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May 8, 2003

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Hand Delivery

Mr. Alberto Bastida
Secretary to the Zoning Commission
Room 210 S
441 4th Street, N.W.
Washington, D.C. 20001

Dear Alberto:

Enclosed are the tape and transcript (with affidavit) regarding the May 5, 2003 public hearing dealing with Zoning Commission Case No. 03-07, Trustees for Harvard University.

Very truly yours,

Norman M. Glasgow, Jr.

Enclosures
cc: Ned Keenan
Mike Steen

WAS1 #1181263 v1

ZONING COMMISSION
District of Columbia
Case 03-07
Exhibit 41

ZONING COMMISSION
District of Columbia
CASE NO.03-07
EXHIBIT NO.41

ZONING COMMISSION CASE NO. 03-07
TRUSTEES OF HARVARD UNIVERSITY
Hearing Date: May 5, 2003

Zoning Commission Members:

Commissioner Mitten, Chairperson
Anthony Hood, Vice Chairman
John Parsons
James Hannaham
Peter May

Zoning Commission Staff:

Alberto Bastida
Sharon Sanchez Schellin

Commissioner Mitten, Chairperson	I'm calling to order the public hearing of the Zoning Commission for Monday, May 5, 2003. My name is Commissioner Mitten and with me this evening are Vice Chairman Anthony Hood and Commissioners John Parsons, Peter May and James Hannaham. Because we don't have court reporter this evening, I will enter the opening statements into the record and will begin with the first case, which is Case No. 03-07, which is the request by Harvard University for approval of an interim use for university functions of premises located at 3232-3240 R Street, N.W. I will now turn to Mr. Glasgow for his presentation.
Norman Glasgow, Jr.	Madam Chair, for the record, my name is Norman M. Glasgow, Jr. of the law firm of Holland & Knight, here on behalf of the Trustees of Harvard University for approval pursuant to Sections 3035.1 and 210.5 of the Zoning Regulations to operate a facility on a five-year interim basis at 3240 R Street, N.W. while construction activities are being undertaken pursuant to the approved campus plan in BZA Order No. 16555 on the main campus. Here with me this evening are Mr. Ned Keenan, the Director of the Dumbarton Oaks facility, and Mr. Michael Steen, Project and Program Manager for Dumbarton Oaks. In review the record, the Commission will note that this application has the support of the Office of Planning and the unanimous support of ANC 2E. We are unaware of any opposition to this proposal. The applicant is in agreement with the five-year limitation recommended by ANC 2E and the Office of Planning and the condition suggested in the OP report that visitors and students be directed not to park on the subject property but are directed to park on the main campus. At the direction of the Commission, we are prepared to give a brief statement, answer questions, or we can stand on the record.
Commissioner Mitten	In the interest of our circumstances, I think I would ask you to stand on the record.
Mr. Glasgow	Thank you. We are prepared to answer any questions, if there are any.
Commissioner Mitten	I don't believe there are any questions from the Commission, so I think we will now move to the report by the Office of Planning.
David McGettigan	The Office of Planning will stand on the record. This is David McGettigan from the Office of Planning and we are willing to stand on the record.
Commissioner Mitten	Alright, there don't seem to be any questions from the Commission for the Office of Planning and I would note for the record that we have reports from the D.C. Department of Transportation, Department of Housing and Community Development and the Fire Marshal. I'll ask again, is there anyone here representing ANC 2E? No? Then I would note for the record that we have a letter of support from the ANC dated April 8, 2003, which is Exhibit 26 in the record. Now I will ask for persons who would like to testify in support. Persons who would like to testify in opposition. I will just note for the record that Mr. Crockett, who is about to testify, has been properly sworn in and is now going to deliver his statement.

