Pillsbury
Winthrop
Shaw
Pittman LLP

April 28, 2005

By Hand Delivery

Anthony Hood
Vice-Chairman, D.C. Zoning Commission
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: Zoning Commission Case No. 04-25 – The Catholic University of America's (the "Applicant") Application for a Zoning Map Amendment and a Campus Plan Amendment and Further Processing Regarding Parcel No. 121/29 of Square 3663 (the "Property")– Post-Hearing Submissions

Dear Vice-Chairman Hood and Members of the Commission:

As a result of the April 14, 2005 Public Hearing of the above referenced case, the Applicant respectfully submits the attached materials, including two draft Findings of Fact and Conclusions of Law and the revised plat showing the structures on the Property.

The first draft Findings of Fact and Conclusions of Law approves a Zoning Map amendment for the Property. The second draft Findings of Fact and Conclusions of Law approves an amendment to the Applicant's 2002 Campus Plan and further processing of that Campus Plan to allow for specific uses of the Property.

As stated during the April 14, 2005 Public Hearing on this case, the Applicant is submitting a revised plat of the Property to show that they will also be renovating the existing gate house so that it can be used for administrative purposes. Twenty (20) copies of the revised plat are attached hereto.

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Sincerely,

Allison C. Prince/JCU

Allison C. Prince

Jeffrey C. Utz

Jeffrey C. Utz

ZONING COMMISSION
District of Columbia
CASE NO. 04-25
EXHIBIT NO. 28

ZONING COMMISSION
District of Columbia
CASE NO.04-25
EXHIBIT NO.28

Enclosures

cc: ANC 5C
ANC 5A
James Berry, Jr.
Steve Mordfin
Abdoulaye Bah

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THE CATHOLIC UNIVERSITY OF AMERICA	WASHINGTON DC	THE CATHOLIC UNIVERSITY OF AMERICA	LEO A DALY	0 50' 100' 150' 200' 250'	EXHIBIT 18A1
					SITE PLAN

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZONING COMMISSION ORDER NO. 04-25
Case No. 04-25
(Catholic University – Campus Plan Amendment and Further Processing)
April 14, 2005

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on April 14, 2005, to consider an application of the Catholic University ("Catholic University," the "University," or the "Applicant"), for 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 property identified as Parcel No. 121/29 of Square 3663, under 11 DCMR §§ 210 and 3014. The Applicant also seeks further processing under the amended plan to allow for the establishment of additional structures and uses as shown on the amended plan. In accordance with 11 DCMR § 210, this case is being heard and decided by the Zoning Commission using the rules of the Board of Zoning Adjustment at 11 DCMR § 3100, et. seq. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3104.4. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

The Applications, Parties and Hearing

1. On September 29, 2004, the Applicant submitted an application to the Zoning Commission for an amendment to Campus Plan to include the property identified as Parcel No. 121/29 of Square 3663 (the "Property" or "West Campus"), under 11 DCMR §§ 210 and 3014 and further processing under the amended plan to allow for the establishment of additional structures and uses as shown on the amended plan.

2. Simultaneously with this application, the Applicant applied for rezoning of the Property from unzoned to the R-5-A District in order to allow for the addition of the Property to the University campus. The Commission established such R-5-A District on the Property in Z.C. Order No. _____.

3. On December 13, 2004, the Zoning Commission set down the application for a public hearing.

4. The Office of Planning, in its Setdown Report to the Zoning Commission, dated December 3, 2004, recommended that the Commission consider mapping the Property with an R-5-A zone.

5. The parties in this case include the Applicant, Advisory Neighborhood Commission 5A ("ANC 5A"), Advisory Neighborhood Commission 5C ("ANC 5C", collectively with ANC 5A, the "ANCs") and the Michigan Park Citizens

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Association. ANC 5A has jurisdiction over the University's "North Campus" and ANC 5C has jurisdiction over the Property.

6. The Notice of Public Hearing was published in the *D.C. Register* on _____. The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject Property, as well as to the ANCs. Zoning placards were properly posted in a timely fashion.

7. A public hearing on the application was conducted on April 14, 2005 pursuant to 11 DCMR § 3117. At the hearing, the Zoning Commission heard testimony addressed to all the various aspects of the campus plan amendment and further processing requested.

8. At its public meeting of _____, the Zoning Commission took proposed action to approve the application for a campus plan amendment and further processing by a vote of _____. The Zoning Commission took final action to approve the application for the campus plan amendment and further processing on _____, 2005, by a vote of _____.

9. The Zoning Commission has jurisdiction under 11 DCMR § 3035 to hear and decide applications for campus plan amendments and further processing of an approved campus plan.

Testimony in Support

10. Two witnesses testified in support of the application: Carl Petchik, Executive Director of Facilities Operations; The Catholic University of America; and Yasuo Oda, Project Architect, Leo A Daly. The Applicant's case was presented by Allison Prince of Pillsbury Winthrop Shaw Pittman LLP.

11. Both ANCs submitted letters in support of the application. Neither ANC testified at the hearing, although a commissioner of ANC 5C testified individually as noted below.

12. Two community members testified in support of the application: Mr. Lloyd Levermore, who expressed his hope that the Property would allow for recreational opportunities for local adolescents, and Mr. James Russell, who is an ANC 5C commissioner.

Testimony in Opposition

13. The Michigan Park Citizens Association testified in opposition to the application. Testimony in opposition emphasized the following points: (i) there is a shortage of housing on the Main Campus; and (ii) the Property is not appropriate for housing since it is too far from the Main Campus.

The Site and the Surrounding Area

14. In April, 2004, the University acquired the 49-acre Property which lies immediately to the west of its main campus. The Property was acquired from the US Soldiers' and Airmen's Home. As federal property, it was unzoned. Simultaneously with this application, the Applicant applied to the Commission to rezone the Property to the R-5-A District. The Commission granted the rezoning application and the Property is currently zoned R-5-A.

15. 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 Catholic University, also in the vicinity of the Property are the Veterans Administrative Hospital and the McMillan Reservoir. The parcel is improved with a few small structures, but the majority of the property is vacant land.

16. The University campus is zoned R-5-A except for certain areas of the campus, located just south of Michigan Avenue.

17. The University is located in the northeast quadrant of Washington, D.C., in a primarily residential area of low to medium density development. 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 campus is divided into three segments. The main campus contains 95.3 acres. This central part of the campus contains the administrative, academic, and student life facilities. The South Campus, comprising 8.7 acres, is located south of Michigan Avenue, and contains student housing and some support facilities. 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.

18. The architecture of the University's 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.

The Applicant's Case

19. The Applicant secured approval for the Campus Plan in Zoning Commission Order No. 02-02 which became effective on May 23, 2003. This application is

the first request for further processing under the approved 2003 - 2012 Campus Plan.

20. The Property is designated as "institutional" and "federal" on the Generalized Land Use Map of the Land Use Element of the Comprehensive Plan. The proposed use is part of the institution of the University and is not inconsistent with the Comprehensive Plan.

21. The R-5-A 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.

22. Adding the Property to the boundaries of the campus governed by the Campus Plan and permitting further processing 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 and renovate the existing gate house. These uses are all in accordance with the 2002 Master Plan. In connection with the further processing of the amended Campus Plan, the University requests immediate approval of all of the uses shown in the West Campus Plan submitted with the application.

23. The University does not seek any change to its enrollment cap or the allowable FAR, as prescribed in the 2002 Campus Plan.

Satisfaction of 11 DCMR § 210

24. Subsection 210.1: The addition of the Property as a university use would be consistent with the zoning and use of the surrounding area

25. Subsection 210.2: The amendment to and further processing of the Campus Plan to allow for the development of the West Campus, as set forth in the amended Campus Plan, is not likely to become objectionable to neighboring property because of noise, traffic, number of students or other objectionable conditions.

a. 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.

b. 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.

c. The Applicant 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.

d. 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.

e. The University plans to use the Property 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 the Applicant. The maintenance, truck and material storage structure is located in the northwestern corner of the site and adjacent to Scale Gate Road, a private street which will provide access. 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. Finally, the Applicant will renovate the existing gate house for administrative purposes.

26. Subsection 210.3: The addition of the West Campus to the Campus Plan and further processing of the structures proposed by the amendment to the Campus Plan satisfies the FAR requirements applicable to the Property.

a. The West Campus is now zoned R-5-A and the remainder of the campus is located within the R-4, R-5-A and CM-1 Districts.

b. 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).

c. In the 2002 Master Plan, the Zoning Commission stated that a maximum density of 0.44 FAR shall be permitted by the year 2012.

d. Prior to the acquisition of the West Campus, the 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.

