Exhibit D

ZONING COMMISSION
District of Columbia
CASE NO. 05-28AK
EXHIBIT NO. 2D

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Z.C. CASE NO.: 05-28

As Secretary to the Commission, I herby certify that on APR - 9 2007 copies of this Z.C. Order No. 05-28 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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Office of Zoning

ZONING COMMISSION
District of Columbia
CASE NO. 05-28
EXHIBIT NO. 66

ZONING COMMISSION
District of Columbia
CASE NO.05-28AH
EXHIBIT NO.3

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 of 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, D.C. 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).

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

Plat for Building Permit of SQUARE 5041 LOT 806- 809, 811, 812, 814, 815 817, 818, 820 & 822

Scale: 1 inch = 60 feet

Recorded in A & T Book Page 3757-W

Receipt No. 06788

Furnished to: P W S P

Surveyor, D.C.

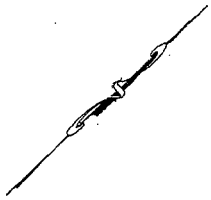
By: D.M.

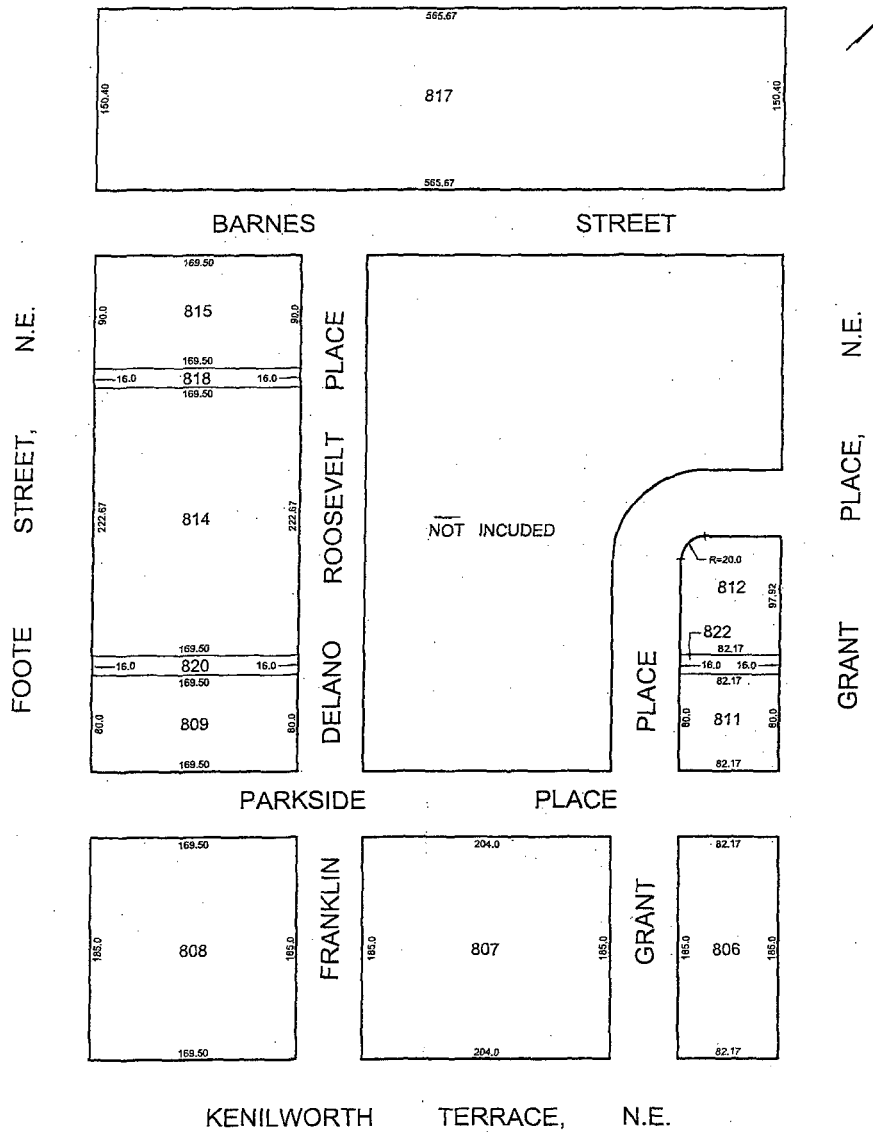
I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or constitution, or parts thereof, including covered porches, are correctly dimensioned and platted and agree, with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent).

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.





SO-06788(2007)

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., March 27, 2007

Plat for Building Permit of SQUARE 5005 LOTS 14-25 & 801-813

Scale: 1 inch = 100 feet Recorded in Book 117 Page 7 (LOTS 14-25)
Book A&T Page 3179-P (LOTS 801-813)

Receipt No. 06789

Furnished to: PWSP

Surveyor, D.C.

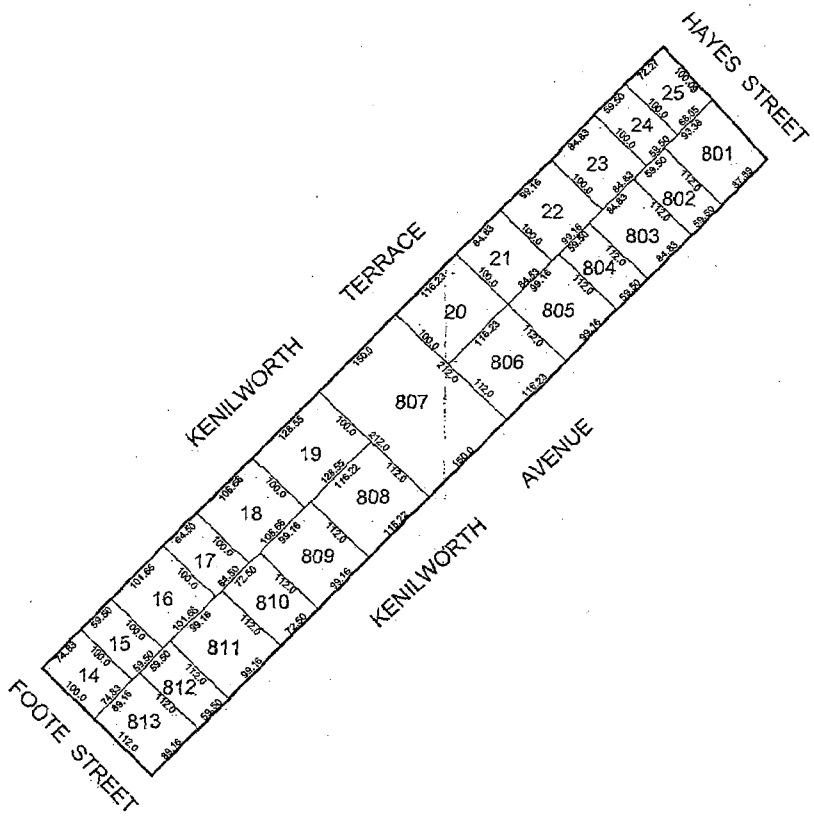
By: D.M.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted, and agree with plans accompanying the application; that the foundation plans as shown hereon or drawn, and dimensioned accurately to the same scale as the property lines shown on this plat, and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be observed in accordance with the Zoning Regulations, and that the area has been correctly drawn and dimensioned hereon, it is further agreed that the elevation of the accessible parking area with respect to the highway Department approved curb and alley grade will not result in a rate of grade along the surface of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., March 27, 2007

Plat for Building Permit of SQUARE 5056 LOTS 806, 809, 810, 814, 821

Scale: 1 inch = 40 feet Recorded in A&T Book Page 3757-X

Receipt No. 06790

Furnished to: P W S P

Surveyor, D.C.

