Government of the District of Columbia
OFFICE OF ZONING

Z.C. CASE NO.: 04-23

As Secretary to the Commission, I herby certify that on OCT 21 2005 copies of this Z.C. Order No. 04-23 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

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ZONING COMMISSION
District of Columbia
CASE NO. 04-23
EXHIBIT NO. 39

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Acting Secretary to the Zoning Commission
Office of Zoning

ZONING COMMISSION
District of Columbia
CASE NO.04-23
EXHIBIT NO.39

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

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ZONING COMMISSION ORDER NO. 04-23
Z.C. Case No. 04-23
(George Washington University – Amendment of Approved Campus Plan to Modify Condition No. 10)
January 13, 2005

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 to amend its approved campus plan to modify Condition No. 10 so as to permit use of the Hall on Virginia Avenue as a residence hall for freshman students, pursuant to §§ 210 and 3135 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. Pursuant to 11 DCMR §§ 210 and 3035, the Commission heard the case under the rules of the Board of Zoning Adjustment set forth in 11 DCMR Chapter 31. At a public meeting on January 13, 2005, the Commission voted 5-0-0 to deny the application, but to stay enforcement of Condition No. 10 until August 2006.

On September 17, 2004, the George Washington University ("Applicant" or "University") filed a self-certified application for special exception relief to amend Condition No. 10 of its approved campus plan so as to permit use of the Hall on Virginia Avenue ("HOVA") for freshman students. After the modification proposed by the Applicant, amended Condition No. 10 would compel the University to require all full-time freshman and sophomore students to reside in University housing located within the campus boundary or within the HOVA, to the extent that such housing is available and with certain exemptions.[1]

At the public hearing, the University amended the application to request permission to house freshmen in HOVA until August 2006. According to the Applicant, allowing the use of HOVA by freshmen through August 2006 would align Condition No. 10 with Condition No. 9(a) of the approved campus plan, which requires the University to make beds available on-campus for at least 5,600 full-time undergraduate students beginning no later than August 31, 2006, and would give additional time for the University to continue discussions with the Office of Planning on broader land-use and student housing issues related to the Foggy Bottom campus.

[1] The Applicant proposed to make the following changes to Condition No. 10:

> Commencing in the Fall **2005** ~~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, **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.~~

The Applicant asserted that the requested amendment would have no adverse impacts on the abutting and nearby property owners due to noise, traffic, number of students or other objectionable conditions, and that precluding the University from counting beds in HOVA, an off-campus residence hall, would not further the District's or the community's objectives. The Applicant stated that the University was not presently seeking to count freshman beds in other off-campus properties or to amend the 70 percent on-campus housing requirement adopted by the Board in Condition No. 9(a).

By memorandum dated November 23, 2004, the Office of Planning ("OP") recommended against approval of the University's request to add the phrase "or within the Hall on Virginia Avenue" to that portion of Condition No. 10 directing the University to require all full-time freshman and sophomore students to reside in University housing located within the campus boundary, so as "to retain the main concept of Condition 10 that all full-time freshman and sophomore students reside within the Campus boundary established by the Board." OP disagreed with the University's assertion that the proposed change would not be objectionable to neighboring property, and instead suggested that the University could use HOVA to house upperclassmen.

OP noted that, during the campus plan process, the University had indicated its intent to require freshman and sophomore students to live on campus, acknowledging the greater need for guidance and potential for behavior problems associated with the younger, relatively immature students. OP also noted its continuing concern about the impact of University activities on the adjacent Foggy Bottom/West End communities. OP did not oppose the University's revised proposal to use HOVA to house freshmen through August 2006, noting that a planning effort was underway to address some broader campus plan issues, but reiterated its support for the policy of requiring freshman and sophomore students to live on campus in the longer term.

By letter dated November 26, 2004, ANC 2A indicated that, at a regularly scheduled and properly noticed public meeting held November 10, 2004 with a quorum present, a majority of the ANC voted to oppose the application for several reasons, in particular "the ANC's long-standing views that the University is in ongoing violation of the Comprehensive Plan, as well as its own Campus Plan." The ANC also asserted that "there is an extensive history of behavior issues at the Hall on Virginia Avenue."

The Commission denied an untimely request for party status in opposition to the application submitted by the Foggy Bottom Association.

The Commission received letters and heard testimony in support of the application from several University students and residents living near HOVA. The letters and testimony generally cited the lack of objectionable conditions currently created by freshmen living in HOVA, a desire to localize the student population in efficiently utilized residence halls rather than spread throughout the community and the configuration of the interior of the building that made HOVA suitable for freshmen and unattractive to upperclass students, who might opt out of University housing and choose to live off-campus to avoid living in HOVA.

The Commission received several letters and heard testimony from persons in opposition to the application. Persons in opposition generally cited the continuing encroachment by University uses into the surrounding residential neighborhood, although some did not oppose use of HOVA to house upperclass students. The Foggy Bottom Association indicated its agreement with the recommendation of the Office of Planning not to modify Condition No. 10. Watergate East, a cooperative 240-unit apartment building on Virginia Avenue across from HOVA, submitted a letter indicating that its board of directors had voted 10-1 on October 20, 2004, with all members present, in opposition to the Applicant's proposal to continue to house freshman students in HOVA, citing "efforts to reduce the negative effect of so many students infiltrating our residential community."

FINDINGS OF FACT

1. The University's campus plan was originally approved, subject to conditions, by the Board of Zoning Adjustment by order issued March 29, 2001 (BZA Application No. 16553).[2] Condition No. 10 of the approved campus plan states that: "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."

2. The Hall on Virginia Avenue is located outside the campus plan boundaries at 2601 Virginia Avenue, N.W., approximately two blocks west of the campus. The 10-story building, formerly a hotel, was purchased by the University in 1998, and now contains a lobby on the first floor, a parking deck on the second level, and eight floors of student residential units.

3. HOVA is located on a narrow lot (Square 6, Lot 825) containing 20,407 square feet in area. The irregularly-shaped parcel is bounded by Virginia Avenue, a freeway (Interstate 66) and a ramp to the freeway. HOVA occupies the entire square with the exception of a small gas station at the western edge of the square near the intersection of Virginia Avenue, 27th Street and the freeway ramp.

4. The Applicant testified that HOVA was acquired specifically to house freshmen, because the building was designed as a dormitory-style residence and did not provide kitchens or cooking facilities, while upperclass students generally prefer to live in apartment-style housing. Freshmen have been the only occupants of HOVA since its purchase by the

[2] Some conditions of approval – not including Condition No. 10 – were subsequently modified by the Board following an appeal by the University to the District of Columbia Court of Appeals and its filing of a civil action in the United States District Court for the District of Columbia. *See* the Board's Final Order on Remand (16553-E; issued December 21, 2001) and Order on Second Remand (16553-I; issued April 26, 2004).

University, other than a residence hall administrator and eight upperclass students who serve as "community facilitators."

5. During the 2004-2005 academic year, 453 freshmen were assigned to HOVA, living in 195 units. Most units have two beds; some have three beds.

6. The Applicant indicated that, for so long as the University was permitted to house freshmen in HOVA, the University would continue to operate the residence hall on the same general basis as it had in the past. Specifically, the University would give early-decision students priority in the selection of HOVA to facilitate the continuation of early-admit students as the majority of the HOVA population; provide a variety of "living and learning communities" designed to attract socially and politically conscientious students to live and study at HOVA; provide a full-time professional staff member for HOVA as well as a live-in community facilitator for each of the eight floors; and provide professional security personnel on the ground floor on a 24-hour basis, with additional security to routinely patrol the building and grounds.

7. The Commission credits the testimony of OP that a concentration of freshman and sophomore students outside the campus boundary, even in University-controlled housing, has the potential for adverse impacts on the neighboring residential communities in light of the greater need for guidance and potential for behavior problems associated with the younger, relatively immature students.

CONCLUSIONS OF LAW

The Applicant is seeking special exception approval, pursuant to §§ 210 and 3104 of the Zoning Regulations, of a modification to its approved campus plan so as to permit use of the Hall on Virginia Avenue as a residence hall for freshman students, under the same conditions as it is currently used, through August 2006. The Commission is authorized to grant a special exception where, in the judgment of the Commission based on a showing through substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to certain conditions specified in § 210. D.C. Official Code § 6-641.07(g)(2) (2001), 11 DCMR § 3104.1.

The Commission concurs with OP that the requested modification of Condition No. 10 should not be approved. As OP noted, the Applicant's proposal is inconsistent with the "main concept" of the Campus Plan – that is, that all full-time freshman and sophomore students should be required to reside within the approved campus boundary –a condition previously found necessary to avoid the creation of any objectionable conditions associated with a university use in a Residence zone. As described by OP and by ANC 2A, the use of off-campus residence halls for freshman students has a potential for adverse impacts in light of the greater need for guidance and possible behavior problems associated with the younger, relatively immature students. The

Commission notes as well that OP expressed a continuing concern about the impact of University activities on the adjacent Foggy Bottom/West End communities.

Although the Commission declines to modify Condition No. 10 to permit the University to house freshmen off-campus in HOVA, the Commission concludes that a stay of the enforcement of Condition No. 10 until August 2006 is appropriate in light of obligations the University has made to provide housing for current students on campus, such that beds are not immediately available on-campus for the freshmen presently in HOVA.

DECISION

At a public meeting on January 13, 2005, the Commission voted 5-0-0 to deny the application but to stay enforcement of Condition No. 10 until August 2006 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, Kevin L. Hildebrand and John G. Parsons voting in favor of the motion).

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **DENIAL** of this application for modification of an approved campus plan so as to permit use of the Hall on Virginia Avenue as a residence hall for freshman students, with enforcement of Condition No. 10 of the approved campus plan **STAYED** until August 31, 2006.

VOTE: 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, Kevin L. Hildebrand and John G. Parsons).

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: OCT 14 2005

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.