

Board of Zoning Adjustment for the District of Columbia
Pre-Hearing Statement of Dupont Circle Citizens Association – 1514 Q Street, NW

The Appellants

The Appellant is the Dupont Circle Citizens Association (DCCA), which represents the location of the subject property, 1514 Q ST NW. The Appellant is representative of zoning, planning and other interests of the individuals who reside in the area that includes the subject property, and is thus directly impacted by the alleged zoning regulation errors.

Summary of Case

The Appellant became aware of the Zoning Administrator's alleged improper interpretation and misapplication of the zoning code in that he did not properly apply the definition and use of a cellar as it relates to habitability and calculation for FAR density compliance.

Zoning Administrator's Errors

The Appellant appeals the decision of the Zoning Administrator (ZA) to issue permit number B1603105 on 7/18/16, which converts a single family residential rowhouse into a 4 unit condominium building. We believe that the ZA's decision presents errors which allow for 33% more density than the maximum allowable 1.8 times floor area ratio (FAR) of gross floor area in the R-5-B zoning district.

The ZA incorrectly excluded the lowest level, partially below grade 2 bedroom, 2 bathroom, condominium dwelling unit from the gross floor area calculation by classifying this partially below grade space as a cellar despite the zoning code definition in 11 DCMR 199.1, which defines a cellar as non-habitable space. This flawed logic is in violation of the zoning code and its definitions as to how space should be calculated and used. Further this permit violates section 402.4 regarding maximum allowable FAR in a R5-B zone.

Factual Background

Description of Subject Property

The Property is located at 1514 Q St NW in the R-5-B zone. The Property is a single family dwelling. The instant case relates to a permit to convert a 3 story residence into a 4 unit, 5 level, condominium. The permit plans show a residential dwelling unit that is partially below grade. The plans label this residential unit a "cellar." The plans show in this cellar a residential unit with a kitchen, a living/dining room, 2 bedrooms, 2 bathrooms and a washer dryer.

In the R-5-B zoning district, the maximum allowable gross floor area density is 1.8 FAR with a maximum 60% lot occupancy.

How the Appellants Will Prove Their Case

Definitions in the zoning regulations are interdependent, since they reflect the application of the goals of zoning in multiple contexts. Understanding this interdependence is essential to fully comprehending the meaning of the term "cellar" and its appropriate application in density limits.

Board of Zoning Adjustment
District of Columbia
CASE NO.19374
EXHIBIT NO.2

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]

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.

In the instant case, if the lowest level, partially below grade residential condominium dwelling unit is habitable and used for living, sleeping, or kitchen facilities as depicted on the plans then this unit is NOT a cellar, but rather is a basement and its floor area must be counted in the calculation of the gross floor area and floor area ratio to determine compliance with the maximum allowable gross floor area in a R5-B district. When this is done, the GFA exceeds the allowable FAR ratio and this condominium development should not be permitted as it is in violation of the zoning code. Accordingly, the BZA should order the permit invalid.

While the BZA has dealt with basement/cellar determinations in prior cases, it is our understanding that a thorough analysis has never been undertaken of the definition of “cellar” in terms of the dual factors cited above.

Timeliness

Appellants are filing this BZA appeal within the required 60-day time period as the permit was issued 7/18/16.