

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the General Counsel



April 12, 2005

Patrick J. Carome, Esquire
Wilmer, Cutler, Pickering, Hale & Dorr
2445 M Street, N.W.
Washington, D.C. 20037

Re: *In the Appeal of Patrick Carome*
BZA Appeal No. 17285
(4825 Dexter Terrace, N.W.)

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Dear Mr. Carome:

I am in receipt of letter of April 8, 2005. As you know, the Board of Zoning Adjustment (BZA) requested that the Zoning Administrator provide copies of the demonstrative evidence used during his testimony. The request for copies was made by the BZA at the end of the hearing. At that time, the ZA provided a copy of the site plan highlighted in his testimony to the Board. The original is in the possession of the Office of Zoning for duplication. I suggest that you contact them directly for a copy. The copies of the PowerPoint presentation will be made available to the parties once it is filed with the BZA. At that time, I will send you a copy. There has been a delay in that filing and I apologize for that inconvenience.

Your third request regarding the appearance of Mr. Bello is a different matter. I will not ensure that Mr. Bello will be present at frequent hearings for the purpose of cross-examination by you. The government has concluded its case and its witnesses will not be available. If you believe that you need additional time to examine a witness, I suggest that you raise the matter with the Board. It is my opinion that you have had sufficient time to cross-examine Mr. Bello and, therefore, his presence is not necessary for future proceedings.

Again, I apologize for the delay in responding to your letter.

Sincerely,

Lisa A. Bell
Senior Counsel

Attachment

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 17285
EXHIBIT NO. 64

Board of Zoning Adjustment
District of Columbia
CASE NO. 17285
EXHIBIT NO. 64

cc: **By Electronic Transmission**
Board of Zoning, Mr. Geoffrey Griffis, Chairman
Toye Bello, Zoning Administrator
Richard L. Aguglia, Counsel for Property Owner

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the General Counsel



April 14, 2005

BY FASCIMILE AND HAND DELIVERY

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 Fourth Street, N.W., Suite 210-S
Washington, D.C. 20001

Re: *In the Appeal of Patrick Carome*
BZA Appeal No. 17285
(4825 Dexter Terrace, N.W.)

Dear Mr. Griffis:

As you are aware, the Board of Zoning Adjustment (Board) has conducted three hearings in the appeal of Patrick Carome. On Tuesday, April 5, 2005, the Board held its third hearing in the Carome matter. That hearing consisted of testimony from the District of Columbia Zoning Administrator (ZA). In addition to oral testimony, the ZA presented two visual aids; a PowerPoint visual aid; and site plans submitted by the applicant to DCRA. Following the conclusion of the hearing, the Board requested that the agency provide copies of the visual aids. Pursuant to that request, please find attached a copy of the PowerPoint presentation. The site plan was delivered to the Board directly after the hearing.

Please note that the ZA's testimony included other legal issues, facts and information which were not included in this visual aid. The visual aid presentation is demonstrative evidence and it was offered to the Board to aid the ZA's oral testimony. In an effort to ensure clarity, we have made a few minor changes. For instance, we have added the citations to the zoning regulations to any references where the regulations were not provided verbatim. The additions will be helpful to a reader.

There are two matters the ZA would like to again highlight. First, the ZA provided three definitions to describe a retaining wall. Two of the definitions were taken from the BOCA code. The Building Officials and Code Administrators, International, Inc. (BOCA) published the last versions of the National Building Code in 1993 and 1996. The International Code Council, Inc. and BOCA issued the International Building Code in 2000. In 2004, the District of Columbia Construction Code and its earlier 2003 Supplement, adopted and incorporated the IBC. It became the "D.C. Building Code." 12A DCMR § 101.2 (2004).

Letter to G. Griffis
April 14, 2005
Page 2.

Second, the DCRA reiterated its position that the agency does not issue building permits to private citizens to build or construct a structure that encroaches upon federal parkland. *See*, D.C. Official Code § 6-1403 (2001). The design plans provided to the DCRA, as evidenced by the permit, indicated the retaining wall would be built entirely on the permit holder's property. The allegations of post-design errors, as we noted, are not within the scope of the zoning administration.

Should you have any additional questions, please provide them to us on May 10, 2005.

Sincerely,



Lisa A. Bell
Senior Counsel

Attachment

cc: **By Electronic Transmission**
Toye Bello, Zoning Administrator
Patrick Carome, Esquire, Appellant
Richard L. Aguglia, Counsel for Property Owner

District of Columbia Board of Zoning Adjustment

Appeal of Patrick J. Carome, No. 17285

*Response of the District of
Columbia Zoning Administrator*

Key Factual Assertions

Agency's position

- Permit issued for "construct(ing) retaining wall around rear yard . . . entirely on owner's land"
- Zoning Classification R-1-A
- Site plans submitted and approved

Appellant's claims

- Structure is not a retaining wall
- WHOD not considered
- Improperly located in the side and rear yard
- Irreparably disrupts ecological system
- Wall is not in compliance with D.C. Building Code

Retaining Walls

- Not specifically defined in the District of Columbia Zoning Regulations or District of Columbia Construction Code but included in the definition of structure
- Dictionary definition – 11 DCMR § 199.2(g)
- Working definition: “A wall designed to resist lateral displacement of soils and other materials” BOCA 1993
- **“A wall that is not laterally supported at the top, designed to resist lateral soil load.” BOCA 1996**

Effect of the Wesley Heights Overlay, 11 DCMR § 1541
(2004)

- The applicability of the overlay is not critical to the zoning decision to approve a retaining wall.
- The retaining wall does not violate the spirit or intent of the overlay.
- A review of the legislative history is not necessary where the regulation the plain meaning is clear on its face.

Site Plan/D.C. Surveyor's Plat

Represents the information presented to the zoning reviewer at the time the permit was issued. 11 DCMR § 3202.2(b) (2004)

011
[**Key definitions from the zoning regulations that are relevant to this appeal: Description of a ‘yard’**]

Exterior space, other than a court, on the same lot with a building or other structure. A yard required by the provisions of this title shall be open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title. No building or structure shall occupy in excess of fifty (50%) percent of a yard required by this title.

11 DCMR § 199.1

Description of '*rear yard*'

A yard between the rear line of a building or other structure and rear lot line, except as provided elsewhere in this title. The rear yard shall be the full width of the lot and shall be unoccupied, except as specifically authorized in this title.

11 DCMR § 199.1

Description of '*side yard*'

A yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure.

11 DCMR § 199.1

Description of 'Building Area'

The maximum horizontal projected area of a building and its accessory buildings. The term "building area" shall include all side yards and open courts less than five feet (5 ft.) in width, and all closed courts less than six feet (6 ft) in width. Except for outside balconies, this term shall not include any projections into open spaces authorized elsewhere in this title . . .

11 DCMR § 199.1

Applicability of Required Rear & Side Yards:

- *Rear Yard:* Measured from the end of the building line out toward the rear property lot line. 11 DCMR § 404.1 governs the minimum depth requirements
- *ZA Interpretation:* *Not applicable to the retaining wall in this appeal*
- *Side Yard:* measured from the side of the house out toward the property. 11 DCMR § 405.9, governs the minimum width requirements
- *ZA Interpretation:* Section 2503.3 provides the exemption.

**The interpretation of “depth” in terms of
determining the rear yard**

Rear Yard

The mean horizontal distance between the rear line of a building and the rear lot line, except as provided elsewhere in this title.

11 DCMR § 199.1

Issue of structural integrity

- Jurisdiction and scope of appeal: Structural soundness post-construction is not an appropriate issue for this appeal (outside of the permit process)
11 DCMR § 3200.2
- Scope of zoning review: proposed construction of the retaining wall; the design plans, submitted in the application process are consistent with 11 DCMR § 3202, *et seq.*
- ZA has no role in the determination of structural integrity of buildings post-construction

Intervenor Role – NPS claims

- DCRA did not issue a permit to a private citizen to construct a structure that allows encroachment on federal parklands
- A determination of the structural integrity of the retaining wall is not a responsibility assigned to NPS under the D.C. Building Code or the D.C. Zoning Regulations

Structures in Required Open Spaces

In sum, the ZA relies upon the following regulation to issue the building permit for a retaining wall:

- 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. 11 DCMR § 2503.3 (2004)

941 North Capitol Street, N.E., Suite 9406,
Washington, D.C. 20002

**DEPARTMENT OF
CONSUMER AND
REGULATORY
AFFAIRS - Office of
the General Counsel**

Fax

To:	Mr. Geoffrey Griffis, Chairman	From:	Lisa A. Bell
	D.C. Board of Zoning Adjustment		Senior Counsel
Fax:	727-6072	Page(s):	<u>19</u> , INCLUSIVE
Phone:	727-6311	Date:	April 15, 2005
Re:	BZA Appeal No. 17285	CC:	

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