GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



I

Application No. 16553-I of the George Washington University, pursuant to 11 DCMR § 3104.1, for a special exception for the review and approval of the University Foggy Bottom Campus Plan – Years 2000-2010 under sections 210 and 507.

DECISION DATE: February 24, 2004

ORDER ON SECOND REMAND

Preliminary Matters. Following the Board's March 29, 2001 final Order in this proceeding, the George Washington University ("University" or "Applicant") filed a petition for review with the District of Columbia Court of Appeals. It also filed a civil action in the United States District Court for the District of Columbia challenging the constitutionality of the Order. On June 15, 2001 the district court issued a preliminary injunction preventing enforcement of Condition No. 9 of the March 29, 2001 Board Order during academic year 2001-2002, or until further order of the court.

After issuance of the preliminary injunction by the district court, the Office of the Corporation Counsel, with the consent of the Board, filed a motion in the District of Columbia Court of Appeals to remand the case to the Board for further consideration of the Board's decision. On July 31, 2001, the Court of Appeals remanded the case without limitation as to the scope of the remand proceeding. The Board held evidentiary hearings on September 17 and 21, 2001, issued a proposed Order, and then a Final Order on Remand, effective January 23, 2002, that incorporated and adopted the March 29, 2001 Order, except as revised.

The University again sought a preliminary injunction before the district court and the parties filed cross motions for summary judgment. On April 12, 2002, the district court entered a declaratory judgment holding that Condition No. 9 (except the unchallenged reporting requirement) and Condition No. 10 violated substantive due process, but upholding the amended Order and the Zoning Regulations against other challenges. On appeal, the United States Court of Appeals reversed the district court judgment to the extent it had invalidated portions of the Order. *See George Washington University v. District of Columbia*, 318 F.3d 203 (D.C. Cir. 2003). The Supreme Court denied further review. *See George Washington University v. District of Columbia*, – U.S. –, 124 S.Ct. 155, 157 L.Ed.2d 45 (2003).

On September 11, 2003, the District of Columbia Court of Appeals issued its decision in *George Washington University v. BZA*, 831 A. 2d 921 (D.C. 2003), which affirmed the Board Order in major part but invalidated Condition No. 9(f) and Condition No. 9(a). The Court upheld Condition No. 9(b) to the extent it imposed on-campus housing obligations to be met after August 2006 and Condition No. 10, under which the University must require freshmen and

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sophomores to reside in university housing within the campus plan boundary established by the Board. The Court maintained in place its stay of condition 9(b) to the extent it related to the pre-August 2006 housing requirements. The Court also deemed part of Condition No. 15(e) moot in light of intervening actions by the Department of Motor Vehicles.

The Court of Appeals sustained Condition No. 8 (capping the total number of students, faculty, and staff) and Condition No. 10 (requiring the University to house freshmen and sophomores on campus) but invited the Board to give further consideration to both Conditions. The Court stated:

> If Condition 10 imposes serious hardship on the University, the University is, of course, free to request the BZA, following this remand, to amend its order. ... Indeed ... a negotiated resolution of the issue may be possible and would undoubtedly be in the interests of justice.[N31]
>
> [N31]Although the University did not preserve its objection to Condition 8, the parties and the Board may also wish to consider whether the faculty cap on that Condition reasonably serves the land use purposes of the Board's order.

George Washington University v. BZA, 831 A.2d 921, 952 (D.C. 2003).

Effective December 8, 2000, the authority to hear and decide new campus plan applications, and non-minor modifications to approved campus plans, became exclusively vested in the Zoning Commission. 11 DCMR §§ 3035. Since that time, the Zoning Commission has heard and decided several campus plan applications and granted numerous further processing requests, including five under this campus plan.[1] In addition, the Commission granted GW's request to modify a planned unit development with respect to the new location of the Elliot School of International Studies (which resulted in that facility being included within the campus boundaries).[2] Currently, the Commission is considering the University's request to modify a further processing granted under the previous campus plan[3] and to approve a planned unit development for a new dormitory.[4] In contrast, the Board's last consideration of the merits of a campus plan request was its earlier remand proceeding in this case, which concluded with the issuance of the January 23, 2002 Order on Remand. There has also been a substantial change in Board membership since approval of the March 29, 2001, order adopting Conditions 8 and 10. Only one Member who participated in that decision remains on the Board, and that person is the Chair of the Zoning Commission.

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[1] *See* Zoning Commission Order No. 953, April 3, 2002 (enclosure of terraces on Smith Hall School of Art); Zoning Commission Order No. 954, April 3, 2002 (construction and use of new School of Business and Public Management); Zoning Commission Order No. 957, April 3, 2002 (construction and use of new dormitory at 607 23rd Street, N.W.); Zoning Commission Order No. 958, April 3, 2002 (construction and use of new dormitory at 616 23rd Street, N.W.); and Zoning Commission Order No. 02-03, May 24, 2002 (area variance for closed court on new dormitory at 616 23rd Street, N.W.).

[2] Zoning Commission Order No. 746-C, August 16, 2002.

[3] Zoning Case No. 02-26 (modification of conditions of approval of Lerner Health & Wellness Center).

[4] Zoning Case No. 03-29 (new residence hall planned unit development at 2025 F Street, N.W.)

Under these circumstances, the Board has unanimously concluded that the Zoning Commission's familiarity with recent campus plan applications and its review of the specific further processing and PUD requests made by GW place it in a better position to determine whether and how to address any request by the University to amend Conditions 8 and 10. The Board therefore will take no action with respect to sustained Conditions 8 and 10.

By this Order, the Board revises the conditions of approval of the Applicant's Campus Plan to be consistent with the Court of Appeals decision.[5] For convenience, the conditions as revised in this Order are restated in the Appendix. This Order makes the following revisions:

Condition No. 9. This condition is modified to revise and combine former Condition No. 9(a) and 9(b), to revise Conditions No. 9(c), and to delete Condition No. 9(f). New Condition No. 9(a) requires the University to make available beds on campus for at least 5,600 full-time undergraduate students by August 31, 2006. Thereafter, whenever the head count of full-time undergraduate enrollment exceeds 8,000 (the "base number"), the University must make available one bed on campus for each full-time undergraduate in excess of the base number. New Condition No. 9(b) (formerly Condition No. 9(c)) is revised by deleting the first sentence, which is now unnecessary in light of the new Condition No. 9(a).

Condition No. 15(e). The requirement to consult with the Department of Motor Vehicles is stricken, and this provision is revised to state:

> Student vehicles: The Applicant, through its Office of the Registrar, shall maintain an accurate record of the license plate numbers of motor vehicles kept by students, updated annually at the beginning of the Fall semester. The Applicant shall direct the students to register their vehicles in the District of Columbia, or obtain a reciprocity sticker. The Applicant shall withhold parking privileges to students who do not comply with D.C. registration or reciprocity requirements. Failure to register student vehicles in the District or to obtain reciprocity stickers shall constitute a violation of the Code of Student Conduct.

For the reasons stated above, the Board hereby **ADOPTS** the conditions of approval of the Applicant's Campus Plan as restated in the Appendix.

VOTE: **4-0-1** (Carol J. Mitten, Curtis L. Etherly, Jr., Geoffrey H. Griffis, and Ruthanne

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[5] Because adoption of this Order is a ministerial act that does not make substantive changes but modifies a prior Board order consistent with the mandate of the Court of Appeals decision, the Board members participating in the vote to adopt this Order who did not hear the matter were not required to read the entire record in this proceeding. All members read the Board's original and first remand orders and the Court of Appeals decision that resulted in this remand.

G. Miller to adopt the conditions of approval of the Applicant's Campus Plan as restated in the Appendix, David A. Zaidain not participating, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY: Jerrily Kress
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 26 2004

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6 OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. NM/LP/rsn

APPENDIX

1. The Applicant's proposed campus plan is approved until June 30, 2009, subject to the following conditions intended to mitigate those adverse impacts identified in this Order and any adverse impacts potentially arising from the location of a university use in a residentially zoned district, or until such time prior to June 30, 2009 as the Zoning Commission determines that conditions warrant submission of an updated campus plan.

2. The campus boundary as depicted in the plan offered by the Applicant is modified and expanded to encompass certain University-owned properties located outside of and adjacent to the southern boundary as previously drawn. The campus plan boundary shall be redrawn to include within it the Dakota at 2100 F Street in Square 81; 2201 Virginia Avenue (Riverside Towers), addresses 518 through 526 22nd Street in Square 58; addresses 2206 and 2208 F Street in Square 58; and the University-owned property in Square 43. In addition, in the event that the Zoning Commission approves the University's application for modification of the approved PUD for Square 122, the campus boundary shall be redrawn to include the PUD property in Square 122 once at least 193 beds for undergraduates are made available there.

3. The University shall work with community representatives to form an Advisory Committee for the purpose of fostering consistent communication between the University and the Foggy Bottom/West End community, discussing issues of mutual interest and proposing solutions to problems that existing or arise in implementing the approved campus plan. It is recommended that the Advisory Committee consist of 10 members: five members to be selected by the University and five members chosen by ANC 2A, the Foggy Bottom Association, and the West End Citizens Association. The Advisory Committee should schedule quarterly meetings open to the public, and should keep minutes of each meeting. Upon request, the University will provide timely data relevant to campus plan issues to the Advisory Committee, provided that the data is not confidential or overly burdensome to produce. Decisions regarding the operation of the Committee should be made jointly by the University and the community.

4. The University shall notify the Office of Planning, ANC 2A, and the Advisory Committee of its development plans for a specific site on campus following approval of the proposal by appropriate University committees and the University's Board of Trustees and prior to preparation of final, detailed plans and specifications.

5. The University shall incorporate the following land-use policy into the 2001 Campus Plan: University uses and structures (including the location of any means of approach to and egress from the structure) will be located to avoid adverse impacts on non-University properties, especially those residential properties on the periphery of the campus.

6. The University shall incorporate the following design policy into the 2001 Campus Plan: The height, bulk, and design (including the location of any means of approach and egress) of future University structures will be compatible with and sensitive to the height, bulk, and design of adjacent non-University-owned structures.

7. The University shall prepare a detailed streetscape plan applicable to the entire campus. The plan shall include, among other elements, a discussion of the installation of sign pylons, and it shall be developed in conjunction with the Office of Planning, the Department of Public Works, and the Advisory Committee. Upon completion, the plan shall be submitted to the Board for review.

8. Student enrollment (headcount) over the life of the plan shall not exceed 20,000 students and the student full-time equivalent shall not exceed 16,553. The number of full-time equivalent faculty and staff shall not exceed 1,550 and 9,000 respectively, while the headcounts for faculty and staff shall not exceed 2,236 and 10,293 respectively.

9. The University must ameliorate the adverse consequences of its failure to supply sufficient housing for its full-time undergraduate students on campus by taking the following steps:

   (a) Beginning no later than August 31, 2006, the University shall make available beds for at least 5,600 full-time undergraduate students on campus. Whenever the head count of full-time undergraduate enrollment exceeds 8,000 (the "base number"), the University shall make available one bed on campus for each full-time undergraduate in excess of the base number.

   (b) The Zoning Commission may extend this deadline after notice and public hearing but only (1) to the extent of time lost as a result of unusual delays by government agencies in processing applications for special exceptions for residential projects; (2) for the duration of third-party appeals to the District of Columbia Court of Appeals or to another judicial forum from the grant of a special exception for a residential project; (3) to the extent of time lost as a consequence of construction delay resulting from acts of God, contractor delays, or acts of third parties. No extensions may be granted for delays fairly attributable to University actions or for delays resulting from the processing of Planned Unit Development (PUD) applications before the Zoning Commission or from judicial challenges to PUD approvals.

   (c) Beginning February 28, 2002, and semiannually thereafter in August and February, the University shall file with the Zoning Commission, Zoning Administrator, the Office of Planning, ANC 2A, and members of the Advisory Committee established in accordance with Condition 3 reports under oath giving (1) the number of full-time undergraduate students then enrolled; (2) the number of University-supplied beds (a) occupied by and (b) made available to full-time undergraduate students on campus; (3) the number and location of University-supplied beds (a) occupied by and (b) made available to its full-time undergraduate students outside the Foggy Bottom/West End area; (4) the number and location of University-supplied beds (a) occupied by and (b) made available to its full-time undergraduate students within Foggy Bottom/West End. For purposes of these reports, the term "University-supplied beds" shall include beds

in any property in which the University has an ownership, leasehold, or contractual interest. Each report shall be accompanied by supporting documentation and full explanations of methods, assumptions, and sources used to compile information in the report.

(d) No special exception shall be granted and no permit to construct or occupy buildings for nonresidential use on campus may be issued, and existing special exceptions and permits issued pursuant to the campus plan approved by this Order shall be subject to suspension and revocation, whenever a semiannual report reveals that the University is not in compliance with the provisions of this condition except special exceptions and permits for projects in which a student housing component would occupy at least 50% of the FAR. In addition, Condition No. 20 of the March 29, 2001 Order shall apply to violations of this condition.

10. Commencing in the Fall 2001 semester, the University shall require all full-time freshmen and sophomore students to reside in University housing located within the campus boundary established by the Board, to the extent that such housing is available. The University may exempt students who commute, are married or have children, or have disabilities or religious beliefs inconsistent with residence hall life. Prior to the Fall 2003 semester, housing commitments made to current University students may be taken into account when determining the amount of housing available.

11. The University shall institute a program to provide its students who are eligible to live off-campus with information about housing opportunities outside the Foggy Bottom/West End Area. The University shall provide this information using local licensed brokers or apartment locators as appropriate, and shall also provide information on the availability, reliability, and accessibility of public transportation between the campus and the housing opportunities. For those locations that are not Metro accessible, the University shall explore the use of a shuttle bus service to its campus for areas that the University determines contain a critical mass of University students, and shall report its criteria and findings to the Advisory Committee annually, at the beginning of each Fall semester.

12. The University shall expand the use of disciplinary interventions to acts of misconduct by students living off-campus in the Foggy Bottom/West End Area, even if the students are not in properties owned or controlled by the University. The University shall act on incident reports by residents, the ANC, community associations, building management, building association boards, University security officers, and police. The University shall develop an outreach program with neighboring apartment buildings to educate management companies and tenant associations on the University's disciplinary program and its reporting requirements to facilitate effective use of its program. Additionally, subject to applicable law, the University shall permit management companies to obtain University clearances for student applicants for apartments to prevent students who are not eligible for the University's on-campus housing due to conduct violations from obtaining units in neighboring apartments.

13. The University shall maintain and publicize a hotline line available 24 hours per day, seven days per week to receive calls about student conduct issues and safety and security concerns. The University shall maintain a log of all calls received and all actions taken, including all referrals made. The University shall maintain its Crimes Tips Hotline (presently 994-TIPS), where calls can be made anonymously to a recorded "tip" line. Calls needing a more immediate response shall be directed to the University police (presently 994-6110) 24 hours per day, seven days per week. The University police will aid off-campus complainants in obtaining assistance from the Metropolitan Police Department. Reports of improper off-campus student conduct will also be referred to the appropriate University departments for their attention.

14. The University shall promptly establish a mandatory program for its students that will address "good neighbor" issues, educating students about appropriate conduct in the off-campus community.

15. The University shall implement measures to minimize adverse impacts associated with parking and traffic.

    a. Support of Mass Transit: The University shall institute the Metrochek program offered by the Washington Metropolitan Area Transit Authority (WMATA) to allow employees to pay for public transportation costs on a pre-tax basis, with a target date for implementation of Spring 2001. In an effort to increase Metro ridership among the student population, the University shall implement an introduction to public transportation program for incoming students that includes provision of WMATA's "SmarTrip" cards to incoming students as of the Fall 2001 new student orientation. The University will work with Metro to schedule a future SmarTrip "carding event" starting in Fall 2001 at various locations around campus to provide additional information about public transportation to the University community.

    b. Parking: The University shall provide at least 2,800 off-street parking spaces within the campus boundary. Any off-street parking obtained by the University at a location outside the campus plan boundaries, including the University's off-campus spaces located at the Kennedy Center, shall not be counted toward the 2,800 minimum for purposes of satisfying this condition. The number of off-street parking spaces required to be provided within the campus boundary may be increased in any subsequent special exception order issued pursuant to this plan if necessary to mitigate the adverse impact of the approved uses on parking. The University shall monitor its utilization of University parking lots to determine usage patterns and to conduct an ongoing assessment of parking needs.

    c. Community Parking Program: In addition to its on-campus parking inventory, the University maintains parking facilities in certain off-campus properties. Members of the Foggy Bottom community have expressed an interest in exploring the creation of a parking program pursuant to which non-student residents of the Foggy Bottom community would be permitted to park in

University properties. The University shall provide contracts for parking to residents of the Foggy Bottom/West End Area on a space-available basis. The location of such spaces will be determined by the University. Levels of and changes in availability will be reported to the Advisory Committee on request.

d. Notice: The University shall notify all affected property owners or occupants in a timely manner of the occurrence of any temporary street closing necessary to accommodate University-related functions.

e. Student vehicles: The Applicant, through its Office of the Registrar, shall maintain an accurate record of the license plate numbers of motor vehicles kept by students, updated annually at the beginning of the Fall semester. The Applicant shall direct the students to register their vehicles in the District of Columbia, or obtain a reciprocity sticker. The Applicant shall withhold parking privileges to students who do not comply with D.C. registration or reciprocity requirements. Failure to register student vehicles in the District or to obtain reciprocity stickers shall constitute a violation of the Code of Student Conduct.

16. Within six months of the effective date of this Order, the University shall prepare an updated comprehensive management plan to address traffic and parking associated with attendance at events on campus that are attended by a significant number of persons not normally associated with the University and the campus, who come to the campus for the specific purpose of attending the event. The management plan shall be maintained by the University, made available to the public, and submitted to the Advisory Committee, and shall include the following:

a. Measures to schedule events at times that reduce conflicts with other traffic and other demands for parking.

b. Measures to discourage travel by private automobile and encourage travel by public transportation.

c. Measures to encourage persons who drive to park in commercial or University parking garages.

d. Any other specific measures to address parking demand and decrease vehicular traffic in the surrounding Foggy Bottom/West End Area.

17. Starting in the Fall 2001 registration process, the University shall gather information about the local addresses of the full-time undergraduate population. The University shall update the information annually. Beginning February 28, 2002, and semiannually thereafter in August and February, the University shall provide the Zoning Commission, Zoning Administrator, ANC 2A, Office of Planning, and Advisory Committee with an audited census of the number of full-time undergraduate students residing in (1) Foggy Bottom/West End outside the campus plan boundaries; (2) the District of Columbia outside the campus plan boundaries and Foggy Bottom/West End, organized by postal

zip codes; (3) Maryland; and (4) Virginia. Each semiannual report shall also include a good-faith estimate of the number of married students and students with children encompassed in each category, (1)-(4). The latest semiannual report shall be included with each application for a special exception pursuant to the approved 2001 Campus Plan.

18. Within 90 days of the effective date of this Order, the University shall revise the Campus Plan to reflect changes mandated by the above-stated conditions. The revision shall include a revised map of the campus, with the following specifications: The map shall show the campus boundaries and the number of each square within the boundary, and shall identify the approved uses for each square; the map shall be legible and not require color for graphic clarity. Upon completion, the revised copy shall be submitted to the Board. The Board shall certify the revised copy as the approved campus plan. Copies of the approved plan shall be maintained in the Office of Zoning and the Office of the Zoning Administrator.

19. The University shall submit a special exception application to the Board for each structure or addition to an existing structure that the University proposes to construct over the life of the Plan. In addition to a demonstration of compliance with applicable provisions of the zoning regulations and the contents of the approved 2001 Campus Plan, each application shall include the following:

    a. A showing that the use, height, bulk, and design (including the location of any means of approach and egress) of the proposed structure is sensitive to and compatible with adjacent and nearby non-University-owned structures and uses;

    b. An indication of any need for, amount of, and proposed locations of interim leased space necessary to accommodate housing and/or activities displaced by construction, and/or activities intended to be located permanently in the completed structure;

    c. Recomputation of the University's total FAR, copies of which shall be submitted to the Zoning Administrator. Such information shall be broken down by zone district and include the following: existing and occupied FAR; FAR under construction pursuant to Board approval; and FAR upon completion of the proposed structure;

    d. An updated student enrollment headcount indicating actual enrollment of full-time undergraduate students, as of 30 days prior to the application date, and the number and percentage of full-time undergraduate students housed on campus, including documentation and an explanation of the methods and assumptions used in the calculation;

    e. The most recent audited count of full-time undergraduate students residing in the Foggy Bottom/West End Area outside of the campus plan boundaries;

f. A progress report on the implementation of the streetscape plan required by Condition No. 7;

g. The number of off-street parking spaces within campus boundaries, as of 30 days prior to the application date, including documentation and an explanation of the methods and assumptions used in the calculation; and

h. A status report on the Transportation Management Program.

20. No special exception application filed by the University for further processing under this plan may be granted unless the University proves that it has consistently remained in substantial compliance with Conditions 1 through 19 set forth in this Order. Further, any violation of a condition of this Order shall be grounds for the denial or revocation of any building permit or certificate of occupancy applied for by, or issued to, the University for any University building or use approved under this plan, and may result in the imposition of fines and penalties pursuant to the Civil Enforcement Act, D.C. Code §§ 6-2701 to 6-2723.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16553-I

As Director of the Office of Zoning, I hereby certify and attest that on APR 2 6 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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ATTESTED BY:

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