

(10A DCMR § 2408.5.)

The Commission previously found that the Project is consistent with this policy with respect to the overall redevelopment approved under the First-Stage Order. (Ex. 1F at FF ¶ 62.) The Commission continues to find that the Project is consistent with this policy. This Project is an undertaking to replace a privately owned apartment complex that currently receives public subsidies. The subsidies include a project based Section 8 contract that is ending this year, and individual tenants using DCHA Housing Choice vouchers. (Ex. 189A at 3.) The Applicant could have waited until the project based contract ended, and constructed a market rate project. (*Id.*) Instead, the Project includes a commitment to retain the project based Section 8 contracts, and to provide an opportunity for all households in good standing that reside at the property at the commencement of the redevelopment to remain on the property through and following the redevelopment process. The Commission finds these commitments made by the Applicant will minimize any displacement that occurs as a result of the Project such that it is consistent with this policy; and

(b) Housing Element policies. The Commission further finds that the Project is consistent with the Housing Element policies of the Comprehensive Plan cited by the Association as follows:

(1) *Policy H-1.2.3 Mixed Income Housing*, which seeks to “Focus investment strategies and affordable housing programs to distribute mixed income housing more equitably across the entire city, taking steps to avoid further concentration of poverty within areas of the city that already have substantial affordable housing.”<sup>13</sup> (10-A DCMR § 504.8.) The Association’s lawyer asserted that the “[A]pplicant’s proposed elimination of deeply affordable units proposed both in Block 7 and the overall redevelopment will drive families out of an intensely gentrifying neighborhood, into hyper-segregated and impoverished areas of the city, thus furthering segregation and concentrating poverty” (Tr. 2 at 139.) The Commission found in the First-Stage Order that the overall RIA Site redevelopment was consistent with Policy H-1.2.3. (Ex. 1F ¶ 56.) The OP Final Report arrives at a similar conclusion for this Application. (Ex. 34 at 18.) In light of the Applicant’s failure to provide any evidence or justification for its assertion, the Commission sees no reason to disturb its previous finding. The Project provides 225 new, high-quality, permanently and deeply affordable units where currently there are 64 units more than approximately 80 years old. The overall RIA Site will create a mixed-

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<sup>13</sup> Although the text of this and the succeeding policy excerpts are not reproduced directly in the Association’s testimony, the entirety of the Comprehensive Plan’s text is incorporated into the record by reference pursuant to the Zoning Regulations, so these policies are provided here for context. (*See* 11-Z DCMR § 203.7; Ex. 1 at the Appendix.)

income community where currently there is a community of concentrated poverty;

- (2) *Policy H-1.2.1 Affordable Housing Production*, which seeks to “Establish the production of housing for low and moderate income households as a major civic priority, to be supported through public programs that stimulate affordable housing production and rehabilitation throughout the city.” (10-A DCMR § 504.6.) The Association stated that the Project does not promote affordable housing. (Tr. 2 at 139.) The Commission disagrees. The Applicant is constructing brand new affordable housing to replace housing with an expiring affordability restriction. OP reaches a similar conclusion, and the Commission is directed to give great weight to its analysis. (Ex. 34 at 18.) The Applicant’s commitment to and promotion of affordable housing is evidenced by its election to deliver new affordable housing as part of its first phase of construction before proceeding to blocks that will have higher concentrations of market-rate units;
- (3) *Policy H-1.3.1 Housing for Families*, which seeks to “Provide a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes, row houses, and three- and four-bedroom apartments.” (10-A DCMR § 505.6.) The Association stated that the Project as well as the overall RIA Site redevelopment eliminates existing four-bedroom units and reduces the number of three-bedroom units. (Tr. 2 at 139.) The Commission does not disagree with the factual statement, but disagrees that the Project is inconsistent with this objective of the Comprehensive Plan. The OP Final Report finds the Application consistent with this policy objective and again the Commission gives such finding great weight. (Ex. 34 at 18.) The Applicant is making a significant commitment to retaining family-sized units. The Project includes three-bedroom units. The First-Stage Order also provides for rowhouses, where currently none exist. The Applicant reiterated its commitment to provide rowhouses as part of future phases of development and to identify resources to support first-time homeownership opportunities for current residents. (Ex. 179 at 3.) This section of the Comprehensive Plan calls for the *provision* of housing units for families and not necessarily the *retention* of existing three- and four-bedroom apartment units, especially existing three- and four-bedroom apartment units that were constructed many decades ago and no longer conform to market standards. Overall, the Project is not inconsistent with this policy objective;
- (4) *Policy H-2.1.1, Protecting Affordable Rental Housing*, which has the objective of “Recogniz[ing] the importance of preserving rental housing affordability to the well-being of the District of Columbia and the diversity of its neighborhoods [and] [u]ndertak[ing] programs to protect

the supply of subsidized rental units and low-cost market rate units.” 10-A DCMR § 509.5. The Association stated that the plan for Block 7 shows that affordable housing will be greatly reduced. (Tr. 2 at 140.) Again, the Commission disagrees. The Project is an express effort to extend and retain an expiring Section 8 affordable housing contract. The Applicant is under no obligation to retain the existing affordability restriction at the RIA Site as a former HUD official testified. (Ex. 128.) Its election to do so on a one-for-one basis is a significant public benefit for the District and the existing residents who benefit from the Section 8 program; and

- (5) *Policy H-2.1.3, Avoiding Displacement*, which seeks, in relevant part, to “Maintain programs to minimize displacement resulting from the conversion or renovation of affordable rental housing to more costly forms of housing.” (10-A DCMR § 509.8.) The Association’s lawyer alleged that Brookland Manor had already experienced “mass displacement” resulting from the reduction in occupancy at Brookland Manor. (Tr. 2 at 140.) The Commission cannot agree with the Association. The Applicant has repeatedly committed to allowing existing tenants who wish to remain and who maintain good standing the opportunity to do so. (Ex. 1F at FF ¶ 56; Ex. 179 at 1-5.) The Commission finds that the Applicant has agreed to do far more than “minimize” displacement; it has developed a plan to avoid Brookland Manor resident displacement altogether. The Association seems to equate, without credible evidence, turnover in Brookland Manor residents with “displacement.” The Commission is not convinced. The Applicant credibly notes that residential turnover in apartment buildings is common and gives a number of reasons why residents leave Brookland Manor regularly of their own accord (listing moving out of the District, purchasing homes, getting married, moving for employment reasons or passing away as instances of natural attrition at Brookland Manor similar to apartment buildings generally). (Ex. 179 at 6.) A change on the order suggested by the Association is in keeping with the Applicant’s analysis of ordinary background conditions of resident turnover. (*Id.*) The Commission previously found redevelopment of Brookland Manor is not inconsistent with this policy objective and sees no reason to reverse that finding now. (Ex. 1F; FF ¶ 56.)

105. DC for Reasonable Development (“DCRD”) also alleged that the Project is inconsistent with the Comprehensive Plan. (Ex. 133 at 2.) In support of this allegation, DCRD cites a list of Comprehensive Plan directives and policies but does not provide even the merest of allegation or offer any explanation as to why the Project would be inconsistent with these particular directives and policies. Moreover, the DCRD letter does not assert that the Project is inconsistent with the provisions cited therein; it merely asserts that such policies are “relevant” without justification or explanation as to how such policies are relevant. Accordingly, these policies and directives are not material contested issues about which the Commission can make a finding or draw conclusions.

106. JF claims that the Project fails to comply with the intent and purposes of the Zoning Regulations, but offers no justification for this claim. (Ex. 162 at 1.) The Commission disagrees with JF and notes its extensive findings herein with respect to the Project's consistency with the Zoning Regulations. Finally, JF alleges an unspecified adverse impact on the surrounding area arising from the Project's creation of affordable housing. (*Id.*) For the reasons set forth above, the Commission finds that the Project will create no unacceptable impact on land values in the surrounding area. (*See* FF ¶ 72.)
107. Opponents raised the following additional issues about the Project:
- (a) Senior and Accessible Units. Ms. Davis further noted that the Association has a preference for housing that is accessible to seniors and those with disabilities. (Tr. 2 at 143; Ex. 142.) The Commission finds that the Applicant has provided evidence that the senior housing will be accessible for seniors and those with disabilities;
  - (b) Isolation of Seniors. Ms. Davis noted that the Project isolates seniors in a senior building that does not meet their needs or allow them to remain an active part of the community. (Tr. 2 at 144.) Community members noted a concern that a senior-only building might separate seniors from other family members. (Tr. 3 at 55, 103, 109; Ex. 144.) The Commission credits the Applicant's testimony that senior residents of Brookland Manor will have the choice as to whether to relocate to the senior building; (Ex. 179 at 5.)
  - (c) Definition of Good Standing as a Criteria for Eligibility to Remain. Ms. El-Amin and others asked for clarification about the standards required for residents to be able to remain at Brookland Manor. (Tr. 2 at 149, 171; *see also* Tr. 3 at 66; Ex. 140.) The Application has provided this information; (Ex. 179 at 6.)
  - (d) Younger/Youth Residents' Concerns of Displacement. Ms. Yvonne Johnson noted that she had observed youth residents of Brookland Manor showing signs of depression and concern regarding displacement; (Tr. 2 at 144-145, 167-169; *see also* Tr. 3 at 66, 103; Ex. 138, 141.)
  - (e) Preservation of Family Housing. Ms. Johnson also expressed support for retaining affordable housing that accommodates families. (Tr. 2 at 144-145.) Community members and advocates expressed similar concerns. (Tr. 3 at 31-36, 42-44, 62-63, 74-76; Ex. 98, 121, 125, 134, 141, 143, 145, 147, 160, 165.) The First-Stage Order established the overall number of affordable units and the bedroom counts of the various units in the overall RIA Site redevelopment; (Ex. 1F at COL ¶ 8-9.)
  - (f) Vacant Units at the RIA Site Could Be Used to House Others. Ms. El-Amin and Ms. Valerie Scott noted a concern about some units in Brookland Manor being vacant when other families need housing. (Tr. 2 at 144-145, 162; *see also* Tr. 3 at 52-53; Ex. 144.) The Commission finds that a certain percentage of vacant units are necessary for the Applicant to undertake relocations on site during

construction so that Brookland Manor residents are not displaced during construction. (Ex. 179 at 6-7.) The Commission notes that the Applicant is voluntarily foregoing rental income by doing so; (*Id.*)

- (g) Security Staff Harassment/Infraction Notices. Ms. El-Amin, Ms. Neeka Sullivan, Ms. Scott, and others raised concerns regarding unprofessional behavior and harassment by the Brookland Manor private security staff. (Tr. 2 at 146-147, 155-158, 160-161, 170; Tr. 3 at 24-25, 28-29, 45, 55, 68-69, 82, 111-112, 125-128, 131; Ex. 94, 115, 116, 137, 144-146, 148, 157.) The Applicant provided extensive information regarding the Brookland Manor security force and noted that it had retained a new security company in response to resident concerns. (*Id.* at 10.) As noted, the Applicant has terminated its relationship with the existing security service in light of these concerns; (Ex. 179 at 10.)
- (h) Park Space. Ms. El-Amin noted that the residents of Brookland Manor would like a new park in their neighborhood and was disappointed that one was not proposed as part of the Project. (Tr. 2 at 148. *see also* Tr. 3 at 107; Ex. 144.) The Commission notes that the Community Green will be constructed in a subsequent second-stage PUD;
- (i) Community Development/Non-housing Related Resident Needs. Rev. Houston expressed a desire for support programs for residents. (Tr. 2 at 151.) The Commission notes that the Applicant provides extensive support programs for residents; (*See supra*, FF ¶¶ 91(f) and 97(e); Ex. 179.)
- (j) Job Placement/Training. Rev. Houston expressed a desire for additional job training so that residents are prepared to participate in the actual construction efforts of the Project; (Tr. 2 at 152; Ex. 85, 143.)
- (k) Fences. Ms. El-Amin and Ms. Scott also raised concerns about fences having been installed at Brookland Manor. (Tr. 2 at 147, 162.) Multiple community members raised concerns regarding the fences as well. (Tr. 3 at 24, 54, 68; Ex. 144, 148.) The Commission finds that the Applicant's installation of fences as a safety measure around construction sites and as a public safety measure in light of criminal activity in and around Brookland Manor is entirely warranted. (Ex. 179 at 10-11.)
- (l) Design and Density. One interested community member spoke in favor of the existing garden apartment style design and noted that the density of the Project was inappropriately high; (Tr. 3 at 105; *see also* Ex. 124, 163, 168.) The Commission uniformly disagrees with this criticism and finds that the urban design and architecture is exemplary. The Commission notes that this commenter's assessment of the FAR for the Project appears to be incorrect. The Project has an overall FAR of 2.8, not 5.95;

- (p) Affirmative fair housing obligations under the Fair Housing Act. The Washington Lawyers' Committee for Civil Rights and Urban Affairs ("WLC") provided testimony regarding the Commission's role in implementing the District's fair housing obligations. (Tr. 3 at 122; Ex. 167.) WLC asserted that the Project did not advance the District's affirmative fair housing obligations under the Fair Housing Act. However, the issue of Fair Housing Act compliance is not within the Zoning Commission's jurisdiction in this case, which is limited to its statutory authority established by D.C. Official Code § 6-641.01, and does not include an assessment of the Applicant's compliance with fair housing obligations under the Fair Housing Act. Only a court with the jurisdiction to so can find Fair Housing Act violations and impose the appropriate penalties and/or enjoin further development of this Project. Unless and until that happens, the Commission may review this PUD for compliance with the PUD standard set forth in Chapter 3 of Subtitle X of the Zoning Regulations.

WLC acknowledges this in its submission, stating "[t]his 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." (Ex. 167 at 2.) WLC goes on to claim that 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." However, the PUD regulations do not require that housing or affordable housing be provided at all. Housing is but one of many types of benefits that may be proffered, and so an applicant's decision to provide little no affordable (other than what is required by IZ) is of absolutely no relevance to a PUD application; and

- (q) New Communities Initiative and Fair Housing Act compliance. Law for Black Lives Matter D.C. ("LBLM") alleged that the Project violates various public policies, including the federal Fair Housing Act and regulations thereunder and the District's New Communities Initiative. (Tr. 3 at 82; Ex. 169.) As stated above, the issue of Fair Housing Act is not within the Commission's jurisdiction in this case. Likewise, the Commission finds that the issue of compliance with the District's New Communities Initiative is not within the Commission's jurisdiction in this case, which is limited to its statutory authority established by D.C. Official Code § 6-641.01. In addition, according to NCI information cited in LBLM's filing, NCI applies only to four specific communities in the District and does not apply to the Project.

108. The Commission therefore resolves these contested questions in favor of the Applicant and finds that the Project is consistent with the First-Stage Order, the Zoning Regulations, and the PUD evaluation standards.

109. The Commission notes that the Brookland Neighborhood Civic Association (“BNCA”) filed a letter declining to take a formal position on the Project. (Ex. 127.) BNCA noted its support for the residents of Brookland Manor and its lack of opposition to the Project itself. (*Id.*) BNCA noted a lack of support for the Project’s architecture. (*Id.*)
110. On balance, the Commission finds that there is comparatively little opposition to the Project itself. Even the Association conceded that it is not opposed to this Project. (Tr. 2 at 88-89; Tr. 3 at 88.) At its core, the Project replaces 64, now-vacant, 80-year-old apartment units subject to a maturing affordability restriction with 331 brand new mixed-income units of the highest-caliber design with modern amenities and subject to a new affordability restriction.

## **CONCLUSIONS OF LAW**

### Procedural and Jurisdictional Conclusions

1. Any PUD application must meet the requirements of Subtitle Z, Chapter 3, 11-X DCMR § 307.1, and the Commission must hear any PUD case in accordance with the contested case procedures of Subtitle Z, Chapter 4. (11-X DCMR § 300.3.) The Commission concludes that the Application satisfies the PUD application requirements, and that the Commission has satisfied the procedural requirements of the Zoning Regulations, including the applicable notice thereof, necessary to issue this Order. The Commission concludes that this Application complies with the Zoning Regulation’s procedural requirements and notice provisions.
2. The minimum area included within a proposed PUD must be no less than 15,000 square feet and all such area must be contiguous. (11-X DCMR § 301.) The Application satisfies these minimum area and contiguity requirements.

### Evaluation Standards

3. The Applicant has requested approval of: (1) a modification of the First-Stage PUD order, and (2) approval of a second stage PUD. The Applicant has the burden of proof to justify the granting of the Application. (11-X DCMR § 304.2.)

### First-Stage PUD Modification

4. The scope of the Commission’s decision in judging the Applicant’s modification to the first stage order is “limited to the impact of the modification on the subject of the original application.” (11-Z DCMR § 704.4.) The Commission is not permitted to revisit the decisions it made in its original decision. (*Id.*) The Commission interprets this to mean that unless an issue is related to the impact of the modification, or the detailed site plan review to determine compliance with the first-stage approval, it is outside of the scope of the Commission’s review of the Application. In this case, the Applicant’s requested modifications to the First-Stage Order are limited to changes to the buildings on Block 7

of the site. The First Stage PUD approved a PUD-related rezoning of Block 7 to the R-5-B (now RA-2) Zone District, and development of the Block with a multi-family building and 28 structures described as “two-over-two residential units.” The Applicant’s requested modifications are quite limited, and include replacing the two-over-two residential units with a second multi-family building, swapping the locations of the senior building and the multi-family building on the site, changes to the building envelopes for these two buildings, and changes to the alley configuration and parking for these two buildings. The Applicant seeks additional relief from the lot occupancy (with respect to both Buildings) and long-term bicycle parking requirements (with respect to Building B only) of the Zoning Regulations. The Applicant also requested flexibility to rebalance affordable units initially provided in Building A to other portions of the RIA Site upon completion of subsequent phases, with the objective of avoiding a permanent disproportional concentration of low income residents in particular buildings. (FF ¶¶ 57-66.) The Applicant did not request any changes to the development proposed for Block 1, the Pedestrian Walk between Blocks 1 and 2, Blocks 2 through 6, Block, or the PUD-related map amendment. Likewise, the Applicant did not request any changes to the Project’s benefits and amenities package, including its proffered affordable housing commitments. The issues raised by opponents related to the sufficiency of the Project’s affordable housing benefits, potential displacement as a potential adverse effect of the PUD, family accommodations and treatment of families with senior residents, subsidy for residents who are DCHA Section 8 HCV holders, and the Project’s consistency with the Comprehensive Plan, are not related to the impact of the modifications and/or additional relief sought by the Application. The issues were decided in the First-Stage Order, and the Commission by rule is not permitted to revisit them.

5. The Commission is required to apply in judging the requested modification to the First Stage Order are set forth in 11-X § 304. The relevant standards are:
  - (a) The Commission shall “judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific benefits of the case; (11-X DCMR § 304.3.)
  - (b) The Commission shall find the proposed development is not inconsistent with the Comprehensive Plan and with other public policies an active programs related to the subject site; (11-X DCMR § 304.4(a).)
  - (c) The Commission shall find the proposed development does not result in unacceptable project impacts on the surrounding area but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits of the project; and (11-X DCMR § 304.4(b).)
  - (d) The Commission shall find the proposed development includes specific public benefits and project amenities that are not inconsistent with the Comprehensive Plan and with other public policies an active programs related to the subject site. (11-X DCMR § 304.4(c).)

The Commission applied these standards and concludes as follows:

- (a) The Commission shall “judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific benefits of the case.” (11-X DCMR § 304.3.)

For the reasons discussed in FF 57-75, 98-108, the Commission concludes the Project warrants the requested modifications to the approved First-Stage Order PUD, including the additional requested zoning flexibility and relief, in light of the extensive public benefits offered by the Project. The relief, flexibility and modifications are comparatively minor and largely offset by mitigation plans and superior design. Moreover, the benefits of the Project and the First-Stage Order more generally are extensive. The Applicant is in the midst of constructing a new mixed-use, mixed-income, transit-oriented neighborhood, replete with amenities such as the Community Green, and introduction of commercial uses, all while preserving a significant quantity of deeply affordable housing that will be indistinguishable from market rate units. The individual elements of the Applicant’s undertaking are benefits to the existing residents and the neighborhood locally; the Applicant’s preservation of affordable housing and creation of new housing is a benefit to the District as a whole. The Applicant’s additional provision of service, employment, and special use benefits is accretive to the Project’s design and programmatic benefits;

- (b) The Commission shall find the proposed development is not inconsistent with the Comprehensive Plan and with other public policies and active programs related to the subject site. (11-X DCMR § 304.4(a).)

For the reasons discussed in FF 68-71, 104, the Commission concludes the Project is not inconsistent with the Comprehensive Plan and with other public policies and active programs related to the subject site;

- (c) The Commission shall find the proposed development does not result in unacceptable project impacts on the surrounding area but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits of the project. (11-X DCMR § 304.4(b).)

For the reasons discussed above in Finding of Fact 72-73, 99-103, 105-107, the Commission finds that the proposed development does not result in unacceptable impacts on the surrounding area. Instead, the Commission concludes the impacts are either favorable, capable of being mitigated, or acceptable given the quality of the public benefits of the project; and

- (d) The Commission shall find the proposed development includes specific public benefits and project amenities that are not inconsistent with the Comprehensive

Plan and with other public policies an active programs related to the subject site. (11-X DCMR § 304.4(c).)

The public benefits of the Project are unchanged from when the Commission approved the First-Stage PUD. The Commission continues to believe the Project includes public benefits and project amenities that are not inconsistent with the Comprehensive Plan and with other public policies an active programs related to the subject site.

6. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations) referenced in the zone reference table. (X §§ 303.1, 303.11.) The Applicant seeks relief from the lot occupancy (with respect to both Buildings) and long-term bicycle parking requirements (with respect to Building B only) of the Zoning Regulations. (FF ¶¶ 62-66.) The Commission has found that these items of relief do not impair the purposes or intent of the Zoning Regulations and are not inconsistent with the Comprehensive Plan. (*Id.*) Therefore, the Commission concludes it may authorize its discretion to grant such items of relief subject to the Conditions hereof.

#### Approval of Second Stage PUD

7. The Commission’s review of the second-stage application is comprised of “a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and this title.” (11-X DCMR §302.2(b).) For the reasons discussed above in FF ¶¶ 60-61 and ¶¶ 99-103, the Commission conducted a detailed site plan review and concludes that the second-stage application complies with the intent and purposes of the first stage approval and the Zoning Regulations, including its commitment to provide an opportunity for all households in good standing that reside at Brookland Manor at the commencement of the redevelopment in early 2018 to remain at the property through and following the redevelopment process.
8. The Commission must undertake a “comprehensive public review” of any PUD application “in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits,” and in deciding on the Application, the Commission must “judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” (X §§ 300.5, 304.3.) A PUD-related zoning map amendment is flexibility against which the Commission must weigh the benefits of the PUD as explained below: (*Id.* § 303.12.)
  - (a) The Commission heard the Application in a public hearing and followed the contested case procedures of the Zoning Regulations. (FF ¶¶ 3-33.) The Commission therefore concludes that it has satisfied the procedural requirements in order to review the Application and evaluate the flexibility and incentives requested against the proposed public benefits;

- (b) The Project warrants the requested relief, modifications to the approved First-Stage Order PUD, flexibility afforded by the Zoning Map amendment in light of the extensive public benefits offered by the Project. The relief, flexibility and modifications are comparatively minor and largely offset by mitigation plans and superior design. Moreover, the benefits of the Project and the First-Stage Order more generally are extensive. The Applicant is in the midst of constructing a new mixed-use, mixed-income, transit-oriented neighborhood, replete with amenities such as the Community Green, and introduction of commercial uses, all while preserving a significant quantity of deeply affordable housing that will be indistinguishable from market rate units. The individual elements of the Applicant's undertaking are benefits to the existing residents and the neighborhood locally; the Applicant's preservation of affordable housing and creation of new housing is a benefit to the District as a whole. The Applicant's additional provision of service, employment, and special use benefits is accretive to the Project's design and programmatic benefits; and
- (c) The Project and its incentives and benefits must be evaluated also against the special circumstances in this case, which include Brookland Manor resident and Association concerns regarding the availability of units and the displacement of residents. The Commission has found that this Project, by itself, does not create unacceptable concerns regarding the availability of units to meet the need of Brookland Manor residents. At the conclusion of the construction of the Project, there will be more than 800 units available to house Brookland Manor residents. The Commission has also found that the strong support for the Applicant among the community for this Project and the Applicant's good will from decades of laudable service to the Brentwood neighborhood and Brookland Manor residents outweigh the concerns alleged. The Commission recognizes the Applicant's challenge in recreating Brookland Manor into a new mixed-use, mixed-income neighborhood and concludes that the benefits it is providing outweigh any special circumstances before the Commission at this time.
9. Accordingly, the Project's benefits and amenities outweigh the relief, flexibility and modifications requested even in light of the background concerns in the community, which concerns the Commission will reevaluate in future second-stage applications under the First-Stage Order.
10. Nothing in the record leads the Commission to disturb its conclusion from the First-Stage Order regarding the Zoning Map amendment applicable to the Property. ("The Commission finds that rezoning the site is consistent with the Comprehensive Plan. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan."). (Ex. 1F at COL ¶ 10.) Therefore, the Commission concludes that the Zoning Map amendment for the Project is consistent with the Plan.

### Consistency with the PUD Process, Zoning Regulations, and Plan

11. Pursuant to the Zoning Regulations, the purposes of the PUD process are “to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.” (11-X DCMR § 300.1 (the “PUD Process”).) The Commission concludes that the approval of the Application is an appropriate result of the PUD Process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter-of-right via the underlying zoning. The Commission has found that the Project provides public benefits that are commendable both in number and quality. Finally, the Commission has found that the Project will not injure the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan.
12. The PUD process is intended to “provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan.” (X § 300.2.) The Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the two areas of articulated zoning relief, which are nonetheless consistent with the intent and purposes of the Zoning Regulations. The Project is not inconsistent with the Comprehensive Plan. Therefore, the Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan.

### Great Weight to ANC Reports and OP Recommendations

13. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. Neither affected ANC submitted a written report in this case, thus there are no issues or concerns. Because the ANCs expressed no issues or concerns, there is nothing for the Commission to give great weight to. *See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
14. The Commission is also required to give great weight to the recommendations of OP. D.C. Code § 6-623.04. The Commission has reviewed the OP Setdown Report, the OP Final Report and heard testimony from OP. The Commission gives OP’s recommendation to approve the application great weight, and concurs with OP’s conclusions.

### Human Rights Act compliance

15. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

## DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Application for second-stage review of a Planned Unit Development and related modification of an approved first-stage PUD for the Subject Property (Square 3953, Lots 1-3). The approval of this PUD is subject to the following guidelines, conditions and standards (“Conditions”).

### **I. Modifications to conditions in the First-Stage Order.**

Condition A.1 of Z.C. Order No. 14-18 is amended to read as follows:

The PUD project shall be developed in accordance with the plans prepared by Perkins Eastman marked as Exhibits 76-76M and supplemented by drawing submitted June 8, 2015 as Exhibit 104A of the record in Z.C. Case No. 14-18, as amended and supplemented by the plans prepared by Torti Gallas Urban, marked as Exhibits 24E1-24E5, 101A1-102A2, and supplemented by drawings submitted on April 10, 2017 as Exhibit 179F1-179F4 of the record in Z.C. Case No. 14-18A (“Approved Plans”).

Condition B.1.a. of Z.C. Order No. 14-18 is amended to read as follows:

- a. If the Section 8 contract remains, the Applicant’s affordable housing obligations shall be as follows:
  - (1) There shall be at least 373 units covered by the Section 8 contract and eleven “inclusionary units” within the meaning of 11 DCMR § 2602;
  - (2) The final location and composition of these units shall be determined by the Applicant no later than the date that the first certificate of occupancy is issued for the final rental building; except that:
    - (i) At least 10% of each multi-family building’s units shall be the Section 8 contract units;
    - (ii) The eleven inclusionary units shall be either Townhouses or Two-Over-Two Units collectively constituting at least 10% of the residential GFA of the Townhouses and Two-Over-Two Units;
    - (iii) Six of the inclusionary units shall be reserved for households earning no more than the 50% of the AMI and five of the inclusionary units shall be reserved for households earning no more than 80% of the AMI; and
    - (iv) The units in the Senior Building shall, as demand dictates, be reserved initially for existing eligible Brookland Manor residents who wish to move to the Senior Building either (x) with a Housing Choice Voucher or (y) who lease a Section 8 contract unit, with the balance (if any) open to other income qualified tenants.

Condition B.2. of Z.C. Order No. 14-18 is amended to read as follows:

B.2. The Applicant shall abide by the terms of the tenant relocation and construction phasing plan as detailed at Exhibits 1G and 179 of the record in case 14-18A. All tenant relocations will occur on the RIA Site. In addition to the information required under the Zoning Regulations and this Order, in connection with any subsequent second stage application arising out of this Order, the Applicant shall provide an update on the allocation of affordable housing units throughout the redevelopment site and the remaining Brookland Manor buildings, as applicable.

## II. Conditions of approval of the Application.

### A. PROJECT DEVELOPMENT

1. The second-stage PUD project shall be developed in accordance with the plans prepared by Torti Gallas Urban marked as Exhibits 24E1-24E5, 101A1-101A2, and supplemented by drawings submitted on April 10, 2017 as Exhibit 179F1-179F4 of the record (“Approved Plans”), as modified by the guidelines, conditions, and standards herein.
2. The second-stage PUD project consists of: (i) Building A, a four-story apartment building containing approximately 131 mixed-income units with associated ground-floor level amenity space, 68 below-grade vehicular parking spaces, and 54 bicycle parking spaces (44 long-term and seven short-term); and (ii) Building B, a four-story residential building containing approximately 200 seniors-only independent living units with associated ground-floor level amenity space, 48 below-grade vehicular parking spaces, and 32 bicycle parking spaces (22 long-term and 10 short-term). Building A has 169,342 square feet of gross floor area, a maximum height of 49 feet four inches, and an FAR of 2.97. Building B has 172,266 square feet of GFA, a maximum height of 51 feet, and an FAR of 3.0. Block 7 has a total FAR of 2.98 and contains 341,608 square feet of GFA, all of which is devoted to residential uses.
3. Flexibility. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
  - b. To vary final selection of the exterior materials within the color ranges of the materials types as proposed based on availability at the time of construction;

- c. To vary the final selection of landscaping materials utilized, based on availability and suitability at the time of construction;
- d. To vary the final streetscape design and materials in response to direction received from District public space permitting authorities;
- e. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, cornices, railings, trim, and outdoor assembly space or any other changes to comply with Construction Codes;
- f. To increase the number of units by up to 10% (except as provided below in Condition B.1.d) and to adjust the location of affordable units to reflect the final unit mix of the Project, provided that the Applicant complies with Condition B.1 of this Order and that the number of permanently affordable residential units in this second-stage PUD application will increase by the same percentage as the number of additional units (while maintaining the overall number of permanently affordable housing units approved in Z.C. Order No. 14-18) and provided further that the allocation of such units does not overly distinguish between market-rate and affordable units in any area of Building A; and
- g. To vary the number of parking spaces plus or minus five percent.

**B. PUBLIC BENEFITS**

- 1. Housing and Affordable Housing. The Applicant shall include in the second-stage PUD Project 331 residential units. The Applicant shall provide a minimum of 265 units (80% of the total units delivered as part of this phase) that shall be deeply affordable and reserved for occupants eligible to receive Section 8 assistance through the project based contract with HUD or through a DCHA Housing Choice Voucher as described below:
  - a. **For the life of the Project**, the Applicant shall reserve a minimum of 25 units in Building A as permanently affordable units reserved for residents that who will be assisted by the project based and/or HCV Section 8 programs, and will be used to house existing Brookland Manor residents as demand dictates, subject in all instances to Condition B.1 of the First-Stage Order. To the extent the Section 8 and/or HCV are inapplicable to the Project, the Applicant shall instead comply with the applicable requirements of Condition B.1.b or Condition B.1.c of the First-Stage Order;

- b. **For the life of the Project**, the Applicant shall include in Building A no fewer than 18 three-bedroom units, of which no fewer than three units shall be reserved as partial satisfaction of the requirements of Condition B.1.a.;
  - c. A minimum of 40 units shall be initially reserved in Building A as temporary replacement units to house existing Brookland Manor residents as demand dictates, subject in all instances to Condition B.1 of the First-Stage Order;
  - d. The Applicant shall have the flexibility to utilize up to all of the units in Building A (i.e. up to all 131 units contained therein) as affordable housing and to reallocate to other buildings in the RIA development any affordable units provided in Building A, subject to the 25-unit minimum set forth in Condition B.1.a. and the three-unit three-bedroom minimum set forth in Condition B.1.b.;
  - e. The units in Building B shall, as demand dictates, be reserved initially for existing eligible Brookland Manor residents who wish to move to Building B either (x) with a Housing Choice Voucher or (y) who lease a Section 8 contract unit, with the balance (if any) open to other income qualified tenants; and
  - f. In addition to the information required under the Zoning Regulations and the First-Stage Order, **in connection with any subsequent second stage application arising out of the First-Stage Order, the Applicant shall provide** an update on the allocation of affordable housing units throughout the redevelopment site and the remaining Brookland Manor buildings, as applicable.
2. **Employment Benefits:** The Applicant has entered into a First Source Agreement with DOES to promote and encourage the hiring of District residents. **The Applicant shall provide updates in all future second-stage applications** as to the Applicant's satisfaction of the terms of the First Source Agreement associated with approved second-stage PUD applications.

3. Relocation and Construction Management Plans.

- a. The Applicant shall abide by the terms of the tenant relocation and construction phasing plan as detailed at Exhibits 1G and 179<sup>14</sup> of the record in this case. All tenant relocations will occur on the property; and
- b. The Applicant shall abide by the terms of the Construction Management Plan as detailed in Exhibit 179B.

4. Social Services and Facilities:

- a. **For the life of the Project**, the Applicant shall continue to provide programs that are designed for the children and seniors that live in the community. Such programs for children may include a variety of enrichment activities, such as after school care, tutoring, arts and crafts, community gardening, summer camp, meal programs to ensure that no child goes home hungry, girls' self-esteem workshops, reading and math tutoring, school supply drives, holiday gifts and a food pantry for families. Such programs for senior residents may include brown-bag lunches and other events designed to bring Brookland Manor's senior community together; and
- b. **Prior to the issuance of the Certificate of Occupancy for the Project**, the Applicant shall submit a memorandum to the Zoning Administrator, with a simultaneous copy to the Office of Zoning, certifying that the social services required hereunder have been arranged as set forth herein, provided the Applicant shall have the flexibility to reallocate such social services from time to time in accordance with the preferences and demands of the target communities.

5. Building Space for Special Uses:

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<sup>14</sup> The relevant portion of Exhibit 179 reads as follows:

1. The Applicant will retain the project based Section 8 Housing Assistance Payment contracts on the property, which provide deep rental assistance to 373 extremely low income families (incomes below 30% of AMI); and
2. All households in good standing that reside at Brookland Manor at the commencement of the redevelopment in early 2018 will be provided the opportunity to remain at the property through and following the redevelopment process.

- a. **For the life of the Project**, the Applicant shall include the Amenity Spaces in each of the two Buildings. Buildings A and B shall each include Amenity Spaces for special uses including, but not limited to, community, educational or social development, promotion of the arts or similar programs; and
  - b. **Prior to the issuance of the final certificate of occupancy for the Project**, the Applicant shall submit a memorandum to the Zoning Administrator, with a simultaneous copy to the Office of Zoning, describing the availability of such space and the guidelines for use by residents and community groups, which availability and guidelines the Applicant shall have the flexibility to amend from time to time in accordance with usage patterns for such space.
6. **LEED-ND Update. Prior to the issuance of the certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with written evidence that the Project advances the First-Stage Order's requirement that the overall area subject to the First-Stage Order is on track to satisfy the requirements of the LEED-ND program at the Silver level. Compliance with the LEED-ND program will be established on the basis of the build-out of the entire PUD area and cannot be accomplished prior to issuance of a Certificate of Occupancy for this phase, but the Applicant shall provide an update on its progress towards satisfaction of such requirement of the First-Stage Order.

**C. TRANSPORTATION MITIGATION**

- 1. **For the life of the Project**, the Applicant shall provide the following traffic demand management ("TDM") measures:
  - a. The Applicant shall designate a TDM coordinator for each building, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;
  - b. All parking on site will be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site, and unbundled from the costs of leasing apartments;
  - c. The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;
  - d. The Applicant shall supply long-term and short-term bicycle parking at both Building A and Building B;
  - e. The Applicant shall install a Transportation Information Center Display (electronic screen) within each residential lobby (one for

each building) containing information related to local transportation alternatives; and

- f. The Applicant shall dedicate two parking spaces within the garage for car-sharing services to use with right of first refusal.
2. The Applicant shall continue to work with DDOT on the following matters: (i) for each subsequent second-stage PUD submission the Applicant will provide an updated CTR for the specific second-stage application which will also include an updated analysis for the entire first-stage PUD, as appropriate; (ii) further coordination to determine the appropriateness of curb bulb outs, the proposed curbside management, and the exact width dimensions for the Saratoga Street layout for Block 7; and (iii) design of the public realm for Block 7, including utility vault location and treatment, and bike rack locations.

**D. MISCELLANEOUS**

1. The Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (“DCRA”) shall not issue any building permits for the PUD until the Applicant has recorded a Covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The change of zoning to the RA-2 Zone District shall be effective upon the recordation of the covenant discussed in Condition No. D.1.
3. The second-stage PUD approval for the development of Block 7 shall remain valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit as specified under the Zoning Regulations. Construction of the project shall start within three years from the effective date of this Order.
4. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.*, (“Act”) 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which 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.

On May 22, 3017, upon the motion of Commissioner Shapiro, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on April 13, 2018.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
\_\_\_\_\_  
ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
\_\_\_\_\_  
SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 14-18A(1)

Z.C. Case No. 14-18A

Mid-City Financial Corporation

(Second-Stage Approval for a PUD and Modification of an Approved First-Stage PUD  
@ Square 3953, Lots 1-3)

ORDER DENYING MOTION FOR RECONSIDERATION

April 30, 2018

By Z.C. Order No. 14-18A effective as of April 13, 2018 (the “Second-Stage Order”), the Zoning Commission for the District of Columbia (“Commission”) granted the application of Mid-City Financial Corporation (“Applicant”) for second-stage approval of a planned unit development (“PUD”) and modification of an approved first-stage PUD and related Zoning Map amendment (collectively, the “Second-Stage PUD”). The property that is the subject of the Second-Stage PUD includes Lots 1-3 in Square 3953 (the “Property”) of the Brookland Manor apartment complex in the Brentwood neighborhood of Ward 5. As part of the approved first-stage PUD in Z.C. Order No. 14-18, the Property was rezoned to the R-5-B zone district.<sup>1</sup>

**Procedural History of the Second-Stage PUD Proceeding**

The Brookland Manor/Brentwood Village Residents Association (“Association”) was a party to the Second-Stage PUD proceeding before this Commission.

The Commission held the original public hearing on the Second-Stage PUD application on February 23, 2017, and the hearing was continued to March 16, 2017. (Exhibit [“Ex.”] 193 ¶¶ 14, 20.) The Association made post-hearing filings on April 18, 2017 and again on May 3, 2017. (Ex. 183,187.)

The Commission approved the Second-Stage PUD by vote on May 22, 2017. The Second-Stage Order became final effective upon publication in the *D.C. Register*. (11-Z DCMR § 604.9.)

On April 16, 2018, the Association filed a request (the “Motion”) that the Commission reconsider the Second-Stage Order and hold further hearings on the Second-Stage PUD application. (Ex. 195.)

<sup>1</sup> These zone districts were renamed as of September 6, 2016, but these re-designations did not impact the Commission’s analysis of the motion that is the subject of this Order or the Second-Stage Order. A typographical error in Finding of Fact (“FF”) ¶ 2 and n.1 of the Order recites that the Zoning Map amendment changed the designation to the Property the R-5-A zone district. The correct zoning designation for the Property is R-5-B, and all such references in the Second-Stage Order to the R-5-A zone district should be understood to refer to the R-5-B zone district, as noted elsewhere in the Second-Stage Order. (See FF ¶ 46 and Conclusions of Law ¶ 4.)

On April 23, 2018, the Applicant filed a response asking the Commission to deny the Motion (the “Response”) pursuant to Subtitle Z § 700.8 of the Commission’s Rules of Practice and Procedure. (Ex. 196.)

At a regularly-scheduled public meeting on April 30, 2018, the Commission considered the Motion and the Response. The Motion was denied.

### **Rules of Procedure Pertaining to a Motion for Reconsideration or Rehearing**

Pursuant to Subtitle Z § 700.6, a motion for reconsideration or rehearing must state with specificity the respect in which the final order is claimed to be erroneous, the grounds of the motion, and the relief sought. The Commission may not grant a request for rehearing unless new evidence is submitted that could not reasonably have been presented at the original hearing. (11-Z DCMR § 700.7.)

### **The Association’s Motion – Discussion of Evidence Pertaining to Displacement**

The Motion presents what the Association asserts is new evidence that was not available at the time of the public hearing on the Second-Stage PUD. The Association also argues that the Commission erred in certain of its findings and conclusions in the Second-Stage Order regarding displacement. The Association states that the Applicant’s overall redevelopment “has resulted in the displacement of residents who resided at Brookland Manor previously, and will continue to result in the displacement of current Brookland Manor residents.” (Ex. 195 at 2.) The Association’s purported evidence of past and future displacement are each taken in turn below.

#### **Evidence of Past Displacement**

In support of its assertion of evidence of past displacement, the Association points to a Memorandum Opinion (the “Opinion”), filed on February 12, 2018 in an ongoing proceeding in the United States District Court for the District of Columbia.<sup>2</sup> The Opinion arises out of litigation filed on behalf of Brookland Manor residents, which litigation is in relation to the Applicant’s proposed overall redevelopment of Brookland Manor and in which the Association alleges such redevelopment fails to further fair housing and has a discriminatory impact on families.

The Commission is not persuaded that the Opinion contains any new evidence, unavailable at the time of the Public Hearing, showing that the Second-Stage PUD that is the subject of the instant proceeding “has resulted in the displacement of residents who resided at Brookland Manor previously.” Similarly, the Commission is not persuaded that the Association has provided any evidence that the specifically cited findings or conclusions in the Second-Stage Order are erroneous, for the following reasons.

- As the Applicant notes, the Opinion itself very clearly states that “Indeed, Ms. Borum [the plaintiff resident of Brookland Manor] does not point to a single individual who has been displaced due to the proposed redevelopment since [the Applicant] submitted their First Stage PUD to the [Commission].” (Ex. 196 at 2; Ex. 195 at Exhibit A at 10.) This

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<sup>2</sup> *Borum v. Brentwood Village, LLC*, No. 16-1723 (RC) (D.D.C. 2018).

statement in the Opinion undercuts any claim by the Association that the Opinion contains evidence of any past displacement unknown at the time of the public hearing and post-hearing submissions.<sup>3</sup>

- The Association does not state with any specificity whether the ongoing federal District Court litigation is pertinent to the Second-Stage PUD, and the Association points to nothing in the Opinion that relates to the proceeding at hand. The factual information presented in the Motion—e.g., pertaining to “118 families (totaling 543 people) in three-, four-, and five-bedroom apartments at Brookland Manor”, the composition of such families, and the 64 overall three-bedroom units approved under the first-stage PUD—whether individually or taken together lacks any reference or relevance to the instant Second-Stage PUD proceeding. The displacement claims alleged and the factual information presented in the Motion appear to pertain to the overall redevelopment of Brookland Manor, which claims and information was thoroughly addressed in the first-stage proceeding. The Commission is by regulation time-barred from revisiting claims relating to displacement arising out of the Commission’s approval of the first-stage PUD unless expressly implicated in the proposed Second-Stage PUD. None of the purportedly new information implicates the Second-Stage PUD, and the Commission declines to now re-open the findings or conclusions in its November 2015 first-stage order related to unit mix or putative displacement impacts, which order was not appealed or challenged.
- Moreover, the Association points to factual information referenced in the Opinion, which information the Association notes is dated “as of January 2017.” (Ex. 195 at 2.) This purportedly new evidence is dated one month prior to the February 2017 public hearing on the instant application. The Association makes no attempt to explain why it did not attempt to present the January 2017 information to the Commission the following month or in its multiple post-hearing submissions filed two and three months thereafter.

#### Evidence of Future Displacement

Similarly, the Commission does not find any evidence that the Second-Stage PUD “will continue to result in the displacement of current Brookland Manor residents.” This issue was addressed thoroughly during the Second-Stage PUD proceedings and convincingly rebutted by the Applicant. The Commission notes that it thoroughly, and with concern about potential impacts on current residents, investigated the Association’s claims that the Applicant’s distribution of affordable units in the “senior building” (or “Building B” as defined in the Second-Stage Order) would somehow lead to the displacement or disruption of current Brookland Manor resident extended families on account of the Second-Stage PUD unit mix or other possible displacement impacts. (*See* Ex. 193 at FF ¶¶ 100-102.) The Commission requested post-hearing briefings on this topic specifically. (*Id.* ¶¶ 80, 81(n)-(t).) However, the Commission found that although there was initial confusion on this topic, it did not believe that any displacement of current Brookland

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<sup>3</sup> Indeed, the Association’s April 18, 2017 post-hearing statement raises allegations of evictions by the Applicant of residents of Brookland Manor. These allegations were before the Commission in its deliberations on the Second-Stage PUD application. (*See* Ex. 193 at FF ¶ 103.)

Manor residents would result from the Second-Stage PUD, finding in the alternative that any displacement that did occur would be acceptable in light of the public benefits.

Without revisiting its previous findings, the Commission notes that the subject Property is currently vacant, and upon completion of the development approved in the instant proceeding, “there will be 800 units on the entire property, a more than adequate amount of housing to accommodate current residents.” (*Id.* ¶¶ 100(c), 110). The Association has presented no evidence, new or otherwise, suggesting that the amount of housing available on the overall property during or upon completion of the development of the project approved in the Second-Stage PUD will be insufficient to house the number of current residents.

Accordingly, after scrutinizing the Motion and the purportedly new information contained therein regarding past and future displacement of Brookland Manor residents, the Commission finds no reasonable basis for concluding that the Second-Stage Order is at all erroneous and finds no examples of new evidence that could not reasonably have been presented at the original hearing. The Commission declines to revisit the conclusions cited in the Motion.

### **The Association’s Motion – Discussion of Evidence Pertaining to Federal Fair Housing Act Violations**

In addition to allegations of new evidence regarding past and future displacement of current residents, the Association urges the Commission to reconsider the Second-Stage PUD in light of the federal Fair Housing Act (“FHA”). The Commission again declines.

#### **Federal Fair Housing Act**

The Association asks the Commission to reconsider its findings that it cannot consider FHA compliance when evaluating a PUD. The Commission takes notice of a recent holding of the District of Columbia Court of Appeals that in at least some instances the Commission may consider obligations set forth in federal law.<sup>4</sup> However, the Commission has determined that it does not have the capacity to adjudicate specific or even generalized FHA claims. A federal district court seems to have agreed with the Commission on this point.<sup>5</sup>

This does not mean that the Commission is powerless to consider the effects of its actions that implicate policy objectives governed by the FHA. Quite the contrary, the Commission has broad authority under the Zoning Regulations, its own Rules of Procedure and Practice, and the Comprehensive Plan to consider the effects of its actions on the “health, safety, and welfare” of District residents and other protected interests as urged by the Association. Similarly, the Commission can and does consider the impacts of projects with regard to the promotion of mixed-income housing, affordable housing production, housing for families, the protection of

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<sup>4</sup> *Barry Farm Tenants and Allies Assoc. v. Zoning Comm’n.*, No. 15-AA-1000 at 33-34 (D.C. Apr. 26, 2018) (holding that the Commission’s conclusion that it did not have jurisdiction under the federal Uniform Relocation Act was erroneous and remanding for reconsideration of local policies addressing relocation).

<sup>5</sup> In a federal court order in the above-referenced civil litigation involving the Applicant and certain residents of Brookland Manor, the court noted that “there is no indication that the [Commission] could be considered a “competent” “court” for purposes of reviewing FHA claims.” (Ex. 196 at Exhibit C at 20.)

existing affordable rental housing, and anti-displacement practices. Within the realm of District law and viewed through the lens of the Commission's unique expertise in land use regulation and zoning, the Commission's power overlaps with the aims of the FHA. Indeed, the Commission made specific findings on these several topics in the Second-Stage Order. (Ex. 193 at FF ¶¶ 70, 104(b).)

### District Human Rights Act ("HRA")

The Association's urging to re-examine the Second-Stage PUD for compliance with the FHA is undercut by its own assertion that the FHA and the HRA "run directly parallel" to each other and that "the protections contained in [the HRA] mirror those of the [FHA] with respect to the prohibition against familial status discrimination." (Ex. 195 at 3.) The Commission points out that it has imposed a specific condition in the Second-Stage Order regarding the HRA:

In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.*, ("Act") 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, gender identity or expression, *familial status, family responsibilities*, matriculation, political affiliation, genetic information, disability, source of income, or *place of residence* or business. Sexual harassment is a form of sex discrimination, which 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.

(Ex. 193 at Decision ¶ II.D.4.) (Emphasis added.) Accordingly, to the extent the Association believes the FHA and HRA "parallel" or "mirror" each other, such overlap is subject to an express condition of the Second-Stage Order.

### The Association's Allegations of Error

In the Motion, the Association raises the following allegations of error on the part of the Commission:

- The Association implies that all 535 units in existence today at Brookland Manor are "deeply affordable units." (Ex. 195 at 3.) The Applicant has presented substantial evidence that only 373 of the existing units are income-restricted "affordable units." Some are occupied by management and others by market-rate tenants. The Applicant has acknowledged that there are in addition to those 373 affordable units, some units occupied by income-restricted residents through the use of vouchers. But such vouchers are personal to the residents and transferable from one property to another. As articulated in detail in the Second-Stage Order, the voucher-holder-occupied units and the 373 affordable units are not equivalent. Moreover, the overall amount and level of affordable housing in the RIA redevelopment was settled as part of the first-stage PUD. The overall affordable unit count issue is not timely or properly raised for the Commission now to reconsider.

- The Association argues that the Second-Stage PUD’s provision of affordable housing “cannot be considered a public benefit.” The Commission’s procedures say precisely otherwise. (*See* 11-X DCMR §§ 305.2 and 305.5(g).) The Applicant is replacing the existing 373 affordable units with 373 new construction affordable units. An applicant as part of a generic PUD is under no obligation to provide affordable housing beyond what is required under the Zoning Regulations’ inclusionary zoning requirements. (*See id.* § 305.11.) Affordable housing in excess of the requirement amount is by definition a public benefit and not a requirement of a PUD. The Commission declines to consider, as the Association advances, whether § 300.1 of Subtitle X imposes additional affordable housing requirements given the actual affordable housing proffered by the Applicant as part of the first-stage PUD and in the instant Second-Stage PUD. The Applicant’s construction of 373 affordable units, given the level of affordability, is a public benefit because the Applicant is under no obligation otherwise to provide such units. The Second-Stage PUD’s affordable housing contributes to and is in accordance with that public benefit.
- The Commission previously made findings on the Second-Stage PUD’s protection of the public health, safety, welfare and convenience and declines to revisit them here seeing no evidence of error in such earlier findings. (*See, e.g.*, Ex. 193 at FF ¶¶ 70, 73.)
- The Association again raises the issue of the decision to eliminate all five-bedroom units at Brookland Manor. As noted above, that issue was squarely addressed in the first-stage proceeding, was not before the Commission in the instant proceeding, was not timely appealed or challenged, and the Commission is time-barred by regulation from reconsidering it here.
- The Association states, incorrectly, that “all four bedroom units” have been “eliminate[d].” (Ex. 195 at 3.) The first-stage PUD includes four-bedroom townhouse units. (Ex. 193 at FF ¶ 81(s).) Nonetheless, as with the five-bedroom units, this issue has been resolved for more than two years, was not timely appealed or challenged, and is not properly before the Commission now.
- The Association alleges, without elaboration, that the Commission has run afoul of the Housing Element of the Comprehensive Plan. The Commission considered these policies in detail, devoting three pages of the Second-Stage Order to its analysis of the Second-Stage PUD in light of the Housing Element. (Ex. 193 at FF ¶ 104(b).) The Commission has considered the Second-Stage PUD in light of the affordable housing, family housing, and displacement objectives of the Housing Element along with numerous other policy objectives of the Comprehensive Plan and determined that the Second-Stage PUD is not inconsistent with these objectives nor with the Comprehensive Plan as a whole. (*Id.*) The Commission sees no reason to reconsider this conclusion.

For the above-stated reasons, the Commission finds no new evidence not reasonably available at the time of the original public hearing on the instant application and no clear error in the Second-Stage PUD. Accordingly, the Motion is **DENIED**.

On April 30, 2018, upon the motion of Chairman Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **DENY** the Motion by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Michael G. Turnbull to approve; Peter G. May, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on May 25, 2018.

**BY THE ORDER OF THE D.C. ZONING COMMISSION**

A majority of the Commission members approved the issuance of this Order.

  
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ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
\_\_\_\_\_  
SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 14-18B**  
**Z.C. Case No. 14-18B**  
**Mid-City Financial Corporation**  
**(Two-Year Time Extension of First-Stage Planned Unit Development**  
**@ Square 3954, Lots 3, 4, and 800-804; Square 4024, Lots 1 and 800-804; and**  
**Square 4025, Lots 1-3, 5, and 800-803)**  
**September 28, 2023**

Pursuant to notice, at its September 28, 2023 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Mid-City Financial Corporation (the “Applicant”) for a two-year time extension of Z.C. Order No. 14-18 (the “Original Order” or “First-Stage PUD”), located at Square 3954, Lots 3, 4, and 800-804; Square 4024, Lots 1 and 800-804; and Square 4025, Lots 1-3, 5, and 800-803 (the “Property<sup>1</sup>”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

1. Pursuant to the Original Order, effective November 6, 2015, the Commission approved the creation of a significant transit-oriented development near the Rhode Island Metro Station. The First-Stage PUD authorized approximately 1.9 million square feet of development on approximately 20 acres of property (Blocks 1-8) in Ward 5 to include a mix of residential and retail uses that will serve as a hub for people to live and shop in their neighborhood (the “PUD Project”). The Original Order also approved a Zoning Map Amendment from the C-2-A and R-5-A to C-2-A and R-5-B zones.
2. The Commission’s unanimous approval of the PUD Project anticipated that all second-stage PUD applications would be filed prior to August 1, 2023. Decision No. E.3. of Z.C. Order No. 14-18 stated:

“The first-stage PUD shall remain valid until August 1, 2023, provided that a

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<sup>1</sup> Some of the lot numbers have changed since the First-Stage PUD was approved. However, the properties that are subject to the First-Stage PUD approval have not changed.

second-stage PUD application for the construction of the Senior Building is filed no later than one year from the effective date of this Order. The filing of each second-stage PUD Application and the Commission's approval thereof will vest the Commission's approval of Z.C. Case No. 14-18, with respect to the property that is the subject of the second-stage application, even if other second-stage applications are not filed by the expiration date." The Commission's approval of the First-Stage PUD became effective on November 6, 2015. In order for the PUD to remain valid an application for a second-stage PUD application for the construction of the Senior Building was required to be filed prior to November 5, 2016. The Applicant filed such an application for a second-stage PUD on August 4, 2016, and the application was approved by the Commission in Z.C. Order No. 14-18A (the "Second-Stage Order). The Second Stage Order, which became effective on April 13, 2018, authorized the development of Block 7 of the PUD Site with two residential buildings, including the Senior Building."

3. Opponents of both the Original Order and the Second-Stage Order filed appeals of the Orders in the U.S. District Court and the D.C. Court of Appeals, respectively. Regarding the Original Order, the U.S. District Court granted a motion for summary judgment in favor of the Applicant on March 30, 2020. Regarding the Second-Stage Order, the D.C. Court of Appeals issued a written decision affirming the Commission's Order on March 4, 2021.

#### **PARTIES**

4. The parties to the Original Order were Advisory Neighborhood Commissions ("ANC") 5B and 5C, and the Brookland Manor/Brentwood Village Residents Association (the "Association").

#### **II. THE APPLICATION**

5. On July 26, 2023, the Applicant filed the Application requesting a two-year time extension of Z.C. Order No. 14-18, prior to the deadline of August 1, 2023, to extend the First-Stage PUD approval until August 1, 2025. The Applicant requested that it be allowed until August 1, 2025, to review, potentially revise, and move forward with second-stage PUD applications for the development of the remaining portions of the Property. The Application stated that it met the standards for a time extension enumerated in Subtitle Z § 705.2. (Exhibit ["Ex."] 2.)
6. The Applicant provided evidence that on July 26, 2023, it served the Application on ANCs 5B and 5C, the Association, and the Office of Planning ("OP") as attested by the Certificate of Service submitted with the Application. (Ex. 3.)
7. The Application stated that since the Commission's approval of the PUD Project in 2015, there has been no substantial change of material facts that undermine the Zoning Commission's approval of the PUD Project. (Ex. 2.)
8. The Application asserted that good cause justifies the Commission's granting the time extension because of litigation and other conditions and circumstances beyond the Applicant's reasonable control that made the Applicant unable to comply with the time

limits of the Original Order beyond the development of Block 7. The Application noted that the Original Order and the Second-Stage Order have been subject to litigation for over four years and seven months since the Original Order was first approved in 2015. Such litigation significantly impacted the ability of the Applicant to move forward with the overall planning and execution of the remaining second-stage PUD applications. (Ex. 2.)

9. Furthermore, the time period between approval of the Original Order and August 1, 2023, witnessed unprecedented challenges, including the COVID pandemic and more recently, significant increases in construction costs and a higher interest rate environment that has created impediments to development activity on the Property moving forward. (Ex. 2.)
10. OP submitted a report dated September 18, 2023 (“OP Report”). The OP Report noted that there have been no substantial changes to the Comprehensive Plan since the PUD Project’s approval that would affect the material facts upon which the project was approved. The OP Report also recommended that the Commission approve the requested two-year extension. (Ex. 6.)
11. The Association did not participate in the Application.
12. On September 28, 2023, ANC 5C filed a letter stating that at its September 20, 2023, duly noticed regularly scheduled meeting, with a quorum present, the ANC voted in unanimous support of the Application. (Ex. 7.)
13. The Commissioner for ANC Single Member District 5B03 filed a letter in support of the Application. (Ex. 8.)

### **CONCLUSIONS OF LAW**

1. Subtitle Z § 705.2 authorizes the Commission to extend the period of an order approving a PUD upon determining that the time extension request demonstrates satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.
2. The Commission concludes that the Applicant timely filed the Application prior to the August 1, 2023 deadline for the expiration of the first-stage PUD approval, which deadline the Application seeks to extend.
3. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that all parties are allowed 30 days to respond.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 705.2(a) by demonstrating that it had served all parties to the Original Order – ANCs 5B and 5C, and the Association– and that all were given 30 days to respond from the July 26, 2023 date of service.

5. Subtitle Z § 705.2(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the PUD.
6. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and the OP Report, which stated that no substantial change has occurred to the material facts upon which the Commission had relied in issuing the Original Order.
7. Subtitle Z §705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:
  - (1) *An inability to obtain sufficient project financing for the development, following an applicant’s diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant’s reasonable control;*
  - (2) *An inability to secure all required governmental agency approvals for a development by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant’s reasonable control; or*
  - (3) *The existence of pending litigation or such other condition, circumstance or factor beyond the applicant’s reasonable control that renders the applicant unable to comply with the time limits of the order.*
8. The Commission concludes that the Application met the standards of both Subtitle Z §§ 705.2(c)(1) and (c)(3) because of the existence of litigation matters before the U.S. District Court and the D.C. Court of Appeals that affected the Property. Furthermore, the unprecedented challenges associated with the COVID pandemic and escalating constructions costs and high interests negatively impacted the Applicant’s ability to start construction. The Commission agrees that these matters were beyond the Applicant’s reasonable control and rendered the Applicant unable to file all second-stage PUD applications by the August 1, 2023 deadline of the Original Order.

**“Great Weight” to the Recommendations of OP**

9. Pursuant to §5(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001).) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A. 3d 1079, 1087 (D.C. 2016).)
10. The Commission notes OP’s conclusion that there have been no substantial changes to the Comprehensive Plan since the PUD Project’s approval that would affect the material facts upon which the project was approved and finds persuasive OP’s recommendation to approve the requested two-year extension.

**“Great Weight” to the Recommendations of the ANC**

11. Pursuant to §13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d).) and Subtitle Z § 406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A. 3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A. 2d 85, 91 n.10 (1978).)
12. The Commission acknowledges ANC 5C’s support of the time extension request and has given that support great weight.

**DECISION**

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a two-year Time Extension of Z.C. Order No. 14-18, subject to the following conditions and provisions:

The conditions in Z.C. Order No. 14-18 remain unchanged and in effect, except that Decision No. E.3. is hereby revised to read as follows (deletions shown in **bold and strikethrough** text; additions shown in **bold** and **underlined** text):

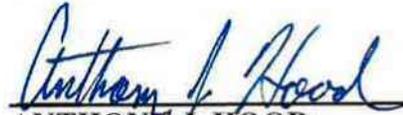
**E. MISCELLANEOUS.**

3. “The first-stage PUD shall remain valid until August 1, ~~2023~~ **2025, by which time the Applicant will file second-stage PUD applications for the development of the remaining portions of the Property. provided that a second-stage PUD application for the construction of the Senior Building is filed no later than one year from the effective date of this Order.** The filing of each second-stage PUD Application and the Commission’s approval thereof will vest the Commission’s approval of Z.C. Case No. 14-18, with respect to the property that is the subject of the second-stage application, even if other second- stage applications are not filed by the expiration date.”

**VOTE (September 28, 2023): 4-0-1**

(Anthony J. Hood, Tammy Stidman, Robert E. Miller and Joseph S. Imamura to **APPROVE**; 3<sup>rd</sup> Mayoral appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 14-18B shall become final and effective upon publication in the District of Columbia Register; that is on December 22, 2023.

  
ANTHONY J. HOOD  
CHAIRMAN  
ZONING COMMISSION

  
SARA A. BARDIN  
DIRECTOR  
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.