

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).


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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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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

Z.C. Case No. 05-28Q

Parkside Residential, LLC

(Approval of a Second-Stage PUD and Modification of an Approved First-Stage PUD @
Square 5041, Lot 806 and Square 5056, Lots 809 and 813)

July 24, 2017

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing (“Public Hearing”) on June 19, 2017 to consider an application (“Application”) from Parkside Residential, LLC (“Applicant”) for review and approval of a second-stage planned unit development and related modification of an approved first-stage planned unit development and Zoning Map amendment (collectively, a “PUD”). The Commission considered the Application pursuant to Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations”), Subtitles X and Z. The Public Hearing was conducted in accordance with the provisions of Chapter 4 of Title 11, Subtitle Z of the District of Columbia Municipal Regulations. For the reasons stated below, the Commission hereby approves the Application.

FINDINGS OF FACT

I. PUD History and Procedural History of the Application

1. The property that is the subject of this PUD includes Lot 806 in Square 5041, Lots 809 and 813 in Square 5056, and portions of closed streets in Square 5041 and Square 5056 (collectively, the “Property” or “Parcel 9”) in the Parkside neighborhood of Ward 7. (Exhibit [“Ex.”] 3 at 2.) The Property is bounded by Kenilworth Terrace, N.E. to the southeast, Grant Place, N.E. to the southwest, Parkside Place, N.E. to the northwest, and Burnham Place, N.E. to the northeast. (*Id.* at 10.) Grant Place, N.E. and Burnham Place, N.E. have been closed as public streets by act of the City Council and are incorporated into the Property. The Property is approximately 54,423 square feet in area and is currently unimproved. (*Id.*) The Applicant proposes to construct two new buildings containing a mix of retail, residential, and office uses, with below-grade parking (“Project”) on the Property. (*Id.* at 2.) The Project contains approximately 76 total residential units. (Ex. 27A(2).)

2. In an order effective as of April 13, 2007, the Commission approved the first-stage planned unit development application of the Applicant in Z.C. Order No. 05-28 (“Parkside PUD”), the first-stage order to which this Application for a second-stage PUD succeeds. (Ex. 3F.)
3. The Parkside PUD approves a plan of development for 10 “building blocks” across the approximately 15.5-acre site that is the subject of such PUD (collectively, “Parkside”). (Ex. 3H.) The Parkside PUD authorizes a mix of residential, mixed-use, commercial, and retail buildings to contain approximately 3,003,000 square feet of gross floor area (“GFA”), including 1,500-2,000 dwelling units, 500,000-750,000 square feet (“sf”) of office space, 30,000-50,000 sf of retail, 260,000 sf of educational uses, and 43,000 sf of healthcare uses; an overall density of 4.4 floor area ratio (“FAR”); and a maximum height of 110 feet for the office buildings and 90 feet otherwise. (Ex. 3 at 1.)
4. In 2008, in Z.C. Case No. 05-28A, the Commission approved a second-stage application for three of the 10 blocks in the Parkside PUD—Blocks A, B, and C. The Commission approved a senior living facility consisting of 98 units to be reserved for individuals with an income no greater than 60% of the area median income (“AMI”). It also approved 100 townhouses, 42 of which would be reserved for buyers with incomes between 80% and 120% AMI. This proposal was later modified in Z.C. Case No. 05-28G. The senior housing has been constructed on Block A and the townhouses are now complete on both Blocks B and C. (*Id.*)
5. In 2010, in Z.C. Case Nos. 05-28B and 05-28C, the District of Columbia Primary Care Association (“DCPCA”) and Lano Parcel 12, LLC, working with the University of the District of Columbia’s Community College of the District of Columbia (“CCDC”), submitted second-stage PUD applications for portions of Blocks H and I. The applicants submitted a simultaneous request (Z.C. Case No. 05-28E¹) to modify the Parkside PUD in order to accommodate the projects proposed in the second-stage applications. The Commission approved both second-stage applications, as well as certain modifications to the Parkside PUD. The DCPCA building has been constructed (subject to modifications approved in Z.C. Case No. 05-28I); however, the second-stage approval for CCDC has lapsed. (*Id.* at 1-2.)
6. In 2011 in Z.C. Case No. 05-28F, the Commission approved a second-stage application for a one-acre park (“Community Green”) located on Block D. The park was included as a benefit and amenity of the Parkside PUD as a whole. The Community Green provides passive recreation for neighbors and provides a central gathering place for the community. The Community Green has been constructed. (*Id.* at 2.)

¹ Z.C. Cases 05-28D, 05-28G, 05-28H, 05-28I, 05-28L, 05-28M, and 05-28N consisted of either minor modifications to various second-stage PUDs or extensions to the first-stage PUD. (*See* Ex. 2 at Appendix.)

7. In 2013, in Z.C. Case Nos. 05-28J and 05-28K, the Commission approved a modification to the Parkside PUD and second-stage application for Block E. Block E contains a multi-family building consisting of 186 affordable residential units reserved for individuals with an income no greater than 60% of the AMI. Construction on Block E is complete and is currently being leased for occupancy. (*Id.* at 1; Ex. 16B at 12.)
8. In April 2017, in Z.C. Case No. 05-28P, the Commission approved an approximately 190-unit market-rate multi-family residential building with below-grade parking on Block J.
9. Nearly concurrent with the Application, in Z.C. Case Nos. 05-28R and 05-28S, the Applicant sought second-stage PUD approval for two multi-family residential buildings, 25 townhouses, and optional ground-floor retail in the multi-family buildings, all with underground parking and at-grade pedestrian improvements on Parcels 8 and 10 of Block F.
10. On March 3, 2017, in Z.C. Case No. 05-28T, an affiliate of the Applicant applied for modification of the Parkside PUD and second-stage approval for Block H (“Block H Application”), which is pending before the Commission. The Block H Application proposes to construct an office building designed to accommodate a federal anchor office tenant, and includes ground-floor retail uses and approximately 111 enclosed, at-grade parking spaces.
11. On October 11, 2016, the Applicant delivered a notice of its intent (“NOI”) to file a zoning application to all owners of property within 200 feet of the perimeter of the Property as well as to Advisory Neighborhood Commission 7D (“ANC”). (Ex. 3C.) On November 18, 2016, the Applicant delivered an amended NOI. (*Id.*) On January 13, 2017, the Applicant filed the Application for this PUD and certified that the Application satisfied the PUD filing requirements. (Ex. 1, 3D). The Application was accepted as complete by the Office of Zoning (“OZ”) on October 5, 2016. (Ex. 5.) OZ referred the Application to the ANC, the Councilmember for Ward 7, and the District Office of Planning (“OP”), and notice of the filing of the Application was published in the *D.C. Register*. (Ex. 6-10.)
12. On March 17, 2017, the Applicant filed modified architectural plans, drawings, and renderings for the Application in response to preliminary comments from OP. (Ex. 12-13.)
13. On March 17, 2017, OP delivered a report regarding the Application (“OP Setdown Report”), recommended that the Commission set the Application down for public hearing, and requested additional information from the Applicant. (Ex. 15; *see also* Finding of Fact [“FF”] ¶ 74.)
14. At a Commission public meeting on March 27, 2017 (“Setdown”), OP presented the OP Setdown Report. (March 27, 2017 Transcript [“Tr. 1”] of the

Commission’s Regular Public Meeting at 32-47.) The Commission then requested additional information from the Applicant. (*Id.*; *see also* FF ¶ 69.)

15. On April 25, 2017, the Applicant filed its pre-hearing statement (“PHS”), which included updated plans and information in response to the requests from OP and the Commission. (Ex. 16.)
16. Notice of the public hearing for Z.C. Case No. 05-28Q was published in the *D.C. Register* on May 5, 2017 (64 *D.C. Reg.* 67361) and was mailed to the ANC and to owners of property within 200 feet of the Property. (Ex. 18-20.) On May 9, 2017, the Applicant posted notice of the public hearing at the Property. (Ex. 21.) On June 14, 2017, the Applicant filed an affidavit describing the maintenance of such posted notice. (Ex. 30.)
17. Pursuant to the Zoning Regulations, 11-X DCMR (“X”) § 405.3,² OP requested comments on the Project from the District Department of Consumer and Regulatory Affairs (“DCRA”); Department of Employment Services (“DOES”); Department of Energy and the Environment (“DOEE”); Department of Health; the Department of Housing and Community Development (“DHCD”); Department of Parks and Recreation; District of Columbia Office on Aging; District of Columbia Public Schools; District Department of Transportation (“DDOT”); Fire and Emergency Medical Services; Metropolitan Police Department; DC Water; and the Washington Metropolitan Area Transit Authority. (Ex. 15 at 15.) On May 11, 2017, OP held an interagency meeting, inviting representatives from numerous agencies. (Ex. 29 at 11.)
18. On May 19, 2017, the Applicant filed a comprehensive transportation review (“CTR”) for the Project. (Ex. 25.)
19. On May 30, 2017, the Applicant filed its supplemental pre-hearing statement (“Supplemental PHS”), which included additional updated plans and drawings, and further information in response to the requests for the OP and the Commission. (Ex. 27.)
20. On June 9, 2017, OP and DDOT each submitted a final report dated June 9, 2017 (respectively, the “OP Final Report” and “DDOT Report”). (Ex. 28, 29.)
21. On June 16, 2017 the Applicant filed a motion for a waiver of the 20-day period required pursuant to Subtitle Z, § 401.5 to submit information into the record in response to the OP Final Report, the DDOT Report, and the ANC. (Ex. 34.)
22. On June 16, 2017, Applicant filed its responses to agency reports (“Responses”). The Responses included revised proposed flexibility, revisions to the

² This Application proceeds under the provisions of the Zoning Regulations in effect as of September 6, 2016. Accordingly, the provisions of 11 DCMR §§ 2407.3 and 2408.3 are inapplicable to the instant proceeding.

transportation demand management plan (“TDM Plan”), and an amendment to the community benefits agreement (as so amended, the “CBA”). (Ex. 33.)

23. On June 19, 2017, the ANC, which is automatically a party to this proceeding, filed a report (“ANC Report”). (Ex. 48-50.) The ANC Report stated that the ANC had voted in support of the Project by a vote of 5-0, on the condition of continued collaboration between the parties. (Ex. 48.) No requests for party status were filed in this proceeding.
24. On June 19, 2017, the Commission conducted a public hearing in accordance with Subtitle Z of the Zoning Regulations on Z.C. Case No. 05-28Q. (June 19, 2017 Transcript [“Tr. 2”] of Z.C. Case No. 05-28Q at 3-4.)
25. As a preliminary matter prior to Applicant’s testimony, the Commission accepted the following Applicant’s witnesses as experts: Mr. Brian Earle in architecture; Mr. Robert Schiesel in traffic engineering and design; and Mr. Otto Condon in urban design. (*Id.* at 5-6.)
26. At the Public Hearing, the Applicant provided testimony from Mr. Jonathan Novak, (*id.* at 11–17); Mr. Condon, (*id.* at 17-21); Mr. Earle, (*id.* at 21-31); and Mr. Schiesel, (*id.* at 31-35.) These witnesses also answered questions from the Commission. (*Id.* at 38-99, 125-41.) The ANC cross-examined Applicant’s witnesses. (*Id.* at 96-99.)
27. OP testified and presented its report at the Public Hearing. (*Id.* at 99-101; Ex. 29; *see also* FF ¶ 77.) DDOT also testified and presented its report. (Tr. 2 at 101-03; *see also* FF ¶ 77.) Neither the Applicant nor the ANC cross-examined OP or DDOT. (Tr. 2 at 105.)
28. At the Public Hearing, the ANC testified, presented its resolution in favor of the Application, and answered the Commission’s questions. (*Id.* at 106-19; *see also* FF ¶ 89-91.)
29. At the Public Hearing, Ward 7 resident Mr. Sheridan Fuller testified to express his “cautious support” for the Application, and answered the Commission’s questions. (Tr. 2 at 120-125.)
30. No persons or organizations spoke in opposition to the Application at the Public Hearing. (*Id.*)
31. At the conclusion of the public hearing, the Commission closed the record with the exception of items requested from the Applicant and the ANC, and a request for Mr. Fuller’s written testimony. (*Id.* at 141; *see also* Ex. 54.)
32. On June 26, 2017, the Applicant provided its list of final proffers and draft conditions pursuant to Subtitle X § 308.8. (Ex. 56.) On July 3, 2017, the Applicant

filed a written post-hearing submission (“Post-Hearing Submission”) in response to items requested by the Commission. (Ex. 57.)

33. On July 10, 2017, the Applicant provided its final proffers and conditions and filed a draft order. (Ex. 60, 59.)
34. On July 24, 2017, the ANC filed a report. (Ex. 61.)
35. On July 24, 2017, the Commission took final action to approve the Application. July 24, 2017 Transcript [“Tr. 3”] of the Commission’s Regular Public Meeting at page 22.

II. Summary of the Property and the Project

36. The Applicant seeks review and approval for the Project as a second-stage PUD with related modifications to the approved Parkside PUD for the development of the Project on the Property. (Ex. 2A.) The Application does not modify the formerly approved PUD-related Map Amendment (“Map Amendment”), which was approved as part of the Parkside PUD to change the zoning for the Property to the C-3-A Zone District from the R-5-A Zone District. (*Id.*)

Overview of the Property and Surrounding Area

37. The Parkside PUD is located in Ward 7, northwest of the intersection of Minnesota Avenue, N.E. and Benning Road, N.E. Parkside is surrounded by the Anacostia River and Kenilworth Park to the northwest, the existing Mayfair Mansions residential apartment complex to the northeast, the Anacostia Freeway (Highway 295) and the Orange Line tracks to the southeast, and the former Pepco plant to the southwest. The Property is located midblock along the southeast boundary of the Parkside PUD and is part the large, currently vacant, “superblock” located between Kenilworth Terrace, N.E. and Parkside Place, N.E. The Property is currently entirely vacant.
38. The Property, Parcel 9 of Block F in the original Parkside PUD layout, is located at the center of Parkside. (*Id.* at 10.) Three of the four surrounding blocks are also currently unimproved, and the fourth contains the existing Community Green. (*Id.*) Although the Property and surrounding blocks are unimproved, Parkside already has streets, sidewalks, and other infrastructure in place to serve the many townhomes, apartments, senior units, and schools already in the neighborhood. (*Id.*)
39. The Parkside PUD is partially constructed. Approximately 100 townhomes, 186 apartments, 98 senior housing units, and a healthcare clinic have been built. Approximately nine acres of the Parkside PUD site remains vacant land. (Ex. 2.)
40. The Property is surrounded by currently vacant lots and the Community Green. The vacant lots are the subject of pending and future second-stage PUD

applications. (*See* Z.C. Case Nos. 05-28R, 05-28S, and 05-28T.) Immediately northeast of the Property, the Parkside PUD contemplated residential uses that have not yet been approved but that are part of a second-stage PUD application pending before the Commission in Z.C. Case No. 05-28S. Southwest of the Property, the Parkside PUD contemplated residential uses that have not yet been approved but that are part of a second-stage PUD application pending before the Commission in Z.C. Case No. 05-28R. The property included in Cases No. 05-28Q (referred to as Parcel 9), 05-28R (referred to as Parcel 8), and 05-28S (referred to as Parcel 10) comprise the entirety of Block F, as it was defined in the Parkside PUD. Opposite the Property along Kenilworth Terrace, N.E. is Parkside's Block H, which is the subject of an existing second-stage PUD application that is expected to contain a mix of office and retail uses. (*See* Z.C. Case No. 05-28T.) Further east of the Property is the Kenilworth Avenue, N.E./Anacostia Freeway/Orange Line corridor which creates a significant barrier between the Property and other land uses even further to the east. The surrounding undeveloped blocks are all controlled by the Applicant or affiliates of the Applicant and are expected to be constructed roughly contemporaneously with the proposed Project.

41. Land uses in the vicinity of the Property include a former Pepco plant, the Educare early-childhood educational facility, Neval Thomas Elementary School, Cesar Chavez Public Charter School, Metrotown apartments and townhomes, and the Parkside townhomes, which were constructed in the 1990s. Two blocks north of the Property are the Mayfair/Paradise multifamily rental communities. Eastland Gardens is located approximately one-half mile to the north of the Property.
42. The Property has vehicular access to the Baltimore/Washington corridor via Highway 295, a six-lane highway that provides convenient access to downtown Washington, to Route 50 and points east, to the Baltimore-Washington Parkway to Howard County and Baltimore, and to the Capital Beltway. The Minnesota Avenue Metrorail Station, with Orange Line service, is located immediately across Highway 295 from the site, within walking distance over a pedestrian bridge ("Bridge") that connects to the Metrorail Station. The Minnesota Avenue Station is seven stops (i.e., approximately 10 to 15 minutes) on the Orange Line from the Metro Center Station. In the opposite direction, the Orange Line runs to New Carrollton, a major employment center for Prince George's County, Maryland. (*Id.*) Two Metrobus lines, the U5 and U6, serve Parkside directly, and numerous other lines serve the nearby Minnesota Avenue, N.E.
43. Parkside is well-served by outdoor space, with thousands of acres of nearby protected parkland, including Kenilworth Aquatic Gardens, Anacostia Park, and the National Arboretum and Kingman Island forming a large, continuous, green space and recreational complex. The Anacostia Riverwalk Trail is under expansion, and approximately 15 miles of the 28-mile trail system are open today. The Parkside Community Green is also nearby.

44. Commercial uses predominate along Minnesota Avenue, N.E. to the northeast and southeast of the Property, and the heart of the Benning neighborhood to the southeast contains the East River Park Shopping Center with a public library, a grocery store, and pharmacy as well as other shops and restaurants. Parkside itself, like the adjacent residential blocks, contains no significant retail other than a single convenience store along Kenilworth Terrace, N.E.
45. Apart from other blocks of Parkside and the schools mentioned above, several other developments are currently planned or have recently been constructed. These include the construction of the first phase of the DOES Government Center, which Center consists of 230,000 sf of office space and first-floor retail. The Park 7 project near the Minnesota Avenue Metrorail Station contains 376 affordable rental units and approximately 20,000 sf of retail space with construction completed in 2014. Also nearby are: (i) a 172 rental unit-development known as Lotus Square; and (ii) a development containing 125 affordable townhouses along with public housing units known as MetroTowns at Parkside, both of which were completed in the recent past.

Parkside PUD

46. Parkside has been adopted by America's Promise Alliance, a coalition of over 400 national organizations working collaboratively to bring comprehensive education and social services to underserved communities based upon the Harlem Children's Zone model. (*Id.*) The Parkside community was accepted into the federal Promise Neighborhood Program with a \$25 million grant from the US Department of Education in December 2012, which is the centerpiece of former President Obama's urban initiatives. (*Id.* at 12-13.) The Promise Neighborhoods Program seeks to engage all resident children and their parents into an achievement program based on tangible goals, including matriculation to college for each and every participating student, positive physical and mental health outcomes for children, and parenting classes. (*Id.* at 13.) The program also seeks to provide employment training and counseling to provide meaningful employment opportunities for the parents. (*Id.*)
47. The Parkside PUD was approved prior to September 6, 2016, and accordingly, pursuant to Subtitle A of the Zoning Regulations, the substantive requirements of the 1958 Zoning Regulations ("ZR58") apply to the Project, except as the Parkside PUD is modified.
48. In sum, once the modifications to the original approval are accounted for, the final Parkside PUD approval allows approximately three million sf of GFA: approximately 43,000 sf of health care uses, 260,000 sf of educational uses, 750,000 sf of commercial uses, and approximately two million sf of residential uses. (Ex. 2 at 2.) Prior to this Order (including the three pending cases cited above), the Commission approved 1.15 million sf of residential use and approximately 43,000 sf of health care use. (Ex. 2 at Appendix 2.)

49. The Parkside PUD approves the overall massing and program for the Parkside PUD site and set forth parameters for each of the site's building blocks, including Block F, which is the subject of the instant order. The Parkside PUD approved the following parameters with respect to Block F in total: Number of Units – 330-365; Lot Occupancy – 47.4 percent;³ GFA – 444,825 sf; FAR – 3.13⁴; Height – 72-90 feet; and Parking – 485 surface parking spaces. (*Id.* at 7.)
50. In the Parkside PUD (which was approved three days after the adoption of the Inclusionary Zoning [“IZ”] regulations), the Applicant proffered a commitment, which the Commission accepted, to set aside 20% of the residential component of the overall Parkside PUD to be affordable for households at 80% AMI and an additional 20% of the overall residential component to be affordable for households at 80-120% of AMI. To date, the Applicant and its affiliates have constructed 384 total units, of which 284 (74%) are affordable at 60% AMI (i.e., at a deeper level of affordability than is required under the Parkside PUD, which required only that units be affordable at 80% AMI); 42 (11% of the total) are affordable at 80-120% AMI; and 58 (15% of the total) are market rate. (Ex. 3 at p. 16, n. 7.) Upon completion of the Project and including the new units added by the Project, 44% of the units in the Parkside PUD will be market-rate units. (Ex. 16, Tr. 2, p. 8.) The Commission finds that Parkside's mixed-income housing and mixed-use approach, of which the Project is a key element, is essential for attracting a mix of commercial uses to the Parkside neighborhood. (Ex. 3 at 5-6.) The Commission agrees with the OP's assessment that the inclusion of office space would further policies related to the provision of business and employment opportunities, and make the retail space that is desired for the neighborhood more viable. (Tr. 1 at 36.)

The Project

51. Overview. The Project consists of two new buildings containing a mix of retail, residential, and office uses, plus approximately 141 below-grade parking spaces and 10 sidewalk parking spaces shared among the uses on the Property. (Ex. 3 at 2; Ex. 3(I)(2).) One building will contain approximately 76 residential units (with approximately 20% of the units reserved as workforce housing). (*Id.*) The other building will contain office space. Both buildings will contain ground-floor retail. (*Id.*)
52. The Project that is the subject of this second-stage Application contains two buildings, one office and one residential, and both with ground-floor retail, and approximately 141 below-grade parking spaces. The office building will have a maximum height of 90 feet and the residential building will have a maximum height of 85 feet.

³ Under the Parkside PUD, Lot Occupancy was calculated using area of the individual building blocks rather than lot area.

⁴ As noted above, the first-stage PUD FAR of 3.13 was calculated based on the block area. Using lot area, the first-stage PUD FAR is 3.32.

53. The Applicant presented evidence that development in the Parkside neighborhood has led to sufficient critical mass of residents to support the proposed new retail uses. The development of office uses at the site will further support new retail by providing a daytime commercial use. The retail will be located on a new vehicular and pedestrian promenade that runs through the site and provides a direct connection between the central Community Green and the planned pedestrian bridge (“Bridge”) from the Minnesota Avenue Metrorail station. The primary rationale for this phase of the development of Parkside are the addition of retail and office uses, the construction of additional multi-family units, and the activation of the keystone Parcel 9 at the center of the neighborhood, with its prominent linkage to the planned pedestrian walkway to the Metrorail station.
54. The Project’s site plan addresses its important context in the Parkside neighborhood. The plan for Parcel 9 calls for two seven-story buildings separated by a promenade (“Promenade”) that has a flexible relationship between pedestrian space and vehicular space. The Promenade links the Community Green and the greater Parkside neighborhood to the future Bridge. The placement of buildings of roughly equal height and mass on either side of the Promenade creates a framing effect that heightens the significance of the Community Green and signifies an arrival into the Parkside neighborhood. The near symmetry of the two buildings, offset slightly because of their differing uses, reinforces the nearly uniform grid of the neighborhood and recalls Parkside’s classical street plan. Parking and loading access have been relegated to the periphery of this block with the primary urban design emphasis being the axial connection between the Community Green and the planned pedestrian pathway to the Metrorail station. The two buildings form strong edges along each of the surrounding streets, creating defensible boundaries and a strong sense of place and hierarchy. The two buildings have rectilinear configurations with more significant setbacks from Kenilworth Terrace, N.E. which is anticipated to be commercial in nature, than from Parkside Place, N.E., which will have a more residential character given its proximity to the Community Green. The size of the two proposed buildings also establishes a sense of commercial significance to Parkside when viewed from the adjacent Anacostia Freeway, serving as an indication that the neighborhood is maturing. The height and density of the two buildings is fairly uniform across the Property, with embellishments, articulation, and materials used to create visual interest and significance.
55. The Project’s height and mass are appropriate relative to the existing context and the planned development of Parkside. The two buildings are each carved back at the upper levels on the Community Green side of the Project, in a gesture to the residential character of that portion of the neighborhood. Contrastingly, the two buildings rise to their full posture on Kenilworth Terrace, N.E., with the intent that the Project will contribute a strong presence on that street in anticipation of future commercial phases. The two buildings approximately mirror each other in height and mass, with the office building being slightly (five feet) taller and somewhat more massive given the market demands for broader floorplates for office uses

relative to residential ones. Parcel 9 has an overall density of approximately 3.81 FAR and will contain approximately 207,759 square feet. For comparison, the Parkside PUD authorized a maximum density of 3.13 FAR for Parcel 9. The FAR of 3.13 was based on the block area for Block F, whereas the 3.81 FAR for Parcel 9 is based on the lot area. Using the lot area, the first-stage PUD density is 3.32 FAR. As noted above, the office building will be approximately 90 feet and the residential building approximately 85 feet.

56. The Project is consistent with the Zoning Regulations and Parkside PUD with respect to other development standards, except as noted below. The Project will occupy approximately 55.4% of the overall lot area, which is slightly greater than what was contemplated (47.3%) in the Parkside PUD for all of Block F. As a result of this increase, the Applicant required a modification from the Parkside PUD with respect to lot occupancy.⁵ Neither front nor rear yards are required for the Property (the Property is a through lot), and none are provided here. Two side yards, each 24 feet, are provided, and comply with the requirement that such yards be two inches for each foot of height. The Project includes three open courts, all of which comply with the Zoning Regulations.
57. The rectilinear form of each building creates significant efficiencies for the Project overall. The office building features a broad, approximately 18,400 square foot floorplate surrounding an elevator and stair core on each of the six upper levels. Likewise, the residential building has a single double-loaded corridor on each upper level. Each building has its main lobby entrance off of the Promenade between the two buildings, a design that encourages pedestrians to engage with the common space between the two buildings. Retail uses wrap the ground floor along both Parkside Place, N.E. and Kenilworth Terrace, N.E. Bike storage is provided at ground level in both buildings. Part of the Applicant's strategy with respect to neighborhood transportation issues is to encourage Parkside residents, especially future residents, to utilize non-automotive forms of transportation. Giving bicycles a prominent location in the Project at-grade opposite the Community Green sends a clear signal that bicycles are a priority transportation mode. By locating the Project's bicycle storage room at-grade with windows similar to those found on a retail storefront, the increased visibility will encourage engagement and adoption among the residents. This design is in line with studies that have shown that more visible bike storage leads to increased adoption.
58. The residential building contains a mix of studio, one-bedroom, one-bedroom plus den, and two-bedroom units. The residential building also has ample dedicated amenity space for resident events, and both buildings have occupiable outdoor rooftop terraces.

⁵ The 47% from the first-stage PUD was calculated using the Block area, whereas the 54% is calculated from the lot area. Using the lot area, the first-stage PUD lot occupancy for Block F would be 50.2%.

59. The Applicant has made a significant commitment to providing affordable housing as part of the overall Parkside development, and has to date delivered residential units available to a mix of incomes.⁶ Accordingly, the Applicant is ahead of schedule with respect to satisfying the Parkside PUD's affordability requirements, and as such, this Application's residential building contains only workforce units and not any affordable units.
60. The approach to the design of each of the Project's buildings creates a connection between function, massing and building expression through materials, detailing and scale. While each of the two buildings are treated differently, the overall approach develops building expressions that complements the surroundings context and anticipates the overall development of the neighborhood as it transitions from a smaller scale, less dense residential community into an active, safe, mixed-use and urban-focused environment as described below:
- (a) The overall form of the residential building emphasizes the pattern of the unit windows while incorporating larger modulations on the longer south and north façades that break down the buildings mass. At grade level, façade modulation is achieved through a careful balance of brick, and storefront glazing systems supporting an active pedestrian experience; and
 - (b) The office building intentionally creates a larger, more civic presence with a fenestration aesthetic that draws on a simpler, larger scale grid pattern formed with cement panels and fixed window elements. In an approach similar to the residential building, façade modulation is concentrated at the grade level and rooftop areas featuring contrasting materials emphasizing the main form and discrete elements. The grade level façade is a highly transparent storefront system that visually connects the interior to the exterior creating the sense of interior spaces as an extension of the pedestrian environment. The rooftop modulation accentuates terrace areas with green roofs that breaks down the building mass towards the park and residential neighborhood.
61. Landscaping. The Project features landscaping at grade and on the rooftop of the office building. The central landscape feature at grade, and indeed the organizing principle of the site plan, is the Promenade through the center of Parcel 9. This Promenade accommodates both vehicles and pedestrians, with an emphasis on functioning as a shared space that is able to be flexibly closed and opened for special events, such as markets and festivals. The Promenade creates the vital pedestrian linkage between the Community Green and the Bridge. The Promenade features street trees and other ground level vegetation, which serve dual purposes of beautification and stormwater control. Street trees and vegetation also line Parkside Place, NE and Kenilworth Terrace, N.E. adjacent to the Project.

⁶ To date, the Applicant has delivered 384 residential units, of which 286 are reserved at affordable (60% AMI) levels and 42 at workforce (80-120% AMI) levels; that is, 85% of the units delivered to Parkside thus far have been affordable or workforce units.

Vegetation is provided at the rooftop level as a green amenity for building occupants and for the environmental benefits. Innovative and artistic fixtures are employed to give the Project a unique character.

62. Parking and Loading. The Project includes a unified below-grade garage expected to contain approximately 141 parking spaces. Ten additional parking spaces are provided at grade along the Promenade. Eighty long-term bicycle parking spaces are provided in secure rooms at grade, and an additional 32 short-term spaces are provided in public space around the perimeter of the Project's two buildings. The Applicant anticipates constructing the garage with knock-out walls to allow connection to future below grade garages on the adjoining Parcels 8 and 10. Access to the garage and loading areas is via alleys at the periphery of the project, which alleys are also shared with Parcels 8 and 10. The existing curb cuts on the Property are relocated to accommodate the proposed configuration. Two new curb cuts are added to allow the proposed Promenade at the center of the Project. The Project's loading is entirely enclosed and does not necessitate any truck backing up into public right of ways. However, the Project does not provide the requisite number of loading berths and delivery areas required under the Zoning Regulations. Accordingly, the Application requires relief with respect to loading.
63. LEED. This Project is designed to the level of LEED-Gold for both the office building and the residential building.

Modifications to and Consistency with the Parkside PUD

64. The Project is consistent with the general parameters established for Block F in the Parkside PUD, but differs slightly with respect to certain elements. Therefore, this Application seeks modifications to the Parkside PUD. The elements of the Project that differ from the Parkside PUD include:
 - (a) Use: The first-stage PUD did not contemplate office use on the Property. After study, the Applicant presented evidence that locating at least some office use on the Property is essential to allowing the ground-floor retail to succeed and that the timing is appropriate for establishing office uses as part of this phase of development;
 - (b) Gross Floor Area/Floor Area Ratio: The first-stage PUD contemplated 151,200 square feet for Parcel 9, whereas 207,759 square feet are now proposed. The density contemplated under the first-stage PUD would have resulted in an FAR of 3.13,⁷ whereas the Project will have an FAR of approximately 3.81 (for Parcel 9 only);

⁷ As noted above, the first-stage PUD FAR of 3.13 was calculated based on the block area. Using lot area, the first-stage PUD FAR is 3.32.

- (c) Lot Occupancy: The first-stage PUD authorized a lot occupancy of 50%⁸ for the entirety of Block F, whereas the Project will have a lot occupancy of 55.4%. The reduced lot occupancy is primarily a result of the conversion of one of the two buildings to office use and the concomitant enlargement of the floor plate of such building to satisfy market demands for office layouts; and
 - (d) Parking: The first-stage PUD approved 114 surface parking spaces for Parcel 9, whereas the Project will provide 141 below-grade parking spaces plus 10 on-street spaces along the Promenade.
65. These modest proposed modifications are consistent with the overall massing, development envelope, policy objectives, impacts, consistency with planning objectives, character, and appropriateness of the Parkside PUD, and were undertaken following detailed studies of the Project's site plan, architecture, landscaping, and transportation as well as current market conditions.
66. The Applicant and the Project are in compliance with the conditions of the Parkside PUD as follows:
- (a) Condition 1: As part of the Application, the Applicant formally confirmed the Map Amendment to rezone the Property from the underlying R-5-A Zone District to the C-3-A Zone District;
 - (b) Condition 2: The Application is largely consistent with the concepts the Commission approved in the Parkside PUD, subject to the modifications requested herein regarding the proposed uses, lot occupancy, GFA/FAR, and parking;
 - (c) Condition 3: The Project demonstrates further development and refinement of the concepts and massing submitted in connection with the Parkside PUD. The Public Benefits are consistent with those proposed during the Parkside PUD;
 - (d) Condition 4: The Project is consistent with the overall dimensional limits set forth in the Parkside PUD Conditions, as modified in Z.C. Order No. 05-28E. The Project is consistent with the maximum height limits allowed pursuant to the Parkside PUD. A construction schedule for the Bridge is expected to be issued in 2017. Construction of the Community Green is complete;
 - (e) Condition 5: Not applicable to this Application;

⁸ As noted above, the first-stage PUD lot occupancy was calculated using the block area rather than the lot area. In the first-stage PUD, the block lot occupancy for Block 9 was 47%.

- (f) Condition 6: Not applicable to this Application. The Project does not include any affordable housing. The Applicant has previously provided updates on its provision of affordable housing and is significantly ahead of its obligations with respect to this Condition;
- (g) Condition 7: The Project includes workforce housing units.
- (h) Condition 8: Landscape plans, and detailed architectural plans and elevations are included in the Final Plans;
- (i) Condition 9: Not applicable to this Application. This analysis was addressed in prior first-stage and second-stage applications;
- (j) Condition 10: The Applicant provided the CTR in fulfillment of this Condition;
- (k) Condition 11: This Application addresses the design and anticipated use of the Promenade at the center of the Property in (a) of this Condition. The Applicant has previously given to DDOT a 45-foot-wide easement at the center of the site as part of the retail plaza. In a prior second-stage application, the Applicant submitted plans regarding buffering the Pepco site;
- (l) Condition 12: Not applicable to this Application. The Applicant is not including for-sale affordable residential units in connection with this Application;
- (m) Condition 13: This Application has been filed prior to October 3, 2017. This condition has been satisfied;
- (n) Condition 14: The Applicant is developing Parkside in phases. The Application is one phase of the 10 building blocks that were approved during the Parkside PUD; and
- (o) Condition 15: This Condition is restated as a Condition of this Order.

Community Outreach

- 67. The Applicant engaged in significant outreach to the surrounding community prior to and after the Public Hearing. The Project reflects the extensive Applicant-led community outreach. The Applicant undertook extensive outreach as part of the first-stage PUD process, and that outreach continues as Parkside comes to fruition as a fully realized neighborhood. The ownership team has continued to meet with the community, as well as government representatives from the OP (on November 22, 2016), DDOT (on December 13, 2016). The Applicant met with the ANC at its next meeting on February 14, 2017, and with the Parkside Civic Association on February 16, 2017, and has engaged in considerable efforts to

engage and inform the nearby residents and other affected and interested stakeholders. The Applicant continued its dialogue with the ANC and the community more generally after the Public Hearing, including, but not limited to, attending a special meeting of the ANC on June 28, 2017. The preferences and desires of numerous community groups and individuals shaped the Project's Public Benefits as evidenced in the Community Benefits Agreement with the ANC 7D for Parkside.

Summary of Public Benefits

68. The Commission approved a package of public benefits in its evaluation of the Parkside PUD ("Parkside Public Benefits") and determined those Benefits appropriately balanced the flexibility requested during the PUD process. The Parkside Public Benefits include: (a) provision of affordable housing in 20 % of the residential component of the Parkside PUD; (b) provision of workforce housing in 20% of the residential component of the Parkside; (c) superior site planning including the provision of the one-acre Community Green and four additional acres of landscaped and/or hardscaped areas; (d) superior urban design; (e) provision of easements for pedestrian access to the Bridge as well as a \$3 million dollar contribution to the Bridge itself; (f) provision of transit-accessible jobs and training for Parkside residents; (g) conservation of natural resources and completion of the LEED-ND certification; and (h) other uses of special value to the community and the District as a transformational, mixed-use, mixed-income, transit-oriented development in Ward 7. As noted above, the Parkside Public Benefits were approved under ZR58. The Applicant has expanded upon and refined the Parkside Public Benefits in this Application. More specifically, the Applicant has proffered the following Public Benefits: (a) superior urban design, architecture, and landscaping; (b) efficient site planning; (c) transportation infrastructure and mass transit improvements; (d) environmental and sustainable benefits; (e) uses of special value to the neighborhood or the District as a whole; (f) other benefits that substantially advance the Comprehensive Plan; and (g) streetscape improvements.

III. Commission Comments and Questions

69. On March 27, 2017, following review of the Initial Statement, at Setdown the Commission provided comments on the Application and requested that the Applicant: (a) provide a comparison between what was originally approved in the first-stage PUD approval and what was proposed at the second-stage; (b) consider design modifications for the residential building that would make the building appear more residential in character, and consider including balconies and changing use and/or color of fiber cement panels in the building; (c) consider additional environmental enhancements, such as a green roof or solar panels, on the roof of the residential building; (d) provide information regarding the necessity of IZ compliance in light of the Application's modifications to the Parkside PUD and provide information on the status of the Parkside PUD's

provision of affordable housing through the instant Application; (e) provide information regarding the introduction of a new use (*i.e.*, office) in the second-stage application that was not included in the first-stage application in light of the Comprehensive Plan.

70. In response to the Commission's comments and questions at Setdown, the Applicant provided, in its PHS, and Supplemental PHS, and at the Public Hearing, the following:
- (a) Comparison of First-Stage Approvals and Second Stage Applications. In the PHS, Applicant provided a detailed overview of the parameters of the approved Parkside PUD. (Ex. 16A.) Applicant also provided information regarding the second-stage applications, including the instant Application, which had followed from the Parkside PUD. (*Id.*) Applicant further provided comparisons of the first-stage approved design and second-stage approved or proposed designs and modifications for Blocks A through I. (*Id.*) In the Supplemental PHS, Applicant provided further illustrations of the differences between the approved first-stage plans and the proposed second-stage plans; (Ex. 27A.)
 - (b) Design Modifications for the Residential Building. In the PHS, the Applicant provided revised plans in response to Commission comments at Setdown. The design revisions included: (i) a warm accent color to distinguish the residential building from the office building; (ii) additional inset balconies in the residential building to further enhance its residential character; (iii) a change in the design and color of the windows of the residential building to further distinguish it from the office building; and (iv) additional information regarding proposed materials for the buildings. (Ex. 16.) In the Supplemental PHS, Applicant provided further refined designs, including revisions to the façade of the residential building to further enhance the residential appearance of the building. (Ex. 27; Ex. 27A.) The Applicant provided additional explanation of the modifications to the residential building at the Public Hearing; (Tr. 2 at 25-31, 50-56.)
 - (c) Environmental Enhancements. In the Supplemental PHS, the Applicant referred the Commission to its commitment to pursue a LEED-Gold level of design for both buildings and provided updated LEED scorecards. (Ex. 27; Ex. 27A4.) Applicant also stated it was continuing to research the feasibility of including solar panels on the residential building; (Ex. 27.)
 - (d) Necessity of IZ Compliance. The Commission agrees with the Applicant that this project is not subject to IZ because the Parkside PUD was set down prior to March 14, 2008, and is therefore exempt from IZ under 11

DCMR § 2608.2⁹, which provides that IZ does not apply to buildings set down before that date.

In some instances, the Commission has found that a PUD modification can trigger IZ when the modifications are so great that the modified project is not the same “building.” This is because the exemption rule states that IZ “shall not apply to any building approved by the Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.” (11 DCMR § 2608.2.) Thus, if the Applicant is no longer developing the same building, it no longer qualifies for the exemption.

In this case, there are some relatively significant changes to the office building, but the uses in the office building do not trigger any inclusionary zoning requirements. The residential building on Parcel 9 include uses that would trigger an IZ requirement, but the changes Applicant seeks through the modification are relatively minor, and do not include any additional residential gross floor area. The Commission therefore considers the residential building on Parcel 9 the same “building” the Commission approved previously, and for purposes of determining whether the modification triggers an IZ requirement under 11 DCMR § 2608.2, and finds that it remains exempt from IZ; and

- (e) Information Regarding Introduction of Office Use at Second-Stage Approval. In its Supplemental PHS, the Applicant presented two examples of developments that proceeded pursuant to a PUD and that included an office use in an area currently designated as Medium Density Residential use on the Comprehensive Plan’s Future Land Use Map (“FLUM”). The Applicant further stated, as it had previously, that the inclusion of office use is supported by the Comprehensive Plan’s goals of commercial and economic development. (Ex. 27.) In the OP Final Report, the OP expressed support for the office use, and stated that the office use was consistent with the Comprehensive Plan and the FLUM. (Ex. 29 at 4.)

- 71. At the Public Hearing, the Commission questioned Applicant regarding: (a) the total amount of office versus retail space for the current proposed Parkside PUD; (b) the methodology of calculating market-rate parking and the facilities that were used to calculate market-rate; (c) the provision of solar panels on residential building, and logistics of allocating solar panel space to future residents; (d) the location of workforce units within the residential building; (e) other developments in the District that have street-level bicycle storage facilities; (f) the design and materials of the buildings; (g) the adoption of DDOT’s proposed conditions; (h) the potential application of IZ requirements, and the Project’s compliance with

⁹ The Project has vested development rights and is therefore subject to the 1958 Zoning Regulations. (11-A DCMR §102.3(a).)

IZ; (i) potential tenants for the office building; (j) the size and location of retail space; (k) potential tenants for retail space; (l) language regarding the requested design flexibility in regards to exterior building materials; (m) traffic impacts; (n) division of parking among various uses at the Project; and (o) the make-up of the Project team.

72. The Commission finds that the Applicant responded completely to the Commission's questions at the Public Hearing as follows:

- (a) Office versus Residential Uses in Parkside PUD. The Applicant explained that the office component of the Parkside PUD will ultimately likely increase over the amount originally approved as part of the Parkside PUD but the Applicant has not yet come close to exceeding the limit established in the Parkside PUD; (Tr. 2 at 39.)
- (b) Calculation of Market-Rate Parking. The Applicant explained that the condition to establish the garage parking rates at no lower than nearby market rates was an industry convention and would be more meaningful in the future when other parking garages existed nearby. In its Post-Hearing Submission, the Applicant explained that the Minnesota Avenue Metrorail station park-and-ride garage located at 4000 Minnesota Ave., NE is within 0.25 miles (walking) of the Project's office building once the Bridge is complete. On weekdays, the park-and-ride garage's current daily rate is \$4.60 and the current monthly rate is \$65.00;
- (c) Provision of Solar Panels/Green Roof. The Applicant provided evidence that the total rooftop area of the residential building available for solar is 4,500 square feet, which could accommodate up to 189 panels and produce a theoretical maximum of approximately 550,000 KW/h annually (which, for scale, equals approximately 25-30% of the electrical energy demand for the residential units in the building). The residential building will be constructed to contain the necessary infrastructure to accommodate future rooftop solar. Accordingly, the Applicant does not propose a green roof for this area. In lieu of providing a green roof on the condominium building, the Project provides the infrastructure necessary for the future installation of a photovoltaic array. Such infrastructure includes sizing the roof to support the increased load, a roof membrane warranted to support the installation of a ballasted array, and raceways from the roof to individual units and the building main electric room. This infrastructure eliminates many of the costliest barriers to installing such a system. At the same time, it allows the residential building's future condominium association ("Association") to procure an array in a manner that best suits their needs and the time of their choosing. This approach is beneficial for a variety of reasons including:

- It allows the Association to choose whether to purchase the array all at one time in a cooperative model, or to allow individuals unit owners to purchase panels at their election;
- If purchased cooperatively, the Association can choose whether to use the array to service common areas, individual units, or some combination thereof; and
- It allows the individual homeowners and/or the Association to take advantage of the Solar Renewable Energy Credit Program in the District.

In order to satisfy, in part, stormwater requirements applicable to the Project, the office building includes green roof rather than rooftop solar. The office building contains 6,500 square feet of green roof area plus outdoor roof terrace across two levels as an outdoor amenity space for building occupants. The provision of a green roof on the office building provides an overall greater environmental benefit and allows the Project's stormwater management requirements to be satisfied on-site. The Applicant has committed to construct the office building to the level of LEED-Gold and has studied sustainability measures for the building as a whole;

- (d) Location of Workforce Units in Residential Building. The Applicant committed to following the distribution requirements of the IZ regulations with respect to the location of the Project's workforce housing unit; (Ex. 57.)
- (e) Other District Buildings with Street-Level Bicycle Storage. Part of the Applicant's strategy with respect to neighborhood transportation issues is to encourage Parkside residents, especially future residents, to utilize non-automotive forms of transportation. Giving bicycles a prominent location in the Project at-grade opposite the Community Green sends a clear signal that bicycles are a priority transportation mode. The Commission finds that, by locating the Project's bicycle storage room at-grade with windows similar to those found on a retail storefront, the increased visibility has the effect of encouraging engagement and adoption of bicycle use among the residents. The Applicant provided examples in the District where secure, indoor bicycle storage is successfully included at the ground level. The Project is well-served by the Anacostia River Trail, which the Applicant hopes will serve as a meaningful bicycle connection for Parkside much as the MBT does for the NoMA neighborhood;
- (f) Refinements to Building Designs. The Applicant explained the changes to the Project so that the residential building reads more clearly as such. (Tr.

2 at 50-52.) In the Post-Hearing Submission, the Applicant provided additional information on materials; (Ex. 57.)

- (g) Adoption of DDOT Proposed Conditions. The Applicant committed to adopt DDOT's conditions with respect to TDM; (Tr. 2 at 56-57.)
- (h) Potential Application of IZ Requirements. The Applicant provided a response that the Project's modification triggered IZ only with respect to the office building and that this position had been discussed with OAG. (Tr. 2 at 59; *see also* FF ¶ 70(d).) The Applicant confirmed that the office building's penthouse would not trigger the affordable housing contribution requirements because it does not meet the minimum size of 1,000 square feet. (Tr. 2 at 60.) The Post-Hearing Statement includes additional information on the size of the office building's penthouse; (Ex. 57.)
- (i) Potential Tenants for the Office Building. The Applicant confirmed that it did not have specific tenants yet for the office building but that it was marketing the building to community-serving groups in Ward 7 and beyond, many of which currently occupy space designed for retail uses rather than office space. (Tr. 2 at 61-62.) The Applicant confirmed that the Project was designed to be constructed in a single phase given the below-grade garage; (*Id.*)
- (j) Size and Location of Retail Space. The Applicant confirmed that the retail was divided unevenly among the Project's two buildings, with approximately 5,800 sf in the residential building and approximately 10,900 sf in the office building; (*Id.* at 63-64.)
- (k) Potential Tenants for Retail Space. The Applicant confirmed that the Project is expected to be the first Parkside project to contain retail and that the Applicant had been in coordination with the community to identify their preferences for the type of retail included in the Project. (*Id.* at 64-66.) The Applicant further confirmed that identifying a small-footprint, fresh-food grocer was a priority; (*Id.*)
- (l) Flexibility regarding Exterior Building Materials. In its Post-Hearing Submission, the Applicant proposed revised flexibility language incorporated herein as a Condition of this Order;
- (m) Traffic Impacts. The Applicant provided a justification for continuing to develop in the Parkside neighborhood despite unresolved regional traffic issues; (Tr. 2 at 75-82.)
- (n) Division of Parking among Various Uses. The Applicant included a plan showing the nesting of residential-restricted parking inside the garage; and (Ex. 27A.)

- (o) Project Team. The Applicant confirmed that no one from the Project team was from Ward 7.
73. The Commission finds that the Applicant had thoroughly addressed its comments. The Applicant provided, in response to Commission's comments and questions, answers that are supported by substantial evidence contained in the record.

IV. Agency Reports and Testimony

Office of Planning

74. In the OP Setdown Report, the OP recommended that the Commission set the Application down for public hearing, and requested the following from the Applicant: (a) refinement and enhancement of the designs of each of the two buildings, including additional façade detail and enhancement of the building design to create a more interesting appearance to the buildings; (b) submission of a traffic study in advance of the Public Hearing; (c) consideration of additional green roof or solar panels on the residential building; (d) additional justification for opening the Promenade, which had been pedestrian-only under a previous design, to vehicular traffic; (e) information regarding the methodology that will be used to calculate the sale of the workforce units, and how workforce units will differ from market-rate units; and (f) submission of a LEED checklist for the office building and a Green Communities checklist for the residential building. (Ex. 15.)
75. In response to the OP Setdown Report, the Applicant provided the following:
- (a) Design Modifications for the Residential Building. The Applicant's PHS and presentation the Public Hearing included information responsive to this request from OP; (*See* FF ¶¶ 70(b); 72(f).)
 - (b) Traffic Study. The Applicant timely filed the CTR.
 - (c) Green Roof or Solar Panels. In its Supplemental PHS, Applicant stated it was continuing to research the feasibility of including solar panels on the residential building. (Ex. 27.) In its Post-Hearing Submission, the Applicant provided a detailed response regarding solar and green roof strategies; (Ex. 57; *see* also FF ¶ 72(c).)
 - (d) Information Regarding Opening of Promenade to Vehicles. In its PHS, the Applicant included information regarding the necessity of opening the Promenade to vehicle traffic to support the viability of the retail uses at the Promenade. (Ex. 16.) The Applicant provided a letter from Joe Falcone of Lincoln Property Company, the Applicant's commercial broker, which explained the importance of vehicle access for the success of retail uses. (Ex. 16C.) The Applicant further stated that DDOT supported opening the

Promenade, in part to avoid the creation of a superblock with limited vehicle porosity; (Ex. 16.)

- (e) Information Regarding Pricing and Design of Workforce Units. The Applicant provided information regarding pricing calculations for the workforce units; and (Ex. 16B.)
- (f) Submission of LEED Checklists. In the PSH and Supplemental PHS, the Applicant provided LEED checklists, reiterated its previous commitment to pursue LEED-Gold level designs for both buildings, and provided updated LEED scorecards. (Ex. 16D3; 27; 27A4.)

76. In the Final OP Report, OP stated that Applicant had addressed all previous issues raised by the OP and the Commission at Setdown, and requested or recommended: (a) further information regarding the price of proposed workforce units in comparison to area market rates; (b) that the various design flexibility should be limited or refined; (c) that the Applicant revise certain façades; (d) the Project include a green roof and/or solar panels; (e) that the Applicant implement various TDM measures; (f) that the Applicant coordinate with UFA regarding protection or transplanting heritage trees on the Property; (g) provision of comparison of proposed workforce housing to area market rate housing. (Ex. 29 at 12.)

- (a) Pricing Information. In its Responses, the Applicant noted the dearth of market-rate transactional information for new construction for-sale housing in Ward 7, the product type initially contemplated for the Project. The only recent comparables are the new three-bedroom market-rate townhouses on Blocks B and C which sold for between \$400,000 and \$470,000;
- (b) Flexibility. With the Post-Hearing Submission, the Applicant substantially revised the flexibility in accordance with language approved by the Office of Attorney General and previously approved by the Commission; (Ex. 57.)
- (c) Façade Design Revisions. In its Responses, the Applicant provided revisions to façade materials and further renderings depicting the exterior of the residential building; (Ex. 33D.)
- (d) Provision of Green Roof or Solar Panels. As noted above, in the Post-Hearing Submission, the Applicant provided an explanation of its green roof and rooftop solar panel strategy;
- (e) TDM Measures. The Applicant agreed to implement OP's recommendations in its TDM plan; (Ex. 33.)

- (f) Coordinate with UFA Regarding On-Site Heritage Trees. The Applicant agreed to coordinate with UFA regarding protection or transplanting of five on-site heritage trees; and (Ex. 33.)
 - (g) Provision of Comparison of Proposed Workforce Housing to Area Market Rate Housing. The Applicant provided a comparison of proposed workforce housing to area market-rate housing. (Ex. 33.)
77. At the Public Hearing, OP testified in support of the Project, and specifically in favor of the proposed modifications. (Tr. 2 at 99-101.) The OP stated that the Applicant had responded to issues raised by the Commission and the OP, and reiterated the OP's support of providing solar panels on the roof of the residential building. (Tr. 2 at 100.) OP further testified that the proposed office use was not inconsistent with the Comprehensive Plan. (*Id.*)
78. The Commission finds that the Applicant satisfactorily addressed all of OP's comments and questions. The Applicant has responded to OP's comments and questions with answers that are supported by substantial evidence in the record.

