

SULLIVAN & BARROS, LLP

Real Estate | Zoning | Land Use

Martin P. Sullivan, Partner
Direct: (202) 503-1704
Fax: (888) 318-2443
msullivan@sullivanbarros.com

September 3, 2013

By Hand Delivery

Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

Re: Statement in Support of Appeal No. 18612 of Terry Hopkins

Dear Chairman Jordan and Members of the Board:

Enclosed please find an original and ten (10) copies of a Statement of Support of Appeal No. 18612 of Terry Hopkins.

Thank you for your consideration of this Appeal.

Sincerely,



Martin P. Sullivan

Board of Zoning Adjustment
District of Columbia
CASE NO. 18612
EXHIBIT NO. 15
www.sullivanbarros.com

**Statement in Support of the Appeal of Terry Hopkins of
Building Permit No. RW1300056**

I. Introduction.

Terry Hopkins (the “**Appellant**”) has appealed the administrative decision of the Zoning Administrator in approving the issuance of Building Permit No. RW1300056 (the “**Permit**”) for the construction of a “retaining wall” at premises 4201 River Road, NW, Square 1674, A&T Lot 805 (the “**Subject Property**”). The Building Permit was issued to the Subject Property owner RUPSHA 2006 LLC (the “**Owner**”). Ms. Hopkins is the owner and resident of 4207 River Rd., NW (the “**Appellant’s Property**”), which abuts the Subject Property to the west (see map showing the two properties attached as Exhibit A.) The Permit was issued on April 5, 2013. The Appellant became aware of the wall on April 9, 2013. This Appeal was timely filed on May 30, 2013.

The structure approved pursuant to the Permit was a seven-foot plus wall (the “**Subject Wall**”) constructed within four feet of the Subject Property’s western property line, which abuts the Appellant’s property. The Subject Wall was constructed in conjunction with a new one-family dwelling on the Subject Property (the “**Building**”). The Subject Wall was constructed for the purpose of facilitating the elevated grading and construction of a driveway on the Subject Property, and was not constructed in order to prevent an earth slide or to otherwise address an existing natural situation with the Subject Property. As such, the Subject Wall, and the area and volume of the fill placed against the Subject Wall (the driveway) constitutes an elevated platform structure greater than four feet in height – not a retaining wall - and must be included in the lot occupancy calculation for the Subject Property. In addition, there is less than eight (8) feet of space between the Elevated Platform Structure and the side property line, constituting a violation of the side yard setback requirement under § 405.8 of the Zoning Regulations.

II. Elevated Platform Structure; Not a Retaining Wall.

In approving the Permit, the Zoning Administrator has determined that the Subject Wall is a mere retaining wall. Further, the Zoning Administrator has apparently determined that the Subject Wall is only two feet in height, when actually the wall is approximately 7.2 feet in height, as shown by the several photos attached as Exhibit B.

When considered under retaining wall jurisprudence crafted by the Board in BZA Appeal No. 17285 (Carome) (affirmed by the D.C. Court of Appeals in *Economides v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 427 (D.C. 2008)), the Subject Wall is clearly not a retaining wall. That wall is, instead, one element of a large elevated platform structure which (i) increases the Subject Property's lot occupancy over the maximum permitted forty percent (40%) and (ii) violates the side yard restrictions under § 405.8.

The newly-constructed elevated platform structure on the Subject Property begins along the western property line with an approximately 4-foot high wall running from the Building's rear wall line to 42nd Street, NW. Adjacent to that 4-foot high wall is an area of fill for a width of about thirty inches, followed by another (parallel) wall approximately 7.2 feet high. Those walls are now holding up the artificially-elevated "fill" area to the east of the walls. The total area of the Elevated Platform Structure consists of approximately 10-20% of the Property and includes the new driveway.

Presumably the Owner believes, and perhaps the Zoning Administrator agreed, that terracing the Subject Wall makes both walls "retaining walls" and not a single "elevated platform structure." But such an interpretation does not comport with the substance of the BZA's findings and decisions in BZA Order No. 17285. In that Order, the Board identified the structure at issue as a single, solitary "structure," and not as separate entities, even though it was made up of several walls, fill dirt, and other materials. Therefore, if the structure at issue here is an elevated platform structure, as it is according to the Board's decision in Case No. 17285, then terracing the structure does not change its nature as an elevated platform structure. Nor does it lower the overall height of that elevated platform structure. It remains a single, solitary elevated platform structure which begins at the property line with a four foot wall and then continues to increase in height with a 7.2 foot wall behind it. This single, solitary structure has a height level greater than four feet. Because it is higher than four feet, it must be included in the lot occupancy calculation and it must be at least eight (8) feet from the side property line, pursuant to this Board's decision in Case No. 17285.¹

¹ To find otherwise would allow a person to build a wall even higher than the thirty-foot-high wall in the *Economides* case, as long as the wall is terraced with minor plateaus in between each four foot wall section.

III. The Elevated Platform Structure Designation Causes Two Zoning Violations.

A. Lot Occupancy Violation

Pursuant to 11 DCMR § 403.2, the entire area of the Elevated Platform Structure must be included in the maximum permitted lot occupancy calculation. While the term “building area” in § 199.1 mentions only “buildings” and not “structures,” the more specific provision in § 403.2 includes *all* structures; therefore including also elevated platform structures in the lot occupancy calculation. Since the reported lot occupancy for this property is already over 39%, any material increase puts the Property over the forty percent (40%) maximum. When considering the entire area of the Elevated Platform Structure -- even considering *only* those portions more than four feet above grade -- lot occupancy clearly exceeds the maximum permitted amount of forty percent (40%).

The Board ruled in Order No. 17285 that “[b]ecause the Board has already concluded that the elevated platform structure is a structure greater than a retaining wall, it must be included in the lot occupancy calculation for the subject property.” In the present case, the Zoning Administrator was required to follow the Board’s decision in Order No. 17285 by including the area of the elevated platform structure in the Subject Property’s lot occupancy calculation.

B. Side Yard Violation.

A Side Yard is defined in the Zoning Regulations as “a yard between any portion of a building *or other structure* and the adjacent side lot line, extending for the full depth of the building *or structure*.” [Emphasis added.] Section 405.8 of the Zoning Regulations requires a side yard for the Subject Property of eight (8) feet. Therefore the elevated platform structure must be at least eight (8) feet from the property line. On the Subject Property, however, the elevated platform structure begins at the property line and rises to a height exceeding seven feet at a point which is only about four feet from the side property line. The Subject Property therefore fails to provide the required eight - foot setback under § 405.8. It was therefore an error for the Zoning Administrator to approve the Permit without requiring such a side yard.

The issue is not whether or not the elevated platform structure may, or may not, be located in a “required side yard.” Rather, the elevated platform structure is a structure separate from any other structure or building on a property, and as such it requires *its own side yard setback*.²

IV. Not a Lot of Record.

It was error for the Zoning Administrator to approve the Permit (as well as the original permit for the house construction), on a property which is not a single lot of record, pursuant to § 3202.3.³ This requirement is well-established and should not need further discussion here.

V. Conclusion.

For the reasons stated above, it was error for the Zoning Administrator to approve Building Permit No. RW1300056 and the Appellant respectfully requests that the Board revoke the Permit and cause the removal of the entire elevated platform structure, or otherwise require that the Subject Property meet the lot occupancy limit, side yard setback requirements, and all other Zoning Regulations.

On behalf of Appellant Terry Hopkins



Martin P. Sullivan
Sullivan & Barros, LLP

² In BZA Case No. 17285, the elevated platform structure in question was located in an area well behind the rear line of the main building on that property, and yet the BZA found that the elevated platform structure failed to satisfy the side yard requirements of § 405.8. So a finding, for instance, that an elevated platform structure can be within 8 feet of the property line as long as it is behind the rear line of a house amounts to a reversal of the Carome and Economides decisions.

³ 3202.3 reads, in part “...a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record.” The Subject Property actually consists of two record lots, as shown on one of the maps in Exhibit A.

