

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
441 4TH Street, N.W.
Washington, D.C. 20001

Appeal of Concerned Neighbors of Argonne Place

Appeal No. 18980

DCRA'S MOTION TO ACCEPT DCRA'S SEPTEMBER 9 FILING AS TIMELY FILED

DCRA apologizes for the late filing of its proposed Findings of Fact and Conclusions of Law on September 9, 2015, required to be submitted by September 8, 2015. This was due to a health emergency in the family of the DCRA Counsel.

Therefore, DCRA respectfully requests that the Board grant this motion to accept DCRA's September 9, 2015 filing of its proposed Findings of Fact and Conclusions of Law as timely filed.

Respectfully submitted,
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General Counsel
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Date: 9/9/15


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DCRA'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Department of Consumer and Regulatory Affairs (“**DCRA**”) hereby submits the proposed Findings of Fact and Conclusions of Law as requested by the Board of Zoning Adjustment (“**Board**”) at its July 7, 2015 public meeting. As the Board had voted orally to grant the Partial Motions to Dismiss for failure to timely file submitted by the property owner (“**Owner**”) and DCRA, the Board requested proposed Findings of Fact and Conclusions of Law only for

“those issues that are ... remaining before the Board to address [-] the retaining wall a[s] it relates to the berm and the parking space and the grade measurement”.

BZA Appeal 18980, Transcript of July 7, 2015 hearing (“**Transcript**”) at 68, 92.

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at 1636 Argonne Place, N.W. (“**Property**”).
2. The Property is located in an R-5-B zone district.
3. The Owner filed a building permit application to convert the existing single family dwelling into a four unit apartment house (“**Project**”). DCRA approved this application and issued Building Permit B1404813 (“**Permit**”) on September 9, 2014.
4. The Owner filed a building permit application to revise the Permit to change the calculation of “adjacent finished grade” as defined by Section 199.1 of the Zoning Regulations at the rear of the Property and so bring the floor area ratio (“**FAR**”) of the Project into compliance with the Zoning Regulations following the December 3, 2014 issuance of a Stop Work Order. This revision only altered the calculation of the rear adjacent finished grade by installing a retaining wall adjacent to the rear building wall.
5. The ZA reviewed this proposed revision and determined that
 - (i) the retaining wall complied with the definition in Section 199.1;
 - (ii) the retaining wall created an adjacent finished grade for the lower level that met the definition of a cellar under Section 199.1 because the ceiling of the lower

- level was less than four feet above the adjacent finished grade created by the retaining wall (actual measurement was three feet and eleven inches (3 ft., 11 in.) above the adjacent finished grade. BZA Appeal 18980, Exhibit 24A, at 2);
- (iii) as a cellar, the lower level is not included in the calculation of “gross floor area” (“GFA”) and so was not included in the calculation of FAR as defined in Section 199.1; and
 - (iv) therefore the proposed revision brought the Project into compliance with FAR requirements that had led to the SWO.
6. The ZA therefore approved this application and DCRA issued Building Permit B1502210 (“**Revised Permit**”) on December 18, 2014. The DCRA public Permit Tracking website correctly reported the issuance of the Revised Permit until January 8, 2015, when an error reported an additional issuance of the Revised Permit on that date.
7. Appellant filed its appeal on January 16, 2015.
8. When the Zoning Administrator (“ZA”) determined based on a site visit that the Revised Permit had caused a collateral violation of the Zoning Regulations, the Owner submitted a building permit application to revise the Revised Permit. This revision only altered the calculation of the rear adjacent finished grade, replacing the proposal of the Revised Permit. This proposed revision moved the retaining wall into the body of the building but retained the grandfathered existing substandard parking spaces with a twelve percent (12%) grade away from the building. BZA Appeal 18980, Exhibit 29, at 3.
9. The ZA approved this application and DCRA issued Building Permit B1509180 (“**2nd Revised Permit**”) on June 23, 2015.
10. The Owner and DCRA filed Partial Motions to Dismiss for failure to timely file all of the Appeal except for the Revised Permit, as replaced by the 2nd Revised Permit – namely the calculation of the rear adjacent finished grade.
11. The Board, at its July 7, 2015 hearing on this appeal, by a vote of 4-0 granted the Owner’s and DCRA’s Partial Motions to Dismiss for failure to timely file and restricted this appeal to the calculation of the rear adjacent finished grade, and the collateral issues of the proposed rear retaining wall and parking grade. BZA Appeal 18980, Transcript at 68, 92.

