

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 12-01G
Z.C. Case No. 12-01G
The Catholic University of America
(Amendment to and Further Processing of an Approved Campus Plan)
March 7, 2024

Pursuant to notice, at its March 7, 2024 public hearing, the Zoning Commission for the District of Columbia (the “Commission”) deliberated upon the application (the “Application”) of The Catholic University of America (the “Applicant” or “University”) for the following relief under 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):

- An amendment of the University’s 2012-2027 Campus Plan (the “Campus Plan”) approved by Z.C. Order No. 12-01 (“Original Order”), as amended by Z.C. Order Nos. 12-01A, 12-01B, 12-01C, 12-01D, 12-01E, and extended by Z.C. Order No. 12-01F (collectively, the “Order”), pursuant to Subtitle X §101.1, 101.14, and 101.16; and
- A further processing pursuant to Subtitle X § 101.9 for Lot 44 in Square 3821 (“Main Campus”) (the “Property”) in the RA-1 zone to construct temporary housing on the Main Campus (the “Project”).

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

PARTIES

1. The following were automatically parties in this proceeding pursuant to Subtitle Z § 403.5:
 - a. The Applicant;
 - b. Advisory Neighborhood Commission (“ANC”) 5A, in which the district the Property is located and so an “affected” ANC pursuant to Subtitle Z § 101.8; and
 - c. ANCs 5B, 5E and 5F, which districts are located across a street from the Property, and so also “affected” ANCs pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

PRIOR APPROVALS

3. Pursuant to Z.C. Order No. 12-01, effective May 25, 2012, the Commission approved the University’s Campus Plan for 2012-2027.

4. Pursuant to Z.C. Order No. 12-01A, effective September 7, 2018, to permit the construction of a service building and surface parking lot on the North Campus, the Commission approved:
 - a. A modification of the Campus Plan, including a modification of Condition Nos. 3, 8, 10, 13 of the Original Order, pursuant to Subtitle X § 101.16;
 - b. A further processing pursuant to Subtitle X § 101.9; and
 - c. A special exception from the surface parking lot screening requirements of Subtitle C § 714.
5. Pursuant to Z.C. Order No. 12-01B, effective January 3, 2020, to permit the relocation of the University's dining hall and an increase in its size, the Commission approved:
 - a. A modification to the Campus Plan, including adding a new Condition No. 18 to the Original Order, pursuant to Subtitle X § 101.16; and
 - b. A further processing pursuant to Subtitle X § 101.9.
6. Pursuant to Z.C. Order No. 12-01C, effective May 14, 2021, to permit the construction of an enlarged Residence Hall/Chapel, the Commission approved:
 - a. A modification to the Campus Plan, including adding a new Condition No. 19 to the Original Order, pursuant to Subtitle X § 101.16; and
 - b. A further processing pursuant to Subtitle X § 101.9.
7. Pursuant to Z.C. Order No. 12-01D, effective May 21, 2021, to permit the construction of the new Conway School of Nursing, the Commission approved:
 - a. A modification of the Campus Plan; and
 - b. A further processing pursuant to Subtitle X § 101.9.
8. Pursuant to Z.C. Order No. 12-01E, effective March 25, 2022, to permit the construction of a solar facility on the West Campus, the Commission approved:
 - a. A modification of the Campus Plan; and
 - b. A further processing pursuant to Subtitle X § 101.9.
9. Pursuant to Z.C. Order No. 12-01F, effective September 15, 2023, the Commission approved an extension of its approval of the Residence Hall/Chapel in Order No. 12-01C pursuant to Subtitle Z §§ 705.2 and 705.3.

NOTICE

10. Pursuant to Subtitle Z §§ 302.6 and 302.7, the University mailed a Notice of Intent to file the Application (Exhibit ("Ex.") 3D and 3D1) on September 8, 2023, more than 45 days prior to filing the Application, to:
 - a. ANCs 5A, 5B, 5E, and 5F; and
 - b. The owners of all property within 200 feet of the Property.
11. Pursuant to Subtitle Z § 402.1, the Office of Zoning ("OZ") sent notice on January 19, 2024 of the March 7, 2024 public hearing to: (Ex. 6, 6A.)
 - a. ANCs 5A, 5B, and 5F;

- b. ANC 5A04, Single Member District Commissioner, in whose district the Property is located;
 - c. ANC 5A05, ANC 5B05, ANC 5F01, and ANC 5F02;
 - d. The Office of ANC;
 - e. The Office of Planning (“OP”);
 - f. The District Department of Transportation (“DDOT”);
 - g. The Department of Building (“DOB”);
 - h. The Department of Energy and Environment (“DOEE”);
 - i. The Office of Zoning Legal Division (“OZLD”)
 - j. The Councilmember for Ward 5, in whose district the Property is located;
 - k. The Chairman of the Council and the At-Large Councilmembers; and
 - l. The owners of all property within 200 feet of the Property.
12. OZ also published notice of the March 7, 2024 public hearing, in the January 26, 2024, *District of Columbia Register* (71 DCR 001087 *et seq.*), as well as the Commission’s calendar on the OZ website. (Ex. 6A.)
13. The Applicant provided evidence that it had posted and maintained notice of the public hearing on the Property in compliance with Subtitle Z § 402. (Ex. 8, 14.)

THE PROPERTY

14. The Property is located on the Main Campus of the University on the northern side and is set back at least 400 feet from Harewood Road, N.E. (Ex. 3.)
15. The Property is designated on the Campus Plan for student housing. (Ex.3.)
16. The Property is located in the RA-1 Zone District. (Ex. 3.)
17. The Project is proposed for Curley Court, which is the location formerly improved with 26 prefabricated modular temporary housing units; and the temporary housing units will utilize a locational address on Divinity Way. (Ex. 3; March 7, 2024 Public Hearing Transcript [“Tr.”] at 8.)

II. THE APPLICATION

18. On December 21, 2023, the University filed the Application. The Application proposed to install prefabricated temporary modular student housing units with approximately 125 beds for students and resident advisors (“RAs”). Nineteen, one story, two- bedroom units, will provide approximately 75 beds. Two, one story buildings, with 12 bedrooms in each will provide approximately 50 beds. This residential complex has been designed to form a small village. The buildings have sloped roofs and porches and have been sited to provide open landscaped courtyards with interconnecting pathways. The modular units have been sensitively arranged around the Community Garden to maintain this important feature of the University community. Additionally, a small utility shed, approximately 13’x15’, will

be needed to house the electrical switchgear equipment for the temporary complex. (Ex. 3-4.)

19. The proposed temporary housing would remain within the .39 Floor Area Ratio (“FAR”) allowed under the Campus Plan and the maximum 1.8 FAR permitted in the RA-1 zone by Subtitle X § 101.5. (Ex. 3.)

RELIEF REQUESTED

20. To construct the proposed temporary student housing, the Applicant requested the following relief as a special exception pursuant to Subtitle X §§ 101.9 and 901.2:
 - a. An amendment of the Campus Plan to authorize the temporary housing; and
 - b. A further processing to authorize construction of the temporary housing.

JUSTIFICATION FOR RELIEF

21. The Application asserted that it satisfied the requirements for a special exception because:
 - a. It met the special exception standards of Subtitle X-901.2, for both the amendment to the Campus Plan and the further processing thereof pursuant to Subtitle X §§ 101.2, 101.5, 101.8, 101.10 and 101.11, because the temporary housing would not have an adverse effect on neighboring properties since:
 - (i) The Property is sufficiently set back from nearby residential properties;
 - (ii) The setback will sufficiently buffer any noise or visual intrusions created by the units; and
 - (iii) The Project does not include parking and will not modify circulation patterns;
 - b. The temporary housing will comply with the 1.8 FAR limit for campuses in the RA-1 Zone District established by Subtitle X §§ 101.5 and 101.12; and
 - c. The temporary housing will be generally consistent with the parameters of the Campus Plan, although it was not specifically called for in the Campus Plan. It will not alter the Campus Plan’s compliance with the requirements of Subtitle X § 101; and the University satisfied the conditions of the Original Order. (Ex. 3.)
22. On February 16, 2024, the University submitted a supplemental statement, including more detailed plans for the temporary housing uses, with the following updates:
 - a. Adjusting the positions of the two 12-bedroom buildings, in the same general area, to increase the spacing between the buildings to 30 feet to provide improved daylighting and ventilation, and moving them to the south to reduce the amount of grading required;
 - b. A shared ADA ramp has been incorporated between the 12-bedroom buildings, replacing the individual ramps to each building and reducing the amount of paved sidewalks;
 - c. The height to the ridge of the front porch gables of the 12-bedroom units has changed from 17’-6” to 18’-0”;
 - d. Minor adjustments in the positions of the 19 two-bedroom units, in the same general layout, to provide additional space for pedestrian circulation through the complex;
 - e. Adjustments to the proposed bioretention areas to accommodate the above noted plan adjustments; and

- f. Minor adjustments to the positions of windows and porches to work better with the interior layouts of the units. (Ex. 11-11B.)
23. At the March 7, 2024 public hearing, the University:
- a. Presented the Application to the Commission with expert testimony from Debra Nauta-Rodriguez on behalf of the University; and
 - b. Explained the Application’s consistency with the Campus Plan, the need for the temporary housing, including the security concerns and desire to house students on-campus and the financial considerations for doing so. (Ex. 16; Tr. at 8-17.)
- Additionally, in response to questions from the Commission, the University explained its intent to minimize waste at deconstruction of the temporary housing and its intent to hold a community liaison committee meeting in Spring 2024. (Tr. 17-19.)

III. RESPONSES TO THE APPLICATION

OP

24. OP submitted a report on February 26, 2024 (“OP Report”) that concluded that the Application meets the applicable standards for amendments and further processing of an Campus Plan pursuant to Subtitle X § 101 because the temporary housing would:
- a. Not be inconsistent with the approved Campus Plan, which called for student housing in the location of the Project;
 - b. Have no significant impacts on surrounding neighborhoods because:
 - (i) It is setback from the adjacent community;
 - (ii) It will not modify existing circulation patterns;
 - (iii) It will not generate a significant amount of noise;
 - c. Would not be inconsistent with the Comprehensive Plan and would advance Comprehensive Plan goals of the Educational Facilities and Land Use Elements;
 - d. Have a relatively minimal impact on Comprehensive Plan racial equity goals and policies; therefore, the OP Report did not include disaggregated race and ethnicity data for the Planning Area in which the Property is located; and
 - e. For these reasons, the OP Report recommended approval of the Application. (Ex. 13; Tr. at 22-24.)
25. At the public hearing, OP testified in support of the application and explained that it did not include disaggregated race and ethnicity for the Planning Area because there would be little to no racial equity impact given the limited scope of the Project. (Tr. at 22-24.)

DDOT

26. DDOT submitted a report dated February 26, 2024 (“DDOT Report”) that concluded the proposal would not have adverse impacts on the District’s transportation network. It further noted that the area to be redeveloped has several trees the size of Special Trees that should be preserved and protected in coordination with the Ward 5 Arborist. DDOT noted no objection to the proposal. (Ex. 12.)
27. DDOT did not testify at the public hearing.

ANC

28. ANC 5A submitted a report dated February 28, 2024 (“ANC 5A Report”) stating that at its duly noticed public meetings on November 29, 2023 and February 28, 2024, at which a quorum of commissioners was present, the University presented the proposal. At the February 28, 2024 meeting, the ANC voted 7-0 to support the Application. The ANC noted that the Project is consistent with the use designated for the Property in the Campus Plan and that the temporary housing is needed to meet the University’s enrollment needs. It further noted that the 15-year term for the temporary housing would provide an adequate amount of time to pursue a permanent solution. (Ex. 15.)
29. ANC 5A did not testify at the public hearing and neither did the other affected ANCs, 5B, 5E, and 5F.

UNDECLARED TESTIMONY

30. Rosemary Lynch testified as “undeclared” on behalf of Father David Smith, the local superior of the Marian Fathers of the Immaculate Conception (“Fathers”), which neighbors the Property. Ms. Lynch’s testimony cited concerns about noise, sunbathing, and deliveries up and down Harewood Road resulting in damage to utility pipes. To remedy these concerns, Ms. Lynch suggested that soundproofing/noise reduction measures be incorporated both in the temporary units and in surrounding landscaping; that water drain off from Marist Hill be addressed across their driveway and section of Harewood Road; and that any broken water pipes resulting from traffic be repaired at the University’s cost. Finally, Ms. Lynch requested to be provided with notice of future community liaison committee meetings, to which the University agreed. (Tr. at 25-32.)
31. The PowerPoint presentation the University presented at the public hearing and submitted into the record included a landscape plan to reflect, in part, its efforts to address concerns raised by its neighbors, the Fathers, regarding potential noise generated by the students residing in the new units. The landscape plan proposed plantings will be chosen and located with the intent to mitigate noise generated by students. (See Ex. 16, Sheet 11.) In addition, during the public hearing the University testified that it had met with its adjacent neighbors that are embedded in the campus, the Fathers, and committed to a line of open communication in mitigating any of their concerns around construction impacts, visual screening, and noise. (Tr. at 11.) The University’s commitment is a condition of this Order.

CONCLUSIONS OF LAW

1. The Commission is authorized under the Zoning Act, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)) to approve a Campus Plan consistent with the requirements set forth in Subtitle X § 101 and Subtitle Z § 302.
2. Pursuant to Subtitle X § 101, the Commission shall evaluate an application for an amendment of a campus plan and further processing as a special exception:

Education use by a college or university shall be permitted as a special exception subject to review and approval by the Zoning Commission under Subtitle X, Chapter 9 after its determination that the use meets the applicable standards and conditions of this chapter. (Subtitle X § 101.1.)

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. (Subtitle X § 101.9.)

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. (Subtitle X § 101.14.)

3. Section 8 of the Zoning Act (*see also* Subtitle X § 901.2.) establishes that the Commission may grant special exception upon its determination that the special exception:
 - *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map;*
 - *Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map; and*
 - *Complies with the special conditions specified in the Zoning Regulations.*
4. For the special exception requested by the Application, the “specific conditions” are those of Subtitle X § 101, specifically:
 - *Application requirements — sufficiency of plans and FAR certification (Subtitle X §§ 101.8, 101.12.);*
 - *Limits on height and density of all buildings in a campus in an R, RF, RA, or RC-1 zone (Subtitle X §§ 101.5 - 101.7, 101.12.);*
 - *Limits on commercial activities (Subtitle X §§ 101.3, 101.4.);*
 - *Limits on college/university uses off-campus (Subtitle X § 101.10.);*
 - *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 (Subtitle X § 101.2.);*
 - *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. (Subtitle X § 101.11.)*
5. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific

regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Commission's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the [Commission] ordinarily must grant the application." (*First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981.) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).)

Specific Special Exception Requirements

6. Based on the case record and the Findings of Facts above, the Commission concludes that the Application satisfied the specific special exception requirements for the requested amendments to the Campus Plan and the further processing thereof as discussed below.
7. The Commission concludes that the Application included the site plan to satisfy the requirements of Subtitle X §§ 101.5-101.7, and 101.12. (Ex. 11A1-11A3.)
8. The Commission concludes that the proposed temporary housing complies with the height limits for a building in a campus in the RA-1 zone given that the maximum height of the housing will be approximately 18 feet.
9. The Commission concludes that the Application satisfied the limits on commercial uses for a college or university of Subtitle X §§ 101.3-101.4 because the amendments to the Campus Plan do not propose any commercial uses incidental to a university use as described in these subsections.
10. The Commission concludes that the Application satisfied the limits of college/university uses off-campus of Subtitle X § 101.10 because the amendments to the Campus Plan do not propose any off-campus interim or permanent uses as described in this subsection.
11. The Commission concludes that the Application satisfies Subtitle X § 101.2's requirement that the Campus Plan locate the temporary housing to not be objectionable to neighboring properties because:
 - The Property is set back from adjacent properties;
 - The facility will not generate significant noise; and
 - Will not modify existing circulation patterns.
12. The Commission concludes, pursuant to Subtitle X § 101.11, that the requested Campus Plan amendment and further processing are not inconsistent with the relevant District Elements of the Comprehensive Plan as the proposal will further policies of the Comprehensive Plan's Educational Facilities and Land Use Elements. The Commission finds that any racial equity impacts resulting from the proposal would be minimal; therefore, disaggregated race and ethnicity data for the Property's Planning Area was not relevant to the Commission's Comprehensive Plan consistency evaluation of this Application.

General Special Exception Standards (Subtitle X § 101.1, 101.14, 901.2.)

13. Based on the case record and the Findings of Facts above, the Commission concludes that the Application satisfies the general special exception standards for the requested amendments to the Campus Plan and the further processing thereof because:
- The requested Campus Plan amendments and further processing are in harmony with the purpose and intent of the Zoning Regulations pursuant to Subtitle X § 901.2(a) because the proposed temporary housing is consistent with the University's and the city's goals to locate university housing on campus and minimize impacts on adjacent communities;
 - The requested relief is further in harmony with the purpose and intent of the Zoning Regulations because the proposed density and height are within permitted height and bulk as set forth in the approved Campus Plan; and
 - The requested Campus Plan amendments and further processing will not tend to affect adversely the use of neighboring property pursuant to Subtitle X § 901.2(b) for the reasons discussed above.

"Great Weight" to the Recommendations of OP

14. The Commission must give "great weight" to the recommendations 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 (2001).) and Subtitle Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
15. 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 ANC

16. The Commission must give "great weight" to the issues and concerns raised 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 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).)
17. The Commission concurs in the ANC 5A Report's support for the Application. The Commission notes the ANC Report's conclusion that the temporary housing will support the University's goals to house students on campus, minimizing impacts on adjacent residential communities.

18. ANCs 5B, 5E and 5F did not submit written responses to the Application, and as such, 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 University has satisfied its burden of proof and therefore **APPROVES** the Application's request for:

- An amendment, pursuant to Subtitle X §§ 101.1, 101.14, and 101.16, to The Catholic University's 2012-2027 Campus Plan approved by Z.C. Order No. 12-01, as modified by Z.C. Orders No. 12-01A, 12-01B, 12-01C, 12-01D, 12-01E, and extended by Z.C. Order No. 12-01F (collectively the "Order"); and
- A further processing approval, pursuant to Subtitle X § 101.9, to authorize the construction of temporary housing. The conditions of the Order as amended by the Orders referenced above shall remain in full force and effect, except that new Condition Nos. 23 and 24 shall be added, to read as follows:

23. The Campus Plan shall be amended to authorize the construction of temporary housing units in accordance with the plans marked as Exhibit 11A1-11A3 of the record in Z.C. Case No. 12-01G. The University shall file an application for a building permit to construct the temporary housing units within two years after the effective date of this Order pursuant to Subtitle Z § 702.2, with construction to begin within three years after the effective date of this Order pursuant to Subtitle Z § 702.3. The temporary housing units shall be permitted for a maximum period of 15 years from the date of issuance of the certificate occupancy for the temporary housing units.

24. The University will provide the Fathers with a point of contact who will be available to discuss concerns regarding noise mitigation measures, stormwater drainage issues and damage caused to the Fathers' property by the construction of the modular units approved herein. The University will also include the Fathers in its outreach to provide information concerning the date and time of its community liaison committee meetings, as required in Condition No. 5 of Order No. 12-01.

Final Action


Vote (March 7, 2024): 4-0-1

(Joseph S. Imamura, Tammy Stidham, Anthony J. Hood and Robert E. Miller to approve; 3rd Mayoral Appointee seat vacant, not voting.)


In accordance with the provisions of Subtitle Z § 604.9, this Order No. 12-01G shall become final and effective upon publication in the *District of Columbia Register*; that is, on May 10, 2024.

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

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.