

1604 V St SE
Washington DC, 20002
Ph: (202) 651-1148

Re: CARE 5.2.2019
Memorandum ZC Nos. 18-18 and 18-19

Dear Commissioners,

CARE is aware Redbrick is working with ANC 8A and ANC 8C to make a better CBA than was previously proffered. CARE is encouraged that our contestation at the Court of Appeals for ZC case 16-29 has helped to facilitate Redbrick coming back to the negotiating table after Redbrick only offered ANC 8A and ANC 8C a combined \$250,000 for their *600 million-dollar project*.¹ Exhibit A. It is CARE's impression that these negotiations are still ongoing. We stand with ANC 8A and 8C in their request for additional time to work out a better CBA agreement for our community. Or maybe CARE will withdraw its PUD appeal, allowing Redbrick to get a building permit tomorrow, and see how well-meaning

CARE also is aware the chosen rulemaking proceeding does not leave much room for the Zoning Commission to encourage a CBA as predicating land use approvals that receive no government funding on community benefit packages may be construed as "exaction" by courts of competent jurisdiction. *Dolan v. City of Tigard*, 512 US 374, 390. Thus, reviewing courts may invalidate a community benefits agreement when a CBA was ascertained by threat of not approving a land use approval. *Id.* There are exceptions to the "exaction" rule. For instance, if there are other legal concerns with a proposed text amendment, or more appropriately here—project approval—than this Zoning Commission may consider them and request rectification from Applicant if there is a nexus that exists between a "legitimate state-interest" and the "permit condition exacted by the city" . *Id.* at 386.

ICARE has several legal issues with this project that constitute "legitimate state interest[s]". *Id.*

For starters, the Map Amendment filed by Redbrick in ZC 18-19 is for a contiguous site and therefore the plain language of 11-Z DCMR 201.2(e) has been derogated if the

¹ <https://dc.urbanturf.com/articles/blog/poplar-point-pud-appeal-leads-developer-to-plan-b/14570>

Commission allows this project to go forward as a rulemaking, map amendment. 11-Z DCMR 201.2(e) plainly articulates that this matter should be a contested case, either as a PUD or map amendment. The lots and squares subject to approval are only separated by one road (Howard Rd.) and thus ZC 18-19 matter should be handled as a contested case. *Id.* Exhibit B.

Second, as previously argued at the March public hearing, this case is a part of a previous PUD application. The DC Court of Appeals has previously ruled that if a project has previously been treated as a contested case by the Zoning Commission then any subsequent consideration of the same Applicant and land area shall be treated how it was previously treated. The DC Court of Appeals held, "...[I]n an earlier case involving precisely the same applicant and the same parcel of land, we specifically held that the proceeding before the Commission had constituted a contested case." *Capitol Hill Restoration Soc. v. Zoning Commission*, 287 A. 2d 101. Holding, "...[i]t was treated as a 'contested case' by the Commission and we see no reason now to view it otherwise." *Palisades Citizens Assoc. V. Dist. Of Col. Zon. Com.*, 368 A. 2d 1143, 1147; see also *Citizens Ass'n of Georgetown, Inc. v. Washington*, 291 A. 2d 699, 705; see also *Schneider V. District Of Columbia Zoning Com'n*, 383 A. 2d 324, fn 9; see also *Capitol Hill Restoration Soc. v. Zoning Com'n*, 380 A. 2d 174, 179. "Naturally, the Zoning Commission may not adjudicate the legal rights, duties or privileges of specific parties under the pretense of legislative action." *Dupont Circle Citizen's Association Et Al., V. District Of Columbia Zoning Commission*, 343 A.2d 296 (1975). Here, by allowing Application 18-18 and 18-19 to go forward the Commission is clearly legislating by pretense as the same applicant and same parcel of land and very similar public land entitlements are being presented in this case as ZC 16-29.

Third, this site already allows high density development. This proposed rulemaking merely allows what Redbrick tried to achieve in an earlier PUD (ZC Case No 16-29). The public land entitlements represent a 44.4% height increase and a 25% density increase. The increases do not represent broad policy decisions, but rather involve the specifics of a project already proposed. To that end, this matter almost exclusively involves the rights of parties. Consider other rulemaking proceedings and non-contested case map amendments that have been ruled upon and allowed by the DC Court of Appeals: *Dupont Circle Citizens Association v. District of Columbia Zoning Commission*, 343 A.2d 296, (allowing halfway houses in R-4 zoning districts citywide); *Charles M. Schneider v. District of Columbia Zoning Commission*, 383 A2d 324, 329 (re-zoning 50 lots across 6 squares); *District of Columbia Citizens Association v. District of Columbia Council*, 327 A.2d 310, 316 (Altering streets and public ways for public use thus not to specific parties and non-contested); *Citizens Association of Georgetown v. District of Columbia Zoning Commission*, 291 A.2d 699, 702 (Re-zoned entire Georgetown waterfront area as non-contested case because the re-zone would implicate policy in all of DC); see also 11-Z DCMR 201.2; compare to 11-Z DCMR 201.5.

Fourth, this rulemaking does not comply with the DC Height Act. The DC Administrative procedures act and prevailing case law requires that rulemakings comply and not contradict existing statutes. Upon information and belief, the width of Howard Rd. plus 20 feet is lower than the building heights sought in this text amendment. HEIGHT OF BUILDINGS ACT CHAPTER 6 SUBCHAPTER I, SECTION 5. In any event, it is the Applicants' burden to show their Applications comply with applicable regulations and statutes and nowhere in either ZC 18-18 or 18-19 is the width of Howard Rd. given, much less any Height Act

calculation made.

Finally, there are environmental issues with this project. It is a toxic site with questions about mitigation of the soil, which contains toxins.² No environmental impact study has been conducted as would be required by the DC Environmental Protection Act should a building permit be granted. The fact this project has gone forward as a rulemaking without the protections of a PUD which would require a written agency report from DDOE, *inter alia*, further undermines the adequacy of this text amendment application. 11-X DCMR 308.4. Also, this site is on a flood plain and contradicts active policy documents such as DC Climate Ready thus is not consistent with the Comprehensive Plan. DC CLIMATE READY pg. 7, 9 (Residents from Wards 7 and 8 most vulnerable to climate change; new buildings, particularly large developments, should be climate ready and this proceeding allows no mechanism to ensure this policy mandate even though the site is on a flood plain.)

As a matter of public record, it should be known that if it were not for CARE's advocacy work Redbrick would not have offered anything to our community but \$250,000. Exhibit A. The only reason they are before the Commission seeking a map amendment is because their project is currently before the Court of Appeals, with a great chance of ZC 16-29 being overturned, as a result of CARE membership's herculean efforts and significant expenditure of resources. The exclusion of CARE from the CBA in favor of "long standing" community organizations that did absolutely *nothing* to protect our community³ as Redbrick attempted to slip by Ward 8 with 10x less than what is being offered now. That is indicative of the divide and conquer tactics long held by colonizing institutions such as Redbrick. Nowhere is this neo-colonialism mindset more evident than in the draft CBA where Redbrick proposes to use "leading land use attorneys" to teach Ballou students about land use law. It begs the question, are these the same land use attorneys that attempted to get around community engagement by circumventing the PUD previously proposed for these parcels of land? The same land use attorneys subject to Federal Law suit because of egregious miscarriages of law at Barry Farm? Are they the ones who through lawless proposed orders have made DC the most unequal, gentrified, and displaced city in the country? Redbrick will pay them minimum wage to learn what about land use law, exactly?

It is clear Redbrick attempts to divorce CARE from the community by paying off organizations less threatening to Redbrick's exploitative agenda, which is Redbrick's right. At the same time, it belies Redbrick's true intentions in our community and why the vast majority of our community does not want them here. While CARE has worked closely with the ANC, the ANC was inappropriately placed in a take it or leave it posture in order to ascertain much needed resources for the community. Redbrick's attitude of Manifest Destiny and the Zoning Commission's willingness to ignore District of Columbia common law and statute carry the blame here and should CARE proceed to file a Writ of Mandamus for this proceeding or file some other legal action to cure its injuries as imagination and the

² https://www.washingtonpost.com/local/a-century-of-buried-toxins-in-the-anacostia-are-coming-to-the-surface/2015/05/19/98def8ec-fcdd-11e4-805c-c3f407e5a9e9_story.html?utm_term=.949c9d7c9d9f

³ The most gentrified and displaced city in the entire country. And how much of this lies at the dais of the Zoning Commission? Does this bear repeating? The oath of public officials: "I ...do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the *District of Columbia*..." (emphasis ours). That does include zoning regulations.

law provides it should never be said that CARE acted selfishly and against the interests of the larger community. CARE stood up for the community to get them to this point, and CARE will continue to stand up for the community until all portions of the community are spoken to.

