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September 15, 2014

VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 200S
Washington, D.C. 20001

Re: Z.C. Case No. 13-14 – McMillan Sand Filtration Site
Applicant's Response to NCPC Staff Letter Dated August 25, 2014

Dear Commissioners:

On behalf of Vision McMillan Partners (“VMP”) and the Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) (collectively “Applicant”), we submit this letter in response to the letter dated August 25, 2014, from the staff of the National Capital Planning Commission (“NCPC”). While the Applicant has successfully addressed the viewshed concerns raised by NCPC staff through a 15-foot shift in the healthcare facility (see separate letter submitted simultaneously herewith), we provide these comments on other issues raised in the letter.

First, the Applicant notes that NCPC staff only discussed the Comprehensive Plan in terms of the district elements. Yet NCPC's jurisdiction in a planned unit development (“PUD”) and map amendment case is limited to an evaluation of impacts on the federal elements of the Comprehensive Plan. The Office of Planning (“OP”), on the other hand, is the appropriate District agency to evaluate the district elements in such applications. To that end, OP provided the Commission with detailed reports on the proposed McMillan planned unit development (“PUD”) and related map amendment and concluded that they were fully consistent with the District Elements. This is further supported by the detailed analysis prepared by the Applicant's expert in land use and planning.

Second, while the Applicant was pleased to cooperate with NCPC staff to preserve the viewsheds from the Armed Forces Retirement Home (“AFRH”) to the Capitol, we note that those viewsheds are not protected through any official historic designation on the National Register of Historic Places or the D.C. Inventory of Historic Sites. There are no easements that protect view corridors or viewsheds across the McMillan PUD site, nor are there any provisions in federal elements of the Comprehensive Plan, developed by NCPC, that protect such views. Thus, we believe there is no basis for NCPC staff to assert control over any private development in the three-plus miles between AFRH and the Capitol. NCPC *does* have the ability to restrict development on the AFRH campus, but its jurisdiction to protect viewsheds does not extend beyond those

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boundaries.¹ Notwithstanding the limits of NCPC's jurisdiction, in the spirit of mutual cooperation, compromise and respect, the Applicant adjusted its building to ensure that the views of the Capitol from Scott Statue on the AFRH campus were adequately preserved.

Third, in discussing the Memorandum of Agreement for the AFRH, NCPC staff correctly notes that the AFRH Master Plan is limited to *development at the AFRH*. While NCPC staff suggests that as a matter of equity the Master Plan should also control development beyond AFRH, there is no legal basis for such and neither NCPC nor the Zoning Commission has the authority to expand the Master Plan's application or scope. Accordingly, the materials from the AFRH attached to NCPC staff's letter, which were unsolicited by the Commission, are immaterial and should be disregarded.

Respectfully submitted,

Holland & Knight LLP

By: 
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cc: Sharon Schellin, Office of Zoning (via email)
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Advisory Neighborhood Commission 1B (via first class mail)
Advisory Neighborhood Commission 5A (via first class mail)

¹ As the Applicant noted in its June 23, 2014, submission to the Commission, American courts do not recognize a prescriptive right to views across another's property. See *Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004) (“American courts have wisely refused to allow the acquisition by prescription of easements of light and air;” “[o]ne may obstruct his neighbor's windows at any time” and “[n]o action can be maintained for obstructing a view”); *Ash v. Tate*, 73 F.2d 518, 519 (Ct. App. D.C. 1934); see also Z.C. Order No. 11-03 (December 20, 2011) at 29, 32; Z.C. Order No. 12-02 (November 29, 2013) at 20; Z.C. Order No. 12-14/12-14A (March 14, 2014), at 28; Z.C. Case No. 11-13 (July 5, 2012), at 28.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Applicant's Response to NCPC Staff was served by e-mail on September 15, 2014 on the following:

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