

BZA 19374

1514 Q Street NW

Context: BZA Cases on Cellar/Basement

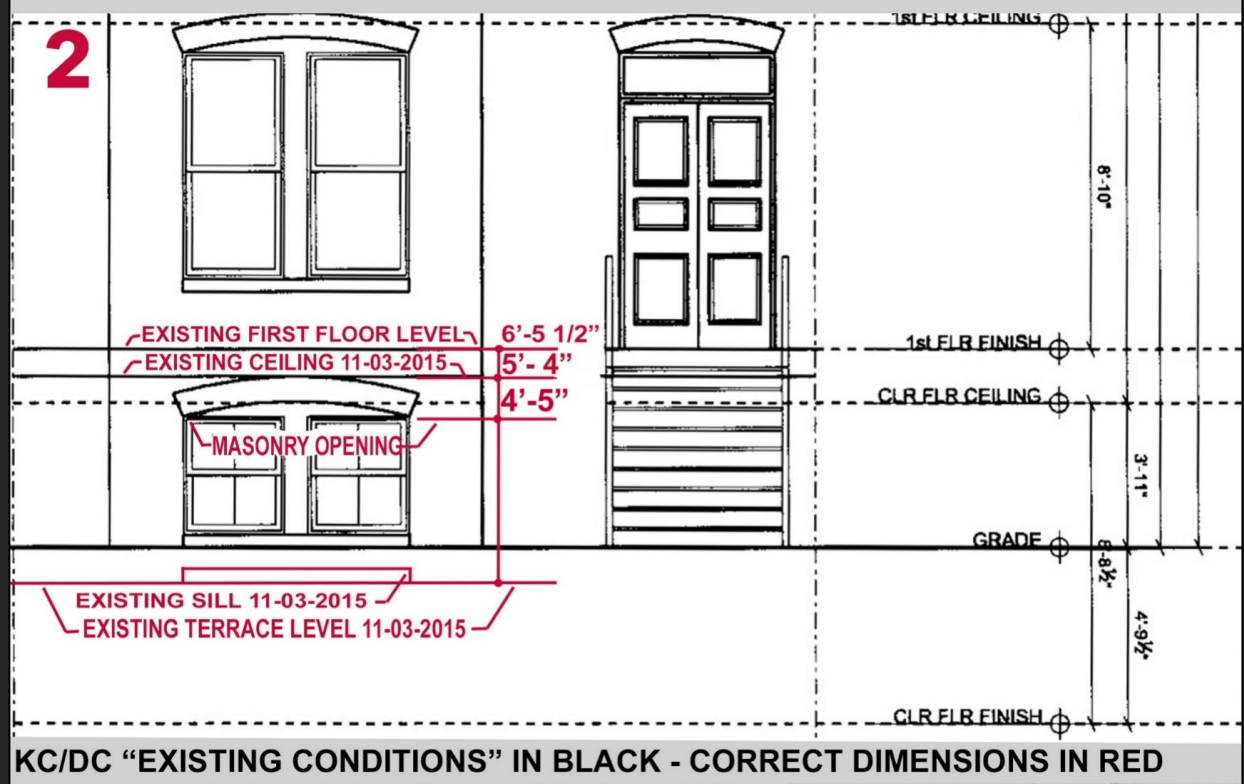
- Prior cases have focused solely on measurements
- BZA has never heard basement/cellar case on basis of cellar definition in relation to habitability

Error 1

Permit and Plans Fail to Achieve
Cellar Measurement

Inconsistent Plans: Changes to Achieve 3'11" Cellar

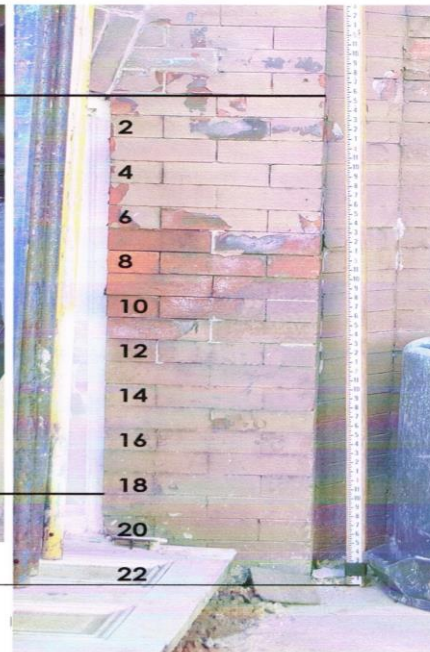
(1) Raise Grade & (2) Lower Ceiling



Front: Photo Shows 4'5" Basement Grade



John Casey showing how he shortened the window openings by 2 1/3 courses and raised the sills 6" above their original positions
March 8, 2016



