

Board of Zoning Adjustment for the District of Columbia
Prehearing Statement of ANC1C – 1835 Ontario Place NW

I. INTRODUCTION

The appellant is the ANC1C “(Appellant)”, which represents the location of the subject property, 1835 Ontario Place NW (the “Property”). The Appellant appeals the decision of the Zoning Administrator (“ZA”) allowing conversion of the existing single family dwelling at the Property into a four-unit condominium building pursuant to the issuance of Building Permit B1502005 on October 22, 2015 (“Building Permit”) (See Exhibit A). The Appellant believe that the ZA’s decision makes the following errors:

- 1) failing to recognize the existence of a parking garage and the granting of a parking credit in order to convert a single-family residence into a 4-unit condominium (in violation of 11 DCMR 2101.1);
- 2) incorrectly designating the lower level as a cellar, not a basement, in order to exclude the square footage on this level from Floor Area Ratio (FAR) (in violation of 11 DCMR 402.4); and
- 3) permitting a “retaining wall” to be erected and exist as a raised grade, in front of a window well at the lower level, posing egress and life safety hazards (in violation of 11 DCMR 3203.5).

II. SUMMARY OF FACTS

Description of Subject Property

The Property is located at 1835 Ontario Place, NW in the R-5-B zone. The Property is a 2-story single family dwelling with a detached garage occupying a lot of 1,832 square feet and constructed in approximately 1910, based on the PIVS report from DCRA’s website (See Exhibit B).

The characteristics of the Property are as follows:

- **Parking.** The Property has had a garage since its construction, according to the BAIST maps from 1919 (see Exhibit C). Currently, there is a garage at the rear.
- **Adjacent Finished Grade.** The lower level’s adjacent finished grade is less than 4 feet at the front of the building. At the rear, the adjacent finished grade is greater than 4 feet (almost 6 feet) and is fully above grade.

Building Permit B1502005 and Construction Plans

The ZA has approved and issued B1502005 and associated construction plans, which propose to convert the single family dwelling to a 4-unit condominium building. Specific to the alleged ZA errors, the project proposes the following:

- **Depiction of Parking Conditions.** The permit and construction plans provide for a single parking space, based upon the ZA’s determination that the Property merits a parking credit in that the Property lacks current parking and that the garage is in fact a “shed.”
- **Adjacent Finished Grade.** An earlier permit, B1412558 - issued on 10/02/14 and expired on 10/02/15 – allowed for the alteration of the adjacent finished grade at the rear by build-up of the grade and insertion of a raised platform of greater than 4 feet in height. Based on this, the ZA determined that the lower level was a cellar, not a basement, and could be excluded from the FAR calculation.

III. SUMMARY OF ZA ERRORS

There are three errors by the ZA with regard to issuance of permit B1502005:

Error 1: Misidentification of Parking Conditions

The ZA incorrectly characterized the parking garage as a “shed” and granted a parking credit, thus allowing conversion of the single family dwelling into a 4-unit condominium building, contrary to 11 DCMR 2101.1, which requires 1 space for every 2 units.

Error 2: Lack of a Legitimate Purpose for the “Retaining Wall” (199.1)

Permission to construct a retaining wall that lacks a *legitimate purpose*. Instead of serving to retain soil or other materials (the 199.1 definition of “retaining wall”), neither of which exist at this location, the retaining wall’s sole purpose is to skew adjacent finished grade calculations to allow for the lower level to be classified as a cellar rather than a basement for purposes of recalculating FAR.

Error 3: Alteration of Adjacent Finished Grade That Creates Life Safety Protections

The ZA incorrectly authorized installation of an alteration of the adjacent finished grade that violates a primary life safety tenet of the zoning regulations by preventing required and emergency egress from the bedroom in the lower level. The change in the Property from a single-family home to a multi-unit condominium building requires enhanced means of egress per 11 DCMR 3203.5 and its reference to the Means of Egress Law under D.C. Official Code §§ 6–703.03.¹

Life safety protections are further detailed in building codes, which are not the purview of the Board but merit reference in this case given the risk presented to life safety. In particular, the proposed retaining wall creates exceptional egress barriers that violate multiple District of

¹ 11 DCMR 3205.5: “Where an alteration to a structure is required by law in order to effect compliance with regulations adopted pursuant to the Means of Egress Law, approved December 24, 1942 (56 Stat. 1083, as amended; D.C. Official Code §§ 6-703.03 to 6-703.09 (2001)(formerly codified at D.C. Code §§ 5-518 to 5-524 (1994 Repl.))), a certificate of occupancy for that structure may be issued prior to the alteration; Provided, that the use of the structure for which a certificate of occupancy is desired, if a new use, is not one that would require a greater amount of egress or fire protection facilities under the Means of Egress Law than is required for the use existing prior to the alteration.”

Columbia Building Code (and parallel International Building Code) provisions as the building elements used to raise the grade plane prevent emergency escape and rescue because of the necessity for the escape route to consist of lowering oneself into a window well, climbing a ladder, and then ducking under a set of stairs that lack head room clearance due to the installation of a raised grade, whose only purpose is to alter the adjacent finished grade in order to allow the lower level to be characterized as a cellar instead of a basement. The outcome of this artificial and unsafe egress is to allow for construction of an condominium building with a greater FAR than is permitted in an R-5-B zone, in violation of 11 DCMR 402.4.

IV. SUMMARY OF ARGUMENTS

Argument 1:

- The Property has had a parking garage since its construction, according to BAIST maps dated 1919 (see Exhibit C).
- Robert Corcoran, resident of nearby 1848 Ontario Pl NW, rented the garage from the previous owner, Mr. Eulis Saunders Sr., from 1985 until 2014. Moreover, Mr. Corcoran originally sought to rent the garage in 1977 – almost 40 years ago (see Exhibit D). Additionally, Bryce Jacobs, resident of 1833 Ontario Pl NW – the neighbor immediately adjacent to the Property – and Richard Hamilton, resident of 1831 Ontario Place NW, have signed Affidavits that since at least 2004, the structure at the rear of the Property has been used exclusively as a garage and both have directly witnessed Robert Corcoran parking in it (see Exhibits E and F).
- The existing owner, Ontario Holdings, LLC, identified the structure as “Covered Parking” in their demolition plans submitted as part of B14112558 issued on October 2, 2014 (see Exhibit G).
- Currently, the garage is still at the Property.
- Finally, on November 20, 2015, a Stop Work Order for “failure to provide two parking spaces for a proposed 4-unit apartment building” (see Exhibit H).

Argument 2A:

Lack of a Legitimate Purpose for the “Retaining Wall” (199.1)

Failure to Meet Definition of Retaining Wall. The so-called “retaining wall” 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. Simply put, no soil or other materials exists at this location and thus no such retention need exists.

The proposed retaining wall does not serve to retain soil from inside or outside the building. “Soil or other materials” would in actuality need to be imported. There is no need for such

materials at this location as the adjusted finished grade is a level and stable ground plane. Rather, this structure will only add this soil, after construction occurs, and is thus properly defined as a “planter.”

Lack of a Legitimate Purpose. The sole purpose of this so-called “retaining wall” is to change the existing adjusted finished grade, which is not reflected in the definition for “retaining wall.” As such, there is no legitimate purpose for the proposed retaining wall as there is no “soil or other materials” to retain.

