

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

**APPEAL OF PETER MINSHALL AND DIANA MINSHALL
Tenants in Common - 3327 Q Street, NW**

PREHEARING STATEMENT OF APPELLANT

I. INTRODUCTION

This is the Prehearing Statement in Support of the Appeal of Mr. Peter Minshall and his daughter, Ms. Diana Minshall (collectively, the “**Appellant**”), owners as tenants-in-common of the property located at 3327 Q Street, NW (the “**Appellant’s Property**”), to the Board of Zoning Adjustment (“**BZA**” or “**Board**”) of a decision made by the District of Columbia Zoning Administrator in approving issuance of Building Permit No. B1410905 (the “**Building Permit**”), issued on November 26, 2014. The Building Permit authorized construction of a retaining wall (the “**Retaining Wall**”) at 3329 Q Street, NW (the “**Subject Property**”), along the common property line with the Appellant’s Property. The Retaining Wall was previously constructed without proper permit approval, in 2013. Following enforcement action by DCRA, the owner of the Subject Property sought approval for the Wall from the Commission of Fine Arts and then filed the subject Building Permit application on August 13, 2014, according the DCRA’s on-line permit monitoring system. The Retaining Wall violates 11 DCMR §413.4(a), which requires that the Wall not exceed four (4) feet in height, as measured pursuant to 11 DCMR §413.2. The Retaining Wall is approximately 10.5 feet high as measured from the base of the wall at the highest point of the wall, which is approximately 6.5 feet higher than permitted.

II. JURISDICTION

The Board has jurisdiction over this appeal pursuant to 11 DCMR §§ 3100.2 & 3200.2. This appeal is timely filed under 11 DCMR § 3112.2(a), having been filed within 60 days from the date the Appellant had notice or knowledge of the decision complained of. The Appellant's counsel learned of the permit issuance on December 16, 2014, upon reviewing the PIVS on-line system at DCRA. It does not appear that the permit was posted on the Subject Property. The permit was issued on November 26, 2014. This appeal is filed well within sixty (60) days of all of those dates.

III. STANDING OF APPELLANT

The Appellant's own the property located at 3327 Q Street, NW (Square 1278, Lot 241) as tenants-in-common, and Diana Minshall resides in the house on the property. The Appellant's Property is directly adjacent to the Subject Property, to the east. The Building Permit authorized the construction of a retaining wall to a height of up to 10.5 feet, as measured pursuant to 11 DCMR §413.2(b), and this Retaining Wall directly and substantially negatively impacts the use and enjoyment of the Appellant's Property (see photos attached as Exhibit B).

IV. DESCRIPTION OF THE RETAINING WALL AND ERROR

The Retaining Wall is a retaining wall constructed along the Subject Property's eastern property line adjacent to the Appellant's Property.¹ It runs along that property line for approximately the rear half of the length of the two properties, and its maximum height is approximately 10.5 feet, in the area most impactful to the Appellant's Property, overlooking that

¹ Attached as Exhibit A is the permit applicant's structural engineer's plans identifying the subject structure as a "Retaining Wall."

property's main living space. This wall is a retaining wall, per the definition of Retaining Wall in Section 199.1 of the Zoning Regulations as well as by the permit applicant's structural engineer's characterization of same. As such, it is limited to a maximum height of four (4) feet along the property line (§413.4(a)). As measured pursuant to §413.2, the Retaining Wall is more than six (6) feet over that height limit, and therefore the Building Permit was issued in error.

V. NEW CONSTRUCTION APPROVAL

The approval by the Zoning Administrator for the after-the-fact construction of the Retaining Wall took place in the context of Building Permit No. B1410905. DCRA's permitting documentation shows that the Zoning Division of DCRA reviewed and approved Building Permit Application No. B1410905 (see approval worksheet for review of the Retaining Wall attached as Exhibit B). This documentation shows that the approval of the structure of the Retaining Wall – not the addition of stucco or coloring – was what the Zoning Division considered when reviewing the subject permit application. The fact that the wall already existed – albeit illegitimately without a CFA approval – does not change the fact that the construction of this Retaining Wall was reviewed after the enactment of the retaining wall Regulations.

There is additional documentation to show that the review of the construction of the Retaining Wall was a de novo review, after the fact of the illegitimate construction. The application cover letter from Tim Dennee to the CFA (Exhibit C) denotes the application as “an after-the-fact application to construct a wall and fences along the east property line of the rear yard of 3329 Q Street NW.” [emphasis added.] Mr. Dennee was correct in terming this an application to *construct* a wall, not to merely refinish a wall. And CFA's review was never

limited to a mere discussion of finishes, despite the fact that in the end CFA approved the height as built.

Finally, both Mr. Dennee (Exhibit D) and DCRA inspector Keith Lambert (Exhibit E) both voiced their opinion internally that the existing wall was not originally authorized, thereby making the 2014 approval the first time the Retaining Wall was officially permitted.

VI. CONCLUSION

For the above reasons, the Appellants respectfully request that the Board grant this Appeal and revoke Building Permit No. B1410905.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Martin P. Sullivan". The signature is written in a cursive, flowing style.

Martin P. Sullivan