

From: Warwick, Daniel (SMD 2B02)
Sent: Wednesday, January 11, 2017 7:47 PM
To: DCOZ - BZA Submissions (DCOZ)
Subject: BZA #19374, Dupont Circle Citizens Association

Letter in Opposition to BZA #19374 appeal

Dear Chairman Hill,

Please see the below post from Greater Greater Washington, co-written by me, regarding and opposing the referenced BZA appeal.

Best,

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A logical fallacy and a Dupont row house could mean less housing in all of DC

Zoning appeals at DC's Board of Zoning Adjustment don't usually make headlines. But in one case in Dupont Circle, an upcoming decision about the legal definition of a "basement" versus a "cellar" could mean fewer apartments in the future.

In DC people have lived in apartments that are partially below ground for over 100 years. For many it is an affordable option for living in a neighborhood that would otherwise be unaffordable.

Most of us know these places as "basements," or perhaps the slightly less common "cellars." It turns out the difference between those last two is very important in the zoning code. Basically, basement apartments count toward a building's allowable size, but cellar apartments don't. That could change.

You say basement, I say cellar

Board of Zoning Adjustment
District of Columbia
CASE NO.19374
EXHIBIT NO.40

The owner of the rowhouse at 1514 Q Street NW wants to turn an existing row house into a four unit building. The zoning allows a three-story building, but the owner can build four units, one on each floor, because cellars don't count as a story. There are many buildings in Dupont Circle and elsewhere with this design.

However, the Dupont Circle Citizens' Association [filed an appeal](#) to change the interpretation of those rules.

The key provision of zoning in this case is “[Floor Area Ratio](#)” (FAR): the building's gross square footage (which is most, but not all, of a building's actual floor space) divided by the total size of the lot it sits on.

In the area encompassing this project, buildings can have a FAR of 1.8. That means if they take up 60% of the lot, they can be three stories tall.

Under DC's zoning code, a floor is a **cellar** if the ceiling is no more than four feet above the ground outside (“grade level,” in technical parlance). It's a **basement** if that distance is more than four feet.

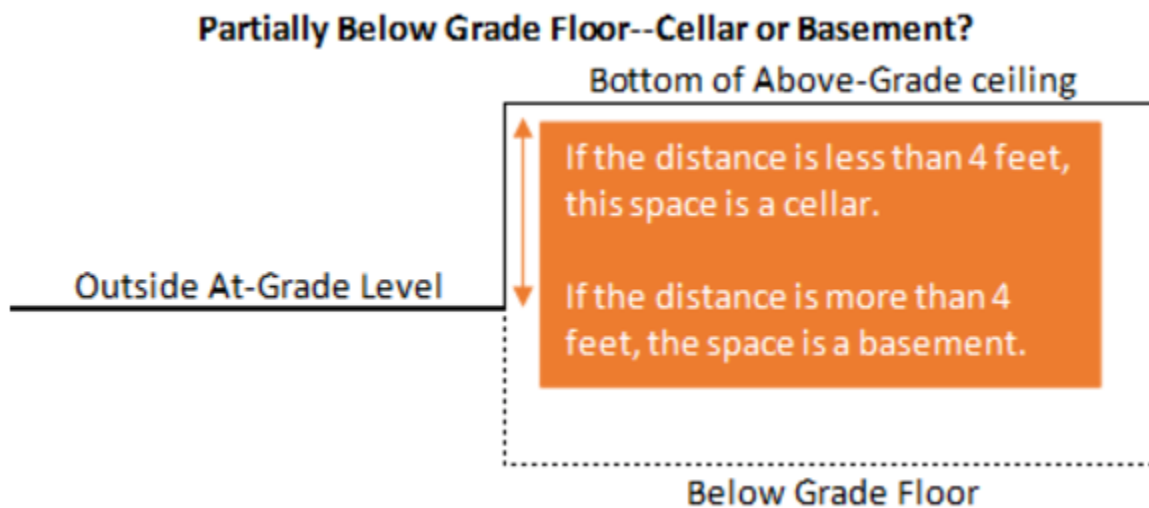


Image by the author.

A basement counts against FAR, while a cellar does not. This makes some sense, as the purpose of zoning is to regulate the visible height and bulk of a building. If someone can live below ground, they're making good use of space that otherwise would be just storage or dirt.

Should cellars count?

DC's Zoning Administrator, the official in charge of interpreting zoning rules, [determined on March 22nd](#) that a plan to build four condominium units was consistent with zoning. The Dupont Circle Citizen's Association [appealed the decision](#).

Here's what they say in their appeal (go to the [case page](#) and click on “DCCA Prehearing Statement, the second item under Case Documents):

The term “cellar” is defined in 11 DCMR 199.1 (ZR-16: Subtitle B, Chapter 1) as non-habitable space that is partially below grade, as follows:

Cellar: the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade.

*Habitable Room: An undivided enclosed space used for living, sleeping, or kitchen facilities. **The term “habitable room” shall not include attics, cellars, corridors, hallways, laundries, serving or storage pantries, bathrooms, or similar space; neither shall it include mechanically ventilated interior kitchens less than one hundred square feet (100 sq. ft.) in area, nor kitchens in commercial establishments.** [emphasis added by DCCA]*

Taken together, this language fully defines a cellar as a non-habitable room where the ceiling of the space is less than 4’ above the adjacent finished grade. In contrast, a habitable room that is partially below grade is no longer definable as a “cellar,” given its status as a habitable room.

Um, actually, no.

Many of us learned basic syllogisms in high school or college (like “all snakes are reptiles; no reptiles have fur; therefore, no snakes have fur.”) If you remember any of that (or even if not), it’d be clear that DCCA is making a basic error of logic. The zoning code does not “fully define a cellar as a non-habitable room.” Rather, it defines a “Habitable Room” for the purposes of the zoning code as one of a set of places not counting cellars (or bathrooms, or halls, etc.)

DCCA has this backward. It’s somewhat like saying, “All snakes are reptiles, therefore all reptiles are snakes,” which is a logical fallacy. This is a related type of fallacy.



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How about an analogy to better understand. Let's say a seaside town wants to prohibit driving cars on the beach, so they pass a law, saying:

A Motor Vehicle may not be driven on the public beach, except those operated by police, medical personnel, or lifeguards on duty.

*Motor Vehicle: A wheeled conveyance powered by an electric, combustion, or other motor. **The term "Motor Vehicle" shall not include toys.***

Now, if someone is driving a miniaturized toy truck on the beach, can the hypothetical Delaware Coast Citizens' Association stop kids from playing with them?

The answer is no. The prohibition is on Motor Vehicles, and the definition specifically excludes toys. If something is a toy, therefore, it is not a Motor Vehicle for the purposes of the prohibition even if it is motorized and is a vehicle, because the second sentence excludes it.

But the hypothetical Delaware Coast Citizens' Association appeals, saying "Taken together, this language fully defines a toy as a non-motorized vehicle" and arguing that anything with a motor can't be a toy.

They get an F in Logical Reasoning, and the BZA should give this appeal a D for Denied.

This case has big implications for DC's affordable housing supply

If the BZA instead falls for this same logical fallacy, many people's ability to build on their row houses will be reduced by 25%. Projects, like this one, to make each floor into an apartment would be limited to fewer housing units, but that is not the only effect.

Some row houses, including in this area, have two 2-floor, 3-bedroom units. These are valuable because they provide large enough space for some families. But without the cellar for living space, there could only be one family-sized unit and one smaller unit, perhaps a 1-bedroom.

Many homeowners rent out their basement (or, technically, cellar) apartments for extra income. Living above ground, where there are windows and lots of open light, is more desirable, but that means people can choose to pay less for cellar with less light, perhaps being able to afford a neighborhood (like Dupont) where they could not otherwise.

A Redfin search for condominium sales including the word "basement" within DC over the past twelve months shows an average sale price of \$476/square foot, while the average sale price for a condominium unit was \$527/square foot. A 10% discount may not be enough for everyone to choose living in basement or cellar, but it is nothing to scoff at when the cost of housing is rising every year.

It is important to note that zoning, which is at issue here, just affects what buildings can be built. Where someone is allowed to live in a building are entirely separate regulations in the building code and not in the zoning regulations.

Most of the areas impacted by this appeal were built before the 1958 zoning code, which set the regulations for floor area ratio and lot occupancy, was adopted in DC. Many of these areas were developed with three story rowhouses and basements or cellars. Counting the cellar in FAR would mean that most of the existing buildings could not be constructed today. That makes little sense.

With [DC's population growing by 1,000 people every month](#), making housing illegal is not a wise decision-- especially when the relatively more affordable units are being targeted.

What's next?

The five-member Board of Zoning Adjustment hears appeals to Zoning Administrator decisions, including this one. There is a hearing on Wednesday, January 18th (originally scheduled for December 14th but postponed at the last minute) to decide if cellars with living space should count

against FAR. Let's hope the members of the BZA understand their elementary logic and preserve more affordable housing options in DC.

If you want to send comments to the BZA, you can do that by [emailing bzasubmissions@dc.gov](mailto:bzasubmissions@dc.gov) before January 18. You must put the case number and title (BZA #19374, Dupont Circle Citizens Association) in the subject line; say in the email whether you or oppose or support the appeal or just want to give general comments; and include your name, address, phone number, and email address ([their rules](#) require all of this).

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