

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 23, 2022

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:30 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK L. HILL, Chairperson
- LORNA JOHN, Vice Chairperson
- CARL BLAKE, Board Member
- CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBER[S] PRESENT:

- ROBERT MILLER, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- PAUL YOUNG, Zoning Data Specialist

DCRA STAFF PRESENT:

- MATTHEW LeGRANT, Zoning Administrator
- PATRICK WHITE, ESQ., Counsel

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Regular Public Hearing held on February 23, 2022.

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Action Association 72

P-R-O-C-E-E-D-I-N-G-S

(9:59 a.m.)

1
2
3 CHAIRPERSON HILL: Okay guys, I guess we're going
4 to begin our appeal. This is a special hearing. We normally
5 would not have met today, but we're meeting in order to hear
6 this appeal. I'm trying to pull it up.

7 ZONING VICE CHAIR MILLER: And I will leave you
8 as you're doing that and wish you a good day.

9 CHAIRPERSON HILL: Thank you, Commission Miller.

10 ZONING VICE CHAIR MILLER: Bye-bye.

11 CHAIRPERSON HILL: Commissioner May, can you hear
12 me? Okay, well welcome.

13 MEMBER MAY: I don't know why I'm having trouble
14 with mine.

15 CHAIRPERSON HILL: Are you guys able to pull this
16 up no IZIS?

17 VICE CHAIRPERSON JOHN: I haven't tried this
18 morning, Mr. Chairman.

19 MEMBER MAY: Sorry, pull what up?

20 CHAIRPERSON HILL: This appeal.

21 MEMBER MAY: Oh.

22 CHAIRPERSON HILL: I mean I have all the paperwork
23 and everything that I've printed out for the case, so I can
24 move forward with that. I just wondered if others had
25 issues. So, we'll just try to figure out how to take

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1 breaks along the way here. I suggest we go ahead and get
2 started.

3 Mr. Moy, if you could call the cases. We're
4 hearing both appeals at the same time and if you could call
5 them and then, Mr. Young, if you can bring in the parties.

6 MR. MOY: Thank you, Mr. Chairman. So in that
7 case the two appeals before the board are as follows.

8 Appeal number 20452 of Michael Hays. This is the
9 appeal from the decision made on November 19, 2020, by the
10 Zoning Administrator, Department of Consumer and Regulatory
11 Affairs to approve the subdivision of Square 192, Lot 108
12 into two separate lots, denoted as Lots 110 and 111, in the
13 RA-8 and RA-9 Zones. The property is located at 1733 16th
14 Street, N.W. (Square 192, Lots 108, 110 and 111).

15 The second appeal is Appeal number 20453 of the
16 Dupont East Civic Action Association. Again, an appeal from
17 the decisions made on November 19, 2020, by the Zoning
18 Administrator, Department of Consumer and Regulatory Affairs
19 to approve the subdivision of Square 192, Lot 108 into two
20 separate lots, denoted as Lots 110 and 111, in the RA-8 and
21 RA-9 zones. The property is located at 1733 16th Street,
22 N.W. (Square 192, Lots 108, 110 and 111).

23 CHAIRPERSON HILL: Okay. Mr. Hanlon, can you hear
24 me?

25 MR. HANLON: Yes, can you hear me?

1 CHAIRPERSON HILL: Yes, but I can't see you.

2 MR. HANLON: Oh, let's see.

3 CHAIRPERSON HILL: Okay, great. All right, Mr.
4 Hanlon, could you introduce yourself first for the record,
5 please?

6 MR. HANLON: Edward Hanlon, representing the
7 Dupont East Civic Action Association.

8 CHAIRPERSON HILL: Okay, great. And Mr. Hanlon,
9 who is with you guys all today?

10 MR. HANLON: I'm sorry? Who is with us? Michael
11 Hays will be representing himself as you know the other
12 appeal and Professor McCrery will be testifying as an expert
13 witness today.

14 CHAIRPERSON HILL: Okay. So, all right let me do
15 this first. Professor McCrery, could you introduce yourself
16 for the record, please?

17 MR. McCRERY: Sure. Professor James McCrery, 900
18 Massachusetts Avenue, N.E., Washington D.C., 20002. Thank
19 you, Mr. Chairman.

20 CHAIRPERSON HILL: Okay, great. Thank you, sir.
21 Mr. Hays, could you introduce yourself for the record?

22 MR. HAYS: Yes, Michael Hays. Do you want my home
23 address or?

24 CHAIRPERSON HILL: You're supposed to, I guess.

25 MR. HAYS: All right, 5305 Portsmouth Road,

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1 Bethesda, Maryland.

2 CHAIRPERSON HILL: Okay, thank you, Mr. Hays.

3 MR. HAYS: And let me add, Mr. Chairman, that Mr.
4 Hanlon to preserve our time is going to be giving an opening
5 statement on behalf of both of us and Professor McCrery is
6 testifying on behalf of both cases as well.

7 CHAIRPERSON HILL: Okay, great. Yes, I know that
8 we had a bunch of preliminary matters with this the last time
9 and I think we addressed everybody or everything, I should
10 say. So, I'll get back around there, just let me get through
11 all the introductions. Mr. Ferris, can you hear me?

12 MR. FERRIS: Yes, Mr. Chair.

13 CHAIRPERSON HILL: Could you introduce yourself
14 for the record, please?

15 MR. FERRIS: Yes, Lawrence Ferris with the Law
16 Firm of Goulston Storrs, here on behalf of the lessee of the
17 property, Perseus.

18 CHAIRPERSON HILL: Okay, Mr. Ferris, are you
19 choosing not to use your camera just so I know?

20 MR. FERRIS: I am. It will be Ms. Roddy
21 presenting. I'm happy to turn my camera on if you would
22 like.

23 CHAIRPERSON HILL: No, that's all right, I'm just
24 trying to see who's doing what. Ms. Roddy, can you hear me?

25 MS. RODDY: I can.

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1 CHAIRPERSON HILL: Could you introduce yourself
2 for the record, please?

3 MS. RODDY: Yes, it's Christine Roddy with
4 Goulston and Storrs and we represent Perseus, the lessee of
5 the eastern lot.

6 CHAIRPERSON HILL: Okay, all right. Let's see.
7 Mr. Lockwood, can you hear me?

8 MR. LOCKWOOD: Yes, good morning.

9 CHAIRPERSON HILL: Could you introduce yourself
10 for the record, please?

11 MR. LOCKWOOD: Yes, my name is Jeffrey Lockwood
12 and I'm an architect at Hickok Cole Architects, working for
13 Perseus.

14 CHAIRPERSON HILL: Okay. Let's see. Mr. LeGrant,
15 can you hear me?

16 MR. LeGRANT: Yes.

17 CHAIRPERSON HILL: Could you introduce yourself
18 for the record, please?

19 MR. LeGRANT: Yes, good morning, Chairman Hill and
20 members of the Board. I'm Matthew LeGrant, Zoning
21 Administrator DCRA.

22 CHAIRPERSON HILL: Okay, Mr. LeGrant, are you here
23 alone today?

24 MR. LeGRANT: No, no. I'll introduce our team --
25 My counsel (telephonic interference) --

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1 MR. WHITE: Mr. Chair?

2 CHAIRPERSON HILL: Yes.

3 MR. LeGRANT: Traffic light at the --
4 (Simultaneous speaking.)

5 MR. WHITE: Mr. Chair, can you hear me?

6 CHAIRPERSON HILL: Who is trying to speak?

7 MR. WHITE: Patrick White.

8 CHAIRPERSON HILL: Oh, okay, great. Mr. White --

9 MR. WHITE: General counsel, DCRA.

10 CHAIRPERSON HILL: Okay, Mr. White.

11 MR. HANLON: Mr. Chair, I was unable to hear Mr.
12 LeGrant. I don't know whether he can turn up his microphone.
13 I could not hear what he was saying.

14 CHAIRPERSON HILL: Sure, no problem. It's a
15 little bit muddled. I asked Mr. LeGrant who is with him
16 today and it's Patrick White. So, Mr. White, you did
17 introduce yourself for the record --

18 MR. WHITE: Correct.

19 CHAIRPERSON HILL: And so okay, so what we're
20 going to do, just so everybody knows, the Appellant has an
21 hour to give their testimony and we tried to do this as
22 efficiently as possible and I know that the parties, the
23 Appellants, have coordinated so that we can hear this
24 expeditiously and have an opportunity to hear where they
25 believe that the Zoning Administrator has erred in his

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1 decision.

2 I guess the first thing that I just kind of wanted
3 to address, I know that Professor McCrery has been admitted
4 as an expert in architecture as per the last hearing and the
5 Appellant wants to admit Professor McCrery as an expert in
6 D.C. zoning and zoning regulations. No offense, Professor
7 McCrery, I read through what the submission was and I wasn't
8 necessarily taken by the fact that you're an expert. I mean
9 I think that you're able to speak on D.C. zoning. I think
10 that you would be able to give all of your testimony.

11 There's not really a whole of difference that the
12 Board, I must say, mentally uses in terms of the difference
13 between an expert and not an expert. I mean we listen to all
14 the testimony and we basically ask all of our questions and
15 anything that gets raised, if we believe it has merit, is
16 something that we'd go ahead and follow up on because we're
17 here to try to figure out, again, whether the Zoning
18 Administrator has erred. So, unless my fellow board members
19 have any issues with it, I don't necessarily think Professor
20 McCrery is an "expert" in D.C. zoning, but do my fellow board
21 members have any thoughts on that? If so, please speak up.

22 Vice Chair John?

23 VICE CHAIRPERSON JOHN: Thank you. I don't think
24 the request was timely as well because my recollection is
25 that there is no initial request to be admitted as a zoning

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1 expert. So that request should have been made when the
2 application was filed.

3 CHAIRPERSON HILL: Okay. Thanks for that clarity,
4 Vice Chair Johnson, and again, Professor McCrery, we'll be
5 taking your testimony in the same fashion, so there's nothing
6 you need to change in terms of your testimony.

7 MR. MCCRERY: Okay. Thank you. I'll be offering
8 it in the same fashion as well. Thank you, Mr. Chair.

9 CHAIRPERSON HILL: Okay, so just for the record,
10 we're going to deny the request for expert status, but
11 Professor McCrery will be testifying on behalf of the
12 Appellant.

13 MR. HANLON: Mr. Chair? As I recall, you said you
14 denied his request to testify as an expert, as I recall, you
15 admitted him as an expert to testify in the field of
16 architecture.

17 CHAIRPERSON HILL: Yes, that's correct.

18 MR. HANLON: May I also inquire, has Mr. Lockwood
19 been admitted as an expert in anything at this point yet?

20 CHAIRPERSON HILL: Mr. Lockwood, I don't know to
21 be quite honest. Ms. Roddy?

22 VICE CHAIRPERSON JOHN: Mr. Chairman, I don't
23 believe there was any request to admit Mr. Lockwood as an
24 expert.

25 MS. RODDY: We would be offering him as an expert

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1 in our rebuttal. He has been previously accepted by the
2 Board and the Zoning Commission as an expert in architecture.

3 CHAIRPERSON HILL: Okay. Ms. Roddy, if he's been
4 previously accepted that means and I'm speaking to Mr.
5 Hanlon, I guess. Mr. Hanlon, that means he's already in our
6 book and so he's already been accepted as an expert so, but
7 also as I mentioned before, he'll be giving his testimony in
8 the same way that everybody else is going to be giving their
9 testimony. But he is already in our book, I guess, as an
10 expert, so he doesn't need to be asked each time.

11 MR. HANLON: Okay and so for point of clarity, Mr.
12 Chair, he would be admitted to testify as an expert in
13 architecture. Like Professor McCrery, he is not admitted to
14 testify as an expert in zoning?

15 CHAIRPERSON HILL: As far as I understand, yes,
16 that's, you know, correct and also again he, just like
17 Professor McCrery, will be giving the same testimony that he
18 gave before. There's no difference in terms of what the
19 testimony is so just, again, as a point of clarity for you,
20 Mr. Hanlon.

21 MR. HANLON: Thank you.

22 CHAIRPERSON HILL: Yep. Okay, so let's see. I
23 know that I have our counsel is here with us as well and I
24 think we can go ahead and get started. So just so everyone
25 is aware of the process, I sometimes get a little bit out of

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1 order every now and again, but it's all in Y507. The basic
2 idea, again, of the regulation is everybody is going to get
3 a chance to present their case. Everyone is going to get a
4 chance to ask questions of each party. Then there will be
5 a, I always kind of forget. Ms. Nagelhout, I guess everyone
6 gets rebuttal, is that correct? Or is it just the Appellant?

7 MS. NAGELHOUT: It's just the Appellant.

8 CHAIRPERSON HILL: Okay, so then Mr. Hanlon, you
9 will get an opportunity to rebut anything that goes on
10 basically and then Ms. Roddy and the DCRA people will get to
11 Mr. White, that is, will get to ask any questions on your
12 rebuttal and then there will be a conclusion given by
13 everybody because I just like to hear conclusions and then
14 you'll get the last word -- I think, does Mr. Hanlon get the
15 last word? I think Mr. Hanlon gets the last word, but Ms.
16 Nagelhout --

17 MS. NAGELHOUT: It's supposed to be in the same
18 order, the same order as the case is presented. So it would
19 be the Appellant, the Appellee and then the property,
20 Perseus, and then the ANC.

21 CHAIRPERSON HILL: Okay, so --

22 MS. NAGELHOUT: That's the order spelled out in
23 the regs, but you can adjust it if you want.

24 CHAIRPERSON HILL: Okay. The way I've done it
25 before and, again, I usually go the Appellant usually has the

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1 last word just because it's their case, but I don't know,
2 I'll let my fellow board members if they have any issues with
3 the way I'm going to go, I'm going to go the way that I
4 always go, which is basically somewhat backwards I supposed,
5 and that this is something, Ms. Nagelhout, you can help me
6 with again to clarify the next time. But it would be DCRA,
7 the ANC, the property owner, the lessee and then Mr. Hanlon
8 is the order at the end. So again, we're going to go through
9 presentations then questions and then we'll see where we get.
10 Mr. Hanlon, you look like you had a question.

11 MR. HANLON: Yes, I'm sorry, Mr. Chair. I had one
12 more question. We have an hour for our joint presentation.
13 Do I have to reserve time out of that hour for any rebuttal?

14 CHAIRPERSON HILL: Everything is supposed to take
15 place in the hour, Mr. Hanlon, but we'll just see how this
16 goes. You know, I mean you're the only case today. I don't
17 really want to go a crazy amount of time because, you know,
18 this was not something that we normally would have done
19 today. It was a holiday and so we're trying to accommodate
20 you guys and so we're here. So, just go ahead and try to get
21 everything in in an hour is what I'm trying to get at, okay?

22 MR. HANLON: Okay. For the record then, let me
23 reserve three minutes for rebuttal in case I need it.

24 CHAIRPERSON HILL: Okay.

25 MR. HANLON: But I'm hoping we'll be a little less

1 formal than that.

2 CHAIRPERSON HILL: Okay, yes. We'll make sure
3 everyone is heard because we want to hear what the argument
4 is. All right, I did get something pulled up here.

5 All right, so Mr. Hanlon, you can go ahead and
6 begin your presentation.

7 MR. HANLON: All right, if I could have
8 Appellant's amended PowerPoint presentation pulled up that
9 was filed in the last 24 hours.

10 CHAIRPERSON HILL: Do you happen to know what
11 exhibit it is?

12 MR. HANLON: Oh. I apologize, I'd have to look
13 at the docket sheet. It was filed yesterday around nine
14 o'clock in the morning.

15 CHAIRPERSON HILL: Got it. So that, Mr. Moy, is
16 something I think I see it here as Exhibit 103 and if that's
17 the case and it came inside the 24 hours, I would like to go
18 ahead and admit it into the record so that we can look at
19 this easily together. That being the case, unless my fellow
20 board members have any issues, please speak up. All right,
21 Mr. Hanlon, you can begin.

22 MR. HANLON: Thank you very much. I want to thank
23 the members of the board for sitting in this special session
24 today, what would otherwise be a vacation day for them, to
25 listen to this case. It has been a long time getting to this

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1 point today so I thank the Board for their patience. Taking
2 into consideration the comments that the Chair made last time
3 and the Vice Chair made last time, we're going to try to
4 streamline the presentation and cut to the chase and go to
5 the most important issues in this case and then submit on the
6 record.

7 So, with that, I'd like to go to slide number two.

8 All right, this appeal challenges the Zoning
9 Administrator's approval of the subdivision of Lot 108. Lot
10 108 runs from 16th Street all the way to 15th Street. It's
11 a large lot. It has about 92,000 square feet of space. The
12 Masonic Temple sits on the front of the lot, fronting 16th
13 Street. Now here in this slide, on the left side you can see
14 the majestic Masonic Temple. It's a national landmark. It's
15 on the Registry of National Historic Places and as Perseus
16 itself quoted to HPRB, "this building was once voted the
17 fifth most beautiful building in the world by a group of
18 members from the Association of American Architects." This
19 building also houses the first public library in the District
20 of Columbia.

21 Now, the back of the building, the back of the
22 temple, is shown in the next three photos in this slide. The
23 photo at the bottom shows the long green open space that
24 existed in Lot 108. That space is approximately 46,000
25 square feet. Up above, you can see part of the garden, the

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1 cherry trees, the statue of George Washington.

2 As Professor McCrery will testify, the Masonic
3 Temple is 139 feet high at least and that would mean under
4 the zoning regulations for RA-9, he will testify, you need
5 one foot of rear yard for every three feet of temple height
6 and therefore you'd need a little over 46 feet of rear yard
7 minimum if this Lot 108 was to be divided. If 16th Street
8 were the front of this building, then this long green open
9 space would be the rear yard of the building. If you drew
10 a lot line as the regulations contemplate, 46 feet behind
11 this building, if we wanted to subdivide, then both that
12 cherry tree and the statue of George Washington would be in
13 that required rear yard behind the building.

14 But, if we go to the next slide, what the Zoning
15 Administrator approved was a subdivision shown here in this
16 photo, that subdivision line would run right where this chain
17 link fence is. The subdivision line the Zoning Administrator
18 approved is not 46 feet behind this building. The
19 subdivision line the Zoning Administrator approved is less
20 than six feet behind this building. This gives a very good
21 visual illustration of where that line would be just follow
22 the chain link fence. Can we go to the next slide, please?

23 Professor James McCrery will testify today, as our
24 expert witness in the field of architecture. He is a
25 nationally known architect. He is appointed by the President

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1 of the United States to be one of the seven commissioners on
2 the U.S. Commission of Fine Arts. He holds not only a
3 Bachelor's, but also a Master's degree in Architecture. He
4 is a tenured associate professor of architecture at Catholic
5 University teaching courses in architecture, both at the
6 undergraduate and graduate levels. He's licensed to practice
7 architecture in 19 different jurisdictions in this country,
8 19 different states. As his resume shows, he has won
9 numerous awards for architecture and architectural excellence
10 from AIA as well as winning the John Russell Pope Award for
11 excellent in architecture. As we know from the file, it was
12 John Russell Pope who designed the Masonic Temple. Can we
13 go to the next slide, please?

14 Now, there are multiple violations of the zoning
15 regs caused by this subdivision the Zoning Administrator has
16 approved. But we would like to hone in and center our
17 attention on two key provisions that this subdivision
18 violates. We know that any subdivision, when a lot is
19 divided, that division shall be effected in a manner that
20 will not violate the provision of this title for yards as
21 well as courts and other open spaces. We want to focus on
22 the fact that any subdivision the Zoning Administrator
23 approves cannot violate any provision of the title with
24 respect to yards. But, in fact, if we look to the right side
25 of this slide, the subdivision does, in fact, violate two

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1 provisions with respect to yards.

2 The first is no structure in a required rear yard
3 may be more than four feet above grade at any point along
4 that structure. We see it here again, every part of a yard
5 must be open and unobstructed and no part of any structure
6 can be more than four feet above grade at any point. The
7 only exceptions are a retaining wall, a fence or stairs. Now
8 when you look at the PowerPoint presentation Perseus filed
9 this week, you will see that it concedes that the structure
10 I'm about to show you is not a fence. It is not stairs.
11 They have marked it a retaining wall and I'll show it to you
12 in a second and Professor McCrery is going to testify why
13 that violates the zoning regs.

14 The second major violation of the zoning regs is
15 the minimum required rear yard. RA-9 zones require a rear
16 yard. Now, for RA-9 zones for every three feet of height of
17 the principal building, there must be one foot of rear yard
18 and that's why there has been so much emphasis in this case
19 about what is the correct calculation of the height of the
20 temple.

21 The rule of measurement would be the height of the
22 building under 308.5, the height of a building permitted to
23 be 90 feet, which this temple is, shall be measured from the
24 building height measuring point to the highest point of the
25 roof. So, that's why such emphasis has been put on this case

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1 as to what is the roof. Now, if we can go to the next slide.

2 What the Zoning Administrator has done is
3 essentially pretended that 16th Street is not the front of
4 the building and because this is a corner lot, they have
5 designated S Street as the front of the building. Professor
6 McCrery will testify why that's not appropriate, but as we
7 all know and as the Board knows, if S Street is the front
8 that's the north side of the building, then the south side
9 of the building is by definition the rear yard. So, what
10 I've marked here in the graphic on the left is if S Street
11 is the front as the Zoning Administrator has chosen to
12 designate, and Perseus has designated, then this red box
13 shows the rear yard of the building. The problem, of course,
14 is there is a huge 11-1/2 foot high 3-1/2 to 4-1/2 foot wide
15 solid granite wall and column in the middle of this rear
16 yard.

17 This column and this wall were not a problem as
18 long as 16th Street was the front, but when you choose to
19 make S Street the front, you automatically make this shown
20 in the red box, the rear yard and so you automatically put
21 into this rear yard what you see in the photo on the right.
22 Nicholas DelleDonne, the President of DECAA, standing next
23 to that huge granite column that is now in the rear yard.

24 The evidence will show today that this column and
25 this wall are more than six and one-half feet inside the lot

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1 line on the south and more than six and one-half feet inside
2 the lot line on the west. It is clearly entirely within the
3 rear yard. As I showed on the graphic on the right, the
4 yellow line is the wall and the green at the bottom of that
5 is the column, all within the required rear yard and that is
6 why it violates the provisions of 324, cited above. Can we
7 go to the next graphic?

8 Here is a picture of the wall again. This wall
9 does not retain anything as Professor McCrery will explain
10 in his testimony. What you see on the right side is that
11 wall in the middle of the rear yard from the east side of the
12 wall. This is an 11-1/2 foot high solid granite wall. If
13 you look at the photo on the left side and the measurement
14 7 feet 8 inches, you will see that the granite wall is at
15 least 7 feet 8 inches above the stone platform. Therefore,
16 as Perseus' own graphic will show in the PowerPoint
17 presentation, this wall retains nothing on either side of it,
18 for at least 7 feet 8 inches above the platform and the wall
19 really retains nothing Professor McCrery will testify, but
20 you can see there's nothing but air on either side of the
21 wall for almost 8 feet up, 4 feet across solid granite. If
22 we can go to the next slide, please.

23 Here is a picture of the wall again to help give
24 you a sense of proportion. On the right that is me, not a
25 great picture, but that is me holding the measuring tape, as

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1 I measured the height of the wall from the platform. That's
2 how we know it is 7 feet 8 inches and also I measured the
3 entire column and wall height, which I got as 11 feet 6
4 inches. Perseus in its PowerPoint presentation will tell
5 that you that this wall is actually 11 feet 10 inches above
6 grade at the curb. So this is a massive wall. Here you can
7 see the wall on the left. You can see that this entire wall
8 which is about 25 feet long by the way in the rear yard, so
9 besides being 11-1/2 feet high and more than 4 feet wide,
10 it's 25 feet long, all in the middle of the rear yard. You
11 can see in the photo, a woman with a blue shirt sitting on
12 the granite seat in that wall and she is sitting in the rear
13 yard. All that wall behind her would be in the rear yard as
14 is the tree behind it. That's why it violates that
15 regulation that no structure in a required rear yard can be
16 more than four feet high other than stairs or a fence, which
17 Perseus concedes it is not or a retaining wall, which this
18 obviously is not as you can see from the photo of the woman
19 sitting in front of the wall. Can we go to the next slide
20 please?

21 Let's talk about the second key provision that
22 Professor McCrery is going to testify about in a few minutes.
23 As we know from the regs, the requirement is in RA-9 that
24 there be one foot of rear yard for every three feet of
25 height. The architectural diagram on the right was prepared

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1 by Perseus itself. This was a diagram Perseus submitted to
2 the Historic Preservation Review Board. If you look at the
3 diagram carefully, you will see that there is a Scottish Rite
4 Temple measuring point next to the red arrow and it has a
5 little symbol there for elevation or height, an architectural
6 symbol. That's the measuring point of the temple on 16th
7 Street in this diagram.

8 If you then look to the center of the diagram, you
9 will see the height symbol again or the elevation symbol
10 again and you will see 139 feet. Professor McCrery will
11 testify that this diagram shows that the top of the roof, the
12 highest point on the roof, is 139 feet at least above grade
13 at the measuring point in front of the building. Here, I've
14 done that calculation and shown that one needs at least 46.33
15 feet of rear yard upon subdivision. Can we go to the next
16 slide, please?

17 Now, there has been some discussion here about
18 this retaining wall. I want to show this photo from 1913,
19 which is on the right, which was taken during the
20 construction of the temple. If you look at the cart, I have
21 an accent, C-A-R-T. If you look at the cart and horse in
22 this photo, that cart and that horse are standing
23 approximately where that 11-1/2 foot massive granite column
24 is today. You can see that on all sides of the horse and the
25 cart the land is level. There is nothing that that wall is

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1 retaining. It is not retaining the lateral force of any
2 soil. You can see the land was flat. Here on the left, you
3 can see the Masons breaking ground and, again, you can see
4 they're breaking ground. It was a vacant lot and it was
5 flat.

6 If you look at the bottom graphic, you can see
7 this is from the building permit that was issued in 2011 to
8 the Masons and it says what is the height of the -- oh it's
9 so small, I'm having trouble -- what is the height of the
10 terrace or parking above curb and it says level. The land
11 was level in front of the building.

12 MR. HAYS: Just let me add, I think Ed misspoke,
13 it's not issued in 2011, it was issued in 1911.

14 MR. HANLON: Oh 1911, I apologize. I apologize
15 for misspeaking. The land was level. The pictures show it
16 was level. The building permit issued in 1911 says it was
17 level. That 11-1/2 foot wall Professor McCrery will testify
18 is not a retaining wall. Can we go to the next graphic,
19 please?

20 Perseus has talked a great deal about the roof not
21 being a roof. As we said, it's important to know what that
22 structure is on top of the temple because the rule of
23 measurement is from the front of the building to the highest
24 point of the roof. Now, if we look at this for a moment,
25 give me a second so I can pull it up and read it. If we

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1 look, what you see on the left is from a January 1916
2 Architectural Review article by the company that built this
3 roof. They called it the roof construction of the temple and
4 there is a graphic from 1916 showing the construction of the
5 roof. Over here, it talks about the roof of the temple, the
6 limestone composing the steps of the roof as seen in the
7 photograph weighs 332 tons.

8 Again here, in that same Architectural Review
9 article, is a blow up on the right, is the roof of the
10 building showing the solid limestone roof. It is referring
11 to that pyramidal shape on top of the temple. At the bottom
12 is a graphic, the Masons themselves have called it a roof for
13 100 years. This comes from their guidebook they published
14 on their 100th anniversary in 2015. It's titled Pyramidal
15 Roof and it shows the structure of the roof. It calls it a
16 roof and if you read, it talks about despite the conspiracy
17 theories to convert, there is no masonic significance to the
18 number of steps on the roof. Yes, each of those steps you
19 see in this pyramid, the Masons for 100 years have called a
20 roof. Can we go to the next slide, please?

21 This is also from the Masons 2015 publication, "A
22 Guidebook to the House of the Temple." Again, it shows the
23 temple from the rear and it shows the roof, the pyramidal
24 roof, and it says, the roof is a limestone, stepped pyramid
25 with a skylight at the crown. That structure, the company

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1 who built it, called it a roof. The Masons for 100 years in
2 publications have called it a roof. Professor McCrery will
3 testify it is a roof. It meets the Webster's definition of
4 a roof. It functions as a roof.

5 Now, here in the next slide, if we go to the next
6 slide, this is what that pyramidal structure looks like
7 standing inside the building and looking up. This is
8 standing in the biggest, the most majestic room in the temple
9 called the Temple Room where the major ceremonies of the
10 temple are held. If you stand on the floor and look straight
11 up, this is what you see. You see that massive structure
12 with the skylight at the very top. Professor McCrery will
13 testify this is the covering over the building which protects
14 the building and the Masons underneath from the elements from
15 the weather. If you remove this pyramidal structure, the
16 building has no roof, no protection from the weather. The
17 rain and snow would come onto the occupants below. This is
18 what is a roof is supposed to be. This meets the Webster's
19 definition and Professor McCrery will explain to that to you
20 in his testimony.

21 One further point, if we look at the graphic on
22 the left. Perseus has chosen to designate S Street as the
23 front. Professor McCrery will explain that if S Street is
24 the front, then the building height measuring point is not
25 at the surface of the ground. It is actually at the bottom

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1 of the areaway and that's because this areaway is 7-1/2 feet
2 wide and grade is therefore established at the bottom of the
3 areaway because it is not an exception to grade. If this
4 areaway were 5 feet wide or less, then grade would be
5 established at the level of the grass up above, but because
6 this areaway is 7-1/2 feet wide, the grade is established at
7 the bottom of the areaway. As Perseus has diagramed, this
8 is Perseus' own diagram submitted to the Historic
9 Preservation Review Board, that would mean that the height
10 of the temple would be 139 feet plus another 15 feet if you
11 choose to make S Street the front. If we can go to the last
12 graphic, the last slide.

13 The last slide is to thank the board members for
14 allowing me to make this PowerPoint presentation. I will
15 turn it back to you, Mr. Chair.

16 CHAIRPERSON HILL: Thank you, Mr. Hanlon. You had
17 said that Professor McCrery was going to testify for some
18 things and then I guess you had also mentioned that Mr. Hays
19 was going to testify?

20 MR. HANLON: Oh, if I said Mr. Hays, I misspoke.
21 I meant Mr. McCrery. If I said Mr. Hays, I apologize.

22 CHAIRPERSON HILL: No, that's all right, I'm just
23 trying to get the timing in here as well. So, Professor
24 McCrery, you're going to testify and I can pull up whatever
25 slide you might need or if you need any slides for your

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1 testimony and then, Mr. Hays, what are you adding to the
2 presentation may I ask?

3 MR. HAYS: I'm relying upon Mr. Hanlon's testimony
4 and Professor McCrery's testimony, so I'm not planning, at
5 this point anyway, to offer any separate testimony.

6 CHAIRPERSON HILL: Got it, okay, thank you.
7 Professor McCrery, would you go ahead and give your portion
8 of the testimony?

9 MR. McCRERY: Thank you, Mr. Chairman and members
10 of the board and thanks, Mr. Hanlon, for that very, very good
11 presentation of the critical issues here. I'm going to be
12 supporting those with more detail.

13 If I could recommend the members have in mind is
14 that the central difficulty here is that the previous
15 approval of the subdivision on the terms that were presented
16 to the administration, have the unfortunate effect of taking
17 what used to be a fully compliant project, the building, the
18 property, the site were fully compliant with all of the
19 zoning regulations and the subdivision that has been approved
20 has had the unfortunate effect, and I'm sure unintended
21 effect, but still very real and unfortunate effect of moving
22 what was in full compliance into something that is no longer
23 a compliant project. That's not a permissible to be able to
24 move something that is in compliance into a position of
25 noncompliance.

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1 There are so many moving parts on this and that
2 has a lot to do with the sort of movement and change of
3 information and change of argument structure on the part of
4 Perseus. What we are doing is really relying on and using,
5 as Mr. Hanlon did, really all of the data provided by them
6 in various stages through this and as I understand it from
7 documents that they've submitted for today's hearing, I think
8 the Board will be able to see that they're moving again. So
9 those are important things to have in mind as we go forward
10 and hear this testimony. Thank you.

11 If you can go, Mr. Chairman, thank you for
12 offering, slide 19. Here, I'll just begin by just
13 reiterating --

14 (Simultaneous speaking.)

15 CHAIRPERSON HILL: Do you have that deck?

16 MR. McCRERY: I believe that's true.

17 CHAIRPERSON HILL: I don't think there is.

18 MR. HAYS: No, Mr. Young has it. It's the slide
19 presentation that we submitted. It's a separate slide
20 presentation.

21 CHAIRPERSON HILL: Okay. It's a different one?

22 MR. HAYS: Yes, it's different from Mr. Hanlon's.
23 We submitted it, Mr. Young has it. I sent it to him again.

24

25 CHAIRPERSON HILL: Okay, I'll wait for Mr. Young.

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1 MR. McCRERY: Well as that's being pulled up,
2 rather than wait in silence. The difficulty is that, as Mr.
3 Hanlon set forth, electing to use S Street as the front
4 requires the south yard to be used as the rear yard. That
5 then triggers requirements for the rear yard as set forth in
6 the zoning regulations. Unfortunately, this building is so
7 tall and the now new rear yard is so short that the developer
8 they're sort of between a rock and a hard place. They have
9 to fight two things. They have to fight a rear yard that's
10 too small according to the regulations and they have to fight
11 a building that's too big for that rear yard. The real
12 difficulty is that these are all existing conditions and you
13 really can't fight them. The very long non-retaining, well
14 I'll call it an extension of the building frankly, wall that
15 extends to the south and also extends to the north toward S
16 Street, south towards the alley, a very, very substantial
17 structure and something that the architect, John Russell
18 Pope, used not only here, but used in very, very similar
19 situations. It was a favorite device of his. He used it at
20 the National Gallery of Art to great effect and he also uses
21 it at the National Archives building.

22 MR. HANLON: May I interrupt a moment, Mr. Chair?
23 I think, Mr. Hays, was it IZIS 97, was that the PowerPoint
24 presentation?

25 MR. HAYS: It was submitted to Mr. Young, yes, we

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1 filed it with IZIS. It was filed earlier prior to the
2 November 10th hearing. I don't have the docket sheet in
3 front of me. Mr. Young. He's on the line, does he have it?

4 VICE CHAIRPERSON JOHN: Mr. Chairman, I believe
5 that's Exhibit 97 and it's 116 pages long. Is that the one?

6 CHAIRPERSON HILL: Yes, I think that's the one,
7 right.

8 VICE CHAIRPERSON JOHN: Okay. Mr. Young, it's
9 Exhibit 97.

10 CHAIRPERSON HILL: Yes, I'm having difficulty
11 pulling up some of these things so I don't know if Mr. Young
12 has that or not.

13 MR. HAYS: I e-mailed it to him --
14 Simultaneous speaking.)

15 CHAIRPERSON HILL: No, Mr. Young might have it,
16 so let's just give him a minute. Mr. Young, can you hear
17 me? Oh, never mind, okay.

18 MR. McCRERY: Oh, there it is. There you go.

19 CHAIRPERSON HILL: Yes. That's it.

20 MR. McCRERY: I'm sorry, if you could advance to
21 -- it is a long document. We aren't going to use all of it,
22 but I do wish to incorporate all of this as part of my
23 testimony, Mr. Chairman, please. For the record and for
24 your use in deliberating this question.

25 CHAIRPERSON HILL: Yes, Professor, it's in the

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1 record. I'm just trying to pull it up myself here.

2 MR. McCRERY: Oh, I see, okay.

3 CHAIRPERSON HILL: But, Mr. Young, I think is
4 trying to get to number 19.

5 MR. McCRERY: Okay. There you go. So, by
6 approving the subdivision, what's happened is then two things
7 -- two very, very important considerations. These aren't
8 marginal considerations of the zoning regulations for Zone
9 RA-9. These are central things. It addresses building
10 height and addresses yard setbacks and yard depths. These
11 are critical portions of the zoning regulations and because
12 these are all existing structures, it moves, as I said
13 earlier, it moves a once conforming, fully conforming
14 building into a now nonconforming situation and nonconforming
15 in very, very critical ways. It would present a terrible
16 precedent for the Zoning Administration moving forward. I
17 strongly, strongly suggest that this is very, very carefully
18 considered.

19 The rear yard then and another way, I think a
20 useful way of considering questions of zoning when you're
21 dealing with existing buildings is were an architect to
22 submit these drawings now for a newly built building, would
23 they pass muster with regard to the zoning regulations. The
24 answer here is no, so were McCrery Architects to submit a
25 proposal just like this one, proposing the rear yard and

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1 having the wall come into the rear yard along the south
2 property line and having that long wall come out in the rear
3 yard, that portion would be held to be in violation of the
4 zoning regulations.

5 Also the height of the building would held to be
6 in violation of the rear yard setback in relationship to the
7 height of the building and so I would need to adjust the site
8 plan accordingly and also the architecture accordingly.
9 Can't adjust the site, it's fixed. Can't adjust the
10 building, it's fixed. So the solution here is correction of
11 the decision of the Zoning Administration. Next slide,
12 please.

13 Okay, this roof, Mr. Hanlon did a very, very good
14 job of establishing that the roof is a roof. We'll be able
15 to establish that it's not an architectural embellishment at
16 all. It's, in fact, very much part and parcel of the
17 building and that even if, and I'll say here, even if one
18 wants to treat it as an architectural embellishment and call
19 it that, it violates the zoning regulations for architectural
20 embellishments, so it can't be -- you again, it's an
21 established fact, it's a fixed building, it's built, it
22 exists. It can't be redefined as something that it's not.
23 So that it's simply not an architectural embellishment.
24 Therefore, it cannot be excepted from the height restriction.

25

1 The temple's pyramidal roof rises from the upper
2 wall. Another point that the developer is trying to take
3 here is that they're trying to lower the building. Yet at
4 the same time, they're trying to say that well we have the
5 argument for the lower building and you'll see their slides
6 that do this, that try to establish the building height as
7 85.25 feet for one argument. For another argument, they'll
8 say that the height of the building is actually at the
9 underside of the roof, which is quite a bit taller. In fact,
10 the building is 139 feet tall and that's actually set forth
11 in Perseus' own documents. It's also set forth in other
12 documents you'll see. Next slide, please.

13 If the pyramid is deemed to be a roof then the
14 minimum rear yard requirements of this code, of section
15 605.1, are violated. On the other hand, if the pyramid is
16 deemed to be an architectural embellishment, which it's not,
17 but even if you were to deem it an architectural
18 embellishment, then 1501.3 is violated. So, the developer
19 in their proposal here is really putting a clamp on the
20 Zoning Administration. They're placing you between a rock
21 and a hard place as well. Next, please.

22 So the zoning regulations provide that a rear yard
23 shall be unoccupied except as specifically provided in this
24 title and it goes on. Next one, please.

25 A structure, and so here are the four exceptions

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1 that you can have for structures in a rear yard. Any
2 structure no part of which is more than four feet above the
3 ground, which is a fancy way of saying if it's higher than
4 four feet then it can't be in a rear yard. A structure not
5 including a building no part of which is four feet above the
6 grade at any point may occupy any yard required under the
7 provisions in this type. B, A fence or a retaining wall and
8 so to address this, there are two structures in the rear
9 yard, okay? We've been focused on this wall that extends out
10 and comes very, very close to the south property. But there
11 are two structures. There is this wall and it's pier and
12 there is also the areaway that Mr. Hanlon showed you in
13 Perseus' building section diagram.

14 There's two structures to be addressed here. But
15 right now, we're focused on the wall that comes out into the
16 south rear yard. It's 11 feet 6 inches tall. Being 11 feet
17 6 inches tall for its entire length, it is more than four
18 feet. So, A is not an acceptable exception to the rear yard
19 structure requirements. B, a fence or a retaining wall.
20 It's certainly not a fence. I think everyone -- we can
21 belabor this point, a couple of slides do this, we'll skip
22 ahead, but this is not a fence. The question really is going
23 to be whether it's a retaining wall or not. We'll get to
24 that very quickly.

25 And then there's this question of stairs. There

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1 are stairs that are in the rear yard now. Now that the rear
2 yard has been redefined to the south yard. There are stairs.
3 There is no question as to the stairs that face 16th Street
4 are an allowable and permission exception for the rear yard.
5 That's not a point that's being made. It's the wall that
6 abuts the stairs, it's 11 feet 6 inches tall, that is in
7 question. Further, the other structure is the large areaway.
8 Next slide, please.

9 So here's the slide that you've seen before. You
10 can see the south yard of the property. The very bottom of
11 that red box on your screen is the property line and the very
12 top of that red box is the face of the upper portion of the
13 building. Just inside that you can see the other structure,
14 the areaway, that 7-foot-6-six wide areaway. In yellow and
15 green is the large 11-foot-6-inch wall that extends well into
16 the rear yard now that it is called the rear yard. Next one,
17 please.

18 Okay, anyway the rear yard must remain unoccupied
19 of structures. So this wall and it's stone pier at the end
20 some call it a column, it's a pier, the very large pier at
21 the end do not come within the exception because both are 11-
22 foot-6 inches or a little bit higher in height. Next.

23 Here's a picture showing that -- Mr. Hanlon showed
24 a good number of pictures, there's no dispute here that this
25 a structure and that it's taller than four feet. Next.

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1 Here's the second exception. It must remain
2 unoccupied. There's an exception for a fence. Here's the
3 fence details and that sort of thing. I think we can skip
4 ahead. This is not a fence. Next one. Thank you.

5 Here's a photograph of the pier. You can see the
6 alley in red brick. You can see the property line with the
7 stone step and that little stone curb that runs along the
8 planting edge on the south wall of the property. You can see
9 the stairs ascending on the west side of the wall with that
10 aluminum railing to get up the stairs. The stairs are in the
11 rear yard and they are an exception to the structures that
12 can be in the rear yard. No contest on any of that. The
13 large pier and the wall are definitely in the rear yard and
14 are structures.

15 Now I'm going to turn your attention to the
16 retaining wall question, okay. Perseus will work to define
17 that wall, go back one, please to the photograph there. They
18 will work to tell you that this is a retaining wall. It is
19 not a retaining wall. Take a look at this so we can move
20 ahead, but to the west are stairs. To the right beyond the
21 wall and I have another photograph of that coming up soon,
22 is earth. Next, please. Okay, next again. I'm sorry, yes
23 forward, okay. Here we go. Retaining wall, okay. No, I
24 think we need to go back to 29, please.

25 Here we go. So here's the definition of retaining

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1 wall, a vertical self-supporting structure constructed of
2 concrete durable wood, masonry or other materials and here
3 I have highlighted it or emphasized this in italics, because
4 this is the critical thing, designed to resist the lateral
5 displacement of soil or other materials. This wall is not
6 designed to and does not resist lateral displacement of
7 anything including soil and including other materials. Next
8 photograph, please.

9 The 1913 photo shown below, we need to show that
10 please, was taken during the construction of the temple.
11 You've seen it before with Mr. Hanlon, the horse-drawn wagon
12 is on the south side. It clearly shows that this is a level
13 lot.

14 CHAIRPERSON HILL: It's the next slide, Mr. Young.

15 MR. McCRERY: Please, yep. Thank you, Mr.
16 Chairman. This is a level lot. It's a level lot. It's
17 defined by the building application. It's also a level lot
18 defined by the evidential proof in this photograph. The wall
19 does not retain. The wall sits upon the natural grade and
20 it's resisting no lateral forces whatsoever. Next slide,
21 please.

22 Mr. Hanlon showed you this one. It's been flat
23 ground since the very beginning. Next one, please.

24 We've seen this a couple of times. Next one. I
25 want to move around to the back side of this wall. Here it

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1 is. So here's a close up view of the rear of the wall. This
2 is the east facing and south facing corner of that large
3 wall. You can see that the earth is well down at the very
4 bottom of the wall and so this wall is not retaining any
5 earth and it is not resisting any lateral forces from the
6 east. Go back one, please.

7 Here you can see that it's not retaining any
8 lateral forces from the west. Yes, it's true that the
9 platform of the walking surface just below the numbers 7 feet
10 8 inches there, that upper surface is higher than the land,
11 the ground on the opposite side of the wall, but there are
12 no lateral forces exerted on that wall by the structure or
13 the staircase. So if you were to remove that wall as a
14 though experiment, if you were to remove that wall, the
15 stairs would remain in situ. They would not all of a sudden
16 heave to the east. That is what retaining walls resist is
17 heaving and thrust of lateral force and there is no lateral
18 force being resisted here at all. Those stairs stand on
19 their own and this wall stands on its own. It's not a
20 retaining wall. Next, please.

21 So, therefore, as it's not a retaining wall it
22 does not meet the exception provided for in the zoning
23 regulations. Next, please.

24 Beautiful magnolia. Next, please.

25 I want to move ahead please if you don't mind.

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1 Slide 42, please. So here we are, the rear yard then is
2 insufficiently deep, in violation as a result of the
3 permission to re-subdivide the lot and to allow for S Street
4 to be called the front. The resulting rear yard is
5 insufficiently deep and that is in violation of those
6 regulations at 605.1. That section requires that there is
7 a 1:3 ratio of rear yard depth in the one column to building
8 height in the three proportion in the RA-9 zone.

9 So here knowing this, the developer needs to then
10 do two things and they work to do this with their claims and
11 their assertions. One is, they've got to get that rear yard
12 distance down, however, they possibly can and they've got to
13 get the height of the building down as much as they possibly
14 can, but they're dealing with facts on the ground and they're
15 dealing with an existing building. And though an existing
16 building presents a certain set of facts that are undeniable
17 and are self-evident, the only way they can therefore get
18 these facts and the building itself, existing building and
19 the fact of the rear yard into some sense of compliance is
20 to persuade the Board that the building is not as high as it
21 actually is and that the rear yard is deeper than it actually
22 is. They're asking you to look away and I'm not saying that
23 from a criminal standpoint or anything like that, it's just
24 that that's the basis of their effort. They have to be able
25 to do this in order to -- and you have to buy into that these

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1 assertions in order for this thing to even comply. They're
2 asking a lot, all right? They're not asking for three or
3 four inches, they're asking for tens and tens of feet in both
4 directions, vertical and horizontal, okay?

5 So the project then is designed to be constructed
6 on a lot less than six feet from the rear of the temple,
7 which Mr. Hanlon talked about this, I don't need to repeat
8 this one, please. If we can just keep going ahead, please
9 to the next diagram.

10 Okay, so here we go. The minimum rear yard shall
11 be established for lots in the RA-9 zone as set forth in the
12 following table. In RA-9 the zone is 15 feet or a distance
13 equal to four inches per one foot, that's 1:3 of the
14 principal building height, okay? Here there's only one
15 principal building and it is the temple itself. Next,
16 please.

17 So that just sets forth the codes, okay. What we
18 have then is that they've done this switch, but it's not a
19 cure. They've switched the side yard to the rear yard and,
20 you know, there's enough case law in front or not case law,
21 but there's enough precedent with this Zoning Administration
22 to allow that to happen. They decided to do it and
23 unfortunately the facts on the ground and the building itself
24 don't support what is required and don't conform with what's
25 required in the zoning regulations. Next, please.

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1 It's this diagram that they used to attempt this.
2 So they're going to establish the building front on S Street.
3 Nonetheless, they're going to measure the height of the
4 building from 16th Street, it's former front, and there's
5 some precedent out there that allows that to happen. I think
6 you might all want to revisit that because it presents future
7 difficulties for the zoning regulations and especially for
8 considerations of the zoning regulations that you all
9 undertake. There's one case and I'm not sure that it's a
10 good precedent to have been set and the Board might consider
11 taking an opportunity to reset that.

12 Nonetheless, the developer is calling the front
13 S Street. They're using the building front to measure the
14 height of the building and they're doing that because they
15 think that there's an opportunity to shave four feet six
16 inches off the height of the building. You'll see in a later
17 slide that they might present that this very point where
18 they're trying to measure from the top of the stair structure
19 rather than from the natural grade at the sidewalk level.
20 Mr. Hanlon did a good job of presenting this slide. Let me
21 just say again that here it is, it's 139 feet to the top of
22 the roof. We'll stipulate to that assertion and we will not
23 stipulate to their attempt to find this an architectural
24 embellishment. It's the roof of the building. Next, please.

25 So here's a diagram then showing --

1 (Simultaneous speaking.)

2 CHAIRPERSON HILL: Hey, Professor McCrery?

3 MR. McCRERY: Yes?

4 CHAIRPERSON HILL: I'm just getting on timing
5 here, just try and understand I'm kind of flipping through
6 your slide deck. Do you know how far you're going? Because
7 you're at 50 minutes now.

8 MR. McCRERY: As a total team? I'm not far away.
9 I'm not going to present all of the slides at all.

10 CHAIRPERSON HILL: That's all right. I'm just
11 trying, because I'm flipping through your slide deck also as
12 you're talking, so I'm just trying to see how far you're
13 going to get.

14 MR. McCRERY: This slide 139 feet, 140 feet like
15 we said, we'll stipulate to 139-foot building height
16 dimension. It needs to be measured though from the natural
17 grade at the sidewalk and you can see that set forth there
18 at just around 140 feet. Next one, please.

19 It comes to this and that is that the necessary
20 depth of the rear yard given that it's a 139-foot structure
21 would, you would think, be one-third of 139, except that
22 they've backed themselves into the corner of their new rear,
23 the building rear is now the south elevation. The south
24 elevation unlike the east front of the building and the
25 former front of the building on the west and the former rear

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1 of the building on the east, don't have areaways. But
2 calling the front yard S Street and calling the south yard
3 the rear yard, they have to take all the structures that are
4 along the south side of the building and are part of the
5 building.

6 We talked about the wall that reaches out well
7 into the rear yard and comes within six feet two inches of
8 the new rear yard property. Now we need to talk about this
9 areaway. The areaway is of sufficient depth as established
10 in the zoning regulations that it has to be considered as
11 part of the height of the building. So it's 15 feet deep as
12 set forth in documents presented by the developer. We don't
13 disagree with that dimension and so to the 139 feet needs to
14 be added 15 feet of building height, which exacerbates the
15 problem even more. So we now have a 154-foot building
16 measured by the developer and as defined by the zoning
17 regulations is 154 feet. And a 154-foot building divide that
18 by three and the rear yard requirement is 51 feet 4 inches
19 and it's 51 feet 4 inches from the rear property line to the
20 nearest structure. The nearest structure is that big
21 retaining wall, which is only six feet away from the rear
22 property line. The next nearest structure is the wall of the
23 areaway and the areaway itself which is a dimension that's
24 substantially less than 51 feet 4 inches. We're looking for
25 a rear yard that needs to be 51 feet 4 inches deep and we're

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1 nowhere near it.

2 Now Perseus' own diagram calculates that the wall
3 of the building that they want to use as the rear yard is at
4 42 feet 6 inches, so even if, even if they use their
5 preferred measurement of the rear lot, the building itself
6 sits squarely in the midst of the rear yard. We're not
7 talking about the wall that they want to call a retaining
8 wall. We're not talking about the areaway, we're talking
9 about the facade of the building they want to use, it's in
10 violation of the rear yard. It's a really, really tough ask.
11 Next one, please.

12 So what they're doing is they're trying to chip
13 away at this, okay? And it's all in violation of 605.1 and
14 by a lot, not by a little bit. Next one, please.

15 Okay, so what this slide does is go through and
16 calculate all that stuff. Scenario one which I just
17 presented to you, it's 51 feet 4 inches and it violates
18 section 605.1. If you measure the temple height from S
19 Street, okay, then you end up with a rear lot requirement of
20 46 feet 4 inches, still in violation of it. Next one,
21 please.

22 So basically however you measure it, however you
23 measure it, this existing building and that rear lot line it
24 can't be found to be in conformance with the zoning
25 regulations at all. Okay, so here again, this is another way

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1 that they're trying to measure the rear, they're trying to
2 assert the rear yard is 32 feet. It's still not big enough.
3 Next one, please.

4 Then there's this attempt to call the roof an
5 architectural embellishment.

6 CHAIRPERSON HILL: Hey, Professor McCrery?

7 MR. McCRERY: Yep.

8 CHAIRPERSON HILL: I'm just checking, is the roof
9 your last argument?

10 MR. McCRERY: Yep.

11 CHAIRPERSON HILL: Okay, all right go ahead.

12 MR. McCRERY: Here we go, so architectural
13 embellishment is all set forth in 1501.3. It does allow for
14 architectural embellishments. Earlier submissions from the
15 developers have set forth a bunch of examples of such
16 architectural embellishments, all of which support our
17 argument not theirs. That this is not an architectural
18 embellishment, that this actually the roof of the building.
19 Architectural embellishments are limited to 30 percent of the
20 wall that they sit upon.

21 What they're going to do is they're going to try
22 to say that long before there was a zoning regulation, there
23 was the requirements for tall buildings to be approved by the
24 D.C. Commission. D.C. Commission did approve this. It came
25 into their jurisdiction not because it's an important

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1 building or that it's a beautiful building. It came into
2 their jurisdiction because it's a tall building. Those
3 people had to go, the architect and the Masons, when they
4 originally built this, they were required to go to the D.C.
5 Commission and get D.C. Commission's approval because it
6 otherwise would have been in violation of the Height Act.
7 They went to the Commission because it's a tall building and
8 they went to it and they did approval from the Commission for
9 building higher than the building heights restrictions
10 allowed. This is a tall building. It's always been a tall
11 building from the very get go. Next side, please.

12 The roof, it's a roof. It's an outside cover of
13 a building or structure including the roofing and all the
14 materials and all the construction necessary to maintain the
15 cover upon its walls or other support. Also the highest
16 point or reach of something. By contrast, Webster's
17 Dictionary defines embellishment in relevant part as follows:
18 The act or process of embellishing or something serving to
19 embellish. In other words, it's a thing that you could have
20 or don't have to have. This building has to have that
21 pyramid, it's part and parcel of the design of the building.
22 It's part and parcel to the fabric of the building. It's
23 part and parcel of the form of the building both exterior and
24 interior as seen on a bunch of earlier slides. This is not
25 an enhancement. It's not a decoration. It's not an

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1 embellishment. This is the roof of the building. Next,
2 please.

3 Thus, in order for 1501.3 to apply, the dome must
4 be determined by you all to be merely an architectural
5 embellishment. The purpose of architectural embellishments
6 is to permit limited decorative detail to embellish a
7 building. By contrast, here the temple's pyramid obviously
8 does not fall within the definition of embellishment because
9 it's not an inessential or decorative or fanciful detail.
10 It's essential to the building to give it form and identity
11 both inside and out. Next slide, please.

12 Here, you've seen this slide, the argument has
13 been made. The Masons define this as the roof. The
14 Architectural Review defined it at the very beginning as a
15 roof. Everyone calls it the roof. The drawings call it a
16 roof. Documents call it a roof. Everyone's calling it a
17 roof. You're being asked contrary to 110 years of tradition
18 of people calling this the roof and knowing that it's a roof,
19 the Board is being asked to say well, no, it's not a roof.
20 It is a roof. It's the roof of this building and therefore
21 you have to measure to the top of it. Next, please. Not
22 you, but one must, okay?

23 Here's the roof of the temple and a great
24 photograph of it. It's an article, Roof Construction of the
25 Temple. It shows very clearly the roof rises on the wall

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1 that extends beyond and through the colonnade that wraps
2 around the building and at the very top of that wall rises
3 the roof. For this to be an architectural embellishment, the
4 pyramidal roof could only rise from 30 percent of one of
5 those walls. But yet here it rises from 100 percent of those
6 four walls. Next, please.

7 CHAIRPERSON HILL: Hey, Professor?

8 MR. McCRERY: Yep.

9 CHAIRPERSON HILL: How far are you going on your
10 slide deck?

11 MR. McCRERY: I know. I'm trying to keep it
12 short. We're almost there.

13 CHAIRPERSON HILL: Okay.

14 MR. McCRERY: All right.

15 CHAIRPERSON HILL: I'm not trying to -- I'm just
16 -- I'm at my hour.

17 MR. McCRERY: Yep.

18 CHAIRPERSON HILL: And I'm like flipping through
19 your slide deck and you've got like probably 10 more slides
20 of the roof.

21 MR. McCRERY: Yes, if you can go to 58. Here's
22 a very clear, helpful diagram of what this building is. The
23 red outline is the building that is the interior enclosure.
24 The blue line is the colonnade that runs around the
25 perimeter. You can see then that the walls rise all the way

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1 up to the base of the roof and the roof rises from 100
2 percent of that wall. The red is the structure of the
3 building and the blue is a lower, if you want to call that
4 architectural embellishment you could, I don't as it's simply
5 the colonnade. It's part and parcel of the building as well.

6 Perseus in this diagram is trying to assert that
7 the building height stops at the top of the blue line. It's
8 absurd. I'm sorry to be rude, but they're asking everyone
9 to believe something that's simply not true. The top of the
10 walls of this building are at the base of that roof. The top
11 of the building is the top of the roof. Thank you. Next
12 one.

13 The top of the roof is 139 feet and this goes on.
14 I mean I think we don't have to go through all this stuff,
15 but one point here is that the developer has previously tried
16 to say that each one of those steps is an independent
17 architectural embellishment and that each one of those steps
18 is therefore progressively more in with an embellishment on
19 top of embellishment on top of embellishment on top of
20 embellishment on top of embellishment and this is the
21 rationale that this Board is being asked to adopt as the
22 basis for the incorrect conclusion that the building height
23 is not the building height and that the rear yard is not the
24 rear yard. I think I can stop right there, Mr. Chairman.

25 CHAIRPERSON HILL: Okay, thanks, Professor.

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1 MR. McCRERY: Okay. I greatly appreciate you
2 allowing me to go over. I appreciate that. Thank you.

3 CHAIRPERSON HILL: Okay, who was starting to
4 speak?

5 MR. HAYS: This was me, Chairman Hill. Can we,
6 since we don't have time for me to go through all the slides,
7 can we adopt -- we'd like to adopt the remaining slides as
8 his testimony and his four expert reports as his written
9 testimony so that it's all in the record and is getting
10 admitted into evidence?

11 CHAIRPERSON HILL: I got it, Mr. Hays. It's all
12 in the record now.

13 MR. HAYS: Okay. Thank you.

14 CHAIRPERSON HILL: Okay, so what I'm going to
15 propose is we take a quick break just to kind of get our
16 thoughts together. Then I was going to ask my fellow board
17 members to have any questions ready that they might have of
18 the Appellant, knowing that we might not even ask our
19 questions now and might hold them until we hear from
20 everybody. Then I would ask the DCRA if they have any
21 questions and/or the property owner or lessee and then we'll
22 go to DCRA's presentation then the lessee's presentation and
23 we'll just kind of go back and forth, round and round until
24 we get through all of this. So, let's go ahead and just take
25 a quick 5- to 10-minute break, a 5-minute break if we can,

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1 just to kind of take a break and come back.

2 (Whereupon, the above-entitled matter went off
3 the record at 11:23 a.m. and resumed at 11:35 a.m.)

4 CHAIRPERSON HILL: All right. I'm looking at my
5 fellow Board members first. Does anybody have any questions
6 of the appellant?

7 VICE CHAIRPERSON JOHN: Not at this time.

8 CHAIRPERSON HILL: Okay. I see a couple of
9 people. I'm going to go with Commissioner May first.

10 MEMBER MAY: Thank you very much. So I think my
11 questions are mostly directed at Mr. McCrery. Hello, Mr.
12 McCrery. Nice to see you in a different context.

13 MR. McCRERY: Very good to see you in a different
14 context. How are you, sir?

15 MEMBER MAY: Fine. So I guess I sort of have a
16 basic question about domes and roofs, right? I mean, isn't
17 it -- wouldn't you consider a dome to be a roof?

18 MR. McCRERY: Yes, sir.

19 MEMBER MAY: Okay. And so the fact that it's been
20 historically called a dome doesn't mean that it's --

21 MR. McCRERY: I think if I can gently correct you,
22 sir, it's actually a pyramid. Domes are definitionally
23 spherical. This is pyramidal. But that's maybe --

24 (Simultaneous speaking.)

25 MR. McCRERY: But it's definitely a roof, yeah.

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1 MEMBER MAY: Yeah, okay. Definitely a roof. I
2 mean, it's pyramidal on the outside. It's a dome shape on
3 the inside.

4 MR. McCRERY: Correct, yeah.

5 MEMBER MAY: And yeah, I mean, I would've called
6 it a pyramidal dome, but --

7 MR. McCRERY: Okay, yeah. I think that's also
8 useful, yeah.

9 MEMBER MAY: Yeah. Now let's see. You made the
10 point with regard to the 11-foot high wall or the 8-foot high
11 wall. However, we know which wall it is, right?

12 MR. McCRERY: Yes, yes, sir.

13 MEMBER MAY: I think you actually called it part
14 of the building in essence. So in circumstances like that
15 where the rear yard varies because the rear of the building
16 varies, how would you measure the depth of the rear yard?

17 MR. McCRERY: Well, first I would find out how to
18 measure it as required by the zoning regulations and follow
19 that. In this case, I would calculate the -- I would measure
20 from the south most extent of the footprint of that wall.
21 It's ver plinth. It's the plinth underneath all of that,
22 right?

23 (Simultaneous speaking.)

24 MR. McCRERY: And then I would measure it to the
25 property. And developers put that at 6 feet 2 or something

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1 very close to 6 feet.

2 MEMBER MAY: Right.

3 MR. McCRERY: I'm happy to agree with that. And
4 then I would go over to the other -- we'll call it the west
5 most structure in the rear yard. And the east most structure
6 in the rear yard is the southeast corner of the areaway. And
7 then I would draw a diagonal line between those two and
8 actually snap a line, just go out with a string and then
9 measure from the midpoint of that string back perpendicular
10 to the south property line. That's how I would do it, sir,
11 because the regs call for the mean -- not an average, a mean.

12 MEMBER MAY: Okay, yeah. I mean, that's
13 interesting. I've never seen it done that way in zoning in
14 the District. Well, I don't know zoning elsewhere. I only
15 know --

16 (Simultaneous speaking.)

17 MR. McCRERY: I think the first thing is go to the
18 regs and see what they require. The regs are very particular
19 about how and where one measures.

20 MEMBER MAY: Right.

21 MR. McCRERY: The building height measurement
22 point is very, very clearly defined, right?

23 MEMBER MAY: Yeah, I knot.

24 MR. McCRERY: Right. So in other words, it's
25 clear that the regs are serious about it. And so I would

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1 interpret it as carefully and strictly as I possibly could.
2 And that what I would do.

3 MEMBER MAY: We'll wait to hear from what the
4 zoning administrator says. But I think it's been -- it has
5 been historically treated as an average.

6 MR. McCRERY: Okay.

7 MEMBER MAY: So the --

8 MR. McCRERY: I guess if I can just interject.
9 The difficulty with the way that the average is, is that --
10 as it's been calculated by the developer is that they've come
11 along every ten feet and measure back perpendicular to the
12 property line and come up with a great number -- I think 20
13 or 21 instances.

14 MEMBER MAY: Yeah, I'm not sure about that route
15 either, and I'm not sure if that's historical.

16 MR. McCRERY: I don't know where that's derived
17 from. I mean, if they're trying to get their average up,
18 they could've measured every inch and had even more -- it
19 would've helped their average.

20 MEMBER MAY: We'll hear from them, and we'll hear
21 from the zoning administrator.

22 MR. McCRERY: Okay. Thank you.

23 MEMBER MAY: So do you know anything about the
24 origin of the 30 percent rule, what that was intended to
25 address with regard to the -- I mean, how that got written

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1 in the zoning regulations, because it wasn't part of the
2 original zoning regulation.

3 MR. McCRERY: I don't know how. I think it
4 probably came -- I don't know. It's speculation on my part.
5 But it seems reasonable that it came from a proposal to
6 beautify the skyline of Washington, D.C. It's comparatively
7 very flat. I think a very good and fairly early example of
8 this permission for architectural embellishment is along on
9 K Street on the north edge of Franklin Square --

10 MEMBER MAY: Yeah.

11 MR. McCRERY: -- where there's two pyramidal
12 architectural embellishments. And they very clearly comport
13 with the zoning regulations for the size and limitation of
14 their footprint with regard to the rest of that long
15 building. And they also beautify the skyline every nicely.

16 MEMBER MAY: Yeah. I mean, I happen to know where
17 it came from because I think that was a text amendment that
18 was enacted relatively recently during my tenure which means
19 during the last -- well, during my current tenure, so within
20 the last 14 years.

21 MR. McCRERY: Well, I'm grateful for it.

22 MEMBER MAY: Yeah, but it wasn't -- I think it was
23 intended to address a circumstance where many developers were
24 simply extend their facades an extra 10 or 15 feet above the
25 height of roof for what seemed like the sole intention of

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1 making the buildings seem taller. And so it was limited to
2 30 percent of the facade because there was a fair amount of
3 mischief going on --

4 (Simultaneous speaking.)

5 MR. McCRERY: I can probably assert and maybe you
6 can say that it was certainly not written in order to bring
7 previously approved tall buildings into conformance.

8 MEMBER MAY: Right, right. Well, it certainly was
9 not the intention to prevent anything like the masonic temple
10 from being built. It was always intend -- it was intended
11 as a measure to protect the Height Act heights.

12 MR. McCRERY: Yes, sir.

13 MEMBER MAY: Try to prevent anything that would
14 make the skyline more unacceptable. So I was a little
15 confused by your testimony. Do you think that the zoning
16 regulations say that you cannot separate the front of the
17 building from the building height measuring point?

18 MR. McCRERY: No. Well, the zoning regulations
19 aren't clear. And I think that that's why it went to an
20 appeal where permission was previously granted in a case
21 where you can call the front of a project -- the side of a
22 project the front like they're doing here. And then you can
23 still nonetheless measure from the new side. And that's --
24 I guess there is a case where that happens. It doesn't seem
25 to be -- it's a non-straightforward interpretation of the

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1 zoning regulations.

2 MEMBER MAY: And again, this is one of those
3 things that, I mean, I devoted --

4 MR. McCRERY: Yeah.

5 MEMBER MAY: -- too much of my life to dealing
6 with straightening out the building height measuring point
7 question --

8 MR. McCRERY: Yeah.

9 MEMBER MAY: -- going back even to my earlier
10 tenure on the zoning commission back in the early 2000s and
11 we first took this on. And we eliminated things like
12 measuring from viaducts and so on.

13 MR. McCRERY: Right.

14 MEMBER MAY: But I think the idea that building
15 height and where the front of the building can be considered
16 were very thoughtfully considered several times, including
17 most recently in the zoning regulation rewrite in 2016. It
18 does remain a separate consideration, I think. I can
19 understand why it would be confusing to the normal layperson
20 or --

21 MR. McCRERY: Yeah, sure, yeah.

22 MEMBER MAY: -- and even to many building
23 professionals because there are a lot of things about the
24 zoning regulations that are confusing.

25 MR. McCRERY: Well, and here the thing is this is

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1 that in this slide, it's just flat as a pan. And the reason
2 -- the motivation for the use of -- so you would think, well,
3 then, who cares. S Street is at the same elevation as 16th
4 Street.

5 It's the same elevation as the alley to the south.
6 So who cares what yard you use. And the answer is, well, the
7 developer cares because it buys them another 4 feet 3 inches
8 if you're willing to say and permit them to assert and claim
9 that they can measure from the staircase -- from the top of
10 the staircase and up.

11 Zoning regulations say you need to measure from
12 natural grade. So they're looking for another 4 feet there.
13 And that's their motivation for coming around the side -- the
14 new side.

15 MEMBER MAY: Right. I think that's it for my
16 questions. So certainly you've prompted a number of
17 questions that I'll have for the zoning administrator.

18 CHAIRPERSON HILL: Great. Thanks, Commissioner.
19 Mr. Smith?

20 MEMBER SMITH: Okay. Mr. May asked one of the
21 questions I was going to ask. My second question is
22 regarding clarity. And this is to Mr. McCrery and maybe I
23 missed it.

24 In your presentation, you had stated that Perseus
25 has argued that the rear yard is 32 feet. But you're making

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1 an argument that based on how they measure the setback, it
2 should be 46 feet 4 inches. Could you explain that a little
3 bit more just for my own clarification at how you arrived at
4 that?

5 MR. McCRERY: Sure. So there -- the building
6 height, let's go to building height first. Okay? The
7 building height needs to be measured from the new front.
8 Okay. And the new front yard is S Street.

9 And that's a self-elected step one by the
10 developer. So the front of the building is now S Street.
11 So you take the 139 foot elevation that it rises from above
12 natural grade.

13 But along S Street, there's an areaway, just like
14 there is an areaway along the alley side as well. So on the
15 north elevation, on the south elevation, those elevations
16 descend 15 feet farther into the ground. But because of the
17 depth of the areaway, it's 7 feet 6 inches, then the zoning
18 regulations are very clear.

19 You have to measure from the bottom of that
20 areaway. So it's 139 feet, the portion that's above natural
21 grade, plus the 15 feet below and that gets you that larger
22 number. And so I am clear, 139, that's 154 feet, sir.

23 And then divide that by 3, that 1 to 3 ratio,
24 building height to rear yard requirement is 51.33 feet which
25 is 51 feet 4 inches. So that would be the required rear yard

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1 measuring the front of the building according to the self-
2 election of the developer. They don't want -- so if you just
3 jot that down, 51 feet 4 inches, that's my interpretation of
4 what the zoning regulations require and that is the actual
5 building height.

6 Now what the developer proposes to do is not use
7 S Street as the front. They propose to use 16th Street as
8 the building front for the purpose of measuring the height
9 of the building. And they propose to do that for the obvious
10 reason of not having to include that extra 15 feet and the
11 height of the building. Understand.

12 So that reduces the building from 154 feet back
13 to 139 feet. And if you divide 139 by 3, then the rear yard
14 would need to then be 46 feet 4 inches. That make sense?
15 And the rear yard is not 46 feet 3 inches -- I'm sorry, 46
16 feet 4 inches.

17 And it's not 46 feet 4 inches no matter how anyone
18 measures it, using means or averages or anything. It never
19 comes close to being 46 feet 4, and it certainly doesn't come
20 anywhere close to being 51 feet 4. Does that answer your
21 question, sir?

22 MEMBER SMITH: Yes, yes. That's was what I was
23 looking for. So that answers my question. Thank you.

24 MR. McCRERY: Thank you for the opportunity to
25 clarify. Thank you.

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1 MEMBER SMITH: No problem.

2 CHAIRPERSON HILL: Okay. Let's see. I'm going
3 to turn to Mr. White. Mr. White, do you have any questions
4 of the appellant? I can't hear you, Mr. White. Sorry. No.
5 I heard a noise there for a second. Maybe --

6 MR. WHITE: I'm using my phone for audio. I'm
7 having a problem with audio on my computer.

8 CHAIRPERSON HILL: No problem.

9 MR. WHITE: Okay. So I don't have any questions
10 for the appellant. Thank you.

11 CHAIRPERSON HILL: Okay. Ms. Roddy?

12 MS. RODDY: Yes, I do have a number of questions.

13 CHAIRPERSON HILL: Okay.

14 MS. RODDY: And they are for Mr. McCrery.

15 CHAIRPERSON HILL: Okay.

16 MS. RODDY: Do you point to any documentation of
17 where the rear yard was designated at the temple was
18 constructed.

19 MR. McCRERY: No, I can't. But know that the
20 temple was constructed before there were zoning regulations.
21 So there would not have been the requirement at that point
22 to indicate front, rear, sides. Also, I would just say that
23 it's quite evident in the architectural design what the front
24 of the building is, what the rear of the building is, and
25 what the sides of the building are.

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1 Now you had testified that at the time the temple
2 was built that the dome was permitted to be erected to a
3 greater height than the limits prescribed in the Height Act.
4 Is that correct?

5 MR. McCRERY: That's my understanding, yes. And
6 I did say that, yes.

7 MS. RODDY: And your testimony is that that
8 additional height was approved by the Commissioners and was
9 not approved through the amendment process as an amendment
10 to the Height Act. Is that correct?

11 MR. McCRERY: I did not testify to that.

12 MS. RODDY: So was that height approved by
13 Commissioners? Or was an amendment to the Height Act made
14 to allow that additional height?

15 MR. McCRERY: What my testimony is, is in the
16 record. But I repeat what I said and that is that the fact
17 that they had to present their project for permission to
18 build it to the D.C. Commissioners is evidence that it was
19 too tall.

20 (Simultaneous speaking.)

21 MS. RODDY: Are you aware --

22 MR. McCRERY: In other words -- okay, go ahead.

23 MS. RODDY: Are you aware of any amendment to the
24 Height Act for this property?

25 MR. McCRERY: No, I'm not.

1 MS. RODDY: Okay. So you also testified that
2 structures less than 4 feet in height are permitted in a rear
3 yard, correct?

4 MR. McCRERY: Structures less than 4 feet, yes.

5 MS. RODDY: So is it your position that structures
6 less than 4 feet in height are permitted in a rear yard but
7 that structures below grade such as areaways are not?

8 MR. McCRERY: Is it my -- say that again. Ask
9 that again, please.

10 MS. RODDY: Well, you had indicated that the
11 areaway should not be included in the depth of the rear yard.
12 And so I'm trying to understand the basis for that. If
13 structures less than 4 feet are permitted, are below grade
14 structures not permitted?

15 MR. McCRERY: No, I think it's not a well-placed
16 question. I say that respectfully. The zoning regulations
17 are very clear that the areaway is a structure.

18 And the reason why and that it has to be measured
19 as part of -- considered part of the structure of the
20 building because of its dimension. And so it's very much
21 part and parcel of the building itself. And since a building
22 cannot sit in its own rear yard, then the areaway cannot be
23 considered to be in the rear yard.

24 MS. RODDY: So your testimony then is that the
25 below grade structure is not permitted --

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1 (Simultaneous speaking.)

2 MR. McCRERY: No, no. My testimony is exactly
3 what the record says it is. Thank you.

4 MS. RODDY: And so with respect to the retaining
5 wall, the retaining wall immediately abuts the areaway that
6 is south of the temple. Is that correct?

7 MR. McCRERY: I won't agree that it's a retaining
8 wall. So --

9 MS. RODDY: The wall that we're discussing.

10 MR. McCRERY: The wall that we're discussing, yes.
11 Your question again, please.

12 MS. RODDY: It abuts the areaway that is south of
13 the temple.

14 MR. McCRERY: There is a stretch of it that it
15 abuts the areaway, yes. And I would say -- well, we measure
16 it exactly 7 feet 6 inches.

17 MS. RODDY: Okay. So there appeared that 7 feet
18 6 inches of the wall that abuts the areaway. And that wall
19 extends below grade to the bottom of the areaway.

20 MR. McCRERY: It does do that in that stretch.
21 Yes, it does.

22 MS. RODDY: And is the wall then retaining the
23 soil from spilling into the areaway?

24 MR. McCRERY: I'm not aware of what is on the east
25 side of that wall below the terraced surface. So I'm not

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1 able to say with any authority what or whether that portion
2 of that wall is acting as a retaining wall. I can say that
3 anything farther south of that areaway is clearly not
4 retaining as it extends farther.

5 MS. RODDY: But your testimony for that portion
6 is that you can't confirm yes or not whether --

7 (Simultaneous speaking.)

8 MR. McCRERY: That's correct. That's correct.

9 MS. RODDY: And I don't know if these questions
10 are appropriate for you. They, I believe, were included in
11 your expert report. And it's been incorporated into the
12 presentation here.

13 It's not clear to me whether we're still pursuing
14 other violations of the zoning regulations with respect to
15 parking, the purpose and intent regulation, side doors.
16 There were a number of things that were included. For the
17 completeness of the record, I would like to pursue questions
18 on that if that's okay with the Chair.

19 MR. McCRERY: Mr. Chairman?

20 CHAIRPERSON HILL: Yeah, maybe Ms. Nagelhout, you
21 can help me also. Like, specifically, I thought we addressed
22 in the preliminary matters the first time we went through
23 this what exactly we were arguing or what was in the original
24 appeal. And I don't know, Ms. Nagelhout or Ms. Ricker, if
25 you guys can help me with do we need to now go through other

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1 items and if they were included in the original appeal.

2 MR. HAYS: I can add that Mr. -- Professor
3 McCrery's report did not address those issues. So that would
4 be beyond the scope of direct or even anything that he's
5 written about. He wasn't -- he didn't offer an opinion on
6 those issues.

7 CHAIRPERSON HILL: It's okay, Mr. Hays. Give me
8 a second. Apparently, it's in the record. And that's what
9 Ms. Roddy is speaking to. And so I'm just trying to clarify
10 with legal counsel here whether or not Ms. Roddy now has to
11 speak to other things that were in the record that may not
12 have been addressed in the original appeal. That's what I'm
13 trying to understand.

14 VICE CHAIRPERSON JOHN: Mr. Chairman, if I could
15 --

16 CHAIRPERSON HILL: Sure. Go on, Ms. Vice Chair.

17 VICE CHAIRPERSON JOHN: -- I don't recall
18 narrowing the issues when we ruled on those various motions.
19 I believe we said that we would ask the parties to address
20 only the essential issues that the Board had to decide such
21 as the building height measuring point and so on. So I would
22 think -- and I'm just opining, waiting on our counsel to
23 speak that I would expect that Ms. Roddy would have to
24 address all of the issues raised.

25 Or she could rest on the record which is quite

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1 clear as to those issues. So I believe in her statement she
2 could. But I don't believe that because those issues were
3 not raised by Mr. McCrery that she should address them at
4 this time. Those would be my thoughts.

5 CHAIRPERSON HILL: Okay. Ms. Roddy, do you have
6 any comments concerning the Vice Chair's thoughts?

7 MS. RODDY: That's fine. I'm happy to address
8 this during my presentation -- during our presentation.

9 CHAIRPERSON HILL: Okay. All right. Well, then
10 Ms. Nagelhout, I don't need your answer at this point. Ms.
11 Roddy, other questions?

12 MS. RODDY: No, that's all I have. Thank you.

13 CHAIRPERSON HILL: Okay. All right. Mr. White,
14 if you want to go ahead and give your presentation. You're
15 going to need the phone again, Mr. -- or maybe not. Can you
16 speak up, Mr. White?

17 MR. WHITE: Yes, I think I was muted by --

18 CHAIRPERSON HILL: Yeah, we can hear you now.

19 MR. WHITE: Okay. Thank you. Good morning,
20 Chairman Hill and members of the Board. We're here today
21 because the appellant, Michael Hays and the DECAA challenge
22 the zoning administrator's approval of the subdivision of Lot
23 108 and Square 192 into two lots, Lot 110 also referred to
24 as the temple lot on the west, which is where the Scottish
25 Rite Temple is located, and Lot 111 commonly referred to as

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1 the eastern lot on the east.

2 Appellants filed nearly identical appeals arguing
3 that the created temple lot violates numerous zoning
4 regulations and that the zoning administrator erred in
5 approving the subdivision. DCRA will demonstrate that the
6 zoning administrator's determination was based upon a
7 thorough review, careful consideration, and the correct
8 application of the zoning regulations. In support of the
9 agency's position, we'd like to call Matthew LeGrant, Zoning
10 Administrator, to testify.

11 CHAIRPERSON HILL: Okay, sure. Mr. LeGrant?

12 MR. LeGRANT: Okay. Good morning.

13 MR. WHITE: Mr. LeGrant, thank you. Would you
14 please just state your name for the record and tell us your
15 position with the Department of Consumer and Regulatory
16 Affairs.

17 MR. LeGRANT: Yes, thank you, Mr. White. Yes,
18 this is Matthew LeGrant, Zoning Administrator of DCRA. I've
19 been in the position for 16 years.

20 MR. WHITE: Okay. And just briefly describe for
21 us your duties and responsibilities as the zoning
22 administrator.

23 MR. LeGRANT: Yes, the responsibilities of the
24 Office of the Zoning Administrator is to administer --

25 MR. HANLON: Mr. Chair -- I'm sorry to interrupt,

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1 Mr. LeGrant. Could Mr. LeGrant come close to the microphone
2 or speak louder? I have a lot of trouble hearing what he's
3 saying.

4 MR. LeGRANT: Okay. Let me see if I can move the
5 microphone closer. I apologize.

6 CHAIRPERSON HILL: That's all right, Mr. LeGrant.
7 Mr. Hanlon, you guys also tried to jack up your mics. I can
8 hear them okay. Mr. LeGrant, go ahead and speak up a little
9 bit if you could.

10 MR. LeGRANT: Okay. Just let me know, Chair, if
11 you cannot hear me and I will try to speak up. Okay. So I
12 was starting, the responsibility of the Office of Zoning
13 Administrator is to enforce, administer, and interpret the
14 zoning regulations for the District of Columbia. And in
15 doing so, we review applications that come to DCRA, building
16 permits, certificates of occupancy, and subdivisions to
17 review for compliance.

18 MR. WHITE: Thank you. Will you just describe the
19 general process for approval of a subdivision. And maybe if
20 you need to differentiate how it differentiates from other
21 approval processes.

22 MR. LeGRANT: Certainly. So of course as myself,
23 I do not go over each and every subdivision. Nevertheless,
24 they are reviewed by the people, my staff in my office which
25 I'm ultimately responsible for. The process for a

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1 subdivision is different than that for a building permit.

2 The building permit comes in for review and is the
3 review of the building permits, then many issues associated
4 with the use of the building and the dimensions of the
5 building and so forth. But in some instances, applicants
6 will apply for a subdivision prior to a permit. But
7 sometimes those things happen simultaneously.

8 MR. WHITE: Okay. And so the appellants here
9 challenge your approval of subdivision -- the subdivision of
10 Lot 108, Square 192. Can you just please tell us the review
11 process this particular subdivision underwent?

12 MR. LeGRANT: Certainly. Thank you. The
13 subdivision applications come in. They're coordinated by
14 DCRA's office as a surveyor. And then they're routed to my
15 office for review.

16 So for subdivisions, in this case the subdivision
17 application came in. It's called subdivision plat that
18 depicts the division of land. And we look at the area in and
19 around --- and this, of course, the Scottish Temple is on,
20 the area in and around the temple is looked at -- I'll back
21 up.

22 The area in and around the Scottish Temple is
23 looked at a number of developers over the years. In this
24 case, I believe the discussions with the Perseus began in or
25 around February 2018. If I recall, counsel for Perseus and

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1 myself met in my office.

2 We looked at some diagrams and plans and we
3 discussed zoning issues with the scenario of the lot being
4 subdivided. This was well before the pandemic. And we
5 discussed the proposed division of land in general. And then
6 as is the practice with an appeal is files as the case here,
7 I reviewed the matter for compliance with zoning regulations.

8 MR. WHITE: Okay. And just to be clear because
9 it has been brought up in the record, holding meetings and
10 having telephone calls such as you did in this matter is well
11 within the normal course of practice of your review process
12 as the zoning administrator. Is that correct?

13 MR. LeGRANT: Yes.

14 MR. WHITE: Okay. At this time, would you be able
15 to pull up our slide presentation in the 20452 case? It's
16 Exhibit 99. And in the 20453 case, it's number 129. Okay.
17 Mr. LeGrant, would you look at Slide No. 1? Can you describe
18 what this document is?

19 MR. LeGRANT: Yes. So this is the -- we call it
20 the subdivision application. Actually, it's a plat. It's
21 a graphic depiction of the subdivision.

22 Again, you can see the Office of Surveyors slashed
23 across it and it's come to the Office of Surveyors. And then
24 they route it to the different divisions, agencies in the
25 District government, including my office, the Office of

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1 Zoning Administrator. And just to orient everyone, the
2 subdivision is Square 192.

3 The depiction of those two squares, Lot 110 and
4 111, is the proposed division of the previous Lot 108 into
5 these two lots. And then in the middle column, you'll see
6 the different agencies including the Office of Tax and
7 Revenue. And obviously this is DOEE and the Office of
8 Historic Preservation and of course my office, Office of
9 Zoning Administrator. It's labeled Department of Consumer
10 Regulatory Affairs.

11 So as the subdivision comes to the office, my
12 staff sit down. They look at it. They look at the zoning.
13 The zoning here of course is RA-9 or Lot 110 and then RA-8
14 or Lot 111. This square is divided down the middle by a lot
15 zoning boundary. And then the analysis occurs as to whether
16 the subdivision is compliant with the zoning regulations.

17 MR. WHITE: Okay. And can you tell us which of
18 these lots is the location of the Scottish Rite Temple that's
19 at issue here?

20 MR. LeGRANT: Yes, it's on the left or the west
21 Lot 110 bordering 16th Street and S Street.

22 MR. WHITE: Okay. Just describe for us how do you
23 undertook to review it.

24 MR. LeGRANT: Right. So once the subdivision
25 comes to my office and, again, we identify the zone. We look

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1 at the regulations in the -- the overall general regulations
2 applicable to lot size, lot area, lot frontage that are
3 prescribed in the zoning regulations. In addition, the --
4 because there's existing building, the Scottish Rite Temple
5 on Lot 110, we further look at to ensure that no new non-
6 conformities are created or any existing non-conformities are
7 aggravated or worsened by the subdivision.

8 MR. WHITE: Okay. And we'll get into the details
9 of your review in a little bit. But ultimately after
10 reviewing this subdivision and the applicable zoning
11 regulations, what determination did you make?

12 MR. LeGRANT: That it was compliance with the
13 zoning regulations.

14 MR. WHITE: Okay. And now let's discuss how you
15 reached that conclusion, particularly your analysis of Lot
16 110, the temple lot. The temple existed on this site for
17 quite some time. Would you elaborate on how you approached
18 and analyzed this?

19 MR. LeGRANT: Well, considering the building that
20 was constructed between 1911 and 1915, well before any zoning
21 regulations existed, we also considered that since it was a
22 historic landmark that no changes were being made to the
23 existing building. As I noted earlier, there is a provision
24 in the zoning regulations about nonconforming structures
25 denoted in Subtitle C, 201.2. Any nonconforming use of a

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1 structure or of land or any nonconforming structure lawfully
2 existing on the effective date of this title that remains
3 nonconforming, and any use or structure lawfully existing
4 that became nonconforming on the effective date of this
5 title, may be continued, operated, occupied, or maintained,
6 subject to the provisions of this chapter, Subtitle C.

7 In addition, there's a provision of Subtitle B,
8 B as in boy, 308.8. A conforming structure in existence on
9 June 14, 2013, that would have been rendered nonconforming
10 as a result of the adoption of amendments to this section,
11 Zoning Commission Order 12-11, shall be deemed conforming;
12 provided that the height of the structure may neither be
13 increased or extended.

14 MR. WHITE: Okay. So to kind of summarize what
15 you just said, an essential fact that you were considering
16 was that there were no changes being made to the existing
17 structure of the Scottish Rite Temple. Is that correct?

18 MR. LeGRANT: That's correct.

19 MR. WHITE: And so essentially, all of the -- any
20 nonconforming feature was allowed to continue to exist?

21 MR. LeGRANT: That's correct.

22 MR. WHITE: So I want to talk to you about given
23 that there were no changes to the temple itself included that
24 there would be no expansion of the temple or not increase in
25 gross floor area, did you determine that no additional

1 parking, loading berths, or loading platforms were required?

2 MR. LeGRANT: Yes, the temple which has been
3 pointed out to be in existence for over 100 years and is a
4 historic, it's considered a nonconforming structure. And the
5 subdivision neither expands nor adds to the nonconformity.
6 The loading berth parking requirements may remain in existing
7 condition.

8 The provisions that speak to this in zoning
9 regulations include Subtitle C, 705.3. A historic resource
10 shall not be required to provide additional parking spaces
11 for a change of use without expansion. And then in Subtitle
12 C, 901.7, in addition to a historic resource shall be
13 required to provide additional loading berths, loading
14 platforms, and service/delivery spaces only if the addition's
15 gross floor area and only when the addition results in a 50
16 percent increase in the gross floor area beyond the gross
17 floor area existing on the effective date of this title. And
18 so because there's no additions to the structure, no new
19 parking or loading was required.

20 MR. WHITE: Okay. And then kind of moving on, as
21 part of your review, did you consider whether Lot 110, the
22 temple lot, met rear and side yard requirements?

23 MR. LeGRANT: Yes.

24 MR. WHITE: Okay. And if we could move to Slide
25 No. 2, please. Take a look at Slide No. 2. This is -- is

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1 this a document that you reviewed in making your
2 determination?

3 MR. LeGRANT: Yes.

4 MR. WHITE: Okay. And let's talk about how was
5 the street frontage determined for Lot 110 for purposes of
6 establishing the rear and side yards?

7 MR. LeGRANT: Right. So upon the submission of
8 a subdivision application, the question is how to determine
9 a rear yard and under what regulations when a property abuts
10 two streets as the case here. The owner is allowed to choose
11 which is the front for determining street frontage. And in
12 this case, the owner selected S Street as the street
13 frontage.

14 MR. WHITE: Okay. And so is there a particular
15 section in the code that allowed for the owner to select
16 street frontage.

17 MR. LeGRANT: Yes. In Subtitle B, Section 100.2,
18 it notes that when a lot abuts more than one street, the
19 owner shall have the option of selecting which is to be the
20 front for purposes of determining street frontage.

21 MR. WHITE: Okay. And Lot 110 fit that
22 definition, that it abutted on more than one street. Is that
23 correct?

24 MR. LeGRANT: Yes.

25 MR. WHITE: So I just want to clear -- be clear

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1 about this. Does the selection of street frontage have
2 anything to do with the building entrance or the address of
3 the property?

4 MR. LeGRANT: No. The street frontage is not tied
5 to where the address is, where the building entrance is.
6 It's not relevant to establishing what the street frontage
7 is. It's not spelled out in the zoning regulations.

8 MR. WHITE: Okay. But it is relevant to the
9 establishment of rear and side yards for zoning purposes,
10 correct?

11 MR. LeGRANT: But once you establish the frontage,
12 then it becomes the front of that lot. And then that drives
13 what becomes the rear and side yards.

14 MR. WHITE: Okay. I think -- so we've established
15 that the owner selected S Street, Northwest as the front.
16 And can you just look for us, identify the location of the
17 rear and side yards based on that?

18 MR. LeGRANT: Sure. So in this diagram, the very
19 top, the building front is labeled. And opposite that at the
20 middle of the drawing it's the rear yard. And then on the
21 two sides, the left or west and to the right or east is the
22 sides.

23 MR. WHITE: Okay. Let's start with the side yards
24 first. Can you tell us whether the side yard requirements
25 were satisfied with respect to Lot 110?

1 MR. LeGRANT: Yes, they were compliant as follows.
2 In the zoning regulations in Subtitle F of the RA-8-9 zone,
3 requires a minimum of 4 feet for a side yard. If we look --
4 and its dimension there is called out.

5 The side yard again on the east side dimensions
6 is 5 feet 9 inches. And onto the west side, there is no side
7 yard required. And that section of the zoning regulation is
8 F 606.4. A side yard shall not be required along a side
9 street abutting a corner lot in RA zone which is the case
10 here.

11 MR. WHITE: Okay. So let's start to talk about
12 the rear yard. Once you establish the location of the rear
13 yard was appropriate based on the owner's selection of street
14 frontage, did you then determine the requirement for a rear
15 yard in the RA-9 zone?

16 MR. LeGRANT: Yes. So the section of the code
17 that speaks to that again in Subtitle F here, 605.1, RA-9
18 zone regulations require a rear yard of 15 feet or a distance
19 equal to 4 inches per foot of building height. And we
20 establish that the rear yard again in the south portion of
21 the lot measured 42 feet 6 inches from the building wall to
22 the property line.

23 MR. WHITE: Okay. So you were able to establish
24 how deep the rear yard was. But now you needed to determine
25 whether it met the minimum requirement. So you needed to

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1 determine -- let's talk a little bit about the building
2 height measuring point and how it was determined. Are you
3 aware of how it was determined?

4 MR. LeGRANT: Sure. The zoning regulations
5 specify in Subtitle B, 308.2, the building height measuring
6 point, or BHMP, is established at the adjacent natural or
7 finished grade, whichever is lower in elevation. That the
8 midpoint of the building facade, the principle building that
9 is closest to a street lot line. The section goes on and
10 says for any excavations projecting from the building facade
11 other than exception to grade defined in Subtitle B, 100.2.

12 The elevation of the midpoint of the building
13 facade shall be the equivalent of the lowest section
14 elevation. And then there's an exclusion for driveways
15 adjacent to midpoints that directly connect to a public right
16 of way. Furthermore, the zoning regulations in 308 -- B
17 308.7, if a building fronts on more than one street, any
18 front may be used to determine street frontage; but the basis
19 for measuring the height of the building shall be established
20 by the street selected as the front of the building.

21 With respect to 308, Section B, 308.7 allows the
22 building height, the BHMP, or the building height measuring
23 point, to be different under different -- to be on a
24 different street than for street frontage. And the Board had
25 held and I believe we've cited in our brief that this is

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1 allowed. In any event, the selection of the front of the
2 building that designates the rear yard in this case, that was
3 the S Street. But for the BHMP, the property owner selected
4 16th Street for purposes of calculating the building height.

5 MR. WHITE: Okay. And so just to kind of clarify
6 something you said, you want to make clear that your
7 testimony is that the selection of S Street, Northwest for
8 purposes of street frontage and the selection of 16th Street,
9 Northwest as the front of the building for purposes of
10 building measuring height are separate and distinct
11 determinations allowed under the zoning regulations?

12 MR. LeGRANT: That's correct.

13 MR. WHITE: Okay. Can you elaborate on that a
14 little bit for us?

15 MR. LeGRANT: Well, the selection of street
16 frontage is not tied in any way to the measurement of
17 building height. And there's a distinction in the zoning
18 regulations between the determination of street frontage and
19 the front of the building. Street frontage is used, among
20 other things, to determine the rear lot line designation
21 whereas the front of the building is used to determine --
22 used to measure building height. And I believe this is what
23 the Board had determined in Appeal No. 19080.

24 MR. WHITE: Okay. Is that The LINE hotel appeal?

25 MR. LeGRANT: I believe that was one, yes.

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1 MR. WHITE: Okay. If we could move to slide 3,
2 please. Once you've determined that the building height
3 measuring point was established correctly, did you consider
4 then that the building height itself was measured correctly?

5 MR. LeGRANT: Yes. So in this case, I was
6 provided a drawing, showing the west elevation which now we
7 all can see. The view of the temple from 16th Street,
8 Northwest or the BHMP is located, the drawing shows the
9 height of the building was measured correctly in accordance
10 with the provision B 308.2. And to further describe this
11 drawing, so the west elevation view shows the mass of the
12 building and the dome.

13 And it shows the lower red line, the elevation of
14 the building height measuring point. It's 93.97. And then
15 we go to the cornice line as the top of the roof. And then
16 the vertical dimensions, 85.25, shows the height of the
17 building in relation to the BHMP and the roof. That's the
18 applicable analysis that one does to determine building
19 height.

20 MR. WHITE: Okay. Now let's discuss why the dome
21 of the temple was not included in determining the building
22 height. Can you tell us why?

23 MR. LeGRANT: Yes. So the section that deals with
24 this was recently renumbered. It was Section C, 1501.3. Now
25 it's in the remittance since December 24th as a result of the

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1 Zoning Commission text amendment.

2 It's now in Subtitle B, 306.5. I'll read it.
3 Architectural embellishments consisting of spires, towers,
4 domes, minarets, and pinnacles may be erected to a greater
5 higher than any limit prescribed by these regulations or the
6 Height Act, provided that the architectural embellishment
7 does not result in an appearance of a raised building height
8 for more than 30 percent of the wall on which the
9 architectural embellishment is located.

10 So since domes are expressly excluded from the
11 BHMP calculation as an architectural element, although they
12 are allowed to exist under these regulations in the Height
13 Act as long as the dome does not result in an appearance of
14 a raised building for more than 30 percent of the wall in
15 which it's located. In this case, the dome is not on a
16 building wall but it's set back from that wall. And this
17 consideration would not apply to give it the appearance of
18 a raised building.

19 And so this drawing that we're all looking at, it
20 looks flat. And so it's almost like, well, are they on the
21 same plane? No. The dome is set back from that -- which is
22 labeled the cornice -- is a setback from that facade which
23 is set by the columns supporting the roof. And so it does
24 not sit upon the wall. The dome does not sit upon the wall
25 leading to this 30 percent extension.

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1 MR. WHITE: Okay. And if we could -- if it's okay
2 if we go back to Slide 2 just for a quick moment. Is the
3 setback more clearly shown here, the setback that you were
4 discussing. Can you maybe describe what you see here, this
5 exhibit?

6 MR. LeGRANT: Right. So that elevation we were
7 looking at on the west slide along 16th Street or the left
8 of the drawing shows the building edge which is set back from
9 the property line. And there's a rectangle which shows that
10 it's not dimensioned. I believe it's, like, 11 feet or
11 something. The edge of the dome architectural element is set
12 back from that wall. So it does not sit upon the wall in
13 which it's located.

14 MR. WHITE: Okay. One other thing, you mentioned
15 the Height Act. And while I'm aware it's not necessarily
16 under review by the Board, but it's helpful for context.
17 That's something that's within your purview which you
18 considered in reviewing this subdivision. Is that correct?

19 MR. LeGRANT: Yes.

20 MR. WHITE: Okay. And can you tell us what you --
21 how you analyzed the Height Act in relation to this
22 subdivision?

23 MR. LeGRANT: Right. So the Height Act, of
24 course, has to be considered by my office. And we looked at
25 -- it's a similar analysis to the zoning regulations -- was

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1 there any issue from this subdivision? And we concluded
2 there are no violations to the Height Act because nothing
3 about the building was changed.

4 MR. WHITE: Okay. And so essentially the building
5 itself was in conformance with the Height Act as it existed
6 prior to the subdivision. Is that what you're telling us?

7 MR. LeGRANT: Yes.

8 MR. WHITE: Okay. And the significance of that
9 is that it was a lawfully existing structure at the time that
10 the zoning regulations came into effect which informs
11 Subtitle C, Section 201.2 which you discussed at the
12 beginning of your testimony. Is that correct?

13 MR. HANLON: Mr. Chair, I'm going to object. I
14 mean, the direct testimony should not be done by leading
15 questions. He should really ask the zoning administrator
16 what he thinks and what the zoning administrator testified.

17 MR. LeGRANT: I'm sorry, Chair. You're on mute.

18 CHAIRPERSON HILL: Thanks. Mr. Hanlon, this is
19 how we get testimony from the zoning administrator. DCRA is
20 questioning the zoning administrator. Please go ahead, Mr.
21 White.

22 MR. WHITE: Thank you. Could we move to slide 4,
23 please?

24 CHAIRPERSON HILL: Just for Mr. Hanlon, you know
25 the zoning administrator is a witness here. So that's what's

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1 happening. Go ahead Mr. White.

2 MR. WHITE: Thank you. Now that you've
3 established the location of building height measuring point
4 was correct and the measurement of the height of the building
5 was in accordance with the zoning regulations. Did you
6 determine that the minimum requirement for the rear yard in
7 the RA-9 zone was in accordance with 11 DCMR Subtitle F,
8 605.1?

9 MR. LeGRANT: Yes. So as I previously noted,
10 those regulations require a rear yard of 15 feet or a
11 distance equal to 4 inches per one foot of height of the
12 building. So the calculation is as follows. We've
13 established the BHMP at 85.25 to 16th Street. That
14 translates into a rear yard requirement of 28.41 feet using
15 that 4 inches per foot of height.

16 And then we compare that minimum requirement of
17 28.41 with the rear yard that is present which is 42 feet 6
18 inches. Therefore, it exceeds the minimum, 28.541. The
19 provided rear yard, 40 feet 6 inches exceeds that. So it's
20 complying with the rear yard setback.

21 MR. WHITE: Okay. Can we move to slide 5, please?
22 And one feature that was discussed earlier that we haven't
23 talked about yet is the areaway. Could you just briefly
24 describe this feature that you see here on the slide?

25 MR. LeGRANT: Yeah. So the photo is very helpful,

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1 and it's at the rear of the building. There is this area,
2 trough on the edge of the building, right? And it's
3 dimensioned here as 7 feet 6 inches wide. And the second of
4 the zoning regulations defines that. The definition is B
5 100.2. The areaway is subsurface space adjacent to a
6 building that is open at the top or protected at the top by
7 a grating or guard that provides passageways or accessing a
8 basement or a cellar.

9 MR. WHITE: Okay. And so it's been suggested that
10 the areaway that exists here in the rear yard should not be
11 included in the measurement of the rear yard. And can you
12 tell us why is this incorrect?

13 MR. LeGRANT: Yeah, it is incorrect because we
14 look at the definition of yard. Again, not to belabor all
15 the definitions in the zoning regulations. But we have yard
16 defined.

17 A yard is defined as an exterior space, other than
18 a court, on the same lot with a building or other structure.
19 A yard required by the provisions of this title shall be open
20 to the sky from the ground up, shall not be occupied by any
21 other building or structure except as specifically provided
22 in this title. And then it goes on that no building or
23 structure shall occupy in excess of 50 percent of a yard in
24 this title.

25 So the areaway, my office, in this case and

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1 numerous other cases that's come before us, we include the
2 space of the areaway is definitely part and allowed to be a
3 yard because the consistency with those definitions. It's
4 open to the sky and it's below grade in this instance. And
5 so in no way whatsoever is it in conflict with being able to
6 be located in a yard.

7 MR. WHITE: Okay. And just speaking
8 hypothetically for a moment, even if it were to be excluded,
9 wouldn't a rear yard still comply with the minimum
10 requirement under F, Section 605.1?

11 MR. LeGRANT: Okay. Well, I don't like
12 hypotheticals. But in this case, we can see in this slide,
13 okay, let's measure then from the retaining wall. And in the
14 photograph, this is the retaining wall a little bit to the
15 left and has the stone cap on it.

16 We'll say, okay, we'll start the rear yard
17 measurement from there or exclude the areaway and we'll go
18 back toward the rear property line. You see the dimension
19 is called out as 32 feet. Well, even in that, let's say
20 worst case scenario the rear yard requirement has -- we
21 previously determined is 28.41 feet. It's still in
22 compliance, with or without the areaway included.

23 MR. WHITE: Okay. Thank you for that. If we can
24 move to slide 6, please. Okay. Finally, I just want to draw
25 your attention to the south wall, also been referred to as

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1 a retaining wall shown in slide 6 here.

2 It's been suggested that this is a nonconforming
3 structure in the rear yard. Can you tell us why that is not
4 the case? And describe some of the relevant features of the
5 wall that led you to that conclusion.

6 MR. LeGRANT: Right. And the appellant spent a
7 bunch of time on this. So I think I can be concise. There
8 is a section that says certain structures are excluded from
9 a yard.

10 And it's laid out in Subtitle B, 324.1 which the
11 appellant put up. It provides for exceptions for retaining
12 walls, fences, and stairs. My office found that these
13 elements conform.

14 The subject wall includes these elements. There's
15 stairs. There's a wall. I know that the appellant has
16 argued as not a retaining wall but is a wall.

17 And furthermore, the office would look at if this
18 was part of a building, if inside this concrete structure
19 contains space because it is massive, would it be part of a
20 building? Well, it's not hollow as far as we know. I
21 haven't chipped into it.

22 But it's solid. It's represented as a solid
23 masonry structure, contains no space, contains no gross floor
24 area. It's not part of a building. Therefore, I believe
25 it's a structure that meets the exceptions laid out in 324.1.

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1 MR. WHITE: Okay. And let's say even if the Board
2 were to find that it was nonconforming, wouldn't it then be
3 considered an existing nonconforming feature under Subtitle
4 C, Section 201.2?

5 MR. LeGRANT: Yes, the Board could certainly find
6 that, yes.

7 MR. WHITE: Okay. So just to conclude, in
8 summary, based on your review on all of these evidence
9 relating to Lot 110 and applicable zoning regulations, does
10 the subdivision comply with all such regulations?

11 MR. LeGRANT: Yes, because the analysis looked at
12 were the yards established in the subdivision compliant?
13 Yes, they were. Were there any non-conformities created?
14 No, they were not. Did it exasperate any non-conformities?
15 No, it did not. So we concluded that the subdivision was
16 compliant, was properly approved by my office.

17 MR. WHITE: Okay. Those are all the questions
18 that I have at this time. Thank you.

19 MR. LeGRANT: Thank you.

20 CHAIRPERSON HILL: Okay. Does the Board have any
21 questions of the zoning administrator? Commissioner May?

22 MEMBER MAY: Yeah, I can be pretty quick about
23 this. I may have missed this. Did you tell us how far the
24 dome is set back from the roof?

25 MR. LeGRANT: The exact -- my notes, I believe

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1 it's 11 feet and change. I'd look to the property owner for
2 the exact calculation. But it is. That's my understanding
3 from the drawings.

4 MEMBER MAY: Okay. Thank you. And let's see.
5 I'm not sure I fully understand the idea that the wall that
6 projects into the rear yard is consistent with any of those
7 exceptions that you site. I mean, it sounds like it's sort
8 of an accumulation of things. There's a stair. It's a wall.
9 Part of it may be retaining. Part of it may not.

10 But even if it's not retaining, the retaining part
11 is still -- there's still 7 and a half feet above the
12 retaining part if it were a retaining way. So I mean, it's
13 not really a very clear fit. And I understand why it seems
14 a little silly to consider something like that part of the
15 building because there's no occupiable space in it.

16 There's no space in it, right? So if we put aside
17 that determination for a second and just think of this in
18 terms of the measurement of depth of rear yard, can you tell
19 us what your typical approach would be? Would it be the
20 diagonal line and the mean as described by the appellant?
21 Or would it be more like what the intervener has suggested
22 with those multiple measurements? Or would it be something
23 else different like an average?

24 MR. LeGRANT: Yeah. So correct, Commissioner.
25 The regulations specify to where it's not just a nice square

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1 rectangle typically that would present itself. And the
2 average or mean comes into play.

3 One approach my office has used is we take the
4 area of the rear yard, and that would be defined by a line
5 across the full entirety of the lot and then divide that area
6 by the length of the line. Now this comes into play.
7 Typically, you have an irregularly shaped lot with a pie
8 shape or the rear property line is askew which is not the
9 case here.

10 So I would have to stretch a bit to think about
11 how if one were to consider the portion of the wall as not
12 conforming to the B, 324.1 exceptions. Then one could
13 average it that way. But I know that the appellant has
14 offered a different way and the property owner has integral
15 scenario as well.

16 MEMBER MAY: So let me ask it a slightly different
17 way then, and I know you don't like hypotheticals. But take
18 a fairly typical circumstance where there might be a rowhouse
19 with a projecting addition into the yard. So everything is
20 really square. It's essentially like an L-shape. What would
21 you do in that circumstance when there's that sort of an L-
22 shape?

23 MR. LeGRANT: One could average then between the
24 two faces of the building. Let's assume that the rear
25 property line is a rectangle. Take those two faces of the

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1 building. If it was, like, a dogleg or something, and that's
2 one way to average. But when applicants come in and they
3 offer a different way of calculating the average, I would
4 take a look at that and see what would make the most sense.

5 MEMBER MAY: So I'm having trouble picturing how
6 that might actually work. Sorry if I'm belaboring the point.
7 But --

8 MR. LeGRANT: Yea.

9 MEMBER MAY: -- let's just say -- I mean, if 50
10 percent of a lot is 20 feet deep and 50 percent of the lot
11 is 30 feet deep, then you might average those two numbers,
12 right? You come up with 25?

13 MR. LeGRANT: Well, again, the first scenario that
14 proffered is to take the area and draw a line across. And
15 that may take into account sort of weighting the extent of
16 what portions of the building are sticking in there. So
17 that's one way to come up with an average. But I too --
18 without seeing the hypothetical that you're proffering, what
19 would be the best way to average that? I'd probably need to
20 see that and graphically depict it.

21 MEMBER MAY: So -- sorry, I'll belabor it one more
22 time. Essentially what you're saying when you talk about
23 averaging it, you're basically talking about calculating the
24 entire area of that yard and then dividing it by the length
25 of the rear property line so that you wind up with an average

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1 depth across the entire rear property.

2 MR. LeGRANT: Yeah, I think that would make sense.

3 MEMBER MAY: Okay. All right. That's what I was
4 trying understand because that what -- I mean, I remember
5 seeing that. I don't remember seeing circumstances where
6 it's calculated using essentially a diagonal line defined at
7 that point. So all right. Thank you.

8 MR. LeGRANT: Thank you.

9 CHAIRPERSON HILL: Anyone else for the zoning
10 administrator. Vice Chair John? You're on mute, Vice Chair
11 John.

12 VICE CHAIRPERSON JOHN: Thank you, Mr. LeGrant.
13 I had a quick question. This is not an irregularly shaped
14 lot, right?

15 MR. LeGRANT: Correct.

16 VICE CHAIRPERSON JOHN: So would you ever have to
17 consider whether it's an average or a mean?

18 MR. LeGRANT: Well, that's a good question. If
19 we're to assume that, again, this wall and column were a
20 portion of the building -- which they're not. But if you did
21 and say, okay, this is a portion of the building. But then
22 the lot lines are not irregular.

23 But the building shape sticking toward the rear
24 property line is arguably irregular. Then there might be an
25 argument for doing an average. But right, it's a bit of a

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1 scenario that my office is faced with the typical example,
2 I would say. The typical scenario is an irregularly shaped
3 lot line, a rear lot line that's askew or pointed or pie
4 shaped or something.

5 VICE CHAIRPERSON JOHN: So I know you don't want
6 to respond to hypotheticals. But you can say no if you don't
7 want to. So if this was a new building with that wall
8 sticking out into the rear yard, would you approve it, or --

9 MR. LeGRANT: Yes, yes. Because I don't consider
10 the wall and column to be part of a building. That would be
11 subject to the rear yard setback. I do believe it falls in
12 the exemptions of B, 324.1 which excludes features including
13 fences, stairs, and walls -- retaining walls.

14 VICE CHAIRPERSON JOHN: And so in your view, this
15 is like a stairway. This is not like an areaway at the front
16 of the building with one of those -- the criteria for
17 exception of an areaway and an areaway going under the stairs
18 at the front in terms of calculating building height
19 measuring point? The discussion got a little confusing. So
20 I want to be clear what you're saying.

21 MR. LeGRANT: Sure. Okay. So let's separate out
22 the two. The areaway, I think the appellant proffered two
23 arguments involving the areaway. One, should we exclude from
24 the calculations of a yard, which again I reject from what
25 I testified to.

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1 And secondly, I propose if the BHMP was moved from
2 16th Street up to S Street, then that areaway that's at the
3 edge of the building fronting a street should be then taken
4 to account for building height measurement purposes. But I
5 didn't even go there because the building height measuring
6 point I think was correctly identified on 16th Street. So
7 there's that piece for the areaway.

8 Then we get to the discussion about this wall,
9 arguably a retaining wall with a column and stairs. And so
10 in my view, one thing that would've been telling and maybe
11 the property owner has is a section across through that stair
12 and wall and the ground level to the east would show that
13 there is a difference in height from what the stair or I
14 think the platform was mentioned -- the stairs leading up to
15 the platform, the thickness of the wall, and then a lower
16 area.

17 I'm not a structural engineer. So I know the
18 appellant's architect says he didn't think any lateral forces
19 were occurring. But when I would look at that, I would say
20 that is retaining -- that's a retaining wall because it's
21 higher on one side than it is on the lower and the walls in
22 between.

23 VICE CHAIRPERSON JOHN: Okay. And a follow-up
24 questions, I believe it was in slide 60 of the appellant's
25 presentation which shows an aerial view of what's depicted

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1 on your slide number 4 which to me shows that the dome is not
2 sitting on the exterior wall of the building. But it is
3 stepped back from the cornice. And so you're saying that
4 essentially in terms of the building height measuring point
5 you would start at the cornice. And the fact that that
6 separation, 11 foot plus or minus, is there makes it not part
7 of the building but more like an embellishment or a --yeah,
8 I guess I'm going to go there -- more like an embellishment?

9 MR. LeGRANT: Yes.

10 (Simultaneous speaking.)

11 VICE CHAIRPERSON JOHN: And if I didn't say it
12 correctly, please correct me.

13 MR. LeGRANT: No. So just the way I approached
14 it was this, is that cornice, that facade is supported by
15 columns. And then it goes 90 degrees to our roof. And a
16 building is defined as a structure that is a roof supported
17 by walls or columns, the definition in the zoning regulation.

18 So that tells me that that is a building right
19 there. The cornice depicts from the facade to the roof 90
20 degrees. And this architectural embellishment of the dome
21 is set back --

22 MEMBER SMITH: Mr. LeGrant, can I interrupt you
23 for a second? Can I request that someone pull up an image
24 of what you're trying to discuss so that we can be --

25 (Simultaneous speaking.)

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1 CHAIRPERSON HILL: If -- Mr. Young, if you could
2 pull up the PowerPoint that DCRA just submitted and go to
3 slide 3.

4 MEMBER SMITH: Thank you.

5 CHAIRPERSON HILL: Is that good, Mr. Smith?

6 MEMBER SMITH: Yes.

7 MR. LeGRANT: Yes. Thank you, Board Member Smith.
8 I think this will help everyone. So right, so again as I
9 started to describe, there's a facade on the building facing
10 16th Street, in this case, supported by columns, comes up to
11 the cornice and then you would go 90 degrees inward.

12 At that point, it's the roof. The cornice
13 demarcates the roof. Then there's a dome, sits back a
14 setback, I believe approximately 11 feet. So it is not
15 sitting -- it's not on that facade.

16 Again, as I testified, this drawing is a --
17 because it's an elevation, it's all flat. But if you look
18 at any other photographs or the roof plan, you'll see that
19 it's set back. So it's not sitting on the wall. It's not
20 an extension of the wall in which it sits.

21 VICE CHAIRPERSON JOHN: Okay. Thank you, Mr.
22 LeGrant. But I wanted to pull up Exhibit 97. Mr. Young, if
23 you could go to Exhibit 97?

24 CHAIRPERSON HILL: Vice Chair John, just before
25 you go, Mr. Smith, you had your hand up for this.

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1 VICE CHAIRPERSON JOHN: I couldn't see. I
2 apologize.

3 CHAIRPERSON HILL: That's all right.

4 MEMBER SMITH: I'm sorry, Ms. John. It's just a
5 follow-up. And Mr. LeGrant, I know you hate hypotheticals.
6 But I think I'm going to ask another hypothetical question.
7 So based on that same interpretation, would that also apply
8 for if I'm a developer and I'm constructing a wraparound
9 porch with an architectural embellishment above that
10 wraparound porch?

11 MR. LeGRANT: Well, if the wraparound porch -- if
12 the facade of that extended all the way to the roof level of
13 the building, then once you get the -- the key is the roof.
14 Regardless of what's happening in the facade, what's the
15 roof. Then is this element -- is the sited architectural
16 embellishment that sits on the roof, is it the same plane as
17 the facade? And in your scenario hypothetical, if the porch
18 is smaller and it's just tacked on the front facade, then no.
19 But if it extended the full length of the facade, then -- and
20 those columns were supporting the roof of the building, then
21 perhaps the answer would be yes.

22 MEMBER SMITH: Okay. So just as a follow-up
23 question, you're defining the cornice. And I believe you
24 stated this earlier. You're defining the cornice above the
25 columnal area around the masonic temple as the roof?

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1 MR. LeGRANT: Yeah, I believe it's at the roof
2 level.

3 MEMBER SMITH: Okay. And can you elaborate again
4 how you came to decide that was the roof?

5 MR. LeGRANT: Okay. So in the plan view, the roof
6 plan view shows the extent of the roof of this building.
7 It's supported by columns, walls on the sides. And upon that
8 roof sits the dome which is set back from those walls or
9 columns.

10 And therefore, as I said, the definition of
11 building includes a roof, a structure with a roof enclosed
12 by walls or columns. And I guess the key aspect is the dome
13 is set back from that. So that's why it qualifies a
14 qualifying architectural embellishment, an exclusion from
15 building height.

16 MEMBER SMITH: Okay. That's it. I may have a
17 follow-up question in a minute. But I think I'm good for
18 now. So sorry to interrupt, Vice Chair John.

19 CHAIRPERSON HILL: That's all right. Before Vice
20 Chair John, you move on from this one side, Mr. LeGrant, I
21 understand what you're saying. And I'm going to take a look
22 at the definition in the regulation again.

23 But just from my own curiosity, I supposed, that
24 dome then, is that whole thing the dome? You're just
25 counting the dome as what is above the roof. But the lines

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1 of the walls inside that -- if you go past the columns and
2 you go up to that wall, that will lines up with the dome.
3 Is that correct?

4 MR. LeGRANT: Yes, I believe that's correct.

5 CHAIRPERSON HILL: Okay. So you don't think that
6 portion of the wall is inside that column. You don't think
7 of that as a dome. You think of the dome just what's above
8 the roof, correct?

9 MR. LeGRANT: Correct.

10 CHAIRPERSON HILL: Okay. Vice Chair John, what
11 do you want to pull up?

12 VICE CHAIRPERSON JOHN: Exhibit -- if Mr. Young
13 could pull up Exhibit 116, slide 60. So Mr. LeGrant, so
14 based on this photograph, you would say that the building --
15 I think it illustrates to me what you just said, so that the
16 building includes the columns separated -- I mean, capped by
17 that roof and so where the cornice is. And so the whole
18 thing, that structure that's set back 8 or 11 feet is the
19 dome?

20 MR. LeGRANT: Yes.

21 VICE CHAIRPERSON JOHN: Okay. That's what I was
22 trying to understand.

23 MR. LeGRANT: Okay.

24 VICE CHAIRPERSON JOHN: Thank you.

25 CHAIRPERSON HILL: All right, Mr. Young. You can

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1 drop it. Thanks. All right. Any other Board members have
2 questions for the zoning administrator?

3 (No audible response.)

4 CHAIRPERSON HILL: All right. Let's go with, I
5 guess, either Mr. Hanlon or Professor McCrery, whoever you
6 want to use to ask questions. Mr. Hanlon, do you know?
7 You're on mute, Mr. Hanlon.

8 MR. HANLON: Sorry. I'm technology --

9 CHAIRPERSON HILL: Oh, Mr. Hanlon, we can't give
10 that excuse anymore. We're two years in.

11 MR. McCRERY: Yeah, there you go.

12 MR. HANLON: I don't know whether Professor
13 McCrery wanted to ask any questions.

14 MR. McCRERY: I'd be happy to ask some questions.

15 MR. HANLON: Okay.

16 CHAIRPERSON HILL: Okay. Go ahead, Professor.

17 MR. McCRERY: Just before I do, actually based on
18 what was just presented, if you can go to the presentation
19 made by the zoning administrator.

20 CHAIRPERSON HILL: May I ask you a question,
21 Professor? I mean, you guys are going to get rebuttal --

22 MR. McCRERY: Yeah.

23 CHAIRPERSON HILL: -- which means that you'll have
24 an opportunity to clarify. I don't really know to -- I'm not
25 an attorney -- rebut --

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1 MR. McCRERY: Understood.

2 CHAIRPERSON HILL: -- whatever testimony was
3 given, right? So if you're going to give additional -- if
4 you're going to present more stuff, it's better to happen
5 during rebuttal.

6 MR. McCRERY: Actually, it was just a comment on
7 a slide. But I can do it as a form of a question.

8 CHAIRPERSON HILL: Okay.

9 MR. McCRERY: Let me get my questions together
10 right here.

11 MS. RODDY: Chair Hill --

12 MR. McCRERY: I have questions for Mr. LeGrant.

13 CHAIRPERSON HILL: Got it. Professor McCrery,
14 give me one second. Ms. Rodman or Roddy, I'm sorry.

15 MS. RODDY: I was going to object. Mr. McCrery
16 is a witness. He isn't a party to the application.

17 CHAIRPERSON HILL: Got it. So I guess the problem
18 that I have, Ms. Roddy, and this is where, like, we're not
19 live anymore. What used to happen is Professor McCrery would
20 pass a note over to Mr. Hanlon. And Mr. Hanlon would ask the
21 questions, right. So I appreciate your clarification and
22 your objection. I can't figure out a better way to do it
23 given this Zoom environment. So Professor McCrery, how many
24 questions do you think you have?

25 MR. McCRERY: For Mr. LeGrant, just a few. I'd

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1 say four.

2 CHAIRPERSON HILL: Okay. Let's go ahead and
3 pretend that Mr. Hanlon is asking these questions. So go
4 ahead, Professor.

5 MR. McCRERY: If you could put up, please, slide
6 number -- the presentation just made, please. We'll just
7 look at those slides. And that question is directly for Mr.
8 Grant -- Mr. LeGrant. I'm apologize. Okay. If you go to
9 slide 2, please. This is slide 3. Got to slide 2, please.

10 All right. Here's a document presented to you by
11 the developer and their consulting professionals. Do you
12 agree that this document does not show the areaways and does
13 not show the long building walls that are west of the
14 existing front of the building?

15 MR. LeGRANT: Yes, I agree.

16 MR. McCRERY: Okay. And I think you may have
17 already answered this. But would your conclusions and
18 analysis have been different if the drawings showed
19 everything that the building presents on the site?

20 MR. LeGRANT: I'm trying to understand. Would our
21 -- would my analysis --

22 MR. McCRERY: In other words, I think it's clear
23 here that this drawing does not show all of what the site is.
24 And if this drawing had presented all of what the site is,
25 would your analysis have been different -- your conclusions

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1 have been any different?

2 MR. LeGRANT: No.

3 MR. McCRERY: Okay. Let's go to slide 3, please.
4 Slide 3, please, the next one. And the question here is
5 about the building height measurement point. Understood your
6 agreement to allow the developer to use the midpoint of 16th
7 Street and the center midpoint of the building as the
8 building height measuring point. Why did you let them use
9 the elevated at 93.97 elevation instead of the natural grade?

10 MR. LeGRANT: Well, I believe that line is on the
11 property line. And so that is the grade at the point. And
12 if there are stairs that go beyond that into the public
13 right-of-way, I would've not considered that.

14 MR. McCRERY: Right. But the zoning code does
15 say, I think -- the regulations say whichever is lower. So
16 they're looking for -- does the regulation look for the
17 lowest natural point? And if so, then is that -- do you
18 agree with the proposal that that is the lowest natural
19 point?

20 MR. LeGRANT: What is the lowest natural point?

21 MR. McCRERY: The elevation at 99.97 -- 93.97.
22 In other words, at the top of the staircase, you agree that's
23 the lowest natural point?

24 MR. LeGRANT: I'll put it this way. I believe
25 that the depicted elevation was the correct BHMP. I

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1 testified to that.

2 MR. McCRERY: Thank you. Let's then go to --
3 we'll stay on this slide. If it's possible, can you do a
4 control and just zoom in just a little bit? Let's look at
5 this building to understand its architecture.

6 Can you pan up a little bit so that we can see the
7 ground? Thank you very much. Thank you. That's perfect.
8 How many cornices do you see here, please, the cornice line
9 that's indicated by the professionals in their drawing? Is
10 the portion at the building at the base of the pyramidal
11 roof, is that also a cornice?

12 MR. LeGRANT: One could argue that the cornice
13 structure has different parts and elements. And I guess I'll
14 just say that one could say the selection of that point of
15 the cornice for the building height is the worst case. One
16 would say, well, the roof behind it is actually lower or we
17 chose a different cornice line, one that bumps out a little
18 bit. Those would actually result in a lower building.

19 (Simultaneous speaking.)

20 MR. McCRERY: Yeah, that's a hypothetical that you
21 don't like to engage in, I think.

22 (Laughter.)

23 MR. McCRERY: Okay. So that's, I guess -- so
24 that's not -- the area -- the wall. Is that -- I'm going to
25 make it a question. The pyramidal roof, does it sit on a

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1 wall? Does it rise from a wall? Or what does it rise from?
2 What does it rest upon?

3 MR. LeGRANT: It rests upon a roof from the roof
4 plan that was shown in the other slide.

5 MR. McCRERY: Well, I'm trying to get you to look.
6 Roof plans can be very deceiving as we'll see. But because
7 they don't show quite a bit of information. They're designed
8 to show roof surfaces. This drawing is an elevation and
9 shows the entirety of the building, including the roof. Is
10 that a wall that the roof is sitting on? Or is it not a
11 wall?

12 MR. LeGRANT: I don't understand the question.
13 What element are you referring to?

14 MR. McCRERY: If someone can point -- do you see
15 the starburst behind the four central columns?

16 MR. LeGRANT: Yes.

17 MR. McCRERY: Okay. Go vertically from that above
18 the red line cornice --

19 MR. LeGRANT: Okay, okay.

20 MR. McCRERY: -- but below the stepped pyramid.
21 There's a surface there that looks like it's made of stone.
22 What's that? Is that a wall or is it part of the dome? Or
23 what is that?

24 MR. LeGRANT: Oh, I see it's a wall below the roof
25 that may be in the same plane as the lower portion of the

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1 dome that's above the roof.

2 MR. McCRERY: Yes, I know where it is. I'm asking
3 you what it is. What is that?

4 MR. LeGRANT: Well, it's a feature of the
5 building. I'll put it that way.

6 MR. McCRERY: Okay. And then so your earlier
7 testimony, one of the Board members included your analysis
8 that the whole thing that we're talking about here, anything
9 that's not the colonnade is the dome. Is that a fair
10 restatement of what you said?

11 MR. LeGRANT: No.

12 CHAIRPERSON HILL: I guess, Professor McCrery, I
13 just want to clarify because I'm the one that had the
14 question. So what I think I was trying to ask and I got the
15 answer that I wanted was that what is -- and this is what I
16 don't know structurally one way or the other that that --
17 we're arguing whether it's a dome or it's not a dome, right?
18 For the purposes of this --

19 MR. McCRERY: Whether it's an architectural
20 embellishment or not, I guess.

21 CHAIRPERSON HILL: Whether it's an architectural
22 embellishment or not, still for the purposes of the question
23 that I had, I was trying to understand is above that cornice
24 line, whether or not it lines up with that wall or not
25 because supposedly it could be supported by the roof is what

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1 the argument is, right? Is that whole thing the
2 architectural embellishment? And Mr. LeGrant, you said yes,
3 correct?

4 MR. LeGRANT: Well, I continue to state that the
5 dome above the roof is an architectural embellishment.

6 MR. McCRERY: Okay. Right, okay. Understood.
7 So let me ask you this then. That would mean that the
8 architectural --

9 (Simultaneous speaking.)

10 VICE CHAIRPERSON JOHN: I hate to interrupt. But
11 that diagram is not a good representation of what is there.
12 It is Exhibit 116, slide 60 --

13 MR. McCRERY: We can go there too.

14 VICE CHAIRPERSON JOHN: -- which is a photograph
15 of what it looks like.

16 MR. McCRERY: Yes, ma'am. We can use that image
17 too.

18 VICE CHAIRPERSON JOHN: Let's use that image
19 because I understand it through this image.

20 MR. McCRERY: That's a very good way of
21 understanding it too.

22 VICE CHAIRPERSON JOHN: Thank you.

23 MR. McCRERY: Thank you. And photographs are much
24 better. Thank you. So here we have an aerial view. And I
25 think what the Chairman's question here is better illustrated

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1 with this photograph and Board Member John's understanding
2 of it as well. So basically, it's your judgment that
3 everything above that lower flat roof is the architectural
4 embellishment?

5 MR. LeGRANT: Yes.

6 MR. McCRERY: Thank you. And I think I just have
7 one more. Can you go then back to the earlier PowerPoint
8 that we were just looking at and go to the very last slide?
9 It's slide 6, I believe. I'm sorry. No, not this one. I
10 apologize. This is the --

11 CHAIRPERSON HILL: Is it DCRA --

12 (Simultaneous speaking.)

13 MR. McCRERY: DCRA, DCRA. Thank you. Very last
14 slide.

15 CHAIRPERSON HILL: You can pull out -- zoom out,
16 Mr. Young, please.

17 MR. McCRERY: And if you can then focus on the
18 lower left-hand photograph. And it might be helpful to the
19 Board members to maybe zoom in on that. As I understand this
20 photograph, Mr. LeGrant, this is a photograph within the
21 areaway looking west towards 16th Street.

22 MR. LeGRANT: Okay.

23 MR. McCRERY: Is that correct?

24 MR. LeGRANT: I believe that's the case.

25 MR. McCRERY: Okay.

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1 MR. LeGRANT: I'm not 100 percent sure because the
2 other view -- the view next to it, I guess, looking to the
3 east.

4 MR. McCRERY: Right.

5 CHAIRPERSON HILL: I think that's facing S Street.

6 MR. McCRERY: The wall here --

7 CHAIRPERSON HILL: The left, I think, is -- the
8 front of that is --

9 (Simultaneous speaking.)

10 CHAIRPERSON HILL: The left is 16th Street.

11 MR. McCRERY: No, in the lower left-hand
12 photograph, I think what we're doing is we're -- and I have
13 not trespassed there. So I don't -- this is new information
14 to me. This is a view within the areaway looking due west.

15 CHAIRPERSON HILL: Meaning facing S Street?

16 VICE CHAIRPERSON JOHN: Yeah.

17 MR. McCRERY: Facing 16th Street.

18 CHAIRPERSON HILL: No, because the lines are
19 facing S -- the lions are facing 16th Street.

20 VICE CHAIRPERSON JOHN: Yeah.

21 MR. McCRERY: Oh, okay, okay. So where in the --
22 can you orient me then, sir, on this image?

23 CHAIRPERSON HILL: I just think you're facing --
24 you're looking towards S as in Sam Street, and to your left
25 is 16th Street. That's what I understand it to be.

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1 MR. McCRERY: So portions of the areaway then are
2 occupied in the yards is my question. It's clear that the
3 areaway, the walls -- the portions of the areaway that are
4 in the yards are actually occupied areas, question mark, and
5 not retaining?

6 CHAIRPERSON HILL: I don't think that's right,
7 Professor. I think you're facing -- as I said, I think
8 you're facing S Street. And so to the left is 16th and to
9 the right is the building.

10 MR. McCRERY: Okay. Well, thank you. Those are
11 my questions. I have some points to make as a result of his
12 testimony. But those are my questions. Thank you.

13 CHAIRPERSON HILL: Okay. Let's see. Oh, Ms.
14 Roddy, do you have any questions of the zoning administrator?

15 MR. HANLON: Mr. Chair, would I also be able to
16 ask some questions?

17 CHAIRPERSON HILL: Mr. Hanlon, you were just
18 asking questions through Professor McCreery. How many
19 questions do you have?

20 MR. HANLON: I have a few.

21 CHAIRPERSON HILL: How many is a few, Mr. Hanlon?

22 MR. HANLON: I'm going to try to get done in 13
23 minutes which is 1:30.

24 CHAIRPERSON HILL: Oh, Mr. Hanlon. You're killing
25 me. I'm trying to go to lunch, man. Do you understand how

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1 long this thing already is? And I'm telling you because I'm
2 trying to do -- I'm also trying to help you guys. Like,
3 Professor McCrery was not supposed to ask any questions as
4 you know, right?

5 And we could've done this through text. And maybe
6 I'll do that the next time. You guys can just text each
7 other, right? So I'll give you five minutes, Mr. Hanlon.
8 You've got five minutes. What questions do you have for Mr.
9 LeGrant?

10 MR. HANLON: Can we pull up ISIZ 97, slide 53?

11 MR. McCRERY: Thank you, Mr. Chairman.

12 CHAIRPERSON HILL: I'm just trying to get through

13 --

14 (Simultaneous speaking.)

15 MR. McCRERY: Understood.

16 CHAIRPERSON HILL: No, no. I'm just -- I mean,
17 we're trying to be fair with everybody. We haven't -- I'm
18 not trying to -- it's just that, again, you weren't supposed
19 to do what you did.

20 MR. HANLON: All right. Mr. LeGrant, is it
21 correct that embellishment is not a defined term in the
22 zoning regulation?

23 MR. LeGRANT: That's correct.

24 MR. HANLON: Is it correct that when a term is not
25 defined in the zoning regulations, we use Webster's

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1 Dictionary to define the term?

2 MR. LeGRANT: Yes.

3 MR. HANLON: Is it correct that Webster's
4 Dictionary defines embellishment as the process of
5 embellishing and Webster's defines embellishing as amplifying
6 with inessential but decorative or fanciful details?

7 MR. LeGRANT: Let me answer it this way. There's
8 a list of items in the excluded architectural embellishment
9 which includes domes. And that, to me, was the determination
10 factor. Was this an architectural embellishment --

11 (Simultaneous speaking.)

12 MR. HANLON: What is Webster's definition --

13 MR. LeGRANT: -- architectural embellishment.
14 It's a dome. Therefore --

15 (Simultaneous speaking.)

16 MR. HANLON: Mr. LeGrant, what's Webster's
17 definition of an embellishment?

18 MR. LeGRANT: Well, you presented it here.

19 MR. HANLON: All right. So it's an inessential
20 but decorative or fanciful detail. Can we go to the page
21 that Ms. Johns asked to be pulled before that showed -- yes.
22 All right. So Mr. LeGrant, you said that -- I believe you
23 said in the answer to Chairman Hill's question maybe that
24 everything above that flat roof over the portico was an
25 embellishment. Is that correct?

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1 MR. LeGRANT: Yes.

2 MR. HANLON: All right. So everything above that
3 portico is in an inessential decorative element of the
4 building. Is that correct?

5 MR. LeGRANT: Well, I don't want you to put words
6 in my mouth. I didn't say that. I know that you relied on
7 Webster's definition of embellishment. I'll just go back to
8 this is a dome sitting on a roof. It's an allowable
9 architectural embellishment that's excluded from building
10 height.

11 MR. HANLON: But you agree with me that
12 embellishment means fanciful, decorative, inessential. And
13 you also --

14 CHAIRPERSON HILL: Mr. Hanlon, I'm just -- we can
15 have differences of opinion.

16 MR. HANLON: All right.

17 CHAIRPERSON HILL: Mr. LeGrant is calling that a
18 dome. You're calling it an architectural embellishment.
19 You've now pointed to Webster's dictionary as to what an
20 architectural embellishment is. And the Board is going to
21 determine what we think is accurate. So just to let you
22 know. Please ask your next question.

23 MR. HANLON: Mr. LeGrant, the dome is functional.
24 Is that correct? If I took that dome off -- that pyramidal
25 dome off, all the weather, the elements, the rain, the snow

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1 would go inside to the rooms below. Is that correct?

2 MR. LeGRANT: As is any dome on any building, I
3 would agree.

4 MR. HANLON: All right. And you would agree that
5 a roof by definition is a covering over the entire building
6 to keep out the elements. It's an impermeable covering over
7 the building?

8 MR. LeGRANT: That makes sense to me.

9 MR. HANLON: All right. If I took the dome off,
10 what is the roof?

11 MR. LeGRANT: Can you clarify?

12 MR. HANLON: Yes. If I took the dome off, is
13 there any other covering over the entire building?

14 MR. LeGRANT: If you take the dome off, I guess
15 there'd be a hole there that would be open to the sky.

16 CHAIRPERSON HILL: Okay, Mr. Hanlon. I mean, what
17 -- and I'm just trying to speed us up -- or not speed us up.
18 Mr. LeGrant is saying that the roof is that bottom portion
19 there, right? And that the rest of the thing is a dome
20 architectural embellishment. And that's where we're sitting
21 currently and deliberating upon.

22 MR. McCRERY: Yes, right.

23 CHAIRPERSON HILL: And if you remove it, yeah,
24 it's all going to be open to the sky.

25 MR. HANLON: And there is -- my point was there's

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1 no other roof other than that dome.

2 CHAIRPERSON HILL: Well, they could build a roof
3 flat. What we're trying to determine is whether or not
4 that's a dome or not, right? That's what we're going to have
5 to talk about. And so -- but go ahead and ask your next
6 question.

7 MR. HANLON: Can I look at the slides -- DCRA
8 slides for a minute?

9 CHAIRPERSON HILL: Are those DCRA slides? No.

10 MR. HANLON: DCRA's PowerPoint.

11 CHAIRPERSON HILL: Got it. Okay. There you go.

12 MR. HANLON: With respect to slide 1, am I
13 correct, Mr. LeGrant, that you did not actually sign this
14 subdivision approval on slide 1. Is that correct?

15 MR. LeGRANT: No, my staffer, Brittany Bullock,
16 did.

17 MR. HANLON: All right. Yeah, because I happen
18 to noticed someone signed for you on this slide.

19 MR. LeGRANT: Yeah, that's a common practice.

20 MR. HANLON: All right. Can I -- let me see. Can
21 I see slide 2 for a moment? Slide 2. I believe you
22 testified this was a diagram that you had in front of you at
23 the time that you were reviewing the subdivision application.
24 Is that correct?

25 MR. LeGRANT: Yes.

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1 MR. HANLON: All right. If you go down to the
2 lower corner of the diagram, it shows that it was prepared
3 in June of 2021. That would've been after the time that you
4 had approved the subdivision, right?

5 MR. LeGRANT: Well, I believe that the depiction
6 of the building footprint was the information provided to my
7 office at the time of the subdivision.

8 MR. HANLON: Okay.

9 MR. LeGRANT: And then this maybe specific
10 drawing, you might be correct, was they added -- like,
11 information may have been done in a later version.

12 MR. HANLON: So at the time you approved the
13 subdivision, you were not aware that there was a wall in what
14 would become the new required rear yard. I ask that because
15 I don't see it drawn on the diagram.

16 MR. LeGRANT: I'll answer it this way. My
17 staffer, in this case, Ms. Bullock, was provided the
18 information, maybe additional information beyond what you've
19 seen today in order to come to a conclusion that the
20 subdivision was correctly approved.

21 MR. HANLON: All right. Do you recall whether you
22 discussed with anyone whether there was a wall, a retaining
23 wall, or any wall in the new required report the subdivision
24 was approved?

25 MR. LeGRANT: I don't recall.

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1 MR. HANLON: Do you recall whether you discussed
2 what the height of the building was and what that pyramid was
3 before you approved this subdivision?

4 MR. LeGRANT: The height of the building was
5 presented as information to the reviewer, Ms. Bullock, in
6 order to do the analysis as to whether the rear yard was
7 compliant.

8 MR. HANLON: Right. And the reason I ask whether
9 you had, in fact, discussed the height with anyone before you
10 approved the subdivision, it's clearly the top of the
11 building is listed as elevation, height of 134 and a half on
12 this diagram. Would that not have caused you to think that
13 maybe to take a further investigation into what that
14 structure was on top of the roof and what was the required
15 rear yard?

16 MR. LeGRANT: 134'6" is the top of the
17 architectural embellishment.

18 MR. HANLON: And that's what you discussed at the
19 time you approved this?

20 MR. LeGRANT: That and the building height which
21 was depicted as 85 feet 3 inches.

22 MR. HANLON: If I can go to slide 6, Mr. Chairman.
23 Just so that we can be clear about this, the lower two
24 photographs are not, in fact, in the rear yard, are they?
25 They're in the side yard, right?

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1 MR. LeGRANT: Again, I have some uncertainty about
2 the actual areaways depicted. These are pictures of the
3 areaways to show they're open to the sky. If they are the
4 areaway on the south side of the building, then it is within
5 the portion of the rear yard as I testified to.

6 MR. HANLON: All right. So I want to be clear
7 again, though. The two areaways shown in the lower
8 photographs are areaways in the front of the building. They
9 would be in what you would now define as the new side yard,
10 correct? They're not in the rear yard.

11 MR. LeGRANT: No.

12 MR. HANLON: All right.

13 MR. LeGRANT: They're not in the side yard.

14 MR. HANLON: Can we go and take a look at -- let
15 me see for a second. Can we take a look for a moment at the
16 -- oh, what happened here? Let me see. I'm looking for a
17 diagram again of the front of the building. Let me see.

18 MR. McCRERY: Slide 2 perhaps.

19 MR. HANLON: Let me see slide 2.

20 MR. McCRERY: Three maybe, three.

21 MR. HANLON: Slide -- if we look at -- I was
22 looking at -- I apologize.

23 MR. HAYS: That slide 15 of Perseus shows where
24 these photographs are -- the location of the photographs.

25 MR. HANLON: Can we have that slide then? Slide

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1 15 you said?

2 MR. HAYS: Slide 15 of Perseus' submission.

3 VICE CHAIRPERSON JOHN: What exhibit?

4 MR. HANLON: Slide 15. It's correct, Mr. LeGrant,
5 that the two photos of the areaway are, in fact, in the front
6 of the building with the sphinxes, correct? They're not in
7 the new required rear yard.

8 MR. LeGRANT: Please let me catch up here. Okay.
9 This image here, I guess, View E which we looked at on the
10 other slide, you're saying that View E -- your question is
11 about that view, that photograph, correct?

12 MR. HANLON: Yeah, mm-hmm.

13 MR. LeGRANT: That's looking north. So that would
14 be on the side of the building to the east. But it's not in
15 the required side yard.

16 MR. HANLON: No.

17 MR. LeGRANT: The side yard as we've established
18 is against the side property line.

19 MR. HANLON: Maybe this would be easy. Can we go
20 to slide 9 of appellant's opening PowerPoint presentation?
21 That one. First, the rear yard runs from lot line to lot
22 line along the south side of the building, correct?

23 MR. LeGRANT: Side yard runs the entire width --
24 (Simultaneous speaking.)

25 MR. HANLON: Rear yard. The rear yard runs from

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1 --

2 MR. LeGRANT: The rear yard runs the entire width
3 of the lot.

4 MR. HANLON: All right. So Perseus has it drawn
5 correctly in its PowerPoint presentation, right? Let's look
6 at Perseus' PowerPoint presentation.

7 CHAIRPERSON HILL: I'm sorry, Mr. Hanlon. I'm
8 trying to also catch up with you. And so your question --
9 and I'm still not really sure why you are asking it. But
10 you're trying to figure out that photo which Mr. LeGrant, as
11 I understand it also, it seems to me to be back in the side
12 yard, right?

13 And so I don't know if that's what Mr. Hanlon is
14 trying to get you to agree to. And I don't know yet the
15 argument for it, I suppose. But, like, so that -- the
16 question is whether or not that photo E is in the side yard.

17 MR. HANLON: Correct.

18 CHAIRPERSON HILL: And Mr. Hanlon, you're asking
19 it why?

20 MR. HANLON: Because the fact that there may be
21 a retaining wall that has nothing to do with whether there
22 is a retaining wall in the rear yard because that happens to
23 be in the side yard. And we need to be looking at the wall
24 in the rear yard.

25 CHAIRPERSON HILL: Well, there was another

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1 photograph I thought that showed that rear wall holding up
2 the areaway. It was another photograph. But regardless, I'm
3 just trying to get -- and I guess the answer is yes. And now
4 I'm just asking Mr. LeGrant. I don't know.

5 And if you can zoom in there, Mr. Young. Scroll
6 down. Mr. LeGrant, I think that area from the photograph is
7 below the pink area and to the right of the wall. And so Mr.
8 LeGrant, is that in the side yard?

9 MR. LeGRANT: I would say that that is in the side
10 yard. But as I remind everyone, as I testified to, along the
11 16th Street or west side, given that's a corner side street,
12 there is no side yard requirement. So it's on the side of
13 the building. One could argue it's in the side yard. But
14 it's not in any required --

15 (Simultaneous speaking.)

16 CHAIRPERSON HILL: I see. There's no required
17 side yard there is what you're trying to clarify?

18 MR. LeGRANT: Yes.

19 CHAIRPERSON HILL: Okay. It's on the side of the
20 building. Okay. Mr. Hanlon, go on, please.

21 MR. HANLON: Yeah. If we could go to Perseus'
22 PowerPoint No. 26. All right. Now Mr. LeGrant, you agree
23 that the pink shows the new required rear yard?

24 MEMBER MAY: I'm sorry. Can I interrupt here for
25 a second, Mr. Chairman?

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1 CHAIRPERSON HILL: Yeah. Go ahead, Commissioner.

2 MEMBER MAY: DCRA did not testify about anything
3 that was in Perseus' presentation. So I don't understand why
4 this would be relevant cross for DCRA. Perhaps for Perseus,
5 but not for DCRA.

6 CHAIRPERSON HILL: Okay. Thanks, Commissioner.
7 So Mr. Hanlon, I would agree with the Commissioner, what he
8 just stated. You're trying to get what answered?

9 MR. HANLON: I would like to know whether the
10 Zoning Commission agrees that this pink area shows the
11 required rear yard.

12 MEMBER MAY: I think Mr. LeGrant already testified
13 that the required rear yard be considered to be across the
14 entire face. And he thought that wall is an exception. It
15 fits under the definition of exception. So maybe, Mr.
16 LeGrant, you can just confirm that, if that's really the
17 question.

18 MR. HANLON: Yeah. Thanks, Mr. May.

19 MR. LeGRANT: Yes, I testified to that, yes.

20 MEMBER MAY: Right.

21 MR. HANLON: All right. Now that wall, you said
22 -- Mr. LeGrant, that wall that we've talked about so much,
23 it's not stairs and it's not a fence. It's a retaining wall.
24 Is that your opinion?

25 MR. LeGRANT: The white portion shown in this

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1 image. The white middle section --

2 (Simultaneous speaking.)

3 CHAIRPERSON HILL: Is that what you're asking, Mr.
4 Hanlon? That's what Mr. LeGrant is trying to clarify.

5 MR. HANLON: Yes. In slide 6 of DCRA, is the top
6 left, the wall that we're discussing, right? And you said
7 that's an exception?

8 MR. LeGRANT: Yes.

9 MR. HANLON: And you said you believe that that
10 photo shown in the right -- I'm sorry, the upper top left is
11 retaining something?

12 MR. LeGRANT: Yes.

13 MR. HANLON: Now under your theory then, that wall
14 is 11 and a half feet high. Could that wall be 20 feet high
15 and still be a retaining wall?

16 MR. LeGRANT: Zoning regulations specify no
17 maximum height for retaining walls.

18 MR. HANLON: All right. So the retaining wall
19 could be 20 feet high, it could be 80 feet high, and nothing
20 on either side of it for 70 or 80 feet and still be a
21 retaining wall?

22 MR. LeGRANT: That's a hypothetical. I don't
23 think --

24 (Simultaneous speaking.)

25 MR. LeGRANT: -- hypothetical.

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1 CHAIRPERSON HILL: I mean, Mr. Hanlon, I don't
2 think it could be 80 feet tall just to let you know. So the
3 -- how many questions you got left, Mr. Hanlon?

4 MR. HANLON: Give me one moment. I think since
5 I'm time restricted, I'll see if I have one last question.

6 (Simultaneous speaking.)

7 CHAIRPERSON HILL: You've already gone over your
8 time that I originally was trying to get you to adhere to.
9 And so I guess what's happening is thank God there's
10 technology where Professor McCrery is trying to text you
11 something. I don't know.

12 Okay. Somebody is trying to text you a question.
13 So you get one more question, Mr. Hanlon, because we got to
14 go back on to the next presentation and we're already, let's
15 see, 9:30, 10:00 o'clock, 10:00, 11:00, 12:00, 1:00. We're
16 at three and a half hours right now, right? So go ahead and
17 ask your final question.

18 MR. HANLON: Mr. Chair, I thank you for your
19 indulging me. I'm not going to ask another question at this
20 time.

21 CHAIRPERSON HILL: Okay. All right. Drop the
22 thing, Mr. Young. Because you're still going to get
23 rebuttal, Mr. Hanlon. All right. I already asked -- I think
24 I asked. Ms. Roddy, do you have questions of the zoning
25 administrator?

1 MS. RODDY: I do.

2 CHAIRPERSON HILL: I did ask. Okay, great.

3 (Simultaneous speaking.)

4 MS. RODDY: Oh, no, no. I do have questions.

5 CHAIRPERSON HILL: I understand. I understand.

6 How many questions, Ms. Roddy, do you have?

7 MS. RODDY: Five.

8 CHAIRPERSON HILL: Okay. All right. Let's take
9 a break because I need to take a break. And then let's come
10 back. We'll have Ms. Roddy's questions, and then we'll have
11 lunch. Okay? That's what my plan is. And I'm getting low
12 on blood sugar. I can tell you all right now. And you don't
13 want Mr. May to get too much less on the blood sugar. I
14 guess he's been snacking. I don't know. Because --

15 MEMBER MAY: Oh, yeah. Why don't we just break
16 for lunch? I mean, we're not going to, like, forget too
17 much. We can break for lunch, then Ms. Roddy can pick up her
18 cross.

19 CHAIRPERSON HILL: No, again, I don't like it.
20 I'm going to -- all right. Ms. Roddy, ask your questions?
21 Can you all suck it up for another five, ten minutes?

22 MR. LeGRANT: Absolutely.

23 CHAIRPERSON HILL: Okay. All right. Now Ms. John
24 has a thought.

25 VICE CHAIRPERSON JOHN: No, I just had one follow-

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1 up question for Mr. Hanlon which can wait until after Ms.
2 Roddy crosses.

3 CHAIRPERSON HILL: Okay. Go ahead, Ms. Roddy.

4 MS. RODDY: Okay. Thank you. So Mr. LeGrant, I
5 believe that you had testified that you are the individual
6 charged with determining compliance with the Height Act. Is
7 that correct?

8 MR. LeGRANT: Yes.

9 MS. RODDY: And so you are familiar with the
10 exception for domes that's in the Height Act and has been
11 referenced throughout the filing for this case?

12 MR. LeGRANT: Yes, I am.

13 MS. RODDY: And so under the Height Act, is a dome
14 including in building height?

15 MR. LeGRANT: No.

16 MS. RODDY: Okay. So just to clarify, domes are
17 allowed to extend to a greater height but they don't actually
18 increase the height of the building under the Height Act.
19 Is that correct?

20 MR. LeGRANT: That's correct.

21 MS. RODDY: And there's a provision then that's
22 in the zoning regulations that is similar to the provision
23 that's provided in the Height Act that excludes domes from
24 building height. Is that correct?

25 MR. LeGRANT: Can you repeat that? I had a little

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1 trouble hearing.

2 MS. RODDY: Sorry. So there is also a provision
3 in the zoning regulations similar to the one in the Height
4 Act that would exclude domes from building height?

5 MR. LeGRANT: Yes.

6 MS. RODDY: And in fact, the zoning regulations
7 refer to domes as an example of an embellishment that is
8 excluded from building height, correct?

9 MR. LeGRANT: Yes, I've testified to that.

10 MS. RODDY: And to also clarify, can a dome serve
11 as both an embellishment and a roof?

12 MR. LeGRANT: Please repeat.

13 MS. RODDY: Can a dome serve as both an
14 embellishment and a roof?

15 MR. LeGRANT: Well, the dome is an architectural
16 embellishment can function as a roof as protecting the area
17 underneath it, sure.

18 MS. RODDY: Okay. Those are my questions. Thank
19 you.

20 CHAIRPERSON HILL: Okay. Vice Chair John?

21 VICE CHAIRPERSON JOHN: Thank you, Mr. Chairman.
22 Mr. Hanlon, I got very confused about the discussion on
23 areaways. And I wanted to go back to the Perseus slide, and
24 I know we haven't really discussed it yet with the pink
25 diagram.

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1 And as I looked at the record, the areaway is on
2 the S Street side. And it is also on the side next to the
3 alley which is now the rear yard. And so the section with
4 the stairs that the ZA referred to is under the pink section
5 depicted in this slide. Is that your understand of what that
6 areaway looks like, Mr. Hanlon? I think you might be more
7 familiar with the building than the rest of us.

8 MR. HANLON: The -- thank you, Mr. John. I've
9 only been in it once. The steps to the areaway would be to
10 the immediate right of the pink square. That is if you see
11 where the subdivision line is being drawn, right there is
12 where the stairs are if you go down into the areaway.

13 VICE CHAIRPERSON JOHN: And the areaway goes all
14 the way to the left around that white projection which is the
15 wall.

16 MR. HANLON: No.

17 VICE CHAIRPERSON JOHN: Okay.

18 MR. HANLON: No, the areaway stops at the wall.

19 VICE CHAIRPERSON JOHN: Okay. So the areaway
20 stops at the wall.

21 MR. HANLON: Yes, you can see that in Perseus No.
22 6.

23 VICE CHAIRPERSON JOHN: Okay. So that was not
24 clear from the picture. So if I walk down to this areaway
25 from wherever the door to the areaway is and I kept walking

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1 all the way over there, I would run into a wall?

2 MR. HANLON: Yes.

3 VICE CHAIRPERSON JOHN: Okay. All right.

4 MR. HANLON: Yes, yes. And then you would go --
5 you could go right immediately above the pink.

6 VICE CHAIRPERSON JOHN: Right.

7 MR. HANLON: And between the wall and the building
8 and the pink is that area that showed the pictures of the
9 areaway with the little windows.

10 VICE CHAIRPERSON JOHN: And so this area is under
11 the steps. There's a space between the wall and the building
12 face.

13 MR. HANLON: Apparently. We did see these
14 pictures yesterday, but apparently so.

15 MR. HAYS: No, no. The steps are to the left of
16 the way. The steps leading up to the -- I think that Vice
17 Chairman John is referring to the steps leading up to the
18 first floor of the temple. Those steps are to the left of
19 the wall as depicted there with the pink.

20 VICE CHAIRPERSON JOHN: And so if I could follow
21 up, those stairs are underneath the steps from 16th Street
22 up to the temple.

23 MR. HAYS: They're not underneath. They are the
24 -- there's the steps that lead up to 16th -- from 16th Street
25 up. And then there's another set of stairs that sort of meet

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1 the same platform. And those are to the left of the wall.
2 Those stairs are shown in a picture of the front of the
3 temple which is --

4 VICE CHAIRPERSON JOHN: If I could correct and
5 interrupt you for a minute, Mr. Hayes. I'm talking about the
6 areaway. And I wanted to find out if I'm in the areaway and
7 I'm walking toward 16th Street, if I turn right, am I going
8 to be in the areaway? And is there an exit from that areaway
9 into the temple?

10 MR. HAYS: That's depicted on the slide, page 15
11 of UE. And it does not appear that there is -- as you make
12 that right turn, there does not appear to be a door there.

13 VICE CHAIRPERSON JOHN: Okay. So there is no exit
14 from the areaway into the temple on the 16th Street side from
15 the areaway?

16 MR. HAYS: That appears to be from -- that's my
17 interpretation of looking at it.

18 VICE CHAIRPERSON JOHN: Okay, okay. And so that
19 could be that wall that we were looking at with no stairs,
20 just a big wall to the side. And I think that helps clarify
21 it for me. Thank you.

22 CHAIRPERSON HILL: Okay. Ms. Roddy, since this
23 is your slide and I just want further clarification, that --
24 the areaway is -- what direction is that? The areaway is to
25 the south of the building. Is that correct?

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1 MS. RODDY: There's an areaway to the south of the
2 building that is included in the rear yard. It turns the
3 corner and heads north. And there's a portion then that
4 continues into the side yard. But there is a portion then
5 of the wall that we're discussing that abuts the areaway that
6 is to the south of the building acting as a retaining wall.

7 CHAIRPERSON HILL: Okay. We can see your pictures
8 during the -- it's actually in -- well, actually now if you
9 pull up Mr. Young DCRA's slide deck and go to slide 5.

10 MS. RODDY: You can see it in that --

11 (Simultaneous speaking.)

12 CHAIRPERSON HILL: That's in the rear yard,
13 correct?

14 MS. RODDY: Correct.

15 CHAIRPERSON HILL: Right. And that's facing --
16 you're walking towards 16th Street?

17 MS. RODDY: Yes. And to Vice Chairman John's
18 question, if you continue to walk, you would run straight
19 into the wall -- the retaining wall.

20 CHAIRPERSON HILL: Right. And then you take a
21 right and then that's the other space that we're talking
22 about?

23 MS. RODDY: Exactly.

24 CHAIRPERSON HILL: Got it. Okay. Does that help
25 at all, Ms. John? It helped me a little.

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1 VICE CHAIRPERSON JOHN: Yes, it does.

2 CHAIRPERSON HILL: Okay. All right. Now let's
3 go ahead and take a break unless anybody has anymore -- we'll
4 take a lunch. So it's 1:45-ish. So I mean, do you want to
5 shoot for 2:10 and see what happens? Okay? All right.
6 Okay. Let's shoot for 2:10. All right. See you guys later.
7 Have some lunch.

8 (Whereupon, the above-entitled matter went off the
9 record at 1:47 p.m. and resumed at 2:21 p.m.)

10 CHAIRPERSON HILL: All right. Mr. Moy, if you
11 want to call us back in?

12 MR. MOY: Yes, thank you, Mr. Chairman. The Board
13 is -- has returned to its public hearing session after a
14 quick lunch recess and the time is at or about 2:22 p.m.

15 CHAIRPERSON HILL: Okay, great. All right,
16 Ms. Roddy. You can go ahead and give us your presentation.

17 MS. RODDY: Thank you. And if we could pull up
18 the presentation that we had filed. I think it's
19 Exhibit 102. It was up previously. Thank you.

20 Good afternoon. Christine Roddy with Goulston &
21 Storrs, and I'm here with Lawrence Ferris, representing
22 Perseus, the leasee of the eastern lot. That's Lot 111 that
23 you can see here on the slide here.

24 CHAIRPERSON HILL: Ms. Roddy, just real quick.
25 I'm sorry. Do you know if it's in the other -- oh, never

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1 mind. I got the -- okay. It's 132 in the other one. Okay.
2 I got it. I'm sorry. Please, go ahead.

3 MS. RODDY: Okay. The approved subdivision is
4 allowing Perseus to proceed with a multifamily development
5 on Lot 111, consisting of about 150 units and dedicating
6 approximately 11 percent of the residential GFA to affordable
7 housing. The building permit for the building has been
8 issued and construction is well underway. And as you know,
9 DECAA has filed an appeal with the BZA of that permit, which
10 will be heard next month by the Board.

11 The lot that was subdivided into Lots 110 and 111
12 was created in 2013. It was not an old lot and had only
13 existed for seven years. The approved subdivision roughly
14 recreates the lot on which the Temple sat at the time it was
15 built and, in fact, Lot 110 is a bit bigger than the lot that
16 the Temple was built on. If we could --

17 You can see here outlined in red, the original lot
18 that the Temple was built on, which is also the boundary of
19 the landmark. And you can see, that in this picture, that
20 there was originally a jog in the lot line, but the current
21 subdivision continues straight toward the south, which is
22 significant in that the approved subdivision aligns with the
23 zone boundary line between the two properties. If we could
24 go to the next slide?

25 And this is a picture of the Temple at the time

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1 it was built, and you can see that there are residential
2 buildings that surrounded it, and you can see how it was
3 configured and the yards that surrounded it at the time of
4 its construction. Because the Temple is a landmark, the
5 subdivision has been reviewed and approved by the Historic
6 Preservation Review Board and by the Mayor's agent, and the
7 Appellants have filed two separate appeals challenging those
8 approvals: one of which is pending before the Court of
9 Appeals and the other before the Superior Court; and the
10 Court of Appeals recently dismissed one of their claims,
11 though the others are still pending.

12 And I'll note that since the Appellant submitted
13 the court's order into the record, that what the Court of
14 Appeals did last week was dismiss altogether the Appellant's
15 challenge to the HPRB approval of the design of the
16 residential project on the eastern lot and they remanded the
17 landmark boundary issue back to the Superior Court solely on
18 jurisdictional grounds, which was a move that was not opposed
19 by any of the parties and was the expected course of action.
20 The appeal to the Mayor's agent's decision is still pending
21 and oral arguments were just heard about two weeks ago.

22 So, in any event, the Appellants are not pursuing
23 this appeal to challenge DCRA's approval of the same
24 subdivision that both HPRB and the Mayor's agent approved.
25 And as I mentioned, DECCA has also appealed the permit and

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1 that was on the basis of the subdivision.

2 So, as we detailed in our prehearing filings and
3 as being demonstrated today, the newly-created lots are
4 entirely consistent with all applicable zoning requirements
5 and DCRA properly approved the subdivision. The Appellants
6 allege that the subdivision fails to meet four primary
7 requirements, and the rear yard has been the biggest focus
8 and what we have focused on today exclusively, but they also
9 claim noncompliance with side yard requirements and with
10 parking and loading requirements.

11 The subdivision is slowly complying with each of
12 these, and I promise to be mindful of the Board's time since
13 we have been for a bit and we've covered a lot already. But
14 I think that, given the gravity of the allegations and the
15 fact that the building is under construction, and the
16 significant appeal -- impact the appeal will have, it's going
17 to be helpful to walk through the issues step by step. So,
18 I would beg the Board's indulgence to bear with me as I try
19 to do just that.

20 CHAIRPERSON HILL: No, that's fine, Ms. Roddy.

21 MS. RODDY: Thank you. So, starting with the rear
22 yard. The math is simple. The temple has a required rear
23 yard of 28.4 feet. It provides a rear yard of 42.5 feet,
24 which exceeds the requirement by over 14 feet. And if we
25 could go to the next slide?

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1 And you can see the rear yard to the south of the
2 template. The rear yard is located opposite of S Street,
3 which the Appellants take issue with, though they seem to
4 have conceded that it is permissible and that there is
5 precedent to support it, but they argue it as disingenuous
6 to say that the front of the building is on S when the main
7 entrance is clearly on 16th and the Temple is redesignating
8 its front.

9 I would first say that what's considered the front
10 of the building for zoning purposes does not change in any
11 way the functional front of a building. Of course, the main
12 entrance is on 16th Street and we don't dispute that, but the
13 building can have a different front for zoning purposes.

14 Secondly, the Temple was built before there was
15 a zoning code, so there was never a designation of yards.
16 And even if there were, that designation is not permanent and
17 it can be changed so long as it does not create a
18 nonconformity. And that is an issue that the Board has
19 squarely decided in the Mt. Pleasant Library case. If we
20 could go to the next slide?

21 And in that case, the Board found that, quote, any
22 prior designation of the front of a building does not find
23 the property owner, end quote. And importantly, the
24 Regulations explicitly say that, where a lot abuts more than
25 one street, the owner shall have the option of selecting

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1 which is to be the front for purposes of determining street
2 abutment, and Mr. LeGrant confirmed this.

3 The owner can choose the front of the building
4 when determining where its yards are located and the
5 Regulations don't place restrictions or specific criteria on
6 that designation. And in this instance, the rear yard is
7 located opposite of S, and that is consistent with the
8 Board's finding in both the 2012 Mt. Pleasant Library Appeal,
9 that's Case Number 18152, and the 2016 LINE Hotel Appeal in
10 Case Number 19080.

11 So, with the rear yard established opposite of S,
12 the next step is to confirm the required depth of the yard,
13 and that's a function of the height of the building, so let's
14 review that measurement. If we could go to the next slide?

15 And you heard Mr. LeGrant testify that when a
16 building is located on multiple streets, the owner can pick
17 which street the building height measuring point, or BHMP,
18 is located on, and I believe the Appellants have also
19 conceded that the past precedent supports this. And it's,
20 of course, the idea that the selection of the BHMP location
21 is completely independent of the chosen front for yard
22 purposes.

23 And that has been the standard policy for years
24 and the Board did confirm that in the LINE Hotel appeal. And
25 in that case, the Board found the Zoning Administrator's

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1 interpretation reasonable and there was a distinction built
2 into the Regulations between the determination of street
3 frontage which is used to determine a rear lot line
4 designation, and building frontage which is used to measure
5 the building height. The next slide, please?

6 And here, you can see the building height
7 measuring point is located on 16th Street and in the
8 residential zone the measuring point is located at the
9 midpoint of the building façade under Subtitle B,
10 Section 308.2. And in an effort to be conservative, and
11 arguably overly so, we took the measuring point at the lot
12 line. Appellants say it must be taken at the curb, but
13 there's no interpretation that says the measuring point
14 should be taken at the curb in a residential zone and they
15 don't offer support for that position.

16 The regulations are clear that the measuring point
17 is to be located at the adjacent natural or finished grade,
18 and the finished natural grade are one in the same under the
19 relevant definitions in this instance because the stairs have
20 been in place for at least five years. The next slide,
21 please?

22 So, from that building height measuring point, the
23 height is then measured to the cornice line of the building,
24 and there's a lot of discussion about whether the dome should
25 be excluded from the building height, and the answer is yes.

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1 There is an exception in the Regulations for embellishments,
2 which specifically encompasses domes. Next slide, please?

3 The language in the Zoning Regulations almost
4 mirrors the language in the Height Act, which you will recall
5 was in effect at the time the Temple was constructed. And
6 you can see the language from both the Regulations and the
7 Height Act on this slide, and you can see just how similar
8 they are.

9 And Mr. McCrery testified that the building permit
10 stated the building -- the Temple was 137 feet tall and the
11 maximum height allowed under the Height Act was 90 feet for
12 residential streets or 130 feet for business streets, under
13 the Height Act, and the height of 137 feet exceeds the stated
14 maximums and would not have been permitted absent a specific
15 amendment to the Height Act for the Temple, which there is
16 not. And Mr. McCrery was not aware of an amendment either.

17 The only way a height in excess of the Height Act
18 was allowed was if it was approved as a dome with the
19 permission of the commissioners and both sides agree that the
20 commissioners did, in fact, sign off on the permit. It's a
21 nuanced distinction, but very important in this case. The
22 height of the Temple was not increase but rather the dome was
23 allowed to exceed the height limitations that were in place.
24 And if we could go to the next slide?

25 In this slide that was prepared by the Office of

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1 Zoning -- the D.C. Office of Zoning and is found on their
2 website, very clearly demonstrates this distinction. And you
3 can see that the dome feature on the blue building to the
4 right is not factored into the height of the building under
5 the Height Act. And while the Board does not have
6 jurisdiction over the Height Act, this methodology is
7 important because the same language that permitted the dome
8 to exceed height limitations under the Height Act was then
9 carried over to the Zoning Regulations, which is what is
10 relied on today to again allow the dome to exceed the height
11 limitations otherwise imposed by zoning.

12 The language in the Regulations allowing the
13 exclusion of domes from height supports Mr. LeGrant's past
14 determinations to exclude such features from building height,
15 even if those features also function as a roof. And we have
16 included those examples in our submission, so I won't belabor
17 the point here.

18 Excluding the dome from measurement of height is
19 consistent with past precedent as well as the permit that
20 approved the Temple's construction, as such it is excluded
21 from the building height for purposes of determining the
22 required depth of the rear yard, resulting in a principled
23 building height of 85.25 feet and a rear yard requirement of
24 28.4 feet.

25 Now, the Appellants attempt to say that the dome

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1 can't be an architectural embellishment because it results
2 in the appearance of a raised building height for more than
3 30 percent of the wall upon which it is located, and that
4 also rings hollow. If we could go to the next slide?

5 You can see here, the dome is stepped back and it
6 doesn't result in the appearance of a raised building height,
7 making it fully consistent with this section. Simply put,
8 the dome does not read visually as extending the building
9 façade and instead stands out very distinctly as a separate
10 esthetic element. The dome was permitted as an exception to
11 height at the time it was built and it continues to be
12 permitted as an exception to height under the Zoning
13 Regulations. Next slide, please?

14 And so, the depth of the rear yard. The temple
15 has a rear yard of 42 and a half feet and that exceeds the
16 requirement by more than 14 feet. The Appellants attempt to
17 argue that the rear yard measurement should exclude the
18 areaway that runs along the south of the building, leading
19 to a rear yard of 32 feet. And I'll point out that the
20 32-foot rear yard would still meet the requirement of 28.
21 But nevertheless, the argument holds no water because the
22 definition of the yard provides that it be open to the sky
23 from the ground up; and that's a quote from the definition.
24 Next slide, please?

25 And again, this issue has been squarely decided

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1 by the Board in a 2017 Adams Morgan for Reasonable
2 Development Appeal, Case Number 18888, where the Board held
3 that a garage ramp and below-grade garage were permitted in
4 a required rear yard because the yard was only required to
5 be open from grade to sky. The Appellants argue that we're
6 mixing apples with oranges because that appeal also addressed
7 how much of a rear yard the structure can occupy.

8 But you don't get to the second question of
9 determining how much of a yard a structure can occupy without
10 first determining whether the structure can be in the rear
11 yard at all. And in that case, the Board readily dismissed
12 the claim that the garage ramp and garage were impermissibly
13 in the required yard because of the clear language of the
14 definition of a yard.

15 And so then, next, the Appellants claim that the
16 retaining wall in the yard renders it nonconforming; however,
17 the Regulations explicitly allow stairs, fences, and
18 retaining walls in a required yard. So, again, their
19 argument ignores the Regulations. If we could go to the next
20 slide?

21 The retaining wall is defined as a vertical, self-
22 supporting structure constructed of concrete, durable wood,
23 masonry, or other materials designed to resist lateral
24 displacement of soil or other materials. And the next slide,
25 please?

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1 And our architect will rebut testimony and confirm
2 that this wall is, in fact, a retaining wall. It is very
3 clearly holding back matter from spilling into the areaway
4 and recall a portion -- we had a lot of discussion about
5 this, but a portion of the areaway is the rear yard, so it
6 is in the rear yard and it is keeping the matter from
7 spilling into that areaway, and that wall is also keeping the
8 stair system in place.

9 And both of that fits into the definition of
10 retaining wall, let alone that it also acts as a fence for
11 people sitting on the bench, as we saw pictures of that, and
12 it is part and parcel with the stair system. It actually
13 fits into all three of the exceptions.

14 But even -- let's put that language aside and put
15 the exemption aside that's provided in B-324, and for the
16 sake of the argument say that the wall does not fit into the
17 exception. The rear yard still meets the required depth.
18 The depth of the rear yard must be measured as the average
19 depth, and that's in the base definition of how to measure
20 a rear yard.

21 That's not -- the average depth is not a
22 methodology used just when you have an irregularly shaped lot
23 or even irregularly shaped yards. Typically, when it comes
24 into place, just because, obviously, within a regular shape,
25 it's more -- it would be typically used. Again, Appellants

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1 claim that the term "mean" means median and not average. But
2 Webster's Dictionary defines "mean" as average. Next slide,
3 please?

4 And here, you can see that we have the definition
5 of "mean" in the Webster's Unabridged Dictionary and it
6 clearly refers to it being an average, and that's consistent
7 with how the term is typically treated in a mathematical
8 context, such as conducting a measurement. So, we also have
9 the definition from the Merriam-Webster online edition, which
10 I believe the Appellants had relied on, if we can go to the
11 next slide?

12 That also supports the interpretation of "mean"
13 in this situation as referring to an average. So,
14 ultimately, it doesn't matter which version of Webster's you
15 look to since it's clear that, regardless, "mean" in this
16 contexts means average, and that's how the Zoning
17 Administrator has consistently applied it.

18 The term of how they -- in terms of how the
19 average is calculated, there are a few methods, and we've
20 discussed that already today. And there have been methods
21 that have been accepted for measuring average depth and our
22 architect will testify that using those methods, both the
23 area method that was discussed and, obviously, the averaging
24 of every ten feet that we had submitted into the record, that
25 the rear yard still meets the required depth.

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1 The impact of averaging the depth is very minimal
2 in this case. It's a difference of about three to 18 inches,
3 depending on the method, and more to the point the difference
4 is not anywhere near causing the rear yard to be less than
5 the required depth of 28 feet. So, at the end of the day,
6 even if you don't accept the walls permitted in the rear
7 yard, which we think it very clearly meets the exception, the
8 yard still satisfies the depth requirement. If we could go
9 to the next slide?

10 So, I would also just point out that even if you
11 accept the opposition's argument that we should put the
12 measuring point at the curb on 16th Street or move it to
13 S Street or even to the bottom of the area where you're on
14 S Street, the Temple still meets the rear yard requirement.
15 So, no matter how much the Appellants strain the Regulations,
16 they're not able to reach a different outcome.

17 So, moving onto the other arguments -- and I know
18 we haven't discussed them today but since they are still
19 alleged and it's in the record, I'd like to take some time
20 to address them. There have been arguments made with respect
21 to the noncompliance of side yard measurements and the
22 materials in the record really haven't clearly articulated
23 a complaint with respect to side yards.

24 But for the sake of the record, I'd like to be
25 clear that there is no issue with compliance of those yards.

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1 Section F-606.4 is clear that there is no minimum depth
2 requirement for a side yard abutting a street, and that would
3 be the western yard. If we could go to the next slide,
4 please?

5 And the eastern side yard meets the minimum
6 requirement of 4 feet no evidence had been offered to
7 challenge that. So, in short, no evidence has been entered
8 to indicate that the side yards don't comply with the
9 required setbacks and the Appellants have not met their
10 burden on that claim. The Appellant's parking and loading
11 claims are similarly misinformed, if we could go to the next
12 slide?

13 The temple was constructed before zoning
14 regulations existed, and that includes parking and loading
15 requirements. And parking and loading are only triggered
16 when there is new construction or an addition. They're not
17 triggered by a subdivision. And you can see from the
18 language of both C-701.2 and 901.2 that these requirements
19 must be met when a new building is constructed. The temple
20 was built before parking or loading was required and there
21 was no subsequent event that would have triggered a parking
22 or loading requirement. A subdivision does not, by itself,
23 impose the requirement.

24 And finally, the Appellants claim that the
25 subdivision is not allowed because the Temple has a

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1 nonconforming height, but that's also another red herring,
2 and this has been stated numerous times in both sides'
3 materials. The height, when you look at Section C-302.1, if
4 you could go to the next slide, you can see that height is
5 not one of the items that is reviewed during a subdivision
6 application. So, while the Temple is consistent with height
7 requirement, it is relevant here only for determining the
8 required depth of the rear yard and is otherwise irrelevant
9 for approval of a subdivision. The next slide, please?

10 And finally, the Appellants have stated that the
11 subdivision is inconsistent with the purpose and intent of
12 the Zoning Regulations; however, the subdivision complies
13 with the matter-of-right requirements of the Zoning
14 Regulations. The purpose and intent provisions do not
15 supersede or supplement the stated zoning requirements set
16 forth for a zone district. Again, this is something that the
17 Board has already decided. And in another appeal, you can
18 see that the Board decided that purpose provisions are merely
19 precatory and do not alter the matter-of-right standard.

20 In any event, our findings demonstrate that the
21 subdivision is, in fact, consistent with these state
22 objectives and the District policy to facilitate the
23 construction of housing, including affordable units, on
24 infill sites such as this.

25 So, before we finish the presentation, I would

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1 like to ask our architect, Jeff Lockwood with Hickok Cole
2 Architects, a few questions to rebut testimony that's been
3 presented. So, Jeff, if you could introduce yourself for the
4 record?

5 MR. LOCKWOOD: Good afternoon, everybody. I'm
6 Jeff -- sorry. I'm Jeff Lockwood. I'm with Hickok Cole
7 Architects. I'm a senior associate here and I've been
8 actually at Hickok for 17 years now.

9 MS. RODDY: Thank you. If we could pull up -- I
10 think it's Slide 24. I'm sorry. I meant the elevation. I
11 can just ask him.

12 Jeff, where did you measure the building height
13 to?

14 MR. LOCKWOOD: I measured it to the top of the
15 cornice.

16 MS. RODDY: Is the dome set back from the cornice
17 line?

18 MR. LOCKWOOD: Yes. The dome is set back 11 foot,
19 4 and a half inches from the cornice line on all four sides.

20 MS. RODDY: So, the dome does not extend the
21 vertical height of the cornice line?

22 MR. LOCKWOOD: That is correct. The dome is set
23 back. It is not in line with the cornice line. It is set
24 back 11'4" away from that cornice line.

25 MS. RODDY: And what supports the weight of the

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1 dome?

2 MR. LOCKWOOD: So, the dome is supported,
3 basically, on a double-wall system, or essentially it sits
4 on the roof of the building and its loads are distributed on
5 the wall directly beneath it but also buttressed by the
6 colonnade wall that surrounds the building. So, it's sort
7 of a dual system. It distributes the loads going down -- all
8 down the hallway, transfers it down into the foundation of
9 the building.

10 MS. RODDY: Now, someone had suggested that
11 perhaps the building height should be measured to the bottom
12 of the ziggurat. Now, what would the building height be if
13 that was the case, if the building height went from the
14 building height measuring point to the bottom of the
15 ziggurat?

16 MR. LOCKWOOD: So, the bottom of the ziggurat is
17 at elevation 195.47 feet, so that would yield -- if you start
18 at the building height measuring point of 93.97 feet, which
19 is what is depicted in --

20 (Simultaneous speaking.)

21 CHAIRPERSON HILL: Sorry, Mr. Lockwood?
22 Mr. Lockwood?

23 MR. LOCKWOOD: -- the height would be 101'6",
24 which would --

25 CHAIRPERSON HILL: Mr. Lockwood? Am I on mute?

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1 MR. LOCKWOOD: -- require a 33.83-foot rear yard.

2 MS. RODDY: And what's the depth of the rear yard
3 that's being provided?

4 MEMBER SMITH: Mr. Lockwood? Mr. Lockwood?

5 MR. LOCKWOOD: And then, the depth of the rear I
6 provide is 42'6", so it's clearly --

7 CHAIRPERSON HILL: Hey, am I on mute?

8 MR. LOCKWOOD: -- more than this required
9 33.83 feet.

10 MEMBER SMITH: No, you're not. But I don't think
11 they can hear us.

12 MS. RODDY: But all the same, the ziggurat, we
13 aren't measuring to the bottom of the ziggurat --

14 (Simultaneous speaking.)

15 VICE CHAIRPERSON JOHN: Okay. Ms. Roddy?

16 MS. RODDY: -- to the cornice line. And when you
17 measure to the cornice line, what is the required rear yard
18 depth.

19 VICE CHAIRPERSON JOHN: -- the wave. Ms. Roddy?

20 MR. LOCKWOOD: Yeah. So, when I measured to the
21 cornice line. I --

22 VICE CHAIRPERSON JOHN: Okay. Chairman --

23 CHAIRPERSON HILL: Can you all hear me?

24 MS. RODDY: Yes.

25 CHAIRPERSON HILL: All right. Well, you

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1 weren't --

2 MS. RODDY: Now we can.

3 CHAIRPERSON HILL: Okay. I'm sorry. You're going
4 to have to start all over again, Mr. Lockwood, because I got
5 completely distracted again. I was trying to understand,
6 what's a ziggurat?

7 MR. McCRERY: May I recommend that you use the
8 elevation to show that instead of the roof plan?

9 CHAIRPERSON HILL: Okay. Give me a second
10 Mister -- Professor McCrery.

11 Ms. Roddy --

12 MR. LOCKWOOD: Yeah --

13 CHAIRPERSON HILL: I appreciate, Professor,
14 whatever you're saying.

15 Ms. Roddy, you can use whatever you want to use.

16 I just -- if you can go back and just tell me what
17 a ziggurat is, Mr. Lockwood.

18 MR. LOCKWOOD: Sure, sure. So, the ziggurat is
19 basically the pyramidal portion of the dome at the top, so
20 it's the part that has all of the multiple steps.

21 CHAIRPERSON HILL: Yeah, okay.

22 MR. LOCKWOOD: A ziggurat is a type of pyramid.

23 CHAIRPERSON HILL: Okay, got it. All right.

24 MR. LOCKWOOD: That's why -- so, that's why we're
25 calling it that.

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1 CHAIRPERSON HILL: Okay. And start again,
2 Ms. Roddy.

3 And thanks, Professor, but I just -- I understand
4 what a ziggurat is now.

5 So, Ms. Roddy, go back to where you were starting
6 to ask Mr. Lockwood -- and, I'm sorry, I just -- you guys
7 couldn't hear me, or I don't know.

8 So, go back, Mr. Young, if you would, to, I think
9 it was -- I don't know which slide it was that Mr. Lockwood's
10 testimony began.

11 Okay, Ms. Roddy. Start again with Mr. Lockwood?

12 MS. RODDY: From the very beginning?

13 CHAIRPERSON HILL: Just the ziggurat part. The
14 first time you introduced the word "ziggurat".

15 MS. RODDY: If we can pull up Slide 8? All right.
16 Thank you.

17 And so, you can see here we measured to the top
18 of the cornice, and I believe Mr. McCrery had raised a
19 question about measuring to the cornice at the bottom of the
20 ziggurat. And so, I was asking, Jeff, what would the height
21 of the building be if we were to measure the height to the
22 bottom of that ziggurat. And, Jeff, what would the height
23 of the building be?

24 MR. LOCKWOOD: It would 101.5 feet, which would
25 yield a requirement -- a rear yard requirement of 33.83 feet,

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1 and we're -- we provide 42.5 feet.

2 CHAIRPERSON HILL: And I appreciate the
3 clarification, Ms. Roddy. You're saying even if the
4 measurement was at the bottom of that ziggurat, you still
5 have the required rear yard?

6 MS. RODDY: Correct, exactly.

7 CHAIRPERSON HILL: Got you. Okay. Thank you.
8 Continue, please?

9 MS. RODDY: So, I'm going to move on to the
10 retaining wall, so if we could go to Slide 15? It should be
11 the slide that has the photos of the wall. There. Thank
12 you.

13 And so, there has been a lot of testimony
14 concerning the wall that is -- runs to the south of the
15 Temple. And can you clarify, is that a retaining wall?

16 MR. LOCKWOOD: Yes.

17 MS. RODDY: Why do you believe that is a retaining
18 wall?

19 MR. LOCKWOOD: So, the wall is shown -- it's shown
20 as blue on the plan, if you look at the plan drawings in the
21 upper-middle of the sheet. It retains the soil from falling
22 into the areaway for the first, let's say, 38 feet, and then
23 you hit the wall of the areaway -- the other retaining wall
24 of the areaway that's perpendicular to it.

25 And then it continues to retain the stair platform

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1 structure that's to the west of the wall, basically, all the
2 way until the end of that wall toward the alley. So, it's
3 holding up soil, stair structure, platform structure for the
4 whole length that it is running north to south.

5 MS. RODDY: And so, if that wall was not in place,
6 would the stair structure remain in place?

7 MR. LOCKWOOD: So, if you pulled this wall off,
8 the soil, gravel, whatever compacted material that's
9 underneath the stairs would spill out. There would be
10 nothing to retain that underneath the stair, helping support
11 the stair itself.

12 MS. RODDY: So, again, for the sake of the
13 argument, let's assume that this is not a retaining wall, it
14 does not fit the exception of a retaining wall, and that
15 under the definition of rear yard and how to measure it we
16 measure the average, how would you measure the average depth
17 of this rear yard?

18 MR. LOCKWOOD: So, we talked about, I think, when
19 we talked to Mr. LeGrant, we basically talked about using the
20 area method, or what I commonly call the area method, where
21 you would basically take the area of the yard, you would
22 divide that area of the yard by the length, to yield the
23 width and depth of the yard. So, that would be the sort of
24 most common -- that's the way I would calculate that.

25 MS. RODDY: And if we can move to Slide 25? And

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1 it's the slide that has the area of the rear yard in pink
2 that we had been referring to previously. But that depicts
3 the methodology that was discussed previously with the Zoning
4 Administrator as one of the methodologies used to determine
5 an average, and that would be the average here.

6 So, Mr. Lockwood, using this method, would the
7 rear yard still meet the required depth?

8
9 MR. LOCKWOOD: Yeah. So, when I calculated the
10 rear yard using this method, I ended up with a rear yard --
11 average rear yard width of 42.24 feet, and that -- and I
12 just -- for sake of argument, I did not include the area of
13 the retaining wall in that area. So, if that was in, that
14 would even be a further dimension.

15 MS. RODDY: Now, did you look at any other methods
16 for determining the average square yard depth?

17 If we could go to the next slide? The previous
18 slide, sorry.

19 MR. LOCKWOOD: Yes. We also looked at, what I
20 would call, the interval method, so it's similar to the area
21 method. But basically, taking dimension every -- in
22 increments of 10 feet. The lot is 212 feet long, so I got
23 21 segments. And if you do the sort of -- the math for that,
24 you get the 40.98-foot average rear yard dimension average --
25 or, average rear yard. And again, that's --

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1 CHAIRPERSON HILL: Mr. Lockwood?

2 MR. LOCKWOOD: -- still much more than the 28.4
3 that we calculated was required.

4 MS. RODDY: And just one last question. And if
5 we could actually pull up the Appellant's slide, Slide 11?
6 Thank you, yes.

7 And I think here, this helps depict it, that you
8 were testifying with respect to what holds the weight of the
9 dome. Can you explain whether the dome extends below the
10 ziggurat and whether there's habitable space in the dome?

11 MR. LOCKWOOD: Yeah. So, the dome structure
12 basically has an inner shell and an outer shell. So, the
13 outer shell and what we're -- what you see when you're on the
14 outside of the building is the ziggurat portion, the pyramid
15 top that we've talked about, and then the stem wall
16 underneath it.

17 And then, on the inside of the -- when you're in
18 the temple space, looking up, and I believe that we've seen
19 a slide of that as well, you see a sloped, curved surface on
20 the inside. And as you can see in the upper left-hand
21 corner, this is a section of the dome, that inner dome
22 actually extends down to the cornice line. So, basically,
23 the -- and there's no habitable space above the line of the
24 cornice in the building.

25 MS. RODDY: And that concludes -- oh, I'm sorry.

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1 I do have one -- I did want to wrap up after his questions.
2 And I just wanted to say that, really, at the end of the day,
3 that the appeal boils down to neighbors who don't want to
4 lose open space. And mind you, the open space is privately
5 owned. It's not accessible to the public. And the neighbors
6 simply don't want to see new housing built near their own.

7 As you can see in the record, the ANC does not
8 support their appeals. You can see their letters in support
9 of both the multifamily project and the subdivision in the
10 record, and that was submitted with their -- the ANC's
11 letter. It's Exhibit 24 in Mr. Hays' record and Exhibit 30
12 in the DECCA record.

13 DCPL supports the subdivision. The HPRB and
14 mayor's agent rejected the Appellant's arguments in
15 opposition to the subdivision and they each approved the
16 subdivision. And now the Zoning Regulations support DCRA's
17 approval of the subdivision as do the District's policies to
18 promote housing, including affordable housing.

19 So, we appreciate the Board's time and
20 consideration and we believe that the record supports denial
21 of these appeals. And that concludes our presentation.

22 CHAIRPERSON HILL: Okay. Thanks. Can you guys
23 hear me?

24 MS. RODDY: Yes.

25 CHAIRPERSON HILL: Okay. All right. When you

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1 were doing the measurements for the rear yard and there was
2 the whole, you know -- the different, you know -- I don't
3 know how many different segments that you took the
4 measurements from, how come you don't take it again from the
5 areaway?

6 MS. RODDY: The areaway's included in the depth
7 of the rear yard.

8 CHAIRPERSON HILL: Got it. Okay.

9 MS. RODDY: And that was the subject of the Adams
10 Morgan for Reasonable Development Appeal. It's Case
11 Number 18888, where the Board had already decided that a ramp
12 and a low-grade garage could be included in their depth of
13 a required rear yard.

14 CHAIRPERSON HILL: That was the LINE Hotel?

15 MS. RODDY: No. It's a separate appeal, but
16 the -- this is on Columbia, so similar neighborhood. Not
17 far. But it was an appeal of a multifamily building and
18 there was a garage ramp and below-grade garage in the rear
19 yard, and there was an objection to it. And the Board said
20 that the yard is defined as being from grade to sky, so
21 below-grade could be included in the depth of the rear yard.
22 And so, the areaway is included in the depth of the rear yard
23 here.

24 CHAIRPERSON HILL: Got it. Okay. All right.
25 That was my one question. And then, the other question --

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1 and I appreciated when you pulled up how the dome -- at least
2 you were showing how the dome goes through the ziggurat down
3 through the whatever that wall to whatever now the -- I'm
4 sorry, that you guys are saying is the roof. And so, that's
5 correct.

6 Is that correct, Mr. Lockwood?

7 MR. LOCKWOOD: Yes, I believe so. That's correct,
8 that the -- yeah. The dome extends on the inside all the way
9 down to the cornice line, and you don't see that extension
10 in the same way on the outside of the building as it's acting
11 on the inside.

12 CHAIRPERSON HILL: Got it, right. To what -- to
13 the cornice line, which what the Zoning Administrator is
14 speaking to as the roof. And then, also what you guys had
15 clarified is that even if you took the measurement from the
16 base of the ziggurat, which -- I mean, just in terms of your
17 argument, that that would include portion of the dome,
18 you-all still meet the rear yard requirement, correct?

19 MR. LOCKWOOD: That is correct.

20 CHAIRPERSON HILL: Okay. Okay. Let's see. Does
21 anyone have any questions for the leasee?

22 Sure, Commissioner May?

23 MEMBER MAY: Yeah. I just want to clarify
24 something about the -- your conclusion that the wall is a
25 retaining wall. And I was trying to find it here and it's --

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1 I couldn't find it quickly. But the definition of the -- or,
2 the listing of exceptions of what can be in a required rear
3 yard, it includes fences and retaining walls and such. But
4 does it -- there's a four-foot limit. Does that four-foot
5 limit apply to retaining walls or is it to other structures?

6 MS. RODDY: The four-foot limit is to other
7 structures, not to retaining walls.

8 MEMBER MAY: Okay. I guess -- I mean, what I'm
9 thinking of is the -- I don't know what the number was, but
10 the Economides case? But I think that had to do with the
11 fact that the very large retaining wall, it was not the
12 issue. It was the fact that it was -- the whole thing was
13 a structure. That everything behind it was a structure. Is
14 that -- did I recall that right?

15 MS. RODDY: Right. And I would also point out
16 that there is a height limit on retaining walls in the R and
17 RF zones, and so that would limit height in those zones, but
18 not in RA.

19 MEMBER MAY: Got it. Okay. I believe that was
20 the issue in Economides, too. Okay. Yeah. I mean, it's --
21 I can understand the argument that it's not really a
22 retaining wall, or at least part of it is not a retaining
23 wall, because it's, you know -- there's a good seven or eight
24 feet above the point of any possible retaining function. So,
25 I appreciate looking at it both ways. Thank you.

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1 MS. RODDY: Understood. And we would say it's all
2 one wall and so the --

3 MEMBER MAY: Yes. (Laughter.)

4 MS. RODDY: The retaining wall.

5 MEMBER MAY: It is one wall.

6 MS. RODDY: So, you wouldn't parse it out --

7 MEMBER MAY: Yeah.

8 MS. RODDY: And so, there is no height limit.

9 MEMBER MAY: Yeah. I mean, it'd be interesting
10 to consider whether it would be something that would be
11 approvable now as a retaining wall in a required rear yard
12 given the height, but that's not where we are, so. And I
13 don't like apples that much either.

14 (Laughter.)

15 MEMBER MAY: All right. Thank you.

16 CHAIRPERSON HILL: Okay. Anyone else for
17 Ms. Roddy, from my board members that is?

18 (No audible response.)

19 CHAIRPERSON HILL: Okay. Let's see. Mr. White,
20 do you have any -- well, do you have any questions for
21 Ms. Roddy?

22 MR. WHITE: No, I don't have any questions. Thank
23 you.

24 CHAIRPERSON HILL: Okay. Mr. Hanlon, do you have
25 questions, or is it Professor McCrery that's going to have

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1 any questions?

2 MR. HANLON: I have some questions for
3 Mr. Lockwood, and Professor McCrery may have a few.

4 CHAIRPERSON HILL: Okay. Let's go with you first,
5 Mr. Hanlon.

6 MR. HANLON: All right. I wanted to talk for a
7 moment, Mr. Lockwood, about your resume.

8 If you can pull up IZIS 96-A?

9 CHAIRPERSON HILL: What's your question,
10 Mr. Hanlon?

11 MR. HANLON: Well, I wanted to know something
12 about his background. His resume doesn't indicate anything
13 about -- much about his education background or about his
14 experience or about his academic credentials, about whether
15 he's been -- well, we know Professor McCrery has won many
16 awards.

17 CHAIRPERSON HILL: Mr. Hanlon, let me just
18 interrupt --

19 MS. RODDY: I'm going to object because he's been
20 accepted as an expert.

21 CHAIRPERSON HILL: Hold up, hold up. Hold up,
22 hold up, hold up, hold up.

23 Mr. Hanlon, I'm not going to spend time going
24 through Mr. Lockwood's resume. The Board has already given
25 him his expert status and he's an architect, right? So,

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1 we're all good with his testimony as an architect, so I don't
2 want to go over his resume. He's been already approved by
3 the Board as an expert in architecture. What's your next
4 question, Mr. Hanlon?

5 MR. HANLON: If we can go to Perseus PowerPoint
6 in IZIS 132, page 26?

7 CHAIRPERSON HILL: Is this it, Mr. Hanlon?

8 MR. HANLON: Yes. I just wanted to be clear,
9 Mr. Lockwood. The wide, pipe-shaped area inside the pink,
10 that is approximately 25 feet long, is it not, from where the
11 column is erected until it meets the areaway wall? Is that
12 correct?

13 MR. LOCKWOOD: I don't know the exact length of
14 the wall, but that pipestone is the retaining wall that's in
15 the rear yard area.

16 MR. HANLON: Right. I was asking because I did
17 the arithmetic and I saw that you had indicated it was
18 184 square feet, and I knew it was about four-feet wide. And
19 so, I got a calculation of about 25 feet long before it hit
20 the areaway wall. Does that seem approximately correct to
21 you?

22 MR. LOCKWOOD: Yes. I mean, 25, 26 feet.

23 MR. HANLON: Okay. And of that -- and that wall,
24 I believe you've also indicated in one of Perseus -- in one
25 of the exhibits, that wall, you measured from grade at curb

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1 to be 11 feet, 10 and a quarter inches. Is that correct?

2 MR. LOCKWOOD: Yes.

3 MR. HANLON: And I believe your diagram also
4 showed -- I'm trying to find it here. Your diagram also
5 showed the wall at the top was over four feet wide, correct?

6 MR. LOCKWOOD: I don't know if I gave a dimension
7 of the width of the wall. It's three-foot-something.

8 MR. HANLON: And as far as you know, the wall is
9 solid granite, correct?

10 MR. LOCKWOOD: I actually don't know what's inside
11 the granite cladding. It's most likely masonry or it could
12 be concrete, but it's solid would be my read of it -- my
13 assumption.

14 MR. HANLON: All right. If we can pull up
15 Appellant's PowerPoint presentation at 7? Slide --

16 CHAIRPERSON HILL: Mr. Young, before you move,
17 hold on a second.

18 The thing that I also, Mr. Lockhart, you know
19 that -- and this is, again, where we're having this
20 discussion about whether this is a retaining wall or not.
21 That again, that areaway -- just as you kind of go here,
22 right? That the areaway actually begins before the edge of
23 that building. Like, how -- I forget. How wide is that
24 areaway from the edge of the building, continuing south?

25 MR. LOCKWOOD: It's 7'6" wide.

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1 CHAIRPERSON HILL: Got it. So, yeah --

2 MR. LOCKWOOD: Yeah. So, from the face of the
3 building to the inside of that southern wall of it is 7'6".

4 CHAIRPERSON HILL: Got it. And so, from the
5 end -- I mean, this is just so -- from the edge of that
6 areaway to the end of that white wall, how far do you think
7 that is?

8 MR. LOCKWOOD: So, it would be -- if we're saying
9 it was -- the whole thing is 25 feet, 7'6" of it as abutting
10 the areaway? Is that what we're trying to figure out? I'm
11 sorry.

12 CHAIRPERSON HILL: I'm just trying to get the
13 extra part that's supposedly supporting the stairs.

14 MR. LOCKWOOD: Okay. Yeah. So, it's roughly
15 17 feet or 16'5" feet that is abutting the stair and the
16 platform that's on the west side of it.

17 CHAIRPERSON HILL: Got it. Okay.

18 I'm sorry, Mr. Hanlon. Where was the next place
19 you wanted to go to?

20 MR. HANLON: I'm sorry. I would -- Mr. Lockwood,
21 you indicated it was about 17, but I think you were probably
22 just slightly mistaken. The distance from the lot line to
23 the areaway wall you've shown on your diagram is 32 feet,
24 right? And the column, you would agree, is between six and
25 seven feet inside the lot line. So, really, the answer to

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1 the Chair's question was, it's about 25 feet long, right?

2 MR. LOCKWOOD: I'm not -- I guess I'm confused as
3 to what we're -- what dimension we're looking for. I don't
4 have, like -- I don't have that dimension on the drawing.

5 CHAIRPERSON HILL: It's okay. It doesn't matter.
6 I'm good with what I needed to know.

7 MR. LOCKWOOD: Okay.

8 MR. HANLON: Okay.

9 CHAIRPERSON HILL: Thank you.

10 Mr. Hanlon, which one did you want to go to?

11 MR. HANLON: Now I lost my train of thought, I
12 hate to admit.

13 CHAIRPERSON HILL: Sorry.

14 MR. HANLON: I wanted to -- no. Well, I wanted
15 to go to Appellant's PowerPoint presentation, Slide 7.

16 VICE CHAIRPERSON JOHN: Mr. Chairman, before --
17 if we could before we leave this slide -- now I'm thoroughly
18 confused by Mr. Hanlon's line of questioning. I'm trying to
19 find out what you're trying to establish.

20 MR. HANLON: I was trying to establish that that
21 part of the wall, which is in the required rear yard, which
22 appears to retain nothing on its east side, is 25 feet long.
23 There is no areaway along that 25-foot section of wall.

24 VICE CHAIRPERSON JOHN: And so, my follow-up
25 question to you is, is it close to the steps in the front on

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1 16th Street?

2 MR. HANLON: The steps are on the other side of
3 the wall, yes. And the steps and the wall abut, but there's
4 no indication that the wall in any way supports the steps.

5 VICE CHAIRPERSON JOHN: And how would we know
6 that?

7 MR. HANLON: Well, it's difficult to know that.
8 Professor McCreery can perhaps address that question again in
9 rebuttal.

10 VICE CHAIRPERSON JOHN: Okay.

11 MR. HANLON: I think he's probably better to
12 address it than I could.

13 VICE CHAIRPERSON JOHN: Thank you. Fair enough.

14 MR. HANLON: I wanted to go -- all right. So, if
15 we go to Appellant's PowerPoint at 7?

16 And so, the photo on the right is what the wall
17 looks like when standing in the rear yard, correct?

18 MR. LOCKWOOD: Yes. That's taken looking right
19 towards 16th Street behind the wall.

20 MR. HANLON: And standing on the ground, going to
21 the top of that wall in Photo 11, would be about 11 and a
22 half feet, correct?

23 MR. LOCKWOOD: That's correct. If you're in the
24 alley, that end of the wall is around 11 and a half feet
25 tall.

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1 MR. HANLON: If I could go to Perseus'
2 PowerPoint -- give me one second. I want to find the slide
3 I want. Can we go to Perseus PowerPoint Slide 15,
4 Mr. Chairman, if it's okay?

5 All right. In View B, you have little steps
6 mocked and red on the wall, and you have a horizontal line
7 drawn on that wall. You see that there?

8 MR. LOCKWOOD: Yes.

9 MR. HANLON: All right. And that indicates, does
10 it not, the level of the platform -- that red, dotted,
11 horizontal line indicates the level of the platform on the
12 other side of that wall. Isn't that correct?

13 MR. LOCKWOOD: That's correct. It's basically,
14 if you could see through the wall, that is the stair and the
15 platform on the other side of the wall.

16 MR. HANLON: Okay. So, everything above that
17 dotted, red, horizontal line to the top of the wall retains
18 nothing, correct?

19 MR. LOCKWOOD: It is part of the wall.

20 MR. HANLON: Does it -- from the red line to the
21 top of the wall, does it retain lateral forces of soil or any
22 other materials from the red line to the top?

23 MR. LOCKWOOD: Yeah. I mean, we -- it resists
24 lateral loads from wind and other -- and it helps support
25 gravity loads, but there's not a soil or structure lateral

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1 load above that dotted red line.

2 MR. HANLON: All right. If we could look for a
3 moment, Chairman Hill, at Appellant's PowerPoint at 5 for a
4 moment.

5 CHAIRPERSON HILL: Okay. Mr. Hanlon, I'm -- I
6 just have to ask you a couple of things. So, Professor
7 McCrery is going to ask some questions after this, correct?

8 MR. HANLON: Yes.

9 CHAIRPERSON HILL: And so, you're going to then
10 have rebuttal. Then everybody's going to have questions on
11 rebuttal. Then everybody's going to have a conclusion and
12 then you're going to have a conclusion. What I'm trying to
13 get at is, we're running out of time, right? And so, how
14 many more questions do you have?

15 MR. HANLON: Mr. Chairman, if you would give me,
16 perhaps, four minutes, I will finish and turn it over to
17 Mr. McCrery. Would that be fair?

18 CHAIRPERSON HILL: Yep. Go ahead.

19 MS. RODDY: And, Chair Hill, I would just
20 reiterate my previous objection with respect to Mr. McCrery
21 providing -- doing the questions, given that he is a witness,
22 not a party.

23 CHAIRPERSON HILL: Got it.

24 MR. HANLON: All right. As we look at -- thank
25 you. The clock is running, so I better get these questions

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1 in.

2 Mr. Lockwood, I want you to look at what's on the
3 screen now. If that wall is not a retaining wall, then no
4 part of that wall along -- no part of which can be more than
5 four feet high anywhere along that wall. Is that correct?

6 MR. LOCKWOOD: I'm not clear what you're asking.

7 MR. HANLON: Yeah. It says, the structure, not
8 including --

9 CHAIRPERSON HILL: Hey, Mr. Hanlon, just to let
10 you know --

11 MR. HANLON: Yes?

12 CHAIRPERSON HILL: -- Mr. Lockwood didn't give
13 this testimony, so you can't really ask him something about
14 something he didn't give testimony about. So, you can ask
15 a question if you'd like.

16 MR. HANLON: Isn't it correct, Mr. Lockwood, that
17 if that is not a retaining wall, if any part of that wall
18 anywhere along that wall is about four feet, it would violate
19 this zoning regulation?

20 MS. RODDY: I object that we haven't offered him
21 as an expert in zoning and that's asking for an
22 interpretation that Mr. LeGrant would be qualified to give.

23 CHAIRPERSON HILL: I agree.

24 And so, Mr. Hanlon, what you're trying to ask, and
25 I think what Mr. Lockwood is already agreeing to, is that he

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1 believes it's a retaining wall. And so, that's already what
2 you've established in terms of questioning him.

3 MR. HANLON: All right. If I could ask a couple
4 of questions about the Height Act?

5 CHAIRPERSON HILL: The Height Act? Okay. What --

6 MR. HANLON: Let's take a look, if we could, at
7 IZIS 97-67 for just a moment.

8 CHAIRPERSON HILL: IZIS 97-67? All right,
9 Mr. Hanlon, I got to say, I got to give you one more
10 question --

11 MR. HANLON: Okay.

12 CHAIRPERSON HILL: -- because you're going to have
13 rebuttal and then -- Ms. Roddy has been pretty flexible in
14 that one of your witnesses is asking questions and that's not
15 what's supposed to happen. But again, since -- if we were
16 live, you'd just be passing a note. And so, that's why I'm
17 trying to get this thing cursing along here. But you're
18 still going to have rebuttal. This is not so you can reargue
19 your case.

20 MR. HANLON: Right.

21 CHAIRPERSON HILL: You're just here to ask
22 questions upon the witness.

23 MR. HANLON: Right.

24 CHAIRPERSON HILL: So, what's your last question,
25 Mr. Hanlon?

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1 MR. HANLON: My last -- thank you, Chairman Hill.
2 My last question is, the part circled in red,
3 we've talked a lot about what is the height from the ground
4 to the roof. And isn't it correct that the original building
5 permit allowed a building from ground to roof to be 137-plus
6 feet?

7 CHAIRPERSON HILL: I don't think Mr. Lockwood's
8 the person to answer this question, Mr. Hanlon. And I'm not
9 even sure who is the person to answer this question. Your
10 question -- again, ask your question?

11 MR. HANLON: Well, Mr. Lockwood has been
12 testifying that he believes the roof is at Level 85, or
13 something like that, is my understanding of his testimony,
14 at the corners.

15 CHAIRPERSON HILL: Okay.

16 MR. HANLON: And, in fact, the building permit
17 authorized a roof of 137-plus feet.

18 CHAIRPERSON HILL: Okay. I don't know. What's
19 your question? I don't understand still, Mr. Hanlon. And
20 Ms. Roddy seems to think she has a comment.

21 So, if you can help, Ms. Roddy, clarify, you're
22 welcome to go ahead and do so.

23 MS. RODDY: Well, I would say that Mr. Lockwood
24 didn't testify to anything with respect to the building
25 permit, so he wouldn't be the person to respond to this. But

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1 in any event, the building permit provides the specific
2 parameters from which they want the height to be measured and
3 that's completely different than what the Height Act or the
4 Zoning Regulations would define as height. It says
5 specifically, for the purposes of this permit, please do
6 this, and that's what the building permit does.

7 MR. HANLON: And so, I guess my point was the
8 Height Act is irrelevant to the discussion we're having
9 today.

10 MS. RODDY: Absolutely, not. The Height Act is
11 very relevant. The Height Act would've limited the height
12 of the building to, I believe, 90 feet but potentially, let's
13 say for the sake of the argument, 130 feet if this is a
14 commercial -- a business street. The 137 feet is only
15 allowed because it's a dome by the very language in the
16 Height Act for exceptions for domes. That's how the 137 feet
17 is permitted by the permission of the commissioners, which
18 is the -- again, the language in the Height Act was then
19 permitted and carried over to the Zoning Regulations.

20 CHAIRPERSON HILL: Okay. Let me --

21 (Simultaneous speaking.)

22 MS. RODDY: -- the height of the building --

23 CHAIRPERSON HILL: Let me interrupt you guys. I
24 understand what was presented to us. The Board understands.

25 Mr. Hanlon, I'm going to move on to your

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1 professor.

2 Professor McCrery, can you -- is it McCrery? I'm
3 sorry. I don't have the --

4 MR. HANLON: McCrery. McCrery.

5 MR. McCRERY: Yeah. It's McCrery, yes. Thank
6 you. Yes.

7 CHAIRPERSON HILL: Okay. Can you drop this,
8 Mr. Young?

9 You guys, we've gone now -- so, this started at
10 10 o'clock, right? And so, this is really not supposed to
11 go this long at all. And we've gone ahead -- and I just want
12 to -- I want to be clear for the record. We've gone above
13 and beyond what we're supposed to do in terms of allowing
14 people to have testimony.

15 And so, Mr. Hanlon, you can't say in any stretch
16 of the word that you haven't had an opportunity to present
17 your case, right? So --

18 MR. HANLON: I never said that.

19 CHAIRPERSON HILL: Right. I'm just saying, for
20 whatever you may be planning next, it's not going to be,
21 Chair Hill didn't let us have the appropriate time, because
22 believe me you have had more than enough time, right? So --

23 MR. HANLON: Chairman Hill was very fair to us
24 all.

25 CHAIRPERSON HILL: Right. There you go. I'll

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1 remember that when the remand's coming down, right?

2 So, Professor, what questions do you have?

3 MR. McCRERY: Of Mr. Lockwood, two, and that's
4 all.

5 CHAIRPERSON HILL: Okay. And I don't think we
6 have to -- just ask your question.

7 MR. McCRERY: Yeah. And what --

8 CHAIRPERSON HILL: You probably know the --
9 Professor, I know that you know anybody who asks their
10 question should probably already know the answer. That's how
11 this thing works.

12 MR. McCRERY: Slide 3.

13 CHAIRPERSON HILL: If you ask a question and you
14 don't know the answer, then you're stupid to ask the
15 question, okay? So, go ahead, Professor.

16 MR. McCRERY: I completely agree. I want to have
17 the gentleman -- my colleague architect answer the question,
18 Slide 3 of their presentation.

19 The setback you said from the -- from your
20 proposed cornice line to the base of your proposed dome,
21 11'4" and change all the way around the perimeter. Is that
22 correct?

23 CHAIRPERSON HILL: All right. Give me a second
24 again, Professor. Which one you want to pull up again?

25 MR. McCRERY: It's Slide 3. It looks like that.

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1 CHAIRPERSON HILL: Which --

2 MR. McCRERY: Their own slide. Perseus' slide.

3 CHAIRPERSON HILL: Okay. Perseus?

4 MR. McCRERY: Yep.

5 CHAIRPERSON HILL: Okay. Give me a second,
6 because I'm also going there. Is it Slide 8? Maybe,
7 Mr. Young?

8 MR. LOCKWOOD: Slide 8 is the west elevation.

9 MR. McCRERY: That's a good one. So, the setback
10 from the cornice line that you're defining to the base of the
11 dome that you're defining, about 11 foot and change. Is that
12 right, sir?

13 MR. LOCKWOOD: 11'4 and a half is what I scaled
14 from the drawing.

15 MR. McCRERY: Do you -- yeah, agreed. And so,
16 the -- and it's the position -- it's your party's position
17 that that entire thing, everything that's above that red
18 line, is the architectural embellishment, question mark?

19 MR. LOCKWOOD: Yes. Everything above the cornice
20 line is dome and is not --

21 (Simultaneous speaking.)

22 MR. McCRERY: And it's architectural
23 embellishment. Is that correct?

24 MR. LOCKWOOD: That is correct. It's a dome that
25 is excluded from the height of the building.

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1 MR. McCRERY: And it's excluded from the height
2 of the building, in your view, because it's an architectural
3 embellishment?

4 MR. LOCKWOOD: It's excluded because it's a dome
5 and a dome is specifically listed under the Height Act and
6 under the Zoning Regs, and it's an element --

7 MR. McCRERY: And in the Zoning Regs is what we're
8 talking about. And in the Zoning Regs, you're working to
9 call that dome an architectural embellishment?

10 MR. LOCKWOOD: The dome is an architectural
11 embellishment.

12 MR. McCRERY: Thank you. And do you agree, then,
13 that with the Zoning Regulations that the limit of an
14 architectural embellishment is 30 percent of the length or
15 width of the wall upon which it rests?

16 MR. LOCKWOOD: The length or width? I'm sorry.
17 I don't understand your --

18 CHAIRPERSON HILL: Professor, I don't think
19 Mr. Lockwood's the one for that question. He didn't testify
20 to the 30 percent, I don't think.

21 MR. McCRERY: Oh, okay. I thought he did.

22 MR. LOCKWOOD: I --

23 CHAIRPERSON HILL: That's the Zoning
24 Administrator.

25 MR. McCRERY: Okay. Then, those are my questions.

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1 Thank you very much.

2 CHAIRPERSON HILL: Mr. Hanlon, Mr. Lockwood didn't
3 testify about the 30 percent.

4 MR. McCRERY: I'm sorry for the confusion on that
5 Mr. Chair.

6 CHAIRPERSON HILL: No, that's all right. And
7 I'm saying --

8 MR. HANLON: And I was confused as well, so
9 it's --

10 MR. McCRERY: Mr. Lockwood, thank you.

11 MR. LOCKWOOD: Thank you.

12 CHAIRPERSON HILL: Okay. All right. So,
13 Mr. Hanlon, you're going to have an opportunity right now to
14 rebut any of the testimony that was given. And again, what
15 that means is, Mr. Hanlon, you don't reargue your case,
16 right? If there were things that you thought during
17 testimony you would like to rebut, you're welcome to go ahead
18 and do so.

19 And then, what's going to happen is the other
20 parties will have questions to ask you about your rebuttal,
21 right? And then, I think that's it, if I'm correct. And
22 Mr. Nagelhout will correct me if I'm wrong. And then, we're
23 going to do conclusions.

24 So, if you need a minute to get yourself situated,
25 Mr. Hanlon, you can. I want to ask how long you need for

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1 rebuttal.

