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I, Michael Hays, am submitting this statement to provide the information specified in 11-Y DCMR § 302.12. The information requested in 11-Y DCMR § 302.12(a)-(d) is set forth on Form 125. The additional information is set forth below.

I. INTRODUCTION

The Zoning Administrator's approval of the subdivision of Lot 108 ("Subdivision") must be reversed and vacated. That Subdivision approval, for which the Zoning Administrator offered no written analysis, violates numerous provisions of the Zoning Regulations, including in particular the violation of the required 1 to 3 ratio of the depth of the rear yard to building height requirement set forth in 11-F DCMR § 605.1.

The Subdivision Applicant (collectively the Supreme Council of the Scottish Rite of Freemasonry, 33rd Degree, Southern Jurisdiction, USA ("Masons") and the developer, Perseus TDC) seek to build a luxury apartment building (the "Luxury Project") on the open green area ("Temple Gardens") to the east of the Masonic Temple located at 1733 16th Street, N.W., a designated historic landmark and also a contributing building to the Sixteenth Street Historic District. To consummate this venture, the Applicant sought the subdivision of Lot 108 ("Subdivision"), which includes the Temple and the Temple Gardens, to separate the site of the Luxury Project from the site of Temple. This action was necessary for the purpose of preserving the tax-exempt status of the Temple, the land of which cannot, per the terms of Congressional legislation, be used for commercial purposes, and to comply with the requirement that two principal buildings cannot co-exist on the same lot.

The Subdivision subdivides Lot 108 along a north-south axis into two roughly equally sized lots. The Subdivision approved by the Zoning Administrator on November 19, 2020 would draw a new lot line *only* 5'9" behind the apse at the rear of the Temple, making all the open

green space in the Temple Gardens part of a new Lot 111 on which the Applicant intends to build the huge apartment complex.

The Temple lot is zoned RA-9. 11-F DCMR § 605.1 requires a 1 to 3 ratio of rear yard depth to building height for RA-9 zones. The Luxury Project is designed to be constructed on the new proposed Eastern Lot 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.

In a disingenuous and improper effort to circumvent this problem, the Applicant proposed (and the Zoning Administrator must have approved) redesignating the north side of the Temple as the front, making the south side of the Temple the new "rear yard." These proposed redesignations (collectively the "Temple Redesignations), improper in their own respect, nonetheless continue to violate 11-F DCMR § 605.1. As shown below, the height of the Temple from ground level is 140'. See Figure 11 at page 25. The Zoning Regulations require that the 15' depth of the areaway in the redesignated "front" on S Street (because its width exceeds 5') must be added to this 140', giving the Temple a height of 155'. See 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); 11-B DCMR § 100.2 (Definitions) (providing that an areaway is excepted from grade only if it "projects no more than five feet (5 ft.) from the building face").

Applying the 1 to 3 ratio mandated by 11-F DCMR § 605.1, the rear yard must be at least 51'8", while the new rear yard is only 32'. See Figure 10 at page 23.

Despite these facts, in a further disingenuous attempt to evade the Zoning Regulations, the Applicant absurdly contended (and the Zoning Administrator must have accepted) that the 332 ton pyramidal roof of the Temple, which keeps the rain and the elements from the Temple itself, is not a “roof” under the Zoning Regulations, but rather an “embellishment” which does not count towards building height for purposes of 11-F DCMR § 605.1. As established by the accompanying Expert Report of Professor James McCrery, a professor of Architecture at Catholic University and a Commissioner of the United States Commission of Fine Arts, this contention violates the Zoning Regulations, as well as common sense.

II. JURISDICTION AND TIMELINESS
(11-Y DCMR § 302.12(e)).

The Board of Zoning Adjustment (“BZA”) is authorized to hear this appeal pursuant to 11-Y DCMR 100.4 of the 2016 Zoning Regulations (“ZR-16”). Further, this appeal is timely filed. I first learned that the subdivision had been recorded upon receipt of an email on November 28, 2020. I did not actually see the Zoning Administrator’s approval of the subdivision until receipt via email at a later date. In any event, I am submitting my appeal within the 60 window from the date of his approval, which was November 19, 2020.

III. APPELLANT’S STANDING AND AGGRIEVEMENT
(11-Y DCMR § 302.12(f)).

I have standing to bring this appeal as I own a house at 1507 S Street, N.W., Washington, D.C., which is immediately across the street from Lot 108 (the subject of the Subdivision that is being appealed).

I am aggrieved by the subdivision approval for many reasons. The purpose of the subdivision is to enable the construction of the massive Luxury Project that will destroy the Temple Gardens, i.e., the open green area to the east of the Temple in what was Lot 108, and is

now Lot 111. The Subdivision and the ensuing Luxury Project has caused and will continue to cause the following harms to me, among other things:

- I currently use this area for aesthetic purposes. I have long enjoyed the unobstructed view of the Temple apse, which the construction of the Project, as the District has admitted, would obscure.
- The Luxury Project will impair my interests in the green space, air, and natural beauty that the Temple Gardens provide. The Project would forever substantially harm my experience of the open space and the Temple. The intrusion of this mammoth luxury complex will instantly and forever after alter my experience of the space, the peace, and the reflection of this historic place. My aesthetic interests will forever be diminished and permanently tarnished by this intrusion on an historic landscape.
- The massive five-story Luxury Project would block the light during many months for my house, which is directly across S Street. In this regard, I commissioned a solar/shadow study for the period November through February, at different times of the day, using software provided by the District. That study shows that the Luxury Project would block the light to houses along S Street for most of this three month period. The row houses that previously occupied the Temple Gardens did not come close to imposing this burden on their neighbors. The Luxury Project, because of its height and its resulting blocking of sunlight to the fronts of the historic row houses on S Street is going to seriously and negatively alter the historic streetscape of the 1500 block of S Street.
- I will suffer harm from the construction that the subdivision permits. The construction process for the five story building will involve large industrial equipment, including equipment necessary to dig more than forty feet below grade to construct the sub-basement level apartments and two parking levels. Construction of the Project, and the associated sound, visual, pollution, and other impacts, will damage my personal experience of this historic site, both during and after construction is completed.
- One of my neighbors, Bill Murray, is a former senior systems engineer at the Washington Metro Office of Safety and Fire Protection, who had “construction responsibilities for client safety.” He testified at a hearing before the Mayor’s Agent as follows:

I’ve had opportunities to see a lot of construction projects. . . . I think we’re probably going to have at least one, possibly two tower cranes on that property. *It’s going to be a massive excavation. According to the attorney, it sounded like it’s even worse than what I thought it was.*

There are some safety perils in a large project like this. Tower cranes do come down. Seattle, April, Dallas in June last year, four dead in Seattle, one dead in Dallas, if I'm not mistaken. These are not things to be ignored.

The excavation will affect, in my opinion, the foundations of surrounding properties. That could be very detrimental to the property owners. Based on my observation of the projects around 14th Street, U Street, we're talking over two years, possibly two and a half years of construction.

It's going to be devastating to that community having tower cranes, rebar, piles floating around on tower cranes. We're talking about major construction. . . . I think these are considerations that should be brought to bear, not ignored. I heard a lot of things, but nothing really -- this is a major undertaking in a residential community, right in the middle.

Mayor's Agent Hearing Tr. at 247-49.

- If construction begins, my experience of the historic Temple and Temple Gardens would be permanently and irreparably harmed by viewing the destruction of this green space and the massive construction equipment. Construction activities will lessen my enjoyment of the area.
- The construction activity poses a substantial risk that I will lose existing tenants, who have already expressed their concern regarding the construction and agreed to move in only if I permitted them to move out prior to the end of the lease and pay them \$1000 in moving expenses should the construction commence.
- The loss of the green space immediately across S Street resulting from the construction of the Project is likely to result in significant decrease in the value of my home of at least \$25,000, as established by the declaration and expert report of Tamora Papas, who was appointed by Mayor Vincent Gray to the D.C. Real Estate Appraisal Board and has been a real estate appraiser for over 14 years.

IV. SUMMARY OF ISSUES ON APPEAL (11-Y DCMR § 302.12(g)).

The following constitute a list of the issues on appeal at this time:

A. General Provisions:

The Subdivision does not conform to the Zoning Regulations and cannot be done as a matter of right. The Subdivision certified by the Zoning Administrator violates 11 DCMR Subtitle A § 101.6 of ZR-16 and Subtitle C § 302.1 of ZR-16:

11-A-101.6. 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-302.1. Where a lot is divided, *the division shall be effected in a manner that will not violate* the provision 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 ...

[Emphasis added.]

B. Rear Yard

The Subdivision Violates the Minimum Rear Yard Requirements of 11 DCMR Subtitle F § 605.1 of ZR-16.

C. Loading Requirements

The Subdivision Violates the Minimum Loading Requirements of 11 DCMR Subtitle C § 901.1 and § 901.4 of ZR-16

D. Location Requirements:

The Subdivision Violates the Location Requirements of 11 DCMR Subtitle C § 903.1 of ZR-16.

E. Size and Layout Requirements:

The Subdivision Violates the Size and Layout Requirements of 11 DCMR Subtitle C § 905.2, § 905.3 and § 905.4 of ZR-16

F. Purpose and Intent:

The Subdivision Violates the Purpose and Intent Contained in 11 DCMR Subtitle F § 601.1

G. Minimum Parking Requirements:

The Subdivision Violates the Minimum Parking Requirements of 11 DCMR Subtitle C § 701.5

H. Increase in Non-Conforming Height:

The Subdivision Increases the Nonconforming Height of the Existing Building by Altering the BHMP.

**V. SUMMARY OF WITNESS TESTIMONY
(11-Y DCMR § 302.12(g)).**

A. James McCrery

Professor James McCrery will provide expert testimony. He is a Professor of Architecture at The Catholic University and a Commissioner of the United States Fine Art Commission. His curriculum vitae and a summary of his testimony can be found in his written report, which is submitted with my Form 125.

B. Ravi Ricker

Ravi Ricker, a certified Architect, will provide expert testimony. A summary of his testimony is being submitted with the Form 125 of Appellant Dupont East Civic Action Association (“DECAA”), which I hereby incorporate by reference.

C. Edward Hanlon

Mr. Hanlon will provide testimony. A summary of his testimony is being submitted with the Form 125 of Appellant DECAA, which I hereby incorporate by reference.

D. Michael Hays

A summary of my testimony is below:

VI. APPELLANT’S STATEMENT AND SUMMARY OF TESTIMONY

A. Subdivision at Issue

The Subject Property, Lot 108, Square 192, owned by the Masons, has an area of approximately 92,220 square feet according to the Subdivision Plat recorded on November 19, 2020. The Subject Property is bounded on the west by 16th Street NW; on the east by 15th Street; on the north by S Street NW; and on the south by a public alley. The Subdivision divides the Lot 108 in half, creating two lots, a Western Lot, Lot 110, and an Eastern Lot, Lot 111. Each new lot will be 46,110 square feet. The below diagram shows the Subdivision that the Zoning Administrator approved on November 19, 2020 as complying with the Zoning Regulations:

Figure 1



On the Western Lot (subdivided Lot 110) sits one of the most magnificent buildings in the nation’s capital, the Masonic Temple located at 16th and S Streets, NW. On the Eastern Lot (subdivided Lot 111) is a green, open space (the “Temple Gardens”) that was mostly cleared and has remained essentially in the same condition since 1932.

B. Background of the Temple.

In May 1911, the Masons broke ground on construction of the Temple. Architect John Russell Pope, who also was the architect for such notable buildings as the Jefferson Memorial and the National Archives, designed the Temple and modeled it after the tomb of Mausolus at Halicarnassus, one of the Seven Wonders of the Ancient World.

The building was dedicated four years later on October 18, 1915. Its stately grandeur has graced this city for over 100 years. Contemporary architects widely praised the building's design. It won Pope the Gold Medal of the Architectural League of New York in 1917. In his 1920 book *L'Architecture aux Etats-Unis*, French architect Jacques Gréber described it as “a monument of remarkable sumptuousness[.]” Fiske Kimball's 1928 book *American Architecture* describes it as “an example of the triumph of classical form in America.” In the 1920s, a panel of architects named it “one of the three best public buildings” in the U.S. In 1932, it was ranked as one of the ten top buildings in the U.S. in a poll of government architects.

The rear apse of the Temple, pictured below, is an important architectural feature of the Temple, portrayed in articles and an obvious and significant contributing element to the Temple's beauty.

Figure 2

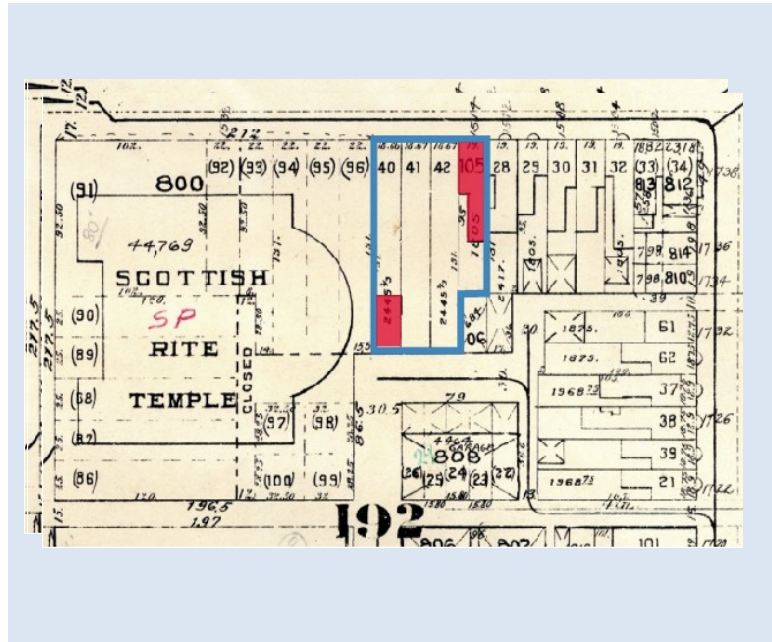


In 1915, when construction of the Temple was completed, there were two and three story row houses in the area behind the Temple, but they left the view of the apse and the colonnade unobstructed. During World War I the Masons contributed greatly to the charitable works during the war and war relief in Britain and France. In 1918, roughly contemporaneously with the War's end, the Masons appropriated \$50,000 (equal to many times that sum in today's dollars) to purchase the land behind the Temple. This appropriation's timing, following closely on the heels of the conclusion of World War I, which interrupted any further development of the Temple site, strongly suggests that the purchase and clearance of the area to the Temple's rear was part of an ongoing project by the Masons to complete their vision of the Temple.

Beginning in 1920, and continuing for some decades thereafter, the Masons acquired all the numerous lots on S Street and 15th Street between the rear of the Temple and 15th Street. Rather than rent these properties to provide income, instead the Masons systematically demolished the row houses. Indeed, as shown in Figure 3 below (excerpted from a study the HPO conducted ("HPO Scottish Rite Temple Property Study"), by 1932, over 85 years ago, the

area which was later designated as Assessment & Taxation (“A&T”) Lot 820 and that the Historic Preservation Office (“HPO”) identified as the Temple Landmark Site in an April 2019 report (“April 30 HPO Report”) had been mostly cleared of houses.

Figure 3
Demolition by 1932



HPO Scottish Rite Temple Property Study

Throughout this process, a succession of Assessment and Taxation (A&T) lots were created for the purpose of delineating the Masons’ ever-expanding real estate holdings. In 1915, when the Temple was completed, it stood upon A&T Lot 800. In 1976, shortly before the passage of the DC Historic Landmark and Historic District Protection Act of 1978 (“Preservation Act” or “Act”), the expanded and consolidated real estate that the Masons owned from 16th Street, N.W. eastward to 15th Street, N.W. was designated A&T Lot 820.

In 1971, almost 50 years ago, Congress passed Private Act 92-23, which provides that the area described therein:

shall be exempt from taxation by the District of Columbia so long as that property is owned by the Supreme Council and *is used in carrying on its purposes and activities and is not used for any commercial purposes.*

Private Act 92-23 (emphasis added). The area so described in this 1971 Congressional Act is Lot 820, the same area the April 30 HPO Report denoted as the boundaries of the Temple Landmark Site, which extends the site subject to the tax exemption approximately 100 feet behind the Temple. Congress' provision of such tax exemption to Lot 820 establishes that Congress itself likewise viewed that area (shown within the red boundary lines of the April 30 HPO Report) to be closely associated with the Temple.