S/A Theresa

Aristotle Charles Theresa
Attorney at Law



With PUD Appeal, Poplar Point Developer Turns to Plan B

by *Nena Perry-Brown*



Aerial rendering of Poplar Point redevelopment.

This past April, the Zoning Commission approved a [planned-unit development](#) (PUD) which would develop six acres of land straddling Howard Road SE between I-295 and South Capitol Street SE ([map](#)) with five buildings, delivering roughly 692 residences and over 1.6 million square feet of office space atop 52,120 square feet of retail and two levels of underground parking, while making improvements to the adjacent Anacostia Metro station.

Now, a pending appeal has led the development team to switch tactics.

Redbrick Partners has [applied](#) for a map amendment for the exact same site, plus that of Cedar Tree Academy Public Charter School at 701 Howard Road SE ([map](#)). Currently zoned MU-14, the application asks that the site be re-zoned as NHR ("Northern Howard Road").

"The NHR Zone District is appropriate for the Mixed Use: High Density Residential/High Density Commercial Land Use designation in the Central Employment Area because it is intended to permit high-density development in this area along Howard Road," the application states. The application also cites the Future Land Use Map as justification for high-density development on the site. The office space slated for this site, along with various sites on the opposite bank of the Anacostia, was offered as part of DC's Amazon HQ2 pitch.

The appeal for the Poplar Point PUD was filed in June by a legal team led by Aristotle Theresa, who is also part of a [lawsuit](#) against the city alleging discriminatory development tactics. Redbrick Partners' application joins several other maneuvers developers have been making recently in order to circumvent or preempt pending appeals of PUDs, including MRP Realty's [recent pursuit](#) of a by-right version of a massive redevelopment on Rhode Island Avenue.

This article originally published at <https://dc.urbanturf.com/articles/blog/poplar-point-pud-appeal-leads-developer-to-plan-b/14570>

Legend






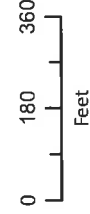
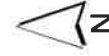
-  Mixed-Use Zone
-  Production, Distribution, and Repair Zone
-  Residential Apartment Zone
-  Unzoned
-  Property to be rezoned to NHR

EXHIBIT B



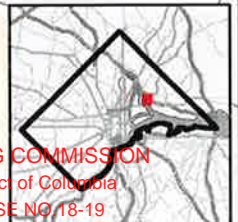
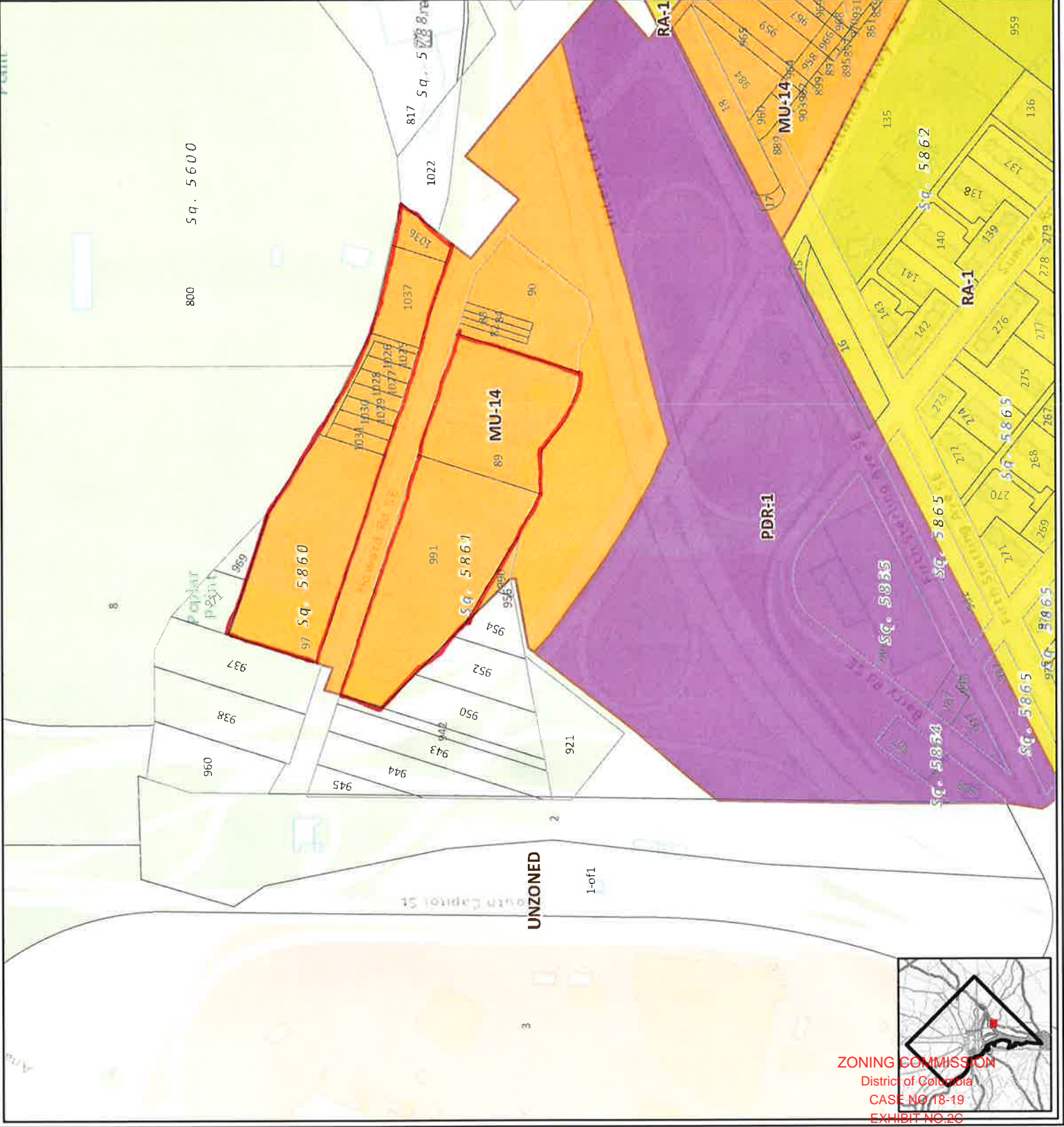
Zoning Map of the District of Columbia



Extracted from Online Zoning Information published by the District of Columbia Office of Zoning, DCGIS, and Office of the Chief Technology Officer (OCTO). Exported on: 10/8/2018

To certify zoning on any property in order to satisfy a legal requirement, contact the office of Zoning at the address listed below.

District of Columbia Office of Zoning,
441 4th St NW, Suite 200 South, Washington, DC 20001
202-727-6311 | dcoz@dc.gov



ZONING COMMISSION
District of Columbia
CASE NO. 18-19
EXHIBIT NO. 2C

The Washington Post

Local

Gentrification in D.C. means widespread displacement, study finds

By [Marissa J. Lang](#)

April 26

In most American cities, gentrification has not pushed low-income residents out of the city they call home, according to a [study](#).

But Washington is not most cities.

In the District, low-income residents are being pushed out of neighborhoods at some of the highest rates [in the country](#), according to the [Institute on Metropolitan Opportunity](#), which sought to track demographic and economic changes in neighborhoods in the 50 largest U.S. cities from 2000 to 2016.

“For all the talk of gentrification happening in cities all over the country, what we found is that it really isn’t,” said Myron Orfield, director of the institute, founded at the University of Minnesota law school to investigate growing social and economic disparities in American cities. “Washington is one of the few places in the country where real displacement is actually occurring. It’s quite rare.”

More than 38 percent of District residents, including about 35 percent of low-income residents, live in census tracts — geographic areas smaller than Zip codes that contain a few thousand residents — that are growing economically. But low-income people who live in those areas are at the greatest risk of displacement, the report says.

The study, conducted over several months and released April 10, comes as

gentrification and its consequences are being discussed with renewed urgency in the nation's capital.

Earlier this month, two neighborhood disputes revealed deep divisions in areas undergoing rapid demographic change. In one incident, a noise complaint [briefly silenced the hallmark go-go music of an electronics store in Shaw](#), while in the other, Howard University students [asked their new neighbors to stop treating their campus like a public park](#).

Neither incident occurred in the area of the District where, according to the study, the most intense displacement has been happening: Ward 6.

According to researchers, Ward 6 — which includes Capitol Hill, Navy Yard, the Southwest Waterfront and parts of downtown — has had [some of the most dramatic changes](#) in the District.

In portions of the Kingman Park and Capitol Hill neighborhoods, nearly 75 percent of the low-income populations have vanished, census information shows. In the Navy Yard neighborhood, about 77 percent of residents were identified as low income in 2000. Sixteen years later, that population dropped to 21 percent.

Most of the people pushed out of these economic hot spots are black and low income, according to the data. The number of District families headed by single mothers or those without a college degree also has declined.

“Since 2000, the same neighborhoods have seen overall population growth of 19 percent, and white population growth of a staggering 202 percent,” researchers wrote. “A huge swath of the city is experiencing gentrification and displacement, stretching from Logan Circle to Petworth, and including neighborhoods like Shaw and Columbia Heights.”

In places such as the Shaw neighborhood, where the go-go music controversy played out, low-income populations have dropped by as much

as 57 percent.

The study divided neighborhoods into categories based on who is moving in and who is moving out:

- Areas experiencing “growth” were defined as regions that were economically expanding while also increasing their number of low-income residents.
- Those experiencing “low-income displacement” — like District neighborhoods — were losing low-income people while growing economically.
- Areas experiencing “low-income concentration” were experiencing an economic decline and an uptick in low-income residents.

Cities struggling with “abandonment” were losing low-income people and suffering economic decline.

“There are organizations spending millions of dollars fighting gentrification in cities and neighborhoods that aren’t actually seeing any displacement,” Orfield said of the national data. “We wanted to build this database to show people where that’s actually happening.”

Pockets of the District have had an increase in low-income residents, but those areas are what researchers call low-income concentration zones because they are not also experiencing economic growth, according to the study.

Several of these zones are east of the Anacostia River, in Wards 7 and 8, where poor areas appear to be getting poorer, researchers said. In neighborhoods such as Good Hope and parts of Greenway, low-income populations have grown by about 60 percent.

“This may reflect an intensification of racial and economic segregation within the city proper, as individuals displaced from a set of gentrifying neighborhoods are concentrated into a nearby set of declining neighborhoods,” the study says.

Areas outside the District were more prone to this phenomenon, data shows.

About 437,000 residents of the city’s suburbs live in areas where low-income populations have increased by as much as 70 percent since 2000. Those areas simultaneously lost about 30 percent of their white residents, according to the data.

Parts of Prince George’s County were the most likely to experience these demographic changes, researchers said.

“The rents are less affordable for poor people in these declining areas not because the rents are going up,” Orfield said. “It’s because the poor people who live there are increasingly worse off.”

Los Angeles is the only other U.S. city that comes close to the District’s levels of gentrification, researchers said, and its displacement rates are higher.

Marissa J. Lang

Marissa J. Lang is a local reporter covering the D.C. metro area. Follow 

The Washington Post

Gridlock

D.C. has the highest 'intensity' of gentrification of any U.S. city, study says

More than 20,000 African American residents were displaced from low-income neighborhoods from 2000 to 2013, researchers say.

By [Katherine Shaver](#)

March 19

About 40 percent of the District's lower-income neighborhoods experienced gentrification between 2000 and 2013, giving the city the greatest "intensity of gentrification" of any in the country, according to a [study](#) released Tuesday by the National Community Reinvestment Coalition.

The District also saw the most African American residents — more than 20,000 — displaced from their neighborhoods during that time, mostly by affluent, white newcomers, researchers said. The District and Philadelphia were most "notable" for displacements of black residents, while Denver and Austin had the most Hispanic residents move. Nationwide, nearly 111,000 African Americans and more than 24,000 Hispanics moved out of gentrifying neighborhoods, the study found.

