

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28C

Z.C. Case No. 05-28C

Lano Parcel 12, LLC

**(Review and Approval of Second-Stage Planned Unit Development
and Related Map Amendment @ Square 5055, Lots 21-24 and 802-805)**

July 25, 2011

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on May 5, 2011 and May 18, 2011, to consider an application of Lano Parcel 12, LLC ("Lano" or the "Applicant") for the review and approval of a second-stage planned unit development ("PUD") and related 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, PUD History, Parties, and Hearing

1. The property that is the subject of the application is located in Square 5055, Lots 22-23 and 802-804 and portions of Lots 21, 24, and 805 (the "Property"). The Property is approximately 54,540 square feet in size. Lano is the owner of the Property. (Exhibit 4; Exhibit 20, p. 2, tabs B and C.)
2. 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, and 30,000-50,000 square feet of retail. 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 90 feet for the mixed-use buildings. Three of the building blocks, Blocks G, H, and I, comprise "Parcel 12". The Property is located on "Parcel 12." (Exhibit 4; Exhibit 20, pp. 1, 6, and tabs A and B.)
3. In the first-stage PUD, the Commission approved a PUD-related map amendment for the Property from the C-2-B Zone District to the CR Zone District. (Exhibit 4; Exhibit 20; p. 7, tab E.)

4. In Z.C. Case No. 05-28, Parcel 12 was approved for a lot occupancy of 80.6%, a gross floor area of 1,709,800 square feet, and a density of 7.05 FAR, as well as a range of 785-875 residential units and 1,400 parking spaces. 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. The office buildings fronting Kenilworth Avenue were approved for a height of 110 feet. (Exhibit 4; Exhibit 20, tabs B and E; Z.C. Order No. 05-28.)
5. In 2008, the Commission approved a second-stage application for three of the 10 building blocks in the Parkside PUD – Blocks A, B, and C (Z.C. Order No. 05-28A). The Commission approved a senior living facility consisting of at least 98 units to be reserved for individuals with an income no greater than 60% of the area median income (“AMI”). The senior living facility is currently under construction. It also approved 112 townhouses, 42 of which would be reserved for buyers with incomes between 80% and 120% AMI. (Exhibit 4; Exhibit 20, p. 1, tab E.)
6. Lano filed an application in June 2010 to modify the first-stage approval as it relates to Blocks G, H, and a portion of Block I (Square 5055, Lots 14-23, 803-813, portions of 24 and 802) and a second-stage application for the construction of the Community College of the District of Columbia (“CCDC”) on the Property. It also sought a PUD-related map amendment for Parcel 12 to the CR and C-3-C Zone Districts, with the Property being rezoned to the CR Zone District. (Exhibits 4 and 20.)
7. The application was assigned Z.C. Case No. 05-28C. The Commission set down Z.C. Case No. 05-28C for a public hearing at its July 26, 2010, public meeting. (*Id.*; July 26 Transcript (“Tr.”), p. 132.)
8. Lano subsequently filed a motion jointly with the District of Columbia Primary Care Association (“DCPCA”) to consolidate its modification of the first-stage PUD with DCPCA’s application to modify the first-stage PUD, which was at that time a part of Z.C. Case No. 05-28B. The Commission granted the motion and the first-stage modification portion of applications Z.C. Case Nos. 05-28B and 05-28C were consolidated into Z.C. Case No. 05-28E. Z.C. Case No. 05-28C was subsequently only a second-stage application for the construction of CCDC. (Exhibit 19.)
9. Z.C. Case No. 05-28E was set down for a public hearing, which was held prior to the public hearings for Z.C. Case No. 05-28C. The Commission partially approved Z.C. Case No. 05-28E, and in doing so, expanded educational and health care uses on Parcel 12 by approximately 305,000 gross square feet and reduced the amount of residential development by approximately 390-440 units. A maximum height of 110 feet was approved for the Property. (Z.C. Order No. 05-28E.)

