



David Belt <tazz20019@gmail.com>

FW: 4000 Benning Road NE supporting documents

6 messages

Atkins, Latisha (Council) <LAtkins@dccouncil.us>

Thu, Aug 31, 2017 at 3:32 PM

To: David Belt <tazz20019@gmail.com>, "Holcomb, Tyrell M. (SMD 7F01)" <7f01@anc.dc.gov>, "Carson-Carr, Sheila (ANC 7F03)" <7f03@anc.dc.gov>

Good afternoon Mr. Belt,

Per our conversation today, attached please find the documents that were shared with us during our meeting with DCRA and DDOT on Thursday, August 24th. As mentioned, myself and Commissioner Holcomb met with the following:

- Rohan Reid, Program Analyst Zoning Enforcement Officer
- Tarek Bolden, Program Analyst
- Mamadou Ndaw, Supervisory Zoning Technician
- James Henry, DDOT Supervisory Engineering Technician Public Space Regulation Administration
- Kathleen Beeton, Zoning Administrator (joined us briefly to hear concerns)

Per your request, the 2 items that you asked me to specifically discussed were:

- 1) How was this approved, by what authority—See Attached Final Rulemaking and Z.C. Order No. 13-07
- 2) Does the public alley become a part of the developer's property- According to James Henry, this project could not have been built adequately without allowing the use of the public space alley. After consulting with the National Park Service, it was determined that this space would not have been developed by either NPS or the District, so allowing the developer to use a portion of the public alley was allowed. Upon completion of the project, the developer will be required to improve the alley and will have to pay the District for use of this public space.

Attached, please find the timeline of events between you and DCRA regarding your specific concerns. While we do understand that there may have been some issues with the timing of the wall check, upon further investigation we understand that there was a SWO placed until the Wall Check was completed and the project brought into compliance. Upon compliance, the project was allowed to resume. At this point, we will continue to monitor the project for code violations, however, we do feel that all of your concerns have been adequately addressed and responded to.

Best regards,

Latisha R. Atkins, J.D.
Deputy Director, Constituent Services
Office of Councilmember Vincent C. Gray – Ward 7
Chairman, Committee on Health
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Suite 406
Washington, DC 20004
Email: latkins@dccouncil.us
Direct Phone Line: [202.741.0898](tel:202.741.0898)
Office Main Phone Line: [202.724.8068](tel:202.724.8068)

Board of Zoning Adjustment
District of Columbia
CASE NO.19627
EXHIBIT NO.3

From: Bolden, Tarek (DCRA) [mailto:tarek.bolden@dc.gov]
Sent: Thursday, August 24, 2017 12:18 PM
To: Atkins, Latisha (Council) <LAtkins@DCCOUNCIL.US>; Holcomb, Tyrell M. (SMD 7F01) <7f01@anc.dc.gov>
Subject: 4000 Benning Road NE supporting documents

Good afternoon Commissioner Holcomb and Ms. Atkins,

Here are copies of the Documents from our meeting and the link to the approved Zoning Commission report

4000 Benning Road NE Zoning Commission Order

<https://app.dcoz.dc.gov/Orders/13-07.pdf>

if you have any further questions, please contact me.

Regards,

Tarek Bolden
Program Analyst | Zoning Enforcement Division | Office of the Zoning Administrator
Department of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th Street, SW, Suite E340 | Washington, DC 20024
[\(202\) 299-2196](tel:202-299-2196) (p) | [\(202\) 442-4863](tel:202-442-4863) (f) | tarek.bolden@dc.gov | www.dkra.dc.gov

2 attachments

 **Retaining Wall Permit Review.pdf**
266K

Scanned-Document-ThuAug31000.pdf
332K

David Belt <tazz20019@gmail.com> Thu, Aug 31, 2017 at 6:02 PM
To: "Atkins, Latisha (Council)" <LAtkins@dccouncil.us>, "Holcomb, Tyrell M. (SMD 7F01)" <7F01@anc.dc.gov>, Sheila Carson Carr <my3bg@aol.com>
Cc: pearlcoalition@gmail.com

[Quoted text hidden]

Hello all,

Mr. Bolden of DCRA obviously does not understand the order of case 13-07 brought on by myself. This was originally about a zoning correction amendment on the map and not about the project at all. It wasn't until the influence of the developer came into play. It was originally rezoned from C3A to R5A and to appease the developer was zoned to R5C. However it was acknowledged by the commission as well as the OP that there was a great likelihood that they would require BZA action as was also stated that they must adhere to the restrictions of the lower R5C zoning. ZC 13-07 does not address any special zoning privileges as DCRA continues to allude. See attachments. These restrictions obviously have been ignored and it is really incredulous that these agencies would go to this extent to save this project. The excuse about public land use is bogus, especially since NPS has no ownership or stake in District owned land. This is also looking even more dubious since it is not a normal practice (at least I hope

not) of DDOT to give away public property to one particular developer because the project was larger than the property owned. They have also submitted no legal, official documentation for this transaction as has been requested. As noted by the ZC and Jennifer Stiegasser of OP, the developer is restricted to the R5C zoning text and amendments. As to the wall check, honestly it has the appearance of being intentionally omitted because it is not the type of inspection that is forgotten. The results of the wall check was, to no surprise, that the main building breached the property line by four (4) feet and was passed anyway. This is the very reason for the wall check early in the process. By the way, the retaining wall is illegal and would have also required BZA approval as well as the rear yard distance.

I am ready to submit a BZA review request for these infractions. I would like to have the support of the ANC in pursuing this case. I would be curious to know if this type of preference and favoritism is given to other developers.

David Belt
Ward 7
3940 Benning RD. NE
Washington, DC 20019
tazz20019@gmail.com

3 attachments



Untitled Extract Pages.pdf

15K



Untitled Extract Pages1.pdf

21K



Retaining Wall Final.doc

55K

Retaining Wall Permit Review

Permit #	RW1700014
Permit Accepted	11/16/2016
Zoning Review	12/21/16
Zoning Approval	1/19/17
Structural Approval	1/31/17
Permit Issued	2/10/17

Address: 4000 Benning Road NE

March 2017	I received a new phone call from Mr. Belt who had a few questions about the development occurring at 4000 Benning Rd, NE (the "Property"). He stated at the time that the developers of the project had originally designed the building under the original C-3-A zoning and the property was rezoned to R-5-C and then switched to RA-3. He believed the Property was no longer in compliance. I reviewed the property records on phone with him and informed him that the property had been approved by zoning. Zoning Approval for B1501924 was given on 7/22/2015.
4/6/17 Letter to OZA	Mr. Belt sent a letter to OZA staff stating that the plans submitted were not compliant with ZC order 13-07. Would we make sure the plans were approved properly.
April 2017 OZA Re-Review	The Zoning Compliance for B1501924 was re-reviewed by the zoning technician and found to be compliant.
4/12/17 Wall Check Issue	During the zoning compliance confirmation, I informed Mr. belt that the Wall Check had not been completed. OZA immediately requested a SWO be placed on the property until the Wall Check was completed.
April 2017 Public Space Concern	Mr. Belt also expressed to me over the phone that the property was using public space without authorization and that the project has closed off a public alley w/o permission.
4/25/17 OZA Staff met with the Owners and developers (Penrose Properties) to discuss potential SWO and Issues	At this meeting Zoning enforcement, the zoning technician supervisor, and a 3 rd party oversight inspector met with the development team and informed them of the need for a Wall Check and the issued raised regarding public space.
4/25/17 Existing Public space permit was submitted to OZA	The developers submitted proof that they had permission to use the public space through Permit #PA107910-R1
4/28/17 Wall Check approval	The Wall Check was approved on 4/28/17 by OZA staff. The property was compliant with the plans and the zoning regulations.
6/16/17 New Compliance concerns	Mr. Belt sent an e-mail to the Supervisory Zoning Tech acknowledging the wall check approval and with a new list of compliance concerns.
6/16-28/17	Mr. Belts concerns were re-reviewed and found compliant with the zoning regulations. A 3 rd party inspector visited the site and determined that construction was being built according to approved plans. OZA staff referred any site construction concerns to Inspection & Compliance (ICA) for review.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING**

AND

Z.C. ORDER NO. 13-07

Z.C. Case No. 13-07

(Map Amendment – 11 DCMR)

**(Zoning Map Amendment for Lots 11-13 (Tax Lot 805), 14, 15, 16-17 (Tax Lot 806), 18-21
(Tax Lot 804), 22, and 52, in Square 5081 from the C-3-A Zone District to the
R-5-C Zone District)**

June 9, 2014

The full text of this Zoning Commission Order is published in the Final Rulemaking section of this edition of the *D.C. Register*.

1 reworking, could meet the R5C as a matter of
2 right?

3 MS. STEINGASSER: That is our
4 understanding, or it may require a rear yard
5 variance. But the rear yard seemed to be the
6 only real point of difficulty within an R5C.

7 COMMISSIONER MILLER: It might need
8 a BZA.

9 MS. STEINGASSER: It might need a
10 BZA.

11 COMMISSIONER MILLER: Okay, thank
12 you.

13 CHAIRMAN HOOD: Any other comments
14 from commissioners? Vice Chair?

15 VICE CHAIR COHEN: Thank you, Mr.
16 Chairman. Again, I have some sympathy for the
17 applicant's goals, but similar to OP, I think
18 that the larger benefit of the 71-unit
19 affordable residential development meets the
20 greater goal for the larger community, and
21 therefore, I would recommend dismissal of the
22 applicant's request.

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1 or semi-detached dwellings, residential
2 rowhouse and apartment development and some
3 service and institution uses on most
4 properties, allow existing -- the existing
5 office use on lot 804 to continue as a legal
6 non-conforming use, but not to expand and
7 require any new development to conform with
8 the allowable height, bulk and use
9 restrictions of the R5b district and allow
10 the moderate density, 100 percent affordable,
11 housing development plan for lot 52 to
12 proceed subject to the limitations of the R5c
13 district.

14 That concludes this brief summary
15 and we're available to answer questions.

16 CHAIRMAN HOOD: Thank you, Mr.
17 Jackson, for teeing that up for us.

18 Commissioners, any questions?
19 Any questions or -- no questions of the
20 Office of Planning?

21 We did have a request to do -- to
22 go certain lots from the C3a to the R5b. Is

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ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
Z.C. ORDER NO. 13-06
Z.C. Case No. 13-06
(Text Amendment – 11 DCMR)
(Text Amendments Relating to Retaining Walls)
March 31, 2014

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of adoption of the following text amendments to the Zoning Regulations of the District of Columbia, at Chapters 1 (The Zoning Regulations) and 4 (Residence District: Height, Area, and Density Regulations) of Title 11 (Zoning) of the District of Columbia Municipal Regulations (DCMR). A Notice of Proposed Rulemaking was published in the *D.C. Register* on February 7, 2014 at 61 DCR 01039. The amendments add a definition of “retaining wall” to § 199.1 and add a new § 413 “Retaining Walls.” These amendments shall become effective upon the publication of this notice in the *D.C. Register*.

Description of Amendments

These text amendments clarify zoning regulations as they pertain to retaining walls. The amendments define the term “retaining wall,” establish an overall maximum height for retaining walls in Residence zones subject to location specific limitations, describe the process for measuring retaining walls, and permit the Board of Zoning Adjustment to grant special exception relief for retaining walls not meeting the requirements of new § 413.

