

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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

Z.C. Case No. 20-08B

Howard University

(Interim University Use at 1901-1911 5th Street, N.W. [Square 3090, Lot 41])
May 8, 2023

Pursuant to notice, at its May 8, 2023 public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Howard University (the “Applicant” or “University” or “Howard” or “HU”) for 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) for a special exception for interim university use, pursuant to Subtitle X, §§ 101.1, 101.2, 101.10 and 901.2, of 1901-1911 5th Street, N.W. (Square 3090, Lot 41) (the “Property”).

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.

I. SUMMARY ORDER

PARTIES

The following were automatically parties in this proceeding pursuant to Subtitle Z § 403.5:

- The Applicant; and
- Advisory Neighborhood Commission (“ANC”) 1B, in which the Property is located, and so is an “affected” ANC pursuant to Subtitle Z § 101.8.

The Applicant served the Application on ANC 1B and the Office of Planning (“OP”) on November 4, 2022, and notice of intent was properly served on ANC 1B and property owners within 200 feet of the Property on September 15, 2022. (Exhibit [“Ex.”] 2, 4.)

NOTICE

On February 28, 2023, the Office of Zoning (“OZ”) sent Notice of the Rescheduled May 8, 2023¹, public hearing (Ex. 26, 27.) to:

- Applicant;
- ANC 1B;
- ANC 1B01 Commissioner;

¹ The public hearing was postponed twice, from February 2, 2023, and April 20, 2023, at the Applicant’s request, to allow more time for community engagement. (Ex. 17.)

- ANC 1E;
- ANC 1E05 Commissioner;
- Office of ANCs;
- Office of Planning (“OP”);
- District Department of Transportation (“DDOT”);
- Department of Energy and the Environment (“DOEE”);
- District Department of Buildings (“DOB”);
- Office of Zoning Legal Division (“OZLD”);
- Ward 1 Councilmember, whose ward includes the Property;
- Chairman and At-Large members of the Council of the District of Columbia; and
- Owners of property within 200 feet of the Property.

OZ published notice of the rescheduled May 8, 2023, public hearing, in the March 10, 2023 *D.C. Register* (70 DCR 003038). (Ex. 25.)

The Applicant submitted an affidavit of posting dated April 28, 2023, confirming that all posting and maintenance requirements were met². (Ex. 36.)

II. THE APPLICATION

On November 4, 2022, the Application was filed pursuant to Subtitle Z § 302 and requested a special exception pursuant to Subtitle X §§ 101.1 and 901.2 to permit interim university use of 1901-1911 5th Street, N.W., as allowed by Subtitle X § 101.10³. (Ex. 2-2C3.) The Property, which is owned by the University, is improved with a three-story row of three former residences which are currently vacant and previously served as a daycare center for employees of the Howard University Hospital, until it closed in 2010. The Property is zoned RF-1, has a land area of approximately 16,000 square feet, fronts on 5th and T Streets, N.W., and is within the Ledroit Park Historic District. The area surrounding the Property is characterized by residential buildings primarily of a row housing and duplex variety. The University’s central campus is located approximately one to one- and one-half blocks to the northwest of the Property. (Ex. 2.)

The Application proposes to use the Property for interim use as administrative space because of an urgent need to move its administrative offices out of their current location in the C.B. Powell Building located at 525 Bryant Street, N.W. The 2020 Central Campus Plan shows the C. B. Powell Building as being in critical condition and as slated to be decommissioned and substantially altered to house the new Health Sciences Complex and STEM Center. Due to the deterioration of the C. B. Powell building and the need to expedite construction of new Health Sciences Complex and STEM Center on the site, the University has been looking for alternative locations in close proximity to campus for administrative space for over a year. (Ex. 2.)

² The affidavit of posting was untimely filed, and the Applicant requested a motion to accept an untimely filing, which the Commission granted at the beginning of the May 8, 2023 public hearing.

³ On March 21, 2023, the Applicant filed a letter requesting to update the Application to request approval of the interim use for a five-year period. (Ex. 30, 31.)

On April 28, 2023, the Applicant filed a supplemental statement stating that it had agreed to work with the community regarding the design and the maintenance of a passive green space on the site of the existing playground in the rear of the Property, which will be accessible to the community. (Ex. 35.) The supplemental statement included a PowerPoint presentation that was presented to the LeDroit Park Civic Association.

APPLICANT'S JUSTIFICATION

The Application states that given the proximity of the Property to the campus and the C.B. Powell Building where the proposed uses were previously housed, the proposed university use does not introduce a new use in the surrounding area. Further, the proposed use does not entail any increase in students or traffic, it is merely a slight relocation of University administrative offices. The proposed use is similar and arguably quieter and less intensive than the previous day care school use which included outdoor recreation activities and a line of cars to pick up and drop off kids in the morning and afternoon. Finally, the Property has onsite parking but the staff who will occupy the Property will likely retain the same transportation and parking arrangements that they currently have so no objectionable parking or traffic impacts are anticipated with the proposed use. (Ex. 2.)

III. RESPONSES TO THE APPLICATION

OP

OP submitted a report, dated May 1, 2023 (Ex. 37, the "OP Report"), and testified in support of the Application at the public hearing. OP's Report recommended approval of the Application subject to the condition that the interim use be limited to a period of five-years after the granting of the Certificate of Occupancy.

OP's Report states that the Zoning Regulations allow for university use within residential zones as a special exception and concludes that the proposal would not result in objectionable impacts to neighboring property because the surface parking spaces on the Property would be retained for use by administrative staff; the Property is in such close proximity to campus that there would be no change in commuting, transportation, or parking patterns; the use would accommodate offices for 25-30 staff during general office hours with no extended day or weekend activities; and office use should not generate any noise.

DDOT

DDOT submitted a report, dated April 26, 2023 (the "DDOT Report"), stating no objection to approval of the Application. (Ex. 34.) DDOT's Report determined that the Application may lead to minor increases in vehicle, transit, pedestrian, and bicycle trips, and may result in increased pick-up and drop-off activity and slightly reduced on street parking availability in the immediate area. DDOT did not testify at the public hearing.

ANC 1B

On May 5, 2023, ANC 1B submitted a written report stating that at its regularly scheduled, duly noticed public meeting on April 6, 2023, with a quorum present, the ANC voted in unanimous support of the Application and cited no issues and concerns. (Ex. 39.) The ANC did not testify at the public hearing.

Other Support

On May 5, 2023, LeDroit Park Civic Association filed a letter in support of the Application, provided the following commitments Howard has made to the community are attached to the record in a supplemental prehearing condition:

- Conduct an “interior-only” renovation, cleaning, and maintenance of the existing façade/envelope with no major changes (historic district);
- Retain the existing on-site parking configuration;
- Continue employees use of existing parking arrangements;
- Maintain the existing oak trees and design / complete improvements to the green space in collaboration with stakeholders (including members of the surrounding LeDroit Park community); and
- Gain final directional support from the LeDroit Park community prior to filing for renovation permits with DOB (formerly DCRA). (Ex. 38.)

CONCLUSIONS

AUTHORITY

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 permit interim university use of land not included in the campus plan consistent with the requirements set forth in Subtitle X §101.10 and subject to compliance with Subtitle X §§101.2 and 901.2.

Pursuant to Subtitle X §§ 101.1 and 901.2, education use by a college or university shall be permitted as a special exception and 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. Accordingly, the Commission required the Applicant to satisfy the burden of proving that the Application satisfied the general special exception standard of Subtitle X § 901.2 and the specific conditions of Subtitle X §§ 101.1, 101.2 and 101.10 pertaining to the establishment of university uses, and the interim use requested.

Based upon the record before the Commission, the Commission concludes that the Applicant has met the burden of proof pursuant to Subtitle X §§ 101.1, 101.2, 101.10, and 901.2, and that the requested interim university use can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Commission further concludes that granting the requested relief will not tend to adversely affect the use of neighboring property and that the interim use shall be located such that it is not likely to become objectionable to neighboring property because of noise, traffic, parking, number of students, or other objectionable conditions.

Since no persons appeared in opposition to the Application and ANC 1B was the only party and it supported the Application, a decision by the Commission to grant this Application would not be averse to any party. Therefore, pursuant to Subtitle Z § 604.7, the Commission authorized a summary order in this case and determined it may waive the requirement that findings of fact and conclusions of law accompany the Order because such waiver will not prejudice the rights of any party.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

The Commission must give “great weight” to the recommendation 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 § 405.8. (*Metropole Condo Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds OP’s Report persuasive and its recommendation that the Commission approve the Application with the condition that the interim use be limited to a five-year period after the granting of the Certificate of Occupancy and therefore concurs in that judgment.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

The Commission must give “great weight” to the issues and concerns raised in 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.)) 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).)”)

The Commission concurs with the ANC Report’s recommendation of approval. As noted, the ANC’s Report cited no issues or concerns.

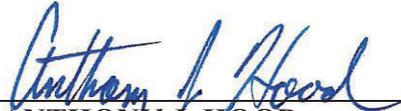
DECISION

In consideration of the case record, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a special exception for interim university use, pursuant to Subtitle X, §§ 101.1, 101.2, 101.10 and 901.2, of 1901-1911 5th Street, N.W. (Square 3090, Lot 41) for a period of five years after the granting of the Certificate of Occupancy.

VOTE (May 8, 2023):

4-0-1 (Anthony J. Hood, Joseph S. Imamura, Robert E. Miller, and Peter G. May to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 20-08B shall become final and effective upon publication in the *DC Register*; that is, on June 9, 2023.



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.