

Board of Zoning Adjustment for the District of Columbia

The Appellants

This pre-hearing statement and accompanying exhibits are filed 5/4/15 (resubmitted 5/5/15 due to IZIS errors), 15 days in advance of the hearing, in accordance with 3112.10. This statement is submitted by the appellants, who reside within 200 feet of the subject property, 1636 Argonne Place NW. As is outlined in detail in this pre-hearing statement, the Zoning Administrator violated multiple zoning regulations in approving building permits B1502210, B1404813 and B1409928 and associated construction plans for the subject property, a single-family dwelling undergoing conversion to a multi-unit condo building.

Address	Names
1652 Argonne Place NW	Deepa Venkataraman and Ajeet Vinayak
1648 Argonne Place NW	Alan Gambrell and James O'Day
1646 Argonne Place NW	Andrea Owen and Richard Ehrenberg
1642 Argonne Place NW	Cy Behoorzi and Tom Natan
1638 Argonne Place NW	Luis and Anita Canizares
1626 Argonne Place NW	Michael Russoto and Angel Torres-Cabassa
1624 Argonne Place NW	Jennifer Barger and Callan Barger
1622 Argonne Place NW	Paul Hunt

Summary of Case

From March-September 2014, DCRA issued multiple building permits for the subject property (B1409928 and B1404813), with determinations that existing and proposed FAR and lot occupancy were in compliance with zoning regulations. These errors were brought to the attention of DCRA by neighbors over the time period October-December 2014. In response, DCRA ruled 12/3/14 that FAR was out of compliance and issued a Stop Work Order (SWO). This decision was reversed several weeks later, on 12/18/14, with approval of a new permit (B1502210, later issued 3/24/15) and a ruling that the building was in FAR compliance. This ruling was based upon DCRA's determination that a change in the *existing finished grade* had occurred, thus allowing for a redefinition of the lower level as a cellar whose square footage is not countable in *existing* and *proposed* FAR calculations.

On 2/17/15, appellants filed this appeal. In order to prepare this case, from January-March 2015, appellants submitted multiple and unsuccessful requests to DCRA (e.g., emails, FOIA) for information about recognition of errors, corrections made and/or the basis for changes in FAR and lot occupancy calculations. Only in late March/early April 2015 were appellants able to access B1502210 and revised architectural plans dated 12/17/14.

In this appeal, appellants identify three errors by the Zoning Administrator in approving building permits and associated architectural plans containing multiple GFA errors and mischaracterization of parking conditions. Collectively, these errors allow the subject building to violated FAR, lot occupancy, number of unit limits, and parking regulations.

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- **Error 1. Incorrect designation of the lower level as a cellar, which incorrectly excludes this square footage from FAR.** This error (1) represents a disregard of DC zoning regulations and long-established DCRA policy on its methodologies (perimeter wall and grade plane) for determination of lower level FAR, (2) is based upon a misidentification of the front finished grade, with notable errors in approved architectural plans; (3) in actuality fails to achieve a change in finished grade that would be necessary to redefine the lower level as a cellar—even if the grade changes were permissible and even if the grade changes were actually carried out, which has not occurred as of 5/4/15; and (4) grants permission for non-conforming changes that are not matter of right modifications and are thus not within DCRA's authority to approve; and (5) violates Construction Code and Building Permit Data Requirements. These errors are particularly egregious as they represent an effort to grant an *ex post facto* change in existing conditions.
- **Error 2. Incorrect GFA calculations, which affect FAR and lot occupancy determinations.** The largest GFA errors include non-inclusion of the lower level; failure to revised GFA calculations to account for removal of the spiral staircase; and incorrect calculation of GFA from interior walls, contrary to the 199.1 requirement in the definition of GFA to measure from exterior walls.
- **Error 3. Violation of multiple parking regulations.** The Zoning Administrator created multiple non-compliant parking conditions with issuance of building permits as the applicant was authorized to eliminate the former garage space under this project and did not provide the required 2 spaces for this 4-unit apartment building. Notably, allowing installation of a retaining wall across the back of the building not only constitutes an improper and unsuccessful effort to change the grade measure but also further shortens the distance to the alley, thus increasing the non-conformity of potential parking spaces, leaving no space for parking. Furthermore, the Zoning Administrator erred in miscalculating the intensity of use as no more than 25%, whereas conversion to from a single family to 4-unit apartment building is a 400% increase. DCMR violations include 2100.6, 2100.7, 2100.10, 2101.1, and 2115.1.

Failure to correct these errors (see table below) will set a flawed precedent for at least three identical properties on the block (1630, 1632, and 1634 Argonne Place, NW) and two additional properties nearby (2910 and 2920 18th Street, NW) that are scheduled to undergo conversion into multi-unit condo units in 2015. The developer who owns these properties has stated an intension to await the outcome of BZA 18980 prior to proceeding with plans to develop these properties, with a particular eye on the BZA ruling regarding characterization of the lower level for purposes of FAR.

Summary of Zoning Administrator's Errors

Error 1: Incorrect Designation of Lower Level as Cellar for FAR	
Why it Was an Error	DCMR Regulations and DCRA Policies
1. Disregards DCRA's methodology for determining lower level FAR.	Perimeter wall method, outlined in Memorandum of James J. Fahey dated September 11, 1990
2. Constitutes an impermissible redefinition of the term "existing."	11-199.1(g)
3. Grants permission to construct an apartment building with a greater FAR than is permitted in an R-5-B zone.	11-402.4 (Floor Area Ratio)
4. Does not change lower level conditions to a cellar and as such disregards definitions of basement and cellar.	11-199.1
5. Ignores DCRA's definition of adjacent finished grade.	Definition of adjacent finished grade per Appeal No. 18615 of 5333 Connecticut Neighborhood Coalition, et al., 10/29/13 IBC grade plane analysis
6. Approval of architectural plans with errors in measurements and conditions for GFA, FAR, and lot occupancy results in a disregard of requirements to submit existing Information in building permits and scaled drawings, in compliance with provisions of zoning regulations—specifically, existing GFA, FAR and lot occupancy.	11-101.5, 11-3202.1, 11-3202.2, 12A-105.1, 12A-105.3, 12A-105-6, 12A-106.1.12, Application for Construction Permits on Private Property
7. Disregards the definition of "retaining wall" in that the structure fails to serve to "resist the lateral displacement of soil or other materials."	11-199.1
8. Violates minimum rear setback requirement of 15' for R-5-B and represents permission that is not matter of right and is thus exceeds DCRA's authority to grant.	11-404.1
9. Exceeds the minimum flexibility allotted to the Zoning Administrator.	11-2522.1
10. Violates building height definition.	11-199.1
11. Violates requirements on means of egress.	12A, Table 1021.2, Table 503
Zoning Error 2: Errors with GFA, FAR, and Lot Occupancy	
1. Errors in calculation of GFA (and thus existing and proposed FAR) for the lower level, porch, balcony, floors 1 through 4.	11-402.4
2. Failure to include existing lot occupancy for first floor porch.	11-402.4
3. Failure to include lower level entryway in proposed lot occupancy	11-402.4
4. Errors in definitions for building, building area, GFA, floor area ratio, percentage of lot occupancy, cellar and basement.	11-199.1
Zoning Error 3: Failure to Enforce Parking Regulations	
1. Failure to provide required number of parking spaces in response to increase in intensity of use.	11-2101.1, 2100.6 and 2115.1
2. Impermissible reduction in the required number of parking spaces.	11-2100.10
3. DCRA error in Increase in intensity calculation.	11-2100.7 and 2100.7

Factual Background

Below is a factual outline in terms of (1) a description of the subject property including the finished grade and parking conditions and (2) a timeline recap of the permits granted for the subject property and shifting FAR determinations by DCRA.

Overview of the Subject Property

The subject property, 1636 Argonne Place NW (Square 2589, Lot 0460) is part of a contiguous row of 17 town houses (2.5 stories with an additional lower level), designed in the Georgian-revival style in the 1920s. The subject property is a single-family dwelling currently being converted into a four-unit condominium building. It is located in an R-5-B zone, which has a FAR limit of 1.8 and lot occupancy of 60%.

