

**BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA**

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:	13-14					
Motion of:	<input type="checkbox"/> Applicant	<input type="checkbox"/> Petitioner	<input type="checkbox"/> Appellant	<input type="checkbox"/> Party	<input type="checkbox"/> Intervenor	<input type="checkbox"/> Other <u>Party in opposition</u>

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Motion to re-open the record in order to permit Friends of McMillan Park (FOMP) to file the attached objection

Points and Authorities:

Please state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form.

FOMP hereby files the attached objection to the Commission's stated intention, suggested by the Chairman just prior to at the close of the record in this proceeding on May 27, 2014, to allow Applicants' witnesses to supply additional testimony in the form of answers to questions from the Commission on July 28, 2014, the date this case is set for a decision.

CERTIFICATE OF SERVICE

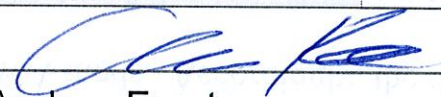
I hereby certify that on this 6 11th day of June, 2014, 10 10 10 10

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via:

Mailed letter Hand delivery E-Mail Other _____

Signature:



Print Name:

Andrea Ferster

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June 11, 2014

Mr. Anthony J. Hood, Chairman
D.C. Zoning Commission
One Judicial Square
441 4th Street, N.W 2nd Fl
Washington, D.C. 20001

Re: ZC Case No. 13-14 – Objection to Allowing Applicants’ Witnesses to
Testify on July 28, 2014

Dear Mr. Hood:

Friends of McMillan Park (“FOMP”), a party in opposition to the above-referenced application for re-zoning and a Planned Unit Development (“PUD”), hereby objects to the Commission’s stated intention to request additional testimony, comments, and/or answers to questions posed by the Commission from the Applicants’ witnesses on July 28, 2014, the day that this case is set for a decision.

At the end of the final hearing in this proceeding on May 27, 2014, this Commission closed the record in this case, established deadlines for limited post-hearing submissions, and set this matter down for a final decision at the Commission’s public meeting on July 28, 2014. The Chairman then requested that the Applicants make their witnesses available at the public meeting set for July 28, 2014, in the event that Commissioners had additional questions for any of Applicants’ witnesses.

FOMP appreciates the Chairman's desire to ensure that the Commission thoroughly understands this unusually complex and important matter that is before it. Nonetheless, this manner of proceeding is a concern. This matter is a contested case proceeding, in which the parties are entitled to the due process right to cross-examine all witnesses who testify in the proceeding. *Capitol Hill Restoration Society v. Zoning Commission*, 287 A.2d 101 (D.C. 1972). Testimony in a contested case proceeding that is not subject to cross-examination is not considered reliable, probative, or substantial evidence. *Selk v. D.C. Dept. of Employment Services*, 497 A.2d 1056 (D.C. 1985).

Allowing Applicant’s witnesses to testify in a context in which other parties are not permitted to cross-examine these witnesses, and where there is no opportunity to

address additional testimony in the proposed findings of fact and conclusions of law or other scheduled post-hearing written submissions, meets neither the Chairman's goal of creating a complete record nor the legal requirements of a contested matter before the Commission.

To avoid these legal problems, if the Commission believes that the Applicants have not satisfied their burden of proof in this proceeding based on the five hearings already held, the Commission should deny the zoning request. Or alternatively, to both avoid these problems and ensure that the record in this case fully reflects the array of information that this Commission will need to make the best decision on behalf of District residents, the Commission may re-open the record and schedule an additional hearing prior to the decision date, so that all parties can participate through cross-examination and address any such additional testimony through appropriate post-hearing written submissions.

Respectfully submitted,



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cc: Carolyn Brown, Esq.