

Nos. 17-AA-0554, 17-AA-0555, 17-AA-0556, 17-AA-0553

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**COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA**

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**DAVID BOBECK, NIDA CHAUDHARY, RYAN CUMMINS, AND  
MARC ANTONY POE**

*Pro Se* Petitioners,

v.

**DISTRICT OF COLUMBIA ZONING COMMISSION**

Respondent,

and

**PARKVIEW COMMUNITY PARTNERS, LLC,**

Intervenor.

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Petition for Review of Decisions of the Zoning Commission  
(ZC Case 16-11)

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**BRIEF OF AMICUS D.C. APPLESEED CENTER FOR LAW AND  
JUSTICE IN SUPPORT OF AFFIRMING THE D.C. ZONING  
COMMISSION**

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## STATEMENT OF INTEREST

Pursuant to D.C. App. R. 29, the DC Appleseed Center for Law and Justice (“DC Appleseed”), through undersigned counsel, respectfully submits this brief as amicus curiae in support of respondent District of Columbia Zoning Commission. DC Appleseed is joined in this amicus brief by the Park Morton Resident Council, Enterprise Community Partners, Inc. (“Enterprise”), the DC Fiscal Policy Institute (“DCFPI”), and the Coalition for Smarter Growth (“CSG”) (collectively, “Amici”).

Amici are affordable housing, community development, and public policy organizations that represent the interests of stakeholders who benefit from the production of affordable housing. The input of Amici may be valuable to this Court because of their experience analyzing legal, policy, and practical issues that touch on affordable housing and real estate development processes in the District of Columbia, particularly Planned Unit Developments, and because of their direct interests in furthering the stated policies of the District of Columbia in support of affordable housing development.

DC Appleseed is a respected policy research and advocacy organization dedicated to making the National Capital Area a better place to live and work. With a range of expertise, and a 35-member board, it has built a 20-year history of successful advocacy on issues including improving economic opportunity for low-income District residents. It

has strong collaborative relationships with non-profit organizations that work on housing, as well as constructive relationships with the administrative and legislative branches of government. In addition, it receives more than \$2 million in pro bono services every year to support its research and advocacy activities, bringing the best legal resources to those least able to afford representation.

The Park Morton Resident Council is the official voice of the residents of Park Morton. Its mission is to assist its community members to thrive, make networking connections, get guidance, and seek resources and workshop services that will lead to better healthcare, employment, college, and more. It aims to build a strong, diverse circle of neighbors, scholastic students, local leaders, and local business owners. It provides services to the community as well as network connections. The Resident Council supports the Bruce Monroe Planned Unit Development predicated on the expectation that Park Morton residents are given first priority for new units and right of return at the redeveloped Park Morton site; that future owners of the Bruce Monroe and Park Morton properties fully comply with the Tenant Opportunity to Purchase Act; and that adequate resident services—including enrollment in DCHA’s Family Self-Sufficiency and homeownership programs—are provided in the redeveloped properties in order to create career, educational, and

networking opportunities for all residents (especially young adults) and are coordinated with the Resident Council.

Enterprise Community Partners, Inc. is a Maryland nonstock, nonprofit corporation exempt from federal income taxes pursuant to section 501(c)(3) of the Internal Revenue Code. Enterprise's mission is to create opportunity for low- and moderate-income people through affordable housing in diverse, thriving communities. Central to its mission is Enterprise's fundamental commitment to give people living in poverty an opportunity to move up and out. Enterprise believes these opportunities are best provided in communities with a diverse mix of affordable and market housing options, access to jobs and social supports, and a strong commitment to the environment and civic participation. Enterprise joins the other Amici in their efforts because of its interest in the preservation and revitalization of much-needed affordable housing in the Park View and Petworth neighborhoods and the expansion of the total number of affordable housing units in this changing community.

The DC Fiscal Policy Institute is a division of the Center on Budget and Policy Priorities, a 501(c)(3) nonprofit organization. DCFPI promotes opportunity and widespread prosperity for all residents of the District of Columbia through independent research and thoughtful policy solutions. DCFPI is actively involved in efforts to promote the expansion and preservation of affordable housing in DC. DCFPI recognizes that

one essential component of that goal is revitalizing DC's public housing in a way that protects public housing residents, through build-first redevelopment and the one-for-one replacement of public housing units. Over the past several years, DCFPI has supported the achievement of those goals in the New Communities Initiative (which includes Park Morton) through policy analysis, testimony, and policy recommendations.

