My name is Tom Natan and I live at 1642 Argonne Place, NW. I'd like to talk about my biggest concern with the proposed basement/cellar definitions but not from a technical perspective. Rather, I want to give some of the history of 1636 Argonne Place, NW, how it relates to the proposal, and why the new language may not work.

In the early 2000s the owners of 1636 excavated the lowest level to make it into a legal apartment. The owners installed a full-height door that led out to the slab behind the house, not changing the back grade. So there was nearly seven feet of height from the ground outside to the top of the door, which was entirely inside the lowest level unit.

This apartment was clearly intended to be compliant, rentable, and habitable space, and was used that way after renovation.

In 2014, the house was purchased for development into a multi-unit building. DCRA issued the original permit based on the developer's application that excluded the floor area of the lowest level unit from the total floor area. Neighbors challenged the permit based on clear photographic evidence that the lowest level should be included in the floor area. This began 18 months of the developer and DCRA trying to come up with a plan to discount the floor area of this habitable apartment – allowing the developer to build higher and create more units.

The first photo [attached] shows the evolution of the design over time. First, after DCRA agreed with the neighbors and issued a stop work order, the developer proposed a retaining wall next to the back wall to serve as the newly-raised adjacent finished grade. DCRA approved this, but later rejected it after neighbors pointed out that this shortened the parking spaces below legal limits.

In the next iteration, the building acquired a notch. The proposed retaining wall was moved inside the building envelope as a “planter,” and the adjacent finished grade got defined on top of the planter, and so was also inside the building envelope. Finally, the driveway was sloped up because the cellarizing trick allowed the popped-up building height to be too high to comply with the rear-yard setback limit. You can see the finished product in the second photo.

When we went to the BZA to appeal, they did not agree that "adjacent” means outside the building, suggesting that the word adjacent needs to be further defined.

The developer of 1636 used the current rule and DCRA’s help to turn this habitable unit into what’s considered non-habitable space in the proposed rule. Anyone passing by in the alley can see how ridiculous and unnatural it looks. We neighbors who use the alley hope that the cars parked on the slope all have working emergency brakes.

That’s one of the problems with the proposed rule as I see it. It encourages more supposedly non-habitable spaces that we all know will be sold and inhabited. And as for the proposed new language on finished grade, take a look at the photo of the sloped driveway. It’s finished grade. But so was the grade below, a concrete surface. Which is the lower of the two for purposes of the rule?

Developers are in the business of finding creative solutions to exiting rules, and DCRA seems willing to assist in this creativity. I can only imagine what kinds of solutions will be devised in the future with the proposed changes. My thanks for the opportunity to speak to you this evening.