EXHIBIT A

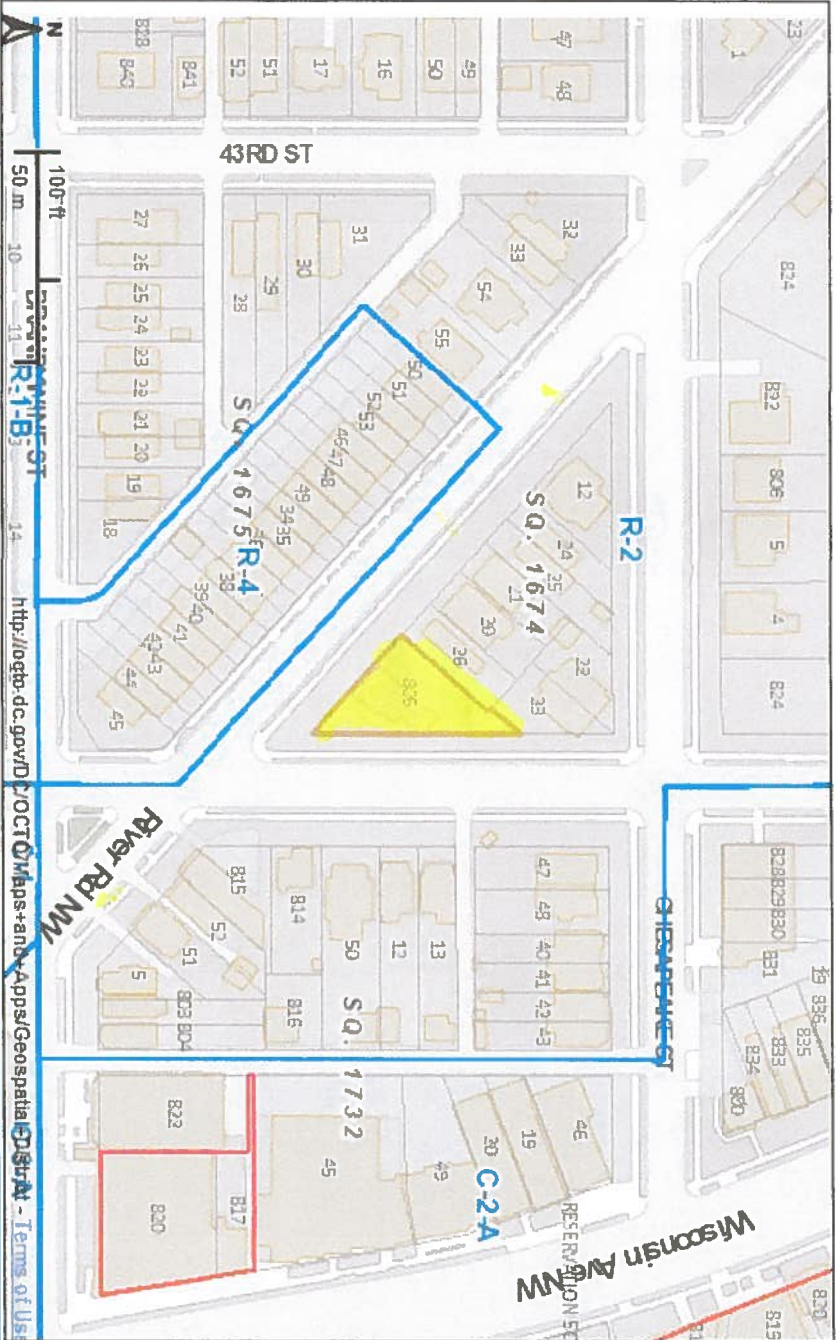
**Maps and Drawings Showing the Subject Property
and the Retaining Wall Boundary**





Zoning Report for Square: 1674 Lot: 0805

September 2, 2013



Zone Districts

Pending Zones

Overlays

Pending Overlays

Base Index

Historic Districts

Active PUDs

Pending

TDRs

Campus Plans

CEA

Latitude: 38.950504, Longitude: -77.082315

While DCoZ is committed to providing accurate and timely zoning information via the zoning map, DCoZ cannot guarantee the quality, content, accuracy or completeness of the information, text, graphics, links, and other items contained therein. All data visualizations on the zoning map should be considered approximate. Information provided in the zoning map should not be used as a substitute for legal, accounting, real estate, business, tax, or other professional advice. DCoZ assumes no liability for any errors, omissions, or inaccuracies in the information provided regardless of the cause or for any decision made, action taken, or action not taken by the user in reliance upon any maps or information provided herein. DCoZ retains the right to change any content on its zoning map without prior notice.

