

July 23, 2018

Anthony Hood, Chairperson
D.C. Zoning Commission
Office of Zoning
441 4th Street NW, Suite 200S
Washington, DC 20001

**Re: Z.C. Case No. 17-18
Goulston & Storrs Comments Regarding Proposed Text Amendments**

Goulston & Storrs offers the following recommendations regarding the proposed text amendments under consideration in Z.C. Case No. 17-18.

Changes to Cellar and Basement Definitions

Goulston recognizes and appreciates the District's objective to address ongoing issues related to whether a below-grade level qualifies as a cellar and is thus excluded from FAR calculations, or is considered a basement and thus is counted towards FAR, as well as scenarios where the intent of the regulations may be frustrated by novel design strategies. Specifically, Goulston recognizes DCRA's aim to realize and effectuate the intent of the Zoning Regulations by shifting the relevant measuring point for cellar/basement determinations from the below-grade level's ceiling to the floor of the ground level.

Based on our experience with numerous clients and design professionals in a wide variety of projects across the District, Goulston respectfully requests that the Commission give serious and deliberate consideration to ensure that the proposed amendments employ a metric that is truly reflective of the mean slab thickness of most projects in the city. While slab thickness varies by construction type, based on our collective experience with the developers and design professionals, such thickness typically ranges from approximately 13 inches up to 22 inches. This actual range exceeds the 12-inch adjustment — 4 ft. from the below-grade level ceiling to 5 ft. from the ground-level floor — that is provided for in the amendments as currently proposed.

Accordingly, the current text of the amendments could have the unintended consequence of eliminating a significant number of residential units from projects throughout the District, reducing the number of new residential units developed in the city by a compelling margin. The reduction in residential units will not only have an effect on affordability across the city, but the elimination of basement level residential units also signifies the elimination of what are often the most affordable units in a building.

For these reasons, Goulston requests that the Commission increase the 12-inch adjustment currently proposed to 24 inches, resulting in a six (6)-foot threshold for determining whether a below-grade level constitutes a basement or cellar. This adjustment is more reflective of industry practice with respect to typical slab thickness and does not risk the unintentional elimination of residential units that could result from the amendments as currently proposed.

Habitability of Cellars

Goulston strongly supports the Office of Planning's proposal to clarify that cellars may, indeed, include habitable rooms. As numerous previous comments submitted to the Commission and the Zoning Administrator's testimony at the February 22, 2018 hearing have made clear, this amendment is both necessary and highly consequential. The habitability of cellars affects the full range of residential projects in the city. From single-family rowhouses to larger mixed-use and apartment developments, projects in the city consistently rely on the long-recognized understanding that a below-grade level that is considered a "cellar," as that term is defined, may include habitable rooms. Any contrary interpretation or amendment to the regulations would have far-reaching and acute consequences for development across the city, including affordable housing, whether currently in development or yet to come. Accordingly, Goulston urges the Commission to adopt the proposed amendments clarifying and confirming the long-standing interpretation of the Zoning Regulations that habitable rooms may be located in cellars.

Phasing and Vesting

Given the significance of the proposed amendments, which will affect projects across all zones and throughout the city, Goulston strongly supports the adoption of a phase-in period for the proposed amendments, as well as specific vesting provisions to ensure that projects that are already well into the development process are not unfairly jeopardized or compromised. The proposed text amendments would have wide-reaching effects for many projects currently in development with respect to how maximum density is calculated, which has immediate ramifications for a project's pro forma. The real world impact for many projects may be the elimination of a large amount of assumed marketable floor area, which has the potential to freeze or terminate projects for which significant investments have already been made. Considering these investments, made in reasonable reliance on the current regulations, it is important that any change with respect to how FAR is calculated be preceded by an ample and equitable phase-in period of no less than six (6) months.

Similarly, for projects that have already made the substantial investment required to obtain zoning and historic preservation entitlements, it is vital that vesting provisions be included to ensure that projects that have relied on the existing rules regarding FAR calculations are not compromised due to unfortuitous timing. Accordingly, Goulston recommends that the proposed amendments include vesting provisions stating that projects that have received approval from the Zoning Commission, Board of Zoning Adjustment, or Historic Preservation Review Board prior to adoption of the proposed amendments, or that have a building permit application filed with the Department of Consumer Regulatory Affairs ("DCRA") prior to adoption of the amendments, are processed under the regulations in effect prior to the amendments proposed in Case No. 17-18.

Conclusion

We appreciate the opportunity to comment on the proposed amendments and we look forward to the Commission's consideration of these comments.

Sincerely,

CHRISTINE RODDY (WLF)

Christine Roddy

A handwritten signature in blue ink, appearing to read "Lawrence Ferris", with a long horizontal flourish extending to the right.

Lawrence Ferris