

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 01-17E
Z.C. Case No. 01-17E
The George Washington University
(Modification of Significance to Condition 8 –
Temporary Housing Plan for Renovation of Thurston Hall)
December 2, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on December 2, 2019 to consider applications from The George Washington University (“University”) for review and approval of a Modification of Significance (“Modification”) to Condition 8 of Z.C. Order No. 746-C (“Original Order”),¹ which approved modifications to a Planned Unit Development and related Zoning Map Amendment (“PUD”) for 1957 E Street NW. The Commission considered the Modification pursuant to Subtitles X and Z of Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations,” to which all references are made unless otherwise specified). For the reasons below, the Commission hereby APPROVES the application.

FINDINGS OF FACT

Background

1. Pursuant to the Original Order, the Commission approved certain modifications to an approved PUD for the development known then as 1957 E Street NW (Square 122, Lot 29) (“Property”) that facilitated the University’s development of the PUD as a mixed-use development containing an academic building and a residence hall. The Original Order memorialized the University’s agreement with the West End Citizens Association (“WECA”) through a series of conditions of approval, including Condition 8, which restricted the

¹ The Modification was part of a series of applications filed to effectuate the renovation of Thurston Hall, a residence hall. Concurrently with the Modification, the University also filed Case No. 06-11Q/06-12Q, which requested a Modification of Significance to condition of the Campus Plan and related First-Stage PUD to facilitate the temporary housing plan needed to accommodate students during the renovation. In August 2019, the University also filed Case No. 06-11R, which included an application for further processing approval of the renovations to Thurston Hall and related relief. The three components were heard together at a public hearing on December 2, 2019.

residence hall to juniors, seniors, graduate students, and students enrolled in an honors program. (Z.C. Order No. 746-C; Ex. 2E.)

Notice

2. On April 19, 2019, the University mailed a Notice of Intent to file an application for modifications to Condition 8 of the Original Order to all property owners within 200 feet of the Property; Advisory Neighborhood Commission 2A (“ANC 2A”), the “affected ANC” per Subtitle Z, Section 101.8; WECA, as a party to the case that resulted in the Original Order; and the Foggy Bottom Association (“FBA”), which although was not a party to the original case, was a party to the 2007 Campus Plan and related First-Stage PUD under which the Foggy Bottom Campus is governed. (Ex. 2F.)
3. On July 15, 2019, the University filed an application for a Modification of Significance to Condition 8 of the Original Order pursuant to Subtitle Z, Section 704 (Modifications of Significance). (Ex. 1, 2, 2A-2G.)
4. On July 25, 2019, the Office of Zoning (“OZ”) referred the Modification to the Office of Planning (“OP”) and ANC 2A, for consideration and report prior to setdown of the application. (Ex. 5, 7.)
5. At its September 23, 2019, public meeting the Commission unanimously voted to set down the Modification for a public hearing. (Transcript [“Tr.”] Sep. 23, 2019 at 51.)
6. Pursuant to Subtitle Z, Section 402.1, the Office of Zoning (“OZ”) published the Notice of Public Hearing on October 1, 2019 (Ex. 16.) Pursuant to Subtitle Z, Section 402.3, the University posted notice of the hearing on the property on October 22, 2019, and maintained such notice in accordance with the Zoning Regulations. (Ex. 19, 29.)

Parties

7. The University and ANC 2A were automatically parties to the proceeding.
8. On October 15, 2019, WECA filed a request for party status in support of the application. (Ex. 17.) At the hearing, the Commission granted WECA’s request for party status.

The Property

9. The Property is located at 1959 E Street NW. which is at the intersection of 20th Street NW and E Street NW. The Property is improved with a residence hall located on the same lot of record as an academic building located at 1957 E Street NW. Both buildings were constructed pursuant to the original PUD, as modified by the Original Order. (Ex. 2A, 2D.)

10. The Property is located within the boundaries of the Foggy Bottom Campus Plan and related First-Stage PUD, which was approved in Z.C. Order No. 06-11/06-12 (“Campus Plan / PUD”). Development and operation of the Campus is governed by the Campus Plan / PUD. The Campus is improved with a mix of academic, administrative, medical, residential, campus life, and athletic uses, along with some commercial/investment properties. The Campus is bounded by the Foggy Bottom and West End residential neighborhoods to the northwest and west. The central employment area abuts the campus to the north and east, and residential, government offices, and institutional uses predominate to the south. (Z.C. Order No. 06-11/06-12 at 6.)
11. The Property is located in the MU-9 Zone District pursuant to a PUD-related rezoning. (Ex. 2D.)

The Application

12. The University plans to renovate Thurston Hall, a former apartment building that serves as a residence hall and currently contains approximately 1,080 beds for first-year students. To accommodate the loss of these beds during renovation, the University worked with ANC 2A, FBA, and WECA to develop a “temporary housing plan” that ensures first- and second-year students remain housed on campus and addresses remaining undergraduate housing demand as well as steps the University will take to minimize any adverse impact on the surrounding residential neighborhoods related to student housing during the renovation (“Temporary Housing Plan”). (Ex. 2, 23.)
13. The Temporary Housing Plan includes a combination of three measures to address undergraduate housing demand: (1) a planned undergraduate enrollment decrease, (2) increased utilization of existing on-campus beds, and (3) the use of certain off-campus properties to accommodate third- and fourth-year students during renovation. (Ex. 23A.) The Temporary Housing Plan also includes a series of commitments by the University that are memorialized in a Voluntary Neighborhood Agreement between the University, ANC 2A, and FBA (“Agreement”). (Ex. 11, 23C.)
14. The element of the Temporary Housing Plan germane to this Modification is the proposed temporary expanded use of the Property as housing for second-year students in addition to older students and honors students. The Campus Plan/PUD generally requires that all first-year and second-year students are housed on campus. First-year beds currently at Thurston Hall will be re-accommodated in other on-campus residence halls during the renovation; this in turn will displace some beds that are currently used to house second-year students. Therefore, the University proposes to use the Property for second-year housing in order to maintain its Campus Plan/PUD commitment regarding second-year student housing on campus. (Ex. 2, 23.)

Requested Modification

15. Condition 8 of the Original Order currently does not permit second-year students to reside at the Property unless they are in an honors program. The University requested modification of Condition 8 to temporarily allow housing for second-year students at the Property for the duration of the Temporary Housing Plan. (Ex. 2, 23.)

Reports on and Responses to the Application

Office of Planning Reports

16. By report dated September 13, 2019, OP recommended setdown of the modification to the Condition 8 because the application was not inconsistent with the Comprehensive Plan or the intent of the approved PUD. (Ex. 9.)
17. By report dated November 22, 2019, OP recommended approval of the Modification with no comments or conditions. Again, OP concluded that the Modification was not inconsistent with the Comprehensive Plan or the intent of the approved PUD. OP noted that the proposed change was limited and temporary. (Ex. 27.)
18. DDOT Report. By report dated November 22, 2019, DDOT expressed no objection to the Modification. (Ex. 28.)
19. ANC 2A. At a regularly-scheduled, duly-noticed public meeting on September 18, 2019, with a quorum present, ANC 2A voted to support the Temporary Housing Plan and related Modification to Condition 8 of the Original Order. ANC 2A's support was conditioned on the terms and commitments set forth in the Agreement with the University.
20. Applicant's Pre-Hearing Submissions.
 - a. On September 27, 2019, the University filed a prehearing submission that included a map illustrating the Temporary Housing Plan, a summary of the Agreement, and proposed conditions of approval. (Ex. 12, 12A, 12B.)
 - b. On November 12, 2019, the University filed a supplemental prehearing submission that refined the terms of the Temporary Housing Plan and related modifications based on the Agreement. The submission reattached the map of the Temporary Housing Plan, the Agreement, and the proposed conditions of approval. (Ex. 23, 23A, 23B, 23C.)

Parties and Persons in Support

21. WECA appeared as a party in support of the Modification. WECA expressed support for the University's plan to minimize adverse effects related to the Temporary Housing Plan as set forth in the University's Agreement with ANC 2A. (Ex. 34.)
22. The Commission received numerous letters from University students in support of the Modification and its importance in facilitating the renovation of Thurston Hall. (Ex. 30, 33)

Public Hearing

23. The Commission held a public hearing on the Modification on December 2, 2019. Alicia Knight, the University's Senior Associate Vice President for Operations, testified on behalf of the University. Rob Schiesel of Gorove/Slade Associates appeared on behalf of the University as an expert witness in transportation planning.
24. Commissioners William Kennedy Smith and Jeri Epstein appeared on behalf of ANC 2A and testified in support of the Modification. The commissioners described the process of negotiating and ultimately reaching agreement with the University regarding the Temporary Housing Plan. The commissioners expressed appreciation for the University's willingness to compromise and address concerns regarding the Temporary Housing Plan, as reflected in the terms of the Agreement. (Tr. Dec. 12 at 37-43.)
25. Sara Maddux, President of WECA, appeared on behalf of WECA and testified in support of the Modification. (Tr. Dec. 2 at 45-49.)
26. Three students from the University testified in support of the Modification, with a focus on the importance of renovating Thurston Hall. (Tr. Dec. 2 at 51-61.)
27. At the hearing, counsel for the University summarized the Modification along with the other components of the zoning approval required to effectuate the proposed renovation of Thurston Hall. The Commission asked no questions regarding the Modification that is the subject of this case.
28. After the close of the hearing, given that there was no opposition to the Modification and no outstanding issues to resolve, the Commission proceeded to deliberate and vote to approve the Modification.

CONCLUSIONS OF LAW

Modification of Significance Approval

1. Subtitle Z, Section 704 authorizes the Commission to review and approve Modifications of Significance to final orders of the Zoning Commission.
2. Subtitle Z, Section 703.5 defines a Modification of Significance as a “modification to a contested case order or the approved plans of greater significance than a modification of consequence.” Subtitle Z, Section 703.6 includes “changes to proffered public benefits” and “additional relief or flexibility” as examples of a Modification of Significance.
3. As set forth in Subtitle Z, Section 703.5, Modifications of Significance require a public hearing. Pursuant to Subtitle Z, Section 704.4, the scope of the hearing is limited to the impact of the modification on the subject of the original application.
4. The Commission concludes that the University has satisfied the requirement of Subtitle Z, Section 703.13 to serve the Modification on all parties to the original proceeding, in this case ANC 2A and WECA.
5. The Commission concludes that the application qualifies as a Modification of Significance within the meaning of Subtitle Z Sections 703.5 and 703.6, as a request to modify conditions of approval that change proffered commitments approved by the Original Order.

Impact on the Campus Plan/PUD

6. The Commission concludes that the Modification will not materially impact the planning, uses, amenities, benefits, and impacts that formed the basis for the Commission’s prior approval of the Original Order because the proposed use of the Property for second-year students is limited in duration and scope. Moreover, the Temporary Housing Plan will facilitate the renovation of on-campus housing, which is central to the goals of the approved Campus Plan.
7. The Commission notes that OP, DDOT, and all of the parties to the Original Order (ANC 2A and WECA) are in support of the Modification and there are no parties or persons in opposition, which furthers the conclusion that the proposed Modification is consistent with the intent of the Original Order.

Not Inconsistent with the Comprehensive Plan

8. The Commission concludes that the Modification is not inconsistent with the Future Land Use Map designations of the Property for Institutional Use in the Comprehensive Plan.

9. The Commission further concludes that the Modification furthers the goals of the Education Facilities element to provide quality on-campus student housing and the goals of the Economic Development element to support the growth of higher education.
10. Finally, the Commission concludes the Modification is not inconsistent with the Near Northwest Area element's goals of coordination between the University and the community and providing quality student housing on campus. Although the Modification results in second-year housing at the Property in the near term, its purpose is to facilitate the long-term renovation and enhancement of on-campus housing, and the University and community have worked together to reach a mutually-acceptable compromise that will address the impacts of the Temporary Housing Plan.

“Great Weight” to the Recommendations of OP

11. 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.) and Subtitle Y § 405.8) *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
12. The Commission finds persuasive OP’s recommendation that the Commission approve the Modification and therefore concurs in that judgment.

“Great Weight” to the Written Report of the ANC

13. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC 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 Board 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).
14. The Commission finds the ANC Report’s support for the Modification persuasive and concurs in that judgment.

DECISION

After the close of the public hearing on December 2, 2019, in consideration of the case record and the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia concluded that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application's request for a Modification of Significance to modify Condition 8 of Z.C. Order No. 746-C as follows:

A. Modification of Condition 8 in Z.C. Order No. 746-C

1. The temporary condition outlined in this Section A shall expire at the end of the Temporary Housing Plan period (i.e. the Limited Period described in Condition B.4.b. below) and are subject to the additional requirements set forth in Section B below.
2. Notwithstanding Condition 8, during the Limited Period, sophomores may reside in the 1959 E Street residence hall.

B. Conditions for the Temporary Housing Plan²

1. Temporary Housing Plan.

- a. The University shall be permitted to house no more than two hundred and twenty (220) third- and fourth-year students at the Aston Residence Hall at 1129 New Hampshire Avenue for a period of no more than twenty-four consecutive months during the Thurston Hall renovation.
- b. The University shall be permitted to house no more than three hundred and thirty (330) third- and fourth-year students at One Washington Circle for a period of no more than twenty-four consecutive months during the Thurston Hall renovation.
- c. The University shall be permitted to house second-year students at 1959 E Street for a period of no more than twenty-four consecutive months during the Thurston Hall renovation.

2. Mitigation of Objectionable Impacts.

- a. The University shall house no more than two students per room at the Aston and One Washington Circle, with the exception of one-bedroom units in One

² The Temporary Housing Plan is a "package deal" that intermixes conditions tied to this Modification as well as conditions tied to the Modification of the Campus Plan / PUD in Case No. 06-11Q/06-12Q. For consistency, the Commission has replicated the full set of conditions in both this Order and Order No. 06-11Q/06-12Q.

Washington Circle (totaling 12 units) which may be permitted to house up to three students.

- b. For the Aston, One Washington Circle and 1959 E Street, the University shall provide residential engagement support to service the University student population, including resident advisors, faculty in-residence and in-residence professional staff living at each property. The Residential Conduct Guidelines that govern student behavior in and around university residential facilities shall apply to each property, as well as the Student Code of Conduct.
 - c. At One Washington Circle, the building will also be staffed by professional management staff 24 hours per day, seven days per week to maintain and operate the property and also serve as additional oversight regarding the buildings' operations and any concerns raised by neighbors.
 - d. The University shall prohibit the use of the balconies and the swimming pool at One Washington Circle by students through physical modifications to the property.
 - e. The University shall continue to provide a mechanism for reporting issues concerning student behavior to the GW University Police Department, and violations of DC law may be reported to the Metropolitan Police Department.
3. **Enrollment Caps.** The University shall continue to operate within its campus plan enrollment caps as set forth in Z.C. Order No. 06-11/06-12.
4. **Duration and Penalty.** Following commencement of the Thurston Hall renovation, the University shall pursue diligent completion of the work and reopen Thurston Hall so that the temporary housing plan use for Aston, One Washington Circle, and 1959 E Street as set forth above will last no more twenty-four consecutive months.
 - a. Should the University continue the Temporary Housing Plan by occupying either the Aston, One Washington Circle or 1959 E Street pursuant to the Temporary Housing Plan after the expiration of the Limited Period (defined below) or remain out of compliance with either Condition C-6 of Z.C. Order No. 06-11/06-12 or Condition 8 of Z.C. Order No. 746-C after the Limited Period, the University will pay as liquidated damages a fee of \$1,000,000 to the Foggy Bottom Defense and Improvement Corporation (the "Trust") for every semester or any part thereof in which the University occupies either the Aston, One Washington Circle, or 1959

E Street pursuant to the Temporary Housing Plan after the expiration of the Limited Period.

- b. For purposes of this order, the “Limited Period” shall be a period of 24 consecutive months commencing from the start date. The start date of the Limited Period shall be the first date upon which an undergraduate student (or, in the case of 1959 E Street, a second-year undergraduate student who would not be otherwise permitted to reside in the property under Condition 8 of Z.C. Order No. 746-C) moves into one of the above three properties to facilitate the Thurston Hall renovation. The end date shall be the date when the last undergraduate student (or, in the case of 1959 E Street, the last second-year undergraduate student) moves out of the above-referenced properties. The University shall provide ANC 2A and FBA with written notice within 5 business days of both the start date and end date, and affirm that it has resumed compliance with Condition C-6 of Z.C. Order No. 06-11/06-12 and Condition 8 of Z.C. Order No. 746-C as of the end date. The University will also provide ANC 2A and FBA with an opportunity to visually inspect the properties in order to confirm such student move-in/move-out activity.
- c. Prior to the issuance of a Certificate of Occupancy for the renovated Thurston Hall, the Applicant shall provide the Zoning Administrator with evidence, and the Zoning Administrator shall determine, that the University has ended the Temporary Housing Plan or made the required liquidated damages payment in accordance with this condition.

5. Communications and Transparency.

- a. The University will maintain a contact number available to all residents to call to register any questions or concerns regarding the operations of the Aston or One Washington Circle.
- b. The University will meet quarterly with ANC 2A and FBA to discuss the operations of the Aston and One Washington Circle.
- c. The University shall provide semi-annual reports to ANC2A regarding the operations of the Aston and One Washington Circle.

C. Miscellaneous

- 1. 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.