

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 18980 of Concerned Citizens of Argonne Place, pursuant to 11 DCMR §§ 3100 and 3101, from December 18, 2014 and January 8, 2015 decisions by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permits Nos. B1502210 and B1404813 to convert a one-family dwelling to a four-unit apartment house in the R-5-B District at premises 1636 Argonne Place, N.W. (Square 2589, Lot 460).

HEARING DATE: July 7, 2015
DECISION DATES: July 7, 2015 and September 15, 2015

ORDER DISMISSING APPEAL AS UNTIMELY IN PART,
AFFIRMING THE DETERMINATION OF THE ZONING ADMINISTRATOR
IN PART, AND REVERSING THE DETERMINATION OF THE
ZONING ADMINISTRATOR IN PART

This appeal was submitted on February 13, 2015 by Concerned Citizens of Argonne Place (the “Appellant”), a group of residents who own and reside in properties near 1636 Argonne Place N.W. (the “subject property”), to challenge decisions of the Zoning Administrator, at the Department of Consumer and Regulatory Affairs (“DCRA”), to issue building permits that allowed the conversion of a former one-family dwelling and two-family flat to a four-unit apartment house in the R-5-B zone. Following a public hearing, the Board voted to dismiss the appeal in part as untimely and to affirm in part and reverse in part the determination of the Zoning Administrator.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda dated February 26, 2015, the Office of Zoning provided notice of the appeal to the Zoning Administrator at DCRA; the Office of Planning; the Councilmember for Ward 1; Advisory Neighborhood Commission (“ANC”) 1C, the ANC in which the subject property is located; and Single Member District/ANC 1C05. Pursuant to 11 DCMR § 3112.14, on February 25, 2015, the Office of Zoning mailed letters providing notice of the hearing to the Appellant; the Zoning Administrator; District Design and Development Argonne LLC, the owner of the property that is the subject of the appeal; and ANC 1C. Notice was published in the *D.C. Register* on March 6, 201. (62 DCR 10.)

BZA APPEAL NO. 18980
PAGE NO. 2

Party Status. Parties in this proceeding are the Appellant, DCRA, ANC 1C, and District Design and Development Argonne LLC (“Property Owner”). There were no other requests for party status.

Appellant’s Case. The Appellant challenged decisions of the Zoning Administrator to issue certain building permits for the subject property, which the Appellant alleged were based on erroneous determinations especially with respect to gross floor area (“GFA”) that resulted in errors in calculations of floor area ratio (“FAR”) and lot occupancy. The Appellant also alleged error in an email from the Zoning Administrator, sent December 19, 2014, that described a determination that the subject property was in compliance with respect to FAR. That determination was made after the Property Owner submitted an application for a permit revision to change the finished grade adjacent to the front and rear of the building to establish the lower level as a cellar. The Appellant contended that the “cumulative effect of these two permits and the Zoning Administrator’s ruling ... is to permit construction of an apartment building with a greater FAR and lot occupancy than is permitted in an R-5-B zone, in violation of Section 402.4.” (Exhibit 7.)

In its prehearing statement submitted on May 5, 2015, the Appellant also alleged “violation of multiple parking regulations” when building permits were issued that allowed the Property Owner to eliminate the former garage space under the project without providing the two parking spaces required for a four-unit apartment house. According to the Appellant, “allowing installation of a retaining wall across the back of the building not only constitutes an improper and unsuccessful effort to change the grade measure but also further shortens the distance to the alley, thus increasing the non-conformity of potential parking spaces, leaving no space for parking.” (Exhibit 22.) After issuance of a revised permit, the Appellant argued that the slope of two newly created parking spaces at the subject property would, at 12% grade, “far exceed the allowable 5% parking surface allowed by the Barrier Act of 1980, thus creating a scenario where zero spaces are provided to the development.” (Exhibit 31.) Pursuant to 11 DCMR § 2115.1, “[p]arking shall also be in compliance with the requirements of the District of Columbia Architectural Barriers Act of 1980, effective July 1, 1980 (D.C. Law 3-76; 12 DCMR art. 15).”