10. Notice of the public hearing for Case No. 05-28C 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. (Exhibits 21 and 22.)
11. Public hearings were conducted for Z.C. Case No. 05-28C on May 5, 2011 and May 18, 2011. The Commission accepted Otto Condon as an expert in urban design and planning, Bryan Cannon as an expert in architecture, Dennis Carmichael as an expert in landscape planning, and Rob Schiesel as an expert in traffic engineering. The Applicant provided testimony from these witnesses in addition to testimony from Christopher LoPiano. (May 5 Tr., pp. 9, 11.)
12. 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 Mansions Tenant Association submitted an incomplete request for party status; accordingly, the Commission did not evaluate the request for party status. (*Id.* at 19; Exhibit 39.)
13. At the hearing, the Commission heard testimony and received evidence from the Office of Planning (“OP”) and the District Department of Transportation (“DDOT”) in support of the application, as well as testimony and evidence from ANC 7D and EGCA expressing concerns with the application. (May 5 Tr., pp. 143, 146; May 18 Tr., pp. 8-19; 28-60.)
14. The Commission heard testimony and received numerous letters from area residents and the Single Member District (“SMD”) representative in support of the application. The Commission also heard testimony from area residents in opposition to the application. (May 5 Tr., pp. 179-224.)
15. During the hearing, the Commission asked the Applicant for a revised shadow study, for more detail regarding a garage wall, more information regarding use of Kenilworth Avenue for access of passenger vehicles, a detailed loading plan, and a letter from the CCDC indicating their role in the application.
16. The Applicant filed responses to this request at the second public hearing on May 18, 2011. (Exhibits 63-67.)
17. At its public meeting on June 13, 2011, the Commission took proposed action to approve the application and plans that were submitted into the record.
18. 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

June 30, 2011, found that the proposed PUD would not be not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.

19. The Commission took final action to approve the application on July 25, 2011.

Overview of the Property and Location

20. The Property is located in Ward 7, just north of the intersection of Minnesota Avenue and Benning Road. It is situated in the Parkside neighborhood and is currently unimproved. (Exhibit 4; Exhibit 20, p. 9.)
21. The Property is bounded by Kenilworth Avenue, N.E., on the south, Kenilworth Terrace, N.E. on the north, and portions of Parcel 12 on the east and the west. (Exhibit 4; Exhibit 20, p. 9.)
22. The Property is comprised of approximately 54,540 square feet of land. (Exhibit 4; Exhibit 20, tabs B and C.)
23. The Parkside neighborhood is partially constructed with streets and infrastructure in-place, 100 townhomes, two schools, streets, parkland and over 15 acres of remaining vacant land. It is adjacent to Kenilworth Avenue and the Minnesota Avenue Orange Line Metrorail Station. (Exhibit 4; Exhibit 20, p. 9.)
24. Land uses in the vicinity of the Property include a PEPCO plant to the southwest, Neval Thomas Elementary School and a District of Columbia Public and Assisted Housing complex to the northwest; vacant land to the southwest, and existing townhomes to the northeast. (Exhibit 4; Exhibit 20, p. 9.)
25. Two blocks north of the Property is the Mayfair/Paradise and Lotus Square multifamily rental communities. The Parkside townhomes referenced in Paragraph 24 are one block from the Property. (Exhibit 4; Exhibit 20, p. 9.)
26. Eastland Gardens is located approximately one half mile to the north of the Property. (Exhibit 4; Exhibit 20, p. 9.)
27. To the west of the Property are Kenilworth Aquatic Gardens, Anacostia Park, the Anacostia River and the National Arboretum, forming a large green space and recreational complex. (Exhibit 4; Exhibit 20, p. 10.)

28. Parkside has been adopted by America's Promise Alliance, a coalition of over 400 national organizations working collaboratively to bring comprehensive education and social services to underserved communities based upon the Harlem Children's Zone model. The Parkside community recently was accepted into the federal U.S. Department of Education's Promise Neighborhood Program, which is the centerpiece of President Barack Obama's urban initiatives. (Exhibit 4; Exhibit 20, p. 11.)
29. The Promise Neighborhoods Program seeks to engage all resident children and their parents into an achievement program based on tangible goals and positive educational outcomes, including matriculation to college for each and every participating student, positive physical and mental health outcomes for children and parenting classes. The program also seeks to provide employment training and counseling to provide meaningful employment opportunities for the parents. (Exhibit 4; Exhibit 20, p. 11.)
30. The District government endorsed the Parkside-Kenilworth application for the federal Promise Neighborhood Program. (Exhibit 4; Exhibit 20, p. 11.)

