ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

PHIL FEOLA
202-663-8789
phil.feola@shawpittman.com

October 11, 2002

By Hand Delivery

District of Columbia Zoning Commission
441 4th Street, NW
Suite 210
Washington, DC 20037

Re: University of Notre Dame, Zoning Commission Case No. 02-25, 1615 New Hampshire Ave., NW ("Property")

Dear Chair Mitten and Members of the Commission:

Overview

This is the University of Notre Dame's response to the material filed in the record in this case since the public hearing. The University believes that the opposition to its occupancy of the Property is driven by a misunderstanding of the District's Zoning Regulations (and related laws) and a number of speculative fears that are contrary to the evidence in the record.

Dupont Circle is a wonderful neighborhood that contains a wide variety of uses. This mix has created a rich and diverse area that contributes to the unique character of Washington, D.C. The area is distinctly urban and suited to a variety of uses, including commercial, residential, institutional and educational. It also is well-served by public transportation. The neighborhood mix is exactly the reason why the University of Notre Dame desires this location for its Washington Program and why the SP Zone specifically accommodates this particular use. It bears repeating that the University's proposal is to convert an existing five story office/residential building ("Building"), containing approximately 26,640 square feet currently used by approximately 50 office workers and 12-19 residents to an academic program with 50 residents (none of whom will be allowed to have cars) and a staff of 12. By any rational standard, the change in use proposed by this application will result in a reduction in land use impact from the existing conditions.

Zoning and the Area

The SP Zone District that encompasses New Hampshire Avenue north of Dupont Circle is a transitional zone designed to be a buffer between the commercial uses located

ZONING COMMISSION
District of Columbia
Case 02-25
Exhibit 49

ZONING COMMISSION
District of Columbia
CASE NO. 02-25
EXHIBIT NO. 49

on the Circle and the moderate and high density residential uses in the surrounding area (11 DCMR §500.3).

The predominant uses in the vicinity of the Property are institutional and office in nature. The properties immediately adjacent to the Property are chanceries and law offices. The block on which the Property is located has no residential uses fronting New Hampshire. The lot across the street, which is a triangular area that extends two-thirds of the length of the block, is occupied by a single monumental building, which is the headquarters of a large fraternal organization. Two sororities are located one block north – Delta Sigma Theta Sorority at 1707 New Hampshire and Zeta Phi Beta Sorority at 1734 New Hampshire. The Carlyle Suites Hotel is located on the same block at 1731 New Hampshire and is comprised of one hundred seventy suites. The residential buildings which are nearby are either medium or high density. For example, the Imperial House Condominiums located at 1601 18th Street, is ten stories high and comprises approximately 160 units. Nearby Corcoran House, located at 1616 18th Street, also is ten stories high. The John W. Ross Elementary school is located at 1730 R Street, on the same block as the Property. All of these uses are permitted as a matter-of-right. Moreover, the Board of Zoning Adjustment found (in Application No. 13810) that a mixed-use building with 16,650 square feet of office space and 12 apartments (9,990 square feet) was appropriate for this Property. The University's proposed use of 1615 New Hampshire Avenue as the center of its Washington Program is completely in keeping with the existing character of the neighborhood.

As the Commission knows, Corcoran Street, developed at a lower density, is also adjacent to the Property. It spans the length of one block and is sandwiched between the above-mentioned uses in the SP Zone District on New Hampshire Avenue, N.W. and the more intense commercial uses on 17th Street (which is zoned DC/C-2-B). The majority of Corcoran Street is zoned DC/R-5-B, a zone district designed to permit urban residential development and institutional and semi-public buildings (11 DCMR §350.1). This R-5-B Zone District also permits as a matter of right: fraternity houses, sorority houses, or dormitories (11 DCMR §330.5(g)); hospitals, sanitariums, or clinics (11 DCMR §330.5(f)); a community based residential facility (11 DCMR §330.5(i)); or a substance abusers' home for up to fifteen residents (11 DCMR §335.1). Thus, even in the R-5-B portion of the neighborhood, dormitories would be permitted as a matter-of-right – without the type of conditions the University has agreed to abide by in this case (population cap, no automobiles, ten year term).

In sum, the zoning and character of the area not only permit uses such as those proposed by the University, but *encourages* them. The University's use of this Property is completely in accord with the neighborhood.

The Opponents' Objections

Opponents [1] of the application have raised a series of objections which either are not relevant under District of Columbia zoning law, represent a misunderstanding of the application and/or are not substantiated by the record in this case.

(a) Dormitory

Many of the letters submitted by opponents pejoratively characterize the University's Washington Program as a "dormitory." In the first instance, the University's residential use of the Building will not be a dormitory as defined in the Zoning Regulations (see Webster's Unabridged Dictionary). The University's students will live in the 12 apartments which already exist in the Building and will then convert a portion of the existing office space in the Building to apartments as the program grows to 50 students. Ironically, however, dormitory use is permitted in the SP zone as a matter of right (11 DCMR §501.1(a), §350.4(a), §330.5(g) (dormitory). Further, educational uses are also permitted as a matter-of-right 11 DCMR §501.1(b) (private school)). Thus, the Property could be turned into a boarding school for a high school at any time. Or, the

---

[1] The University takes issue, and is disappointed, with the characterization in ANC 2B's second submission (reversing its previous position) in this case. The ANC states: "Several dozen constituents . . . were in attendance at the meeting and provided testimony in opposition to the proposed use" (Exhibit 38 of the Record). At the time that the University matter was discussed, excluding the Commissioners and the University's representatives, there were only 15 people in the room. Eleven of these people (most of whom testified before the Zoning Commission) testified in opposition. In all, 149 households were sent notices of this application (see Exhibit 1 of the Record), and if you eliminate the duplicative filings (one person filed three letters in opposition in the Record, another filed four), the separate filings by husband/wife and apartment/mates and the form letters filed by those residents far removed from the subject property, only a minority of households have expressed opposition. This is not to say that the opponents views should be discounted, it is only meant to demonstrate that the vast majority of the neighborhood sees this application for what it is – a minor change to the use of the Property.

One opponent asserts that, "[s]hould UND sell the building in the future, there is no limit to how the building might be used." This is true, but only because the existing Zoning Regulations permit a variety of institutional uses in the SP zone district as a matter of right, such as: (1) a fraternity house or sorority house (11 DCMR §501.1(a), §350.4(a), §330.5(g)); (2) a youth residential care home for up to 15 persons (11 DCMR §501.1(a), §350.4(f)); (3) a child development center for up to 25 individuals (11 DCMR §501.1(a), §350.4(g)); and (4) a hospital, sanitarium, or clinic (11 DCMR §501.1(a), §350.4(a), §330.5(f)).

The Commission should not deny this application simply because the University wishes to establish an academic program as well as related housing for its students in the Building or because the property could someday be sold and used for a use permitted by law.

(b) Objectionable Conditions

The opponents argue that the University's Washington Program is likely to become objectionable to neighboring property because of parking and traffic problems, which could make the neighborhood unsafe for children; a reduction in the city's tax base; noise; too much "foot" traffic; lower real estate values; crowding the Safeway grocery store; "university sprawl" and reduced property values.

(1) Parking and Traffic

Many of the opponents' assertions demonstrate a misunderstanding of the Program. The University currently discourages students from bringing cars to the District, even though it is not required to do so. As the testimony indicated, during the five years of the program, no student has kept an automobile in the District. And as testified to in the record of the case, the University has agreed to affirmatively prohibit students, except in instances of disability, from bringing cars to the program.[2] Accordingly, fears that the program will cause parking and traffic problems are unfounded and deliberately ignore the actual record of this proceeding including the Office of Planning's report. Further, because the students will not have cars to drive,

---

[2] In the case of a disabled student, the University will have more than ample parking space to allow that person to park in the Building's garage.

there is no evidence that their presence will make Corcoran Street less safe for small children. In point of fact, the University, with 12 employees and 50 students without cars, will reduce the amount of parking and traffic in the neighborhood from that caused by existing users of the Building.

(2) Tax Base

The opponents' fears regarding the reduction of the tax base and the displacement of existing residents and businesses are simply not relevant. The Zoning Commission does not have the authority to review land use cases in the context of whether or not a particular user may be exempt from real estate taxes. Only the Council of the District of Columbia has such authority.

Further, this issue is not a standard by which to judge a special exception use. It is not a zoning criterion. In any event, the student residents will contribute financially to the District by patronizing the District's commercial establishments. And the Zoning Commission heard testimony that many former participants in the Washington Program have returned to the District following graduation to become permanent residents.

(3) Noise

There is no evidence in the record that demonstrates that student residents of apartments create more noise than non-students. As the testimony shows, to promote an orderly atmosphere, the University plans to provide full-time adult supervision of the students. This supervisor will live in the Building and have the ability to control the noise and activities of the residents. Further, as was testified by the University representatives at the public hearing, the University has an extensive set of rules that all students must abide by and any violations of those rules are dealt with in disciplinary hearings with sanctions being imposed. Further, because the program is so small, the resident supervisor and the director of the program will know each of the students and be aware of their behavior. Finally, each of the students must apply to be admitted to the program. The University only admits students who demonstrate excellent academic credentials and who have no evidence of prior disciplinary action.

And, contrary to allegations, the Zoning Commission has heard unrebutted evidence that in the five year history of the program that there were no complaints at the University's current location in Woodley Park.

(4) Foot Traffic

The opponents' allegation that increased foot traffic, will be an objectionable condition that will destroy the "unique calm" of Corcoran Street, is ludicrous. Urban planners and city officials all over the country have spent decades trying to develop urban neighborhoods that encourage "foot" traffic. Here, the Corcoran Street neighbors appeared worried that there will be too much.

This is especially ludicrous given the fact that a current tenant, the International Law Institute, in a letter in opposition to this application, states that it conducts seminars, conferences, and practical training in the Building in a manner, perhaps more intensive that the University's proposed use. The Institute "brings participants to the Dupont Circle area from all over the world . . . who reside in nearby hotels" (Exhibit 36 of the Record). We presume these participants walk to the Building to attend the seminars. These visitors are in addition to the approximately fifty office workers who currently work in the building and the potential nineteen residents who live in the Building's 12 apartments. These visitors and office workers are just as likely to use Corcoran Street to reach the commercial uses on 17th Street as the Notre Dame residents.

The Notre Dame Program is a small discrete program with a twelve person faculty/staff. The University's courses and seminars will be open only to the students of the Program who will live in the Building, as opposed to the numerous visitors brought to the site by the current users. The foot traffic of the students will not be an objectionable condition, particularly compared to current use of the Building.

(5) Safeway Overcrowding

The opponents also complain that the students will overcrowd the neighborhood Safeway. The Program will add a maximum of fifty residents to the area. The twelve units of the building could house nineteen residents if the apartments were fully leased. There are currently more than fifty office workers in the building who clearly may also use the Safeway on a regular basis. In all probability there will be no more persons using the Safeway than do now.

(6) University "Sprawl"/Reduced Property Values

Likewise, the opponents have failed to present any evidence that the proposed use will lower the value of nearby property or cause "university sprawl." The most valuable

property in the neighborhood is currently devoted to institutional use, and there are sorority houses, hotels, and large residential buildings nearby. Unlike areas such as Foggy Bottom and Georgetown, which contain the primary campuses of major universities, the Washington Program merely uses a single building. As testimony in the record by Timothy Scully, CSC, the Executive Vice President of the University, demonstrates, the University has no plans to relocate its main campus to Washington, D.C. or to expand its Washington Program beyond this building. Further, even if this alleged "horror" would come to pass, any expansion of the "campus" would necessarily be reviewed, and approved, by the Zoning Commission.

(c) Students

If we distill the transparent arguments asserted by the opponents, the heart of the issue becomes apparent – they do not want students in the neighborhood. Apparently the opponents are not aware that the Human Rights Act of 1977, D.C. Code § 2-1401.01 *et seq*, prohibits discrimination against students in transactions involving real property. D.C. Code §2-1402.21 (2001). Recent amendments to the Act further clarify that a District agency may not discriminate against students:

> [I]t shall be an unlawful discriminatory practice for a District government agency or office to limit or refuse to provide any facility, service, program, or benefit to any individual on the basis of an individual's actual or perceived ... matriculation ....

Human Rights Amendment Act of 2002, Law 14-189 (2002). The Act defines "matriculation" as "the condition of being enrolled in a college, or university." D.C. Code §2-1401.02 (2001). One opponent, Mr. Seitz, goes further to suggest that the University's Washington Program be housed in the "ample space" that the District provides to "other Catholic schools in the area." In addition to violating the Human Rights Act, his views, if adopted by a government agency, are a blatant violation of federal law prohibiting discrimination on the basis of religion. *See* 42 U.S.C. §3604.

Conclusion

The fears of the neighboring property owners are unfounded. Of its own volition, the University has taken meaningful steps to ensure that its use of the Property will not be

objectionable, steps not required of any other user of the Building. These commitments include limiting the number of students to fifty, committing to employ a full-time resident supervisor, and prohibiting students from bringing cars to the District. This distinctly urban neighborhood, characterized by a mix of uses, would be enriched by the addition of the University of Notre Dame's Washington Program. Its residents would patronize the numerous commercial establishments in the area, thereby adding to tax revenue and the economic development of the area. Students who receive a positive impression of the District are more likely to seek employment here after college – becoming taxpaying residents. Most importantly, the land use impact that will result if this application is approved is minimal. There is no evidence, aside from stereotypical, unsupported statements, that the Program will result in objectionable conditions due to traffic, number of students or noise.

For the above reasons, the University requests that the Zoning Commission approve its application to use 1615 New Hampshire Avenue, N.W. for its Washington Program.

Respectfully submitted,



Phil Feola

Cc: Thomas Kellenberg
Carol Kaesebier, Esq.

ShawPittman LLP

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing response was mailed this 11th day of October 2002 to:

D.C. Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, DC 20002
Attn: Venita Ray

Advisory Neighborhood Commission 2B
P.O. Box 33224
Washington, DC 20033-0224



Phil T. Feola