Similar to most other houses on the block, the subject property building has a masonry façade with a covered arcaded front porch and a mansard roof. As a whole, the block retains its historic architectural character and is a contributing feature to the neighborhood at large. All of the homes on the block are sited on a terraced embankment approximately 10-12 feet above the street grade. Each home has a series of concrete steps leading from the public sidewalk to a front landing, which continues on to a raised concrete porch and front entrance for the first floor. It is at this front landing point that the lower level is observable.

Overview of Lower Level Grade

Most homes on Argonne Place NW have lower levels that are partially above grade at the front and partially or entirely above grade at the rear. The subject property differs, however, in that the lower level is completely above grade. As of 5/4/15, the existing lower level stands more than 4' above the adjacent finished grade and is observable as such in the front, rear, and portions of the rear sides and is thus definable in its entirety as a basement and is therefore countable in FAR under both the perimeter wall and grade plane methods. In other words, the adjacent finished grade has not been changed, contrary to what DCRA states in approval of B1502210 and B1404813.

- **Front Façade.** The building front is sited on a terraced embankment and set back from the property line approximately 15 feet. A series of steps from the public sidewalk lead up to the front entrance, terminating at a concrete landing with two points of entry. One is a series of steps leading straight ahead to the front porch. The second is a level concrete sidewalk that subsequently leads to a descending set of steps to the below grade courtyard and apartment unit on the lower level (see photos, Exhibits 1 and 18). This configuration is attributable to a 2002 renovation of the original English-style basement by prior owners (see Exhibit 2: 2002 Renovation). This remodeling created an entryway area to serve as a front door entry for a one-bedroom basement apartment. The lower level front has been fully excavated to provide access for the apartment unit.
- **Rear Façade.** At the rear, the building is set back 16 feet from the property line. The lower level is fully above grade (see Exhibits 1 and 18). Additionally, portions of the building's side walls at the rear of the property are not obscured by abutting buildings, thus allowing them to be measured for purposes of calculating FAR via the perimeter wall method. These side walls are also fully above grade (see Exhibits 1 and 18).

Parking

Existing conditions for this single-family dwelling included a garage on the lower level and a rear yard to alley distance of 16'. This lower level space was converted into a 1-bedroom basement rental unit in 2002 under DCRA permits B441124-4419020, preserving the garage. The garage is depicted in 2014 architectural plans for existing conditions (see Exhibits 1 and 18).

Timeline: Permits Issued and Variable FAR and Lot Occupancy Calculations

Following is a recap of the three permits issued for the subject property, construction activities, neighbor communications regarding FAR/lot occupancy concerns, and DCRA actions. In summary, all of the issued permits rely on the accuracy and veracity of GFA, FAR and lot occupancy calculations in approved architectural plans, which appellants dispute. A December 3, 2014 SWO issued on the subject property validates concerns about FAR violations. The basis for lifting the Stop Work Order and issuance of a new permit recognizing FAR compliance is based on multiple errors, described in the following section, The Zoning Administrator's Errors.

- **Initial Permit.** Permit B1404813 (3/19/14 to 10/29/14) was issued to cover an array of mechanical, electrical, structural, DDOE, and plumbing work for conversion of this single family row house into four condominium apartments (Exhibit 3: B1404813).
- **Permit to Construct Retaining Wall.** Permit B1409928 (7/21/14) was issued to allow for construction of a retaining wall at the rear of the building with a maximum height of 30" (Exhibit 4: B1409928). The intent of this permit was to enable the lower level to be characterized as a cellar, thus keeping the project's FAR in line with the permissible limits approved in B1404813. As of May 4, 2015, the retaining wall has not been constructed.
- **Initial FAR and Lot Occupancy Calculations.** Building plans submitted and approved 8/29/14 under the above permits stated the existing FAR as 1.26 and the proposed FAR as 1.77. In these building plans, the lower level was characterized, in total, as a cellar and thus was not counted in FAR. The lot occupancy (existing and proposed) was stated as 63% in undated plans provided to abutters in the Summer of 2014 and later revised to 58% in 8/29/14 approved plans. Again, limits in this R-5-B area are FAR 1.8 and lot occupancy of 60% (Exhibit 5: 1636 Drawings June 2014).
- **Initial Demolition and Construction.** From September-October 2014 to December 2014, demolition and conversion of the property was initiated, resulting in gutting of the interior, roof, and removal of the masonry wall on the first floor. The new construction included framing of the condominium units, extension of the attic into a full third floor, and the addition of a penthouse on the fourth floor. Additional work included the enclosure and framing of the front porch arcade, to be captured as interior space for the first floor condominium unit.
- **Neighbor Concerns to DCRA.** Simultaneously, in October 2014, concerned neighbors reviewed building permits and architectural plans (as provided to abutters at 1634 and 1638) and engaged in email correspondence and a meeting with DCRA staff (October-November) to raise concerns about potential violation of FAR and lot occupancy limitations.
- **DCRA Reassessment of FAR and Lot Occupancy Calculations.** DCRA communicated to neighbors in a 11/19/14 email that the lot occupancy was 58.7% and in compliance and that

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FAR recalculations were ongoing. DCRA also stated they anticipated issuance of a Stop Work Order pending finalization of this evaluation.

- **Stop Work Order for FAR Violation.** On 12/3/14, a SWO was placed on the property (Exhibit 6: 1636 SWO Dec 14). A subsequent 12/12/14 DCRA email to abutters and appellants stated that proposed FAR was determined to be 2.07, not 1.77, as presented in the initially submitted building plans approved by DCRA.
- **Continued FAR Violation, Rejection of New Permit.** A third permit, B1502210 was submitted by the developer and initially rejected on 12/12/14 as the project continued to exceed the allowable FAR, as follows: “the revised submitted drawings still reflect that the far is over the allowed area in the r-5-b zone” (PIVS).
- **New Permit Approved on Change in Existing Grade: FAR Compliance Recognized.** Subsequently, B1502210 was approved a week later, on 12/18/14, and issued 3/24/14. The revised permit cross-references B1404813 and grants permission to produce a “new grade to reflect cellar throughout private property” stating:

“(r.5.b) revise project dox approval from b1404813 from a single family converted to a 4 unit apartment house - condos by interior work, new addition, plus mezzanine, roof decks. no additional parking required, addition does not increase intensity by more than 25 percent. revision will produce new grade to reflect cellar throughout private property and new 1’ high rear retaining wall. new work also verified by zoning administrator, matt legrant” (Exhibit 7: PIVS 1636 Argonne May 3 2015).

Zoning Administrator Matt LeGrant wrote a 12/19/14 email to abutters and appellants that this new building permit had been issued, thus bringing the property into FAR compliance. As of 5/4/15, no “new grade” has been established to change the adjacent finished grade in order to achieve cellar level designation.

- **Permit Re-Issued.** Permit B1404813, originally issued and modified 3/19/14 to 10/29/14, was revised and issued on 1/8/15 (Exhibit 3: B1404813). No new PIVS or permit comments were provided by DCRA.
- **Efforts to Obtain Revised Permits and Plans.** Appellants were unsuccessful from January to March 2015 in securing this modified building permit and associated architectural plans from the following sources: (1) DCRA’s Records Room (despite numerous calls and emails in January and February); (2) a January 2015 FOIA request; and (3) a February 2015 letter from the Ward 1 councilmember to the Zoning Administrator; and a (4) 1/16/15 FOIA request, largely unaddressed in a 3/3/15 DCRA FOIA response (Exhibit 8: FOIA Requests). The permits and plans were also unavailable until 3/24/15 as the permit had not been paid, according to the DCRA Records Room, creating difficulties in preparing this appeal. Only on 3/31/15 were requested records provided by DCRA in response to a 3/5/15 appeal to the Mayor’s FOIA office regarding DCRA’s earlier FOIA response, although FAR and lot occupancy data were not provided.

