

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 11-15J**

**Z.C. Case No. 11-15J**

**Howard University**

**(Modification of Consequence to Approved Campus Plan @  
Lots 930 and 933 in Square 2877 [2225 Georgia Avenue N.W.]  
November 18, 2019**

Pursuant to notice, at its November 18, 2019, public meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Howard University (“Howard”) for a Modification of Consequence to Z.C. Order No. 11-15F (the “Extraction Order”), as modified by Z.C. Order No. 11-15H, that amended the boundaries of the Campus Plan approved by Z.C. Order No. 11-15, as modified by Z.C. Order Nos. 11-15A through 11-15I (the “Approved Campus Plan”), to remove Lots 930 and 933 in Square 2877, with street addresses of 2112 and 2114 Georgia Avenue N.W (the “Properties”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations [“Zoning Regulations of 2016”], to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**I. BACKGROUND**

**PRIOR APPROVALS**

1. Pursuant to Z.C. Order No. 11-15, effective March 2, 2012, the Commission approved the Approved Campus Plan.
2. Pursuant to Z.C. Order Nos. 11-15A through 11-15E, and 11-15G through 11-15I, the Commission approved various amendments and further processing of the Approved Campus Plan that are not relevant to the Application.
3. Pursuant to the Extraction Order, as modified by Z.C. Order No. 11-15H, the Commission approved the extraction of certain properties from the boundary of the Approved Campus Plan.

**PARTIES AND NOTICE**

4. The only parties to Z.C Case No. 11-15F other than Howard were Advisory Neighborhood Commissions (“ANC”) 1B and 5E, the “affected” ANCs pursuant to Subtitle Z § 101.8.

5. Howard provided evidence that on September 12, 2019 it served the Application on ANCs 1B and 5E and the Office of Planning (“OP”), as attested by the Certificate of Service submitted with the Application (Ex. 2).

### **THE PROPERTY**

6. The Properties are both vacant historic properties:
  - The Washington Railway and Electric Company Garage at 2112 Georgia Avenue, N.W. and
  - The Bond Bread Factory at 2114 Georgia Avenue, N.W.

## **II. THE APPLICATION**

7. The Application requested a Modification of Consequence of the Extraction Order to add the Properties to those removed from the Approved Campus Plan by the Extraction Order, because the Properties:
  - Are adjacent to a series of lots removed from the Approved Campus Plan by the Extraction Order (Parking Lot Three, Lots 62, 811, 934, 945, 968, 970, 972, 977, 979, and 1023 in Square 2877);
  - Are not “core assets” of Howard;
  - Have never been intended for academic purposes; and
  - Planned to be redeveloped as a mixed-use project.
8. The Application stated that Howard remained committed to abide with all conditions of the Extraction Order, including the commitment to present any plans for the development of the extracted properties at a public meeting of the affected ANC prior to the submission of applicable building permits.

## **III. RESPONSES TO THE APPLICATION**

### **OP REPORT**

9. OP submitted an October 11, 2019, report (Ex. 6, the “**OP Report**”) that recommended approval of the Application as a Modification of Consequence.

### **ANC REPORTS**

10. ANC 1B submitted a report (Ex. 5, the “**ANC 1B Report**”) stating that at its regularly scheduled and duly noticed public meeting of March 10, 2019, at which a quorum was present, the ANC voted to support the Application but expressed the concern that Howard
  - Continue to abide by the conditions included in the Extraction Order; and
  - Hold a community meeting with the development team in order to allow for community input on the proposed development of the Properties.
11. ANC 5E did not submit a response to the Application.

## CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to approve Modifications of Consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a Modification of Consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance”.
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” and “a redesign or relocation of architectural elements” as examples of Modifications of Consequence.
4. The Commission concludes that Howard satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANCs 1B and 5E.
5. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to amend Condition No. 1 of the Extraction Order to amend the boundaries of the Approved Campus Plan, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that because ANCs 1B and 5E, the only parties other than the Applicant to Z.C. Case No. 11-15, were given the opportunity to file responses to the Application, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties to the original proceeding had been met, and therefore the Commission could consider the merits of the Application at its November 18, 2019 public meeting.
7. The Commission finds that the Application is consistent with the Approved Campus Plan because the proposed extraction does not change any of the material facts upon which the Commission based its original approval and it furthers the goals of the Approved Campus Plan by extracting properties no longer part of Howard’s academic campus.

### “GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

8. The Commission must give “great weight” to the recommendations of OP pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8.) (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
9. The Commission finds persuasive OP’s recommendation to approve the Application and concurs in that judgment.

**“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANCS**

10. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public 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.); see Subtitle Z § 406.2.) To satisfy the great weight requirement, the Commission 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).”)
11. The Commission concludes that Howard has addressed ANC 1B Report’s concern that Howard maintain its commitment to abide by the conditions of the Extraction Order, including presentation of development plans to the affected ANCs prior to applying for building permits, and concurs with ANC 1B Report’s support for the Application.
12. Since ANC 5E did not submit a written response to the Application, there is nothing to which the Commission can give “great weight”.

**DECISION**

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that Howard has satisfied its burden of proof and therefore **APPROVES** a Modification of Consequence to Z.C. Order No. 11-15F, as amended by Z.C. Order No. 11-15H, to modify Condition No. 1, to read as follows (deletions shown in ~~bold and strikethrough~~ text; additions in **bold and underlined** text):

1. The following properties are removed from the Campus Plan boundaries:
  - a. Effingham Apartments ...<sup>1</sup>
  - ...
  - g. Parking Lot Three, northwestern corner of Georgia Avenue and W Street, N.W., (Lots 62, 811, 934, 945, 968, 970, 972, 977, 979, and 1023 in Square 2877); ~~and~~
  - h. Florida Avenue Townhomes, 907 and 909 Florida Avenue, N.W. (Lots 872 and 873 in Square 2873);
  - i. the Washington Railway and Electric Company Garage at 2112 Georgia Avenue, N.W. (Lot 933 in Square 2877); and**

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<sup>1</sup> The use of this and other ellipses indicate that other provisions exist in the subsection being amended and that the amendment of the provisions does not signify an intent to repeal.

**i. the Bond Bread Factory at 2114 Georgia Avenue, NW. (Lot 930 in Square 2877).**

All other conditions of Z.C. Order No. 11-15F, as modified by Z.C. Order No. 11-15H, remain unchanged and in effect.

**VOTE (November 18, 2019): 5-0-0** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order No. 11-15J shall become final and effective upon publication in the *DC Register*; that is, on September 4, 2020.

  
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**ANTHONY J. HOOD**  
CHAIRMAN  
ZONING COMMISSION

  
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**SARA A. BARDIN**  
DIRECTOR  
OFFICE OF ZONING

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.