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ZONING COMMISSION
District of Columbia

CASE NO. 05-28E

EXHIBIT NO. 62

ZONING COMMISSION
District of Columbia
CASE NO.05-28E
EXHIBIT NO.62

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

Z.C. Case No. 05-28E

**Lano Parcel 12, LLC and District of Columbia Primary Care Association
(Modification of First-Stage Planned Unit Development and Related Map Amendments @
Square 5055, Lots 14-25 and 801-813)**

June 27, 2011

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 ("PUD") 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 request in part, and denies the request in part, 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, Z.C. Case No. 05-28 ("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. (Exhibit 3, pp. 1, 6, and tab C.)
4. In that case, the Commission approved a PUD-related map amendment for the Property from the C-2-B Zone District to the C-3-A and CR Zone Districts. (Exhibit 3, p. 8, tab C.)
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 3, p. 1, tab C.)

6. In Z.C. 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. (Z.C. Order No. 05-28; Exhibit 3, tab C.)
7. On May 10, 2010, the DCPCA submitted an application to modify the portion of the approved First-Stage PUD, and for second-stage approval with a PUD-related Zoning Map amendment 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") (Z.C. Case No. 05-28B). (Exhibit 3, p. 2.)
8. On June 3, 2010, Lano, the owner of the Property, filed an application to modify the portion of the First-Stage PUD 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 ("CCDC") 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 (Z.C. Case No. 05-28C). (Exhibit 3, pp. 2-3.)
9. The DCPCA application, Z.C. 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, Z.C. 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 proposed to 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 by changing the approved uses for a portion of the Property; changing the height of the buildings approved for portions of the Property; and requesting a PUD-related map amendment for portions of the Property. More specifically, the Applicant requests the following modifications to the original First-Stage PUD:

Subdividing Block I into Block I1 and Block I2:

For Block I 2:

- Changing the approved use from residential to medical office to permit a health clinic;
- Decreasing the building height along Kenilworth Avenue from 90 feet to 53 feet and along Kenilworth Terrace from 54 feet to 23.83 feet; and
- Confirming the previously approved PUD-related map amendment to the C-3-A Zone District.

For Block I1:

- Changing the use from residential to educational to permit a community college;
- Adding ground floor retail along Kenilworth Avenue;
- Modifying the building height to increase the height along Kenilworth Avenue from 90 feet to 110 feet and decrease the height along Kenilworth Terrace from 54 feet to 21 feet; and
- Changing the PUD-related map amendment to the CR Zone District.

For Block H:

- Increasing the building height along Kenilworth Avenue from 110 feet to 130 feet and along Kenilworth Terrace from 44 feet to 90 feet; and
- Changing the PUD-related map amendment to the C-3-C Zone District.

Subdividing Block G into Block G1 and G2:

For Block G2:

- Changing use from residential to office;
- Adding ground floor retail along Kenilworth Terrace;
- Increasing the building along Kenilworth Avenue from 90 feet to 110 feet, and along Kenilworth Terrace from 54 feet to 90 feet; and
- Changing the PUD-related map amendment to the CR Zone District.

For Block G1:

- Adding ground floor retail to Kenilworth Terrace;
- Increasing the building height along Kenilworth Avenue from 90 feet to 110 feet, and along Kenilworth Terrace from 54 feet to 90 feet; and
- Changing the PUD-related map amendment to the CR Zone District.

(collectively, "Project".) (Exhibit 3, p. 3.)

11. Both applications were set down for a public hearing at the Commission's public meeting on July 26, 2010. (July 26 Transcript ("Tr."), 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. The applications would remain separate with respect to the requested second-stage PUD approvals. (Exhibit 1.)
13. The Commission granted this motion at its public meeting on January 10, 2011, and consolidated the first-stage modification applications into Z.C. Case No. 05-28E. It set the application down for a public hearing. (January 10 Tr., p. 11.)
14. Notice of the public hearing was published in the *D.C. Register* on February 18, 2011 (50 D.C. Reg. 1460) 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 Tr., 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. Pursuant to 11 DCMR 3022.3, which requires an affected person or group to file a party status request 14 days in advance of a hearing, 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 Tr., pp. 209-219, 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 Tr., 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 DDOT's report, a response to OP'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 ("DOH") 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 Tr., 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 May 23, 2011, the Commission took proposed action to approve the application and plans that were submitted into the record as they pertain to the CCDC and DCPCA properties, as defined herein. The Commission denied without prejudice the remaining elements of the application, including the modification in heights, uses and zoning designation for the remainder of the Lano Property.
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 May 26, 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.
23. The Commission took final action to approve the application on June 27, 2011.

