

DC Board of Zoning Adjustment
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Washington, DC 20001
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DC for Reasonable Development
Daniel Wolkoff, member
Cynthia Carson, member
Melissa Peffers, member
Jerome Peloquin, member,
James Fournier, member
Linwood Norman, member,
Jimmie Boykin, member

Appellant,

v.

DC Department of Consumer and
and Regulatory Affairs,

Respondent.

BZA Appeal No. 20191

EMERGENCY MOTION PURSUANT TO 11-Y DCMR 407.1, .2, et. seq., and 11-Y DCMR 408.1(b), 11-Y DCMR 506.1(b),(h) REQUESTING THE BZA TO ACT AND POSTPONE DECISION ON MCMILLAN APPEAL

Appellants come now as an emergency pursuant to BZA regulations, 11-Y DCMR 407.1, .2, et. seq., and 11-Y DCMR 408.1(b), 11-Y DCMR 506.1(b), (h). The motion asks the BZA to delay the decision on this appeal and with good cause.

All parties have been served per 11-Y DCMR 205, et seq. Since this motion is being filed as an emergency and given the timing of submission, none of the opposition parties have actively granted consent to this motion, and we presume they will oppose.

The Applicant in this case is still seeking historic preservation review and approvals of their plans. Moreover, the Commission on Fine Arts is still and will be reviewing the plans as well. As such these plans are still in flux, demonstrably demonstrating in addition to all arguments and evidence already provided, that the Respondent, DC Consumer and Regulatory Authority's (DCRA) issuance of

the Demolition Permit at McMillan Park, as well as any other permits, including the Foundation Permit under appeal are premature.

Ongoing Administrative Reviews Show the Record is Not Complete; Appeal Decision Should be Postponed

HPRB Case #20-483 will be up for review at the end of this month regarding the development proposed for Parcel 1. See agenda at the Historic Preservation Office website, here:

<https://planning.dc.gov/node/1491046> – As well see the email attached in Exhibit #1.

Moreover, this Thursday, the Commission on Fine Arts will be reviewing the Parcel 6 proposal. See the agenda at the CFA website here: <https://www.cfa.gov/records-research/project-search/cfa-18-jun-20-6>

As shown in prior submissions, including the slide deck shown by Appellants during the appeal hearing on August 5, 2020, both the Commission on Fine Arts and Historic Preservation are considered DCRA sub-categories on the PERMIT INTAKE form and are required for signoff before permits are issued, as so goes for zoning requirements.

The plans now before the CFA and HPRB will be reviewed and under going changes and thus any issuance of the permits to demolish the site are premature.

As testified during the hearing, zoning regulations require completed administrative reviews before permits can be issued. Clearly there are still reviews underway as shown above, in addition as a key issue in our appeal, the Master Plan still requires second stage zoning review and approval before permits could be issued.

The Court's Imperative Shows Delay on Appeal Decision Warranted to Allow the Respondent and Applicant to Provide a Full Record Before Decision

Both the Respondent and Intervenor referenced DC Court of Appeals Case No. 18-AA-357 found here: <https://www.dccourts.gov/sites/default/files/2019-05/18-AA-357.pdf>

At Page 53 of the above referenced Judgment, the Court states unequivocally, "Until . . . any other obstacles to the applicants' ability to complete the project are resolved, the applicants may not commence demolition."

Indeed, it is clear that the aforementioned administrative reviews still underway and those still required (Second-stage Zoning) are indeed "obstacles" to proceeding with demolition in an effort to

complete the project. Thus, the Demolition permit has been issued prematurely in contradiction of the DC Zoning Code, DC law, and the Court's imperative.

Thus we would ask the BZA not make any decision on this appeal until:

1. The Applicant and Respondent can clarify a timeline and list of agencies, both local and federal, by which the applications for the proposed McMillan Town Center demolition and redevelopment project still need review, edits, and approvals;
2. The Applicant and Respondent clarify the extent they have begun their demolition activities at the site with a timeline of when they started;
3. The Applicant and Respondent clarify in writing as to when the existing McMillan deed covenants are considered and brought into any new contracts, land deeds, and administrative reviews and decision; and,
4. The Applicant and Respondent receive Court instruction on when they can proceed in furthering their administrative review.

Until all of these points are considered and information is shared openly with the BZA and public, examination and decision making on this appeal is impossible as the record is not complete.

Appellants move this with good cause as shown above on Tuesday, September 15, 2020.

Regards,

/s /n

Chris Otten, co-facilitator

DC for Reasonable Development

202-656-5874

dc4reality@gmail.com

EXHIBIT #1



d.c. forrd <dc4reality@gmail.com>

Re: HPRB: MCMILLAN PARK

1 message

Callcott, Steve (OP) <steve.callcott@dc.gov>

Tue, Sep 15, 2020 at 9:30 AM

To: "d.c. forrd" <dc4reality@gmail.com>

Cc: "aferster@railstotrails.org" <aferster@railstotrails.org>, Betsy Merritt <emerritt@savingplaces.org>, Vining Kirby <>nulliparaacnestis@gmail.com>, Carole Lewis Anderson <carole.lewis.anderson@gmail.com>, Andrea Rosen <aerie@rcn.com>, Robin Diener <robinsdiener@gmail.com>, Peter Stebbins <pjstebbins@gmail.com>, Sarah Katherine Jorgensen <Jorgensen.Sarah@gmail.com>, Daniel Wolkoff <amglassart@yahoo.com>, Jerome Peloquin <aquaponikus@gmail.com>, Linwood Norman <linwood.norman@gmail.com>, cynthia Carson <cyncarson@gmail.com>, Joanne Boykin <sapphire91264@gmail.com>, "Maloney, David (OP)" <david.maloney@dc.gov>, Ari Theresa <Actheresa@gmail.com>, Mel Peffers <mpeffs@gmail.com>

Concept application #20-483 will likely be scheduled for the September 24th meeting, however final scheduling will be confirmed when the agendas are released on our website this Friday. As per the public notice of the meeting, the deadline for submitting public comments is 24 hours prior to the meeting (10:00AM the day before the scheduled meeting). I am not aware of any proposed discussion of preservation covenants with regard to this concept application.

Steve Callcott

From: d.c. forrd <dc4reality@gmail.com>

Sent: Monday, September 14, 2020 4:30 PM

To: Callcott, Steve (OP) <steve.callcott@dc.gov>

Cc: aferster@railstotrails.org <aferster@railstotrails.org>; Betsy Merritt <emerritt@savingplaces.org>; Vining Kirby <nulliparaacnestis@gmail.com>; Carole Lewis Anderson <carole.lewis.anderson@gmail.com>; Andrea Rosen <aerie@rcn.com>; Robin Diener <robinsdiener@gmail.com>; Peter Stebbins <pjstebbins@gmail.com>; Sarah Katherine Jorgensen <Jorgensen.Sarah@gmail.com>; Daniel Wolkoff <amglassart@yahoo.com>; Jerome Peloquin <aquaponikus@gmail.com>; Linwood Norman <linwood.norman@gmail.com>; cynthia Carson <cyncarson@gmail.com>; Joanne Boykin <sapphire91264@gmail.com>; Maloney, David (OP) <david.maloney@dc.gov>; Ari Theresa <Actheresa@gmail.com>; Mel Peffers <mpeffs@gmail.com>

Subject: HPRB: MCMILLAN PARK

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Hello Mr. Callcott,
Hope you are alright despite.

Wanted to inquire with you, we saw this agenda notice here >>

https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/HPO%20Monthly%20Public%20Notice%20-%2009%202020_0.pdf

In this notice, we see under "**Landmarks**":

5E -- McMillan Park Reservoir, [2940 North Capitol Street NW](#), HPA 20-483, concept/construction of healthcare facility on parcel 1(Callcott)

Questions:

1. What day will this be heard by HPRB, Sep 24th or Oct 1?
2. What is the deadline for public comment?
3. Per the hearings before the Mayor's Agent on this project, per Mr. Byrne, Mrs. Carolyn Brown for the Applicant, and Mrs. Betsy Merritt for the National Trust on Historic Preservation, we understand that the existing restrictive preservation covenants that run with the McMillan deed in perpetuity will finally be discussed in light of its effect on the McMillan project including Parcel 1, particularly the threatened underlying protected cultural assets such as the filter beds located there. Do you understand this to be the forum for this discussion to be finally had?

I've cc'd key FOMP and McMillan supporters with this email, and I've cc'd Mr. Maloney for any insights from him as well.

Your insights and information are much appreciated.

Thank you so much,
Chris Otten, Save McMillan Action Coalition
c/ DC for Reasonable Development

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DC for Reasonable Development
(202) 656-5874
www.dc4reason.org
fb.me/dc4reality
twitter.com/dc4reality

For the latest information on the District Government's response to COVID-19 (Coronavirus), please visit coronavirus.dc.gov.

CERTIFICATE OF SERVICE

I, Chris Otten, attest to serving the above EMERGENCY MOTION PURSUANT TO 11-Y DCMR 407.1, .2, ET. SEQ., AND 11-Y DCMR 408.1(B), 11-Y DCMR 506.1(B),(H) REQUESTING THE BZA TO ACT AND POSTPONE DECISION ON MCMILLAN APPEAL on September 15, 2020, as follows:

RESPONDENT DCRA

Hugh.Green@dc.gov
Brendan.Heath@dc.gov
Matthew.Legrant@dc.gov
Esther.McGraw2@dc.gov

APPLICANT DMPED

Fernando.Amarillas@dc.gov
Andy.Saindon@dc.gov

Mayor Muriel Bowser,

By email: eom@dc.gov

Courtesy copies to all complainants:

Daniel Wolkoff <amglassart@yahoo.com>,
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Jerome Peloquin <aquaponikus@gmail.com>,
Linwood Norman <Linwood.norman@gmail.com>,
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And by mail to:
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