

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28B
Z.C. Case No. 05-28B
District of Columbia Primary Care Association
(Second-Stage Planned Unit Development and Zoning Map Amendment @
Square 5055, Lots 25 and 801 and Portions of 24 and 802)
June 27, 2011

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on April 18, 2011 and May 5, 2011, to consider an application of the District of Columbia Primary Care Association ("DCPCA" or the "Applicant") for the review and final approval of a second-stage planned unit development ("PUD") and Zoning Map amendment. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. The Commission approves the application, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearings

1. The property that is the subject of this second-stage PUD application and Map Amendment is located in Square 5055, Lots 25 and 801 and portions of 24 and 802 (the "Property") within the Parkside PUD approved by the Commission in Z.C. Order No. 05-28 (September 11, 2006). (Exhibit 4, p. 1.)
2. Lano Parcel 12, LLC ("Lano") owns the Property and DCPCA is the contract purchaser. (Exhibit 4, p. 3.)
3. DCPCA is a District of Columbia nonprofit health care reform organization founded in 1998 to improve the health of DC's most vulnerable residents by ensuring that they receive high quality primary health care regardless of their ability to pay. (Exhibit 4, p. 3.)
4. DCPCA intends to develop the Property as a new location for a community health center ("Health Center") for Unity Health Care, Inc. ("Unity"). Unity will be the owner/operator of the Health Center. Unity is a non-profit organization which offers a citywide network of quality health and human services to the medically underserved regardless of race, ethnic background or ability to pay. (Exhibit 4, pp. 3-4.)

5. On May 10, 2010, DCPCA submitted an application ("Application") to modify the first-stage approval of Z.C. Case No. 05-28 and to process a second-stage application and Map Amendment for the Property to accommodate the proposed Health Center and an adjacent temporary surface parking lot (Exhibit 4, p. 1.)
6. The Health Center will be located on a portion of Block I, defined in Z.C. Order No. 05-28, consisting of 0.46 acres (20,029 square feet of land). (Z.C. Order No. 05-28; Exhibit 4, p. 4 tab B.)
7. The Applicant requested a modification of the residential use previously approved for the southeast corner of the Property to a nonresidential use in the form of a health center for DCPCA. The Applicant also modified the height from 90 feet to 42 feet. (Z.C. Case No. 05-28E.)
8. At the July 12, 2010 public meeting, the Commission deferred setdown until the July 26, 2010 public meeting in order to review the application from Lano to modify the first-stage approval as it related to Blocks G, H, and the remaining portion of Block I (Square 5055, Lots 14-23, 803-813, portions of 24 and 802) ("Lano Property") and a second-stage application for the construction of the Community College of the District of Columbia on the Lano Property. Lano also sought to modify the PUD-related Map Amendment for the Lano Property to the CR and C-3-C Zone Districts. (Z.C. Case No. 05-28C.)
9. On July 19, 2010, DCPCA supplemented the record in response to the Commission's comments and questions at the July 12, 2010 public meeting which included the elimination of the temporary surface parking lot. (Exhibit 13, p. 1.)
10. The Application was set down for a public hearing at the Commission's public meeting on July 26, 2010. (July 26 Transcript ("Tr."), pp. 133 and 150.)
11. On December 27, 2010, the Applicant filed a Pre-Hearing Statement and revised architectural plans and elevations. The Applicant's Pre-Hearing Statement addressed a number of issues raised by the Commission at the public meeting on July 26, 2010. (Exhibit 23.)
12. On December 27, 2010, DCPCA submitted a joint motion, with Lano, to consolidate the related applications (Z.C. Case Nos. 05-28B and 05-28C) solely as they relate to the modification of the first-stage PUD, thus removing this requested relief from Z.C. Case 05-28B. (Exhibit 21.) The Commission granted this motion at its public meeting on January 10, 2011, and consolidated the first-stage modification applications into Z.C. Case No. 05-28E. It set the application down for a public hearing.

13. Notice of the public hearing for Z.C. Case No. 05-28B was published in the *D.C. Register* on February 18, 2011 and was mailed to Advisory Neighborhood Commission ("ANC") 7D and to owners of property within 200 feet of the second-stage PUD site. (Exhibit 24.)
14. On March 29, 2011, DCPCA supplemented the record by including: 1) an alternate façade study for Hayes Street; 2) outlines of testimony; 3) copies of resumes; 4) updated transportation study; and 5) updated site amenities plan. (Exhibit 28.)
15. The Applicant submitted a supplemental submission on April 18, 2011, attaching an updated letter of support from Mohammad N. Akhter, MD, MPH, the current Director of the Department of Health ("DOH"), in response to a request from the Commission, as well as other letters in support. (Exhibit 37.)
16. A public hearing was conducted on April 18, 2011. The Commission accepted Rugel Chiriboga, of Little Diversified Architectural Consulting, as an expert in architecture and Erwin Andres, of Gorove/Slade Associates, Inc., as an expert in traffic engineering. The Applicant provided testimony from these witnesses in addition to testimony from Sharon Baskerville, CEO of DCPCA. (April 18 Tr., pp. 15-55.)
17. In addition to the Applicant, ANC 7D was automatically a party in this proceeding. The Commission also granted a request for party status in opposition to the application from the Eastland Gardens Civic Association ("EGCA"). Mayfair Mansion 2005 Tenants Association, Inc. submitted a request for party status, but since the application was untimely and incomplete, the Commission denied party status. (April 18 Tr., p. 10.)
18. At the April 18th hearing, the Commission heard testimony from the Office of Planning ("OP") in support of the Application, as well as testimony from ANC 7D and EGCA expressing concerns with the Application. (April 18 Tr., pp. 153-176, 165-172, 216-226.)
19. District Department of Transportation ("DDOT") neither testified nor submitted a report. (April 18 Tr., pp. 268-270.)
20. The Commission heard testimony and received numerous letters from area residents and the Single Member District representative in support of the application. The Commission also heard testimony from area residents in opposition to the application. (April 18 Tr., pp. 179-195; 227-249.)
21. At the close of the April 18, 2011 hearing, the Commission decided to continue the hearing to be able to hear testimony from and cross-examine DDOT and hear the Applicant's rebuttal. The Commission asked DDOT to submit a report by 3:00 p.m. on

- April 27, 2011 and for the record to remain open so parties could provide written responses to the DDOT report by May 2, 2011. (April 18 Tr., pp. 267-268, 271-274.)
22. DDOT submitted a report on April 27 (dated, April 21, 2011) after the 3:00 p.m. deadline, supporting the Application with conditions. (Exhibit 52.)
 23. On May 2, 2011, the Applicant filed its post-hearing submission 1) describing the community's support for the proposed health center by the executive and legislative branches of the District government, most immediately affected ANC 7D single member districts, and the local community, 2) commenting on DDOT's Report and providing a supporting Technical Memorandum from Gorove/Slade, 3) referencing the recent Comprehensive Plan Amendment Act of 2010 that included amendments intended to further encourage and facilitate local primary care facilities in residential areas, and 4) submitting updated architectural plans in response to the Commission's comments and guidance, including refinement of the Kenilworth Avenue Elevation/Façade and the Hayes Street Elevation/Façade, simplifying the relationship with the walls of the green roof to the pedestrian bridge and replacing the stone fins with scored and integral color concrete. (Exhibit 53.)
 24. The public hearing was continued on May 5, 2011, and DDOT testified in support of the Application, including the reduction in off-street parking from 102 to 69 spaces and was cross-examined by the parties. DDOT stated they were in favor of providing visitor parking within the Health Center's garage and thought that there should be an increase in patient parking, without increasing the number of overall parking spaces. DDOT also stressed the importance of the Applicant monitoring the various street frontages with respect to how long vehicles may be parked there. DDOT recognized that the impacts of the Health Center will be relatively modest and that DDOT has made some successful changes to the access points in the local road network and is a work in progress. DDOT went on to say that the bulk of the traffic impacts will be associated with the remaining lots of the PUD site when built out. In addition, DDOT reinforced the need for paid parking and that only the Health Center employees and visitors should be allowed to use the parking garage. (May 5 Tr., pp. 9-12, 29-31, 40-41.)
 25. Also at the May 5, 2011 hearing, the Applicant's Transportation expert testified in response to the DDOT report and provided an explanation of approximately how many patients will be visiting the Health Center, the current available on-street parking, and staff and visitor demand for parking. The Transportation Consultant also walked through and accepted the conditions as set forth in the DDOT Report, dated April 21, 2011. (May 5 Tr., pp. 18-22, 25, 34-37; Exhibit 52.)
 26. At its public meeting on May 23, 2011, the Commission took proposed action to approve the application and plans that were submitted into the record.

27. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. NCPC, by action dated May 26, 2011, found that the proposed second-stage PUD would not be not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.
28. The Commission took final action to approve the application on June 27, 2011.

First-Stage PUD Approval of Z.C. Case No. 05-28

29. The first-stage PUD for Parkside was approved in September 2006 pursuant to Z.C. Order No. 05-28. The Parkside first-stage PUD approved 10 "building blocks" consisting of residential, mixed-use, commercial, and retail buildings containing approximately 3,003,000 square feet of gross floor area, including 1,500-2,000 dwelling units, 500,000-750,000 square feet of office space, 30,000-50,000 square feet of retail space, and approximately 2,400 total parking spaces. The floor area ratio ("FAR") for the entire 15.5-acre PUD was approved at 4.4 and a maximum height of 110 feet was approved for the office buildings and the heights of the remaining buildings were not to exceed 90 feet and scaled down to lesser heights around the existing townhomes. (Z.C. Order No. 05-28; Exhibit 4, tab B.)
30. In that case, the Commission approved a PUD-related map amendment for the Property from the C-2-B Zone District to the C-3-A Zone District. The Applicant was required to submit applications in connection with the second-stage approval that set forth the rezoning by square and lot. (Z.C. Order No. 05-28; Exhibit 4, tab B.)
31. The Property was approved for residential use with the portions of the residential buildings fronting on Kenilworth Avenue were approved for heights up to 90 feet, with scaling down to 44 feet as the buildings moved toward Kenilworth Terrace. (Z.C. Order No. 05-28; Exhibit 4; tab B.)
32. In September 2006, the Commission granted second-stage approval for 112 townhomes and 98 senior affordable housing units. This approval is set forth in Z.C. Order No. 05-28A. (Z.C. Order No. 05-28A.)

Modification of the First-Stage PUD, Z.C. Case No. 05-28E

33. On December 27, 2010, DCPCA submitted a joint motion, with Lano, to consolidate their applications solely as they relate to the modification of the first-stage PUD, thus removing this requested relief from Z.C. Case 05-28B. (Exhibit 21.) The Commission granted this motion at its public meeting on January 10, 2011, and consolidated the first-

stage modification applications into Z.C. Case No. 05-28E. It set the application down for a public hearing.

34. DCPCA's modification of the first-stage approval involves: (1) changing the approved use for the Property from residential to the Health Center; and (2) reducing the height of the building approved for the Property which was 90 feet along Kenilworth Avenue and 54 feet along Kenilworth Terrace. (Exhibit 23, p. 5.)
35. A public hearing for Z.C. Case No. 05-28E was conducted on April 4, 2011.
36. At its public meeting on May 23, 2011, the Commission took proposed action to approve the portion of Z.C. Case No. 05-28E that includes the DCPCA project and plans that were submitted into the record. Approval of the modification allowed the Zoning Commission to then move forward on deciding Z.C. Case No. 05-28B.

