

# District of Columbia Court of Appeals

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FRIENDS OF McMILLAN PARK, McMILLAN	)	)
COALITION FOR SUSTAINABLE AGRICULTURE	)	)
and D.C. FOR REASONABLE DEVELOPMENT,	)	)
	Petitioners,	)
v.	)	Nos. 15-AA-493,
	)	15-AA-525,
DISTRICT OF COLUMBIA ZONING COMMISSION,	)	15-AA-536,
	Respondent,	)
	)	15-AA-572
	)	)
VISION McMILLAN PARTNERS, LLC,	)	)
	Intervenor.	)
<hr/>		)
FRIENDS OF McMILLAN PARK,	)	)
	Petitioner,	)
v.	)	)
	)	No. 15-AA-1008
	)	)
	)	)
MAYOR'S AGENT FOR HISTORIC PRESERVATION	)	)
and DISTRICT OF COLUMBIA OFFICE OF PLANNING,	)	)
	Respondents.	)
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## BRIEF FOR *AMICI CURIAE* COMMITTEE OF 100 ON THE FEDERAL CITY AND DC PRESERVATION LEAGUE IN SUPPORT OF PETITIONER FRIENDS OF McMILLAN PARK

### IDENTITY AND INTEREST OF *AMICI CURIAE*

The Committee of 100 on the Federal City, a non-profit organization, is the oldest private planning organization in the District of Columbia. Founded in 1923, the Committee of 100 has dedicated its efforts to safeguarding and advancing Washington's historic distinction, natural beauty and overall livability, as guided by the original L'Enfant Plan for the city's development and the 1902 McMillan Plan, which has shaped the federal city for over a century.

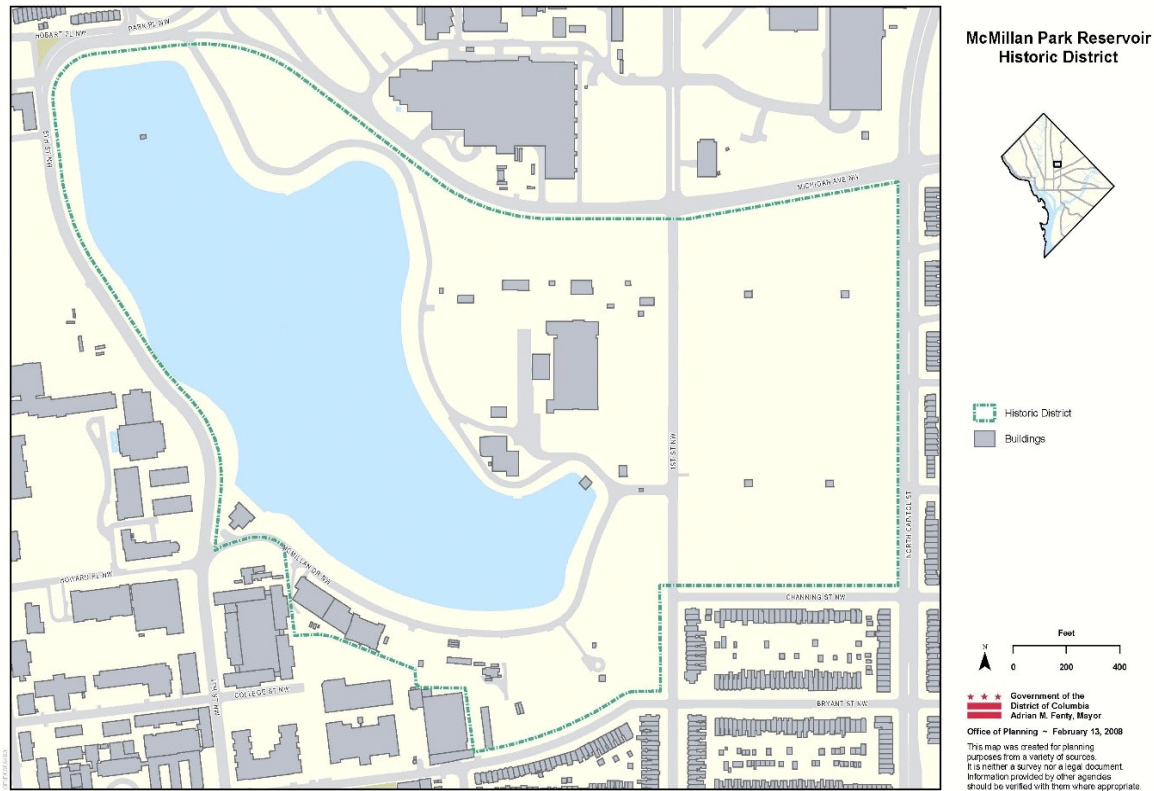
DC Preservation League is a non-profit organization that for over 40 years has pursued its mission to preserve, protect, and enhance the historic and built environment of Washington, DC, through advocacy and education. DC Preservation League successfully petitioned the Historic Preservation Review Board to designate this park as a landmark, which the Review Board did in 1991.

Both organizations were authorized to participate in this case by their respective boards of trustees.

### **STATEMENT OF FACTS**

We adopt and incorporate by reference the statement of facts set forth in the brief of petitioner Friends of McMillan Park, but to place our argument in context, we offer a brief description of the McMillan Park Reservoir Historic District and its significance in preservation terms.

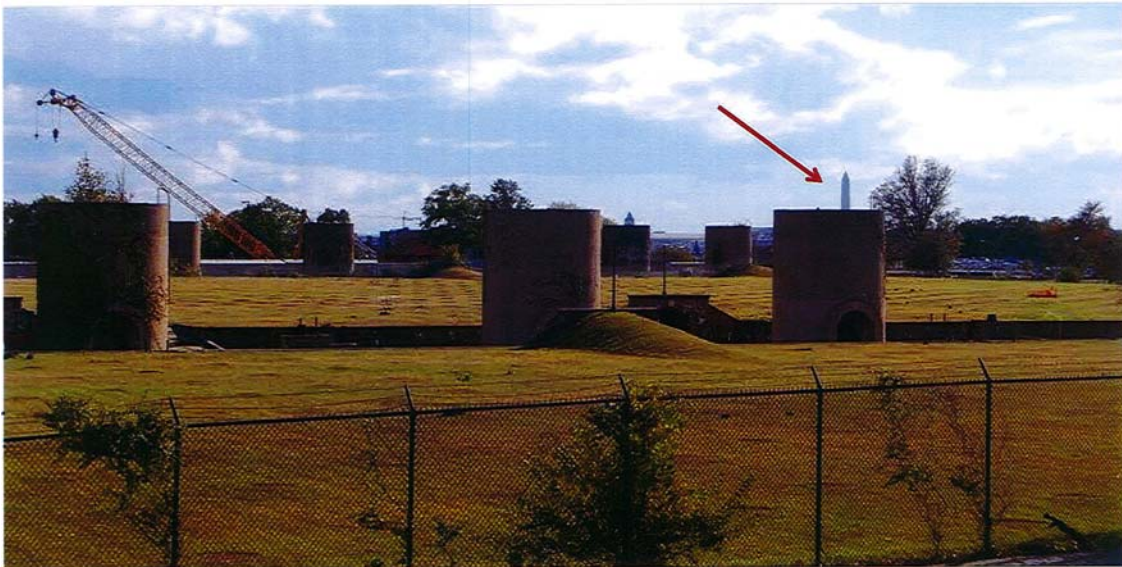
The McMillan Park Reservoir Historic District is a 92-acre property that is bounded on the north by Michigan Avenue, N.W., on the east by North Capitol Street, on the west by Fifth Street, N.W., and on the south by Bryant and Channing Streets, N.W. Designated as a landmark in 1991, it contains the McMillan Reservoir, the former McMillan Park (now closed) and the so-called Sand Filtration Site, which is the subject of this case. The boundaries of this district are shown on the following map of historic properties maintained by the District's Office of Planning and available at <http://planning.dc.gov/node/593222>.



The Sand Filtration Site is a rectangular, 25-acre parcel on the east side of this historic district, and it lies between First Street, N.W. and North Capitol Street. This Site was a significant part of Washington’s municipal water system for most of the 20<sup>th</sup> century. It is a large open area featuring significant open space with sand storage towers prominently located in the middle of the site, as shown in the pictures below from the hearing record (J.A. 428, 429, 439). Water from the reservoir would flow through more than 20 underground “vaults” that would filter and purify the water for public consumption.



<sup>2526</sup>  
Boston Ivy-clad sand towers of the North Court



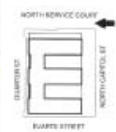
<sup>2527</sup>  
Sand towers seen from Michigan Avenue with Washington Monument in background.



000439

Row of sand towers and hopper

The proposed development would significantly change the character of the site. Some open space would remain along the southern boundary of the Site, and the sand towers would remain on a horizontal axis towards the north end of the park, but they would be dwarfed by the new buildings being constructed. Below is the proposed land use map presented by the applicants during the hearing (HPA 14-393 R. 521), followed by an architect's rendering of how the sand filters would stand in relationship to the new commercial buildings on the Site (HPA 14-393 R. 663).



What is the historic significance of the McMillan Park Reservoir Historic District? At first blush, a park featuring a water filtration system may not seem as “historic” as, say, a civil war battlefield or a presidential home. Such a view would, however, be at odds with the goals and scope of the Historic Landmark and Historic District Protection Act, D.C. Code § 6-1101 *et seq.* (the “Preservation Act” or the “Act”). The goal of the Preservation Act extends beyond preserving iconic landmarks or districts that are associated with significant historic events or personages. Instead the Act’s “public policy” objective is to “protect[ ], enhance[ ], and perpetuat[e] . . . improvements and landscape features of landmarks and districts which represent distinctive elements of the city’s cultural, social, economic, political and architectural history.” D.C. Code § 6-1101(a).

The Act thus contemplates that landmarks and districts may be designated by an expert body created by that Act, the Historic Preservation Review Board (*see* D.C. Code § 6-1103) because these sites are important in telling future generations about the history of Washington, D.C. The McMillan Park Reservoir Historic District was so designated, with its significance resting on the fact that it was “created in the industrial age and is a unique marriage of park and industry” (HPA 14-393 R. 1140). In addition, the park was the creation of the legendary landscape architect, Frederick Law Olmsted, Jr., who was principally involved in many public sites and landmarks in Washington, DC.<sup>1</sup>

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<sup>1</sup> According to the National Park Service, Olmsted, Jr. “worked on [national park] projects in Acadia, Everglades, and Yosemite. A partial listing of his design projects in the nation's capital reads like a guide to the NPS-managed sites of Washington,

The applicant's expert witness testified to the historic significance of this historic district by reference to the criteria for a property being listed on the National Register of Historic Properties:

Criterion A: Association with the history of water purification.

The McMillan Park Reservoir was the first water treatment facility in the City of Washington, and its operations resulted in the elimination of typhoid epidemics and reduced incidence of other diseases.

Construction of its slow sand water filtration system represented a triumph of the pure water advocates over those who advocated chemical treatment of water.

The Potomac River was Washington's principal source of water in the last half of the 19<sup>th</sup> century, yet the river was becoming increasingly polluted by household and industrial waste. This made water purification a significant policy issue, and experts debated whether to proceed by sand filtration or by adding chemicals. The former view prevailed, and the McMillan Slot Sand Filtration Plant was one of the last slow sand filtration facilities to be constructed in the United States.

Criterion B: Association with Senator James McMillan

The Reservoir is a memorial to the senator who spearheaded development and implementation of the monumental McMillan Park Plan, which completed the 1792 L'Enfant Plan for the Federal city in the context of the 1893 City Beautiful aesthetic. Then-Secretary of War William Howard Taft named this park in McMillan's honor in 1906.

Senator McMillan was the driving force behind the 1902 McMillan Plan that called for completion of the National Mall, the articulation of ceremonial boulevards throughout the city, the establishment of a comprehensive parks and recreation system, and the overall beautification of Washington. The designation of the reservoir and sand filtration plant as a publicly accessible park was a testament to his efforts to beautify the nation's capital by enlarging and enhancing the system of public open spaces as part of the City

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D.C., including the Mall, Jefferson Memorial, White House grounds, and Rock Creek Park." [http://www.nps.gov/parkhistory/online\\_books/sontag/olmsted.htm](http://www.nps.gov/parkhistory/online_books/sontag/olmsted.htm). See also <http://www.olmsted.org/the-olmsted-legacy/frederick-law-olmsted-jr>



Beautiful movement at the time. The noted architect Frederick Law Olmsted, Jr. was retained to design a landscape plan that transformed a public works facility into a designed landscape.

Criterion C: Distinctive design and construction as a public works facility and public park.

The McMillan Park Reservoir is a major element in the District of Columbia's water system, an urban American engineering resource of great historic, cultural, landscape, planning, engineering and architectural significance.

The Reservoir is a major element in the McMillan Park System, which envisioned a linkage of green open spaces from Rock Creek to Anacostia through the areas developing north of the original Federal City.

The Reservoir was the result of a collaboration of major figures in the City Beautiful movement who later contributed to the aesthetic and architectural development of Washington.

(J.A. 545-547).

That such a site deserves preservation is also indicated by the fact that in 1973 the National Park Service designated the Washington Aqueduct System as a national historical park. The Washington Aqueduct System was created in the mid-19th century and was one of the first aqueducts in the United States. Stretching from Great Falls to Georgetown, it includes the Dalecarlia Reservoir and the Georgetown Reservoir and is historically significant as Washington's first public water system. <http://www.nps.gov/choh/learn/historyculture/thewashingtonaqueductsystem.htm>. If anything, the McMillan Park Reservoir Historic District has added significance because it is the only site of its sort to utilize such a sand filtration system.

The Preservation Act thus allows the designation of a variety of sites for a

variety of reasons consistent with the designation criteria set out in the Act. Once a landmark or historic district has been designated, the Mayor's Agent may authorize a subdivision of the property, as well as the alteration or demolition of structures or new construction, provided that the Act's criteria for taking those actions have been met. As we explain below, that did not happen here.

### ARGUMENT

#### THE MAYOR'S AGENT ERRED IN NOT GIVING PLENARY CONSIDERATION TO THE EFFECT OF A SUBDIVISION ON THIS HISTORIC SITE IN ITS ENTIRETY.

At issue here are two inter-related decisions by the Mayor's Agent for D.C. Law 2-144, the Preservation Act, which states that once a historic district has been designated, the Mayor's Agent shall consider an application to subdivide that district into more or fewer lots. Approval may be granted if the Mayor's Agent finds that subdivision is "necessary in the public interest" or could cause economic hardship (the latter not an issue here). D.C. Code § 6-1106(e). "Necessary in the public interest" is defined as "consistent with the purposes of [the Act] as set forth in D.C. Code § 6-1101(b) or necessary to allow the construction of a project of special merit." D.C. Code § 6-1102(10). "Special merit" is defined as "a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services." D.C. Code § 6-1102(11).

A similar "necessary in the public interest" standard governs proposals to alter or demolish existing structures on the site in order to make way for a project

of “special merit.” D.C. Code §§ 6-1104(e), 6-1105(f). A major focus of this case was the proposed demolition of most of the underground vaults and some historic portals to make way for an extensive mixed-use development project.

Cases raising a claim of “special merit “ require the Mayor’s Agent to engage in a balancing of interests between, on the one hand, the loss of a historic resource and, on the other hand, the special merit of the proposed project. This balancing is required given the Act’s “emphasis on safeguard(ing) the city’s historic, esthetic and cultural heritage.” *Citizens Comm. to Save Historic Rhodes Tavern v. District of Columbia Dept of Housing & Community Development.*, 432 A.2d 710, 716 (D.C. 1981) (internal citation omitted).

It would seem logical that questions about whether a landmark should be subdivided in the first place are antecedent to questions of whether specific elements of that site should be altered or demolished – or at least be considered contemporaneously with proposals for demolition and new construction. However, that did not happen here. Instead, the Mayor’s Agent first hearing focused on identifying those elements of the redevelopment plan that could (and could not) be considered to have “special merit.” Having concluded that there were enough elements in the proposal to support a finding of “special merit,” the Mayor’s Agent then proceeded to balance those elements against the proposed losses through demolition, primarily the underground vaults. Only after he had ruled that the redevelopment proposal warranted demolition did the Mayor’s Agent hold a separate hearing, this one focusing on the threshold question of whether the historic site

should be subdivided in the first place.

The Mayor's Agent candidly acknowledged that this "cart before the horse" situation was unusual, if not unprecedented. Be that as it may, he apparently recognized that he had painted himself into a corner because of his decision to approve a demolition permit – even though that decision did not focus on the issue of how redevelopment would affect the historic landmark *as a whole*, an inquiry that differs from the more in-the-weeds examination of specific elements to be demolished to make way for a project of "special merit." .

This was error. The applicants chose to litigate these two required hearings in a sequence that first called upon the Mayor's Agent to focus on the more micro issues (*e.g.*, the value of preserving underground vaults), and only after deciding those issues, did the Mayor's Agent consider what should have been the threshold issue regarding subdivision. By that point, however, matters had progressed to a point where the applicants were successful in persuading the Mayor's Agent that nothing had changed, that the facts were the same, and that the subdivision issue should be viewed as a technical exercise that involved nothing more than "lines on [a] piece of paper that get recorded in the Surveyor's Office" that should not "derail the hard-won consensus on [the HPRB] of how the site could be developed" (J.A. 582-83). The Mayor's Agent then confirmed his prior conclusion that the "totality" of the redevelopment project, already determined to be a project of special merit, warranted approving the subdivision.

Why was this error? The text and structure of the Preservation Act indicate

that subdivision issues are not a mere technicality to be considered after the “real” issues about demolition, alteration or new construction has been decided under the criteria set out D.C. Code §§ 6-1104, -1105 and -1107, respectively. It is difficult to conclude that the Council intended subdivision questions to be treated as a subsidiary, technical issue – an afterthought, really – given that the Act creates a stand-alone statute dealing with subdivision issues (D.C. Code § 6-1106) rather than inserting a provision or subsection in the three statutes cited above, *i.e.*, something to the effect that the land records maintained by the District’s Office of the Surveyor shall be amended to conform to any Mayor’s Agent decision on demolition, alteration or new construction that involves a subdivision of a historic district or landmark.

To be sure, it is possible – and may be preferable – for the Mayor’s Agent to consider subdivisions and other proposed changes to a historic landmark in a single, unified case, which is how many of these cases proceed. There is, however, no precedent to delay subdivision questions until after the Mayor’s Agent has considered and approved the alteration or demolition of specific elements in a historic district.

The inquiry in subdivision cases can differ significantly from consideration of claims of “special merit” involving demolition or other changes. A subdivision case requires consideration of the impact of subdivision on the historic landmark *as a whole*. What is the character of the historic landmark? How critical a role are the spatial relationships of existing structures with the open space in the specific

historic district? What effect would development have on the viewsheds to and from the district? What would be the impact on the historic district of subdividing and carving up a 25-acre site that has maintained its integrity as a unitary whole for over a century? Subdivision questions thus can require more of a “big picture” analysis of how subdivision would affect the integrity of the historic site.

By contrast, the types of questions to be considered and resolved with respect to proposed alterations and demolitions can be considerably more granular, and the level of analysis needed to resolve those more “micro” issues can give short shrift to the more “big picture “ considerations. For example, in a demolition case the Mayor’s Agent must first identify which specific elements of the proposed redevelopment plan rise to the level of having “special merit.” Such a detailed parsing is required because not every element of a development plan may qualify as “special” under the Preservation Act, *e.g.*, the provision of the same number of affordable units that the Zoning Regulations would require for any development, the construction of an office building just like dozens of others in the city.

Once the Mayor’s Agent is satisfied that certain elements of a redevelopment plan do, in fact, rise to the level of having “special merit,” the Mayor’s Agent must then balance the gains from achieving those “special merit “ items versus the loss of historic resources, which in this case was viewed as primarily the loss of underground vaults and some of the above-ground open space, with those losses to be partially mitigated by attempting to preserve two of the 30 underground vaults and the maintenance of some open space.

An examination of prior Mayor's Agent decisions show how the types of considerations in deciding subdivision requests can involve issues that may not be considered if (as here) the initial focus is on the trade-offs involved in specific demolition cases.

Consider, for example, the situation where a property owner wishes to subdivide a lot with a historic building in order to permit construction of additional buildings on the site. What is the defining characteristic of that historic district? If the defining characteristic is the landmark building on the site, and if the undeveloped acreage does not affect the public's ability to view, enjoy and interpret the landmark, the Mayor's Agent has approved subdivision.

An example of this is *HPA No. 03-586, S-01894 (In re The Embassy of the Republic of Cape Verde Babcock-Macomb House)*, available at <https://repository.library.georgetown.edu/handle/10822/761617>.<sup>2</sup> There, the owner sought subdivision of a historic district to permit the sale of vacant land, the proceeds of which would be used to rehabilitate and restore the landmark building on the site. The Mayor's Agent noted that the portion of the property to be subdivided was never related in any significant way to the landmark building; indeed, the portion to be subdivided was only consolidated into the landmark property in 1988 and was then being used as a parking lot. Moreover, the property owner proposed building restrictions for construction on the new lot so as to ensure sufficient open space around the landmark and prevent any new construction from overwhelming or overshadowing

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<sup>2</sup> Georgetown Law Library maintains Mayor's Agent decisions at its website on the Preservation Act, <https://repository.library.georgetown.edu/handle/10822/761426>.

the landmark.

Similarly, in *HPA No. 04-145 (In re the Tregaron Estate)*, available at <https://repository.library.georgetown.edu/handle/10822/761620>, the applicant sought to subdivide a large historic district so as to create eight smaller lots within that district in order to construct single-family housing on those lots. The Mayor's Agent focused on the impact of subdivision on the Tregaron site as a whole, noting (at p. 4) that if construction did occur, the impact of those houses on the landscape would be minimal, as the houses will be "invisible from the most important vistas and vantage points within the estate, and will respect important topographical, man-made and natural features and characteristics." In addition, there would be significant landscape rehabilitation, and ten acres – roughly half the total acreage – would be available for public use and enjoyment. See also *HPA No. 02-614 (In re Rosedale)*, available at <https://repository.library.georgetown.edu/handle/10822/761609> (subdivision and subsequent construction will not detract from the landmark portions of the property).<sup>3</sup>

Had the Mayor's Agent undertaken the requisite inquiry in this case, it is likely that he would have to confront more directly and make findings on two points

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<sup>3</sup> As an aside, and in the interest of completeness, we note that subdivisions of landmarks and historic districts do not inevitably entail carving up a single lot to create multiple smaller lots. Subdivision proposals may involve *reducing* the number of lots on a historic site in order to enhance the character of the historic district and to showcase and enhance public appreciation of the historic buildings on the site. See *HPA No. 00-601, 01-044 (In re Calvary Baptist Church)*, available at <https://repository.library.georgetown.edu/handle/10822/761277>; *HPA No. 06-007 (In re the Bowie-Sevier House)*, available at <https://repository.library.georgetown.edu/handle/10822/761626>.



that seemed to be key to the applicants' argument:

(1) Even though the development will pave over roughly two-thirds of the Site, there will still be some open space for public use (J.A. 573; R 3273); and

(2) The site has been closed to the public for years, so there is no great loss in terms of existing access, and besides, development will take down the fence and open the site to the public. We respond as follows.

The District of Columbia is a mature, two century old northeastern city that is geographically small and largely built out. These facts place a premium on preserving open space generally and historic open spaces in particular. Indeed, this Court has explicitly stated that preservation of open space is a key goal under the Act: "Part of the rationale for adopting the Act was to stem the tide towards the diminution of the landscape features of historic districts in the District of Columbia." *Gondelman v. District of Columbia Department of Consumer and Regulatory Affairs*, 789 A.2d 1238, 1242 (D.C. 2002). That is why the Historic Preservation Review Board and the Mayor's Agent were authorized "*to consider the entire site on which the structure stands.*" *Id.* (emphasis added)

The preservation of open space can be significant in order to give the public an appreciation of the spatial relationships involving buildings on a site, which is hardly a trivial concern when dealing with the work of one of America's leading landscape architects. Here, the spatial organization of the 25-acre site gives prominence to the sand towers and other built structures on the narrow service courts, as petitioners' brief explains in more detail (at pp. 41-42). To cluster new

development around these service courts dramatically changes one's understanding of this landmark site. The fact that 6.2 acres of open space are preserved at the south end of the project does not protect some of the most important open space that explains the site's historic significance. Samuel Johnson may have believed that "a blade of grass is a blade of grass," but that is not the case here.

Moreover, there may be important viewsheds that could be marred by new construction, particularly if new construction should occur on the scale being proposed here. Friends of McMillan Park's expert and the National Trust for Historic Preservation submitted written testimony at the subdivision hearing that "This intensive development would adversely impact the viewshed of the Capitol Dome from two specific locations at President Lincoln's Cottage: the south lawn of the Cottage, and the main entrance to the Visitor Education Center. The Cottage lawn was Lincoln's historic view. Both are important views for the visitors, programs, and education at Lincoln's Cottage. In addition second floor views from inside the Cottage are adversely impacted by the proposed development. The most important of those is the view of the Washington Monument" (HPA 15-133 R. 306). However, the Mayor's Agent refused to allow these witnesses to testify at the subdivision hearing, finding the prior decision on demolition foreclosed any consideration of this issue (HPA 15-133 R. 2377).

Open space has been an important consideration in subdivision cases, and there are decisions where a subdivision has been approved, provided there is significant preservation of open space and the effect of subdivision does not mar or

impair the overall character of the site. Conversely, there are Mayor's Agent cases where a subdivision application is denied because subdivision would have a negative effect on open spaces in the historic district. See *HPA No. 07-267 (In re. the Williams-Addison House)*, available at <https://repository.library.georgetown.edu/handle/10822/761637>. Similarly in the "Greystone" case, HPA No. 96-307, available at <https://repository.library.georgetown.edu/handle/10822/761250>, the Mayor's Agent denied subdivision of three-lot "rural enclave" near Rock Creek Park, citing (at p. 10) the applicant's failure to show that the "the widening and resurfacing of historic gravel roadways, diminution in the size and shape of open space, the erasure of boundary demarcations, the flattening of land contours, the loss of trees and vegetation, the construction of new structures that are not accessory in nature, and the loss of views and rural setting enhances or restores the historic enclave."

Similarly – and contrary to the finding in the Mayor's Agent demolition decision (at p. 8) that the impact on views "has no direct bearing on the special merit inquiry under D.C. law" – this Court has held that a loss of views of a historic district or the buildings in it may be a proper basis for the Mayor's Agent to deny an application. *Reneau v. District of Columbia*, 676 A.2d 913 (D.C. 1996) (upholding denial of a permit to add an addition to a house in a historic district because development would have a negative effect on the vista of the historic property).

In this case, the Mayor's Agent made no findings on these "big picture" issues, apart from a passing acknowledgment that yes, subdivision may sacrifice

“the coherence of the overall site” (J.A. 583). However, he proceeded to uphold subdivision on the basis of the balancing of competing factors that he considered in his prior decision. This foreclosed a more extensive evidentiary showing – and findings that could be reviewed by this Court – about how the proposed development was inconsistent with the preservation of the salient characteristics of the entire historic district.

The importance of open spaces is illustrated by the presence in the District of Columbia of a number of historic sites that are valued and preserved in part for their openness, which helps to convey a sense of the property and the site’s historic associations. Familiar examples of District of Columbia landmarks historic districts that feature significant open spaces include St. Elizabeth’s Hospital, the Armed Forces Retirement Home, Walter Reed Army Medical Center and various Civil War forts. See <http://planning.dc.gov/page/historic-district-maps>.

This brings us to the additional point that was part of the Mayor’s Agent’s rationale for discounting the massive destruction of the site’s historic features, namely, the fact the Site has not been open to the public for years. (J.A. 353; HPA 14-393 R. 9). The fact that a historically significant site is not generally open to the public does not diminish the significance of that site or the need for a hard look at the impact of subdivision or development as a whole. For example, much of the Washington Aqueduct System, a national historic landmark, is not and never will be accessible to the public because it is underground, running along MacArthur Boulevard, N.W. Other sites not generally available to the public at the time of

their designation include St. Elizabeth’s Hospital locally and historic sites in other cities, particularly those that were military installations, such as the Presidio in San Francisco and Governors Island at the southern tip of Manhattan in New York City.<sup>4</sup> Indeed, one of the most iconic and best known national landmarks in the United States – the *U.S.S. Arizona* – cannot be accessed directly by the general public because it lies nearly 40 feet under the waters of Pearl Harbor and can be viewed only from a visitors’ center and memorial at sea level above the remains of the ship’s hull. See <https://www.nps.gov/valr/index.htm>.

Thus, rationales to the effect of “nothing about the proposed development has changed” or “subdivision is simply a matter of drawing lines on a map” cannot excuse the failure in this case to give plenary consideration to the question of whether subdividing this historic district is permitted under the Act in the first instance.

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A final thought: Towards the end of the demolition decision, the Mayor’s Agent offers (at p. 10) an extra-statutory defense of his “special merit” finding, noting that “mixed development of the McMillan site has been anticipated since its purchase by the District of Columbia in 1986 and continue to be supported by every organ of the District government, including the unanimous votes by the Council in

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<sup>4</sup> With the passage of time and intervening developments (a cessation of military usage in the case of the last two examples) these sites are being developed for greater public access, but with a significant preservation component. Greater public access to the McMillan historic district may be a positive good, but so also is a proper examination of the subdivision issues as required by the Act.

December 2014 to convey the property to VMP to build the very project under review here.” Of course, it was not so many years ago that “every organ” of government wanted to criss-cross the city of Washington with an extensive network of freeways, as well as a new Three Sisters Bridge to connect Georgetown with Virginia. Notwithstanding that support, and notwithstanding the “merit” (special or otherwise) that many saw in creating such a freeway system, the courts reminded the government of its obligation to satisfy all applicable statutory requirements before a project can proceed. See *D.C. Federation of Civic Associations v. Airis*, 391 F.2d 478 (D.C. Cir. 1968); *D.C. Federation of Civil Associations v. Volpe*, 459 F.2d 1231 (D.C. Cir. 1972).<sup>5</sup> That is all that petitioner and its *amici* seek here.

### CONCLUSION

For these reasons, the demolition and subdivision decisions of the Mayor’s Agent should be vacated and remanded for plenary consideration of the proposal to subdivide the McMillan Park Reservoir Historic District.

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<sup>5</sup> The history of plans for the proposed D.C. Interstate system is well summarized at [http://www.roadstothefuture.com/DC\\_Interstate\\_Fwy.html](http://www.roadstothefuture.com/DC_Interstate_Fwy.html). The 1958 “Basic Freeway Plan” proposed the most extensive set of freeway construction, see <http://beyonddc.com/log/?p=1913>. The scope of that 1958 plan was whittled down during the planning review process over the next decade; even so, by the time of the *Federation of Civic Associations* cases, the official plan contemplated additional freeways that were never built, as well as the Three Sisters Bridge. The final plan for additional freeway construction, including freeways that were never built, appears in a map at [http://www.roadstothefuture.com/DC\\_Area\\_Map.html](http://www.roadstothefuture.com/DC_Area_Map.html).

Respectfully submitted,

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April 2016

### CERTIFICATE OF SERVICE

I hereby certify that copies of this brief for amici curiae were served by first-class mail, postage prepaid, this 20<sup>th</sup> day of April, 2016 upon:

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