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By Hand Delivery

Ms. Carol Mitten
Chairperson, D.C. Zoning Commission
441 4th Street, N.W.
Room 210
Washington, D.C. 20001

Re: Z.C. Case No. 04-23: Special Exception Approval of a Campus Plan Amendment for The George Washington University

Dear Chairperson Mitten and Members of the Commission:

On behalf of The George Washington University, the applicant in the above-mentioned matter, enclosed please find the applicant's Proposed Findings of Fact and Conclusions of Law. If you have any questions or concerns, please feel free to contact the undersigned.

Sincerely,

Maureen E. Dwyer

Maureen E. Dwyer

Enclosures

Document #: 1452600 v.1

ZONING COMMISSION
District of Columbia
CASE NO. 04-23
EXHIBIT NO. 37

ZONING COMMISSION
District of Columbia
CASE NO.04-23
EXHIBIT NO.37

APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 04-23
Case No. 04-23
(Special Exception Approval of a Campus Plan Amendment for The George Washington University)

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on December 2, 2004, to consider an application from The George Washington University ("**GW**" or "**the University**") for special exception approval of an amendment to Condition 10 of its Campus Plan for its Foggy Bottom campus. The University requests that Condition 10 be changed to permit the use of the Hall on Virginia Avenue ("**HOVA**") for freshmen housing. In accordance with 11 DCMR §§ 210 and 3035, this case was heard by the Zoning Commission under the rules of the Board of Zoning Adjustment, set forth in Chapter 31 of 11 DCMR.

HEARING DATE: December 2, 2004

DECISION DATE: January 13, 2004

FINDINGS OF FACT

The Application, Parties, and Public Hearing

1. On September 17, 2004, the University submitted an application to the Zoning Commission for special exception relief to amend Condition 10 of the Campus Plan as approved by the Board of Zoning Adjustment ("**BZA**") in BZA Order No. 16553-I (the "**Order**").

2. The Commission provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("**ANC**") 2A and to the owners of property within 200 feet.

3. The Applicant and the ANC are the parties in this case. The Foggy Bottom Association ("**FBA**") initially filed a request for party status on November 22, 2004, and filed a supplemental request for party status on November 24, 2004. Under § 3106.2 of the Zoning Regulations, an affected person must file a request for party status at least fourteen days prior to the date of the public hearing. In this case, all requests for party status were due to be filed by November 18. Given that the FBA is familiar with the Zoning Commission's rules and procedures, the Commission decided not to waive the requirement that a request for party status be timely filed and denied FBA's request for party status.

4. The public hearing on the proposed Campus Plan amendment and special exception was held on December 2, 2004.

HOVA

5. In 1998, the University purchased a ten-story building located at 2601 Virginia Avenue, N.W. The building was constructed in 1963 as a Howard Johnson Motor Lodge and was used as a hotel for many years. Following its purchase of the building, the University renovated it for use as a freshmen residence hall and renamed it the Hall on Virginia Avenue ("**HOVA**"). The University paid $19 million to purchase the building, and the renovations cost the University more than $4.1 million.

6. HOVA was expressly designed for housing the maximum number of freshmen and sophomores. It currently provides 454 undergraduate student beds in 195 units. Each dormitory-style unit contains either two or three beds and a bathroom. The units do not feature kitchens.

7. Upperclassmen generally prefer apartment-style housing units to dormitory-style units. GW upperclassmen testified that they would not consider living in HOVA, primarily because the units lack kitchens.

8. Preventing the University from using HOVA for freshman housing would create unnecessary competition for housing located on campus and would result in many upperclassmen seeking private housing in the Foggy Bottom Community – the precise situation that Conditions 9 and 10 were intended to remedy.

9. Entering freshmen most frequently request HOVA as their first-choice residence hall. Because of HOVA's popularity, over three-fourths of the freshmen accepted at HOVA are early decision students with stellar academic records and leadership and service experience.

10. HOVA provides a structured environment tailored to freshmen. It houses four of the University's "living and learning communities," which provide the students with residential activities and events, educational experiences, and leadership opportunities. In addition, each floor of HOVA is supervised by a student staff member, who is responsible for informing students about the policies and regulations of their community. The University's director of residential life and education lives in a private apartment on the seventh floor.

11. The University has taken steps to ensure that the behavior of HOVA's students is not objectionable to surrounding properties. The balconies on the front of the building facing

Virginia Avenue are secured with a channel iron that prevents the doors from being opened more than six inches, and the windows on the opposite side of the building, facing the highway, are three-panel windows with secured screens. HOVA also features a security desk that is staffed at all times by a member of the University Police Department.

12. The University cited data showing that students in HOVA have been the subject of GW disciplinary proceedings at levels far less than students in other residence halls on campus, both for freshmen and upper classmen.

