

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

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IN THE MATTER OF: :

 :

Office of Planning - Text : Case No.

Amendments to Define and : 13-06

Regulate Retaining Walls in :

R-1 through R-4 Districts :

 :

-----:

Monday,
December 2, 2013

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No.
13-06 by the District of Columbia Zoning
Commission convened at 6:02 p.m. in the
Jerrily R. Kress Memorial Hearing Room at 441
4th Street, N.W., Washington, D.C., 20001,
Anthony J. Hood, Chairman, presiding.

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ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
MARCIE COHEN, Vice Chair
MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)
PETER MAY, Commissioner (NPS)
ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
MATT JESICK

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

The transcript constitutes the
minutes from the Public Hearing held on
December 2, 2013.

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P-R-O-C-E-E-D-I-N-G-S

(6:02 p.m.)

CHAIRMAN HOOD: Okay, we're ready to get started. We actually have two cases tonight. Let me read the first case, and we'll go right into the second case. I won't do introductions for the second case. But I'll get right into the specifics.

Good evening ladies and gentlemen. This is a public hearing of the Zoning Commission for the District of Columbia for Monday, December 2, 2013. My name is Anthony Hood.

Joining me are Vice Chair Cohen, Commissioners Miller, May and Turnbull. We are also joined by the Office Zoning staff, Ms. Sharon Schellin.

Also, from the Office of Attorney General staff, Mr. Bergstein, the Office of Planning staff, Ms. Elliott and Mr. Jesick. This proceeding is being recorded by court reporters, also webcast live.

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1 Accordingly, we must ask you to
2 refrain from any disruptive noises or actions
3 in the hearing room. The subject of this
4 evening's first case is Zoning Commission
5 Case Number 13-06.

6 This request by the Office of
7 Planning protects amendments to the zoning
8 regulations related to retaining walls.
9 Notice of today's hearing was published in
10 the D.C. Register on October 18, 2013.

11 And copies of that announcement
12 are available to my left on the wall near the
13 door. This hearing will be conducted in
14 accordance with provisions of 11 DCMR 3021 as
15 follows.

16 Preliminary matters,
17 presentations by the Office of Planning,
18 report of other government agencies, report
19 of the ANC, in this case is all ANCs,
20 organizations and persons in support,
21 organizations and persons in opposition.

22 The following time constraints

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1 will be maintained in this hearing,
2 organizations five minutes, individuals three
3 minutes. The Commission intends to adhere to
4 the time limits as strictly as possible in
5 order to hear the case in a reasonable period
6 of time.

7 The Commission reserves the right
8 to change the time limits for presentations
9 if necessary, and notes that no time shall be
10 seeded. All persons appearing before the
11 Commission are to fill out two witness cards.

12 These cards are located to my
13 left on the table near the door. Upon coming
14 forward to speak to the Commission, please
15 give both cards to the reporter sitting to my
16 right before taking a seat at the table.

17 When presenting information to
18 the Commission, please turn on and speak into
19 your microphone first stating your name and
20 home address. When you are finished
21 speaking, please turn your microphone off so
22 that your microphone is no longer picking up

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1 sound or background noise.

2 The decision of the Commission in
3 this case must be based exclusively on the
4 public record. To avoid any appearance of
5 the contrary, the Commission requests that
6 the persons present not engage the members of
7 the Commission in conversation during the
8 recess or anytime.

9 The staff will be available
10 throughout the hearing to discuss procedural
11 questions. Please turn off all beepers and
12 cell phones at this time so not to disrupt
13 these proceedings.

14 At this time the Commission will
15 consider any preliminary matters. Does the
16 staff have any preliminary matters?

17 MS. SCHELLIN: No, sir.

18 CHAIRMAN HOOD: I do have one
19 preliminary matter. I'm going to read this
20 at this case, the next case and probably at
21 the end of the next case. This is not
22 germane to this particular case, but I wanted

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1 to do it while we have the video.

2 The Zoning Commission will hold a
3 further hearing on Zoning Commission Case
4 Number 08-06A, Zoning Regulations Review, on
5 Thursday, January 30, 2014 from 6:00 p.m. to
6 10:00 p.m. to hear from the Advisory
7 Neighborhood Commissions.

