



BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA



FORM 125 - APPEAL

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.

Pursuant to §§ 3100 and 3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the

administrative decision of:

Name of administrative officer and title

made on

Date of decision

that states

Address(es) of Affected Premises

Square(s)

Lot(s)

Zone Districts

Present use of Property:

Proposed use of Property:

Name of Owner of Property:

Address:

Phone No(s):

Fax No.:

E-Mail:

Name of Lessee:

Address:

Phone No(s):

Fax No.:

E-Mail:

Name of Appellant, if other than Owner:

Address:

Phone No(s):

Fax No.:

E-Mail:

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this appeal is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22-2405)

Date:

Signature of Appellant*:

Waiver of Fee - Status of Appellant

☐ ANC

☐ DC Government Agency

☐ NCPC

☐ Citizens' Association/Association created for civic purposes that is not for profit

To be notified of hearing and decision (Appellant or Authorized Agent*):

Name:

Address:

Phone No(s):

Fax No.:

E-Mail:

* If an appeal is filed by the agent of the Appellant, Form 125 - Appeal shall be accompanied by a letter signed by the Appellant authorizing the agent to act on its behalf in this appeal.

Board of Zoning Adjustment

Appellant's agent

CASE NO. 18980

EXHIBIT NO 3

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

INSTRUCTIONS

Any appeal that is not completed in accordance with the following instructions shall not be accepted.

1. All appeals shall be made pursuant to this form. If additional space is necessary, use separate sheets of 8½" x 11" paper to complete the form (drawings and plans may be no larger than 11" x 17").
2. All appeals must be filed electronically through the Interactive Zoning Information System (IZIS), which is located on the Office of Zoning's website at: www.dcoz.dc.gov.
3. ***At the time of filing this appeal, the Appellant is REQUIRED to upload the following information into IZIS:***
 - A. Each and every exception to the administrative decision, in specific detail. Details should state the allegations of error in the administrative decision – “why it was an error” – and reference the relevant Sections of the Title 11 DCMR Zoning Regulations and/or Map.
 - B. A detailed statement explaining how the Appellant intends to prove its case.
 - C. In the case of an area variance, a plat drawn to scale and certified by a DC licensed survey engineer or the D.C. Surveyor's Office showing boundaries and dimensions of the existing and proposed buildings and accessory buildings. Also required are, if any, architectural plans and elevations in sufficient detail to clearly illustrate any proposed building to be erected or altered, proposed landscaping/screens and building materials as they relate to the specifics of the appeal. Submittal of plat and plans shall not exceed 11" x 17" in size. (See Form 130 – Plat, Plan and Elevation Specifications for the required information on these drawings.)

Note: Appellant is required at the time of filing to serve all parties; including, as appropriate, the Appellee, the Owner of the property, the Lessee, and the Advisory Neighborhood Commission. In an appeal, only parties can testify or submit information into the record; however, parties may solicit pertinent information from affected persons to include in their submissions into the record.



If you need a reasonable accommodation for a disability under the Americans with Disabilities Act (ADA) or Fair Housing Act, please complete Form 155 - Request for Reasonable Accommodation.

Attachment 1 to Form 125

The Appellants

The appellants are the following property owners. All live within 200 feet of the subject property, 1636 Argonne Place NW, and are thus directly impacted by zoning regulation errors regarding Floor Area Ratio (FAR), lot occupancy and Gross Floor Area (GFA) for the subject property.

Address	Names
1648 Argonne Place NW	Alan Gambrell

The following individuals will be filing for party status under this case:

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

Factual Background

Summary

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%.

From March-September 2014, DCRA issued multiple building permits for the subject property with determinations that existing and proposed FAR and lot occupancy were in compliance. In response to neighbor alerts raised October-November, DCRA ruled 12/3/14 that FAR was out of compliance and issued a Stop Work Order (SWO). DCRA subsequently determined on 12/12/14 that FAR was 2.07 and thus non-compliant. This decision was reversed one week later with issuance of building permit B1502210 on 12/18/14 and a determination that the subject property was now in FAR compliance. The determination of FAR compliance in B1502210 is expressed with reference to another permit, B1404813, initially issued in 2014 and reissued 1/8/15.

Appellants believe these two permits, and a corresponding December 19, 2014 email from the Zoning Administrator describing a determination that the subject property was in FAR compliance, contain two errors with regard to FAR and lot occupancy zoning regulations. First, the lower level has been incorrectly designated as a cellar, which excludes this square footage from FAR. Secondly, these two building permits are based upon associated architectural plans that contain multiple GFA errors that result in FAR and lot occupancy calculation errors. These errors were brought to the

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attention of DCRA by neighbors over the time period October-December 2014. Together, these errors allow the subject building to be enlarged beyond allowable FAR and lot occupancy limits. In addition, failure to enforce zoning limits on the subject property will set a flawed precedent for three identical properties on the block (1630, 1632, and 1634 Argonne Place, NW) that are planned for conversion into multi-unit condo units in 2015.

As of this appeal filing date, DCRA has not provided appellants with any of the following information, which appellants anticipate and expect to be forthcoming by the time of the appeal hearing so that the BZA and all parties to the dispute can have access to all the facts in this case:

- Building permits B1502210 and B1404813.
- Access to newly updated architectural drawings associated with these permits.
- The basis for DCRA's redetermination of FAR and lot occupancy calculations.

Appellants diligently but unsuccessfully attempted to obtain the above information from November 2014 to February 15, 2015 (the date of this amended filing) via November 2014 email requests to DCRA, a January 2015 FOIA request (in process) and a February 2015 letter from the Ward 1 councilmember to the Zoning Administrator.

Permits Issued and Variable FAR and Lot Occupancy Calculations

Following is a recap of the three permits issued for the subject property, correspondence with DCRA, 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 12/3/14 SWO issued on the subject property validates concerns about FAR violations. The basis for lifting the SWO 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 construction activity inclusive of mechanical, electrical, structural, DDOE, and plumbing work for conversion of this single family row house into four condominium apartments.
- **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". The intent of this permit was to enable the lower level to be characterized as a cellar, thus keeping FAR in line with the permissible limits approved in the original Permit B1404813.
- **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%. Again, limits in this R-5-B area are FAR 1.8 and lot occupancy of 60%.
- **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.

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- **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 November 19, 2014 email that the lot occupancy was 58.7% and in compliance and that FAR recalculations were ongoing. DCRA also stated they anticipated issuance of a SWO pending finalization of this evaluation.
- **SWO for FAR Violation.** On 12/3/14, a SWO was placed on the property. A DCRA email, of 12/12/14, sent to neighbors, stated that proposed FAR was determined to be 2.07, and 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 with proposed revisions and was rejected on 12/12/14 as the project continued to exceed the allowable FAR.
- **New Permit Approved on Change in Existing Grade: FAR Compliance Recognized.** Subsequently, permit B1502210 was approved a week later, on 12/18/14. The revised decision grants permission to produce a “new grade to reflect cellar throughout private property” (Source: PIVS). Zoning Administrator Matt LeGrant wrote a 12/19/14 email to the concerned neighbors (now the appellants) that a new building permit had been issued, thus bringing the property into FAR compliance. The content of this email is presented below.
- **Permit Re-Issued.** Permit B1404813, originally issued and modified 3/19/14 to 10/29/14, was further revised and reissued on 1/8/15.
- **Lack of Response to Information Requests.** As of the date of submission of this appeal, appellants have been unsuccessful in securing building permits B1502210 and B1404813 and associated architectural plans from the following sources: (1) DCRA’s Records Room (despite numerous calls and emails during January and February 2015); (2) a January 2015 FOIA request; and (3) a February 2015 letter from the Ward 1 councilmember to the Zoning Administrator.

DCRA and Zoning Administrator Errors

Appellants are bringing this appeal on the basis of two errors by DCRA and the Zoning Administrator with regard to issuance of permit B1502210 (12/18/14) and B1404813 (1/08/15) for the subject property 1636 Argonne Place, NW, and a corresponding December 19, 2014 email from the Zoning Administrator describing a determination that the subject property was in FAR compliance, which reads:

“Concerned Neighbors of 1636 Argonne Pl NW:

I wanted to update those neighboring residents who have expressed some concerns about the project, regarding my office’s latest action regarding this matter.

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Yesterday [12/18/14] I received an application from the property owner for a building permit revision [B1502210] to change the finished grade adjacent to the front and rear of the building to establish the lower level as a cellar, so that the ceiling of that level will not be more than four (4) feet above the adjacent finished grade. After reviewing the revision drawings, I found that they comply with the Zoning Regulations [sic]. My office has approved that revision, and as a result, I conclude that the project is now compliant with the FAR limitation applicable to this property.

Furthermore, I have found that there are no further Zoning related issues with this project. I have asked DCRA's Inspection Division to lift the current Stop Work Order [SWO] so the owner may proceed both the previously authorized construction under Permit #B1404813.

Please let me know if you have any further questions."

Please let me know if you have any further questions.

The cumulative effect of these two permits and the Zoning Administrator's ruling as contained in the above email is to permit construction of an apartment building with a greater FAR and lot occupancy than is permitted in an R-5-B zone, in violation of Section 402.4. Note: Zoning errors are found in both B1502210 and cross-references to B1404813. (Source: PIVS).

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

1. **Disregard of Perimeter Wall Method.** DCRA and the Zoning Administrator violate DCRA's long-established perimeter wall method for determining the floor area of the lower level to charge to GFA, which uses definitions of "cellar" and "basement" as specified in DCMR 199.1. The Zoning Administrator errs by disregarding the fact that the finished grade for the lower level perimeter exceeds 4'.
2. **Disregard of DCMR 199.1 Definitions of Basement and Cellar.** Building Permit B1502210 and B1404813 authorize construction of a 30" maximum height retaining wall in order to redefine the rear grade as cellar. However, this retaining wall would only change the distance between the adjacent finished grade to the lower level ceiling to, at a minimum, 52" (4' 4"). Thus, the construction of a rear wall does not make a material difference; the rear grade continues to allow this level to be classified as a basement.
3. **Disregard of DCMR 199.1 Definition of Retaining Wall.** The DCMR 199.1 definition of "retaining wall" in that the structure fails to 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 depict retention of soil or other materials in its building plans.
4. **Disregard of DCMR 404 and Construction Code 1807.2 Purpose of a Retaining Wall.** DCRA and the Zoning Administrator grant permission to construct a rear retaining wall whose sole purpose is to change the finished grade and not to resist the lateral displacement of soil or other materials as such materials do not currently exist.
5. **Misidentification of Recognized Adjacent Finished Grade.** The Zoning Administrator disregards the fact that the subject property's front entryway to the lower level is the adjacent finished grade.
6. **Violation of Construction Code and Building Permit Data Requirements Under Section 3202.1.** DCRA and the Zoning Administrator disregard Section 3202.1 requirements that

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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: Application for Construction Permits on Private Property; Guidelines for Building Permits; and District of Columbia Construction Codes Supplement of 2013, 106.1.12 Zoning Compliance Review Data.

7. **Violation of 402.4 FAR and Lot Occupancy Rules.** DCRA and the Zoning Administrator disregard Section 402.4 in permitting construction of an apartment building with a greater FAR and lot occupancy than is permitted in an R-5-B zone. Specifically FAR compliance is based upon a two-step process outlined in building permits that require submission of information on current (existing) conditions as the sole and only rationale basis from which to determine the permissibility of future (proposed) revisions and their compliance with FAR.

Zoning Error 2: Errors with GFA, FAR, and Lot Occupancy Per Section 402.4

Violation of Section 402.4 and 403.2 for R-5-B. DCRA and the Zoning Administrator have erred in approving Building Permit B1502210, the cross-referenced Building Permit B1404813, and associated architectural plans, which contain multiple errors in GFA that create subsequent errors in FAR as well as errors in lot occupancy calculations. Corrected calculations exceed allowable limits for R-5-B in terms of FAR (Section 402.4) and lot occupancy (Section 403.2).

How Appellants Will Prove Case

Appellants intend to prove their case through:

- Expert testimony from an architect concerning the plans.
- Analysis of the architectural plans and construction drawings.
- Photographic evidence.