Z.C. 02-30

District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

GARLAND F. PINKSTON
CLERK OF COURT

Telephone: 879-2700
Area Code 202

May 11, 2004

NO. 04-AA-463 Washington Canoe Club, et al vs. DC Zoning Commission

District of Columbia Zoning Commission
Jerrily Kress, Director
441 4th Street, N.W.
Suite 210S
Washington, D.C. 20001

Dear Sir/Madam:

Pursuant to the rules of this Court I am transmitting, herewith, a copy of the petition for review filed on May 10, 2004, in the above-entitled case.

Yours very truly,

Garland F. Pinkston
Clerk of Court

By: Ruth Sterrett
Information Center Supervisor

cc: Edward Schwab, Esq.

ZONING COMMISSION
District of Columbia
Case 02-30
Exhibit 393

ZONING COMMISSION
District of Columbia
CASE NO.02-30
EXHIBIT NO.393

04-AA-463

Form 5. Petition for Review.

DISTRICT OF COLUMBIA COURT OF APPEALS
PETITION FOR REVIEW

Appeal No. [ ]

[Washington Canoe Club, et al (*see additonal names below)]
Petitioner

v.

[02-30]
Agency No.

[DC Zoning Commission]
Respondent (Agency)

I, [Wasington Canoe Club, et al.], seek review by the District of Columbia Court of Appeals of the decision or order of [Zoning Commission Order 02-30] (agency) entered on the [9] day of [April] [2004]

Names, addresses, and telephone numbers of all other parties and their counsel who appeared in the agency (use additional pages if necessary):

CYNTHIA A. GIORDANO, ESQ., Arnold & Porter 555 12th Street, N.W. Washington, D.C. 20004 (202) 942-5000
(Attorney for the Applicants - Georgetown University Boathouse and The National Park Service)
ANC 2E , 3265 S Street, NW, Washington, DC 20007 (202) 338-7427

Signature of Petitioner or Attorney
(all but natural persons representing themselves must be represented

[Richard B. Nettler/929471/Jeannine Rustad 451110]
Printed Name of Petitioner or Attorney

Robins, Kaplan, Miller & Ciresi, L.L.P.
1801 K Street, NW - Suite 1200
Washington, DC 20006
Address

(202) 775-0725
Telephone Number

NOTE: ATTACH A COPY OF THE DECISION/ORDER ISSUED BY THE DISTRICT OF COLUMBIA AGENCY FROM WHICH THE PETITION IS TAKEN.

Washington Canoe Club
1524 T Street, NW
Washington, DC 20009

C &O Canal Association
P.O. Box 366
Glen Echo, MD 20812-0366

Coalition For the Capital Crescent Trail
P.O. Box 366
Bethesda, MD 20824-0703

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

★ ★ ★

ZONING COMMISSION ORDER NO. 02-30
Case No. 02-30
(Georgetown University Boathouse -- Map Amendment, Special Exception, Variance)
December 11, 2003

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on May 19, June 5, and June 19, 2003 to consider an application from the President and Directors of Georgetown College ("Georgetown University" or the "University") and the National Park Service ("NPS"), (collectively, the "Applicants"), for a map amendment, special exceptions, and variance relief. The Applicants originally applied for zoning from unzoned to the W-1 zone district. The Zoning Commission, at the request of the Office of Planning ("OP"), and with the consent of the Applicants, determined to advertise the then-pending W-0 District as an alternative zone classification to the requested W-1 District. Accordingly, the Applicants also applied for special exceptions and variance relief under the W-0 District to allow boathouse use on the subject property. Georgetown University is proposing to build a boathouse for use by the University's crew team. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the applications.

FINDINGS OF FACT

The Applications, Parties and Hearing

1. On August 6, 2002, the Applicants submitted an application to the Zoning Commission for a map amendment from unzoned to the W-1 District for property identified as Tract 102-114 (the "Property") in order to allow construction of the University's proposed boathouse on the Property. W-1 was the lowest density existing zone classification to allow boathouse use. On October 28, 2002, the Zoning Commission set down the application for a public hearing.

2. Also on August 6, 2002, the Applicants submitted a petition requesting several text amendments to the W-1 Waterfront District that would be necessary to permit development of the boathouse if the Property were to be mapped W-1. On October 28, 2002, the Zoning Commission set down the petition for a public hearing. The petition for the text amendment, Zoning Commission Case No. 02-31, was eventually denied.

3. The OP, in its Setdown Report to the Zoning Commission, dated October 18, 2002, recommended that the Commission consider mapping the Property with an entirely new zoning category, the Waterfront Open Space zone (W-0). The W-0 zone district was newly proposed by OP in Zoning Commission Case No. 02-42 and represents the most restrictive

waterfront zone district available. Case No. 02-42 proceeded before the Commission during the same time period as the instant case.

4. At its October 28, 2002 meeting, the Zoning Commission considered the recommendation from the Office of Planning that the proposed W-0 zone be considered as an alternative to the W-1 request. The Applicants acquiesced in the consideration of the W-0 zone as a potentially applicable zone classification and the W-0 District was therefore advertised in the alternative. The W-0 zone, as proposed, however, required a special exception for approval of boathouse use and development; therefore, the Applicants filed a separate application for the special exceptions and variance, which their design would necessitate if the Zoning Commission decided to zone the Property W-0, instead of W-1.[1]

5. The parties in this case include the Applicants, Advisory Neighborhood Commission ("ANC") 2E, the Washington Canoe Club ("WCC"), the Coalition for the Capital Crescent Trail, and the C&O Canal Association.

6. A description of the proposed boathouse project and the Notice of Public Hearing were published in the *D.C. Register* on March 21, 2003. The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject Property, as well as to ANC 2E. Zoning placards were properly posted in a timely fashion.

7. A public hearing on both the applications was conducted on May 19, June 5, and June 19, 2003, as a contested case pursuant to 11 DCMR § 3022. At the hearing, the Zoning Commission heard testimony addressed to all the various aspects of the map amendment, and the special exceptions and variance relief requested.

8. At its public meeting of July 31, 2003, the Zoning Commission took proposed action to approve the application for a map amendment from unzoned to W-0 by a vote of 4-1-0. The Zoning Commission took final action to approve the application for the map amendment to W-0 on December 11, 2003, by a vote of 3-0-2. Also on December 11, 2003, the Zoning Commission voted to approve the special exceptions and variance by a vote of 3-0-2. Because the Property was mapped with a W-0 zone district, the Applicants' August 6, 2002 petition requesting text amendments to the W-1 district was mooted. *See,* separate Zoning Commission order on Case No. 02-31.

Testimony in Support

9. Twenty-seven persons and organizations testified in support of the applications. Testimony in support emphasized the following points:

   a) The Georgetown Waterfront Park Commission stated that Georgetown University was a full participant in the Commission's work and kept the Commission informed of its plans. Further, the Waterfront Park Commission stated that construction and operation of the University's boathouse is an important step in carrying out the Georgetown Waterfront

[1]The application for the map amendment and the separate application for the special exceptions and variance relief were consolidated under Case No. 02-30 and are referred to herein as the "applications."

Park Plan, but if the Georgetown boathouse was located east of 34th Street, it would disrupt views and access to the river.

b) The Georgetown University boathouse will allow area high school rowing programs to grow, because space at Thompson's boathouse will be freed up. Relocating Georgetown University's crew team to its own facility will allow Thompson's to be used for area high school teams and will help to alleviate Thompson's critical problem of inadequate boat storage space.

c) The design of the proposed boathouse is attractive and its size reasonable. The use is non-polluting, it creates no regular vehicular traffic, and the dock does not get in the way of other river users.

d) No new boathouse space has been built since Thompson's Boat Center was built in 1960, and the demand for space is increasing rapidly. An envisioned boathouse zone (part of the Georgetown Waterfront Park Plan), including within it the University's boathouse, will help to satisfy this demand and will enhance the ambience of the Georgetown waterfront by reinforcing the century-old tradition of rowing and canoeing in this historic location.

e) The proposed site is a good one, with long, straight stretches; good, water-accessible sites are limited. There have been environmental objections to the proposed boathouse, but it is impossible to build along the river without some environmental disturbances, which will be minimal at the subject site.

f) Different river users can be good neighbors. The representative of the Potomac Boat Club stated that Georgetown University, in its current location at Thompson's, has dealt with other rowers and paddlers and will be a welcome neighbor at the proposed site.

Testimony in Opposition

10. The Washington Canoe Club, the Coalition for the Capital Crescent Trail, and the C&O Canal Association testified as parties in opposition, as well as several individuals. Testimony in opposition emphasized the following points:

a) The proposed boathouse is too high and too wide. Accordingly, it will unduly block views of the river and of Key Bridge from the Capital Crescent Trail and the C&O Canal Towpath. The rowing tank and exercise machines should be removed from the boathouse and located on the University's main campus to reduce the size of the boathouse. The building should be set back farther from the river.

b) The use of parkland for a private boathouse should not be allowed, as it will result in a loss of parkland and a loss of public access to the water's edge at this site. Instead, the boathouse should be located on a site east of 34th Street.

c) The Washington Canoe Club's members will be handicapped by conflicts between the WCC's established practice and racing courses and the Georgetown crew team's courses, particularly because the University's boat dock extends too far into the river.

d) The proposed boathouse is an intrusion into the C&O Canal National Historic Park and congestion caused by the boathouse will impede the use of the Capital Crescent Trail.

e) The Property has valuable environmental qualities that should be retained in a natural condition. This is a shallow part of the river, and sediment accumulation due to use of motor launches will require dredging. There will be increased pollution and run-off if the boathouse is built, as well as loss of wildlife and valuable plants. Use of chlorine in the rowing tank poses an environmental hazard.

The Site and the Surrounding Area

10. The Property is within the boathouse zone designated in the Georgetown Waterfront Park Plan, which was developed by the NPS in the 1980's as a result of an extensive public planning process. This Plan was approved in 1986 by the National Capital Planning Commission, the Commission of Fine Arts, the District of Columbia Historic Preservation Review Board, the Advisory Council on Historic Preservation, and the C&O Canal National Historical Park Advisory Commission.

11. The Property fronts on the Potomac River and is part of federal parkland and open space along the river controlled by the National Park Service. Immediately to the north of the parcel is the Capital Crescent Trail, and beyond that, the C&O Canal, flanked by the Potomac Heritage Trail. The C&O Canal and associated lands are also federal parkland and a national historic landmark maintained by the NPS. Continuing to the north, the land rises up to Canal Road, a major arterial street, followed by Georgetown University located up a steep rise from Canal Road. Thus, the Property is within convenient walking distance of the University.

12. The public park/open space land use pattern described above continues to the west and the east along the Potomac River for some distance. Public parkland and the C&O Canal and Towpath extend generally along the riverfront to the west of the Property. Immediately to the east of the Property is the boathouse of the Washington Canoe Club, an attractive wood-frame structure. Several hundred feet farther to the east is the dead end of K Street, the nearest point of vehicular access. Some surface parking exists at this location. Still farther to the east, K Street passes under Key Bridge and continues through the remainder of the Georgetown waterfront area.

13. The nearest developed areas to the Property are the Washington Canoe Club ("WCC") boathouse immediately to the east, the Georgetown waterfront (commercial and residential uses) farther to the east, the Georgetown residential neighborhood to the northeast, and the Georgetown University campus due north beyond Canal Road.

