

DC Office of Administrative Hearings
441 4th Street NW, Suite 450N
Washington, DC 20001
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DC for Reasonable Development,
et. al.,

Joint *Pro se* Complainants

v.

DC Department of Consumer and
and Regulatory Affairs,

Respondent.

2019 DCRA 00135

Appeal of DCRA Issued Permits

D1600814 & FD1800040

("The Permits" or "Permits")

**PRO SE COMPLAINANT'S MOTION TO STRIKE INTERVENOR, DMPED'S
SUBMISSION DATED SEPTEMBER 18, 2020, OR IN THE ALTERNATIVE, ORDER
DMPED TO FILE A MOTION EXPLAINING THE RELEVANCY OF
THEIR SUBMISSION TO THE INSTANT CASE**

Pro se Complainants come now jointly per OAH Rule 2813.2 and 2841.4, with a Non-Consent Motion to Strike "DMPED's Praeipce Regarding Status of Related Proceedings" dated September 18, 2020 ("DMPED Submission" or "Submission").

Intervenor, Friends of McMillan Park (FOMP) took no position on this motion. Intervenor, Deputy Mayor's Office for Planning and Economic Development (DMPED) and Respondent, DC Department of Consumer and Regulatory Affairs (DCRA) are usually adversarial to our motions and we presume will oppose and they have that right by the OAH rules.

This Motion seeks to strike Intervenor, DMPED's submission to the OAH entitled, "DMPED's Praeipce Regarding Status of Related Proceedings" dated September 18, 2020 ("DMPED Submission" or "Submission"). Intervenor's Submission wrongly compels all parties and the OAH to go on an unnecessary go-fish expedition as to the Submission's relevancy to the instant appeals case.

We believe DMPED is looking to backfill the record, and post facto insert administrative reviews into the DCRA file after already issuing permits unlawfully. Thus, the relevancy of DMPED's Submission must be explained or forthrightly stricken from the record.

INTRODUCTION

Demolition Permit D-1600819 ("Demolition Permit") and Foundation Permit FP-1800040 ("Foundation Permit") together "the Permits" were issued prematurely and unlawfully by DCRA, contravening basic construction codes that include the Existing Building Code and Historic Structures subsections, among other Construction Codes including life safety codes as shown in the initial complaint and amended complaint to the OAH by the *Pro se* Complainants.

Pro se Complainants have jointly asked the OAH to immediately revoke the Permits as prematurely issued and done so not in compliance with the DC Construction Codes, and incorporated International Existing Building Codes, as well as the DC Historic Preservation Act.

The OAH has the authority to revoke the Demolition and Foundation permits per DC Code § 2-1831.09 (b)(9), or alternatively, order the code official to revoke the permit pursuant to 12 DCMR § 105.6, until planning considerations, regulations, and law protecting our health, well being, and rights to lift up this historic place are complied with. The illegal issuance of the Permits imminently threatens Complainants interests in an amazing public historic site at McMillan Park, a protected site that the Respondent, DCRA has mistakenly allowed the Applicant to commence demolition and to throw away 1.3 million cubic feet of existing historic concrete structures.

ARGUMENT IN SUPPORT OF THE MOTION TO STRIKE OR IN THE ALTERNATIVE TO ORDER INTERVENOR, DMPED TO EXPLAIN THEIR SUBMISSION

There's been a lot of obfuscation and outright misinformation put on the record by the Respondent and Intervenor. For example, the records in the the cases referenced in DMPED's Submission show the attorney for DCRA, Mr. Hugh Green, grossly misinforming decision-makers in another administrative appeal regarding McMillan Park as to when demolition/construction activities had begun at the site. Mr. Green alleges no work at the site began until sometime in November 2019. All evidence on the record and in the public domain shows heavy

equipment arriving at the site in August 2019 and demolition activities starting soon thereafter. *See Exhibit A.*

The aforementioned misinformation provided by DCRA is startling in its non-nonchalant presentation especially while under oath. It is indeed the casual way misrepresentations by city agents are put on the table that should be a big red flag for the OAH, however par it has been for a very controversial project. To remind the OAH and all parties, Intervenor, DMPED had city taxpayers paying a PR Firm out of Baltimore to “provide cover for local elected officials” and “discredit” those who oppose the demolition of McMillan Park. Additional ethical breakdowns were highlighted by DC’s independent Auditor who said the McMillan Town Center project required competitive re-bidding to comply with the law. *See Exhibit B.*

Complainants want the Respondent and/or the Intervenor to explain honestly what relevancy the September 18, 2020, Submission documents and other updates regarding McMillan Park have to the instant OAH appeal. If they won’t explain the relevancy of the Submission, then it should be stricken from the record and not considered when adjudicating this appeal.

The Applicant's proposed McMillan Town Center plans are still changing

Pursuant to the law, D.C. Code § 6-1104, among other codes, the Applicant has no right to begin demolition of the entirety of the historic McMillan Park site, which Permit D-1600819 specifically allows, when clearly the Applicant cannot show they are able to complete the project which is still being reviewed and changed and does not yet have all of its administrative approvals free and clear.

Moreover, we believe that DMPED’s Submission dated September 18, 2020, demonstrates the likelihood that even further adjustments will be made to the Applicant's McMillan Town Center proposal – in various forms to the many buildings, structures, roads, and infrastructure, and master planning – again supporting Complainants position that the Permits were issued prematurely and illegally.

For example, the District of Columbia Zoning Commission needs a second-look at the overall McMillan Master Plan, just as Parcel 3 needs Second-Stage Zoning review and approval. *See District of Columbia Zoning Order 13-14(6).* Additionally, Parcel 2’s second-stage approval

is being challenged and if the appeal is successful will likely change this component of the project. *See* DC Court of Appeals Case No 18-AA-1146.

Moreover, changes to building heights, moving the building over laterally on the site, and other adjustments to materials, landscaping, etc. at Parcel 1 were recently evaluated by the Historic Preservation Review Board (HPRB).

Since last appearing before the Board in concept, the project has been more substantially revised in response to comments by the DC Zoning Commission and the National Capital Planning Commission as part of the review as a Planned Unit Development. Specifically, the height of the west wing of the building has been lowered from 130 feet to 113 feet and the building mass shifted 15 feet to the east in order to preserve views from the Armed Forces Retirement Home south across the McMillan Site to the U.S. Capitol.

McMillan Town Center, Parcel 1, Historic Preservation Office Staff Report by Steve Callcott, to the Historic Preservation Review Board, Case HPA No. 20-483, dated September 24, 2020. Attachment 3.

On October 1, 2020, the HPRB approved sending Parcel 1 designs back to the DC Office of Planning staff to coordinate further refinements and finalize further changes with the Applicant. Historic approval is needed to be finalized before permit issuance as demonstrated by the DCRA Permit Approvals Checklist. *See* “Historic by” on the DCRA Checklist, Exhibit C.

In addition to Historic approvals, Fine Arts approvals are needed to be finalized before permit issuance as demonstrated by the DCRA Permit Approvals Checklist. *See* “Fine Arts by” on the DCRA Checklist, Exhibit C. The OAH record shows that the Applicant & DCRA sought Commission on Fine Arts (CFA) approvals many months after DCRA issued the Foundation Permit. Recent (June, Sept 2020) CFA reviews of the design and structures on Parcel 6 is a clear demonstration that the Permits were issued by DCRA prematurely in a mad rush to serve the Applicant, bypassing the requirements of the Construction Codes and DC Historic Preservation Act.

In fact, for Parcel 6, we see significant changes to the plans from when they were approved by the Zoning Commission and we argue these changes will require second-stage zoning approval or at least modifications to the latest Zoning Order 13-14(6). *See* Exhibit D.

DCRA's hurry to issue permits that will permanently and dramatically alter a large historically significant site is deleterious to not just the site, and Complainant's interests therein, but DCRA is also crushing the notion of a lawful permit issuance review and approval process pursuant to the Construction Codes. For, we have already witnessed DCRA issue the Permits by allowing the Applicant to skip required Historic and Fine Arts reviews only to be caught and now they are trying to backfill the record. This is an arbitrary and capricious mess and spells trouble for the required safety reviews.

DC Court of Appeals Statement on Premature Demolition

The D.C. Court of Appeals delineates that the inability of the Applicant to complete the entirety of the McMillan Town Center project circumvents anyone's rushed desire – DCRA, DMPED, the Applicant, or otherwise – to demolish the historic McMillan Park and Sand Filtration Plant:

. . . [A]s long as legal obstacles to the *completion of the entire project* remain, demolition of historic structures on the Filtration Complex will not be consistent with the purposes of the Historic Preservation Act. ... Until that appeal and *any other obstacles to the applicants' ability to complete the project* are resolved, the applicants may not commence demolition.

Friends of McMillan Park v. D.C. Mayor's Agent for Historic Pres., 207 A.3d 1155, 1179 (D.C. 2019) (emphasis added).

DC Superior Court opinion parallels that of the DC Court of Appeals

We believe the OAH will find, just as did DC Superior Court Judge Higashi, that DCRA has not independently demonstrated how the Applicant no longer faces obstacles to completing the entirety of the project:

... [I]t would appear that Petitioner has clearly demonstrated a likelihood that they would be able to prove that DCRA, in issuing the demolition permit, violated the Historic Preservation Act because there is no evidence that DCRA made an independent finding of the applicant's ability to complete the project.

D.C. Superior Court Judge, Kelly Higashi, Bench Ruling, Transcript January 10, 2020 at page 12. See Attachment 3 of Complainant's March 2, 2020 Motion for Summary Revocation of the Permits.

Judge Higashi continues:

The D.C. Historic Preservation Act from D.C. Code, Section 6-1104(h) governing demolitions, Subsection (h) says, in those cases in which the Mayor finds that the demolition is necessary to allow the construction of a project of special merit, no demolition permit shall be issued unless, one, a permit for new construction was issued simultaneously under Section 6-1107 which is the Historic Preservation Act section on new construction. *And two, the owner demonstrates the ability to complete the project.*

D.C. Superior Court Judge, Kelly Higashi, Bench Ruling, Transcript January 10, 2020 at page 9 (emphasis added). See Attachment 3 of Complainant's March 2, 2020 Motion for Summary Revocation of the Permits.

DMPED's Submission inadvertently shows that Revocation of the Permits is warranted

Complainant's point to and call back upon our Motion for Summary Revocation and Points and Authorities attached therein, dated March 2, 2020, to show the Permits can and must be revoked as they were issued prematurely and illegally by DCRA in contravention of the D.C. Historic Preservation Act from D.C. Code § 6-1104(h) and the D.C. Construction Codes. In addition, if demolition were to proceed, it would imminently risk the health and well-being of the Complainants in contravention of 12 DCMR § 101.2.4.

There are many legally-required administrative reviews, some would say obstacles, in the Applicant's way preventing the completion of the project right now. Reiterating prior filings, citations, and facts referenced and submitted by Complainants, and now most recently by DMPED's very own Submission:

- Parcels 2, 3, 4, 5, 6, 7 will require further review by the HPRB;
- Parcels 1, 2, 3, 4, 5, & 7 will require further reviews by the CFA;
- Parcel 3 and the overall McMillan Town Center Master Plan requires second-stage zoning approval before the ZC; And,
- Parcel 2 requires adjudication by the DC Court of Appeals.

These legal requirements were not taken into account by DCRA before the code official unlawfully and prematurely issued the demolition and foundation permits, both contested

decisions now under review by the OAH.

Complainants continue to ask the OAH to use its the authority to revoke the Demolition and Foundation permits per DC Code § 2–1831.09 (b)(9), or alternatively, order the code official to revoke the permit pursuant to 12 DCMR § 105.6, until these fundamental planning considerations, regulations, and law are actually complied with, thus relieving imminent injury to Complainants and our interests in our historic McMillan Park as well as our interest in our health and well being and of that of our neighbors and friends in the surrounding community.

CONCLUSION

Does a tree make a sound if it falls in the woods and no one is around to hear it? It would seem that only if people are checking in on the actions of DCRA will this agency actually make any attempt to follow the Construction Codes and the law. We ask the OAH no longer accept this abuse of the plain reading of the codes.

The similar dispassion by DMPED and DCRA to follow the law, especially as to proper and timely Historic and Fine Arts reviews must further manifest in their lacksadasical oversight of safety measures regarding the McMillan Town Center project. Complainants believe required safety measures are also being skipped now such as when the Respondent stubbornly denies access to any evidence showing safety considerations in allowing the Applicant to demolish and remove 1.3 million cubic feet of cement that may have asbestos fibers woven throughout.

DCRA's role in the above arbitrary and capricious behavior casts doubt as to the entirety of the efficacy of its safety review under the Construction Codes. Moreover, pursuant to the Historic Preservation Act, the Applicant cannot substantiate they have the ability right now to complete the project. Demolition has been stayed by the Court of Appeals for good reason.

Complainants come now asking the OAH to Strike DMPED's Submission dated September 18, 2020, from the record, or preferably in the alternative, order the Intervenor, DMPED to explain the relevancy of the documents they seek to add to the instant record by way of a motion. We also ask the OAH to act on our March 2, 2020, Motion for Summary Revocation of the Permits as soon as reasonably possible.

Respectfully submitted on behalf of *Pro se* Complainants, on this, the 8th day of October, 2020,
by,

/s/n Chris Otten

Chris Otten, co-facilitator
DC for Reasonable Development
202 810 2768
dc4reality@gmail.com

EXHIBIT A

PURPOSEFUL MISINFORMATION BEING PUT ON THE RECORD BY CITY OFFICIALS

In recent Board of Zoning Adjustment hearings regarding this very same project, the McMillan Town Center, the attorney for the DC Department of Consumer and Regulatory Affairs, Mr. Matthew Green, testified under oath that no work began at the site before a "land covenant" was put on the record in the case. The timing of all this shows the deception at play.

Mr. Green testifies that the land covenant was filed with DCRA sometime in November 2019 and that there was "no movement" on the site until after the covenant was recorded.

The Permits in question, now under review by the OAH, were issued far before land covenants were recorded and work at the site began in August 2019 soon after the Permits were issued by DCRA.

Evidence of work starting at the McMillan Park site precedes November 2019 and can be seen in several ways:

1. Washington Business Journal Article, "District officials insist there's no demolition work underway at McMillan site" dated August 27, 2020, by Alex Koma, <https://www.bizjournals.com/washington/news/2019/08/27/district-officials-insist-theres-no-demolition.html>
2. Save McMillan Action Coalition YouTube Channel, YouTube Video entitled, "McMillan Park Demolition Oct 8 2019" showing large vehicles at the site and plumes of dust blowing off the site in October 2019, <https://www.youtube.com/watch?v=s9jjQyw8vew>
3. There are several attestations by McMillan Park neighbors that have been put on the OAH record showing pictures and testimony about concerns of demolition beginning in August 2019. See attestations by Daniel Wolkoff, Melissa Peffers, and Jimmie Boykin.

Pertinent parts of the Board of Zoning Adjustment Transcript dated August 5, 2020 can be found below and the original transcript is at this link:

<https://app.dcoz.dc.gov/Content/Search/Download.aspx?exhibitid=213539>

At Pages 52-53 of the BZA Transcript dated August 5, 2020.

MR. GREEN: Yes. So it's brought up in our filings. So the -- I can get the dates, but the permits were issued in . . . August of 2019, and the covenant was put on record in November. So there's

a timing issue in which we want to bring to the Board's attentions. But nevertheless, DCRA's position is that it is moot, nonetheless, now that the covenant is of record.

As I understand it, and certainly we can talk to the property owners and -- the property owner as well as -- it's our understanding that there was no construction, and nothing occurred in between the issuance of the permit and when it went on record, meaning the covenant was recorded.

...

What I'm saying is, and I'll try to be -- the regulation provides that -- is the reading of the regulation is that the covenant be on record before the permits are issued. The permits were issued, and the covenant then went on record. However, between that gap [August 2019 through November 2019], there was no construction, there was no movement on the property. The point that DCRA has made -- There's no violation, and it is moot nonetheless.

For Mr. Green to testify under oath that no work had begun at the site until after a land covenant was filed in November 2019 is a testimonial to the nature of this project, arbitrary and capricious as it is.

EXHIBIT B

A VARIETY OF ETHICAL BREAKDOWNS AROUND THE MCMILLAN PROJECT

Complainants would like to point the OAH to the following links and documentation of the other ethical breakdowns and corruption regarding the McMillan Town Center proposal.

PR FIRM PAID FOR BY DC TAXPAYERS

In regards to the PR firm from Baltimore, Fontaine Inc., paid for by DC taxpayers to discredit opposition to the destruction of McMillan Park and its historic structures, please see the following links:

- Friends of McMillan Park webpage, “VMP Fake Grassroots Campaign” showing documents that were won through the Freedom of Information Act requests showing Fontaine Inc was paid to give “cover to elected officials” and “neutralize public opposition” to the demolition of McMillan Park site. Link here: <http://friendsofmcmillan.org/links/vmp-fake-grassroots-campaign/>
- Save McMillan Action Coalition webpage, “The Theft of McMillan Park” showing documents pertaining to the Business Plan put forth by Fontaine Inc to “Shift community dialogue and general perception to that of majority local support for VMP plans” among other anti-community objectives. Link here: <http://savemcmillan.org/corruption/>
- DC for Reasonable Development YouTube Channel, YouTube video entitled, “DC Council Oversight 2014: DMPED; McMillan Testimony” dated February 23, 2014. Link here: <https://www.youtube.com/watch?v=uXkOgHV7Lhw>

Ward 5's Daniel Wolkoff and Mary Pat Rowan speak with Muriel Bowser, Chair of the DC Council Oversight Committee on Economic Development about the Deputy Mayor's Office of Planning and Economic Development particularly about DMPED's ongoing attempt to surplus McMillan park. The testimony exposes the Fontaine Inc PR strategy, paid for by taxpayers, to help the city dispose McMillan Park despite substantial public opposition.

DC AUDITOR CALL TO COMPETITIVELY REBID THE MCMILLAN PARK PROJECT

DC's independent auditor, Mrs. Kathy Patterson, called on the city to follow the law and competitively bid the McMillan Park Town Center project. See the following links:

- Washington Post article, "The process to choose the developer for McMillan was flawed, D.C. auditor says" by Perry Stein, dated, October 26, 2015,
<https://www.washingtonpost.com/news/local/wp/2015/10/26/the-process-to-choose-the-developer-for-mcmillan-was-flawed-d-c-auditor-says/>
"Although in its early stages that plan included a competitive process that resulted in the selection of Vision McMillan Partners, LLC (VMP) as the land development team, it ultimately resulted in a greatly expanded role and exclusive rights for VMP, all without the benefit of a competitive process," the letter from auditor Kathleen Patterson states.
- The District Dig article, "Heads in the Sand" by Jeffrey Anderson, September 28, 2018,
<https://districtdig.com/2018/09/28/heads-in-the-sand/>
[My] reporting was validated in a 2015 report by D.C. Auditor Kathy Patterson, who criticized the selection of VMP as Master Developer: "Just as it is common knowledge in the construction industry that government practice is to rebid a project if there is a material change to the scope of work, certainly, the change to VMP's role and giving it exclusive rights are material changes that warrant a new competitive process."

EXHIBIT C

DCRA PERMIT APPROVALS CHECKLIST EXCERPTED

Complainants show attached the DCRA Permit Approvals Checklist that clearly shows the required reviews and approvals by the DCRA sub-disciplines of “Historic” and “Fine Arts” needed before issuance of the Permits – reviews by the Historic Preservation Review Board and Commission on Fine Arts respectively as it relates to this case.

We would point the OAH to Complainant’s Motion for Summary Revocation and Points and Authorities attached therein, dated March 2, 2020, at Attachment 2, to view the entirety of the DCRA Permit Application.

APPROVALS (DO NOT WRITE ON THIS PAGE; OFFICIAL USE ONLY)			
A. PERMIT CONTROL		C. PLANS AND APPLICATION APPROVAL	
<div><div><input type="checkbox"/> 1. Fine Arts bv: _____ Date: _____</div><div><input type="checkbox"/> 2. Historic Bv: _____ Date: _____</div><div><input type="checkbox"/> 3. Cap. Gateway bv: _____ Date: _____</div><div><input type="checkbox"/> 4. NCPD: _____ Date: _____</div><div><input type="checkbox"/> 5. W.H./Obs. Precinct bv: _____ Date: _____</div><div><input type="checkbox"/> 6. Flood Control bv: _____ Date: _____</div><div><input type="checkbox"/> 7. WMATA bv: _____ Date: _____</div><div><input type="checkbox"/> 8. Condem. bv: _____ Date: _____</div><div><input type="checkbox"/> 9. Rental Accom bv: _____ Date: _____</div><div><input type="checkbox"/> 10. Chinatown Dist. bv: _____ Date: _____</div><div><input type="checkbox"/> 11. Utility Clearance bv: _____ Date: _____</div><div><input type="checkbox"/> 12. General Liability Ins. Policy Clearance by: _____ Date: _____</div></div>		<div><div><input type="checkbox"/> 1. Information Counter bv: _____ Date: _____</div><div><input type="checkbox"/> 2. Information Center bv: _____ Date: _____<div><input type="checkbox"/> (a) ABRA bv: _____ Date: _____<input type="checkbox"/> (b) Noise Control bv: _____ Date: _____<input type="checkbox"/> (c) Industrial Safety bv: _____ Date: _____<input type="checkbox"/> (d) Vector Control bv: _____ Date: _____<input type="checkbox"/> (e) D.C. Animal bv: _____ Date: _____<input type="checkbox"/> (f) Police Dept. bv: _____ Date: _____</div></div><div><input type="checkbox"/> 3. Zoning bv: _____ Date: _____<div><input type="checkbox"/> Zoning Update bv: _____ Date: _____<input type="checkbox"/> Zoning Overlay approval bv: _____ Date: _____</div></div><div><input type="checkbox"/> 4. DDOT - Permit and Records Division/Deposit #<div>Sidewalk Deposit \$ _____ Driveway Deposit \$ _____<div>by: _____ Date: _____</div></div></div><div><input type="checkbox"/> 5. Water/Sewer Design Branch Consumer Eng. by: _____ Date: _____</div><div><input type="checkbox"/> 6. Environmental Regulation Administration<div><input type="checkbox"/> Environmental Policy Review Control No. _____<div>bv: _____ Date: _____</div></div><div><input type="checkbox"/> Erosion Control bv: _____ Date: _____</div><div><input type="checkbox"/> Storm Water Maint. bv: _____ Date: _____<div>Plan No. _____</div></div><div><input type="checkbox"/> Air Quality bv: _____ Date: _____</div><div><input type="checkbox"/> Underground Storage bv: _____ Date: _____</div></div><div><input type="checkbox"/> 7. Mechanical Eng. Review bv: _____ Date: _____</div><div><input type="checkbox"/> 8. Plumbing Eng. Review bv: _____ Date: _____</div><div><input type="checkbox"/> 9. Electrical Eng. Review bv: _____ Date: _____</div><div><input type="checkbox"/> 10. Health Plan Review<div><input type="checkbox"/> (a) Food Plan Review bv: _____ Date: _____<input type="checkbox"/> (b) Medical X-Ray Plan Rev.<div>by: _____ Date: _____</div></div></div><div><input type="checkbox"/> 11. Fire Protection Plan Review by: _____ Date: _____</div><div><input type="checkbox"/> 12. D.C. Fire Dept. (Fire Prevention Plan Review Section)<div>bv: _____ Date: _____</div></div><div><input type="checkbox"/> 13. Elevator Plan Rev. Sec. bv: _____ Date: _____</div><div><input type="checkbox"/> 14. Plumbing Insp Rev. bv: _____ Date: _____</div><div><input type="checkbox"/> 15. Construction Insp. Branch (field Check)<div>bv: _____ Date: _____</div></div><div><input type="checkbox"/> 16. Historic Pres. Div bv: _____ Date: _____</div><div><input type="checkbox"/> 17. EISF bv: _____ Date: _____</div><div><input type="checkbox"/> 18. Structural Eng. bv: _____ Date: _____</div><div><input type="checkbox"/> 19. Permit and Certificate Issuance Counter bv: _____ Date: _____</div></div> <div><input type="checkbox"/> 20. QC bv: _____ Date: _____</div>	

EXHIBIT D

MCMILLAN TOWN CENTER CHANGING: PARCEL 6 DRAMATICALLY SO

Complainants demonstrate below the substantial changes unfolding after the DC Zoning Commission gave approvals for the McMillan Town Center. The changes of the designs in Parcel 6 show this very dramatically.

From DC Zoning Order 13-14(6), at Page 85-86, Point 4 (emphasis added):

Parcel 6: Parcel 6, which includes the South Service Court, shall be developed as a Park including a 6.2-acre open space with a community center, as shown on the drawings prepared by EEK Perkins Eastman Architects dated April 11, 2014, marked as Exhibit 32A to the record, and as *supplemented by drawings submitted on June 23, 2014, marked as Exhibit 832A in the record*. The community center shall be constructed to a maximum height of 26 feet and contain approximately 17,500 square feet of GFA, or a density of approximately .07 FAR. The community center shall include gallery space with exhibits on the history of the McMillan site, a 25-meter swimming pool, a multipurpose community meeting room with a catering kitchen, outdoor gathering space, fitness studio, and locker and shower facilities. This amenity shall be open to the public and provide a user-friendly and convenient space for public gatherings and community events. The multipurpose community meeting room shall include moveable partitions to create smaller and larger spaces for gathering. Parcel 6 shall have 21 dedicated parking spaces and a dedicated loading area located in the South Service Court.

Exhibit 832A on the Zoning Record shows the latest design iteration approved by and expected to be constructed by the DC Zoning Commission. These plans were not modified by the DC Zoning Commission or changed in any second-stage zoning approvals, yet.

However, as you can see below the changes between Exhibit 832A on the zoning record and approved in Zoning Order 13-14(6) are substantially different than that reviewed and approved most recently by the DC Commission on Fine Arts (CFA). These substantial changes to Parcel 6 demonstrated below are being called “refinements” however, Complainants argue that these changes as shown will require further Zoning Commission review approval before Permits may be issued.

**IMAGE FROM EXHIBIT 832A ON THE
DC ZONING RECORD 13-14(6)
PARCEL 6 APPROVED BY
DC ZONING COMMISSION**



IMAGES FROM COMMISSION ON FINE ARTS (CFA) DOCUMENT REVIEW “6-CFA-18-JUN-20-6”



DESIGN REFINEMENTS

- McMILLAN MEMORIAL FOUNTAIN SITED AT SW CORNER
- ACCESSIBLE RAMP RELOCATED FROM CHANNING STREET BERM TO A CENTRAL LOCATION BETWEEN THE COMMUNITY CENTER AND FILTER CELL 28
- ENTRY TO PLAZA FROM NORTH CAPITOL STREET REFINED TO MAINTAIN INTEGRITY OF THE BERM
- PLAZA REORGANIZED INTO ONE COHERENT SPACE
- BIORETENTION FEATURES REORGANIZED TO SERVE AS A FOCAL POINT AND AN ORGANIZING DESIGN FEATURE OF PLAZA
- IMPROVED ACCESS FROM PLAZA TO THE SOUTH SERVICE COURT BY ADDING STAIRS
- SPRAY FOUNTAIN RELOCATED FROM SOUTH SERVICE COURT TO PLAZA TO BETTER ACTIVATE PLAZA AND ENHANCE CHILD SAFETY



CERTIFICATE OF SERVICE

I, Chris Otten, attest to serving the above **PRO SE COMPLAINANT'S MOTION TO STRIKE INTERVENOR, DMPED'S SUBMISSION DATED SEPTEMBER 18, 2020, OR IN THE ALTERNATIVE, ORDER DMPED TO FILE A MOTION EXPLAINING THE RELEVANCY OF THEIR SUBMISSION TO THE INSTANT CASE** on October 8, 2020, as follows:

RESPONDENT, DCRA:

To: oaheserve.dcra@dc.gov

To: Doris Parker-Woolridge, Doris (DCRA), doris.parker-woolridge@dc.gov

To: Brendan Heath, (OAG), Brendan.Heath@dc.gov

INTERVENORS:

DMPED

To: Toni Cherry, (OP), toni.cherry@dc.gov

To: Fernando Amarillas, (OAG), fernando.amarillas@dc.gov

To: Andy Saindon, (OAG) andy.saindon@dc.gov

Friends of McMillan Park

To: Andrea Ferster, aferster@railstotrails.org

Courtesy copies to all complainants:

Daniel Wolkoff, amglassart@yahoo.com,
Cynthia Carson, cyncarson@gmail.com,
Jerome Peloquin, aquaponikus@gmail.com,
Linwood Norman, Linwood.norman@gmail.com,
Melissa Peffers, mpeffs@gmail.com,
Christof Rotten, crotten2@gmail.com,
James Fournier, james.fournier@gmail.com,
Yonna Pendleton, yonna1994@gmail.com
Michael Werstein, michaelwerstein@gmail.com

And by mail to:

Jimmie Boykin

2406 North Capitol Street NW

Washington, DC 20002

Signed,

/s/n Chris Otten

Chris Otten, co-facilitator DC for Reasonable Development

202 810 2768 || dc4reality@gmail.com