



BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA



FORM 125 - APPEAL

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.

Pursuant to §§ 3100 and 3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the

administrative decision of: Zoning Administrator, DCRA

Name of administrative officer and title

made on Date of decision 6/23/15 that states

revision to b1404813 to turn it from a retaining wall permit to a building permit for the same scope of work. the actual scope is a retaining wall with interior alterations and repairs for continued use as a two family flat as per prior certificate of

occupancy co1300980

Address(es) of Affected Premises

Square(s)

Lot(s)

Zone Districts

1636 Argonne Place NW

2589

0460

R-5-B

Present use of Property: Single family

Proposed use of Property: 4 unit apartment house

Name of Owner of Property: Greg Keats, District Design and Development Argonne LLC

Address: 10305 Holly Hill Place, Potomac MD 20854-5027

Phone No(s).: 301-455-6388

Fax No.:

E-Mail:

gakeats@gmail.com

Name of Lessee:

Address:

Phone No(s).:

Fax No.:

E-Mail:

gakeats@gmail.com

Name of Appellant, if other than Owner:

Address:

Phone No(s).:

Fax No.:

E-Mail:

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this appeal is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22-2405)

Date: 8/17/2015

Signature of Appellant*:

JonMarc Buffa, Chair, ANC1C PZT Committee

Waiver of Fee - Status of Appellant

☒ ANC



DC Government Agency



NCPC



Citizens' Association/Association created for civic purposes that is not for profit

To be notified of hearing and decision (Appellant or Authorized Agent*):

Name: JonMarc Buffa

Address: P.O. Box 21009, Kalorama Station NW Washington DC 20009

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* If an appeal is filed by the agent of the Appellant, Form 125 - Appeal shall be accompanied by a letter signed by the Appellant authorizing the agent to act on its behalf in this appeal.

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

Board of Zoning Adjustment
District of Columbia
CASE NO.19115
EXHIBIT NO.1

ANC1C Appeal of B1509180 for 1636 Argonne Place NW

Attachment 1 to Form 125

Appellants

This pre-hearing statement was filed August 17, 2015 per 11 DCMR 3112.10 and is submitted by ANC1C, representing Adams Morgan and the area within which 1636 Argonne Place NW is located. This appeal is of the Zoning Administrator's approval and issuance of B1509180.

Summary of Case

From September 2014 to June 2015, three DCRA permits were issued for the subject property. In sequence, each authorized a specific scheme to change the adjacent finished grade in order to change the designation of the lower level from basement to cellar so as to exclude the lower level square footage from Floor Area Ratio (FAR) calculations. (Cellars do not count in FAR calculations while basements are included.) The first two permits were each subsequently invalidated by the issuance Stop Work Orders. ANC1C contests the latest such permit, B1509180, issued 6/23/15.

ANC1C identifies two errors associated with issuance of B1509180: (1) failure to correctly assess grade measurements in determining FAR for this property, located in R-5-B, in violation of 11-402.4 and definitions of grade and its meaning in relation to basement, cellar, Gross Floor Area (GFA), FAR and rear yard setback, per 11-199.1 and other provisions; and (2) approval of alterations in parking that are noncompliant with the zoning regulations, per 2100.6, 2100.7, 2100.9, 2100.10, 2101.1, 2115.1, and 199.1.

Factual Background: Timeline

- **Permit B1509180 Issued for Retaining Wall.** B1509180 was issued by DCRA on 6/23/15, authorizing construction of a retaining wall, embedded within the rear wall of the building, and installation of a 12% gradient in the parking space, replacing the flat grade parking space currently in existence.
- **Basis for ANC1C Interest.** ANC1C has status in this case, per 11 DCMR 3200.1 and 3199.1; comprises the area within which the subject property is location; and has passed multiple resolutions in 2015 specific to adherence to zoning regulations and the conditions under review at the subject property. Resolutions include:
 - **ANC1C Resolution to Direct Improvements in DCRA Administration of Zoning Regulations.** On March 4, 2015, ANC1C passed, 7-0, a resolution to support compliance with R-5-B regulations governing GFA, FAR, lot occupancy, means of egress, structural building requirements, and parking requirements. In addition, the resolution calls for an administrative review of the performance of DCRA in terms of its building permit and building code compliance enforcement.
 - **ANC1C Resolution to Support BZA Appeal 18980 by Argonne Place Residents.** On April 1, 2015, ANC1 passed, 6-0, a resolution in support for filing of BZA 18980 and the ANC1C's position that of compliance with current zoning regulations was essential, with specific reference to FAR and GFA rules.

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- **ANC1C Resolution on Parking.** On May 6, 2015, ANC1C passed, 7-0, a resolution in support of enforcement of DCMR parking regulations, with specific attention to adhering to requirements for 1 space for every 2 units, minimum size requirements of 9' x 19', and relief from such requirements to be only in exceptional circumstances and be a matter for the BZA to resolve.

Factual Background: Subject Property

The subject property, 1636 Argonne Place NW (Square 2589, Lot 0460) is a single-family dwelling being converted, as of the Fall of 2014, into a 4-unit condominium building. It is located in an R-5-B zone, which has a FAR limit of 1.8 and lot occupancy of 60%. The subject property's 2-family Certificate of Occupancy 1300980 issued June 4, 2013 lapsed upon initiation of conversion and for other reasons as outlined in the regulations.

- **Front Façade.** The building front is sited on a hillside, with a series of steps from the public sidewalk lead up to the front entrance, terminating at a concrete landing with two points of entry. The first entry is another series of steps that leads straight ahead to the front porch. The finished grade at the landing in front of the entryway, is 4' 2" below the lower level's ceiling, according to approved architectural plans. The second entry is a level concrete sidewalk that leads to a descending set of steps to a below grade entryway to the apartment unit on the lower level. At this point, the distance between the adjacent finished grade and the lower level ceiling is 8'.
- **Rear Façade.** At the rear, the building is set back 16 feet from the property line. The lower level is fully above grade. Additionally, portions of the building's sidewalls at the rear of the property are not obscured by abutting buildings. These sidewalls are also fully above grade. The distance between this finished grade and the lower level ceiling is 7' 6". The rear wall currently includes two windows, 49" in height, which is in excess of basement grade distance of 48". Furthermore, the B1509180 retaining wall is un-built as of 8/18/15 and thus cannot be defined as a point for measuring the adjacent finished grade as it simply is not an existing structure.
- **Parking.** Former conditions for this single-family dwelling included a garage on the lower level and a rear yard to alley distance of 16'. This lower level space was converted into a 1-bedroom basement rental unit in 2002 under DCRA permits B441124-4419020, preserving the garage. In the current conversion to a multi-unit building, initiated in 2014, the garage was incorporated within the lower level unit and no longer exists.

The Zoning Administrator's Errors

#1. Incorrect Designation of Lower Level as Cellar for FAR

B1509180 authorizes construction of a retaining wall proposed to be embedded within the building itself and define the grade as a location within the building itself, which is contrary to the intent of the zoning regulations and precedent.

The Zoning Administrator's decision to grant permit B1509180 (1) disregards the fact that the adjacent finished grade exceeds 4' (basement grade) at all perimeter points; (2) represents a disregard of DC zoning regulations and long-established DCRA policy on its methodologies for determination of lower level FAR, (3) misidentifies the front finished grade as the permit fails to

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recognize the actual front grade dimensions; (4) fails to achieve a change in finished grade that would be necessary to redefine the lower level as a cellar; (5) violates the accepted definition of grade as a point external to a building; and (6) violates Construction Code and Building Permit Data Requirements; and (7) ignores the fact that the lower level was designated as a basement in 2002, by DCRA, in granting approval of a lower level renovation.

Front Grade. As for the front grade, construction drawings, if measured, clearly show a grade of 8' at the front of the building and 4'2" at the sidewalk in front of the building. However, the notations on the drawings show 3'11" in a space that is within the built interior space, which cannot serve as the adjacent finished grade as it is a point internal to the building. Acceptance of these errors is contrary to 11 DCMR 199.1, 11 DCMR 101.5, 11 DCMR 3202.1, and 11 DCMR 3202.2. In addition, acceptance of these errors is contrary to 12-105.1 (Required Permits), 12-105.3 (Application for Permit), 12-105-6 (Revocation of Permits), 12-106.1.12 (Zoning Compliance Review Data). In summary, misidentification of the grade incorrectly omits the lower level from GFA calculations, allowing the subject property to exceed allowable limits for R-5-B in terms of FAR, in violation of 11 DCMR 402.4.

Rear Grade. Errors in rear grade calculations are evident in measurements of approved plans. Acceptance of these errors is contrary to 11 DCMR 199.1, 11 DCMR 101.5, 11 DCMR 3202.1, and 11 DCMR 3202.2. In addition, acceptance of these errors is contrary to 12-105.1 (Required Permits), 12-105.3 (Application for Permit), 12-105-6 (Revocation of Permits), 12-106.1.12 (Zoning Compliance Review Data). In summary, misidentification of the grade incorrectly omits the lower level from GFA calculations, allowing the subject property to exceed allowable limits for R-5-B in terms of FAR, in violation of 11 DCMR 402.4.

Retaining Wall. Multiple errors have also occurred with regard to the Zoning Administrator's efforts to alter the definition of the existing grade at the rear of the building by permitting construction of what is defined as a retaining wall. The proposed structure does not meet the DCMR 11-199.1 definition of "retaining wall" (as well as Construction Code 1807.2) as it does not serve to "resist the lateral displacement of soil or other materials" as required in this definition. There is no legitimate purpose for a retaining wall at this location as soil or other materials do not exist in this location and in reality would need to be added. The sole function of this retaining wall is to create a change in the adjacent finished grade, which is not included in the definition of "retaining wall." Furthermore, the embedded retaining wall is within the building footprint and thus cannot serve as the adjacent finished grade (per zoning regulations, BZA cases and DCRA precedent), could not be constructed as proposed as it does not comply with building codes, and does not exist.

#2. Parking, Accessibility and Public Health/Safety Requirements

B1509180 creates multiple non-compliant parking conditions as the installation of the retaining wall makes it impossible to install the required 2 spaces (9' x 19') for this 4-unit apartment building. DCMR violations include:

- 2100.6, 2100.7 and 2100.9 (increase in intensity of use);
- 2100.10 (number of parking spaces cannot be reduced);
- 2101.1 (required number of parking spaces in R-5-B); and
- 2115.1 (required size of parking spaces).

In addition, B1509180 grants permission to create a surface with a 12% gradient under an interpretation that the rear yard location is a driveway. However, given that the garage was eliminated, the rear yard is clearly definable as a parking space. The proposed 12% gradient is thus

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contrary to the zoning regulation requirement for parking spaces to be accessible, per 11 DCMR 199.1, which is not possible with a 12% grade.

Timeliness

- **Circumstances Under Which ANC1C Learned of Decision Being Appealed.** The ANC1C-05 Commissioner formally notified the ANC1C about B1509180 in early July. The Commissioner requested that the Planning, Zoning and Transportation (PZT) committee place on its July 22, 2015 agenda a discussion of the permit and a possible resolution to file an ANC BZA appeal.
- **ANC1C Consideration of Resolution on Argonne Place.** The PZT committee of ANC1C met on July 22, 2015 and passed, 3-0, a resolution to appeal of B1509180.
- **ANC1C Passage of Resolution on Argonne Place.** On August 5, 2015, the full ANC1C passed, 6-0, the resolution as approved by the PZT.
- **ANC1C Filing of Appeal.** ANC1C filed this appeal on August 17, 2015, within 60 days of issuance of B1509180.

How Appellants Will Prove Case

Appellants intend to prove their case through:

- Analysis of zoning regulations.
- Expert testimony from an architect concerning the plans.
- Analysis of the architectural plans and construction drawings.
- Photographic evidence.