

**DISTRICT OF COLUMBIA COURT OF APPEALS
430 E STREET, NW
WASHINGTON, DC 20001**

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)	
Andrea E. Rosen,)	
<i>Pro se</i> Petitioner,)	
)	DCCA Case No. 15AA590
v.)	
)	
District of Columbia)	
Zoning Commission,)	
Respondent)	
)	
Vision McMillan Partners,)	
Intervenor)	
)	
)	

Reply Statement in re: Zoning Order No. 13-14 in Case No, 13-14
Granting the application of Vision McMillan Partners, LLC (VMP) and the Office of the Deputy Mayor for Planning and Economic Development (DMPED) for first-stage and consolidated review and approval of a Planned Unit Development (PUD) and related zoning map amendment to the C-3-C and CR Zone Districts

I, Andrea Rosen, proceeding *Pro se* in this case, submit this Reply to Intervenor's Response dated May 26, 2016. This Reply incorporates all facts and arguments by Petitioners, Friends of McMillan Park, DC for Reasonable Development, and McMillan Coalition for Sustainable Agriculture as found in their Opening Briefs and Replies. I, Andrea Rosen, don't seek to participate in argument orally before the Court, and intend to allow the counsel for FOMP, DC4RD, and MCSA to represent my issues.

I was born in the District of Columbia and for all but one decade of my adult life I have voted and paid taxes in my native city. But my connection to the land running west of North Capitol Street between Michigan Avenue and Channing Street reaches back to my youth, nearly a half century ago, when as a high school senior in 1970 I traveled along North Capitol Street on my way to an internship four times weekly. I was awed by the great, green sweep of the land, the vistas across its boundaries, and the brooding towers that lent a lost-in-time quality to the place—all tantalizingly visible, though not accessible, behind a tall fence. [Zoning Commission Exhibit 5; pg 1; Exhibit 829, pg 2, not paginated] I was transfixed by the place, compelling but secretive. I knew that *one day* the fence would come down, the mystery would be revealed, and I would make that place part of my life.

Caught up in living in another city, then working and raising a child in another part of this city, in time I lost track of the greensward with the towers. But a decade into the new century I read about a community's struggle with the District government over the future use of a 25-acre historic park. I was stunned to realize that the contested place was the romantic landscape of my youth -- McMillan Sand Filtration Site and Park! It was only then that I learned that the romantic landscape is a massive green roof supported by a forest of arched vaults where water was cleansed--for drinking, bathing, washing clothes, watering the garden, filling the wading pool—from 1905 to 1986, during my lifetime! McMillan was pivotal in the history of the capital because it dramatically reduced the incidence of water-borne diseases [ZC Exhibit 538A, pg 65]. This amazing history,

known by very few residents of our city due to the longtime mothballing of the site, only strengthened my attachment to McMillan as a defining Washington landmark.

I have now renewed my relationship with McMillan--this time up close and personal. I still derive joy from driving past the site, but now I have also run on its great expanses and explored its subterranean vaults.

But I also learned that even before my dream for the place could be realized—the return of public land to public enjoyment—the city was plotting its destruction. So I joined the generations of Washingtonians who have fought one inappropriate development plan after another, to raise my voice against this latest visionless plan.

I arrived on the scene during the early stages of the Historic Preservation Review Board (HPRB) hearings on VMP's plans for McMillan Town Center. For the longest time, I was convinced that the arguments of the community, the historians, and the preservation lawyers would prevail, based as they are on a deeply felt sense of place, in-depth research, democratic ideals, common sense, *and the law*. Yet at each step, I witnessed our appointed and elected officials summarily dismiss our arguments with illogical decisions so indefensible they would make George Orwell squirm. I came to understand that the wanton destruction of the site had been pre-determined, and no law, no amount of public outcry, was going to derail a done deal.

Loss of Historic Landmark, Due Process, Legal Protections

By education and early career, I am an art historian. Our local historic preservation laws are, or should be, invaluable tools for attaining a humane built environment that preserves our historic resources and sense of place.

This belief informs D.C.'s **Historic Landmark and Historic District Protection Act of 1978**:

Section 2. Purposes. (D.C. Official Code § 6-1101)

(a) It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of properties of historical, cultural and aesthetic merit are in the interests of the health, prosperity and welfare of the people of the District of Columbia. (<http://dcode.org/simple/sections/6-1101.html>)

McMillan Sand Filtration Site and Park is part of the McMillan Park Reservoir Historic Landmark, which was listed on the D.C. Inventory of Historic Sites in 1991. [ZC Exhibit 538A, pg 64] Through the efforts of citizens (who initiated the process when the District government ignored the obligation to do so [ZC Exhibit 74, pp 8-9]), the McMillan Sand Filtration Site and Park was added to the National Register of Historic Places 21 years later. These designations betoken McMillan as a site of citywide and national historic significance. The historic merit of this site and the sanctity of historic preservation protections are especially important to me as an historian.

The problem is, ZC Order No. 13-14, granting the application of VMP and DMPED for first-stage and consolidated review and approval of a Planned Unit Development (PUD) and related zoning map amendment to the C-3-C and CR Zone Districts [ZC Exhibit 873] will produce a massive suburban-type project, in the mid-20th-century-revival style now so prevalent throughout the District, that will obliterate the historic McMillan site without regard for D.C.'s Historic Landmark and Historic District

Protection Act [ZC Exhibit 5, pg 2; Exhibit 91, pg 3], Section 106 of the Historic Preservation Act [ZC Exhibit 868A, pp 6-7] or the 2007 Comprehensive Plan of the District of Columbia. [ZC Exhibit 5, pp 2, 3-5; Exhibit 693, pp 1-3 (not paginated); Exhibit 715, pp 1-2 (not paginated); Exhibit 770, pp 1-3, 6-8; Exhibit 817; Exhibit 829; 850, pp 3-4 (not paginated); Exhibit 868A, pp 1-2, 4-5]

I am aggrieved that the protections afforded by the D.C. Preservation Act for my health, prosperity, and welfare have been ignored **at each level of review** of this project. [ZC Exhibit 715, pp 1-4] The Zoning Commission decision not only deprives me of my enjoyment of this public property and views “of historical, cultural and aesthetic merit” [ZC Exhibits 829, 850, 868A, 868B], it also denies me due process, which aggrieves me.

The deed, signed September 25, 1987, by which McMillan was sold by the United States of America, via the General Services Administration, to the District of Columbia, contains a very specific preservation covenant under the heading **Historic Resources**. [ZC Exhibit 74, pp 5, 8-10; Exhibit 689]

If a part of the Parcel is found to be eligible [for the National Register of Historic Places], prior to the initiation of any work at the Parcel, the DC HPO will be consulted during the development of any and all plans and specifications for the renovation, rehabilitation, demolition, or new construction planned for the Parcel, and any and all final plans and specifications for work will be submitted to the District of Columbia HPO for review and approval prior to implementation. If the District of Columbia HPO does not agree with the preliminary or final plans and specifications for work at the Parcel, and the disagreement cannot be resolved, the

District of Columbia shall immediately request the comments of the Council [Advisory Council on Historic Preservation] in accordance with 36 CFR Part 800. . . . Any and all rehabilitation and renovation work at the parcel will be undertaken in accordance with “The Secretary of the Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings” (Standards).

The DC HPO was consulted, and the HPRB stated in its Board Action of October 31, 2013, regarding McMillan Park Reservoir, 2501 First Street NW, HPA #13-318, revised concept/townhouses, mixed use retail and residential buildings, medical office buildings:

The Board: (A) Determined that the proposal will result in substantial demolition, as defined in the preservation regulations, and [is] therefore inconsistent with the purposes of the Historic Landmark and Historic District Protection Act [ZC Exhibit 91, pg 3]

Yet the VMP plan has never been submitted for comment to the Advisory Council on Historic Preservation. [ZC Exhibit 868A, pp 5-7]

Furthermore, the Covenant that development should conform to the Secretary’s Standards has been batted away at all levels of review, including in the decisions of the HPRB [ZC Exhibit 715, pp 2-4), the Zoning Commission, and the Mayor’s Agent for Historic Preservation. In fact, the Mayor’s Agent, when asked about this Covenant during his quasi-judicial hearings to determine whether the “special merit” of the development plan warranted the destruction of the character-defining features and the open-space

quality of the site, averred that he did not care about the Covenant. Moreover, he told residents in denying the relevance of the Covenant that he was giving us something to take to court. And finally, he advised us that the fate of McMillan is ultimately a political decision, not governed by rules and regulations.

For the most part, the rezoning of a site and the application of the Historic Preservation Law lies outside the purview of the legislature, i.e., the D.C. Council, and therefore is theoretically not a political matter. Still, the Council is obliged to hold a hearing on the disposition of public property, which it did, in the form of a Roundtable conducted by the Councilmember in whose ward McMillan is located, a cheerleader for the current development plan. The Committee Report of that hearing falsified pivotal testimony by the city-anointed community organization, McMillan Advisory Group (MAG), and conveniently the public record omits all actual written testimony delivered to the Roundtable, citing its voluminousness. When the Council came to vote on disposition of the property and, later on, to fund the demolition of the character-defining features of the site, the Council Chair relied on the supposed approval by the MAG, in contradiction to the MAG's actual full-throated opposition.

We have also been told by the Council Chair that because opponents of the VMP plan did not exert sufficient political pressure, failed to fill the halls of the Wilson Building, nothing could be done to stop the VMP plan.

The procedures devised to protect a historic site have been hijacked to plant the seal of approval on its doom. HPRB sent the redevelopment plan to the Zoning Commission, even though, due to the high level of destruction, the plan required review by the

Advisory Council (never done) and the Mayor's Agent for Historic Preservation. The ZC adopted the posture that the destruction has been approved--even though in fact the HPRB action glosses over that question [ZC Exhibit 91, pg 3], and the application had yet to be reviewed by the Mayor's Agent for Historic Preservation--and gave preliminary approval of zoning that is unwarranted by the Comprehensive Plan. Perhaps this is because the Office of Planning (OP) advises the Zoning Commission, and DMPED is both OP's boss and VMP's partner in the deal to flip McMillan Park.

The Mayor's Agent held hearings in two stages, months apart, so that the destruction of the character-defining subterranean features and the destruction of the character-defining open space were each weighed in isolation. The Mayor's Agent justified the destruction of the latter by his earlier finding that the destruction of the former was warranted. If demolition of the underground vaulting is already a done deal, what point is there in retaining the open space? The Mayor's Agent asserted that the site's fate isn't a matter of law--rather, it's a political football. The Zoning Commission gave its final approval to the plan because everyone else had already rubber-stamped it. The Council voted unanimously to go along with the executive branch and the "independent" quasi-judicial agencies because "the train has left the station."

I am aggrieved that the deliberative agencies have ceded their obligations to the political class and vice versa. Crucial checks and balances, and the division of powers have given way to a hall of mirrors. And there is no exit.

I am pained by the injustice perpetrated by a District government that runs rough-shod over the protections to McMillan accorded by (1) its own rules and regulations; and (2) the agreement that deeded the property to this city.

Loss of My Use and Enjoyment of the Open Space, Vistas of McMillan Park

McMillan was intended to be, and has functioned as, a park [ZC Exhibit 5, pp 1, 3; Exhibit 541, pg 239], DMPED and VMP talking points notwithstanding. Builders in the first two decades of the 20th century advertised proximity to McMillan Park recreation facilities to sell new rowhouses in adjacent Bloomingdale. Longtime Washingtonians remember gardening, picnicking, playing sports, sleeping under the stars in McMillan Park before the fence went up in 1941. [ZC Exhibit 5, pg 3] For nearly a half century I have waited for the District government to refurbish and return these 25 acres to wide public recreational use.

Unofficially, despite the fence and the hardware store sign declaiming “Private Property,” people have continued to breach the fence to visit McMillan. Neighbors recollect playing baseball there into the 1950s and 1960s. The Bloomingdale Civic Association held its picnic there in the 1980s.

More officially, the D.C. government granted approval to community residents John Salatti and Tony Norman to conduct tours there, which they did between 2008 and 2013. Mr. Salatti was an Advisory Neighborhood Commissioner and vice president of the Bloomingdale Civic Association. Mr. Norman served as Commissioner of ANC 1B10 from 2011 to 2014 and chaired ANC1B in 2013. Members of the public came to appreciate McMillan Park through these public tours, which is likely why the District

government put a stop to them. This will become a permanent injury if the Zoning Commission's order is implemented.

I still visit the area at least twice a month to enjoy the scene of this historic space from the public sidewalks, streets around McMillan Park, and sometimes from the green spaces within. Various vantage points offer me axial vistas across McMillan Park, into the reservoir, south to the downtown landmarks, and north and east to the Basilica. [ZC Exhibit 541; Exhibit 829, pg 2]

I have shared a particularly historic vista across McMillan with the resident of Lincoln's Cottage. In a letter dated November 7, 2014 [ZC Exhibit 868B] to the National Capital Planning Commission, the Executive Director of Lincoln's Cottage wrote:

". . . our visitors not only see the views of downtown Washington, . . . but these views are central to our interpretation of President Lincoln's Cottage and the surrounding landscape. . . . The nighttime views of the illuminated Capitol Dome currently available to our visitors are especially impressive and impactful . . . [views] which would be negatively impacted by the proposed development. . . . Destruction of that connection to Lincoln's view -- the symbol of democracy he worked to maintain -- would be a significant loss." [ZC Exhibit 868B, pp 1-2]

I visit, and invite friends and relatives to visit, the indelible Lincoln's Cottage. In no uncertain terms, the letter by the Executive Director of Lincoln Cottage delineates how the agency decision to grant the McMillan PUD and map amendment will affect the historic views from Lincoln Cottage. [ZC Exhibit 868B, p 2] The NCPC's initial opposition to the PUD and map amendment [ZC Exhibit 850, pp 3-4, not paginated] had

been extinguished by a “flatly erroneous” report prepared by an NCPC staffer [ZC Exhibit 868B, pp 1, 3]--who shortly thereafter departed the NCPC for a job with VMP’s law firm. His report asserted that the view of the Capitol from the Cottage no longer exists [ZC Exhibit 868B, pg 1], and VMP’s architect provided computer-generated diagrams to prove the staffer’s assertion; their testimony was accepted by NCPC despite the obvious conflict of interest in which it was marinated. As a visitor to Lincoln’s cottage and an historian who treasures the view of the Capitol dome that Lincoln himself proclaimed, I am especially aggrieved by the Zoning Commission’s refusal to credit the expert witness’s letter in its zoning decision.

Impact of Traffic on Personal Well-being

In its report dated April 21, 2014, the DC Department of Transportation (DDOT) projected that the first phase of the McMillan PUD will produce 2,818 - 3,135 parking spaces, of which 1,650 - 1,883 will be indoor parking at the medical office building. [ZC Exhibit 38, pg 11] DDOT projected that McMillan Town Center would stimulate 1,895 new vehicular trips in total during the peak AM period and 2,061 new vehicular trips during the peak PM period. [ZC Exhibit 38, pg 9] Many of the medical office building spaces will be used for short-term parking, which suggests a significant number of vehicular trips will be made to and from the site during the day, a data point that seems to be missing from all of the transportation studies for the Applicant.

The closest two Metro stations are approximately a mile from the McMillan PUD site, and thus “beyond the typical walkshed of a rail transit facility. Accordingly, bus service is particularly important in order to provide the ‘last mile’ connection to the nearby Metro

stations as well as connecting people to destinations served by the adjacent bus routes.”

[ZC Exhibit 38, pp 12-13] DDOT stated that existing bus service does not have the capacity to accommodate future demand, which DDOT projected to be 1,100 new bus seats per hour.

In the Applicant’s Transportation Performance Plan, submitted to the agency on August 25, 2014, the Applicant “commit[ed] to coordinate with DDOT and nearby institutions to provide a detailed final Transit Implementation Plan prior to building permit issuance.” [ZC Exhibit 832D] Various “refinements” over the next several months did not provide additional material details. In the end, VMP is still committed to building approximately 3,000 parking spaces—under the assumption that they will be used—and the funding is not in place to build out bus routes. This means the Zoning Commission has signed off before an actual final plan can be included in the order.

These thoroughfares are already heavily trafficked, particularly during rush hour. It is not unreasonable, therefore, to imagine that if this PUD is built, the traffic will worsen.

I drive the routes around McMillan Park regularly. The main thoroughfares, North Capitol Street and Michigan Avenue, allow my husband and me to access points in the city, including, crucially, Union Station. I suffer from a flying phobia and thus depend upon Amtrak for a lot more domestic travel than most people. For example, I plan to travel to Chicago this summer by train and contemplate a train trip to the West Coast as well. I have had the experience of being stuck in rush-hour traffic in a cab heading into town on North Capital Street for an hour, and arriving at Union Station with mere minutes to catch my train.

Further, how much worse will be the experience of ambulance drivers and their patients! It is a regular occurrence under present conditions—I have seen it myself—that ambulances jump the median strip on North Capitol Street to turn onto Michigan Avenue in order to deliver their grievously ill passengers to one of the hospitals in the complex north of Michigan Avenue. One of these ill passengers may be my husband or me, given our ages (70 and 64). The increased traffic barriers to accessing the hospitals north of the McMillan site pose a public health threat to me and my family.

For all of the above reasons, I will be injured by the Zoning Commission decision to approve a project that demonstrates little coordinated planning and only trivial commitments made in writing to “mitigate” the impacts and my concerns. The current development plan will ultimately destroy my use and enjoyment of the resources and vistas of this amazing historic public site; and make transportation even more difficult and unpredictable.

I attest that the above statements are true and accurate to the best of my knowledge under penalty of perjury by the law.

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CERTIFICATE OF SERVICE

I, Andrea Rosen, proceeding *Pro se*, attest that copies of **Reply Statement in re: Zoning Order No. 13-14 in Case No, 13-14** were put in the regular post mail to the parties on the 21st day of June, 2016.

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