Appellant’s Allegations:

12. Appellant alleged the following errors:
- (i) The retaining wall was illegal;

- (ii) The retaining wall could not create the adjacent finished grade for determination of the lower level as a cellar exempt from GFA and therefore FAR calculations; and
- (iii) The parking spaces are illegal because of the 12% grade.

Response to Appellant's Allegations:

13. The Owner and DCRA asserted that the retaining wall complies with the Zoning Regulations because the retaining wall:

- (i) met the definition in Section 199.1 because the retaining wall serves to laterally displace soil and so serves a legitimate purpose as defined by the Zoning Commission:

“Retaining Wall - a vertical, self-supporting structure constructed of concrete, durable wood, masonry or other material, designed to resist the lateral displacement of soil or other materials. The term shall include concrete walls, crib and bin walls, reinforced or mechanically stabilized earth systems, anchored walls, soil nail walls, multi-tiered systems, boulder walls, or other retaining structures.”

- (ii) complied with the requirements of Section 413 governing retaining walls, in particular Section 413.4's requirement that it not exceed four feet in height, as measured from the natural grade at the base of the wall per Section 413.2. This is either one foot, ten inches (1 ft., 10 in.) from the top of the parking surface, or three feet, ten inches (3 ft., 10 in.) from the existing grade. BZA Appeal 18980, Exhibit 29, at 3.

14. The Owner and DCRA asserted that the retaining wall does create adjacent finished grade. Although this term is not defined in the Zoning Regulations, it has been consistently interpreted by its plain meaning as the grade adjacent to the building that is established at the conclusion of the construction process as shown on the plans approved with a building permit. The plans approved with the 2nd Revised Permit show this adjacent finished grade to be the grade between the rear of the building and the top of the retaining wall. This grade is less than four feet below the ceiling of the lower level, which is therefore a cellar under the definition in Section 199.1. As a cellar, the lower level is not included in the calculation of GFA, per the definition in Section 199.1, and so is not included in the calculation of FAR, per the definition in Section 199.1.

15. The Owner and DCRA asserted that the two substandard parking spaces are legal because

- (i) their substandard size is grandfathered as existing parking spaces; and
- (ii) the 12% grade is the maximum permitted for driveways under Section 2117.8(a), which the ZA has interpreted as therefore being the maximum permitted for parking

spaces for zoning review purposes. This is the only provision in the Zoning Regulations that addresses the grade permitted for a parking space or driveway.

CONCLUSIONS OF LAW

The Board finds that Appellant failed to sustain its allegation that the retaining wall approved in the 2nd Revised Permit violated the Zoning Regulations.

Retaining Wall

The Board finds that the retaining wall serves a legitimate purpose in resisting the lateral displacement of soil, the definition provided by the Zoning Commission. The Board also finds that the retaining wall here established the adjacent finished grade at the rear of the building as the top of the retaining wall and soil held up by the retaining wall. As a result, the Board agrees with the ZA that the lower level is a cellar since its ceiling is less than four feet above the adjacent finished grade, and so is not counted in GFA and FAR. Therefore the Board upholds the ZA's determination that the 2nd Revised Permit complies with the FAR requirements of the Zoning Regulations.

Parking

The Board finds that the two substandard parking spaces are compliant with the Zoning Regulations as grandfathered existing parking spaces. The Board also upholds the ZA's determination that the 12% grade of the parking spaces complies with the Zoning Regulations is a permissible interpretation based on the analogous provision for driveways under Section 2117.8(a) in light of the absence of a direct provision for the grade of parking spaces in the Zoning Regulations. Therefore the Board upholds the ZA's determination that the 2nd Revised Permit complies with the parking requirements of the Zoning Regulations.

For these reasons, the Board determines that the Zoning Administrator correctly approved the 2nd Revised Permit as compliant with the Zoning Regulations. Accordingly, it is **ORDERED** that the appeal is **DISMISSED** for failure to substantiate the allegations of any violations of the Zoning Regulations.

Respectfully submitted,

CHARLES THOMAS

General Counsel

Department of Consumer and Regulatory Affairs

Date:

9/9/15



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CERTIFICATE OF SERVICE

I hereby certify that on this 9th of September, 2015, a copy of the foregoing Findings of Fact and Conclusions of Law was served via electronic mail to:

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