

**Mid-City Financial Corporation, Brentwood Associates, LP & MCF Brentwood SC, LLC,  
Case No. 14-18A**

HEARING ON SECOND-STAGE REVIEW AND APPROVAL OF A  
PLANNED UNIT DEVELOPMENT AND MODIFICATION  
ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
441 4<sup>th</sup> Street, NW, #200, Washington, DC 20001  
February 23, 2017<sup>1</sup>

*Written Testimony of: Catherine Cone, Staff Attorney, Fair Housing Project  
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Thank you for the opportunity to testify today on behalf of The Washington Lawyers' Committee for Civil Rights and Urban Affairs (the "Washington Lawyers' Committee" or "Committee"). The Washington Lawyers' Committee was founded in 1968 to address civil rights violations and racial justice and poverty-related issues in our community through litigation and other advocacy, including mobilizing the pro bono resources of the private bar. Among the areas in which we work are fair and equal housing opportunity through our Fair Housing Project. Along with the law firm, Covington and Burling, we represent a class of families at Brookland Manor in a federal civil rights lawsuit against Mid-City Financial in which we allege that the proposed redevelopment discriminates against families with children at Brookland Manor because the redevelopment plan eliminates four- and five-bedroom units and reduces three-bedroom units, which adversely impacts families with children, as my Covington and Burling colleague, Nooree Lee, testified about earlier.

The second-stage Planned Unit Development ("PUD") application for the Brookland Manor property raises significant issues for the Zoning Commission ("Commission") to consider. In particular, the Brookland Manor redevelopment and second-stage PUD application are inconsistent with the District of Columbia's ("District" or "City") obligations to comply with the Fair Housing Act and affirmatively further fair housing. To ensure that the Brookland Manor redevelopment and this body comply with the District's obligations, the Committee asks the Zoning Commission to require Mid-City Financial Corporation ("Mid-City") to alter its redevelopment by preserving additional affordable housing units and creating family-sized units of four or more bedrooms as well as more three-bedroom units. Should the Commission fail to do so, the proposed redevelopment will displace long-standing primarily African American residents, including the families with children who reside in large units targeted for elimination, and likely perpetuate the patterns of racial segregation which the City has acknowledged to be its greatest fair housing challenge. The proposed PUD provides the Commission a key opportunity to ensure that the Brookland Manor redevelopment is equitable and that it furthers fair housing.

Rapidly rising housing costs and stagnant wages in the D.C. area have gravely impacted the ability of low- and moderate- income families and individuals to find affordable housing. In 2015, the D.C. Fiscal Policy Institute reported that since 2002, rent for the bottom two quintiles of D.C. renters rose by 14% and 35%, respectively, while their incomes remained stagnant.<sup>2</sup> In

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<sup>1</sup> The Party in Opposition will present its public witness testimony on March 16, 2017, at the direction of the Zoning Commission. This testimony will thus not be delivered until March 16 even though it was prepared on February 23.

<sup>2</sup> Wes Rivers, *Going, Going, Gone: DC's Vanishing Affordable Housing*, A DC Fiscal Policy Report (March 12, 2015) at pages 2-3 [hereinafter "*Going, Going, Gone*"], available at: <http://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>.

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addition, the number of affordably priced apartments in D.C. has rapidly decreased in the last decade—by nearly half.<sup>3</sup> When affordable apartments are redeveloped into luxury housing, low-income families are forced to relocate. This issue especially impacts families living in large apartment units because in Washington, D.C., only 8% of housing units are four-bedrooms, 4% are five- or more bedrooms, and 21% are three-bedrooms.<sup>4</sup> Wards 7 and 8 are home to some of the only affordable four- and five- bedroom apartments in the City,<sup>5</sup> which are affected by poverty more than any other area in D.C. and have high concentrations of African American communities. In sum, rising housing prices and the geographical limitations for affordable family-sized units lead more African American families to move to Wards 7 and 8 to find affordable suitably-sized housing and further perpetuates racial and economic segregation.

