



## **Advisory Neighborhood Commission 1C**

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[www.anc1c.org](http://www.anc1c.org)

*Representing Adams Morgan*

### **Commissioners:**

**Julie Seiwel** (1C01)

**Hector Huevo** (1C02)

**Ted Guthrie** (1C03)

**Gabriela Mossi** (1C04)

**Alan Gambrell** (1C05)

**Billy Simpson** (1C06)

**Wilson Reynolds** (1C07)

**JonMarc Buffa** (1C08)

November 30, 2015

Marnique Heath, Chair  
Board of Zoning Adjustment  
441 4th Street, N.W., Suite 200-S  
Washington, D.C. 20001

RE: ANC 1C - BZA Appeal 19115

Dear Chair Heath,

ANC 1C respectfully files this Motion to Oppose the two  
Motions to Dismiss as filed November 25, 2015 (1) by  
Martin P. Sullivan on behalf of District Design and  
Development Argonne LLC and (2) by DCRA.

Sincerely,

Billy Simpson  
Chair, Advisory Neighborhood Commission 1C

Attachment

**BZA No 19115**  
**ANC1C Motion in Opposition to Dismiss**  
**November 30, 2015**

Advisory Neighborhood Commission 1C (ANC1C) files this Motion in Opposition to Dismiss in response to the two Motions to Dismiss as filed November 25, 2015 (1) by Martin P. Sullivan on behalf of District Design and Development Argonne LLC and (2) by DCRA.

The Motions to Dismiss are based on three fundamental errors. First, the Motions to Dismiss mistakenly conflate the appellants in the two appeals. The appellants to the appeals are not the same, and therefore res judicata and collateral estoppel do not apply. Second, the ANC1C is contesting a different permit in the Second Appeal than the permit that was under consideration in the First Appeal. And third, the substantive questions of law and fact raised in each appeal are distinct. These points are elaborated below.

**The Appellants are Different**

The First Appeal (BZA 18980) was filed by the Concerned Citizens of Argonne Place, who are 15 individuals residing at Argonne Place<sup>1</sup> and who paid the \$1,400 filing fee and brought the appeal as residents of the District of Columbia. ANC1C confined its participation in the First Appeal to an April 2015 letter of support (submitted in the form of a resolution). The First Appeal was heard by the Board on July 7, 2015. As such, ANC1C has never had its “day in court.”

In contrast, the Second Appeal (BZA 19115) was filed by ANC1C based on a unanimous vote of ANC1C Commissioners, taken August 5, 2015. As such, the Motions to Dismiss are incorrect in stating that “[t]he Appellant in BZA Appeal 18980 was ANC 1C” (DCRA Motion, page 3) and that both cases involve “the exact same party making the challenge, with the exact same representative, on the exact same building permit” (Sullivan Motion, page 2).

To further address the Motion’s mischaracterization of the ANC1C appeal as one being brought by a single individual, Mr. Gambrell, the ANC1C’s August 5, 2015 resolution resolves “that filing and representation may be carried out by any Commissioner on ANC 1C” (page 4)

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<sup>1</sup> Concerned Citizens of Argonne Place Appellants in BZA Case 18980 were: Deepa Venkataraman and Ajeet Vinayak, Alan Gambrell and James O’Day, Andrea Owen and Richard Ehrenberg, Cy Behoorzi and Tom Natan., Luis and Anita Canizares, Michael Russoto and Angel Torres-Cabassa., Jennifer Barger and Callan Barger, and Paul Hunt (1652, 1648, 1646, 1642, 1638, 1626, 1624, 1622 Argonne Place NW, respectively),

and does not confine its authorization to Mr. Gambrell, as the Motion to Dismiss asserts. In fact, ANC1C representation before the December 2, 2015 BZA hearing will be JonMarc Buffa, Chair of the Planning, Zoning and Transportation Committee of ANC1C.

### **Permits of Concern in First and Second Appeals are Different**

Regarding the First Appeal, ANC1C issued an April 2015 letter of support for the appeal by Concerned Citizen of Argonne Place in Case 18980. At that point, the permits under appeal were B1404813 and B1502210. Thus, the April letter of support could not have dealt with B1509180, which was not issued until two months later, on June 23, 2015. ANC1C resolutions are not open-ended authorizations. ANC1C in fact goes to great lengths to provide specific language in its resolutions so as to provide clarity and focus on positions and actions authorized on its behalf and in its name.

ANC1C subsequently (and unanimously) passed an August 5, 2015 resolution authorizing an appeal—specifically of B1509180.

### **The Facts Being Appealed are Different**

The following chart outlines the issues raised in each appeal. (Notably, DCRA's Motion to Dismiss illogically contends that the "front adjacent finished grade" is an untimely matter as it is not part of B1509180 [page 4] as it is impossible to conduct a grade plane analysis without both a rear and front grade measurement.) It should also be noted that Case 19115 reflects ANC1C's growing concern that DCRA intends to systematically adopt unauthorized new interpretations of the basement/cellar rule, which has been raised in recent months at a number of properties in ANC1C: 1706 V Street NW and potentially three other houses in Argonne Place and two more on 18th Street NW.

### **Conclusion**

For the reasons set forth above and in the below chart, ANC1C urges the Board of Zoning Adjustment to reject the Motions to Dismiss and to allow ANC1C's appeal to be considered on its merits.

### Differences in Alleged Errors Raised in Two Cases

| <b>Alleged Errors</b>                                                                                                                                                          | <b>First Appeal:<br/>18980 Pre-Hearing<br/>Statement and<br/>7/7/2015 Hearing</b> | <b>Second Appeal:<br/>19115<br/>Pre-Hearing<br/>Statement</b> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|---------------------------------------------------------------|
| ZA did not clearly engage in perimeter wall or grade plane method analysis.                                                                                                    | X                                                                                 |                                                               |
| ZA disregards actual measurements on construction drawings (Error 1 in 19115)                                                                                                  | X<br>Only rear grade was allowed for review by Board Chair Jordan                 | X<br>Appeals both rear and front grade                        |
| ZA ignores 2002 designation of lower level as basement.                                                                                                                        | X                                                                                 |                                                               |
| ZA ignores Construction Code and Building Permit Data Requirements                                                                                                             | X                                                                                 |                                                               |
| ZA misidentifies adjacent finished grade as top lip of planter/notch                                                                                                           | X<br>Appeal: that DCRA ruling is contrary to Fahey memo                           | X                                                             |
| ZA violates building height definition prohibition on use of berm or other artificial landscape to alter measurement point                                                     | X                                                                                 |                                                               |
| Errors in calculation of GFA and FAR: Lower Level Calculation                                                                                                                  |                                                                                   |                                                               |
| Errors in calculation of GFA and FAR: First Level Porch                                                                                                                        |                                                                                   |                                                               |
| Errors in calculation of GFA and FAR: Second Floor Balcony                                                                                                                     |                                                                                   |                                                               |
| Errors in calculation of GFA and FAR: Spiral Staircase                                                                                                                         |                                                                                   |                                                               |
| Errors in calculation of GFA and FAR: Incorrect Measurement from Interior Walls                                                                                                |                                                                                   |                                                               |
| Required Number of Parking Spaces Not Provided                                                                                                                                 | X                                                                                 |                                                               |
| Parking Conditions Worsened After Removal of Grandfathered Space                                                                                                               | X                                                                                 |                                                               |
| Parking Conditions Worsened in Violation of Accessibility Standards                                                                                                            |                                                                                   |                                                               |
| Parking Conditions Violate Public Health and Safety                                                                                                                            |                                                                                   |                                                               |
| Incorrect Calculation of Increase in Intensity of Use                                                                                                                          |                                                                                   |                                                               |
| ZA disregards plain definitions of “adjacent,” “finished” and “grade” in Webster’s dictionary per 199.1 (Error 2 in 19115)                                                     |                                                                                   | X                                                             |
| ZA disregards DCRA precedent as expressed in multiple BZA cases, determination letters and a Court of Appeals case (Error 3 in 19115)                                          |                                                                                   | X                                                             |
| ZA disregards logic of not counting adjacent finished grade at proximate locations (areaways, window wells) and inconsistency of then going inside building (Error 4 in 19115) | X                                                                                 | X                                                             |
| ZA lacks precedent to set adjacent finished grade within the building’s envelope and at top of a retaining wall (Error 5 in 19115)                                             |                                                                                   | X                                                             |
| Lack of legitimate purpose of retaining wall (Error 6 in 19115)                                                                                                                |                                                                                   | X                                                             |