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September 15, 2014

D.C. Zoning Commission  
One Judiciary Square  
441 4<sup>th</sup> Street, N.W 2<sup>nd</sup> Fl  
Washington, D.C. 20001

Re: ZC Case No. 13-14 - Reply of Friends of McMillan Park to  
Applicant's Second Post-Hearing Submission

Dear Commissioners:

Friends of McMillan Park ("FOMP"), a party in opposition to the above-referenced application for a Planned Unit Development ("PUD") hereby responds to the submission made by the Applicant Vision McMillan Partner ("VMP") on August 25, 2014, responding to a series of questions posted by this Commission at the decision meeting set forth July 28, 2014.

Consistency with the Comprehensive Plan

Neither the Applicant's submission of August 25, 2014, nor its submission of September 15, 2014, address the concerns expressed by this Commission that the 130-foot building and 110-foot heights permitted by the proposed high-density C-3-C and CR zoning would be inconsistent with the Comprehensive Plan's medium density residential/moderate density commercial/ parks, recreation, and open space land use designation for the site. This designation was approved by the National Capital Planning Commission ("NCPC") in 1990 with the direction that development on the site must 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.

VMP's response was to eliminate a single floor from the Medical Office Building. However, the comment letter submitted by NCPC executive director Marcel Acosta, filed August 25, 2014, squarely and definitely concludes that the heights of the buildings on the site, even with the height reduction of the Medical Office Building to 115 feet, are not consistent with a moderate-density commercial zone district, which typically "include

C-2-A, C-2-B, and C-3-A, [and] which allow[s] building heights up to 65 feet.” Exhibit 850, at 4.

More importantly, the NCPC letter concludes that “the C-3-C zoning requested as part of the McMillan development is typically considered to be a high-density commercial zone.” *Id.* The NCPC states that this high density zoning and development “*appears to be inconsistent with the Comprehensive Plan policies specific to the McMillan site, and the land use designations show on the Future Land Use map.*” *Id.* (emphasis added) This finding by the NCPC on inconsistency with the Comprehensive Plan is independent of the NCPC’s specific comments about the impact on the view from the AFRH-W. It is and remains a powerful repudiation of the Applicant’s attempt to argue that the high-density zoning district proposed by VMP is consistent with the Comprehensive Plan designation for this historically important and sensitive site.

VMP’s latest design change, described in its submission of September 15, 2014, does not alter the heights that the NCPC previously found were incompatible with the Comprehensive Plan designation for the site. Instead, the new design simply shifts the mass of the Medical Office Building 15 feet west.<sup>1</sup> While the NCPC, in its letter dated September 15, 2014, agrees that this design change “improves the view from Scott Statue” and resolves the NCPC’s objections about the impact of building heights on views from the AFRH-W, nothing in the NCPC letter retracts its separate conclusion in its letter of August 25, 2014, that “the C-3-C zoning requested as part of the McMillan development is typically considered to be a high-density commercial zone.” Exhibit 850.

The NCPC has an important statutory role in the development of the D.C. Comprehensive Plan. The NCPC must review and approve all amendments to the Comprehensive Plan and must be given “appropriate meaningful continuing consultation throughout the planning process for the National Capital.” D.C. Code § 2-1002(a)(4)(F). One of the NCPC’s key consultation functions is to provide reports and recommendations to the Zoning Commission on “proposed amendments of the zoning regulations and maps as to the relation, conformity, or consistency of such amendments with the comprehensive plan for the National Capital.” *Id.* § 2-1006(a); *See* D.C. Code 6-641.05(a)(1)(B).

While the Zoning Commission is not bound by the NCPC’s recommendations, “[t]he Zoning Commission must accord substantial weight and respect to the NCPC’s statutorily authorized commentary, and the record must contain a strong basis for resort to a different interpretation.” *Capitol Hill Restoration Soc. v. Zoning Commission*, 380 A.2d 174, 184 (D.C. 1977), *overruled in part on other grounds*, *Citizens Ass’n of Georgetown v. Zoning Commission*, 392 A.2d 1027 (D.C.1978). As the 1990 Comprehensive Plan amendment record makes clear, the NCPC has recognized a strong

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<sup>1</sup> FOMP will provide its specific comments to this most recent (September 15<sup>th</sup>) revised design on September 22, 2014.

federal interest in development that occurs on the McMillan Sand Filtration Site. Exhibit 514.

The NCPS's letter of August 25, 2014, continues to provide a powerful rebuttal of the Applicant's view that the high-density zoning requested for this site should be approved, without regard to the effect of the latest design change on views from the AFRH-W. Accordingly, the request for a zoning map amendment to adopt the high-density zone districts of C-3-C and CR for the site should be denied.

### Traffic

VMP's submission of another "transportation performance plan" is not responsive to the Commission's concerns regarding the excessive overall traffic load that this project would generate and this Commission's request for commitments to provide specific transit services and traffic mitigation. Rather, this plan contains nothing more than vague promises to "coordinate" or "work with DDOT" to engage in future transportation planning to address future traffic conditions and future needs for transit services, VMP makes no concrete commitments to implement measures that will meet the demand for transit services and/or reduce the unacceptable levels of traffic generated by the site.

With regard to transit, VMP asserts that DDOT is "committed" to providing additional public transit capacity for 1,100 transit trips during the peak hour, but nowhere in the submission is there evidence of any such a commitment by DDOT. Rather, the only stated "commitment" is "to coordinate with DDOT and nearby institutions to provide a detailed final Transit Implementation Plan . . . [to] increase the peak hour transit capacity by 1,100 passengers," and provide "comparable off peak service." VMP Submission of 8/25, Exhibit B, at 2. A mere commitment to "coordinate" on a "transportation management plan" to address the transit gaps that will undoubtedly exist at the time a certificate of occupancy is issued does not constitute a "measurable" commitment that is capable of being "completed or arranged prior to the issuance of a Certificate of Occupancy," as required by the PUD regulations. 11 DCMR § 2403.6(b).

Moreover, notwithstanding VMP's suggestion, nothing in the letter from Deputy Mayor Jeffrey Miller makes any commitment toward transit service. Instead, the District of Columbia has committed only to time frames for installing "site infrastructure and public roadways," the rehabilitation of the historic resources identified . . . for preservation" and "construction of a community center." VMP Submission of 8/25, Exhibit G.

Likewise, DDOT's comment letter dated September 10, 2014, is utterly devoid any actual commitment to provide the needed transit services to accommodate the 24,414 transit trips daily, including approximately 1,700 trips during the PM peak hour, that the Applicant's traffic study show will be generated by the development. Exhibit 851. Instead, DDOT states only that DDOT intends to continue to "coordinate on the

development of the specific elements to be included in the Transportation Implementation Plan,” which services are dependent on “funding opportunities” that may never materialize. *Id.* .

Nor is there any such “commitment” in the letter supplied by an individual D.C. Councilmember “sharing” his “thoughts” and “expressing” his “support” for the Project (Exhibit 832D), as DDOT suggests. This letter from Councilmember McDuffie merely acknowledges DDOT’s pre-existing plans to begin “the study and planning process for the east-west circulator line before the end of this year” but does not in any way commit or bind the D.C. Council to appropriate or the D.C. government to spend a single additional dollar to provide enhanced transit service.

Recognizing implicitly that there is no DDOT commitment to provide capacity for additional transit trips, VMP’s proposed “Transportation Performance Plan” states that “[i]f public transit services enhancements are not possible by the Certificate of Occupancy for Phase I, the Applicant will fill any transit demand gaps through shuttles.” VMP Submission on 8/25/14, Exhibit B, at 2. However, again, this assertion is devoid of any time frame or measurable, quantifiable commitments, or more importantly, any associated conditions in VMP’s proposed order that would make this assertion an enforceable requirement. The only change made to VMP’s proposed order merely commits that “The Applicant shall implement the Transportation Performance Plan dated August 25, 2014, submitted to the record as Exhibit \_\_\_” VMP Submission of 8/25, Exhibit F, at 7.

