

Appellants' Presentation Board of Zoning Adjustment

Case Nos. 20452 & 20453

Hearing Date Nov. 10, 2021

Testimony and Exhibits

- The following slides and exhibits include a summary of the expected testimony of Appellants' and their experts.

Excerpt from *Ward 5 Imp. Ass'n v. DC*

Ward 5 Imp. Ass'n v. DC Bd. of Zoning Adjustment, 98 A.3d 147, 154-55 (2014) (vacating BZA's decision), in holding that the Board has *de novo* interpretative responsibility over the Zoning Regulations, stated:

“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[.]”*** [Emphasis added.]

Post-Hoc Rationalizations for Zoning Administrator's Decisions Not Allowed

- “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 Dennis P. Sobin*, BZA Appeal No. 13715 at 6 (Dec. 3, 1982) (emphasis added).
- “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. *Appeal of ANC 6A*, BZA Appeal No. 17439 at 6 (March 30, 2007) (emphasis added).

Principles of Interpretation -- Language of Zoning Regulations Governs

- 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 or regulation, ignore certain words, and “rewrite” it to impose a different meaning not contemplated by the legislature. *Ind. Mich. Power Co. v. Dep’t of Energy*, 88 F.3d 1272, 1276 (D.C. Cir. 1996).

Forcing Appellants To Guess as to the Basis for the Subdivision Approval Violates Due Process

- “[W]hen a notice requires its targets to guess among several possible bases for adverse government action, it has not served [the] fundamental purposes [of due process].” *Reeve Aleutian Airways, Inc. v. United States*, 982 F.2d 594, 599 (D.C. Cir. 1993) (emphasis added).
- “Without notice or the specific reasons for the denial, a claimant is reduced to guessing what evidence can or should be submitted in response and driven to responding to every possible argument against denial at the possible risk of missing the critical one altogether.” *Gray Panthers v. Schweiker*, 652 F.2d 146, 168-69, 172 (D.C. Cir. 1980) (emphasis added).

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

(See Separate PDF for Enlarged Version with All Pages)

From: [Ferris, Lawrence](#)
To: [LeGrant, Matt \(DCRA\)](#)
Cc: [Boddy, Christine](#)
Subject: 1733 16th Street NW - Scottish Rite Redevelopment
Date: Tuesday, September 25, 2018 5:22:47 PM
Attachments: [Draft Zoning Determination Letter - 1733 16th Street NW - Proposed Project.docx](#)
[1733 16th Street NW - Architectural Plans.DWG](#)
[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 façade 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)-721-1135
***goulston&storr*s**
1999 K Street, NW * Suite 500 * Washington, DC 20006-1101
(202)-721-0011 * Fax (202)-721-1111 * www.goulstonstorr.com
.....

This communication may contain information which is privileged and/or confidential under applicable law. Any dissemination, copy or disclosure, other than by the intended recipient, is

Board of Zoning Adjustment
Subject of License
CASE NO. 20453
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)
(See Separate PDF for Enlarged Version with All Pages)**

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.20453
EXHIBIT NO.10

Zoning Determination Letter Dated Oct. 30, 2018 Written by Perseus' Attorney and Signed by ZA Mathew LeGrant Without Changing a Word (IZIS Dkt. Ex. #12) (See Separate PDF for Enlarged Version with All Pages)



**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.

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

Board of Zoning Adjustment

Screenshot of DCRA Website Page Entitled “Determination Letters, Zoning Maps and Plans” Explaining Purpose of Zoning Determination Letters (See Separate PDF for Enlarged Version)

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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Search



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 December 2020 (IZIS Dkt. Ex. #54)

(See Separate PDF for Enlarged Version with All Pages)

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

The screenshot displays the District of Columbia Freedom of Information Act Public Access Portal. At the top, there are three red stars and a red bar. Below this is the title "District of Columbia Freedom of Information Act Public Access Portal". A navigation menu includes "Home", "Publishable Records/Records", "Request Status", "Submit a FOIA Request", and "Submit an Appeal". The current page is titled "Request Details" for request ID "2021-FOIA-01918". It provides instructions on how to modify request details, login, or contact support. A table lists request details: Request ID (2021-FOIA-01918), Requester Name (Edward Hanlon), Request Date (12/31/2020), Request Status (In Progress), and Notes (None). A footer note states: "IMPORTANT - Please read carefully! Learn the request type: FOIA for standard FOIA requests."

Board of Zoning Adjustment
District of Columbia
CASE NO. ZD453
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 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)

FOIA Request 2021-FOIA-01919 Filed by Edward Hanlon in December 2020 (IZIS Dkt. Ex. #55)

(See Separate PDF for Enlarged Version with All Pages)

The screenshot displays the District of Columbia Freedom of Information Act Public Access Portal. At the top, there are three red stars and two red bars. Below this is the title "District of Columbia Freedom of Information Act Public Access Portal". The navigation menu includes "My Account", "Change Password", "Inbox (0)", "Sign Out", and "Help". The main navigation bar contains "Home", "Publicly Available Data/Records", "Request Status", "Submit a FOIA Request", and "Submit an Appeal". The current page is titled "Request 2021-FOIA-01919" and includes links for "Create Appeal", "Inbox (0)", "Compose Message", "Sent Messages", "Withdraw Request", and "Back".

Requester Details

To modify request details please update your requester profile or contact our office for assistance.

EDWARD HANLON
1525 Seaman Street NW
Washington, DC 20009
Phone: (202) 462-4497
EDHANLO1204@gmail.com

Requester Email: EDHANLO1204@gmail.com

Request Details

Date Requested	12/24/2020
Received Date	1/23/2021
Estimated Delivery Date	10/27/2021
Status	Closed

General Request Information

IMPORTANT - Please read carefully Leave the request type as 'FOIA' for standard FOIA requests.

Board of Zoning Adjustment
District of Columbia
OFFICE OF THE CLERK
2000 4TH STREET, NW
WASHINGTON, DC 20001

Blow-Up of Last Page of FOIA Request 2021-FOIA-01919 Specifying Requested Documents

ATTACHMENT TO FOIA REQUEST 2021-FOIA-01919

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)

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

(See Separate PDF for Enlarged Version with All Pages)



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) (See Separate PDF for Enlarged Version)

<p><small>The undersigned hereby certifies that the copies of the plat and map are true and correct copies of the original plat and map as filed in the Office of the Surveyor of the District of Columbia, and that the same have been duly recorded in the Office of the Surveyor of the District of Columbia.</small></p> <p>NOTICE <small>THE PUBLIC NOTICE OF THE DEPARTMENT OF THE DISTRICT OF COLUMBIA, OFFICE OF THE SURVEYOR, IS HEREBY GIVEN THAT THE PLAT AND MAP OF THE SUBDIVISION OF SQUARE 192, AS SHOWN ON THE PLAT AND MAP, HAVE BEEN FILED IN THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA, AND THAT THE SAME ARE AVAILABLE FOR PUBLIC INSPECTION AND RECORDATION IN THE OFFICE OF THE SURVEYOR OF THE DISTRICT OF COLUMBIA.</small></p> <p>NUMBER OF TRUSTS: _____</p> <p>ASSENT BY TRUSTEES:</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p style="text-align: center;">OFFICE OF TAX AND REVENUE</p> <p style="text-align: center;">191922</p> <p>I certify that the following statement reflects the condition of the record:</p> <p>1. I am duly sworn and qualified. _____</p> <p>2. I have no financial interest in the record. _____</p> <p>3. There are no liens or encumbrances on the record. _____</p> <p>I acknowledge that I have read the conditions and covenants of the record and that I am not a party to the same.</p> <p style="text-align: right;">_____ <small>OFFICIAL POSITION/TITLE</small></p> <p>DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS</p> <p>I certify that the subdivision complies with all applicable provisions of DCRA, being together with the State of Maryland.</p> <p>Being sworn: _____</p> <p style="text-align: right;">_____ <small>OFFICIAL POSITION/TITLE</small></p> <p>DEPARTMENT OF THE ENERGY & ENVIRONMENT (DOEE)</p> <p>I certify that the subdivision complies with all applicable provisions of DCRA, being together with the State of Maryland.</p> <p>Being sworn: _____</p> <p style="text-align: right;">_____ <small>OFFICIAL POSITION/TITLE</small></p> <p style="text-align: center;">_____ <small>OFFICIAL POSITION/TITLE</small></p> <p style="text-align: center;">OFFICE OF THE SURVEYOR</p> <p>I certify that this plat is correct and is hereby recorded.</p> <p style="text-align: right;">_____ <small>OFFICIAL POSITION/TITLE</small></p>	<p style="text-align: center; font-size: 1.2em;">SUBDIVISION SQUARE 192</p> <p style="text-align: center;">S STREET, N.W.</p>
<p style="text-align: center;">SURVEYORS OFFICE, D.C.</p> <p>Map No. _____</p> <p>County: U.S.A. District: _____</p> <p>Recorded and completed by: _____</p> <p>Recorded on: _____</p> <p>Scale: 1 inch = 10 feet</p>	<p><small>Referred to as "subdivision" means independent original survey.</small></p>	

Curriculum Vitae

Professor James McCrery

(See Separate PDF for Enlarged Version with All Pages)

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

Blowup of Subdivision Plat



Summary of Conclusions of Professor McCrery

- *First*, the new rear yard violates the zoning regulations because it is occupied by structures that do not come within the exemptions to 11-B DCMR § 100.2.
- *Second*, the Subdivision of Lot 108 violates 11-F DCMR § 605.1 because the depth of the new rear yard is insufficient.
 - Perseus and DCRA do not dispute a 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 deep, even accepting their other contentions.

Summary of Conclusions of Professor McCrery (cont'd)

- *Third*, even if the roof is deemed an “architectural embellishment,” 11-C DCMR § 1501.3 expressly provides that such embellishment **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.”
- 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 pyramid sits on 100% of each wall plate. If the 332 ton pyramidal roof is deemed an embellishment, then the pyramid obviously gives the appearance of a raised building height along 100% of the wall on which the pyramid is located in violation of 11-C DCMR § 1501.3.

Summary of Conclusions of Professor McCrery (cont'd)

- Thus, if the pyramid is deemed a roof, then the minimum rear yard requirements of 11-F DCMR § 605.1 are violated.
- On the other hand, If the pyramid is deemed an embellishment, then 11-C DCMR § 1501.3 is violated.

The New Rear Yard Violates the Zoning Regulations Because It Is Occupied by an Unauthorized Structure

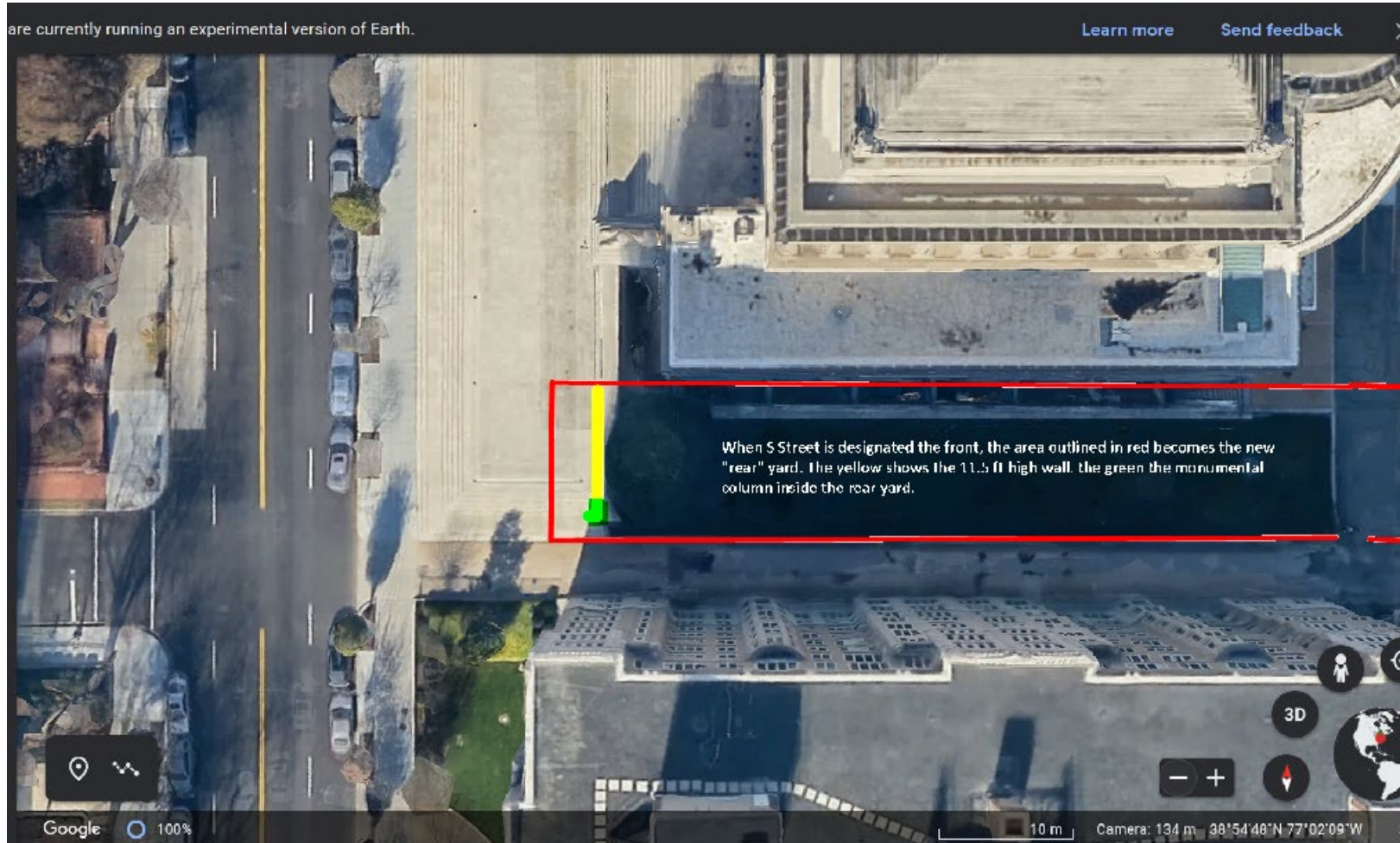
- The Zoning Regulations provide that a rear yard “shall be unoccupied, except as specifically provided in this title.” 11-B DCMR § 100.2 (definition of “yard, rear”).

Exceptions to Prohibition of Structures in Rear Yard

11-B DCMR § 324.1, in turn, exempts from this requirement:

- (a) ***A structure***, not including a building ***no part of which is more than four feet (4 ft.) above the grade at any point***, may occupy any yard required under the provisions of this title. Any railing required by the D.C. Construction Code Supplements, Title 12 DCMR, shall not be calculated in the measurement of this height;
- (b) ***A fence or retaining wall*** constructed in accordance with the Construction Code may occupy any yard required under the provisions of this title; and
- (c) ***Stairs*** leading to the ground from a door located on the story in which the principal entrance of a building is located may occupy any yard required under provisions of this title. The stairs shall include any railing required by the provisions of the Construction Code.

Location of 11' 6" High Wall and Stone Column in New Rear Yard



Wall and Stone Column Are More Than 4 Feet High

First Exception to Rear Yard “Unoccupied” Requirement: “A structure, not including a building *no part of which is more than four feet (4 ft.) above the grade at any point . . .*”

Not Applicable: Wall and Stone Column do not come within exception because both are over 11’6” high

Photo of the 11'6" High Monumental Stone Column and Wall in the Rear Yard with DECAA's President, Nick DelleDonne, Standing Next to It (IZIS Dkt. Ex. #52 (p 3))



11'6" High Wall and Stone Column Are Not a Fence

- **Second Exception to Rear Yard “Unoccupied” Requirement: Fence.** The term “fence” is not defined in the Zoning Regulations. Thus, under 11-B DCMR § 100.1(g), we must consult Webster’s Dictionary for a definition.
- Webster’s defines “fence” as “a barrier intended to prevent escape or intrusion or to mark a boundary.”
- **Not Applicable:** Here, neither the Wall nor the Stone Column prevents “escape or intrusion” as they are open ended and do not enclose anything. Further, neither “mark[s] a boundary”.
- Also, *“a fence differs from a wall in not having a solid foundation along its whole length.”* Prince George’s County Zoning Regulations.
- Here, the Wall and Stone Column each have a solid foundation along their entire length.

Photo Showing that Wall and Stone Column Do Not Constitute a Fence (Prof. McCrery's Reply - at p. 23)



11'6" High Wall and Stone Column Are Not a Retaining Wall

- **Third Exception to Rear Yard “Unoccupied” Requirement: Retaining Wall.** 11-B DCMR § 100.2 defines a “retaining wall” as:

“A vertical, self-supporting structure constructed of concrete, durable wood, masonry or other materials, *designed to resist the lateral displacement of soil or other materials.*” (Emphasis added).

- **Not Applicable:** As the below photos establish, neither the Wall nor the Stone Column “resist[s] the lateral displacement of soil or other materials.”

Wall and Stone Column Are Not a Retaining Wall (Cont'd)

- The 1913 photo shown below was taken during the construction of the Temple and is published by the Masons in their book *“A Guidebook to the House of the Temple”*.
- The horse drawn wagon is on the south side (alley side) of lot 108 and is sitting approximately where the 11'6" Wall and Stone Column are today. The grade is approximately the same on all four sides of the wagon.
- It clearly shows the above 11'6" Wall and Stone Column retain nothing on either their west or east sides of the Wall and Stone Column and their construction was obviously not “designed to resist the lateral displacement of soil or other materials.”

1913 Construction Photo of Temple Showing That Wall and Stone Column Are Not a Retaining Wall

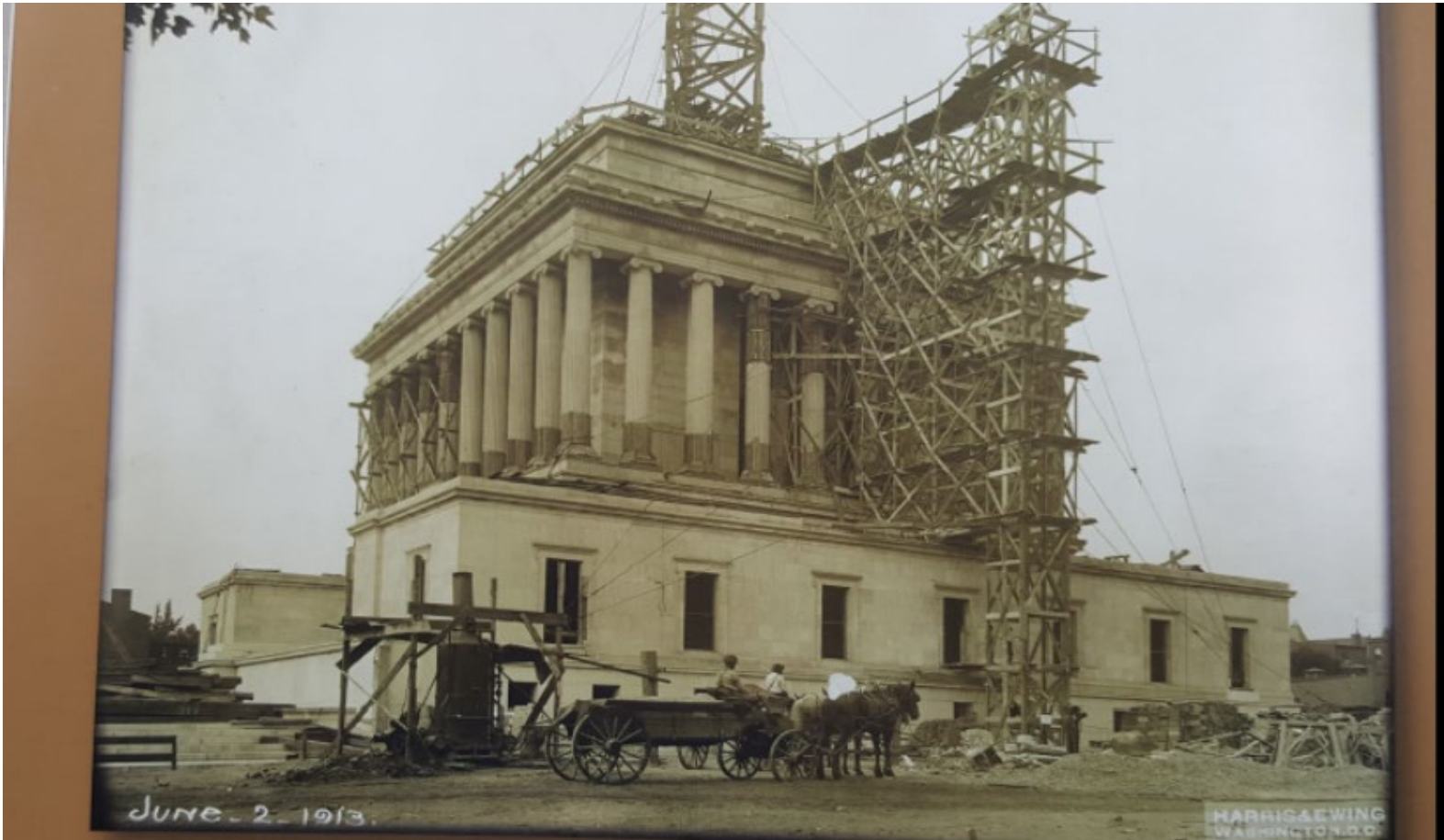


Photo of Groundbreaking Ceremony From Temple Guidebook Showing Temple Lot Is Flat, Vacant Land

Groundbreaking Ceremony

ON MAY 31, 1911, Grand Commander James D. Richardson turned "the first spade of earth in the building of the new Temple" (1911 *Transactions*, p. 124). The day was chosen in honor of the 110th anniversary of the founding of the Supreme Council in Charleston, South Carolina. The ceremony marked the beginning of the work that would take four years to complete. In 2011, the Supreme Council celebrated the 100th anniversary of the official groundbreaking ceremony for the new House of the Temple.

As the builders went about the work of excavating for the basement and foundations, Richardson arranged for an event following explicitly Masonic traditions to celebrate laying the cornerstone the new House of the Temple.



Pictured (left to right): Stirling Kerr, Jr., 33°, Secretary-General; Rev. William Snyder, 32°; James D. Richardson, 33°, Grand Commander; Francis J. Woodman, 33°, Grand Tiler; William I. Boyden, 33°, Librarian of Supreme Council.

Laying the Cornerstone

IN AUGUST 1911, plans were made to hold a very special and Masonically symbolic ceremony to lay the cornerstone of the House of the Temple. At the invitation of Sovereign Grand Commander James D. Richardson, J. Claude Keiper, Grand Master of the Grand Lodge of the District of Columbia, presided over the laying of the cornerstone.

On October 18, that year the corner...



Photo of West Side of Wall and Stone Column With 7'8" Measurement Above Stone Platform Level on West Side of Temple Showing These Are Not Retaining Walls



Photo of South and East Side of Wall and Stone Column with 7'8" Measurement Above Stone Platform Level of Temple Showing They Are Not a Retaining Wall

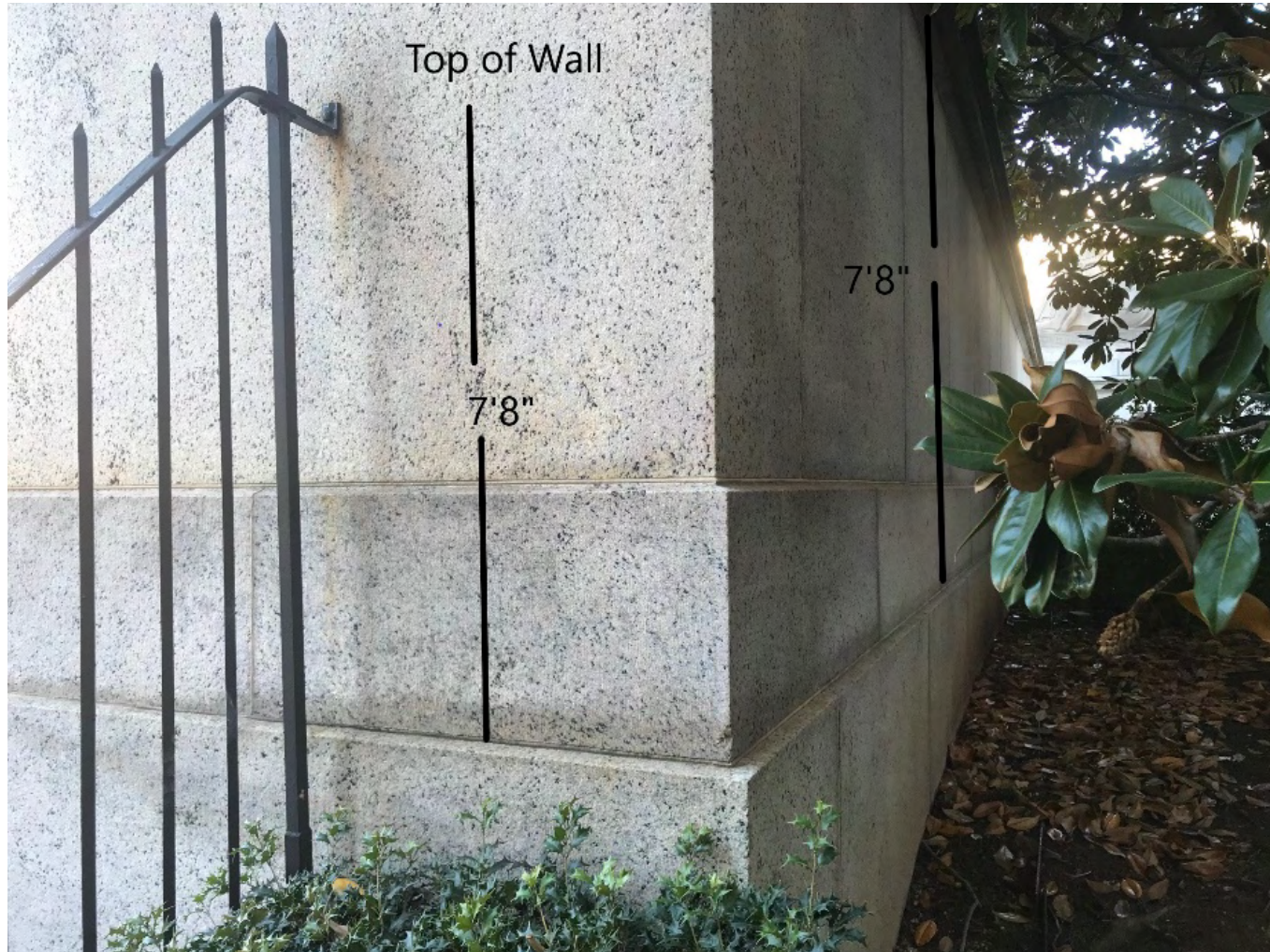


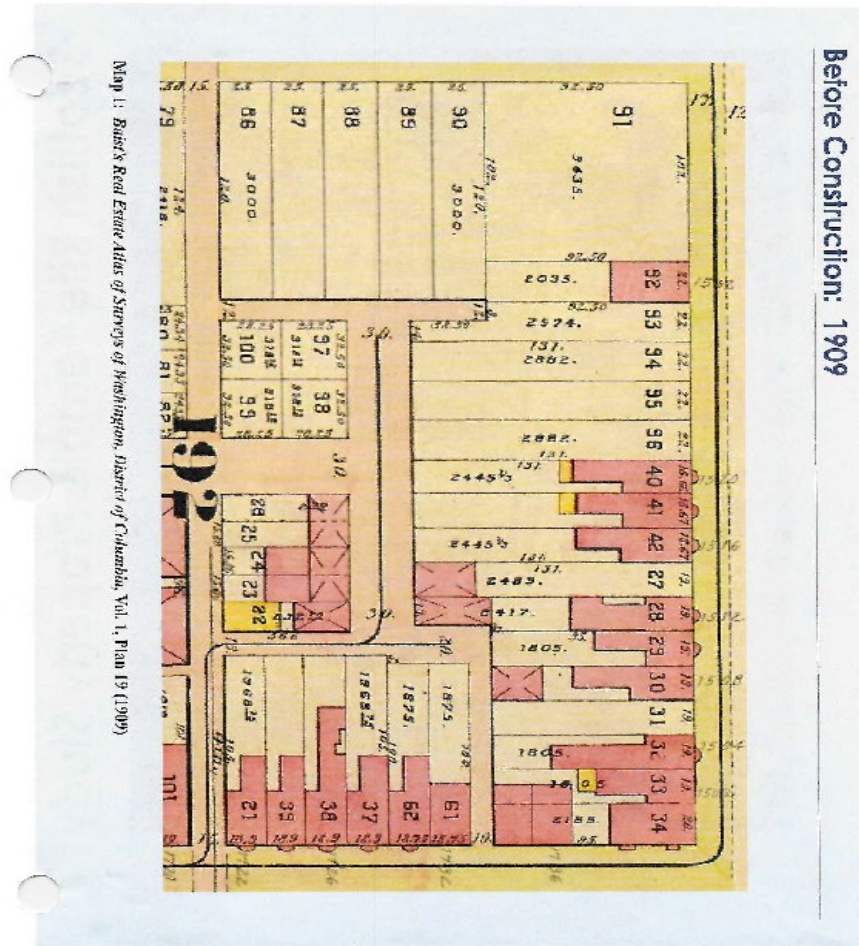
Photo of the East Side of 11'6" High Wall in the New Rear Yard (IZIS Dkt. Ex. #52 (p.1)) Showing It Is Not a Retaining Wall



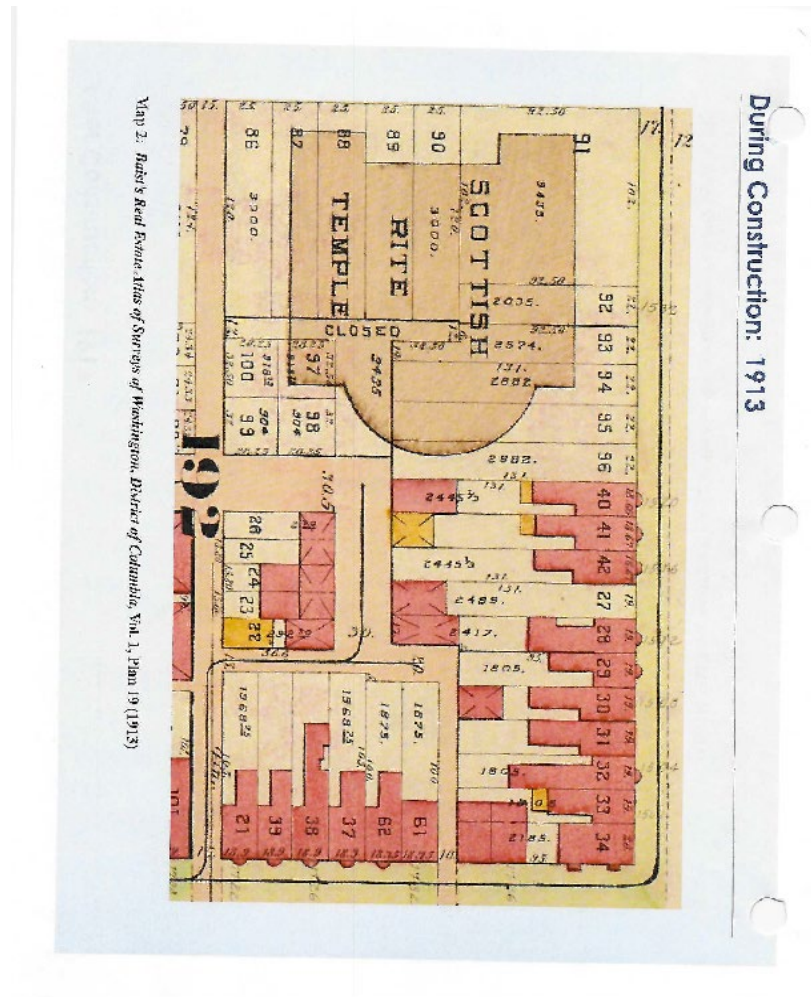
Photo Showing 7'8" Measurement of Granite Wall And Stone Column Above Concrete Platform



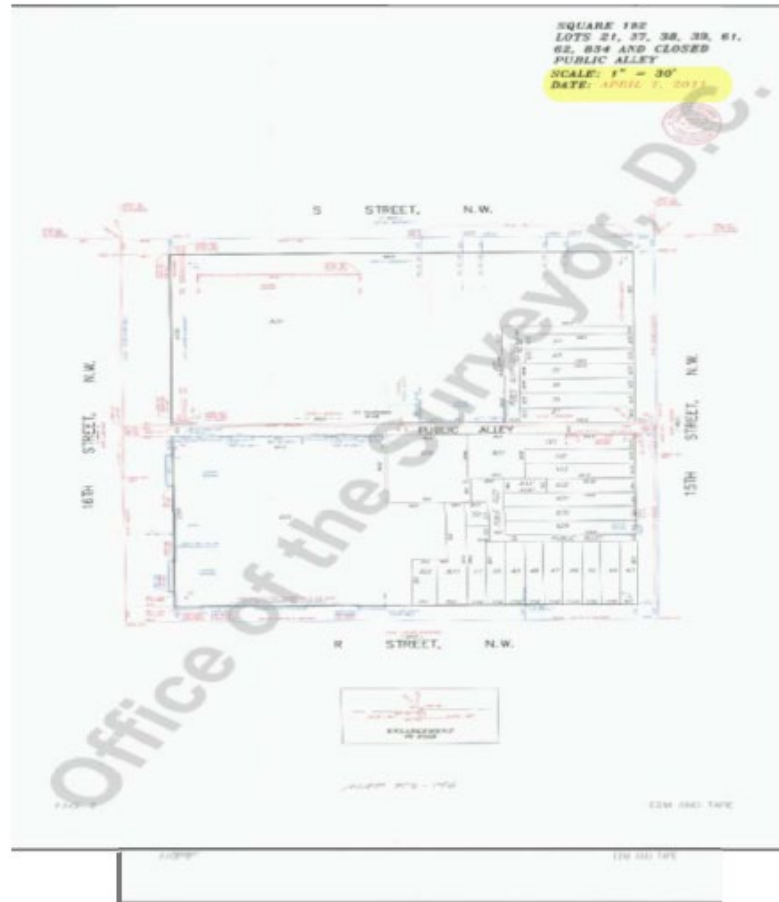
Baist Map of Square 192 in 1909 Shortly Before Temple Construction Commenced Showing Vacant Lot Where Temple Is To Be Built



Baist Map of Square 192 in 1913 During Construction Showing Outline of Temple

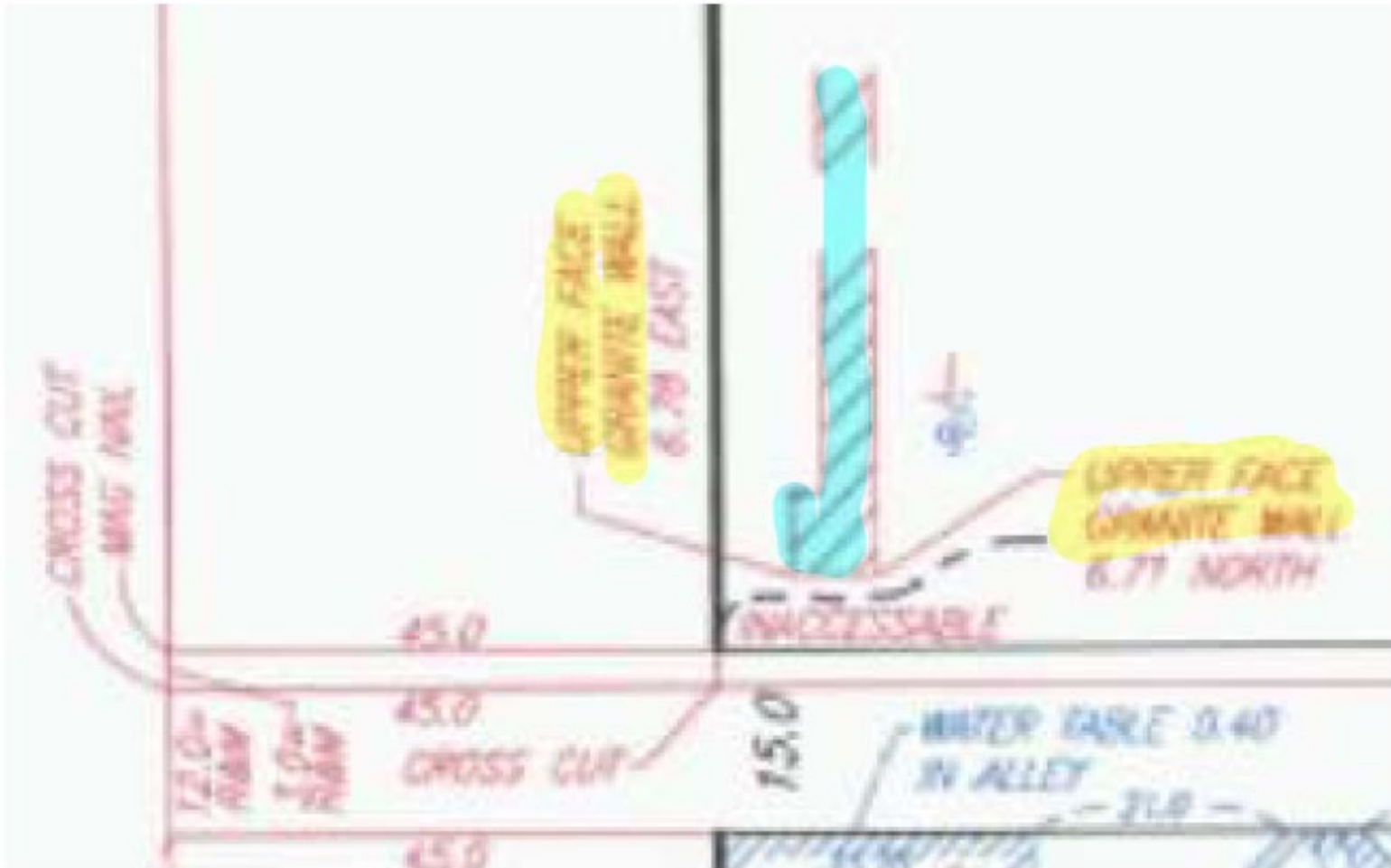


DC Surveyor's Plat of Square 192



Available at https://dcraonline-rms.dcra.dc.gov/Watermark/ViewOne.jsp?GUID=035A38A7-40F5-CFED-B22C-56DC22100000&repositoryId=null&repositoryType=null&docId=null&mimeType=null&template_name=null&version=null&vsId=null

Excerpt of DC Surveyor's Plat of Square 192



Wall and Stone Column Are Not Stairs

- The final exception is for “stairs leading to the ground from a door located on the story in which the principal entrance of a building is located may occupy any yard required under provisions of this title. The stairs shall include any railing required by the provisions of the Construction Code.”
- The Wall and the Stone Column are not stairs, they do not have risers or treads, one cannot walk on them, and the railing is completely separate and not attached to the Wall or the Stone Column.

Rear Yard Insufficiently Deep In Violation of 11-F DCMR § 605.1

- I now address the insufficient depth of the new rear yard.
- The Temple lot is zoned RA-9. 11-F DCMR § 605.1 requires a 1 to 3 ratio of rear yard depth to building height for RA-9 zones.
- The Luxury Project is designed to be constructed on the new proposed Eastern Lot less than six feet from the 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 Deep -- Text of 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:

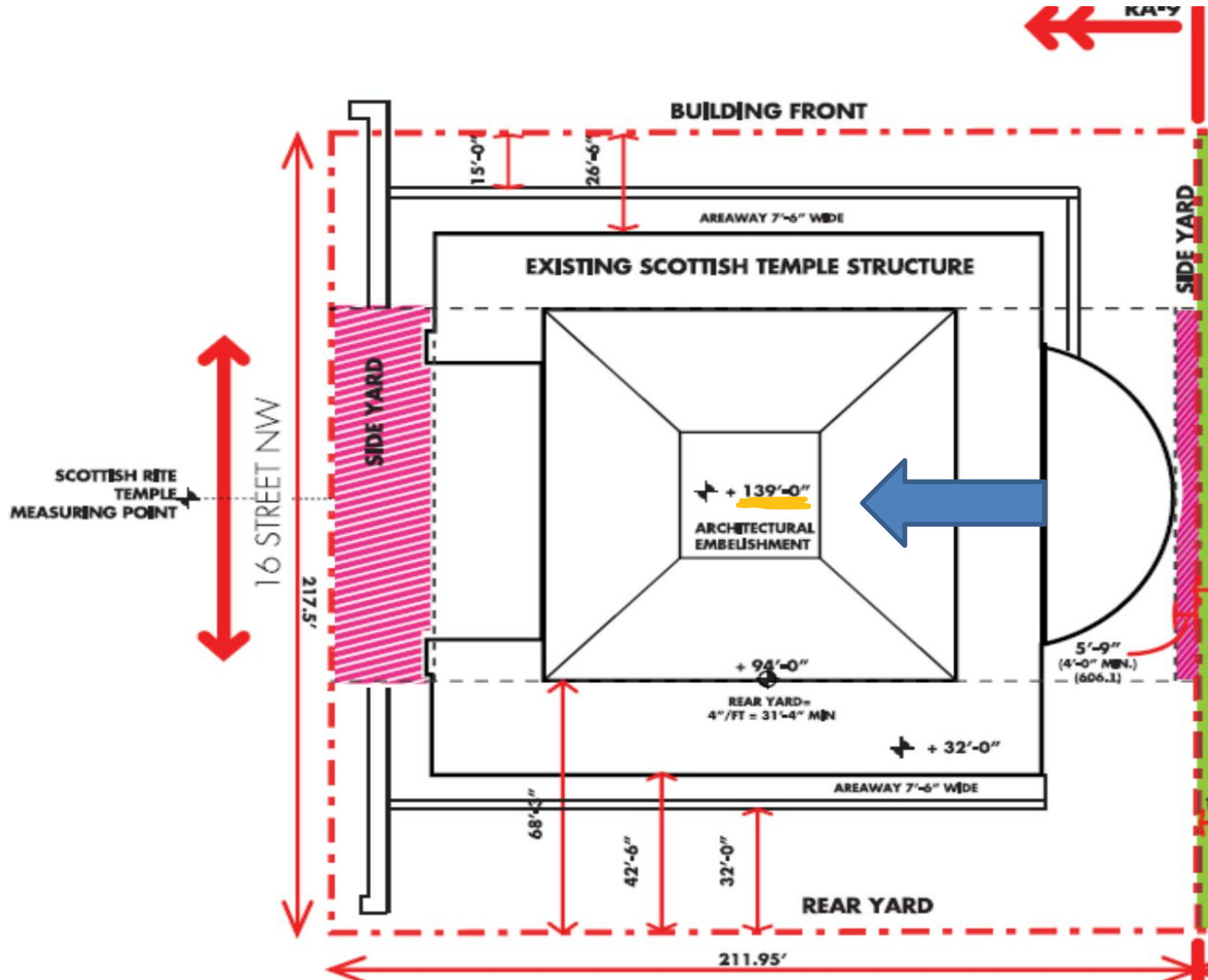
TABLE F § 605.1: MINIMUM REAR YARD

<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

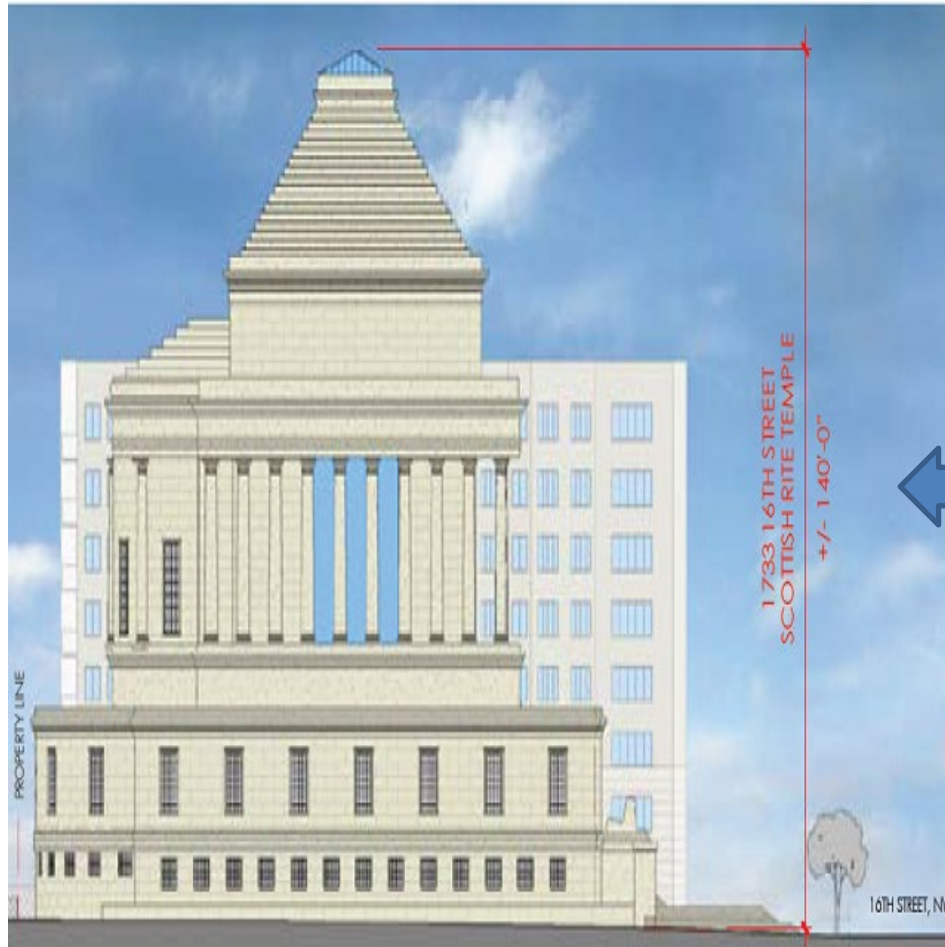
Rear Yard Insufficiently Deep

- Perseus now 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 side.
- This does not cure the violation of 11-F DCMR § 605.1
- The below diagram, which Perseus submitted to the HPRB, sets forth this attempt.

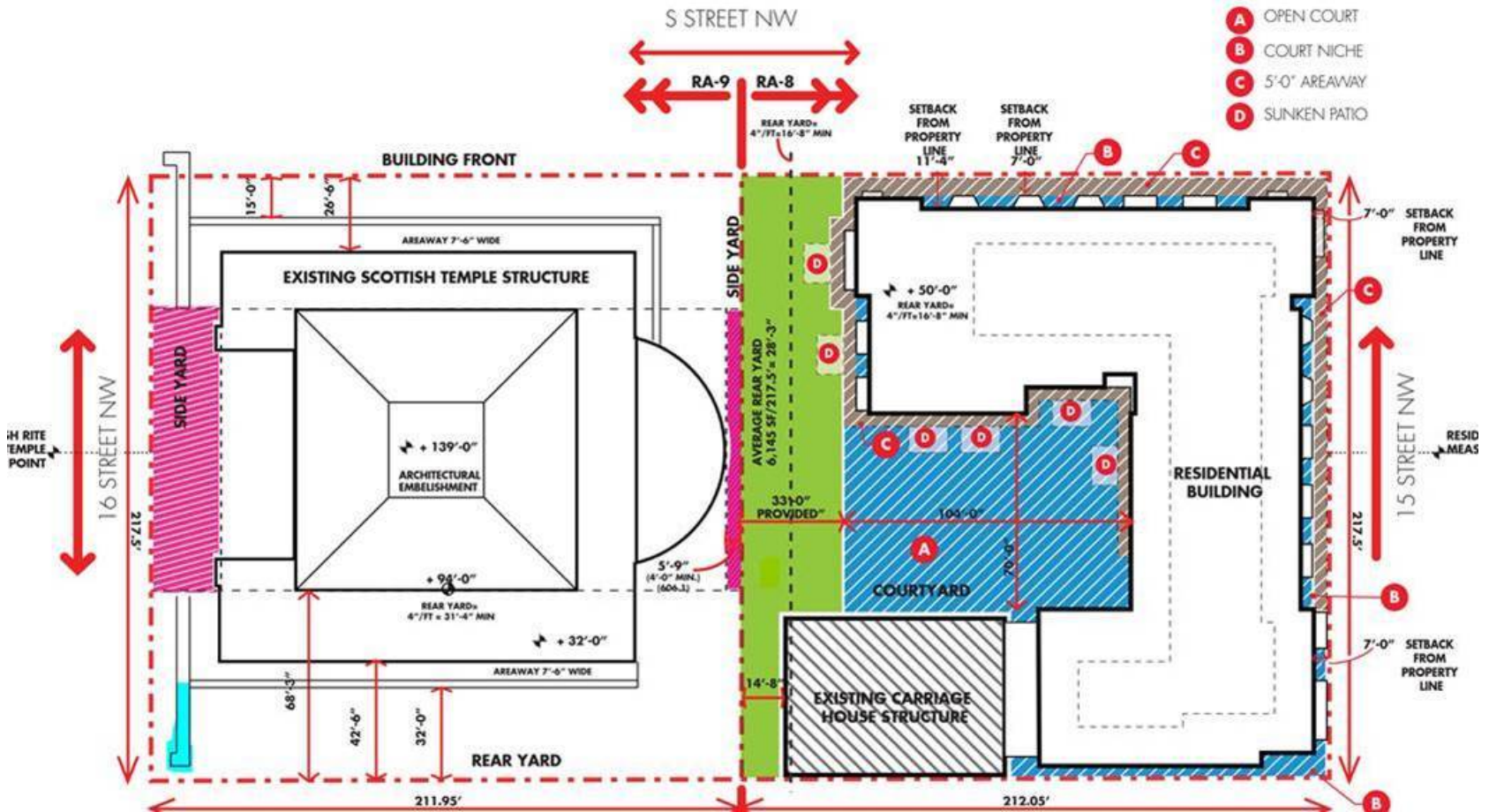
Perseus' Diagram Submitted to HPRB Showing Temple Height is 139'



Prof. McCrery's Reply - Figure 2 at 5 From Perseus' Application to HPRB Showing Temple Height of "140' +/-"



Perseus' Diagram Submitted to HPRB Showing Temple and Location of Luxury Project



Necessary Depth of Rear Yard

- Perseus' own measurements establish that the Temple height is at least 139' and that the depth of the S Street areaway is 15'.
- Thus, to comply with 11-F DCMR § 605.1, the new rear yard, including the 15' depth of the S Street areaway, must be at least:

$$139' + 15' = 154'$$

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

- Not including the 15' depth of the S Street areaway, the new rear yard must be at least:

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

- However, as established by Perseus' own diagram calculations, the rear yard is at most only **42'6''** deep, even including the south areaway width.
- Thus, the new rear yard is insufficiently deep.

Perseus' Contentions Are Insufficient To Support Approval of the Subdivision

- Perseus attempts to whittle down the Temple's height and increase the depth of the rear yard.
 - It contends that the vertical depth of north areaway is not included in the height.
 - It contends that the south areaway is included in the depth of the rear yard measured from the property line.
- But even accepting these contentions, which are wrong, the Subdivision still violates 11-F DCMR § 605.1.

Rear Yard Calculations Based on Perseus' Measurements

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

Scenario 1

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

$$139 + 15 = 154'$$

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

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

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

Scenario 2

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

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

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

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

Rear Yard Calculations Based On Perseus' Measurements (Cont'd)

Scenario 3

Temple Height (16th Street) (improperly excluding north areaway):
139'

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

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

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

The Temple's 332 Ton Pyramidal Roof Is Not An “Architectural 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 and does not apply here.
- 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 states:
 - **“Architectural embellishments *consisting of* spires, towers, domes, minarets, and pinnacles may be erected to a greater height than any limit prescribed by these regulations or the Height Act, provided the architectural embellishment does not result in the appearance of a raised building height for more than thirty percent (30%) of the wall on which the architectural embellishment is located.”** [Emphasis added.]

332 Ton Roof Is Not an “Architectural Embellishment”- Definitions from Prof. McCrery’s Reply at 6

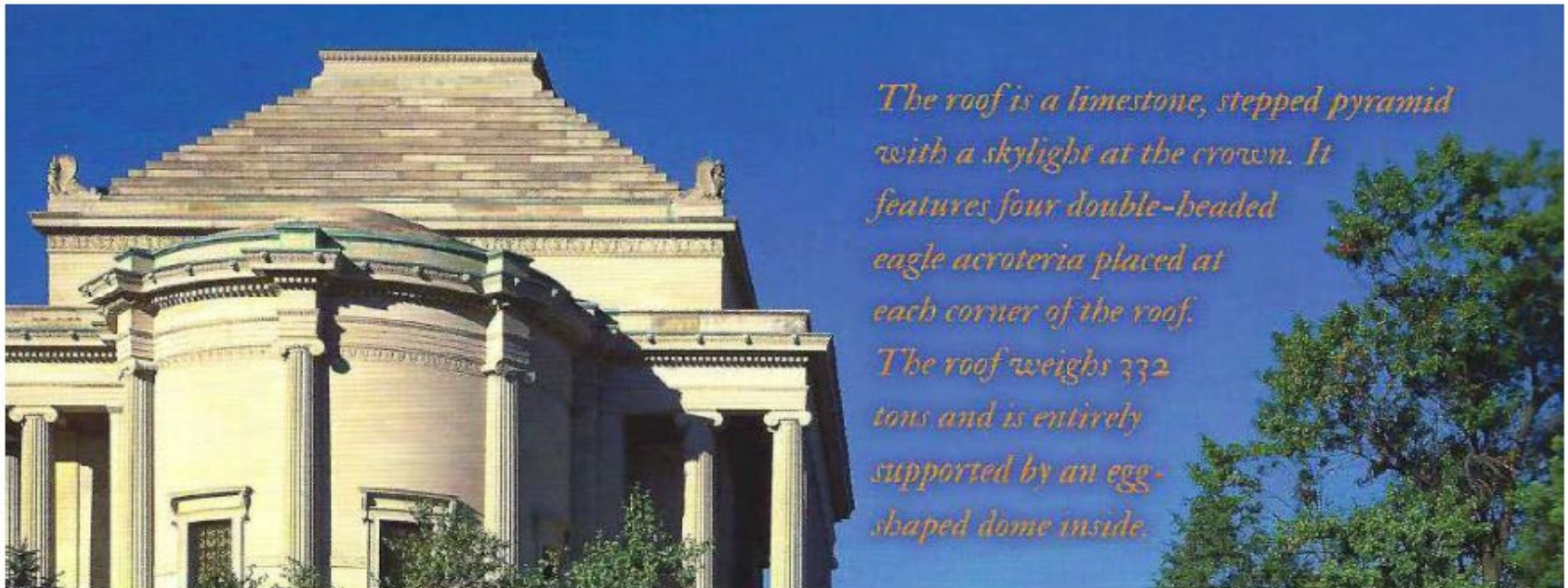
- Webster’s Dictionary defines “**roof**” in relevant part as:
 - “the outside cover of a building or structure including the roofing and all the materials and construction necessary to maintain the cover upon its walls or other support”
 - “the highest point or reach of something”
- By contrast, Webster’s Dictionary 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 "Architectural Embellishment"

- Thus, for 11-C DCMR § 1501.3 to apply, the dome must be an "architectural embellishment."
- 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 Webster's definition of embellishment because it is clearly not an "inessential" "decorative or fanciful detail." Rather, the roof is essential to the building to give it form and identity both inside and out, and to provide protection from the elements to the people below.

Masons' Admissions that Pyramidal Structure Is a Roof

IZIS Exhibit # 29c, "*A Guidebook to the House of the Temple*" (published by the Masons in 2015) repeatedly refers to the 332 ton pyramidal structure as their roof. The following is from page 3 of IZIS Exhibit #29c:



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.

Builder's Admission that Pyramidal Structure Is a Roof

In a 1916 article entitled “*Roof Construction of the Temple*”, the contractor who built the roof, R. Guastavino Company, referred to the 332 ton pyramidal structure as a roof writing:



View of Building, Showing Solid Limestone Roof

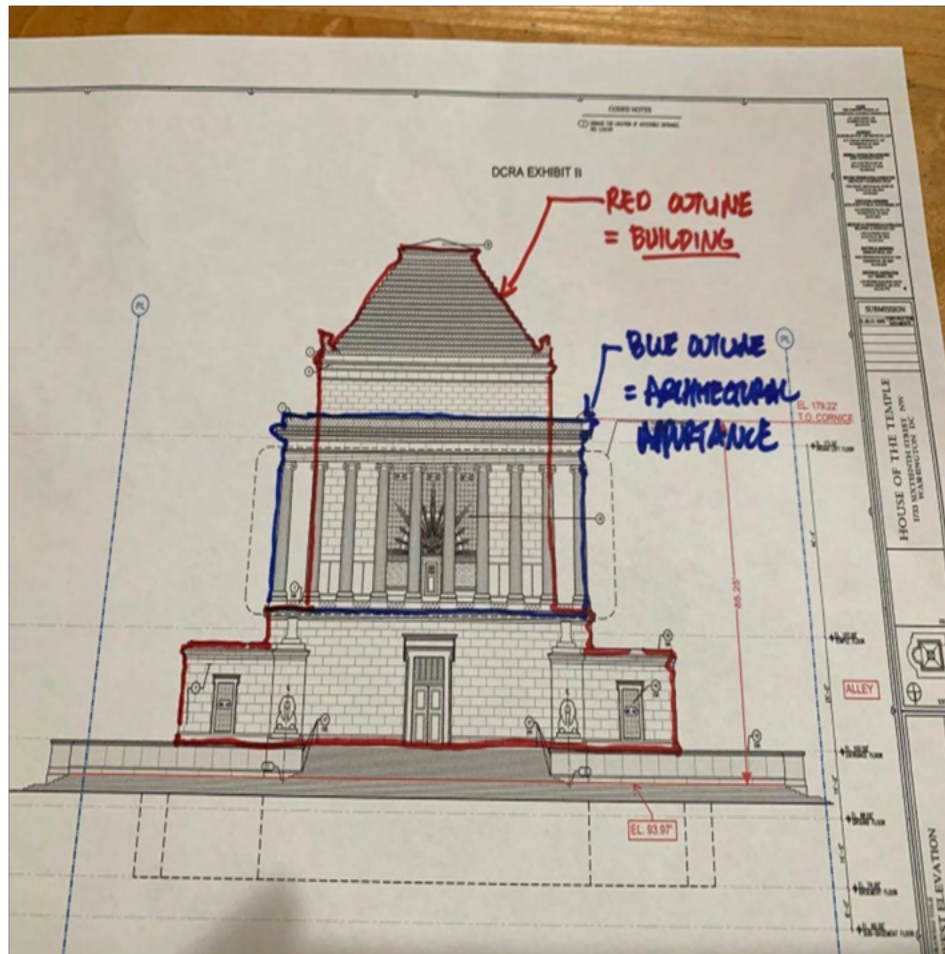
“[I]n the roof of the Temple the limestone alone, composing the steps in the roof as seen in the photograph weighs 332 tons! The entire weight of this roof, limestone and all, is supported by a shell of typical Guastavino Construction.” (Photo to left appeared in the original 1916 article)

Architectural Review, January 1916,
Volume IV, No. 1 (See attached article)

The Pyramidal Roof Has the Appearance of a Raised Building Height for More than 30% of the Temple Wall

- Even assuming *arguendo* that the 332 ton roof is an architectural embellishment, 11-C DCMR § 1501.3 provides that an architectural embellishment is exempted from the height limitations **only if:**
 - **“the architectural embellishment does not result in the appearance of a raised building height for more than thirty percent (30%) of the wall on which the architectural embellishment is located.”** [Emphasis added.]

Prof. McCrery's Reply – Fig. 11 at p. 21 Showing Roof Has Appearance of Raised Building Height for More Than 30% of the Temple Wall on Which It Sits



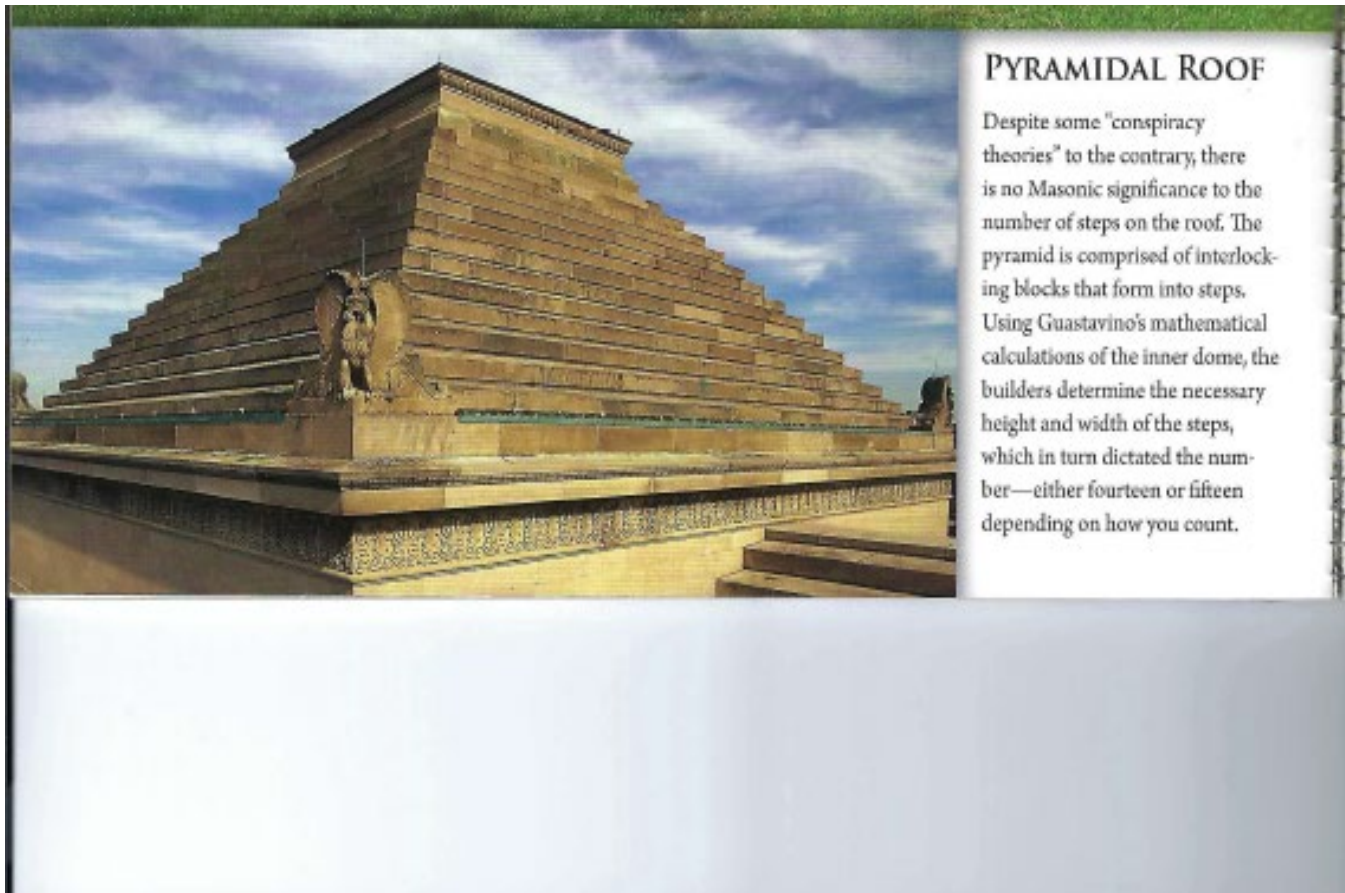
Arguments That Roof Does Not Give Appearance of Raised Building Height Are Meritless

- *First*, Perseus' claim that "dome is not located on a wall" is totally false as previous diagram showed.
- *Second*, Perseus' argument that "because the dome is stepped, each step sets back from the wall on which it is located and thus does not result in the appearance of a raised height of more than 30% of the wall upon which the step is located" literally makes no sense. Perseus' argument literally means the Temple has no roof.
 - Each step is obviously not a wall, and even if it were, each "step" would comprise more than 30% of the wall on which it sits. The below picture of the Temple's roof establishes this fact:

**Prof. McCrery's Reply – Fig. 12 at p. 22
Showing Temple Roof Gives Appearance of Raised Building Height for
More than 30% of the Wall on Which It Sits**



Excerpts from “Guidebook to House of the Temple” (Submitted with DECAA’s April 2020 Supp.) Showing “Pyramidal Roof”



Perseus and Mason's Attempts To Escape The Rear Yard Ratio Requirements Fail

- These attempts fall into 5 categories
 - Building Height Act
 - Previous Approvals of Other Buildings
 - Changing the Height of Temple
 - Vertical Depth of Areaway at New S Street Front Not Included in Height
 - Width of Areaway in New Rear Yard Not Included in Depth of Rear Yard

Perseus' First Attempted Misdirection -- Meritless Building Height Act Argument

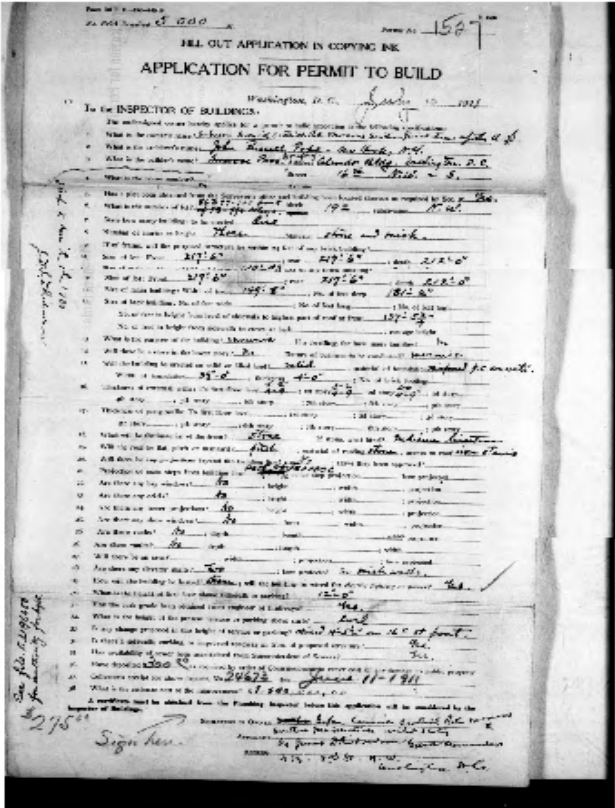
- First, Perseus claims that: “If the [Temple] dome had not been considered an embellishment and instead been included in the Temple’s building height, approval to exceed the Height Act maximum of 130 feet *would have required an amendment to the Height Act* specifically granting an exemption for the Temple Lot.” Perseus Opp. 11 (emphasis added).
- This contention is flatly wrong, and the BHA itself belies that contention, as I previously established in my Reply at pages 9-10.

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].

➤ The BHA does not mention “architectural embellishments,” which is a later zoning construct not found anywhere in the BHA

Masons' App. for Permit to Build - Prof. McCrery Supp. Ex. 1



Masons' App. for Permit to Build - Prof. McCrery Supp. Ex. 1 (Expanded)

Form 500 E. D.—2M—8-16-10

No. Brick Required 5 000 M. Permit No. 1527 R. 1520

FILL OUT APPLICATION IN COPYING INK

APPLICATION FOR PERMIT TO BUILD

Washington, D. C., July 10 1911

To the INSPECTOR OF BUILDINGS:

The undersigned owner hereby applies for a permit to build according to the following specifications:

1. What is the owner's name? Supreme Council 5441th Rite Masons Southern Jurisdiction of the U. S.
2. What is the architect's name? John Russell Pope - New York, N.Y.
3. What is the builder's name? Anonymous Bros. Address Calverly Bldg. Washington, D. C.
Street 16th N.W. - S.
4. What is the house number? + Avenue _____
5. Has a plat been obtained from the Surveyor's office and building been located thereon as required by Sec. 26 Yes.
6. What is the number of lot? 86 to 97-100 front block 192 subdivision N.W.
of 98-99-100 alleys.
7. State how many buildings to be erected One
8. Number of stories in height Three Material stone and brick.
9. If of frame, will the proposed structure be within 24 feet of any brick building?
10. Size of lot: Front 217'-6"; rear 217'-6"; depth 212'-0"
11. Size of main building: Width 149'-0"

Shook & Sons, Inc.

Masons' App. for Permit to Build - Prof. McCrery Supp. Ex. 1 (Expanded)

E. J. McCrery
1733

10. Size of lot: Front 217'-6"; rear 217'-6"; depth 212'-0"

11. Size of main building: Width of front 149'-8"; No. of feet deep 181'-2"

12. Size of back building: No. of feet wide _____; No. of feet long _____; No. of feet high _____

No. of feet in height from level of sidewalk to highest part of roof at front 137'-5 $\frac{3}{4}$ "
 No. of feet in height from sidewalk to eaves at back _____; average height _____

13. What is the purpose of the building? Masonic If a dwelling, for how many families? 1

14. Will there be a store in the lower story? No Nature of business to be conducted? Masonic

15. Will the building be erected on solid or filled land? solid; material of foundation reinforced p.c. concrete
 Width of foundation 39'-0"; thickness 4'-0"; No. of brick footing _____

16. Thickness of external walls: To first floor level 3-8" 4-9"; 1st story 3-2 4-9"; 2d story 2-0 4-9"; 3d story _____
 4th story _____; 5th story _____; 6th story _____; 7th story _____; 8th story _____; 9th story _____

17. Thickness of party walls: To first floor level _____; 1st story _____; 2d story _____; 3d story _____
 4th story _____; 5th story _____; 6th story _____; 7th story _____; 8th story _____; 9th story _____

18. What will be the material of the front? stone If stone, what kind? Indiana limestone

19. Will the roof be flat, pitch, or mansard? pitch; material of roofing stone; access to roof iron stairs

20. Will there be any projections beyond the building line? No; Have they been approved? _____

21. Projection of main steps from building line part of terrace 1/6 cellar step projection _____ how projected _____

22. Are there any bay windows? No; height _____; width _____; projection _____

23. Are there any oriels? No; height _____; width _____; projection _____

24. Are there any tower projections? No; height _____; width _____; projection _____

25. Are there any show windows? No; form _____; width _____; projection _____

26. Are there vaults? No; depth _____; length _____; width _____

Masons' App. for Permit to Build - Prof. McCrery Supp. Ex. 1 (Expanded)

See file E.D. 96650
for authority for Dept.

26. Are there vaults? no; depth _____; length _____; width _____

27. Will there be an area? _____; width _____; projection _____; how protected _____

28. Are there any elevator shafts? two; how protected in brick walls.

29. How will the building be heated? steam; will the building be wired for electric lighting or power? Yes ✓

30. What is the height of first floor above sidewalk or parking? 12'-0"

31. Has the curb grade been obtained from engineer of highways? Yes

32. What is the height of the present terrace or parking above curb? level

33. Is any change proposed in this height of terrace or parking? raised 4'-5 1/2" on 16" st foot.

34. Is there a sidewalk, curbing, or improved roadway in front of proposed structure? Yes

35. Has availability of sewer been ascertained from Superintendent of Sewers? Yes

36. Have deposited \$300.00 as required by order of Commissioners to cover cost of any damage to public property.

37. Collector's receipt for above deposit, No. 24673, date June 11-1911

38. What is the estimate cost of the improvement? \$1,100,000.00

A certificate must be obtained from the Plumbing Inspector before this application will be considered by the Inspector of Buildings.

275⁰⁰
Sign here. →

SIGNATURE OF OWNER Southern Lumber & Lath Co. Wash D.C.

APPLICANT by James D. Richardson Agent

ADDRESS 433 - 5th St. N.W. Washington D.C.

Masons' Permit to Build Approved By "Commissioners DC" in Accordance with BHA § 5 (Prof. McCrery Supplement Exhibit 2)

NO PROJECTIONS BEYOND THE BUILDING LINE.

Form 501 E. D. - 4 M. 7-1-20 R. 108

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

PERMIT TO BUILD

Walls shall not be erected to a greater height than (12'-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 2 block 192 subdivision S. 6. Cor. 16th & P. Sts, NW*

24673 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*

By Order of the Commissioners, D. C. *June 11/11*
Morris Blacker
Inspector of Buildings.

Fee Paid, \$ *275.00*
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 office of the Inspector of Buildings be notified the day before any work is done on this building.

CANCELLED
RELEASED

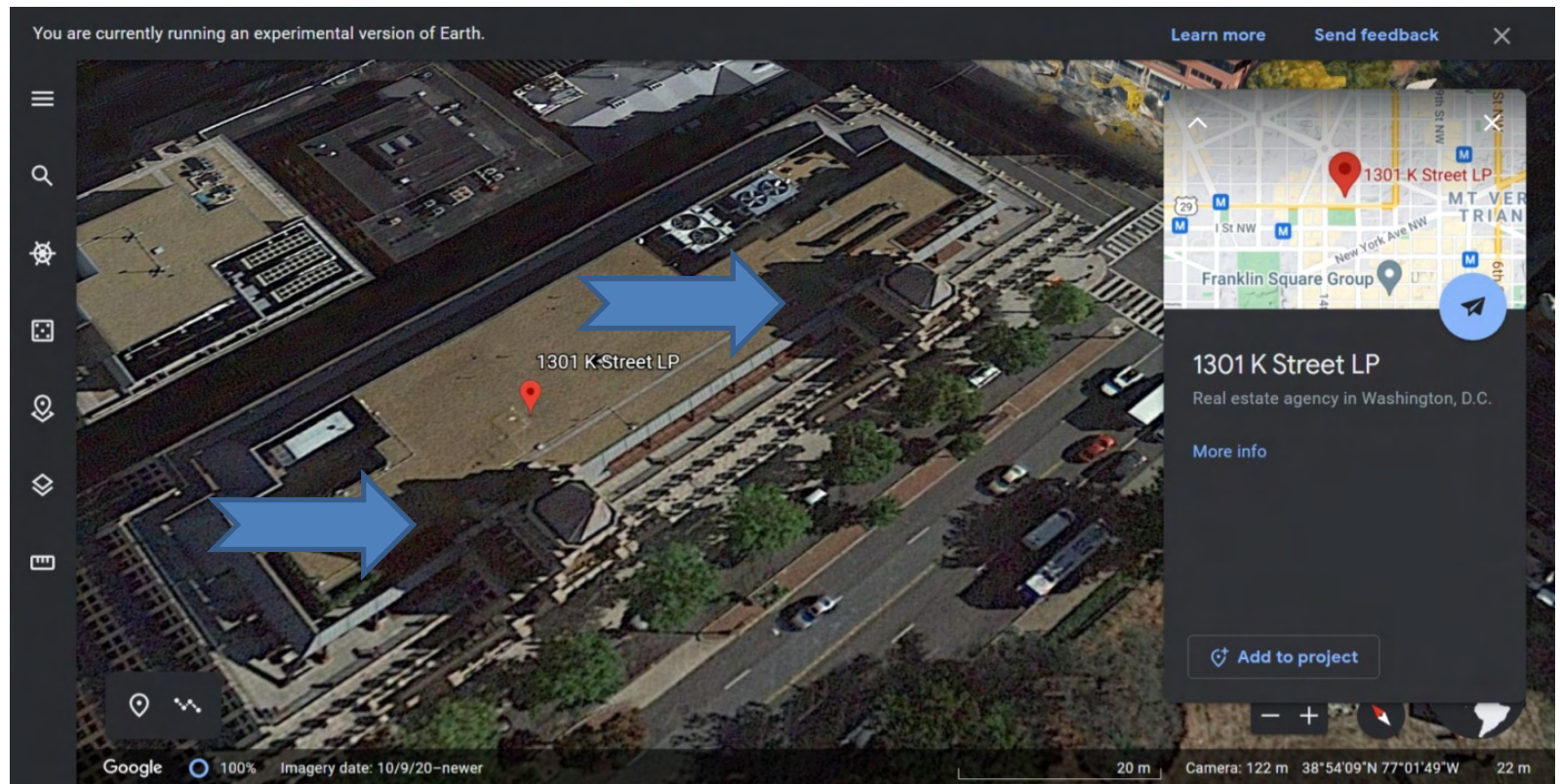
“This is to Certify, That Supreme Council Scottish Rite has permission to erect” the Temple “in accordance with application No. 1527 . . . By Order of the Commissioners DC.”

Perseus' Second Attempted Misdirection -- Prior Height Approvals

- *Second*, the examples of buildings with embellishments Perseus and the Masons offer, even assuming they were approved under 11-C DCMR § 1501.3, are radically different from the present case.
- Perseus' examples and other examples show embellishments that do not occupy the entire roof, but are minor additions, and unlike the Temple's dome, do not constitute the entire roof.

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

Example of Embellishment



Prof. McCrery's Reply - Figure 4 at p. 10
Example of Embellishment
1331 F Street, NW



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

Example of Embellishment



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

Example of Embellishment



Zoning Determination Letter for 1920 N Street at 2-3 Articulates Some of the Relevant Criteria

- “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.]

Perseus' Third Attempted Misdirection -- Chipping Away at Height of Temple

- Perseus attempts to chip away at 139' height of Temple that it previously provided to Zoning Administrator.
- Perseus submits new documents not before Zoning Administrator claiming height is 134' 6".
- This assertion is meretricious.

**Response to Perseus' Third Attempted Misdirection --
The Height of the Temple From 16th Street Is Measured from the
Curb Level, Not Five Feet Up the Stairs to the Temple.**

- First, Perseus attempts to chip away at the Temple's legitimate height by offering another height calculation from 16th Street, claiming that the height is 134' 6".
 - This calculation was not before the Zoning Administrator and thus cannot be considered.
- In any event, this contention is erroneous. To reach this calculation, Perseus assumes 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, and does not measure from the curb level, as 11-B DCMR § 308.2 requires. Instead, it begins its measurement approximately 5' higher up the stairs at the front of the building.

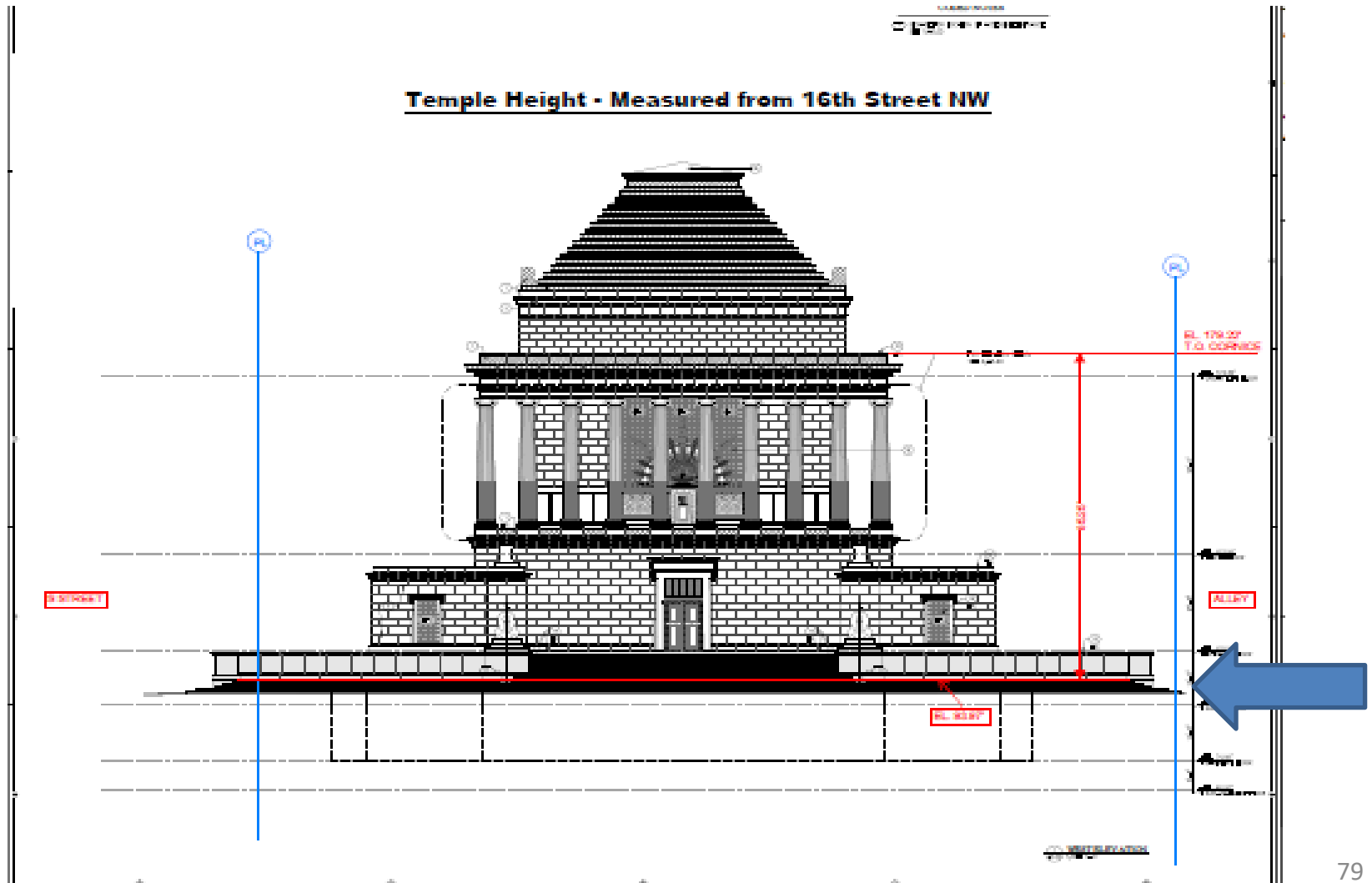
**Prof. McCrery's Reply - Figure 8 at p. 13
Showing Improper Location of Perseus 134' 6" Measurement**



Perseus Ex. B

(Not Before Zoning Administrator)

Arrow Showing Perseus' Erroneous Measuring Point Above Stairs



The BHMP from 16th Street Is Measured from the Curb Level, as Perseus Originally Found

- 11-B DCMR § 308.2 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.]

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, Natural: The undisturbed elevation of the ground of a lot prior to human intervention; or where there are existing improvements on a lot, the established elevation of the ground, exclusive of the improvements or adjustments to the grade made in the five (5) years prior to applying for a building permit. Exceptions to Natural Grade are set forth in the definition of “Grade, Exceptions to.”
- “Floor, Ground: The floor level nearest to and above the adjacent finished grade.”

Photo Showing Grade at Curb Level



Perseus' Fourth Attempted Misdirection -- Excluding the Vertical Depth of the S Street Areaway

- In an effort to avoid including the vertical depth of the S Street areaway in the height of the Temple, Perseus claims the height should be measured not from the Temple's newly designated "front" on S St., but from a different "street frontage" on 16th Street.
- No documents were before the Zoning Administrator in which Perseus made the "street frontage" claim, so there is no basis to consider it.
- In any event, this argument is clearly contrary to the Zoning Regulations and common sense.

Response to Perseus' Fourth Attempted Misdirection - The Temple's Height Is Measured From The Temple's Designated Front Per 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.]
- Section 308.7 **does not** say the height is measured from the “street frontage.”

**Response to Perseus' Fourth Attempted Misdirection --
The BHMP Must Be Calculated from S St., Which
Is the Side Perseus Designated as the "Front"**

- 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 BHMP and rear lot line determination purposes.

Response to Perseus' Fourth Attempted Misdirection -- The Temple's Height Is Measured From The Temple's Designated Front Per 11-B DCMR § 308.7

- *First*, there is nothing in the Zoning Regulations that suggests that a building can have two “fronts,” one for measuring BHMP and one for rear yard determination. That contention has no pertinent textual support.
- *Second*, while there may be a difference between “street frontage” and “front,” the *Zoning Regulations do not provide that the BHMP or the rear yard is determined by “street frontage.”*

Response to Perseus' Fourth Attempted Misdirection -- Measurement Principles

- The BHMP cannot be measured from 16th Street as the Temple “front,” unless the rear yard is to the east of the Temple, which will mean that the Temple will have almost no rear yard.
- As to the rear yard, the term “rear” is not defined in the Zoning Regulations.
- Thus, we look to Webster’s 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.]

Response to Perseus' Fourth Attempted Misdirection -- The Vertical Depth of S Street Areaway Must Be Included in the Temple's Height

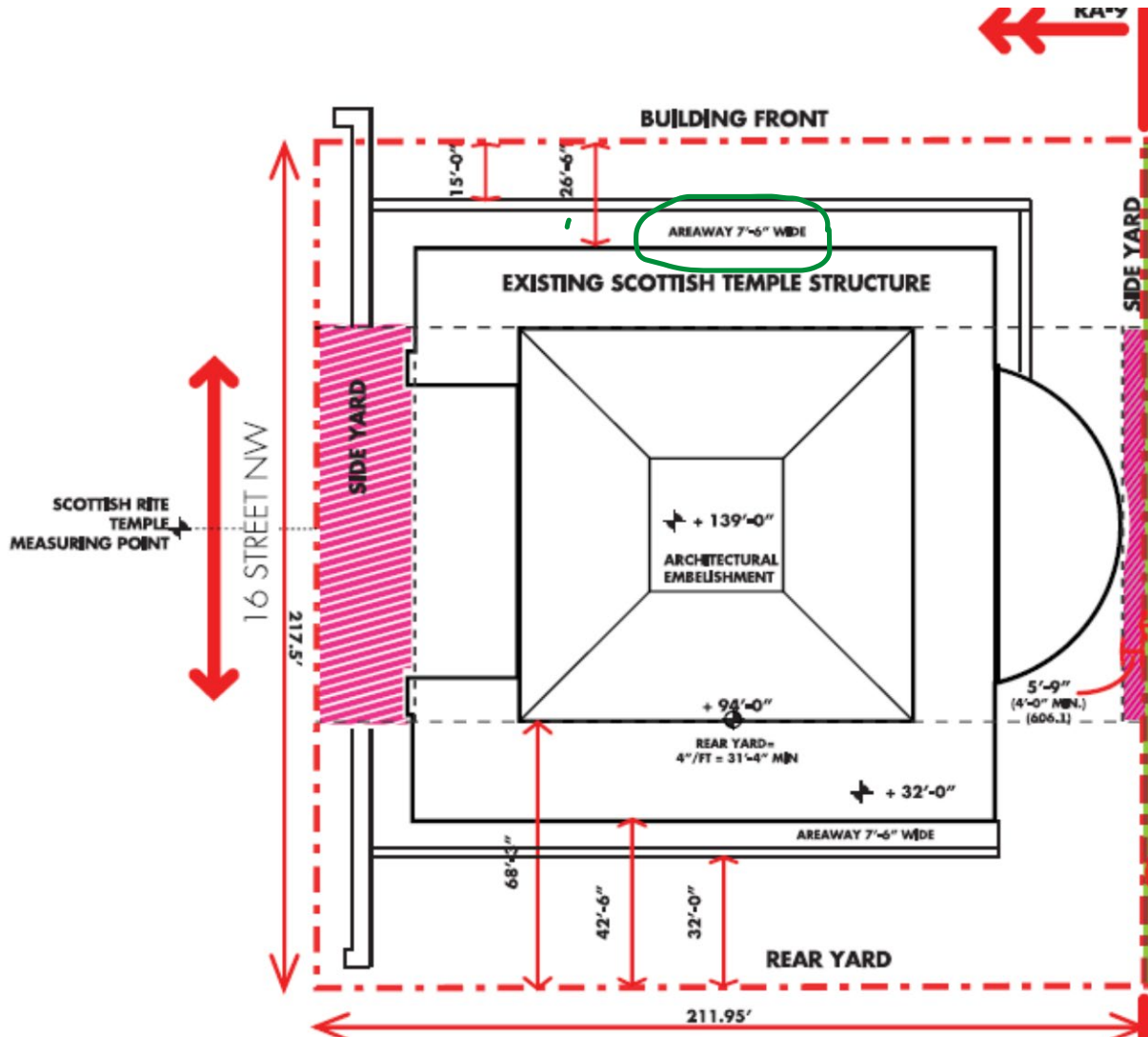
- The vertical depth of the S Street areaway must be included in the Temple's height.
- 11-B DCMR § 308.2 states: “The building height measuring point (BHMP) shall be established at the **adjacent natural or finished grade, *whichever is the lower in elevation*** [.]” [Emphasis added.]
- 11-B DCMR § 100.2 defines exceptions to grade:

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.*** [Emphasis added.]

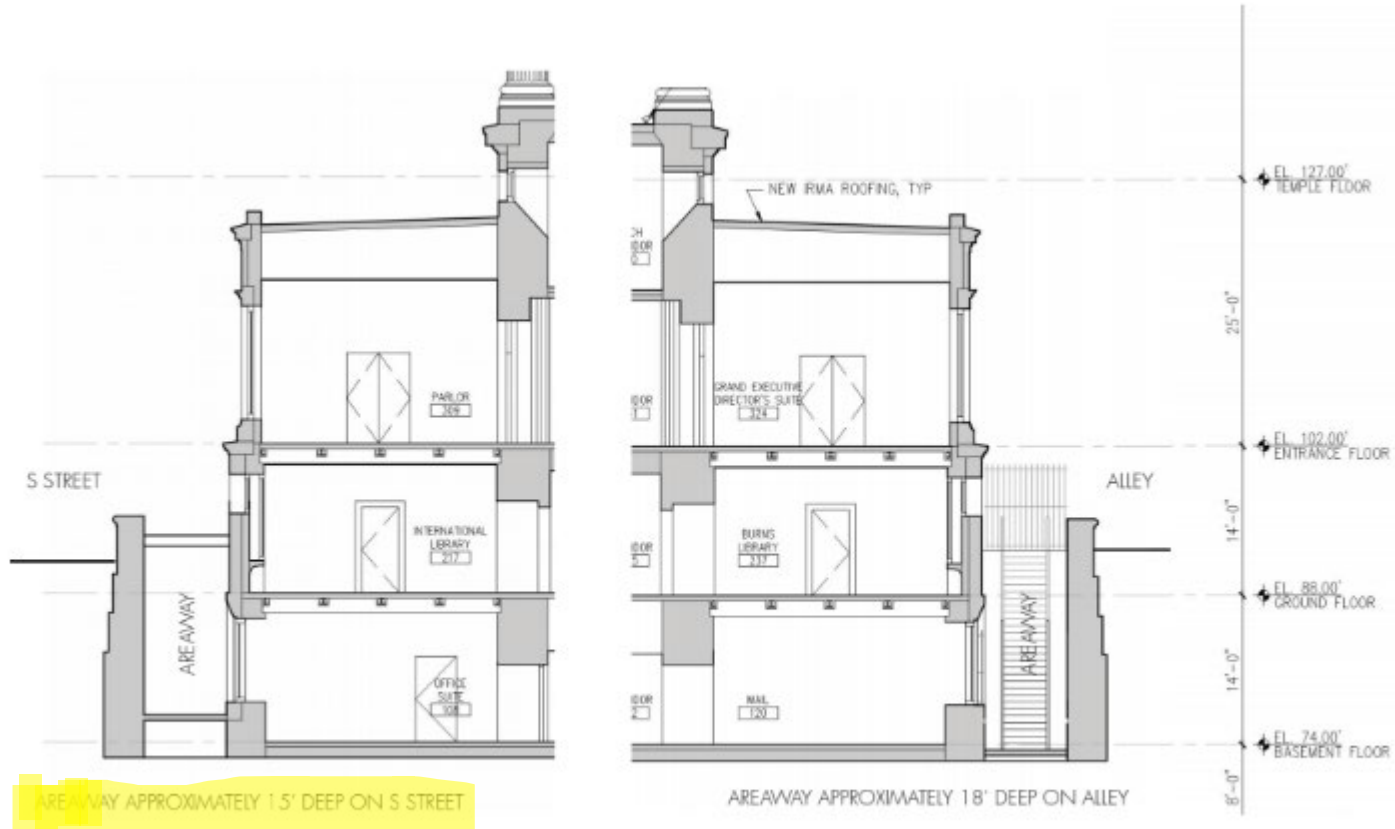
Response to Perseus' Fourth Attempted Misdirection -- The Vertical Depth of the S Street Areaway Must Be Included in the Temple's Height

- The below diagram shows that the areaway circled in green at the redesignated "front" on S Street is more than 7'6" wide from front to back.
- Thus, the BHMP must be measured from the base of the areaway.

Perseus' Diagram Showing North Areaway Is 7' 6" Wide



Perseus Diagram Showing Vertical Depth of S Street Areaway Is 15'



Minimum Depth of Rear Yard Including Vertical Depth of North Areaway

$$139 + 15 = 154'$$

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

Perseus' Fifth Attempted Misdirection -- Erroneous Argument That the South Areaway's Width Must Be Included in the Depth of the New Rear Yard.

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

11-B DCMR § 100.2 (Definition of Rear Yard)

- “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.”*

Definition of Structure

- 11-B DCMR § 100.2 defines “Structure as follows”:
 - “Structure: ***Anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground*** and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls. The term structure shall not include mechanical equipment, but shall include the supports for mechanical equipment. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.” [Emphasis added.]

Picture of South Acreway 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 depth 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.’”

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.

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

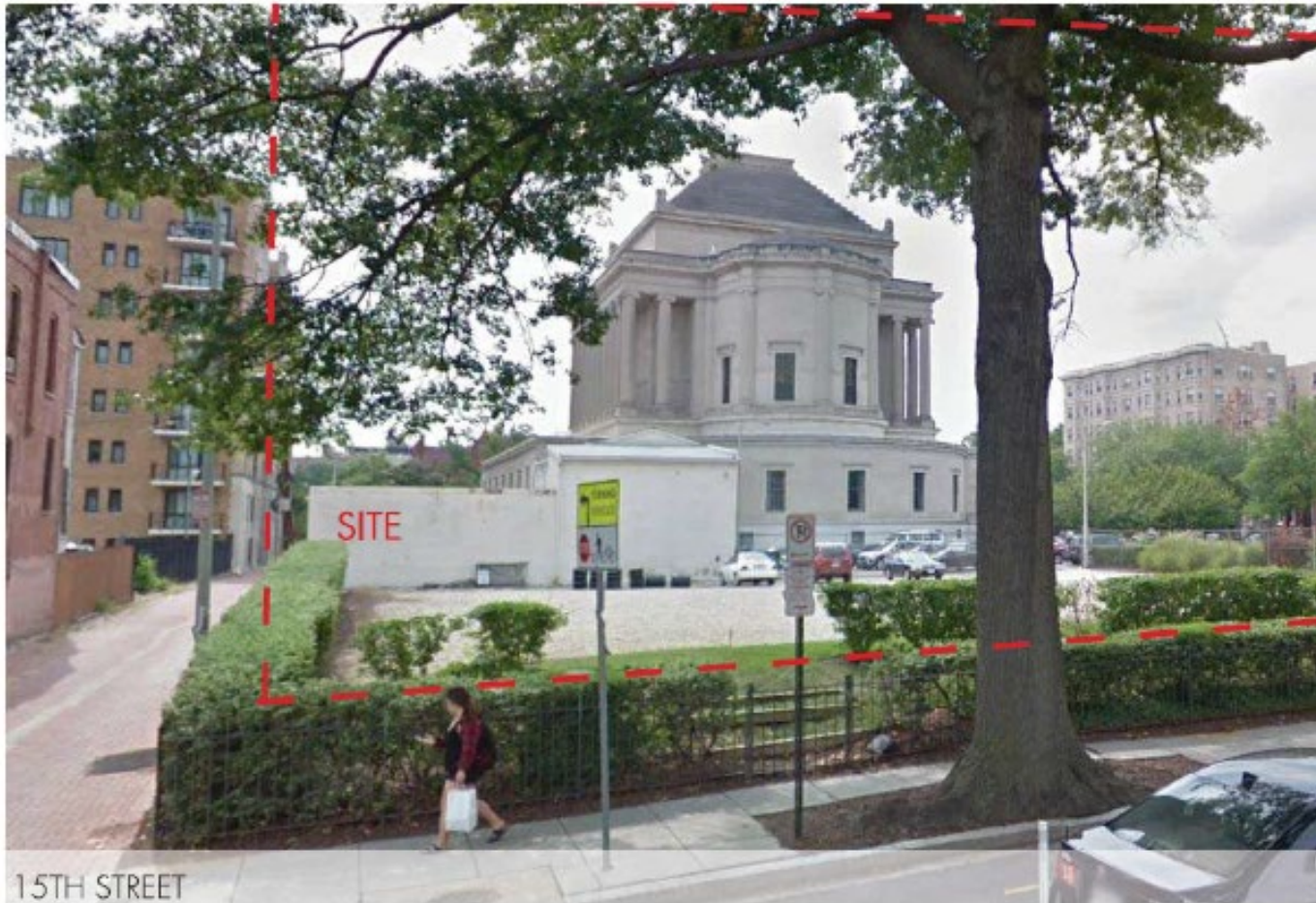
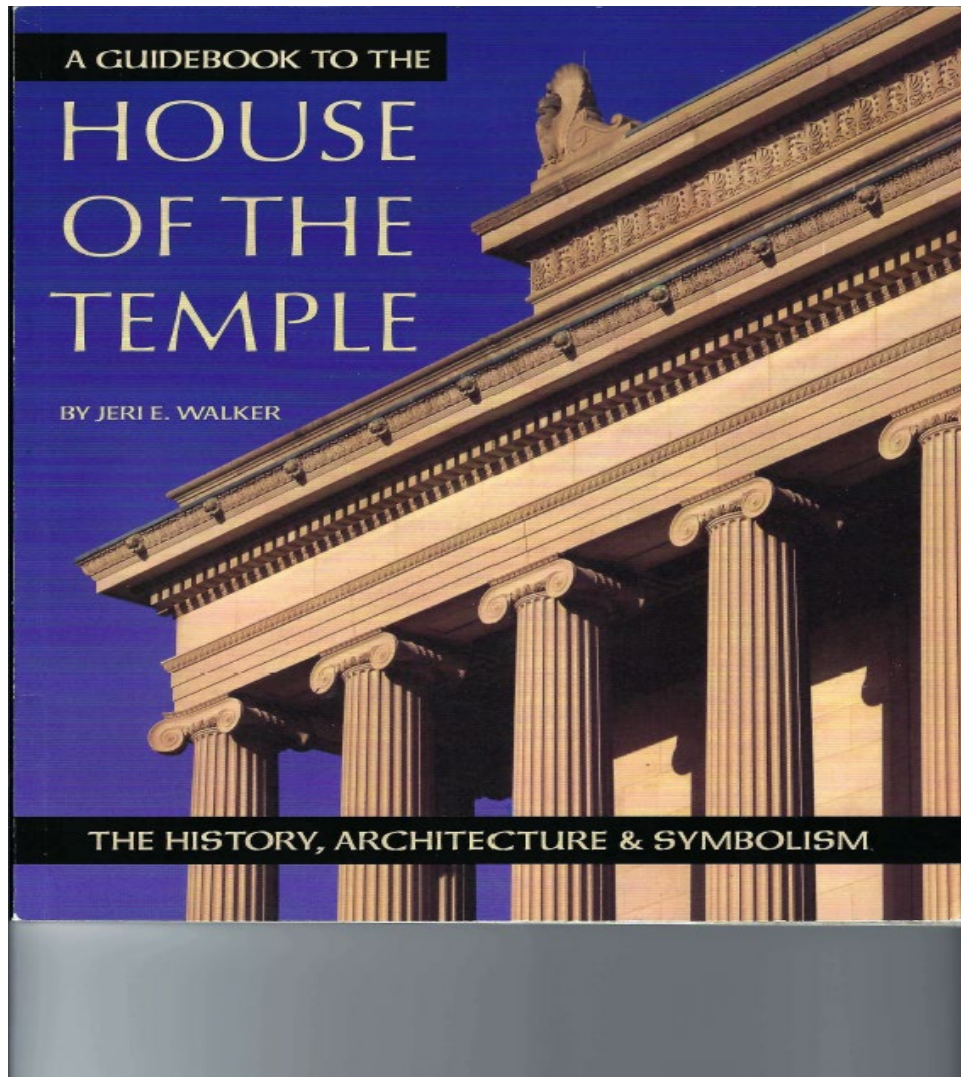


Photo of the Temple from the Front Showing the 11'6" High Wall from the Front (IZIS Dkt. Ex. 61)



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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FIRST EDITION, 2015

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

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




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

April 16, 1910




Grand Commander Richardson breaks ground for the new temple.

May 31, 1911




Work is ongoing on the foundation and basement.

April 1, 1912




Supernumerary 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




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

May 27, 1912




Construction continues on the first floor.

July 1912



First floor nears completion.

August 19, 1912



1909

Blowup of Excerpts - Guidebook (Submitted with DECAA's April 2020 Supplement)

August 19, 1912



First floor nears
completion.

Blowup of Excerpts - Guidebook (Submitted with DECAA's April 2020 Supplement)



Blowup of Excerpts - Guidebook (Submitted with DECAA's April 2020 Supplement)



Photo of S Street Lawn



11-B DCMR § 100.2 (Definitions)

- “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.”

Study of Carriage House

(See Separate PDF for Enlarged Version with All Pages)

Memorandum

DATE: June 1, 2017
TO: Adam M. Peters, Perseus Realty
FROM: Emily Eig
SUBJECT: Scottish Rite Temple Garage¹



Figure 1: Scottish Rite Temple Garage, north and west elevations, facing southeast. EHT Traceries.

Summary

The Garage at 1733 Sixteenth Street, N.W., Washington, D.C. is located in Square 192, Lot 108 (Originally Lots 22, 23, 24, 25, and 26 of William S. Roose's subdivision) (Figures 1 – 4).² It is currently owned by The Supreme Council, who acquired it in 1969. The building as it stands today has experienced a substantial number of additions and alterations from its earliest known construction in 1883 as a store

¹ The building has had various uses over its long history, including as a store house, blacksmith shop, carriage house, stable, and commercial garage. The building's use as a garage has been its most recent and longest use, as such, the building will be referred to as either the "Garage" or the "Scottish Rite Temple Garage."

² Tax and Assessment Lot 108 encompasses the entirety of north half of Square 192. Lot 108 is owned by the Scottish Rite Temple, and is the site of the Scottish Rite Temple as well as the Garage.

Dome of Temple Looking Upwards from Interior



Temple at Dusk



Resume of Ravi Ricker

Licensed Architect

(See Separate PDF for Enlarged Version with All Pages)

Ravi Ricker
2511 W. Moffat #104
Chicago, IL 60647
cell phone: 773.580.0564
email: raviricker@hotmail.com

Resume

PROFILE

Licensed Architect with 28 years of experience in Architecture and Construction. Extensive experience in Single Family and Multifamily housing, as well as a range of Commercial and Industrial projects. A history of working with Non-profit organizations, both funders and developers. A Professional career dedicated to thoughtful environmentally sustainable choices for clients, from creative renovations and adaptive reuse, to alternative mechanical solutions like Solar thermal and Geothermal systems, to use of uncommon but highly effective construction types like Insulated Concrete Form Construction. Experience working with all types of design consultants, and success navigating complex code, and funding source requirements.

REGISTRATION

Licensed Architect - State of Illinois

AFFILIATIONS

American Institute of Architects
Cal OES - California - Safety Assessment Program - Certified Disaster Service Worker
U.S. Green Building Council - LEED Associate (2009 - 2019)
City of Chicago, Licensed Energy Professional (2009 - 2019)

PROFESSIONAL EXPERIENCE

Wrap Architecture - Chicago
4/07-Current: Principal, Architect

- Co-founded and established Wrap Architecture as a thriving award-winning Architectural practice.
- Managed consultants and staff through architectural projects of varying sizes and types.
(see Project Experience attached, and Wrap website www.wraparchitecture.com for project details)
- Projects spanned from feasibility studies, building and zoning code reviews, Schematic Designs, and Design Development through development of Construction Documents for bidding and permit, and Construction Administration Services from payout reviews through punch list and project closeout.
- Design Development was achieved working closely with Civil, Structural, Mechanical, Electrical and Plumbing Engineers as well as other consultants including Landscape Architects, Lighting Designers, Energy Consultants, and Commercial Kitchen designers when projects necessitated.
- Other roles included generation of proposals and contracts, website production, general business planning and business administration, including management and upkeep of licensing and required insurances.

GMAC-RFC - Chicago Metropolitan Area
2/04-2/07: Construction Project Manager

- Home Ownership Preservation Enterprise - Renovation of 81 REO 1-4 Unit Residential Buildings
- Reviewed recent foreclosed properties portfolio and identified candidates for renovation and resale.
- Defined the scope of work, procured contractor services and oversaw renovation efforts, contractor payouts and construction close out for resale to homeowners, to develop neighborhood homeownership.
- Reported monthly progress to GMAC-RFC management and local non-profit stake holders.
- 81 units developed, each resulted in a greater return of lost funds than initial lender projections.

Pappageorge Haymes LTD - Chicago
2/00-2/04: Project Architect

- Projects ranged from new single-family homes, and mixed-use buildings to the conversion of an over 1M sf Montgomery Wards warehouse, into 288 residential units above 2 floors of parking and a data center.
- Project phases included feasibility through schematic design, design development, construction documents and construction administration.

Neighborhood Housing Services - Redevelopment Corporation - Chicago
8/95-2/00: Construction Coordinator

- Renovation of 140 1-4 Unit Residential Buildings (located throughout Roseland & Englewood)
- Identified properties for purchase, renovation and resale to increase homeownership.
- Defined the scope of work, procured contractor services, oversaw renovation efforts, contractor payouts and construction close out.
- Reported weekly progress to NHS-RC director, and maintained books for lenders annual reviews.
- Created a specification standard for NHS-RC properties, and managed local staff in NHS-RC renovations.
- Consulted with the NHS' Neighborhood Lending Program's loan committee on technical construction issues.

Chicago Rehab Network - Chicago
2/94-8/95: Construction Specialist

- \$1.4 M HOPE-3 Implementation Grant for a revolving loan fund for the renovation of residential buildings.
- Provided technical assistance and assisted non-profit members with loan applications.
- Presented loan applications for review by the loan committee.
- 7 projects were completed in partnership with CRN member non-profit organizations.

ACORN Housing Corporation - Chicago
2/92-2/94: Construction Specialist

- Renovation of 21 Single Family and 2 Flats.
- Identified properties for development and defined the renovation scopes and specifications.
- Managed future homebuyers through a sweat equity program both reducing development costs and educating homeowners.

EDUCATION

Bachelor of Architecture (General Honors) - University of Miami, Coral Gables, FL - May 1991
Architecture Study Abroad - Architectural Association, London, England - 1990

Loading Berths and Service/Delivery Spaces Regulations

- 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

- Subtitle F § 905.4 of ZR-16 states:

that “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;”

Loading Berths and Service/Delivery Spaces Regulations

➤ **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)