DDOT

79. The DDOT Report noted no objection to the Project, provided that the TDM plan is effectively implemented. The DDOT Report also noted certain post-hearing conditions. (Ex. 28.)
80. The Commission finds that the Applicant has addressed all comments and questions raised by DDOT. The Commission further finds that, as DDOT testified at the Public Hearing, because all comments and questions have been addressed, DDOT does not object to the Project.
81. The DDOT Report included numerous findings, which the Commission hereby adopts. The DDOT Report found that the Applicant utilized sound methodology and assumptions to perform its analysis.
82. The DDOT Report requested that the Applicant provide three electronic vehicle charging stations at the Project. The Applicant agreed and the Post-Hearing Submission shows the location of such stations. (Ex. 57A.)
83. The DDOT Report supported the implementation of the TDM plan which requires the Applicant to:
- (a) Designate a TDM coordinator;
 - (b) Unbundle the cost of residential parking from the lease or purchase price of units;
 - (c) Charge market-rate prices for all garage parking;

- (d) Provide bicycle parking facilities in accordance with or exceeding the Zoning Regulations;
 - (e) Provide TDM Materials to New Residents in the Residential Welcome Packet;
 - (f) Install a transportation information center display in the lobby of the residential building;
 - (g) Provide bicycle repair stations within the bicycle storage room of each building;
 - (h) Provide showers and changing facilities in the office building;
 - (i) Dedicate two parking spaces within the garage for car-sharing services; and
 - (j) Fund the installation of a new 19-dock Capital Bikeshare station and one year of maintenance.
84. To address potential traffic congestion at the intersection of Kenilworth Terrace and Nannie Helen Burroughs N.E., DDOT proposed, and the Applicant agreed to, the following mitigation conditions. The Applicant must:
- (a) Fund the installation of hardware necessary to implement proposed traffic signal changes at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Burroughs N.E., up to \$25,000;
 - (b) Install a transportation information center display in the lobby of the office building;
 - (c) Unbundle the cost of parking from office leases; and
 - (d) Provide at least 20 additional feet of space within the proposed 19-dock Capital Bikeshare station to accommodate and additional eight docks if expanded in the future.
85. At the Public Hearing, DDOT testified that it supported the Applicant's proposed conditions, and that DDOT had no objection to the approval of the Application. (Tr. 2 at 101, 103.) At the Public Hearing, DDOT also addressed regional traffic issues affecting Ward 7. (*Id.* at 102-103.) DDOT testified that it was making improvements in Ward 7, including the addition of a second left turn lane on Nannie Helen Burroughs to Kenilworth. (*Id.* at 102.) DDOT also testified regarding ongoing improvements that are intended to relieve traffic in Ward 7. (*Id.* at 102-103.)

86. The Commission requested that DDOT appear before the Commission again regarding improvements being made in and around the area of the Project, and scheduled for DDOT to attend and testify at the Commission meeting on July 10, 2017.
87. The Commission finds that DDOT's reports and testimony were thorough and credible and helpful in considering the Application, and accordingly gives such testimony appropriate weight in reviewing the Application.

UFA

88. DDOT's Urban Forestry Administration ("UFA") submitted comments memorialized in the OP Final Report. (Ex. 29 at 12.) UFA noted that five heritage trees are located within the Promenade and that the proposed buildings may interfere with the root zones of such trees. It noted that it will continue to work with the Applicant in resolving this issue.

V. ANC Reports and Testimony

89. ANC 7D submitted two reports. The first report was submitted June 19, 2017. (Ex. 48.) It stated that the ANC 7D and the Applicant were engaged in a continuing dialogue to address concerns the ANC had about potential transportation and traffic mitigations, retail strategy and planning, activation of public spaces and parking, and that both parties were committed to continue the dialogue with the goal of a mutual agreement.
90. The second ANC 7D Report was submitted July 24, 2017. (Ex. 61.) It stated that the ANC and the Applicant had reached an agreement that addressed all of the ANC's concerns, and that at a properly noticed meeting with a quorum present, the ANC had voted unanimously to support the application without conditions.
91. At the public hearing, the ANC expressed concerns regarding three issues, namely: (a) transportation and traffic issues; (b) provision of retail within Parkside; and (c) the provision of community spaces and community infrastructure. (*Id.* at 110.) These items are addressed below in the Findings on Core Issues section of this Order. (*See* ¶¶ 95-96 ("Core Issues").)

VI. Persons in Support

92. At the Public Hearing, Ward 7 resident Sheridan Fuller spoke in favor of the Project, and also expressed some concerns regarding the impacts of the Project. (Tr. 2 at 120-123.) Specifically, Mr. Fuller expressed his concerns regarding: (a) traffic; (b) community spaces; and (c) impact on housing costs. Mr. Fuller's concerns are addressed in more detail along with concerns raised by opponents of the Project. (*See* FF ¶ 94.)

VII. Opponents' Concerns and Objections

93. The Commission received written testimony from 19 individuals or organization expressing concerns regarding the Project. (Ex. 11, 32, 35-47, 49-50, and 52.)¹⁰ Most of these Form Objections expressed support for the arrival of retail development in the neighborhood and stated that the Project had, from their perspective, improved since the initial designs. The Commission has reviewed all of the testimony in the record and finds such testimony to be generally credible. The following paragraph identifies and addresses the concerns and objections in the Form Objections. These collective concerns and objections are grouped into categories (rather than addressed as individual items of testimony from each individual author) for review and analysis. A subset of such concerns and objections, together with certain of those raised by the ANC, are addressed in more detail in the Core Issues section of this Order.¹¹
94. The Form Objections expressed concerns about the following categories of issues:
- (a) Parking. One individual expressed concern about the Project's potential impact on parking. (Ex. 11.) The Commission relies on DDOT's report and finds that the Project provides adequate parking for the mix and amount of uses proposed. DDOT's report reflects the same conclusion. Moreover, the Commission finds that the Applicant's proffer to study parking concerns in Parkside as part of the Public Benefits ensures that any adverse Parking impacts are offset by the quality of such Public Benefits;
 - (b) Noise. One individual expressed concern about the Project's potential impact on noise. (Ex. 11.) The Commission finds that noise impacts from the Project are either capable of being mitigated as part of the Construction Management Plan or not unacceptable in light of the Projects' public benefits and the Parkside Public Benefits as a whole;
 - (c) Property Value Impacts. One email expressed concern about the Project's potential impact on lowering property values. (Ex. 11.) Another witness raised concerns that the Project will increase property values. (Tr. 2 at 122.) These concerns were reiterated in the Form Objections. The Commission finds that the Applicant's substantial commitment to providing affordable housing and workforce housing as part of Parkside as a whole and as part of the instant Project offsets any impacts on

¹⁰ Sixteen of the emails are form in nature. (See Ex. 35-47, 49-50, and 52 ("Form Objections").) However, this does not diminish the consideration that the Commission gives the Form Objections upon review. This note is merely to explain that citations to individual letters are generally not provided herein because the concerns and objections summarized herein are generally attributable to all opponents.

¹¹ The Commission does not suggest that the contested issues addressed in this paragraph are immaterial. Rather, the designated Core Issues grouped below all warranted a greater intensity of scrutiny by the Commission and are grouped together with concerns raised by the ANC purely for organizational purposes.

surrounding property values. The Commission tends to disagree that the Project will decrease property values given the investment in converting a currently-vacant land to productive uses;

- (d) Property Uses. One email stated that the Property should be used for green space, commercial space, or condominiums. (Ex. 11.) The Commission finds that Parkside provides green space, as required pursuant to the Parkside PUD, in the form of the Community Green. The Commission also notes that the Applicant has committed to assisting with opening up nearby lands under the control of the National Park Service to community use. (Ex. 27B.) This Project includes both commercial space (office and retail) as well as multifamily residential units that are proposed to be for-sale products. Accordingly, the Commission finds that these concerns are more than adequately addressed;
- (e) Traffic. Transportation issues are addressed in the Core Issues below; (*See* FF ¶ 96(a).)
- (f) Public spaces and amenities for public. Public and community space issues are addressed in the Core Issues as well; (*See id.*)
- (g) Invest in development/employment training/education. The Form Objections encouraged the Applicant to invest in community development, such as job training and the provision of employment opportunities. The Commission finds that the Applicant has committed to providing a robust package of employment-related benefits. (Ex. 27B.) A significant portion of the Parkside program is to include an education conveyor belt. (*See* FF ¶¶ 46; 122; 133(h).) The Commission finds that the Applicant is highly responsive to this issue;
- (h) Community Engagement. Some of the Form Objections encouraged the Applicant to consider expanding its commitment in the CBA, and to continue to engage with the community. The Commission finds that the Applicant satisfied this request. The CBA was amended and expanded. (Ex. 33C.) The Applicant continued its dialogue with the ANC and the community more generally after the Public Hearing, including, but not limited to, attending a special meeting of the ANC on June 28, 2017; and (Ex. 57.)
- (i) Tree Protection and Landscaping Measures. Casey Trees, a District-based tree advocacy organization included comments in the record regarding the heritage trees that exist on the Property. (Ex. 32.) The Commission finds that the Applicant has prepared a site and landscaping plan that can accommodate the appropriate treatment, including if necessary, relocation of such trees.

VIII. Findings regarding Core Issues

95. The Commission finds that the Applicant has responded fully and satisfactorily to each material contested issue raised in this Application. The Commission has reviewed the entire record in this case and finds that three categories of items raised by the ANC, community opponents, and the Commission are best consolidated in this section as Core Issues. Although the Commission ultimately agrees with the Applicant and affords OP's analysis its requisite great weight, the objections and concerns raised by the ANC and other opponents warrant careful scrutiny. In sum, the Commission resolves these contested questions in favor of the Applicant and finds that the Project is consistent with the Zoning Regulations and the PUD Evaluation Standards.
96. The Core Issues in this matter include: (a) traffic and transportation issues; (b) provision of retail space; and (c) provision of community space.
- (a) Transportation and Traffic Issues. The Applicant committed, as part of the Community Benefits Agreement ("CBA") that the Applicant has provided to the ANC, to engage a transportation engineer to provide suggested solutions to larger, regional traffic issues outside the scope of the Project that affect Parkside and nearby neighborhoods. (Ex. 27B. The suggested solutions will be used to facilitate dialogue between the ANC and other members of the community on the one hand and DDOT on the other. The CBA also obligates the Applicant to engage a transportation engineer to develop a parking and curbside management plan with ANC and community input to identify the community's desired parking restrictions for each block of the Parkside neighborhood. The parking plan will provide DDOT and the community a context to develop a unified parking solution for the neighborhood. Altogether the Applicant has committed to spend \$20,000 to study potential solutions to: (i) regional and neighborhood traffic concerns affecting Parkside and surrounding neighborhoods; and (ii) parking issues within Parkside. This amount is above what DDOT has requested, and the Applicant has committed to provide, as mitigation for the transportation impacts of the instant Application. The Commission understands that the locations, traffic and parking issues reviewed as part of this exercise are ultimately controlled by and subject to the discretion of DDOT, but finds the Applicant's willingness to be an advocate to DDOT on behalf of the community's interests constitutes a public benefit;
- (b) Retail. Also as part of the CBA, the Applicant committed to engage in quarterly meetings and/or updates on retail leasing and marketing activities involving the Application and adjacent blocks. (Ex. 33C.) The meetings/updates will involve a working group composed of community residents. These meetings give the community a seat at the table in determining Parkside's retail future; and

- (c) Community Infrastructure. To address the ANC's and other community members' concerns regarding the shortage of community space in Parkside that is both large enough and flexible enough to satisfy the various community needs and time constraints, the Applicant committed up to \$20,000 to renovate and modernize an existing Parkside neighborhood community room currently under control of the Parkside Townhome Home Owner's Association ("Parkside HOA"). The renovation and future use of the existing community room by the ANC and other community groups is subject to the review and approval of the Parkside HOA, and the Applicant and the ANC are in active negotiations with the Parkside HOA regarding the possible renovation and use of this space. Renovating the existing community room is a preferable solution because it provides a space for the ANC and community groups in the very near term. The Applicant is awaiting the ANC's and Parkside HOA's response on this proposal, but is confident a mutually acceptable solution exists. In the event an agreement cannot be reached with the Parkside HOA regarding the renovation and use of the existing community room, the Applicant will work with the ANC and the community to identify another location for community meeting space within the Parkside PUD. The Commission also notes that the existing Community Green as well as the retail Promenade proposed as part of the Application and the elevated plaza ("Plaza") proposed as part of the pending application for Block H (i.e., Z.C. Case No. 05-28T) create a network of connected pedestrian-oriented public space infrastructure in the Parkside neighborhood. That is, the Applicant has already made a significant commitment to provide public gathering spaces at Parkside. At the request of the ANC, the Applicant is committed to studying additional means of further activating the public gathering spaces through dynamic landscaping and furniture to make the spaces feel more inviting and family-friendly. The proposals to identify and provide a community room and additional activation of the public space surrounding the Project are additive relative to the Parkside Public Benefits.

IX. Development Incentives: Map Amendment, Zoning Relief, and Flexibility

97. The PUD Process specifically allows greater flexibility in planning and design than is possible under strict application of the Zoning Regulations. Under the Zoning Regulations, the Commission retains discretion to grant relief from the development standards of the Zoning Regulations and to allow for project flexibility development incentives. (X §§ 303.1, 303.11, 303.13.) The Zoning Regulations specifically allow the Commission to approve any such zoning relief that would otherwise require the approval of the Board of Zoning Adjustment. Generally, such relief is available at the discretion of the Commission; however, where such relief is available only by special exception ordinarily, the Commission must determine that the relief request satisfies that standard for

relief. (*Id.* § 303.13.)¹² A Zoning Map amendment is a type of development incentive and accordingly is addressed here. (*Id.* § 303.12.)

98. As part of the Application, the Applicant requested the Commission grant relief from the strict application of loading requirements for both the office and residential buildings (collectively, the “Development Incentives”) and the Map Amendment.
99. Minor Modifications to the Project do not need to comply with Zoning Regulations effective as of September 6, 2016 because this Application is vested under the 1958 Zoning Regulations. Subtitle A, § 102.4. Current Zoning Regulations do apply to the Project’s loading because the Project’s inclusion of office use is a modification from the first-stage PUD.

Map Amendment

100. The Property is currently in the R-5-A Zone District, and the Parkside PUD approved the Map Amendment to the C-3-A Zone District. The Commission previously found as part of the Parkside PUD that the Map Amendment is not inconsistent with the Comprehensive Plan, which finding satisfies the requirements for granting the Map Amendment. (*See* X § 500.3 and Z.C. Case 05-28.) The Commission sees no reason to disturb its previous findings regarding granting the Map Amendment.

Loading Requirements Relief

101. Under the Zoning Regulations applicable to the Project, the Project is required to provide two 30-foot loading berths for the office building; however, only one is proposed. The Commission finds that the requested relief is appropriate given the public benefits and amenities provided as part of the Project, the context surrounding the Project site, and the general consistency of the Project with the Zoning Regulations for similar relief under a matter-of-right development. Under the Zoning Regulations applicable to the Project, the Project is required to provide a 55-foot berth for the residential building; however, it is providing a 30-foot berth instead. The Commission finds that the requested relief is appropriate given the public benefits and amenities provided as part of the Project, the context surrounding the Project site and the general consistency of the Project with the Zoning Regulations for similar relief under a matter-of-right development.

¹² Subtitle X § 303.13 provides in relevant part that “[a]s part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards.”

PUD-Related Flexibility

102. The Applicant requested certain flexibilities in relation to finalizing the design and construction of the Project. These flexibilities have been refined and narrowed pursuant to comments from the Commission and the OP. (Ex. 33A, 56.) The Commission finds that the proposed flexibilities are sufficiently minor and circumscribed, and approves the flexibilities as proposed in the Applicant Supplemental PHS. (Ex. 33A.)

Inclusionary Zoning.

103. This project is not subject to IZ because the Parkside PUD was set down prior to March 14, 2008, and is therefore exempt from IZ under 11 DCMR § 2608.2¹³, which provides that IZ does not apply to buildings set down before that date. In some instances, the Commission has found that a PUD modification can trigger IZ when the modifications are so great that the modified project is not the same “building.” This is because the exemption rule states that IZ “shall not apply to any building approved by the Zoning Commission pursuant to Chapter 24 if the approved application was set down for hearing prior to March 14, 2008.” (11 DCMR § 2608.2.) Thus, if the Applicant is no longer developing the same building, it is no longer qualifies for the exemption. In this case, there are some relatively significant changes to the office building, but the uses in the office building do not trigger any inclusionary zoning requirements. So there is no reason to apply IZ to that building. The residential building on Parcel 9 does include uses that would trigger an IZ requirement, but the changes Applicant seeks through the modification are relatively minor, and do not include any additional residential gross floor area. The Commission therefore considers the residential building on Parcel 9 to be the same “building” the Commission approved previously, and for purposes of determining whether the modification triggers an IZ requirement under 11 DCMR § 2608.2, finds that it remains exempt from IZ.
104. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the “public health, safety, morals, convenience, order, prosperity, and general welfare to (a) provide adequate light and air, (b) prevent undue concentration of population and the overcrowding of land, and (c) provide distribution of population, business, and industry, and use of land that will tend to create conditions favorable to transportation, protection of property, civic activity, and recreational, educational, and cultural opportunities; and that will tend to further economy and efficiency in the supply of public services.” (11-A DCMR § 101.1 [“Zoning Purposes”]) The Commission finds that Project is in harmony with the Zoning Purposes because it protects light and air on the Property and surrounding Properties, prevents overcrowding by providing retail uses and public

¹³ The Project has vested development rights and is therefore subject to the 1958 Zoning Regulations. 11-A DCMR §102.3(a).

gathering spaces, and provides a more equitable distribution of business land uses that create favorable conditions with respect to transportation (e.g., transit-oriented employment opportunities) and civic activity. The Project is also generally consistent with the height, density, and dimensional aspects of the Zoning Regulations and the Parkside PUD, requiring only modest flexibility with respect to loading. For the reasons set forth above, the Commission finds the Applicant has satisfied the standards necessary for the Commission to grant the requested Development Incentives.

X. PUD Requirements

105. As set forth in the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, provided that the project that is the subject of the PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; (c) protects and advances the public health, safety, welfare, and convenience; (d) is not inconsistent with the Comprehensive Plan and does not result in action inconsistent therewith; (e) does not circumvent the intent and purposes of the Zoning Regulations; and (f) undergoes a comprehensive public review by the Commission in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits (collectively, the “PUD Requirements”). (X §§ 300.1, 300.2, 300.5.)

(a) The Project is superior to the development of the Property under the matter-of-right standards for the following reasons:

- Public Space. The Project’s physical form—loading and garage access from alleys, new construction facing the street, on-street parallel parking, a tree-lined streetscape—encourages pedestrian use and mitigates traffic impacts by promoting and encouraging active mobility over driving. The Project’s Promenade also presents a key linkage between the Community Green and the nearby Metrorail Station;
- Retail and Office Uses. The Project adds office and retail uses in a transit-oriented location. These types of uses are rarely constructed anew in Ward 7 and would not be possible at this location but for the Project proceeding under a PUD with an approved PUD-related map amendment. The community has expressed its desire for more retail space in Ward 7. Additionally, these uses provide employment and economic benefits, which makes the Project superior to a matter-of-right development;
- Other Public Benefits. The Project includes the other public benefits, as discussed further below (FF ¶¶135-148), many of which

would not be required or feasible under a matter-of-right development; and

- Community Engagement. A matter-of-right development would not have afforded the community as many opportunities to engage with the Applicant and provide feedback. The PUD process has facilitated extensive community engagement and the Applicant has responded to community input through, among other actions, entering into the CBA;
- (b) The public benefits are commendable in number and quality. For the reasons set forth more fully in the public benefits findings, the public benefits are of a commendable quality. (See FF ¶¶ 135-146.) There are at least nine distinct categories of public benefits for the Project and additional public benefits for the Parkside PUD overall, absolute numbers that the Commission finds to be commendable. Finally, the Commission finds that the public benefits are meaningful. The public benefits address the preferences, needs and concerns of community residents, were developed following the Applicant’s robust community engagement process, supported by OP, and are not inconsistent with the Comprehensive Plan; (See FF ¶¶ 67,135-148.)
- (c) The Project protects and advances the public health, safety, welfare, and convenience:
- Public Health. The Project protects and advances the public health by being designed in a high-quality manner and in compliance with all applicable construction codes. (Ex. 3 at 21.) There are no existing residential units on the Property or on any adjacent blocks. The availability of open adjacent lots for staging and parking will allow the Applicant to readily mitigate any construction-period impacts. (*Id.* at 30.) The Applicant has also agreed to enter into a Construction Management Plan with the ANC. (Ex. 56 at 2.) The Project includes a number of mitigation measures, notably the pedestrian-oriented design, linkage to the Community Green, and bicycle facilities, which protect and affirmatively advance the public health. The Project also includes funding to develop a re-design of a nearby park. The Project does not entail any unwarranted overcrowding or overpopulation. The Project also complies with all applicable environmental performance standards;
 - Safety. The Project protects and advances safety: the Project has been designed in a manner that puts “eyes on the street” to promote public realm safety. The Project also includes funding for a transportation study to investigate issues surrounding circulation; (Ex. 56 at 5.)

- Welfare. The Project protects and advances the public welfare by bringing much-needed economic activity to Ward 7, which has long been overlooked for the purposes of locating new office tenants. The Applicant has also agreed to multiple measures to promote and encourage the hiring of Ward 7 residents for jobs, including permanent positions, related to the Project; and (Ex. 56 at 2-4.)
- Convenience. Finally, the Project protects and advances the public convenience by adding new neighborhood-serving retail uses. Such retail serves existing Parkside residents and has a strong transit-oriented component. The Project also facilitates the connection of the Bridge in the Parkside neighborhood, and the Bridge improves convenience in access to the Metrorail station;

(d) The Project is not inconsistent with the Comprehensive Plan and would not result in any action inconsistent with the Comprehensive Plan. Extensive findings regarding the Project’s lack of inconsistency with the Comprehensive Plan are provided below; (*See* FF ¶¶ 111-125.)

(e) The Project does not circumvent the Zoning Purposes. The Project does not circumvent the Zoning Purposes. The general intent and purposes of the Zoning Regulations are, *inter alia*, to promote the “public health, safety, morals, convenience, order, prosperity, and general welfare.” (11-A § 101.1.) Findings regarding the Project’s protection and advancement of the public health, safety, convenience, and welfare are provided above: (FF ¶ 104(c).)

- Morals. The Project promotes morals insofar as the Application was undertaken with extensive community outreach. (FF ¶¶ 67) The Commission finds that this community dialogue exemplifies public morals as expressed through the Zoning Regulations and PUD process;
- Order. The Project exemplifies orderly, well-planned development that is undertaken on behalf of the best interests of the residents of the District with respect to the above-cited objectives. The Project complies with all of the specific development standards set forth in the Zoning Regulations, except where flexibility is hereby requested, which flexibility is minor in this instance and expressly contemplated as part of the PUD process. (X §§ 300.1, 303.1.) The Project allows for an appropriate amount of light and air by virtue of its bulk, height, orientation, setbacks, and location east of existing residences; and

- Prosperity. As noted with respect to public welfare above, the Project promotes prosperity by putting to productive use land, including office and retail space, which is currently vacant. (FF ¶ 37.) The Project also promotes public prosperity with respect to its future provision of tax revenue to the District and its addition of many new employees in Ward 7. It also introduces a new transit-oriented employment opportunity for District residents; and
- (f) The Project has undergone a comprehensive public review by the Commission, which has evaluated the Project’s flexibility and incentives in proportion to the public benefits. The Commission has reviewed the entirety of the record. The record is complete with multiple detailed briefings from the Applicant and reports from multiple District agencies and the ANC. The Commission heard presentations on the Application and had the opportunity to ask questions of the Applicant, OP, DDOT, and the ANC. In every material way, the Applicant responded satisfactorily to the requests from the Commission. The Applicant has also responded thoroughly to OP, DDOT and the ANC. The record in this matter is unquestionably full, and the Commission has reviewed it in its entirety.

106. The Commission finds that the Project satisfies the PUD Requirements.

XI. PUD Balancing and Evaluation Standards

PUD Balancing

107. As set forth in the Zoning Regulations, the Commission must evaluate and grant or deny a PUD application according to the standards of § 304 of Subtitle X. The Applicant has the burden of proof to justify the granting of the Application according to such standards. (X § 304.2.)
108. The Commission’s findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm’n.*, 97 A.3d 579 (D.C. 2014). The Commission finds that the Applicant has satisfied the relevant evidentiary threshold to carry its burden of proof in the instant proceeding. The Applicant has provided multiple filings containing volumes of evidence all relevant to this proceeding. (Ex. 3, 12, 13, 14, 16, 25, 27, 56, 57 (plus exhibits thereto).) The Commission, in its reasonable determination, accepts such filings as containing evidence substantial to support the findings contained herein.
109. Pursuant to Subtitle X § 304.3, in deciding this PUD Application the Commission has, according to the specific circumstances of this Application, judged, balanced, and reconciled the relative value of: (a) the Public Benefits and other project amenities offered as part of the Project, (b) the Development Incentives requested by the Applicant (where, pursuant to Subtitle X § 303.12, the requested Map

Amendment is a type of PUD incentive), and (c) any potential adverse effects (collectively, the “PUD Balancing Test”).

- (a) The public benefits are numerous and of a high quality. In sum, the Project provides the numerous public benefits. A full accounting of the public benefits is provided below; (See FF ¶¶ 135-146.)
- (b) The Project’s Development Incentives are comparatively minor and appropriately granted in light of the public benefits. The Commission finds that the Applicant requests comparatively minor Development Incentives for the Project. The Project’s individual Development Incentives are described above. (See FF ¶¶ 97.) The most significant, by far, of the Development Incentives is the Map Amendment, which was approved in the Parkside PUD. The Map Amendment allows the Applicant to construct the Project to a higher density and greater height than is possible as a matter of right. The Development Incentives underlie and indeed make possible the public benefits, and the public benefits justify the additional height and density afforded by the Map Amendment;
- (c) Any potential adverse effects of the Project are appropriately mitigated or outweighed by the Public Benefits. The ANC lists potential adverse effects of the Project. (See FF ¶¶ 89-91.) The Applicant separately identified and studied potential adverse impacts of the Project. See FF ¶¶ 126-134. Such findings are incorporated herein. As the Commission found in response to each individual articulated concern or objection to the Project, these potential adverse effects are either capable of being mitigated or appropriate in light of the Public Benefits; and
- (d) The Public Benefits together outweigh the Project’s potential adverse effects and justify the Development Incentives. The Commission returns to a familiar point in its review of the record in this proceeding: the Project adds much needed commercial uses to Parkside and provides numerous Public Benefits. These items are the offset the additional density sought through the Application.

110. The Commission has reviewed the record, identified the circumstances of the Application, the Property, the Project and the surrounding area, and balanced, reconciled, and judged the Public Benefits against the PUD Incentives and potential adverse effects. In sum, the Commission finds that the Project satisfies the PUD Balancing Test.

PUD Evaluation Standards

111. As set forth in the immediately succeeding paragraphs, the Commission hereby also finds that the Project: (a) is not inconsistent with the Comprehensive Plan or other adopted public policies and active programs (collectively, the “Plan”)

related to the Property; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities but instead is either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and amenities, which are not inconsistent with the Plan with respect to the Property (collectively, the “PUD Evaluation Standards”). (See X § 304.3.)

PUD Evaluation Standards

112. Comprehensive Plan Purposes. The purposes of the Comprehensive Plan are to: (a) define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development; (b) guide executive and legislative decisions and matters affecting the District and its citizens; (c) promote economic growth in jobs for District residents; (d) guide private and public development in order to achieve District and community goals; (e) maintain and enhance the natural and architectural assets of the District; and (f) assist in conservation, stabilization and improvement of each neighborhood and community in the District. (See DC Code Section 1-306.01(b).) The Project advances these purposes by furthering social and economic development through the construction of new office and retail uses on currently vacant land, providing market-rate and workforce housing, investing in a District neighborhood that seeks new investment, committing to the implementation of the TDM measures, and improving the urban design and public space surrounding the Property. The Project assists in the improvement and stabilization of the urban environment in the immediate neighborhood and the District as a whole.
113. OP Findings regarding the Comprehensive Plan. The OP Final Report finds that the Project is not inconsistent with the Comprehensive Plan. (See Ex. 29.) The Commission gives great weight to these OP findings and incorporates them herein.
114. As part of the Parkside PUD, the Commission found that the proposal for Parkside, including the proposal for the Property (with which the Project hereby complies) was consistent with the Comprehensive Plan and other adopted policies of the District. (See Z.C. Order No. 05-28, FF ¶¶ 35, 36, 38, 45, 46 and Conclusions of Law ¶ 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.”).) Given the findings in the record, the clear conclusions of law in the Parkside PUD, and the consistency between the instant Project and the Parkside PUD, the Commission finds that the Project is not inconsistent with the Comprehensive Plan.
115. Future Land Use Map and Generalized Policy Map. The FLUM designates the Property as appropriate for medium density residential uses. The medium-density

residential designation is used to define neighborhoods where mid-rise apartment buildings are the predominant use (four to seven stories). By definition, the FLUM is to be interpreted broadly. (10-A2 DCMR § 226(a).) The FLUM is intended to provide a “generalized guide for development and conservation decisions” and is expressly “not a zoning map.” (10-A2 DCMR § 226, *et. seq.*) The Map designations are generally imposed at the block scale, but the Comprehensive Plan’s Map guidelines expressly accommodate differential treatment for different parcels or buildings on a single block. That is, the “the land use category definitions describe the general character of development in each area,” but there may be “individual buildings” that deviate from the expressed designations. (10-A2 DCMR § 226(c).) The Map guidelines also provide for additional flexibility from the strict designations of the Map in the context of a PUD. (*Id.*) The DC Court of Appeals recently clarified that “even if a proposal conflicts with one or more individual policies associated with the [Comp. Plan], this does not, in and of itself preclude the Zoning Commission from concluding that the action would be consistent with the Comp. Plan as a whole.” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1034 (D.C. 2016) (internal quotation omitted).) The Commission finds that the Project, in the context of the overall Parkside PUD, complies with the FLUM for the following reasons:

- (a) An apartment building with seven floors of units is consistent with the FLUM designation;
- (b) The Property was rezoned to the C-3-A Zone District under the first-stage PUD. Office use is permitted as a matter of right in the C-3-A Zone District;
- (c) The inclusion of commercial uses on the Property is not inconsistent with the FLUM. Providing office in this location is also consistent with the Property’s inclusion in the Central Employment Area (“CEA”). The CEA includes a variety of office users, including major government offices and draws workers and visitors from across the region;
- (d) The Property is immediately adjacent to areas designated for mixed-use, high-density commercial uses. Accordingly, it is reasonable that the Property could be used for commercial uses because the intent of the FLUM is to be interpreted broadly;
- (e) The Comprehensive Plan’s Generalized Policy Map designates the Property as Neighborhood Enhancement Area, which is to ensure that new development fits in and responds to the existing character, natural features, and existing/planned infrastructure capacity. As OP noted, the Project is not inconsistent with such designation; and (Ex. 29 at 12.)

- (f) The overall Parkside PUD, and the Project both substantially comply with the Comprehensive Plan. Specifically, the Project’s introduction of office and commercial uses further the policies associated with the Comprehensive Plan, and any conflict with the FLUM created by the introduction of these uses is outweighed by the Project’s benefits that promote the Comprehensive Plan’s objectives. (*See* FF ¶¶ 115-124.)
116. Land Use (“LU”) Element. The Project is not inconsistent with the LU Element. The Comprehensive Plan devotes a great deal of attention to the importance of transit-oriented development, mixed-use development and the promotion of commercial centers. The LU Element also encourages the integration of new developments into the existing urban fabric, the infilling of vacant lots that create gaps in the urban fabric, and the introduction of housing, while maintaining buffer zones from commercial developments and preserving neighborhood character. The Commission finds that the Project is not inconsistent with the LU Element:
- (a) First, the Project encourages development around Metrorail stations, it is a mixed-use development, and it creates a commercial center in an area that desires commercial development. The residential and office components fulfill the Plan’s objective to locate for infill development near the existing transportation infrastructure and provide the critical mass needed to support the commercial uses;
- (b) Second, the Plan also seeks to achieve “land use compatibility” – specifically, the enhancement and stabilization of the District’s neighborhoods by the protection of residential neighborhoods from non-residential and disruptive uses. The Project is an important infill development that replaces vacant lots, and, especially in the context of the overall Parkside PUD, incorporates of the surrounding neighborhood through pedestrian-oriented development and the inclusion of public spaces; and
- (c) Third, the Project presents a “buffer” between the lower-density townhouse residential uses that exist at Parkside today and the higher intensity highway and highway-adjacent commercial uses planned for future phases. The Project serves as an important transition between the commercial nature of Kenilworth Terrace and the lower-density residential along Parkside Place.
117. Transportation Element. The Plan emphasizes creation of a multi-modal transportation system that links land use and transportation. The Plan encourages strengthening the linkage between land use and transportation as new development occurs, and the Project precisely strengthens such linkage. Parcel 9 is located between the commercial center of Kenilworth Terrace and the lower density residential uses in the Parkside community. The development will not only transition the uses and density, but it will provide a connection between the

uses, and that connection is the fundamental organizing principle for the Project's site plan and physical design. The project will transform the vacant lot into a contributing part of the Parkside community. Further, the Applicant is contributing funds to the construction of a pedestrian bridge—the construction of which is expected to begin within the year—to facilitate access between the site and the Metro station. In all, the Project facilitates and encourages the use of the Metro Station and is the first phase of Parkside to add jobs, in addition to housing, near transit.

118. Housing Element. The Plan's overarching goal for housing in the District is to increase the supply of safe and affordable housing. The Project advances that objective by providing new residential units and supporting the creation of housing in future phases of the Parkside PUD. The Parkside PUD is a private sector-led redevelopment effort that produces new housing, and particularly workforce housing on a vacant site in an historically underinvested portion of the District. The Project incorporates a mix of uses and residential units for a mix of income levels. Perhaps most significantly, the Project includes a comprehensive vision that matches social, economic, healthcare, education and other programs with real estate development to establish and nurture a fully functioning neighborhood.
119. Environmental Protection Element. The Project is not inconsistent with the Comprehensive Plan's environmental protection element's goal to protect and enhance the manmade and natural environmental through environmentally-conscious steps. The Project's landscape plan will help beautify Parkside, enhance streets and public spaces, reduce stormwater runoff, and create a stronger sense of character and identity, thereby advancing these policies. There is an extensive landscape plan providing for abundant trees, retention of many existing trees, and comprehensive and creative stormwater treatment on the Property. The Project proposes elements to improve water quality through design features such as the use of a rain garden in the courtyard to treat runoff from impervious surfaces, including roofs and paved areas; and through the use of a vegetative swale (bio-filtration) to treat runoff from the Property. The Project will seek to be constructed to meet Green Communities and LEED-Gold certification levels. Finally, the overall PUD has been selected as a LEED-ND (Leadership in Energy and Environmental Design for Neighborhood Developments) Pilot project.
120. Economic Development Element. The Project is consistent with the economic development element, the overarching goal of which is to strengthen the District economy and help District residents find and keep jobs. The Project introduces a smaller-floorplate office concept that introduces some diversity into the Ward 7 office space market. In addition, the Project introduces retail and job opportunities to an area where such opportunities have traditionally been limited. In addition, in its proposed conditions the Applicant has agreed to: (i) direct the Project's contractors and subcontractors to use reasonable efforts to hire Ward 7 residents, with a goal of 51% of all new hires being Ward 7 residents; (ii) facilitate job

trainings for Ward 7 residents; (iii) assist in soliciting Ward 7 residents for available jobs; and (iv) hold a job fair for Ward 7 residents. (Ex. 56.)