8 This hearing is being held in
9 conjunction with Chairman Mendelson's ANC
10 quarterly meeting and will be held at the
11 John A. Wilson building in Room 412. Notices
12 will be mailed to every commissioner in the
13 very near future.

14 Let me just read the specifics
15 again. The Zoning Commission will hold a
16 further hearing on Zoning Commission Case
17 Number 08-06A, Zoning Regulation Review, on
18 Thursday, January 30, 2014 from 6:00 p.m. to
19 10:00 p.m. or to conclusion, to hear from the
20 Advisory Neighborhood Commissions.

21 This hearing is being held in
22 conjunction with Chairman Mendelson's ANC

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1 quarterly meeting, and will be held at the
2 John A. Wilson building in Room 412. Notices
3 will be mailed to every commission in the
4 very near future.

5 Thank you, and if we could pass
6 that on and so we can try to help get the
7 word out to our ANC commissions and
8 commissioners. Okay, Ms. Schellin, did we
9 have any other preliminary matters? Okay.
10 Let's go to Ms. Elliott. Ms. Elliott, good
11 evening. You may begin, or Mr. Jesick, Ms.
12 Elliott.

13 MS. ELLIOTT: This one's on me.
14 Good evening Mr. Chairman, members of the
15 Commission. For the record, my name is
16 Brandice Elliott, representing the Office of
17 Planning.

18 The proposed text amendment
19 regarding retaining walls has undergone some
20 transition since the set down hearing that
21 occurred in April.

22 With the assistance of public

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1 testimony made at the public hearing held in
2 July and guidance from the Commission
3 throughout this process, we believe we're
4 getting a little bit closer to crafting an
5 amendment that would require retaining walls
6 in residential districts to be
7 environmentally sensitive, in character with
8 the neighborhood and that would have minimal
9 impact on adjacent property.

10 Since the last meeting in
11 September, the Office of Planning has worked
12 with the Office of the Attorney General to
13 refine the text amendment so that the
14 regulations achieve the intended objectives.

15 The text amendment that was
16 advertised in the Second Notice of Public
17 Hearing is the product of this collaboration.

18 The text amendment still consists of two
19 parts.

20 The first is the definition and
21 the second part is the, would implement
22 design criteria that regulates height, how

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1 tall a retaining wall may be, where it can be
2 located on the lot, whether it is calculated
3 as lot occupancy and now, allowance for
4 relief by special exception.

5 The text amendment has been
6 revised to include two new key regulations.
7 First, the provision to allow taller
8 retaining walls along alleys in the R-3 and
9 R-4 districts has been added.

10 We heard some testimony during
11 the public hearing in July that row home
12 districts, particularly those that, well,
13 those adjacent to improved public allies do
14 have some existing issues that probably, that
15 the proposed height limitations on retaining
16 walls would cause additional issues for.

17 So we have revised Section 413.32
18 to allow this additional height. And second,
19 at the request of the Commission, a provision
20 allowing relief by special exception has also
21 been added.

22 Other modifications to the

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1 amendment include reorganization of Section
2 413.4. The location requirements for walls
3 for four feet in height have been
4 consolidated into one section whereas
5 previously they were divided into multiple
6 sections.

7 And then also 413.8 has also been
8 clarified to indicate that terraced or tiered
9 walls of four feet in height or less are not
10 calculated as lot occupancy.

11 I think that that summarizes the
12 modifications, so with that, I would be happy
13 to answer any questions you may have.

14 CHAIRMAN HOOD: Okay. Thank you
15 very much Ms. Elliott. Commissioners, any
16 questions of the Office of Planning?
17 Commissioner May?

18 COMMISSIONER MAY: So if I
19 understand correctly now, I mean this is a
20 new absolute limit of six feet for a
21 retaining wall without, unless you get a
22 special exception?

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1 MS. ELLIOTT: With the exception
2 of retaining walls located in R-3 and R-4
3 districts adjacent to an improved public
4 alley.

5 COMMISSIONER MAY: Got it, and
6 even if it is on the front of a building, if
7 it's, if you can have a retaining wall at the
8 front of your property, but it can't be any
9 higher than the adjacent ones. And it also
10 has to be less than six feet.

