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BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

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Application of The George Washington University **Z.C. Case No. 04-23**
Campus Plan Amendment **ANC 2A**

STATEMENT OF THE APPLICANT

I.

NATURE OF RELIEF SOUGHT

Pursuant to 11 DCMR Section 3104 and in accordance with Section 210 of the Zoning Regulations, The George Washington University (hereinafter "GW" or "University") requests special exception approval of an amendment to its Campus Plan conditions for its Foggy Bottom campus. Specifically, the following changes are requested:

- Condition 10: Revise to permit use of the Hall on Virginia Avenue ("HOVA") for freshmen.

No variances are requested in this application and the requested special exception relief fully meets the requirements of the Zoning Regulations. The University is not requesting any changes to its campus plan boundaries nor is it proposing any new buildings or any increase in its enrollment or staff.

At a future date, the University plans to file an application to request further changes to its campus plan conditions, including Condition 9(a). The exact nature of that amendment application will be determined after the University's ongoing discussions with the Office of Planning to address campus density and its 2006 housing commitment have been concluded and these issues are discussed with community representatives.

ZONING COMMISSION
District of Columbia
Case 04-23
Exhibit 18

ORIGINAL

ZONING COMMISSION
District of Columbia
CASE NO.04-23
EXHIBIT NO.18

II.

INTRODUCTORY STATEMENT

Procedural History of this Amendment Application

The detailed procedural history of the University's campus plan case is set forth in the Board's Order on Second Remand (Order No. 16553-I, attached hereto as Exhibit A) and the District of Columbia Court of Appeals decision in *George Washington University v. BZA, 831 A.2d 921 (DC 2003),* attached hereto as Exhibit B. With respect to Condition 10, the Court sustained that condition but invited the Board to give further consideration to it.[1] The Board did not, believing that the appropriate agency to address this issue was the Zoning Commission. For that reason, the subject application is filed.

The University's Housing Commitment

Since the date of its campus plan approval, the University has proceeded expeditiously to construct the additional on campus beds required by its Campus Plan order. The Zoning Commission has heard and decided further processing applications for a new dormitory at 607 23rd Street, NW (Z.C. Order No. 957), a new dormitory at 616 23rd Street, N.W. (Z.C. Order No. 958), and a new residence hall/planned unit development at 2025 F Street, N.W. (Z.C. Order No. 03-29). In total, the University has added more than 2,000 beds to its campus since the expiration of its last campus plan, and an additional 560 beds are scheduled to be on-line in the Fall of 2006. The requested amendments to its campus plan conditions do not detract from the University's commitment to provide additional on campus beds.

[1] The Court also invited the Board to address Condition 8 but the Board declined. The University is not preparing any amendment to Condition 8 at this time, but will reserve that for a future application, if needed.

Compliance with Campus Plan Conditions

As described in the attached Exhibit C, the University is in compliance with its campus plan conditions.

III.

REQUESTED AMENDMENT TO CAMPUS PLAN CONDITIONS

Condition 10 (Housing Freshmen and Sophomores on Campus)

Condition 10 precludes HOVA (and other off-campus residence halls) from being used to house freshmen and sophomores. The Court stayed this provision pending the remand proceeding and strongly signaled that the BZA's revision of this condition on remand to provide that freshmen and sophomores only be housed "in University housing" would be "in the interests of justice." The Court, however, did not order the BZA to address this provision and the BZA declined to do so.

The "interests of justice" would be served by allowing HOVA to be used for freshmen because HOVA was purchased in 1998 specifically for this purpose. HOVA, as a former motel with transient customers, is designed more as a dormitory-style residence, with no kitchen or cooking facilities provided. Upper classmen at GW – indeed upper classmen in most universities – generally prefer to live in apartment-style housing and decline to live in dormitories. Upper classmen look for residences with a kitchen and more living space than HOVA provides.[2] Since its purchase by GW, freshmen have been the only occupants of HOVA (other than the graduate student and "staff community facilitators"), beginning before the University filed its application for the 2000-2010 Campus Plan. HOVA has remained the most requested residence hall among

[2] The one year the University announced plans to assign upper classmen to HOVA – spring 2003 (for housing assignment the following fall) – it resulted in a significant decrease in the number of such students electing to participate in the University's housing system.

freshmen. In all of this time, the use of HOVA by freshmen has not presented an objectionable impact to the surrounding community.

GW has spent considerable money in making HOVA attractive to freshmen. The University paid $19 million to purchase the building. Since then, the University has spent more than $4.1 million in renovating HOVA, much of it spent five years ago.

Since all beds on campus have already been assigned, there is no on-campus housing still available for freshmen this fall. Housing assignments were made and contracts signed with upperclassmen beginning in February and ending in March, prior to the April 26, 2004 BZA order on Second Remand. Residence halls suitable for freshmen, including HOVA, were reserved for freshmen. Thus, after the Second Remand Order, the only housing that was then available for freshmen was in HOVA and the other freshmen dorms. Some 1721 freshmen are scheduled to be housed on-campus this fall, and 453 freshmen are assigned to HOVA. Thus, freshman use of HOVA for the 2004-05 school year is consistent with the language of Condition 10 that freshmen and sophomores be housed on campus to the "extent such housing is available." The University, however, would like to address the use of HOVA for freshmen for future years.[3]

The requested amendment would change the language of Condition 10 to read as follows:

> Commencing in the Fall **2005** semester, the University shall require all full-time freshmen and sophomore students to reside in University housing located within the campus boundary established by the Board, **or within the Hall on Virginia Avenue ("HOVA",)** to the extent that such housing is available. The University may exempt students who commute, are married, or have children, or have disabilities or religious beliefs inconsistent with residence hall life.

The University is not seeking by this application to count freshmen beds in other off-

[3] The continued use of HOVA as a student residence hall is not an issue. Both the BZA and the DC Court of Appeals have confirmed that HOVA can be used for student housing as a matter of right. (BZA Appeal No 16507 and *Watergate West v. DC BZA*, 815 A.2d. 762 (DC 2003.)

campus properties, or to amend the 70% on-campus housing requirement of Condition 9(a). The request at this time is only to amend Condition 10 to permit the freshmen beds in HOVA to count toward its compliance with Condition 10.

IV.

JURISDICTION OF THE COMMISSION

Effective December 8, 2000, the authority to hear and decide new campus plan and further processing applications became exclusively vested in the Zoning Commission pursuant to 11 DCMR Section 3035. Each case is processed and heard under the special exception provisions of Section 210 of 11 DCMR.

Uses that are permitted by special exception are presumed to be appropriate for the applicable zoning district as long as certain conditions are satisfied. In considering special exception applications, the Commission must consider only whether the relevant conditions and special exception criteria have been met. If the applicant meets its burden, the Commission must ordinarily grant the application . *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment,* 432 A.2d 965 (1981). *Stewart v. District of Columbia Board of Zoning Adjustment,* 305 A.2d 516, 518 (1978).

In recent decisions, the District of Columbia Court of Appeals has reaffirmed the Commission's jurisdiction and scope of review in campus plan cases and has made clear that in reaching its decision the Commission may take into consideration such factors as institutional necessity. *Draude v. District of Columbia Board of Zoning Adjustment,* 582 A.2d 949, 955 (1990). Further, the Court has distinguished the broader public good referenced in the Zoning Regulations from the more narrow interests of neighboring property owners.

Through the exhibits, testimony and other evidence before the Commission, the

University will establish that it complies with all applicable provisions of the Zoning Regulations so as to be entitled to the requested special exception relief. The University will establish that the requested amendments to its campus plan conditions will allow the campus to continue as a vital educational institution and community resource serving both the mission of the University and the larger public good.

V.

WITNESSES

1. Charles Barber, Senior Counsel of The George Washington University
2. Rebecca Sawyer, Assistant Dean of Students

VI.

EXHIBITS IN SUPPORT OF APPLICATION

Before proceeding with the description of compliance with the zoning requirements, the following exhibits are submitted.

Exhibit A:	BZA Order on Second Remand, Order No. 16553-I
Exhibit B:	*George Washington University vs. DC Board of Zoning Adjustment,* 831 A.2d 921 (DC 2003)
Exhibit C:	University's Statement of Compliance with Campus Plan Conditions
Exhibit D:	Outline of Testimony of Charles Barber, Senior Counsel, The George Washington University
Exhibit E:	Outline of Testimony of Rebecca Sawyer, Assistant Dean of Students
Exhibit F:	Maps showing location of HOVA and zoning in area
Exhibit G:	Photographs of HOVA

VII.

COMPLIANCE WITH THE REQUIREMENTS OF §210

In all respects, the requested Campus Plan Amendment fully complies with §210 of 11 DCMR. The specific zoning requirements are addressed in detail below.

A. College or University Which Is an Academic Institution of Higher Learning (Subsection 210.1)

By Act of Congress dated February 9, 1821, The George Washington University was chartered as an educational institution of higher learning.

B. The Use Is Located So that It Is Not Likely to Become Objectionable to Neighboring Property (Subsection 210.2)

No changes to existing campus uses or facilities or to the campus boundaries are proposed, nor is the University proposing any changes to its enrollment or staff members. Accordingly, the requested amendments to Campus Plan conditions will not be objectionable to neighboring property due to noise, traffic, number of students, or other objectionable conditions.

C. Compliance with the Maximum Bulk Requirements (Subsection 210.3)

The University campus is developed with approximately 4.2 million square feet, which results in an overall FAR of 2.92, below the 3.5 FAR permitted under the zoning regulations. No new development is proposed as part of this Campus Plan Amendment application and no changes are proposed to the development permitted under its campus plan approval.

D. Submission of a Plan for Developing the Campus as a Whole (Subsection 210.4)

The University previously filed and received approval for its campus plan. That campus plan document is entitled "The Foggy Bottom Campus Plan – Years 2000 through 2009," and is a matter of public record. That plan meets all of the requirements in terms of showing buildings, parking and loading, screening, signage, athletic and other recreational facilities. No changes to

that campus plan document are proposed as part of this amendment application.

E. No Interim Use of Land is Proposed (Subsection 210.5)

No interim use of land is requested as part of this campus plan.

F. No New Use Sought for Approved Site of Buildings Moved Off Campus (Subsection 210.6)

The University does not seek approval for any use of a previously approved building site and thus complies with this section.

G. Compliance with the Policies of the District Elements of the Comprehensive Plan (Subsection 210.7)

The requested amendments to the Campus Plan conditions are not inconsistent with the policies of the District Elements of the Comprehensive Plan. In fact, the requested change to Condition 10 will further the goals and objectives of the Ward 2 elements of the Comprehensive Plan by permitting continued use of HOVA for student housing which both the Board and the Court found was not inconsistent with the Comprehensive Plan.

H. The Proposed Buildings Are within the Floor Area Limit for the Campus as a Whole (Subsection 210.8)

The existing Campus Plan FAR of 2.92 is within the permitted 3.5 FAR prescribed for the residentially zoned portions of the campus.

I. Referral to the District of Columbia Office of Planning and the District of Columbia Department of Public Works (Subsection 210.9)

This amendment application was referred to the Office of Planning and DDOT for their review and report.

VIII.

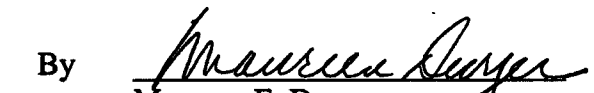
CONCLUSION

For the reasons stated above, the requested amendment to the campus plan conditions

meets the special exception requirements and carries out the city's and the community's objectives for the University campus. Accordingly, it is respectfully requested that the Commission approve the application.

Respectfully submitted,

SHAW PITTMAN, LLP

By 

Maureen E. Dwyer
Land Use Counsel for
The George Washington University

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