



Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007

Maureen E. Dwyer
tel 202.663.8834
maureen.dwyer@pillsburylaw.com

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D.C. OFFICE OF ZONING

December 29, 2008

Zoning Commission for the District
of Columbia
District of Columbia Board of Zoning Adjustment
441 4th Street, NW
Suite 220- South
Washington, DC 20001

Re: AISGW Post-hearing Submission for Z.C. Case No. 08-06-7
(Comprehensive Zoning Regulations Rewrite: Campus/Institutional)

Dear Members of the Commission and the Board:

On behalf of the Association of Independent Schools of Greater Washington ("AISGW"), we are submitting these additional comments to supplement the testimony presented at the public hearing and in response to questions raised by the commissioners, the board and the Office of Planning ("OP") during the course of the hearing. Specifically, the following issues are addressed:

- The 300,000 square foot threshold should only include Gross Floor Area as that term is defined in the Zoning Regulations.
- If more than one school/institutional use is located on a campus, each should be treated as a separate use in terms of determining size.
- Allow schools the flexibility to move forward with unanticipated small projects as a matter of right.
- Allow schools the flexibility to have ancillary uses, such as bookstores and cafes, that are open to the public.

- Include specific language in the final regulations that makes clear that the campus plan process as applied to private schools is a less-intensive and more streamlined process than the campus plan process for colleges and universities.
- Include specific language in the final regulations that confirms the long-standing precedent that special exception uses are presumed compatible provided the specific conditions of the special exception are met.

The 300,000 Square Foot Threshold Should Only Include Gross Floor Area

Gross Floor Area is a defined term under the Zoning Regulations and is the term proposed by the Office of Planning in the Notice of Public Hearing for purposes of calculating the threshold size that would trigger campus plan review. In supporting this recommendation, AISGW relied upon the definition of GFA which excludes below-grade space as well as roof top space that is not covered. If the Commission decides to change the calculation to include these spaces, not only would it impose a burden on schools to now try and calculate the below-grade spaces but it may also subject some of the schools to a campus plan requirement even though the size and impacts of these schools nowhere near approach those of colleges and universities. By way of comparison, the GFA of the largest AISGW school is approximately 250,000 square feet whereas the GFA permitted under the campus plans for Georgetown University, George Washington University and Howard University ranges from 6.2 – 7.4 million square feet.

Accordingly, AISGW requests that the Commission adopt the language proposed by OP which only includes GFA. Alternatively, if the Commission decides to include below-grade space, AISGW requests that the threshold be increased to 500,000 square feet before a campus plan requirement is triggered. Whatever measure is used, the campus plan regulations should not pull in schools at this point in time, especially since the proposed special exception regulations provide a comprehensive framework for review of the impacts of these smaller institutional uses.

Each School/Institutional Use on a Campus Should be Treated Separately for Purposes of the Size Calculation

Each school or institutional use on a campus that has a separate governing structure, operations and management, should be treated separately for purposes of the size calculation. These are independent autonomous institutions that should not be required to join together and agree upon a campus plan and then be required to join forces again whenever one of the institutions proposes changes to the campus plan. This would also create a situation where institutions are competing for space simply because they are located within the same square. Based upon the "best practices" review of other cities, we can find no precedent for requiring separate institutions to jointly apply for either a special exception or a campus plan. Further, since the proposed special exception and campus plan regulations require each institution to address its neighborhood context, the adjacency of other institutional uses will be considered. Accordingly, we request that the Commission make clear that each institution is treated separately for purposes of the size calculation.

The Special Exception Process Should Allow Small Unanticipated Projects to Proceed as a Matter of Right

OP has proposed allowing unanticipated projects of 3,500 square feet of GFA to proceed as a matter of right without a campus plan amendment. AISGW supports this but also believes that the same flexibility should be provided to private schools under the special exception process, a point raised by the Chair of the Board of Zoning Adjustment during the public hearing. AISGW also supports raising the GFA figure to 5,000 square feet which still represents a very minor addition. This would provide needed flexibility for institutions and at the same time ensure that large projects with neighborhood impacts would be subject to review.

Allow Ancillary Non-Residential Uses for Institutional Uses as Part of a Special Exception

OP has proposed allowing ancillary non-residential uses as part of an approved campus plan. AISGW supports this but also believes that the same flexibility should be provided to private schools under the special exception process, a point raised by Commissioner May. Under the current regulations, accessory uses such as book stores and cafes are permitted, provided they are limited to use by the school staff and students. AISGW supports allowing these uses to be open to the

public, particularly since they could provide an important community amenity. These uses would not be permitted as a matter of right but would be reviewed as part of the special exception so any impacts would be addressed during the public hearing/review process.

A Less Intensive and More Streamlined Campus Plan Process for Private Schools

As indicated above, even when a private school reaches the threshold of 300,000 square feet of GFA, thus triggering campus plan review, the size of that school pales in comparison with the GFA permitted for colleges and universities, which can reach 7.4 million square feet of GFA. Accordingly, the campus plan requirements for private schools should recognize their differential impacts and the regulations should clearly state that private schools are not required to address each of the subjects with the same level of detail as colleges and universities. In many cases, a paragraph explaining, for example, its signage or streetscape treatment, should suffice without a school having to retain an expert consultant or develop a detailed plan. For most of AISGW's schools, salaries are below public school salaries, endowments are modest, staffing is tight and budgets are stretched. These schools simply do not have the resources available to colleges and universities and, thus, the campus plan requirements should be modified to reflect that.

The Presumption of Compatibility Should be Expressly Stated in the Regulations

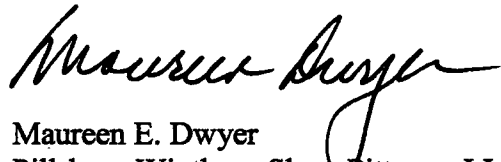
As a matter of law, special exceptions are presumed compatible with residential uses provided the conditions of the special exception are met. When the campus plan special exception was transferred to the Zoning Commission for review, this presumption carried with it. And the same would apply if the private school special exception is transferred to the Zoning Commission. Nonetheless, it is recommended that the regulations clearly state that this presumption of compatibility applies, regardless of which body is ultimately determined to be the agency that reviews the special exception.

Conclusion

We appreciate the opportunity to provide these supplemental comments and we look forward to continuing to work with the Office of Planning as it develops the draft regulations. In particular, we want to emphasize that to the extent the new

regulations define the methods for calculating student or employee numbers, they include the grandfathering of existing institutions so that no school is faced with noncompliance or having to reduce its numbers simply by virtue of a new method or definition being employed. We also want to emphasize our previous testimony that in terms of community benefits, the city as a whole should be considered given that our schools have far-reaching impacts on the larger community, in addition to the many benefits they provide to their immediate neighborhoods.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Maureen Dwyer", written in a cursive style.

Maureen E. Dwyer
Pillsbury Winthrop Shaw Pittman, LLP
On behalf of AISGW

cc: Travis Parker, Office of Planning
Elizabeth Downes, AISGW