

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



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

**Z.C. Case No. 05-28G**

**Parkside Homes, LLC and Parkside Residential, LLC**

**(Modifications to a Second-Stage Planned Unit Development @ Square 5041, Lots 809, 814, 815, 818, 820, 824, and 827)**

**November 28, 2011**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 24, 2011, to consider an application of Parkside Homes, LLC and Parkside Residential, LLC (“Applicant”) for the review and approval of modifications to a second-stage planned unit development (“PUD”). 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.

**FINDINGS OF FACT**

**PROCEDURAL HISTORY**

1. The Applicant first submitted the application as a minor modification of a second-stage PUD and requested that it be considered on the Commission’s consent agenda. The Commission considered the request at its public meeting on July 25, 2011, and determined that the proposed modifications, though modest, could not be considered “minor” pursuant to § 3030 of the Zoning Regulations. The Commission set the application down for a public hearing. (Exhibit 1; July 25, 2011 Transcript, pp. 24, 25, 112, 113.)
2. Notice of the public hearing for Z.C. Case No. 05-28G was published in the *D.C. Register* on August 19, 2011, and was mailed to Advisory Neighborhood Commission (“ANC”) 7D and to owners of property within 200 feet of the second-stage PUD site.
3. A public hearing was conducted for Z.C. Case No. 05-28G on October 24, 2011. The Commission heard testimony from Mike Irons and Troy Johnson, representatives of the contract purchaser of the site, and Alison Crowley, a representative of the property owner. (October 24, 2011 Transcript (“Transcript”), pp. 8, 13.)
4. In addition to the Applicant, ANC 7D was automatically a party in this proceeding.
5. At the hearing, the Commission heard testimony and received evidence from the Office of Planning (“OP”) in support of the application. (Transcript, pp. 51-52.)

6. During the hearing, the Commission asked the Applicant for revised elevations depicting the proposed downspouts and additional information on the proposed biofiltration system. The Applicant provided this information on November 10, 2011. (Exhibit 25.)
7. The Commission took proposed action to approve the application at the close of the hearing on October 24, 2011.
8. 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.
9. The Commission took final action to approve the application on November 28, 2011.

#### **APPLICATION**

10. The property that is the subject of the application is located in Square 5041, Lots 809, 814, 815, 818, 820, 824, and 827 (“Property”). (Exhibits 1, 14.)
11. The first-stage PUD consisted of 15.5 acres of land east of the Anacostia River in Ward 7. 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. (Exhibit 14.)
12. Three of the building blocks secured second-stage approval in Z.C. Case No. 05-28A: Blocks A, B, and C. Z.C. Order No. 05-28A approved 98 housing units for Block A and 112 townhouses for Blocks B and C. Block A is currently under construction as approved. Blocks B and C were the subject of the modification application. (*Id.*)
13. Blocks B and C are located in the northwest corner of the approved PUD. Z.C. Order No. 05-28A approved a total of 112 townhomes for both blocks with a gross floor area of 269,548 square feet. A total of 46 townhomes were approved for Block B with a gross floor area of 108,912 square feet, a floor area ratio (“FAR”) of 2.1, and a maximum height of 47 feet. A total of 66 townhomes with a gross floor area of 160,636 square feet, a FAR of 2.01 and a maximum height of 47 feet were approved for Block C. (*Id.*)
14. The PUD is being modified to eliminate all of the 14-foot-wide units (54 units) and replacing them with wider units on both Blocks B and C. The Applicant determined that 14-foot-wide units would be difficult to market and are not as attractive to purchasers as the units with more comfortable widths. The new site plan only includes 16-foot-wide and 20-foot wide units. (*Id.*)

15. This change to the widths of the townhouses results in minor adjustments to the site plan and will have a modest impact on the PUD. The number of townhomes will be reduced from 112 to 100. The elevations will change, including the elimination of the optional fourth floor. (*Id.*)
16. The gross floor area of Block B changes from 108,912 square feet to 89,856 square feet and the gross floor area for Block C changes from 160,636 square feet to 138,232 square feet. The gross floor area for both blocks is reduced from 269,548 square feet to 228,088 square feet. (*Id.*)
17. The height of the buildings on Blocks B and C is reduced from 47 feet to 39 feet, 6 inches. (*Id.*)
18. The modification to the site plan also results in changes to the landscape plan, setbacks, and lot occupancy as a result of the change in building footprint. (*Id.*)
19. The Applicant also requested clarification of Condition No. 7 of Z.C. Order No. 05-28 to more clearly specify that the income limitation only applies to the initial purchaser on the property. This understanding is consistent with the record in the first-stage PUD. See Z.C. Order No. 05-28, Findings of Fact 34(b). In reiteration of the evidence in Z.C. Case No. No. 05-28, the Applicant noted the influx of subsidized housing the area and the importance of also providing market rate housing to this community. (*Id.*)

#### **COMPLIANCE WITH COMPREHENSIVE PLAN**

20. The objectives of a PUD are to permit flexibility of development in return for the provision of superior public benefits, provided the PUD process is not used to circumvent the intent and purposes of the Zoning Regulations or result in an action inconsistent with the Comprehensive Plan. The overall PUD is consistent with the objectives and evaluation standards of a PUD, as defined in Chapter 24 of the Zoning Regulations. The PUD is not inconsistent with the Comprehensive Plan. (Exhibit 17, p. 5.)
21. The Future Land Use Map recommends medium-density residential use for Block B and a combination of medium and moderate-density residential for Block C. Moderate-density residential is defined as row house neighborhoods; row house communities are also prevalent in medium-density residential communities. (*Id.*)
22. The Generalized Policy Map identifies Parkside as a Neighborhood Enhancement Area, which are neighborhoods with substantial amounts of vacant residentially zoned land. Parkside is a largely vacant neighborhood and the approved first-stage PUD and this second-stage PUD is consistent with both the Generalized Policy and Future Land Use Maps. (*Id.*)

23. The PUD furthers several elements of the Comprehensive Plan, including the Land Use Element, the Housing Element, the Environmental Protection Element and the Far Northeast and Southeast Area Element. The PUD is designed to encourage transit use and it will provide housing for families. The site plan also provides for additional trees and landscaping. Finally, the project is providing new housing on vacant lots near Metro stations, as called for in the Area Element. (*Id.* at 6.)

#### **AGENCY AND GOVERNMENT REPORTS**

24. By report dated October 14, 2011, OP recommended that the application be approved. It noted that the reduction in the number of units was “minor” in comparison to the overall PUD. It further noted that the revised facades of the rowhouses result in a distinctly residential feel and appearance. (Exhibit 17, p. 7.)
25. OP also supported the requested clarification regarding the control period of the workforce housing units and confirmed that the clarification is consistent with the first-stage PUD approval. (*Id.*)
26. By an email to OP dated October 6, 2011, the District Department of Transportation (“DDOT”) noted that it had not commented on the application. (*Id.*)

#### **ADVISORY NEIGHBORHOOD COMMISSION 7D REPORT**

27. ANC 7D submitted a letter dated October 12, 2011, in support with the requested modification. The ANC noted that the Applicant addressed both the ANC’s and residents’ concerns and questions and that the modifications better ensure the houses will be marketable once constructed. The ANC further stated that the proposed project is consistent with the existing Parkside residences. The ANC voted unanimously in support of the application. (Exhibit 16.)

#### **PERSONS IN SUPPORT**

28. No persons testified in support of the application.

#### **PARTY IN OPPOSITION**

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

#### **PERSONS IN OPPOSITION**

30. 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 modification of the second-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 Applicant and believes that the modifications will benefit the project and make the houses more marketable and appealing to potential residents.
6. The Commission believes the modifications are consistent with the intent of the first- and second-stage approvals, including the clarification regarding the income restrictions on the workforce units.
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 and in conformity with the first-stage PUD.
8. Approval of the application is not inconsistent with the Comprehensive Plan. The Commission agrees with OP's determination in this case and finds that the proposed project is consistent with and fosters numerous policies and elements of the Comprehensive Plan, including the Far Northeast and Southeast Area Element.
9. 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 and noted their support for the modifications.

10. 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.
11. Notice of the public hearing was provided in accordance with the Zoning Regulations.
12. 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 modifications to the approved second-stage PUD application for property consisting in Square 5041, Lots 809, 814, 815, 818, 820, 824, and 827 ("Property"). The approval delineated in Z.C. Order No. 05-28A shall remain in full force and effect with respect to the approval of the senior housing development (Block A) and with respect to the approved map amendment from the R-5-A Zone District to the C-3-A Zone District. The conditions controlling the approval of the townhouses (Blocks B and C) are listed in their entirety below. 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. "During the operation of the building" means a period of time that begins when the building is first occupied, and ending when it is last occupied. 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 6, 15, 20, and 25 of the record, as modified by guidelines, conditions, and standards herein. In accordance with the plans and the materials noted above, the approved project shall consist of 100 townhomes.
2. At least 136 parking spaces shall be provided for the townhomes.
3. The Applicant shall have flexibility with the PUD in the following areas:
  - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;

- b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and
- c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit.

**B. Public Benefits**

- 1. Prior to the issuance of a building permit for the PUD, the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services.
- 2. Prior to the issuance of a Certificate of Occupancy, the PUD shall meet the sustainable criteria for LEED-ND. The owner shall submit a certification from the project architect that these criteria have been met.
- 3. The owner shall pay 25% of the cost of a new pedestrian bridge to connect the PUD site to the Minnesota Avenue Metrorail Station, with its payment not to exceed \$3 million. The payment shall be made within 60 days after DDOT notifies the owner that DDOT has the legal authority to proceed with advertising a contract for the construction of the bridge, or within 60 days after the issuance of a building permit that would result in the aggregate density of the PUD exceeding the matter-of-right limit for the property, whichever is the first to occur.
- 4. Forty-two townhouses will be reserved for buyers earning between 80% and 120% of the area median income. This income limitation shall only apply to the initial purchaser.

**C. Miscellaneous**

- 5. The PUD has been vested pursuant to the issuance of Building Permit No. B0905238 and the start of construction on Block A prior to October 3, 2011. An application for the final building permit completing the development of Blocks B and C approved herein must be filed within three (3) years of the issuance of the final certificate of occupancy of Block A.
- 6. The Applicant shall record a Notice of Modification of a Planned Unit Development Covenant in 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. Such covenant shall bind the Applicant and all successors in

title to construct on and use the Property in accordance with this Order or amendment thereof by the Commission.

7. 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.

On October 24, 2011, upon the motion of Vice Chairman Schlater , as seconded by Commissioner May , the Zoning Commission **APPROVED** this application at its public hearing by a vote of **3-0-2** (Anthony J. Hood, Konrad W. Schlater, and Peter G. May to approve; Marcie Cohen and Michael G. Turnbull, not present, not voting).

On November 28, 2011, upon the motion of Vice Chairman Schlater, 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, Konrad W. Schlater, and Peter G. May to adopt; Marcie Cohen and Michael G. Turnbull, 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 16, 2011.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
**ZONING COMMISSION**

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of Zoning



**Z.C. CASE NO.: 05-28G**

As Secretary to the Commission, I hereby certify that on **DEC 21 2011** copies of this Z.C. Order No. 05-28G were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- |    |   |    |  |
|----|---|----|--|
| 1. | <i>D.C. Register</i>  | 5. | Gottlieb Simon<br>ANC<br>1350 Pennsylvania Avenue, N.W.<br>Washington, D.C. 20004                            |
| 2. | Phil Feola and Christine Roddy, Esqs.<br>Goulston and Storrs<br>1999 K Street, N.W. Suite 500<br>Washington, D.C. 20006 | 6. | Councilmember Yvette Alexander   |
| 3. | ANC 7D*<br>c/o Willette Seaward, Chair<br>4234 Grant Street, N.E.<br>Washington, DC 20019                               | 7. | DDOT (Martin Parker)   |
| 4. | Commissioner Willie Woods<br>ANC/SMD 7D07<br><a href="mailto:7D07@anc.dc.gov">7D07@anc.dc.gov</a>                       | 8. | Melinda Bolling, Acting General Counsel<br>DCRA<br>1100 4 <sup>th</sup> Street, S.W.<br>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 cursive script that reads "Sharon S. Schellin".

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