

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 12-01B
Z.C. Case No. 12-01B
The Catholic University of America
(Amendment to and Further Processing of an Approved Campus Plan
@ Square 3821, Lot 44 [620 Michigan Avenue, N.E.]
May 20, 2019

Pursuant to notice, at a public meeting of the Zoning Commission for the District of Columbia (the “Commission”) held on May 20, 2019, the Commission considered the request of the Catholic University of America (the “University”) for an amendment to, and further processing of, the University’s approved 2012-2027 Campus Plan (the “Campus Plan”), approved by Z.C. Order No. 12-01 (the “Original Order”), as amended by Z.C. Order No. 12-01A, for Square 3671, Lots 2, 3, and 802, Square 3821, Lot 44, and Parcel 121/29 (collectively, the “Property”) to adjust the size and location of the dining hall. The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission APPROVES the Application.

FINDINGS OF FACT

Notice

1. On March 12, 2019, the University filed an application to amend and further process the Campus Plan to permit the expansion and relocation of the dining hall approved by the Campus Plan (the “Application”).
2. On December 27, 2018, more than 45 days prior to filing the Application as required by Subtitle Z § 302.6, the University mailed a Notice of Intent to file the Application to Advisory Neighborhood Commission (“ANC”) 5A, in which district the Property is located, ANCs 5B and 5E, which districts across a street from the Property and which are deemed with ANC 5A, the ANCs “affected” by the Application pursuant to Subtitle Z §101.8, and the owners of all property within 200 feet of the Property. (Exhibit [“Ex.”] 3C.)
3. The Application included a certificate of service on ANCs 5A, 5B, and 5E, and the Office of Planning (“OP”), as required by Subtitle Z § 302.11. (Ex. 1.)
4. Pursuant to Subtitle Z § 402.1, on March 28, 2019 the Office of Zoning sent notice of the May 20, 2019 public hearing to the University; ANCs 5A, 5B, and 5E, and the Office of

ANCs; the owners of all property within 200 feet of the Property; OP; the District Department of Transportation (“DDOT”); the Department of Consumer & Regulatory Affairs; and the Councilmember for Ward 5, the Chairman of the Council, and the At-Large Councilmembers. Notice of the public hearing was published in the *D.C. Register* on April 5, 2019 (66 DCR 4238). (Ex. 10)

The Application

5. The Property is located in the RA-1 zone.
6. The University amended the plans submitted with the Application in response to comments from OP. (Ex. 3H, 12B, 16A, 19, and 26A1-26A3.)
7. The Application, as amended by the final revised plans (Exhibits 26A1-26A3, the “Final Plans”), proposed to increase the size of the dining hall (the “Dining Hall”) to approximately 36,500 square feet and to relocate the Dining Hall to the site of to-be demolished Magner House (student housing). (Ex. 3)
8. The Dining Hall would be approximately 17,417 square feet larger than the 19,083 square feet of Magner House, which would increase the University’s overall Floor Area Ratio (“FAR”) to 0.30, within the 0.39 FAR approved by the Campus Plan and within the 1.8 FAR maximum for the RA-1 zone pursuant to Subtitle X § 101.5.
9. The only condition of the Original Order impacted by the Application is Condition No. 14 which requires the University to provide a status update on the Campus Plan open space improvements with each further processing application. (Ex. 3 and 3A). The Application stated that the University plans to remove the McMahan surface parking lot on the Main Campus by 2020 and replace it with green, landscaped open space. The Application noted that the conversion was expected to be complete by 2022 and provide 80,000 more square feet of green space. (Ex. 3)

Parties

10. The University and ANCs 5A, 5B, and 5E were automatically parties in this proceeding per Subtitle Z § 403.5. The Commission received no requests for party status.

OP Report

11. OP submitted a report dated May 10, 2019, stating general support for the Application, but requesting additional drawings and other information from the University to fully analyze the compliance of the Application with the campus plan requirements. (Ex. 15.)
12. Following the University submission of updated plans, OP submitted a supplemental report on May 17, 2019, recommending approval of the Application on the condition that the University reduce the design flexibility proposed on Sheet A101C of the Revised Plans. (Ex. 18.)

13. The University subsequently agreed to narrow the requested design flexibility. (May 20, 2019 Public Hearing Transcript [“May 20 Tr.”] at 8-10) and OP testified in support of the Application. (May 20 Tr. at 14.)

ANC Reports

14. ANC 5A submitted a report dated May 16, 2019, stating that at a properly noticed meeting, with a quorum present, the ANC voted to support the Application without expressing any issues or concerns. (Ex. 20.)
15. ANCs 5B and 5E did not submit a report.

CONCLUSIONS OF LAW

1. The Commission may approve a campus plan, and any amendment and further processing thereof, as a special exception upon determining that the applicant has demonstrated the satisfaction of the requirements of Subtitle X § 101 and Chapter 9. The Commission concludes that the Application meets these requirements as follows:
2. Subtitle X § 101.2 - *The uses shall be located so that they are not likely to become objectionable to neighboring property because of noise, traffic, parking, number of students, or other objectionable conditions.*

The Commission finds that the Dining Hall would be located in the center of the main campus, approximately 800 feet and across the metro and railroad tracks from the nearest off-campus residence. As such, the Commission concludes that the Dining Hall will not result in any objectionable impacts in terms of noise to the neighboring properties.

The Commission notes that while the Dining Hall will likely generate additional deliveries and trash truck trips, it concludes that those vehicles would access the facility from John McCormack Road, and then from either Michigan Avenue or Taylor Street, and would not pass directly through neighborhood streets.

Finally, the Commission concludes that because no parking is proposed for the Dining Hall, and because it will not increase enrollment, it should not generate any additional automobile traffic. The Commission notes that DDOT did not submit a response to the Application despite being served notice and that the Applicant’s testimony attributed this lack of a response to the fact that the Application does not propose any parking and expects to create minimal impacts on traffic. (May 20, Tr. at 12.)

3. Subtitle X § 101.3 - *Any commercial use customarily incidental to a university use in an R, RF, or RA zone, or as an adjunct use to a university building, shall be subject to the following conditions:*
 - (a) *There shall be a demonstrated and necessary relationship between the use and the university functions;*
 - (b) *The total floor area of all commercial uses, including basement or cellar space, shall occupy no more than ten percent (10%) of the gross floor area of the total campus plan floor area; and*

- (c) *The commercial use shall be located so that it will not become objectionable to non-university residential neighbors due to hours of operation, noise, parking, loading, lighting, trash, or other operational characteristics that are not customarily associated with a residential use.*

The Commission finds that the Application does not specify whether any portion of the Dining Hall will be dedicated to commercial uses such as restaurant-style food vendors. However, the Commission concludes that such a use would be incidental to the University use and would not result in any objectionable impacts.

4. *Subtitle X § 101.4 - The campus plan process shall not serve as a process to create general commercial activities or developments unrelated to the educational mission of the applicant or that would be inconsistent with the Comprehensive Plan.*
The Commission concludes that the Dining Hall will not result in the creation of general commercial activities unrelated to the educational mission of the University.
5. *Subtitle X § 101.5 - The following development standards shall apply to the maximum total density of all buildings and structures on the campus in an R, RF, RA, or RC-1 zone: All R Zones – Maximum Height of 50 feet, and Maximum 1.8 Floor Area Ratio (“FAR”).*
The Commission finds that the Original Order approved a total FAR of 0.39, within the maximum 1.8 FAR permitted in the RA-1 Zone. The Dining Hall will result in a total FAR of 0.30, consistent with the Original Order.
6. *Subtitle X § 101.6 - Because of permissive increases as applicable to normal bulk requirements in the low-density zones regulated by this title, it is the intent of this subsection to prevent unreasonable campus expansion into improved low-density zones.*
The Commission concludes that the Application would not result in the expansion of the campus into low-density zones.
7. *Subtitle X § 101.7 - In calculating floor area ratio (FAR), the land area shall not include public streets and alleys, but may include interior private streets and alleys within the campus boundaries.*
The Commission concludes that the FAR calculation included in the campus plan did not include public streets but did include interior streets and driveways within the campus boundaries.
8. *Subtitle X § 101.8 - As a prerequisite to requesting a further processing for each college or university use, the applicant shall have submitted to the Zoning Commission for its approval a plan for developing the campus as a whole, showing the location, height, and bulk, where appropriate, of all present and proposed improvements including, but not limited to, the following:*
- a) Buildings and parking and loading facilities;*
 - b) Screening, signs, streets, and public utility facilities;*
 - c) Athletic and other recreational facilities; and*
 - d) A description of all activities conducted or to be conducted on the campus, and of the capacity of all present and proposed campus development.*

The Commission concludes that the Final Plans include all the required information. (Ex. 26A-26C.)

9. Subtitle X § 101.9 - *The further processing of specific buildings, structures, and uses within an approved campus plan shall be processed as a special exception unless the campus plan approval was included in an order granting a first-stage planned unit development (PUD) for the campus, in which case the further processing shall be in the form of second-stage planned unit development applications filed consistent with the conditions of the approved campus plan/PUD.*

The Commission concludes that the Application was properly filed as a special exception for a further processing to the original campus plan, as well as an amendment to the campus plan.

10. Subtitle X § 101.10 - *Within a reasonable distance of the college or university campus, and subject to compliance with Subtitle X § 101.2, the Zoning Commission may also permit the interim use of land or improved property with any use that the Zoning Commission may determine is a proper college or university function. The land need not be included in the campus plan. When a major new building that has been proposed in a campus plan is instead moved off-campus, the previously designated site shall not be designated for, or devoted to, a different major new building unless the Zoning Commission has approved an amendment to the campus plan applicable to the site; provided, that for this purpose a major new building is defined as one specifically identified in the campus plan.*

The Commission concludes that the Application is not proposing an interim use of property.

11. Subtitle X § 101.11 - *In reviewing and deciding a campus plan application or new building construction pursuant to a campus plan, the Zoning Commission shall consider, to the extent they are relevant, the policies of the District Elements of the Comprehensive Plan.*

In Z.C. Case No. 12-01, Commission concluded that the Campus Plan was not inconsistent with the policies of the Comprehensive Plan, including the Future Land Use Map, the Generalized Policy Map, the Upper Northeast Area Element, and the Brookland Small Area Plan. The Commission concludes that the Dining Hall will be consistent with the previous approvals and will not change the relationship of the Campus Plan to the Comprehensive Plan. (Ex. 3A.)

12. Subtitle X § 101.12 - *As an integral part of the application requesting approval of new building construction pursuant to a campus plan, the college or university shall certify and document that the proposed building or amendment is within the FAR limit for the campus as a whole, based upon the computation included in the most recently approved campus plan and the FARs of any other buildings constructed or demolished since the campus plan was approved.*

The Commission concludes that the new total FAR of 0.30 after the completion of the Dining Hall will be within the maximum 0.39 FAR permitted under the Campus Plan.

13. Subtitle X § 101.13 - *Pursuant to Subtitle Z § 405.1, as soon as the application is accepted, the Office of Zoning shall refer the application to the Office of Planning, the Department*

of Transportation, and the Department of Energy and Environment for review and written reports.

The Commission concludes that the Application was properly referred to all relevant District agencies. The Commission notes that the Office of Planning was the only agency to provide a report on the Application.

14. Subtitle X § 101.14¹ - *Approval of a campus plan shall be based on the determination by the Zoning Commission that the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps, subject to the special conditions specified in this section.*

The Commission concludes that the Dining Hall will be consistent with the scale of the existing buildings on the campus and the Campus Plan generally. The Commission also concludes that due to the Dining Hall's central location, lack of parking, and minimal traffic and loading impacts, it is unlikely to result in adverse impacts to neighboring properties.

“Great Weight” to the Recommendations of OP

15. The Commission is required to 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.); Subtitle Y § 405.8); *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).
16. The Commission finds OP’s recommendation that the Commission approve the Application persuasive and concurred in that judgment.

“Great Weight” to the Written Report of the ANCs

17. The Commission must give “great weight” to the issues and concerns raised in a written report of the 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 Y § 406.2.) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). 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) (citation omitted).”
18. The Commission finds the support of ANC 5A for the Application persuasive and concurs in that judgment. The Commission has no issues or concerns to which it can give great

¹ Subtitle X § 101.14 encapsulates the general Special Exception criteria of Subtitle X § 901.2.

weight from either ANC 5B or ANC 5E, as these ANCs did not submit any report in this case despite having received notice of the Application.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant's request to amend and further process the Campus Plan for the Catholic University as originally approved by Z.C. Order No. 12-01, as amended by Z.C. Order No. 12-01A. The conditions in Z.C. Order No. 12-01, as amended by Z.C. Order No. 12-01A, remain in full force and effect together with the following new Condition No. 18:

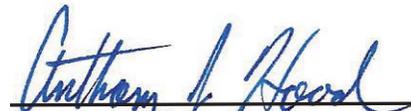
- 18. The Dining Hall shall be developed in accordance with the plans prepared by Perkins Eastman, dated July 19, 2019, and marked as Exhibits 26A through 26C of the record.

VOTE (May 20, 2019): 5-0-0 (Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, Peter G. May, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this order 12-01B shall become final and effective upon publication in the *DC Register*; that is, on January 3, 2020.

BY 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

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.