

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

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

In re)
)
Appeal of Dupont East Civic) Case No.20453
Action Association))
)
)
_____)

In re)
)
Appeal of Michael D. Hays) Case No. 20452
)
)
_____)

**REPLY STATEMENT OF
PROFESSOR JAMES MCCRERY IN
SUPPORT OF APPEAL OF ZONING ADMINISTRATOR'S
APPROVAL OF SUBDIVISION OF SQUARE 192 LOT 108**

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I. INTRODUCTION

I am responding to the Pre-Hearing Submissions of DCRA (DCRA Opp.) and Perseus TDC, LLC (Perseus Opp.) (collectively, “Oppositions”). I understand from reviewing those Oppositions that they do not dispute the 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 of Lot 108 (“Subdivision”) violates 11-F DCMR § 605.1 because the new rear yard is insufficiently wide.¹

As I show below, the contentions in the Opposition 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), or excluding the width of the rear yard areaway (which must be excluded), applying the 1 to 3 ratio mandated by 11-F 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.”

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), I will use the term “wide” or “width” to refer to this measurement to avoid confusion with the issue surrounding the depth of the north areaway.

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 I show below, 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 walls on which it is located.

II. DISCUSSION

A. The Subdivision Violates 11-F DCMR § 605.1 Because the New Rear Yard Is Insufficiently Wide.

As I established in my initial Expert Report, the Redesignated Rear Yard to the south of the Temple violates 11-F DCMR § 605.1 because it is insufficiently wide. The Oppositions misguidedly attempt to dispute this determination by arguing that the height should not be measured from the base of the areaway and that the areaway should not be included in the measurement of the rear yard. I address these objections below. But even if those measurements are not included, the Redesignated 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

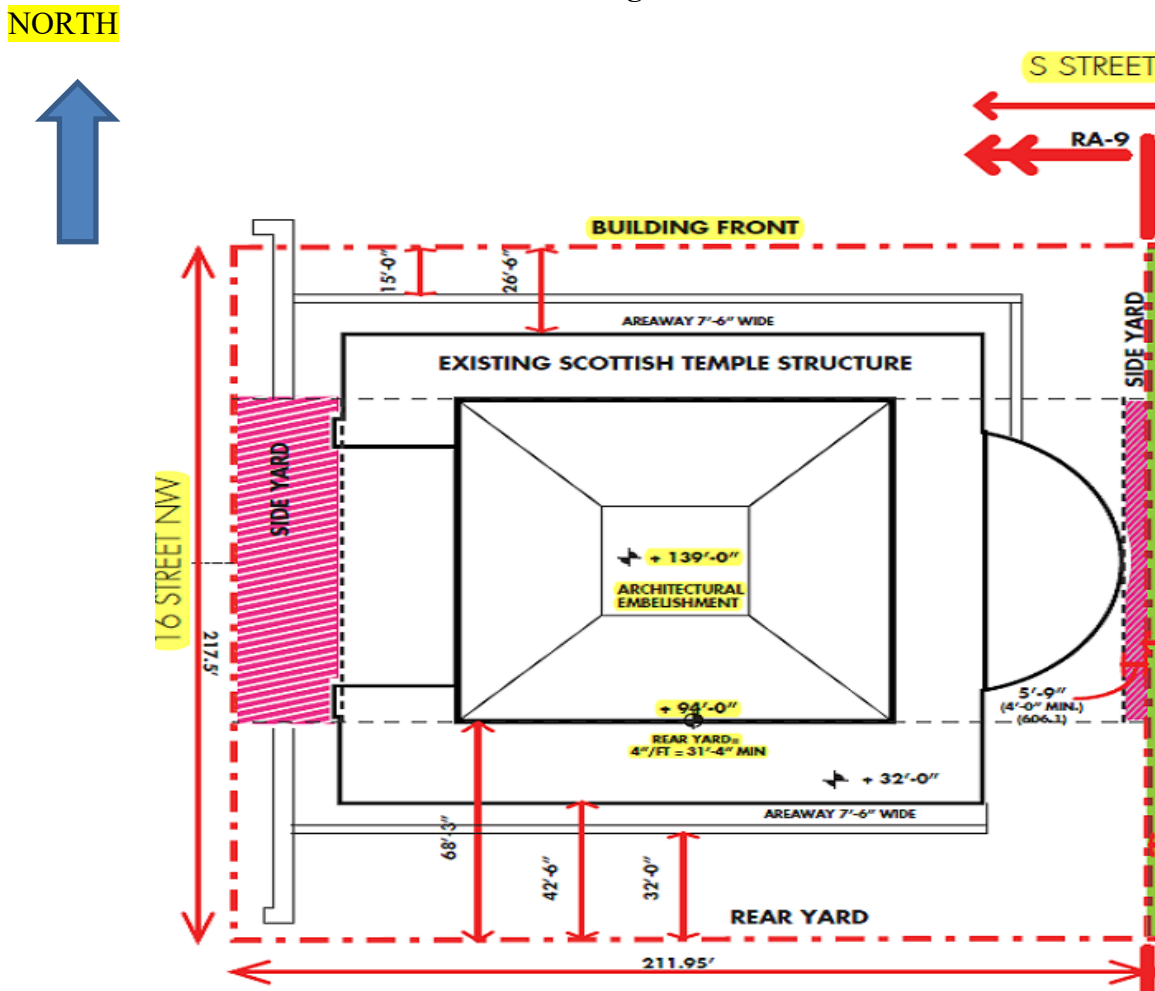
Since 4" is 1/3 of a foot, one multiplies the principal building height by 1/3 to calculate the required width of the rear yard.

