

ANC1C Resolution

Clarify and Revise Basement/Cellar Zoning Regulation

March 2, 2016

Summary

Purpose of Zoning Regulations. DC zoning regulations include multiple rules to manage and put limitations on the height, density, and usage of buildings and their impact on quality of life. These rules govern the maximum allowable size of buildings in terms of, for example, their square footage and number of stories, height and lot occupancy, as well as allowable habitable space.

Basement/Cellar Rule Defined. Among these regulations is one referred to as the basement/cellar rule, which is a measurement formula that determines whether and how much of a building's lower level gets counted when calculating the current size of a building and whether that lower level space can be habitable. Under the zoning regulations:

- A basement is "that portion of a story partly below grade, the ceiling of which is four feet (4 ft.) or more above the adjacent finished grade." A basement is counted and is considered habitable space.
- A cellar is defined as "that portion of a story, the ceiling of which is less than four feet (4 ft.) above the adjacent finished grade." A cellar is not counted and is considered not habitable.

Lower Level is a Significant Amount of Space Whose Development is Open to Manipulation.

Interpretation of a lower level as a basement v. cellar under this rule represents the largest amount of space in a building that can be redefined and exempt from building size calculations, solely by use of alterations in the measurement formula. On its face, this constitutes a threat to the purpose of zoning regulations in setting clear and consistent standards for building density

So-called pop-up developments of rowhouses are often possible when a lower level of a rowhouse is classified as a cellar, which is not counted in square footage calculations for the Floor Area Ratio (FAR) limit in R-5-B. Likewise, a cellar does not count against the three-story limit in R-4. In both cases, a cellar-defined lower level means that approximately one additional floor can be added on the top of a rowhouse, and the cellar is converted into habitable space, contrary to the intent of zoning density limits and zoning regulations on what constitutes habitable space.

Basement/Cellar Rule Routinely Manipulated. Measurement manipulations are routinely authorized by the DCRA Zoning Administrator (ZA), thus rendering the basement/cellar rule irrelevant. Specifically, the ZA regularly approves permits and plans that manipulate the measurement formula (e.g., raise grade to reduce measurement to <4') to redefine lower level spaces as cellars in order to exempt this space from building size calculations. The Board of Zoning Adjustment has endorsed these interpretations. Simultaneously, the ZA allows cellar space, defined as "not habitable" in the zoning regulations, to be converted into condo units.

New Regulations Have Some Improvements But More Needed. The Zoning Regulation Review (ZRR) endorses a basement/cellar rule that includes some improvements (i.e., the upper measurement point will be changed to the first floor; the grade plane method will be the only allowable method for attached

buildings). However, the ZRR leaves some matters unresolved (e.g., there are no prohibitions of measurement reference point changes that would allow for conversion of a basement to a cellar solely to evade the basement/cellar rule; the definition of “adjacent finished grade” is not provided). In summary, short- and long-term reforms are needed in order to restore the intent of this rule and thus preserve the integrity of the zoning regulatory process.

Problems with the Basement/Cellar Rule

The basement/cellar rule fails to provide clear guidance to zoning officials, permit applicants and citizens in the following respects.

- Interpretation of the basement/cellar rule is so imprecise as to enable a party to technically change the definition of a lower level from basement to cellar status. As such, this renders the meaning of cellar as a limitation meaningless.
- The basement/cellar rule is inconsistently applied by the ZA. In some cases, the ZA uses the perimeter wall method for attached structures, which undercounts lower level square footage. In other cases, the ZA uses the grade plane method.
- The perimeter wall method is inherently biased toward maximizing a lower level’s square footage as cellar as common walls are considered unobservable and thus default measured as cellar perimeter.
- The basement/cellar rule has been incorrectly applied by the ZA. In at least one case, the ZA has identified the “adjacent finished grade” as a point within the building itself, contrary to decades of precedent.
- The basement/cellar rule is applied by the ZA to exclude from adjacent finished grade a point called “areaway” (i.e., the grade extending 5 feet from the face of the building). However, exclusion of areaways from the definition of adjacent finished grade is not found in the zoning regulations. Furthermore, while the basis of excluding areaways may be tied to building code provisions, 12G DCMR 402 provisions set the areaway distance of 4 feet from the face of a building, not 5 feet.
- The basement/cellar rule is interpreted by the ZA in a manner whereby the grade can be changed, thus allowing alterations from basement status to cellar status. Such changes are inconsistent with zoning regulation prohibitions on changing the grade for purposes of measuring building height, as found in the definition of building height: "the vertical distance measured at the existing grade at the midpoint of the building façade of the principal building that is closest to a street lot line to a point designated in the zone district. Berms or other forms of artificial landscaping shall not be included in measuring building height."
- To be determined is whether the ZA will allow the basement/cellar rule to be newly interpreted to allow a lowering of the ceiling of the lower level for the sole purpose of achieving a distance of less than 4 feet that would enable evasion of the basement/cellar rule. If permitted, this would represent a further weakening of the rule.

- Other building-related codes—all of which relate to the zoning regulations in terms of their application from the standpoint of quality building standards and quality of housing—include multiple provisions that define grade and habitable space. The ZA’s application of the basement/cellar rule in terms of grade/habitable space is in conflict with these provisions. To illustrate:
 - The District of Columbia’s 2013 Building Code and the International Building Code (Chapter 2, Definitions) provide the same definition for “grade plane” as: “A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than 6 feet (1829 mm) from the building, between the building and a point 6 feet (1829 mm) from the building.
 - Building Code 12G DCMR, 402 includes provisions that exclude rooms that are below ground level for use as habitable space (402.1.1), with additional provisions governing how such below grade space can be made habitable.
 - Housing and Building Restrictions and Regulations, 6–1451.01 5A states: “‘Certificate of occupancy’ means the first certificate of occupancy issued for a usable, habitable space at grade or above grade.”
 - The Housing Code excludes cellars from the definition of habitable space (14-199.1, Definitions), limits as habitable space rooms whose exterior walls are more than 50% below grade but which can be altered to be habitable if the areaway on the external wall is 4’ or more in width and the lower level’s walls are 50% or more above the grade adjacent to the areaway. (14-404.1)
 - The Property Maintenance Code permits below grade areas as habitable (12G-401.4) if they meet code provisions.

Solutions to Be Pursued

ANC1C resolves to pursue the following options to resolve uncertainties and manipulations of the basement/cellar rule.

- ANC1C urges the ZA to:
 - Cease improper identification of the adjacent finished grade as a point within the building envelope and to return to established precedent on designation of the adjacent finished grade as a point exterior to the building envelope.
 - Exclusively use the grade plane method for rowhouse basement/cellar calculations, up until activation of the ZRR on 9/6/16. This option is currently available to the ZA and thus such a directive would require no regulatory changes.
 - Cease exclusion of “areaways” from the adjacent finished grade definition as such language does not exist in the zoning regulations.

- Not allow for modifications of the “adjacent finished grade” when such changes have no legitimate purpose (i.e., are not tied to structural or other requirements that relate to the integrity of the building).
 - Not allow for changes to the lower level ceiling when such changes serve no legitimate purpose and are carried out to influence the basement/cellar designation.
 - Improve verification of basement/cellar designations in building permits and plans, including site visit measurements, particularly in response to citizen requests.
 - Align basement/cellar designation rules with related zoning regulations and building codes dealing with habitable space, grade determinations, and areaways.
- ANC1C urges the Office of Planning and the Zoning Commission to further investigate challenges with the basement/cellar rule in the ZRR and seek text amendments to resolve uncertainties. These changes may include but are not limited to:
 - If lower level space is made habitable, then such space should be counted in maximum building size rules (e.g., FAR [R-5-B] and as a Story [R-4]). This change will entail related changes in various zoning definitions.
 - Prohibit changes to the grade for purposes of calculating the basement/cellar rule, in alignment with earlier zoning regulation changes that prohibited grade changes for purposes of calculating building height.
 - ANC1C will work with other ANCs and other groups to pursue zoning regulation changes on the basement/cellar rule.

ANC1C authorizes ANC1C Commissioner Gambrell to pursue the goal’s of this resolution with various parties.

ANC1C will communicate this resolution to Office of Planning, the Mayor’s office, the Zoning Commission, the City Council and the Board of Zoning Adjustment.