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June 3, 2005

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By Hand

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

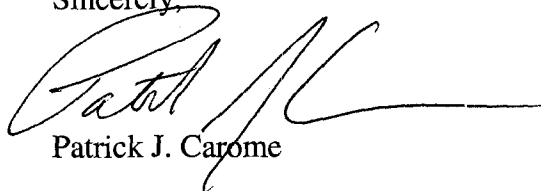
Re: *BZA Appeal No. 17285*

Dear Ms. Kress:

Enclosed for filing in the above-referenced appeal, please find the original and twenty copies of my Response to DCRA's Objections Concerning NPS's Expert Witness.

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

Sincerely,



Patrick J. Carome

Enclosure

cc w/enclosure:
Richard L. Aguglia, Esq.
Lisa Bell, Esq.
Jeff Bernstein, Esq.
Alma Gates, ANC Chair

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BZA

Case No. 17285
Exhibit No. 93

**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

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APPELLANT'S RESPONSE TO DCRA CONCERNING NPS'S EXPERT WITNESS

Appellant Patrick Carome hereby submits this brief response to DCRA's May 27, 2005 "Objections" concerning NPS expert witness Robert Pinciotti and DCRA's accompanying affidavit of Abdullahi Barrow.

1. DCRA's latest submissions, like its earlier ones, are shot through with factual errors, mischaracterizations of the record, faulty logic, and irrelevant argument about points that are not in dispute. Rather than burden the Board by cataloguing all of these defects now, Appellant will address them, to the extent they are pertinent, in its submission of Proposed Findings of Fact and Conclusions of Law later this month.
2. DCRA's latest submissions contain several key concessions that serve only to confirm and strengthen Appellant's arguments that DCRA made numerous fatal errors in its decision that the Economides' Walled Platform Structure complies with the Zoning Code. These concessions include the following:
 - a. that the Walled Platform Structure is a "Mechanically Stabilized Earth Structure," just as Mr. Pinciotti testified (*see* DCRA Objections at 5; Barrows Aff. ¶¶ 4, 6);

- b. that the wall component of the Walled Platform Structure is “included” in a larger “system” that also includes “geogrid” and “compacted” “lifts” of earth material brought in from other locations and “added to the site” (*see* DCRA Objections at 5; Barrows Aff ¶¶ 4-6);
 - c. that the 1996 BOCA Code — which defines “retaining wall” in a manner that Mr. Pinciotti’s un rebutted testimony shows does not encompass walls, like the MESA wall here, that are laterally supported at the top — is “incorporated” in the current D.C. Building Code (*see* DCRA Objections at 2, footnote 2).
 - d. that under the DCRA’s interpretation of the D.C. Zoning Code and the D.C. Building Code (which is incorporated into the Zoning Code through 11 DCMR § 2503.3 insofar as it pertains to fences and retaining walls), there is no limit whatsoever on the height to which a property owner may erect a “retaining wall” that is “backfill[ed]” with earth material trucked in to fill previously open areas, even when those areas are immediately adjacent to neighboring properties and in a required rear yard (*see* DCRA Objections at 5; Barrows Aff. ¶ 7).
3. DCRA’s principal objection to Mr. Pinciotti’s capacity to testify as an expert, which is that he supposedly did not know if the 1996 BOCA Code was the prevailing law in the District of Columbia (*see* DCRA Objections at 2), is frivolous. The Board fully examined Mr. Pinciotti’s qualifications as a geotechnical engineer and, specifically, his experience in design and oversight of the construction of structures similar to the one at issue in this appeal. (*See* 5/10/05 Transcript.) As Chairperson Griffis aptly noted, it is within the Board’s broad discretion to recognize expert witnesses, and Mr. Pinciotti’s

background “rise[s] to the level of understanding the issues of geotechnical engineering, of which [Mr. Pinciotti] avail[ed himself] to testify.” *Id.* Mr. Pinciotti, of course, was not called upon as an expert witness concerning what law applies to this case; indeed, that question is reserved to the Board and the Courts and is not a proper subject for expert testimony.

4. Appellant joins in the National Park Service’s objections to Mr. Barrow’s testimony on the grounds that DCRA has failed to establish that he has the basic qualifications necessary for testifying on the geotechnical engineering issues that are relevant to this case.

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "Patrick J. Carome", is written over a horizontal line.

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Dated: June 3, 2005