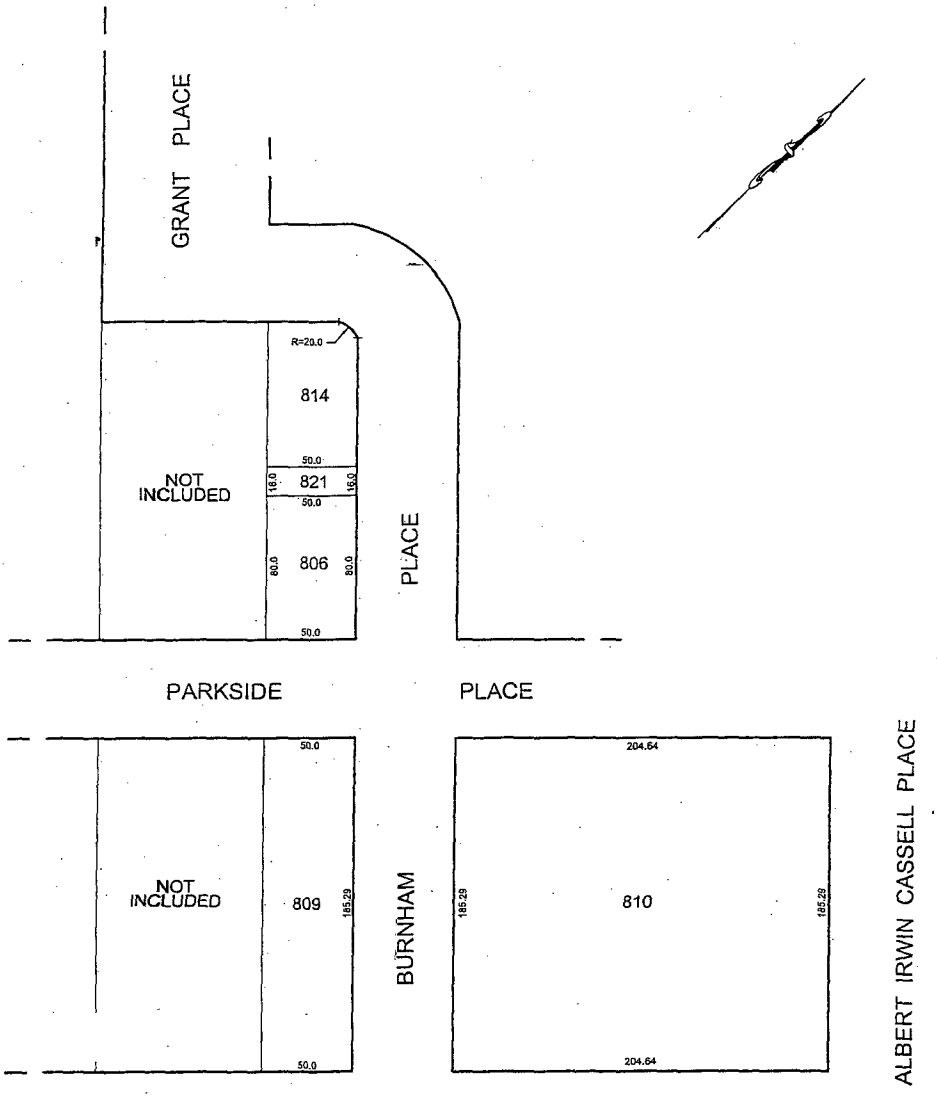
By: D.M.

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat; and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: _____

_____
(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed descriptions.



SO-06790(2007)

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 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.

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)

ZONING COMMISSION
District of Columbia
CASE NO. 05-28L
EXHIBIT NO. 13

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,

i 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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28O
Z.C. Case No. 05-28O
Lano Parcel 12, LLC and Parkside Residential, LLC
(Two-Year PUD Time Extension @ Square 5041, Lots 806 and 807; Square 5055, Lot 26; and Square 5056, Lots 41, 809-811, and 813)
November 9, 2015

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

FINDINGS OF FACT

Case Background

1. The Commission granted first-stage PUD approval for the property ("Property") on April 13, 2007, pursuant to Z.C. Order No. 05-28.

2. Z.C. Order No. 05-28 approved approximately three million square feet of mixed-use development on 10 building blocks over 15 acres of vacant property east of the Anacostia River in Ward 7. Specifically, it approved 1,500-2,000 residential units; 500,000-750,000 square feet of office space; and 30,000-50,000 square feet of retail. It approved a maximum height of 110 feet for two office towers and a maximum height of 90 feet for the remainder of the Property. The first stage also approved the PUD-related rezoning of the Property from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts.

3. The approval was valid for a period of one year, within which time an application for a second-stage PUD was required to be filed. If the second-stage application was for less than the entire Property, the remaining second-stage applications were required to be filed within three years of the approval of the initial second-stage application. (Z.C. Order No. 05-28.)

4. The Applicant filed a second-stage application for a portion of the Property in November 2007. It was approved on October 3, 2008. Accordingly, all subsequent second-stage

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

5. By October 3, 2011, second-stage applications had been filed for five of the PUD blocks. The first-stage approval was subsequently modified during the processing of those second-stage applications. Z.C. Case No. 05-28E, which was approved on June 27, 2011, approved a change of use, increased the approved maximum height, and approved a PUD-related rezoning to the CR Zone District for a portion of the Property. (Z.C. Order Nos. 05-28 and 05-28E.)

6. On August 10, 2011, the Applicant filed a request to extend the first-stage approval through October 3, 2013 to allow for the remainder of the second-stage applications to be filed. The Commission approved the request in Z.C. Case No. 05-28H and the first-stage approval was extended through October 3, 2013. (Z.C. Order No. 05-28H.)

7. By October 3, 2013, the Applicant had filed second-stage applications for two additional blocks. On October 2, 2013, the Applicant filed a request for a second two-year extension of the first-stage PUD approval, again, to allow for the remaining second-stage applications to be filed. The Commission approved the request in Z.C. Case No. 05-28L and the first-stage approval was extended through October 3, 2015. (Z.C. Order No. 05-28L.)

8. By October 3, 2015, construction of the one-acre park approved in Z.C. Case No. 05-28F was completed, construction proceeded on the townhomes approved in Z.C. Case No. 05-28A and modified in Z.C. Case Nos. 05-28G and 05-28M, and construction proceeded on the multifamily building approved in Z.C. Case No. 05-28J/05-28K.

9. On October 2, 2015, the Applicant filed a request for a two-year extension of the first-stage PUD approval to allow for the remaining second-stage applications to be filed. (Exhibit ["Ex."] 1-1F).

10. The request was placed on the Commission's November 9, 2015 meeting agenda, at which time the Commission took action to approve a two-year extension of the first-stage PUD. The expiration of the first-stage approval was extended through October 3, 2017.

11. Since the issuance of Z.C. Order No. 05-28, the following second-stage applications have been approved:

    - Z.C. Case No. 05-28A: The Commission approved a second-stage application for Parcels A, B, and C. The approved project included an affordable senior housing facility and single-family townhomes. The affordable senior housing facility has

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

- Z.C. Case No. 05-28B: The Commission approved a second-stage application for the construction of a public health center on Parcel I. The approval was modified in Z.C. Case No. 05-28I; a 43,000-square-foot health center has been constructed on the property and has been operating for nearly two years;

- Z.C. Case No. 05-28F: The Commission approved a second-stage application for the one-acre park at the center of the PUD. The park was completed in December 2014 and is currently maintained by the Applicant; and

- Z.C. Case No. 05-28J/05-28K: The Commission approved a second-stage application for a multi-family building consisting of 186 affordable units. Construction on this project commenced in January 2015 and is targeted for completion in Fall 2016. (Ex. 1-1F.)

Extension Request

12. Subsection 2407.11 of the Zoning Regulations grants the Commission the authority to extend a first-stage PUD approval in accordance with the standard and process for second-stage PUD extensions set forth in §§ 2408.10 through 2408.12. As required by those standards, the Commission must determine whether: (a) the extension request was served on all parties to the application by the Applicant and that parties were given at least 30 days to respond; (b) there was no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and (c) the Applicant demonstrated with substantial evidence that there was good cause for such extension.

13. The Applicant satisfied each of the three standards. The request was served on Advisory Neighborhood Commission ("ANC") 7D and the Parkside Townhomes Condominium, Inc., the only parties to the first-stage PUD, on the same day as it was filed with the Commission. The request was considered by the Commission after the 30-day period had lapsed. (Ex. 1-1F.)

14. There has been no substantial change in any material facts upon which the Commission based its original approval. The changes that did occur support the original approval. Since the initial approval, additional residential and educational projects have proceeded in the vicinity of the Property. In addition to the aforementioned changes, the other changes that have occurred are a part of the Parkside PUD, such as the construction of a

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

15. The Comprehensive Plan designation and zoning designation for these parcels remains unchanged since the granting of the first-stage PUD in 2006 and the last extension granted in 2013. (Ex. 1-1F.)

16. The Applicant's failure to file the requisite second-stage applications within the requisite period of time was due to a confluence of factors, namely the state of the residential, retail, and office markets east of the Anacostia River, and challenges in obtaining financing for mixed-income and mixed-use development coupled with the timing of construction of previously approved projects. (Ex. 1-1F.)

17. The first-stage PUD approved residential, office, and retail uses for the site. The demand has largely been for residential uses rather than office and retail uses. The Applicant sought second-stage approvals for residential phases and started construction on two of them. The residential projects will introduce almost 300 new residential units into this area. Phasing the approvals of the remaining residential projects provides the time necessary for the market to adjust to the new units without being flooded. (Ex. 1-1F.)

18. The demand for office use is not yet fully established east of the Anacostia River. The Applicant has made efforts to cultivate this market: it has incorporated this area into the Central Employment Area and provided the funding for a new pedestrian bridge to the Metrorail station to supplement the existing pedestrian bridge. (Ex. 1-1F.)

19. Nevertheless, economic growth, namely the expansion of the office market, has been delayed in this part of Ward 7. The office market that was anticipated at the time the PUD was approved in 2005 is only now beginning to resurface. (Ex. 1-1F.)

20. Another challenge to drawing a large office user, ideal for the 750,000 square feet approved in the PUD, has been the lack of retail amenities in Parkside and adjacent neighborhoods. A large office tenant such as a General Services Administration agency will relocate its operations to an area served by a variety of retail options within a quarter-mile radius of the site. Retail tenants, in turn, look to locate their operations in established neighborhoods displaying robust income and education levels, increasing employment levels and population growth. While Parkside is a burgeoning neighborhood, it has not yet reached the levels of growth it needs to raise its attractiveness to retail and office tenants. For these reasons, the Applicant has focused on the development of housing in order to stimulate population growth and create a mixed-income environment. (Ex. 1-1F.)

21. Nevertheless, the Applicant has moved forward with the benefits and amenities that were promised in the PUD, including the construction of a one-acre park and providing $ 3,000,000 for a new pedestrian bridge to the Metrorail Station. Both the bridge and the park are pivotal aspects of the project, and the fact that the Applicant provides these benefits before the construction of the remaining phases of the PUD is noteworthy. (Ex. 1-1F.)

22. ANC Single Member District representative, Justin Lini, submitted a letter dated November 9, 2015, in support of the request. Commissioner Lini stated that the progress that has been made on the Parkside PUD has improved the quality of life for residents. (Ex. 5.)

23. ANC 7D did not submit a letter into the record to indicate its support or opposition.

24. The Office of Planning ("OP") submitted a report dated October 20, 2015. OP recommended approval of the time extension request and noted the Applicant's fulfillment of the standard promulgated in § 2408.10 of the Zoning Regulations. OP noted that the Applicant "has demonstrated with substantial evidence good cause for the extension and [OP] recommends that the Commission grant the request." (Ex. 4.)

CONCLUSIONS OF LAW

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

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

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

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

(a) An inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing because of changes in economic and market conditions beyond the applicant's reasonable control;

(b) An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD Order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control; or

(c) The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order.

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

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

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

DECISION

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

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

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

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

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28U
Z.C. Case No. 05-28U
Lano Parcel 12, LLC
(Two-Year Time Extension for PUD @ Square 5041, Lots 806 and 807; Square 5055, Lot 26; and Square 5056, Lots 41, 809-811, and 813)
January 29, 2018

Pursuant to notice, at its November 27, 2017 and January 28, 2018 public meetings, the Zoning Commission for the District of Columbia (the "Commission") considered the application (the "Application") of Lano Parcel 12, LLC (the "Applicant") for:

- A two-year time extension, pursuant to Subtitle Z § 705.2 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), of the deadline to file applications for the remaining second stage applications for the planned unit development ("PUD") approved by Z.C. Order No. 05-28 (the "Original Order"), as extended by Z.C. Orders Nos. 05-28H, 05-28L, and 05-28O; and
- A waiver of Subtitle Z § 705.5's maximum of two time extensions for a PUD to grant a fourth time extension.

The subject property consists of Lots 806 and 807 in Square 5041, Lot 26 in Square 5056, and Lots 41, 809-811, and 813 in Square 5056 (the "Property"). The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Background

1. Pursuant to the Original Order, the Commission granted a PUD, together with a rezoning of the Property from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts, to construct approximately 3.1 million square feet of mixed-use development on the 15 vacant acres east of the Anacostia River in Ward 7 (the "First-Stage PUD").

2. Condition No. 13 of the Original Order required the Applicant to file an application for a second-stage PUD approval within one year of the April 13, 2007, effective date of the Original Order, and all subsequent second-stage applications within three years of the effective date of the first second-stage approval.

3. The Applicant filed its first second-stage application in Z.C. Case No. 05-28A on November 16, 2007, within the one-year deadline imposed by Condition No. 13 of the Original Order.

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4. The Commission approved the first second-stage application in Z.C. Case No. 05-28A, effective October 3, 2008, which established the deadline for the Applicant to file all remaining second-stage applications by October 3, 2011, pursuant to Condition No. 13 of the Original Order.

5. Pursuant to Z.C. Order No. 05-28H,[1] effective February 3, 2012, the Commission granted a two-year time extension for filing the remaining second-stage applications until April 13, 2013.

6. Pursuant to Z.C. Order No. 05-28L,[2] effective February 7, 2014, the Commission granted a two-year time extension for filing the remaining second-stage applications until April 13, 2015.

7. Pursuant to Z.C. Order No. 05-28O,[3] effective February 12, 2016, the Commission granted a time extension for filing the remaining elements of the second stage PUD until October 3, 2017.

8. Pursuant to Z.C. Order Nos. 05-28P through 05-28T, the Commission approved second-stage applications.

Parties

9. In addition to the Applicant, the only parties to Z.C. Case No. 05-28 were Advisory Neighborhood Commissions ("ANC") 7D and 7F, the "affected" ANCs pursuant to Subtitle Z § 101.8,[4] and Parkside Townhomes Condominium, Inc. ("PTC").

The Application

10. On October 2, 2017, the Applicant filed the Application requesting a two-year time extension of the October 3, 2017, deadline established by Z.C. Order No. 05-28O to file the remaining second-stage applications.

11. The Application noted that there are three blocks remaining in the First-Stage PUD for which a second-stage application remains to be filed: Block G, a portion of Block H, and a portion of Block I. The Original Order approved approximately 500,000 square feet of residential development on Block G; 135,000 square feet of office development for the remainder of Block H; and 260,000 square feet of educational development for the remainder of Block I. (Exhibit ["Ex."] 1.)

12. The Applicant provided evidence that it served the Application on ANCs 7D and 7F and PTC, by October 23, 2017, as attested by the updated Certificate of Service submitted with the Application. (Ex. 3.)

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[1] Pursuant to Z.C. Order Nos. 05-28B through 05-28G, the Commission approved second-stage applications (B, C, and F), denied a time extension request as premature (D), and approved modifications (E and G).

[2] Pursuant to Z.C. Order Nos. 05-28I through 05-28K, the Commission approved second-stage applications.

[3] Pursuant to Z.C. Order Nos. 05-28M and 05-28N, the Commission approved modifications.

[4] ANC 7F is an "affected ANC" per Subtitle Z § 101.8, as it is located directly across the street from the property that is the subject of this Application.

13. The Application asserted that it met the requirements for the two-year time extension and waiver from the maximum of two time extensions because:
    - There has been no substantial change in any material facts upon which the Commission based its approval of the Original Order; and
    - Good cause justifies the Commission's granting the time extension because the PUD has been affected by a number of events that have slowed the development timetable, including:
        - The state of residential, retail, and office market east of the Anacostia River;
        - The timing of construction of previously approved projects; and
        - Challenges in obtaining financing for mixed-income and mixed-use development.

14. OP submitted a November 17, 2017, report (the "OP Report") recommending approval of the Application, including the waiver to allow the fourth time extension, conditioned on all new second-stage approvals being subject to all current environmental and housing regulations. (Ex. 6.)

15. The OP Report based its recommendation on OP's determinations that there had been substantial changes in the material facts on which the Commission had based its approval of the First-Stage PUD – specifically updated Comprehensive Plan and Zoning Regulations environmental (Green Area Ratio, "GAR") and affordable housing (Inclusionary Zoning, "IZ") standards – but that these would be addressed by the proposed conditions. The OP Report noted that the substantial new development near the site had been anticipated by the Commission in approving the First Stage PUD.

16. OP submitted a December 29, 2017, supplemental report (the "OP Supplemental Report"), clarifying the specific conditions that the Applicant had accepted: (Ex. 8, 9.)
    - The remaining second-stage applications shall comply with the environmental regulations in effect at the time of filing of the remaining second-stage applications; and
    - The remaining second-stage applications shall be subject to IZ in effect at the time of filing of the second-stage applications for any residential units constructed in excess of the 480 remaining units authorized by the First-Stage PUD, with the IZ taking effect at the conclusion of the 30-year affordability period established by the Original Order.

17. ANC 7D submitted a written report (the "ANC 7D Report") in support of the Application, citing the productive ongoing discussions with the Applicant that had improved the Applicant's proffered public benefits for second-stage applications. (Ex. 5.)

18. PTC did not participate in the proceedings for this Application.

CONCLUSIONS OF LAW

1. Subtitle Z §§ 705.2 authorizes the Commission to extend the time period of an order approving a PUD upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z §§ 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.

2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that parties are allowed 30 days to respond.

3. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a) by demonstrating that it had served all parties to the Original Order – ANCs 7D and 7F, and PTC – and that all were given 30 days to respond from the October 23, 2017, date of service.

4. Subtitle Z § 705.2(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 PUD.

5. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because the only substantial changes in material facts upon which the Commission based its approval of the First-Stage PUD - the updated environmental and affordable housing standards (GAR & IZ) – will be addressed by the conditions proposed by OP and agreed to by the Applicant.

6. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:

   (1) An inability to obtain sufficient project financing for the development, 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;

   (2) An inability to secure all required governmental agency approvals for a development 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

   (3) 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 order.

7. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(1) because the Applicant has demonstrated that it has diligently pursued the financing of the development of the Property and has not been able to move forward due to market conditions outside of its control, including challenges obtaining financing for mixed-use development east of the Anacostia River and the potential oversaturation of residential and commercial market without phasing the delivery of the remaining parcels in the First-Stage PUD.

8. Subtitle Z § 705.5 requires that "[a]n applicant with an approved PUD may request no more than two (2) extensions."

9. Subtitle Z § 101.9 authorizes the Commission to waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the Applicant demonstrates good cause for the waiver and the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

10. The Commission concludes that good cause exists for the Applicant's request for a waiver from the provisions of Subtitle Z § 705.5 to allow for a fourth time extension because of:
- The size and scope of the project approved by the Original Order;
- The Applicant's ongoing efforts to complete the second-stage projects; and
- The support from the community for an extension. (Ex. 1 at 4, Ex. 5.)

11. The Commission concludes that no party will be prejudiced by the granting of this waiver – the ANC 7D Report supported the waiver request, and neither ANC 7F nor PTC filed any response.

"Great Weight" to the Recommendations of OP

12. The Board must give "great weight" to the recommendation of 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).)

13. The Commission finds persuasive OP's recommendation that the Commission approve the Application, subject to the conditions pertaining to affordable housing and environmental impact described below, and therefore concurs in that judgment.

"Great Weight" to the Written Report of the ANC

14. The Commission must give "great weight" to the issues and concerns of the affected ANC expressed in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public 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 this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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 (1978).)

15. The Commission finds the ANC 7D Report's support for the Application persuasive and concurs with 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 two-year time extension (with a waiver of Subtitle Z § 705.5) of Z.C. Order No. 05-28, as extended by Z.C. Order No. 05-28O, until October 3, 2019,

within which time any outstanding second-stage PUD application must be filed, subject to the following conditions and provisions:

1. All remaining second-stage PUD applications shall comply with the environmental regulations in effect at the time of filing of the second-stage PUD application.

2. All residential units proposed by the remaining second-stage PUD applications in excess of the 480 remaining units authorized by the First-Stage PUD shall be subject to Inclusionary Zoning requirements in effect on the effective date of this Order 05-28U, with the IZ requirements to take effect at the end of the 30-year affordability period established by the Original Order.

The conditions in Z.C. Order No. 05-28 remain unchanged and in effect.

VOTE (January 29, 2018): 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order 05-28U shall become final and effective upon publication in the *D.C. Register*; that is, on June 12, 2020.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28V
Z.C. Case No. 05-28V
Lano Parcel 12, LLC
(Two-Year Time Extension for PUD @ Square 5055, Lot 26)
December 9, 2019

Pursuant to notice, at its November 18, 2019 and December 9, 2019 public meetings, the Zoning Commission for the District of Columbia (the "Commission") considered the application (the "Application") of Lano Parcel 12, LLC (the "Applicant") concerning Lot 26 in Square 5055 (the "Property") for: a two-year time extension, pursuant to Subtitle Z § 705.2 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified), of the deadline to file applications for the remaining second-stage applications for the planned unit development ("PUD") approved by Z.C. Order No. 05-28 (the "Original Order"), as extended by Z.C. Order Nos. 05-28H, 05-28L, 05-28O, and 05-28U, with a waiver of Subtitle Z § 705.5's maximum of two time extensions for a PUD to grant a fifth time extension.

The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the Original Order, effective April 13, 2007 (the "Original Order Effective Date"), the Commission approved a first-stage PUD, together with a related Zoning Map amendment rezoning from the R-5-A and C-2-B to the C-3-A and CR Zone Districts, to construct approximately 3.1 million square feet of mixed-use development (the "First-Stage PUD") on the 15 vacant acres east of the Anacostia River in Ward 7 (the "First-Stage PUD Site").

2. Condition No. 13 of the Original Order required the Applicant to file a second-stage PUD application under the First-Stage PUD within one year of the Original Order Effective Date, with all remaining second-stage PUD applications required to be filed within three years of the effective date of the order approving the first second-stage PUD application.

ZONING COMMISSION
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EXHIBIT NO.10

3. The Applicant timely filed its first second-stage application in Z.C. Case No. 05-28A on November 16, 2007, within the one-year deadline imposed by Condition No. 13 of the Original Order.

4. Pursuant to Z.C. Order No. 05-28A, effective October 3, 2008, the Commission approved the first second-stage PUD application, thereby establishing the deadline for the Applicant to file all remaining second-stage PUD applications under the First-Stage PUD, including the Property, as October 3, 2011.

5. Pursuant to Z.C. Order No. 05-28H,[1] effective February 3, 2012, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2013.

6. Pursuant to Z.C. Order No. 05-28L,[2] effective February 7, 2014, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2015.

7. Pursuant to Z.C. Order No. 05-28O,[3] effective February 12, 2016, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2017.

8. Pursuant to Z.C. Order No. 05-28U,[4] effective January 29, 2018, the Commission approved a two-year time extension to file all remaining second-stage PUD applications, including the Property, until October 3, 2019.

PARTIES AND NOTICE

9. In addition to the Applicant, the only parties to Z.C. Case No. 05-28 were Advisory Neighborhood Commissions ("ANC") 7D and 7F, the "affected" ANCs pursuant to Subtitle Z § 101.8,[5] and Parkside Townhomes Condominium, Inc. ("PTC").

10. On May 18, 2020, as attested by the Certificate of Service submitted with the Application, the Applicant served the Application on: (Exhibit ["Ex."] 2, 3.)
    - ANCs 7D and 7F;
    - the Office of Planning ("OP"); and
    - PTC.

[1] Pursuant to Z.C. Order Nos. 05-28B through 05-28G, the Commission approved second-stage PUDs (B, C, and F), denied a time extension request as premature (D), and approved modifications of the First-Stage PUD (E) and of a second-stage PUD (G).
[2] Pursuant to Z.C. Order Nos. 05-28I through 05-28K, the Commission approved second-stage PUDs.
[3] Pursuant to Z.C. Order Nos. 05-28M and 05-28N, the Commission approved modifications to second-stage PUDs.
[4] Pursuant to Z.C. Order Nos. 05-28P through 05-28T, the Commission approved second-stage PUDs.
[5] ANC 7F is an "affected ANC" per Subtitle Z § 101.8 as it is located directly across the street from the Property.

II. THE APPLICATION

11. On October 2, 2019, the Applicant timely filed the Application requesting a two-year time extension of the October 3, 2019 deadline established by Z.C. Order No. 05-28U to file the remaining second-stage PUD applications.

12. The Application stated that second-stage PUD applications had been filed for the First-Stage PUD Site except for:
- Block G, for which the Original Order approved approximately 500,000 square feet of residential development;
- A portion of Block H, for which the Original Order approved approximately 135,000 square feet of office development; and
- A portion of Block I, for which the Original Order approved approximately 260,000 square feet of educational development. (Ex. 2.)

13. The Application asserted that it met the requirements for the proposed two-year time extension and waiver from the maximum of two time extensions because:
- There has been no substantial change in any material facts upon which the Commission based its approval of the Original Order; and
- Good cause justifies the Commission's granting the time extension because the PUD has been affected by events that have slowed the development timetable, including:
  - The state of residential, retail, and office market east of the Anacostia River;
  - The timing of construction of previously approved projects; and
  - Challenges in obtaining financing for mixed-income and mixed-use development.

14. OP submitted a November 8, 2019 report (the "OP Report") concluding that although the Commission had anticipated in its First-Stage PUD that substantial new development would occur near the Property, the Commission had not anticipated the following substantial changes to the material facts on which the Commission had based its approval of the First-Stage PUD: (Ex. 5.)
- The updated environmental provisions of the Comprehensive Plan and Zoning Regulations (Green Area Ratio, "GAR"); and
- The updated affordable housing provisions of the Zoning Regulations (Inclusionary Zoning, "IZ") standards.

The OP Report therefore recommended approval of the Application, including the waiver to allow the fourth time extension, but with the condition that all remaining second-stage PUD applications under the First-Stage PUD be subject to all environmental and housing regulations in effect at the time of application.

15. Although ANC 7D did not file a response prior to the Commission's initial approval of the Application at its November 18, 2019, public meeting, the ANC filed a request to reopen

the record to include the ANC's December 5, 2019, written report (the "ANC 7D Report") in support of the Application, citing the productive ongoing discussions with the Applicant that had improved the Applicant's proffered public benefits for second-stage applications and willingness to discuss plans for this parcel and connecting parcels. (Ex. 5.)

16. Neither ANC 7F nor PTC filed a response to the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order approving a PUD upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.

2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that parties are allowed 30 days to respond.

3. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a) by demonstrating that it had served the Application on all parties to the Original Order – ANCs 7D and 7F and PTC – and that all were given 30 days to respond from the October 2, 2019, date of service.

4. The Commission grants ANC 7D's request to reopen the record pursuant to Subtitle Z § 602.6 to include the ANC Report because:
   - The ANC demonstrated good cause as it had not understood it could not testify as to the ANC's response to the Application at the November 18, 2019, public meeting; and
   - No prejudice would occur to the parties because ANC 7F and PTC did not file any responses, and because the ANC Report supported the Application.

5. Subtitle Z § 705.5 requires that "[a]n applicant with an approved PUD may request no more than two (2) extensions."

6. Subtitle Z § 101.9 authorizes the Commission to waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the Applicant demonstrates good cause for the waiver and the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

7. The Commission concludes that good cause exists for the Applicant's request for a waiver from the provisions of Subtitle Z § 705.5 to allow for a fifth time extension because of:
   - The size and scope of the Original Order;
   - The Applicant's ongoing efforts to complete the second-stage projects; and
   - The support from the community for an extension. (Ex. 6.)

8. The Commission concludes that no party will be prejudiced by the granting of this waiver, as the ANC 7D Report supported the Application and neither ANC 7F nor PTC filed any response to the Application.

9. Subtitle Z § 705.2(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 PUD.

10. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because the only substantial change in material facts upon which the Commission based its approval of the First-Stage PUD – the updated environmental and affordable housing standards (GAR and IZ) – will be addressed by the conditions proposed by OP and agreed to by the Applicant.

11. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:

(1) An inability to obtain sufficient project financing for the development, 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;

(2) An inability to secure all required governmental agency approvals for a development 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

(3) 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 order.

12. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(1) because the Applicant has demonstrated that it has diligently pursued the financing of the development of the Property and has not been able to move forward due to market conditions outside of its control, including challenges obtaining financing for mixed use development east of the Anacostia River and the potential oversaturation of residential and commercial market without phasing the delivery of the remaining parcels in the First-Stage PUD.

"Great Weight" to the Recommendations of OP

13. The Commission must give "great weight" to the recommendation of 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).)

14. The Commission finds persuasive OP's recommendation that the Commission approve the Application, subject to the conditions pertaining to affordable housing and environmental impact described below, and therefore concurs in that judgment.

"Great Weight" to the Written Report of the ANC

15. The Commission must give "great weight" to the issues and concerns of the affected ANC expressed in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public 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 this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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 (1978).)

16. The Commission finds the ANC 7D Report's support for the Application persuasive and concurs with that judgment.

17. Since ANC 7F did not file any response to the Application, there is nothing to which the Commission can give great weight.

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 two-year time extension (with a waiver of Subtitle Z § 705.5) of Z.C. Order No. 05-28, as extended by Z.C. Order Nos. 05-28H, 05-28L, 05-28O, and 05-28U, until **October 3, 2021**, within which time any outstanding second-stage PUD application under the First-Stage PUD approved by Z.C. Order No. 05-28 must be filed, subject to the following conditions and provisions:

1. All remaining second-stage PUD applications shall comply with the environmental regulations in effect at the time of filing of the second-stage PUD application.

2. The residential building proposed by the first-stage approval on Block G shall include a minimum of 480 units, including 311 market-rate units (approximately 65%) and 169 workforce units. Units constructed on Block G1 in excess of 480 shall be required to be affordable for a period of 30 years, pursuant to the first-stage approval, after which 8% of the additional units in excess of 480 units shall be required to be reserved as affordable in perpetuity, pursuant to the IZ provisions.

The conditions in Z.C. Order No. 05-28 remain unchanged and in effect.

VOTE (December 9, 2019[6]): 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on August 7, 2020.

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.

[6] The Commission initially voted to approve the Application at its November 18, 2019, public meeting before ANC 7D filed its request to reopen the record for the ANC Report; and after granting the request, reaffirmed its vote as herein recorded at its December 9, 2019, public meeting.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

OFFICE OF ZONING
ZONING COMMISSION
Z.C. Order No. 05-28V(1)
Z.C. Case No. 05-28
Lano Parcel 12, LLC
(Subtitle Z § 705.9 Administrative Covid-19 One-Year Time Extension for 1st-Stage PUD & Related Map Amendment @ Lot 26, Square 5055)
September 20, 2021

- Z.C. Order (the "Order"), effective on August 7, 2020, was valid until October 3, 2021.

- The applicant filed an application to extend the Order's validity per Subtitle Z § 705.9, as adopted by the Zoning Commission's emergency action in Z.C. Case 20-26 by one year.

- Pursuant to Subtitle Z § 705.9, the Director of the Office of Zoning extends the Order's validity to expire on **October 3, 2022**.

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on October 1, 2021.

SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

ZONING COMMISSION
District of Columbia
CASE NO.05-28V
EXHIBIT NO.15

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28AA
Z.C. Case No. 05-28AA
Lano Parcel 12, LLC
(Two-Year Time Extension for PUD @ Square 5055, Lot 26)
November 10, 2022

Pursuant to notice, at its November 10, 2022 public meeting, the Zoning Commission for the District of Columbia (the "Commission") considered the application (the "Application") of Lano Parcel 12, LLC (the "Applicant") concerning Lot 26 in Square 5055 (the "Property") for (i) a waiver from the Commission's rules limiting applicants to requesting no more than two extensions of an approved PUD and a second extension of no more than one year to allow a sixth two-year time extension; and (ii) a two-year time extension of the deadline to file applications for the remaining second-stage applications for the planned unit development ("PUD") approved by Z.C. Order No. 05-28 (the "Original Order"), as extended by Z.C. Orders No. 05-28H, 05-28L, 05-28O, 05-28U, 05-28V, and 05-28V(1). 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 regulatory citations refer unless otherwise specified). For the reasons stated below, the Commission APPROVES the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the Original Order, effective April 13, 2007 (the "First-Stage Order Effective Date"), the Commission approved a first-stage PUD, together with a related Zoning Map amendment rezoning from the R-5-A and C-2-B to the C-3-A and CR Zone Districts, to construct approximately 3.1 million square feet of mixed-use development (the "First-Stage PUD") on 15 vacant acres in Ward 7 (the "First-Stage PUD Site").

2. Condition No. 13 of the Original Order required the Applicant to file a second-stage PUD application under the First-Stage PUD within one year of the First-Stage Order Effective Date, with all remaining second-stage PUD applications required to be filed within three years of the effective date of the order approving the first second-stage PUD application.

3. An affiliate of the Applicant timely filed its first second-stage PUD application in Z.C. Case No. 05-28A on November 16, 2007, within the one-year deadline imposed by Condition No. 13 of the Original Order.

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District of Columbia
CASE NO.05-28AA
EXHIBIT NO.9

4. Pursuant to Z.C. Order No. 05-28A, effective October 3, 2008, the Commission approved the first second-stage PUD application, thereby establishing the deadline for the Applicant to file all remaining second-stage PUD applications under the First-Stage PUD, including the Property, as October 3, 2011.

5. Pursuant to Z.C. Order No. 05-28H,[1] effective February 3, 2012, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2013.

6. Pursuant to Z.C. Order No. 05-28L,[2] effective February 7, 2014, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2015.

7. Pursuant to Z.C. Order No. 05-28O,[3] effective February 12, 2016, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2017.

8. Pursuant to Z.C. Order Nos. 05-28U, 05-28V, and 05-28V(1),[4] effective June 12, 2020, August 7, 2020, and October 1, 2021, respectively, the Commission approved two further two-year extensions and one COVID-related administrative extension of the deadline to file all remaining second-stage PUD applications, with the further extended deadline being October 3, 2022.

PARTIES AND NOTICE

9. In addition to the Applicant, the only parties to Z.C. Case No. 05-28 were Advisory Neighborhood Commissions ("ANC") 7D and 7F, the "affected" ANCs pursuant to Subtitle Z § 101.8, and Parkside Townhomes Condominium, Inc. ("PTC").[5]

10. On September 30, 2022, the Applicant served the Application on ANCs 7D and 7F, the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), and PTC, as attested by the Certificate of Service submitted with the Application. (Exhibit ["Ex."] 2.)

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[1] Pursuant to Z.C. Order Nos. 05-28B through 05-28G, the Commission approved second-stage PUDs (Z.C. Order Nos. 05-28B, 05-28C, and 05-28F), denied a time extension request as premature (Z.C. Order No. 05-28D) and approved modifications to the First-Stage PUD (Z.C. Order No. 05-28E) and to a second-stage PUD (Z.C. Order No. 05-28G).

[2] Pursuant to Z.C. Order Nos. 05-28I and 05-28J/K, the Commission approved second-stage PUDs or modifications thereof.

[3] Pursuant to Z.C. Order Nos. 05-28M and 05-28N, the Commission approved modifications of approved second-stage PUDs.

[4] Pursuant to Z.C. Order Nos. 05-28P, 05-28Q, 05-28R/S, and 05-28T, the Commission approved four second-stage PUDs. Pursuant to Z.C. Order Nos. 05-28W, 05-28W(1), 05-28X, and 05-28X(1), the Commission approved time extensions of the second-stage PUDs approved in, respectively, Z.C. Order Nos. 05-28Q and 05-28T. Pursuant to Z.C. Order Nos. 05-28Y and 05-28Z, the Commission approved modifications of approved second-stage PUDs.

[5] ANC 7F was not a party to the First-Stage PUD when it was filed and approved but became an "affected ANC" per Subtitle Z § 101.8 upon the adoption of the Zoning Regulations of 2016 as ANC 7F is located directly across a public street from the Property.

II. THE APPLICATION

11. On September 30, 2022, the Applicant filed the Application requesting (i) a waiver from Subtitle Z § 705.5, which limits applicants from requesting no more than two extensions of an approved PUD and a second extension of no more than one year to allow a sixth two-year time extension; and (ii) a two-year time extension of the October 3, 2022 deadline established by Z.C. Order No. 05-28V(1) to file the remaining second-stage PUD applications. (Ex. 2.)

12. The Application stated that second-stage PUD applications had been filed for the First-Stage PUD Site except for:

- Block G, for which the Original Order approved approximately 500,000 square feet of residential uses;
- A portion of Block H, for which the Original Order approved approximately 135,000 square feet of office and commercial uses; and
- A portion of Block I, for which the Original Order approved approximately 260,000 square feet of educational uses. (Ex. 2 at 4.)

13. The Applicant asserted that it met the requirements for the proposed two-year time extension and waiver from the maximum of two time extensions and the maximum of one year for a second time extension because:

- There has been no substantial change in any material facts upon which the Commission based its approval of the Original Order that would undermine the Commission's justification for approving the original application; and
- Good cause justifies the Commission's granting the time extension because the PUD has been affected by events that have slowed the development timetable, including:
  - The state of residential, retail, and office market east of the Anacostia River;
  - The timing of construction of previously approved projects; and
  - Challenges in obtaining financing for mixed-income and mixed-use development from investors who are unwilling to take on the risk of too many residential units entering the market simultaneously, further exacerbated by the COVID-19 pandemic. (Ex. 2 at 7-10; 2D.)

14. The Applicant noted the recent progress accomplished despite these economic challenges, including completion of construction of the townhomes on Parcels 8 and 10, now 100% occupied; the expected delivery date of 2023 for the multifamily buildings on Parcels 8 and 10; and the filing of a building permit application for the residential building on Parcel 9. The Applicant also noted that it has moved forward with the benefits and amenities promised in the PUD, including the construction of a one-acre park; providing $3 million for a new pedestrian bridge to the Metrorail station; and continued solicitations to locate a federal or D.C. government agency on the Property. (Ex. 2 at 5, 10.)

15. In recognition that the requested time extension exceeds the number of time extensions contemplated under the Zoning Regulations, the Applicant proposed enhancing its public

benefits commitment by increasing its affordable housing set aside from 8 percent of residential units built in excess of the remaining 480 residential units originally approved as part of the PUD to 10 percent. (Ex. 2 at 1.)

III. RESPONSES TO THE APLICATION

OP

16. On November 9, 2022, OP filed a report (the "OP Report")[6] supporting the Application and concluding that:

- No substantial changes to the material facts had occurred since the First-Stage PUD that were not anticipated with the exception of the following:
  - The adoption of the Inclusionary Zoning ("IZ") regulations. However, as noted by the OP Report, Z.C. Order No. 05-28U made the remaining units in excess of 480 subject to IZ requirements to take effect upon the expiration of the 30-year affordability period established by the Original Order; and
  - The PUD Site was identified as an Opportunity Zone; and
- Good cause was shown by the Applicant's inability to secure users for the remaining parcels on Block H due to circumstances beyond its control. The OP Report further noted that extending the first-stage approval would help ensure construction of the remainder of the PUD Site. (Ex. 5.)

ANCs

17. ANC 7D filed a letter dated September 14, 2022 ("ANC 7D Letter") in support of the Application, stating that at a properly called and noticed meeting on September 13, 2022, with a quorum present, ANC 7D voted 4-0 to support the Application. The ANC 7D Letter referred to its strong working relationship with the Applicant, noting their monthly discussions and standing retail working group. The ANC 7D Letter also supported the Applicant's requested waiver. (Ex. 6.)

18. ANC 7F did not file a response to the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order approving a PUD upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.

2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that parties are allowed 30 days to respond.

3. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a) by demonstrating that it had served the Application on all parties to the Original Order – ANCs

[6] OP requested a waiver to late file its report less than 10 days before the hearing, which the Commission granted at the November 10, 2022 public meeting.

7D and 7F and PTC – and that all were given 30 days to respond from the September 30, 2022 date of service.

4. Subtitle Z § 705.5 requires that an applicant with an approved PUD may request no more than two extensions, and that a second extension may be approved for no more than one year.

5. Subtitle Z § 101.9 authorizes the Commission to waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the Applicant demonstrates good cause for the waiver and the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

6. The Commission concludes that good cause exists for granting the Applicant's request for a waiver from the provisions of Subtitle Z § 705.5 to allow for this time extension because of:

- The size and scope of the Original Order;
- The Applicant's ongoing efforts to complete the second-stage projects; and
- The support from the community for an extension.

7. The Commission concludes that no party will be prejudiced by the granting of this waiver, as the ANC 7D Letter supported the Application and neither ANC 7F nor PTC filed any response to the Application.

8. Subtitle Z § 705.2(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 PUD.

9. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because the only substantial change in material facts upon which the Commission based its approval of the First-Stage PUD has been addressed by the Applicant through an increased IZ set-aside.

10. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:

> *(1) An inability to obtain sufficient project financing for the development, 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;*
>
> *(2) An inability to secure all required governmental agency approvals for a development 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*

(3) 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 order.

11. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(1) because the Applicant has demonstrated that it has diligently pursued the financing of the development of the Property and has not been able to move forward due to market conditions outside of its control, including challenges obtaining financing for mixed use development east of the Anacostia River and labor and supply disruptions caused by the COVID-19 pandemic.

"Great Weight" to the Recommendations of OP

12. The Commission must give "great weight" to the recommendation of 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).)

13. The Commission 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 ANCs

14. The Commission must give "great weight" to the issues and concerns of the affected ANC expressed in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public 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 this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)

15. ANC 7D submitted a written report recommending approval of the Application without raising any issues or concerns. The Commission finds ANC 7D's support for the Application persuasive and concurs with that judgment.

16. Since ANC 7F did not file any response to the Application, there is nothing to which the Commission can give great weight.

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 two-year time extension (with a waiver of Subtitle Z

§ 705.5 requirements pursuant to Subtitle Z § 101.9) of Z.C. Order No. 05-28, as extended by Z.C. Order Nos. 05-28H, 05-28L, 05-28O, 05-28U, 05-28V, and 05-28V(1) until October 3, 2024, within which time any outstanding second-stage PUD application under the First-Stage PUD approved by Z.C. Order No. 05-28 must be filed.

The Conditions in Z.C. Order No. 05-28 remain unchanged and in effect as previously modified, except that Condition 13 is revised to read as follows and new Conditions 16, 17, and 18 (amending and restating Conditions added in Z.C. Order Nos. 05-28U and 05-28V) are added to read as follows (deletions shown in **~~bold and strikethrough~~** text and additions are shown in **bold and underlined** text):

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 **October 3, 2024** **~~three (3) years from date of approval of the partial second-stage~~**. It is within the Zoning Commission's discretion to extend these periods.

. . .

16. All remaining second-stage PUD applications shall comply with the environmental regulations in effect at the time of filing of the second-stage PUD application. [*unchanged from Z.C. Order Nos. 05-28U and 05-28V but included here for completeness*]

17. All residential units proposed by the remaining second-stage PUD applications in excess of the 480 remaining units authorized by the First-Stage PUD shall be subject to Inclusionary Zoning requirements in effect on the effective date of this Z.C. Order 05-28**AA**~~**U**~~, with **10% of the units to be set aside as IZ units, a 10% set-aside,** ~~**the IZ requirements**~~ to take effect at the end of the 30-year affordability period established by the Original Order.

18. The residential building proposed by the first-stage approval on Block G shall include **approximately** ~~**a minimum of**~~ 480 units, including **approximately** 311 market-rate units (approximately 65%) and **approximately** 169 workforce units. Units constructed on Block G~~**1**~~ in excess of 480 shall be required to be affordable for a period of 30 years~~,~~ pursuant to **Condition 6 of** the first-stage approval, after which **10%** ~~**8%**~~ of the additional units in excess of 480 units shall be required to be reserved as affordable in perpetuity, pursuant to the IZ provisions.

VOTE (November 10, 2022): 4-0-1 (Vice Chair Miller moving, Commissioner May seconding, Anthony J. Hood, Robert E. Miller, Peter G. May, and Joseph S. Imamura, to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 05-28AA shall become final and effective upon publication in the *D.C. Register*; that is, on January 20, 2023.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28AH
Z.C. Case No. 05-28AH
Lano Parcel 12, LLC
(Two-Year Time Extension for PUD @ Square 5055, Lot 26)
November 14, 2024

Pursuant to notice, at its November 14, 2024 public meeting, the Zoning Commission for the District of Columbia (the "Commission") considered the application (the "Application") of Lano Parcel 12, LLC (the "Applicant") concerning Lot 26 in Square 5055 (the "Property") for (i) a waiver from the Commission's rules limiting applicants to requesting no more than two extensions of an approved PUD and a second extension of no more than one year to allow a seventh two-year time extension; and (ii) a two-year time extension of the deadline to file applications for the remaining second-stage applications for the planned unit development ("PUD") approved by Z.C. Order No. 05-28 (the "Original Order" or the "Parkside PUD"), as extended by Z.C. Orders No. 05-28H, 05-28L, 05-28O, 05-28U, 05-28V, 05-28V(1)[1], and 05-28AA. 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 regulatory citations refer unless otherwise specified). For the reasons stated below, the Commission APPROVES the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the Original Order, effective April 13, 2007 (the "First-Stage Order Effective Date"), the Commission approved a first-stage PUD, together with a related Zoning Map amendment rezoning from the R-5-A and C-2-B to the C-3-A and CR zone districts, to construct approximately 3.1 million square feet of mixed-use development (the "First-Stage PUD") on 15 vacant acres in Ward 7 (the "First-Stage PUD Site").

2. Condition No. 13 of the Original Order required the Applicant to file a second-stage PUD application under the First-Stage PUD within one year of the First-Stage Order Effective Date, with all remaining second-stage PUD applications required to be filed within three years of the effective date of the order approving the first second-stage PUD application.

[1] The extension granted in Z.C. Order No. 05-28V(1) was an administrative extension due to the COVID-19 pandemic, under Subtitle Z §§ 702.1-702.3 or 705.9; therefore, it does not count as an extension request under Subtitle Z § 705.5.

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EXHIBIT NO.8

3. An affiliate of the Applicant timely filed its first second-stage PUD application in Z.C. Case No. 05-28A on November 16, 2007, within the one-year deadline imposed by Condition No. 13 of the Original Order.

4. Pursuant to Z.C. Order No. 05-28A, effective October 3, 2008, the Commission approved the first second-stage PUD application, thereby establishing the deadline for the Applicant to file all remaining second-stage PUD applications under the First-Stage PUD, including the Property, as October 3, 2011.

5. Pursuant to Z.C. Order No. 05-28H,2 effective February 3, 2012, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2013.

6. Pursuant to Z.C. Order No. 05-28L,[3] effective February 7, 2014, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2015.

7. Pursuant to Z.C. Order No. 05-28O,4 effective February 12, 2016, the Commission approved a two-year time extension of this deadline to file all remaining second-stage PUD applications, including the Property, until October 3, 2017.

8. Pursuant to Z.C. Order Nos. 05-28U, 05-28V, and 05-28V(1),5 effective June 12, 2020, August 7, 2020, and October 1, 2021, respectively, the Commission approved two further two-year extensions and one COVID-related administrative extension of the deadline to file all remaining second-stage PUD applications, with the further extended deadline being October 3, 2022.

9. Pursuant to Z.C. Order No. 05-28AA, effective January 20, 2023, the Commission approved a two-year extension to the deadline to file all remaining second-stage PUD applications, until October 3, 2024.

PARTIES AND NOTICE

10. In addition to the Applicant, the only parties to Z.C. Case No. 05-28 were Advisory Neighborhood Commissions ("ANC") 7D and 7F, the "affected" ANCs pursuant to Subtitle Z § 101.8, and Parkside Townhomes Condominium, Inc. ("PTC").[6]

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[2] Pursuant to Z.C. Order Nos. 05-28B through 05-28G, the Commission approved second-stage PUDs (Z.C. Order Nos. 05-28B, 05-28C, and 05-28F), denied a time extension request as premature (Z.C. Order No. 05-28D) and approved modifications to the First-Stage PUD (Z.C. Order No. 05-28E) and to a second-stage PUD (Z.C. Order No. 05-28G).

[3] Pursuant to Z.C. Order Nos. 05-28I and 05-28J/K, the Commission approved second-stage PUDs or modifications thereof.

[4] Pursuant to Z.C. Order Nos. 05-28M and 05-28N, the Commission approved modifications of approved second-stage PUDs.

[5] Pursuant to Z.C. Order Nos. 05-28P, 05-28Q, 05-28R/S, and 05-28T, the Commission approved four second-stage PUDs. Pursuant to Z.C. Order Nos. 05-28W, 05-28W(1), 05-28X, and 05-28X(1), the Commission approved time extensions of the second-stage PUDs approved in, respectively, Z.C. Order Nos. 05-28Q and 05-28T. Pursuant to Z.C. Order Nos. 05-28Y and 05-28Z, the Commission approved modifications of approved second-stage PUDs.

[6] ANC 7F was not a party to the First-Stage PUD when it was filed and approved but became an "affected ANC" per Subtitle Z § 101.8 upon the adoption of the Zoning Regulations of 2016 as ANC 7F is located directly across a public street from the Property.

11. On October 2, 2024, the Applicant served the Application on ANCs 7D and 7F, the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), and PTC, as attested by the Certificate of Service submitted with the Application. (Exhibit ["Ex."] 2)

II. THE APPLICATION

12. On October 2, 2024, the Applicant filed the Application requesting (i) a waiver from Subtitle Z § 705.5, which limits applicants from requesting no more than two extensions of an approved PUD and a second extension of no more than one year to allow a seventh two-year time extension for the Parkside PUD; and (ii) a two-year time extension of the October 3, 2024 deadline established by Z.C. Order No. 05-28AA to file the remaining second-stage PUD applications of the Parkside PUD. (Ex. 2)

13. The Application stated that second-stage PUD applications had been filed for the First-Stage PUD Site except for Block G, Block H, and a portion of Block I, which all front on Kenilworth Avenue, N.E., and consist of approximately 1.825 million square feet of remaining development. (Ex. 2 at pp. 3-4)

14. The Applicant asserted that it met the requirements of Subtitle X § 705.2 for the proposed two-year time extension and the requirements of Subtitle X § 101.9 for waiver from the maximum of two-time extensions and the maximum of one year for a second time extension because:

    - The time extension request was served on all parties and parties were allowed 30 days to respond;
    - There has been no substantial change in any material facts upon which the Commission based its approval of the Original Order that would undermine the Commission's justification for approving the original application;
    - Good cause justifies the Commission's granting the time extension because the Parkside PUD has been affected by events that have slowed the development timetable, including:
        - The state of residential, retail, and office market east of the Anacostia River;
        - Challenges in obtaining financing for mixed-income and mixed-use development; and
    - The COVID-19 pandemic; andGood cause justifies the Commission granting the waiver because over 1.17 million square feet of development has been approved to date through the second-stage PUD process and over 313,000 square feet of the Parkside PUD is either under construction or pending commencement of construction. Granting the extension will enable the Parkside PUD to develop the three remaining Blocks located in the most prominent position, fronting Kenilworth Avenue, N.E., to provide the transit-oriented, and equitable and economic development needed east of the Anacostia River; and such waiver will not prejudice the rights of any party, nor is it otherwise prohibited by law. (Ex. 2 at pp. 5-9)

15. The Applicant noted the recent progress accomplished despite these challenges, including the completion and delivery of the Parcel 8 multifamily building in September 2024, expected

completion and delivery of the multifamily building on Parcel 10 by early 2025, and expected commencement of construction on the Parcel 9A and 9B residential buildings by second quarter 2025. The Applicant stated that the five second-stage PUDs approved by the Commission in Z.C. Order Nos. 05-28P through 05-28T accounted for 655 residential units, which have all been constructed or are in the process of obtaining a building permit for construction. Further, the Applicant has fulfilled the affordable housing obligations of the Parkside PUD, ensuring that 284 units reserved for families at or below 60% median family income were constructed before building out of market rate units. Moreover, the Applicant has continued to actively engage the community, completing construction of a community playground and amenity area on Block H and committing to make permanent green space on portions of Black H to encourage pedestrian traffic and use of the bridge to the Minnesota Avenue Metro station. The Applicant also noted that it has explored partnerships with Victory Housing, a prominent hotel developer, an educational provider, and retail anchor tenants with respect to the remaining Parkside PUD Blocks but has been unable to solidify interest given market conditions. (Ex. 2 at pp. 4-9)

III. RESPONSES TO THE APLICATION

OP

16. On November 4, 2024, OP filed a report (the "OP Report") recommending approval of the two-year time extension and the associated waiver and concluding that the time extension meets the requirements of Subtitle Z § 705.2; and that good cause was shown for the slowed development timetable due to challenges in the retail and office markets and obtaining financing, which resulted in the Applicant's inability to secure users for the remaining Parkside PUD parcels. Thus, approval of the extension and associated waiver would help to ensure that the entire Parkside PUD is constructed, including potentially larger buildings close to the Minnesota Avenue Metro station, consistent with Comprehensive Plan direction. (Ex. 6)

ANCs

17. Neither ANC 7D nor ANC 7F filed a response to the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 705.2 authorizes the Commission to extend the time period of an order upon determining that the time extension request demonstrated satisfaction of the requirements of Subtitle Z § 705.2 and compliance with the limitations of Subtitle Z §§ 705.3, 705.5, and 705.6.

2. Subtitle Z § 705.2(a) requires that an Applicant serve the extension request on all parties and that parties are allowed 30 days to respond.

3. The Commission concludes that the Applicant has satisfied Subtitle Z § 705.2(a) by 2024, demonstrating that it had served the Application on all parties to the Original Order – ANCs 7D and 7F and PTC – and that all were given 30 days to respond from the October 2, 2024, date of service.

4. Subtitle Z § 705.5 requires that an applicant with an approved PUD may request no more than two extensions, and that a second extension may be approved for no more than one year.

5. Subtitle Z § 101.9 authorizes the Commission to waive any of the provisions of Subtitle Z if, in the judgment of the Commission, the Applicant demonstrates good cause for the waiver and the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

6. The Commission concludes that good cause exists for granting the Applicant's request for a waiver from the provisions of Subtitle Z § 705.5 to allow for this time extension because, despite ongoing challenges and delays, the Applicant has achieved substantial development progress on the Parkside PUD through the Second-Stage PUD process, and granting the waiver will allow the three remaining Blocks to be developed consistent with Comprehensive Plan direction.

7. The Commission concludes that no party will be prejudiced by the granting of this waiver, as none of the parties, ANC 7D, ANC 7F, and PTC, filed a response to the Application; and the waiver is not otherwise prohibited by law.

8. Subtitle Z § 705.2(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 PUD.

9. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) because there has been no substantial change to the material facts upon which the Commission based its approval of the Original Order that would undermine the Commission's justification for that approval.

10. Subtitle Z § 705.2(c) requires that an application demonstrate with substantial evidence one or more of the following criteria:
    (1) An inability to obtain sufficient project financing for the development, 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;
    (2) An inability to secure all required governmental agency approvals for a development 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
    (3) 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 order.

11. The Commission concludes that the Application met the standard of Subtitle Z § 705.2(c)(1) and (c)(3) because the Applicant has demonstrated that it has diligently pursued development of the remaining three Blocks of the Parkside PUD and has not been able to move forward due to market conditions outside of its reasonable control, including challenges obtaining

financing for mixed use development east of the Anacostia River, the COVID-19 pandemic, and inability to secure users for the remaining Blocks of the Parkside PUD. Therefore, the Applicant needs additional time to file one or more Second-Stage PUD applications for the remaining Blocks.

"Great Weight" to the Recommendations of OP

12. The Commission must give "great weight" to the recommendation of 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 § 405.9. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

13. The Commission 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 ANCs

14. The Commission must give "great weight" to the issues and concerns of the affected ANC expressed in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public 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 this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978))

15. Neither ANC 7D nor ANC 7F filed a response to the Application; therefore, there is nothing to which the Commission can give great weight.

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 two-year time extension (with a waiver of Subtitle Z § 705.5 requirements pursuant to Subtitle Z § 101.9) of Z.C. Order No. 05-28, as extended by Z.C. Order Nos. 05-28H, 05-28L, 05-28O, 05-28U, 05-28V, 05-28V(1), and 05-28AA until October 3, 2026, within which time any outstanding second-stage PUD application under the First-Stage PUD approved by Z.C. Order No. 05-28 must be filed.

The Conditions in Z.C. Order No. 05-28 remain unchanged and in effect as previously modified, except that Condition 13 is revised to read as follows (deletions shown in **~~bold and strikethrough~~** text and additions are shown in **bold and underlined** text):

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 **October 3, 2026** **~~three (3) years from date of~~**

~~**approval of the partial second-stage**~~. It is within the Zoning Commission's discretion to extend these periods.

Final Action
VOTE (November 14, 2024): 5-0-0 (Robert E. Miller, Joseph S. Imamura, Anthony J. Hood, Tammy Stidham and Gwen Wright to approve.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 05-28AH shall become final and effective upon publication in the *District of Columbia Register*; that is, on December 27, 2024.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

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 RESIDENT 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.