



CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

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October 28, 2013

Anthony Hood, Chairperson
D.C. Zoning Commission
441 4th Street NW, 2nd Floor
Washington, DC 20001

Re: Comments from the Consortium of Universities to Z.C. Case No. 08-06A (Title 11, Zoning Regulations – Comprehensive Text Revisions)

Dear Chairman Hood and Members of the Commission:

The Consortium of Universities of the Washington Metropolitan Area (“Consortium”) submits the following comments to the Zoning Commission on relevant sections of the proposed new text of the Zoning Regulations in Z.C. Case No. 08-06A.

The Consortium previously participated in the Campus/Institutional Working Group meetings regarding campus plan regulations in 2008 and was pleased to support the recommendations provided by the Office of Planning to the Commission later that year. The Consortium acknowledges the changes that the Office of Planning has made to the draft Zoning Regulations regarding the Campus Plan process following the completion of the working group discussions in response to the Zoning Commission’s recent experience with numerous Campus Plans. The Consortium is concerned, however, that the proposed regulations unfairly target academic uses and provides the following comments and recommendations regarding these changes.

University Uses in Commercial Zones

The Consortium recommends that the Commission delete Subtitle X, Section 102. The draft Zoning Regulations require special exception approval for college/university use in low density commercial zones (C-1 and C-2-A zone districts). Unlike in residential zones, a broad range of uses are permitted in commercial zones. Therefore, if put into practice, the proposed regulation of universities in commercial zones would improperly discriminate against certain uses when they are associated with a college or university, even though the use would otherwise be permitted for a non-college/university property owner or tenant. For example, a theater (i.e. Studio Theater, Gala Theater, Arena Stage) is a permitted matter-of-right use in a C-2-A Zone District,

while a university theater (such as AU's Greenberg Theatre) would require special exception approval under the draft Regulations. Similarly, an architect or lawyer's office is a permitted use in the C-1 and C-2-A zones, but a university architect or general counsel's office in those same zones would require special exception approval. Therefore, the proposed change would effectively treat a college or university user differently than a non-college/university user, which as the Consortium has asserted in past proceedings, violates the requirement of the Zoning Act of 1938 that the District of Columbia zoning regulations be applied uniformly throughout each zone district.

For the same reasons, the **Consortium also recommends that the Commission clarify that colleges and universities are permitted to use residential buildings (e.g single family house, rowhouse, or apartment) for residential purposes** as a matter-of-right in the appropriate zone district, just as any other property owner or tenant.

Commercial Uses on University Campuses

University campuses often include retail and service establishments that serve the student, faculty and staff populations, such as sandwich and coffee shops and small grocery or convenience stores. In many cases, these uses are also open to the public and help contribute to the vibrancy of the neighboring community and provide a pedestrian scale to institutional buildings. The proposed Regulations would limit commercial uses on campuses to those with a "demonstrated and necessary relationship between commercial use and university function." The recommended language is overly restrictive, as it would require such commercial uses be located as "internally central to the campus as possible" and would only permit them if there was a "demonstrated and necessary relationship."

The Consortium recommends that the Commission relax this language to allow the Commission to consider the relationship of such commercial uses not only to the university's operation and academic mission but also to the student experience and to the surrounding neighborhood . In many circumstances, neighborhood-serving retail uses at the periphery of the campus are appropriate in an urban setting and would be viewed as an amenity for both university and neighborhood alike. Specifically, the Consortium recommends that the Commission:

- Amend Section 101.3(a) to more broadly permit such uses when they further the university's academic mission or enhance the on-campus student life experience; and
- Amend Section 101.3(c) to permit such commercial uses to be located in any appropriate location on campus.

Student Counts

As the Commission is aware, many of the District's colleges and universities are subject to strict enrollment limitations. To clarify and streamline the enforcement of these limitations, the Commission has approved precise definitions of which students enrolled by the university "count" towards these limitations, often based on an assessment of whether the student actually

creates an impact based on his or her relationship to the campus. The D.C. Court of Appeals has affirmed this “primary relationship” standard for measuring enrollment impacts.

The draft Regulations require student counts for every student on campus, including full-time, part-time, international, certificate/non-degree, single course, night programs, and executive program students. Generally speaking, the existing enrollment limitations and definitions within approved campus plans capture all of these types of students – they start with the entire defined universe of “student,” which necessarily includes all of the above categories, and then adjusts accordingly for those students who are either not on campus or otherwise do not create any impacts on the campus.

