

DISCUSSION

A. It Is Improper To Import Irrelevant “Penthouse” Language From Other Sections of the Zoning Regulations Into the General Rules for Height Measurement.

I understand that a contention has been made that the language in the 11-C DCMR § 1501.3 of the Zoning Regulations dealing with “penthouses” should be deemed applicable to the general provisions regarding height measurements applicable to the Temple. As I noted in my Expert Report, the height of the Temple should be measured from the BHMP to the “highest point excluding parapets and balustrades not exceeding four feet (4 ft.) in height” per 11-B DCMR § 308.5. Subtitle F, specifically dealing with the RA Zones applicable to the Temple, provides no exception to the height limitations therein for “embellishments.” Indeed, the word does not even appear in that Subtitle.

11-C DCMR § 1501.3, mentioning “architectural embellishments,”¹ is entitled “Penthouse Height” and is contained in Chapter 15 of Subtitle C, entitled “Penthouses.” It is limited to penthouses and obviously has no relevance to the Temple. In any event, it is apparent that even under this provision, assuming it were applicable which it is not, that the “dome” must still qualify as an “architectural embellishment” before its exception comes into play. As I explained at length in my prior Expert Report, it is disingenuous to suggest that the Temple’s 332 ton pyramidal roof is an “embellishment.” It is part and parcel of the building design. Indeed, the pyramidal roof comprises 33% of the overall height of the Temple. This is not an “embellishment.”

B. The Building Height Act Does Not Support the Contention That the Temple’s 332 Ton Pyramidal Roof Is an “Embellishment.”

I understand supporters of the zoning approval also contend that the Temple when constructed would have violated the Building Height Act (“BHA”). They therefore argue that the roof of the Temple must have been considered an “embellishment,” which they (mistakenly) argue is currently exempted under 11-C DCMR § 1501.3, to have permitted the Temple’s construction. In addition to being based on rank speculation and a false predicate, the BHA itself belies that contention. The construction of the Temple was completed in 1915. The BHA in effect at that time does not mention the word “embellishment.” Thus, any flawed view of the Temple roof as an “embellishment” would have been irrelevant under the BHA.

Moreover, the 1910 version of the BHA in effect at the time of the Temple’s construction provides an exception as follows:

¹ This section provides: “**1501 PENTHOUSE HEIGHT . . . 1503.3** Architectural embellishments consisting of spires, tower, 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.” I would also note that the pyramidal roof, which is 46 feet in height, comprises substantially more than “30% of the wall” on which it is located, which is 94 feet tall. See McCrery Expert Report at 4 (Diagram).

“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. It is apparent that a procedure existed under the BHA for approval of the Temple’s height that had nothing to do with “embellishment.” Indeed, that is exactly what has occurred.

I have reviewed the Masons’ application for a building permit and the resulting approval, dated September 11, 2015, which are available at the on line site of the National Archives, Record Group 351, Reel 655, images 56-57, 63-64, <https://catalog.archives.gov/id/125057890>. I have attached hereto as Exhibit 1² the “Application For Permit To Build,” dated July 10, 1911 which provides as follows:

Line 12. “No. of feet in height from level of sidewalk to highest part of roof at front: 137’ 5 ¾””

Thus, the building height to the “highest part of the roof” is clearly established *by the Masons* as at least 137’5 ¾”.

It further provides:

Line 24. “Are there any tower projections? No”

Thus the Temple was presented *by the Masons* as having “no projections” – no “embellishments.”

I have attached as Exhibit 2 the associated executed “Permit to Build.” It states that: “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.*” Thus, it is apparent that the height of the Temple roof was “approved by the Commissioners of the District of Columbia.” BHA § 5. “Embellishment” had nothing to do with the Temple’s approval.

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All the contents of this Supplemental Expert Report and my previous Expert Report set forth the multitude of reasons why the current approval should be overturned.

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² Given the size of the page, it was necessary to break it into three parts and reassemble them to render it legible.

I hereby certify that this report is an accurate statement of my opinions.

4-21-21
Date

/s/ James McCrery
James McCrery

EXHIBIT 1

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? Superior School & Athletic Club - 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? Armorel Bros. - Address: Belmont Bldg. Washington, D. C.
4. What is the house number? 16th N.W. - S.
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 part block of 98-99 alleys. 192 subdivision N. W.
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 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 3/4"
No. of feet in height from sidewalk to eaves at back _____; average height _____
13. What is the purpose of the building? Ymnca If a dwelling, for how many families? No
14. Will there be a store in the lower story? No Nature of business to be conducted? Ymnca
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'-6"; 1st story 4'-9"; 2d story 4'-9"; 3d story 4'-9"
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 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 _____
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. front.
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

Start to work at it 1788
J. R. Pope

See file E.D. 96650
for authority for height

27500

Sign here.

SIGNATURE OF OWNER Southern Superior Athletic Club - Southern Jurisdiction United States

APPLICANT By James D. Hittorson - Licensed Surveyor

ADDRESS 433 - 3rd St. N.W. Washington D.C.

EXHIBIT 2

No. brick required *5 million*

Permit No. *1527*

PERMIT TO BUILD

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

OFFICE OF INSPECTOR OF BUILDINGS
DISTRICT OF COLUMBIA

Washington, *Sept. 22, 1911.*

[Handwritten initials]

This is to Certify That *Supreme Council Scottish Rite* has permission to erect *one 30x40 brick stone masonic temple* lot *86-100* block *192* square *subdividing* No. *S. 5. Cor. 16th & P. Sts, NW*

HOUSE NUMBER MUST BE VERIFIED BEFORE BEING PLACED ON BUILDINGS

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

The right is reserved to examine the buildings as often as may be necessary 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.

Fee Paid, \$ *275.00*

June 11/11

Morris Blacker

Inspector of Buildings.

Approval not to building may, does not cover terrace or approach steps.

Water used through meter.

It is a condition of this permit that the address of the Inspector of Buildings be notified the day of erection of any structure on public property.

CANCELLED
8 1911
RELEASED