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FAR and GFA Calculations for 1636 Argonne Place

	Date	Existing	Proposed	Source
Building Plans Approved	8/29/14	1.26 2143	1.77 3008	B1409928 – Building Plans dated 7/21/14
Neighbor Corrections Communicated to DCRA	10/14	1.67	2.51	
DCRA Stop Work Order	12/3/14	*	2.07	12/12/14 Email Correspondence from DCRA
Permit B1502210	12/18/14	*	*	
Zoning Administrator email lifting of Stop Work Order	12/19/14	*	*	
Permit B1404813	3/24/15	*	*	
Appellants' Calculations	5/4/15	1.73	2.51	Analysis of Approved Plans, 6/24/15

* Unknown: DCRA has not provided this information but stated by DCRA as “compliant with the FAR limitation”

Lot Occupancy Calculations for 1636 Argonne Place

	Date	Existing	Proposed
Building Plans Approved	8/29/14	63%	63%
Appellant Corrections Communicated to DCRA	11/14	59.8%	62.11%
DCRA Stop Work Order	12/3/14	*	58.7%
Permit B1502210	12/18/14	*	*
Zoning Administrator email lifting of Stop Work Order	12/19/14	*	*
Permit B1404813	3/24/15	*	*
Appellants Calculations	5/4/15	59.58%	62.11%

* Unknown: DCRA has not provided this information.

The Zoning Administrator's Errors

There are three errors by the Zoning Administrator with regard to issuance of permit B1502210, which cross-references B1404813 and which in turn dependent on B1409928. The cumulative effect is to permit construction of an apartment building at 1636 Argonne Place NW, in violation of violated FAR, lot occupancy, number of unit limits, and parking regulations for R-5-B.

Zoning Error 1 of 3: Incorrect Designation of Lower Level as Cellar for FAR

As described below, the Zoning Administrator's decision to grant permits B1502210, B1404813, and B1409928 (1) disregards DC zoning regulations and long-established DCRA policy on its methodologies (perimeter wall and grade plane) for determination of lower level FAR, (2) is based upon a misidentification of the front finished grade, with notable errors in approved architectural plans; (3) in actuality fails to achieve a change in finished grade that would be necessary to redefine the lower level as a cellar—even if the grade changes were permissible and even if the grade changes were actually carried out, which has not occurred as of 5/4/15; and (4) grants permission for non-conforming changes that are not matter of right modifications and are thus not within DCRA's authority to approve; and (5) violates Construction Code and Building Permit Data Requirements.

What the Zoning Administrator seeks to authorize is a stunning disregard of a fundamental prerequisite of the zoning regulations—a fair and accurate assessment of existing and proposed circumstances for a given project. This is apparent in the Zoning Administrator's drive to retroactively redefine the *existing* adjacent finished grade and to do so 6+ months after issuance of original building permits and initiation of construction on the subject property, and to additionally make this decision after having earlier issued a contrary ruling that the lower level was, in part of whole, definable as a "basement" and thus countable in "existing FAR."

Disregard of DCRA Perimeter Wall Method, 199.1 Definitions, 402.4 FAR

The Zoning Administrator disregards the DCRA's long-established perimeter wall method (outlined in Memorandum of James J. Fahey dated September 11, 1990) for determining the floor area of the lower level to charge to gross floor area, which uses definitions of "cellar" and "basement" as specified in DCMR 199.1. Errors are as follows.

- **Analysis Errors.** It is not clear if the Zoning Administrator engaged in an analysis of the grade using either the perimeter wall method or grade plane method as no such documentation was provided in response to appellants' FOIA request, which was limited to the provision of the following statement:

"As regards the calculation of lot occupancy and FAR, I call your attention to the PDF entitled "1626 [sic] Argonne Place Plat.pdf" that is attached to the B1404813 Digital Permit Application File and which includes the applicant's stated calculations for FAR and lot occupancy based on the attached plat. These calculations were confirmed by the Zoning Administrator's Office as accurate and as within the FAR permitted for the property and so there is no separate record of these calculations" (see below and Exhibit 9: 1636 Argonne Place Plat Mar 14).

2014 Plat with Proposed Lot Occupancy and FAR Calculations

1636 ARGONNE PLACE

EXISTING TWO STORY
MASONRY STRUCTURE WITH CELLAR WITH
PROPOSED 1 STORY W/ MEZZININE ADDITION

LOT AREA:

$$20 \times 85 = 1700 \text{ sq. ft.}$$

BUILDING AREA: ORIGINAL FOOT PRINT REMAINS

$$45 \times 20 = 900.00 \text{ sq. ft.}$$

$$7.1 \times 13.2 = 93.72 \text{ sq. ft.}$$

$$= 993.72 \text{ sq. ft.}$$

LOT OCCUPANCY:

