

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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APPEAL OF:

Patrick J. Carome

From the Administrative Decision of DCRA
to issue Building Permit No. B460927

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BZA Appeal No. 17285

**PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

Appeal of Patrick J. Carome, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator of the Department of Consumer and Regulatory Affairs. Appellant alleges that the Zoning Administrator erred by issuing a Building Permit (No. 46097, dated April 23, 2004) allowing the construction of a masonry retaining wall serving a single family detached dwelling. Appellant contends that the retaining wall violates the Zoning Regulations, including the side yard requirements (section 405), rear yard requirements (section 404), and structures in open space requirements (section 2503). The subject premise is located within the Tree/Slope/Wesley Heights/R-1-A District and located at 4825 Dexter Terrace, N.W., (Square 1381, and Lot 806).

HEARING DATES: March 1, 2005; April 5, 2005; May 10, 2005; May 24, 2005

DECISION DATE: July 5, 2005

I. FINDINGS OF FACT

1. On February 23, 2004, the applicant, Frank and Dina Economides, submitted an application to the Department to construct a retaining wall entirely on the property. The proposed work was described as 'construct(ion) new retaining wall around rear yard as per plans.' The application included a contract agreement for the proposed work, site plat and design specifications.

2. The site plat, SO-00092 (2002), submitted with the application indicated the proposed retaining wall would be built entirely on the property within the lot lines. On January 27, 2004, the design specifications report prepared by Doug Staler from Ryan & Associates, entitled Mesa Site Retaining Wall, was reviewed by Professional Engineer,

BZA

Case No. 17285

Exhibit No. 100

Board of Zoning Adjustment
District of Columbia
CASE NO. 17285
EXHIBIT NO. 100

William K. Ryan, No. 10946. It was approved by a structural reviewer at the DCRA on February 3, 2005.

3. The MESA Site Retaining Wall design report provided data about the retaining wall, including stability, materials, design parameters, grading, geogrid, and soil composition. The report indicated the leveling pad would be comprised of compacted gravel or unreinforced concrete. Typical gravels used for this leveling pad are #57, CR6, 21A 2A modified, 2B, RC6, RC57, etc. Lean unreinforced concrete with a strength of 1,500 PSI may also be used for the leveling pad. Appellant's Exh. 24, Ryan Report, pg. 2, Section 2.04. The MESA retaining wall did not require footers.

4. On April 20, 2004, April 22, 2005 and April 23, 2004, DCRA technicians reviewed the building permit application in the soil and erosion control, zoning, and structural areas, respectively. The zoning reviewed included a inspection of the site plan, an evaluation of the site and location of the subject property and proposed work and review of any other related facts which may have a bearing on use of the site.

5. On April 23, 2004, the DCRA issued building permit No. B460927 to Frank and Dina Economides ("Owner") to construct a retaining wall around the rear yard of this home on 4825 Dexter Terrace, NW, Washington, D.C. located in an R-1-A District. The property is also located within the Wesley Heights Overlay District. It is recorded as Square 1381, Lot 806.

6. The Building Permit B460927 provided "construct(ion) of new retaining wall around rear yard as per plans. Entirely on owner's land."

II. CONCLUSIONS OF LAW

1. The R-1-A District permits a retaining wall. 11 DCMR § 400.1(2003)

2. Retaining walls are not subject to setback requirements. 11 DCMR § 2503.3(2003).

3. Structure is defined as anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location of the ground and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls. The term structure shall not include mechanical equipment. 11 DCMR § 199.1. The retaining wall constructed by the permit holder meets the definition of structure within the meaning of the zoning regulations.

4. Pursuant to 11 DCMR § 2503.3, a fence or retaining wall constructed in accordance with the D.C. Building Code may occupy any yard required under the provisions of this title. A retaining wall may be placed in a yard on the property.

5. Yard is defined as an exterior space, other than a court, on the same lot with a building or other structure. A yard required by the provisions of this title shall be open to the sky and the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title. No building or structure shall occupy in excess of fifty percent (50%) of a yard required by this title. 11 DCMR § 199.1. A yard is defined as the area from the home to the lot line. The retaining wall was constructed within the yard area.

6. The Board accepts the interpretation of the Zoning Administrator that the retaining wall may be located in the yard area without regard to setback or side yard requirements.

7. The Board accepts the interpretation of the Zoning Administrator that the retaining wall as planned is consistent with the Zoning Regulations, and not inconsistent with Wesley Heights Overlay District. The Board gives deference to the administrative interpretation of the Zoning Administrator.

8. The Board also accepts the conclusion of the Zoning Administrator that zoning review ends once the permit is issued.

9. The Zoning Administrator is charged with the implementation of the Zoning Regulations.

10. The Board of Zoning Adjustment (BZA) is authorized to hear appeals by any person aggrieved by any decision of the "Inspector of Buildings" [or Zoning Administrator] granting or refusing a building permit or other administrative decision based upon the zoning regulations or a zoning map. The Board, however, has not found any reversible error in the determinations made by DCRA in issuing the building permit.

11. The Board will not interfere with the Zoning Administrator's interpretation or substitute its own judgment where the Zoning Administrator's interpretation is reasonable and there has been no abuse of discretion.

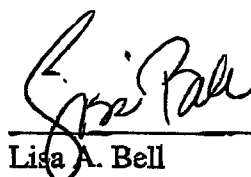
ORDER

Based on the record taken as a whole, including the testimony and evidence of record including the building permit applications, plans and all documentation submitted by the parties to this appeal, the Board concludes that DCRA did not error in issuing the permits. Accordingly, the Board denies the appeal.

Geoffry H. Griffis, Chairman

Vote: _____

Respectfully submitted,



Lisa A. Bell
Attorney for Appellee
Office of the General Counsel
Department of Consumer & Regulatory
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941 N. Capitol Street, NE
Washington, D.C. 20002

Certificate of Service

I hereby certify that a copy of the foregoing is being served on the following parties and counsel:

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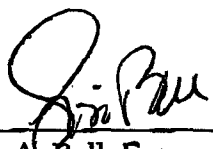
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United States Department of Interior
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by first class mail on this 20th day of June 2005.



Lisa A. Bell, Esq.

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**DEPARTMENT OF
CONSUMER AND
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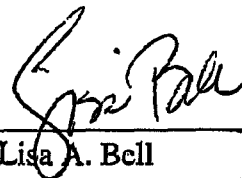
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Geoffry H. Griffis, Chairman

Vote: _____

Respectfully submitted,



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Certificate of Service

I hereby certify that a copy of the foregoing is being served on the following parties and counsel:

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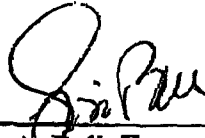
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Re: Carome Appeal

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