DC Office of Zoning

www.dcoz.dc.gov

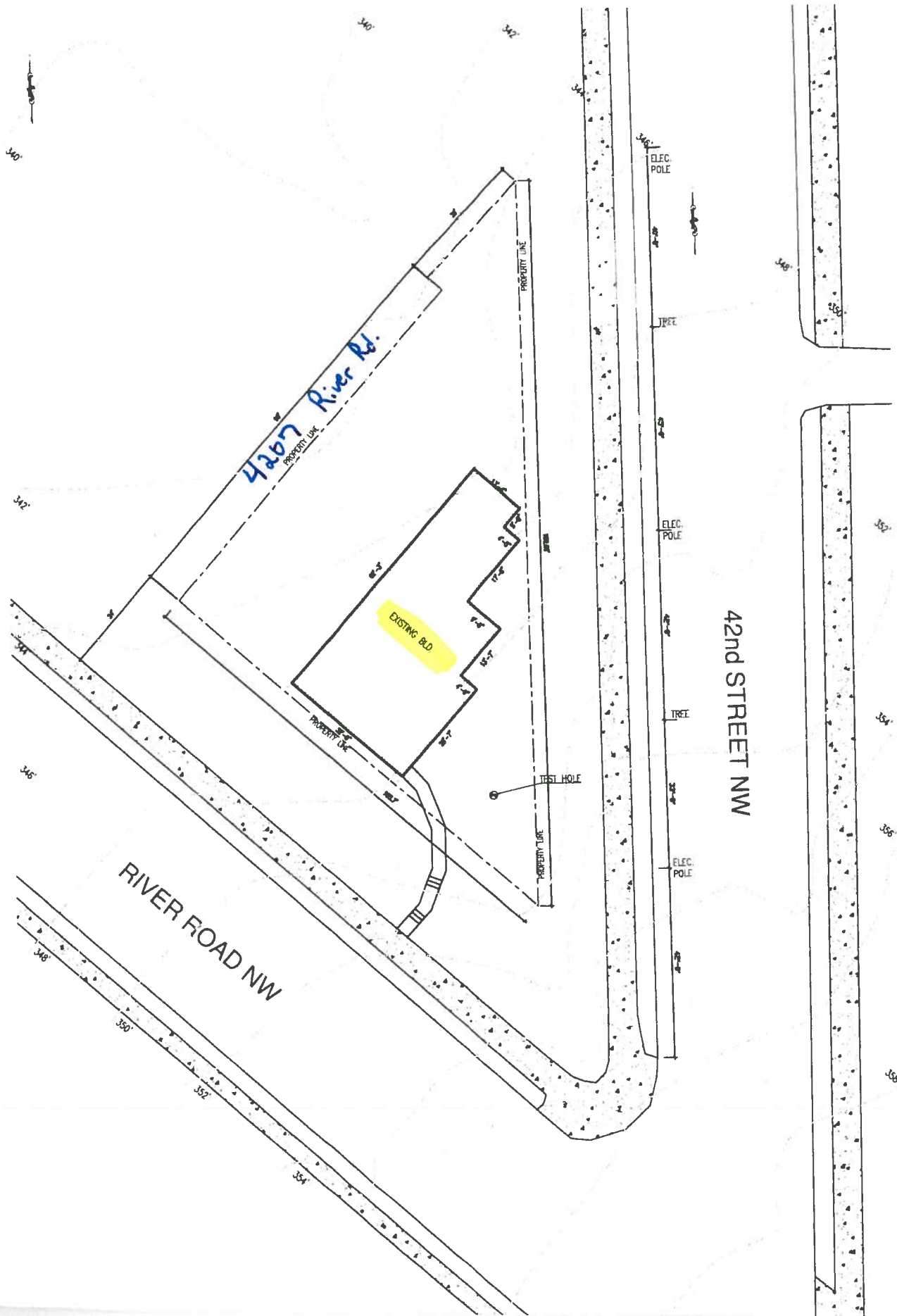
Zoning Data Summary*

Square/Suffix/Lot	1674 / n/a / 0805
Premises Address	4201 RIVER RD NW
Zoning District (s)	R-2
Overlay District (s)	
Pending Zoning District(s)	
Pending Overlay District(s)	
PUDs	None
Pending PUDs	None
Ward	3
Council Member	Mary M. Cheh
ANC	3E
ANC Chairperson	Jonathan Bender
SMD	3E03
Commissioner	Jonathan Bender

* For a detailed explanation of zoning related terms, please refer to the DC Zoning Map Glossary available at http://maps.dcoz.dc.gov/css/Map_App_User_Guide/Glossary.pdf.