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, N.E., on the north, Foote Street, N.E., on the west, and Hayes Street, N.E., 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 apartments; 125 units of work force housing units proposed within the Pollin Memorial PUD recently approved by the 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 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 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 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 Commission granted second-stage approval for 112 townhomes and 98 senior affordable housing units. This approval is set forth in Z.C. Order No. 05-28A. (Z.C. Order No. 05-28A; 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.*)

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 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. (Z.C. Order No. 05-28; Exhibit 3, p. 14.)

Partial Approval of the Requested First-Stage PUD Modifications and PUD-Related Map Amendment

44. 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 CCDC and a health center for DCPCA. (Exhibit 3, pp. 3, 6-7.)
45. The CCDC will be located on a portion of Blocks H and I, as those Blocks were defined in Z.C. Order No. 05-28 and in Exhibit 3, p. 7, tab B, more accurately known as Square 5055, Lots 22-23, 803-804 and portions of Lots 21, 24, 802, and 805 (“CCDC Property”). The Health Center will be located on the remaining portion of Block I more accurately referred to as Square 5055, Lots 25, 801, and a portion of Lots 24 and 802 (Z.C. Order No. 05-28; Exhibit 3, p. 7, tab B.)
46. The modification of the First-Stage PUD provides educational and health care uses of approximately 300,000 gross square feet on Blocks H and I, which increases the amount of non-residential uses on the property up to 1,050,000 square feet and reduces the amount of residential development by approximately 300,000 square feet; however, the gross floor area of the development on the Property will be reduced by approximately 140,000 square feet from what was approved in the First-Stage PUD. (Exhibit 3, tab B; Exhibit 28; April 4 Tr., p. 50.)
47. The change in uses will diversify the Parkside community and make it a more attractive, self-sustaining development. (Exhibit 3, p. 15.)
48. 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.)
49. 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.)

50. 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 Tr., p. 43.)
51. The increase in nonresidential 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 nonresidential use will be essential to sustaining the retail use. (Exhibit 3, p. 15; April 4 Tr., p. 51.)
52. 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 CCDC Property to 110 feet. 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.)
53. The increased building height for the CCDC Property 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 building would shield 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.)
54. The height approved for the CCDC Property will step down to lesser heights along Kenilworth Terrace so as to be compatible with the heights of the other Parkside buildings. (Exhibit 3, p. 16.)
55. 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.)
56. The Project's proposed storm water management and erosion control plans will minimize impact on the adjacent property and existing storm water systems. The PUD will use a rain garden to treat runoff from impervious surfaces as well as a vegetative swale (bio-filtration) to treat runoff from the entire PUD site. The use of bio-swales throughout the

overall PUD will help manage the storm water in an environmentally superior method. Additionally, DCPCA has proposed a green roof system over a portion of the Health Center.

57. The First-Stage PUD established that a PUD-related map amendment for the Property from the C-2-B Zone District to the CR and C-3-A Zone Districts was appropriate. In order to accommodate the newly proposed height for the CCDC Property, the CCDC Property will be rezoned to the CR Zone District as a PUD-related map amendment. The DCPCA Property will remain in the C-3-A Zone District. (Exhibit 3, pp. 8-9.)
58. 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 § 600.1, 600.4.)

Partial Denial of the Requested First-Stage PUD Modifications and PUD-Related Map Amendment

59. The Applicant requested modifications to Block H to allow the construction of two office buildings with 130 foot building heights. This represents a height increase of 20 feet from what was approved in the original order. In order to achieve this building height, the Project requires a PUD-related map amendment for the buildings from the CR zoning approved in the original order to the C-3-C Zone District.
60. The Applicant requested modification to Block G from a single residential building to two buildings, and a change to office use in one of the buildings. The Applicant also requested an increase in the heights of the buildings from 90 feet to 110 feet. In order to achieve these building heights, the Project requires a PUD-related map amendments for the buildings from C-3-A zoning approved in the original order to the CR Zone District.
61. In Z.C. Order No. 05-28, the Commission noted that the Applicant proposed the same zoning and associated heights of 130 feet for the office buildings in Block H and 110 feet for the residential buildings in Block G. However, in its setdown report, OP proposed CR zoning for the office buildings in Block H and C-3-A zoning for the residential buildings and associated heights of 110 feet for the office buildings and 90 feet for the residential buildings. The Commission set down the OP recommendation as an alternative. The Applicant subsequently amended their application to conform to the lower zoning classifications and heights proposed by OP.
62. In judging a PUD application, the Applicant has the burden of proof of showing that the impact of the project on the surrounding area is not unacceptable. (11 DCMR 2403.3.)

The Commission finds the requested amendments to Blocks G and H would permit construction of buildings that are too simply high for this site. The Commission finds that the impact of buildings this tall on the surrounding area would be unacceptable and is denied. Since the C-3-A zoning was requested to accommodate the height, that request is also denied.

Project Amenities and Public Benefits

63. 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.)
64. 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 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 3, p. 21, tab C.)
65. 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. (Z.C. Order No. 05-28; Z.C. Order No. 05-28A; Exhibit 3, p. 21, tab C.)
66. 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. (Z.C. Order No. 05-28; Z.C. Order No. 05-28A; Exhibit 3, p. 21, tab C.)
67. 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. (Z.C. Order No. 05-28; Z.C. Order No. 05-28A; Exhibit 3, p. 21, tab C.)

Compliance with PUD Standards

68. 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, 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 the PUD modification with respect to the CCDC Property and the DCPCA Property. 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 is a public benefit. (Exhibit 3, pp. 18-21; Exhibit 28.)
69. 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 Tr., pp. 66-81, 86-88.)
70. The Commission finds that the character, scale, and mix of uses of the CCDC and DCPCA portions 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 for those portions of the Project 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 those portions 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 Tr., pp. 66-81, 86-88.)
71. 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 requires that a Transportation Demand

Management Plan will be provided with the processing of all future second-stage applications. (April 4 Tr., pp. 81-86; Exhibit 15, tab C; Exhibit 28.)

72. 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.)
73. The Commission credits the testimony and submissions of the Applicant and OP regarding the compliance of the Project with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide and area elements of the Plan, including:
 - a. Designation as appropriate for high density residential and medium density commercial uses on the Future Land Use Map;
 - b. Land Use Element policies recognizing the important contribution of universities to the District, compatibility of uses in mixed-use developments, transit-oriented development;
 - c. Other policies in the Economic Development, Education, Transportation, Environmental Protection, and Urban Design Elements related to the Land Use policies and goals stated above;
 - d. Community Services and Facilities Elements for providing community healthcare centers; and
 - e. Policies in the Far Northeast and Southeast regarding infill development, development of large parcels, development near transit nodes, and additional health care facilities. (Exhibit 3, pp. 23-25; Exhibit 16.)

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, OP recommended conditional 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 to protect the nearby proposed lower density residential areas. (Exhibit 16.) The Applicant submitted a revised massing of Block G1 on April 18, 2011, in response to OP'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 D.C. (Exhibit 32.)

81. By letter dated April 14, 2011, Dr. Mohammad N. Akhter, Director of DOH stated his support of Z.C. 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. 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, one in support and one abstention, with a quorum present, in opposition of the application. The ANC's report listed a number of issues and concerns:
 - Concern that the increase in height from 110 feet to 130 feet in Block H would overshadow the residential atmosphere of the community, and a related concern that the increase in height to 130 feet in block H and the increase from 90 feet to 110 feet in block G would create shading problems;
 - Concern about a lack of community engagement on the part of the developer given the scope of the project, and a related concern that the developer presented changes to its proposal at different meetings, which created a sense of confusion about the project;
 - A preference on the part of the community for the market rate housing and retail present in the original PUD proposal;
 - Concern about safety on the existing pedestrian bridge;
 - Concern that the proposed new pedestrian bridge will not be built because of the District's current financial situation;
 - Concern that the mix of institutional buildings and uses will reduce property values
 - Concern about storm water runoff; and
 - Concern about the lack of disclosure of an environmental impact statement(Exhibit 18.)
84. Chairperson Willette Seaward testified on behalf of the ANC at the hearing on April 4, 2011.
85. The Applicant met with the community 19 times since October 2009, including four presentations to ANC 7D. The only changes to the Applicant's proposal as it was presented to the community at the meetings were changes in architectural details.

86. Previously, ANC 7D by letter dated October 13, 2010, advised that on September 14, 2010, the Commission voted three to one to support DCPCA's application. (Exhibits 37, 51.)
87. Single Member District ("SMD") 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.)
88. SMD 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

89. 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 SMD Commissioner Willie H. Woods. Jr., ANC 7D07. (Exhibits 33 and 45.)
90. 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.)
91. 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.)
92. DOH submitted letters of support dated, October 8, 2010, by its then director, Dr. Pierre N.D. Vigilance and more a recent letter dated, April 14, 2011, by current director Dr. Mohammad N. Akhter. Both letters refer to the \$15 million grant given by DOH to fund the Health Center. (Exhibits 27 and 51.)
93. Dorothy M. Douglas, Ward 7 Member of the D.C. 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.)
94. 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.)

95. 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 residents, who will learn more about green practices because of the development. (Exhibits 11, 34, 46, and 51.)
96. 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 and higher quality and accessible health care. (Exhibit 47.)

Party in Opposition

97. EGCA, a party in opposition to the application, presented a written statement and testimony from a panel on behalf of EGCA 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

98. 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 Tr., pp. 310-314.)
99. Thelma Jackson, resident of Eastland Gardens, testified in opposition due to concerns regarding increased traffic. (April 4 Tr., pp. 314-316.)
100. 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.)
101. 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.)
102. 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 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 the approved modification for the CCDC Property and the DCPCA Property 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, 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 these properties will benefit the Parkside community, Ward 7, and the District; namely, the modifications will enable the construction of educational and health care facilities in an underserved community.
7. The Commission finds that the density and height of the approved modification for the CCDC Property and the DCPCA Property is appropriately dispersed on the PUD site as it shields neighboring uses and appropriately relates to existing townhomes. The approval

of a greater height for the CCDC Property 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 90 foot tall building and a 110 foot tall building; the twenty foot difference results in a *de minimis* extension of the shadow that is evident only during certain times of the year. The scaling down of the height at the eastern edge of the Property is appropriate given its relationship to adjacent buildings and uses.

8. Approval of the modification application as it relates to the CCDC Property and DCPCA Property 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 for these properties is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP in this case and finds that the proposed projects are consistent with and foster numerous policies and elements of the Comprehensive Plan. Specifically, the Commission believes that the proposed projects further 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 CCDC 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 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. The project benefits and amenities are reasonable tradeoffs for the requested development flexibility.
13. The Commission concludes the Applicant has not sustained its burden of proving that the additional height requested for the proposed buildings on Blocks H and G will not have an unacceptable impact on the surrounding area. (11 DCMR § 2403.3.) The

Commission therefore denies approval of requested modifications to the First-Stage PUD for Block H and to Block G. Nevertheless, the Commission encourages the Applicant to develop these blocks and establish a clear development plan.

14. 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 has carefully considered each issue and concern expressed in the ANC's report. The Commission found the ANC's advice persuasive on some issues, and not persuasive on others.

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 Commission agrees with the ANC that the additional height requested for Blocks G and H was excessive, and therefore denied that portion of the modification request. The Commission found the ANC's advice persuasive and gave it great weight.

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 found that there was sufficient community engagement on the part of the Applicant. The Applicant met with the community 19 times since October 2009 to present its proposal, including four meetings with ANC 7D. The only changes to the proposal were changes to the architectural details of the project. The Commission therefore was not persuaded by the ANC's advice.

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 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 issue relevant for the same reason stated for issue 3.

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 issue relevant for the same reason stated for issue 3.

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

The Commission does not find this advice persuasive because it believes the new uses will diversify the Parkside community and make it a more attractive, self-sustaining development. An abundance of residential development has already occurred and is planned for the immediate surroundings. 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. The increase in nonresidential 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 nonresidential use will be essential to sustaining the retail use. The Commission finds that the character, scale, and mix of uses of the CCDC and DCPCA portions 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. The Commission therefore is not persuaded that the new mix 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. The PUD will use a rain garden to treat runoff from impervious surfaces as well as a vegetative swale (bio-filtration) to treat runoff from the entire PUD site. The use of bio-swales throughout the overall PUD will help manage the storm water in an environmentally superior method. Additionally, DCPCA has proposed a green roof system over a portion of the Health Center.

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

The Commission does not find this advice persuasive because the Applicant is not required to disclose or submit an environmental impact statement by Chapter 24 of the Zoning Regulations. While the Applicant will eventually be required to submit an environmental impact screening form and to undergo an environmental review under the District of Columbia Environmental Policy Act of 1989 ("DCEPA"), D.C. Official Code

§ 8-109.01 *et seq.*, that process does not begin until after the 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).

15. 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 carefully considered OP's recommendations that the health center and CCDC improve the mix of uses in the project, and that a step down in height for the proposed G1 building is necessary along its Foote Street frontage. The Commission finds this advice persuasive. The Commission also carefully considered OP's advice to approve the requested modifications necessary to permit additional height for the office buildings in Block H allowing a height of 130 feet, or the residential building at Block G1 allowing a height of 110 feet. The Commission believes these heights are simply too tall for this location.
16. Notice of the public hearing was provided in accordance with the Zoning Regulations.
17. 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 to the CR Zone District, as shall be stated with greater specificity in any order granting final PUD approval for the CCDC Property; and **ORDERS APPROVAL** of the application to modify the First-Stage approval of a planned unit development for the DCPCA Property. 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 and C-3-A that specifies the proposed rezoning by square and lot.
2. The modifications to the First-Stage PUD are approved as they pertain to the CCDC Property and the DCPCA Property 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. The requested modifications to the height, use and rezoning of the remainder of the Lano Property are denied without prejudice, as stated with further specificity below.

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 63-67.
4. In accordance with the plans and materials noted above, the approved modifications to the PUD shall consist of approximately 1,560,000 square feet of gross floor area to be developed on the Property. 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, 750,000 square feet of gross floor area will be dedicated to commercial use, and 504,700 square feet to residential use. The maximum height approved for the Property will be 110 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 and the CCDC Property. The health care center shall be approximately 42 feet tall and the approved heights for the remaining buildings shall not be changed by this modification application.
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 700,400 square feet of residential use.
6. The Applicant shall submit, as part of the second-stage applications, landscape plans, detailed architectural plans, and elevations indicating the design treatment of each building.
7. The Applicant shall submit, as part of its second-stage applications 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 time limits on the processing of the second-stage applications shall be as approved in Z.C. Order No. 05-28, subject to any time extensions granted by the Commission pursuant to 11 DCMR §§ 2408.10 and .11.
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 Z.C. 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.

At its public meeting on May 23, 2011, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission took proposed action to **APPROVE** the application regarding the requested changes in use for the Community College and Health Center and to **DENY** the application without prejudice regarding the requested changes in heights for Blocks H, G1, and G2, by a vote of **4-0-1** (Anthony J. Hood, Peter G. May, Greg M. Selfridge, and Michael G. Turnbull to approve in part, and to deny in part; Konrad W. Schlater, having recused himself, not voting).

On June 27, 2011, upon the motion of Commissioner Turnbull, 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 present, not voting).

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