

WESLEY HEIGHTS HISTORICAL SOCIETY

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MEMORANDUM

TO: Geoffrey Griffis, Chair
Board of Zoning Adjustment

FROM: George E. Watson, President
Wesley Heights Historical Society

DATE: May 15, 2005

RE: Material Requested for the Record
BZA Appeal #17285

The cases concerning changing grade by installing a berm behind an ad hoc retaining wall were BZA Appeals 15453, 15453B and 16020, dating back to 1991 and 1993.

After starting demolition of an existing modest poolhouse and construction of an outsize elaborate two-story replacement without any authorizing permits at 4524 Garfield Street in Wesley Heights, Mr. Ralph Davidson, the owner, subsequently obtained a permit to build a poolhouse/recreation center on his back property line which abutted Mr. Tyrus Barre's side lot driveway at 2811 Foxhall Road (the Barre property was actually in his wife, Raimonda's, name). The permit was originally for a guesthouse/poolhouse with a kitchen, wet bar, and fireplace and sleeping quarters on the second level. The Building was some twenty-five feet high and commanded a view of Mr. Barr's backyard and swimming pool since it was built within two feet of the back yard property line. Ty Barre appealed the issuance of the permit and, at the order of the BZA, the loft bedroom was changed to a storage loft and the height was reduced somewhat, although the Zoning Administrator was said to have recommended that Mr. Davidson erect a "retaining wall" and pile up a berm behind it to establish a new baseline for measurement of the height of the accessory building. The clerestory windows still towered over the seven-foot backyard fence and bothered Mr. Barre no end so he appealed the Zoning Administrator's decision and recommendation concerning the berm. At some time thereafter, Mr. Davidson began calling the building a "garage," even

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District of Columbia
CASE NO. 17285
EXHIBIT NO. 77

BZA

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though I believe there was no real driveway access and had no area for car storage and another garage was already part of the main house. During the appeal, the BZA agreed that it was a violation to build up the berm with a retaining wall to establish a new baseline level to allow an accessory building higher than otherwise permitted. As far as I know, the size and scale that the BZA called for were never enforced and the large, too-high building still exists. I believe the DC Court of Appeals has also supported Mr. Barre's case concerning the appeal. Mr. Barr's lawyer throughout the very expensive (some \$40-50,000) ANC and BZA hearings and the court case was Richard Nettler. Mr. Barre died, unhappy, a year or two ago of a blood-pressure-related ailment.

Points that are of interest in the poolhouse case to Mr. Carome's appeal involve the issue of where and how height of a structure is measured and how that measurement can be affected by an artificially mounded berm and *ad hoc*, later-installed retaining wall and are found in the Findings of Fact items 12, 13c and 16 in Appeal number 15453.

Item 12 cites subsections of portions of 11 DCMR 2500 that were relevant to the Ty Barre appeal including: "2500.7 The height of an accessory building permitted by 2500.4 or 2500.5 shall be measured from the finished grade at the middle of the side of the accessory building that faces the main building to the highest point of the building."

Under Findings of Fact item 13c:

"Responding to the issue of height, the grade was changed by adding a two-foot retaining wall on the northern side of the structure. The new wall effectively raised the finished grade, bringing the height of the building within the 15-foot maximum height provision of DCMR 2500.4."

Under Finding of Facts item 16:

"By letter dated October 25, 1990 to the Zoning Administrator, the Appellant's attorney questioned whether the Zoning Regulations could be validly interpreted to allow the height of a structure to be lowered by the addition of a retaining wall. It was noted that the original plans show, *inter alia*, a 23-foot high building. The Zoning Administrator was asked to check the grade and height of the building an issue a stop work order if it exceeds 15 feet from the existing grade."

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