

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 05-28AE  
Z.C. Case No. 05-28AE  
Lano Parcel 12, LLC  
(One-Year Time Extension for PUD @ Square 5056, Portion of Lot 26)  
May 11, 2023**

Pursuant to notice, at its May 11, 2023 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Lano Parcel 12, LLC (the “Applicant”) concerning a portion of Lot 26 in Square 5056 (“Parcel 12H”) for a one-year time extension of the validity of the second-stage PUD (the “Second-Stage PUD”) approved by Z.C. Order No. 05-28T (the “Second-Stage Order”), pursuant to the first-stage PUD (the “First-Stage PUD”) approved by Z.C. Order No. 05-28 (the “Original Order”). The Second-Stage PUD was previously extended by Z.C. Order No. 05-28X and Z.C. Order No. 05-28X(2).<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 Zoning Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”]), to which all subsequent regulatory citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PRIOR APPROVALS**

1. Pursuant to the Original Order, effective April 13, 2007 (the “First-Stage Order Effective Date”), the Commission approved a first-stage PUD, together with a related Zoning Map amendment rezoning from the R-5-A and C-2-B to the C-3-A and CR zone districts, to construct approximately 3.1 million square feet of mixed-use development (the “First-Stage PUD”) on 15 vacant acres in Ward 7 (the “First-Stage PUD Site”).
2. Condition No. 13 of the Original Order required the Applicant to file a second-stage PUD application under the First-Stage PUD within one year of the Original Order Effective Date, with all remaining second-stage PUD applications required to be filed within three years of the effective date of the order approving the first second-stage PUD application.

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<sup>1</sup> Z.C. Order No. 05-28X(2) corrected a typographical error in Z.C. Order No. 05-28X(1).

3. An affiliate of the Applicant timely filed its first second-stage application in Z.C. Case No. 05-28A on November 16, 2007, within the one-year deadline imposed by Condition No. 13 of the Original Order.
4. Pursuant to Z.C. Order No. 05-28A, effective October 3, 2008, the Commission approved the first second-stage PUD application, thereby establishing the deadline for the Applicant to file all remaining second-stage PUD applications under the First-Stage PUD, including the Property, as October 3, 2011.
5. Pursuant to Z.C. Order No. 05-28H<sup>2</sup>, effective February 3, 2012, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2013.
6. Pursuant to Z.C. Order No. 05-28L<sup>3</sup>, effective February 7, 2014, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2015.
7. Pursuant to Z.C. Order No. 05-28O<sup>4</sup>, effective February 12, 2016, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2017.
8. Pursuant to Z.C. Order Nos. 05-28U, 05-28V, 05-28V(1), and 05-28AA,<sup>5</sup> effective June 12, 2020, August 7, 2020, October 1, 2021, and January 20, 2023, respectively, the Commission approved three further two-year extensions and one Covid-related administrative extension of the deadline to file all remaining second-stage PUD applications, with the further extended deadline being October 3, 2024.
9. Pursuant to Z.C. Order No. 05-28T, effective March 23, 2018, the Commission approved the Second-Stage PUD for Parcel 12H to construct a 10-story office building with ground floor retail, designed to accommodate a federal or District government tenant.

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<sup>2</sup> Pursuant to Z.C. Order Nos. 05-28B through 05-28G, the Commission approved second-stage PUDs (Z.C. Order Nos. 05-28B, 05-28C, and 05-28F), denied a time extension request as premature (Z.C. Order No. 05-28D) and approved modifications to the First-Stage PUD (Z.C. Order Nos. 05-28E) and to a second-stage PUD (Z.C. Order No. 05-28G).

<sup>3</sup> Pursuant to Z.C. Order Nos. 05-28I and 05-28J/K, the Commission approved second-stage PUDs or modifications thereof.

<sup>4</sup> Pursuant to Z.C. Order Nos. 05-28M and 05-28N, the Commission approved modifications of second-stage PUDs.

<sup>5</sup> Pursuant to Z.C. Order Nos. 05-28P, 05-28Q, and 05-28R/S, the Commission approved three second-stage PUDs, none of which apply to Parcel 12H. Pursuant to Z.C. Order Nos. 05-28W and 05-28W(1), the Commission approved time extensions of the second-stage PUD approved in Z.C. Order Nos. 05-28Q, none of which apply to Parcel 12H. Pursuant to Z.C. Order Nos. 05-28Y, 05-28Z, and 05-28AB, the Commission approved modifications of approved second-stage PUDs and the First-Stage PUD, none of which apply to Parcel 12H. As part of the pending Z.C. Case Nos. 05-28AC and 05-28AF, the Applicant is pursuing additional modifications to approved second-stage PUDs, which additional modifications are pending before the Commission as of the effective date of this order and which do not apply to Parcel 12H.

10. Pursuant to Z.C. Order Nos. 05-28X, the Commission approved a two-year time extension to the Second-Stage PUD for Parcel 12H requiring a building permit application to be filed by March 23, 2022; and in 05-28X(2), which corrected a typographical error in Z.C. Order No. 05-28X(1), the Second-Stage PUD for Parcel 12H was administratively extended for one year to March 23, 2023.

