

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPEAL OF A DECISION OF THE ZONING ADMINISTRATOR FOR THE DISTRICT OF
COLUMBIA, DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

SUBDIVISION OF LOT 108 ON SQUARE 192

In re)
)
Appeal of the)
Dupont East Civic Action Association)
)
_____)

January 18, 2021

APPELLANT’S STATEMENT IN SUPPORT OF APPEAL

This statement is filed on behalf of Appellant, Dupont East Civic Action Association (DECAA) (hereinafter the “Appellant”), a 501(c)(3) civic association whose boundaries include Lot 108 on Square 192 and whose members include many residents who live on streets adjacent to Square 192, by and through its undersigned representative. This Statement is in support of DECAA’s appeal of the decision of Matthew LeGrant, Zoning Administrator for the District of Columbia (the “Zoning Administrator”), certifying the zoning compliance of the subdivision of Lot 108 on Square 192 into two lots, Lot 110 (“Western Lot”) and Lot 111 (“Eastern Lot”), (the “Subdivision”). On Lot 110 is a national historic landmarked building, the Scottish Rite Masonic Temple (“Masonic Temple”), whose street address is 1733 16th Street NW. The new Lot 111 immediately to the rear of the Masonic Temple building contains the area known as the Temple Gardens, a large open green area; a nineteenth century historic carriage house runs along the alley on the south side of Lot 111.

Jurisdiction

The Board of Zoning Adjustment (“BZA”) is authorized to hear this appeal pursuant to Subtitle

Y § 100.4 of the 2016 Zoning Regulations (“ZR-16”).

Standing

The Appellant has standing to bring this appeal as a “person aggrieved” pursuant to Subtitle Y § 302.1 of ZR-16.

DECAA is a neighborhood 501(c)(3) charitable organization dedicated to preserving the historic, architectural and aesthetic value of property, landmarks, sites and objects within its Boundaries and to promoting the preservation of existing open spaces in public and private hands within its Boundaries. Square 192 lies completely within DECAA’s boundaries. DECAA was originally founded by neighbors opposed to inappropriate overdevelopment of Lot 108, the site of a world-famous national landmark, the Masonic Temple.

DECAA, as the “Aggrieved Party”, has standing to file this Appeal and its interests will be adversely and substantially affected by the proposed Subdivision. A number of members of DECAA live in homes, condos and apartments immediately abutting or adjacent to Lot 108.

Timeliness

This appeal is timely filed pursuant to Subtitle Y § 302.2 of ZR-16 because the Zoning Administrator certified the zoning compliance of the Subdivision on November 19, 2020 and, thereafter, on November 19, 2020 the Subdivision was recorded in Subdivision Book 217 Page 161 (“the Plat”). A copy of the Subdivision filing with the November 19, 2020 signature of the Zoning Administrator was subsequently posted on a fence of Lot 108.

SUMMARY OF ARGUMENT

The Subdivision does not conform to the zoning regulations and cannot be done as a matter of right, The Subdivision certified by the Zoning Administrator violates Subtitle A § 101.6 of ZR-16 and Subtitle C § 302.1 of ZR-16:

11-A-101.6 Where a lot is divided, the division shall be effected in a manner that will not violate the provisions 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-302.1 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 ...

- A. THE SUBDIVISION VIOLATES THE MINIMUM REAR YARD REQUIREMENTS OF SUBTITLE F § 605.1 OF ZR-16
- B. THE SUBDIVISION VIOLATES THE MINIMUM LOADING REQUIREMENTS OF SUBTITLE C § 901.1 AND § 901.4 OF ZR-16
- C. THE SUBDIVISION VIOLATES THE LOCATION REQUIREMENTS OF SUBTITLE C § 903.1 OF ZR-16
- D. THE SUBDIVISION VIOLATES THE SIZE AND LAYOUT REQUIREMENTS OF SUBTITLE C § 905.2, § 905.3 AND § 905.4 OF ZR-16
- E. THE SUBDIVISION VIOLATES THE MINIMUM PARKING REQUIREMENTS OF SUBTITLE C § 701.5
- F. THE SUBDIVISION VIOLATES THE PURPOSE AND INTENT CONTAINED IN SUBTITLE F § 601.1

- G. THE SUBDIVISION INCREASES THE NONCONFORMING HEIGHT OF THE EXISTING BUILDING BY ALTERING THE BUILDING HEIGHT MEASURING POINT (BHMP)
- H. THE SUBDIVISION VIOLATES THE SIDE YARD REQUIREMENTS OF SUBTITLE F § 606.1

SUMMARY OF WITNESS TESTIMONY

A. James McCrery

Professor James McCrery will provide expert testimony. He is a Professor of Architecture at Catholic University and a Commissioner of the United States Commission of Fine Arts. A summary of his testimony and his curriculum vitae are being submitted with the Form 125 of Appellant Michael Hays which DECAA hereby incorporates in its entirety by reference.

B. Ravi Ricker

Ravi Ricker, a certified Architect, will provide expert testimony. His curriculum vitae and a summary of his testimony is being submitted with DECAA's Form 125.

C. Michael Hays

Mr. Hays will provide testimony. A summary of his testimony is being submitted with the Form 125 of Appellant Hays and contained in his Statement of *Appellant Michael Hays In Support Of Appeal of Zoning Administrator's Approval ff Subdivision of Square 192 Lot 108* which DECAA hereby incorporates in its entirety by reference.

D. Nicholas DelleDonne

Mr. DelleDonne, President of DECAA, will provide testimony concerning DECAA's standing. A summary of his testimony is below.

E. Edward Hanlon

Mr. Hanlon will provide testimony. A summary of his testimony is below.

SUBJECT PROPERTY

The Subject Property, Lot 108, Square 192, owned by

The Supreme Council (Mother Council of the World) of the Inspectors General Knights Commanders of the House of the Temple of Solomon of the Thirty-Third Degree of the Ancient and Accepted Scottish Rite of the Free Masonry of the Southern Jurisdiction of the United States Of America

(hereinafter “Property Owner”), has an area of approximately 92,220 square feet according to the Subdivision Plat recorded on November 19, 2020. *See* Figure 1 below The Subject Property is bounded on the west by 16th Street NW on the east by 15th Street on the north by S Street NW and on the south by a public alley. The Subdivision divides the property in half, a western lot, Lot 110, and an eastern lot, Lot 111. Each new lot will be 46,110 square feet. Figure1 below shows the subdivision which was approved by the Zoning Administrator on November 19, 2020:

Figure 1

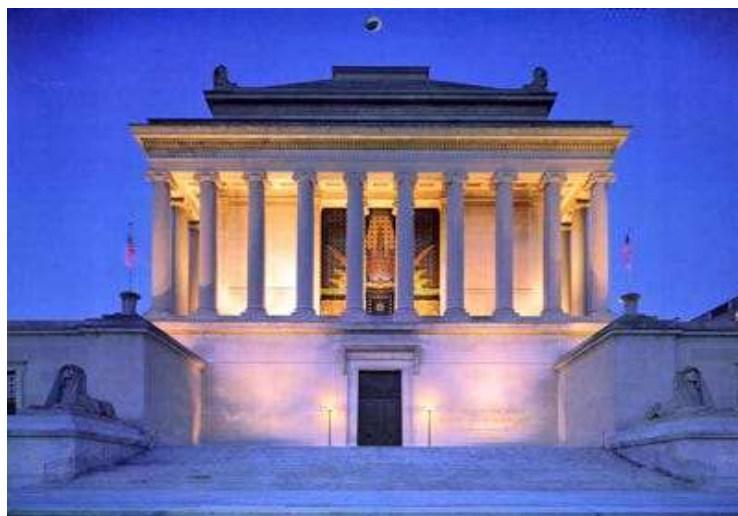


On the western half of Lot 108 (subdivided Lot 110) sits one of the most magnificent buildings in the nation’s capital, the Masonic Temple located at 16th and S Streets, NW. In May 1911, the Masons broke ground on construction of the Temple. Its architect was John Russell Pope, who also was the architect for such notable buildings as the Jefferson Memorial, the National Archives, the National Gallery of Art and the National City Christian Church. The Masonic Temple’s stately grandeur has graced this city for over 100 years.

Contemporary architects widely praised the design of the Masonic Temple, and a panel of architects named it “one of the three best public buildings” in the U.S. The National Park Service recounts on its website that “In 1931, the [the Masonic Temple] building was voted the *fifth most beautiful building in the world* by members of the Association of American Architects.” <https://www.nps.gov/nr/travel/wash/dc54.htm>

American Architecture describes the Masonic Temple as “an example of the triumph of classical form in America.” The Masonic Temple is listed in the D.C. Inventory of Historic Sites as a Historic Landmark and is a contributing resource in the 16th Street Historic District. The property was included in the city’s first list of landmarks by the Joint Committee of Landmarks in 1964. In 1978 the Masonic Temple was listed in the National Register of Historic Places.

Figure 2



Above: The front of the Masonic Temple showing the majestic stairway and entrance door facing 16th Street

Below are two photos of the rear of the Temple, known as the Temple Gardens, taken from the Property Owner's Facebook page. The first photo immediately below shows the full view from 15th Street looking west.

Figure 3



Figure 4



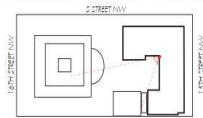
The Subdivision approved by the Zoning Administrator on November 19, 2020 would draw a new lot line *only 5'9"* behind the apse at the rear of the Temple above, making all the open green space shown in Figure 3 part of new Lot 111 on which the Property Owner intends to build a huge apartment complex.

The intent of the Property Owner is to build a 5-story apartment building (4 stories above grade with an additional level of residential penthouse apartments on the building's roof), plus two levels of subterranean residential cellar apartments, an amenity club on the roof, a rooftop swimming pool, and a two-story underground parking garage – all on the green grassy park-like area shown in Figures 3 and 4.

Figure 5



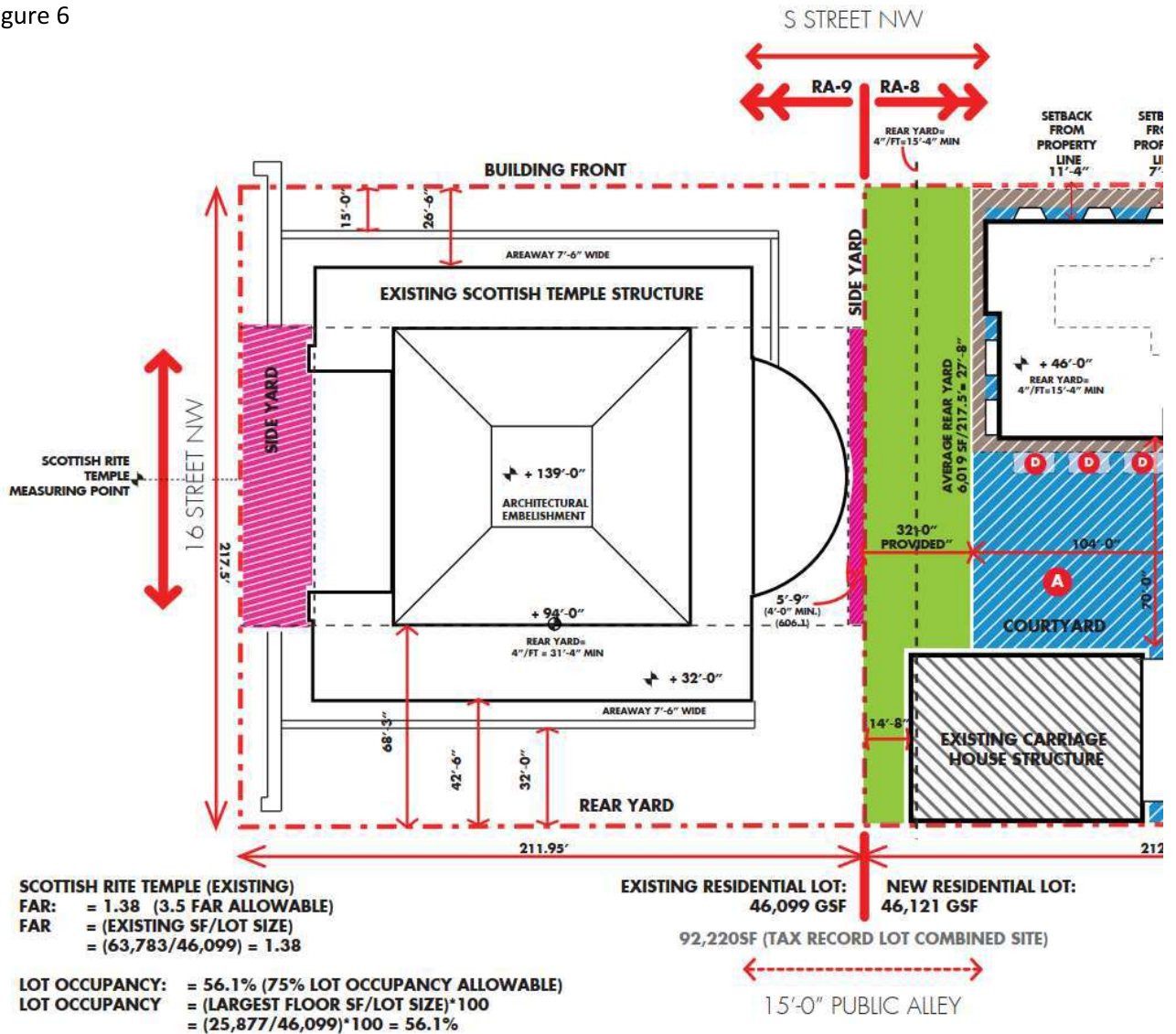
HISTORIC PRESERVATION REVIEW BOARD PACKAGE
  1733 16TH STREET NW



BIRDS EYE - COURTYARD
 02.28.2019 **A-46**

Figure 5 above shows what the Property Owner intends to construct on the new Lot 111. The Subdivision line would run less than 6 feet from the majestic Masonic Temple building shown in Figures 2, 3 and 4. Lot 108 is currently split zoned as shown in Figure 6 below which was prepared by the Property Owner's architects. Lot 110 would be in a RA-9 zone and Lot 111 would be in a RA-8 one as shown in Figure 6 below:

Figure 6



HISTORIC PRESERVATION REVIEW BOARD PACKAGE



1733 16TH STREET NW

The architects for the Property Owner show the height of the Masonic Temple is between 139 feet above grade (Figure 6) and 140 feet above grade (Figure 7) with the BHMP computed from the curb opposite the front of the building facing 16th Street as shown in Figure 7 below. The drawings in Figures 6 and 7 were prepared by the architects for the Property Owner.

Figure 7

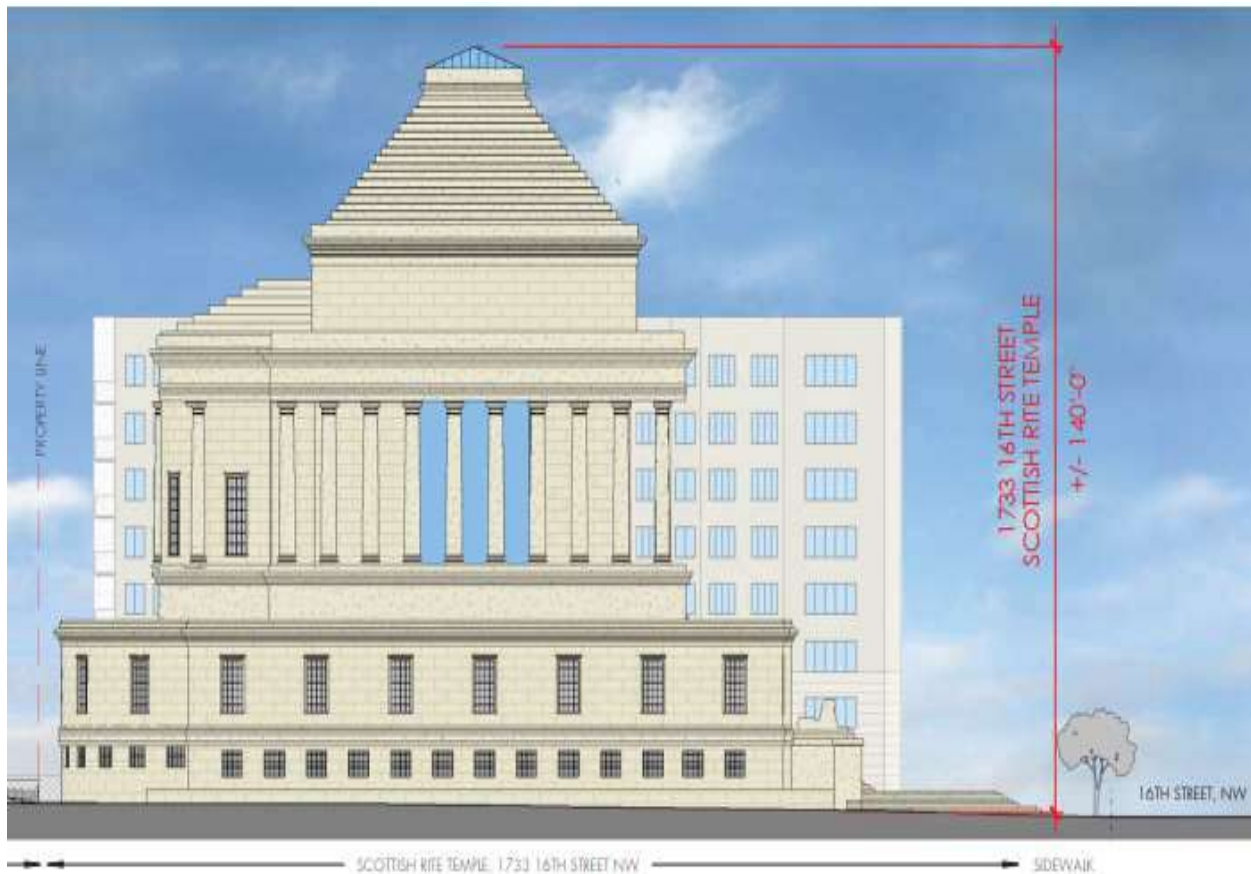


Figure 7 above shows the Temple from S Street NW looking south towards the Temple building. There is no entranceway (and never has been any entranceway) on the S Street side of the Temple.

However, in filing for Subdivision and in the Zoning Administrator's decision to approve the Subdivision application, the Property Owner claims S Street should be considered the theoretical front of this nationally recognized historic landmark even though it has no entranceway and 16th street, with its iconic majestic stairway, would then be a side street.

Along both the north and south sides of the Masonic Temple are wide deep areaways as shown below in Figure 8.

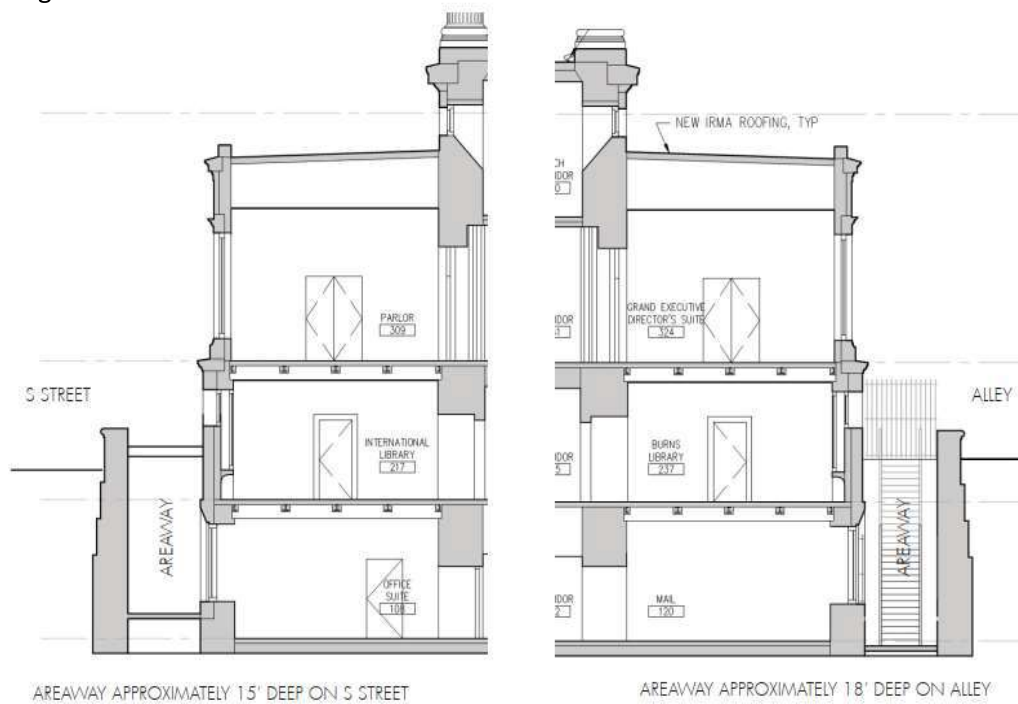
Figure 8



SCOTTISH RITE TEMPLE 1733 16TH STREET (HISTORIC DISTRICT)
VIEW OF AREAWAY ON ALLEY

The Property Owner's architect gives the dimensions of these areaways as 7 ½ feet wide (See Figure 6 above) and 15 feet deep on the S Street side (Figure 9 below) and 7 ½ feet wide and 18 feet deep on the public alley side (Figure 9 below). The Property Owner's architect gives the width of the areaway walls as 4 feet wide along S Street and 3 feet wide along the Public Alley side, See Figure 6 above.

Figure 9



I. THE SUBDIVISION VIOLATES THE MINIMUM REAR YARD REQUIREMENTS OF SUBTITLE F § 605.1 OF ZR-16

Subtitle F § 605.1 of ZR-16 states:

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

Zone	Minimum Rear Yard
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

According to the Property Owner's architect the Masonic Temple is at least 139 feet high measured from the curb opposite the front of the building on 16th Street. This BHMP is shown on the left side of Figure 6 above. See both Figures 6 and 7 above. If the Property Owner were designating 16th Street as the building's front, then the rear yard would be immediately to the east of the Temple apse stretching at least $139/3 = 46.33$ feet towards 15th Street encompassing approximately 25% of the green grassy area shown in Figure 3 above.

In addition, as the Property Owner's architect shows in Figure 6 above, an existing small historic carriage house occupies approximately 90 feet stretching along the south side of Lot 108 behind the Temple apse.

A compliant subdivision could have been created if 16th Street were designated the front of the Temple building since the rear yard would be over 212 feet long stretching from the Temple apse all the way to 15th Street. See Figures 1 and 6 But, such a subdivision would be smaller than Lot 111, preserving at least 25% of the Temple Garden as the rear yard contemplated by the Zoning Regulations.

Instead, the Zoning Administrator ignored possible alternative conforming subdivisions and gave into the Property Owner's historically inappropriate designation of S Street as the theoretical front of this beautiful historic landmark.

But there is an areaway running along the S Street façade of the Temple building which is 7.5 feet wide and 15 feet deep.

Subtitle B § 308.2 of ZR-16 states:

The building height measuring point (BHMP) shall be established at the adjacent natural or finished grade, *whichever is the lower in elevation*, at the mid-point of the building façade of the principal building that is closest to a street lot line. For

any excavations projecting from the building's façade other than an exception to grade as defined at Subtitle B § 100.2 the elevation of the midpoint of a building façade *shall be the equivalent of the lowest such elevation*; excluding existing driveways adjacent to the midpoint(s) directly connecting a garage and public right of way. (Emphasis added)

Subtitle B § 100.2 of ZR-16 defines the only exceptions to grade as follows:

Grade, Exceptions to: The following are exceptions to “Finished Grade” and “Natural Grade” as those terms are defined below: ... (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.*

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. (Emphasis added)

Therefore, the Zoning Regulations establish the BHMP at the bottom of this areaway running along S Street.

Hence, if S Street is designated the front of the Temple building, the height of the Temple measured from its BHMP is at least $139 + 15 = 154$ feet.

If S Street is designated the front as it is in Figure 6 prepared by the Property Owner, then the required rear yard under Subtitle F § 605.1 of ZR-16 is at least $154/3 = \underline{51.33}$ feet.

Figure 6 shows the distance from the lot line along the south side of Lot 108 to outer wall of the areaway is only 32 feet. The distance from the lot line along the south side of Lot 108 to the north face of the areaway is shown in Figure 6 to be $42 \frac{1}{2}$ feet.

The Subdivision approved by the Zoning Administrator on November 19, 2020 violates Subtitle A § 101.6, Subtitle C § 302.1 and Subtitle F § 605.1 of ZR-16.

II. THE SUBDIVISION VIOLATES THE MINIMUM LOADING REQUIREMENTS OF SUBTITLE C § 901.1 AND § 901.4 OF ZR-16, THE LOCATION REQUIREMENTS OF SUBTITLE C § 903.1 OF ZR-16 AND THE SIZE AND LAYOUT REQUIREMENTS OF SUBTITLE C § 905.2, § 905.3 AND § 905.4 OF ZR-16

Subtitle F § 901.1 of ZR-16 states:

All buildings or structures shall be provided with loading berths and service/delivery spaces as follows...

Use	Minimum Number of Loading Berths Required	Minimum Number of Service/Delivery Spaces Required
Institutional		
30,000 to 100,000 sq. ft. gross floor area	1	1
More than 100,000 sq. ft. gross floor area	2	1

Figure 6 computed by the Property Owner's architect shows the Gross Floor Area of the Temple building is 63,783 sq feet. On subdivision Lot 110 must be complaint with the Zoning Regulations. Pursuant to Subtitle F § 901.1 of ZR-16 upon subdivision the Masonic Temple must have at least one loading berth and one service/delivery space.

Subtitle F § 901.4 of ZR-16 states:

Each loading berth shall be accompanied by one (1) adjacent loading platform.

In addition to at least one loading berth and one service/delivery space the Masonic Temple must also have an area loading platform.

Figure 10 below shows the present loading area. All loading, deliveries and service are done at this dedicated entrance shown in Figure 10. There is no other loading entrance. Note the orange cone in Figure 10 is set where the new boundary subdivision line will be drawn.

Everything shown from the orange cone to the bottom of Figure 10 will be in new Lot 111.

Figure 10



Figure 11 below is a Google Maps aerial view. The red line shows the boundary between Lots 110 and 111 upon subdivision. All the parking spaces to the right of the red line in Figure 11 will be eliminated. The width of the access lane to the loading area will be halved from 30 feet to 15 feet.

Figure 11



Subtitle F § 905.1, 905.2 and 905.3 of ZR-16 state the size and layout requirements for loading berths and service/delivery spaces

905.1 The intent of this section is to ensure that loading facilities are adequately sized and capable of performing their intended functions.

905.2 All loading berths shall be a minimum of twelve feet (12 ft.) wide, have a minimum depth of thirty feet (30ft.) and have a minimum vertical clearance of fourteen feet(14ft.).

905.3 All service/delivery spaces shall be a minimum of ten feet (10 ft.) wide, have a minimum depth of twenty feet (20 ft.) and have a minimum vertical clearance of ten feet (10 ft.) (Emphasis added)

The Masonic Temple must have at least one service/delivery space under § 901.1 of Subtitle F.

§ 905.11 of Subtitle F makes clear that the area set aside for the required service/delivery space cannot be used to meet the berthing or platform required minimums:

901.11 Each service/delivery space shall be clearly marked “For Service and Delivery Vehicles Only” and used *exclusively* for such vehicles. (Emphasis added)

Further, Subtitle F § 905.6 of ZR-16 states that the areas for access aisles, maneuvering space and loading platforms cannot be used to meet the size and layout requirements for loading berths and service/delivery spaces:

905.6 The dimensions specified in this section for loading berths and service/delivery spaces are exclusive of access aisles, maneuvering space, and loading platform

The area dedicated to the required loading berth shown in Figure 11 appears less than 55 feet deep east to west. In such cases Subtitle F § 905.4 of ZR-16 states:

All loading berths shall be accompanied by one (1) adjacent loading platform that meets the following requirements:(a) A loading berth that is less than fifty-five

feet (55 ft.) deep shall have a platform that is at least one hundred square feet (100 sq. ft.) and at least eight feet (8 ft.) wide;

Finally, Subtitle F § 905.6 of ZR-16 states

903.1 Except as provided in this section, all loading berths and service/delivery spaces shall be located as follows ... (b) Within the rear yard of the building they are intended to serve; or (c) Within a court or side yard of the building they are intended to serve, provided that on a lot that is within or adjacent to an R, RF, RA, or NC zone, the loading berths and service/delivery loading spaces *shall be at least six feet (6ft.) from any side lot line.* (Emphasis added)

The Masonic Temple is a major institution. The Masonic Temple holds seminars, tours, meetings, banquets, educational classes, and celebrations at its building. Lot 108 clearly has sufficient space to meet all loading, service and delivery needs of the Temple as the open area east of the Temple is over 200 feet long. This is easy to see from Figure 11, if the red boundary line were moved east to encompass just part of the area the Property Owner currently uses for parking and deliveries on the north side of the carriage house. See Figures 6 and 11.

The problem is that Property Owner wants to squash all its loading, service and deliveries into a postage stamp area which cannot meet the minimum requirements of Subtitle F § 901.1 et seq., of ZR-16 as shown above.

There are alternative subdivisions of Lot 108 that would enlarge the western lot sufficiently to meet the Property Owner's required minimums for loading, service and deliveries. However, the Subdivision approved by the Zoning Administrator on November 19, 2020 does not meet these required minimums and it was error for the Zoning Administrator to approve the Subdivision at issue.

III. THE SUBDIVISION VIOLATES THE MINIMUM PARKING REQUIREMENTS OF SUBTITLE C § 701.5

Subtitle C § 701.5 states that the “minimum number of vehicle parking spaces” required for an “Institutional, general” use, which includes the Masonic Temple, is:

Use Category	Minimum number of vehicle parking spaces
Institutional, general	1.67 per 1,000 sq. ft. in excess of 5,000 sq. ft.

Figure 6 gives the square footage of the Masonic Temple as 63,783¹ square feet. The required parking minimum would be

$$(63,783 - 5,000)/1,000 = 58.783$$

$$58.783 \times 1.67 = 98.168 \text{ spaces}$$

The Masonic Temple is within 0.5 miles of the U Street Metro and, therefore, under Subtitle C § 702.1 the number of required parking spaces is reduced by 50% from 98 to 49 required spaces.

It can be seen from Figures 1 and 11 that the Subdivision recorded on November 19, 2020 eliminates all the surface parking for Lot 110 and, therefore, violates Subtitle C § 701.5. That is, because all open space more than 5’9” from the rear of Temple apse will be placed in the new eastern lot, Lot 111, As a result, Lot 110 will have no parking spaces above or below ground to serve the institutional use of this national historic landmark.

¹ The 63,783 square foot figure comes from Figure 6 produced by the Property Owner’s architect but cannot be verified from publicly available information.

As stated in footnote 1 the 63,783 square foot figure comes from Figure 6 produced by the Property Owner's architect but cannot be verified from publicly available information.

However, pursuant to Subtitle B § 100.2 of ZR-16 the finished grade on both the north and south sides of the Masonic Temple is at the bottom of the 7.5 foot wide areaways. As explained above, areaways wider than 5 feet are not an exception to grade.

Subtitle B § 100.2 of ZR-16 defines the ground floor as "The floor level nearest to and above the adjacent finished grade."

On the north and south sides of the Temple building, the ground floor is the floor shown at the very bottom of the areaway in Figure 8 repeated below:

Figure 8



SCOTTISH RITE TEMPLE 1733 16TH STREET (HISTORIC DISTRICT)
VIEW OF AREAWAY ON ALLEY

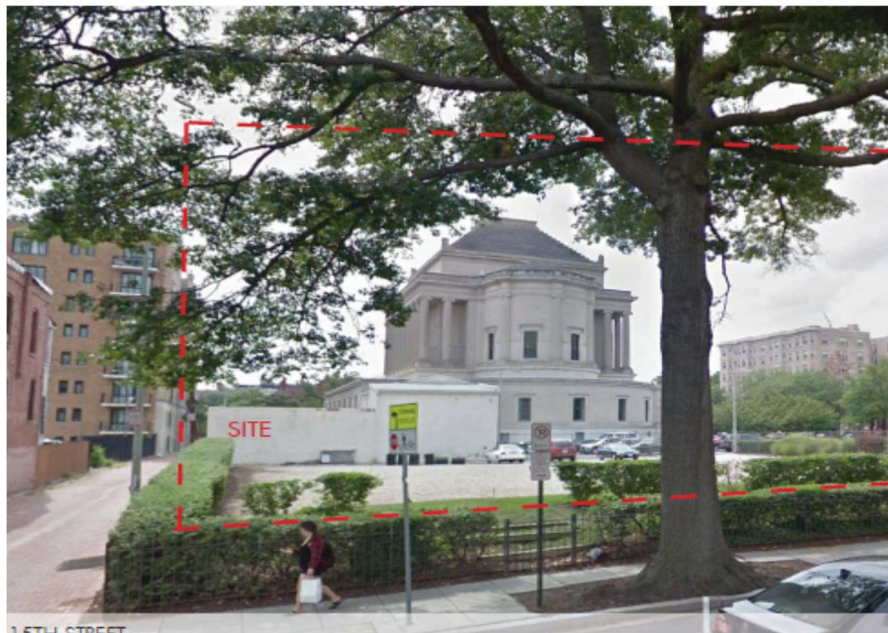
From Figure 6 the gross floor area for lowest floor shown in Figure 8 (2 of whose 4 sides (50%) are completely above finished grade) can be computed under Subtitle B § 304.4 of ZR-16 to be $148.5' \times 148.5' = 22,052 \times 0.5 = 11,026$ sq feet. It appears the Property Owner's architect has

not included this lowest level in the computed the GFA of 63,783. Thus, the correct GFA is approximately $63,783 + 11,026 = 74,809$ sq feet. The number of parking spaces needed for Lot 110 upon Subdivision is computed as follows:

$$\begin{aligned} (74,809-5,000)/1000 &= 69.8 \\ 69.8 \times 1.67 &= 116.57 \\ 116.57 \times 50\% \text{ Metro credit} &= 58.3 \text{ parking spaces} \end{aligned}$$

Lot 108 has sufficient room in the large open area to the rear of the Temple apse to easily fit several times 58 parking spaces. The existing parking area for Lot 108 is shown below in Figure 12, which is a photo the Property Owner's architect supplied.

Figure 12



After Subdivision Lot 100 will have no parking spaces.

11-A-101.6 states “Where a lot is divided, the division shall be effected in a manner that will not violate the provisions of this title for ... parking spaces...[for] any lot created.” The Subdivision approved by the Zoning Administrator violates the required parking lot minimum for Lot 110.

IV. THE SUBDIVISION VIOLATES THE PURPOSE AND INTENT CONTAINED IN SUBTITLE F § 601.1 FOR THE DUPONT CIRCLE RA ZONES

For all the reasons given above the Subdivision approved by the Zoning Administrator on November 19, 2020 violates multiple provisions of the Zoning Regulations.

In addition, the Subdivision violates the purpose and intent of the Dupont Circle RA zones, RA-8 and RA-9. The Property Owner is twisting the Zoning Regulations to achieve an outcome not intended by the Zoning Regulations.

In order to reduce the size of the lot on which one of the most beautiful and iconic buildings in the world sits, on which the first public library in the District of Columbia was housed, designed by a man, John Russell Pope, perhaps, the most important architect in DC's history, a national historic landmark, the Property Owner proposes to do to this landmark something which defies common sense – designate the 16th Street side of the Temple a “side” of this building and the doorless, stairless S Street side the “front” of this majestic building.

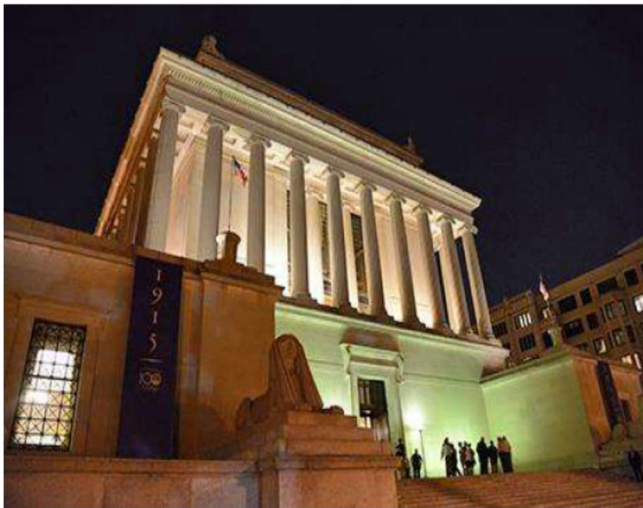


Figure 13 (16th Street side)



Figure 14 (S Street side/no door/no stairs)

The Property Owner is attempting call the front the side and the side the front of a *national landmark*.

The massive roof of the Masonic Temple weighs 332 tons.² The roof is shown from the inside in Figure 15 standing inside the Temple Room where major ceremonies take place, looking up to the skylight at the top of the 332 ton pyramidal roof. The Property Owner destroys the ordinary meaning of words when it attempts to call the 332 ton roof of this national landmark not a roof but an “embellishment” in Figure 6, *supra*, (so as to minimize the required rear yard for Lot 110 in this RA-9 zone). But, if the 332 ton pyramidal roof is not a roof, then the Temple is not a building (because by definition a building is a structure with a roof) (Subtitle B § 100.2 of ZR-16: “Building: A structure requiring permanent placement on the ground that has one (1) or more floors *and a roof* supported by columns or walls.)

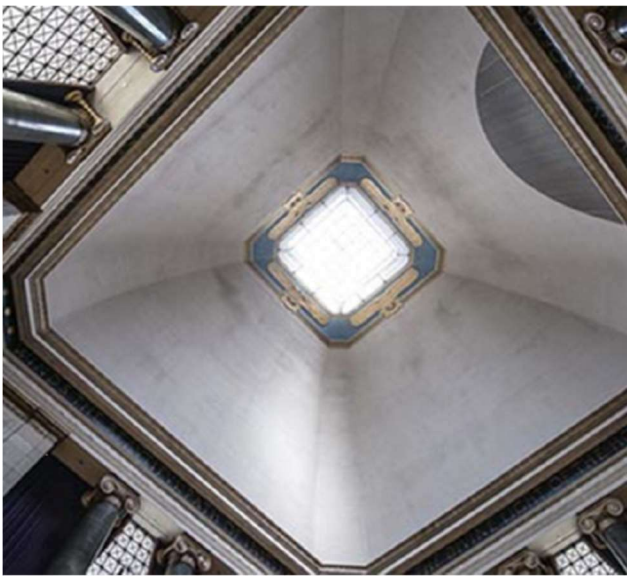


Figure 15 taken from the Temple’s Facebook page, standing inside the Temple room where major ceremonies take place, looking up to the skylight at the top of the 332 ton pyramidal roof

Such designations (the front is not the front and the roof is not the roof of this national landmark) are sophistry and violate our common sense, our notions of beauty, our respect for

2 See the Masonic Temple Virtual Tour at <https://scottishrite.org/our-museum/virtual-tour/>

history and are a genuflection to greed which violates the purposes and intent laid out in Subtitle F § 601.1.

The Subdivision the Zoning Administrator approved on November 19, 2020 in scale, density, coverage and relationship to the historic Temple building is contrary to the clear and worthy intentions for the RA-9 zone. The Zoning Regulations, ZR-16, set forth the *intent* for the RA-9 zone:

The RA-9 zone is intended to:

Recognize the Dupont Circle area is a unique resource in the District of Columbia that must be preserved and enhanced;

- Provide strong protections to retain its low scale, predominantly residential character, independent small retail businesses, human scale streetscapes, and historic character;
- Enhance the residential character of the area by maintaining existing residential uses and controlling the scale and density of residential development;
- Protect the integrity of “contributing buildings”, as that term is defined by the Historic Landmark and Historic District Protection Act of 1978.
- Preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide...

The intent of Subtitle F § 601.1 is violated by approving a Subdivision which creates a non-conforming lot, too small to preserve the minimum rear yard required in RA-9, the minimum loading requirements, delivery and parking requirements and by seeking to place a national landmark on a lot too small for its size and use and thereby fails to protect the “integrity” of the Masonic Temple building and the lot upon which it sits. The proposed lot division results in a direct violation of the Zoning Regulations by eliminating what is undisputedly the existing rear yard of the Scottish Rite Temple and the open green space it provides. The proposed new

construction on the existing rear yard green space clearly undermines the R8, R9 and R10 zone goal to:

(e) Preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide;

This Subdivision which the Zoning Administrator erred in approving on November 19, 2020 cannot be done as a matter of right. The standards set out on Subtitle F § 601.1 above are *not* merely precatory with respect to the November 19, 2020 Subdivision.

V. THE SUBDIVISION CREATES A LARGER LOT 111 THAN CONTEMPLATED BY THE ZONING REGULATIONS VIOLATING THE PURPOSE AND INTENT OF SUBTITLE F § 601.1

The Subdivision approved by the Zoning Administrator creates an illegally small Lot 110 with a rear yard smaller than the minimum rear yard required in a RA-9 zone. The Subdivision also fails to provide the minimum loading, service/delivery space and parking which Lot 110 requires. *In doing so the Subdivision creates a larger Lot 111 than permitted by 11-C-302.1.*

There certainly are *alternative subdivisions* which the Property Owner could have proposed which would not violate the Zoning Regulations and which would allow for some development on the eastern part of Lot 108 consistent with RA-8 standards.

Had the Property Owner submitted a conforming subdivision application which continued to designate 16th Street, the historic front of this national landmark, as the “front” of the Temple building, then approximately 50 feet of rear yard would be required stretching out from the rear of the Temple apse towards 15th Street to satisfy Subtitle F § 605.1 of ZR-16. As Figures 1 and 6

above show, there is currently over 200 feet of rear yard between the apse and 15th Street with only a small historic carriage house running partially along the alley side of Lot 108 east of the apse.

A subdivision boundary line could have been proposed by the Property Owner approximately 50 feet east of the Temple apse for most of Lot 108 except adjacent to the carriage house (in a proper conforming subdivision the carriage house would be in the western lot).

Further, the lower density of the existing adjacent RA-2 and RF-2 neighboring districts to the north and east of Lot 111 are buffered by extensive existing rear yard open space. The addition of contemplated R8 construction on the district boundary on Lot 111 will have a direct impact on the character of the abutting lower density residential districts, removing the long-standing transition between the lower density neighborhood and the higher RA-9 building.

The lot division the Zoning Administrator approved on November 19, 2020 and the new construction the Property Owner intends on the eastern lot undermines the stated goals for the Dupont Circle R8 and R9 zones and will permanently alter the essential character of the neighborhood which include:

- (b) Provide strong protections to retain its low scale, predominantly residential character, independent small retail businesses, human scale streetscapes, and historic character;
- (c) Enhance the residential character of the area by maintaining existing residential uses and controlling the scale and density of residential development;

A conforming subdivision which would result in a smaller sized eastern lot would allow less dense development consistent with the purposes and intent Subtitle F § 601.1

VI. THE SUBDIVISION INCREASES THE NONCONFORMING HEIGHT OF THE EXISTING BUILDING BY ALTERING THE BHMP

Incorporating the arguments made above, the Subdivision approved by the Zoning Administrator on November 19, 2020, designates S Street as the front of this historic landmarked building. There is a 7'6" wide, 15 foot deep, areaway running along the S Street side. See Figure 9 above. The effect of designating S Street as the front is that the BHMP is established at the bottom of the areaway running along the S Street side of the Masonic Temple building.