Record photograph of existing conditions taken by Don Hawkins on November 21, 2015 showing springline of masonry to be 4'-5" above grade.

Spencer M. Parie
Notary

3/11/2016

Don Hawkins 3.11.2016

AFFIDAVIT OF JOHN CASEY

AUTHENTICATING ATTACHED PHOTOS

I, John Casey, being duly sworn, do hereby attest that the attached photos are authentic and were taken of 1514 Q Street NW during the February 12, 2016 meeting I attended on the property with DCRA Inspector Ruben Legaspi, SMD 2B05 Abigail Nichols, and project architect KC Price. The attached photos accurately document that the ceiling of the lower level is less than four feet (4 ft.) above the adjacent finished grade.

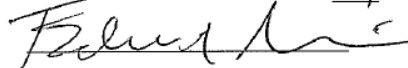
Date:

2/27/16

Signature:



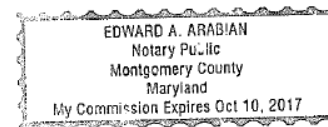
Subscribed and sworn to me this 27 date of FEBRUARY 2016.



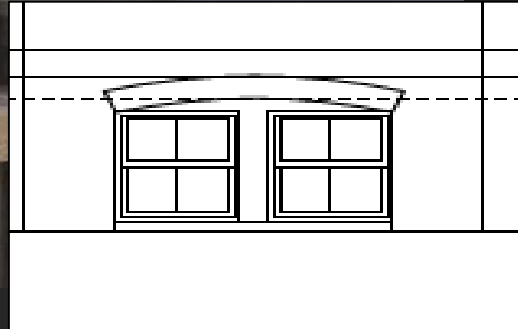
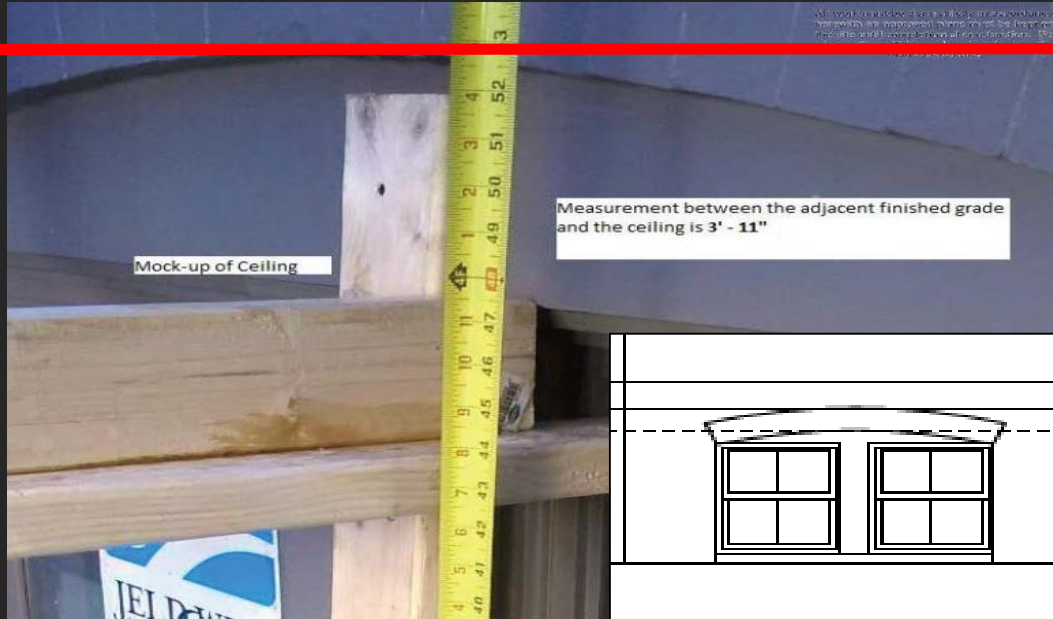
(Signature)

