

**BEFORE THE BOARD OF ZONING ADJUSTMENT  
FOR THE DISTRICT OF COLUMBIA**

APPEAL OF A DECISION OF THE ZONING ADMINISTRATOR FOR THE DISTRICT OF  
COLUMBIA, DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
SUBDIVISION OF LOT 108 ON SQUARE 192

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

**OPPOSITION OF APPELLANTS DUPONT EAST CIVIC ACTION ASSOCIATION  
AND MICHAEL D. HAYS TO DCRA’S MOTION FOR LEAVE TO FILE ITS  
RESPONSIVE BRIEF ON OR BEFORE JULY 21, 2021 AND  
APPELLANTS’ MOTION TO SET REVISED SCHEDULE**

Appellants Dupont East Civic Action Association and Michael D. Hays (collectively “Appellants”), through counsel, hereby oppose the DCRA’s motion to set July 21, 2021 for filing its brief for the reasons set for below. Instead, Appellants move the Board to set a reasonable schedule as set forth below.

**SUMMARY**

DCRA’s proposal is fundamentally unfair. Appellants timely filed their Supplemental Submission before the Board postponed the May 12, 2021 hearing. DCRA now proposes in its Motion that it be given approximately *100 days*, to respond to Appellants’ submission and that Appellants be given just *4 days* to prepare their reply. And DCRA’s motion would give the Board just *3 days* consider all this material. DCRA gave no reasons in its motion for why it should be granted nearly 100 days, Appellants 4 days, and the Board a mere 3 days. Instead,

Appellants move the Board to adopt the schedule that Appellants propose below, which will provide an equal extension of time to DCRA and Appellants, while providing this Board with ample time to consider the materials in these complex and important cases.

### ARGUMENT

These cases challenge the Zoning Administrator's approval of the subdivision of the lot upon which sits the Masonic Temple, located at 16<sup>th</sup> and S Streets, N.W., a designated historic landmark. Architect John Russell Pope, who also was the architect for such notable buildings as the Jefferson Memorial and the National Archives, designed the Temple and modeled it after the tomb of Mausolus at Halicarnassus, one of the Seven Wonders of the Ancient World. Its stately grandeur has graced this city for over 100 years. Architects have widely praised the building's design.<sup>1</sup> The zoning approval, if not reversed, will permit the construction of a luxury apartment building (the "Luxury Project") on the open green area ("Temple Gardens") to the east of the Masonic Temple, blocking the view of the Temple's apse, one of its most beautiful and important features.

The hearing on these important and complex cases was originally set for May 12, 2021. As a result, Appellants timely filed their supplemental submission pursuant to Subtitle Y 302.16 twenty-one days prior to the hearing date, i.e., on April 14, 2021. DCRA's response was due on May 5, 2021, which it did not file. The Board has continued the hearing to July 28, 2021.

DCRA has now moved for an unreasonable extension of the due date for its submission until July 21, 2021, which would provide it a total of *98 days* from the date of Appellants'

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<sup>1</sup> It won Pope the Gold Medal of the Architectural League of New York in 1917. In his 1920 book *L'Architecture aux Etats-Unis*, French architect Jacques Gréber described it as "a monument of remarkable sumptuousness[.]" Fiske Kimball's 1928 book *American Architecture* describes it as "an example of the triumph of classical form in America." In the 1920s, a panel of architects named it "one of the three best public buildings" in the U.S. In 1932, it was ranked as one of the ten top buildings in the U.S. in a poll of government architects.

submission to file its response, while only giving Appellants *4 days* to prepare their reply, and the Board *3 days* to consider all this material. This is totally unreasonable for multiple reasons.

*First*, DCRA's proposal is unfair to the Board, providing DCRA with 98 days to prepare its submissions while only giving the Board *3 days* to consider all the material. These cases are complex and important, involve a number of different claims,<sup>2</sup> and have generated immense concern and publicity in the community. The Board should have more than 3 days to consider the material.

*Second*, for much the same reasons, DCRA's proposal is totally unfair to Appellants. As a matter of fundamental fairness, any extension of the time to file should provide Appellants with the same extension of time as DCRA. It is unreasonable to provide DCRA with almost *100 days* to prepare their response, while only giving Appellants *4 days* to respond in this complicated case. Indeed, Appellants have two expert witnesses that they need to coordinate with, and 4 days is wholly insufficient for those purposes.

*Third*, the Zoning Administrator failed to conduct any analysis of the issues surrounding the subdivision relating to the Temple itself. Indeed, an FOIA request revealed that the *only* document addressing the Temple's compliance with the Zoning Rules as a result of the Subdivision was the one sentence approval itself, which merely stated as follows: "I certify that this subdivision complies with all applicable provisions of DCMR 11, Zoning Regulation of the

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<sup>2</sup> This claims include DECAA's contentions that: (i) the Subdivision Violates the Minimum Rear Yard Requirements of 11 DCMR Subtitle F § 605.1 of ZR-16; (ii) the Subdivision Violates the Minimum Loading Requirements of 11 DCMR Subtitle C § 901.1 and § 901.4 of ZR-16; (iii) the Subdivision Violates the Location Requirements of 11 DCMR Subtitle C § 903.1 of ZR-16; (iv) the Subdivision Violates the Size and Layout Requirements of 11 DCMR Subtitle C § 905.2, § 905.3, and § 905.4 of ZR-16; (v) the Subdivision Violates the Minimum Parking Requirements of 11 DCMR Subtitle C § 701.5; and (vi) the Subdivision Increases the Nonconforming Height of the Existing Building by Altering the BHMP.

District of Columbia.” Accordingly, at this point, DCRA has provided Appellants with no information whatsoever regarding its defense to these claims. This fact further supports providing Appellants with additional time to respond to DCRA’s contentions.

*Fourth*, the Zoning Administrator’s failure to provide any analysis at the time of the his approval of the subdivision should not be used in conjunction with the very short 4 day period for Appellants to respond to DCRA’s submission as a tactical ploy to deprive Appellants of due process by denying them a reasonable opportunity to respond. The predicate of the 4 day period provided in the rules undoubtedly assumed that the Zoning Administrator would have provided the parties with adequate notice of the basis of his decision. Here, there was none. Under these circumstances, it is unreasonable to impose a 4 day requirement for reply submissions.

According, Appellants submit that the Board should adopt the following schedule. This schedule gives an equal extension to both DCRA and Appellants, and provides Appellants with the additional time necessary to consult with their experts and prepare their reply submissions:

- **DCRA’s** submission is due **June 2, 2021** (an additional 4 weeks from the original due date of May 5, 2021);
- **Appellants’** replies are due **June 30, 2021** (four weeks from DCRA’s submission);
- This schedule would provide the Board with 4 weeks to consider all this material.

A proposed order is submitted herewith.

### **CONCLUSION**

For all the above reasons, Appellants respectfully request that the Board deny DCRA’s motion for leave to file its responsive brief on or before July 21, 2021 and instead approve Appellants’ above proposed schedule.

Respectfully submitted,

For Dupont East Civic Action Association

/s/Edward Hanlon

Edward Hanlon

For Michael D. Hays

/s/Michael D. Hays

Michael D. Hays

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**[Proposed] Order**

Having considered DCRA’s Motion for Leave To File Its Responsive Brief on or Before July 21, 2021, Appellants’ Opposition thereto, and Appellants’ Motion to Set Revised Schedule, it is, this, \_\_\_\_ day of May, 2021:

ORDERED that DCRA’s Motion for Leave To File Its Responsive Brief on or Before July 21, 2021 is denied;

FURTHER ORDERED that Appellants’ Motion To Set a Revised Schedule is granted;

FURTHER ORDERED that the below schedule is adopted for the above referenced cases:

- DCRA’s submission is due June 2, 2021; and
- Appellants’ replies are due June 30, 2021.

SO ORDERED

\_\_\_\_\_  
For the Board

**Certificate of Service**

I hereby certify that, pursuant to 11-Y DCMR §§ 205.3(e) and 302.15, a copy of the foregoing Opposition of Appellants Dupont East Civic Action Association and Michael D. Hays to DCRA's Motion for Leave To File Its Responsive Brief on or Before July 21, 2021 and Appellants' Motion To Set Revised Schedule, and proposed Order is being served this 10<sup>th</sup> day of May, 2021, upon the following by email:

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/s/ Michael Hays  
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