121. Parks, Recreation, and Open Space Element. The development is consistent with the Parks, Recreation, and Open Space element, which calls for the inclusion of neighborhood or community parks on large sites. The Comprehensive Plan specifically recognizes the value of functional open space. The Parkside PUD contemplated the Community Green, a one-acre open park, that was approved by the Commission in Z.C. Case Nos. 05-28A and 05-28F. The Green has been constructed and has been well received by the community. The Community Green serves as an amenity for residents and neighbors and will create an attractive resting point that District residents can appreciate while they take an evening stroll, walk the dog, or simply read a book outside. The Project enhances that amenity by introducing ground-level activities, well-designed adjacent sidewalks and street uses, and by introducing new residents and officer workers to use and monitor the Green. The Project's Promenade also presents a key linkage between the Green and the nearby Metrorail Station.
122. Urban Design Element. The Project is consistent with the Comprehensive Plan's urban design policies insofar as they provide for: (a) neighborhood connectivity; (b) gateways from East-of-the-River neighborhoods to Anacostia River crossings, with landscape and transportation improvements along Howard Road, Martin Luther King Jr. Avenue, Pennsylvania Avenue, Randle Circle (Minnesota and Massachusetts), Benning Road, and Kenilworth Avenue; (c) use of the District's major avenues and boulevards, particularly important streets that suffer from poor aesthetic conditions, to reinforce the form and identity of the city; (d) the creation of neighborhood centers; (e) infill development; (f) the integration of large site developments; (g) the protection of open spaces; (h) the consideration of surrounding neighborhoods in large site developments; and (i) improving the street environment. The Urban Design Element of the Plan seeks to, among other goals, strengthen civic identity through a renewed focus on public spaces and boulevards; designing for successful neighborhoods and large site reintegration; improving the public realm, particularly street and sidewalk space; and promoting design excellence throughout the District. The Project reflects the beneficial architectural qualities of the surrounding residential neighborhoods. Parcel 9 includes an appropriate use, density and height, and the Parkside PUD allows for sufficient private and public open space for the residents. The buildings and the intervening Promenade provide an important connection between previously approved second-stage applications, providing the unity and cohesion of plan that Parkside needs.
123. Educational Facilities Element. The Comprehensive Plan encourages the development of educational facilities throughout the District in a manner that is compatible with adjacent residential uses. Accordingly, the Project supports this objective by providing a critical infusion of commercial and additional residential uses at a key location in the Parkside neighborhood. Ultimately, the Project helps

the educational facilities in existence in and planned for the Parkside neighborhood continue to thrive.

124. Far Northeast and Southeast Area Element. The Property is located in the Far Northeast and Southeast Area of the Comprehensive Plan. It is not located within the boundaries of any Policy Focus Area of that Area Element. The current condition of the Parkside neighborhood, with over nine vacant acres of land, discourages an active connection between the Anacostia waterfront and the Ward 7 community. The Parkside PUD and the Project create significant contributions to area elements, including, but not limited to, the development of retail use, the development of new housing, the increased accessibility of transit, and the connection to the waterfront. The contributions to these elements outweigh other inherently conflicting area elements, such as the preference for low density development. Additionally, the Parkside PUD and the Project also encourage the maintenance of the current low density neighborhoods by providing economic and residential uses to potentially absorb increased development without disrupting the current neighborhoods. The development of the Parkside PUD creates a more inviting, accessible and active connection to the Anacostia waterfront. The new Bridge and the urban design of the Project encourages the Ward 7 community to use the waterfront and its new and existing amenities. The Bridge also makes the waterfront accessible to visitors to the area who come from other parts of the District or the Maryland and Virginia suburbs. The increased activity engendered by these first phases of development creates a friendlier, more inviting atmosphere for residents wanting to access the waterfront. The strong visual corridors and pedestrian pathways of the site design encourage use of the waterfront. The Parkside PUD also reflects the District's plan for concentrating a mix of uses at the Minnesota Avenue Metrorail Station. The addition of a significant office and retail building as part of the Project supports the concept of Parkside as a true mixed-use development. The heights and density proposed for development are also appropriate for the PUD's proximity to public transit and its role in transitioning between uses and creating a buffer from the adjacent highway. Finally, the Project's design creates an appropriate transition between the greater heights along Kenilworth Avenue to the lesser heights as the development stretches toward the Anacostia River.
125. Taken as a whole, the Project is not inconsistent with the District or Area Elements of the Plan or with the objectives of other adopted public policies applicable to the Property. There are individual objectives in these site-specific plans that the Project either does not address or does not substantially advance. Planning policy documents by their very nature are comprehensive and occasionally internally contradictory. However, the Project is not inconsistent with the broad public planning objectives for Ward 7 and Parkside specifically.
126. The Commission finds that there were no particularized allegations of inconsistency with the Comprehensive Plan raised by the ANC or any other party or person. Therefore, for the reasons set forth more fully above the Commission

finds that the Application, including the Map Amendment, is not inconsistent with the Plan.

Project Impacts

127. For the following reasons, the Commission finds that the Project does not result in unacceptable project impacts on the surrounding area or on the operation of District services and facilities, but instead creates impacts that are either favorable, capable of being mitigated, or acceptable given the Public Benefits.
128. Zoning and Land Use.
- (a) The approved Map Amendment for the property's zoning to the C-3-A Zone District is consistent with the Transit-Oriented Development ("TOD") categories on the Generalized Land Use Map of the Comprehensive Plan and is compatible with the zoning designated for adjacent blocks pursuant to the first-stage PUD. The C-3-A designation for the Property is consistent with its development as a mixed-use, TOD node for the Parkside neighborhood; and
 - (b) From a land use perspective, the Project will create no unacceptable impacts on surrounding neighborhoods. Any impacts from the Project's proposed land use are either favorable, capable of being mitigated, or acceptable given the quality of the significant public benefits included as part of the Project. The Project's mix of office, retail and multi-family residential uses is entirely appropriate given the proximity to transit and highway access, the ongoing development efforts in the neighborhood, and the extensive planning and community support for the first-stage PUD. The Project's height and mass are an appropriate transition from the approved greater densities closer to the Anacostia Freeway and the Metrorail station to the less intense residential uses to the northwest. The Project's introduction of a critical mass of commercial uses to the neighborhood is a favorable land use impact. The proposed commercial uses will create economic opportunities and continue with the stabilization of the neighborhood. The continued contribution of new, high-quality, for-sale multi-family housing units to Ward 7 will have additional positive impacts on the surrounding areas as such contribution advances other aspects of the Parkside Vision. To the extent there are any ancillary unfavorable impacts arising out of the Project, such impacts are either mitigated by the Project's design or offset by the quality of the public benefits associated with this Project and the Parkside PUD as a whole outweigh any negative effect. Moreover, the Project's conversion of vacant lots to productive and active uses, and the creation of a thoughtfully-designed public pedestrian space will also have positive impacts.

129. Housing. The Project's addition of new housing is a favorable impact. The Project will contain 20% workforce housing for the life of the Project. (Ex. 56.) The Project continues the trend of creating new high-quality, transit-accessible housing units. Such units are in high demand across the District and the need for such units is particularly dire in Ward 7. The addition of new housing will have favorable impacts on surrounding areas by adding residents who will support the proposed commercial uses. The Project's inclusion of workforce- and market-rate units has favorable impacts because it will help establish Parkside as a mixed-income community and not one that overly concentrates affordable housing.
130. Construction-Period Impacts on Neighbors. During the development period for Parcel 9, the Project's impacts on neighbors are capable of being mitigated, and the Applicant has significant experience successfully completing construction projects in infill locations without disturbing neighbors. There are no existing residential units on the Property or on any adjacent blocks. The availability of open adjacent lots for staging and parking will allow the Applicant to readily mitigate any construction-period impacts.
131. Open Space, Urban Design and Massing Impacts. The Project favorably improves upon the existing conditions with respect to the relationship between the proposed buildings, proposed and existing open spaces, and the urban design of the Project. The existing conditions include a vacant block that does little to contribute to the adjacent Community Green. The Project will have favorable impacts on the Green by providing ground level uses and new residents to activate the public realm. In addition, the Project creates a strong, obvious connection between the Metrorail station and Parkside's Community Green. Finally, the Project has favorable impacts on the surrounding area as a keystone linking the multi-family buildings on Blocks J and E and establishing the context for the future, higher-density phases along Kenilworth Ave.
132. Design and Aesthetic Impacts. The Project's design and architecture have a favorable outcome, no unacceptable impacts, and are likely to become a point of resident and community pride. The Project incorporates the highest-quality architecture and exemplary design. Upon completion of Parcel 9, the new buildings will appear fresh and emblematic of new investment without appearing overly contemporary or out-of-place. Instead, the Project will continue the architectural vocabulary that is emerging in Parkside and that will establish a high baseline of quality of design and finishes expected for projects in the vicinity. The Project's landscaping and public realm detailing will be truly exemplary and will have a strongly favorable impact on surrounding areas, as it further contributes to the sense of place in the Parkside neighborhood with the introduction of retail uses. The Project's overall design and its details strongly reinforce and strengthen the character of the surrounding residential areas and will be favorable for the neighborhood.

133. Transportation and Mobility Impacts. The Project does not have an adverse impact on the public transportation facilities or roadways that cannot otherwise be mitigated. The Project's vehicular traffic impacts are mitigated by its transit options, and the Project achieves the right balance of mobility. The Property is well-served by transit and vehicular infrastructure, and the Project's relatively small scale will not introduce adverse impacts on either system that can't otherwise be mitigated. The Project's favorable transit access and its strong TDM program help mitigate any expected traffic concerns. Additionally, the Project includes \$25,000 for the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, N.E. intersection to alleviate traffic congestion. Transportation-related mitigations are as follows: (Ex. 56.)
- (a) Transit. The Minnesota Avenue Metrorail station is less than a half-mile walk from the Property, and that station is relatively underutilized relative to other stations in the WMATA system. Numerous Metrobus lines also service the Property, including a Priority Corridor Network route, and it is expected that many of the Project's residents will use public transit. The Property has a TransitScore of 73 (which indicates "Excellent Transit" with "transit convenient for most trips");
 - (b) Parking. The Project includes approximately 141 below-grade parking spaces to accommodate the parking demand of residents and occupants of the office building, and 10 street-level parking spaces to accommodate retail-use customers. The Applicant commits to providing \$5,000 for use by the ANC for a traffic consultant to develop a parking and curbside management plan. (Ex. 56.) Bicycle usage is also coherently integrated into the design of the Project, with long-term spaces in a dedicated storage room and the required short-term spaces provided elsewhere in public space. The Project provides sufficient new off-street parking to serve new residents, but not so much parking as to induce unnecessary driving;
 - (c) Curb Cuts. The Project entails relocating existing curb cuts on the Property to accommodate the proposed configuration. The existing curb cuts on the Property will be relocated to accommodate the proposed configuration. Two new curb cuts will be added to allow the proposed through connection at the center of the Project. Loading and parking will be accessed from former rights-of-way that have been closed and will function as alleys;
 - (d) Pedestrian Realm. The landscaping and streetscaping improvements proposed as part of Parcel 9 prioritize pedestrian access along each of the surrounding streets and create a permeable connection through the Property between the Bridge and adjacent blocks. Additionally, the Applicant commits to providing \$7,500 to be used by the ANC to develop a conceptual design for a play and/or athletic field in the nearby National

Park Service-owned land. (Ex. 56.) The Project's ground floor designs, site plan, building layout, and streetscape all prioritize pedestrian access to and interaction with the Project. The alley improvements anticipated will allow the Project to prioritize pedestrian access along each of the main streets surrounding Parcel 9 and to create a permeable connection between the Project and the Community Green;

(e) TDM. The Project includes an extensive TDM plan to mitigate any transportation impacts. The Project includes \$25,000 for the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, N.E. intersection to alleviate traffic congestion. (Ex. 56.) The Applicant also commits to providing \$15,000 for use by the ANC for the expertise of a traffic consultant to study solutions to circulation issues beyond what is required for mitigation of potential impacts of the overall Parkside PUD. (Ex. 56.) The Project's physical form—loading and garage access from alleys, new construction facing the street, on-street parallel parking, a tree-lined streetscape—mitigates traffic impacts by promoting and encouraging active mobility over driving. At the same time, the Project makes reasonable accommodations for those who choose to or must drive without interfering with the parking supply of neighboring residents. To the extent the Project creates transportation or mobility impacts on the neighborhood or District more generally, they are either capable of being mitigated through the TDM or acceptable given the quality of the Public Benefits. The TDM plan includes the following commitments: (Ex. 33B.)

- The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who will act as a point of contact with DDOT;
- All parking on site will be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site;
- The Applicant will unbundle the cost of residential parking from the cost of lease or purchase of each unit;
- The Applicant will unbundle the cost of vehicle parking from the cost of the office lease;
- The Applicant will install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;

- The Applicant will install a Transportation Information Center Display (electronic screen) within the office building lobby containing information related to local transportation alternatives;
- The Applicant will or exceed zoning requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;
- The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials;
- The Applicant will provide bicycle repair stations to be located within the bicycle storage rooms.
- The Applicant will dedicate two spaces within the garage for car-sharing services to use with right of first refusal;
- The Applicant will provide showers and corresponding changing facilities for the office use; and
- The Applicant will fund the installation of a new Capital Bikeshare station and one year of maintenance. The station will be a 19-dock station. An additional 20 feet of space will be provided to accommodate eight additional docks is expanded in the future.

134. Project Impacts on City Services and Project Environmental Impacts. The Project does not have any adverse impacts on the public facilities or District services that it will rely on for service. Likewise, the Project will not have adverse environmental impacts as described below: (Ex. 3 (and exhibits thereto).)

- (a) Water Demand. The Project contains approximately 207,759 square feet of new GFA. The average daily water demand for this project can be met by the existing District water system. The Project's connection for the fire and residential water supply will be made within the existing distribution system and will be coordinated with DC Water. The two buildings will have individual water meters; (*Id.*)
- (b) Sanitary Sewer Demand. The sanitary sewer connections for the Project will be made within the existing distribution system and will be coordinated with DC Water. As noted above, the infrastructure for the Parkside neighborhood has largely already been constructed; (*Id.*)
- (c) Stormwater Management. The Project has been designed to achieve high levels of on-site stormwater retention. The proposed bio-retention basin planters, green roofs, and permeable pavement are designed to exceed

DOEE stormwater management retention and detention requirements. The requisite inlets and closed pipe system will be designed and constructed in compliance with the standards set by DOEE, DC Water, and DDOT;

- (d) Solid Waste Services. Solid waste and recycling materials generated by the Project will be collected regularly by a private trash collection contractor;
 - (e) Electrical Services. Electricity for the new Buildings will be provided by the Potomac Electric Power Company (“Pepco”) in accordance with its usual terms and conditions of service. All electrical systems will be designed to comply with the D.C. Energy Code. Transformers will be installed on the Property in accordance with Pepco’s design guidelines;
 - (f) Energy Conservation. The Project will be constructed in full compliance with Article 24 (Energy Conservation) of the District of Columbia Building Code. Conformance to code standards will minimize the amounts of energy needed for the heat, ventilation, hot water, electrical distribution, and lighting systems contained in the building;
 - (g) Erosion Control. During excavation and construction, erosion on the Property will be controlled in accordance with District of Columbia law; and
 - (h) Public Schools. The Project is highly unlikely to have an unacceptable impact on schools in the District given the size of the Project, its mix and type of units, and the capacity for the District’s nearby schools to take on additional students. In addition, several private and charter schools are near the Project, offering educational options to residents who may seek alternatives to the neighborhood public schools. Moreover, in the city as a whole, the population of school-age children is declining while the population of childless households is increasing. Because of these trends, the nature of the Project’s demographics, and the variety of school choices nearby, the Applicant expects that the school network will be able to accommodate, without any unfavorable impacts, the school-age children that may reside at the Project.
135. Other Impacts. The findings related to issues raised by the ANC includes additional discussion on the Project’s impacts and the Commission’s balancing thereof. In sum, the Project’s impacts are either capable of being mitigated or not unacceptable in light of the public benefits.

Public Benefits

136. The objective of the PUD process is to encourage high-quality development that provides public benefits and amenities by allowing greater flexibility in planning and design than may be possible under matter-of-right zoning. (X § 305.1.)

137. The Project achieves the goals of the PUD process by creating a high-quality mixed-use commercial development with significant related public benefits. The Commission finds that the Project includes the public benefits enumerated in the following paragraphs, which are not inconsistent with the Plan as a whole with respect to the Property.
138. Subtitle X § 305.4 requires that a majority of the public benefits of the proposed PUD relate to the geographic area of the ANC in which the application is proposed. Findings with respect to the geographic effect of the public benefits are addressed in the following paragraphs. In general, the public benefits relate to the area of the ANC.
139. Superior urban design, architecture, and landscaping (Subtitle X § 305.5(a) and (b)). The Project's urban design and landscaping are superior public benefits. Subsections 305.5(a) and (b) of Subtitle X list urban design and landscaping as categories of public benefits and project amenities for a project proceeding under a PUD. The Project incorporates numerous design precepts that guide superior urban design in the District and that represent significant improvements over the existing aesthetic and functional conditions of Parcel 9. For instance, the Project's urban design prominently frames the pedestrian Promenade leading to the Community Green and creates a strong sense of arrival in the Parkside neighborhood. Similarly, the Project's strong edges along existing streets give the two buildings visual heft and create an urban condition that is hospitable for pedestrians and guides them through the center of the PUD site. The Project similarly includes elements of superior architectural and landscape design. For example, the Project presents a thoughtful ground-floor design that integrates seamlessly with the Promenade. The Project also utilizes high-quality façade materials and finishes. With respect to landscaping, the Project employs a palette of vegetation and fixtures that is simultaneously appropriate for the neighborhood and representative of the Project's place-making objectives.
140. Site planning, and efficient and economical land utilization (§ 305.5(c)). The proposed site plan is another superior benefit of the Project. Pursuant to Subtitle X § 305.5(c) of the Zoning Regulations, "site planning and efficient and economical land utilization" are public benefits and project amenities to be evaluated by the Commission. The benefits of the Project's site plan and efficient land utilization are captured in the Project's overall density, introduction of commercial uses, and absolute number of new residential units provided. The Project's greater heights and density near transit nodes exemplify economical land utilization. The proposed development serves as a transition from the commercial uses along Kenilworth Avenue and the residential uses along Parkside Place and its design is of the appropriate massing and height to establish this transition. The Project also improves land that has been vacant for decades, and its development will make it a significant contribution to establishing a community within the Parkside PUD. At an FAR of greater than 3.0, the proposed density is appropriate for the Property given the proximity to transit options while not overbearing the lower density

residential neighborhoods to the north, south, and east of the Site. The Project is designed to benefit from proximity to nearby protected areas, the Anacostia River and natural grades and perhaps most importantly, the major transportation corridor to the southeast, including the Minnesota Avenue Metrorail Station and the Anacostia Freeway. The site plan is designed to infill and continue the urban build out of the Parkside neighborhood. It will connect the existing Parkside Townhomes with the fabric of the city and will establish a true mixed-use and transit-oriented development in the heart of Ward 7.

141. Employment benefits. The Applicant has committed to providing employment benefits at the request of the ANC, and such commitments constitute public benefits under the Zoning Regulations. (X § 305.5(h).) The development provides a commercial development to bring full time workers and retail options to Parkside. Continuing the trend of reversing years of disinvestment in Ward 7, the Project is a potential economic boon for the surrounding area and contributes to the successful creation of a retail market. In addition, in its proposed conditions the Applicant has agreed to: (i) direct the Project's contractors and subcontractors to use reasonable efforts to hire Ward 7 residents, with a goal of 51% of all new hires being Ward 7 residents; (ii) direct the Project's managers of the retail, residential and office space to use reasonable good faith efforts to select permanent employees from among qualified Ward 7 residents (iii) facilitate job trainings for Ward 7 residents; (iv) assist in soliciting Ward 7 residents for available jobs; and (v) hold a job fair for Ward 7 residents. (Ex. 48B, 56.)

142. Housing and affordable housing (§ 305.5(f), (g)). The Project includes a greater number of housing units than could be developed on the site as a matter of right and reserves 20% of the units as workforce housing units for the first purchaser. (Ex. 56.) Pursuant to §§ 305.3(f) and (g) of Subtitle X, the production of housing that exceeds the amount that would have been required through matter-of-right development under existing zoning and affordable housing above what is required under the IZ provisions of the Zoning Regulations is a public benefit. The Project makes a significant contribution of new residential and new workforce units on a site that is transit-accessible, part of an exciting mixed-income development, and well-positioned to take advantage of economic opportunities that emerge in the Parkside neighborhood in the future. Specifically, the Commission finds that the Project provides housing and affordable housing public benefits because:
 - (a) Creation of additional housing. The housing proposed as part of the Project exceeds the amount possible through a matter-of-right redevelopment pursuant to the applicable limits in the underlying zone (i.e., the R-5-A Zone District) by approximately 53,170 square feet. Under existing zoning there is no residential minimum for the underlying RA-1 zone, which has a maximum FAR of 0.9 (1.08 with the IZ bonus). The provision of additional workforce and market rate units helps meet the housing needs of the District; and

- (b) Creation of affordable housing in the Project and Parkside PUD. Although the Project that is the subject of this Application does not include any affordable housing units, the overall Parkside development approved pursuant to the first-stage PUD includes a significant contribution of affordable and workforce housing units. The overall PUD reserves: (i) 20% of the total residential component as affordable units to households having an income not exceeding 80% of AMI for the Washington, DC Metropolitan Statistical Area (adjusted for family size); and (ii) a further 20% of the total residential component for workforce housing targeted to households that have an income between 80-120% of the AMI. While this phase of the overall Parkside PUD will include market-rate units and workforce housing units only, the Parkside PUD as a whole provides a diverse number of housing options for households at different price points. This Project, with its addition of retail and other economic development opportunities, and its keystone site plan, is central to making possible the development of affordable units in other phases of the Parkside PUD.
143. Transportation infrastructure and mass transit improvements (§ 305.5(o) and (p)). Subtitle X § 305.5(p) provides that mass transit improvements, including construction of improvements to Metrorail station entrances, also constitute public benefits for a PUD. As noted above, a central organizing element of the Project's design is the construction of the vehicular and pedestrian Promenade through the center of Parcel 9. The Applicant committed to allowing pedestrian access through the Promenade as part of the street-closing process before the District Council. Further, as part of the Parkside PUD, the Applicant agreed to contribute to the construction of a new pedestrian bridge between the Parkside neighborhood and the Minnesota Avenue Metrorail Station. The Applicant has committed 25% of the cost of the bridge not to exceed \$3 million to ensure that this bridge be constructed to improve access to this site. The Applicant and DDOT have entered into an agreement, secured by the \$3 million that the Applicant has already posted, fulfilling this obligation. The groundbreaking for the pedestrian bridge is anticipated to occur in 2017, pending the commitment of the balance of the funds from public sources.
144. Environmental and sustainable benefits (§ 305.5(k)). The Project includes innovative sustainable design elements and will achieve appropriate levels of environmental certification. Subtitle X § 305.5(k) provides that environmental benefits are also public benefits to the extent such environmental benefits exceed the standards required by zoning or other regulations. The overall Parkside PUD has been designed to exceed the standards for LEED-ND certification. This Project will be designed to achieve LEED-Gold for both the office and residential buildings.
145. Uses of Special Value to the Neighborhood or the District of Columbia as a Whole (§ 305.5(q)). As part of the public process leading to the Parkside PUD,

the Applicant worked with residents, community members, the ANCs, and OP to identify additional public benefits of special significance to residents and neighbors. Subtitle X § 303.5(q) lists uses of special value to the neighborhood as public benefits of a PUD. The development will provide a multifamily and commercial development to bring full time residents, workers, and retail options to Parkside. The Project will also serve as an important transition between commercial uses and lower-density residential uses on the PUD Property. The proposed development will enhance a site that has been vacant for several years and will connect the existing Parkside Townhomes, senior housing, Community Green, and the multifamily units with the greater community.

146. Other public benefits which substantially advance the Comprehensive Plan (§ 305.5(r)). The Applicant commits to providing \$5,000 for use by the ANC for a traffic consultant to develop a parking and curbside management plan. (Ex. 56.) Additionally, the Applicant commits to providing \$7,500 to be used by the ANC to develop a conceptual design for a play and/or athletic field in the nearby National Park Service-owned land. (Ex. 56.) the Applicant committed up to \$20,000 to renovate and modernize the existing Parkside HOA neighborhood community room. (Ex. 57.)
147. Streetscape improvements. The Project's physical form—loading and garage access from alleys, new construction facing the street, on-street parallel parking, a tree-lined streetscape—encourages pedestrian use and mitigates traffic impacts by promoting and encouraging active mobility over driving. The Project's Promenade also presents a key linkage between the Community Green and the nearby Metrorail Station.

Consistency of the Public Benefits with the Plan.

148. The Commission also finds that the Project's Public Benefits are not inconsistent with the Plan because each is an integral part of the Project, which itself is not inconsistent with the Plan. Moreover, such Public Benefits are each tangible, quantifiable, measurable, or capable of being completed or arranged prior to the issuance of a certificate of occupancy for the Project.
149. Accordingly, the Project satisfies the PUD Evaluation Standards.

CONCLUSIONS OF LAW

Procedural and Jurisdictional Conclusions

1. A PUD application must adhere to certain procedural requirements. (X § 307.1; Z §§ 205, 300, 400-08, 600-06, 700-707.) The Commission must hear any PUD case in accordance with the contested case procedures of Subtitle Z, Chapter 4 and Subtitle X § 300.3. The Commission has found and hereby concludes: (i) the Application satisfies the PUD application requirements; and (ii) the Applicant, OZ, OP, and the Commission have

satisfied the applicable procedural requirements, including the applicable notice requirements of the Zoning Regulations.

2. The minimum area included within a proposed PUD must be no less than 15,000 sf and all such area must be contiguous. (X § 301.) The Application satisfies these minimum area and contiguity requirements.
3. The Application is subject to compliance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq. (the “Act”).

Evidentiary Standards

4. The Applicant has the burden of proof to justify the granting of the Application according to the PUD and Map Amendment standards enumerated above. (X §§ 304.2, 500.2.) The Commission’s findings in relation to a PUD must be supported by substantial evidence. (*See Howell v. District of Columbia Zoning Comm’n.*, 97 A.3d 579 (DC 2014).) Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support” the conclusions contained herein. (*D.C. Library Renaissance Project v. District of Columbia Zoning Comm’n.*, 73 A.3d 107, 125 (DC 2013).) The Applicant’s filings, testimony, and expert witness presentations are credible and thorough and reasonably adequate to support the Commission’s analysis and conclusions contained herein. Accordingly, the Applicant has provided substantial evidence to demonstrate that the Project satisfies the relevant PUD evaluation standards.

Consistency with the PUD Process, Zoning Regulations, and Plan

5. Pursuant to the Zoning Regulations, the purpose of the PUD process is “to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) Results in a project superior to what would result from the matter-of-right standards; (b) Offers a commendable number or quality of meaningful public benefits; and (c) Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.” (X § 300.1.) The Commission concludes that the approval of the Application is an appropriate result of the PUD process. The Project is a high-quality development that is superior to what could be constructed on the Property as a matter of right via the underlying zoning. The Commission has found that the public benefits are meaningful and are commendable both in number and quality. Finally, the Commission has found that the Project does not injure but instead advances the public health, safety, welfare or convenience, and is not inconsistent with the Comprehensive Plan.
6. The PUD process is intended to “provid[e] for greater flexibility in planning and design than may be possible under conventional zoning procedures, [but] the PUD process shall not be used to circumvent the intent and purposes of the Zoning Regulations, or to result in action that is inconsistent with the Comprehensive Plan.” (X § 300.2.) The Commission has found that the Project generally conforms to the requirements of the Zoning Regulations except for the few areas of articulated zoning relief, which are

nonetheless consistent with the intent and purposes of the Zoning Regulations. The Project is not inconsistent with the Comprehensive Plan. Therefore, the Commission concludes that Project does not circumvent the Zoning Regulations and is not inconsistent with the Comprehensive Plan.

Evaluation Standards

7. The Commission must evaluate the Map Amendment request and approve it only if it is not inconsistent with the Comprehensive Plan. (X §§ 500.1, 500.3.) The Commission has made extensive findings that the Map Amendment, as it supports the Project, is not inconsistent with the Plan. Accordingly, the Map Amendment satisfies the relevant standard for approval.
8. As part of a PUD application, the Commission may, in its discretion, grant relief from any building development standard or other standard (except use regulations). (X §§ 303.1, 303.11.) The Applicant seeks the Loading Relief pursuant to the Commission's discretion to grant relief from any development standards of the Zoning Regulations. The Commission has found that such item of relief does not impair the Zoning Purposes and is not inconsistent with the Comprehensive Plan. (*Id.*) The Commission concludes it may exercise its discretion to grant such Development Incentives subject to the Conditions (as such term is hereinafter defined) hereof.
9. The PUD provisions require the Commission to evaluate whether the Application: “(a) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (b) does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (c) includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.” (*Id.* § 304.4.) The Commission has reviewed the entire record and issued findings to support its conclusion that the Application satisfies the PUD Evaluation Standards. The Commission concludes the Project is not inconsistent with the Comprehensive Plan as a whole, accepts the entirety of the Applicant's impact analysis contained in the record and concludes that the Project does not have any unacceptable impacts. The Commission further concludes that the Project includes Public Benefits, as described below, which are also not inconsistent with the Comprehensive Plan.
10. In particular, the Commission finds that the Project's inclusion of an office use is not inconsistent with the Comprehensive Plan. Provisions of the Comprehensive Plan guiding interpretation of the FLUM instruct that the FLUM use designations describe the “general character” of development for all of the properties on a block but that there may be individual buildings that deviate from the designation. This guidance supports office use on the Property because lots similarly designated are anticipated to contain residential use. The specific policy objectives of the District and Area Elements of the Comp. Plan offer significant support for office use as part of the Project. In particular, the consistency

of the Project's transit-oriented and economic development components justifies modest misalignment with the FLUM designation.

11. The Zoning Regulations define Public Benefits as “superior features of a proposed PUD that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the matter-of-right provisions of this title.” X § 305.2. Such public benefits must satisfy the following criteria (“Public Benefit Criteria”): (a) benefits must be tangible and quantifiable items; (b) benefits must be measurable and able to be completed or arranged prior to issuance of a certificate of occupancy; (c) benefits must primarily benefit the geographic boundaries of the ANC; and (d) monetary contributions shall only be permitted if made to a District of Columbia government program or if the applicant agrees that no certificate of occupancy for the PUD may be issued unless the applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. (*Id.* §§ 305.3, 305.4). Based on the Commission’s findings regarding the Public Benefits as well as the Conditions of this Order, the Commission concludes that the Public Benefits benefit the surrounding neighborhood and the District as a whole to a significantly greater extent than would a matter-of-right development and readily satisfy the Public Benefit Criteria.

12. The Commission must undertake a “comprehensive public review” of the PUD application “in order to evaluate the flexibility or incentives requested in proportion to the proposed public benefits.” (X § 300.5.) In deciding on the Application, the Commission must “judge, balance, and reconcile the relative value of the public benefits project and amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case” as follows: (X §§ 304.3, 303.12.)
 - (a) The Commission heard the Application at the Public Hearing and followed the contested case procedures of the Zoning Regulations. The Commission therefore concludes that it has satisfied the procedural requirements in order to review the Application and evaluate the flexibility and Development Incentives requested and potential adverse effects against the proposed public benefits, in light of the circumstances of the case;

 - (b) The Commission’s review of the Application has been comprehensive. The Commission has reviewed the entire record and has identified and examined the concerns and statements about the Project raised by the ANC and District agencies. The Commission has appropriately considered the substantial evidence presented by the Applicant. The Commission grants appropriate weight to the reports and testimony of the various reviewing District agencies and the ANC. There are no items in the record that the Commission has excluded from its consideration notwithstanding in some instances this Order does not contain precise citation to such items; and

- (c) The Project warrants the Development Incentives (including the Map Amendment) and flexibility in light of the Project’s extensive and comprehensive public benefits. The Development Incentives directly support the Project’s provision of public benefits. The public benefit-supporting nature of the Development Incentives affords the public benefits ample cushion to offset any potential adverse effects. The Project has largely been designed to avoid such effects. However, to the extent such effects exist as a result of the Project—for instance with respect to traffic—the magnitude of the public benefits and the Applicant’s mitigation efforts provide sufficient justification for the Project notwithstanding such effects. Moreover, the public benefits generally accrue most significantly to the area immediately surrounding the Project. Therefore, those most likely to be adversely affected by the Project nonetheless also benefit from it. The Commission concludes that the Project’s Development Incentives are warranted in light of the public benefits, when considering the specific nature of the area surrounding the Project and the Project’s overall consistency with the Comprehensive Plan.
13. Accordingly, the Project’s public benefits justify the Development Incentives requested even in light of the background concerns of the ANC regarding the potential adverse effects of the Project. The Application satisfies the PUD Requirements.
14. The Commission must grant approval to any second-stage PUD application that it finds in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, provided such approval may be subject to conditions. (X § 309.2.) The Commission has found that the Application is in accordance with the Zoning Purposes, the PUD process, and the Parkside PUD. Accordingly, the Commission concludes that it must approve the Application subject to the Conditions of this Order.
15. 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. While ANC 7D’s first report listed four areas of concern, it further stated that it was engaged in an ongoing discussion with the Applicant in an effort to resolve them. ANC 7D’s second report stated that it had “reached agreement” on the areas of concern and that its support was without condition. The Commission understands this to mean that the ANC no longer had issues or concerns. Because the ANC expressed no issues or concerns, there is nothing for the Commission to give great weight to. (*See Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
16. The Commission is also required to give great weight to the recommendations of OP 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). The Commission has reviewed the OP Setdown Report and OP Final Report and heard testimony from OP and finds that OP supports the Application. The Commission gives OP’s recommendation to approve the Application great weight.