First-Stage PUD Approval

31. The first-stage PUD for Parkside was approved in September 2006 pursuant to Z.C. Order No. 05-28. The approval allowed for three million gross square feet of development to consist of approximately 1,500-2,000 residential units, 500,000-750,000 square feet of office space, and 30,000-50,000 square feet of retail, with approximately 2,400 total parking spaces. (Z.C. Order No. 05-28; Exhibit 4; Exhibit 20, tab E.)
32. The entire project was approved for approximately 3,003,000 square feet of gross floor area resulting in an overall density of approximately 4.44 FAR. The total lot occupancy of the PUD was approved for approximately 62.4%. The maximum height of the PUD was approved for 110 feet, which was reserved solely for the buildings located in the center portion of the Property fronting Kenilworth Avenue. The heights of the remaining buildings were not to exceed 90 feet and scaled down to lesser heights around the existing townhomes. The first-stage PUD approval was subsequently modified in Z.C. Case No. 05-28E, as described in Paragraph 36 below. (*Id.*)
33. The Commission approved a rezoning from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts. The Applicant was required to submit applications in connection with the second-stage approval that set forth the rezoning by Square and Lot. (*Id.*)
34. For the Property, the first-stage approval allowed for a maximum height of 90 feet and residential use. (Exhibit 4; Exhibit 20, tab E.)

35. The Property is a portion of Block I and a very small portion of Block H, as defined in the original first-stage approval. The entirety of Block I was approved for 504,700 square feet of residential use to accommodate approximately 390-440 units. The entirety of Block H was approved for 110 foot tall office buildings with a gross floor area of 700,400 square feet. (Exhibit 4; Exhibit 20, tabs A and E.)
36. Z.C. Case No. 05-28E approved a modification of the first-stage PUD as it pertains to the Property. The Commission approved the site for a 110 foot tall building dedicated to educational use with a gross floor area of approximately 260,000 square feet, a lot occupancy of 92%, a rear yard of 10 feet, and four courtyards. The Commission simultaneously approved a rezoning from the previously approved C-3-A Zone District to the CR Zone District. (Z.C. Order No. 05-28E.)
37. The CR Zone District encourages a diversity of compatible land uses that may include a mixture of residential, office, retail, recreational, and other uses. The CR Zone District is applied to geographic areas where a mixture of uses and building densities is intended to carry out elements of District of Columbia development plans, including goals in employment, transportation, housing, and public facilities. (11 DCMR § 600.1, 600.4.)

Project

38. The CCDC is a new post-secondary program established to complement the University of the District of Columbia's higher-education program. The 2009-2010 academic year marked the first year in operation for the CCDC. The program serves the City's residents by integrating workforce preparation, employability skill development, quality education and developmental education, economic development and employer linkages, and school-to-career training. Overall, it provides a seamless transition from K-12 to adult education and literacy to college prep—and continuous lifelong learning. The CCDC offers:
 - Associate Degrees - Two-year academic degree programs leading to careers in demand;
 - Certificate Programs - Short-term educational and training programs that enhance professional options;
 - Continuing Education - Enhancement of current job skills by meeting Continuing Education Unit requirements with over 1000 online courses; and
 - Workforce Development - Job and professional training to help students develop the skills that local employers need today.

The community college functions as the open-enrollment institution for the University System, while UDC has become a selective institution, only offering bachelor and graduate degrees. (Exhibit 4; Exhibit 20, p. 15.)

39. CCDC has five locations in the District, in addition to the proposed site, but none are located in Ward 7 east of the Anacostia River. In the 2009 Academic Year, 2,335 students were enrolled in the program; 41% of the CCDC enrollment consisted of full-time students and 59% were part-time students. The CCDC expects that no more than 500 students, 25 faculty, and 50 staff members will be on the instant site at any one time. Establishing this program in Parkside will effectuate the goals of the Promise Neighborhood Program as well as bring opportunities currently available in the rest of DC to those east of the Anacostia River in Ward 7. (*Id.* at p. 16.)
40. The CCDC building is an eight-story building (110 foot height) with 260,000 square feet of gross floor area. (*Id.* at p. 15, tab C.)
41. It will include classroom facilities and other amenities such as auditoriums, outdoor plaza space, a student center, a café, offices, and a job center. (*Id.*)
42. The building will include 87 parking spaces that will be reserved for students, faculty, staff, and CCDC visitors. The parking garage has shared access to Kenilworth Terrace with the neighboring Health Center, but each building will provide its own parking. (Exhibit 4; Exhibit 20, tab C; Exhibits 35, 36, and 53.)
43. An additional curb cut is located on Kenilworth Avenue for loading. DDOT recommended that passenger vehicles be prohibited from entering or exiting the garage from Kenilworth Avenue. The Applicant disagreed, but offered additional measures intended to mitigate DDOT's concerns. DDOT unfortunately has not advised the Commission as to whether this issue has been resolved. In the absence of any response, the Commission is reluctant to make a finding on the issue, but believes that the Applicant and DDOT should continue their efforts to resolve the issue. The Commission notes that DDOT has the delegated authority to make rules governing the "control ... and movement of traffic" and the "routing" of motor vehicles. D.C. Official Code § 50-2201.03 (a)(1) and (6). It therefore appears to the Commission that if, in fact, DDOT remains unconvinced of the wisdom of permitting passenger vehicle access from Kenilworth Avenue, and the Applicant, in its further discussions with DDOT, fails to convince DDOT to change its position, the agency can simply post a sign prohibiting passenger vehicles from turning off of Kenilworth Avenue onto the garage.
44. The building plans contain the following sustainability features. The building design consists primarily of glass curtain walls and metal panels with punched windows. It includes green and reflective roofs, bicycle parking spaces and changing rooms. (Exhibit 4; Exhibit 20, tab C; Exhibit 35.)

45. The Applicant requested and was granted flexibility from the use requirements for the CR Zone District (§ 615) and the public space requirements for the CR Zone District (§ 633). (Exhibit 4; Exhibit 20, page 16; Exhibit 30.) No other types of flexibility from the requirements of the Zoning Regulations was requested or granted.
46. CCDC submitted a letter in support of the application, stating that 24% of the current student body is from Ward 7 and that 70-80% of its students take public transportation to school. (Exhibit 63.)
47. Project Amenities and Public Benefits
 - a. Special Value for Neighborhood: The development will allow for a community college to provide educational opportunities and job training for residents throughout the city. The CCDC will offer classes in a variety of technical fields, many being in the health care industry, which will complement the neighboring health center. (Exhibit 4; Exhibit 20, pp. 20-21.)
 - b. Affordable and Workforce Housing: The overall PUD is reserving 20% of the total residential component as affordable units to households having an income not exceeding 80% of Area Median Income (“AMI”) for the Washington, DC Metropolitan Statistical Area (adjusted for family size). It is further reserving 20% of the total residential component for workforce housing targeted to households that have an income between 80 – 120% of the AMI. In all, the PUD will provide a true mix of incomes in the Parkside community. (Z.C. Order No. 05-28; Z.C. Order No. 05-28A; Exhibit 4; Exhibit 20, p. 20, tab E.)
 - c. 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. (*Id.*)
 - d. Pedestrian Bridge: A new pedestrian bridge is set to be constructed between the Parkside PUD and the Minnesota Avenue Metrorail Station. The Applicant has committed 25% of the cost of the bridge not to exceed three million dollars to ensure that this bridge be constructed to improve access to this site. (*Id.*)
 - e. Compliance with Comprehensive Plan: The proposed project significantly advances the purposes of the Comprehensive Plan by furthering the social and economic development of the District through the construction of new residential units on underutilized land, including a senior housing facility; by centering

development around a transportation node; by thoughtful planning of one of the few large, vacant parcels in the District; and providing educational facilities east of the Anacostia River (*Id.*; Exhibit 35.)

Compliance with PUD Standards

48. 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.” During its consideration of the first-stage PUD in Z.C. Case No. 05-28, and the first-stage modification in Z.C. Case No. 05-28E, the Commission determined that the development incentives and related rezoning for the Property were appropriate and fully justified by the superior benefits and amenities offered by the PUD. Here, the Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations for this second-stage approval and PUD-related map amendment. The application is justified in light of the superior benefits and amenities of the PUD, including the value of providing adult educational opportunities; the Commission does not find that other additional amenities and benefits are required to satisfy the standards for this PUD. It finds that the approval of the application will allow for the construction of a community college that will serve an underserved part of the District, which in and of itself and is a public benefit. (Exhibit 4; Exhibit 20, pp. 16-21; Exhibit 53; Exhibit 64.)
49. The Commission credits the testimony of the Applicant and its architectural and planning experts 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 consistent with the original approval of the first-stage PUD and the subsequent modification. (Exhibit 4; Exhibit 20, tab C; Exhibit 53; May 5 Tr., pp. 32-34, 39-46.)
50. The Commission finds that the character, scale, and proposed use is appropriate, and the CCDC will add to the diversity of the area, increase its pedestrian nature and help stabilize this new community. It also finds that the site plan is consistent with the intent and purposes of the PUD process and the 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, including the provision of educational use is a benefit for the community and consistent with the intent of the first-stage PUD. (Exhibit 4; Exhibit 20, tab C; Exhibit 53; May 5 Tr., pp. 14-29, 32-34, 39-46.)
51. 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 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. The Commission expects that the operation of the building will comply with the Loading Management Plan and Transportation Demand Management Plan proposed by the Applicant. (May 5 Tr., 48-57; Exhibit 20, tab C; Exhibits 53, 66, 67, and 77.)

52. The Commission appreciates the testimony of EGCA regarding their traffic concerns but found the Applicant's testimony persuasive regarding the different points of ingress and egress to Parkside and finds that traffic can enter and exit the Parkside community with minimal impact on Eastland Gardens. (Exhibit 53.)
53. The Commission believes that the Applicant has addressed the concerns DDOT noted in its report regarding the necessity of a sufficient loading management plan, the need for additional bicycle parking, and the need for adequate changing and shower facilities for cyclists. The Commission notes that the Applicant provided a loading management plan that DDOT found sufficient, it agreed to provide additional bicycle parking spaces in the parking garage and along Kenilworth Terrace, and additional U-shaped bicycle racks on Kenilworth Terrace, and it is providing a shower and changing facilities for bicyclists and pedestrians. (Exhibits 36, 53, 66, 67, and 77.) As previously discussed in Finding of Fact No. 43, DDOT has not indicated whether the Applicant has resolved its concern regarding access to the parking garage from Kenilworth Avenue for passenger vehicles. But as also noted, the Applicant intends to continue to work with DDOT on this issue, and, in any event, DDOT has the authority to prohibit passenger vehicle access if in fact those concerns continue to exist and cannot be addressed to its satisfaction. The Commission therefore leaves the issue for DDOT to resolve pursuant to its existing authority.
54. 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 community colleges east of the Anacostia River. (Exhibit 4; Exhibit 20, pp. 22-25; Exhibit 35.)
55. The Parkside PUD also reflects the District's plan for concentrating a mix of uses at the Minnesota Avenue Metrorail Station. The addition of CCDC will truly make the Parkside development a mixed-use PUD. The height and density proposed for development are also appropriate for the PUD's proximity to public transit and its inclusion in the Central Employment Area. Finally, the building design reflects the dynamic sense of presence appropriate for the introduction of the first community college site east of the Anacostia River in Ward 7. (Exhibit 4; Exhibit 20, tab C.)