Mr. Crockett	Good evening, members of the Commission, my name is Don Crockett. I live at 3070 Q Street, N.W., which is about three blocks from the subject property. I have lived there for the last 30 years. I have served as a committee chairman and on the Board of Directors for the Citizens Association of Georgetown and also President of the Georgetown Residents Alliance. I come here tonight reluctantly because Dumbarton Oaks has been a good neighbor over the years, but when I see an institution such as this applying to take over a single family residence, it gives me great pause. I don't think it is something that the Board should look into lightly. Our neighborhood has been besieged over the entire 30 year period that I have lived there with various requests for non-residential uses of residential property. I've detailed that a little bit more in my statement. What bothers me about this is that Dumbarton Oaks apparently didn't investigate or want to use the available commercial office facilities which are nearby. One example that I have noticed for the last six months is that there is 5,000 square feet of available office space at Dumbarton Court, which is just down the street on 31st Street near N, which is suited to this type of thing whereas a residence is not suited to being an office, it's supposed to be a residence. I think that these types of intrusions into our neighborhood are unnecessary and they shouldn't be allowed. That is my first position. My alternative position is that, if this is to be allowed, there are several points in the application which struck my eye. The first is, I think that it is too vague and it ought to be restricted, very strictly, to office use during weekday hours, no other uses if that's what the application is for. There is a reference in there to holding occasional small receptions. I don't know why one would want to hold small receptions in a temporary office facility, particularly Dumbarton Oaks, which has its own reception facilities which are going to be usable through the construction period. The third recommendation that I would have is that the five year period seems to be a long time for this construction. That the construction is going to take five years, it is going to be a long haul for the entire neighborhood and I think the Order ought to say that the people will move out of this temporary facility when the construction is completed or five years, whichever occurs earlier. I hope it isn't going to be five years. And, finally, I would suggest that in no event, this is the basic reason I am here, I'm afraid of a precedent. I'm afraid of a precedent of having a university take over a single family home. I think it is the camel nose under the tent. I can foresee in five years, they'll say, "well, we've been there for five years, and now we want to buy it and we want to make it part of our campus", and I don't want that to happen. I think we've got enough of that going on. Thank you.
Commissioner Mitten	Thank you, Mr. Crockett. Let me see if any of the Commissioners have any questions. Any questions for Mr. Crockett?
Commissioner Hood	Yes, I do have a quick question for you Mr. Crockett. I had a concern about the five years. Unfortunately, what I have here – I didn't know there was any opposition, I'll be frankly honest. I know the type is rolling, I don't like operating under these circumstances, but I do have a question about your testimony. Madam Chair, can we come back so we don't waste.... Mr. Crockett, help me with my orientation. You mentioned that there was some commercially zoned land closer to Dumbarton as opposed to the residential area.

Mr. Crockett	Well, there obviously is.
Commissioner Mitten	Wait a second.
Mr. Crockett	I didn't mean to imply that there was commercially available office space that is closer than this particular residence. Obviously, it's close to Wisconsin Avenue and there is commercial office space up and down Wisconsin Avenue. The facility that I noticed that has been available for many, many months is in Hamilton Court, which is an old converted apartment house down on 31st Street, which is about four blocks down. I walk it every day; it's not much of a walk, and that is beautiful office space designed just for this type of thing, and I don't understand why – I can understand their wanting to be close – but then to be close, you have to rent a single family home. If you go a few more blocks, there is plenty of space to be in a thing that is zoned for office and designed as an office. That's basically my point.
Commissioner Hood	Thank you Madam Chair, I have no further questions. Thank you Mr. Crockett.
Commissioner Mitten	Anyone else have any questions for Mr. Crockett. Commissioner Hannaham.
Commissioner Hannaham	Did you mean that the building – the residential facility – is really too large for an office use as contemplated here?
Mr.Crockett	No, I'm sure they can shoe-horn 15 or 18 employees into that residence.
Commissioner Hannaham	I might have misunderstood. I know what I was thinking. You talked of the use of this residential facility – that it should be restricted in some way. I wonder whether you could sort of clarify that a little.
Mr. Crockett	If there are going to be non-residential uses - and actually there are two single family homes there together – it should be restricted to office use during normal office hours and it should not be used for receptions, parties, or other things like that.
Commissioner Hannaham	I see, OK.
Mr. Crockett	They stated in their application that there would be no parties or large events, but it is vague and they say occasional small events. Well, I don't think there should be any. If it is for office, then it ought to be office, and they have plenty of facilities to do other things over at Dumbarton Oaks.
Commissioner Hannaham	So maybe, just office parties, birthday parties, going away parties.
Mr. Crockett	Oh, well, for the 18 staff, yes, that is a normal part of life, but I'm talking about receptions which means other people coming in that sort of thing.
Commissioner Hannaham	So you would restrict it if possible in some ways to reduce the use

Mr. Crockett	To the use of the office staff.
Commissioner Hannaham	I understand your point now. Thank you. Madam Chair.
Commissioner Mitten	Thank you, Mr. Crockett. Is there anyone else who would like to testify in opposition? Yes. Give that to Mr. Bastida if you would and then be sure to state your name and address for the record when you begin speaking.
Mrs. Schellin	Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth?
Commissioner Mitten	You will have three minutes.
Mrs. Hodgson	My name is Morgan Hodgson. I live directly across the street with my family. We have five children, two of whom are still living with us and are in school here in the District. We have lived there for 23 years. I am a graduate of Harvard and a huge supporter of Harvard University and of Dumbarton Oaks. I think it is – and I have no objection to an interim use – but I wanted to simply second the comments that Mr. Crockett made about ensuring that it is truly an interim use and is not later, two years from now when construction is nearly at an end, or three years from now whenever that is, that number one the interim use ends when construction ends and that it is not then turned into "well its worked out alright so far, can we extend it." It is a residential neighborhood. It has no, to my knowledge, any other non-residential use on our block. It is a busy block already and I speak for myself and for other residents on the block. We saw the sign go up. I heard no other piece of information about it and just wanted to come down and say that I think that it has truly residential character and I think everybody is willing to bend to the needs of a temporary solution for a legitimate problem, but that it should be that and nothing more. Thank you.
Commissioner Mitten	Thank you. Let me see if any of the Commissioners have any questions for you. Anyone have any questions? Alright, thank you for coming down. Alright, Mr. Glasgow, would you like to respond to some of what you have heard?
Mr. Glasgow	Thank you, Madam Chair. With respect to the conditions that have been proposed, we can just go through those. I don't think that we have any particular issue here. One is that the residence shall be used only for temporary office purposes between 7 am and 5:30 pm on weekdays. There will be no evening or weekend use.
Mr. Keenan	We certainly have no plans and are happy to bind ourselves not to have any events that begin – evening events. People stay at work sometimes and I wouldn't want to bind ourselves to rooting them out at 5:30. And we'll talk about some of these other issues. I'd be happy to talk about them later or even now. We have no plans to use the place for social events, receptions or parties. When we put in our application that we were restricted – that we are not going to do any parking there, we are requiring our employees to park in their regular places or assigned places. Let's see, what else does it say here.

	Number 3, I think that is acceptable, depending, of course, on what one construes as the construction of the library being completed. We want to be able to move back in. You see, we are building a library and moving all the books into that building. After we've done that, we have to rehab the space out of which we have moved the books and so it will take us, I hope not a long time to do that, so that then the people who are now in the swing space can move back into the main building. So, with that qualification, I think that is an acceptable condition.
Mr. Glasgow	Let me respond to number 4 because that is more a legal issue. I mean, the regulations provide for this type of use and when the five years are up, the Commission decides whatever cases are before it, or if there is no case and we move back into the building, there is nothing to deal with.
Mr. Keenan	You know, we filed a Master Plan almost three years ago now I guess it is, where we talk about the next 10 years. We have no plans, that's sort of a legal way to say it. I will resist the expansion of Dumbarton Oaks in any significant way. That is, we have not only have no plans to grow; you know you don't have students; we don't live on tuitions; we don't sell admissions; and I think the institution is just about the right size. I certainly can pledge that so long as I'm Director, there will be no significant expansion.
Mr. Glasgow	I think, Mr. Keenan, this case isn't about the Campus Plan. We've just got the four items here and I think from what you've said that you can agree to number 1, except that we don't to have to tell people that they must leave if you haven't finished their work at 5:30 pm on weekdays.
Commissioner Mitten	Is there an alternative time that you would suggest?
Mr. Keenan	I think 7 would be alright. I think more people – you know, if they haven't finished their work by 7, then there's something wrong.
Mr. Glasgow	And we would be saying condition No. 1 is 7am to 7pm. Condition No. 2, you....
Mr. Keenan	With the exceptions that were mentioned. If somebody has a birthday, something like that, I don't want to get crossways with anybody. I've actually talked to the immediate neighbors next door. It is a residential neighborhood, but, of course, there is a public library next door on the other side and we certainly are not going to have any large, loud, student-driven activities there of any kind. We don't have any students.
Mr. Glasgow	Number 3 – you indicated that we have requested five years and if we are finished before the five years, then the use....
Mr. Keenan	Once we can move, as I described it, once we no longer have a need for swing space, once we can rehab the building that we are moving out of when we move into the new building, we'll have no more need for it.
Commissioner Mitten	Let me ask you, when you were talking, I sort of added something to number 3,