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 review and approval of the second-stage PUD, modification to a first-stage approval and the related map amendment to the C-3-A Zone District for the Property that are the subject of the Application. The approval of this PUD is subject to the following guidelines, conditions, and standards (“Conditions”).

A. PROJECT DEVELOPMENT

1. The Project shall be developed in accordance with plans and drawings filed in the record in this case as Exhibit 57A1-57A9 (“Final Plans”), as modified by the guidelines, conditions, and standards herein.
2. The Project shall have flexibility from the use, FAR, lot occupancy, and parking requirements set forth in Z.C. Order No. 05-28, as noted in the Findings of Fact. The Project shall further have flexibility from the Zoning Regulations from the loading requirements as noted in the Findings of Fact.
3. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - (a) To vary the location and design of interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the building;
 - (b) To provide a range in the number of residential units and number of parking spaces plus or minus 10% from the number depicted on the Plans;
 - (c) To vary the final selection of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and to make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, canopies and trim, louvers and vents, such that the refinements do not substantially change the external configuration or appearance of the building; and
 - (d) To coordinate with DDOT to finalize the streetscape design and materials during the public space process.

B. PUBLIC BENEFITS

1. Prior to issuance of a building permit, the Applicant shall:

- (a) Execute a Development and Construction Management Plan with the ANC, which plan shall include terms substantially similar to those proposed in Exhibit 27B;
- (b) Direct the Project's contractors and subcontractors to use reasonable good faith efforts to select new hires from among qualified persons with a goal of at least 51% of all new hires being residents of Ward 7. This commitment shall be included in each contract with Project contractors and subcontractors. The Applicant shall provide to the ANC on a quarterly basis for the duration of construction, an employment report documenting the number of Ward 7 residents hired for the Project. The employment reports to the ANC will provide a summary of: (i) the approximate number of employees working on the Project in total; (ii) the number of new hires working on the Project; and (iii) the number of the new hires that are Ward 7 residents, provided the specific contents of such report may be modified by mutual agreement of the Applicant and the ANC;
- (c) In coordination with the ANC, identify a local representative, group, organization and/or coordinator to facilitate job training for future jobs related to the Project, and to help administer solicitations from Parkside to the Ward 7 community for available jobs. All solicitations shall include details regarding the specifications, requirements and/or skillset desired for the available jobs; and
- (d) Host a job fair in coordination and in partnership with the ANC, Ward 7 Business Partnership, DC DOES and DC DSLBD, to identify (i) qualified candidates for construction job openings and (ii) Ward 7-based subcontractors.

2. Prior to issuance of a certificate of occupancy, the Applicant shall:

- (a) Provide evidence to the Zoning Administrator that it advertised jobs and contracting opportunities with the following: (i) the Project's contractor's website, (ii) the ANC's website, (iii) community message boards, (iv) Project signage, and (v) referral partners, as applicable, and in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;
- (b) Provide evidence to the Zoning Administrator that it has used or directed the managers of its office, residential and retail space to use, reasonable

good faith efforts to select permanent new hires from among qualified residents of Ward 7. These positions may include, but are not limited to, marketing positions, facilities management positions, or landscaping positions. The Applicant shall advertise these job opportunities on its website and through referral partners, as applicable, in each case providing clear instructions for how to apply and who to contact for information about such jobs and opportunities;

- (c) Provide the Zoning Administrator evidence that it has provided the ANC with a written quarterly update on the number of Ward 7 residents hired for positions within the Project; and
- (d) Submit evidence to the Zoning Administrator, in the form of a document certified by a LEED Accredited Professional that the Project will comply with the LEED requirements at the LEED-Gold level, however actual LEED certification shall not be required.

3. **Until the earlier of the issuance of a certificate of occupancy for the first retail space or 90% of lease up of the retail space,** the Applicant shall: Provide the Zoning Administrator evidence that it has no less than quarterly, either held a meeting or provided an update to the community working group (“Retail Working Group”) to discuss the status of Parkside’s efforts to market approved retail spaces in the Project. As part of the quarterly meetings, the Applicant shall provide the Retail Working Group copies of market studies, reports and marketing material for the Project for review and comments. The Retail Working Group members shall be obligated to keep confidential work product and information regarding the leasing effort and potential retail operators provided by the Applicant. The Retail Working Group shall be composed of eight individuals, which shall include the Single Member District representative for the Project, a member of the Parkside Civic Association, and a representative of the Applicant. The remaining members of the group shall be determined by the ANC Single Member District representative.

4. **Prior to the issuance of the first Certificate of Occupancy for the residential building on Parcel 9, the Applicant shall demonstrate the following:**

- (a) **For the life of the Project,** the Applicant shall:
 - (i) Provide a total of approximately 78,460 square feet of residential GFA of housing in the residential building on Parcel 9;
 - (ii) Set aside no less than 20% of the residential units in the residential building on Parcel 9 as workforce housing units available to households with an annual median income between 80% of the Area Median Income and 120% of the Area Median Income

(“Workforce Units”), provided such income restriction shall only apply to the first purchaser of the Workforce Units;

- (b) The distribution of the Workforce Units shall generally be in accordance with Sheet A.1.04 of Exhibit 27; and
- (c) The Applicant shall record a covenant pursuant to X § 311.6 requiring compliance with conditions B.4(a) and B.4(b).

5. **Prior to the issuance of the first certificate of occupancy for development approved in Z.C. Case Nos. 05-28P, 05-28Q, 05-28R, 05-28S, and 05-28T**, the Applicant shall provide evidence to the Zoning Administrator that it has funded, at a cost to the Applicant of up to \$25,000, the recommended signal operation upgrades at the Kenilworth Terrace, N.E. and Nannie Helen Burroughs Avenue, NE intersection to help alleviate traffic congestion.

6. **Prior to issuance of the first building permit for the development approved in Z.C. Case Nos. 05-28P, 05-28Q, 05-28R, and 05-28S, the Applicant shall:**

- (a) Contribute up to \$7,500 (the “Landscape Fund”) to an escrow account for use by the ANC to hire a landscape architect to develop a conceptual design for a play and/or athletic field in the National Park Service (“NPS”)-owned open space (“NPS Land”) behind Neval Thomas Elementary School. Preference for the landscape architect shall be given to qualified Ward 7-based CBE firms. The Landscape Fund shall be used for the following scope and for no other purpose: (i) one community charrette led by the landscape architect and include all involved stakeholders (including but not limited to the ANC, Parkside Civic Association, Neval Thomas Elementary School representatives, Cesar Chavez Middle and High School representatives, Mayfair Tenants Association, Parkside, and any additional community members interested) to identify play space needs, goals and objectives for the NPS Land; (ii) development by the landscape architect of a concept design and layout for the NPS Land utilizing the input and feedback generated from the community charrette to guide the design; (iii) one presentation of the conceptual design to community stakeholders by the landscape architect; and (iv) one meeting with the landscape architect, community stakeholders, and the appropriate NPS and/or DC representatives to review the proposed conceptual design and advocate for use of NPS Land, but only to the extent NPS and/or DC representatives agree to attend such a meeting. As NPS owns the NPS Land, the ANC acknowledges and agrees that NPS is solely responsible for the design and use of the NPS Land. The landscape design shall be developed to a concept level only and with the intent to be used as a community tool to show NPS what is possible in the

space and promote the conversion of the NPS Land by NPS to a play and/or athletic field for use by the community, and the design shall not include detailed plans that could be used for permitting and/or construction. Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy;

- (b) Contribute up to \$15,000 in an escrow account (“Transportation Study Fund”) for use by the ANC for the expertise of a traffic consultant to study solutions to circulation issues beyond what is required to mitigate the overall first-stage Parkside PUD (“Parkside Study”). The goal of the Parkside Study is to provide analysis and feasibility regarding potential solutions to larger, regional traffic issues to facilitate discussions with DDOT. The Parkside Study shall include the following scope and the Transportation Study Fund shall be used for no other purpose: (i) schedule a meeting with the traffic consultant and community, including but not limited to the ANC, Parkside Civic Association, Mayfair Tenant’s Association and any additional community associations, parties or members interested, to identify the community’s top traffic issues and/or congested locations; (ii) have the traffic consultant study the top issues and/or locations and develop a few potential solutions that might alleviate some of the issues; (iii) present the findings and potential traffic solutions to the community; and (iv) schedule a meeting between the traffic consultant, the ANC and/or appropriate community representatives and DDOT to present the potential traffic solutions to DDOT. It is understood that locations and traffic issues reviewed as part of the Parkside Study are ultimately controlled by and subject to the discretion of DDOT, and outside of the scope of any of the Projects, and that Parkside cannot guarantee DDOT’s approval of the scope of the Parkside Study or any of the proposed traffic solutions or other recommendations developed by the traffic consultant. The intention of the Parkside Study is to identify potential traffic solutions for the locations of most concern to the community in a similar way to other DDOT studies that the traffic consultant has advised on to help facilitate DDOT’s review. The Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy; and
- (c) Set aside up to \$5,000 in an escrow account for use by the ANC for a traffic consultant to develop a parking and curbside management plan (“Parking Plan”) with and for use by the ANC and community, with the understanding that DDOT is responsible for making and implementing any recommendations in the Parking Plan. The purpose of the Parking Plan is to identify the parking regulations, such as RPP and on-street parking meters, desired for each block to provide DDOT and the

community a context to develop a parking solution for the whole neighborhood instead of on a block-by-block basis. The boundaries for Parking Plan shall be the blocks within the area bordered by Foote St., N.E., Anacostia Street, N.E., Hayes St., N.E., and Kenilworth Terrace, N.E., plus the portion of Kenilworth Terrace, N.E. between Hayes Street, N.E. and Jay Street, N.E. Applicant shall provide evidence that funds were used for intended purpose prior to issuance of final certificate of occupancy.

C. Transportation Mitigation

1. **For the Life of the Project** (except where otherwise noted below), the Applicant shall abide by the terms of the TDM plan, which requires compliance with the following:
 - (a) The Applicant shall designate a TDM coordinator, who is responsible for organizing and marketing the TDM plan and who shall act as a point of contact with DDOT;
 - (b) All parking on site shall be priced at market rates at minimum, defined as the average cost for parking in a 0.25-mile radius from the site;
 - (c) The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase of each unit;
 - (d) The Applicant shall unbundle the cost of vehicle parking from the cost of the office lease;
 - (e) The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobby containing information related to local transportation alternatives;
 - (f) The Applicant shall install a Transportation Information Center Display (electronic screen) within the office building lobby containing information related to local transportation alternatives;
 - (g) The Applicant shall meet or exceed zoning requirements to provide bicycle parking facilities at the proposed development. This includes secure parking located on-site and short-term bicycle parking around the perimeter of the site;
 - (h) The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials;
 - (i) The Applicant shall provide bicycle repair stations to be located within the bicycle storage rooms;

- (j) The Applicant shall dedicate two spaces within the garage for car-sharing services to use with right of first refusal; and
 - (k) The Applicant shall provide showers and corresponding changing facilities for the office use.
2. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall adopt a loading management plan to coordinate resident moving operations, office deliveries, and trash removal operations.
 3. **Prior to the issuance of a certificate of occupancy or the office building**, the Applicant shall fund the installation of a new 19-dock Capital Bikeshare station and one year of maintenance. The location of the station shall be finalized with DDOT during the public space process, and it must include an additional 20 feet of space to be left available to accommodate eight additional docks if expanded in the future
 4. **Prior to issuance of a building permit for the Project**¹⁴, the Applicant shall fund and install the hardware necessary to implement the proposed traffic signal changes at the intersection of Kenilworth Terrace, N.E. and Nannie Helen Burroughs, N.E., subject to DDOT approval, with a maximum cost to the Applicant of \$25,000, if not already completed at the time such building permit is issued.

D. MISCELLANEOUS

1. The Zoning Regulations Division of DCRA shall not issue any building permits for the PUD until the Applicant has recorded a Covenant (the “PUD Covenant”) in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the property in accordance with this order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The change of zoning to the C-3-A Zone District shall be effective upon the recordation of the PUD Covenant.
3. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.

¹⁴ This same requirement was stated in Condition B.2.g of Z.C. Order 05-28P effective September 1, 2017. It is the Commission’s intent that this funding requirement be satisfied prior to whichever project’s certificate of occupancy is issued first.


4. In accordance with 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, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On July 24, 2017, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0**.


In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on March 23, 2018.

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 05-28W
Z.C. Case No. 05-28W
Parkside Residential, LLC
(Two-Year Time Extension for Second-Stage PUD @ Square 5056, Lots 865-869)
April 27, 2020

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 Parkside Residential, LLC (the “Applicant”) concerning Lots 865-869 in Square 5056¹ (“Parcel 9”) 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 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 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”).

¹ The second-stage Order covered Lot 806 in Square 5041 and Lots 809 and 813 in Square 5056, both lots created for assessment and taxation purposes (“A&T Lots”). These two A&T Lots were consolidated into Record Lot 43 in Square 5056 by the plat recorded on September 24, 2018, in Subdivision Book 214, Page 129; in turn subdivided into A&T Lots 835-863 by the plat recorded on January 23, 2019, in A&T Book 3880-W; with A&T Lot 850 subdivided into A&T Lots 864-870 on August 6, 2019, in A&T Book 3882-U; all references to the records of the D.C. Office of the Surveyor.

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.
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 Parcel 9, 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 Parcel 9, to 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 Parcel 9, 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 Parcel 9, to October 3, 2017.
8. Pursuant to the Second-Stage Order,⁵ effective March 23, 2018, the Commission approved the Second-Stage PUD, with a modification of the First-Stage PUD, for Parcel 9, with requirements to file a building permit application to construct the Second-Stage PUD within two years of the Second-Stage Order's effective date and to start construction within three years of that effective date.
9. Pursuant to Z.C. Order Nos. 05-28R through 05-28V,⁶ the Commission approved applications that did not apply to Parcel 9.

² 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).

³ Pursuant to Z.C. Order Nos. 05-28I through 05-28K, the Commission approved second-stage PUDs.

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

⁵ Pursuant to Z.C. Order No. 05-28P, the Commission approved a second-stage PUD.

⁶ Pursuant to Z.C. Order Nos. 05-28R through 05-28V, the Commission approved second-stage PUDs (R through T) and additional extensions of the deadline to file all remaining second-stage PUD applications under the First-Stage PUD (U and V).

PARTIES AND NOTICE

10. In addition to the Applicant, the only parties to Z.C. Case No. 05-28Q were Advisory Neighborhood Commissions (“ANC”) 7D and 7F, the “affected” ANCs pursuant to Subtitle Z § 101.8.⁷
11. On May 20, 2020, as attested by the Certificate of Service submitted with the Application, the Applicant served the Application on:
 - ANCs 7D and 7F; and
 - The Office of Planning (“OP”). (Exhibit [“Ex.”] 2.)

II. THE APPLICATION

12. On March 20, 2020, the Applicant timely filed the Application requesting a two-year time extension of the validity of the Second-Stage Order, specifically the deadlines:
 - To file a building permit application to construct the Second-Stage PUD by March 23, 2020; and
 - To start construction of the Second-Stage PUD by March 23, 2021.
13. The Application asserted that it met the requirements for the proposed two-year time extension because:
 - There has been no substantial change in any material facts upon which the Commission based its approval of the Original Order, although beneficial improvements affecting the area around Parcel 9 and the Second-Stage PUD have occurred, including the inclusion of the First-Stage PUD Site in the District’s Central Employment Area and in an Opportunity Zone, and the Applicant has completed many of the community benefits required as part of the First-Stage PUD and associated second-stage PUDs; 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 and tenants for office development.
14. OP submitted an April 15, 2020, report (the “OP Report”) concluding that no substantial changes to the material facts on which the Commission had based its approval of the Second-Stage PUD, and therefore recommended approval of the Application. (Ex. 4.)
15. 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 approving a PUD upon determining that the time extension request demonstrated

⁷ ANC 7F is an “affected ANC” per Subtitle Z § 101.8 as it is located directly across the street from Parcel 9.

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 Second-Stage Order – ANCs 7D and 7F – and that all were given 30 days to respond from the October 2, 2019, date of service.
4. Subtitle Z § 705.2(b) requires that the Commission find that no substantial changes had occurred to 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 no substantial changes had occurred in material facts upon which the Commission based its approval of the Second-Stage PUD.
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 Parcel 9 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 office market without phasing the delivery of the remaining parcels in the First-Stage PUD.

“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. Since ANCs 7D and 7F did not file any responses to the Application, there is nothing to which the Commission can give great weight.

DECISION

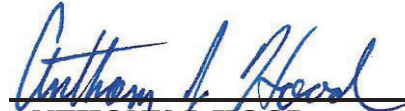
In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a two-year time extension of Z.C. Order No. 05-28Q, with the requirement that the Applicant:

- File a building permit application to construct the Second-Stage PUD approved by Z.C. Order No. 05-28Q by **March 23, 2022**; and
- Begin construction of the Second-Stage PUD approved by Z.C. Order No. 05-28Q by **March 23, 2023**.

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

VOTE (April 27, 2020): **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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission




OFFICE OF ZONING
ZONING COMMISSION
ZC Order No. 05-28W(1)
ZC Case No. 05-28W
Parkside Residential, LLC

**Subtitle Z § 705.9 Administrative Covid-19 One-Year Time Extension for 2nd-Stage PUD @
Lots 865-869, Square 5056 (Kenilworth Terrace, N.E.)
March 22, 2022**

- Z.C. Order No. 05-28W (the “Order”), effective on August 7, 2020, required the Applicant to file a building permit application to construct the second-stage PUD approved by Z.C. Order No. 05-28Q by March 23, 2022.
- 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 March 23, 2023.

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 April 1, 2022.



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

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ZONING COMMISSION
District of Columbia
CASE NO.05-28w
EXHIBIT NO.10