The Temple has had the benefit of the tax exemption since at least 1971 (a period of almost 50 years), including for the area extending 100 feet eastwards towards 15th Street from the rear of the Temple building itself, thereby establishing that the Temple Landmark Site (as determined by the April 30 HPO Report) was "used in carrying on its purposes and activities."

For over 20 years, from 1990 to 2011, the Temple Gardens, the area to the rear of the Temple, was a community garden under an agreement between the Masons and the District of Columbia Government.

C. The Joint Committee Recognizes Lot 820 as the Temple Landmark Site.

The Joint Committee on Landmarks, the predecessor to the Historic Preservation Review Board ("HPRB"), included the Scottish Rite Temple in its 1964 *Preliminary List*. Thereafter, in 1977, shortly before passage of the Preservation Act, the Joint Committee evaluated what should be the boundaries of the Sixteenth Street Historic District. The application for the Sixteenth Street Historic District stated that only properties fronting on 16th Street were to be included.

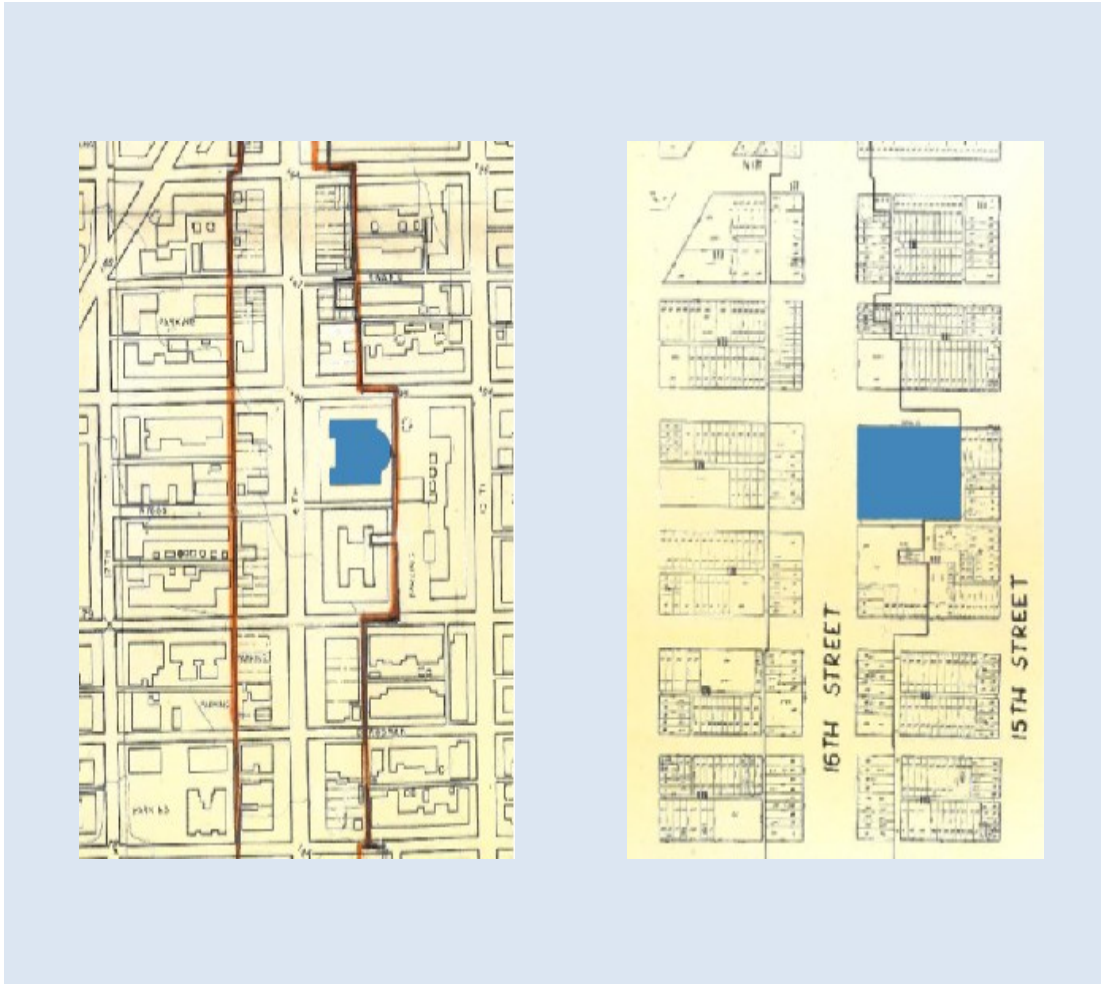
The Joint Committee ultimately concluded that the portion of the Sixteenth Street Historic District relating to the Temple should include the entirety of Lot 820, which was created in 1976,

also shortly before the Joint Committee’s designation. That conclusion is consistent with the normal historic preservation practice of designating the site of a landmark as the lot upon which it sits at the time of its designation. As the HPO has admitted, the Joint Committee’s designation of that Historic District boundary as Lot 820 “acknowledged by implication that Lot 820 was also the site of the historic landmark designation for the temple.” HPO “*Additional Information on Historic Property Boundaries*”.

The below maps (also excerpted from the HPO Scottish Rite Temple Property Study) reflect the Joint Committee’s conclusion. As the two maps suggest, the Joint Committee initially considered a smaller site for the Temple Landmark, roughly corresponding to Lot 800, but rejected that in favor of a designation that included the entirety of Lot 820. HPO Scottish Rite Temple Property Study at 23.

Figure 4

Sixteenth Street Historic District: 1977



Map 8: Jt. Comm. Draft Map (1977)

Map 9: Jt. Comm. Final Map (6-17-77)

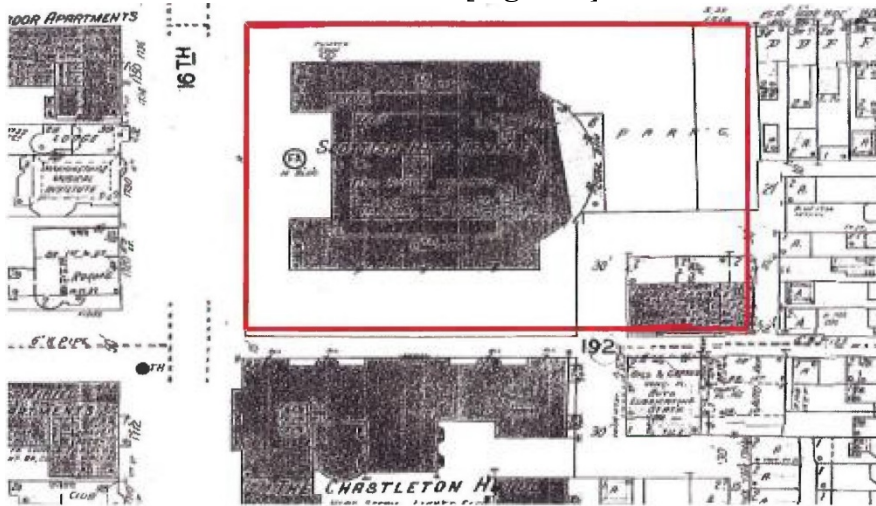
In 1996, to reflect further land acquisitions, the Masons' holdings were designated A&T Lot 834. Some properties in the District were historically assigned an assessment and taxation (A&T) lot, usually a number in the 800s, to facilitate the payment of taxes. To build on one of these properties, the DC Surveyor must assign a new record lot number before one can obtain a permit. The lot that comprises the Masons' current holdings extending to 15th Street was given the record lot designation of Lot 108 in 2013.