### **PARTIES AND NOTICE**

11. In addition to the Applicant, the only parties to Z.C. Case No. 05-28 were Advisory Neighborhood Commission (“ANC”) 7D and Parkside Townhomes Condo Association, Inc. ANC 7F, is now an “affected” ANCs pursuant to Subtitle Z § 101.8.<sup>6</sup>
12. On March 22, 2023, the Applicant served the Application, on ANCs 7D and 7F, Parkside Townhomes Condo Association, Inc., the Office of Planning (“OP”), and the District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

### **II. THE APPLICATION**

13. On March 22, 2023, the Applicant filed the Application requesting a one-year time extension of the March 23, 2023 expiration of the Second-Stage Order, established by Z.C. Order No. 05-28X(2) to file a building permit application for Parcel 12H by March 23, 2024 and to begin construction on Parcel 12H by March 23, 2025.
14. The Application asserted that it met the requirements for the proposed one-year time extension because:
  - There has been no substantial change in any material facts upon which the Commission based its approval of the Second-Stage Order; and
  - Good cause justifies the Commission’s granting the time extension because the PUD has been affected by events that have slowed the development timetable, including:
    - The obstacles facing the office market since the Covid-19 pandemic, including many companies pivoting to partial or fully remote work; and
    - Challenges in obtaining financing due to economic repercussions of the Covid-19 pandemic and the uncertainty in financial markets with respect to rising interest rates.
15. The Applicant noted the recent progress accomplished despite these economic challenges, including completion of construction of the townhomes on Parcels 8 and 10, now 100% occupied, and the expected delivery date of 2024 for the multifamily buildings delivering 230 units and the first retail space at Parkside on Parcels 8 and 10. (Ex. 2 at 1-2.)

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<sup>6</sup> ANC 7F was not a party to the Original Order when it was filed and approved but became an “affected ANC” with respect to the First-Stage PUD Site per Subtitle Z § 101.8 upon the adoption of the Zoning Regulations of 2016 as ANC 7F is located directly across the street from the First-Stage PUD Site.

### III. RESPONSES TO THE APPLICATION

#### OP

16. On April 20, 2023, OP filed a report (the “OP Report”) supporting the Application and concluding that:
- There had been no substantial changes to the material facts on which the Commission had based its approval of the Second-Stage PUD with the exception of construction of the pedestrian bridge over Kenilworth Avenue, improving pedestrian access from Parkside to the Metro; and
  - Good cause was shown by a shift in the economic and market conditions beyond the Applicant’s reasonable control, resulting in the Applicant’s inability to find an office tenant for the proposed building.
- (Ex. 5.)

#### ANCs

17. Neither ANC 7D nor ANC 7F filed a response to the Application.

#### CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order approving a PUD upon determining that the time extension request demonstrated 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. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that parties are allowed 30 days to respond.
3. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a) by demonstrating that it had served the Application on all parties to the Original Order – ANC 7D and Parkside Townhomes Condo Association, Inc. – and that both were given at least 30 days to respond from the March 22, 2023, date of service.
4. Subtitle Z § 705.5 requires that “[a]n applicant with an approved PUD may request no more than two (2) extensions, not including any granted due to the Covid-19 pandemic under Subtitle Z §§ 702.1-702.3 or 705.9. The second extension for an extension may be approved for no more than one (1) year.”
5. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.5 because the Application is the second extension, not including the Covid-19 administrative extension granted in Z.C. Order No. 05-28X(2), and the Application requests a one-year extension.
6. 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.

7. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because there has been no substantial change in any of the material facts upon which the Commission based its original approval.
8. 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.*
9. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(1) and (3) because the Applicant has demonstrated that it has diligently pursued the financing of the development of the Property and has not been able to move forward due to market conditions outside of its control, including challenges in obtaining financing due to the economic repercussions of the Covid-19 pandemic and challenges posed by the current state of the office market.

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

10. The Commission must give “great weight” to the recommendation of OP pursuant to § 5 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 (2018 Repl.)) and Subtitle Z § 405.8. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
11. The Commission finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

#### **“Great Weight” to the Written Report of the ANC**

12. The Commission must give “great weight” to the issues and concerns of the affected ANC expressed in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public 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)(2012 Repl.)) and Subtitle Z § 406.2. 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. 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).)

13. Because neither ANC 7D nor ANC 7F filed any response to the Application, there is nothing to which the Commission can give 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 Applicant’s request for a one-year time extension of Z.C. Order No. 05-28T, as extended by Z.C. Order Nos. 05-28X and 05-28X(2), until March 23, 2024, within which time the Applicant must file for a building permit application to construct the building approved in the Second-Stage PUD approved by Z.C. Order No. 05-28T, and until March 23, 2025, within which time the Applicant must begin construction on the building approved in the Second-Stage PUD approved by Z.C. Order No. 05-28T.

The Conditions in Z.C. Order No. 05-28, as modified by Z.C. Order No. 05-28T, remain unchanged and in effect.

**VOTE (May 11, 2023): 4-0-1**

(Robert E. Miller, Joseph Imamura, Anthony J. Hood, and Peter G. May to **APPROVE**; 3<sup>rd</sup> Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 05-28AE shall become final and effective upon publication in the *DC Register*; that is, on October 20, 2023.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

  
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**SARA A. GARDIN**  
**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.