



TOWN OF LOS GATOS
PLANNING COMMISSION STAFF REPORT
Meeting Date: April 13, 2016

ITEM NO: 3
DESK ITEM

PREPARED BY: Marni Moseley, AICP, Associate Planner
MMoseley@losgatosca.gov

APPLICATION NO: Architecture and Site Application S-12-103
Subdivision Application M-12-008
Negative Declaration ND-16-001

LOCATION: **341 Bella Vista Avenue** (west side of Bella Vista Avenue, north of Charles Street)

APPLICANT/
PROPERTY OWNER: Jake Peters and Dan Ross

CONTACT: Dan Ross

APPLICATION
SUMMARY: Requesting approval to merge two lots and to construct a new single family residence and remove large protected trees on property zoned R-1:8. No significant environmental impacts have been identified and a Mitigated Negative Declaration is recommended. APN 529-23-015 and 016.

EXHIBITS: Received under separate cover:
1. Initial Study and Mitigated Negative Declaration, *March 4, 2016*
2-14. Previously received with April 13, 2016 Staff Report

Received with this Desk Item Report:

15. Comments received from 11:01 a.m. on April 7, 2016 to 11:00 a.m. on April 13, 2016

REMARKS:

Staff received additional public comments after distribution of the staff report (Exhibit 15).

Additionally, staff received questions from Planning Commissioners. Their questions and staff's responses are provided below:

Question: Why does the lowest level of the residence count as cellar if it is exposed more than four feet?

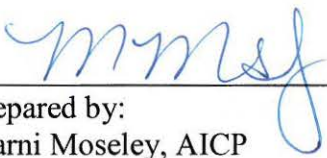
Town Code provides the following definition for cellar:

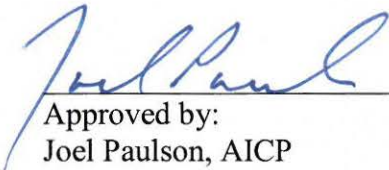
Cellar means an enclosed area that does not extend more than four (4) feet above the existing or finished grade in any location. Cellars, as defined here, shall not be included in the floor area ratio calculation for residential developments. That area of a cellar where the building height exceeds four (4) feet above existing or finished grade shall not be included in this definition and shall be included in the floor area ratio calculation. For purposes of this definition whichever grade (existing or proposed) results in the lowest building profile of a building shall be used.

As discussed within the third sentence (underlined above) when an area extends more than four feet above grade, that area is counted as floor area, while the area of the residence which is less than four feet above grade would continue to be counted as cellar and be exempt from FAR calculations. The area shown in blue on sheet A2.3 of the proposed plans is considered cellar based on the Town Code definition, whereas, the area shown in purple, extends more than four feet above grade or is not located below the footprint of the residence above and would count as floor area.

Question: What is the property information for 331 Bella Vista Avenue?

It was requested that the property information for 331 Bella Vista Avenue be included in the neighborhood comparison chart. Upon further review, 331 Bella Vista Avenue is one of three units located on the parcel with 333 Bella Vista Avenue. Information for this site is provided within the neighborhood analysis chart on page 5 of the staff report.


Prepared by:
Marni Moseley, AICP
Associate Planner


Approved by:
Joel Paulson, AICP
Community Development Director

JP:MM:sr

RECEIVED

APR 8 - 2016

April 8, 2016

TOWN OF LOS GATOS
PLANNING DIVISION

Norman E. Matteoni
Peggy M. O'Laughlin
Bradley M. Matteoni
Barton G. Hechtman
Gerry Houlikan

Advance Copy via Email

Mary Badame and Members of the Los Gatos Planning Commission
Town of Los Gatos
110 E. Main Street
Los Gatos, CA 95030

Re: 341 Bella Vista Avenue

Dear Chairperson Badame and Members of the Commission:

This office represents Dan and Deborah Ross, the owners of 339 and 341 Bella Vista. They have applied to construct a single family home utilizing both of those parcels. The plan for that home, which will be a subject of your meeting on April 13th, reflects substantial input from neighbors, Town staff, Planning Commissioners and Town Councilmembers over a multi-year period. It requires no variances and has been sensitively designed to address a myriad of concerns. Mr. and Mrs. Ross and I look forward to describing the project and answering your questions at the hearing, and look forward to your approval of the application. Please copy me on all future notices and public communications issued by the Town regarding the application.