2 MR. HANLON: Probably only a few minutes. If the
3 Chair would allow, I would like to have Professor McCrery
4 spend about five minutes doing an open rebuttal. I would ask
5 him a general question and let him more efficiently -- he can
6 probably do it in five minutes than have me ask a series of
7 questions about Mr. Lockwood's testimony.

8 CHAIRPERSON HILL: Okay. I think Ms. Roddy's
9 about to say something, so give me a second. Well, I thought
10 she was going to say something. I don't know. I love how
11 you just have to read faces through this little cube.

12 MR. HANLON: All right. Go ahead.

13 CHAIRPERSON HILL: Ms. Nagelhout, can you hear me?

14 MS. NAGELHOUT: I can.

15 CHAIRPERSON HILL: So, what -- no, Mr. Hanlon
16 is -- and this is where I always get confused.
17 Mr. McCrery -- Professor McCrery is a witness and so
18 Mr. Hanlon's the person who's supposed to do any of the
19 rebuttal? Or what Mr. Hanlon is now saying is that he would
20 like Professor McCrery to give the rebuttal.

21 Is that correct, Mr. Hanlon?

22 MR. HANLON: The rebuttal evidence. That's
23 correct. I would ask Professor McCrery if he could explain
24 again why Mr. Lockwood is incorrect about using the cornice
25 and incorrect about the dome. But I think it would be more

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1 efficient if we simply allow Mister -- Professor McCrery to
2 explain the inconsistency, or the error, in Mr. Lockwood's
3 presentation about the dome.

4 CHAIRPERSON HILL: Okay. Ms. Nagelhout, does that
5 sound okay?

6 MS. NAGELHOUT: Yes. You can have a witness on
7 rebuttal, and that sounds like what they're proposing.

8 CHAIRPERSON HILL: Okay. All right. Well then,
9 there you go. Mr. Hanlon, go ahead, and you can ask your
10 questions of Professor McCrery.

11 MR. HANLON: Professor McCrery, if you could take
12 just a few minutes to explain what you perceive as the error
13 in Mr. Lockwood's testimony about the dome and about the roof
14 and about the cornice?

15 MR. McCRERY: Sure. There's a number of things.
16 The discussion of the interior versus exterior dome versus
17 ziggurat is all very interesting. And one thing that it does
18 demonstrate is that the ziggurat and the dome do rise from
19 and sit upon and are -- the weight of those elements are
20 borne by the wall directly underneath the base of the roof,
21 the stepped ziggurat roof.

22 That means that the building rises -- the building
23 walls, I should say, rise all the way to that, what they
24 stipulate as, 101.5 feet, but actually should be correctly
25 measured from natural grade for another four and a half feet,

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1 so it would be 106 feet above natural grade. And that's
2 just -- that's not me just to agree with their method of
3 calculation by eliminating the roof of the building.

4 The very document we just reviewed showing that
5 building was originally approved at 137 feet and change at
6 the top of the roof is the quote of that document, and it
7 can't be that the Zoning Administration is asked to ignore
8 historical documents, just prima facie evidence. Please
9 don't look at that. Please just listen to what we say.
10 Which is essentially the structure of argument offered by
11 Perseus and their counsel. So, it's still -- so, that's the
12 dome question as addressed by Mr. Lockwood.

13 Another very important point here is that again,
14 in this situation where they're backing a project into
15 trouble with the Zoning Regulations, and that is with regard
16 to trying -- attempting to call everything above their
17 definition of the cornice line as the architectural
18 embellishment.

19 But an architectural embellishment is limited to
20 30 percent of the width of the wall above which it rises and
21 this, in my quick calculations -- but they're pretty accurate
22 I must say. Using an engineer scale here at the office on
23 a printed and -- appropriately, accurately printed document
24 from their presentation. That portion, what they want to
25 call an architectural embellishment, comprises 80 percent of

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1 the width of the building upon which it appears to rise.

2 So, it simply can't be, then, that this is an
3 architectural embellishment by definitions set forth in the
4 Zoning Regulations. It violates the very regulations that
5 they're trying to use in order to advance their mission. And
6 this is the constant theme. The constant theme is they're
7 trying to -- they've been backed into building height --

8 (Simultaneous speaking.)

9 CHAIRPERSON HILL: Professor McCrery?

10 MR. McCRERY: Yep?

11 CHAIRPERSON HILL: I'm not trying to interrupt
12 your thought process. I'm just trying to understand
13 rebuttal.

14 MR. McCRERY: Yep.

15 CHAIRPERSON HILL: And then, you have made me ask
16 some -- you have made me think about some other questions
17 that's I'm going to ask.

18 MR. McCRERY: Go ahead. Yep.

19 CHAIRPERSON HILL: You're providing rebuttal on
20 what was provided in terms of testimony.

21 MR. McCRERY: Yes.

22 CHAIRPERSON HILL: So, you're kind of going over
23 again the whole 30 percent -- well, never mind. And that's
24 fine --

25 MR. McCRERY: No. That's a new one. That's a new

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1 point that they brought forth, I would suggest to you,
2 respectfully.

3 CHAIRPERSON HILL: Okay. I --

4 MR. McCRERY: It's their testimony. It's their
5 testimony. It's their assertion -- and this is new, today.
6 It's their assertion that everything above that is the
7 architectural embellishment. And so, this is an attempt to
8 respond to that. And I'm using the calculations. That's why
9 I asked the gentleman, Mr. Lockwood, for his dimensions, so
10 that we could -- I could use them faithfully in response.

11 CHAIRPERSON HILL: Okay.

12 MR. McCRERY: Yep. So, no matter which way you
13 look at this building, it's a perfect, cubicle building in
14 from so, regardless of which elevation you address, this --
15 what they want to call an architectural embellishment can't
16 be called an architectural embellishment within the terms
17 that are clearly established and definitions that are clearly
18 established in the Zoning Regulations. It's not an
19 architectural embellishment because it's just too big to be
20 an architectural embellishment. It's too much of the
21 building to be an architectural embellishment.

22 If you go to Slide -- we don't have to go to the
23 slide. We can go to the -- if you want to, you can. There's
24 a -- the definition slide that counsel offered about
25 distances and averages and that sort of thing. Just above

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1 the highlighted portion -- and most of it is screened back
2 so that we can focus on their preferred definition. But the
3 one directly in front of it mentions -- and this is Slide 16
4 of their presentation.

5 But it talks about the midpoint, okay? And that
6 the mean is a midpoint. They want to call it average. Their
7 definition just above it also says midpoint. So, yes, it's
8 true that we can -- we need to refer to Webster's, but we
9 can't pick and choose. We have to refer to all of Webster's,
10 and one of the definitions of midpoint.

11 So, the midpoint is what I was describing to one
12 of the -- earlier this morning to one of the board members
13 who asked how I would calculate it, and I -- and that's the
14 midpoint method. One method is the area method, which begs
15 the question, well, how did you generate the area in the
16 first place, because you generate an area by starting with
17 a length and width, and then you divide it by the length and
18 guess what? You get the width. So, it's a chicken and egg
19 thing. It's a reentrant loop way of establishing yard depth.

20 And one other thing that's very, very key is that
21 the Zoning Regulations are very clear about the areaway,
22 notwithstanding that it's open to the sky and notwithstanding
23 that there's another case that allows for a ramp to go down
24 to a parking garage. This is not a ramp and does not go down
25 to a parking garage, so there's an attempt to sort of, you

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1 know, slip this areaway thing in as if it's never been
2 covered -- as if areaways are sort of an undiscovered,
3 unaddressed issue in the Zoning Regulations.

4 Except that they are specifically addressed in the
5 Zoning Regulations and the Zoning Regulations say exactly
6 what areaways are and what they're not. And when they're
7 more than five feet, they qualify as structures. That's in
8 the Zoning Regulations.

9 So, you're being asked over and over and over
10 again to ignore the Zoning -- the text of the Zoning
11 Regulations in order to come to a conclusion that they want
12 you to come to on building height, on the actual front of the
13 building itself, and rear yard measurement. How to measure
14 things. What to call things. It's in every single category
15 that they're asking you, the Members of the Board, to look
16 the other way, frankly.

17 MR. HANLON: Professor McCrery, I have one more
18 question. Would you respond, please, to Mr. Lockwood's
19 testimony that -- concerning the wall. That it's a retaining
20 wall even though most of it is above the platform, and that
21 the stairs would fall over, the stairs would lean, that the
22 wall is retaining the stairs. And that there may or may not
23 be soil under the stairs.

24 MR. McCRERY: I don't know if there's soil
25 underneath those stairs. I'm not sure that's determinable

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1 without taking the stairs apart. It's clear that
2 Mr. Lockwood is unsure as well. He's not sure how the wall
3 is made. Neither am I. He's not sure how the stairs are
4 built. Neither am I. But it is clear that those stairs do
5 not rely on that wall in order to be -- to remain in their
6 position, in their place.

7 It is clear that there is a portion of that wall
8 that is in the side yard now, right? That they've placed in
9 their new side yard that does retain earth, but it retains
10 earth from the earth level and down. Eleven feet of it is
11 not retaining at all.

12 CHAIRPERSON HILL: Okay. Again, we're trying to
13 rebut things that Mister -- anyway, the presentation's --

14 (Simultaneous speaking.)

15 CHAIRPERSON HILL: Mr. Hanlon, you got a last one?

16 MR. HANLON: No. I think you'll be happy to hear
17 that I don't have a third question.

18 CHAIRPERSON HILL: Okay. All right. Okay. So,
19 thanks, Professor. And, Professor, by the way, we're all
20 here and you're trying to convince us, too, right?
21 Everybody's trying to convince us.

22 MR. McCRERY: Absolutely, yes.

23 CHAIRPERSON HILL: I mean, that's the point,
24 right?

25 MR. McCRERY: Yep, that's right. Yep.

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1 CHAIRPERSON HILL: Okay. So, let's see. All
2 right. Okay. So, does my fellow board members have any
3 questions for rebuttal -- for the rebuttal? And if so, raise
4 your hands. Y'all can think about it because I'm going to
5 go to -- oh, no. I got Commissioner May. Okay?

6 MEMBER MAY: Yeah. So, Mr. McCrery, you talk
7 about the dome not being an embellishment --

8 MR. McCRERY: Yeah.

9 MEMBER MAY: -- and you also pointed out the fact
10 that the building height when it includes the dome is 137 and
11 some feet, whatever. So, if that's the case, how was it
12 originally approved? How is it that the original building
13 permit was approved? It must've been considered a dome at
14 that point, right?

15 MR. McCRERY: I don't know what it was considered.
16 I think they needed to go to the Commission in order to build
17 a building higher than --

18 MEMBER MAY: Right.

19 MR. McCRERY: -- allowed height, and they got it.

20 MEMBER MAY: Right. But the Commission --

21 (Simultaneous speaking.)

22 MR. McCRERY: But they say very clearly what the
23 height of the building is on those documents is 137 feet.

24 MEMBER MAY: Yeah.

25 (Simultaneous speaking.)

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1 MR. McCRERY: To the roof. And they use the word
2 "roof".

3 MEMBER MAY: Okay. But the Commission doesn't
4 have -- the discretion that the Commission had to approve
5 things above the Height Act heights was defined by the Height
6 Act. And so, it included exceptions for towers, domes, and
7 spires, whatever the language was. And true, it didn't use
8 the word "architectural embellishment". That's a zoning
9 invention. Does it make --

10 (Simultaneous speaking.)

11 MR. McCRERY: I'm sorry.

12 MEMBER MAY: Does it make sense that it would be
13 considered a dome? I mean, it's not a spire. It's not a
14 minaret.

15 MR. McCRERY: Yeah. It's not a dome either. It
16 think ziggurat is the -- I mean, if we're trying to be really
17 narrowly and correctly accurate here, it's a stepped ziggurat
18 form. It's modeled quite clearly on the temple in
19 Halicarnassus and, I mean --

20 MEMBER MAY: Yeah. So, I'm pretty sure that's not
21 in the Height Act either.

22 MR. McCRERY: What's that? The --

23 MEMBER MAY: That specific architectural
24 precedent, right? So, it had to of been something, right?
25 The Commission must've seen something in it, so it must fit

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1 within the definition of things that were allowed to exceed
2 the Height Act, right?

3 MR. McCRERY: I suppose so, yes. And this. But
4 I think what counsel's trying to do with that --

5 MEMBER MAY: I'm not asking you what the counsel's
6 trying to do. I just wanted to get clarity of your opinion
7 about where -- how this was originally approved and I think
8 I have it now.

9 MR. McCRERY: Okay.

10 MEMBER MAY: Thank you.

11 CHAIRPERSON HILL: Okay. Anybody else for
12 rebuttal?

13 (No audible response.)

14 CHAIRPERSON HILL: I hate to ask this. I'm going
15 to ask Mr. LeGrant.

16 Mr. LeGrant, I got a question because I'm confused
17 about the 30 percent thing a little bit, right? I mean, I
18 follow the logic in terms of how this got approved in terms
19 of being above the Height Act because it was considered a
20 dome. I'm not -- I'm just having a discussion in my own way
21 here to get to this 30 percent. Can you explain this 30
22 percent thing again to me?

23 MR. LeGRANT: All attempt to do so, Chair Hill.
24 So, the Zoning Regulations say, an architectural
25 embellishment is allowed to be above building height as long

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1 as it doesn't exceed 30 percent of the -- I mean, greater
2 than 30 percent to create an appearance of an extension of
3 a building wall.

4 So, the way that, in this case and in other cases,
5 my office administers this is, oh, is this -- let's just use
6 the word "façade". Is the -- is something being attached to
7 the -- like, to, say, the front façade or façade facing the
8 street, that goes up vertically, that extends the appearance
9 of that wall vertically. If it sits on that wall then, oh,
10 okay. That's when the 30 percent limitation comes into play.

11 And as I've testified in this case, the dome is
12 a exceptional -- exception to the building height. Does not
13 sit on the building wall. It's set back from the building
14 wall, so it doesn't trigger the 30-percent analysis because
15 it's set back.

16 CHAIRPERSON HILL: Okay. All right. I got it.

17 MR. LeGRANT: Is that helpful?

18 CHAIRPERSON HILL: Yeah, yeah. Thanks. That's
19 what I was trying to figure out again.

20 MR. LeGRANT: Okay.

21 CHAIRPERSON HILL: Okay. So, now we're going to
22 go to -- oh, yeah. Ms. Roddy, do you have any questions on
23 rebuttal?

24 MS. RODDY: I do not.

25 CHAIRPERSON HILL: Okay. All right. We're going

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1 to go to conclusions. Let's see. Let's do -- oh, yeah. Ms.
2 John? You're on mute, Ms. John.

3 VICE CHAIRPERSON JOHN: Since Mr. LeGrant is
4 available, I wanted to ask a question about the -- where the
5 building height is measured from. And there was an issue of
6 whether you could start within the public space or the -- it
7 would be the area at the lot line. So, the grade would be
8 established at the lot line in this case, not at the
9 sidewalk, which is public space.

10 MR. LeGRANT: Yes, yes. Let me put it this way.
11 If you go to the midpoint of the building, the question is
12 where the midpoint -- arguably, it's in the RA zone, like
13 other residential prefaced zones. It's the face of the
14 building, which would be -- you would -- this building would
15 start shrinking if they looked at the face of the building.

16 But, okay. In the abundance of caution, we use
17 the midpoint opposite the -- the midpoint of the building --
18 at that property line. That's a little more conservative way
19 to look at it. I believe like this because of the -- there's
20 a whole structure of these stairs and everything, okay?
21 Treat that whole structure as the building for argument
22 purposes, then that I think is a logical place to establish
23 the BHMP.

24 VICE CHAIRPERSON JOHN: Okay. Thank you.

25 MR. LeGRANT: Thank you.

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1 CHAIRPERSON HILL: Okay. So, I'm going to follow
2 what legal counsel had told me to do, which is follow the
3 Regulations, and I'm going in the order of conclusions in the
4 same what that I've gone with the order of everything else.
5 So, we're going to go with the Appellant giving me a
6 conclusion, then ECRA, then Ms. Roddy.

7 So, Mr. Hanlon, how long would you like for a
8 conclusion?

9 MR. HANLON: I don't know exactly. A one-minute
10 break and maybe a five- or six-minute conclusion, or maybe
11 ten at the most.

12 CHAIRPERSON HILL: Okay. I'll tell you what.
13 I'll give you a minute break and we'll go ahead and do a
14 five-minute conclusion, okay? Because again, all you're
15 trying to do is sum up, right? And so then, we're going to
16 do DCRA, then we're going to do Ms. Roddy. So, let's just
17 take a couple minutes real quick so Mr. Hanlon can get
18 himself organized. Thank you.

19 MR. HANLON: Thank you.

20 (Whereupon, the above-entitled matter went off the
21 record at 3:42 p.m. and resumed at 3:52 p.m.)

22 CHAIRPERSON HILL: All right. All right,
23 Mr. Hanlon. You want to go ahead and give us your
24 conclusion?

25 MR. HANLON: Yes, thank you. Could we pull up --

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1 (Simultaneous speaking.)

2 MR. HANLON: -- Appellant's --

3 CHAIRPERSON HILL: Give me one second, Mr. Hanlon.
4 Commissioner May?

5 MEMBER MAY: Yeah. I'm sorry to interrupt, but
6 I just had one question that I thought I should ask before
7 we get into the closing.

8 CHAIRPERSON HILL: Yep.

9 MEMBER MAY: And I would ask this of Mr. LeGrant.
10 I'm wondering if you know the definition of a fence? I don't
11 think that's -- I don't know if it's defined in the Zoning
12 Regulations or whether it's in the -- just based on Merriam-
13 Webster.

14 MR. LeGRANT: Well, Commissioner, the term "fence"
15 is not defined in the Zoning Regulations and I think it would
16 then revert to Webster.

17 MEMBER MAY: Right. And you don't happen to have
18 Webster's definition?

19 MR. LeGRANT: Not handy.

20 (Simultaneous speaking.)

21 MEMBER MAY: Yeah? Okay. We used to have it at
22 the Zoning Commission Office. I used to look at it. It's
23 a big book.

24 MR. HAYS: We have a slide on the definition.

25 MEMBER MAY: Okay. Mr. Hays, I was going to --

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1 let me just ask.

2 Ms. Roddy, do you happen to have the definition?

3 MS. RODDY: I do. I'm pulling it up now.

4 MEMBER MAY: Okay.

5 MR. HAY: It's Slide 27 of ours is --

6 MEMBER MAY: Which exhibit in yours?

7 MR. MAY: It's Slide 27. It's of the November --

8 MR. HANLON: IZIS 97.

9 MEMBER MAY: Twenty-seven of IZIS 97? Okay. Oh,
10 okay. And is that the Webster's Unabridged Dictionary that's
11 cited in the Regulations, or is it just Webster's online?

12 MR. MAY: It's Merriam-Webster's Unabridged
13 Dictionary, so. Webster's was acquired -- I looked this up,
14 actually. Webster's was acquired by Merriam-Webster, like,
15 in I don't know 1890 or something. And so, they obtained the
16 rights of the --

17 MEMBER MAY: Okay.

18 MS. RODDY: I have the Random House, the -- it's
19 Webster's Unabridged. And that definition is, a barrier
20 enclosing or bordering a field, yard, et cetera. Usually
21 made of post, wire, wood. Used to prevent entrance, to
22 confine, or mark a boundary.

23 MEMBER MAY: Thank you.

24 CHAIRPERSON HILL: Okay. Mr. Hanlon, you need us
25 to bring something up?

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1 MR. HANLON: Yes. If we could bring up
2 Appellant's PowerPoint presentation and I'm going to refer
3 to just a couple of slides in my closing. Can we bring up
4 Slide 6? Thank you.

5 CHAIRPERSON HILL: And, Mr. Hanlon, just so you
6 know, like, normally, we don't pull up slide decks again.
7 Like, I'm just letting you know. Like, you're not supposed
8 to re-give your presentation. You're just hitting the high
9 points. You know that, right?

10 MR. HANLON: Yes.

11 CHAIRPERSON HILL: Okay.

12 MR. HANLON: I want to thank Chairman Hill and the
13 Members of the Board, and the other people who have been here
14 today to listen to this long hearing. But I would point out
15 that sometimes things are much easier than they seem.
16 Sometimes saying two plus two really does equal four, and we
17 really should strip away things and look at the basic issues
18 here.

19 CHAIRPERSON HILL: Hey, Mr. Hanlon. I am going
20 to interrupt you one second.

21 Mr. Young, can you drop the slide deck?

22 I am just a little uncomfortable pulling up
23 slides. Can you just go ahead and give us your conclusion?

24 MR. HANLON: As I was saying, sometimes things are
25 really much simpler than they seem. We see in the photos

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1 that have been presented that Mr. DelleDonne is standing next
2 to an 11 and a half foot, four-foot-wide dome column. That
3 stone column clearly is not a retaining wall.

4 Even Perseus' own slide shows that one side of the
5 wall retains nothing and also, marked a red horizontal line
6 on that wall, where that wall comes on the other side of the
7 steps. And we know that that wall is almost eight feet above
8 the platform on the steps and it retains nothing, according
9 to Professor McCrery, at least from the platform up, and
10 therefore it should not be regarded as a retaining wall.

11 With respect to the roof issue -- and it's
12 really -- seems to me very clear. It's obviously a roof.
13 The Zoning Administrator testified something could be both
14 an embellishment and a roof. But it's a roof. And if it's
15 a roof, the building -- the way we measure, according to the
16 Zoning Regs, is you measure from the existing and natural
17 grade, whichever's lowest, to the highest point of the roof.
18 If it's a roof, an embellishment; it's a roof. If it's a
19 roof, we measure to that highest point.

20 And with respect to the dome, Mr. Chair and
21 Ms. John, who also asked, that -- Mr. Lockwood talked
22 about -- showed one of our slides and talked about the
23 structure, the inner structure of that dome, and how the
24 weight is supported for that large dome. But that dome sits
25 on a wall. You know, he -- Mr. Lockwood wants to argue it

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1 sits at a wall down in the colonnade level, but it sits on
2 a wall.

3 And once it sits on a wall, it cannot be an
4 embellishment if it gives the appearance of height along more
5 than 30 percent of that wall. And obviously, according even
6 to Professor McCrery's calculation, it sits on at least
7 80 percent of that wall. And it rises, as we know from all
8 the evidence in the record, at least 46 feet high above that
9 colonnade. So, yes, at some point that dome has to sit on
10 a wall. And when it sits on a wall, it gives the appearance
11 from the outside looking up at it of a raised height above
12 that wall, whether that wall's at a colonnade or that wall
13 is somewhere else. So, I would emphasize that point.

14 With respect to existing and natural grade, I
15 showed you a historic photo from 1913 during construction.
16 I showed you the cart and the horse, and you can clearly see
17 that the ground was flat. The natural grade is where it is
18 now. It's at curb or sidewalk level. The building permit
19 says the same thing. The level of the ground next to the
20 curb was level. The word is "level" in the permit. And what
21 that permit did was authorize something 137 and a half feet
22 is now 139 feet; it has a skylight on it. But nevertheless,
23 it's a roof. It functions as a roof. Embellishment? It's
24 a roof.

25 I would -- so, I would ask you to strip away

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1 everything else and look at those two, simple issues. Do
2 your lying eyes say to you, yes, that 11-and-a-half-foot
3 column is a retaining wall? Of course not. It doesn't
4 retain anything. And when you look at that thing, you have
5 to -- the Temple, you have to ask yourself, where is the
6 roof? Something has to be a roof. A structure cannot be a
7 building without a roof. So, something is the roof and we
8 measure to the highest point of that roof, and that is
9 139 feet.

10 And that's what Perseus said to the Historic
11 Preservation Review Board. In the initial diagrams they
12 produced, they had the building measuring on 16th Street and
13 they had the height of that building at 139 feet. And if
14 those two things are true, then it violates the rear yard
15 requirement because you need 46 feet-plus of rear yard if
16 that building's 139 feet high. And under nobody's
17 calculation do you have that much depth in the rear yard.

18 So, Mr. Chairman and Members of the Board, I would
19 just ask you to look carefully at the photos, use common
20 sense. Ask yourself, what do these things really look like
21 and what do they function as? And then, I think you will
22 agree with us that this subdivision violated two different
23 provisions of the Zoning Code at least. Thank you.

24 CHAIRPERSON HILL: Thank you, Mr. Hanlon, and
25 thank you for your time and testimony.

1 Mr. White?

2 MR. WHITE: Thank you. I'm sorry. Mr. Chair and
3 Members, thank you. I'll be very brief given the length of
4 time we've already spent. As you've heard from Mr. LeGrant
5 today, he and his staff conducted a thorough review,
6 considering all aspects of the property. They gave careful
7 consideration to the Zoning Regulations in light of the
8 various aspects of the property, including all that we've
9 discussed.

10 And the result was the correct application of the
11 Zoning Regulations to the subdivision. This decision was
12 neither arbitrary or capricious. And based on everything
13 you've heard from Mr. LeGrant today, DCRA asks that you deny
14 the appeal and uphold the Zoning Administrator's
15 determination. Thank you.

16 CHAIRPERSON HILL: Thank you, Mr. White.

17 Ms. Roddy?

18 MS. RODDY: Thank you. We think that this case
19 is quite clear in that every decision that has been made is
20 supported by the Regulations and past precedent. The
21 Appellants have tried to throw out as many arguments as they
22 can in the hope that something sticks, but nothing does. The
23 Regulations and precedent support locating the rear yard
24 south of the Temple, and the Appellants have conceded as
25 much.

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1 They support locating the measuring point on
2 16th Street. And again, the Appellants and Mr. McCrery's
3 testimony concede as much. They support excluding the dome
4 from building height, they support including the area
5 weighing the depth of the rear yard, and they support
6 allowing the retaining wall in the rear yard.

7 There's been a lot of discussion about the dome
8 and, as Appellant's Slide 11 shows, the dome consists of the
9 ziggurat and the stem wall below, down to the cornice,
10 supporting the measurement to the cornice line. And contrary
11 to Mr. McCrery's testimony, we're not suggesting that you
12 ignore the original building permit, and Commissioner May was
13 getting to this point, I believe.

14 It's very important that the permit reflects
15 137 feet because 137 feet would not have been permitted
16 without an amendment to the Height Act, and there are only
17 five. I believe one was St. Matthews, Harrington Hotel,
18 Georgetown Hospital, a former temple at the Hilton site,
19 and -- I'm sorry. I don't remember the fifth, but it was not
20 this site. It was approved at 137 feet because it's a dome,
21 and that section was carried over into the Zoning Regulations
22 to allow that except to height for domes.

23 So, with respect to the 30-percent provision that
24 we've also talked about a lot today, the Regulations prohibit
25 the appearance of a raised building height. The dome is set

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1 back and does not increase the appearance of the raised
2 building height at all, much less 30 percent.

3 And then, with respect to the retaining wall,
4 which we also spent a lot of time on, Mr. McCrery testified
5 that it is a retaining wall as it abuts the areaway, and a
6 portion of that areaway is in the rear yard. He also
7 testified that he does not know if there is soil under the
8 stairs, so he cannot opine as to whether it is retaining soil
9 under the stairs or not. It's their burden to prove and they
10 have not met that burden.

11 With respect to the averaging, it's been
12 established that the mean has been interpreted to mean
13 average. And under B-318.2, it says that the rear yard is
14 measured as the mean horizontal distance. That's in all
15 cases for a rear yard depth. Not just in unusually-shaped
16 lots, but the rear yard is always a mean measurement. So,
17 we aren't doing anything unusual here, should you find that
18 the retaining wall is not permitted in the rear yard.

19 And again, we only get to that if the retaining
20 wall is determined not to be permitted. I think the
21 retaining wall fits all three exceptions. It acts as a
22 fence, as a retaining wall, as well as being part and parcel
23 with the stairs. The Appellants have dissected each set of
24 the rear yard measurement, but still their arguments fail.

25 With respect to their other claims as to parking,

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1 loading, side yard, and the intent and purpose of the
2 Regulations, there's nothing to support any of those and they
3 didn't spend any time trying to suggest that there was today,
4 and I think that the record is complete to show that there
5 isn't. This project has gone through all of the required and
6 relevant processes and has been approved every step of the
7 way, and the Appellants have tried to throw roadblocks,
8 unsuccessfully so, at each step.

9 Again, I think it's important to note that the
10 ANCs do not support these appeals, and you can see in their
11 submissions that they support the subdivision. As you may
12 or may not be aware, the building is already under
13 construction. There is a 35-footdeep excavated construction
14 site and concrete is already being poured.

15 So, I do understand if the Board is no prepared
16 to deliberate on this case today because there has been a lot
17 of information, but we would ask that the Board resolve this
18 matter quickly, given the gravity of this situation. So, we
19 appreciate your time and we ask that you deny these appeals.

20 CHAIRPERSON HILL: Okay. Thanks, Ms. Roddy.

21 All right, everybody. I'm looking at my fellow
22 board members. I suggest that we come back to this next
23 week. We'll take the week to kind of chew on all of this and
24 deliberate next week. And I'm looking at my board members,
25 if they have any issues with all that? Nobody's given me a

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1 thumbs down.

2 Again, I'd like to thank all of the people who
3 have come here before us today. It's been a very long
4 hearing. I'm glad this is all we had because, otherwise, I
5 wouldn't survive. And so, it's already now 4 o'clock. I
6 want to thank, again, the Appellant, the property owner, and
7 DCRA for their attendance, and also my fellow board members.

8 I'm going to close the record of the hearing and
9 excuse everyone. Thank you, all, very much. Except for my
10 board members. Please stay.

11 Mr. Young, please excuse everyone. Thank you.

12 All right. I neglected to ask if anybody needed
13 anything, so I hope you didn't because I don't have to, like,
14 go get people now. And if you do, then just let me know
15 later and I'll figure it out. So, we'll deliberate next
16 week. Does that sound good? Okay. Mr. Moy, is that all
17 good with you?

18 MR. MOY: If it's good with the Board, it's always
19 good for me, Mr. Chairman.

20 CHAIRPERSON HILL: Okay. Does anybody have
21 anything they'd like to add before I close the hearing? No?
22 Okay. All right. We'll see you all next week, then.
23 Hearing's adjourned. Thank you. Bye-bye.

24 (Whereupon, the above-entitled matter went off the
25 record at 4:08 p.m.)

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In the matter of: Public Hearing

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