The PUD Project and Location

37. The Property is located just north of the intersection of Minnesota Avenue and Benning Road and across Kenilworth Avenue from the Minnesota Avenue Orange Line Metrorail Station. It is situated in the Parkside neighborhood of Ward 7 and is currently unimproved. (Exhibit 4, p. 6.)
38. The Property is bounded by Kenilworth Terrace, N.E. on the north, Hayes Street, N.E. to the east, and Kenilworth Avenue, N.E. on the south and on the west to a depth of 90 feet running west of Hayes Street. (Exhibit 4, p. 1.)
39. There is pedestrian access to the site by means of an existing pedestrian bridge which connects the neighborhood with the Minnesota Avenue Metrorail Station. (Exhibit 4, p. 7.)
40. The Property is composed of approximately 0.46 acres (20,029 square feet of land). (Exhibit 4, p. 4.)
41. The Project will have a density of 2.13 FAR (42,644 gross square feet of development) with a height of 42 feet/three stories and a lot occupancy of 17,024 square feet (85%) all consistent with the C-3-A Zone. A total of 69 parking spaces will be provided within a two-level underground garage, including at least 10 parking spaces for visitors. The Applicant will also provide 12 bicycle spaces. (Exhibit 23, pp. 11, 13-15 and Exhibit 55.)
42. The Project includes design elements to prevent or minimize environmental impacts, including a green roof, storm water management, energy conservation, transportation demand management, and less intense development than permitted as a matter-of-right.

In order to address existing site runoff, a trench drain will be located at the west property line where the existing concrete curb makes contact with the Health Center building.

43. The Health Center will form a strong corner at Kenilworth Terrace and Hayes Street and will act as a gradual transition both in materials and scale between the existing neighborhood buildings to the north and the east and the proposed community college to the west. (Exhibit 4, p. 21.)
44. The Property is located in a federally designated Health Professional Shortage Area, which means there is less than one primary care provider for every 2,000 residents. Accordingly, the District Department of Health provided DCPCA a grant of \$15 million to construct a health center to address the lack of health care services in Ward 7.
45. A 2008 RAND report revealed that the health indicators for the Ward 7 population show a population at risk. The report indicated that adult residents of Ward 7 and 8 had generally higher rates of chronic disease, poor health status and premature mortality than in other areas of the District of Columbia. (April 18 Tr., p. 25.)

Zoning Map Amendment

46. The Applicant requests confirmation of a map amendment from C-2-B to C-3-A which was previously approved as part of the First Stage PUD Case No. 05-28, but required the Applicant to submit the application for rezoning as part of this second-stage PUD approval. (Z.C. Case No. 05-28 Condition No. 1 and Exhibit 23, p. 5.)

Development Incentives and Flexibility

47. DCPCA requested zoning relief to: 1) reduce the number of required off-street parking spaces from 102 to 69; 2) reduce the west side yard from seven feet to four feet; and 3) eliminate the loading platform and loading berth requirements. As permitted under § 2405.8, the Commission may grant such flexibility without the need for approval from the Board of Zoning Adjustment. (Exhibit 23, 29, 55.)

Project Amenities and Public Benefits

48. Special Value for Neighborhood: The Project will provide much needed high quality primary health care for District residents, namely those east of the Anacostia River in Wards 7 and 8, regardless of ability to pay. (Exhibit 4, pp. 6, 8, 30.)
49. Urban Design and Architecture: A complementary design approach to the existing neighborhood buildings has been undertaken. The Health Center respects the street edge, forming a strong corner at Kenilworth Terrace and Hayes Street that acts as a carefully planned complement of materials and scale between the existing neighborhood buildings

and the proposed future building development at the shared west property line. Both its size and height are compatible with the existing neighborhood buildings, as evidenced by the photos of the surrounding neighborhood buildings. DCPCA has had several meetings with ANC 7D and set up a neighborhood design committee to solicit feedback on the Project throughout the design process. (Exhibit 23, pp. 23-26, tab D.)

50. Site Planning: The proposed density of the Project is appropriate for the Property. The FAR (2.13) and a lot occupancy of 85% are well within the matter-of-right standards for the C-3-A District. The Project makes efficient use of the site by incorporating the existing pedestrian bridge that is to remain into the transit-oriented design, maintaining the pedestrian access from the Minnesota Metro Station to Health Center and the surrounding community. Where permissible, the building footprint has been held back away from the property line adjacent to the existing pedestrian bridge to allow for an extra wide public sidewalk access to increase accessibility and safety as an alternative to the existing no sidewalk between the pedestrian bridge and Hayes Street traffic. The PUD serves the broader community by constructing a much needed health center on currently vacant land in the midst of its target population.

51. Effective and Safe Vehicular and Pedestrian Access, Transportation Management measures connections to public transit services, and other measures to mitigate adverse traffic impacts:

The Applicant will follow the following Transportation Management Plan ("TMP") and Loading Plan:

- a. The Applicant will take advantage of the site's immediate proximity to the existing Minnesota Avenue Metrorail station accessible across DC-295 via the existing pedestrian bridge;
- b. The Applicant will designate a staff member(s) of building management of the Health Center as Transportation Coordinator to be a primary point of contact responsible for coordinating the implementation of the TMP;
- c. The Applicant will provide employees with flexible benefits for transit, resulting in pre-tax salary deduction for Metro rail/bus expenses;
- d. The Applicant will provide information regarding ridesharing opportunities via website links to www.commuterconnections.com;
- e. The Applicant will provide 69 parking spaces on two underground levels. Employees will be charged a market rate for parking, but parking will be free for patients;

