

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

<i>In re</i> Appeal of DC for Reasonable Development	BZA Case No. 20191 Next Event: Public Meeting, September 16, 2020, 9:30 a.m.
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**PROPERTY OWNER DMPED’S RESPONSE
TO APPELLANT’S SUPPLEMENTAL TESTIMONY**

On August 5, 2020, the Board of Zoning Adjustment (the Board) held a public hearing in this matter. The Board partially granted motions to dismiss from respondent the Department of Consumer and Regulatory Affairs (DCRA) and property owner the Office of the Deputy Mayor for Planning and Economic Development (DMPED), dismissing all bases for the appeal except 11Z DCMR § 702.8.¹ The Parties then made presentations on the merits of the appeal as it pertained to that regulation, and the Board indicated that the matter would be taken under advisement for decision at the public meeting of September 16, 2020. The Board further held that the record would be closed, excluding submission of a series of slides used in appellant’s rebuttal presentation.

Nonetheless, appellant has now submitted supplemental, written testimony from Jerome Peloquin and Jimmie Boykin. That testimony repeats meritless

¹ That provision, relating to the Zoning Commission’s (the Commission’s) approval of planned unit developments (PUDs), states that “[t]he Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission” 11Z DCMR § 702.8.

arguments that were definitively rejected by the Board at the hearing and neither witness addresses the sole remaining dispositive issue in the case: whether the plans submitted by DMPED to DCRA “conform” to the plans approved by the Commission. *See* 11Z DCMR § 702.8.

The witnesses assert that demolition cannot proceed before further proceedings by the Commission and make reference to alleged historic preservation covenants. *See, e.g.,* Peloquin Testimony [66] at 1; Boykin Testimony [67] at 1. These arguments have already been rejected by the Board and neither witness undertakes any further analysis that the Board has not already been provided in appellants’ numerous previous filings. The Board should decline to reconsider these arguments.²

Both witnesses also introduce new issues which this Board should decline to consider at this late date. *See* 11Y DCMR § 302.13. Mr. Peloquin attempts to challenge the underlying merits of the PUD, asserting that the filter beds “can obviously be re-purposed” and “are so unique and so inviting for a future sustainability project as to do anything else is criminal.” Peloquin Testimony at 2. As DMPED previously made clear, the Commission explicitly approved demolition of the filtration cells when it approved the PUD at the McMillan Sand Filtration Site (the Site). *See* Zoning Comm’n Order 13-14(6) at 46–47, *Vision McMillan Partners, LLC, et al.*, Z.C. Case No 13-14 (Sept. 14, 2017) (“In sum, based upon the expert testimony given and reports submitted, the Commission concluded (and still does) that the cells

² Linwood Norman’s and Daniel Wolkoff’s testimony, submitted August 19, 2020 and August 20, 2020, respectively, rely on similar arguments previously considered and rejected by the Board or Commission.

are so structurally unstable that they cannot support development above. Even the less intensive development suggested by [Friends of McMillan Park] was unsupported.”) These findings were affirmed in full by the D.C. Court of Appeals. *See Friends of McMillan Park v. D.C. Zoning Comm’n (FOMP III)*, 211 A.3d 139, 147 (D.C. 2019) (“In our view, the Commission’s analysis of [historic preservation] was reasonable and supported by substantial evidence.”); *see also Friends of McMillan Park v. D.C. Mayor’s Agent for Historic Pres.*, 207 A.3d 1155, 1177 (D.C. 2019) (affirming Mayor’s Agent’s rejection of alternative development proposals for the Site that were “cursory at best” and introduced “at the ninety-ninth hour”) (internal quotations omitted). In this light, demolition of filtration cells as indicated by Demolition Permit D1600814 is in complete conformance with the Commission’s conclusions. 11Z DCMR § 702.8.³

Mr. Boykin’s testimony includes comments regarding traffic and affordable housing. *See Boykin Testimony* at 1–2. The Commission analyzed both issues when it approved the PUD and its findings were affirmed by the Court of Appeals. *See Zoning Comm’n Order 13-14(6)* at 23–25, 47, 54–55, 90; *see also FOMP III*, 211 A.3d at 148, 150–51. Mr. Boykin provides no analysis of how the plans submitted by DMPED to DCRA could possibly constitute a deviation from the Commission’s findings as they relate to traffic and affordable housing.

³ The Board should decline to consider Mr. Peloquin’s cursory reference to proceedings before the U.S. Commission on Fine Arts as that argument has already been dismissed by the Board. *See Peloquin Testimony* at 1–2.

For the foregoing reasons, and the reasons previously stated by DMPED in its Motion to Dismiss [24] and Response to Request for Additional Submissions [43], the Board should find in favor of DMPED and dismiss the appeal.

Dated: August 20, 2020.

Respectfully submitted,

EMILY GUNSTON
Senior Counsel to the Attorney General for
the District of Columbia

TONI MICHELLE JACKSON
Deputy Attorney General
Public Interest Division

/s/ Fernando Amarillas
FERNANDO AMARILLAS [974858]
Chief, Equity Section

/s/ Brendan Heath
ANDREW J. SAINDON [456987]
Senior Assistant Attorney General
BRENDAN HEATH [1619960]
Assistant Attorney General
400 Sixth Street, N.W., Suite 10100
Washington, D.C. 20001
(202) 724-6643
andy.saindon@dc.gov
(202) 442-9880
brendan.heath@dc.gov

*Counsel for Property Owner Office of the
Deputy Mayor for Planning and Economic
Development*

CERTIFICATE OF SERVICE

Pursuant to 11Y DCMR § 205, undersigned counsel certifies that on August 20, 2020, a copy of this response was served by email on:

DC for Reasonable Development, c/o Chris Otten
dc4reality@gmail.com
Appellant

Hugh Green
Hugh.green@dc.gov
Counsel for Appellee Department of Consumer and Regulatory Affairs

Advisory Neighborhood Commissions 5E & 1B
5E@anc.dc.gov
1B@anc.dc.gov
Affected Advisory Neighborhood Commissions

/s/ Brendan Heath
BRENDAN HEATH [1619960]