THE CATHOLIC UNIVERSITY OF AMERICA

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APPLICATION TO THE DISTRICT OF COLUMBIA ZONING COMMISSION FOR A ZONING MAP AMENDMENT AND AMENDMENT TO AND FURTHER PROCESSING OF THE 2002 CAMPUS PLAN

September 29, 2004

ZONING COMMISSION
District of Columbia
Case 04-25
Exhibit 2

BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

STATEMENT OF THE BURDEN OF PROOF

In April 2004, The Catholic University of America ("CUA," the "University" or the "Applicant"), acquired 49 acres of land immediately to the west of its main campus (Parcel No. 121/29) ("West Campus"). In order to integrate the newly acquired land into the campus as a whole and make viable use of the land, Zoning Commission relief is necessary. In accordance with Section 102 of the District of Columbia Zoning Regulations, the University seeks an amendment to the Zoning Map of the District of Columbia in order to establish the R-5-A Zone District on the currently unzoned West Campus. Further, in accordance with Sections 210 and 3014 of the District of Columbia Zoning Regulations, CUA requests an amendment to the 2002 Master Plan of The Catholic University of America ("Campus Plan"), which guides the development of the campus through May 12, 2012, to include the West Campus. Finally, CUA seeks further processing under the amended plan to allow for the establishment of certain uses as described herein.

I.
Nature of Relief Sought

CUA secured approval for the Campus Plan in Zoning Commission Order No. 02-02 (attached hereto as Exhibit C), which became effective on May 23, 2003. In accordance with §§ 210 and 3104 of the District of Columbia Zoning Regulations, the Applicant now seeks an amendment to and further processing of the Campus Plan in order to include the West Campus within its boundaries and make viable use of the newly acquired parcel. The University must secure an amendment to the Zoning Map of the District of Columbia to establish the R-5-A zoning category for the unzoned West Campus to allow its inclusion within the Campus Plan.

II.
Jurisdiction of The Zoning Commission

The Zoning Commission has jurisdiction under Section 3010 to establish zoning for the newly acquired West Campus. The Zoning Commission has jurisdiction under Section 3035 to approve the amendment to the Campus Plan and the further processing of the Campus Plan.

III.
Background

A. Description of the Property and Surrounding Area

In April 2004, CUA acquired 49 acres of land at the eastern boundary of the U.S. Soldiers' and Airmen's Home from the United States Government. The 49-acre parcel borders the western part of the Catholic University of America and is currently unzoned. The site is bounded by North Capitol Street to the west, Irving Street to the southwest, Michigan Avenue to the south, Harewood Road, N.E. to the east, and the Pope John Paul II Cultural Center to the north. In addition to the University, also in the vicinity of the Property are the Veterans Administrative Hospital and the McMillan Reservoir. The parcel is improved with two small buildings and four sheds, but the majority of the property is unimproved land.

With the acquisition of the West Campus, the University is currently divided into four segments: (1) The main campus contains 95.3 acres. This central part of the campus contains the administrative, academic, and student life facilities. (2) The South Campus, comprising approximately 8 acres, is located south of Michigan Avenue, and contains student housing and some support facilities. (3) The North Campus contains 40.5 acres and is located north of Taylor Street. This area is used for recreation programs and includes an athletic center, stadium, and sports fields. (4) While plans for the West Campus have not yet been finalized, it is anticipated that the newly acquired West Campus will contain a pavilion for outdoor performances and event

field, an unpaved cross-country track, an environmental research area, two areas of spiritual repose, a maintenance, truck and material storage structure and temporary housing units.

The majority of the existing 144 acre CUA campus is zoned R-5-A. There are two exceptions: the area of the South Campus which formerly included Monroe Hall is zoned CM-1 and C-1, and the Monroe Block is zoned R-4. CUA is located in the northeast quadrant of Washington, D.C., in a primarily residential area of a low to medium density. Immediately surrounding the campus are many large institutional facilities, particularly houses of religious study, colleges, and hospitals, as well as some light industrial and commercial properties

The architecture of the main campus exemplifies the historic evolution of the institution dating from before the turn of the century. A variety of architectural styles are present in a pattern of campus development that historically responded to the orientation of the perimeter streets and to the topographic high points of the campus. These include Caldwell Hall, Gibbons Hall, Maloney Hall, McMahon Hall and Mullen Library. The historic character of select older structures is particularly impressive and helps establish a strong, pleasant University presence, especially along Michigan Avenue. The adjacent Basilica acts as a distinguished landmark for the neighborhood and campus. Further, many original campus buildings remain prominent structures, with architectural features to be preserved and featured as strengths of the University environment.

B. History of The Catholic University of America

The Catholic University of America was formally established as a center for graduate studies in theology at the Third Plenary Council of Baltimore in 1884. On April 21, 1887, the University was formally incorporated under the laws of the District of Columbia. The first

graduate students were admitted in 1889 and the first undergraduates in 1904. In 1928, a special act of the Congress expanded the University's authority, extended its services and increased the membership of its governing body, the Board of Trustees.

The Catholic University of America was one of the earliest universities and the first Catholic university to offer doctorate degrees, awarding its first two in 1895. Today, CUA maintains its commitment to graduate education and strives with renewed effort to be an international center of scholarship, where the pursuit of human knowledge is carried out in the best tradition of Catholic intellectual life. In addition to doctoral and other graduate and professional programs, the University continues to provide an undergraduate education that is grounded in the liberal arts, with a firm foundation in philosophy and religion. The University's capacity to use its graduate focus, scholarly and professional resources and distinctive identity to provide an education and create a collegiate culture, constitutes a hallmark of its commitment to undergraduate studies.

C. History of the West Campus

The West Campus was formerly owned by the United States Soldiers' and Airmen's Home ("USSAH" or "Home"). USSAH has retained and continues to use its main campus, which is located on the west side of North Capitol Street. The Home was established in 1851 as an "asylum for old and disabled veterans" and provided a residence and related services for military veterans. This facility, together with the United States Naval Home, was incorporated into an independent establishment within the Executive Branch in 1990. The consolidated institution, known as the Armed Forces Retirement Home ("AFRH"), was administered by the Armed Forces Retirement Home Board ("AFRHB").

For roughly the past decade of its operation, the AFRH experienced declining revenues

and annual budget deficits. In an effort to address this expected continuation in revenue decline, the AFRHB, acting pursuant to congressional authority, worked to identify and evaluate alternatives for the modernization and long-term viability of the retirement facilities. Among the proposals was a recommendation to sell a 49-acre parcel of excess land owned by the Soldiers' and Airmen's Home. To implement this recommendation, AFRHB subsequently requested legislation that would authorize the sale of this excess property and, in section 1053 of the National Defense Authorization Act for Fiscal Year 1997, that authorization was provided: "the Armed Forces Retirement Home Board may convey, by sale or otherwise, all right, title, and interest . . . in a parcel of real property . . . consisting of approximately 49 acres located in Washington, District of Columbia . . . ." Pub. L. No. 104-201, § 1053, 110 Stat. 2422, 2650 (1996).

Two years later, Congress revisited AFRHB's authorization to sell the parcel, essentially directing that the property be sold to CUA. Thereafter CUA engaged the Armed Forces Retirement Home in an effort to negotiate a fair market price at which CUA could purchase the property. However, the Armed Forces Retirement Home spurned CUA's offers, wanting instead to have the property developed and to retain title. After year of extensive litigation, the sale of the property to CUA was completed in April 2004.

IV.
Proposed R-5-A Zone District

As mentioned above, the Applicant seeks an amendment to the Zoning Map of the District of Columbia to rezone the West Campus to the R-5-A Zone District. Given its prior federal ownership and use, the Property is now unzoned. Pursuant to 11 DCMR 101.5, a structure cannot be constructed on unzoned property except in conformity with the Zoning

Regulations. 11 DCMR 106.7 states that "[n]o building permit or certificate of occupancy shall be issued nor proceeding initiated before the Board of Zoning Adjustment, nor shall any property in private ownership be used for any purpose until after the Zoning Administrator has designated zoning for the property." Accordingly, until the West Campus is zoned, the land will not be suitable for use, as no structure may be built on the site as a matter of right.

The R-5-A Zone District is a General Residence District designed to permit flexibility of design by permitting all types of urban residential development. The R-5-A Zone District also permits the construction of institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts. The flexible nature of the R-5-A District allows residential, institutional and accessory uses that are essential to the support and furtherance of the University's vision for the future. A college campus in the R-5-A District is permitted a maximum floor area ratio (FAR) of 1.8. The maximum height for an institutional structure in the R-5-A Zone District is ninety feet, subject to certain setbacks. Pursuant to Section 210.3, the development parameters are further prescribed by the 2002 Campus Plan approved by the Zoning Commission in Order 20-02. All planned construction within the West Campus falls well within these limitations and meets the requirements for site coverage and yard setbacks.

A.

Standards Applicable to an Application for a Zoning Map Amendment

The Zoning Act (D.C. Code, Sections 5-412, et seq., 1994 Edition) sets forth the criteria that the Zoning Commission must apply in adopting zoning regulations. Section 5-413 sets out the underlying purposes of the regulations to "promote the health, safety, morals, convenience,

order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital . . ." Section 5-414 directs the Zoning Commission to make its regulations "not inconsistent with the comprehensive plan for the national capital . . ." Section 5-414 further requires that zoning regulations:

> shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency of public services. Such regulations shall be made with reasonable consideration, among other things of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and land values therein.

The Commission must apply the same standards and criteria in determining whether to approve a requested amendment to the Zoning Map of the District of Columbia.

B.
RATIONALE FOR ZONING MAP AMENDMENT APPROVAL

The proposed rezoning of the Property from unzoned to the R-5-A Zone District meets the D.C. Code's standards for approval. Further, the rezoning will:

A. Help achieve the goals and objectives of the District of Columbia Comprehensive Plan; and

B. Allow for the immediate use of the West Campus for recreational, athletic and spiritual purposes by CUA, thereby enhancing the actual Property, the University and the adjacent residential and institutional uses.

C.
THE COMPREHENSIVE PLAN

Rezoning the Property to R-5-A is "not inconsistent with the Comprehensive Plan." In fact, such a rezoning would help to implement and achieve many diverse goals of the Comprehensive Plan. The zoning, which will allow institutional use, is consistent with the existing land uses to the north, south and east of the West Campus. The rezoning of the Property is entirely consistent with the following Elements of the Comprehensive Plan:

1.
Land Use Element

Establishment of the R-5-A Zone District on the Property would further various aspects of the Land Use Element of the Comprehensive Plan. For example, the Comprehensive Plan includes support for the following objective for institutional land use:

- Recognize the **specialized land needs** and unique economic and human development opportunities presented by colleges, **universities**, and other institutional **users of large tracts** and require the development of detailed master plans, if none exist, that incorporate all land and facilities concurrently in use or currently owned by the institution and anticipated for future use. (emphasis added) 10 DCMR §1115.1(j).

The development of the West Campus will advance the above Land Use Element objective, as well as the general objective of promoting the continued contributions of private institutions toward the District's cultural and economic vitality, and of preparing master plans for colleges and universities.

2.
Ward 5 Element

There are numerous policies and objectives in the Ward 5 Element that are furthered as a result of the establishment of the R-5-A Zone District for the Property. The Ward 5 objectives for land use/zoning include:

> "Protect and enhance the stability of residential neighborhoods." 10 DCMR §1629.1 (a).
>
> "Encourage and support an appropriate mix of uses in all economic development, where appropriate including uses such as housing, parks and open space." 10 DCMR 1629.1 (c)

The R-5-A Zone District is an appropriate zoning designation for the Property that will allow a use that will achieve these objectives. The R-5-A Zone District will allow the University to construct a pavilion for outdoor performances and event field, an unpaved cross-country track, an environmental research area, two areas of spiritual repose, a maintenance, truck and material storage structure and temporary housing units.

D.
Health, Safety, General Welfare

The proposed map amendment would further the health, safety and general welfare of the District of Columbia. Development under R-5-A zoning would produce an extension of CUA's campus that is consistent with, and supportive of, the surrounding uses. The zoning would also be consistent with sound planning principles, in helping to establish an appropriate mix of uses on the Property that will enhance and strengthen the surrounding neighborhood and the University.