$$994 / 1700 = 58\%$$

FAR

CELLAR = NOT INCLUDED

$$\text{LEVEL 1} = 994 \text{ sq. ft.}$$

$$\text{LEVEL 2} = 900 \text{ sq. ft.}$$

$$\text{LEVEL 3} = 855 \text{ sq. ft.}$$

$$\text{MEZZ} = 256 \text{ sq. ft.}$$

$$= 3,005 \text{ sq. ft.}$$

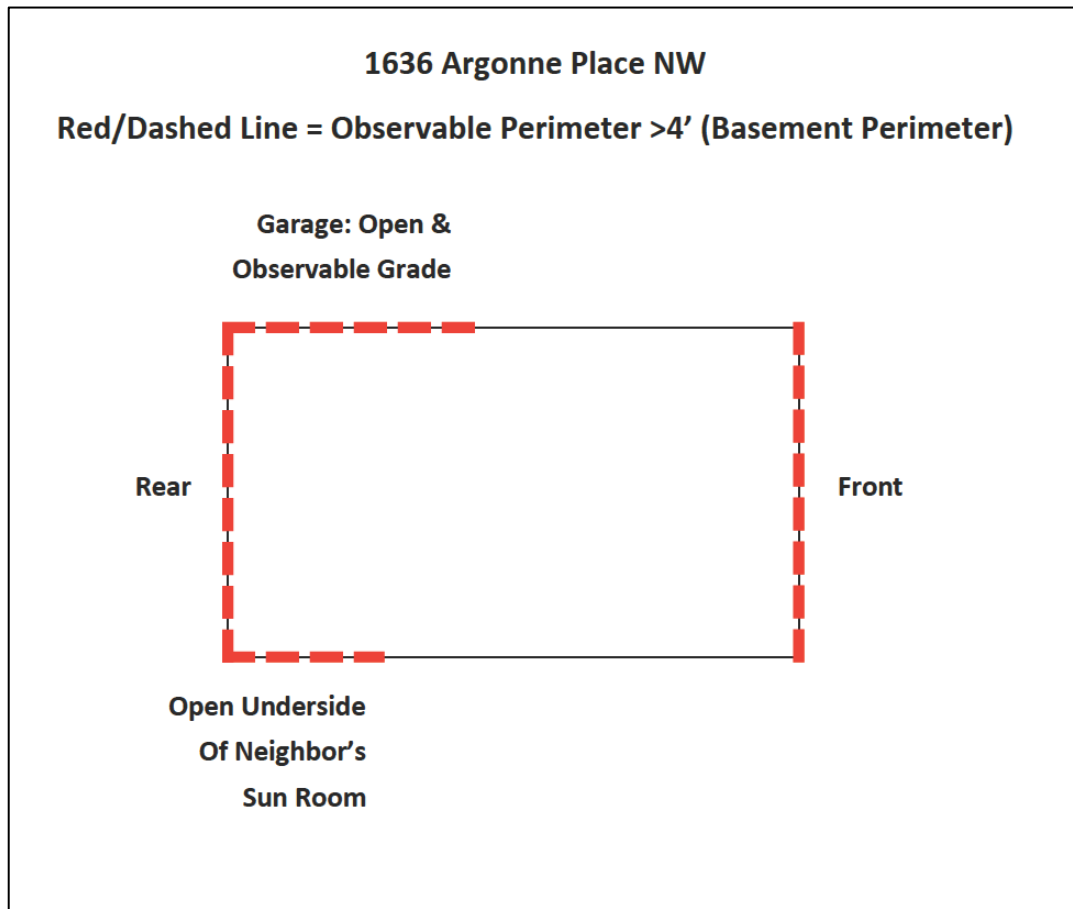
$$33,005 / 1,700 = 1.76 \text{ FAR}$$

Corrections on Proposed Lot Occupancy and FAR Calculations

Proposed	2014 Plat	Actual
Lot Occupancy		
2014 Plat: First Floor w/o porch <u>Actual</u> : Lower Level w/o lower level entryway	45 x 20 = 900	44.46 x 20.48 = 910.46
Porch	7.1 x 11.2 = 93.72	7.10 x 14.42 = 102.41
<u>Actual</u> : Lower level entryway to be enclosed (not within footprint of above porch)		7.1 x 6.06 = 43.06
Total Building Area	900 + 93.72 = 993.72	910.46 + 102.41 + 43.06 = 1055.93
Lot Occupancy	994/1700 = 58%	1055.93/1700 = 62%
FAR		
Lower Level	Not Included	1067.01 From A0101 (6/24/14)
Level 1	994	1012.87 From A0101 (6/24/14)
Level 2	900	1012.91 From A0101 (6/24/14)
Level 3	855	870.36 From A0101 (6/24/14)
Mezz (Level 4)	256	300.24 From A0101 (6/24/14)
FAR	3005/1700 = 1.76 FAR	5263.38/1700 = 2.51 FAR

- **Availability of Actual Perimeter Dimensions Ignored.** The Zoning Administrator errs by disregarding the fact that the existing adjacent finished grade for the following perimeters exceeds 4':
 - The front of the building.
 - The rear of the building.
 - The observable finished grade of the west wall (garage with door that is observable).
 - The east wall (open and observable underside of sunroom of neighbor).

By endorsing the retaining wall as a device to allegedly change the rear finished grade, it is clear that the Zoning Administrator has ignored the availability of observable perimeters on the sides of the property for purposes of measuring the lower level's grade. Both of these grades are open, observable, and >4' from finished grade to the lower level ceiling (i.e., basement grade).



Existing Adjacent Finished Grade: 5/4/15

	Front (North)	Rear (South)	Side (West)	Side (West)	Side (East)	Side (East)
Distance From Existing Finished Grade to Lower Level Ceiling	8' ¼" (96 ¼")	7' 6" (90")	--	7' 6" (90")	--	6' 8" (80")
Perimeter	20'	20'	26'	18'	34'	10'
Description	Entryway: 7' 1 ¼" Width from Exterior Wall of Building to Exterior of Entryway	Street Level	Common Wall, Not Directly Observable and Thus a Null Value in the Perimeter Wall Method	Common Wall, Observable from Subject Property	Common Wall, Not Directly Observable and Thus a Null Value in the Perimeter Wall Method	Common Wall, Observable from Subject Property

- Existing Conditions Disregarded.** The Zoning Administrator further errs in ignoring the fact that the lower level was designated as a basement in 2002, by DCRA, in granting approval of a lower level renovation. Permits B430896 (dated 1/13/00) and B441124 (dated 12/17/01) both read, in part: "Interior renovation of basement" (Exhibit 2: 2000 1636 Construction Drawings and Exhibit 10: 1636 -02 Permits).

Furthermore, the Zoning Administrator ignores the plain meaning of the term “existing,” whose definition is excluded from 11-199.1 and is thus dependent on 11-199.1(g), which reads: “Words not defined in this section shall have the meaning given in Webster's Unabridged Dictionary.” DCRA can only properly make determinations with building permits if there is an understanding and reality that the term “existing” represents the condition that exists at the time prior to initiation of a future project seeking a permit to build a “proposed” structure. To rule otherwise renders meaningless the ability of the District of Columbia to assess planned construction projects from the standpoint of “existing” conditions, which is the fundamental reference point for determining “proposed” activities to allow under zoning regulations.

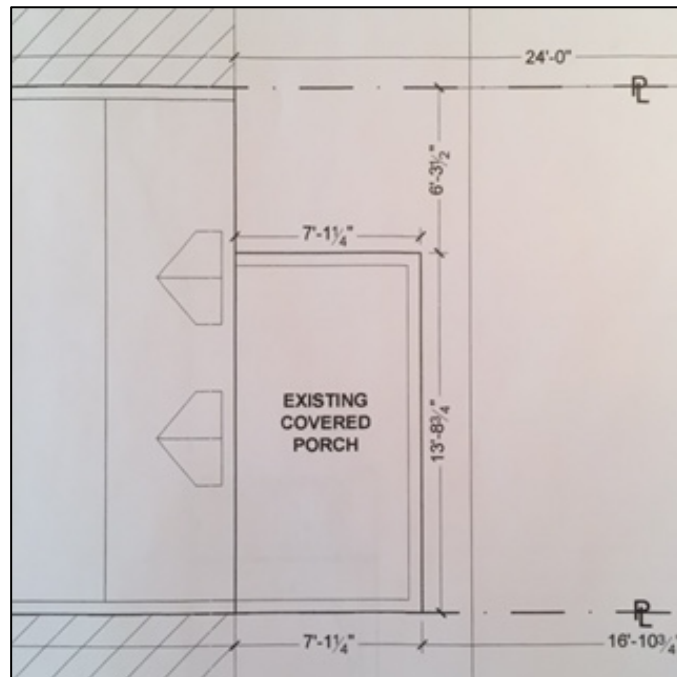
The outcome of this disregard is to grant permission to construct an apartment building with a FAR in excess of the 1.8 FAR limit established in 11-402.4 for R-5-B.

Misidentification of Existing Finished Grade: Front

Errors in the front grade determination include the misidentification of the point of reference for the front finished grade, despite the fact that the subject property's entryway to the lower level is 7' 1 ¼" wide from the face of the building's front wall to the face of the area's retaining/exterior wall and, as such, is definable as the adjacent finished grade (see below). The standard for considering the front entryway space as the adjacent finished grade is outlined in BZA Appeal No. 18615 of 5333, Connecticut Neighborhood Coalition, et al., 10/29/13. That ruling defines the parameters of space that are not definable as the adjacent finished grade, specifically, an “areaway” that is a “generally accepted five-foot width standard” that the Zoning Administrator has “never considered” as the adjacent finished grade. In establishing the parameters for a space that is NOT DEFINABLE as adjacent finished grade (an “areaway”), the Zoning Administrator establishes, by logical extension, the parameters for a space that IS DEFINABLE as the adjacent finished grade.

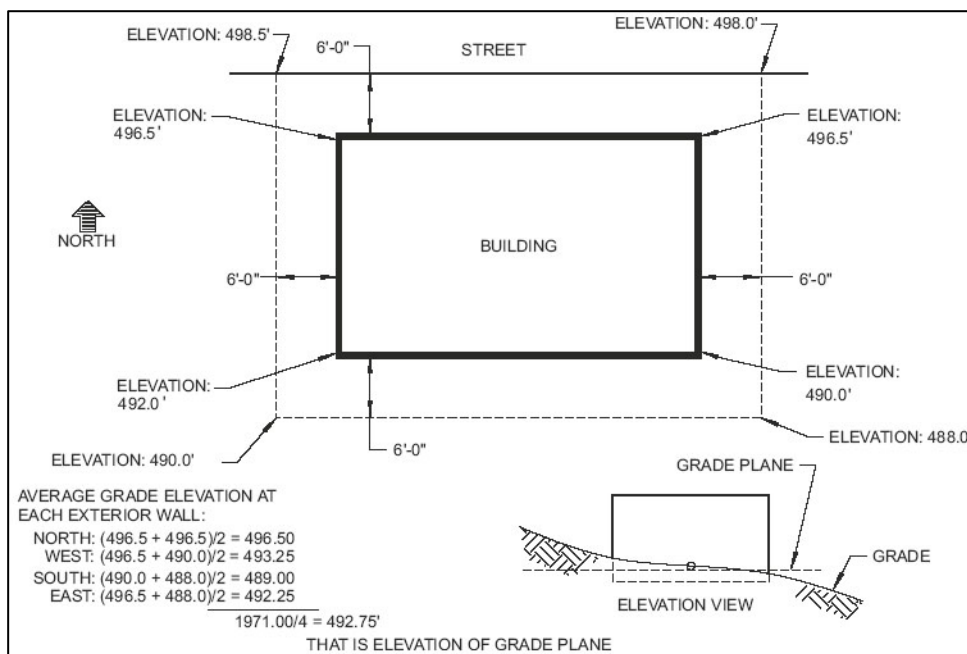
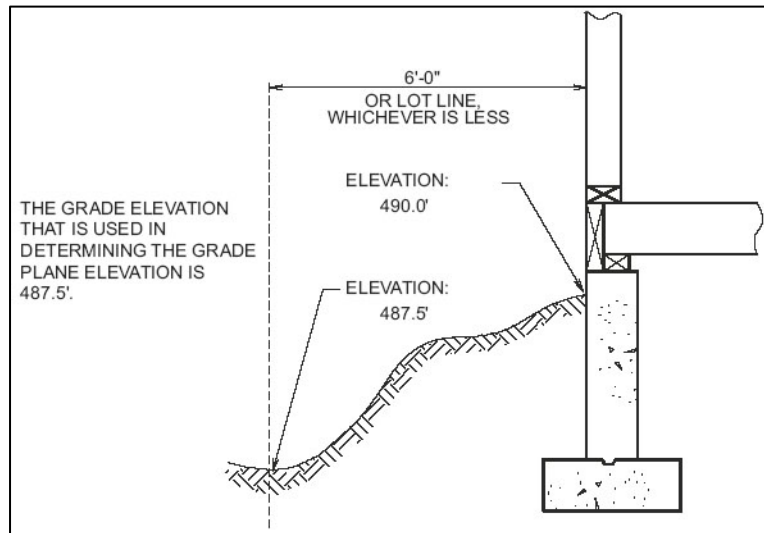
Revised Plans:
Dimensions of
Front Entryway
7' 1 ¼" wide

A0100 (12/17/14)



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This 5' standard for an areaway is additionally supported in the IBC's grade plane analysis, which defines the "true" point for which to establish a story above and below grade as 6' beyond the exterior wall for buildings where grades fall away from the exterior walls (see below diagram). For the subject property, the entryway qualifies as the adjacent finished grade as it is 7' 1 ¼" wide from the face of the building's front wall to the face of the area's retaining/exterior wall, which is both wider than the 5' areaway standard and IBC's 6' point of measurement standard.



Errors in Plans: Existing Front Grade

Errors in front grade calculations are evident in measurements of approved plans as well as

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correspondence and photo documentation from the property owner's representative. Acceptance of these errors disregards requirements for parties to submit zoning data and drawings on existing GFA, existing FAR, and existing lot occupancy—meaning prior to the initiation of construction—as is stipulated in 11-3202.1, and 11-3202.2 and forms submitted for permits.

Below is a summary of actual conditions, followed by errors.

Actual Front Grade. The distance between the front finished grade and the lower level ceiling is 8' (Exhibits 1 and 18). The adjacent finished grade at the front is the entryway, as established in BZA Appeal No. 18615 of 5333. This entryway, created in the above-described 2002 renovation, is directly below the front porch and has a similar footprint. The entryway extends across the entire width of the building (20') and 7' 1 ¼" in depth as measured from the front of the building (i.e., the basement apartment and its front door) to the face of the exterior wall of this entryway. On the other side of this exterior wall is the unfinished grade of the front yard. This exterior wall has a locked gateway leading up to a set of steps that terminate at the finished landing for the building. Note: The finished grade at this landing is 4' 2" below the lower level's ceiling, according to approved architectural plans and DCRA's own interpretation, meaning that the lower level would also be definable as a basement if measured from this location. Appellants carried out a verification of this figure by measuring the front step risers from the landing to the first floor, arriving at 51.5" (4' 3 1/2") (see below table and Exhibit 11: Front Risers). Regardless, the appropriate point for measuring the adjacent finished grade is the entryway (Exhibits 1 and 18).

Riser	Inches
1	8
2	7 ½
3	7 ½
4	7 ½
5	7 ½
6	7 ¼
7	8
Porch	7 ½
Subtotal	62 ½
Minus 10" joists	51 ½

1636 Argonne "Riser" Calculation of Front Grade from Landing to Ceiling of Lower Level

Errors

- **Revised Plans: Front Entryway Grade.** Architectural plans dated 12/17/14 identify the front

grade as 3'11".. However, the front finished grade of this point is misrepresented in the plans. The actual front grade at this point is 7'6". Notably, revised plans do not correct errors identified in the initial plans.

- **Revised Plans: Front Grade at Landing.** DCRA's own measurement on revised plans of the front finished grade at the front landing is identified as 4'2". Appellants have additionally checked the accuracy of this measurement. Notably, revised plans do not correct errors identified in the initial plans.
- **Revised Permit Documentation: Front Grade at Front Landing.** The property owner's representative submitted a photo with a tape measure calculation whose purpose was to verify the front finished grade, submitted in support of B1502210 (issued 3/25/15), which was secured by appellants via a FOIA request. This photo is in error as the tape measure is positioned on a raised curb and is also positioned to fall well short of the lower level ceiling. Appellants submit a more accurate assessment of the grade from the front landing, using measurements of the risers from the front landing (see Exhibits 1 and 18).

In addition, a 11/24/14 email (presented below) from owner's architect states that the front finished grade is 3'6" and that there was an error on submitted drawings (from June 2014, approved 8/29/14). However, the revised plans submitted 12/17/14 do not demonstrate such a measurement.

On Mon, Nov 24, 2014 at 1:17 PM, Carmel Greer <carmel@districtdesign.com> wrote:

Hi,

I just went to the site to measure, and the cellar is most assuredly a cellar (both in dimension and in spirit - at the front of the building, the ceiling is 3'-6" above grade). There is, however, a typo on sheets A201/A202.

Attached please find the corrected A201/202 (indicating the as-built grade to cellar ceiling height), as well as site photos from TODAY indicating the as-built dimension.

- **Initial Plans.** Errors were identified in initially submitted architectural plans dated 6/24/14 and approved 8/29/14, which do not provide dimensions for the front grade. Nonetheless, appellants measured the scaled drawing and arrived at a grade of 4'6" (roughly equivalent to DCRA's determination of 4'2" on drawings dated 12/17/14) for the incorrectly depicted grade under the entryway (the same grade as the front walkway grade) and 8' for the correct grade under the entryway (Exhibits 1 and 18).

Misidentification of Adjacent Finished Grade: Rear

Multiple errors have occurred with regard to the Zoning Administrator's designation of the adjacent finished grade at the rear of the building.

Disregard of DCMR 199.1 Definitions of Basement and Cellar. As described above, the Zoning Administrator has disregarded the measurable finished grade on the west and east sections of the rear of the property. In addition, the Zoning Administrator has incorrectly concluded that the retaining wall would redefine the rear perimeter as a cellar level, which violates DCMR 199.1 definitions of "basement" and "cellar." This is evident for the following reasons:

- **Actual Conditions Are Basement Perimeter.** As documented in the attached photos (Exhibits 1 and 18), the rear wall construction includes installation of two windows, 49" in height, which is in excess of basement perimeter. This is a minimum measurement for the rear grade as

additional space exists both above and below the window frame (i.e. based on construction drawings, the un-built retaining wall does not encroach upon the lower lip of the window and the lower level ceiling logically is located some distance above the top of the window frame).

