

Zoning Commission of the District of Columbia

Case No. 17-18

Resolution of the Kalorama Citizens Association

Whereas, the Zoning Commission is considering proposals from the Office of Planning that provide an opportunity for the Commission to take a further important step in its efforts over the last three years to deal with the proliferation of incompatibly dense redevelopment of rowhouses – “popups” and “pop-backs” – that has caused widespread distress in predominately rowhouse neighborhoods;

Whereas, the proposals focus principally on the part that the Zoning Regulations’ treatment of “basements”, “cellars”, and “attics” has played in this proliferation;

Whereas, this “basement/cellar/attic” problem arose from the following facts

1. DC’s Zoning Regulations as written have long taken the position that cellars and attics were regarded as unsuitable for use as living space and were thus explicitly excluded from the list of spaces that could qualify as a “habitable room”;

2. Accordingly, cellars, and attics without a tolerably high ceiling (6’6” or higher), were not counted against a building’s allowable “gross floor area”, and cellars were not regarded as “stories” and thus did not count against a building’s maximum number of stories;

3. Basements, not being as far below grade as cellars, and also attics with a ceiling above 6’6”, were deemed

acceptable for living space, and accordingly were included in the calculation of a gross floor area;

4. At some point a Zoning Administrator apparently concluded that this policy regarding non-use of cellars and certain attics as habitable rooms had become obsolete, and consequently projects in which apartments were placed in cellars, or in which attics with ceilings under 6'6" were designed to be used as living space, began to be approved, while those cellars and attics nevertheless continued to be excluded from the calculation of allowable gross floor area and the cellars were still not counted as "stories";

5. In these circumstances it was possible for a rowhouse re-developer to add as much as an entire floor, or more, to a building without paying any cost in allowable floor area or the allowable number of stories; this possibility gave them strong incentives to devise design features that would serve the sole purpose of obtaining the "free" gross floor area, even at the cost of degrading the living space by eliminating such amenities as an amply high ceiling. These stratagems have included

- *Installing a dropped ceiling in the basement*

- *In an attached or semi-detached house, choosing a method of allocating floor area between basement and cellar that will disproportionately inflate the cellar portion.*

- *Depositing fill material next to a wall to raise the adjacent grade and reduce the distance between the grade and the floor above.*

- *Convincing the Zoning Administrator to accept some ad hoc creative solution such as locating the "grade" in a niche in the exterior wall,*

- *Installing a dropped ceiling in the attic.*

And OP's current proposal would codify an additional such mechanism:

● *Ensuring that window wells and areaways project no more than four and five feet, respectively, from the building face, as required by the proposed definition of "finished grade".*

6. The use of such mechanisms, assisted by a sympathetic reception from DCRA, greatly increased the likelihood of popups or pop-backs in row house neighborhoods such as RA-1, -2, -7 and -8, RC-1 and RF-4 and -5, which provide a maximum FAR, and to a lesser extent in RF-1 -2, and -3, which have no FAR limit but do have a limit on the number of stories;

Whereas, OP's current proposals eliminate one of these devices (having to do with allocating floor area between cellar and basement), it would leave others still available, and moreover would inadvertently create an added incentive for developers to gut or demolish rowhouses in order to gain "free" gross floor area;

Whereas, unless the proposal is modified in critical respects, substantial pressure to re-develop row houses with popups and pop-backs will therefore continue after its adoption;

Whereas, there are only two ways to reliably put an end to this persistent problem:

One way would be for the Commission to make clear that apartments and other habitable rooms cannot be located in cellars or attics with ceilings less than 6'6" in height, thus applying the Regulations consistently with the plain meaning of provisions that have been in the code for decades. This would affirm the fundamental principle that the Regulations can be amended only by the Commission, proceeding in accord with the requirements of notice, comment and hearing. At the same time it would put an end to a state of affairs that has generated and encouraged harmful gaming of the system.

If the Commission is unwilling, by this action, to place these cellar and attic spaces outside the inventory of available housing space going forward, the only effective alternative is to eliminate the root cause of the popup problem: the harmful incentives generated by the possibility of securing FAR-free marketable living space. This can be done by requiring that any cellar or attic floor area that is used for habitable space be included in gross floor area, and that any cellar so used be counted as a story, at least in the most vulnerable zones;

Whereas, OP itself suggested this general approach in an earlier draft Setdown Report dated December 2, 2016, which included the following draft recommendations:

Recommendation 2: Change definition of “Gross Floor Area” to include cellars in RA-1 and RA-2 zones

Gross Floor Area (GFA): The sum of the gross horizontal areas of the several floors of all buildings on a lot, measured from the exterior faces of exterior walls and from the center line of walls separating two (2) buildings. See Also: Subtitle B §§ 304 and 305.

GFA 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, **and habitable rooms in cellars in the RA-1 and RA-2 zones.**

GFA shall not include ~~cellars~~, exterior balconies that do not exceed a projection of six feet (6 ft.) beyond the exterior walls of the building, all projections beyond the lot line that may be allowed by other Municipal codes, vent shafts, and pipe chase shafts above the ground floor, atriums above the ground floor, ramps on the ground floor leading down to areas of parking on a lower level; and in residential zones, the first floor or basement area designed and used for parking or recreation spaces provided that not more than fifty percent (50%) of the perimeter of that space may be comprised of columns, piers, walls, or windows, or similarly enclosed. **GFA shall not include cellars except for habitable rooms in cellars in the RA-1 and RA-2 zones.**

Recommendation 4: Change definition of “Story” to clarify a cellar is counted as a story

Story: The space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured.

For the purpose of determining the maximum number of permitted stories, the term "story" shall not include cellars or penthouses or cellars that do not qualify as habitable space as defined in this title.

Therefore, Kalorama Citizens Association strongly urges that, if cellars and attics are to be permitted to continue to be used as habitable rooms, the Commission adopt OP's Recommendations 2 and 4 from the December 2, 2016 draft, with three necessary changes:

(1) expand the list of zones in which the provision applies to include at least RA-1, -2, -7 and -8, RC-1 and RF-1 through 5,

(2) insert "or attics" after "cellars", in each instance in the underlined portions of Recommendation 2, and

(3) amend the rules of measurement for number of stories (§B-310) so as to provide that a cellar used as a habitable room is counted as a story.