Subtitle B § 100.2 of ZR-16 defines the only exceptions to grade as follows:

Grade, Exceptions to: The following are exceptions to “Finished Grade” and “Natural Grade” as those terms are defined below: ...*(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.*

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. (Emphasis added)

Subtitle B § 308.2 states:

The building height measuring point (BHMP) shall be established at the existing grade at the mid-point of the building façade of the principal building that is closest to a street lot line

Subtitle B § 308.5 states:

The height of a building permitted to be ninety feet (90 ft.) shall be measured *from the BHMP to the highest point of the roof* excluding parapets and balustrades not exceeding four feet (4 ft.) in height.

Subtitle B § 308.7 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.*

The result of the above is that if the Property Owner wishes to designate S Street as the front of the Temple building in order to designate a different rear yard than the current historically proper rear yard, the Property Owner must accept the benefit and the burden of its choice. Choosing S Street as the front causes the BHMP to shift and the measured height of the building to increase. This increases the nonconforming height of the Temple building for purposes of the application of the Zoning Regulations in violation of Subtitle C § 201.1 which states:

Subtitle C § 201.1

Except as otherwise permitted in this chapter, nonconforming structures or uses may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures

VII. THE SUBDIVISION MAY VIOLATE THE SIDE YARD REQUIREMENTS OF SUBTITLE F § 606.1

Subtitle F § 606.1 states:

No side yards are required in the RA-8, RA-9, and RA-10 zones; however, if a side yard is provided, it shall be a minimum of four feet (4 ft.).

Subtitle F § 606.5 states:

Existing conforming side yards may not be reduced to a non-conforming width or eliminated.

While the proposed side yards (on the east and west sides of the Temple building upon subdivision) may comply with the above cited Zoning Regulations, it is impossible to tell from the existing publicly available information. The proposed western side yard has not been dimensioned on any publicly available information. The Property Owner has not correctly

computed building height or required rear yard as discussed, *supra*. The reorientation of the side yards in this November 19, 2020 Subdivision significantly diminishes the side yard depth of the resulting lot, Lot 110 raising serious questions about whether the newly designated side yards are conforming.

VIII THE ZONING ADMINISTRATOR’S EGREGIOUS FAILURE TO PROPERLY CARRY OUT HIS DUTIES AND RESPONSINBILITIES

On November 19, 2020 the Zoning Administrator stated

“I certify this subdivision complies with all applicable provisions of DCMR 11, Zoning Regulation of the District of Columbia”

It appears to be signed by “BB” for Mathew LeGrant and was recorded later on November 19, 2020 in Subdivision Book 217 Page 161 (“the Plat”).

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
11/19/2020
I certify that this subdivision complies with all applicable provisions of DCMR 11,
Zoning Regulation of the District of Columbia.
Being Executed: BB-BRA-1
Zoning Administrator

The Property Owner sought this Subdivision in order to construct a huge apartment building and 2 level underground parking garage on the eastern lot estimated to cost \$48 million dollars according to an Affidavit filed by the Property Owner’s developer Perseus TDC. It is unknown whether BB is only a zoning technician and what additional information, if any, he/she may have reviewed on November 19, 2020 or whether he/she was directed to sign by Mr. LeGrant.

What is known from documents released under the Freedom of Information Act is that

the Zoning Administrator allowed the attorneys for the developer to write their own ‘zoning determination letter’ dated October 30, 2018 concerning the apartment complex. Under Mr. LeGrant’s signature is a Disclaimer that the October 30, 2018 letter is not a final decision and is not appealable event/writing under Subtitle Y § 302.5 of ZR-16. The Disclaimer stated:

DISCLAIMER: This letter is issued in reliance upon, and therefore limited to, the questions asked, and the documents submitted in support of the request for a determination. The determinations reached in this letter are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this letter. Changes in the applicable laws, regulations, or policy, or new information or evidence, may result in a different determination. This letter is **NOT** a “final writing”, as used in Section Y-302.5 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations, but instead is an advisory statement of how the Zoning Administrator would rule on an application if reviewed as of the date of this letter based on the information submitted for the Zoning Administrator’s review. Therefore this letter does **NOT** vest an application for zoning or other DCRA approval process (including any vesting provisions established under the Zoning Regulations unless specified otherwise therein), which may only occur as part of the review of an application submitted to DCRA.

The records released under the Freedom of Information Act show that Lawrence Ferris, Esq., the attorney for the Property Owner’s developer, wrote the entire letter and emailed it to the Zoning Administrator in September 2018. The Zoning Administrator signed the letter on October 30, 2018 which Mr. Ferris had written for him. The ZA did not even change a punctuation mark in the multipage single spaced letter. What the Zoning Administrator did is a horrid practice which shakes confidence of the citizens of the District of Columbia in the fairness and impartiality by which DC’s Zoning Regulations are administered. Rich property owners and their attorneys should not be writing their own zoning determination letters even ones which, as here, do not constitute an appealable event under Subtitle Y § 302.5 of ZR-16.

Further, since the attorney for the developer wrote the entire October 30, 2018 letter and the ZA did not even alter a comma in the letter, there can be no confidence that the Zoning Administrator carefully and independently considered all the applicable zoning issues.

This Board should, therefore, have no confidence that the Zoning Administrator made a responsible and careful analysis (or any analysis) of the zoning issues concerning this November

19, 2020 Subdivision. Given the foregoing the Board should neither give deference to or credence to the Zoning Administrator's determinations in this Appeal.

CONCLUSION

For all the above reasons, the Dupont East Civic Action Association hereby respectfully requests that the Zoning Administrator's approval of the Subdivision of Lot 108 be reversed and vacated.

Respectfully submitted,

A handwritten signature in black ink that reads "Edward V. Hanlon". The signature is written in a cursive style with a large initial "E".

Edward V. Hanlon
1523 Swann Street NW
Washington, DC 20009

TABLE

Figure 1	Exhibit 4
Figure 2	Source: Property Owner's Facebook Page
Figure 3	Source: Property Owner's Facebook Page
Figure 4	Source: Property Owner's Facebook Page
Figure 5	Exhibit 3 Page A-46
Figure 6	Exhibit 3 Page A-9
Figure 7	Exhibit 3 Page A-18
Figure 8	Exhibit 3 Page A-84
Figure 9	Exhibit 3 Page A-84
Figure 10	Source: Property Owner's Facebook Page
Figure 11	Google Maps
Figure 12	Exhibit 3 Page A-6
Figure 13	Source: Property Owner's Facebook Page
Figure 14	Photo
Figure 15	Source: Property Owner's Facebook Page