

# ZC 17-18 Basement/Cellar Rule

## Observations and Recommendations

*Submitted by Alan Gambrell – 1/18/18*

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### ***Summary Statement***

OP’s 17-18 grade measurement recommendations would provide much-needed consistency in measurement distances across sections of the zoning regulations (definitions and grade plane sections). However, the recommendation to exclude “areaways” as the adjacent finished grade effectively invalidates the meaning of the term, which is identified in the zoning regulations and the building codes as being located at the façade of the building. This recommendation is also counterintuitive as an areaway effectively turns a cellar into a basement by (1) increasing the grade measurement to basement distance and (2) creating conditions that make the space suitable for human occupation, in accordance with light, air and egress requirements. The recommendation to newly-define cellars and attics as habitable rooms is equally illogical as these spaces are unfit for human habitation, as the zoning regulations have long held.

### *Zoning Commission Recently Endorsed Grade Measurement at Face of Building, Counting of Living Spaces*

The Zoning Commission has passed two regulations in recent years that present a clear understanding of both measurement and habitability matters under review in 17-18.

- In ZRR-16, an illustrative figure (see attached) depicts the grade measurement at the façade of the building, providing clarifying information for the regulation under review in 17-18, Subtitle B 304.5.<sup>1</sup>
- In ZC 04-33G, newly-named “cellar dwelling units” were recognized as living spaces that were not to be ignored but, rather, were countable in minimum set-aside requirements for Inclusionary Zoning.

### ***Summary of Recommendations on 17-18***

1. Support - OP measurement changes.
2. Recommend - the OP definition of Grade, Finished as: Grade, Adjacent Finished: The ground directly abutting the perimeter of a building or structure/outside the building area.
3. Oppose - the OP proposal to exempt an areaway from the definition of finished grade.
4. Oppose - In the habitable room definition, do not adopt the OP proposal and, instead, retain the words “attics, cellars” from “‘habitable room’ shall not include”
5. Recommend – Add that space used for dwelling should be included in GFA/FAR and counted as a story.

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<sup>1</sup> It is unclear when and why this graph was removed.

## Background

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### **Zoning Regulations Set Standards**

Zoning regulations seek to ensure minimum standards for residents and other occupants of a city's buildings in terms of density of occupants, health, and safety. Regulations are interdependent, since they reflect the application of the goals of zoning in multiple contexts. Density rules that limit the mass of building include the basement/cellar rule, comprised of definitions on (1) measurement and (2) use (habitability) for these two types of partially below grade spaces. A cellar is partially below grade non-habitable space. A basement is partially below grade habitable space.

A cellar is a story that is not suitable for habitation because of, for example, inadequate light and air. Thus, a cellar is excluded from density formulas to thus not penalize development that cannot be used for habitation. Specific provisions in the codes do allow, however, for the creation of partially below grade units if they have adequate light, ventilation, and emergency egress, most often through creation of areaways, which increase the adjacent finished grade by excavation.

### **Purpose of Density Formulas**

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#### **Density formulas count all habitable/livable spaces.**

*Attics<sup>2</sup> and cellars are excluded because they are not suitable for human habitation.*

*The Zoning Commission (ZC) has previously said that occupied spaces are to be counted in density calculations. In ZC 04-33G the ZC identified "cellar dwelling units" (first time use of term) and said they could be occupied spaces and were to be counted in the minimum set-aside requirements for IZ.*

#### **Basement and Cellar Definitions are 2-part: measurement and use (habitable).**

*One cannot cherry pick which definitions to apply.*

#### **Habitability matters in density formulas.**

*Habitability is stated in eight (8) zoning definitions that are tied to density calculations.<sup>3</sup>*

*Habitability is referenced for both basement and cellar spaces.*

#### **ZRR-16 and ZR-16 do not exclude the areaway as being the adjacent finished grade.**

*ZRR-16 defined grade as the "midpoint of the building façade" but the figure was omitted from the final copy (it is not clear if this was agreed to by the ZC).*

*An areaway creates light and air and grade measurement changes that redefine a cellar to a basement.*

#### **The zoning regulations should align with the building codes and other regulations.<sup>4</sup>**

*The ICC, which sets national standards, measures grade plane at face of building.*

*Building codes do not specify built conditions for cellars.*

*Word "cellar" is not found in the building codes.*

#### **Exclusion of habitable cellars from FAR has not been long-standing DCRA practice.**

*In 2007, the previous Zoning Administrator considered both measurement and use (Corcoran Street).*

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<sup>2</sup> Attics with headroom greater than 6'6" are counted.

<sup>3</sup> Apartment; Bedroom; Dwelling Unit; Habitable Room; Hotel; Inn; Penthouse Habitable Space; Rooming Unit

<sup>4</sup> DCMR 11-101.4(d)

## **The Problem 17-18 Seeks to Address**

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### ***DCRA Has Authorized Lowering of the Ceiling to Meet Cellar Measurement Distance***

DCRA has authorized permits that allow for the lowering of the ceiling inside the building in order to create a cellar measurement point (i.e., less than 4' when compared to the adjacent finished grade). This is being addressed in 17-18 by changing the upper grade measurement point to the floor above.

### ***DCRA Has Identified Adjacent Finished Grade at Inconsistent/Changing Points***

DCRA has issued multiple permits that are inconsistent in their identification of "adjacent finished grade." They include: a newly built berm; the top of a newly installed retaining wall; and the top of a planter within the envelope of a building.

### ***DCRA Excluded Areaway as Adjacent Finished Grade, with No Clear Rationale***

Based on available information, it appears that DCRA began excluding the areaway as the adjacent finished grade around 2013, as evidenced in a BZA case statement: "The Zoning Administrator has never considered the bottom of an areaway as the adjacent finished grade."<sup>5</sup> No regulation has been cited to substantiate this exclusion.

### ***DCRA Does Not Apply the Habitable Room Definition to Basement/Cellar Rule***

Various DCRA determination letters and issued permits confirm that the agency is regularly issuing rulings that reference the definition of cellar but not the cross-referenced definition of cellar space as non-habitable.

### ***Inconsistent Application of Rule Leads to Overbuilding, Harms Integrity of Zoning***

DCRA's interpretation of the zoning regulations with respect to cellars has negative effects in terms of:

- Approval of row house developments that exceed density rules by inappropriately excluding lower level apartments from GFA/FAR and story calculations.
- Circumventing the spirit and intent of city zoning regulations.
- Fostering mistrust and lack of confidence in city government and its representatives.

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<sup>5</sup> BZA Appeal No 18615, 10/29/13

## Recommendations on 17-18 Draft Language

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### **SUPPORT: Changes that Provide Consistency in Measurement Points**

- *As OP proposes, the measurement distances should be corrected as they currently differ across the definitions and FAR calculation formulas.*
- *As OP proposes, the distance of 5' from adjacent finished grade to floor above is a more appropriate distance than the 6' distance currently listed as the floor sandwich is typically around 12" and the modification from 4' to 5' thus aligns more with this distance increase.*

### **RECOMMEND: Additional Grade Measurement Clarifications**

*Add a definition of "adjacent" as external to the building area.*

- *DCRA's Zoning Administrator has previously identified "adjacent" as being a point within the building area (on top of a planter)*
- *Explicitly prohibit berming to alter basement/cellar grades.*

### **OPPOSE: Exclusion of Adjacent Finished Grade as Areaways**

### **RECOMMEND: Identify Adjacent Finished Grade as Base of Building Facade**

*Delete the exception of an areaway from the definition of finished grade.*

*Revise the definition of Grade, Finished as: Grade, Adjacent Finished: **Grade, Finished**: The ground directly abutting the perimeter of a building or structure/outside the building area.*

- *ZRR-16 identified GFA/FAR grade measurement point as "midpoint of building façade" (see next page).*
- *ICC measures the grade at the base of the building façade.*
- *Areaways create more light, air and access and, in effect, turn cellars into basements.*
- *Exclusion of areaways as the adjacent finished grade creates an enormous loophole in the basement/cellar measurement rule.*
- *The zoning regulations provide no supporting language for this exclusion.*
- *The areaway distance from façade is only 4' from the façade, according to the DC building code, not 5'.*
- *Neighboring jurisdictions do not support this exclusion.*

### **OPPOSE: Identifying Attics and Cellars as Habitable Rooms**

### **RECOMMEND: Add Language: GFA/FAR & Story Formulas Count Habitable Spaces**

*In habitable room definition, retain words "attics, cellars" from "'habitable room' shall not include"*

*Add: Space used for dwelling should be included in GFA/FAR and counted as a story.*

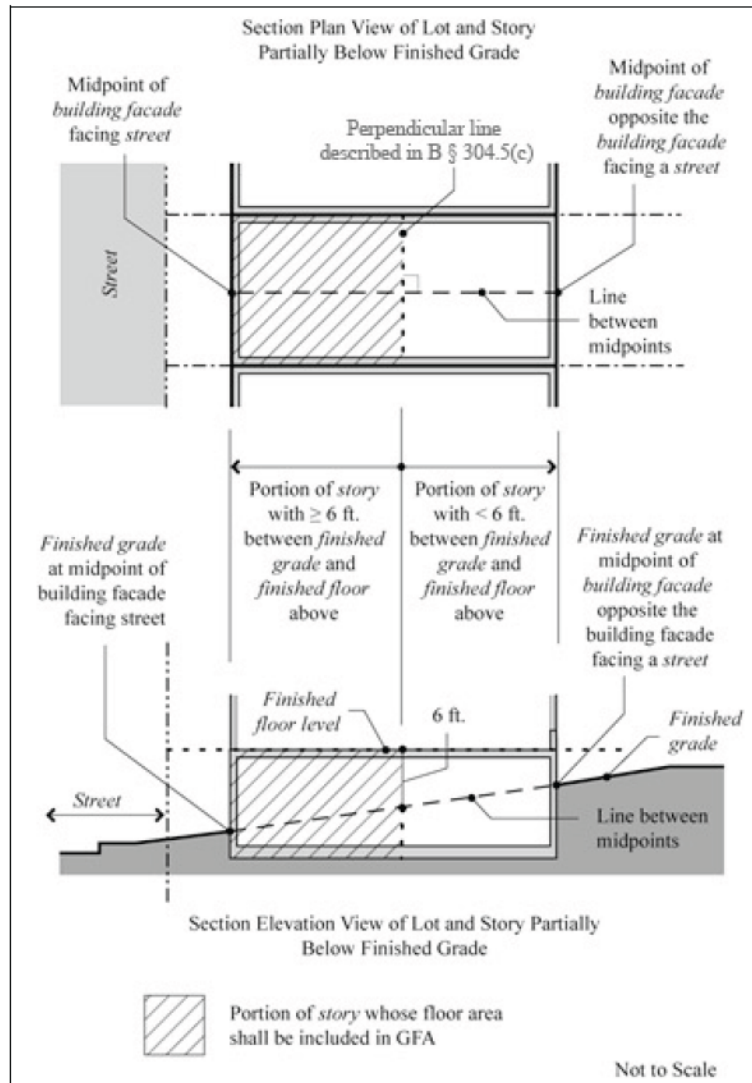
- *Exclusion of habitable cellars from FAR has not been long-standing DCRA practice.*
- *The zoning regulations should align with the building codes and other regulations.*
- *An areaway makes a lower level more exposed to the grade/more livable.*
- *Habitability matters in density formulas.*
- *Basement and Cellar Definitions are 2-part: measurement and use (habitable).*
- *Density formulas should count all habitable/livable spaces.*

	Density Formula	Cellar Disregard	Formula Overage	Penthouse Disregard	Formula Overage (Cellar & PH)
RA-2	1.8 FAR	.6 FAR	~25%	.4 FAR	>50%
RF-1	3 Stories	1 Story	~25%	1 story	>60%

**ZRR-16 Figure (removed from Final as were all graphics)**

Figure depicts GFA/FAR grade measurement point as “midpoint of building façade”

**FIGURE B § 304.5: DETERMINATION OF GFA FOR THE STORY OF AN ATTACHED BUILDING LOCATED PARTIALLY BELOW GRADE**



ZC Proposed Action, Dec. 2014  
Subtitle B-55

# Why Exclude Areaway as Adjacent Finished Grade?

Areaway Makes Lower Level Even More Above Grade