VMP’s monitoring plan is equally insubstantial and devoid of any enforceable measures. First of all, the Transportation Performance Plan contains only two actually measurable and enforceable limits: a combined trip cap of 500 peak hour right turns at First Street and Healing Gardens driveways, and a limit on the length of queues from North Capital Street onto the site. VMP 8/26/14 Submission, Exhibit B, at 4. However, the Applicant’s own transportation study shows 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 the traffic generated by this and other background projects. Final Traffic Impact Study, at Figures 29, 30, and 31. Exhibit 31D. And yet no trip caps or monitoring is provided for these other failing intersections, which may be used as alternative roads to enter the site and bypass the left turns on North Capital Street to enter the site .

More importantly nothing in the transportation performance plans addresses in any meaningful way what will happen if the trip caps are exceeded. Instead, if trip caps are exceeded by 10% for two consecutive years, VMP will “conduct a robust survey of users to determine travel patterns to and from the site,” and then “develop an implementation plan to help meet monitoring goals.” VMP Submission of 8/25, Exhibit B, at 7. However, there is no mechanism to ensure that this new transportation demand management plan will be any more effective than the current one. Given the wholly

unrealistic projections for transit use at a site located from one mile from the nearest Metrorail station, the reality is that it will be impossible to address a violation of these trip caps, and VMP's monitoring plan is useless.

Moreover, the Applicant is proposing to serve only 1,100 of the projected 1,700 passengers per hour estimated by the Applicant in their traffic study, which is approximately 64% of the demand. Since there is not even a plan to accommodate these additional 600 peak hour transit trips, the projected number of single occupancy vehicles to be generated by this project must be adjusted to accommodate these additional trips.

Further, the site would be generating approximately 1,500 transit trips per hour during the daytime off-peak hours. DDOT and the Applicant have not addressed this issue on providing transit during off-peak hours to serve 1,500 passengers per hour. If the Applicant uses shuttle buses to serve the 1,500 passengers, depending upon the size of the shuttle buses, the hourly number of shuttles needed would range from a low of 38 trips (40 passenger bus) to a high of 94 trips (16 passenger capacity). On a daily basis, the number of shuttle bus trips would be 600 (40 passenger capacity) to a high of 1,500 (16 passenger capacity). The current development plans incorporate no transit staging area in the site plan. The suggestion that the impacts of this service could be mitigated when 80% of the site is occupied is unrealistic, if not impossible. At that time, the shuttles could only be staged on the public streets because there would not be adequate space on-site.

DDOT cites no authority or support for its belief that the provision of bikeshare docks, parking management plans, or carsharing spaces "will significantly decrease the usage of single occupancy vehicles." The Applicant's traffic study already assumed that 5 percent of the trips (451 persons) would walk or bike to the site in one hour. This is an unrealistic assumption to begin with and assuming that further decrease of single occupancy vehicles can be achieved by providing bikeshare docks, etc. is near impossible for a site located more than one mile from a Metrorail station. Indeed, the lack of dedicated bike lanes or off-road trails will be a significant disincentive to bikeshare use given the significant traffic using Michigan Avenue and nearby streets. Nor will electric car charging stations reduce travel demand. The lack of any enforceable obligations to reduce traffic renders the monitoring plan meaningless. VMP should be required to conduct a "robust" origin and destination study of traffic patterns *now* not later, and the penalty for exceeding trip caps must be a real, enforceable measure to reduce travel demand, not simply *another* study.

As VMP's own traffic report demonstrates, even assuming that 1,700 peak hour trips will be accommodated by transit trips, the development will generate 24,414 transit trips per day. As FOMP's traffic expert pointed out, "These numbers of bus transit use at a site located more than a mile from a Metrorail station is unheard of and almost impossible to achieve. Only 14 out of the total of 86 metro rail stations on the WMATA system have boardings that exceed the projected bus transit use at the site." Exhibit 835,

at 2.<sup>2</sup> This level of development at the site can only be supported by a Metrorail station at the site and not through the use of shuttle buses..

Finally, Applicant's traffic study shows that many of the intersections and roadways would operate at unacceptable levels even with the proposed Roadway Infrastructure Enhancements. These computations were made without incorporating the traffic impact of more than the 1,500 or so daily shuttle trips (100 transit and shuttle buses per hour) on the already congested streets surrounding the site. Given that the development plan has no staging area for transit services, these shuttles will be picking up or dropping off passengers on the public street network. Imagine the traffic gridlock that would result if Metro stations at Farragut North, Union Station, and Metro Center were eliminated, and all of these riders were left to take shuttle buses. That is the gridlock that will occur on a daily basis at the McMillan Site if this intensive development proposal is approved.

### Employment

VMP's post-hearing submission fails to provide any commitments or assurances that the Development will provide permanent employment opportunities for District of Columbia residents who are most in need of these jobs. The permanent jobs available on the site are primarily for skilled and trained healthcare workers. Implicitly recognizing that District residents most in need of employment opportunities will not possess the qualifications for the available jobs, VMP's "employment" plan consists exclusively of providing \$1 million toward the creation of the OpportunityMcMillan Fund, to be administered by the Community Foundation for the National Capital Region ("Foundation").

VMP indicates that \$300,000 of this fund would go to scholarships for "community residents" to pursue higher education, training or job-related certification, and \$700,000 in grants to "organizations whose core mission is workforce development." However, upon closer scrutiny, \$300,000 of this fund will be going to temporary construction job placement, "grants management and oversight," and "research, planning, and consulting support." Of the \$700,000 committed to "sustainable economic opportunity", it is unclear exactly how much of this fund will be going to actual job training since, as VMP acknowledges, it has not entered into a formal agreement with the Foundation. The Foundation's letter (Exhibit D-2) is framed entirely in generalities.

Nowhere does VMP specify the number of persons who will receive training from this Fund. There are no performance goals, no monitoring, and as a result, no way to ever measure the success of the training afforded by the Fund or ascertain whether the grant program has provided any new "employment opportunities." Thus, the

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<sup>2</sup> See [http://www.wmata.com/search/search6\\_results.cfm?cx=013460872174630858503%3A9b-e-rbpd2e&ie=UTF-8&q=Search&q=ridership+statistics&x=0&y=0](http://www.wmata.com/search/search6_results.cfm?cx=013460872174630858503%3A9b-e-rbpd2e&ie=UTF-8&q=Search&q=ridership+statistics&x=0&y=0).

establishment of the OpportunityMcMillan Fund does not constitute a “measurable” commitment to provide training and employment opportunities that is capable of being “completed or arranged prior to the issuance of a Certificate of Occupancy,” as required by the PUD regulations. 11 DCMR § 2403.6(b).

### Housing

VMP’s post hearing submission offers to set aside an additional four townhouse units for households earning no more than 80% of the AMI. As FOMP has pointed out, 80 % of AMI is currently \$86,000 for a family of four. None of the housing units, including the senior units, would be available to persons earning 30% AMI, where the greatest need for affordable housing exists.

The District of Columbia is giving VMP the exclusive rights to a valuable tract of real estate, and is paying for all VMP’s land development costs, including the costs of infrastructure/street improvements, storm water manager, and historic preservation. Under these circumstances, there is no justification for this Commission to grant the requested development bonuses afforded by the PUD and map amendment under the mantle of “affordable housing” without requiring the Developer to provide even a single unit of housing for lower income households.

### Conclusion

The Applicants have now been provided a second bite at the apple to provide measurable, quantifiable benefits, amenities and mitigation measures to attempt to offset the significant adverse impacts of their development proposal on this very sensitive and special historic site. They have failed to do so in this latest submission. No further bites of the apple for this application should be permitted. Instead, FOMP urges this Commission to deny the application.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of this Response to Applicant's Post Hearing Submission were served electronically this 15th day of September, 2014 upon Wayne Quin, counsel for the applicant at wayne.quin @hollandknight.com, upon ANC 5E Chair Sylvia Pickney, at [5E04@anc.dc.gov](mailto:5E04@anc.dc.gov), and ANC 4E SMD Commissioner Diane Barnes, at [5E09@anc.dc.gov](mailto:5E09@anc.dc.gov)



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