

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-02C
Z.C. Case No. 11-02C
University of the District of Columbia
(Modification of Consequence - Campus Plan)
November 19, 2018

Pursuant to its properly noticed public meetings on October 22, 2018 and November 19, 2018, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of the University of the District of Columbia (the “University”) for a modification of consequence to Condition Nos. 8 and 15(a) of Z.C. Order No. 11-02/11-02A (the “Original Order”), which approved a new campus plan for the University’s Van Ness (the “UDC Campus Plan”).

The Commission considered the Application pursuant to Subtitle Z § 703 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”) [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 the Original Order, effective July 29, 2011, the Commission approved the UDC Campus Plan for 2011-2020 as well as a further processing to allow construction and use of a new student center subject to 28 conditions.
2. Pursuant to Z.C. Order No. 11-02B, the Commission approved a minor modification to the Original Order to permit the temporary installation of trailers on the University’s soccer field for Murch Elementary School students through August 2018. This minor modification did not modify any condition of the Original Order.

PARTIES AND NOTICE

3. Other than the Applicant, the only parties to the Original Order were:
 - Advisory Neighborhood Commission (“ANC”) 3F, the “affected ANC” per Subtitle Z § 101.8, which is automatically a party per Subtitle Z § 403.5;
 - The Van Ness Residents Association (“VNRA”); and
 - The Van Ness South Tenant’s Association (“VNSTA”).

4. The Applicant served the Application on ANC 3F, VNRA, and VNSTA on June 14, 2018, as indicated by the certificate of service submitted with the Application. (Exhibit [“Ex.”] 1.)

II. THE APPLICATION

5. The Application, filed on June 14, 2018, requested the amendment of the following conditions of the Original Order that the University believed were overly broad for the University to implement:
 - Condition No. 8, which required all University students, whether living on- or off-campus, to comply with the University’s Code of Conduct; and
 - Condition No. 15(a), which prohibited University students, faculty, and staff from parking in residential streets adjacent to the University’s Van Ness campus.
6. In its letter of September 18, 2018, the University modified the Application to incorporate revised text for Condition Nos. 8 and 15(a), agreed to by ANC 3F, as follows (proposed additions shown **bold and underlined** text; proposed deletions shown in ~~**bold and strikethrough**~~ text): (Ex. 7.)

Condition No. 8:

“All students at the Van Ness Campus, whether living on campus, off campus in housing leased directly by the University, or off campus in privately owned or leased property, shall be required to comply with the University Code of Conduct. ~~Within three months of approval of the campus plan~~ **On or before December 31, 2018**, the University shall evaluate and collect input from the Task Force on revisions to the Code of Conduct that will address the impacts of students living on or near campus.”

Condition No. 15(a):

“The University shall ~~require~~ **encourage** all students, faculty and staff to park in University or other commercial parking facilities on or near the Van Ness Campus.

- a. The University shall ~~prohibit~~ **strongly discourage**, to the extent permitted by law, students from parking on the residential streets adjacent to and surrounding the Van Ness campus. To accomplish these purposes, the University shall employ a system of ~~administrative actions, penalties, and fines~~ **monitoring and notice**; and”

III. RESPONSES TO THE APPLICATION

OP REPORT

7. On October 12, 2018, the Office of Planning (“OP”) submitted a report (the “OP Report”) that recommended approval of the Application. (Ex. 8.)

ANC REPORT

8. On September 17, 2018, ANC 3F submitted a report (the “ANC Report”) stating that: (Ex. 7A.)
 - The University had met with the ANC and agreed to amend its Application to address ANC concerns; and
 - At the ANC’s properly noticed public meeting of September 17, 2018, with a quorum present, the ANC voted to support the Application as amended by the Applicant’s filing dated September 18, 2018.

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make 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” as an example of a modification of consequence.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all surviving parties to the original proceeding, in this case ANC 3F, VNRA, and VNSTA.
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 modify conditions of the Original Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that because ANC 3F filed a response to the Application, and all other parties failed to do so by the deadline set by the Commission, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties had been met, and therefore the Commission could consider the merits of the Application at its November 19, 2018, public meeting.
7. The Commission concludes that the Application is consistent with the intent of the Original Order because the proposed modifications only apply to two of the 28 conditions of the Original Order and the changes to these two conditions are minor and do not change the substance of these conditions.

“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 found OP's recommendations to approve the Application persuasive and concurred in that judgment.

"GREAT WEIGHT" TO THE WRITTEN REPORT OF THE ANC

10. 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).)
11. Although the ANC Report did not raise any issues or concerns with the Application to which the Commission can give "great weight," the Commission notes the ANC Report's support for the Application and concurs in that judgement.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a modification of consequence of Z.C. Order No. 11-02/11-02A by revising Condition Nos. 8 and 15(a), to read as follows (additions in **bold and underlined** text and deletions in ~~**bold and strikethrough**~~ text):

8. All students at the Van Ness Campus, whether living on campus, off campus in housing leased directly by the University, or off campus in privately owned or leased property, shall be required to comply with the University Code of Conduct. ~~**Within three months of approval of the campus plan**~~ **On or before December 31, 2018**, the University shall evaluate and collect input from the Task Force on revisions to the Code of Conduct that will address the impacts of students living on or near campus.
15. The University shall ~~**require**~~ **encourage** all students, faculty and staff to park in University or other commercial parking facilities on or near the Van Ness Campus.
 - a. The University shall ~~**prohibit**~~ **strongly discourage**, to the extent permitted by law, students from parking on the residential streets adjacent to and surrounding the Van Ness campus. To accomplish these purposes, the University shall employ a system of ~~**administrative actions, penalties, and fines**~~ **monitoring and notice**; and

b. ...¹

All other conditions in Z.C. Order No. 11-02/11-02A remain in effect and unchanged.

VOTE (November 19, 2018): 5-0-0 (Anthony J. Hood, Michael G. Turnbull, Robert E. Miller, 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. 11-02C shall become final and effective upon publication in the *D.C. Register*; that is, on September 18, 2020.

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.

¹ The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.