BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Appeals of Michael Hays and Dupont East Civic Action Association

BZA Appeal Nos. 20452 & 20453
ANC 2B04

Perseus TDC, LLC's Pre-Hearing Statement

Perseus TDC, LLC ("**Perseus**") hereby respectfully requests that the Board of Zoning Adjustment ("**BZA**" or "**Board**") deny the above-referenced appeals (collectively, the "**Appeal**").[1] Appellants, Dupont East Civic Action Association ("**DECAA**") and Michael Hays (collectively, the "**Appellants**"), challenge the subdivision approved by the Zoning Administrator on November 19, 2020 (the "**Subdivision**") of former Lot 108 in Square 192 into two lots: Lot 110 on the west (the "**Temple Lot**"), which is occupied by the Scottish Rite Temple (the "**Temple**"), a historic landmark listed in the D.C. Inventory of Historic Sites and constructed beginning in 1911; and Lot 111 on the east (the "**Eastern Lot**").

The Appellants argue that the Zoning Administrator erred in approving the Subdivision for zoning compliance because the resulting Temple Lot fails to comply with the 2016 Zoning Regulations. As discussed in detail below, the Appellants are wrong: the Temple Lot is fully compliant and the Zoning Administrator did not err in approving the Subdivision. Accordingly, Perseus respectfully requests that the Appeal be denied.

I. Background

The Subdivision site, former Lot 108 occupying the northern segment of Square 192, was established in 2013 and consists of land that historically was comprised of numerous lots with various configurations that evolved over more than a century. The Temple, located on the

[1] Perseus is lessee of the Eastern Lot, as defined below. As such, it is automatically a party to these proceedings pursuant to Subtitle Y § 501.1(c).

western portion of the site along 16th Street, NW, was constructed beginning in 1911 and completed in 1915. At that time, the lot on which the Temple sat, former Lot 800 (shown on the 1919 Baist Map attached as Exhibit A), consisted of approximately 44,769 square feet, or slightly less than half (approximately 48.5%) of the total 92,220 square feet that would eventually become former Lot 108. The balance of the land consisted of individual rowhome lots fronting on S and 15th Streets, an internal network of public alleys, and various alley structures. Over the course of the following century, the Masons gradually acquired the remaining property located in future Lot 108, with a small handful of the lots acquired and the rowhomes demolished by the mid-1960s and the rest acquired over the following decades. As the lots were acquired, they were consolidated into successively larger Assessment and Taxation Lots, once in 1976 and then again in 1996, after the last acquisitions were made in the early 1990s. Closure of the internal public alley network was completed in 2011, with Lot 108 created two years later.

The Subdivision divides Lot 108 into two lots, both with an area of 46,110 square feet. Accordingly, the Temple Lot will be moderately larger — by approximately 1,341 square feet — than the original Lot 800 upon which it was built. The subdivision is a necessary prerequisite to the Masons' ground lease of the resulting Eastern Lot to Perseus for the development of a multifamily residential building, as Subtitle C § 302.2 of the Zoning Regulations limits residential lots to one primary building per lot. The Historic Preservation Review Board ("**HPRB**") reviewed the Subdivision on three separate occasions in 2018 and 2019 and found the Subdivision to be compatible with the landmark and the Sixteenth Street and Fourteenth Street Historic Districts during each review, and the Mayor's Agent for Historic Preservation ("**Mayor's Agent**") likewise approved the Subdivision in 2020. The HPRB, in 2019, also granted concept approval for the design of the residential project and rejected an application filed

by Appellant DECAA to expand the Temple landmark boundary. DECAA filed a lawsuit against the District challenging the HPRB's landmark boundary decision and concept approval for the residential project. The District of Columbia Superior Court dismissed the lawsuit in 2020, and DECAA appealed that dismissal, which appeal is currently pending before the District of Columbia Court of Appeals. The Appellants also appealed the Mayor's Agent's approval of the Subdivision to the Court of Appeals; that appeal is also currently pending. The Appellants now seek to challenge the Subdivision before this Board, arguing that the Temple Lot does not satisfy zoning requirements.

