

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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

Z.C. Case No. 05-28F
Lano Parcel 12, LLC

(Second-Stage Planned Unit Development and Related Map Amendment @ Square 5041,
Lots 811, 812, and 822 and Square 5056, Lots 806, 812, 814, and 821)

November 28, 2011

Pursuant to notice, the Zoning Commission for the District of Columbia ("Commission") held public hearings on September 19, 2011, to consider an application of Lano Parcel 12, LLC ("Lano" or "Applicant") for the review and approval of a second-stage planned unit development ("PUD") and related map amendment. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. The Commission approves the application, subject to the conditions below.

FINDINGS OF FACT

Application, PUD History, Parties, and Hearing

1. The property that is the subject of the application is located in Square 5041, Lots 811, 812, and 822, and Square 5056, Lots 806, 812, 814, and 821 ("Property"). The Property is approximately one acre in size. Lano is the owner of the Property. (Exhibit 1.)
2. The initial Parkside first-stage PUD approved 10 "building blocks" consisting of residential, mixed-use, commercial, and retail buildings containing approximately 3,003,000 square feet of gross floor area, including 1,500-2,000 dwelling units, 500,000-750,000 square feet of office space and 30,000-50,000 square feet of retail. The floor area ratio ("FAR") for the entire 15.5 acre PUD was approved at 4.4 and a maximum height of 110 feet was approved for the office buildings and 90 feet for the mixed-use buildings. (Exhibit 4, p. 1.)
3. The first-stage PUD approval was subsequently modified pursuant to Z.C. Case No. 05-28E. The Commission approved Z.C. Case No. 05-28E, which expanded educational and health care uses by approximately 305,000 gross square feet and reduced the amount of residential development by approximately 390-440 units. It also expanded the approved maximum height of 110 feet. (Z.C. Order No. 05-28E.)

4. In the first-stage PUD, the Commission approved a PUD-related map amendment for the Property from the R-5-A and C-2-B Zone Districts to the C-2-B Zone District. (Exhibit 4, tab K.)
5. In 2008, the Commission approved a second-stage application for three of the 10 building blocks in the Parkside PUD – Blocks A, B, and C (Z.C. Order No. 05-28A). The Commission approved a senior living facility consisting of at least 98 units to be reserved for individuals with an income no greater than 60% of the area median income (“AMI”). The senior living facility is currently under construction. It also approved 112 townhouses, 42 of which would be reserved for buyers with incomes between 80% and 120% AMI. (Exhibit 4, p. 5 and tab K; Exhibit 12.)
6. In 2011, the Commission approved second-stage applications for two additional building blocks in the Parkside PUD – Block I and a portion of Block H. The applications provided for the construction of the Community College of the District of Columbia and the District of Columbia Primary Care Association. (*Id.*)
7. The Applicant subsequently filed a second-stage application for the improvement of the park at the center of the PUD and it was designated as Z.C. Case No. 05-28F. (Exhibit 6.)
8. Notice of the public hearing for Z.C. Case No. 05-28F was published in the *D.C. Register* on July 22, 2011 and was mailed to Advisory Neighborhood Commission (“ANC”) 7D and to owners of property within 200 feet of the second-stage PUD site.
9. A public hearing was conducted for Z.C. Case No. 05-28F on September 19, 2011. The Commission accepted Sharon Bradley as an expert in landscape architecture. In addition to Ms. Bradley, Alison Crowley provided testimony on behalf of the Applicant. (September 19, 2011 Transcript “Transcript”, pp. 24-32.)
10. In addition to the Applicant, ANC 7D was automatically a party in this proceeding.
11. The Commission considered a preliminary request from the ANC to keep the record open to allow them to submit a resolution. The Commission voted to keep the record open until October 14, 2011 in order to accept their resolution. (Exhibit 23; Transcript, pp. 11-12; 56.)
12. At the hearing, the Commission heard testimony and received evidence from the Office of Planning (“OP”) in support of the application. (Transcript, pp. 45-46.)
13. During the hearing, the Commission asked the Applicant for a lighting plan, which the Applicant provided on October 14, 2011. (Transcript, p. 51; Exhibit 29.)

14. At its public meeting on October 17, 2011, the Commission took proposed action to approve the application and plans that were submitted into the record.
15. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. NCPC, by action dated October 27, 2011, found that the proposed PUD would not be not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.
16. The Commission took final action to approve the application on November 28, 2011.

Overview of the Property and Location

17. The Property is located in Ward 7, just north of the intersection of Minnesota Avenue and Benning Road. It is situated in the Parkside neighborhood and is currently unimproved. (Exhibit 4, p. 6.)
18. The Property is bounded by Grant Place, N.E. to the west and north, Burnham Place, N.E. to the east and Parkside Place, N.E. to the south. (Exhibit 4, p. 6.)
19. The Property is comprised of approximately one acre of land. (*Id.*)
20. The Parkside neighborhood is partially constructed with streets and infrastructure in place, 100 townhomes, two schools, streets, parkland, and over 15 acres of remaining vacant land. It is adjacent to Kenilworth Avenue and the Minnesota Avenue Orange Line Metrorail Station. (*Id.*)
21. The parcel, referred to as Block D in the first-stage PUD application, abuts an existing townhouse community to its north, west and east. Undeveloped parcels of the Parkside PUD abut the Property to the south. (Exhibit 4, p. 7.)
22. Land uses in the vicinity of the Property include a PEPCO plant to the southwest, Neval Thomas Elementary School and a District of Columbia Public and Assisted Housing complex to the northwest, vacant land to the southwest, and existing townhomes to the northeast. (*Id.*)
23. Eastland Gardens is located approximately one half mile to the north of the Property. (*Id.*)

24. To the west of the Property are Kenilworth Aquatic Gardens, Anacostia Park, the Anacostia River, and the National Arboretum, forming a large green space and recreational complex. (*Id.*)

First-Stage PUD Approval and Proposed Project

25. The first-stage PUD proposed the provision of a plaza that would be open to the public at the center of the development as an amenity of the PUD. Findings of Fact numbers 23 and 32 of Z.C. Order No. 05-28, stated that the plaza was to be nearly one acre in size and would provide “various pathways for pedestrians and will be shaded by trees.”
26. The finished plaza that is the subject of the second-stage PUD application is consistent with the First Stage approval. It will include pedestrian walkways lined with pavers, benches, light posts, mature shade trees, and landscaping. (Exhibit 4, p. 6; Exhibit 19, tab A.)
27. The Applicant held three charettes with the neighboring property owners in developing the design. The Applicant publicized the charettes to the communities to the west of Kenilworth Avenue. The design was finalized after the final community charette. (Exhibit 19; Exhibit 25.)
28. The design will focus the planned gathering spaces toward the southeast portion of the Property, on Parkside Place, away from the existing Parkside townhomes and closer to the new construction proposed in connection with the first-stage Parkside PUD. This area will include a paved terrace with seating around a central art feature. With the exception of a paved walkway extending through the Property, the remainder of the Property will be lawn for passive recreational uses. (Exhibit 19, tab A; Exhibit 25.)
29. The three existing mature trees on the Property will be retained and incorporated into the landscaping of the park. (Exhibit 19, tab A; Exhibit 25.)
30. The District Department of the Environment (“DDOE”) held an “All Hands Day” with the community on the parcel and planted 32 trees on the Property. (Exhibit 25.)
31. The project will integrate sustainable design throughout the landscaping including pervious pavers, rain gardens, planting beds, dark skylight fixtures, and sustainable materials in all site furnishings. (Exhibit 25.)
32. The park will be maintained by the private property owner but will be open to the public. (Exhibits 4, 19, 25.)

Project

33. **Project Amenities and Public Benefits**

- a. **Special Value for Neighborhood:** The overall PUD will allow for a community college to provide educational opportunities and job training for residents throughout the city, including in Ward 7;
- b. **Affordable and Workforce Housing:** The overall PUD is reserving 20% of the total residential component as affordable units to households having an income not exceeding 80% of Area Median Income for the Washington, DC Metropolitan Statistical Area (adjusted for family size). It is further reserving 20% of the total residential component for workforce housing targeted to households that have an income between 80–120% of the Area Median Income. In all, the PUD will provide a true mix of incomes in the Parkside community;
- c. **First Source Employment Program:** According to § 2403.9(e), “employment and training opportunities” are representative public benefits and project amenities. To further this goal, the Applicant will enter into an agreement to participate in the Department of Employment Services (“DOES”) First Source Employment Program to promote and encourage the hiring of District of Columbia residents;
- d. **Pedestrian Bridge:** A new pedestrian bridge is set to be constructed between the Parkside PUD and the Minnesota Avenue Metrorail Station. The Applicant has committed 25% of the cost of the bridge not to exceed \$3 million to ensure that this bridge be constructed to improve access to this site; and
- e. **Compliance with Comprehensive Plan:** The proposed Project significantly advances the purposes of the Comprehensive Plan by furthering the social and economic development of the District through the construction of new residential units on underutilized land, including a senior housing facility; by centering development around a transportation node; by thoughtful planning of one of the few large, vacant parcels in the District; and providing educational facilities east of the Anacostia River.

(Exhibit 4, pp. 9-10.)

34. **Flexibility from PUD Requirements**

- a. The Applicant requested relief from the requirements of § 2406.7, which requires at least 10 days notice to residents within 200 feet prior to submitting an application for a Planned Unit Development. The Applicant sent the requisite

notice four days prior to filing the Planned Unit Development application. The Applicant, however, reached out to all residents within 200 feet to notify them of the application and to seek their input in the charette process. The Applicant provided the community sufficient notice of the project prior to the public hearing. (Exhibit 4, p. 7; Transcript, p. 16.)

- b. No other zoning relief was requested or granted.

Compliance with PUD Standards

35. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” During its consideration of the first-stage PUD in Z.C. Case No. 05-28, and the first-stage modification in Z.C. Case No. 05-28E, the Commission determined that the development incentives and related rezoning for the Property were appropriate and fully justified by the superior benefits and amenities offered by the PUD. Here, the Commission finds that the Applicant has satisfied its burden of proof under the Zoning Regulations for this second-stage approval and PUD-related map amendment. The application is justified in light of the superior benefits and amenities of the PUD. The park was offered as an amenity in the first-stage PUD and it is comprised largely of landscaping, thus, the Commission does not find that other additional amenities and benefits are required to satisfy the standards for this PUD. It finds that the approval of the application will allow for the establishment of a private park open to for use by the public, which in and of itself and is a public benefit.
36. The Commission credits the testimony of the Applicant and its landscape architect and finds that the landscaping and site planning of the park constitutes acceptable project amenities and public benefits consistent with the first-stage PUD.
37. As detailed in this Order, the Commission acknowledges DDOT’s analysis and believes that the Applicant has addressed the concerns DDOT noted in its report, namely that the Applicant has confirmed that the property owner will maintain the property, including the landscaping and hardscaping. The Commission agrees with the Applicant that an eight-foot-wide sidewalk is too wide given the residential nature of the community. It further agrees that the planting strip is better provided as depicted in the plans in order to provide tree roots room to grow; further, DDOE has already planted trees on the Property in a manner consistent with the planting strip depicted in the plans. The Commission also acknowledges DDOT’s concern that trash will collect under the tree grates but accepts the Applicant’s testimony that it is using grates that are ADA-compliant will not have space between grates large enough to allow trash to filter beneath it. The Commission also acknowledges that the Applicant is using a grate that expands with tree growth so that it will avoid fatally girdling or strangling the tree, per DDOT’s concerns. Finally, the

Applicant is incorporating low impact development techniques per DDOT's recommendation. (Exhibit 20.)

38. The Commission credits the testimony and submissions of the Applicant and OP regarding the compliance of the Project with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide and area elements of the Plan, including:
- a. Designation as appropriate for parks, recreation, and open space uses on the Future Land Use Map; and
 - b. Park, Recreation, Open Spaces policies recognizing the importance of acquiring and improving parkland to meet the recreational needs of residents, requiring all park improvements to be of high design and construction quality, sensitive to the natural environment and compatible with surrounding land uses, and the importance of design parks, trails and recreational facilities to improve public safety.

(Exhibit 21.)

Agency and Government Reports

39. By report dated September 9, 2011, and by testimony at the public hearing, the Office of Planning ("OP") recommended approval of the second-stage PUD. It found that the establishment of a private park for use by the public is a significant amenity for Parkside. It found the design of the park suitable and appropriate and stated that it would provide a logical terminus to a central spine beginning between the office towers and continuing toward the existing Parkside townhomes. OP recommended that the park remain open to the public and not be enclosed by fencing or gates and that the Applicant consider the use of pervious paving materials where appropriate to minimize stormwater runoff. (Exhibit 21.)
40. By report dated September 6, 2011, DDOT recommended conditional approval of the application. DDOT provided the following suggestions: (1) that the Applicant maintain the park; (2) the Applicant plant a four-foot-wide continuous strip around the park perimeter; (3) the Applicant provide an eight-foot sidewalk; (4) the Applicant not install tree grates to avoid trash accumulating underneath them and to avoid fatally girdling and strangling trees; and (5) the Applicant consider low-impact development in the landscaping design. As noted in paragraph 37 above, the Applicant addressed each of these concerns. DDOT commends the Applicant for retaining the existing trees on the Property. (Exhibit 20.)

41. By an email to OP, dated August 31, 2011, the Department of Parks and Recreation indicated that it had no comments on the application. (Exhibit 21.)
42. By an email to OP, dated September 1, 2011, the Metropolitan Police Department requested that the area be well lit and the shrubs and plantings used not be too dense and/or high. (Exhibit 21.)

ANC 7D Report

43. ANC 7D submitted a letter, dated September 15, 2011, requesting that the Applicant present at the ANC's October public meeting and that the record be left open until after the meeting to allow the ANC to comment on the application. (Exhibit 23.)
44. At the ANC's October regularly scheduled and duly noticed public meeting with a quorum, the ANC voted unanimously in support of the project. They submitted a letter into the record dated October 12, 2011 stating its support for the project. (Exhibit 28.)
45. ANC Commissioner Willie Woods submitted a letter in support of the application dated September 15, 2011. He noted that the park will be a welcome place for old and new residents to gather and will add beauty to the neighborhood. (Exhibit 22.)

