

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NOS.: 06-11 & 06-12

As Secretary to the Commission, I hereby certify that on **FEB 23 2010** copies of this Z.C. Order No. 06-11A/06-12A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ATTESTED BY:

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ZONING COMMISSION
District of Columbia

CASE NO. 06-11

EXHIBIT NO. 267

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ZONING COMMISSION
District of Columbia
CASE NO.06-11
EXHIBIT NO.267

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-11A/06-12A

Z.C. Case Nos. 06-11 and 06-12

**Applications of George Washington University for Special Exception Approval of a
Campus Plan and for Approval of a First-Stage Planned Unit Development and
Related Zoning Map Amendments for the Foggy Bottom Campus**

PROCEDURAL ORDER ON REMAND

This proceeding concerns two applications submitted by the George Washington University (“Applicant” or “University”) concerning its Foggy Bottom campus: Z.C. Case No. 06-11, an application for special exception approval of “The Foggy Bottom Campus Plan: 2006-2025” (“Campus Plan”); and Z.C. Case No. 06-12, an application for review and first-stage approval of a planned unit development and related amendments to the Zoning Map of the District of Columbia applicable to University-owned properties within the campus boundaries. The Zoning Commission for the District of Columbia (the “Commission”) consolidated the applications and considered Case No. 06-11 pursuant to §§ 210, 3035, and 3104 of the Zoning Regulations, and Case No. 06-12 pursuant to chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. By order effective October 26, 2007, the Commission approved the applications subject to conditions (Z.C. Order No. 06-11/06-12).

Parties to this proceeding, in addition to the Applicant, are Advisory Neighborhood Commission (“ANC”) 2A, the Foggy Bottom Association (“FBA”), and the West End Citizens Association (“WECA”). FBA appealed the Commission’s decision to the District of Columbia Court of Appeals (“Court of Appeals” or “DCCA”). By decision dated September 3, 2009, the Court of Appeals affirmed the Commission’s decision except to remand “for further proceedings with respect to the method of counting students.” (*Foggy Bottom Association v. D.C. Zoning Commission*, 979 A.2d 1160, 1176 (D.C. 2009).)

On January 28, 2010, the Commission received unsolicited correspondence from FBA requesting a hearing. The Applicant expressed its opposition through a letter dated February 4, 2010. Since the Commission did not solicit the parties’ views on how to proceed on remand, it will not respond directly to either communication.

Court of Appeals Decision

The pertinent portion of the Court of Appeals ruling that resulted in this remand is as follow:

One of the more contentious issues during the hearings was the method of calculating the number of students using the Foggy Bottom campus, for the

purpose of enforcing limits. ... The University proposed a “primary relationship” test, which would, in general, count all students who either live or take classes on the Foggy Bottom campus, but exclude those students who either reside or take all their classes at GW’s satellite campus, Mount Vernon. FBA advocated an “intensity of use” test, whereby all students using the Foggy Bottom campus would be included, regardless of whether they were also counted in a different campus’s plan. The Commission adopted GW’s “primary relationship” test without much analysis

...

The Commission did not address FBA’s argument that all students coming to the Foggy Bottom campus add to the strain on the neighborhood, and therefore should be counted in the campus plan, regardless of whether those students are also accounted for in the Mount Vernon plan.

...

Because the Commission did not demonstrate a rational connection between its findings of fact and its conclusion, we remand to give the Commission the opportunity to articulate its reasoning.

979 A.2d at 1173-1174.

Request for Proposed Order

Pursuant to the remand instructions, the Commission will issue an order to better “articulate its reasoning” as to why the primary relationship test proposed by the Applicant should be used with respect to the method of counting students rather than the intensity of use test proposed by FBA.

To aid it in this process, the Commission requests the Applicant, as the prevailing party on this issue, to provide a proposed order on remand that cures the deficiencies found by DCCA. The proposed order should contain such findings of facts and conclusions of law as are required. Each finding must indicate the transcript page or the exhibit that supports the statement. A copy of all referenced transcript pages and exhibits shall be filed with the proposed order. If an exhibit is voluminous, only the pages relevant to the finding need be provided. If applicable, the conclusions of law should include transcript references to the portions of the Commission’s deliberations relied upon, and those pages should be submitted as well.

The Applicant shall file and serve its proposed order no later than March 20, 2010 and shall also make an electronic version available to the other parties and to the Land Use and Public Works Section of the Office of the Attorney General.

FBA, WECA, and ANC 2A may each provide a revised version of the proposed order for the sole purpose of making such corrections to the Applicant's characterization of their respective positions or the Commission's rationale as each considers necessary. New language must be underlined and deleted language shown in strikethrough. Any additional or revised factual finding must indicate the transcript page or exhibit that supports the addition or revision made. A copy of all referenced transcript pages and exhibits shall be filed with each revised order. If an exhibit is voluminous, only the pages relevant to the finding need be provided.

Any revised order shall be filed and served no later than fourteen days after the Applicant serves its proposed order, computed in accordance with 11 DCMR § 3001.

No other filings that bear upon the substances of this remand will be accepted.

This Order was approved by the Commission in an executive session held on February 22, 2010.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING