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. 20452
Appeal of Michael D. Hays	)	
	)	
	)	

REPLY STATEMENT OF APPELLANT
MICHAEL HAYS IN SUPPORT OF APPEAL OF
ZONING ADMINISTOR'S APPROVAL OF SUBDIVISION OF SQUARE 192 LOT 108

TABLE OF CONTENTS

I. INTRODUCTION

The Pre-Hearing Submissions of DCRA ("District Opp.") and Perseus TDC, LLC ("Perseus Opp.") (collectively, "Oppositions') do not dispute a central contention of Appellants Dupont East Civic Association and Michael D. Hays (collectively, "DECAA"): if the 332 ton roof of the Temple is not deemed an architectural embellishment, then the subdivision of Lot 108 ("Subdivision") violates 11-F DCMR § 605.1 because the new rear yard is insufficiently wide.[1]

As shown below, and in the Replies of Dupont East Citizens Action Association and of Professor James McCrery, which are incorporated herein by reference, the contentions in the Oppositions are ill-founded. The Temple lot is zoned RA-9. 11-F DCMR § 605.1 requires a 1 to 3 ratio of rear yard width to building height for RA-9 zones. The Luxury Project is designed to be constructed on the new proposed Eastern Lot just a few feet from the actual 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.

The Oppositions attempt to evade 11-F DCMR § 605.1 by redesignating the front of the Temple as S Street, making the new rear yard ("Redesignated Rear Yard") to the south of the Temple, does not cure this violation. As the diagrams submitted by Perseus to the DC Government establish, the height of the Temple from ground level is 139.' *See* Figure 1 below. Even without including the depth of the S Street areaway (which must be included in the height if the rear yard is to the south of the Temple), or excluding the width of the rear yard areaway (which must be excluded from the rear yard width), applying the 1 to 3 ratio mandated by 11-F

[1] Although the Zoning Regulations define the "depth" of the rear yard to mean the "horizontal distance between the rear line of a building and the rear lot line, except as provided elsewhere in this title" (11-B DCMR § 100.2), the term "wide" or "width" is used herein to refer to this measurement to avoid confusion with the issue surrounding the depth of the north areaway.

DCMR § 605.1 to the 139' height, the rear yard must be at least 46'4", while the new rear yard (even excluding the areaway) is only 42'6."

The Oppositions' arguments that the dome is an "architectural embellishment" and thus not included in the height calculations fail. Among other things, the domed roof cannot come with the dictionary definition of an "embellishment" that the Zoning Regulations mandate apply. Further, as shown below and in Professor McCrery's Reply, the dome cannot constitute an architectural embellishment under 11-C DCMR § 1501.3 for a separate reason. Under 11-C DCMR § 1501.3, a dome can only constitute an "architectural embellishment" if it "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." Here, the dome of the Temple in fact covers the entire wall on which it is located.

II. ARGUMENT

A. The Oppositions Cannot Save the Zoning Administrator's Failure to Properly Evaluate the Subdivision Application by Submitting Materials that the Zoning Administrator Never Considered.

The Oppositions, in an effort to supply a rationale and evidence for the decision of the Zoning Administrator, make a number of arguments and submit a number of exhibits that the Zoning Administrator never considered when he approved the Subdivision. These include diagrams inconsistent with Perseus' representations to the Historic Preservation Review Board ("HPRB") that Perseus submitted to obtain HPRB's approval of the Subdivision. The Board of Zoning Adjustment ("Board") has concluded it cannot approve a Zoning Administrator's decision on the basis of evidence that the Zoning Administrator did not even consider. *See, e.g., Appeal of Dennis P. Sobin*, BZA Appeal No. 13715 at 6 (Dec. 3, 1982) ("The Board will make its determination based only on the evidence that the Zoning Administrator had before him at the

time of his decision."); *Appeal of ANC 6A*, BZA Appeal No. 17439 at 6 (March 30, 2007) ("The issue before this Board is whether the facts know to the Acting Zoning Administrator at the time [of his approval] could have reasonably led him to believe" that the requirements were met).

In this regard, Mr. Hanlon submitted a Freedom of Information Act ("FOIA") request to the District of Columbia requesting all information relating to the Zoning Administrator's approval of the Subdivision. The District's response revealed that the *only* document addressing the Temple's compliance with the Zoning Regulations was the plat and the one sentence approval itself, which merely states as follows: "I certify that this subdivision complies with all applicable provisions of DCMR 11, Zoning Regulation of the District of Columbia." *See* Exhibit 1 (DCRA's FOIA Response and only document produced).

Thus, the Zoning Administrator, according to the District, considered no evidence in approving the Subdivision other than that on the plat. This conclusion is supported by the fact that, according to another FOIA request that Mr. Hanlon submitted to the District:

- On September 25, 2018 Lawrence Ferris, Esq., Perseus' attorney, sent an email to Zoning Administrator LeGrant stating *inter alia* that Mr. Ferris is forwarding a "draft determination letter" to Zoning Administrator LeGrant for Mr. LeGrant's signature;

- The actual "draft determination letter" which Perseus' own attorney wrote for Mr. LeGrant to sign stating the project "compl[ies] with the applicable provisions of the Zoning Regulations"; and

- The final determination letter signed by Mr. LeGrant on October 30, 2018 which is identical, *even to every punctuation mark*, with the draft letter which Perseus' attorney wrote and forwarded to Mr. LeGrant for Mr. LeGrant's signature.

See IZIS Dkt. Entries 10-12.

Thus, it is apparent the Zoning Administrator merely rubber-stamped Perseus' request for approval of the Subdivision. His approval must therefore be vacated and reversed.

B. The Zoning Administrator's Determination Is Entitled to No Deference.

While the above facts establish that the Zoning Administrator's determination should be entitled to no deference, pertinent case law likewise established that this Board owes his determinations no deference:

> 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*[.]

Ward 5 Imp. Ass'n v. Dist. of Columbia Bd. of Zoning Adjustment, 98 A.3d 147, 154-55 (2014) (vacating BZA's decision) (emphasis added).[2]

C. The Temple Redesignations Result in a Violation of 11-F DCMR § 605.1 Because the New Rear Yard Is Insufficiently Wide.

As DECAA established in its Opening Statements, and as further established by the Expert Reports of Professor McCrery, the redesignation of the Temple's rear yard ("Redesiginated Rear Yard") to the south of the Temple results in a violation of 11-F DCMR § 605.1 because the Redesignated Rear Yard is insufficiently wide. The Oppositions misguidedly attempt to chip away at this determination by arguing that the height should not be measured from the base of the north areaway and that width of the south areaway should not be excluded in the measurement of the rear yard (in fact, that inclusion is required by the definitions in 11-B

[2] Perseus claim that "great deference" is due to the Zoning Administrator's interpretation of the Zoning Regulations is thus false. The quotation it cites in *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n,* 431 A.2d 560, 565 (D.C. 1981) refers to the Zoning Commission's, not the Zoning Administrator's, interpretation. To the extent Appeal of *ANC ID*, BZA Case No. 18152, is to the contrary, it has been overruled by the D.C. Court of Appeals.

DCMR § 100.2). These objections are considered below. But even if depth of the north areaway in not included in the height measurement and the width of the south areaway is included in the width of the Redesignated Rear Yard, that Rear Yard still violates 11-F DCMR § 605.1.

The Temple lot is zoned RA-9. 11-F DCMR § 605.1 provides as follows:

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

Zone	Minimum Rear Yard
RA-8	15 ft.; or A distance equal to 4 in. per 1 ft. of principal building height
RA-9	15 ft.; or A distance equal to 4 in. per 1 ft. of principal building height

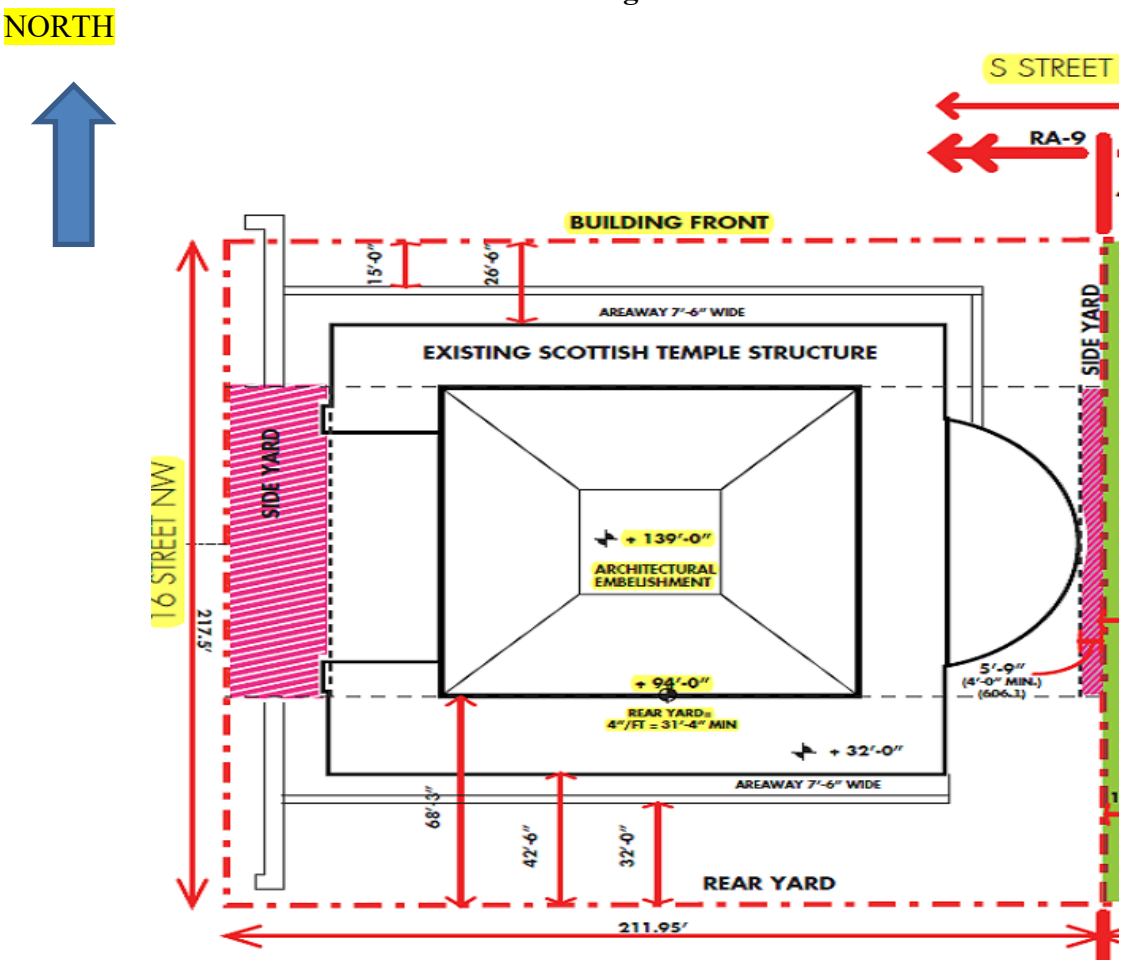
Since 4" is 1/3 of a foot, one multiplies the principal building height by 1/3 to calculate the required width of the rear yard.

As Figure 1 below establishes (from the Application that Perseus submitted to the HBRB (https://drive.google.com/file/d/1i9xXfj_g4IPLbwrPwJ2oiBmvkZtpC4qc/view?usp=sharing)), the height of the Temple is 139' (*not including the depth of the north areaway*). Thus, to comply with 11-F DCMR § 605.1, the width of the rear yard must be:

1/3 x 139' = 46'4"

However, as established by Perseus own calculations reflected in Figure 1 below, the rear yard is only **42'6"** wide (excluding the south areaway).

Figure 1



In an effort to chip away at the height of Temple, Perseus has offered another height calculation (again based on information that was not before the Zoning Administrator), that the Temple's height is 134'6". *See* Perseus Opp. Exhibit C. While this height measurement, as shown below, is inaccurate, it too cannot save the Subdivision, as even this reduction in height is insufficient to render the Redesignated Rear Yard compliant with 11-F DCMR § 605.1:

1/3 x 134'6" = 44'10"

The Redesignated Rear Yard, as noted above, is only **42'6"** wide.[3]

[3] It bears noting that Perseus attempts to revise the height to 134"6,' not because of some revelation as to the true height, but a litigation-inspired effort to reduce the Temple's height.

To avoid the obvious violation of 11-F DCMR § 605.1, the Oppositions offer a number of excuses, none of which, according to the District's FOIA response, were before the Zoning Administrator and none of which can salvage the approval of the Subdivision.

D. The Temple's Pyramidal Roof Is Its "Roof" Under the Zoning Regulations, Not an "Embellishment." Thus, the Temple's Building Height Must Be Measured from the Top of Its Pyramidal Roof.

For their first attempt to evade 11-F DCMR § 605.1, the Oppositions contend that the 332 ton roof of the Temple, which is in the shape of a pyramid, does not constitute a "roof" under the applicable Zoning Regulations, but is rather an "embellishment" and thus should not contribute to the Temple's building height. Under this misguided theory, the Oppositions contend that the height of the Temple is 85'3." Perseus Opp. Exhibit 3.

As DECAA and Professor McCrery established in their initial submissions, this contention is contrary to the applicable rules of regulatory construction, to the Zoning Regulations, to common sense, and to simple observation. The Oppositions do not dispute the pertinent legal principles:

- This Board's construction of the term "roof" and "architectural embellishment" is "de novo." *Ward 5 Imp. Ass'n*, 98 A.3d at 154-55.

- 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, ignore certain words, and "rewrite" it to impose distinct meaning not contemplated by the legislature. *Ind. Mich. Power Co. v. Dep't of Energy*, 88 F.3d 1272, 1276 (D.C. Cir. 1996).

A conclusion that the Temple's 332 ton roof is not a "roof" as defined in the Zoning Regulations, but rather an "embellishment, violates these standard and well-established principles of statutory and regulatory construction for multiple reasons as set forth in DECAA's Opening Statements and its expert reports. Among other things:

First, as DECAA showed in its Opening Statements, such an interpretation violates the principle that "the assumption that the ordinary meaning of language accurately expresses the legislative purpose." *Park 'N Fly, Inc.*, 469 U.S. at 194. Here, neither the word "roof" nor the word "embellishment" are defined in the Zoning Regulations. *See* 11-B DCMR § 100.2. Under these circumstances, 11-B DCMR § 100.1(g) provides: "*Words not defined in this section shall have the meanings given in Webster's Unabridged Dictionary*."

Webster's, in turn, 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 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*."

[Emphasis added.]

Neither the District nor Perseus dispute these definitions. The District ignores these definitions (Dist. Opp. 7). Perseus, on the other hand, in a tacit acknowledgement that these dictionary definitions mandate reversal, meritlessly asserts, despite the Zoning Regulations to the

contrary, that "inquiry into principles of statutory interpretation and Webster's unabridged Dictionary is wholly unnecessary in this case" because of the "unambiguous text of the Zoning Regulations[.]" Perseus Opp. 13. Perseus' assertion is false. It violates the principle that the Board cannot, in the guise of interpreting a statute, ignore certain words, and "rewrite" it to impose distinct meaning not contemplated by the legislature. *Ind. Mich. Power Co.* 88 F.3d at 1276. The Zoning Regulations dictate the meaning of 11-F DCMR § 605.1 and, to the extent that regulation includes words not defined in the Zoning Regulations, their meaning must be established by Webster's Dictionary. Those undefined words include "roof" and "embellishment." Thus, those dictionary definitions must be applied, and it is only after those dictionary definitions are applied that the meaning of 11-F DCMR § 605.1 can be ascertained.

In any event, instead of addressing the Zoning Regulations' mandate to consult the dictionary, both Oppositions rely upon the undefined terms in 11 DCMR § 1501.3, claiming that that regulation definitively resolves that the Temple's 332 ton roof is in fact an architectural embellishment. This contention fails for multiple additional reasons.

First, 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 thus has no textual relevance to the Temple. The District ignores this issue, while Perseus asserts, without any textual support in the Zoning Regulations, that it applies outside of the Chapter in which it is located. This contention, of course, violates a fundamental principle of statutory interpretation: Courts must presume that the legislature "says in a statute what it means and means in a statute what it says." *Dodd,* 545 U.S. at 357; *see Kakeh v. United Planning Org., Inc.,* 655 F. Supp. 2d at 123 (same). Had the Zoning Regulations intended this

provision to apply outside of penthouses, it would have been simplicity itself to so provide. The Zoning Regulations did not do so.

In an effort to avoid the clear language of the Zoning Regulations, Perseus argues that placement in Chapter 15 dealing with "Penthouses" "was the most logical chapter in the Zoning Regulations to address any building features that exceed primary building height." Perseus Opp. 12. This contention is misguided, as a far more logical place to have included the provision had it been intended to have general applicability would be Subtitle B, "Definitions, Rules of Measurement, and Use Categories." Perseus further argues that the architectural embellishment provisions in the 1958 Zoning Regulations "was not [so] limited" and that there was nothing in the rewrite of those regulations that "conveyed any intent to limit the reach of the architectural embellishment exemption" is likewise false. Perseus Opp. 12. The 2016 Zoning Regulations specifically provide that:

> The Zoning Commission for the District of Columbia, pursuant to authority conferred by Congress under the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code §§ 6-641.01 to 6-641.15 (hereafter, the Zoning Act), after public notice and hearing prescribed by law, does hereby establish and adopt these regulations (2016 Regulations) and the Zoning Maps accompanying them *to supersede in full the zoning regulations and the Zoning Maps, as originally adopted on, and effective as of 12:01 a.m. May 12, 1958 (1958 Regulations), as amended, and that are hereby repealed*.

11-A DCMR § 100.1 (emphasis added).[4]

Second, even assuming *arguendo* that 11-C DCMR § 1501.3 applies (contrary to the text), that does not assist the District or Perseus because 11-C DCMR § 1501.3 unambiguously

[4] Perseus' contention that it would make no sense to limit this exception to penthouses "because a penthouse by definition exceeds a structure's primary building height" (Perseus Opp. 12) likewise is misguided. Penthouses are still subject to height restrictions. 11-C DCMR § 1501. Thus, an exemption for "domes" on penthouses is still pertinent.

specifies that not all "domes" are "architectural embellishments." 11-C DCMR § 1501.3 provides:

> 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.

Id. (emphasis added). Thus, the text unambiguously provides that not all "spires, towers, domes, minarets, and pinnacles" are exempted from the height restrictions; rather only those "spires, towers, domes, minarets, and pinnacles" that constitute "architectural embellishments" are excluded. Had the Zoning Regulations intended to exempt all "spires, towers, domes, minarets, and pinnacles," it would have said so, rather than caveating the exclusion by specifying that these structures must constitute "architectural embellishments." By comparison, 11-C DCMR § 1501.5 exempts "a chimney or smokestack" without such a caveat.

Since "spires, towers, domes, minarets, and pinnacles" must constitute an "architectural embellishment," as established above, one looks to the definitions that the Zoning Regulations specifies to determine if they meet the definition. As likewise established above, in the instant case, the 332 ton Temple roof does not constitute an "architectural embellishment." This conclusion is further mandated by the well-established principle that a regulatory authority will "avoid interpretations of statutes which lead to implausible results." *Abdulshakur v. Dist. of Columbia,* 589 A.2d 1258, 1266 (D.C. 1991); *see United States v. Brown,* 333 U.S. 18, 27 (1948) ("No rule of [statutory] construction necessitates the acceptance of an interpretation resulting in patently absurd consequences."); *Dist. of Columbia v. Reid,* 104 A.3d 859, 868 (2014). Here, if any "tower" or "dome" were automatically excluded from the height restrictions, it would simply gut the Zoning Regulations' height restrictions. The legislature intended no such absurd result.

Moreover, to deem a 332 ton pyramidal structure serving as a roof covering the entire Temple an "architectural embellishment" is literally absurd.

Third, construing the Temple's 332 ton roof as merely an "embellishment" is improper because there is no competing common sense, "plausible" construction of embellishment that could possibly authorize the Zoning Administrator's approval. Tribunals must presume that the legislature says "what it means and means . . . what it says." *Dodd v. United States*, 545 U.S. 353, 357 (2005).

Fifth, a short, simple phrase does not authorize fundamental restructuring. The legislature "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions." *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001); *see FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (court must be guided "by common sense as to the manner in which Congress is likely to delegate a policy decision of such economic and political magnitude to an administrative agency."); *Sch. Dist. of City of Pontiac v. Sec'y of U.S. Dep't of Educ.*, 584 F.3d 253, 294 (6th Cir. 2009) (Sutton, J., concurring) (same). Here, interpreting a massive 332 ton pyramid structure as an "embellishment" not counting toward the height of a building would simply gut the Zoning Regulations, including the height restrictions. Any developer could simply evade the provisions of the Zoning Regulations, including height and rear yard restrictions. That cannot be what the Zoning Regulations intended, and the legislature certainly did not intend to provide the Zoning Administrator with that discretion. Moreover, if the pyramidal structure were deemed an "embellishment," and not a roof, then of course the Temple would have no roof, in violation of the Zoning Code, which defines a "Building" as "A structure requiring permanent placement on the ground that has one or more floors and a roof[.]" 11 DCMR § 100.2 (Definitions).

The Oppositions attempt to shoehorn the Temple into the height exclusion is meritless. *First*, as Professor McCrery established in his Expert Reports, 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." Professor McCrery Reply at 8.

> By contrast, here the Temple's pyramidal roof obviously does not fall within the definition of embellishment because it is clearly essential to the building to give it form and identity both inside and out, and to provide protection from the elements. These are requirements of essential, basic, fundamental elements of roofs, not of "embellishments."

Id. at 8. As Professor McCrery further noted:

> The pyramidal roof is not an embellishment. It falls squarely within the definition of "roof." It is part and parcel of the building and must be accounted for in measuring and establishing the building height in accordance with the Zoning Regulations. Further, there is a skylight at the center of the pyramid so that natural light may come into the building through the roof. The term "skylight" is defined by Webster's in relevant part as "an opening *in a roof* or a deck of a ship covered with translucent or transparent material (as glass or plastic) and designed for the admission of light." (Emphasis added). Thus, the Temple's pyramidal structure is not an "embellishment."

Professor McCrery's Expert Report 9.

Second, in a bizarre misconstruction of the Building Height Act ("BHA"), Perseus misguidedly 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 Professor McCrery established in his Supplement. *See* Supplement to Expert Report of James Curtis McCrery, II, Architect, at 2-3.

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:

> "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. Attached as Exhibit 2 is the Temple's 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.

Third, Perseus cites to a number of examples where the Zoning Administrator purportedly has approved domes exceeding the height limitation, allegedly on the basis that they constitute "architectural embellishments." Perseus asserts that some of these embellishments "functionally serve as a roof" because "the ceiling of an occupiable floor is located above the maximum height prescribed by the" BHA. Perseus Opp. 14. Even a cursory review of the buildings Perseus alludes to shows that they are wholly distinguishable from the present situation, even assuming they were approved on the basis of the "embellishment" exception. The "embellishments" in each of those cases *did not, as in the case of the Temple, constitute the*

entire roof. Rather, they are fixtures placed on the top of the roofs providing decorative detail. *See* Professor McCrery's Reply at 9-10.

Fourth, the letter of the Zoning Administrator dated December 17, 2013 regarding, inter alia, 1920 N Street, N.W. (DCRA Opp. Ex. D; Perseus Opp. Ex. E) ("1920 N Street Letter") provides additional support for the conclusion that the Temple's doomed roof is a roof, not an architectural embellishment. In that letter, in approving the alleged embellishment at issue, the Zoning Administrator specifically noted:

> 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*.

1920 N Street Letter, at 2-3 (emphasis added). By contrast, here the claimed "embellishment" is 100% of the roof area.[5]

For these reasons, the roof of the Temple is its roof, not an architectural embellishment. Thus, the Zoning Administrator improperly approved the Subdivision because it violates 11-F DCMR § 605.1.

E. The Oppositions' Attempts to Chip Away at the Temple's Height and Add to the Width of the Rear Yard Are Meritless.

The Oppositions attempt to chip away at the Temple's height through four misguided arguments. As noted above, none of these is sufficient to reduce the Temple's height sufficiently to meet the requirements of 11-F DCMR § 605.1. But they too are misguided.

[5] Perseus' speculation that the "primary driver behind the dome is its aesthetic purpose" is not only irrelevant, but also wrong. The primary driver for the Temple roof, like all roofs, was to protect the interior and to shield it from the sun and to keep out rain, snow, and dirt. Making it an attractive roof was a secondary consideration.

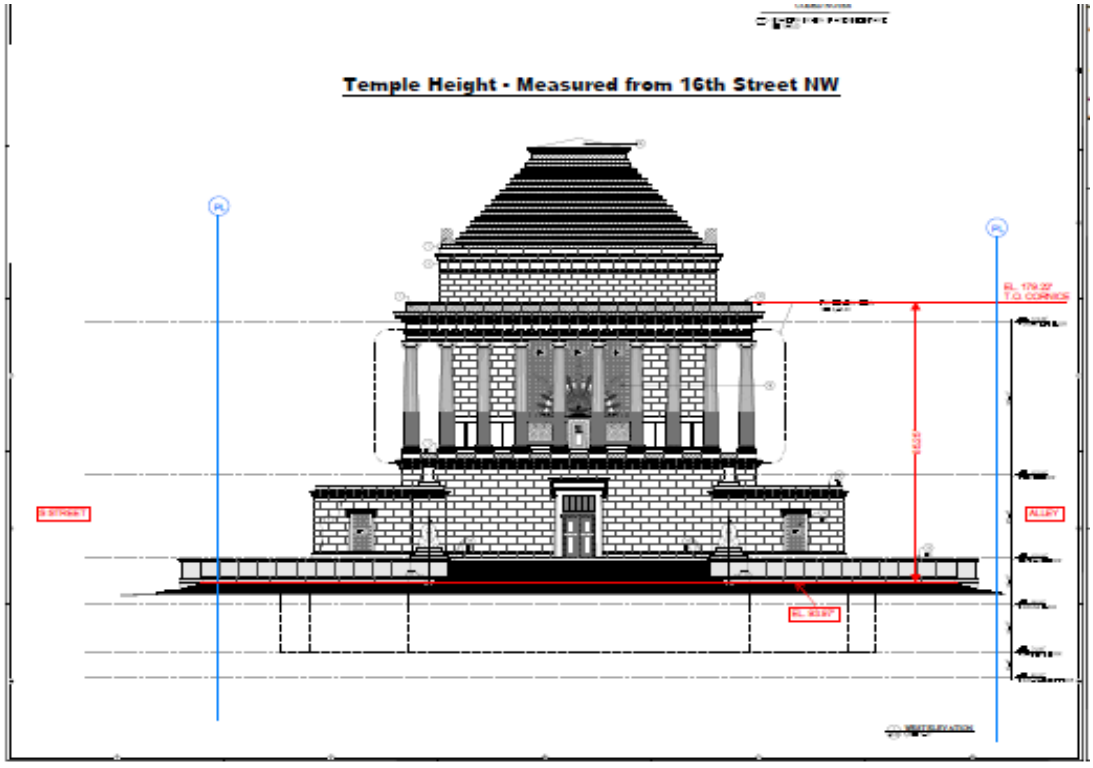
1. The Height of the Temple From 16th Street Is Measured from the Sidewalk Level, Not Five Feet Up the Stairs to the Temple.

Perseus first attempts to chip away at the Temple's legitimate height by offering another height calculation for the Temple height from 16th Street, claiming (contrary to their previous submission to the HPRB) that the Temple's height is 134'6" from this perspective. *See* Perseus Opp. Exhibit C. To reach this calculation, Perseus does not measure from the sidewalk, as required (assuming for these purposes 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), but instead begins its measurement approximately 5' higher up the stairs at the front of the building. *See* Perseus Opp. Ex. B. This is an inaccurate measurement. 11-B DCMR § 308.2 states as follows:

> 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.

It is obvious from Exhibit B that the 134'6" measurement is not being taken from the sidewalk, but artificially measured from a higher point at the top of the first set of stairs for the sole purpose of attempting to reduce the Temple's height.

Figure 2 (Perseus Ex. B)



Comparing this diagram to the picture below (Figure 3) showing the front of the Temple establishes that Perseus is not measuring the height from the sidewalk.

Figure 3

This new measurement violates the Zoning Regulations.

Moreover, Perseus is estopped from attempting to establish a new height for the Temple. Having submitted a document to the District government claiming that the height of the Temple was 139,' which the District relied upon in denying DECAA's challenges to the Subdivision, it should not be permitted now to change that height.

2. The Zoning Administrator Must Be Reversed Since He Either Did Not Determine at All or Did Not Properly Determine the Face of the Temple from Which the BMHP Must Be Calculated.

The Oppositions contend that the Zoning Administrator properly considered the S Street side of the Temple as the basis for designating the rear lot line and hence the rear yard width, but properly evaluated the BMHP from the 16th Street side of the Temple. This contention fails at the outset because there is no evidence that the Zoning Administrator did either. As noted above, the DCRA responded to an FOIA request that there were no documents relating to the Subdivision approval other than the plat approval itself. The Oppositions' litigation-inspired contention that the "street frontage" for purposes of determining the rear lot line can be different than the building's front used for purposes of measuring BMHP is of no moment if that were not the basis of his determination.

In any event, while Perseus cites to several prior Zoning Administrator's determinations, those are not binding on the Board. To the contrary, the Board's review is "*de novo*." *Ward 5*, 98 A.3d at 154-55. To the extent that the Board previously concluded in the one case cited, *Adams Morgan Neighbors For Action*, that a different "front" exists for BMPH and rear line determination purposes, that decision was contrary to the Zoning Regulations and sound policy.[6]

[6] Apparently recognizing that the Board's prior determination rests on a weak foundation, Perseus asserts that "any new interpretation of this issue should only be applied prospectively to future projects and not abruptly enforced against this Subdivision after it has received zoning approval," citing *Smith v. Dist. of Columbia Bd. of Zoning Adjustment,* 342 A.2d 356, 359 & n.9 (D.C. 1975). Perseus Opp. 8. n.3. This contention is misguided for several reasons, including

First, assuming for purposes of this discussion that Perseus' selection of the "front" of the building as the S Street side was proper, with which DECAA and Professor McCrery disagree,[7] 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 BMHP and rear lot line determination purposes. In this regard, the pertinent regulations provide:

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. [Emphasis added.]
>
> 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.

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.]

The Oppositions' contention is contrary to these regulations for a number of reasons. *First*, there is nothing in the Zoning Regulations that remotely suggests that the building can have two "fronts," one for measuring BMHP and one for rear yard determination. That contention has *no* pertinent textual support and is thus contrary to well-established principles of

---

the following. *First*, as noted above, the evidence establishes that there was no reliance on this alleged interpretation because it was never argued by Perseus and never relied upon by the Zoning Administrator. *Second, Smith* did not rule that the Board should apply the new determination only prospectively, rather it simply stated that: "While the Board is of course not bound for all time by its prior positions, we think it should have considered this [prospective] contention, not only in connection with its decision of the merits of the case, but also as it relates to petitioner's claim of estoppel." *Id*. *Third,* Perseus makes no claim of estoppel here.

[7] *See* McCrery Expert Report at 2.

statutory interpretation. *Dodd,* 545 U.S. at 357 (courts must presume that the legislature "says in a statute what it means and means in a statute what it says."); *Kakeh v. United Planning Org., Inc.,* 655 F. Supp. 2d 107, 123 (D.D.C. 2009) (same); *Ind. Mich. Power Co.,* 88 F.3d at 1276 (agency cannot, in the guise of interpreting a statute, ignore certain words, and "rewrite" it to impose distinct meaning not contemplated by the legislature.).

Second, while there may be a difference between "street frontage" and "front," the Zoning Regulations do not provide that the BMPH or the rear yard is determined by "street frontage."

Measurement of BMPH: As to the measurement of BMPH, 11-B DCMR § 308.7 provides that the "*basis for measuring the height of the building shall be established by the street selected as the front of the building.* [Emphasis added.]

Measurement of Rear Yard. As to the rear yard, the term "rear" is not defined in the Zoning Regulations. Thus, we look to Webster's Unabridged 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.] Indeed, if the rear yard were to be determined by street frontage, in every corner lot there would be at least two "rear yards," both of which would have to comply with 11-F DCMR § 605.1. However, to the contrary, the Zoning Regulations contemplate only one rear yard, which is the "yard between the rear line of a building or other structure and the rear lot line[.]"[8] Thus, the BMHP is determined from the S Street side, which likewise determines the rear lot line and rear yard.

[8] Perseus' cite to 11-B DCMR § 317.2 is misguided. That section provides that "a lot may have more than one (1) rear lot line." However, as the Zoning Regulations provide, that is to address the situation where the lot is irregularly shaped. *See, e.g.,* 11-B DCMR § 318.3. The Zoning Regulations do not contemplate two "rear yards" for purposes of compliance with 11-F DCMR §

3. If the South Side of the Temple Is To Be Used as the Rear Yard, Then the Depth of the Areaway on the North Side (S Street Side) Must Be Included in the BMPH.

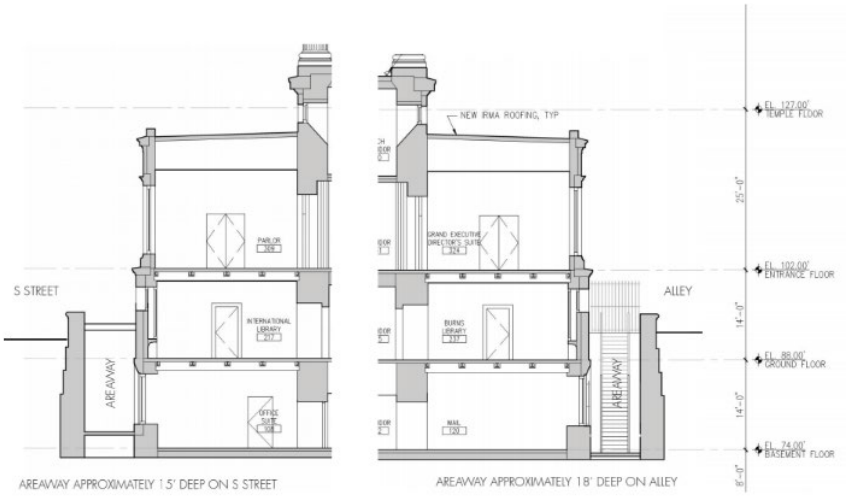
As established in DECAA and Professor McCrery's initial submissions, since the areaway at the redesignated "front" on S Street is more than 7'6" wide (*see* Figure 1), the BHMP is measured from the base of the areaway:

> Grade, Exceptions to: The following are exceptions to "Finished Grade" and "Natural Grade" as those terms are defined below: (a) A window well that projects no more than four feet (4 ft.) from the building face; and (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.*

11-B DCMR § 100.2 (Definitions) (emphasis added). Here, the areaway on the S Street side is 7'6", and thus is *not* and exception to grade. *See* Figure 1.

Per Figure 43 below (prepared by the developer), the areaway at the redesignated "front" of the Temple on S Street is 15 feet deep:

Figure 4



605.1 in the case of regular lots lines such as exist on the Temple lot. If it did, as noted above, both "rear yards" would have to comply with 11-F DCMR § 605.1.

Thus, 15 feet must be added to the Temple's height (139') for a total height of 154'. Multiplying that number by 1/3 reveals that that minimum width of the rear year must be at least 51'4".

Minimum Width of Rear Yard

139 +15 = 154'

1/3 x 154 = 51'4"

Accordingly, regardless of whether the width of the rear yard includes the width of the south areaway or not, the proposed Redesignated Rear Yard violates 11-F DCMR § 605.1.

The District's contention that the 15' depth of the areaway is excluded from the BMPH calculation because it is an exception to grade is misguided. It cites the regulation that provides an exception to grade for an areaway, but ignores that the exception applies only to an areaway that "projects no more than five feet (5 ft) from the building face." 11-B DCMR § 100.1. It does not dispute that, as noted above, the areaway here, according to Perseus' own measurements, extends 7'6" from the Temple's face. Thus, the areaway is included in the BMPH calculation.

The District's further contention that the "Temple's areaway is an existing non-conforming feature," even if true, is irrelevant. The Zoning Regulations do not provide that non-conforming areaways are excluded from BMPH. To the contrary, in mandating that any subdivision result in compliance with its provisions, the Zoning Regulations state that:

> Where a lot is divided, the division shall be effected in a manner that *will not violate the provisions of this title for yards*, courts, other open space, minimum lot width, minimum lot area, floor area ratio, percentage of lot occupancy, parking spaces, or loading berths applicable to that lot or any lot created.

11-C DCMR § 101.6 (emphasis added).

4. The Width of the South Areaway Cannot Be Included in the Width of the Rear Yard.

As DECAA and Professor McCrery demonstrated in their initial submissions, the width of the areaway in the Redesignated Rear Yard (7'6") cannot be included in calculating the width

of the Redesignated Rear Yard. In this regard, the width of the redesignated "rear yard" is measured from the southern edge of the areaway to the south property line. The "rear yard" must exclude the areaway, per the definitions of "Yard" and "Rear Yard". The Zoning Regulations define "yard" as:

> Yard: An exterior space, other than a court, on the same lot with a building or other structure. A yard required by the provisions of this title shall be open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title. No building or structure shall occupy in excess of fifty percent (50%) of a yard required by this title.
>
> and:
>
> 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.
>
> and:
>
> 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.

11-B DCMR § 100.2 (Definitions) (emphasis added). *Reading these definitions together, it is apparent that the "rear yard" does not include the areaway* because the areaway is a "structure." The Zoning Regulations define "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.

11-B DCMR § 100.2 (Definitions). A picture of the areaway at the south of the Temple is set forth below:

Figure 5

The areaway clearly comes within the Zoning Regulations definition of "structure" and it occupies the Redesignated Rear Yard.

Perseus misguidedly argues that that the areaway does not "occupy" the rear yard, citing 11-B DCMR § 324.1(a), which provides:

> 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.

But Perseus' argument simply confuses apples and oranges. As noted above, the definition of rear yard is: "A yard between the rear line of a building *or other structure* and the rear lot line, except as provided elsewhere in this title." While it further provides that "The rear yard shall be for the full width of the lot and shall be unoccupied," it does not state that if a structure is permitted (e.g., a structure is less than 4'), it changes that measurement of the width

of the rear yard. That provision merely provides an exception to what would otherwise be a prohibition of such structures in rear yards.

The Oppositions reliance on *Adams Morgan for Reasonable Development,* BZA Case No. 18888, is similarly misguided. There, the Board addressed whether "the garage ramp and below-grade garage" violated the provision that "the rear yard "shall be unoccupied," not how the width of the rear yard is to be measured. Moreover, unlike here, the Board found the use conforming because "the garage ramp is located at grade and that the garage is located below grade."

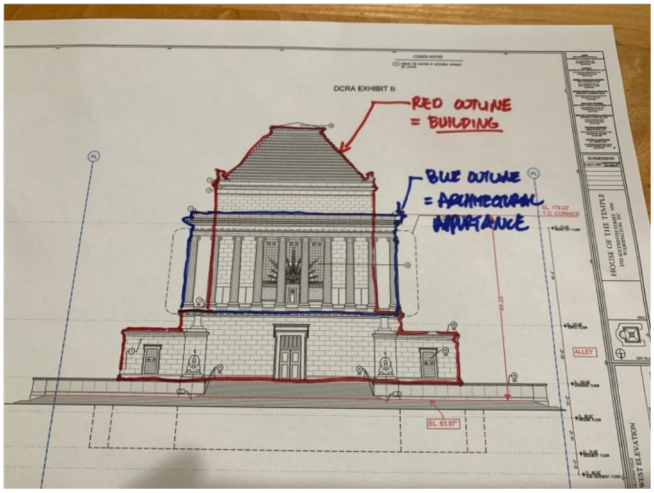
Accordingly, the width of the areaway, 7'6", must be included in the width of the rear yard. Thus, the width of the rear yard is 32', well below the required width to satisfy 11-F DCMR § 605.1.[9]

F. The Temple's Pyramidal Roof Is Not An "Embellishment" Because It Results in the Appearance of a Raised Building Height for More Than Thirty Percent of the Wall on Which It Sits.

As previously noted, 11-C DCMR § 1501.3 expressly provides that a dome *cannot* be deemed an "embellishment" 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." Here, 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. Below is a diagram of the Temple, with the building's structure outlined in red:

[9] Even if the south areaway were to be included as part of the rear yard, which it should not be, the Subdivision would still violate 11-F DCMR § 605.1. As noted above, the minimum width of the rear yard is 44'10" even accepting Perseus revised height determination and excluding the depth of the north areaway. Adding the south areaway to the width of the rear yard still only makes it 42'6" wide, below the required minimum.

Figure 6



Thus, the Temple's roof sits upon all the walls of the Temple, and thus cannot satisfy the requirements to be deemed an "architectural embellishment."

The Oppositions make two wholly misguided assertions in an attempt to avoid the exclusionary provisions of 11-C DCMR § 1501.3. *First*, both the District and Perseus claim that "the dome is not located on a wall." District Opp. 7; Perseus Opp. 13. This assertion is clearly wrong, as the diagram above shows.

Second, Perseus (but not the District) claims 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." Perseus Opp. 13. This contention literally makes no sense. 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:

Figure 7

For these reasons, the Temple's pyramidal roof cannot constitute an architectural embellishment.

G. The Rear Yard Violates the Zoning Regulations Because It Is Occupied by a Structure that Is Over Four Feet Tall.

As Perseus notes in its Opposition (at 9), 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"). 11-B DCMR § 324.1(a), in turn, exempts from this requirement "any structure less than four (4) feet in height, [which] is permitted to be located within a required side or rear yard." Perseus Opp. at 9. Here, the wall identified in the below picture occupying a portion of the Redesiginated Rear Yard is in gross violation of that requirement. That wall is 11'6" tall.[10]

[10] DECAA recognizes that this precise issue was not specifically identified in its opening submissions. However, since the Zoning Administrator did not issue any written report, nor were there any documents produced by the District relating to the Zoning Administrator's approval, it was unclear at the time that DECAA filed those opening submissions on what basis either the Zoning Administrator or Perseus would claim that the Subdivision met the Zoning Regulations' requirements. That basis was unknown until the District and Perseus filed their Oppositions, which included *for the first time* their contention that the Temple could meet the

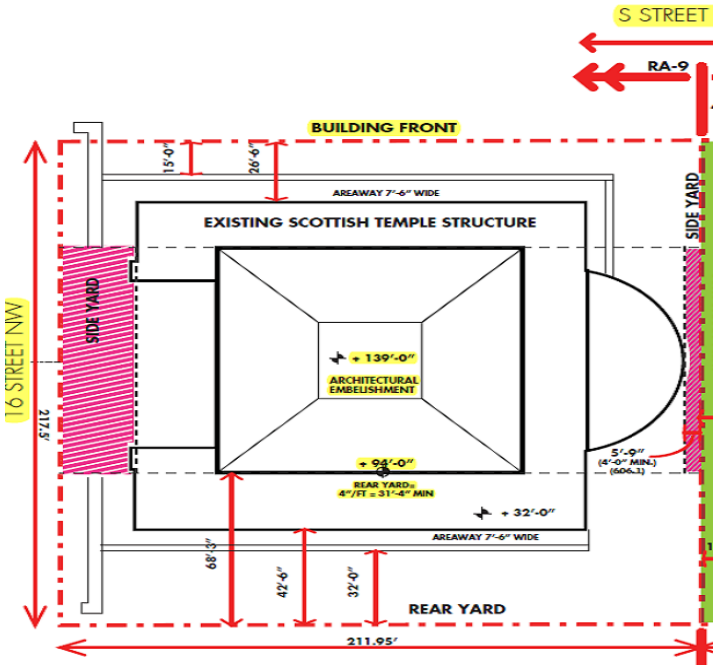
Figure 8

Figure 9

That structure, as evidenced by the below diagram Perseus prepared, is clearly in the "rear yard."

Figure 10

North



Zoning Regulations though a redesignation of the Temple's south side as the rear yard. Thus, having no notice from either the District or Perseus, DECAA could not fully identify the shortcomings of the Zoning Administrator's Subdivision approval. Accordingly, the Board should consider this flagrant violation of the Zoning Regulations, and Appellants so request the Board.

H. The Subdivision Is Totally at Odds with the Purposes of the Zoning Regulations.

As Professor McCrery established in his initial Expert Report, the Zoning Administrator's approval of the Subdivision is totally at odds with those Regulations' stated intent:

> [T]he proposed property subdivision, the proposed development, and its proposed scale, density, coverage and relationship to the historic Temple building each run contrary to the clear and worthy *intentions* for the RA-9 zone. The Zoning Regulations set forth the *intent* for the RA-9 zone:
>
> > The RA-9 zone is intended to: (*emphasis ours)*
> >
> > Recognize the Dupont Circle area is a unique resource in the District of Columbia that must be preserved and enhanced;
> >
> > - *Provide strong protections to retain its low scale*, predominantly residential character, independent small retail businesses, human scale streetscapes, *and historic character*;
> > - Enhance the residential character of the area by maintaining existing residential uses *and controlling the scale and density of residential development*;
> > - *Protect the integrity of "contributing buildings",* as that term is defined by the Historic Landmark and Historic District Protection Act of 1978.
> > - *Preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide;*
> > - Enhance the streetscape by maintaining the public space in front of buildings as landscaped green spaces; an
> > - Encourage greater use of public transportation and the free circulation of vehicles through public streets and alleys."
> >
> > The proposed property subdivision, the proposed development, and its proposed scale, density, coverage and relationship to the historic Temple building each run contrary to 4 of the 6 clearly stated and worthy *intentions* for the RA-9 zone

McCrery Expert Report at 10.

While Perseus argues those purposes cannot justify a denial, it does not contend, nor could it, that those intentions are irrelevant. Indeed, Perseus does not dispute that the Subdivision is, as Professor McCrery found, contrary to the above noted purposes in italics.

Rather, it claims that the Subdivision will "protect the integrity of 'contributing buildings[.]'" Perseus Opp. 18. It is obvious that dropping a massive five story building within a few feet of the Temple's rear obstructing its view will not "protect the integrity" of the Temple, it will destroy it. Perseus' attempt to sidestep the inevitable degradation of the Temple should the Subdivision be approved on the basis that it will provide "a revenue stream to the Temple" is likewise disingenuous. The Masons "completed" a "$50 + million" renovation in 2015. *See* Exhibit 3 hereto. There has been no showing in any forum that the Masons could not complete any additional renovations required without the Luxury Project. The Luxury Project is intended to line the pockets of the developer, not provide "affordable housing;" and there is no shortage of the luxury apartments that Project envisions, rather there is a glut.

Similarly, Perseus' assertion that this "Appeal is merely one more baseless attempt to prevent construction" ignores the disgraceful conduct surrounding the Luxury Project and its associated Subdivision approval that has been established in depositions and discovery in these other cases. That conduct, as established by sworn testimony that Perseus has not and cannot dispute, includes, among other things:

- The Ethics Manual of the DC Government provides: "A government employee *shall not* participate in government action *that could affect her own financial interests* or that of another person or organization with which she is affiliated." Ethics Manual at 4 (citing 18 U.S.C. §§ 203, 2205). In violation of these rules, the HPO official in charge of reviewing the Luxury Project lived directly across the street in a house worth more than $1 million.

- The HPO, after issuing a final report finding that Lot 820 was the Temple Landmark boundary, which would have made the Luxury Project's

approval more difficult, changed that determination without explanation after a last-minute call from the developer.

- The ANC Commissioner who testified in favor of the Luxury Project was employed by a company that worked on the Project.

- The Masons and Perseus represented to the Mayor's Agent that no significant renovations had been undertaken on the Temple in the last 100 years. The Mayor's Agent relied on this representation, which was false because a "$50 million" renovation was "completed" in 2015. *See* Exhibit 3.

- In this case, the Zoning Administrator issued no written review of the compliance of the Subdivision with the Zoning Regulations, instead copying verbatim the letter that Perseus' counsel sent him.

The cases that DECAA has filed are not baseless allegations intended to improperly stop an otherwise meritorious project.

Finally, Perseus could have requested approval of conforming project that did not involve violations of the Zoning Regulations. It chose not to do so.

III. CONCLUSION

For all the above reasons, I hereby respectfully request that the Zoning Administrator's approval of the Subdivision of Lot 108 be reversed and vacated.

Respectfully submitted,
/s/Michael Hays
Michael Hays

Certificate of Service

I hereby certify that, pursuant to 11-Y DCMR §§ 205.3(e) and 302.15, a copy of the foregoing Reply Statement of Appellant Michael D. Hays in Support of Appeal of Zoning Administrator's Approval of Subdivision of Square 192 Lot 108 and associated exhibits have been served, this 19th day of July, 2021, upon the following by email:

Hugh J. Green
Assistant General Counsel
Department of Consumer and Regulatory Affairs
Office of the General Counsel
1100 4th Street, S.W., 5th Floor
Washington, D.C. 2024
Email: hugh.green@dc.gov

Matthew LeGrant
Zoning Administrator
Department of Consumer and Regulatory Affairs
1100 4th Street, S.W., Room 3100
Washington, DC 20024
Email: dcra@dc.gov

Andrew Zimmitti
Manatt
1050 Connecticut Ave., NW
Suite 600
Washington, D.C. 20036
202 585-6505
Email: azimmitti@manatt.com
Counsel for Supreme Council of the Scottish Rite of Freemasonry, 33rd Degree, Southern Jurisdiction, USA

Christine Roddy
Goulston & Storrs, PC
1999 K St NW Ste 500,
Washington, DC 20006
Croddy@goulstonstorrs.com
Counsel for Perseus TDC

Daniel Warwick
Chairperson ANC 2B
2146 Florida Ave, NW
Washington, DC 20008
2B@anc.dc.gov

John Fanning
Chairperson ANC 2F
1307 12th Street, NW #505
Washington, DC 20005
2F@anc.dc.gov
Email: 2B04@anc.dc.gov

Moshe Pastermak
Commissioner ANC 2B04
#9 Dupont Circle, NW
Washington, DC 20036
Email: 2B04@anc.dc.gov

/s/ Michael D. Hays
Michael D. Hays

EXHIBIT 1

Government of the District of Columbia
Department of Consumer and Regulatory Affairs

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.hanlon.3@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)

FOIA Request No. 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)

Your request is granted. DCRA conducted a search and was unable to locate correspondence pertaining to the subdivision identified in your FOIA request. Please find attached a plat DCRA's Office of the Zoning Administrator and the Office of the Surveyor located and determined response to your FOIA request. Please be advised, according to the Office of the Surveyor, an application was submitted in paper format and is not accessible at this time. However, the information provided on the application is reflected on the plat itself. If you have any questions pertaining to the Office of the Surveyor, please feel free to contact the unit directly, see below.

Surveyor, Office of the Surveyor
Department of Consumer and Regulatory Affairs
1100 4th St SW, DC 20024
Phone: 202-258-1214
dcra.dc.gov

Appeal Rights

Pursuant to D.C. Code § 2-537 and Title 1 of the D.C. Municipal Regulations (DCMR) § 412, you may file an administrative appeal or seek judicial review if you are dissatisfied with a public body's response to your request. Administrative appeals are submitted to the Mayor. If you submitted your FOIA request via the Freedom of Information Act Public Access Website, you may submit the appeal by logging on to your account via FOIAXpress. An appeal also may be submitted by mail or email. The appeal must include a copy of the original request as well as a copy of the public body's written denial letter issued to you, if any. In addition, the appeal must include a written statement of the arguments, circumstances, or reasons in support of the information sought by your request. The appeal letter must include "Freedom of Information Act Appeal" or "FOIA Appeal" in the subject line of the letter as well as marked on the outside of the envelope. You may direct a written appeal to:

foia.appeals@dc.gov

Or

The Mayor's Office of Legal Counsel
FOIA Appeal
1350 Pennsylvania Ave., N.W.
Suite 407

Washington, D.C. 20004

A copy of all appeal materials must be forwarded to Genet Amare, D.C. Department of Consumer and Regulatory Affairs, 1100 4th Street, S.W., 5th Floor, Washington, D.C. 20024.

Please feel free to contact me if you have any questions regarding this response.

Sincerely,

Genet Amare

Genet Amare, Esq. | *FOIA Officer*
Department of Consumer and Regulatory Affairs
genet.amare@dc.gov | 1100 4th St SW, DC 20024
main: 202.442.4400 | desk: 202.442.8769
dcra.dc.gov

The undersigned certify that they are owners in fee simple of the property to be subdivided and are in peaceful occupation thereof; that there are no pending suits or actions that affect title to the property; that parties to any deeds of trust have hereon indicated their assent; and that there are no interests or claims affecting title to the property other than such deeds of trust. The undersigned hereby subdivides Lot 108, Square 192 (Book 207 Page 188) into two Lots and requests that this subdivision be recorded in the Office of the Surveyor of the District of Columbia.

WITNESSES

OWNERS

THE SUPREME COUNCIL
(MOTHER COUNCIL OF THE WORLD)
OF THE INSPECTORS GENERAL
KNIGHTS COMMANDERS
OF THE HOUSE OF
THE TEMPLE OF SOLOMON OF THE
THIRTY-THIRD DEGREE
OF THE ANCIENT AND ACCEPTED
SCOTTISH RITE OF FREE MASONRY
OF THE SOUTHERN JURISDICTION OF
THE UNITED STATES OF AMERICA

WITNESS SIGNATURE

WITNESS SIGNATURE

RONALD A. SEALE, SOVEREIGN GRAND COMMANDER

WITNESS SIGNATURE

WITNESS SIGNATURE

WILLIAM G. SIZEMORE II, GRAND EXECUTIVE DIRECTOR

Subscribed and sworn before me this 7th day of August 2019

Notary Public

My Commission Expires 3/31/22

(NOTARY SEAL)

NUMBER OF TRUSTS: 0

ASSENT BY TRUSTEES:

OFFICE OF TAX AND REVENUE

11/12/20, 2019

I certify that the following statements relating to this subdivision are correct.

1 Ownership agrees with our records: 11/12/20 ob

2 Real estate taxes are paid to: 03/31/21 ob

3 There are no unpaid assessments: 11/12/20 ob

Quincy Lenay
for Chief Assessor, Assessment Division

I acknowledge for the owners that this is not a tax certificate as intended by D.C. Code Section 47-405.

Diana Herndon

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

11/19/2020 ~~2019~~

I certify that this subdivision complies with all applicable provisions of DCMR11, Zoning Regulation of the District of Columbia.

Zoning District: RA-8/RA-9

for ML
Zoning Administrator

DEPARTMENT OF THE ENERGY & ENVIRONMENT (DOEE)

November 12, 2020, 2019

I certify that this subdivision complies with all applicable provisions of DCMR20, Chapter 31 - Flood Hazard Rules, of the District of Columbia.

Flood Zone & Flood Elevation: Zone X Unshaded

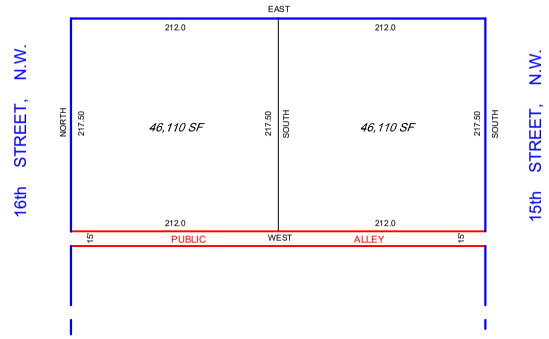
Victor Ukpolo
DOEE Official

November 13, 2020 2019

HISTORIC PRESERVATION

SUBDIVISION
SQUARE 192

S STREET, N.W.



SURVEYOR'S OFFICE, D.C.

Made for: LOT 108 LESSEE, LLC

Drawn by: L.E.S. Checked by:

Record and computations by: B. MYERS

Recorded at:

Recorded in Book Page SR-19-05797

Scale: 1 inch = 60 feet File No. 19-46111

2019/SUBS/SR-19-05797-SQ.192

*Amended to accommodate correct a degraded original image.

11/3/2020

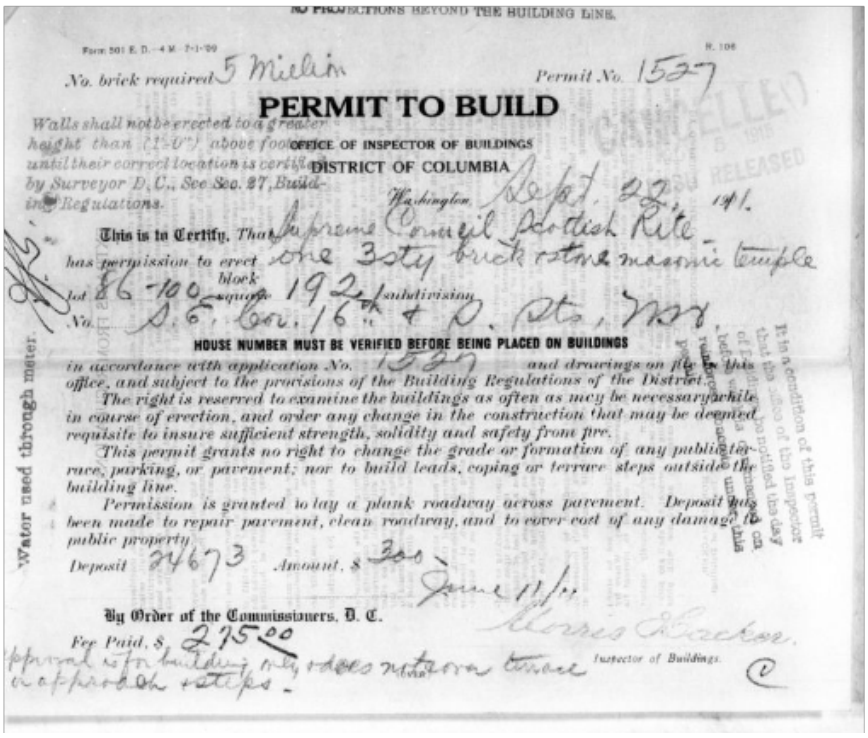
OFFICE OF THE SURVEYOR

, 2019

I certify that this plat is correct and is hereby recorded.

Surveyor, D.C.

EXHIBIT 2



NO PROJECTIONS BEYOND THE BUILDING LINE.

Form 501 E. D. - 4 M - 7-1-09 R. 106

No. brick required 5 Million Permit No. 1527

PERMIT TO BUILD

Walls shall not be erected to a greater height than (1'-0") above footing 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 sty brick & stone masonic temple

on lot 86-100 block square 192½ subdividing

No. S. 6, Cor. 16th & D. 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 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 June 11/11

By Order of the Commissioners, D. C.

Fee Paid, $ 275.00

Approval of building regulations does not cover approach to steps.

Morris Hacker
Inspector of Buildings.

Water used through meter.

It is a condition of this permit that the owner of the property shall be notified the day before work is commenced under this permit.

EXHIBIT 3

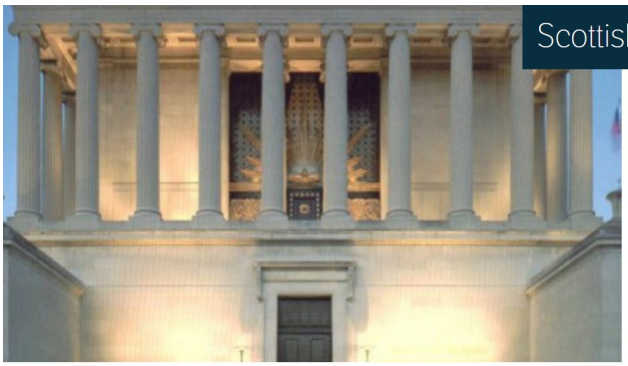
Exhibit 31

GRUNLEY

ABOUT SERVICES PORTFOLIO NEWS SUBCONTRACTORS CAREERS CONTACT US

Religious / Cultural

All Industries



Scottish Rite, House of the Temple - Renovation

LOCATION:
16th and R Street, NW, Washington, DC

OWNER:
Scottish Rite

ARCHITECT:
Hartman-Cox Architects

CONTRACT AMOUNT:
$50+ Million

DATE OF COMPLETION:
12/28/2015

The House of the Temple is the headquarters for the Scottish Rite of Freemasonry, Southern Jurisdiction. It is a National Historic Landmark that houses exhibits and archives of significance to freemasons. The building was designed by John Russell Pope (e.g., National Gallery of Art, National Archives Building, Jefferson Memorial) and completed in 1915. The renovation of the Scottish Rite, House of the Temple is one of the first major renovation projects to use Integrated Project Delivery (IPD). The restoration and renovation project upgraded the building's mechanical, electrical, plumbing, fire and life safety systems to current standards, and improved emergency egress and access for the disabled. Elaborate finishes and stonework were protected during the construction process.

The renovation of the Scottish Rite, House of the Temple is one of the first major Integrated Project Delivery (IPD) projects in the world.