Procedures Leading to Adoption of Amendments

On March 29, 2013, The Office of Planning (OP) submitted a memorandum that served as a petition requesting amendments to the regulations. At its April 8, 2013 public meeting, the Commission voted to set down the proposal for a hearing. In addition to providing a new definition for retaining wall and establishing height limitations, the proposed rules provided that a “retaining wall four feet or more in height that elevates the terrain and is back filled with dirt or other fill material would be considered a structure, included in lot occupancy”

A Notice of Public Hearing containing the OP text was published in the May 3, 2013 edition of the *D.C. Register* at 60 DCR 6475.

On July 12, OP submitted a report including an updated version of the advertised text that clarified how to measure the height of a retaining wall and required that retaining walls on a block with street frontage not exceed the height of adjacent retaining walls.

Holland & Knight, LLP submitted a letter dated July 22, 2013 suggesting modifications to the proposed amendment. Holland & Knight proposed revisions to § 412.3¹ dealing with the measurement of required yards in order to create consistency with existing definitions. Holland & Knight also proposed that, in order for a retaining wall to be a structure that contributes to lot occupancy, the retaining wall must include geogrid materials, pursuant to a previous Board of Zoning Adjustment decision.²

A public hearing was held on July 22, 2013. Testimony was given by Ms. Alma Gates, on behalf of Neighbors United Trust, and by Mr. Mark Eckenwiler. Ms. Gates testified in support of the amendments with some suggestions for clarification. Ms. Gates proposed clarifying how the six foot maximum height requirement in § 412.4 reconciles with the four foot maximum height in rear or side yards in § 412.2. Next, Ms. Gates questioned whether the prohibition against “paved or otherwise covered” landscape areas in § 412.7 intends to exclude pervious pavers, and suggested the Commission consider circumstances when pervious pavers might be effective and appropriate. Ms. Gates also suggested adding “in public space” to the provision in § 412.3 that prohibits a retaining wall in “any required yard as measured from the property line inward along the street frontage.”

Mr. Eckenwiler discussed the proposed amendments as they relate to existing regulations governing accessory buildings. Mr. Eckenwiler noted that the proposed regulation limit a retaining wall to four feet while under § 2500.4, a property owner can build an accessory structure up to fifteen feet tall in the same yard. Mr. Eckenwiler addressed similar concerns about § 412.5, which states that retaining walls shall be considered structures included in lot occupancy. Mr. Eckenwiler indicated that lot occupancy turns on building area, which has an exception for structures that do not extend above the level of the main floor of the building. He believed that this exception could complicate the process of calculating lot occupancy for the purpose of the proposed rule.

The Commission closed the record and requested that OP address these concerns in a supplemental report, which the Commission would consider during its public meeting on September 9, 2013.

OP filed a supplemental report dated August 29, 2013 that provided substantial revisions to the proposed text in response to the issues raised before and during the public hearing. In the revisions, OP eliminated the use of “yard” in response to Holland & Knight’s concern about the amendment conflicting with existing definitions. OP responded to Holland & Knight’s

¹ At the time the text amendments were proposed, the final section of Chapter 4 of the Zoning Regulations was § 411. Accordingly, the proposed new section “Retaining Walls” was numbered § 412 in OP’s petition. After discovering that separate rulemaking proceedings were underway to create a new § 412, OP renumbered the proposed section “Retaining Walls” as § 413 in its November 22, 2013 report. All references to section and subsection numbers in this document reflect the number assigned to the proposed section at the time the relevant comment or testimony was made.

² In *BZA Appeal No. 17285 of Patrick J. Carome*, the Board found that three elements were required for a retaining wall to constitute a structure that contributes to lot occupancy in the Wesley Heights Overlay District: (i) a wall; (ii) fill dirt; and (iii) a geogrid fabric that holds dirt in place.

suggestion to include geogrid materials in the definition of retaining wall by noting that the proposed section is intended to apply to retaining walls more broadly, not only to those that include geogrid material. In response to Ms. Gates' testimony, OP clarified the language of §§ 412.2 and 412.4 to highlight the relationship between the two height limitations. OP created a § 412.11 to address Mr. Eckenwiler's concern regarding lot occupancy measurement and building area. The revisions also clarified how to measure a retaining wall that varies in height.

During the public meeting on September 9, 2013 and in response to a request to reopen the record by Neighbors United Trust, the Commission decided by consensus to schedule an additional public hearing to allow testimony on the most recent OP revisions. In advance of this hearing, the Commission asked OP to clarify the new provision about lot occupancy and to address the regulations for retaining walls that abut an improved alley. The Commission also noted that a variance would be required to obtain relief from the new section's requirements and suggested that OP explore whether special exception relief should be available.

A second Notice of Public Hearing was published in the *D.C. Register* on October 18, 2013 at 60 DCR 14793. As explained in the OP supplemental report dated November 22, 2013, the revised text included a general reorganization and renumbering of the proposed new section (formerly § 412, now § 413). Substantively, revised § 413.3 maintained the overall height limit of six feet, but provided for no restrictions on height for retaining walls adjacent to alleys in R-3 and R-4 zones. Subsection 413.8 clarified that any tiered or terraced retaining walls greater than four feet in height would be calculated as contributing to lot occupancy. Finally, proposed § 413.10 allowed the Board of Zoning Adjustment to grant special exception relief for retaining walls that could not meet the requirements of § 413 upon proof that conditions relating to the building, terrain, or surrounding area would make full compliance unduly restrictive, prohibitively costly, or unreasonable.

The second public hearing was held on December 2, 2013. During the hearing, the Commission voiced concerns about the proposed 1:1 grade for terraced walls, suggesting that this horizontal to vertical ratio may be too steep and therefore impractical. In response to the provision requiring retaining wall measurements to start from the finished grade, the Commission inquired about whether the finished grade could be manipulated in a way that would evade the height requirement.

Ms. Alma Gates, testifying again on behalf of Neighbors United Trust, expressed concern about the lack of a maximum height requirement for retaining walls that abut an alley in the R-3 and R-4 Districts. Ms. Gates also suggested that OP consider more clearly distinguishing the provision regarding special exception relief provision from the requirements for variance relief. Ms. Gates considered the proposed language to be conflating the two standards. In addition, Ms. Gates sought clarification as to how a new property owner would measure the backfill area behind a retaining wall for the purpose of calculating in lot occupancy.

After hearing testimony, the Commission closed the record, aside from requesting a supplemental report from OP addressing the concerns raised at the hearing.

OP filed a supplemental report on January 13, 2014. The report revised the proposed regulation so that retaining walls would be measured from “the lowest level of the ground immediately under the wall” rather than from the finished grade at the bottom of the wall. In addition, a 12 foot height restriction was proposed for retaining walls abutting an improved alley in R-3 and R-4 zones, and maximum slope for terraced retaining walls was revised to a horizontal to vertical ratio of 2:1. In response to the Commission’s concerns over the potential manipulation of height measurement, OP added a provision disallowing berms or other forms of intermittent terrain elevation from being included in the measurement of height.

The report also recommended against including retaining walls in the calculation of lot occupancy under any circumstances. OP explained that, in researching this matter, it found that there are no other surrounding jurisdictions that require backfilled retaining walls to be calculated as lot occupancy. The report further noted that retaining walls are regulated through other types of provisions, such as those governing placement and height limitations.

Finally, the report offered no substantive change to the proposed standard for granting special exception relief. OP indicated that the proposed language is similar to other instances when a special exception is required to comply with requirements in addition to those in § 3104.1, and provided examples.

At its meeting on January 27, 2014, the Commission asked OP to consider clarifying the new measurement language because the meaning of the phrase “immediately under the wall” could be taken to mean the subsurface. The Commission then authorized the publication of a notice of proposed rulemaking in the *D.C. Register* of the text as revised in the OP report, subject to the refinement requested, and a referral of that text to the National Capital Planning Commission (NCPC) for the 30-day period of review required under § 492 of the District Charter.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on February 7, 2014 at 61 DCR 1039. In response to the Commission’s concerns over the potential ambiguity of the phrase “immediately under the wall,” the proposed rules provided that height measurement would be taken from “from the lowest level of the ground at the base of the wall.”

The Commission received correspondence from Alma Gates on behalf of Neighbors United Trust in a letter dated February 8, 2014, which was the date immediately after publication of the notice. The correspondence does not purport to be in response to the published notice, but rather states its substance “relates to the Office of Planning’s January 13, 2014 Supplemental Report.” As such, the comments are not responsive to the Notice of Proposed Rulemaking and could properly be struck from the record. The Commission’s actions with regard to the correspondence are discussed later in this Order.

In a letter dated February 7, 2014, the NCPC Executive Director informed the Zoning Commission that, through a delegated action dated January 30, 2014, he found that the proposed text amendments were not inconsistent with the Federal Elements of the Comprehensive Plan for the National Capital.

At a properly noticed meeting held on March 31, 2014, the Commission considered whether to take final action to adopt the amendments.

With respect to the correspondence submitted by Ms. Gates, the Commission decided to permit it to remain in the record. The letter expressed concern over proposed § 413.2(c), believing that it would allow berms and other forms of intermittent terrain elevation to be included in the measurement of height. Ms. Gates also suggested that retaining wall height should be measured from “natural grade” and that the Commission adopt the definition of that term as advertised in Z.C. Case No. 08-06A for proposed Subtitle B of Title 11. Finally, Ms. Gates recommended that retaining walls should be included in the calculation of lot occupancy under two scenarios.

The Commission was not persuaded that proposed § 413.2 (c), concerning berms and other forms of intermittent terrain elevation should be revised as proposed by Ms. Gates. She suggested that berms “shall not be included,” rather than “shall be included” when measuring retaining wall height. The Commission notes that the phrase “shall not be included” also appears in a similar provision added to the definition of “building, height of” in Case No. 12-11. In that case, Ms. Gates offered the following relevant testimony:

1. Height

A. Definition.

Berms or other forms of artificial elevation shall not be included in measuring building height.

Comment: The prohibition against berms is a very important addition to the regulations!

Z.C. Case No. 12-11 (Exhibit 10.)

The Commission agrees with Ms. Gates’ original observation and declines to create inconsistent versions of what is essentially the same prohibition.

The Commission was persuaded by Ms. Gates’ suggestion that the measuring point for retaining walls should be at the “natural grade” at the base of the wall. The Commission agreed that using this more restrictive term better communicates its intent in establishing height limitations. As to Ms. Gates suggestion that the Commission use the recently proposed definition of “natural grade,” the Commission notes that a definition of the term already exists at § 199. The Commission does not believe it is either wise or necessary to have two separate definitions of the term, with one definition only applying to retaining walls. The current definition is adequate for this purpose and if the Commission ultimately decides to adopt the version proposed; the revised definition will then apply to these structures.

As to including retaining walls in the calculation of lot occupancy, the Commission remains comfortable in its determination not to do so, particularly in view of its decision to measure height from natural grade. The one existing exception is for the type of retaining walls involved

in *Appeal No. 17285 of Patrick J. Carome*. The Commission notes that the *Carome* case involved the unique lot occupancy provision of the Wesley Heights Overlay and the Board's ruling was limited in its applicability to properties located therein. The Commission sees no purpose in extending that ruling, but rather concurs with OP's view that retaining walls can be regulated through other types of provisions, including those adopted in this Order.

The Commission also sought a clarification from OP as to whether the reference to tiered and terraced retaining walls in § 413.8 described a single sloped retaining wall or a series of separate retaining walls that were sloped. OP indicated that the provision was referring to the latter and, at the request of the Commission, agreed to work with the Office of the Attorney General (OAG) to clarify the language of the requirement. At the end of the meeting, the Commission voted to adopt the text amendments, with the inclusion of "natural grade" as a measuring point and with the revisions to be provided by OP and OAG.

After the meeting, OAG provided the Commission with a revised version of § 413.8 jointly formulated with OP. However, OAG informed the Commission that the Commission must approve the final wording of each rule it adopts and, therefore, it must vote whether to adopt the proposed revision. Therefore, at a properly noticed public meeting held April 15, 2014, the Commission considered the revised text and took final action adopt the text amendments as revised.

Under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)), the Commission must give "great weight" to the issues and concerns of the affected ANCs. In a letter dated November 16, 2013, ANC 6B indicated that it voted 8-0-2 in support of the proposed amendments at a duly noticed meeting on November 12, 2013 with a quorum present. Although the text of the proposed rule has changed somewhat since the ANC report, the Commission concludes that its action adopting the rule is consistent with the ANC's intent and therefore found its advice persuasive.

Title 11 DCMR, ZONING, is amended as follows:

Title 11, DCMR, Chapter 1, THE ZONING REGULATIONS, is amended by adding the following definition to § 199.1 in alphabetical order:

Retaining Wall - a vertical, self-supporting structure constructed of concrete, durable wood, masonry or other material, designed to resist the lateral displacement of soil or other materials. The term shall include concrete walls, crib and bin walls, reinforced or mechanically stabilized earth systems, anchored walls, soil nail walls, multi-tiered systems, boulder walls, or other retaining structures.

Title 11, DCMR, Chapter 4, RESIDENCE DISTRICT: HEIGHT, AREA, AND DENSITY REGULATIONS, is amended by adding a new § 413, RETAINING WALLS, to read as follows:

413 RETAINING WALLS

413.1 In R-1, R-2, R-3, and R-4 Districts a retaining wall may be erected in accordance with the requirements of this section.

413.2 The height of a retaining wall shall be determined as follows:

- (a) The height of a retaining wall is the vertical distance measured from the natural grade at the base of the wall to the top of the wall;
- (b) When the height of a retaining wall varies, the height shall be measured at the highest point of the wall, from the natural grade at the base of the wall at that point; and
- (c) Berms or other similar forms of intermittent terrain elevation shall not be included in measuring retaining wall height.

413.3 Subject to the height limitations of § 413.4 through 413.7, the maximum height of a retaining wall shall be six feet (6 ft.).

413.4 A retaining wall shall not exceed four feet (4 ft.) in height in the following locations, unless a lower height is required by § 413.5 and 413.6:

- (a) Along a street frontage or property line;
- (b) Within any required side yard;
- (c) In the R-1 Districts, within twenty-five feet (25 ft.) of the rear property line, as measured from the rear property line inward; and
- (d) In the R-2, R-3, and R-4 Districts, within twenty feet (20 ft.) of the rear property line, as measured from the rear property line inward.

413.5 A retaining wall located along a street frontage on a block with adjacent existing retaining walls shall not be greater in height than the tallest adjacent existing retaining walls up to the maximum height of four feet (4 ft.).

413.6 A retaining wall located on any area between a property line and a building line shall not exceed a maximum height of forty-two inches (42 in.).

413.7 A retaining wall abutting an improved alley in the R-3 or R-4 Districts shall not exceed a maximum height of twelve feet (12 ft.).

413.8 Retaining walls may be tiered or terraced provided that the width of the area between each retaining wall is at least twice the height of the lower retaining wall.

The area between each wall shall be pervious and may not be paved or otherwise covered with impervious materials.

413.9 Retaining walls not meeting the requirements of this section, may be approved by the Board of Zoning Adjustment as a special exception pursuant to § 3104.1. In addition to meeting the general conditions for being granted a special exception as set forth in that subsection, the applicant must demonstrate that conditions relating to the building, terrain, or surrounding area would to make full compliance unduly restrictive, prohibitively costly, or unreasonable.

On January 27, 2014, upon the motion of Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **APPROVED** the petition at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On March 31, 2014, upon the motion of Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028.8, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on June 13, 2014.