

**The Council @Park Morton (Park Morton resident council)
Motion to Reconsider ZC Remand Zoning Order 16-11 &
Limited Rehearing of ZC Oder 16-12 w/ regards to Racial Equity Lens
Review**

Background

The Council@Park Morton (PMRC) is the recognized representative for Park Morton residents. In 2007 the residents of Park Morton and their property were made apart of the New Communities Initiative (NCI) via DC's legislative process. In 2014 sighting slow process the city ended its relationship with the initial team contracted to execute the Park Morton NCI redevelopment. In 2014 the city released a study (Policy Advisor's Recommendations 16-11 Ex. 230) highlighting potential opportunities, challenges and adverse impacts of the NCI program overall and for residents including those living at Park Morton. In November of 2014 Park View Community Partners (PVCP) was selected by a partnership between DC Housing Authority (DCHA) and the city (DMPED) as the new Master Developer for Park Morton NCI.

Approximately 1½ years after selection PVCP filed two interrelated Park Morton NCI PUD applications, one for the Bruce Monroe site and another for the Park Morton site. These two applications were then set down together as zoning cases 16-11 (Bruce Monroe) and 16-12 (Park Morton) in the Summer of 2016. In ZC Case 16-11 PVCP and DMPED were identified [16-11, Ex.1] as "The Applicant" and in ZC Case 16-12 PVCP and DCHA [16-12, Ex.1] were identified as "The Applicant". On 12/5/2016 and 12/8/2016 DC Zoning Commission (the Commission) recognized PMRC as parties in both cases respectively. The Commission issued approval orders for ZC Cases 16-11 and 16-12 together on 3/3/17. In doing so the Commission locked potential opportunities and adverse impacts for Park Morton resident to "Applicants'" ability to deliver on the promises of NCI. As outlined in Policy Advisors report, in the history of the NCI these partners have never delivered according to NCI promises.

Reconsideration Is Plain and Warranted

After urgently reviewing the Commission's Zoning Commission Order No. 16-11(1) ZC in Case No. 16-11, Park View Community Partners & the District of Columbia (Consolidated PUD and Related Map Amendment @ Square 2890, Part of Lot 8491) dated November 18, 2021 and served to parties on 4/25/22, the PMRC makes the following points of contest and new evidence to substantiate our request for reconsideration. Reconsideration is warranted on grounds that the Commission erred as follows in evaluating NCI's impacts on PMRC and Park Morton Residents:

- **The Commission failed to prepare and implement the tools and training necessary to evaluate and implement the Comprehensive Plan's and NCI policies actions through an equity, particularly a racial equity lens in its consistency analysis. And relied on processes and tools which fall short of its own and industry standards**

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- **By excluding the Park Morton site (ZC 16-12) from its process, the Commission failed to properly judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any adverse effects on PMRC and residents of Park Morton and surrounding neighborhood. This is especially the case with the lost of NCI Build-First.**
- **The Commission erred in its limited scope review of case evidence in its Remand Order in a manner which shifted the Burden of Proof away from the Applicant as contrary to zoning regulations. Instead the Commission as placed burden of proof to the PMRC to prove adverse impacts and lack of benefits which are inherent to NCI.**

New Evidence

Post hearing three key pieces of evidence came to light which have impacts on Park Morton NCI, PMRC and the Zoning Orders.

- On November 18, 2021 post hearing, the Applicant presented to PMRC a new development plan which fundamentally altered project phasing in contrary phasing contemplated in ZC Orders 16-11 and 16-12. The presentation was based on DCHA Resolution 21-18, 10/13/21, which altered project phasing and financing for the Park Morton site (ZC 16-12).
 - o RESOLUTION 21-18
https://www.dchousing.org/api/files/board/asovmjmx_x1fda1lx434x3kct2r434.pdf
 - o Park Morton Resident Meeting November 18, 2021
https://www.dchousing.org/api/files/dchaUS/82zkoxrl_j2bfqij0922czaxwlin922.pdf
- On April 28, 2022, three days after noticing PMRC of the Remand Zoning Order the Zoning Commission released its initial Racial Equity Tool to the public via the Commission's website.
 - o <https://dcoz.dc.gov/release/zc-racial-equity-analysis-tool>

Relief

PMRC makes a Motion for Rehearing together ZC Cases 16-11 and 16-12 for the purposes accepting new evidence, expert testimony and public testimony in order for the Commission to prepare and implement equity tool(s) tailored to properly apply a racial equity lens and harm-benefit analysis and consistency evaluations in the Park Morton NCI zoning cases 16-11 Remand and 16-12.

