

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-08C

Z.C. Case No. 20-08C

Howard University

(Modification Without Hearing to Howard University Central Campus Master Plan)

September 26, 2024

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on September 26, 2024. At that meeting, the Commission considered the application (“Application”) of Howard University (“Applicant” or “University”), for a Modification Without Hearing¹ to Howard University’s 2020-2030 Central Campus Plan (the “Campus Plan”), which was approved in Z.C. Order No. 20-08 (the “Original Order”), as modified by Z.C. Order Nos. 20-08A and 20-08B, to include 2711 Georgia Avenue, N.W. (Square 3058, Lot 53) (the “Property”) within the boundaries of the Campus Plan.

The Commission considered the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

Approved Campus Plans

1. Pursuant to Z.C. Order No. 11-15, effective March 2, 2012, the Commission approved Howard University’s 2011 Central Campus Plan, which included the Property² within the 2011 Central Campus Plan boundaries.

¹ The Application was filed and served on July 1, 2024, as a modification of consequence. Pursuant to Z.C. Order No. 22-25, which became effective on August 2, 2024, during the pendency of the Application, modifications of consequence were reclassified as “Modifications Without Hearing” and certain citations and procedures were updated consistent with this change. Accordingly, the Application was considered and approved as a Modification Without Hearing pursuant to the Zoning Regulations in effect at the time of approval. All references in this Order are to the Zoning Regulations in effect on September 26, 2024, the date of the Commission’s decision on the Application.

² At the time of extraction, approved in Z.C. Order Nos. 11-15F and 11-15H, respectively, the Property consisted of Lots 827, 828, 829, and 833 in Square 3058. These lots have since been subdivided into Lot 53, which is the subject of this Application.

2. Pursuant to Z.C. Order Nos. 11-15F and 11-15H, effective March 16, 2018, and April 12, 2019, respectively, the Commission granted the University's request to extract several properties, including the Property, from the 2011 Central Campus Plan boundaries to facilitate their development with private partners.
3. Pursuant to Z.C. Order No. 20-08, effective April 8, 2022, the Commission approved Howard University's 2020-2030 Central Campus Plan, which did not include the previously extracted Property within its boundaries.
4. Pursuant to Z.C. Order Nos. 20-08A and 20-08B, effective April 29, 2022, and June 9, 2023, respectively, the Commission approved separate requests for special exception relief to permit interim university uses of various properties near the University.

Parties and Notice

5. Advisory Neighborhood Commission ("ANC") 1E, in which the Property is located, is the "affected ANC" and automatically party to the Application.
6. On July 1, 2024, the Applicant served the Application on ANC 1E and ANC 1B, which was a party to the original Campus Plan case,³ as well as the Office of Planning ("OP") and the District Department of Transportation ("DDOT"), as attested by the Certificate of Service submitted with the Application (Exhibit ["Ex."] 2 at 6).

II. THE APPLICATION

7. On July 1, 2024, the Applicant filed an Application with the Commission requesting a modification to the Original Order which approved the Campus Plan (Ex. 1, 2).
8. The Application requested that the Original Order be modified to include the Property within the boundaries of the Campus Plan based on the following:
 - (a) The Property is located contiguous with the current Campus Plan boundaries and had previously been located within the boundaries of the 2011 Central Campus Plan. The Property is split-zoned with the majority zoned MU-4 and a small portion zoned RA-2 (Ex. 2);
 - (b) The Property was previously extracted from the 2011 Central Campus Plan pursuant to Z.C. Order Nos. 11-15F and 11-15H to make it available for private development (Ex. 2);
 - (c) The Property was subsequently ground leased to a private developer and developed with a mixed-use office and residential project consisting of approximately 26,459

³ ANC 1B was the sole affected ANC in Z.C. Case No. 20-08. As a result of the District's decadal ANC redistricting, the majority of the Campus (including the Property) is now located in ANC 1E, and portions of the Campus remain in ANC 1B.

square feet of office space and 93 residential units, including 12 Inclusionary Zoning (“IZ”) units (the “Project”) (Ex. 2);

- (d) Increasing needs for graduate student housing has led the University to seek an increase in the availability of on-campus housing. The University therefore requested this modification to include the Property within the Campus Plan boundaries so that it can master lease the Project’s residential units as dormitory student housing. The master lease would be for a 5-year period with an option to extend for another 5 years. During this period, the Project’s residential component will be exclusively for the University’s students, faculty, and staff. In addition, the office space in the Project, which is located entirely within the MU-4 zoned portion of the Property, is intended to be leased to the University for use as administrative offices (Ex. 2);
- (e) Subtitle C § 1001.6 provides an exemption from IZ for “[h]ousing developed by or on behalf of a local college or university exclusively for its students, faculty, or staff.” The change in use for the residential portion of the Project to student housing has raised issues about the applicability of IZ to the Project. The Project was designed and permitted prior to the University’s recent decision to operate the Project as student housing, so it was subject to the IZ set-aside requirements and eligible for IZ bonus density. As a result, the Project was constructed with 12 IZ units and utilized approximately 0.35 floor-area-ratio (“FAR”) (approximately 10,164 square feet) of bonus density. By converting the residential portion of the Project to student housing exclusively for the University’s students, faculty, and staff, the Property would be exempt from IZ and would not be entitled to the bonus density the Project has already utilized. To account for the retention of the Project’s bonus density, the proposed modification seeks to re-incorporate the Property back into the Campus Plan. This will require the Project’s bonus density to be aggregated with other residentially zoned properties in the Campus Plan which, altogether, must comply with the maximum floor area ratio (“FAR”) applicable for those properties within a campus plan, under Subtitle X § 101.5.⁴ (Ex. 2);
- (f) To memorialize the Applicant’s intent for the planned student housing at the Property to be exempt from IZ; and for IZ to apply if the Property is converted to a non-student housing use, the Applicant proposed the following conditions of approval:

“For so long as the residential portion of the Project is used by the University as a residence hall exclusively for its students, faculty, and staff, the Project shall be

⁴ The Application states that pursuant to Subtitle X § 101.5, FAR for residentially zoned portions of a campus are aggregated and evaluated based on the campus as a whole. The Campus Plan approved a total FAR of 1.58 for the RA-2 and RF-1 zoned portions of the Campus, which is within the 1.8 FAR limit for RA-2 and RF-1 zoned land in a campus plan, under Subtitle X § 101.5. Notably, if the RA-2 portion of the Property is added into the Campus Plan, as proposed, the RA-2 and RF-1 zoned portions of the Campus remain within that approved 1.58 FAR.

exempt from the Inclusionary Zoning requirements pursuant to Subtitle C, Section 1001.6(c)."

"In the event of a change in use of all or a portion of the residential portion of the Project from a residence hall to another multifamily residential use that would be subject to the Inclusionary Zoning requirements of Subtitle C, Chapter 10, the provisions of that chapter shall apply to such use." (Ex. 2); and

- (g) In response to the Commission's questions at its July 25, 2024, public meeting about whether the Project is currently occupied by tenants, the University submitted a supplemental statement on September 12, 2024, indicating that the Project was recently completed and is unoccupied. (Ex. 6)

III. RESPONSES TO THE APPLICATION

OP Report

9. On July 15, 2024, OP submitted a report ("OP Report") stating that "the modification would bring the property under the requirements of the campus plan and would not be inconsistent with the Comprehensive Plan." The OP Report found that the proposal is not likely to become objectionable to neighboring property because of noise, traffic, parking, number of students, or other objectionable conditions. OP recommended including the following requirement proffered by the University as a condition of approval of the Application:

"In the event of a change in use of all or a portion of the residential portion of the Project from a residence hall to another multifamily residential use that would be subject to the Inclusionary Zoning requirements of Subtitle C, Chapter 10, the provisions of that chapter shall apply to such use."

The OP Report noted that the Applicant also proffered additional condition language (*see* Finding of Fact 8 above) which would indicate that the Project will be exempt from IZ requirements for so long as it is used as a residence hall; however, OP believed this condition language is not necessary "as it is covered by the modification request." (Ex. 5)

ANC Report

10. Neither ANC 1E nor ANC 1B filed a response to the Application.

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make Modifications Without Hearing to final orders and plans without a public hearing.
2. Subtitle Z § 703.6 defines a Modification Without Hearing as "a modification in which impact may be understood without witness testimony, including, but not limited to a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural

elements and open spaces from the final design approved by the Commission. Determination that a modification can be approved without witness testimony is within the Commission's discretion. A request to add or change a zoning map designation to an approved planned unit development shall not be considered without a hearing."

3. The Commission concludes that the Application qualifies as a Modification Without Hearing within the meaning of Subtitle Z § 703.6, as the modification seeks a minor change to Howard University's Campus Plan boundaries to incorporate property that had previously been included within the boundaries of the campus, and the Commission believes the modification's impact can be understood without witness testimony. Therefore, the modification can be granted without a public hearing.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.10 to serve the Application on all parties to the original proceeding—in this case ANC 1B—and OP, at the same time that the request was filed with the Office of Zoning. In addition, the Applicant served the Application on ANC 1E, which is the affected ANC for the Property following redistricting. The Commission concludes that the ANCs were allowed 30 days, after the request was filed and served on July 1, 2024, to file a response to the Application in accordance with Subtitle Z § 703.12.
5. The Commission concludes that, in accordance with Subtitle Z § 703.13, this request for a Modification Without Hearing was filed with the Office of Zoning at least 35 days prior to the public meeting at which the request was considered by the Commission. The request was originally filed on July 1, 2024, and considered by the Commission at its September 26, 2024, public meeting.
6. The Commission finds that the Application is consistent with the intent of the Original Order because the requested modification is a minor change to the University's campus plan boundaries. The Commission acknowledges that the Project will not be subject to an IZ set-aside requirement so long as it is used exclusively as dormitory housing for the University's students, faculty, and staff, and that if the Project is converted to a non-student housing residential use that would be subject to IZ, then IZ will apply. The Commission believes the Applicant's proposed condition language addressing this issue is appropriate and therefore includes such language as a condition hereof.

"GREAT WEIGHT" TO THE RECOMMENDATIONS OF OP

7. The Commission is required to give "great weight" to the recommendations of OP pursuant to § 5 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 (2018 Repl.)) and Subtitle Z § 405.9 (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016)).
8. The Commission finds OP's recommendations to approve the Application persuasive and concurs in that judgment. While the Commission acknowledges that OP recommended only including part of the Applicant's proffered condition language regarding the applicability of IZ to the Project, the Commission nevertheless believes that all of the

Applicant's proposed condition language, taken in full, provides clarity about the intended effect of this modification and should be incorporated into the conditions hereof.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

9. The Commission must give “great weight” to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting 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. D.C. Bd. of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (D.C. 1978) (citation omitted)).
10. Neither ANC 1B nor ANC 1E, submitted a written response to the Application; therefore, the Commission has nothing to which it can give “great weight.”

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant's request for a Modification Without Hearing to Z.C. Order No. 20-08, to include 2711 Georgia Avenue, N.W. (Square 3058, Lot 53), including the building located thereon (the “Project”), within the boundary of the Howard University 2020-2030 Central Campus Plan, subject to the following conditions:

- a. For so long as the residential portion of the Project is used by the University as a residence hall exclusively for its students, faculty, and staff, the Project shall be exempt from the Inclusionary Zoning requirements pursuant to Subtitle C § 1001.6(c); and
- b. In the event of a change in use of all or a portion of the residential portion of the Project from a residence hall to another multifamily residential use that would be subject to the Inclusionary Zoning requirements of Subtitle C, Chapter 10, the provisions of that chapter shall apply.

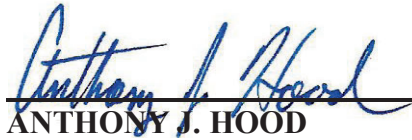
VOTE (September 26, 2024): 4-0-1

(Joseph S. Imamura, Tammy Stidham, Anthony J. Hood and Robert E. Miller to approve; 3rd Mayoral Appointee seat vacant.)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-08C shall become final and effective upon publication in the *District of Columbia Register*; that is, on February 14, 2025.

BY THE 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.