

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28AG
Z.C. Case No. 05-28AG
Parkside Residential, LLC
(One-Year Time Extension for PUD @ Square 5056, Lots 868 and 869)
April 25, 2024

Pursuant to notice, at its April 25, 2024 public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Parkside Residential, LLC (the “Applicant”) concerning Lots 868- 869 in Square 5056 (“Parcel 9B”) for a one-year time extension of the validity of the second-stage PUD (the “Second-Stage PUD”) approved by Z.C. Order No. 05-28Q (the “Second-Stage Order”), pursuant to the first-stage PUD (the “First-Stage PUD”) approved by Z.C. Order No. 05-28 (the “Original Order”). The Second-Stage PUD was previously extended by Z.C. Order No. 05-28W, Z.C. Order No. 05-28W(1), and Z.C. Order No. 05-28AD; and modified by Z.C. Order No. 05-28Z and Z.C. Order No. 05-28AC. The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedure, which are codified in Subtitle Z of Zoning 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 zones, 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. Pursuant to Z.C. Order No. 05-28Q, effective March 23, 2018, the Commission approved the Second-Stage PUD for Parcel 9 authorizing Parcel 9 to be constructed with a multi-family residential building on Parcel 9B of a maximum height of 80 feet, and an office building on Parcel 9A of a maximum height of 85 feet, both with ground floor retail and approximately 151 below-grade parking spaces.
3. Pursuant to Z.C. Order No. 05-28Z, effective May 6, 2022, the Commission approved a modification of consequence to the Second-Stage PUD for Parcel 9.

4. Pursuant to Z.C. Order No. 05-28W, the Commission approved a two-year time extension to the Second-Stage PUD for Parcel 9 requiring a building permit application to be filed by March 23, 2022.
5. Pursuant to Z.C. Order No. 05-28W(1)¹, effective April 1, 2022, the time to file a building permit application for Parcel 9 was administratively extended to March 23, 2023; therefore, the time to start construction on Parcel 9 was extended to March 23, 2024.
6. Pursuant to Z.C. Order No. 05-28AC, effective October 6, 2023, the Commission approved a modification of significance to the Second-Stage PUD for Parcel 9, primarily to change the use for Parcel 9A from office to residential use.
7. Pursuant to Z.C. Order No. 05-28AD, effective October 6, 2023, the Commission approved a one-year time extension for Parcel 9A requiring a building permit application to be filed by March 23, 2024, and construction to commence by March 23, 2025. This application did not include Parcel 9B because the Applicant timely filed a building permit application for Parcel 9B within the March 23, 2023 deadline established in Z.C. Order No. 05-28W(1).

PARTIES AND NOTICE

8. In addition to the Applicant, the only parties to Z.C. Case No. 05-28 were Advisory Neighborhood Commissions (“ANC”) 7D and Parkside Townhomes Condo Association, Inc. ANC 7F, is now an “affected” ANCs pursuant to Subtitle Z § 101.8.²
9. On March 22, 2024, the Applicant served the Application, on ANCs 7D and 7F, Parkside Townhomes Condo Association, Inc., the Office of Planning (“OP”), and the District Department of Transportation (“DDOT”), as attested by the Certificate of Service submitted with the Application. (Exhibit [“Ex.”] 3.)

II. THE APPLICATION

10. On March 22, 2024, the Applicant filed the Application³ requesting a one-year time extension of the March 23, 2024 deadline, established by Z.C. Order No. 05-28W(1) to start construction for Parcel 9B by March 23, 2025. The Application asserted that it met the requirements, under Subtitle Z § 705.2, for the proposed one-year time extension because:
 - The Application was served on all parties and all parties were allowed 30 days to respond;

¹ This administrative extension was granted by the Office of Zoning Director, under Subtitle Z § 705.9, due to complications from the COVID-19 pandemic. Therefore, it does not count toward the maximum two extension requests an applicant with an approved PUD is allowed under Subtitle Z § 705.5.

² ANC 7F was not a party to the Original Order when it was filed and approved but became an “affected ANC” with respect to the First-Stage PUD Site per Subtitle Z § 101.8 upon the adoption of the Zoning Regulations of 2016 as ANC 7F is located directly across the street from the First-Stage PUD Site.

³ This Application for an extension fully complies with the limitations of Subtitle Z § 705.5 because it is the Applicant’s second extension request of an approved PUD, and it is not for more than one year.

- There has been no substantial change in any material facts upon which the Commission based its approval of the Second-Stage Order; and
- Good cause justifies the Commission’s granting the time extension because the Applicant has taken substantial steps toward commencing construction of Parcel 9B, but due to Parcel 9B being used as the staging area for construction on adjacent Parcels 8 and 10, construction on Parcel 9B has not yet commenced. (Ex. 3.) The Applicant provided current photos to demonstrate that Parcel 9B is utilized for construction staging. (See Ex. 3A.) The Applicant states that construction on adjacent Parcels is near completion with delivery planned in 2024; therefore, Parcel 9B can be cleared of staging materials and construction can commence in the very near future. (Ex. 3.)

III. RESPONSES TO THE APPLICATION

OP

11. On April 15, 2024, OP filed a corrected report⁴ (the “Corrected OP Report”) supporting the Application and concluding that the Application met the requirements of Subtitle Z § 705.2. (Ex. 6A.)

ANCs

12. Neither ANC 7D nor ANC 7F filed a response to the Application.
13. Parkside Townhomes Condo Association, Inc. 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 – ANC 7D and Parkside Townhomes Condo Association, Inc. – and ANC 7F, and all were given at least 30 days to respond from the March 22, 2024, 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.

⁴ OP filed an earlier report on April 15, 2024, at Ex. 6, but then filed a corrected report later that day.

5. The Commission concludes that the Application satisfied Subtitle Z § 705.2(b) based on the Application and the Corrected OP Report, which stated there has been no substantial change in any of the material facts upon which the Commission based its original approval.
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)(3) because the Applicant has demonstrated that it has diligently pursued commencing construction on Parcel 9B and has not been able to move forward due to Parcel 9B's use as a staging area for construction on adjacent Parcels 8 and 10. These conditions are beyond the Applicant's reasonable control as construction on Parcel 9B cannot commence until the Parcel 8 and 10 buildings are delivered, and Parcel 9B can be cleared of staging materials.

“Great Weight” to the Recommendations of OP

8. 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).)
9. 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 ANC

10. 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).)

11. Because neither ANC 7D nor ANC 7F filed any response to the Application, there is nothing to which the Commission can give great weight.
12. As previously noted, Parkside Townhomes Condo Association, Inc. did not file a response to the Application.

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 one-year time extension of Z.C. Order No. 05-28Q, as extended by Z.C. Order Nos. 05-28W, 05-28W(1), and 05-28AD; and as modified by Z.C. Order No. 05-28Z and Z.C. Order No. 05-28AC, until March 23, 2025, within which time the Applicant must start construction on Parcel 9B.

The Conditions in Z.C. Order No. 05-28, as modified by Z.C. Order No. 05-28Q, Z.C. Order No. 05-28Z, and Z.C. Order No. 05-28AC, remain unchanged and in effect.

Final Action

VOTE (April 25, 2024): 4-0-1 (Robert E. Miller, Joseph Imamura, Anthony J. Hood and Tammy Stidham to approve; 3rd Mayoral Appointee seat vacant.)

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



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.