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June 4, 2004

VIA HAND DELIVERY

Jerrily R. Kress, FAIA
Director, Office of Zoning
441 Fourth Street, N.W.
Suite 220
Washington, D.C. 20001

Re: Z.C. Case No. 02-26: The George Washington University Lerner Health and Wellness Center

Dear Ms. Kress:

Enclosed for filing is the applicant's revised proposed Findings of Fact, Conclusions of Law and Order in the above-referenced case.

Sincerely,

Jerry A. Moore III

JAM/ydl

Enclosure

cc: Advisory Neighborhood Commission 2A
c/o Ms. Dorothy Miller
2440 Virginia Avenue, N.W.
Apt. D206
Washington, D.C. 20037

The Foggy Bottom Association
c/o West End Library
24th L & Streets, N.W.
Washington, D.C. 20037

ZONING COMMISSION
District of Columbia
CASE NO. 02-26
EXHIBIT NO. 87

ZONING COMMISSION
District of Columbia
CASE NO.02-26
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The Zoning Commission for the District of Columbia

Order No. 02-26
Z.C. Case No. 02-26

The George Washington University -
Application for Special Exception under 11 D.C.M.R. § 210
for Premises at 2301 G Street, N.W. (Square 42, Lot 847)

June 14, 2004

Pursuant to Public Notice, The Zoning Commission for the District of Columbia (the "Commission") held public hearings on December 2, 2002 and May 13, 2004 to consider an application from the George Washington University ("the University" or "the Applicant"), pursuant to Sections 210 and 3104.4 of the Zoning Regulations, for "further processing" special exception relief, under an existing campus plan, to amend the Board of Zoning Adjustment's (the "BZA") March 31, 1998 Order No. 16276 (the "Order") to modify condition number one restricting the classes of users at the Lerner Health and Wellness Center (the "Center") and to amend condition number two to permit the Center to remain open until 1:00 a.m. on all

days except Saturday. By letter dated March 11, 2004 the University modified its request to expand the membership at the Center by seeking approval to offer 1341 new memberships. The University also requested zoning authority to extend the Center's closing hour to 1:00 a.m. on all days. The new memberships would be offered to the following classes of individuals:

1. Students, faculty and staff of the University's Mount Vernon campus.

2. Immediate neighbors to the Center including owners of the Remington Condominiums, (52 memberships), the residents of St. Mary's Court (50 memberships), the members of St. Mary's Church (10 memberships) and the members of the Independent Order of Odd Fellows Lodge (10 memberships).

3. Friends and supporters of the University who are members of the "Presidents Club". This category would include up to 270

members, 25 of whom are already permitted to be members of the Center under the conditions of BZA Order No. 16276 and approximately 100 of which are currently serviced at the Smith Center, one block away.

4. The students and faculty of the School Without Walls. This category currently numbers 327 students and 42 faculty members.

5. Guests of members of the Center, limited to no more than 25 guests on a weekday and no more than 50 guests on weekends.

Thus, the modified application seeks approval for a total of 1341 additional members instead of the 3000 new members that the University requested in the first application in this case. The public hearings were conducted in accordance with the provisions of 11 D.C.M.R. Sections 210 and 3104.4.

Procedural Background

Public Notice. The Office of Zoning ("OZ") published a notice of public hearing in the D.C. Register on _____and _____ A copy of the public hearing notice was posted in the Office of Zoning and copies were provided to the District of Columbia public library system.

By letter dated _____, the Office of Zoning mailed a Notice of Public Hearing to the owners of all property within two hundred feet of the subject property; the District of Columbia Office of Planning ("OP"); the District Department of Transportation; Advisory Neighborhood Commission ("ANC") 2A, the ANC for the area within which the property is located; the single member ANC district for the subject property; the Ward 2 Councilmember; the Zoning Administrator; and to the Applicant.

The applicant submitted an affidavits of posting dated _____ and _____ indicating that on _____ and _____ it posted the property with two (2) zoning notices, (1) on each of its street frontages on 23rd Street, NW and on G Street, NW.

The Initial Office of Planning Report. By memorandum dated November 25, 2002, the D.C. Office of Planning recommended that: a) condition one of the BZA Order No. 16276 be revised to allow the University to offer the use of the Wellness Center to residents of the Foggy Bottom West end area and for the Commission to consider allowing the University to extend membership to students, faculty and staff of its Mount Vernon Campus; and b) revise condition 2 of BZA Order No. 16276 to allow the Wellness Center to remain open until 11:30 p.m. on all days of the week; and c) "take note" that the University plans to open the Wellness Center at 6:00 a.m. and to move intercollegiate squash team play (no spectators facility) to the

Wellness Center and confirm that these changes fall within the hours and activities allowed under BZA Order No. 16276.

The Initial Report of the District Department of Transportation. By memorandum dated November 26, 2002, the District Department of Transportation ("DOT") supported the Office of Planning's recommendation to revise Condition 1 to limit new members to residents of the Foggy Bottom/West end community together with students, faculty and staff from the Mt. Vernon campus, provided that adequate transit service is provided to and from the Mt. Vernon campus. DOT also concurred with the Office of Planning's recommendation to limit the closing hours of operation to 11:30 p.m. seven days a week. In making this recommendation DOT acknowledged that the extension of the Center's closing hour will have little traffic impact, but could "possibly" result in a noise impact or "other [unexplained] disruption" to the community. DOT further

recommended that the Center develop a transportation management plan when special events with more than 50 participants occur at the Center and that the University provide additional bicycle storage facilities and establish policies to further encourage transit usage.

The Initial ANC Report. By letter dated November 26, 2002, Advisory Neighborhood Commission 2A submitted a resolution in opposition to the application. In that resolution the ANC contended that the University is attempting to change the use that was first approved for the Center in BZA Order No. 16276; that the modifications proposed by the University cannot be implemented without a review of the University's Foggy Bottom Campus Plan and of its Mt. Vernon Campus Plan; that the requested additions to membership would transform the Center from a low intensity use to a high intensity use which is inappropriate at the edge of the campus boundary; that the University is attempting to introduce a high

intensity intercollegiate sports activity at the Center; that modifying the membership categories to offer memberships to selected persons who are not affiliated with the University constitutes a violation of the anti-discrimination provisions of the District of Columbia Human Rights Act; and that the approval of this application will result in the Center becoming a quasi-commercial facility with no connection to the University's educational mission.

The December 2, 2002 Public Hearing. Charles Barber, Esquire and Tony Vecchione, both of the University, testified to the reasons that the University seeks to extend membership privileges beyond those that have been approved by the BZA, its efforts to obtain neighborhood support, the requests that the University has received from people who live and work in the community, efforts made by the University to ensure that its usage projections are correct, the current user profile at the University's Smith Center, the current user profile at

the Center, the projected use of the Center if this application is approved and to the ability of the Center to accommodate additional users. University representatives also testified about the desire to provide students in particular a healthy recreational alternative in the later hours by extending closing time until 1:00 a.m. on most nights. According to the University's representatives, students are typically out that time of night and no complaints have been received about any disruptive conduct by students leaving the Center at closing.

Paul Brailsford, co-founder and CEO of Brailsford and Dunlavey, a firm that provides facility planning and project management services for the development of quality of life facilities for independent school, higher education and municipal clients, testified as an expert on the demand and use of recreational and intercollegiate sports facilities. He noted the trends and usage profiles of the Center compared with other universities and membership options, hours of operation and

membership patterns that are common to university facilities of this type. He opined further on projected use patterns at the Center, the impact that approval of the application would have on daily utilization by day, week and month and the University and community market demand for expanded services, together with the benefits to the University and to the neighborhood. His report noted that most schools are expanding recreation center operating hours until 1:00 a.m. and 2:00 a.m. to provide students with an alternative activity to going to bars. The Center is the only facility of those he surveyed that is open less than 100 hours per week. He concluded that the Center is not optimally utilized and that, when the current and the projected utilization rates are considered, an additional 3,000 members can be reasonably accommodated without causing an adverse impact to the Center or to the adjacent neighborhood.

Nicole White of Gorove/Slade Associates testified as an expert on existing and projected traffic and parking conditions. Her written report and oral testimony indicated that approximately 17,000 students, 2,000 faculty and 7,800 staff are enrolled or employed at the University's Foggy Bottom campus. All 17,000 students have membership rights. Approximately 1,000 of the 9,800 faculty and staff have purchased memberships at the Center. When she divided the 2,375 average weekday patrons into the total of 18,000 people who currently qualify for memberships and she was able to conclude that only 13% of those currently eligible to use the Center on an average day actually do so. She testified that the Center has a capacity of 1,973 persons and presented data which showed that the Center experiences the most traffic entering and exiting the facility between the hours of 6:00 p.m. and 7:00 p.m. when an average of 243 persons are using the Center. Her report concluded that the

approval of this application will have no adverse traffic, pedestrian of parking impact because, in this urban setting, most of those who do use, and are projected to use the Center access the building by foot or by public transportation. She also submitted oral and written evidence that extending the closing hour of the Center will have a minimal impact on traffic and parking because of the diminished traffic during later hours and the aforestated means of access.

Ten residents of the Foggy Bottom neighborhood appeared and testified in support of the application. In the main, those witnesses objected to the BZA condition that excluded neighborhood residents from benefiting from the use of the Center. Supporting witnesses concluded David Lehrman, Commissioner-elect for ANC 2A-01. He testified to his belief that the target population for an extended membership would be the people who are already on campus or who live in the neighborhood.

A representative of the Foggy Bottom Association testified in opposition to this application alleging that an expanded membership and increased hours of operations will have an adverse impact on the neighborhood and its "tax paying businesses."

The Foggy Bottom Association submitted a letter and oral testimony in opposition to the application. A person representing a nearby sports club also appeared at the hearing in opposition to the application.

After the hearing the Commission asked the University to prioritize by classes its request to expand membership. The University complied and submitted its priorities into the record.

Thereafter, the decision in the case was delayed by litigation regarding the Campus Plan. During that period, in September 2003, the University requested the Commission to consider a revised

membership plan in lieu of the originally submitted proposal. The Commission declined to entertain that request.

At its meeting of February 19, 2003, the Commission asked the University to update its usage experience at the Center, to submit a statement regarding its compliance with the conditions set forth in the Campus Plan, and to provide information on the projected impacts of the additional categories of users it seeks to accommodate.

Legal Proceedings. By Order dated March 29, 2001, the D.C. Board of Zoning Adjustment conditionally approved the University's Campus Plan through June 9, 2009. By its terms, to receive future special exceptions from the Zoning Commission, the University must be in compliance with Conditions 1 through 19. The University challenged portions of that Order in the U.S. District Court for the District of Columbia and the Court issued a preliminary injunction against enforcement of certain conditions. Subsequently, after

another public hearing, the BZA issued a "Remand Order" dated January 23, 2002, that modified condition nos. 2, 9 and 17 of the original order but left other conditions in tact. Thereafter, the University renewed its legal challenge. Subsequently, by Order dated April 12, 2002, the U.S. District court declared several conditions of the Remand Order to be invalid and unenforceable. Otherwise, the BZA Order and all other conditions were upheld.

The District of Columbia appealed the U.S. District Court's Order to the U.S. Court of Appeals for the District of Columbia. By Order dated February 4, 2003 the appellate court reinstated the previously invalidated conditions of the Remand Order. Concurrently, the University appealed the Remand Order to the District of Columbia Court of Appeals.

At a public meeting held March 10, 2003, on advice of counsel, the Commission determined that the University was not then in

compliance with Condition 9(a) of the Remand Order which, in pertinent part, requires the University to, by August of 2002, supply 5,600 beds for its undergraduate students either on its Foggy Bottom Campus or outside of the Foggy Bottom neighborhood. Relying on Condition 9(e) of the Remand Order which specifically states "that no special exception shall be granted whenever a semi-annual report reveals the University is not in compliance with the provisions of Condition 9," the Commission determined that the University had not demonstrated that it was in compliance with Condition 9(a) and, for that reason, the Commission voted to deny Application No. 02-26. No order reflecting that vote was issued.

Later, on July 3, 2003, the D.C. Court of Appeals stayed the provisions of Conditions 9(a), 9(b), 9(f) and 10 pending further order of that court. The effect of this action was to remove the procedural obstacle, as determined by the Commission on March 10, 2003, to the

Zoning Commission moving forward to finally decide this application on its merits.

By letter dated September 4, 2003, the University requested the Commission to reopen the record to receive further evidence and to modify this application.