E.
Development Under The R-5-A Zone District Would Create Favorable Conditions, Not Adverse Consequences, For The Property And The Surrounding Area

The establishment of the R-5-A Zone District on the Property will not result in the overcrowding of land or undue concentration of population. The University does not seek any change to its enrollment cap or the allowable FAR, as prescribed in the 2002 Campus Plan. The introduction of the R-5-A Zone District, will create conditions for development on the Property that are favorable to the surrounding area and to the University in its recreational, educational and cultural opportunities. Therefore, the proposed Zoning Map Amendment application satisfies the requirements of D.C. Code Section 5-414.

V.
The Applicant Complies With The Requirements Of Section 210

In accordance with Section 210 of the District of Columbia Zoning Regulations, the University also seeks an amendment to and further processing of the Campus Plan in order to make viable use of the West Campus. As mentioned above, the University plans to have a pavilion for outdoor performances and event field, an unpaved cross-country track, an environmental research area, two areas of spiritual repose, a maintenance, truck and material storage structure and temporary housing units on the West Campus. These uses are all in accordance with the 2002 Master Plan. In connection with the further processing of the amended Campus Plan, CUA requests immediate approval of all of the uses shown in the West Campus Plan.

A. Subsection 210.2: The West Campus is Situated Such That it is Not Likely To Become Objectionable To Neighboring Property Because Of Noise, Traffic, Number Of Students Or Other Objectionable Conditions.

The development of the West Campus as set forth in the amended Campus Plan will not create objectionable conditions on neighboring properties. The entire University, including the West Campus, has a unique location and low intensity of use. The generous open space and large wooded areas on the West Campus create a buffer from the surrounding properties. Further, while the University is located primarily within residential zone districts, it is surrounded by many other institutional uses, rather than single family homes. Additionally, the network of streets surrounding the campus act as a natural buffer between the entire campus and nearby property owners.

CUA does not propose any change to the current enrollment cap of 7,500 FTE students and 1,710 faculty and staff set forth in the 2002 Campus Plan. The current student enrollment for the 2004-2005 academic year is 4,710 full time equivalent students and a headcount of 5,962 students, well below what is permitted. This number of students and faculty results in only a minimal impact on the surrounding community, and the addition of the West Campus will have no effect on the number of students enrolled at the University.

The traffic report conducted in preparation for the 2002 Campus Plan established that there were no adverse traffic impacts associated with the 2002 Campus Plan. As mentioned above, the addition of the West Campus will have no impact on enrollment or the number of faculty and staff. Therefore, it will not have an impact on traffic. Further, the University has no plans to build additional roads or parking lots in order to accommodate students and staff coming to and from the West Campus. Accordingly, the rezoning of the newly acquired West Campus will not create objectionable traffic conditions or impact the existing parking conditions on the

campus and the amendment to and further processing of the Campus Plan will not create any objectionable conditions. As mentioned above, the University plans to use the parcel for a pavilion for outdoor performances and event field, an unpaved cross-country track, an environmental research area, two areas of spiritual repose, a maintenance, truck and material storage structure and temporary housing units. None of theses uses will create objectionable noise or other conditions. The cross-county track, areas of spiritual repose and environmental research area are inherently quiet and do not involve any buildings. The proposed temporary housing is located along Harewood Road, a significant arterial, and will be far removed from any property that is not owned by CUA. The maintenance, truck and material storage structure is located in the northwestern corner of the site and adjacent to Scale Gate Road, which will provide access. Finally, the pavilion is primarily an outdoor facility; however, the stage area will be a structure. The pavilion will be located along Harewood Road and will be far removed from any non-University property.

B. Subsection 210.3: The West Campus is Currently Unzoned. The Remainder of the Campus is Located Within The R-4, R-5-A and CM-1 Districts. The Proposed Development of the West Campus, When Added To All Existing Buildings And Structures On The Campus, Will Not Exceed The Gross Floor Area Prescribed For The R-5-B District.

For colleges and universities located in residential districts, the maximum bulk normally applicable in zoning districts may be increased, provided the total bulk shall not exceed that prescribed for the R-5-B District (1.8 FAR). In the 2002 Master Plan, the Zoning Commission stated that a maximum density of 0.44 FAR shall be permitted by the year 2012. Prior to the acquisition of the West Campus, the Catholic University campus had a total FAR of approximately 0.36, remaining far below the 1.8 FAR maximum permitted by the Zoning Regulations and well within the cap set forth in the 2002 Master Plan. As a result of the

acquisition of the 49-acre parcel with few improvements and plans for only minimal construction, the FAR has decreased to 0.33.

C. Subsection 210.4: The Applicant Has Filed With The Zoning Commission Catholic University's Long-Range Plans For Developing The Campus As A Whole.

The 2002 Master Plan contains a thorough description of the development of the campus as a whole, showing the location, height and bulk of all present and proposed improvements. The amended Master Plan attached hereto as Exhibit D, is a limited update of the 2002 Plan.

D. Subsection 210.5: The Zoning Commission May Also Permit The Interim Use Of Land Or Improved Property Within A Reasonable Distance of Campus.

The application does not involve the interim use of off-campus land.

E. Subsection 201.6: Major New Buildings Proposed in a Campus Plan That Are Moved Off Campus, Shall Not be Designated for a Different Use Without Commission Approval.

This application does not involve the movement off campus of any University buildings.

F. Section 210.7: In Considering The Application, The Zoning Commission Shall Consider The Policies Of The District Elements Of The Comprehensive Plan.

Further processing of the Campus Plan is consistent with the policies of the District Elements of the Comprehensive Plan. Such policies include: incorporating all land currently owned by the institution and anticipated for future use, supporting the subsequent review and further processing of university master plans, preserving and ensuring community input and the updating plans for university campuses, and promoting the continued contributions of private institutions toward the District's cultural and economic vitality.

G. Section 210.8: Certification That FAR Is Within Limit In the Campus Plan.

CUA hereby certifies that the acquisition of the West Campus and any proposed construction thereon will result in a total gross floor area on the campus plan that is significantly less than the 0.44 authorized in the 2002 Campus Plan.

H. Subsection 210.9: Copies Of This Application Have Been Submitted To The Office Of Planning And The Department of Public Works.

It is the Applicant's understanding that the Office of Planning and the Department of Public Works have been provided with copies of this application.

VI.
Community Contacts

CUA will be meeting with representatives of ANC 5A and ANC 5C.

VII.
Applicant Complies With Section 3108 of the Zoning Regulations

The approval of a new zoning category for the West Campus and the amendment to and further processing of the Campus Plan, will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and, as discussed in detail in Section V above, will not tend to affect adversely the use of neighboring properties.

VIII.
Exhibits in Support

The Applicant submits the following exhibits in support of the application and this statement:

Exhibit A: Zoning Map Amendment application form.

Exhibit B: Application for the amendment to and the further processing of the Campus Plan.

Exhibit C: Zoning Commission Order 02-20 approving the 2002 Master Plan.

Exhibit D: Amended 2002 Master Plan.

Exhibit E: Board of Zoning Adjustment Order No. 16613 approving the construction of the Pryzbyla Center.

Exhibit F: Zoning Commission Order No. 04-10 approving the temporary housing units for an additional five years.

Exhibit G: Pertinent portion of the Zoning Map.

Exhibit H: Photographs of West and Main Campuses.

Exhibit I: Building Plats.

Exhibit J: Self-Certification Form.

Exhibit K: Statement of Existing and Intended Uses.

Exhibit L: Property Owner List.

Exhibit M: Authorization Letter.

IX.
Witnesses

Julie Englund, Vice President for Finance and Administration, Treasurer, The Catholic University of America

Carl Petchik, Executive Director of Facilities Operations, The Catholic University of America

Michael Winstanley, Project Architect, Leo A. Daly Architects

X.
Conclusion

For the reasons set forth above, it is respectfully submitted that Catholic University has established that the relief may be granted in accordance with the requirements of the Zoning Regulations.

Respectfully submitted,

SHAW PITTMAN LLP

By: _____
Allison C. Prince

By: _____
Heidi N. Sachs

September 29, 2004