DCRA. The Department of Consumer and Regulatory Affairs described the appeal as a challenge of the Zoning Administrator’s approval of a building permit issued on September 9, 2014, and revised on December 18, 2014, to change the adjacent finished grade at the subject property so as to bring the floor area ratio into conformity with zoning requirements, noting that a second revised permit was issued on June 23, 2015 after the Zoning Administrator determined that the first revision had caused a collateral zoning violation. DCRA agreed with the Property Owner that the Appellant failed to file a timely appeal to the initial permit, and asserted that the appeal should therefore be limited to the first and second revised permits, which were both “limited to addressing the determination of the lower level as a basement.” (Exhibit 35.) DCRA also contended that the Zoning Administrator correctly approved the second revised permit as compliant with the Zoning Regulations.

BZA APPEAL NO. 18980
PAGE NO. 3

Property Owner. The owner of the subject property filed a motion to dismiss the appeal as untimely, stating that “[o]ther than the lower-level Gross Floor Area issue (the ‘Retaining Wall Issue’), every aspect of the March 19th zoning approval has not changed since the original approval on March 19th and per the issuance of the Building Permit on September 9th,” more than eight months before the appeal was submitted. The Property Owner contended that “full zoning approval” had been received on March 19, 2014, although that approval was revoked eight months later, in December 2014, and one “week later Argonne LLC received a zoning approval for the resolution of the single issue on which the approval was revoked in December – the Retaining Wall Issue.” The appeal was filed “nearly eleven (11) months after the original zoning approval, five (5) months after issuance and posting of the subject Building Permit, and a little over two (2) months after the approval of the Retaining Wall Issue.” (Exhibit 25.)

The Property Owner claimed good-faith reliance on the original zoning approval on March 19, 2014, on the building permit issued on September 9, 2014, and on the Zoning Administrator’s revised approval on December 10, 2014. The Property Owner asserted the affirmative defenses of laches and estoppel, and moved to dismiss the appeal, for lack of timeliness, on all claims of error other than the claim relating to the retaining wall, since every other decision was made on March 19, 2014 and made official in the permit issued on September 9, 2014, which were 11 months and five months, respectively, before the appeal was filed.

ANC Report. By a vote of 6-0 at a public meeting on April 1, 2015, with a quorum present, ANC 1C adopted a resolution in support of the appeal. The resolution stated that “failure to enforce zoning and building code regulations on the subject property will set a flawed precedent for similar and identical properties in Adams Morgan and other neighborhoods in the District of Columbia.” (Exhibit 17.)

FINDINGS OF FACT

1. The property that is the subject of this appeal is located at 1636 Argonne Place, N.W. (Square 2589, Lot 460).
2. The lot is improved with a row building formerly used as a one-family dwelling and later as a two-family flat. The Property Owner recently began construction of an addition to the building as part of its planned conversion to a four-unit apartment house.
3. A parking area with spaces for two vehicles will be provided at the rear of the property, accessible from a public alley. The parking area will occupy the rear yard, which is 16 feet deep, and will rise from the alley toward the building at a grade of 12%.
4. The subject property is zoned R-5-B, which permits a maximum FAR of 1.8 and maximum lot occupancy of 60%. (11 DCMR §§ 402.4, 403.2.)

BZA APPEAL NO. 18980
PAGE NO. 4

5. The Property Owner applied for a permit for the apartment house project at the subject property on March 5, 2014. That application, for Building Permit No. 1404813, was approved by the Zoning Division of DCRA on March 19, 2014, and the permit was issued on September 9, 2014 (the “September permit”). The permit type was “addition alteration repair” and the description of work included “Renovation of existing single family masonry veneer structure, 1 story wood framed addition with mezzanine” and “change of use from single family dwelling to 4 unit condo building.” (Exhibit 22D.)
6. Beginning in October 2014, residents living near the subject property, including some who later became members of the Appellant group, contacted and met with DCRA staff “to raise concerns about potential violation of FAR and lot occupancy limitations.” (Exhibit 31.)
7. On December 3, 2014, a stop work order was issued, on the ground that the project would exceed the maximum floor area ratio permitted in the R-5-B zone because of a recalculation of the gross floor area on the lower level of the building. (Exhibits 22G, 25.) The Property Owner filed an application for a new building permit to revise the September permit so as to allow the installation of a retaining wall extending from the rear building wall that would alter the rear adjacent finished grade.
8. At a meeting with the Property Owner on December 10, 2014, the Zoning Administrator approved the proposed revision based on his determinations that the planned retaining wall would be consistent with the zoning definition of “retaining wall,” and would create an adjacent finished grade for the lower level consistent with the zoning definition of a cellar because the ceiling of the lower level would be less than four feet above the adjacent finished grade created by the retaining wall.¹ (Exhibits 25, 24A at 2.) The Zoning Administrator determined that the lower level, as a cellar, would not be included in the calculation of gross floor area² and so would also be excluded from the calculation of FAR.³ Accordingly, the Zoning Administrator concluded that the proposed revision brought the project into compliance with FAR requirements, and the stop work order was lifted around December 20, 2014.
9. A new permit, Building Permit No. 1502210, was issued March 24, 2015 as a revision of B1404813 with “plans to reflect new grade” (“Revised permit”). (Exhibit 22Q.) The

¹ A “cellar” is defined in § 199.1 of the Zoning Regulations as “that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade,” while a “basement” is defined as “that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade.”

² In accordance with § 199.1, the “term ‘gross floor area’ shall include basements...[but] shall not include cellars....”

³ As defined in § 199.1, “floor area ratio” is “a figure that expresses the total gross floor area as a multiple of the area of the lot. This figure is determined by dividing the gross floor area of all buildings on a lot by the area of that lot.”

Revised permit authorized a retaining wall at the rear of the property that would establish the adjacent finished grade.

10. The Zoning Administrator subsequently made a site visit to the subject property and discovered that the Revised permit had caused a collateral violation of the Zoning Regulations by increasing a nonconforming aspect of the planned parking spaces. After a second stop work order was placed on the property on May 20, 2015, the Property Owner submitted a new building permit application to revise the Revised permit. (Exhibit 29 at 3.)
11. Building Permit No. 1509180 was issued June 23, 2015 as a revision of B1404813 “to remove approximately 73 square feet of cellar and install retaining wall.” (“Second Revised permit”). (Exhibit 30.) The second revision changed the location of the planned retaining wall to a niche to be formed at the rear of the building, so that the retaining wall would be aligned with the face of the building and would not diminish the depth of the rear yard or the length of the parking area.
12. The height of the retaining wall would be one foot, 10 inches, measured from the top of the parking surface to the top of the berm that would create the finished grade adjacent to the rear wall of the building. The distance between the top of the berm and the ceiling of the lower level would be three feet, 11 inches. (Exhibit 29 at 3.) The Second Revised permit did not alter the Zoning Administrator’s prior determination that the lower level of the building was a cellar but allowed an increase in the width of the retaining wall as well as its relocation into the building niche.
13. This appeal was submitted on February 13, 2015.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized by § 8 of the Zoning Act to “hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal” made by any administrative officer in the administration or enforcement of the Zoning Regulations. (D.C. Official Code § 6-641.07(g)(1) (2008 Repl.). *See also* 11 DCMR § 3100.2.) Appeals to the Board of Zoning Adjustment “may be taken by any person aggrieved, or organization authorized to represent that person, affected by any decision of an administrative officer...granting or withholding a certificate of occupancy ... based in whole or part upon any zoning regulations or map” adopted pursuant to the Zoning Act. (D.C. Official Code § 6-641.07(f) (2008 Repl.). *See also* 11 DCMR § 3200.2.)

