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April 24, 2015

Via IZIS

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

RE: Z.C. Order No. 13-14 – McMillan Sand Filtration Site
Opposition to Motion for Reconsideration

Dear Commissioners:

On behalf of Vision McMillan Partners, LLC, through the Deputy Mayor's Office for Planning and Economic Development, the applicant in the above-referenced matter, we hereby oppose the motion of the McMillan Coalition for Sustainable Development ("MCS D") to waive the rules to accept a request for reconsideration and re-argument. This response is timely filed pursuant to 11 DCMR § 3029.7.

1. The Commission Properly Denied Party Status to MCS D.

The Zoning Commission properly denied party status to MCS D as not meeting the requirements under the Commission's rules. The Commission determined that MCS D was not affected more significantly, distinctively or uniquely in character or kind by the proposed zoning action than those of other persons in the general public. 11 DCMR § 3022.3(f)(5); see Zoning Commission Hearing Transcript, May 8, 2015 ("Tr."), at 12-17. Nevertheless, out of an abundance of caution, the Commission requested MCS D to help clarify its request for party status but a representative from MCS D was not present at the hearing to respond to questions. Consequently, the Commission correctly denied party status based on the information supplied. Tr. at 19-21; see also Finding of Fact No. 10, Z.C. Order No. 13-14 (April 17, 2015).

It is the duty of the Commission to ensure that its proceedings are conducted in an orderly and timely fashion. The hearing notice clearly stated the start time of 6:30 p.m. for the hearing, and the Chairman convened the hearing at 6:35 p.m. The MCSD party status request was considered approximately 3-4 minutes later. The MCSD offered no explanation as to why it was not in the hearing room or other extenuating circumstances that excused its absence. Without such, there was no basis for the Commission to further reconsider the request for party status. Without party status, MCSD is precluded from filing a motion for reconsideration or re-argument and the Commission should deny the motion accordingly.

2. Alternatively, the Motion Does Not Provide Sufficient Grounds for Reconsideration or Re-Argument.

Pursuant to section 2029.6 of the Commission's rules, a motion for reconsideration or re-argument must indicate the alleged errors in the order. The only "new evidence" that MCSD provides is an alleged finding in a subsequent Mayor's Agent Order where the Mayor's Agent supposedly failed to refute that assertion the McMillan project was one of high density. MCSD's argument fails for two reasons. First, the Mayor's Agent Order was a separate proceeding to decide whether demolition permits should be issued for the underground cells. That decision is not binding or otherwise does not control any action of the Zoning Commission. Second, the Mayor's Agent specifically deferred to the Zoning Commission as the appropriate body to rule on matters of height and density. See *Re Vision McMillan Partners LLC et al.*, Mayor's Agent Decision and Order, April 13, 2015, at 8 ("Given that the current density has been explicitly approved by both the Zoning Commission and the Council, this [density] does not seem problematic in a preservation inquiry."). Thus, MCSD does not present any error in the Commission's order that needs to be redressed.

3. Conclusion

Based on the foregoing, the Commission should deny MCSD's request to waive the rules to accept its motion for reconsideration and re-argument. Alternatively, the Commission should deny the motion for reconsideration and re-argument as failing to allege an error in the Commission's order.

Respectfully submitted,

CastroHaase PLLC

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cc: Sharon Schellin, Office of Zoning (via email)
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Maxine Brown-Roberts, D.C. Office of Planning (via email)
Advisory Neighborhood Commission 1B (via first class mail)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing letter was service by email on April 24, 2015, on the following:

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