II. The Subdivision Complies with the Zoning Regulations.

The approved Subdivision does not violate the Zoning Regulations. Subtitle C, Section 302.1 provides, in relevant part:

> Where a lot is divided, the division shall be effected in a manner that will not violate the provision of this title for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces, or loading berths applicable to that lot or any lot created . . . .

11-C DCMR § 302.1; *see also* 11-A DCMR § 101.6 (stating same). The Appellants claim that the Temple Lot, located in the RA-9 zone, violates applicable rear yard, height, loading, parking, and side yard requirements as well as the purpose and intent of the regulations. Despite the fact that the Temple was constructed before any zoning regulations were enacted in the District of Columbia, the Temple Lot does comply with each of the current Zoning Regulations.

As explained below, the Zoning Administrator properly approved the Subdivision and should be given great deference in interpreting the Zoning Regulations. *See Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, 431 A.2d 560, 565 (D.C. 1981) ("accord[ing] great deference to an agency's interpretation of its own administrative regulations" and "uphold[ing] that construction unless clearly erroneous or inconsistent with the

regulations"); *see also BZA Order No. 18152, Appeal of ANC 1D* ("Certainly deference is due when the ZA selects a reasonable approach."). The Appellants complain that the Zoning Administrator did not evaluate the compliance of the Temple Lot in writing. However, no such written explanation is required.

As explained below, the Temple Lot complies with (a) the rear yard requirements; (b) the maximum height requirements; (c) the minimum vehicle parking requirements; (d) the minimum loading requirements; (e) the side yard requirements; and (f) the purpose and intent of the RA-9 zone.

A. The Temple Lot Satisfies Rear Yard Requirements.

The Appellants allege several errors in arguing that the Temple Lot violates minimum rear yard requirements. The Appellants contend as follows: that the designation of S Street, NW as the front for purposes of measuring rear yard is improper; that the Temple areaways must be excluded from the measurement of the depth of the rear yard; and that the Temple dome must also be included in building height for purposes of calculating the minimum rear yard depth requirement. As discussed in detail below, the Appellants' arguments fail on all counts and the Temple Lot satisfies the Zoning Regulations requirements for rear yard.

1. The Zoning Administrator Did Not Err in Allowing S Street, NW to Be Designated as the Street Frontage for Rear Yard Purposes.

The RA-9 zone requires a rear yard that is the greater of 15 feet or "a distance equal to four (4) inches per one (1) foot of principal building height." 11-F DCMR § 605.1. Appellants argue that the Temple's rear yard must be located to the east of the Temple, opposite 16th Street, and therefore fails to comply. With a Building Height Measuring Point ("**BHMP**") on 16th Street, NW, the height of the Temple is approximately 85.25 feet as shown in the west (16th

Street) elevation on Page A4.00 included in Exhibit B.[2] Therefore, the minimum rear yard requirement is 28.42 feet (85.25 x 4 ÷ 12 = 28.42). As shown on the Zoning Diagram attached as Exhibit C, the front of the Temple Lot for rear yard purposes has been designated as S Street, NW and, therefore, the rear yard is located to the south of the Temple abutting the alley. The rear yard is approximately 42.5 feet and thus complies.

First, the Appellants claim that the designation of the rear yard opposite S Street, NW is an inappropriate "*re*designation." Brief of Michael Hays in Case No. 20452 (hereinafter, "**Hays Brief**") at 2; 22-28 (emphasis added). However, the Temple was constructed in 1911, prior to the adoption of any zoning regulations in the District of Columbia. Accordingly, a rear yard never was designated and there can be no "redesignation." In any event, the Board has previously held that "any prior designation of the front of a building does not bind the property owner . . . so long as the existing building will remain conforming." *BZA Appeal No. 18152 of ANC 1D* (2012) at 7 (included in Exhibit D). "The Zoning Regulations do not prohibit this result and the flexibility it affords is consistent with the intent of the regulations." *Id.*

The Appellants go on to argue that S Street, NW cannot be designated a "front" for rear yard purposes because there is no door on that side of the building. Brief of DECAA in Case No. 20453 (hereinafter, "**DECAA Brief**") at 22. Nothing in the Zoning Regulations requires that there be a door on the side of the building opposite the rear yard, nor has the Zoning Administrator ever interpreted the regulations as imposing such a requirement. Moreover, in *BZA Appeal No. 19080 of Adams Morgan Neighbors for Action* (2016) (included Exhibit D), which challenged the building permit authorizing construction of The Line Hotel at 1770 Euclid Street, NW (hereinafter, "**The Line Hotel Appeal**"), the Board agreed with the Zoning Administrator's

[2] As discussed in detail below, the height of the Temple for zoning purposes does not include the dome atop the building.

conclusion that Columbia Road could be designated as the hotel's front for rear yard purposes despite the main building entrance being on Euclid Street. The Board held that "the Zoning Regulations unambiguously — and without any restriction — allow the Owner to select which street will be used to determine street frontage." *BZA Appeal No. 19080* at 4. The Board affirmed as reasonable the Zoning Administrator's interpretation that the "selection of street frontage is not tied to the location of the building entrance or the address of the property . . ." *Id.* at 5. Regardless, there is a door facing S Street, as shown on the north elevation on Page A4.02A of Exhibit B, making any such argument moot.

The Appellants further claim that whichever side of a building is designated as the "front" for building height measurement purposes must also be the "front" for rear yard purposes, pointing to Subtitle B, Section 308.7, which states, "if a building fronts on more than one (1) street, any front may be used to determine street frontage; but the basis for measuring the height of the building shall be established by the street selected as the front of the building." 11-B DCMR § 308.7.

However, the Appellants' argument ignores both the language of the regulations and well-established precedent. The definition of "street frontage" states that "where a lot abuts more than one (1) street, the owner shall have the option of selecting which is to be the front for purposes of determining street frontage." 11-B DCMR § 199.1. The Zoning Regulations further provide, "a lot may have more than one (1) rear lot line." 11-B DCMR § 317.2. Both this Board and the Zoning Administrator have long acknowledged a distinction under the regulations between the designation of street frontage for rear yard purposes and what constitutes the front of a building for purposes of measuring building height. In The Line Hotel Appeal, the Board affirmed as reasonable the Zoning Administrator's interpretation that the "selection of street

frontage is not tied to the location of the building entrance or the address of the property . . . ***nor . . . is the selection of street frontage tied in any way to the measurement of building height***; i.e. the ZA testified that 'measuring the building height can occur on another street frontage besides the choice of the frontage for the frontage of the lot.'" *Id.* at 5 (emphasis added). As made clear in The Line Hotel Appeal Order:

> The Board agrees with the position advanced by DCRA's counsel, that there is a distinction built into the Zoning Regulations between the determination of "street frontage" and the "front" of a building. Street frontage is used, among other things, to determine the rear lot line designation; whereas, building frontage is used to measure building height. (Tr., p. 126-127). ***As such, the fact that Euclid Street is the building front — used to measure building height — has no bearing on the selection of street frontage.***

Id. (emphasis added).

The Zoning Administrator's recognition that the regulations permit a different "front" for BHMP and rear yard purposes represents a longstanding and consistent application of the regulations. For instance, in 2015, the Zoning Administrator reviewed a development proposal for the St. Thomas Church building at 1772 Church Street, NW (Square 156, Lot 369) and similarly determined that the height of the building in that case could be measured from 18th Street while the front of the building could be Church Street for purposes of determining side and rear yard requirements. Determination Letter dated November 4, 2015 at Conclusion No. 8 (included in Exhibit E). Likewise, in reviewing the Scottish Rite Temple located at 2800 16th Street, NW (Square 2578, Lot 25), the Zoning Administrator identified Mozart Place, NW as the front lot line for rear yard purposes and confirmed that Columbia Road could be designated as the front for building height measurement purposes. Determination Letter dated February 13, 2017 at 3–4 (included in Exhibit E).

These cases are representative of the Zoning Administrator's long-established recognition of the flexibility built into the Zoning Regulations, regulations which must be written in a way that makes basic development standards capable of being practically applied to the many diverse circumstances and predicaments posed by corner lots such as the Temple Lot at issue in this case. The Board decided this issue as recently as 2016 in The Line Hotel Appeal and concluded that the Zoning Administrator's long-held interpretation is reasonable. The Appellants have presented no convincing argument for upending this longstanding and sensible application of the regulations or for the Board to reverse its recent affirmation of the same.[3]

2. Even If the BHMP Is Located on S Street, NW, the Rear Yard Complies.

Notwithstanding the foregoing, if the Board were to reverse its prior decisions and require that S Street, NW be designated as the front of the building for purposes of both building height and rear yard, the Temple still satisfies the minimum rear yard requirement. The building height measured from S Street would be approximately 87.11 feet, as shown on the north elevation on Page A4.02A of Exhibit B. Therefore, the minimum rear yard requirement would be 29.03 feet (87.47 x 4 ÷ 12 = 29.03). Further, even if the areaway were included in the building height measurement as Appellants argue, the rear yard still complies with the Temple height.[4] In such case, as shown on Page A4.02B of Exhibit B, the Temple's height would measure to approximately 102.72 feet with a resulting minimum rear yard requirement of 34.19 feet

[3] Indeed, given the longstanding nature of this interpretation of the provisions applicable to rear yards, even if the Board were to go so far as to reverse its prior decision and overturn the Zoning Administrator, Court of Appeals precedent makes clear that any new interpretation of the Zoning Regulations on this issue should only be applied prospectively to future projects and not abruptly enforced against this Subdivision after it has received zoning approval. *See Smith v. District of Columbia Board of Zoning Adjustment*, 342 A.2d 356, 359 and n.9 (1975) (reversing Board's decision overturning the Zoning Administrator's interpretation related to decks and urging the Board to consider that any new interpretation should be made prospectively only given the longstanding nature of that interpretation).

[4] We do not concede that the Temple's areaway is included in the building height measurement given that this condition predates the 2018 text amendment (Z.C. Case No. 17-18) that revised the definitions related to grade measurement to specifically include the floor of areaways exceeding five (5) feet in width.

(102.72 x 4 ÷ 12 = 34.24). Because, as noted above, the rear yard opposite S Street, NW is 42.5 feet, it would still comply.

3. The Zoning Administrator Did Not Err in Including the Temple Areaway in the Temple's Rear Yard.

The Appellants also argue that the areaway abutting the Temple on the southern wall must be excluded from the rear yard. Hays Brief at 27. The definition of "yard" in Subtitle B § 100 states, "[a] yard required by the provisions of this title shall be open to the sky ***from the ground up***, and shall not be occupied by any building or structure, except as specifically provided in this title . . . ." (emphasis added). On this point, the provisions of Subtitle B governing what is permitted in a yard state, "a structure, not including a building no part of which is more than four feet (4 ft.) above the grade at any point, may occupy any yard required." 11-B DCMR § 324.1(a). Phrased another way, a below-grade structure, and any structure less than four (4) feet in height, is permitted to be located within a required side or rear yard. The areaway abutting the alley is below grade and the surrounding above-ground structure has a height of two (2) feet, eight (8) inches. Accordingly, the width of the areaway is properly included in the rear yard measurement.

This comports with the Board's decision in an analogous case involving a garage ramp. In *BZA Appeal No. 18888 of Adams Morgan for Reasonable Development* (2017) (included in Exhibit D), the Board considered whether a ramp leading down to a below-grade garage violated the rear yard requirement. The Board found:

> The definition of a rear yard requires that it be open to the sky "from the ground up." The garage ramp and the garage do not violate this requirement. There is no dispute that the garage ramp is located at grade and that the garage is located below grade. Neither the ramp nor the garage "occupy" the rear yard as that term is defined in the Zoning Regulations; thus, each may be located along the property line. Further, it cannot be said that both occupy more than 50% of the rear yard since they do not occupy the rear yard at all. The walls that surround the garage

> ramp are less than four feet above grade, and are therefore permissible with the required rear yard . . . .

See BZA Appeal No. 18888 at 7.[5]

Accordingly, just as the garage ramp did not reduce the dimension of the rear yard in that case, so is the width of the areaway properly counted toward the rear yard calculation here. Accordingly, the Temple's rear yard measures the full 42.5 feet from the wall of the building to the lot line and thus meets the minimum 30 feet required by the Zoning Regulations.

4. The Zoning Administrator Did Not Err in Finding That the Temple Dome is an Architectural Embellishment That Does Not Count Toward Building Height.

As noted above, the minimum rear yard requirement in the RA-9 zone is determined based on the principal building height. 11-F DCMR § 605.1. Appellants argue that the Temple dome must be included in the building's height for purposes of calculating the rear yard requirement. However, from the time the Temple was built the dome has been considered an architectural embellishment that is not counted in measuring the Temple's building height for purposes of compliance with the Height of Buildings Act of 1910 (the "**Height Act**") and the Zoning Regulations.

The "architectural embellishment" concept derives from the Height Act's special dispensation for certain types of upper story building features, and the concept is carried forward in the Zoning Regulations, where it is categorized under the general heading of "architectural embellishments." The Height Act, which was effective prior to the Temple's construction, permits certain architectural embellishments and other building components to exceed the maximum height prescribed by the Height Act. Section 5 of the Height Act provides as follow:

[5] The case was reviewed under the 1958 Zoning Regulations, which included language identical to that now provided in the relevant definitions and rules of measurement in Subtitle B.

"Spires, towers, ***domes***, minarets, pinnacles, penthouses . . . may be erected to a greater height than any limit prescribed in this Act when and as the same may be approved by the Commissioners of the District of Columbia." *See* Exhibit F, Act of June 1, 1910, ch. 263, 36 Stat. 452, 454 (emphasis added); *see also* D.C. Code § 6-601.05(h) (stating same).[6] The maximum building height permitted for the Temple under the Height Act is 130 feet, yet the building permit for the Temple, issued in 1911, states that a height of 137 feet, five (5) inches was approved "By Order of the Commissioners, DC." *See* D.C. Code § 6-601.05(b) (restricting building height to 130 feet on business streets, except for a portion of Pennsylvania Avenue, NW); Exhibit G, Temple Building Permit No. 1527 (stating that approval is "By Order of the Commissioners, D.C.") and Permit Application at ¶ 12. If the dome had not been considered an embellishment and instead been included in the Temple's building height, approval to exceed the Height Act maximum of 130 feet would have required an amendment to the Height Act specifically granting an exemption for the Temple Lot. The Height Act includes five such exemptions for specified sites, and the Temple Lot is not among those sites. *See* D.C. Code § 6-601.05(h). Accordingly, the public record is clear that the dome was not included in the building height and that the Commissioners instead approved it as an embellishment permitted to exceed the building height prescribed under the Height Act.

The same concept of allowing architectural embellishments, such as a dome, to exceed the maximum height otherwise permitted is carried forward in the Zoning Regulations. Drawing directly on the Height Act's language, the regulations state: "Architectural embellishments consisting of spires, tower, ***domes***, minarets, and pinnacles may be erected to a greater height

[6] At the time the Temple was constructed, authority to approve building elements above the maximum permitted height was vested with the then-existing District of Columbia Board of Commissioners. (This authority was subsequently transferred to the newly-created Office of the Mayor upon adoption of the Home Rule Act in 1973.)

than any limit prescribed by these regulations or the Height Act, provided the architectural embellishment does not result in the appearance of a raised building height for more than thirty percent (30%) of the wall on which the architectural embellishment is located." 11-C DCMR § 1501.3 (emphasis added). Appellants argue that this provision applies only to penthouses and is therefore "irrelevant" to height measurement. *See* BZA Ex. 23A, Supplement to Expert Report of James Curtis McCrery, II at 2. This claim misinterprets the regulation and ignores its origin from the Height Act. The placement of the architectural embellishment exemption within the penthouse regulations of Subtitle C, Chapter 15 merely reflects that this is the most logical chapter in the Zoning Regulations to address any building features that exceed primary building height. Appellants' argument ignores that the analog provision for architectural embellishments in residential zones under the 1958 Zoning Regulations was not limited as Appellants claim, and nothing in the legislative history of the 2016 comprehensive Zoning Regulations Rewrite conveyed any intent to limit the reach of the architectural embellishment exemption merely by moving it to Chapter 15 of Subtitle C. *See* ZR-58 11 DCMR § 400.3 ("A spire, tower, dome, pinnacle, minaret serving as an architectural embellishment, or antenna may be erected to a height in excess of that which this section otherwise authorizes in the district in which it is located."). The language of Subtitle C, Section 1501.3 directly echoes and explicitly references the Height Act; thus, the clear intent of the Zoning Regulations is to carry over the allowance for embellishments first established by the Height Act.

Moreover, the Appellants' reading would render Subtitle C, Section 1501.3 meaningless because a penthouse by definition exceeds a structure's primary building height. It would make no sense to grant an exemption for architectural embellishments that only applied to penthouse

height limits and left embellishments still subject to — and effectively prohibited by — the lower limit set for primary building height.

Here, the Temple dome constitutes an architectural embellishment as listed in Subtitle C, Section 1501.3, and it does not result in the appearance of a raised building height for more than 30% of the wall on which it is located. First, the dome is not located on a wall and because the dome is stepped, each step sets back from the wall on which it is located and thus does not result in the appearance of a raised height of more than 30% of the wall upon which the step is located. Therefore, the dome qualifies as an architectural embellishment to be excluded from the Temple's height measurement.

The Appellants devote much attention to arguing that treating the Temple dome as an architectural embellishment is not a plausible reading of the word "embellishment." Hays Brief at 28–32; DECAA Brief at 23. However, an extensive inquiry into principles of statutory interpretation and Webster's Unabridged Dictionary is wholly unnecessary in this case. Here, we need look no further than the unambiguous text of the Zoning Regulations and the original permitting records for the Temple in order to confirm that the dome is excluded from building height. First, the language of the Zoning Regulations (which, as explained above, is directly derived from the similar language in the Height Act) specifically lists domes as one of the types of architectural embellishments excluded from building height. 11-DCMR § 1501.3 ("Architectural embellishments **consisting of spires, tower, domes** . . . ."). Second, and as also explained above, the permitting records for the Temple clearly confirm that the Temple dome was considered such an excluded embellishment that was permitted to exceed the maximum permitted height when the building was originally constructed.

Despite the regulations and public record directly refuting their position, the Appellants nonetheless argue that a dome cannot serve the same functional purpose as a roof and therefore the dome counts towards the Temple's height. *See* Hays Brief at 3, 28-32; DECAA Brief at 23. Not only is this argument disproved by the clear language of the Zoning Regulations and the Temple's permitting record, it is wholly undercut by the fact that there are numerous examples of a dome serving both functional and aesthetic purposes in the District. In many instances throughout the District, the ceiling of an occupiable floor is located above the maximum height as prescribed by the Height Act, meaning the embellishment acts functionally as a roof. These buildings include the WilmerHale building at 1875 Pennsylvania Avenue, NW; the World Bank building at 1818 H Street, NW; the Homer Building at 701 13th Street, NW; the IMF Headquarters at I and 19th and H Streets, NW; IMF Headquarters II at 1900 Pennsylvania Avenue, NW; the Westin DC City Center hotel at 1400 M Street, NW; the Convention Center Hotel, approved by Z.C. Order No. 08-13; 1900 N Street, NW; Alexander Court at 2000 L Street, NW; and the Conrad Hotel at 950 New York Avenue, NW. *See* Zoning Administrator Determination Letter regarding 1920 N Street, NW, dated December 17, 2012 at 2–3 (included in Exhibit E); *see also* Exhibit H, Examples of Architectural Embellishments Functioning as a Roof (showing all of the above-listed buildings).

The Temple's dome similarly covers the occupiable ground floor and exceeds the maximum permitted building height; however, as with the cases mentioned above, this does not somehow prevent it from being treated as an embellishment under the Zoning Regulations. The primary driver behind the dome is its aesthetic purpose, *see* 1920 N Street Determination Letter at 2, which — in addition to the clear language of the regulations and permitting record — only further supports the conclusion that the dome serves as an architectural embellishment and does

not count towards the Temple's building height for purposes of calculating the minimum rear yard requirement.

B. The Temple Complies With Maximum Height Requirements.

The Appellants argue that the Subdivision "increases the nonconforming height of the existing building by altering the BHMP [building height measuring point]." The Appellants' claim is fundamentally flawed in several respects. First, and importantly, subdivision of a property does not trigger review for compliance with height requirements. Subtitle C, Section 302.1 lists the specific development standards for which compliance is required in order to receive approval to subdivide a property. 11-C DCMR § 302.1 ("Where a lot is divided, the division shall be effected in a manner that will not violate any provision of this title for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces, or loading berths applicable to that lot or any lot created . . . ."). Notably absent from that list is building height. Thus, building height is outside the scope of the Zoning Administrator's review when considering a proposed subdivision, except to the extent such height impacts one of the other development standards referenced in Subtitle C § 302.1 (such as, in this case, rear yard as discussed in detail above). Accordingly, approval of the subdivision application did not require demonstrating that the Temple would meet the current Zoning Regulations restrictions on height.

Furthermore, as discussed in detail in Section II.A.1 above, when a property fronts on multiple streets, the Zoning Regulations permit a property owner to designate one street as the street frontage for rear yard purposes and a different street as the front of the building for purposes of measuring building height. Accordingly, contrary to the Appellants' argument,

designating S Street, NW as the Temple's street frontage for purposes of measuring the rear yard has no impact on the designation of 16th Street as the building front for height purposes.

Finally, no new construction is being proposed on the Temple Lot in connection with the subdivision (and no additional permits have been issued since 1911 that would modify the height of the building) so as to trigger the application of current building height requirements.

C. The Temple Lot Complies with Parking Requirements for a Historic Resource That Predates the Adoption of the Zoning Regulations.

Appellants argue that the Temple Lot is required to provide 58 parking spaces and thus violates the Zoning Regulations. DECAA Brief at 21. However, the Appellants entirely ignore that the Temple's construction predates adoption of the Zoning Regulations or any parking requirements. No parking was required at the time the Temple was constructed and the Temple did not provide any parking. Only an addition to the Temple would trigger a parking requirement; a subdivision in and of itself does not trigger a parking requirement.

Under Subtitle C § 302.1, in order to subdivide a property, the applicant must demonstrate that the subdivision will not violate the Zoning Regulations provisions for, e.g., parking. As set forth in the parking regulations in Subtitle C, Chapter 7, the requirement to provide parking is triggered for a historic landmark when there is an expansion or change of use within an existing building or structure, except that a historic resource is not required to provide additional parking for a change in use without expansion. 11-C DCMR § 705.3. The creation of the Temple Lot by way of subdivision does not trigger a parking requirement because there is no simultaneous addition being proposed that would increase the existing gross floor area of the Temple by 50% or more (or at all). *Id.* § 704.2. Parking was not required at the time the Temple was built and no new additions have ever been constructed that would trigger such a requirement; any parking that has been provided on the Temple site has never been required.

This interpretation is supported by former determinations issued by the Zoning Administrator. *See* Determination Letter dated February 13, 2017 at 6 (included in Exhibit E). Accordingly, the Temple Lot is not required to provide any parking.

D. The Temple Lot Complies with Loading Requirements for a Historic Resource That Predates Adoption of the Zoning Regulations.

Appellants argue that the Temple Lot fails to comply with the minimum loading requirements, the location of loading, and the size and layout requirements. Hays Brief at 6; DECAA Brief at 15–18. Similar to the parking requirements discussed above, no loading facilities were required at the time the Temple was constructed. The requirement to provide loading is only triggered for a historic landmark when an addition expands the gross floor area of the existing building by 50% or more. 11-C DCMR § 901.7. Here, because no addition is proposed for the Temple Lot, the Temple Lot is not required to provide loading facilities. A subdivision by itself does not trigger a loading requirement; accordingly, the Subdivision complies with the Zoning Regulations for loading.

E. The Temple Lot Complies with Side Yard Requirements.

The Appellants allege that the Temple Lot "may" violate side yard requirements but offer no information or evidence to support the claim. DECAA Brief at 28–29. Accordingly, the Appellants fail to state a colorable claim with respect to side yard. In any event, pursuant to Subtitle F § 606.4, in the RA-9 Zone, there is no minimum depth for a side yard along a side street abutting a corner lot. Thus, there is no minimum side yard requirement for the western side yard. For the eastern side of the Temple Lot, a minimum side yard of four (4) feet is required. 11-F DCMR §606.1. The Temple's eastern side yard, at its narrowest, is approximately five (5) feet, nine (9) inches wide and therefore complies.

F. The Zoning Administrator Has No Authority to Deny a Subdivision Application Based on Purpose and Intent Provisions in the Zoning Regulations and the Instant Subdivision Is Consistent with Such Provisions.

Finally, Appellants argue that the Subdivision violates the purpose and intent of the RA-8 and RA-9 zones. Hays Brief at 6, 33; DECAA Brief at 22–26. Importantly, purpose and intent provisions in the Zoning Regulations are not substantive requirements that must be satisfied in order to receive approval during review for a subdivision or building permit. As the Board has previously stated, "purpose provisions . . . are merely precatory and do not alter the matter of right standard." *See BZA Appeal No. 18429 of Edward V. Hanlon* at 10 (2013) (further stating that purpose statements are instead "directed to the Board and Zoning Commission when considering a request for zoning relief . . . .") (internal citations omitted).[7] Accordingly, the purpose provisions are outside the scope of the Zoning Administrator's review, and the Zoning Administrator has no authority to deny an application for subdivision based on purpose provisions.

In any event, the Subdivision at issue in this case is fully consistent with the intent of the RA-8 and RA-9 zones. Subtitle F, Section 600.1 provides that the Dupont Circle RA zones (RA-8, RA-9, and RA-10) are intended to "recognize the Dupont Circle area is a unique resource in the District of Columbia that must be preserved and enhanced" and "protect the integrity of 'contributing buildings,' as that term is defined by the Historic Landmark and Historic District Protection Act of 1978." 11-F DCMR §§ 600.1(a), 600.1(f). Here, the Subdivision will permit the construction of a new residential apartment building, which will include affordable units, on the resulting Eastern Lot, the ground lease for which will provide a stream of revenue to the

[7] We note that Edward Hanlon is a member of Appellant DECAA and listed as the contact person for DECAA in this appeal. Based on the Board's prior ruling in Mr. Hanlon's 2013 appeal, the Appellants should be well aware that purpose provisions are not treated as establishing enforceable restrictions and should withdraw this frivolous claim.

Temple. As the Appellants assert, the Temple has been named one of the "most beautiful buildings in the world." DECAA Brief at 6. This subdivision will help ensure that such an important structure in the District will be adequately preserved by generating income to the Temple that will help protect its integrity and complete much-needed extensive restoration work. Therefore, the approved Subdivision is consistent with the purpose and intent of the RA-8 and RA-9 zones.

III. Conclusion

For the reasons stated above, the Appellants have failed to meet their burden with respect to any of the errors they allege the Zoning Administrator to have committed in reviewing the Subdivision, and their Appeal therefore should be rejected.

While the Appellants lodge a myriad of strained arguments that the Subdivision violates the Zoning Regulations — even offering wholly contrived claims that the Zoning Administrator was subjected to undue influence in conducting a routine review of the Subdivision — in reality, this Appeal is merely one more baseless attempt to prevent construction of the multifamily development proposed for the Eastern Lot. Appellants continue to use every possible channel of litigation, including the instant Appeal, to thwart the residential project, including initiating two separate challenges currently before District of Columbia Court of Appeals objecting to the project's historic preservation approvals, as noted above.

The proposed multifamily development on the Eastern Lot will provide approximately 97,000 square feet of housing, including approximately 11,000 square feet of affordable housing in a neighborhood where housing is notoriously expensive. The Subdivision has not only been approved by the Zoning Administrator, but the HPRB and the Mayor's Agent have also deemed it consistent with the District's goals of historic preservation.

Perseus respectfully requests that the Board affirm the Zoning Administrator's approval of the Subdivision and deny the Appeal.

Respectfully Submitted,

/s/
Christine A. Roddy

/s/
Lawrence Ferris

/s/
Lee Sheehan