As the quasi-judicial body tasked with hearing various land use cases, including PUDs, and one intimately involved in the planning process, the Commission is well positioned to assist the City in complying with its fair housing obligations. As a public sector agency tasked with determining whether to approve proposed redevelopments which will impact the District population's ability to access housing, the Commission is required to consider whether its decisions help ameliorate or create barriers to fair housing choice. For these reasons, the Commission should consider the impediments to fair housing choice that the City has previously identified but insufficiently addressed when reviewing and deciding whether to approve or deny redevelopments, including the Brookland Manor PUD currently before it. These impediments include: (1) the City's dual housing market which has further entrenched patterns of racial segregation, (2) the high cost of housing, exacerbated by the District's failures to preserve affordable housing in the face of gentrification, including larger family-sized units, and (3) the lack of a process that explicitly requires developments to comply with fair housing laws in order to receive District zoning approval. All of these issues are critically important in this PUD.

This Commission should note that the District's obligations to further fair housing do not require it to determine, as a matter of law, whether a particular redevelopment unlawfully violates the federal civil rights afforded to members of a protected class nor to adjudicate claims under the federal Fair Housing Act and/or District of Columbia Human Rights Act frameworks, which are properly considered by courts of competent jurisdiction. Rather, the Commission can consider the fair housing implications of specific PUDs under the Commission's review and whether such redevelopments pose barriers to fair housing choice, as previously explained, when it considers the public benefits and adverse impacts of each redevelopment. Should the Commission wish to seek guidance on how to more concretely aid the City in abiding by its fair housing obligations, it can consult with the Department of Housing and Community Development which was tasked with identifying the impediments to fair housing choice that exist in the District.

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<sup>3</sup> See *id.* at 4. Between 2002 and 2013 the number of apartments renting for \$800 a month—a rate that is affordable for a household earning \$32,000 a year—declined by 27,000 while the number of units renting for more than \$1,600—rents affordable for households earning greater than \$64,000 monthly—increased by nearly 37,000. *Id.*

<sup>4</sup> See Peter Tatian, Josh Leopold, et al., *Affordable Housing Needs Assessment for the District of Columbia, Phase II*, An Urban Institute Research Report (May 2015) at 2 [hereinafter “Affordable Housing Needs Assessment”]; see also Appendix A, Table A21 or page 132 (describing the results of a 2008-2012 survey).

<sup>5</sup> *Id.* at 18-19. The distribution of large families varies intensely across Wards—households of four or more individuals make up only 4% of Ward 2, which is 10% African American, but up to 21% of Ward 8, which is 94% African American. *Id.* 110-111, App. A.

**I. The District's Duty to Affirmatively Further Fair Housing**

By way of background, any county that is a Community Development Block Grant (“CDBG”) recipient—such as the District of Columbia—is required to certify that the grant is being used in conformity with the Fair Housing Act, 42 U.S.C. § 3601 et seq., and that it is affirmatively furthering fair housing, as is any consortium of local government units receiving such funds.<sup>6</sup> As part of these obligations,<sup>7</sup> a recipient of CDBG funds like the District is required to identify what impediments to fair housing choice exist in that jurisdiction by conducting an analysis of impediments (“AI”), taking appropriate actions to overcome the effects of those impediments, and maintaining records of the analysis used to determine those impediments and the actions taken to overcome them.<sup>8</sup>

Further, as part of its affirmatively furthering obligations, the District is required to submit a certification of the jurisdiction's compliance to affirmatively further fair housing with its Consolidated Plan submissions.<sup>9</sup> In August 2016, the District submitted its Consolidated Plan to HUD, along with an Annual Action Plan, in which it certified that the City was complying with the Fair Housing Act and its duty to affirmatively further fair housing. On September 16, 2016, the Washington Lawyers' Committee, along with the Equal Rights Center—the District of Columbia's full service, private fair housing center—and the Holy Redeemer Parish Social Justice Ministry, challenged those certifications made by the District in a letter to HUD because ample evidence shows that the District is taking actions that are inconsistent with its certifications and that its Consolidated Plan and Annual Action Plan fail to fully address impediments previously identified by the District in its prior AIs. The Committee and its partners are specifically concerned that the District is failing to: (1) identify actions and strategies that address long-standing patterns of racial segregation, (2) take actions to preserve affordable housing despite ongoing gentrification, and (3) preserve and restore affordable three-, four-, and five-bedroom units needed to accommodate families with minor children, as evidenced by the Brookland Manor redevelopment, among other examples.

As a result of the concerns we raised, HUD undertook its own investigation which led it to inform the District on November 14, 2016 that the City's Consolidated Plan and Annual Action Plan did not specifically address any of the District's previously identified impediments to fair housing choice, citing the Brookland Manor redevelopment as an example where the City “could have done more to preserve and develop affordable housing and decrease segregation, which would help address the lack of current affordable housing and the declining trend of available

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<sup>6</sup> 42 U.S.C. §§ 3608 (d) & (e)(5); 24 CFR § 91.225 (a)(1); 24 CFR § 91.425 (a); *see also* 24 CFR § 91.236.

<sup>7</sup> Although in 2015 the United States Department of Housing and Urban Development (“HUD”) passed a new “Affirmatively Furthering Fair Housing Rule,” governing regulations nonetheless provide that until such time as a program participant is required to submit an “Assessment of Fair housing” under the new rule—which the District has not yet done—the participant “*shall* continue to conduct an analysis of impediments . . . in accordance with requirements in effect prior to August 17, 2015.” 24 CFR § 5.151.

<sup>8</sup> 42 U.S.C. §§ 3608 (d) & (e)(5); 24 CFR § 91.225 (a)(1); 24 CFR § 91.425 (a); *see also* 24 CFR § 91.236.

<sup>9</sup> Internal September 26, 2016 HUD memorandum from the Office of Fair Housing and Equal Opportunity to the Office of Community Planning and Development at 1, made available pursuant to FOIA request No. 17-FI-RO3-00474 [hereinafter “Internal HUD FHEO Memorandum”].

affordable housing since 2000.”<sup>10</sup>

Relatedly, in its 2012 AI, the District specifically recognized the planning process as an area in which the City is failing to affirmatively further fair housing. The 2012 AI identified a series of Public Sector Impediments to fair housing choice, one of which noted that “[n]othing in the District’s planning process directly addresses any fair housing issues that the city can help resolve and fair housing violations that the city can help prevent.”<sup>11</sup> Because the 2012 AI indicates that “[r]esidential developments . . . require[ing] city review and approval are approved without any effort to promote compliance with the Fair Housing Act,” it recommends that the District “explicitly require developers of all residential developments and buildings to comply with the federal Fair Housing Act and the District’s own fair housing law in order to receive zoning approval and a building permit,” (2012 AI at 189), thus clearly contemplating a clear role for the Zoning Commission to play. Viewed through the Brookland Manor redevelopment, these issues are particularly significant given the property’s location and history.

**II. Furthering Fair Housing Through the Brookland Manor Redevelopment**  
***a. Tenants Who Are Displaced by the Redevelopment—Especially Families—Will Likely Move to Racially Concentrated Neighborhoods, Thus Perpetuating Racial Segregation.***

The Brookland Manor redevelopment will impact an area of the City that is rapidly gentrifying and a historically African American community. As of 2015, Ward 5 had a population of 75,109 individuals of which 76% are Black non-Hispanic, 19% are White non-Hispanic, 7% are Hispanic, 1% are Asian/Pacific Islander non-Hispanic, and 2% other.<sup>12</sup> Historically, however, the City’s overall demographics have changed over time. From 1980 to 2010, “[t]he city’s African American . . . population [fell] by 143,780, from 70.3 percent . . . to 50.7 percent . . . while its Caucasian population grew by nearly 60,000, an increase from 26.9 percent in 1980 to 38.5 percent in 2010.” (2012 AI at 1).<sup>13</sup> Thus the District’s demographic changes “have given [it] an opportunity unparalleled in the history of great American cities: to transform itself into a stable, racially, ethnically, and economically integrated city *without* displacing its most vulnerable residents.” (*Id.*). And, “financially well-off Caucasian in-migration,” while “bringing racial and economic integration to what had been overwhelmingly minority neighborhoods in a city that ha[d] long been intensely segregated and disproportionately low-income African American,” was accompanied by gentrification which could lead to “massive displacement of [the City’s] most vulnerable population, low-income households, largely African American population and to a lesser extent, Hispanic,” as had occurred in other cities. (*Id.* at 1-2).

