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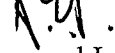
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Memorandum

Date: June 23, 2014

To: D.C. Zoning Commission

From: Steven E. Sher 
Director of Zoning and Land Use Services

Re: Case No. 13-14 - McMillan Sand Filtration Site
Compliance with the Comprehensive Plan

The Zoning Commission requested additional information demonstrating that the proposed C-3-C zoning for Parcel 1 (Cell 14 and the Healthcare Facility) and the proposed CR zoning for Parcels 2, 3 and 4 (multi-family residential over retail and a Health Care facility) are not inconsistent with the Comprehensive Plan, the legal standard for the zoning of property in the District of Columbia. D.C. Code § 6-641.02 (2012 Repl.). In addressing this issue, I note that the C-3-C and CR Districts would apply to this property only in conjunction with the controls of the PUD; i.e., the height and FAR allowed by C-3-C and CR would be limited to the levels and locations that the Commission specifies in approving the PUD plans.

The Comprehensive Plan has many components, both in the text and on maps, that provide guidance to the Commission as it considers zoning changes. The Generalized Policy Map of the Comprehensive Plan is designed to identify how different parts of the city may change, and areas where new development is to be encouraged and facilitated. The McMillan Sand Filtration Site is one of the 25 areas of the District designated on the Generalized Policy Map as a Land Use Change Area that anticipates that the existing land use will change to a different one. "They include many of the city's large development opportunity sites, and ... represent much of the city's supply of vacant and underutilized land." 10A DCMR § 223.10.

The Comprehensive Plan Future Land Use Map ("FLUM") expresses the public policy on future land uses across the city. 10A DCMR § 225.1. The FLUM places the McMillan Sand Filtration site in *three* land use categories: (i) Medium Density Residential, (ii) Moderate Density Commercial, and (iii) Parks, Recreation and Open Space. Those categories are defined in the Framework Element of the Comprehensive Plan in sections 225.5, 225.9 and 225.17, which are set forth in full as an attachment to this memo.

These categories include suggested corresponding zone districts (although other zone districts may apply), as follows:

	Matter-of-right residential FAR	Matter-of-right comm. FAR	IZ bonus	Total FAR permitted as a matter-of-right
Medium Density Residential				
R-5-B	1.8	n/a	0.36	2.16
R-5-C	3.5	n/a	0.7	4.2
Moderate Density Commercial				
C-2-A	1.0	1.5	0.5	3.0
C-2-B	2.0	1.5	0.7	4.2
C-3-A	2.5	1.5	0.8	4.8

The McMillan PUD proposes to construct a total of 2,074,353 square feet of gross floor area. The overall land area of the site is 1,075,356 square feet (approximately 24.7 acres); the net land area of the site (after subtracting the areas devoted to streets) is 878,330 square feet (approximately 20 acres). The density of the total PUD on the net land area is 2.36 FAR, of which 1.29 FAR is office and retail. Those numbers are well within and below the density permitted as a matter-of-right under C-2-A, which is the lowest of the three zones indicated as "corresponding" to Moderate Density Commercial. Thus, the 2.36 FAR proposed under the McMillan PUD is fully consistent with the FLUM designation as to density.

Through the flexibility afforded by the PUD process, the proposed density has been carefully and appropriately distributed across the site by concentrating development on the northern end of the site while leaving other portions, particularly at the south end of the site, as parks, recreation, and open space, consistent with the Comprehensive Plan designation. In classic planning terminology, this concentration of density on a portion of a site is referred to as "cluster development." The objectives of cluster development are frequently achieved by the use of planned development zones, within the vernacular of the District's Zoning Regulations, a "planned unit development."¹

¹Michael Murphy and Joseph Stinson, "Cluster Development," available at www.landuse.law.pace.edu; *see also* Cluster Development in Plain English, Municipal Research and Services Center, <http://www.mrsc.org/subjects/planning/lu/cluster.aspx> ("Cluster development is a development arrangement in which all buildings allowable on a site are concentrated on a portion of the site, leaving the remainder of the site undeveloped. This contrasts with the conventional land development and subdivision approach, which is to divide an entire site into lots, each of which meets minimum zoning lot size requirements and may be used for building construction."). Numerous jurisdictions across the country have adopted cluster development regulations specifically to encourage the type of development proposed for the McMillan site, where density is concentrated on one part of a parcel to protect open space or natural preserves on another. *See, for example*, "Cluster/Conservation Development," <http://urbanext.illinois.edu/lcr/cluster.cfm> (last visited June 19, 2014); "Cluster/Open Space

At the McMillan site, there are approximately 12 acres proposed for open space, which consist of the Park, the Olmsted Walk, Cell 14, the healing gardens and the historic service courts. The trade-off for providing this substantial amount of open space is the concentration of height and density at the northern portion of the PUD site. The only building to reach 130 feet is the westernmost side of the Healthcare Facility at the western portion of Parcel 1, between Michigan Avenue, the north service court, 1st Street and Half Street. This height is only proposed in order to accommodate the higher than normal floor-to-ceiling heights required for the nine-story building designed by VMP on this portion of Parcel 1 (see comparison diagram of typical nine-story building and medical office building at nine stories included with the supplemental architectural plans). This segment of the PUD is the farthest removed from the adjacent rowhouse neighborhoods –more than 1,000 feet from the houses on the south side of Channing Street and more than 500 feet from the houses on the east side of North Capitol Street. This section of the PUD site also abuts the higher height and density permitted on the Children's Hospital, Washington Hospital Center and VA Hospital sites. Children's Hospital is built to a height of 127.5 feet.

This "cluster development" approach to the McMillan site is a critical and essential part of fulfilling the parks, recreation and open space designation of the FLUM, while at the same time achieving the other elements of the Comprehensive Plan and the city's strategic economic plan. For example, the Land Use Element of the Comprehensive Plan sets forth policies for protecting and utilizing historic resources as assets on large sites. Large sites are also to be leveraged to provide public benefits such as affordable housing, new parks and open spaces, health care and civic facilities as well as other public facilities. 10A DCMR §§ 305 and 703.13 (LU-1.2 and ED-1.1.5). The Mid-City Element of the Comprehensive Plan specifically recognizes that development on portions of the McMillan site may be necessary to stabilize the site and provide the desired open space and amenities, and should consist of moderate to medium density housing, retail, and other compatible uses. 10A DCMR § 2016.9. The city's strategic economic plan specifically calls for the development of the McMillan site as a medical office hub to create a focal point for the city's medical institutions and much-needed expansion space for area hospitals.² Other factors in the Comprehensive Plan include transportation connectivity, relationship to other institutional uses as well as to the residential community as more completely enumerated in the Applicant's report submitted to the Zoning Commission at the public hearing, marked as Exhibit No. 153 of the record.

These policies and goals, which must be read in their totality and which may reinforce one another or which may be at some variance, must be applied using the interpretive guidelines

Development," Chester County Planning Commission (PA), <http://www.landscapes2.org/ToolsElement/Pages/Cluster.cfm> (last visited Jun3 19, 2014); "Noncontiguous Cluster Development," <http://www.njfuture.org/wp-content/uploads/2013/02/How-Clustering-Works.pdf>.

² Office of the Mayor, "Five-Year Economic Development Strategy for the District of Columbia," (Nov. 2012) at 32, http://dmped.dc.gov/sites/default/files/dc/sites/dmped/publication/attachments/Full%20Report_Final_OFFSET_final_11192012.pdf.

of the Comprehensive Plan. These guidelines state that the FLUM is to be "interpreted broadly" and recognize that the densities within any given area on the FLUM "reflect all contiguous properties on a block – there may be individual buildings that are higher or lower than these ranges within each area." 10A DCMR § 226(c)(emphasis added). The guidelines further advise that "the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. It should be noted that the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here." *Id.*

The site's landmark status and the design constraints imposed through the Historic Preservation Review Board process also affect the spacing of buildings and utilization of existing improvements both above and below grade. In order to afford the necessary protections set forth in the Historic Preservation Element of the Comprehensive Plan, and the specific considerations for the McMillan planning area under the Mid –City Element, it is essential to decrease and limit the footprint of buildings. Buildings must be placed, as proposed, in locations compatible with other adjacent uses and densities on nearby properties. In this particular case, healthcare is the most proximate institutional use to the site across Michigan Avenue and should provide a strong market to permit the City and its development team to leverage the area for sound economic development.

These policies, goals and interpretive guidelines of the Comprehensive Plan all support the conclusion that the proposed C-3-C and CR Districts for the northern portion of the McMillan Site would not be inconsistent with the Comprehensive Plan. The proposed density of 2.36 is at the low end of the commercial and residential densities prescribed in the FLUM. As noted on the chart above, medium and moderate density zones generally range up to 4.0 FAR for R-5-C to 4.8 FAR for C-3-A. Thus, the proposed density is well within the moderate and medium density range for the corresponding zone districts identified with the Comprehensive Plan maps. Significantly, the FLUM specifically permits other zones to apply, since the entire Comprehensive Plan is to be applied with flexibility to meet the underlying facts. The distribution of the density around the site, with higher heights to the north and lower heights to the south, is a tradeoff to achieve the overall goals of the project and the Plan.

Attachment

Description of Applicable Land Use Categories

Medium density residential:

"This designation is used to define neighborhoods or areas where mid-rise (4-7 stories) apartment buildings are the predominant use. Pockets of low and moderate density housing may exist within these areas. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. The R-5-B and R-5-C Zone districts are generally consistent with the Medium Density designation, although other zones may apply." (§ 225.5)

Moderate density commercial:

This designation is used to define shopping and service areas that are somewhat more intense in scale and character than the low-density commercial areas. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts uses that draw from a broader market area. Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height. The corresponding Zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply. (§ 225.9)

Parks, recreation and open space:

"This designation includes the federal and District park systems, including the National Parks, the circles and squares of the L'Enfant city and District neighborhoods, the National Mall, settings for significant commemorative works, certain federal buildings such as the White House and the US Capitol grounds, and museums, and District-operated parks and associated recreation centers. It also includes permanent open space uses such as cemeteries, open space associated with utilities such as the Dalecarlia and McMillan Reservoirs, and open space along highways such as Suitland Parkway. This category includes a mix of passive open space (for resource conservation and habitat protection) and active open space (for recreation). Because of the map scale, parks smaller than one acre—including many of the triangles along the city's avenues—may not appear on the Map. Zoning designations for these areas vary. The federal parklands are generally unzoned, and District parklands tend to be zoned the same as surrounding land uses." (§ 225.17)