** To the extent an active PUD exists on a particular site, the PUD zoning depicts the zoning in effect for that site.

EXISTING SITE CONDITIONS (Scale 1"=30')



Map maints.

LEG

- XX'
- W
- S
- SW

42nd STREET NW

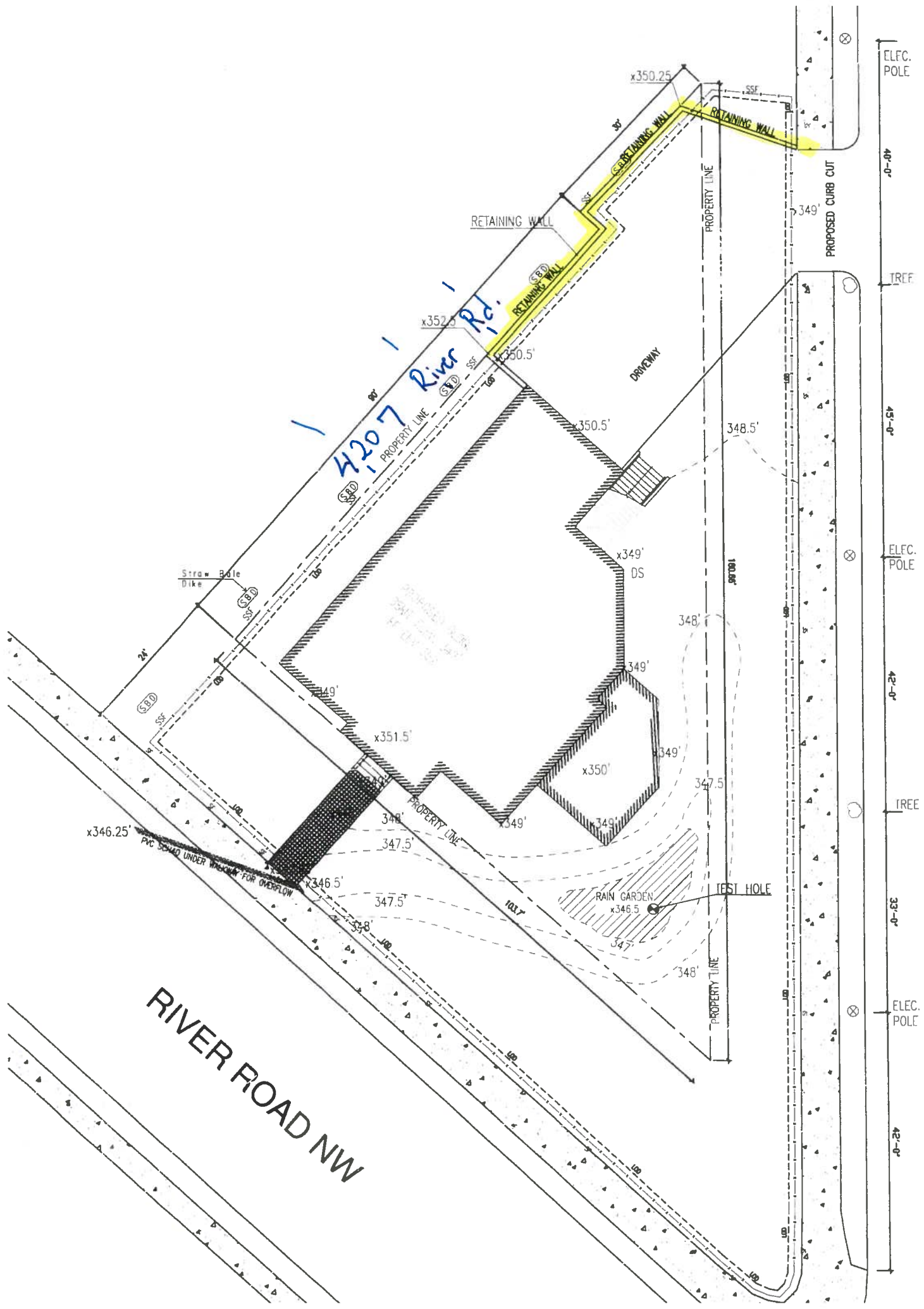


EXHIBIT B

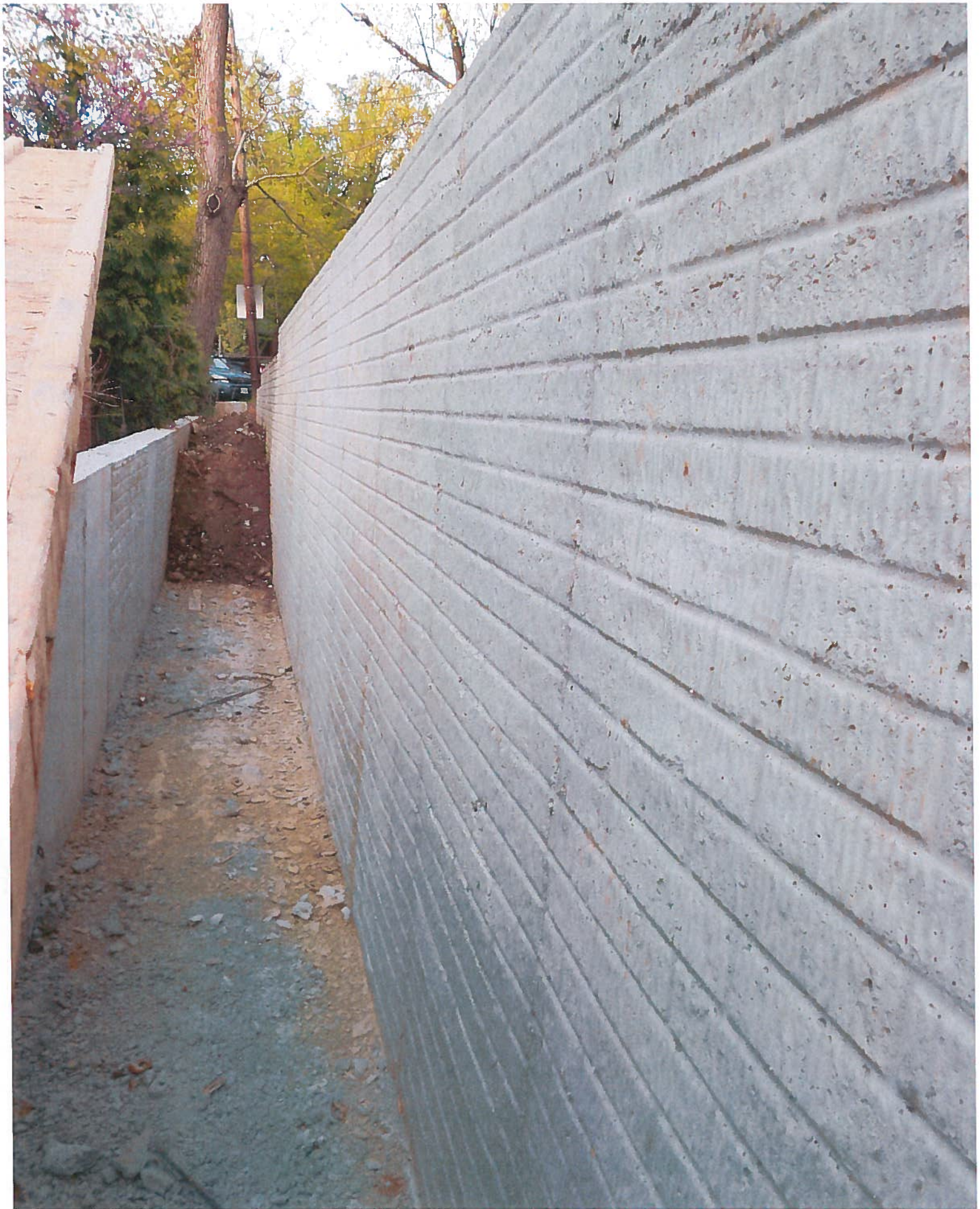
Photographs Showing:

- 1) A view of the completed Elevated Platform Structure from the Appellant's rear yard.
- 2) A view of the two walls facilitating the construction of the elevated platform structure, from inside the two walls.
- 3) A view of the two walls, illustrating the change in elevation from outside the wall to the height of the wall and fill on the other side.

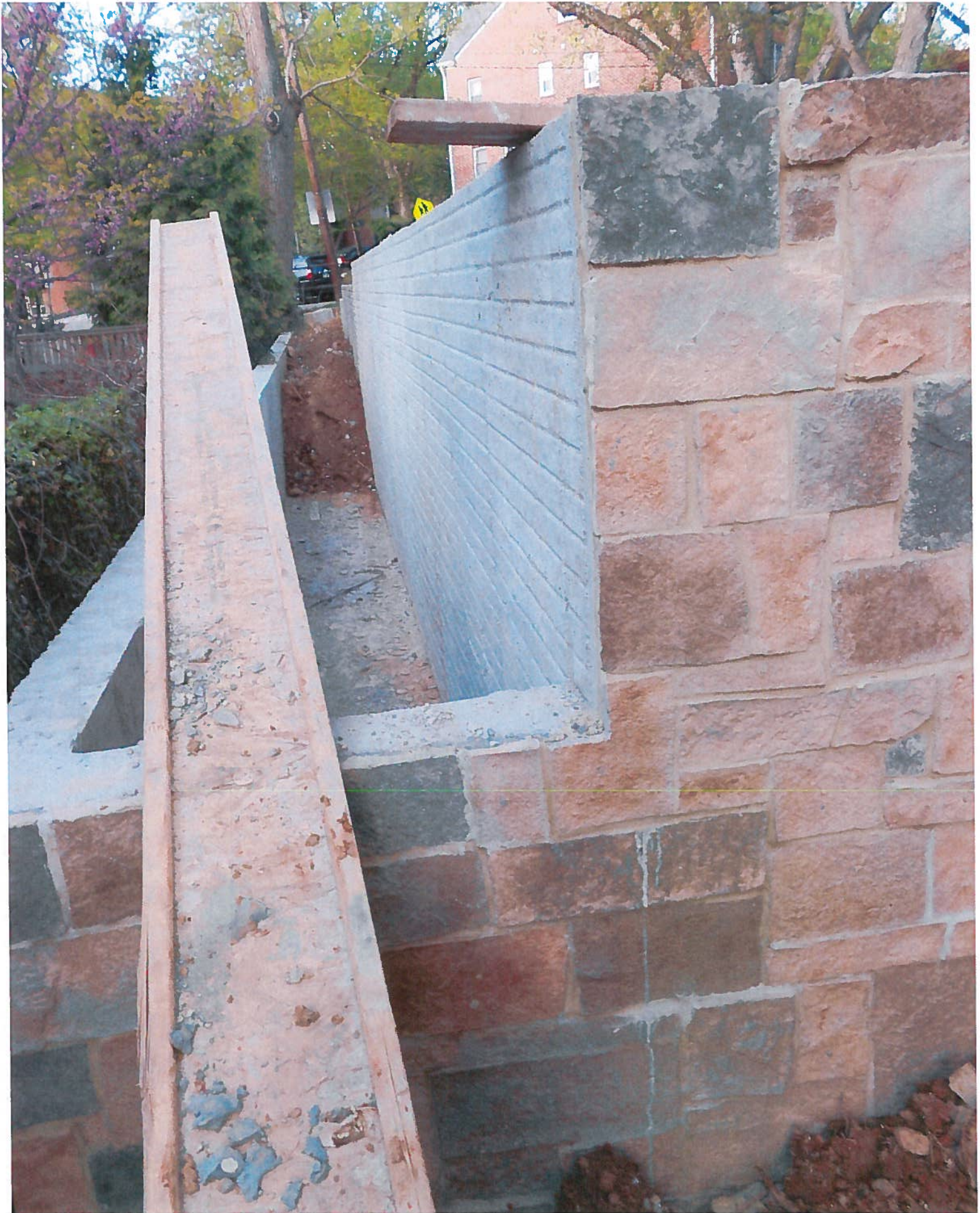
1



#2



#3



CERTIFICATE OF SERVICE

I, Martin P. Sullivan, HEREBY CERTIFY that on September 3, 2013, a copy of the foregoing Appellant's Statement in Support of Appeal was delivered via e-mail to the following:

Jay A. Surabian, Esq.
Assistant Attorney General
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., 5th Floor
Washington, D.C. 20024
jay.surabian@dc.gov

Jonathan Bender
Chair, ANC 3E
jonbender@gmail.com

Mohammed Sikder
RUPSHA 2006 LLC
sikder@district-properties.com