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Appeal of Determination Letter re 608 Massachusetts Ave N.E. to Bray 6-4-13 pursuant to 11 DCMR §§ 3000 et Seq. and 3100 et Seq., from the zoning determination letter of Matthew Le Grant, Zoning Administrator for the Government of the District of Columbia Department of Consumer and Regulatory Affairs, Office of the Zoning Administrator, in the issuance of his zoning determination letter allowing as a matter of right the conversion of 608 Massachusetts Ave, N.E., in the R-4 District (Square 0865, Lot 0060) — currently the offices of the American Society of Interior Designers — to a University of Georgia dormitory to house up to 35 students for a semester at a time, along with a resident Program manager and space for seminars and visiting faculty.

BACKGROUND

This appeal challenges Zoning Administrator Matthew Le Grant's zoning determination allowing, as a matter of right, the conversion of the American Society of Interior Designers' office at 608 Massachusetts Ave. N.E., Washington, D.C., an R-4 residential district, into an auxiliary University of Georgia campus on Capitol Hill. The determination was issued on the premise that: 1) the proposed use qualifies as a dormitory; and 2) there are similar facilities in Washington, D.C., that have been permitted as dormitories for similar university programs. The determination is wrong for several reasons. First, the proposed design does not qualify as a dormitory under Webster's definition. Second, the property design is more accurately described as a "stand-alone facility," or campus, of the University of Georgia in Washington, D.C., requiring that the University of Georgia submit a campus plan to the Zoning Commission before the dormitory can be permitted as a special exception. Third, the facility is an apartment complex rather than a dormitory, which would require, at a minimum, 900 square feet per apartment under R-4 zoning rather than the proposed 88-135 square feet per person.

The Zoning Administrator's erroneous interpretation of dormitory and failure to require a campus plan, as mandated by the zoning laws, would permit virtually any property owner or organization to convert a townhouse (or any other structure zoned R-4) into a densely populated Washington, D.C. "dormitory," as a matter of right, regardless of the effects on residential neighbors, parking, or the character of the residential neighborhood. Any institution—whether educational, religious, or for-profit—could open a Washington, D.C., campus in any R-4 residential neighborhood under the guise of a "dormitory"—even though the "primary purpose" of the R-4 designation is "the stabilization of remaining one-family dwellings." With more and more institutions viewing a Washington "campus" as desirable, the Zoning Administrator's interpretation not only fails to satisfy the requirements of the zoning regulations, but threatens the historic character of the Capitol Hill residential neighborhood.

THE PROPERTY

The subject property is an office building, owned by the American Society of Interior Designers, located at 608 Massachusetts Ave N.E. Washington, D.C., in the R-4 Zone District.

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The subject property comprises around 7,000 square feet of land area and is bounded by Massachusetts Avenue N.E. on the south and C St. N.E. to the north. The boundaries to the east and west are slightly more complicated. On the west, the Massachusetts Avenue side of the subject property is bounded by, i.e., shares a party wall with, a single-family residential home. On the east, the Massachusetts Avenue side of the subject property is also bounded by a single-family residential home. The subject property's driveway separates that house, 614 Massachusetts Ave N.E., from the subject property, though toward the C St. N.E. side the properties are separated by only about five feet. As the Arent Fox Memo, filed by Kinley R. Bray to Matthew LeGrant on April 10, 2013, indicates, the C Street side of the subject property is bounded by a public alley to the east and a private alley to the west.

The property is currently in use as a non-profit office, pursuant to a special exception granted in BZA Order No. 14244. The special exception was granted subject to several conditions including, but not limited to, a requirement that the normal hours of operation shall not exceed 8:30 A.M. to 6:00 P.M. Monday through Friday.

THE PROPOSED USE

According to the Arent Fox memo, "[t]he University of Georgia is currently negotiating for the purchase of the Property, and would like to use it to house students participating in the University's Semester in Washington Program (the "Program").... If the Proposed Use is permitted, the University will use the Property to house up to 35 students for a semester at a time, along with a resident Program manager and space for visiting faculty." See Arent Fox Memo from Kinley R. Bray to Matthew LeGrant, Zoning Administrator, at 2 (Apr. 10, 2013). The memo further explains the intended use, noting that the property will include or be used for: 1) weekly seminars and guest lectures; 2) facilities to "support independent and group studies"; 3) lecture facilities; 4) offices for Program Staff; 5) an apartment for the resident Program Manager; 6) a suite for visiting faculty; 7) common laundry and lounges; 8) a kitchenette on each floor; 9) conference rooms on the residential floors; and 10) a full-catering kitchen, dining facilities, and multipurpose room. *Id.* According to Arent Fox, 87.3 percent of the square footage will be for "housing and housing-related uses (e.g., laundry, lounge, kitchenette, study rooms)." *Id.*

EXCEPTIONS

As explained below, the proposed use is not a dormitory. However, even if the property were to satisfy the definition of dormitory, a college or university dormitory is subject to 11 DCMR § 210 providing, *inter alia*, that a use as a *college or university dormitory* is permitted in a residential district only after a special exemption is granted.

The Proposed Use Is Not a Dormitory

Pursuant to 11 DCMR § 330.5(i), a dormitory is allowed as a matter of right in the R-4 Zone, but Zoning Regulations do not define dormitory. “Words not defined [in the Regulations themselves] shall have the meanings given in Webster’s Unabridged Dictionary.” 11 DCMR § 199.2(g). Webster’s Third International Unabridged Dictionary defines “dormitory” as “1: a room intended primarily to be slept in; esp.: a large room providing sleeping quarters for many persons and sometimes divided into cubicles. 2: a residence hall providing separate rooms or suites for individuals or for groups of two, three, or four with common toilet and bathroom facilities but usually without housekeeping facilities.” The proposed use for 608 Massachusetts Avenue does not satisfy the first definition because the facility is not principally designed to “provide[] sleeping quarters.” Rather, it is designed as a satellite campus of the University of Georgia providing classrooms, offices, and other academic facilities. A significant portion of the facility is dedicated to purposes other than providing sleeping accommodations.

The second definition of dormitory is similarly inapplicable to the proposed facility, as the secondary dictionary definition merely addresses how a facility principally designed for sleeping may be subdivided. The fatal flaw in this plan is that it is principally designed as a “standalone” academic facility, not merely sleeping quarters. *See* Arent Fox memo at 3. In addition to student suites, there is a guest or visitor’s suite, the program director apartment, kitchen and dining facilities, lounge areas, study rooms, “conference/lecture facilities that can accommodate all Program participants in a single space,” program offices, a “catering” kitchen, and a “multipurpose room.” In fact, according to the proposed architectural drawings, only 17.5 percent to 22 percent of the square footage will be used for student sleeping quarters. This is counter to the Webster definition. Moreover, the Arent Fox memo also notes that the dorms in Athens, Georgia, do not include dining facilities or study rooms, as they have access to separate dining halls and campus libraries. Here, the University of Georgia has simply included the dining facilities and moved the library, or “study rooms” into one, self-contained building. It is clear that Webster’s definition did not contemplate lecture halls, guest suites, a catering kitchen in addition to student kitchens, and spaces for entertaining and common studying. Those uses are beyond the scope of the dormitory definition. Accordingly, the proposed dormitory does not meet the definition.

Furthermore, the proposed purpose of the subject property does not comport with the traditional understanding of a Capitol Hill dormitory. Looking at the history of dormitories in the Capitol Hill area is informative when contemplating the reasons behind allowing dormitories as a matter of right in an otherwise residential neighborhood. *See* 11 DCMR §§ 3104.1 and 3104.3 (R-4 Districts: General Provisions explaining that “[t]he R-4 District is designed to include those areas now developed primarily with row dwellings...,” and “[v]ery little vacant land shall be included within the R-4 District, since its *primary purpose shall be the stabilization of remaining one-family dwellings*[,]” and, finally, “the R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) Districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement”)(emphasis added).

Upon information and belief, the dormitories on Capitol Hill served specific needs that are, for the most part, no longer relevant considerations. For example, in 1918 Congress passed “An Act To Authorize the President to provide housing for war needs.” These buildings were necessary infrastructure to handle the needs of the government during World War I. “The buildings built here were to house only women, and in fact women who were working for the federal government.” *See* Robert Pol, *Lost Capitol Hill: The Union Plaza Dormitories* (Jan. 10, 2011). The buildings were eventually converted from dormitories to office space. *Id.* In 1887 the Thompson-Markward Hall was chartered by Congress as the Young Woman’s Christian Home. Since then it has “provided housing to thousands of young women in the Nation’s Capital.” *See* Thompson-Markward Hall: Your Home on the Hill, *available at* <http://www.tmhdc.org/>. This was a space where “young women could be cared for at a moderate price while recovering from illness or operation.” *Id.* It was converted entirely into a dormitory for women in 1938. Current rules require that all guests must report to the front desk and leave an ID. Male guests are welcome on the lobby level only. Residents receive a key to their personal room only, there is a dress code, and food may not be taken from the dining hall to personal rooms. *Id.* Additionally, housing for Senate and House pages was also a reason to include dormitories on Capitol Hill. *Id.* As part of that program, pages were not allowed to bring personal vehicles with them, thus reducing parking concerns around page dormitories. The House of Representatives no longer utilizes pages, and there is no longer a significant need for women’s only housing for federal government employees.¹ Accordingly, although some dormitories have been allowed as a matter of right in R-4 zones, the intent was not to allow state university auxiliary campuses on Capitol Hill, an area whose primary zoning purpose is to stabilize the remaining one-family homes. *See, e.g.*, 11 DCMR § 210.2 (“Use as a college or university shall be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions.”) Moreover, dormitories in the area historically have been understood as places with strict rules on, *inter alia*, visitors, music, parking, and alcohol. The rules that apply at University of Georgia dormitories, situated among other dorms on the University of Georgia’s vast campus, are utterly unsuited to a one-family residential neighborhood in Washington, D.C. Were the Zoning Administrator’s determination that this proposed use satisfies the definition of dormitory be upheld, universities here and across the country could turn virtually any property in an R-4 zone, with no public notice, into a “dormitory” as a matter of right. It appears, moreover, that the proposed facility could receive designation as a non-profit university from the D.C. government. This would establish a new precedent for other out-of-state universities to convert existing buildings for their use and perhaps exempt them from the heavy tax burden that is carried by the residential and commercial property owners. This is neither the goal, intent, nor vision for R-4, and this use does not satisfy the definition of dormitory as understood by Webster and context.

¹ The history of these dorms provides background information about dormitories on Capitol Hill, but it should be noted that Thompson-Markward Hall is not in an R-4 zone.

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In short, the history and usage of dormitories on Capitol Hill did not contemplate the usage the University of Georgia envisions. Under any reading of the definition, the University of Georgia facility does not meet the dictionary requirements. Although lounges, study rooms, multipurpose rooms, kitchens, classrooms, offices and facility manager apartments may be typical for dorms in Athens, Georgia, (*See Arent Fox Memo*, at 3) they are not part of a dormitory as defined by Webster. Nor are those uses consistent with the rationales behind R-4 zoning. The University of Georgia itself notes that 12.7 percent of the gross floor area will not be used as a dormitory, thus acknowledging that the property is not merely a dormitory. Moreover, it is unclear exactly how that 12.7 percent measurement was reached, as the proposed architectural drawings suggest that the entire first floor, apparently one-third of the premises, will be used for non-dormitory uses, plus portions of the second and third floors and the entire parking garage. In total, the non-“dormitory” use of the building appears to be well in excess of one-third of the building. The proposed use, a self-contained campus facility with lounges, study rooms, multipurpose rooms, kitchens, classrooms, offices, a manager apartment, and visitor suites is simply not a dormitory.

College or University Dormitories Require Approval as a Special Exception

Even if a determination were somehow reached that the proposed purpose satisfies the criteria for a dormitory, the proposed *university* “dormitory” is not allowed as a matter of right in an R-4 Zone. Although dormitories in general may be allowed as a matter of right, Zoning Regulations specifically contemplate the use of college or university dormitories in residential neighborhoods, and permits them only as a special exception upon approval by the Zoning Commission. “Use as a college or university that is an academic institution of higher learning, including a college or university ... dormitory ... proposed to be located on the campus of a college or university, shall be permitted as a special exception in an R-1 District if approved by the Zoning Commission under § 3104, subject to the provisions of this section.” 11 DCMR § 210.1. Section 210.1, which applies in R-1 districts, is incorporated by reference into the regulations for R-4 districts. *See* 11 DCMR § 330.5(a), 11 DCMR § 320.3(a), 11 DCMR § 300.3(a); *see also Georgetown Residents Alliance v. D.C. Board of Zoning Adjustment*, 816 A.2d 41, at*46 n. 9 (D.C. Ct. App. 2003). In short, the Zoning Regulations put special restrictions on university dormitories in residential neighborhoods, which were not addressed in the zoning determination.

Although only one building, the University of Georgia’s proposed use of 608 Massachusetts Ave. N.E. would become in actual fact “The University of Georgia Campus in Washington, D.C.” – a full-service outpost of the University of Georgia on Capitol Hill. The premises would be a “standalone” building, as the Arent Fox memo explicitly states, that includes sleeping quarters, offices, catering facilities, visiting faculty suites, space for classes and guest lecturers. The building supports independent and group study, traditionally done in a library, and can accommodate all Program participants in a single space, including offices for Program staff. As such, the building is a campus, defined by Webster’s Third International Unabridged Dictionary as: “1: the grounds and buildings of a university, college, or school....c: a geographically

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separate part of a university. d: a college, school, or division of a university that is complete in itself in having its own faculty and physical facilities but that is linked to the university by a common president and policy-making body.”

Zoning regulations in the District of Columbia require that “[a]s a prerequisite to requesting a special exception for each college or university use, the applicant shall have submitted to the Commission for its approval a plan for developing the campus...” 11 DCMR § 210.4; *see also* Zoning in the District of Columbia, Office of Zoning Government of the District of Columbia, at 7, *available at* http://dcoz.dc.gov/dcoz_brochure_013111.pdf (“Large institutions, such as colleges and universities, are required to prepare and submit a plan to the ZC for approval. After a ‘campus plan’ is approved, future development of the ‘campus’ must be in accordance with the plan. A campus plan is treated in the same manner as a Special Exception.”). Finally, “[u]se as a college or university shall be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions.” 11 DCMR § 210.2.

The University of Georgia is a large academic institution and use of the property as a college or university dormitory is subject to this campus plan requirement in the identical manner as all other colleges and universities in the District. The University of Georgia should be required to undergo the same strict scrutiny as other colleges and universities located in the District of Columbia that propose to build dormitories in or next to residential neighborhoods. *See, e.g.*, “D.C. Zoning Commission’s extensive review of AU Campus plan extends into fall,” *The Eagle* (July 15, 2011) (“The Office of Planning, which oversees the city’s development, recommended the Commission approve the Campus Plan subject to AU:...setting East Campus buildings back 65 ft. from the east property line near the Westover Place townhomes.”). Likewise, Georgetown University spent months working with the Zoning Commission and the Georgetown neighborhood to develop its campus plan through 2017, which included such detailed requirements as enrollment, student conduct policies, and development projects. *See e.g.*, Brady Holt, “Zoning Panel Quickly Backs GU Plan,” *The Georgetown Dish* (July 18, 2012). This type of oversight for campuses, which 608 Massachusetts Ave. N.E. would be, is fundamental to protecting the integrity of the neighborhood and making sure the “objectionable conditions” are mitigated as effectively as possible. Moreover, it is required by Zoning Regulations. 11 DCMR § 210.2.

The proposed use of the subject property would turn an office building that is limited to 8:30 am to 6:00 pm regular use Monday through Friday into a University of Georgia D.C. campus with limited supervision. As such, public policy and zoning laws require that a Campus Plan be submitted and approved in order for a special exception. In addition, requiring a campus plan would allow appropriate notice and comment period for neighbors and appropriate due process, given the potential density influx, noise, increased parking problems, traffic, congestion, and alcohol and smoking violations.

The Proposed Dormitory is More Comparable to an Apartment Building

Furthermore, the proposed design is more comparable to an apartment building than a dormitory. Section 199 of the Zoning Regulations defines an “apartment” as “one (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and the control of the occupants of those rooms.” Although the student suites do not have their own individual kitchens en suite, the proposed structure is more comparable to an apartment complex than a dormitory. Each suite appears to have its own bathroom facility. It appears that at least one of the units is likely to contain both a kitchen and bathroom facility. Finally, there will be a kitchen facility available exclusively for the use of and the control of the occupants of the rooms on each floor. Since there is no regular meal service, it seems that these kitchens are designed for the regular and exclusive use of the individuals on each floor, comparable to an apartment setup. This type of apartment-like setup should not be allowed in an R-4 zone as a dormitory as a matter of right merely because the University of Georgia has proposed kitchens on each floor rather than in the individual suites.

Moreover, public policy mandates that this setup, that intends to add 35 or more people to a residential block – a building surrounded by single-family homes, many with small children – undergo at least as much scrutiny and be subject to the same square-footage requirements as apartments. The entire character of the R-4 zone is subject to change from single-family dwellings to student housing if these hybrid buildings, which do not meet the definition of dormitory, are allowed as a matter of right. Indeed, under the Zoning Administrator’s determination, which says nothing about colleges or students or academic ownership, it becomes possible to convert any building in the R-4 zone into multi-unit housing simply by calling it a dormitory.

The Proposed Use is Not Similar to Other Dormitories

Finally, as noted above, other dormitories in the District of Columbia are part of campuses that must be approved as part of a campus plan. Howard, Georgetown, Gallaudet, American, Trinity and other colleges and universities in the District must submit and abide by campus plans. The Arent Fox memo refers to a Howard University dorm and to a Cornell University building at 2148 O St. N.W. The Howard University dorm is likely part of a general campus plan. The Cornell University facility, upon information and belief, is an apartment building, not a dormitory. Moreover, it is not located in a similar residential neighborhood, as the Arent Fox memo states. Unlike R-4, R-5-B zoning, the zoning designation for the Cornell building’s location, is more dense, allowing as a matter of right medium/high density development of general residential uses, including apartment buildings. Additionally, another D.C. facility operated by Stanford University in Woodley Park at 2661 Connecticut Avenue, N.W., Washington, D.C. 20008 is located in a non-residential zone, C-2-B, that permits matter-of-right medium density development, including office, retail, housing, and mixed uses to a maximum lot occupancy of 80 percent for residential use and 100 percent for all other uses.

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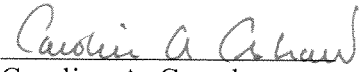
If, as the Arent Fox memo asserts, the Cornell program is comparable to the University of Georgia program, the University of Georgia should also be considered an apartment building and abide by all relevant zoning requirements. Moreover, upon information and belief, the Cornell program is staffed by three graduate students, one live-in professional, a building manager and two other staff — significantly more oversight than that proposed at the University of Georgia campus, which would be located in a significantly less dense residential neighborhood. Professionals in the industry have indicated that one live-in program administrator is not sufficient to monitor appropriately any consumption of alcoholic beverages and other rules and regulations allegedly mandated by the University of Georgia Code of Conduct. In short, the proposed use is not similar to other dormitories.

CONCLUSION

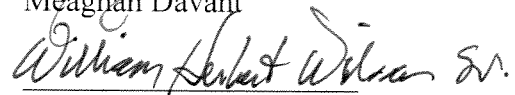
The proposed use of 608 Massachusetts Ave N.E. should not be permitted as a matter of right as it does not meet the Webster's definition of "dormitory." It appears that more than a third of the subject property will not be used as a dormitory. Even if the building were deemed consistent with dormitory use, however, it is a university dormitory that is not permitted as a matter of right. As a university dormitory the University of Georgia is required to obtain approval of a campus plan by the Zoning Commission and to receive a special exception. Moreover, the use of such a building is not comparable to other similar programs, like Stanford and Cornell, both of which are sited in zoning districts far more dense than the R-4 residential zone, e.g., the Cornell building is an apartment building in a neighborhood zoned for apartments. Finally, public policy dictates that allowing such use in an R-4 zone pursuant to the Zoning Administrator's determination utilizes an anomaly in the R-4 zone that will become a loophole allowing any building in R-4 to become a dormitory, substantially altering the neighborhood in its entirety while allowing neighbors no recourse through the D.C. zoning procedures.

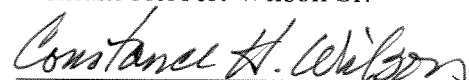
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Respectfully,


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