



VIA ELECTRONIC AND HAND DELIVERY

February 22, 2018

Mr. Anthony J. Hood, Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: Zoning Commission Case No. 17-18 – District of Columbia Building Industry Association Comments

Dear Chairperson Hood and Members of the Commission:

I am submitting this letter on behalf of the D.C. Building Industry Association (“DCBIA”). This letter contains DCBIA’s comments on the above-referenced text amendment case which is being heard this evening.

Phasing and Timing of Implementation

As a primary matter, we note that these proposed text amendments modify numerous fundamental definitions and methods of measurement throughout the Zoning Regulations. These text amendments will affect properties of all types in all zone districts across the City. As such, the text amendments will have far-reaching effects on the District. Consequently, we believe that these text amendments should be phased in over a transition period. **Given the often lengthy amount of time projects are in their planning and design phase, we believe that a phase in period of six (6) to twelve (12) months from the effective date of the Order for permit applications to be filed with and accepted by DCRA would be appropriate. Similarly, projects that have been approved by typical “vesting” actions such as votes of the D.C. Zoning Commission, the D.C. Board of Zoning Adjustment, or the D.C. Historic Preservation Review Board but potentially not yet far enough along to have filed for building permits should be allowed to proceed to permit under the Zoning Regulations as they existed prior to the potential implementation of Z.C. Case No. 17-18.**

Given the broad scope of the text amendments, we also believe it would be advisable to further delay a vote for Z.C. Case No. 17-18 so that the text amendments can be more fully assimilated by property owners and developers and additional comments can be received into the record.

455 Massachusetts Avenue, NW Suite 400 | Washington, DC 20001 | (202) 966-8665 | info@dcbia.org

Definitions of “Cellar” and “Basement;” Rules of Measurement for Gross Floor Area (B-304)

We appreciate the District’s revision of the four-foot-above-adjacent-grade measurement (to the ceiling of the relevant level) to the five-foot-above-adjacent-grade measurement (to the floor of the level above) in the definitions of “cellar” and “basement” and in Sub. B, Secs. 304.4 and 304.5. The additional foot of height was intended to capture the thickness of the typical ground floor slab of buildings so that the intent of the Zoning Regulations could remain intact but the ability to manipulate the basement/cellar ceiling would be eliminated.

However, based on a thorough review of the typical slab thicknesses associated with various construction types, we do not believe such additional one foot allowance, from four (4) feet to five (5) feet, to be sufficient. **Rather, we believe that an additional foot should be included such that the definitions of “cellar” and “basement” and Sub. B, Secs. 304.4 and 304.5 utilize a metric of six (6) feet above adjacent grade to determine the type of level and calculate the gross floor area of such level.**

Necessary floor thickness depends upon the type of construction. The following are estimated dimensions of typical floor thicknesses for different construction types that are common in the District:

- Cast-in-place Concrete (Typical or Transfer Slab): approx. 13.25-14.5 inches plus the drop capitals (generally approx. 6”-12”) [*Typical floor pictured on Exhibit A.*]
- Hambro or Bar Joist: approx. 22 inches
- Wood Frame (Solid Joist or TJI): approx. 17 inches
- Wood Frame Open Web Truss: approx. 21 inches

Examples of the above construction types are illustrated on Exhibit A.

The above estimated thicknesses are for typical spans and greater thicknesses could be necessary (especially in wood) if unique site conditions exist.

We also note that the issue of drop capitals (for the cast-in-place concrete floor typology) is not insignificant, particularly since many of the conditions at the cellar/first floor level will be transfer slabs and the total thickness for this construction type can be over two (2) feet. Losing any useable height to this modification inevitably means more of the project will be located underground, and therefore, construction costs increase and therefore, the affordability of the project will decrease.

The use of the five (5) foot metric as proposed in the definitions of “cellar” and “basement” and in Sections B-304.4 and 304.5 will effectively reduce the amount of square footage available to construct on parcels throughout the District. Similar to the above, we believe that affordability of many effected projects will decrease.

Support of habitable rooms in cellars and attics

DCBIA supports the Office of Planning's proposed clarification of the definition of "habitable room". This clarification will affirm the long-standing interpretation of the Zoning Regulations by this Commission, the BZA and the Office of the Zoning Administrator.

The issue of whether cellars may include habitable rooms was the subject of BZA Appeal No. 19374 of Dupont Circle Citizens Association (DCCA). In that case, DCCA argued that the Zoning Regulations do not allow habitable rooms in the portion of a building that is classified as a cellar. Opposition to that appeal was filed by a number of individuals and entities. The BZA dismissed the appeal as untimely filed. The written order has not yet been issued.

However, of note in that appeal are the many letters submitted to the record by DC government housing agencies and for-profit and non-profit housing providers, and others, noting the importance of being able to continue to devote cellar area to habitable space, to help address the need for more housing in the District. Copies of the following exhibits from the record for BZA Appeal No. 19374 are attached hereto as Exhibit B:

- 54 - WC Smith Co.
- 58 - Coalition for Smarter Growth
- 59 - Miller Development
- 60 - Altus Realty
- 61 - Adams Investment Group
- 62 - Capital City Real Estate
- 63 - DC Housing Finance Agency
- 64 - DC Housing Authority
- 65 - Holladay Corporation
- 68 - Missionfirst
- 69 - Pecar Properties
- 76 - Abdo Development

The record in BZA Appeal No. 19374 also cites a number of PUD's and BZA cases where dwelling units were approved in cellar space, including ZC Nos. 15-33 and 06-34A, as well as BZA Nos. 18615, 19127, 19035, 18814, 18785, 18724, 17679-C and 17111-A.

In addition, this Commission adopted recent amendments to the IZ regulations in Case No. 04-33G, which included Sub. C, Sec. 1003.9, recognizing that IZ units may be located in cellars.

We greatly appreciate the opportunity to provide comments on these important text amendments and would be happy to provide additional information if helpful.

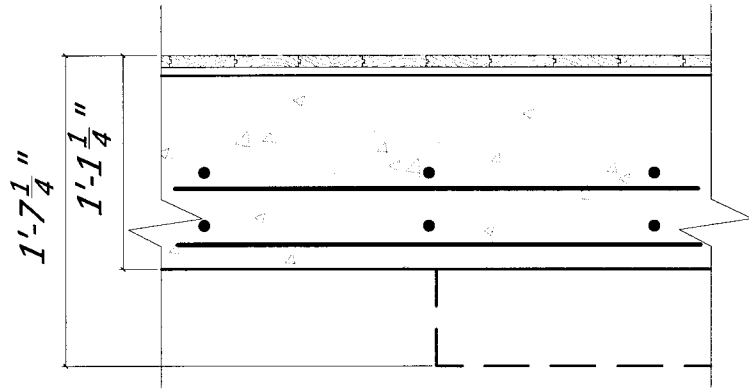
Sincerely

A handwritten signature in black ink that reads "Lisa Maria Mallory". The signature is written in a cursive style with a large initial "L" and "M".

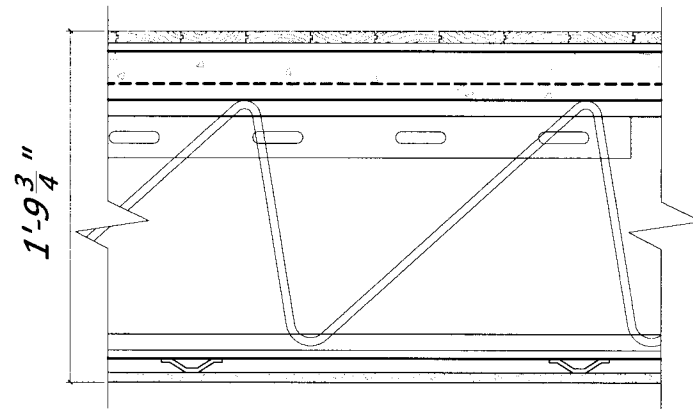
Lisa Maria Mallory
Chief Executive Officer

EXHIBIT A

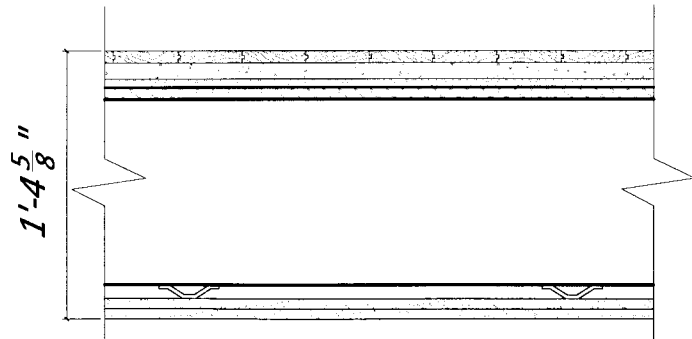
TYPICAL CONCRETE FLOOR SYSTEM
(TRANSFER SLAB)



TYPICAL HAMBRO FLOOR SYSTEM



TYPICAL WOOD JOIST FLOOR SYSTEM



TYPICAL WOOD TRUSS FLOOR SYSTEM

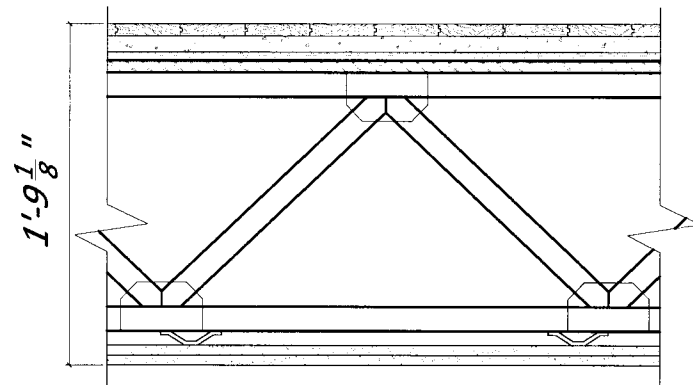


EXHIBIT B



February 13, 2017

Board of Zoning Adjustment
441 4th Street, NW
Suite 200S
Washington DC 20001

Re: BZA Appeal 19374

Dear Board Members:

We are writing to register our opposition to this appeal. If granted, this appeal will have a detrimental impact on the delivery of affordable housing in the District, not only by WC Smith, but also by many other housing providers across the city. There is broad agreement that the city needs thousands of additional affordable units to meet the current need of low-income District households. All parties – the city, developers, community associations – should be looking for creative ways to provide housing for residents with less earning power. Mayor Bowser said it is one of the most urgent needs of the District.

Over the last almost 50 years, WC Smith has worked collaboratively with the District of Columbia government, District agencies, ANC's, community organizations and other stakeholders to create affordable communities. Our company has built thousands of dwelling units of all types in the city. We are proud to be a contributing member of the housing industry for current and future residents of the District.

We believe that the policy proposed by the Appellants in this case, if adopted by the BZA, will have negative consequences on the delivery of housing, and especially affordable housing, throughout the city. Many of our housing developments include dwelling units and other living spaces in portions of the building that are classified as "cellars" for zoning purposes. There is no law or regulation that prevents this. To change the current laws and policies to prevent otherwise-usable space in a dwelling from being devoted to living space runs counter to the District's current efforts to promote the creation and retention of adequate affordable housing.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bradley J. Fennell', written over a white background.

Bradley J. Fennell
Senior Vice President



EXHIBIT B

Coalition for Smarter Growth

DC • MD • VA

February 16, 2017

DC Board of Zoning Adjustment
441 4th Street NW Suite 200S
Washington, DC 20001

RE: Oppose BZA Appeal No. 19374 – retain current interpretation of cellar space as habitable

Dear members of the Board:

We would like to express our opposition to the BZA Appeal No. 19374.


We support the current interpretation of the Zoning Commission that allows cellar space to be used for habitable rooms and dwelling units. To exclude dwellings in the cellar space would significantly reduce the amount of living space available in the city, especially in denser, in-demand neighborhoods. To change the interpretation of the allowable use of cellar space to exclude habitable rooms would cause substantial harm to property owners who use their cellar space for habitable space, and harm the city at large by shrinking the availability of dwelling units. Partially below-grade dwellings tend to be priced at lower rates than wholly above grade dwellings. Reinterpretation of the use of cellar space for habitable space will impose new affordability problems onto a city that already has a major problem with housing affordability.

For these reasons, we ask the Board to reject the claim that the use of cellar space as habitable is not allowed under the zoning regulations.

Thank you for your consideration.

Sincerely,

Cheryl Cort
Policy Director

	EXHIBIT B			MILLER Smart Development. Real Investment.
	<i>8120 Woodmont Ave Suite 160 Bethesda Md 20814</i>			
	E: info@millerdc.com	T: 240.752.9866	millerdc.com	

Board of Zoning Adjustment
 441 4th Street NW
 Suite 200 S
 Washington, D.C. 20005

February 3, 2017

BZA Appeal 19374

Dear Board Members:

We strongly oppose the BZA Appeal regarding the development of habitable cellar level space at 1514 Q Street NW.

To accept the Appellant's argument would set an incorrect and far-reaching precedent prohibiting dwelling units and living spaces on the cellar level of a building, contrary to decades of existing precedent on this matter and a countless number of successful, vital, and frequently affordable cellar level residences throughout the City.

In summary, accepting the Appellant's argument would:

1. negatively impact the future supply of affordable units, as the lowest level units are frequently the least expensive, and cellar level units are not counted in the FAR calculation;
2. convert a cellar dwelling unit into a basement unit, and thus include it within the building's maximum permitted FAR calculation and number of stories calculation, adding increased cost pressure to projects desirable to city-wide objectives already faced with serious cost hurdles;
3. overturn the Zoning Commission's recent regulations regarding Inclusionary Zoning units in cellars, and reverse years of contrary interpretation;
4. alter city-wide policy on delivery of affordable housing units.

From the development community's perspective, accepting the Appellant's argument would be a significant blow to achieving the City's density objectives as set forth in the Comprehensive Plan and Zoning Code, both of which would have contemplated the consistent longstanding interpretation of the zoning regulations related to this matter.

Further, it would be a serious setback to the important work of ensuring maximum city wide opportunities to meet collective affordable housing objectives.

We strongly oppose the Appeal of this matter.

Please feel free to contact me for further comment.

Sincerely,



Robert J. Miller
 President

Board of Zoning Adjustment
 District of Columbia
 CASE NO. 19374
 EXHIBIT NO. 59

February 9, 2017

Board of Zoning Adjustment
441 4th Street, NW
Suite 200S
Washington DC 20001

Re: BZA Appeal 19374

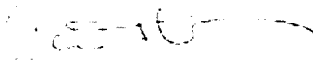
Dear Members of the Board:

We respectfully request that the Board of Zoning Adjustment deny this appeal. With all of the focus in the city on providing more housing opportunities for all segments of society; particularly affordable housing, it makes little sense for the District to adopt a policy that prevents usable cellar space in a building from being used for living space.

Several of our projects have included units on the cellar level of the building. These units are less expensive, attracting younger and less affluent persons, than the more expensive units in the upper levels. Allowing these spaces to be occupied as dwellings in desirable neighborhoods helps to provide equal housing opportunities to all residents of the District and ensures diversity in our communities.

Thank you for your consideration.

Sincerely



Charles Kehler
Principal

EXHIBIT B



1228 31st Street, NW 202.965.2250
Second Floor 202.965.2985
Washington, DC 20007 www.adamsinvestment.com

Adams

Board of Zoning Adjustment

441 4th Street, NW

Suite 200S

Washington DC 20001

Re: BZA Appeal 19374

Dear Board Members:

We understand that this appeal questions whether dwelling units and living spaces may be located on the cellar level of a residential building in the District. We urge the Board to issue a decision which upholds the current long-standing practice to allow dwelling units and living spaces on the cellar level.

Dwelling units on the cellar level typically rent or sell for a lower price per square foot than other units in a residential building, and allow people of lesser means an opportunity to live in neighborhoods which they otherwise might not be able to afford. Leaving such spaces vacant, rather than putting them to a productive housing use, is a terrible waste of valuable housing resources in the District. The Mayor is promoting housing opportunities across the city, and the Council deals extensively with affordable housing. The Zoning Commission has enacted significant Inclusionary Zoning regulations. The BZA should join in by protecting the continued ability to use the cellar level of residential buildings for housing.

Thank you for rejecting this appeal.

Sincerely,

Douglas Yurechko
Adams Investment Group



BZA Appeal No. 19374
February 15, 2017

Attn: Board of Zoning Adjustments
Letter of Support

This letter is written to support in favor of JC Development and their ongoing development of habitable cellar level spaces.

Over the last ten years, we have built hundreds of homes in Washington DC with occupied cellar space. If in the future cellar spaces were to be declared as un-inhabitable, it would unnecessarily preclude the use of an entire level of thousands of homes across the city. This will reduce the already strained housing supply.

