ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA

RE: Application of Georgetown University and U.S. National Park Service for A Zoning Map Amendment and Special Exception for Tract 102-114) Z.C. Case. No. 02-30

Hearing dates: May 19, 2002
June 5, 2003
June 19, 2003

Decision date: _____

PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW SUBMITTED BY
WASHINGTON CANOE CLUB AND C & 0 CANAL ASSOCIATION

I. SUMMARY OF EVIDENCE

1. On August 6, 2002, Georgetown University and the U.S. National Park Service ("Applicants") filed an application for a Zoning Map Amendment, seeking to zone Tract 102-114, a vacant parcel of land presently owned by the National Park Service ("NPS") fronting on the Potomac River approximately 1/4 mile west of the Key Bridge, from unzoned to the Waterfront-1 (W-1) zone, to enable Georgetown University to develop a recreational boathouse on Tract No. 102-i14 (Case No. 02-30). On the same day, the Applicants submitted an application for a text amendment to the W-1 zone, designated as Case No. 02-31, the effect of which would make a boathouse use matter-of-right in the W-1 zone.

2. On October 28, 2002, the Zoning Commission set down for a public hearing Case No. 02-42, a text amendment for the creation of a new waterfront open space (W-0) zone classification. The proposed new W-0 zone classification would establish new criteria for uses, such as a boathouse, within the new W-0 zone, and would permit the Zoning Commission to undertake simultaneous review of special exception or variance requests for proposals when initial zoning is also being established.

3. On October 28, 2002, the Zoning Commission also set down Case No. 02-30 (the application for a map amendment) and Case No. 02-31 (the application for a text amendment to the W-1 zone) for a public hearing.

4. On March 13, 2003, the Applicants filed a new application to amend the Zoning Map to zone Tract 102-114, from unzoned to the proposed new W-0 zone, and to approve a special exception and variance allowing the use of the land for a proposed boathouse.

ZONING COMMISSION
District of Columbia
Case 02-30
Exhibit 380

ZONING COMMISSION
District of Columbia
CASE NO.02-30
EXHIBIT NO.380

5. On April 28, 2003, after a public hearing held on March 13, 2003, the Zoning Commission approved the text amendment to establish the new W-0 zone classification, subject to a number of amendments to the proposal. The Commission noted that a new hearing would need to be held on any substantial changes to the proposed text amendment as a result of the Commission's review. See Transcript of Zoning Hearing, at p. 112 (April 28, 2003).

6. On March 21, 2003, the Zoning Commission provided public notice that, on May 19, 2003, a contested case hearing would be held on Case No. 02-30, which was advertised in the alternative for either a map amendment to zone the unmapped site to the proposed W-0 zone, or to the W-1 zone, and a special exception hearing to review the boathouse. Public notice was also provided that on the same day, a hearing would be held on the proposed text amendment to the zoning regulations applicable to the W-1 zone (Case No. 02-31). A public hearing in Case No. 02-31 was also held on May 19, 2003.

7. Public hearings in Case No. 02-30 were held on May 19, 2003, June 5, 2003, and June 19, 2003. On May, 19, 2003, the Zoning Commission heard testimony from the Applicants witnesses Alan Brangman and Tony Johnson (Georgetown University), Sally Blumenthal (National Park Service), Stephen Muse and William Kirwan (architects); and Nathan W. Gross (planner). On June 5, 2003, the Commission heard testimony from Joel Lawson from the Office of Planning, and from persons in opposition and support of the application, and on June 19, 2003, the Commission heard from the persons and parties in opposition.

8. The Commission received the following written reports from the D.C. Office of Planning: a Final Report dated May 9, 2003, a Supplemental Report dated May 29, 2003, which report included the comments of the D.C. Department of Health, and other governmental agencies, and a Supplemental Report dated June 27, 2003, to which was attached reports from , the D.C. Historic Preservation Review Board (Attachment I), the D.C. Historic Preservation Officer ("DCHPO") (Attachment II), and a 1998 Memorandum of Agreement ("MOA"), executed by the Advisory Council on Historic Preservation, the DCHPO, NPS and Georgetown University (Attachment III).

9. The Washington Canoe Club, the Chesapeake and Ohio Canal Association, and the Coalition for the Capital Crescent Trail, were granted status as parties in opposition.

10. The D.C. Historic Preservation Review Board and the DCHPO determined that a boathouse having a footprint of not more than 15,000 feet or height not in excess of 40 feet has the potential to adversely effect the C & O Canal Historical Park and the Georgetown Historic District, which are listed in the National Register of Historic Places. Supplemental Report of Office of Planning, dated June 27, 2003 (Attachments I, II, & III). This determination was made in 1997 in the context of the NPS's obligations to consider the potential adverse impacts of the land exchange on historic properties pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f. Id.

11. The 1988 MOA requires the NPS to ensure that the boathouse's "footprint or aggregate footprints are not more than 15,000 square feet for a building rising no more than 40 feet above grade." Supplemental Report Office of Planning (June 27, 2003) (Attachment III, Stipulation 1.a.)

12. The footprint of the proposed boathouse will be 22,800 square feet. Final Report of the D.C. Office of Planning, Revised Plan Profile (May 9, 2003). As a result, the boathouse is 1/3 taller and will "exceed the maximum permitted footprint by approximately 5,000 sq. ft." Supplemental Report of Office of Planning at 4 (June 27, 2003).

13. The GU Boathouse is seven times the volume of the historic Washington Canoe Club, and has four times the square footage of the historic Washington Canoe Club. Transcript of Zoning Commission hearing of 6/19/03, at page 13; WCC written testimony dated 6/19/03

14. The height of the proposed boathouse will 54 feet above grade (including a 14-foot attic for mechanical equipment). Supplemental Report of Office of Planning at 4 (June 27, 2003). When viewed from the river, the boathouse will stand 21 feet above the historic C&O Canal and 25 feet above the historic Washington Canoe Club. See WCC written testimony dated 6/19/03, at 12; WCC submission dated 6/27/03, paragraph 7.

15. Contrary to the representations of the NPS [Transcript of Zoning Commission hearing of 5/19/03, at158-59], the C&O Canal Advisory Commission did not approve the design of the proposed boathouse. Transcript of Zoning Commission hearing of 6/19/03, at169, 171. To the contrary, the C & Canal Advisory Commission voted on June 20, 2003, to express concerns regarding the size and height of the proposed Boathouse. See WCC letter of 6/27/03.

16. The Georgetown Waterfront Plan establishes a "Non Motorized Boathouse Zone," in which "the natural conditions of the palisades will be preserved," consisting of the area "west of the boundary of the designated boathouse area." Georgetown Waterfront Plan, Section 30. The Plan further provides that "[t]he area assigned to boathouses does not extend further west of Key Bridge than about 1,100 feet because of the policy aimed at preservation of the natural appearance of the Palisades." Georgetown Waterfront Plan, Section 14 (Letter from NPS to Zoning Commission dated May 14, 2003)

17. The boathouse will be located between 1,254 feet and 1,310 feet west of Key Bridge. Submission from Georgetown University to Zoning Commission dated June 16, 2003 (aerial photo).

18. The C&O Canal National Historical Park is listed in the National Register of Historic Places, and the unspoiled, natural setting of the area, are important contributing features to this historic linear park, which is significant for its conservation of adjacent lands. National Register Nomination, attached to Testimony of Fred Mopsik submitted on 6/19/03.

19. The D.C. Office of Planning, in evaluating the project, did not consider the impact of the boathouse on the C & O Canal National Historic Park. Transcript of Zoning Hearing, 6/5/03, at p. 25. No consideration was made of the views, or any impacts on the C&O Canal National Historical Park, by the designers of the boathouse. Transcript 5/19/03, p. 131, 163. To the contrary, the University concedes that it made no effort "to overly minimize the size of the building, as it will be pleasing for the public to look at." Submission by Georgetown University to Zoning Commission, at 3 (June 16, 2003).

20. The boathouse will block views from the C & O Canal and towpath during the winter months. Letter from NPS to Zoning Commission, p. 3 of Fact Sheet (May 14, 2003). Photographs submitted by the Parties in opposition presently show clear views of the river from the canal and towpath even in the summer. See Photographs attached to submission of Fred Mopsik's dated June 26, 2003; Photographs submitted by WCC and COCA on June 19, 2003; Transcript of Zoning Hearing of 6/19/03, at 134-35 There is no support for the NPS's assertions to the contrary in its letter of May 14, 2003. Significant views of the historic Washington Canoe Club and views from the historic C&O Canal towpath of the Washington Monument and Key Bridge will also be impaired. See WCC written testimony of 6/19/03, pages 5, 12.

21. While the NPS prepared an Environmental Assessment to evaluate the impacts of the proposed exchange of land between the NPS and Georgetown University, this Environmental Assessment did not consider the impact of the proposed boathouse. Transcript of Zoning Hearing of 5/19/03 (Testimony of Ms. Blumenthal), at page 171.

22. The D.C. Department of Health, in reviewing the impacts of the boathouse, advised that "the proposed boathouse project has the potential to negatively affect wetlands, upland terrestrial habitat, and aquatic habitat." Memo to Joel Lawson, Office of Planning from Jim Collier, P.E., Chief, Bureau of Environmental Quality, D.C. Department of Health (May 14, 2002), attached to Supplemental Report of Office of Planning (May 29, 2003).

23. The Applicants have not performed a hydrological study regarding the flow of the river at flood and the impact of the new structure on the ability of the adjacent historic Washington Canoe Club building to withstand a flood – which heretofore has withstood floods because of the wooded parkland upstream from the club. See WCC testimony, 6/19/03, page 10; WCC Letter to Mr. Parson from January, 2003, submitted on 6/19/03; Transcript of Zoning Hearing of 5/19/03, at p. 7-8;Transcript of Zoning Hearing of 6/19/03, at 134-35.

24. The Applicants have not performed any assessment of the possibility that the boathouse will increase erosion and damaging sedimentation of the river. See WCC testimony, 6/19/03, page 10, See WCC Letter to Mr. Parson from January, 2003, submitted on 6/19/03; Transcript of Zoning Hearing of 5/19/03, at p. 7.

25. The fragile, unstable embankment for the C & O Canal will have to be cut and graded in order to construct an access roadway to the boathouse that accommodates the Capital Crescent

Trail. Transcript of Zoning Hearing of 5/19/03, at pp. 133-34, 169-71; Transcript of Zoning Hearing of 5/19/03, at p. 177.

26. Grave damage to the C&O Canal NHP and the Washington Canoe Club is likely to occur during construction of the boathouse and during flood conditions. Transcript of Hearing of 6/19/03, at 134-35 (testimony of Larry Shuette); WCC Letter to Zoning Commission dated June 27, 2003.

27. The predominant use of the Potomac River in the area for the proposed boathouse is by canoes and kayaks. See written submission, Alexandria Harbold, page 2 Safety will be compromised by the placement of a rowing facility directly upstream of a sprint canoeing facility given the faster, backward traveling eights and the slower, forward-facing canoes and kayaks, creating a potential for collisions. Transcript of Zoning Hearing of 6/19/03 (Harbold Testimonies), at pages 33-34, 40-42, 123-24. This area of the river is reserved per the Potomac River Safety Committee for canoes and kayaks. Transcript of Zoning hearing of 6/19/03, at 34.

28. Applicants make conflicting statements regarding the extent of boathouse use. The record suggests that Georgetown University will use the boathouse year round, with regattas in the fall during peak season for canoeing and kayaking. See WCC submittal dated 6/19/03; Response to written submittal dated 6/16/03, page 7; Arnold and Porter letter dated 6/16/03.

29. WCC's programs and activities will be adversely affected by the boathouse use, since the dock will block three lanes from the well established WCC racecourse. See Pictorial submission of Mike Harbold testimony from 6/19/03; Pictorial submission of Alexandria Harbold testimony of 6/19/03.

30. The paved portion of the Capital Crescent Trail will be shifted 10 feet to the north to accommodate a new 15-foot wide access roadway to the boathouse, thereby eliminating the soft shoulders currently on both sides of the trail for 800 feet, and effectively reducing the width of the trail from 14 to 10 feet and increasing congestion on the trail for its thousands of users.. Transcript of 6/19/03, at pp. 177-79. Generally applicable guidelines for trail design provide that a trail such as the Capital Crescent Trail should have minimum width of 14 feet. Id. at p. 183. The safety of trail users will be compromised by the service vehicles and boat trailers that will be using the adjoining boathouse access roadway. Id. at 188.

31. While the D.C. Department of Transportation indicated in its report that the Applicant will adequately manage traffic and parking, this report only takes into account impacts on vehicular traffic, and fails to consider the impacts of the boathouse on boat traffic in the Potomac river or on pedestrian and non-motorized vehicle traffic using the narrowed Capital Crescent Trail, including the increased pedestrian and bicycle traffic on the Trail generated by the boathouse itself. See Report of D.C. Department of Transportation, attached to Supplemental Report of Office of Planning (June 27, 2003).

32. While originally the Applicants characterized their proposed boathouse as having a setback of 15 feet from the waterfront, the setback as measured from the cantilevered upper-story balcony is in fact only seven feet from the water. Supplemental Report of Office of Planning, at 1 (June 27, 2003). Georgetown University does not intend to permit public access to the waterfront area. Statement of Applicants in Support of Application, at 9 (March 13, 2003).

33. A private boathouse on what is now public access open space will decrease opportunities for the general public to boat on the river. Memo to Joel Lawson, Office of Planning from Jim Collier, P.E., Chief, Bureau of Environmental Quality, D.C. Department of Health (May 14, 2002), attached to Supplemental Report of Office of Planning (May 29, 2003).

34. Contrary to the suggestion of the Applicant, the full height of the second floor of the boathouse is not needed to comply with Federal Emergency Management Agency ("FEMA") requirements" for the second floor to be above the 100 year flood elevation." Transcript of Zoning Hearing of 5/19/03, at page 60, line 21. FEMA requirements applicable to construction within the 100-year flood require an elevation of nine feet. See GU submitted photograph of the Washington Canoe Club with elevations. Since the first floor is 14 feet high, the second floor is 5 feet above the flood elevation. Id.; NPS Email from Mr. Parsons, submitted 6/27/03.

35. The proposed boathouse includes both "an exercise room" (with a fireplace and 24-foot ceilings) as well as a "multi-function" room. Transcript of Hearing on 6/19/03, at 187; Supplemental Report of Office of Planning, at 5 (6/27/03). Removal of the exercise room off-site (i.e., to the main campus) would allow the building to be redesigned at a much smaller scale, which would lessen impacts on trail users, and on the views from the Towpath, and possibly the extent of the requested waterfront setback variance. Id.

36. The proposed boathouse design includes an extensive covered balcony on the waterfront side of the building totaling over 2,000 square feet in area, which "could be reduced without seriously impacting the functionality of the building," which would thereby "reduce the needed variance by increasing the waterfront waterfront setback from 7 to 15 feet. Supplemental Report of Office of Planning, at 5 (6/27/03).

37. There is conflicting evidence in the record about the use of the boathouse for social functions. GU indicated on its official web site that the boathouse will be used for social functions although GU indicated in testimony that it would not use the facility for social functions or parties. See WCC submittal of 6/27/03 for a copy of the website prior to editing; See WCC testimony of 6/19/03, page 3 for text; NPS Email from Mr. Parsons, submitted 6/27/03; Transcript of Zoning hearing of 5/19/03 page 111-13.

38. There is also conflicting evidence in the record about whether a sailing program will be conducted in the proposed boathouse. See Applicant's Pre-hearing Submission, at 7 (Nov 22, 2002); WCC testimony 6/19/03 page 3; Arnold & Porter summary (June 16, 2003)

39. Construction of the proposed boathouse will remove only 15 eight-person rowing shells from the racks at Thompson's Boathouse. See Transcript of Zoning Hearing (Tony Johnston testimony) of 5/19/03, at page 139.

40. Contrary to the testimony of the Applicant, the proposed boathouse would be double the size of the average boathouse in the Eastern Association of Rowing Colleges (EARC), while Georgetown University (GU) is only 1/5 the size of the largest school in terms of its student body. Transcript of Zoning Hearing of 6/19/03, at 136-42; WCC Response and table submitted 6/27/03.

41. Since rowing shells are a maximum of 60 feet long, a boathouse need only be 62-64' deep to accommodate rowing shells. See WCC submission of 6/19/03 "NPS Facility and Site Analysis for a Boathouse on the Potomac"; Transcript of Zoning Hearing of 5/19/10 (testimony of Tony Johnston), page 136; WCC written testimony submitted 6/19/03, page 13, 32; Transcript of Zoning Hearing (Tony Johnston testimony) of 5/19/03, at page 139.

42. The second floor of the boathouse could be lower than 14' and still allow for storage of rowing oars, since rowing oars are only 12'6" long, and the butt of the oars could be placed in a "pit" (as both MIT and Univ. of Pennsylvania do). See WCC written testimony, 6/19/03, page 13.

43. Applicants' suggestion that the size boathouse cannot be reduced without compromising programmatic functions cannot be squared with the justification of the original land exchange with the NPS, which is that the Applicants would otherwise build its boathouse upstream on a much narrower parcel of land. Arnold & Porter submission, at 2, 3 (June 16, 2003).

44. Title IX doesn't require grandiose facilities, simply equal facilities.

45. A rowing tank is not a water-dependent function, and can be placed on campus, as can ergometers. In the EARC, five Universities have tanks on campus, 3 have no tanks, 6 have tanks in the boathouse. See Transcript of Zoning Hearing of 5/19/10 (testimony of Erik Meyers), at page 70; See Table 1 of WCC testimony, 6/19/03, page 15

46. GU's proposed 24-seat rowing tank will be the largest sited inside a boathouse in the EARC. See WCC testimony 6/19/03, page 2

47. The proposed boathouse would be substantially larger than Thompsons Boat Center (TBC), which is 22,500 square feet, or 22,500/35,500 (63%) the size of the GU Boathouse. TBC hold 112 shells indoors and accommodates 1,800 high school students and 2 university programs. See NPS Site Analysis, submitted by WCC on 6/19/03. Both TBC and WCC are set back 35 feet or more from the waterfront. Transcript of Zoning Hearing of 6/19/03, at 132.

Findings of Fact

48. The proposed text amendments to the zoning regulations that would adopt a new "W-0" zone classifications have not been adopted in final form by the Zoning Commission, and have not been submitted for "comment and review" by the National Capital Planning Commission, as required by D.C. Code § 6-641.05(a)(1)(B).

49. The draft of the text amendments for the new W-0 zone that was set down for a public hearing by the Zoning Commission in Case 02-42 on February 28, 2003, differs in a number of material respects from the draft regulations applied by the Office of Planning in its Final Report on Case No. 02-30. Compare Final Report of Office of Planning for Case No. 02-42, Attachment II (Feb 28, 2003) with Final Report of Office of Planning for Case No. 02-30 (May 9, 2003). For example, the prior iteration of the text amendment relating to waterfront setbacks provided for a set back of "not less than 20 feet to any public or structure . . . to provide for continuous public access along the water," while the Office of Planning applied a different standard relating to waterfront setback in evaluating Case No. 02-30. Id. Likewise, the special exception review criteria set down for the Zoning Commission hearing were contained in proposed regulation 905.3, and applied to the Office of Planning, whereas in Case No. 02-30, the Office of Planning apparently applied criteria identified as being the Applicant's burden of proof in a proposed Section 923 of the new text amendment. Id. The Application for special exception references Section 917.1(v) as setting forth the special exception criteria applicable to approval of boathouses in the W-0 Zone. Application for Special Exception, at 9 (March 13, 2003).

50. The draft text amendment purporting to establish the new W-0 zone and its zoning criteria presently that is apparently being applied to Case No. 02-30 is not presently available on the Zoning Commission website, in the D.C. Municipal Regulations, or in the D.C. Register.

51. The special exception and variance review criteria set forth in the draft text amendment governing the new W-0 zone have been modified since the set down hearing, and may yet be subject to further changes during the course of subsequent agency reviews prior to final adoption. As a result, members of the public or parties in opposition to Case No. 02-30 have no way of determining what version of the draft text amendment will be applied by the Zoning Commission in reviewing Case No. 02-30. Without final text amendments relating to the new W-0 zone, parties in opposition to Case No. 02-30 are severely hampered in their ability to meaningfully participate in that proceeding, which purports to apply draft text amendments creating the W-0 zone to the proposed boathouse.

52. If the site were mapped as a W-1 zone, the proposed boathouse would not be matter-of-right and the special exception proceeding for the boathouse could not be undertaken by Zoning Commission simultaneously with the initial mapping of the site, absent the text amendments proposed by the Applicants in Case No. 02-31.

53. The boathouse building will be located between 1,254 feet and 1,310 feet west of Key Bridge, and thus would be located partially outside the approved non-motorized Boathouse Zone of the Georgetown Waterfront Park.

54. Georgetown University does not intend to allow the public free access to the waterfront area, and therefore the waterfront in the vicinity of the boathouse, which was formerly open to the public, will become unavailable to the public.

55. The boathouse would be used by at most 300 students [Transcript 5/18, p.138], while the usage of the C&O Canal National Historical Park in the District of Columbia in 2002 was over 2 million, [NPS data, NPS website].

56. The proposed boathouse will be located within the C & O Canal Historical Park, which is listed in the National Register of Historic Places, and will result in adverse effects to this historic resource, as well as other nearby historic properties.

57. The boathouse will have a detrimental impact on river traffic within an area that is designated by the Potomac Safety Committee for use of canoes and kayaks., as it will increase the number of river users at the already-congested trail head, will add large docks that disrupt established traffic patterns in the river, and will create safety hazards for canoes and kayaks

58. The boathouse will have a detrimental impact on traffic on the Capital Crescent Trail, since it will eliminate the soft shoulders on both sides of the trail in order to construct a 15-foot access road for the boathouse, effectively narrowing the trail from 14 to 10 feet, thereby increasing traffic congestion on the trail for its thousands of users.

59. The lack of on-site parking facilities will result in detrimental impacts to on-street parking, since the limited available on-street parking will be used by boathouse users, staff and service crews, including security personnel, coaches, students, spectators and visitors.

60. The boathouse is likely to have a detrimental impact on traffic caused by shuttle buses and the motor vehicles driven by visitors, students, and staff who choose not to use shuttle buses.

61. The boathouse is likely to have a significant negative impact on the environment, including wetlands, upland terrestrial habitat, and aquatic habitat, and to the Potomac River.

62. The boathouse will block views of the Potomac river year round, as well as views of the Washington Monument and other landmarks, and views from the Washington Canoe Club.

63. The boathouse is designed to a depth that exceeds the amount of depth necessary to accommodate the number and type of shells that GU plans to use, and includes additional space (such as an exercise room, kitchen, and rowing tanks) beyond that which is to accomplish the programmatic function of the boathouse.

64. Major reductions can be made in the size of the building with no impact on the ability of the boathouse to perform its programmatic functions.

65. The need for a variance from the minimum 20-foot set-back from the water is a function of the balconies on the boathouse, a design feature that bears no relationship to the programmatic function, and the excess depth of the boathouse, which is designed to a greater depth than necessary to accommodate the number and type of rowing shells GU will be using, rather than the configuration or condition of the property.

Conclusions of Law

D.C. Administrative Procedures Act and Due Process Clause

66. The D.C. Administrative Procedure Act ("APA") provides that, "[i]n any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Mayor or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding the Mayor or the agency determines that the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto." D.C. Code § 2-509(a). This notice is necessary to satisfy the due process requirement of the Fifth Amendment to the U.S. Constitution. Williams v. Barry, 708 F.2d 789 (D.C. App. 1983); Spivey v. Barry, 665 F.2d 1222, 1228 (D.C. Cir. 1981).

67. The DC APA also require all agencies, "prior to the adoption of any rule or the amendment or repeal thereof, publish in the District of Columbia Register . . .notice of the intended action so as to afford interested persons opportunity to submit data and views either orally or in writing . . . " D.C. Code § 2-505(a). The required publication or service "shall be made not less than 30 days prior to the effective date of the proposed adoption, amendment, or repeal, as the case may be, except as otherwise provided by the Mayor or the agency upon good cause found and published with the notice." Id.

68. One of the circumstances under which zoning changes may be applied without completion of the required notice and comment rulemaking procedures is pursuant to the "vesting provisions" adopted by the Zoning Commission. These "vesting provisions" apply "[i]f an application for a building permit is filed when the Zoning Commission has pending before it a proceeding to consider an amendment of the zone district classification of the site of the proposed construction." 11 DCMR § 3202.5. Under these regulations, "[i]f the application is filed after

the date on which the Zoning Commission has made a decision to hold a hearing on the amendment, the application may be processed, and any work authorized by the permit may be carried to completion, only in accordance with the zone district classification of the site pursuant to the final decision of the Zoning Commission in the proceeding, or in accordance with the most restrictive zone classification being considered for the site. Id. § 3202.5(b). These vesting provisions do not apply if the application to change the zone classification is filed by the owner of the property. Id. § 3202.5(e).

69. The vesting provisions were adopted by Zoning Commission Order 516 (Jan. 5, 1987). The Zoning Commission subsequently made clear that these "vesting provisions" were intended to apply only to where a zoning *map* amendment is pending before the Commission, and specifically declined to adopt provisions that would restrict the vesting of construction rights when a *text* amendment is pending before the Commission, explaining that "text amendments, which are ordinarily considered for general application throughout the District, are inherently more complex than map amendment rulemaking cases, which apply to a relatively small area; this is so, even though it is the case that text amendments are involved in certain map amendments, such as those which involve overlay provisions; the greater complexity renders it administratively impractical to restrict development and business activities while such cases are pending; moreover, it is inherently more difficult to project the approximate ultimate decision in such cases." Zoning Commission Order No. 588, at 3-4 (Sept. 15, 1988).

70. The notice provided to the public was not legally sufficient to apprise parties and members of the public of the issues involved in Case No. 02-30 since there has not yet been any decision about what zone district will be applied to this land on which the boathouse would be located, or what special exception review criteria will be applied. Due to the lack of final regulations adopting the W-0 zone (or final adoption of the text amendments to the W-1 zone necessary to permit review of the boathouse by the Zoning Commission). As a result, the parties did not receive the required notice of the afforded hearing by the Commission in Case No. 02-30, or an adequate opportunity to comment on the variance and special exception applications, in violation of the APA and due process clause of the U.S. Constitution.

71. Further, because the Zoning Commission is applying to the boathouse a text amendment (either the proposed regulations applicable to the proposed W-0 zone or the text amendments applicable to the W-1 zone) that has not yet been adopted in accordance with the APA, any approval of the boathouse violates the notice and comment rulemaking requirements of by the APA.

W-O Zone Special Exception Criteria

72. Under the proposed W-O zone (if it is ultimately adopted in the same form as the proposed zoning text amendment), a boathouse use will be permitted by special exception provided that the Applicant demonstrate that it meets certain special exception criteria. See Zoning Case No. 02-42.

73. Due to the size of the proposed boathouse, the boathouse will partially displace and reduce the width of the Capital Crescent Trail, a major public recreational facility along the waterfront. The boathouse will also convert for Georgetown University's private use a waterfront area previously available for public recreational use, thereby detracting from and reducing the public recreational opportunities offered along the waterfront. The boathouse, by blocking the public's view of the Potomac River and other significant landmarks from the C & O Canal Historical Park and towpath, will detract from and impair the visual opportunities offered along the waterfront, and will have an adverse effect on historic resources; including the C&O Canal Historical Park and the historic Washington Canoe Club. Therefore, the boathouse proposal does not meet the special exception criteria that "the buildings, structures and uses will enhance the visual and public recreational opportunities offered along the waterfront." Proposed Zoning Regulation, §§ 918.2(a), 923.2.

74. The proposed boathouse project has the potential to negatively affect wetlands, upland terrestrial habitat, and aquatic habitat, and will likely require an Environmental Impact Statement under the D.C. Environmental Policy Act due to its significant negative impacts on the environment. Memo to Joel Lawson, Office of Planning from Jim Collier, P.E., Chief, Bureau of Environmental Quality, D.C. Department of Health (May 14, 2002), attached to Supplemental Report of Office of Planning (May 29, 2003). Therefore, the proposed boathouse does not satisfy the proposed special exception criteria that "Buildings, structures and uses on land will be located and designed to minimize adverse impacts on the river and riverbank areas." Proposed Zoning Regulation, § 923.3.

75. The boathouse location will adversely affect traffic on the river itself, including WCC's programs and activities, since the dock will block three lanes from the well established WCC racecourse, and intrude on an already congested area of the river that is designated for canoe and kayak use. Therefore, the proposed boathouse and docks do not satisfy the proposed special exception criteria that "Buildings, structures and uses on, under, or over water will be located and designed to minimize adverse impacts on the river and riverbank areas." Proposed Zoning Regulation, § 923.4.

76. In addition to the foregoing adverse effects on river traffic, the boathouse also is likely to reduce the available of on-street parking as a result of motor vehicles driven by visitors, students, and staff who choose not to or are unable to make use of shuttle buses. The boathouse will also increase traffic congestion on Capital Crescent Trail by reducing its width from 14 to 10 feet, adversely affecting the trail's thousands of users. The boathouse will make 300 feet of the waterfront unavailable to the public. The boathouse therefore does not satisfy the special exception criteria that "All structures and buildings will be located so as not likely to become objectionable to surrounding and nearby property because of noise, traffic or parking, and so as not to limit public access along or to the waterfront, other than directly in front of a boathouse. . . " Proposed Zoning Regulation, §§ 918.2(c), 923.5.

77. The boathouse structure will occupy 48 percent of a undeveloped, natural 1.09

acre parcel of land site, in addition to paving over a portion of the site for an access road and assembly area, significantly increasing the impervious surfaces on the site, and result in increased sedimentation to the Potomac River. The boathouse therefore does not satisfy the special exception criteria that "[i]mpervious surfaces are minimized, and buildings, structures, and other uses will be designed and sited to minimize potential for surface run-off into the river." Proposed Zoning Regulation, § 923.6.

Variance

78. The proposed zoning regulations for the W-0 zone would require a setback from the shoreline of not less than 75 feet to any building or structure, and allows for the consideration of a special exception for any proposed waterfront setback of greater than 20 ' and less than 75 '. Proposed zoning regulation, § 935. Applicants propose a setback of only seven feet from the waterfront, requiring a variance from the minimum setback requirements of proposed zoning regulations § 935.

79. A variance will be granted "[w]here, by reason of exceptional narrowness shallowness or shape of a specific piece of property at the time to the original adoption of the regulations, or by reason of exceptional topographic conditions or other extraordinary or exception situation or condition of a specific piece of property, the structure application of any [zoning] regulation . . . would result in peculiar or exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property." 11 DCMR § 3103.2. Further, a variance can be granted only if "the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. Id.

80. The lack of the minimum setback is a function of the inclusion of balconies as an optional design feature of the boathouse that is not needed for reasonable boathouse functions, and is also due to the inclusion of non-water dependent uses (a rowing tank and exercise room) that need not be provided on a boathouse site. Therefore, the requested variance is not needed to provide relief from any hardship to the Applicant attributable to an exceptional topographic conditions or other extraordinary or exceptional situation or condition of the property.

81. The purpose of the waterfront setback, as stated in the first draft of the text of the proposed Section 935, is to provide for continuous public access along the water. Final Report of Office of Planning in Case No. 02-42, Attachment II (Feb. 28, 2003); Further Information Report of Office of Planning in Case No. 02-42, at 3 (April 4, 2003).

82. The minimum waterfront setback requirement of 20 feet (by special exception) in the proposed W-0 zone was intended to minimize impacts on the riverbank and the river, and to provide space for public access along the waterfront. It is not sufficient for the Applicants to simply assert that the public will be barred from access to the waterfront as justification for the

variance. Accepting this rationale would in fact encourage owners to preclude public access as a means seeking a variance, and thereby impair the purpose of the setback requirement in the proposed zoning regulations for the W-0 zone, which is to increase public access to the waterfront, not provide private owners with incentives to bar public access.

Comprehensive Plan

83. The D.C. Comprehensive Plan, as amended, provides that zoning must be consistent with the District Elements of the D.C. Comprehensive Plan 10 DCMR § 112.6.

84. The proposed boathouse will adversely affect the historic significance of the C & O Canal National Historical Park, and will allow incompatible recreational uses to take precedence over preserving the historic significance of the Park. Approval of the special exception to allow the boathouse is therefore inconsistent with the Federal Element of the Comprehensive Plan, which provides that "The C&O Canal National Historical Park should be preserved as a legacy of inland waterway development. It should also serve as a recreational area for non-motorized uses, such as bicycling, jogging, hiking and boating, though preservation of the park's historic resources should take precedence over the provision of recreational activities." Source: National Capital Planning commission, Comprehensive Plan for the National Capital: Federal Elements. P. 184, February 2, 1989.

85. The proposed boathouse will be a massive, four-story, 35,524 square foot structure that will pave over what is presently unspoilt natural parkland. Approval of the special exception to allow the boathouse as currently designed is therefore inconsistent with the Parks, Open Space and Natural Features element of the Comprehensive Plan, which provides that "As a great natural area, the Potomac Palisades . . . should reflect the nature, which controlled the early settlement in the Region. Conspicuous man-made forms should be avoided upstream from Key Bridge. The green landscape and park-like character provided by trees, grass and other abundant plant materials should be kept particularly evident in relation to the rivers."

86. The proposed massive boathouse, located within seven feet of the waterfront, will blocks key views of the river and other landmarks from the C & O Canal towpath and other key vantage points year-round, and will not be available for public use. Approval of the special exception is therefore inconsistent with the Parks, Open Space and Natural Features element of the Comprehensive Plan, which provides that "all lands within 150 to 200 feet of the water's edge . . . should be managed in a manner that will encourage the enjoyment and recreational use of water resources, while protecting the scenic values of the waterways."

87. The Ward 2 Objective for Waterfront Development provides that "[t]he objective for waterfront development is to realize the full potential of Ward 2 waterfront areas in terms of public access to the waterfront, recreation space, and adjacent mixed-use development." 10 DCMR § 1347.1. The Ward 2 Objective for Urban Design provides that "[t]he city, working with the National Park Service, shall ensure that Ward 2 waterfront areas . . . provide public access and

use." Id. § 1371.1(d). Allowing a private boathouse exclusive rights to use what is now public access open space will decrease opportunities for the general public to boat on the river, and is therefore inconsistent with the Ward 2 Element of the Comprehensive Plan.

88. The 1987 Georgetown Waterfront Plan designates a general area of land and water within which new boathouses are appropriate. The area assigned to boathouses does not extend further west of Key Bridge than about 1,100 feet because of the policy aimed at preservation of the natural appearance of the Palisades." 1987 Plan for the Georgetown Waterfront Park & C&O Canal.

89. The proposed boathouse will be located between 1,254 feet and 1,310 feet west of Key Bridge, and therefore will be located partially within the area west of Key Bridge designated for non-motorized boating, in violation of the NPS's 1987 Plan for the Georgetown Waterfront.

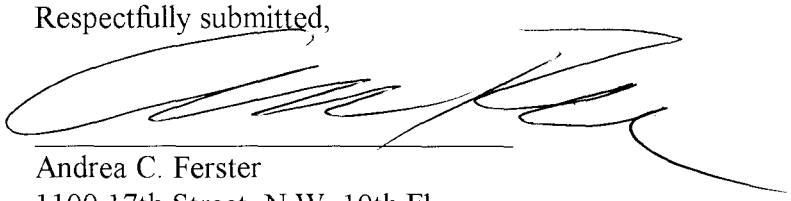
90. In light of the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the subject application for a special exception and variance is denied.

VOTE: (James Hannahan, Peter May, Anthony Hood, and Carol Mitten)

BY ORDER OF THE D.C. ZONING COMMISSION

ATTESTED BY: _____
Jerrily Kress, Director
Office of Zoning

Respectfully submitted,



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Counsel for Washington Canoe Club and C & O Canal Association

July 18, 2003

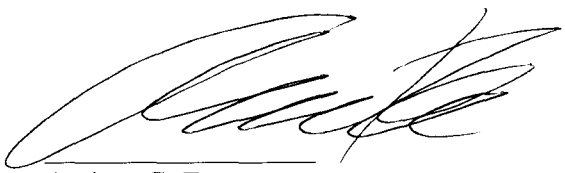
CERTIFICATE OF SERVICE

I hereby certify that, on July 18, 2003, a copy of the foregoing Proposed Findings of Fact and Conclusions of Law was served by mail on:

Cynthia Giordano
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1206

Tom Birch
ANC 2E
Jellefs Boys and Girls Club
3265 S Street, N.W.
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Ernie Brooks
Coalition for the Capital Crescent Trail
P. O. Box 30703
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Andrea C. Ferster

Chesapeake & Ohio Canal Association

P.O. Box 366 • Glen Echo MD 20812

July 2, 2003

Ms. Carol Mitten, Chair
District of Columbia Zoning Commission
441 4th Street, NW
Suite 210 South
Washington DC 20001

Dear Ms. Mitten,

This letter is to authorize Andrea Ferster to represent myself and the Chesapeake & Ohio Canal Association, in the Case 02-30 for the purpose of pursuing this case providing testimony on my behalf.

Sincerely yours,

Frederick I. Mopsik
Cochair, Environmental Committee

Washington Canoe Club
3700 WATER STREET, NW
WASHINGTON, D.C. 20007

July 17, 2003

Carol Mitter, Chair
D.C. Zoning Commission
441 4th Street, N.W. Suite 210 South
Washington, D.C. 20001

Re: Case No. 02-30

Dear Ms. Mitten:

This letter authorizes Andrea Ferster to represent the Washington Canoe Club (WCC) in the above-referenced proceeding, and to file proposed findings of fact and conclusions of law on WCC's behalf.

Very truly yours,

William Caspar

William Caspar, Vice President
Washington Canoe Club