

DC Board of Zoning Adjustment
441 4th Street NW, Suite 200 South
Washington, DC 20001
bzsubmissions@dc.gov

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

**APPELLANT'S RESPONSE TO THE BZA MEMORANDUM &
ORDER DATED JUNE 26, 2020**

BZA Memorandum and Order dated June 26, 2020 provides notice to cure to Appellants. The BZA is seeking "all statements, information, briefs, reports, plans, photographs, or other exhibits" for the public hearing. The BZA also seeks more information about the plans approved for the Community Center, the design by which the Foundation Permit FD1800040 allows construction to start.

Appellants do not want our appeal dismissed as we've provided most of what has been requested above already to the record, albeit perhaps across several submissions as the pleadings have unfolded and per prior orders of the BZA. Here, Appellants seek to consolidate all "information" to be submitted before the hearing and for the sake of the notice to cure, we respond below.

Key Appeal Issues and Applicable Zoning Regulations

Throughout all of our filings Appellants have thought we made clear the two key appeal issues:

1. The Zoning Administrator errs in approving the issuance of the Permits by DCRA prematurely, in contradiction of the plain reading of the DC Zoning Regulations. The Zoning Administrator never explains his approval for the record such as in a Letter of Determination.

2. The Zoning Regulations require recordation of land covenants before permits can be issued, yet the restrictive preservation covenants that run with the land deed now, and in perpetuity, are not found on the DCRA or BZA record. The Zoning Administrator does not account for the existing preservation covenants at McMillan Park in the DCRA record before signing off on the Permits, in error.

The aforementioned two key issues are explored at length in the June 18, 2020, APPELLANT'S RESPONSE TO DCRA AND DMPED'S MOTIONS TO DISMISS PER THE MAY 28, 2020 BZA MEMORANDUM REGARDING APPEAL OF RESPONDENT'S, DCRA PREMATURE & ERRONEOUS ISSUANCE OF PERMITS D1600814 & PERMIT FD1800040. *See Attachment D.*

Appellants adopt all citations, facts, and arguments found in the above filing as well as all prior filings by the Appellants and incorporate them here in now in this response to the June 26, 2020 BZA Memorandum and Order (EMPHASIS ADDED).

Key Zoning Regulations

Appellants have shown since our initial filing of Form 125 that the Zoning Administrator has not adhered to several critical zoning regulations in issuing the Permits.

These regulations have been cited numerous times in all of our Appeal filings demonstrating how the Zoning Administrator allowed DCRA to issue the Permits prematurely and illegally.

Appellants, for the purposes of fully informing the record have also referenced supporting regulations that substantiate the central regulations cited in our initial Appeal documents.

For the sake of consolidation under the BZA's notice to cure, Appellants point to Attachment E for a list of the applicable central zoning regulations and supporting regulations as well that we rely on in this appeal.

Appellants are seeking BZA review of the Two Permits, the Demolition and Foundation Permits

To be clear here, Appellants are seeking review of the two DCRA-issued permits to date, the Foundation Permit FD1800040 and the Demolition Permit D1600814, together the "Permits."

Both of these Permits allow the Applicant to begin implementing project activities at the site as part of the McMillan "Master Plan." Appellants have shown throughout all submissions since the start of the instant appeal that the McMillan "Master Plan" is explicitly referenced in Zoning Commission Order No. 13-14(6) to have only received "First Stage" PUD review and approval. Pursuant to the Zoning Regulations, the McMillan "Master Plan" still requires Second Stage PUD review and approval before the Permits may be issued by DCRA.

Per the law, Appellants expect that the Second Stage PUD review as required will take into account the pending review and requested changes of the Community Center by the US Commission on Fine Arts (CFA). This administrative process was only recently brought to the attention by the Appellants, almost by happenstance. Neither the Applicant, Respondent, DCRA, nor Intervenor, DMPED, made anyone aware that the CFA is currently evaluating and changing the plans approved for the Community Center, the still evolving component of the McMillan Master Plan that the Foundation Permit is directly related to.

DCRA clearly did not ensure "Fine Arts Permit Approval" was actually completed before issuing the Demolition Permit or the Foundation Permit for the Community Center. See Attachment A & B.

Appellants expect the DC Zoning Commission to incorporate the CFA's design changes to the Community Center when the Zoning Commission takes up the Second Stage PUD application for the McMillan Master Plan.

A trial will help the BZA ascertain the rationale as to why the Zoning Administrator (ZA) can ignore these central facts and zoning regulations being raised in this appeal. The ZA has not provided a Letter of Determination despite numerous requests, including a FOIA request that has produced no documentation from the ZA to date. See Attachment C.

Experts at Trial

Appellants intend to introduce at least one expert to review the above facts and regulations at the hearing with Commissioners in that we would qualify Aristotle Theresa, Esquire, a leading zoning attorney in the District of Columbia well versed in DC's Zoning Regulations and the DC

Comprehensive Plan, as an expert at trial. We intend to supplement the record pursuant 11-Y DCMR 302.12(i) with Mr. Theresa's credentials before the hearing. For the record right now, and pursuant to the request of the BZA, Appellants point Commissioners to Mr. Theresa's website, www.StoopLaw.com.

Witnesses at Trial

Moreover, Appellants seek to introduce Mr. Jim Schulman, professional architect and other witnesses that can speak to the evidence and reports we have already provided to the record pursuant to 11-Y DCMR 302.12(h). Other witnesses include all plaintiffs directly affected by the demolition of McMillan Park.

Exhibits -- Statements, information, briefs, reports, etc. pursuant to 11-Y DCMR 302.12(h)

Appellants have already submitted numerous exhibits into the record per 11-Y DCMR 302.12(h). Our witnesses will be ready to testify to these exhibits. They include:

1. District of Columbia Zoning Commission Order No. 13-14(6). The order can be found here in its entirety >> <http://www.tinyurl.com/zc-case-13-14>

2. Emails and FOIA request exchanged with the District of Columbia Zoning Administrator citing the zoning regulations. Attachment C.

3. APPELLANT'S RESPONSE TO DCRA AND DMPED'S MOTIONS TO DISMISS PER THE MAY 28, 2020 BZA MEMORANDUM REGARDING APPEAL OF RESPONDENT'S, DCRA PREMATURE & ERRONEOUS ISSUANCE OF PERMITS D1600814 & PERMIT FD1800040. Attachment F.

4. Existing Historic Preservation Covenants at McMillan Park. See Attachment A of APPELLANT'S RESPONSE TO DCRA AND DMPED'S MOTIONS TO DISMISS PER THE MAY 28, 2020 BZA MEMORANDUM REGARDING APPEAL OF RESPONDENT'S, DCRA PREMATURE & ERRONEOUS ISSUANCE OF PERMITS D1600814 & PERMIT FD1800040.

5. DCRA Permit D1600814 dated August 16, 2019 allowing the demolition across the entire PUD site and thus the start of the implementation of the McMillan Park Master Plan. Attachment D.

6. CFA Webpage and Emails showing that the Community Center related to the Foundation Permit is still under review and pending changes. Attachment B.

This concludes Appellant's response to the BZA's notice to cure per the June 26, 2020, BZA Memorandum and Order.

If we have missed anything, Appellants ask the BZA or other parties to please inform us as such and we will provide any additional information or responses as required.

Regards,

/s /n

Chris Otten, co-facilitator

DC for Reasonable Development

202-656-5874

dc4reality@gmail.com

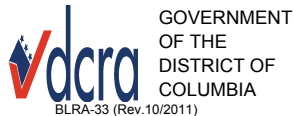
EXHIBITS FOR TRIAL IN BZA APPEAL NO. 20191 THESE EXHIBITS LISTED AS ATTACHMENTS

- ATTACHMENT A & B – DCRA clearly did not ensure "Fine Arts Permit Approval" was actually completed before issuing the Demolition Permit or the Foundation Permit for the Community Center.
- ATTACHMENT C – Emails and FOIA request exchanged with the District of Columbia Zoning Administrator citing zoning regulations.
- ATTACHMENT D – DCRA Permit D1600814 dated August 16, 2019 allowing the demolition across the entire PUD site and thus the start of the implementation of the McMillan Park Master Plan.
- ATTACHMENT E – Applicable Zoning Regulations under Appeal
- ATTACHMENT F – APPELLANT’S RESPONSE TO DCRA AND DMPED’S MOTIONS TO DISMISS PER THE MAY 28, 2020 BZA MEMORANDUM REGARDING APPEAL OF RESPONDENT’S, DCRA PREMATURE & ERRONEOUS ISSUANCE OF PERMITS D1600814 & PERMIT FD1800040, dated June 18, 2020, including its own “Attachment A” which incorporates the Existing Historic Preservation Covenants at McMillan Park.

