

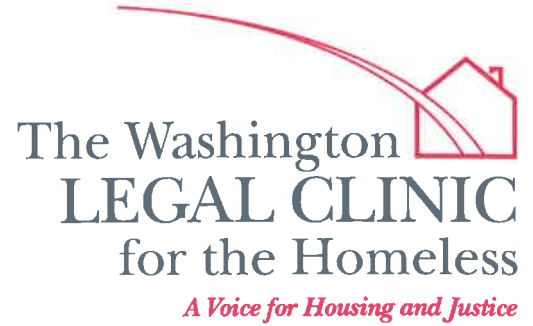
True Reformer Building
1200 U Street, NW
Washington, DC 20009
(202) 328-5500
www.legalclinic.org

Board
David E. Rogers
President
John R. Jacob
Vice President
Stanley O. Sher
Treasurer
Susan M. Hoffman
Secretary
Jonathan L. Abram
Joan Alker
Fonda Allen
Cheryl K. Barnes
Jeffrey D. Bauman
Laurie B. Davis
Robert D. Dinerstein
Wesley R. Heppler
Tom Karr
Laura Tuell Parcher
James E. Rocap, III
Valerie E. Ross
Jeff Schwaber
Ellie Smith
Marsha Tucker
Emily Whiting
David Wittenstein

Semper Nobiscum
Mary Ann Luby
1940 - 2010

Staff
Patricia Mullahy Fugere
Executive Director
Marta I. Beresin
Staff Attorney
LaJuan Brooks
Administrative Assistant
Amber W. Harding
Staff Attorney
David M. Booth
Disability Rights Initiative
Dea C. Lott
*Staff Attorney **
Kristi Matthews
*Kressley Fellow for
Grassroots Advocacy*
Scott McNeilly
Staff Attorney
William R. Merrifield, Jr.
Staff Attorney
Nassim Moshiree
Staff Attorney
Becky O'Brien
Staff Attorney
Leslie Plant
Administrator
Ann Marie Staudenmaier
Staff Attorney
Kaitlyn Uhl
Volunteer Coordinator

*admitted only in Indiana



June 15, 2015

Via Electronic Submission


Mr. Anthony J. Hood, Chairman
DC Zoning Commission
441 4th Street NW, Suite 2105
Washington DC 20001

**Re: Zoning Commission Case No. 14-18- First Stage PUD and Zoning Map Amendment
Application- Party Opponent Proposed Findings of Fact and Conclusions of Law**

Dear Chairman Hood and Members of the Zoning Commission:

Enclosed please find the Party Opponent's Findings of Fact and Conclusions of Law.

Sincerely,


William R. Merrifield



Certificate of Service

I hereby certify that I sent a copy of the forgoing document to the following addresses on June 8, 2015
by First Class Mail:

Maxine Brown-Roberts
Office of Planning
1100 4th Street , SW
Suite E650
Washington, DC 20024

Regina James, ANC 5C05
1363 Adams Street, NE
Washington DC 20019

Monique Smith, ANC 5C06
1714 Montana Avenue, NE
Washington DC 20018

ANC 5C
PO Box 81027
Washington DC, 20018

ANC 5B
1322 Irving Street NE,
Washington DC 20017

Paul A. Tummonds
Goulston & Storrs
1999 K Street NW, Ste. 500
Washington DC 20006.


William Merrifield

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION
ZONING COMMISSION ORDER**

Z.C. Case No. 14-18

**Public Hearing Case No. 14-18 (Mid-City Financial Corporation- 1st Stage PUD & Related
Map Amendment at Squares 3953, 3954, 4024, & 4025**

June 15, 2015

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held two public hearings on May 7, 2015 and May 11, 2015 to consider an application from Mid-City Financial Corporation (the Applicant”) requesting a first stage planned unit development (“PUD”) application and related zoning map amendment at squares 3953, 3954, 4024, and 4025. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby conditionally approves the application.

Procedural History

1. The Applicant (Mid-City Financial) applied to the Commission on October 14, 2014, for a First-Stage Planned Unit Development and related Zoning Map amendment for the above mentioned property. To achieve their redevelopment goals, the Applicant proposed a First Stage PUD – related map amendment from the R-5-A and C-2-A districts to the R-5-B, C-2-A and C-2-B districts.
2. The case was then set down for hearing in November 2014, at which time the Zoning Commission raised concerns that the proposal was inconsistent with the Comprehensive Plan. (Ex. No. 53).
3. On March 1, 2015, the Brookland Manor/Brentwood Village Resident’s Association filed for Party Status in Opposition of the proposed PUD. (Ex. No. 28).
4. The original Application called for the demolition of the existing 535 affordable housing units currently on site as part of a larger planned redevelopment. This redevelopment called for an overall increase in density from the 535 current units to over 2,235 units. Of the 2,235 units proposed, 424 units would be affordable. Of those 424 units, 373 would be replacement Project Based Section 8 units and the remaining 51 units would be for residents with housing choice vouchers. (Ex. No. 53).
5. Pursuant to the original Application, if the Project Based units were not renewed due to lack of Federal Funding, the Applicant offered to reserve 20% of the proposed 424 units for affordable housing at the Inclusionary Zoning Standards as follows:

- a. 212 units (10%) at 80 % of the area median income;
 - b. 212 units (10%) at 50% of the area median income; and
 - c. 12 for sale townhomes (10%) with 6 units to be offered to families at 50% of the AMI and 6 units for families up to 80% of AMI. (Ex. No. 53).
6. The March 13, 2015 Office of Planning report noted that the above option did not include the replacement of any of the affordable housing that is currently on site and noted that the OP was not supportive of any option that that would completely eliminate the level of affordability that currently exists. (Ex. No. 53).
7. The March 13, 2015 Office of Planning Report noted that although the current development contained 4 and 5 bedroom units, that the Applicant did not commit to providing any 4 or 5 bedroom units at the proposed redeveloped property.(Ex. No. 53).
8. A public hearing was set on March 16, 2015 at which time the Zoning Commission expressed further concern that the proposal was inconsistent with the Comprehensive Plan and ordered the Applicant to modify the proposal to fit within the Comprehensive Plan's framework. At that hearing, the Commission also granted party status to the Brookland Manor/Brentwood Village Tenant's Association. The Commission then set a second public hearing for May 7, 2015 to allow the Applicant to present a modified proposal. Another public hearing was held on May 11, 2015 in order to allow the Party in Opposition to present their case.
9. There was no final decision made at the conclusion of the May 11, 2015 hearing and the Commission ordered the Applicant to submit supplement information by June 8, 2015 to address the Commissions continuing concerns with the project.

Findings of Fact

1. On May 7, 2015, a public hearing was held at which time the Applicant presented their plan seeking Stage 1 PUD approval and related Map Amendment to redevelop the Brookland Manor Apartments and Brentwood Village Shopping Center. (See May 7. Tr. p. 1).
2. The Applicant's modified proposal seeks to significantly increase density at the current site and would create approximately 1, 760 residential units. (May 7 Tr. p. 7.).
3. The vast majority of the redeveloped units would be market rate units. (May 7 Tr. p. 7).
4. Currently there are 535 total affordable housing units on the Brookland Manor site. (May 7 Tr. p. 97. Lines 21-23).
5. Of these 535 total units, the Applicant's post hearing supplemental materials show that 485 units are currently occupied. (Ex. No. 104C).

6. These 485 households vary in bedroom size, household composition and level of subsidy. (Ex. No. 104C).
7. The Applicant has committed to providing 373 affordable units in the redeveloped property per the renewal of their current Project Based Section 8 Contract. (May 7 Tr. pg. 84 Lines 15 - 20).
8. Additionally, the Applicant committed that **all other households** that remain on site at the commencement of the redevelopment project will have the right to be housed at the redeveloped project at appropriate bedroom sizes. (May 7 Tr. pg. 84 Lines 15-20).
9. Without the Applicant's commitment to provide affordable units beyond the 373 project based units (a significant amount of which will be exclusively for Senior Citizens) the proposed redevelopment would result in the large scale displacement of current tenants. (See attached Exhibit A).
10. The Applicant acknowledged that it may be necessary to build units with more than three bedrooms on site in order to house large families that currently reside at Brookland Manor and will continue to reside at the property at the commencement of the redevelopment. (May 7 Tr. pg. 104. Lines 1- 8).
11. The Applicant also committed that the redevelopment will be phased to allow all households to remain on site during the entire redevelopment process. (May 7 Tr. pg. 7 Lines 24 and 25. Page 8 lines 1-6).
12. The Office of Planning in consultation with DHCD has suggested that there be at least 500 units of affordable housing at the redeveloped property. (May 7 Tr. pg. 126 Lines 6-8).

Conclusions of Law

PUD Evaluation Standards

- 1) The purpose and standards of Planned Unit Developments are outlined in 11 DCMR, Chapter 24. Section 2400.1 states that a PUD is "designed to encourage high quality developments that provide public benefits." In order to maximize the use of the site consistent with the zoning regulations and to utilize opportunities for additional FAR, the Applicant is requesting that the proposal be reviewed as a Stage 1 PUD. This would allow the utilization of the flexibility stated in Section 2400.2.

The overall goal is to permit flexibility of development and other incentives, such as increased building height and density; provided, that the project offers a commendable number of quality public benefits and that it protects and advances the public health, safety and welfare, and convenience.

Section 2400.4 establishes that the PUD shall not be inconsistent with the Comp Plan:

While providing for greater flexibility in planning and design than may be possible under conventional zoning procedures, the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, nor to result in action that is inconsistent with the Comprehensive Plan.

Section 2403 further outlines the standards under which the application is evaluated.

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 the public benefits to the project. 2403.3.

Based on the above PUD evaluation standards and in conjunction with the affordable housing goals of the Comprehensive Plan, the Commission finds that as a prerequisite for First Stage PUD approval, the Applicant shall be required to replace all 535 affordable housing units currently on site. Although the Applicant has committed that all Brookland Manor residents, at the time the redevelopment commences, will have the opportunity to be housed at the redeveloped site- the Commission feels that in light of the District's current affordable housing crisis, it is important to not lose any existing affordable units that currently exists on the current site. To lose any affordability on site would not protect nor advance public health, safety or welfare.

Therefore, the Commission orders that the 485 households currently on site at the time of the Applicant's June 8, 2015 post hearing submission be included at the redeveloped site at their existing subsidy levels and appropriate bedroom sizes as determined by HUD guidelines. Further, these units at the above specified subsidy levels and bedroom sizes will remain permanently affordable at the redeveloped site. Should any of these households be lost to attrition before the commencement of redevelopment, the Applicant shall nevertheless replace the unit at the redeveloped site pursuant to the bedroom size and subsidy level of the vacated household. The remaining 50 units that comprise the 535 total units shall be replaced as four bedrooms and shall not be rented at more than the DCHA payment standard for voucher holders so that these family units stay permanently affordable.

Further, the Commission finds that the Applicant shall develop a phasing plan to build first in order to eliminate displacement of current residents during the course of the redevelopment. The Commission believes this is crucial considering the project could take up to 10 years to be completed.

Next, with respect to the affordable units that the Applicant plans to rent via Section 8 vouchers at the redeveloped property (those units that will be kept affordable but fall outside the Section 8 project based contract), the Applicant shall ensure that the rents at these units are permanently kept in line with the DCHA payment standards for the Section 8 program to ensure the units remain affordable for current and future voucher holders.

Lastly, the Applicant's alternative affordable housing plan should the Section 8 project based contract not be renewed is not sufficient to provide appropriate levels of affordable housing at the current site. Thus, in the event the project based contract is not renewed, the Applicant shall keep the 485 units specified above, at the above specified bedroom sizes and subsidy levels permanently available to rent to Section 8 voucher recipients.

These housing requirements are in addition to the affordable homeownership commitments the Applicant has made to date. The Commission expressly intends that these conditions shall be a covenant that survives sale of the Property. Any and all future landlords and/or owners of the Property shall be subject to the terms of this covenant, and shall expressly agree to be bound by the terms of this covenant.

The Applicant shall have an affirmative obligation to provide notice of these conditions to any buyer or potential buyer of the Property. The Applicant shall place language in any contract for sale of the Property providing that the buyer is bound by the terms of this covenant.

The Commission finds the above affordable housing requirements to be an appropriate public benefit to grant the requested zoning relief. The Commission further finds the above affordable housing requirements are consistent with the provisions of the Comprehensive Plan.

CONCLUSION

Accordingly, for the reasons stated above, it is hereby **ORDERED** that the Mid City Financial application requesting a first stage approval of a planned unit development ("PUD") & related zoning map amendment at 3953, 3954, 4024, and 4025 is **Conditionally Approved** based on the above affordable housing requirements.

On _____, 2015, upon the motion of Commissioner _____, as seconded by Commissioner _____, the Zoning Commission **conditionally approved** the application at its public meeting by a vote of _____ (Names of COMMISSIONERS).

On _____, 2015, upon the motion of Commissioner _____, as seconded by Commissioner _____, the Zoning Commission **ADOPTED** the order at its public meeting, by a vote of _____ (NAMES OF COMMISSIONERS)

In accordance with the provisions of 11 DCMR 3208, this order shall become final and effective upon the publication in the D.C. Register, that is on _____.

PURSUANT TO 11 DCMR §3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR §3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR §3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF

ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.D. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. CODE §2-1401.01 *ET SEQ.*, (THE AACT@), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION THAT IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

Displacement Demographics Based on Demographic Information Contained in Applicant’s Exhibit 104C “Brookland Manor Demographics Report.”

The following calculations are based on the replacement of only the Section 8 Project Based Contract. The calculations show displacement scenarios if the only affordable housing replaced at the redeveloped site is the current Section 8 project based contract. Furthermore, the calculations are based on the Applicant’s proposed reconfiguration of the project based contract to include 200 units set aside for senior citizens, age 62 and up, as they have proposed in Exhibit 75A.

Overview

Mid-City Financial Corporation has made no commitment to assist the 165+ households that face certain displacement.

Per the Applicant’s Exhibit 104C there are 485 households currently residing at Brookland Manor.¹ A minimum of 165 households will be displaced under applicant’s proposal of reserving 200 affordable units exclusively for households with at least one senior citizen age 62 and higher, and 173 affordable units with no age requirements.² All figures are from the Applicant’s Exhibit 104C, titled “Brookland Manor Demographics May 2015,” unless otherwise noted.³

Year	Households that qualify for senior housing because they have at least one member age 62 or older	Households that do not qualify for senior housing	Non-senior affordable units	Minimum number of households displaced by Applicant’s proposal
2015	106	379	535	N/A
2020	147	338	173	165

¹ Exhibit 104C provides two lists of Brookland Manor households. The first list is on pages 1-17 and cites 486 households. However, the second list on pages 18-57 is more detailed and cites 485 households. For the Applicant’s benefit all calculations are based on the lower figure.

² On page 2 of Exhibit 75A the Applicant states: “Phase 1 will include the development of a 200 unit senior citizen (limited to residents aged 62+) building...” The applicant does not say whether the seniors’ family members will be permitted to reside with them. However, the calculations that follow assume the Applicant would not prohibit the family of senior residents from living with them in the new development.

³ Exhibit 104C is the only source of complete data from which to calculate the number of households displaced by the applicant’s plan. Though the applicant has based its calculations on the expectation of 424 households in 2018, this not a usable statistic. To calculate the number of displaced households under the Applicant’s plan, one must know the number of households with a citizen age 62+. It is impossible to calculate the number of households with seniors in 2018 because the applicant has not provided demographic information within its historical turnover rates. Therefore, the figure of 424 households is unworkable.

A

The minimum displacement of 165 households depends on Mid-City building at least 30 units for seniors that have two bedrooms or more. If Mid-City stays with its existing proposal of only 15 2BR units for seniors, the total number of displaced households jumps to 180.

The total number of displaced individuals is not possible to calculate because Mid-City has not made a commitment to a specified number of two and three bedroom units within the 173 affordable units with no age requirements. The total number of displaced individuals will be larger if the larger families are displaced due to an insufficient quantity of multi-bedroom affordable units. Likewise, the total number of displaced individuals will be smaller if Mid-City builds a sufficient quantity of multi-bedroom affordable units, and the largest families can stay.

Senior Housing

At the top of page 3 of the Applicant’s Exhibit No. 75A, the Applicant plans for only 15 two bedroom units and 185 one bedroom units for seniors. In the year 2020, this breakdown of one and two bedroom units for seniors will force 15 families to make the choice of separating or staying together.⁴ If those 15 families each choose to separate to ensure the senior member of the family can access an affordable 1BR unit, the Applicant’s plan will have created 15 more displaced families bringing the total to 180 (165 + 15).

Applicant’s proposed Senior units from <u>Exhibit No. 75A</u> page 3			Potential effect on Brookland Manor Families in 2020	
1 Bedroom Units	2 Bedroom Units	Total Units reserved for Seniors	Families that will require senior units of 2BR or more	Potential number of families separated by forced downsizing
185	15	200	30	15

To ensure that no family is forced to choose between splitting up, to provide the senior members of the family have an affordable place to live, and staying together while facing an increased risk of homelessness, current Brookland Manor residents need 30 units with two bedrooms or more in the year 2020.

Senior units that could be filled by current Brookland Manor residents in the year 2020	Surplus units for seniors unfillable by current	Total

⁴ On page 3 of Exhibit 75A the Applicant implies it is planning on the senior population of 2020 to fill the units: “Several more households will be added to the 62+ cohort over the next 5 years. The senior citizen building will be substantially occupied by existing residents of Brookland Manor.” The Applicant states the senior building will be completed in 2019 however, the applicant does not specify when in 2019 the building will be completed (page 3 Exhibit 75A). Therefore, to allow for the possibility of reasonable construction delays, the year 2020 is used to measure the number of Brookland Manor households that could move into the applicant’s proposed senior building when it is completed.

					residents in 2020	
1 Bedroom Units	2 Bedroom Units	3 Bedroom Units	4 Bedroom Units	Potential number of families separated by forced downsizing	1 Bedroom Units	Total units for Seniors
117	21	6	3	0	53	200

Non-Senior Housing

By 2020, there will be 66 non-senior households with five or more people that require a three bedroom apartment or larger. On page 6 of Mid-City's Exhibit No. 75, it committed "to build sixty-four three bedroom units on site to accommodate existing households that require them." However, Mid-City did not say whether these 64 3BR units would be part of the 173 non-senior units that will accept Section 8 vouchers. It is our understanding that Mid-City has made no other commitment to building multi-bedroom apartments at this time.

Assuming Mid-City meant to include the 64 three bedroom units in the 173 non-senior family totals, most of the largest families would be able to avoid displacement. However, with no guarantee of sufficient bedrooms per unit more families may be forced to separate if they are to claim one of 173 non-senior family units in the applicant's proposal. If more households are forced to separate the total number of displaced households will be higher than 180.