11 MS. ELLIOTT: Correct.

12 COMMISSIONER MAY: Okay. So
13 there are some properties where they're very
14 high retaining walls in the District. So are
15 those simply going to be, I don't know, grand
16 fathered or noncompliant or you can't do it
17 again.

18 Or you'd have to do a special
19 exception I guess to get it, to do something
20 like that again.

21 MS. ELLIOTT: Correct. Existing
22 walls, they're existing. Proposed walls

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1 would, under the proposed regulations, they
2 would require special exception.

3 COMMISSIONER MAY: Okay. I don't
4 know how frequently that occurs, but I can, I
5 just picture a few of them. There's a
6 requirement, and I don't know if this is new
7 or whether it was in the original.

8 But if you do four foot retaining
9 walls as tiers that has to be at least four
10 feet between the wall, between one wall and
11 the next, right?

12 MS. ELLIOTT: Correct. That was
13 actually included in the original text as
14 well.

15 COMMISSIONER MAY: It was in the
16 original. Okay. All right. I think we have
17 to think carefully about that because that's
18 a pretty, fairly steep sort of relationship.

19 It effectively means a one to one
20 slope, and I'm not sure it's going to give
21 you a very desirable outcome. Does it
22 require four feet from face to face of wall,

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1 or is it four feet of permeable area?

2 MS. ELLIOTT: It's four feet of
3 permeable area between walls.

4 COMMISSIONER MAY: Okay, so it
5 would have to be a little more than four feet
6 because the wall has some thickness.

7 MS. ELLIOTT: I believe so.

8 COMMISSIONER MAY: Okay. In the
9 letter from the Neighbors United Trust
10 there's a mention of having some sort of
11 absolute limit on retaining walls and a
12 retaining wall of no maximum height in R-3 or
13 R-4 district when it abuts in the alley.

14 And they're concerned that it
15 could be taller than the absolute height
16 limit for a structure, or 40 feet. I don't
17 think that's a realistic outcome.

18 But I mean should there be a
19 maximum in that circumstance? I mean can we
20 reasonably say that it should never be more
21 than ten feet or 12 feet or something like
22 that because I think having some sort of cap

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1 probably is smart?

2 MS. ELLIOTT: We could certainly
3 look into that. Unfortunately, I only just
4 received the letter today --

5 COMMISSIONER MAY: Yes.

6 MS. ELLIOTT: -- so I haven't
7 really had the chance to look into that
8 further and develop a response. But I don't
9 think it's a bad idea, and we could certainly
10 look into that further.

11 COMMISSIONER MAY: Right. Yes,
12 and so I do think that adding an absolute max
13 makes sense, but it should be much lower than
14 40 feet.

15 Then the other question that
16 they'd raised, which I think is an issue is
17 how do you measure the area of a retaining
18 wall when it's, when it becomes an elevated
19 platform structure that's counted against lot
20 occupancy generally?

21 And I'm not sure that one can
22 realistically expect that at some point when

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1 a retaining wall is put in that its recorded
2 forever what the original slope was. So I
3 think in having some other method for
4 calculating that would make sense.

5 And the, I know that in the
6 discussions of a recent case where this was
7 an issue, the standard for what you
8 ordinarily be able to slope your property
9 would be one foot of height for every two
10 feet of distance. So I don't know, that's a
11 one to two slope or two to one slope. I
12 should know this, but maybe Mr. Turnbull
13 knows.

14 Anyway, but maybe that ought to
15 be standard that you calculate what that
16 slope would be and then use that as the basis
17 for establishing what the limit would be
18 because I think it's too hard to have to go
19 back and try to figure out 50 years from now
20 what was the grade when this original
21 retaining wall was put in. But I do think
22 that having something that's realistic would

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1 make sense. Thanks.

2 CHAIRMAN HOOD: Okay. Thank you.

3 Our Vice Chair?

4 VICE CHAIR COHEN: Thank you Mr.
5 Chairman. The wall begins at the finished
6 grade. Is that correct with the measurement
7 of the wall?

8 MS. ELLIOTT: Correct, based on
9 the definition that begins at finished grade,
10 and it --

11 VICE CHAIR COHEN: And so
12 finished grade can be manipulated somewhat,
13 or how do you determine that?

14 MS. ELLIOTT: There may be a
15 definition, but I'm not sure off the top of
16 my head.

17 VICE CHAIR COHEN: Oh, I'll look
18 into that as well because I just want to make
19 sure that it's clear to everybody. You're
20 looking it up now?

21 MR. BERGSTEIN: Madam Chair,
22 there also was an amendment very recently

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1 that prohibited the use of berms and other
2 artificial forms of landscaping from being
3 used to measure height in R zones.

4 And I don't have it with me, but
5 it's part of that new administrative
6 regulations that recently became adopted.
7 And that might take care of it because these
8 are resident zones.

9 VICE CHAIR COHEN: Okay. Is it
10 important to refer to it or just to reference
11 it?

12 MR. BERGSTEIN: I can work. I
13 can talk with the Office of Planning --

14 VICE CHAIR COHEN: Okay.

15 MR. BERGSTEIN: -- some more, but
16 generally speaking, that is the general
17 measurement of buildings and structures in
18 resident zones. And you added absolute
19 prohibition against the use of berms or
20 artificial landscaping.

21 VICE CHAIR COHEN: Good. I mean
22 that's important, so I think we should just

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1 really emphasize that.

2 CHAIRMAN HOOD: Any other
3 comments, questions? Ms. Schellin, I know
4 that Commissioner May asked you to look at
5 the Neighbors United Trust. I'm going to ask
6 you to respond to everything.

7 I know you haven't had time. You
8 mentioned that, so I was going to actually
9 have a dialogue with Ms. Gates and all of us.

10 But since you have not had time to review
11 this, I would like for you to respond to,
12 especially what Mr. May asked as well as the
13 letter in general. Okay? That's my request.

14 MS. ELLIOTT: Certainly.

15 CHAIRMAN HOOD: Okay. Any other
16 questions? Okay.

17 COMMISSIONER TURNBULL: I think
18 everyone else was asked all the wrong
19 questions.

20 CHAIRMAN HOOD: Do we have any
21 other reports or any, thank you Ms. Elliott.

22 Do we have any other reports from other

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1 government agencies? I don't think we did.
2 I think we're actually pretty completed.

3 Do we have anyone here who would
4 like, any person from an ANC who would like
5 to testify? I just had the ANC, how quick
6 paper leaves. You didn't take it? You
7 didn't get it this time? I just had it.
8 Yes, I had it. Oh, here it is. I've got too
9 much stuff.

10 We did get a letter from ANC 6-V,
11 and it states this. At its regularly
12 scheduled proper notice meeting on November
13 12, 2013 with a quorum present, Advisory
14 Neighborhood Commission, ANC 6-V voted 8-0-2
15 in support of the above referenced text
16 amendments to the Zoning Regulations.

17 And it tells us who to contact,
18 and it's signed by the chair, Mr. Brian
19 Flahaven, Chair. Okay. Let's go to our
20 witness list. Is there anyone here?

21 I do know that we have Ms. Gates
22 who'd like to testify. If you can come

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1 forward. Is there anyone else here who would
2 like to testify on this case who's present
3 tonight either in support or in opposition?
4 Ms. Gates, you're going solo.

5 MS. GATES: My testimony is the
6 same as the letter. Would you like me to
7 read it into the record?

8 CHAIRMAN HOOD: If you would like
9 to read it into the record, that would be
10 fine.

11 MS. GATES: Okay. I want, my
12 name is Alma Gates, and I'm representing
13 Neighbors United Trust. I want to thank the
14 Zoning Commission for its guidance and for
15 reopening the file on Case Number 13-06.

16 The revised text amendments are a
17 vast improvement. However, there are still a
18 few areas that may need your attention.
19 Proposed Section 13.3 would allow a retaining
20 wall of no maximum height in a R-3 or R-4
21 district provided it abuts an improved alley.

22 However, Section 400.1, Height of

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1 Buildings or Structures in a Residence
2 District, limits the height of structures in
3 these districts to 40 feet. Therefore,
4 Section 413.3 appears in conflict with the
5 residence district height regulations.

6 Section 413.3 might be more
7 consistent with the residence district height
8 regulations if it were changed to read
9 "subject to the location-based height
10 limitations of Section 413.4 through 413.6,
11 the maximum height of a retaining wall shall
12 be six feet, with the exception of a
13 retaining wall abutting an improved alley in
14 an R-3 or R-4 district, which shall not
15 exceed 40 feet."

16 I realize that that is extreme.
17 However, having lived in the neighborhood
18 where a 30 foot wall went up without a
19 permit, this wouldn't surprise me at all. So
20 I just put it in there.

21 The Commission may want to limit
22 retaining walls in the R-3 and R-4 districts

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1 to 40 feet and allow for further height
2 through a special exception or variance.

3 Section 413.10 does address the
4 need for additional height flexibility for
5 all zone districts. Section 413.10 states
6 "in addition to meeting the general
7 conditions for being granted a special
8 exception as set forth in that section, the
9 applicant must demonstrate the conditions
10 relating to the building, terrain or
11 surrounding area would make full compliance
12 unduly restrictive, prohibitively costly or
13 unreasonable."

14 It appears the criteria in
15 Section 413.10 reflects the requirements for
16 an area variance rather than a special
17 exception. Finally, it remains unclear how a
18 new property owner would know to measure or
19 calculate the backfill area behind a
20 retaining wall that needs to be included in
21 lot occupancy.

22 If the retaining wall in the

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1 backfill area were installed by a previous
2 owner, the backfill area would no longer be
3 distinguishable as it would become part of a
4 totally landscaped yard.

5 Section 413.7 lacks language
6 requiring the area that elevates the terrain
7 with backfilled dirt or other fill material
8 to be officially recorded at the time of
9 disturbance.

10 Otherwise it would not be obvious
11 this area should be included in lot occupancy
12 calculations in the future. For example, it
13 would be impossible today to calculate the
14 area of the Economides rear yard. That
15 should be included in lot occupancy.

16 The surface of that elevated
17 platform structure has been completely
18 landscaped from the rear of the house to the
19 rear property line. How would lot occupancy
20 of that yard be calculated today given a
21 portion of the rear yard was never disturbed
22 when the wall was constructed, and a portion

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1 of the rear yard is backfilled.

2 No obvious signs remain to aid in
3 the calculation of lot occupancy. Section
4 413.7 should be expanded to include a
5 requirement that the lot occupancy
6 calculation of the backfilled area of the
7 yard be formally recorded at the time a
8 permit is issued for the construction of a
9 retaining wall. That concludes my testimony.

10 Thank you.

11 CHAIRMAN HOOD: Thank you Ms.
12 Gates. Commissioners any questions on Ms.
13 Gates testimony? Okay. Not seeing any, Ms.
14 Gates we did, as you've heard, we did ask the
15 Office of Planning to respond, especially
16 when I read, and I'm glad you read that into
17 that record because that last point, I may
18 have missed it, but that's a good point also.

19 So Office of Planning will be
20 responding. All right, thank you very much
21 Ms. Gates. We appreciate you taking the time
22 to come in and testify. Is there anyone else

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1 who'd like to testify on the first case,
2 retaining walls?

3 Okay, not seeing anyone else
4 who'd like to testify in this case, I guess
5 we will close the record other than for what
6 we asked for. Ms. Schellin, we'll close the
7 record. Do we have anything else in this
8 case Commissioners? Okay, Ms. Schellin, do
9 we need to do anything else?

10 MS. SCHELLIN: I guess we need to
11 set a date for which the items that you guys
12 want to receive these.

13 CHAIRMAN HOOD: I think
14 everything is coming from the Office of
15 Planning's response. Can we set the date?

16 MS. SCHELLIN: I think in light
17 of the holidays maybe we could set January
18 13th and take this up at our second meeting
19 in January, which would be January 27th.
20 Does that work for the Commission?

21 CHAIRMAN HOOD: Okay, that's
22 fine. Any objections? Ms. Elliott, is that

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1 good for Office of Planning?

2 MS. ELLIOTT: Yes, we can meet
3 those deadlines.

4 CHAIRMAN HOOD: Okay. All right
5 Ms. Schellin, do we have anything else?

6 MS. SCHELLIN: No, sir.

7 CHAIRMAN HOOD: Okay, I want to
8 thank everyone for their participation in
9 this first hearing. And this hearing is
10 adjourned.

11 (Whereupon, the hearing in the
12 above-entitled matter was concluded at 6:25
13 p.m.)
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