	which is the special exception shall terminate when the construction of the library at Dumbarton Oaks is completed and the office space in the main building has been renovated. Is that accurate?
Mr. Keenan	That's fine.
Mr. Glasgow	Number 4 is really a legal issued that's covered by the regulations in any event. I think with that we have responded to the issues in Mr. Crockett's letter and we have agreed to the condition that was suggested in the Office of Planning's report.
Commissioner Mitten	Does anyone have any follow-up questions?
Commissioner Hood	Madam Chair, I do have a question. I'm just concerned about number 1. Realistically, I know people do stay and work late, and I know you said if they haven't finished by 7 o'clock – I know a lot of people stay much after 7. I want to know how really, number 1, you can deal with it. Case in point, there would be no evening or weekend use. A lot of folks go to work on the weekends when they need to. I just want to make sure that we....
Mr. Keenan	I don't, I mean, you know, these are people in the financial office. These are accountants and people in the publications office who are editors and publication designers. They work fairly flexible hours.
Commissioner Hood	Which goes to my point.
Mr. Keenan	They're exceptionally quiet people.
Commissioner Hood	Right, which goes to my point.
Mr. Keenan	And I would rather agree with you and not set any hard lines. I mean, if what is the motivation for this is to make sure that we don't have any raucous parties or any social events in those hours, I think that's fine. That's sort of dealt with in number 2. It's going to be very quite.
Commissioner Hood	Let me just say this Mr. Keenan. I just have a problem with us approving, Madame Chair, some conditions which say there will be no evening or weekend use. Accountants, some professions that he named, I know for a fact working in publication myself, we work on the weekends; but maybe there can be some controls. I do understand Mr. Crockett's point. But I don't know, I think I agree with you about that they are noisy or loud, but it goes to this condition number 2, and I think that will be enforced and hopefully take care of his concern. But the other concern that I heard was expansion use and I do agree, I guess I'm agreeing with everybody, I do agree with Mr. Crockett. In five years, Mr. Glasgow, they may be faced with an expansion of the campus plan. I don't know, I'm just putting that out there and I understand that precautionary measures, which I believe the two residents who live in the area, which their concern is, to be cautious and I think they are proceeding with caution and the problem will be the expansion in their neighborhood and taking over. Here we have another campus and another problem. That's not

	in front of us now, but I want to make sure that you understand exactly, I heard them loud and clear. I do have concern with No. 1 Madam Chair, because actually I don't think – we can sit here and pass it, but I don't think that's real.
Mr. Keenan	You mean realistic?
Commissioner Hood	Realistic – I really don't think that there will be no evening or weekend use – I think that could be mitigated and negotiated.
Mr. Glasgow	I think, Commissioner Hood, what I would suggest there is that we say that the residence shall only be used for temporary office purposes, generally between 7 am and 7 pm on weekdays and then strike the sentence "There will be no evening or weekend use" because I agree. In the law firms and every place that I see now, it just seems hours are getting longer in the workplace.
Commissioner Hood	I just don't see that - we can sit here and pass it, but I don't see it as being real, that's my point.
Commissioner May	I just want to say that I don't agree. I think it is unrealistic to impose hard time deadline invariably somebody is going to forget it and its going to, you know, become an issue and its, I think the wording that was suggested, between 7 and 7 on weekdays, I think, is a good way to encourage control without unduly limiting things and, again, I don't think it is going to be an offensive use to the neighborhood.
Mr. Keenan	Could I just sort of pledge sufficiently that if the neighbors notice any activity at a time or of a type that they find bothersome, that they should get in touch with me directly and I will see to it that it ceases.
Commissioner Mitten	That's great.
Mr. Keenan	You know, the nice thing is that the people we are talking about are mature professionals, they are not students and I hope I'm not maligning students as a class, but these are all very professional people who have been working at Dumbarton Oaks for many years and want to continue.
Commissioner Mitten	Great. Anything else?
Mr. Glasgow	That concludes our presentation.
Commissioner Parsons	Quick question. Mr. Keenan, there is an Exhibit H here in our records which is now the scope of this hearing, but I couldn't help but notice, are these the plans of what you want to build?
Mr. Glasgow	No sir, those were requested for us to be filed in this. We did not intend on filing those.
Commissioner Parsons	So these are not the plans...

Mr. Keenan	No, those are not, and I think you know the story.
Commissioner Parsons	Unfortunately.
Commissioner Mitten	OK, I think we're done.
Mr. Glasgow	Thank you. And we would like to get a decision because we are under construction at the campus as we speak and we have real need for the space. We have worked out our agreements with the property owners and the ANC and Office of Planning.
Commissioner Mitten	OK, I think we have – the applicant has committed to the conditions proffered by the Office of Planning and then we have worked on the conditions that were offered by Mr. Crockett, and I would move approval of the application in Case No. 03-07, subject to the conditions as we have modified them this evening.
Commissioner Parsons	Second.
Mr. Keenan	Subject to how we've modified them – how do we deal with No. 1 - there will be no evening or weekend use?
Commissioner Mitten	I believe what Mr. Glasgow had suggested was that the residence shall be used only for temporary office purposes generally between 7 am and 7 pm on weekdays. That's the modified condition No. 1.
Mr. Keenan	And remove that second sentence.
Commissioner Mitten	Yes, remove the portion about evening or weekend use. Any further discussion?
Commissioner Hood	Yes, should we just say 7 to 7 on weekends too or just leave that out. Because now that we have weekends – they could stay all night or whatever.
Commissioner Mitten	I think the idea
Commissioner Hood	I'm just trying to cover concerns that we heard.
Commissioner Mitten	I think the idea is, I mean they are generally going to be working during the week and occasionally they may work on the weekends, but, you know, this encourages them to keep their regular hours during the week. It doesn't restrict them from never coming on the weekend.
Commissioner Hood	I wasn't trying to restrict them from coming on the weekends, I just was trying to address the concerns that we heard – that there would be no evening or weekend use. And I think we may need to put a limit on it. But if no one feels that way, I will go with it.
Commissioner Mitten	What I was suggesting is that that sentence be removed entirely – that second sentence.

Commissioner Hood	But my concerns are that we are not covering the weekend. But no one seems to think that is a big deal, so lets move forward. Thanks.
Commissioner Mitten	Is there any further discussion? Then all those in favor please say aye Aye
Commissioner Mitten	Those opposed, please say no. Ms. Sanchez, would you please record the vote.
Sharon Sanchez Schellin	The staff will record the vote 5-0, Commission Mitten moving; Commission Parsons, seconding; Commissioners Hood, May and Hannaham in favor to approved Case No. 03-07 based on the conditions agreed to by the applicant this evening.
Commissioner Mitten	Thank you.

AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

I, Cheryl B. Jones, do swear that, to the best of my knowledge, the attached document, which I prepared, reflects a true and accurate transcription of the tape of the May 5, 2003 Zoning Commission Hearing regarding Case No. 03-07.

Cheryl B. Jones

SUBSCRIBED AND SWORN to before me this 8th day of May, 2003.

David M. Lautenberger
Notary Public, District of Columbia
My Commission Expires 12-14-04

Notary Public, D.C.

My commission expires: _____

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