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February 16, 2005

Patrick J. Carome

By Hand

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Re: *BZA Appeal No. 17285*

Dear Ms. Kress:

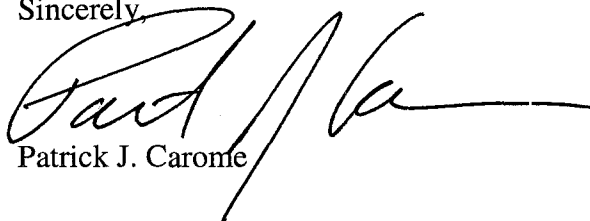
Enclosed for the filing in the above-referenced appeal, please find the original brief of Appellant Patrick J. Carome and accompanying exhibits. (There are two volumes of exhibits plus three oversize exhibits (Nos. 23, 25, and 28), which we have attempted to fold to legal size.)

These items were served by hand yesterday upon Richard Aguglia, who is representing the owner and developer (Constandina Economides and Frank Economides, respectively) in this appeal, and they also were sent to you by mail yesterday. We attempted to have these items hand-delivered to your office yesterday, but unfortunately some unexpected, last-minute logistical problems made it impossible for us to do so before your office's closing time of 5 p.m. To the extent that there is any issue regarding the timeliness of this filing, we respectfully request that such issue be waived.

Also enclosed please find twenty copies of the brief. We will deliver to you a bit later today twenty copies of the exhibit sets.

If you have any questions, please feel free to contact me.

Sincerely,



Patrick J. Carome

Enclosures

cc w/o enclosures: Richard L. Agugila

USIDOCs 4971687v1

BZA
Case No. 17285
Exhibit No. 21

Board of Zoning Adjustment
District of Columbia
CASE NO. 17285
EXHIBIT NO. 21A1

A

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Patrick J. Carome

of Building Permit
No. B460927

4825 Dexter Terrace, NW
Frank & Dina Economides, Owners

BZA Appeal No. 17285

Hearing Date: March 1, 2005

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BRIEF OF APPELLANT PATRICK J. CAROME

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Exhibit No. 21-A

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INTRODUCTION

This appeal concerns an erroneous and unlawful decision by the Department of Consumer and Regulatory Affairs (“DCRA”) to permit a wealthy property owner and her husband-developer, Constandina (“Dina”) and Frank Economides, to erect a huge earthen platform structure over most of the backyard of a residential property at 4825 Dexter Terrace, N.W. (Lot 806, Square 1381). The lot in question is zoned as R-1-A and subject to the highly restrictive Wesley Heights Overlay. This platform structure is now causing, and unless removed and remediated will continue to cause, severe and irreparable environmental and other damage to the surrounding neighborhood. These harms are especially grave because the subject property directly abuts — and the structure at issue now towers over — Wesley Heights Park, one of the jewels of the federally owned and maintained Rock Creek Park system.

DCRA’s decision to issue a building permit for this hideous structure (hereinafter, the Walled Platform Structure) violated many applicable provisions of the Zoning Code, including (but not limited to) the provisions that (a) strictly limit the sizes and types of structures that may be erected in a required rear yard or a required side yard (11 DCMR §§ 404-05; 2503); (b) limit the height of fences, walls and wall fences located within 10 feet of a property line to no more than seven feet (12 DCMR § 3110); (c) prohibit the construction in required rear or side yards of fences or retaining walls that are not constructed in accordance with the D.C. Building Code (11 DCMR § 2503.3); and (d) specify special restrictions regarding preservation of access to air and light, and the maximum lot occupancy of any structure, that apply to all properties, such as this one, that are in the Wesley Heights Overlay District (11 DCMR §§ 1541-43).

This appeal seeks to overturn the clearly erroneous decision of the DCRA to permit the Economides to erect the Walled Platform Structure, and to require the Economides to dismantle the structure and restore the backyard at 4825 Dexter Terrace to its pre-existing state.

EXECUTIVE SUMMARY

As seen from within Wesley Heights Park, and as can now be seen from the surrounding public streets and from Appellant's home due to the seasonal absence of foliage on the trees in the thickly wooded Park, the Economides' Walled Platform Structure evokes the outward image of a warehouse, prison, or big-box store. Here is what it now looks like from within Wesley Heights Park:



Illustration No. 1 (View of Walled Platform Structure from Within Wesley Heights Park, Late 2004)

This structure's stated purpose is to serve as an elevated platform for the support of persons engaged in private recreation or leisure activities. If the Economides are permitted to complete its construction, they will have converted a large back yard that slopes steeply down toward Wesley Heights Park into a huge elevated artificial terrace whose top surface is nearly a quarter acre, set as much as 30 feet above the existing grade. It would permanently obliterate air and light that previously flowed into the park and other neighboring properties, and it would permanently overshadow and scar the park in a way that would totally change and destroy its character.

Unless DCRA's decision to allow construction of the Walled Platform Structure is overturned, the structure will stand as the ignominious exclamation point of a two-and-a-half year spree of illegal — *and in many respects criminal* — construction activity at 4825 Dexter Terrace. During this period, through deception, fraud, and utter disregard for numerous applicable laws, the Economides have been completely transforming this parcel. This transformation has involved their illegal destruction of a half-century-old residence under the guise of a fraudulent and fabricated "emergency razing" permit, their illegal construction of a new and highly overbuilt 4-story mansion on the site of the original residence, and their erection of an enormous artificial terrace on top of the steeply sloped back yard that lies between the new mansion and Wesley Heights Park, which shares a 200-foot border with, and lies below, the Economides' property.

At almost every turn, DCRA's errors and incompetence — and at times even its outright complicity — have enabled and facilitated the Economides' illegal rampage of destruction and

construction. While much of what has recently occurred on this property should be condemned — indeed, separate criminal proceedings concerning these activities are ongoing against Frank Economides in both D.C. Superior Court and the U.S. District Court for the District of Columbia — the focus of this appeal is narrow. Its sole objective is to reverse and undo the DCRA decision that purported to allow the Economides to proceed with the most recent and most abominable outgrowth of the Economides’ building spree: the Walled Platform Structure¹ that now overshadows and darkens Wesley Heights Park and other neighboring properties.

The decision being appealed was originally reflected in Building Permit No. B460927, which the DCRA issued to Mr. and Mrs. Economides on April 23, 2004, over the name of its recently ousted director, David Clark. That permit purportedly authorized the Economides to “construct new retaining wall around rear yard as per plans [—] entirely on owner’s land.” (Ex. 52.)² Although neither the permit itself nor the permit application (Ex. 51) sought or provided any permission for the Economides to fill the interior of these walls with an artificial earthen terrace constructed entirely of foreign materials trucked in from elsewhere, the Economides have nevertheless treated the permit as a license to do exactly that, and DCRA has done nothing to stop them.

¹ In the document Appellant filed to commence this appeal, he referred to this structure as the “Illegal Warehouse Platform Building.” Appellant herein uses the term “Walled Platform Structure” instead, because none of the arguments advanced herein require the structure to be considered to be either a “building” or a “warehouse.” Appellant reserves the right, however, to continue to press the contention made in his opening filing to the effect that this illegal structure is also an illegal building within the meaning of the D.C. Zoning Code.

² All of the Exhibits that are referenced are contained in the tabbed Exhibit Volumes that are being submitted as an Appendix to this submission.

The DCRA's permitting decision was reaffirmed in a letter dated December 9, 2004, following the imposition of several Stop Work Orders and a special DCRA review that were prompted by citizen complaints. That letter, signed by Denzil Noble, the Administrator of the DCRA's Building and Land Regulation Administration ("BLRA"), candidly acknowledged that the DCRA "recognize[s] that Mr. Economides has and continues to *flagrantl[y] violate the laws of the District of Columbia.*" (Emphasis added.) On the subject of the Walled Platform Structure, however, the letter simply concluded — without any analysis of the zoning issues — that "[t]he retaining wall on this property is not illegal." (Ex. 64.)

The Appellant, Patrick Carome, is a long-time D.C. resident who lives with his wife on the north side of Fulton Street, which is a two-block drive from Dexter Terrace and which runs along the northern border of Wesley Heights Park. Mr. Carome's home is on the opposite side of the street from the park. The partially constructed northern wall of the Economides' Walled Platform Structure began to become visible to Mr. Carome from the front of his home starting in mid- or late October 2004, after the trees in the thickly wooded Wesley Heights Park had substantially dropped their foliage. He first learned of the existence of a DCRA permit purporting to authorize the construction of a "retaining wall" at 4825 Dexter Terrace no earlier than late October 2004. He filed this appeal on December 13, 2004, four days after Denzil Noble had reaffirmed DCRA's permitting decision and a week before DCRA lifted its Stop Work Orders.

As set forth in the attachment to the form that he filed to commence this Appeal, Mr. Carome is aggrieved for a variety of reasons by the DCRA's decision to permit the Economides to erect the Walled Platform Structure. *See* BZA Appeal of Patrick Carome, Attachment to Form

125 (“BZA Appeal”). For example, during this winter season, the northern wall of the structure dominates the view from the front of his home. (See Illustration No. 2.) Moreover, the extreme damage that the structure has done, is doing, and threatens to do to Wesley Heights Park is substantially interfering with his ability to use and enjoy nearby public parkland. See BZA Appeal at 5-7.

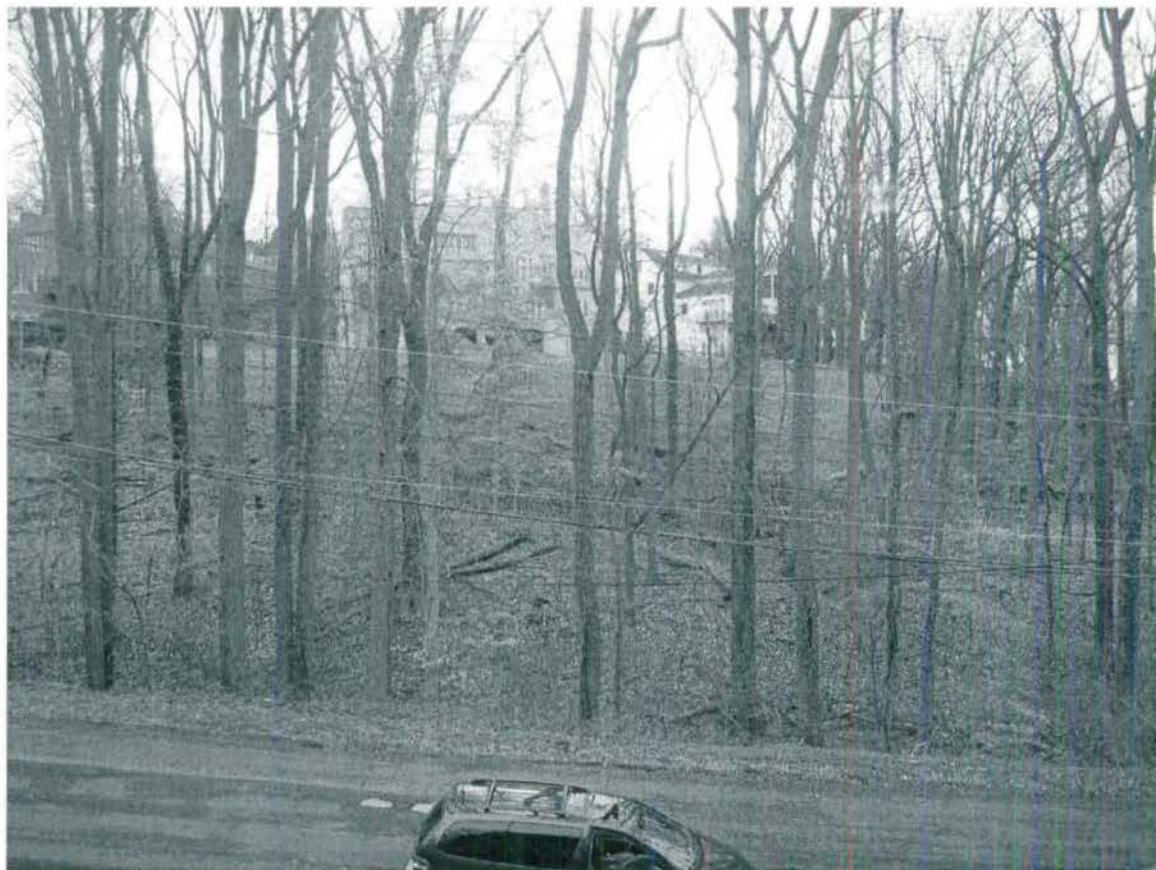


Illustration No. 2 (View of Illegal Construction Site from Appellant’s home, Dec. 2004)

The scope and dimensions of the platform structure, which the Economides duped DCRA into permitting as if it were merely a “retaining wall,” are breathtaking:

- The total area of its artificially elevated upper surface, which was designed to support

leisure activities and even a swimming pool, exceeds 10,000 square feet – nearly one-quarter of an acre. (Ex. 23.)

- It is flanked and partly supported by four enormous “mesa block” walls totaling nearly 400 feet in length. (*Id.*)
- The longest wall is 200 feet long and soars to 30 feet above grade.
- One of the shorter walls also reaches a height of 30 feet above grade. (Ex. 24.)
- Also supporting the elevated platform are thousands of tons of foreign material — fill dirt of unspecified quality, contaminated with garbage and trash, that was illegally trucked to the property from one or more unidentified locations. (Ex. 40.)
- The fill is supposed to be layered between huge sheets of synthetic “geogrid” fabric that attach to the outer walls and stretch laterally into the platform structure’s inner core. In all, according to an engineering plan, there are supposed to be more than 50 layers of such fabric. (Ex. 24.)

The location of the platform structure is no less mind-boggling. It occupies and obliterates nearly a quarter-acre of open space on residential property that is zoned R-1-A and is subject to the Wesley Heights Overlay — right in the heart of one of the most strictly zoned and regulated residential neighborhoods in the city. Crudely plopped down into what used to be the upper portion of a heavily wooded ravine (which Frank Economides earlier had partially cleared in violation of D.C. and federal criminal law (Exs. 50 & 49), it now dominates an entire parkland and neighborhood. Its exterior walls are right up against, and in some places actually cross over, the boundary line between the Economides’ property and four neighboring properties. The

longest and highest of those walls runs directly along (and at points encroaches over) the border between the Economides' property and Wesley Heights Park, a tract of wooded parkland that is an integral part of the Rock Creek National Park system.

Construction of the Walled Platform Structure, and the structure itself, have caused and are continuing to cause severe environmental damage to Wesley Heights Park and other adjacent woodland. It has left a sterile swath of dead and toppled trees in a large segment of the park. (Ex. 29.) It has oozed huge quantities of mud and silt down the park's slope, ruining a jogging trail, swamping trees, and clogging the stream bed. It has evicted deer and much other wildlife.

There is also evidence that the Walled Platform Structure's construction was very shoddy and that it may be a safety hazard. More than 100 of its segmented blocks are cracked. (Exs. 37-39.) Some of the critical joints of its exterior walls appear to be separating. (Ex. 41.) And in many places those walls, designed to be straight and plumb (Ex. 24), are visibly bulging and undulating. (Ex. 36.) These conditions are cause for significant concern. *See* Affidavit of James Heltman, attached as Exhibit 1.

As outlined in the original appeal, and as refined and expanded in the Analysis section of this brief, the Economides' platform structure violates the D.C. Zoning Code for numerous independent reasons. Each one of these reasons should be sufficient, by itself, to require invalidation of the DCRA permit purporting to allow construction of a so-called "retaining wall." The most obvious and straightforward of these reasons may be summarized as follows:

1. The elevated platform structure violates the core purposes of the Wesley Heights Overlay, which is to "[p]reserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood." 11 DCMR § 1541. Given its size

and mass, its overshadowing dominance of the surrounding parkscape, and its displacement of many old growth trees that the Economides illegally felled, it is difficult to imagine a structure that could be more antithetical to these purposes.

2. The elevated platform structure violates the Zoning Code's general prohibition on the construction of structures in the required rear yard (the area that is within 25 feet of the rear property line) and the required side yards (the areas that are within 8 feet of the side property lines). 11 DCMR § 2503. Only a few types of structures are exempt from this prohibition, and the only exempt category that could possibly be relevant here is "fences or retaining walls constructed in accordance the D.C. Building Code." 11 DCMR § 2503. The platform structure is not within any of the excepted categories, and in particular it is not (or, at least, is not merely) a "retaining wall." As its name suggests, the basic function of a "retaining wall" is to retain soils in a pre-existing location; in contrast, the basic function of the elevated platform structure is to support leisure activities, and far from being "pre-existing," the foreign fill material and geogrid fabric that its exterior walls confine was trucked in from offsite to construct the platform in the air space above the yard.
3. Even if the platform structure were nothing more than a "retaining wall," it still would violate the Zoning Code because its walls rise higher than the maximum of seven feet that is allowable for fences or "fence walls" that are located within a buffer zone of 10 feet. This height limitation is set forth in the D.C. Building Code, 12 DCMR § 3110, and is applicable here, because the zoning code provides that only a retaining wall or fence that "has been constructed in accordance with the D.C. Building Code" may be built in a

required rear yard or a required side yard. 11 DCRM § 2503.

4. Even if the platform structure were nothing more than a “retaining wall,” it still would violate the Zoning Code because there are numerous other respects (in addition to the 7-foot height limitation referenced above) in which the structure has not been constructed in accordance with the D.C. Building Code. To take just one of many examples, the structure now produces a concentrated and damaging discharge of water onto the neighboring parkland, contrary to established professional standards. (Ex. 1.)
5. The Walled Platform Structure exceeds the Wesley Heights Overlay’s explicit limitation on the proportion of a lot that may be occupied by a single structure. This structure, based on the plans that the Economides submitted to the DCRA, occupies an area of land that is at least approximately 10,000 square feet. This substantially exceeds the applicable limitation of 30% of the total lot area for any one structure. Because the Economides’ lot has a surface square area of 25,811 square feet (Ex. 26), the maximum lot occupancy for any one structure on the property is less than 7800 square feet.

On February 2, 2005, following presentations regarding this Appeal by both Mr. Carome and the Economides’ zoning counsel, the Advisory Neighborhood Commission voted unanimously to support this appeal generally and, in particular, to support the positions regarding zoning violations that Appellant has articulated above. This support of the appeal is highly significant because, as the zoning statute and regulations state, “The Board shall give ‘great weight’ to the written report of the ANC, as required by § 3 of the Comprehensive Neighborhood Advisory Commission Reform Amendment Act of 2000. . . .” 11 DCMR § 3115.2.

For all of these reasons, and for the additional reasons set forth in the Appeal itself and in

the Statement of Facts and Analysis sections of this brief, the Board of Zoning Adjustment should promptly overturn and invalidate the DCRA's decision to permit the erection of the Walled Platform Structure, and should exercise all powers available to it to compel, or call upon other authorities to compel its immediate and safe dismantling.

STATEMENT OF FACTS

1. In order to put the DCRA decision regarding the so-called "retaining wall" into its proper context, as well as to put into the record facts that establish the timeliness of this appeal, Appellant sets forth the following detailed recitation of facts and evidence.

The Subject Property

2. The subject property, Lot 806 of Square 1381, is zoned R-1-A and lies entirely within the Wesley Heights Overlay District ("WHOD"). 11 DCMR § 1541.2(b) (stating that all of Square 1381 is included in WHOD) (*See Ex. 3.*)

3. Because the subject property is zoned as R-1-A, and because it is within and subject to the Wesley Heights Overlay District (as is Appellant's property), *see* 11 DCRA 1541.2(a) (Ex. 3), it is among the most strictly controlled classes of property within the entire District of Columbia.

4. The subject property is an irregularly shaped quadrangle that, according to District of Columbia Real Property Tax Department records, is 25,811 square-feet in size. *See www.taxpayerservicecenter.com.* (Ex. 26.) Documents that the Owners have submitted to the DCRA assert, apparently falsely, that the subject property is 26,811, or 1000 square-feet larger than stated in the District's official tax records.

5. The subject property lies on the upper portion of a ravine that contains, at the

bottom, a stream that flows from east to west through Wesley Heights/Rock Creek Park. The front of the subject property, which fronts onto Dexter Terrace, N.W., is at the top of the ravine. The subject property slopes steeply downward from front to the back at approximately a 45-degree angle. (*See* Ex. 23.) The back of the subject property borders Wesley Heights Park and its grade is much lower than the front. (*See id.*)

6. Until December of 2002, a reasonably-sized, half-century-old, single-family dwelling was the only significant building on the subject property. (*See* Exs. 28 & 58.)

The Economides Hatch a Plan to Transform the Property

7. By sometime in the middle of 2002, the Economides had formulated a secret scheme under which they would go about radically transforming the property at 4825 Dexter Terrace, which had served as one of their principal residences for a number of years, into a totally different set of structures that would be wholly out of keeping with, and highly damaging to, their Wesley Heights neighborhood and the public parkland that abuts their property and that is used by many residents of the District of Columbia.

8. Now, some thirty months later, documents and other evidence have emerged that show that, from the beginning, their plan was to effect this set of changes in a piecemeal manner, and to engage in a whole series of criminal and fraudulent activities that would both conceal from the community the true nature of what they were doing and evade and circumvent the municipal and federal regulatory processes that govern construction activities in the District of Columbia and adjacent to national parkland.

9. It is now abundantly clear that extreme incompetence (or worse) within the DCRA was a key facilitator for the Economides' implementation of this scheme. In fact, Appellant's recent investigation of these matters has uncovered evidence — a fabricated permit document (*See* Ex. 53) — that strongly suggests that criminal misconduct *within DCRA* aided and abetted the Economides' implementation of their scheme.

10. As set forth in chronological detail below, the Economides secret illegal construction scheme was to be implemented in at least four phases:

- *First*, they would clear the heavily wooded lower part of their backyard, as well as a portion of the adjacent land within the federal park, of numerous trees and plants, including many old growth trees on the parkland, and they would engage in some minor grading and filling in those areas.
- *Second*, they would illegally raze their existing 5000-square-foot residence without complying with any of the special permitting procedures and environmental regulations for doing so, pretending that this was an unexpected emergency measure resulting from a construction "accident."
- *Third*, they would erect an enormous, four-story, 15,000-square-foot mansion at the upper end of their property, but would do so without obtaining a permit reflecting that a new house was being constructed.
- *Fourth*, they would construct an enormous, quarter-acre, elevated earthen platform, supported by four walls built with segmented mesa blocks — a form of construction characteristic of industrial parks or interstate highways — that would serve as a

terrace for their (or some future owners') private leisure activities, far above and overlooking the federal parkland below.

- There is inconclusive evidence that this scheme had a fifth element — the installation of a swimming pool on part of the elevated terrace structure (Ex. 24) though it is highly doubtful that will ever be realized now that the community and law enforcement agencies have been awakened to the extent of the Economides' wrongdoing.

The Economides Launch a Destruction and Construction Rampage in Spring 2002

11. The illegal construction scheme was launched sometime in Spring 2002, as documented in a February 12, 2003 "Final Order" issued against Frank Economides and his real estate development company, Economides Development, by an Administrative Law Judge of the D.C. Department of Health. (*See Ex. 50.*)

12. On June 4, 2002, D.C. Department of Health investigators discovered that Mr. Economides and his companies, without having any permit to do so and without taking any of the legally required erosion control measures, had conducted illegal land-moving, illegal land-clearing, and illegal tree felling operations near the rear of the 4825 Dexter Terrace site. (*Id.*) Their destruction was not confined to their private property. They cut down several large old-growth trees that were actually located on or near federal parkland (*see Ex. 49*), and they left many felled trees lying on the floor of the park. The illegal land disturbing activity included delivery of "truckloads" of fill dirt to the property and piling it up in the backyard. (*See Ex. 50.*) This illegal activity severely damaged Wesley Heights Park and its watershed.

13. The Spring 2002 episode led to both civil and criminal law enforcement activity

against Mr. Economides and his company. On July 7, 2002, the Department of Health cited Economides for engaging in illegal land disturbing activities without a building permit in violation of 21 DCMR § 599.1, and for failing to put in place any “erosion controls . . . to prevent the dirt from being washed into the nearby stream [in Wesley Heights Park], in violation of 21 DCMR § 539.4. (*See* Ex. 18 at 1.) After a hearing on September 19, 2002, which Mr. Economides failed even to attend, an Administrative Law Judge ruled that he and his company had in fact committed these violations and fined them a total \$600, apparently the maximum penalty allowed for these offenses. (*See* Ex. 50 at 2-4.)

14. In June 2002, U.S. Park Police, Criminal Investigation Division, commenced a criminal investigation into the Economides’ destruction of old-growth trees located on park property. The area of the illegal activity was marked off as a crime scene, and the United States government later initiated a criminal case against Mr. Economides, charging him with 5 counts of destruction of federal government property. (*See* Ex. 49.) The federal case was subsequently put on hold through the U.S. Attorney’s Office’s so-called “diversion” program, subject to various conditions, including Mr. Economides payment of an \$8000 fine, his performance of community service, and his avoidance of any further encroachments on federal parkland. (*See* Ex. 49.)

Summer 2002: The Permit for Minor Grading and Filling

15. In the midst of the legal fall-out from this first round of illegal destruction, on August 26, 2002, Mr. Economides applied to DCRA for a construction permit to perform minor grading and filling in the rear yard of 4825 Dexter Terrace. (*See* Ex. 56.) In connection with this application Mr. Economides wore two different hats — both that of the owner of the property

and that of the Building Contractor. The application indicated that this would be minor grading – declared by Economides as costing only \$5000 — that would start on August 30, 2002 and be completed exactly one year later. (*Id.*) It affirmatively indicated that no retaining wall was to be erected in connection with this project (that section of the permit was crossed out). (*Id.*) And it also stated, in answer to a question on the environmental intake form, that no “additional activity [is] planned by the applicant for this site . . . during the next three years that requires a permit.” (*Id.*) At least this last statement, it is now obvious, was utterly false and deceptive.

16. On September 5, 2002, DCRA issued to the Economides the requested permit for minor and grading and filling for a fee of \$250, which was calculated based on the small cost of the project as represented by Mr. Economides’ agent on the application. (*See* Ex. 57.)

Summer 2002 : Completion of Detailed Plans for All New Mansion

17. At the exact moment that the Economides were representing to the outside world that their intentions were to do a little bit of grading and filling but no more, they in fact were actually putting the final touches on their secret planning to destroy the existing house at 4825 Dexter Terrace and to build an entirely new — and far larger — mansion in its place. This is evident from a careful inspection of drawings and plans that DCRA recently provided to Appellant. For example, as of August 23, 2002, three days *before* the Economides applied for the limited filling and grading permit, their Architectural Firm, David Jones Architects, had prepared a plan document depicting what it described as a “*New 2½ Story Masonry and Frame House.*” (*See* Ex. 25 (emphasis added).)

18. By September 13, 2002, David Jones Architects had completed a full set of final, detailed plans for this *all new house* – which despite the earlier description were clearly for a house that would have *four above-grade* stories facing out from its back side. These plans showed every detail of a finished house that would have 5 bedrooms, 8 bathrooms, and a billiard room, a library, a three-car garage, and even a 250-square foot tiled wine cellar with its very own fireplace. (Ex. 25.)

19. Five days later, on September 18, 2002, CAS Engineering, a land-planning engineering firm that would later purport to certify one of the drawings for the Walled Platform Structure, completed a final “Building Permit Site Plan and Stormwater Management Plan” showing the footprint for the same new house depicted in the David Jones Architects drawing, calling it a “Prop[osed] 2-Story House.” (See Ex. 25.) This plan showed that “Phase I Grading” work was to occur in the rear yard, but it did not reflect that any retaining wall structure was contemplated in that area. (*Id.*) This plan also referred to a “Topographic Survey” that CAS Engineering had completed seven months earlier, in February 2002, shortly before the Economides performed their illegal grading and tree clearing. (*Id.*)

Fall 2002: The Phantom Renovation Project

20. The following week, on September 26, 2002, Frank and Dina Economides submitted to the DCRA an utterly false application for a building permit. Remarkably, this application did not seek permission to build an all new house, as the Economides in fact were planning. Rather, it sought permission for a “renovation and addition to single family dwelling as per plans,” which the Economides wanted to start and complete “ASAP.” (See Ex. 58.) Included with this application was a bogus “Contract Agreement” signed by Mr. Economides

that named himself and his wife as both the contractor and property owners for a make-believe construction project that would, “to the best of [his] knowledge and belief, involve \$150,000 of “alteration” to their *existing* house, plus \$225,000 in “new” construction. (*Id.*) In support of this application, the Economides brazenly submitted to DCRA the David Jones Architects and the CAS Engineering plans that plainly and explicitly called for the construction of an enormous, all *new* mansion. (The evidence of their submission to DCRA at this time includes the presence of DCRA stamps and markings on them bearing dates from October 8, 2002 and November 19, 2002.) (Ex. 25.)

21. The Economides obviously must have had good reason to be confident that DCRA would not bounce their permit application on account of the total disconnect between the scope of the permit they were seeking (an *alteration and addition* that would add a mere 3000 square feet to the existing gross floor area of the house) and the scope of the work contemplated on the very face of the plans they had submitted (an all new mansion that would have gross floor in excess of 15,000 square feet), not to mention the application’s complete failure to address the stubborn fact that the existing house would first have to be demolished (which would require *another* permit) before the new one could go up.

22. Whether the Economides’ confidence derived from something as simple as their inside knowledge of that agency’s unfathomable incompetence, or whether it more ominously involved outright graft or other criminal behavior within DCRA itself, may never be known. Ironically, a few days ago, it was reported that the new director of DCRA, Patrick Canavan, has introduced a plan for staff ethics training following questions about whether DCRA’s Denzil Noble received favored treatment from DCRA inspectors who were called out to inspect

defective apartment buildings owned by none other than Mr. Noble himself. *Washington Post*, February 13, 2005, p. 1 of *Metro Section*. What is clear, however, is that the DCRA did not disappoint Frank and Dina Economides: on November 26, 2002, it issued them Building Permit No. B425076 for “renovation and addition to single family dwelling as per plans.” (Ex. 59.)

December 2002: The Staged “Emergency” House Razing

23. Within three weeks of receiving the permit for their phantom “alteration and addition,” the Economides took the sticky “problem” of having to demolish the existing house into their own hands. In the middle of the afternoon on Sunday, December 15, 2002, without having any permit whatsoever to do so, they commenced operations to totally raze the house using a bulldozer. (See Exs. 65.) Dina Economides would later tell a neighbor, obviously falsely, that the need to raze the house had arisen suddenly because a bulldozer involved in renovation activities had accidentally bumped into the house, requiring its immediate condemnation. Affidavit of Harry Gates, attached as Exhibit 2. That, of course, was a lie, for the Economides had been planning for at least several months before the “emergency razing” to demolish the existing house to make room for their exquisitely planned new mansion.

24. Telling tall tales to neighbors was not the Economides’ only means of covering their tracks. In order to bolster the false impression that the demolition of their half-century-old home was an unexpected emergency rather than a methodically pre-meditated event, Frank Economides obtained from someone within the DCRA permit office a fraudulent and fabricated document purporting to be a DCRA permit issued to “Frank E.” for the razing of the existing house at 4825 Dexter Terrace. (Ex. 53.) The date that this fabricated permit purports to have been issued is December 13, 2002 — the Friday before the Sunday on which the razing

commenced. A handwritten note and fax footprint on the face of this fabricated document shows that someone faxed it to “Frank E.” from a fax machine within the DCRA Permit Service Center on December 17, 2002, two days after the razing commenced. (*Id.*)

25. Appellant has recently unearthed evidence that conclusively demonstrates that this “emergency raze” permit is a complete fake and forgery. Specifically, the date (12/13/02), address (4825 Dexter Terrace, N.W.), and name (Frank E.) reflected on this document were all added to a copy of an “emergency raze” permit that had been issued several months earlier to a *different* property owner (Beleghis Nasseri), for the razing of a house on a *different* property. (*Compare* Exhibit 54, *with* Exhibit 53.) No special forensic expertise is needed to detect the fraudulent doctoring of this document. Not only is the presence of two different typewriter fonts fairly evident, but the Lot and Square Numbers that the forger clumsily left on the forgery are those for the Chain Bridge Road property, where a house in fact was razed, supposedly as an emergency, in May 2002, and where an all new house now stands.^{3/}

^{3/} Curiously, the provenance of the authentic emergency raze permit for 2970 Chain Bridge Road is itself a bit suspicious. The file associated with Mr. Nasseri’s application for this permit shows that DCRA Chief Inspector Juan Scott, who also had responsibility for supervising construction activity at the 4825 Dexter Terrace site — provided one-stop shopping for Mr. Nasseri in connection with his emergency raze permit. First, on May 15, 2002, Chief Inspector Scott issued a “Notice of Violation and Notice to Abate” to Mr. Nasseri, declaring that he had to demolish an “unsafe” structure at 2970 Chain Bridge Road within 24 hours, or else the Mayor would cause DCRA to do the demolition itself. (*See* Ex. 54.) Second, that very same day, Mr. Nasseri submitted to the DCRA an application for an “emergency raze due to house falling,” together with a contract for razing that he and a demolition contractor from Northeast D.C. had signed, also that same day. (*Id.*) Third, also on that same day, Chief Inspector Scott himself approved the application for the permit. It appears that Mr. Scott was the sole government official involved in the approval of this permit application. (*Id.*)

26. Appellant is not aware of all the uses that the Economides may have made of the fabricated raze permit, nor even exactly what it was that made it expedient for them to have such a document in their hands within two days after they started to raze their old house. Perhaps it was something they needed to convince someone — perhaps a neighbor, perhaps the police — that there was some legal basis for the highly conspicuous razing activity that was then ongoing on their property. Or perhaps it was to gain some advantageous treatment from some other third party. The answers to such questions may never be known.

27. What is clear, however, is that an agent of the Economides used the forged raze permit on at least one occasion to obtain a subsidiary permit from the DCRA. Specifically, it was used to obtain an electrical permit that was issued in early January 2003 to authorize the Economides to drop a new electrical power line from the utility pole in front of their house down to the property. (*See* Ex. 55.) Such electrical work obviously was necessary in the wake of the razing and before the start of their planned new construction, and it may well be that the only way for the Economides to get DCRA to issue the necessary electrical permit was to present a building permit that reflected a logical need for such work. *See* 12 DCMR (issuance of electrical permits authorized only under the umbrella of a pre-existing Building Permit). In any event, DCRA's files for 4825 Dexter Terrace contain a copy of the indisputably forged document as an attachment to an application for an electrical permit that is dated in January 2003. (Ex. 55.)

DCRA Plays "Catch-Up"

28. For some or all of the time between December 15, 2002 and June 27, 2003, Mr. Economides was actively engaged in completing the razing of the house at 4825 Dexter Terrace and erecting a completely new home in accordance with the plans that had been drawn up by his

architects and engineers in late summer 2003. (*See* Exs. 65 & 47.)

29. Inexplicably, despite its construction oversight responsibilities, despite the fact that it had issued a “renovation and addition permit” for 4825 Dexter Terrace in November 2002 and therefore had good reason to monitor activities there, and despite the fact that persons at DCRA had both originated and received a forged “emergency raze” permit for that site, it seems that no one at DCRA took any notice of the Economides illegal razing and construction activity there for over six months.

30. According to recently issued DCRA reports, it was not until June 24, 2003 that its Chief Inspector, Juan Scott, first discovered that the Economides both had razed their house without a permit and were then in the process of building a new house without a permit. (*See* Exs. 65 & 64.) At that point, DCRA says, it issued a Stop Work Order because “work [was] conducted beyond the scope of the [renovation and addition] permit that was issued on 11/26/02 (B425076).” (*See* Ex. 59.) DCRA now claims that it in connection with that Stop Work Order, “the owner was instructed to submit revised plans that reflected the full scope of the work” and that such “[r]evised plans were submitted.” (*Id.*) In fact DCRA has to date been unable (or unwilling) to produce copies of any such “revised plans” despite multiple requests from Appellant. (*See* Ex. 67.) This perhaps is not surprising, because there is every indication that the mansion the Economides were building as of June 2003 — and that they are still building even today — bears an uncanny resemblance to the plans for a new house that the Economides have been working with since November 2002.

31. Also inexplicably, DCRA did not impose or seek to impose any penalty whatsoever on the Economides after its June 2003 discovery of their double-barreled illegal

razing and construction. (*See* Exs. 64 & 65.) Although the Attorney General of the District of Columbia very recently commenced a criminal prosecution of Frank Economides for more than 1400 counts of violating the D.C. Building Code in connection with the illegal razing and illegal new construction (*see* Ex. 47), it is Appellant's understanding that such action has occurred *without* the full support and cooperation of DCRA.

June 2003: DCRA Quickly Grants Permit to Build New House

32. The mid-2003 dust-up was barely a bump in the road for the Economides, and officials at DCRA were extremely accommodating of the Economides obvious desire to barrel forward with the project. On June 27, 2003, less than 72-hours after DCRA's belated "discovery" of the Economides' massive illegal construction activity, DCRA accepted a new application for a building permit from the Economides. (*See* Ex. 60.)

33. Someone within DCRA, most likely Chief Inspector Scott, even seems to have helped guide the Economides on what this application should say. In the section of the application where the applicant is supposed to describe the "proposed work," the Economides' agent wrote: "Revise description of work to read construct new s.f.d. [single-family dwelling] as per plans *as per D.C Inspector.*" (*Id.* (emphasis added.) Almost the entire remainder of the application form was struck through and left blank — including the entire section relating to "New Building," and no contract substantiating the cost of the project was included. (*Id.*)

34. Less than three business days after the Economides filed this application — their *first* for a permit that would authorize construction of a new house at 4825 Dexter Terrace — DCRA issued Miscellaneous Building Permit No. B452810. Its operative portion stated: "Revision to Bldg. Permit #B425076. Revise Description of Work to Read Construct New SFD

as per Plans and D.C .Inspector.” (*See* Ex. 61.) It appears that there was no zoning review whatsoever conducted in connection with the issuance of this permit. (*See id.*) Indeed, there seems to have been no review at all, except a perfunctory check-off by someone responsible for structural engineering. (*Id.*) The fee for this new permit was a scant \$75.

February 2004: The Application for the “Retaining Wall” Permit

35. Some seven months later, on February 23, 2004, the Economides quietly submitted an application for a building permit authorizing them to “construct new retaining wall around rear yard as per plans.” (*See* Ex. 51.) This is the application that resulted in the issuance of the Building Permit that is the subject of the present Zoning Appeal. The application, and the DCRA’s processing of it, was riddled with many serious and fundamental defects, including the following:

- There is no evidence that the Economides advised DCRA in connection with this permit, or that anyone within DCRA reviewed or acted on the application were aware, that the 4825 Dexter Terrace property is within the Wesley Heights Overlay District. Indeed, the front page of the application designated the “zoning district” simply as R1A, and the “zoning” section for official use on the back page of the application simply says “SFD” apparently a reference to Single Family Dwelling. (*Id.*)
- The application referred to the construction only of a “retaining wall,” and made no reference to the fact that the objective of the project was not (or at least not only) the construction of a wall (actually, several walls), but rather was the creation of a huge, man-made earthen platform to be used for private leisure activities.

- The application failed to mention, much less seek permission for, the fact that tons and tons of foreign fill material of uncertain and unspecified origin would be trucked to the site and loaded into the cavity created by the exterior mesa-block walls and the pre-existing slope of land. Indeed, the application stated that the only material to be used on the project would be “mesa block,” omitting all reference to the alternating layers of fill and geogrid sheeting that would make up the main part of the structure. (*Id.*)
- The application gave no indication that the work being proposed would relate to, and be an integral part of, a huge and transformational construction project that had been ongoing at this site for nearly two years, and that construction of the Walled Platform Structure would be undertaken simultaneously and in conjunction with all of the other still-ongoing building activity on the same site. (*See id.*)
- Although the applicant checked a box indicating that the area of disturbed earth would exceed 50 square feet, the application document failed to provide any answers to questions regarding soil erosion control methods and area of offsite drainage, both of which were required to be answered. (*See id.*)
- The application asserted that the “retaining wall” would be erected “entirely on owner’s land,” whereas it in fact encroaches over the border and into Wesley Heights Park. (*See Exs. 51 & 45.*)
- The application contained a bogus “Contract Agreement,” purporting to be a contract to which Frank and Dina Economides are parties and estimating that the cost of

constructing the “retaining wall” would be \$30,000, an amount that seems highly questionable. (Ex. 51.)

- The application failed to provide required answers to questions asking for the number of footings and size of footings associated with the proposed structure. (*Id.*)

36. Since this appeal was filed, Appellant has attempted to review and obtain copies of, among other things, all records and documentation in DCRA’s possession relating to this “retaining wall” permit application and DCRA’s review and processing of it. These efforts have included multiple in-person visits to the DCRA permit center and the submission of a detailed request under the D.C. Freedom of Information Act on [date]. (Exs. 67.) The only such records or documentation that DCRA has provided to Appellant to date are the following: (a) a one-page site drawing entitled “WALL PLAN” that 4825 Dexter Terrace which appears to bear the seal and signature of an engineer, Curt A. Schreffler, dated 03-31-04 (Ex. 23); (b) a one-page, unsigned document discussing various generic sediment control measures as well as a simple drawing of the 4825 Dexter Terrace site showing the location of a “PROPOSED RETAINING WALL” (*id.*); and (c) a 36-page document entitled “MESA SITE RETAINING WALL, FINAL DESIGNS FOR: ECONOMIDES RESIDENCE, which purports to have been prepared by Doug Statler of Ryan & Associates and which bears on its front cover the initials of “Robert Chan, Structural Engr. Section,” dated 2/3/05, under a stamped legend that reads “District of Columbia Permit Processing Division, Structural Work in General Approved Subject to the Further Approval of Construction.” (Ex. 24.)

37. On April 23, 2004, the DCRA issued Building Permit No. B460927, purportedly authorizing Frank and Dina Economides to “construct new retaining wall around rear yard as per

plans [--] entirely on owner's land.” (*See* Ex. 52.) The zoning reference on this permit accurately indicated that the property is zoned as R-1-A, but it failed to reflect that the property is also subject to the highly restrictive Wesley Heights Overlay. (*Id.*) For reasons spelled out in the Analysis section of this brief, the issuance of this permit violated numerous provisions of the Zoning Code.

October 2004: Appellant First Meets Mr. Economides

38. Mr. Carome does not know when construction of the Walled Platform Structure commenced. In mid to late October 2004, as the foliage in Wesley Heights Park was thinning, he began to notice evidence of the construction of a walled structure on or near the rear of the Economides property from the vantage of his own property at 4747 Fulton Street. On Saturday, October 23, 2004, Mr. Carome learned from his wife, Elsie Carome, that Mr. Economides was present at the 4825 Dexter Terrace property. Mr. Carome drove his car over to that address; introduced himself Mr. Economides, who was standing near the street in front of the his construction site; and told Mr. Economides that he was upset about the damage that the Economides' construction activities were doing to Wesley Heights Park and the surrounding neighborhood. To the best of Mr. Carome's knowledge, this was the first occasion on which he had ever seen or met Mr. Economides.

39. Mr. Economides told Mr. Carome that all of the construction activity occurring on the property was perfectly fine, that he had gotten everything satisfactorily resolved with the Park Service, that the impacts being inflicted on the park and neighborhood were normal for any construction activity, and that Mr. Carome should simply get used to it.

Fall 2004: Citizen Complaints to DCRA and DCRA's Commencement of a Special Review

40. In late October and early November 2004, the Caromes made repeated complaints to DCRA and other D.C. agencies and government officials relating to various aspects of the construction activity at 4825 Dexter Terrace, including especially about the Walled Platform Structure and the damage its construction and presence were inflicting upon Wesley Heights park and the surrounding neighborhood.

41. These complaints (and likely those of others) resulted in Teresa Lewis, DCRA's Deputy Director for Operations, and Juan Scott, DCRA's Chief Inspector and Supervisor of DCRA's Construction Branch, commencing an investigation of the Economides' construction activities. (*See* Ex. 66.) As part of that investigation, Mr. Scott conducted inspections of the construction site. (*Id.*)

42. As a result of those inspections, on November 2, 2004, DCRA made determinations that construction on the site had gone beyond the scope of that allowed under existing permits and that various inspections that were required had not occurred. (*See* Ex. 65.) On that date, Inspector Scott issued four Stop Work Orders ("SWOs") and posted four SWO warning notices on the front of the property. (*See* Ex. 46.)

43. DCRA officials advised Mr. Carome and others that the Stop Work Orders required cessation of all construction activity at 4825 Dexter Terrace, including continued construction of the so-called "retaining wall" around the property's rear perimeter. (*See* Exs. 64-66.) A specific handwritten notation of the words "STOP WORK" was written on the front of the DCRA's official file for the "retaining wall" permit.

44. Six days after the Stop Work Orders were issued, on November 8, 2004, DCRA

issued an “Order to Correct” to Mrs. Economides, informing her that the Stop Work Orders were issued for working beyond the scope of permits obtained and progressing with construction of the building without the necessary inspections for each stage of work as required by the DC code and regulations. (*See* Ex. 66.)

45. On November 24, 2004, Elizabeth Carter, the Special Assistant to the Administrator of DCRA’s Building and Land Regulation Administration, advised Ms. Carome in writing that the Order to Correct had “instructed Ms. Economides to submit plans and a D.C. Surveyor’s Plat for the full scope of the project,” and assured her “the Stop Work Orders will remain in place until all permits are obtained.” Ms. Carter further stated:

Inspector Scott has put processes in place to ensure that no further permits are issued to this property and no further inspections conducted on this property until the property owner has come into compliance with all applicable codes and regulations. . . . Inspector Scott will continue to monitor this site to ensure no further construction activity takes place until the property owner has taken the corrective actions as required.

(*Id.*)

46. The Economides largely ignored the Stop Work Orders throughout most of November and much of December 2004. Just a few days after the SWO warning notices were pasted to the front of the property, someone tore them down, apparently without authorization. During this period, the Economides’ crews of subcontractors continued to engage in a wide variety of prohibited and illegal construction activity on the site, including on the Walled Platform Structure. They installed a new driveway and illegally excavated for a new curb cut on the public property in front of the house, yet another activity that required a permit for which the Economides had not even bothered to apply. (Ex. 46.)

47. Even though Inspector Scott and others at DCRA were advised that work was continuing in flagrant violation of the SWOs and that the notices declaring that SWOs were in effect had been removed, for weeks they took no visible actions to control the situation.

48. On December 9, 2004, Denzil Noble, the Administrator of the DCRA's Building and Land Regulation Administration, wrote a letter to the Caromes, purporting to assure them that that District Authorities were taking aggressive enforcement action against the Economides. He reported that \$2000 in fines had been assessed against the Economides for "working beyond the scope of the permit" relating to construction of the new house, that the D.C. Department of Transportation was "in the process of issuing fines" relating to the Economides occupation of public space without required permits, and that "Inspector Juan Scott will continue to monitor the site on a frequent basis." (Ex. 64.) He further stated:

Please be advised that DCRA is coordinating with both [the Department of Transportation] and [the Department of Health] to strategically take enforcement action against Frank Economides. We recognize that Mr. Economides has and continues to flagrantly violate the laws of the District of Columbia and we intend to take stronger enforcement action against him.

(*Id.* at 3.)

49. But on the most important issue of all — the status of the Walled Platform Structure under D.C. zoning laws — Mr. Noble's December 9 letter sided with the Economides. Specifically, he opined that "[t]he retaining wall on this property is not illegal" because "[t]he plans for the wall were reviewed and approved by DCRA structural engineers and engineers from the Soil Erosion/Stormwater Division of the Department of Health." (Ex. 64.) Curiously, Mr. Noble made no effort to address any of the *zoning* issues associated with the "retaining wall," or even to contend that DCRA had ever even conducted a proper *zoning* analysis relating

to the “retaining wall.” His only remark about zoning issues in this letter pertained to the “single family dwelling” (*i.e.*, house) that the Economides are constructing, which he conclusorily asserted “complies in every respect with the requirements of the Wesley Heights Overlay.” (*See id.*)

Commencement of This Appeal and Subsequent Events

50. Two business days after Mr. Noble signed this letter, on December 13, 2004, Mr. Carome commenced the present Zoning Appeal before the Board of Zoning Adjustment.

51. Subsequent to the filing of the Zoning Appeal, there have been a number of relevant developments pertaining to the Economides and their illegal construction scheme, including those noted below.

52. Due to the extensive community concern relating to the illegal construction activity at 4825 Dexter Terrace, and following a meeting on this subject that D.C. Councilmember Kathy Patterson arranged and held with the then head of DCRA, David Clark, DCRA promised to issue “Weekly Updates” to the community about how it was dealing with these problems. On December 14, 2004, the day after Appellant filed his Zoning Appeal, DCRA issued “DCRA WEEKLY REPORT #1.” (*See Ex. 65.*) Without explanation, DCRA has never issued any subsequent “Weekly Report.”

53. On December 20, 2004, DCRA lifted all of the previously issued Stop Work Orders and issued a new and, and highly unconventional, Building Permit No. B468560, which reads as follows: “This permit is on file to technically correct Permit B452180 [the building permit issued on July 2, 2003], which was granted for an amended alteration & repair per[m]it, but which should have indicated new bldg constr[uction].” (*See Ex. 64.*) The publicly available

file relating to this permit shows no analyses regarding whether and how the house being constructed complies with applicable zoning regulations, including those relating to gross size and gross floor area. Contrary to its previous promises that it would “keep the Caromes informed” of further regulatory actions relating to 4825 Dexter Terrace (*see, e.g.*, Ex. 66), DCRA failed to direct any communication whatsoever to the Caromes regarding its December 20 decisions. Moreover, despite repeated formal requests from Mr. Carome, DCRA has failed to provide any explanation or further information regarding this set of decisions, in violation of its legal obligations under the D.C. Freedom of Information Act and [DC Building Code Provision]. (*See* Exs. 67 & 68.)

54. On January 27, 2005, the Attorney General of the District of Columbia filed a criminal complaint against Frank Economides in D.C. Superior Court, charging him with 1480 violations of the D.C. Building Code, all in connection with his activities at 4325 Dexter Terrace, N.W. (*See* Exs 47 & 48.) This criminal prosecution apparently was the result of a special D.C. police department investigation, and appears to have been launched without the full support or cooperation of the DCRA. The alleged violations principally pertain to Mr. Economides’ razing of the pre-existing house without any permit starting on December 15, 2002, and his subsequent construction of an all new home without a permit (*id.*) — matters that had become fully known to DCRA at least seven months earlier but which DCRA inexplicably patched over with a 3-day stop work order and a perfunctory new \$75 building permit.

55. Starting no later than mid-January 2005, the Inspector General of the District of Columbia had launched an active investigation into the activities of the DCRA relating to its permitting and regulatory decisions pertaining to 4825 Dexter Terrace and the Economides.

56. In early February, 2005, representatives of the U.S. Park Service performed certain inspection and surveying activities — involving some excavation and digging of test holes near the base of the Walled Platform Structure — apparently to assess whether the structure has been erected partially within Wesley Heights Park. It is Appellant’s understanding that these activities detected that man-made drainage systems and/or wall footings within the park.

ANC-3D Votes Unanimously to Support this Appeal

On February 2, 2005, the Advisory Neighborhood Commission 3D, the ANC body for the territory that encompasses 4825 Dexter Terrace, Wesley Heights Park, and Appellant’s own residence, held a lengthy public hearing regarding the merits of this Zoning Appeal. During this hearing, both Mr Carome and Richard Aguglia, a lawyer representing the Economides, were permitted to present their positions in considerable detail.

57. Before that hearing, both Mr. Carome and Mr. Aguglia submitted written material to the ANC Members in advance of the hearing. (*See* Exs. 69 & 70.)

58. At the conclusion of this public hearing, the six Commissioners who were present (only one was absent) voted *unanimously* to support the appeal, and to support specifically his contentions (1) that the Walled Platform Structure violates the core purposes of the Wesley Heights Overlay as set forth in 11 DCMR § 1541; (2) that the combined wall structure and the dwelling are in excess of the 30 percent lot occupancy allowed in the Wesley Heights Overlay District under 11 DCMR § 1543, (3) that the height of the wall exceeds the seven foot limitation for fences and fence walls that is provided in the D.C. Building Code, 12 DCMR § 3110A, and incorporated into the D.C. Zoning Code via 11 DCMR § 2503; and (4) that the permitting

decision failed to account for the fact that the Walled Platform Structure is not merely a “retaining wall” because the material supported by exterior walls was imported from elsewhere and filled in behind the walls to create an artificial terrace, such that the structure is not one of the limited types of structures that may lawfully be erected in a required rear yard or a required side yard, *see* 11 DCMR §§ 404 & 405.



Illustration No. 2 (View of Illegal Construction Site from Appellant's home, Dec. 2004)

ANALYSIS

DCRA's DECISION TO PERMIT CONSTRUCTION OF THE WALLED PLATFORM STRUCTURE VIOLATED THE D.C. ZONING CODE

The Board of Zoning Adjustment should reverse the DCRA's decision to issue Building

Permit No. B460927 because that decision has served as the sole basis and supposed authorization for Dina Economides as a property owner, and Frank Economides as a developer-contractor, to erect an enormous structure whose massive size, extreme height and highly intrusive location directly violate several of the clearest and most important prohibitions contained in the Zoning Code.

The proposition that the Walled Platform Structure violates multiple provisions of the zoning code should come as no surprise. If a huge and domineering structure such as this could be erected at will immediately adjacent to (and even encroaching upon) other private property and public parkland in the most protected class of residential property in the district (R-1-A), and in one of the most strictly zoned districts in the city (the WHOD), it would make the drafters of the Zoning Code out to be fools. Indeed, if this sort of construction is permissible as a matter of right in residential districts, then every single owner of residential property in the District, especially every one who lives downhill from someone else, is at constant risk that their next-door neighbors will erect walls of *unlimited height* around the very outer perimeter of their yards, and then pour fill material of any sort into the open air space within those walls until it is filled to the very brim, no matter how much damage that might wreak on all neighboring properties.

Not surprisingly, when the Advisory Neighborhood Commission with jurisdiction over the Wesley Heights Overlay District considered these very issues earlier this month, it voted unanimously in favor of a resolution agreeing to support this appeal because, as Appellant has alleged, the Walled Platform Structure being erected by the Economides violates not just one, but several, controlling provisions of the Zoning Code. This Board, of course, must accord “great weight” to that unanimous decision, and to the written statement of the ANC that will be

submitted in support of this appeal. D.C. Official Code § 1-309.10(d)(3)(A) (2001); 11 DCMR § 3115.2; *see also Lovendusky v. Dist. of Columbia Bd. of Zoning Adjustment*, 852 A.2d 927, 933 (D.C. 2004); *Foggy Bottom Ass'n v. Dist. of Columbia Bd. of Zoning Adjustment*, 791 A.2d 64, 76 (D.C. 2002).

Appellant has mapped out below several different paths, each one of which should bring this Board directly and with little difficulty to the conclusion that the DCRA's permitting decision to authorize construction of the Walled Platform Structure was fatally flawed under the Zoning Code. This abundance of meritorious grounds for reversal should give the Board substantial comfort in ruling in Appellant's favor. But if the Board is inclined to rule for Appellant on any one ground, it need not reach and decide the merits of every other theory that Appellant has presented. Because each of Appellant's theories is an independent and sufficient basis for invalidating the challenged permit, reversal will be required so long as the Board determines that at least one of Appellant's theories has merit.

A. The Walled Platform Structure Fundamentally Violates the Core Purposes of the Wesley Heights Overlay.

Recognizing the special — but fragile — aesthetic and environmental qualities of the Wesley Heights neighborhood, the D.C. Zoning Code provides properties within the designated Wesley Heights Overlay District (“WHOD”) with a number of extraordinary protections and restrictions that go beyond the basic zoning provisions that apply city-wide. 11 DCMR §§ 1541-1543. The purposes of the WHOD are stated clearly in the Code. They are to:

- (a) Preserve in general the current density of the neighborhood;
- (b) Allow reasonable opportunities for owners to expand their dwellings; and
- (c) Preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the

neighborhood.

Id. § 1541.3.

The Economides' property at 4825 Dexter Terrace, which is designated Lot 806 in Square 1381, is within the WHOD and subject to its special protections and restrictions. 11 DCMR § 1541.2(b) (providing that WHOD includes all of Square 1381). It also encompasses Appellant's property at 4747 Fulton Street, which is in Square 1408, as well as Wesley Heights Park and the two lots on either side of the Economides' property (all in Square 1381). *Id.*

When DCRA understands that it is processing a building permit application for a property in an overlay district, its standard practice is to note the applicable overlay (*e.g.*, WHOD), as well as the more general zoning category (*e.g.*, R-1-A) in the shaded box at the top of the application's front page. Similarly, when it issues a building permit for such a property, its standard practice is to state the same information on the face of the permit itself. That, for example, is exactly what DCRA did in connection with the building permits (and corresponding applications) that it issued to the Economides on September 9, 2002 for minor filling and grading work (Ex. 57) on September 26, 2002 for the Economides' phantom "renovation and addition" project (*see* Ex. 59), and on December 20, 2004 to "technically correct" the first permit for construction of a new house (*see* Ex. 62).

Remarkably, neither the application nor the building permit for the Economides' so-called "retaining wall" was flagged as subject to the WHOD; both documents refer only to the Economides' basic R-1-A categorization of the Economides' property. (*See* Exs. 51 & 52.) This conspicuous departure from DCRA's usual standard practice is strong evidence that the agency officials who performed the zoning analysis relating to the "retaining wall" permit were either so

careless as to be unaware of, or were aware but for some reason ignored, the applicability of the WHOD to this critically important zoning decision. In any event, it appears that DCRA never considered whether the Walled Platform Structure that the Economides are now building in the heart of the WHOD would comply with the extraordinary restrictions applicable within the WHOD.

If District authorities had properly taken the Wesley Heights Overlay into account, they could not have reached any conclusion other than that the proposed structure would violate its explicit and core purposes. Allowing the Economides to erect the Walled Platform Structure flies right in the teeth of the first and third purpose of the WHOD, and derives no support or justification from the second purpose. As to the first purpose — preserving the current density of neighborhood — it should be readily apparent that plopping an enormous structure that has the oppressive look and feel of a big-box store or prison on top of the backyard of an enormous new mansion, especially when done on the border of an undeveloped parcel of parkland, destroys, rather than preserves, the “current density” of buildings.

The second purpose, “allowing reasonable opportunities for owners to expand their dwellings,” lends no countervailing support to the DCRA’s decision. Permitting construction of the Walled Platform Building would not expand a “dwelling,” since whatever that structure is, it is neither a “dwelling” nor an expanded part of a “dwelling.” *See* 11 DCMR § 199.1 (defining “dwelling” as “a building designed or used for human habitation”). Moreover, it is simply inconceivable, given that the Economides are now constructing a new mansion that will be more than twice the size of the previous dwelling, that any *further* expansion of a dwelling on this site could be “reasonable.”

It would be hard to imagine a structure that — in terms of size, height, location and appearance — could do any more violence to the third purpose of the WHOD than is now being done by the nearly completed Walled Platform Structure. In terms of preservation of “existing trees,” there probably has never been a single-lot construction project in the whole history of the WHOD that has involved the destruction of even half the number of trees that the Economides sacrificed for this retaining wall. The decimation of trees has been at least five-fold: (1) they killed countless trees on their own property during the illegal and unauthorized clearing operation that led to the Department of Health citations and fines in 2002 (Ex. 50); (2) they illegally felled old-growth trees *on the federal parkland* at the same time, leading to criminal prosecution of Frank Economides for destruction of federal property (Ex. 49); (3) they killed more trees during the actual construction of the Walled Platform Structure in 2004; (4) repeated and continuing run-off of concentrated flows of water, silt and slime onto the parkland from the Walled Platform Structure are killing and damaging still more trees through suffocation from silt and root damage from erosion gullies (Exs. 43 & 44);^{4/} and (5) the massive blockage of sunlight that the structure now causes on the park and neighboring private properties, together with the compaction of the surrounding soil from its enormous weight and pressure, will take a heavy toll on a swath of many more trees, and will prevent others from ever beginning to grow. (See Ex. 29.) In short, what was once a heavily wooded tract of private and public property, which previously sloped harmoniously to a park stream, has been converted into a sterile and largely

^{4/} The Park Service has even had to put up special protective fencing around some young trees that are near the creek bed in the park — and quite far from wall — that have been overrun by layers of silt and slime flowing from the construction zone. (See Ex. 29).

tree-less wasteland that is likely to get worse unless the structure is promptly (and properly) dismantled and the slope remediated.

In terms of preserving “access to air and light” and the “harmonious design and attractive appearance of the neighborhood,” once again, erection of the Walled Platform Structure has been absolutely disastrous. It blocks and consumes huge quantities of air and light that used to flow through and over the hillside and into the parkland and other neighboring properties. And while “harmonious design” and “attractive appearance” are undoubtedly subjective terms, it is difficult to imagine that anyone would find the structure erected by the Economides to be anything but the antithesis of both.

The Walled Platform Structure is an anomaly in Wesley Heights. In a hilly, wooded, park-like neighborhood, the massive platform in the Economides’ rear yard stands out as the neighborhood’s most unsightly and unconventional structure. While its enormity is certainly its most striking feature, its oozing of mud and silt that now clog and block the stream-bed below, and its creation of gurgling, muddy erosion gullies that have spoiled the park’s walking trails, are also enormous detractions from the aesthetics of the neighborhood and the community. In every possible respect, it is the very definition of what the Wesley Heights Overlay scheme was designed to prevent.

For the foregoing reasons, and also taking into account the “heavy weight” that should be accorded to the ANC’s own written report that will support this appeal on this basis, 11 DCMR § 3115.2, the Board of Zoning Adjustment should reverse DCRA’s decision to issue Building Permit No. B460927 due to the Walled Platform Structure’s direct assault against the core purposes of the WHOD.

B. The Walled Platform Structure Violates the Zoning Code's General Prohibition on the Construction of Structures in "Required" Rear and Side Yards.

The Zoning Code requires rear yards of specified depths and side yards of specified widths for properties in residential districts. For lots zoned R-1-A, such as the Economides', the Code mandates a *minimum* rear yard of 25 feet and a *minimum* side yard of eight feet. 11 DCMR § 404.1; 11 DCMR § 405.9. Many of the plans and drawings that the Economides have submitted to DCRA in connection with their various piecemeal permit applications, including some that they submitted in connection with their applications relating to the Walled Platform Structure, denote the locations of these required yards. The obvious purpose of requiring such yards is to ensure that buildings or structures on one property do not become so close to neighboring property as to unduly impinge upon the air, light and views available to the owners and users of neighboring properties, and to control building density.

In general, and subject only to a small number of narrow exceptions, no building or structure may be erected within a required rear or side yard. The Code specifies only four types of structures property owners may place in these required yards: certain structures that are less than four feet high at their highest point; certain antennas; certain stairs; and "fence[s] or retaining wall[s] constructed in accordance with the D.C. Building Code." 11 DCMR §§ 2503.2 - 2503.5. Apart from these narrow exceptions, "every part of a [required yard] shall be open and unobstructed to the sky from the ground up." 11 DCMR § 2503.1. As the following analysis shows, the Walled Platform Structure plainly contravenes this requirement.

In the first instance, it is essential to determine the nature of the structure that is at issue. DCRA and the Economides would have this Board believe that the "structure" at issue is merely

a set of “retaining walls” — thousands of large “mesa blocks” piled up on top of each other into four vertical walls that extend along nearly 400 feet of the perimeter of the property. But that is ridiculous. Plainly the “structure” that has been erected includes all of the new material — imported fill dirt, imported gravel, and huge stretches of geogrid fabric that bind the structure together — that the Economides have *permanently* loaded and affixed inside those walls so as to form and create the expansive elevated platform (or terrace) that now occupies what previously was nothing but thin air and tree tops. Indeed, as the Economides have conceded, there would have been no point to building this structure except to create that platform or terrace. The unsightly retaining walls are just a necessary means for achieving that end. Indeed, to pretend that the “structure” at issue here is nothing but “retaining walls” would be like saying that a cherry pie freshly pulled from an oven is nothing but the hot pie tin.^{5/}

Fortunately, the Zoning Code provides a definition of “structure” that accords with common sense and that clearly resolves this issue. Under the Code, a “structure,” is “*anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including, among other things, radio and television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls.*” 11 DCMR § 199 (emphasis added). Under both prongs of this definition, the “structure” (or “structures”) that comprises the Walled

^{5/} Of course, had the Economides filled behind the walls with concrete, they could not possibly argue the resulting Walled Platform Structure was merely a “retaining wall.” The fact that they chose to fill behind the wall with alternating layers of trucked-in dirt fill and geogrid sheets, thus giving the wall something to retain, does not change to structure’s treatment under D.C. law.

Platform Structure includes not just the four mesa block walls, but also the artificial platform or terrace that those walls now partially support.

(1) The platform or terrace certainly is “anything constructed . . . the use of which requires permanent location on the ground.” It undoubtedly was “constructed,” as defined in *Webster’s Unabridged American Dictionary*, both in the sense of being “form[ed], ma[d]e, or create[d] by combining parts or elements,” and in the sense of being “fabricate[d] out of heterogeneous or disparate elements.”^{6/} Its alternating layers of imported fill dirt and carefully measured sheets of specially manufactured plastic geogrid fabric plainly have been piled up, arranged, and built to form a huge level platform for leisure activities. And the whole entity obviously has been “fabricated” out of disparate elements — including the fill dirt, the geogrid sheets, the masonry blocks at the perimeter, and even the temporary and permanent additional fencing that of course must encircle the elevated rim of the terrace to prevent injury and death caused by falling from the edge. Moreover, “use” of this platform or artificial terrace most certainly requires its “permanent location on the ground.” Successful design of such an enormous elevated platform jutting from the side of a steep hill is an engineering feat, the whole point of which is to keep all of it “permanently” in the same location, so as to prevent a collapse or other failure that could maim or kill either users or anyone standing below it.

^{6/} Where the Board is called upon to interpret a term the Code fails to define, it assumes that term has the “meaning given in *Webster’s Unabridged Dictionary*.” 11 DCMR § 199.2(f). *Webster’s Third New International Dictionary of the English Language Unabridged* (“*Webster’s Unabridged Dictionary*”), the authoritative dictionary of American English, defines “construct” as “to form, make, or create by combining parts or elements.”

(2) The second (and alternative) prong of the Code’s definition of “structure” is just as easily satisfied here. The platform or terrace that is supported by the mesa block walls is itself directly “attached” to “something having a permanent location on the ground.” The purpose and function of the numerous separate and huge sheets of high-tension geogrid fabric that, according to the engineering plans, were to be layered throughout the sub-stratum of the terrace serve to firmly attach the wall to the terrace, and to attach the terrace to the wall, so that the great weight of the earth resting on top of those sheets may bind and attach the entire structure together into an integral unit, so that lateral forces do not cause it to disintegrate and collapse down the hill. (Ex. 24.) And, of course, the walls to which the geogrid sheets are attached themselves have a “permanent location on the ground.” *Id.* at 6.

(3) If there were (and there is not) any doubt that the structure we are evaluating is not just its four mesa block walls, it would be obliterated by the fact that the Code’s definition includes a non-exclusive list of examples of things that are “structures,” and that list includes the very thing that is the Walled Platform Structure’s whole reason for being: a relatively level “platform[],” elevated to within just a couple of feet of the new mansions’ many back doors, available for private leisure use by the owners family and friends. The Code itself does not define “platform,” so once again we must turn to *Webster’s Unabridged Dictionary*. It defines “platform” as “a natural or *constructed terrace*.” (Ex. 21.) And it defines “terrace” as a “relatively level paved or planted area adjoining a building and in formal settings often surrounded by a balustrade.” *Id.* The Walled Platform Structure consuming the entirety of the Economides’ required rear and side yards could not fit any more neatly within these definitions.

The next critical question, then, is whether the Walled Platform Structure — taking into

account its entire elevated platform component and not just its walls — fits completely within any of the narrowly defined exceptions to the general prohibition on erecting any building *or structure* in a required back or side yard. 11 DCMR § 2503. The legality of this structure under the Zoning Code hinges on this question, because it is undisputed that this structure is located in *both* the required back yard *and* each of the required side yards at 4825 Dexter Terrace.^{7/} Indeed, the Walled Platform Structure — including all portions of its artificially elevated platform/terrace — occupies the *entirety* of the 25-foot deep required rear yard, and substantially more than half of one of the two 8-foot wide required side yards. (Ex. 23.)

The Walled Platform Structure definitely does not fit within any of the four narrow exceptions to the general prohibition of all buildings and structures in required yards. Three of the four exceptions — those for certain structures that are less than four feet high at their highest point; certain antennas; and certain stairs — are obviously inapplicable. 11 DCMR §§ 2503.2; 2503.4-2503.5. All of DCRA’s and the Economides’ eggs, therefore, are in the one remaining exception: “fence[s] or retaining wall[s] constructed in accordance with the D.C. Building Code,” which is no doubt why the permit application only sought permission, and why the permit purported to grant permission, *only* for the erection of a “retaining wall” — whose *only*

^{7/} The structure’s exterior walls are shown on drawings that the Economides submitted to DCRA as being planned for installation within *one foot* of the lot’s outer boundaries (Ex. 23 & 24), and it now appears that at least some portions of those walls have been built *on the other side* of those boundaries. (Ex. 45.)

materials would be “mesa blocks”^{8/} — and nothing more. But here again, DCRA and the Economides have it wrong.

There should be no need to debate whether or not, looked at alone, the mesa block walls that are essential supporting *components* of the Walled Platform Structure are “retaining walls” under the D.C. Zoning Code. That question need not be answered, because, as established above, the Walled Platform Structure includes a huge artificial elevated platform which itself is (or is part of) a structure, and which by no possible stretch could be shoe-horned into the definition of a “retaining wall.” Indeed, even the Code’s definition of “structure” itself negates any notion that an artificially elevated earthen platform that is fabricated from entirely imported materials (fill and geogrid) and held up by masonry walls (even if those walls may themselves be deemed “retaining walls) is itself *just* a “retaining wall.” By offering both “platforms” and “retaining walls” as distinct examples of what constitutes a “structure,” 11 DCMR § 199.1, the Code’s drafters plainly understood (as should be obvious to all) that a specially constructed “platform” and a “retaining wall” are one and the same.^{9/}

^{8/} There is a space on the standard Building Permit Application in which an applicant whose construction project will include a “Retaining Wall” must state the materials from which it will be constructed. On the Economides’ application, their agent wrote only “Mesa Block” in this space. Obviously, if the Economides had thought that the elevated earthen platform they were proposing to erect within the mesa block walls was itself subsumed within the term “retaining wall” — an interpretation that would have been absurd on its face — then clearly they would have listed in this same space the materials — alternating layers of geogrid fabric and imported fill dirt — for by any measure (weight, mass, volume, and possibly even price) those imported materials were to become the most significant components of this structure.

^{9/} If the Board found itself compelled to determine whether the structure at issue in this appeal is indeed a “retaining wall,” there would be a strong argument that it is *not*. Other zoning authorities and courts have refused to classify structures such as that occupying the Economides’

The colossal structure in the Economides' required yard is not an antenna; it is not a set of stairs; it is significantly more than four feet high; and it is not merely a fence or retaining wall. It substantially obstructs the Economides' steeply sloped required yard and dramatically imposes upon neighbors and park visitors. It violates the D.C. Zoning Code, and it must be brought into compliance with the Code, or be torn down.

C. Even if It Were Only a Retaining Wall, the Walled Platform Structure Still Would Violate the Zoning Code Because Its Outer Walls Exceed the Seven-Foot Height Limitation for Fence Walls.

As noted above, the D.C. Zoning Code mandates that "every part of a [required] yard . . . shall be open and unobstructed to the sky from the ground up." 11 DCMR § 2503.1. Even if the Board considers only the external walls of the Walled Platform Structure, their extreme height would render them impermissible structures in the required rear and side yards pursuant to Section 2503's exception for fences and retaining walls. As noted above, the only fences and walls the Code permits in required yards are those "constructed in accordance with the D.C. Building Code." 11 DCMR § 2503.3. Here, the Walled Platform Structure violates the D.C. Building Code because its walls exceed the applicable height limitation. This violation renders each of its four walls an unauthorized structure in the Economides' required rear and side yards

required yards as "retaining walls." In *Ranson v. City of Charleston*, 496 S.E.2d 191 (W. Va. 1997), West Virginia's highest court upheld application of a six-foot height limitation on fences to a structure much like that on the Economides property, despite the fact that, unlike the limitation in the D.C. Code, the height limitation explicitly excluded retaining walls. *Id.* at 193 n.2. Noting that the property owners leveled their yard so as to create a "play area for their children," the Charleston Board of Zoning Appeals found that "the wall was never intended to be a 'typical retaining wall.'" *Id.* at 194. Rather, the property owners built a fence wall in excess of six feet and then placed fill dirt behind it. *Id.* To permit this wall to exceed the limitation on fences, therefore, would have been "tantamount to amending" the City's fence ordinance. *Id.*

in contravention of the *Zoning* Code. This Board's reasoning has previously recognized that the explicit Zoning Code cross-reference to the Building Code in § 2503.3 means that violations of the Building Code with respect to retaining walls or fences located in "required" yards are also *Zoning* violations. See *Decision of the BZA in Appeal of David J. Grinstead* at 16-17 (noting that the appellant had alleged no Building Code violations in relation his neighbor's fence wall that would render that wall a violation of the Zoning Code).

If the structure we are considering here were *just* the mesa blocks stacked along the lot's outer perimeter (contrary to the argument in Part B above), then it would also qualify as a "fence wall," a compound term used in the Building Code to ensure that any kind of wall (including a retaining wall) that also functions as a "fence" is subject to the same restraints that apply to fences. Without such a provision, the Code would produce absurd and anomalous results, such as allowing solid walls to be erected to that would not be allowed for see-through fences (such as chain-link or picket fences).

While neither the D.C. Code nor *Webster's Unabridged Dictionary* defines "fence wall," the latter volume's separate definitions of "fence" and "wall" support the conclusion that the Economides' mesa-block walls are "fence walls" as contemplated by the Code. *Webster's* defines a "fence" as "a barrier intended . . . to mark a boundary" and a "wall" as "a masonry fence around a garden, park, or estate." (Ex. 21.) If the Board considers only the mesa-block portions of the Economides' Walled Platform Structure in assessing its compliance with the D.C. Code, what remains are four stacks of masonry totaling nearly 400 feet in length and climbing to 30 feet above-grade. Within inches of Wesley Heights Park and the yards of the Economides' neighbors, the mesa-block structure closely follows and marks the boundaries of the

Economides' property, creating a barrier around their estate. It is, therefore, a fence wall.

As noted above, the D.C. Building Code places the same limitations on fence walls as it does on fences. 12 DCMR § 3110.1.1. In order to be "constructed in accordance with the D.C. Building Code," fences and fence walls located within 10 feet of a property line in a residential district may not exceed seven feet. 12 DCMR § 3110.3.3. The fence wall encircling the Economides' property is within inches of the property line, is located in a residential district, and towers 30 feet above Wesley Heights Park and the yards of the Economides' neighbors. It is not, therefore "constructed in accordance with the D.C. Building Code." As a result, it constitutes an unauthorized structure in the Economides' rear and side yards in violation of the D.C. Zoning Code. 11 DCMR § 2503.3.

Even if the Board concludes the fence wall is also a retaining wall, the structure's status as both a fence wall and a retaining wall would not save it from violation of the D.C. Zoning Code. The D.C. Code states quite clearly that fence walls within 10 feet of a party line may not exceed seven feet. 12 DCMR § 3110.3.3. This provision makes no exception for retaining walls. To decide this limitation does not apply to the Walled Platform Structure, the Board would in effect amend the Code to read: "Fences within a strip 10 feet . . . from a party line shall not exceed 7 feet *unless they also serve as retaining walls.*"

Furthermore, as described above, the construction of this "retaining wall" was atypical. It was not built to resist *existing* lateral pressure. Rather, the Economides created lateral pressure by filling behind the wall with dirt and debris. To allow this action to exempt the Economides from the strictures of the D.C. Code would encourage others to build massive walls abutting their neighbors' property and simply fill in behind the walls so as to avoid a Zoning Code (and

Building Code) violation. The height limitation on fences and fence walls near party lines aims to save D.C. residents from such imposition. The Board should not countenance this circumvention of both the letter and the spirit of D.C. law.

Other zoning authorities and courts in the mid-Atlantic region have applied fence-wall height limitations to retaining walls built to support artificial fill material. For example, in *Adler v. Craft*, A-1-03T5 (N.J. Super. Ct. App. Div. Sept. 22, 2004), a New Jersey appellate court addressed the scope of a municipal code provision mandating that “fences or walls shall not exceed seven feet in height.” *Id.* at 4. Like the Economides, the property owners in that case wanted to “create a more level, usable landscape” in their steeply sloped rear yard, so they built a “retaining wall” and then filled and graded their yard behind the wall. *Id.* The resulting “retaining wall” reached 16 feet in height. *Id.* at 8. The property owners sought to exempt their wall from the seven-foot limitation on fences or walls, however, by virtue of the structure’s status as a “retaining wall.”

Conceding that the municipal code governing wall heights did not explicitly apply to “retaining walls,” the appellate court in *Adler v. Craft* nevertheless upheld application of the height limitation to the 16-foot retaining wall at issue in that case. As explained by the court, “the overall purpose of [the] fence ordinance is to protect adjoining property owners from the impact of massive, ponderous structures,” and that purpose informed the court’s interpretation of the ordinance. *Id.* at 11. The court went on to hold that it would defeat the overall purpose of [the fence] ordinance to interpret it in a manner that would permit construction of a solid concrete retaining wall of any height but bar a solid wooden fence of more than seven feet. The court stressed that the effect of the structure upon the surrounding properties obviously would

not be lessened simply because it might be a retaining wall. *Id.* at 12.

Similarly, in *Ranson v. City of Charleston*, 496 S.E.2d 191 (W. Va. 1997), West Virginia's highest court upheld application of a fence ordinance to a retaining wall, despite the fact that the ordinance in that case, unlike the one in the District, explicitly exempted retaining walls. The Court noted that the retaining wall at issue was "not typical"; property owners first built the wall, then placed fill behind it so as to create a level rear yard. *Id.* at 194. The Court credited the Charleston Board of Zoning Appeals' argument that allowing residents to circumvent the City's fence ordinance by calling oversized fence walls "retaining walls" would undermine the ordinance's very purpose. *Id.* To do so, noted the court, would encourage residents to build "walls of any height" and simply place "fill dirt against them." *Id.* Whatever "retaining" such walls might accomplish would do nothing to mitigate the enormity of their imposition on neighboring property owners. It is the extent of that imposition, measured in height, which these various fence ordinances seek to address. The walls' ability to retain fill is simply irrelevant to the analysis.

The Walled Platform Structure clearly exceeds the height limitation on fence walls in the Building Code, and it represents the very sort of imposition upon neighboring properties such height limitations are designed to prevent. Considering these reasons, and taking into account the "great weight" the Board must afford the ANC's written report supporting this appeal on these bases, 11 DCMR § 3115.2, the Board should reverse the DCRA's decision to issue Building Permit No. B460927.

D. Even If It Were Nothing More Than a “Retaining Wall,” the Structure Still Would Violate the Zoning Code Because It Violates the D.C. Building Code in Numerous Other Respects.

Even if viewed as nothing other than a “retaining wall,” the structure erected by the Economides still violates numerous other requirements of the D.C. Building Code (in addition to the seven-foot height limitation discussed above). For these reasons as well, the structure is not a “fence or retaining wall *constructed in accordance with the D.C. Building Code*,” 11 DCMR § 2503.3, and therefore its erection in the Economides’ required rear and side yards violates the Zoning Code. 11 DCMR § 2503.1.

1. Construction of the Walled Platform Structure Appears to Have Deviated in Significant Respects from the Engineering Plans.

Although Appellant has had only limited time to study the recently disclosed engineering plans for the Walled Platform Structure that the Economides submitted to DCRA (Ex. 24), a preliminary review of those plans, and a comparison of them to what has been built so far, appears to reflect that the construction has deviated in significant respects from the engineer’s instructions. For example, whereas the engineer stated that the planned vertical joint between the two tallest walls should be replaced with a radius curve, the structure as built has a vertical joint at that location. (Ex. 41.) Likewise, whereas the engineering plans call for straight, plumb walls, the walls in fact are not at all plumb, and bulge and undulate in many respects. (Ex. 36.) These deviations in the construction of such a tall and massive structure perched precariously on a slope, and the absence of any evidence that any qualified engineer has established that these

deviations do not impair the integrity of the structure, further demonstrate that the Walled Platform Structure has not been constructed in accordance with the D.C. Building Code.^{10/}

2. The Walled Platform Structure Now Discharges a Concentrated Flow of Water onto the Federal Parkland in Contravention of Professional Building Standards.

As detailed in the accompanying affidavit of Professional Engineer James Heltman, the Walled Platform Structure has substantially and deleteriously altered the manner in which water drains from the Economides' property into the federal parkland below. (Ex. 1.) In particular, the structure is periodically causing a concentrated and damaging discharge of water directly into the parkland from a drainage line that exits near the northwest corner of the structure's base. *Id.* This constitutes a violation of professional building standards (*id.*) and therefore further

^{10/} Appellant respectfully requests the right to submit additional evidence, possibly including one or more reports of a structural engineer or other expert witness, closer to the date of the scheduled hearing. With respect to any such additional submission, the fourteen-day deadline imposed by the Code should be waived. The reasons for this include the fact that DCRA, contrary to applicable law, refused to provide Appellant with a complete copy of the engineering plans in its files until February 4, 2005. DCRA was required to provide Appellant with ready access to that record (and other records) on demand (which Appellant began to make repeatedly and in person at the DCRA permit office starting in late December 2004) pursuant to applicable regulations. DCRA also was independently obligated to provide Appellant with a copy of that record no later than January 25, 2005 to a written request that he submitted to DCRA on January 10, 2005* pursuant to the D.C. Freedom of Information Act. DCRA failed to comply with those obligations, despite Appellants' repeated calls and inquiries, until after Appellant was forced to make extraordinary appeals to the new director of DCRA, Patrick Canavan; the Office of D.C. Councilmember Kathy Patterson; and ANC 3D Chair Alma Gates. In addition, counsel for Mr. Economides, Richard Aguglia, declined repeated written requests from Appellant to provide him with a copy of this document, which Appellant saw in the hands of Dina Economides at the ANC hearing held on February 2, 2005. Appellant's ability meaningfully to consult with experts was substantially impaired by these facts. In addition, Appellant's ability to prepare this submission, including to consult with experts, was impaired by the death of his father-in-law on February 3, which required him to be out of town for five days. For these reasons, the time for Appellant to submit additional evidentiary material should be extended for a reasonable time.

evidences that the structure is not a retaining wall that has been constructed in accordance with the Building Code.

3. The Walled Platform Structure Violates the D.C. Building Code's Requirements Pertaining to Party Fences.

Under the D.C. Building Code, “those portions of the length of a fence [or fence wall], including footings, which are partly on each side of a party line shall be considered as party fences” and shall be subject to special additional conditions. 12 DCMR § 3110.2. The special conditions include that the owner of the adjacent property must also sign the permit application, *id.*, and that the fence be “a wood, woven wire, or iron fence of open pattern unless otherwise agreed by the adjoining owners.” 12 DCMR § 3110.2.1.

At least one area of the Walled Platform Structure's longest wall appears to encroach directly over the property line and onto the adjoining Wesley Heights Park, which is owned by the federal government. This is evident from the fact that at approximately the middle of that wall, there are less than 3.5 inches between a National Park Service boundary stake and the face of the lowest block that is visible above the mud. (Ex. 45.) Because the wall at that point was designed to have at multiple courses of mesa blocks *below* grade level (Ex. 24 at 5), because the each course of blocks was designed to protrude out 5/8 of an inch further than the block above it (*id.* at 4), and because the wall was designed to have an integrally essential “leveling pad” that would protrude beyond the lowest block (*id.* at 6), it therefore is apparent that, at least this

segment of the wall is literally on the federal parkland.¹¹ That means that at least that segment is subject to the special conditions for “party” fence walls, which clearly were not satisfied here.

4. The Walled Platform Structure Is Unsafe.

The D.C. Building Code protects residents against all “structures that are or hereafter shall become unsafe, unsanitary, . . . or are otherwise dangerous to human life or the public welfare” 12 DCMR § 115.1. The Walled Platform Structure appears to have been designed and/or constructed in a manner that poses such dangers; for this reason as well, it violates both the Building Code and the Zoning Code, and therefore its must be dismantled.

Thousands of tons of fill of unknown origin and quality are layered within this structure. With the structure not yet even completed or declared to be fit for use by DCRA, its exterior walls — which are subject to enormous stresses due to the structure’s extreme height and the tremendous lateral pressures created by the fill piled into it — are already developing prominent bulges, waves and undulations (Ex. 36); already have more than 100 significantly cracked mesa blocks in the lowest areas of the tallest walls (Exs. 37-39), and are oozing large quantities of silt and mud into Wesley Heights Park. The dangers posed by this enormous and seemingly unstable structure are obvious to the naked eye. After even a cursory layman’s view of the engineering plans for the structure, however, the threat it represents becomes truly frightening.

According to the structure’s design engineer, Ryan & Associates, the mesa blocks used in construction of its walls must be “sound and free of cracks or other defects” (Ex. 24.)

¹¹ In addition, it appears that a drainage system relating to the wall may exist below grade outside its exterior walls.

“Mesa blocks showing cracks of longer than 1/2 inch shall not be used within the wall.” *Id.*

Despite this warning from the structure’s design engineer, however, over 100 mesa blocks with cracks longer than half an inch — many running the entire eight-inch height of the block, are found at the lower levels of the walls tallest segments. In many instances, cracks run the entire length of the block. Many of these cracked blocks are grouped together, with crack patterns developing vertically from one block through the next. Given the structure’s placement atop a steep slope leading into a public park, these cracking walls appear to constitute not only a Building Code and significant departure from the engineering plans, but also cause for significant public concern. (Ex. 1.)

The Walled Platform Structure’s design engineer made unmistakably clear the potential danger it presented. All such structures are “critical,” according to Ryan & Associates, meaning they not only require significant financial investment but that their failure “will negatively impact a property both financially and from a public safety perspective.” (Ex. 24 at 30.) For that reason, the design engineer insisted, the owner “must have the construction certified by a licensed geotechnical/structural engineer registered in” the District. (*Id.*) In fact, the design engineer essentially directed the Economides to ensure a geotechnical and civil engineer would be present on a continual basis to perform tests of soil, grading, compacting, storm-water management, drainage, and wall construction. (*Id.* at 2, 3, 4, 29, 30, 31, 33, 35, 36.) Although Frank Economides counsel submitted to the ANC Commissioners a conclusory letter from a soil engineering firm asserting that some testing and inspections were performed (see page of Ex. 5 of Economides exhibits), that letter was dated December 15, 2004 — two days after this Appeal was filed. Moreover, Mr. Economides’ counsel failed to provide actual copies of any testing or

inspection reports from this or any other technical firm to the ANC, nor have any such reports appeared among any of the records that DCRA has made available in response to Appellant's numerous requests. The public safety concerns raised by this potentially unsupervised and obviously shoddy construction project, and the resulting structure of uncertain stability that now sits precariously above Wesley Heights Park, are great.^{12/}

5. No DCRA Structural Engineer or Other Certified Structural Engineer Reviewed the Walled Platform Structure Prior to Its Construction.

There is no evidence that any code official or structural engineer, either within or outside DCRA, certified to DCRA, in accordance with the requirements of the Building Code, *see* 12 DCMR § 105.3.1, that the plans for the Walled Platform Structure conformed to all applicable requirements of the Building Code prior to the issuance of the permit for the so-called "retaining wall." This is a further respect in which this structure was not constructed in accordance with the Building Code.

Although the Economides' counsel presented to the ANC Commissioners a one-page, document purporting to certify that the Walled Platform Structure complies with the Building Code, this document raises more questions than it answers. (Ex. 70.) This supposed certification was executed on December 15, 2004 — two days after Appellant filed his appeal and *eight months* after the permit in question was issued. Furthermore, even this document does not

^{12/} On January 28, 2005, Appellant made an in-person written report at DCRA's office stating that the Walled Platform Structure appeared to be a threat to public safety and requesting that DCRA send an inspector out to the property immediately to perform an inspection. Appellant further requested that he be informed of the results of that inspection. Appellant has received no communication from DCRA or anyone else indicating or suggesting that any such inspection was ever performed.

identify in any way the property or structure to which the certification supposedly relates. In addition, while this document refers to some plans that supposedly are “attached,” the Economides counsel produced it to the ANC Commissioners without any such attachment(s), and he declined to comply with Appellant’s subsequent request for a copy of any such attachments. This creates still further reason to believe that the Walled Platform Structure was not constructed in accordance with the D.C. Building Code.

6. Evidence of Required Inspections Is Lacking.

The D.C. Building Code specifically provides that an “inspection [must be] performed before walls reach the height of one foot, to verify agreement with survey data” and that “[a] certificate from the Office of the Surveyor, showing location of the walls with reference to lot and building lines shall be submitted to the code official before erection of such wall is authorized to proceed.” 12 DCMR § 109.3.8.5. But there is no evidence that such inspection was performed on the 30-foot tall structure erected by the Economides at any point during its construction. Appellant has made repeated visits to the D.C. Surveyor’s Office to ascertain whether any report of such wall checks were performed on the Walled Platform Structure. On such visits Appellant has seen documentation of wall checks performed in connection with the construction of the pre-existing house at 4825 Dexter Terrace and the new mansion. (Ex. 28), but no report of a wall check on the Walled Platform Structure was in the file or otherwise available.

In addition, despite repeated requests, including a FOIA request to which the DCRA has failed to respond as required by law, Appellant has not been able to see or obtain any report of any inspection or testing performed on the Walled Platform Structure at any time. If DCRA in

fact has failed to perform periodic inspections of the Walled Platform Structure, that would constitute yet a further respect in which the structure has not been constructed in accordance with the D.C. Building Code. Among other things, it would contravene the Building Code's general requirement that, "[a]fter issuing a building permit, the code official shall conduct such inspections, from time to time during and upon completion of the work, for which a permit has been issued." *Id.* §109.3.

A one-page letter that Mr. Economides' counsel recently provided to the ANC Commissioners as evidence that required inspections were performed by an engineering firm, (*see* Ex. 70 at 1), serves only to raise further questions about, and certainly does not satisfactorily demonstrate, whether all required inspections and supervision by qualified engineering personnel occurred before and during construction of the Walled Platform Structure. (*id.* at 1) Once again, this letter is dated in mid-December 2004 — after Appellant filed his appeal. Moreover, while that letter states that copies of inspection and test reports were attached to it, the Economides' counsel produced it without any such attachments, and has refused to comply with Appellant's written request for copies of all such reports

7. There Is No Evidence that Proper and Safe Fill Material Was Used to Construct the Walled Platform Structure.

The D.C. Building Code clearly provides that "[n]o materials other than Class 1, Class 2 or Class 3 fill material shall be used in filling depressions and grading the site. . . . All work shall be done in accordance with the Department of Health Environmental Health Administration Watershed Protection Division and, where applicable, the Department of Public Works." 12 DCMR § 3304.3. There is no evidence in the records that DCRA has made available that this

suspect material satisfies the Building Code's strict requirements for fill. In addition, the fill dirt, which is extremely rocky, appears to be contaminated with refuse and debris. (Ex. 40.)

Moreover, at the ANC hearing, Economides' lawyer asserted that the fill used was especially absorbent, which Appellant understands would be inconsistent with safe construction. These all appear to be further Code violations.

8. The Economides Failed to Obtain Other Necessary Permits.

In addition to the Illegal Building Permit, the Economides were required under the D.C. Building Code to obtain a number of specialty permits before beginning construction of the Walled Platform Structure. *See* 12 DCMR § 105.1.11. There is no evidence that Economides obtained any of these required permits.

First, there is no evidence that the Economides or their agents obtained a "public space permit" to install silt protection fences and other structures on public space, as is now evident has occurred (and, by the Economides' unlawful and intentional design, could only occur) on the public space of Wesley Heights/Rock Creek Park. *Id.* § 105.1.11.2.

Second, there is no evidence that the Economides or their agents obtained an "excavation permit" covering this work, even though one was required because the work involved "excavat[ing] and other earth disturbing actions affecting an area larger than 50 square feet." *Id.* § 105.1.11.2.

E. The Walled Platform Structure Violates the Zoning Code Because It Exceeds the Maximum Lot Occupancy Permitted by the Wesley Heights Overlay.

The Walled Platform Structure in the Economides' required yard plainly violates the maximum lot occupancy permitted on properties within the Wesley Heights Overlay District. Contrary to

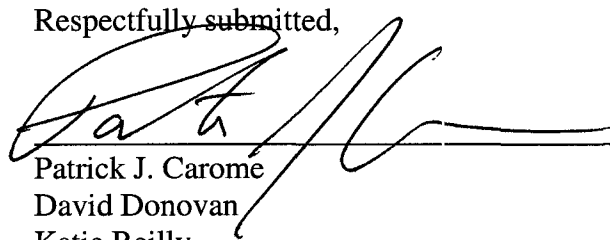
the applicable D.C. Zoning Code provision, which dictates that “[n]o structure, including accessory buildings, shall occupy an area in excess of thirty percent . . . of the lot,” 11 DCMR § 1543.2, the Walled Platform Structure consuming the Economides’ rear and side yards occupies an area of approximately 10,000 square feet — nearly 40% of the Economides’ 25,811-square-foot lot. (Exs. 23 & 24.) Without even taking into account the Economides’ sizeable mansion, the Walled Platform Structure alone thus exceeds the maximum lot occupancy and thus violates the Zoning Code for this reason as well.

CONCLUSION

For all of the foregoing reasons, and for all of the reasons set forth in the filing that Appellant made to commence this appeal, the Board should, pursuant to 11 DCMR § 3100.4, REVERSE the decision of DCRA to issue the Economides a Building Permit purporting to authorize them to construct the Walled Platform Structure and should ORDER the Economides to dismantle the Walled Platform Structure (including the removal of all fill material contained within its exterior walls) in a manner that protects the surround properties, including Wesley Heights Park, from any further damage or encroachment.

Respectfully submitted,

By:



Patrick J. Carome
David Donovan
Katie Reilly
WILMER CUTLER PICKERING
HALE AND DORR LLP
2445 M Street, N.W.
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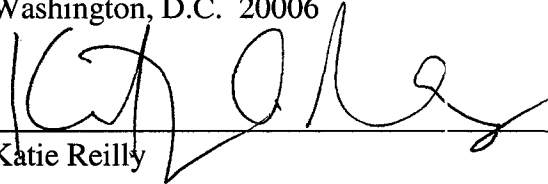
Counsel for Appellant

Dated: February 15, 2005

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above and foregoing Brief of Appellant Patrick J. Carome and accompanying exhibits has been served on the following counsel of record by hand, this 15th day of February, 2005:

Richard L. Aguglia
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006



Katie Reilly

B

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeal of Patrick J. Carome

of Building Permit
No. B460927

4825 Dexter Terrace, NW
Frank & Dina Economides, Owners

BZA Appeal No. 17285

Hearing Date: March 1, 2005

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APPENDIX OF EXHIBITS TO BRIEF OF APPELLANT
PATRICK J. CAROME VOL 1 OF 2

Patrick J. Carome
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February 15, 2005

BZA
Case No. 17285
Exhibit No. 21-B

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of Patrick J. Carome, BZA Appeal No. 17235

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Exhibit 4	Rear & Side Yard Requirements, 11 DCMR §§ 404 - 405
Exhibit 5	Structures in Required Open Spaces, 11 DCMR § 2503
Exhibit 6	Definition of “Structure,” 11 DCMR § 199
Exhibit 7	Meaning of Terms not Defined by Code, 11 DCRM § 199.2(g)
Exhibit 8	Advisory Neighborhood Commission, 11 DCMR § 3115
Exhibit 9	Advisory Neighborhood Commissions, D.C. Code § 1-309.10
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Court Decisions

Exhibit 19	<i>Ranson v. City of Charleston</i> , 496 S.E.2d 191 (W.Va. 1997)
Exhibit 20	<i>Adler v. Craft</i> , A-1-03T5 (N.J. Sup. Ct. App. Div. Sept. 22, 2004)

***Definitions from Webster’s Third New International Dictionary of the English Language
Unabridged Version***

Exhibit 21	“construct,” “fence,” “platform,” “retaining wall,” “terrace,” and “ wall”
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Maps and Plans

Exhibit 22	Surveyor's Maps of Affected Lots
Exhibit 23	CAS Drawing of Plans for Walled-Platform Structure
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Exhibit 54	Permit No. 44054 and Application for Razing at 2970 Chain Bridge Road
Exhibit 55	Electrical Permits Obtained Pursuant to Forged Permit No. 445054
Exhibit 56	Application for Permit to Fill Rear Yard and Regrade Rear Yard

Exhibit 57 Permit No. 422839 to Fill Rear Yard and Regrade Rear Yard
Exhibit 58 Application for Permit for Renovation and Addition to Single Family Dwelling
Exhibit 59 Permit No. B425076 for Renovation and Addition to Single Family Dwelling
Exhibit 60 Application for Permit for New House Construction
Exhibit 61 Permit No. B452810 for New House Construction
Exhibit 62 Permit No. B468560 to “Technically Correct” Permit No. B452180
Exhibit 63 Correct Form for Application for Permit to Build Retaining Wall

Correspondence

Exhibit 64 Letter to Caromes from Denzil Noble Dated December 9, 2004
Exhibit 65 First and Only Weekly Update from DCRA
Exhibit 66 Email from Elizabeth Carter to Elsie Carome Dated November 11, 2004
Exhibit 67 FOIA Request and Follow-Up Letter
Exhibit 68 Caromes’ Request for Explanation

ANC Submissions

Exhibit 69 Carome Submission
Exhibit 70 Submission by Richard Aguglia on Behalf of Economides

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of Patrick J. Carome

of Building Permit
No. B460927

4825 Dexter Terrace, NW
Frank & Dina Economides, Owners

BZA Appeal No. 17285

Hearing Date: March 1, 2005

AFFIDAVIT OF JAMES W. HELTMAN

I, James W. Heltman, being duly sworn, depose and say:

1. My name is James W. Heltman. I am a professional engineer currently registered as such in the District of Columbia. Until my retirement earlier this month, I was employed as Chief Civil Engineer at Alphatec, pc, an engineering and architectural consulting firm based in the District of Columbia. I reside in the District of Columbia.

2. I hold a Bachelor of Science degree in Civil Engineering from Colorado State University, with graduate work at The George Washington University. I am a Life Member of the American Society of Civil Engineers. I have been practicing site development and infrastructure engineering in the Greater Washington Area for nearly forty (40) years.

3. On or about December 4, 2004, I visually observed the exterior surface of the segmented block walls that support the walled platform structure that has been erected over the rear area of the residential property lot located at 4225 Dexter Terrace, N.W. I did this while walking along the land at grade level near the base of the structure. While doing so, I observed cracks in a number of the blocks that make up the exterior walls, particularly in lower areas of the taller sections of the walls. I also observed that a number of portions of the walls have bulges and/or waves in them. Although my engineering specialty is not structural, these cracks, bulges and waves give me concerns about the structural integrity and safety of the structure.

4. I have also reviewed copies of certain plan documents that Appellant Patrick J. Carome provided to me with a representation that they were obtained from the DCRA as its records of plans submitted by or on behalf of the property owners for a permit to construct the so-called "retaining wall" at 4825 Dexter Terrace, N.W. These documents are (a) a one-page site drawing entitled "WALL PLAN" for 4825 Dexter Terrace which appears to bear the seal and signature of an engineer, Curt A. Schreffler, dated 03-31-04; and (b) a 36-page document

entitled "MESA SITE RETAINING WALL, FINAL DESIGNS FOR: ECONOMIDES RESIDENCE, which purports to have been prepared by Doug Statler of Ryan & Associates and which bears on its front cover the initials of "Robert Chan, Structural Engr. Section," dated 2/3/05, under a stamped legend that reads "District of Columbia Permit Processing Division, Structural Work in General Approved Subject to the Further Approval of Construction."

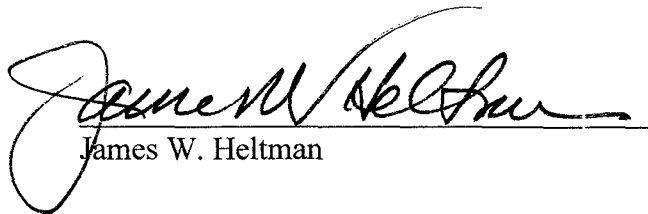
5. I have also reviewed certain photographs that Appellant Patrick J. Carome showed to me with a representation that they depict land surface areas near to, and below, the lower-most corner of the exterior of the walled platform structure (the corner designated as point 2+27 on the plan documents referenced in paragraph 4 above) at a time when it was raining in mid-January 2005.

6. Based on the observations and information referenced in paragraphs 3 through 5 above, it is apparent to me that the walled platform structure is having a negative impact on the surrounding environment because it has significantly changed the manner in which surface and other water, including rainwater, drains from the rear of the property at 4825 Dexter Terrace, N.W. Specifically, before this structure was erected, such water flowed in a relatively dispersed and unconcentrated manner in accordance with the pre-existing grade. Now, after construction, there is a concentrated and heavy outflow from a footing drain outlet that exits the wall structure near the point designated as 2+27. It is evident that this concentrated outflow creates a concentrated stream that flows directly onto and over the adjoining public parkland and into the creek that runs through the center of the park. As a result of this flow concentration, an erosion channel has appeared downstream from the base of the wall.

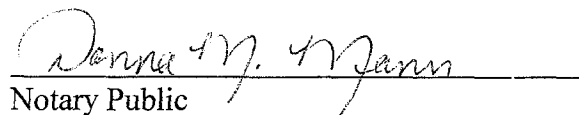
6. Erection of structures that significantly change the character of the discharges of water from one parcel of real property to another, of the type described in paragraph 6 are, in my professional experience, contrary to normal standards and practices of building and construction in the District of Columbia.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14 day of February, 2005.


James W. Heltman

SUBSCRIBED AND SWORN TO before me, this 14th day of February, 2005.


Notary Public

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of Patrick J. Carome

of Building Permit
No. B460927

4825 Dexter Terrace, NW
Frank & Dina Economides, Owners

BZA Appeal No. 17285

Hearing Date: March 1, 2005

AFFIDAVIT OF HARRY GATES

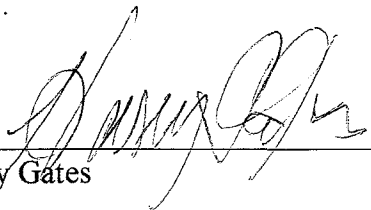
I, Harry Gates, being duly sworn, depose and say:

1. My name is Harry Gates. I am over 18 years of age. I reside at 4911 Ashby Street, N.W., Washington, D.C., and have lived there since 1969.
2. My residence is several blocks away from 4825 Dexter Terrace, N.W.
3. Over the past eight or so years, I have had several occasions to see or speak with Frank and/or Dina Economides. For example, there occasionally have been neighborhood activities or functions when I either saw or interacted with one or both of them. I know that they and their children used to live at that address, and I know that they have been engaged in ongoing construction activity at that location for more than two years.
4. As was the case for many persons in our general neighborhood, I was aware that the house at 4825 Dexter Terrace was demolished starting sometime in December 2002.
5. In March of 2003, while I was doing some early Spring yard work in my front yard, Dina Economides stopped her car in front of my house and engaged me in conversation for about 15 or 20 minutes. During this conversation, she she talked about the demolition of her house at 4825 Dexter Terrace. She told me that the razing was not a planned event and that it had been necessitated by a construction accident. Specifically, she said that a bulldozer was

being used to do some work near the house and that it hit the corner of the house and damaged it, and that this required the whole house to be taken down for safety reasons.

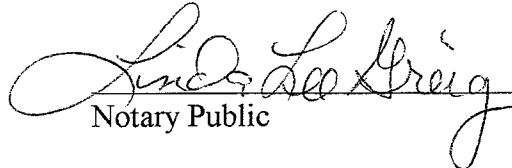
I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14 day of February, 2005.



Harry Gates

SUBSCRIBED AND SWORN TO before me, this 14th day of February, 2005.



Notary Public

My Commission Expires January 1, 2008

1534 HEIGHT, AREA, AND BULK REGULATIONS (NO)

1534.1 The maximum permitted building height in the NO Overlay District shall not exceed forty feet (40 ft.).

1534.2 For purposes of this chapter, the height of a building shall be measured as follows:

(a) The height of a building shall be the vertical distance measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof or parapet; and

(b) The curb elevation opposite the middle of the front of the building shall be determined as the average elevation of the lot from its front line to its rear lot line.

1534.3 The provisions of chapter 24 of this title shall not operate to permit a planned unit development in the NO Overlay District to exceed either the limits of § 1534.1, or the area, bulk, and yard standards that apply as a matter of right in any underlying district within the NO Overlay District.

1534.4 All provisions of § 411 shall also apply to roof structures in the NO Overlay District.

SOURCE: Final Rulemaking published at 39 DCR 2745, 2747 (April 17, 1992); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8461-62 (October 20, 2000).

1535-1540 [RESERVED]**1541 WESLEY HEIGHTS OVERLAY DISTRICT (WH)**

1541.1 The Wesley Heights (WH) Overlay District is established to preserve and enhance the low density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area.

1541.2 The WH Overlay District shall apply to the area and properties contained in this subsection:

(a) The area is generally bounded by a line which begins at the intersection of Nebraska and New Mexico Avenues and runs southeast along the center line of New Mexico Avenue, N.W., to the western boundary of Glover Archbold Park. The line then runs south and west along the west boundary of Glover Archbold Park to a point east of the southernmost point of Lot 33 of Square 1341. The line then runs west across 44th Street to the southwest boundary of

Lot 33. The line then runs in a northerly direction along the rear lot lines of the properties on the west side of 44th Street, to the southern boundary of Lot 15 of Square 1341, inclusive of Lot 33. (For those lots with narrow frontages on the west side of 44th Street, the WH Overlay District boundary line shall cross those narrow lot frontages by connecting the rear lot lines of the adjacent lots across the narrow lot frontage.) The line then runs west along the southern boundary of Lot 15; then runs northwest along the west boundary of Lot 15; then runs in a westerly direction along the right-of-way of the Dexter Court cul-de-sac excluding Lots 19-21, and then runs southwest along the south boundary of Lot 18. The line then runs north along the west boundary of Lot 18 to the southern boundary of Lot 805. The line then runs west along the southern boundaries of Lots 805 and 800; then runs north along the west boundary of Lot 800; then runs west to Foxhall Road along the southern boundary of Lot 804. The line then runs south along the center line of Foxhall Road; then runs west along the northern boundary of Lot 813 of Square 1380; then runs southwest along the rear of Lots 4, 5, and 820 of Square 1380; then runs west to 49th Street along the southern boundaries of Lots 820 to 824, 826, and 6 of Square 1380. The line then runs north along the western boundary of 49th Street right-of-way; continues east along the northern boundary of Cathedral Avenue right-of-way; and turns north along the property line at the rear of the properties on the west side of Foxhall Road (including all of Square 1523 and Lots 28 and 29 of Square 1521). The line then runs east along the northern property line of Lot 28 of Square 1521 to Foxhall Road, then runs north along the west boundary of the Foxhall Road right-of-way to New Mexico Avenue. The line then runs northeast along the center line of New Mexico Avenue to the point of origin at the intersection of New Mexico and Nebraska Avenues, N.W.; and

- (b) The properties that are contained within the boundaries of the WH Overlay District, as set forth in § 1541.2(a), include all of Squares 1338 to 1340, 1380, 1381, 1406, 1408, 1521, 1523, 1524, 1603 to 1612, 1614, 1615, 1619 to 1622, 1625, 1626, 1700, and 1701; and a portion of Squares 1341, 1397, and 1601 (those portions include Lots 11, 12, 15 to 18, 24, 25, 28 to 34, 36, 37, 800, 804, 805, 807, 810, 814, 819, 821, 824, 825, and 868, and a portion of Lots 35, 857, and 869 in Square 1341; Lots 4 to 6, 814 to 816, 818, 820 to 824, and 826 in Square 1397; and Lots 804 and 805 in Square 1601).

1541.3 The purposes of the WH Overlay District are to:

- (a) Preserve in general the current density of neighborhood;
- (b) Allow reasonable opportunities for owners to expand their dwellings; and

- (c) Preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood.

SOURCE: Final Rulemaking published at 39 DCR 6827 (September 11, 1992); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8462-62 (October 20, 2000).

1542 GENERAL PROVISIONS (WH)

- 1542.1 The WH Overlay District is an overlay district and shall be mapped in combination with one (1) of two (2) underlying districts (R-1-A and R-1-B) and not instead of the underlying districts.
- 1542.2 All uses, buildings, and structures permitted in accordance with this chapter and the appropriate regulations of the underlying district with which the mapped WH Overlay District is combined, shall be permitted in the combined districts.
- 1542.3 All restrictions and prohibitions provided for by either of the underlying districts combined in accordance with this chapter shall also apply, except as specifically modified by this chapter. Where there is a conflict between this chapter and the underlying zoning, the more restrictive provisions of this title shall govern.

SOURCE: Final Rulemaking published at 39 DCR 6827, 6829 (September 11, 1992); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8463 (October 20, 2000).

1543 RESTRICTIONS: MAXIMUM LOT OCCUPANCY, FLOOR AREA RATIO, AND FRONT YARD SETBACK (WH)

- 1543.1 The restrictions under this section shall apply to both the R-1-A and the R-1-B Districts within the WH Overlay District.
- 1543.2 No structure, including accessory buildings, shall occupy an area in excess of thirty percent (30%) of the lot; except that:
 - (a) Structures on lots of between five thousand square feet and six thousand six hundred and sixty-seven square feet (5,000 ft.² and 6,667 ft.²) may occupy up to two thousand square feet (2,000 ft.²); and
 - (b) Structures on lots of less than five thousand square feet (5,000 ft.²) may occupy up to forty percent (40%) of the area of the lot.

1543.3 The gross floor area of all buildings and structures on the lot shall not exceed the sum of two thousand square feet (2,000 ft.²) plus forty percent (40%) of the area of the lot; provided, that the following modifications of gross floor area shall apply in the WH Overlay District:

- (a) The first two hundred square feet (200 ft.²) of an open porch, or total open porch space if there is more than one open porch, and the first six hundred square feet (600 ft.²) of a garage shall not count in gross floor area; and
- (b) Basement or cellar floor area shall count in gross floor area if a finished floor is provided, if the floor to ceiling height is in excess of six feet, six inches (6 ft., 6 in.), and shall count only up to a floor area equal to five (5) times the total fenestration area for the cellar or basement floor.

1543.4 All residential buildings shall have a front yard setback equal to or greater than the average setback of all structures on the same side of the street in the block where the building in question is located. The required setbacks are depicted in the map entitled, "Required Front Yard Setbacks," which is a part of this overlay district and located in the D.C. Office of Zoning and in the Zoning Division of the Department of Consumer and Regulatory Affairs.

SOURCE: Final Rulemaking published at 39 DCR 6827, 6829 (September 11, 1992); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8463 (October 20, 2000).

EDITOR'S NOTE: The map entitled "Required Front Yard Setbacks," is published at 39 DCR 6827, 6831 (September 11, 1992).

1544-1550 [RESERVED]

1551 SIXTEENTH STREET HEIGHTS OVERLAY DISTRICT (SSH)

1551.1 The Sixteenth Street Heights (SSH) Overlay District is established to help accomplish several goals and policies of the Comprehensive Plan, especially those land use objectives relating to housing supply, neighborhood quality and character, and policies relating to human services and private institutions, as applied to the 16th Street Heights neighborhood.

1551.2 The SSH Overlay District encompasses the geographic area in northwest Washington generally bounded by 16th Street and Rock Creek Park on the west, Military Road and Missouri Avenue on the north, and 14th Street on the east, and Colorado Avenue on the southeast. This overlay zone is applied to properties zoned R-1-B in the following squares and portions of squares: 2718, 2719, 2720, 2720W, 2721, 2721W, 2722, 2722W, 2723, 2723W, 2724, 2724W, 2725, 2741, 2742, 2796, and 2799.

ZONE DISTRICT AND STRUCTURE	MAXIMUM PERCENTAGE OF LOT OCCUPANCY
R-1-A, R-1-B, R-2 Church or public school	60%
R-1-A, R-1-B, R-2 All other structures	40%
R-3 Row dwelling, church, or public school	60%
R-3 All other structures	40%
R-4 Row dwelling, flat, church, or public school	60%
R-4 Conversion to multiple dwelling	None Prescribed
R-4 All other structures	40%
R-5-A Church or public school	60%
R-5-A All other structures	40%
R-5-B All other structures	60%
R-5-C, R-5-D, R-5-E All other structures	75%

SOURCE: § 3303 of the Zoning Regulations, effective May 12, 1958; as amended by Final Rulemaking published at 39 DCR 8305, 8307 (November 13, 1992); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8368 (October 20, 2000).

404 REAR YARDS (R)

404.1 A rear yard shall be provided for each structure located in a Residence District, the minimum depth of which shall be as set forth in the following table:

ZONE DISTRICT	MINIMUM DEPTH OF REAR YARD
R-1-A, R-1-B	25 feet
R-2, R-3, R-4, R-5-A	20 feet
R-5-B, R-5-C, R-5-D	4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet.
R-5-E	3 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 feet.

- 404.2 In the case of a through lot or a corner lot abutting three (3) or more streets, the depth of rear yard may be measured from the center line of the street abutting the lot at the rear of the structure.
- 404.3 In the case of a lot proposed to be used by a public school that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, the required rear yard may be reduced or omitted.
- 404.4 In the case of a building existing on or before May 12, 1958, an extension or addition may be made to the building into the required rear yard; provided, that the extension or addition shall be limited to that portion of the rear yard included in the building area on May 12, 1958.

SOURCE: § 3304 of the Zoning Regulations, effective May 12, 1958; as amended by Final Rulemaking published at 39 DCR 8305, 8307 (November 13, 1992); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8368-69 (October 20, 2000).

405 SIDE YARDS (R)

- 405.1 In an R-2, R-3, R-4, or R-5 District, a one-family detached dwelling shall be subject to the side yard requirements of an R-1 District.

- 405.2 In an R-3, R-4, or R-5 District, a one-family semi-detached dwelling shall be subject to the side yard requirements of an R-2 District.
- 405.3 In R-2, R-3, R-4, and R-5 Districts, when a one-family dwelling, flat, or multiple dwelling is erected that does not share a common division wall with an existing building or a building being constructed together with the new building, it shall have a side yard on each resulting free-standing side.
- 405.4 Except as provided in § 405.1, in an R-5-A District, one (1) side yard shall be provided for all structures unless the structure is an apartment house containing three (3) or more dwelling units per floor, in which case two (2) side yards shall be provided, each with the minimum width set forth in § 405.9.
- 405.5 A side yard shall not be required along a side street abutting a corner lot in a Residence District.
- 405.6 Except as provided in §§ 405.1 and 405.2, a side yard shall not be required in an R-3, R-4, R-5-B, R-5-C, R-5-D, or R-5-E District. However, if the yard is provided, it shall be at least three inches (3 in.) wide per foot of height of building, but not less than eight feet (8 ft.) wide.
- 405.7 In the case of a lot located in an R-1 or R-2 District proposed to be used by a public school that abuts or adjoins on one (1) or more side lot lines a public open space, recreation area, or reservation, the required side yard may be reduced or omitted.
- 405.8 In the case of a building existing on or before May 12, 1958, with a side yard less than eight feet (8 ft.) wide, an extension or addition may be made to the building; provided, that the width of the existing side yard shall not be decreased; and provided further, that the width of the existing side yard shall be a minimum of five feet (5 ft.).
- 405.9 Side yards shall be provided on lots in Residence Districts as set forth in the following table, subject to the special requirements of other provisions of this chapter:

ZONE DISTRICT	MINIMUM WIDTH OF EACH SIDE YARD
R-1-A, R-1-B, R-2	8 feet
R-3, R-4	None required, except as provided under §§ 405.1, 405.2, and 405.6

ZONE DISTRICT	MINIMUM WIDTH OF EACH SIDE YARD
R-5-A	3 inches per foot of height of building, but not less than 8 ft.
R-5-B, R-5-C, R-5-D, R-5-E	None required, except as provided under §§ 405.1, 405.2, and 405.6.

SOURCE: § 3305 of the Zoning Regulations, effective May 12, 1958; as amended by: Zoning Commission Order No. 17, dated November 17, 1970, published at 17 DCR 305 (November 30, 1970); Final Rulemaking published at 39 DCR 8305, 8307 (November 13, 1992); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8369 (October 20, 2000).

406 COURTS (R)

406.1 Where a court is provided in a Residence District, the court shall have the minimum dimensions set forth in the following table:

ZONE DISTRICT AND STRUCTURE	MINIMUM WIDTH OF OPEN COURT	MINIMUM WIDTH AND AREA OF CLOSED COURT
R-1-A, R-1-B, R-2, R-3, R-4, R-5-A One-family dwelling	4 in. per foot of height of court, but not less than 6 ft.	Width: 4 in. per foot of height of court, but not less than 5 ft. Area: Twice the square of the required width of court dimension based on the height of court, but not less than 350 ft. ²
R-1-A, R-1-B, R-2, R-3, R-4, R-5-A All other structures	4 in. per foot of height of court, but not less than 10 ft.	Width: 4 in. per foot of height of court, but not less 15 ft. Area: Twice the square of the required width of court dimension based on the height of court, but not less than 350 ft.

2503 STRUCTURES IN REQUIRED OPEN SPACES

- 2503.1 Except for the structures and exceptions specified in this section, every part of a yard required under this title shall be open and unobstructed to the sky from the ground up.
- 2503.2 A structure, not including a building no part of which is more than four feet (4 ft.) above the grade at any point, may occupy any yard required under the provisions of this title. Any railing required by the D.C. Construction Code, Title 12 DCMR, shall not be calculated in the measurement of this height.
- 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.
- 2503.4 Stairs leading to the ground from a door located on the story in which the principal entrance of a building is located may occupy any yard required under provisions of this title. The stairs shall include any railing required by the provisions of the D.C. Building Code.
- 2503.5 An antenna that complies with all other requirements of this title may occupy any side or rear yard that is required by this title.

SOURCE: § 7602.2 of the Zoning Regulations (April 1981); as amended by: Final Rulemaking published at 27 DCR 2226, 2228 (May 23, 1980); Final Rulemaking published at 36 DCR 1509, 1522 (February 24, 1989); and Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8526 (October 20, 2000).

2504 STRIPPING OF TOPSOIL

- 2504.1 No person, firm, or corporation other than the District of Columbia government or an agency acting under contract with the District government shall remove topsoil or sod in any zone district, other than an M District, except under one (1) of the following conditions:
- (a) In connection with the construction or alteration of a building for which a building permit has been previously issued, or in connection with excavation or grading incidental to the building or maintenance of the building grounds;
 - (b) In connection with normal lawn preparation and maintenance on the lot from which the topsoil or sod is removed;
 - (c) In connection with any accessory use incidental to a permitted use;

Story (continued)

For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars, stairway or elevator penthouses, or other roof structures; provided, that the total area of all roof structures located above the top story shall not exceed one-third (1/3) of the total roof area.

Story, top - the uppermost portion of any building or structure that is used for purposes other than housing for mechanical equipment or stairway or elevator penthouses. The term "top story" shall exclude architectural embellishment.

Street - a public highway designated as a street, avenue, or road on the records of the Surveyor of the District of Columbia.

Street frontage - the property line where a lot abuts upon a street. When a lot abuts upon more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage.

Structure - anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on 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, but shall include the supports for mechanical equipment.

Tenement - One (1) or more habitable rooms in an apartment house, under the exclusive control of the occupant of the apartment house.

Tenement house - a building or part of a building containing three (3) or more tenements, or any building or part of a building containing any combination of three (3) or more tenements and apartments.

Through square connection - a continuous improved area through a square for pedestrians providing a connection between two (2) parallel or opposite streets or on a corner lot; provided, that the entrances to the area shall not be less than thirty feet (30 ft.) from the corner. (24 DCR 10787)

Uptown center - a multi-purpose major activity center with strong transit orientations and significant concentration of employment and high density residential as the principal elements, developed in a manner that serves the surrounding lower density community while protecting it from avoidable intrusions. (21 DCR 1465-66)

Use, accessory - a use customarily incidental and subordinate to the principal use, and located on the same lot with the principal use.

- (f) The words “occupied” and “used” shall be considered as though followed by the words “or intended, arranged, or designed to be used or occupied, offered for occupancy”; and
- (g) Words not defined in this section shall have the meanings given in *Webster’s Unabridged Dictionary*.

SOURCE: Unless otherwise noted, the source of these definitions is §§ 1201 and 1202 of the Zoning Regulations, effective May 12, 1958; as amended by: Final Rulemaking published at 39 DCR 1900, 1904 (March 20, 1992); Final Rulemaking published at 40 DCR 1951 (March 19, 1993); Final Rulemaking published at 40 DCR 3744 (June 11, 1993); Final Rulemaking published at 40 DCR 6364 (September 3, 1993); Final Rulemaking published at 45 DCR 1045, 1046 (February 27, 1998); Final Rulemaking published at 46 DCR 8284, 8286 (October 15, 1999); Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8336 (October 20, 2000); Final Rulemaking published at 48 DCR 9830, 9831-32 (October 26, 2001); and Final Rulemaking published at 49 DCR 1655 (February 22, 2002).

- 3114.6 If an application is referred in advance of the public hearing to any public agency for a report or recommendation, no report is received in the record, and the time period specified in § 2509 has elapsed, then the Board may proceed to decide the application based on the record not including such report and recommendation.

SOURCE: Final Rulemaking published at 46 DCR 7853, 7905 (October 1, 1999); as amended by Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8564 (October 20, 2000).

3115 ADVISORY NEIGHBORHOOD COMMISSIONS

- 3115.1 The written report of the ANC shall be submitted to the Board at least seven (7) day in advance of the hearing and shall contain the following information:
- (a) An identification of the appeal or application;
 - (b) When the public meeting of the ANC to consider the appeal or application was held;
 - (c) Whether proper notice of that meeting was given by the ANC;
 - (d) The number of members of the ANC that constitute a quorum and the number of members present at the meeting;
 - (e) The issues and concerns of the ANC about the appeal or application as related to the standards of the Zoning Regulations against which the appeal or application must be judged;
 - (f) The recommendation, if any, of the ANC as to the disposition of the appeal or application;
 - (g) The vote on the motion to adopt the report to the Board;
 - (h) The name of the person authorized by the ANC to present the report; and
 - (i) The signature of the ANC chairperson or vice-chairperson.
- 3115.2 The Board shall give “great weight” to the written report of the ANC, as required by § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-135, 47 DCR 5519 (2000))(codified at D.C. Official Code § 1-309.10(d)(3)(A)(2001).



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C

Formerly cited as DC ST 1981 § 1-261

District of Columbia Official Code 2001 Edition Currentness

Division I. Government of District.

Title 1. Government Organization. (Refs & Annos)

Chapter 3. Specified Governmental Authority.

▣ Subchapter V. Advisory Neighborhood Commissions.

▣ Part A. General.

→ § 1-309.10. Advisory Neighborhood Commissions-Duties and responsibilities; notice; great weight; access to documents; reports; contributions.

(a) Each Advisory Neighborhood Commission ("Commission") may advise the Council of the District of Columbia, the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect that Commission area. For the purposes of this part, proposed actions of District government policy shall be the same as those for which prior notice of proposed rulemaking is required pursuant to § 2-505(a) or as pertains to the Council of the District of Columbia.

(b) Thirty days written notice, excluding Saturdays, Sundays and legal holidays of such District government actions or proposed actions shall be given by first-class mail to the Office of Advisory Neighborhood Commissions, each affected Commission, the Commissioner representing a single-member district affected by said actions, and to each affected Ward Councilmember, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. In cases in which the 30-day written notice requirement is not satisfied, notification of such proposed government action or actions to the Commissioner representing the affected single-member district shall be made by mail. The Register shall be made available, without cost, to each Commission. A central record of all such notices shall be held by the Office of Advisory Neighborhood Commissions.

(c)(1) Proposed District government actions covered by this part shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or independent agencies, boards, and commissions. In addition to those notices required in subsection (a) of this section, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, before the transmission to the Council of a proposed revenue bond issuance, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals and priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section. Each District of Columbia government entity shall maintain a record of the notices sent to each Commission pursuant to subsection (b) of this section.

(2)(A) The Alcoholic Beverage Control Board ("ABC Board") or its designee shall give notice to Advisory Neighborhood Commissions, the Office of Advisory Neighborhood Commissions, the Commission or Commissions representing the area within 600 feet of where the applicant's establishment is located, and the

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Commissioner representing an affected single-member district at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location. The ABC Board or its designee party shall give notice by first-class mail, posted not less than 5 calendar days prior to the first day of the 45-calendar-day notice period, and addressed to:

- (i) The Commission office, with sufficient copies of the notice for distribution to each Commissioner;
- (ii) The Chairperson of the Commission at his or her home address of record; and
- (iii) The Commissioner in whose single-member district the establishment is located at his or her home address of record.

(B) In addition, the ABC Board shall provide to each Commission office, on a quarterly basis, a printed list of all Alcohol Beverage Control licenses due to expire in the ensuing 6 months. An Advisory Neighborhood Commission may object to the application in the manner set forth in § 25-115(c) and (e).

(3) The Department of Consumer and Regulatory Affairs shall ensure that each Advisory Neighborhood Commission is provided at least twice a month by first-class mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission. All notices shall also be provided to the Office of Advisory Neighborhood Commissions. Each Commission and the affected ward Councilmember shall also be provided at least twice a month with a current list of applications for public space permits.

(d)(1) Each Commission so notified pursuant to subsections (b) and (c) of this section of the proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with § 1-309.11(c) which is open to the public in accordance with 1-309.11(g). The recommendations of the Commission, if any, shall be in writing and articulate the basis for its decision.

(2) At the close of business of the day after which the notice period concludes as provided in subsection (b) or (c) of this section, the affected District government entity may proceed to make its decision.

(3)(A) The issues and concerns raised in the recommendations of the Commission shall be given **great weight** during the deliberations by the government entity. **Great weight** requires acknowledgement of the Commission as the source of the recommendations and explicit reference to each of the Commission's issues and concerns.

(B) In all cases the government entity is required to articulate its decision in writing. The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.

(C) The government entity shall promptly send to the Commission and the respective ward Councilmember a copy of its written decision.

(4) Oral testimony shall be followed as if provided in advance in writing as required by paragraph (1) of this subsection when accompanied within 7 days by written documentation approved by the respective Commission, which supports the testimony.

(e) Reserved.

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(f) Each Commission may present its views to any federal or District agency.

(g) The Commission shall not have the power to initiate a legal action in the courts of the District of Columbia or in the federal courts, provided that this limitation does not apply to or prohibit any Commissioner from bringing suit as a citizen.

(h)(1) Each Commission may initiate its own proposal for District government action. The District government entity to which the proposal is made shall acknowledge the proposal in writing to the initiating Commission within 10 days of receipt of the proposal and shall issue a status report to the initiating Commission within 60 days of receipt.

(2) Any Commission may hold public hearings on requested or proposed government actions. Commissions may invite public witnesses from any executive or independent entity to testify before the Commission. Within 45 days of the close of the public hearing, the Commission may submit to the Council a report detailing the Commission's findings and recommendations to be included in any public record of the proposed government action.

(i)(1) Each Commission shall have access to District government officials and to all District government official documents and public data pursuant to § 2-531 et seq. that are material to the exercise of its development of recommendations to the District government.

(2) The Mayor shall provide to all Commissions, at no cost, current zoning and alcohol beverage control regulations, and any other regulations requested in writing by the respective Commission not available electronically, in order for Commissioners to adequately perform their responsibilities.

(j)(1) On or before November 30 of each year, each Commission may file an annual report with the Council and the Mayor for the preceding fiscal year. Such report shall include, but shall not be limited to:

(A) Summaries of important problems perceived by the Commission in order of their priority;

(B) Recommendations for actions to be taken by the District government;

(C) Recommendations for improvements on the operation of the Commissions;

(D) Financial report; and

(E) A Summary of Commission activities.

(2) Minority reports may be filed.

(k) Reserved.

(l) No Commission may solicit or receive funds unless specifically authorized to do so by the Council, except that receipt of individual contributions of \$1,000 or less need not be approved by the Council. No person shall make any contribution, nor shall a Commission receive any contribution from any person which, when aggregated with all other contributions received from that person, exceeds \$1,000 per calendar year. Each Commission shall file with its quarterly reports to the District of Columbia Auditor required pursuant to § 1-309.13(j) details of all contributions received during the relevant period of time.

(m) Each Commission shall monitor complaints of Commission area residents with respect to the delivery of District government services and file comments on same with the appropriate District government entity and the

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Council.

(n) Each Commission shall develop an annual fiscal year spending plan budget for the upcoming fiscal year within 60 days of notification of the amount of the Commission's annual allotment. Prior to adoption of the budget at a public meeting, the Commission shall present the budget at a public meeting of the Commission to elicit comments from the residents of the Commission area.

(o) Each Commission may, where appropriate, constitute the citizen advisory mechanism required by any federal statute (unless specifically prohibited by federal statute).

CREDIT(S)

(Oct. 10, 1975, D.C. Law 1-21, § 13, as added Mar. 26, 1976, D.C. Law 1-58, § 2, 22 DCR 5454; Apr. 19, 1977, D.C. Law 1-120, § 3, 23 DCR 9924; Oct. 26, 1977, D.C. Law 2-30, § 2(a), (b), 24 DCR 3723; Apr. 30, 1988, D.C. Law 7-104, § 37, 35 DCR 147; Mar. 6, 1991, D.C. Law 8-203, § 3(c), 37 DCR 8420; Oct. 3, 1992, D.C. Law 9-174, § 3(b), 39 DCR 5859; Apr. 29, 1998, D.C. Law 12-91, § 2(a), 45 DCR 1312; Jun. 27, 2000, D.C. Law 13-135, § 3(a), 47 DCR 2741; Mar. 6, 2002, D.C. Law 14-79, § 2, 48 DCR 11266; June 12, 2003, D.C. Law 14-310, § 3, 50 DCR 1092; Sept. 30, 2004, D.C. Law 15-187, § 104, 51 DCR 6525.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 1-261.

1973 Ed., § 1-171i.

Effect of Amendments

D.C. Law 13-135, in the section name line added "notice; **great weight**; access to documents; reports; contributions", and rewrote the section, which formerly read:

"(a) Each Advisory Neighborhood Commission (hereinafter in §§ 1-261 to 1-264 the 'Commission') may advise the Council of the District of Columbia, the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including decisions regarding planning, streets, recreation, social services programs, education, health, safety and sanitation which affect that Commission area. For the purposes of this act, proposed actions of District government policy shall be the same as those for which prior notice of proposed rulemaking is required pursuant to § 1-1506(a) or as pertains to the Council of the District of Columbia.

"(b) Thirty days written notice of such District government actions or proposed actions shall be given by mail to each Commission affected by said actions, except where shorter notice on good cause made and published with the notice may be provided or in the case of an emergency and such notice shall be published in the District of Columbia Register. The Register shall be made available, without cost, to each Commission.

"(c)(1) Proposed District government actions covered by this act shall include, but shall not be limited to, actions of the Council of the District of Columbia, the executive branch, or independent agency. In addition to those notices required in subsection (a) of this section, each agency, board and commission shall, before the award of any grant funds to a citizen organization or group, or before the formulation of any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting said Commission area, the District budget and city goals, and

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priorities, proposed changes in District government service delivery, and the opening of any proposed facility systems, provide to each affected Commission notice of the proposed action as required by subsection (b) of this section. Each District of Columbia agency shall maintain a record of such notices sent to each Commission.

"(2) The Alcoholic Beverage Control Board shall give notice to Advisory Neighborhood Commissions at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses. class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location. The notice shall be given to the Advisory Neighborhood Commission representing the area in which the applicant's establishment is located. The Board shall give notice by first-class mail, posted not less than 5 calendar days prior to the first day of the 45-calendar-day notice period, and addressed to the Commission office, with sufficient copies of the notice for distribution to each Commission member, the Chairperson of the Commission at his or her home address of record, and the Commission member in whose single-member district the establishment is located at his or her home address of record. In addition, the Board shall provide to each Commission office, on a quarterly basis, a printed list of all ABC licenses due to expire in the ensuing 6 months. An Advisory Neighborhood Commission may object to the application in the manner set forth in § 25-115(c) and (e).

"(3) The Department of Licenses, Investigation and Inspections shall ensure

that each affected Advisory Neighborhood Commission is provided regularly by mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission.

"(d) Each Commission so notified pursuant to subsections (b) and (c) of this section of proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with § 1-262(c) which is open to the public in accordance with § 1-262(g). At the close of business of the 31st day from mailing of such written notice or earlier if such limited publication has been provided, the affected District government entity may proceed to make its decision. The issues and concerns raised in the recommendations of the Commission shall be given **great weight** during the deliberations by the governmental agency and those issues shall be discussed in the written rationale for the governmental decision taken. "**Great weight** " requires acknowledgement of the Commission as the source of the recommendations, and requires explicit reference to each ANC issue and concern as such as well as specific findings and conclusions with respect to each.

"(e) Repealed.

"(f) Each Commission may present its views to any federal or District agency.

"(g) The Commission shall not have the power to initiate a legal action in the courts of the District of Columbia or in the federal courts, provided that this limitation does not apply to or prohibit any Commissioner from bringing suit as a citizen. The Commission may petition the Council through the Special Committee on Advisory Neighborhood Commissions or such successor committee should the Commission feel legal redress is required.

"(h) Each Commission may initiate its own proposal for District government action. The District government entity to which the proposal is made shall acknowledge the proposal in writing to the initiating Commission within 10 days of receipt of the proposal and shall issue a status report to the initiating Commission within 90 days of receipt.

"(i) Each Commission shall have access to District government officials and to all District government official documents and public data pursuant to Commissioner's Order No. 71-370 that are material to the exercise of its development of recommendations to the District government.

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"(j)(1) On or before November 30 of each year, each Commission shall file an annual report with the Council of the District of Columbia and the Mayor for the preceding fiscal year. Such report shall include, but shall not be limited to:

"(A) Summaries of important problems perceived by the Commission and in the order of their priority;

"(B) Recommendations for actions to be taken by District government;

"(C) Recommendations for improvements on the operation of the Commissions;

"(D) Financial report; and

"(E) Summary of Commission activities.

"(2) Minority reports may be filed.

"(k) Other than neighborhood or community enhancement campaigns, Commissions may operate programs only in conjunction with existing governmental activities, provided that such activities on behalf of the Commissions do not duplicate already available programs or services, and further provided that the Commissions' programs are not conducted on a contractual basis with existing governmental agencies.

"(l) No Commission may solicit or receive funds unless specifically authorized to do so by the Council, except that receipt of individual contributions of \$400 or less need not be approved by the Council. No person shall make any contribution, nor shall a Commission receive any contribution from any person which, when aggregated with all other contributions received from that person, exceeds \$400 per calendar year. Each Commission shall include in the Commission's annual report required pursuant to subsection (j) of this section a report of all contributions received in the previous fiscal year.

"(m) Each Commission shall monitor complaints of Commission area residents with respect to the delivery of the District government services and file comments on same with the appropriate District government entity as well as the Council.

"(n) Each Commission shall develop an annual fiscal year spending plan budget for the upcoming fiscal year and submit the budget to the Mayor and Council within 60 days of notification of the amount of the Commission's annual allotment. Prior to adoption of the budget at a public meeting of the Commission and submission of the budget to the Mayor and Council, the Commission shall present the budget at a public meeting of the Commission to elicit comments from the residents of the Commission area.

"(o) Each Commission may, where appropriate, constitute the citizen advisory mechanism required by any federal statute (unless specifically prohibited by federal statute)."

D.C. Law 14-79, in subsec. (l), substituted "\$1000" for "\$400" in two places.

D.C. Law 14-310, in subsec. (c)(1), inserted "before the transmission to the Council of a proposed revenue bond issuance," after "organization or group,".

D.C. Law 15-187, in subsec. (c)(2)(A), substituted "The Alcoholic Beverage Control Board ('ABC Board') or its designee shall give notice to Advisory Neighborhood Commissions, the Office of Advisory Neighborhood Commissions, the Commission or Commissions representing the area within 600 feet of where the applicant's establishment is located, and the Commissioner representing an affected single-member district at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N,

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C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location." for "The Alcoholic Beverage Control Board ('ABC Board') or its designee shall give notice to Advisory Neighborhood Commissions, the Office of Advisory Neighborhood Commissions, the Commission representing the area in which the applicant's establishment is located, and the Commissioner representing an affected single-member district at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer's licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location."

Temporary Amendments of Section

Section 2 of D.C. Law 14-60, in subsec. (l), substituted the number "400" for the number "1,000".

Section 4(b) of D.C. Law 14-60 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 2 of Advisory Neighborhood Commissions Annual Contribution Emergency Amendment Act of 2001 (D.C. Act 14- 125, August 3, 2001, 48 DCR 7932).

For temporary (90 day) amendment of section, see § 2 of Advisory Neighborhood Commissions Annual Contribution Legislative Review Emergency Amendment Act of 2001 (D.C. Act 14-162, November 2, 2001, 48 DCR 10402).

Legislative History of Laws

For legislative history of D.C. Law 1-21, see Historical and Statutory Notes following § 1-309.01.

Law 1-58 was introduced in Council and assigned Bill No. 1-193, which was referred to the Committee on Advisory Neighborhood Commissions. The Bill was adopted on first and second readings on December 2, 1975 and December 16, 1975, respectively. Signed by the Mayor on January 9, 1976, it was assigned Act No. 1-85 and transmitted to both Houses of Congress for its review.

Law 1-120 was introduced in Council and assigned Bill No. 1-340, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on November 23, 1976 and December 7, 1976, respectively. Enacted without signature by the Mayor on January 1, 1977, it was assigned Act No. 1-206 and transmitted to both Houses of Congress for its review.

Law 2-30 was introduced in Council and assigned Bill No. 2-72, which was referred to the Committee on Advisory Neighborhood Commissions. The Bill was adopted on first and second readings on June 28, 1977 and July 12, 1977, respectively. Signed by the Mayor on August 5, 1977, it was assigned Act No. 2-67 and transmitted to both Houses of Congress for its review.

Law 7-104 was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Nov. 24, 1987 and DeC. 8, 1987, respectively. Signed by the Mayor on DeC. 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

For legislative history of D.C. Law 8-203, see Historical and Statutory Notes following § 1-309.14.

For legislative history of D.C. Law 9-174, see Historical and Statutory Notes following § 1-309.06.

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Law 12-91, the "Advisory Neighborhood Commissions Quorum Definition Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-263, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-263 and transmitted to both Houses of Congress for its review. D.C. Law 12- 91 became effective on April 29, 1998.

For Law 13-135, see notes following § 1-309.01.

Law 14-60, the "Advisory Neighborhood Commission Annual Contribution Temporary Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-306, which was retained by Council. The Bill was adopted on first and second readings on July 10, 2001, and October 2, 2001, respectively. Signed by the Mayor on October 23, 2001, it was assigned Act No. 14-155 and transmitted to both Houses of Congress for its review. D.C. Law 14-60 became effective on January 24, 2002.

Law 14-79, the "Advisory Neighborhood Commissions Annual Contribution Amendment Act of 2001", was introduced in Council and assigned Bill No. 14-150, which was referred to the Committee on Public Services. The Bill was adopted on first and second readings on October 2, 2001, and November 6, 2001, respectively. Signed by the Mayor on November 29, 2001, it was assigned Act No. 14-199 and transmitted to both Houses of Congress for its review. D.C. Law 14-79 became effective on March 6, 2002.

For Law 14-310, see notes following § 1-307.63.

Law 15-187, the "Omnibus Alcoholic Beverage Amendment Act 2004", was introduced in Council and assigned Bill No. 15-516, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 20, 2004, and May 18, 2004, respectively. Signed by the Mayor on June 23, 2004, it was assigned Act No. 15-442 and transmitted to both Houses of Congress for its review. D.C. Law 15-187 became effective on September 30, 2004.

References in Text

Section 25-115, referred to in subsection (c)(2)(B) of this section, is part of Title 25, D.C. Code, which title was amended and enacted by D.C. Law 13- 298, effective May 3, 2001. For disposition of the subject matter of former Title 25, see the Disposition Table preceding § 25-101.

Transfer of Functions

The functions of the Department of Licenses, Investigations, and Inspections were transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983, effective March 31, 1983.

Miscellaneous Notes

Authorization for the solicitation and acceptance of grant monies by Advisory Neighborhood Commission 2D: Pursuant to §§ 2 and 3 of D.C. Law 10-130, the Council authorized Advisory Neighborhood Commission 2D to solicit and accept grant monies for the funding of an employee to research development proposals within its boundaries. Section 4(b) of D.C. Law 10-130 provided that the act expires on December 31, 1995.

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District of Columbia Official Code 2001 Edition Currentness

☞ Constitution for the State of New Columbia

☞ Article X. Miscellaneous.

Sec. 1001. Advisory neighborhood commissions.

(a) The House of Delegates shall by act divide the State of New Columbia into neighborhood commission areas following each decennial census reapportionment. In designating such neighborhoods, the House of Delegates shall consider natural geographic boundaries, election districts, and divisions of the State of New Columbia made for the purpose of administration of services.

(b) Elections for members of each advisory neighborhood commission shall be nonpartisan, and shall be administered by the Board of Elections and Ethics. Advisory neighborhood commission members shall be elected from single-member districts within each neighborhood commission area by the registered qualified electors of such district.

(c) Each advisory neighborhood commission:

(1) May advise the State of New Columbia government on matters of public policy including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood commission area;

(2) May employ staff and expend, for public purposes within its neighborhood commission area, public funds and other funds donated to it; and

(3) Shall have such other powers and duties as may be provided by act of the House of Delegates.

(d) In the manner provided by act of the House of Delegates, in addition to any other notice required by law, timely notice shall be given to each advisory neighborhood commission of requested or proposed zoning changes, variances, public improvements, licenses or permits of significance to neighborhood planning and development within its neighborhood commission area for its review, comment, and recommendation.

(e) In order to pay the expenses of the advisory neighborhood commissions, enable them to employ such staff as may be necessary, and to conduct programs for the welfare of the people in a neighborhood commission area, the State of New Columbia government shall allot funds to the advisory neighborhood commissions out of the general revenues of the State of New Columbia in an amount which is not less than the amount provided in the prior fiscal year. The funding apportioned to each advisory neighborhood commission shall bear the same ratio to the full sum allotted as the population of the neighborhood bears to the population of the State of New Columbia. The House of Delegates may authorize additional methods of financing advisory neighborhood commissions.

(f) The House of Delegates shall by act make provisions for the handling of funds and accounts by each advisory neighborhood commission and shall establish guidelines with respect to the employment of persons by each advisory neighborhood commission which shall include fixing the status of such employees with respect to the State of New Columbia government, but all such provisions and guidelines shall be uniform for all advisory neighborhood commissions and shall provide that decisions to employ and discharge employees shall be made by the advisory neighborhood commission. These provisions shall conform to the extent practicable to the regular budgetary, expenditure and auditing procedures and the personnel merit system of the State of New Columbia.

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(g) The House of Delegates shall have authority, in accordance with the provisions of this constitution, to legislate with respect to the advisory neighborhood commissions established in this section.

(h) The issues and concerns raised by an affected advisory neighborhood commission in the recommendations of that commission shall be given **great weight** during the deliberations by a State of New Columbia governmental agency, board, or commission.

Sec. 1002. Agreements.

(a) The Governor shall annually estimate the amount of the State of New Columbia's principal and interest expense which is required to service State of New Columbia obligations attributable to the Maryland and Virginia pro rata share of State of New Columbia sanitary sewage water works and other water pollution projects which provide service to the local jurisdictions in those states. Such amounts as determined by the Governor pursuant to the agreements described in subsection (b) of this section shall be used to exclude the Maryland and Virginia share of pollution projects cost from the limitation on the State of New Columbia's capital project obligations as provided in section 719(a).

(b) The Governor shall enter into agreements with the states and local jurisdictions concerned for annual payments to the State of New Columbia of rates and charges for waste treatment services in accordance with the use and benefits made and derived from the operation of the said waste treatment facilities. Each such agreement shall require that the estimated amount of such rates and charges will be paid in advance, subject to adjustment after each year. Such rates and charges shall be sufficient to cover the cost of construction, interest on capital, operation and maintenance, and the necessary replacement of equipment during the useful life of the facility.

(c) The Governor is authorized to enter into agreements with the President of the United States or the President's designee for the purpose of obligating the State of New Columbia to provide police, fire, and other essential services to the District of Columbia.

Sec. 1003. Contract authority of Governor regarding costs of Potomac River reservoir; contract payments; appropriations.

(a) The Governor is authorized to contract with the United States, any state in the Potomac River basin, any agency or political subdivision thereof, and any other competent state or local authority, with respect to the payment by the State of New Columbia to the United States, either directly or indirectly, of the State of New Columbia's equitable share of any part or parts of the non-federal portion of the costs of any reservoirs authorized by the Congress for construction on the Potomac River or any of its tributaries. Every such contract may contain such provisions as the Governor may deem necessary or appropriate.

(b) Unless hereafter otherwise provided by legislation enacted by the House of Delegates, all payments made by the State of New Columbia and all moneys received by the State of New Columbia pursuant to any contract made under the authority of this constitution shall be paid from, or be deposited in, a fund designated by the Governor. Charges for water delivered from the State of New Columbia water system for use outside the State of New Columbia may be adjusted to reflect the portions of any payments made by the State of New Columbia under contracts authorized by this constitution which are equitably attributable to such use outside the State of New Columbia.

(c) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

Sec. 1004. Open meetings.

(a) All meetings (including hearings) of any department, agency, board, or commission of the State of New

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Columbia government, including meetings of the House of Delegates of the State of New Columbia, at which official action of any kind is taken shall be open to the public. No resolution, rule, act, regulation or other official action shall be effective unless taken, made, or enacted at such meeting.

(b) A written transcript or a transcription shall be kept for all such meetings and shall be made available to the public during normal business hours of the State of New Columbia government. Copies of such written transcripts or copies of such transcriptions shall be available upon request to the public at reasonable cost.

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SECTION 105A PERMITS

105.1 Required Permits. A permit shall be obtained from the code official before any of the construction activities or regulated actions specified in Sections 105.1.1 through 105.1.13 shall begin. Depending on the scope of work, as specified in Sections 105.1.1 through 105.1.13, a construction project shall require one or more of the following types of permit:

1. Building permit.
2. Interior demolition permit.
3. Partial demolition permit.
4. Raze permit.
5. Sign permit.
6. Projection permit.
7. Public space permit.
8. Specialty permit.
9. Miscellaneous permit.
10. Supplemental permit.

Certain types and scopes of work, as specified in Section 105.2, are exempted from the permit requirement of this section. The use of postcard permits as specified in Subsections 105.5.4 through 105.5.4.3 shall be deemed compliance with the permit requirement of this section.

105.1.1 Quarterly Installation Permit. In place of an individual permit for each alteration to an already approved equipment installation, upon application the code official may issue a quarterly permit to any person, firm, or corporation regularly employing one or more licensed trade persons in the building or on the premises owned or operated by the permit applicant, for work that would otherwise require a licensed master to obtain an installation permit.

105.1.2 Quarterly Permit Records. The person to whom a quarterly permit is issued shall keep a detailed written record of all alterations to an approved equipment installation made under such quarterly permit. Such records shall be open to the code official at all reasonable times or shall be filed with the code official when requested.

105.1.3 Owner's Responsibility. The owner, builder, or authorized representative shall be responsible for securing all the required permits, or for obtaining a declaration by the code official stating that a permit is not required. Work started without a permit where a permit is determined to be required shall be a violation of the Construction Codes.

105.1.4 Building Permits. A building permit is required for the following activities:

1. New construction, including constructing, adding to or moving a building or structure;
2. Altering or repairing an existing building or structure;
3. Build-out the interior layout of a tenant space within a new building shell;
4. Repair fire damage to a building or structure;
5. Erect or replace a retaining wall;
6. Erect or replace a fence;
7. Erect or replace an awning, canopy, tent or other membrane structure, or similar structures;
8. Install or remove an underground storage tank;
9. Erect a radio, television or other telecommunications tower;
10. Construct, alter or repair a swimming pool;
11. Construct supporting structures for heavy equipment.
12. Underpinning;

13. Change the occupancy of the building or structure to a different Use Group, as defined in Chapter 3 of the Building Code.

105.1.5 Interior Demolition Permits. An interior demolition permit is required to demolish interior non-bearing walls, interior finishes and other interior non-bearing elements. The code official shall issue such a permit upon request, whether in connection with a future reconstruction project or not, and whether it affects egress, fire and life safety of occupied areas or not, subject to the provisions of Chapter 33 of the Building Code and Chapter 14 of the fire code listed in Chapter 35.

105.1.6 Partial Demolition Permits. A partial demolition permit is required for the following activities:

1. Removal or demolition of a part of a building or structure that is of greater scope than that allowed under an interior demolition permit pursuant to Section 105.1.5, but of a lesser scope than the raze of the entire building or structure down to the ground, as provided for in Section 105.1.7.
2. Interior demolition within a building or structure, that would otherwise be allowed under an interior demolition permit issued pursuant to section 105.1.5, where any interior space of that building or structure has been specifically designated as a historic landmark.

105.1.7 Raze Permits. A raze permit is required to secure the right to remove a building or structure down to the ground.

105.1.7.1 Razing Operations. Before a structure can be demolished or removed, the owner or agent shall apply for and obtain a razing operations permit pursuant to section 105.1.13(5), to be authorized to proceed with the necessary operations to raze or remove the structure.

105.1.7.1.1 Service Connections to Mechanical Equipment. Fuel-fired or electrically-supplied heating appliances or equipment shall not be removed from any building or structure to be demolished or removed, until a raze permit to demolish or remove the building or structure has been issued in accordance with this Section 105.1.7.

105.1.7.2 Lot Regulation. Whenever a structure is demolished or removed, the premises shall be maintained free from unsafe or hazardous conditions by the proper regulation of the lot, restoration of established grades and the erection of the necessary retaining walls and fences in accordance with the provisions of Chapter 33 of the *Building Code*.

105.1.8 Sign Permits. A sign permit is required to install or alter a sign or other advertising device subject to the provisions of Section 3107 of the *Building Code*, unless exempted therein.

105.1.9 Projection Permits. A projection permit is required to construct, enlarge, alter or remove a projection beyond the building line. This includes projections above ground and vaults in public space.

105.1.10 Public Space Permits. A public space permit is required for the following actions entailing the temporary occupation of public space:

1. To install, alter or remove enclosed or unenclosed sidewalk cafés;
2. To store building materials;
3. To install temporary fences, sidewalk protection or construction trailers in public space;
4. To install cranes or similar hoisting devices;
5. To place a dumpster for construction debris.
6. To otherwise occupy public space, to the extent deemed necessary by the Director of Public Works or the Director of the Department of Transportation in the public interest.

105.1.11 Specialty Permits. A specialty permit, as indicated hereafter, is required for the following activities:

1. Underpinning Permit, to underpin existing walls, footings, foundations or other structural loadbearing elements.
2. Excavation Permit, to excavate and other earth disturbing actions affecting an area larger than 50 square feet.
3. Sheet piling and Shoring Permit, to install excavation and slope stabilization systems.
4. Grading Permit, for grading, regrading or landfilling operations.
5. Capacity Placard Permit, to obtain approval of the posted maximum occupant load for the placards required by Section 1003.2.2.5.
6. Capacity Increase Permit, to secure approval of an increase in allowable occupant load for a building or premises.
7. After-Hours Permit, to engage in construction, installation, maintenance, alteration, repair, demolition, or razing activities outside normal working hours. For the purposes of this permit, normal working hours shall be from seven (7) a.m. to seven (7) p.m., Monday through Saturday.

8. Tower Crane Permit, to install cranes or other similar hoisting devices, in public space or private property.

The code official is authorized to waive the specialty permits required under items 1, 2, 3, 4, 5 or 6 of this section if a building permit is issued for a wider scope of work that includes the scope of work covered by those specialty permits.

105.1.11.1 Limitations on After-Hours Work in Residential Areas. No after-hours permit shall be issued for work in an area zoned "residential" under the Zoning Regulations then in effect, or in an area within 500 feet (152 400 mm) of such residential zone, or within 500 feet (152 400 mm) of a building with sleeping quarters, unless the code official determines that not issuing such permit would pose a threat to public safety, health and welfare.

105.1.12 Miscellaneous Permits. A miscellaneous building permit is required for the following activities:

1. Installing stationary scaffolding;
2. Cleaning exteriors of buildings or structures, in private or public space, using steam, chemical cleaning or sandblasting;
3. Blasting operations;
4. Waterproofing and dampproofing;
5. Erecting observation stands;
6. Renewal Permit, to obtain an extension of a valid unused building permit, as authorized by Section 105.5.1.
7. Revision Permit, to revise or amend a valid current permit, as authorized by Section 105.3.3.
8. Installation of dish antenna on the façade of any building in a historic district or on a historically designated building or structure.

The code official is authorized to waive the miscellaneous permit required under item 4 of this section if a building permit is issued for a wider scope of work that includes the scope of work covered by that miscellaneous permit.

105.1.13 Supplemental Permits. A supplemental permit, as indicated hereafter, is required in addition to the applicable permits described in Sections 105.1.4, 105.1.5, 105.1.6 and 105.1.7.

1. Supplemental plumbing installation permit, for installation of plumbing systems and fixtures, as specified in Section 105.1.16.
2. Supplemental gasfitting installation permit, for installation of gas-fueled appliances and equipment, as specified in Section 105.1.17.
3. Supplemental mechanical installation permit, for installation of refrigerating and cooling systems and mechanical equipment, as specified in Section 105.1.15.
4. Supplemental electrical installation permit, for installation of electrical systems and fixtures, as specified in Section 105.1.14.
5. Supplemental razing or demolition operations permit, for license to proceed with demolition operations in connection with a raze permit or a partial demolition permit, as specified in Section
6. Supplemental air quality permit, to obtain license to install and/or operate stationary air pollution source equipment or an air pollution control device on a stationary source, as specified in Sections 200.1 and 200.2 of DCMR Title 20, except as exempted in the same Title.

105.1.7.1 and to use specially regulated demolishing equipment. Once the razing operations permit application is filed with the Department, the code official shall notify all utilities having service connections within the structure such as water, electric, gas, sewer, telephone and other connections. A permit to demolish or remove a structure shall not be issued until a release is obtained from the utilities, stating that their respective service connections and appurtenant equipment such as meters and regulators, have been removed or sealed and plugged in an approved manner.

105.1.14 Permits Required for Electrical Work. Installation, replacement or repair of electrical appliances and equipment, electrical wiring for power and lighting, other than equipment exempt under Section 105.2.2.1, shall require an electrical installation permit. Electrical installation permits are required, namely, for the following:

1. Power Limited Wiring. Electrical permit is required for the installation of fire protective signaling systems and other power limited wiring installed by other than public utility companies.
2. Electrical Signs. Electrical permit shall be required for the erection of a sign on or in which lights of any description are to be used, or which will be illuminated by artificial means.

3. Preventive Maintenance. Electrical permits are required to perform preventive maintenance in switchboards, as required in Article E-384-37 of the *Electrical Code*.
4. Temporary Wiring. Electrical permit shall be required for the installation of electric wiring of a temporary nature for light, heat, or power purposes, and is issued contingent upon the removal of said wiring and apparatus upon expiration of the permit.
5. Barricade Lamps. Electrical permit shall be required for temporary obstruction barricade lamps on or over an authorized temporary enclosing fence or barricade on public property and for other temporary lighting in public space back of the inner edge of a public sidewalk; such temporary permits shall be approved by the Department of Public Works.
6. Construction Hoists. Electrical permit shall be required for the installation of building material hoists used in building construction.
7. Electrical Current Use During Building Construction. Electrical permit shall be required for the temporary use of electric current for light, heat, or power purposes on any permanent system of wiring, pending completion and final approval thereof.
8. Electrical Work in Connection with the Installation of Mechanical Equipment. Electrical permit shall be required for electrical work in connection with the installation of mechanical equipment.

105.1.14.1 Limited scope permits. When new electrical work, addition to or alteration of existing electrical systems is not included in a building permit, and the project entails only electrical work, only the electrical installation permit shall be required, provided plans showing the proposed work are submitted with the application and approved by the code official. Where the scope of work thus permitted exceeds the scope of two (2) postcard permits, as defined in Section 105.5.4.2.5, an alteration permit fee shall be assessed, based on the valuation of the project, in addition to the installation permit fee.

105.1.14.2 Temporary Permits. Permits required under items 4 and 5 of Section 105.1.14 shall be valid for 90 days, and shall be renewable before expiration, for 90-day periods. Permits required under item 7 of Section 105.1.14 shall be valid for one year or until completion of the purpose for which they were issued, whichever comes first, and shall be renewable before expiration, for one-year periods.

105.1.14.3 Quarterly Permits. The code official is authorized to issue quarterly permits for the installation of lighting and appliance branch circuits and replacement of motor branch circuits, motor, and controls, for three-month

periods, to owners or occupants of a building regularly employing one or more licensed master electricians on the premises.

105.1.14.4 Permits for Conduits, Poles and Wires. Permits shall be obtained to install manholes, underground conduits, for the erection of poles and stringing of overhead wires, or increasing the height of a pole in accordance with the following sections.

105.1.14.4.1 Public Works or Utility Company Work in Public Space.

The code official shall issue permits, upon approval by the Director of the Department of Public Works, of an application to install manholes, underground conduits, erect poles or string overhead wires for telegraph, telephone, signal, railway, light, heat or power purposes. Overhead wires shall also include service drops to buildings, private wires strung along curb or public sidewalk for decorative or other lighting, and the installation of all wiring incidental to the Department of Public Works, such as motors for drawbridges and for underpass ventilation. Said permits shall be issued to electrical contractors, public utilities, and any person, firm, company, or corporation authorized by law to use the public space, roads, avenues, alleys and highways, for these purposes.

105.1.14.4.2 Private wiring in public space. The code official shall issue electrical permits upon approval by the Director of Public Works, for private lamp posts, yard lights, step or similar lighting pertaining to residential type occupancies, behind the public sidewalk line. Applications for electrical permits for private wiring in public space for the erection of private lamp posts, yard lights, step or similar lighting shall be accompanied by an outside light agreement, a sketch showing the distance from the public sidewalk or street to the lighting and at least one lateral distance from the property line to the said lighting.

105.1.14.4.3 Private Wiring in Sidewalk Cafes, Entrance Awnings, and Similar Structures in Public Space. The code official is authorized to issue electrical permits for private wiring in connection with awnings, entrance awnings, sidewalk café enclosures, and similar facilities in public space, when accompanied by the special permit specified hereafter. No private lamp post or lamp shall be erected or placed in public space or in any public street, avenue, alley, or road of the District of Columbia, nor beyond the inner edge of a sidewalk, unless authorized by a special permit to erect the lamp post or lamp. The permit is subject to the right of the Director of Public Works to require such lamppost or lamp to be removed whenever he or she deems such removal necessary in the public interest. The application for the permit shall be accompanied by a written agreement signed by the owner or occupant, or both, of the premises in front of which it is desired to erect such lamp post or lamp, agreeing to

remove the same when called upon by the Director of Public Works to do so.

105.1.15 Permits Required for Mechanical Work. Installation, replacement or repair of refrigerating or cooling equipment, pressure vessels or boilers, other than equipment exempt under Section 105.2.2.2, shall require a supplemental mechanical installation permit.

105.1.15.1 Limited scope permits. When new mechanical work, addition to or alteration of existing mechanical systems is not included in a building permit, and the project entails only mechanical work, only the mechanical installation permit shall be required, provided plans showing the proposed work are submitted with the application and approved by the code official. Where the scope of work thus permitted exceeds the scope of two (2) postcard permits, as defined in Section 105.5.4.2.4, an alteration permit fee shall be assessed, based on the valuation of the project, in addition to the installation permit fee.

105.1.16 Permits Required for Plumbing Work. Installation, replacement or repair of plumbing systems, plumbing fixtures, or their appurtenances, other than work exempt under Section 105.2.2.3, shall require a supplemental plumbing installation permit. A plumbing installation permit is required, namely, for water pressure booster pumps or recirculation pumps.

105.1.16.1 Limited scope permits. When new plumbing work, addition to or alteration of existing plumbing systems is not included in a building permit, and the project entails only plumbing work, only the plumbing installation permit shall be required, provided plans showing the proposed work are submitted with the application and approved by the code official. Where the scope of work thus permitted exceeds twenty (20) fixture units, an alteration permit fee shall be assessed, based on the valuation of the project, in addition to the installation permit fee.

105.1.17 Permits Required for Gasfitting Work. Installation or replacement of fuel gas fired mechanical equipment, or any replacement of or repair to the gas line serving such appliances shall require a supplemental gasfitting installation permit. Gasfitting installation permits shall be obtained, namely, for the following:

1. Gas fired water or space heating appliances other than boilers.
2. Gas fired boilers in single-family dwellings.
3. Gas fired hot water boilers with a gas input rating of less than 525,000 Btu/h (154 kW).

105.1.17.1 Limited scope permits. When new gasfitting work, addition to or alteration of existing gas distribution systems is not included in a building permit,

and the project entails only gasfitting work, only the gasfitting installation permit shall be required, provided plans showing the proposed work are submitted with the application and approved by the code official. Where the scope of work thus permitted exceeds service to five (5) appliances, an alteration permit fee shall be assessed, based on the valuation of the project, in addition to the installation permit fee.

105.3 Application for Permit. The application for permit shall be submitted in the form prescribed and provided by the code official, and shall be accompanied by any filing fee deposit required pursuant to Section 108.2.1.1 and any other fees required by the code official to be paid at the time of filing. All other fees shall be paid prior to issuance of the permit pursuant to Section 108. The code official may reject an application at the time of filing if the application and required supporting documents are not substantially complete." Submittal requirements shall be in accordance with Section 106. The application form shall contain the statement "Making of a false statement in this form is punishable by criminal penalties pursuant to D.C. Code § 22-2405" in the applicant's signature box.

105.3.1 Action on Application. The code official shall examine or cause to be examined all applications for permit and amendments to applications within a reasonable time after filing. If deficiencies in the application, plans or other supporting documents are discovered during processing, the code official may, in his discretion, give the applicant an opportunity to correct the deficiencies prior to taking action to approve or reject the application. If the application or the plans do not conform to the requirements of all pertinent laws, the code official is authorized to reject such application. The code official shall state the reasons for the rejection in writing, citing specific Code sections, and stating the applicant's right of appeal under Section 112. If the code official is satisfied that the proposed work conforms to the requirements of the Construction Codes and all applicable laws, rules, and regulations, the code official shall issue a permit as soon as practicable.

105.3.1.1 Peer Reviewer. Wherever the terms "third-party reviewer", "third-party plans reviewer", or "third-party reviewing agency" are used in this section, these terms shall refer to and be equivalent to a "peer reviewer" as that term is defined and described in the "Homestart Regulatory Improvement Amendment Act of 2002," D.C. Law 14-162, effective 6/25/02. A "certified third-party reviewer" or "certified third party reviewing agency" shall refer to and be equivalent to a "certified peer reviewer" as that term is defined and described in D.C. Law 14-162.

105.3.1.2 Third-party Certification. The applicant shall have the option of providing for a third-party plans reviewer or third-party reviewing agency, at the applicant's expense, to perform a code compliance review of the project, including review of one or more components of the construction documents set forth in this subsection, and to provide the code official with a certified report of

the findings of the review, in a format acceptable to the code official.
“Components” of construction documents as used in this section shall refer to the various disciplines requiring review. The code official shall accept such reports from approved third-party plans reviewers or plans review agencies, provided that the code official determines that such agencies and reviewers satisfy the qualification and reliability requirements established by the code official and all such reports are certified by reviewers who possess a valid license as a registered architect or professional engineer in the District of Columbia. If the code official is satisfied that the proposed construction documents or certified components of construction documents conform to the requirements of the Construction Codes and all applicable laws, rules, and regulations, the code official shall approve the construction documents or certified components of the construction documents within 15 days of submission of the documents and accompanying certified report.

105.3.1.1.1 Minimum Qualification, Training, Experience and Reliability Requirements for Approved Third-Party Reviewers and Third-Party Review Agencies.

Third-party plans reviewers and plans review agencies shall meet the following requirements:

1. Each third-party plans reviewer who reviews construction documents shall possess the appropriate licenses and expertise in order to review the type of documents being reviewed, and shall submit evidence annually that his or her license is valid.
2. Each plans review agency shall have adequate staff with the appropriate licenses and expertise to review the types of construction documents that they propose to review.
3. A third-party plans reviewer or plans review agency shall meet the independence and ethical requirements of Section 6c (b)(4), (5), (6), (7), and (8) of the Homestart Regulatory Improvement Amendment Act.
4. Each third-party plans review agency shall include at least one registered architect or professional engineer licensed in the District of Columbia who shall act as the professional in charge of the review and who shall certify the plans reviews performed by the agency. Any person working for the agency who is not so licensed shall work under the direct supervision of a D.C. registered architect or professional engineer.
5. Each plans reviewer who reviews construction documents under this section, either as a third-party plans reviewer or as a member of a plans review agency, shall have an acceptable level of expertise and experience in the performance of code compliance reviews in the

disciplines for which he is seeking certification, which shall include at a minimum: Demonstrable experience of at least three years of code compliance reviews in the applicable discipline in a jurisdiction using the applicable national model codes as the basis for its construction codes; or possession of a current national certification as a plans reviewer, issued by a certifying agency recognized by the International Codes Council, in the discipline or disciplines in which the reviewer is applying to perform reviews.

6. Such additional requirements as the code official may impose from time to time to ensure the accuracy and reliability of the plans reviewers and the plan reviews conducted.

105.3.1.1.2. Approval and Certification of Third-Party Plans Reviewers and Plan Review Agencies. An individual or agency that wishes to be certified as an approved third-party plans reviewer or third-party plans review agency shall submit an application on the form provided by the Director and shall provide all necessary information and documentation to demonstrate satisfaction of the minimum qualifications, training, experience and reliability requirements set forth in section 105.3.1.1.1.

105.3.1.1.3 Scope of Third-Party Peer Review. When approving a third-party plans reviewer or third-party plans review agency, the code official shall specify the review disciplines of the permit construction documents that the plans reviewer or plans review agency is authorized to review. Each approved third-party plans reviewer or agency shall be assigned a number. The areas in which a third-party plans reviewer or third-party plans review agency may be certified may include any of the following:

1. Architectural/Structural;
2. Elevators;
3. Mechanical;
4. Plumbing;
5. Electrical;
6. Fire and Life Safety (Fire Protection).

105.3.1.1.4 Expedited Construction Documents Review Procedures. In order to participate, the property owner, agent or permit applicant shall advise the Department, in the construction permit application, that a certified third-party plans reviewer or third-party plans review agency will review one or more disciplines of the construction documents in conformity with Section 6c of the Homestart Regulatory Improvement Amendment Act of 2002. The said construction documents shall be

reviewed by the third-party plans reviewer and recommended for submission/approval in the certified report provided to the code official.

105.3.1.1.5 Certification of Plans by Third-Party Reviewer. The third-party plans reviewer shall include a certification on each plan reviewed including the information required by Section 6c. (e) of the Homestart Regulatory Improvement Amendment Act.

105.3.1.1.6 Review of Work Conducted by Third-Party Plans Reviewers and Revocation of Certification. The code official shall periodically conduct a detailed unannounced audit of documents reviewed by third-party plans reviewers and plans review agencies, and shall also maintain a tracking system to monitor the recommendations of the third-party plans reviewers. If the code official determines that plans recommended by the third-party reviewer or third-party reviewing agency for approval do not meet the requirements of the Construction Codes or that the reviewer or agency has failed to meet other requirements of this section or of Section 6b or 6c of the Homestart Regulatory Improvement Amendment Act, the code official is authorized to revoke the third-party reviewer's or third party reviewing agency's certification upon written notice, including the reason for the revocation. The certification may be reinstated if the Director determines that the third-party reviewer or third party reviewing agency has remedied the violation that formed the basis for the revocation and the reviewer, or professional in charge in the case of a reviewing agency, possesses a valid license as an architect or professional engineer.

105.3.1.2 Payment of Delinquent Fines and Penalties. The code official may refuse to issue a permit if the owner, applicant, or responsible officer has outstanding fines or penalties imposed under the Construction Codes.

105.3.1.3 By Whom Application is Made. Application for a permit shall be made by the owner or lessee of the building or structure, or by the agent of either. The licensed engineer, architect or interior designer employed in connection with the proposed work shall be allowed to submit an application for a building permit on behalf of the owner or lessee.

105.3.1.4 Names and Addresses Required. The full names and addresses of the owner, lessee, applicant, and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.

105.3.1.5 Penalties for False Statements. If an applicant willfully makes a false statement in the application form that is in fact material, under circumstances in which the statement could reasonably be expected to be relied upon as true, the applicant, upon conviction, is subject to the penalties of D.C. Code § 22-2405.

105.3.1.6 Approval of Partial Plans. The code official is authorized to issue a partial permit for the construction of foundations or any other part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted, provided adequate information and detailed statements have been filed complying with all pertinent requirements of the Construction Codes. Issuance of a partial permit by the code official does not constitute assurance that a permit for the entire structure will be granted. The holder of such partial permit for the foundations or other part of a building or structure will proceed with the building operation at the holder's own risk and without assurance that a permit for the entire structure will be granted.

105.3.1.6.1 Separate or Combined Permits. Separate permits may be required for structural, electrical, plumbing, and mechanical installations, or for special construction, in the discretion of the code official. Consolidated permits may be issued incorporating two or more of the areas of design.

105.3.1.7 Approved Plans. The code official shall stamp "Approved" or otherwise endorse in writing all sets of corrected plans. One set of such approved plans shall be retained by the code official and one set shall be kept at the building site, open to inspection of the code official or an authorized representative at all reasonable times.

105.3.1.8 Signature on Permit. The code official's signature shall be attached to every permit; or the code official may authorize a subordinate to affix a facsimile of the code official's signature to permits.

105.3.2 Time Limitation of Application. Application and supporting documentation for any proposed work shall be deemed to have been abandoned if the applicant fails to obtain the permit within six months of the date of written notification by the code official that the permit is ready for issuance, or if the applicant fails to make the required changes in the application, plans or other supporting documents within one year of the date of written notification by the code official that the plans review is complete and that changes are required before the permit shall be issued. Refunds of the unused portion of the application file deposit shall be made pursuant to Section 108.6.

Exception: If the applicant shows reasonable cause, the code official is permitted to grant a maximum of two (2) extensions of time for additional periods not exceeding six (6) months each.

105.3.3 Amendments to Permit. The holder of a valid active building permit shall be authorized to amend it or to amend the plans, application or other records pertaining to it, by filing at any time before completion of the work for which the original permit was issued, an application for revision of a building permit, accompanied by two (2) sets of the revised plans or documents. Once such amendments are approved and the revision permit is issued, it shall be deemed part of the original permit and shall be kept therewith in the official records of the Department. A revision permit shall become invalid upon

expiration of the original building permit it amends. The extension provisions of Section 105.5.1 shall apply to the original building permit and shall only affect the respective revision permits to the extent that the original building permit is extended.

109.3 Required Inspections. After issuing a building permit, the code official shall conduct such inspections, from time to time during and upon completion of the work, for which a permit has been issued. A record of all such examinations and inspections and of all noted violations of this code shall be maintained by the code official. Inspections to be done pursuant to Section 109 include, but are not limited to, the types indicated in Sections 109.3.1 through 109.3.8.7.

109.3.1 Footing and Foundation Inspection. Inspections performed after excavations have been made and before pilings are driven or footings are poured, for inspection of soil and foundation conditions.

109.3.1.1 Footing Trenches. Inspection of the bottom of footing trenches, after all reinforcement steel is set and before any concrete is placed.

109.3.2 Concrete slab or under-floor inspection. Concrete slab and under-floor inspections shall be made after in-slab or under-floor reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. Materials for the foundation shall be on the job, except where concrete is ready-mixed in accordance with ASTM C94, the concrete need not be on the job.

109.3.3 Lowest floor elevation. The elevation certification required in Section 1612.5 of the *Building Code* shall be submitted to the code official.

109.3.4 Frame Inspection. Inspection of structural framing and fastenings, performed before concealing materials, for inspection of anchorage to foundations, bracing, firestopping and/or termite protection.

109.3.5 Lath or Gypsum Board Inspection. Lath and gypsum board inspections shall be made after lathing and gypsum board, interior and exterior, is in place, but before any plastering is applied or before gypsum board joints and fasteners are taped and finished.

109.3.6 Fire-resistant Penetrations. Protection of joints and penetrations in fire-resistance-rated assemblies shall not be concealed from view until inspected and approved.

109.3.7 Energy Efficiency Inspections. Inspection of required insulating materials, performed before covering them with any other materials. Inspections shall be made to determine compliance with Chapter 13 and shall include, but not be limited to, inspections for: envelope insulation R and U value, fenestration U value, duct system R value, and HVAC and water heating equipment efficiency.

109.3.8 Other Inspections. In addition to the inspections specified above, the building official is authorized to make or to require the owner of a building or structure to have an independent inspection agency perform other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the department.

109.4 Third-party Inspection Agencies. The code official shall accept reports of approved third-party inspection agencies or approved third-party inspectors on all field inspection disciplines under the Construction Codes, provided such agencies or inspectors satisfy the qualifications and reliability requirements, set forth in this subsection, as well as Sections 1703.1.1 through 1703.1.3 of the Building Code. If an inspection report is filed by a third-party inspection agency, it shall be signed by the agency professional in charge of the project. The code official shall approve the work inspected by the approved third-party inspection agency or approved third-party inspector, based on the inspection reports, provided that the code official is satisfied that the reports substantiate compliance with the requirements of the Construction Codes.

3303.4.3 Fill materials. No materials other than Class 1, Class 2 or Class 3 fill material shall be used in filling depressions and grading the site. All depressions shall be filled; all excess earth, all building materials, and all debris shall be removed from the site; and the premises shall be left in a safe, clean and sanitary condition. All work shall be done in accordance with the Department of Health Environmental Health Administration Watershed Protection Division and, where applicable, the Department of Public Works.

Westlaw.

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CODE OF DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS
CDCR TITLE 21. WATER AND SANITATION
CHAPTER 5. WATER QUALITY AND POLLUTION

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Current through December 2004

502. LAND DISTURBING ACTIVITIES

502.1 No person may engage in any land disturbing activity on any property within the District until that person has secured a building permit from the District. Approval of a building permit shall be conditioned upon submission by the permit applicant of an erosion and sedimentation plan which has been reviewed and approved by the Department.

502.2 The Department shall establish and publish in the D.C. Register guidelines for the information and supporting documents to be included in the erosion and sedimentation plan required under this section. These guidelines should require or specify the following:

(a) Provisions in each plan for controlling erosion while land disturbing activity is under way and after its completion; and

(b) General qualifications necessary for persons preparing erosion and sedimentation plans.

502.3 The guidelines for preparation of erosion and sedimentation plans are incorporated in this section by reference in accordance with the District of Columbia Documents Act (D.C. Code §1-1532(b)(3) (1992 Repl. Vol.)), and shall be available for public inspection as set forth in §501.4.

502.4 Fees for land disturbing activities are set forth as follows:

EXCAVATION, GRADING AND LANDFILL PLAN REVIEW:	FEE
For sites measuring up to 595 ft.2 or 66 yds3 of disturbed earth	\$38.00
For sites measuring more than 595 ft.2 or 66 yds3 of disturbed earth	\$38.00 plus 2.5 cents per additional 100 ft.2 or 0.333 cubic yards of disturbed earth
STORM WATER MANAGEMENT PLAN REVIEW:	
For land disturbing activities for sites measuring more than 5,000 ft.2	\$55.00 plus 2.5 cents per additional 100 ft.2 over 5,000 ft.2

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502.5 Upon notice from the Director that the work involving a land disturbing activity is being conducted contrary to the provision of the Health Regulations of the District of Columbia, effective December 26, 1969 (21 DCMR §§ 500 et seq.), or in an unsafe and dangerous manner such work shall be immediately stopped. The stop work order shall be in writing, state the conditions under which work may be resumed, and be given to the owner of the property involved, the owner's agent, or the person doing the work.

502.6 Any person who shall continue any work related to the particular land disturbing activity for which a stop work order has been served, except such work as that person is directed to perform to correct a violation or unsafe condition, shall be liable to a fine pursuant to §104 of the Department of Consumer and Regulatory Affairs Civil Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code §6-2704).

SOURCE: Section 2 of the Soil Erosion and Sedimentation Control Act of 1977,
D.C. Law 2-23, 24 DCR 792 (July 22, 1977), 8 DCRR §8-2:804, Health Regulations (1965 Edition); as amended by Final Rulemaking published at 35 DCR 7692 (October 21, 1988); by Final Rulemaking published at 35 DCR 8552 (December 9, 1988); and by §4(b) of the Soil Erosion and Sedimentation Control Amendment Act of 1994, D.C. Law 10-166, 41 DCR 4892, 4893 (July 22, 1994).

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599. DEFINITIONS

599.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed

Adverse Impact - any deleterious effect on waters or wetlands, including quality, quantity, surface area, special composition, aesthetics or usefulness for human or natural uses which are or may be harmful or injurious to human health, welfare, safety or property. (35 DCR 28)

Applicant - any person who requests approval of development. (35 DCR 28)

Aquifer - a porous water bearing geologic formation generally restricted to materials capable of yielding an appreciable supply of water. (35 DCR 28)

Clearing - the removal of trees and brush from the land, excluding the ordinary mowing of grass, pruning of trees or other forms of long-term landscape maintenance. (35 DCR 28)

Construction - any on-site activity which will result in the creation of a new storm water discharge facility, including the building, assembling, expansion, modification or alteration of the existing contours of the property, the erection of buildings or other structures, or any part thereof, or land clearing. (35 DCR 28)

Department - the Department of Consumer and Regulatory Affairs.

Director - the Director of the Department of Consumer and Regulatory Affairs or the Director's representative, agent, or designee.

Erosion - the process by which the ground surface is worn away by the action of wind and/or water.

Erosion and sedimentation control standards and specifications - the written procedures, requirements or plans to control erosion and sedimentation as officially adopted by the Department of Consumer and Regulatory Affairs of the District of Columbia pursuant to this chapter.

Excavation or Cut - an act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated and the conditions resulting from those actions.

Grading - any stripping, excavating, stockpiling, or any combination thereof, including the conditions resulting from those actions.

Land disturbing activity - any earth movement or land change which may result in soil erosion from water or wind and the movement of sediments in the District of Columbia, including, but not limited to, stripping, grading,

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excavating, transporting and filling of land, construction or demolition of buildings or structures.

The term "land disturbing activity" shall not include any minor land disturbing activity such as the following:

- (a) Home gardening an individual home landscaping, repairs, and maintenance work;
- (b) Single family dwelling utility service connections and construction of connections or utility construction where the excavated material is removed from the job site;
- (c) Tilling, planting, or harvesting or agricultural or horticultural crops;
- (d) Installation of fence and sign posts or poles; or
- (e) Emergency work to protect life, limb or property, and emergency repairs; Provided, that if the land disturbing activity would have required an approved erosion and sedimentation control plan if the activity were not an emergency, then the land disturbed shall be shaped and stabilized in accordance with the requirements of the Department of Consumer and Regulatory Affairs. (D.C. Law 10-166)

Landfilling - any act by which soil is deposited, placed, or pushed, where it had not previously been located.

Mayor - the Mayor of the District of Columbia or his or her designee.

Permit Applicant - the lawful owner of any property where a soil disturbing activity is to take place, or the lawful owner's designated representative who applies to the Department of Consumer and Regulatory Affairs for a building permit. When work is to be done under contract the lawful owner of the property is responsible for securing the building permit.

Person - any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, cooperative, or any other legal entity.

Sedimentation - the deposit of or transportation of soil from one place to another as a result of an erosion process.

Soil - all earth material of whatever origin that overlies bedrock and may include the decomposed zone of bedrock which can be readily excavated by mechanical equipment.

Soil erosion and sedimentation control plan - a document to be prepared by a permit applicant and submitted to the Department of Consumer and Regulatory Affairs for approval before a building permit can be issued by the District.

Stripping - any activity which removes or significantly disturbs the vegetative surface cover including clearing, grubbing of stumps and rock mat, and top soil removal.

SOURCE: Section 8-2:802 of the Soil Erosion and Sedimentation Control Act of 1977, D.C. Law 2-23, 24 DCR 792 (July 22, 1977); as amended by §8-2:802 of the Water Quality Standard Approval Act of 1977, D.C. Law 2-68, 24 DCR 6809 (February 17, 1978); by Final Rulemaking published at 35 DCR 21, 28 (January 1,

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1988); 8 DCRR, Health Regulations (1965 Edition); and by §4 of the Soil Erosion and Sedimentation Control Amendment Act of 1994, D.C. Law 10-166, 41 DCR 4892, 4893 (July 22, 1994).

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CDCR TITLE 21. WATER AND SANITATION
CHAPTER 5. WATER QUALITY AND POLLUTION
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Current through December 2004

539. EROSION CONTROL PRINCIPLES: DESIGN

539.1 Erosion and sediment control measures shall be applied to erodible material exposed by any project activity.

539.2 Whenever possible grading will be limited to only those areas which are involved in current construction activities.

539.3 All areas exposed and unprotected shall be protected within a minimum amount of time.

539.4 Adequate erosion control measures shall be in place prior to and during the time of exposure.

539.5 The period of exposure shall not exceed one hundred twenty (120) days.

539.6 Temporary or permanent stabilization shall be installed during or immediately upon completion of rough grading activities.

539.7 In most cases, a combination of limited grading, limited time of exposure, and a judicious selection of erosion control practices will prove to be the most practical solution.

539.8 The maximum area that can be exposed at any one time shall be limited to seven hundred fifty thousand square feet (750,000 ft.²).

539.9 All cut and fill slopes will be protected against stormwater run-off by use of diversions, which will be paved or otherwise protected by vegetation or matting from erodible velocities or volumes. On cut and fill slopes of equal or greater inclination than three horizontal to one vertical (3:1), critical area stabilization methods will be applied. Slopes flatter than 3:1 may require the application of critical area stabilization depending on soil characteristics.

539.10 Cut and fill slopes will be protected in five foot (5 ft.) vertical increments as each increment is completed. When constructed out-of-season for planting, critical area stabilization will be used for protection until permanent protection can be provided.

SOURCE: Final Rulemaking published at 25 DCR 1033 (July 28, 1978),
incorporating text of Proposed Rulemaking published at 24 DCR 10522 (June 9,
1978); 8 DCRR, Health Regulations (1965 Edition).

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EDITOR'S NOTE: Under the Final Rulemaking published at 25 DCR 1033 (July 28, 1978), the Department of Environmental Services adopted the Handbook for Erosion and Sediment Control (February, 1977). Sections 538 through 545 were published in that Handbook.

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C

Supreme Court of Appeals of
 West Virginia.

Steve RANSON and Cheryl Ranson, his wife,
 Plaintiffs Below, Appellants,
 v.

CITY OF CHARLESTON and the Board of Zoning
 Appeals, Defendants Below,
 Appellees.

No. 23978.

Submitted Oct. 8, 1997.
 Decided Oct. 24, 1997.

Applicants filed petition for writ of certiorari after city board of zoning appeals (BZA) found that perimeter wall enclosing their residence violated city ordinance governing wall heights and denied applicants' request for a height variance. The Circuit Court, Kanawha County, Herman G. Canady, Jr., J., affirmed decision of BZA, and applicants appealed. The Supreme Court of Appeals held that: (1) BZA did not apply an erroneous principle of law in holding that placing dirt against interior portion of wall did not make it a "retaining wall," and (2) evidence supported factual findings upon which BZA denied request for height variance.

Affirmed.

West Headnotes

[1] Zoning and Planning 605
 414k605

[1] Zoning and Planning 701
 414k701

While on appeal there is a presumption that a board of zoning appeals (BZA) acted correctly, reviewing court should reverse administrative decision where board has applied an erroneous principle of law, was plainly wrong in its factual findings, or has acted beyond its jurisdiction.

[2] Zoning and Planning 255.5
 414k255.5

City board of zoning appeals (BZA) did not apply erroneous principle of law in holding that applicant's placing dirt against interior portion of perimeter wall enclosing their residence did not make it a "retaining wall," for purposes of city zoning ordinance

governing height restrictions on fences and walls.

[3] Zoning and Planning 538
 414k538

Evidence supported factual findings upon which city board of zoning appeals (BZA) denied applicant's request for height variance for perimeter wall around their residence on grounds that wall was never intended to be a typical retaining wall exempt from height restrictions; BZA held extensive public hearing, which included testimony from applicants' engineer, city officials, applicants, and concerned citizens, and applicants revealed that enclosed yard was going to be a play area for their children and that they intended to level yard and in doing so, would be placing dirt against interior part of wall making it a "retaining wall."

****192 *242 Syllabus by the Court**

"While on appeal there is a presumption that a board of zoning appeals acted correctly, a reviewing court should reverse the administrative decision where the board has applied an erroneous principle of law, was plainly wrong in its factual findings, or has acted beyond its jurisdiction." Syl. pt. 5, *Wolfe v. Forbes*, 159 W.Va. 34, 217 S.E.2d 899 (1975).

Thomas R. Goodwin, Dennis C. Taylor, Goodwin & Goodwin, Charleston, for Appellants.

Joyce F. Ofsa, Trina L. Leone, Spilman, Thomas & Battle, Charleston, for Appellees.

PER CURIAM: [FN1]

FN1. We point out that a per curiam opinion is not legal precedent. See *Lieving v. Hadley*, 188 W.Va. 197, 201 n. 4, 423 S.E.2d 600, 606 n. 4 (1992) ("Per curiam opinions ... are used to decide only the specific case before the Court; everything in a per curiam opinion beyond the syllabus point is merely *obiter dicta*.... Other courts, such as many of the United States Circuit Courts of Appeals, have gone to non-published (not-to-be-cited) opinions to deal with similar cases. We do not have such a specific practice, but instead use published per curiam opinions. However, if rules of law or accepted ways of doing things are to be changed, then this Court will do so in a

signed opinion, not a per curiam opinion.").

This action is before this Court upon an appeal from the final order of the Circuit Court of Kanawha County entered on January 18, 1996. Pursuant to that order, the circuit court affirmed the decision of the Charleston Board of Zoning Appeals (hereinafter BZA) holding that a wall built on appellants' property was in violation of a zoning ordinance and that no variance would be granted. This Court has before it the petition for appeal, the designated record, and the briefs and argument of counsel. As discussed below, this Court is of the opinion that the circuit court acted correctly in affirming the decision of the BZA. Accordingly, the final order is affirmed.

I

In 1994, appellants purchased a home on Grosscup Road in Charleston, West Virginia. Shortly thereafter, appellants obtained a building permit and began a renovation project *243 **193 on their new home and surrounding property. As part of the renovations, appellants began constructing a brick wall around the perimeter of their property. Several months later, the City of Charleston (hereinafter City), learned that the appellants' remodeling work was exceeding the costs authorized by their building permit. The City requested that appellants upgrade their permit. When they failed to do so, the City issued a stop work order. In response, appellants applied for and received a new building permit authorizing \$150,000 renovations.

Just over a month later, the City issued a second stop work order. This time the appellants were informed that the wall being constructed was in violation of a city ordinance because portions of the wall along the front of the property were more than six feet high. [FN2] In order to lift the cease and desist order, appellants applied for a height variance. At this point, appellants also hired an engineer to inspect their wall. The appellants informed the engineer that the planned renovations called for filling depressions on the property with fill dirt. Based upon this information and his inspection of the wall, the engineer issued an opinion that the appellants' wall met the definition of "retaining wall" set forth in the BOCA Code. [FN3] Subsequently, appellants contacted the City and contended that their wall was a "retaining wall" and therefore exempt from the six-foot height restriction.

[FN2] The height restriction at issue in this case is found in section 22-3(c) of the

Zoning Ordinance of the City of Charleston: Fences, walls, terraces, steps, or other similar features may project into a required setback, except as provided under Sec. 22-4, Vision field, but shall not exceed six feet in height. However, retaining walls (and fences in commercial and industrial districts) may exceed six feet in height, provided they do not violate the provision of Sec. 22-4, Vision field.

[FN3] The BOCA (Building Officials & Code Administrators International, Inc.) National Building Code, § 1812.2 (12 ed. 1993), defines "retaining wall" as "A wall designed to resist the lateral displacement of soils and other materials." The City's zoning ordinance does not specifically define retaining wall.

On April 10, 1995, appellants received a letter from the City planning director stating that he agreed that the wall was a retaining wall and therefore, in his opinion, the appellants would not need a variance. Accordingly, appellants withdrew their request for a height variance. After learning that appellants were no longer seeking a variance, several of appellants' neighbors, who had expressed dissatisfaction with the wall from the time construction began, appeared at the BZA offices and registered complaints. Thereafter, a third stop work order was issued.

On May 11, 1995, appellants filed an application with the BZA for a declaration that the wall was a retaining wall and in compliance with the city ordinance. Alternatively, appellants sought a two-foot height variance. Following an evidentiary hearing on the request, the BZA issued its decision on June 19, 1995. The BZA concluded that the wall was "essentially constructed to enclose the perimeter of the applicant's property and provide a barrier between that property and the property of others." The BZA also found that appellants demonstrated no hardship unique to the property and refused to grant a two-foot variance. Appellants sought relief in the circuit court by filing a Petition for Writ of Certiorari and Complaint for Damages. Following hearings and supplementation of the record, the circuit court affirmed the decision of the BZA as reflected in the final order.

II

[1] Our general standard of review presumes that the actions of a board of zoning appeals were proper.

We have held that: "While on appeal there is a presumption that a board of zoning appeals acted correctly, a reviewing court should reverse the administrative decision where the board has applied an erroneous principle of law, was plainly wrong in its factual findings, or has acted beyond its jurisdiction." Syl. pt. 5, *Wolfe v. Forbes*, 159 W.Va. 34, 217 S.E.2d 899 (1975). See also syl. pt. 3, *Harding v. Board of Zoning Appeals of the City of Morgantown*, 159 W.Va. 73, 219 S.E.2d 324 (1975); syl. pt. 3, *244**194 *Shannondale v. Jefferson County Planning and Zoning Comm'n*, 199 W.Va. 494, 485 S.E.2d 438 (1997).

Appellants contend that the BZA's interpretation of section 22-3(c) of the city zoning ordinance, [FN4] does not comport with common sense, the BOCA Code's definition of "retaining wall," [FN5] or the opinions of any of the experts who testified at the BZA hearing. Appellants further contend that the BZA erred in its factual findings by concluding that the subject wall was intended either exclusively or primarily as a perimeter wall. In this case, appellants are essentially requesting this Court to assume the role of the BZA and declare that placing dirt against the interior portion of their wall makes it a "retaining wall" which is exempt from the ordinance requirements. Our standard of review requires us to decline that request.

[FN4. See note 2, *supra*.

[FN5. See note 3, *supra*.

[2] With respect to interpretation of the ordinance at issue, we cannot ignore the BZA's conclusion that declaring the appellants' wall to be a retaining wall would be tantamount to amending the ordinance. The BZA points out that such action would encourage citizens to circumvent the ordinance by building walls of any height and then justifying them as being retaining walls by placing fill dirt against them. We are mindful of our declaration in *Wolfe*, that "[a] board of zoning appeals is not a law-making body and, consequently, has no power to amend the zoning ordinance under which it functions." 159 W.Va. at 45, 217 S.E.2d at 906. Accordingly, we find that the BZA did not apply an erroneous principle of law and acted within its jurisdiction in ruling upon appellants' application.

[3] Regarding the BZA's factual findings, we first note that the BZA held an extensive public hearing. The BZA heard testimony from the appellants' engineer and city officials as well as statements from

the appellants and concerned citizens. Based upon information obtained at that hearing, the BZA issued a detailed order setting forth findings of fact and conclusions of law in support of its decision to deny the appellants' request. A crucial finding of the BZA was that the wall was never intended to be a "typical retaining wall." The record reflects that throughout the proceedings in this case, appellants offered different explanations for the wall. In the first instance, the wall was to fence in a vicious pet dog. Eventually, appellants revealed that the enclosed yard was going to be a play area for their children. Appellants stated that they intended to level the yard and in doing so, would be placing dirt against the interior part of the wall making it a retaining wall. We find that the BZA's factual findings are supported by the record and therefore are not plainly wrong.

Based upon all of the above, the final order of the Circuit Court of Kanawha County is affirmed.

Affirmed.

WORKMAN, C.J., deeming herself disqualified, did not participate in the decision of this case.

201 W.Va. 241, 496 S.E.2d 191

END OF DOCUMENT

CVM5003
PAGE: 0001

ACMS APPELLATE SYSTEM
DOCUMENT LIST

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DOCKET NBR: A 000001 03
CASE TITLE: FRAN E ADLER VS KIMBERLI CRAFT

S	DATE FILED	DOC TYPE	DOCUMENT DESCRIPTION	FILING PARTY LAST NAME	ATTORNEY/FIRM
	08 12 2003	NOA	NOTICE OF APPEAL	MURPHY	MANDELBAUM SALSBURG
	08 12 2003	ZCS	CASE INFO STATEMENT	MURPHY	MANDELBAUM SALSBURG
	08 12 2003	M10	STAY	MURPHY	MANDELBAUM SALSBURG
	08 15 2003	MAN	MOT ANSWER	KRAMER	BENDIT WEINSTOCK
	08 15 2003	MAN	MOT ANSWER	ADLER	TRAUM
	08 19 2003	O10	ORD FOR STAY	MURPHY	MANDELBAUM SALSBURG
	09 08 2003	ZCS	CASE INFO STATEMENT	ADLER	TRAUM
	09 23 2003	ZCS	CASE INFO STATEMENT	KRAMER	BENDIT WEINSTOCK
	09 30 2003	ZSO	SCHEDULING ORDER	MURPHY	MANDELBAUM SALSBURG
	11 05 2003	M36	FILE OVR/BRF	MURPHY	MANDELBAUM SALSBURG
	11 06 2003	B01	APPEL BRIEF/APPENDI	MURPHY	MANDELBAUM SALSBURG

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DOCKET NBR: A 000001 03
CASE TITLE: FRAN E ADLER VS KIMBERLI CRAFT

S	DATE FILED	DOC TYPE	DOCUMENT DESCRIPTION	FILING PARTY LAST NAME	ATTORNEY/FIRM
	12 11 2003	O36	ORD TO FILE OVR/BRF	MURPHY	MANDELBAUM SALSBURG
	01 08 2004	B04	RESP BRIEF/APPENDIX	MONTCLAIR	SELTZER
	01 12 2004	ZOA	ORAL ARGUMNT REQUES	KRAMER	BENDIT WEINSTOCK
	01 12 2004	B04	RESP BRIEF/APPENDIX	KRAMER	BENDIT WEINSTOCK
	01 13 2004	B04	RESP BRIEF/APPENDIX	ADLER	TRAUM
	01 13 2004	ZOA	ORAL ARGUMNT REQUES	ADLER	TRAUM
	01 22 2004	ZOA	ORAL ARGUMNT REQUES	MURPHY	MANDELBAUM SALSBURG
	01 23 2004	B12	REPLY BRIEF	MURPHY	MANDELBAUM SALSBURG
	11 19 2004	APN	REGULAR OPINION		

PF2 - DOCUMENT INQUIRY

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PF22-HELP

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DOCKET NBR: AM 000853 01
CASE TITLE: FRAN E ADLER VS KIMBERLI CRAFT

	DATE	DOC	DOCUMENT	FILING PARTY	ATTORNEY/FIRM
S	FILED	TYPE	DESCRIPTION	LAST NAME	
	06 14 2002	M01	LEAV TO APP	ADLER	NASHIEL KATES NUSSMA
	06 18 2002	O01	ORD FOR LEAV TO APP	ADLER	NASHIEL KATES NUSSMA

PF2 - DOCUMENT INQUIRY

PF7 - PRIOR

PF8 - NEXT

PF22-HELP

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1-03TS

FRAN E. ADLER,

Plaintiff-Respondent,

and

ROBERT P. KRAMER,

Plaintiff/Intervenor-
Respondent

v.

KIMBERLI CRAFT, Montclair Township
Engineer, ANTHONY MONTOURI, Montclair
Building Sub-Code Official, RICHARD
CHARREUN, Montclair Planning
Technician,

Defendants-Respondents,

and

MICHAEL J. MURPHY,

Defendant/Third-Party
Plaintiff-Appellant,

v.

TOWNSHIP OF MONTCLAIR, MAYOR
AND COUNCIL OF THE TOWNSHIP OF
MONTCLAIR,

Third-Party Defendants-
Respondents.

Argued September 22, 2004 - Decided **NOV 19 2004**

Before Judges Wefing, Fall and C. S. Fisher.

On appeal from Superior Court of New Jersey, Law Division, Essex County, ESX-L-5586-02.

Avrom J. Gold argued the cause for appellant (Mandelbaum, Salsburg, Gold, Lazris, Discenza & Steinberg, attorneys; Ricki Anne Sokol, on the brief).

Kenneth P. Traum argued the cause for respondent Fran E. Adler.

James F. Keegan argued the cause for intervenor-respondent Robert P. Kramer (Bendit Weinstock, attorneys; Mr. Keegan and Christine M. Tiritilli, on the brief).

Richard Seltzer argued the cause for respondents and third-party respondents.

PER CURIAM

Defendant third-party plaintiff Michael J. Murphy appeals from trial court orders granting summary judgment to plaintiffs Fran E. Adler and Robert P. Kramer and denying his motion for reconsideration. After reviewing the record in light of the contentions advanced on appeal, we affirm in part, reverse in part, and remand for further proceedings.

I

Murphy owns two adjoining lots in Montclair, Lots 15.01 and 15.02 in Block 204; they are also known as 131 and 139 Lloyd Road. Mulford Lane is one block east of Lloyd Road. Both streets are located in what Montclair has designated as a steep

slope zone. Lloyd Road is higher up the slope than Mulford Lane. Plaintiffs Adler and Kramer live at 22 Mulford Lane and 18 Mulford Lane, respectively. The rear of Adler's property abuts 131 Lloyd Road and the rear of Kramer's property abuts 139 Lloyd Road. All the properties are zoned single-family residential.

When Murphy purchased these lots, they were unimproved. He submitted plans for the construction of a single family home for himself and his family. Murphy's plans conformed with the applicable zoning requirements and he did not need any variances to proceed.

Because of the slope of his land, he proposed to construct a retaining wall which would span the two lots and then backfill behind the wall, to create a more level, usable landscape. At the time of Murphy's submission, Montclair had two ordinances which potentially bore upon his plans. Section 347.27 of Montclair's zoning ordinance regulated fences. Paragraph (1) of that ordinance provides:

On interior lots, open fences (defined as having 25% or less solid areas or voids of dimension not less than two inches) shall not exceed 4 1/2 feet in height, and solid walls, other than retaining walls, shall not exceed three feet in height when built in front of the extreme rear corner(s) of the principal building. Stockade and other solid fences are not permitted in this area.

On the remainder of the lot, fences or walls shall not exceed seven feet in height.

[Township of Montclair, Code §347.27(1).]

Chapter 294, Montclair's steep slope ordinance, governed applications for construction within the steep slope zone. Applications which did not require the approval of either the Planning Board or the Zoning Board of Adjustment, such as Murphy's, required the review and approval of the Township Engineer. Section 294-6 sets forth the governing standards for approval of such applications.

In order to obtain engineering approval, each applicant shall submit plans, reports and calculations designed to demonstrate and accomplish or further the following standards:

- A. Control velocity and rate of water runoff from the proposed developed site so that such velocity and rate are no greater after development than before development, unless a more stringent standard is contained in the New Jersey Residential Site Improvement Standards, in which instance the more stringent provision shall apply.
- B. Provide for the proper disposition of surface water runoff so that it will not create unstable conditions downstream and on adjacent properties. Appropriate storm drainage facilities shall be constructed as deemed necessary by the reviewing engineer.
- C. Stabilize all fill placed on the lot by retaining walls or other appropriate structures as approved by the reviewing engineer when, in the opinion of the engineer, normal mulching and vegetation establishment will not suffice.

D. Establish vegetation sufficient to stabilize the soil on all disturbed areas as each stage of grading is completed. All disturbed soil surfaces shall be stabilized or covered prior to the first day of November if the planned impervious surface (e.g. roads, drives, etc.) cannot be established prior to November. A temporary treatment adequate to prevent erosion shall be installed on those surfaces.

E. Reestablish vegetation on disturbed areas. Exposed graded areas shall be mulched and seeded to provide a basic ground cover which will prevent erosion.

F. Meet all Building Code requirements where structures and/or retaining walls are involved.

G. Prevent soil slippage.

H. Minimize number and extent of excavations to prevent groundwater discharge to surfaces.

I. Preserve maximum number of trees and other vegetation on the site consistent with reasonable use and erosion control procedures.

J. Conform to standards for steep slope control contained herein and the Standards for Soil Erosion and Sediment Control adopted by the New Jersey State Soil Conservation Committee.

When Murphy purchased this property, it was encumbered by a ten-foot-wide sewer easement held by Montclair. The easement runs for 136 feet along the rear of Lot 15.02 and extends ten feet northerly along the rear of Lot 15.01. On the southern border of Lot 15.02, the easement extends for an additional ten feet into Lot 15.03, also known as 145 Lloyd Road. A single sanitary sewer pipe, eight inches in diameter, serving only 145

Lloyd Road is buried in the easement and runs from the rear of Lot 15.03 to a manhole located at the northerly end of the easement on Murphy's Lot 15.01. At that juncture, the sanitary sewer line turns eastward through a different easement across the Adler property to Mulford Lane. Both the Adler and Kramer properties connect into the sewer pipe in the Adler easement downstream from the manhole located on Murphy's lot 15.01.

In order to maximize the amount of usable land he would create, Murphy wished to locate his proposed retaining wall over this sewer easement, rather than ten feet into his property. He approached the Township Council and proposed that he take over responsibility for maintaining the easement. Under his proposal, he agreed that in return for being permitted to place his retaining wall over the easement:

- 1) he would assume full responsibility for the integrity of the buried pipe during the process of construction;

- 2) he would execute a deed addendum under which he would be responsible for any additional excavation costs incurred as a result of the wall and additional fill in the event the pipe had to be repaired or serviced in the future; and

- 3) he would grant an access-only easement along the southerly border of Lot 15.02 to provide the Township with a more feasible access route to the easement from Lloyd Road.

After debating the idea at two separate meetings, the Council declined to surrender its easement or to permit Murphy to encroach upon it.

Murphy submitted his site plans for approval to the Montclair Planning Department. On April 24, 2002, a staff member notified him that the plans were approved. The letter stated in part:

The Site Work Plans depict retaining walls on the subject properties, which are not considered "fences" or "walls" in the Zoning Ordinance. The retaining walls depicted on the plans are specifically exempted from zoning regulations in Montclair Code Section 347-27 Fences and therefore are not subject to the regulations specified in that code section.

On May 28, 2002, the Council voted not to permit Murphy to encroach upon its sewer easement. By letter dated June 8, 2002, the Township Engineer informed Murphy that the site had been approved insofar as the requirements of the steep slope ordinance were concerned and that he could begin any site work that did not require additional approvals from the building department.

Murphy began to clear the site in preparation for construction of the retaining wall. On June 11, 2002, plaintiff Adler filed suit, seeking to enjoin Murphy's construction of this retaining wall. She alleged that its construction was in

violation of the steep slope ordinance and that retaining walls were included in the seven-foot height limitation of Montclair's fence ordinance. The trial court denied her request for a temporary restraining order and this court denied her request for emergent relief. Adler's lawsuit continued, as did Murphy's construction. As the litigation went on, her neighbor Kramer was permitted to intervene. By the time the matter was presented to the trial court on motions for summary judgment, the wall behind the Adler property had been completed and the site backfilled and, in addition, the Township had adopted a new ordinance specifically governing the construction of retaining walls. The completed wall ranges from twelve feet to sixteen feet in height.

After briefing and oral argument, the trial court made two determinations: first, that retaining walls were subject to Montclair's fence ordinance and that Murphy's wall should be reduced to no more than seven feet in height and, secondly, that the Township acted within its rights when it refused to permit Murphy to encroach upon its sewer easement. The trial court denied Murphy's motion for reconsideration. We granted Murphy's request for a stay pending determination of this appeal.

Murphy presents two principal arguments on appeal, the first of which is that retaining walls are beyond the scope of

Montclair's fence ordinance. We disagree and thus affirm so much of the June 9, 2003, order of the trial court as determined that retaining walls are subject to the Township's fence ordinance.

II

We have earlier set forth the text of Montclair's ordinance regulating fences. We concur in the trial court's description of this ordinance as "poorly articulated." Certain established principles of statutory construction guide us in the task of interpreting this ordinance. 1A Norman J. Singer, Sutherland Statutory Construction, §30.6 (6th ed. 2002) ("As a general rule, courts apply the same rules of construction to municipal ordinances as they do to statutes."). "[A]n ordinance should be interpreted to 'effectuate the legislative intent in light of the language used and the objects sought to be achieved.'" State, Township of Pennsauken v. Schad, 160 N.J. 156, 170 (1999) (quoting Merin v. Maglaki, 126 N.J. 430, 435 (1992)). When confronted with language which "is susceptible to different interpretations, the court considers extrinsic factors, such as the statute's purpose, legislative history, and statutory context to ascertain the [L]egislature's intent." Schad, 160 N.J. at 170.

The Court's opinion in Schad is instructive. The municipality had an ordinance regulating the size and number of signs that could be utilized in connection with a commercial property. Defendant owned two adult entertainment facilities, both of which had signs complying with the Pennsauken ordinance. Id. at 166. He mounted on the interior of the front windows of each of the stores a color transparency of a woman wearing a bathing suit; the transparency was nearly 43 square feet in size. Ibid. The transparencies were only visible from the exterior and were illuminated at night. Id. at 167. Pennsauken charged defendant with violating its sign ordinance, but he defended on the grounds, inter alia, that the transparencies were interior displays and not signs. Ibid.

Pennsauken's ordinance defined a sign as:

A structure and a land use, a building wall or other outdoor surface or any device used for visual communication, display, identification or publicity

[Id. at 168.]

Explaining the Court's conclusion that these transparencies were, indeed, signs within the meaning of Pennsauken's ordinance, Justice Handler made the following observation.

The qualifying term "outside" is undoubtedly the key element of the definition of "sign" under section 126-700.1. The term may be invested with a meaning that serves the purpose and

effectuates the basic intent of the ordinance by applying to all signs the requirement that the display be observable from outside a building by the passing public. To limit that term so that the ordinance would apply only to signs or displays that are placed or located physically outside a building allows a proprietor to circumvent the ordinance's restrictions and intended effect by placing an otherwise noncomplying sign behind a window inside of the premises, while still communicating to passersby. Such an application would undermine the ordinance's objectives concerning the visual effect and environmental impact on the community. An interpretation of the term "outside" that focuses on the external visibility of the sign better harmonizes the language of the ordinance with the drafters' intent. Under that view, defendant's displays qualify as signs because their message was directed solely outside the buildings.

[Id. at 173.]

In our judgment, the overall purpose of Montclair's fence ordinance is to protect adjoining property owners from the impact of massive, ponderous structures. That purpose informs our interpretation of this ordinance.

Pursuant to the first sentence of §347.27 (1), the only solid wall that may be built in the front of a house that may exceed three feet in height is a retaining wall. We deem it significant that the ordinance provides that "[o]n the remainder of the lot," that is, to the rear of the principal structure, "fences or walls shall not exceed seven feet in height." The

Township did not exclude retaining walls from this overall limitation, as it did when circumscribing the construction of walls at the front of the property. In our view, it would defeat the overall purpose of this ordinance to interpret it in a manner that would permit construction of a solid concrete retaining wall of any height but bar a solid wooden fence of more than seven feet in height. The effect of a structure upon the surrounding properties is not lessened simply because it is denominated a retaining wall.

Because the wall had been completed by the time the parties' summary judgment motions were heard, the trial court was confronted with the question of crafting an appropriate remedy. It directed that Murphy reduce the wall to no more than seven feet in order to comply with the terms of the fence ordinance. We are satisfied that the trial court erred in ordering that relief, at least at that juncture of the proceedings.

We reach this conclusion for several reasons. In conjunction with filing his appeal, Murphy sought a stay of the trial court's order requiring him to redo this wall so as to comply with the fence ordinance. Murphy supported his request for a stay with an affidavit in which he estimated it would cost him approximately \$120,000 and four months to comply with the

trial court's order. We accepted the accuracy of that representation for purposes of a request for a stay, but plaintiffs are entitled to dispute the question, if they are able to do so.

In addition, by the time the trial court decided this matter, Montclair had adopted an ordinance specifically governing the design and construction of retaining walls. That ordinance appears to provide for retaining walls that are higher than seven feet, provided they are designed and built on a staggered, or stepped, basis.

In our view, the trial court should have afforded the parties the opportunity to address what an appropriate remedy would be in this situation. The relief granted was too drastic based on the record before the trial court at the time. We express no views on what an appropriate remedy might be and do not foreclose the trial court from coming to the same result, if, after hearing the parties' proofs and arguments, the trial court deems it the only feasible way to afford relief. Nor do we express any views on whether, at this juncture, Murphy could seek relief by way of variance.

III

The second question Murphy presents in connection with his appeal is whether the Township acted arbitrarily, capriciously

and unreasonably when it refused to permit him to construct his retaining wall over the sewer easement that ran through the rear of his property. As to this, we are satisfied that the Township did not act in such a manner, and we affirm so much of the trial court's order as held to that effect.

"An easement is defined as a 'nonpossessory incorporeal interest in another's possessory estate in land, entitling the holder . . . to make some use of the other's property.'" Kline v. Bernardsville Assoc., Inc., 267 N.J. Super. 473, 478 (App. Div. 1993) (quoting Leach v. Anderl, 218 N.J. Super. 81, 24 (App. Div. 1987)). Both sides in this litigation rely upon the same case to support their positions, Tide-Water Pipe Co. v. Blair Holding Co., 42 N.J. 591 (1964). In that case, defendant owned property subject to an easement held by plaintiff, a petroleum pipeline company, and wished to construct a building over the pipeline. The Supreme Court affirmed the trial court's determination that the property owner had no right to erect such a building. Id. at 610.

The first step in determining the rights of a property owner, vis-à-vis the holder of an easement, is to look at the easement grant itself. Id. at 605. A reviewing court, in determining the rights of the parties, works:

within the framework of the universally
accepted principle of easement law that the

landowner may not, without the consent of the easement holder, unreasonably interfere with the latter's rights or change the character of the easement so as to make the use thereof significantly more difficult or more burdensome. Equally well recognized is the corollary principle that there is, arising out of every easement, an implied right to do what is reasonably necessary for its complete enjoyment, that right to be exercised, however, in such reasonable manner as to avoid unnecessary increases in the burden upon the landowner.

[Id. at 604 (citations omitted).]

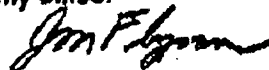
The easement in question was granted in title to the Township in 1977 by Murphy's predecessor. It granted Montclair "an easement with the right to reconstruct and perpetually maintain a sanitary sewer line or water lines, together with all necessary laterals" Clearly, Murphy's proposal envisioned significantly changing the character of the easement. In light of the municipality's fundamental responsibility to the rest of the citizenry for the operation and maintenance of the sanitary sewer system, its refusal to permit Murphy to encroach upon its easement can hardly be considered arbitrary, capricious or unreasonable.

Murphy has raised a number of other procedural issues, dealing with such matters as his motion for reconsideration, his motion to amend his pleadings and the trial court's decision to permit plaintiff Kramer to intervene. We are satisfied the

trial court's handling of each of these questions was an appropriate exercise of its discretion and provides no basis to reverse the judgment. To the extent Murphy has raised issues to which we have not specifically adverted in this opinion, we deem them to lack sufficient merit to warrant discussion in a written opinion, for it would lack any precedential value.

For the reasons we have stated, the judgment under review is affirmed in part and reversed in part and the matter is remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

Webster's Third New International Dictionary

OF THE ENGLISH LANGUAGE
UNABRIDGED

A Merriam-Webster
REG. U. S. PAT. OFF.

WITH SEVEN LANGUAGE
DICTIONARY

VOLUME I

A to G



constrictor
knot

acc. *accusare* [L, *accusare*], a custom or usage, *esp.* one having
accusations, the *acc.*

[illegible]

dim. of *piata* silver, fr. OSP — more at PLATE] 1 a very heavy metallic element that is typically grayish white, is nonmagnetic, and difficult, expands a relatively high electric resistance, and is chiefly bivalent and tetravalent, that occurs usu. native as grains and nuggets containing alloys (as with copper, iron, silver, or gold) in alluvial deposits often associated with nickel, cobalt, and arsenic, and that is used chiefly in the form of alloys in special chemical ware and apparatus (as crucibles, dishes, foil, wire), in electrical and electronic devices, as a catalyst, in dental alloys, and in jewelry 2 of the color of platinum 3 being of the luxury value of platinum: COSTLY (present-day ~ prices of basic needs)

platinum black *n* 1 a soft dull black powder of finely divided platinum that is obtained by reduction and precipitation from solutions of its salts that is capable of occluding large volumes of hydrogen, oxygen, or other gases and that is used as catalyst for hydrogenation or oxidation

platinum blonde *n* 1 a pale silvery blonde color that is obtained by bleaching hair with a bluish rinse 2 a person whose hair is of the color platinum blonde

platinum metal *n* any of the six precious metallic elements including platinum and elements resembling it in chemical and physical properties that belong to group VIII of the periodic table and are often subdivided into two triads of which is composed of ruthenium, rhodium, and palladium whose specific gravities are about 12 and the other of which is composed of osmium, iridium, and platinum whose specific gravities are over 20

platinotype *n* 1 a photographic paper sensitized with a solution containing potassium chloroplatinate and ferric oxalate 2 a process of making photographs by the platinotype process

platinum sponge *n* metallic platinum in a gray porous spongy form that is used in catalyzing ammonium chloroplatinate, that occludes large volumes of hydrogen, oxygen, and other gases, and that is used as a catalyst

plat-i-tu-dine \plad-ē-tū-dī-, -ai-, -i-, tū-dī-*n* *s* [fr. *plai*, *plai* (fr. OF) + *-tūde* (as in *altitude*, *recititude*) — more at PLATE] 1 a level or surface that extends below the foot or insipid: staleness of ideas or thoughts 2 TRITE 3 a thought or remark that is flat, dull, trite, or weak 4 a dull, stale, or insipid truisim: COMMONPLACE

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plat-i-tu-dine \plad-ē-t

three optically isomeric forms and in the form of esters, that is obtained also from pine oil by distillation or from pine oil by hydrazine, and is used chiefly in perfumery. **1**: a term used in perfumery to designate a substance which has an odor of hyacinths — called also *beta-terpineol* **2**: an isomer having an odor of lilacs similar to that of alpha-terpineol — called also *gamma-terpineol*

terpina hydrate *ter'pina'hydrat* *n* **1**: a white crystalline or powdery compound $C_{10}H_{16}O$ formed from *alpha*-terpene by absorption of water, obtained usu. from turpentine oil or alpha-pinene by hydration with dilute acids or from pine oil by steaming the residual rosin, and used as an expectorant for a cough and as an intermediate in many terpenes

terpinol *ter'pinol* *n* **1**: a commercial liquid mixture **2**: *terpinol*, esp. **3**: the commercial liquid mixture **4**: a liquid monooxygenic terpene hydrocarbon, a terpene, a few essential oils and obtained synthetically (as in the manufacture of terpineol); **1,4(8)-para-menthadiene**

terpi-nol *ter'pi-nol* *n* **1**: a *terpinol* **2**: a unit-valent radical $C_{10}H_{17}$ derived from terpineol and esp. alpha-terpineol

terpinol acetate *ter'pinol'asetat* *n* **1**: a fragrant liquid ester: $CH_3COOC_{10}H_{17}$ found in several essential oils, made synthetically (as by reaction of alpha-terpineol or alpha-pinene with acetic anhydride) and used in perfumes and soaps

terpolymer *ter'pōl-mer* *n* **1**: a polymer **2**: a product of the polymerization of three different polymerizing substances — compare *Copolymer*

terp-sich-o-re *ter'p-sich-o-re* *n* **1**: a *terpinol* **2**: a unit-valent radical $C_{10}H_{17}$ derived from terpineol and esp. alpha-terpineol

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— more at **TERRACE**, **MARL** **1**: a late Neolithic or early Bronze age lake dwelling or settlement of northern Italy known from remains found in the mountains of the Po valley

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the earth's magnetic condition **terrestrial planet** *ter'ris-trial'plan-it* *n* **1**: one of the four inner planets of the solar system (Mercury, Venus, Earth, and Mars are the terrestrial planets) — compare **MAJOR PLANET**

terrestrial pole *ter'ris-trial'pōl* *n* **1**: a pole **2**: a pole

terrestrial telescope *ter'ris-trial'tel-i-skōp* *n* **1**: a refracting telescope for viewing objects through an eyepiece that consists of three or four lenses so arranged that the final image is right side up — compare **ASTRONOMICAL TELESCOPE**, **FIELD GLASS**, **SPYGLASS**

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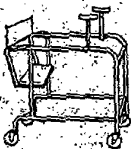
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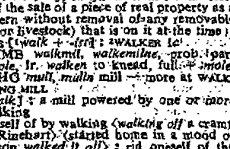
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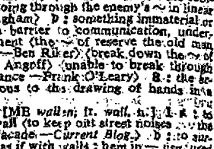
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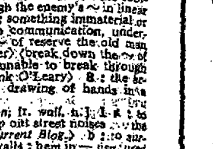
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021

2008

80

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223/34

33

66-921

22

8027

802

10

068

100

24

64-234

W. E. B. DUBOIS

100

2027 258.0

STREETS

44-38861-1000

1979-80

1053

29.53

55



106 AC.

ST

2027-258.0

10,890.4
802.

35,428.4
803

35,443.4
804

25,002.1
1

57°42'E.

P.T.

TERACE

3354122E

52.12.40T. 46.95
52033'30"E
79.48

5.220 49.44
158.16

5410.97' 40.4E.
191.90

550.36' 40.1E.
8.4.84

1410.20' 00.4W.
212.16

78.78
52033'30"E
72.08

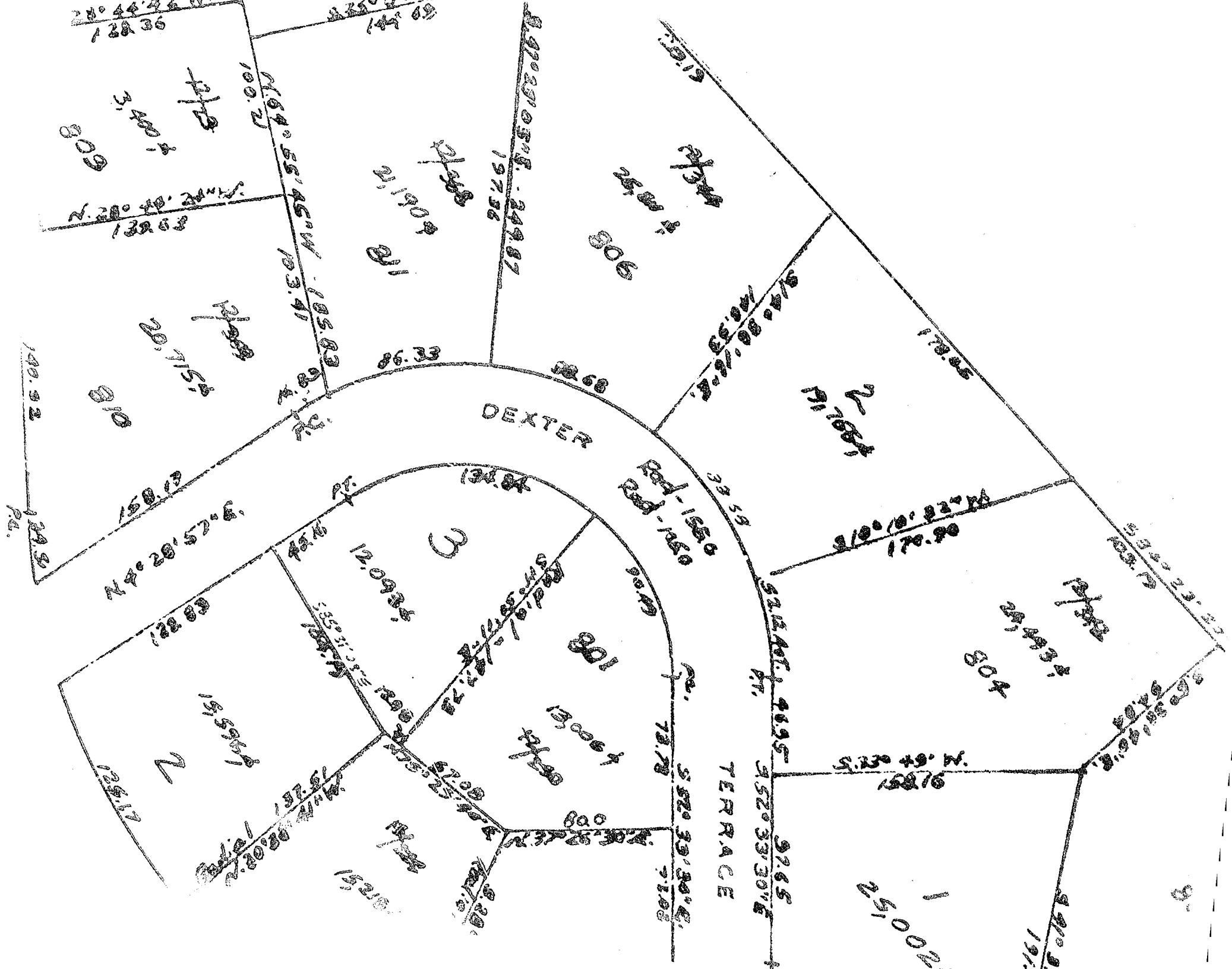
15156.4
14.0

1380

1800.4

800

8048



49TH

ST

S 11° 12' 50"

S 24° 00' 15" W.

661 439.0 44.4370

P.T.

281.2 59.79

127.0

487.1 P.C.

83.01

1342.4
808

160.0
142.71

2137.4
807

100.0

77.51

12.19

25.4
806

140.33
140.33
140.33

170.26

111.75

S 24° 44' 42" W.
128.36

164.55
103.41
185.83

S 25° 04' 15" W.
141.09

8470.25
137.26
249.87

2119.0
811

Rad. = 102.50

90.02

93.41

P.T.

S.

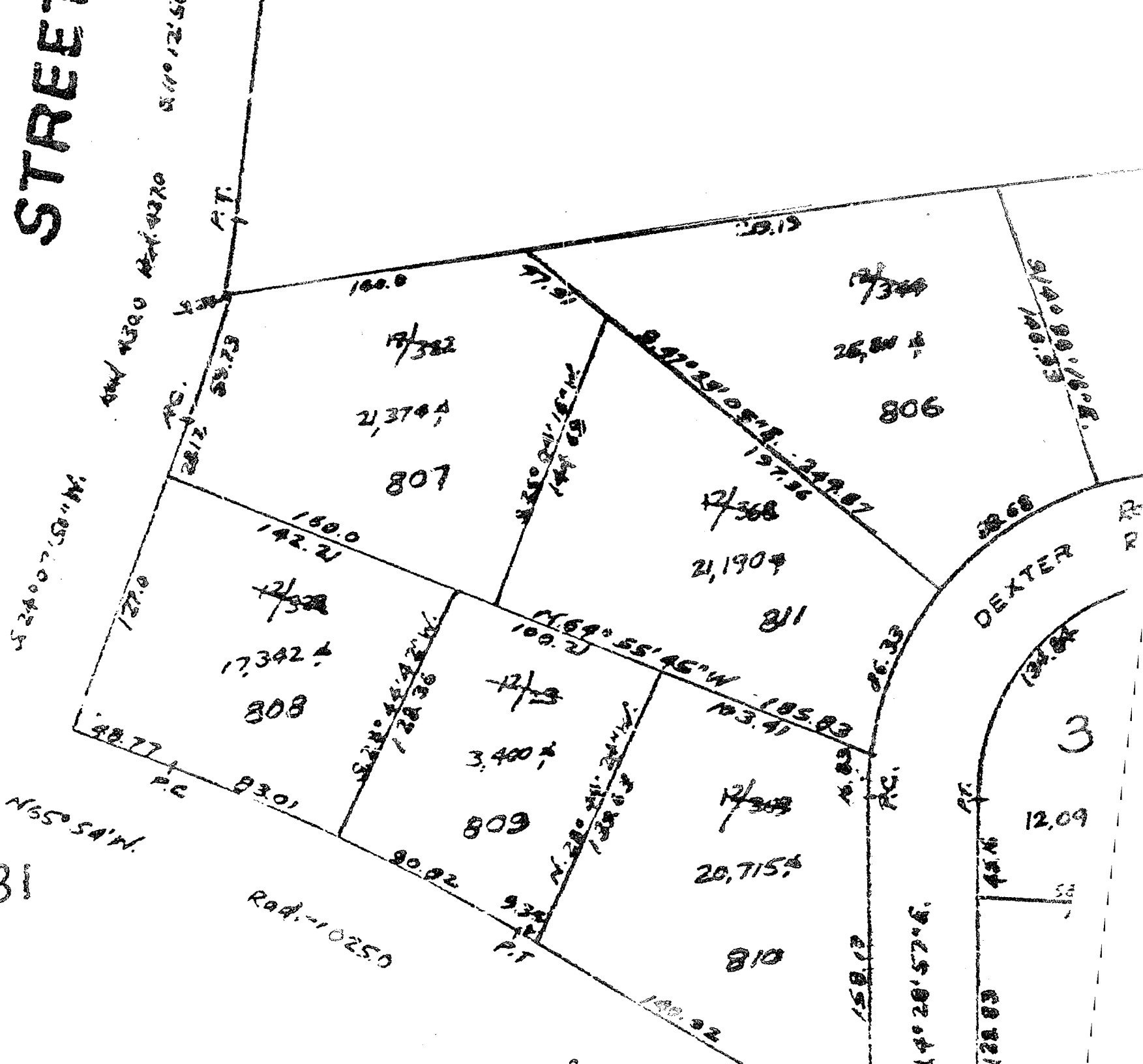
14

N 55° 54' W.

D

1381

STREET



FULTON



OVERSIZED EXHIBIT
SUBMITTED SEPARATELY

Main Office
353 W. Patrick St., P. O. Box 1858
Frederick, MD 21702-0858
Phone (301) 360-9534
Fax (301) 360-9574

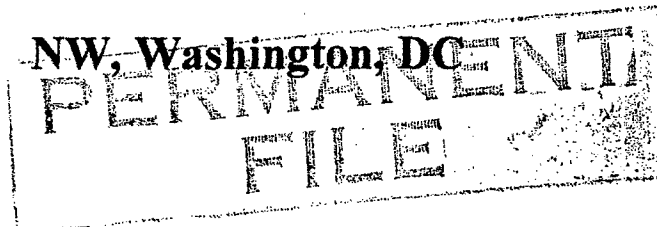
PA Office
68 W. King St. P. O. Box 6
Shippensburg, PA 17257-0006
Phone (717) 477-8400
Fax (717) 477-8410

Ryan & Associates

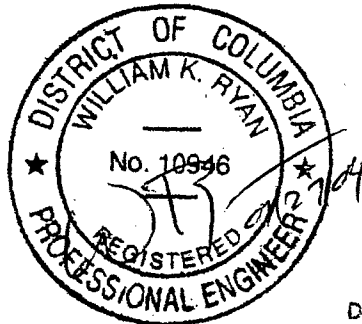
A Division of WKR Consulting, Inc.

MESA SITE RETAINING WALL

FINAL DESIGNS FOR: **ECONOMIDES RESIDENCE**



REVIEWED BY:



DISTRICT OF COLUMBIA
PERMIT PROCESSING DIVISION
STRUCTURAL WORK IN GENERAL
APPROVED SUBJECT TO THE
FURTHER APPROVAL OF CONSTRUCTION

Robert Chan
Structural Engr. Section
Date 7/3/05

BLOCK PRODUCER: York Building Products
PREPARED BY: Doug Statler of Ryan & Associates
RA PROJECT #: PA231304

Consulting & Design Engineers

.....

TABLE OF CONTENTS

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Geogrid Reinforced Leveling Pad Detail	6
Partial civil plan	7
Profiles	8 & 9
Structural Cross Sections	10- 25
Railing Details	26- 27
Specifications	28- 36

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Shippensburg, PA 17257-0006
Phone (717) 477-8400
Fax (717) 477-8410

Ryan & Associates

A Division of WKR Consulting, Inc.

January 27, 2004

RA PROJECT # PA231304

PROJECT: Economides residence
LOCATION: 4825 Dexter Terrace, NW, DC
BLOCK PRODUCER: York Building Products
PREPARED BY: Doug Statler of Ryan & Associates

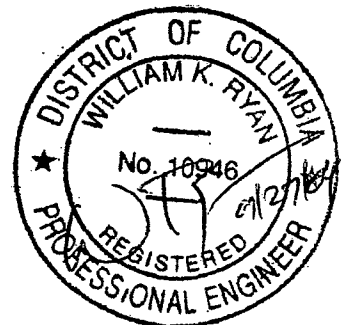
CALCULATIONS FOR THE ATTACHED CROSS SECTIONS HAVE BEEN REVIEWED FOR THE MESA RETAINING WALL ON THIS PROJECT:

Section #1 (15.33' total height: 14.00' exposed & 1.33' buried)

Section #2 (18.67' total height: 16.67' exposed & 2.00' buried)

Section #3 (28.00' total height: 25.33' exposed & 2.67' buried)

Section #4 (33.33' total height: 30.67' exposed & 2.67' buried)



**SEE THE GENERAL NOTES FOR IMPORTANT JOB SPECIFIC
INFORMATION ABOUT THE WALL ON THIS PROJECT.**

NOTE: PLEASE DIRECT ALL QUESTIONS REGARDING THIS DESIGN
TO THE PENNSYLVANIA OFFICE (717)-477-8400.

Consulting & Design Engineers

.....

Scope: The retaining wall design engineer (Ryan & Associates) scope consists of preparing the wall designs and professionally sealing to enable the contractor to obtain necessary permits and properly construct the wall. The design considers the internal and local stability of the reinforced soil mass and is in accordance with acceptable engineering practice and these specifications. Services outside this scope such as responding to the owner's engineering firm (civil, structural, geotechnical or otherwise), provision of quality control testing & inspection, certification of wall construction, investigation of failed or non-conforming walls or any other services may be provided on a time & materials basis or for a negotiated fee.

Contractor's Responsibility: This design has been done in an effort to achieve the required grade changes shown on the civil plans for this project. The wall installer must verify the accuracy of this design by comparing it to the civil plans **prior to wall construction**. The civil plans govern and their grades must always be met. The lineal footage of the wall and the TW/BW elevations must be checked. If an error is discovered, Ryan & Associates (RA) shall be notified immediately and revisions will be provided. RA will not be responsible for correcting a wall that is being built or has been built incorrectly due this design being followed rather than the civil drawings.

Stormwater Management: The segmental retaining wall is not a stormwater management structure. Therefore, it is absolutely essential that surface water be prevented from entering the wall's reinforced geogrid zone. This is usually accomplished by the site engineer (owner's civil engineer) grading the surface behind the wall to direct surface water to swales that divert the water around the wall ends, to inlets or over the top of the wall through scuppers. If water is directed to the wall, the top eight inches of compacted fill over the reinforced geogrid zone must have impermeable soil such as CL, GC, SC or an underlying geomembrane (see RA Specifications for details).

INSTALLATION MUST CONFORM TO THE ATTACHED "Ryan & Associates retaining wall specifications and installation guidelines for Mesa".

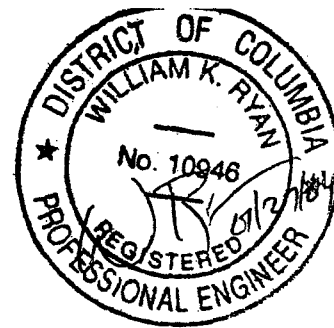
William K. Ryan, M. S., P. E.

CO# 37912	DC #10946	DE# 11919	MD# 21586	ME# 10567
NC# 29155	NH#11156	NY# 081355	OH#29706	PA# PE-043437-E
SC #22968	VA# 033739	WV# 14153		

The information contained herein is proprietary and is the sole property of RA. It is only intended for use on this project. Reuse of these drawings, sketches, and design computations in any manner is strictly prohibited without written approval from RA. Any other use is subject to penalty of law. ©

RYAN & ASSOCIATES

A Division of WKR Consulting, Inc.



PROJECT NAME: Economides residence
LOCATION: NW, DC

PROJECT#: PA231304
BLOCK TYPE: Mesa

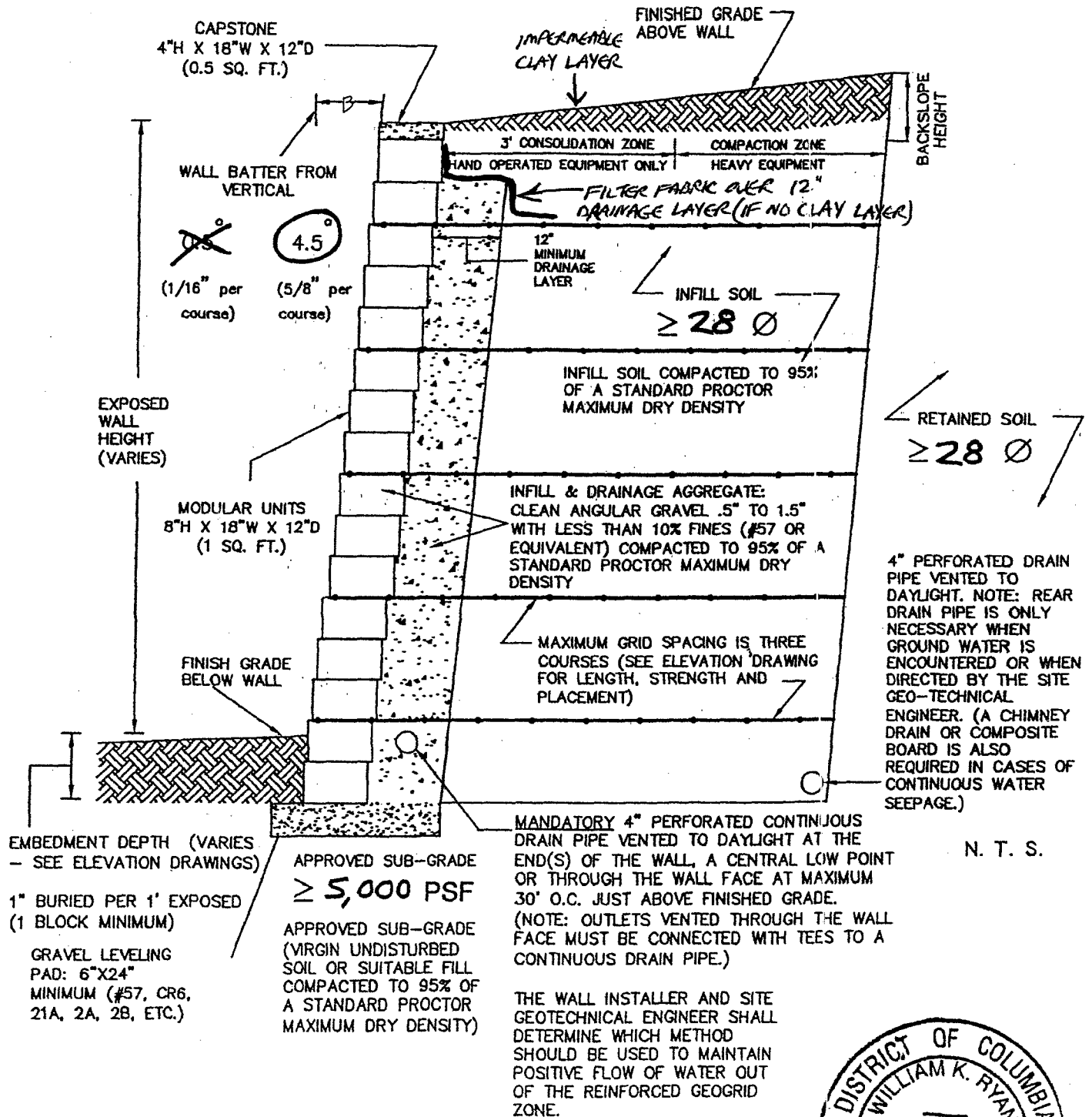
GENERAL NOTES

1. **SOIL PARAMETERS:** Based on the "Infiltration Rate Study Stormwater Management Facilities" for this project dated 10/09/2002 prepared by Specialized Engineering, the in-situ site soils are SM (silty sand). Therefore an internal angle of friction of **30°** was used for the **foundation soil** (the wall's sub-grade) in this design. If during excavation it is discovered that there are fine-grained soils present in the wall's foundation area, Ryan & Associates (RA) must be notified so that the design sections can be rerun with the actual field conditions. The infill and retained soils (within and behind the wall's reinforced geogrid zone) will be imported fill. An internal angle of friction of **28°** was used for the **infill and retained soils** in this design. This is for a worst case ML (silt) soil type. CH (fat clay), CL (lean clay), MH (elastic silt) and OH/ OL/ PT (organic) soils are not acceptable for wall construction. If these unsuitable soils are encountered they must be removed and replaced with soils that meet or exceed the design friction angle of 28°. Assumed unit weights (maximum wet densities less 5% for 95% compaction) of 130 PCF for the 30° foundation soil and 125 PCF for the 28° infill and retained soils were used. The site geotechnical engineer will need to run proctor tests on the proposed fill (or review the tests provided by the borrow source). Fluctuations of 5 PCF higher or lower will not affect this design, however if the unit weight varies by more than 5 PCF RA must be notified so that the cross sections can be rerun to verify that all factors of safety are still met. The soil must be within 2% of optimum moisture so that 95% compaction can be achieved. No cohesion was used in any of the calculations.
2. **BEARING CAPACITY:** The sub-grade (the soils under the wall's gravel leveling pad and the soils under the wall's reinforced geogrid zone) must be tested prior to wall construction and have a minimum allowable bearing capacity of 5,000 PSF in order for a standard 6" X 24" leveling pad to be used for the entire wall. If the minimum allowable bearing capacity is only 4,000 PSF then a 1' X 4' geogrid reinforced leveling pad will be required for the area of the wall referenced by Sections 3 & 4 (if it is only 3,000 PSF then a 1.5' X 6' geogrid reinforced leveling pad will be required). See attached detail for a geogrid reinforced leveling pad. The sub-grade must be virgin (natural undisturbed soil with blow counts ≥ 12) or suitable fill ($\geq 30^\circ$) compacted to 95% of a standard proctor maximum dry density. Any areas of the sub-grade that do not meet a 3,000 PSF allowable bearing capacity will require undercutting until it is obtained.
3. **SLOPES & SURCHARGES:** A short 5:1 slope was applied to the wall. A 120 PSF live load surcharge was also applied in the event there are future patios, pool decks, sidewalks, etc.

4. **SPECIFICATIONS:** Construction and materials must conform to the attached "*Ryan & Associates segmental retaining wall specifications and installation guidelines for Mesa*".
5. **FACTORS OF SAFETY:** The following factors of safety have been met in this design: Sliding 1.5, Overturning 2.0, Bearing Capacity 2.0, Geogrid Overstress 1.5 and Geogrid Pullout 1.5 (from the soil and from the block).
6. **GEOGRIDS:** UXMESA3, UXMESA4, UXMESA5 & UXMESA6 geogrids, which have LTDS (Long Term Design Strengths) of 1876, 2852, 3771 & 4738 respectively, were used in this design. All geogrid substitutions must have prior approval of RA.
7. **CIVIL PLANS:** This design package is based on the "Building Permit Site Plan", sheet 1 of 7, dated 08/2002 (last revised 10/15/2002) prepared by CAS Engineering. A partial copy of this plan has been included to show the RA wall stationing.
8. **WALL BATTER:** This wall was designed with the blocks having a 4.5° batter (setback of 5/8" per block course). **The 0.5° near vertical batter (setback of 1/16" per block course) may not be used for this wall.** NOTE: it is important for the wall installer and the civil engineer/surveyor to predetermine the wall's batter during stake out. The wall will need to be moved forward at the base if there are critical dimensions that must be met on the high side of the wall.
9. **WALL PROFILE:** The elevation drawing was done to represent the grade changes necessary on the civil plans and was done in even block course increments of .667' (8"). Minor field changes may be necessary by the wall installer. Lineal footage may be added or subtracted as needed if the wall's height is equal to or less than the design height. If the wall needs to be raised in height, RA shall be notified and a new structural cross section(s) provided before the wall installer proceeds. The cap height of 333' (4") is not shown on the profile drawing however its height may have been used in some cases to achieve the desired TW elevation.
10. **EMBEDMENT:** 2 blocks from station 0+00 to 0+45, 2 blocks increasing to 3 blocks from 0+45 to 0+72, 3 blocks from 0+72 to 1+37, 3 blocks increasing to 4 blocks from 1+37 to 1+72, 4 blocks from 1+72 to 3+03, 4 blocks decreasing to 3 blocks from 3+03 to 3+51 and 3 blocks decreasing to 2 blocks from 3+51 to 3+98.
11. **CONSTRUCTION OVERSIGHT:** The construction of this wall must be performed under the observation of a District of Columbia Registered Professional Engineer to ensure that it is built in accordance with the RA General Notes and Specifications.
12. **BLOCK SYSTEM:** This design is valid only for the Mesa block system. Each segmental wall system has unique dimensions, connection devices and interacts differently with geogrids; therefore other block types may not be substituted.
13. **TANGENT ANGLE:** The angle point as drawn on the civil plans at station 2+27 should be built as a radius (outside curve) to prevent a vertical joint. The 90° corners at stations 0+45 & 2+55 must be built structural with the blocks interlocked, overlapped and glued.

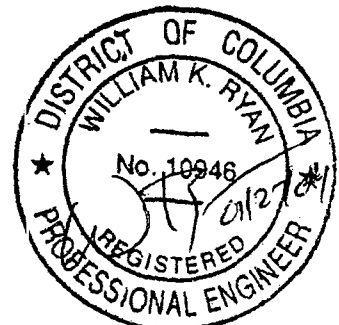
MESA

TYPICAL WALL SECTION



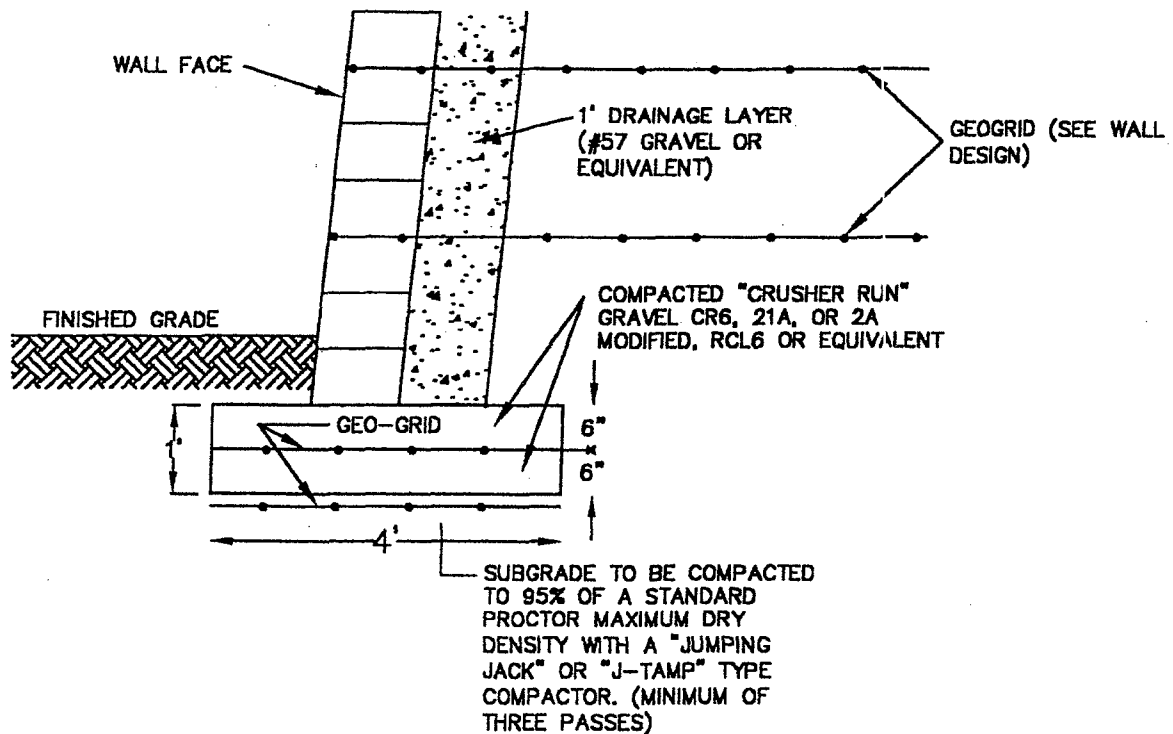
N. T. S.

RYAN & ASSOCIATES— Consulting & Design Engineers
68 West King Street, P.O. Box 6, Shippensburg, PA 17257-0006
PHONE 717-477-8400 FAX 717-477-8410



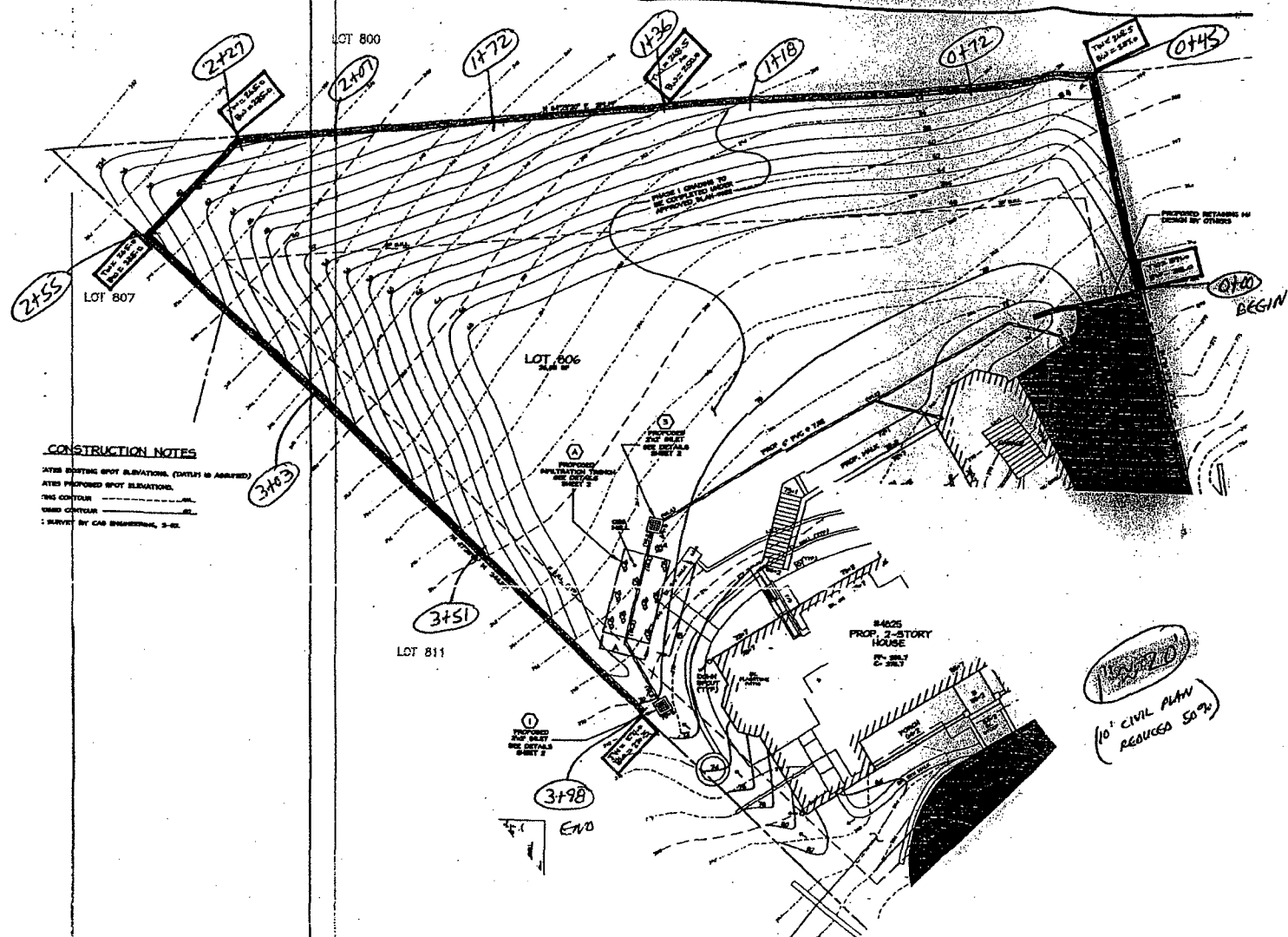
GEOGRID REINFORCED LEVELING PAD

for building segmental retaining walls on fill soils or to enhance the soil's bearing capacity



NOTE: THIS 1' x 4' LEVELING PAD WILL IMPROVE THE SOIL'S BEARING CAPABILITIES BY A MINIMUM OF 1,000 PSF. A 1.5' X 6' LEVELING PAD WILL INCREASE THE SOIL'S BEARING CAPABILITIES BY A MINIMUM OF 2,000 (3 LAYERS OF GEOGRID REQUIRED)

RYAN & ASSOCIATES— *Consulting & Design Engineers*
68 West King Street, P.O. Box 6, Shippensburg, PA 17257-0006
PHONE 717-477-8400 FAX 717-477-8410



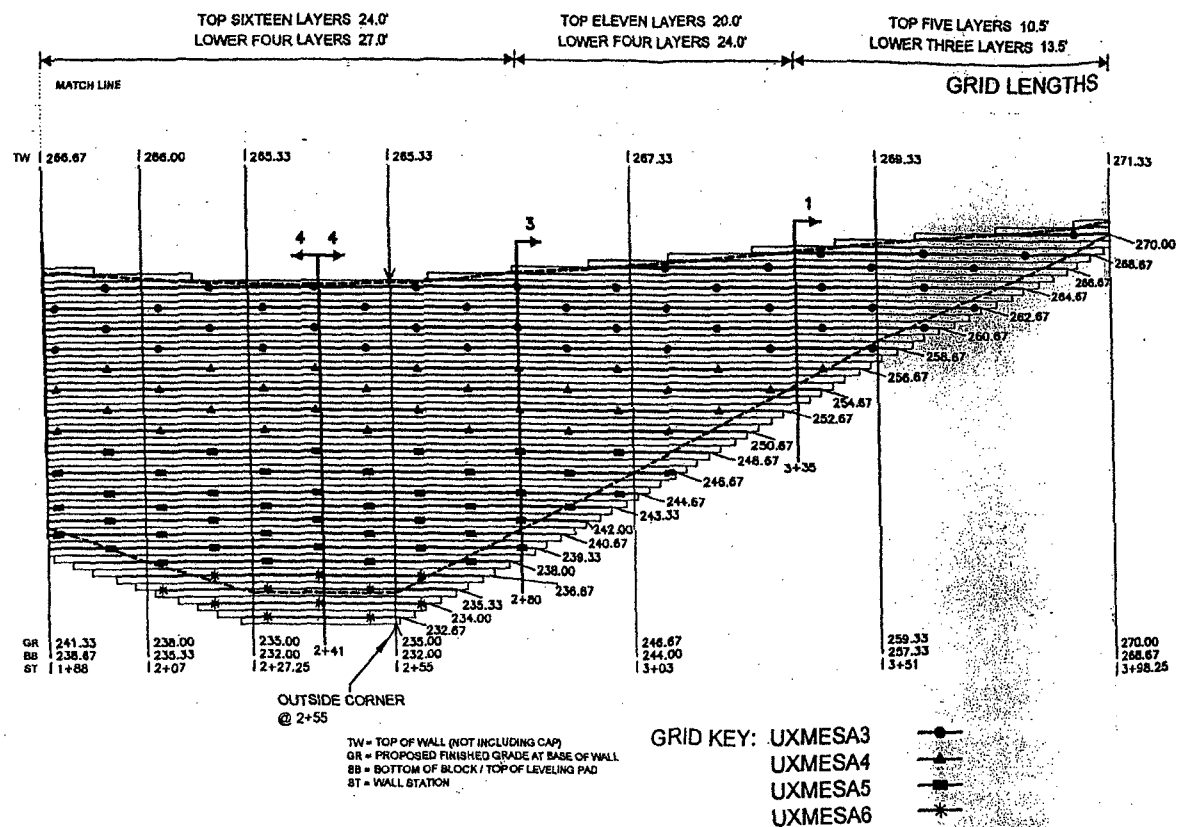
MESA 4.5°

HORIZONTAL SCALE: 1" = 20' VERTICAL SCALE: 1" = 10'



MESA 4.5°

HORIZONTAL SCALE: 1" = 20' VERTICAL SCALE: 1" = 10'



ECONOMIDES RESIDENCE

AASHTO DESIGN METHOD

PROJECT IDENTIFICATION

Title: ECONOMIDES RESIDENCE
Project Number: PA231304
Client: Economides Development, LLC
Designer: DKS
Station Number: 1

Description:

Section #1

SECTION # 1
0+00 to 0+63
3+35 to 3+98

Company's information:

Name: Ryan & Associates
Street: 68 W. King St.
P. O. Box 6
Shippensburg, PA 17257-0006
Telephone #: 717-477-8400
Fax #: 717-477-8410
E-Mail: dstatler_ra@earthlink.net

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Original date and time of creating this file: 01-23-04

PROGRAM MODE:

ANALYSIS
of a SIMPLE STRUCTURE
using GEOGRID as reinforcing material.

SOIL DATA

REINFORCED SOIL

Unit weight, γ 130.0 lb/ft³
 Design value of internal angle of friction, ϕ 28.0 °

RETAINED SOIL

Unit weight, γ 130.0 lb/ft³
 Design value of internal angle of friction, ϕ 28.0 °

FOUNDATION SOIL (Considered as an equivalent uniform soil)

Equivalent unit weight, γ_{equiv} 130.0 lb/ft³
 Equivalent internal angle of friction, ϕ_{equiv} 30.0 °
 Equivalent cohesion, c_{equiv} 0.0 lb/ft²

Characterization of Reinforced soil: Sand, Silt and Clay (SILTY SAND)

Water table does not affect bearing capacity

LATERAL EARTH PRESSURE COEFFICIENTS

K_a (internal stability) = 0.3610 (if batter is less than 10°, K_a is calculated from eq. 15. Otherwise, eq. 38 is utilized)

Inclination of internal slip plane, $\psi = 59.00^\circ$ (see Fig. 28 in DEMO 82).

K_a (external stability) = 0.3656 (if batter is less than 10°, K_a is calculated from eq. 16. Otherwise, eq. 17 is utilized)

BEARING CAPACITY

Bearing capacity coefficients (calculated by MESA): $N_c = 30.14$ $N_\gamma = 22.40$

SEISMICITY

Not Applicable

INPUT DATA: Geometry and Surcharge loads (of a SIMPLE STRUCTURE)

Design height, Hd 15.33 [ft]. { Embedded depth is E = 1.33 ft, and height above top of finished bottom grade is H = 14.00 ft }

Batter, α 4.5 [deg]

NOTE: Specified batter combined with MESA block setback implies the LEVELING PAD is inclined at +0.000° to the horizontal.

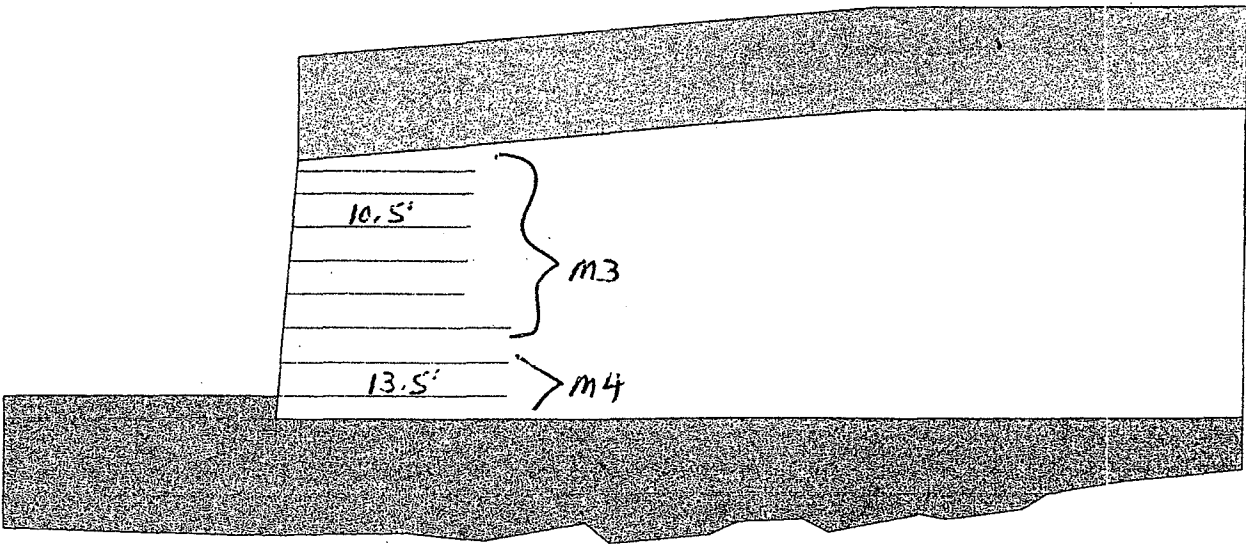
Backslope, β 5.0 [deg]

Backslope rise 3.0 [ft] Broken back equivalent angle, I = 5.00° (see Fig. 25 in DEMO 82)

UNIFORM SURCHARGE

Uniformly distributed dead load is 0.0 [lb/ft ²], and live load is 120.0 [lb/ft ²]

ANALYZED REINFORCEMENT LAYOUT:



SCALE:

0 2 4 6 8 10 [ft]

Efficiency: Grid strength static = 63% Efficiency: Connection strength static = 60%

ANALYSIS: CALCULATED FACTORS (Static conditions)

Bearing capacity, $F_s = 6.96$, Foundation Interface: F_s -direct sliding = 2.039, Eccentricity, $e/L = 0.0726$.

GEOGRID				CONNECTION			Geogrid strength F_s	Pullout resistance F_s	Direct sliding F_s	Eccentricity e/L
Elev. [ft]	Length [ft]	Type	Rc	F_s -overall [pullout resistance]	F_s -overall [connection break]	F_s -overall [geogrid strength]				
1.33	13.50	MESA4	1.00	1.51	1.67	1.59	1.595	8.717	1.757	0.0587
3.33	13.50	MESA4	1.00	2.04	2.27	2.16	2.158	9.440	1.985	0.0401
5.33	13.50	MESA3	1.00	1.59	1.67	1.59	1.586	8.552	2.278	0.0239
7.33	10.50	MESA3	1.00	1.93	2.02	1.92	1.924	5.198	2.147	0.0289
9.33	10.50	MESA3	1.00	2.45	2.57	2.44	2.445	4.309	2.606	0.0101
11.33	10.50	MESA3	1.00	3.36	3.52	3.35	3.351	3.403	3.292	-0.0067
13.33	10.50	MESA3	1.00	6.09	6.39	6.08	6.084	2.796	4.357	-0.0277
14.67	10.50	MESA3	1.00	13.23	13.87	13.21	13.208	2.567	5.108	-0.0673

ECONOMIDES RESIDENCE

AASHTO DESIGN METHOD

PROJECT IDENTIFICATION

Title: ECONOMIDES RESIDENCE
Project Number: PA231304
Client: Economides Development, LLC
Designer: DKS
Station Number: 2

Description:

Section #2

SECTION #2

0+63 to 1+18

Company's information:

Name: Ryan & Associates
Street: 68 W. King St.
P. O. Box 6
Shippensburg, PA 17257-0006
Telephone #: 717-477-8400
Fax #: 717-477-8410
E-Mail: dstatler_ra@earthlink.net

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Original date and time of creating this file: 01-23-04

PROGRAM MODE:

ANALYSIS
of a SIMPLE STRUCTURE
using GEOGRID as reinforcing material.

SOIL DATA

REINFORCED SOIL

Unit weight, γ 130.0 lb/ft³
Design value of internal angle of friction, ϕ 28.0 °

RETAINED SOIL

Unit weight, γ 130.0 lb/ft³
Design value of internal angle of friction, ϕ 28.0 °

FOUNDATION SOIL (Considered as an equivalent uniform soil)

Equivalent unit weight, γ_{equiv} 130.0 lb/ft³
Equivalent internal angle of friction, ϕ_{equiv} 30.0 °
Equivalent cohesion, c_{equiv} 0.0 lb/ft²

Characterization of Reinforced soil: Sand, Silt and Clay (SILTY SAND)

Water table does not affect bearing capacity

LATERAL EARTH PRESSURE COEFFICIENTS

K_a (internal stability) = 0.3610 (if batter is less than 10°, K_a is calculated from eq. 15. Otherwise, eq. 38 is utilized)

Inclination of internal slip plane, $\psi = 59.00^\circ$ (see Fig. 28 in DEMO 82).

K_a (external stability) = 0.3649 (if batter is less than 10°, K_a is calculated from eq. 16. Otherwise, eq. 17 is utilized)

BEARING CAPACITY

Bearing capacity coefficients (calculated by MESA): $N_c = 0.00$

$N_\gamma = 10.00$

SEISMICITY

Not Applicable

INPUT DATA: Geometry and Surcharge loads (of a SIMPLE STRUCTURE)

Design height, Hd 18.67 [ft] { Embedded depth is E = 2.00 ft, and height above top of finished bottom grade is H = 16.67 ft }

Batter, ω 4.5 [deg]

NOTE: Specified batter combined with MESA block setback implies the LEVELING PAD is inclined at +0.000° to the horizontal.

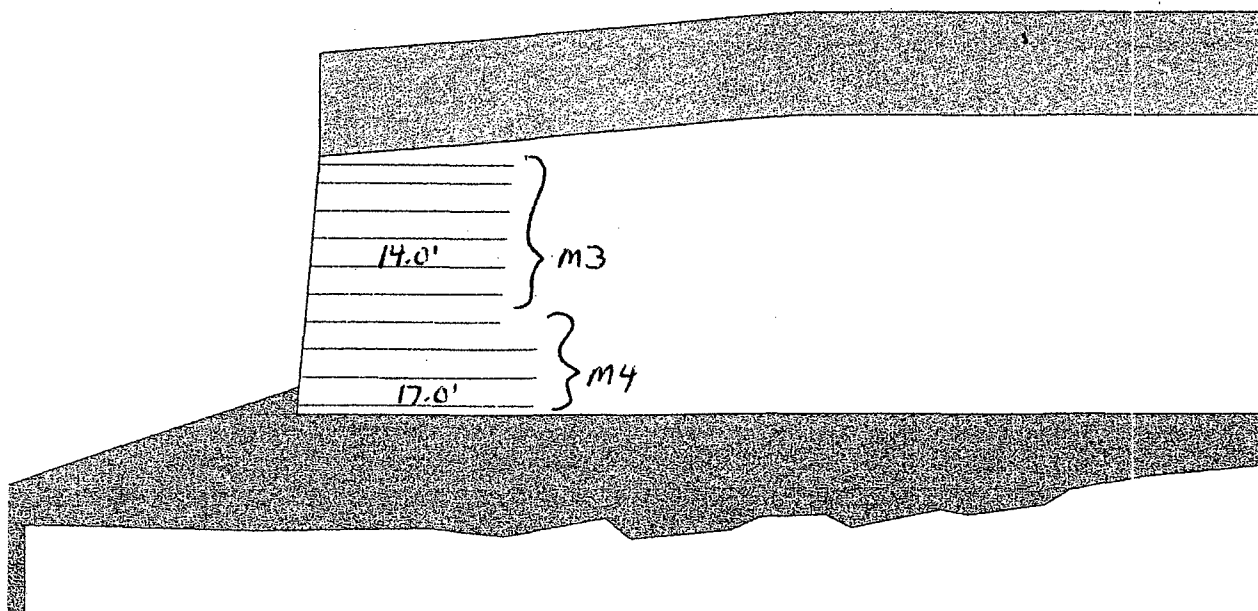
Backslope, β 5.0 [deg]

Backslope rise 3.0 [ft] Broken back equivalent angle, I = 4.59° (see Fig. 25 in DEMO 82)

UNIFORM SURCHARGE

Uniformly distributed dead load is 0.0 [lb/ft²], and live load is 120.0 [lb/ft²]

ANALYZED REINFORCEMENT LAYOUT:



SCALE:

0 2 4 6 8 10 [ft]

Efficiency: Grid strength static = 68% Efficiency: Connection strength static = 64%

ANALYSIS: CALCULATED FACTORS (Static conditions)

Bearing capacity, $F_s = 3.33$, Foundation Interface: F_s -direct sliding = 2.140, Eccentricity, $e/L = 0.0651$.

GEOGRID				CONNECTION			Geogrid strength F_s	Pullout resistance F_s	Direct sliding F_s	Eccentricity e/L
Elev. [ft]	Length [ft]	Type	R_c	F_s -overall [pullout resistance]	F_s -overall [connection break]	F_s -overall [geogrid strength]				
0.67	17.00	MESA4	1.00	1.70	1.88	1.79	1.792	16.058	1.765	0.0597
2.67	17.00	MESA4	1.00	1.56	1.73	1.65	1.651	12.706	1.944	0.0446
4.67	17.00	MESA4	1.00	1.77	1.96	1.87	1.866	11.840	2.162	0.0311
6.67	14.00	MESA4	1.00	2.03	2.25	2.14	2.142	8.440	2.050	0.0367
8.67	14.00	MESA3	1.00	1.57	1.65	1.57	1.572	7.558	2.352	0.0215
10.67	14.00	MESA3	1.00	1.91	2.00	1.90	1.903	6.671	2.750	0.0081
12.67	14.00	MESA3	1.00	2.42	2.53	2.41	2.411	5.771	3.301	-0.0040
14.67	14.00	MESA3	1.00	3.29	3.45	3.29	3.289	4.846	4.096	-0.0167
16.67	14.00	MESA3	1.00	5.94	6.22	5.93	5.927	4.417	5.252	-0.0372
18.00	14.00	MESA3	1.00	12.54	13.15	12.52	12.521	4.595	5.953	-0.0788

ECONOMIDES RESIDENCE

AASHTO DESIGN METHOD

PROJECT IDENTIFICATION

Title: ECONOMIDES RESIDENCE
Project Number: PA231304
Client: Economides Development, LLC
Designer: DKS
Station Number: 3

Description:

Section #3

SECTION #3

H-18 to I+88
2+80 to 3+35

Company's information:

Name: Ryan & Associates
Street: 68 W. King St.
P. O. Box 6
Shippensburg, PA 17257-0006
Telephone #: 717-477-8400
Fax #: 717-477-8410
E-Mail: dstatler_ra@earthlink.net

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Original date and time of creating this file: 01-23-04

PROGRAM MODE:

ANALYSIS
of a SIMPLE STRUCTURE
using GEOGRID as reinforcing material.

SOIL DATA

REINFORCED SOIL

Unit weight, γ 130.0 lb/ft³
Design value of internal angle of friction, ϕ 28.0 °

RETAINED SOIL

Unit weight, γ 130.0 lb/ft³
Design value of internal angle of friction, ϕ 28.0 °

FOUNDATION SOIL (Considered as an equivalent uniform soil)

Equivalent unit weight, γ_{equiv} 130.0 lb/ft³
Equivalent internal angle of friction, ϕ_{equiv} 30.0 °
Equivalent cohesion, c_{equiv} 0.0 lb/ft²

Characterization of Reinforced soil: Sand, Silt and Clay (SILTY SAND)

Water table does not affect bearing capacity

LATERAL EARTH PRESSURE COEFFICIENTS

K_a (internal stability) = 0.3610 (if batter is less than 10°, K_a is calculated from eq. 15. Otherwise, eq. 38 is utilized)

Inclination of internal slip plane, $\psi = 59.00^\circ$ (see Fig. 28 in DEMO 82).

K_a (external stability) = 0.3627 (if batter is less than 10°, K_a is calculated from eq. 16. Otherwise, eq. 17 is utilized)

BEARING CAPACITY

Bearing capacity coefficients (calculated by MESA): $N_c = 0.00$

$N_\gamma = 10.00$

SEISMICITY

Not Applicable

INPUT DATA: Geometry and Surcharge loads (of a SIMPLE STRUCTURE)

Design height, Hd 28.00 [ft] { Embedded depth is E = 2.67 ft, and height above top of finished bottom grade is H = 25.33 ft }

Batter, ω 4.5 [deg]

NOTE: Specified batter combined with MESA block setback implies the LEVELING PAD is inclined at +0.000° to the horizontal.

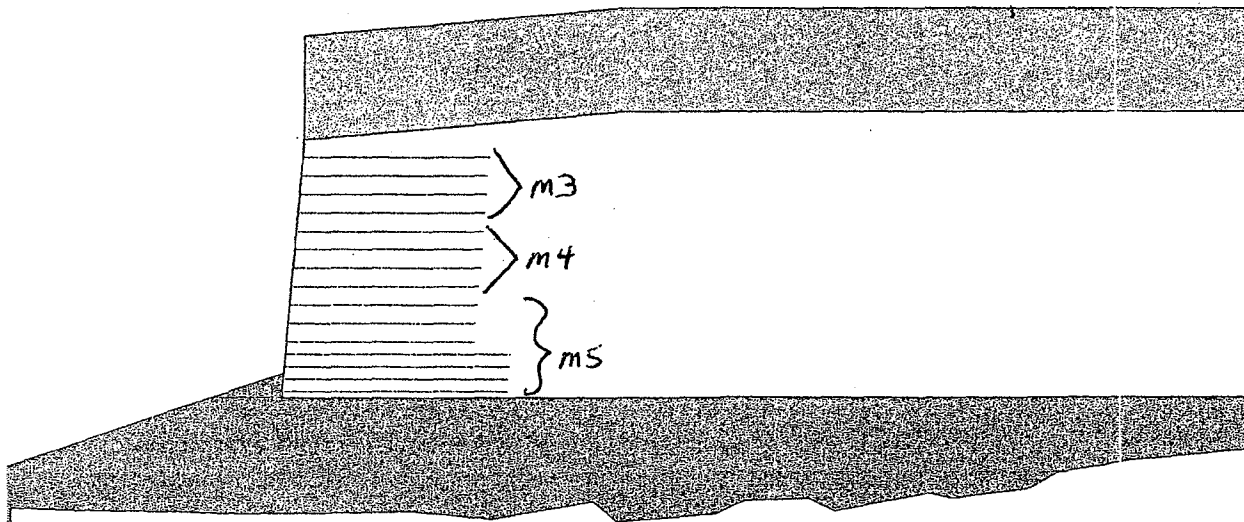
Backslope, β 5.0 [deg]

Backslope rise 3.0 [ft] Broken back equivalent angle, I = 3.07° (see Fig. 25 in DEMO 82)

UNIFORM SURCHARGE

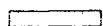
Uniformly distributed dead load is 0.0 [lb/ft²], and live load is 120.0 [lb/ft²]

ANALYZED REINFORCEMENT LAYOUT:



SCALE:

0 2 4 6 8 10 [ft]



ECONOMIDES RESIDENCE

AASHTO DESIGN METHOD

PROJECT IDENTIFICATION

Title: ECONOMIDES RESIDENCE
Project Number: PA231304
Client: Economides Development, LLC
Designer: DKS
Station Number: 4

Description:

Section #4

SECTION #4

1+88 to 2+80

Company's information:

Name: Ryan & Associates
Street: 68 W. King St.
P. O. Box 6
Shippensburg, PA 17257-0006
Telephone #: 717-477-8400
Fax #: 717-477-8410
E-Mail: dstatler_ra@earthlink.net

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Original date and time of creating this file: 01-23-04

PROGRAM MODE:

ANALYSIS
of a SIMPLE STRUCTURE
using GEOGRID as reinforcing material.

SOIL DATA

REINFORCED SOIL

Unit weight, γ 130.0 lb/ft³
Design value of internal angle of friction, ϕ 28.0 °

RETAINED SOIL

Unit weight, γ 130.0 lb/ft³
Design value of internal angle of friction, ϕ 28.0 °

FOUNDATION SOIL (Considered as an equivalent uniform soil)

Equivalent unit weight, γ_{equiv} 130.0 lb/ft³
Equivalent internal angle of friction, ϕ_{equiv} 30.0 °
Equivalent cohesion, c_{equiv} 0.0 lb/ft²

Characterization of Reinforced soil: Sand, Silt and Clay (SILTY SAND)
Water table does not affect bearing capacity

LATERAL EARTH PRESSURE COEFFICIENTS

K_a (internal stability) = 0.3610 (if batter is less than 10°, K_a is calculated from eq. 15. Otherwise, eq. 38 is utilized)
Inclination of internal slip plane, $\psi = 59.00^\circ$ (see Fig. 28 in DEMO 82).
 K_a (external stability) = 0.3622 (if batter is less than 10°, K_a is calculated from eq. 16. Otherwise, eq. 17 is utilized)

BEARING CAPACITY

Bearing capacity coefficients (calculated by MESA): $N_c = 0.00$ $N_\gamma = 10.00$

SEISMICITY

Not Applicable

INPUT DATA: Geometry and Surcharge loads (of a SIMPLE STRUCTURE)

Design height, Hd 33.34 [ft] { Embedded depth is E = 2.67 ft, and height above top of finished bottom grade is H = 30.67 ft }

Batter, ω 4.5 [deg]

NOTE: Specified batter combined with MESA block setback implies the LEVELING PAD is inclined at $+0.000^\circ$ to the horizontal.

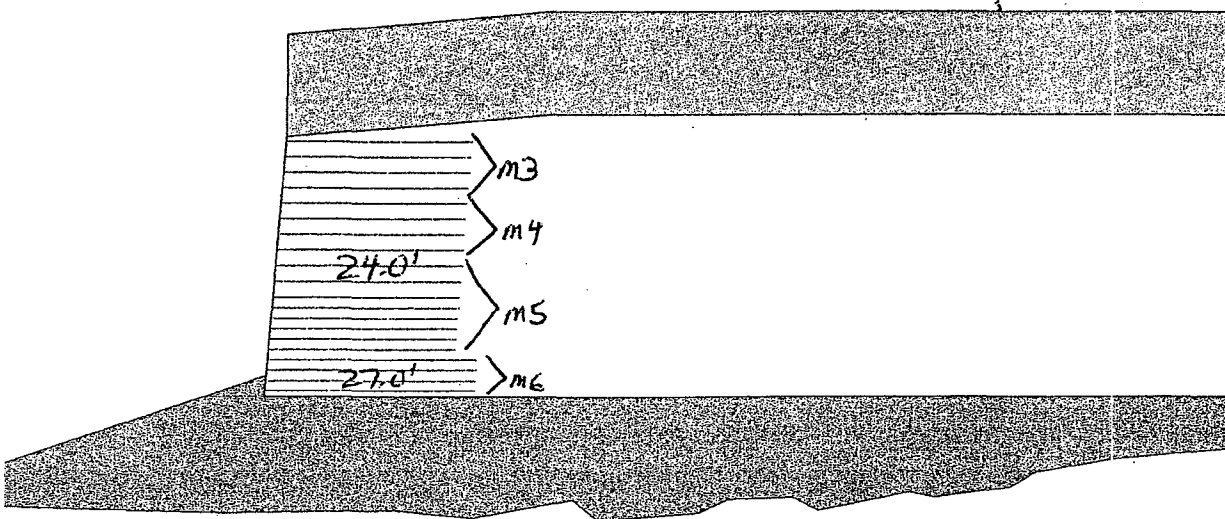
Backslope, β 5.0 [deg]

Backslope rise 3.0 [ft] Broken back equivalent angle, $I = 2.58^\circ$ (see Fig. 25 in DEMO 82)

UNIFORM SURCHARGE

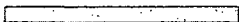
Uniformly distributed dead load is 0.0 [lb/ft²], and live load is 120.0 [lb/ft²]

ANALYZED REINFORCEMENT LAYOUT:



SCALE:

0 5 10 15 20 25 30 [ft]



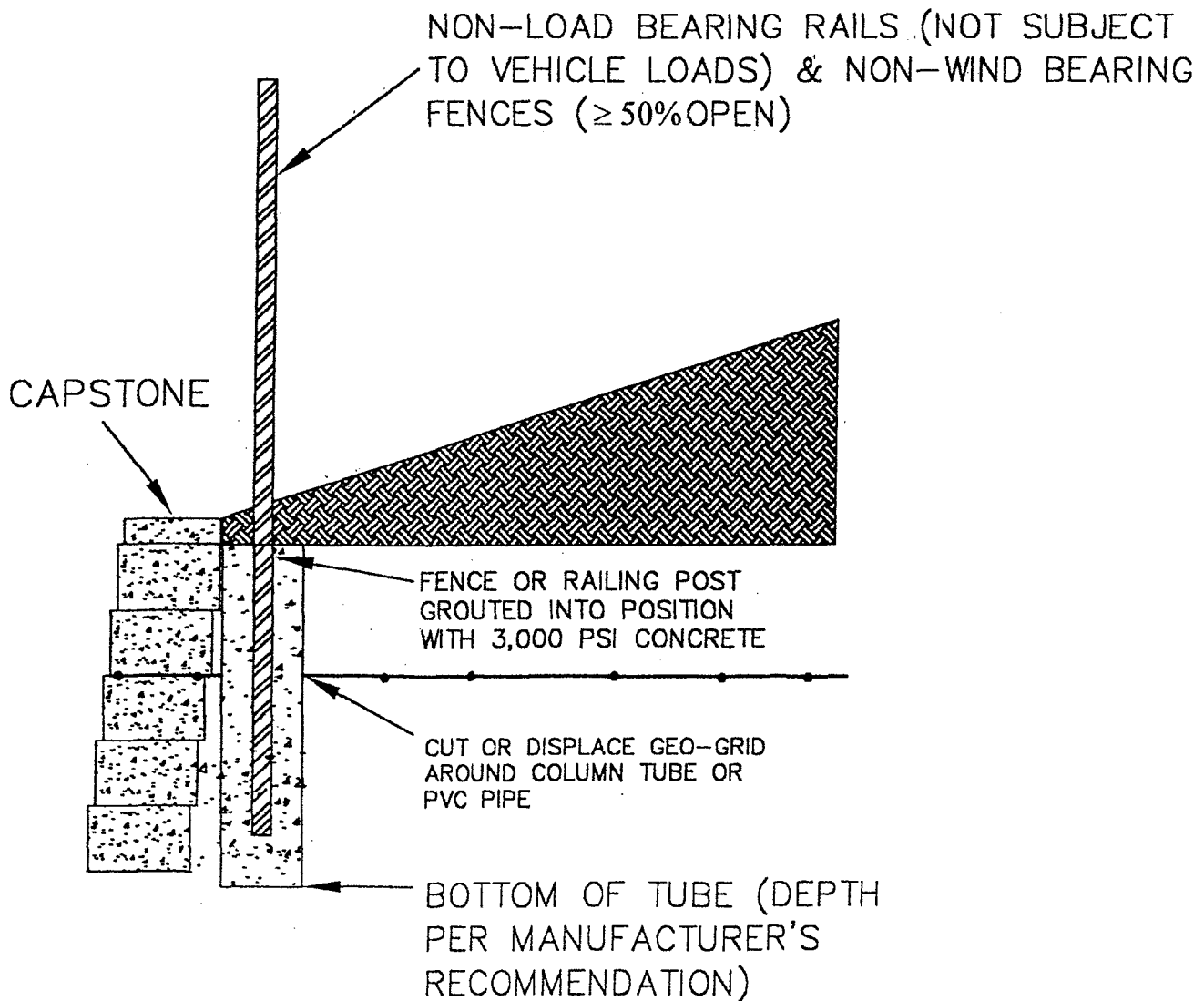
Efficiency: Grid strength static = 69% Efficiency: Connection strength static = 66%

ANALYSIS: CALCULATED FACTORS (Static conditions)

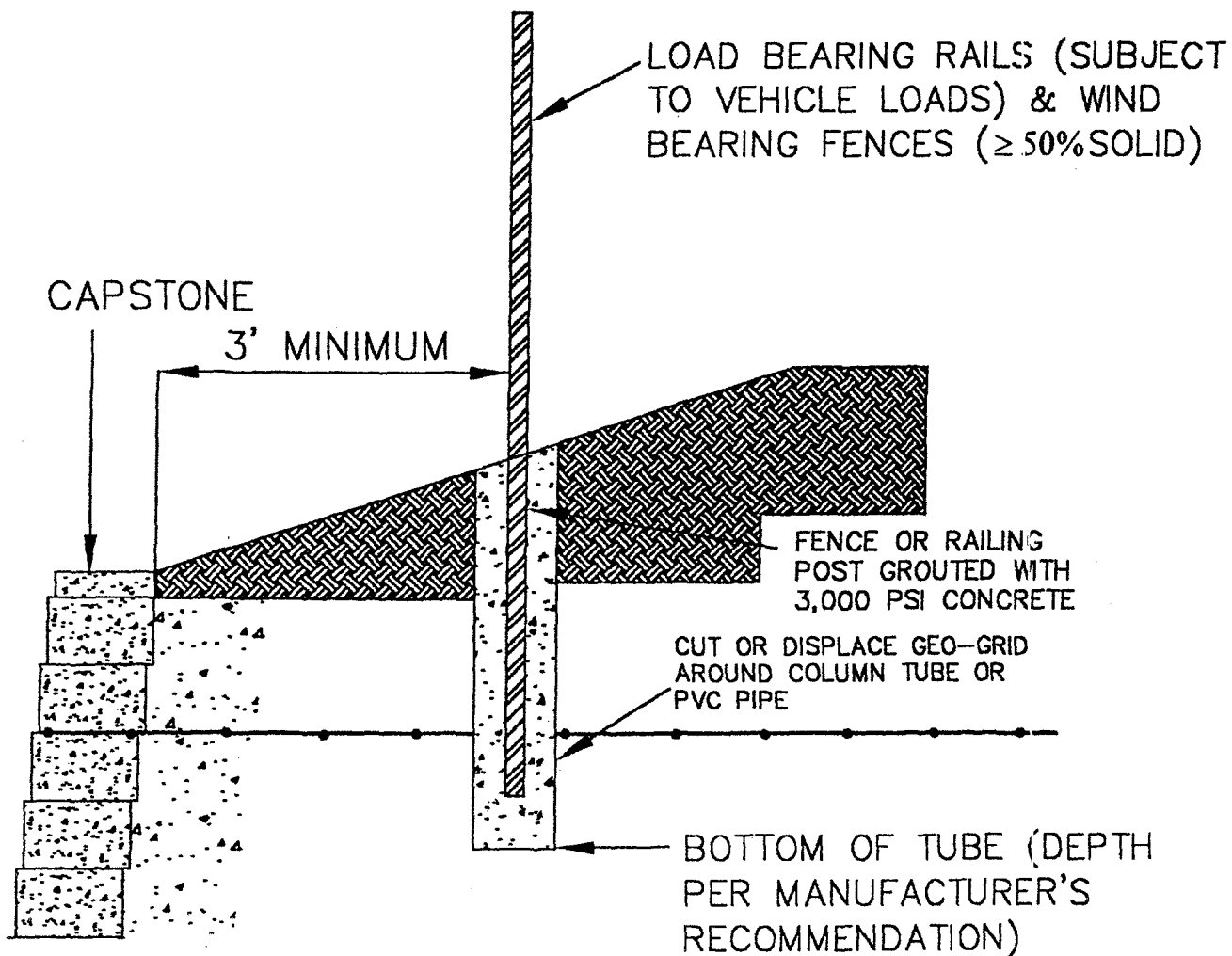
Bearing capacity, $F_s = 2.78$, Foundation Interface: F_s -direct sliding = 1.983, Eccentricity, $e/L = 0.0846$.

GEOGRID				CONNECTION			Geogrid strength F_s	Pullout resistance F_s	Direct sliding F_s	Eccentricity e/L
Elev. [ft]	Length [ft]	Type	Rc	F_s -overall [pullout resistance]	F_s -overall [connection break]	F_s -overall [geogrid strength]				
0.67	27.00	MESA6	1.00	2.10	2.09	1.99	1.991	32.033	1.615	0.0818
2.00	27.00	MESA6	1.00	2.19	2.18	2.07	2.073	31.875	1.676	0.0743
3.33	27.00	MESA6	1.00	2.28	2.26	2.15	2.154	31.319	1.741	0.0671
4.67	27.00	MESA6	1.00	2.38	2.36	2.25	2.248	30.546	1.812	0.0602
6.00	24.00	MESA5	1.00	1.89	2.03	1.94	1.937	25.927	1.693	0.0721
7.33	24.00	MESA5	1.00	1.97	2.12	2.02	2.021	24.978	1.768	0.0642
8.67	24.00	MESA5	1.00	2.07	2.23	2.12	2.123	24.106	1.850	0.0566
10.00	24.00	MESA5	1.00	2.18	2.36	2.24	2.243	23.328	1.940	0.0494
11.33	24.00	MESA5	1.00	2.30	2.48	2.36	2.359	22.374	2.038	0.0426
12.67	24.00	MESA5	1.00	1.96	2.11	2.01	2.012	17.317	2.147	0.0361
14.67	24.00	MESA5	1.00	1.78	1.92	1.83	1.829	13.489	2.332	0.0270
16.67	24.00	MESA5	1.00	1.97	2.13	2.03	2.026	12.624	2.550	0.0187
18.67	24.00	MESA4	1.00	1.65	1.83	1.74	1.740	11.749	2.811	0.0110
20.67	24.00	MESA4	1.00	1.87	2.08	1.98	1.978	10.883	3.128	0.0038
22.67	24.00	MESA4	1.00	2.17	2.41	2.29	2.292	10.015	3.522	-0.0031
24.67	24.00	MESA4	1.00	2.58	2.86	2.72	2.723	9.147	4.021	-0.0100
26.67	24.00	MESA3	1.00	2.10	2.20	2.10	2.098	8.266	4.671	-0.0177
28.67	24.00	MESA3	1.00	2.74	2.87	2.73	2.732	7.390	5.534	-0.0277
30.67	24.00	MESA3	1.00	3.92	4.11	3.92	3.917	6.504	6.661	-0.0455
32.67	24.00	MESA3	1.00	7.80	8.18	7.79	7.788	6.287	7.606	-0.1007

NON-LOAD BEARING & NON-WIND BEARING FENCE AND RAILING DETAIL (INSTALLED BEHIND WALL)



LOAD BEARING & WIND BEARING FENCE AND RAILING DETAIL (INSTALLED BEHIND WALL)



SPECIFICATIONS FOR SEGMENTAL RETAINING WALL SYSTEMS

PART 1: GENERAL

1.01 Description

- A. Work includes furnishing and installing segmental retaining wall (SRW) Units to the lines and grades designated on the Final Design prepared by Ryan & Associates (RA). Also included are furnishing and installing appurtenant materials required for construction of the retaining wall as shown on the RA Final Design.

1.02 Reference Standards

- A. **ASTM C 140-** Sampling and Testing Concrete Masonry Units
- B. **ASTM D 4595-** Tensile Properties of Geotextiles by the Wide-Width Strip Method.
- C. **ASTM D 5262-** Test Method for Evaluating the Unconfined Creep Behavior of Geo- Grids
- D. **GRI:GG1-** Single Rib Geogrid Tensile Strength
- E. **GRI:GG5-** Geogrid Pullout
- F. **ASTM D 698-** Moisture Density Relationship for Soils, Standard Method
- G. **ASTM D 422-** Gradation of Soils
- H. **ASTM 4318-** Atterberg Limits of Soil
- I. **ASTM 3034-** Specification for Polyvinyl Chloride (PVC) Plastic Pipe
- J. **ASTM D 1248-** Specification for Corrugated Plastic Pipe

1.03 Design Standards

- A. The following factors of safety must have been met in this design: Sliding 1.5, Overturning 2.0, Bearing Capacity 2.0, Geogrid Overstress 1.5, Geogrid Connection (between the block and the geogrid) and Geogrid Pullout 1.5 (from the block and from the soil).

PART 2: MATERIALS & DESIGN PARAMETERS

2.01 Segmental Retaining Wall Units

- A. SRW Units shall be machine formed, Portland Cement concrete blocks specifically designed for retaining wall applications. The SRW Unit currently approved for this project is:

Mesa as manufactured by York Building Products

NOTE: Where Mesa specifications and reference documents conflict with these specifications, the RA specifications hold precedence.

- B. SRW Units shall be sound and free of cracks or other defects that would interfere with the proper placing of the units or significantly impair the strength or permanence of the structure. Cracking or excessive chipping may be grounds for rejection. Units showing cracks longer than 1/2 inch shall not be used within the wall. Units showing chips visible at a distance of 30 feet from the wall shall not be used within the wall.
- C. Concrete used to manufacture SRW Units shall have a minimum 28 days compressive strength of 3,000 PSI and a maximum moisture absorption rate, by weight, of 8% as determined in accordance with ASTM C 140. Compressive strength test specimens shall conform to the saw-cut coupon provisions of Section 5.2.4 of ASTM C 140 with the following exception: Coupon shall be taken from the least dimension of the unit of a size and shape representing the geometry of the unit as a whole.
- D. SRW Units molded dimensions shall not differ more than $\pm 1/8$ inch from that specified, except height which shall be $\pm 1/16$ inch as measured in accordance with ASTM C 140.

2.02 Geosynthetic Reinforcement

- A. Geosynthetic reinforcement shall consist of geogrids as indicated on the RA Final Design. No geogrid substitutions shall be permitted without the prior approval of RA (a partial redesign may be necessary if geogrids are substituted). NOTE: it is always acceptable to substitute a higher strength geogrid (of the same manufacturer) for a lower strength geogrid.

2.03 Connectors

- A. Connectors shall be Mesa high-density polyethylene with fiberglass inclusions as manufactured by Tensar. The connectors may be placed in two manners: one position provides a 4.5° wall batter (setback of 5/8" per block course) and the other position provides a 0.5° near vertical batter (setback of 1/16" per block course). The design batter of the wall(s) for this project should be listed in the RA General Notes. It is always acceptable to change an RA Final Design from the 0.5° batter to the 4.5° batter since it is more conservative (yields higher factors of safety); however the cross sections will need to be revised (partial redesign is necessary) to change from the 4.5° batter to 0.5°.

2.04 Leveling Pad

- A. Material for the leveling pad shall consist 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.

2.05 Drainage Aggregate

- A. Drainage aggregate shall be clean angular gravel (#57 or equivalent) with a size of 1/2 inch to 1 1/2 inches and less than 10% fines (passing the #200 sieve). Rounded "pea gravel" type aggregate is not permissible since it does not have the necessary frictional properties. Recycled gravel may be used if it meets the above criterion.

2.06 Drainage Pipe

- A. The drainage collection pipe shall be a 4 inch perforated or slotted PVC or corrugated HDPE pipe.

2.07 Infill Soil: within the reinforced geogrid zone

- A. The soils used must meet or exceed the friction angle stated in the RA Final Design (in the General Notes, on the typical wall section and on the structural cross sections). The reinforced material shall be free of debris and organic material (i.e.- no plants, roots, sod, top soil, trash, wood, etc.). The infill soil shall not consist of CH (fat clay), MH (elastic silt) or OH/ OL/ PT (organic) soils.
- B. Rocks may be used as infill material as long as they have a maximum size of 6 inches and a mean diameter of 3 inches. Recycled concrete is permissible for infill except with certain polyester geogrids in water applications. In the case of water applications the geogrid manufacturer shall be consulted to see if the alkali in the recycled material will cause corrosive damage to their geogrid.
- C. Select gravel (classified by USCS as GP or GW) is normally an acceptable substitution in the event suitable soils (those meeting RA's and the site geotechnical engineer's requirements) are not readily available. However, the unit weights of gravel can vary widely (clean gravel is typically 105 PCF and "crusher run" gravel is typically 135 PCF) so RA must be notified so that revised sections can be run prior to making any substitutions. In some cases clean gravel actually requires longer geogrid because of its extremely light unit weight (typically 105 PCF).

2.08 Retained Soil: the area beyond the infill soil and extending to a distance that is twice the wall's exposed height

- A. This soil must meet or exceed the friction angle stated in the RA Final Design (in the General Notes, on the typical wall section and on the structural cross sections). This soil must be virgin (natural

undisturbed with blow counts ≥ 12) or suitable fill (friction angle $\geq$ the RA Final Design requirement) compacted to 95% of a standard proctor maximum dry density.

2.09 Foundation Soil: the soil under the wall's gravel leveling pad and the soil under the reinforced geogrid zone

- A. The foundation soil must meet or exceed the minimum allowable bearing capacity stated in the RA Final Design (in the General Notes and on the typical wall section). The sub-grade must be virgin (natural undisturbed soil with blow counts ≥ 12) or suitable fill (friction angle $\geq$ the RA Final Design requirement) compacted to 95% of a standard proctor maximum dry density. If highly plastic soils (CH or MH) or organic soils (OH, OL, or PT) are encountered in the sub-grade they must be removed and replaced with suitable soil or gravel that is placed in controlled lifts and compacted to 95% of a standard proctor maximum dry density. If the organic or plastic soils extend so deep that they cannot be totally removed, they shall be undercut a minimum of 4' and replaced with suitable soils or gravel.

2.10 Soil Investigation

- A. RA recommends that every retaining wall design be preceded by an in-situ soil investigation by a licensed geotechnical engineer. However, if the owner and/or wall installer elects not to have an investigation conducted RA may assume soil design parameters based on: published data by the Soil Conservation Service (soil maps), a verbal description by the owner and/or wall installer or by RA's previous experience in certain geographic areas. It must be understood that the owner and/or wall installer bears full responsibility to the election not to have a soil investigation performed.

2.11 Site History & Information

- A. Many factors other than soil information affect the performance and design of the retaining wall. RA relies on information provided by the owner and/or wall installer when designing a retaining wall. RA bears no responsibility if the owner and/or wall installer omit critical information required to properly design the wall. Information critical to wall design from the site consist of: topographic features (such as slopes), soil types, utilities, storm water management, structures (including buildings, other existing or proposed walls, swimming pools, etc.), site geological phenomenon, groundwater, loads with the wall's zone of influence (such as driveways, patios, roadways, sidewalks, etc.) and any other readily known site factors that could potentially impact the RA Final Design.

PART 3: CONSTRUCTION

3.01 Inspection

- A. RA considers all retaining walls to be critical structures, meaning most walls require a considerable financial investment by the owner and failure of a wall will negatively impact a property both financially and from a public safety perspective. The owner or owner's representative is responsible for verifying that the wall installer meets all of the requirements of the RA Final Design (as stated in these specifications and the project's General Notes). This includes all submittals for materials and design, qualifications and proper installation of the wall system. All walls with an exposed height of 6 feet or greater must have the construction certified by a licensed geotechnical/ structural engineer registered in the jurisdiction of the project. Additionally, after the wall has been completed it is highly recommended that it be surveyed to establish the wall's current horizontal and vertical alignment.
- B. The wall installer's field construction supervisor shall have demonstrated experience and be qualified to direct all work at the site.
- C. RA provides construction review on some retaining wall projects. RA verifies general compliance with the RA Final Design; however, it is the wall installer's ultimate responsibility to construct the structure properly in accordance with the RA Final Design. RA's liability is limited to the amount of our fees for the scope of work provided for the wall designs and construction oversight.

3.02 Excavation

- A. The wall installer shall excavate to the lines and grades shown on the RA Final Design and the project's civil plans. The wall installer shall take precautions to minimize over-excavation. Over-excavation shall be filled with compacted soil (friction angle $\geq$ RA design parameters) or gravel as directed by the site geotechnical engineer.
- B. The wall installer shall verify the location of existing structures and utilities prior to excavation. The wall installer shall ensure that all surrounding structures are protected from the effects of wall excavation. Excavation support (shoring), if required, is the responsibility of the wall installer. All excavation must be conducted in accordance with OSHA (federal) and state safety regulations. All work to construct the wall must be in accordance with 29CFR1926 sub-part P (OSHA Excavation Safety Requirements).

3.03 Foundation Preparation

- A. Following excavation, the foundation soils (under the wall's gravel leveling pad and under the wall's reinforced geogrid zone) shall be examined by the site geotechnical engineer to assure that the actual foundation soil strength meets or exceeds the minimum allowable bearing capacity in the RA Final Design (stated in the General Notes and shown on the typical wall section). Soils that do not meet the required strength shall be removed and replaced with approved select structural fill or gravel and be compacted to 95% of a standard proctor maximum dry density for the full depth.
- B. In cases of poor bearing capacity or fill soils, an enlarged geogrid reinforced leveling pad may be required. This typically consists of a 1 foot deep X 4 foot wide leveling pad with geogrid under (on the sub-grade) and within the gravel (6 inches above the sub-grade). The sub-grade must be compacted with a "J-Tamp" or "Jumping Jack" type compactor with a minimum of three passes prior to geogrid placement. These extra measures will increase the soil's bearing capacity by a minimum of 1,000 PSF (RA shall be consulted if the soil's bearing capacity needs to be increased by more than 1,000 PSF).

3.04 Leveling Pad Construction

- A. The leveling pad shall be placed so that its top elevation is the same as the bottom of block ("BB") elevation on the RA Final Design profile drawing. It shall have a minimum thickness of 6 inches and a minimum width of 2 feet. The leveling pad should, at a minimum, extend laterally at least a distance of 6 inches from the toe and heel of the lower most SRW Unit.
- B. The leveling pad material shall be compacted to 95% of a standard proctor maximum dry density with a vibratory plate compactor to provide a firm level-bearing surface on which to place the first course of SRW Units. A thin layer (not to exceed 1/2 inch) of well-graded sand or stone dust may be used to smooth the top of the leveling pad.

3.05 SRW Unit Installation

- A. All SRW Units shall be installed at the proper elevation and orientation as shown on the RA Final Design profile drawing and in conjunction with the project's civil plans. The SRW Units shall be installed in general accordance with the manufacturer's recommendations (RA's Final Design shall govern in any conflict between the two requirements).
- B. The first course of SRW Units shall be placed on the leveling pad. The units shall be leveled side-to-side, front-to-rear and with adjacent units, and aligned to ensure intimate contact with the leveling pad. The first course is the most important for accurate and acceptable results. Alignment may be done by means of a string line or an offset from the base line to the backs of the blocks. SRW units shall have a minimum 4 inch overlap of units on each successive course so that the wall is interlocked and continuous. No horizontal gaps greater than 1/4 inch between the faces of adjacent units are permitted.
- C. Because the wall has a setback, its batter must be predetermined during the stake out process by the civil engineer/surveyor and wall installer. If there are critical dimensions that must be met on the high side of the wall then the base (at the toe) will need to be moved forward to compensate.

- D. Lay out of curves and corners shall be installed in accordance with the civil plans and the RA Final Design. Construction techniques for curves and corners shall be in general accordance with the SRW manufacturer's installation guidelines. In general, all tangent angles shown on the civil drawings should be changed into curves to enhance the wall's strength and appearance. Continuous vertical joints are not recommended. Inside and outside 90° corners may be constructed without compromising the wall's integrity if they are properly interlocked. Inside corners should be constructed so that the SRW Units interlock (according to manufacturer's recommendations) and outside corners should incorporate special corner blocks when possible. If special outside corner blocks are not available from the block manufacturer for this project then the manufacturer's guidelines for building structural outside corners shall be followed. If gluing is necessary only industrial grade adhesives or sealants designed for concrete-to-concrete applications may be used (adhesives designed for plastic or wood applications are not acceptable).
- E. Clean all excess debris from the tops of the SRW Units and install the next course.
- F. Repeat procedures to extent of wall height.
- G. A $\pm 2^\circ$ tolerance is permitted horizontally for wall batter (block setback). In no case shall a wall go beyond vertical (have a negative batter). Walls shall be built level (not with grade), however a ± 1.5 inch tolerance over a 10 foot distance is permitted vertically (as checked from left to right along the wall).
- H. Embedment shall be a minimum of 1 inch buried for every 1 foot of wall exposed with one block minimum when the front slope is 4:1 or greater (more level). Walls constructed on 3:1 front slopes or less (more steep) require additional buried blocks. See the profile drawing in the RA Final Design for the exact amount of embedment (the amount of buried block can be determined at each wall station by subtracting the "BB" elevations from the "GR" elevations).

3.06 Geogrid Reinforcement Placement

- A. All geogrid reinforcement shall be installed at the proper elevation, length and strength as shown on the profile and structural cross sections in the RA Final Design. Partial geogrid coverage is not acceptable: no gaps shall be present between geogrid layers. 100% coverage is required, however it is not necessary to overlap the geogrid pieces. The geogrid shall be laid horizontally on the compacted infill soil and on top of the concrete SRW Units. The geogrid must be embedded into the SRW Units to the face. The wall installer shall verify that the orientation of the geogrid is in accordance with the geogrid manufacturer's recommendations. The highest strength direction of the geogrid must be perpendicular to the wall face (the geogrid must not be laid parallel to the wall- cannot be rolled out with the wall).
- B. Geogrid reinforcement layers shall be one continuous piece for their entire embedment length. Overlapping of the geogrid in the design strength direction (perpendicular to the wall face) is not permitted.
- C. Tracked construction equipment shall not be operated directly on the geogrid. A minimum of 6 inches of backfill is required prior to operation of tracked vehicles over the geogrid. Turning should be kept to a minimum. Rubber-tired equipment may pass over the geogrid reinforcement at slow speeds (less than 5 MPH).
- D. The geogrid shall be in tension and free of wrinkles prior to placement of the infill soil. Nominal tension shall be applied to the geogrid and secured in place with staples, stakes or by hand until it is covered by 6 inches of infill soil.
- E. For inside & outside corners and inside & outside curves the geogrid shall be placed according to the manufacturer's instructions to provide total geogrid coverage. On outside corners the geogrid should be shifted up or down one course and alternated so that the geogrid comes into the reinforced geogrid zone from both legs of the 90° angle. Geogrid layers should never be placed on top of one another: there must be a minimum of 3 inches of compacted infill soil between geogrid layers.

3.07 Wall Drainage

- A. Drainage aggregate (clean gravel such as #57 or equivalent) shall be installed behind the entire wall face from the first course below grade to one course from the top of the wall. The drainage gravel shall be placed to a minimum thickness of 12 inches behind the SRW Units. Drainage gravel shall also fill all voids between and within (if hollow) the SRW Units. SRW Units must be filled with drainage aggregate in one course lifts (SRW Units may not be stacked in two or three course lifts and then have the gravel dumped in from the top through multiple courses). An impermeable clay layer (CL, GC or SC) shall be placed on top of the 12" drainage layer. If clayey soils are not readily available, a layer of filter fabric (Mirafi 140N or equivalent) shall be placed on top of the gravel (below the topsoil) to prevent the downward migration of fines.
- B. Drainpipes are mandatory and shall be vented to daylight at the end(s) of the wall, at a central low point of the wall, or through the wall face at maximum intervals of 30 feet on center (no more than 6 inches above finished grade when vented through the wall face). The pipe(s) must maintain gravity flow of water outside the reinforced geogrid zone. Water must drain to an outlet and have positive flow. If a continuous pipe is run, it shall daylight into a storm sewer manhole or along a slope at an elevation lower than the lowest point of the pipe within the drainage aggregate. When drainpipes are daylighted at the end(s) of a wall they must be visible and unobstructed. The drainpipes should be checked by the owner on a regular basis to ensure that they remain open (not blocked, filled in, grown over, pinched).
- C. Rear drainpipes are required in the following situations: when groundwater can rise and approach within 1 foot of the leveling pad sub-grade, in "cut" situations where the potential exists for storm water to enter the interface between the reinforced geogrid zone and the retained zone and when low permeable soils (CL- lean clay & ML- silt) are used for infill soil. Retaining walls with low permeable soils in the reinforced geogrid zone are more susceptible to being negatively impacted by hydrostatic forces. The owner may elect to install a rear drainpipe to minimize or eliminate potential hydrostatic force buildup leading to potential wall movements. RA recommends a rear drainage system for all walls with these soil types in cut situations, however ultimately it is the owner's decision. This rear drainpipe shall be surrounded by a minimum of 12 inches of clean gravel (#57 or equivalent) and surrounded with filter fabric to prevent the migration of fines. This rear drainpipe must vent to daylight or be directed to a storm sewer manhole (see instructions for front drainpipe in section 3.07B above).
- D. Chimney drains (a second 12 inch layer of drainage aggregate within the rear 1 foot of the reinforced geogrid zone or directly behind the reinforced geogrid zone) must be installed when groundwater is present or likely (to an elevation that is a minimum of 1 foot above predicted levels as given by the site geotechnical engineer), when stated in the RA Final Design or when required by the site geotechnical engineer.
- E. All drainage zone aggregate shall be compacted to 95% of a standard proctor maximum dry density with a vibratory plate compactor (minimum of three passes).

3.08 Backfill Placement

- A. The infill soil shall be placed as shown in the RA Final Design in the maximum compacted lift thickness of 10 inches and shall be compacted to a minimum of 95% of a standard proctor maximum dry density (ASTM D 698) at a moisture content within 2% of optimum. The backfill shall be placed and spread in such a manner as to eliminate wrinkles or movement of the geogrid and the SRW units. Compaction testing shall be done at 25%, 50%, 75% and 100% of the wall height or as specified by the site geotechnical engineer.
- B. Only a vibratory plate or small-scale vibratory smooth drum compactor equipment shall be allowed within 3 feet of the front of the wall face. Compaction within the 3 feet behind the wall face shall be achieved by at least three (3) passes of the lightweight mechanical plate compactor or roller. Heavy equipment (such as track hoes, ride on rollers, pans, etc.) must be kept back a minimum of 3 feet from the rear of the wall.
- C. At the end of each day's operation, the wall installer shall slope the last level of backfill away from the wall facing to direct water runoff away from the wall face.

- D. At completion of wall construction if final grading, paving, landscaping and/or storm drainage installation adjacent to the wall is not placed immediately after wall completion, temporary grading shall be provided to ensure that water runoff is not allowed to collect or pond behind the wall until final construction adjacent to the wall is completed.
- E. Filter fabric (Mirafi 140N or equivalent) is required when the infill soil is classified as poorly graded sand (SP) or well graded sand (SW) since these soils are non-cohesive and could potentially slough, clogging the gravel drainage layer. Filter fabric is optional between the 12 inch gravel drainage layer and the compacted infill soil if the backfill soils are clayey (CL or SC), gravelly (GC, GM, GP or GW) or silty (ML or SM).

3.09 SRW Caps

- A. SRW caps shall be properly aligned and glued (for safety reasons) to the underlying SRW Units with a flexible high-strength concrete adhesive or sealant designed for "concrete to concrete" applications (not for plastic or wood). Rigid adhesive or mortar is not acceptable.

3.10 Water Applications

- A. When walls are installed in water applications (such as storm water ponds, streams, bulkheads, areas adjacent to flood plains, etc.) all clean gravel must be used as infill up to 1 foot above the 100 year flood elevation, the high water level or the top of berm/spillway. This gravel must be free draining and have less than 10% fines (#57 or equivalent). Filter fabric (Mirafi 140N or equivalent) must go in front of the buried block, under the leveling pad, behind the reinforced geogrid zone (vertically up to the extent of the gravel infill) and on top of the gravel infill (horizontally). This is required to prevent the migration of fines into the gravel infill. Rip rap is required in front of the bottom three courses on walls installed in tidal waters. Rip rap is also required when indicated on the civil plans and where pipes with active water flow exit through the wall.

3.11 Rails, Fences & Other Structures

- A. The scope of RA for this project does not include fence or railing designs. Typical details have been given to provide general guidelines for the installation of fences, guardrails and railings behind walls. RA cannot give specific details because the type, placement and height of fences and rails vary widely and because the requirements are different depending on the municipality and regulatory authority. RA can provide a project specific fence or rail detail and structural design for an additional fee if given exact information (material type and size and manufacturer's specifications and installation guidelines).
- B. Open fences and railings not subject to wind loads (minimum of 50% open and maximum of 50% solid) may be placed directly behind the wall or in the wall (can be placed in the blocks only if they are a hollow system and if the cores and web alignment will accept the posts) as long as they are not subject to vehicular impact. Solid or semi-solid fences that are subject to wind loads must be kept back a minimum of 3 feet from the rear of the wall to prevent loading of the wall.
- C. Guardrails subject to vehicular impact must be kept back a minimum of 3 feet from the rear of the wall to prevent loading of the wall. Guardrails may be placed closer than this 3 foot minimum only if a barrier (such as curbing, wheel stops, etc.) is in place to prevent vehicular impact (the overhang of vehicles must be considered when determining this).
- D. Light post foundations, sign foundations and similar structures subject to wind loads must be kept back a minimum of 3 feet from the rear of the wall to prevent loading of the wall.
- E. In cases where these 3 foot minimum distances cannot be met due to restraints on the site, additional analyses will need to be done to determine methods of stabilization. RA can provide these designs for an additional fee.

3.12 Storm Structures & Utilities

- A. Reinforced Concrete Pipes (RCP) may pass through the leveling pad or wall structure without additional means of support (it should be verified from the pipe manufacturer that the pipe can withstand a load equal to or greater than that exerted by the wall- as stated in the RA Final Design General Notes under "Bearing Capacity". The SRW units may be cut to fit around the pipe and the voids filled with non-shrink grout or type "M" mortar. A concrete collar may be cast around the structure if desired for ease of construction and aesthetic considerations. When a collar is cast, the top of the collar must line up with an even block course to maintain proper alignment, neat workmanship and to eliminate horizontal cutting of blocks.
- B. The wall may not bear on plastic or steel pipes (such as ADS, CMP, HDPE, PVC, SLCPP, etc.) or utilities (such as electric, gas, phone lines, sewer or water lines, etc.). Grade beams or lintels must be used to bridge these non-load bearing structures. If a specific grade beam or lintel is not specified in the RA Final Design, RA shall be consulted to determine the size, strength and reinforcing of the grade beam or lintel. If these non-load bearing pipes or utilities are located at minimum of 42 inches below the wall's leveling pad then a grade beam or lintel is not necessary.
- C. Concrete storm structures may be located behind a wall and be within the reinforced geogrid zone as dictated by the project's civil drawings. If the structure(s) cannot be moved out of the reinforced geogrid zone and the geogrid cannot be installed to its full design length the following shall apply. On small structures (such as collection boxes, concrete pipes less than 18 inches, inlets, manholes, etc.) it is acceptable to shorten the geogrid from the design length and meet the structure. The area between the wall and structure where the geogrid has been shortened must be filled with gravel (#57 or equivalent) and not soil. The gravel must be compacted to 95% of a standard proctor maximum dry density with a vibratory plate compactor. On large structures and in cases where pipes parallel the wall for long distances, RA shall be consulted to determine the impact on the wall before allowing this to be done.
- D. The wall's integrity may be compromised if pipes or structures burst or develop leaks and allow water or fluids to saturate the reinforced geogrid zone. RA is not responsible for wall failure that results from pipes or structures that burst or leak and allow water or fluids to saturate the reinforced geogrid zone.

3.13 Construction Adjacent to Completed Wall

- A. The owner or owner's representative is responsible for ensuring that construction adjacent to the wall by others does not disturb the wall or place temporary construction loads on the wall that exceed design loads, including loads such as water pressure, temporary grades, or equipment loading. Heavy paving or grading equipment shall be kept a minimum of three feet behind the back of the wall face. Equipment with wheel loads in excess of 150 PSF live load shall not be operated within 10 feet of the face of the retaining wall during construction adjacent to the wall. Care should be taken by the general contractor or owner to ensure water runoff is directed away from the wall structure until final grading and surface drainage collection systems are completed.
- B. Care must be taken when installing appurtenances (such as generators, transformers, etc.) or utilities within the reinforced geogrid zone of the wall. The compaction integrity of the reinforced geogrid zone must be maintained, both below and beside (around) the appurtenance or utility. Neglecting to do so may cause hydrostatic pressure and wall failure.

3.14 Storm Water Management & Slopes

- A. The segmental retaining wall is not a storm water management structure. The wall can accommodate the rainfall above the reinforced geogrid zone but not the watershed (including the retained zone). Therefore it is absolutely essential that surface water be prevented from entering (and ultimately saturating) the reinforced geogrid zone. This is usually accomplished by the site engineer (owner's civil engineer) grading the surface behind the wall to direct surface water to swales that divert the water around the wall ends, to inlets or over the top of the wall through scuppers. If water is directed to the wall (such as applications with back slopes), the top 8 inches of compacted fill over the reinforced geogrid zone must have impermeable soil (such as CL, GC or SC). If clayey soils are not readily available an underlying geomembrane (geosynthetic liner) may also be used. This geomembrane shall be Mirafi G200N, Stratadrain or equivalent. It shall extend downward vertically a minimum of 3 feet

behind the reinforced geogrid zone, be laid horizontally on top of the reinforced geogrid zone with a maximum slope of 10:1 and extend forward into the 12 inch gravel drainage layer.

- B. The site geotechnical engineer is responsible for verifying the stability of slopes on the project. RA's scope includes only wall the design, not the evaluation of back slopes (above walls) or front slopes (at the base of walls). RA performs global stability analyses on walls that rest on major front slopes, however only the wall is analyzed, not the actual slopes above or below the wall. It is the responsibility of the site geotechnical engineer to determine if the site soils are able to sustain the proposed grades. If not, they shall determine and specify the additional reinforcement that is necessary to provide the proper slope stability and prevent erosion.

3.15 Post Construction Responsibilities

- A. Retaining walls are a substantial financial investment. Therefore it is in the owner's best interest that a wall maintenance budget be established within the overall property management budget to monitor and provide preventative maintenance. Retaining wall maintenance, at a minimum, should consist of: checking drainage, inspecting for settling and surveying to verify alignment and batter. This service should be by qualified personnel under the supervision of a licensed geotechnical/structural engineer. RA can provide this service for an additional fee.
- B. **RA SHOULD BE NOTIFIED AS SOON AS REASONABLY POSSIBLE IF THE RETAINING WALL EXHIBITS CONDITIONS CONTRARY TO THE RA FINAL DESIGN SO THAT RA MAY BE CONSULTED TO PROTECT THE OWNER'S INVESTMENT.**

END OF SECTION

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