

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

<i>In re</i> Appeal of DC for Reasonable Development	BZA Case No. 20191 Next Event: Public Hearing, August 5, 2020, 9:30 a.m.
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**PROPERTY OWNER DMPED’S RESPONSE TO
THE BOARD’S REQUEST FOR ADDITIONAL SUBMISSIONS**

INTRODUCTION

At the Board of Zoning Adjustment’s (the Board’s) public meeting on June 24, 2020, the Board held the Office of the Deputy Mayor for Planning and Economic Development’s (DMPED’s) motion to dismiss the appeal in abeyance for consideration at the public hearing of August 5, 2020. The Board also requested that the parties submit written evidence on how the plans approved by Foundation Permit FD1800040¹ relate to those approved by the Zoning Commission (the Commission) and an explanation of how the plans comply with 11Z DCMR § 702.8.²

¹ This permit authorizes construction of a foundation for the planned community center at the McMillan Sand Filtration Site (the Site).

² That provision reads:

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

Because the plans approved by the Department of Consumer and Regulatory Affairs (DCRA) conform to the Commission’s PUD approval order, the appeal should be dismissed.

ARGUMENT

As an initial matter, DMPED reiterates that the burden of proof in zoning appeals rests on the appellant to justify granting the appeal, not on the respondent or property owner. 11X DCMR 1101.2; *see also* Property Owner [DMPED’s] Mot. to Dismiss Appeal [24] (DMPED MTD) at 3. While DMPED and DCRA provide the documents requested in the Board’s order, DMPED objects to the shifting of the burden. Appellants have failed to identify any substantive portion of the Zoning Code which they allege has been violated. *See* DMPED MTD at 7–8.

DCRA has provided the set of plans associated with its approval of permit FD1800040. These plans make clear that permit FD1800040 is in full compliance with the underlying PUD approval order. The Commission’s order is silent as to how the foundation of the community center is to be built, as the order only provided for the basic dimensions of the building and a list of its included amenities. *See, e.g.,* Zoning Comm’n Order 13-14(6) at 86–87, *Vision McMillan Partners, LLC, et al.*, Z.C. Case No.13-14 (Sept. 14, 2017) (indicating approval of the tentative illustrative plans and omitting discussion of the building’s foundation); *see also id.* at 87 (“The Applicant shall have [] flexibility with the design of the PUD in the following areas

Commission’s order approving the PUD [planned unit development].

... [t]o vary the location and design of all interior components ... ”). In other words, the Commission did not set any specific requirements for DMPED’s plans for the foundation approved by permit FD1800040. However, DMPED’s tentative plans for the layout of the community center building were provided to DCRA along with the foundation plans, for reference purposes. *See, e.g.* Project Information, No. A0002. These plans are outside the scope of the foundation permit at issue here because they will be fully considered in DMPED’s subsequent applications for the relevant building permits, but they nonetheless illustrate that DMPED’s ongoing planning for the community center fully complies with the Commission’s order.

For the community center, the Commission approved a maximum height of 26 feet with a floor area ratio (FAR) of approximately 0.07, or approximately 17,500 square feet in gross floor area. Zoning Comm’n Order 13-14(6) at 86. Supplemental drawing A0201 shows the height for the building as 21 feet and 9 inches. *See* North and East Elevations, No. A0201.³ Likewise, Project Information document A0002 shows a total gross square footage of 18,995 square feet, which, given Parcel Six’s total site area of 328,059 square feet, yields a FAR of approximately 0.06, less than the Commission’s granted density of approximately 0.07 FAR. *See* Project Information, No. A0002; Zoning Comm’n Order 13-14(6) at 86; Zoning Comm’n Case No. 13-14 Ex. 32A2A2; 11B DCMR § 303.1 (FAR is calculated by dividing total gross floor area of buildings on a lot by the area of that lot). The general dimensions and

³ The community center’s height is measured from the entry level at the front of the building, here the north face abutting the Site’s South Service Court. *See* Zoning Comm’n Case No. 13-14 Ex. 32A2A2; *see also* 11B DCMR § 308.2, .6.

location of the community center in the plans also match those approved by the Zoning Commission. *Compare* Architectural Site Plan, No. A0010 *and* Roof Plan, No. A0103 *with* Zoning Comm'n Case No. 13-14 Ex. No. 832A1 at 17 (showing same location and dimensions of community center between the plans).

As to the specific amenities to be offered by the community center, their exact location and layout within the building remain tentative because, as noted, DCRA has not yet issued the relevant building permits. However, the dimensions established by the plans for the foundation clearly show that the center can contain all features required by the Commission, and the current plans for the building reflect that fact by including space for each of them. *Compare* Zoning Comm'n Order 13-14(6) at 86–87 (community center amenities to include gallery, swimming pool, multipurpose room, fitness studio, and locker rooms) *with* 1st Floor Framing Plan, No. S1010 (showing dimensions of foundation for community center's first floor) *and* 2nd Floor and Entry Level Framing Plan, No. S1020 (showing dimensions of community center's 2nd floor and entry level) *and* Project Information, No. A0002 (allocating space in the building for each of the required amenities). Therefore, the plans authorized by permit FD1800040 are in full compliance with the Zoning Commission's PUD approval order and likewise comply with 11Z DCMR § 702.8.

CONCLUSION

For the foregoing reasons, and the reasons stated in DMPED's motion to dismiss the appeal, the Board should grant the motion and dismiss the Appeal with prejudice.

Dated: July 8, 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 11Y DCMR § 205, undersigned counsel certifies that on July 8, 2020, a copy of this response was served by email on:

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