27. Subsection 210.4: The Applicant has filed with the Commission the University's long-range plans for developing the campus as a whole. The 2002 Campus Plan contains a thorough description of the development of the campus, showing the location, height and bulk of all present and proposed improvements. The Applicant submitted an amended Master Plan with the application to act as a limited update of the 2002 Plan.

28. Subsection 210.5: The Commission may also permit the interim use of land or improved property within a reasonable distance of campus. However, the application does not involve the interim use of off-campus land.

29. 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. However, this application does not involve the movement off campus of any University buildings.

30. Section 210.7: In considering an Application, the 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.

31. Section 210.8: The Applicant demonstrated and certified that the proposed building is within the floor area ratio ("FAR") limit in the Campus Plan. The

Applicant has certified 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 FAR authorized in the 2002 Campus Plan.

32. Subsection 210.9: Copies of the application were submitted to the Office of Planning and the Department of Public Works.

33. The Commission finds that 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 will not affect adversely the use of neighboring properties.

Report of the Office of Planning

34. By report dated March 28, 2005, and through testimony at the public hearing, the Office of Planning ("OP") recommended approval of the application. The OP report supported the amendment to and further processing of the Campus Plan. The OP report noted that (i) the FAR for the University campus will drop from .36 to .33 FAR, less than the maximum permitted FAR of .44 permitted by the 2002 Campus Plan; (ii) no parking or traffic circulation problems will be created by the application; and (iii) that the vast majority of the Property will remain open space.

35. Regarding the application's satisfaction of the 11 DCMR § 210 criteria, the OP report stated that: (i) the proposed use of the Property is consistent with the surrounding area; (ii) the use of the West Campus as part of the University's campus is not likely to become objectionable to neighboring property because of noise, traffic, number of students or other objectionable conditions; (iii) the application proposes no increase in FAR that would exceed the FAR limitations of the 2002 Campus Plan or the R-5-A District; (iv) the application contains a plan for all present and future improvements; (v) the application does not propose interim use of land located off-campus; (vi) no major new buildings are proposed to be moved off-campus as a result of the application; (vii) District Elements within the Comprehensive Plan relevant to he subject application are satisfied; (viii) the application was referred to OP and DDOT, but no response was received by DDOT.

36. The OP report noted that the application will contribute to achieving many of the provisions of the Comprehensive Plan including: (i) stabilizing and improving the District's neighborhoods by improving temporary student housing; (ii) preserving and promoting cultural and natural amenities by providing new opportunities for the arts with the new pavilion and amphitheater and the addition of open space; and (iii) furthering the Ward 5 plan.

37. OP noted that the property is listed as "institutional" and "federal" on the Generalized Land Use Map, and it is therefore appropriate to use the entire parcel for the use proposed by the Applicant.

38. OP recommended approval of the application subject to the following conditions:

    a. The Applicant shall incorporate an evaluation of the historic resources on the new property into its current historic resources inventory that was developed as part of the 2002 Campus Plan.

    b. The conditions of the Z.C. Case 02-20, the approval of the 2002 Campus Plan remain in force, with the exception of Conditions No. 2 and 5.

    c. Condition No. 2 of the 2002 Campus Plan shall be amended as set forth by this application to include Parcel 121/29 in Square 3663.

    d. Condition No. 6 of the 2002 Campus Plan shall be amended to permit a maximum gross floor area of 2,748,265 square feet by the year 2012.

    e. The proposed 50 to 60 beds of temporary housing are removed at the conclusion of the 2005-2006 school year.

Reports of Agencies Other Than OP

39. The Fire and Emergency Medical Services Department had no objection to the application, provided that the proposed development has acceptable Fire Department access.

40. The Department of Health had no objection but "expects [the Applicant] to comply with the District's Environmental Laws as well as federal NPDES Regulations related to MS-4 Permits for construction activities involving an acre or more of land disturbance."

41. No comments were received from the District Department of Transportation ("DDOT"), the Metropolitan Police Department, the Board of Education and Department of Consumer and Regulatory Affairs.

CONCLUSIONS OF LAW

The Applicant is seeking an amendment to and further processing of its 2002 Campus Plan, pursuant to §§ 210 and 3104 of the Zoning Regulations, to allow for the addition of the Property to the campus boundaries and to allow limited construction as shown in the portion of the Campus Plan governing the Property and use of the Property. The Commission is authorized to grant such relief where, in the judgment of the Commission based on a showing through substantial evidence, such amendment and further processing will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to certain conditions specified in § 210. D.C. Official Code § 6-641.07(g)(2) (2001), 11 DCMR § 3104.1.

1. Based on the Findings of Fact above, the Commission approves the requested amendment to the 2002 Campus Plan to add the West Campus to the boundaries

defined therein and the further processing of the 2002 Campus Plan to include the following uses on the West Campus, according to the plans submitted with the application: 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, a renovated gate house, and temporary housing units.

2. The proposed uses of the Property are consistent with the Applicant's use of the Property for university purposes, is consistent with the Zoning Regulations and Map, and will not tend to adversely affect the use of neighboring property. The record provides no notable objections to the Unversity's proposed uses, and the Commission gives great weight to the recommendations of approval from the Office of Planning and the affected ANCs.

3. The Applicant has remained in substantial compliance with all conditions of approval of its Campus Plan.

Accordingly, it is ordered that this application is **GRANTED** subject to the following conditions:

1. The Applicant shall incorporate an evaluation of the historic resources on the Property into its current historic resources inventory that was developed as part of the 2002 Campus Plan.

2. The conditions of the Z.C. Case 02-20, the approval of the 2002 Campus Plan remain in force, with the exception of Conditions No. 2 and 5.

3. Condition No. 2 of the 2002 Campus Plan shall be amended as set forth by this application to include Parcel 121/29 in Square 3663.

4. Condition No. 6 of the 2002 Campus Plan shall be amended to permit a maximum gross floor area of 2,748,265 square feet by the year 2012.

5. The temporary housing units may be constructed for use in the Fall of 2006 and may remain in place for a total of three (3) academic years only.

VOTE: _____ (_____) to approve the application).

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: _____

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.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE COMMISSION ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE COMMISSION.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER. OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C.LAW 2- 38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER. NOTE IN SECTION 2-1401.01 OF THE D.C. HUMAN RIGHTS ACT THAT IT IS THE INTENT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, IN ENACTING THIS CHAPTER, TO SECURE AN END IN THE DISTRICT OF COLUMBIA TO DISCRIMINATION FOR ANY REASON OTHER THAN THAT OF INDIVIDUAL MERIT, INCLUDING, BUT NOT LIMITED TO, DISCRIMINATION BY REASON OF RACE, COLOR, RELIGION, NATURAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, AND PLACE OF RESIDENCE OR BUSINESS.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ZONING COMMISSION ORDER NO. 04-25
Case No. 04-25
(Catholic University – Map Amendment)
April 14, 2005

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on April 14, 2005, to consider an application of the Catholic University ("Catholic University," the "University," or the "Applicant"), for a map amendment of property identified as Parcel No. 121/29 of Square 3663. The Applicant is applying to zone a newly-acquired 49 acre parcel from unzoned to the R-5-A Zone District under 11 DCMR § 102 and 11 DCMR § 3021. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the application.

FINDINGS OF FACT

The Applications, Parties and Hearing

1. On September 29, 2004, the Applicant submitted an application to the Zoning Commission for a map amendment from unzoned to the R-5-A District for property identified as Parcel No. 121/29 of Square 3663 (the "Property" or the "West Campus") in order to allow for the use of the Property and the addition of the Property to the University campus. R-5-A is a zone classification that is consistent with the surrounding neighborhood and institutional uses. On December 13, 2004, the Zoning Commission set down the application for a public hearing.

2. Also on September 29, 2004, the Applicant submitted an application requesting 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, and the further processing of the Campus Plan to allow for certain enumerated uses on the Property. On December 13, 2004, the Zoning Commission set down the application for a public hearing.

3. The Office of Planning, in its Setdown Report to the Zoning Commission, dated December 3, 2004, recommended that the Commission consider mapping the Property with an R-5-A zone.

4. The parties in this case include the Applicant, Advisory Neighborhood Commission 5A ("ANC 5A"), Advisory Neighborhood Commission 5C ("ANC 5C", collectively with ANC 5A, the "ANCs") and the Michigan Park Citizens Association. ANC 5A has jurisdiction over the University's "North Campus" and ANC 5C has jurisdiction over the Property.

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5. The Notice of Public Hearing was published in the *D.C. Register* on _____. The Notice of Public Hearing was mailed to all property owners within 200 feet of the subject Property, as well as to the ANCs. Zoning placards were properly posted in a timely fashion.

6. A public hearing on the application was conducted on April 14, 2005, as a contested case pursuant to 11 DCMR § 3022. At the hearing, the Zoning Commission heard testimony addressed to all the various aspects of the map amendment requested.

7. At its public meeting of _____, the Zoning Commission took proposed action to approve the application for a map amendment from unzoned to R-5-A by a vote of _____. The Zoning Commission took final action to approve the application for the map amendment to R-5-A on _____, 2005, by a vote of _____.

8. The Zoning Commission has jurisdiction under 11 DCMR § 3010 to establish zoning for the Property.

Testimony in Support

9. Two witnesses testified in support of the application: Carl Petchik, Executive Director of Facilities Operations; The Catholic University of America; and Yasuo Oda, Project Architect, Leo A Daly. The Applicant's case was presented by Allison Prince of Pillsbury Winthrop Shaw Pittman LLP.

10. Both ANCs submitted letters in support of the application. Neither ANC testified at the hearing, although a commissioner of ANC 5C testified individually as noted below.

11. Two community members testified in support of the application: Mr. Lloyd Levermore, who expressed his hope that the Property would allow for recreational opportunities for local adolescents, and Mr. James Russell, who is an ANC 5C commissioner.

Testimony in Opposition

12. The Michigan Park Citizens Association testified in opposition to the application. Testimony in opposition emphasized the following points: (i) there is a shortage of housing on the Main Campus; and (ii) the Property is not appropriate for housing since it is too far from the Main Campus.

The Site and the Surrounding Area

13. In April, 2004, the University acquired the 49-acre Property which lies immediately to the west of its main campus. The Property was acquired from the US Soldiers' and Airmen's Home. As it was a federal property, it is unzoned. In

order to integrate the Property into the campus as a whole and make viable use of the land, Zoning Commission relief is necessary.

14. 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 Catholic University, also in the vicinity of the Property are the Veterans Administrative Hospital and the McMillan Reservoir. The parcel is improved with a few small structures, but the majority of the property is vacant land.

15. The campus of CUA is zoned R-5-A except for certain areas of the campus, located just south of Michigan Avenue.

16. The University is located in the northeast quadrant of Washington, D.C., in a primarily residential area of low to medium density development. 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 campus is divided into three segments. The main campus contains 95.3 acres. This central part of the campus contains the administrative, academic, and student life facilities. The South Campus, comprising 8.7 acres, is located south of Michigan Avenue, and contains student housing and some support facilities. 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.

The Map Amendment

17. The zone classification before the Commission in this case is the R-5-A District. This is a low-density zone designed for general residential uses. This zone classification is perfectly suited to the Property, given its surroundings.

18. The Applicant seeks to establish R-5-A zoning on the site in order to make viable use of the property. Until the West Campus is zoned, the land is not suitable for use as no structure may be built on the site as a matter of right.

19. The proposed zoning map amendment would rezone the Property to the R-5-A (low height and density) Zone District. The R-5 Zone District is a general residence district designed to permit flexibility of design by permitting all types of urban residential development and the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts. The R-5-A District permits the following uses as a matter-of-right: all types of residential buildings, including a residence for teachers or staff of privates schools; youth residential care home, community residence facility, or health care facility for 7 to 15 persons; child/elderly development center; parking garage; and doctor's office. Pursuant to Section 210.3, the development parameters are prescribed by the 2002

Campus Plan approved by the Commission in Order 20-02. Accordingly, the maximum FAR for the campus is 1.8.

20. The Zoning Act (D.C. Code, Section 5-412, et seq., 1994 Edition) sets forth the criteria that the 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 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. The proposed map amendment would further the health, safety and general welfare of the District of Columbia.

21. The establishment of the R-5-A District on the Property will not result in the overcrowding of land or undue concentration of population. The introduction of the R-5-A 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.

