

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION**

ZONING COMMISSION ORDER NO. 13-14

Z.C. Case No. 13-14

Vision McMillan Partners LLC

McMillan Sand Filtration Site

**First Stage and Consolidated Planned Unit Development and
Related Zoning Map Amendment at 2501 First Street, N.W.
for Square 3128, Lot 800**

_____, 2014

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on May 1, 5, 8, 14, and 27, 2014, to consider an application from Vision McMillan Partners, LLC and the District of Columbia (the Applicants") requesting a first stage and consolidated review and approval of a planned unit development ("PUD") application and related zoning map amendment for the McMillan Sand Filtration Site. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby denies the application.

FINDINGS OF FACT

The Application

1. The Applicant applied to the Commission on November 22, 2013, for consolidated review and approval of a PUD for property consisting of the formerly federally owned site, now owned by the District of Columbia, located at 2501 First Street, N.W. (Square 3128, Lot 800) (the "Subject Property"), as well as a related amendment of the Zoning Map to zone the site C-3-C (the northern portion) and CR (southern portion). The overall site has approximately 1,075,356 square feet (24.69 acres) of land area.
2. The Applicant proposes to build a mixed-use, mixed-income urban development project for the adaptive reuse of the Subject Property. The overall project will include 1,030,000 square feet of gross floor area devoted to healthcare facilities; approximately 444,056 square feet of public open space; approximately 94,170 square feet of gross floor area devoted to retail uses; 923,730 square feet of gross floor area devoted to residential uses; and 17,500 square feet of gross floor area devoted to a community center. The PUD site is organized into three land areas that are separated by two historic service courts running in an east-west direction (the "North Service Court" and the "South Service Court").
3. The Medical Office Building on Parcel 1 (northern sector of the site) would have two

towers joined together at the first floor, and would have a maximum of 10-stories extending up to 130 feet at the corner of Michigan Avenue and First Street, tapering down to 115 feet on Half Street and 102 feet overlooking North Capitol Street. The office building would contain 860,000 square feet of office space, plus ground floor “optional” retail of 15,000 square feet, and will be served by a single parking garage of 1,900 parking spaces. It is projected to generate 22,718 vehicle trips plus 19,292 transit trips on a weekday to and from the Site. A 23,374 square foot “Healing Garden” would border the transit center and be oriented toward Michigan Avenue.

4. Parcel 2 would be developed with 285 residential units and 23,250 square feet of ground floor retail use.

5. Parcel 3 would have an additional 170,000-square-foot healthcare facility with 3,000 square feet of ground floor retail uses.

6. Parcel 4 is proposed to be developed with a 308,150-square-foot, 6-story, mixed-use building and would serve as a transition from the proposed taller health care facility to the north toward the townhouses to the south. The building would accommodate a 52,920-square-foot grocery store on the ground level and approximately 278 apartments, of which 85 would be for seniors, 55-years and older on the upper floors. The building would be divided into three bars above the first floor with landscaped open courts between the bars.

7. Parcel 5 would contain 146 (350,000 gross square feet) 3- and 4-story townhouses. The townhouses would be in 19 buildings with each building having between 6 and 8 units. The townhouses would have rear garage access from new private alleys.

8. The Southern Sector, Parcel 6, would contain the South Service Court, a 6.2 acre park in which a community center would be inserted, and would accommodate a construction and staging area on the western portion of the Parcel for the D.C. Water Long Term Control Project to improve stormwater management for the area. The South Service Court would provide vehicular access/egress from First Street and east-west pedestrian access, as well as on-street parking for the 17,000 square foot community center. The community center would include an indoor pool, playgrounds, an amphitheater, a pond, and a “walking museum” while the adjacent park would provide bicycle parking and direct access to the elevated Olmsted Walk

History of the Site

9. The Subject Property is currently un-zoned because it was formerly federal property. The site was transferred to the District of Columbia by the General Services Administration (“GSA”) in 1987. The District of Columbia paid a purchase price of \$9.3 million. 5-2-14 Tr. at 65. To discharge its responsibilities under Section 106 of the National Historic Preservation Act

(“NHPA”), 16 U.S.C. § 470f, the GSA’s transfer to the District of Columbia was made subject to binding preservation covenants. These covenants, which were recorded in the land records of the District of Columbia in 1987, provide that the D.C. Historic Preservation Officer must review all preliminary and final plans and specifications for renovation, rehabilitation, demolition, or new construction within the site, and if the HPO does not “agree with” the preliminary or final plans, and the disagreement cannot be resolved, the District must immediately request the comments of the Advisory Council on Historic Preservation in accordance with 36 CFR Part 800. The covenants further provide that any rehabilitation would be subject to the Secretary of the Interior’s *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*. Based on these commitments, the GSA determined that the transfer would have no adverse effect on historic properties. Exhibits 74, 689.

10. In 1990, the District of Columbia amended the D.C. Comprehensive Plan Generalized Land Use Map to designate the McMillan site for mixed-use, medium density residential; moderate density commercial; and parks, recreation, and open space land uses. Subsequent amendments to the Comprehensive Plan retained this designation.

11. In its review of the proposed amendments, the National Capital Planning Commission requested that the District Government give special consideration and care to preserving the historic open space character of the site as a complement to McMillan Reservoir, as well as protecting the views across the site of the U.S. Capitol from the U.S. Soldiers’ and Airmen’s Home, which is listed in the National Register and the D.C. Inventory of Historic Sites, and has been a national park since 1906.

12. On April 23, 2010, the District of Columbia entered into an Exclusive Rights Agreement with Vision McMillan Partners (“VMP”) granting VMP the exclusive right to negotiate for the acquisition and development of the site, and did not, as a result, seek competitive bids or proposals for the site’s development. Exhibit 75, 76. Under this Exclusive Rights Agreement, the District is responsible for paying all VMP’s land development costs, including the costs of infrastructure/street improvements, storm water manager, and historic preservation. *Id.*, Exhibits B, D.

Preliminary Matters

13. In setting down the application for a hearing, the Commission divided the application into seven parcels: Parcel 1 (healthcare facility), Parcel 2 (173,000-square-foot healthcare facility with ground floor retail), Parcel 3 (334,950-square-foot mixed-use building with ground floor retail and residential units above); Parcel 4 (Multi-Family/Retail Building), Parcel 5 (condominium townhouses), and Parcels 6 and 7 (Master Plan, Open Spaces and Parks,

Community Center) A Stage 1 PUD review is sought for Parcels 2 and 3, and a consolidated parcel review will occur for the remaining parcels.

14. The Commission provided proper and timely notice of public hearings on the application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 5E and to the owners of property within 200 feet of the McMillan site. The notice stated that public hearing would be held on the Master Plan and Stage 1 review for Parcels 2 and 3, and Open Space (Parcels 6 and 7) on May 1, 2014. The public hearing for the consolidated stage 2 PUD for Parcels 4 and 5 was noticed for May 5, 2014, and the public hearing for the consolidated stage 2 PUD for Parcel 1 (medical Office Building) was noticed for May 8, 2014.

