

Appellants' Presentation Board of Zoning Adjustment

Case Nos. 20452 & 20453

Excerpt from *Ward 5 Imp. v. DC*

We have held that “[i]t is the Board, not the Zoning Administrator, which has final administrative responsibility to interpret the zoning regulations.” [*Bannum, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 894 A.2d 423, 431 \(D.C.2006\)](#) (quoting [*Murray v. District of Columbia Bd. of Zoning Adjustment*, 572 A.2d 1055, 1058 \(D.C.1990\)](#)); see also [*District of Columbia, Dep't of Pub. Works v. L.G. Indus., Inc.*, 758 A.2d 950, 956 \(D.C.2000\)](#) (stating that the BZA “is charged with interpreting the zoning regulations”). *The BZA’s interpretive responsibility, therefore, is de novo.* The BZA’s responsibilities to “hear and decide” zoning appeals under [D.C. Code § 6–641.07\(g\)\(2\)](#) and 11 DCMR § 3100.2 *require more of the BZA than deference to the Zoning Administrator[.]*

Ward 5 Imp. Ass’n v. Dist. of Columbia Bd. of Zoning Adjustment, 98 A.3d 147, 154-55 (2014) (vacating BZA’s decision)

Principles of Interpretation

- Statutory and regulatory construction must begin with “the assumption that the ordinary meaning of language accurately expresses the legislative purpose.” *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194 (1985). Thus, this Board’s construction must be “plausible,” and an outlier meaning is insufficient. *Cohen v. JP Morgan Chase & Co.*, 498 F.3d 111, 120 (2d Cir. 2007).
- Courts must presume that the legislature “says in a statute what it means and means in a statute what it says.” *Dodd v. United States*, 545 U.S. 353, 357 (2005); see *Kakeh v. United Planning Org., Inc.*, 655 F. Supp. 2d 107, 123 (D.D.C. 2009) (same).
- The Board cannot, in the guise of interpreting a statute, ignore certain words, and “rewrite” it to impose distinct meaning not contemplated by the legislature. *Ind. Mich. Power Co. v. Dep’t of Energy*, 88 F.3d 1272, 1276 (D.C. Cir. 1996).

Email from Attorney Lawrence Ferris to ZA Mathew LeGrant dated September 25, 2018 (IZIS Dkt Ex. #11)

From: [Ferris, Lawrence](#)
To: [LeGrant, Matt \(DCMA\)](#)
Cc: [Baskin, Christine](#)
Subject: 1733 16th Street NW - Scottish Rite Redevelopment
Date: Tuesday, September 25, 2018 5:22:47 PM
Attachments: [Draft Drafting Determination Letter - 1733 16th Street NW - Proposed Project.docx](#)
[1733 16th Street NW - Architectural Plans PDF](#)
[Determination Letter re 1733 16th St NW 4-18-18.pdf](#)

CAUTION: This email originated from outside of the DC Government. Do not click on links or open attachments unless you recognize the sender and know that the content is safe. If you believe that this email is suspicious, please forward to phishing@dc.gov for additional analysis by OCTO Security Operations Center (SOC).

Matt,

As you may recall, we met on August 27 to discuss our client's proposed development for the site of the Scottish Rite Temple at 1733 16th Street NW and, specifically, changes made to the project since our meeting on February 20 and your subsequent determination letter dated April 18.

Per our discussion, attached is a draft determination letter and the relevant architectural plans. As stated in the letter, this draft incorporates both your earlier findings in the April 18 determination and the substance of our discussions on August 27. I've also attached your April 18 determination letter for reference.

I did want to note one slight revision since our meeting on August 27. At the time of our meeting, the plans showed one bay that is cantilevered over the areaway on the eastern façade near the corner of 15th and S Street NW, beginning on Level 01 (the first level above grade). The plans have since been revised to add two more such cantilevered bays, which are located on the northern facade facing S Street NW and begin at Level 02 (the second level above grade). This is outlined in detail the draft letter and also shown in the attached plans, but I wanted to bring it to your attention since it differs slightly from what was presented when we met with you.

Please let us know if you have any questions, would like any additional information, or would like to discuss.

Thank you very much for your time.

Best,
Lawrence

.....
Lawrence Ferris
Direct (202)-721-1136
goulston&stotts
1999 K Street, NW * Suite 500 * Washington, DC 20006-1101
(202)-721-0011 * Fax (202)-721-1111 * www.goulstonstotts.com
.....

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Adjustment
to
the
Bill
of
Materials
CASE NO. 2018-3
EXHIBIT NO. 11

Draft Zoning Determination Letter (dated Sept. 2018 written by Perseus' Atty Ferris for ZA Mathew LeGrant to sign) (IZIS Dkt. Ex. #10)

September __, 2018

Lawrence Ferris
Goulston & Storrs
1999 K Street, NW, Suite 500
Washington, DC 20006

Re: 1733 16th Street, NW – Scottish Rite Temple Site, Square 192, Lot 108

Dear Mr. Ferris:

This letter is a comprehensive determination for your client's project at 1733 16th Street NW (Square 192, Lot 108) (the "Property"). This determination combines the findings from my determination letter dated April 18, 2018, and the substance of our discussion on August 27, 2018.

I. Background

As shown on the plans attached to this letter, the Property is bounded by S Street NW to the north, 15th Street NW to the east, a public alley to the south, and 16th Street NW to the west. The Property is currently improved with the Scottish Rite Temple ("Temple"), located on the western portion of the lot, and a carriage house ("Carriage House"), located on the eastern portion of the lot along the alley to the south. The entire site is a designated historic landmark. The Property is split-zoned, with the western portion zoned RA-9 and the eastern portion zoned RA-8. Your client proposes to subdivide the Property into two separate record lots. The proposed subdivision will create a new lot line that will be coterminous with the zone boundary line, bisecting the Property into a western lot occupied by the Temple ("Western Lot") and an eastern lot ("Proposed Eastern Lot"). The Proposed Eastern lot will be bounded by S Street to the north, 15th Street to the east, a public alley to the south and the Western Lot to the west. The Proposed Eastern Lot will be developed with a new apartment building that will incorporate the existing Carriage House (the "Project"), as shown in the attached plans. This determination letter pertains to the Project.

II. Zoning Issues

A. Rear Yard

The Project will front on 15th Street NW, with the rear yard measured from the newly created lot line running through the Property. Based on the Project's proposed height of 50 feet, under Subtitle F § 605.1, the rear yard requirement is 16.7 feet. Pursuant to Subtitle B § 318.2, the rear yard is measured as the "mean horizontal distance between the rear line of the building and the rear lot line." In other words, the rear yard measurement may be "averaged" across the Project, and the Project satisfies rear yard requirements so long as this average meets or exceeds 16.7 feet. Notably, as shown in the site plan on Sheet A-1 of the attached plans, the existing

Error! Unknown document property name.

Board of Zoning Adjustment
District of Columbia
CASE NO. 20463
EXHIBIT NO. 10

Zoning Determination Letter dated Oct. 30, 2018 signed by ZA Mathew LeGrant (IZIS Dkt. Ex. #12)



**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**

October 30, 2018

Lawrence Ferris
Goulston & Storrs
1999 K Street, NW, Suite 500
Washington, DC 20006

Re: 1733 16th Street, NW – Scottish Rite Temple Site, Square 192, Lot 108

Dear Mr. Ferris:

This letter is a comprehensive determination for your client's project at 1733 16th Street NW (Square 192, Lot 108) (the "Property"). This determination combines the findings from my determination letter dated April 18, 2018, and the substance of our discussion on August 27, 2018.

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Screenshot DCRA Website Page Entitled “Determination Letters, Zoning Maps and Plans” explaining purpose of Zoning Determination Letters

DCRA's Corporation and Professional Licensing platforms will be unavailable from Friday, July 23 at 8 pm to Sunday, July 25 at 8 am due to scheduled maintenance. Thank you for your patience.



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Determination Letters, Zoning Maps and Plans

**Tuesday,
March 6,
2018**

Determination Letters, Zoning Maps and Plans

The Zoning Administrator issues determination letters resulting from requests by property owners, developers, architects, and land use attorneys inquiring about the applicable zoning regulations applicable to specific development proposals. These letters offer guidance to requesting parties as to whether a proposed project, such as a new building, an addition to an existing building, or a use change, conform to the District's Zoning regulations as set forth in DCMR Title.

 [DECEMBER 20, 2016 ZONING DETERMINATION LETTER FOR 1107 H STREET, NE.PDF](#)

 [DET LET RE 1101 H ST NE TO MAZO 2-14-18.PDF](#)

FOIA Request 2021-FOIA-01918 filed by Edward Hanlon in Dec. 2020 (IZIS Dkt. Ex. #54)

FOIA REQUEST 2021-FOIA-01918 TO DCRA DATED 12/30/20

The screenshot shows the District of Columbia Freedom of Information Act Public Access Portal. At the top, there are three red stars and the DC flag. Below the header, there are navigation links: Home, Publicly Available Data Records, Request Status, Submit a FOIA Request, and Submit an Appeal. The main content area is titled "Request Details" and contains the following information:

Request Details

To modify request details please update your request profile or contact our office at 202-724-3000.

Request Information

Request Number	2021-01918
Request Date	12/30/2020
Requesting Party Name	EDWARD HANLON
Phone	202-724-3000

Request Information

***IMPORTANT - Please read carefully!** Learn the request type and FOIA for detailed FOIA requests.

Board of Zoning Adjustment
 District of Columbia
 CASE NO.20483
 EXHIBIT NO.54

Attachment to FOIA Request 2021-FOIA-01918 filed by Edward Hanlon in Dec. 2020 listing the Documents Requested from the Office of the Zoning Administrator (IZIS Dkt. Ex. #54)

ATTACHMENT to FOIA Request:

With respect to the subdivision of Sq. 192 Lot 108 into lots 110 & 111:

1. The application for subdivision of Sq. 192 Lot 108 into lots 110 & 111;
2. Any survey provided to the Office of the Zoning Administrator with the application or otherwise relied upon by DCRA in reviewing and approving the requested subdivision application;
3. Any drawings or data submitted to the Office of the Zoning Administrator by the Applicant wishing to subdivide Lot 108 or which were otherwise reviewed by your office during the subdivision application process which address zoning issues including building height, yards, set back and/or lot coverage issue;
4. Any drawings or plans of the existing Scottish Rite Masonic Temple which were reviewed by the Office of the Zoning Administrator during the subdivision application process;
5. Any and all elevation or setback information provided by the Applicant to the Office of the Zoning Administrator during the subdivision application process; and,
6. All other pertinent data upon which the Office of the Zoning Administrator relied when making its decision to approve the subdivision of this lot 108.

(Date Range for Record Search: From 09/01/2020 To 12/30/2020)

DCRA's FINAL RESPONSE to FOIA Request 2021-FOIA-01918 and 2021-FOIA-01919 (annotated) (IZIS Dkt. Ex #58)



Office of the Director

February 9, 2021

VIA ELECTRONIC MAIL

Edward Hanlon
1523 Swann Street, NW
Washington, D.C. 20009
Phone 301-466-4492
ed.hanlon3@gmail.com

Subject: Final Response for FOIA Request Nos. 2021-FOIA-01918 and 01919

Dear Mr. Hanlon:

The D.C. Department of Consumer and Regulatory Affairs (DCRA) is in receipt of your request pursuant to the District of Columbia Freedom of Information Act (FOIA). Specifically, you requested

FOIA Request No. 2021-FOIA-01918

With respect to the subdivision of Sq. 192 Lot 108 into lots 110 & 111:

1. The application for subdivision of Sq. 192 Lot 108 into lots 110 & 111;
2. Any survey provided to the Office of the Zoning Administrator with the application or otherwise relied upon by DCRA in reviewing and approving the requested subdivision application;
3. Any drawings or data submitted to the Office of the Zoning Administrator by the Applicant wishing to subdivide Lot 108 or which were otherwise reviewed by your office during the subdivision application process which address zoning issues including building height, yards, set back and/or lot coverage issue;
4. Any drawings or plans of the existing Scottish Rights Masonic Temple which were reviewed by the Office of the Zoning Administrator during the subdivision application process;
5. Any and all elevation or setback information provided by the Applicant to the Office of the Zoning Administrator during the subdivision application process; and,
6. All other pertinent data upon which the Office of the Zoning Administrator relied when making its decision to approve the subdivision of this lot 108.

(Date Range for Record Search: From 09/01/2020 To 12/30/2020)

Only Document DCRA Supplied in Response to FOIA Requests 2021-FOIA-01918 and 2021-FOIA-01919 (IZIS Dkt. Ex. #59)

<p>The undersigned hereby certifies that the copies of the records are true and correct copies of the records as they exist in the custody of the agency and were prepared in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. 552, and the regulations thereunder, 16 C.F.R. 1.106, and were prepared in accordance with the provisions of the Freedom of Information Act, 5 U.S.C. 552, and the regulations thereunder, 16 C.F.R. 1.106.</p>	<p>OFFICE OF TAX AND REVENUE 110200</p> <p>I certify that the following information regarding the subdivision was correct:</p> <p>1. Ownership agrees with our records: 110200 ac</p> <p>2. Total acreage is correct: 110200 ac</p> <p>3. There are no legal encumbrances: 110200 ac</p> <p>I acknowledge to the extent that this is not a certified or licensed Public Land Surveyor.</p> <p>_____</p>	<p>SUBDIVISION SQUARE 192</p>
<p>DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS 110200</p> <p>I certify that the subdivision complies with all applicable provisions of DCRA, including registration and sales of interests.</p> <p>Doing Business: BARBARA</p>	<p>DEPARTMENT OF THE ENERGY & ENVIRONMENT (DCEE) November 12, 2024</p> <p>I certify that the subdivision complies with all applicable provisions of DCRA, Chapter 27, Subchapter 20B, and the Rules of Subchapter 20B.</p> <p>Real Estate & Field Division: _____</p>	<p>S STREET, N.W.</p>
<p>DEPARTMENT OF THE ENERGY & ENVIRONMENT (DCEE) November 12, 2024</p> <p>I certify that the subdivision complies with all applicable provisions of DCRA, Chapter 27, Subchapter 20B, and the Rules of Subchapter 20B.</p> <p>Real Estate & Field Division: _____</p>	<p>OFFICE OF THE SURVEYOR 110200</p> <p>I certify that this plat is correct and is hereby recorded.</p> <p>_____</p>	
<p>SURVEYORS OFFICE, D.C.</p> <p>Book No. _____</p> <p>County: L.R. Chancery _____</p> <p>Record and registration by: _____</p> <p>Recorded on: _____</p> <p>Recorded in: _____</p> <p>Scale: 1 inch = 400 feet (Ratio: 1:1600)</p> <p>20240808-16-00000-000</p>	<p>OFFICE OF THE SURVEYOR 110200</p> <p>I certify that this plat is correct and is hereby recorded.</p> <p>_____</p>	

Curriculum Vitae

Prof. James McCrery

James Curtis McCrery, II AIA, NCARB

900 Massachusetts Avenue, NE
Washington, DC 20002
202.737.5444

mccrery@cua.edu
james@mccreryarchitects.com

CURRICULUM VITAE – January 2021

EDUCATION

Master of Architecture, The Ohio State University. Columbus, Ohio. May 1993.

Principal critics and theorists in ascending order of coursework and influence:
Sanford Kwinter, Douglas Graf, Jeffrey Kipnis, Peter Eisenman.

Bachelor of Science in Architecture, The Ohio State University. Columbus, Ohio. December 1989.

ACADEMIC ACTIVITY

Appointment with

Continuous Tenure - The Catholic University of America – Washington, DC.
Effective August 2020.

Promoted

Associate Professor - The Catholic University of America – Washington, DC.
Effective August 2020.

Assistant Professor - The Catholic University of America – Washington, DC.
August 2016 to August 2020.

Founder and Director: The Concentration in Classical Architecture and Urbanism
at The School of Architecture and Planning
The Catholic University of America – Washington, DC

University Service: Curriculum Committee – Member
Graduate Admissions Committee – Member
Dean's Strategic Planning Committee (2016-2020) – Member
New Classical Faculty Search Committee – Chairman
Human Ecology Institute – Inaugural Fellow

11-F DCMR § 605.1

605.1

A minimum rear yard shall be established for lots in the RA-8, RA-9, and RA-10 zones as set forth in the following table:

TABLE F § 605.1: MINIMUM REAR YARD

<i>Zone</i>	<i>Minimum Rear Yard</i>
RA-8	15 ft.; or A distance equal to 4 in. per 1 ft. of principal building height
RA-9	15 ft.; or A distance equal to 4 in. per 1 ft. of principal building height

Professor McCrery's Summary of Conclusions

- First, the Subdivision of Lot 108 violates 11-F DCMR § 605.1 because the new rear yard is insufficiently wide.
 - I do not understand the Perseus and DCRA's Oppositions to dispute the central contention in my Expert Report: if the 332 ton roof of the Temple is deemed a roof, and not an "architectural embellishment," then the Subdivision violates 11-F DCMR § 605.1 because the new rear yard is insufficiently wide, even accepting their other contentions.
- Second, the new rear yard violates the zoning regulations because it is occupied by a structure that is over four feet tall in violation of 11-B DCMR § 100.2.

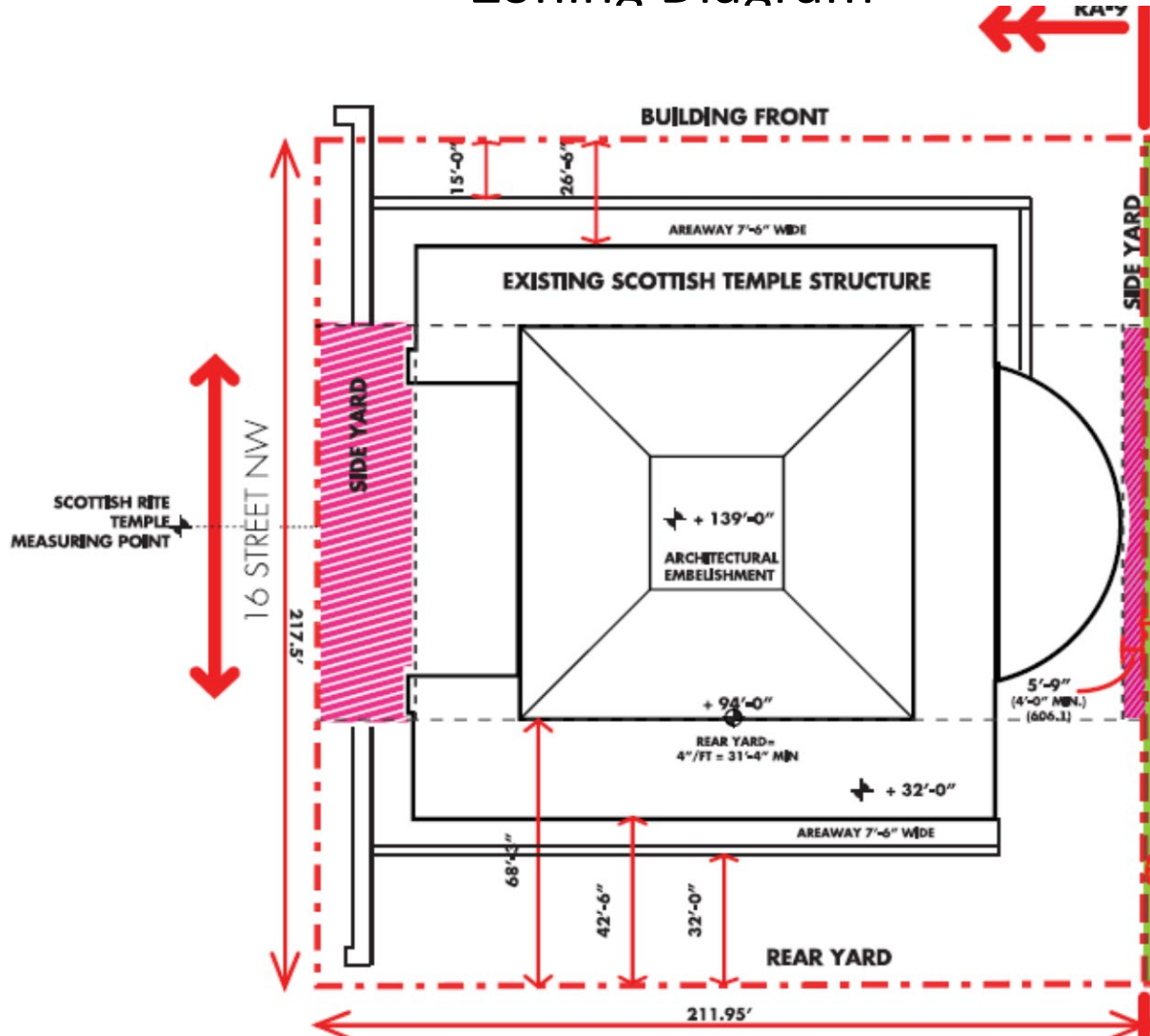
Rear Yard Insufficiently Wide

- I will address the insufficient depth of the new rear yard first.
- The Temple lot is zoned RA-9. 11-F DCMR § 605.1 requires a 1 to 3 ratio of rear yard width to building height for RA-9 zones.
- The Luxury Project is designed to be constructed on the new proposed Eastern Lot just a six or so feet from the actual rear of the Temple.
- Thus, what is now the Temple's actual rear yard can no longer serve as the Temple's rear yard for zoning purposes because it would mean that the design would grossly violate the rear yard requirements of 11-F DCMR § 605.1.

Rear Yard Insufficiently Wide

- Perseus attempts to evade this rear yard requirement by redesignating the S Street side as the “front,” so that the new rear yard is on the south, which has some open space.
- This does not cure the violation of 11-F DCMR § 605.1
- The below diagram, submitted to the HPRB as part of its “Zoning Diagram” sets forth this attempt

Prof. McCrery's Reply - Figure 1 at 4 From Perseus' Application to HPRB "Zoning Diagram"



Prof. McCrery's Reply - Figure 2 at 5 From Perseus' Application To HPRG



Rear Yard Insufficiently Wide

- The Oppositions attempt to whittle down the height of the temple and increase the width of the back yard.
 - They contend that the depth of north areaway is not included in the height
 - They contend that the south areaway is included in the width of the rear yard
- But even accepting these contentions, which are misguided, the Subdivision still violates 11-F DCMR § 605.1 if the roof of the Temple is not deemed an “architectural embellishment” and thus excluded from the height pursuant to 11-C DCMR § 1501.3.

Rear Yard Insufficiently Wide

- Perseus own calculations establish that the height of the Temple is 139'
- Thus, to comply with 11-F DCMR § 605.1, the new rear yard must be
 - **$1/3 \times 139' = 46'4''$**
- However, as established by Perseus own calculations, the rear yard is only **42'6''** wide, including the areaway.
- Thus, the new rear yard is insufficiently wide.

To comply with 11-F DCMR § 605.1, the width of the rear yard must be 1/3 of the Temple's height

Scenario 1

Actual Building Height (16th Street) (not including north areaway): 139'

$$1/3 \times 139' = 46'4''$$

Rear yard is **32' (42'6"** wide, improperly including the south areaway):

Result: In Either Case - Violation of 11-F DCMR § 605.1

Scenario 2

Building Height (improperly measured from top of stairs on 16th Street) (not including north areaway): 134'6"

$$1/3 \times 134'6'' = 44'10''$$

Rear yard is **32' (42'6"** wide, improperly including the south areaway):

Result: In Either Case - Violation of 11-F DCMR § 605.1

Scenario 3

Building Height measured from S Street (including north areaway): 154'

$$139 + 15 = 154'$$

$$1/3 \times 154' = 51'4''$$

Rear yard is **32' (42'6"** wide, improperly including the south areaway):

Result: In Either Case - Violation of 11-F DCMR § 605.1

Scenario 4

Building Height measured from S Street (improperly excluding north areaway): 139'

$$1/3 \times 139' = 46'4''$$

Rear yard is **32' (42'6"** wide, improperly including the south areaway):

Result: In Either Case - Violation of 11-F DCMR § 605.1

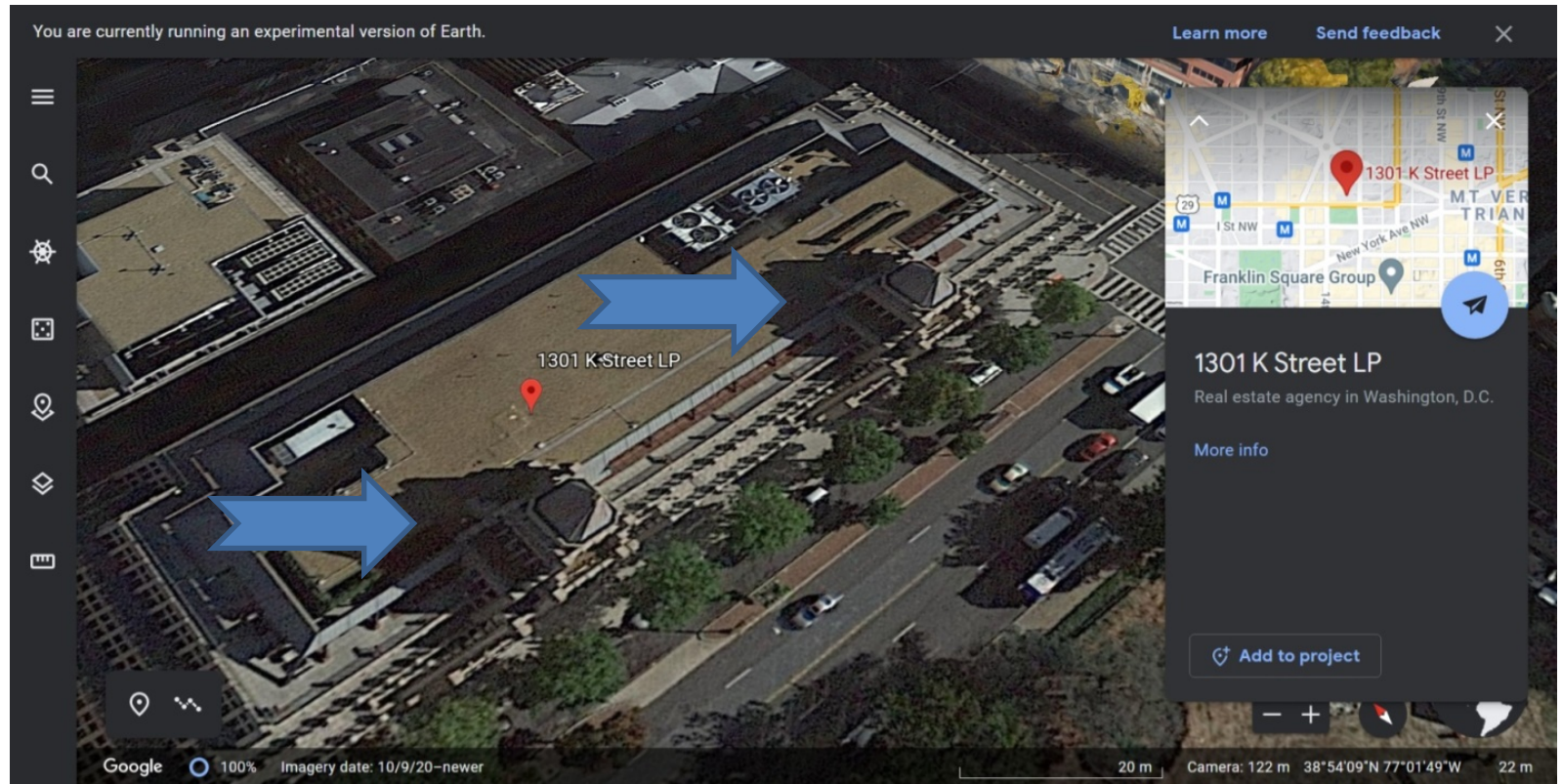
Definitions from Prof. McCrery Expert Reply at 6

- Webster's defines **"roof"** in relevant part as:
 - **"the outside cover of a building or structure including the roofing and all the materials and construction necessary to maintain the cover upon its walls or other support"**
 - **"the highest point or reach of something"**
- By contrast, Webster's defines **"embellishment"** in relevant part as follows:
 - "the act or process of embellishing"
 - "something serving to embellish"
- Webster's in turn defines **"embellish"** in relevant part as:
 - **"to enhance [or] amplify . . . *with inessential but decorative or fanciful details.*"**

The Temple's 332 Ton Pyramidal Roof Is Not An Embellishment

- 11-C DCMR § 1501.3, mentioning “architectural embellishments,” is entitled “Penthouse Height” and is contained in Chapter 15 of Subtitle C, entitled “Penthouses.” It is limited to penthouses.
- Even assuming *arguendo* that 11-C DCMR § 1501.3 applies, that does not assist the District or Perseus because 11-C DCMR § 1501.3 unambiguously specifies that not all “domes” are “architectural embellishments.” 11-C DCMR § 1501.3
- The purpose of the “architectural embellishment” exception “is to permit limited decorative detail to ‘embellish’ a building. By analogy, a bow in a woman’s hair is a decorative detail, the head is not.
- By contrast, here the Temple’s pyramidal roof obviously does not fall within the definition of embellishment because it is clearly essential to the building to give it form and identity both inside and out, and to provide protection from the elements.

Prof. McCrery's Reply - Figure 2 at p.8



Building Height Act § 5 Excerpt

- “Spires, towers, domes, minarets, pinnacles, pent houses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks 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[.]***” BHA § 5 [Emphasis added.]

Masons' Permit to Build

Prof. McCrery Supplement Exhibit 2

NO PROJECTIONS BEYOND THE BUILDING LINE.

Form 501 E. D. - 4 M. 7-1-00 R. 108

No. brick required *5 million* Permit No. *1527*

PERMIT TO BUILD

Walls shall not be erected to a greater height than (1'-0") above footings until their correct location is certified by Surveyor D. C. See Sec. 27, Building Regulations.

OFFICE OF INSPECTOR OF BUILDINGS
DISTRICT OF COLUMBIA

Washington, Sept. 22, 1911.

This is to Certify, That *Supreme Council Scottish Rite* has permission to erect *one 3 story brick stone masonic temple* on lot *86-100* Block *192nd* subdivision No. *S. C. Cor. 16th + P. Sts, NW*

HOUSE NUMBER MUST BE VERIFIED BEFORE BEING PLACED ON BUILDINGS

in accordance with application No. *1527* and drawings on file in this office, and subject to the provisions of the Building Regulations of the District.

The right is reserved to examine the buildings as often as may be necessary while in course of erection, and order any change in the construction that may be deemed requisite to insure sufficient strength, solidity and safety from fire.

This permit grants no right to change the grade or formation of any public terrace, parking, or pavement; nor to build leads, coping or terrace steps outside the building line.

Permission is granted to lay a plank roadway across pavement. Deposit has been made to repair pavement, clean roadway, and to cover cost of any damage to public property.

Deposit *24673* Amount, \$ *300*

June 11/11
Morris Kacker
Inspector of Buildings.

By Order of the Commissioners, D. C.

Fee Paid, \$ *27500*

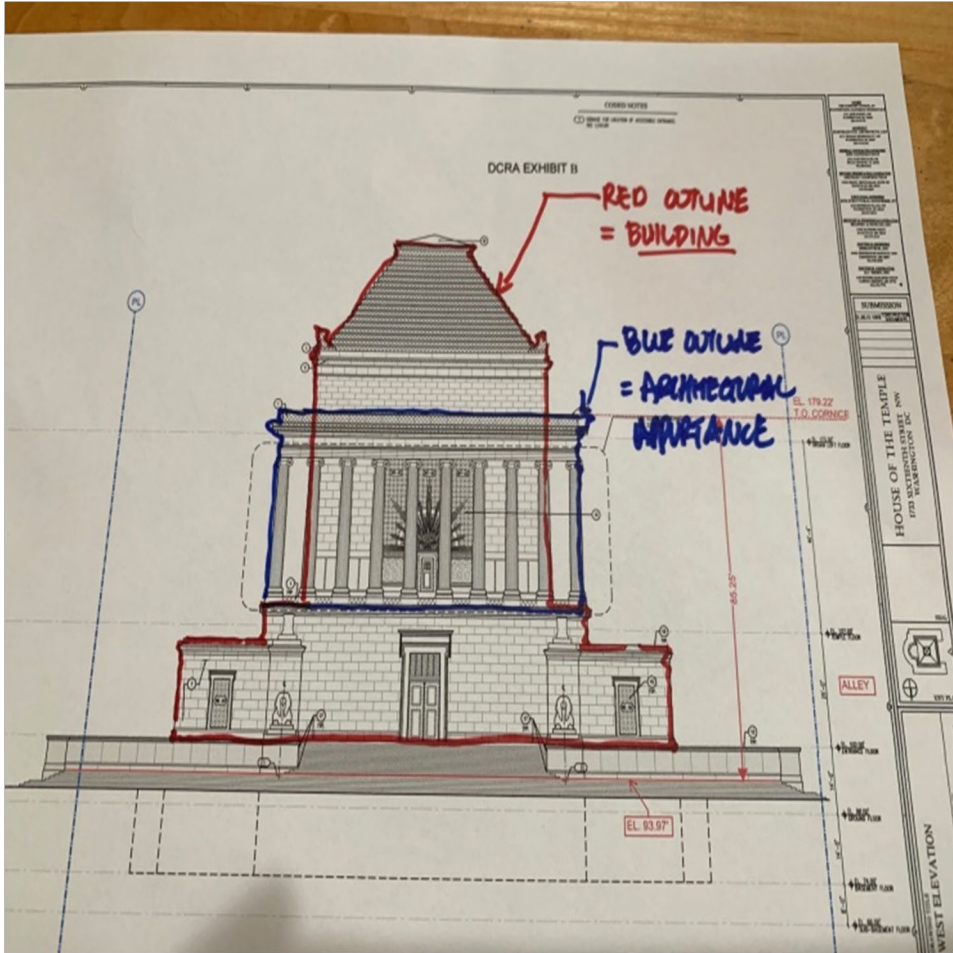
Approval is for building only, does not cover terrace or approach steps.

Water used through meter.

It is a condition of this permit that the owner of the building shall pay the cost of the day work of the Inspector of Buildings on the building.

CANCELLED
RELEASED

Prof. McCrery's Reply - Figure 11 at p. 21



Prof. McCrery's Reply - Figure 12 at p. 22



Prof. McCrery's Reply - Figure 4 at p. 10

1331 F Street, NW



Prof. McCrery's Reply - Figure 5 at p. 10



Prof. McCrery's Reply - Figure 6 at p. 10



1920 N Street Letter at 2-3

- “The Embellishment is also separate from, has no direct communication with, and is ***below the height of the project’s roof structure***”
- “As mentioned above, the Embellishment comprises approximately 5,200 square feet of area. The roof area of the building is approximately 43,000 square feet. ***Therefore, the Embellishment comprises approximately twelve percent (12%) of the roof area, and an even smaller percentage of the building footprint.***”

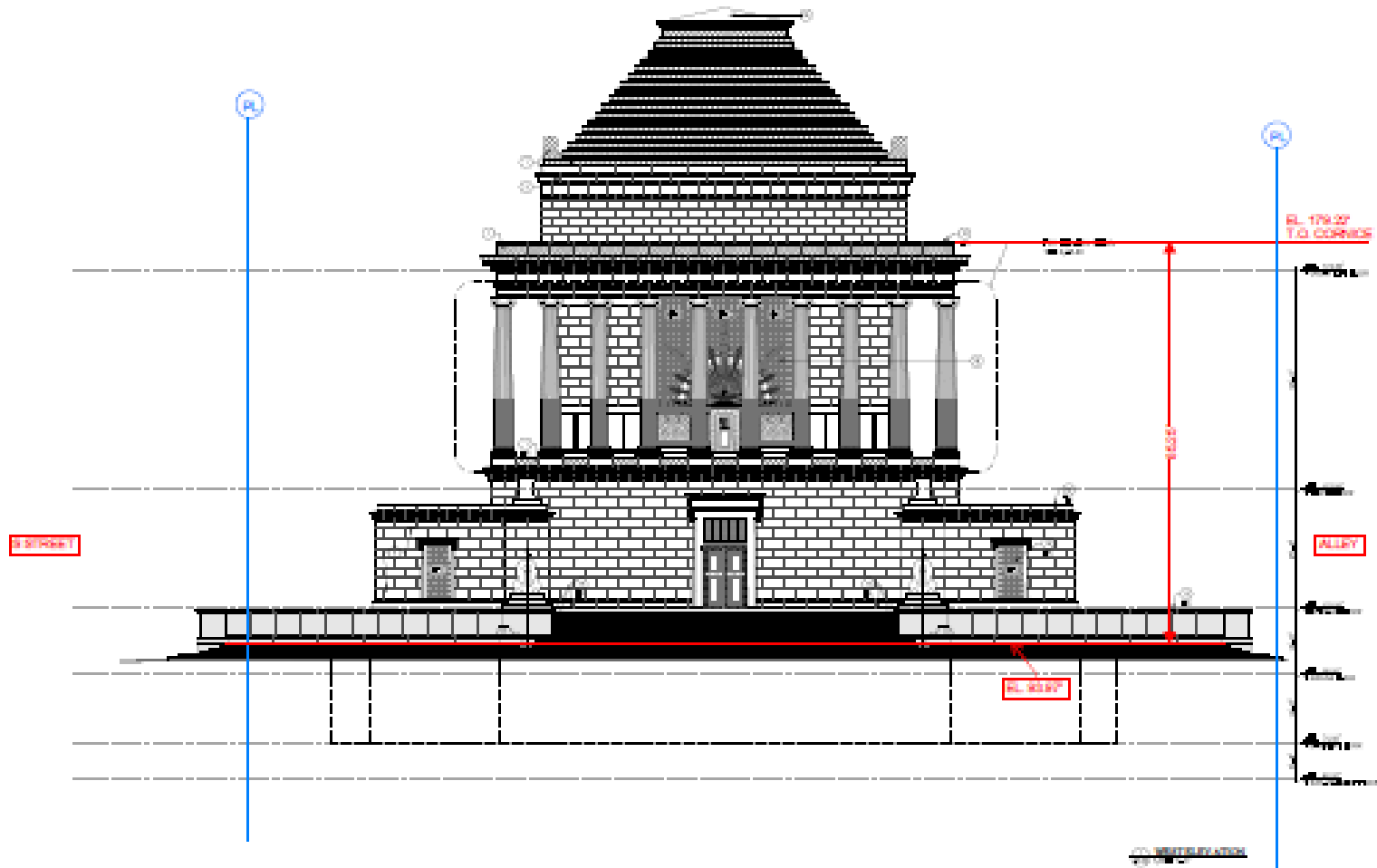
[Emphasis added.]

The Height of the Temple From 16th Street Is Measured from the Sidewalk Level, Not Five Feet Up the Stairs to the Temple.

- Perseus attempts to chip away at the Temple's legitimate height by offering another height calculation from 16th Street, claiming (contrary to their previous submission to the HPRB) that the Temple's height is 134'6" from this perspective.
- To reach this calculation, Perseus does not measure from the sidewalk, as required (assuming for these purposes that 16th Street is the proper location from which to take the measurement, which it is not, if the rear yard is to the south of the Temple), but instead begins its measurement approximately 5' higher up the stairs at the front of the building.

Perseus Ex. B

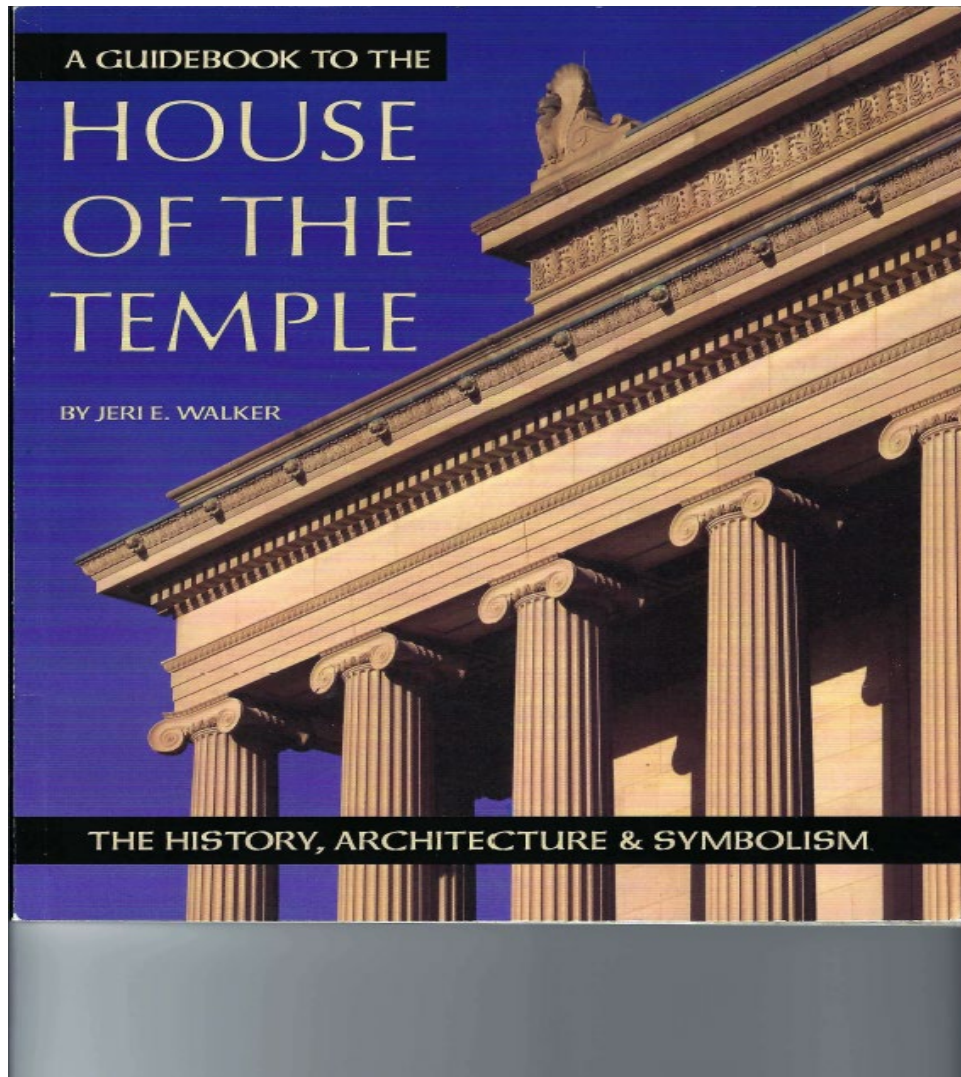
Temple Height - Measured from 16th Street NW



Prof. McCrery's Reply - Figure 8 at p. 13



Excerpts from Guidebook to House of the Temple (Submitted with DECAA's April 2020 Supp.)



Excerpts from Guidebook to House of the Temple (Submitted with DECAA's April 2020 Supp.)

*A Guidebook to the House of the Temple:
The History, Architecture & Symbolism*
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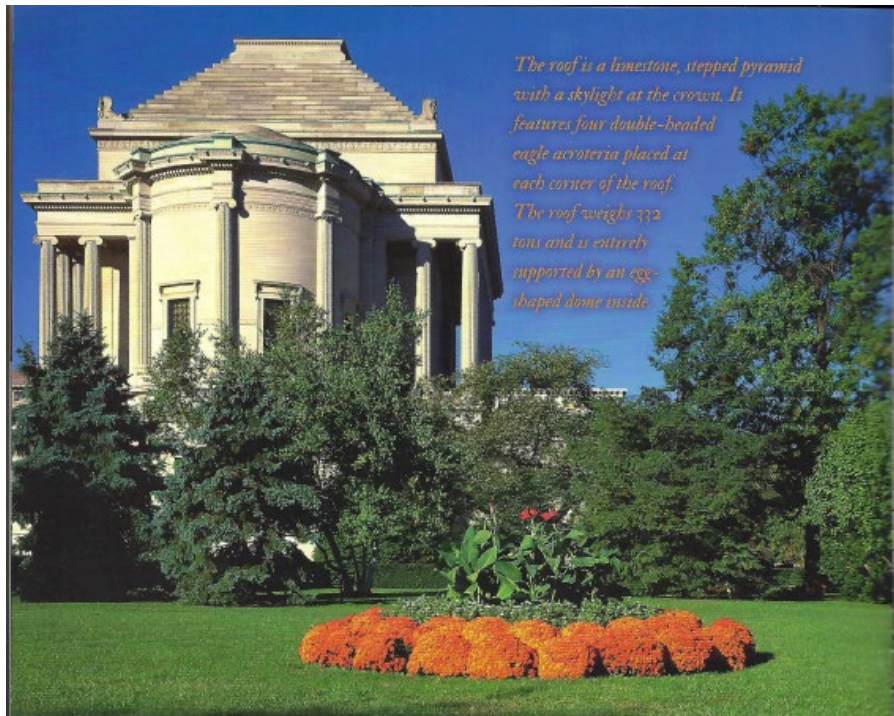
AUTHOR AND DESIGNER:

Jeri E. Walker

EDITORS:

Dr. S. Brent Morris, 33°, G.C., Managing Editor of the *Scottish Rite Journal*
Arturo de Hoyos, 33°, G.C., Grand Archivist and Grand Historian
Mary Kay Lanzalotta, FAIA, Hartman-Cox Architects
Sean Graystone, 33°, G.C., Superintendent of the House of the Temple
Elizabeth A. W. McCarthy, Creative Director, Supreme Council, 33°

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The roof is a limestone, stepped pyramid with a skylight at the crown. It features four double-headed eagle acroteria placed at each corner of the roof. The roof weighs 332 tons and is entirely supported by an egg-shaped dome inside.



PYRAMIDAL ROOF


Despite some "conspiracy theories" to the contrary, there is no Masonic significance to the number of steps on the roof. The pyramid is comprised of interlocking blocks that form into steps. Using Guastavino's mathematical calculations of the inner dome, the builders determine the necessary height and width of the steps, which in turn dictated the number—either fourteen or fifteen depending on how you count.

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Timeline

Resolution passes at the Supreme Council's Biennial Session to erect a new House of the Temple in Washington, D.C.

October 23, 1909




Supreme Council purchases property at 16th and S Streets, NW at a cost of \$164,333.85.

May 14, 1910


Famed sculptor Adolph Alexander Weinman receives commission to carve the two sphinxes for the temple entrance.

July 10, 1912




Grand Commander Richardson breaks ground for the new temple.

May 31, 1911




Work is ongoing on the foundation and basement.

April 1, 1912



Supreme Council hires Architect John Russell Pope to build the new House of the Temple.

April 16, 1910




Notress Brothers of Worcester, Mass., win contract to construct the Temple.

May 9, 1911


A crowd of about 6,000 people attend the Cornerstone Ceremony.

October 18, 1911



Construction continues on the first floor.

May 27, 1912




Supreme Council hires R. Gualavino Company of New York, hired to build their unique *cupola dome* above the Temple Room.

July 1912

First floor nears completion.

August 19, 1912



1909

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August 19, 1912

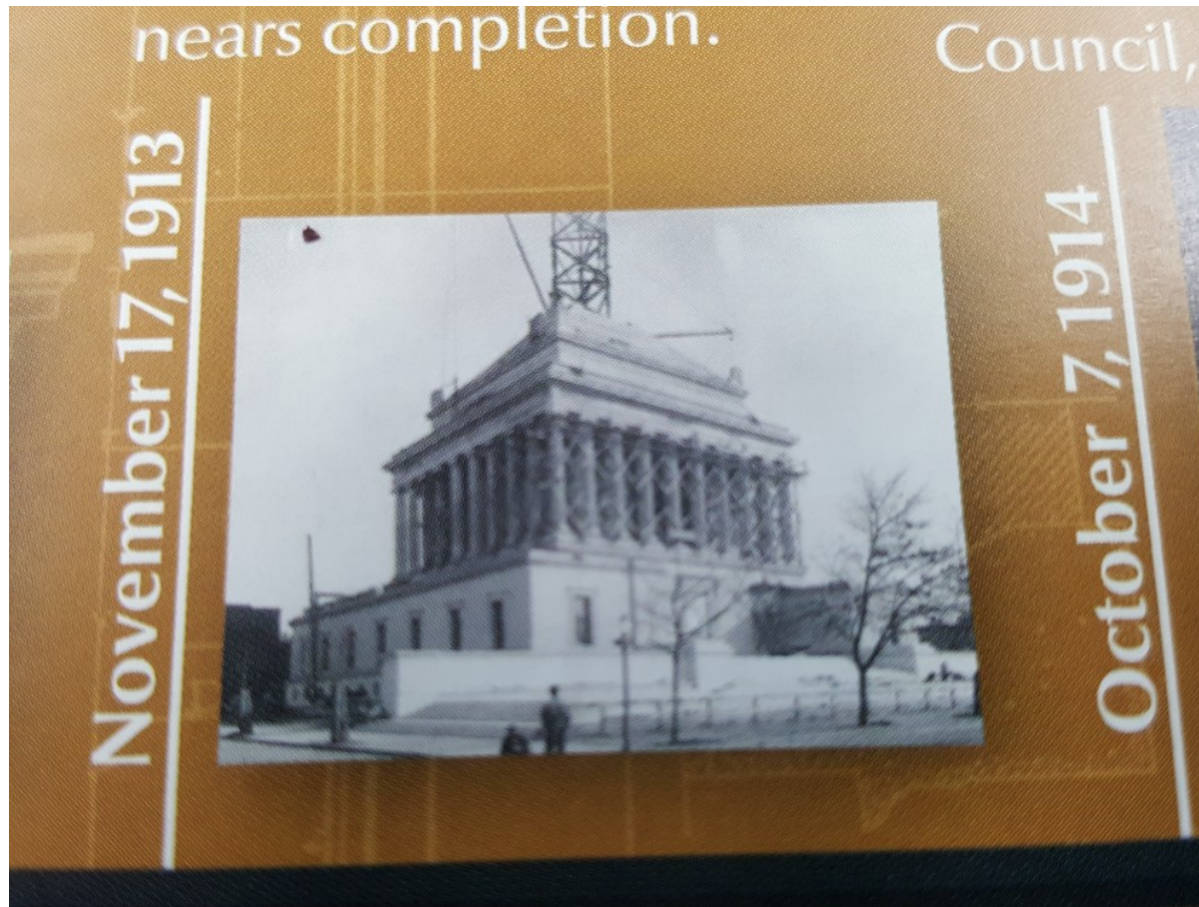


First floor nears
completion.

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11-B DCMR § 100.2

- “Street Frontage: The property line where a lot abuts upon a street. When a lot abuts upon 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.”
- “Yard, Rear: A yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title. The rear yard shall be for the full width of the lot and shall be unoccupied, except as specifically authorized in this title.”

The Zoning Administrator Either Did Not Determine or Did Not Properly Determine the Face of the Temple from Which the BMHP Must Be Calculated

- No evidence the Zoning Administrator considered the S Street side of the Temple as the basis for designating the rear lot line and hence the rear yard width, but evaluated the BMHP from the 16th Street side of the Temple.
- The most reasonable interpretation of the Zoning Regulations is that, once an applicant has determined the “front” of the building, that is the front of the building for both BMHP and rear lot line determination purposes.

11-B DCMR § 308.7

- “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.*” [Emphasis added.]

Webster’s Definition of “Rear”:

- “the part of something that is located opposite to its front”

Measurement Principles

- **Measurement of BMPH:** As to the measurement of BMPH, 11-B DCMR § 308.7 provides that the “*basis for measuring the height of the building shall be established by the street selected as the front of the building.*” [Emphasis added.]
- **Measurement of Rear Yard.** As to the rear yard, the term “rear” is not defined in the Zoning Regulations. Thus, we look to Webster’s Unabridged Dictionary for a definition. See 11-B DCMR § 100.1(g). Webster’s defines “rear” in pertinent part as “*the part of something that is located opposite to its front,*” not opposite its “street frontage.” [Emphasis added.]

