

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's Response to Applicant's Post Hearing Submission.**

Dear Chairman Hood and Members of the Zoning Commission:

Enclosed please find the Party Opponent's Findings Party Opponent's Response to Applicant's Post Hearing Submission.

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

I. Introduction

Mid City Financial Corporation (the “Applicant”) has not yet addressed the fact that their proposal will displace a minimum of 165 households. This fact has been and remains the most serious problem with the Applicant’s proposal. The position of the Brookland Manor/Brentwood Village Residents Association (the "Party Opponent") remains that the current number of 535 units of affordable housing must be maintained. Of equal importance, all current residents should be guaranteed housing in the new development.

However, beyond the Party Opponent’s disagreement over the number of affordable units that should be part of the new Brookland Manor, the Applicant’s proposed conditions in Ex. No. 111 raise additional concerns. The Applicant’s proposed condition B.1 addresses the Applicant’s commitment to affordable housing. Condition B.1 does not explain why the Applicant continues to pursue a surplus of senior housing and a shortage of family housing, a plan which would needlessly increase the number of families displaced.

Proposed condition B.2 addresses the Applicant's tenant relocation plan and construction phasing plan. The Applicant makes a commitment to cover tenants’ relocation expenses. However, the Applicant does not commit in writing to relocate all tenants to units on the property, despite the Applicant’s oral testimony to the contrary.

II. Procedural History

1. The Applicant (Mid-City Financial) applied to the Commission on October 14, 2014, for a First-Stage Planned Unit Development (PUD) and related Zoning Map amendment for the property known as Brookland Manor. 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 the 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 Ex. No. 111, if the Project Based units were not renewed due to lack of Federal Funding, the Applicant offered:

- a. 329 multifamily units (20%) are to be set aside at 60% of AMI (provided the change in underwriting standards is approved, some form of property tax relief granted to those units, and DC Housing Trust Funds are provided); and
 - b. 11(10%) of 114 for-sale units are reserved for families making the minimum income levels prescribed in the Inclusionary Zoning program.
6. The March 13, 2015 Office of Planning (OP) 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.
10. The Applicant submitted supplemental information in on June 8, 2015. (Ex. No. 104, 104A, 104B, 105C). The Applicant submitted Proposed Findings of Fact and Conclusions of Law on June 15, 2015. (Ex. No. 108).
11. The Party Opponent submitted Proposed Findings of Fact and Conclusions of Law on June 15, 2015. (Ex. No. 109).
12. The Commission voted to approve the Proposed Action at the public meeting on June 29, 2015. (June 29 Tr. pg. 30). The Commission requested additional written submissions about the Applicant's phasing plan and granted Party Opponents the opportunity to respond in writing. (June 29 Tr. pg. 31).

III. 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 increase significantly the 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). 373 of the 535 units are affordable under a Section 8 project based contract. The remaining 162 units that comprise the 535 total are affordable because their current market rent is low enough to accept vouchers. (May 7, Tr. p. 103. Lines 6-11).
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 *testified* 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. (Ex. No. 109A). Such an outcome would be incongruent with the Applicant's oral testimony (May 7 Tr. pg. 84. Lines 15-20), but unavoidable under the current redevelopment plan. (Ex. No. 111).
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. pg. 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).

IV. The Applicant's current proposal will displace a minimum of 165 households.

Despite the Applicant's proposed reduction in affordable housing at Brookland Manor from 535 units to 373 units, the Applicant has never acknowledge the quantitative effect of the reduction of 162 units (535 – 373) on the 485 households living at Brookland Manor in writing.

The Applicant's oral testimony before the Commission differs markedly from their most recent written commitments. At the May 7, 2015 hearing, Mr. Michael Meers, on behalf of the Applicant, testified: "And so our commitment was for the 373 affordable units. And then we additionally committed to any other families that we will accommodate them in the new development. So whether it's 424, or 434, or 414, we will accommodate those families." (May 7, Tr. pg. 84. Lines 15-20). In their submissions to the Commission on April 10, 2015, the Applicant stated: "In regard to the 51 market rate units (the difference between 424 and 373 – occupied by households assisted with DC Housing Authority (DCHA) Housing Choice Vouchers and those with no subsidies at all), the Applicant will work with DCHA to ensure that its clients have the opportunity to remain at the property even as the market rents are changed to reflect the newly constructed units." (Ex. No. 75 pg. 4).

Though the Applicant testified that it would secure vouchers from DCHA which would cover the increased market rent in the new development, and allow current voucher holders to remain at the redeveloped property, there is no reported progress on this effort. Even more troubling is that Applicant makes no mention of its work with DCHA as part of the "specific and enforceable" conditions in Ex. No. 111, which indicates the Applicant has abandoned its earlier commitments.

Currently, the maximum contract rent that DCHA will cover in the Brentwood neighborhood, of which Brookland Manor is a part, is \$1,788.00 per month for a three-bedroom apartment. Mr. Meers testified that the monthly rent of the Applicant's new three bedroom units would exceed \$1,788.00 per month. (May 7 Tr. pg. 100. Lines 9-12). With no guarantee that the new units will be affordable to DCHA voucher holders it will be impossible to accommodate all current residents in the proposed development. The Applicant's proposed numbers of affordable units and lack of progress in securing a new commitment from DCHA guarantee a minimum of 162 households will be displaced by the Applicant's proposal.

Moreover, per the Applicant's Exhibit 104C, there are 485 households currently residing at Brookland Manor.¹ Of these 485 households, a minimum of 165 family households will be displaced under the Applicant's proposal. This is due to the insistence of the Applicant to convert current multi-family households into units reserved exclusively for households with at least one senior citizen age 62 and higher.² The figures used for this analysis are from the Applicant's Ex. No. 104C.³

¹ Ex. No. 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 Ex. No. 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.

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

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

It is instructive to note that these displacement figures may end up being higher because at this time it is not possible to pin point numbers. This is because the Applicant has not made a commitment to a specified number of two and three bedroom units within the 173 affordable units with no age requirements under the Section 8 project based contract. Thus, 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.

Senior Housing

The Applicant plans for only 15 two bedroom units and 185 one bedroom units for seniors. (Ex. No. 75A. pg. 3). 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).

³ Ex. No. 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.

⁴ On page 3 of Ex. No. 75A, the Applicant implies it is planning for 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. (Ex. No. 75A. pg. 3). 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.

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

Senior units that could be filled by current Brookland Manor residents in the year 2020					Surplus units for seniors unfillable by current residents in 2020	Total
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. (Ex. No. 104C. pg. 18-57). The Applicant stated it would build “sixty-four three bedroom units on site to accommodate existing households that require them.” (Ex. No. 75. pg. 6). However, the Applicant did not say whether these 64 3BR units would be part of the 173 non-senior units under the Section 8 project based contract. Furthermore, the Applicant did not commit to build 3BR units in its most recent pleading, Ex. No. 111. Without a commitment to build three bedroom units in the new Brookland Manor the largest families will face displacement. 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.

V. Proposed condition B.1 does not say whether families can live in surplus senior citizen units or clarify why the Applicant pursues a surplus of senior units and a shortage of units for families.

Proposed Condition B.1 states:

“The Applicant will retain the Section 8 contract for 373 units on the Subject Property in perpetuity. The PUD project shall provide for 22% (373 of the total 1,646 multi-family units) of the new rental accommodations to be reserved as affordable units with AMI [Average Median Income] levels that are significantly below 50% of AMI. An additional 11 for-sale townhouses or two-over –two units will be reserved as affordable units that will satisfy the Inclusionary Zoning standards. The senior citizen building proposed for Block 4 will be 100% assisted, each multi-family building will have at least 10% of the units reserved as affordable housing, and 10% of the for-sale residential units (townhouses or two-over-two units) will be reserved as affordable dwellings.”

(Ex. No. 111. pg. 1-2).

Setting aside our disagreement about the appropriateness of the total number of affordable units, condition B.1 poses two additional concerns. First, the Applicant has neglected to explain why they continue to pursue a surplus of senior housing and a shortage of family housing to the detriment of current Brookland Manor residents. In addition, the fact that the senior building for Block 4 would be “100% assisted” leaves open the possibility that non-senior family members will be prohibited from living with senior members of the family in the proposed development.

The first problem with condition B.1 is the Applicant’s lack of explanation of what they would do with the surplus senior units while residents suffer from a shortage of family units. This omission could be the difference of 50 Section 8 project based units. Mr. Meers testified on behalf of the Applicant before the Zoning Commission on May 7, 2015, to explain how the number of Senior Citizen units would be determined:

"And so we're going to be conducting a survey on site with our residents who are or will be 62 and over, to see how many of them would choose to live in the senior housing building. Some may make different choices, but we want to – so the sizing of the building will be based upon those interviews and the preferences expressed."

(May 7 Tr. pg. 83. Lines 1-7).

Despite Mr. Meer’s testimony, the Applicant has not made a written commitment to survey residents who are or will be over the age of 62 in Ex. No. 111.

Mr. Meers later testified that 150 to 200 units of the 373 units on the Section 8 contract would be reserved for seniors. (May 11 Tr. pg. 100. Lines 17-19). The Applicant’s written submissions confirm Mr. Meers’s May 11 testimony. (Ex. No. 108 pg. 12). The Applicant has also stated that “the senior citizen building will be substantially occupied by existing residents of Brookland Manor.” (Ex. No. 75A pg. 3). As stated above, of the 485 households currently living at Brookland Manor there will be only 147 households with a resident age 62 or over by the year 2020. (Ex. No. 109A pg. 1; See also Ex. No. 104C pg. 18-57). Therefore, in accordance with the

Applicant's statements, to fit the senior building to the needs of existing residents, and keeping with the Applicant's approximation of 150 to 200 senior units, the number of senior units would fall far closer to 150 than 200.

The Applicant, despite knowing that could be a maximum 147 households with seniors in 2020, has never mentioned allowing non-seniors to live in the 53 potential surplus senior units (200 – 147 = 53). The Applicant has never mentioned whether its commitment to 373 Section 8 units would decrease if the number of senior units decreases from 200 to 150. These are troubling omissions in the applicant's proposal that require clarification.

Second, the fact that Block 4's senior building would be 100% assisted raises the question of whether the Applicant will allow non-senior family members to live with seniors or whether they will force families to separate. The calculation that 165 families would be displaced at minimum is premised on non-senior family members being able to live with seniors in the proposed development. If that is not the case, the number of displaced households will increase because the Applicant will have created new households through the forced separation of existing households.

VI. Proposed Condition B.2 permits the displacement of hundreds of tenants.

Proposed Condition B.2 states:

“The Applicant shall be required to abide by the terms of the tenant relocation and construction phasing plan as detailed in Exhibit 104B of the record in this case.” (Ex. No. 111. pg. 2). In Exhibit 104B, the Applicant outlines its tenant relocation plan with respect to each phase of construction:

- Phase 1: “The Applicant anticipates that Block 7's three existing building will be vacant when construction starts in early 2018 with all of those residents relocated at ownership expense to an appropriate home on the property.” (Ex. No. 104B. pg. 3).
- Phase 2A: “For those not relocating to the senior building, the Applicant will relocate these residents at the Applicant's expense to a comparable unit on the property.” (Ex. No. 104B. pg. 3).

The Applicant's commitment to cover residents relocation expenses to “an appropriate home on the property” in Phase 1 and a “comparable unit on the property” in Phase 2A requires clarification. (Ex. No. 104B. pg. 3). The coverage of relocation expenses is only a useful provision if it means that the new unit will have an appropriate number of bedrooms for the tenant's household size at a monthly rent the tenant can afford through the utilization of an existing subsidy. Otherwise, mere relocation at the Applicant's expense brings no guarantee of affordability after the tenants are relocated.

As stated above, the Applicant has only committed to 373 Section 8 units while there are 485 households currently residing on the property. Due to this shortage, many tenants would not be able to afford the units they are relocated to on the property. The Applicant's coverage of relocation expenses is of no benefit to tenants if they cannot afford the rent of the apartment applicant moves them to on the property. B.2 is not an enforceable condition because there will

simply not be enough affordable "appropriate homes" and "comparable units" for residents to relocate to and live on the property, per the Applicant's plan.

Proposed condition B.2, like all of the Applicant's pleadings, willfully ignores the fact that 485, the number of current households, is a greater number than 373, the number of proposed affordable units. The Applicant hints at this problem of basic arithmetic by omitting the phrase "on the property" in the tenant relocation plan for construction Phase 2B:

- Phase 2B: "Again, relocations will be done at the Applicant's expense with relocations to a comparable unit." (Ex. No. 104B. pg. 3).

By not including the phrase "on the property" the Applicant will be empowered to displace any number of current residents in construction Phase 2B. Approximately 165 households would lose their homes and would likely have to move to a neighborhood where there is a high concentration of buildings that accept DCHA Housing Choice Vouchers. Neighborhoods with high concentrations of voucher holders are the poorest and most intensely segregated neighborhoods in the District. (Ex. No. 96B pg. 6). Unless the above problems are addressed, the Applicant's development, with the acquiescence of the Zoning Commission, will perpetuate decades-old patterns of housing segregation.

VII. Proposed Conditions to Avoid Displacement

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- 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 485 households currently on site at the time of the Applicant's June 8, 2015 post hearing submission shall 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 Applicant shall develop a phasing plan to build first in order to eliminate displacement of current residents during the course of the redevelopment. 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. 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.