The Zoning Regulations specify that an appeal must be filed within 60 days “from the date the person appealing ... had notice or knowledge of the decision complained of, or reasonably should have had notice ..., whichever is earlier.” (11 DCMR § 3112.2(a).) The Property Owner and

BZA APPEAL NO. 18980
PAGE NO. 6

DCRA filed motions to dismiss the appeal as untimely, except with respect to the determination made in the Revised permit, as replaced by the Second Revised permit – namely the calculation of the rear adjacent finished grade. The Property Owner contended that all the other decisions subject to challenge in the appeal were made on March 19, 2014 when the Zoning Administrator approved the application for the September permit, although the appeal was not filed until at least 100 days after the Appellant “fully knew of the decisions being challenged.” (Exhibit 25.) DCRA argued that the Appellant failed to file a timely appeal of the initial permit (Building Permit No. 1404813, issued September 9, 2014), and asserted that the appeal should be limited to the Revised permit and the Second Revised permit; that is, “the determination of ‘adjacent finished grade’ and the impact of that on the FAR calculation.” (Exhibit 35.) The Property Owner contended that the 60-day period began by late October 2014 at the latest, when the Appellant had obtained copies of the relevant building permits and architectural plans. (Transcript (“Tr.”) of July 7, 2015 at 54-55.) According to the Property Owner, the beginning of the 60-day period could be fixed earlier, with the issuance of the building permit on September 9, because the permit was posted promptly and work began at the subject property immediately thereafter, or even earlier than the date of permit issuance, because the neighbors were aware of the project.

Despite the neighbors’ earlier knowledge that construction had begun at the subject property, the Appellant argued that the 60-day period for an appeal to the Board of Zoning Adjustment began December 18, 2014 with the Zoning Administrator’s approval of the Revised permit. The Appellant stated that, despite an inability to obtain copies of relevant drawings, the Appellant’s neighbors nonetheless had “immediately started conversations with DCRA and raised questions during the 60-day period after September 9 when the first permit was issued working with the zoning regulatory process.” (Tr. of July 7, 2015 at 52.) The Appellant decided not to file an appeal while engaged in “an active conversation ... with the regulatory body [about] ... a problem that they would like to perhaps address,” especially in light of the issuance of a stop work order on December 3, 2014, which confirmed the Appellant’s reliance on the regulatory process. (Tr. of July 7, 2015 at 53.) The Appellant also contended that the appeal was timely because the aspect under appeal “in the first permit also applies to all of the other permits later issued,” specifically with respect to errors in the calculation of gross floor area and height. (Tr. of July 7, 2015 at 53.)

The building permit is ordinarily the document that reflects a zoning decision about whether a proposed structure and its intended use, as described in the permit application, conform to the zoning regulations, and may provide “the first notice from which an aggrieved person knew or ‘reasonably should have ... know[n]’ ... of the resolution or decision” *Basken v. District of Columbia Bd. of Zoning Adjustment*, 946 A.2d 356, 364, 367 (D.C. 2008); *Schonberger v. District of Columbia Bd. of Zoning Adjustment*, 940 A.2d 159 (2008). A zoning decision made prior to the issuance of a building permit may be appealable if the appellant had knowledge of the decision.⁴ *See Appeal No. 19049 of Caesar Junker et al.* (2015).

⁴ The Appellant became aware at some time that “DCRA issued multiple building permits for the subject property” between March and September 2014, “with determinations that existing and proposed FAR, lot occupancy, building height and parking conditions were in compliance with zoning regulations,” and that “[c]oncerns were brought to the attention of DCRA by neighbors over the time period October-December 2014.” (Exhibit 31.) While some members

BZA APPEAL NO. 18980
PAGE NO. 7

In this case the Board finds no reason to conclude that the Appellant lacked knowledge of the issuance of Building Permit No. 1404813 on September 9, 2014. The Board credits the Property Owner's assertion that the permit was posted and work began at the subject property immediately thereafter. By its own account, the Appellant knew of the issuance of the September permit at least by October 2014, when some neighbors met with DCRA to discuss their concerns about potential zoning violations at the subject property related to lot occupancy and floor area ratio. However, the appeal was not filed until February 13, 2015 – that is, well after the 60-day deadline even based on the October date when the Appellant indisputably had knowledge of the zoning decision. The Appellant's "active conversation" with DCRA or other measures to pursue the regulatory process did not toll the time allowed for submission of an appeal. *See Woodley Park Community Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 490 A.2d 628, 638 (D.C. 1985) (delay in filing appeal was not reasonable where appellant opted to continue negotiations with property owner rather than pursue the alternate route of an administrative challenge to owner's development plans; property owner's behavior, including being "less than fully candid" so that appellant believed its concerns would be accommodated, did not eliminate responsibility for choices where appellant "was fully aware of the sharp differences that existed between the parties."); *Waste Management of Maryland, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 775 A.2d 1117, 1123 (D.C. 2001) (fact that appellant continued discussions with DCRA, choosing "to concentrate on avenues that reasonably may have appeared more promising than an appeal," did not excuse its delay in noting an appeal).

The Board finds no merit in the Appellant's contention that the appeal was timely because the aspect of the first permit under appeal applies as well to all the permits at issue. To the extent that the subsequent permits merely reiterated the zoning decisions embodied in the issuance of the September permit and did not reflect new zoning decisions, the initial permit was the only appealable decision. A subsequent building permit or communication from the Zoning Administrator cannot be appealed unless it contains a new decision. *See Appeal No. 17915 (Bolduc)*, 56 DCR 9698 (2009), citing *Appeal No. 16982 (Herron and ANC 3F)*, 52 DCR 3904 (2005), *Appeal No. 17411 (Basken and Meyer)*, 53 DCR 2495, *affirmed, Basken*, 946 A.2d at 362 (D.C. 2008); *Appeal No. 17830 (Cooper)*, 56 DCR 3737 (2009).

The Board was not persuaded by the Appellant's contention that the 60-day deadline should be extended due to exceptional circumstances outside the Appellant's control that could not have been reasonably anticipated but that substantially impaired the Appellant's ability to file the appeal. (*See* 11 DCMR § 3112.2(d).) In this instance the September permit was not ambiguous or one of a series that hampered comprehension of the entire scope of the project, nor was the Appellant faced with building permit applications of a "cumulative, piecemeal nature" that obfuscated the

of the Appellant group may have been aware that the zoning review of the September permit was completed by March 19, 2014, that information may not have been known to the Appellant until later, and the Board declines to base its decision on timeliness on the earlier March 2014 date without a showing that the Appellant had actual knowledge then. (*Cf. Appeal No. 18300 (Ausubel)*; April 11, 2012) (pre-permit email from ZA to Appellant constituted notice of zoning determination); *Appeal No. 18469 (Lynch)*; March 19, 2013) (ZA posting on permit tracking system constituted notice of zoning determination where appellant knew of the zoning approval).

BZA APPEAL NO. 18980
PAGE NO. 8

full extent of the construction project. *Compare Sisson v. District of Columbia Bd. of Zoning Adjustment*, 805 A.2d 964, 969-970 (D.C. 2008) (Appellant was not chargeable with notice of entire scope of work performed at neighboring property until all permits were issued, where permit applications omitted relevant information, most permits were issued under wrong zoning classification, individual permits failed to reflect the entire scope of proposed renovations, and work was performed outside the scope of issued permits). The Appellant claimed difficulty in obtaining copies of plans from DCRA but acknowledged receiving copies of construction plans from neighbors living close to the subject property. An extension of the filing deadline would prejudice the other parties to the appeal, as evidenced by DCRA's assertion of prejudice both to DCRA and to the permit holder (Exhibit 35), and the Property Owner's claims of estoppel and laches (Exhibit 25).⁵

Accordingly, the Board finds a lack of timeliness in the appeal of matters that were not changed after issuance of Building Permit No. 1404813 on September 9, 2014, or after October 2014, when the Appellants certainly had notice of some matters they now challenge in the appeal. The Board concludes that the appeal was timely only with respect to the matters newly authorized by the Revised permit issued in December 2014, as amended by the Second Revised permit issued in June 2015; that is, the calculation of the rear adjacent finished grade and collateral issues relating to the proposed rear retaining wall and the grade in the parking area. (Tr. at 68, 92.) The Revised permit authorized a change to the original permit in such a way that altered the determination of the rear adjacent finished grade by means of a retaining wall installed adjacent to the rear building wall. The Second Revised permit again altered the determination of the rear adjacent finished grade, replacing the proposal of the Revised permit with a plan to "carve out" a portion of the rear of the building for a berm that would establish the adjacent finished grade and be held in place by the retaining wall. This proposal created a 12% grade for the rear parking area accessible from the public alley.

In light of the Board's decision that a portion of the appeal must be dismissed as untimely, the merits of the appeal are limited to the remaining issues raised by the Appellant, which concern the retaining wall approved in the Second Revised permit and its use in determining adjacent finished grade, and the location of the parking area on a 12% grade. The Appellant contended that the retaining wall was illegal and could not create the adjacent finished grade or serve as a reference point for the determination of the lower level as a cellar, in part because the wall was not yet built and thus could not designate "existing" conditions, including finished grade.

The Zoning Regulations define "retaining wall" as "a vertical, self-supporting structure constructed of concrete, durable wood, masonry or other material, designed to resist the lateral

⁵ The Property Owner asserted that "permanent and expensive improvements [were made] in justifiable reliance on the affirmative act of DCRA in approving the subject Building Permit. DCRA then took no action for almost three (3) months, when the Stop Work Order was issued." (Exhibit 25.) At the public hearing, the Property Owner acknowledged that the claims of estoppel and laches were no longer applicable after the Board determined that a portion of the appeal, concerning decisions reflected in the September permit and not altered by subsequently issued revised permits, was not timely. (See Tr. of July 7, 2015 at 84.)

BZA APPEAL NO. 18980
PAGE NO. 9

displacement of soil or other materials” (11 DCMR § 199.1.) The term “retaining wall” includes “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.” The Board concurs with DCRA and the Property Owner that the retaining wall approved by the Second Revised permit would comply with zoning requirements in that the wall would serve a legitimate purpose in laterally displacing soil. The Appellant did not contradict testimony that the retaining wall at the subject property was necessary to prevent soil erosion. *Compare* Appeal No. 17285 (*Carome*; 2006) (an elevated platform structure constructed to shore up an artificially created surface for leisure activities was not a retaining wall built to resist lateral pressure and prevent an earth slide); *affirmed, Economides v. District of Columbia Bd. of Zoning Adjustment*, 954 A.2d 427 (D.C. 2008).

The Board finds no merit in the Appellant’s contention that the approved retaining wall cannot create the adjacent finished grade or serve as a reference point for the determination of the lower level as a cellar. As the Property Owner noted, the Zoning Regulations do not prohibit the adjusting of the finished grade for purposes of FAR calculations, and the Appellant did not demonstrate that the Zoning Administrator’s decision in this regard was inconsistent with customary practice or otherwise in error. Noting that “adjacent finished grade” is not defined in the Zoning Regulations, DCRA asserted that the term 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 Board concurs with DCRA’s assessment that the plans approved with the Second Revised permit showed the adjacent finished grade to be the grade between the rear of the building and the top of the retaining wall. Since that grade would be less than four feet below the ceiling of the lower level, the lower level would be a cellar under the definition in § 199.1, and, as a cellar, the lower level would not be included in the calculation of gross floor area or floor area ratio, in keeping with the definitions of those terms in § 199.1. The Board also concurs with DCRA that the § 199.1 definitions at issue in this proceeding do not refer to “existing” conditions but rather require an evaluation of proposed conditions for zoning compliance, since “‘finished’ means the grade proposed by the [permit] applicant to be established under a permit.” (Exhibit 35.)

With respect to the parking area at the rear of the subject property, § 2115.1 provides:

- 2115.1 Except as otherwise provided in this section, a required automobile parking space shall be a minimum of nine feet (9 ft.) in width and nineteen feet (19 ft.) in length, exclusive of access drives, aisles, ramps, columns, office or work areas and shall be striped according to the requirements of § 2117.3. Parking shall also be in compliance with the requirements of the District of Columbia Architectural Barriers Act of 1980, effective July 1, 1980 (D.C. Law 3-76; 12 DCMR art. 15).

BZA APPEAL NO. 18980
PAGE NO. 10

The Appellant asserted that the parking spaces would be illegal because their 12% grade would purportedly violate the Barrier Act.⁶ The Appellant acknowledged that the 12% slope might have been approved pursuant to § 2117.8(a),⁷ but argued that “a parking space of 16’ in length is not a driveway as defined in § 2117.8(a) (‘provides access to required parking spaces’)” but “a stationary spot” that is “the terminal arrival point served by a driveway.” (Exhibit 31.) The Property Owner and DCRA asserted that the two parking spaces would be legal because their substandard size was grandfathered as existing parking spaces. DCRA also noted that the Zoning Administrator has interpreted § 2117.8(a) as permitting a maximum 12% grade for a parking space as well as for a driveway, especially under circumstances such as at the subject property where the parking area would serve as both, because the Zoning Regulations do not separately define parking spaces and driveways.

The Board agrees with DCRA and the Property Owner that the parking area at the subject property may be provided at a maximum grade of 12% in accordance with § 2117.8 since the Zoning Regulations do not distinguish a parking space and an access ramp, aisle, or driveway, except in § 2115.1. That provision is intended to ensure that a parking space will generally be striped in compliance with a certain minimum size, exclusive of related features such as driveways that might otherwise impinge on a parking area. The Board does not find that the minimum size requirement precludes the approval of a 12% grade, specifically permitted for a driveway, to a parking area as well.

However, the Board concurs with the Appellant that the two parking spaces at the subject property would not comply with § 2115.1, because that provision sets the minimum size of “a required automobile parking space” at nine feet in width and 19 feet in length “exclusive of access drives, aisles, ramps, columns, office or work areas”. The Property Owner conceded that the length of the spaces at the subject property would be only 16 feet.

The Board is required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)). In this case, ANC 1C adopted a resolution in support of the appeal, stating that the “failure to enforce zoning and building code regulations on the subject property will set a flawed precedent for similar and identical properties.... (Exhibit 17.) For the reasons discussed above, the Board determined that a portion of the appeal was not filed in compliance with the deadline established by the Zoning Regulations and therefore must be dismissed. With respect to the remaining zoning issues on appeal, the Board determined that the Zoning Administrator’s determinations should be upheld in part and reversed in part. The ANC’s resolution recognized the need for compliance with zoning requirements but

⁶ The current Construction Codes at Title 12 DCMR does not appear to contain any portion of this act. The act as adopted appears at 27 DCR 2409 (1980).

⁷ Pursuant to § 2117.8(a), a “driveway that provides access to required parking spaces” may “have a maximum grade of not more than twelve percent (12%) with a vertical transition at the property line.”

BZA APPEAL NO. 18980
PAGE NO. 11

did not specifically address the issues decided by the Board in this proceeding, and therefore the Board cannot give “great weight” to any specific issues or concerns raised by the ANC.

Based on the findings of fact and conclusion of law, the Board concludes that the Appellant has not satisfied the burden of proof in its claims of error in the decisions of the Zoning Administrator with respect to the finally approved retaining wall, the adjacent finished grade, and the determination that the lower level of the building is a cellar, or in allowing the 12% grade in the parking area; however, the Board does find error in the Zoning Administrator’s determination to approve a parking area where the spaces would not satisfy the minimum size requirements stated in § 2115.1⁸ Accordingly, it is therefore **ORDERED** that a portion of the **APPEAL** is **DISMISSED** as untimely and the Zoning Administrator’s determination is **SUSTAINED in part and REVERSED in part**.

VOTE: 4-0-1 (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen voting to DISMISS a portion of the appeal as untimely; Frederick L. Hill not participating).

VOTE: 3-0-2 (Lloyd J. Jordan, Jeffrey L. Hinkle, and Marcie I. Cohen voting to AFFIRM the Zoning Administrator’s determination in part and to REVERSE the determination in part; Marnique Y. Heath not present, not voting; Frederick L. Hill not participating).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 13, 2016

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

⁸ On January 12, 2016, the Board granted Application No. 19154 by the Property Owner for variance relief from this requirement. An order formally approving the application is being separately issued.