- f. The Applicant will provide a minimum of 10 visitor parking spaces within the garage;
- g. The Applicant will provide a total of 12 bicycle parking spaces, including eight within the Health Center garage and four bicycle parking spaces outside the building along Kenilworth Terrace. The Applicant will be subject to additional bicycle parking review one year after the Certificate of Occupancy has been issued to the Applicant. The Applicant will meet with DDOT Bicycle Program staff members on site to review the inventory and location of bicycle parking;
- h. The Applicant will designate the existing private space on Hayes Street in front of the Health Center as sidewalk to effectively widen the existing sidewalk on the west side of Hayes Street providing a better and safer pedestrian experience from the pedestrian bridge to the front door of the Health Center;
- i. The Applicant will designate an accessible paratransit, taxi, and passenger vehicle loading area at the main entrance to the Health Center designated by appropriate signage;
- j. The Applicant will provide effective directional signage (parking, deliveries, taxi stand, etc.) to direct visitors and service vehicles to Kenilworth Terrace where deliveries will be managed and where the entrance to the parking garage is located. Additional signage will be installed to direct patients to the passenger loading area on Hayes Street;
- k. The Applicant will provide shower and locker facility for employee bikers;
- l. The Applicant will provide incentives for DCPCA Health Care Center professionals to participate in a carpool. The carpool program will offer a parking subsidy; and
- m. The Applicant will provide a community bulletin board or kiosk located in the lobby of the building providing information related to local transportation alternatives and resources.

Loading Management Plan

- n. The Applicant will provide on-street parking on Hayes Street shifted from north side to south side to create a pedestrian buffer;
- o. The Applicant will designate a Transportation Coordinator to manage curbside space;

- p. The Applicant will provide on-street loading for deliveries and trash on Kenilworth Terrace; and
 - q. The Applicant will meet with ANC 7D annually to review loading practices.
52. First Source Employment Program: According to § 2403.9(e), “employment and training opportunities” are representative public benefits and project amenities. To further this goal, the Applicant will enter into an agreement to participate in the Department of Employment Services (“DOES”) First Source Employment Program to promote and encourage the hiring of District of Columbia residents. (Exhibit 23, p. 30.)
53. Environmental Benefits: As a sustainable green feature, the 4,452 square foot sustainable green roof feature situated above the ground floor at the south part of the Project at Kenilworth Avenue is at approximately the same vertical elevation and visible to the public coming to the site and neighborhood from across I-295 via the Minnesota Avenue Metro Station pedestrian bridge and ramp. From the interior of the Health Center, the south end of the patient public waiting areas fronts the green roof on the upper levels providing a direct visual access to the green roof feature. The green roof amenity which will collect rainwater from the upper floors of the building also serves to assist in minimizing the water run-off at the site. At the street level, additional landscaped zones are provided on the three street frontages of the Health Center. (Exhibit 23, p. 30.)

Compliance with the Comprehensive Plan

54. The project achieves the objective of the Comprehensive Plan (“Comp Plan” or “Plan”). The proposed Health Care Center directly supports both the Citywide and Ward 7 Community Services and Facilities objectives of the Comprehensive Plan for the expansion of community-based health centers. (Exhibit 23, pp. 37-39.)
55. Community Services and Facilities Element: The goal for community services and facilities is to: “Provide high-quality, accessible, efficiently managed, and properly funded community facilities to support the efficient delivery of municipal services, protect public health and safety, and enhance the well-being of current and future District residents.” The Plan notes that community health care centers are sometimes referred to as the city’s “social infrastructure” and they are “just as important to the quality of life as water, sewer, and transportation facilities, and have spatial needs that must be addressed over the coming years.” Significantly, the Plan singles out the Applicant’s leadership role through the “Medical Homes DC” program to enlarge, enhance, and replace the current network of community health centers and ensure more equitable geographic distribution of these facilities. (Exhibit 23, pp. 37-38.) Effective April 11, 2011, the Comprehensive Plan Citywide Element for Health Care Facilities and Services was amended as part of

the “Comprehensive Plan Act of 2010” to further encourage and facilitate local primary care facilities in residential areas, as set forth:

Review and assess zoning regulation to identify barriers to, and create opportunities for, the development of primary care facilities and neighborhood clinics, including the reuse of existing nonresidential buildings in residential zones, after a public review and approval process that provides an opportunity to address neighborhood impacts. (Section 1106.21 Action CSF 2.1.B: Review Zoning Issues.)

56. Land Use Element: The Plan cites the importance of transit-oriented development by creating a policy which directs development around those Metrorail Stations which offer the greatest opportunities for infill development and growth. The Project will be located within 800 feet from the Minnesota Avenue Metrorail Station entrance. As such, it fulfills the Plan’s desire for transit-oriented infill development. Furthermore, the Project will complement the surrounding neighborhood. (Exhibit 23, pp. 38.)
57. Transportation Element: The Plan states that “although the District has already developed walkable, transit-oriented neighborhoods, future opportunities will arise to strengthen the linkage between land use and transportation as new development takes place.” The development of the Health Care Center so close to the Minnesota Avenue Metrorail Station will encourage staff and patients to take public transportation resulting in a decrease in automobile traffic. The Plan promotes smart growth as a regional solution, “a regional strategy of promoting infill, mixed-use and transit-oriented development in urbanized areas is needed to ensure transportation efficiency in the District and the region.” (Exhibit 23, pp. 38.)
58. Environmental Protection Element: The Plan seeks to encourage the planting of street trees and the “use of landscaping to beautify the city, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity.” (Exhibit 23, pp. 38.)
59. Urban Design Element: The design for the Parkside Health Center takes advantage of the benefits of its urban environment to provide a medical facility in a growing residential neighborhood. The location adjacent to the Minnesota Avenue Metrorail Station, with direct access across the pedestrian bridge which terminates near the corner of Kenilworth Avenue and Hayes Street, will provide excellent access for patients and staff. In addition, major Metro bus routes serve the site and many patients will find themselves within walking distance of the facility. This easy access will only be enhanced as the new Parkside development matures providing many new housing units in close proximity to the new Parkside Health Center. (Exhibit 23, pp. 39.)

60. Compliance with Area Element: The Comprehensive Plan targets “Health Care Facilities” as a specific policy focus within Far Northeast/Southeast Area (Ward 7). The Policy encourages providing additional facilities to meet the mental and physical health needs of Far Northeast and Southeast residents, including primary care facilities, youth development centers, family counseling, drug abuse and alcohol treatment facilities. The comprehensive plan goes on to state that, “such facilities are vital to reduce crime and promote positive youth development. Specific plans for new social service and health facilities should be developed through needs assessments, agency master plans, strategic plans, and the city’s public facility planning process. All plans should be prepared in collaboration with the community, with input from local ANCs and civic associations, residents and businesses, and local community development corporations and non-profit service providers.” Both the District of Columbia Department of Housing and Community Development and ANC 7D support the Parkside Health Center and cite the need for quality primary care services in this ward. (Exhibit 23, pp. 39.)

Agency and Government Reports

61. By reports dated July 2, 2010 (setdown report) and April 8, 2011 (final report) and by testimony at the public hearings, the Office of Planning (“OP”) recommended approval of the Project. It found that the proposal was not inconsistent with the Comprehensive Plan or the modifications requested as part of Z.C. Case No. 05-28E and it supported the health center. OP viewed that the new use will help serve the medical needs of the existing and future residents of not just Parkside, but for all of Ward 7. (Exhibits 12, 29.)
62. By report dated April 21, 2011, and testimony at the public hearing, DDOT recommended conditional approval of the Project. DDOT commended the Applicant for improving the street-level portion of the building by locating the vehicle parking in a below-grade garage. DDOT recommended: 1) a thorough loading management plan addressing the various daily and weekly deliveries to the DCPCA building; 2) two electronic information displays located in the lobby of the building providing real time information related to local transportation alternatives; 3) a more complete TMP that provide health center patients some incentives not to drive to the facility; 4) additional bicycle parking for review one year after the Certificate of Occupancy has been issued; 5) incentives for DCPCA health care professionals to participate in a carpool – the carpool program should offer a parking subsidy; and 6) an annual meeting with ANC 7D to review the loading practices associated with the Health Care facility – the ANC should assist with offering suggestions to improve the schedule and location of truck deliveries to the site. (Exhibit 52.)
63. By letter dated February 23, 2011, Ward 7 Councilmember Yvette Alexander expressed her support of the modifications to the first-stage PUD and specifically the new medical facility “which will bring much-needed primary health care services to all residents who

are currently underserved.” Councilmember Alexander also stated that “daytime activity from the offices, CCDC and medical facility will contribute to community safety and vitality.” (Exhibit 37.)

64. Dorothy M. Douglas, Ward 7 Member of the D.C. State Board of Education and former chairperson of ANC 7D, submitted a letter dated April 13, 2011 expressing support for the Application. (Exhibit 37.)
65. The D.C. DOH submitted letters of support dated, October 8, 2010, by its then director, Dr. Pierre N.D. Vigilance, and more a recent letter dated, April 14, 2011, by current director, Dr. Mohammad N. Akhter. Both letters were in support of the Project and refer to the \$15 million grant given by DOH to fund the Health Center. (Exhibits 23, tab A and 37.)
66. By letter dated April 14, 2011, Beatriz “BB” Otero, the Deputy Mayor for Health and Human Services stated her support for the DCPCA health center and required PUD modification and emphasized the need for quality primary care services to manage and care for the morbidities present in large numbers in this part of the District. (Exhibit 37.)

Advisory Neighborhood Commission 7D Report

67. Advisory Neighborhood Commission (“ANC”) 7D submitted letters, dated October 13, 2010 and March 29, 2011, into the record. The ANC indicated, in the October letter, that at its September 14, 2010 properly noticed meeting, the Commissioners voted three in support and one in opposition, with a quorum present, in support of the application. In the March letter, the ANC indicated that at its March 8, 2011 properly noticed meeting, the Commissioners voted five in opposition, two in abstention, and zero in favor with a quorum present, in opposition to the application. The Applicant was not invited to and did not participate in the March 8, 2011 ANC 7D meeting. The ANC indicated:
 - Concern that the increase in height from 110 feet to 130 feet in Block H would overshadow the residential atmosphere of the community, and a related concern that the increase in height to 130 feet in Block H and the increase from 90 feet to 110 feet in Block G would create shading problems;
 - Concern about a lack of community engagement on the part of the developer given the scope of the project, and a related concern that the developer presented changes to its proposal at different meetings, which created a sense of confusion about the project;
 - A preference on the part of the community for the market rate housing and retail present in the original PUD proposal;
 - Concern about safety on the existing pedestrian bridge;
 - Concern that the proposed new pedestrian bridge will not be built because of the District’s current financial situation;

- Concern that the mix of institutional buildings and uses will reduce property values;
- Concern about storm water runoff; and
- Concern about the lack of disclosure of an environmental impact statement.

(Exhibits 18, 31.)

