Government of the District of Columbia
Office of Zoning

Z.C. CASE NO.: 02-03

As Secretary to the Zoning Commission, I herby certify that on MAY 28 2002 copies of Order No. 02-03 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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5. Councilmember Jack Evans (Ward 2)

6. Office of Planning (Ellen McCarthy)

7. Zoning Administrator

8. Alan Bergstein, Office of Corporation Counsel

ATTESTED BY: Alberto P. Bastida

Alberto P. Bastida, AICP
Secretary to the Zoning Commission

ZONING COMMISSION
District of Columbia
CASE NO.02-03
EXHIBIT NO.34

Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 02-03
Case No. 02-03
(Campus Plan and Further Processing - The George Washington University)
May 13, 2002

This Decision and Order arises from an application by the George Washington University ("University" or "Applicant") for relief under § 3103.2 of the Zoning Regulations, for an area variance from the minimum closed court area and width requirements of § 406.1. In accordance with § 210 of the Zoning Regulations, this case is being heard by the Zoning Commission using the rules of the Board of Zoning Adjustment at 11 D.C.M.R. § 3100, *et seq.* Relief is requested to authorize the design of a closed court, as proposed, on a new student dormitory structure on the campus of the University in an R-5-D District at premises 616 23rd Street, N.W. (Square 43, Lot 26).

HEARING DATE: April 11, 2002

DECISION DATE: May 13, 2002

SUMMARY ORDER

1. Advisory Neighborhood Commission ("ANC") 2A was a party in this proceeding. The Commission received a request for party status from Dr. Donald Kreuzer, which was granted.

2. Pursuant to Commission practices relating to campus plans, this application was not accompanied by a self-certification form or memorandum from the Zoning Administrator certifying the required zoning relief.

3. The Applicant submitted a plan for developing the campus as a whole, showing the location, height, and bulk of all present and proposed improvements as required by 11 D.C.M.R. § 210.4. The Board of Zoning Adjustment ("BZA") approved that plan by order dated March 29, 2001. The Board clarified that order, on remand, by order dated December 21, 2001. The approved Campus Plan For The George Washington University For Years 2000 Through 2010 ("Approved Campus Plan") adds Square 43 to the campus boundary.

4. The BZA's order of March 29, 2001, and the remand order of December 21, 2001, require the University to take decisive steps to house 70% of its full-time undergraduate students within the campus boundaries. To that end, *inter alia*, the remand order directs

the University to provide beds for at least 5,600 full-time undergraduate students on campus, or outside of the Foggy Bottom/West End area, no later than August 31, 2002. In addition, beginning in August 2002, the University was ordered to provide one bed on-campus, or outside of the Foggy Bottom/West End area, for each full-time undergraduate student in excess of the University enrollment of 8,000. The University was directed to meet the aforementioned housing requirements exclusively by on-campus housing no later than August 31, 2006. By order dated April 12, 2002, the United States District Court for the District of Columbia declared that these provisions of the BZA's order are unconstitutional and ordered final summary judgment invalidating their effect. The court stated that it expected the University to continue to honor its commitment to increase the amount of on-campus housing.

5. The Applicant proposes to construct a new, state of the art dormitory on a lot it now owns in Square 43. By Zoning Commission Order No. 958, dated January 14, 2002, (Z.C. Case No. 01-21CP) the Zoning Commission granted special exception approval pursuant to 11 D.C.M.R. § 3104.1 and in accordance with § 210 of the Zoning Regulations authorizing the construction and use of this new dormitory facility on Square 43. This case comes to the Commission because the design of the approved building, revised since the submission of Case No. 01-21CP, requires an area variance.

6. The new dormitory's height, FAR, and side and rear yard measurements are all consistent with the Zoning Regulations. However, the proposed building design provides an arched design feature at the southeastern corner of the structure which creates a closed court. The court is bounded by the walls of the proposed dormitory, a common lot line with an adjacent property and a public alley which is three feet wide. The court width is four feet, which is sixteen feet less than the regulations require. The court area is approximately seventy-seven square feet, which is less than the required minimum of four hundred square feet. The footprint of the dormitory building extends to the lot line adjacent to the neighboring property on the southeast and to the three-foot public alley. The angular "hinge" which creates the closed court at issue here first appears on the dormitory building's southeastern lot line at a height of twenty-eight feet above the ground and extends for sixty additional feet to the roofline. The curvature of the hinge feature creates a closed court at its base.

7. The site is located on a nearly triangular square bordered by G Street on the north, 23rd Street on the east, Virginia Avenue on the south, and 24th Street on the west. Lot 26 contains approximately 32,723 square feet of land area and is unimproved. The remainder of the square contains the Wellington Condominium residences and three single-family structures. The Wellington Condominium was built in 1982 and contains 52 units. The three single family structures, located on the southeastern tip of the square, are owned by Dr. Donald Kreuzer, who has expressed an intention to develop his property to the fullest extent of the zoning envelope and, perhaps, beyond.

8. The generalized land use map of the District of Columbia Comprehensive Plan Act designates the entire campus plan area for "institutional uses". The properties that lie

adjacent to the campus are generally designed for high density residential and medium and high density commercial uses. Generally, medium to high density residential and commercial uses predominate to the west of the campus, while high density commercial uses dominate to the east.

9. The University's architect, who was recognized as an expert witness by the Commission, testified that the proposed dormitory is designed so as not to be objectionable to surrounding properties.

10. The University's architect also explained the architecture of the building and the specific hinge feature concept. He opined that the hinge feature articulates the rotation of the 23rd Street and Virginia Avenue wings of the building with an architectural device designed to heighten the interest of the building on 23rd Street, which has a "special street" status in the District of Columbia Elements of the Comprehensive Plan for the National Capital. He said that the dimensions of the closed court are quite small, being approximately one foot wide at its eastern most extreme, seven inches in dimension from the property line, approximately four feet in depth at Dr. Kreuzer's property where it then wraps around to a public alley, three feet wide, that exists between the applicant's lot and the townhouse properties. The architect calculated the width of the closed court at approximately twenty-seven feet. He opined that the closed court is a very irregular shape.

11. The architect explained further that it is important to keep the proposed design, with the hinge feature and the resulting closed court, in order to meet the number of beds that the University seeks to put in this dormitory. If the closed court were eliminated, the architect testified that such would result in a significant loss of beds, approximately 120, that the building could offer. He opined further that elimination of the proposed hinge would be detrimental to the southeastern façade of the building and may not be supported by the Commission of Fine Arts.

12. The architect testified that the granting of this application would not limit Dr. Kreuzer's ability to develop his property, if he chooses. He said that the development of Dr. Kreuzer's property would necessitate the University permanently filling in its windows that face Dr. Kreuzer's property to the height of Kreuzer's building. He cited 12 D.C.M.R. § 705.3.36 as requiring windows on common lot lines to be closed in the event that a building on an adjacent lot is built to the lot line.

13. The architect testified that Lot 26 is unique in that it is L-shaped with irregular boundaries and a sloping topography. He said the lot is also unique because it borders on 23rd Street which is designated as a "special street" in the comprehensive plan. He said further that this location constitutes an important gateway to the campus of the University. He testified that a practical difficulty would arise from the losing of the hinged design feature in the building façade, which would result in an unattractive flat building appearance at a very important location. He related that in his preliminary meetings with the Office of Planning and the staff of the Commission of Fine Arts it was suggested that this location requires a special gateway design because it is a special place.

He said that the proposed closed court would not have an adverse impact on the light and air to either the University's building or to Dr. Kreuzer's property.

14. By memorandum dated April 4, 2002, and by oral testimony at the April 11, 2002, public hearing, the D.C. Office of Planning opined that this Application satisfied the zoning requirements and recommended that it be approved. In so doing, the memorandum cited the irregular shape of Lot 26 and the gateway status of the intersection of 23rd Street and Virginia Avenue. In addition, the Office of Planning stated that 23rd Street is designated as a "special street" in the Comprehensive Plan for the National Capitol. In reaching its recommendation, the Office of Planning noted that the closed court that is created by the hinge constitutes only a small part of the large dormitory building that has already been approved by the Commission; that the closed court limitations in the Zoning Regulations do not relate well to the relatively small area of the design feature that is proposed; and that the design feature is being proposed in order to improve the aesthetic appearance of the building. The memorandum concluded that the application meets the tests for an area variance and that the property is unique because of its shape and its location; that the strict application of the Zoning Regulations in this case would mean that the hinge design feature could not be built, thus lessening the attractiveness of the design of this building at an important location; and that the variance can be granted without causing substantial detriment to the public good by allowing the construction of a more attractive building at this gateway location. It noted that both the Office of Planning and the Commission of Fine Arts have recognized the importance of this gateway location and that the Commission of Fine Arts has approved this design feature in concept.

15. The Applicant submitted evidence that the Commission of Fine Arts has approved, in concept, the dormitory building design that includes the hinged building feature.

16. By letter dated April 11, 2002, the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) stated that it does not oppose the Applicant providing increased student housing within its campus boundary but opposes this application because the Applicant has not met the requirements of § 3103.2. Specifically, the ANC alleges that the property is not unique, but if the property is found to be unique that the University made it that way and that the University has not shown the granting of the variance to be in the public good because the adjoining Kreuzer property will be detrimentally affected. The letter went on to state that if the variance is granted that it should not create a situation in which the applicant might use as a basis in the future to oppose the development of the Kreuzer property and that any variance approval be conditioned upon the University permanently closing the windows along the Kreuzer property in accord with the D.C. Building Code.

17. The Applicant objected to the ANC letter and resolution because it only earned the affirmative votes of two of the four Commissioners who were present and voted at the ANC special meeting at which this matter was discussed. The ANC Chairwoman responded that the full ANC consists of six members, that four of the members were present for the vote on this resolution, that two of the four voted "Aye" and the remaining

two members abstained from voting. She testified in these circumstances that it is her understanding of the rules of order that the two abstentions are not counted as votes and that the two "Aye" votes constitute a majority of those present and voting, thus effectuating the resolution.

18. Counsel for Dr. Kreuzer and Dr. Kreuzer's architect appeared at the hearing and testified that Dr. Kreuzer didn't know " . . . how much in opposition to . . ." this application he was. But he does recognize that it is possible that the granting of the requested variance could have an adverse effect on his future development plans. His architect discussed some design possibilities for development on Dr. Kreuzer's property and emphasized the necessity that the dormitory windows on the hinge façade be closed should Dr. Kreuzer develop his property, and that the presence of those windows not be used by the University to form the basis of an adverse impact complaint should Dr. Kreuzer choose to develop his property to his property line.

19. Dorothy Miller, the Commissioner for ANC 2A05 appeared and testified in general opposition to the application.

20. Charles Barber, Senior Counsel to the Applicant, testified to the University's efforts to increase the number of on-campus beds it is able to provide to its full-time undergraduate students. He stated that the timing of this application is important because University housing is unlike other residential housing in that University housing must be brought on-line by August of a particular year or students will have made their housing plans for that academic year and the dormitory building will likely be without residents until the next class year.

21. The parties submitted post-hearing memoranda on the validity of the ANC resolution. The Commission decided to accept the resolution into the record.

FINDINGS OF FACT:

1. The Commission finds that the University has met the requisite burden of proof as set forth in Section 3103.2 of the Zoning Regulations. The Commission agrees with the Applicant's expert witness and the Office of Planning that the property is unique because of its irregular shape, the existence of the three foot alley and its location on a special street at the gateway of the University; that the strict application of the closed court requirements will create a practical difficulty in that the University will be unable to develop an important architectural design feature at an important intersection of the city. Not granting this closed court variance would also unreasonably force the Applicant to create a larger court at the expense of building space, an end that would result in the loss of a substantial number of dormitory beds that the Applicant has been ordered by the BZA to create.

2. The Commission finds that the variance can be granted without causing substantial detriment to the public good and will not impair the intent, purpose, and integrity of the

Zoning Regulations and map, and will serve the public good by allowing the construction of a more attractive building at this gateway and special street location. Further, the Commission has already determined that the special exception required to build the dormitory as proposed will be in harmony with the general purpose and intent of the Zoning Regulations and zoning maps and will not tend to adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps.

3. The Commission makes the following findings with respect to the concerns submitted by ANC-2A:

   a. The Commission agrees with the testimony of the Office of Planning and the Applicant's expert witness that the property is unique because of its shape and location at the gateway to the University on a street designated as special in the Comprehensive Plan for the National Capitol;

   b. There is no evidence in the record that the Applicant created the unique property configuration. The ANC presented no evidence that either the shape, the topography or the location of the site was created or affected by the Applicant;

   c. The ANC failed to provide any evidence that the granting of this application will detrimentally affect Dr. Kreuzer's property. Indeed, the Applicant testified that should the Kreuzer property be developed, a proposition which is unclear in the record, it would be required by the D.C. Building Code to close those windows that face his property on the property line that they share. Neither the ANC nor Dr. Kreuzer made any colorable showing of this Application's adverse effect on the Kreuzer property;

   d. The Commission cannot and does not evaluate the impact that the granting of this application may have on a future development that may be undertaken by Dr. Kreuzer. There is no showing on the record as to what that development may be, when it may be built, or if it will be built. As such, the Commission declines the ANC's invitation to condition this order on a future development of which it has no knowledge; and

   e. The Commission finds that the concerns submitted by Dorothy Miller, appearing in opposition to this application, are without substance and unpersuasive.

CONCLUSIONS OF LAW:

1. Based on the Findings of Fact and the evidence of record, the University is seeking an area variance under § 3103.2 from the minimum closed court area and width requirements at § 406.1 to authorize the design, as proposed, of a new student dormitory structure on its campus on Lot 26 and Square 43. The granting of this relief requires compliance with those provisions of Zoning Regulations. The Commission concludes that the University has met its burden of proof.

2. The Commission concludes that it has accorded ANC 2A the "great weight" to which it is entitled. Accordingly, it is ordered that this application is GRANTED.

VOTE: **3-1-1** (James H. Hannaham, Carol J. Mitten, and Anthony J. Hood to approve; Peter J. May against; and John G. Parsons not voting, having not heard the case)

BY ORDER OF THE ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Each concurring member has approved the issuance of this Summary Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: MAY 24 2002

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURES AND RENOVATIONS WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999 Repl.). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.