

**DC Board of Zoning Adjustment
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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.

Appeal of DCRA Demolition
Permit D1600814 dated
August 16, 2019 &
Appeal of DCRA
Foundation Permit FD1800040
dated August 27, 2019

**MOTION FOR SUMMARY AFFIRMANCE OF COMPLAINANT'S
APPEAL OF RESPONDENT'S, DCRA ERRONEOUS ISSUANCE
OF PERMITS D1600814 & PERMIT FD1800040**

In response to the BZA's Order dated May 28, 2020, the Complainant's submit this timely Motion for Summary Affirmance of the Appeal.

DC4RD timely filed an appeal that the BZA has the jurisdiction over regarding Respondent's, DCRA erroneous issuance of permits and the BZA can rule summarily where facts are undisputed and the rules are clearcut. 11-X DCMR § 1100, etc., 11-Y DCMR § 302, 11-Y DCMR § 204, 11-Z DCMR § 1603.2(c).

Here, Complainants ask that the BZA rule summarily in favor of our appeal and rescind DCRA's premature issuance of a foundation and demolition permit at McMillan Park. DCRA is mocking the plain letter of the zoning code in the District of Columbia thus hurting the interests of all the Complainants in this important historic site as well as imminently threatening the welfare and safety of the community where some of the Complainants live and work contrary to the purpose of the

Zoning Regulations in the District of Columbia. DC Code § 6–641, *et seq.*

Introduction

The Respondent DCRA issued a Permit D1600814 allowing the Applicant to demolish most of the historic assets at McMillan Park. The Respondent then issued Permit FD1800040 to set in the foundation for the proposed community center located at the south east corner of the McMillan "Master Plan." The Complainants timely filed for review of wrongful and premature issuance of these permits in October 2019, before this sudden onset of a terrible pandemic.

The Zoning Administrator Erred in Signing Off on Issuing The Permits

Over the course of several weeks, Complainants sought the rationale of the DC Zoning Administrator in approving the permits, highlighting the key zoning regulations we are now asking the BZA to weigh in this appeal. *See* Complainant's BZA APPEAL OF ERRONEOUS ISSUANCE OF DCRA PERMIT D1600814 & PERMIT FD1800040 dated October 15, 2019.

In prematurely approving the issuance of the permits, the Zoning Administrator failed to consider Zoning Order No. 13-14(6) which clearly demonstrates that a Second-Stage PUD review is still pending regarding the McMillan Park "Master Plan."

The Applicant identified seven development parcels within the PUD Site. The [Zoning] Commission granted first-stage PUD approval for the Master Plan and Parcels 2 and 3, consolidated PUD approval for the remaining five parcels, and a related map amendment to zone the PUD Site to the CR Zone District, except for Parcel 1, which was mapped in the C-3-C Zone District. Parcel 1 is located in the northern portion of the PUD Site and the C-3-C Zone District was requested to accommodate the 130-foot height requested for the proposed building at that location. That building was eventually approved for a maximum height of 115-feet, and will hereinafter be referred to as the "Parcel 1 Building." (emphasis added).

DC Zoning Commission Order No. 13-14(6).

The plain reading of Zoning Order 13-14(6) demonstrates that the Zoning Commission must conduct Second-stage PUD review for the "Master Plan" and "Parcels 2 and 3." Since Zoning Order 13-14(6) was published, the Parcel 2 component has received Second-stage PUD review and approval shown by Zoning Commission Order 13-14(A). This order now has pending claims before the DC Court of Appeals that may result in a vacate or remand judgment as has happened with prior approvals

sending the project back to the Zoning Commission for more review. *See* DC Court of Appeals Case No. 18-AA-1146.

Complainants are not aware of any scheduled zoning hearings for the Second-stage review of Parcel 3 or the McMillan Master Plan as required by the zoning code and iterated by Zoning Order 13-14(6). Thus the destruction of almost all of the historically protected cultural assets at McMillan Park (subterranean water cells, portico and filtration walls) is premature as the McMillan "Master Plan" still requires administrative review by law.

The Complainants seek a well-ordered process that rides within the rails of the zoning code as Complainants are fully aware and threatened by the implementation of the McMillan Master Plan which will likely result in almost a decade of demolition and construction activities within close proximity to our residential community directly affecting nearby elders, children and families, is located just adjacent to DC's drinking water supply, and will be driven on top of a very important registered site that is supposed to be historically protected. §§ 6-641, 6-1104, *et seq.*

Applicable and Clear Cut Zoning Regulations

Complainants believe Mr. Legrant, the DC Zoning Administrator would not respond to our emails seeking his Letter of Determination regarding DCRA's issuance of the permits now under review because he would have no logical leg to stand on that is supported by the zoning code in signing off on these permits.

Mr. Legrant is supposed to know that no permits can be issued unless all administrative review have been completed, that is the First- and Second-stage PUD review of the McMillan "Master Plan" is approved by the Zoning Commission. Here, the proper and full administrative review has not been completed by the Zoning Commission and thus no covenants can be recorded or permits issued as plans may be changed by the Zoning Commission during a Second-stage review. Moreover, the Zoning Regulations make clear that permits can be issued only after Second-stage reviews are complete. *See* 11-X DCMR §§ 311.1, 3, § 309.2, 11-Z DCMR § 702.7, § 702.8.

Coupling the above administrative law with the fundamental fact that McMillan Park is a longstanding registered historic site with legal protections demonstrates that the Applicant clearly cannot complete entirety of the project, let alone even begin to break ground.

“In those cases in which the Mayor finds that the demolition is necessary to allow the construction of a project of special merit, no demolition permit shall be issued unless a permit

for new construction is issued simultaneously under § 6-1107 and the owner demonstrates the ability to complete the project.”

D.C. Code § 6–1104 (h).

Here the Applicant cannot demonstrate the ability to complete the project until the Zoning Commission reviews and approves a Second-stage PUD order for the "Master Plan" according to the aforementioned DC Zoning Regulations and as shown by the First-stage approval in Zoning Order 13-14(6).

Conclusion

The undisputed facts above showing that the permits at question were issued by DCRA prematurely can be easily contrasted to clear requirements of the zoning regulations and the law. The reticence of the DC Zoning Administrator to publish a Letter of Determination despite multiple inquiries further demonstrates the rush to demolish McMillan Park is not allowed, yet, by law.

Thus the Complainants ask the BZA to summarily affirm our appeal and immediately vacate Permit D1600814 & Permit FD1800040.

Regards,

/s /n

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DC for Reasonable Development

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CERTIFICATE OF SERVICE

I, Chris Otten, attest to serving the above **MOTION FOR SUMMARY AFFIRMANCE OF COMPLAINANT'S APPEAL OF RESPONDENT'S, DCRA ERRONEOUS ISSUANCE OF PERMITS D1600814 & PERMIT FD1800040** on June 8, 2020, as follows:

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