

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



MEMORANDUM

To: Office of Documents and Administrative Issuance (via-email)
From: Sharon S. Schellin 
Secretary to the Zoning Commission
Date: September 15, 2009
Re: Publication for the Office of Zoning

Please publish the following in the *D.C. Register* on September 18, 2009

1. Z.C. Corrected Order No. 05-28A1 (Case No. 05-28A).

Attachment

ZONING COMMISSION
District of Columbia
Case No. 05-28A
Exhibit No. 42

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION CORRECTED¹ ORDER NO. 05-28A1**

Z. C. Case No. 05-28A

**(Second-Stage Planned Unit Development ["PUD"] and Amendment to the Zoning
Map for Parkside Homes LLC and Parkside Senior Housing LLC)**

September 8, 2008

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on June 16, 2008, to consider an application of Parkside Homes LLC and Parkside Senior Housing LLC, for the review and approval of the second stage of an approved PUD and the implementation of a related map amendment from the R-5-A Zone District to the C-3-A Zone District. The property that is the subject of the second stage approval is located in Square 5041, Lots 809, 814, 815, 818, 820, 823, and 824 ("Subject Property"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

At its public meeting on July 14, 2008, the Commission took proposed action by a vote of 4-0-1 to approve the application and plans that were submitted into the record.

The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The NCPC Executive Director, through a Delegated Action dated August 29, 2008, found that the proposed PUD is not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.

The Commission took final action to approve the application on September 8, 2008, by a vote of 4-0-1.

FINDINGS OF FACT

1. In November 2007, Parkside Residential LLC submitted an application for second stage PUD approval for the first phase of development implementing a first stage PUD and related map amendment. The Applicant sought approval to develop approximately 165,000 square feet of unimproved land in Ward 7 as a senior living facility and single-family townhomes. (Exhibit 3.)
2. Parkside Residential LLC subsequently transferred the Subject Property to Parkside Homes LLC and Parkside Senior Housing LLC (collectively, the "Applicant") (Exhibit 15, p. 5.)

¹ The only correction being made hereto is to Condition No. 11 to correct a typographical error, i.e., Order No. 05-28 to Order No. 05-28A. No other corrections are made hereto. In addition, Condition No. 11 has been modified to indicate the actual date upon which the PUD's validity will end unless the action required by that condition is taken.

- 3 The application was set down for a public hearing at the Commission's January 14, 2008 public meeting.

First Stage PUD Approval

4. The Commission approved the first stage PUD and related Zoning Map amendment on April 13, 2007. The first stage PUD approved a mixed-use development for Square 5041, Lots 806-809, 811, 812, 814, 815, 817, 818, 820, and 822; Square 5055, Lots 14-25 and 801-813; Square 5056, Lots 806, 809, 810-814, and 821 ("First Stage PUD Site"). (Z.C Order No. 05-28.)
- 5 The First Stage PUD Site consisted of approximately 15.5 acres of land just north of the intersection of Minnesota Avenue and Benning Road and across Kenilworth Avenue from the Minnesota Avenue Metrorail Station. The First Stage PUD Site is in Ward 7, east of the Anacostia River. It is roughly bounded by Anacostia Avenue, Foote Street, Kenilworth Avenue, Hayes Street, Barnes Street, Roosevelt Place, Grant Place, Burnham Place, and Parkside Place. Id.
- 6 The First Stage PUD Site is located to the northeast of a PEPCO plant, to the southeast of Neval Thomas Elementary School and a District of Columbia Public and Assisted Housing complex, to the south of the Mayfair/Paradise multifamily rental communities and to the south of Eastland Gardens. The Kenilworth Aquatic Gardens, Anacostia Park, the Anacostia River, and the national Arboretum are located to the west of the First Stage PUD Site. Id.
7. The Commission approved a PUD-related Zoning Map amendment from the R-5-A and C-2-A Zone Districts to the C-3-A and CR Zone Districts and approximately 3,003,000 gross square feet of development during the first stage PUD application process. Specifically, it approved 1,500-2,000 dwelling units, 500,000-750,000 square feet of office space, and 30,000-50,000 square feet of retail. A maximum density of 4.4 floor area ratio ("FAR") was approved, as was a maximum building height of 110 feet for the office buildings along Kenilworth Avenue and a maximum height of 90 feet for the residential and retail buildings. Id.
- 8 The first stage PUD divided the PUD site into 10 blocks: Blocks A-J. Blocks A, B, and C are the subject of the instant application. Block A was approved for residential use, a lot occupancy of 62.6%, a maximum density of 4.12 FAR, and a height range of 54 to 84 feet. Block B was approved for residential use, a lot occupancy of 41%, a maximum density of 1.26 FAR, and a maximum height of 52 feet. Block C was also approved for residential use, a lot occupancy of 78.3%, a maximum density of 3.31 FAR, and a maximum height of 64 feet. Id.

9. The Commission approved Blocks A, B, and C for a PUD-related rezoning to the C-3-A Zone District. Id

First Phase of Second Stage PUD Approval

10. The Subject Property is known as Blocks A, B, and C. Lot 817 of the Original PUD Application was subsequently subdivided to create Lots 823 and 824 (Exhibit 3, p. 1, Exhibit 15, p. 5.)
11. The Subject Property is bound by Anacostia Avenue to the north, Grant Place to the east, Foote Street to the west, and Barnes Street and Parkside Place to the south. Block A is located at the corner of Foote Street and Anacostia Avenue and is across the street from the Neval Thomas Elementary School. Block B is located immediately to the east of Block A and is bounded by Anacostia Avenue, Grant Place, Barnes Street, and Block A and is across the street from both the Neval Thomas Elementary School and the existing Parkside Townhomes. Block C is located to the south of Block A. It is bounded by Foote Street, Roosevelt Place, Barnes Street, and Parkside Place, and is adjacent to the Parkside Townhomes. (Exhibit 3, p. 1)
12. The Applicant is constructing a 98-unit senior living facility and 112 single-family townhomes on the Subject Property. (Exhibit 3, p. 11, Exhibit 15, pp. 12-13)
13. The senior living facility will be located on Block A, immediately adjacent to a sustainable linear park with natural stormwater management capabilities. The facility will consist of approximately 96,900 square feet of development. The building will have a density of 2.22 FAR, it will consist of 98 units, and it will have a maximum height of 54 feet and a lot occupancy of 51.6%. It will also provide 25 parking spaces ("Senior Living Facility"). (Exhibit 15, p. 12.)
14. The Senior Living Facility will incorporate sustainable elements such as Energy Star rated appliances, energy efficient lighting, low-VOC paints and adhesives, as well as a naturally landscaped bioswale that runs along the northern edge of the building adjacent to a linear park. (Exhibit 15, p. 13.)
15. Units in the senior living facility will be available to families with an annual income below 60% of the area median income ("AMI") (Exhibit 15, p. 12.)
16. Blocks B and C will be dedicated to townhomes that will complement the existing Parkside Townhomes. The Applicant will construct 112 townhomes. The townhomes will each be approximately 2,000-3,000 square feet in size with a maximum height of 47 feet. The development will include two-bedroom, three-bedroom, and four-bedroom models and will be three stories with an optional roof

deck and an optional penthouse. One hundred four of the townhomes will include a one- or a two-car garage. In all, 136 parking spaces will be provided with the townhomes. (Exhibit 15, pp. 13-15.)

17. Block B will consist of 108,912 square feet of development and a density of 2.1 FAR. It will include 46 townhomes with a maximum height of 47 feet. (Exhibit 15, p. 14.)
18. Block C will consist of 160,636 square feet of development and a density of 2.01 FAR. It will include 66 townhomes with a maximum height of 47 feet. (Exhibit 15, p. 14.)
19. Nearly half of the townhomes in Blocks B and C will be available to individuals with an income between 80% and 120% of the AMI. (Exhibit 15, p. 21.)
20. The facades will be constructed with hardy board and hardy plank with a masonry base and accenting bays in each string of townhomes. The facades will also include over-sized brick throughout. (Exhibit 33.)
21. The development is consistent with the standards for evaluating a PUD under Chapter 24 of the Zoning Regulations. This development will create a high-quality residential project with significant housing opportunities, both affordable and market-rate. (Exhibit 15, pp. 18-21.)
 - **Urban Design, Architecture, Landscaping:** the Subject Property is in close proximity to the Minnesota Avenue Metrorail Station. Locating residential uses near public transportation is good urban design. The development also supports housing needs in the community for market-rate for-sale housing, and affordable senior housing. The residential buildings will be constructed along the property line, emphasizing the urban nature of the project. They will utilize high-quality materials that compliment the existing Parkside Townhomes. The development will also include extensive landscaping of the grounds.
 - **Site Planning:** the development takes advantage of its location adjacent to parklands, the Anacostia River and natural grades and the major transportation corridor to the southeast. It will replace vacant land and connect the existing Parkside Townhomes with the fabric of the city.
 - **Effective and Safe Vehicular and Pedestrian Access:** the development will not have an adverse impact on the transportation infrastructure in the area. The development will encourage transit ridership and enhance sidewalks. A bike trail along the Anacostia River will be easily accessible to the site and adequate automobile parking will be provided for each building.

The Applicant addressed concerns raised by the Office of Planning ("OP") regarding the need for access to the site via Benning Road. The Applicant testified that there were several issues with providing access between the Parkside PUD from Benning Road; namely: insufficient public right-of-way for road construction, physical barriers and natural barriers, and incompatible truck traffic. The Applicant's analysis, with which the District Department of Transportation ("DDOT") concurred, demonstrated that access to the site is sufficient with the existing road network.

- **Affordable Housing:** the development will provide 210 new housing units. Ninety-eight of the units will be affordable and 42 units will provide new opportunities for home ownership at workforce rates, as described in conditions of this Order.

- **Public Benefits:**

The development will bring affordable senior housing to an area that has a rapidly increasing senior population but has few options for housing for individuals on a fixed income.

It will also bring quality, market-rate options to a community that is comprised largely by subsidized housing projects.

The Applicant will also enter into a First Source Employment agreement with the Department of Employment Services to promote and encourage the hiring of District of Columbia residents.

The Senior Living Facility will be designed to meet the Green Communities criteria.

The Applicant has committed to contributing 25% of the cost of a new pedestrian bridge, not to exceed \$3 million. The bridge will improve site access as it will connect the entire PUD site to the Minnesota Avenue Metrorail Station. The Deputy Mayor's Office of Planning and Economic Development and DDOT have committed \$5 million to the project.

- 22 The development is fully consistent with and fosters goals and policies stated in the elements of the District of Columbia Comprehensive Plan. The development significantly advances these goals and policies by furthering the social and economic development of the District through the construction of new residential units on underutilized land. The project serves the goals of several of the citywide elements of the Comprehensive Plan: (Exhibit 15, pp. 24-29.)

- Land Use Map the Subject Property is designated as primarily Medium-Density Residential, with a slice of the Property fronting on Roosevelt Place as Moderate-Density Residential. The density of the proposed residential uses of the Subject Property complies with the proposed land use designation.
- Land Use Element: the Subject Property supports transit-oriented development. The Subject Property is a short walk to the Minnesota Avenue Metrorail station, which is one-third of a mile away from the Project Site. The development also enhances and stabilizes District neighborhoods by providing new residential opportunities for existing residents in the neighborhood.
- Transportation Element: the development will capitalize its proximity to the Minnesota Avenue Metrorail Station, promotes smart growth and supports transit-oriented development.
- Housing Element: the creation of a significant residential development on the Subject Property will further stabilize the community, build upon the existing neighborhood culture and will likely serve as a catalyst to the burgeoning Anacostia River waterfront.
- Environmental Protection Element: the Subject Property will be landscaped extensively to enhance streets and public spaces and reduce stormwater runoff. The development will include rain gardens to treat runoff from impervious surfaces and a vegetative swale to treat runoff from the Subject Property. It will also make use of permeable pavers in the alleys to reduce stormwater runoff from the Subject Property. The Senior Living Facility will satisfy the standards set forth by the Green Communities program. The overall PUD will also seek to achieve the equivalent of Silver level certification under the Leadership in Energy and Environmental Design Neighborhood Development program.
- Parks, Recreation, and Open Space Element: the development will include a linear park that will serve as public passive recreation space and will abut an open park that will be enhanced through future phases of development pursuant to Zoning Commission Order No. 05-28
- Urban Design Element: the development will reflect the beneficial architectural qualities of the surrounding residential neighborhoods. It includes an appropriate density that allows for sufficient private and public open space.

- Area Element the development allows for a variety of housing options for individuals with varying incomes. It will also transform a vacant piece of land into an inviting, accessible and active connection to the Anacostia waterfront.

Public Hearing

23. A public hearing was held for the application on June 16, 2008. The Commission accepted Jack McLaurin and Logan Schutz as experts in architecture; Rob Schiesel as an expert in traffic engineering, and Dennis Carmichael as an expert in landscape architecture.
24. At the close of the hearing, the Commission asked the Applicant to study the façades of the townhomes; specifically, to use different materials, simplify the façade and to modify the window design to provide a more residential appearance. It also asked for more information regarding the location, income levels and administration of the affordable housing component.
25. The Applicant filed its post-hearing submission addressing the Commission's comments on June 30, 2008.

GOVERNMENT REPORTS

26. On June 6, 2008, OP submitted its report in support of the application into the record. OP requested additional information regarding the townhomes reserved as market-rate housing. OP also asked for information regarding market-rate values in the area. OP suggested that the issue of vehicular access to the overall PUD from Benning Road should be addressed in future phases of the PUD. (Exhibit 21.)
27. OP stated that it was very supportive of the project and that the development will add new residential opportunities in the area, including affordable senior housing that will benefit the neighborhood residents and District as a whole. It further found that the application was not inconsistent with the policies of the 2006 Comprehensive Plan. (Exhibit 21.)
28. OP stated that the Applicant satisfied each of the conditions of Z.C. Order No. 05-28. (Exhibit 21.)
29. OP concluded that the development satisfied the Strategic Neighborhood Action Plan for Cluster 30 by supporting public safety through the development of vacant land and supporting the provision of improved access for new and existing residents to the Metrorail Station. It also stated that the development furthers the

objectives of the Great Streets Initiative for the designed streets in the area. (Exhibit 21)

30. DDOT filed a report on June 13, 2008, in support of the PUD. It supports the project and recommends the Applicant pursue, with the District, the construction of a new above-grade pedestrian bridge to the Metrorail Station and an access via Benning Road if, and when, the issue of right-of-way is resolved. DDOT also recommended that at least 10 bicycle parking spaces be provided and that approximately two parking spaces be set aside for car sharing vehicles. (Exhibit 25.)
31. DDOT found that the parking provided with the development would be more than adequate to meet the parking needs of the residents and minimize spillover into the neighborhood. (Exhibit 25.)
32. DDOT agreed with the Applicant's capacity analysis and found that most intersections leading to and from the development operate at a good level of service. (Exhibit 25.)

ANC 7D REPORT

33. ANC 7D submitted two letters of support into the record. In the letter dated June 4, 2008, the ANC indicated that at its May 13, 2008 meeting, the Commissioners voted unanimously, with a quorum present, in support of the application. In the letter dated June 6, 2008, the ANC indicated that the Applicant had presented the application to the ANC on four different occasions and that the ANC gave a "strong endorsement" of the project. (Exhibits 22, 23.)
34. Commissioner Dorothy Douglas testified on behalf of the ANC at the hearing on June 16, 2008

PARTIES AND PERSONS IN SUPPORT

35. Councilmember Yvette Alexander submitted a letter in support of the application indicating that she was impressed with the Applicant's community outreach efforts and felt that the project was a "critical" component of the development of downtown Ward 7. (Exhibit 28.)
36. On June 3, 2008, the Watts Branch Alliance submitted a letter in support of the application into the record. It stated that the Parkside project was a "crucial opportunity for sustainable neighborhood development." (Exhibit 27)
37. Green Communities for Enterprise Community Partners, Inc. submitted a letter in support of the application. They indicated that they were fully supportive of the

project and its efforts the nation's only standard for green affordable housing. It provided the Applicant a grant to incorporate the Green Communities criteria into the project. (Exhibit 33)

38. No individual or entity was granted party status to testify in support of the application.

PARTIES AND PERSONS IN OPPOSITION

39. No individuals or parties testified or submitted evidence into the record in opposition to the application.

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 second stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. In this application, the Commission finds that the requested flexibility from theoretical lot requirements and the side and rear yard requirements can be granted with no detriment to surrounding properties and without detriment to the zone plan or map.
- 3 The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of 11 DCMR §2401.1
- 5 The PUD is consistent with the first stage PUD, and Z.C. Order No. 05-28.
- 6 The Commission concludes that this project provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Subject Property would provide. The Commission finds

that the large amount of affordable housing provided in this project is a significant public benefit

7. The Commission concludes the impact of the project is acceptable given the quality of the public benefits of the project. The proposed massing and heights of the buildings are appropriate. The Commission agrees with the conclusions of the Applicant's traffic and parking expert that the proposed project will not create adverse traffic or parking impacts on the surrounding community. The Commission further agrees with the Applicant that access via Benning Road is neither feasible nor necessary for the development of the PUD as a whole.
8. Approval of the PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP in this case and finds that the proposed project is consistent with and fosters numerous themes and elements of the Comprehensive Plan. Specifically, the Commission believes that the proposed project furthers the following themes: stabilizing the District's neighborhoods, increasing the quantity and quality of employment opportunities in the District, preserving and promoting natural amenities, respecting and improving their physical character, preserving and ensuring community input, providing for diversity, and promoting enhanced public safety.
9. The Commission believes that the proposed PUD-related rezoning of the Subject Property to the C-3-A Zone District is appropriate given the superior features of the PUD project, the goals, and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
10. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse affects, and concludes approval is warranted.
11. In accordance with 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 concurs with ANC 7D's letters of support.
12. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623 04, to give great weight to OP recommendations. The Commission concurs with OP's view that second-stage approval should be granted.
13. Notice of the public hearing was provided in accordance with the Zoning Regulations

14. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application for second-stage review of the first phase of an approved planned unit development ("PUD") and Zoning Map amendment application from the R-5-A Zone District to the C-3-A Zone District for Lots 809, 814, 815, 818, 820, 823, and 824 in Square 5041. The approval of this PUD and Zoning Map amendment is subject to the following guidelines, conditions, and standards:

1. The second-stage PUD shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 3, 14, 15, 33, and 36 of the record, as modified by the guidelines, conditions, and standards of this Order.
2. In accordance with the plans and materials noted above, the approved PUD shall consist of 98 senior housing units and 112 townhomes. The senior housing facility on Block A shall consist of approximately 96,900 square feet of development, a 2.22 FAR, have a maximum height of 54 feet, and a lot occupancy of 51.6%.
3. In accordance with the plans and materials noted above, the approved PUD shall consist of 46 townhomes on Block B. The townhomes on Block B shall consist of 108,912 square feet of gross floor area, a 2.1 FAR, and have a maximum height of 47 feet.
4. In accordance with the plans and materials noted above, the approved PUD shall consist of 66 townhomes on Block C. The townhomes on Block C shall consist of 160,636 square feet of gross floor area, a 2.01 FAR, and a maximum height of 47 feet.
5. Twenty-five parking spaces shall be provided for the senior living facility and at least 136 parking spaces shall be provided for the townhomes.
6. The senior living facility will consist of at least 98 units that will be reserved for individuals with an income no greater than 60% of the area median income.
7. Forty-two townhouses will be reserved for buyers earning between 80% and 120% of the area median income.

8. The owner shall pay 25% of the cost of a new pedestrian bridge to connect the PUD site to the Minnesota Avenue Metrorail Station, with its payment not to exceed \$3 million. The payment shall be made within 60 days after DDOT notifies the owner that DDOT has the legal authority to proceed with advertising a contract for the construction of the bridge, or within 60 days after the issuance of a building permit that would result in the aggregate FAR of the PUD exceeding the matter of right limit for the property, whichever is the first to occur.
9. The PUD shall: meet the sustainable criteria for LEED-ND, and the Senior Living Facility shall meet the Green Committee criteria. The owner shall submit a certification from the project architect that these criteria have been met prior to the issuance of a Certificate of Occupancy.
10. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services prior to the issuance of a building permit for the PUD.
11. The PUD shall be valid until October 3, 2010, i.e. two years from the effective date of the order being corrected. Within such time, an application must be filed for a building permit for the construction of one of the buildings to be located on Blocks A, B, or C, and construction must start within three (3) years of the date of the effective date of this Order. The filing of the building permit application will vest this Order as to the building being constructed. An application for the final building permit completing the development of the PUD approved herein must be filed within three (3) years of the issuance of the final certificate of occupancy of the first building.
12. The owner shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures,
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and
 - c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.

13. No building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, which is satisfactory to the Office of the Attorney General ("OAG") and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA") Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with this Order, or amendment thereof by the Commission. The applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
14. The change of zoning from the R-5-A Zone District to the C-3-A Zone District for the Subject Property shall be effective upon the recordation of the covenant discussed in Condition No. 10, pursuant to 11 DCMR §3028.9.
15. The owner is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. 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, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the owner to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

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

On July 14, 2008, the Zoning Commission **APPROVED** the application by a vote of 4-0-1 (Anthony J. Hood, Curtis L. Etherly, Jr., and Michael G. Turnbull to approve; Peter G. May to approve by absentee ballot; Gregory N. Jeffries, not having participated, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on September 8, 2008, by a vote of 4-0-1 (Anthony J. Hood, Michael G. Turnbull, Curtis L. Etherly, Jr., and Peter G. May to adopt; Gregory N. Jeffries, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Corrected Order is deemed to have become final and effective *nunc pro tunc* as of October 3, 2008.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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

Z.C. Case No. 05-28G

Parkside Homes, LLC and Parkside Residential, LLC

**(Modifications to a Second-Stage Planned Unit Development @ Square 5041, Lots 809, 814,
815, 818, 820, 824, and 827)**

November 28, 2011

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held a public hearing on October 24, 2011, to consider an application of Parkside Homes, LLC and Parkside Residential, LLC ("Applicant") for the review and approval of modifications to a second-stage planned unit development ("PUD") 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

FINDINGS OF FACT

PROCEDURAL HISTORY

- 1 The Applicant first submitted the application as a minor modification of a second-stage PUD and requested that it be considered on the Commission's consent agenda The Commission considered the request at its public meeting on July 25, 2011, and determined that the proposed modifications, though modest, could not be considered "minor" pursuant to § 3030 of the Zoning Regulations The Commission set the application down for a public hearing (Exhibit 1, July 25, 2011 Transcript, pp 24, 25, 112, 113)
- 2 Notice of the public hearing for Z C Case No 05-28G was published in the *D C Register* on August 19, 2011, and was mailed to Advisory Neighborhood Commission ("ANC") 7D and to owners of property within 200 feet of the second-stage PUD site
- 3 A public hearing was conducted for Z C Case No 05-28G on October 24, 2011 The Commission heard testimony from Mike Irons and Troy Johnson, representatives of the contract purchaser of the site, and Alison Crowley, a representative of the property owner (October 24, 2011 Transcript ("Transcript"), pp 8, 13)
- 4 In addition to the Applicant, ANC 7D was automatically a party in this proceeding
- 5 At the hearing, the Commission heard testimony and received evidence from the Office of Planning ("OP") in support of the application (Transcript, pp 51-52)

- 6 During the hearing, the Commission asked the Applicant for revised elevations depicting the proposed downspouts and additional information on the proposed biofiltration system. The Applicant provided this information on November 10, 2011. (Exhibit 25)
- 7 The Commission took proposed action to approve the application at the close of the hearing on October 24, 2011
- 8 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 October 27, 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
- 9 The Commission took final action to approve the application on November 28, 2011

APPLICATION

- 10 The property that is the subject of the application is located in Square 5041, Lots 809, 814, 815, 818, 820, 824, and 827 ("Property") (Exhibits 1, 14)
- 11 The first-stage PUD consisted of 15.5 acres of land east of the Anacostia River in Ward 7. The initial Parkside first-stage PUD approved 10 "building blocks" consisting of residential, mixed-use, commercial, and retail buildings containing approximately 3,003,000 square feet of gross floor area, including 1,500-2,000 dwelling units, 500,000-750,000 square feet of office space and 30,000-50,000 square feet of retail. (Exhibit 14)
- 12 Three of the building blocks secured second-stage approval in Z.C. Case No. 05-28A. Blocks A, B, and C. Z.C. Order No. 05-28A approved 98 housing units for Block A and 112 townhouses for Blocks B and C. Block A is currently under construction as approved. Blocks B and C were the subject of the modification application. (*Id.*)
- 13 Blocks B and C are located in the northwest corner of the approved PUD. Z.C. Order No. 05-28A approved a total of 112 townhomes for both blocks with a gross floor area of 269,548 square feet. A total of 46 townhomes were approved for Block B with a gross floor area of 108,912 square feet, a floor area ratio ("FAR") of 2.1, and a maximum height of 47 feet. A total of 66 townhomes with a gross floor area of 160,636 square feet, a FAR of 2.01 and a maximum height of 47 feet were approved for Block C. (*Id.*)
- 14 The PUD is being modified to eliminate all of the 14-foot-wide units (54 units) and replacing them with wider units on both Blocks B and C. The Applicant determined that 14-foot-wide units would be difficult to market and are not as attractive to purchasers as the units with more comfortable widths. The new site plan only includes 16-foot-wide and 20-foot wide units. (*Id.*)

- 15 This change to the widths of the townhouses results in minor adjustments to the site plan and will have a modest impact on the PUD. The number of townhomes will be reduced from 112 to 100. The elevations will change, including the elimination of the optional fourth floor. (*Id.*)
- 16 The gross floor area of Block B changes from 108,912 square feet to 89,856 square feet and the gross floor area for Block C changes from 160,636 square feet to 138,232 square feet. The gross floor area for both blocks is reduced from 269,548 square feet to 228,088 square feet. (*Id.*)
17. The height of the buildings on Blocks B and C is reduced from 47 feet to 39 feet, 6 inches. (*Id.*)
- 18 The modification to the site plan also results in changes to the landscape plan, setbacks, and lot occupancy as a result of the change in building footprint. (*Id.*)
- 19 The Applicant also requested clarification of Condition No. 7 of Z.C. Order No. 05-28 to more clearly specify that the income limitation only applies to the initial purchaser on the property. This understanding is consistent with the record in the first-stage PUD. See Z.C. Order No. 05-28, Findings of Fact 34(b). In reiteration of the evidence in Z.C. Case No. 05-28, the Applicant noted the influx of subsidized housing in the area and the importance of also providing market rate housing to this community. (*Id.*)

COMPLIANCE WITH COMPREHENSIVE PLAN

- 20 The objectives of a PUD are to permit flexibility of development in return for the provision of superior public benefits, provided the PUD process is not used to circumvent the intent and purposes of the Zoning Regulations or result in an action inconsistent with the Comprehensive Plan. The overall PUD is consistent with the objectives and evaluation standards of a PUD, as defined in Chapter 24 of the Zoning Regulations. The PUD is not inconsistent with the Comprehensive Plan. (Exhibit 17, p. 5)
21. The Future Land Use Map recommends medium-density residential use for Block B and a combination of medium and moderate-density residential for Block C. Moderate-density residential is defined as row house neighborhoods, row house communities are also prevalent in medium-density residential communities. (*Id.*)
- 22 The Generalized Policy Map identifies Parkside as a Neighborhood Enhancement Area, which are neighborhoods with substantial amounts of vacant residentially zoned land. Parkside is a largely vacant neighborhood and the approved first-stage PUD and this second-stage PUD is consistent with both the Generalized Policy and Future Land Use Maps. (*Id.*)

- 23 The PUD furthers several elements of the Comprehensive Plan, including the Land Use Element, the Housing Element, the Environmental Protection Element and the Far Northeast and Southeast Area Element. The PUD is designed to encourage transit use and it will provide housing for families. The site plan also provides for additional trees and landscaping. Finally, the project is providing new housing on vacant lots near Metro stations, as called for in the Area Element (*Id.* at 6.)

AGENCY AND GOVERNMENT REPORTS

- 24 By report dated October 14, 2011, OP recommended that the application be approved. It noted that the reduction in the number of units was “minor” in comparison to the overall PUD. It further noted that the revised facades of the rowhouses result in a distinctly residential feel and appearance. (Exhibit 17, p. 7)
- 25 OP also supported the requested clarification regarding the control period of the workforce housing units and confirmed that the clarification is consistent with the first-stage PUD approval. (*Id.*)
- 26 By an email to OP dated October 6, 2011, the District Department of Transportation (“DDOT”) noted that it had not commented on the application. (*Id.*)

ADVISORY NEIGHBORHOOD COMMISSION 7D REPORT

- 27 ANC 7D submitted a letter dated October 12, 2011, in support with the requested modification. The ANC noted that the Applicant addressed both the ANC’s and residents’ concerns and questions and that the modifications better ensure the houses will be marketable once constructed. The ANC further stated that the proposed project is consistent with the existing Parkside residences. The ANC voted unanimously in support of the application. (Exhibit 16)

PERSONS IN SUPPORT

- 28 No persons testified in support of the application.

PARTY IN OPPOSITION

- 29 There were no parties in opposition to the application.

PERSONS IN OPPOSITION

- 30 No persons testified in opposition to the application.

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 modification of the second-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 the overall 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 Applicant and believes that the modifications will benefit the project and make the houses more marketable and appealing to potential residents
- 6 The Commission believes the modifications are consistent with the intent of the first- and second-stage approvals, including the clarification regarding the income restrictions on the workforce units
- 7 Approval of the application will promote the orderly development of the Property in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia and in conformity with the first-stage PUD
- 8 Approval of the application is not inconsistent with the Comprehensive Plan The Commission agrees with OP's determination in this case and finds that the proposed project is consistent with and fosters numerous policies and elements of the Comprehensive Plan, including the Far Northeast and Southeast Area Element.
- 9 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 ANC voted unanimously in support of the application and noted their support for the modifications

- 10 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 application should be granted and that it is not inconsistent with the Comprehensive Plan.
- 11 Notice of the public hearing was provided in accordance with the Zoning Regulations.
- 12 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 modifications to the approved second-stage PUD application for property consisting in Square 5041, Lots 809, 814, 815, 818, 820, 824, and 827 ("Property"). The approval delineated in Z C Order No 05-28A shall remain in full force and effect with respect to the approval of the senior housing development (Block A) and with respect to the approved map amendment from the R-5-A Zone District to the C-3-A Zone District. The conditions controlling the approval of the townhouses (Blocks B and C) are listed in their entirety below. For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order, however, that party remains liable for any violation of these conditions that occurred while an Owner. "During the operation of the building" means a period of time that begins when the building is first occupied, and ending when it is last occupied. This approval is subject to the following guidelines, conditions, and standards:

A. Project Development

- 1 This project shall be developed in accordance with the plans marked as Exhibits 6, 15, 20, and 25 of the record, as modified by guidelines, conditions, and standards herein. In accordance with the plans and the materials noted above, the approved project shall consist of 100 townhomes.
- 2 At least 136 parking spaces shall be provided for the townhomes.
- 3 The Applicant shall have flexibility with the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures,

- b To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials, and
- c To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit

B. Public Benefits

- 1 Prior to the issuance of a building permit for the PUD, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services
- 2 Prior to the issuance of a Certificate of Occupancy, the PUD shall meet the sustainable criteria for LEED-ND. The owner shall submit a certification from the project architect that these criteria have been met
- 3 The owner shall pay 25% of the cost of a new pedestrian bridge to connect the PUD site to the Minnesota Avenue Metrorail Station, with its payment not to exceed \$3 million. The payment shall be made within 60 days after DDOT notifies the owner that DDOT has the legal authority to proceed with advertising a contract for the construction of the bridge, or within 60 days after the issuance of a building permit that would result in the aggregate density of the PUD exceeding the matter-of-right limit for the property, whichever is the first to occur
- 4 Forty-two townhouses will be reserved for buyers earning between 80% and 120% of the area median income. This income limitation shall only apply to the initial purchaser.

C. Miscellaneous

- 5 The PUD has been vested pursuant to the issuance of Building Permit No B0905238 and the start of construction on Block A prior to October 3, 2011. An application for the final building permit completing the development of Blocks B and C approved herein must be filed within three (3) years of the issuance of the final certificate of occupancy of Block A
- 6 The Applicant shall record a Notice of Modification of a Planned Unit Development Covenant in the land records of the District of Columbia, between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General. Such covenant shall bind the Applicant and all successors in

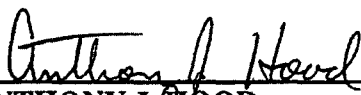
title to construct on and use the Property in accordance with this Order or amendment thereof by the Commission.

- 7 In accordance with the D C Human Rights Act of 1977, as amended, D C Official Code §§ 2-1401 01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

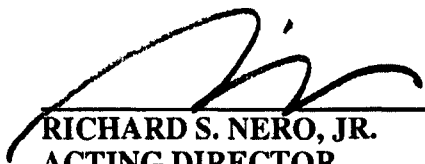
On October 24, 2011, upon the motion of Vice Chairman Schlater, as seconded by Commissioner May, the Zoning Commission **APPROVED** this application at its public hearing by a vote of **3-0-2** (Anthony J Hood, Konrad W Schlater, and Peter G May to approve; Marcie Cohen and Michael G Turnbull, not present, not voting)

On November 28, 2011, upon the motion of Vice Chairman Schlater, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Konrad W. Schlater, and Peter G May to adopt; Marcie Cohen and Michael G Turnbull, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C Register* on December 16, 2011



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



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

As Secretary to the Commission, I hereby certify that on **DEC 21 2011** copies of this Z C Order No. 05-28G were mailed first class, postage prepaid or sent by inter-office government mail to the following.

- | | | | |
|---|--|---|---|
| 1 | <i>D.C Register</i> | 5 | Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N W
Washington, D C. 20004 |
| 2 | Phil Feola and Christine Roddy, Esqs
Goulston and Storrs
1999 K Street, N W Suite 500
Washington, D C 20006 | 6 | Councilmember Yvette Alexander |
| 3 | ANC 7D*
c/o Willette Seaward, Chair
4234 Grant Street, N E
Washington, DC 20019 | 7 | DDOT (Martin Parker) |
| 4 | Commissioner Willie Woods
ANC/SMD 7D07
<u>7D07@anc dc gov</u> | 8 | Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S W
Washington, DC 20024 |
| | | 9 | Office of the Attorney General (Alan
Bergstein) |

*Note. advised by Gottlieb Simon to send ANC
7D notices temporarily to the Chair as of
December 16, 2011

ATTESTED BY:

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning