

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28AH
Z.C. Case No. 05-28AH
Lano Parcel 12, LLC
(Two-Year Time Extension for PUD @ Square 5055, Lot 26)
November 14, 2024

Pursuant to notice, at its November 14, 2024 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 Lot 26 in Square 5055 (the “Property”) for (i) a waiver from the Commission’s rules limiting applicants to requesting no more than two extensions of an approved PUD and a second extension of no more than one year to allow a seventh two-year time extension; and (ii) a two-year time extension of the deadline to file applications for the remaining second-stage applications for the planned unit development (“PUD”) approved by Z.C. Order No. 05-28 (the “Original Order” or the “Parkside PUD”), as extended by Z.C. Orders No. 05-28H, 05-28L, 05-28O, 05-28U, 05-28V, 05-28V(1)¹, and 05-28AA. The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations, (Zoning Regulations of 2016 [the “Zoning Regulations”], to which all subsequent 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 First-Stage 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.

¹ The extension granted in Z.C. Order No. 05-28V(1) was an administrative extension due to the COVID-19 pandemic, under Subtitle Z §§ 702.1-702.3 or 705.9; therefore, it does not count as an extension request under Subtitle Z § 705.5.

3. An affiliate of the Applicant timely filed its first second-stage PUD 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,² 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,³ 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,⁴ 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, and 05-28V(1),⁵ effective June 12, 2020, August 7, 2020, and October 1, 2021, respectively, the Commission approved two 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, 2022.
9. Pursuant to Z.C. Order No. 05-28AA, effective January 20, 2023, the Commission approved a two-year extension to the deadline to file all remaining second-stage PUD applications, until October 3, 2024.

PARTIES AND NOTICE

10. In addition to the Applicant, the only parties to Z.C. Case No. 05-28 were Advisory Neighborhood Commissions (“ANC”) 7D and 7F, the “affected” ANCs pursuant to Subtitle Z § 101.8, and Parkside Townhomes Condominium, Inc. (“PTC”).⁶

² 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 No. 05-28E) and to a second-stage PUD (Z.C. Order No. 05-28G).

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

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

⁵ Pursuant to Z.C. Order Nos. 05-28P, 05-28Q, 05-28R/S, and 05-28T, the Commission approved four second-stage PUDs. Pursuant to Z.C. Order Nos. 05-28W, 05-28W(1), 05-28X, and 05-28X(1), the Commission approved time extensions of the second-stage PUDs approved in, respectively, Z.C. Order Nos. 05-28Q and 05-28T. Pursuant to Z.C. Order Nos. 05-28Y and 05-28Z, the Commission approved modifications of approved second-stage PUDs.

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

11. On October 2, 2024, the Applicant served the Application on ANC 7D and 7F, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), and PTC, as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2)

II. THE APPLICATION

12. On October 2, 2024, the Applicant filed the Application requesting (i) a waiver from Subtitle Z § 705.5, which limits applicants from requesting no more than two extensions of an approved PUD and a second extension of no more than one year to allow a seventh two-year time extension for the Parkside PUD; and (ii) a two-year time extension of the October 3, 2024 deadline established by Z.C. Order No. 05-28AA to file the remaining second-stage PUD applications of the Parkside PUD. (Ex. 2)
13. The Application stated that second-stage PUD applications had been filed for the First-Stage PUD Site except for Block G, Block H, and a portion of Block I, which all front on Kenilworth Avenue, N.E., and consist of approximately 1.825 million square feet of remaining development. (Ex. 2 at pp. 3-4)
14. The Applicant asserted that it met the requirements of Subtitle X § 705.2 for the proposed two-year time extension and the requirements of Subtitle X § 101.9 for waiver from the maximum of two-time extensions and the maximum of one year for a second time extension because:
 - The time extension request was served on all parties and parties were allowed 30 days to respond;
 - There has been no substantial change in any material facts upon which the Commission based its approval of the Original Order that would undermine the Commission’s justification for approving the original application;
 - Good cause justifies the Commission’s granting the time extension because the Parkside PUD has been affected by events that have slowed the development timetable, including:
 - The state of residential, retail, and office market east of the Anacostia River;
 - Challenges in obtaining financing for mixed-income and mixed-use development; and
 - The COVID-19 pandemic; and Good cause justifies the Commission granting the waiver because over 1.17 million square feet of development has been approved to date through the second-stage PUD process and over 313,000 square feet of the Parkside PUD is either under construction or pending commencement of construction. Granting the extension will enable the Parkside PUD to develop the three remaining Blocks located in the most prominent position, fronting Kenilworth Avenue, N.E., to provide the transit-oriented, and equitable and economic development needed east of the Anacostia River; and such waiver will not prejudice the rights of any party, nor is it otherwise prohibited by law. (Ex. 2 at pp. 5-9)
15. The Applicant noted the recent progress accomplished despite these challenges, including the completion and delivery of the Parcel 8 multifamily building in September 2024, expected

completion and delivery of the multifamily building on Parcel 10 by early 2025, and expected commencement of construction on the Parcel 9A and 9B residential buildings by second quarter 2025. The Applicant stated that the five second-stage PUDs approved by the Commission in Z.C. Order Nos. 05-28P through 05-28T accounted for 655 residential units, which have all been constructed or are in the process of obtaining a building permit for construction. Further, the Applicant has fulfilled the affordable housing obligations of the Parkside PUD, ensuring that 284 units reserved for families at or below 60% median family income were constructed before building out of market rate units. Moreover, the Applicant has continued to actively engage the community, completing construction of a community playground and amenity area on Block H and committing to make permanent green space on portions of Block H to encourage pedestrian traffic and use of the bridge to the Minnesota Avenue Metro station. The Applicant also noted that it has explored partnerships with Victory Housing, a prominent hotel developer, an educational provider, and retail anchor tenants with respect to the remaining Parkside PUD Blocks but has been unable to solidify interest given market conditions. (Ex. 2 at pp. 4-9)

III. RESPONSES TO THE APPLICATION

OP

16. On November 4, 2024, OP filed a report (the “OP Report”) recommending approval of the two-year time extension and the associated waiver and concluding that the time extension meets the requirements of Subtitle Z § 705.2; and that good cause was shown for the slowed development timetable due to challenges in the retail and office markets and obtaining financing, which resulted in the Applicant’s inability to secure users for the remaining Parkside PUD parcels. Thus, approval of the extension and associated waiver would help to ensure that the entire Parkside PUD is constructed, including potentially larger buildings close to the Minnesota Avenue Metro station, consistent with Comprehensive Plan direction. (Ex. 6)

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 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 2024, demonstrating that it had served the Application on all parties to the Original Order – ANC 7D and 7F and PTC – and that all were given 30 days to respond from the October 2, 2024, date of service.

4. Subtitle Z § 705.5 requires that an applicant with an approved PUD may request no more than two extensions, and that a second extension may be approved for no more than one year.
5. Subtitle Z § 101.9 authorizes the Commission to waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the Applicant demonstrates good cause for the waiver and the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.
6. The Commission concludes that good cause exists for granting the Applicant's request for a waiver from the provisions of Subtitle Z § 705.5 to allow for this time extension because, despite ongoing challenges and delays, the Applicant has achieved substantial development progress on the Parkside PUD through the Second-Stage PUD process, and granting the waiver will allow the three remaining Blocks to be developed consistent with Comprehensive Plan direction.
7. The Commission concludes that no party will be prejudiced by the granting of this waiver, as none of the parties, ANC 7D, ANC 7F, and PTC, filed a response to the Application; and the waiver is not otherwise prohibited by law.
8. 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.
9. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because there has been no substantial change to the material facts upon which the Commission based its approval of the Original Order that would undermine the Commission's justification for that approval.
10. 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.*
11. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(1) and (c)(3) because the Applicant has demonstrated that it has diligently pursued development of the remaining three Blocks of the Parkside PUD and has not been able to move forward due to market conditions outside of its reasonable control, including challenges obtaining

financing for mixed use development east of the Anacostia River, the COVID-19 pandemic, and inability to secure users for the remaining Blocks of the Parkside PUD. Therefore, the Applicant needs additional time to file one or more Second-Stage PUD applications for the remaining Blocks.

“Great Weight” to the Recommendations of OP

12. 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 § 405.9. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
13. 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

14. 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. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978))
15. Neither ANC 7D nor ANC 7F filed a response to the Application; therefore, 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 Application’s request for a two-year time extension (with a waiver of Subtitle Z § 705.5 requirements pursuant to Subtitle Z § 101.9) of Z.C. Order No. 05-28, as extended by Z.C. Order Nos. 05-28H, 05-28L, 05-28O, 05-28U, 05-28V, 05-28V(1), and 05-28AA until October 3, 2026, within which time any outstanding second-stage PUD application under the First-Stage PUD approved by Z.C. Order No. 05-28 must be filed.

The Conditions in Z.C. Order No. 05-28 remain unchanged and in effect as previously modified, except that Condition 13 is revised to read as follows (deletions shown in **~~bold and strikethrough~~** text and additions are shown in **bold and underlined** text):

13. The first-stage approval is valid for a period of one year, within which time a second-stage application shall be filed. If the second-stage application is for less than the entire development described in this Order, no subsequent second-stage application may be filed after **October 3, 2026** ~~three (3) years from date of~~

~~approval of the partial second stage.~~ It is within the Zoning Commission's discretion to extend these periods.

Final Action


VOTE (November 14, 2024): 5-0-0

(Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, Tammy Stidham and Gwen Wright to approve.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 05-28AH shall become final and effective upon publication in the *District of Columbia Register*; that is, on December 27, 2024.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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 RESIDENT 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.