



BEFORE THE ZONING COMMISSION OR  
BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA



FORM 150 – MOTION FORM

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A  
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:

19374

Motion of:

☐ Applicant

☐ Petitioner

☒ Appellant

☐ Party

☐ Intervenor

☐ Other \_\_\_\_\_

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

RESPONSE TO OWNER'S PREHEARING STATEMENT IN OPPOSITION TO APPEAL

Filed per Subtitle Y, Section 302.13

Points and Authorities:

On a separate sheet of 8 ½" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

☐ Yes, consent was obtained by all parties

☐ Consent was obtained by some, but not all parties

☐ No attempt was made

☐ Despite diligent efforts consent could not be obtained

Further Explanation: N/A This is a response to Owners Pre Hearing Statement

CERTIFICATE OF SERVICE

I hereby certify that on this

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day of

December

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I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via:

☐ Mailed letter

☐ Hand delivery

☒ E-Mail

☐ Other \_\_\_\_\_

Signature:

Print Name:

Dupont Circle Citizens Association

Address:

9 Dupont Circle NW 20036

Phone No.:

202-431-9254

E-Mail:

president@dupont-circle.org

Board of Zoning Adjustment  
District of Columbia  
CASE NO.19374  
EXHIBIT NO.34

**BOARD OF ZONING ADJUSTMENT  
FOR THE DISTRICT OF COLUMBIA**

Appeal of Dupont Circle Citizens' Association

Appeal No 19374

Hearing Date December 14, 2016

**RESPONSE TO OWNER'S PREHEARING STATEMENT IN OPPOSITION TO APPEAL**

December 11, 2016

This Response is filed pursuant to Title 11, Subtitle Y, 302.18, "No later than three (3) days before the public hearing, the appellant may file a brief and supporting information in reply to any of the responsive briefs." Outlined below is a response to the Motion to Dismiss in Section III followed by a summary response to items outlined in Section IV. For ease of review, responses are numbered to reflect the numbering found in the Owner's prehearing statement.

**MOTION TO DISMISS**

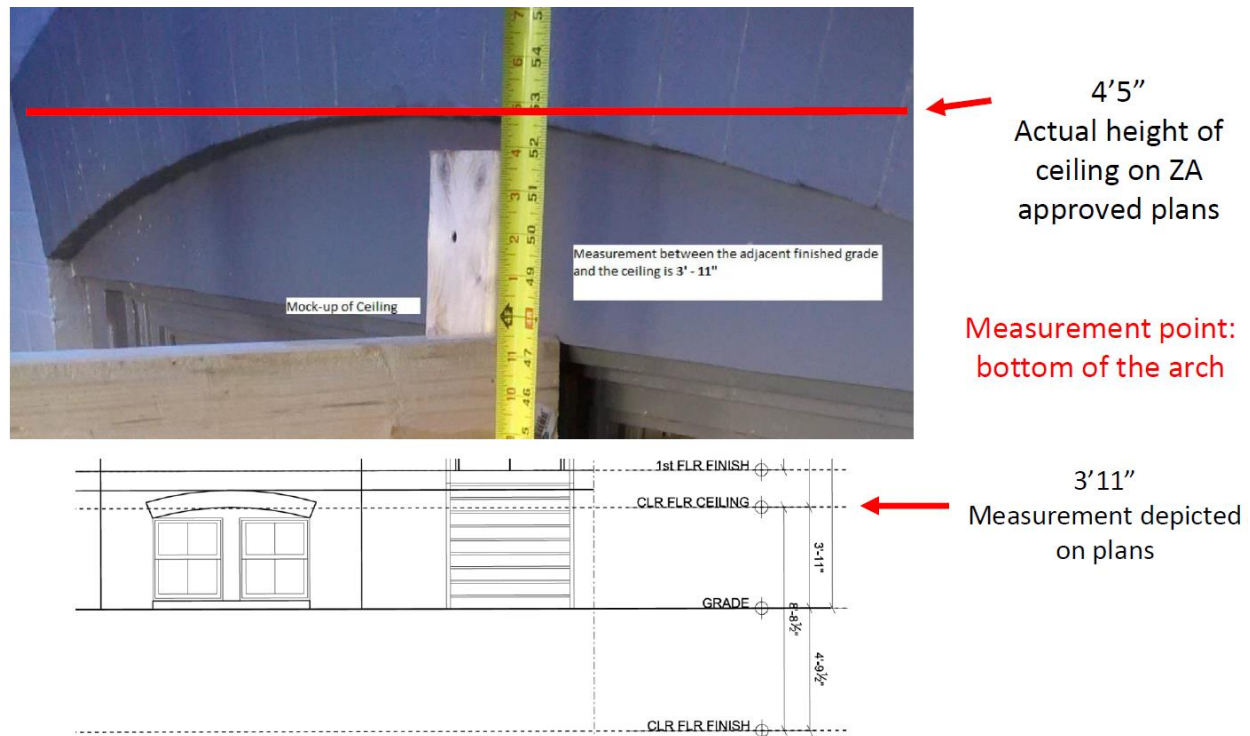
Section III of Owner's Prehearing Statement

Appellants are justified in filing Error 1, in compliance with Subtitle Y, Section 302.13, in the revised prehearing statement filed November 23, 2016 as approved plans were unavailable to Appellants at the time of filing of the initial prehearing statement on September 16, 2016. The Zoning Administrator's determination letter was issued March 21, 2016, while B1603105 was issued July 18, 2016. During this time period, and up to September 16<sup>th</sup> when Appellant filed its initial pre hearing statement, Appellants were unsuccessful in attempts to obtain plans, despite requests to DCRA's Records Room

Furthermore, the accuracy of measurements on plans associated with B1603105 was put into question during the March 8 2016 meeting with the owner of 1514 Q Street NW and DCRA officials Rohan Reid and Tarek Bolden, Paul Weishar and Kim Elliot. At this meeting, DCRA officials commented that any imprecision in the plans and/or failure of the plans to achieve a 3'11" measurement would be addressed by submission of a new plans and permit request to further lower the ceiling to achieve such a measurement distance.

Appellants therefore conducted an assessment of information that was available and submitted this analysis in its revised prehearing statement.

Finally, the Board should not ignore the simple photographic evidence showing the building measurements, which when compared to the submitted plans clearly show that the height of the ceiling on the plans is ~4'5". This ceiling level on the plans is at the bottom of the arch as seen below. This clearly shows that the plans approved by the Zoning Administrator contain a ceiling height, as measured by DCRA officials, that exceeds the 3'11" ceiling height required for a cellar. Accordingly, the Zoning Administrator erred in approving these plans since the measurement on the plans does not accurately reflect that actual measurement at the building as measured by the property owner and DCRA. The permit issued for these plans should be revoked.



## STATEMENT TO DENY APPEAL

### Section IV, A-C of Owner's Prehearing Statement

Our prehearing and revised prehearing statements address these points in detail. As our prehearing statements explain, the two definitions are not separate and unrelated. The zoning definitions contain multiple interrelated and interdependent definitions, as we explain.

### Section IV, D. 1 of Owner's Prehearing Statement

Zoning Administrator determination letters have never specifically stated that habitable rooms can be defined as cellars for purposes of exclusion from FAR. Rather, the Zoning Administrator has provided a rationale the focuses on whether a "habitable room" can exist in a "below grade" dwelling unit.

### Section IV, D. 2 of Owner's Prehearing Statement

References to Zoning Commission IZ and PUD language in fact reveal imprecision in use of the word "cellar," which this case seeks to clarify. Further, one citation, 1003.9, is a matter of counting so-called cellar space in floor area set-aside requirements, which reflects that such "cellar" space is being counted in density calculations, which is the opposite of treatment of cellar space in FAR calculations.

### Section IV, D. 3 of Owner's Prehearing Statement

While the BZA has dealt with basement/cellar determinations in multiple prior cases, the BZA has never reviewed a basement/cellar determination on the basis of the cellar definition and the related habitable room definition. None of the prior BZA cases cited dealt with the question that the BZA is considering in this case: the relevance of habitability to FAR calculations.

Section IV, E of Owner's Prehearing Statement

There is no evidence to support the claim that cellar units expand the stock of affordable housing. Evidence submitted to the record demonstrates the opposite: lower level units being created are being offered at full market rates.

Section IV, F of Owner's Prehearing Statement

References to building and housing codes were prompted by the Zoning Administrator's reliance on these codes as justification for the treatment of cellar space in FAR rules. As our revised prehearing statement addresses in detail, a review of building and housing codes as they are referenced in the Zoning Regulations illustrates inconsistency in application of the term "cellar."

Section IV, G of Owner's Prehearing Statement

This case does not challenge BZA precedent, since the Board has never entertained a case to assess the application of the cellar definition in terms of the application of habitability in density rules.

For the foregoing reasons, Appellant asks the Board to deny the Motion to Dismiss Error 1 and to fully consider the information contained in our prehearing and revised prehearing statements.

Respectfully submitted,

Dupont Circle Citizens Association

December 11, 2016

*Certificate of Service*

I hereby certify that, on December 11, 2016, I served the foregoing document via email on the following persons:

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