

BZA Appeal No. 19374

Presentation of 1514 Q LLC

Hearing Date: January 18, 2017

Subject Property: November 6, 2016



Subject Property: January 12, 2017



Subject Property: January 12, 2017



Subject Property: January 12, 2017



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1958 Zoning Regulations

Chapter 1, Section 199 (DEFINITIONS)

199.1 - When used in this title, the following terms and phrases shall have the meanings ascribed:

Basement: That portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade.

Cellar: That portion of a story, 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 ft.²) in area, nor kitchens in commercial establishments.

1958 Zoning Regulations

Chapter 5, Section 534 (REAR YARD (SP))

534.9 - In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate setbacks.

Chapter 7, Section 774 (REAR YARD (C))

774.4 - In determining distances between windows in buildings facing each other, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be sufficient to provide adequate light and privacy to the rooms.

1958 Zoning Regulations

Chapter 1, Section 199 (Habitable Room)

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 ft.²) in area, nor kitchens in commercial establishments.

Chapter 1, Section 199 (Story)

For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars or penthouses.

Chapter 1, Section 199 (Gross Floor Area)

The term "gross floor area" shall not include cellars and outside balconies that do not exceed a projection of six feet (6 ft.) beyond the exterior walls of the building.

1958 Zoning Regulations

Chapter 15, Section 1543 (Wesley Heights Overlay District (WH))

1543.3 The gross floor area of all buildings and structures on the lot shall not exceed the sum of two thousand square feet (2,000 ft.²) plus forty percent (40%) of the area of the lot; provided, that the following modifications of gross floor area shall apply in the WH Overlay District:

(a) The first two hundred square feet (200 ft.²) of an open porch, or total open porch space if there is more than one open porch, and the first six hundred square feet (600 ft.²) of a garage shall not count in gross floor area; and

(b) Basement or cellar floor area shall count in gross floor area if a finished floor is provided, if the floor to ceiling height is in excess of six feet, six inches (6 ft., 6 in.), and shall count only up to a floor area equal to five (5) times the total fenestration area for the cellar or basement floor.

Z.C. Order No. 04-33G
Amendments to Inclusionary Zoning Regulations
File Rulemaking Published: December 16, 2016

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING

AND

Z.C. ORDER NO. 04-33G

Z.C. Case No. 04-33G

(Text Amendment – Inclusionary Zoning – Amendments to Subtitle C, Chapter 10)

October 17, 2016

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Rep1.), hereby gives notice of its adoption of amendments to Subtitles B, C, and I of Title 11 (Zoning Regulations of 2016) of the District of Columbia

- | | |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1003.7 | Notwithstanding Subtitle C §§ 1003.3 and 1003.4 , one hundred percent (100%) of inclusionary units resulting from the set-aside required for penthouse habitable space shall be set aside for eligible low-income households <u>earning equal to or less than fifty percent (50%) of the MFI.</u> |
| 1003.8 | <u>An inclusionary development in an StE zone shall devote no less than ten percent (10%) of the gross floor area being devoted to residential use for inclusionary units.</u> |
| 1003.9 | <u>An inclusionary development's entire residential floor area including dwelling units located in cellar space or enclosed building projections that extend into public space, shall be included for purposes of calculating the minimum set-aside requirements of Subtitle C §§ 1003.1 and 1003.2</u> |
| 1003.10 | <u>The square footage set aside applicable to an inclusionary development that is exclusively comprised of ownership units may be reduced by twenty percent (20%) provided all the units are set aside to households earning</u> |