22. The proposed rezoning of the Property from unzoned to the R-5-A 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 the Property to be used for recreational, athletic, academic, residential and cultural purposes by the University, thereby enhancing the actual Property, the University and the adjacent residential areas.

Consistency with the Comprehensive Plan

23. Section 492 of the District of Columbia Home Rule Act (D.C. Official Code § 6-641.02 (2001)), provides that zoning shall be "not inconsistent" with the *Comprehensive Plan for the National Capital* (the "Plan"). The mapping of the R-5-A District on the Property will help carry out the Plan in numerous ways, as set forth below:

    a. *Land Use Element.* Establishment of the R-5-A District on the Property would further various aspects of the Land Use Element of the Plan. The Plan includes support for the following objectives for public and 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).

    b. *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 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 District will allow the University to use the Property with uses befitting its institutional mission and satisfy the Ward 5 objectives..

Reports of the Office of Planning

24. In its report of March 28, 2005, OP recommended that the Zoning Commission approve the application of the University for the zoning map amendment.

25. OP found that the R-5-A District is appropriate for university uses, noting that universities are a use permitted by special exception only within the R-5-A District, subject to approval of a campus plan by the Zoning Commission.

26. OP also noted that the requested map amendment would be consistent with the zoning in the surrounding areas since most of the other portions of the University campus are located within the R-5-A District and that other properties around the Property are R-5-A, SP-1 and unzoned due to institutional federal uses.

27. OP noted that the property is listed as "institutional" and "federal" on the Generalized Land Use Map, and it is therefore appropriate to use the entire parcel for the use proposed by the Applicant.

Report of the National Capital Planning Commission

28. The National Capital Planning Commission ("NCPC") concluded that the zoning map amendment to R-5-A would not negatively affect the federal interest.

Reports of Agencies Other Than OP

29. The Fire and Emergency Medical Services Department had no objection to the application, provided that the proposed development has acceptable Fire Department access.

30. The Department of Health had no objection but "expects [the Applicant] to comply with the District's Environmental Laws as well as federal NPDES Regulations related to MS-4 Permits for construction activities involving an acre or more of land disturbance."

31. No comments were received from the District Department of Transportation ("DDOT"), the Metropolitan Police Department, the Board of Education and Department of Consumer and Regulatory Affairs.

CONCLUSIONS OF LAW

1. Section 1 of the Zoning Act of 1938 (52 Stat. 797, as amended, D.C. Official Code § 6-641.01 (2001)) establishes the authority of the Commission to "promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia" through regulation of the structures and uses on its land.

2. Section 3 of the Zoning Act of 1938 (52 Stat. 797, 798, as amended, D.C. Official Code § 6-641.03 (2001)) establishes the authority of the Commission to amend the zoning maps of the District of Columbia.

3. All public notice, public hearing, and NCPC referral requirements for the map amendment have been met.

4. The R-5-A District is specifically designed for low density development of general residential uses. The Property's current unimproved state and the surrounding low density residential and institutional uses, primarily of R-5-A and institutional federal uses, therefore, lends itself to R-5-A zoning.

5. The Commission concludes that the R-5-A District is an appropriate zone district to be mapped over the Property.

6. The Commission further concludes that the requested map amendment from unzoned to R-5-A is not inconsistent with the Comprehensive Plan for the National Capital or with the purposes of the 1938 Zoning Act.

7. The Commission also concludes that the proposed map amendment to R-5-A is consistent with the Generalized Land Use Map's designation of the subject property as "institutional" and "federal."

8. The Commission cannot choose to retain an unzoned designation when zoning has been sought. Here, the Applicant has requested the most restrictive zoning category that is both suitable and not inconsistent with the Comprehensive Plan.

9. Based upon the above findings and conclusions, the Commission concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the communities near which the Property is located and the University.

10. The Commission notes the recommendations in support of the map amendment to R-5-A of ANC 5A, ANC 5C and OP and has accorded them the "great weight" to which they are entitled.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Commission hereby **ORDERS APPROVAL** of the application for an amendment of the zoning map to change the status of the Property from unzoned to R-5-A.

VOTE: _____.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (Act) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

In accordance with the provisions of 11 DCMR 3028, this order shall become final and effective upon publication in the D.C. Register on _____.

ANTHONY HOOD
Vice Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning