

**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)	
)	Case No. 20453
Appeal of Dupont East Civic)	
Action Association)	
_____)	
In re)	Case No. 20452
)	
Appeal of Michael D. Hays)	
_____)	

**JOINT MOTION OF APPELLANTS DUPONT EAST CIVIC ACTION
ASSOCIATION AND MICHAEL D. HAYS FOR SUMMARY REVERSAL**

COME NOW Appellants Dupont East Civic Action Association (“DECAA”) and Michael D. Hays (collectively “DECAA”) and jointly file this Motion for Summary Reversal. In support of this motion, they state as follows:

INTRODUCTION

As more fully set forth below, this Board should summarily reverse and vacate the Zoning Administrator’s approval of the subdivision of Lot 108 (“Subdivision”). Bedrock principles of the District of Columbia Administrative Procedure Act (“DCAPA”) establish that a decision of the Zoning Administrator must be reversed if it is arbitrary and capricious or unsupported by substantial evidence. DCRA’s response to two FOIA requests submitted in December 2020 and discussed below establish that the Zoning Administrator had *no information* before him, had reviewed no documents and had relied on *nothing* from which he could determine whether or not this Subdivision complied with the Zoning Regulations at the time he approved the Subdivision.

Accordingly, the Zoning Administrator’s approval violates the DCAPA.

FACTUAL BACKGROUND

A. **DCRA's Response to FOIA Requests For Information Establish That the Zoning Administrator Had No Basis to Approve the Subdivision.**

In December 2020 Edward Hanlon submitted two FOIA requests to DCRA (see IZIS Exhs 54 and 55).¹ In FOIA request 2021-FOIA-01919 (filed on the docket as IZIS Exh. 55) Mr. Hanlon requested

All correspondence including but not limited to all email correspondence between the Office of the Zoning Administrator or Matthew Legrant or Kathleen Beeton on one hand and any person or entity concerning the subdivision of Sq192 Lot 108 (Date Range for Record Search: From 01/01/2020 To 12/30/2020) with respect to the subdivision of Sq. 192 Lot 108 into lots 110 & 111:

IZIS Exh. 55 (emphasis added). In its response to this FOIA request, DCRA replied in writing that *DCRA could not locate any correspondence whatsoever* between the Office of the Zoning Administrator and “and any person or entity concerning the subdivision of Sq192 Lot 108,” not even one email. *See* IZIS Exh. 58.

In FOIA request 2021-FOIA-01918 (filed on the docket as IZIS Exh. 54), Mr. Hanlon requested all of the following and got only one piece of paper in reply (IZIS Exh. 59):

Records Requested in FOIA-01918:

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;

¹ All IZIS Exhibit numbers refer to the Docket Entries in Case No.20453. The exhibits are numbered slightly differently in Case No.20452.

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)

IZIS Exh. 59.

DCRA's sole one page reply (IZIS Exh. 59) to the above extensive FOIA requests for its records concerning the subdivision is this:

<p>The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof, that there are no pending suits or actions that affect title to the property, that parties to any deeds of trust have been indicated that assent, and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby subdivides Lot 108, Section 120 (Block 207 Page 168) into two Lots and requests that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.</p> <p>WITNESSES</p> <p>OWNER THE SUPREME COUNCIL (MOTHER COUNCIL OF THE WORLD) OF THE INSPECTORS GENERAL RIGHTS COMMISSIONERS OF THE HOUSE OF THE TEMPLE OF SOLOMONS OF THE THIRTY-THIRD DEGREE OF THE ANCIENT AND ACCEPTED SCOTTISH RITE OF FREE MASONRY OF THE SOUTHERN JURISDICTION OF THE UNITED STATES OF AMERICA</p> <p>Witness Signature: <i>[Signature]</i> Witness Name: RONALD A. SCALE, DEPARTMENT GRANT COMMANDER</p> <p>Witness Signature: <i>[Signature]</i> Witness Name: WILLIAM C. SEDMORE II, GRAND EXECUTIVE DIRECTOR</p> <p>Subscribed and sworn before me this <u>7th</u> day of <u>August</u> 2019 <i>[Signature]</i> Notary Public My Commission Expires <u>3/31/22</u></p> <p>(NOTARY SEAL)</p> <p>NUMBER OF TRUSTS: <u>0</u></p> <p>ASSENT BY TRUSTEES:</p>	<p style="text-align: center;">OFFICE OF TAX AND REVENUE</p> <p style="text-align: right;">11/12/20 _____ 2019</p> <p>I certify that the following statements relating to this subdivision are correct.</p> <p>1. Ownership agrees with our records: <u>11/12/20 ad</u></p> <p>2. Real estate taxes are paid to: <u>03/31/21 ad</u></p> <p>3. There are no unpaid assessments: <u>11/12/20 ad</u></p> <p style="text-align: center;"><i>Quincy Leary</i> for Chief Assessor, Assessment Division</p> <p>I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 17-140.</p> <p style="text-align: center;"><i>Diana Anderson</i></p> <p>DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS</p> <p style="text-align: right;">11/19/2020 <u>ms</u></p> <p>I certify that this subdivision complies with all applicable provisions of DCMR11, Zoning Regulation of the District of Columbia.</p> <p>Zoning District: <u>RA-SRA-9</u> _____ for ML</p> <p>DEPARTMENT OF THE ENERGY & ENVIRONMENT (DOEE)</p> <p style="text-align: right;">November 12, 2020 November 12, 2020</p> <p>I certify that this subdivision complies with all applicable provisions of DCMR20, Chapter 21 - Flood Hazard Rules, of the District of Columbia.</p> <p>Flood Zone & Flood Elevation: <u>Zone X Unshaded</u></p> <p style="text-align: center;"><i>Victor Uspate</i> DOEE Official</p> <p style="text-align: right;">November 13, 2020 2019</p> <p style="text-align: center;">HISTORIC PRESERVATION</p>	<p style="text-align: center; font-size: 24pt;">SUBDIVISION SQUARE 192</p> <p style="text-align: center;">S STREET, N.W.</p> <div style="text-align: center;"> </div>
<p>SURVEYOR'S OFFICE, D.C.</p> <p>Made for: <u>LOT 108 LESSEE, LLC</u></p> <p>Drawn by: <u>L.E.S.</u> Checked by: <u>[Signature]</u></p> <p>Revised and computations by: <u>B. MYERS</u></p> <p>Recorded at: _____ Page: <u>SR-19-06797</u></p> <p>Scale: 1 inch = 60 feet File No: 19-06111</p> <p>2019080809-19-06797-00-192</p>	<p style="text-align: center;">*Amended to accommodate correct a degraded original image.</p> <p style="text-align: center;"><i>[Signature]</i> 11/30/2020</p> <p style="text-align: center;">OFFICE OF THE SURVEYOR</p> <p style="text-align: right;">_____ 2019</p> <p>I certify that this plat is correct and is hereby recorded.</p> <p style="text-align: center;">Surveyor, D.C.</p>	

Thus, DCRA claims that the Zoning Administrator reviewed no documents, plats, plans or drawings except the amateurish stick plat (IZIS Exh. 59), corresponded with no one about this Subdivision, sent or received no emails about this Subdivision, and relied on nothing to make his decision to approve the Subdivision other than the above stick plat in IZIS Exh. 59.

ARGUMENT

A. The Zoning Administrator's Approval of the Subdivision Violated the DCAPA.

The DCAPA requires that agency actions that are “arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law” must be set aside, reversed, and vacated. DC Code § 2-510. To satisfy this standard, the agency “must examine the relevant data and articulate a satisfactory explanation for its action, including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (citation omitted).² Both the result of the rulemaking and “the process by which [the Zoning Administrator] reaches that result must be logical and rational.” *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998). The decision under review must be supported by “substantial evidence,” i.e., “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Fontenot v. Dist. of Columbia Dep’t of Emp’t Servs.*, 804 A.2d 1104, 1106 (D.C. 2002) (citation omitted).

Finally, this Board has determined it cannot approve a Zoning Administrator’s decision on the basis of evidence that the Zoning Administrator did not even consider. *See, e.g., Appeal of Dennis P. Sobin*, BZA Appeal No. 13715 at 6 (Dec. 3, 1982) (“The Board will make its determination based only on the evidence that the Zoning Administrator had before him at the time of his decision.”); *Appeal of ANC 6A*, BZA Appeal No. 17439 at 6 (March 30, 2007) (“The issue before this Board is whether the facts known to the Acting Zoning Administrator at the time [of his approval] could have reasonably led him to believe” that the requirements were met).

It is patently obvious that the Zoning Administrator’s approval of the Subdivision violates

² Cases construing the federal APA are relevant. *Coakley v. Police and Firemen’s Ret. and Relief Bd.*, 370 A.2d 1345, 1348 (D.C. 1977).

these standards. According to DCRA's FOIA responses (IZIS Exhs. 58 and 59) , the Zoning Administrator had *no information* before him, had reviewed no documents and had relied on *nothing* from which he could discern whether or not this Subdivision complied with the Zoning Regulations at the time he approved the Subdivision. Approval of the Subdivision on that completely vacuous basis was obviously arbitrary and capricious. Further, the absence of *any* evidence in this situation constitutes a gross violation of the substantial evidence standard.

CONCLUSION

Accordingly, for the reasons given above Appellants request that this motion be granted, and that the decision of the Zoning Administrator approving the Subdivision of Lot 108 be summarily reversed and vacated.

Respectfully submitted,

For Dupont East Civic Action Association

/s/ Edward V. Hanlon
Edward V., Hanlon

For Michael D. Hays

/s/ Michael D. Hays
Michael D. Hays

CERTIFICATE OF SERVICE

I certify that on the below date I served a copy the foregoing Motion via email to:

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I further certify that on this date I served a copy of the foregoing Motion via first class mail postage prepaid to::

The Supreme Council of the Scottish Rite Temple 1733 16th Street, NW
Washington DC 20009
Property Owner



Edward V. Hanlon
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Date: October 6, 2021