

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



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

Z.C. Case No. 05-28H

Lano Parcel 12 LLC, Parkside Residential LLC, Parkside Homes LLC and Parkside Senior Housing LLC

(Two Year PUD and Related Zoning Map Amendment Time Extension @ Square 5041, Lots 47, 806-809, 811, 812, 814, 815, 818, 820, 822, 824, 827; Square 5055, Lots 14-25, 801-813; Square 5056, Lots 806, 809, 810-814, and 821) (“Property”)

September 26, 2011

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on September 26, 2011. At that meeting, the Commission approved the request of Lano Parcel 12 LLC, Parkside Residential LLC, Parkside Homes LLC, and Parkside Senior Housing LLC (collectively, “Applicant”) for a two-year time extension of the first-stage planned unit development (“PUD”) for the Parkside project. The time extension request was made pursuant to Chapter 24 of the District of Columbia Zoning Regulations.

FINDINGS OF FACT

1. The Commission granted first-stage PUD approval for the Property on April 13, 2007 pursuant to Z.C. Order No. 05-28 (“Order”). The approval was valid for a period of one year, within which time an application for a second-stage PUD was required to be filed. If the second-stage application was for less than the entire Property, the remaining second-stage applications were required to be filed within three years of the approval of the initial second-stage application.
2. The Applicant filed a second-stage application for a portion of the Property in November 2007. It was approved on October 3, 2008. Accordingly, all subsequent second-stage applications for the Property were required to be filed by October 3, 2011. (Z.C. Order No. 05-28A.)
3. On August 10, 2011, the Applicant filed a request to extend the first-stage approval through October 3, 2013. (Exhibit 1.)
4. The first-stage approval was for a project consisting of approximately three million square feet of mixed-use development on 10 building blocks on over 15 acres of vacant property east of the Anacostia River in Ward 7. Specifically, it approved 1,500-2,000 residential units; 500,000-750,000 square feet of office space; and 30,000-50,000 square feet of retail. It approved a maximum height of 110 feet for two office towers and a maximum height of 90 feet for the remainder of the Property. The Order also approved

the rezoning of the Property from the R-5-A and C-2-B Zone Districts to the C-3-A and CR Zone Districts. (Exhibit 1.)

5. The first-stage approval was modified by Z.C. Case No. 05-28E. Z.C. Order No. 05-28E approved a change of use, increased the approved maximum height, and approved a rezoning to the CR Zone District for a portion of the Property. (Exhibit 1.)
6. Following the approval of the Order, the real estate market in the country and the District of Columbia suffered a major downturn. As a result, the Applicant was unable to obtain sufficient project financing in time to proceed with a second-stage PUD for the entirety of the Project approved by the first-stage approval.
7. Nevertheless, the Applicant moved forward with applications for second-stage approval for five of the 10 building blocks approved in the Order, including the development of a 98-unit affordable senior housing building, 112 townhomes with a workforce housing component, a park to be made available to the public, the Community College of the District of Columbia (“CCDC”), and a health care facility. The affordable senior housing building is currently under construction. The CCDC and the health care facility were recently approved by the Commission pursuant to Z.C. Order Nos. 05-28C and 05-28B, respectively. (Exhibits 1 and 6.) In all, the Applicant has spent approximately \$3.5 million relating to its pursuit of second-stage approvals, exclusive of costs relating to property acquisition. (Exhibit 6.)
8. The Applicant served its request for an extension on all parties to the first-stage PUD, including the affected Advisory Neighborhood Commission (“ANC”) 7D and the Parkside Townhomes Condominium. The parties were given 30 days to respond to the request.
9. The Parkside Townhouses Condominium (“PTC”) submitted a letter dated August 31, 2011, in opposition to the time extension request. The letter repeated the PTC’s objections to the original PUD, namely its impact on traffic and parking conditions. The letter stated that the traffic and parking issues that were the source of its original objection have increased since the Commission issued its original order. The letter also stated that PTC did not believe the Applicant met its burden of proof with respect to its extension request. (Exhibit 4.)
10. ANC 7D did not submit a report.
11. In response to the PTC letter, the Applicant filed a supplemental submission outlining the good faith efforts the Applicant made to develop the property within the timeline contemplated by Z.C. Order No. 05-28, and stating that the changes that have occurred in

the Parkside community since 2007 were contemplated in the original PUD order. The submission also included an affidavit outlining the number of second-stage applications the Applicant has filed for the Property and the amount of money it has spent in pursuing such applications. (Exhibit 6.)

12. The Office of Planning (“OP”) submitted a report dated September 16, 2011. OP recommended approval of the time extension request and noted the Applicant’s fulfillment of the standard promulgated in § 2408.10 of the Zoning Regulations, which apply to the extension of orders granting consolidated or second-stage PUDs. OP noted that the Applicant “has demonstrated with substantial evidence good cause for the extension and [OP] recommends that the Commission grant the request.” (Exhibit 5.)

CONCLUSIONS OF LAW

Section 2407.10 of the Zoning Regulations provides first-stage PUDs are valid for one year, and authorizes the Commission to extend that period. The Zoning Regulations do not provide the process or standard the Commission is to follow when deciding whether to grant a first-stage extension. However, the Commission in the past has applied the process and standard stated in the Regulations for extending a second-stage or consolidated PUD order (“Final PUD Order”). See Z.C. Order No. 02-51B, *Center for Strategic and International Studies, Inc.*, 56 DCR 2648 (2009).

Those provisions authorize the Commission to extend the validity of a final PUD order for good cause shown upon a request made before the expiration of the approval, provided: (a) the request is served on all parties to the application by the applicant, and all parties are allowed 30 days to respond; (b) there is no substantial change in any material fact upon which the Zoning Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD; and (c) the applicant demonstrates with substantial evidence that there is good cause for such extension as provided in § 2408.11. (11 DCMR § 2408.10.) Section 2408.11 provides the following criteria for good cause shown: (a) an inability to obtain sufficient project financing for the PUD, following an applicant’s diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant’s reasonable control; (b) an inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant’s reasonable control; or (c) the existence of pending litigation or such other condition or factor beyond the applicant’s reasonable control which renders the applicant unable to comply with the time limits of the PUD order.

The Commission concludes that the Applicant complied with the notice requirements of 11 DCMR § 2408.10 (a) by serving all parties with a copy of the application and allowing them 30 days to respond.

The Commission concludes there are no substantial changes in the material facts that the Commission relied on in approving the original first-stage PUD application. PTC argued that the “traffic and parking issues that were the source of its original objection have only increased during the time since the Commission’s Order.” This is not a change in the material facts the Commission relied on approving the original PUD, since the Commission contemplated an increase in traffic and increased parking demand in the area as the PUD was developed. Five of the 10 blocks included in the original PUD have been developed, and have increased traffic and parking demand in the area.

The Commission further notes that the PTC’s concerns regarding traffic and parking were addressed during the first-stage PUD and can be discussed further in the second-stage applications for the remainder of the Property. Specifically, the Commission expressly found in the first-stage PUD that it “agrees with the conclusions of the Applicant’s traffic and parking expert, as well as the conclusions of DDOT, that the proposed project will not create adverse traffic or parking impacts on the surrounding community.” (Z.C. Order No. 05-28, Conclusion of Law No. 10.)

The Commission finds there is substantial evidence of good cause for the extension. The Applicant has been unable to secure project financing for the remaining portions of the first-stage approval despite the Applicant’s diligent good faith efforts, because of changes in economic and market conditions beyond the Applicant’s reasonable control. The Applicant has made good faith efforts to fully effectuate the first-stage PUD and has pursued a significant number of second-stage applications in a financially challenging time.

Section 2408.12 of the Zoning Regulations provides that the Commission must hold a public hearing on a request for an extension of the validity of a final PUD only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the PUD concerning any of the criteria set forth in § 2408.11. The Commission concludes a hearing is not necessary for this first-stage extension request since there are not any material factual conflicts generated by the parties concerning any of the criteria set forth in § 2408.11 of the Zoning Regulations.

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

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 7D. As noted in Finding of Fact No. 10, ANC 7D did not submit a report and so there was nothing which to give great weight to.

The Commission concludes that its decision is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations.

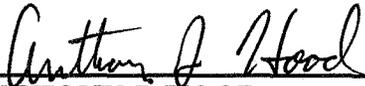
DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Z.C. Case No. 05-28H for a two-year time extension of Z.C. Order No. 05-28. The validity of the first-stage PUD is extended until October 3, 2013, within which time any outstanding second-stage PUD applications for the Property must be filed.

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

On September 26, 2011, upon motion by Chairman Hood, as seconded by Vice Chairman Schlater, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Greg M. Selfridge, Konrad W. Schlater, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR 3028.8, this Order shall become final and effective upon publication in the D. C. Register on February 3, 2012.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
ACTING DIRECTOR
OFFICE OF ZONING

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



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

FEB 7 2012

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 05-28H 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 & Storrs
1999 K Street, N.W. Suite 500
Washington, D.C. 20006-1101
3. ANC 7D
5002 Hayes Street, N.E.
Washington, D.C. 20019
4. Commissioner Willie Woods
ANC/SMD 7D07
3725 Cassell Place, N.E.
Washington, D.C. 20019
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, D.C. 20024
9. Office of the Attorney General (Alan Bergstein)
10. Parkside Townhomes Condo. Assoc.
c/o Benny Kass, Esq.
1050 17th Street, N.W.
Washington, D.C. 20036

ATTESTED BY:

A handwritten signature in black ink, appearing to read "S. S. Schellin", is written over a horizontal line.

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