

**DC Office of the Attorney General**  
**441 4<sup>th</sup> Street NW, WDC 20001**

March 23, 2017

Dear Mr. Racine, and Mr. Bergstein,

DC for Reasonable Development was a petitioner in the case that vacated the Zoning Commission decision approving the demolition and privatization and mega-project at McMillan Park.

The Zoning Commission has prevented the public from participating in the vacate and remand proceedings so far, by keeping the record closed even to submit pre-hearing statements or even motions. See Attachment 1.

The Zoning Commission has not opened the record for electronic filings from the petitioner or anyone from the public. Commissioners expect the public to bring printed copies to the agency hearing on Thursday. Attachment 2.

The Secretary of the Zoning Commission has said the Chair of the Commission, Anthony Hood will not allow any motions from the aggrieved public to be considered by the Commission at all. Attachment 3.

This administrative posture follows on from the Commission denying a request by Friends of McMillan Park to defer the March 23 hearing for thirty days so that the public may have an opportunity to review and respond to the Applicant's electronic submission of more than 15 exhibits, consisting of 300+ pages. Attachment 4 and see >> <http://www.dcfeedback.com/fit2print/citywide/174>

Members of DC for Reasonable Development have asked me to send this note to you, and to ask for assistance.

The posture of the planning officials in this rehearing of the McMillan Park case has heavily prejudiced the public from receiving timely information for fair review and reasonable response regarding this critically important District matter of serious public interest.

Simultaneously, the process as it stands now is biased in favor of the Applicant who can put significant volumes of information on the record at will. Including putting information on the record at the last minute even though they had the information many weeks ago. This administrative posture has proceeded without any rationalization by the Commission, or the Office of Zoning..

We are compelled to inform you of this lack of due process in how the Commission is proceeding given the facts above. Considering how important this public property is to the future of our members and the public,

**We would ask:**

1. That your office request the Commission defer the March 23 hearing for 30 days, and set a subsequent timeline of submissions from parties.
2. Request that the Commission immediately open the record for public submissions, including electronic submissions, and keep the record open until the last hearing whatever date that may fall on.

We look forward to your response.

As signed,

/s/n **Chris Otten**, co-facilitator

DC for Reasonable Development

Partners in support of this request (inter-alia):

- DC Statehood Green Party Political Policy Action Committee
- Empower DC
- Justice First DC
- McMillan Coalition For Sustainable Agriculture
- One DC
- Union Artists
- Ward 5 Alliance for Equity
- Washington Legal Clinic for the Homeless
- Ward 5 ANC Commissioner Gayle Carley
- Environmental Policy Analyst Mel Peffers

[MARCH 23; 5AM]

## **ATTACHMENT 1**

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF LIMITED SCOPE PUBLIC HEARING**

**TIME AND PLACE:**                      **Thursday, March 23, 2017, @ 6:30 p.m.  
Jerrily R. Kress Memorial Hearing Room  
441 4th Street, N.W., Suite 220-South  
Washington, D.C. 20001**

**FOR THE LIMITED PURPOSE OF CONSIDERING THE ISSUES REMANDED BY  
THE DISTRICT OF COLUMBIA COURT OF APPEALS TO THE ZONING  
COMMISSION PERTAINING TO THE FOLLOWING APPLICATION:**

**CASE NO. 13-14 (Vision McMillan Partners LLC and the District of Columbia – First-  
Stage and Consolidated PUDs and Related Map Amendment @ 2501 First Street, N.W.  
(Square 3128, Lot 800))**

**THIS CASE IS OF INTEREST TO ANCs 5E, 5A, and 1B**

Through Zoning Commission Order No. 13-14, as corrected (“the Order”), the Zoning Commission for the District of Columbia (the “Commission”) approved an application for a planned unit development (“PUD”) pertaining to the McMillan Reservoir Slow Sand Filtration Site, located at 2501 First Street, N.W., Washington, D.C. (Square 3128, Lot 800) in Washington, D.C. (the “Property”). The application was submitted by Vision McMillan Partners, LLC, on behalf of the District of Columbia through the Deputy Mayor for Planning and Economic Development, the owner of the Property (collectively, the “Applicant”). The Order approved a first-stage and consolidated PUD and related map amendment to rezone the Property from unzoned to the CR and C-3-C zone districts. The parties in the case were the Applicant, ANC 5E, the ANC in which the PUD site is located, and Friends of McMillan Park (“FOMP”).

FOMP petitioned the District of Columbia Court of Appeals to review the Order. A division of that court decided to “vacate the Commission's order and remand for further proceedings.” *Friends of McMillan Park v. D.C. Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016) (the “Opinion”).

At its public meeting held January 30, 2017, the Commission voted to hold a limited scope public hearing on the issues remanded. The parties in the original case remain as parties in this remand and may present testimony and legal argument limited to the following issues, which are stated below using the same subject headings as used in the Opinion. The Applicant has the burden of proof as to all the issues.

## **A. Consistency with the Comprehensive Plan**

Subsection 2403.4 of the Zoning Regulations of 1958 (Title 11 DCMR)<sup>1</sup> requires the Commission 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.”

The Comprehensive Plan’s Future Land Use Map designates future uses at the McMillan site as “moderate density commercial,” “medium density residential,” and “parks, recreation, and open space.” The Commission agreed to permit to high-density development on the northern portion of the site concluding that, when the entire site is taken into account, the PUD’s overall density is consistent with that permitted in moderate-density commercial zones. The Court agreed with that interpretation. However, the Mid-City Area Element provides that development on the McMillan site “should consist of moderate- to medium-density housing, retail, and other compatible uses.” (10-A DCMR § 2016.9 (2016).) In response, the Commission found that permitting the high-density development was “a critical and essential part of fulfilling the parks, recreation, and open space designation of the Future Land Use Map, while at the same time achieving other elements of the Comprehensive Plan and the city’s strategic economic plan.” The Court concluded that further explanation was needed.

### **Issue No. 1**

- A. Could the other policies cited in the Order be advanced even if development on the site were limited to medium- and moderate-density use?
- B. If not, which of the competing policies should be given greater weight and why?

The Court also found that Commission failed to adequately address a number of provisions in the Comprehensive Plan that FOMP claimed weighed against approval of the PUD, including provisions discouraging the placement of large buildings near low-density residential neighborhoods (10-A DCMR §§ 305.11, 309.10, 309.15 (2016)), and a provision encouraging geographic dispersion of health-care facilities (10-A DCMR § 1105.1 (2016)).

### **Issue No. 2.**

Do these or other Comprehensive Plan policies cited by FOMP in the record of this case weigh against approval of the PUD?

## **B. Other Objections to the Commission’s Order**

After determining to vacate the Order based upon its Comprehensive Plan discussion, the Court briefly addressed “several additional issues that could affect proceedings on remand.” (149 A.3d at 1035.) Those additional issues are as follows:

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<sup>1</sup> Because this application was originally setdown for hearing prior to the repeal of the 1958 Zoning Regulations, it will be decided under the PUD standards existing prior to the September 6, 2016 repeal, but heard in accordance with the contested case provisions of Title 11-Z, Chapter 4 of the 2016 Zoning Regulations.

## **1. Preservation of Open Space**

Policy MC-2.6. of the Mid City Element provides in part:

Require that reuse plans for the McMillan Reservoir Sand Filtration site dedicate a substantial contiguous portion of the site for recreation and open space

The Court expressed its doubt that this policy was mandatory and therefore concluded that the “Commission might be able to permissibly conclude that the need to preserve open space justified the inclusion of some high-density development on the site.” (149 A.3d at 1036.)

### **Issue No. 3**

Is the high-density development proposed for the site the only feasible way to retain a substantial part of the property as open space and make the site usable for recreational purposes?

## **2. Adverse Impacts**

The 1958 PUD Regulations provide:

2403.3 The impact of the project on the surrounding area and the operation of city services and facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.

2403.8 In deciding a PUD application, the Commission shall 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.

The Court concluded that the Commission “failed to adequately address a variety of asserted adverse impacts of the PUD, including environmental problems, destabilization of land values and displacement of neighboring residents, and increased demand for essential public services.” (149 A.3d at 1036.)

### **Issue No. 4**

A. Will the PUD result in environmental problems, destabilization of land values, or displacement of neighboring residents or have the potential to cause any other adverse impacts identified by the FOMP in the record of this case.?

- B. If so, how should the Commission judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and these potential adverse effects.

#### **Issue No. 5**

- A. Will the PUD have a favorable impact on the operation of city services and facilities?
- B. If not, is the impact capable of being mitigated, or acceptable given the quality of public benefits in the project?

As to the issue of city services, the Commission notes the discussion in the Opinion concerning the failure of certain District agencies to respond to referrals made by the Office of Planning. At the time it voted to hold this hearing, the Commission requested that the Office of Planning again refer the application to the non-responding agencies. If less than all of the agencies fail to respond, the Commission will hear from the parties as to the significance, if any, of such non-response on the Commission's disposition of this issue.

If any party believes that the issues stated above do not accurately or fully reflect the issues remanded, that party must, no later than 3:00 p.m. on March 13, 2016, file with the Office of Zoning, and serve upon the other parties, a written statement identifying the asserted deficiency(ies) and offering revised language for the existing or any proposed additional issue identified. If no such submission is timely made by a party, that party is deemed to have agreed that the scope of this hearing fully encompasses the issues on remand.

In addition, any party by that same date and time may file a written statement responding to the remand issues stated above. No response to another party's filing will be accepted.

Other than these two submissions, and the Office of Planning and other agency reports discussed above, no submissions may be entered into the record by any party or person. During the hearing, the Commission will accept written statements offered by witnesses and exhibits offered by the parties.

The record in this remand proceeding includes the entire record of Zoning Commission Case No. 13-14. The Parties and public witnesses are to avoid repetitious testimony.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR Subtitle Z, Chapter 4.

#### **How to participate as a witness.**

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. Prior to speaking, each witness is requested to identify, by number, the remand

issue or issues being addressed, which should also be indicated on any written testimony. The applicable time limits for oral testimony are described below.

### **Time limits.**

For each segment of the hearing conducted on the dates listed above, the following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

- |                  |                |
|------------------|----------------|
| 1. Applicant     | 60 minutes.    |
| 2. FOMP          | 60 minutes     |
| 3. Organizations | 5 minutes each |
| 4. Individuals   | 3 minutes each |

Pursuant to Subtitle Z § 408.4, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

**ANTHONY J. HOOD, ROBERT E. MILLER, PETER A. SHAPIRO, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.**

**Do you need assistance to participate?** If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) five days in advance of the meeting. These services will be provided free of charge.

**¿Necesita ayuda para participar?** Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

**Avez-vous besoin d'assistance pour pouvoir participer?** Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

**참여하시는데 도움이 필요하세요?** 특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312 로 전화 하시거나 [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

**您需要有人帮助参加活动吗?**如果您需要特殊便利设施或语言协助服务(翻译或口译)·请在见面之前提前五天与 Zee Hill 联系·电话号码 (202) 727-0312, 电子邮件 [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) 这些是免费提供的服务。

**Quý vị có cần trợ giúp gì để tham gia không?** Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

**ለሚሳተፍ ዕርዳታ ያስፈልግዎታል?** የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እነዚህ አገልግሎቶች የሚሰጡት በነጻ ነው።



## **ATTACHMENT 2**



d.c. forrd <dc4reality@gmail.com>

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## Fwd: McMillan Park: Trouble Ahead, Case 13-14

1 message

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**Linwood Norman** <linwood.norman@gmail.com>

Tue, Mar 21, 2017 at 9:39 AM

To: "d.c. forrd" <dc4reality@gmail.com>

Hi Chris,

FYI -- Please see message from Donna Hanousek of the Office of Zoning that the record is closed to submissions from the public.

Linwood

----- Forwarded message -----

From: **Hanousek, Donna (DCOZ)** <[Donna.Hanousek@dc.gov](mailto:Donna.Hanousek@dc.gov)>

Date: Tue, Mar 21, 2017 at 9:33 AM

Subject: RE: McMillan Park: Trouble Ahead, Case 13-14

To: "[linwood.norman@gmail.com](mailto:linwood.norman@gmail.com)" <[linwood.norman@gmail.com](mailto:linwood.norman@gmail.com)>

Dear Linwood Norman:

The record in this case is closed to submissions from the public, as such, we cannot add your comments to the case record.

Thanks,  
Donna

Donna Hanousek  
Senior Zoning Specialist  
Office of Zoning | District of Columbia

441 4th Street, NW | Suite 200-S | Washington, DC 20001  
(202) 727-6311 (office) | (202) 727-0789 (direct) | (202) 727-6072 (fax)  
[www.dcoz@dc.gov](mailto:www.dcoz@dc.gov) | [Donna.Hanousek@dc.gov](mailto:Donna.Hanousek@dc.gov)

-----Original Message-----

From: [linwood.norman@gmail.com](mailto:linwood.norman@gmail.com) [mailto:[linwood.norman@gmail.com](mailto:linwood.norman@gmail.com)]

Sent: Tuesday, March 21, 2017 8:43 AM

To: ATD EOM MIS <[mayor@dc.gov](mailto:mayor@dc.gov)>; ATD EOM3 <[eom@dc.gov](mailto:eom@dc.gov)>; [bnadeau@dccouncil.us](mailto:bnadeau@dccouncil.us); Evans, Jack (COUNCIL) <[JACKEVANS@DCCOUNCIL.US](mailto:JACKEVANS@DCCOUNCIL.US)>; Evans, Jack (COUNCIL) <[JACKEVANS@DCCOUNCIL.US](mailto:JACKEVANS@DCCOUNCIL.US)>; Cheh, Mary (COUNCIL) <[MCheh@DCCOUNCIL.US](mailto:MCheh@DCCOUNCIL.US)>; Todd, Brandon (COUNCIL) <[BTodd@DCCOUNCIL.US](mailto:BTodd@DCCOUNCIL.US)>; [kmcduffie@dccouncil.us](mailto:kmcduffie@dccouncil.us); Allen, Charles (COUNCIL) <[CAllen@DCCOUNCIL.US](mailto:CAllen@DCCOUNCIL.US)>; [vgray@dccouncil.us](mailto:vgray@dccouncil.us); [vincegray2016@gmail.com](mailto:vincegray2016@gmail.com); [twhite@dccouncil.us](mailto:twhite@dccouncil.us); [trayonwhite2011@gmail.com](mailto:trayonwhite2011@gmail.com); [rwhite@dccouncil.us](mailto:rwhite@dccouncil.us); [abonds@dccouncil.us](mailto:abonds@dccouncil.us); [dgrosso@dccouncil.us](mailto:dgrosso@dccouncil.us); [esilverman@dccouncil.us](mailto:esilverman@dccouncil.us); Mendelson, Phil (COUNCIL) <[PMENDELSON@DCCOUNCIL.US](mailto:PMENDELSON@DCCOUNCIL.US)>; DCOZ - ZC Submissions (DCOZ) <[zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov)>  
Subject: McMillan Park: Trouble Ahead, Case 13-14

Dear Elected Representatives,

Destroying McMillan Park by converting it to high density commercial/residential use will cause severe harm to adjacent low and moderate density residential areas in the future.

By dramatically veering away from the city's plans for substantial open space at McMillan Park (6 acres is not substantial when you consider we have 25 acres of open space at McMillan now), the threat to the surrounding community is heightened, especially because of the recent changes to the minimum area requirements for PUDs.

McMillan Park is a historically landmarked site, providing views that are second to none in the city. I always enjoy these views when I walk and drive by the park. This will all be forever lost if this mega project moves forward. It will negatively impact the value of the surrounding community by removing the views and the historic fabric of the site and by creating extreme vehicular congestion and pollution.

Is your next step to create a PUD at Meridian Hill Park? Would you even consider such as idea at Meridian if that land was flat and suitable for construction?

**WE WANT A DESIGN COMPETITION AT MCMILLAN!** We want a real discussion of alternative designs, not a rehash of the original plan. I do not agree with the developer's pleas that no other design is even possible.

The PUD must be denied, as the Court said that after a rehearing the Commission can choose to go in the direction of a completely different project. The Court is right. This project must be significantly changed to meet the city's policies to protect our low and moderate sized neighborhoods.

I submit these comments as a supporter of DC for Reasonable Development and Friends of McMillan Park.

Respectfully,

Linwood Norman  
135 T Street NW  
Washington, DC 20001

Linwood Norman  
[linwood.norman@gmail.com](mailto:linwood.norman@gmail.com)  
8048370737

Ward: 5  
Zip: 20001

### **ATTACHMENT 3**



d.c. forrd <dc4reality@gmail.com>

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**RE: NEW MOTION--> ZC 13-14: Motion FOR LEAVE in Support of FOMP's Request**

1 message

**Schellin, Sharon (DCOZ)** <sharon.schellin@dc.gov>

Thu, Mar 16, 2017 at 8:08 PM

To: "d.c. forrd" <dc4reality@gmail.com>

Cc: "Racine, Karl (OAG)" <Karl.Racine@dc.gov>, "Bergstein, Alan (OAG)" <alan.bergstein@dc.gov>

Mr. Otten,

I was acting at the direction of the Chairman of the Commission. Thank you.

**Sharon S. Schellin**

**Secretary to the Zoning Commission**

**Office of Zoning** | *District of Columbia Government*

441 4<sup>th</sup> Street, N.W. | Suite 200-S | Washington, D.C. 20001

(202) 727-0340 direct | (202) 727-6072 fax

[www.dcoz.dc.gov](http://www.dcoz.dc.gov) | [Sharon.Schellin@dc.gov](mailto:Sharon.Schellin@dc.gov)

**From:** d.c. forrd [mailto:[dc4reality@gmail.com](mailto:dc4reality@gmail.com)]

**Sent:** Thursday, March 16, 2017 6:40 PM

**To:** Schellin, Sharon (DCOZ)

**Cc:** Racine, Karl (OAG)

**Subject:** Re: NEW MOTION--> ZC 13-14: Motion FOR LEAVE in Support of FOMP's Request

Secretary, There is no mechanism for you to deny this Motion. PERIOD.

As I read the rules, you are to be the agency archive keeper and to help the Commission process these sorts of Motions, not make determinative decisions about the substance or request merits in the Motions. if I am wrong, please cite me the regs or statute that allows you to do this.

Whereas I have heavily cited the rules that say Motions can be sent to the Commission for their review, you have chosen to use administrative euphemism to not bring these Motions forward to the Commission as you are required. By discussing some difference in a "procedural order" and some "rules" your posture does not stand the test of reasonable agency interpretation.

In fact, your choice to not deliver these DC4RD Motions is absolutely on par with allowing the Applicant to drop 300 pages of documents just 10 days before the rehearing to unfairly put the public at a clear disadvantage in these rehearing procedures.

I am appalled by this railroading on all fronts. Wow.

I am attaching both Motions again, and am asking again to pick one or bring both to the Commission for their review and decision.

Regards,

Chris Otten, co-facilitator

DC for Reasonable Development

On Thu, Mar 16, 2017 at 6:23 PM, Schellin, Sharon (DCOZ) <[sharon.schellin@dc.gov](mailto:sharon.schellin@dc.gov)> wrote:

There is no mechanism to ask leave from a procedural order, only from a rule.

There will be no more responses on issue. The Commission has scheduled a Special Public Meeting for Monday to consider the party's request and responses from the other parties, if they choose to file one. Thanks, Sharon

**Sharon S. Schellin**

**Secretary to the Zoning Commission**

**Office of Zoning** | *District of Columbia Government*

441 4<sup>th</sup> Street, N.W. | Suite 200-S | Washington, D.C. 20001

(202) 727-0340 direct | (202) 727-6072 fax

[www.dcoz.dc.gov](http://www.dcoz.dc.gov) | [Sharon.Schellin@dc.gov](mailto:Sharon.Schellin@dc.gov)

**From:** d.c. forrd [mailto:[dc4reality@gmail.com](mailto:dc4reality@gmail.com)]

**Sent:** Thursday, March 16, 2017 4:35 PM

**To:** Schellin, Sharon (DCOZ) <[sharon.schellin@dc.gov](mailto:sharon.schellin@dc.gov)>

**Cc:** [shane.dettman@hklaw.com](mailto:shane.dettman@hklaw.com); [afenster@railstotrails.org](mailto:afenster@railstotrails.org); Steingasser, Jennifer (OP) <[jennifer.steingasser@dc.gov](mailto:jennifer.steingasser@dc.gov)>; Barnes, Dianne (SMD 5E09) <[5E09@anc.dc.gov](mailto:5E09@anc.dc.gov)>; Thomas, Bradley Ashton (SMD 5E05) <[5E05@anc.dc.gov](mailto:5E05@anc.dc.gov)>; Edwards, Ronnie (SMD 5A05) <[5A05@anc.dc.gov](mailto:5A05@anc.dc.gov)>; ANC 1B Office (ANC 1B) <[1B@anc.dc.gov](mailto:1B@anc.dc.gov)>; ATD EOM3 <[eom@dc.gov](mailto:eom@dc.gov)>; Racine, Karl (OAG) <[Karl.Racine@dc.gov](mailto:Karl.Racine@dc.gov)>

**Subject:** NEW MOTION--> ZC 13-14: Motion FOR LEAVE in Support of FOMP's Request

Dear Secretary,

I have attached a new Motion, that I am respectfully asking you bring to the Commission and put on the agency record.

I am citing regulations that allow the public to ask the Commission for leave of the rules by way of motion.

Submission of Motions to the Commission, like any adjudicative agency is indeed allowed by the zoning regulations (I've cited those in our Motion), as well by any normal adjudicative process throughout the District, nation, even the law-abiding world.

To the contrary, I cannot find any citation that says the Secretary of the Commission can prevent access to these Motions by the Commission or that says the Secretary has the authority to act as a gatekeeper for what motions are seen or not by the Commission.

I have attached a new Motion per the zoning regulations and as such, I am asking that you forthrightly bring to the Commission the attached amended Motion for Leave in Support of FOMP's Request for Deferment.

Regards,

Chris Otten

DC for Reasonable Development

On Thu, Mar 16, 2017 at 4:03 PM, Schellin, Sharon (DCOZ) <[sharon.schellin@dc.gov](mailto:sharon.schellin@dc.gov)> wrote:

Your submission is being returned as it cannot be accepted based on the Notice of Limited Scope Hearing. Other than the two submissions, and the Office of Planning and other agency reports discussed in the notice, no submissions may be entered into the record by any party or person. During the hearing, the Commission will accept written statements offered by witnesses and exhibits offered by the parties. Thanks, Sharon

**Sharon S. Schellin**

**Secretary to the Zoning Commission**

**Office of Zoning** | *District of Columbia Government*

441 4<sup>th</sup> Street, N.W. | Suite 200-S | Washington, D.C. 20001

(202) 727-0340 direct | (202) 727-6072 fax

[www.dcoz.dc.gov](http://www.dcoz.dc.gov) | [Sharon.Schellin@dc.gov](mailto:Sharon.Schellin@dc.gov)

**From:** d.c. forrd [mailto:[dc4reality@gmail.com](mailto:dc4reality@gmail.com)]

**Sent:** Thursday, March 16, 2017 3:48 PM

**To:** Schellin, Sharon (DCOZ) <[sharon.schellin@dc.gov](mailto:sharon.schellin@dc.gov)>; DCOZ - ZC Submissions (DCOZ) <[zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov)>; Hanousek, Donna (DCOZ) <[Donna.Hanousek@dc.gov](mailto:Donna.Hanousek@dc.gov)>

**Cc:** [norman.glasgowjr@hklaw.com](mailto:norman.glasgowjr@hklaw.com); [shane.dettman@hklaw.com](mailto:shane.dettman@hklaw.com); [afferster@railstotrails.org](mailto:afferster@railstotrails.org); Steingasser, Jennifer (OP) <[jennifer.steingasser@dc.gov](mailto:jennifer.steingasser@dc.gov)>; Barnes, Dianne (SMD 5E09) <[5E09@anc.dc.gov](mailto:5E09@anc.dc.gov)>; Thomas, Bradley Ashton (SMD 5E05) <[5E05@anc.dc.gov](mailto:5E05@anc.dc.gov)>; Edwards, Ronnie (SMD 5A05) <[5A05@anc.dc.gov](mailto:5A05@anc.dc.gov)>; ANC 1B Office (ANC 1B) <[1B@anc.dc.gov](mailto:1B@anc.dc.gov)>; ATD EOM3 <[eom@dc.gov](mailto:eom@dc.gov)>; Racine, Karl (OAG) <[Karl.Racine@dc.gov](mailto:Karl.Racine@dc.gov)>

**Subject:** ZC 13-14: Motion in Support of FOMP's Request

Dear Secretary,

Please see attached Motion to bring to the Commissioners in ZC Case 13-14, along with a Certificate of Service.

Please contact me with any questions.

Regards,

Chris Otten, co-facilitator

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DC for Reasonable Development

[202-810-2768](tel:202-810-2768)

[dc4reason.org](http://dc4reason.org)

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#### **Attachment 4**



**DISTRICT OF COLUMBIA ZONING COMMISSION**  
**441 4th Street NW, Suite 200 South**  
**Washington, DC 20009**

**Motion for Leave of the Commission to**  
**Support Friends of McMillan Park Request for Deferment**  
**ZONING COMMISSION REHEARING, ZC CASE NO. 13-14**

On or about February 1, 2017, the Office of Zoning announced public notice of the rehearing of ZC case No. 13-14. The Commission instituted significant restrictions on who and what can be filed in this rehearing. “Other than these two submissions, and the Office of Planning and other agency reports discussed above, no submissions may be entered into the record by any party or person.” See page 4 of Exhibit 889, Zoning Commission Notice of Limited Scope Public Hearing.

**Pursuant to 11 DCMR § Z-403.7(a), and generally, 11 DCMR § Z-407, DC for Reasonable Development (“DC4RD”) submits this Motion for Leave of the Commission to Support Friends of McMillan Park Request for Deferment.**

DC4RD is a Petitioner in DC Court of Appeals Case Nos. 15-AA-0493, 15-AA-0525, 15-AA-0536, 15-AA-0572, and 15-AA-1008. These cases were collectively adjudicated on December 8, 2016, in favor of the Petitioners, vacating wholly Zoning Commission Order No. 13-14. More to the point, the DC Court of Appeals panel of judges reference, *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment* (D.C. Nov. 10, 2016), in suggesting that additional zoning hearings may result in the Commission "reaching a different result" from the first set of hearings in 2014.

As it is, there have been no submissions to the agency record and no zoning hearings held on this matter in nearly three years. Now comes the Applicant, just a mere ten days before a new set of hearings are to begin on March 23, 2017, with the submission of documentation consisting of more than three-hundred pages stretching across at least seventeen submitted exhibits. Exhibits 895, 896A-896P on the agency record.

The Applicant's response in opposition to FOMP's request for deferment dated March 16, 2017 (Exhibit 901) demonstrates the unnecessary pressure the Applicant wants to insert into these new hearings, thus jeopardizing the standing and due process of FOMP, DC4RD, and the public in review of the Applicant's voluminous new material that may serve as basis for any new decision of the Commission.

To summarize, the Applicant is relying on at least three-hundred pages of new information to pursue re-approval of a high-density zoning application and project at McMillan Park. Under normal circumstances and a typical zoning application process, a significant volume of documents like those just entered into the record by the Applicant would have been available at least several weeks before any hearing was scheduled. Time for review of application materials is especially important in a contested case with opposition parties. As such, FOMP is heavily prejudiced by the current rehearing timeline and review process, and as well, DC4RD members and the public are surprised too.

Per 11 DCMR Z-401.10, DC4RD strongly supports FOMP's request to defer the scheduled rehearing in ZC Case No. 13-14, currently set for March 23, 2017, to at least 30 days out, preferably more than 45 days, so to provide the due process and time needed for

opposition parties to fairly prepare arguments and evidence that may help the Commission reach a different conclusion about the case as suggested by the Court. *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment* (D.C. Nov. 10, 2016),

Moreover, by and of this motion, DC4RD in no way acquiesces our serious concern that the “limited-scope” posture presented to the public by the Zoning Commission and the Office of Attorney General is not at all appropriate or fair given how inter-connected the facts are with the policies of the DC Comprehensive Plan regarding one of DC's biggest PUD cases centered on one of the last remaining large open public green spaces left in our city, McMillan Park.

For DC for Reasonable Development, I submit this Motion on the 16th day of March, 2017, and ask the Commission to grant FOMP's request for deferment to allow a fair review of the aforementioned stacks of new information just recently submitted to the zoning record in ZC Case No. 13-14.

Submitted by,

***/s/n Chris Otten***

Chris Otten, co-facilitator  
DC for Reasonable Development (“DC4RD”)  
202 810 2768 || dc4reality@gmail.com

## CERTIFICATE OF SERVICE

*I HEREBY CERTIFY* that a copy of the foregoing Motion for Leave of the Commission to Support of Friends of McMillan Park Request for Deferment was served to the following parties on March 16, 2017, by email to:

*Counsel for Applicant*

Norman Glasgow, Jr. & Shane Dettman  
Holland and Knight  
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Commissioner Diane Barnes (SMD 5E09)  
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Commissioner Bradley Thomas, Chair ANC 5E  
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Commissioner Ronnie Edwards, Chair, ANC 5A  
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Advisory Neighborhood Commission 1B  
1b@anc.dc.gov

Signed,

*/s/n Chris Otten*

Chris Otten, co-facilitator  
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