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<sup>10</sup> November 14, 2016 HUD Office of Fair Housing and Equal Opportunity Letter to Mayor Muriel Bowser at page 5 [hereinafter “HUD Letter to Mayor Muriel Bowser”].

<sup>11</sup> “District of Columbia Analysis of Impediments to Fair Housing Choice 2006-2011,” Impediment #8, at 188 [hereinafter “2012 AI”], available at:

<https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/DC%20AI%202012%20-%20FINAL.pdf>.

<sup>12</sup> Affordable Housing Needs Assessment for the District of Columbia: Phase II, 111 tbl. A.1 (2015).

<sup>13</sup> Although the Asian population and Hispanic populations also grew, the most significant change the City saw was to its African American population. (2012 AI at 1).

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In analyzing the impact of the changes the District had experienced over time on various demographic groups, the AI noted that “[n]o other racial or ethnic group is as segregated as the District’s [African American] population.” (2012 AI at 3). Further, given that the African American population was largely concentrated in the Southeast quadrant of the City—which remained true in 2000 and 2010, at rates over 93%—the AI identified “[t]his extreme degree of segregation” as “the District’s greatest fair housing challenge.” (*Id.*)<sup>14</sup>

Brentwood in particular and Ward 5 more generally were identified by the District as traditionally African American neighborhoods with a White in-migration. (2012 AI at 57-58). The 2012 also AI noted that the District would face “a challenging balancing act between gentrification and the preservation and creation of housing affordable to households with modest incomes, primarily African American and to a lesser extent Hispanic—all within a framework of affirmatively furthering fair housing by consciously promoting racial, ethnic, and economic integration” throughout the District. (*Id.*) Applied to Brookland Manor, the challenge posed by this redevelopment is to ensure that the project does not lead to further displacement of low-income African American households, which by virtue of the elimination of four- and five-bedroom units and reduction in three-bedroom units is all but assured for families residing in these units. Because only 8% of housing units in the City are four-bedrooms, 4% are five- or more bedrooms, and 21% are three-bedrooms<sup>15</sup> and Wards 7 and 8 are home to some of the only affordable four- and five-bedroom apartments in the City,<sup>16</sup> families who are displaced from these units will be forced to move to areas where such housing is available. Unless the Commission acts to undo the elimination of family-sized units, it will all but ensure that the redevelopment further perpetuates racial segregation in the District.

***b. The Brookland Manor Redevelopment Will Lead to a Loss of Affordable Housing, Including Large Bedroom Units Needed to House Families.***

With respect to the larger affordable housing crisis, the City repeatedly noted in its 2012 AI that the low and moderate income African American population is much more likely to be severely cost burdened and thus forced to pay 50% or more of their income on housing.<sup>17</sup> This is but one of a series of “housing problems” experienced by 45.45% of African American households. Moreover, the “relatively high cost of housing continues to pose a barrier to fair housing choice in the District by fostering economic segregation and the racial segregation that accompanies it due to the median income of the District’s non-Hispanic white households being so much greater than the median income of African American households.” (2012 AI Impediment #4, at 185). And, the in-migration of wealthier Caucasians into neighborhoods that have traditionally been primarily African American, such as Brentwood, has been accompanied

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<sup>14</sup> See also HUD Letter to Mayor Muriel Bowser at 3-4; September 16, 2016 Letter to Michael Rose, HUD Field Office, Community and Planning Development, and Melody Taylor-Blancher, HUD Regional Office, Fair Housing and Equal Opportunity at 2 [hereinafter “September 2016 Letter to HUD”].

<sup>15</sup> Housing Needs Assessment at 2 and Appendix A, Table A21 or page 132.

<sup>16</sup> *Id.* at 18-19. The distribution of large families varies intensely across Wards—households of four or more individuals make up only 4% of Ward 2, which is 10% African American, but up to 21% of Ward 8, which is 94% African American. *Id.* 110-111, App. A. The Urban Institute report also notes that Wards 7 and 8 are affected by poverty more than any other area in D.C. and have high concentrations of African American communities.

<sup>17</sup> HUD Letter to Mayor Muriel Bowser at page 4.

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by gentrification and resulting higher rents and displacement of low-income households, who are disproportionately African American. This has taken place while the City’s rental housing stock continues to decrease and while the cost of housing remains largely out of reach to very low-income households who are most severely hit by increases in housing costs.<sup>18</sup> Given the very fragile state of affordable housing in the District and need to achieve racial and economic integration in gentrifying neighborhoods, the 2012 AI recommended that the City *preserve existing affordable housing* and *create new affordable housing units*.<sup>19</sup>

This Commission approved the Brookland Manor Stage-One PUD application for a development that will include 1,760 residential units of which 1,646 will be multi-family or senior-designated housing.<sup>20</sup> As the Commission noted, Brookland Manor is comprised of 535 units of which 373 were covered and deeply subsidized under a Section 8 project-based rental assistance contract with HUD (“Section 8 project-based contract”) and additional units that were “market” rate units, most of which have largely been rented by tenants who pay their rents through DC Housing Choice Vouchers.<sup>21</sup> Under the redevelopment plan, 373 units—or 22% of the total multi-family and senior units units—will be designated as affordable housing at area median income (“AMI”) levels that are below 50% of AMI, assuming Mid-City is able to renew the Section 8 project-based contract, in addition to 11 inclusionary zoning units.<sup>22</sup> As mentioned, none of these units will include four or more bedroom units and only 64 apartments will be three-bedroom units. The Commission nonetheless concluded that the retention of the 373 Section 8 project-based contract units “is a significant amenity of the PUD project.” When considered in the larger scheme of the City’s affordable housing crisis, the District’s depleted housing stock for low-income households and large families in particular, the Commission should not easily overlook the loss of an additional 162 units of housing at Brookland Manor. These units have permitted tenants to stay in their homes because the rents remained affordable.

Mid-City itself acknowledged in its stage-two PUD application materials that “[n]inety-eight percent of existing households at Brookland Manor are assisted with a Section 8 subsidy either under the project based Section 8 Housing Assistance Payment contract or with a DCHA Housing Choice Voucher.”<sup>23</sup> It further noted that “the resident portion of the rent will remain at 30% of household income . . . even as the existing apartments are replaced with modern, fully amenitized housing,”<sup>24</sup> though it has yet to put forth an agreement signed by the DC Housing Authority (“DCHA”) confirming that regardless of the new rents set at the redevelopment,

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<sup>18</sup> “Among DC’s lowest income residents, 64 percent devote half or more of their income to housing. And one-third of more moderate-income families, with incomes up to \$54,000, have housing cost burdens this severe.” *Going, Gone*, *Gone* at 1 and 7.

<sup>19</sup> HUD Letter to Mayor Muriel Bowser at page 4 (citing the 2012 AI).

<sup>20</sup> Ex. 118, Zoning Commission Order No. 14-18 (Sept. 10, 2015) [hereinafter “First-Stage PUD Approval ZC Order”] at p. 9, ¶ 29; p. 17, ¶ 52; and p. 56, ¶ 8, available at:

[https://app.dcoz.dc.gov/Content/Search/ViewCaseReport.aspx?case\\_id=14-18](https://app.dcoz.dc.gov/Content/Search/ViewCaseReport.aspx?case_id=14-18) (“View Full Log”).

<sup>21</sup> First-Stage PUD Approval ZC Order p. 56, ¶ 8.

<sup>22</sup> First-Stage PUD Approval ZC Order p. 17, ¶ 52; p. 59 ¶¶ B.1.a. (1.)-(2.).

<sup>23</sup> Ex. 1G, Snapshot of Existing Brookland Manor Community, Tenant Relocation and Construction Phasing Plan, and Affordable Housing Program at 1, available at:

[https://app.dcoz.dc.gov/Content/Search/ViewCaseReport.aspx?case\\_id=14-18A](https://app.dcoz.dc.gov/Content/Search/ViewCaseReport.aspx?case_id=14-18A) (“View Full Log”).

<sup>24</sup> *Id.*

voucher holder tenants will be permitted to rent above the DCHA-established voucher caps.<sup>25</sup>

Because such assurances are not in place, the Commission should reconsider its approval of the current redevelopment, making it conditional on obtaining these assurances from Mid-City. Alternatively, other concrete means exist to preserve additional affordable housing through the proposed redevelopment, beyond the project-based units. The Brookland Manor/Brentwood Village Residents' Association has proposed to Mid-City that its members join Mid-City and Councilmember McDuffie in lobbying the City for additional affordable housing units for the redevelopment, financed out of the Housing Production Trust Fund. Doing so will not only preserve the ability of long-standing African American residents to remain in their community, it will also avoid further displacement of these tenants. Taking such actions would also implement the 2012 AI recommendation to preserve existing housing affordable for households with modest incomes and assure a proportion of new units are affordable to this income group in the gentrifying neighborhoods and throughout the city.” (2012 AI at 182).<sup>26</sup> If the Commission does not act, in HUD’s words to Mayor Bowser, the Brookland Manor redevelopment will serve as an example where “the District could have done more to preserve and develop affordable housing and decrease segregation, which would help address the lack of current affordable housing and the declining trend of available affordable housing since 2000.”<sup>27</sup> This body’s members can help avoid that result.

***c. By Eliminating And Reducing Large Units which Will Disparately Impact Families, The Current Redevelopment Is One More PUD that Fails to Comply with Fair Housing Laws.***

As my Covington & Burling colleague Nooree Lee testified earlier, because the proposed redevelopment plan will eliminate four- and five-bedroom apartments and reduce three- bedroom apartments, the plan is much more likely to impact families with children, as compared to non-families who live on the property, and thus discriminate against families. This kind of discriminatory effect on families is prohibited under federal and local fair housing laws and for that very reason runs afoul of the City’s obligations to affirmatively further fair housing. As the Washington Lawyers’ Committee and its partners stated to HUD, “[t]he failure of the City’s Office of Planning and its Zoning Commission to assure protection of affordable units and units that can house families [as part of the Brookland Manor redevelopment] . . . is inconsistent with the obligation to affirmatively further fair housing and constitutes ‘familial status’ discrimination in violation of the Fair Housing Act.”<sup>28</sup>

**Conclusion**

In closing, the Washington Lawyers’ Committee reminds this Commission that it is uniquely positioned to use the planning process as a vehicle for ensuring that the City comply with its fair housing obligations. In the case of the Brookland Manor redevelopment, the Commission can achieve this goal by requiring Mid-City to alter its redevelopment by preserving additional affordable housing units for all of the non-project based units and creating units of

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<sup>25</sup> See Housing Choice Voucher Program rents for “Brentwood” neighborhood, available at: [http://www.dchousing.org/rent\\_hcvp.aspx/rent\\_hcvp.aspx](http://www.dchousing.org/rent_hcvp.aspx/rent_hcvp.aspx).

<sup>26</sup> See also September 2016 Letter to HUD at 2; HUD Letter to Mayor Muriel Bowser at 5.

<sup>27</sup> HUD Letter to Mayor Muriel Bowser at 5.

<sup>28</sup> September 2016 Letter to HUD at 5.

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four or more bedrooms as well as restoring the existing level of three bedroom units. Doing so will avoid displacing long-standing African American residents, especially families with children, and avoid further entrenching racial segregation in the District.