



ADVISORY NEIGHBORHOOD COMMISSION 3E

TENLEYTOWN AMERICAN UNIVERSITY PARK FRIENDSHIP HEIGHTS

c/o Lisner-Louise-Dickson-Hurt Home 5425 Western Avenue, NW Washington, DC 20015

www.anc3e.org

**Resolution Regarding the Board of Zoning Adjustment Appeal Relating to
4201 River Road (BZA Case No. 18612)**

WHEREAS

Until 2012 and for decades previously, a modest house stood at 4201 River Road, NW. The house sat on essentially the same grade as that of its nearest neighbor – 4207 River Road, NW – owned by the Appellant in the BZA case, Terry Hopkins. (See photos shown at Attachment A.)

In 2012, District Properties (“DP”) purchased the property and pursued its development plan that has brought us to where we are today. (See photographs at Attachment B.)

Pursuant to that plan, DP significantly changed the grade of the site with as much as seven feet of fill held in place in part by walls and in part by the new house. (See photographs at Attachment C.)

The net effect of the changes to the grade and other construction was that DP effectively built the new house on top of a newly created hill, at a level significantly higher than the original grade and the grade of the nearest neighbor, creating a structure that is significantly out of context, and that looms over the home of the nearest neighbor – the Appellant in the instant case.

Setting aside the technical requirements of the zoning rules, which we believe support the Appellant’s case, one cannot stand at the doorstep of the Appellant’s home without being struck by the fact that outcomes like the one here are what the zoning rules were enacted to avoid.

Because the area covered by the elevated platform, including the area covered in fill and then covered again for use as the driveway, was not counted towards lot occupancy, the project was deemed to comply with the 40 percent lot occupancy requirement, coming in at over 39

percent. However, if the covered area and/or the part of it used for the driveway counted towards lot occupancy (as they should be), the project would substantially exceed the 40 percent lot occupancy limit and a Variance process would have been required through which the competing interest could have been equitably resolved subject to BZA review.

Similarly, District Properties claims that the house is thirty six feet high after the changes to the grade and hence no zoning relief was required. However, if measured from the original grade and from the perspective of the nearest house – 4207 River Road, NW, owned by the Appellant – the height greatly exceeds the 40 foot limit, and, again, a Variance or Special Exception process would have been required and the competing interests addressed.

Moreover, because the wall holding up the fill was treated as a retaining wall and not part of an elevated platform, even though it was an artificially elevated platform greater than four feet in height which was not built to resist lateral pressure or prevent an earth slide, DCRA permitted it less than eight feet from the property line. That too had adverse consequences for the neighbors. Had the elevated platform been lower than or further from the property line, the resulting house would have been lower when seen from the neighboring property, farther from the neighboring property, or both. If the placement or height of the wall had been properly treated, the project again would have been subject to a Variance or Special Exception process through which the competing interest could have been equitably resolved subject to BZA review.

We note that DP has chosen to proceed on a number of occasions to invest in construction without a permit – for example pouring the driveway before a permit was granted and making a makeshift ramp to provide access to the property by oversized trucks -- at this site, including in the public space. In doing so, one might infer that DP sought to present its work to regulatory agencies as a *fait accompli*.

At bottom, DP has chosen to press the outer limits of the zoning rules to maximize the value of its property, fully cognizant that in doing so it is imposing substantial burdens and adverse consequences on its neighbors, particularly its nearest neighbor, the Appellant in this case.

The question before the BZA now is whether the subject walls and fill behind them, which was constructed solely for the purpose of creating an elevated platform structure (including the driveway), cause the property to exceed the permitted lot occupancy or to violate side-yard setback rules such that Variances should be required. It is a shame that this project has reached the BZA only after many facts have been established on the ground, but it remains incumbent on the BZA to apply the zoning rules strictly and in a manner that can allow for an

equitable result.

We believe it is self-evident that the rules were not intended to encourage construction like this. If they were, residents could build substantial hills on their lots in neighborhoods across the city and build homes on top of them, looming over their neighbors. In addition to looming over their nearest neighbors, such dramatic revision to the landscape can also have adverse impacts in terms of stormwater management and runoff. The Comprehensive Plan, however, stresses the importance of scale and preservation of neighborhood character in various of the stated policy directives:

Policy UD-2.2.1 Neighborhood Character and Identity

Strengthen the defining visual qualities of Washington’s neighborhoods. This should be achieved in part by relating the scale of infill development, alterations, renovations and additions to existing neighborhood context.

Policy LU-2.2.1: Code Enforcement as a Tool for Neighborhood Conservation

Recognize the importance of consistent, effective, and comprehensive code enforcement to the protection of residential neighborhoods. Housing, building, and zoning regulations must be strictly applied and enforced in all neighborhoods of the city to prevent deteriorated, unsafe, and unhealthy conditions; reduce illegal activities; maintain the general level of residential uses, densities, and height; and ensure that health and safety hazards are promptly corrected.

Policy LU-2.1.6: Teardowns

Discourage the replacement of quality homes in good physical condition with new homes that are substantially larger, taller, and bulkier than the prevailing building stock.

As a practical matter, part of what is at issue here is the manner in which 4201 River Road, NW would loom over the Appellant’s home and be out of character with the neighborhood. Height restrictions, intended to protect against such outcomes, are important to the District. In the sometimes controversial zoning rewrite process, the Office of Planning has made clear that it proposes no changes to the height restrictions and indeed may move to strengthen them to avoid the construction of new homes that could “ detract{} from neighborhood character and result{} in homes that are out of context.” See Attachment D.

The contemplated Office of Planning changes regarding height measurement are not directly relevant here, but underscore again the importance the zoning regime places on the fair approach to building height. Clearly, building new, maximalist homes on newly constructed

hills such that the resulting homes tower over their nearest neighbor and are much higher than 40 feet tall when viewed from the perspective of the nearest neighbor is not consistent with either the letter or spirit of the rules.

We understand that given the degree to which the construction at 4201 River Road is nearly complete, the question of remedy could be challenging. However, not granting relief because of concern about the shape of the remedy would wrongly reward DP and punish the Appellant. On the other hand, if the BZA required DP to seek a Variance or Special Exception, the BZA would retain jurisdiction and could determine whether any demands for adjustment to the plans or mitigation were reasonable when reviewing that Variance or Special Exception application.

Requiring DP to participate in such a process would be consistent with both the letter and spirit of the rules and fundamental fairness to the Appellants and the community.

THEREFORE BE IT RESOLVED, we support the appeal by Terry Hopkins (BZA Case No. 18612) and urge the BZA to include the elevated platform in the calculation of lot occupancy and find that the relevant wall and platform are too close to the property line, and thereby require District Properties to seek a Variance or Special Exception relating to the project. Such a process would fulfill the letter and spirit of the zoning rules and allow for a setting in which to conclude the kind of equitable resolution of the clash of interests of this new project and the existing neighbors as the zoning rules intend. The BZA itself would be the arbiter of such a Variance or Special Exception application and could ensure it proceeded equitably.

ANC 3E approved this resolution at its meeting on August 29, 2013, which was properly noticed and at which a quorum was present. The resolution was approved unanimously by a vote of 5-0-0. Commissioners Jonathan Bender, Matthew Frumin, Kathryn Tinker, Tom Quinn and Sam Serebin were present.

ANC 3E
By Jonathan Bender, Chairperson