In a decision and Order dated September 11, 2003, the D.C. Court of Appeals, inter alia, invalidated Condition 9(a) of the Remand Order and continued the stay of Condition 10.

By letters dated October 17, 2003, Advisory Neighborhood Commission 2A and the Foggy Bottom Association stated their opposition to the University's request to reopen the case record and to modify the application.

At its regular meeting on October 20, 2003, the Commission noted that both the District of Columbia and the University had filed cross motions for a rehearing of the District of Columbia Court of

Appeals Order of September 11, 2003. Concluding that the question of compliance with the Remand Order was still undecided in litigation, the Commission determined to wait for further action by the Court of Appeals before it decided this application on its merits. The University's motion to receive further evidence into the case record was denied.

On December 23, 2003, the D.C. Court of Appeals issued an Order denying both parties' motions for a rehearing of its September 11, 2003, Order.

The Commission met at its regular meeting on February 9, 2004, and determined that, for purposes of this proceeding, the D.C. Court of Appeals has relieved the University of the obligation of complying with Conditions 9(a) of the Remand Order, as well as Condition 10 of the original order at this time, and accordingly the University was entitled to a decision on the merits of this application.

CURRENT USAGE

The University responded by letter dated March 11, 2004 in which it stated that, by law, the Center can accommodate 1,973 persons at once. Since it opened, users have been restricted to the students, faculty and staff of the University's Foggy Bottom campus. Charts reflecting weekday usages during a week that the University is in session were submitted into the record. These users are drawn from a base population of approximately 17,000 students, 2,000 faculty and 8,500 staff members, some of them students, on the Foggy Bottom campus. All have membership rights, but only a few actually exercised them. Only 1,000 or so of the 10,500 faculty and staff members have purchased memberships. Student memberships are included in mandatory activity fees. Thus, dividing the total of 18,000 people who have current memberships, into the 1,729 average number of patrons that the use the Center during a week reveals that

only 9.6% of the current members use the facility on an average day on which school is in session.

The current usage charts reflect that:

- Peak usage is in the early evening hours;
- The Center is busier on Mondays, Tuesdays and Wednesdays than it is on Thursdays and Fridays;
- Usage on Saturday and Sundays is minimal; and
- The maximum number of users at any one time during the survey week is 263, or 13% of the building's capacity and 39% of its practical capacity.

The average daily usage of 1,729 at the Wellness Center compares with an average daily usage of 25,000 to 30,000 persons a day that enter the Marvin Center which is located in the core of the campus.

The University's expert transportation consultants submitted an analysis of the current usage at the Center which has found that 77%

of the Center's users walk to the facility, 9% arrive by public transportation, 4% bike and only 10% use an automobile. Of those that use an automobile to access the Center, only 5% drive to campus primarily to use the Center, the others are already on campus for other reasons.

The Second Office Of Planning Report. The Office of Planning submitted a second Memorandum, dated May 6, 2004 that addressed the terms of the University's modified request. This report:

1) Supported allowing the students, faculty and staff of the University's Mount Vernon Campus to be offered memberships at the Center subject to an "adequate" University shuttle service.

2) Supported allowing the University to offer up to 122

memberships to the residents of the Remington Condominiums and the St. Mary's Court, the St. Mary's Church and the Odd Fellows Lodge.

3) Recommended against allowing additional President's Club members to become members of the Center.

4) Supported allowing memberships to be offered to the students and faculty of the School Without Walls.

5) Recommended against allowing guests of members to use the Center on both weekdays and weekends.

6) Suggested an 11:30 p.m. closing time on all days.

7) Recommended that the application, as modified by the Office of Planning recommendations, be approved for a period of three (3) years, at which time the impact of the new classes of users could be evaluated to determine future usage.

8) Continued to support the University's right under BZA Order 16276 to open the Center at 6:00 a.m.

9) Concluded that moving intercollegiate squash team matches to the Center would not result in an adverse impact to the neighborhood because of the limited number of team members involved and the lack of spectator space at the Center.

In making these recommendations, the Office of Planning emphasized its view that University students should be the primary class of members at the Center and that a regular tracking reports schedule be implemented to measure and resolve any adverse impacts that occur.

The Second Department of Transportation Report. In a memorandum dated April 12, 2004, the Department of Transportation concluded that the University's modified request for new members and

later closing hours would not adversely impact the area road network. For that reason the Department of Transportation supports the modified application.

The Second ANC Report. By letter dated May 11, 2004, Advisory Neighborhood Commission 2A restated its opposition to this application, even as modified. In so doing, it relied on issues it raised in its previous submission relating to an alleged high intensity use in an area designated for low intensity uses, an allegation that the University is in violation of its Campus Plan by enrolling more than 20,000 students on its Foggy Bottom campus and that the University is using buildings outside of its campus without the benefit of the proper zoning relief.

The May 13, 2004 Public Hearing. Messer's Barber, Vecchione and Ms. White testified in support of the modified application. Mr. Barber explained why the University chose to modify its application,

how the resulting classes of new members was chosen, why it is important to the University that President's Club members and guests of members be allowed to use the Center as requested, the University's justification for a later closing hour and that the University is in compliance with its Campus Plan order, as demonstrated in a letter, dated March 11, 2004 that is in the record. Mr. Barber stated that the purpose of the Center is to provide health and wellness activities and services to the entire University community, including students, staff, trustees, friends and contributors to the University, guests of members including parents of students, and nearby Foggy Bottom residents and neighbors.

Mr. Vecchione spoke to the usage pattern, by day and time, by the current membership and to the building and management capacity and capability to handle the additional members that this modified application requests.

Ms. White testified to a March 10, 2004 memorandum that her firm prepared for the Department of Transportation and submitted into this record on March 11, 2004. That memorandum analyzed the traffic and parking impact that the modified classes of members, if approved, would have on the transportation and parking system. In pertinent part, that memorandum stated:

1) That only 5% of the Mount Vernon College students are expected to drive specifically to visit the Center. The remaining Mount Vernon College students will either already be on campus or will utilize the shuttle bus.

2) That the vast majority of new members from the Remington Condominiums, St. Mary's Court, St. Mary's Church and the Odd Fellows Lodge would walk to the Center.

3) That based upon her survey results of existing President's Club members, approximately 15% of the new Center users would

drive to the Foggy Bottom campus solely to use the Center resulting in 9 new vehicle trips per typical weekday.

4) That members of the School Without Walls would already travel to the neighborhood every weekday and would walk to and from the Center, generating no traffic impact.

5) That guests of members would most likely drive to the Foggy Bottom campus, although usually for reasons other than solely to use the Center. For purposes of her analysis she assumed that 100% of the guests will drive to the campus and use the University parking garage.

6) That neither extending the hours of operation nor having the Center host intercollegiate squash matches significantly increase the activity at the Center.

Her analysis concluded that the projected traffic and parking demand generated by the modified application will be low due to the

mode choice patterns of the new members, the majority of whom will walk or take transit to the Center.

A neighborhood resident also testified in support of the application. In addition, she asked that the University be granted the authority to offer memberships to residents of the Foggy Bottom neighborhood. She testified that many of them have a need to use the Center and nearly all would access the Center by foot.

A representative of the Foggy Bottom Association testified in opposition to the modified application.

CONTESTED ISSUES

1. In considering the issues raised by the ANC, the Commission finds that it concurs with the BZA determination in Application no. 16276 that the Center is not a major use on this campus. Even with the additional membership that is proposed, at peak periods the usage of this building is projected by the University

and its expert consultants to be substantially less than that of other buildings located at the core of the campus. The ANC did not challenge these projections and presented no support of its own that the expanded membership would contribute to or exacerbate objectionable conditions in the adjoining neighborhood.

2. The Commission disagrees with ANC's contention that the District of Columbia Human Rights Act, as amended, precludes the Commission from fashioning an order that would extend the University's ability to offer memberships at the Center to non-University individuals who reside in the adjacent neighborhood. The ANC contends that such a policy would constitute discrimination on the basis of "place of residence" in violation of the Act. Besides taking the unseemly stance of taking a position is directly adverse of the interest of its own constituents, the ANC's position is directly contrary to the plain language of the Human Rights Act. Although Section 2-1402.31

does prohibit discrimination of the basis, inter alia, of residency in a "place of public accommodation", the Center is not such a place. Section 2-1402.02 (24) defines "place of public accommodation" and expressfully excludes "any institution, club, or place of accommodation which is in its nature distinctly private...". Clearly, the George Washington University is a private institution and the Center is part of this private institution. Therefore, the prohibition on discrimination on the basis of residency in Section 1402.31 does not apply to the University or to the Center.

Further, Section 2-1402.41 provides a prohibition against discrimination by institutions of higher education, but contains no mention of "place of residence" as an unlawful basis of discrimination. Thus, the D.C. Human Rights Act does not prohibit an institution of higher education from making membership decisions with respect to the Center on the basis of residency.

3. With regard to the ANC's contention that approving this application will create a quasi-commercial facility unrelated to the University's educational mission, the Commission disagrees. The Center will be owned and managed by the University, and will provide health and wellness services primarily for the benefit of its students, faculty and staff. Extending those benefits as proposed, to persons who are either otherwise affiliated with the University or to persons who reside near to the Center, does not alter or substantially diminish its primary purposes, as testified by the University's expert on the demand and use of recreational sports facilities. Such facilities are common on campuses of higher educational institutions around the country and frequently include community members.

4. The ANC's contention that the approval of this application will change the use that was approved for this building in BZA application No. 16276 is without an evidentiary basis to support it. On

the other hand, there is sufficient evidence in the record to justify a conclusion that the University proposes no change to the health and wellness uses that were approved by the BZA.

5. The ANC's contends that the University is increasing the intensity of use at the Center by transferring intercollegiate sports activities that are currently located at the Smith Center. The Commission finds that it is satisfied with testimony of University representatives and the Office of Planning that there are no spectator facilities at the Center and that the scheduling of intercollegiate squash activities at the Center has not appreciably increased the occupancy or the intensity of the approved uses at the Center. This finding is supported by the expert testimony and evidence submitted by the University's traffic and parking consultant and by University's expert facilities consultant and there is no evidence to the contrary.

6. Finally, the ANC's contention that the approval of this application requires a modification to the approved plans for the University's Foggy Bottom and Mt. Vernon campuses is without merit. Section 210.4 of the Zoning Regulations requires the University to develop its campus(es) according to an approved plan showing the location, height and bulk of all of its present and proposed developments. The Commission has approved such plans for the University's Foggy Bottom and Mt. Vernon campuses. The Foggy Bottom campus plan, viewed together with the special exception granted in BZA Order No. 16276, and with the special exception requested here, satisfies the requirements of Section 210.4. There is no building or new use being proposed for the University's Mt. Vernon campus so the campus plan provisions of Section 210.4 are not applicable to this application.

FINDINGS OF FACT

1. The subject property is located at 700 23rd Street, NW on the Northwest corner of the intersection of 23rd and G Streets, NW. It is located within the approved George Washington University Campus boundaries on lot 947 in Square 42.

2. The site is located in an R-5-D District and is improved with a four story structure with four underground levels, three of which are used for parking. As a part of its mission, the University uses the building as a Health and Wellness Center that provides recreational and physical fitness activities to the university community.

3. On March 31, 1998, the BZA approved a special exception for the construction and use of the Center finding that the Campus Plan "... clearly anticipates an athletic facility within its periphery such as the Health and Wellness Center that has been proposed." That order limited the use of the Center to the "... students, faculty and staff

of the Foggy Bottom Campus" and mandated that "... operation of the facility shall end at 10:00 p.m., Monday through Saturday and at 8:00 p.m. on Sundays."

4. The Center opened in August 2001. The University has since gathered and submitted into evidence data that demonstrates the actual usage of the Center to be significantly below building capacity and less than the level that the BZA previously found to be the maximum that could be sustained without creating an adverse traffic impact. Further, the University submitted evidence that the Center was constructed to hold almost 2,000 single users at any given time, but that the actual usage profile demonstrates that the Center only operates at 12.5% of its capacity during its highest period of use, thus leaving the building occupancy at 87.5% under capacity. The University evidence analyzed usage experience during the hours and

days that the Center was open. No evidence to the contrary was presented.

5. The University's expert traffic consultant submitted reports and testified at the hearing that less than 10% of the students and less than 20% of the faculty and staff who use the Center arrive there by private vehicle. Of those who did drive to the Center, they either found street parking or parked in one of the University's parking facilities. The traffic consultant concluded that, based on its research, the current usage of the Center results in a negligible impact on the surrounding community and the surrounding street system. No evidence to the contrary was presented.

6. In this application, the University proposes to extend membership at the Center beyond the students, faculty and staff of its Foggy Bottom campus to an additional 1,341 users including university students, faculty and staff of the Mount Vernon Campus, members of

the University President's Club, guests of members and to people who live and work in the neighborhood, including residents of St. Mary's Court, members of St. Mary's Church and the Odd Fellows Lodge, students and staff at the School Without Walls and to the owners of the Remington Condominiums.

7. With the existing usage data as a guide, the University's expert traffic consultant submitted evidence and testified that the approval of the proposed additional users, as modified by the University, would not have an adverse traffic impact because even with the projected patronage, the Center will still operate well under capacity and result in a negligible increase in traffic, a level that the traffic expert concludes to have an insignificant impact on area traffic conditions. The report also concluded that the existing sidewalk system can accommodate the projected increase in pedestrian usage. The Commission accepts the evidence of the traffic consultant.

8. The University submitted evidence that 530 students, faculty and staff are assigned to its Mt. Vernon Campus from which 75 additional users of the Center are projected; that transportation between the Foggy Bottom and Mt. Vernon campuses is facilitated by University shuttle buses which are scheduled no less frequently than every 20 minutes during the school year; that there is a shuttle bus stop located one block from the Center; that the friends and supporters of the University who are members of the President's Club category would add a maximum of 245 new users to the Center; the students and faculty of the School Without Walls would add 369 new members, that guests of members would add a maximum of 50 new members and that the community memberships from the Remington Condominiums, St. Mary's Court, St. Mary's Church and the Odd Fellows Lodge would add a total of 122 new members. There was no evidence to the contrary.

9. The University submitted evidence that students on its Mt. Vernon campus would likely arrive on the Foggy Bottom campus by shuttle bus; that many of the President's Club members are likely to be already on the campus, and that the residents and members of the nearby establishments are already located in the neighborhood and thus, unlikely to have an additional traffic impact. There was no evidence to the contrary.

10. Crediting the testimony of the community resident and of the University and its consultants, there is room at the Center to accommodate, without adverse impact, additional members from persons who reside in the community, nearly all of whom would walk to the Center.

11. By letter dated February 28, 2003, the University submitted the biannual report that is required by the Remand Order. The University also submitted a status report, dated March 11, 2004,

on its compliance with the conditions of the campus plan Orders. These submissions demonstrated that the University was in compliance with all applicable conditions. There is no credible evidence to the contrary.

CONCLUSIONS OF LAW

1. The Zoning Commission is authorized under 11 D.C.M.R. Section 210.1 to approve a special exception in an R-5-D District for a college or university use.

2. The public notice and public hearing requirements for the special exception have been met.

3. As directed by 11 D.C.M.R. Section 3119.2, the Commission has required the applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Section 3104.1 for special exception relief under Section 210.

4. Based upon the record before the Commission and having given "great weight" to the ANC, the Commission concludes that the applicant has met the burden of proof pursuant to the 11 D.C.M.R. Sections 3104.1 and 210.1, that the requested relief can be granted subject to the conditions set forth below as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Commission further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

DECISION

In consideration of the findings and conclusions set forth in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS**, that this application be **GRANTED** subject to the following conditions:

1. The University is authorized to expand the membership at the Center by 1441 members. In so doing, it is expected that these new members will be students, faculty and staff of the University's Mt. Vernon campus, friends and supporters of the University who are members of the President's Club, students and faculty of the School Without Walls, and to persons who reside within the Foggy Bottom neighborhood or who are members of organizations that are located within that boundary.

2. The University will maintain a regular shuttle service between the Mt. Vernon campus and the Foggy Bottom campus during the hours that the Center is open so long as Mt. Vernon campus students are permitted access to the Center.

3. The Center shall close at 1:00 a.m. on all days.

BY ORDER OF THE ZONING COMMISSION

FOR THE DISTRICT OF COLUMBIA

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____

JERRILY R. KRESS, FAIA

Director

FINAL DATE OF ORDER:_____

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 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOME 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.