In BZA 17285 (2005), later upheld by the District of Columbia Court of Appeals in *Economides v. DC Board of Zoning Adjustment*, the Board questioned whether a retaining wall served a “legitimate purpose” “by posing a two-part analysis to deem the structure illegitimate. The Board ruled that:

1. One, “such lateral pressure was supplied afterward” (emphasis added) and
2. Two, “[t]he purpose of the wall itself was not to prevent an earth slide, but to shore up the artificially-elevated platform which serves the appellant as a new level surface on which to engage in leisure activities.” (See Exhibit *Economides v DC BZA*)

ANC1C recognizes that the ruling in BZA 17285 invalidating a retaining wall pre-dated the definition of retaining wall added to DCMR in 2014. ANC1C also recognizes that the retaining wall in BZA 17285 was contested in part on the basis that it was a prohibited “structure” in a rear yard and upwards of 30 feet in height. Regardless, the height of the retaining wall as a criterion against which to judge its legitimacy is irrelevant as the fundamental purpose of a retaining wall must be met, regardless of its height or the tonnage of soil or other materials that would be imported into the site. Thus, the underlying rationale disallowing the wall in BZA 17285 is consistent with 1835 Ontario Place NW: the retaining wall “does not ‘resist lateral pressure’” but rather has a contrary purpose. It is immaterial as to the specific nature of the contrary purpose.

- In BZA 17285, the contrary purpose was to create “a new level surface on which to engage in leisure activities.”
- In BZA 19115, the contrary purpose is to attempt to alter adjusted finished grade so that the lower level can be defined as a cellar rather than a basement in order to exclude its square footage from FAR.

In neither case does the retaining wall exist to address its fundamental role. In the present case, the retaining wall has an illegitimate purpose: subversion of 11 DCMR 402.4 for R-5-B. Again, this supports the finding in *Economies v. DC Board of Zoning Adjustment*, et. al.

Argument 2B:

Permit to Construct Retaining Wall. Permit B1412558 (issued 10/02/14, expired 10/02/15) was issued to allow for construction of a retaining wall at the rear of the building with a height in excess of 4 feet. The intent of this permit was to enable the lower level to be characterized as a

cellar, not a basement, thus excluding it from the FAR calculation approved in Permit B1502005. As of December 21, 2015, the retaining wall has not been constructed.

- The building was erected in approximately 1910 and exists to this day without the need for a “retaining wall.”
- In Building Permit B1412558, the Owner received permission to “repair existing slab,” including installing new “retaining wall.”
- As of December 21, 2015 no “retaining wall” has been installed.
- Moreover, Building Permit B1412558 was issued on 10/02/14 and expired on 10/02/2015. Since no work has ever commenced under Building Permit B1412558, that building permit has now expired.
- On October 22, 2015, the ZA approved building permit B1502005, which characterized the lower as a cellar, and not basement, such that the space was excluded from the FAR calculation.
- But, the ZA can’t use a un-built retaining wall authorized under an expired building permit to determine the adjacent finished grade for a new permit.

Argument 3:

Life Safety and Means of Egress Requirements. The retaining wall also cannot be considered legitimate as it violates a primary life safety tenet of the zoning regulations by preventing required and emergency egress from the bedroom in the lower level. The change in the Property from a single-family home to a multi-unit condominium building requires enhanced means of egress per 11 DCMR 3203.5 and its reference to the Means of Egress Law under D.C. Official Code §§ 6–703.03.

Life safety protections are further detailed in building codes, which are not the purview of the Board but merit reference in this case given the risk presented to life safety. In particular, the proposed retaining wall creates exceptional egress barriers that violate multiple District of Columbia Building Code provisions as the building elements used to raise the grade plane prevent emergency escape and rescue because the openings do not open directly into a public way or a yard or court that opens to a public way as required under 1029.1; the openings are not shown to comply with 1029.2 or 1029.4.

In summary, the retaining wall would compromise and worsen the means of emergency egress as it exists under current conditions.

V. Timeliness

The Appellant learned about the Building Permit being issued after October 22, 2015. Appellants are filing this BZA appeal within the required 60-day time period.

VI. How Appellants Will Prove Case

Appellants intend to prove their case through:

- Neighbor testimony.
- Expert testimony.
- Analysis of the architectural plans and construction drawings.
- Photographic evidence.