Sixty-two 62 lower-income census tracts in the District gentrified between 2000 and 2013, putting the city third behind New York and Los Angeles for the highest number of neighborhoods that had transformed. The District ranked first in "intensity of gentrification," on the basis of the percentage of lower-income neighborhoods that experienced gentrification.

Because of the District's intensity ranking, "you feel it and you see it," said

Jesse Van Tol, chief executive of the NCRC, a research and advocacy coalition of 600 community organizations that promote economic and racial justice. "It's the visibility and the pace of it."

The study defines gentrification as occurring when "an influx of investment and changes to the built environment lead to rising home values, family incomes and educational levels of residents." It defines "cultural displacement" as instances when "minority areas see a rapid decline in their numbers as affluent, white gentrifiers replace the incumbent residents."

Researchers examined U.S. census tracts that, in 2000, were in the lower 40th percentile for median home values and household incomes in their metropolitan areas.

Van Tol said gentrification has followed a national move back to cities, particularly among affluent workers. The District drew many during the Great Recession, when the city's economy and job markets were more stable than others. Meanwhile, the amount of affordable housing has lagged, even amid new residential development.

Many residents can rattle off the D.C. neighborhoods that have undergone rapid economic change, including Petworth, Mount Pleasant, Brookland, and the U and 14th street corridors.

Gentrification can benefit areas because it signals economic investment, Van Tol said. The problem comes, he said, when longtime residents are pushed out as rents and property taxes rise, leaving them unable to benefit from the improvements. Activists also are concerned about the culture that can leave with a neighborhood's longtime residents. Van Tol recalled the 2015 closing of the popular Jamaican restaurant Sweet Mango Cafe in Petworth and the end of the neighborhood's annual Caribbean parade.

"I think the loss of these cultural institutions has really changed the identity

of neighborhoods in a way that might be unwelcome by the people who have lived there,” Van Tol said.

Van Tol said he was surprised by the finding that gentrification was rare in small and medium cities in the country’s interior. Nationally, the study found, nearly half of all gentrified neighborhoods were in seven cities: the District, New York, Los Angeles, Philadelphia, Baltimore, San Diego and Chicago.

In an essay accompanying the study, Sabiyha Prince of Empower DC said the city “rolled out the proverbial red carpet” for tens of thousands of new residents in the past five years. But the new dog parks, bike lanes, condominiums and pricey restaurants that followed, she said, are not viewed as improvements by long-term residents, who can feel isolated because of losing neighbors, social networks and local businesses. Prince, an anthropologist, said longtime Washingtonians tell stories of “alienation and vulnerability in the nation’s capital.”

“The hopes, dreams and needs of low-income and working class residents — which include truly affordable housing, safe and reliable child care, food justice, the ability to attend houses of worship and the unencumbered use of public spaces — do not diligently appear on the local legislative body’s list of pending priorities,” Prince wrote.

Gentrification is also a factor in the city’s lack of affordable housing, residents say.

A 2017 [Washington Post poll](#) found that three-quarters of Washingtonians, including 78 percent of those who moved to the District in the past 15 years with incomes of at least \$150,000 per year, said that new, high-income residents were a “major reason” for the shortage of affordable housing in the District.

Overall, the poll found, two-thirds of D.C. residents — including larger shares of whites (88 percent) and those making more than \$100,000 (86 percent) — said redevelopment was “mainly good.”

The researchers recommended policies that they say promote investment in neighborhoods while ensuring that existing residents can afford to stay to benefit from it. Those include mandating that renters have the right of first refusal to buy units when apartment buildings are converted to condominiums, coupled with financing programs to help low-income and first-time buyers.

Van Tol said he was most surprised by researchers' finding many areas in the United States where gentrification didn't necessarily result in residents being displaced. Those tended to be areas with more homeowners, who were less vulnerable to being pushed out by rapid rent increases as property values rose. Finding ways for gentrification to proceed without forcing out longtime residents is an area ripe for more study, he said.

“I'm not anti-gentrification,” Van Tol said. “I'm anti-displacement. Investing in these neighborhoods is very much needed.”

Emily Guskin contributed to this report.

Katherine Shaver

Katherine Shaver is a transportation and development reporter focusing on urban/suburban planning issues and construction of Maryland's light-rail Purple Line. Since joining The Washington Post in 1997, she also has covered crime, courts, education and local government. Follow 
