

Board of Zoning Adjustment for the District of Columbia

The Appellants

This pre-hearing statement and accompanying exhibits (Tabs) were filed 6/23/15, in accordance with 3112.10. However, this version was amended as DCRA provided a new permit B1509180 on 6/24/15. As such as Form 150 was filed with this amended pre-hearing statement.

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 (including the revision to permit B1404813, issued 6/19/15 per RW1500079 and B1509180, issued 6/24/15) and associated construction drawings 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: Issue and Filings

From March-September 2014, DCRA issued multiple building permits for the subject property (B1409928 and B1404813), with determinations that existing and proposed FAR, lot occupancy, building height and parking conditions were in compliance with zoning regulations. Concerns were brought to the attention of DCRA by neighbors over the time period October-December 2014. Over this time span, initial correspondence focused on general observations and later concerns informed by an interpretation of specific zoning regulations as neighbors gained an understanding of zoning rules. In response, DCRA ruled 12/3/14 that FAR was out of compliance and issued a Stop Work Order. This decision was reversed several weeks later, on 12/18/14, with approval of revised permits (B1404813, re-issued 1/8/15 and B1502210, re-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 preparing the initial version of 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 permits and revised construction drawings, dated 12/17/14.

On 5/14/15, 5 days prior to the original BZA hearing date, DCRA requested a continuation based upon their determination made 5/7/15 that B1502210 "conflicted with the Zoning Regulations." Appellants declined to agree to a continuation, which was granted by the BZA on 5/19/15 to a new date of 7/7/15. A second Stop Work Order was placed on the property 5/20/15. A month later,

appellants were provided with the revised plans and permit on 6/19/15, leaving appellants with 4 calendar days to revise their pre-hearing statement, which was submitted 6/23/15—by the 14 day time period prior to the hearing date.

As stated above, our pre-hearing statement was further revised and re-submitted 6/25/15 to include information provided by DCRA on 6/24/15 (in response to an appellant email) about issuance of B1509180.

Summary of Case: Errors

The beauty of the zoning regulations is their interrelatedness. Non-adherence with one requirement will often create another problem—a cascade of errors serving as a regulatory alarm bell. Such is the case with this appeal. Our case is quite straightforward. Appellants identify four errors by the Zoning Administrator in approving permits and associated drawings that (1) ignore “existing” and “proposed” conditions as the basis for making determinations, as called for under zoning regulations; and (2) disregard of commonly understood definitions of grade and its meaning in relation to basement, cellar, FAR, building height, and rear yard setback. Other errors are connected to Gross Floor Area (GFA) and parking.

The four errors outlined in our case are attributable to a cascade of errors governing zoning regulations on grade, building height, FAR calculations, rear yard setback, and parking.

As for errors in grade definitions, these manipulations (see page 5) comprise a disregard of actual conditions (including depiction of a non-existent berm) and a bizarre set of three planters/retaining wall options, whose tops are proposed to serve as (and yet un-built) grade for purposes of determining lower level cellar/basement status. At each point, initially as neighbors and later as appellants, we have pointed out actual and existing conditions. At each point, drawings been changed, repeatedly, in apparent pursuit of an impossible solution: a redefinition of the plain meaning of zoning regulations governing existing, proposed, and grade.

The latest series of changes can be found in B1509180 (hereinafter referred to as June 2015 Error). This permit replaced an earlier set of 1/8/15 and 3/24/15 revisions (hereinafter termed Jan-March 2015 Permit Revisions), whose attempt to circumvent the zoning regulations definition of existing grade created a ripple effect in the form of a series of parking and rear yard violations documented by appellants in our initial pre-hearing statement.¹ B1509180 is a permit to construct an as-yet un-built retaining wall proposed to be embedded within the building itself. This represents a frontal assault on the accepted definition of grade as a location external to the building façade. Clearly, any point on this non-existent embedded wall is irrelevant on determining the status of the lower level as a cellar/basement and a story below/above grade. Finally, as if the case is not made by the clear logic of what is meant by grade, the embedded retaining wall does not exist and thus cannot serve as a reference point for determining basement/cellar status of the lower level.

¹ In the body of our appeal, we present errors found in the latest permit revisions and continue to present errors associated with our original appeal so as to ensure that the latest revisions are properly understood as an additional attempt to interpret zoning regulations in an unorthodox manner. For the convenience of reviewers, we clearly categorize and mark the dates that apply to each error. This approach was additionally necessitated given the limited time given to appellants to file a revised appeal.

- **Error 1. Incorrect designation of the lower level as a cellar, which improperly excludes this square footage from FAR.** A series of construction drawings submitted and approved by DCRA in 2014-15 share a common feature in mischaracterizing the existing grade. Approval of these drawings and associated permits (1) represents a disregard of DC zoning regulations by improperly designating as cellar what by definition is a story above grade and ignores long-established DCRA policy on its methodologies (perimeter wall and grade plane) for determination of lower level FAR, (2) is based upon a misrepresentation of the front finished grade, with notable errors in approved construction drawings; (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 6/25/15, the date of this appeal statement; (4) grants permission for non-conforming changes that are not matter of right modifications; (5) as stated above, violates the accepted definition of grade as a point external to the building façade; and (6) violates Construction Code/Building Permit Data Requirements that require applicants to state existing and proposed conditions. These errors are particularly egregious as they represent an effort to grant an *ex post facto* change in existing conditions.
- **Error 2. Impermissible alteration of the building height and disregard of interrelationship of zoning definitions.** The permit documents and plans incorrectly represent the building height, which, as it should be measured in the R-5-B district, is 48'-7". Based on this measuring point, the lowest level can be determined to be a story above grade and therefore countable towards FAR. Because the ceiling is greater than 4' (7'-9") from the existing grade at the rear of the building, the entire story should be considered above grade and therefore countable as FAR.

In addition, the height of the building as measured at the rear of the property is 52'-2", which requires a 17.3' rear yard setback, which is not achievable as the rear yard is 16' at this property. Non-compliance with this requirement is not addressed, nor is any Zoning Administrator minor flexibility of 10%/12" per 2522.1 referenced. This suggests that either the top of the embedded wall or the proposed parking slope have been used to measure building height, contrary to the 199.1 prohibition on alteration of the building height using a berm or artificial means. Furthermore, the inextricable linkage of definitions for grade, building height and story is ignored.

- **Error 3. Incorrect GFA calculations, which affect FAR determinations.** The largest GFA errors include non-inclusion of the lower level; failure to revise 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. In summary, the FAR is 2.46, well over the allowable 1.8 FAR for R-5-B.
- **Error 4. Violation of multiple parking regulations.** The Zoning Administrator allows multiple non-compliant parking conditions with the issuance of building permits for this property as the applicant was authorized to eliminate the former garage space under this project without providing the required 2 spaces for this 4-unit apartment building. (Note: Permit forms and plans are inconsistent in defining the number of units in the building, stating single family dwelling (its original status in 2014), a 4-unit conversion (permits B1404813, B1409928, and B1404813) and, in the latest permit B1509180 filings (with conflicting information indicating both a 2-unit v. 4-unit building, although no modified drawings are provided to indicate a change from 4-units to 2-units). Given the lack of clarity, we continue to

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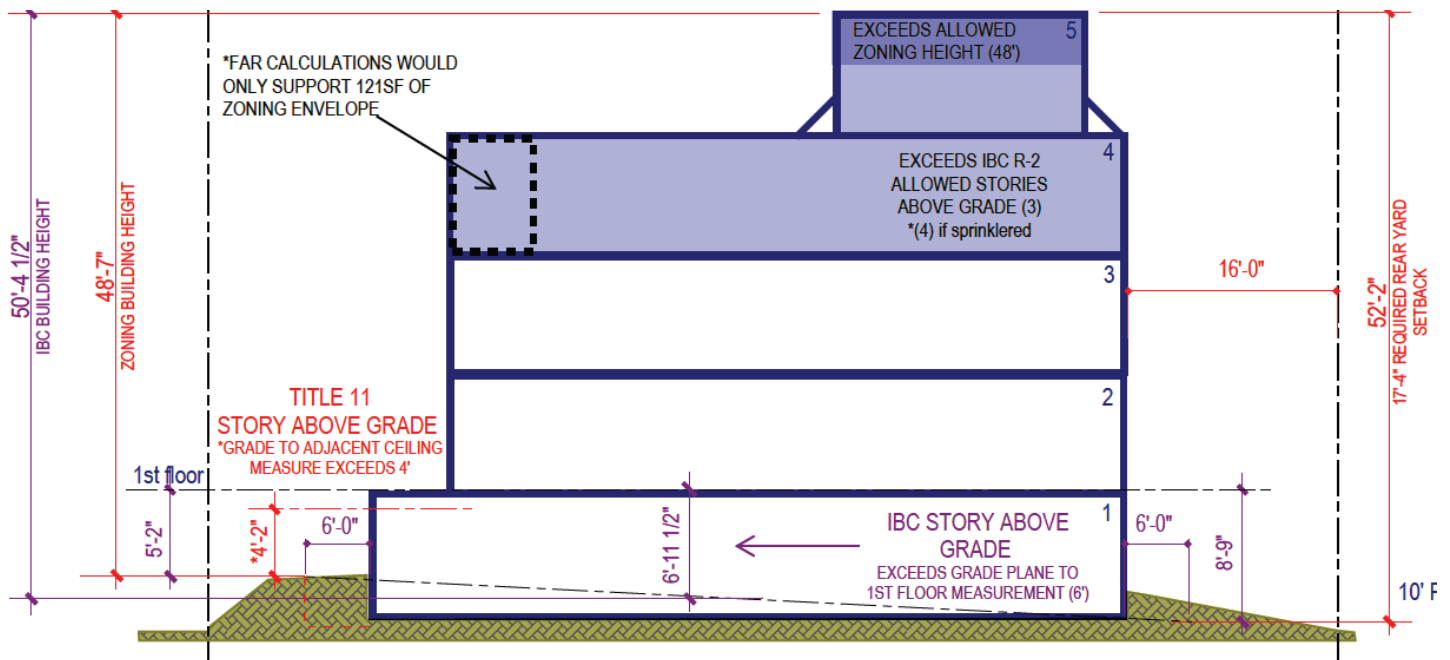
define the subject property as a 4-unit building. Thus, the intensity of use was miscalculated as no more than 25%, whereas conversion to a 4-unit apartment building is a 400% increase.

In the revised scenario, the parking spaces are inclined to 12% to create a bermed condition that presumably is meant to alter the height measurement at the rear. The slope of the newly proposed parking spaces far exceeds the allowable 5% parking surface allowed by the Barrier Act of 1980, thus creating a scenario where zero spaces are provided to the development.

Failure to correct these errors (summarized in the 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.

**For the convenience of readers, errors are summarized in the table on page 6.
In addition, please see the Tabs, particularly Tabs B, T, U and BB.**

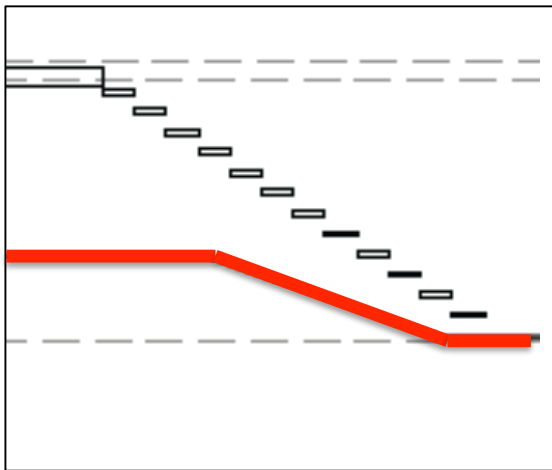
Graphic Overview of 1636 Argonne Place NW



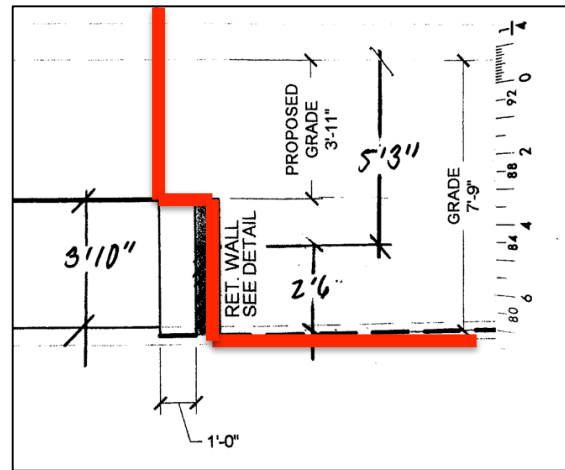
The Rear Grade:

A Series of Attempts to Alter FAR Calculations of the Lower Level

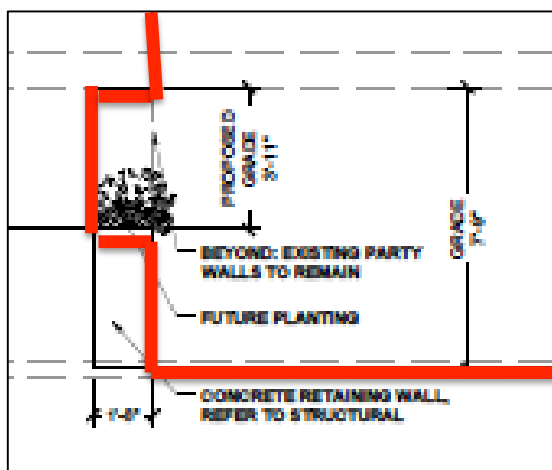
Original
June 2014



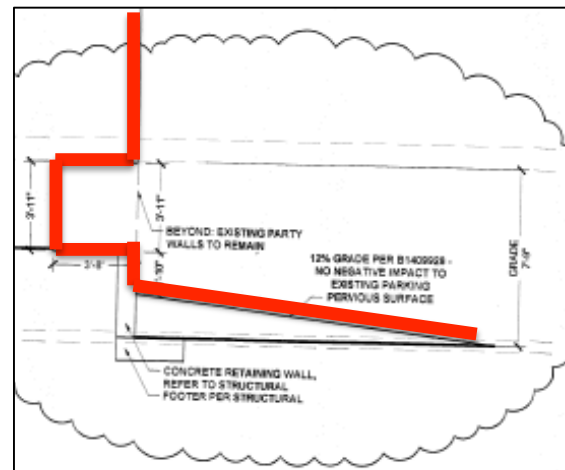
First Revision
December 2014



Second Draft Revision
May 2015



The Third Revision
June 2015



Summary of Zoning Administrator’s Errors Applicable to 6/24/15 Revised Permits

Error 1: Incorrect Designation of Lower Level as Cellar for FAR	
Why it Was an Error	Zoning Regulations and DCRA Policies
1. Disregards DCRA’s methodology for determining lower level FAR.	Perimeter wall method, outlined in Fahey Memo 9/11/90
2. Constitutes impermissible redefinition of the term “existing.”	11-199.(g)2
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 at the front of the building.	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 and FAR 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 and FAR.	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
Error 2: Building Height and Definition of Grade	
1. Violates the minimum rear setback requirement 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
2. Violates building height definition prohibition of use of a berm or other artificial landscape to alter measurement point.	11-199.1
3. Violates requirements on means of egress.	12A, Table 1021.2, Table 503
Error 3: Errors with GFA and FAR	
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. Errors in definitions for building, building area, GFA, floor area ratio, cellar and basement.	11-199.1
Error 4: 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: Timeline

Following is a recap of the 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 and FAR calculations in approved architectural plans, which appellants dispute. A December 3, 2014 Stop Work Order 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 (Tab D: Building Permit 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" (Tab E: Building Permit 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% (Tab F: 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 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 Stop Work Order was placed on the property (Tab G: Stop Work Order). 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.

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- **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 3/24/15. 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” (Tab H: PIVS).

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 6/25/15, 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 (Tab D: Building Permit 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 (Tab I: 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.
- **DCRA Determination of Error in Building Permit: Motion to Continue.** As noted in a 5/18/15 Motion to Continue, “[t]he Zoning Administrator (“ZA”), based on a 5/7/15 site visit, determined that the plans approved for B1502210 (‘Retaining Wall Permit’) conflicted with the Zoning Regulations and informed the Permit Holder that the Retaining Wall Permit would be revoked unless plans could be submitted to resolve the violation of the Zoning Regulations.” On 5/14/15, 5 calendar days before the original 5/19/15 BZA case date, DCRA communicated with appellants requesting a continuation, which appellants declined on 5/15/15. The BZA granted the continuation on 5/19/15, delaying the case to 7/7/15.

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- **Stop Work Order Requested and Granted.** On May 20, 2015, in response to neighbor requests to act upon the problems identified in the above 5/7/15 site visit, DCRA placed a Stop Work Order for FAR violations (see Tab W: Stop Work Order May 20 2015).
- **Status of Revised Plans and Permit.** On 6/15/15, appellants wrote an email to DCRA and BZA asking if new permits/plans were approved and what opportunity appellants would have to review and comment on new submissions prior to the 7/7/15 hearing date as responses needed to be submitted 14 days prior to the hearing date (i.e., 6/23/15). On 6/18/15, DCRA responded to inform appellants that revised plans and a permit were pending. The revised plans (dated 6/4/15) were provided via email 6/19/15. A permit regarding a retaining wall (Tab X: RW1500079) was provided 6/19/15 and noted as a revision to B1404813.
- **Revised Appellant Statement.** Appellants revised their existing appeal documents over the 4-day time period of 6/20/15 to 6/23/15, opting not to request a Motion 150 waiver of the 14-day window for submission of documents. Revisions were filed 6/23/15.
- **Permit B1509180 Issued for Retaining Wall.** On the morning of 6/24/15, appellants noted in PIVS a new permit was issued, B1509180, and emailed DCRA and BZA inquiring about its status, access to the permit, supporting documents and revised plans. Appellants also stated their intent to file a Form 150 and submit an amended pre-hearing statement and exhibits upon receipt of these new documents, which were provided 6/24/15 in the afternoon.
- **Revised Pre-Hearing Statement File.** Appellants revised their existing appeal documents on 6/24/15 and submitted them on 6/25/15 in the morning, along with a Form 150.

Factual Background: Subject Property

Below is a factual outline in terms of a description of the subject property.

Overview of the Property

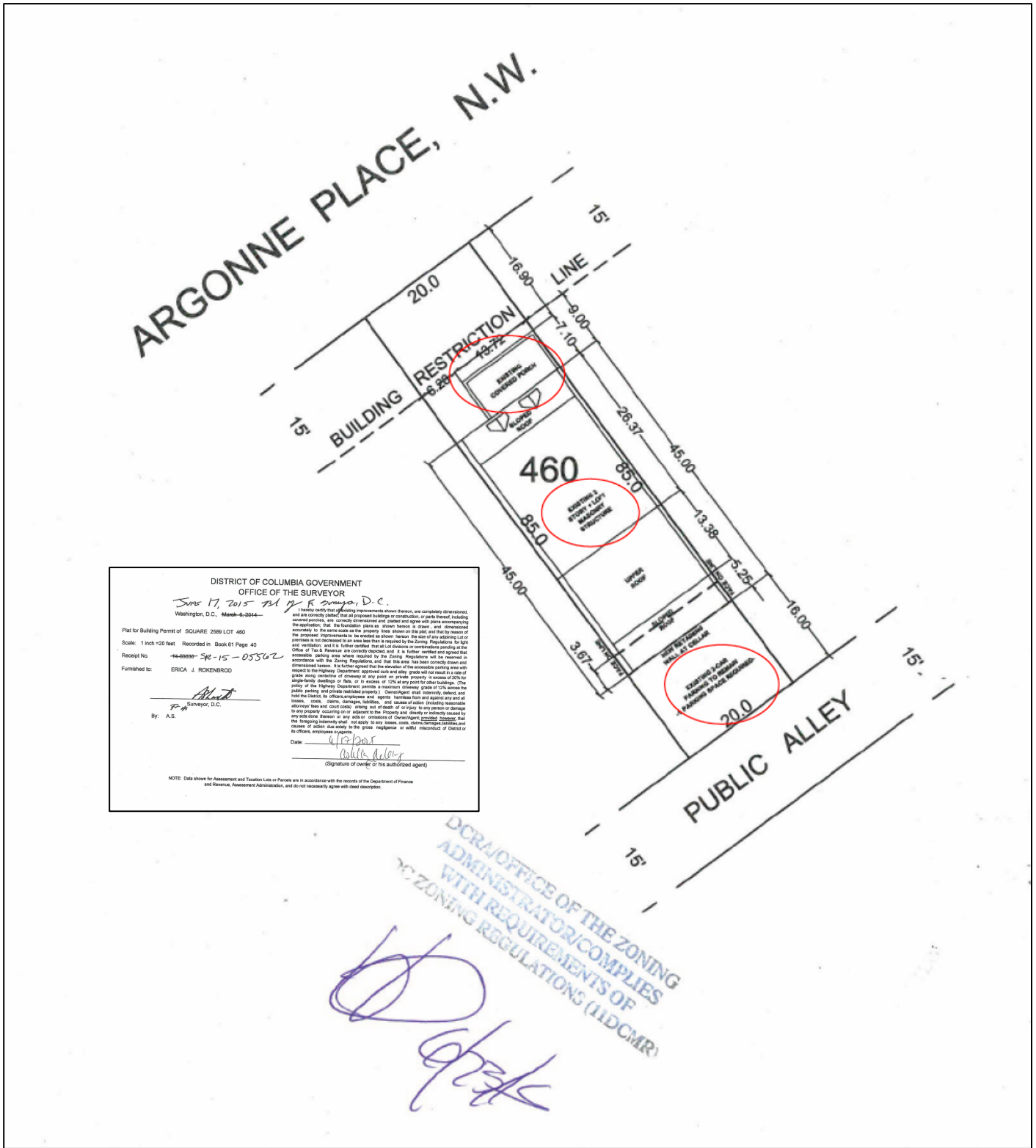
The subject property, 1636 Argonne Place NW (Square 2589, Lot 0460) is part of a contiguous row of 17 town houses (2.5 stories with an additional lower level), designed in the Georgian-revival style in the 1920s. The subject property is a single-family dwelling currently being converted into a 4-unit condominium building. It is located in an R-5-B zone, which has a FAR limit of 1.8 and lot occupancy of 60%.

As stated elsewhere in this document, most documents and plans define this as a 4-unit building. Only one document, the Zoning Data Summary associated with B1509180, dated 6/22/15, characterizes the building as a 2-unit existing and 2-unit conversion. Given the conflicting information, the absence of revised drawings to depict a 2-unit building, and the designation of 4-units on the majority of documents, appellants refer to the building as a 4-unit conversion. See page 11 for copies of both Zoning Data Summary sheets.

The building plat, revised 6/17/15, presents the building location. Note: Errors in this plat include:

- Depiction of an “existing covered porch” (this space has been incorporated within interior living space within one of the building’s proposed units).
- Depiction of “existing 2-car parking to remain – 1 parking space required” (no permits have been issued to designate 2-car parking and 2 parking spaces are required for this 4-unit building).
- Notation of this as an “existing 3 story + loft” masonry structure (the building is 5 stories or, at a minimum, 4 stories + mezzanine).

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.



Zoning Data Summary – 3/4/14

D. Zoning Data			
For items with asterisks (*) refer to the Definitions Section of the Zoning Regulations, 11 DCMR, § 199.1, available online at dcoz.dc.gov/info/reg.shtm.			
Data	Existing	Proposed	Official Use Only (code requirement)
Fill in both columns: numbers must match those on attached applications, plats, and plans.			
Units & Parking Spaces			
Number of dwelling units	1 Units	4 Units	
Number of parking spaces (9' x 19')	2 Units	2 Units	
Setbacks & Building Heights			
Side Yard* Setback (left when you face property)	N/A Linear feet	N/A Linear feet	
Side Yard* Setback (right when you face property)	N/A Linear feet	N/A Linear feet	
Rear Yard* Setback	16' Linear feet	16' Linear feet	
Building Height*	2+L Stories	3+L Stories	
	33'-7 1/4" Feet	44'-0 1/4" Feet	
Areas			
Lot Area	1700 Square feet	1700 Square feet	
Gross Floor Area* (GFA) of entire building (sum of all floors)	2143 Square feet	3008 Square feet	
Floor Area Ratio*	1.26 GFA / Lot Area	1.76 GFA / Lot Area	
Building Area* (sum of footprints of all buildings)	997 Square feet	997 Square feet	
Lot Occupancy* (Bldg Area / Lot Area)	58% %	58% %	
			OFFICIAL GOVERNMENT OF THE DISTRICT OF COLUMBIA PERMIT OPERATIONS DIVISION B1404813

Form Completed by (sign and print name):

Date:

All work must be done strictly in accordance
herewith an approved plans and specifications
the site until completion of construction. No
inspection will be made unless Approved

Zoning Data Summary – 6/22/15

D. Zoning Data			
For items with asterisks (*) refer to the Definitions Section of the Zoning Regulations, 11 DCMR, § 199.1, available online at dcoz.dc.gov/info/reg.shtm.			
Data	Existing	Proposed	Official Use Only (code requirement)
Fill in both columns: numbers must match those on attached applications, plats, and plans.			
Units & Parking Spaces			
Number of dwelling units	2 Units	2 Units	
Number of parking spaces (9' x 19')	2 Units	2 Units	
Setbacks & Building Heights			
Side Yard* Setback (left when you face property)			
Side Yard* Setback (right when you face property)			
Rear Yard* Setback	16' Linear feet	16' Linear feet	
Building Height*	3 Stories	3 Stories	
	44' Feet	44' Feet	
Areas			
Lot Area	1700 Square feet	1700 Square feet	
Gross Floor Area* (GFA) of entire building (sum of all floors)	3067 Square feet	3067 Square feet	
Floor Area Ratio*	1.80 GFA / Lot Area	1.80 GFA / Lot Area	
Building Area* (sum of footprints of all buildings)	997 Square feet	997 Square feet	
Lot Occupancy* (Bldg Area / Lot Area)	58 %	58 %	

Form Completed by (sign and print name):

Date:

Abdullah Adams

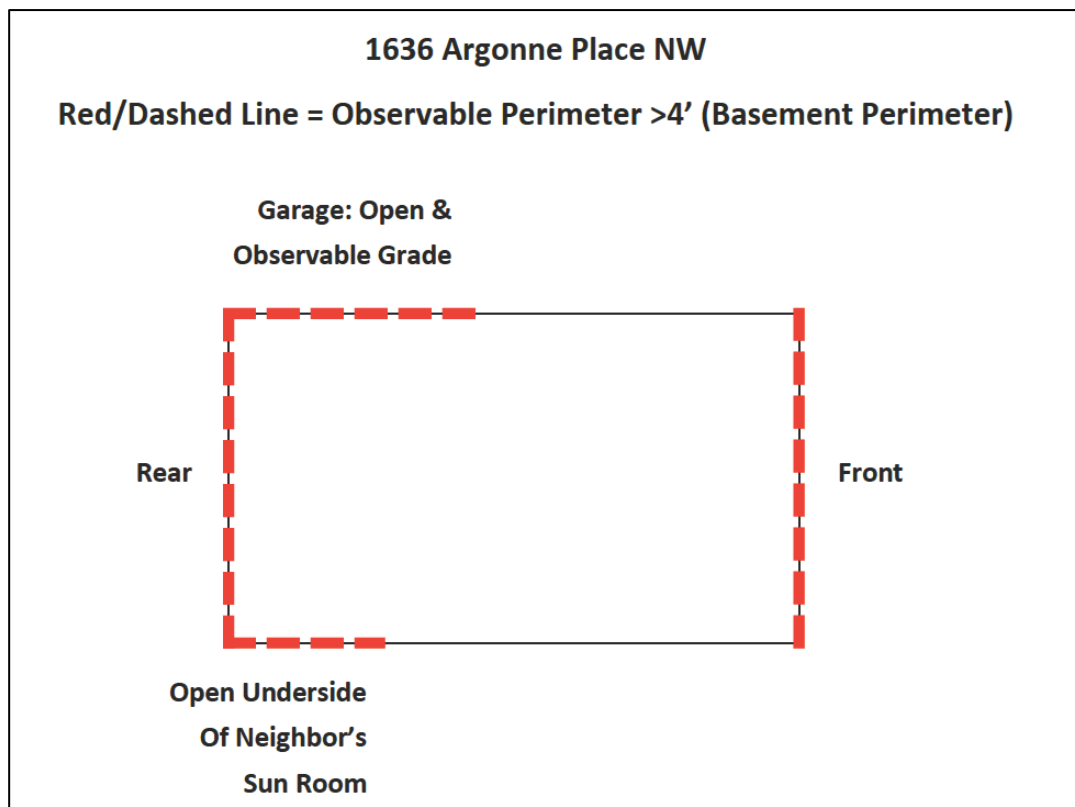
6/22/15

3/2011 rev. 2

Overview of Lower Level

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 6/25/15, 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 (Tabs B, T and U). This configuration is attributable to a 2002 renovation of the original English-style basement by prior owners (Tab V: 2000-2002 Construction Drawings). 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. See detailed description, below.
- **Rear Façade.** At the rear, the building is set back 16 feet from the property line. The lower level is fully above grade (Tabs B, T and U). 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 (Tabs T and U). See detailed description, below.



Detail of Front Grade

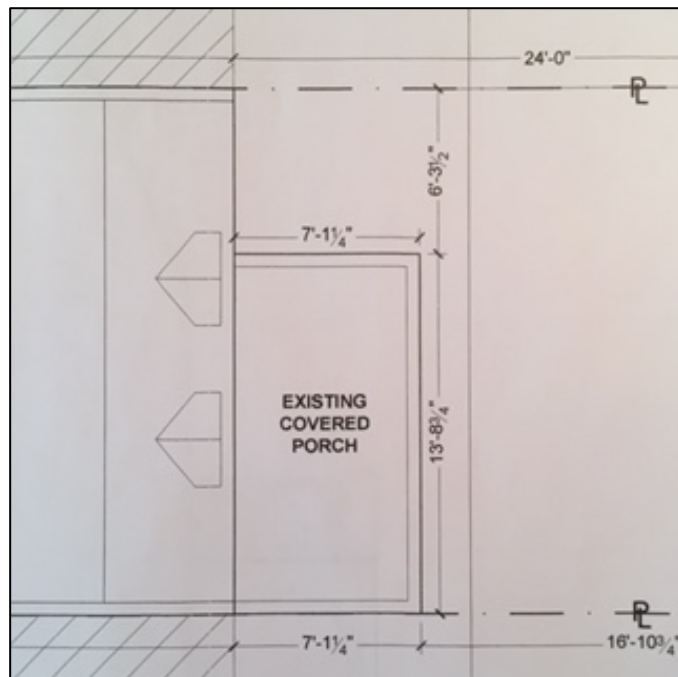
- **Existing Adjacent Finished Grade: Entryway.** The adjacent finished grade at the front is the entryway. At this point, the distance between the grade and the lower level ceiling is 8' (Tabs B, T and U).

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.

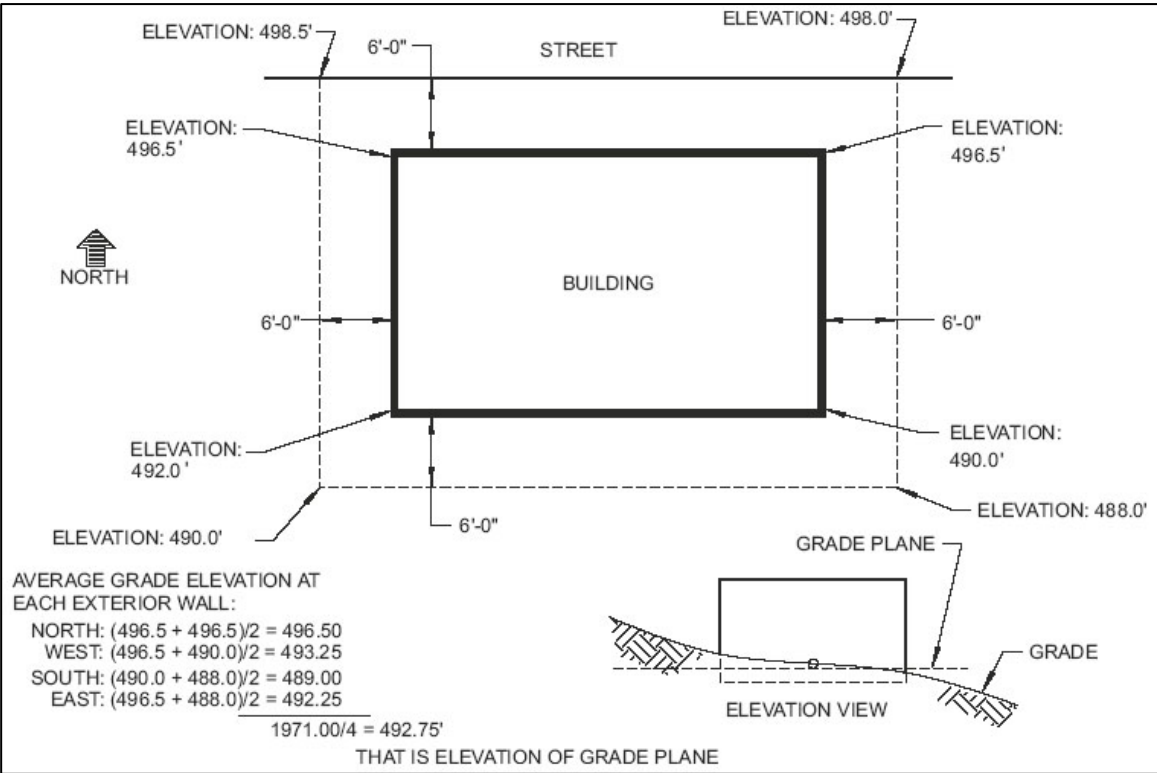
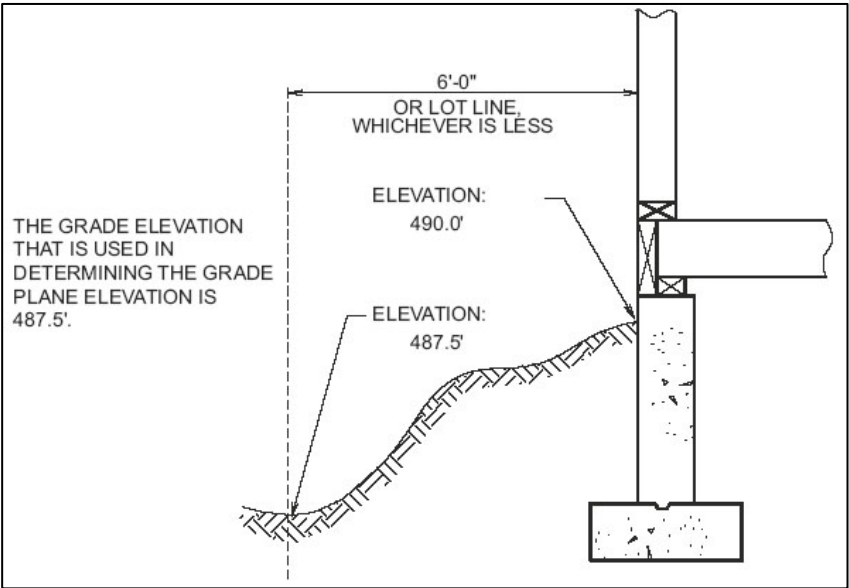
This entryway, created in a 2002 renovation, is directly below the front porch. The entryway extends across the entire width of the building (20') and 7' 1 ¼" in depth as measured from the front of the building (i.e., the basement apartment and its front door) to the face of the exterior wall of this 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.

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

A0100 (6/4/15)



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.



- **Verification of Grade at Front Landing.** The finished grade at the landing that is in front of the above-described entryway, is 4' 2" below the lower level's ceiling, according to approved architectural plans and DCRA's own interpretation. Thus, the lower level would also be definable as a basement even if measured from this secondary 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") (Tab L: Front Risers). Regardless, the appropriate point for measuring the adjacent finished grade is the entryway, as described above (Tabs B, T and U).

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

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

Detail of Rear Grade

- **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" (Tabs B, T and U). As of 6/25/15, this grade to lower level distance is 7'6".
- **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 (Tabs B, T and U). 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) (Tabs B, T and U). This section is 80" from finished grade to ceiling height of the lower level.
- **Actual Conditions Are Basement Perimeter.** As documented in attached photos (Tabs B, T and U), the rear wall currently includes two windows, 49" in height, which is in excess of basement perimeter distance. This is a minimum measurement for the existing rear grade as additional space exists both above and below the window frame (i.e. based on construction drawings). The notch/retaining wall inaccurately depicts windows of a different dimension.

Furthermore, the un-built retaining wall (approved 12/18/14) is misrepresented in not encroaching upon the lower lip of the window, which would in fact occur if that earlier retaining wall existed in relation to the currently installed windows.

- **Notch and Notch/Retaining Wall Do Not Exist.** The B1509180 notch/retaining wall and the earlier permitted retaining wall (approved 12/18/14 and issued 3/24/15) are both un-built as of 6/25/15 (Tabs B, T and U) 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.

Overview of Building Height

Two sets of measurements are presented: the existing building (per 6/14 plans) and the building as of 6/25/15.

- **Front of Building.** At the base of the stairs to the porch, the grade is established at the midpoint of the main building façade. The existing building height as of 6/14 was 36’ 7 ½” (misidentified on building plans as 33’ 7 ½”). The building height as of 6/25/15 is 51’7”, in excess of the 50’ maximum for R-5-B.
- **Rear of Building.** The existing building height (as of 6/14) at the rear, from the grade to the to the highest point of the main roof or parapet wall was 36’ ½” (misidentified as 29’ 9 ½”). The building as of 6/25/15 is 51’7”.

Overview of Rear Yard

The distance from the rear property line to the rear of the building is 16’. The maximum building height for this rear yard is 48’. As noted above, the building height at the rear is 51’7”.

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 (Tab F).

The Zoning Administrator's Errors

There are four errors by the Zoning Administrator with regard to issuance of permit B1502210, B1404813, B1409928 and B1509180. The cumulative effect is to permit construction of an apartment building at 1636 Argonne Place NW, in violation of FAR, GFA calculations, number of unit limits, and parking regulations for R-5-B.

Zoning Error 1 of 4: Incorrect Designation of Lower Level as Cellar for FAR

The Zoning Administrator's decision to grant permits B1502210, B1404813, B1409928, and B1509180 (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 construction drawings; (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 6/25/15; (4) grants permission for non-conforming changes that are not matter of right modifications; (5) as stated above, violates the accepted definition of grade as a point external to the building façade; and (6) 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.

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 repeatedly, nearly one year after issuance of original building permits and initiation of construction on the subject property. Mischaracterization of existing conditions is ongoing and apparently ceaseless as these efforts were made 12/18/14 (the partial basis for appellant's initial appeal submission) and again in June 2015 permits (in response to a 5/7/15 site visit determination of violations), leading to two Stop Work Orders (12/14 and 5/15).

June 2015 Error: 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 mathematical documentation was provided in response to appellants' FOIA request, which was limited to the provision of the following statement, which states the results, not the basis for this determination:

“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” (Tab J: DC Surveyor’s Plat).

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 x 85 =	1700 sq. ft.
BUILDING AREA: ORIGINAL FOOT PRINT REMAINS	
45 x 20 =	900.00 sq. ft.
7.1 x 13.2 =	93.72 sq. ft.
	= 993.72 sq. ft.
LOT OCCUPANCY:	
994 / 1700 =	58%
FAR	
CELLAR = NOT INCLUDED	
LEVEL 1 =	994 sq. ft.
LEVEL 2 =	900 sq. ft.
LEVEL 3 =	855 sq. ft.
MEZZ =	256 sq. ft.
	= 3,005 sq. ft.
33,005 / 1,700 =	1.76 FAR

June 2015 Error: Disregard of Actual Perimeter Dimensions and Points for Measuring Grade

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).

Each of these perimeters is described more fully below.

By endorsing an embedded 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. As documented below, these grades are open, observable, and >4' from finished grade to the lower level ceiling (i.e., basement grade).

Existing Adjacent Finished Grade: 6/25/15

	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

June 2015 Error: Disregard of Prior DCRA Definition of Lower Level as Basement

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" (Tab V: 2000-02 Construction Drawings and Tab K: 2000-02 Permits).

June 2015 Error: Violation of Construction Code and Building Permit Data Requirements

With the above disregards of actual existing conditions, 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 point that is 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 the future status of “proposed” activities to allow to process according to zoning regulations.

Should the above discussion of existing and proposed appear too philosophical, please note that the significance of these terms is evident in 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 and existing FAR—meaning prior to the initiation of construction—as is stipulated in the following forms (Tab M: 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).

Grade Errors

June 2015 Errors: Existing Front Grade

Errors in front grade calculations are evident in measurements of approved plans as well as 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 and existing FAR—meaning prior to the initiation of construction—as is stipulated in 11-3202.1, and 11-3202.2 and forms submitted for permits.

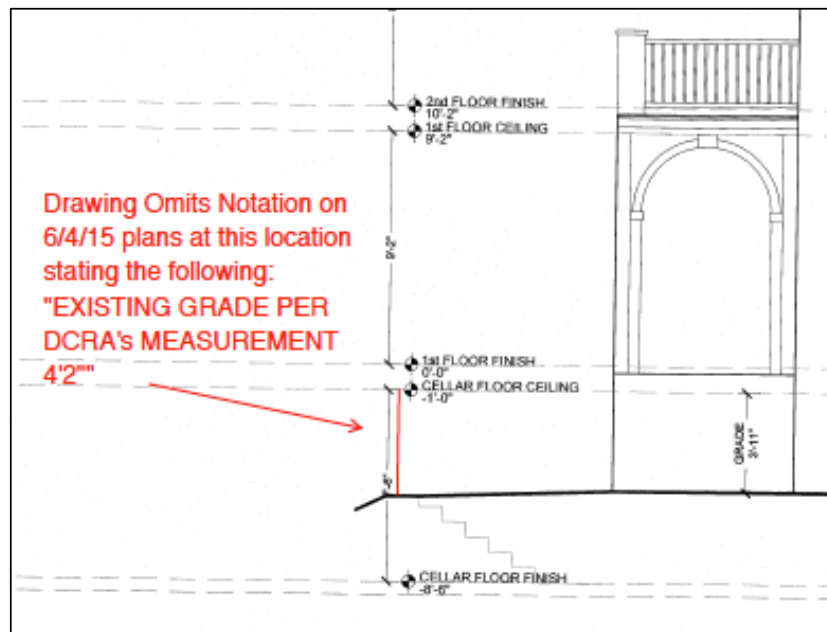
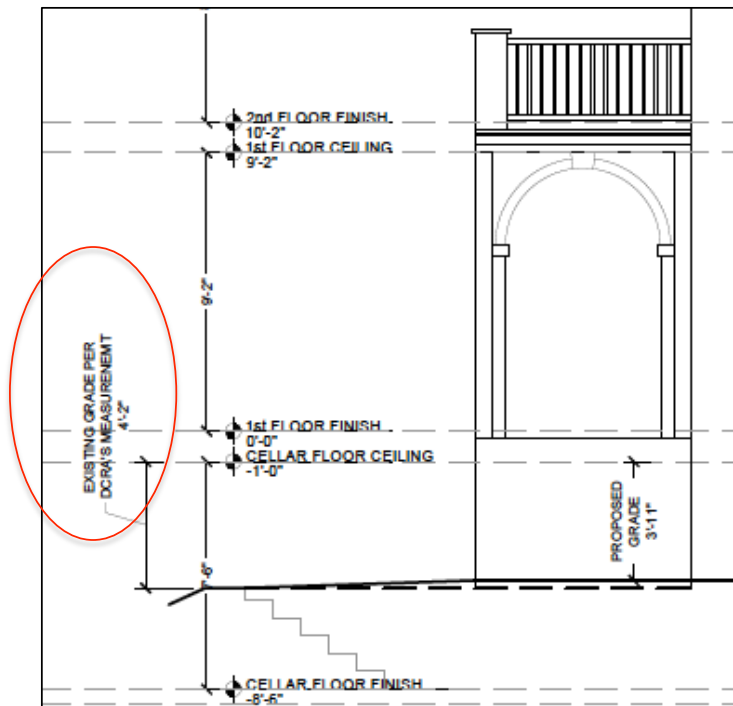
- **6/4/15 Revised Plans: Front Entryway Grade.** Architectural plans dated 6/4/15 identify the front grade as “EXISTING GRADE PER DCRA’S MEASUREMENT 4’2” (basement perimeter). At this point, the debate should be settled as to whether the front perimeter is basement or cellar. Nonetheless, the plans go on to depict at point under the first level porch (the entryway, the true adjacent finished grade as described above) as “PROPOSED GRADE 3’11””. The depiction is both irrelevant and incongruent with building plans as (1) the entryway is the adjacent finished grade as described above; (2) this grade is “proposed” and is thus irrelevant for purposes of establishing the basement/cellar designation; and (3) misrepresents the site conditions as this space is proposed to become part of the lower level unit and entryway to the lower level and would thus be impossible to berm over to achieve this measurement (see Tab T: Existing Conditions June 2015 and Tab U: Front Rear Parking Drawings June 2015).

Note: Plans submitted with B1502210 omit references to Existing and Proposed Grade. See below and Tab CC.

FRONT GRADE – Sheet A0202

Top: 12/17/14 Drawing Includes Reference to Existing Grade

Bottom: 6/4/15 Drawing with B1509180 - Excludes Reference to Existing Grade



12/17/14 Revised Plans: Front Entryway Grade. Architectural plans dated 12/17/14 identify the front grade as “PROPOSED GRADE 3’11”” and “EXISTING GRADE PER DCRA’S MEASUREMENT 4’2””. The actual front grade is 8’ at the entryway. As described above, “proposed” as a point of measurement is irrelevant and incongruent with building plans.

- **Nov-Dec 2014 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 1/8/15), 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 (Tab B: Existing Conditions and Tab S: Front Rear Parking Drawings).

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.

- **2014 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 (Tab B: Existing Conditions and Tab S: Front Rear Parking Drawings).

June 2015 Errors: Existing Rear Grade

Errors in rear grade calculations are also 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).

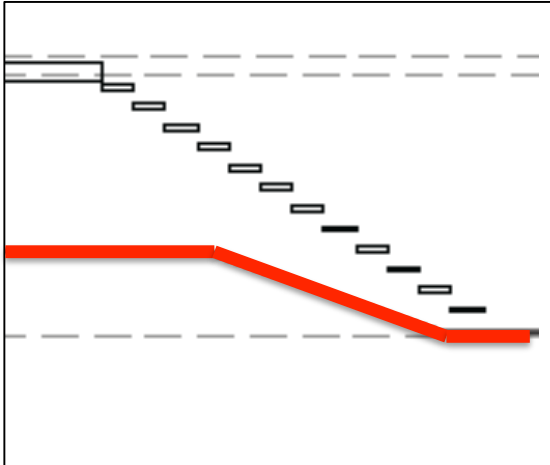
Multiple errors have also occurred with regard to the Zoning Administrator’s efforts to alter the definition of the existing grade at the rear of the building. These errors relate to a sequence of schemes to create a new grade.

- The latest was B1509180 to define the grade as the bottom lip of an un-built notch within the building).
- The earlier attempt was through the 12/18/14 permit (issued 3/24/15) to construct a “retaining wall” (also un-built) against the back of the building, abandoned as an effort to create a new grade per a 5/7/15 Zoning Administrator determination.

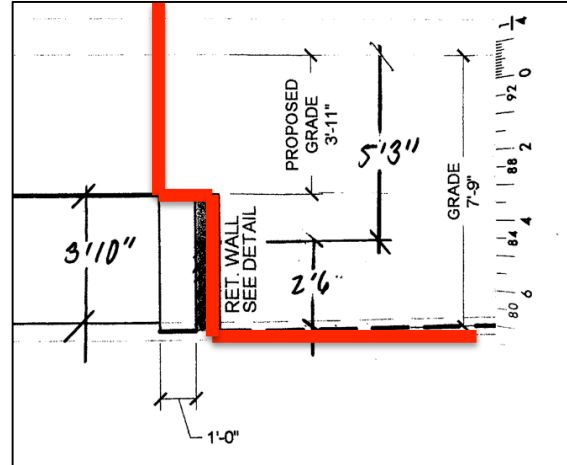
The Rear Grade:

A Series of Attempts to Alter FAR Calculations of the Lower Level

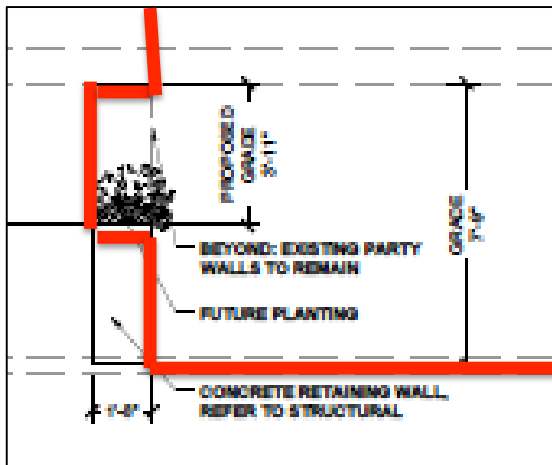
Original
June 2014



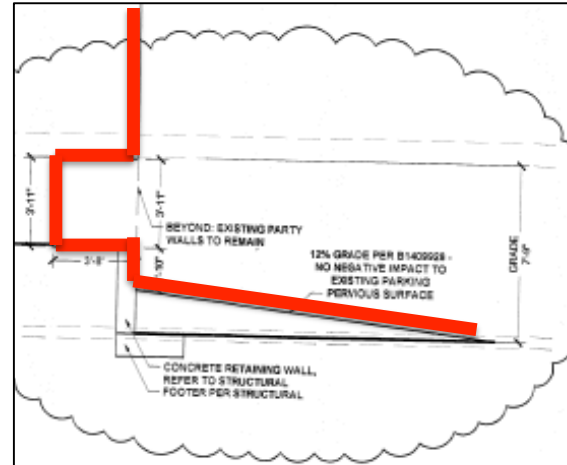
First Revision
December 2014



Second Draft Revision
May 2015



The Third Revision
June 2015



Errors: Mis-Identification of Grade as Top Lip of Planter/Notch

- **June 2015 Misidentification of the Grade as the Lower Lip of an Embedded Notch/"Retaining Wall."** The Zoning Administrator granted B1509180 to create a notch within the back building wall, defining this structure as a retaining wall and defining the grade as the lower lip of this notch, which (if actually built) would be a point within the actual building. However, accepted definitions for grade (a term not explicitly defined but rather referenced in multiple and interrelated definitions) do not support the definition of grade as being anywhere but at the base of the wall, which is a point external to the building façade. If measured from the point that is external to the building façade, the grade is basement in all scenarios. The first is existing conditions, where the distance is 7'9". The second is proposed conditions, the proposed and un-built (i.e., not existing) slope, where the distance is 5'9" (see Tab U: Front Rear Parking Drawings June 2015).
- **1990 Fahey memo.** "In the case of a building that has a difference in grade, resulting in floors that are by definition part basement and cellar; you use the following method for obtaining the floor area charged to gross floor area: (1) First measure the total perimeter of the floor in question. (2) Then, measure that portion of the perimeter of the floor, the ceiling of which is four feet or more above the **adjacent finished grade, (EMPHASIS ADDED)** and what percentage this is of the total perimeter of the floor in question. The answer to the above will be the percentage of the floor area chargeable to gross floor area."
- **Basement.** "that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the **adjacent finished grade. (EMPHASIS ADDED)**
- **Cellar.** "that portion of a story, the ceiling of which is less than four feet (4 ft.) above the **adjacent finished grade" (EMPHASIS ADDED).**

One additional definition reinforces that grade is a point external to the building. This definition merits specific attention as part of the June 2015 B1509180 scheme to alter the grade involves creation of a sloped parking space to elevate the grade, which is specifically prohibited per the below definition and which is relevant to this case as the building height exceeds the required rear yard setback, as described below.

- **Building, height of.** "...in Residence Districts (R) the vertical distance measured at the existing **grade at the mid-point of the building façade (EMPHASIS ADDED)** 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. The term curb shall refer to a curb at grade. In the case of a property fronting a bridge or a viaduct, the height of the building shall be measured from the lower of the natural **grade or the finished grade at the middle of the front of the building (EMPHASIS ADDED)** to the highest point of the roof or parapet or a point designated by a specific zone district."

June 2015 Errors: Errors and Omissions in Retaining Wall Permit (RW1500079)

There are multiple errors, omissions and inadequacies in the permit for the retaining wall, calling into question the accuracy of the retaining wall permit process, as follows (see Tab X: RW1500079 Permit File):

BZA 18980 – 1636 Argonne Place NW – Submitted 6/23/15 – Amended 6/25/15

- Page 1: Retaining wall height is listed as both "1" and "1.83 ft. high max."
- Permit Appl, #11: "Alteration and Repair" is checked but not "Retaining Wall."
- Permit Appl, #12: Description of Proposed Work is illegible.
- Permit Appl, #25: "Area of Off-site Drainage" of 20 SF seems inadequate for a 320 SF parking area.
- Permit Appl, Section B: Numerous questions are left blank (contractor's name, length/width/height, etc.).
- Permit Appl, B-31: Driveway construction is indicated as No, which is incorrect.

Errors: Jan-March 2015 Permit Revisions - Retaining Wall

- **Jan-March 2015 Permit Revisions - Permitted 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" (Tab B: Existing Conditions and Tab S: Front Rear Parking Drawings).
- **Jan-March 2015 Permit Revisions - 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.
- **Jan-March 2015 Permit Revisions - 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" (Tab B: Existing Conditions and Tab S: Front Rear Parking Drawings).
- **Jan-March 2015 Permit Revisions - 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.

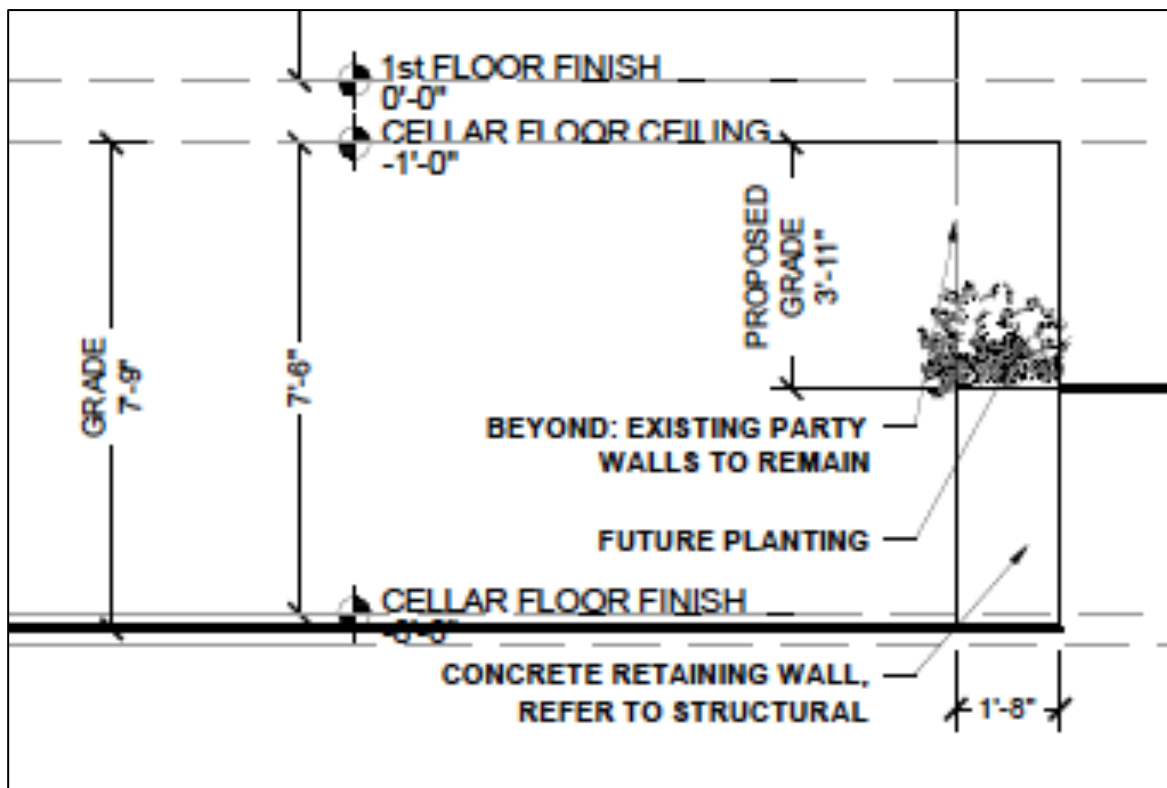
Errors: Impermissibility of Issuing a Permit to Build a Retaining Wall

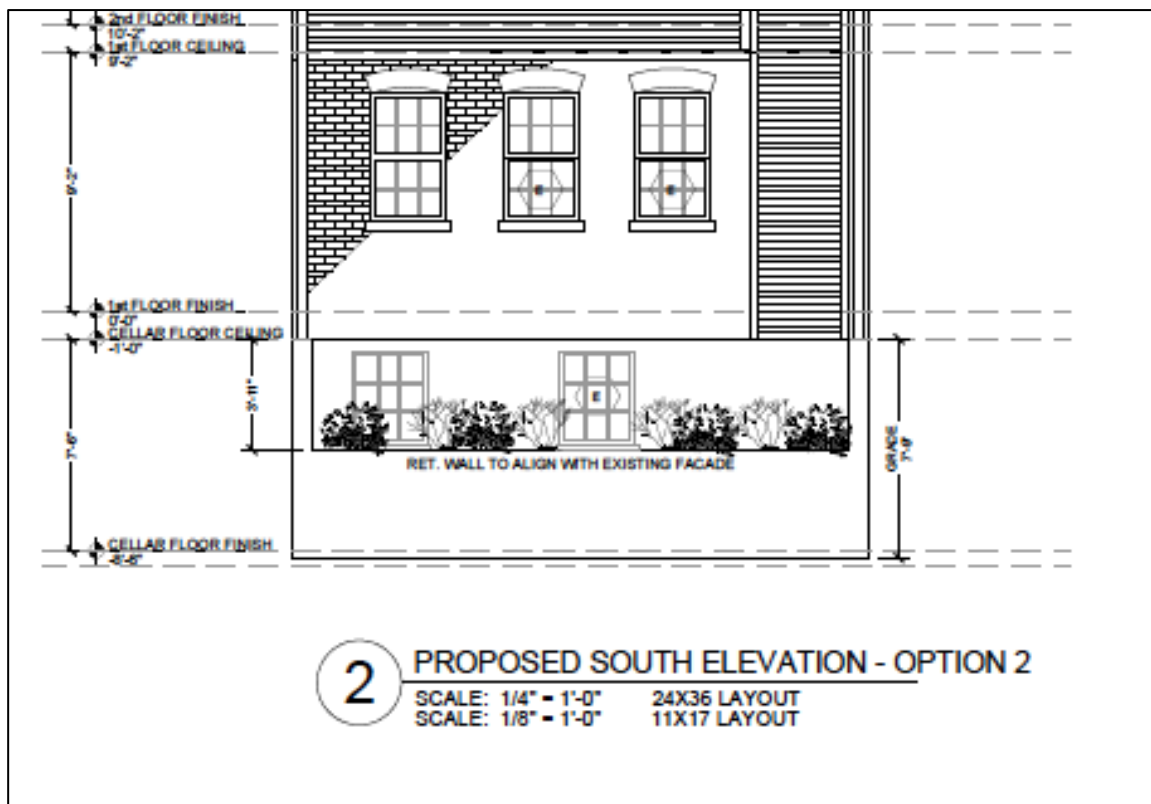
The Zoning Administrator has committed multiple errors in permitting construction of what is

defined as a retaining wall.

- **June 2015 Permit and Jan-March 2015 Permit Revisions - 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.” This is clear in the draft revisions submitted 5/13/15 in response to the 5/7/15 DCRA notice of an intent to revoke the building permit as the drawing depicts shrubbery (see below). 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.”

Plan Revision Proposal – 5/13/15 – Sheet A0201.2 and A0203.2





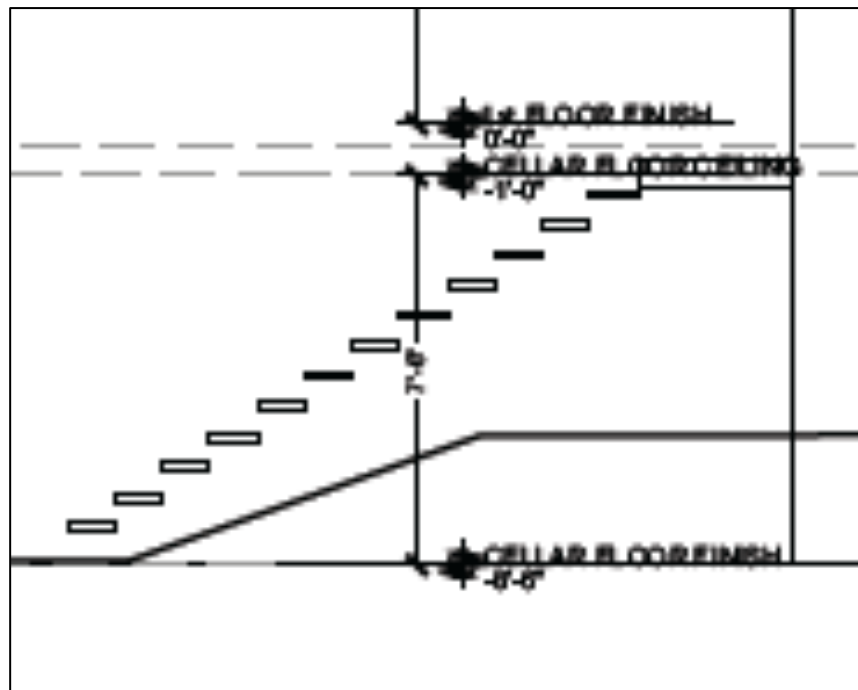
- Jan-March 2015 Permit Revisions Violation of Parking Requirements.** The structure called a retaining wall encroaches on the non-conforming parking space, which is 16' in length without the retaining wall and 14' 4" with the retaining wall. (Tab B: Existing Conditions and Tab S: Front Rear Parking Drawings). 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.
- Jan-March 2015 Permit Revisions - 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' 4 ½", 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))."

2014 Initial Plan Errors: Misrepresentation of Rear Grade

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 (see below and Tab B: Existing Conditions and Tab S: Front Rear Parking Drawings) and an incorrect proposed grade. Even with these errors, the rear grade is 5'—basement perimeter.

**2014 Construction Drawing of Rear Grade
Depicts Berm/Slope That Does Not Exist**



Zoning Error 2 of 4: Building Height and Definition of Grade

Building plans depict inaccurate representations and alterations of the grade, which in turn lead to zoning errors. To fully understand these zoning errors requires a re-review of definitions and their interrelationships and interdependencies.

- **199.1: Building, Height of.** “...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.”
- **199.1 Story.** “a story is the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. **The number of stories shall be counted at the point from which the height of the building is measured.**” (EMPHASIS ADDED)
- **Basement.** “that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade. (EMPHASIS ADDED)
- **Cellar.** “that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade” (EMPHASIS ADDED).
- **IBC 2009. Story Above Grade Plane.** “Any story having its finished floor surface entirely above grade plane, or in which the finished surface of the floor next above is: 1. More than 6 feet (1829 mm) above grade plane; or 2. More than 12 feet (3658 mm) above the finished ground level at any point.”
- **IBC 2009, Appendix J (J102).** Grade is defined as “the vertical location of the ground surface.”

As is clear from the above definitions, the words “grade,” “story” and “building height” are linked and inseparable. 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 from feet to head and yet magically not counting their feet to their knees when measuring their inseam.

With this context in mind, below is a review of the building height calculations and errors.

June 2015 Error: Building Height: Front

The cover sheet data indicates an existing building height of 44’-0 ¼”, which by the data on the sheet leaves a ceiling of lowest level to grade dimension of 4’-5 ¼”. This coincides with measurements taken on-site but differs from DCRA’s measurement of 4’-2”. Although a proposed grade of 3’-11” is shown for obvious purposes, the grade is shown where an entryway exists that is not possible to achieve.

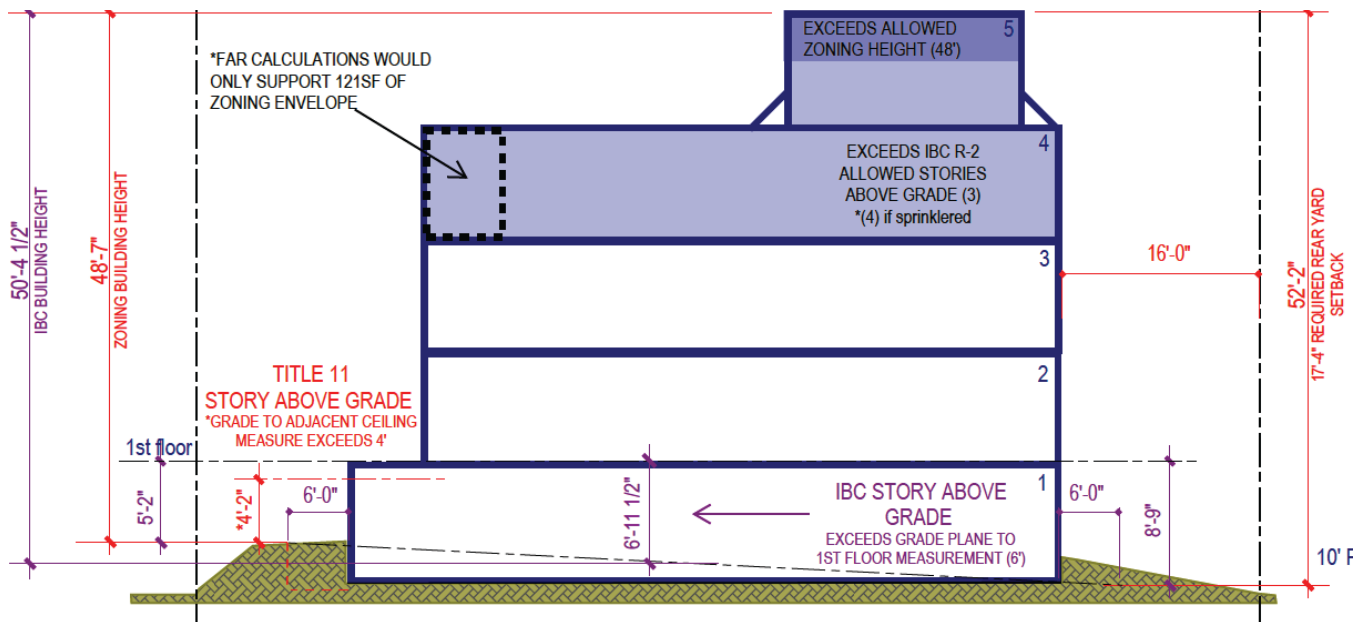
The actual building height, as it should be measured in the R-5-B district, is 48’-7”. Based on this measuring point, the lowest level can be determined to be a story above grade and therefore countable towards FAR. Because the ceiling is greater than 4’ (7’-9”) from the existing grade at the rear of the building, the entire story should be considered above grade and therefore countable as FAR.

See Tab BB: Grade Height Diagram.

June 2015 Error: Building Height: Rear

The height of the building as measured at the rear of the property is not considered in the permit drawings and, as built, represents a height of 52'-2". The addition does not comply with the zoning allowed height onto the rear yard because it exceeds 48'-0", which is the allowed height for a structure with a 16'-0" rear yard setback.

Neither the top of the wall shown on A0201, nor the proposed berm against the exterior rear wall (a combined height of 3'-10") are allowed to influence the height measurement under the Title 11 Section 199.1 definition of building height. Thus, neither point could be used to bring the addition into compliance. While the Zoning Administrator can exercise 10%/12" minor flexibility per 2522.1, no such statement is included in the permit, suggesting that the Zoning Administrator has allowed use of one of these impermissible measurement points. Furthermore, the inextricable linkage of definitions for grade, building height and story are ignored.



Errors: Building Code Violations

The various inconsistencies and misrepresentations previously noted with the grade are problematic beyond the zoning code and presumably affect life safety. The original permit documents incorrectly calculate the IBC measuring point (grade plane) for a story above grade due to among other things a false representation of the rear grade. At minimum, 4 stories should be listed as above grade by both IBC and Title 11 not 3.

Because the final approved permit set for the 5 levels of construction was not made available to us for review, we are unable to present a fully informed argument as to why the uppermost level should not be allowed as a mezzanine. Under the IBC (and arguably by Zoning too), this level fails to meet the criteria for a mezzanine and would therefore be disallowed as a 5th story under the R2 limitation of 4 sprinklered stories (Tab H: PIV, Tab D: Building Permit B1404813).

- Title 11 MEZZANINE. A floor space within a story between its floor and the floor or roof next above it and having an area of not more than one-third ($1/3$) of the area of the floor immediately below. A mezzanine shall not be considered a story in determining the maximum number of permitted stories.
- IBC 2009 MEZZANINE. An intermediate level or levels between the floor and ceiling of any story and in accordance with Section 505.

Zoning Error 3 of 4: Errors with GFA and FAR Per 402.4

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 calculations. As a result, the subject property exceeds allowable limits for R-5-B in terms of FAR (Section 402.4). Specific errors are outlined in the narrative and tables below.

- **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).

1636 ARGONNE PLACE, NW B1404813 - 4/3/14

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 (Tab N: 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.

Detailed GFA and FAR Errors

Below is a comparative review of these calculations, from architectural plans approved by DCRA, with errors and corrections outlined by appellants.

GFA and FAR: Comparison of Existing and Proposed

	EXISTING			PROPOSED	
	6/24/14	6/4/15	Corrections	6/4/15	Corrections
<i>Lower Level Is Mis-defined as Cellar</i>	1042	1042		969	
			910.46		994
First	997	997	1012.87	997	1012.87
Second	819	900	920.87	900	1012.91
Third	327	875	103.44	875	870.36
Fourth	N/A	295	N/A	295	300.24
Total	2143.00	3067	2947.63	3067	4188
FAR	1.26	1.8	1.73	1.77	2.46

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Square Footage Calculations: Basis for FAR Calculations

Square Footage Calculations	Width	Depth	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	48.44	992.05
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		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	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	870.36
4th Floor Proposed	20.48	13	266.24
4th Floor Proposed: Stair Hall	4	8.5	34.00
4th Floor Proposed: Total			300.24

Zoning Error 4 of 4: Noncompliance with Parking, Accessibility and Public Health and Safety 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-bedroom basement rental unit in 2002 under DCRA permits B441124-4419020, preserving the garage.

In issuing B1509180, the Zoning Administrator seems to seek to ameliorate parking zoning errors identified with the initial appeal, scheduled for hearing 5/19/15 but delayed due to DCRA's request for a continuation to 7/7/15. In the interim, the permit has removed the so-called retaining wall from the rear yard, partially addressing a shortage in the rear yard setback and the worsening of the parking space requirement. However, the Zoning Administrator has continued to create multiple non-compliant parking conditions as the applicant eliminates the former garage space under this project and did not provide the required 2 spaces for this 4-unit apartment building. 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. Additionally, a new set of accessibility and safety problems has been created by the proposal to install a 12% grade parking slope. DCMR violations include 2100.6, 2100.7, 2100.10, 2101.1, and 2115.1 and are described as follows.

June 2015 Error: Permit 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 (Tab O: 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 6/4/15 and 12/17/14 do not meet the parking size requirements). Furthermore, the Zoning Administrator makes no reference to permitting location of compact spaces, per 2115.3. 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 (no updated sheets were made available) 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' (Tab P: Zoning Data Summary).
- The Zoning Data Summary Sheet submitted 12/4/14 (no updated sheets were made available) 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' (Tab Q: Building Permit B1502210).

June 2015 Error: 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 (16' 6" x 9 ½") that is grandfathered as a compliant parking space (Tabs T and U). The garage was retained in the 2002 conversion of the lower level to a one bedroom unit 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 and is of a smaller and thus worse dimension than the pre-existing garage.

Awareness of 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' (Tab P: Zoning Data Summary).
- 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" (Tab Q: Building Permit B1502210).

June 2015 Error: Parking Worsened in Violation of 2100.10 Accessibility Standards

The Zoning Administrator also violates 2100.10 by granting a permit to create 12% upward sloped parking spaces. This grade far exceeds that of other zoning and code requirements, thus making the new parking spaces infeasible when compared to allowable slopes in similar circumstances, as follows.

- **DCMR 11-2115.1 – 2% Slope.** This provision states that "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).” Interpretation of the slope limitation in this provision can be found in reference to the federal ADA Act, which references ANSI 117.1 (American National Standard. Accessible and Usable Buildings and Facilities. 2003), which reads: “502.5 Parking Spaces. Floor Surfaces. Parking spaces and access aisles shall comply with Section 302 and have surface slopes not steeper than 1:48 [2%].” The proposed 12% grade is even more troubling as it applies to a proposed parking space that is only 16’ in length and not the 19’ length referenced in 2115.1 (Tab Z: Parking Slope Accessibility).

- **ADA – 5% to 8.3%.** ADA accessibility rules place a walking ramp slope maximum at 8.3% for ramps on an accessible surface. The allowable access slope is 5% (1:20).
- **IBC 2009 - 406.2.5 Ramps – 6.67%.** Vehicle ramps shall not be considered as required exits unless pedestrian facilities are provided. Vehicle ramps that are utilized for vertical circulation as well as for parking shall not exceed a slope of 1:15 (6.67 percent).

Note: it is possible that the 12% slope was arrived at under 2117.8(a), which states that a “driveway that provides access to required parking spaces shall meet the following standards: (a) It shall have a maximum grade of not more than twelve percent (12%) with a vertical transition at the property line.” However, a parking space of 16’ in length is not a driveway as defined in 2117.8(a) (“provides access to required parking spaces”). Rather, the space is a parking space or the terminal arrival point served by a driveway. As a stationary spot, a 12% grade is simply infeasible as a matter of safety and convenience.

June 2015 Error: Negative Impact of Parking on Public Health and Safety

With the installation of two parking spaces, on a 12% slope, the site will have no practical location for placement of trash and recycling receptacles for 4 units. Calculating the real world impact is relatively straightforward. Taking 4 units, with 2 receptacles each, at the measured dimensions of DC trash and recycling receptacles, it is hard to envision how 16 cans can be placed on a 12% slope and not routinely tip over, roll into the alley, knock against parked vehicles, and otherwise be impractical for daily use.

The above scenario is contrary to 11 DCMR 101.1 that “In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, and general welfare to: (a) Provide adequate light and air; (b) Prevent undue concentration of population and the overcrowding of land; and (c) Provide distribution of population, business and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.”

June 2015 Error: 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” (Tab H: PIVS). 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, CO1300980). However, this certificate is invalid as the property was gutted for purposes of a total renovation.

Jan-March 2015 Permit Errors: Noncompliance with Parking Requirements

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 (Tab O: 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' (Tab P: Zoning Data Summary).
- 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' (Tab Q: Building Permit 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 (Tabs B, T and U) 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' (Tab P: Zoning Data Summary).
- 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" (Tab Q: Building Permit 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" (Tab H: PIVS). 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:

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“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, CO1300980). However, this certificate is invalid as the property was gutted for purposes of a total renovation.

The Zoning Data Summary associated with B1509180, dated 6/22/15, for the first time characterizes the building as a 2-unit existing and 2-unit conversion, under Certificate of Occupancy CO130980. However, the building plans and the B1509180 face page continue to define the building as 4-unit. Given the confusion, the absence of revised drawings to depict a 2-unit building, and the designation of 4-units on the majority of documents, appellants refer to the building as a 4-unit conversion. The Zoning Data Summary submitted 3/4/14 verifies the preponderance of 4-unit designations as it characterizes the building as a single family house being converted to a 4-unit building.

Date	Source	Existing	Proposed
3/4/14	Zoning Data Summary	1	4
6/24/14	Construction Drawings	1	4
12/17/14	Construction Drawings	4	4
6/4/15	Construction Drawings	4	4
6/22/15	Zoning Data Summary	2	2

In addition, the number of parking spaces (on both the 3/4/14 and 6/22/15 Zoning Data Summary) indicate 2 existing and 2 proposed parking spaces, at 9' x 19', although the rear yard is only 16'.

Timeliness of Appeal

Please note the following timeline, earliest to most recent, demonstrating that appellants acted quickly in response to their initial inquiries to DCRA to address concerns, which were in process from October-December 2014, at which time the 60-day clock began with issuance of a permit that began the appeals process.

- October-December 2014. Neighbors raised concerns with DCRA about potential violations. During this time, neighbors were unaware of zoning requirements and depended on their own research, multiple visits to DCRA to secure permits and plans, and emails to DCRA, most of which were unreturned.
- 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.
- 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.
- 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 5/19/15 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.
- From 1/1/15 to 3/31/15, appellants were unsuccessful in securing full copies of permits, despite repeat requests from the DCRA Records Room (in part, one permit was issued but not paid for and thus was not processed over to the Records Room) and a 1/20/15 FOIA submission to DCRA and subsequent 3/6/15 FOIA appeal to the Mayor’s Office.
- Appellants’ FOIA request was addressed 3/31/15 by Maximilian Tondro and Melinda Bolling.
- On 5/18/15, DCRA file a request for a continuation, which was granted 5/19/15 by BZA, over the objections of appellants, who were enthusiastic in resolving the case. The case was rescheduled to 7/7/15.
- On 5/20/15, appellants requested a Stop Work Order due to 5/14/15 and 5/18/15 correspondence from DCRA regarding permit problems and the potential to revoke permits. The Stop Work Order was placed 5/20/15.