The Coalition for Smarter Growth ("CSG") is a division of the Piedmont Environmental Council, a Virginia nonstock corporation and 501(c)(3) nonprofit organization. CSG has worked for 21 years in the District of Columbia and surrounding jurisdictions to promote walkable, inclusive, and transit-oriented communities. CSG has focused on building a more inclusive city by successfully advocating for DC laws, regulations, and policies that increase the supply of affordable housing, including: inclusionary zoning requirements and later amendments to serve those with greater need; requirements that 20% to 30% of housing units built when the city transfers public land to private developers be affordable, including at deeply affordable levels; and priority for allocation of DC public subsidies to those private developments committed to permanent affordability. CSG served on the 2006 Comprehensive Plan task force and worked for eight years to revise zoning regulations (effective 2016), focusing on reducing barriers to

building more housing at a lower cost. CSG has been actively involved in the Bruce Monroe PUD because the case furthers the mission of the organization by preserving and expanding long-term affordable housing close to transit and preventing displacement of long-time low-income residents in a neighborhood rapidly rising in value, while also creating a new public park.

## **STATEMENT OF DISCLOSURE**

DC Appleseed is a non-profit alliance/advocacy organization with no parent corporation and no stock.

The Park Morton Resident Council is an unincorporated association with no parent corporation and no stock.

Enterprise is a Maryland nonstock, nonprofit corporation exempt from federal income taxes pursuant to section 501(c)(3) of the Internal Revenue Code. Enterprise has no parent company and no publicly held company owns any interest in Enterprise.

The DC Fiscal Policy Institute is a division of the Center on Budget and Policy Priorities, a 501(c)(3) nonprofit organization with no parent corporation and no stock.

The CSG is a division of Piedmont Environmental Council, a Virginia nonstock corporation and 501(c)(3) nonprofit organization, with no parent corporation and no stock.

## **SUMMARY OF ARGUMENT**

This case will affect whether the District of Columbia is able to provide affordable housing to its most vulnerable citizens. Petitioners never adequately acknowledge this important goal or grapple with how the Bruce Morton Planned Unit Development (“PUD”) will accomplish that objective. Amici ask the Court to consider how its decision here will affect citizens who need access to quality, affordable housing. The Court should apply the applicable standard of review, and on that basis promptly affirm the decision of the District of Columbia Zoning Commission (“ZC” or “Commission”) under review.

## **ARGUMENT**

### **I. THE BRUCE MONROE PUD SERVES THE RESIDENTS OF PARK MORTON AND ADVANCES IMPORTANT AFFORDABLE HOUSING OBJECTIVES**

The PUD at issue in this appeal is an integral part of a larger initiative to preserve and revitalize much-needed affordable housing in the Park View and Petworth neighborhoods. Petitioners gloss over this critical aspect of the PUD in asking the Court to vacate the order under review. The Commission, by contrast, properly took into account the vital importance of the District of Columbia’s affordable housing goals when it concluded that the PUD application is consistent with the Comprehensive Plan.

The Bruce Monroe PUD must be understood in conjunction with the Park Morton public housing site, located about four blocks to the northeast of the Bruce Monroe PUD site. Concurrently with the filing of the application that resulted in the order under review, the applicant Park View Community Partners and the District of Columbia Housing Authority (“DCHA”) filed a related PUD application for the redevelopment of the Park Morton site. The two projects, taken together, will allow the District to achieve a long-standing promise to the residents of Park Morton to revitalize their community without displacing low-income residents.

Park Morton was built in 1960 and consists of 17 garden-style apartment buildings with 174 walk-up units, all of which are two-bedroom units. The apartment complex is owned and managed by DCHA. Over the years, the residents of Park Morton and their surrounding neighbors have complained of crime and drug-related activity at the apartment complex. The Park Morton complex has a challenging physical layout, with numerous dead ends and other characteristics that make it difficult to create what is known as “defensible space.” The capital needs of the Park Morton complex long ago outstripped DCHA’s ability to pay for them. As a result, the buildings now have numerous maintenance issues that cause significant

daily hardship to current residents. Examples include faulty heating systems that often malfunction during the winter; asbestos flooring in some locations that still needs to be removed; frequent plumbing and ceiling leaks; peeling plaster from the walls; and malfunctioning doors that do not close properly, endangering residents' safety. Park Morton residents regularly cite these maintenance issues as serious concerns that necessitate the redevelopment of the property.

