ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

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

* *Not Admitted in DC*

Supervised by Members of DC Bar

Ashleigh Dale Horne
202-663-8428
ashleigh.horne@shawpittman.com

October 18, 2002

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., N.W.

Dear Chair Mitten and the Members of the Commission:

Attached please find the University of Notre Dame's Proposed Findings of Fact and Conclusions of Law. Please feel free to call me if you have any questions at 202-663-8789.

Sincerely,

Phil Feola

Ashleigh Dale Horne*

Attachment

cc: Carol Kaesebier, Esq.
Steven Teitelbaum, Esq.

Document #: 1280581 v.1

ZONING COMMISSION
District of Columbia
Case 02-25
Exhibit 51

ZONING COMMISSION
District of Columbia
CASE NO.02-25
EXHIBIT NO.51

APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION

Zoning Commission Case No. 02-25 of the University of Notre Dame, pursuant to 11 DCMR §§ 507 and 3104, for a special exception for the review and approval of the University Campus Plan and further processing approval for the use of an existing building located at 1615 New Hampshire Avenue, N.W. (Lot 249, Square 155) ("**Property**") for a University.

HEARING DATE: September 12, 2002

DECISION DATE: October 28, 2002

PRELIMINARY MATTERS:

1. By Zoning Commission Order No. 932, the Zoning Commission of the District of Columbia ("Zoning Commission" or "Commission") transferred jurisdiction for the review and approval of campus plans from the BZA to the Commission.

2. On June 25, 2002, the University of Notre Dame, contract purchaser of the Property, acting on behalf of the owner, Nauru Phosphate Royalties (Washington, D.C.), Inc., filed an application with the Zoning Commission for approval of its Campus Plan and for further processing approval to use the property located at 1615 New Hampshire Avenue, N.W. (Square 155, Lot 249).

3. The Commission provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission 2B and to the owners of property within 200 feet of the site. The application was referred to the Office of Planning ("OP") for review and report.

4. The public hearing on the proposed Campus Plan and special exception was held on September 12, 2002.

FINDINGS OF FACT:

1. The University of Notre Dame was established in 1842 under the auspices of the Catholic Church. Its main campus is located in South Bend, Indiana.

2. The University of Notre Dame Semester in Washington Program (the "Program") was founded in 1997. It is a satellite program that enables students matriculated at the University's main campus to take advantage of the unique educational opportunities available in Washington, D.C. It is open to sophomores, juniors and seniors. Since its inception, the Program has matriculated over one-hundred fifty students.

3. The Program's curriculum consists of a core public policy seminar, two elective courses in business and the humanities, a student internship in government, business, or nonprofit offices, co-curricular activities and a variety of lectures. The students are required to work between twenty and twenty-five hours per week at internships. Participants also take part in community service activities.

4. The Program currently accommodates twenty-five students per semester and is located in leased space at 2807 Connecticut Avenue, N.W. It currently employs an executive director and an administrative assistant. The University wishes to expand the Program to a maximum of fifty students, eight full time equivalent faculty/staff and four adjunct faculty.

5. The proposed Campus Plan is limited to the Property located at 1615 New Hampshire Avenue, N.W. (Lot 249, Square 155) in the Dupont Circle neighborhood. The

Property is located on the south side of the 1600 block of New Hampshire Avenue, N.W. at the northeast corner of the intersection of New Hampshire Avenue and Corcoran Street, N.W. The Property is generally triangular in shape. It has frontage on New Hampshire Avenue of approximately 101 feet and frontage on Corcoran Street of approximately 136 feet. To the rear, the Property abuts a fifteen foot wide public alley. The total land area of the Property is approximately 6,600 square feet. It is located in the DC/SP-1 Zone District.

6. The Property is located on New Hampshire Avenue in the DC/SP-1 Zone District, which is characterized by institutional and office uses. 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 Avenue. The lot across New Hampshire Avenue from the Property is occupied by a single building that is the headquarters of a large fraternal organization. Two sororities are located one block north of the Property – 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 comprises on hundred seventy suites. The John W. Ross Elementary school is located at 1730 R Street, on the same block as the Property.

7. Corcoran Street spans the length of one block, connecting the institutional and office uses on New Hampshire Avenue with the commercial uses on 17th Street (which is zoned DC/C-2-B). A Safeway grocery store is located at the corner of Corcoran Street and Seventeenth Street. Corcoran Street is located in the DC/R-5-B Zone District and the predominant use is residential.