The Consortium agrees with the goal of providing as much transparency and clarity as possible regarding student counts and associated enrollment limitations. However, the Consortium also strongly recommends that the Commission continue to acknowledge and affirm that different categories of students generate varying levels of impacts and, accordingly, student counts and enrollment limitations should continue to reflect such differences. The Commission should retain the flexibility to approve student counting methodologies and enrollment limitations, including separate counts for different categories of students and, in some circumstances, exceptions from enrollment limitations for certain types of students.

Finally, to the extent that the Commission moves toward a singular definition that captures a broader universe of students than is currently included in existing campus plans, the Consortium recommends that the Commission acknowledge that existing enrollment limitations will likely need to be increased in the future to accommodate the expanded definition of student. **Existing campus plans should continue to proceed under their existing methodologies and enrollment limitations until their expiration.**

Campus Activity and Description of “All Programs”

The draft Regulations require that universities provide an explanation of “all programs on campus including educational, certificate, adult learning, international, career training, religious, night classes, civic and nonprofit uses” as a part of the campus plan process.

Universities, by their very nature, are open institutions that permit a broad range of activities that contribute to the vitality of the District, not only through academic and research-related initiatives but also through cultural, recreational, and entertainment activities. In many cases, the District’s universities partner with community and city organizations in mutually beneficial ways to provide facilities to accommodate their ongoing programs. Furthermore, use of a university campus is often decentralized, and various uses and activities develop organically as faculty, staff, and students further the institution’s educational mission.

The Consortium recommends that the Commission acknowledge that any assessment of “all” programs that take place on a campus should be a broad overview of the various types of activities that take place as reflected in the buildings and uses approved through the campus plan process. Consistent with current practice, the assessment would allow the Commission to determine whether appropriate controls are required to mitigate

impacts associated with the use of the campus (such as limitations on the hours for use of athletic fields or requirements to address the transportation impacts associated with visitors to the campus.) The proposed assessment should not be intended to require specific approval for each individual program on a campus or a means to count each and every person that comes onto the campus.

Similarly, the proposed assessment of “all programs” should not be intended to result in numerical limitations on such activities. Rigid limits would chill the contributions that universities make to the academic and cultural fabric of the District by providing facilities and other contributions through partnerships with other District institutions, organizations and community groups.

Subdivision and Theoretical Lots

The draft Regulations would require institutional campuses to create cumbersome “theoretical” lots as a part of special exception approval. This requirement overrules the long-standing interpretation that multiple buildings are permitted on the lot of an approved university campus.

The Consortium recommends the following changes:

- Amend Subtitle A, Section 301.3 to add exception from record lot requirement for institutional campuses such as universities;
- Amend Subtitle C, Section 402 to permit multiple buildings for institutional campuses in residential zones as well as in nonresidential zones;
- Amend Subtitle C, Section 407.10 to remove the requirement for institutional uses to secure theoretical lot approval;
- If draft theoretical lot regulations do apply, then amend Subtitle C, Section 407.3 to clarify that limitations on private streets do not apply to institutional campuses.

Minor Modifications

As was discussed as a part of the Campus/Institutional Working Group in connection with the zoning rewrite, other jurisdictions permit universities to construct minor structures and additions without requiring a discretionary zoning review process.

The Consortium recommends that the Commission authorize such minor modifications to existing buildings or structures that have de minimis impact and are needed for building code compliance or operational reasons to modernize existing buildings. Such minor changes would still require a building permit, and would only be permitted after the Zoning Administrator has concluded that the proposed changes are consistent with the campus plan approval. This would be similar to the current process that governs the minor modification of PUDs. Specific changes to implement this recommendation include:

- Amend Subtitle A, Section 304 to give the Zoning Administrator the authority to approve modifications on institutional campuses required for structural, building code compliance, or operational reasons that do not exceed 2% of gross floor area or lot occupancy of the building, subject to finding by the Zoning Administrator that the change is consistent with the approved special exception. Similar to PUDs, these determinations would be reported to the Zoning Commission to confirm that they are minor.
- Amend Subtitle X, Section 101.18 to parallel Subtitle A, Section 304 and permit small additions needed for code compliance without campus plan amendment when within 2% of the existing building or structure.

Building Height Measurement

The draft Regulations carry forward the recently adopted requirement that building height be measured from the midpoint of the building façade along the street/lot line nearest to a public street. The application of this new requirement has proven to be a challenge when applied on large campuses, particularly for buildings interior to the campus that do not have a clear façade that is “closest” to the public street.

The Consortium recommends that the Commission return to the longstanding practice of permitting the property owner to select the most appropriate front for measuring building height. The Commission would still, of course, retain the ultimate discretion to conclude whether the building height is appropriate as part of the special exception review process. Specific amendments include:

- Amend Subtitle B, definition of “Building Height, Residential Zones” and Subtitle C, Section 502.3, 502.7, and 503.6 to permit measurement from midpoint of whatever building façade that permits the greater height for buildings on campuses that are set back 1:1 from all lot lines – not limited to the façade that faces a “public street.”
- Confirm that height is measured from “finished grade” for buildings within campuses that do not front directly on an adjacent street and from “existing grade” for buildings that front on a street, as set forth in Subtitle C, Section 502.3. (Subtitle B, definitions, and Subtitle C, Section 503.6 uses the term “natural grade”.)

FAR Calculation

The draft Regulations require interior private roads on a campus that serve as access to buildings or circulation be excluded from FAR calculations. **This significant departure from existing practice would deprive universities of existing density rights and disrupt their established investment-backed expectations for campus development. Therefore, the Consortium strongly urges the Commission to delete this provision.**

The proposed rule is based on recent Zoning Commission direction that removes private street networks in PUDs for purposes of calculating the maximum permitted FAR. In those

situations, a single property owner is prospectively seeking to subdivide a large piece of property and establish a private street network rather than go through the cumbersome process of setting up a public street network (which would also remove the street areas from the FAR calculation). These private street networks are subject to regulations that dictate street width and other characteristics, and the network will operate as de facto public streets shared by many different property owners. Road networks on university campuses are different. They have been in place for decades, are completely internal to the campus, and are maintained and used only by the university population. The roads are often informally arranged, and their location and widths are adjusted over time to accommodate new construction and changes in campus circulation patterns.

The proposed change would deprive universities of significant well-established development rights and undermine the core principle of the District's campus planning scheme, which is that universities should focus development on existing campuses. For decades, the campus plan regulations have granted universities additional density rights to permit growth within their campus boundaries and avoid encroaching on surrounding residential neighborhoods. The proposed regulation—retroactively applied to universities with existing campuses—reduces the amount of permitted development on large campuses and takes away existing density that these universities have relied on as available for decades. By way of example, the rule change would:

Reduce available density for GU's Main Campus by approximately 850,000 s.f.

Reduce available density for AU's Main Campus by approximately 500,000 s.f.

Reduce available density for GW's Mount Vernon Campus by 130,000 s.f.

To put these numbers in perspective, the most recent GU campus plan calls for just over 1,000,000 new square feet and the most recent GW Mount Vernon campus plan calls for approximately 150,000 new square feet. In other words, the rule change would effectively wipe out an entire campus plan worth of development and force universities to look elsewhere to accommodate their program needs.

Therefore, the Consortium recommends that the Commission either delete Subtitle X, Section 101.7 or alternatively increase maximum permitted FAR on campuses under Section 101.5 to account for the loss of longstanding permitted density.

Accessory Uses

Under established District of Columbia law, a wide range of accessory uses are permitted on a college or university campus provided that they are incidental and subordinate to the principal university use, ranging from utilities, transportation infrastructure, and cultural or performing arts uses to medical care, religious based institutions, and daycare uses.

The draft Regulations enumerate certain typical accessory uses for universities, such as accessory athletic and recreation areas, dormitories, cafeterias, ancillary commercial uses, multiple academic and administrative buildings, and sports facilities. This list could be read,

however, as proscribing a limited list of permitted accessory uses, rather than simply providing a list of examples.

The Consortium recommends that the proposed Regulations clearly acknowledge the well-established principle that a range of uses may take place on campuses, so long as such uses are customarily incidental and subordinate to the university use. Specifically, the Consortium recommends the following:

- Amend Subtitle C, Section 203 to permit accessory uses on college and university campuses, even if the accessory use is not permitted in the underlying zone, so long as the use is determined to be incidental and subordinate to the principal use and consistent with the institution's mission.
- Amend Subtitle D, Section 1611; Subtitle E, Section 1107; and Subtitle F, Section 1405 to permit accessory uses on college and university campuses, even if the accessory use is not otherwise permitted in the underlying zone, so long as the use is determined to be incidental and subordinate to the principal use and consistent with the institution's mission.

The Consortium also recommends that the proposed Regulations acknowledge the well-established practice that such accessory uses are not limited to college or university populations. By way of example, performing arts events are often open to the public, and university fitness and recreation facilities are often open for membership to neighbors.

Conclusion

We appreciate the Commission's consideration of these issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Cavanaugh", written over a horizontal line.

Dr. John Cavanaugh
President and CEO
Consortium of Universities of the
Washington Metropolitan Area