

April 25, 2011

VIA HAND DELIVERY

Mr. Anthony J. Hood
Chairperson
District of Columbia Zoning Commission
441 4th Street, NW
Suite 210-S
Washington, DC 20001

2011 APR 25 PM 2:22
DISTRICT OF COLUMBIA
ZONING COMMISSION

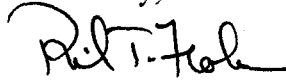
Re: Zoning Commission Case No. 5-28E: Proposed Findings of Fact and Conclusions of Law

Dear Chairperson Hood and Members of the Commission:

Enclosed please find an original and twenty copies of the Applicant's Proposed Findings of Fact and Conclusions of Law in the above-referenced case.

We believe the record is otherwise complete and ask the Commission to place this case on its next public meeting agenda for proposed action to approve the application.

Sincerely,



Phil T. Feola



J. Patrick Brown

cc: Chris LoPiano, City Interests

ZONING COMMISSION
District of Columbia
CASE NO. 05-28E
EXHIBIT NO. 56

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was sent to the following by first class mail or by hand delivery on April 25, 2011:

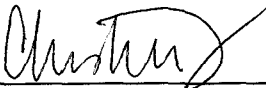
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ANC 7D
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Willie Woods, SMD 7D07
3725 Cassell Place NE
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Christine Roddy

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

Z.C. Case No. 05-28E

**(Modification of First-Stage Planned Unit Development (“PUD”)
and Related Map Amendments)**

**Lano Parcel 12 LLC and District of Columbia Primary Care Association – Square 5055,
Lots 14-25 and 801-813)**

[Date of Final Action]

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on April 4, 2011, to consider an application of Lano Parcel 12 LLC (“Lano”) and the District of Columbia Primary Care Association (“DCPCA”) (collectively, the “Applicant”) for the review and approval of the modification of an approved First-Stage Planned Unit Development and Related Map Amendments. 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 hearing was 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 Hearing

1. The property that is the subject of the application is located in Square 5055, Lots 14-25 and 801-813 (the “Property”). (Exhibit 3, p.1)
2. Lano owns the entirety of the Property while DCPCA is the contract purchaser for a portion of the Property (Square 5055, Lots 25, 801, and portions of lots 24 and 802) (“DCPCA Property”). (Exhibit 3, p.1)
3. The Parkside First Stage PUD approved ten “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. (Exhibit 3, pp.1, 6, and tab C)
4. In that case, the Zoning Commission approved a PUD-related Map Amendment for the Property from the C-2-B Zone District to the C-3-A and CR Zone Districts. (Exhibit 3, p.8, tab C)

5. In 2008, the Zoning Commission approved a Second Stage application for three of the ten building blocks in the Parkside PUD – Blocks A, B, and C (Zoning Commission 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 3, p. 1, tab C)
6. In Case No. 05-28, the Property 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. A range of 785-875 residential units and 1,400 parking spaces were approved for the Property. 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. (Order No. 05-28; Exhibit 3, tab C)
7. On May 10, 2010, the DCPCA submitted an application to modify the First-Stage approval and a Second-Stage application for a 20,029 square foot portion of Block I (Square 5055, Lots 25, 801 and portions of Lots 24 and 802) to accommodate a health center (“Parkside Health Center” or “Health Center”) (Zoning Commission Case No. 05-28B). (Exhibit 3, p. 2)
8. Lano, the owner of the Property, filed an application 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. It also sought a PUD-related Map Amendment for the Lano Property to the CR and C-3-C Zone Districts. (Exhibit 3, pp. 2-3)
9. The DCPCA application, Case No. 05-28B, sought to reduce the height and density and change the use originally approved for a portion of Block I. The Lano application, Case No. 05-28C, sought to modify the approved uses for a portion of Blocks G, H and I, to increase the approved heights for the Lano Property and to modify the approved zoning designations for the Lano Property. (Exhibit 3, pp. 2-3)
10. In combination, the DCPCA and Lano applications modify the First-Stage approval as it relates to Blocks G, H, and I (Square 5055, Lots 14-25 and 801-813) of the original First-Stage PUD approval in three respects: (1) changing the approved uses for a portion of the Property; (2) changing the height of the buildings approved for portions of the Property; and (3) requesting a PUD-related map amendment for portions of the Property (collectively, “Project”). (Exhibit 3, p. 3)
11. Both applications were set down for a public hearing at the Zoning Commission’s public meeting on July 26, 2010. (July 26 Transcript, pp. 133,150)

12. DCPCA and Lano filed pre-hearing statements for their respective applications on December 27, 2010. They simultaneously submitted a motion to consolidate their applications solely as they relate to the modification of the First-Stage PUD. (Exhibit 1)
13. The Zoning Commission granted this motion at its public meeting on January 10, 2011, and consolidated the First-Stage modification applications into Case No. 05-28E. It set the application down for a public hearing. (January 10 Transcript, p. 11)
14. Notice of the public hearing was published in the D.C. Register on _____ (_____) and was mailed to Advisory Neighborhood Commission (“ANC”) 7D and to owners of property within 200 feet of the second stage PUD site. (Exhibit 5)
15. A public hearing was conducted on April 4, 2011. The Commission accepted Beth Buffington and Rugel Chiriboga as experts in architecture, Otto Condon as an expert in urban design and planning, and Erwin Andres and Rob Schiesel as experts in traffic engineering. The Applicant provided testimony from these witnesses in addition to testimony from Christopher LoPiano and Sharon Baskerville. (April 4 Transcript, pp. 22-23)
16. 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 a request for party status after the close of the public hearing; accordingly, the Commission did not evaluate the request for party status. (Id. at 19; Exhibit 32)
17. 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. (April 4 Transcript, pp. 209-19, 253-264, 293-307)
18. 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 4 Transcript, pp. 265-293; 307-319)
19. At the close of the hearing, the Commission asked the Applicant for shadow studies for Blocks G, H, and I, a transportation analysis with updated level of service counts accounting for the construction on Nannie Helen Burroughs, a response to the District Department of Transportation report, a response to the Office of Planning’s request to step the residential building on Block G down to reduced height, and a letter from the current Director of the Department of Health in support of the application. The Commission otherwise left the record open for additional letters in support or opposition from the community and for party responses to the Applicant’s post-hearing submission. (April 4 Transcript, pp. 333-344)

20. The Applicant filed its post-hearing submission addressing the Commission's comments on April 18, 2011. (Exhibit 51.)
21. At its public meeting on _____, 2011, the Commission took proposed action by a vote of _____ to approve the application and plans that were submitted into the record.
22. 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 _____, 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.
23. The Commission took final action to approve the application on _____ by a vote of ____.

Overview of the Property and Location

24. 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 3, p. 10)
25. The Property is bounded by Kenilworth Avenue, N.E. on the south, Kenilworth Terrace, NE on the north, Foote Street, NE on the west and Hayes Street, NE on the east. (Exhibit 3, pp. 10-11)
26. The Property is composed of approximately 242,416 square feet of land. (Exhibit 3, p. 11)
27. 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 3, p. 11)
28. Land uses in the vicinity of the PUD Site 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 3, p. 11)
29. Two blocks north of the PUD Site is the Mayfair/Paradise and Lotus Square multifamily rental communities. The Parkside townhomes referenced in Paragraph 26 are one block from the Property. (Exhibit 3, p. 11)
30. Eastland Gardens is located approximately one half mile to the north of the PUD Site. (Exhibit 3, p. 11)

31. To the west of the PUD Site are Kenilworth Aquatic Gardens, Anacostia Park, the Anacostia River and the National Arboretum, forming a large green space and recreational complex. (Exhibit 3, p. 11)
32. Several other developments are planned for or have already been constructed in the Parkside neighborhood. These include the construction of the first phase of the Government Center, which consists of 230,000 square feet of office space and first floor retail; the newly constructed, 700 student Cesar Chavez Public Charter High School; 172 rental units known as Lotus Square; redevelopment of the Mayfair Mansion condominiums; 125 units of work force housing units proposed within the Pollin Memorial PUD recently approved by the Zoning Commission; the Board of Zoning Adjustment approved the Educare child development center on the grounds of the Neval Thomas Elementary School; and the planned second phase of the Government Center that is being developed as more than 300 units of housing with first floor retail along Minnesota Avenue. (Exhibit 3, p. 12)
33. 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's Children Zone model. The Parkside community recently was accepted into the federal Promise Neighborhood Program, which is the centerpiece of President Barack Obama's urban initiatives. (Exhibit 3, p. 13)
34. 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 3, p. 13)
35. The District government endorsed the Parkside-Kenilworth application for the federal Promise Neighborhood Program. (Exhibit 3, p. 13)
36. The Property is also 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. (Exhibit 51)

First Stage PUD Approval

37. The First Stage PUD for Parkside was approved in September 2006 pursuant to 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. (Order No. 05-28; Exhibit 3, Tab C)

38. 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 floor area ratio ("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 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. (Id.)
39. 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.)
40. In September 2006, the Zoning Commission granted Second Stage approval for 112 townhomes and 98 senior affordable housing units. This approval is set forth Zoning Commission Order No. 05-28A. (Order No. 05-28A; Exhibit 3, Tab C)
41. For the Property, the First-Stage approval allowed for a maximum height of 110 feet for the office towers at the center of the Property and a maximum height of 90 for the remaining buildings. The Property was approved for office use in the center towers and residential in the remaining buildings. Ground floor retail was approved throughout the Property. (Id.)

Modification of the First-Stage PUD

42. The Property was initially approved for over 1,009,000 square feet of residential use and over 700,000 square feet of office use with ground floor retail. (Exhibit 3, tab C; Exhibit 28)
43. The Applicant is modifying the residential uses previously approved for the southeast corner of the Property to nonresidential uses in the form of a community college use for the Community College of the District of Columbia ("CCDC") and a health center for DCPCA. (Exhibit 3, pp. 3, 6-7)
44. The CCDC will be located on a portion of Blocks H and I, as those Blocks were defined in Order No. 05-28 and in Exhibit 3, p. 7, tab B. The Health Center will be located on the remaining portion of Block I. (Order No. 05-28; Exhibit 3, p. 7, tab B)
45. The approved First-Stage PUD allocated a total of 785 – 875 residential units for the entirety of Parcel 12, including approximately 390-440 units that the First-Stage PUD anticipated on the CCDC and DCPCA properties. (Order No. 05-28; Exhibit 3, p. 14)
46. A portion of Block G will be converted from residential to commercial use. Blocks G and H of the Parkside PUD are the logical locations for a large, government agency. Block H was approved for 500,000 to 750,000 gross square feet of office use in the First Stage Approval, which remains unchanged. (Order No. 05-28, Exhibit 3, pp. 7-8, 12)

47. Block G was approved for approximately 390-440 residential units in the First Stage PUD, with a gross floor area of approximately 505,000 square feet. In place of the single building, the Applicant is providing two buildings: one building of residential units with ground floor retail and another building of office use. The residential building will be approximately 300,000 square feet in size and the office building will be approximately 415,000 square feet in size. Approximately 325-375 residential units will remain on Block G. (Exhibit 3, tab B; Exhibit 28)
48. The modification of the First Stage approval expands office, educational and health care uses to approximately 1,400,000 gross square feet on Blocks G,H and I and reduces the amount of residential development by approximately 450,000 square feet; however, the gross floor area of the development on the Property will remain unchanged from what was approved in the First Stage PUD. (Exhibit 3, tab B; Exhibit 28; April 4 Transcript, p. 50)
49. The change in uses will diversify the Parkside community and make it a more attractive, self-sustaining development. (Exhibit 3, p. 15)
50. Although the modifications will reduce the amount of residential uses, there will still be more than one million gross square feet of residential development (1,250-1,500 units) on the balance of the Parkside PUD. (Exhibit 3, p. 14)
51. Additional residential uses have also been approved for the greater Parkside neighborhood. Since the original Parkside First Stage PUD approval, the following residential projects have been approved: (1) the Pollin PUD, immediately adjacent to Parkside, which was approved for 125 residential units; (2) Donatelli Development will be developing 300 units at the intersection of Minnesota Avenue and Benning Road (second phase of Government Center); and (3) Lotus Square which has been completed with 172 multifamily units immediately adjacent to Parkside. (Exhibit 3, p. 14)
52. These projects represent a tremendous increase in the amount of housing in this subsection of the District. This will reduce and slow down the market's absorption rate for housing in Parkside. (Exhibit 3, p. 14; April 4 Transcript, p. 43)
53. The increase in office use will also make the proposed retail space more viable. The retail requires "day-time" users in order to be successful. The retailers cannot rely solely on the residents for business, who will patronize the stores primarily during the evening and on weekends. The office use will be essential to sustaining the retail use. (Exhibit 3, p. 15; April 4 Transcript, p. 51)
54. The First Stage PUD approved a maximum height of 110 feet for the office buildings on Block H and 90 feet for the residential buildings along Kenilworth Avenue, with the residential buildings scaling down to as low as 44 feet in height toward Kenilworth Terrace. The modification will increase the height of the central office buildings to 130 feet and the heights of the remaining buildings on the Lano Property to 110 feet, with a similar scaling down as they extend toward residential areas to the north and the east, as

depicted in the approved plans. The height of the DCPCA Property will be reduced from 90 feet and nine stories to 42 feet and three stories. (Exhibit 3, pp. 8, 15-16, tab B; Exhibit 28)

55. The extra height is needed to accommodate the minimum gross floor area required for many of the federal government and General Services Administration (“GSA”) solicitations. There are no federal office installations currently in Ward 7. (Exhibit 3, pp. 15-16)
56. The increased building height along Kenilworth Avenue is appropriate because it is located immediately adjacent to Interstate 295, a multi-lane freeway (also known as the Anacostia Freeway), and the CSX railroad tracks. The buildings will shield the remainder of the Parkside development from the Freeway aesthetics and noise and will act as a buffer between the Freeway and a predominantly residential development. (Exhibit 3, p. 16)
57. The heights proposed for the Property will step down to lesser heights along Kenilworth Terrace so as to be compatible with the heights of the other Parkside buildings as the development steps west. (Exhibit 3, p. 16)
58. 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 Community College to the west. (Exhibit 3, p. 16)
59. The First Stage PUD approved a PUD-related map amendment for the Property from the C-2-B Zone District to the CR and C-3-A Zone Districts. In order to accommodate the newly proposed heights for the Property, the central office towers will be rezoned to the C-3-C Zone District and the remainder of the Lano Property to the CR Zone District. The DCPCA Property will remain in the C-3-A Zone District. (Exhibit 3, pp. 8-9)
60. 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 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 Sections 600.1, 600.4)
61. The C-3-C Zone District provides substantial amounts of employment, housing and mixed uses. It permits medium-high density development, including office, retail, housing and mixed-use development. (11 DCMR Sections 740.2, 740.8)

Project Amenities and Public Benefits

62. Special Value for Neighborhood: The modifications to the approved development will allow for a community college to provide educational opportunities and job training for

residents throughout the city, particularly in Ward 7. The CCDC will offer classes in a variety of technical fields, many being in the health care industry. The development will also provide a health center to provide health care for District residents, namely those east of the Anacostia River in Wards 7 and 8. (Exhibit 3, pp. 20-21)

63. 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 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 Area Median Income. In all, the PUD will provide a true mix of incomes in the Parkside community. (Order No. 05-28; Order No. 05-28A; Exhibit 3, p. 21, tab C)
64. First Source Employment Program: According to Section 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. (Order No. 05-28; Order No. 05-28A; Exhibit 3, p. 21, tab C)
65. 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 \$3 million to ensure that this bridge be constructed to improve access to this site. (Order No. 05-28; Order No. 05-28A; Exhibit 3, p. 21, tab C)
66. 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 health care and educational facilities as well as an overall mix of uses. (Order No. 05-28; Order No. 05-28A; Exhibit 3, p. 21, tab C)

Compliance with PUD Standards

67. 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 Case No. 05-28, the Commission determined that the development incentives and related rezoning for the entire 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 PUD modification. The proposed modifications are 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 modifications will allow for the construction of two buildings that will serve an

underserved part of the District, which in and of itself and is a public benefit. (Exhibit 3, pp. 18-21; Exhibit 28)

68. 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. (Exhibit 3, tab B; Exhibit 28; April 4 Transcript, pp. 66-81, 86-88)
69. The Commission finds that the character, scale, and mix of uses of the Project are appropriate, and the proposed uses 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 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, including the provision of education and health care uses are benefits for the community and consistent with the intent of the original approval of the First Stage PUD. (Exhibit 3, tab B; Exhibit 28; April 4 Transcript, pp. 66-81, 86-88)
70. 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 a Transportation Demand Management Plan will be provided with the processing of all future Second-Stage applications. (April 4 Transcript, p. 81-86; Exhibit 15, tab C; Exhibit 28)
71. 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)
72. 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;
 - 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 3, pp. 23-25; Exhibit 16)
73. 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 and the CCDC will truly make the Parkside development a mixed-use PUD. The heights and densities 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 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. (Exhibit 3, p. 26)

Agency and Government Reports

74. By report dated March 25, 2011 and by testimony at the public hearing, the Office of Planning ("OP") recommended approval of the modifications to the First-Stage PUD. It found that the proposal was not inconsistent with the Comprehensive Plan and it supported the addition of a health center and community college. They viewed the new uses as improving the mix of uses in the development but also that they expanded the services and opportunities available to Ward 7. (Exhibit 16)
75. OP found that the additional office use would make the site competitive for federal government uses. The additional office space and height was appropriate for the Property given its proximity to the Metrorail Station, the additional residential projects being constructed in the area, the addition of the Property to the Central Employment Area, and the Property's Comprehensive Plan future land use designation. (Exhibit 16)
76. OP conditioned its recommendation on the reduction in height of the building on Block G1 along its Foote Street frontage. (Exhibit 16). The Applicant submitted a revised massing of Block G1 on April 18, 2011, which responds to the Office of Planning's comments. (Exhibit 52).
77. By report dated March 31, 2011, and testimony at the public hearing, DDOT recommended approval of the modifications to the First Stage PUD. It expressed concern that more rigorous transportation impact mitigation strategies and aggressive transportation demand management plans would have to be provided in future Second Stage applications to reduce the trip impacts of the change in uses. (Exhibit 20).
78. DDOT submitted a supplemental report dated April 18, 2011, indicating that it has begun a new traffic signal timing plan for overall better operation of the Nannie Helen Burroughs/Kenilworth Terrace intersection. It reiterated that it was "very supportive" of the proposed uses for the Property and it would evaluate its ongoing work associated with

the signal timing changes, new signs and new intersection pavement markings. (Exhibit 54).

79. By letter dated February 23, 2011, Councilmember Yvette Alexander expressed her support of the modifications to the First Stage PUD. She believes the change in uses will help address unemployment, lack of educational opportunities, lack of retail and health care options and an overall lack of investment in Ward 7. She supports the increase in height because of the prospect that it will bring a major tenant to the community, offering more opportunities for employment. (Exhibit 14).
80. On April 4, 2011, the District of Columbia Board of Education submitted a letter in support of the application to modify the First-Stage PUD approval. Specifically, it supports the provision of affordable educational opportunities for every resident of the Parkside-Kenilworth neighborhood, as well as all of DC. (Exhibit 32).
81. By letter dated April 14, 2011, Dr. Mohammad N. Akhter, Director of the Department of Health stated his support of Case No. 05-28E, stating that there is a critical need for quality primary care services in the Parkside community. (Exhibit 51).
82. By letter dated April 14, 2011, Beatriz "BB" Otero, the Deputy Mayor for Health and Human Services stated her support for the modification application 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 51).

ADVISORY NEIGHBORHOOD COMMISSION 7D REPORT

83. 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 (5) in opposition, one (1) in support and one (1) abstention, with a quorum present, in opposition of the application. The ANC indicated concern over the height of the buildings, lack of community engagement and stormwater concerns. (Exhibit 18)
84. Chairperson Willette Seaward testified on behalf of the ANC at the hearing on April 4, 2011.
85. Previously, ANC 7D by letter dated October 13, 2010, advised that on September 14, 2010, the Commission voted 3 to 1 to support DCPCA's application. (Exhibits 37, 51).
86. Single Member District Commissioner for the Property, Willie H. Woods, Jr., ANC 7D07 testified in support on behalf of his SMD07, and submitted letters of support as well as a petition in support signed by residents living in SMD07. (Exhibits 31, 33, 43, 45 and 51)
87. Single Member District 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 will bring conveniently located health care to residents of the neighborhood. (Exhibits 50 and 51)

PERSONS IN SUPPORT

88. Several members of the community presented testimony in support of the application, including Geraldine Bell, President, Parkside Civic Association (Exhibits 7-9 and 35); Charles Eaves, Community Activist for Ward 7; and Single Member District Commissioner Willie H. Woods. Jr., ANC 7D07 (Exhibits 33 and 45).
89. 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)
90. Councilmember Yvette M. Alexander submitted a letter, dated February 23, 2011, stating support for the application. The letter noted that the project aligns with the Promise Neighborhood Principles, will bring affordable post-secondary educational opportunities, create more jobs, bring much-needed health care and will contribute to the safety and vitality of the community. (Exhibits 14 and 51)
91. DC Department of Health 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 refer to the \$15 million grant given by DOH to fund the Health Center. (Exhibits 27 and 51)
92. Dorothy M. Douglas, Ward 7 Member of the DC State Board of Education and former chairperson of ANC 7D submitted letters dated April 4, 2011 and April 13, 2011 expressing support for the application (Exhibits 26, 38 and 51)
93. Parkside Civic Association submitted two letters in support of the application. The first, dated February 10, 2011, referred to the vote to support the project and the second letter dated, February 16, 2011, noted that the area is currently underserved by both health care facilities and educational opportunities and the project will increase quality of life and contribute greatly to the community. (Exhibits 7, 8 and 51)
94. Executive Director of Groundwork Anacostia River DC submitted letters dated February 24, 2011, April 3, 2011 and April 12, 2011, all supporting the application and noting the proposed sustainable architecture that will serve both the environment and the resident, who will learn more about green practices because of the development. (Exhibits 11, 34, 46 and 51)
95. Lotus Square – Kenilworth Ave Apartments submitted a letter, dated April 8, 2011, by its president, Elder Melvin A. Moore-Adams, emphasizing the need for educational opportunities and higher quality and accessible health care. (Exhibit 47)

PARTY IN OPPOSITION

96. Eastland Gardens Civic Association, a party in opposition to the application, presented a written statement and testimony from a panel on behalf of the Association consisting of Greg Rhett, President, Erman Clay, Dalton Howard and Fred Wilson. The panel stated concern over the reduction of residential units, increase in traffic and the nontransparent behavior of the applicant. (Exhibits 17 and 36)

PERSONS IN OPPOSITION

97. Michelle Walls, 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 4 Transcript, pp. 310-314)
98. Thelma Jackson, resident of Eastland Gardens, testified in opposition due to concerns regarding increased traffic. (April 4 Transcript, pp. 314-316)
99. Several members of the community wrote letters in opposition of the application which were accepted into the record. (Exhibits 23, 30, 40, 41, 48, 49 and 53)
100. Mayfair Mansion 2005 Tenants Association Inc., submitted a letter of opposition, dated March 30, 2011, noting concerns about parking, traffic, and proposed uses. (Exhibit 32)
101. Commissioner, Lisa White, ANC 7D01, submitted a letter, dated April 14, 2011, in opposition to the application due to concerns regarding environmental impact. (Exhibit 53)

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 Zoning 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, or the implementation of the initial First Stage PUD, would provide. The Commission finds that the large amount of affordable and workforce housing provided in the overall PUD is a significant amenity that will be available to District residents, including police officers and school teachers. The Commission believes that despite the modifications to the PUD to convert residential use to non-residential use, that 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 the modification of uses approved for the Property will benefit the Parkside community, Ward 7 and the District. The modifications will enable the construction of educational and health care facilities in an underserved community. It will also enable the PUD to attract office tenants that in turn will spur much needed retail uses along Kenilworth Terrace.

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 approval of greater heights in the PUD 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 Exhibit 52 support this conclusion. The studies confirm that the shadows do not extend beyond the buildings lining Kenilworth Terrace. The studies further confirm that there is very little distinction between a shadow cast by a 110 foot tall building and a 130 foot tall building; the twenty foot difference results in a deminimis extension of the shadow that is evident only during certain times of the year. The scaling down of the height at both edges of the Property is appropriate given its relationship to adjacent buildings and uses.

8. Approval of the modification 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 the First-Stage PUD modifications and the PUD-related Zoning Map Amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of the Office of Planning 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, parks, recreation and open space, urban design, educational facilities, community services and facilities, and the area element.

10. The Commission believes that the proposed PUD-related rezoning of the Lano Property to the CR and C-3-C 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 Commission agrees with the conclusions of the Applicant's traffic and parking expert, as well as the conclusions of DDOT, that the modifications will not create adverse traffic or parking impacts on the surrounding community. The Commission will expect each Second Stage application to provide a detailed Transportation Demand Management Plan.

12. In accordance with D.C. Official Code § 1-309.10(d)(2001), 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. In fact, the Commission believes that the Applicant addressed the ANC's concerns. Specifically, the Commission finds that the increased height will not have a detrimental effect on neighboring communities. The shadow studies prepared by the Applicant confirm that the shadows from the buildings will extend beyond the boundaries of the PUD to a minimal degree and only during limited times of the year. The Commission also finds that DCPCA and Lano met with the community at total of 19 times since October 2009, indicating that there was a significant amount of community engagement. The Commission also acknowledges that the any concerns with stormwater management will be reviewed by the District Department of the Environment and the Department of Consumer and Regulatory Affairs during the building permit process. Finally, the Commission credits the testimony of the Single Member District representative, Willie Woods, and officers of the Parkside Civic Association, stating that the Applicant had engaged the community and been forthright in their communication with the community. The Commission found the testimony of the Single Member District representative, the officers of the Parkside Civic Association and letter from Lotus-Square persuasive in that these individuals are located in the immediate vicinity of the Property and are the most immediately affected by the proposal, yet, were very supportive of the proposal.

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 (2001)), to give great weight to OP recommendations. The Commission concurs with OP's view that the modifications to the first-stage approval should be granted, conditioned upon the stepping back of the residential building on the Property to respond to the residential building across Kenilworth Terrace.

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 to modify the First-Stage approval of a Planned Unit Development and related Zoning Map

Amendment for a portion of the Property to the CR and C-3-C Zone Districts, as shall be stated with greater specificity in any order granting final PUD approval. This approval is subject to the following guidelines, conditions, and standards:

1. The Applicant shall submit, with the application for second-stage approval of the PUD, an application for rezoning the Property from C-2-B to CR, C-3-A, and C-3-C that specifies the proposed rezoning by square and lot.

2. The modifications to the First-Stage PUD are approved in accordance with the plans and materials submitted by the Applicant marked as Exhibits 3, 15, 28, and 52 of the record, as modified by the guidelines, conditions, and standards of this Order.

3. The Second-Stage design of the PUD shall be based on further development and refinement of the plans marked as Exhibits 3, 28, and 52 of the record, as modified by the guidelines, conditions, and standards of this Order and shall include all public benefits and amenities described in Findings of Fact 61-66.

4. In accordance with the plans and materials noted above, the approved modifications to the PUD shall consist of approximately 1,709,800 square feet of gross floor area. Of the gross floor area, approximately 43,000 square feet will be dedicated to health care uses, 260,000 square feet will be dedicated to the CCDC, 1,118,200 will be dedicated to commercial use and 306,000 will be dedicated to residential use. The maximum height approved for the Property will be 130 feet, which will be reserved solely for the two office buildings located in the center of the Property as shown on Exhibits 3, 28, and 52. The health care center shall be approximately 42 feet tall and the remaining buildings on the Property shall be no taller than 110 feet. The buildings must set back and scale down as depicted in the approved plans.

5. If the Applicant cannot secure a lead tenant for the office use, it may use that portion of the development envelope for up to an additional 1,118,200 square feet of residential use.

6. The Applicant shall submit, as part of the Second-Stage application, landscape plans, detailed architectural plans, and elevations indicating the design treatment of each building.

7. The Applicant shall submit, as part of a Second-Stage application for the Property, a transportation impact mitigation strategy and a transportation demand management plan to reduce trip impacts. It shall also address the adequacy of pedestrian and vehicular access to the PUD Site, including an analysis of the DDOT recommendation with respect to pedestrian access and analyze the traffic impacts of the PUD in light of other new developments and uses in the vicinity.

8. The First-Stage approval for the modification is valid for a period of one year, within which time a Second-Stage application for the Property, or a portion of the Property, shall be filed. The time limits on the processing of the Second-Stage applications shall be as otherwise approved in Order No. 05-28.

9. Second-Stage applications for the development of the Property may be filed in phases for one or more of the buildings.

10. All other conditions of approval stated in Order No. 05-28 shall remain in effect unless modified by this Order.

11. 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.

For the reasons stated above, the Commission concludes that the Applicant has met the burden, it is hereby ORDERED that the application be GRANTED.

The Zoning Commission at its public meeting held on _____, APPROVED the application by a vote of _____ ().

The Order was ADOPTED by the Zoning Commission at its public meeting on _____ by a vote of _____ ().

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

Anthony Hood
Chairman
Zoning Commission

Jamison Weinbaum
Director
Office of Zoning