Agency and Government Reports

56. By report dated April 8, 2011, and by testimony at the public hearing, OP recommended approval of the second-stage PUD. It found that the establishment of a community college east of the Anacostia River is a significant amenity for Parkside and for all of Wards 7 and 8. The project will offer educational opportunities in a part of the District where such opportunities are not available. OP concluded that the second-stage PUD is not inconsistent with the elements of the Comprehensive Plan or the first-stage PUD. OP, however, conditioned its recommendation of support on approval of the modifications to the first-stage PUD that were heard by the Commission in Z.C. Case No. 05-28E. (Exhibit 35.)
57. By report dated April 8, 2011, and testimony at the public hearing, DDOT recommended approval of the second-stage application. It encouraged the Applicant to expand its transportation demand management measures ("TDM") and to propose a loading management plan. DDOT did not support the use of the Kenilworth Avenue curb cut for passengers accessing or exiting the site. The report also recommended inclusion of additional bicycle parking in the parking garage and on Kenilworth Terrace, the addition of six inverted U-shaped bicycle racks, and the inclusion of shower and changing facilities. At the hearing, DDOT voiced concern with using Kenilworth Avenue for loading for large delivery trucks. (Exhibit 36.)
58. In response to DDOT's concerns, the Applicant agreed to reserve spaces for Zipcar in the parking garage, offer preferred spaces in the garage for carpooling, coordinate an on-line ride-matching service, and increase bike parking to 40 spaces in the garage and six

inverted U-racks on Kenilworth Terrace, and to make shower facilities available. (Exhibit 53.)

59. The Applicant also proposed a loading management plan that includes designating a dock manager, restricting deliveries to off-peak times between the morning and evening rush hours or on weekends, prohibiting loading activity or queuing to the loading dock on Kenilworth Avenue or Kenilworth Terrace, with the exception of larger trucks as provided herein, and allowing large trucks that cannot be accommodated in the loading area on Kenilworth Avenue to be loaded from Kenilworth Terrace and to coordinate with DDOT as necessary in doing so. The Applicant also submitted a sight distance analysis suggesting that traffic approaching the driveway from Kenilworth Avenue or from the slip ramp off the freeway will have adequate distance to stop before the driveway to the CCDC site, in order to address DDOT's safety concerns. However, DDOT has not formally indicated whether its concerns have been addressed. Nevertheless, the Applicant agreed to continue to work with DDOT in resolving any remaining concerns DDOT has on this issue. (Exhibits 66, 67, and 77.)
60. By report dated July 11, 2011, DDOT indicated that it found the Applicant's loading management plan sufficient to alleviate community and transportation impacts. (Exhibit 77.)
61. By letter dated February 23, 2011, Councilmember Yvette Alexander expressed her support of the second-stage application. She believes the project will help address unemployment, lack of educational opportunities, lack of retail and an overall lack of investment in Ward 7. She further supports the project because it will offer more opportunities for employment. (Exhibit 28.)
62. On April 4, 2011, the District of Columbia Board of Education submitted a letter in support of the application. Specifically, it supports the provision of affordable educational opportunities for every resident of the Parkside-Kenilworth neighborhood, as well as all of D.C. (Exhibit 32.)

Advisory Neighborhood Commission 7D Report

63. Advisory Neighborhood Commission ("ANC") 7D submitted a letter, dated March 29, 2011, into the record. The ANC indicated that at its March 8, 2011 meeting, the Commissioners voted five in opposition, two in support, with a quorum present, in opposition of the application. 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 Blocks 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;
 - Concern about electric power reliability; and
 - Concern about the lack of disclosure of an environmental impact statement.
- (Exhibit 38.)

64. Chairperson Willette Seaward testified on behalf of the ANC at the hearings on May 5 and May 18, 2011. (Exhibits 49, 61.)
65. ANC/Single Member District ("SMD") Commissioner for the Property, Willie H. Woods. Jr., ANC 7D07 testified in support on behalf of his SMD07, and submitted a letter of support as well as a petition in support signed by residents living in his SMD. (Exhibits 34, 37.)
66. ANC Commissioner William Ross submitted a letter in support of the application. He stated that the community college will help educate area residents and better prepare them to compete in the job market. He also noted that the activity generated by the CCDC will help sustain the proposed retail, which is supported by the community. (Exhibit 48.)

Persons in Support

67. Several members of the community presented testimony in support of the application, including Geraldine Bell, President, Parkside Civic Association; Melvin Moore-Adams, President, Lotus Square Tenants Association; and ANC/SMD 7D07 Commissioner Willie H. Woods. Jr.; Carrie Thornhill, CCDC Advisory Committee; Rick Tingley-Clements, former ANC 7D Commissioner; Doris Sarumi, Marshall Heights Community Development Organization; and Cheryl Cort, Coalition for Smarter Growth. (Exhibits 23-25, 40, 55, 56, and 59.)
68. Numerous members of the community wrote letters in support of the application which were accepted into the record. (Exhibits 26, 33, 57, and 58.)

69. Parkside Civic Association ("Association") submitted several letters in support of the application. The Association noted that the area is currently underserved by educational opportunities and the project will increase quality of life and contribute greatly to the community. (Exhibits 23, 24, 33, and 35.)
70. The Executive Director of Groundwork Anacostia River DC submitted a letter in support of the application and noted that the proposed sustainable architecture that will serve both the environment and the resident, who will learn more about green practices because of the development. (Exhibit 26.)
71. Lotus Square -- Kenilworth Avenue Apartments submitted a letter, dated April 8, 2011, by its president, Elder Melvin A. Moore-Adams, emphasizing the need for educational opportunities. (Exhibit 40.)

Party in Opposition

72. EGCA, a party in opposition to the application, presented a written statement and testimony from a panel on behalf of EGCA headed by Greg Rhett, President. He stated concern over the reduction of residential units, increase in traffic and the nontransparent behavior of the applicant. (Exhibit 62.)

Persons in Opposition

73. Donna Burris, Yolanda Coleman, Dalton Howard, and E. Clay testified in opposition to the project. (May 5 Tr., p. 215-222.)
74. Several individuals submitted letters in opposition to the application, which were accepted into the record. (Exhibits 16, 18, 41, 42, 43, 46, and 47.)

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, urban planner, transportation consultant, 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 would provide. The Commission finds that the educational opportunities and job training skills that the CCDC will provide is a valuable asset for the Ward 7 community. The Commission further finds that occupation of the building with a “daytime” user such as the CCDC will help make the retail uses successful. The Commission believes that the design, including sustainable elements of design, bicycle parking, and site planning of the project promotes smart growth and encourages use of public transportation.
6. The Commission finds that the density and height of the project is appropriate. The 110-foot building height will not have an adverse effect, particularly with respect to light and air, on existing residential uses and will largely be imperceptible to adjacent properties. The shadow studies submitted by the Applicant in Exhibits 53 and 65 support this conclusion. The studies confirm that the shadows do not extend beyond the buildings lining Kenilworth Terrace.
7. The Commission concludes the public benefits are a reasonable tradeoff for the zoning relief requested and the potential adverse effects of the project.
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 and in conformity with the first-stage PUD.
9. Approval of the application and the 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, educational facilities, community services and facilities, and the area element.

10. The Commission believes that the proposed PUD-related rezoning of the Property to the CR Zone District 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 Commission agrees with the conclusions of the Applicant's traffic and parking expert, as well as the conclusions of DDOT, that the application is appropriate given its proximity to the Metrorail Station and that its effects on the community can be mitigated through the approved TDM and loading management plans.
12. 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 modification application but is not persuaded by their position. The issues and concerns listed in the ANC's 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.

The comments regarding the building heights pertain only to 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. 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 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.

Issue 8: Concern about power grid reliability.

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 9: 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, 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).

13. 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), to give great weight to OP recommendations. The Commission concurs with OP's view that the application should be granted and that it is not inconsistent with the Comprehensive Plan.
14. Notice of the public hearing was provided in accordance with the Zoning Regulations.
15. 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 **ORDERS APPROVAL** of the application for a map amendment from the C-2-B to the CR Zone District in conjunction with second-stage PUD approval for property consisting of Square 5055, Lots 21-24, and 802-805 ("Subject Property"). This approval 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. This project shall be developed in accordance with the plans marked as Exhibits 4, 20, 53, 64, and 65 of the record, as modified by guidelines, conditions, and standards herein.
2. The project shall provide a community college that will provide educational opportunities for its students. Ground floor retail shall be permitted as shown in the plans submitted into the Record as Exhibits 4, 20, 53, 64, and 65.

3. The Applicant shall implement a transportation demand management plan consistent with that submitted as Exhibit 53 of the record. It shall include the following provisions:
 - The Applicant shall designate a Transportation Demand Management Coordinator to serve as a point of contact for any transportation demand management issues;
 - The Applicant shall provide a minimum of 40 bicycle parking spaces in the garage and a minimum of six inverted U-racks on Kenilworth Terrace;
 - The Applicant shall limit use of the parking spaces to faculty, staff, students or visitors of the building's users;
 - The Applicant shall charge market-rate prices for use of vehicular parking spaces;
 - The Applicant shall provide an information kiosk with bus schedules and bike routes on the Property;
 - The Applicant shall reserve spaces in the garage for use by an automobile sharing service provided such a service agrees to locate in the garage; and
 - The Applicant shall promote a carpooling program that will provide preferred parking in the garage. The program will also include an on-line ride-matching service.
4. The Applicant shall implement a loading management plan consistent with that submitted as Exhibit 66 and Exhibit 75 in the record. It shall include the following provisions:
 - A Dock Manager shall be appointed by the building management to oversee the loading. The CCDC shall be required to schedule all deliveries through the Dock Manager;
 - The Dock Manager shall review the size of truck and time for each scheduled delivery;
 - The Dock Manager shall ensure that deliveries will be made via single unit trucks instead of tractor-trailers as is practicable;
 - Deliveries shall be restricted to off-peak times between the morning and evening rush hours or on weekends to limit loading activities impact on Kenilworth Avenue;
 - No loading activity or queuing to the loading dock shall take place on Kenilworth Avenue;
 - Large vehicles (tractor-trailers) that cannot be accommodated within the loading dock area shall be loaded from Kenilworth Terrace; and
 - The Dock Manager shall coordinate the timing of these deliveries to not impact CCDC or local business/residential activity and such deliveries shall require a permit from DDOT for temporary restrictions of on-street parking. The ANC shall be notified in advance of these deliveries.
5. The Applicant shall enter into a First Source Agreement with the Department of Employment Services prior to the issuance of a building permit for the project.

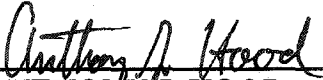
6. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction;
 - To make minor refinements to exterior details and dimensions, including balcony enclosures, belts, courses, sills, bases, cornices, railings, and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - To vary the size, location and design features of retail entrances, including the size, location, and design of windows, doors, awnings, canopies, and similar features, to accommodate the needs of specific retail tenants and storefront design; and
 - To vary the size, location, and other features of proposed building signage related to the community college use or the retail use, provided that such signage is consistent with the locations and dimensions illustrated in the approved plans or is otherwise permitted under the applicable provisions of the Building Code.
7. The Applicant shall work with the District Department of Transportation (“DDOT”) to resolve DDOT’s concerns over garage access from Kenilworth Avenue for passenger vehicles.
8. No building permit shall be issued for this project until the Applicant has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.
9. The change in zoning from the C-2-B Zone District to the CR Zone District shall be effective upon the recordation of the covenant referenced in paragraph 8, pursuant to 11 DCMR § 2408.15.
10. The application approved by this 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 the building permit as specified in 11 DCMR § 2409.1. Construction of the project shall start within three years from the effective date of this Order.

11. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, *et seq.* ("Act") and this Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, 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 also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

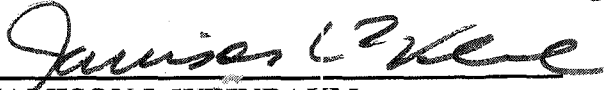
On June 13, 2011, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission **APPROVED** this application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to approve; Konrad W. Schlater, not having participated, not voting).

On July 25, 2011, upon the motion of Chairman Hood as seconded by Commissioner May, 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 having participated, 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.: 05-28C

As Secretary to the Commission, I hereby certify that on **AUG 29 2011** copies of this Z.C. Order No. 05-28C 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