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

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

However, as established by Perseus own calculations, the rear yard is only 42'6" wide, including the areaway:

Figure 1



In an effort to chip away at the height of Temple, Perseus has offered another height calculation, claiming that the Temple's height is 134'6". See Perseus Opp. Exhibit C. As established below, this height measurement is inaccurate, but in any event it is also insufficient to render the Redesignated Rear Yard compliant with 11-F DCMR § 605.1:

$$1/3 \times 134'6" = 44'10"$$

The Redesignated Rear Yard, even as claimed by Perseus, is only 42'6" wide.

To avoid the obvious violation of 11-F DCMR § 605.1, the Oppositions offer a number of excuses, none of which were apparently before the Zoning Administrator and none of which can salvage the approval of the Subdivision.

B. 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 only 85'3." Perseus Opp. Exhibit C.

As I demonstrated in my Expert Report, this contention is contrary to the applicable zoning regulations, to common sense, and to simple observation. The Zoning Regulations define neither the word "roof" nor the word "embellishment." 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 disputes these definitions. The District ignores these definitions (Dist. Opp. 7). Perseus, on the other hand, oddly 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 allegedly “unambiguous text of the Zoning Regulations[.]” Perseus Opp. 13.

In any event, instead of addressing the Zoning Regulations’ definitions, both Oppositions rely upon 11-C DCMR § 1501.3, claiming that it definitively resolves that the Temple’s 332 ton roof is in fact an architectural embellishment. This contention fails for multiple 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. 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.

Second, even assuming 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 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.

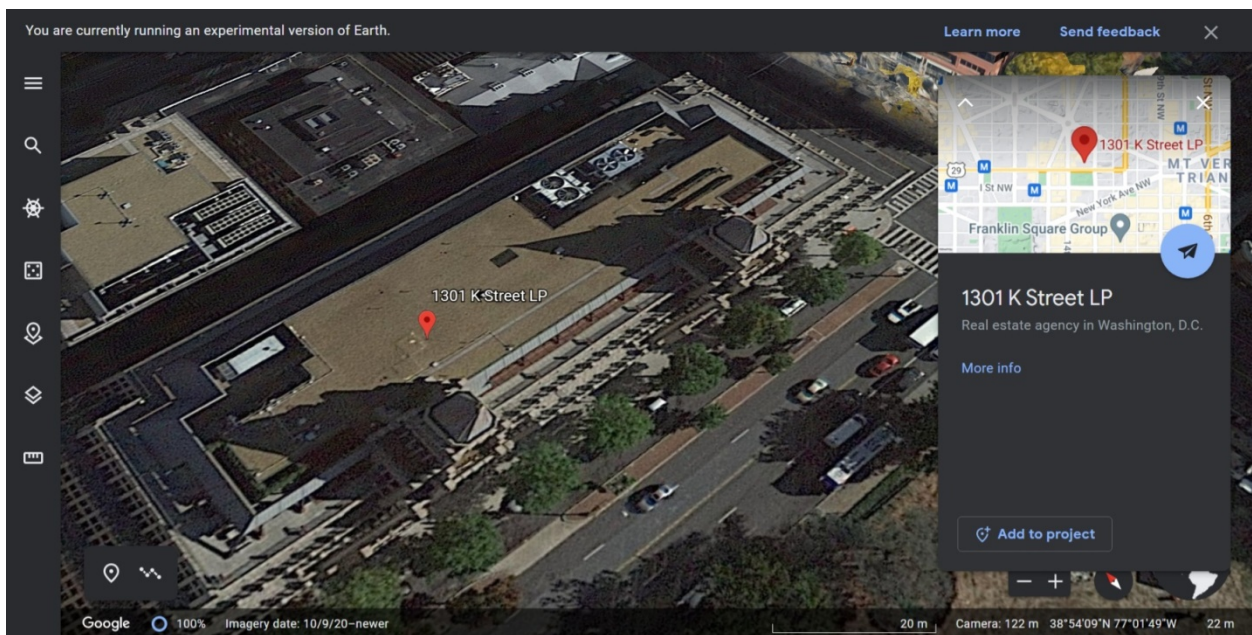
Id. (emphasis added). Thus, the text unambiguously provides that *not all* “spires, towers, domes, minarets, and pinnacles” are exempted from the height restrictions; rather *only* those “spires, towers, domes, minarets, and pinnacles” that constitute “architectural embellishments” are excluded. Had 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 meet the definition of an “architectural embellishment.”

Third, the conclusion that not all “domes” are automatically excluded from the height restrictions likewise is consistent with the intent of the Zoning Regulations. A contrary conclusion would simply gut the Zoning Regulations’ height restrictions.

The Oppositions attempt to shoehorn the Temple’s dome into the “architectural embellishment” exclusion is meritless and contrary to the intent of the Zoning Regulations. *First*, the intent 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. An example of legitimate architectural embellishment is the domes on the roof of 1301 K Street, N.W., a picture of which is provided below:

Figure 2



They occupy a small percentage of the total roof area, and provide the limited decorative detail that constitutes an architectural embellishment.

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.”

Second, in a misconception of the Building Height Act (“BHA”), that I previously addressed in my Supplement, 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.

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 provided 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. Thus, 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. The Temple’s executed “Permit to Build” states:

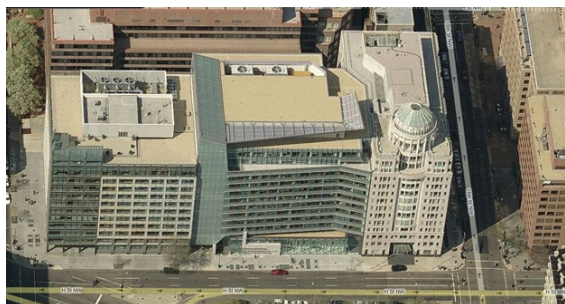
“This is to Certify, That Supreme Council Scottish Rite has permission to erect” the Temple “in accordance with application No. 1527 . . . *By Order of the Commissioners DC.*”

Thus, 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, the Oppositions provide a number of pictures that they assert are domes that exceed the height limitations, allegedly on the basis that they constitute “architectural

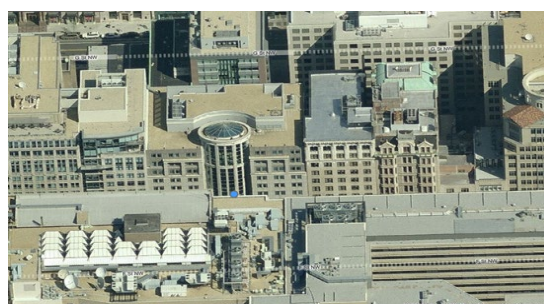
embellishments.” Even a cursory review of the buildings the Oppositions allude to shows that they are wholly distinguishable from the present situation, even assuming they were approved on the basis of the “embellishment” exception. The “embellishments” in each of those cases did not, as in the case of the Temple, constitute the entire roof. Rather, they are fixtures placed on the top of the roofs providing decorative detail. For example:

Figure 3



WILMER HALE - 1875 PENNSYLVANIA NW

Figure 4



1331 F STREET NW

Figure 5



THE HOMER BUILDING - 601 13TH STREET NW

Figure 6



1501 K STREET NW

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 additional support for my 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.

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.

C. 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.

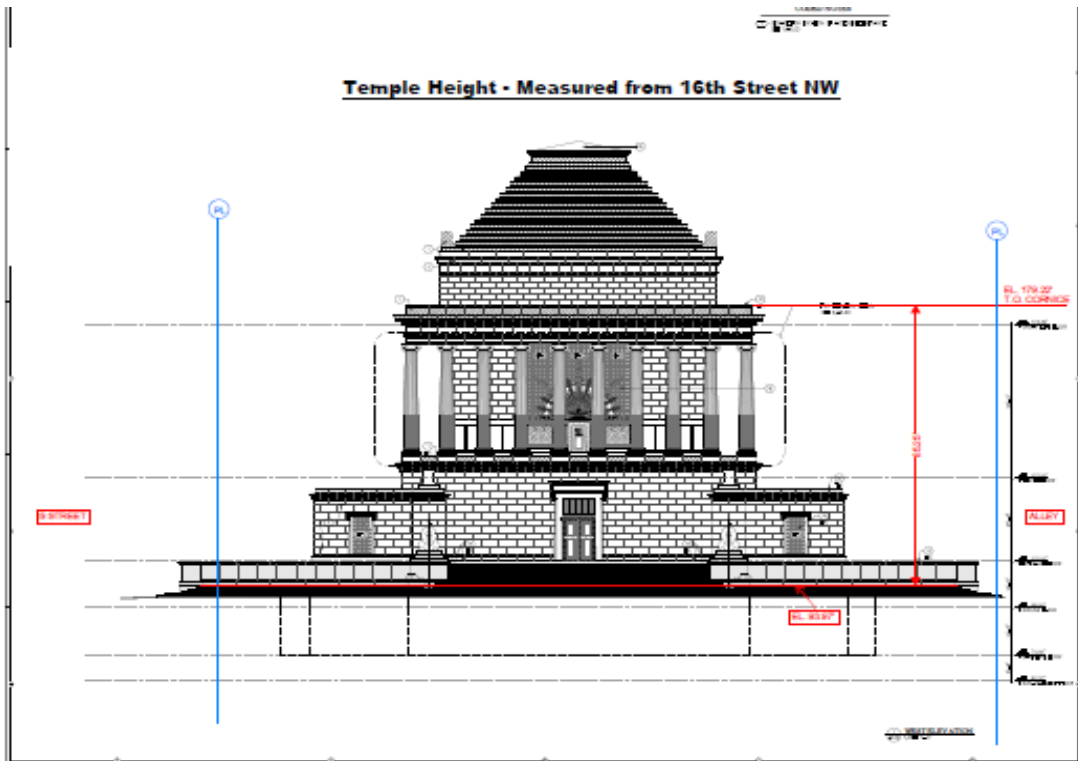
1. The Height of the Temple From 16th Street Is Measured from the Sidewalk Level, Not Five Feet Up the Stairs to the Temple.

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 7 (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 8



This new measurement violates the Zoning Regulations.

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 claim 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 approval itself. The Oppositions' 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 was 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, I understand that the Board's review is de

novo. 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 purpose, I believe that decision was contrary to the Zoning Regulations and sound policy for the following reasons.

Assuming for purposes of this discussion that Perseus’ selection of the “front” of the building as the S Street side was proper, with which I disagree,² 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.

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.

² See my Expert Report at 2.

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[.]”³ Thus, the BMHP is determined from the S Street side, which likewise determines the rear lot line and rear yard.

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 my initial Expert Report, 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:

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

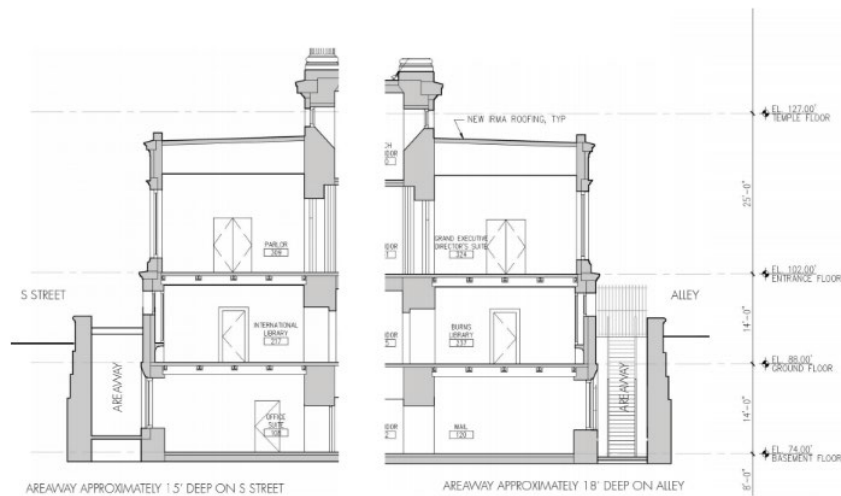
Grade, Finished: The elevation of the ground directly abutting the perimeter of a building or structure or directly abutting an exception to finished grade. Exceptions to Finished Grade are set forth in the definition of “Grade, Exceptions to.”

Grade, 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).

Per Figure 9 below prepared by the developer, the areaway at the redesignated “front” of the Temple on S Street is 15 feet deep:

Figure 9



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 yard must be at least 51’4”.

Minimum Width of Rear Yard

$$139 + 15 = 154'$$

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

Accordingly, regardless of whether the width of the rear yard includes the width of the areaway at the rear 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 fact. 11-B DCMR § 100.1. It does not dispute that 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, they provide that:

The Zoning Regulations, in mandating that any subdivision result in compliance with its provisions, states 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 Areaway Cannot Be Included in the Width of the Rear Yard.