ATTACHMENT A

PERMIT APPROVALS LIST (SEE PAGE 5 OF 9)

PRE-FILE NUMBERS	ZONING DISTRICT	FILE NUMBER	PERMIT NUMBER



DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
 BUILDING AND LAND REGULATION ADMINISTRATION PERMIT SERVICE CENTER
 DCRA.DC.GOV



APPLICATION FOR CONSTRUCTION PERMITS ON PRIVATE PROPERTY
 (PRINT INK OR TYPE, DO NOT WRITE IN SHADED AREAS)
 ERASING, CROSSING OUT, WHITING OUT, OR OTHERWISE ALTERING ANY ENTERED INFORMATION WILL VOID THIS APPLICATION

CLEARANCE TO FILE
 By _____ Date _____

(A) ALL APPLICANTS MUST COMPLETE ITEMS 1 THRU 35

1. Address of Proposed Work: 2940 NORTH CAPITOL ST NW	Suite No:	2. Lot: 0872	3. Square: 0542	4. Application Date: 09/09/2019
5. Owner of Building or Property: Usgbf Waterfront Station Llc	6. Address (Include Zip Code) Usaa Real Estate Company, 9830 Colonnade Blvd Ste 600, San Antonio, TX 78230-2209		7. Phone	
8. Agent for Owner (if applicable) Clifford Dixon	9. Address (Include Zip Code)		10. Phone	

11. Type of Proposed Work (Select only one)

<input type="checkbox"/> New Building(B)	<input type="checkbox"/> Awning (G)	<input type="checkbox"/> Observation Stand (L)	<input type="checkbox"/> Sheetpiling and Shoring(R)
<input type="checkbox"/> Addition (B)	<input type="checkbox"/> Sign (Z)	<input type="checkbox"/> Scaffolding Information (M)	<input type="checkbox"/> Tenant Layout (S)
<input checked="" type="checkbox"/> Addition Alteration Repair(B)	<input type="checkbox"/> After Hours (H)	<input type="checkbox"/> Soil Borings(N)	<input type="checkbox"/> Swimming Pool (T)
<input type="checkbox"/> Raze Building(C)	<input type="checkbox"/> Demolition (I)	<input type="checkbox"/> Tower Crane(O)	<input type="checkbox"/> Special Sign (U)
<input type="checkbox"/> Retaining Wall (D)	<input type="checkbox"/> Capacity Placard (AA)	<input type="checkbox"/> Foundation Only(P)	<input type="checkbox"/> Solar System (AB)
<input type="checkbox"/> Fence (E)	<input type="checkbox"/> Christmas Tree Stand (J)	<input type="checkbox"/> Underground Storage Tank(Q)	<input type="checkbox"/> Excavation Only (V)
<input type="checkbox"/> Shed (F)	<input type="checkbox"/> Fireworks Stand (J)	<input type="checkbox"/> Civil Site Work Only (K)	<input type="checkbox"/> Tent (X)
<input type="checkbox"/> New Building(B)	<input type="checkbox"/> Garage (F)		<input type="checkbox"/> Antenna (W)

12. Description of Proposed Work DGS MCMILLAN REVISION TO PERMIT D1600814 TO CHANGE THE DESIGN TEAM AND ENGINEERS OF RECORD WITH MINOR REVISIONS TO SELECTIVE SHEETS.	13. Do you have an Elevation Certificate <input type="checkbox"/> Yes <input type="checkbox"/> No
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14. Existing Use(s) of Building or Property Other (Specify)	15. Ex. No of Stories of Bldg 0	16. Ex. No of Dwelling Units 0	OFFICIAL USE ONLY Miscellaneous FEE \$
17. Proposed Use(s) of Building or Property Other (Specify)	18. Prop. No of Stories of Bldg 0	19. Prop. No of Dwelling Units 0	

20. Starting Date	21. Completion Date of work	22. Method of Removing Construction Debris <input checked="" type="checkbox"/> Pick-up Truck <input type="checkbox"/> Dumpster <input type="checkbox"/> Other (specify)	23. Does the proposed work involve disturbing the earth or razing a building? <input type="checkbox"/> Yes, answer a.24 <input checked="" type="checkbox"/> No, SKIP a.24-29
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24. Is the area of disturbed earth more than 50 sq.ft? <input type="checkbox"/> Yes, answer a.26-27 <input type="checkbox"/> No, SKIP a.26-27	26. Soil Erosion Control Methods	27. Area of Offsite Drainage	28. No. of Footings or Columns	29. Size of Footings or Columns
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25. Is the area disturbed earth more than 5000 sq.ft? <input type="checkbox"/> Yes. <input checked="" type="checkbox"/> No.	30. Existing Stories Plus	32. Existing Penthouse <input type="checkbox"/> Yes. <input checked="" type="checkbox"/> No.	OFFICIAL USE ONLY	
	31. Proposed Stories Plus	33. Proposed Penthouse <input type="checkbox"/> Yes. <input checked="" type="checkbox"/> No.	M	R
			P	P
			E	H
			F	A
			S	

34. 3rd Party Review <input type="checkbox"/> Yes. <input checked="" type="checkbox"/> No.	35. 1st time Tenant Build <input type="checkbox"/> Yes. Ours <input type="checkbox"/> No.	36. Floors Involved in Proposed Construction LOT	W <input type="checkbox"/> Yes. <input type="checkbox"/> No.
			PLANS
			<input type="checkbox"/> No. <input type="checkbox"/> Sm. <input type="checkbox"/> La.

(B) NEW BUILDING, ADDITION, & ALTERATION (COMPLETE ITEMS 1 THRU 36)

1. Architect's Name:		2. D.C. Lic. No.:		3. Architect's Address: (include Zip Code)			4. Phone:		
5. Engineer's Name:		6. D.C. Lic. No.:		7. Engineer's Address: (include Zip Code)			8. Phone:		
9. Building Contractor's Name:		10. D.C. Lic. No.:		11. Contractor's Address: (include Zip Code)			12. Phone:		
13. Fire Suppression: <input type="checkbox"/> Fully Sprinklered <input type="checkbox"/> Partially Sprinklered <input type="checkbox"/> Standpipe System <input checked="" type="checkbox"/> None <input type="checkbox"/> Other		14. Present Gross Floor Area of Bldg.: 0		15. Proposed Gross Floor Area of Addition 0			17. Breakdown of Lot Area(=100%)		
				16. Proposed Gross Floor Area of Bldg 0			a. building	%	
							b. paved area	%	
							c. greenery	%	
18. Total Lot Area: Sq. Ft 200000	19. Length: 0	20. Width: 0	21. Height: 0	22. Floors involved in this permit LOT			23. Projection beyond building line? <input type="checkbox"/> Yes. Answer 24 to 28 <input checked="" type="checkbox"/> No. SKIP 24 to 28		
24. Number and type of projection:		25. Distance of Projection		26. Width of Projection	27. Width of Building frontage	28. Signature of Owner (projection Only)			
29. Water or Sewer Excavation <input type="checkbox"/> Yes. <input checked="" type="checkbox"/> No.	30. Driveway Construction: <input type="checkbox"/> Yes. <input checked="" type="checkbox"/> No.		31. Sheeting/Shoring <input type="checkbox"/> Yes. <input checked="" type="checkbox"/> No.		32. Elevators Involved: <input type="checkbox"/> Yes. Answer 33 <input checked="" type="checkbox"/> No.		33. No and Type of Elevators		34. Plans Certified by Engineer: <input checked="" type="checkbox"/> Yes. Cert. Attached <input type="checkbox"/> No.
35. Estimated Cost of Work (a) New/Add: \$ _____ (b) Alt/Repair: \$ 1 _____ Total : \$ _____				OFFICIAL USE ONLY					
				Alter/Repair FEE	New Const. FEE	Filing FEE	TOTAL PERMIT FEE		
				\$	\$	\$	\$		
36. Volume of New Bldg. or Addition Cu. Ft. 0				By	Date	By	Date	By	Date

(H) SIGN (COMPLETE ITEMS 1 THRU 22)

1. Number:	2. Electric Signs: Yes. Answer 3 to 10 No. SKIP 3 to 10	3. Type: Incandes Fluoresc Neon LED	4. Power: Va	5. Electrical Contractor:	6. Business License Number:				
7. Address of Electrical Contractor: (include zip)		8. Signature of Licensed Electrician:		9. Phone No.	10. Electrician License No.				
11. Height relative to building and ground			12. Material of Sign:	13. Type of Sign:		14. Color of Sign:			
			15. Width of Sign: 0	16. Length of Sign: 0	17. Area of Sign:	18. Width of Business frontage:			
19. Certificate of Occupancy No. for Bldg.:		20. Sign Contractor Name:		OFFICIAL USE ONLY					
				Sign FEE:		Elect FEE:		Total FEE:	
21. Sign Contractor's Address:		22. Phone No.:		By	Date	By	Date	By	Date

SOLAR SYSTEM (COMPLETE ITEMS 1 THRU 27)

1. Type of System:	2. System Connection:	3. Inverter Type	4. Number of modules/collectors:	5. Single-Module Rated Output:
6. Mounting system: <input type="checkbox"/> Rafters <input type="checkbox"/> Parapet to Parapet <input type="checkbox"/> Ballasted <input type="checkbox"/> Other	7. Angle with Respect to Roof:	8. Year House Built.	9. Number of Neighbor Notification	10. Year Roof Replaced.
				11. Roof Area: Sq.Ft
12. Total Surface Area of Panels/Collectors:	13. Height of the System Above Roof: FtIn	14. Type of Financing:	15. Solar Renewable Energy Credits (SREC):	
16. General Contractor's First Name:	17. General Contractor's Last Name:		18. General Contractor's Company Name:	
19. General Contractor's Street Address:	20. General Contractor's Suite or Unit:		21. General Contractor's City:	
22. General Contractor's State:	23. General Contractor's Zip Code:		24. General Contractor's Phone:	
25. General Contractor's Email:	26. General Contractor's DC License Number:		27. System Size:	

APPLICANT'S SIGNATURE

A. OWNER: I hereby certify that I am the owner of the property, that the application and plans are complete and correct to the best of my knowledge, that if a permit (or permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulation of the District of Columbia.

Signature of Owner _____ Address _____ Date _____

B. AGENT: I hereby certify that I have the authority of the owner to make this application. I declare that the application and plans are complete and correct to the best of my knowledge. The owner has assured me that if a permit (or Permits) is issued, the construction will conform to the D.C. Construction Codes, the Zoning Regulations, and other applicable laws and regulation of the District of Columbia.

Signature of Agent _____ Address _____ Date _____

APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY)

A. PERMIT CONTROL

- 1. Fine Arts bv: _____ Date: _____
2. Historic Bv: _____ Date: _____
3. Cap. Gateway bv: _____ Date: _____
4. NCPD: _____ Date: _____
5. W.H./Obs. Precinct bv: _____ Date: _____
6. Flood Control bv: _____ Date: _____
7. WMATA bv: _____ Date: _____
8. Condem. bv: _____ Date: _____
9. Rental Accom bv: _____ Date: _____
10. Chinatown Dist. bv: _____ Date: _____
11. Utility Clearance bv: _____ Date: _____
12. General Liability Ins. Policy Clearance by: _____ Date: _____

B. CLEARANCE TO FILE PLANS

- 1. Zonina bv: _____ Date: _____
2. DDOT - Permit and Records Division
Access to Parkina Street [] Street [] Allev
Cleared bv: _____ Date: _____
3. DDOT - Consumer Engineer
Cleared bv: _____ Date: _____
4. ERA - Erosion Control
Cleared bv: _____ Date: _____

Restriction of the Permits

TO REPORT WASTE, FRAUD, OR ABUSE BY ANY D.C. GOVERNMENT OFFICIAL, CALL THE D.C. INSPECTOR GENERAL AT 1-800-521-1639

C. PLANS AND APPLICATION APPROVAL

- 1. Information Counter bv: _____ Date: _____
2. Information Center bv: _____ Date: _____
(a) ABRA bv: _____ Date: _____
(b) Noise Control bv: _____ Date: _____
(c) Industrial Safetv bv: _____ Date: _____
(d) Vector Control bv: _____ Date: _____
(e) D.C. Animal bv: _____ Date: _____
(f) Police Dept. bv: _____ Date: _____
3. Zonina bv: _____ Date: _____
Zonina Update bv: _____ Date: _____
Zonina Overlav approval bv: _____ Date: _____
4. DDOT - Permit and Records Division/Deposit #
Sidewalk Deposit \$ _____ Driveway Deposit \$ _____
by: _____ Date: _____
5. Water/Sewer Design Branch
Consumer Eng. by: _____ Date: _____
6. Environmental Regulation Administration
Environmental Policv Review
Control No. _____
bv: _____ Date: _____
Erosion Control bv: _____ Date: _____
Storm Water Mamt. bv: _____ Date: _____
Plan No. _____
Air Quality bv: _____ Date: _____
Underground Storage bv: _____ Date: _____
7. Mechanical Eng. Review bv: _____ Date: _____
8. Plumbing Eng. Review bv: _____ Date: _____
9. Electrical Eng. Review bv: _____ Date: _____
10. Health Plan Review
(a) Food Plan Review bv: _____ Date: _____
(b) Medical X-Ray Plan Rev.
by: _____ Date: _____
11. Fire Protection Plan Review
by: _____ Date: _____
12. D.C. Fire Dept. (Fire Prevention Plan Review Section)
bv: _____ Date: _____
13. Elevator Plan Rev. Sec. bv: _____ Date: _____
14. Plumbing Insp Rev. bv: _____ Date: _____
15. Construction Insp. Branch (field Check)
bv: _____ Date: _____
16. Historic Pres. Div bv: _____ Date: _____
17. EISF bv: _____ Date: _____
18. Structural Eng. bv: _____ Date: _____
19. Permit and Certificate Issuance Counter
bv: _____ Date: _____
20. QC bv: _____ Date: _____

ZONING

CofO Number _____ Date: _____
Existing Use(s) _____
Proposed Use(s) _____

Job No. _____ BZA Case No. _____

DDOT - PUBLIC SPACE

[] New Bldd.
[] P.O.D.
[] File in Room 2124
Street Name _____
Street Width _____
Road Width _____
Sidewalk Width _____
Parking _____

PUD Order No. _____

ATTACHMENT B

EMAILS BETWEEN
COMPLAINANTS AND
CFA



SaveMcMillan ActionCoalition <smac.dc@gmail.com>

CFA REVIEW: MAP BOUNDARIES

SaveMcMillan ActionCoalition <smac.dc@gmail.com>
To: Frederick Lindstrom <flindstrom@cfa.gov>

Tue, Jul 7, 2020 at 4:28 PM

Appreciate this message and instruction Fredrick.
Will do as guided.
Thanks
Chris, SMAC, DC4RD

On Tue, Jul 7, 2020 at 4:09 PM Frederick Lindstrom <flindstrom@cfa.gov> wrote:

Chris,

I have made a note on my list of potential submission for this coming September to contact you if the McMillan Recreation Center project is submitted to the Commission for review. If you do not hear from me after the submission deadline on the 3rd of September, please feel free to send me a email to confirm. Also, if at that time you would like to submit comments on the project to the Commission, please send them to me at FLindstrom@cfa.gov and with a copy to our staff email box (CFAStaff@cfa.gov), and we will make sure that your comments are circulated to our Commission members and placed in the case file.

Regards,

Frederick J. Lindstrom
Assistant Secretary
U.S. Commission of Fine Arts
401 F Street, NW, Suite 312
Washington, DC 20001-2637
www.CFA.gov
Voice: 202-504-2200
Cell: 202-489-8940
Fax: 202-504-2195

"Behind the cloud, the sun is still shining."

- Abraham Lincoln

From: SaveMcMillan ActionCoalition <smac.dc@gmail.com>
Sent: Tuesday, July 7, 2020 11:31 AM
To: Thomas Luebke <tluebke@cfa.gov>
Cc: Frederick Lindstrom <flindstrom@cfa.gov>
Subject: Re: CFA REVIEW: MAP BOUNDARIES

Thank you Thomas.

On Tuesday, July 7, 2020, Thomas Luebke <tluebke@cfa.gov> wrote:

Chris:

DMPED did not file for review of this project for the 16 July meeting of the CFA. There is no August meeting, so the next possible review would be 17 September. I have asked Frederick Lindstrom, Assistant Secretary, to follow up with you on questions of public comment. Best regards, Tom Luebke

From: SaveMcMillan ActionCoalition <smac.dc@gmail.com>
Sent: Tuesday, July 07, 2020 1:06 AM
To: Thomas Luebke <tluebke@cfa.gov>
Subject: Re: FW: CFA REVIEW: MAP BOUNDARIES

Mr. Luebke,

Hope you had a nice 4th.

Following up, and out of curiosity, has DMPED resubmitted final comprehensive designs for the community center as needed by the CFA for the July meeting, or will they by chance do that for August?

Thanks for your time and patience,

Chris Otten

On Thu, Jul 2, 2020 at 5:21 PM SaveMcMillan ActionCoalition <smac.dc@gmail.com> wrote:

Received and understood.

So as I understand, DMPED will have to resubmit redesigned drawings per the CFA comments as an application for a future meeting based on the comments from the June meeting. Is that right? Will you inform us when they refile designs for the CFA to review again.

Thank you.

Chris Otten

On Thu, Jul 2, 2020 at 5:17 PM Thomas Luebke <tluebke@cfa.gov> wrote:

You are welcome to comment at any time. However, the CFA has already reviewed and commented on what was presented at the June meeting, so your group's comments at this point would most usefully be directed to DMPED/DPR instead of CFA (which can't do anything more with the comments until a new design is submitted). You can copy us for the record, and the comments would still be circulated to the CFA members in advance of the next review of the project.

From: SaveMcMillan ActionCoalition [<mailto:smac.dc@gmail.com>]
Sent: Thursday, July 02, 2020 5:05 PM
To: Thomas Luebke <tluebke@cfa.gov>
Subject: Re: FW: CFA REVIEW: MAP BOUNDARIES

Thank you Mr. Luebke,

Seems the CFA is expecting DMPED come back with design changes, some of them major as to the building layout and entrances and such. We'd like to send in comments as to the latest round of comments the CFA has sent to DMPED regarding the community center and more. Is that possible?

Chris O.

On Thu, Jul 2, 2020 at 4:32 PM Thomas Luebke <tluebke@cfa.gov> wrote:

Chris:

Today's filing deadline is for a case to be submitted for review by the Commission at its next meeting, scheduled for 16 July. For public comment on agenda cases, you can send in comments to the staff email address (cfastaff@cfa.gov) that you used earlier. If we receive the comments prior to

the meeting, we circulate the comments to the Commission members for their consideration.

From: SaveMcMillan ActionCoalition [mailto:smac.dc@gmail.com]
Sent: Thursday, July 02, 2020 4:09 PM
To: Thomas Luebke <tluebke@cfa.gov>
Subject: Re: FW: CFA REVIEW: MAP BOUNDARIES

Mr. Luebke,

Thank you for this explanation. Very clear.

Please clarify just a couple more issues if you could:

1. When you say they may be filing again by COB today, filing as to what?
2. How and when can the community comment on these filings as we feel left out so far.

Thank you,
Chris Otten

On Thu, Jul 2, 2020 at 1:41 PM Thomas Luebke <tluebke@cfa.gov> wrote:

Chris:

Thanks for your question. The simple answer is that the Commission of Fine Arts (CFA) reviews public projects in Washington, D.C., both for the federal and District of Columbia governments. The McMillan Reservoir community/recreation center is a public building within this redevelopment site, and the CFA is reviewing it as it does many other DC facilities across the city. For your information, the Shipstead-Luce Act applies only to private development and would not be involved in this case, even if it were located within the area of jurisdiction.

Finally, regarding public comment, the burden of public notice is on the District of Columbia, not CFA; we routinely get public comment on other public projects (such as neighborhood rec centers, schools, libraries, parks, etc.) because the various neighborhood groups have been notified by the relevant DC agency (DPR, DGS, DCPS, etc.); you may want to ask the project management team—in this case managed by Gilles Stucker at DMPED—why your group was not informed about the CFA review. I note that CFA posts its agendas publicly via its website in advance of its public meetings.

Please let me know if you have any further questions about the CFA review of the McMillan Reservoir project; I am not sure but the applicants may be submitting for another review for the 16 July meeting of the CFA—the deadline for filing is COB today. Sincerely,

Thomas Luebke, FAIA

Secretary, U.S. Commission of Fine Arts

401 F Street, NW

Suite 312

Washington, DC 20001

(202) 504-2200

www.cfa.gov

From: SaveMcMillan ActionCoalition <smac.dc@gmail.com>

Date: Thursday, July 2, 2020 at 12:29 AM

To: CFA Staff <cfastaff@cfa.gov>

Subject: CFA REVIEW: MAP BOUNDARIES

To whom it may concern, or Shipstead-Luce Act staff architect:

My name is Chris. I am with the Save McMillan Action Coalition. We are curious as to this case >> <https://www.cfa.gov/records-research/project-search/cfa-18-jun-20-6>

Recently heard, the CFA made comments as to the Community Center on Parcel 7 within the McMillan Master Plan "Town Center."

What I am seeking clarity on is straightforward, given the boundaries of the Shipstead-Luce Act map we see here <https://www.cfa.gov/project-review/shipstead-luce> -- we find it curious why the McMillan Master Plan and this community center component would come before the CFA for review and approval.

Please explain as we've been watching this project closely and no one has informed us of the CFA process and review underway, and we imagine that is why there isn't a lot of public comment on the record in this case. Right?

Thanks for any insights.

Chris Otten

OPERATING STATUS AND PROJECT REVIEW

Due to the Covid-19 public health emergency, the U.S. Commission of Fine Arts has made several changes to its meeting schedule and project submission procedures. [Click here](#) for the latest information, including temporary submission procedures. For general inquiries, please email cfastaff@cfa.gov or call (202) 504-2200.

CFA 18/JUN/20-6

LOCATION:

North Capitol Street and Channing Street, NW
Washington, DC

OWNER:

D.C. Office of the Deputy Mayor for Planning and Economic Development

PROPERTY:

McMillan Community Center

DESCRIPTION:

New community and recreation center

REVIEW TYPE:

Final

PREVIOUS REVIEW:

[CFA 15/SEP/16-6](#)

SUBMITTED DOCUMENTS:

[McMillan Community Center presentation](#)

Letter

25 June 2020

Dear Mr. Falcicchio:

In its public meeting of 18 June conducted by videoconference, the Commission of Fine Arts reviewed a final design submission for a new park and community center building on the southern portion of the historic McMillan Sand Filtration Site at North Capitol and Channing Streets, NW. The Commission approved the proposed landscape design, contingent on the resolution of the issues raised in its review; however, it did not take an action on the proposal for the community center building, requesting additional study and documentation of the design for this component of the project.

The Commission members expressed their continued enthusiasm for the adaptive reuse of this outstanding urban site and historic industrial relic, commenting that its redevelopment and interpretation has the potential to be significant, both locally and nationally. They expressed appreciation for the responsiveness of the new project team and endorsed the progress made on the landscape design since the project was last reviewed. However, while accepting the general concept and massing of the proposed building, they observed that it was not adequately documented in the presentation, and they requested the submission of additional drawings and renderings for review; specific items that should be documented include the proposed material palette, the projecting shade structures, and how the new interventions meet the existing historic elements of the site, such as at the earthen berm and at filter cell 28. In addition, they raised concern with the proposed arrangement of the building program and the resulting decision to locate the only building entrance on the upper level of the site at the South Court, which would isolate the building from its outdoor program spaces and the surrounding park. They advised that the project would benefit from the inclusion of entrances at the upper-level playground on the west and at the lower-level plaza on the east; this lower-level entrance would also facilitate more pedestrian movement between the street, the public plaza and water garden, and the building, making the relatively secluded plaza feel safer.

For the design of the site, the Commission members expressed strong support for the proposed revisions to the landscape, and they provided several suggestions for its refinement. Regarding the plaza, they recommended repositioning the bioretention areas outward, possibly integrating them with the tree planting beds and reducing the width of the outer walkway, in order to avoid subdividing the central space and to improve the relationship to the plaza's perimeter of stepped berms. Although they expressed some support for open, half-circular benches surrounding the trees, they also suggested substituting moveable seating for the circular benches to improve the function and clarity of the central space. They questioned the extensive use of concrete retaining walls and terracing that would support the earthen berm, particularly at the southern gateway along North Capitol Street, recommending instead the use of structural soil and geotextiles to bring the steep, simply planted slopes of the berm underneath the pedestrian bridge and into the site. For the planting palette, they suggested the reconsideration of the proposed lindens in the playground, as these trees tend to attract bees; while this is a desirable characteristic for promoting biodiversity, it may be inappropriate where children are playing. They also advised further study of the blooming patterns of the various small trees proposed along the Olmsted Walk to ensure that the resulting rhythm of color appears intentional; they recommended further study of the placement of the proposed exercise stations along the walk, commenting that using them may be challenging due to their close proximity to the narrow path.

The Commission commends this redevelopment project to create a public facility that supports its surrounding community and is an exemplary treatment of historic resources. To complete the final review of the community center building, the Commission looks forward to the review of an additional submission that provides comprehensive documentation and addresses its recommendations; please coordinate with the staff for the resolution of the comments regarding the landscape design. As always, the staff is available to assist you with the next submission.

Sincerely,

/s/Thomas E. Luebke, FAIA

Secretary

John Falcicchio, Acting Deputy Mayor
D.C. Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004

cc: Tom Jester, Quinn Evans Architects
Elliot Rhodside, Rhodside & Harwell



OPERATING STATUS AND PROJECT REVIEW

Due to the Covid-19 public health emergency, the U.S. Commission of Fine Arts has made several changes to its meeting schedule and project submission procedures. [Click here](#) for the latest information, including temporary submission procedures. For general inquiries, please email staff@cfa.gov or call (202) 504-2200.

- RECORDS & RESEARCH
- RECORD OF CFA ACTIONS
- PROJECT SEARCH
- RESEARCH COLLECTIONS
- ACCESSING CFA RECORDS
- RESEARCH POLICY & COSTS

CFA 18/JUN/20-6

LOCATION:
North Capitol Street and Channing Street, NW
Washington, DC

OWNER:
D.C. Office of the Deputy Mayor for Planning and Economic Development

PROPERTY:
McMillan Community Center

DESCRIPTION:
New community and recreation center

REVIEW TYPE:
Final

PREVIOUS REVIEW:
[CFA 11/SEP/18-6](#)

SUBMITTED DOCUMENTS:
[\[2\] McMillan Community Center presentation](#)

Letter

28 June 2020

Dear Mr. Falckoch:

In its public meeting of 18 June conducted by videoconference, the Commission of Fine Arts reviewed a final design submission for a new park and community center building on the southern portion of the historic McMillan Island Filtration Site at North Capitol and Channing Streets, NW. The Commission approved the proposed landscape design, contingent on the resolution of the issues raised in its review; however, it did not take an action on the proposal for the community center building, requesting additional study and documentation of the design for this component of the project.

The Commission members expressed their continued enthusiasm for the adaptive reuse of this outstanding urban site and historic industrial relic, commenting that its redevelopment and interpretation has the potential to be significant, both locally and nationally. They expressed appreciation for the responsiveness of the new project team and endorsed the progress made on the landscape design since the project was last reviewed. However, while accepting the general concept and massing of the proposed building, they observed that it was not adequately documented in the presentation, and they requested the submission of additional drawings and renderings for review, specific items that should be documented include the proposed material palette, the projecting shade structures, and how the new interventions meet the existing historic elements of the site, such as at the northern term and at their end 20. In addition, they raised concern with the proposed arrangement of the building program and the resulting decision to locate the only building entrance on the upper level of the site at the South Court, which would isolate the building from its outdoor program spaces and the surrounding park. They advised that the project would benefit from the inclusion of entrances at the upper-level playground on the west and at the lower-level plaza on the east; this lower-level entrance would also facilitate more pedestrian movement between the street, the public plaza and water garden, and the building, making the relatively secluded plaza feel safer.

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Sincerely,

/s/Thomas E. Luebke, FAIA
Secretary

John Falckoch, Acting Deputy Mayor
D.C. Office of the Deputy Mayor for Planning and Economic Development
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004

cc: Tom Jender, Quinn Evans Architects
Elise Rhoadside, Rhoadside & Harwell

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U.S. Commission of Fine Arts
401 F Street NW, Suite 912
Washington, DC 20001-2720
(202) 504-2200



BZA APPEAL 20191

APPELLANT'S ATTACHMENT C

Emails and FOIA request
exchanged with the District
of Columbia Zoning
Administrator citing zoning
regulations.



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

RE: 2501 1st Street Designation: Help Needed

1 message

LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>

Thu, Oct 10, 2019 at 4:18 PM

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

Cc: "Silverman, Elissa (Council)" <esilverman@dccouncil.us>, "kmcduffie@dccouncil.us" <kmcduffie@dccouncil.us>, ATD DCRA <dcra@dc.gov>, friends-of-mcmillan-park <friends-of-mcmillan-park@googlegroups.com>, Vining Kirby <>nulliparaacnestis@gmail.com>, "afenster@railstotrails.org" <afenster@railstotrails.org>, Heather Benno <heather.benno@gmail.com>, Cynthia Carson <cyncarson@gmail.com>, James Fournier <james.fournier@gmail.com>, Daniel Wolkoff <amglassart@yahoo.com>, Jerome Peloquin <aquaponikus@gmail.com>, Mel Peffer <mpeffs@gmail.com>, Linwood Norman <linwood.norman@gmail.com>, Christof Rotten <crotten2@gmail.com>, "akoma@bizjournals.com" <akoma@bizjournals.com>, "cuneyt.dil@gmail.com" <cuneyt.dil@gmail.com>, "paul.schwartzman@washpost.com" <paul.schwartzman@washpost.com>, fredrick kunkle <fredrick.kunkle@washpost.com>, byjeffreyanderson <byjeffreyanderson@gmail.com>

Chris Otten-

My apologies for the delay in responding. I am consulting with my counsel on this matter and my goal is to have a response to you by cob 10/15/19.

Matthew Le Grant

Zoning Administrator

Department of Consumer and Regulatory Affairs

Government of the District of Columbia

1100 4th St SW, Washington DC 20024

[Matthew.legrant@dc.gov](mailto:matthew.legrant@dc.gov)

202 442-4576

From: d.c. forrd [mailto:dc4reality@gmail.com]

Sent: Thursday, October 10, 2019 12:40 PM

To: LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>

Cc: Silverman, Elissa (Council) <esilverman@dccouncil.us>; kmcduffie@dccouncil.us; ATD DCRA <dcra@dc.gov>; friends-of-mcmillan-park@googlegroups.com; Vining Kirby <nulliparaacnestis@gmail.com>; afenster@railstotrails.org; Heather Benno <heather.benno@gmail.com>; Cynthia Carson <cyncarson@gmail.com>; James Fournier <james.fournier@gmail.com>; Daniel Wolkoff <amglassart@yahoo.com>; Jerome Peloquin <aquaponikus@gmail.com>; Mel Peffer <mpeffs@gmail.com>; Linwood Norman <linwood.norman@gmail.com>; Christof Rotten <crotten2@gmail.com>; akoma@bizjournals.com; cuneyt.dil@gmail.com; paul.schwartzman@washpost.com; fredrick kunkle <fredrick.kunkle@washpost.com>; byjeffreyanderson <byjeffreyanderson@gmail.com>

Subject: Re: 2501 1st Street Designation: Help Needed

CAUTION: This email originated from outside of the DC Government. Do not click on links or open attachments unless you recognize the sender and know that the content is safe. If you believe that this email is suspicious, please forward to phishing@dc.gov for additional analysis by OCTO Security Operations Center (SOC).

Mr. Legrant,

This will be our last and final request. We are asking for your determination letters as to the zoning requirements that went into mistaken approval of the building and foundation permits at McMillan Park.

Please advise as soon as possible.

Regards,

Chris Otten

On Wed, Oct 2, 2019 at 11:20 AM d.c. forrd <dc4reality@gmail.com> wrote:

Mr. Legrant,

Please advise. Have you recieved this request for determination?

It regards McMillan Park permit issuance: Raze permit and Foundation permit.

Chris Otten

DC4RD

----- Forwarded message -----

From: **d.c. forrd** <dc4reality@gmail.com>
Date: Friday, September 27, 2019
Subject: 2501 1st Street Designation: Help Needed
To: matthew.legrant@dc.gov

Still awaiting an answer on this inquiry Mr. Legrant.

----- Forwarded message -----

From: **d.c. forrd** <dc4reality@gmail.com>
Date: Mon, Aug 26, 2019 at 1:24 AM
Subject: 2501 1st Street Designation: Help Needed
To: <matthew.legrant@dc.gov>
Cc: friends-of-mcmillan-park <friends-of-mcmillan-park@googlegroups.com>, cynthia Carson <cyncarson@gmail.com>, Linwood Norman <linwood.norman@gmail.com>, James Fournier <james.fournier@gmail.com>, Yolanda Hawthorne <bella2chef@yahoo.com>, Daniel Wolkoff <amglassart@yahoo.com>, Jerome Peloquin <aquaponikus@gmail.com>, Christof Rotten <crotten2@gmail.com>, Mel Peffers <mpeffs@gmail.com>

Dear Mr. Legrant,

Seeking your analysis and determination as to the construction/rehabilitation/redevelopment activity at the McMillan Park site.

We need your determination as to if you have/will you/did sign off on the consistency of issuing permits at McMillan Park with the requirements of DC's Zoning Regulations.

The Zoning Order in ZC Case 13-14(6) says:

The Applicant identified seven development parcels within the PUD Site. The 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."

How can demolition/rehabilitation/redevelopment activities start at McMillan Park given the following Zoning Regulations:

- 11 DCMR X § 309.2 If the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision.
- 11 DCMR § 311.1 X § Following approval of an application by the Zoning Commission, the applicant may file an application for a building permit with the proper authorities of the District of Columbia.
- 11 DCMR § 311.3 The Zoning Administrator shall not approve a permit application unless the applicant has recorded a covenant in the land records of the District of Columbia between the owner or owners and the District of Columbia satisfactory to the Office of the Attorney General and the Zoning Administrator, which covenant will bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Zoning Commission.
- 11 DCMR Z § 702.7 Following approval of an application by the Commission, the applicant may file an application for a building permit with the proper authorities of the District of Columbia.
- 11 DCMR Z § 702.8 The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied. Nor shall the Zoning Administrator accept the establishment of an escrow account in satisfaction of any condition in the Commission's order approving the PUD.

And as to the *Historic Preservation law* in context of the above Zoning Regs:

DC CODE § 6-1104 (h) -- 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.

Please clarify/send your positions.

I would ask you send us any determinations you made in so far as any of the permits (not clear the totality) issued at McMillan Park.

Thank you,

Chris Otten, co-facilitator

DC for Reasonable Development

DC for Reasonable Development
c/o Chris Otten
1830 Belmont Rd NW
Washington, DC 20009
dc4reality@gmail.com || 202-8102768

Erin Roberts, Esq., DCRA FOIA Officer
1100 4th Street, SW, Washington, DC 20024
erin.roberts@dc.gov || Phone: (202) 899-3615 || Fax: (202) 442-9445

November 8, 2019

Re: Freedom of Information Act Request per DC Open Government Act

Dear Mrs. Roberts:

This is a request under the DC Freedom of Information Act.

I request to pick up or receive a copy of any and all documents produced as either a facsimile, electronic email, PDF, Word, or other such electronic document, and/or hard-copy paper documents, mail and otherwise, that may be found along the search terms of **“McMillan Park” or “McMillan Sand Filtration Plant”** or otherwise anything to do with the proposed “McMillan Park” or “McMillan Sand Filtration” project located in Ward 5, on the border with Ward 1 in Washington, DC.

Responsive documents shall be such documents found using the criteria above within the records of **District of Columbia Department of Consumer & Regulatory Affairs**, specifically agency representatives: Mr. MATTHEW LEGRANT and Mr. ERNEST CHRAPPAH.

Responsive Documents shall include any found within the dates of November 8, 2018, and November 8, 2019.

The McMillan Park project is of serious public interest in that 1) its a public landmark of national recognition, 2) will have significant impact on the public services of many residents living in Ward 1 and Ward 5, and will have a permanent and lasting impact on the built environment affecting the entire city, including the Capitol just a couple of miles south of the site.

I am writing this FOIA on behalf of DC for Reasonable Development (DC4RD), an unincorporated non-profit citizens association located in the District of Columbia that has been heavily involved in the project being proposed for McMillan Park.

We are seeking the above public information in the public interest because it is likely to contribute significantly to the public understanding of the activities and information used to make final determinations about the proposal to privatize the now public open green space in order to construct several high-density commercial buildings at this site. In no way will any of the responsive documents be shared for commercial purposes.

I am willing to pay fees for this request up to a maximum of \$51.00. If you estimate that the fees will exceed this limit, please inform me first.

Thank you for your consideration of this request.

Sincerely,

/s/n

Chris Otten

DC for Reasonable Development
1830 Belmont Rd NW
Washington, DC 20009
dc4reality@gmail.com || 202-8102768

BZA APPEAL 20191

APPELLANT'S ATTACHMENT D

**DCRA Permit D1600814
dated August 16, 2019
allowing the demolition
across the entire PUD site
and thus the start of the
implementation of the
McMillan Park Master Plan.**

Exhibit 5

Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862



D

DEMOLITION PERMIT

THIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK UNTIL WORK IS COMPLETED AND APPROVED



PERMIT NO. D1600814

Date: **08/16/2019**

Address of Project: 2940 NORTH CAPITOL ST NW				Zone:	Ward:	Square: 0000	Suffix:	Lot: 0000
Permission Is Hereby Granted To: - District Of Columbia		Owner Address: 1350 PENNSYLVANIA AVENUE NW, SUITE 317, WASHINGTON 20004			PERMIT FEE: \$339,768.00			
Description of Work: This permit is for the demolition of several aspect of the McMillan Sand Filtration Site, located at Square 3128, Lot 0800. This includes exterior filter walls, underground cells, and above ground structures.								
Type of Demolition: Exterior	Type of Walls: Non - Load Bearing	# of Ext. Walls Removed: 4	Existing # of Stories: 0	Area of Disturbed Earth > 50sqft: Yes - Answer Questions (B an				
Roof Remain No	Existing Use: Utility	Proposed Use: Utility	Building Construction Type			Plans: Yes		
Agent Name: Mckissack & Mckissack		Agent Address:		Existing Dwell Units: 0	Proposed Dwell Units: 0	No. of Stories: 0	Floor(s) Involved	
<p>Conditions/ Restrictions:</p> <p>Signed Authorization to waive payment</p> <p>THE EXISTING HISTORIC STRUCTURE LOCATED ADJACENT TO SAND WASHER #11 IS NOT PERMITTED TO BE REMOVED UNDER THIS PERMIT. SEPARATE PERMIT SHALL BE PULLED FOR THE REMOVAL OF THE HISTORIC STRUCTURE.</p> <p>This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year.</p> <p>All Construction Done According To The Current Building Codes And Zoning Regulations;</p> <p>As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit.</p>								
Director: Ernest Chrappah <i>Ernest Chrappah</i>		Permit Clerk SCARR			Expiration Date: 12/02/2017			
<p>TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639</p> <p>To schedule a CONSTRUCTION INSPECTION or for INQUIRIES CALL (202) 442-9557</p> <p>Call Miss Utility at 811 or 1-800-257-7777 at least 48 Hours prior to excavation to obtain a ticket. //www.missutility.net/wshingtondc/dcstatelaw.asp</p>								

BZA APPEAL 20191

APPELLANT'S ATTACHMENT E

Applicable Zoning
Regulations under Appeal

BZA APPEAL 20191

APPELLANT'S ATTACHMENT E

APPELLANT'S RESPONSE TO DCRA AND DMPED'S MOTIONS TO DISMISS PER THE MAY 28, 2020 BZA MEMORANDUM REGARDING APPEAL OF RESPONDENT'S, DCRA PREMATURE & ERRONEOUS ISSUANCE OF PERMITS D1600814 & PERMIT FD1800040, dated June 18, 2020, including its own "Attachment A" which incorporates the Existing Historic Preservation Covenants at McMillan Park.

**DC Board of Zoning Adjustment
441 4th Street NW, Suite 200 South
Washington, DC 20001
bzsubmissions@dc.gov**

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

**APPELLANT’S RESPONSE TO DCRA AND DMPED’S MOTIONS TO DISMISS PER THE
MAY 28, 2020 BZA MEMORANDUM REGARDING APPEAL OF RESPONDENT’S, DCRA
PREMATURE & ERRONEOUS ISSUANCE OF PERMITS D1600814 & PERMIT FD1800040**

On May 28, 2020, the DC Board of Zoning Adjustment (“BZA”) issued a Memorandum asking parties to act: "Given the existence of pending preliminary motions in the record, the Board also determined that it would consider any preliminary matters at its Public Meeting on June 24, 2020. By Thursday, June 18, 2020 at 11:59 p.m. Parties shall submit to the record any responses to motions regarding preliminary matters and serve all parties."

There exist two preliminary motions on the record from the Respondent and Intervenor dated March 4, 2020 asking the BZA to dismiss the appeal: DCRA Partial Consent Motion to Dismiss the Appeal dated March 4, 2020 ("DCRA Motion to Dismiss" or "DCRA.Mot.Dismiss") and Property Owner Office of the Deputy Mayor for Planning and Economic Development's Motion to Dismiss the Appeal dated March 4, 2020 ("DMPED's Motion to Dismiss" or "DMPED.Mot.Dismiss").

Pursuant to the May 28, 2020 BZA Memorandum asking parties to respond to any "pending preliminary motions" by today, Thursday, June 18, 2020, Appellants come now with this Response in Opposition to DCRA and DMPED's Motions to Dismiss and ask that the BZA deny these motions and grant Appellant's Motion for Summary Affirmance dated June 8, 2020.

INTRODUCTION

Appellants come with this response in opposition to DCRA and DMPED's March 4, 2020 motions to dismiss our appeal of DCRA's premature and unlawfully issued permits, Permit D1600814 and FD1800040 (The "Permits" collectively).

Both DCRA and DMPED unfairly mischaracterize the facts and zoning regulations on the record and wholly disregard how Appellants have begged the Zoning Administrator ("ZA"), Mr. Matthew Legrant, to provide the rationale (in the form of a Letter of Determination) explaining his approval of the Permits when DCRA issued them in late August 2019. *See* Attachment to Appellant's October 15, 2019, BZA Appeal Form 125.

The ZA's Letter of Determination is still not on the record in this case and this lack of action speaks directly to facts central to the illegality of the permit issuance now before the BZA:

- The Permits were issued without regard of the required zoning procedure as clearly stipulated by the regulations; And,
- DCRA and DMPED's play with smoke and mirrors hides the fundamental difference between the types of Planned Unit Development ("PUD") applications (First-Stage & Second-Stage PUD applications) that were and still have to be submitted by the Applicant and then approved by the Zoning Commission ("ZC").

In this response, Appellants seek to demonstrate that key zoning procedures don't allow for permits to be issued by DCRA until the Second-Stage applications are approved by the ZC, as the PUD project and conditions may change upon Second-stage review.

Of import here is Zoning Order No. 13-14(6) cited by the Appellants in our BZA Appeal Form 125, laying bare that the Zoning Commission must still consider and expressly provide Second-Stage approvals for the McMillan Park "Master Plan," "Parcel 2," and "Parcel 3" before permits can be issued. *See* DMPED.Mot.Dismiss at Page 4, Footnote #5. Without these Second-Stage approvals, especially of the McMillan "Master Plan," the Permits could not be issued by DCRA.

The ZA remains silent on the required zoning procedures vis-a-vis his role in approving the Permits, especially as it regards Second-Stage zoning review required for the Applicant's PUD project. DCRA and DMPED want to pretend there isn't a difference in the types of PUD applications that give rise to this appeal. Appellants stand in opposition to dismissal and ask the BZA to move to trial.

Standard for Summary Dismissal

For Commissioners to summarily dismiss BZA Appeal No. 20191, they must find that the facts are not disputed and the law is uncomplicated. *Jackson v. District of Columbia Bd. of Elections and Ethics*, 770 A.2d 79, 80 (D.C. 2001) (stating that summary relief is appropriate where “the facts of the case are uncomplicated and undisputed” and “the legal basis of the decision on review is narrow and clear-cut”).

Here the zoning regulations cited by Appellants giving rise to this appeal are supported by other key regulations that extend across subchapters in the zoning code in a way that only a trial would allow for full exploration of such nuances and detail. Moreover, Appellants highly dispute DCRA and DMPED’s misstatement of facts, namely when they say Appellants don't rely on any facts to substantiate our appeal. This couldn't be more unfair and simply untrue. ^{1 2}

Appellants ask the BZA to deny DCRA and DMPED's motions to dismiss our appeal upon consideration of the High Court's standard in *Jackson v. District of Columbia Bd. of Elections and Ethics*.

ARGUMENT

A. The Zoning Regulations are law that must be followed by all agencies, parties, and the Zoning Administrator

The Appellants are seeking review by the BZA of how the Zoning Administrator prematurely issues the Permits only by ignoring key zoning regulations as well as Planned Unit Development (PUD) conditions in Zoning Order No. 13-14(6).

1 See DCRA.Mot.Dismiss at Page 4 – "The Appellant's mere citation to the regulation, absent any factual or evidentiary support, cannot stand. Accordingly the Appeal must be dismissed."

2 See DMPED.Mot.Dismiss at Page 1 – "... [A]ppellants do not identify how the Permits violate any substantive provision of the zoning regulations. As such the Board should dismiss the appeal."

The PUD process is a key component of the Zoning Regulations consisting of procedure and process that must be followed: "... [T]he PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations... ." 11-X DCMR 300.2.

The PUD regulations are substantiated by the leading code subchapter: "No building, structure, or premises shall be used, and no building, structure, or part of a building or structure shall be constructed, extended, moved, structurally altered, or enlarged except in conformity with this title." 11-A DCMR 101.5.

Strict compliance with conditions in Zoning Commission orders is also plain in the code: "The provisions of this section shall apply when a building permit or certificate of occupancy has been issued under the authority of an order of the Board of Zoning Adjustment or the Zoning Commission, and the order of the Board of Zoning Adjustment or the Zoning Commission sets forth any condition to the issuance of the building permit or certificate of occupancy, or to the approval of a variance, special exception, design review, or planned unit development." 11-A DCMR 303.1, *et. seq.*

The Zoning Administrator, just as all DC residents are held to the plain letter of the code and cannot circumvent the requirements despite any ignorance and lack of action therein. A trial is needed to examine the ZA's rationale as to his statutory role under the regulations in prematurely approving the Permits, thus DCRA and DMPED's motions to summarily dismiss must be denied.

B. "Procedural" regulations are still zoning regulations to be followed by all

The McMillan Park "Master Plan" includes the demolition of the historic assets at the site as well as the delivery of a community center in the southeast corner of the site, among other components of the Applicant's proposed project. Appellants have shown that Zoning Order No. 13-14(6) only approves First-Stage zoning conditions of the "Master Plan" (DMPED.Mot.Dismiss at Page 4, Footnote #5).

Thus, the Applicant will have to return to the Zoning Commission to receive Second-Stage approval of the overall McMillan Park "Master Plan" that includes demolition and construction activities across the entirety of the site. *See* 11-X DCMR 302.1, .2, .5, .7, *et. seq.*

The procedure for complete PUD approval, First-Stage and Second-Stage, of any development project must be conditioned by the Zoning Commission before permits are issued, this is not discretionary as DCRA and DMPED would like to imply. *See* 11-X DCMR 308.3, 309.2, .3, 11-Z DCMR 702.1, .4, .8, *inter-alia*.

- "None of the five cited provisions establish that the issuance of the Permits was improper. Three of the cited regulations are purely procedural... ." DMPED.Mot.Dismiss at Page 7.
- "Three of the five regulations cited by the Appellant are purely procedural and do not govern actions by the Zoning Administrator." DCRA.Mot.Dismiss at Page 2.

DCRA and DMPED want the BZA to believe that some regulations can be called "procedural" and thus be relegated as discretionary. That is, maybe the the Zoning Administrator will follow the regulations or not. As shown above, this position is absolutely baseless and mocks the black letter of the law. A trial is needed to examine the ZA directly about his posture in approving the Permits despite the aforementioned zoning regulations differentiating First- and Second-Stage approvals.

C. Appellants specifically relate facts to the code in our appeal

Relating the facts found in Zoning Order No. 13-14(6) and the applicable zoning code is expressly highlighted in Appellant's BZA Appeal Form 125 at Page 4, 1st bullet point on the page: "The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied. Nor shall the Zoning Administrator accept the establishment of an escrow account in satisfaction of any condition in the Commission's order approving the PUD." 11-X DCMR 311.2 & 11-Z DCMR 702.8.

In approving the Permits, the Zoning Administrator never provides any rationale in a Letter of Determination and won't answer Appellants numerous requests to explain why the aforementioned regulations can be ignored. DCRA and DMPED cite to nothing saying these applicable regulations, labeled "procedural," are discretionary at all and then may be ignored by the ZA. The zoning regulations cited by Appellants in our appeal are not discretionary.

But the plain letter of the law doesn't seem to phase DCRA: "As an initial matter the Appellant merely cites to the regulations in a conclusory fashion and provides no factual support. ... There are no specific factual claims by the Appellant as to how the Zoning Administrator violated these regulations." DCRA.Mot.Dismiss at Page 3.

Perhaps since Mr. Legrant, the ZA, bypassed 11-X DCMR § 311.3 and 11-Z DCMR 702.10, at the time he approved the Permits, DCRA and DMPED made a leap and now believe the ZA can choose

to ignore any of the zoning regulations. In contradiction of the above zoning regulations (*Id.*), the ZA approved the Permits some three or more months before the so-called land covenant was recorded on November 19, 2019, according to the Exhibit put on the record by DCRA.³

D. The Court of Appeals only affirms ZC Order No. 13-14(6), First-Stage zoning approval of the McMillan “Master Plan”

When DCRA concludes that since Zoning Order No. 13-14(6) was affirmed by the DC Court of Appeals, "The Permits arising out of those approvals are proper." *See* DCRA.Mot.Dismiss at Page 4.

DCRA wants the BZA to believe that the High Court miraculously granted Second-Stage zoning approval to the McMillan “Master Plan.” This position is baseless. The Judgment affirms Zoning Order No. 13-14(6) only approving First-Stage zoning review of the overall McMillan plan. A trial is needed to determine the rationale of the ZA's premature and illegal approval of the issued Permits, that he has so far yet to explain in writing.

E. McMillan Park's historic status and existing preservation covenants tie ZA approval of the Permits to the DC Historic Preservation Act per relevant zoning regulations

DCRA and DMPED claim the HPA has no relevancy before the BZA. "The Board lacks authority to hear issues regarding the HPA." *See* DCRA.Mot.Dismiss at Page 5. "The Board lacks jurisdiction to consider appeals based on the HPA." DMPED.Mot.Dismiss at Page 5. They are wrong.

DC Zoning Regulations require the Zoning Administrator confirm a written covenant is on the record. "The Zoning Administrator shall not approve a permit application unless the applicant has recorded a covenant in the land records of the District of Columbia between the owner or owners and the District of Columbia satisfactory to . . . the Zoning Administrator . . . [that] will bind the owner and all successors in title to construct on and use the property... ." *See* 11-X DCMR § 311.3 and 11-Z DCMR 702.10.

DCRA puts what they claim to be a “covenant” on the record in their March 4, 2020 filing. *See* DCRA.Mot.Dismiss, Exhibit. But no where in the Exhibit of this alleged covenant does it acknowledge or incorporate the already existing Federally-assigned covenants which remain as restrictions on the McMillan Park deed applying to all land owners and successors. *See* Attachment A.

³ "Permit D1600814 was issued on or about August 19, 2019 and FD1800040 was issued on or about August 27, 2019." *See* DCRA.Mot.Dismiss at Page 4.

These restrictive historic protection covenants run with the deed in perpetuity and should have been witnessed by and incorporated into the covenant by the Zoning Administrator in writing per 11-X DCMR § 311.3 and 11-Z DCMR 702.10. They were not, in error.

Appellants seek a trial to show how the regulations and the DC Historic Preservation Act (“HPA”) cross a threshold of inter-related preservation law (D.C. Code § 6–1104 [h]) and relevant zoning code that the BZA is authorized to consider, just as the OAH is simultaneously considering the HPA's role within the scope of the DC Construction Codes.

This is a matter of complicated legal jurisdiction and substantial questions of law with implications to a major historic site in the District of Columbia. These matters demand further administrative exploration under appeal by the BZA. Thus a trial is needed to fully explore and adjudicate these issues. As such, the BZA is authorized to deny DCRA and DMPED's motions to dismiss our appeal.

CONCLUSION

Pursuant to High Court decision, *Jackson v. District of Columbia Bd. of Elections and Ethics*, 770 A.2d 79, 80 (D.C. 2001) (stating that summary relief is appropriate where “the facts of the case are uncomplicated and undisputed” and “the legal basis of the decision on review is narrow and clear-cut”), Appellants ask the BZA not grant summary dismissal of our appeal and to order a trial so that Appellants may further tap the expertise of our witnesses, examine the Zoning Administrator to probe his rationale in prematurely approving issuance of the Permits, and delve into the details of the facts vis-a-vis the DC Zoning Regulations in the instant matter.

Submitted per the BZA instructions in the May 28, 2020 Memorandum, on this the 18th day of June, 2020 to the BZA, BZA staff, and all parties.

Regards,

/s/n

Chris Otten, co-facilitator

DC for Reasonable Development

202-656-5874

dc4reality@gmail.com

BZA APPEAL NO. 20191

**APPELLANT'S RESPONSE TO DCRA AND DMPED'S MOTIONS TO DISMISS PER THE
MAY 28, 2020 BZA MEMORANDUM REGARDING APPEAL OF RESPONDENT'S, DCRA
PREMATURE & ERRONEOUS ISSUANCE OF PERMITS D1600814 & PERMIT FD1800040**

ATTACHMENT A

Prepared by:
Ralph O. Howard
GSA, Region 4, Atlanta, GA
Office of Regional Counsel

QUITCLAIM DEED

STATE OF GEORGIA)
)
COUNTY OF FULTON)

THIS INDENTURE, made this 25th day of September, 1987, between the UNITED STATES OF AMERICA, acting by and through the Administrator of General Services, under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949, approved June 30, 1949 (P.L. 81-152), as amended (40 U.S.C. 484), and regulations and orders promulgated thereunder, Grantor, and the District of Columbia, Grantee.

00000

WITNESSETH:

That the Grantor, for and in consideration of the sum of NINE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$9,300,000.00) cash in hand paid, and receipt of which is hereby acknowledged, has remised, released, and forever quitclaimed and by these presents does remise, release and forever quitclaim unto the Grantee, its successors and assigns, all right, title, interest, claim and demand which the said Grantor has or may have had in and to that certain tract or parcel of land lying and being situate in the District of Columbia, and being more particularly described as follows: *Part of Parcel 108/8,*

A certain parcel of land situate in Washington, District of Columbia, NW, being all of Tract Number 133 and a portion of Tract Numbers 134 and 135 known as the "McMillan Filter Plant" parcel of the Washington Aqueduct McMillan Reservoir and Filter Plant, owned by the United States of America, here-in-after referred to by the Tract Number, and more particularly bounded and described around the filter plant boundary line as follows:

Beginning at the northeast corner common to Tract Number 133, at a point of intersection of the southerly line of Michigan Avenue with the westerly line of North Capitol Street, said point being further located South 48° 54' 36" West 86.24 feet, more or less, from the intersection of the centerline of Michigan Avenue with the centerline of North Capitol Street; thence, leaving the southerly line of Michigan Avenue, and with the westerly line of North Capitol Street and the line of Tract Number 133;

Due South; passing a corner common to Tract Number 133 and Tract Number 135 and formerly the north line of Frankfort Street at 284.49 feet; passing a corner common to Tract Number 135 and Tract Number 134 and formerly the southline of Frankfort Street at 374.49 feet; passing a corner common to Tract Number 134 and Tract Number 135 and formerly the north line of Emporia Street at 674.49 feet; passing another corner common to Tract Number 135 and Tract Number 134 and formerly the south line of Emporia Street at 764.49 feet; passing another corner common to Tract Number 134 and Tract Number 135 and formerly the north line of Douglas Street at 1064.49 feet; passing another corner common to Tract Number 135 and Tract Number 134 and formerly the south line of Douglas Street at 1154.49 feet, in all 1454.49 feet to a corner common to Tract Number 134, at a point of intersection of the westerly line of North Capitol Street

with the north line of Channing Street, thence, leaving the westerly line of North Capitol Street, and with the north line of Channing Street and the line of Tract Number 134;

Due West 774.33 feet to another corner common to Tract Number 134, at a point of intersection of the north line of Channing Street, with the east line of First Street; thence, leaving the north line of Channing Street, and with the east line of First Street, continuing with the line of Tract Number 134;

Due North; passing a corner common to Tract Number 134 and Tract Number 135 and formerly the south line of Douglas Street at 300.00 feet; passing another corner common to Tract Number 135 and Tract Number 134 and formerly the north line of Douglas Street at 390.00 feet; passing another corner common to Tract Number 134 and Tract Number 135 and formerly the south line of Emporia Street at 690.00 feet; passing another corner common to Tract Number 135 and Tract Number 134 and formerly the north line of Emporia Street at 780.00 feet; passing another corner common to Tract Number 134 and Tract Number 135 and formerly the south line of Frankfort Street at 1080.00 feet; passing another corner common to Tract Number 135 and Tract Number 133 and formerly the north line of Frankfort Street at 1170.00 feet, in all 1323.01 feet to the northwest corner common to Tract Number 133, at a point of intersection of the east line of First Street, with the southerly line of Michigan Avenue; thence, leaving the east line of First Street, and with the southerly line of Michigan Avenue and the line of Tract Number 133;

North 80° 21' 47" East 785.41 feet to the place of beginning, containing 24.69 acres, more or less and except 4.80 acres of previously dedicated public rights-of-way.

The bearings and distances used herein are based on the Maryland Coordinate Grid System, 1927 N.A. Datum, as well as reflecting subdivision survey data depicted on sheet no. 8 of a map entitled "Washington Aqueduct Property Map McMillan Property", prepared by U.S. Engineer Office, Washington, D.C., Revised by C.P.H., October 1937.

It is the intent of the foregoing description to include all of the same land as that acquired by the United States of America by the following deed:

<u>Tract No.</u>	<u>Grantor</u>	<u>Deed Dated</u>	<u>Liber</u>	<u>Folio</u>
133	Joseph Paul & Wife	18 Mar 1901	853	775

Also, a portion of the same land as that acquired by the United States of America by the following instrument:

<u>Tract No.</u>	<u>Grantor</u>	<u>Deed Dated</u>	<u>Liber</u>	<u>Folio</u>
134	Joseph Paul & Wife	29 Apr 1901	853	771
135	District of Columbia Streets	Turned Over		

SUBJECT TO all existing easements or rights-of-way for public roads and highways, public utilities, railroads and pipelines as of May 8, 1987.

The Government of the District of Columbia hereby acknowledges and agrees that upon acceptance of conveyance of the property that no construction or disturbances of any kind will be allowed to take place prior to January 1988. Therefore, allowing the Washington Aqueduct Division to continue the maintenance and use of the property for the purpose of a water filter facility, to be used as needed, on a non-reimbursable basis.

The following are covenants running with the land at law as well as in equity, and are binding upon and inure to the benefit of the successors and assigns of the District of Columbia, and all present and future persons or entities owning or having an interest in said portion of the McMillan Reservoir, District of Columbia, or part thereof.

NON-DISCRIMINATION

The purchaser covenants for itself, its successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said purchaser and such heirs, successors and assigns shall not discriminate upon the basis of race, color, religion, national origin, or sex in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have sole right to enforce this covenant in any court of competent jurisdiction.

EXCESS PROFITS

This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period

from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(a) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

- (1) The purchase price of the real property;
- (2) The direct costs actually incurred and paid for improvements which serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements;
- (3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (a)(2) of this section; and
- (4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(b) None of the allowable costs described in paragraph (a) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(c) In order to verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

- (1) A description of each portion of the property that has been resold;
- (2) The sale price of each such resold portion;
- (3) The identity of each purchaser;
- (4) The proposed land use; and
- (5) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

If no resale has been made, the report shall so state.

(d) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

FAA CLAUSE

Based on coordination between the General Services Administration and the Federal Aviation Administration (FAA) as recommended in House Report No. 95-1053, entitled "FAA

Determination of 'No Hazard' for Structures Near Airports," it has been determined that the only public airport within six nautical air miles of this property is the Washington National Airport. FAA has been apprised of the proposed disposal of the property, and that the Government's conveyance document (this document) will contain a provision that the Grantee, its successors and assigns and every successor in interest to the property herein described, or any part thereof, must prohibit any construction or alteration on the property unless a determination of no hazard to air navigation is issued by FAA in accordance with 14 CFR Part 77. "Objects Affecting Navigable Airspace," or under the authority of the Federal Aviation Act of 1958, as amended.

HISTORIC RESOURCES

An Historic Resources Report for the 19.89 acre parcel of McMillan Reservoir (hereafter "Parcel") that includes an inventory of resources considered to be eligible for the National Register of Historic Places will be undertaken by the District of Columbia. This report will be prepared in consultation with, and submitted to, the District of Columbia Historic Preservation Officer (HPO) for review and comment prior to the initiation of any work at the Parcel. The District of Columbia HPO and the Council shall have 30 working days to review the report. *Carol Thompson*

The Historic Resources Report will be prepared in accordance with the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (National

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Park Service, 1983), by an engineering or architectural historian approved by the District of Columbia HPO and who meets, at minimum, the professional qualifications standards described in the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation."

The report will identify and evaluate historic resources in the Parcel in relation to the whole of McMillan Reservoir. The report will also describe and discuss the potential significance of any prehistoric and pre-reservoir historic resources, and those associated with the development of McMillan Reservoir as a municipal reservoir for the District of Columbia. If necessary to present a complete picture of the significance of the resources, the report will discuss them in relation to the whole of McMillan Reservoir.

If no part of the Parcel is found to be eligible, then the Grantee is relieved of further preservation responsibilities. If a part of the Parcel is found to be eligible, prior to the initiation of any work at the Parcel, the DC HPO will be consulted during the development of any and all plans and specifications for the renovation, rehabilitation, demolition, or new construction planned for the Parcel, and any and all final plans and specifications for work will be submitted to the District of Columbia HPO for review and approval prior to implementation. If the District of Columbia HPO does not agree with the preliminary or final plans and specifications for work at the Parcel, and the disagreement cannot be resolved, the

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District of Columbia shall immediately request the comments of the Council in accordance with 36 CFR Part 800.

Any and all rehabilitation and renovation work at the parcel will be undertaken in accordance with "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (Standards).

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest or claim whatsoever of the said Grantor, either in law or in equity.

The property hereby conveyed is presently under the jurisdiction of the General Services Administration, is available for disposal and its disposal has been heretofore authorized by the Administrator of General Services acting pursuant to the above referred to laws, regulations and orders.

IN WITNESS WHEREOF, the UNITED STATES OF AMERICA has caused these presents to be executed in its name and on its behalf the day and year first above written.

UNITED STATES OF AMERICA
Acting by and through
Administrator of General Services

WITNESSES:

William N. Holcomb Jr.
James J. Brown

By: Patricia E. Bailey
PATRICIA E. BAILEY
Acting Director
Office of Real Estate Sales
General Services Administration
Region IV, Atlanta, Georgia

CERTIFICATE OF SERVICE

I, Chris Otten, attest to serving the above **APPELLANT'S RESPONSE TO THE BZA MEMORANDUM & ORDER DATED JUNE 26, 2020** on July 8, 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>,
Cynthia Carson <cyncarson@gmail.com>,
Jerome Peloquin <aquaponikus@gmail.com>,
Linwood Norman <Linwood.norman@gmail.com>,
Melissa Peffers <mpeffs@gmail.com>,
Christof Rotten <crotten2@gmail.com>,
James Fournier <james.fournier@gmail.com>,

And by mail to:
Jimmie Boykin
2406 N Capitol St.
WDC 20002