

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
Z.C. ORDER NO. 12-01E
Z.C. Case No. 12-01E
The Catholic University of America
(Amendment to and Further Processing of an Approved Campus Plan)
January 6, 2022

Pursuant to notice, at its January 6, 2022 public hearing, the Zoning Commission for the District of Columbia (the "Commission") deliberated upon the application (the "Application") of The Catholic University of America (the "University") for the following relief under 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):

- An amendment of the University's 2012-2027 Campus Plan (the "Campus Plan") approved by Z.C. Order No. 12-01, as amended by Z.C. Orders No. 12-01A, 12-01B, 12-01C and 12-01D (collectively, the "Order"), pursuant to Subtitle X § 101.1, 101.14, and 101.16; and
- A further processing pursuant to Subtitle X § 101.9 for Lot 7 in Square 3663 ("West Campus") (the "Property") in the RA-1 zone to construct a new solar facility on the West Campus. The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z. For the reasons stated below, the Commission APPROVES the Application.

FINDINGS OF FACT
I. BACKGROUND

PARTIES

1. The following were automatically parties in this proceeding pursuant to Subtitle Z § 403.5:
 - The Applicant; and
 - Advisory Neighborhood Commission ("ANC") 5A, in which district the Property is located and so an "affected" ANC pursuant to Subtitle Z § 101.8; and
 - ANCs 5B and 5E, which districts are across a street from the Property, and so also "affected" ANCs pursuant to Subtitle Z § 101.8.
2. The Commission received no requests for party status.

PRIOR APPROVALS

3. Pursuant to Z.C. Order No. 12-01, effective May 25, 2012, the Commission approved the University's Campus Plan for 2012-2017.
4. Pursuant to Z.C. Order No. 12-01A, effective September 7, 2018, to permit the construction of a service building and surface parking lot on the North Campus, the Commission approved:
 - A modification to the Campus Plan, including a modification of Conditions No. 3, 8, 10, and 13 of the Original Order, pursuant to Subtitle X § 101.16;
 - A further processing pursuant to Subtitle X § 101.9; and
 - A special exception from the surface parking lot screening requirements of Subtitle C § 714.
5. Pursuant to Z.C. Order No. 12-01B, effective January 3, 2020, to permit the relocation of the University's dining hall and an increase in its size, the Commission approved:
 - A modification to the Campus Plan, including adding a new Condition No. 18 to the Original Order, pursuant to Subtitle X § 101.16; and
 - A further processing pursuant to Subtitle X § 101.9.
6. Pursuant to Z.C. Order No. 12-01C, effective May 14, 2021, to permit the construction of an enlarged Residence Hall/Chapel, the Commission approved:
 - A modification to the Campus Plan, including adding a new Condition No. 19 to the Original Order, pursuant to Subtitle X § 101.16; and
 - A further processing pursuant to Subtitle X § 101.9.
7. Pursuant to Z.C. Order No. 12-01D, effective April 19, 2021 to permit the construction of the new Conway School of Nursing, the Commission approved:
 - A modification to the Campus Plan; and
 - A further processing pursuant to X §101.9.

NOTICE

8. Pursuant to Subtitle Z §§ 302.6 and 302.7, the University mailed a Notice of Intent to file the Application (Exhibit ["Ex."] 3D), on September 1, 2021, more than 45 days prior to filing the Application, to:
 - ANCs 5A, 5B, and 5E; and
 - The owners of all property within 200 feet of the Property.
9. Pursuant to Subtitle Z § 402.1, the Office of Zoning ("OZ") sent notice on November 3, 2021, of the January 6, 2022, public hearing to:
 - The University;
 - ANCs 5A, 5B, and 5E, and the Office of ANCs;
 - ANC 5A04 Single Member District Commissioner, in whose district the Property is located;
 - The Office of Planning ("OP");
 - The District Department of Transportation ("DDOT");
 - The Department of Consumer & Regulatory Affairs;

- The Councilmember for Ward 5, in whose district the Property is located;
 - The Chairman of the Council, and the At-Large Councilmembers; and
 - The owners of all property within 200 feet of the Property. (Ex. 6-7.)
10. OZ also published the notice of the January 6, 2022, public hearing in the November 12, 2021, D.C. Register (68 DCR 46) as well as on the Commission's calendar on the OZ website. (Ex. 5, 7.)

THE PROPERTY

11. The Property is located on the West Campus of the University and bounded by:
- To the north — The Saint Paul II National Shrine;
 - To the east — Harewood Road;
 - To the south — The North Capitol/Irving Interchange and property owned by the Basilica part of which is used as a surface parking lot; and
 - To the west — North Capitol Street
12. The Property does not abut any property that is devoted to residential uses. (Ex. 3.)
13. The Property is largely unimproved. (Ex. 3.)
14. The Property is designated on the Campus Plan for a temporary surface parking lot and a new vehicular access between North Capitol Street NE and Harewood Road and various other uses. (Ex. 3.)
15. The Property is located in the RA-1 zone.

II. THE APPLICATION

16. The Application proposed to install a solar facility on a 25 acre portion of the West Campus that would be accessory to the University use. The Application's proposed solar facility would:
- Remain within the 0.39 FAR allowed under the Campus Plan and the maximum 1.8 FAR permitted in the RA-1 zone by Subtitle X § 101.5 (Ex. 3). The solar facility will not constitute building area; therefore, the facility will not count toward lot occupancy or generate FAR. Further it will not trigger GAR.

RELIEF REQUESTED

17. To construct the proposed solar facility, the Application requested the following relief as a special exception pursuant to Subtitle X §§ 101.9 and 901.2:
- An amendment of the Campus Plan to authorize the solar facility and certain other limited uses; and
 - A further processing to authorize the solar facility.

JUSTIFICATION FOR RELIEF

18. The Application asserted that it satisfied the requirements for a special exception for a further processing of a campus plan because:
- It met the special exception standards of Subtitle X § 901.2, for both the amendment to the Campus Plan and the further processing thereof pursuant to Subtitle X §§ 101.2, 101.5, 101.8, 101.10, and 101.11, because the proposed solar facility would not have an adverse effect on neighboring properties since:
 - The Property will not abut any residential property; and
 - The solar facility will not increase the current noise levels on campus.
 - The solar facility will generate minimal traffic
 - The solar facility will be well screened from neighboring property
 - The solar facility would comply with the 1.8 FAR limit for campuses in the RA-1 zone established by Subtitle X §§ 101.5 and 101.12. In fact, it will not increase the FAR;
 - The solar facility will be generally consistent with the parameters of the Campus Plan, although it was not specifically approved in the Campus Plan and will not alter the Campus Plan's compliance with the requirements of Subtitle X § 101; and
 - The Application satisfied the conditions of the Order.
19. At the January 6, 2022, public hearing, the University:
- Presented the Application to the Commission with expert testimony from:
 - Debra Nauta-Rodriguez on behalf of the University;
 - The witness explained the Application's consistency with the Campus Plan including its low-intensity use, non-nuisance and low-traffic generating nature, promotion of sustainability efforts on campus, and the creation of educational opportunities for Ward 5 students. (Tr. at 12, 15; Ex. 21.) The witness also explained how the solar facility would benefit the University and the larger community and described the public-private partnership that will enable one of the largest solar power arrays in the District. (Ex. 21.)

III. RESPONSES TO THE APPLICATION

OP

20. OP submitted a report on December 21, 2021 (Ex. 18, the "OP Report") that:
- Concluded that the Application meets the applicable standards for amendments and further processing of an approved Campus Plan pursuant to Subtitle X § 101 because the solar facility would:
 - Not be inconsistent with the approved Campus Plan which stated that “promoting responsible environmental stewardship is a University priority”;
 - Have no significant impacts on surrounding neighborhoods because:
 - It is far removed from residential neighborhoods;
 - It will not generate noise and or significant vehicular traffic; and
 - It will be limited in visibility from nearby streets.

- Advance the goals of the Environmental Protection Element of the District's Comprehensive Plan, which calls for sustainable electricity.
- Recommended approval of the Application.

21. OP testified in support of the Application. (Tr. at 31.)

DOEE

22. DOEE submitted comments as Attachment A to the OP Report. DOEE noted:
- The need for a stormwater management plan during the permit process;
 - The need for continued coordination with the DDOT Urban Forestry Division;
 - A potential need to adjust the level of disturbance to maintain a 100-foot buffer between the solar array and the remnant forest; and
 - A potential need to offset tree loss by new tree planting.

DDOT

23. DDOT submitted a report dated December 27, 2021 (Ex. 19, the "DDOT Report") that:
- The facility will have no new curb cuts;
 - Will generate minimal trips;
 - Will not increase parking; and
 - Does not include new east-west connectivity through the West Campus but such connectivity can be considered when the Campus Plan is updated in 2027

ANC

24. ANC 5A submitted a report dated January 6, 2022 (Ex. 22, the "ANC 5A Report") stating that its duly noticed public meeting on October 27, 2021, at which a quorum of commissioners was present the ANC:
- Supported the educational and research opportunities the solar facility would create;
 - Found that the solar facility would enhance the District's renewable energy goals;
 - Found that the solar facility would create employment opportunities, enhance stormwater management, and protect heritage trees;
 - Found that the solar facility would be quiet and generate minimal vehicular traffic, thus having no adverse impact on neighboring properties; and
 - Voted to support the Application.
25. ANCs 5B and 5E did not submit reports in response to the Application.

Other Support

Both Casey Trees and the Basilica filed letters in the record expressing support for the application.

CONCLUSIONS OF LAW

1. The Commission is authorized under the Zoning Act, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)) to approve a Campus Plan

consistent with the requirements set forth in Subtitle X §§ 101 and 102 and Subtitle Z § 302.

2. Pursuant to Subtitle X § 101, the Commission shall evaluate an application for an amendment of a campus plan and further processing as a special exception:

Education use by a college or university shall be permitted as a special exception subject to review and approval by the Zoning Commission under Subtitle X, Chapter 9 after its determination that the use meets the applicable standards and conditions of this chapter. (Subtitle X § 101.1.)

Approval of a campus plan shall be based on the determination by the Zoning Commission that the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps, subject to the special conditions specified in this section. (Subtitle X § 101.14.)

3. Section 8 of the Zoning Act (*see also* Subtitle X § 901.2) establishes that the Commission may grant special exception upon its determination that the special exception:

- *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map;*
- *Will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map; and*
- *Complies with the special conditions specified in the Zoning Regulations.*

4. For the special exception requested by the Application, the "specific conditions" are those of Subtitle X § 101, specifically:

- *Application requirements — sufficiency of plans and FAR certification (Subtitle X §§ 101.8, 101.12);*
- *Limits on height and density of all buildings in a campus in an R, RF, RA, or RC-1 zone (Subtitle X §§ 101.5 - 101.7, 101.12);*
- *Limits on commercial activities (Subtitle X §§ 101.3, 101.4);*
- *Limits on college/university uses off-campus (Subtitle X § 101.10);*
- *The uses shall be located so that they are not likely to become objectionable to neighboring property because of noise, traffic, parking, number of students, or other objectionable conditions (Subtitle X § 101.2);*
- *In reviewing and deciding a campus plan application or new building construction pursuant to a campus plan, the Zoning Commission shall consider, to the extent they are relevant, the policies of the District Elements of the Comprehensive Plan. (Subtitle X § 101.11.)*

5. Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Commission's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the [Commission] ordinarily must grant the application." *First Washington*

Baptist Church v. D.C. Bd. of Zoning Adjustment, 423 A.2d 695, 701 (D.C. 1981) (quoting Stewart v. D.C. Bd. of Zoning Adjustment, 305 A.2d 516, 518 (D.C. 1973)).

SPECIFIC SPECIAL EXCEPTION REQUIREMENTS

6. Based on the case record and the Findings of Facts above, the Commission concludes that the Application satisfied the specific special exception requirements for the requested amendments to the Campus Plan and the further processing thereof as follows.
7. The Commission concludes that the Application included the site plan to satisfy the requirements of Subtitle X §§ 101.5-101.7, and 101.12. (Ex. 16A1-16A3.)
8. The Commission concludes that the solar facility complies with the height limits for a building in a campus in the RA-1 zone although the Commission notes (as was noted by OP) that:
 - The height limits are inapplicable since the solar facility does not constitute a building; and
 - Regardless, the maximum height of the solar panels is only 9.5 feet. Maximum height is to be measured from final grade below the midpoint of the high side of the panel.
9. The Commission concludes that the Application satisfied the limits on commercial uses for a college or university of Subtitle X §§ 101.3-101.4 because the amendments to the Campus Plan do not propose any commercial uses incidental to a university use as described in these subsections.
10. The Commission concludes that the Application satisfied the limits of college/university uses off-campus of Subtitle X § 101.10 because the amendments to the Campus Plan do not propose any off-campus interim or permanent uses as described in this subsection.
11. The Commission concludes, pursuant to Subtitle X § 101.11, that the requested the Campus Plan amendment and further processing are not inconsistent with the relevant District Elements of the Comprehensive Plan. (Ex. 3; Comprehensive Plan Amendment Act of 2021, §§ 612.3, 612.5, 612.6, 612.8 and 612.10)
12. The Commission concludes that the Application satisfies Subtitle X § 101.2's requirement that the Campus Plan locate the solar facility to not be objectionable to neighboring properties because:
 - The Property does not abut any residential property; and
 - The facility will not increase the current noise levels on campus or generate significant traffic.

GENERAL SPECIAL EXCEPTION STANDARDS (SUBTITLE X § 101.1, 101.14, 901.2)

13. Based on the case record and the Findings of Facts above, the Commission concludes that the Application satisfies the general special exception standards for the requested amendments to the Campus Plan and the further processing thereof because:

- The requested Campus Plan amendments and further processing are in harmony with the purpose and intent of the Zoning Regulations pursuant to Subtitle X § 901.2(a) because the proposed solar facility is consistent with the University's and the city's energy goals and therefore the Commission approved as harmonious with the Zoning Regulation's purpose and intent and the solar facility is not governed by the height and bulk standards for university buildings in the RA-1 zone but complies nonetheless as detailed above; and
- The requested Campus Plan amendments and further processing will not tend to affect adversely the use of neighboring property pursuant to Subtitle X § 901.2(b) as discussed above.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

14. 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).)
15. The Commission finds OP's recommendation that the Commission approve the Application persuasive and concurred in that judgment.
16. The Commission takes note of the DOEE comments that were attached to the OP report and requested a post-hearing submission from the applicant that further clarifies the extent of the buffer between the solar facility and the remnant forest and also provides further information on the existing trees on the West Campus as well as the approximate number that will be removed. In light of all of the information in the record, the Commission has determined that:

There is no need to impose a term on the solar facility use as suggested by DOEE since the University will be returning to the Zoning Commission before the ground lease for the solar facility expires. At that time the University can report on the solar facility.

The buffer provided between the solar facility and the remnant forest has been thoroughly studied by the University's team and the Commission finds that the proposed buffer is adequate and appropriate.

Given the University's longstanding commitment to the preservation and enhancement of the tree canopy on the campus and its successful partnership with Casey Trees, the Commission finds that it is not necessary to impose a strict obligation for a 1:1 replacement of trees.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

17. The Commission must give "great weight" to the issues and concerns raised in a written report of an 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.) and 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).)

18. The Commission concurs in the ANC 5A Report's support for the Application. Specifically, the Commission notes that the solar facility will support the University's and the District's sustainability goals, will create educational opportunities for the District's students, and will not have an adverse impact on neighboring properties due to its low-intensity and quiet use that will generate minimal vehicular traffic.
19. ANCs 5B and 5E did not submit written responses to the Application, and as such, 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 the University has satisfied its burden of proof and therefore **APPROVES** the Application's request for:

- An amendment, pursuant to Subtitle X §§ 101.1, 101.14, and 101.16, to The Catholic University's 2012-2027 Campus Plan approved by Z.C. Order No. 12-01, as modified by Z.C. Orders No. 12-01A, 12-01B, 12-01C, and 12-01D (collectively the "Order"); and
 - A further processing approval, pursuant to Subtitle X § 101.9, to authorize the construction of solar facility. The conditions of the Order as amended by the Orders referenced in Section 1 above shall remain in full force and effect, except that new Condition No. 22 shall be added, to read as follows:
22. **The Campus Plan shall be amended to authorize the construction of a solar facility in accordance with the plans prepared by Timmons Group, Inc., dated December 17, 2021, and marked as Exhibit 16A2, 16A3 and 24A of the record in Z.C. Case No. 12-01E and the portion of the Campus Plan affecting the West Campus shall be amended with a revised Exhibit 17 (from the original Campus Plan) which is in the record of this application as Exhibit 16A1. The new solar facility will have:**
- **A panel height of a maximum of 9.5 feet**
 - **No building area therefore no gross floor area; and;**

Subject to the University filing an application for a building permit to construct a solar facility within two years after the effective date of this Order pursuant to Subtitle Z § 702.2, with construction to begin within three years after the effective date of this Order pursuant to Subtitle Z § 702.3.

VOTE (January 6, 2022): 4-0-1 (Robert E. Miller, Anthony J. Hood, Peter G. May, and Joseph S. Imamura to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 12-01E shall become final and effective upon publication in the DC Register; that is, on _____.

BY ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION

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.