

**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 REPLY OF APPELLANTS DUPONT EAST CIVIC ACTION ASSOCIATION  
AND MICHAEL D. HAYS TO THE OPPOSITION OF PERSEUS TDC AND  
DCRA TO APPELLANTS’ JOINT MOTION FOR SUMMARY REVERSAL**

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

In opposition to DECAA’s Motion for Summary Reversal (“Motion”), Perseus and the Masons principally argue that the Board is required to hold a public hearing pursuant to 11-Y DCMR § 505.5. However, nothing in that provision prevents this Board from addressing the motion for summary reversal at the outset of the public hearing. Given that DCRA has admitted in its FOIA responses that the Zoning Administrator had no documents upon which he relied in approving the Subdivision (other than IZIS Exh. 59 - a one page stick plat), a full blown public hearing is a waste of this Board’s time. Rather, the Board should address this Motion at the outset of the hearing.

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Perseus (but not DCRA) also argues, contrary to DCRA's position, that the Zoning Administrator "reviewed in 2018" some documents that they attached as Exhibit A. However, it is apparent from DCRA's response that the Zoning Administrator neither reviewed or relied upon those documents *in approving the Subdivision on November 19, 2020*. Mr. Hanlon's FOIA request sought the following, among other things:

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)

IZIS Exh. 59 (emphasis added).

DCRA's one page reply (IZIS Exh. 59) to the above extensive request for its records concerning the Subdivision was solely the amateurishly drawn stick plat (IZIS Exh. 59) which failed to provide any information from which the Zoning Administrator could reasonably conclude the proposed Subdivision complied with the Zoning Regulations. Thus, DCRA admits 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

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Subdivision other than the stick plat in IZIS Exh. 59. Accordingly, under this Board’s authority, since the Zoning Administrator had no evidence before him at the time of his decision upon which he relied in approving the Subdivision, his approval must be vacated and reversed. *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).

Finally, DECAA notes that Perseus does not claim that the any documents other than those in Exhibit A to its opposition were ever before the Zoning Administrator. Thus, under the above authority, most of the exhibits Perseus submitted with its Prehearing Submission are inadmissible, including, for example, the documents asserting a revised height for the Temple (Exhibits B and C to Perseus’ Prehearing Submission). Indeed, Exhibit C (claiming a Temple height of 134’ 6”) is dated “06 29 2021” and could not possibly have been relied upon by the Zoning Administrator on November 19, 2020, over seven months earlier.

**CONCLUSION**

Accordingly, for the reasons given above Appellants request that their Motion for Summary Reversal 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

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**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*



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Edward V. Hanlon  
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Washington, DC 20009

Date: October 18, 2021