8. The Property is improved with a five story mixed-use building constructed in 1987 pursuant to Board of Zoning Adjustment Order No. 13810. The lower level and floors 1-3 are devoted to office use. The lower level, first floor, and 1500 square feet of the fourth floor are leased to the International Law Institute, whose lease expires on June 30, 2003. The second floor is leased to a law firm, whose lease expires on January 31, 2005. The third floor is devoted to chancery use, and is leased to the Republic of Georgia. Its lease expires on December 31, 2003. The fourth and fifth floors contain twelve residential apartments, only five of which are occupied, with a potential to house nineteen residents. Approximately fifty office workers currently work in the building.

9. The International Law Institute conducts seminars and conferences in its space on the lower, first and fourth floors. The seminars and conferences are attended by numerous professionals from developing countries, who reside in nearby hotels and utilize the other services of the neighborhood while they are attending the seminars.

10. The proposed use will produce no discernable change from the existing uses on the Property. There is no requirement for exterior changes to convert the building to university use. The building currently provides office, classroom and residential space. Thus, the proposed use will require only cosmetic changes to the interior.

11. The building complies with bulk, height, lot occupancy and all other applicable zoning requirements.

12. The Zoning Commission credits the testimony of Thomas Kellenberg, Executive Director of the University's Washington Program, that the proposed use provides a surplus

number of parking spaces within the building. The Property contains eleven parking spaces, well in excess of the University's needs.

13. The proposed use will have a positive impact on parking and traffic. The number of office workers will decrease from fifty to twelve. The student residents will be prohibited from locating vehicles in the District unless they have a disability that requires them to utilize a vehicle for transportation. Moreover, the Property is located within walking distance of the Dupont Circle Metrorail station.

14. The Commission credits the testimony of Thomas Kellenberg that the Program has not received any complaints from neighbors since 1997.

15. The proposed campus plan and use satisfies many of the goals enumerated in the District Elements of the Comprehensive Plan. The implementation will help conserve and enhance the neighborhood and create a center of knowledge and learning by bring a vibrant, but small, center of learning to Dupont Circle. It will enhance the urban character of the area without creating traffic or parking problems. Further, it will promote economic development by bringing more residents to the neighborhood, who will patronize local businesses without contributing to traffic or parking problems. The Program also will create an improved buffer between the high-density commercial uses in Dupont Circle and the residential areas of the neighborhood.

16. During the public hearing, several residents of Corcoran Street claimed that they did not receive, by mail, notice of the public hearing. As the record demonstrates, notices were mailed to the property owners within 200 feet of the Property on June 11, 2002 (R. Exhibit 9). Only eleven of the notices were returned to this office (R. Exhibits 12, 15, and 35). Accordingly,

the Zoning Commission finds the notices were mailed to the neighboring property owners as required and all other forms of notice, required by law and the Zoning Regulations, were effectively, and actually, given.

Applicant's Testimony

17. The Applicant offered testimony and evidence from the following: Father Timothy Scully, Executive Vice President of the University of Notre Dame; Thomas Kellenberg, Executive Director of the University of Notre Dame Washington, D.C. Program; and Craig Tiller, Architect, University of Notre Dame.

18. Father Scully described the University and its educational philosophy:

- The University of Notre Dame was founded by the Catholic church over 160 years ago. It is located on a 1,250 acre campus in northern Indiana, and currently enrolls 10,800 students.

- The mission of the University is to instill its students with a sense of human solidarity and concern for the common good. The University aspires to create future leaders of America who have a deep social and moral conscience and a desire to serve justice.

- The University recruits a select student body for its undergraduate programs, which consistently rank in the top twenty of national universities (Testimony of Father Timothy Scully, Transcript of September 12, 2002, p. 10).

19. The University is committed to educating its students throughout the nation and the world through national and international study programs. It owns approximately half of its

study abroad facilities and operates the remaining facilities (Testimony of Father Timothy Scully, Transcript of September 12, 2002, p. 11).

20. Father Scully noted that the University has the financial ability to purchase the subject property and to operate the Program in the manner presented in its proposed Campus Plan. He testified that the University has a current operating budget of approximately $600 million and an endowment of approximately $3 billion (Testimony of Father Timothy Scully, Transcript of September 12, 2002, p. 11).

21. Father Scully added that the Program supplements the University's Hesburgh Program in Public Service, a program dedicated to the spirit of public service exemplified by Rev. Theodore Hesburgh, a recipient of the Congressional Gold Medal of Honor (Testimony of Father Timothy Scully, Transcript of September 12, 2002, p. 12).

22. Father Scully also discussed the University's longstanding relationship with the District of Columbia. Currently, it is the second largest provider of congressional staff persons in the District, and has over 5,600 alumni in the Washington metro area. However, he testified that the building will not be operated as an alumni center. It will be used only as a teaching and learning center for the students of the Program (Testimony of Father Timothy Scully, Transcript of September 12, 2002, p. 12).

23. Thomas Kellenberg, Executive Director of the Program, discussed the history of the Program. He testified that the Program was established five years ago, in 1997. It is currently housed in a building owned by Boston University in the Woodley Park neighborhood. Since its inception, the Program has matriculated over 150 students (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, p. 13).

24. Mr. Kellenberg further testified that the Program was founded because of the strong demand at the University's campus in Indiana for opportunities for public and community service (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, p. 13).

25. Mr. Kellenberg explained that, in addition to his duties as director, he teaches students of the Program. He stated that he has taught each of the students who has been involved in the Program. He testified that the Program is very selective, and attracts a distinguished group of young scholars. Specifically, he testified that the students selected to participate are honor students with GPAs in excess of 3.6 on a 4.0 scale (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, p. 13).

26. Mr. Kellenberg also discussed the community service activities related to the Program. He stated that nearly one hundred percent of the students involved in the Program volunteer in the community during their semester in the District. Their volunteer work includes serving meals to the homeless and tutoring children (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, p. 13).

27. Mr. Kellenberg stated that many of the former participants in the Program return to the District after completing their education. These individuals have taught in schools, worked for nonprofit organizations, and worked on Capitol Hill (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, p. 14).

28. Mr. Kellenberg described the Program as extremely rigorous. The students are required to participate in internships in government, business, and nonprofit organizations on Mondays, Tuesdays, Wednesdays, and Fridays during the day. They then attend classes on Monday, Tuesday, and Wednesday evenings, and for the entire day on Thursday. The students

also participate in organized cultural activities such as trips to the Kennedy Center and the Shakespeare Theatre (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, p. 14).

29. Mr. Kellenberg discussed the role of discipline in administering the Program. First, he noted that the applicants endure a rigorous screening process. They must submit a recommendation form from their rector and resident assistants in the dormitories at the Indiana campus. Any disciplinary action that results in penalties against a student disqualifies the student from the Program. He testified that, since the its inception, the Program has not received any complaints from neighbors. He further stated that any student who was involved in an incident while participating in the Program would be subject to discipline at the University's main campus. Penalties could include expulsion from the Program and the University. (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, p. 15).

30. Mr. Kellenberg also described the Property. He testified that New Hampshire Avenue is an arterial of Dupont Circle. In that area, New Hampshire Avenue is characterized by large buildings and institutional uses, such as embassies. The building on the Property contains twelve apartments on the fourth and fifth floors and contains existing classroom and office space. The ground floor and lower level are occupied by the International Law Institute, which conducts classes. He stated that the remainder of the building is used by a law firm and an embassy (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, p. 16).

31. Mr. Kellenberg addressed the effect of the proposed use on traffic and parking. He testified that the existing parking exceeds the University's needs. He further testified that the University has a policy of prohibiting students from bringing vehicles to the District. He noted

that, in the five-year history of the program, only one student has brought a car to the Program, and that student demonstrated special circumstances. He testified that special circumstances that would justify bringing a car to the District include handicap or disability (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, p. 16).

32. Mr. Kellenberg also stated that the Program would like to phase-in its use of the facility. The building would be used by the Program's administration during the summer of 2003, and the entire Program would be housed there beginning that September (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, p. 16).

33. Craig Tiller, an architect with the University of Notre Dame, testified about the physical and timing aspects of the University's plans to use the building. He described the building as a five-story building with an underground parking level. He noted that the parking level contains eleven parking spaces. He observed that the building is well-maintained, and testified that the University intends to continue to maintain it. He testified that the ground and first floors currently have existing classroom and office space, which would require little to no modification to fit the purposes of the Program. He further testified that that space is appropriate for the current size of the Program. He noted that the fourth and fifth floors of the building contain twelve residential units, including five studio apartments and seven one-bedroom apartments. He noted that the fourth floor also contains approximately 1,500 square feet of office space (Testimony of Craig Tiller, Transcript of September 12, 2002, pp. 17-18).

34. Mr. Tiller discussed the University's plans to occupy the building in phases. He noted that the minor renovations needed could begin in June 2003. He stated that, after the renovations, the building would be able to accommodate thirty-five students and one resident

rector, who would reside in one of the one-bedroom apartments. Mr. Tiller explained the potential phasing of the program into the building and opined that the building could easily accommodate 50 students, 12 faculty/staff and the program (Testimony of Craig Tiller, Transcript of September 12, 2002, p. 19).

35. Mr. Kellenberg addressed the conditions suggested in the report of the Office of Planning. He testified that the University fully supports all of the recommendations except that capping the student enrollment at thirty-one (OP Proposed Condition No. 3), unnecessarily limits the University because the building could initially accommodate thirty-five students. Further, he testified that a condition (OP Proposed Condition No. 4), which would require the University to return for further processing prior to occupying the second and third floors, is unnecessary and unduly burdensome. He testified that the third floor will become available in December 2003, only a few months after the University begins occupying the building (September 2003). He also testified that the second floor will be merely expanded classroom space rather than further incremental expansion of the number of students in the program (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, pp. 21-22).

36. In response to issues regarding the reconfiguration of the building and adequacy of the space, Mr. Tiller testified that the building would require very little modification. He further testified that the residences at the University's main campus provide approximately 250 square feet per student. The proposed use of the building would provide approximately 300 square feet per student. Thus, the proposed amount of residential space per student for the Program would be comparable to that of the University's main campus in Indiana. He explained that the University plans to house four students in each of the one-bedroom apartments and two

students in each of the studio apartments (Testimony of Craig Tiller, Transcript of September 12, 2002, pp. 25-26).

37. Mr. Kellenberg testified that no students would be permitted to live off campus; all students would be required to live in the building (Testimony of Thomas Kellenberg, Transcript of September 12, 2002 public hearing p. 26). Mr. Kellenberg also testified that the current entrance for the residential floors is in the back of the building fronting Corcoran Street. Those two floors are serviced by a separate elevator. The entrance to the office portion fronts New Hampshire Avenue. He further stated that the elevators between the office and residential portions of the building are connected and that the office elevator also provides access to the residential floors (Testimony of Thomas Kellenberg, Transcript of September 12, 2002 public hearing p. 27). Mr. Kellenberg also testified that no complaint has been made against any of the students in the Program (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, pp. 28-29).

38. During the hearing, the issue of further expansion of the program was raised. Mr. Kellenberg replied that the University has no plans to further expand the Program and that the building would be more than adequate to serve the Program's academic and administrative needs (Testimony of Thomas Kellenberg, Transcript of September 12, 2002 public hearing p. 29). Further, Mr. Kellenberg responded that the students' behavior will be supervised by a priest or nun who will live in the building and act a rector or rectress. He also stated that the University is distinguished by its religious affiliation, which provides the students with twenty-four hour supervision for counseling and disciplinary purposes (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, pp. 29-30).

39. A question was raised as to whether the University actively prohibits students from bringing cars to the District. Mr. Kellenberg testified that, in the past, students have been strongly discouraged from bringing vehicles to the District. He noted that only one student has brought a vehicle in the District and that special circumstances were involved. He further asserted that the University is willing to prohibit all students from bringing vehicles to the District unless the vehicle is necessary because of a student's disability or handicap (Testimony of Thomas Kellenberg, Transcript of September 12, 2002, pp. 32-33).

Reports of Government Agencies

40. The Office of Planning (OP), in its reports dated September 5 and 6, 2003 and through its testimony at the public hearing, found the proposed campus plan and use will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property. Thus, OP recommended conditional approval of the Campus Plan and special exception application. OP found the analysis to be straightforward because the campus plan will be limited to a single building, and all of the uses will be contained within the building (Testimony of Jennifer Steingasser, Transcript of September 12, 2002, p. 34).