14. The Property is currently owned by the U.S. Government and is unzoned. It is currently in use as public open space between the Potomac River and the Capital Crescent

(biking/hiking) Trail. The parcel has a land area of approximately 1.09 acres and is long and narrow, being approximately 440 feet in length and of variable depth between 94 to 127 feet. The site is vacant and covered with grass and a number of trees. It is located approximately one-fourth of a mile west of Key Bridge and immediately to the west of the existing boathouse of the WCC, a party in this case. The WCC's boathouse is situated on public park land and is licensed from the National Park Service.

15. The National Park Service has entered into an Exchange Agreement with the University to exchange Tract 102-114 for another waterfront property currently owned by the University farther to the west -- Tract 102-109. The Property has no significant wetlands, vegetation, or wildlife. The subject site is the product of landfill, having been radically disturbed in 1969 when the interceptor sewer line (seven feet in diameter) was placed below grade, and in the 1970's, when an access road was constructed on the site in connection with the anticipated construction of the Three Sisters Bridge. The property exchange will occur if and when certain conditions, including the establishment of zoning on the Property, are met. The Exchange Agreement restricts the University's use of the Property to that of a non-motorized boathouse, which the University wishes to establish for the use of its crew program.

The Map Amendment

16. The two zone classifications before the Commission in this case are the W-1 District and the W-0 District. Both of these are low-density zones designed for waterfront locations, and both zones allow boathouse use as a special exception. (*See,* 11 DCMR §§ 915 and 918). No other zone classification is suited to the Property. The residential zones do not allow boathouse use; the commercial, mixed-use, and industrial zones allow too intense development for this location; and the W-2 and W-3 zones also allow development that would be too intense for this location and purpose.

17. The W-0 District is a new zone district recently created by the Zoning Commission,[2] at the behest of, and with the advice of, OP. The purpose and intent of the W-0 zone is to provide a low-density alternative to previously existing waterfront zones and to minimize negative environmental, physical, and visual impacts of development along the Potomac and Anacostia waterfronts.

18. Uses permitted within the W-0 zone are more strictly limited than those permitted in the W-1 zone. The only matter-of-right uses within a W-0 zone are publicly-accessible park or open space, occasional boat construction, a community garden, a public nature education or interpretive center, and a seasonal or occasional market with non-permanent structures. 11 DCMR § 901.5. Within a W-0 zone, any more intensive use, including a boathouse, requires a special exception. *See, generally,* 11 DCMR §§ 918-923. Further, any building or structure in a W-0 zone must be set back not less than 100 feet from the mean high water level, unless a special exception or variance is granted permitting a lesser setback. 11 DCMR § 937.

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[2]On December 8, 2003, the Zoning Commission took final action to approve creating the new W-0 zone. The Notice of Final Rulemaking was published in the April 2, 2004 edition of the *D.C. Register* (51 DCR 3440).

19. The W-0 District is appropriate for the Property, because it will foster low-intensity uses and the minimization of negative impacts on this sensitive and important riverfront area. The W-0 zone is the lowest density waterfront zone available and will allow, if appropriate, approval of the plans for the University's boathouse as a special exception.

Consistency with the Comprehensive Plan

20. Section 492 of the District of Columbia Home Rule Act (D.C. Official Code § 6-641.02 (2001)), provides that zoning shall be "not inconsistent" with the *Comprehensive Plan for the National Capital* (the "Plan"). The mapping of the W-0 District on the Property will help carry out the Plan in numerous ways, as set forth below:

(a) *Waterfront Planning, Recreation, and Environment.* The Plan, at 10 DCMR § 1115.1(c), under "Public and Institutional Land Use Objectives," calls for the District to engage in waterfront planning and to capitalize on:

> unrealized opportunities for creating exciting and imaginative water-focused recreation . . . and cultural development along the Anacostia and Potomac Rivers and [to ensure] that new development enhances the physical and environmental quality of the rivers and adjoining areas.

The W-0 zoning will advance this public objective.

(b) *Ward Two Element – Urban Design, Recreational Use.* The Ward Two Element of the Plan will also be furthered by the establishment of W-0 zoning, with its emphasis on open space and public access to the shoreline. This Element states, under Urban Design objectives at 10 DCMR § 1317.1(d)(1), that "[t]he city, working with the National Park Service, shall ensure that Ward 2 waterfront areas, including Georgetown, provide public access and use."

(c) *Federal Element – Natural Features and Recreation on Waterfronts.* The Federal Element of the Comprehensive Plan includes the following policy statement under "Natural Features, Shorelines and Waterfronts:"

> All lands within 150 to 200 feet of the water's edge along the Potomac and Anacostia Rivers 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.

The purposes of W-0 zoning are consonant with this public policy. Therefore, the mapping of the W-0 zone over the Property will advance the policy.

(d) *Generalized Land Use Map – Land Use Element.* The Generalized Land Use Map of the District's Land Use Element designates the subject Property for use as "Parks, Recreation and Open Space." The W-0 zoning, restricting use of the Property to recreational and open space uses, with a special exception necessary for any more intensive use, is consistent with the "Parks, Recreation and Open Space" land use designation.

Reports of the Office of Planning -- Concerning the Map Amendment

21. In its Setdown Report of October 18, 2002, OP recommended that the Zoning Commission consider the W-0 zone for the Property, rather than the originally requested W-1 zone. OP was concerned that a W-1 zone designation would permit a higher level of use than permitted by the Exchange Agreement or anticipated for waterfront areas such as this. OP explained that the W-0 zone, which OP had proposed in Case No. 02-42, would be specifically for low-intensity open space and waterfront uses such as the Applicants' proposed boathouse, would establish basic criteria for uses such as a boathouse, and would provide for simultaneous Zoning Commission review of special exception and variance requests when initial zoning is also being established, as is the case here.

22. In its May 9, 2003 report, OP explained that the Applicants had agreed that W-0 was a more appropriate zone designation than W-1.

