

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
(PUD Modification of Significance to Condition 8 –
Temporary Housing Plan for Renovation of Thurston Hall)
December 2, 2019

Pursuant to notice, at its public hearing on December 2, 2019, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) from The George Washington University (the “University”) for review and approval of a modification of significance to Condition 8 of Z.C. Order No. 746-C (“Original Order”), which approved modifications to a planned unit development (“PUD”) and related Zoning Map amendment for Lot 29 in Square 122 with an address of 1959 E Street, N.W. (the “Property”) to allow for the temporary use of the Property for housing second-year undergraduates of the University normally housed in Thurston Hall while that dormitory undergoes renovation.

The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”] to which all subsequent citations refer unless otherwise specified) and for the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Background

1. Pursuant to the Original Order, the Commission approved a modification of an approved PUD as a second-stage PUD for the Property, which limited the uses of the Property, including restricting residence to juniors, seniors, and graduate students of the University, as well as University students enrolled in an honors program. (Exhibit [“Ex.”] 2E.)
2. The Property is located within the boundaries of the Foggy Bottom Campus Plan of 2006-2025 (the “Approved Campus Plan”), approved by Z.C. Order No. 06-11, and the related first-stage PUD (the “Approved PUD,” and collectively with the Approved Campus Plan, the “Approved Campus Plan/PUD”) that was approved by Z.C. Order No. 06-11/06-12 (the “Campus Plan/PUD Order”), and which governs development and operation of the University’s Foggy Bottom Campus (the “Campus”). (Z.C. Order No. 06-11/06-12 at 6.)

Notice

3. The University mailed a Notice of Intent on April 19, 2019, to file an application to modify Condition 8 of the Original Order to:
 - Advisory Neighborhood Commission 2A (“ANC 2A”), the “affected ANC” per Subtitle Z § 101.8;
 - West End Citizens Association (“WECA”), as a party to a case preceding that of the Original Order and as an active participant in the case approved by the Original Order;
 - The Foggy Bottom Association (“FBA”), which was not a party to the case that culminated in the Original Order, but which was a party to Campus Plan / PUD Order; and
 - All property owners within 200 feet of the Property. (Ex. 2F.)
4. At its public meeting on September 23, 2019, the Commission voted to set down the modification for a public hearing. (September 23, 2019, Public Meeting transcript at 51; Ex. 13.)
5. The Office of Zoning published the Notice of Public Hearing on October 1, 2019, pursuant to Subtitle Z § 402.1. (Ex. 16.)
6. The University filed affidavits stating that it had posted notice of the hearing on the Property on October 22, 2019 and maintained such notice in pursuant to Subtitle Z § 402. (Ex. 19, 29.)

Parties

7. The University and ANC 2A were automatically parties to the proceeding pursuant to Subtitle Z § 403.5.
8. WECA filed a request for party status in support of the Application on October 15, 2019. (Ex. 17.)
9. The Commission granted WECA’s request for party status at its December 2, 2019 public hearing.

The Property

10. The Property is located at the intersection of 20th and E Streets, N.W.
11. The Property is located in the C-3-C zone pursuant to a PUD-related rezoning.¹ (Ex. 2D.)

The Application

12. The Application was one of four applications simultaneously filed by the University with the Commission to authorize the renovation of Thurston Hall (the “Renovation”) and the

¹ The equivalent of the C-3-C zone under the Zoning Regulations of 2016 is the MU-9 zone.

temporary relocation of students housed in Thurston Hall during the Renovation, which were heard together at a public hearing on December 2, 2019. The other three applications were:

- a. Z.C. Case No. 06-11R, for further processing of the Approved Campus Plan to permit the Renovation and related zoning relief (the “Further Processing Application”); and
 - b. Z.C. Case Nos. 06-11Q and 06-12Q (collectively, the “Modification Applications”), for modifications to the Approved Campus Plan and Approved PUD, respectively, to allow for the temporary housing of students normally housed at Thurston Hall while it undergoes Renovation.
13. Thurston Hall is an on-campus residence hall which currently contains approximately 1,080 beds for first-year students. (Ex. 2.) 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. 23A.)
14. The Temporary Housing Plan includes a combination of three measures to address undergraduate housing demand:
- a. A planned undergraduate enrollment decrease;
 - b. Increased utilization of existing on-campus beds; and
 - c. The use of certain off-campus properties to accommodate third- and fourth-year students during renovation.
15. The Temporary Housing Plan also includes a series of commitments regarding duration of the Temporary Housing Plan, penalties, and mitigation measures agreed to by the University and memorialized in a voluntary agreement between the University, ANC 2A, and FBA (the “ANC Agreement”). (Ex. 11, 23C.)
16. The Approved Campus Plan/PUD generally requires that all first- and second-year undergraduate students are housed on the Campus. First-year beds currently located 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 Approved Campus Plan/PUD commitment regarding second-year student housing on campus. (Ex. 2, 23.)

17. The Application requested modification of Condition 8 to temporarily allow second-year undergraduate students not enrolled in an honors program to reside at the Property for the duration of the Temporary Housing Plan. (Ex. 2, 23.)
18. On September 27, 2019, the University filed a prehearing submission that included a map illustrating the Temporary Housing Plan, a summary of the ANC Agreement, and proposed conditions of approval. (Ex. 12-12B.)
19. The University also provided a Comprehensive Transportation Review (“CTR”) prepared by Rob Schiesel of Gorove/Slade. (Ex. 18-18A.) The CTR concluded that the Temporary Housing Plan “[would] not adversely impact the local transportation network.” The CTR also noted that the University had proposed a Traffic Demand Management (“TDM”) Plan for the facilities associated with the Temporary Housing Plan in order to promote non-vehicular modes of travel for students and to mitigate any adverse impacts.
20. 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 ANC Agreement. The submission reattached the map of the Temporary Housing Plan, the ANC Agreement, and the proposed conditions of approval. (Ex. 23- 23C.)
21. At the public hearing held 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.

Responses to the Application

Office of Planning (“OP”)

22. On September 13, 2019, OP filed a report that recommended the Commission set down the Application for the modification of Condition 8 because the Application was not inconsistent with the Comprehensive Plan (the “CP”) or the intent of the Approved PUD. (Ex. 10.)
23. On November 22, 2019, OP filed a report that recommended approval of the Application with no comments or conditions (the “OP Report”). (Ex. 27.) The OP Report concluded that the Application was not inconsistent with the CP or the intent of the Approved PUD. The OP Report also noted that the proposed change was limited in scope and temporary in duration.
24. At the public hearing on December 2, 2019, OP recommended approval of the Application and rested on the record of its report. (12/2/19 Transcript [“12/2 Tr.”] at 36.)

Department of Transportation

25. By a report dated November 22, 2019, DDOT expressed no objection to the Application on the condition that the University implement the TDM Plan proposed in the CTR. (Ex. 28.)

ANC 2A

26. ANC 2A submitted a report (the “ANC Report”), stating that at its regularly-scheduled, duly-noticed public meeting on September 18, 2019, at which a quorum present, it voted to support the Application’s Temporary Housing Plan and related modification to Condition 8 of the Original Order, subject to the terms and commitments set forth in the ANC Agreement. (Ex. 14.)
27. At the public hearing on December 2, 2019, both Chairperson Smith and Commissioner Epstein from ANC 2A testified in support of the Application and commended the University on its extensive public outreach and willingness to compromise on the Further Processing and Modification Applications. The ANC commissioners described the process by which the ANC had negotiated with the University regarding the Temporary Housing Plan and how the terms of the ANC Agreement had been reached. (12/2 Tr. at 37-43.)

Parties and Persons in Support

28. On December 2, 2019, WECA submitted a letter expressing 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.)
29. At the public hearing on December 2, 2019, Sara Maddux, President of WECA, testified on behalf of WECA as a party in support of the Application. (12/2 Tr. at 45-49.)

Other Responses

30. The Commission received numerous letters from University students in support of the Application and its importance in facilitating the renovation of Thurston Hall. (Ex. 30, 33.)
31. At the public hearing on December 2, 2019, three students from the University testified in support of the Application, focusing on the importance of renovating Thurston Hall. (12/2 Tr. at 51-61.)

CONCLUSIONS OF LAW

Modification of Significance Approval

1. Subtitle Z § 704 authorizes the Commission to review and approve modifications of significance to final orders of the Commission.
2. Subtitle Z § 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 § 703.6 includes “changes to proffered public benefits” and “additional relief or flexibility” as examples of a modification of significance.
3. Subtitle Z § 703.5 requires the Commission to hold a public hearing on a modification of significance. Pursuant to Subtitle Z § 704.4, the scope of the hearing is limited to the impact of the modification on the subject of the original application and does not permit the Commission to revisit its original decision.

4. The Commission concludes that the University has satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 2A and WECA.
5. The Commission concludes that the Application properly qualifies as a modification of significance within the meaning of Subtitle Z §§ 703.5 and 703.6, as a request to modify conditions of approval that change proffered commitments approved by the Original Order. The Commission also notes the desire of the University to have both the Modification Applications and the Further Processing Application considered at the same hearing due to the interconnected nature of the various applications.

Impact on the Campus Plan/PUD

6. The Commission concludes that the Application 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.

Not Inconsistent with the Comprehensive Plan

7. The Commission concludes that the Application is not inconsistent with the Future Land Use Map designations of the Property for Institutional Use in the Comprehensive Plan.
8. The Commission further concludes that the Application 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.
9. Finally, the Commission concludes the Application 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 Application 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

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

“Great Weight” to the Written Report of the ANC

12. 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 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).)
13. The Commission finds that the ANC Report did not raise any issues or concerns regarding the Application that were not addressed through the ANC Agreement. The Commission notes the ANC Report’s support for the Application persuasive and concurs in that judgment.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the application for a modification of significance to temporarily modify Condition 8 of Z.C. Order No. 746-C as follows (with all other conditions of that Order remaining unchanged and in effect) to facilitate the Temporary Housing Plan, subject to the following conditions (deleted text in ~~bold and strikethrough~~; new text in **bold and underlined**):

8. The University shall restrict residential occupancy in the project to juniors, seniors, graduate students, and students enrolled in an honors program, **except as allowed in Condition No. 8A below.**
- 8A. During the Limited Period (as defined below) of the Temporary Housing Plan (defined below), sophomores may reside in the 1959 E Street Residence Hall (“1959 E Street”) subject to additional requirements set forth below:**
 - i. Enrollment Caps - The University shall continue to operate within the Campus Plan enrollment caps as set forth in Z.C. Order No. 06-11/06-12;**
 - ii. The Limited Period:**
 - a. The University shall be permitted to house second-year students at 1959 E Street (the “Temporary Housing Plan”) for a period of no more than 24 consecutive months during the Thurston Hall renovation (the “Limited Period”);**
 - b. For purposes of this order, the “Limited Period” shall be a period of 24 consecutive months commencing from the date upon which 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 1959 E Street to facilitate the Thurston Hall renovation. The Limited Period shall end on the date when the last such second-year undergraduate student moves out of 1959 E Street; and

c. 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 1959 E Street as set forth above will last no more 24 consecutive months;

iii. Mitigation of Objectionable Impacts:

a. For 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, as well as the Student Code of Conduct; and

b. 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;

iv. Duration and Penalty: Should the University continue the Temporary Housing Plan by occupying 1959 E Street pursuant to the Temporary Housing Plan after the expiration of the Limited Period or remain out of compliance with 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 1959 E Street pursuant to the Temporary Housing Plan after the expiration of the Limited Period; and

v. Compliance:

a. The University shall provide ANC 2A and FBA with written notice within five business days of both the start date and end date and affirm that it has resumed compliance with 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;


b. 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; and

c. The Zoning Administrator shall file with the Zoning Commission his/her determination that the University has ended the Temporary Housing Plan and has resumed compliance with Condition 8 of Z.C. Order No. 746-C.

VOTE (Dec. 2, 2019): 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May; and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 01-17E shall become final and effective upon publication in the *D.C. Register*; that is, on April 3, 2020.



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.