Very truly yours,



BARTON G. HECHTMAN

BGH:cab
cc: Mr. and Mrs. Ross

\\moh-us01-fs01\Data\Clients\ROSS Dan\correspondence\Los Gatos Planning Commission.docx



848 The Alameda
San Jose, CA 95126
ph. 408.293.4300
fax. 408.293.4004
www.matteoni.com

EXHIBIT 15

***This Page
Intentionally
Left Blank***

PATRICK K. TILLMAN

Attorney at Law

RECEIVED

APR 11 2016

April 10, 2016

**TOWN OF LOS GATOS
PLANNING DIVISION**

**Sent via e-mail to: MMoseley@losgatosca.gov
and planning@losgatosca.gov**

Marni Moseley
Los Gatos Planning Department
110 E. Main Street
Los Gatos, CA 95030

Re: 339 & 341 Bella Vista Avenue Applications
Applicant: Dan Ross
Planning Commission Meeting – 04-13-16
Objections to Proposed Construction
Supplement

Dear Ms. Moseley:

Upon reading that the Planning Department considered the above referenced plan satisfies the Town's General Plan and the HDS&G, I must supplement my objections to the project.

The laundry list of HDS&G and General Plan violations is similar in length to the warnings this Applicant was provided over the last five (5) years about his plan(s). (See 04-07-16 correspondence)

It should be recognized that "mitigation," if any there will be, addresses "non-compliance." The proposed plan does not conform to the Town's General Plan or the HDS&G. Giving Applicant umpteen exceptions/waivers ... and a front yard ... is not appropriate.

HILLSIDE DEVELOPMENT STANDARDS AND GUIDELINES

Authority.

- The Planning Commission, not the DRC or Director, determines compliance of proposed projects with *the greatest impact on neighbors*. (@ pg. 63)
- The R-1 lots are included in the HDS&G because of the presence of a hillside environment and/or steep slopes. (@ pg. 7)
- “Standards” are mandatory, nondiscretionary regulations that must be followed. (@ pg. 10)
- The Burden of Proof for exceptions to “Standards” is on the Applicant to show *compelling reasons* for each deviation. (@ pg. 67)

“Standards” violated:

1. **LRDA.** (@ pgs. 12-15) There is no LRDA.
2. **Avoid Hazardous building site.** (@ pg. 16) +30° slopes are considered “hazardous” by the HDS&G.
3. **Cut and Fill.** (@ pgs. 17-18) Both were exceeded.
4. **Driveway and Parking.** (@ pgs. 22-23) Exceeds 15° slope and has inadequate line of sight.
5. **Geological hazards.** (@ pg. 23) 53 ° slope, soft dirt, too close to downhill Townhomes – one (1) of them has small children.
6. **FAR.** (@ pgs. 27-30) Plan exceeds FAR by +600 sq. ft. Exceptions to the FAR cannot result in significant visual impact to neighboring properties. (@ 30)
7. **Architectural Design.** (@ pgs. 31-32) Privacy not coherently addressed.
8. **Building Height.** (pgs. 35-36) Exceeds the 28’ max.

9. 3-Story building Prohibited. (@ pg. 36) This is a three (3) story building.

10. Bulk and Mass. (@ pgs. 36-38) Is prominently visible to surrounding properties.

11. Tree Preservation. (@ pg. 54) Removal of one (1) +200 year-old tree and another +100 year old tree leaves a 60' open gap to the tree-lined ridge. Both trees are healthy. A recent change to the Tree Ordinance precludes removal of both trees.

LOS GATOS **2020 GENERAL PLAN**

“General Plan provisions” violated:

<u>Citation</u>	<u>Item</u>
------------------------	--------------------

LU-1	Goal #1. To preserve, promote, and protect the existing small-town character and quality of life within Los Gatos.
-------------	---

LU-1.3	Policy. Preserve existing trees, natural vegetation, natural topography ...
--------	---

LU-1.4	Policy. <i>“Infill projects shall be designed”</i> with respect to neighbors.
--------	---

LU-7	Goal #7. Encourage appropriate infill development.
-------------	---

LU-7.2	Policy. Ensure compatibility with surrounding neighborhoods.
--------	--

LU-7.3	Policy. Infill projects shall contribute to the neighborhood, and <i>“shall not detract from the existing quality of life.”</i>
--------	---

LU-7.4	Policy. Infill projects shall not compete with the surrounding neighborhoods as to scale or character.
--------	--

Citation **Item**

CD-2 **Goal.** Limit the intensity of new development.

CD-2.1 Policy. Building setbacks shall increase as mass and height increase.

CD-4 **Goal.** Preserve existing trees.

CD-4.3 Policy. Protected trees should be preserved.

CD-6 **Goal.** Promote and protect the physical and other distinctive qualities of residential neighborhoods.

CD-6.1 Policy. Reduce the visual impact of new construction to its neighbors.

CD-6.3 Policy. “Encourage basements and cellars to provide “hidden” square footage in lieu of visible mass.” (Emphasis not added)

CD-6.4 Policy. Site new homes to maximize privacy, livability. Siting should not create visual impacts affecting other properties.

CD-14 **Goal.** Preserve the natural beauty and integrity of surrounding hillsides by regulating new homes.

CD_14.1 Policy. Minimize development and preserve and enhance the rural atmosphere and natural plant and wildlife habitats in the hillsides.

CD-14.3 Policy. A maximum of two (2) stories shall be visible from every elevation.

CD-14.4 Policy. Projection above the ridge view is prohibited.

CD-14.6 Policy. Discourage inappropriate development on and near the hillsides.

Citation **Item**

CD-15 **Goal.** Preserve the natural topography by regulating grading.

CD-15.4 Policy. Preserving native trees.

CD-15.5 Policy. Promote minimal disruption of existing native plants.

CD-16 **Goal.** Promote and protect view sheds and scenic resources.

CD-16.1 Policy. Prevent development that significantly depletes, damages, or alters existing landscape vista.

CD-16.3 Policy. Respect the views of neighbors ([uphill or down])

Thank you.

Respectfully,

/s/

Patrick K. Tillman

cc: Mary Badame (*by e-mail*)

***This Page
Intentionally
Left Blank***

Marni Moseley

From: Barnickel, John, RVP <john.barnickel@medtronic.com>
Sent: Monday, April 11, 2016 3:42 PM
To: Marni Moseley
Subject: 341 Bella Vista

Dear Ms. Moseley: I am writing to express my support for the proposed home development at 341 Bella Vista.

I am a neighbor and my wife, kids, and I walk by this site several times per week. As you know, this is a neighborhood of one to three story homes, some with apartments and condos in the back, and attached higher density townhomes with reduced setbacks, adjacent to highway 9. I have viewed the story poles, and this plan is reasonable for the neighborhood and appears to be an improvement over many of the existing sites and structures.

It should be mentioned that I prefer that the proposed plan include a garage to minimize on street parking demands.

My travel plans do not allow my in-person support so I hope this email correspondence will suffice. Thank you.

John Barnickel
Templeton Lane, Los Gatos
Vice President, Pacific Region
Cardiac and Vascular Group
Medtronic, Inc.
(925) 872-3000 Mobile
www.medtronic.com

[CONFIDENTIALITY AND PRIVACY NOTICE] Information transmitted by this email is proprietary to Medtronic and is intended for use only by the individual or entity to which it is addressed, and may contain information that is private, privileged, confidential or exempt from disclosure under applicable law. If you are not the intended recipient or it appears that this mail has been forwarded to you without proper authority, you are notified that any use or dissemination of this information in any manner is strictly prohibited. In such cases, please delete this mail from your records. To view this notice in other languages you can either select the following link or manually copy and paste the link into the address bar of a web browser: <http://emaildisclaimer.medtronic.com>

Planning

From: Jade Corral <jadecorral@gmail.com>
Sent: Tuesday, April 12, 2016 11:27 PM
To: Planning
Cc: Marni Moseley
Subject: 341 Bella Vista
Attachments: 341BellaVista.docx

April 12, 2016

Dear Planning Commissioners,

When you are to look at the homes already constructed along Bell Vista it is evident to see that the homes are built around the trees. The homes that are already established take advantage of the rich natural resources that the trees provide. Yet, the applicant looks to annihilate three currently protected Oak trees on the plan building site. Why would this sole individual be above the protection of these trees? What precedent would this set for future developments looking to level Redwoods, Oaks and other trees that are over a hundred years old? It would clearly set a precedent that invaluable resources that have stood for over a hundred years can be decimated for a quick profit.

The trees are not the only concern on the hillside. Removing the undergrowth would allow for soil erosion, an increase in water runoff and the migration of wildlife that currently resides in the undergrowth. To bring in copious amounts of heavy, hazardous machinery to remove the greenery would cause severe soil erosion; the roots of the trees and undergrowth which currently hold all the soil and nutrients to the hillside will be uprooted. With the plants no longer present to absorb water this will cause runoff into the trail that runs directly below the hillside. Many residents use this path to access Bella Vista and Downtown, it would be impossible to utilize the path once the runoff is flooding down the demolished hillside. The runoff would not be the only thing to flood down into the paths and homes that are nestled below. The removal of the undergrowth will be a detriment to all wildlife that is currently housed in and on the hillside.

For the above reasons the only action that is conceivable is to deny the application.

Jade Corral
(408) 458 0520
jadecorral@gmail.com
160 Maggi Court

TO: Chair Bodome and the Planning Commission
From: Lee Quintana

Re: 347 Bella Vista
Hearing: 4/12/2016

RECEIVED

APR 13 2016

TOWN OF LOS GATOS
PLANNING DIVISION

ORGANIZATION:

- I. Attachment: Most relevant section of Planning Documents
- II. Introduction: Site Constraints
- III. Issues and Questions
- IV. Closing Thoughts and Suggested Project Modifications

I. ATTACHED: SECTION OF MOST RELEVANT PLANNING DOCUMENTS

- General Policy on Cellars
- Zoning definitions for a story and for a cellar
- Residential Design Guidelines
- Town Council Resolution on Cellars and Attics
- Hillside Development Standards and Guidelines (HDS&G)
-

II. INTRODUCTION: SITE CONSTRAINTS

The physical constraints of this site make it a challenge to develop. This is not a typical R-1 lot. Nor is it a typical of a lot subject to the HDS&G.

It is smaller than a typical hillside lot, it has a higher average slope than the typical hillside lot, it contains no area that would normally be qualify as a LRDA, it does not meet the R-1 zoning requirement for depth, and it is located uphill from a PD zoning that allows townhouses at a higher density than and with different development standards than the R-1 zone.

In addition it is heavily wooded, contains several heritage tree, and trees identified to be removed may affect adjacent trees which may require the removal of additional trees not currently identified for removal in the final report of the Town's arborist.

It is not appropriate to compare the proposed homes on the east side of Bella Vista with the project; the depth and width of the homes to the east are very different. Nor is it fair to compare a single family home in an R-1 Zone with multi-family homes in a PD.

III. ISSUES AND QUESTIONS

There are numerous issues and question raised by this application related to individual aspects of the project, as well as to the application as a whole, These need to be addressed before the Planning Commission makes any decision on this project.

Are the individually aspects of the project consistent with the relevant sections Town's planning regulations (General Plan, Zoning Code, Hillside Development Standards and Guidelines, Residential Design Guidelines etc.)?

But, more important, when taken as a whole is the project consistent with the intent and forward the goals of the Town's various land use regulations and documents?

Story, Cellar, Garage:

- Is the lower level a cellar or a story?
- Can a Story also be a Cellar or are they mutually exclusive?
- If a cellar, is it compatible with the intent of the GP Policy on cellars?
- Are cellars (or basements) allowed to extend beyond the footprint of the story above?
- How was the mass of the bottom floor of this structure (and the overhang of the main floor) included in the analysis of mass and bulk ?
- Should the garage footage above 400 be counted towards floor area?

Grading and Foundations:

- Should piers that are required to support foundations or retaining walls be considered when evaluation the projects consistency with the HDS&G grading standards (the heigh of the piers are not discussed in the staff report).
- Is the retaining wall, which runs parallel to Bella Vista and along the far south side of the property, required to support the Bella Vista, to support the house foundation, or both?
- Can the area created by these walls be backfilled to more closely recreate the original topography?
- Is this area consistent with the Council Policy on Cellars or the intent of the General Plan Policy on cellars?
- If the NW portion of the main floor were set back from the floor below (as is the SW side) would the requirements for retaining walls, foundation wall, and piers be reduced?
- Is the projecting western portion of lowest floor (adjacent to living room) a usable balcony or a green roof not intended for use as a balcony?

Additional Questions:

- Why is the setback line along the east side measured from the edge of pavement along Bella Vista rather than from the lot line?
- What portion of the understory to the trees will be removed to conform with the geotechnical recommendations?
- How does the proposed landscaping meet the HDS&G and fire code recommendations for defensible space on steep hillsides?
- Maximum floor area allowed:
- The above questions and answers as they relate to allowed floor area.

IV. CLOSING THOUGHTS AND SUGGESTED MODIFICATIONS:

Closing thoughts and conclusions

Based on the the Attached list of relevant Town regulations the conclusions I have reached are that the project:

- The proposed project is not consistent with the intent of the General Plan policy on cellars, the Council Policy on Cellars or with the Residential Design Guideline regarding cellars when considering mass and bulk.
- The proposed lower level of the proposed house is a story not a cellar
- The project does not meet the intent of the HDS&G regarding the maximum allowed intensity
- The project does not meet the HDS&G grading standards

While this is legal lot with a right to build, the project is still subject to discretionary action regarding to the intensity of the development approved. While the Commission may reach a different conclusion I do not find the intensity of development the currently appropriate given the site's very real constraints.

Please require the applicant to return to the Planning Commission with a project redesigned to an appropriate intensity based on the site constraints.

Redesign:

To achieve an appropriate intensity the redesign needs to:

- Reduce the overall mass and bulk of the structure
- Better address privacy concerns
- Reduce grading impacts regardless of how the lower floor is defined (a story or a cellar),
- Restore more of the site to its original topography

Modification to Consider

The following are some concepts to achieve an appropriate intensity. They are not specific design directions. No doubt others and better ideas I have not thought of.

- Replace the garage with a parking pad. Garages are not required. The surface parked cars would not be highly visible from Bella Vista.
- Replace garage storage with modest sized storage unit(s) at the edge of the parking pad designed to be consistent with the architecture of the house and integrate into the house design. If the dimensions were kept modest (+/- 5' deep and 6' high) the visual impact of the garage would be reduced.
- Setback the entire main floor from the bottom floor. Currently the SW side is set back, however the NW corner extends beyond the lower floor.
- Replace the roof deck (SW portion of roof) with a green roof similar to one on the NW corner of the main floor roof shown.
- Limit light exit wells on the west side and front to the minimum required by fire code.
- Reduce the size of the lower south side patio

- Eliminate the stairwell to the roof deck and reduce the size of the upper south side patio

Thank you for your consideration,

Lee Quintana

II. MOST RELEVANT POLICIES, REGULATIONS AND DEFINITIONS

General Plan Policy LP2.3 Cellar/basements

Encourage basements and cellars to provide hidden square footage in lieu of visible mass.”(emphasis added)

Zoning Code Section 29.10.20 Definitions: Story

Story means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement or cellar is more than six (6) feet above grade, such basement or cellar shall be considered a story. Three story building elevations are prohibited in Hillside Residential and Resource Conservation Zones.

Zoning Code 29.10.020 Definitions: Cellar

Cellar means an enclosed area that does not extend more than four (4) feet above the existing or finished grade in any location. Cellars, as defined here, shall not be included in the floor area ratio calculation for residential developments. That area of a cellar where the building height exceeds four (4) feet above existing or finished grade shall not be included in this definition and shall be included in the floor area ratio calculation. For purposes of this definition whichever grade (existing or proposed) results in the lowest building profile of a building shall be used. (emphasis added)

Residential Design Guidelines. Cellars (p.23)

Cellars are defined as an enclosed area that does not extend more than 4 feet above the existing or finished grade, and are not counted in the Floor Area Ratio calculation, by Town Policy. **However, if any part of a cellar is above grade, it shall be considered in analyzing the bulk and mass of the structure, even if it is not included in the FAR.** The intent set forth in the General Plan is “to provide hidden square footage in-lieu of visible mass.” (emphasis added)

Town Council Resolution 2002-167 Adopting Cellars and Attic Policy:

Definition:

Cellars as defined here, shall not be included in the FAR. That area of a cellar where the building height exceeds four feet above existing or finished grade shall not be included in this definition and shall be included in the floor area calculation. For purposes of this policy, whichever grade (existing or proposed) results in the lowest building profile of a building shall be used.

Policy:

In reviewing plans for cellars staff shall consider the following:

- **A cellar shall not extend more than four feet above the adjacent finished grade at any point around the perimeter of the foundation.** Below grade floor

area must meet the above definition of cellar to be excluded from the floor area calculation for the structure.(emphasis added)

- If any portion of a cellar extends more than four feet above grade, that area shall be included in the floor area calculation.
- **Light and exit wells may encroach into front and side yard setbacks provided that a minimum three-foot wide pedestrian access is provided around the light well(s). Light wells and exiting shall be the minimum required to comply with the Uniform Building Code criteria for natural light and ventilation.** (emphasis added)
- Below grade patios may extend out from a cellar into the required rear yard provided that a minimum 10 foot setback is retained from the rear property line.
- **Cellars and basements (except light and exit wells) shall not extend beyond the building footprint.** (emphasis added)
- The Planning Commission may allow an exception to this policy based on extenuating or exceptional circumstances applicable to the property including, size, shape, topography, location or surroundings. The Commission shall make findings to support such a decision.
(emphasis added)

Hillside Development Standards and Guidelines

Things to Consider Before you Begin the Design Process (bullets 3-6 and footnote 1):

- The HDS&G establish a framework for appropriate design, standards and minimum and/or maximum requirements. However, stricter standards may be required to avoid potential impacts and to achieve the goals and objectives of the HDS&G.¹
- The illustrations provided in the HDS&G are schematic and meant to show the intent of a standard or guideline.
- Not every site can be developed at the maximum density or intensity allowed by the Zoning Ordinance. Some sites cannot accommodate a two-story home
- ¹Designs that are bulky and massive may be more difficult to get approved (see Chapter V. section F. on pages 37-39).