The Campus Plan, Procedural History, and the Requested Amendment to Condition 10

13. The Order, which became final on April 26, 2004, approved GW's Campus Plan for the years 2000 through 2009 (the "**Campus Plan**"). The complete procedural history of the Campus Plan is set forth in detail in the Order and the decision of the District of Columbia Court of Appeals in *George Washington University v. Board of Zoning Adjustment*, 831 A.2d 921 (D.C. 2003).

14. On appeal, the D.C. Court of Appeals affirmed the Board's prior version of the Order in substantial part, but invalidated Conditions 9(a) and 9(f). Although the Court of Appeals upheld Condition 10 of the Order, it invited the Board, in the interest of justice, to reconsider it. Although the Court did not invalidate Condition 10, it decided to maintain its stay of that condition until the Board issued its order on remand. On remand, the Board decided not to revisit Condition 10, finding the Zoning Commission is the appropriate agency to address the issue.

15. Among other things, the Campus Plan defines the boundaries of the campus and places a cap on student enrollment and the permitted number of faculty and staff. Condition 9 of the

Campus Plan requires the University to make available beds for at least 5,600 full-time undergraduate students on campus no later than August 31, 2006. Whenever the head count of full-time undergraduate enrollment exceeds 8,000, the University must provide one bed on campus for each full-time undergraduate student in excess of that number. Condition 10 of the Order requires the University to house, within the campus boundary, all full-time freshmen and sophomores commencing in the Fall 2001 semester. Condition 10 thus forbids the University from using HOVA to house freshmen.

16. Condition 10 of the Campus Plan provides:

> Commencing in the Fall 2001 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, 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. Prior to the Fall 2003 semester, housing commitments made to current University students may be taken into account when determining the amount of housing available.

(BZA Order No. 16553-I, Condition 10, p. 7) (emphasis supplied).

17. As currently written, Condition 10 precludes the University from using HOVA and other off-campus residence to house freshmen and sophomores. In addition, the dates set forth in Condition 10 are outdated. The Remand Order became final on April 26, 2004, well after the dates set forth in Condition 10 had passed.

18. The application initially requested that Condition 10 be modified as follows:

> Commencing in the Fall ~~2003~~ **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. ~~Prior to the Fall 2003 semester, housing commitments made to current University students may be taken into account when determining the amount of housing available.~~

19. During the public hearing, Charles Barber, the Senior Counsel of the University, suggested a compromise. He proposed that Condition 10 be revised to permit the University to use HOVA for freshman housing until the Fall of 2006. Beginning in August of 2006, the University would be required to house all freshmen in University housing located within the Campus Plan boundaries.

20. In response to a question posed by Commissioner Mitten, the University agreed that if permitted to house freshmen in HOVA, it would maintain in place the current policies and practices for the operation of the dormitory.

21. Despite its legal challenges to the Order, the University has made substantial efforts to provide more student housing on campus. Since 2000, GW has added in excess of 2000 beds. GW currently is housing 65 percent of its students within the Campus Plan boundaries and is housing 78 percent of its students in University-owned residence halls off-campus. An additional 560 beds are scheduled to be available for the Fall of 2006.

Report of the Office of Planning

22. The report of the Office of Planning ("OP"), dated November 23, 2004, recommended that the dates in Condition 10 be revised but that the University's request to permit the use of HOVA for freshmen housing be denied. In its report, OP stated that having freshmen and sophomores concentrated in an area outside of the campus boundary, even in University controlled housing, has the potential for adverse impacts on the community due to the "youth and relative immaturity" of the students. OP also stated that allowing the University to house

freshmen in HOVA would constitute an institutional intrusion into the community, which could cause the Foggy Bottom and West End neighborhoods to reach the "tipping point" referenced in its earlier reports on the Campus Plan. OP noted that it has supported GW's efforts to provide on-campus housing by expediting further processing cases involving housing. It recommended that the Zoning Commission grant the University's requests to revise the Fall 2003 date to Fall 2005 and to delete the final sentence. OP supported these changes because the references were out-of-date.

23. During the public hearing, OP testified that it does not oppose the University's proposed compromise, which would permit GW to house freshmen in HOVA until the Fall of 2006, at which time other projects creating additional freshmen housing would be complete.

Reports of Other Government Agencies

24. No government agency other than the Office of Planning submitted a report on the application.

Advisory Neighborhood Commissions

25. On November 10, 2004, during its regularly scheduled and properly noticed public meeting, Advisory Neighborhood Commission 2A voted 3 to 2 to opposed the University's application to modify Condition 10 of the Campus Plan. ANC 2A submitted a written statement and Dorothy Miller, Chair of ANC 2A, testified in opposition during the public hearing. In its written submission and testimony, ANC 2A contended that the proposed modifications to Condition 10 would be inconsistent with the Comprehensive Plan's goal that GW should provide housing for its students within the current campus plan boundaries. ANC 2A also argued that GW's request should be denied because the University has moved some of its academic and

administrative space to commercial properties off-campus and because the University has continued to increase its undergraduate enrollment.

26. During the public hearing, Dorothy Miller testified that ANC 2A refuses to schedule quarterly public meetings with GW as required by Condition 3 of the Order.

Other Community Organizations

27. The Foggy Bottom Association submitted a letter in opposition to the application and testified during the public hearing. The FBA testified that it opposes the application for the reasons set forth by OP in its report and the reasons stated by ANC 2A.

28. The Board of Directors of Watergate East, a cooperative apartment building located across Virginia Avenue from HOVA, submitted a letter in opposition to the application. They cited GW's non-compliance with the Campus Plan as their reason for opposing the application.

Other Public Testimony

29. Several witnesses testified in support of the application. Community residents were in favor of housing as many students in university-owned housing as possible, and they testified that allowing GW to house freshmen in HOVA would reduce the number of students living off-campus in the Foggy Bottom community. Two residents of Watergate East testified that they have not experienced objectionable behavior by the students residing in HOVA and that they support the continued use of HOVA for housing freshmen. Three community residents, who are also seniors at GW, testified that HOVA would not be desirable housing for upperclassmen and that prohibiting freshmen from living in the building would result in more students living off-campus in private housing. A representative of the Residence Hall Association testified that HOVA is one of the most requested residence halls available to GW freshmen. A resident who

lives on Virginia Avenue, near HOVA, testified that preventing the continued use of HOVA for freshman housing would result in hundreds of students moving into private housing in the community. She also testified that the University's community concern policy is extremely effective and well-published.

CONCLUSIONS OF LAW

GW is seeking a campus plan amendment and a special exception pursuant to §§ 3104.1 and 210 of the Zoning regulations to permit the University to use HOVA to house freshmen until the Fall of 2006. In order to meet its burden of proof under § 210.2, the University must demonstrate that such use is "not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions." Based on the Findings of Fact and the evidence of record, the Commission concludes that the University has met its burden of proof.

The University's use of HOVA as a student residence hall is permitted as a matter-of-right under the current R-5-E zoning. Accordingly, the only issue in this application is whether GW should be permitted to use HOVA for freshman housing.

When the Board approved the Campus Plan in 2001, the University's use of HOVA as a student residence hall for freshmen was relatively new. In contrast, in the present application, the University presented evidence resulting from five years of operating HOVA as a freshman residence hall. The disciplinary problems the Board feared in 2001 did not materialize. Indeed, the University demonstrated that freshmen residing in HOVA are less likely to be involved in disciplinary action than freshmen residing in other freshmen residence halls. Many community residents testified in support of the application. Although the ANC stated that numerous

behavioral incidents occurred in HOVA, it failed to present any evidence of a history of such incidents.

The District of Columbia Court of Appeals has indicated that Condition 10, although based on substantial evidence in the record, may have resulted in an unjust situation. The Commission finds the compromise suggested by the University during the public hearing is an appropriate compromise that would address the concerns of both the University and the Office of Planning. It will mitigate the harsh effects of Condition 10 while continuing to address the underlying concerns that Condition 10 was intended to remedy. The approval of this application will result in more students being housed in University residence halls and fewer students seeking private housing in the Foggy Bottom West End Community.

DECISION

The Commission has accorded ANC 2A and the Office of Planning the "great weight" to which they are entitled. Accordingly, it is **ORDERED** that the application is **GRANTED**, and Condition 10 of Board of Zoning Adjustment No. 16553-I is hereby modified as follows:

> Commencing in the Fall of 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, to the extent that such housing is available; provided that the University shall be permitted to house freshmen within the Hall on Virginia Avenue ("HOVA") until the Fall of 2006 semester. The University may exempt students who commute, are married, or have children, or have disabilities or religious beliefs inconsistent with residence hall life.
>
> For so long as GW is permitted to house freshmen in HOVA, the University will continue to operate this residential hall on the same general basis as it has in the past. Specifically, GW will:

1) Give early decision students priority in the selection of HOVA in order to facilitate the continuation of early admit students as the majority of the HOVA population;

2) Provide a variety of Living and Learning Communities designed to attract socially and politically conscientious students to live and study at HOVA;

3) Provide one full-time professional staff member for the residence hall, as well as a live-in community facilitator for each of the eight floors'

4) Provide professional security personnel on the ground floor on a 24 hour basis; and

5) Provide additional security to routinely patrol the building and grounds.

VOTE:

BY ORDER OF THE D.C. ZONING COMMISSION
Each concurring member approved the issuance of this Order.

ATTESTED BY:_____
JERRILY R. KRESS, FAIA
DIRECTOR, OFFICE OF ZONING

FINAL DATE OF ORDER:_____

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of December, 2005, the foregoing "Applicant's Proposed Findings of Fact and Conclusions of Law" was served by hand delivery, on the following:

Dorothy Miller, Chair
ANC-2A
2440 Virginia Avenue, NW, No. D206
Washington, D.C. 20037

Ms. Ellen McCarthy
Mr. John Fondersmith
District of Columbia Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Ashleigh Horne

Ashleigh Horne

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