15. The Commission granted the request from Friends of McMillan Park (“FOMP”) to participate as a party in opposition to the application. The Commission denied the party status request of McMillan Coalition for Sustainable Agriculture.

16. The Commission considered FOMP’s motion to dismiss or postpone the hearing on the grounds that the project was subject to multiple contingencies and uncertainties rendering it unripe to consider the application. The Commission denied the motion.

Parties and Hearings

17. A hearing on the Master Plan and Parcels 6 and 7 was held on May 1, 2014. A hearing on the multi-family/retail building (Parcel 4) and Townhouses (Parcel 5) was held on May 5, 2014. A hearing on the Healthcare Facility (Parcel 1) was held on May 8, 2014. Continuation hearings including rebuttal testimony were held on May 13 and 27, 2014.

18. The record was left open until June 23, 2014 for post-hearing submissions and for responses by July 7, 2014.

19. The Commission received written submissions from supporters and opponents of the project.

20. The Applicant presented expert testimony from VMP and their retained experts describing the project’s various components.

21. The Commission received oral and written testimony from the Office of Planning (“OP”), which expressed support for the application. The Department of Transportation (“DDOT”)’s report noted that the development will worsen traffic conditions at several intersections in the site area and most particularly, the conditions at the intersection of N. Capitol/Michigan Avenue and

Michigan Avenue/First Street “will experience a significant degradation “of Level of Service (“LOS”) and several locations on North Capitol are “expected to operate at a failing LOS.” Exhibit 38.

22. The ANC 5E testified that the ANC supported the plan. However, Teri Janine Quinn, Vice-Chair of ANC 5E and the commissioner for single-member district 5E06, testified that at the time the ANC voted to support the PUD, it had not even received or reviewed the PUD application. M.A. Tr. at 107 (May 13, 2014). She testified that the issue that was before the ANC for a vote was whether the ANC “would support the decision from HPRB to send the matter on to the mayor's agent for review.” *Id.*

23. A number of individual supporters of the project testified that they supported the development because the site had been vacant for too long, and they expressed hope that it would offer the sort of upscale stores amenities desired by new residents in this “rapidly changing” neighborhood. M.A. Tr. at 95 (May 13, 2014).

24. FOMP, a party in opposition, presented expert testimony from George Oberlander of GO Consulting (who was qualified as an expert on urban planning and issues of consistency with the Comprehensive Plan); and Joe Mehra of MCV Associates, Inc. (who was qualified as an expert on traffic engineering and transportation management), and Miriam Gusevich, who qualified as an expert in architecture and design).

25. The Commission received written submissions from opponents of the project. It also heard testimony from neighborhood residents who expressed concern about the height and density of the project, the destruction of this historic resource and the loss of historic viewsheds, the additional traffic being generated and lack of any effective mitigation, the loss of a publicly owned park space, and the inadequacy of the amenities and benefits being offered.

26. On May 27, 2014, the National Capital Planning Commission requested that the Commission keep the record for this proceeding open an additional 45 days beyond the date of the final hearing in order to allow the NCPC “to investigate potential impacts on historic viewsheds resulting from development on the McMillian Reservoir.” On information and belief, the Commission did not act on this request. Ex. 814.

PROPOSED FINDINGS OF FACT

Comprehensive Plan

27. Under section 2403.4 of the Zoning Regulations, the Commission may approve a PUD only if it finds that the proposal “is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.” The Commission makes the following findings on that point.

a. The Generalized Land Use Map identifies the McMillan Sand Filtration site as a “Land Use Change Area” designated for future land use for medium density residential, moderate density commercial and parks, recreation and open space. Exhibit 6C.

b. The Comprehensive Plan Framework specifically provides that, for moderate density commercial land uses, “The corresponding Zone districts are generally C-2-A, C-2-B, and C-3-A, although other districts may apply.” 10A DCMR § 225.9. “Buildings are larger and/or taller than those in low density commercial areas but generally do not exceed five stories in height.” *Id.*

c. The Medium Density Residential 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. 10A DCMR § 225.5.

d. The Comprehensive Plan Framework also provides that “Residential uses are permitted in all of the commercial zones.” 10A DCMR § 225.21.

e. A visual analysis prepared by the NCPC at that time this Comprehensive Plan designation was approved confirmed that “any structures to be introduced with the District-owned part of McMillan Park should be widely spaced, not to exceed the 4-story height of the Veterans Hospital, and preferably have lower transitional heights and picturesque rooflines to blend with the immediate landscape and the park environs.” Exhibit 514.

f. The Zoning Regulations provide that a medium-density commercial district equates to C-2-A zoning and a medium-bulk-zone district equates to C-3-A. *Id.* §§ 105.1(d)(2)(A), (3)(A). Under the Zoning Regulations, the maximum permissible height in the C-3-A district is 65 feet without a PUD, and 90 feet with a PUD. 11 DCMR §§ 7700.1; 2405.1. The maximum permissible height in a C-2-A district is 50 feet without a PUD and 65 feet with a PUD.

- g. The Comprehensive Plan’s Area Elements provide additional policies to guide development and redevelopment within the Land Use Change Areas. 10A DCMR § 223.11
- h. The relevant “Area Element” is the Mid-City element (MC-2.6.5), which provides as follows: “Recognize that development on portions of the McMillan Sand Filtration site may be necessary to stabilize the site and provide the desired open space and amenities. Where development takes place, it should consist of *moderate- to medium-density* housing, retail, and other compatible uses.” 10A DCMR § 2016.9 (emphasis added).
- i. Under the proposed PUD, the zoning of Parcel 1 would become C-3-C for the northern portion of the site, in order to permit the construction of a 130-foot-tall medical office building. The Zoning Regulations provide that the C-3-C district is a “high bulk” district. A C-3-C District permits a maximum height of 90 feet (11 DCMR §§ 770.1). Under the PUD standards for the C-3-C District, the maximum height is 130 feet (11 DCMR §§ 2405.1).
- j. Under the proposed PUD, the zoning of Parcels 2, 3, 4, and 5 would be CR in order to permit the construction of multi-family dwellings, office buildings, and retail from six to eight stories, with heights of up to 110 feet. OP Hearing Report (Master Plan), at 5, 11 (April 21, 1014); Post-hearing Submission – Annotated Master Plan, at 6.
- k. According to the Zoning Regulations, the high-density CR Districts permit a building height of 90 feet without a PUD, and 110 feet with a PUD. 11 DCMR §§ 630.1; 2405.1.

Potential Adverse Impacts

28. Under Sections 2403.5 and 2403.8, the Commission is obliged to evaluate the proposed amenities and to balance their relative values, the degree of development incentives offered, and any potential adverse impacts. The Commission evaluates those adverse impacts here.

- a. The Commission makes the following findings regarding the project’s potential adverse impacts on historic properties, viewsheds, and open space:
- i. The adverse impacts of Applicant’s development plans on the significant historic structures and features on the McMillan Sand Filtration site and its open space significantly outweigh the limited preservation benefits proffered on the site. Applicant’s development plans call for the total destruction of all but three of the historic underground cells on the site, the architectural elements most closely linked to the historic purpose and function of the former McMillan Sand Filtration facility. Of those

remaining three cells, only one cell is proposed to be preserved in full, with the other two only partially maintained. The plans also call for the destruction of virtually all of the service court walls along the north maintenance corridor, preserving a single 20-foot high masonry base. Two thirds of the McMillan Park open space would be destroyed.

ii. FOMP's historic preservation expert testified that the 130-foot tall Medical Office Building would eliminate the flow to both the western part of McMillan as well as the view from the east to the west of the Colonial Tower of Howard University and to the Romanesque tower of the West Gate House on the federal side of McMillan and site lines to the large body of water there. M.A. Tr. at 181 (May 13, 2014). The importance of maintaining these sightlines was emphasized in the NCPC's 1990 McMillan Park Visual Analysis. Exhibit 541. The view of the sand towers from Michigan Avenue would be obliterated. M.A. Tr. at 181 (May 13, 2014)

iii. The National Register nomination for McMillan Park (see Exhibit 34A-1-34A-7) makes crystal clear that "[t]he landscaped grounds were designed by the nationally acclaimed landscape architect, Frederick Law Olmsted, Jr."; that "the notion of the reservoir as a park open to the public contributes to a complete understanding of the site; and that the "site is significant as a park that "opened the waterworks up for public use and contributed to the civic beauty of the city. NR Nomination, at 14.

iv. The Commission credits the visual impact analysis prepared by the NCPC when it agreed to the moderate density land use designation in the Comprehensive Plan, recognizing that, "McMillan Park occupies a strategic position in the Special Street character along North Capitol Street and in the reciprocal views between Capitol Hill and the Soldier's Home Hill. . . . The park open-space also contributes significantly to the overall scenic setting formed by the Soldier's Home and its environs, visually linking the Shrine of the Immaculate Conception and Trinity College settings with those of LeDroit Park Historic District and the old campus of Howard University." Exhibit 514. The NCPC therefore concluded that "any structures to be introduced with the District-owned part of McMillan Park should be widely spaced, not to exceed the 4-story height of the Veterans Hospital, and preferably have lower transitional heights and picturesque rooflines to blend with the immediate landscape and the park environs." Exhibit 514. The Commission notes the testimony of FOMP's historic preservation expert and others that the massive scale of the proposed development would overwhelm and dominate most of the significant character-defining features of the site, especially the sand filtration towers on the North Service Court, and would obliterate important views of those features. Exhibits 34B, 532

v. The Applicants' structural report shows that 60% of the historic underground cells

slated for destruction have only minor or moderate damage and that a variety of techniques are available to strengthen and reinforce the foundation and interior structures to allow for adaptive re-use of these cells. Silman Report, at 19, 42. However, the Applicant failed to consider any of these options for rehabilitating and adaptively re-using the cells.

b. The Commission makes the following findings regarding the project's potential adverse impacts on traffic operations:

- i. The Applicants traffic expert, Gorove/Slade, indicates that the proposed development is estimated to generate a total of 31,560 vehicle trips on a weekday. This would more than the double current traffic volumes on North Capitol Street between Michigan Avenue and Irving Street (daily traffic volume of 30,900 vehicles).
- ii. The Applicants' Traffic Impact Study projects that a majority of the measured intersections within the site will have an unacceptable ("F") level of service ("LOS") for one or more directional movements in the morning and afternoon peak hours as a result of this and other background projects. Final Traffic Impact Study, at Figures 29, 30, and 31. Exhibit 31D.
- iii. As DDOT's report recognized, the site is located more than one mile from a Metrorail station, which is beyond the typical walkshed of a rail transit facility, making bus service important in connecting the site to nearby Metrorail stations. Exhibit 38. The Applicant's traffic expert acknowledged that many of the buses that currently serve the site are at or beyond acceptable capacity. Traffic Impact Study, at 90.
- iv. DDOT's Report concluded that more than 1,100 new bus seats would be needed in the peak hour to accommodate the anticipated transit trips. Exhibit 38.
- v. Gorove/Slade forecasts transit use of 1,710 during the PM peak hour and 24,414 on a daily basis, representing a 30 % mode split. This figure was based on the assumption that 30 percent of the persons traveling to and from the medical office building and the general office building will be using transit, 4% would walk, 1% would bike and the remainder 65% would use the automobile. The traffic expert also assumed a 35 percent mode share by transit for the residential uses. However, the

Commission credits the testimony of FOMP's traffic expert indicating that, according to WMATA's 2005 Development Related Ridership Survey, the transit share for office buildings drop to 13% for office buildings located one half mile from the metro station, and to 36% for residences located one half mile from the metro station. Instead, even assuming an aggressive travel demand management program, a transit mode share of at the most 20 percent may be achieved at the site for the medical office building and the general office use. A transit mode share of at the most 25 percent may be achieved at the site for the residential uses. Therefore, the Commission finds that the Applicants' traffic study underestimated the vehicle trips by 15 percent during the AM and PM peak hours.

- vi The Commission also finds that the Applicant's traffic analysis is flawed for its failure to include in the LOS analysis the impact of the more than 100 additional buses that will be needed to accommodate projected transit users under the Applicants' scenario of transit use. This transit use would require more than 610 bus trips to serve only the site traffic, and more than 100 bus trips would be needed to serve exclusively both the site and the background developments in the study area during the peak one hour. *See* Supplemental Report of MCV Associates (July 7, 2014).
- viii. FOMP's traffic expert points out that the Applicant's analysis omits the additional bus trips from the levels of service analysis. FOMP's traffic expert estimates that more than 100 bus trips would be needed to serve exclusively the site and the background developments in the study area during the peak one hour. These additional bus trips during the peak period will have a significant impact on the traffic flows and levels of service at the study intersections, yet they were not included in the LOS analysis by the Applicants' expert. *Id.*
- ix. The Commission finds that there is a significant likelihood that the site will generate more vehicle trips than estimated and further degrading conditions at the already failing intersections on Michigan Avenue and First Street.
- x. The Commission therefore finds that the Applicants' traffic impact studies are inadequate to allow this Commission to assess the full impact of the development on traffic operations.

PUD Evaluation Standards

29. Section 2403.9 of the Zoning Regulations enumerates ten “evaluation standards” that be proven by the proponent of a PUD to exhibit and document the public benefits or amenities of the project. Other “additional categories” may be used as well. *Id.* “A project may qualify for approval by being particularly strong in only one or a few of the categories in § 2403.9, but must be found to be acceptable in all proffered categories and superior in many.” 11 DCMR § 2403.10. The Commission makes the following findings concerning these standards here.

a. **Urban Design, Architecture, Site Planning, Landscaping, and Open Space (Section 2403.9(a) and (b)).** Currently, the site consists almost entirely of open space. The Applicant’s plans propose to maintain only approximately 440,000 of open space out of the entire over-1,075,000 square foot development site. And of that 440,000 square feet of open space, only about 348,800 square feet in the back of the site (32 % of the site) are to be dedicated as a “park” space. The “public infrastructure” offered by the Applicant (community center, streets, paths, bike racks) will all be privately owned and privately controlled. The public’s access is unclear.

b. **Section 2403.9(c): Effective and safe vehicular and pedestrian access; transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts.**

The Applicants present the plan as providing the following transportation benefits:

- i. DDOT’s report indicates that 2,721 and 3,038 new parking spaces provided to serve the office, residential and commercial development on the site, while in excess of what is normally supplied, was appropriate in light of the site’s one-mile distance from the nearest Metro rail station. Exhibit 38.
- ii. DDOT has agreed in principle to incorporate the following improvements to the existing infrastructure to accommodate anticipated changes in traveler behavior:
 - (1) Install a traffic signal at the intersection of Michigan Avenue and Half Street
 - (2) Construct a westbound left turn lane at the intersection of Michigan Avenue and Half Street
 - (3) Extend the eastbound left turn lane at the intersection of Michigan

- Avenue and North Capitol Street
- (4) Install a traffic signal at the intersection of the North Service Court and North Capitol Street
 - (5) Install a traffic signal at the intersection of the Evarts Street and North Capitol Street
 - (6) Construct a northbound left turn lane at the intersection of the North Service Court and Evarts Street and North Capitol Street
 - (7) Widen First Street between Michigan Avenue and the First Street driveway
- iii. The Applicant proposes the following Transportation Demand Management measures:
- (1) grocery employers providing employees with SmartBenefits;
 - (2) TDM Coordinator to implement, monitor, and be the point of Contact with DDOT;
 - (3) Bicycle parking and shower accommodations;
 - (4) On-street spaces reserved for car sharing services; Electronic messaging boards to display transit information;
 - (5) Market rate pricing for on-site parking spaces; and
 - (6) Unbundling of parking spaces on the multifamily.
- iv. DDOT will pay for the entire transportation infrastructure cost prior to the transfer of the site to VMP, even though the streets will then be privately owned by VMP following the transfer.
- v. The Applicant's post-hearing submission asserts that "the city has advised the Applicant that it will implement recommended improvements to mass transit, including funding a Tenleytown to Brookland Circulator bus route to Metro stations in time for completion of the Parcel 1." Post-hearing Submission, at 3. However, no letter or other evidence of this intent is provided. The Applicant has obtained no commitment for increased public transit services from WMATA.
- vi. DDOT's proposed mitigation for exceeding the traffic projection of 31,500 daily trips consists of annual reporting once the project reaches 90% residential occupancy and 85% commercial occupancy. In the event the trip caps are exceeded in two consecutive years, the Applicant would conduct a robust survey of users to determine travel patterns. Based on this, the Applicant will develop an implementation plan to help meet

monitoring goals.

- c. **Section 2403.9(d): Historic preservation of private or public structures, places or parks:** The Applicants point to the preservation of two of the 18 historic underground sand filtration vaults (cells 14 and 28) and all of the regulatory houses and sand bin towers as well as restoration of the historic Olmsted walk on the property in asserting “historic preservation” as a benefit of this project. However, Cell 14 is being preserved and re-used by the D.C. Water and Sewer Authority, not VMP. M.A. Tr. at 112 (May 27, 2014). As noted in Findings No. 28(a), the massive scale of the proposed development would overwhelm and dominate most of the significant character-defining features of the site, especially the sand filtration towers on the North Service Court, and would obliterate important views of those features. The Commission therefore finds that the adverse impacts of Applicants’ development plans on the significant historic structures and features on the McMillan Sand Filtration site and its open space significantly outweigh the limited preservation measures and park features proffered by the Applicants.
- d. **Section 2403.9(e): Employment and training opportunities:**
- (i) The Applicants would enter into a “first source employment program” with the Department of Employment Services.
 - (ii) Although the Applicants claim that the project would create over 1,300 jobs in the medical profession, *see* Statement of Applicant, at 30, they offer no basis for this figure. It appears to be derived in large part from the hypothetical number of offices the Applicants hopes to carve out of the buildings devoted to health care.
 - (iii) The Applicants have secured no lease commitments from any health care provider or other tenant to lease any of the space in the Medical Office Building. The general letter of support for the project from Children’s National Medical Center lauds the project’s “park and open space programming,” but says nothing about the need for medical office space, much less make any commitment to utilize that space. Applicants’ Post- Hearing Submission, Exhibit I.
 - (iv) The Commission notes that the Applicants’ office would also face competition from the 6,000,000-plus square foot development proposed for Armed Forces Retirement Home (“AFRH”) project one block north of the Proposed Development Site. The AFRH project will be ready for occupancy long before any project is completed at McMillan Park, having completed the required regulatory processes in 2007. According to AFRH Chief Operating Officer Steven G.

McManus, the AFRH's renewed request for proposals (RFP) should be published in the coming weeks. Given where the AFRH project is in its process, the project would likely break ground long before the Applicants' proposed project. By contrast, numerous required reviews and approvals must take place before this project can move forward, including approval by the Mayor's Agent for Historic Preservation, and legislation by the Council of the District of Columbia to vote to surplus and dispose of the McMillan Park property. This very stiff competition calls into question the accuracy and strength of the forecasted number of jobs that the Applicants are claiming and certainly whether the numbers can hold up when the market for medical office space in this area of the city would dry up after going from zero square feet to 3,000,000 square feet (combined Applicant and AFRH projects) in just a few years.

- (v) The Commission finds that, with no data to back up its employment projections and tenant commitments or even expressions of interest to fill the over 1,000,000 square feet of health care facilities (more than half of the project's total square footage), and the likely competition it will face from the AFRH office development, the Applicants' figures for permanent medical jobs are overly vague and unsupported. The Applicants' consultant conceded that the projections about job creation are not based on surveys or secured lease commitments, but are merely "speculation." M.A. Tr. At 124 (May 8, 2014).

e. **Section 2403.9(f): Housing and affordable housing:** The Applicants propose the following "affordable" housing benefits:

- i. The multifamily structure on Parcel 4 will contain 85 units of "senior housing," which will be designated for 50% - 60% AMI. 5-1-14 Tr. at 40. 50% AMI is currently \$50,000 for a single person household.
- ii. Of the 130 townhomes and 16 "back-to-back" homes on Parcel 5, 9 units will be designated for 50% AMI and nine units for 80% of the AMI, which is currently \$86,000 for a family of four. 5-5-14 Tr. at 27-28.
- iii. The 16 back-to-back homes on Parcel 5 will be market rate, selling from between \$400, 000 to \$700,000. 5-5-14 Tr. at 165. Tr. at 35 (May 5, 2014).
- iv. On Parcel 2, 10 % of the 250 units on the multi-family dwelling (25 units) on Parcel 2 will be allocated to housing for persons at 80 % of AMI. OP Report on Master Plan, at 14 (Ex. 37).
- v. The total percentage of housing dedicated to persons at 50-60% AMI for the project as a whole is 15%. OP Report on Parcels 4 and 5 (Exhibit 46); OP Report on Master Plan, at 14. This is a mere 7% above what is already required under the IZ requirements applicable to matter of right project. 11 DCMR § 2603.

- vi. Nothing in the record indicates that the Applicants considered the possible loss of affordable housing resulting from the infusion of market rate housing and upscale amenities that would accelerate gentrification of the nearby neighborhoods. Exhibit 690.
- f. **Section 2403.9(h): Environmental benefits, such as storm water runoff controls and preservation of open space or trees:** The Application cites the proposed LEED-gold higher level of certification for buildings, and storm water management in accordance with standards set by the Department of Health. However, these measures do nothing more than mitigate the impacts of adding over 1.5 million square feet of buildings to what is now a largely pervious open space area that acts as a natural storm management system. The measures are also inadequate in that they reflect EPA standards for storms that are smaller than the storms that inflicted significant damage on the Bloomingdale neighborhood just south of the McMillan five different times in 2012.
- g. **Section 2403.9(i): Uses of special value to the neighborhood or the District of Columbia as a whole:** The Applicants cite the grocery store and retail as uses of “special benefit” to the neighborhood, as well as the construction of the Community Center. However, within 1.5 miles of McMillan, over half a dozen grocery stores have opened in the last four years or are in the planning/construction phase. Moreover, the record contains insufficient evidence that these amenities could not be offered under a less intensive development proposal that would be consistent with the site’s moderate/medium density land use designation in the Comprehensive Plan.
- vi. **Section 2403.9(j): Other public benefits and project amenities and other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.** The Applicants proffer an agreement with the ANC to provide a series of cash payments and other financial benefits to the community. This agreement has not received the support of the neighborhood civic associations around the site. It is also does not have the support of the McMillan Advisory Group, the organization set up by the Applicants to provide community input and guidance on the project generally and specifically about the community benefits agreement.

CONCLUSIONS OF LAW

1. The Commission denies the application as not meeting the standards of Chapter 24 of the Zoning Regulations.
2. The Planned Unit Development process is designed to encourage high-quality developments that provide public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number of quality or public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” 11 DCMR § 2400.2.

3. The Commission must find that the project is not inconsistent with the Comprehensive Plan and other public policies, 11 DCMR § 2403.4, and it must find that the impact of the project on surrounding areas and government operations will not be unacceptable. A project's impact must either be favorable or, if adverse, capable of being mitigated or outweighed by the project's benefits. 11 DCMR § 2403.

4. In evaluating whether the applicant has met its burden, the Commission must "judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case." 11 DCMR § 2403.8.

5. A PUD applicant seeking a related map amendment must demonstrate that "public health, safety and general welfare goals of zoning regulation would be served by the ... amendment." *Citizens Association of Georgetown v. District of Columbia Zoning Commission* 402 A.2d 36, 39 (1974). A proposed map amendment should "create conditions favorable to health safety transportation, prosperity, protection of property, civic activity and recreational, educational and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein." *Id.* at 40. Those criteria are not met here.

6. The Commission is required to find that the proposed PUD is "not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site." For the reasons set forth here and in Findings No. 27, the Commission concludes that the CR and C-3-C zone districts proposed are inconsistent with the Comprehensive Plan:

- a. Both the proposed CR and C-3-A zones districts are consistent only with a high-density commercial and residential land use designation. These zone districts are inconsistent with the Comprehensive Plan's Future Land Use Map and text (MC-2.6.5), both of which clearly designate the site as "mixed use: medium density residential, moderate density commercial and parks, recreation and open space."
- b. The Commission finds that the building heights proposed in the PUD – 130 feet for the Medical Office Building and in excess of four to eight stories for the residential buildings -- are inconsistent with the heights permitted in a moderate density commercial/medium density residential zone district even taking into account PUD flexibility.

- c. Moreover, as also noted in Findings No. 27(a) and 27(h), the proposed zoning map amendments are inconsistent with the only two provisions of the Comprehensive Plan that deal explicitly with this site. Considering that these are the most germane provisions of the Comprehensive Plan, they (along with the Generalized Land Use Map) are to be given effect in any PUD case.
- d. The Commission concludes that a zoning district of C-2-A would be consistent with the mixed use medium/moderate density land use designation in the Comprehensive Plan. The C-2-A zone district would allow building heights without a PUD of up to 50 feet and 65 feet with a PUD. 11 DCMR §§ 770.1; 2405.1. The C-2-A designation would permit the mix of uses sought by the Future Land Use Map, maintain viewsheds and vistas sought by the Area Plan, and also comply with both the framework element of the comprehensive plan and the NCPC's view of appropriate heights that are appropriate for the important sightlines and vistas near and through the site.
- e. The Applicants acknowledge that a zone district permitting a 130-foot high medical office building would normally be inconsistent with the moderate density designation for the site, but argue that because of the lower scale of buildings on the southern end of the site, the project is consistent with the Comprehensive Plan across "the entirety of the site." M.A. Tr. at 88. The Commission rejects this. The Home Rule Act directs that zoning maps and amendments thereto "shall not be inconsistent with the comprehensive plan for the national capital." D.C. Code § 641.02. This statute does not permit the Commission to ignore a clear inconsistency with the Comprehensive Plan by engaging in this sort of "averaging" across a site, which would make the Comprehensive Plan's clear legislative designations virtually meaningless.
- f. The Applicant cites a plethora of provisions from the Comprehensive Plan that would purportedly be advanced if this application is approved. However, section 2403.4 does not say that a PUD application shall be "not inconsistent with *portions of the Comprehensive Plan.*" The Commission rejects the Applicant's effort to pick and choose provisions of the Comprehensive Plan as it suits the Applicant's purposes. The Commission must consider the entire Comprehensive Plan, giving primacy to the designations in the Future Land Use Map and clear designation of appropriate density and zone districts in the area element governing this particular site. If the proposed map amendment is plainly inconsistent with the medium density resident/moderate density commercial designation in the Future Land Use Map and Mid-City area element, as it is here, conformity selectively chosen general policies cannot cure this fundamental inconsistency.

- g. Particularly misplaced is the Applicants' reliance on general policies, such as the Housing Policy to "[d]evelop and maintain a safe, decent, and affordable supply of housing for all current and future residents of the District of Columbia." 10A DCMR § 501.1. Such general policies cannot be construed in a manner that conflicts with the specific land use designation for that site set forth in the Land Use Map and Area Elements of the Plan, since it is the specific land use designation that controls over the general.
- h. The Commission rejects the Applicants' argument that the word "generally" in the Comprehensive Plan's Framework designation that "moderate density" zones "are generally C-2-A, C-2-B, and C-3-A, although other districts may apply (10 DCMR 225.9) gives this Commission discretion to adopt high-density zone districts for areas clearly designated for medium or moderate density zone districts. If the Applicant's view were to be adopted, the Comprehensive Plan would have no controlling meaning whatsoever over the land use development process, and would give zoning authorities virtually unconstrained discretion to ignore clear designations in the land use map and text, in violation of the Home Rule Act. Instead, the word "generally" should be qualified by the principle of *eiusdem generis* (*i.e.* the language must be limited in application to items similar to those specifically enumerated). *Keefe Co. v. District of Columbia Bd. of Zoning Adjustment*, 409 A.2d 624, 626 (D.C. 1979) In this case, the C-2-A zone district, while not specifically enumerated in Section 225.9, would also be "generally consistent with the Medium Density designation," and would permit the mix of uses specified by the Future Land Use Map. However, high density zoning districts such as CR or C-3-C are not similar to the medium/moderate density zoning districts specifically enumerated.
- i. Likewise, the Applicant's argument that the language that in areas designated as moderate density commercial "buildings *generally* do not exceed five stories in height (10 DCMR 225.9) does not give the Commission discretion to adopt zone districts that are inconsistent with the densities specified in the Comprehensive Plan. Instead, this language merely reflects the latitude given to the Commission under the PUD regulations to permit height increases in the appropriate Zoning Districts, subject up to the limits in the PUD Regulations. In this case, a PUD in the moderate density C-2-A zone district would be permitted heights of up to 65 feet. 11 DCMR § 2405.1.

7. The proposed PUD is also inconsistent with the Comprehensive Plan's "other adopted public policies and active programs related to the subject site." The Commission makes the

following conclusions on that point.

- a. **Policy LU-1.2.7: Protecting Existing Assets on Large Sites:** Identify and protect existing assets such as historic buildings, historic site plan elements, important vistas and major landscape elements as large sites are redeveloped.”

As noted in Finding No. 28(a), the Applicant’s proposed plan would demolish 18 out of 20 cells or 95% of the underground historic cells, demolishing a park built by one of the founders of American Landscape Architecture on a site chosen for majestic views of downtown Washington on a par with those from President Lincoln’s cottage on the AFRH grounds.

- b. **Policy MC-2.6.1: Open Space on McMillan Reservoir Sand Filtration Site:** Require that reuse plans for the McMillan Reservoir Sand Filtration site dedicate a substantial contiguous portion of the site for recreation and open space....Consistent with the 1901 McMillan Plan, connectivity to nearby open spaces such as the Armed Forces Retirement Home, should be achieved through site design.”

As noted in Findings No. 28(a), the intensive development on the portions of the site not dedicated to park use, and particularly, the 130-foot height of the Medical Office Building, will impair the site’s connectivity to the AFRH and other open spaces and obstruct key sightlines.

- c. **Policy MC-2.6.2: Historic Preservation at McMillan Reservoir:** Restore key above-ground elements of the site in a manner that is compatible with the original plan, and explore the adaptive reuse of some of the underground “cells” as part of the historic record of the site. The cultural significance of this site, and its importance to the history of the District of Columbia must be recognized as it is reused. Consideration should be given to monuments, memorials, and museums as part of the site design. 10A DCMR § 2016.6.

i. As noted in Findings No. 28(a), under the proposed plan, all but three of the underground historic cells will be destroyed, and none of them will be re-used. The Applicant’s structural report shows that 60 % of the historic underground cells slated for destruction have only minor or moderate damage and that a variety of techniques are available to strengthen and reinforce the foundation and interior structures to allow for adaptive re-use of these cells. Exhibit 786H (Silman Report), at 19, 42. However, the Applicant failed to consider any of these options for rehabilitating and adaptively re-using the cells. While the Applicants’ historic preservation expert speculated that the need to undertake reinforcement of the historic cells could result in some loss of integrity, any such loss of historic integrity is obviously much less than the total destruction

contemplated by the Applicants' proposal.

d. **McMillan Policy MC 2.6.3: Mitigating Reuse Impacts**, provides as follows: "Ensure that any development on the site is designed to reduce parking, traffic, and noise impacts on the community; be architecturally compatible with the surrounding community; and improve transportation options to the site and surrounding neighborhood." 10A DCMR § 2016.7

e. **McMillan Policy MC 2.6.3: Mitigating Reuse Impacts**: Ensure that any development on the site is designed to reduce parking, traffic, and noise impacts on the community; be architecturally compatible with the surrounding community; and improve transportation options to the site and surrounding neighborhood. 10A DCMR § 2016.7

As noted in Findings No. 28(b), the development on the site will significantly degrade traffic operations on key transportation arterials serving the site, with no meaningful mitigation. The Commission therefore finds that the Applicants' plan achieves none of MC 2.6.3's goals. The only mitigation strategies are limited to the McMillan site itself; the Applicants do not address the significant increase in traffic that will burden the surrounding neighborhoods, especially Stronghold and Bloomingdale, or to realistically improve transportation options (beyond expanding the District's Bikeshare program.

f. **McMillan Policy MC 2.6.3: Mitigating Reuse Impacts**: "Any change in use on the site should increase connectivity between Northwest and Northeast neighborhoods as well as the hospital complex to the north."

The Commission finds that the Applicants' plan does not to increase the site's connectivity with the existing street grid and the adjoining neighborhoods. The McMillan site continues to be self-contained under the development proposal.

g. **McMillan Policy MC 2.6.5** : "Any development on the site should maintain viewsheds and vistas and be situated in a way that minimizes impacts on historic resources and adjacent development." 10A DCMR § 2016.9.

i. As the NCPC recognized, "McMillan Park occupies a strategic position in the Special Street character along North Capitol Street and in the reciprocal views between Capitol Hill and the Soldier's Home Hill. . . . The park open-space also contributes significantly to the overall scenic setting formed by the Soldier's Home and its environs, visually linking the Shrine of the Immaculate Conception and Trinity College settings with those of LaDroit Park Historic District and the old campus of Howard University." Exhibit 514. As the NCPC therefore concluded: "any structures to be introduced with the District-owned part of McMillan Park should be widely spaced, not to exceed the 4-story

height of the Veterans Hospital, and preferably have lower transitional heights and picturesque rooflines to blend with the immediate landscape and the park environs.” Exhibit 514.

ii. The Commission finds that the massive scale of the proposed development would overwhelm and dominate most of the significant character-defining features of the site, especially the sand filtration towers on the North Service Court, and would obliterate important views of those features. Exhibits 34B, 532. Nothing in the Applicant’s post-hearing submission rebuts this evidence. To the contrary, the Applicants’ sightline rebuttal study on internal views specifically acknowledges that “[w]the new construction, views across the plain to the north from the southern third and the service courts will be different than they were historically.” Applicants’ Post-Hearing Submission, Exhibit H, at 10.

iii. While the Applicants’ sightline study attempts to downplay the impact of the development on external views of the U.S. Capitol and other external sightlines, greater deference is owed to the expert findings of the NCPC on this issue.

iv. The Commission finds that the Applicants’ reliance on certain actions and statements of the Historic Preservation Review Board (“HPRB”) as demonstrating that the project as a whole is in accord with historic preservation values and policies, is misplaced. The record is clear that the HPRB specifically found that “the project will result in substantial demolition of character-defining features and the redevelopment will compromise the open-space quality of the site, the SHPO concludes that the project does not meet the *Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* and advises the District to forward the plans to the Advisory Council for comment.” Exhibit 6C. The HPRB also found that the extensive demolition of historic structures “is not consistent with the purposes of the preservation act.” *Id.* All other statement by the HPRB regarding compliance with the covenants or with the design concept proposed is in recognition that “the applicant will need to establish that the proposed demolition will result in a project of special merit before the Mayor’s Agent for Historic Preservation. Exhibit 776.

h. Parks, Recreation and the Open Space (“PROS”) -3.3 Other Significant Open Space Networks. “McMillan Reservoir is identified as a significant element in the element of the Comprehensive Plan, which states that “A unique open space network comprised primarily of major federal facilities, cemeteries, and institutional uses is located just north of the city’s geographic center, in an area otherwise lacking in public parkland. The network includes *McMillan Reservoir*, the Armed Forces Retirement Home, Rock Creek Church Cemetery, National Cemetery, and Glenwood, Prospect Hill,

and St. Mary's Cemeteries. This area was already established as a major recreational ground for Washington in the 19th century. Its role as such was confirmed by the 1901 McMillan Plan, which recognized the dual function of these lands as functional facilities and passive open spaces. While public access to many of these properties is restricted today, their presence as an open space corridor is plainly visible on aerial photos of the city." 10A DCMR § 814.2 (emphasis added)

The Commission finds that, regardless of whether active park use was part of the original historic significance of the site, the record is clear that the sand filtration site has had a long history of public recreation use prior to World War II, and that the destruction of two-thirds of this space represents a net loss of park land for an area that has fewer parks and recreation areas than any other Ward in the city. Exhibit 540.

i. **PROS-3.3.1 Policy: North-Central Open Space Network:** "Protect and enhance the historic open space network extending from McMillan Reservoir to Fort Totten. As future land use changes in this area take place, an integrated system of permanent open spaces and improved parks should be maintained or created." 10A DCMR 814.5

As noted in Findings No. 28 (a) and 29(g), two-thirds of the McMillan Park open space would be destroyed under the proposed PUD and map amendment. The Commission finds that the Applicants' plan directly contravenes both the spirit and the letter of PROS-3.3.1.

j. The Applicant has cited other provisions of the Comprehensive Plan Major Elements in an effort to establish that the project would not be inconsistent with the Comprehensive Plan. *See* Exhibit 6E. The cited provisions involve city-wide general policies and objectives, such as those regarding housing, economic growth, and environmental policy. However, as noted above, the specific land use designation and textual guidance provided by the Comprehensive Plan contemplate that McMillan Park will be a moderate/medium density land use. The Commission finds that it is the specific land use designation for McMillan set forth in the Future Land Use Map and the Area plan that must be given primacy over general city-wide policies.

8. Under Sections 2403.5 and 2403.8, the Commission is obliged to evaluate the proposed amenities and to balance their relative values, the degree of development incentives offered, and any potential adverse impacts. For the reasons stated below, the Commission determines that the proposed amenities are insufficient to warrant the dramatic increase in development density being requested.

- a. With respect to section 2403.9(a), architecture and urban design, the Commission concludes, as set forth in Finding 29(a), that the project is inappropriate for the site by virtue of the intensity of development on this historically significant open space area that is an essential element key element of the McMillan Plan of 1902, and the proposed heights, which obstruct numerous important sightlines.
- i. The destruction of some of the most architecturally unique and beautiful structures in the City and the replacement of these structures and features with the undistinguished architectural features of the new buildings, whose inappropriate scale obscures the view of the historic sand bins that are being preserved simply does not constitute a benefit that outweighs the project's destructive impact.
- ii. The Commission notes that the applicant could have achieved all of the proffered public benefits and amenities with a C-2-A zoning classification; the principal effect of a C-3-C zone is to permit a 130-foot medical office building.
- b. With respect to section 2403.9(a)), **Urban Design, Architecture, Landscaping, Open Space, Site Planning, and economic land utilization** the Commission is unpersuaded that the design, architecture, site planning and landscaping provides a sufficient benefit to outweigh the potential adverse effect of the development. The small amount of open space preserved in the development cannot be considered a benefit or amenity any more than preserving a single historic structure while demolishing an entire historic district. The proposed 130-foot medical office building would have a scale, height and density ill-suited for this important site. As noted in Conclusion of Law 8(f), there is no evidence that the proffered benefits and amenities could not have been achieved with a zoning district appropriate to the site's moderate/medium density designation in the Comprehensive Plan. On balance, there are no benefits that address, much less outweigh, the potential adverse effects of the development, including the adverse traffic impacts and the loss of distinguished architecture on the site.
- c. With respect to section 2403.9(c), **Effective and safe vehicular and pedestrian access; transportation management measures, connections to public transit service, and other measures to mitigate adverse traffic impacts**, the Commission concludes that the proffered traffic measures will not mitigate the project's adverse traffic impacts and therefore do not constitute a public benefit that outweigh the potential adverse effects of the development on traffic operations near the site.
 - i. As noted in Findings Nos. 28(b) and 29(b), the traffic impacts resulting from the development will be adverse, notwithstanding the

- implementation of each of the transportation improvements and transportation demand management (“TDM”) recommended by DDOT
- ii. The only additional mitigation proposed is to establish trip caps on vehicles the parking garage entry and exist on First Street that will be enforced through monitoring. M..A. Tr. at 132 (May 13, 2014).
 - iii. However, given that the monitoring will occur when the project achieves 90 % residential occupancy and 85 % commercial occupancy, there is no meaningful consequence or penalty that will attach at that late date from exceeding the trip cap. The Applicant has obtained no commitment for improved public transit or new Circulator services from WMATA, and such service is not within the power of the Applicants to provide or this Commission to direct. As a result, this hoped-for transportation amenity cannot be considered sufficiently “measurable and able to be completed or arranged prior to the issuance of a Certificate of Occupancy,” as required by the PUD regulations. 11 DCMR § 2403.6(b).
 - iv. The Commission finds that the proffered private shuttle buses cannot, on balance, address, much less outweigh, the potential adverse effects of the development on traffic operations near the site. The record has established that the Applicant’s proposed traffic improvements and transportation demand management (“TDM”) measures will not prevent traffic conditions from degrading to a level of service of F, a failing grade. As for the proposed TDM program, as the Applicant’s own expert has conceded, visitors to the medical office building are unlikely to utilize car-sharing, bicycling, or transit, particularly given the one-mile distance to the nearest Metro. The Commission has insufficient evidence to conclude that a plan of the sort being proposed will actually have any mitigating impact.
- d. With respect to section 2403.9(d), **Historic preservation of private or public structures, places or parks**, the Commission concludes that the limited preservation of historic structures and creation of parks will not mitigate the project’s adverse impacts on this historic open space. The Commission rejects the clam of the Applicant that this factor is satisfied by the limited preservation of structures and features. As noted in Findings No. 28(a), the Applicants’ plan calls for the destruction of 95% of the remaining underground cells. The Commission credits the testimony showing that the massive height and bulk of the proposed apartment building would loom over and dominate the sand filtration towers in the northern maintenance corridor loom site. The proposed siting and design of 161 townhouses are also too close to the south maintenance corridor and are not

compatible with the historic character of the McMillan Park site. Moreover, the massive and intensive development contemplated by the Master Plan destroys the vast majority of open space and landscape features on the site. As noted in Conclusion of Law 9(a), the proffered preservation of a limited number of structures and features is entirely outweighed by the project's destruction of two-thirds of the historically significant structures, landscape features, and open space.

- e. Section 2403.9(e), **Employment and training opportunities**, is not met here. Other than the short-term construction jobs, which would provide employment opportunities with any development proposal, the anticipated employment benefits flowing from the Medical Office Building are entirely speculative. As noted in Findings No. 29(d), the Applicants have secured no tenant commitments and have done no serious studies showing a need for additional medical offices. In light of the very stiff competition that this building will receive from the 2.2 million square feet of office space proposed for the AFRH site, the accuracy and strength of the forecasted number of jobs that the Applicant is claiming is highly questionable.
- f. With respect to section 2403.9(f), dealing with **housing and affordable housing**, the Commission acknowledges the 18% set-aside for affordable housing, but nonetheless concludes that these housing benefits could be achieved without severe adverse effects, which are largely a product of other aspects of this development proposal, for the following reasons:
- (1) A PUD with a moderate density commercial zone district such as C-2-A would provide sufficient flexibility to permit the Applicant to develop the site with the proffered number of market rate and "affordable" units, without the highly destructive impact on this unique historic and open space.
 - (2) There is no evidence in the record to suggest that an alternative development proposal consistent with the site's moderate/medium density land use designation could not be profitable or viable. Given that the District of Columbia chose to enter into an exclusive rights agreement with VMP, District does not have the advantage of having reviewed alternative development proposals that a more competitive process would have afforded.
- g. Under section 2403.9(h), which deals with **environmental benefits**, there is a modest benefit in terms of sustainable design and a green roof and LEED certification, and storm water management. However, , these measures do nothing more than mitigate the impacts of adding over 1.5 million square feet of

buildings to what is a largely pervious open space area that acts as a natural storm management system. The Commission notes that the improvements to stormwater management are largely being undertaken by the City independent of this project. The Commission finds that the environmental measures being undertaken by the Applicants do no more than mitigate some of the adverse environmental impacts generated by the project itself, and that the relative value of these measures is outweighed by the negative adverse impacts on the environment, historic resources, open space, viewsheds, and traffic resulting from intensity of development sought by the Applicants.

- h. Under sections 2403.9(i) and (j), **other public benefits and project amenities**, the principal amenity feature appears to be the provision of a grocery store, the 6.2 acre park and community center, and certain cash payments to community groups. The Commission concludes, however, that these amenities are not of significant value to offset the impacts of the development as a whole for the following reasons:
- i. The proposed for a grocery store could be achieved by re-zoning the site to a zone district more appropriate to the site's moderate density commercial designation, such as C-2-A, which would permit a 52,920 square foot grocery store with the .74 FAR proposed. 11 DCMR §§ 701.4(i), 771.2. Although the C-2-A zone district would require a lower height than the current plans for a 77-foot high building (no more than 50 feet without a PUD, 65 feet with a PUD), that height limit would reduce the impact on the important sight lines and internal and external views currently afforded by the site.
 - ii. Moreover, the Commission is unpersuaded by the Applicant's efforts to tie this amenity to the Medical Office Building. There is no evidence that the viability of this grocery store depends on the patronage from the Medical Office Building.
 - iii. The Commission addresses the park in discussing the adequacy of mitigation of adverse effects. As noted in Finding No. 28(a), two thirds of the McMillan Park open space would be destroyed. While the provision of a 6.2 acre park is certainly beneficial, the park is more in the nature of mitigation rather than a benefit, and it does not outweigh the project's overall adverse effects on parks and open space.

- iv. Likewise, the cash payments could be offered under a less intensive development proposal, and do not outweigh the project's adverse impacts.

9. Section 2304.6 of the Zoning Regulations requires all public benefits to meet the following criteria: "Benefits shall be tangible and quantifiable items; and (b) Benefits shall be measurable and able to be completed or arranged prior to issuance of a Certificate of Occupancy."

- a. As noted in Finding No. 29(d), the Applicant's claimed employment benefits, particularly with respect to the projection of permanent jobs from the Medical Office Building, are vague and unquantifiable. With no commitments or even letters of intent from any potential tenants and with substantial competition nearby from the intensive office development that will precede the proposed Medical office Building at the AFRH project, these projected employment benefits are unlikely to be completed or arranged prior to issuance of a Certificate of Occupancy,
- b. As noted in Finding No. 28(b), the proffered measures to mitigate the severe adverse effects on traffic from the estimated 31,500 additional daily trips generated by the development are also unlikely to be completed or arranged prior to issuance of a Certificate of Occupancy. The Applicant has obtained no commitment for improved public transit or new circulator services from WMATA
- c. The establishment of monitoring and trip caps are also unlikely to result in any tangible or quantifiable benefit since, as noted in Finding No. 5(c), there is no meaningful consequence or penalty that will result from exceeding the trip cap. The Applicant has obtained no commitment for improved public transit or new circulator services from WMATA here,
- d. There is no evidence that Applicants' estimate that 24,000 trips will be made by transit is able to be completed or arranged prior to issuance of a Certificate of Occupancy, given the site's one-mile distance from the closest Metrorail station. Likewise, there is insufficient evidence that the proposed TDM measures will in any way effectively mitigate the adverse effects of such an intensive development in an area not served by Metrorail.

10. The Commission concludes that the adverse traffic impacts of adding at least 31,500 daily vehicle trips detailed in Findings No. 28(b) are not capable of being mitigated and are not outweighed by the project's benefits.

11. The Commission concludes that the project's serious adverse impacts detailed in Findings No. 28(a) on one of the City's most significant historic site, open space, and important sightlines are not in any way mitigated by the limited preservation and open space provided for in the development plans and are not outweighed by the project's benefits.

12. Accordingly, the Commission concludes that that the impact of the project on surrounding areas and government operations is unacceptable, that these adverse impacts are not capable of being mitigated, and are not outweighed by the project's benefits. 11 DCMR § 2403.

13. The Commission has considered the views expressed by ANC 5E in this proceeding. While the ANC is normally entitled to "great weight," in this case, there is some doubt that the ANC's vote in fact related to the zoning action before this Commission but instead concerned an action to be taken by the Historic Preservation Review Board. Given that the ANC's action does not specifically address the factors or standards that this Commission is required to consider, this Commission's decision denying the application gives the ANC the appropriate degree of weight.

CONCLUSION

Accordingly, for the reasons stated above, it is hereby

ORDERED that the application Vision McMillan Partners, LLC and the District of Columbia requesting a first stage and consolidated review and approval of a planned unit development ("PUD") application and related zoning map amendment for the McMillan Sand Filtration is hereby **DENIED**.

VOTE: __-__ ()

BY ORDER OF THE D.C. ZONING COMMISSION
Each concurring member approved the issuance of this order.

ATTESTED BY:

SARA BARDIN, DIRECTOR
OFFICE OF ZONING

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR §3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR §3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR §3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.D. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. CODE §2-1401.01 *ET SEQ.*, (THE "ACT"), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION THAT IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

CERTIFICATE OF SERVICE

I hereby certify that copies of these proposed findings of fact and conclusions of law were served electronically this 7th day of July, 2014 upon Carolyn Brown, counsel for the applicant at carloyn.brown@hollandknight.com upon Association, ANC 5E Chair Sylvia Pickney, at 5E04@anc.dc.gov, and ANC 4E SMD Commissioner Diane Barnes, at 5E09@anc.dc.gov



Andrea Ferster