I demonstrated in my initial Expert Report that 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 10



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.

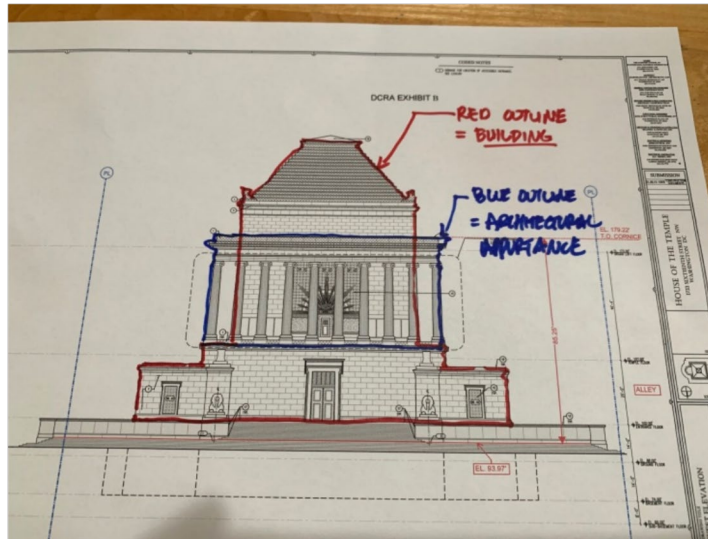
The Oppositions reliance on *Adams Morgan for Reasonable Development*, BZA Case No. 18888, is similarly misguided. There, the Board addressed whether “the garage ramp and below-grade garage” violated the provision that “the rear yard “shall be unoccupied,” not how the width of the rear yard is to be 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 excluded from 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.

D. 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:

Figure 11



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 12



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

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

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. 11-B DCMR § 324.1(a).

Here, the structure and accompanying wall identified in the below pictures occupying a portion of the Redesignated Rear Yard violates these provisions. They are 11’6” tall.

Figure 13



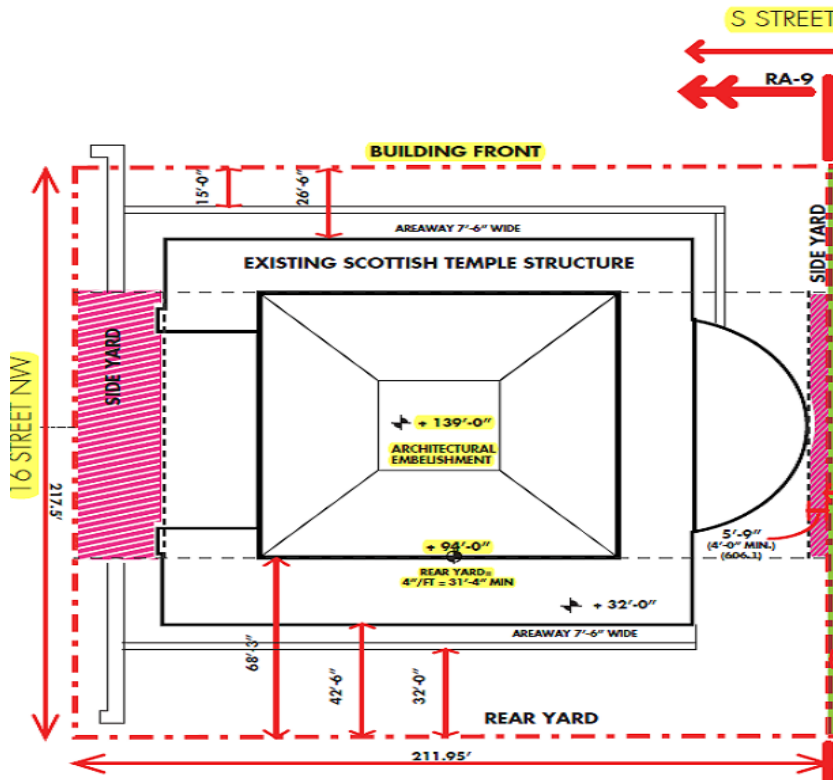
Figure 14



That structure and wall, as evidenced by the below diagram Perseus prepared, are clearly in the “rear yard” as designated now by Perseus.

Figure 15

NORTH



III. CONCLUSION

For all the above reasons, the Zoning Administrator's approval of the Subdivision of Lot 108 must be reversed and vacated.

Respectfully submitted,
/s/James McCrery
James McCrery

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 Professor James McCrery 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:

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