In February 2008, the D.C. Council approved the Park Morton Redevelopment Initiative Plan ("Park Morton Plan"), a redevelopment plan that "seeks to create a healthy, mixed-income community with integrated services that offer families better housing, employment and educational opportunities." Park Morton was one of four public and subsidized housing communities chosen for the New Communities Initiative ("NCI"), a DC government program launched in 2005 "with the goal of revitalizing and rebuilding specific communities that have experienced high levels of disinvestment, crime and poverty." The NCI seeks to revitalize these communities by improving the affordable housing options available to residents, and by improving the lives of

residents through better access to job opportunities, healthcare, and other public resources.<sup>1</sup>

The NCI is guided by four principles:

- One for one replacement to ensure there is no net loss of existing affordable housing units;
- Creating opportunities for residents to stay in the community, e.g., by ensuring that current residents have priority for new replacement units;
- Building mixed-income housing to end the concentration of low-income housing and poverty; and
- “Build first,” which calls for the development of new housing *prior to* the demolition of existing housing, so as to minimize the displacement of existing residents within the community.

While all four of these principles are satisfied in the case of the Bruce Monroe and Park Morton PUDs, the last principle – “build first” – is particularly important. Other projects involving the redevelopment of public and subsidized housing have given rise to anger and frustration when residents learn that they need to move off-site – and potentially out of the community altogether – while the redevelopment project is

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<sup>1</sup> See *The New Communities Initiative*, <http://www.dcnewcommunities.org> (last visited Apr. 27, 2018), for more information about the NCI.

underway. The redevelopment of the Barry Farm complex in Ward 8, another NCI project, has been challenged by this problem.<sup>2</sup>

The proximity of the Bruce Monroe and Park Morton sites will allow the District to satisfy the “build first” principle in the case of these projects, and in a way that will set an example not only for the District, but for the country. The Bruce Monroe PUD site takes its name from the Bruce Monroe Public School, which occupied the site until it was demolished in 2009. Contrary to the impression conveyed by Petitioners’ brief, the Bruce Monroe site was never intended to remain a public park in perpetuity, at least not in its entirety. The public park was always considered an “interim” use of the land. Consistent with the resolution by which the District Council disposed of the land, the residential component of the redeveloped Bruce Monroe site will consist mostly of public and affordable housing – far more than is typically found in a PUD, and far more than the applicant would be required to develop under the applicable zoning regulations. The development of this public and

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<sup>2</sup> See Paul Duggan, *D.C. public housing residents are angry they will now be forced to move for redevelopment*, The Washington Post (July 8, 2017), [https://www.washingtonpost.com/local/trafficandcommuting/dc-public-housing-residents-are-angry-they-will-now-be-forced-to-move-for-redevelopment/2017/07/08/4431368a-5f4a-11e7-a4f7-af34fc1d9d39\\_story.html?utm\\_term=.0b1b38d2f7ac](https://www.washingtonpost.com/local/trafficandcommuting/dc-public-housing-residents-are-angry-they-will-now-be-forced-to-move-for-redevelopment/2017/07/08/4431368a-5f4a-11e7-a4f7-af34fc1d9d39_story.html?utm_term=.0b1b38d2f7ac). See also *Barry Farm Tenants & Allies Ass’n v. District of Columbia Zoning Comm’n*, 2018 WL 1955466 (D.C. Apr. 26, 2018).

affordable housing within a few blocks of the Park Morton site is crucial to achieving the “build first” principle in connection with the redevelopment of Park Morton.

