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Zoning Commission of the District of Columbia
One Judiciary Square – Suite 210-South
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Washington, D.C. 20001

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Re: ZC Case 08-06-7 (Comprehensive Zoning Rewrite: Campus/Institutional)

Honorable Members of the Zoning Commission:

This letter and materials that accompany respond to the six “Recommendations” offered by the Office of Planning as posed in your Notice of Public Hearing; it also touches on several closely related topics. This letter is submitted in my personal capacity, not on behalf of any specific client in my professional practice.

For convenience, I summarize the six recommendations as follows:

1. Treat all institutions in residence zones within a common regulatory structure, differentiating by size and impact, not use.
2. Require institutions having more than 300,000 square feet of gross floor area to submit and gain approval for a Campus Plan that would be valid for ten years, and allow institutions with lesser area to apply for approval under that process as well in lieu of a special exception process for the program/facility or any expansion of program/facility.
3. Create “comprehensive” Campus Plan criteria to address the “full range” of possible impacts
4. Provide some flexibility for minor structural changes (additions) to meet unanticipated requirements without having to formally amend an approved campus plan, and require the Zoning Administrator to review submissions for buildings or occupancy within the area of a campus plan for consistency with the approved plan.¹
5. Replace present special exception criteria with ones addressing “full range” of impact of program/facility (proposing these be a subset of the “comprehensive” criteria of a campus plan).²
6. Allow ancillary and accessory non-residential uses for institutions otherwise allowed as part of a special exception or campus plan.

ZONING COMMISSION
District of Columbia

CASE NO.

EXHIBIT NO.

08-06-7

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¹ The Notice of Hearing’s numbered recommendations skipped “4” and numbered this as “5”. Moreover, the Notice of Hearing omitted the third part of the Office of Planning Recommendation that proposed the Zoning Administrator review applicable campus plan conditions for each building permit or certificate of occupancy application processing and require consistency prior to approval of specific permits or certificates.

² The Notice of Hearing’s numbered recommendations numbered both this and the following recommendation as “6”.

1.

Treat all institutions in residence zones within a common regulatory structure, differentiating by size and impact, not use.

First, recall that the triggering provision of the Comprehensive Plan on this topic focuses on “**large** non-profits, service organizations, private schools, seminaries, colleges and universities, and other institutional uses occupying **large** sites [emphasis added].” It then goes on to say that the “expansion of these [**large**] uses” is not to be permitted if the quality of life in adjacent residential areas is adversely impacted. I sense that the Office of Planning’s recommendations fail, thus far, to distinguish between small institutional uses that should continue to be allowed by right from those requiring special exception from those needing a campus plan; in effect, the language of the Recommendations seems to apply to institutional uses of all sizes.

I urge this because, fundamentally, I conclude that at least some institutions (and not just churches; think about public libraries, for example) are a potentially appropriate part of all residence districts, adding to their character and providing a sense of place that gives communities pride. Institutions do have impacts that are positive – even for their flanking neighbors.

I cannot ignore enormous differences that arise by type of use, both legal and in terms of impact, “use” (which is the present basis of distinction). These should not be abandoned in favor of size or perceived impact based on size. Conceptually, an all-encompassing term “institution” would cover a wide range of uses – well beyond those discussed at the December 11 hearing:

- Such a change would impose restrictions on one use that is now allowed to be established without restriction in all base zone districts and all but one overlay district, this use being a church (more commonly designated a “Place of Worship”). Over and above the question of “impact” of a church or place of worship (not including programs it may sponsor or lease to others to provide valuable community services such as pre-schools, day care, care of elderly and, in some cases, private schools of all kinds when located on the same property, each requiring independent zoning approval), the Constitution and two Federal statutes, the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) of 2000 and the Religious Freedom Restoration Act (“RFRA”) of 1994, as amended, demand that places of worship not face State or local land use restrictions unless there a **compelling** public purpose is established and, at this time the present record lacks any findings of the Office of Planning or anyone else on this point.
- Moreover, any such change appears to potentially supplant recently established rules governing nearly all public institutions: public schools (and public charter schools), public libraries, and facilities for public recreation facilities, and police and fire stations.
- Treating all institutions in the same framework would also potentially allow uses now excluded from more restrictive residence zones to become established in all residence zones, these including “hospital, sanitarium, and clinic for humans” and “museums” (both now first allowed in the R-4 zone district). I doubt if this was intended and recommend that this not be an unintended consequence of lumping all institutional controls under a single term.

While the Comprehensive Plan specifically references “residence” zones, institutions are also prevalent in other districts established for significant residential populations, including the present Special Purpose (“SP”) and Commercial-Residential (“CR”) zone districts. I note this because these zones now distinguish certain institutions allowed by right and others that currently require special exception, just as is the case now within Residence zone provisions.

Accordingly, I urge the Commission to reject the first Recommendation.

- As an alternative, I suggest that the Commission direct the Office of Planning to evaluate and then suggest characteristics that the land to be used by institutions that would be allowed by right

in the various residence zones as well as those allowed by Special Exception or Campus Plan. This study could build on recent analysis accepted by the Commission for public schools, namely having minimum lot size and frontage, the details of which might vary by use or some combination of use and other objective characteristics (such as number of students, number of employees, seating capacity, etc.) As a starting point, the Commission could also reasonably limit institutions to those record lots that are conforming in the zone districts that establish minimum area or frontage requirements (presently R-4 and more restrictive Residence districts). Without too much imagination, the Office of Planning could also take up the question of the appropriateness of any existing buildings that are non-conforming as applicable (thus potentially not allowing an institution to occupy a non-conforming row or semi-detached dwelling in an R-1 zone district) – basically saying that while some smaller institutions could be located in many or all Residence districts, they must at least be on conforming lots and in conforming buildings and not be shoehorned into sites and structures that are not appropriate.

- It would seem particularly appropriate to expand the scope of lot requirements from the present “public school” provision to private schools, but not assuming that the exact requirements now standing should remain without further scrutiny. To me, this idea is something that should be considered in light of my deep conviction that the Commission should, in this overall rewrite, adopt and embrace what I call the “Golden Rule of Public Administration” – That provisions adopted for essentially the same circumstances should apply equally to government-owned and operated uses and those that are in owned/operated by those in the private sector (for profit or non-profit). This is basically to make sure that the public sector “experiences” the same hurdles as those in the private sector and, if they are unable to comply or find them too limiting or time consuming, that the public sector come to understand that the same thing might well be the case with their private counterparts and then lead to modify the requirements to a realistic level.

2.

Require institutions having more than 300,000 square feet of gross floor area to submit and gain approval for a Campus Plan that would be valid for ten years, and allow institutions with lesser area to apply for approval under that process as well in lieu of a special exception process for the program/facility or any expansion of program/facility.

As noted above, I strongly urge the Commission to defer to the Constitution and Federal statutes as it relates to places of worship. Accordingly, I recommend that no institutional provision relating to a place of worship apply at any square footage and, for institutions that contain a chapel or place of worship that the areas thereof be excluded. (This modification would not apply to programs a place of worship might share or operate, or allow others to operate in facilities leased from the property owner, that would require special exception or campus plan review in their own right.)

As to the specific square footage at which the campus plan would be required and whether it would include all but parking and loading areas below grade, the record at the close of the hearing was far from adequate so no decision should be reached until data are collected by the Office of Planning and provided to the Commission for decision – and a subsequent specific hearing proposal.

3.

Create “comprehensive” Campus Plan criteria to address the “full range” of possible impacts

As noted earlier, I urge the Commission to exclude any place of worship from zoning scrutiny. As such, the reach of the campus plan’s analyses and reviews should exclude any such elements in a specific campus, but this should not be taken so literally as to functionally exempt a theological seminary from review, just its sacred spaces. As some noted during the public hearing, having a roster of topics falls far short of having specific criteria by which to determine the standards the deciding zoning body will apply

to each. In no case should this rewrite proceed toward implementation with a mere list of topics, leaving critical criteria for “later” and skipping any forum in which to address these in a manner similar to that of the present case. However, where there topics and considerations the Commission knows will not be considered in the overall process, it would be useful to declare these in the rules so that expectations are not falsely created that the zoning body will address, for example, compliance with the local Environmental Policy Act.

The overall roster of issues a campus plan would evaluate focuses on its edge and, while extensive, does not account for possible uses of properties located within the campus boundary that are not part of the institutions current or planned holdings; this minor oversight should be addressed.

As noted in the December 11 hearing, applicants for a campus plan (or special exception) approval should be allowed to file with a declaration that portions of the requirements need not apply. This would not mean that others could not oppose such an exclusion and let the decision rest with the zoning body that the matter is before, but institutions should not have to commit resources to reports from consultants that are of no value to any ultimate decision.

As noted by many, no institution will proceed casually into any “campus plan” review. As such, it may be useful to allow (but not require) an institution to file a “Notice of Intent” to file a campus plan proposal, copying applicable Advisory Neighborhood Commissions and community organizations, and allow them to provide the zoning body with any “other issues” it feels should be addressed and for the applicant to comment on any such suggestions, but getting clear answer from the zoning body in a preliminary stage before it embarks on the formal plan development process. Gaining such a set-down decision should guarantee the applicant institution that it would not face an unexpected issue during the course of later hearings.

The Commission should, consistent with its determinations on Recommendation 6, add some words to “building use” so that the applicant is invited to provide details of “accessory and ancillary” uses as warranted.

As to suggestions that institutions be allowed to set out benefits they bring to the District and Metropolitan area, I concur, but this should be not be construed to allow any overall set of benefits to somehow be applied as a “credit” against any adverse impacts the same programs and facilities may generate on those whose issues the regulation aims to understand and protect at the edges of (and possibly those encircled by) a campus.

4.

Provide some flexibility for minor structural changes (additions) to meet unanticipated requirements without having to formally amend an approved campus plan, and require the Zoning Administrator to review submissions for buildings or occupancy within the area of a campus plan for consistency with the approved plan.

I support this recommendation, but urge that the allowance be expanded from that proposed (3,500 gross square feet) to a larger figure, particularly in circumstances where the addition might rise to the full height of a building (as in a stair tower). It might be better to frame this as some maximum area “per floor” (perhaps 750 square feet/floor/building and as much as 1,000 on the first two floors).

I also support the proposal for review and determination by the Zoning Administrator for consistency in campus plans that lead to subsequent applications for building permits or revised or added certificates of occupancy, but with one caveat, that institutions should be able relocate approved uses within the overall campus as their needs and demands require within facilities of the same size and character, e.g. teaching areas, faculty offices, dormitories – but not to relocate dissimilar elements so an office building could not swap locations with a playing field, for example, without review by the approving zoning body.

Moreover, uses ancillary or accessory to a use that allowably relocates by this right should be allowed to move with it.

5.

Replace present special exception criteria with ones addressing full range of impact of program/facility (proposing these be a subset of the “comprehensive” criteria of a campus plan).

While I have no issue with the development of a comprehensive roster of topics a campus plan proposal should encompass, I am skeptical that any fixed list can ever cover the “full range” of issues. Rather, the Commission should determine which issues are to be examined in the context of campus plan review (or special exception processing) and which are to be left for others later (as in certain “environmental” reviews that are now taken up as part of the building permit process) or that will remain outside the campus plan hearing process.

In contrast to the campus plan remarks above, here I recommend that the Commission firmly establish the topics a special exception application address (or propose as non-applicable), this to remove any doubt that institutions will have to face other elements that are introduced late in the planning process or even during the hearing process itself.

6.

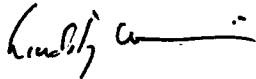
Allow ancillary and accessory non-residential uses for institutions otherwise allowed as part of a special exception or campus plan.

I support this recommendation, the implementation of which may call for some expansion of the expression “building use” where it now appears in the two sets of criteria. However, I remain uncertain as to how to best characterize the range of accessory and ancillary uses in terms of zoning relief to be pursued if, for example, a hospital were to have a restaurant serving beer, wine or even hard spirits that could be a destination for the public at large, just as a college’s guest “hotel” rooms might be open to the surrounding community (and even be a benefit to flanking residential neighbors at holiday periods). At this point, the most prudent course would be to invite applicants to lay out what they contemplate and make sure the zoning body’s rules are set with sufficient breadth so that Notice of Hearing allows the body to consider and approve what is before it as the circumstances and facts warrant.

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Thank you for considering these thoughts and suggestions.

Respectfully,



Lindsley Williams