41. OP found the proposed Campus Plan is not likely to become objectionable because of noise, traffic, number of students, or other objectionable conditions. It found that the change most likely to cause an objectionable impact is the addition of student housing on the site. Even so, OP found the potential negative impact is mitigated by several factors. First, the student population will never exceed fifty. Second the primary location of the student housing will be the fourth and fifth floors of the building. This will minimize any noise to adjacent

property. Third, the students will be housed at the site for only one semester. Finally, students will not have vehicles (OP Report dated September 5 p. 7).

42. OP also found the proposed use of the Property is consistent with the Campus Plan and is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions. Specifically, it found that the building will be used in virtually the same manner as its current use and, therefore, will produce no discernible change from the existing uses on the Property, because the Program currently enrolls only twenty-five students and will not exceed fifty students. Further, each of the students will be involved in an internship at various locations in the District and the proximity of the Property to the Dupont Circle Metrorail station will encourage the students to utilize public transportation. The current office and classroom space will largely continue to be used as offices and classrooms (OP report dated September 5 p. 8)

43. OP found that the intensity of use would not increase and result in increased parking demand, because although the number of residents will increase from twelve (apartment units) to fifty, the number of office workers will decrease from fifty to twelve. Finally, OP determined that the current office and residential use has not caused any negative impacts (OP report dated September 5 p. 8). In addition, OP expressed concern about the phasing of the project and the potential for mixed university and office use. Thus, it recommended that the applicant return for further processing of the second and third floors and potential increased enrollment in four years or when the commercial tenants vacate the building, whichever is sooner (OP report dated September 6 p. 2). During the hearing, OP was informed that the University intends to use the third floor in December 2003, only a few months after the start of its first semester in the building. Accordingly, OP agreed that the third floor should not be

required to return for further processing as stated in its proposed Condition 2 (Testimony of Jennifer Steingasser, Transcript of September 12, 2002, p. 35). In response to inquiry by the Commission, OP agreed that no further processing would be necessary given that the second floor will not used for additional housing, residential use, or additional students (Testimony of Jennifer Steingasser, Transcript of September 12, 2002, p. 36-38).

44. Recommending conditional approval, OP concluded that the granting of the request for approval of the campus plan and special exception is an appropriate application of the special exception provisions. It found that the Program is a unique educational and housing opportunity that will not tend to affect adversely the use of neighboring property. OP recommended the following conditions:

- The applicant must commit to efforts to encourage ridesharing, transit, bicycle, and pedestrian modes of transportation by employees, fellows, faculty, and visitors.

- As long as commercial tenants remain on the second and third floors, six (6) parking spaces must be reserved for their use.

- The applicant must prohibit students from having vehicles while attending the Program.

(OP report dated September 6, p. 2.).

First and Second Report and Testimony of Advisory Neighborhood Commission 2B

45. ANC 2B adopted a resolution in support of the special exception at its meeting on August 14, 2002, and noted that its support was, in part, based on the applicant's testimony that

students would be prohibited from bringing vehicles to the Program (Exhibit 39 of the record, Letter from Vince Micone, Chairperson of ANC 2B dated August 27, 2002.) However, during the public hearing on this matter, several residents testified that they had not been notified of the meeting during which the ANC considered this matter. Accordingly, this Zoning Commission kept the record open so that the ANC could reconsider the matter. ANC 2B reversed its previous position and adopted a resolution in opposition to the application. In its second resolution, the ANC stated that community residents were concerned about: the impact of a university program in a residential neighborhood, removal of apartment units, loss of tax revenue, and neighborhood incompatibility. The ANC also stated that it was concerned that residents did not receive notice of the application by mail (Letter from Vince Micone, Chairperson, ANC 2B dated September 24, 2002, Exhibit 38 of the record).

Other Parties

46. No parties in support or opposition appeared in this proceeding.

Letters and Testimony of Persons in Support of the Application

47. Michael Vitlip, a current student of the Program, testified in support of the application, stating that the Program is an incomparable educational experience for University students. He stated that he currently is participating in an internship in the District of Columbia Office of the Corporation Counsel Criminal Division. He testified that the District is the best place for a student to learn about Congress and public policy (Testimony of Michael Vitlip, Transcript of September 12, 2002, pp. 40-41).

48. Jacqueline Rey-Hipolito, an alumna of the University and the Program, testified in support of the application. She stated that her experience as an intern on Capitol Hill was an

unparalleled education experience that encouraged her to return to the District to work for a congressman (Testimony of Jacqueline Rey-Hipolito, Transcript of September 12, 2002, p. 42).

49. Aaron O'Donnell, an alumnus of the University and the Program, testified in support of the application. He testified that he formerly resided in Indianapolis, Indiana, and decided to move to the District because of his experience in the Program. He further noted that several of the students who participated with him in the Program currently reside in the District or plan to reside in the District following graduate school (Testimony of Aaron O'Donnell, Transcript of September 12, 2002, p. 43).

Letters and Testimony of Persons in Opposition to the Application

50. Nine witnesses testified in opposition and several letters were filed in opposition to the application. One opponent testified that she is an employee of the International Law Institute. She does not want her employer to move because she wants to continue to walk to work (Testimony of Linda Eilertsen, Transcript of September 12, 2002, p. 44-45). The property owners on Corcoran Street testified that they do not want a dormitory in their neighborhood and that the proposed use will cause objectionable noise, overcrowding, increased traffic and parking problems, loss of tax revenue, overcrowding of the Safeway, loss of residential housing, and incompatibility with the character of the neighborhood. They further testified that they had not received notice of the ANC meeting at which the application was considered or received the mailed notice of the Zoning Commission hearing. The letters filed in opposition to the application generally addressed the same concerns. Additional concerns included: the possibility of university sprawl; alcohol use; decreased property values; inadequate supervision of the students; increased foot traffic in the neighborhood; and displacement of existing businesses in

the building. Two letters in opposition objected to the fact that the University is affiliated with the Catholic Church.

CONCLUSIONS OF LAW

The Applicant is seeking a special exception under §507 of the Zoning Regulations for approval of a Campus Plan and further processing for the use of 1615 New Hampshire Avenue, N.W. for a university use. The standard for approval of a campus plan and a specific University building, is, in the judgment of the Commission, that the use is located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions. Uses that are permitted by special exception are presumed to be appropriate for the applicable zoning district as long as the conditions in specified by the regulations are satisfied.

The Commission concludes that the proposed campus plan is appropriately clear and specific given that it contemplates the use of one building, which will undergo only minor modifications. The Commission concludes that the Applicant has shown the location, height, and bulk of all present and proposed improvements, including buildings, parking and loading facilities, screening, signs, streets, public utility facilities, and athletic and recreational facilities. Further, the Applicant has described the activities to be conducted on the Property and the capacity of all present and improved developments.

The Commission also concludes that the Applicant has met its burden of showing that the university use will not be objectionable to neighboring property.

The Commission agrees with the Office of Planning that the proposed Campus Plan and use will not cause objectionable noise. The location of the Program is within the confines of the

building, which will minimize any noise to adjacent property. Further, the Commission concludes that the residential portion of the Program will be concentrated on the fourth and fifth floors, which will further minimize the effect on adjacent property. The University also has taken steps to mitigate any noise or disruptive behavior by committing to employing a full-time resident rector or rectress to supervise the students. Finally, any objectionable noise will be limited by the small size of the Program.

The Commission concludes that the university use will not cause objectionable traffic and parking problems. The University has agreed to prohibit any student, except in the instance of disability, from bringing a vehicle to the Program. There is no such restriction on the current users of the building. Thus, the approximately fifty office employees and potential nineteen residents could drive and park up to sixty-nine vehicles in the area if the current uses continued. Thus, the proposed use is likely to lessen the traffic and parking impact in the area.

Likewise, the number of students is not likely to become an objectionable condition. The Program currently enrolls only twenty-five students per semester. During the first academic year, the Program will have only thirty-five students per semester. The University has requested approval for a maximum of fifty students per semester. This is comparable to the fifty office workers who currently occupy the building and the attendees of seminars held at the Property.

Community residents have expressed concern that the proposed use may cause objectionable foot traffic and overcrowding of the Safeway. However, there is no persuasive or probative evidence in the record to support this position. Indeed, the evidence in the record is to the contrary. The International Law Institute, in a letter in opposition to the application, states that it conducts seminars and conferences at the Property that it participants to the Dupont Circle

Area from all over the world. It also states that the participants in the seminars reside in nearby hotels and patronize local businesses. This is in addition to the potential nineteen residents and fifty office workers who currently utilize the Property. The record does not include any evidence that the students and faculty of the Program will increase the foot traffic in the area or increase the overcrowding of the Safeway as opposed to the potential sixty-nine occupants related to the current use. On the contrary, the building will be open only to the students of the Program who live in the Building and the twelve faculty and staff.

Neighboring property owners also expressed concern that the proposed use will cause "university creep" and reduce the values of their properties. The Commission credits the testimony of Father Timothy Scully, the Executive Vice President of the University, that the University has no plans to relocate its main campus to Washington, D.C. or to expand the Program beyond the Property. Community residents also expressed concern that the proposed use will displace existing residents and businesses and decrease the tax base of the District of Columbia. These concerns, however, are not proper considerations under §507.8 and 507.8.

The proposed Campus Plan and use are in keeping with the character of the neighborhood. The Zoning Regulations provide that the SP Zone District is designed to act as a buffer between adjoining commercial and residential areas. (11 DCMR § 500.2). Corcoran Street is located in an R-5-B Zone District. The increased residential use, and decreased commercial use, of the Property improves the buffer between the commercial uses in Dupont Circle and the adjacent residential area zoned R-5-B. The Zoning Regulations demonstrate that the proposed use is appropriate for its location. Uses permitted as a matter-of-right in both the SP and R-5-B Zone Districts include fraternity houses, sorority houses, and dormitories. (11 DCMR §330.5(g)). In addition, private schools are permitted as a matter-of-right in the SP zone

district. (11 DCMR §501.1(b)). Two sororities are located near the Property, and an elementary school is located on the same block as the Property. For those same reasons, the Commission concludes the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Maps.

The Commission is required by statute to give "great weight" to the resolutions of Advisory Neighborhood Commission 2B that were filed in this case. The Commission has afforded the resolutions the required "great weight." A letter from the ANC dated August 27, 2002, stated that the ANC had adopted a resolution in support of the application provided the Applicant agrees to prohibit students from bringing vehicles to the program. During the public hearing, several residents testified that they had not been notified of the ANC meeting. Accordingly, this Commission provided the ANC the opportunity to reconsider its prior resolution. During its meeting of September 18, 2002, the ANC adopted a resolution opposing the application. In its letter dated September 24, 2002, the ANC stated that concerns expressed by residents include, the impact of a university program in a residential neighborhood, removal of apartment units, loss of tax revenue, and neighborhood incompatibility. As set forth above, the Zoning Regulations direct this Commission to consider whether the proposed use is likely to become objectionable because of noise, traffic, number of students, or other objectionable conditions. The loss of tax revenue and removal of apartment units are not objectionable conditions contemplated by §507. Further, as discussed at length above, the proposed use will be compatible with the urban character of the Dupont Circle neighborhood and is compatible with the uses permitted as a matter-of-right in the SP-1 and R-5-B Zone Districts. The Commission concludes that the concerns expressed by ANC 2B are either not legally relevant under the District of Columbia Zoning Regulations, have been rebutted by evidence in the record or can be

addressed by the Conditions set forth below. The ANC also expressed concern that many of the property owners claimed that they did not receive notice of the application from the Office of Zoning by mail. The record, however, demonstrates that the notices were mailed, as required by the Zoning Regulations, on July 11, 2002 to all property owners within 200 feet of the subject site including all of those who testified before the Commission in opposition. Further, all other notices required by law or the Zoning Regulations were effectuated.

In accordance with the foregoing, the Commission concludes that the Campus Plan and further processing application satisfies the requirements of Section 507 of the Zoning Regulations. Accordingly, it is **ORDERED** that the application is **GRANTED SUBJECT** to the following **CONDITIONS**:

1. The Campus Plan is **APPROVED** until June 30, 2013.

2. The Property is **APPROVED** for university use.

3. The approved Campus Plan boundary comprises the entirety of Lot 249 in Square 155.

4. The number of students shall not exceed 50 per semester.

5. The University shall employ a full-time resident supervisor who shall reside in the building when the Program is in session.

6. The University shall prohibit students from bringing cars to the District of Columbia, except in the case of disability.

7. The University shall encourage ridesharing, transit, bicycle, and pedestrian modes of transportation by employees, fellows, faculty and visitors.

8. The University shall reserve six (6) parking spaces for the commercial tenants on the second and third floors until they vacate the building.

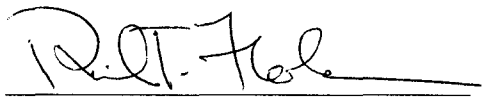
Document #: 1279446 v.1

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing response was mailed this 18th 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

Document #: 1278915 v.1