The Bruce Monroe PUD will include a total of 273 residential units: 189 units in the apartment house (referred to by Petitioners as “Building A”), 76 units in a senior building (“Building B”), and eight townhomes. Of the 273 residential units, 90 will be public housing replacement units, 109–13 will be low-income affordable units (with affordability set for 60% of area median income), and 70–74 will be market-rate units.<sup>3</sup> Current residents of Park Morton will have priority for the public housing units on the Bruce Monroe site, thereby replacing 90 of the 174 existing units at Park Morton. (Twenty-seven replacement units have already been built at another site in the neighborhood, and the remaining residents of Park Morton will have other options to remain in the community while Park Morton is redeveloped). The Bruce Monroe

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<sup>3</sup> While the Commission referred to the affordable units as “workforce affordable” units, the “workforce” category is usually considered to fall between 60 and 120 percent of area median income (“AMI”), or sometimes between 80 and 120 percent of AMI. In DC, 60% AMI and below are designated the priority income targeting in the DC Comprehensive Housing Strategy Task Force recommendations (2012). Deborah Ratner Salzberg and Harry D. Sewell, *Housing Task Force Report*, <https://ota.dc.gov/sites/default/files/dc/sites/ota/publication/attachments/housingtaskforce-report-031113-singles.pdf> (last visited Apr. 13, 2018).

site will be completed first, which will allow for the staged redevelopment of Park Morton. Combined, the Bruce Monroe PUD and the Park Morton PUD will replace 174 units of existing public housing with 303 units of public and affordable housing, along with 159 market-rate units.

The Bruce Monroe and Park Morton PUDs are taking place against the backdrop of a rapidly changing community that fits the pattern commonly referred to as “gentrification.” Over the past decade, a large number of high-income households have moved into Park View, Petworth, and the neighborhoods immediately surrounding them. According to data maintained by the Urban Institute, the average household income in Park View increased from \$57,956 in 2000 to \$94,342 in 2015. However, the total number of occupied housing units in the neighbourhood only increased from 2,469 homes in 2000 to 2,678 homes in 2010. As a result of this demand outpacing supply, land values have risen dramatically. The median home sales price in Park View increased from \$156,000 in 2000 to \$634,500 in 2016. This has led to these neighborhoods becoming increasingly inaccessible to lower-income households, whether to rent or to own.

The availability of publicly-owned land at the Bruce Monroe site allowed the District to leverage this valuable property to subsidize public

housing replacement units and a much larger number of affordable units than would otherwise be possible at this site. In addition, the leverage allowed the District to ensure deeper affordability not only at the workforce level, but also for lower-income households. When combined with the market-rate units and the redevelopment of Park Morton, the result will be a genuine mixed-income community in an area of the District where market pressures would otherwise lead to higher levels of displacement.

Taken together, the Bruce Monroe and Park Morton PUDs will not only preserve existing public housing within the Park View and Petworth neighborhoods, but in fact will greatly expand the total number of affordable housing units in this changing community. These two projects will allow the District to achieve all four of the NCI's principles: one for one replacement, creating opportunities for existing residents to remain within the community, developing mixed-income housing to end concentrated poverty, and "building first" to minimize the displacement of residents during redevelopment. The Bruce Monroe and Park Morton PUDs represent the fulfilment of long-overdue promises to the community, and provide a model for how the District and other cities facing the pressures of rising housing costs can preserve housing and economic opportunities for all residents.

## **II. PLANNED UNIT DEVELOPMENTS SUCH AS THE BRUCE MONROE PUD ARE AN IMPORTANT TOOL FOR ACHIEVING THE DISTRICT’S AFFORDABLE HOUSING OBJECTIVES**

The Planned Unit Development is an important tool for the District of Columbia to achieve its goal of preserving and expanding affordable housing options for its residents. Unfortunately, the use of the PUD as a tool to achieve affordable housing goals is threatened by the delays that result from meritless appeals of Commission decisions.

A Planned Unit Development is a project-specific zoning action that allows for a higher-quality development than could be built as a matter of right, provided that the project offers “a commendable number or quality of meaningful public benefits” and is not inconsistent with the Comprehensive Plan. D.C. Code § 11-X300.1. Among the public benefits that a PUD can provide in exchange for greater flexibility in matters such as height and density is the development of affordable housing on the PUD site. The District has used the PUD process to achieve affordable housing goals since 2001, prior to the implementation of Inclusionary Zoning.<sup>4</sup>

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<sup>4</sup> The District’s Inclusionary Zoning (IZ) Program requires that eight to 10 percent of the residential floor area of most new residential developments be set aside for affordable rental or for-sale units. For rental units, the income target is 60 percent of area median family income, and for for-sale units, 80 percent of area median family income.

*(continued)*

As the Bruce Monroe PUD exemplifies, PUDs are frequently combined with public subsidies in order to obtain a larger number of affordable units, or units with deeper levels of affordability, than would otherwise be viable financially under matter-of-right zoning. Even when there is not a significant public subsidy element, PUDs permit the development of a larger number of residential units than allowed under matter-of-right zoning, and can therefore increase the total number of units dedicated to affordable housing. In these ways, the PUD process is an important supplement to Inclusionary Zoning and District-owned property disposition affordability requirements, and allows for the development of sites such as Bruce Monroe that go far beyond mandatory affordable housing requirements.<sup>5</sup> According to the DC Office of Planning, for example, the 47 PUDs approved or in progress during fiscal

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*Inclusionary Zoning*, dhcd, 1, [https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/service\\_content/attachments/Inclusionary%20Zoning%20Program%20Fact%20Sheet%202018.pdf](https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/service_content/attachments/Inclusionary%20Zoning%20Program%20Fact%20Sheet%202018.pdf) (last visited Apr. 27, 2018).

<sup>5</sup> The District requires that dispositions of city-owned land for residential development include 20 to 30 percent affordable units, beyond the IZ minimum. *See* 10 DCMR § 801.b-3, <https://code.dccouncil.us/dc/council/code/titles/10/chapters/8/> (last visited May 7, 2018)

year 2017 yielded 2,530 units of affordable housing, four times the number of units that would have resulted from Inclusionary Zoning.<sup>6</sup>

### **III. CHALLENGES TO PUDS HAVE EFFECTIVELY UNDERMINED THEIR ABILITY TO ADVANCE AFFORDABLE HOUSING OBJECTIVES**

Unfortunately, the delays occasioned by petitions seeking judicial review of Zoning Commission decisions threaten to undermine the utility of the Planned Unit Development as a means of addressing the District's affordable housing challenges. According to one recent study, there are currently 13 PUDs under review by this Court, accounting for nearly 4,678 residential units – at least 718 of which are designated as affordable.<sup>7</sup> These projects cannot proceed until the process of judicial review is complete.

A report by the Washington DC Economic Partnership found that court challenges, along with rising lumber costs, were major contributors to a decline in residential construction starts in 2017, notwithstanding continued strong demand for new units.<sup>8</sup> The report forecasts that citywide rents will increase by 3.5% per year over the next three years, as

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<sup>6</sup> *Fiscal Year 2017–18 Performance Oversight Hearing*, Council of the District of Columbia (Feb.28, 2017 Testimony of Eric D. Shaw.

<sup>7</sup> David Whitehead, *How many homes are currently stuck in DC courts?*, Greater Washington (Apr. 5, 2018), <https://ggwash.org/view/67150/how-many-homes-are-currently-stuck-in-dc-courts>.

<sup>8</sup> See Washington DC Economic Partnership, *Washington, DC Development Report* at 45 (2017/2018 ed.).

the delivery of new units fails to keep pace with demand. As rents continue to rise, the pressure on lower-income District residents will also continue to rise, along with the cost to the public of ensuring access to affordable housing.

The impact of spurious court challenges on the viability of PUDs is not limited to the usual harms associated with a delayed real estate project (e.g. in terms of changes in material prices, the need to renegotiate with contractors, extended site control costs, and so on). Planned Unit Developments that include a significant affordable housing component have certain characteristics that make them particularly vulnerable to delay. Chief among these is the fact that affordable housing projects have lower margins than fully market-rate housing projects. As a consequence, PUDs with a significant affordable housing component are heavily dependent upon specialized sources of financing, some of which may be time-limited. Developers of these projects are tightly constrained in their ability to raise rents (or sales prices) at a later date in order to make up increased costs due to delay. In short, there is significantly less margin for delay in a project that includes a significant amount of affordable housing.

Of course, the consequences of delay resulting from court appeals affect not only the project's financial viability. The inability of a project

to move forward means that residents waiting for new public and affordable housing units must wait longer for safe, decent, and stable housing that they can afford. That problem is particularly acute in cases such as this one, where the PUD under review is the “build first” site for an existing housing development that is slated for demolition and redevelopment. A prolonged delay of a “build first” PUD affects not only the challenged project, but also the residents of the existing site who must continue to live in substandard housing.

The delays resulting from appeals of PUD determinations have become so frequent and significant that developers are turning away from the PUD as a means of implementing new projects, and relying instead upon the more limited development opportunities available as a matter of right.<sup>9</sup> This trend, if it continues, will significantly limit the District’s

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<sup>9</sup> See Jim Campbell, Somerset Development, *Restoring the Planned Unit Development Process- Testimony D.C. Public Hearing* (Mar. 30, 2018), <http://lims.dccouncil.us/Download/39567/B22-0663-HearingRecord1.pdf> (included in in the hearing record for D.C. Council Bill B22 633).

Campbell states: “Through the PUD process for Portner Place on U street, NW, we were able to preserve existing very low income housing and double to the total amount of affordable housing on the site. We were able to do this with substantially less public subsidy than would have been required absent the internal cross-subsidy from the market strength. Without the PUD this would not have been possible! Unfortunately, because of the current uncertainty with regards to the PUD process, and the likelihood of a PUD being challenged, we have decided to not utilize this approach on two upcoming locations in the District. We will develop as-of-right, which unfortunately will result in fewer affordable units than

*(continued)*

ability to support large-scale public and affordable housing projects such as Bruce Monroe and Park Morton. The mandatory affordable housing requirements imposed by Inclusionary Zoning are simply inadequate to develop affordable housing projects on this scale, and were never intended to do so. Only the PUD can provide the flexibility required to develop these types of projects. The failure or diminishment of the PUD as an instrument of public policy would represent a major setback in the District's efforts to ensure that its residents have access to safe and affordable housing, and to its efforts to promote vibrant, mixed-income communities throughout the city. *See, e.g.*, Comprehensive Plan, Framework Element Guiding Principles Nos. 2, 6, 10 & 12; Housing Elements Nos. H-1.2.1, H-1.2.3, H-1.2.4, H-1.2.7; Mid-City Elements Nos. MC-2.1.1, MC-2.1D.

#### **IV. THE COURT SHOULD PROMPTLY AFFIRM THE ZONING COMMISSION'S DECISION**

##### **A. The Zoning Commission's Decision Is Fully Supported by the Record and Is Consistent with Applicable Law**

This Court accords considerable deference to the Zoning

Commission. *Howell v. District of Columbia Zoning Comm'n*, 97 A.3d

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would have been viable under a PUD approach. The costs and loss of time associated with the prospect of litigation is too great to risk.” *Id.* at pdf pp. 679-80.

579, 581 (D.C. 2014) (quoting *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1166–67 (D.C. 2013)). The Court “must affirm the Commission’s decision so long as (1) it has made findings of fact on each material contested issue; (2) there is substantial evidence in the record to support each finding; and (3) its conclusions of law follow rationally from those findings.” *Id.* (citation omitted). Moreover, “[w]here the Commission has fully addressed the applicable aspects, policies, and material issues regarding the [Comprehensive] Plan, this court will not substitute its own judgment for that of the Commission.” *Id.* at 581 (citation omitted).

In deciding whether to approve a PUD application, including any proposed Zoning Map amendments, the Commission must determine that “the proposed PUD is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site . . . .” 11 DCMR § 304.4. Even if a PUD application arguably “conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.” *Durant, supra*, 65 A.3d at 1168. The Comprehensive Plan reflects numerous “occasionally competing policies and goals,” and “the Commission may balance competing priorities” in

evaluating whether a PUD application is consistent with the Comprehensive Plan as a whole. *D.C. Library Renaissance Project/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013).

In its 76-page decision, the Zoning Commission comprehensively evaluated the consistency of the PUD application with the Comprehensive Plan and with other relevant public policies and initiatives, including the New Communities Initiative, the Park Morton Plan, and the Georgia Avenue – Petworth Metro Station Area and Corridor Plan Revitalization Strategy. The Zoning Commission made numerous factual findings in support of its conclusion that the Bruce Monroe PUD does not conflict with the Comprehensive Plan or with other policies and initiatives.

The Zoning Commission properly placed significant weight upon the extent to which the Bruce Monroe PUD furthers the objectives of the Comprehensive Plan and other District policies concerning access to affordable housing. As discussed previously, the development of affordable housing above and beyond what is required under matter-of-right zoning can justify the approval of a PUD application. In this regard, the Zoning Commission found that:

The Project's most significant benefit is the creation of new housing, including public housing replacement units and additional new affordable housing units, consistent with the goals of the Zoning Regulations, the Comprehensive Plan, the New Communities Initiative, and the Mayor's housing initiative. The Project will provide 90 off-site replacement public housing units for Park Morton, allowing new public housing to be built prior to the demolition of existing public housing. Coordinated redevelopment of the PUD Site and Park Morton will minimize displacement, maximize opportunities for permanent moves, allow for phased redevelopment of Park Morton to keep existing residents on-site, and spread the density of Park Morton across multiple land parcels in order to achieve a one-for-one replacement of public housing units and mixed-income development.

Zoning Commission for the District of Columbia Zoning Commission Order No. 16-11 "Decision") § 83.

The Zoning Commission understood that achieving the desired public and affordable housing objectives at the Bruce Monroe site would require greater density and height than the pre-existing zoning would permit as a matter of right. But that is precisely the type of flexibility that the PUD process is meant to provide in exchange for "meaningful public benefits" such as increased access to affordable housing. The Zoning Commission further understood that its evaluation of whether the Bruce Monroe PUD is consistent with the Comprehensive Plan and other relevant policies could entail trade-offs among different policy objectives, such as the trade-off between greater density and reduced open space at the Bruce Monroe site. The Zoning Commission took into account, however, the applicant's commitment to build "a first class urban park of

approximately one acre” on the redeveloped site, and found that the project “is consistent with the Comprehensive Plan’s goals of developing new housing and affordable housing, while also preserving open space.” Decision §§ 148, 151.

While finding that “the housing density proposed for the PUD Site is consistent with the Comprehensive Plan and is necessary to achieve the important goals of the New Communities Initiative,” Decision para. 151, the Commission made clear that it would have found the Bruce Monroe PUD consistent *overall* with the Comprehensive Plan, even if certain aspects of the application were *not* consistent with the Comprehensive Plan. The Commission stated:

Based upon the Findings of Fact above, the Commission finds that the proposed density, scale, and building heights proposed for the PUD Site are consistent with the Comprehensive Plan. However, even if this Commission found that the proposed density, scale, and building heights were not consistent with the Comprehensive Plan, the Commission would still conclude that the overall Project is consistent with the Comprehensive Plan based on the numerous goals and policies that the Project’s development program embodies and advances. . . . In this case, the Commission has balanced the many competing priorities within the Comprehensive Plan, and concluded that the overall Project is consistent with the Comprehensive Plan as a whole.

Decision § 203.

The Commission’s statement is consistent with this Court’s recognition that “the Commission may balance competing priorities” in

evaluating whether a PUD application is consistent with the Comprehensive Plan as a whole. *D.C. Library Renaissance Project/West End Library Advisory Grp.*, *supra*, 73 A.3d at 126. While Amici agree with the Commission’s finding that the Bruce Monroe PUD is consistent in its entirety with the Comprehensive Plan and other relevant District policies, Amici also agree that the project’s significant contributions to the District’s affordable housing goals would warrant a finding that the project is consistent overall with the Comprehensive Plan even if certain elements of the project were in conflict with specific policies and objectives set forth in the Comprehensive Plan.

Against these findings by the Commission, Petitioners raise objections that amount to nothing more than asking the Court to reweigh the evidence and reach different conclusions than those reached by the Commission. Central to Petitioners’ arguments on appeal is that the Commission somehow misunderstood the height of “Building A,” and that this error infected the Commission’s entire analysis of whether the proposed height, density, and number of stories are consistent with the surrounding Future Land Use Map designations. Petitioners argue that the Commission erroneously understood Building A to constitute a “90-foot apartment house with eight stories plus a mezzanine,” whereas Petitioners contend that Building A is a “nine-story building.” This

alleged mistake on the Commission's part is the foundation of Petitioner's first claim of error, as set forth in its arguments captioned 1a-1d.

Petitioners mischaracterize the Commission's decision. The Commission expressly found that a 90-foot building – which is what Building A is – is consistent with the Moderate Density Commercial designation that predominates along the eastern edge of the PUD site, where Building A will be located. The Commission based this finding on the fact that the C-2-B Zone District, which corresponds with the Moderate Density Commercial designation, permits a maximum height of 90 feet and a maximum density of 6.0 FAR. The Commission found that a building height of 90 feet could accommodate buildings *of up to nine stories*, assuming an average ceiling height of 10 feet. The Commission's analysis did not turn on whether Building A consists of nine stories or eight stories plus a mezzanine, a seemingly semantic distinction. Rather, the Commission's analysis turned on the fact that Building A is 90 feet tall and has a FAR of 5.9, and is therefore consistent with the height and density of buildings that are permitted as a matter of right in the surrounding Land Use Map and zoning designations. Petitioners have not identified any respect in which these findings are unsupported by

substantial evidence or any respect in which the Commission's conclusions do not follow rationally from its findings.

Petitioners' other claims of error, relating generally to the Commission's evaluation of project impacts and its evaluation of the input received from other government agencies, scarcely warrant comment. Petitioners fail to identify any material contested issue on which the Commission failed to make a finding, or any respect in which the Commission's findings were unsupported by substantial evidence. Nor do Petitioners identify any "applicable aspects, policies, and material issues regarding the [Comprehensive] Plan" that the Commission failed to consider in its evaluation of the PUD application. Petitioners' second set of arguments once again amounts to nothing more than a request that the Court reweigh evidence that the Commission has already considered, and reach different conclusions than those reached by the Commission.

This case is unlike *Barry Farm*, where the Zoning Commission "ha[d] numerous issues that ha[d] not been fully addressed." 2018 WL 1955466, at \*8. Instead, all of the Commission's findings of fact are supported by substantial evidence in the record considered as a whole, and the Commission's conclusions of law concerning the consistency of the PUD with the Comprehensive Plan and other applicable policies flow rationally from the Commission's findings. *Cf id.* at \*7-\*8. The

Commission’s decision is “fully and clearly explained” and provides the explanations “necessary for meaningful judicial review and deference to the agency’s decision.” *D.C. Appleseed Ctr. For Law & Justice v. District of Columbia Dep’t of Ins., Sec., and Banking*, 54 A.3d 1188, 1216 (D.C. 2012). Moreover, what especially troubled the Court in *Barry Farm* was that the residents would be displaced during development without adequate plans. *Barry Farm*, 2018 WL 1955466 at \*13. Here, the use of “build first” is designed to avoid precisely this problem.

**B. Promptly Affirming the Zoning Commission’s Decision Will Help Ensure the Continued Viability of the PUD as a Means of Achieving Important Affordable Housing Objectives**

Amici respectfully submit that the present petition for review presents a clear opportunity for the Court to reaffirm the deference that it accords to decisions of the Commission in matters relating to Planned Unit Developments. As discussed herein, and as the Bruce Monroe PUD exemplifies, the Planned Unit Development is a vitally important tool for achieving the District’s public and affordable housing objectives. The ability of Planned Unit Developments to achieve those objectives, as well as other important public benefits, is threatened by the use of meritless appeals as a means of delaying PUDs after they have been reviewed and approved by the Commission. While Amici understand and support the critical role of judicial review as a means of ensuring reasoned agency

decision making, at the same time Amici believe the right to judicial review should not be allowed to undermine the vitality of the PUD as a tool of public policy. Where, as here, the Commission has fully considered and addressed contested material issues relating to the PUD application and has made a reasoned determination concerning its consistency with the Comprehensive Plan, the Court should move promptly to affirm the Commission's decision.

Prompt action by the Court to affirm the Commission's decision will not only help to revitalize the PUD as a means of achieving the District's affordable housing objectives, but will also serve the interests of the many long-standing residents of the Park View and Petworth neighborhoods who have waited years for the redevelopment of the Park Morton complex. Once complete, the Bruce Monroe and Park Morton PUDs will go a long way toward achieving a community that is both racially and economically diverse. As explained by NeighborUp Park View, a neighborhood community-building initiative organized by NCI, the use of the Bruce Monroe site as the "build first" location for the redevelopment of Park Morton "meant that Park Morton could be

redeveloped without displacing residents from the neighborhood.”<sup>10</sup>

Together, these projects will allow “the diverse Park View community . . . to continue to live and thrive together, even as the neighborhood changes.” *Id.* The Court should promptly affirm the Commission’s well-considered decision so that these important projects can move forward.

Respectfully submitted,

Date: May 7, 2018

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<sup>10</sup> *I Belong Here*, New Communities Initiative, <https://drive.google.com/file/d/143j3LUy0tfq2f7tqXEtA5DATvojHwBK3/view> (last visited Apr. 27, 2018).

## **CERTIFICATE OF SERVICE**

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