23. By reports dated May 9 and June 27, 2003, and by testimony at the public hearing, OP recommended approval of the applications. Specifically, OP recommended approval of W-0 zoning for the Property, as well as approval of the special exceptions and variance requested in conjunction with the proposed boathouse use.

Report of the National Capital Planning Commission

24. The National Capital Planning Commission ("NCPC") concluded that the zoning map amendment to W-0 would not negatively affect the federal interest, provided the construction of the boathouse complies with the Memorandum of Agreement ("MOA") between the University and the NPS which, in effect, placed conditions on the underlying use of the Property. The MOA restricted the footprint of the boathouse building to 15,000 square feet and its height to 40 feet above grade. The height to the top of the peaked boathouse roof is approximately 54 feet, but the height of the boathouse properly measured pursuant to the zoning regulations is 40 feet. Its size, however, at 32,325 square feet, is in excess of the 15,000-square-foot maximum stipulated in the MOA. The Applicants, however, point out that the height and area requirements must be read together with the other requirements in the MOA, which state that the parties shall work cooperatively to adopt a boathouse design agreeable to both and that prior to submission to approval authorities, the NPS shall approve the design. Pursuant to these requirements, after working cooperatively with the University, NPS has approved the design and submitted it to both the Zoning Commission and the Commission of Fine Arts.

Report of ANC 2E -- Concerning the Map Amendment

25. In its letter of June 4, 2003, ANC 2E, the ANC within which the Property is located, stated that it "enthusiastically supported" the establishment of W-0 zoning over the Property.

The Boathouse Special Exceptions and Variance

26. Along with the map amendment, the Applicants requested three types of zoning relief: (1) a special exception for boathouse use in a W-0 zone (§§ 3104.1, 924, 918), (2) a special exception to eliminate the W-0 off-street parking requirement for a boathouse (§§ 3104.1, 923.3), and (3) a variance from the waterfront setback required in a W-0 zone (§§ 3103.2, 937.3).

Description of the Proposed Boathouse

27. A boathouse is allowed by special exception in a W-0 District, pursuant to 11 DCMR § 918. The zoning computations for the proposed boathouse are summarized below in comparison with W-0 requirements in the right-hand column:

Proposed	Required
Land Area: 1.09 acres, or 47,480 s.f.	No minimum or maximum
Gross Floor Area: 32,325 s.f./0.68 FAR[3]	0.75 (§ 931.1(a))
Lot Occupancy: 41%	50% (§ 932.2(a))
Height: 40 feet	40 feet (§ 930.1)
Side Yards: 50' (east), 58' (west)	12 feet (§ 934.1)
Waterfront Setback: 7-15 feet	20 feet (§ 937)
Parking: None	17 spaces

28. After conceptual design and feasibility studies confirming the feasibility of the boathouse use, the University's architect undertook field studies of the Washington Canoe Club boathouse and others. Based on these studies, the University's boathouse design incorporates gabled roofs, materials of shingle and stone, and porches and decks, to link this new boathouse to the boathouse traditions of the past and to complement the adjacent WCC structure. The architectural design and materials are of high quality and will present a pleasing view for the public. In 2001, the design was praised by the Historic Preservation Review Board and the Commission of Fine Arts.

29. The unimproved areas of the boathouse site will be maintained in a naturally landscaped condition and open to the public. .

30. The length of the entire boathouse building will be 280 feet, 4 inches. The main portion of the boathouse will have a setback from the river of 15 feet, with the setback from the overhanging cantilevered balcony at approximately 7 feet. The setbacks from the east and west wings of the building range from 42 to 55 feet from the water's edge and these areas are open to the public.

31. The boathouse will be used only by the University's crew team and those associated with it, a limited sailing program, and a summer camp for young day campers for three to four weeks during the summer. During the school year, approximately 200 students per day will use the facility in the fall and approximately 150 students per day in the spring.

[3] Zoning FAR may be slightly larger due to inclusion of outdoor spaces such as decks.

32. Functional areas in the boathouse will include: racing shell storage, repair bay, rowing tank, showers/locker rooms/restrooms, ante room with kitchen, multi-purpose area for exercise and training, observation deck, coach's office, and a dock and ramp for water access.

33. Construction of the boathouse will enable Georgetown University to have its own high-quality boathouse and to leave temporary and crowded space at Thompson's Boathouse. The shell storage thus made available at Thompson's will help accommodate the rapidly expanding high school crew programs in the Washington area.

34. The boathouse site is located nine feet below the 100-year flood plain; therefore, the D.C. Environmental Health Administration and Watershed Protection Division will review the project. The boathouse design will allow floodwaters to enter from the ground floor but not reach the upper floors. After floods, the mud will be cleaned from the ground floor to ready the structure for use again.

The Special Exception for the Boathouse Use

A. Section 3104 Special Exception Criteria

i. Harmony with the general purpose and intent of the zoning regulations and zoning maps

35. The W-0 zone is intended to "provide waterfront park space recreation area with related waterfront-oriented or waterfront-enhancing uses, to serve local and regional open space recreation needs." 11 DCMR § 900.6. The W-0 zone is intended to animate the District's waterways, particularly areas in close proximity to developed urban lands.

36. The proposed boathouse will provide a waterfront-enhancing recreational use, while retaining open space accessible to the public. It will help to enliven the Potomac River waterfront in this area.

37. The proposed boathouse use is in keeping with the intent of, and will further the purposes of, the W-0 zone. It is a use appropriate to the site and the surrounding uses. The Commission therefore finds that the boathouse use will be in harmony with the general purpose and intent of the zoning regulations and maps.

ii. No adverse impact on neighboring property

38. The boathouse will have some impact on the Capital Crescent Trail in that it will result in the relocation, by a few feet, of a short trail section, but the width of the trail will not be changed. The boathouse will also result in the removal of a portion of undeveloped land adjacent to the Trail and will have some impact on views of the water from the Trail, particularly in winter. The Commission, however, finds that the boathouse will animate a portion of the Trail, provide more users, and provide a "point of interest" at the trailhead. Further, the facility as designed, will complement the river-scape when seen from afar.

39. The University's boathouse will be approximately 95 feet from the western wall of the Washington Canoe Club boathouse. There are no other nearby buildings.

40. All undeveloped portions of the boathouse Property will remain naturally-landscaped open space available to the public. There will be no outdoor boat storage.

41. The boathouse is divided into five discrete sections -- a central part, and two wing sections, connected by two hyphens. The design breaks up the bulk of the building. Gabled roofs will provide an interesting roofline, while hiding all mechanical equipment. These roofs, along with covered porches, arcades, and other detailing, as well as quality materials, make for an attractive boathouse structure.

42. The boathouse is to be built with the minimum number of shell storage spaces necessary to accommodate the University's crew program. During the hearing process, in response to concerns of OP, the Applicants reduced the actual height of the boathouse by 3 feet and reduced the total length of the building by 11 feet, 8 inches, by decreasing the size of the rowing tank from a tank able to accommodate 24 rowers to one able to accommodate 20 rowers. The reduction in rowing tank size also reduced the building's overall footprint by 675 square feet.

43. The boathouse will provide no parking on-site, with regular users arriving on foot or by bicycle. The boathouse will provide a 12-foot access road of a pervious material, such as gravel, with a turn-around at the end. The road will be screened from the Capital Crescent Trail by a three-foot planting strip and the boathouse building will be set back 5 to 8 feet from the road. The access road will be used for emergency access, trash pick-up, and delivering and retrieving boats. Daily vehicular access by staff and/or students will be prohibited.

44. Other than an occasional gathering of crew team members or alumni, there will be no social functions hosted by the University at the boathouse; nor will the boathouse be used for the social functions of other organizations. Therefore, there will be no danger of noise attributable to such functions.

45. The University will implement a parking management plan, particularly with respect to regattas, that includes the shuttling of spectators and members of visiting crew teams by University buses to the K Street dead-end, from which they will walk to the Property. Further, regattas held at the boathouse will not end there, but will end at Thompson's Boathouse. Therefore, there will be no vehicular congestion at the boathouse due to regattas.

46. There was concern voiced about possible safety issues or conflicts among the various users of the water. Though outside the Commission's expertise, the Commission believes that these concerns have been addressed and that any potential conflicts can be avoided or mitigated through the cooperative efforts of all of those who use the water, whether canoers, rowers, kayakers, or others.

47. The Commission finds that the University's proposed boathouse will not tend to affect adversely the use of neighboring properties.

B. W-0 Special Exception Review Criteria

i. General special exception review criteria, § 924

48. The Commission finds that the University's proposed boathouse meets the applicable W-0 special exception criteria set forth at 11 DCMR § 924. Specifically:

a) The boathouse will enhance the visual and public recreational opportunities offered along the waterfront. The boathouse will provide recreational opportunities along the Potomac River and animate both the water surface and the entrance to the Capital Crescent Trail. The building design is in keeping with boathouse traditions and presents attractive facades to both the riverfront and the Trail.

b) The boathouse is located and designed to minimize adverse impacts on the river and riverbank areas. The boathouse site is adjacent to an existing boathouse and close to urban areas. The lack of parking and outdoor storage on the site will lessen negative impacts on the open areas and the riverbank. The boathouse project has undergone review by the District of Columbia Environmental Regulatory Agency, and will include soil erosion control measures during construction and a storm-water management structure including a sand filter to slow and control impervious area runoff. The project has also been reviewed by the Army Corps of Engineers, which determined that there are no qualifying wetlands or habitats on the site that will be disturbed by the construction of the boathouse. The Army Corps has also reviewed and provided design guidelines for the proposed stone rip rap shore stabilization along the river, as well as for the dock. Lastly, the Environmental Assessment prepared in conjunction with the Exchange Agreement between the University and the NPS made a finding of no significant impact with regard to the land exchange.

c) There are no berths associated with the boathouse.

d) The pier, the only structure located over the water, will be located and designed to minimize adverse impacts on the river and riverbank areas. Only the first twenty feet of the pier is a permanent structure, the rest is demountable in sections and will be removed during the winter months.

e) The boathouse 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 the waterfront, other than directly in front of the boathouse. The location of the boathouse in such close proximity to the University obviates the need to drive to the boathouse. If the boathouse were placed farther from the University, such a need would arise, increasing vehicular traffic in the surrounding area. *See also,* Findings of Fact No's. 38-47.

f) The boathouse design minimizes impervious surfaces and is sited to minimize surface storm-water runoff directly into the river. The only impervious surface presented is the footprint of the boathouse building itself. The project includes no on-site parking and no new paved access ways. New trees of native species are to be planted close to the edge of the river, which will help minimize runoff. *See also,* Finding of Fact No. 48(b).

g) Emergency access to the boathouse will be provided by the new access road adjacent to the Capital Crescent Trail. *See,* Finding of Fact No. 43.

ii. W-0 boathouse use special exception review criteria, § 918

49. The Zoning Commission finds that the proposed boathouse furthers the objectives of the waterfront district in that it will enliven and animate the riverfront, as well as the trailhead of the Capital Crescent Trail, while providing recreational opportunities and public open space.

50. The boathouse will be designed to enhance the visual and recreational opportunities offered along the waterfront. *See,* Findings of Fact No's. 29, 35, 36, and 48(a).

51. The boathouse itself will be located entirely on land. The pier is designed to be a floating wooden dock and ramp that lead to a permanent platform at the level of the boat storage bays. No fill of normally submerged areas is proposed; excavation will be minimized, because the boathouse will rest on caissons or pilings.

52. The boathouse will be located so as not likely to become objectionable to surrounding and nearby property because of noise, traffic, or parking. *See,* Findings of Facts No's. 38-47.

Reports of the Office of Planning -- Concerning Special Exception for Boathouse Use

53. OP filed four reports in this case. The first, dated October 18, 2002, addressed almost exclusively the question of which zone was more appropriate, the W-1 zone originally requested or the new W-0 zone. The October 18, 2002 report recommended that the Commission set down the application for a public hearing, but expressed no specific concerns with the proposed boathouse design.

54. The second OP report, dated May 9, 2003, primarily addressed the special exceptions and variance requested by the Applicants. OP carefully analyzed all the requirements for 1) special exception use in a W-0 zone, 2) the parking special exception, and 3) the waterfront setback variance, and determined that the University's boathouse fulfilled all these requirements. OP stated that boathouses are a desirable use on Washington's waterfronts and recommended approval of both the special exceptions and the variance.

55. In its Supplemental Report, dated June 27, 2003, OP reiterated its recommendation of approval for the special exception for boathouse use. In the Supplemental Report, OP discussed specific issues that had been brought up at the public hearing: the waterfront setback, the K Street parking and turnaround, environmental review, historic preservation, and building programming/building bulk. Most of the Supplemental Report is informational, with three design modifications suggested by OP. The three modifications

suggested were some reduction in the scale of the building, a reduction of the size of the waterfront balcony and associated roof covering in order to increase the waterfront setback, and a lessening of the roof height. In response to these suggestions, the Applicants reduced the building height by 3 feet, its length by 11 feet, 8 inches, and its size by 675 square feet. Regarding the porch overhang/greater setback issue, the Commission agrees with the Applicants that too great a setback would impede the simple object of storing boats near where they are used, and that the 15-foot setback to the central part of the building itself, combined with the 42- to 55-foot setbacks along the building's wings, is sufficient.

56. The Final OP Report, dated May 29, 2003, listed and appended the reports of other District agencies. All of these reports are generally supportive of the project, but they do not specifically address each aspect of the application (i.e., the map amendment, the special exception for boathouse use, the special exception to permit no off-street parking, and the variance from the setback requirements), therefore, they are discussed in more detail later in this Order, at Findings of Facts No's. 69 through 76.

The Special Exception for Parking

A. Section 3104 Special Exception Criteria

57. In the W-0 zone, one off-street parking space is normally required for every 2,000 square feet of gross building area. 11 DCMR § 2101.1. The University's boathouse, at 32,325 square feet, would therefore require 17 parking spaces. Pursuant to §§ 3104 and 923.2, however, all off-street parking spaces required for a boathouse may be eliminated by special exception. The Applicants are requesting special exception relief to eliminate the parking requirement, as they propose to provide no off-street parking for the boathouse.

58. The lack of any parking on the boathouse Property will be in harmony with the general purpose and intent of the zoning regulations and maps. The intent of the W-0 District is to minimize negative impacts on waterfront areas. Providing parking on the Property could result in greater impervious surface close to the river's edge, thereby impeding drainage and increasing surface storm water runoff directly into the river. It would also inescapably result in greater vehicular congestion on and around the Property. All of these things conflict with the purpose and intent of the W-0 zone.

59. The W-0 District emphasizes open space and public access. Providing parking would result in a more intense use of the Property, less open space area maintained in a natural condition, and, probably less area accessible to the public.

60. The lack of parking on the Property will not adversely impact the use of neighboring property. Because it is anticipated that most people using the boathouse will arrive on foot or by bicycle, there is no need to fear parking congestion on streets in the neighborhood, which could adversely impact neighboring property. Further, only emergency vehicles, trash trucks, and trucks hauling boats will access the Property by driving, so there is no need for parking, and parking on-site would likely end up being more adverse to neighboring property than the lack thereof, as on-site parking would be a little-used eyesore.

B. Section 923.3 Special Exception Criteria

61. The application meets the three requirements set forth in § 923.3, as shown below:

    a) The provision of parking would result in significant adverse impacts on adjacent parkland. A parking area on the Property would result in less naturally-landscaped open space available to the public. Further, it could result in a greater amount of impervious surface near the river's edge, leading to both environmental and visual negative impacts. Parking on-site would likely lead to traffic congestion from the arrivals and departures of vehicles to the site.

    b) The location of the boathouse will likely diminish the demand for parking from what would otherwise be required, because the only users of the boathouse will be individuals associated with Georgetown University, which is located within walking distance of the Property. The boathouse is not intended to be used by the general public on a regular basis. Nonetheless, parking is available on the dead-end of K Street within walking distance, and visitors will be brought to this spot by shuttle bus to then walk to the boathouse. It is anticipated that almost all users of the boathouse will arrive on foot or by bicycle and the Capital Crescent Trail, immediately to the north of the boathouse, will provide convenient pedestrian/bicyclist access.

    c) Reasonable and conveniently-located alternatives to parking exist and are available to boathouse users with minimal impact on adjacent land and development. *See,* Finding of Fact 61(b).

Report of the Office of Planning -- Concerning Parking Special Exception

62. The only OP report that discusses the parking special exception is the report of May 9, 2003. It addresses each of the § 3104 and § 923.3 requirements and determines that each requirement has been met by the application. It, therefore, recommends approval of the special exception under § 923.3 to permit no off-street parking associated with the boathouse. OP reiterated this recommendation in its hearing testimony.

The Variance from the Required Waterfront Setback

63. Section 937.1 requires a building setback from the mean high water level of not less than one hundred feet. Section 937.3 permits a setback of greater than 20 feet, but not less than 100 feet, by special exception. Any setback of less than 20 feet requires a variance. The two wings of the boathouse are set back from the river 42 to 55 feet; the center of the boathouse is set back 15 feet, with the porch overhang reaching to within approximately 7 feet of the mean high water level. Therefore, the Applicants request a variance under § 3103.2 to permit the less-than-20-foot setback of the central portion of the building and its overhang.

64. The Property is beset with extraordinary or exceptional conditions favoring the granting of a variance. At 94 to 127 feet in depth, the Property is shallow for a facility of this kind. The Capital Crescent Trail parallels the water's edge at a distance of approximately 130 feet.

Therefore, between the shallowness of the Property and the proximity of the Trail, it would be impossible to build any structure without a relaxation of the waterfront setback requirement and/or a significant disruption of the Trail.

65. The extraordinary or exceptional conditions of the Property cause practical difficulties for the Applicants. The Applicants have indicated, and the Commission agrees, that a greater setback, necessitating a re-design of the boathouse, which was designed before W-0 was proposed, and/or a lesser setback from the Capital Crescent Trail, would have negative impacts on the internal functioning of the boathouse, its overall appearance and stylistic consistency, and on the users of the Trail.

66. The variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zoning regulations and map. As explained above, the boathouse use is compatible with the purpose and intent of the W-0 zone. *See, e.g.,* Findings of Fact No's. 35-37 and 49. The boathouse will not cause substantial detriment to the public good. To the contrary, it will provide a visually interesting building and will animate the water's surface and the Property on which it sits. It will foster greater passive use of the publicly-accessible open, naturally-landscaped areas, and potentially lead to greater stewardship of the waters. Further, by providing a facility for the University's crew team, the team's current use of Thompson's Boathouse will end, opening space for other users, thereby aiding the public good. The boathouse will not cause any detriment to the public good due to traffic or parking congestion.

Reports of the Office of Planning -- Concerning Waterfront Setback Variance

67. OP addressed each of the variance criteria in its May 9, 2003 report and determined that the application satisfied them all. Therefore, in this report and in its testimony, OP recommended approving the variance.

68. In its June 27, 2003 Supplemental Report, OP evidenced a desire to have the Applicants increase the setback of the overhanging roof from 7 to 15 feet, and the setback of the center part of the boathouse building from 15 feet to at least 20 feet. OP noted, however, that such increases should only be made if "the necessary internal programming, overall building design and setback from the Capital Crescent Trail are not significantly impacted," and it did not withdraw its support of the variance.

Reports of Agencies Other Than OP

69. The District Department of Transportation ("DDOT"), in its report of May 27, 2003, had no objection to the proposed boathouse. DDOT endorsed the University's parking management plan and stated that the lack of on-site parking "will have little or no parking impact on the residential neighborhood in the area." The Zoning Commission requested that DDOT further comment on potential conflicts at the dead-end of K Street, N.W. between parking and buses for the drop-off of boathouse users. DDOT advised that the issue of bus and emergency vehicle turn around at the end of the street was reviewed in relation to the Georgetown Waterfront Park Plan, and it was determined that there is sufficient space

available. Small buses and larger emergency vehicles would be able to safely and conveniently turn around at this location. The service road onto the Property will permit the turn-around of boat trailers and maintenance and emergency vehicles on the boathouse site.

70. The District Water and Sewer Authority ("WASA") submitted a report dated April 24, 2003, which did not specifically support or oppose the proposed boathouse, but instead listed a series of on-going requirements that the project would need to fulfill during the construction process.

71. The District Department of Parks and Recreation, in its April 28, 2003 report, supported the map amendment to permit the boathouse use.

72. The District Department of Health, Department of Environmental Quality, in its May 14, 2003 report, was concerned with loss of public access to the riverfront and opined that a detailed Environmental Impact Statement may be required under District of Columbia law. The Commission need not delay its consideration of these applications pending an environmental analysis. The Commission also finds that the concern as to public access has been addressed.

73. The District Department of Housing and Community Development indicated support for construction of the boathouse in its May 29, 2003 report.

74. The Metropolitan Police Department submitted a report on December 27, 2003. It found that the boathouse use would have no impact on its regional operations command and that the boathouse would enhance the area waterway and adjoining lands.

75. The District Fire and Emergency Services Department provided a report dated April 28, 2003. The Department expressed concerns regarding access for emergency vehicles, which have been addressed, and requested installation of a fire hydrant in close proximity to the boathouse.

76. The boathouse concept design was approved by the Old Georgetown Board on October 4, 2001, the U.S. Commission of Fine Arts on October 18, 2001, and the Georgetown Waterfront Commission on March 20, 2002. Review for design approvals will be a continuing process as the project is undertaken, including those by the District Historic Preservation Office.

Report and Testimony of ANC 2E

77. At its October 2, 2001 meeting, ANC 2E voted to not oppose the boathouse design. By testimony at the public hearing and by letter dated June 4, 2003, ANC 2E unanimously recommended approval of the applications, including the map amendment to W-0, the special exceptions for boathouse use and parking, and the variance from the waterfront setback. The ANC representative stated that the ANC has reviewed the boathouse project and supported its approval several times during the past two years, including the approval actions of the Commission of Fine Arts and the Old Georgetown Board.

CONCLUSIONS OF LAW

1. Section 1 of the Zoning Act of 1938 (52 Stat. 797, as amended, D.C. Official Code § 6-641.01 (2001)) establishes the authority of the Zoning Commission to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia" through regulation of the structures and uses on its land.

2. Section 3 of the Zoning Act of 1938 (52 Stat. 797, 798, as amended, D.C. Official Code § 6-641.03 (2001)) establishes the authority of the Zoning Commission to amend the zoning maps of the District of Columbia.

3. Section 917.3 of the zoning regulations authorizes Zoning Commission review of special exception and variance applications simultaneously with a zoning map amendment application.

4. All public notice, public hearing, and NCPC referral requirements for the map amendment, special exceptions, and variance, have been met.

The Map Amendment

5. The W-0 District is specifically designed for mapping along waterfronts and emphasizes open space and parkland. The Property's current unimproved state, therefore, lends itself to W-0 zoning.

6. The W-0 District also permits, by special exception, low-density recreational, arts, and retail uses. The zoning of the Property to W-0 will, therefore, also permit such uses, which is consistent with the Commission's vision for lively and engaging waterfronts.

7. The Commission concludes that the W-0 District is the most appropriate zone district to be mapped over the Property.

8. The Commission further concludes that the requested map amendment from unzoned to W-0 is not inconsistent with the Comprehensive Plan for the National Capital or with the purposes of the 1938 Zoning Act.

9. The Commission also concludes that the proposed map amendment to W-0 is consistent with the Generalized Land Use Map's designation of the subject property as "parks, recreation and open space."

10. The Commission cannot choose to retain an unzoned designation when zoning has been sought. Here, the Applicants have requested the most restrictive zoning category that is both suitable and not inconsistent with the Comprehensive Plan.

11. Based upon the above findings and conclusions, the Commission concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the waterfront and the communities near which the Property is located.

12. The Commission notes the recommendations in support of the map amendment to W-0 of both ANC 2E and OP and has accorded them the "great weight" to which they are entitled.

The Special Exceptions

13. If an applicant meets its burden of proof in a special exception application, the special exception must ordinarily be granted. *See, e.g., First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment,* 432 A.2d 695 (D.C. 1981).

The Special Exception for Boathouse Use

14. Based upon the Findings of Fact above, the Commission concludes that the Applicants' proposed boathouse meets all the requirements for a special exception for boathouse use in a W-0 zone, specifically those set forth at 11 DCMR §§ 3104, 924, and 918.

15. The Commission notes that both the ANC and OP recommended approval of the boathouse use special exception, that their issues and concerns have been discussed, and they both have been accorded the requisite "great weight."

The Special Exception for Parking

16. Based upon the Findings of Fact above, the Commission concludes that the Applicants have met their burden of proof for a special exception to eliminate the requirement of off-street parking for a boathouse. Specifically, it has met the requirements of 11 DCMR §§ 3104 and 923.3.

17. The Commission notes that both the ANC and OP recommended approval of the parking special exception, that their issues and concerns have been discussed, and they both have been accorded the requisite "great weight."

The Variance from the Required Waterfront Setback

18. In order to obtain a variance, an applicant must make three showings: (1) an exceptional situation or condition of its property, (2) that results in either practical difficulties or undue hardship to the property owner, and (3) no substantial detriment to the public good or impairment of the intent, purpose or integrity of the zone plan. (Section 8(g)(3) of the 1938 Zoning Act, 52 Stat. 800, as amended, D.C. Official Code § 6-641.07(g)(3) (2001)).

19. The Applicants request an area variance and, therefore, must make the lesser showing of practical difficulties, as opposed to the more stringent showing of undue hardship, which is necessary for a use variance. *See, e.g., Palmer v. District of Columbia Board of Zoning Adjustment,* 287 A.2d 535 (D.C. 1972).

20. Based on the Findings of Fact above, the Commission concludes that the Applicants have made the three showings required for the granting of a variance and have, therefore, met their burden of proof with respect to the waterfront setback variance.

21. The Commission notes that both the ANC and OP recommended the granting of the variance, that their issues and concerns have been discussed, and they both have been accorded the requisite "great weight."

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for an amendment of the zoning map to change the status of the Property from unzoned to W-0.

Further, in consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the applications for a special exception for boathouse use in the W-0 zone district, a special exception to eliminate the requirement of off-street parking for the boathouse use, and a variance from the waterfront setback required in the W-0 zone district. The special exception for boathouse use is subject to the following conditions:

1. The boathouse shall be used only by personnel and students affiliated with the University's crew program, and may also be used by attendees of the limited sailing program and the youth summer day camp program.

2. A parking management plan shall be put into operation by the University, particularly for events such as regattas. It shall include the following features:

   a) All users of, and visitors to, the boathouse will walk or bicycle to the boathouse site.

   b) The team buses of visiting crew teams will drop off the visiting team members on the University's main campus, and the buses will park on the main campus.

   c) Spectators, visitors, and visiting crew teams will be shuttled to the dead-end of K Street, from which they will walk to the boathouse site.

   d) The shuttles will run as demand requires, dropping off patrons and picking up others to return to the University's main campus.

   e) Spectators and visitors will be encouraged to use the shuttle or to park on the main campus and walk to the boathouse.

3. The Applicants shall allow continued public access to the waterfront on the Property.

4. Other than an occasional gathering of Georgetown University crew team members, personnel, or alumni, there shall be no social functions held at the boathouse.

5. Only emergency vehicles, maintenance vehicles, and vehicles pulling boat trailers shall be allowed vehicular access to the Property.

6. When users of the boathouse are launching or removing shells from the water, or rowing in the river itself, they shall take care not to conflict with, and shall, when appropriate, yield to, passage by canoes and kayaks. The University crew team shall coordinate boat lanes and access with the adjacent Washington Canoe Club, and shall comply with the boat traffic guidelines for the Potomac River, as established by the Potomac River Safety Committee.

7. The Applicants are required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above-protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

VOTE: At a special public meeting on December 11, 2003, the Zoning Commission took final action to **APPROVE** the application for a map amendment by a vote of 3-0-2 (Carol J. Mitten, Peter G. May, and Anthony J. Hood to approve; John G. Parsons, having recused himself, not voting; and James H. Hannaham, not present, not voting). The Zoning Commission also took final action to **APPROVE** the applications for special exceptions and a variance by a vote of 3-0-2 (Carol J. Mitten, Peter G. May, and Anthony J. Hood to approve; John G. Parsons, having recused himself, not voting; and James H. Hannaham, not present, not voting).

In accordance with the provisions of 11 DCMR §3028.9, this Order shall become effective upon publication in the *D.C. **Register;*** that is on APR - 9 2004.

Carol J. Mitten
CAROL J. MITTEN
Chairman
Zoning Commission

Jerrily R. Kress
JERRILY R. KRESS, FAIA
Director
Office of Zoning