

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-280

Z.C. Case No. 05-280

Lano Parcel 12, LLC and Parkside Residential, LLC
(Two-Year PUD Time Extension @ Square 5041, Lots 806 and 807; Square 5055, Lot 26;
and Square 5056, Lots 41, 809-811, and 813)
November 9, 2015

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on November 9, 2015. At that meeting, the Commission approved the request of Lano Parcel 12, LLC and Parkside Residential, LLC (collectively, "Applicant") for a two-year time extension of the first-stage planned unit development ("PUD") for the Parkside project. The time extension request was made pursuant to Chapters 1 and 24 of the District of Columbia Zoning Regulations. The Commission determined that this request was properly before it under the provisions of § 2407.10 *et seq.* of the Zoning Regulations.

FINDINGS OF FACT

Case Background

1. The Commission granted first-stage PUD approval for the property ("Property") on April 13, 2007, pursuant to Z.C. Order No. 05-28.
2. Z.C. Order No. 05-28 approved approximately three million square feet of mixed-use development on 10 building blocks over 15 acres of vacant property east of the Anacostia River in Ward 7. Specifically, it approved 1,500-2,000 residential units; 500,000-750,000 square feet of office space; and 30,000-50,000 square feet of retail. It approved a maximum height of 110 feet for two office towers and a maximum height of 90 feet for the remainder of the Property. The first stage also approved the PUD-related rezoning of the Property from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts.
3. The approval was valid for a period of one year, within which time an application for a second-stage PUD was required to be filed. If the second-stage application was for less than the entire Property, the remaining second-stage applications were required to be filed within three years of the approval of the initial second-stage application. (Z.C. Order No. 05-28.)
4. The Applicant filed a second-stage application for a portion of the Property in November 2007. It was approved on October 3, 2008. Accordingly, all subsequent second-stage

applications for the Property were required to be filed by October 3, 2011. (Z.C. Order No. 05-28A.)

5. By October 3, 2011, second-stage applications had been filed for five of the PUD blocks. The first-stage approval was subsequently modified during the processing of those second-stage applications. Z.C. Case No. 05-28E, which was approved on June 27, 2011, approved a change of use, increased the approved maximum height, and approved a PUD-related rezoning to the CR Zone District for a portion of the Property. (Z.C. Order Nos. 05-28 and 05-28E.)
6. On August 10, 2011, the Applicant filed a request to extend the first-stage approval through October 3, 2013 to allow for the remainder of the second-stage applications to be filed. The Commission approved the request in Z.C. Case No. 05-28H and the first-stage approval was extended through October 3, 2013. (Z.C. Order No. 05-28H.)
7. By October 3, 2013, the Applicant had filed second-stage applications for two additional blocks. On October 2, 2013, the Applicant filed a request for a second two-year extension of the first-stage PUD approval, again, to allow for the remaining second-stage applications to be filed. The Commission approved the request in Z.C. Case No. 05-28L and the first-stage approval was extended through October 3, 2015. (Z.C. Order No. 05-28L.)
8. By October 3, 2015, construction of the one-acre park approved in Z.C. Case No. 05-28F was completed, construction proceeded on the townhomes approved in Z.C. Case No. 05-28A and modified in Z.C. Case Nos. 05-28G and 05-28M, and construction proceeded on the multifamily building approved in Z.C. Case No. 05-28J/05-28K.
9. On October 2, 2015, the Applicant filed a request for a two-year extension of the first-stage PUD approval to allow for the remaining second-stage applications to be filed. (Exhibit ["Ex."] 1-1F).
10. The request was placed on the Commission's November 9, 2015 meeting agenda, at which time the Commission took action to approve a two-year extension of the first-stage PUD. The expiration of the first-stage approval was extended through October 3, 2017.
11. Since the issuance of Z.C. Order No. 05-28, the following second-stage applications have been approved:
 - Z.C. Case No. 05-28A: The Commission approved a second-stage application for Parcels A, B, and C. The approved project included an affordable senior housing facility and single-family townhomes. The affordable senior housing facility has

been constructed and has been operating for over three years. The first phase of the townhomes is under construction and delivery is anticipated by Spring 2016;

- Z.C. Case No. 05-28B: The Commission approved a second-stage application for the construction of a public health center on Parcel I. The approval was modified in Z.C. Case No. 05-28I; a 43,000-square-foot health center has been constructed on the property and has been operating for nearly two years;
- Z.C. Case No. 05-28F: The Commission approved a second-stage application for the one-acre park at the center of the PUD. The park was completed in December 2014 and is currently maintained by the Applicant; and
- Z.C. Case No. 05-28J/05-28K: The Commission approved a second-stage application for a multi-family building consisting of 186 affordable units. Construction on this project commenced in January 2015 and is targeted for completion in Fall 2016. (Ex. 1-1F.)

Extension Request

12. Subsection 2407.11 of the Zoning Regulations grants the Commission the authority to extend a first-stage PUD approval in accordance with the standard and process for second-stage PUD extensions set forth in §§ 2408.10 through 2408.12. As required by those standards, the Commission must determine whether: (a) the extension request was served on all parties to the application by the Applicant and that parties were given at least 30 days to respond; (b) there was no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the Applicant demonstrated with substantial evidence that there was good cause for such extension.
13. The Applicant satisfied each of the three standards. The request was served on Advisory Neighborhood Commission ("ANC") 7D and the Parkside Townhomes Condominium, Inc., the only parties to the first-stage PUD, on the same day as it was filed with the Commission. The request was considered by the Commission after the 30-day period had lapsed. (Ex. 1-1F.)
14. There has been no substantial change in any material facts upon which the Commission based its original approval. The changes that did occur support the original approval. Since the initial approval, additional residential and educational projects have proceeded in the vicinity of the Property. In addition to the aforementioned changes, the other changes that have occurred are a part of the Parkside PUD, such as the construction of a

senior housing facility, public health care facility, the public park, the multifamily building, and the townhomes. (Ex. 1-1F.)

15. The Comprehensive Plan designation and zoning designation for these parcels remains unchanged since the granting of the first-stage PUD in 2006 and the last extension granted in 2013. (Ex. 1-1F.)
16. The Applicant's failure to file the requisite second-stage applications within the requisite period of time was due to a confluence of factors, namely the state of the residential, retail, and office markets east of the Anacostia River, and challenges in obtaining financing for mixed-income and mixed-use development coupled with the timing of construction of previously approved projects. (Ex. 1-1F.)
17. The first-stage PUD approved residential, office, and retail uses for the site. The demand has largely been for residential uses rather than office and retail uses. The Applicant sought second-stage approvals for residential phases and started construction on two of them. The residential projects will introduce almost 300 new residential units into this area. Phasing the approvals of the remaining residential projects provides the time necessary for the market to adjust to the new units without being flooded. (Ex. 1-1F.)
18. The demand for office use is not yet fully established east of the Anacostia River. The Applicant has made efforts to cultivate this market: it has incorporated this area into the Central Employment Area and provided the funding for a new pedestrian bridge to the Metrorail station to supplement the existing pedestrian bridge. (Ex. 1-1F.)
19. Nevertheless, economic growth, namely the expansion of the office market, has been delayed in this part of Ward 7. The office market that was anticipated at the time the PUD was approved in 2005 is only now beginning to resurface. (Ex. 1-1F.)
20. Another challenge to drawing a large office user, ideal for the 750,000 square feet approved in the PUD, has been the lack of retail amenities in Parkside and adjacent neighborhoods. A large office tenant such as a General Services Administration agency will relocate its operations to an area served by a variety of retail options within a quarter-mile radius of the site. Retail tenants, in turn, look to locate their operations in established neighborhoods displaying robust income and education levels, increasing employment levels and population growth. While Parkside is a burgeoning neighborhood, it has not yet reached the levels of growth it needs to raise its attractiveness to retail and office tenants. For these reasons, the Applicant has focused on the development of housing in order to stimulate population growth and create a mixed-income environment. (Ex. 1-1F.)

21. Nevertheless, the Applicant has moved forward with the benefits and amenities that were promised in the PUD, including the construction of a one-acre park and providing \$ 3,000,000 for a new pedestrian bridge to the Metrorail Station. Both the bridge and the park are pivotal aspects of the project, and the fact that the Applicant provides these benefits before the construction of the remaining phases of the PUD is noteworthy. (Ex. 1-1F.)
22. ANC Single Member District representative, Justin Lini, submitted a letter dated November 9, 2015, in support of the request. Commissioner Lini stated that the progress that has been made on the Parkside PUD has improved the quality of life for residents. (Ex. 5.)
23. ANC 7D did not submit a letter into the record to indicate its support or opposition.
24. The Office of Planning (“OP”) submitted a report dated October 20, 2015. OP recommended approval of the time extension request and noted the Applicant’s fulfillment of the standard promulgated in § 2408.10 of the Zoning Regulations. OP noted that the Applicant “has demonstrated with substantial evidence good cause for the extension and [OP] recommends that the Commission grant the request.” (Ex. 4.)

CONCLUSIONS OF LAW

The Commission may extend the time period of an approved PUD provided the requirements of 11 DCMR §§ 2407.10, 2407.11, 2408.10, 2408.11, and 2408.12 are satisfied. Subsections 2407.10 and 2407.11 give the Commission the authority to extend the validity of a first-stage PUD approval. The Commission analyzes such extension requests pursuant to the standard set forth for second-stage PUD extensions in § 2408.10. Subsection 2408.10(a) requires that the applicant serve the extension request on all parties and that all parties are allowed 30 days to respond. The Applicant served the parties to the original PUD application, ANC 7D and the Parkside Townhome Condominiums, when it filed the time extension application on October 2, 2015. Both parties were given 30 days to respond to the extension request.

Subsection 2408.10(b) requires that the Commission find that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD. The Commission concludes that extending the time period of approval is appropriate, as there are no substantial changes in the material facts that the Commission relied on in approving the original PUD application.

Finally, § 2408.10(c) requires that the applicant demonstrate with substantial evidence that there is a good cause for the proposed extension, as provided in § 2408.11. Pursuant to § 2408.11, an

extension of validity of a PUD may be granted if the applicant has demonstrated with substantial evidence one or more of the following criteria:

- (a) An inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;
- (b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD Order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or
- (c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

The Commission finds that there is good cause shown to extend the period of time of the validity of the first-stage PUD. The Commission also finds that the Applicant made good faith efforts to effectuate the first-stage PUD and has pursued second-stage approvals in a financially challenging time where economic and market conditions were beyond the Applicant's reasonable control.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (DC Law 8-163, D.C. Official Code § 6-623.04), to give great weight to OP recommendations (as discussed in paragraph 24 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation.

For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR §§ 2407.10, 2408.10, and 2408.11.

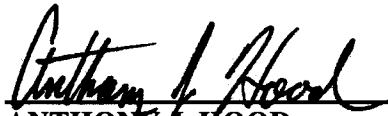
DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 05-28O for a two-year time extension of Z.C. Order No. 05-28, which was most recently extended in Z.C. Order No. 05-28L. The validity of the first-stage PUD is extended until October 3, 2017, within which time any outstanding second-stage PUD applications for the Property must be filed.

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

On November 9, 2015, upon motion by Vice Chairperson Cohen, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve and adopt).

In accordance with the provisions of 11 DCMR 3028.8, this Order shall become final and effective upon publication in the *D.C. Register* on February 12, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING