

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 05-28
Case No. 05-28
(First Stage Planned Unit Development &
Related Zoning Map Amendment - Parkside Residential LLC)
September 11, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on May 15, 2006 to consider an application from Parkside Residential LLC for first-stage review and approval of a planned unit development ("PUD") and related zoning map amendment 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, pursuant to Chapter 24 and § 102, respectively, of the District of Columbia Municipal Regulations (DCMR) Title 11 (Zoning). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022

FINDINGS OF FACT

1. The project site consists of Square 5041, Lots 806-809, 811, 812, 814, 815, 817, 818, 820, and 822, Square 5055, Lots 14-25 and 801-813, and Square 5056, Lots 806, 809, 810-814, and 821 (the "Property" or "PUD Site"). The Property is located in the Parkside neighborhood of Ward 7 and consists of approximately 15.5 acres of land area with frontage along Kenilworth Avenue, Foote Street, Anacostia Avenue, Barnes Street, Grant Place, Parkside Place, Roosevelt Place, Burnham Place, Kenilworth Terrace, and Hayes Street, all in the Northeast Quadrant (Exhibit 2, Statement of the Applicant, Exhibit I)

2. The PUD Site is currently split-zoned R-5-A and C-2-B. The PUD application includes a PUD-related rezoning of the majority of the site to the C-3-A Zone District and a rezoning of a limited portion along Kenilworth Avenue to the CR Zone District to permit the construction of two office/retail buildings. (Exhibit 2, Statement of the Applicant, p. 17, Exhibit 21, Pre-hearing Statement, Exhibit A)

3. Parkside Residential LLC (the "Applicant"), which is a joint venture between Banc of America Community Development Corporation, Marshall Heights Community Development Organization, Lano International, Inc., and Building Hope, filed an application for

first-stage review and approval of a planned unit development and a related amendment to the Zoning Map of the District of Columbia on August 31, 2005 (Exhibit 2, Statement of the Applicant, pp 9-10)

4 The Applicant initially proposed to rezone the residential portions of the site to CR and the portion to be used as office space to C-3-C. The Applicant proposed a maximum height of 110 feet for some of the residential buildings and a height of 130 feet for the office buildings (Exhibit 2, Statement of the Applicant, p 9)

5 At a public meeting on November 14, 2005, the Office of Planning ("OP") stated its support for the project, however, OP proposed an alternative rezoning for the Property the portion of the site of the proposed office buildings would be rezoned to CR, limiting the height of the buildings to 110 feet, and the remainder of the site would be rezoned to C-3-A, allowing a maximum height of 90 feet for the residential buildings (Exhibit 18, November 4, 2005 OP Report)

6 The Commission set both the Applicant's proposal and OP's alternative proposal down on November 14, 2005 for a public hearing

7 The Applicant subsequently amended the application to conform to the zoning classifications and heights proposed by OP (Exhibit 21, Pre-hearing Statement, p 7)

8 The Commission held a public hearing on the amended application on May 15, 2006.

9 At the public hearing, the Commission accepted Don Carter of Urban Design Associates as an expert in architecture and land-use planning; Dennis Carmichael was accepted as an expert in landscape architecture, and Robert Schiesel and Louis Slade were accepted as experts in traffic and parking. ANC 7D, the ANC in which the Property is located, was automatically a party to this application. The Commission granted party status in opposition to the application to the Parkside Townhomes Condominium, Inc.

10 The Commission took proposed action on June 12, 2006 to approve the amended application, subject to conditions

11. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated June 29, 2006, found the proposed PUD would not affect the federal interests in the National Capital and would not be inconsistent with the Comprehensive Plan for the National Capital

12 The Commission took final action to approve the application of Z C Case No 05-28, subject to conditions, on September 11, 2006

PUD SITE

13 The Property consists of approximately 15.5 acres of land area just north of the intersection of Minnesota Avenue and Benning Road and across Kenilworth Avenue from the Minnesota Avenue Metrorail Station. The PUD Site is located in Ward 7, east of the Anacostia River. The Property is within the area that has been targeted by the Anacostia Waterfront Corporation for revitalization, it is within the vicinity of three roadways included in the Mayor's Great Streets Initiative, and it is within both a Housing Opportunity Area and a Development Opportunity Area (Exhibit 21, Pre-hearing Statement, p. 3)

14 The Trust for Public Land created a master development plan for the original 26-acre Parkside site (Exhibit 21, Pre-hearing Statement, p. 1, Exhibit A)

15 Phase I was successfully developed in the early 1990s as 100 townhomes known as the Parkside Townhomes. The Parkside Townhomes development is roughly bounded by Barnes Street, Roosevelt Place, Parkside Place, and Cassell Place, N.E. (Exhibit 21, Pre-hearing Statement, p. 4)

16 The PUD Site is roughly bounded by Anacostia Avenue, Foote Street, Kenilworth Avenue, Hayes Street, Barnes Street, Roosevelt Place, Grant Place, Burnham Place, and Parkside Place

17 Land uses in the vicinity of the site include a Pepco generating plant and the Benning Road solid waste transfer station to the southwest, Neval Thomas Elementary School and an assisted housing complex to the northwest, Kenilworth Avenue/Interstate 295 to the south, and residential developments known as Mayfair Mansions and Paradise at Parkside to the north. The Kenilworth Aquatic Gardens, Anacostia Park, the Anacostia River, and the National Arboretum are located to the west of the PUD Site

18 The PUD Site is located in the residential medium-density/commercial moderate-density land use category as defined on the District of Columbia Generalized Land Use Map

PUD APPLICATION AND PROJECT

19. The proposed PUD consists of a series of residential, mixed-use, commercial, and retail buildings that will contain approximately 3,003,000 gross square feet with accessory parking. There will be approximately 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 15.5-acre project will complete the development of a 26-acre site that began in the early 1990s. The floor area ratio ("FAR") of the

PUD project will be 4 4. The office buildings will be 110 feet in height along Kenilworth Avenue. The residential and mixed residential/retail buildings will have a maximum height of 90 feet, and will gradually scale down as they become more proximate to the existing Parkside Townhomes. Greater heights will be maintained along Foote Street to shield the interior units from the adjacent Pepco plant. (Exhibit 21, Pre-hearing Statement, p. 6)

20 The project is split into ten building "blocks." Block A is located in the eastern corner of the PUD Site, at the corner of Foote Street and Anacostia Avenue. It is adjacent to both the Pepco plant and the Neval Thomas Elementary School. Block A will have a lot occupancy of 62.6 percent and will contain a gross floor area of 134,400 square feet, with a density of 4.12 FAR. A range of 105-120 residential units will be located on Block A. The structure proposed for Block A will be constructed in a "U" shape. Heights will range from 54 feet to 84 feet. (Exhibit 21, Pre-hearing Statement, Exhibit B)

21. Block B is bounded by Anacostia Avenue, Grant Place, Barnes Street, and Block A. It is located adjacent to the Neval Thomas School and the existing Parkside Townhomes, it also acts as a gateway to the adjacent park land and the Anacostia River. Block B will contain five separate residential buildings, with a lot occupancy of 41 percent, a gross floor area of 69,940 square feet, and a density of 1.26 FAR. It will consist of 35-45 residential units and will provide approximately 77 parking spaces. Heights for the five buildings will range from 28 feet to 52 feet. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

22 Block C is bounded on the southwest side by Foote Street and by Roosevelt Place on the northeast side, adjacent to the Pepco plant and the Parkside Townhomes. It will contain four residential buildings, with a lot occupancy of 78.3 percent, a gross floor area of 277,920 square feet, and a density of 3.31 FAR. It will include 140-160 residential units and will provide approximately 336 parking spaces. Building heights for Block C will range from 43 feet along Roosevelt Place to 64 feet along Foote Street. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

23 Block D consists of a park that is nearly one acre in size. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

24 Block E is located in the western portion of the PUD site and is adjacent to the Pepco plant. A range of 140-160 residential units will be developed in a single building in Block E, with a lot occupancy of 63 percent, a gross floor area of 183,000 square feet, and a density of 4.6 FAR. Heights for this U-shaped building will range from 54 feet to 90 feet. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

25 Block F is located in the central portion of the site and is bounded on the north by Parkside Place and on the south by Kenilworth Terrace. The Parkside Townhomes are located to the northwest of Block F. There are three portions of Block F: a retail portion will line a central pathway and will be flanked by residential components on both the east and west. Block F will

have a lot occupancy of approximately 47 percent. It will include a range of 330-365 residential units, with a gross square floor area of 444,825 square feet and a density of 3.13 FAR. Approximately 485 parking spaces will be located on Block F. There will be six buildings in Block F. Building heights along Kenilworth Terrace will reach a maximum of 90 feet, heights along Parkside Place will range from 47 feet to 72 feet. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

26 Blocks G, H, and I are located along the southeastern portion of the PUD Site. They each have frontage on Kenilworth Avenue and Kenilworth Terrace. Block G is adjacent to the Pepco plant. These Blocks will have a combined lot occupancy of 80.6 percent, a gross floor area of 1,709,800 square feet, and a density of 7.05 FAR. A range of 785-875 residential units will be located in these Blocks, as well as approximately 1,400 parking spaces. The portions of the residential buildings fronting on Kenilworth Avenue will be 90 feet in height. Toward Kenilworth Terrace, the buildings will scale down to as low as 44 feet in height. The office buildings fronting Kenilworth Avenue will be 110 feet in height. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

27 Block H, which is located between Blocks G and I, will be developed with the office space component of the project. If the Applicant cannot secure a lead tenant for the office use, Block H will be used for an additional 500,000 – 750,000 square feet of residential space.

28 Block J is located in the northernmost corner of the site, bounded by Hayes Street, Kenilworth Terrace, Parkside Place, and Block F. It is adjacent to the Cesar Chavez Public Charter School to the northwest and the Mayfair Mansions to the north. The Block will be developed with one building with a lot occupancy of 63 percent, a gross floor area of approximately 183,000 square feet, and a density of 4.58 FAR. The building will contain 140-160 residential units and 96 parking spaces. The height of the portion of the building fronting on Kenilworth Terrace will rise to 90 feet, while the remainder of the building will scale down from 74 feet to 54 feet. (Exhibit 21, Pre-Hearing Statement, Exhibit B)

29 The Applicant provided several views of the PUD in the Pre-hearing Statement. These views demonstrated that the PUD will not be highly visible from the Anacostia Waterfront or the National Arboretum. The PUD will largely not be visible from Minnesota Avenue once the new Government Center is constructed. Only a few floors of the PUD will be visible looking west from Interstate 295. (Exhibit 21, Pre-Hearing Statement, Exhibit C)

30 As shown in Exhibit 21 (the Statement of the Applicant, Exhibit G), vehicular ingress/egress to the PUD Site is possible from Kenilworth Avenue at Hayes Street and Foote Street, and from Kenilworth Terrace. The Applicant is working with the Anacostia Waterfront Corporation and the Deputy Mayor for Planning and Economic Development to open up an additional point of access via a public road that lies outside but adjacent to the northwest property line of Pepco's property on one side and the southwest property line of National Park

Service land on the other. The road is in existence, but it terminates before it connects the PUD Site with Benning Road. (Exhibit 21, Pre-Hearing Statement, p. 11)

31 The PUD will provide approximately 2,400 parking spaces. Each element of the PUD will have parking to accommodate demand and it will be arranged discreetly on the site. Parking will be provided below grade to the extent that it is economically feasible. The remainder of the parking will be arranged in independent parking garages between residential buildings. The Applicant proposed implementing green design ideas such as rooftop gardens to improve views of the garages. The details of the Applicant's parking plan will be more fully developed in later stages of the Applicant's application. The Applicant also requested flexibility to allow off-site parking within above-grade parking structures for some of the residential units, although revisions to the parking layout are anticipated as part of the more detailed second-stage review. (Exhibit 21, Pre-Hearing Statement, p. 18)

32 The PUD includes landscape improvements and will provide nearly five acres of open space, including a central plaza almost one acre in size. The central plaza will provide various pathways for pedestrians and will be shaded by trees. Additionally, each Block will be surrounded by trees and landscaping. The open area between the retail buildings will include public seating, and the Applicant will make an effort to preserve an existing willow oak located at the site. Finally, a grand stairway stretching from Kenilworth Terrace to a plaza will be located between the two office buildings. The plaza will lead to a new pedestrian bridge that will span Interstate 295 and terminate at the Minnesota Avenue Metro Station. The plaza between the office buildings will have additional landscaping. The grand stairway will be flanked by pedestrian pathways that may be used for outdoor seating for cafes located in the ground floor retail areas. The PUD will encourage utilization of Kenilworth Park and will serve as a gateway to the Anacostia Waterfront Riverwalk and regional trail network. (Exhibit 2, Statement of the Applicant, Exhibit F, Exhibit 21, Pre-hearing Statement, Exhibit B)

33 There is an existing pedestrian bridge that abuts the PUD Site and connects directly to the Metro Station. The District Department of Transportation ("DDOT") is planning to spend \$500,000 to improve the existing bridge and make the bridge span safer and more convenient. In addition to the existing bridge, the Applicant is providing \$3 million toward the design and construction of another pedestrian bridge that will be a central component to the PUD. The Anacostia Waterfront Corporation and DDOT are discussing apportioning an additional \$10 million to the design and construction of the bridge. The Anacostia Waterfront Corporation is hosting a design competition to ensure a sophisticated bridge design. (Exhibit 21, Pre-Hearing Statement, p. 12)

34 In addition to pledging \$3 million to the construction of the new pedestrian bridge, the Applicant is providing a number of additional benefits and amenities with the PUD

a Affordable Housing: The Applicant will dedicate 20 percent of the residential component of the PUD to individuals with incomes equal to or less than 80 percent of the Area Median Income ("affordable housing"). The rental portion of the affordable housing will be reserved for those with an income less than 60 percent of the Area Median Income. The rental affordable housing will remain affordable for a minimum of 30 years; the for-sale affordable housing will remain affordable for the same term required by the public subsidy used to provide the tenant's gap financing (Exhibit 21, Pre-Hearing Statement, p 14, Exhibit 56)

b Workforce Housing: An additional 20 percent of the residential portion of the PUD will be dedicated to individuals making between 80 and 120 percent of the Area Median Income ("workforce housing"). There will be no control period for this housing component

c Site Planning: The PUD optimizes mixed-income, mixed-use, transit-oriented development on one of the largest remaining pieces of undeveloped land in the District, within a half-mile of a Metro Station. The PUD is consistent with the permitted density for the C-3-A and CR Zone Districts. The Applicant will preserve and improve an existing one acre park and will preserve mature trees at the PUD site. Nearly five acres of landscaped park, plaza, and pedestrian space are included in the PUD (Exhibit 34, May 5, 2006 OP Report, p 4, Exhibit 21, Pre-Hearing Statement, Exhibit B)

d Urban Design: The PUD provides a transit-oriented design that is compatible with the existing townhomes and improves linkages to the Anacostia Waterfront. Its interconnected street network will disperse traffic and ease the pedestrian experience. The buildings, residences, shops, and services will be close together for ease of walking to enable a more efficient use of land and resources. The PUD's heights and densities will buffer and shield the community from the Pepco plant and the trash transfer station. The site plan accommodates higher density, while the form and scale of individual buildings are intended to minimize visual and physical impacts on the existing houses in the Parkside neighborhood. The heights and densities of the buildings will gradually decrease as they get closer to the existing Parkside Townhomes. Finally, the landscaping plan will augment existing street trees and add many new plantings (Exhibit 2, Statement of the Applicant, p 28)

e Effective and Safe Vehicular and Pedestrian Access. The transit-oriented design elements of the PUD will enable greater transit ridership. Both the existing and the proposed pedestrian bridge tie the Applicant's site to the Metrorail. In addition, the Applicant will donate an easement for the public to access the proposed pedestrian

bridge The PUD will also provide a link to the proposed Anacostia Riverwalk (Exhibit 2, Statement of the Applicant, p 29)

f Employment and Training Provided the PUD can secure a lead tenant for the office space, the PUD will provide a substantial number of jobs with its extensive office and retail space The PUD also presents numerous construction opportunities. The residential space will bring permanent property management positions Additionally, Marshall Heights Community Development Organization will provide training to first-time homebuyers (Exhibit 21, Pre-hearing Statement, pp 22, 29)

g Environmental Benefits The Applicant will pursue additional due diligence for various green implementation strategies. It has received the Enterprise Green Communities Initiative Grant and has been recognized by the Smart Growth Alliance as a Smart Growth project As the PUD is proposed, it is eligible for LEED-ND certification The master plan conserves open space and mature trees to a great extent (Exhibit 21, Pre-hearing Statement, p 29).

h Uses of Special Value The project is transformational for Ward 7 It will be a visible indication of the revitalization of the Ward and will create a northern anchor for the existing downtown of Ward 7 The project will take advantage of its site along a major corridor heading into the District to create a landmark mixed-use, transit-oriented, mixed-income, environmentally-sensitive development The Applicant also undertook a detailed community planning process and sought the input of a significant portion of the neighboring communities (Exhibit 21, Pre-hearing Statement, p 30)

35 The PUD is consistent with and fosters numerous goals and policies stated in the elements of the Comprehensive Plan of the National Capital The project is consistent with the following major themes of the Comprehensive Plan: stabilizing the District's neighborhoods; increasing the quantity and quality of employment opportunities in the District, preserving and promoting natural amenities, respecting and improving the physical character, preserving and ensuring community input, and providing for diversity (Exhibit 2, Statement of the Applicant pp. 32-35, see also Exhibit 34, May 5, 2006 OP Report, p. 3)

36 The project is consistent with many Major Elements of the Comprehensive Plan (including the Economic Development, Housing, Environmental Protection, Transportation, Urban Design, and Land Use Elements) and fulfills numerous goals and policies of the Ward 7 Plan (Exhibit 2, Statement of the Applicant, pp 35 – 45)

37 In response to issues raised by the Commission during the May 15, 2006 public hearing, the Applicant provided more detailed information regarding the affordability control period of its affordable housing on May 22, 2006 (Exhibit 56)

GOVERNMENT REPORTS

38 The Office of Planning (“OP”), in its report dated May 5, 2006 and its supplemental report dated May 11, 2006 and through its testimony at the public hearing, recommended approval of the PUD, provided that a revised and updated traffic impact analysis regarding the adequacy of pedestrian and vehicular access to the site would be undertaken prior to second-stage approval of each phase of the PUD. OP believed that resolution, with relevant District agencies, of vehicular and pedestrian access was necessary for the adequate functioning of new development, which would also be of benefit to existing area residents, schools, and businesses. OP was supportive of the redevelopment project and found it generally consistent with the Comprehensive Plan and with the zoning for the area (Exhibit 34, May 5, 2006 OP Report, p. 8). OP was particularly supportive of the Applicant’s proposal to meet, and serve as the prototype for, the new LEED-ND standards (Exhibit 40, May 11, 2006 OP Report, p. 1).

39 The District Department of Transportation (“DDOT”) submitted a report dated May 5, 2006 that supported the PUD. DDOT examined the proposal in terms of trip generation and level of service calculations at the critical intersections leading to and from the proposed project. DDOT agreed with the Applicant’s capacity analysis and the level of service calculation at the pertinent intersections in the vicinity of the project. DDOT supported increased housing production, office, and retail uses at the site. It further noted that the amount of parking provided with the PUD would be adequate to meet the parking needs of the development and to minimize parking spillover into the neighborhood residential and business area (Exhibit 40, pp. 2-3).

40 The District Department of Health noted in its report that a portion of the development was located in a flood hazard zone. At the hearing on May 15, 2006, the Commission heard testimony from the Applicant’s civil engineer that their analysis did not indicate any flood plain problems at the PUD Site. The Applicant agreed to review this issue further.

41 In its May 1, 2006 report, the Department of Employment Services recommended that the Applicant enter into the First Source Agreement prior to Zoning Commission proposed action.

42 The DC Water and Sewer Authority (“DC WASA”) submitted a report to the Office of Planning on May 3, 2006. DC WASA noted that the PUD would have a significant impact on water demands, existing sanitary sewers, and existing stormwater sewers in the area. DC WASA will review the project plans that the Applicant submits for permits.

43 The Anacostia Waterfront Corporation (“AWC”) submitted a letter in support of the application dated April 20, 2006. AWC stated that the project “will bring much needed housing, employment opportunities, services and amenities to a long underserved part of the

city ” AWC supported the project, including important infrastructure improvements like the pedestrian bridge (Exhibit 28)

44 Stanley Jackson, the Deputy Mayor for Planning Economic Development, submitted a letter in support of the project on February 14, 2006 Mr Jackson stated that the Executive Office of the Mayor supported full funding of the design, construction, and operation of the pedestrian bridge Mr Jackson envisioned that the PUD would present an opportunity to reconnect the Parkside neighborhood and downtown Ward 7 (Exhibit 20)

45 Vincent Gray, Councilmember for Ward 7, submitted a letter dated October 2, 2005 in support of the PUD Councilmember Gray stated that the PUD was consistent with established policies of encouraging development near Metro stations and in historically distressed areas (Exhibit 12)

46 The District of Columbia Housing Authority submitted a letter in support of the PUD dated September 28, 2005 The Authority noted that the PUD was consistent with the Mayor’s New Communities Initiative to create large-scale mixed-income communities in distressed areas of the city The Authority was impressed with the Applicant’s inclusive planning process to build consensus for the proposal within the community (Exhibit 15)

ADVISORY NEIGHBORHOOD COMMISSION REPORT

47 Advisory Neighborhood Commission (“ANC”) 7D unanimously adopted a resolution in support of the project at a regularly scheduled and publicly noticed meeting on April 11, 2006 The ANC, in its written resolution dated April 13, 2006, noted that the PUD presented a “great opportunity for the neighborhood.” It further acknowledged the Applicant presented to the ANC on three different occasions and made a “strong effort to conduct an inclusive community planning process ” The ANC “strongly supports the project because it represents a critical piece of the ongoing revitalization of Ward 7.” (Exhibit 35)

PERSONS IN SUPPORT

48 Numerous members of the community presented testimony in support of the application, including Greg Rhett, President, Eastland Gardens Civic Association, John Bailey, Smart Growth Alliance, Howard Ways, Anacostia Waterfront Corporation, Trelane Patrick, Parkside Townhome Owner/Resident, Cheryl Cort, Washington Regional Network for Livable Communities, Shirley Lawson, President, Mayfair Mansions 2005 Tenant Association, Inc , and Irasema Salcido, Cesar Chavez School (Exhibit 51)

49 Numerous members of the community wrote letters in support of the application, which were accepted into the record (Exhibits 28-32, 35-39)

50 The Smart Growth Alliance submitted a letter, dated January 13, 2006, stating its support for the project. The Alliance stated that the PUD would add tremendously to Ward 7 generally and the Minnesota Avenue neighborhood specifically by adding market-rate and affordable housing units as well as much-needed retail opportunities. The Alliance found the affordable housing component of the project was "quite impressive and far beyond the industry standard, especially at Metro stations" (Exhibit 19)

51 A representative of the Neval Thomas Elementary School submitted a letter in support of the PUD dated October 11, 2005. The letter noted that the PUD would benefit the school by increasing the pool of students, by developing a vacant site and completing the neighborhood, and by increasing the possibility for upgrading the school (Exhibit 17)

52 A representative of GreenHOME, an organization dedicated to making affordable housing green, submitted a letter in support of the PUD dated October 11, 2005. The GreenHOME letter stated that the PUD was critical to the revitalization of Ward 7 and appropriate for an underutilized site located in the vicinity of a Metro station (Exhibit 16)

53 A representative of Paradise at Parkside Apartments submitted a letter, dated October 4, 2005, expressing its support for the PUD. The letter acknowledged the Applicant's effort to gain their support during the PUD process. The Apartments believed that it will benefit from affordable homeownership opportunities, the retail, access to the Anacostia River, and improved access to the Metro station (Exhibit 13)

54 Mayfair Mansions 2005 Tenant Association, Inc. submitted a letter in support of the PUD, dated October 4, 2005. Mayfair believed that development of the vacant site would benefit the entire community (Exhibit 14)

PARTY IN OPPOSITION

55 The president of Parkside Townhomes Condominium, Inc., a party in opposition to the application, presented a written statement and testimony at the May 15, 2006 public hearing, stating that the PUD would have an adverse impact on parking and traffic in the area. (Exhibit 33)

PERSONS IN OPPOSITION

56 Rita and Mary Jackson testified in opposition to the PUD. They shared concerns regarding the location of the PUD adjacent to the Pepco plant (Exhibit 42)

CONCLUSIONS OF LAW

1 Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits 11 DCMR § 2400.1 The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project “offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience.” 11 DCMR § 2400.2

2 Under the PUD process, the Zoning Commission has the authority to consider this application as a two-stage PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards.

3 The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that will offer a variety of building 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 Commission agrees with the testimony of the project architect and the representatives of the Applicant and believes that this project does in fact provide superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the large amount of affordable and workforce housing provided in this project is a significant amenity that will be available to District residents, including police officers and school teachers. The Commission believes that the design and site planning of the project promotes smart growth and encourages use of public transportation.

6 The Commission finds that the density of the PUD is appropriately dispersed on the PUD site as it shields obnoxious neighboring uses and appropriately relates to existing townhomes.

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.

8 Approval of the first-stage PUD and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of the Office of Planning in this case and finds that the proposed project is consistent with and fosters numerous 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 the 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 Property to the C-3-A and CR Districts 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 agrees with the conclusions of the Applicant's traffic and parking expert, as well as the conclusions of DDOT, that the proposed project will not create adverse traffic or parking impacts on the surrounding community

11 In accordance with D C Official Code §1-309 10(d)(2001), the Commission must give great weight to the written issues and concerns of the affected ANC The Commission concurs with ANC 7D's letter expressing support of the application

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 (2001)), to give great weight to OP recommendations The Commission concurs with OP's view that first-stage approval should be granted, conditioned upon a requirement that a revised and updated traffic impact analysis be submitted prior to second-stage approval of each phase of the PUD

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 first-stage review of a planned unit development and related Zoning Map amendment from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts for the Property, as shall be stated with greater specificity in any order granting final PUD approval This approval is subject to the following guidelines, conditions, and standards

1 The Applicant shall submit, with the application for second-stage approval of the PUD, an application for rezoning the PUD site from R-5-A and C-2-B to C-3-A and CR that specifies the proposed rezoning by square and lot

2 The first-stage PUD is approved in accordance with the plans and materials submitted by the Applicant marked as Exhibits 2, 21, and 52 of the record, as modified by the guidelines, conditions, and standards of this Order

3 The second-stage design of the PUD shall be based on further development and refinement of the plans marked as Exhibits 2, 21, and 52 of the record, as modified by the guidelines, conditions, and standards of this Order and shall include all public benefits described in Findings of Fact 32 through 34

4 In accordance with the plans and materials noted above, the approved PUD shall consist of approximately 1,500–2,000 dwelling units, 500,000–750,000 square feet of office space, 30,000–50,000 square feet of retail, with approximately 2,400 total parking spaces. The entire project will include 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 will be approximately 62.4 percent. The maximum height of the PUD will be 110 feet, which will be reserved solely for the buildings located in the center portion of Parcel 12 fronting Kenilworth Avenue. The heights for the remaining buildings shall not exceed 90 feet and must scale down to lesser heights around the existing townhomes, as depicted in the Applicant's plans.

5 If the Applicant cannot secure a lead tenant for the office use, it may use that portion of the development envelope for an additional 500,000–750,000 square feet of residential space.

6 The PUD will reserve 20 percent of the total residential component as units affordable to households having an income not exceeding 80 percent of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size). Those reserved as affordable rental units will remain affordable for at least 30 years; the affordability restriction for the affordable for-sale housing shall be consistent with the terms required by the public subsidy the homebuyer uses to provide gap financing.

7 The PUD will reserve 20 percent of the total residential component for workforce housing targeted to households that have an income between 80 and 120 percent of the Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size).

8 The Applicant shall submit, as part of the second-stage application, landscape plans, detailed architectural plans, and elevations indicating the design treatment of each building.

9 The Applicant shall submit, as part of a second-stage application, an analysis of the potential for providing access to the PUD Site from Benning Road.

10 The Applicant shall submit, as part of a second-stage application, a detailed traffic study that will (a) address the adequacy of pedestrian and vehicular access to the PUD Site, including an analysis of the DDOT recommendation with respect to pedestrian access, (b) address traffic conditions pertaining to Kenilworth Avenue, particularly in light of the transportation initiatives identified by DDOT as planned or underway in the vicinity, such as the

Kenilworth Avenue Corridor study, and (c) analyze the traffic impacts of the PUD in light of other new developments and uses in the vicinity, such as the Cesar Chavez Public Charter School

11 The Applicant shall submit, as part of a second-stage application, materials addressing (a) the design and anticipated use of the pedestrian retail plaza at the center of the PUD Site, including whether it should be open to slow-speed vehicular traffic, and (b) potential cooperation with Pepco to provide adequate landscaping to buffer the Pepco site from the PUD Site

12 The Applicant shall specify, in its second-stage application, the period of affordability applicable to the for-sale affordable units

13 The first-stage approval is valid for a period of one year, within which time a second-stage application shall be filed. If the second-stage application is for less than the entire development described in this Order, no subsequent second-stage application may be filed after three (3) years from date of approval of the partial second-stage. It is within the Zoning Commission's discretion to extend these periods

14 Given the size of the PUD, the Applicant may file the second-stage application in phases for one or more of the buildings

15 In accordance with the D C Human Rights Act of 1977, as amended, D C Official Code §§ 2-1401.01 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived race, color, religion, national origin, sex, age, marital status, 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 that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the act will not be tolerated. Violators will be subject to disciplinary action.

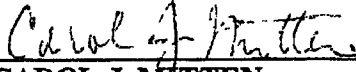
For the reasons stated above, the Commission concludes that the Applicant has met the burden, it is hereby **ORDERED** that the application be **GRANTED**

The Zoning Commission at its public meeting held on June 12, 2006, **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to approve)

Z.C. ORDER NO. 05-28
Z.C. CASE NO 05-28
PAGE 16

The Order was **ADOPTED** by the Zoning Commission at its public meeting on September 11, 2006 by a vote of 5-0-0 (Carol J Mitten, John G. Parsons, Anthony J Hood, Gregory N. Jeffries, and Michael G. Turnbull to adopt)

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D C Register* on APR 13 2007



CAROL J. MITTEN
Chairman
Zoning Commission



JERRILY R. KRESS, FAIA
Director
Office of Zoning

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., March 27 2007

Plot for Building Permit of SQUARE 8041 LOT 806-808, 811 812, 814 815
817, 818, 820 & 822

Scale: 1 inch = 50 feet

Recorded in A & T Book Page 3257-W

Receipt No. 05780

Published by P W S P

[Signature]
Surveyor, D.C.

By D.M. *[Signature]*

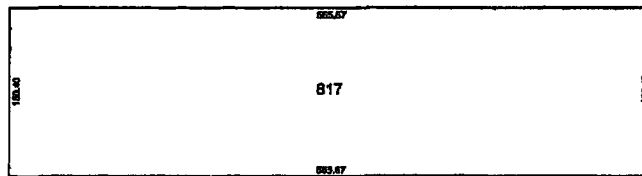
I hereby certify that all existing improvements shown herein, are completely described, and are correctly placed; that if proposed buildings or constructions, or other improvements, including covered porches, are correctly described and placed and agree with plans accompanying this application; that the boundaries shown as shown herein to street, and dimensions according to the measurements to the property lines shown on this plan are true by reason of the personal measurements to be obtained all shown herein the size of any building or other improvement to be constructed thereon shall be marked by the Surveyor, and the same shall be marked by the Surveyor, and it is further certified and signed that complete building lines, which are required by the District Regulations, will be preserved in accordance with the laws, Regulations, and that herein, and more exactly drawn and described herein. All other improvements shown on this plan, and the same shall be shown on the plan. The Department approved, and all other points not mentioned in a note of points along boundaries of highways and any points on publicly owned lands of D.C. for city-owned buildings or lots, or in cases of D.C. of any other building. (This building line is shown in the plan, and a building line shall be shown in the plan, and the public policy and the public interest property.)

Date: _____

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are to be taken from the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with this description.

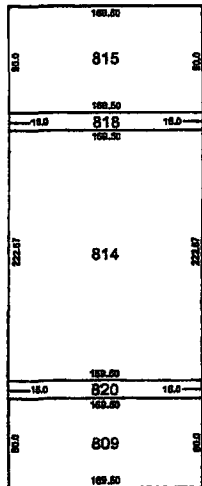
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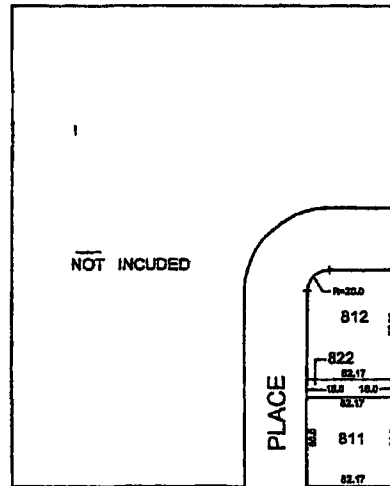
BARNES STREET

STREET

FOOTE STREET, N E



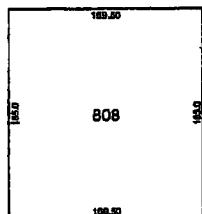
DELANO ROOSEVELT PLACE



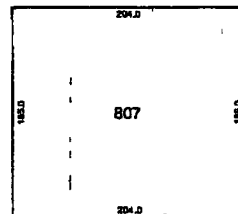
GRANT PLACE, N E

PARKSIDE PLACE

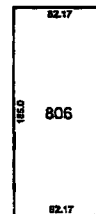
PLACE



FRANKLIN



GRANT



KENILWORTH TERRACE, N E

Washington, D.C., March 27 2007

Scale, 1 inch = 100 feet

Recorded in Book 117 Page 7 (LOTS 14-23)
Book A&T Page 2179-P (LOTS 801-813)

Receipt No. **01713**

Furnished to **FWSP**

Surveyor, D.C.

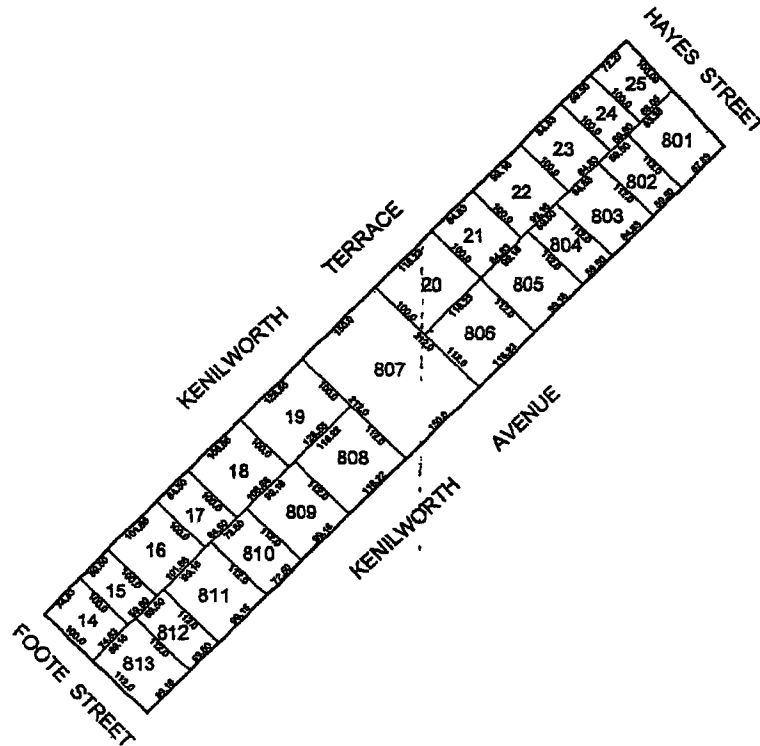
By D.M. 

[illegible]

Date _____

(Signature of owner or his authorized agent)

NOTE: Data shown for Admissions and Tuition Letter Periods are in accordance with the records of the Department of Finance and Planning, Accounting Administration, and do not necessarily agree with those reported.



SO-067904/2007

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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.)

441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001

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E-Mail dcocz@dc.gov

Web Site www.dcoz.dc.gov

- 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 and 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-swailes 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 a

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.

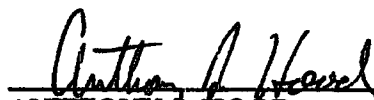
- 3 The second-stage design of the PUD shall be based on further development and refinement of the plans marked as Exhibits 3, 28, and 52 of the record, as modified by the guidelines, conditions, and standards of this Order and shall include all public benefits and amenities described in Findings of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

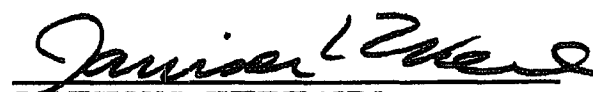
At its public meeting on May 23, 2011, upon the motion of Chairman Hood, as seconded by Commissioner May, the Zoning Commission took proposed action to **APPROVE** the application regarding the requested changes in use for the Community College and Health Center and to **DENY** the application without 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



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



JAMISION L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



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

AUG 29 2011

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

- | | |
|--|---|
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ATTESTED BY:

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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

Z.C. Case No. 05-28H

Lano Parcel 12 LLC, Parkside Residential LLC, Parkside Homes LLC and Parkside Senior Housing LLC

(Two Year PUD and Related Zoning Map Amendment Time Extension @ Square 5041, Lots 47, 806-809, 811, 812, 814, 815, 818, 820, 822, 824, 827; Square 5055, Lots 14-25, 801-813; Square 5056, Lots 806, 809, 810-814, and 821) ("Property")

September 26, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on September 26, 2011. At that meeting, the Commission approved the request of Lano Parcel 12 LLC, Parkside Residential LLC, Parkside Homes LLC, and Parkside Senior Housing 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 Chapter 24 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

1. The Commission granted first-stage PUD approval for the Property on April 13, 2007 pursuant to Z.C. Order No. 05-28 ("Order"). 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.
2. 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).
3. On August 10, 2011, the Applicant filed a request to extend the first-stage approval through October 3, 2013. (Exhibit 1.)
4. The first-stage approval was for a project consisting of approximately three million square feet of mixed-use development on 10 building blocks on 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 Order also approved

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the rezoning of the Property from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts (Exhibit 1)

5. The first-stage approval was modified by Z C Case No 05-28E Z C Order No 05-28E approved a change of use, increased the approved maximum height, and approved a rezoning to the CR Zone District for a portion of the Property (Exhibit 1)
6. Following the approval of the Order, the real estate market in the country and the District of Columbia suffered a major downturn. As a result, the Applicant was unable to obtain sufficient project financing in time to proceed with a second-stage PUD for the entirety of the Project approved by the first-stage approval
7. Nevertheless, the Applicant moved forward with applications for second-stage approval for five of the 10 building blocks approved in the Order, including the development of a 98-unit affordable senior housing building, 112 townhomes with a workforce housing component, a park to be made available to the public, the Community College of the District of Columbia ("CCDC"), and a health care facility The affordable senior housing building is currently under construction The CCDC and the health care facility were recently approved by the Commission pursuant to Z C. Order Nos. 05-28C and 05-28B, respectively (Exhibits 1 and 6) In all, the Applicant has spent approximately \$3.5 million relating to its pursuit of second-stage approvals, exclusive of costs relating to property acquisition (Exhibit 6.)
8. The Applicant served its request for an extension on all parties to the first-stage PUD, including the affected Advisory Neighborhood Commission ("ANC") 7D and the Parkside Townhomes Condominium The parties were given 30 days to respond to the request
9. The Parkside Townhouses Condominium ("PTC") submitted a letter dated August 31, 2011, in opposition to the time extension request. The letter repeated the PTC's objections to the original PUD, namely its impact on traffic and parking conditions The letter stated that the traffic and parking issues that were the source of its original objection have increased since the Commission issued its original order The letter also stated that PTC did not believe the Applicant met its burden of proof with respect to its extension request (Exhibit 4.)
10. ANC 7D did not submit a report
11. In response to the PTC letter, the Applicant filed a supplemental submission outlining the good faith efforts the Applicant made to develop the property within the timeline contemplated by Z C Order No 05-28, and stating that the changes that have occurred in

the Parkside community since 2007 were contemplated in the original PUD order. The submission also included an affidavit outlining the number of second-stage applications the Applicant has filed for the Property and the amount of money it has spent in pursuing such applications (Exhibit 6).

12. The Office of Planning ("OP") submitted a report dated September 16, 2011. 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, which apply to the extension of orders granting consolidated or second-stage PUDs. OP noted that the Applicant "has demonstrated with substantial evidence good cause for the extension and [OP] recommends that the Commission grant the request" (Exhibit 5).

CONCLUSIONS OF LAW

Section 2407.10 of the Zoning Regulations provides first-stage PUDs are valid for one year, and authorizes the Commission to extend that period. The Zoning Regulations do not provide the process or standard the Commission is to follow when deciding whether to grant a first-stage extension. However, the Commission in the past has applied the process and standard stated in the Regulations for extending a second-stage or consolidated PUD order ("Final PUD Order"). See Z.C. Order No. 02-51B, *Center for Strategic and International Studies, Inc.*, 56 DCR 2648 (2009).

Those provisions authorize the Commission to extend the validity of a final PUD order for good cause shown upon a request made before the expiration of the approval, provided (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Zoning Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD, and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11 (11 DCMR § 2408.10). Section 2408.11 provides the following criteria for good cause shown: (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 or factor beyond the applicant's reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

The Commission concludes that the Applicant complied with the notice requirements of 11 DCMR § 2408 10 (a) by serving all parties with a copy of the application and allowing them 30 days to respond

The Commission concludes there are no substantial changes in the material facts that the Commission relied on in approving the original first-stage PUD application. PTC argued that the “traffic and parking issues that were the source of its original objection have only increased during the time since the Commission’s Order.” This is not a change in the material facts the Commission relied on approving the original PUD, since the Commission contemplated an increase in traffic and increased parking demand in the area as the PUD was developed. Five of the 10 blocks included in the original PUD have been developed, and have increased traffic and parking demand in the area.

The Commission further notes that the PTC’s concerns regarding traffic and parking were addressed during the first-stage PUD and can be discussed further in the second-stage applications for the remainder of the Property. Specifically, the Commission expressly found in the first-stage PUD that it “agrees with the conclusions of the Applicant’s traffic and parking expert, as well as the conclusions of DDOT, that the proposed project will not create adverse traffic or parking impacts on the surrounding community” (Z.C. Order No. 05-28, Conclusion of Law No. 10).

The Commission finds there is substantial evidence of good cause for the extension. The Applicant has been unable to secure project financing for the remaining portions of the first-stage approval despite the Applicant’s diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant’s reasonable control. The Applicant has made good faith efforts to fully effectuate the first-stage PUD and has pursued a significant number of second-stage applications in a financially challenging time.

Section 2408 12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a final PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The Commission concludes a hearing is not necessary for this first-stage extension request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

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. OP recommended approval of the time extension request and the Commission concurs in its recommendation.

The Commission is required under § 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)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 7D. As noted in Finding of Fact No. 10, ANC 7D did not submit a report and so there was nothing which to give great weight to

The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

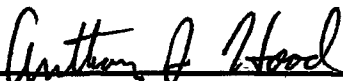
DECISION

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. 05-28H for a two-year time extension of Z.C. Order No. 05-28. The validity of the first-stage PUD is extended until October 3, 2013, within which time any outstanding second-stage PUD applications for the Property must be filed.

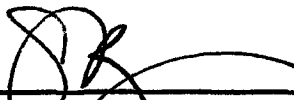
For the reasons stated above, the Commission concludes that the Applicant has met its burden; it is hereby **ORDERED** that the request be **GRANTED**.

On September 26, 2011, upon motion by Chairman Hood, as seconded by Vice Chairman Schlater, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Greg M. Selfridge, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to 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 3, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
ACTING DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



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

FEB 7 2012

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

- | | | | |
|----|---|-----|--|
| 1 | <i>DC Register</i> | 6. | Councilmember Yvette Alexander |
| 2. | Phil Feola and Christine Roddy, Esqs.
Goulston & Storrs
1999 K Street, N W. Suite 500
Washington, D.C 20006-1101 | 7. | DDOT (Martin Parker) |
| 3. | ANC 7D
5002 Hayes Street, N.E
Washington, D.C. 20019 | 8. | Melinda Bolling, Acting General Counsel
DCRA
1100 4 th Street, S.W.
Washington, D C. 20024 |
| 4. | Commissioner Willie Woods
ANC/SMD 7D07
3725 Cassell Place, N.E.
Washington, D.C. 20019 | 9. | Office of the Attorney General (Alan
Bergstein) |
| 5 | Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N W
Washington, D.C 20004 | 10. | Parkside Townhomes Condo. Assoc
c/o Benny Kass, Esq.
1050 17 th Street, N.W.
Washington, D.C 20036 |

ATTESTED BY:

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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

Z.C. Case No. 05-28L

**Lano Parcel 12, LLC, Parkside Residential, LLC, Parkside Homes, LLC, and CI GD
Parkside 7, LLC**

**(Two-Year PUD and Zoning Map Amendment Time Extension @ Square 5041, Lots 48-70,
806-809, 814, 815, 818, 820, and 833-850; Square 5055, Lot 26; and Square 5056, Lots 41,
809-811, and 813)**

November 18, 2013

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia ("Commission") was held on November 18, 2013. At that meeting, the Commission approved the request of Lano Parcel 12 LLC, Parkside Residential LLC, Parkside Homes, LLC, and CI GD Parkside 7, LLC (collectively, the "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.

FINDINGS OF FACT

Case Background

1. The Commission granted first-stage PUD approval for the property on April 13, 2007, pursuant to Z C Order No 05-28 (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 on 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 PUD also approved the rezoning of the property from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts, subject to the requirement of § 3028.9 for the completion of the second-stage approval process and the filing of covenants for each second-stage approval.
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)

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4. Therefore, at least one second-stage application had to be filed by April 12, 2008.
5. 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.)
6. By October 3, 2011, second-stage applications had been filed for five of the PUD blocks. The First-Stage PUD 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 rezoning to the CR Zone District for a portion of the Property. (Z C Order Nos 05-28 and 05-28E)
7. On August 10, 2011, the Applicant filed a request to extend the First-Stage PUD 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 PUD approval was extended through October 3, 2013. (Z C Order No. 05-28H.)
8. 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.
9. The request was placed on the Commission's November 18, 2013, 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 PUD approval was extended through October 3, 2015.
10. Since the issuance of Z C Order 05-28, the following second-stage applications have been approved
 - Z C Case No 05-28A The Commission approved a second-stage application for Blocks 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 is currently operational. The Commission modified the approval for the townhouse development in Z C Case No 05-28G. The project was approved for 100 townhomes, 58 of which will be sold at market-rate and 42 will be workforce housing,
 - Z C Case No 05-28B The Commission approved a second-stage application for the construction of a public health center on Block 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 is currently operational;

- Z C Case No. 05-28C The Commission approved a second-stage application to locate the Community College of the District of Columbia on a portion of Blocks H and I of the PUD,
- Z C Case No 05-28F The Commission approved a second-stage application for the one-acre park at the center of the PUD; and
- Z C Case No. 05-28J/K The Commission approved a second-stage application for 186 affordable residential units on Block E

Extension Request

11. Subsection 2407 11 of the Zoning Regulations grants the Commission the authority to extend a first-stage PUD approval in accordance with the standards and process for second-stage PUD extensions set forth in § 2408 10 through 2408 12.
12. Pursuant to § 2408.10, 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. With respect to the first prong, the request was served on the 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.
- 14 The Parkside neighborhood has not undergone any significant changes since the PUD was initially granted In fact, the most substantial changes have been the result of the approved PUD, including construction of a senior housing facility and public health care facility
15. The Comprehensive Plan designation and zoning designation for the property surrounding property remains unchanged since the granting of the First-Stage PUD in 2006 and the extension and modification granted in 2011

- 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, including the economic downturn that hit the country in 2008, just two years after the first-stage application was approved
- 17 Ward 7, particularly the areas east of the Anacostia River, were particularly hard-hit by the recession. The Applicant has faced challenges in coordinating the timing of development with market demands. It has also faced financing challenges, particularly for the townhomes and for affordable housing. The Applicant has and continues to approach financial institutions to realize the project
18. The Applicant included an affidavit with its extension request that outlined the efforts that had been taken to implement the First-Stage PUD approval
 - a The senior housing facility opened and is currently 98% occupied,
 - b. The District of Columbia Primary Care facility opened on October 16, 2013, and will serve an estimated 50,000 patients annually;
 - c The Applicant will file for its building permit for the public park in December 2013,
 - d. The Applicant is finalizing its Funding Agreement with the District Department of Transportation ("DDOT") and depositing its contribution into a Special Fund maintained by DDOT to fund the pedestrian bridge between the PUD and the Metrorail station. DDOT has finalized the project's Contract Package and estimates to start construction in Q1 2014 with completion in year-end 2015;
 - e. The Commission approved a residential building for Block E,
 - f. The Applicant retained an architect to prepare schematic drawings for the development of Block F as a mixed-use residential and retail development,
 - g. The Applicant partnered with K Hovnanian Homebuilders on the townhomes approved for Blocks B and C and has completed 100% of the civil engineering permit plans and received approval from all the appropriate District agencies for a Public Space Permit, Stabilized Construction Entrance Permit, and Utility Permits;
 - h. The Applicant partnered with The Michaels Organization and The Warrenton Group for the DC Housing Authority's ("DCHA") Choice Neighborhoods Initiative Implementation Funding application in September 2013. The partnership seeks to develop Block J into multifamily housing if/when DCHA is awarded this grant from HUD,

1. The Applicant approached several financial institutions to partner with on the project's financing, however, the state of the single-family lending market in the District and specifically in Ward 7 posed numerous challenges with respect to finding the right construction lender;
 - j The Applicant made good faith efforts to attract a large office user on Block H. It approached several district agencies, including the Department of Homeland Security and DCHA. The conditions of the office market in Ward 7 as well as District-wide pose significant challenges to drawing such users east of the Anacostia River; and
 - k The Applicant moved forward with applications for second-stage approval for seven of 10 building blocks approved in the Order, including the development of a 98-unit affordable senior housing building, 100 townhomes with a workforce housing component, a park to be made available to the public, the Community College of the District of Columbia ("CCDC"), a health care facility, and an affordable multi-family building.
- 19 The Parkside Civic Association ("PCA") submitted a letter dated November 8, 2013, in support of the request. The PCA noted they supported the request because the Applicant has pursued a number of second-stage approvals and plays an important role in constructing several great projects in the neighborhood, including Victory Square, the senior housing facility, Educare of Washington DC and the Unity Health, the primary care clinic in the PUD. Other projects, like the community park and 600 Kenilworth Terrace (Block E) are due to start construction next year and when finished will be community assets. The Parkside PUD and Master Plan are still relevant and continue to drive the vision for the future of Parkside. The PCA also noted that the Applicant is committed to the Parkside community and to fulfilling its obligations and has attended numerous ANC 7D public meetings and local Parkside Civic Association meetings to keep the residents informed.
- 20 Willie Woods, the ANC Single Member District representative, submitted a letter dated November 8, 2013, in support of the request. Mr. Woods stated that he was still a proponent of the project and is looking forward to it coming to fruition. He also noted that there has been movement in the right direction since the initial approval of the First-Stage PUD (Exhibit ["Ex "] 11)
- 21 ANC 7D did not submit a letter into the record to indicate its support or opposition.
22. The Office of Planning ("OP") submitted a report dated November 1, 2013. 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. 10.)

CONCLUSIONS OF LAW

1. 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.
2. 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 first-stage PUD and Zoning Map Amendment and time extension application on October 2, 2013. Both parties were given 30 days to respond to the extension request.
3. 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.
4. 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.
5. The Commission finds that there is good cause shown to extend the period of time of the validity of the First-Stage PUD based upon the Applicant’s inability to obtain sufficient project financing for the remainder of the PUD. The Commission also finds that the

Applicant has made good faith efforts to effectuate the First-Stage PUD and has pursued a significant number of Second Stage applications in a financially challenging time where economic and market conditions were beyond the Applicant's reasonable control

- 6 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 22 above). OP recommended approval of the time extension request and the Commission concurs in its recommendation
- 7 For these reasons, the Commission finds that the Applicant has satisfied the requirements of 11 DCMR §§ 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. 05-28L for a two-year time extension of Z C Order No 05-28. The validity of the First-Stage PUD is extended until October 3, 2015, within which time any outstanding second-stage PUD applications for the property must be filed

On November 18, 2013, upon motion by Chairman Hood, as seconded by Vice Chairman Cohen, the Zoning Commission **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 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 7, 2014.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING