

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28Z
Z.C. Case No. 05-28Z
Parkside Residential, LLC
(Modification of Consequence to a Second-Stage
Planned Unit Development @ Lots 865-869 in Square 5056)
February 24, 2022

Pursuant to notice, at its February 24, 2022 public meeting, the Zoning Commission for the District of Columbia (“Commission”) considered the application (“Application”) of Parkside Residential, LLC (“Applicant”) for a Modification of Consequence to a Second-Stage Planned Unit Development (“PUD”) approval granted in Z.C. Order No. 05-28Q, as modified by Z.C. Order Nos. 05-28W and 05-28W(1), for Lots 865-869 in Square 5056 (“Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

PRIOR APPROVALS

1. Pursuant to Z.C. Order No. 05-28 (“First-Stage Order”), effective April 13, 2007, the Commission approved, subject to enumerated conditions, a First-Stage PUD with a related Zoning Map amendment from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts, to construct approximately three million square feet of mixed-use development on ten building blocks comprising approximately 15.5 acres in the Parkside neighborhood of Ward 7. The Property that is the subject of this Application is a portion of Block F, one of the ten blocks on the PUD site, referred to as Parcel 9.
2. Pursuant to Z.C. Order No. 05-28Q (“Second-Stage Order”), effective March 23, 2018, the Commission approved, subject to enumerated conditions, a Second-Stage PUD and a modification of the First-Stage Order to construct a multifamily residential building (“Building 9B”) and an office building (“Building 9A,” and together with Building 9B, the “Project”), both with ground floor retail, on Parcel 9. The Second-Stage Order included requirements to file a building permit application to construct the Project within two years of the Second-Stage Order’s effective date and to start construction of the Project within three years of that effective date.

3. Pursuant to Z.C. Order No. 05-28W (“Second-Stage Extension Order”), the Commission approved a two-year time extension of the validity of the Second-Stage PUD approved by the Second-Stage Order. The Second-Stage Extension Order required the Applicant to file a building permit application to construct the Project by March 23, 2022 and to start construction of the Project by March 23, 2023.
4. Pursuant to Z.C. Order No. 05-28W(1) (“Second-Stage Administrative Covid-19 One-Year Time Extension Order”), the Commission approved a one-year time extension of the validity of the Second-Stage PUD approved by the Second-Stage Order per Subtitle Z § 705.9, as adopted by the Commission’s emergency action in Z.C. Case 20-26 - 20-26B. The Second-Stage Administrative Covid-19 One-Year Time Extension Order required the Applicant to file a building permit application to construct the Project by March 23, 2023.

PARTIES AND NOTICE

5. The only party to the Second-Stage Order other than the Applicant was Advisory Neighborhood Commission (“ANC”) 7D, the “affected” ANC pursuant to Subtitle Z § 101.8.
6. On December 30, 2021, the Applicant served the Application on ANC 7D as well as the D.C. Office of Planning (“OP”) and the District Department of Transportation, as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 2.)

THE APPLICATION

7. On December 30, 2021, the Applicant filed the Application requesting a Modification of Consequence to the Second-Stage Order to allow for (1) a phasing plan that permits the Applicant to file building permits and start construction of the Building 9B mixed-use residential building and the Building 9A mixed-use office building on separate timelines; (2) a change to the approved stepdown height of Building 9B along Parkside Place, N.E.; and (3) modifications of the sizes and locations of the windows along Building 9B’s elevations. The Application included plans and drawings depicting the design changes requested by the Applicant as Exhibit C. (Ex. 2, 2C1-2C3.)
8. The Application noted that the Second-Stage Order anticipated that Buildings 9A and 9B would be constructed together in a single phase because they share a below-grade parking garage. As stated above, the deadline to file a permit to construct both buildings was extended to March 23, 2023, by the Second-Stage Administrative Covid-19 One-Year Time Extension Order. However, the Applicant stated it has found an opportunity zone investor for Building 9B and is now in a position to proceed with the permitting and construction of the Building 9B mixed-use residential building sooner than Building 9A. Therefore, the Applicant explained that it would like to apply for a permit and begin construction of Building 9B as soon as possible to comply with the timing requirements of the opportunity zone program as well as to deliver the residential units to the market sooner. (Ex. 2.)

9. If the separate permitting and construction timelines were approved, the Applicant stated that Building 9B would include a portion of the below grade garage consisting of approximately 41 parking spaces and a knockout panel to connect to a future garage constructed with Building 9A, as depicted in the plans and drawings in Exhibit C of the Application. In addition, the Applicant proposed an interim landscape plan for Building 9B, also shown in Exhibit C, which would be finalized with the construction of Building 9A. (Ex. 2, 2C1-2C3.)
10. The Application explained the Applicant was requesting a modification to change the stepdown height for Building 9B from 74 feet¹ to 70 feet and four inches along Parkside Place, N.E. after refining its grade measurements and adjusting the floor-to-ceiling heights in the building. The Applicant noted the change in the stepdown height will not affect the number of residential units in Building 9B,² the visual impact of the building, or the building's approved maximum height of 85 feet along Kenilworth Terrace, N.E. (Ex. 2, 2C1-2C3.)
11. The Application also explained the Applicant was requesting adjustments to the window sizes and locations on each elevation of Building 9B as the result of refining the unit mix and size of the units in the building. The changes in fenestration are reflected in the plans and drawings included as Exhibit C to the Application. The Applicant stated that the changes do not affect the provision of balconies or the materials being used. (Ex. 2, 2C1-2C3.)

RESPONSES TO THE APPLICATION

OP Report

12. On January 20, 2022, OP submitted a report (“OP Report”) stating no objection to the Application being considered a Modification of Consequence and recommending approval of the Application. (Ex. 3.)
13. OP observed that the modification would allow for a phased construction of Building 9A and Building 9B as well as a small increase in the building height of Building 9B along Parkside Place within the permitted height for the underlying zone. OP also stated that the changes to the fenestration of Building 9B would result in only minor alterations to the building façade and would not affect the façade's building materials. (Ex. 3.)

¹ The Application noted that the 74-foot stepdown height approved in the Second-Stage Order was erroneously measured from Parkside Place instead of the building height measuring point (“BHMP”) on Kenilworth Terrace. This Application's requested modification of the stepdown height to 70 feet and four inches was correctly calculated using the measuring point from the BHMP on Kenilworth Terrace. Despite the lower stepdown height (i.e., 70 feet and four inches), the Applicant explained that the modification if approved would effectively result in an increase of ten inches in Building 9B's stepdown height along Parkside Place because of the differing reference points used in the Second-Stage Order compared to this Application.

² The Second-Stage Order approved approximately 76 residential units, plus or minus 10%. The Applicant indicated its current proposal includes 82 units, which is within the flexibility afforded by the Second-Stage Order.

14. OP noted that the requested modifications would not result in any changes to the benefits and amenities of the Project as approved, nor would they change any of the previously approved relief and flexibility requests. (Ex. 3.)

ANC Report

15. On February 3, 2022, ANC 7D submitted a written report stating that at its January 11, 2022 duly noticed public meeting, at which a quorum was present, ANC 7D voted 5-0-1 to support the Application. The ANC report cited the opportunity to develop Parcel 9 with multifamily housing options, including workforce housing, and much-needed retail as reasons for supporting the Application. ANC 7D stated the Applicant presented the Application to ANC 7D and demonstrated its willingness to engage with ANC 7D and the community. The ANC report indicated that the Application satisfied ANC 7D's concerns that Parcel 9B would be developed in an orderly way with uses and designs that benefit the Parkside neighborhood and the ANC 7D community. (Ex. 4.)

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make Modifications of Consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a Modification of Consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.”
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission” as examples of a Modification of Consequence.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 7D.
5. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the architectural elements of Building 9B as well as proposing to phase filing building permit applications and starting construction of Buildings 9B and 9A on separate timelines, and therefore the modification can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties has been met, and therefore the Commission could consider the merits of the Application at its February 24, 2022 public meeting.
7. The Commission finds that the Application is consistent with the Second-Stage Order, because the requested modifications only modify the conditions of the Second-Stage Order and architectural design of Building 9B to allow for a phased development of the Project

and respond to a refinement in the number and configuration of residential units that will be provided within allowable limits without resulting in any changes to the public benefits and amenities being provided by the Project.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

8. The Commission must give “great weight” to the recommendations of the OP pursuant to § 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 (2018 Repl.) and Subtitle Z § 405.8; *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
9. The Commission notes OP’s lack of objection to the Application being considered as a Modification of Consequence and finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

10. The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 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) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted).)
11. The Commission finds ANC 7D’s recommendations to approve the Application persuasive and concurs in that judgment.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a Modification of Consequence of Z.C. Order No. 05-28Q, as modified by Z.C. Order Nos. 05-28W and 05-28W(1), subject to the following conditions and provisions:


1. The conditions in Z.C. Order No. 05-28Q remain unchanged and in effect, except that Condition A.1 as incorporated in Z.C. Order No. 05-28Q, is hereby revised to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with plans and drawings filed in the record in ~~this case~~ **Z.C. Case No. 05-28Q** as Exhibit 57A1-57A9, **as modified by the plans and drawings filed in the record of Z.C. Case No. 05-28Z as Exhibits 2C1-2C3 (collectively, “Final Plans”), and as further modified by the guidelines, conditions, and standards herein of Z.C. Order No. 05-28Q and Z.C. Order No. 05-28Z. The Applicant may file separate building permit applications to construct the mixed-use building on Parcel 9B and the mixed-use building on Parcel 9A and the below-grade parking garage(s) associated therewith on Parcel 9 of Block F, and the Applicant may start construction of such buildings and garages in separate phases in accordance with the Final Plans as approved by Z.C. Order No. 05-28Q and modified by Z.C. Order No. 05-28Z, and subject to the time extensions set forth in Z.C. Order Nos. 05-28W and 05-28W(1); provided, however, that the failure to file an application for a building permit for or to commence construction on one such building shall not divest the other building if the applicable vesting requirements have been satisfied for such other building.**

VOTE (February 24, 2022): **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Joseph S. Imamura to **APPROVE**; third Mayoral appointee seat vacant)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 05-28Z shall become final and effective upon publication in the *D.C. Register*; that is, on May 6, 2022.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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.