Grading Standards:

Cut/Fill Standards (1 to 6)

1. Cuts and fills in excess of the following levels are considered excessive and contrary to the objectives of the Hillside Design Standards and Guidelines. Grade to the minimum amount necessary to accommodate buildings and to site structures consistent with slope contours. These are maximum numbers and may be reduced by the deciding body if the project does not meet other grading standards or is not consistent with the goals and objectives of the Hillside Development Standards and Guidelines.

Table 1 Maximum Graded Cuts and Fills

House and attached garage: 8' cut, 3' fill (excluding cellar)

Other (decks, yards): 4' cut 3' fill

Combined combined depths of cut/fill for development other than main residence shall be limited to 6'.

3. Buildings shall be located in a manner that minimized the need for grading and preserves.....
4. Unless specifically approved by the Town, strip grading and clearing land of native vegetation is prohibited except for small areas adjacent to buildings, access drives and parking areas.
5. **Graded areas shall not be larger than the area of the footprint of the house, plus that area necessary to accommodate access, guest parking, and turnaround areas. (emphasis added)**
6. **After placing development the site shall be restored as closely as possible to its original topography. (emphasis added)**

Development Intensity Maximum Allowable Development

A. Maximum allowed gross floor area

The maximum allowable gross floor area for homes subject to the Hillside Development Standards and Guidelines is determined using a floor area ratio (FAR) adjusted for slope as provided in Table 1, below. However, **achieving the maximum floor area allowed is not guaranteed due to individual site constraints. The priority is to comply with the standards and guidelines rather than designing to the FAR. The FAR is a numerical guide and achieving the allowable square footage is not a goal. Greater weight shall be given to issues, including but not limited to, height, building mass and scale, visual impacts, grading and compatibility. (emphasis added)**

B. Exclusions from allowable Floor Area

1. Cellars
2. **Garages up to 400 square feet in area. (emphasis added)**

Exception to Maximum Floor Area

The Town Council or Planning Commission may approve residential projects greater than the maximum allowed floor area (when all of the following conditions apply:) Of the 9 criteria listed the proposed project may or may not meet the following criteria for an exception.

2. There will be no significant impacts on protected trees, wildlife habitat or movement corridors.
3. Any grading necessary to accommodate the building area that exceeds the allowed FAR or an accessory building will be minimized.
4. All standards and applicable guidelines are being met.
7. A minimum of 25% of hardscape material is permeable (certain types of interlocking pavers, grasscrete, pervious concrete, etc.).
8. A significant cellar element is included in the design, unless it conflicts with other standards.
9. There will not be a significant visual impact to neighboring properties.

Cellars And Basements

Posted on [July 2, 2014](#) by [Michael Zenreich](#) mzarchitects.com/cellars-and-basements-2/

Let's start off by agreeing that the English language is ambiguous.

That being said, there are some words and definitions that are clear, but are constantly used incorrectly. The best example of this is the misuse of the words **"cellar"** and **"basement"**.

In the world of Architecture there is a major difference between a "cellar" and a "basement". The New York City Zoning Resolution, The New York State Multiple Dwelling Law, The New York City Housing Maintenance Code, and the New York City Building Code all use both of these terms differently.

All of these Codes draw a distinction between a "cellar" and a "basement". I would like to break down the different definitions and discuss why it is important to be clear in labeling a sub grade floor either a cellar or basement.

According to the New York City Zoning Resolution, a "cellar" is a space wholly or partly below curb level with more than one-half its height (measured floor to ceiling) below curb level. A "basement" is a story (or portion of a story) partly below curb level, with at least one-half its height (measured from floor to ceiling) above curb level.

Why does this matter? Generally "cellar" space is not counted as "floor area" and does not count towards the amount of "floor area" that the zoning district permits one to build. A "basement" on the other hand is "floor area" and counts as a "story". The zoning resolution sometimes limits the maximum number of stories and therefore a "basement" is considered like any other "story" above grade.