- **Retaining Wall Does Not Exist.** The retaining wall is un-built as of May 4, 2015 (Exhibits 1 and 18) and thus cannot be defined as a point for measuring the existing finished grade as it simply is not an existing structure for purposes of designation of existing conditions, in compliance with the commonly understood term “existing” that is applicable per Webster’s and as a reference point from which to identify a contrasting point in time: proposed.
- **Retaining Wall of Insufficient Height to Achieve Cellar Designation.** Building Permits B1502210 and B1404813 authorize construction of a 30” maximum height retaining wall (Note: The online PIVS system provides a contradictory lower height of 1 foot) in order to redefine the rear grade as cellar. However, even if constructed, the rear grade would continue to be a basement perimeter. Note: The retaining wall is depicted on construction drawings as 3’10” in height (unlabeled) in order to achieve a rear finished grade of 3’11”. If a wall 30” in height were installed, per the permit, the finished grade would be 5’3” (Exhibits 1 and 18).
- **Retaining Wall of Insufficient Depth to Alter Grade.** As described above, the IBC’s grade plane analysis defines the “true” point for which to establish a story above and below grade as 6’ beyond the exterior wall for buildings where grades fall away from the exterior walls. As such, the retaining wall (more accurately, a planter) would need to be at least 6’ wide to establish a new grade.
- **Retaining Wall Does Not Represent an Alteration of the Natural Grade.** In BZA 18615, the District of Columbia’s Pre-Hearing Statement, Appeal No. 18615, 5/31/13, states that “The use of the term ‘finished grade’ in the Zoning Regulations contemplates that a developer will be able to alter the natural grade. There is nothing in the Zoning Regulations that prohibits a developer from adding soil to achieve a desired finished grade and the Zoning Administrator has consistently allowed this.” BZA 18980 differs in that the Zoning Administrator has granted permission to change the existing finished grade, which is a concrete surface and most assuredly is not a “natural” grade and is not being modified to “achieve a desired finished grade” as such grade already exists and, furthermore, existed at the time of submission of permits and as of 5/4/15, the date of this submission.
- **Retaining Wall is Not a Berm.** An added footnote reference for the above citation in the the District of Columbia’s Pre-Hearing Statement references a prohibition on using a berm to measure building height (ZC 12-11, revising the definition of building height in 11-199.1), and reads “the Zoning Commission does not exclude a berm from being considered as the adjacent finished grade for purposes of determining if a building story is a cellar or basement.” This citation is not relevant to BZA 18980 as the Zoning Administrator has not granted permission to build a berm for purposes of altering the “finished grade.” Errors in Plans: Rear Grade

Errors in Plans: Rear Grade

Errors in rear grade calculations are evident in measurements of approved plans. Acceptance of these errors is contrary to 11-101.5, 11-3202.1, and 11-3202.2. In addition, acceptance of these errors is contrary to 12-105.1 (Required Permits), 12-105.3 (Application for Permit), 12-105-6 (Revocation of Permits), 12-106.1.12 (Zoning Compliance Review Data).

Below is a summary of actual conditions, followed by errors in submitted plans.

Actual Rear Finished Grade. The building's rear adjacent finished grade is street level. The distance between this finished grade and the lower level ceiling is 7' 6" (Exhibits 1 and 18). Again, as of 5/4/15, this grade to lower level distance remains at 7'6" as the retaining wall has not been constructed along this rear wall. Note: Even if constructed, this retaining wall, 30" in height under the permit, would still leave more than 4' between this theoretical (and non-existent) grade and the lower level ceiling. The lower level rear wall thus remains a basement perimeter under any and all circumstances.

Actual Rear Side Finished Grades (East and West). Portions of the building's side walls at the back of the property are observable and accessible and can thus be measured in order to use the perimeter wall method calculations. The west wall (incorrectly labeled east wall in the architect's construction drawings) includes a section of 18' in length that is visible and accessible (i.e., is not contained within the abutting property). This section is 90" from the natural grade (there is no finished grade at this point) to ceiling height of the lower level (Exhibits 1 and 18). The east wall (incorrectly labeled west wall in the architect's 6/24/14 construction drawings) includes a section of 34' in length that is open and observable (i.e., garage space with retractable door) (Exhibits 1 and 18). This section is 80" from finished grade to ceiling height of the lower level.

Errors

- **Revised Plans: Rear Grade.** Architectural plans dated 12/17/14 identify the proposed rear grade as 3'10", with the point of reference as the top of the uninstalled retaining wall. No drawings are provided for existing grade. However, the grade is misrepresented in the plans. As stated above, the retaining wall is depicted on construction drawings as 3'10" in height (unlabeled) in order to achieve a rear finished grade of 3'11". If a wall 30" in height (the permitted height) were installed, the finished grade would be 5'3" (Exhibits 1 and 18).
- **Initial Plans.** Errors were identified in initially submitted architectural plans dated 6/24/14, which do not provide dimensions for the rear grade but do show an incorrect existing grade (Exhibits 1 and 18) and an incorrect proposed grade. Even with these errors, the rear grade is 5'—basement perimeter.

Impermissibility of Issuing a Permit to Build a Retaining Wall

The Zoning Administrator has committed multiple errors in permitting construction of what is defined as a retaining wall.

- **Disregard of DCMR 199.1 Definition of Retaining Wall.** The structure does not meet the DCMR 11-199.1 definition of "retaining wall" (as well as Construction Code 1807.2) as it does not serve to "resist the lateral displacement of soil or other materials" as required in this definition. Building Permit B1502210 and B1404813 authorize construction of a "retaining wall" that does not serve to retain soil or other materials as no such retention need exists. Rather, this structure will only add this soil, after such construction occurs, and is thus properly defined as a "planter." Furthermore, the sole purpose of this so-called "retaining wall" is to allegedly change the existing adjacent finished grade, which is not included in the definition of "retaining wall."
- **Violation of Parking Requirements.** The structure called a retaining wall encroaches on the non-conforming parking space, which is 16' in length without the retaining wall and 14' 4" with

the retaining wall. (Exhibits 1 and 18). This violates:

- DCMR 2115.1, which states: “Except as otherwise provided in this section, a required automobile parking space shall be a minimum of nine feet (9 ft.) in width and nineteen feet (19 ft.) in length, exclusive of access drives, aisles, ramps, columns, office or work areas and shall be striped according to the requirements of § 2117.3. Parking shall also be in compliance with the requirements of the District of Columbia Architectural Barriers Act of 1980, effective July 1, 1980 (D.C. Law 3-76; 12 DCMR art. 15); and
- DCMR 2100.10, which prohibits making a non-conforming condition worse.
- **Violation of Rear Yard Setback.** The retaining wall violates the setback requirement as follows:
 - The building height at the rear of the subject property is 52’, which dictates a rear yard setback of 17.3’. The existing setback is 16’, which complies with the minimum 15’ setback in R-5-B, per DCMR 11-404.1, which reads: “4 inches per foot of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 feet.” Installation of the retaining wall, however, reduces the rear yard setback to 14’4”.
 - The retaining wall width of 1’8” exceeds 10% of the existing rear yard setback and, as such, exceeds the minor flexibility allotted for the Zoning Administrator outlined in 11-2522.1, which reads, in part: “ 2522.1 The Zoning Administrator is authorized to permit the following deviations, if the Zoning Administrator determines that the deviation or deviations will not impair the purpose of the otherwise applicable regulations: (c) Deviations not to exceed the greater of ten percent (10%) or twelve (12) inches of the linear requirements governing rear yard, side yard, and minimum dimensions of the court and court niche and roof structure setback requirements, provided that all deviations of roof structure setback requirements comply with the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6 601.01 to 6-601.09 (2001) (formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl. & Supp. 1999)).”

Consequences of Misidentification of the Grade

Misidentification of the finished grade has a direct impact on related zoning and building code considerations dealing with building height and means of egress, as described below.

- **Violation of DCMR 11-199.1 Building Height.** The “grade” is a fixed point as it serves as a point of reference for measuring both the building height and the basement/cellar calculation for the lower level. Any attempt to disassociate the definition of grade for different purposes is an attempt to ignore the ground upon which a building rests. It’s akin to measuring an individual’s height and yet magically not counting their feet to their knees when measuring their inseam. Thus, allowing the grade to be altered with a retaining wall is contrary to specific language defining “building, height of” in DCMR 11.199.1, which states that, “in other than Residence Districts (R), the vertical distance measured from the level of the curb, opposite the middle of the front of the building to the highest point of the roof or parapet or a point designated by a specific zone district; in Residence Districts (R) the vertical distance measured at the existing grade at the mid-point of the building façade of the principal building that is

closest to a street lot line to a point designated in the zone district. Berms or other forms of artificial landscaping shall not be included in measuring building height.” This is relevant for this case as the retaining wall is described by the applicant in B1409928 as “regrade Rear for future garden. Patch garage door. New retaining wall no taller than 30 inches.”

