

**DC Board of Zoning Adjustment  
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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.*  
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Appeal of DCRA Demolition  
Permit D1600814 dated  
August 16, 2019 &  
Appeal of DCRA  
Foundation Permit FD1800040  
dated August 27, 2019

**BZA APPEAL OF ERRONEOUS ISSUANCE OF DCRA  
PERMIT D1600814 & PERMIT FD1800040**

Petitioner, DC for Reasonable Development (“DC4RD”), a non-profit citizens association located in the District of Columbia, and its directly affected members who have asked to participate in this appeal through our citizens association, come now with this appeal of two recently issued DC Department of Consumer and Regulatory Affairs (“DCRA”) permits, on this the 15<sup>th</sup> day of October, 2019.

DCRA has erroneously issued a demolition permit and foundation construction permit risking imminent and permanent harm to the historic resources at McMillan Park, a national landmark on the historic register. The issuance of the permits are far premature contradicting basic zoning codes as well as the integrated Historic Preservation law. Attempts to get clarity from the DCRA Zoning Administrator has been futile to date. Out of an abundance of caution and according to the timing jurisdiction of the zoning codes, DC4RD submits this appeal on behalf of our affected members.

**ASSIGNED REPRESENTATIVE:**

At a publicly noticed decision-meeting held on Saturday, October 12, 2019, as called and proctored by DC4RD, according to the organizational bylaws, all members of DC4RD were informed of the appeal in writing. None of our directly affected active members objected to submitting this appeal and in fact have affirmatively asked DC4RD Facilitators (Nonprofit Association Managers) to represent grave concerns about McMillan Park to this District OF Columbia administrative body. Full consent and authorization has been granted to Chris Otten, co-facilitator of DC4RD, in all matters regarding this appeal. This authorization stands in effect unless amended at a future publicly noticed DC4RD meeting.

**BZA APPEAL OVERVIEW:**

The issuance of any permits by DCRA for any work at the site associated with McMillan Park project is premature pursuant to Court directives, Historic Preservation Law, and the intersection of these with the DC Zoning Regulations. *See* Generally DC Code § 6–641.07 and DC Municipal Regulations Chapter 11. *See also*, the integration of DC Historic Preservation Law that says an applicant cannot demolish all or parts of historic sites until financial feasibility has been determined and until a Building permit is issued pursuant to DC Code § 6–1104 (h).

Following on, any permit approvals issued by DCRA to date also do not meet the Standards of the Interior Secretary for work on the project, as any permit approval at this stage has not shown and received credit that the project meets these Standards despite the Federal Covenants that run with the site. <https://www.nps.gov/tps/standards/four-treatments.htm>

**JURISDICTION & FEE WAIVER:**

DC4RD timely files this Form 125 on per BZA Regulations 11-X DCMR § 1100, etc., 11-Y DCMR § 302, etc., and 11-Z DCMR § 204, etc. DC4RD this timely appeal pursuant 11-X DCMR § 1100, etc., 11-Y DCMR § 302, etc., and with waiver of the hearing fees pursuant to 11-Z DCMR § 1603.2(c).

**APPLICABLE ZONING REGULATIONS (*INTER-ALIA*):**

DC4RD has yet received a full set of plans for these permits, has not yet received any letters of zoning determination, and has not yet received information regarding the amount of carcinogenic chemicals, and exposure thereof, that may be coming off the site as demolition has illegally started.

On its face however, DCRA has issued permits that contravenes the BZA zoning regulations and threatens direct harm to DC4RD members. Relief granted by the BZA in affirming this appeal will relieve the injuries. The following regulations are what we have determined can be initially submitted as the basis for this appeal, however we ask that until all documentation is provided by the Respondent in an open and transparent way, that other claims may come to the fore.

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

The Applicant identified seven development parcels within the PUD Site. **The [Zoning] 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.” (emphasis added).

This appeal rests on the question that demolition/rehabilitation/redevelopment activities cannot 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 District of Columbia Historic Preservation law in context of the above Zoning Regulations, D.C. Code § 6–1104 (h), says, “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.”

The Zoning Administrator has not yet made determinations to the above pending questions of zoning compliance despite numerous inquiries. See attached.

As such, DC4RD submits this BZA appeal on October 15, 2019, and seeks a quick resolution to this issue.

Thank you,

*/s /n*

**Chris Otten, co-facilitator**

DC for Reasonable Development

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## **CERTIFICATE OF SERVICE**

I, Chris Otten, attest to serving the above BZA APPEAL FORM 125 to the Respondent and Applicant, on this Tuesday, October 15, 2019, as follows:

**Esther McGraw, Counsel for DCRA**

Assistant General Counsel  
Office of the General Counsel  
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**Mayor Muriel Bowser,**

By email: [eom@dc.gov](mailto:eom@dc.gov)

*Courtesy copies to all complainants:*

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