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Doris Parker-Woolridge, Esquire
Office of the General Counsel
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Washington, DC 20002

Dear Ms. Parker-Woolridge:

I hope by the time you receive this you will have fully recovered from the automobile accident and in good health and spirits. I can't tell you how happy I (and our ANC and Historical Society) am that a responsible and dedicated attorney is showing sincere interest in resolving outstanding issues in the Wesley Heights area. It has been a long and frustrating journey trying to deal with the Zoning Office, and it now looks like there is light at the end of the tunnel. Hooray for the good guys!

2708 – 44th Street, N.W.

I believe this property violates several zoning regulations of the Wesley Heights Overlay, not just the finished attic. However, I suspect it serves little purpose to raise these issues again. Mr. Bello was involved in the initial approval of this project.

Your inspector reports that the attic is not used as livable space and therefore doesn't count as a story, is not included in building height, and the space not calculated as gross floor area. This analysis seems strange to me. What is to prevent some future owner from easily converting the attic to livable space?

The original computation shows gross floor area of 5,744 square feet, but you will see from the enclosed advertisement that it was sold as containing over 7,000 square feel including 5-7 bedrooms.

Time and time again I have called the Zoning Office's attention to a mysterious incident regarding this property. On 11 June 1999 I went to the Office of Records Management in an effort to purchase copies of the revised architectural drawings for this construction. They were not there, and I was referred to the Central File Office. People there were not

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able to locate the file on the office's computer. However, a courteous and helpful employee went through a series of loose-leaf books and did find a reference to it. The plans were not available because they were signed out by a Mr. Wayne Bowie and not returned. Who is Wayne Bowie I asked? Nobody seemed to know. Would he have been an employee of the DC government? Probably, I was told because nobody else can remove master file documents, only copies. Were they going to try to get them back I inquired? Since they didn't know Wayne Bowie they said it would be impossible to get them back. The staff brought in the supervisor who said all this was very unusual. I did some sleuthing and found that Mr. Bowie was employed by the developer of the subject property! Now the question arises why did the Central file Office allow a private citizen to remove the only copy of the plans? Why did the developer want the permanent office file when he and the architect surely had dozens of extra copies? No government official has ever expressed the slightest concern over this incident.

4417 Garfield Street, N.W.

I am pleased that at long last the government is going to enforce the height limit on the garage at this site. This violation was pointed out in writing and in a personal meeting with Mr. Johnson, Mr. Noble, and Mr. Bello before construction was finished when there was time to correct the situation. Mr. Bello, particularly, was adamant the garage was in compliance.

Doris, it would be extremely helpful to the ANC, Wesley Heights Historical Society, and individual neighbors if your office would take a hard look at the language of the regulations – independent of the Zoning staff – about four issues that we have been unable to receive clear answers.

Question: Are cellars, as opposed to basements, habitable spaces? NO If the answer is yes, do they count as a story and in the gross floor area?

Regulation: Section 199.1 states that a cellar is "that portion of a story, the ceiling of which is less than four feet (4 ft) above the adjacent finished grade." A basement is "that portion of a story partly below grade, the ceiling of which is four feet (4 ft) or more above the adjacent finished grade." A habitable room is "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..." The regulation also states that, "For the purpose of determining maximum number of permitted stories, the term 'story' shall not include cellars, stair or elevator penthouses, or other roof structures..."

In addition to the Zoning Regulations, Title 14, Section 404.1 of the Housing Regulations states that, "Any room with more than fifty percent (50%) of any exterior wall area from floor to ceiling below ground level (using average level along each exterior wall) shall not be used as habitable room..."

Question: Can accessory building garages located within a rear yard setback contain habitable space? If the answer is yes, what is the restriction on the amount of livable space permitted?

Regulation: Section 204.1 – The following buildings shall be permitted as accessory building in R-1 districts incidental to the uses permitted in this chapter: (a) Private garage, subject to the special provisions of chapter 23;..." Section 2300.2 – "A private garage that is an accessory building in a Residence district shall be subject to the following special regulations in regard to its location: (a) It may be located either within a rear yard or beside the main building; Provided, that if the garage is located beside the main building, it shall be removed from the side lot line a distance equal to the required side yard and from all building lines a distance of not less than ten feet (10 ft). Section 2300.3 has a special provision – with limitations – to permit an artist studio in a private garage that is an accessory building. Also, Section 2500.5 provides, "In an R-1-A or R-1-B district, an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building." There are restrictions for this use; for example in 2500.6 it "shall not be located within the required rear yard."

Note: To allow habitable space in garages in rear yard setbacks makes a mockery of the regulation that does not permit it.

Question: Must the Zoning Office have legitimate reason to measure the height of a residence building from grade to the ceiling of the top story rather than the curb to the highest point of the roof?

Regulation: In Section 400.1 of Title 11 it is mandated a residence building **shall not** exceed 40 feet in height and 3 stories tall in districts R-1 through R-5-A. Section 199.1 provides that the vertical distance be "measured from the level of the curb opposite the middle of the front of the building to the highest point of the roof of parapet." In those districts in which the height of a building is limited to forty feet there is an exception that provides the measurement **may** be from the finished grade level at the middle of the front of the building to the ceiling of the top story.

It is instructive that in Section 199.1 regarding building height there are five explanatory paragraphs for different circumstances: one uses "may," three use " shall," and another uses both "may" and "shall".

Note: The differences between shall and may are obvious and intentional by the drafters of the regulations. Therefore, it appears the Zoning Office is required to make a case-by-case determination to use the "may" provision depending on circumstances.

Question: Are swimming pools, patios, and retaining walls considered "structures" and therefore counted in lot occupancy?

Regulation: A Structure is defined as "**anything** constructed, including a building, the use of which requires permanent location in the ground, or anything attached to something having a permanent location on the ground and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls." The Wesley Heights Overlay District, Section 1543.2, provides "**No structure**, including accessory buildings, shall occupy an area in excess of thirty percent (30%) of the lot..." but there are exceptions for lots smaller than 6,667 square feet.

Note: The Zoning Office relies on Section 2503.2 regarding projections into open spaces that do not exceed four feet above grade as not constituting "structures." However, this is an environmental section for open spaces to allow light, air, and water and has nothing to do with lot occupancy. If the regulation drafters meant to exclude structures under four feet they would have written it into the principal section of "**anything** constructed." Theoretically, I suppose an owner could cement over his entire yard under the Zoning Office's position.

Thanks again for your continuing interest in these important issues to the District of Columbia.

Sincerely,

Bill

William E. Timmons