DCRA Certificate of Inclusionary Zoning Compliance (CIZC) Form



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS CERTIFICATE OF INCLUSIONARY ZONING COMPLIANCE (CIZC) APPLICATION



Consult the Instructions
Guide to complete this
application

SECTION A - BUILDING PERMIT AND PROJECT INFORMATION (All information must match building permit application, where applicable)							
1. Name of Inclusionary Development				2. Address(es) of Inclusionary Development			
3. Square/Suffix	4. Lot(s)	5. Ward	6. Overlay District / Zoning District	7. Zoning Commission or BZA Order (if applicable)	8. Building Permit Application Date: _____ Number: _____		
9. Owner of Building or Property			10. Owner Address (include ZIP code)		11. Owner Phone # & Email		
12. Agent for Owner			13. Agent Address (include ZIP code)		14. Agent Phone # & Email		
15. Is the development exempt from IZ per C-1001.6(a)? <input type="checkbox"/> Yes <input type="checkbox"/> No	16. Is the development an RF zone conversion? <input type="checkbox"/> Yes <input type="checkbox"/> No	17. Is the development an IZ "opt in" per C-1001.8? <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Does the project involve construction of penthouse habitable space? <input type="checkbox"/> Yes. Fill out Penthouse Affordable Housing Addendum <input type="checkbox"/> No	19. Primary Construction Method <input type="checkbox"/> Steel and/or Concrete <input type="checkbox"/> Other (such as stick built)	20. Total Land Area of the Lot(s) of the Inclusionary Development: _____ sq. ft.	21. Total Gross Floor Area (all uses): _____ sq. ft.	22. Total Residential Gross Floor Area: _____ sq. ft.
23. Total <u>Residential Gross</u> Floor Area Including Residential Add-ons: Residential Gross Floor Area (Same as Box 22): _____ sq. ft. + Gross cellar area (when res. units are in cellar): _____ sq. ft. + Gross enclosed public space projections: _____ sq. ft. Total Residential Gross Floor Area for IZ Analysis (sum): _____ sq. ft.				24. Total <u>Net Residential</u> Floor Area Including Residential Add-ons: Net Residential Floor Area (Based on Box 22): _____ sq. ft. + Net cellar area (when res. units are in cellar): _____ sq. ft. + Net enclosed public space projections: _____ sq. ft. Total Net Residential Area for IZ Analysis (sum): _____ sq. ft.		25. Ratio of Box 24 ÷ Box 23 (totals): 0. _____ 26. Factor yielding greater IZ (per C-1003): <input type="checkbox"/> 8% or <input type="checkbox"/> 10% of GFA <input type="checkbox"/> 50% or <input type="checkbox"/> 75% of bonus density	

DCRA Certificate of Inclusionary Zoning Compliance (CIZC) Instruction Guide

- **Box 23:** This box asks for “Total Residential Gross Floor Area” including any residential “add-ons” that are otherwise not counted in Box 22. Such add-ons are “Gross Cellar Area” and “Gross Enclosed Public Space Projections.” Sum the calculations to determine the “Total Residential Gross Floor Area for IZ Analysis.” More specifically:
 - **Gross Cellar Area:** For multiple dwellings, only enter information for a Development when residential unit(s) are located in cellar space, as defined by B-100.2. For single household dwellings and flats, cellar space must be entered in all cases. Cellar space is measured as the sum of the gross horizontal areas of the cellar. In addition to the area of the dwelling units, include the area of elevator shafts, stairwells, and common areas, and exclude floor space used for mechanical equipment with structural headroom of six feet, five inches (6 ft., 5 in.) or less. Space dedicated for parking should also be excluded.
 - **Gross Enclosed Public Space Projections:** Enter information only where building projections in public space, such as bay windows that enclose residential floor area, are present. In such cases, include all residential projection space regardless of whether the space is contained within a residential unit or common space.
- **Box 24:** This box asks for “Total Net Residential Floor Area” including “add-ons” identified in Box 23. In general, the “Net Residential Floor Area” references occupiable residential space in a dwelling unit. The figure also should include occupiable space located in cellars and enclosed public space projections referenced in Box 22. For multiple dwellings, occupiable space is defined as the actual floor area inside a unit or dwelling, including the interior wall(s)’ thickness. Excluded from this calculation are common areas, such as elevators, stairways, lobbies, mechanical rooms, party rooms, vent shafts and pipe chaser shafts, and the thickness of exterior walls and the walls between dwelling units. For flats, all residential floor area should be included except for shared stairways, entries, or other common space, and the thickness of exterior walls and the walls between dwelling units. For single household dwellings, all residential floor area should be included, except for the thickness of exterior walls.

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BZA Appeal No. 18615: Findings of Fact

zone district, the resulting maximum density is 4.2 FAR.

35. FAR is calculated by dividing the gross floor area of the building by the area of the lot. (See 11 DCMR § 199.1 (Definition of "Floor area ratio").) Cellars are excluded from gross floor area, but basements are included. (See 11 DCMR § 199.1 (Definition of "Gross floor area").)
36. The difference between the two is that cellars are less than four feet above the adjacent finished grade, while basements are four feet or more above the adjacent finished grade.
37. Given the site's lot area of 47,370 square feet, the permitted gross floor area is 198,954 square feet (4.2 FAR). As approved in the Permits, the Building's gross floor area measures 198,338 square feet.
38. The lowest habitable level of the Building is located partly above-grade.
39. The Zoning Administrator utilized the long-accepted "perimeter wall method" to determine

43. Because of this calculation, portions of 17 apartment units were included in the cellar level of the proposed building and not counted towards FAR.
44. A portion of the finished grade on the Military Road side is approximately two feet higher than the existing condition over a distance of approximately 30 feet. Measurements along that point reflected that the ceiling of the lowest floor to be less than four feet above this adjacent finished grade and therefore a cellar not countable against GFA.
45. Along Military Road and in the interior courtyard of the proposed building, plans show an areaway. Similar to a window well, this areaway is a narrow space between the grade and the building to provide additional light to the lowest units.
46. The areaway along Military Road measures approximately four feet wide, with no access from the units, and the areaways within a portion of the courtyard measure five feet wide and are accessible only to each individual unit (Exhibit 48.)
47. Based upon prior administrative practice, the Zoning Administrator identified the top of the grade behind the areaways as being the adjacent finished grade. Measurements reflected that the ceiling of the lowest floor adjacent to this finished grade was less than four feet, and therefore a cellar not countable against GFA.
48. The Zoning Administrator has never considered the bottom of an areaway as the adjacent finished grade.

Events leading to the filing of this Appeal

49. On May 28, 2013, DCPA issued Permit No. B1208703 for the proposed building.

BZA Appeal No. 18615: Conclusions of Law

3. Building Density.

The Appellant's final claim of zoning error regards DCRA's determination to exclude certain portions of the lowest habitable level of the Building from the calculation of building density. The parties agree that the building density maximum for the site is 4.2 FAR. However, the Appellant claims that DCRA erroneously excluded the majority of the lowest habitable level even though certain units fronting Military Road sit above the sidewalk and street level.

Cellars are excluded from gross floor area, but basements are included. (See 11 DCMR § 199.1 (Definition of "Gross floor area").) The Zoning Regulations define the term "cellar" as that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade and "basement" as "that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade." (11 DCMR 199.1.) When, as here, a portion of the building is partly below grade, the Zoning Administrator uses the perimeter wall method to determine which area are located four or more feet above the finished grade and therefore included within the computation of gross floor area.

Further, the Board agrees with DCRA that the term "adjacent finished grade" connotes the ability to adjust the grade as compared to keeping "natural" or "previously existing grade." And contrary to the position of the Appellant, the determination of density for new construction involving courtyard construction above a garage requires the use of finished grade irrespective of the material that forms the adjacent finished grade, be it dirt or other landscaping, or paving or hardscaping.

The slightly elevated grade along the 30-foot portion of Military Road and adjacent to the areaways is no greater than has been allowed in countless number of projects approved by

of the grade behind each areaway. The Appellant erroneously contends that the finished grade should be considered to be the bottom of each areaway. This has never been the method followed by the Zoning Administrator.

For all these reasons, the Board concludes that the Zoning Administrator did not err in its calculation of the Building's density to exclude certain portions of the Building's lowest level as determined by the perimeter wall method.