- **Violation of Required Means of Egress.** The subject property is described on approved plans as R-3 Group existing and R-2 proposed Group. Per DCMR 12A Building Code Supplement:
 - R-2 allows only 3 stories with one exit, per Table 1021.2, Stories with One Exit.
 - R-2 only allows for 4 stories above grade, per, Table 503, Allowable Building Heights and Areas.

With corrections in the determination of the finished grade for purposes of the lower level, the subject property’s top floor will be properly defined as 5 levels, which is not permitted. DCRA recognized that this top level was in fact a full story and not a mezzanine during the permit review process (Exhibit 7: PIVS 1636 Argonne May 3 14). However, this determination was not subsequently resolved as later statements discussed the top level as a mezzanine in relation to compliance with IBC provisions dealing with openness and means of egress (Exhibit 3: B1404813, pages 21, 27, 31, 49, 52). In addition, 2 means of egress are required for this top level. However, approved plans only provide 1 set of stairs.

Violation of Construction Code and Building Permit Data Requirements Under 11-101.5, 11-3202.1, and 11-3202.2

The Zoning Administrator disregards Section 3202.1 requirements that building permits shall not be issued for the proposed erection, construction, conversion, or alteration of any structure unless that structure complies with the provisions of the zoning regulations. Specifically, the Zoning Administrator disregards requirements for parties to submit zoning data on existing GFA, existing FAR, and existing lot occupancy—meaning prior to the initiation of construction—as is stipulated in the following forms (Exhibit 12: Code and Zoning Forms), which are based on an inherent reading of 11-101.5 as well as requirements for submission of building permit data and drawings on existing and proposed structures, per 11-3202.1, and 11-3202.2.

- Guidelines for Building Permits, per section 12A-105.1 of the 2013 DCMR 12A, Building Permit Requirements, as stipulated in Building Plans Checklist, page 2, Architectural: Complete Building Data Information, require applicants to provide data on “Building height, number of stories and floor areas” and “Existing Conditions.”
- Application for Construction Permits on Private Property, Questions 14a: Existing Stories Plus (Basement/Cellar), 17a: Proposed Stories Plus (Basement/Cellar); 21: “Present Gross Floor Area of Bldg,” 22: “Proposed Gross Floor Area of Bldg.”
- District of Columbia Construction Codes Supplement of 2013.
- 12A-106.1.12 Zoning Compliance Review Data (requires submission of data on existing and proposed parking spaces, rear yard setback, GFA, FAR and lot occupancy).

Zoning Error 2 of 3: Errors with GFA, FAR, and Lot Occupancy Per 402.4 and 403.2

The Zoning Administrator has erred in approving identified permits and associated architectural plans, which contain multiple errors in GFA that create subsequent errors in FAR and lot occupancy calculations. As a result, the subject property exceeds allowable limits for R-5-B in terms of FAR (Section 402.4) and lot occupancy (Section 403.2). Specific errors are outlined in the narrative and tables below.

GFA Errors

- **Lower Level Mischaracterization.** Errors in designation of the lower level as a cellar instead of a basement are outlined above. This results in a failure to include this SF in GFA, in violation of 199.1 Definitions of Cellar, Basement, GFA and FAR.
- **First Level Porch.** The first level porch is >4' above grade and covered and should be included in existing GFA.
- **Second Floor Balcony.** The second floor balcony is not included in GFA, in violation of the 11-199.1 definition of building area.
- **Removal of Spiral Staircase.** Third Party Plan Review comments from 4/3/14 state that a new spiral staircase will be located on the back of the building, with Third Party documentation 8/1/14 stating the spiral staircase has been removed (see below).

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Fire Comments: 6. Confirm egress windows are provided for each bedroom on all levels as required for a 3 story building with one exit. Provide notes on floor plans showing which windows will be designated as egress windows. 9. Indicate mezzanine level on egress plans. Show travel distance from rooftop terrace to exterior of building. Mezzanine level has been shown on Fire Egress plans. 10. **Spiral Stair located on back of building**
This is a new spiral stair. Please refer to Structural Pages.

CORE GROUP Fire Protection (Third Party Plan Review) - 8/1/14

Number 18 Status Closed Sheet(s) Arch. The **spiral stair at the back of the building has been removed from the scope.** The 3rd floor (actually 4 stories above grade) is not permitted without 2 exits. Provide 2nd exit. In addition, the code summary should reflect this as an existing 3 story building and proposed 4 stories above grade plan. Show grade plan on new elevation. 8/1/14 – Grade has been modified per DCRA approved permit.

However, the spiral staircase on the lower level, 1st, 2nd, and 3rd floors continues to be represented in plans and is not evident from photographic evidence (Exhibit 13: Spiral Staircase), with the square footage they occupy being incorrectly omitted from GFA. Note: As dimensioned, the circular staircase exists in a 42" niche, which no landing before entering the stairs, with a tread of 18". Both conditions are not compliant with the building code.

- **Incorrect Measurement from Interior Walls.** Approved plans are incorrect in calculating GFA from interior walls, contrary to requirement to measure from, as required by 199.1 definition of GFA walls, for the 1st, 2nd, 3rd, and 4th floors.

Lot Occupancy Errors

It appears that the Zoning Administrator has incorrectly applied definitions for percentage of lot occupancy, “building area,” and “building.” Errors include:

- **Lower Level Entryway: Proposed Lot Occupancy.** As documented above, the proposed lower level entryway, being on the floor that is properly defined as a “basement,” is definable as part of the “building area,” which is defined in part as “the maximum horizontal projected area of a building and its accessory buildings.” However, the Zoning Administrator fails to count the proposed enclosure of the lower level entryway in proposed lot occupancy. This space matches and exceeds the space represented by the above first floor porch thus is the space that should be included in proposed lot occupancy.
- **Miscalculation of SF.** Square footage calculations on approved plans do not match those in the lot occupancy calculations and include the dimensions for the first floor (equivalent to the lower level) and the porch).
- **Inconsistency with Earlier DCRA Calculation.** A 2000 submitted and approved Application for Construction Permits on Private Property identifies the lot occupancy as 58.8% (see Exhibit 10: 1636 2000-02 Permits, question 43), which is more than the figure provided in 2014. While a small difference, the variation demonstrates that the Zoning Administrator has erred in relying on imprecise calculations.

Detailed GFA, FAR and Lot Occupancy Errors

Over the course of the three permits issued by DCRA for the subject property, only one set of GFA, FAR and lot occupancy calculations were submitted to DCRA, in the form of architectural plans dated 6/24/14 and approved 8/29/14. Below is a comparative review of these calculations, from architectural plans approved by DCRA, with errors and corrections outlined by appellants, submitted to DCRA 11/17/14 and 12/1/14 and further revised in this appeal.

GFA and FAR: Comparison of Existing and Proposed

	EXISTING		PROPOSED	
	Submitted Plans	Corrections	Submitted Plans	Corrections
<i>Lower Level Is</i>	1042		1042	
		910.46		1067.01
First	997	1012.87	997	1012.87
Second	819	920.87	900	1012.91
Third	327	103.44	855	870.36
Fourth	N/A	N/A	256	300.24
Total	2143.00	2947.63	3008.00	4263.38
FAR	1.26	1.73	1.77	2.51

Square Footage Calculations: Basis for FAR and Lot Occupancy Calculations

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Square Footage Calculations	Width	Depth	SF Plans	SF Actual
Lower Level: Existing	20.48	44.46		910.46
Lower Level Entry Area: Existing	20.48	7.10		145.48
Lower Level with Entryway: Existing	20.48	51.56		1055.99
Lower Level: Proposed	20.48	52.10	1042.00	1067.01
First Floor Excluding Terrace: Existing	20.48	44.46		910.46
Covered 1st Floor Terrace (Porch): Existing	14.42	7.10		102.41
Non-covered 1st Floor Entry: Existing	6.06	7.10		43.06
First Floor: Proposed	20.48		997.00	1012.87
2nd Floor Balcony: Existing	14.42	7.10		102.41
2nd Floor W/O Sun Room	20.48	34.21		700.59
2nd Floor Sunroom: Existing	11.50	10.25		117.88
2nd Floor Wing Wall 1: Existing	4.50	10.25		46.13
2nd Floor Wing Wall 2: Existing	4.50	10.25		46.13
2nd Floor Total (Existing)				920.87
2nd Floor: Proposed (Excluding Balcony)	20.48	44.46		910.54
2nd Floor: Proposed	20.48	44.46	900.00	1012.91
3rd Floor Existing (Square but reflects area with less than 6'6" clearance)	20.48	13.50		276.47
3rd Floor Existing: Stair Hall: Existing	4.00	10.50		42.00
3rd Floor Corrected (correct head room): Existing	20.48	3.00		61.44
3rd Floor Corrected (correct head room + stair hall): Existing				103.44
3rd Floor Proposed	20.48	42.50	855.00	870.36
4th Floor Proposed	20.48	13		266.24
4th Floor Proposed: Stair Hall	4	8.5		34.00
4th Floor Proposed: Total			256	300.24

Zoning Error 3 of 3: Noncompliance with Parking Requirements

Existing conditions for this single-family dwelling included a garage on the lower level as shown in AD0101 and a rear yard to alley distance of 16'. This lower level space was converted into a 1-

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bedroom basement rental unit in 2002 under DCRA permits B441124-4419020, preserving the garage (see Exhibits 1 and 18).

In issuing building permits, the Zoning Administrator created multiple non-compliant parking conditions as the applicant eliminated the former garage space under this project and did not provide the required 2 spaces for this 4-unit apartment building. Notably, allowing installation of a retaining wall across the back of the building not only illegally changes the grade measure (as described above) but also further shortens the distance to the alley, thus increasing the non-conformity of potential parking spaces, leaving no space for parking. Furthermore, the Zoning Administrator erred in miscalculating the intensity of use as no more than 25%, whereas conversion to from a single family to 4-unit apartment building is a 400% increase. DCMR violations include 2100.6, 2100.7, 2100.10, 2101.1, and 2115.1 and are described as follows.

1. **Violation of DCMR Requirement on Number of Parking Spaces Not Provided.** DCMR 11-2101.1 states that a multiple dwelling unit in an R-5-B zone requires one parking space for every two units. The project therefore requires two 9' x 19' parking spaces (as required per Section 2115.1) for the increase in intensity as required by section 2100.6, which reads: "Except as provided in § 2120.3, when the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement specified in § 2101, parking spaces shall be provided for the addition, subject to §§ 2100.7 through 2100.9." The Zoning Administrator has recently reinforced this regulation in an April 2, 2015 email to the Ward 1 councilmember (see Exhibit 14: DCRA on Parking), which reads:

"In order for my office to be able to approve the proposed conversion to four dwellings the Applicant is required to demonstrate that two 9' by 19' parking spaces would be provided on the property. To date he has not done so. Therefore unless the applicant can demonstrate compliance, or receives relief from the parking requirement from the Board of Zoning Adjustment [BZA], then the pending building permit application cannot be approved, and only a project [if a revision is proposed] for a two dwelling unit building could be approved."

However, no regulation spaces are provided as the rear yard is 16' to the public alley (the parking spaces shown in "proposed site plan" on revised drawings dated 12/17/14 do not meet the parking size requirements). This space is proposed to be further shortened to 14' 8" by granting of a permit to install a retaining wall, worsening non-conformity to the point of making it infeasible to provide two parking spaces. Awareness of these noncompliant conditions is evident in the two Zoning Data Summary Sheets submitted for B1404813:

- The Zoning Data Summary Sheet submitted 3/4/14 states there are 2 parking spaces according to the form criterion of 9' x 19', although this very same form correctly identifies the existing and proposed rear yard setback as 16' (Exhibit 15: ZDR Parking 03_14).
 - The Zoning Data Summary Sheet submitted 12/4/14 states there are 2 parking spaces according to the form criterion of 9' x 19', although this very same form incorrectly identifies the existing and proposed rear yard setback as 15' (Exhibit 16: B1502210).
2. **Parking Worsened in Violation of 2100.10.** A non-conforming condition, parking, has been made worse rather than corrected, as the existing single family dwelling had a garage (Exhibits 1 and 18) This space was converted into a one bedroom basement rental unit under DCRA

permits B441124-4419020, issued in 2000-02. The garage was retained in that conversion but was eliminated by the current project and no longer exists. Section 2100.10 states that the existing number of parking spaces cannot be reduced, as follows: “In the case of a building or structure for which the Zoning Regulations now require more parking spaces than were required when the building or structure was built, the following shall be required: (a) If the existing number of parking spaces now provided is less than or equal to the minimum number of parking spaces now required by this chapter, the number of parking spaces cannot be reduced.” The garage should therefore have been kept or a parking space provided on the lot in another location. However, this space was not re-located as the rear yard is only 16’ to the public alley, which is non-compliant with the standard 9’ x 19’ space required in 2115.1. Furthermore, the Zoning Administrator also violates 2100.10 by granting a permit to install a retaining wall, further worsening non-conformity by shortening the rear yard setback to 14’8” and to the point of making it infeasible to provide two parking spaces. Awareness of these noncompliant conditions is evident in the two Zoning Data Summary Sheets submitted for B1404813:

- As stated above, the Zoning Data Summary Sheet submitted 3/4/14 states there are 2 parking spaces according to the form criterion of 9’ x 19’, although this very same form clearly and correctly identifies the existing and proposed rear yard setback as 16’ (Exhibit: 15: ZDR Parking 03_14).
- As stated above, the Zoning Data Summary Sheet submitted 12/4/14 states there are 2 parking spaces according to the form criterion of 9’ x 19’, although this very same form incorrectly identifies the existing rear yard setback as 15’ (it is 16’) and the proposed rear yard setback as 15’, which is incorrect as the retaining wall would reduce the rear yard setback to 14’4” (Exhibit 16: B1502210).

3. **DCRA Error in Increase in Intensity Calculation.** On the DCRA Permit Status PIVS web site, the zoning reviewer, Jeanetta Anderson, incorrectly states for B1404813 (3/19/14) and B1502210 (12/18/14) that “no additional parking required, addition does not increase intensity by more than 25 percent” (Exhibit 7: PIVS 1636 Argonne May 3 14). Actually, the increase from the existing one unit for a single-family dwelling is to a four unit condo, which is more in the range of a 400% increase. This is contrary to the requirement to increase parking as is specified in DCMR 11-2100.7 and 2100.7, which read as follows:

“2100.6 Except as provided in § 2120.3, when the intensity of use of a building or structure existing before May 12, 1958 is increased by an addition of employees, dwelling units, gross floor area, seating capacity, or other unit of measurement specified in § 2101, parking spaces shall be provided for the addition, subject to §§ 2100.7 through 2100.9.

2100.7 Parking spaces shall not be required for the addition unless the addition increases the intensity of use of the building or structure by more than twenty-five percent (25%) of the aggregate.”

Alternatively, this increase in intensity might also be measured as 100% if based upon a Certificate of Occupancy issued for the property for a two-family flat (issued 6/14/13, C01300980). However, this certificate is invalid as the property was gutted for purposes of a total renovation.

Timeliness of Appeal

Appellants filed this case on 2/17/15, within the required 60-day filing period and made themselves available for a timely resolution of this BZA case. Appellants also raised the issue of timeliness with all involved parties. Please note the following timeline.

- BZA 18980 was initially scheduled for 4/21/15.
- On 3/11/15, BZA notified all parties about a delay in the case date to 5/21/15 due to unavailability of both the Zoning Administrator and the property owner.
- On 3/11/15, appellants emailed BZA and DCRA that construction work at the site was ongoing and that we were concerned that we would be forced into an “under roof” denial of relief. No response to this email was received.