My commission expires on: 10-10-2017

Seal:



Front: Photo (Actual) Shows 4' 5" Basement As Measured from Brick Arch



3'11" Measurement Depicted on the Plans

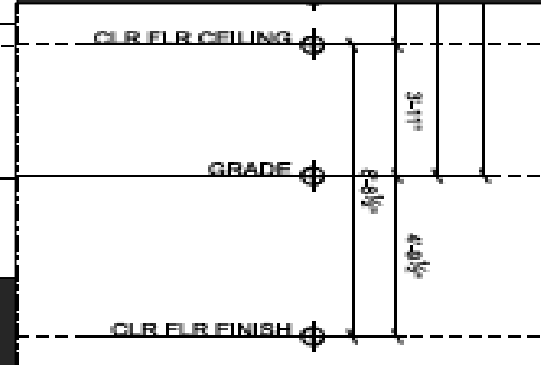
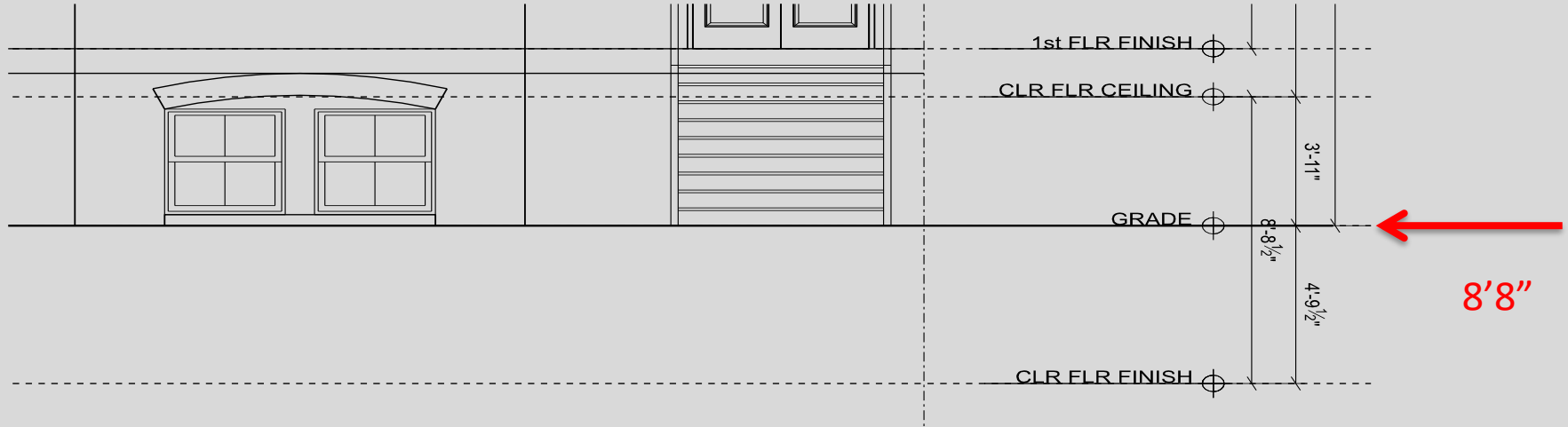


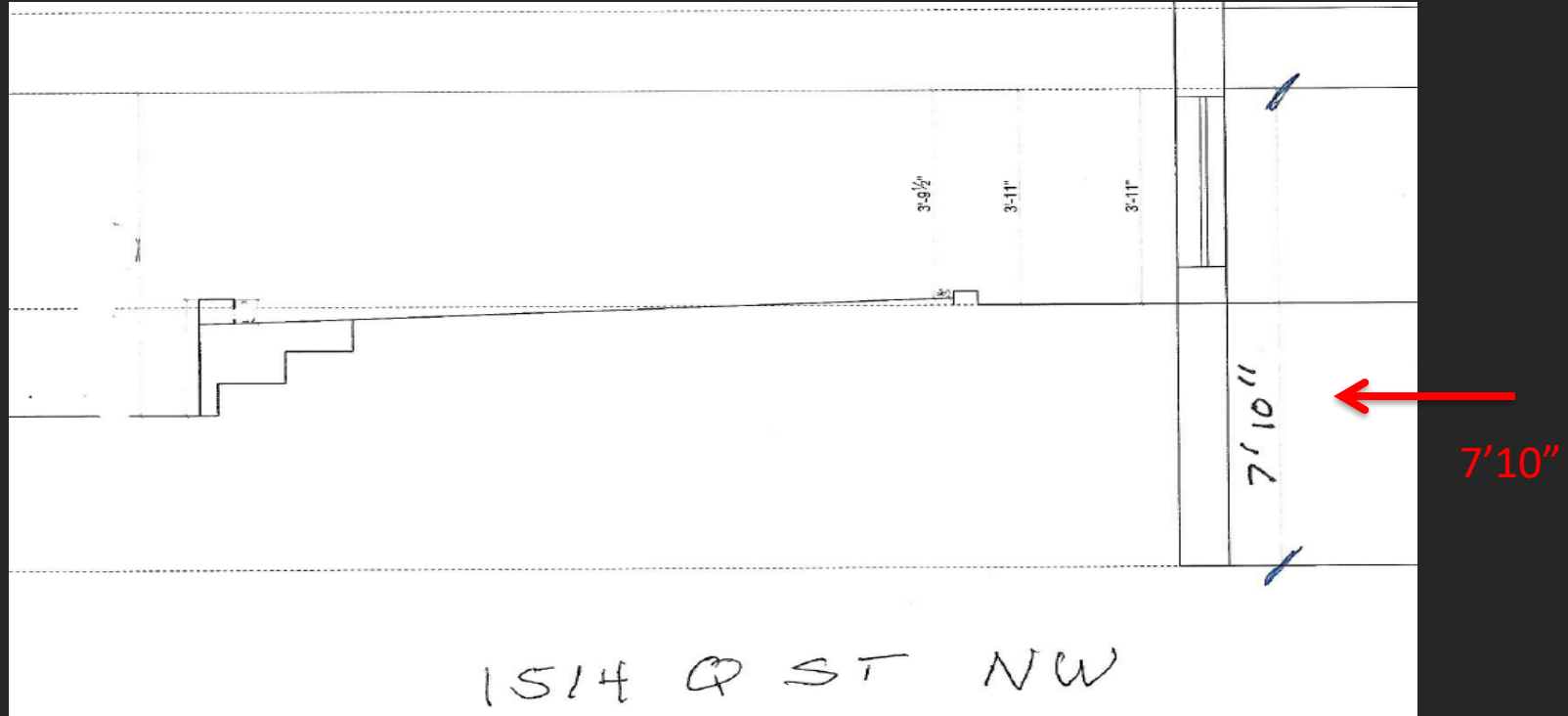
Photo from Exhibit B in Determination Letter

Front: Plans Show 8'8" Interior Ceiling Height



From Approved Plans

Front: Plans Show 7'10" Interior Ceiling Height



Plan from Exhibit C in Zoning Determination Letter

Error 2

Failure to Follow Clear Language in the Zoning Regulations

Cellar is defined under Habitable Room definition for a reason.

Is it functioning as a cellar?

Space that is defined as a cellar should function as a cellar.

Partially Below Grade Space - 2 Types

Basements vs Cellars

	Cellars	Basements
Habitable?	NO	YES
Included in Gross Floor Area?	NO	YES
Ceiling Height above Adjacent Grade	Less than 4'	Greater Than 4'

There are two different classification for partially below grade space with different requirements and treatment under Gross Floor Area

Definitions

- Cellar – that portion of a story the ceiling of which is less than 4' 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.....
- Apartment- **one (1) or more habitable rooms** with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms.

Definition of a Cellar- 2 Parts

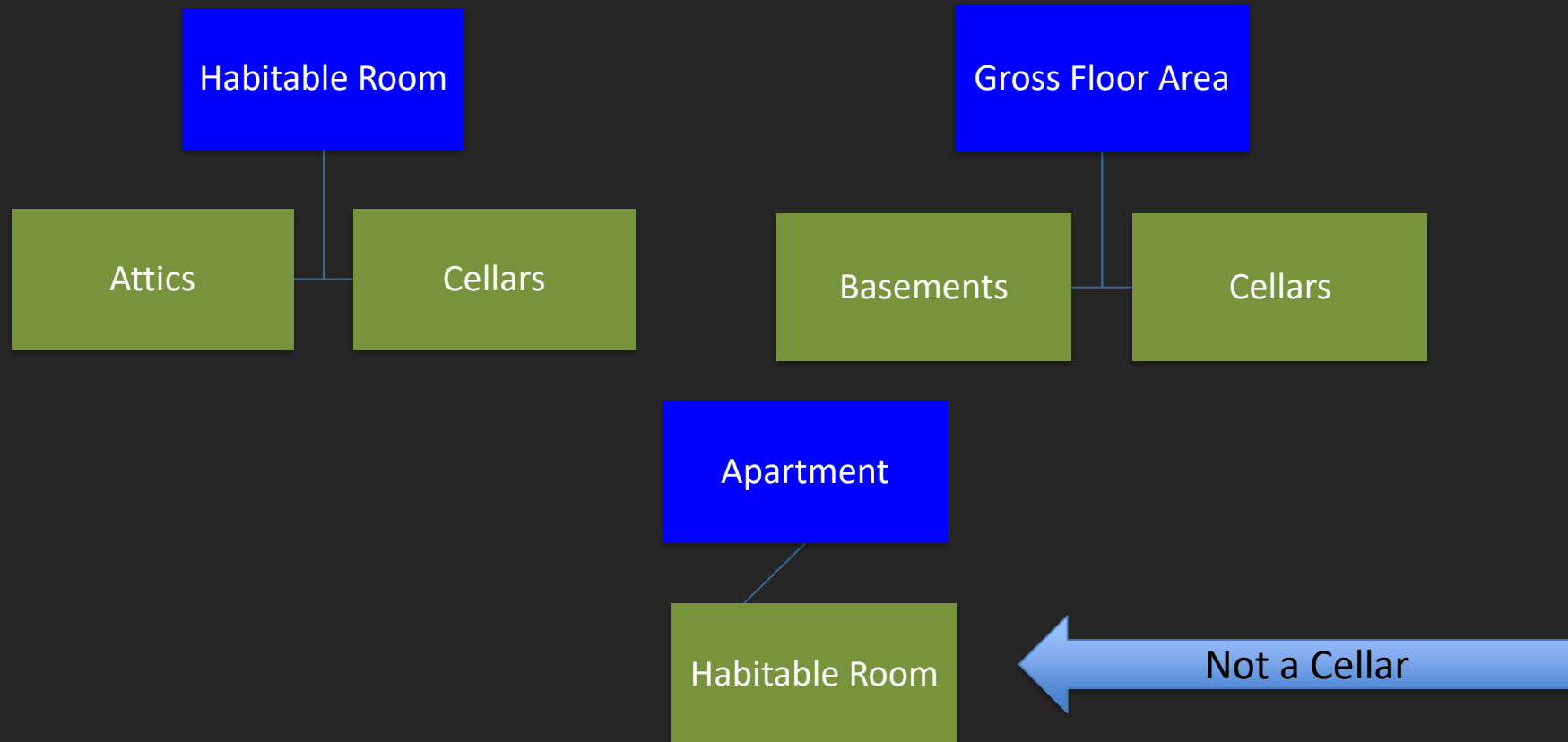
Included in **two** 199.1 Definitions

- Cellar – rule of **measurement**
- Habitable Room – rule of **use**

You cannot cherry pick which definitions to apply. The ZA has only applied the rule of measurement but has ignored the rule of use.

Zoning Definitions

Examples of Cross-references



Law of Surplusage

- By ignoring the restriction on cellars as habitable space, the ZA has rendered meaningless the definitional difference between basement and cellar
- The effect of this is to change the FAR in a R5B district from 1.8 to ~2.4
- Apartments clearly consist of habitable rooms
- Habitable rooms clearly exclude cellars

ZA's Imprecise Justification of Cellar Definition

“Although a preliminary reading of the definitions of these terms supports the exclusion of such rooms from Cellars, my office’s approval of numerous other projects with below grade dwelling units is consistent with the District’s Zoning Regulations. Although cellars and attics are excluded from the definition of “habitable room,” the regulations do not prohibit those spaces from being used for sleeping, cooking, and living. This has been DCRA’s long standing interpretation of the regulations and it is consistent with the many provisions of the District of Columbia Construction Codes (including the Building Code, Property Maintenance Code, and Fire Prevention Code) that specifically allow for the occupancy of partially below grade dwelling units. Here, as in other projects, the cellar units must provide light, ventilation, and emergency egress required by those codes” [emphasis added].

Clarifications of the ZA's Email

- We agree that it is possible to have a partially below grade, habitable living space. It is called a Basement
- The zoning regulations do not state that habitable space or apartments are allowed in Cellars.
- Two Wrongs Don't Make a Right- If this ZA previously allowed habitable cellar space, that does not mean it is the correct application of the zoning regulations and cannot be used as justification to rationalize this new question before this Board.
- **In fact, a prior ZA ruled differently in 2007**

1736 Corcoran St Precedent

- A 2007 DCRA review by ZA Bill Crews considered the question as to whether a cellar could be a habitable apartment AND also be excluded from GFA and FAR
- In order to gain approval of their planned expansion, the owners converted an existing basement apartment into a cellar to exclude the newly created cellar from GFA so as to allow the building to remain within allowable FAR levels.
- In this strikingly similar precedent, the ZA used a two part test according to the zoning definitions that in order to classify the space as a cellar AND exclude that space from GFA, this space had to BOTH have ceiling height less than 4' above grade AND not be used as an apartment. See Exhibit 41
- This is the SAME question before this board

ZA References “Other Codes” to Justify his Approval

- Alignment with other regulations justified per DCMR 11-101.4(d) which states “The provisions of any statute or other municipal regulations shall govern whenever they: Impose higher standards than are required by this title.”
- The “Latest version of the final adopted rule presented in D.C. Municipal Regulations (DCMR)” as posted at <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=14-404> prohibits partially below grade habitable space if more than 50% of the exterior wall area is below ground.

Error 3

Failure to Apply Clear Intent
Of Density Formula

If you use it, count it.

Failure to Apply Clear Intent of Density Formula

- Density Formulas: Exist to limit height, bulk, number of stories, size of buildings, density of population
- Cellar Definition: Included in **two** 199.1 Definitions
 - Cellar – rule of **measurement**
 - Habitable Room – rule of **use**

DC Office of Zoning Handbook

- “The zoning controls of a particular zone district applicable to a property govern many aspects of use and development including”
 - “Maximum permitted building bulk or gross FAR, which is a general measure of building scale and”
- The above reference equates Bulk and FAR
- Ignoring the cellar restriction as habitable space does just the opposite- Instead of controlling bulk it facilitates the transfer of bulk from partially below grade to the top and back of the building

FAR Counts All Livable Space

- Not all livable space is defined as “habitable” in the definition of “habitable room.”
- However, FAR is clearly tied to the relationship of space being occupiable for purposes of living, sleeping and eating.

Misapplication of FAR

- Why is cellar space excluded from FAR?
 - Regulations do not envisage cellar space as being used for human habitation

Manipulations Evade FAR

- Manipulation of grade and ceiling height seeks to evade FAR by changing definition
- While redefined “cellar” is still being used as habitable space
- This “Trick” is against both the plain English of the zoning regulations as well as the intent of the difference between a Basement and a Cellar

“Habitable” Included in 8 Definitions

- Apartment; Apartment, bachelor; Dwelling; Dwelling Unit; Habitable Room; Hotel; Inn; Motel; Rooming Unit; Tenement.
- Each of 8 terms is included in density formulas by inference.

Summary

- The ZA Approved plans do not even meet his own requirement that the measurement from ceiling to adjacent finished grade is less than 4'
- The ZA has ignored the full, interrelated definitions which in plain English require that apartments consist of habitable rooms and restrict cellars from the definition of habitable rooms
- There is precedent to support Appellants reading of the regulations which requires both the measurement requirement and use restrictions to be followed
- The ZA's failure to enforce a cellar's restriction as habitable space ignores the intent of the Zoning Regulation FAR rules to control bulk and facilitates the creation of more bulk above and beyond the allowable levels in the regulations.