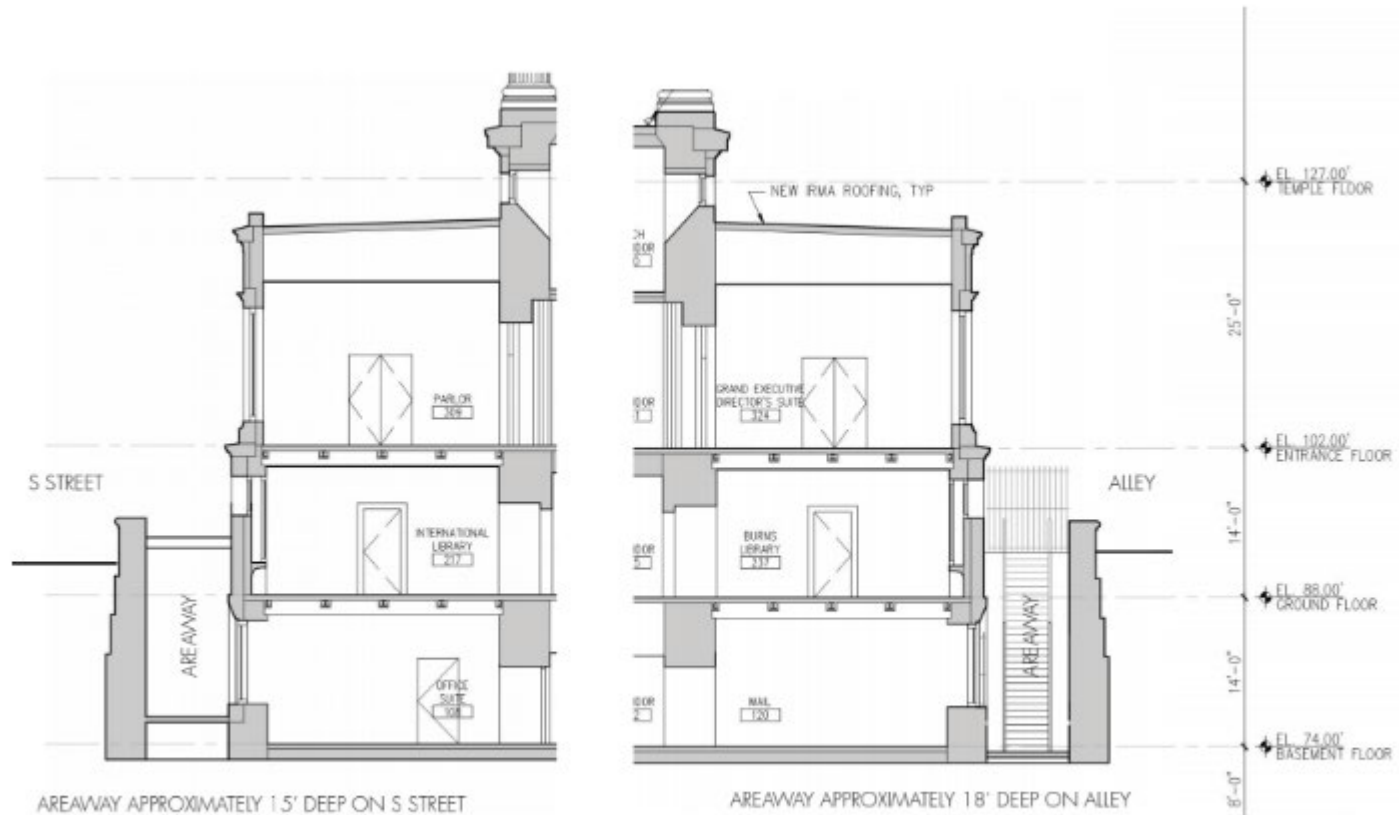
**If the South Side of the Temple Is To Be Used as the Rear Yard,
Then the Depth of the Areaway on the North Side (S Street Side)
Must Be Included in the BMPH**

- Since the areaway at the redesignated “front” on S Street is more than 7’6” wide, the BHMP is measured from the base of the areaway.
- Thus, 15 feet (the depth of the south areaway) must be added to the Temple’s height (139’) for a total height of 154.’

11-B DCMR § 100.2 (Definitions)

- “Grade, Finished: The elevation of the ground directly abutting the perimeter of a building or structure or directly abutting an exception to finished grade. Exceptions to Finished Grade are set forth in the definition of “Grade, Exceptions to.”
- “Grade, Exceptions to: The following are exceptions to “Finished Grade” and “Natural Grade” as those terms are defined below: (a) A window well that projects no more than four feet (4 ft.) from the building face; and (b) *An areaway that provides direct access to an entrance and, excluding associated stairs or ramps, projects no more than five feet (5 ft.) from the building face.* [Emphasis added.]

Prof. McCrery Reply - Figure 9 at 16



Minimum Width of Rear Yard

$$139 + 15 = 154'$$

$$1/3 \times 154 = 51'4''$$

The Width of the South Areaway Cannot Be Included in the Width of the Rear Yard.

- The width of the areaway in the Redesignated Rear Yard (7'6") cannot be included in calculating the width of the Redesignated Rear Yard.
- In this regard, the width of the redesignated "rear yard" is measured from the southern edge of the areaway to the south property line.
- The "rear yard" must exclude the areaway, per the definitions of "Yard" and "Rear Yard".

11-B DCMR § 100.2 (Definitions)

- “Yard, Rear: A yard between the rear line of a building *or other structure* and the rear lot line, except as provided elsewhere in this title. The rear yard shall be for the full width of the lot and shall be unoccupied, except as specifically authorized in this title. “
- “Yard, rear, depth of: The mean horizontal distance between the rear line of a building and the rear lot line, except as provided elsewhere in this title.”
- *Reading these definitions together, it is apparent that the “rear yard” does not include the areaway because the areaway is a “structure.”*

Prof. McCrery's Reply - Figure 10 at p. 19



Adams Morgan for Reasonable Development,
BZA Case No. 18888

- In that case, the Board addressed whether “the garage ramp and below-grade garage” violated the provision that “the rear yard “shall be unoccupied,” not how the width of the rear yard is to be measured.
- “AMFRD’s appeal states ‘the Ontario project impedes onto the rear yard requirements as shown on the record, and noted by the Office of Planning, that half of the rear yard is taken up by the ramp structures leading down to the subterranean garage.’”

The Temple's Pyramidal Roof Results in the Appearance of a Raised Building Height for More Than Thirty Percent of the Wall on Which It Sits

- 11-C DCMR § 1501.3 expressly provides that a dome *cannot* be excepted from the height restrictions if it results “in the appearance of a raised building height for more than thirty percent (30%) of the wall on which the architectural embellishment is located.”
- Here, the Temple's pyramidal roof, which is co-extensive with the walls of the Temple, obviously gives “the appearance of a raised building height for more than thirty percent (30%) of the wall” on which it sits

The New Rear Yard Violates the Zoning Regulations Because It Is Occupied by a Structure that Is Over Four Feet Tall

- The Zoning Regulations provide that a rear yard “shall be unoccupied, except as specifically provided in this title.” 11-B DCMR § 100.2 (definition of “yard, rear”).
- 11-B DCMR § 324.1(a), in turn, exempts from this requirement any structure less than four (4) feet in height, which is permitted to be located within a required side or rear yard. 11-B DCMR § 324.1(a).

Prof. McCrery's Reply - at p. 23

Figure 13



Figure 14



Photo of the Front Steps of the Temple (IZIS Dkt. Ex #51)



Photo of the Temple from the Front Showing the 11.5 ft. High Structure from the Front (IZIS Dkt. Ex #61



Google Earth Screenshot of Rear Yard Showing Part of Front Steps, Column and 11.5' Wall Will be in new Rear Yard (IZIS Dkt. Ex. #53)

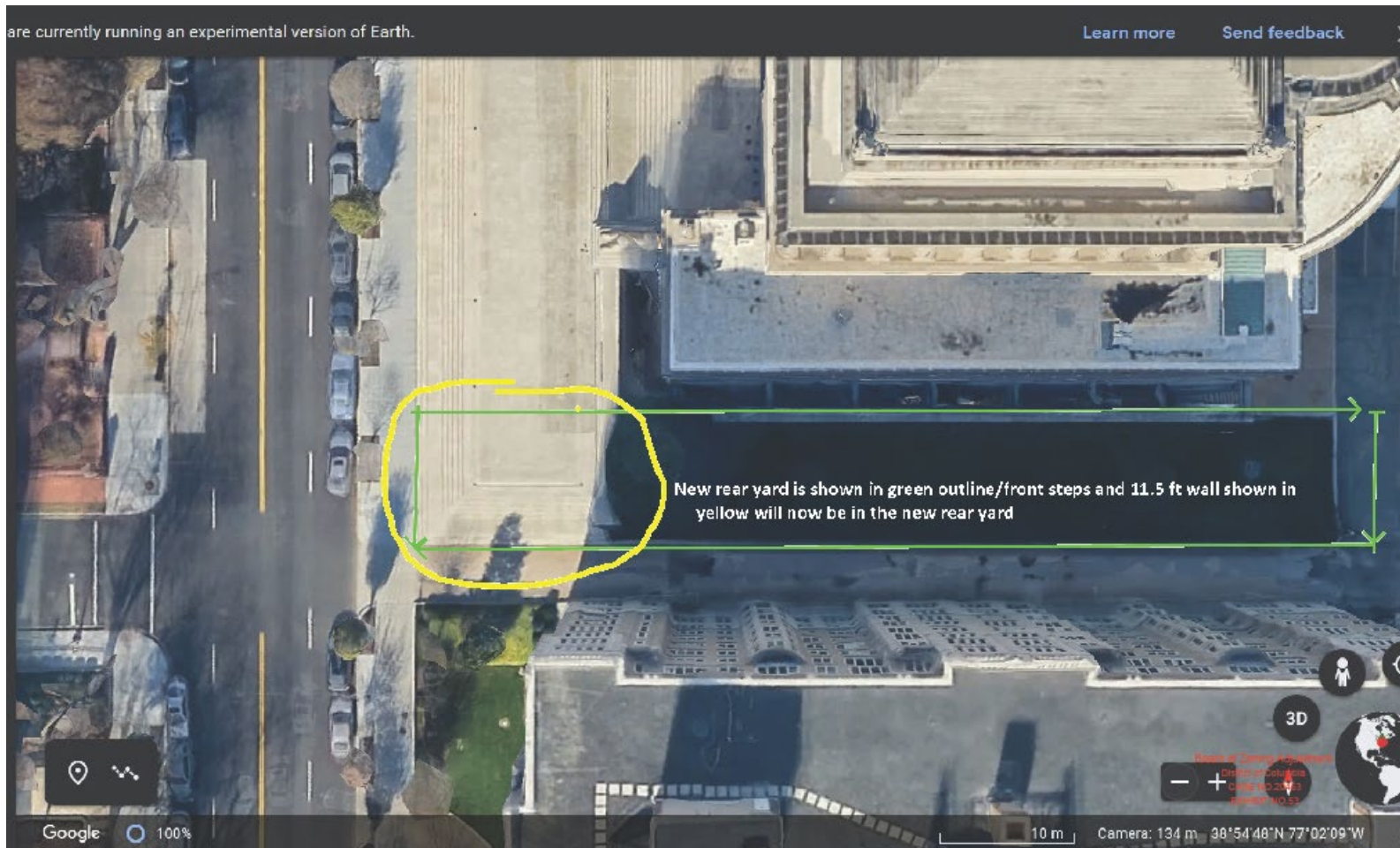


Photo of the 11.5' Monumental Stone Column in the Rear Yard with the DECAA's President, Nick DelleDonne, standing next to it (IZIS Dkt. Ex. #52 (p 3))



Photo of the 11.5' Wall in the new Rear Yard (IZIS Dkt.
Ex. #52 (p.1))



Photo of the Temple from the Front Showing the 11.5' High Structure from the Front (IZIS Dkt. Ex. 61)



Photo of S Street Lawn



Photo Taken from S Street Showing the Tree Mound



Photo Taken from S Street Showing Grade



View of Parking Lot from 15th Street (IZIS Ex. 8A1 p.6)



Google Earth Photo Showing Lot Line, Existing Parking Lot & Loading (DECAA Pre-H Stat)

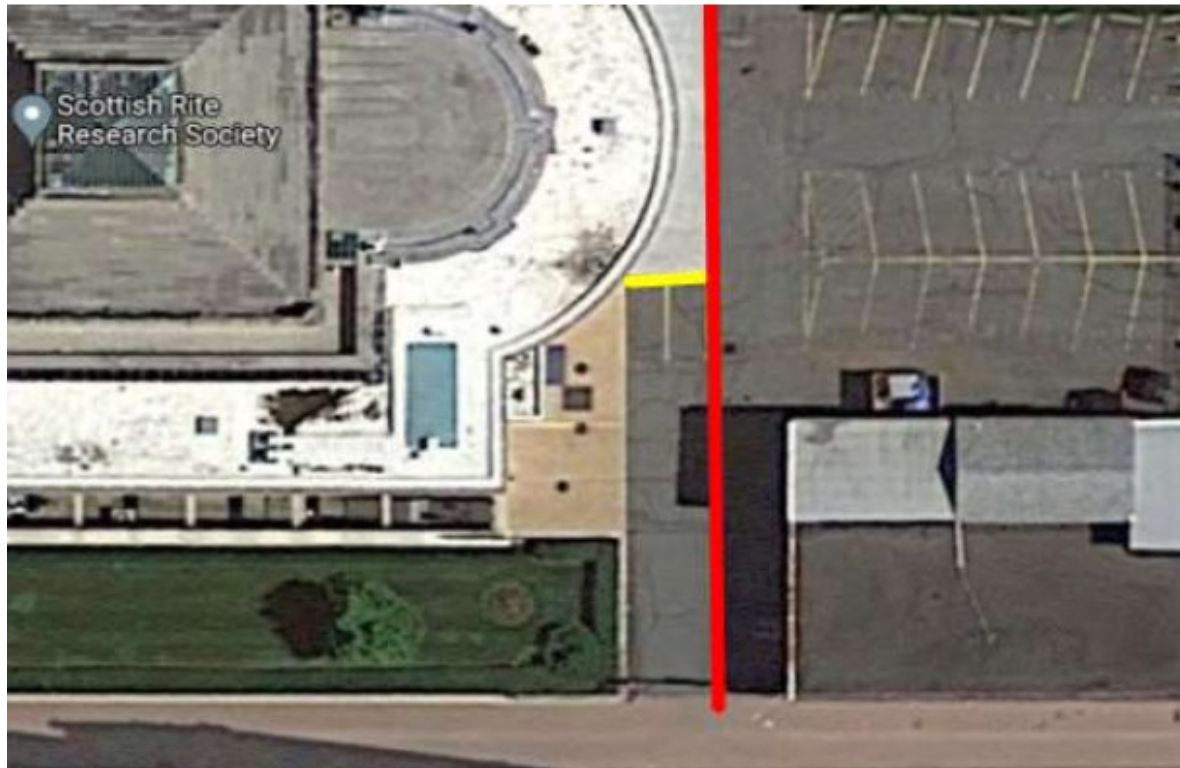


Photo of Loading Berth Dock (DECAA Pre-Hearing Statement)



Appellants' Exhibit No. 51 - SubTitle C 701.5

Firefox

<https://online.encodeplus.com/regs/washington-dc/doc-view.aspx?priat=1>

701.5 Except as provided for in Subtitle C § 702, parking requirements for all use categories are as follows (all references to "sq. ft." refers to square feet of gross floor area as calculated in Subtitle C § 709):

TABLE C § 701.5: PARKING REQUIREMENTS	
Use Category	Minimum number of vehicle parking spaces
Agriculture, large	1.67 per 1,000 sq. ft.
Agriculture, residential	None
Animal sales, care and boarding	1 per 1,000 sq. ft. in excess of 3,000 sq. ft.
Antennas	None
Arts, design, and creation	1 per 1,000 sq. ft. in excess of 3,000 sq. ft.
Basic utilities	0.33 per 1,000 sq. ft. in excess of 3,000 sq. ft.
Chancery	0.5 per 1,000 sq. ft. in excess of 3,000 sq. ft., or as determined by the Foreign Mission Board of Zoning Adjustment.
Community-based institutional facility	1 per 1,000 sq. ft.
Daytime care	0.5 per 1,000 sq. ft. with a minimum of 1 space required.
Eating and drinking establishments	1.33 per 1,000 sq. ft. in excess of 3,000 sq. ft. A minimum of 1 parking space shall be required for a food delivery service.
Education, college/university	For each building: 2 for each 3 teachers; plus either 1 for each 10 classroom seats or 1 for each 12 stadium seats or 1 for each 10 auditorium seats, whichever is greater, except if a campus plan has been approved by the Zoning Commission or the Board of Zoning Adjustment for the college or university, in which case the parking shall be provided as set forth in the approved campus plan.
Education, private	Elementary and middle school: 2 for each 3 teachers and other employees. High school and accessory uses: 2 for each 3 teachers and other employees, plus either 1 for each 20 classroom seats or 1 for each 10 seats in the largest auditorium, gymnasium or area usable for public assembly, whichever is greater.
Education, public	0.25 per 1,000 sq. ft.
Emergency shelter	0.5 per 1,000 sq. ft.
Entertainment, assembly, and performing arts	2 per 1,000 sq. ft.
Firearm sales	1.33 per 1,000 sq. ft. in excess of 5,000 sq. ft.
Government, large-scale	None
Government, local	0.5 space per 1,000 sq. ft. in excess of 2,000 sq. ft. with a minimum of 1 space required, except: Public recreation and community center: 0.25 space per 1,000 sq. ft. in excess of 2,000 sq. ft. with a minimum of 1 space required; and Kiosk public library - no requirement.
Institutional, general	1.67 per 1,000 sq. ft. in excess of 5,000 sq. ft.
Institutional, religious	1 for each 10 seats of occupancy capacity in the main sanctuary; provided, that where the seats are not fixed, each 7 sq. ft. usable for seating or each 18 in. of bench if benches are provided shall be considered 1 seat.
Lodging	0.5 per 1,000 sq. ft. in excess of 3,000 sq. ft.
Medical care	1 per 1,000 sq. ft. in excess of 3,000 sq. ft., with a minimum of 1 space required.
Marine	0.5 per 1,000 sq. ft.
Motor vehicle-related	2 per 1,000 sq. ft.
Office	0.5 per 1,000 sq. ft. in excess of 3,000 sq. ft., except: a medical or dental office, clinic, or veterinary hospital: 1 per 1,000 sq. in excess of 3,000 sq. ft.
Parking	None
Parks and recreation	0.5 per 1,000 sq. ft.
Production, distribution, repair	1 per 1,000 sq. ft. in excess of 3,000 sq. ft., except warehouse or storage facility - 1 per 3,000 sq. ft.
Residential, single dwelling unit	1 per principal dwelling.
Residential, flat	1 per 2 dwelling units.
Residential, multiple dwelling unit	1 per 3 dwelling units in excess of 4 units, except: 1 per 2 dwelling units for any R, or RF zone. 1 per 6 units of publicly assisted housing, reserved for the elderly and/or handicapped.
Retail	1.33 per 1,000 sq. ft. in excess of 3,000 sq. ft.