We support the vote in favor of continuing to allow Cellars, at 4' or less above grade to continue to be excluded from FAR calculations.

Jerry Zayets
Capital City Real Estate LLC
1515 14th St NW Suite 400
Washington DC 20010



EXHIBIT B

District of Columbia Housing Finance Agency

815 Florida Avenue, NW Washington, DC 20001-3017

February 22, 1017

Frederick L. Hill, Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: **Board of Zoning Adjustment Appeal No. 19374**

Dear Chairperson Hill:

It is our understanding that you have a matter pending before the Board that challenges a long-standing interpretation of the Zoning Regulations allowing residential units at the cellar level of a building.


The DC Housing Finance Agency was established in 1979 to stimulate and expand homeownership and rental housing opportunities in the city. We accomplish this mission, in part, by issuing housing mortgage revenue bonds that lower the developers' costs of acquiring, constructing and rehabilitating rental housing.

The Board's ruling could potentially impact the feasibility of affordable and mixed-income residential projects, particularly in underserved communities. Also, it could potentially reduce affordable housing opportunities for low and moderate income persons and families in more dense areas of the city.

In light of the foregoing, we urge the Board's careful consideration of this matter.

Sincerely,

District of Columbia Housing Finance Agency



Todd A. Lee, Executive Director

Board of Zoning Adjustment
District of Columbia
CASE NO. 19374
EXHIBIT NO. 63

Phone: 202-777-1600 Fax: 202-986-6705 www.dchfa.org

EXHIBIT B



District of Columbia Housing Authority

1133 North Capitol Street, NE Washington, DC 20002-7599
202-535-1000

Adrienne Todman, Executive Director

February 10, 2017

Frederick L. Hill, Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, NW, Suite 200-S
Washington, DC 20001

Re: Board of Zoning Adjustment Appeal No. 19374

Dear Chairperson Hill:

We understand that you have a matter pending before your Board that calls into question the ability to devote to residential use the lower level of a residential building, and specifically those areas classified as "cellars" for zoning purposes. We request that you take into consideration the possible effects of your ruling on the interests of the District of Columbia Housing Authority (DCHA).

DCHA is an independent government agency that provides quality affordable housing to extremely low-to-moderate income households. We foster sustainable communities where residents can improve their lives. As one of the District's largest landlords, DCHA serves 50,000 qualified low-income residents through traditional affordable housing, tenant-and project-based housing vouchers, and mixed-income properties.

A number of our buildings include units and other living areas on the lower level, including portions of the building which are classified for zoning purposes as cellars. A ruling by your Board that would change the current policy, to no longer allow these units to exist, and to prevent the future establishment of such units, will have an adverse effect on DCHA's ability to fulfill its mission.

Thank you for taking our views into consideration. If you would like to discuss this further, you may reach me at 202-535-1000.

Sincerely,

A handwritten signature in black ink, appearing to read "Merrick T. Malone". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Merrick T. Malone
Director, Office of Capital Programs

www.dchousing.org

Board of Zoning Adjustment
District of Columbia
CASE NO. 19374
EXHIBIT NO. 64

EXHIBIT B



3400 Idaho Avenue, N.W.
Washington, D.C. 20016

TEL. (202) 362-2400
FAX. (202) 364-0844

February 16, 2017

Board of Zoning Adjustment
441 4th Street, NW, Suite 200S
Washington, DC 20001

Re: BZA Appeal 19374

Dear Members of the Board:

We want to strongly register our opposition to BZA Appeal No. 19374. In our view, accepting the Appellant's position is tantamount to further limiting the supply of affordable housing in the District of Columbia at a time when such housing is in critically short supply.

As a company, we specialize in developing high density urban housing. All of our recent projects have included cellar space as habitable units. The benefits are twofold. First, the extra density they add often enhances a project's feasibility because cellar units are not counted in the FAR calculation. Second, and more importantly, these units are typically the least expensive. This allows lower income residents the opportunity to live in neighborhoods they might otherwise be unable to afford.

The BZA would set an incorrect and confusing precedent by accepting the Appellant's argument. Effectively, it would overturn the Zoning Commission's recent regulations regarding Inclusionary Zoning units in cellars, reversing years of contrary interpretation.

In sum, the District has a critical affordable housing problem. It will only get worse if cellar space can no longer be used to provide lower cost housing. For the reasons noted above, we sincerely hope that you vote to reject the appeal.

Sincerely,

Rita J. Bamberger
Senior Vice President

EXHIBIT B



Board of Zoning Adjustment
441 4th Street, NW
Suite 200S
Washington DC 20001
February 15, 2017

Re: BZA Appeal No. 19374

Dear Members of the Board:

Mission First Housing Group's mission is to develop and manage affordable, safe and sustainable homes for people in need, with a focus on the vulnerable. We ensure that our residents have access to resources to help them live independently. We deliver housing that provides long-term benefits to residents and neighbors alike. Our latest project in DC is Plaza West, at the northeast corner of 4th and K Streets, NW, which we are developing in partnership with Golden Rule Plaza, Inc., a nonprofit affiliate of Bible Way Church. This project will have 50 units for families making 30-50% AMI, and 173 units for families making less than 60% AMI, and will open in 2018.

We understand that this appeal before you challenges the ability to locate housing units and other living spaces on the cellar level. The use of the cellar level for housing units and living spaces is a practice widely used in the affordable housing industry in the District. Such spaces are not counted in the gross floor area, which helps to reduce the development costs and increase the usability and efficiency of the building. A decision which prohibits cellar-level use could negatively impact affordable-housing providers in the District. We ask that you deny this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Everhart", written in a cursive style.

Elizabeth Everhart
Senior Project Executive



January 31, 2017

Board of Zoning Adjustment
441 4th Street NW
Suite 200S
Washington, DC 20001
RE: BZA Appeal No. 19374

Dear Members of the Board:

Pecar Properties LLC wishes to register its strong opposition to BZA Appeal No. 19374. The logic behind the appeal is flawed and does not consider broader issues for DC owners and residence seeking affordable housing. The action would destroy property values and displace those currently living in cellar level units.

Since 2008 we have been actively involved in delivering high quality boutique residential projects. In every project we have utilized the cellar as permitted habitable space. These units created affordable rental and purchase options for DC residence.

By reversing our city's long history of cellar units as habitable space you will:

- Negatively impact the future supply of affordable units, as the lowest level units are typically the least expensive
- Immediately create economic hardship to cellar unit owners, while forcing tenants to seek alternative and more expensive housing options. This will increase demand for "non – cellar" units and drive prices even higher worsening our affordable housing problem.
- Overturn and unnecessarily complicate the Zoning Commission's recent regulations regarding Inclusionary Zoning units in cellars, and reverse years of contrary interpretation.

In conclusion, the public would be substantially harmed by this action and we sincerely hope that you vote in opposition.

Respectfully,

A handwritten signature in black ink that reads "Gene Pecar". The signature is fluid and cursive, with the first letters of "Gene" and "Pecar" being capitalized and prominent.

**GENE PECAR, PRINCIPAL
PECAR PROPERTIES LLC
gene@pecarproperties.com
703-439-9162**

Board of Zoning Adjustment
District of Columbia
CASE NO. 19374
EXHIBIT NO. 69

1633 Q ST NW STE 230 WASHINGTON DC 20009

EXHIBIT B



February 17, 2017

bzasubmissions@dc.gov

Fred Hill, Chairman
Board of Zoning Adjustment
441 4th Street NW Room 200S
Washington DC 20001

Re: BZA Appeal 19374

Dear Chairman Hill and Members of the Board:

The purpose of this letter is to register my company's strong opposition to this appeal.

Abdo Development has contributed significantly to the housing stock in DC over the past two decades including the construction of affordable units. We strongly urge this Board to uphold the Zoning Administrator's determination regarding the use of cellar space for residential purposes. Mr. LeGrant's ruling is fully consistent with the longstanding interpretation of the regulations. He reached his conclusion after a careful and thoughtful consideration of all relevant information. As the owner has indicated, there are numerous residential buildings in DC that include units in the cellar. Some of these projects are matter of right and others have been approved by this Board or the Zoning Commission.

The Appellant view, if accepted, will result in the loss of a significant amount of housing units and cellar units are often the most affordable units in a project. As you are aware, one of the Mayor's top priorities is to increase the amount of affordable housing in the city.

The Zoning Administrator reached his conclusion after a careful and thoughtful consideration of all relevant information.

Sincerely,

Gordon Buist
Abdo Development
Chief Operating Officer