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The Commission can and must facilitate, strongly encourage negotiations and modifications to zoning orders ZC 16-11 (Remand) and ZC 16-12 to reflect the results of a proper racial equity lens analysis, especially as it regards to changes in the Applicant's development plans, including phasing and financing and as to Park Resident mitigation and benefit plans.

REMAND ORDER ERRORS

ERROR SET 1: The Commission failed to prepare and implement the tools and training necessary to evaluate and implement the Comprehensive Plan's and NCI policies actions through an equity, particularly a racial equity lens in its consistency analysis. And relied on processes and tools which fall short of its own and industry standards.

PMRC asserts that the Commission's newly released Racial Equity Tool should be applied and reevaluated under this rehearing motion.

This tool and process is discussed on the Commission's website:

"This tool is intended to be used by the Commission in analyzing zoning actions through a racial equity lens as a part of its overall Comprehensive Plan consistency analysis of zoning actions..."

After the Commission has used the tool in its deliberations, it is anticipated that changes and refinements to the tool will occur. To that end, the Commission will hold a roundtable regarding the tool in September to receive community input and feedback on both the tool and the Commission's use of the tool." [Zoning Commission Website]

As the quote below highlights the Commission relied heavily on OP's Racial Equity Analysis; however this problematic because OP's approach does not meet industry standards. The attached email from DC Council's Office On Racial Equity (CORE) which conducted a Racial Equity Impact Assessment (REIA) on the Comprehensive Plan Amendment Act of 2020, Bill 24-0001 the type of expert testimony which would be raised at a rehear. See Attachment 1.

"While the Commission acknowledges that it has not formally adopted a "racial equity tool" the Commission does not believe that the absence of a formal tool precludes the Commission from evaluating zoning actions through a racial equity lens as a part of its Comprehensive Plan consistency analysis at this time. In fact, the Commission finds the currently available data and tools that OP utilized in its evaluation of the Project "through a racial equity lens"

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***persuasive as explained above, and more persuasive than it finds
PMRC's suggested "racial equity tool."*** [16-11(1) Remand Order (310)]

ERROR (Set 2):

By excluding the Park Morton site (ZC 16-12) from its process, the Commission failed to properly judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any adverse effects on PMRC and residents of Park Morton and surrounding neighborhood. This is especially the case with the lost of NCI Build-First.

The Commission erred in its limited scope review of case evidence in its Remand Order in a manner which shifted the Burden of Proof away from the Applicant as contrary to zoning regulations. Instead the Commission as placed burden of proof to the PMRC to prove adverse impacts and lack of benefits which are inherent to NCI.

In the quotes below from the Commission's Remand Order conclusions either don't flow clearly from evidence presented or are not clear how the Commission judged, balanced and reconciled the benefits and adverse impacts especially as it relates to NCI.

"However, the Commission decided the Park Morton case and this case in 2017, and the Park Morton case was not appealed. It is final and effective. The Commission therefore has no basis to revisit its decision in the Park Morton case." [16-11(1) Remand Order Section C.]

For example, an appeal ZC 16-12 is not necessary to, *"judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any adverse effects according to the specific circumstances of the case"* given the Applicant has submitted letters indicating that the circumstance of the project has significantly changed in the relationship between ZC 16-12 and ZC 16-11. [16-11 Ex. 270, 361]

See other examples:

- For example, in order to meet the 1:1 replacement requirement of NCI the original ZC 16-11 order would need to produce 147 replacement units this project only produces 90 units, 57 units shy. To ensure 1:1 replacement the Park Morton site must be included along with related phasing. [ZC 16-12 Ex. 287(77), Ex.5, Ex.16, Ex.33, Ex.251 & ZC 16-11 Ex.6, Ex.6B, Ex.33. Ex. 64, Ex.287, Ex.322]

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- Similarly, the evidence in the above exhibits confirms the importance of “Build-First” for project phasing across ZC 16-11 and ZC 16-12 and resident well-being.
- The Commission approving both orders 16-11 and 16-12 found the Bruce Monroe first and Park Morton second phasing appropriate and necessary. Neither order granted the Applicant flexibility with regards to the order of phasing. 16-12 would need to be revisited atleast for this purpose. {ZC 16-12 Ex.287 & ZC 16-11 Ex. 322]
- It should also be noted that OP upon whom the Commission relies for elements of its Racial Equity and other analysis does not even mention the loss of Bruce Monroe as a Build-First site let alone acknowledge the adverse impacts. {ZC 16-11 Ex. 354]
- As acknowledged by the Commission in its Remand Order, the primary advocate for disassociating PUD 16-11 and PUD-12 especially when it comes to a Racial Equity Len’s analysis and resident out comes is the Applicant in their Post-Hearing Submission (ZC 16-11 Ex.450). However, Applicant’s response at best would be called contradictory and disingenuous.
 - o Item a.i the Applicant claims Action MC-2.1.E is not applicable to the PUD (ZC 16-11). However to the contrary in ZC 16-11 Ex.6 filed 5/13/16 by the Applicant which states, **“The Subject Property[Bruce Monroe 16-11] and proposed development will serve as the Build-First site for the Park Morton Public Housing Community, a targeted site that is part of the District’s New Community’s Initiative (“NCI)”**”.
 - o Item a.i. also claims **“nor to the Applicant”**. However, Ex.6 also states, *“Concurrent with this application, the Applicant and the District of Columbia Housing Authority are filing an application for a PUD and related Zoning Map amendment for the Park Morton public housing site[ZC 16-12]...”*.

The Applicant said it best in its 5/16/16 Statement of the Applicant, **“The Park Morton Redevelopment Initiative is a comprehensive partnership between the District of Columbia’s Office of the Deputy Mayor for Planning and Economic Development (“DMPED”) and the District of Columbia Housing Authority (“DCHA)”**”.

The Applicant cannot meet its burden of proof standard [11 DCMR Subtitle Z 304.2] without the simultaneous consideration of ZC 16-11 and ZC 16-12, the Commission in its Remand Order is improperly and unfairly placing the burden of proof on PMRC, while denying PMRC the opportunity to present new evidence.

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ERROR (Set 3)

The Commission further finds that the displacement of Park Morton residents was caused by a number of factors, but the approval of this Application and future development of the Project was not the cause of the displacement of Park Morton residents. In fact, the Commission believes that fewer Park Morton residents would have been displaced had this Project been built in coordination with the redevelopment of the Park Morton site as originally planned, and approved by the Commission. Therefore, the Commission does not believe that the displacement is an adverse effect of this Project. [16-11(1) Remand Order Section C.]

Unfortunately, the Commission in the above statement exposes its lack of understanding of NCI in general and Park Morton NCI in particular. Resident adverse impact of displacement has unfortunately become an inherent feature of NCI (For example, see the Quadell report 2014, <https://dcnewcommunities.org/wp-content/uploads/2014/09/Policy-Advisors-Recommendations-on-the-NCI-Program.pdf>).¹ Therefore the approval of an NCI related PUD causes the adverse impact. Build-First and others NCI elements are designed to mitigate the depth and breadth of the adverse impact of displacement, but without implementation, the NCI objectives are rhetorical. As part of the city's planning apparatus touting the benefits of NCI, the Zoning Commission must also weight the resultant track record of harm. The Commission in its Remand Order removes Build-First as a mitigating benefit, but doesn't place the burden on the Applicant to address the Build-First loss. The Commission's position is unsupported by the evidence.

- The original 16-11 order designates the 90 units as replacement units permanently removing these units from the Park Morton site. Short of other interceding mitigation, 90 residents are effectively compelled from their neighborhood and generational homes at and around Park Morton (Georgia Avenue and Morton Street NW). And, further, compelled to move into

1 Four guiding principles lay the framework for New Communities:

- One for One Replacement to ensure that there is no net loss of affordable housing units in the neighborhood;
- b. The Opportunity for Residents to Return/Stay in the Community to ensure that current residents will have a priority for new replacement units in an effort to remain in their neighborhood;
- c. Mixed-Income Housing to end the concentration of low-income housing and poverty; and
- d. Build First, which calls for the development of new housing to begin prior to the demolition of existing distressed housing to minimize displacement.

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housing structure of a downtown sized quality, versus the existing garden style apartments with light and air they have come to enjoy now. Given the history of NCI as documented in Exhibit 182 (3.0 PRINCIPLES, GOALS AND STRATEGIES) and the adverse impacts on residents facing similar scenario, the Commission would have to find some adverse finding.

- This designation as well complicates the right of return for at least 33 of these 90 residents given only 57 replacement units remain on site at Park Morton as a result of the way these unit were designated in the original order. Another clear adverse impact unaddressed by the Commission in both the original and Remand orders.

The Commission found this evidence persuasive. Despite the fact the Project will no longer serve as a “Build First” site, it will still provide necessary replacement public housing units in a mixed income community. The Commission therefore finds that the Project still advances the policies of the Park Morton Plan and NCI.

- When the Commission recognizes the loss of Bruce Monroe as a Build-First site it is recognizing an adverse impact without naming and evaluating it as such in error.
- Moreover, as explained Exhibit 182, Build-First is a logistical and financial burden for the DCHA and DMPED. The letters DCHA and DMPED Ex. 270 and Ex. 361 respectively reflect agency interests not those of Park Morton residents, thus inherently adverse to them. The Commission must acknowledge this in the weighing the efficiency of the purported benefits versus the actual and imminent harms to Park Morton residents.

Recent actions by the DC Housing Authority Commissioners points to new evidence allowing all former Park Morton residents to be prioritized and allow those families and residents who have been displaced (since 2007) to move back to the new Phase I housing at Park Morton (See DCHA Resolution 22-19, <https://youtu.be/scFsGaouJo?t=5375>). DCHA resolution 22-19 substantially diminishes reliance on Bruce Monroe as needed for Build First or a replacement unit site. It's likely Park Morton residents will indeed relocate back to their Park Morton community first and in toto. Thus the project at Bruce Monroe cannot be considered needed, nor a benefit for the purposes of Park Morton residents, and it needs another look to meet other public needs (i.e. educational & recreation space sorely lacking along Georgia Ave corridor).

For the foregoing reasons and errors, PMRC, a party to the ZC proceedings, timely requests a rehearing of the new evidence and reconsideration of Remand Order ZC Order No. 16-11(1).

s/n/

Shonta' High, President, PMRC

ATTACHMENT

-----Original Message-----

From: "Mody, Namita (Council)" <nmody@DCCOUNCIL.US>

Sent: Wednesday, May 4, 2022 4:47pm

To: "McClure, Brian (Council)" <bmcclure@DCCOUNCIL.US>, "whj@melanet.com" <whj@melanet.com>

Subject: Re: Park Morton Order

Hi William,

I believe we have met in larger groups but not one-on-one before, so it's nice to e-meet you!

We know that you need to respond in within 10 days, but because of the time constraint we're having a hard time wrapping our heads fully around the matter and all of its nuances. We don't fully understand the moving pieces here, but from a cursory review, our concern is that the Commission's findings are more akin to a racial equity "rubber stamp" and not a racial equity analysis. The illusion of an analysis harms the District's Black residents who are disproportionately affected by matters of zoning.

In place of something more formal, we are sharing some things we would probably point out. We hope you can pull whichever points are helpful. (And just to note—we are writing in response to the "racial equity analysis" included in the Remand Order of the Park Morton case. We don't have any thoughts on the Park Morton case itself.)

1) In our Comprehensive Plan REIA—which informed the updated Plan—our intention was not for a racial equity evaluation to be folded into "an overall Comprehensive Plan consistency analysis of a project."

As part of our extensive review of the Comprehensive Plan, we used our authority to provide recommendations to create a more racially equitable process. Part of our recommendation was for the Zoning Commission to review all cases through a racial equity lens.

We meant that a thorough, objective, and standalone racial equity analysis should inform planning decisions. The REIA shared this best practice on [page 22](#): "disparate impact analyses and racial equity-focused evaluations must inform planning decisions." This recommendation was partly based off what we observed in Montgomery County, which is [legally required](#) to conduct a racial equity impact assessment of each zoning text amendment.

In addition, we counter the Zoning Commission's conclusion that "given that most Comprehensive Plan policies do not directly address race, the Commission readily acknowledges the difficulty in evaluating a zoning action through a 'racial equity lens.'" Most, if not all, of the bills that CORE evaluates do not directly address race. However, that does not affect our ability to assess them through a racial equity lens.

2) Despite stating that a standalone racial equity analysis was not needed, the Remand Order includes a section titled a "racial equity analysis."

Unfortunately, neither what the Zoning Commission has submitted in Section D (pages 98-102) nor OP’s Supplemental Report qualify as racial equity analyses.

To be clear, there are serious deficiencies in these “racial equity analyses.” These “analyses:”

- do not ask basic questions such as:
 - What are the current systemic racial inequities facing the community and surrounding communities? What data is available and is it disaggregated by race?
 - How might different races and ethnicities be uniquely affected by the project?
 - How will the project affect resident demographics by race and ethnicity?
 - How will proposed benefits be guaranteed? How will policy outcomes be measured?
 - Based on similar projects, how might small business participation requirements and First Source hiring requirements play out in practice?
- do not provide any critical, balanced analysis as to who would be harmed or who would benefit,
- do not include any research, use any citations, or refer to a templated methodology to support their conclusions (for example, what research points to the conclusion that a mixed-income community promotes racial equity, as written in Section 303?).

We hope this helps,
Nami

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