68. Chairperson Willette Seaward testified on behalf of the ANC at the hearings on April 18 and May 5, 2011.
69. Single Member District Commissioner (“SMD”) for the Property, Willie H. Woods, Jr., ANC 7D07 submitted a letter and testified in support on behalf of his SMD07. Commissioner Woods also submitted a petition in support signed by residents living in SMD07. (Exhibits 30, 37, 49.)
70. SMD Commissioner for the area abutting the Property, Sharita C. Slayton, ANC 7D02, submitted a letter, dated April 13, 2011, in support of the Health Center, noting it would bring conveniently located health care to residents of the neighborhood. (Exhibits 37.)
71. SMD Commissioner, William “Willie” Ross, ANC 7D03, submitted a letter, dated May 3, 2011, in support of the Project stating he had voted in support of the Project at the March 8, 2011 vote. (Exhibit 54.)

Persons in Support

72. SMD Commissioner Willie H. Woods, Jr., ANC 7D07, presented testimony in support of the Application. (April 18 Tr., pp. 184-185.)
73. Elder Melvin A. Moore-Adams, the president of Lotus Square – Kenilworth Ave Apartments, testified in support and emphasized the need for accessible health care. (April 18 Tr., pp. 186-189.)
74. Numerous members of the community wrote letters in support of the application which were accepted into the record. (Exhibits 9, 19, 24, 39, and 42.)
75. Executive Director of Groundwork Anacostia River DC submitted a letter dated February April 12, 2011, supporting the application and stressing the importance of providing quality health care to the neighborhood. (Exhibits 32.)

Party in Opposition

76. EGCA, a party in opposition to the application, presented a written statement and testimony by its president, Greg Rhett. Mr. Rhett expressed concern over the reduction

of residential units, increase in traffic, and the nontransparent behavior of the applicant. (April 18 Tr., pp. 216-223; Exhibits 27 and 44.)

Persons in Opposition

77. Michelle Jones, former Parkside resident, testified in opposition to the application expressing concern over whether former residents, pushed out during demolition in the 1960s would be given first rights once Parkside is redeveloped. (April 18 Tr., pp. 179-184; Exhibit 46.)
78. Several members of the community, including Deborah Brown, Lawrence Perry, Eileen McConnell, Donna Burriss, Dan Milstein, and Brenda Jacons, testified in opposition due to concerns regarding increased traffic. (April 18 Tr., pp. 227-243; Exhibits 45 and 47)
79. Several members of the community wrote letters in opposition of the application which were accepted into the record. (Exhibits 34, 35, and 48.)
80. Mayfair Mansion 2005 Tenants Association Inc., submitted a letter of opposition, dated March 30, 2011, and testified noting concerns about parking, traffic, and proposed use. (April 18 Tr., pp. 244-249; Exhibit 33.)
81. Commissioner Lisa White, ANC 7D01, submitted a letter, dated April 14, 2011, in opposition to the application due to concerns regarding environmental impact. (Exhibit 38.)

Compliance with PUD Standards

82. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” The Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations for this PUD application. The proposed health center is wholly justified in light of the superior benefits and amenities of the PUD; the Commission does not find that other additional amenities and benefits are required to satisfy the standards for this PUD. It finds that the Project will serve a medically underserved part of the District, which in and of itself is a public benefit. (Exhibit 23, pp. 23- 37, tab D and Exhibits 28, 40, and 53.)
83. The Commission credits the testimony of the Applicant and its architectural expert and finds that the superior design, site planning, streetscape, sustainable design, and uses of special value of the project all constitute acceptable project amenities and public benefits. (Exhibit 23, pp. 23-37, tab D and Exhibits 28, 40, and 53.)

84. The Commission finds that the site plan is consistent with the intent and purposes of the PUD process and the initial first-stage PUD approval to encourage high quality developments that provide public benefits. In addition, the Commission finds that the site plan and features of the project are a benefit for the community and consistent with the intent of the original approval of the first-stage PUD. (Z.C. Order 05-28; Exhibit 23, tab B.)
85. For the reasons detailed in this Order, the Commission credits the testimony of the Applicant's traffic consultant and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area will be minimal and are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD. (May 5 Tr., p. 81-86; Exhibit 15, tab C; Exhibit 28.)
86. As detailed in this Order, the Commission agrees with DDOT's conclusions regarding vehicular and pedestrian impacts and related issues with the proposed development. (Exhibit 54.)
87. The Commission credits the testimony and submissions of the Applicant and OP regarding the compliance of the Project with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide and area elements of the Plan, including:
 - a. Designation as appropriate for high density residential and medium density commercial uses on the Future Land Use Map;
 - b. Land Use Element policies recognizing the important contribution of universities to the District, compatibility of uses in mixed-use developments, transit-oriented development;
 - c. Other policies in the Economic Development, Education, Transportation, Environmental Protection, and Urban Design Elements related to the Land Use policies and goals stated above;
 - d. Community Services and Facilities Elements for providing community healthcare centers; and
 - e. Policies in the Far Northeast and Southeast regarding infill development, development of large parcels, development near transit nodes, and additional health care facilities. (Exhibit 23, pp. 37-39.)

88. The Parkside PUD also reflects the District's plan for concentrating a mix of uses at the Minnesota Avenue Metrorail Station. The addition of both the Health Center will truly make the Parkside development a mixed-use PUD. Finally, the building designs call for an appropriate transition between the greater heights along Kenilworth Avenue to the lesser heights as the development stretches toward the Anacostia River.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high quality developments that provide public benefits. (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process, the Commission has the authority to consider this application as a two-stage PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards.
3. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that will offer a variety of building uses and types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of 11 DCMR § 2401.1.
5. The Commission agrees with the testimony of the project architect, transportation expert, and the representatives of the Applicant and believes that this project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property, or the implementation of the initial first-stage PUD, would provide. The Commission believes that despite the modifications to the PUD to convert residential use to non-residential use, there will still be a significant amount of residential uses on the PUD site. The Commission believes that the design, reduced parking, and site planning of the project promotes smart growth and encourages use of public transportation.
6. The Commission further finds that Health Center will benefit the Parkside community, Ward 7, and the District.
7. The Commission finds that the density and height of the PUD is appropriately dispersed on the PUD site as it shields neighboring uses and appropriately relates to existing

townhomes. The scaling down of the height of the Property is appropriate given its relationship to adjacent buildings and uses.

