

GOVERNMENT OF THE DISTRICT OF COLUMBIA



Zoning Commission
Z.C. CORRECTED¹ ORDER NO. 12-01D(1)
Z.C. Case No. 12-01D
The Catholic University of America
(Amendment to and Further Processing of an Approved Campus Plan)
April 19, 2021

Pursuant to notice, at its April 19, 2021 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. Order Nos. 12-01A, 12-01B, and 12-01C (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 44 in Square 3821 (the “Property”) in the RA-1 zone to construct Building A/Nursing School. 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.

¹ This Corrected Order corrects a minor typo in the introductory paragraph which stated that the relief was required to construct a new residence hall instead of Building A/Nursing School. The rest of the Order is unchanged.

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 Condition Nos. 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 N1/N2 Hall/Chapel with a relocated 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.

NOTICE

7. Pursuant to Subtitle Z §§ 302.6 and 302.7, the University mailed a Notice of Intent to file the Application (Exhibit ["Ex."] 3D), on November 16, 2020, 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.
8. Pursuant to Subtitle Z § 402.1, the Office of Zoning ("OZ") sent notice on February 17, 2021, of the April 19, 2021, 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. 6-8.)
9. OZ also published the notice of the April 19, 2021, public hearing in the February 19, 2021, *D.C. Register* (68 DCR 2070) as well as on the Commission's calendar on the OZ website. (Ex. 5, 8.)

THE PROPERTY

10. The Property is located on the southern edge of the University's main campus and bounded:
 - To the north – Alumni Lane and the University's Main Campus;
 - To the east – University Drive and Maloney Hall (an existing academic building);
 - To the south – Michigan Avenue N.E.; and
 - To the west – Father O'Connell Hall (an existing academic and administrative building). (Ex. 3B1.)
11. The Property does not abut any property that is devoted to residential uses. (Ex. 3.)
12. The Property is currently improved with a surface parking lot. (Ex. 3.)
13. The Property is designated on the Campus Plan for a new four-story academic building of 68,000 square feet ("Building A/Nursing School"). (Proposed Building A on pp. 66-67 in Ex. 25B1 of Z.C. Case No. 12-01.)
14. The Property is located in the RA-1 zone.

II. THE APPLICATION

15. The Application proposed to remove the existing surface parking lot and enlarge the size of the Building A/Nursing School approved by the Campus Plan. The Application's proposed enlarged Building A/Nursing School would:
 - House the new Conway School of Nursing including classrooms and science labs;
 - Have a height of approximately 67 feet, 7 inches, measured at the center of the south façade that is setback 22 feet, 1 inch from the property line abutting Michigan Avenue, N.E.;
 - Have a gross floor area of 88,566 square feet;
 - 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, 13A1);
 - Provide a maximum of 42 below grade parking spaces; and
 - Include the construction of a gateway entrance feature to provide access to the campus from Michigan Avenue, N.E.

RELIEF REQUESTED

16. To construct the proposed enlarged Building A/Nursing School, 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 enlargement of Building A/Nursing School by approximately 20,566 square feet; and
 - A further processing to authorize the enlarged Building A/Nursing School.

JUSTIFICATION FOR RELIEF

17. 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 amendments to the Campus Plan and the further processing thereof pursuant to Subtitle X §§ 101.1, 101.9, 101.14, and 101.16, because the enlarged Building A/Nursing School would not be have an adverse effect on neighboring properties since:
 - The Property does not abut any residential property;
 - The Building A/Nursing School will not increase the current noise levels on campus; and
 - The Building A/Nursing School will be able to handle an increased enrollment in nursing students because any resulting traffic impacts would be mitigated by the Campus's proximity to the Metrorail station and the provision of 42 below-grade parking spaces;
 - The Building A/Nursing School would comply with the 1.8 FAR limit for campuses in the RA-1 zone established by Subtitle X §§ 101.5 and 101.12;
 - The Building A/Nursing School would generally be consistent with the parameters of the Campus Plan, although it is larger than what had been approved by the Campus Plan and would not alter the Campus Plan's compliance with the requirements of Subtitle X § 101; and
 - The Application satisfied the conditions of the Order.
18. At the April 19, 2021, public hearing, the University:
- Presented the Application to the Commission with testimony from:
 - Debra Nauta-Rodgriuez on behalf of the University;
 - Kevin Petersen on behalf of Ayers Saint Gross, the architect; and
 - Daniel Lovas on behalf of VHB Metro DC, the traffic engineer;
 - Confirmed that it had reached agreement with DDOT regarding DDOT's condition concerning the provision of an eight-foot-wide shared pedestrian pathway and planting strip along Michigan Avenue, N.E. (Ex. 21; April 19, 2021 Public Hearing Transcript ["Tr."] at 11); and
 - Explained the Application's consistency with the Campus Plan including its consistency with the FAR, parking, and open space requirements of the Order. (Tr. at 13-16.)

III. RESPONSES TO THE APPLICATION

OP

19. OP submitted an April 9, 2021, report (Ex. 15, 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 enlarged Building A/Nursing School would:
 - Not be inconsistent with the approved Campus Plan as it retains the approved academic building and would further specific goals of the Campus Plan including the development of new, modern nursing school; and
 - Have no significant impacts on the surrounding neighborhoods because:

- The increased size would not be out of scale with nearby buildings, both on the Campus and across Michigan Avenue; and
- Building A/Nursing School will be located more than 500 feet from the closest low density residential area; and
- Recommended approval of the Application.

20. OP testified in support of the Application. (Tr. at 32.)

DDOT

21. DDOT submitted an April 8, 2021 (Ex. 14, the “DDOT Report”) that:
- Concluded that the 42 proposed parking spaces is consistent with the Campus Plan’s parking cap;
 - Noted that Building A/Nursing School would provide more than the Campus Plan’s requirements for bicycle parking by providing six long-term and 42 short-term bicycle parking spaces;
 - Requested that the University construct a 10- to 12-foot shared pedestrian pathway along the site’s entire frontage of Michigan Avenue, N.E., between Monroe Street and 7th Street/University Drive, N.E., subject to DDOT approval; and
 - Recommended no objection to the Application on the condition that the University provide the pedestrian pathway described above.
22. At the public hearing, DDOT testified that:
- It continued to support of the Application;
 - Based on further discussions with the University, DDOT was now requiring an eight-foot shared use sidewalk and a six-foot tree box zone and that the University had agreed to this revised condition; and
 - DDOT requested that the order include a condition concerning the sidewalk to require the University to reach an agreement with DDOT regarding the related public access easement to be provided by the University for the portion of the sidewalk on private property. (Tr. at 35-37.)

ANC

23. ANC 5A submitted a report (Ex. 16, the “ANC 5A Report”) stating that its duly noticed public meeting on March 24, 2021, at which a quorum of commissioners was present the ANC:
- Expressed concerns about the ongoing traffic flow problems around the Campus but noted that the University had committed to continue to work with the community and DDOT;
 - Requested that the University identify Ward 5 businesses for participation in construction activities;
 - Found that the Application would contribute significantly to the community by providing a “gateway entrance feature” to the Campus and the new nursing school would “significantly enhance the overall safety and ongoing support for residents and surrounding businesses”; and
 - Voted to support the Application.

24. ANCs 5B and 5E did not submit reports in response to 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 and FAR certification for the enlarged Building A/Nursing School to satisfy the requirements of Subtitle X §§ 101.5-101.7, and 101.12.
8. The Commission concludes that the enlarged Building A/Nursing School complies with the height limits for a building in a campus in the RA-1 zone because:
 - Subtitle F § 202.3 authorizes an institutional building to exceed the maximum height allowed in a RA zone proportionate to the institutional building's setback from all lot lines;
 - Subtitle X § 101.5 authorizes a 50-foot maximum height for all buildings on a campus in the RA-1 zone; and
 - The extra 17 feet, 7-inch height of Building A/Nursing School over this 50-foot maximum is less than the 22-foot, 1 inch setback of Building A/Nursing School from Michigan Avenue, N.E.
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 because the proposed academic use of Building A/Nursing School was approved in the Campus Plan that the Commission approved as compliant with this subsection.

12. The Commission concludes that the Application satisfies Subtitle X § 101.2's requirement that the Campus Plan locate the educational uses to not be objectionable to neighboring properties because:
- The proposed increase in Building A/Nursing School's gross floor area of approximately 20,566 square feet is minor in the context of the Campus Plan and will allow the building to better match the scale of the neighboring buildings;
 - The Property does not abut any residential property;
 - Building A/Nursing School will not increase the current noise levels on campus; and
 - Building A/Nursing School will be able to support increased enrollment in the nursing school without resulting in objectionable traffic impacts because of its location near transit options and provision of 42 parking spaces within the building.

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 enlarged Building A/Nursing School maintain the uses authorized by the Campus Plan that the Commission approved as harmonious with the Zoning Regulation's purpose and intent and the enlarged Building A/Nursing School comply with the height and bulk standards for university uses in the RA-1 zone 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.

"GREAT WEIGHT" TO THE WRITTEN REPORT OF THE ANC

16. 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).)

17. The Commission finds the ANC 5A Report’s concerns that the proposed Building A/Nursing School and gateway feature would benefit the community and that the University continue to coordinate with DDOT on traffic issues persuasive and concurs. The Commission notes that the University has agreed to work with DDOT, as well as to involve more Ward 5 businesses in construction, which is not germane to the Commission’s review. The Commission concludes that the ANC 5A Report’s concerns were addressed and concurs in the ANC 5A Report’s support for the Application.
18. 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. Order Nos. 12-01A, 12-01B, and 12-01C (collectively the “Order”); and
- A further processing approval, pursuant to Subtitle X § 101.9,

to authorize the construction of a new academic building to be used as the Conway School of Nursing (“Building A/Nursing School”). The conditions of the Order remain in full force and effect, except that Condition Nos. 1, 2, and 14 shall be amended and new Condition Nos. 20 and 21 shall be added, to read as follows (text to be added shown in **bold and underscore**; text to be deleted shown in **~~bold and strikethrough~~**):

1. ~~The maximum student enrollment shall be 8,035 students (headcount), which includes any person taking at least one class or course on campus~~ **The Campus shall be developed in accordance with the plans marked as Exhibits 25 through 25C in the record of Z.C. Case No. 12-01 (the “Campus Plan”).**
2. The maximum **student enrollment and** number of part-time and full-time faculty and staff shall be:
 - a. **8,035 students (headcount), which includes any person taking at least one class or course on campus; and**
 - b. **2,130 part-time and full-time faculty and staff** as determined by headcount.
14. The University shall provide a status update on the Campus Plan open space improvements with each further processing application it submits to the Zoning Commission for

consideration, as such open space improvements relate to the specific further processing application.

20. The Campus Plan shall be amended to authorize the construction of Building A/Nursing School in accordance with the plans prepared by Avers Saint Gross, dated March 30, 2021, and marked as Exhibits 13A1 through 13A4, and 21 of the record in Z.C. Case No. 12-01D,

- **With a height of approximately 67 feet, 7 inches;**
- **With a gross floor area of approximately 88,566 square feet;**
- **With a maximum of 42 below grade parking spaces; and**
- **Subject to the University filing an application for a building permit to construct Building A/Nursing School 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.**


21. Prior to the issuance of Certificate of Occupancy for Building A/Nursing School, the University shall construct a shared use sidewalk with a minimum pedestrian clear path of eight (8) feet along the northern side of Michigan Avenue N.E. between 7th and Monroe Streets, N.E., and record a public access easement, subject to DDOT approval, for the portion of the proposed shared use sidewalk located on the Property.

VOTE (April 19, 2021): 5-0-0 (Robert E. Miller, Anthony J. Hood, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to APPROVE)


In accordance with the provisions of Subtitle Z § 604.9, this Order No. 12-01D became final and effective upon the original publication date in the *DC Register*; that is, on May 21, 2021.

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.