D. DECAA's Application and HPO Reports.

DECAA filed an application with the HPO and HPRB to *extend* the eastern boundary of the Temple Landmark Site all the way to 15th Street, N.W., encompassing *all* of Lot 108. In response to DECAA's petition, the HPO issued a report on April 30, 2019, the April 30 HPO Report. The HPO recommended that the HPRB reject that petition, but in the process it nonetheless *expressly* identified the *specific* boundaries of the current Historic Landmark Designation of the Temple area as Lot 820:

Under the D.C. Preservation Law adopted in 1978, the new legal protections for a historic landmark extend to the building and its site, commonly interpreted as the lot where the building is situated. At the time of its designation, the temple sat on the lot shown in red outline below [i.e., Lot 820]. The landmark boundaries of the Scottish Rite Temple include approximately 2/3 of present-day Lot 108 in Square 192. Lot 108, which extends from 16th Street east to 15th Street on the northern half of the square, is the result of a 2013 subdivision by the Supreme Council combining a series of old lots in Square 192 into a single lot. Extending from 16th Street easterly to a point that is in line with an alleyway that ran north-south through part of the northern half of the square, the landmark boundaries comprised the Scottish Rite Temple building itself; a carriage house/garage complex located at the southeast (rear) of the property (Old Lot 808); and open space to the east (in part historically occupied by rowhouses).

[Figure 5]



1959 Sanborn Map showing landmark boundary overlay

These boundaries [outlined in red] included the original lots which the Scottish Rite purchased in 1910 to build its temple, as well as additional adjacent lots it purchased in the decades after completion of the temple (1915) until the time that boundaries were established for the 16th Street Historic District (1977).

The landmark boundary follows the eastern edge of the 16th Street Historic District.

April 30 HPO Report at 1-2.

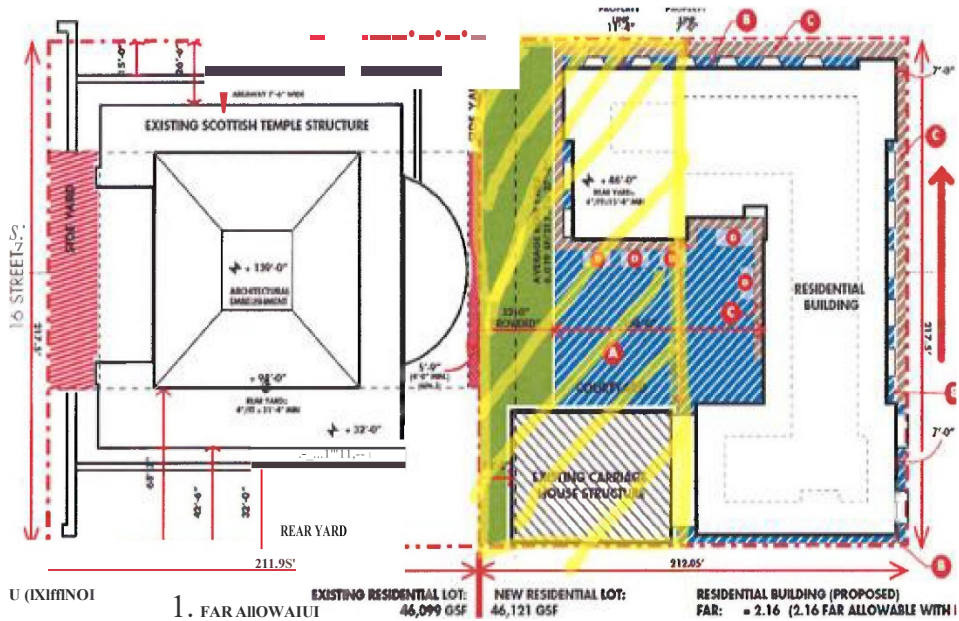
Further, the HPRB and the HPO espouse that they both follow the guidance established by the National Register in delineating the boundaries of historic landmarks and districts. The National Register Bulletin, in directing that the applicable agency use the current legal boundaries of a landmark site when establishing the boundary, provides as follows:

Current Legal Boundaries: *Use the legal boundaries of a property as recorded in the current tax map or plat accompanying the deed when these boundaries encompass the eligible resource and are consistent with its historical significance and remaining integrity.*

National Register Bulletin, Defining Boundaries for National Register Properties (“National Register Bulletin”) at 3 (emphasis added) (available at <https://www.nps.gov/subjects/nationalregister/upload/Boundaries-Completed.pdf>). The boundary of the Temple Landmark site at the time it was entered in the DC Inventory of Historic Places was Lot 820.

The Luxury Project could not proceed with the landmark boundary of the Temple set at Lot 820 because, as shown in Figure 6 below, the boundary (denoted in yellow) extends into the Project area.

Figure 6



After a call from the Applicant, the HPO reversed its position and, in an unprecedented action, removed the very well-respected HPO official who had written the April 30 HPO Report from any further involvement. A mere four days later, on May 10, 2019, the HPO issued a new report, the May 10 Report. Without referencing the April 30 HPO Report, or acknowledging it in any way, in an unexplained reversal of its previous position, the HPO proposed a completely different eastern boundary for the Temple Landmark Site than that which the HPO had expressly confirmed a scant 10 days earlier. It proposed that the eastern boundary of the Temple Landmark Site was Lot 800, whose eastern boundary was only a few feet from the back of the Temple, which would permit Perseus to develop the Luxury Project. Its conclusion that the Temple Landmark boundary should be drawn a few feet from the back of the Temple was its contention, that: “Logically, boundaries should reflect the extent of the property at the time of the Temple’s completion in 1915[.]” This position is, of course, the polar opposite of the National Bulletin’s exhortation to “current legal boundaries.”

E. The Subdivision Application.

The Applicant, to consummate its venture, sought the Subdivision of Lot 108 to separate the site of the commercial development from the site of Temple. This action was necessary for the purpose of preserving the tax-exempt status of the Temple, whose real estate cannot, per the terms of Congressional legislation, be used for commercial purposes, and to comply with the requirement that two principal buildings cannot co-exist on the same lot.

As noted above, the Subdivision subdivides Lot 108 along a north-south axis into two roughly equally sized lots. Below are two photos of the rear of the Temple (Figures 7 and 8), known as the Temple Gardens, taken from the Property Owner's Facebook page. The first photo immediately below shows the full view from 15th Street looking west:

Figure 7



Figure 8

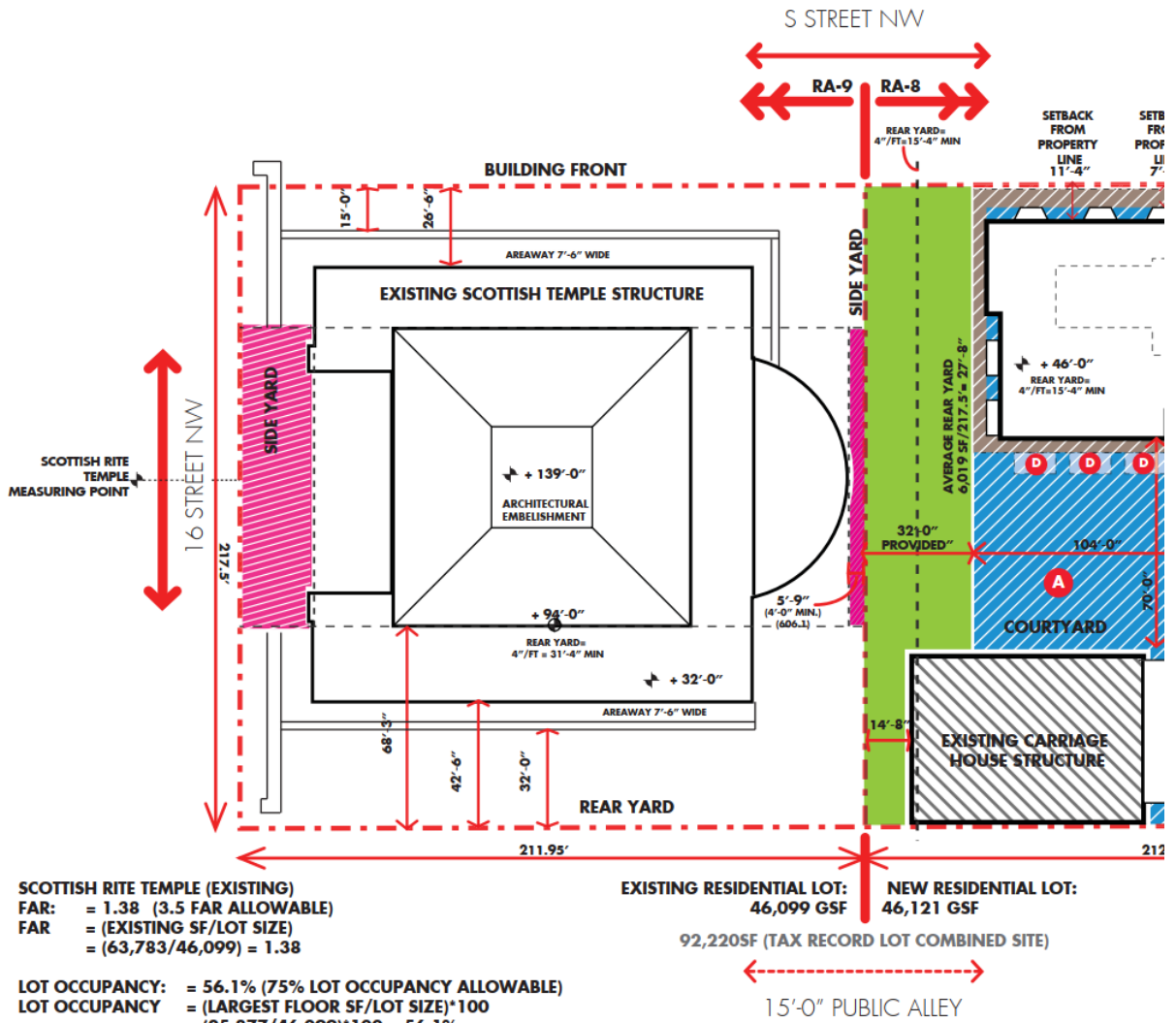


The Subdivision approved by the Zoning Administrator on November 19, 2020 would draw a new lot line *only 5’9”* behind the apse at the rear of the Temple above, making all the open green space shown in Figure 7 part of new Lot 111 on which the Applicant intends to build a huge apartment complex.

The Applicant’s intent is to build a 5-story apartment building (4 stories above grade with an additional level of residential penthouse apartments on the building’s roof), plus two levels of subterranean residential cellar apartments, and a two-story underground parking garage – all on the green grassy park-like area shown in Figures 7 and 8. The Subdivision line would run less than 6 feet from the majestic Masonic Temple building shown above. Lot 108 is currently split zoned as shown in Figure 9 below, which was prepared by the Applicant’s architects (**Exhibit 3** hereto at A-9).¹ Lot 110 would be in a RA-9 zone and Lot 111 would be in a RA-8 zone as shown in Figure 9 below:

¹ Available at:
https://drive.google.com/file/d/1i9xXfj_g4IPLbwrPwJ2oiBmvkZtpC4qc/view?usp=sharing).

Figure 9



HISTORIC PRESERVATION REVIEW BOARD PACKAGE.



1733 16TH STREET NW

F. The Zoning Administrator's Approval of the Subdivision Must Be Reversed.

1. The Zoning Administrator's Approval Is Entitled to No Credence.

The Zoning Administrator's conclusion that the Subdivision of Lot 108 complies with the Zoning Regulations is entitled to no credence for at least two reasons.

First, the developer, Perseus, exercised undue influence over the Zoning Administrator. Attached hereto as **Exhibit 1** is a letter to the DC Inspector General from then ANC 2B09 Commissioner Edward Hanlon. Commissioner Hanlon states in his letter as follows:

Pursuant to a Freedom of Information Act request that I filed with the Department of Consumer and Regulatory Affairs concerning the Masonic Temple Project I received a number of documents from DCRA. These documents include the following:

- (a) A September 25, 2018 email from Lawrence Ferris, Esq., Perseus' attorney, to Zoning Administrator LeGrant stating *inter alia* that Mr. Ferris is forwarding a "draft determination letter" to ZA LeGrant for Mr. LeGrant's signature;
- (b) 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
- (c) 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.

Commissioner Hanlon Ltr. at 1 (emphasis added).

It is readily apparent that the Zoning Administrator, for whatever reason, has not discharged his duties with respect to the instant Subdivision and applied his independent judgement.

Second, this lack of independent judgement is again reflected in the Zoning Administrator's failure to provide any written analysis supporting his determination that the Subdivision of Lot 108 as it affects the Temple itself (now on Lot 110) will comply with the Zoning Regulations. His letter analyzing the alleged compliance of the Subdivision with the Zoning Regulations (**Exhibit 2** hereto) purports to be a "comprehensive determination for your client's project at 1733 16th Street, NW (Square 192, Lot 108)[.]" However, it cleverly defines the "Project" as only the new Luxury Project to be constructed on what is now Lot 111. It does not address the compliance of the Temple after the Subdivision. As set forth below, the Subdivision renders the Temple nonconforming.

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

As noted above, to consummate its venture, the Applicant sought the Subdivision of Lot 108 to separate the site of the commercial development on the proposed Eastern Lot from the site of the historic Temple on the proposed Western Lot. The Subdivision that the Applicant sought would establish the western boundary of the Eastern Lot less than 6 feet from the Temple's rear wall.

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). *See also* 11-A DCMR § 101.6.

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

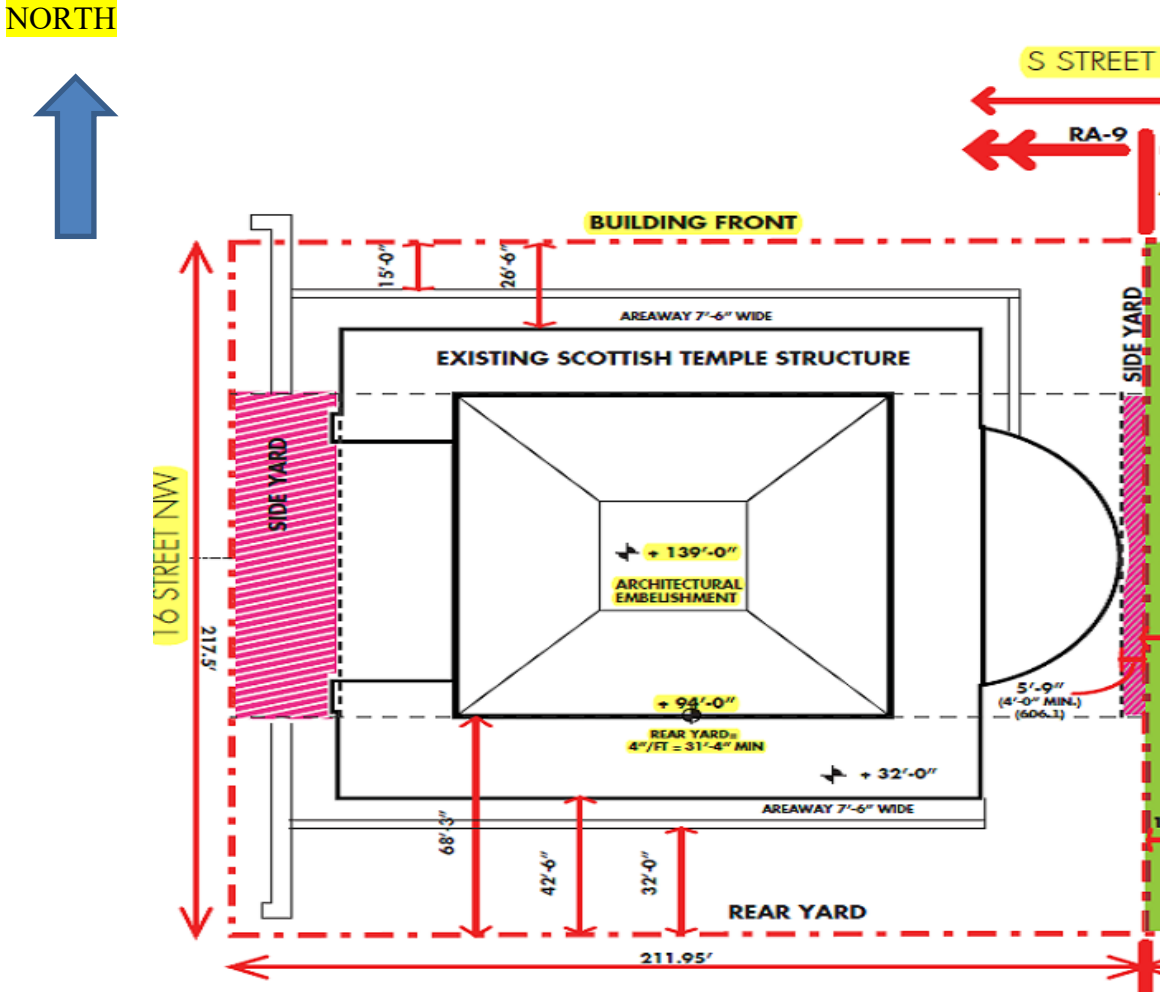
Zone	Minimum Rear Yard
RA-8	15 ft.; or A distance equal to 4 in. per 1 ft. of principal building height
RA-9	15 ft.; or A distance equal to 4 in. per 1 ft. of principal building height

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

The Luxury Project is designed to be constructed just a few feet from the actual rear of the Temple on the new proposed Eastern Lot. Thus, what is now the Temple’s actual rear yard can no longer serve as the Temple’s rear yard because it would violate the rear yard requirements of 11-F DCMR § 605.1. In a failed attempt to circumvent the Zoning Regulations, the Applicant disingenuously proposes to abuse the intent of the Zoning Regulations by redesignating the north side yard of the Temple as its front, and accordingly the south side of the Temple becomes the new “rear yard.” Similarly, what was the front of the Temple would be designated as a side yard, and what remains of the area between the Temple and the new Luxury Project would also be designated as a new side yard. All of these redesignations (“Temple Redesignations”) are for a property for which no redevelopment is proposed.

Figure 10 below sets forth these proposed Redesignations. That diagram is from the Application Package that the Applicant submitted to HPRB (**Exhibit 3** hereto at A-9, available at https://drive.google.com/file/d/1i9xXfj_g4IPLbwrPwJ2oiBmvkZtpC4qc/view?usp=sharing):

Figure 10



As set forth below, the Temple Redesignations create a violation of the minimum rear yard requirements set forth in 11-F DCMR § 605.1 because the ratio of the height of the Temple roof to width of the rear yard exceeds the permissible ratio. Therefore, the Zoning Administrator’s approval of the Subdivision must be reversed and vacated.

In order to calculate the permissible width of the rear yard, one must multiply the height of the building times 1/3. That provides the minimum width of the rear yard. To make this calculation, the height of the Temple must first be established. As demonstrated by Figure 11 below submitted by the developer (**Exhibit 3** hereto at A-18), the height of the Temple from the surface grade is 140 feet. See 11-B DCMR § 308.5 (“The height of a building permitted to be

ninety feet (90 ft.) shall be measured from the BHMP to the highest point of the roof excluding parapets and balustrades not exceeding four feet (4 ft.) in height.”); 11-B DCMR § 308.2 (“The building height measuring point (BHM) shall be established at the adjacent natural or finished grade, whichever is the lower in elevation”).

Figure 11



However, as revealed in Figure 10, there is an “areaway” 7’6” wide at both the redesignated front and rear of the Temple. Pursuant to the Zoning Regulations:

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.*

11-B DCMR § 308.7 (emphasis added). Since the areaway at the redesignated “front” on S Street is more than 5’ wide, the BHMP is measured from the base of the areaway:

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.”

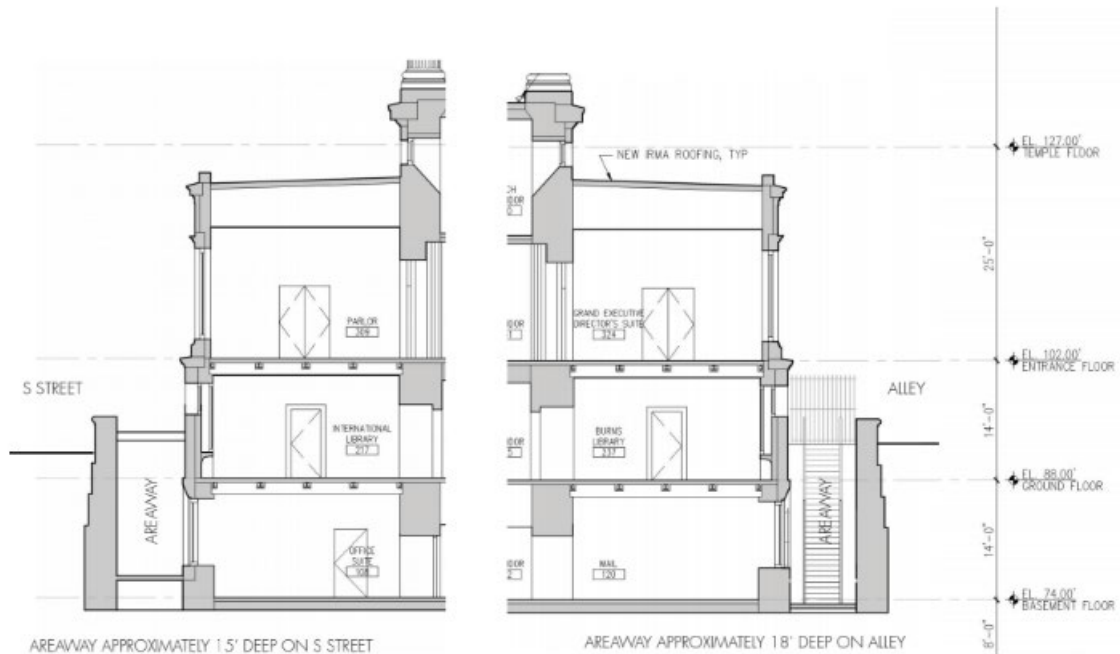
Grade, Exceptions to: The following are exceptions to “Finished Grade” and “Natural Grade” as those terms are defined below: (a) A window well that projects no more than four feet (4 ft.) from the building face; and (b) *An areaway*

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). See also 11-B DCMR § 308.2 (“For any excavations projecting from the building’s façade other than an exception to grade as defined at Subtitle B§ 100.2 the elevation of the midpoint of a building façade shall be the equivalent of the lowest such elevation”) (emphasis added)

Per Figure 12 below prepared by the developer (**Exhibit 3** hereto at A-84), the areaway at the redesignated “front” of the Temple on S Street is 15 feet deep:

Figure 12



Therefore, that 15 feet must be added to the height of the building (140') for a total height of 155'. Multiplying that number by 1/3 reveals that that minimum depth of the rear yard must be at least 51' 8". However, as shown in Figure 10, the proposed redesignated rear yard is only 32'.

The 32' is the depth of the redesignated "rear yard" measured from the edge of the areaway to the south property line. The "rear yard" cannot include 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.

Yard, Rear: A yard between the rear line of a *building or other structure and the rear lot line*, except as provided elsewhere in this title. The rear yard shall be for the full width of the lot and shall be unoccupied, except as specifically authorized in this title.

Yard, rear, depth of: The mean horizontal distance between the rear line of a building and the rear lot line, *except as provided elsewhere in this title*.

11-B DCMR § 100.2 (Definitions) (emphasis added). Reading these definitions together, it is apparent that the "rear yard" does not include the areaway. A picture of the areaway is set forth below in Figure 13, demonstrating that it is a "structure":

Figure 13



Using the information set forth by the Applicant in Figure 10, the rear yard is 32'-0". Thus, the proposed rear yard is non-conforming, making the proposed Western Lot of the Subdivision non-conforming.

Even if the 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 depth of the rear yard is 51'8". Adding the areaway to the back yard still only makes it 42'6" deep.

3. The Pyramid of the Temple Is the Temple's "Roof," Not an "Embellishment." Thus, the Temple's Building Height Must Be Measured From the Top of Its Pyramidal Roof.

Based on its Figure 10 (shown above), the Applicant apparently contends 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 bizarre approach, the Applicant is apparently contending that the height of the Temple is only 94', which means the rear yard must be only 31'4" wide, narrowly coming within the 32' from the areaway to the property line.

Similar to Applicant's attempts to call the front a "side" and a side the "back", this contention is contrary to the applicable rules of regulatory construction, the zoning regulations, to common sense, and to simple observation.

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). The Zoning Administrator's construction must be "plausible," and thus an outlier meaning is insufficient. *Cohen v. JP Morgan Chase & Co.*, 498 F.3d 111, 120 (2d Cir. 2007). The Zoning Administrator cannot, in the guise of interpreting a statute, ignore certain words, and "rewrite" it to impose distinct meaning not contemplated by

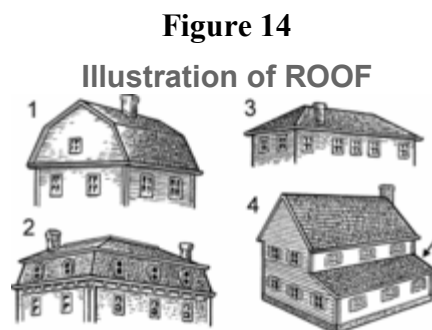
the legislature. *Ind. Mich. Power Co. v. Dep't of Energy*, 88 F.3d 1272, 1276 (D.C. Cir. 1996). A conclusion that the Temple's 332 ton roof is not a "roof" as defined in the Zoning Regulations, but rather an "embellishment, violates standard and well-established principles of statutory and regulatory construction for multiple reasons.

First, 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"

Webster's also provides the following diagrams under the definition of roof:



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:

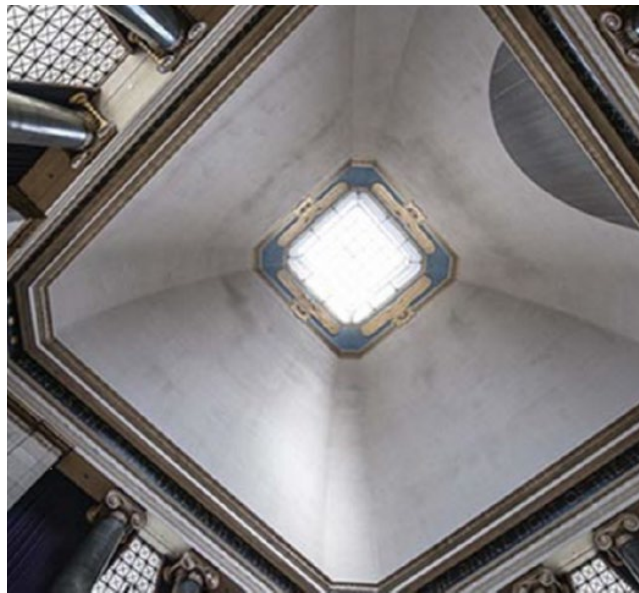
- “to enhance [or] amplify . . . *with inessential but decorative or fanciful details.*”

[Emphasis added.]

The Temple’s pyramid 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 buildings, not of “embellishments.”

Below is a picture of the pyramid roof from the interior of the Temple. As you can see, the pyramid forms the roof over the interior. It is important to the Masonic tradition that it does so, and it was designed and built to be a pyramidal roof whose form shows on the inside and on the outside of the building.

Figure 15



The 332 ton pyramidal roof is as essential to the Scottish Rite Temple as the dome of the Jefferson Memorial (also designed by Pope) is essential to the memorial. The Jefferson Memorial’s domed roof impacts both the interior and the exterior of the Memorial in ways remarkably similar to the Scottish Rite Temple’s pyramidal roof. 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.”

Second, 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 of the redesignation. 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).

Third, 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 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, by simply adding a few decorative details to a non-conforming roof. That cannot be what the Zoning Regulations intended.

Fourth, a tribunal must “interpret the statute as a symmetrical and coherent regulatory scheme, and fit, if possible, all parts into a harmonious whole.” *FDA*, 529 U.S. at 133, 120 S. Ct. at 1301. For much the same reasons as above, adoption of the Zoning Administrator’s interpretation of the Zoning Regulations would gut other provisions of the Zoning Regulations limiting the height of buildings and setting minimum requirements for the size of rear yards. This result could not have been intended. 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).

Finally, even if the Temple roof were deemed an “embellishment, the Redesignations would still result in a non-conforming rear yard. The depth of the areaway is 15’, which must be added to the 94’ for a total of 109’, which means the rear yard must be at least 36’4”. The 32’ rear yard is thus still non-conforming.

4. The Applicant Could Have Requested a Conforming Subdivision.

As established by the above calculations, there is ample property to the east of the Temple for such a rear yard, while still providing significant space for a new project, albeit a smaller one than the proposed Luxury Project.

Indeed, treating the Temple’s actual rear yard as the Temple’s proposed rear yard and establishing the building height in the way that the Zoning Regulations clearly intends, allows the Zoning Regulations to function as intended. The Applicant wants to redesignate the

Temple's front as S Street, but avoid the burdens that the Zoning Regulations correspondingly impose.

In contrast, the 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 added)

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; and
- 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.

VII. ADDITIONAL EVIDENCE (11-Y DCMR § 302.12(h)).

Additional evidence that I may wish to offer at the hearing includes the Exhibits 1 through 3 submitted herewith and the following:

- A. The Expert Report of James McCrery (submitted herewith)
- B. DECAA's Statement (submitted with DECAA's Appeal and incorporated herein by reference)
- C. The Expert Report of Ravi Ricker (submitted with DECAA's Appeal and incorporated herein by reference)
- D. Various publicly available published scholarly treatments of the Temple, including Sixteenth Street Architecture Vol.1, pages 278-321

* * * * *

VIII. 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

EXHIBIT 1

EDWARD HANLON

ANC Commissioner

ANC 2B09

Daniel W. Lucas, Inspector General Office of the Inspector General
717 14th Street, NW, 5th Floor Washington, DC 20005
Email: oig@dc.gov
March 12, 2019

**Re: Request for Investigation of Matters Related to the
Masonic Temple Development Project
(1733 16th Street NW)**

Dear Mr. Lucas:

As you may know, the Masonic Temple located at 1733 16th Street NW has hired Perseus Realty, LLC to plan and build a huge apartment building on what is currently a large open area green area at 15th and S Streets NW behind the existing Masonic Temple building ("Masonic Temple Project"). This land is currently tax exempt. In a very complicated zoning scenario, Perseus and the Masons plan to subdivide the lot into two parcels (one tax exempt and one not) and build a large apartment building, up to 150 units, plus underground garage, on the new subdivided lot. It appears Perseus may need zoning relief for this project.

Apparently, discussions and meetings between the Zoning Administrator, Matthew LeGrant, and representatives of Perseus and Perseus' lawyers went on for months in 2018.

Pursuant to a Freedom of Information Act request that I filed with the Department of Consumer and Regulatory Affairs concerning the Masonic Temple Project I received a number of documents from DCRA. These documents include the following:

1. A September 25, 2018 email from Lawrence Ferris, Esq., Perseus' attorney, to Zoning Administrator LeGrant stating *inter alia* that Mr. Ferris is forwarding a "draft determination letter" to ZA LeGrant for Mr. LeGrant's signature;
2. 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
3. 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.

I believe it is a terrible practice for the Administrator of the Office of Zoning to allow wealthy developers or their lawyers to be writing his Zoning Determination Letters. Public confidence in the fairness, correctness and integrity of his zoning decisions, decisions which affect

the lives of thousands of people, would be badly shaken if it were widely known that this practice exists in Mr. LeGrant's office, the office of the Zoning Administrator for the District of Columbia.

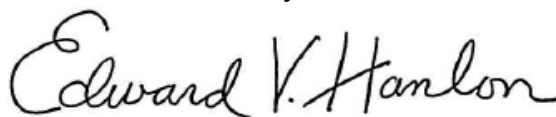
That such a highly questionable practice was used in evaluating whether the proposed **Masonic Temple Project** complies with all applicable zoning regulations is of great concern. This project has generated intense neighborhood resident opposition. For residents to learn that the developer's lawyer is the one who is drafting the key zoning determination letter lowers respect for civic institutions and calls into question the fairness and correctness of that zoning determination.

I, therefore, request that your office:

1. Open a prompt investigation into the manner in which the zoning decisions were made with respect to the Masonic Temple Project; and, determine whether undue influence or the appearance of undue influence was accorded a wealthy, well healed developer;
2. Investigate the policies and practices of the office of the Zoning Administrator to determine whether those policies and practices are inconsistent with public faith and confidence in the integrity and impartial administration of our laws; and
3. Take appropriate actions to end the practice of allowing developers to draft their own zoning determination letters.

If you have any questions concerning this request or need any additional information concerning this request, please contact me at my law office at 301-474-1800 or contact me by email at ED.HANLON.3@gmail.com.

Sincerely,



Edward V. Hanlon
1523 Swann Street
NW Washington,
DC 20009 *ANC*
Commissioner
ANC2B09

Enclosures

EXHIBIT 2



**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**

October 30, 2018

Lawrence Ferris
Goulston & Storrs
1999 K Street, NW, Suite 500
Washington, DC 20006

Re: 1733 16th Street, NW – Scottish Rite Temple Site, Square 192, Lot 108

Dear Mr. Ferris:

This letter is a comprehensive determination for your client's project at 1733 16th Street NW (Square 192, Lot 108) (the "Property"). This determination combines the findings from my determination letter dated April 18, 2018, and the substance of our discussion on August 27, 2018.

I. Background

As shown on the plans attached to this letter, the Property is bounded by S Street NW to the north, 15th Street NW to the east, a public alley to the south, and 16th Street NW to the west. The Property is currently improved with the Scottish Rite Temple ("Temple"), located on the western portion of the lot, and a carriage house ("Carriage House"), located on the eastern portion of the lot along the alley to the south. The entire site is a designated historic landmark. The Property is split-zoned, with the western portion zoned RA-9 and the eastern portion zoned RA-8. Your client proposes to subdivide the Property into two separate record lots. The proposed subdivision will create a new lot line that will be coterminous with the zone boundary line, bisecting the Property into a western lot occupied by the Temple ("Western Lot") and an eastern lot ("Proposed Eastern Lot"). The Proposed Eastern lot will be bounded by S Street to the north, 15th Street to the east, a public alley to the south and the Western Lot to the west. The Proposed Eastern Lot will be developed with a new apartment building that will incorporate the existing Carriage House (the "Project"), as shown in the attached plans. This determination letter pertains to the Project.

II. Zoning Issues

A. Rear Yard

The Project will front on 15th Street NW, with the rear yard measured from the newly created lot line running through the Property. Based on the Project's proposed height of 50 feet, under Subtitle F § 605.1, the rear yard requirement is 16.7 feet. Pursuant to Subtitle B § 318.2, the rear yard is measured as the "mean horizontal distance between the rear line of the building

and the rear lot line.” In other words, the rear yard measurement may be “averaged” across the Project, and the Project satisfies rear yard requirements so long as this average meets or exceeds 16.7 feet. Notably, as shown in the site plan on Sheet A-1 of the attached plans, the existing Carriage House will not meet this rear yard requirement, providing a rear yard of only 14.6 feet. However, as outlined above, under Subtitle B § 318.2, the rear yard measurement for the Project will be based on the average across the entirety of the rear lot line. This average measurement is approximately 28.3 feet, which exceeds the minimum 16.7-foot requirement. Accordingly, the Project complies with the rear yard requirement of Subtitle F § 605.1.

B. Minimum Parking Requirement

Pursuant to Subtitle C § 702.1(a), the minimum parking requirement for the Project may be reduced by fifty percent (50%) if any part of the Proposed Eastern Lot is within one-half (0.5) mile of a Metrorail station. This distance is measured from the point of the lot line nearest the Metro station and is measured “as the crow flies,” as opposed to path-of-travel. The Proposed Eastern Lot line is approximately 1,865 feet or 0.35 miles from the U Street/African-American Civil War Memorial/Cardozo Metrorail station, and thus the Project qualifies for reduced minimum parking requirements under Subtitle C § 702.1(a).

C. Parking Ramp

Under Subtitle C § 711.8, a driveway that provides access to required parking spaces must have a maximum grade no greater than twelve percent (12%) with a vertical transition at the property line. The proposed ramp leading down to below-grade parking for the Project will have a varying slope, which at some points will exceed 12%. However, the vertical transition at the property line will not exceed twelve percent (12%), and thus the Project complies with Subtitle C § 711.8.

D. Court Niches

As indicated on Sheet A-1 of the attached plans, the Project will include several façade recesses. These recesses are decorative architectural treatments constituting “court niches,” as defined in Subtitle B § 100.2. They are not considered “courts,” as that term is defined in the Zoning Regulations, and are not required to satisfy minimum court requirements. Accordingly, the proposed court niches comply with the Zoning Regulations. This conclusion is not altered by the façade being pulled back from the property line as compared to the initial design reviewed in my determination letter dated April 18, 2018. In addition to the façade recesses along the north and eastern sides of the building, the recessed façade along the public alley to the south is also an architectural treatment designed to expand and enhance views of the historic Carriage House on the Proposed Eastern Lot and, thus, constitutes a court niche that is not subject to minimum court requirements.

Additionally, as shown on the attached site plan, the Project will include a compliant open court bordering the western lot line. This court is required to have a minimum width of four (4) inches per foot of height, but no less than 10 feet per Subtitle F § 202.1. The minimum open court width required in this case is 16.7 feet based on the Project’s height of 50 feet. The

court will have a width of 84 feet, as shown on the site plan. Thus, the Project will comply with minimum court requirements.

E. Areaways

As shown on the attached plans and elevations, the Project will include an areaway around the perimeter of the building. The areaway will provide access to duplex units on the “EB1” and “EB2” levels of the building. Because the areaway will project no more than five (5) feet from the building wall, the areaway is considered an exception to grade, as provided by the recent amendments to the Zoning Regulations adopted in Zoning Commission Case No. 17-18. Further, this maximum five (5) foot dimension is maintained around the corners of the building, as shown on the attached plans. Additionally, the areaways are considered “open to the sky” as required. The “bridges” and stairways over the area ways providing unit access from the street and to sunken patios on the “EB1” and “01” levels, as shown on Sheet A-8 of the attached plans, do not change this determination as they are grated. Similarly the two (2) foot deep cantilevered bays proposed along the northern façade and the four (4) foot deep cantilevered bay proposed along the eastern façade, as shown on Sheets A-6 through A-8 of the attached plans, do not alter the determination that the areaways are open to the sky because these projections are approximately 13.7 feet and 3.7 feet, respectively, above grade.

F. FAR

As shown on Sheet A-10 of the attached plans, several units on the “EB1” level will provide sunken patios. These sunken patios project more than five (5) feet from the building wall and thus do not constitute window wells that would qualify as an exception to grade. Accordingly, finished grade would be established at the floor of these sunken patios and, using the perimeter wall method for measuring FAR prescribed by the Zoning Regulations, the unit space adjacent to these sunken patios counts towards the Project’s total FAR.

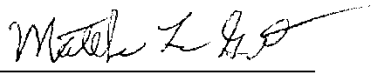
G. Lot Occupancy

As discussed at our meeting, the lot occupancy for the Project is measured based on the building area at the ground level of the building, as provided by Subtitle B §§ 312.2 and 312.3. This measurement includes the proposed bays, including the cantilevered bays proposed along 15th Street NW and S Street NW, but does not include the retaining walls enclosing the proposed areaways.

III. Conclusion

Based on this analysis, the various Project features shown in the attached site plan and discussed above comply with the applicable provisions of the Zoning Regulations. Upon the presentation of proper plans, I would approve these aspects of the Project for zoning compliance in a building permit application review.

I believe I have addressed the issues we discussed and agreed upon. Please let me know if you have any further questions.

Sincerely, 
Matthew Le Grant
Zoning Administrator

Attachments: Plan Set dated 9-25-18
Determination Letter 4-18-18

DISCLAIMER: This letter is issued in reliance upon, and therefore limited to, the questions asked, and the documents submitted in support of the request for a determination. The determinations reached in this letter are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this letter. Changes in the applicable laws, regulations, or policy, or new information or evidence, may result in a different determination. This letter is **NOT** a “final writing”, as used in Section Y-302.5 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations, but instead is an advisory statement of how the Zoning Administrator would rule on an application if reviewed as of the date of this letter based on the information submitted for the Zoning Administrator’s review. Therefore this letter does **NOT** vest an application for zoning or other DCRA approval process (including any vesting provisions established under the Zoning Regulations unless specified otherwise therein), which may only occur as part of the review of an application submitted to DCRA.

File: Det Let re 1733 16th St NW to Ferris 10-30-18

