DCCA is a volunteer, nonprofit organization, founded in 1922 to promote and protect the Dupont Circle neighborhood.

DUPONT CIRCLE CITIZENS ASSOCIATION
DCCA

9 Dupont Circle, NW
Washington, DC 20036
www.dupont-circle.org

January 17, 2018

Dear Sir or Madam:

Attached please find the Statement of the Dupont Circle Citizens Association submitted in connection with ZC Case No. 17-18.

Thank you.

Sincerely,

Glenn Engelmann
Board Member

Enclosure

District of Columbia Zoning Commission

Case No. 17-18

Statement of the Dupont Circle Citizens Association

The Dupont Circle Citizens Association ("DCCA") is a non-profit Corporation organized under the laws of the District of Columbia. The Association has been in existence since 1922 and is dedicated to the promotion and protection of the interests of the residents of the National Capital, particularly those in the vicinity of Dupont Circle. To that end, DCCA has a long history of working for civic and social improvements in the Dupont Circle area, as well as engaging in charitable and educational activities. Importantly, DCCA serves as a vehicle for engaging with the government on behalf of its members on issues regarding the quality of life in the city and Dupont Circle. It has been particularly engaged on issues related to development, zoning, safety and noise.

Dupont Circle is blessed with a variety of buildings including most prominently, a wide array of row houses dating back to before the turn of the last century. The row houses are typically 3-4 stories with numerous interesting architectural features. Consequently, the historic importance of the area has been recognized by the establishment of an historic district for historic preservation purposes.

From the beginning, many of these buildings have what came to be known as English basements—habitable apartments partially below grade which are often rented out to provide

the building owner with a stream of income. Cellars, on the other hand, were uninhabitable areas below the first floor used for storage. More recently, however, developers have been converting row houses into multi-unit apartment buildings and condominiums. In that effort, developers have undertaken extreme efforts to squeeze as many profitable units as possible from the structure.

Developers have been aided in their efforts by a clever manipulation of the zoning regulations. Since cellars are excluded from the density calculations, while basements are not, they try to fashion their lower units in such a way as to claim status as a cellar rather than a basement. This trick is achieved by reducing the window area of the unit, lowering a ceiling or modifying the grading of the building. However, this ignores the fact that by definition, and logic, a cellar and basement are distinguishable because the latter is habitable and the former is not. It is this practice which creates unlawful congestion that the proposed amendments fail to address and in fact will exacerbate.

Zoning regulations play a vital role in ensuring that development within the city takes place in a sensible and thoughtful manner. Zoning exists to ensure minimum standards for a city's buildings. By controlling the size and density of the city's housing stock, they safeguard the public's health, safety, and welfare.

DCCA has an overriding concern and interest in ensuring that laws and regulations of the District of Columbia are clear, logical, consistent and fairly applied. We are concerned that this has not been the case with respect to the application of the regulations related to basement and cellars. All too frequently developers have been able to game the system to unfairly expand the square footage of their projects by converting habitable living spaces into "cellars". The

proposed amendments while addressing some aspects of the questionable manipulation of the zoning regulations fails to tackle the core issue. In fact, the proposed amendments, by removing the concept of habitability from the definitions of basements and cellars will greatly exacerbate this problem.

The District of Columbia zoning regulations were expressly drafted for "controlling and restricting the height, bulk, number of stories, and size of buildings [and] the density of population ... in the District of Colombia...." (DCMR 11-100.4) The regulations contain multiple provisions to achieve this goal, including density formulas and their composite parts.

The zoning regulations include the following provisions specifically focused on density:

a. Gross floor area (GFA): the sum of the gross horizontal areas of the several floors of all buildings on the lot, measured from the exterior faces of exterior walls and from the center line of walls separating two (2) buildings. The term "gross floor area" shall include basements, elevator shafts, and stairwells at each story; floor space used for mechanical equipment (with structural headroom of six feet, six inches (6 ft., 6 in.), or more); penthouses; attic space (whether or not a floor has actually been laid, providing structural headroom of six feet, six inches (6 ft., 6 in.), or more); interior balconies; and mezzanines. 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. (Case 62-32, May 29, 1962)

b. Floor area ratio (FAR): a figure that expresses the total gross floor area as a multiple of the area of the lot. This figure is determined by dividing the gross floor area of all buildings on a lot by the area of that lot.

These regulations are consistent with this overarching goal and date back to 1958. Contemporaneous urban planning sources indicate that FAR in particular was considered as a "basic bulk control"; in other words, it was considered to be a device to "regulate the volume of buildings" and thus to "limit the concentration of people and their activities ... the loads imposed on traffic, transit and service facilities" as well as to "afford access of light and air into

buildings and the space surrounding them."

In Washington, DC, a cellar has until now has been consistently defined in law and regulation as a story that is not suitable for habitation because of inadequate light, air and headroom, in fulfillment of the purpose of zoning regulations to set an appropriate quality of living standards and manage density. Thus, there are two distinct definitions in DCMR 11-199.1 for partially below grade space—one being a basement and the other being a cellar. A cellar, being uninhabitable, is logically excluded from the definitions of GFA, which is used to calculate FAR. A basement, on the other hand, is habitable and is included in GFA.

Basic principles of statutory construction call for defined terms to have meaning and their distinctions to be purposeful. The Law of Surplusage states that the regulations should not be interpreted so as to render the words meaningless. Yet this is exactly what the proposed amendments do. By excluding an entire floor habitable space from GFA and FAR by simply relabeling habitable space as a "cellar," this renders meaningless the definitional difference between a basement and a cellar. What is the point of having two definitions unless the spaces are clearly differentiated? There is no logical reason to exclude a cellar from determining the permissible habitable space unless it is not suitable for living.

Washington's building codes, and other similar provisions are consistent in describing a cellar as a non-habitable space. To drive the point home, these codes exclude cellars from habitable space definitions. Specific provisions in the codes do allow, however, for the creation of partially below grade units (i.e., not cellars), if they have adequate light, ventilation, and emergency egress.

These codes include the following:

- The Title 12 DC construction codes (IBC) do not use the term "cellar"[1] when discussing or defining habitable space. Rather, 12 DCMR reads: "Habitable spaces are permitted below grade plane [i.e., not cellars], provided they meet the requirements of this code,"[2] which refers to requirements to provide sufficient light, air and ventilation. Under 12 DCMR, these habitable spaces are designated as "basements" (i.e., habitable space that is partially below grade and has access to light and air).

- The Property Maintenance Code permits below-grade areas as habitable (12G-401.4) if they meet code provisions.

- Housing and Building Restrictions and Regulations, 6–1451.01 5A state: "'Certificate of occupancy' means the first certificate of occupancy issued for a usable, habitable space at grade or above grade

The proposal would undermine the purpose of the zoning regulations and the laws governing density in the city. It is wholly illogical to differentiate between basements and cellars in the absence of a habitable standard of some sort. Any habitable space needs to be considered under zoning rules and considered as part of the calculations for appropriate density. If it is believed that the density restrictions are too limited, then the solution is to amend the law, not to engage in illogical contortions.

DCCA respectfully requests that the distinction between cellars and basements based on habitability be maintained by the Zoning Commission. Alternatively, the Zoning Commission should mandate that any and all habitable space, be it a basement cellar or attic, be

[1] The Building Code (12 DCMR) only discusses cellars in reference to such matters as protection of abutting areaways with guardrails (3202.9.1.4) and smoke alarms (704.2).
[2] 12 DCMR, Title G, Property Maintenance Code Supplement, Chapter 4, Light, Ventilation and Occupancy Limitations, 401.4, Habitable spaces.

included in GFA and FAR calculations.

Respectfully submitted,

Dupont Circle Citizens Association,

Robin Diener /gc

Robin Diener, President

Lance Salonia /gc

Lance Salonia, Regulatory Committee Chair

Dated: January 17, 2018