WILMER CUTLER PICKERING
HALE AND DORR LLP

May 12, 2005

Patrick J. Carome

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By Hand

Ms. Gerrily Kress
Director
District of Columbia Office of Zoning
441 4th Street, N.W.
Suite 210 South
Washington, DC 20001

Re: *BZA Appeal No. 17285*

Dear Ms. Kress:

Enclosed for filing in the above-referenced Appeal are twenty copies of a letter setting forth written questions we are posing to Zoning Administrator Toye Bello. These questions have been posed in accordance with instructions from the Board of Zoning Adjustment during the hearing on this Appeal on the evening of May 10. We served these questions earlier this morning on DCRA's counsel, Lisa Bell, by hand delivery and e-mail/PDF delivery. Please provide copies of the enclosed letter to the members of the Board.

Thank you for your cooperation.

Sincerely,

Patrick J. Carome

Enclosure

cc w/enclosure (via PDF):

Richard L. Aguglia, Esq.
Alma Gates
David Murphy
Jeffrey Bernstein

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BZA
Case No. 17285
Exhibit No. 75

Board of Zoning Adjustment
District of Columbia
CASE NO. 17285
EXHIBIT NO. 75

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By PDF and Hand

Lisa Bell, Esq.
D.C. Department of Consumer and Regulatory Affairs
Office of the General Counsel
941 N. Capitol Street, NE
Suite 9400
Washington, DC 20002

Re: *BZA Appeal No. 17285*

Dear Ms. Bell:

In accordance with the instructions from the Board of Zoning Adjustment at the end of the hearing on Tuesday, I am providing you with the following written questions which are to be answered under oath by Toye Bello. As the Board instructed, you are obligated to serve me with written answers to these questions by Tuesday, May 17.

The questions are as follows:

1. Does the last sentence of the Zoning Code's definition of "yard" (quoted on page 6 of your PowerPoint presentation)[1/] limit the percentage of a required yard that may lawfully be occupied by a structure that qualifies as a "fence or retaining wall" that satisfies 11 DCMR § 2503.3?[2/] Please answer yes or no if possible, and please explain the basis for your answer.

2. Assuming that the structure authorized by Permit No. B460927 was constructed in accordance with the plans that DCRA approved, what percentage of the required rear yard at 4825 Dexter Terrace does that structure now "occupy" within the meaning of the last sentence of the definition of "yard" (quoted on page 6 of your PowerPoint

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[1/] This sentence reads as follows: "No building or structure shall occupy in excess of fifty percent (50%) of a yard required by this title." 11 DCMR 199.1.

[2/] You have already testified that structures that satisfy the exception specified in 11 DCMR § 2503.2 are subject to the fifty percent yard limitation on occupancy of required yards. *See* April 5 Transcript at 144. This question focuses on the relationship between that fifty percent limitation and § 2503.3, which the last page of your PowerPoint presentation says is the regulation on which you relied in issuing the building permit at issue in this Appeal.

presentation)? Please explain how that figure was derived, and please state the extent to which areas occupied by each of the following materials were taken into account in deriving that figure: mesa blocks, leveling pad(s), gravel, geogrid, and compacted soil and fill.[3/]

3. On the enclosed photocopy of Carome Exhibit 23, please mark with a colored marker all of the areas (if any) that are **both** (a) part of or within a yard that is required by any provision of Title 11 of the DCMR **and** (b) occupied (within the meaning of the last sentence of the definition of "yard" quoted on page 6 of your PowerPoint presentation)[4/] by the structure that was purportedly authorized by Permit No. B460927.

4. If (hypothetically) the plans submitted by the owners to DCRA had indicated that the space or cavity behind the wall structure was going to be filled entirely with concrete, rather than the fill material(s) that the owners in fact proposed to use, in what respects, if any, would that difference have changed or affected the decision and analysis of your office concerning whether the proposed structure would comply with the Zoning Code, including 11 DCMR § 2503 and the last sentence of the definition of yard specified in 11 DCMR § 199.1. Please answer yes or no if possible, and please explain the basis for your answer.

5. If (hypothetically) the plans submitted by the owners to DCRA had indicated that the mesa block wall(s) would be fifteen (15) feet thick (measured from the exterior face of the wall to the interior face of the wall in contact with fill material), how and to what extent would the thickness of the walls have been taken into account in calculating the percentage of any required yard that the structure would occupy within the meaning of the last sentence of the definition of "yard" quoted on page 6 of your PowerPoint presentation? Please explain the basis for your answer.

These questions are to be answered by Mr. Bello in his capacity as Zoning Administrator. It is our understanding that the answers shall be subject to the oath of truthfulness that Mr. Bello took before his live testimony in this proceeding.

[3/] Please note that this question pertains to the subject of *yard* occupancy as specified in the last sentence of the definition of "yard", rather than the subject of "percentage of lot occupancy" as specified in 11 DCMR § 403 and as explicated by the concept of "building area" referenced on page 9 of your PowerPoint presentation.

[4/] In indicating what areas are occupied by the structure, please assume that the structure has been erected in the location and manner that was proposed in the plans that were submitted to the DCRA before the permit was issued.

We look forward to receiving Mr. Bello's responses. Thank you for your cooperation.

Sincerely,

Patrick J. Carome

Enclosure

cc (w/o enclosure): Richard Aguglia, Esq. (by PDF)
Jeffrey Bernstein, Esq. (by PDF)
David Murphy (by PDF)
Alma Gates (by PDF)