BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA

FORM 150 – MOTION FORM

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:	*20452 and 20453*

Motion of:	☐ Applicant	☐ Petitioner	☒ Appellant	☐ Party	☐ Intervenor	☐ Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

JOINT MOTION OF APPELLANTS DUPONT EAST CIVIC ACTION ASSOCIATION AND MICHAEL D. HAYS TO REVISE SUBMISSION SCHEDULE

Points and Authorities:

On a separate sheet of 8 ½" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

- ❑ Yes, consent was obtained by all parties
- ❑ Consent was obtained by some, but not all parties
- ☒ No attempt was made
- ❑ Despite diligent efforts consent could not be obtained

Further Explanation: ***No representative or attorney for any other parties other than the Dupont East Civic Action Association and Michael D. Hayes have entered an appearance in this case to-date. The Certificate of Service lists all parties that received a BZA Notice (other than Councilmembers), as well as, counsel for the Property Owner (Supreme Council of the Scottish Rite of Freemasonry, 33rd Degree) and counsel for the developer (Perseus TDC).***

CERTIFICATE OF SERVICE

I hereby certify that on this DD *10* day of *March* Month, YYYY *2021*

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning in the above-referenced ZC or BZA case via: ❑ Mailed letter ❑ Hand delivery ☒ E-Mail ❑ Other _____

Signature:	*/s/ Edward Hanlon*		
Print Name:	*Edward Hanlon*		
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Board of Zoning Adjustment
District of Columbia
CASE NO.20452
EXHIBIT NO.20

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPEAL OF A DECISION OF THE ZONING ADMINISTRATOR FOR THE DISTRICT OF COLUMBIA, DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS SUBDIVISION OF LOT 108 ON SQUARE 192

In re APPEAL OF DUPONT EAST CIVIC ACTION ASSOCIATION	)	Case No. 20453
In re APPEAL OF MICHAEL D. HAYS	)	Case No. 20452

JOINT MOTION OF APPELLANTS
DUPONT EAST CIVIC ACTION ASSOCIATION AND
MICHAEL D. HAYS TO REVISE SUBMISSION SCHEDULE

INTRODUCTION

Appellants Dupont East Civic Action Association and Michael D. Hays (collectively "DECAA") hereby move the Board of Zoning Adjustment ("BZA") to revise the dates for submissions set forth in the BZA Rules of Practice and Procedure Subtitle Y §§ 302.16-302.18 to provide more time for the parties to prepare their submissions and for the BZA to consider those submissions before the hearing scheduled on May 12, 2021. As grounds for this motion, DECAA states as follows.

BACKGROUND

The Subdivision Applicant (collectively the Supreme Council of the Scottish Rite of Freemasonry, 33rd Degree, Southern Jurisdiction, USA ("Masons") and the developer, Perseus

TDC) seek to build a luxury apartment building (the "Luxury Project") on the open green area ("Temple Gardens") to the east of the Masonic Temple located at 1733 16th Street, N.W., a designated historic landmark and also a contributing building to the Sixteenth Street Historic District. To consummate this venture, the Applicant sought the subdivision of Lot 108 ("Subdivision"), which includes the Temple and the Temple Gardens, to separate the site of the Luxury Project from the site of Temple. This action was necessary for the purpose of preserving the tax-exempt status of the Temple, the land of which cannot, per the terms of Congressional legislation, be used for commercial purposes, and to comply with the requirement that two principal buildings cannot co-exist on the same lot.

Architect John Russell Pope, who also was the architect for such notable buildings as the Jefferson Memorial and the National Archives, designed the Temple and modeled it after the tomb of Mausolus at Halicarnassus, one of the Seven Wonders of the Ancient World. Its stately grandeur has graced this city for over 100 years. Architects have widely praised the building's design.[1]

The rear apse of the Temple is an important architectural feature of the Temple, portrayed in articles and an obvious and significant contributing element to the Temple's beauty. The Subdivision subdivides Lot 108 along a north-south axis into two roughly equally sized lots. The Subdivision approved by the Zoning Administrator on November 19, 2020 would draw a new lot line *only* 5'9" behind the apse at the rear of the Temple, making all the open green space in the

[1] It won Pope the Gold Medal of the Architectural League of New York in 1917. In his 1920 book *L'Architecture aux Etats-Unis*, French architect Jacques Gréber described it as "a monument of remarkable sumptuousness[.]" Fiske Kimball's 1928 book *American Architecture* describes it as "an example of the triumph of classical form in America." In the 1920s, a panel of architects named it "one of the three best public buildings" in the U.S. In 1932, it was ranked as one of the ten top buildings in the U.S. in a poll of government architects.

Temple Gardens part of a new Lot 111 on which the Applicant intends to build the huge apartment complex. The apartment complex would wholly block the view of the Temple's apse.

The Zoning Administrator failed to conduct any analysis of the issues surrounding the Subdivision issues relating to the Temple itself. Indeed, an FOIA request revealed that the *only* document addressing the Temple's compliance with the Zoning Rules as a result of the Subdivision was the one sentence approval itself, which merely stated as follows: "I certify that this subdivision complies with all applicable provisions of DCMR 11, Zoning Regulation of the District of Columbia."

ARGUMENT

The hearing on the above appeals is currently set for May 12, 2021. The BZA Rules currently provide for party submissions as follows:

> 302.16 No later than twenty-one (21) days before the date of the public hearing on the zoning appeal, the appellant shall file with the Board any supplemental documents.
>
> 302.17 No later than seven (7) days before the public hearing, the appellee and all persons with party status and the affected ANC shall file any responsive briefs and supporting information, whether in support of or opposition to the appeal. All filings shall be accompanied by a certificate of service.
>
> 302.18 No later than three (3) days before the public hearing, the appellant may file a brief and supporting information in reply to any of the responsive briefs.

DECAA respectfully submits that additional time should be incorporated into this schedule to provide the parties with additional time to prepare their submissions and for the BZA to consider those submissions before the May 12 hearing. This case involves a number of complicated issues, including DECAA's contentions that:

- The Subdivision Violates the Minimum Rear Yard Requirements of 11 DCMR Subtitle F § 605.1 of ZR-16;
- The Subdivision Violates the Minimum Loading Requirements of 11 DCMR Subtitle C § 901.1 and § 901.4 of ZR-16;

- The Subdivision Violates the Location Requirements of 11 DCMR Subtitle C § 903.1 of ZR-16;

- The Subdivision Violates the Size and Layout Requirements of 11 DCMR Subtitle C § 905.2, § 905.3 and § 905.4 of ZR-16;

- The Subdivision Violates the Minimum Parking Requirements of 11 DCMR Subtitle C § 701.5

- The Subdivision Increases the Nonconforming Height of the Existing Building by Altering the BHMP.

In addition, Appellants have two expert witnesses that they must consult with and who must prepare additional submissions.

Among other things, the submission schedule set forth in Subtitle Y §§ 302.16-302.18 does not provide adequate time for each Appellant to prepare a reply to the submission of the opposing parties, particularly given the total absence of any documentation regarding the basis for the Zoning Administrator's approval of the Subdivision. Accordingly, Appellants propose the following schedule, which provides additional time for opposing parties to prepare their submissions and for Appellants to reply, and additional time for the BZA's consideration of these filings:

- Monday April 12, 2021: Appellants shall file with the Board any supplemental documents; (9 days earlier than required under § 302.16)

- Friday April 30, 2021: Appellee and all persons with party status and the affected ANC shall file any responsive briefs and supporting information, whether in support of or opposition to the appeal (giving them 18 days after Appellants' submission instead of 14 days, 4 extra days than the time between filings allowed under §§ 302.16-302.18)

- Friday, May 7, 2021: Appellants may file a brief and supporting information in reply to any of the responsive briefs (giving Appellants' 7 days instead of 3 days, 4 extra days than the time between filings allowed under §§ 302.16-302.18)

By agreeing to file their § 302.16 documentation 9 days earlier than required under the Board's Rules, Appellants' request would give all other parties 4 extra days (18 in total) to file their responsive briefs and supporting information than presently allowed and would likewise give Appellants 4 extra days (7 days in total) than presently allowed to file supporting information in reply to any of the responsive briefs.

By granting this request all parties' filings would be received by the Board sooner than set out in §§ 302.16-302.18. Granting this request is in the interests of justice and administrative efficiency.

CONCLUSION

For all the above reasons, Appellants respectfully request that BZA grant this request for a revised submission schedule.

Respectfully submitted,

For Dupont East Civic Action Association
/s/Edward Hanlon
Edward Hanlon

For Michael D. Hays

/s/Michael D. Hays
Michael D. Hays

Certificate of Service

I hereby certify that, pursuant to 11-Y DCMR §§ 205.3(e) and 302.15, a copy of the foregoing Joint Motion of Appellants Dupont East Civic Action Association and Michael D. Hays to Revise Submission Schedule has been served, this 10th day of March, 2021, upon the following by email:

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