

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-11Q/06-12Q
Z.C. Case No. 06-11Q/06-12Q

The George Washington University
(Modification of Significance to Conditions of the 2007 Foggy Bottom Campus Plan and
Related First-Stage PUD – Temporary Housing Plan for Renovation of Thurston Hall)
December 2, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on December 2, 2019 to consider applications from The George Washington University (“University”) for review and approval of a Modification of Significance (“Modification”) to conditions of the 2007 Foggy Bottom Campus Plan and the related First-Stage PUD (“Campus Plan / PUD”) for the Foggy Bottom Campus.¹ The Commission considered the Modification pursuant to Subtitles X and Z of Title 11 of the District of Columbia Municipal Regulations (“Zoning Regulations,” to which all references are made unless otherwise specified). For the reasons below, the Commission hereby APPROVES the application.

FINDINGS OF FACT

Background

1. Pursuant to Z.C. Order No. 06-11/06-12 (the “Campus Plan/PUD Order”), the Commission granted special exception approval for a campus plan for the University’s Foggy Bottom Campus as well as a related First-Stage PUD for the Campus. The Campus Plan incorporated a plan for developing the campus as a whole by concentrating height and density within the central campus core. The related First-Stage PUD identified 16 development sites for future development as well as the uses, height, density, and lot occupancy for each development site. The Campus Plan/PUD Order was conditioned on,

¹ The Modification was filed to effectuate the renovation of Thurston Hall, a residence hall. Concurrently with the Modification, the University also filed Case No. 01-17E, which requested a Modification of Significance to a condition of a PUD for 1959 E Street NW to further facilitate the temporary housing plan needed to accommodate students during the renovation. In August 2019, the University also filed Case No. 06-11R, which included an application for further processing approval of the renovations to Thurston Hall and related relief. The three components were heard together at a public hearing on December 2, 2019.

among other measures, commitments to on-campus housing requirements and end the use of off-campus residence halls to house undergraduate students.

Notice

2. On April 19, 2019, the University mailed a Notice of Intent to file an application for modifications to certain conditions of the Campus Plan / PUD to all property owners within 200 feet of the property that comprises the Foggy Bottom campus as well as owners within 200 feet of The Aston at 1129 New Hampshire Avenue NW (“Aston”) and One Washington Circle Hotel at 1 Washington Circle NW (“OWCH”); Advisory Neighborhood Commission 2A (“ANC 2A”), the “affected ANC” per Subtitle Z, Section 101.8; and the Foggy Bottom Association (“FBA”) and the West End Citizens Association (“WECA”), parties to the original 2007 Campus Plan and related First-Stage PUD. (Ex. 2F.)
3. On July 15, 2019, the University filed an application for a Modification of Significance to conditions of the Campus Plan / PUD pursuant to Subtitle Z, Section 704 (Modifications of Significance). The application for modification of the conditions of the Campus Plan was filed as Case No. 06-11Q; the application for modification of the conditions of the related First-Stage PUD was filed as Case No. 06-12Q. (Ex. 1, 2, 2A-2G; all references are to the exhibit log in Case No. 06-12Q.)
4. On July 25, 2019, the Office of Zoning (“OZ”) referred the application for modification of the First-Stage PUD to the Office of Planning (“OP”), ANC 2A, and ANC 2B² for consideration and report prior to setdown of the application. (Ex. 4, 6.)
5. At its September 23, 2019, public meeting the Commission unanimously voted to set down the Modification for a public hearing. (9/23 Transcript [“Tr.”] at 51.)
6. Pursuant to Subtitle Z, Section 402.1, the Office of Zoning (“OZ”) published the Notice of Public Hearing on October 1, 2019 (Ex. 15.)
7. On October 8, 2019, the University filed a letter requesting that the Commission waive the posting requirements as set forth in Subtitle Z, Section 402.4. Section 402.4 requires posting at each street frontage and on the front of each existing building, rather than only on all frontages that face property not owned by the University, which was the required posting for campus plans under Section 3113.17 of the 1958 Zoning Regulations. The University requested permission to post the property consistent with the old Section 3113.17, and the Commission granted the requested waiver at its public meeting on October 23, 2019. Pursuant to Subtitle Z, Section 402.3, the University posted notice of the hearing on the

² ANC 2B was not an “affected ANC” pursuant to Subtitle Z, Section 101.8, but OZ provided ANC 2B with referral because it was located within 200 feet of a portion of the property that was the subject of the application.

property on October 24, 2019, and maintained such notice in accordance with the Zoning Regulations and the waiver described above. (Ex. 20, 30.)

Parties

8. The University and ANC 2A were automatically parties to the proceeding.
9. On October 15, 2019, WECA filed a request for party status in support of the application. (Ex. 16.) At the hearing, the Commission granted WECA's request for party status.

The Property

10. The property that is the subject of the Modification is the University's Foggy Bottom Campus, which is defined in Condition C-2 of the Campus Plan/PUD Order and consists of properties located in Squares 39, 40, 41, 42, 43, 54, 55, 56, 57, 58, 75, 77, 79, 80, 81, 101, 102, 103, 121, and 122 as enumerated in the list attached to the University's application ("Campus"). (Ex. 2A.) The property that is the subject of the Modification also includes, for the purposes of this application only, The Aston (Square 72, Lot 7) and OWCH (Square 52, Lot 805) (together with the Campus, "Property").
11. Development and operation of the Campus is governed by the Campus Plan / PUD, which was approved in the Campus Plan/PUD Order. The Campus is improved with a mix of academic, administrative, medical, residential, campus life, and athletic uses, along with some commercial/investment properties. The Campus is bounded by the Foggy Bottom and West End residential neighborhoods to the northwest and west. The central employment area abuts the campus to the north and east, and residential, government offices, and institutional uses predominate to the south.. (Z.C. Order No. 06-11/06-12 at 6.)
12. The Aston is located mid-block at 1129 New Hampshire Avenue NW, approximately three blocks north of the Campus. The Aston is owned by the University and used for graduate student housing. (Ex. 2.)
13. OWCH is located at 1 Washington Circle NW, across Washington Circle from the Campus. OWCH is owned by the University and used as a hotel. (Ex. 2.)
14. The Campus is located in the RA-4, RA-5, MU-9, and MU-2 Zone Districts. The Aston and OWCH are each located in the RA-5 Zone District. (Ex. 2E.)

The Application

15. The University plans to renovate Thurston Hall, a former apartment building that serves as a residence hall and currently contains approximately 1,080 beds for first-year students. To accommodate the loss of these beds during renovation, the University worked with ANC 2A,

FBA, and WECA to develop a “temporary housing plan” that ensures first- and second-year students remain housed on campus and addresses remaining undergraduate housing demand as well as steps the University will take to minimize any adverse impact on the surrounding residential neighborhoods related to student housing during the renovation (“Temporary Housing Plan”). (Ex. 2, 24.)

16. The Temporary Housing Plan includes a combination of three measures to address undergraduate housing demand: (1) a planned undergraduate enrollment decrease, (2) increased utilization of existing on-campus beds, and (3) the use of The Aston and OWCH to accommodate third- and fourth-year students during renovation. (Ex. 24A.)
17. The Temporary Housing Plan also includes a series of commitments regarding the duration of the Temporary Housing Plan, the number of students to be housed in The Aston and OWCH, mitigation of potentially objectionable impacts related to the proposed temporary off-campus undergraduate housing facilities, and communication during the Temporary Housing Plan, which are memorialized in a Voluntary Neighborhood Agreement between the University, ANC 2A, and FBA (“Agreement”). (Ex. 10, 24C.)
18. Comprehensive Transportation Review. On October 18, 2019, the University submitted a Comprehensive Transportation Review (“CTR”) that evaluated the transportation impacts of the Temporary Housing Plan as well as the proposed renovation of Thurston Hall. The CTR concluded there would be minimal or no adverse transportation impacts from the Temporary Housing Plan and proposed a Transportation Demand Management Plan (“TDM Plan”) for The Aston and OWCH during the duration of the Temporary Housing Plan.

Requested Modifications

19. As refined based on the Agreement, the University requested modification of the Campus Plan/PUD Order to approve three conditions of approval that would temporarily supplant or augment conditions of the Campus Plan/PUD Order for the limited period of the Temporary Housing Plan.
 - a. Condition P-8(b) of the Campus Plan/PUD Order prohibits undergraduate housing in The Aston. The University proposed a modification to allow third- and fourth-year undergraduate students in The Aston during the limited period of the Temporary Housing Plan.
 - b. Condition C-6 of the Campus Plan/PUD Order sets forth the undergraduate housing requirement for the Campus. The University proposed a modification that would allow off-campus beds at The Aston and OWCH to count toward the bed requirement. The University anticipated it would otherwise meet the requirement during the term of the Temporary Housing Plan, but it requested flexibility from the

requirement by up to 99 beds in case for some reason the full number of beds cannot be provided, without such deviation being considered a violation of the condition.

- c. Condition P-1 of the Campus Plan/PUD Order sets forth certain restrictions on off-campus properties. The University proposed a condition that confirmed the University's temporary use of OWCH for third- and fourth-year students during the limited period of the Temporary Housing Plan is permitted.

(Ex. 24; Ex. 32.)

The University also proffered conditions of approval that would memorialize the commitments of the Agreement, based on proposed conditions agreed to by the parties to the Agreement and attached to the Agreement as Addendum A. (Ex. 24B, 32.)

Reports on and Responses to the Application

Office of Planning Reports

20. By report dated September 13, 2019, OP recommended setdown of the modification to the Campus Plan-related First-Stage PUD³ because the application was not inconsistent with the Comprehensive Plan or the intent of the approved PUD. (Ex. 9.)
21. By report dated November 22, 2019, OP recommended approval of the Modification with no comments or conditions. Again, OP concluded that the application was not inconsistent with the Comprehensive Plan or the intent of the approved PUD. OP noted that the student housing alterations were temporary, limited in numerical and geographic scope, and accompanied by measures to minimize potential adverse impacts. (Ex. 28.)
22. DDOT Report. By report dated November 22, 2019, DDOT expressed no objection to the Modification provided the University implement its proposed TDM Plan for The Aston and OWCH for the duration of the Temporary Housing Plan. (Ex. 29.)
23. ANC 2A. At a regularly-scheduled, duly-noticed public meeting on September 18, 2019, with a quorum present, ANC 2A voted to support the Temporary Housing Plan and related modifications to the conditions of the Campus Plan / PUD. ANC 2A's support was conditioned on the terms and commitments set forth in the Agreement with the University.
24. Applicant's Pre-Hearing Submissions.

³ Under Section 400.4, no setdown is required for modification of the Campus Plan.

- d. On September 27, 2019, the University filed a prehearing submission that included a map illustrating the Temporary Housing Plan, a summary of the Agreement, and proposed conditions of approval. (Ex. 11, 11A, 11B.)
 - e. On November 12, 2019, the University filed a supplemental prehearing submission that refined the terms of the Temporary Housing Plan and related modifications based on the Agreement. The submission reattached the map of the Temporary Housing Plan, the Agreement, and the proposed conditions of approval. (Ex. 24, 24A, 24B, 24C.)
25. Applicant's Hearing Submission. On December 2, 2019, the Applicant submitted a further revision to the proposed condition of approval regarding OWCH based on discussions with ANC 2A. (Ex. 32.)

Parties and Persons in Support

26. WECA appeared as a party in support of the Modification. WECA expressed support for the University's plan to minimize adverse effects related to the Temporary Housing Plan as set forth in the University's Agreement with ANC 2A. WECA expressed concern regarding the provision of the Agreement that would impose a financial penalty if the duration of the Temporary Housing Plan was exceeded. (Ex. 35; Tr. Dec. 2, 2019 at 45-49.)
27. The Commission received numerous letters from University students in support of the Modification and its importance in facilitating the renovation of Thurston Hall. (Ex. 31, 34)

Public Hearing

28. The Commission held a public hearing on the Modification on December 2, 2019. Alicia Knight, the University's Senior Associate Vice President for Operations, testified on behalf of the University. Rob Schiesel of Gorove/Slade Associates appeared on behalf of the University as an expert witness in transportation planning.
29. Commissioners William Kennedy Smith and Jeri Epstein appeared on behalf of ANC 2A and testified in support of the Modification. The commissioners described the process of negotiating and ultimately reaching agreement with the University regarding the Temporary Housing Plan. The commissioners expressed appreciation for the University's willingness to compromise and address concerns regarding the Temporary Housing Plan, as reflected in the terms of the Agreement. (Tr. Dec. 12 at 37-43.)
30. Sara Maddux, President of WECA, appeared on behalf of WECA and testified in support of the Modification. (Tr. Dec. 2 at 45-49.)

31. Three students from the University testified in support of the Modification, with a focus on the importance of renovating Thurston Hall. (Tr. Dec. 2 at 51-61.)
32. At the hearing, counsel for the University summarized the Modification along with the other components of the zoning approval required to effectuate the proposed renovation of Thurston Hall. With respect to the Modification, the University responded to questions from the Commission regarding the Temporary Housing Plan, including the University's strategic plan to reduce undergraduate enrollment, the process for reaching agreement with the ANC, and the proposed mitigation measures in the OWCH.
33. After the close of the hearing, given that there was no opposition to the Modification and no outstanding issues to resolve, the Commission proceeded to deliberate and vote to approve the Modification.

CONCLUSIONS OF LAW

Modification of Significance Approval

1. Subtitle Z, Section 704 authorizes the Commission to review and approve Modifications of Significance to final orders of the Zoning Commission.
2. Subtitle Z, Section 703.5 defines a Modification of Significance as a "modification to a contested case order or the approved plans of greater significance than a modification of consequence." Subtitle Z, Section 703.6 includes "changes to proffered public benefits" and "additional relief or flexibility" as examples of a Modification of Significance.
3. As set forth in Subtitle Z, Section 703.5, Modifications of Significance require a public hearing. Pursuant to Subtitle Z, Section 704.4, the scope of the hearing is limited to the impact of the modification on the subject of the original application.
4. The Commission concludes that the University has satisfied the requirement of Subtitle Z, Section 703.13 to serve the Modification on all parties to the original proceeding, in this case ANC 2A, FBA, and WECA.
5. The Commission concludes that the application qualifies as a Modification of Significance within the meaning of Subtitle Z Sections 703.5 and 703.6, as a request to modify conditions of approval that change proffered public benefits and commitments approved by the Campus Plan/PUD Order.

Impact on the Campus Plan/PUD

6. The Commission concludes that the Modification is consistent with the intent of the approved Campus Plan and is not likely to generate objectionable impacts due to noise,

traffic, number of students, or other objectionable conditions because the Temporary Housing Plan is limited in duration and scope, and the University has worked with the parties to develop a series of mutually agreeable commitments and conditions to mitigate the potential impacts of the Temporary Housing Plan. Moreover, the Temporary Housing Plan will facilitate the renovation of on-campus housing, which is central to the goals of the approved Campus Plan.

7. For similar reasons, the Commission concludes that the Modification will not materially impact the planning, uses, amenities, benefits, and impacts that formed the basis for the Commission's prior approval of the related First-Stage PUD.
8. The Commission notes that OP, DDOT, and all of the parties to the Campus Plan / PUD (ANC 2A, FBA, and WECA) are in support of the Modification and there are no parties or persons in opposition, which furthers the conclusion that the proposed Modification is consistent with the intent of the approved Campus Plan / PUD.

Not Inconsistent with the Comprehensive Plan

9. The Commission concludes that the Modification is not inconsistent with the Future Land Use Map designations of the Campus for Institutional Use or The Aston and OWCH for High-Density Residential Use in the Comprehensive Plan.
10. The Commission further concludes that the Modification furthers the goals of the Education Facilities element to provide quality on-campus student housing and the goals of the Economic Development element to support the growth of higher education.
11. Finally, the Commission concludes the Modification is not inconsistent with the Near Northwest Area element's goals of coordination between the University and the community and providing quality student housing on campus. Although the Temporary Housing Plan results in additional off-campus housing in the near term, its purpose is to facilitate the long-term renovation and enhancement of on-campus housing, and the University and community have worked together to reach a mutually-acceptable compromise that will address the impacts of the Temporary Housing Plan.

“Great Weight” to the Recommendations of OP

12. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8) *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).

13. The Commission finds persuasive OP’s recommendation that the Commission approve the Modification and therefore concurs in that judgment.

“Great Weight” to the Written Report of the ANC

14. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Y § 406.2) To satisfy the great weight requirement, the Board must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).
15. The Commission finds the ANC Report’s support for the Modification persuasive and concurs in that judgment.

DECISION

After the close of the public hearing on December 2, 2019, in consideration of the case record and the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia concluded that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a Modification of Significance to modify Z.C. Order No. 06-11/06-12 to facilitate the Temporary Housing Plan, subject to the following conditions:

A. Modification of Conditions in Z.C. Order No. 06-11/06-12

1. The temporary conditions outlined in this Section A shall expire at the end of the Temporary Housing Plan period (i.e. the Limited Period described in Condition B.4.b. below) and are subject to the additional requirements set forth in Section B below.
2. Notwithstanding Condition P-8, during the Limited Period, the University may house undergraduate third-year and fourth-year students in The Aston.
3. Notwithstanding Condition C-6, during the Limited Period, the University shall make available beds, either on campus or in The Aston or One Washington Circle, for full-time Foggy Bottom undergraduate students equivalent to 70% of the full-time Foggy Bottom

undergraduate student population up to an enrollment of 8,000, plus one bed per full time Foggy Bottom undergraduate student over 8,000. Notwithstanding the foregoing, during Limited Period, the University shall have flexibility from the above requirement by up to 99 beds without such deviation being considered a violation of the condition.

4. The University's temporary use of One Washington Circle to accommodate third- and fourth-year students as a part of the Temporary Housing Plan is permitted.

B. Conditions for the Temporary Housing Plan

1. Temporary Housing Plan.

- a. The University shall be permitted to house no more than two hundred and twenty (220) third- and fourth-year students at the Aston Residence Hall at 1129 New Hampshire Avenue for a period of no more than twenty-four consecutive months during the Thurston Hall renovation.
- b. The University shall be permitted to house no more than three hundred and thirty (330) third- and fourth-year students at One Washington Circle for a period of no more than twenty-four consecutive months during the Thurston Hall renovation.
- c. The University shall be permitted to house second-year students at 1959 E Street for a period of no more than twenty-four consecutive months during the Thurston Hall renovation.

2. Mitigation of Objectionable Impacts.

- a. The University shall house no more than two students per room at the Aston and One Washington Circle, with the exception of one-bedroom units in One Washington Circle (totaling 12 units) which may be permitted to house up to three students.
- b. For the Aston, One Washington Circle and 1959 E Street, the University shall provide residential engagement support to service the University student population, including resident advisors, faculty in-residence and in-residence professional staff living at each property. The Residential Conduct Guidelines that govern student behavior in and around university residential facilities shall apply to each property, as well as the Student Code of Conduct.

- c. At One Washington Circle, the building will also be staffed by professional management staff 24 hours per day, seven days per week to maintain and operate the property and also serve as additional oversight regarding the buildings' operations and any concerns raised by neighbors.
 - d. The University shall prohibit the use of the balconies and the swimming pool at One Washington Circle by students through physical modifications to the property.
 - e. The University shall continue to provide a mechanism for reporting issues concerning student behavior to the GW University Police Department, and violations of DC law may be reported to the Metropolitan Police Department.
3. **Enrollment Caps.** The University shall continue to operate within its campus plan enrollment caps as set forth in Z.C. Order No. 06-11/06-12.
4. **Duration and Penalty.** Following commencement of the Thurston Hall renovation, the University shall pursue diligent completion of the work and reopen Thurston Hall so that the temporary housing plan use for Aston, One Washington Circle, and 1959 E Street as set forth above will last no more twenty-four consecutive months.
- a. Should the University continue the Temporary Housing Plan by occupying either the Aston, One Washington Circle or 1959 E Street pursuant to the Temporary Housing Plan after the expiration of the Limited Period (defined below) or remain out of compliance with either Condition C-6 of Z.C. Order No. 06-11/06-12 or Condition 8 of Z.C. Order No. 746-C after the Limited Period, the University will pay as liquidated damages a fee of \$1,000,000 to the Foggy Bottom Defense and Improvement Corporation (the "Trust") for every semester or any part thereof in which the University occupies either the Aston, One Washington Circle, or 1959 E Street pursuant to the Temporary Housing Plan after the expiration of the Limited Period.
 - b. For purposes of this order, the "Limited Period" shall be a period of 24 consecutive months commencing from the start date. The start date of the Limited Period shall be the first date upon which an undergraduate student (or, in the case of 1959 E Street, a second-year undergraduate student who would not be otherwise permitted to reside in the property under Condition 8 of Z.C. Order No. 746-C) moves into one of the above three properties to facilitate the Thurston Hall renovation. The end date shall be the date when the last undergraduate student (or, in the case of 1959 E Street, the last second-year undergraduate student)

moves out of the above-referenced properties. The University shall provide ANC 2A and FBA with written notice within 5 business days of both the start date and end date, and affirm that it has resumed compliance with Condition C-6 of Z.C. Order No. 06-11/06-12 and Condition 8 of Z.C. Order No. 746-C as of the end date. The University will also provide ANC 2A and FBA with an opportunity to visually inspect the properties in order to confirm such student move-in/move-out activity.

- c. Prior to the issuance of a Certificate of Occupancy for the renovated Thurston Hall, the Applicant shall provide the Zoning Administrator with evidence, and the Zoning Administrator shall determine, that the University has ended the Temporary Housing Plan or made the required liquidated damages payment in accordance with this condition.

5. **Communications and Transparency.**

- a. The University will maintain a contact number available to all residents to call to register any questions or concerns regarding the operations of the Aston or One Washington Circle.
- b. The University will meet quarterly with ANC 2A and FBA to discuss the operations of the Aston and One Washington Circle.
- c. The University shall provide semi-annual reports to ANC2A regarding the operations of the Aston and One Washington Circle.

C. **Transportation Demand Management Measures:** For the duration of the Temporary Housing Plan, the University shall adhere to the following transportation demand management measures:

1. Students at The Aston and OWCH will be provided with information on transportation options upon move-in that includes details on public transit options, bike facilities locations, and other available programs.
2. Alternative transportation modes, carpooling programs, and car-sharing are promoted through flyers and information provided to students at The Aston and OWCH.

3. A transportation factsheet link is posted online to provide information and campus transportation options.

D. Miscellaneous

1. 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.