

May 5, 2017

VIA IZIS

Chairman Anthony Hood  
District of Columbia Zoning Commission  
441 4th Street NW, Suite 200  
Washington, DC 20001

Re: ZC Case No. 14-18A – Motion to Strike Brookland Manor/Brentwood Village Residents Association (the “Association”) Response to Mid-City Financial Corporation (the “Applicant”) Draft Conditions

Dear Chairman Hood and Members of the Commission:

The Applicant submits this Motion to Strike the Association’s May 3, 2017 Response (“**Response**,” filed as Exhibit 187 in the record in the above-referenced case) to the Applicant’s April 24, 2017 Draft Conditions (“**Draft Conditions**,” filed as Exhibit 186) on two grounds: (i) the Response is improperly filed, and (ii) more significantly, the Response is overly broad, largely unresponsive to the content of the Applicant’s Draft Conditions, and outside the scope of a response that a party may file to proposed conditions. Striking the Response does not prejudice the Association.

The Response Is Improperly Filed

The PUD procedures in the Zoning Regulations do not afford a party the opportunity to respond to draft conditions. Rather, a party opponent has the opportunity to respond only to the Applicant’s *final* conditions. See 11-X DCMR § 308.13 (“[T]he Office of the Attorney General, Office of Planning, and the affected Advisory Neighborhood Commission and *any other party may file any responses each has to the applicant’s final Proffer and conditions*”) (emphasis added). There is no corresponding opportunity for a party to file responses to draft conditions. Section 602.3 of Subtitle Z, which affords parties the opportunity to respond to any exhibits, information, or legal briefs submitted by the Applicant, is inapplicable in this instance. The Draft Conditions are not among the categories of post-hearing filings to which a party opponent may respond.

The Response Is Overly Broad

If the Response were merely filed out of sequence, the Applicant likely would not be filing this motion. However, the Response is flawed in a more serious manner that dictates its exclusion from the record in this case. The Response includes discussion that is overly broad,

generally unresponsive to the proposed Draft Conditions, and far beyond the scope of a permissible response to conditions. The PUD procedures of the Zoning Regulations provide that any responses to the Applicant's final conditions must "be limited to whether the conditions in the final Proffer are specific and enforceable." 11-X DCMR § 308.13. The Response substantially exceeds this scope. The Response devotes three pages to re-hashing arguments raised in previous filings or during the first-stage proceedings. This content is not properly before the Commission at this time as it is not at all related to the Draft Conditions. The Association's response to conditions is not an appropriate stage to rehash or repackage arguments that could have been made (and in this instance have been made) in a previous filing(s). Any response to the Applicant's conditions, whether now or in the future, should be permitted in the record only if such response is limited to whether the conditions are specific and enforceable and should not include discussion on contested issues or other topics. The Association also proposes its own conditions. The relevant regulations do not afford the Association such an opportunity, and such proposals should be stricken from the record.

Striking the Response Does Not Prejudice the Association

The Commission should be reassured that the Association would not at all be prejudiced if the Response were stricken from the record. First, the discussion contained in the Response is already before the Commission in the Association's post-hearing filing. See Exhibit 183. Second, striking the Association's proposed conditions would not be prejudicial to the Association because party opponents have no right under the Zoning Regulations to put forth proposed conditions. Indeed, it would be very unusual for such proposed conditions to be in the record. Finally, the Applicant intends to file a supplemental post-hearing submission by May 8, 2017, and the Association will be served a copy of that filing and will retain its rights under the Zoning Regulations. However, the record should not contain a response from the Association to the Applicant's proposed conditions when such a response is beyond the scope permitted by the Zoning Regulations.

In sum, for the reasons outlined above, the Applicant respectfully requests the Commission strike the Response from the record in this case. The Applicant looks forward to the Zoning Commission taking final action on this second-stage PUD application on May 22, 2017.

Sincerely,



Paul A. Tummonds, Jr.



David A. Lewis

## Certificate of Service

The undersigned hereby certifies that copies of the foregoing document will be delivered by e-mail or first-class mail to the following addresses on May 5, 2017.

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David A. Lewis