8. Approval of the Application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
9. Approval of this second-stage and PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP in this case and finds that the proposed project is consistent with and fosters numerous policies and elements of the Comprehensive Plan. Specifically, the Commission believes that the proposed project furthers the following elements: land use, transportation, environmental protection, urban design, community services and facilities, and the area element.
10. The Commission believes that the proposed PUD-related rezoning of the Property to the C-3-A Zone Districts is appropriate given the Comprehensive Plan designation for the Property, its location in the Central Employment Area, the superior features of the PUD project, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
11. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
12. The project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
13. In accordance with §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)), the Commission must give great weight to the written issues and concerns of the affected ANC. The Commission evaluated the ANC's concerns with the application, but is not persuaded by its position written on March 29, 2011. The issues and concerns listed in the March 29, 2011 letter were identical to those submitted in the consolidated first-stage PUD modification Case No. 05-28E, which included the remainder of the Lano Property.

Issue 1: Concern that the increase in height from 110 feet to 130 feet in Block H would overshadow the residential atmosphere of the community and create shading problems, and a related concern that the increase from 90 feet to 110 feet in Block G would create shading problems.

These comments pertain only to other aspects of the first-stage PUD modification and not to this application.

Issue 2: Concern about a lack of community engagement on the part of the developer given the scope of the project, and a related concern that the developer presented changes to its proposal at different meetings, which created a sense of confusion about the project.

The Commission concludes there was sufficient community engagement on the part of the Applicant. This comment pertains primarily to the first-stage modification, which was much broader in scope. Finally, the Commission credits the testimony of the SMD representative, Willie Woods, and the testimony of Melvin A. Moore-Adams, the president of the Lotus Square Tenants Association stating that the Applicant had engaged the community and been forthright in their communication with the community. In addition, adjacent SMD Commissioners, Sharita Slayton and Willie Ross, also submitted letters in support of the Project. The Commission found this testimony and submission persuasive in that these individuals are located in the immediate vicinity of the Property and are the most immediately affected by the proposal; yet, they were very supportive of the proposal.

Issue 3: A preference on the part of the community for the market rate housing and retail present in the original PUD proposal.

The Commission does not find this advice legally relevant. The only question before the Commission instead is whether the proposed modifications meet the standards established in Chapter 24 of the Zoning Regulations.

Issue 4: Concern about safety on the existing pedestrian bridge.

The Commission does not find this advice legally relevant. The only question before the Commission instead is whether the proposed modifications meet the standards established in Chapter 24 of the Zoning Regulations.

Issue 5: Concern that the proposed new pedestrian bridge will not be built because of the District's current financial situation.

The Commission does not find this advice legally relevant. The only question before the Commission instead is whether the proposed modifications meet the standards established in Chapter 24 of the Zoning Regulations.

Issue 6: Concern that the mix of institutional buildings and uses will reduce property values.

The Commission found in its order approving the first-stage PUD modification that the character, scale, and mix of uses of the DCPCA portion of the project is appropriate, and the proposed use will add to the diversity of the area, increase its pedestrian nature, and help stabilize this new community. Accordingly, the Commission does not find the advice persuasive that the uses will diminish property values

Issue 7: Concern about storm water runoff.

The Commission does not find this advice persuasive because it believes that the Project's proposed storm water management and erosion control plans will minimize impact on the adjacent property and existing storm water systems. Additionally, the Project includes a green roof system over a portion of the Health Center.

Issue 8: Concern about the lack of disclosure of an environmental impact statement.

The Commission does not find this advice persuasive because the Applicant is not required to disclose or submit an environmental impact statement by Chapter 24 of the Zoning Regulations. While the Applicant will eventually be required to submit a environmental impact screening form and to undergo an environmental review under the District of Columbia Environmental Policy Act of 1989 (DCEPA"), D.C. Official Code § 8-109.01 *et seq.*, that process does not begin until after the Zoning Commission has approved the PUD and the Applicant is seeking a building permit. Foggy Bottom Ass'n v. District of Columbia Zoning Comm'n, 979 A.2d 1160, 1165 (D.C. 2009).

14. The Commission is required under § 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 (2001)), to give great weight to OP recommendations. The Commission concurs with OP's view that the second-stage approval should be granted.
15. Notice of the public hearing was provided in accordance with the Zoning Regulations.
16. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for a second-stage PUD and Zoning Map amendment for the property from the C-2-B to the C-3-A Zone District for Lots 25 and 801 and portions of 24 and 802 in Square 5055. This approval of this second-stage PUD and Zoning Map amendment is subject to the following

guidelines, conditions, and standards. For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner.

1. The second-stage PUD is approved in accordance with the architectural plans and elevation prepared by the architect and submitted by the Applicant marked as Exhibits 4, 13, 23, 28, 40, 53, and 55 of the record, as modified by the guidelines, conditions, and standards of this Order. The Project will include a community health center, or "clinic" that will provide health care to District residents, especially those east of the Anacostia River in Wards 7 and 8, and all other qualified patients regardless of ability to pay.
2. In accordance with the plans and materials noted above, the approved PUD shall consist of approximately 42,644 gross square feet of development with a height of approximately 42 feet/three stories and a lot occupancy of 17,024 square feet (85%).
3. The Applicant shall have flexibility from the number of off-street parking spaces, side yard requirements, and the loading platform and loading berth requirements, consistent with the approved Plans and as discussed in the Development Incentives and Flexibility section of the Order.
4. The Applicant shall provide a total of 69 parking spaces within a two-level below-grade garage, including at least 10 parking spaces for visitors. The charge for parking for employees will be at market-rate while the visitor parking will be free. The Applicant will, through signage and limited access, ensure that parking in the garage will only be used for the Health Center.
5. The Applicant shall also provide 12 bicycle spaces with additional bicycle parking subject to review by DDOT one year after the Certificate of Occupancy has been issued to the Applicant.
6. The Applicant shall follow the following Transportation Management Plan ("TMP") and Loading Plan:
 - a. The Applicant shall take advantage of the site's immediate proximity to the existing Minnesota Avenue Metrorail station accessible across DC-295 via the existing pedestrian bridge;

- b. The Applicant shall designate a staff member(s) of building management of the Health Center as Transportation Coordinator to be a primary point of contact responsible for coordinating the implementation of the TMP;
- c. The Applicant shall provide employees with flexible benefits for transit, resulting in pre-tax salary deduction for Metro rail/bus expenses;
- d. The Applicant shall provide information regarding ridesharing opportunities via website links to www.commuterconnections.com;
- e. The Applicant shall provide 69 parking spaces on two underground levels. Employees will be charged a market rate for parking, but parking will be free for patients;
- f. The Applicant shall provide a minimum of 10 visitor parking spaces within the garage;
- g. The Applicant shall provide a total of 12 bicycle parking spaces, including eight within the Health Center garage and four bicycle parking spaces outside the building along Kenilworth Terrace. The Applicant shall be subject to additional bicycle parking review one year after the Certificate of Occupancy has been issued to the Applicant. The Applicant shall meet with DDOT Bicycle Program staff members on site to review the inventory and location of bicycle parking;
- h. The Applicant shall designate the existing private space on Hayes Street in front of the Health Center as sidewalk to effectively widen the existing sidewalk on the west side of Hayes Street providing a better and safer pedestrian experience from the pedestrian bridge to the front door of the Health Center;
- i. The Applicant shall designate an accessible paratransit, taxi, and passenger vehicle loading area at the main entrance to the Health Center designated by appropriate signage;
- j. The Applicant shall provide effective directional signage (parking, deliveries, taxi stand, etc.) to direct visitors and service vehicles to Kenilworth Terrace where deliveries will be managed and where the entrance to the parking garage is located. Additional signage will be installed to direct patients to the passenger loading area on Hayes Street;
- k. The Applicant shall provide shower and locker facility for employee bikers;

- l. The Applicant shall provide incentives for DCPCA Health Care Center professionals to participate in a carpool. The carpool program shall offer a parking subsidy; and
- m. The Applicant shall provide a community bulletin board or kiosk located in the lobby of the building providing information related to local transportation alternatives and resources.

Loading Management Plan

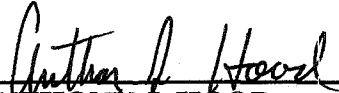
- n. The Applicant shall provide on-street parking on Hayes Street shifted from north side to south side to create a pedestrian buffer;
 - o. The Applicant shall designate a Transportation Coordinator to manage curbside space;
 - p. The Applicant shall provide on-street loading for deliveries and trash on Kenilworth Terrace; and
 - q. The Applicant shall meet with ANC 7D annually to review loading practices.
7. The Applicant shall have flexibility with the design of the PUD in the following areas:
- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, elevators, toilet rooms, stairways and mechanical rooms, provided that the variations do not materially change the exterior configuration of the building;
 - b. To vary the final selection of the exterior materials to be similar in color and material to types as proposed, based on availability at the time of construction, without reducing the quality of the materials;
 - c. To vary the number and location of visitor parking spaces in the two-story garage, provided that the Applicant shall provide no fewer than 10 parking spaces;
 - d. To make refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other minor changes to comply with the D.C. Building Code or that are otherwise necessary to obtain a final building permit. Only those exterior changes initiated by the Building and Land Regulation Administration of DCRA will be permitted within the context of this design flexibility; and

- e. To vary the final selection of landscaping materials to provide plant material similar in appearance and cost depending on market availability.
8. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services prior to the issuance of a building permit for the PUD.
9. No building permit shall be issued for the approved second-stage PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owner of the subject property and the District of Columbia that is satisfactory to the Office of the Attorney General and DCRA. Such covenant shall bind the owner and all successors in title to construct improvements upon and use this property only in accordance with this Order or amendment thereof by the Zoning Commission.
10. The change in zoning from the C-2-B Zone District to the C-3-A Zone District for the Subject property shall be effective upon the recordation of the covenant discussed in Condition No. 9, pursuant to 11 DCMR § 3028.9.
11. This second-stage PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in § 2409.1 of the Zoning Regulations. Construction shall begin within three years of the effective date of this Order.
12. 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.

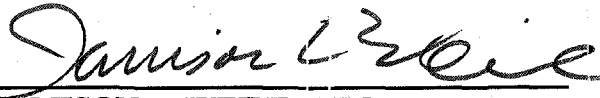
On May 23, 2011, upon the motion of Commissioner May, as seconded by Commissioner Selfridge, the Zoning Commission **APPROVED** this application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to approve; Konrad W. Schlater, having recused himself, not voting).

On June 27, 2011, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to adopt; Konrad W. Schlater, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on August 26, 2011.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

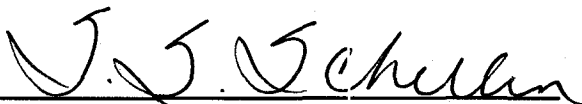
GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 05-28B

As Secretary to the Commission, I hereby certify that on AUG 29 2011 copies of this Z.C. Order No. 05-28B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|---|--|
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ATTESTED BY: 
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Secretary to the Zoning Commission
Office of Zoning