Persons in Support

46. No persons testified in support of the application.

Party in Opposition

47. There were no parties in opposition to the application.

Persons in Opposition

48. No persons testified in opposition to the application.

CONCLUSIONS OF LAW

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

2. Under the PUD process, the Commission has the authority to consider this application as a two-stage PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards.
3. The development of the overall PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that will offer a variety of building uses and types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
4. The PUD meets the minimum area requirements of 11 DCMR § 2401.1.
5. The Commission agrees with the testimony of the project landscape architect and the representative of the Applicant and believes that this project does in fact provide superior features that benefit the surrounding neighborhood. The Commission finds that the provision of a private park available for public use is an amenity for the overall Parkside PUD.
6. The Commission believes that the landscape and hardscape design, including sustainable elements, are commendable and appropriate in light of the context of the park. The Commission further finds that the park will not have an adverse effect on neighboring properties.
7. The Commission finds that the Applicant provided sufficient notice of the application to counteract the deficiency in the notice provided by the Notice of Intent. In fact, the Applicant left notices at the door of each residence within 200 feet and hosted three charettes for the community to comment on the design.
8. 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 and in conformity with the first-stage PUD.
9. Approval of the application and the PUD-related Zoning Map amendment is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP in this case and finds that the proposed project is consistent with and fosters numerous policies and elements of the Comprehensive Plan. Specifically, the Commission believes that the proposed project furthers the following elements: park, recreation and open spaces and the area element.
10. The Commission believes that the proposed PUD-related rezoning of the Property to the C-3-A Zone District is appropriate given the Comprehensive Plan designation for the Property, its location in the Central Employment Area, the superior features of the PUD

project, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.

11. In accordance with § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)), the Commission must give great weight to the written issues and concerns of the affected ANC. The ANC voted unanimously in 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 the application should be granted and that it is not inconsistent with the Comprehensive Plan.
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 a map amendment from the R-5-A and C-2-B to the C-3-A Zone District in conjunction with second-stage PUD approval for property consisting of Square 5041, Lots 811, 812, 822, and Square 5056, Lots 806, 812, 814, and 821 ("Property"). For the purposes of these conditions, the term "Applicant" shall mean the person or entity then holding title to the Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Property, that party shall have no further obligations under this Order; however, that party remains liable for any violation of these conditions that occurred while an Owner. This approval is subject to the following guidelines, conditions, and standards:

A. Project Development

1. This project shall be developed in accordance with the plans marked as Exhibits 19, 25, and 29 of the record, as modified by guidelines, conditions, and standards herein.
2. The Applicant shall have flexibility with the design of the PUD in the following areas:

- To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction, including the use of granite in the proposed wall; and
- To make minor refinements to exterior details and dimensions, including location and size of walkways, plantings, lighting, furnishings, and used on the terrace and the final details of the central art feature.

B. Public Benefits

1. The project shall be used as a private park open for public use. No wall, fence or gate shall be placed around the perimeter of the park.

C. Miscellaneous

1. No permit shall be issued for this project until the Applicant has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.
2. The change in zoning from the R-5-A and C-2-B Zone Districts to the C-3-A Zone District shall be effective upon the recordation of the covenant referenced in paragraph 8, pursuant to 11 DCMR § 2408.15.
3. The application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a permit to effectuate the construction of the park. Construction of the project shall start within three years from the effective date of this Order.
4. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, *et seq.* ("Act") and this Order is conditioned upon full compliance with those provisions. 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, 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.

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

On October 17, 2011, upon the motion of Commissioner May, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Marcie Cohen and Konrad W. Schlater, not having participated, not voting).

On November 28, 2011, upon the motion of Commissioner Turnbull, as seconded by Commissioner May, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to adopt; Marcie Cohen and Konrad W. Schlater, not having participated, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register* on December 30, 2011.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



RICHARD S. NERO, JR.
ACTING DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



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

DEC 29 2011

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

1. *D.C. Register*
2. Phil Feola and Christine Roddy, Esqs.
Goulston and Storrs
1999 K Street, N.W. Suite 500
Washington, D.C. 20006
3. ANC 7D*
c/o Willette Seaward, Chair
4234 Grant Street, N.E.
Washington, DC 20019
4. Commissioner Willie Woods
ANC/SMD 7D07
7D07@anc.dc.gov
5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
6. Councilmember Yvette Alexander
7. DDOT (Martin Parker)
8. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, DC 20024
9. Office of the Attorney General (Alan Bergstein)

*Note: advised by Gottlieb Simon to send ANC 7D notices temporarily to the Chair as of December 16, 2011.

ATTESTED BY:

A handwritten signature in black ink that reads "S. S. Schellin".

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