

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

\*\*\*\*\*

BOARD OF ZONING ADJUSTMENT

\*\*\*\*\*

SPECIAL PUBLIC MEETING

\*\*\*\*\*

TUESDAY  
FEBRUARY 24, 2004

\*\*\*\*\*

APPLICATION NUMBERS:

16553 (George Washington University)

17043 (Reconsideration of Appeal of Stanton Park  
Neighborhood Association)

\*\*\*\*\*

The Special Public Meeting convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001, pursuant to notice, at 9:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE MILLER	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN	Chairperson
ANTHONY HOOD	Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

Clifford Moy	Acting Secretary
Beverly Bailey	Office of Zoning
John Nyarku	Office of Zoning

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OFFICE OF CORPORATION COUNSEL STAFF PRESENT:

Sherry Glazier, Esquire  
Lori Monroe, Esquire

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P R O C E E D I N G S

(10:19 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 24 February 2004 public meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis. I am Chairperson. Joining me today is Ms. Miller, Vice Chair; also Mr. Etherly; and sitting on one of our decisions this morning is Ms. Mitten, representing the Zoning Commission.

Regretfully we do have one Board member that is out sick today, but we will be able to proceed with our entire agenda as we go through this.

Copies of the hearing agenda are available to you. Of course, we do have several things for decision this morning, and I'm going to be a little bit flexible with what we do, but I will make sure that everyone is clear on exactly what our agenda is and how we proceed.

I would say a couple of things. Well, first of all, in our deliberation let me just get right into it.

It is, of course, a deliberation from the Board. So there won't be any testimony or address

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1 from anybody that's here today. So with that, why  
2 don't I go to calling the first case for decision this  
3 morning.

4 MR. MOY: Yes, good morning, Mr. Chairman,  
5 members of the Board.

6 The first case for decision is application  
7 No. 16553 of the George Washington University,  
8 pursuant to 11 DCMR 3104.1, for a special exception  
9 for the review and the approval of the University  
10 Foggy Bottom Campus Plan, Years 2000-2010, under  
11 Sections 210 and 507, and this is before the Board for  
12 action on the draft order on second remand.

13 And that completes the staff's briefing,  
14 Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Very well. Thank  
16 you very much.

17 I know the Board has taken some great time  
18 in processing this entire campus plan, but certainly  
19 at this juncture, and we have before us, as stated by  
20 Mr. Moy, documents for our action.

21 Is there initial comments or discussion  
22 from the Board or is there motions?

23 COMMISSIONER MITTEN: Mr. Chairman, I  
24 would move that we conform our prior order on the  
25 final remand to become our order on the second remand

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1 to conform with the decision of the District of  
2 Columbia Court of Appeals of September 11th, 2003, as  
3 it relates to Conditions 9 and 15.

4 MR. ETHERLY: I second it, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 The motion before us has been seconded. I  
7 open up for discussion and deliberation on the motion  
8 that's before us.

9 VICE CHAIRPERSON MILLER: Mr. Chairman, I  
10 would like to note that the Court of appeals invited  
11 us to revisit Condition 10, which deals with the  
12 housing of freshmen and sophomores in off-campus  
13 university controlled dormitories. My inclination  
14 originally was to accept the court's invitation. It  
15 was couched in words of reconsidering this in the  
16 interests of justice and that they found the result of  
17 the previous board troubling. However, I'm going to  
18 be voting for this motion today because my colleagues  
19 have brought to my attention that the G.W. Campus Plan  
20 is before the Zoning Commission at this time. There's  
21 a P.U.D. pending and it would make sense for all  
22 aspects of the Campus Plan to be before the Zoning  
23 Commission instead of one piece still being before the  
24 BZA and because I believe that GW therefore has a  
25 remedy and it makes sense that its concerns be in one

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1 place, and this was only an invitation by the Court of  
2 Appeals. I think that the sentiment of the Court of  
3 Appeals can be fulfilled by G.W. bringing that  
4 concern to the Zoning Commission. So I will be  
5 supporting the motion.

6 CHAIRPERSON GRIFFIS: Good. Thank you.

7 Others? Any other comments?

8 I think that's well stated, Ms. Miller,  
9 and certainly as we look at the opinion from the Court  
10 of Appeals, it was part of the last page of it, which  
11 said if Condition 10 imposes serious hardship on the  
12 university, and it outlines what is the potential or  
13 hypothetical recourse for that.

14 And I think you stating the fact that it  
15 may well be able to be addressed at the Zoning  
16 Commission is appropriate.

17 Anything further then?

18 (No response.)

19 CHAIRPERSON GRIFFIS: With no other  
20 comments, we have a motion before us that has been  
21 seconded then. I would ask for all those in favor  
22 signify by saying aye.

23 (Chorus of ayes.)

24 CHAIRPERSON GRIFFIS: And opposed?

25 (No response.)

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1 MR. MOY: Staff would record the vote as  
2 four, zero, one on the motion of Ms. Mitten, seconded  
3 by Mr. Etherly. Also in support of the motion, Mr.  
4 Griffis, the Chairman, and Ms. Miller. We have one  
5 Board member, Mr. Zaidain, not participating, not  
6 voting.

7 CHAIRPERSON GRIFFIS: Thank you very much.

8 We have one other decision making at this  
9 special public meeting agenda that's on the agenda for  
10 us. However, we have two cases in the morning at our  
11 public hearing that are requesting postponement. So I  
12 think it would be more adventitious and equitable to  
13 take those up.

14 So what I'd like to do is suspend the  
15 public meeting for a brief moment and call to order  
16 the morning session and public hearing of the 24th of  
17 February 2004.

18 (Whereupon, the foregoing matter went off  
19 the record at 10:25 a.m. and went back on  
20 the record at 11:37 a.m.)

21 CHAIRPERSON GRIFFIS: And we will resume  
22 and reconvene our public meeting, and let's call the  
23 second case in our public meeting this morning.

24 MR. MOY: Yes, Mr. Chairman. That second  
25 case is reconsideration of motion of the Board of the

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1 appeal of 17043 of Stanton Park Neighborhood  
2 Association, pursuant to 11 DCMR 3100 and 3101, from  
3 the administrative decision of the Zoning  
4 Administrator in the issuance of Certificate of  
5 Occupancy Permit Nos. CO51289 and CO512090 to Capitol  
6 Hill Healthcare Group, dated March 26, 2003, for a  
7 community residence facility and hospital, 60 beds and  
8 60 parking spaces, respectively. Appellant alleges  
9 that the Zoning Administrator erred by issuing the  
10 occupancy permits where the proposed use is in  
11 violation of the parking requirements. The R-5-C  
12 zoned subject premises are located at 700 Constitution  
13 Avenue, N.E., Square 875, Lot 76.

14 The Board completed testimony on the  
15 application and decided the case on January 6th, 2004.

16 On February 10th, 2004, the Board on its own motion  
17 moved to reconsider its decision of January 6th, 2004,  
18 and scheduled its decision for reconsideration for  
19 February 24th, 2004.

20 And that completes my briefing, Mr.  
21 Chairman.

22 CHAIRPERSON GRIFFIS: Good. Thank you very  
23 much, Mr. Moy.

24 And it is true that the Board on its own  
25 motion did decide to reconsider, and we are now under

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1 the reconsideration, and of course, an important  
2 aspect of this is we did not receive any additional  
3 materials into the record and no other findings or  
4 filings were requested. I think that this is an  
5 important aspect of the Board that oftentimes upon  
6 substantive reflection of an application, especially  
7 one as complex as the appeal that we heard with the  
8 Stanton Park Neighborhood, that the deliberation in  
9 the record is not entirely full in order for us to  
10 write a strong order.

11 And in looking at that, I think the Board  
12 appropriately takes the opportunity to reflect on some  
13 of the actions that it had taken.

14 With that, we are here present today in  
15 order to proceed with this, and I will turn it over to  
16 the Vice Chair, Ms. Miller, I believe, who has some  
17 opening or beginning comments on this; is that  
18 correct?

19 VICE CHAIRPERSON MILLER: I think at this  
20 time I'd like to put a motion before the Board and  
21 then we can have discussion on that.

22 CHAIRPERSON GRIFFIS: Excellent.

23 VICE CHAIRPERSON MILLER: The motion is to  
24 grant Appeal No. 17043 of the Stanton Neighborhood  
25 Park Association on the grounds that the Zoning

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1 Administrator erred where there was no parking  
2 schedule specifically applicable for a health care  
3 facility in applying the parking requirements for a  
4 rooming or boarding house where he should have  
5 satisfied the parking requirements for a hospital.

6 In support of that, I would note that a  
7 hospital's facility that is more similar in the nature  
8 of its operations and the likely impacts on parking.  
9 We had little evidence in the record from DCRA as to  
10 why a rooming house was a more appropriate, analogous  
11 facility, and in looking at all of the evidence in the  
12 record, it appears to me that a hospital makes a lot  
13 more sense; that it's a medical facility; that it has  
14 similar staffing needs or more similar staffing needs  
15 to a nursing home than does a rooming house, and there  
16 was evidence in the record put in by the ANC and by  
17 the neighborhood association on that.

18 The ZA is supposed to look at parking  
19 schedule --

20 MR. ETHERLY: Mr. Chairman, before we get  
21 too far, it might be appropriate to have a second.

22 CHAIRPERSON GRIFFIS: Would you like a  
23 second on that motion?

24 VICE CHAIRPERSON MILLER: I'm sorry.

25 MR. ETHERLY: I'd like to defer to my

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1 colleague, Mr. Hood.

2 COMMISSIONER HOOD: I was going to second  
3 it, but I just wanted to clarify when we're talking  
4 about granting the appeal, we're just talking about  
5 that portion that pertains just to parking.

6 VICE CHAIRPERSON MILLER: That is correct.

7 COMMISSIONER HOOD: Yes, I'll second.

8 CHAIRPERSON GRIFFIS: So what we have is  
9 the motion, which we can restate in succinct form,  
10 which would be to deny in part and actually to grant  
11 in part.

12 VICE CHAIRPERSON MILLER: I only phrased  
13 it that way because I thought we were just  
14 reconsidering one part. So I was just addressing that  
15 part.

16 COMMISSIONER HOOD: Okay. I'll second.

17 VICE CHAIRPERSON MILLER: I guess where I  
18 was basically saying that the ZA is supposed to look  
19 at the most analogous use, and in doing that, he  
20 should be looking at the nature of the use, and the  
21 impacts of the use on the public, and there was not  
22 very much evidence in the record that he actually did  
23 that.

24 I think he limited himself to looking at  
25 residential uses only, and there's no requirement in

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1 the law that he be limited to looking purely at  
2 residential uses, particularly --

3 CHAIRPERSON GRIFFIS: So if I'm clear on  
4 that, one of the foundations of what you see as the  
5 error by the Zoning Administration is that they looked  
6 at an analogous use as residential and didn't then go  
7 beyond the residential requirements, and you find that  
8 three's an error for several reasons.

9 VICE CHAIRPERSON MILLER: That's correct.  
10 I think that the health facility aspect of this case  
11 is very important when you're considering the parking  
12 and not just the residential use. I think that the ZA  
13 looked to the Sunrise cases precedents, which was a  
14 community residence facility, but that community  
15 residence facility does not have the same kind of  
16 medical needs and support staff as does a nursing  
17 home.

18 CHAIRPERSON GRIFFIS: So Sunrise is  
19 differentiated from the Stanton Park facility based on  
20 the fact that a community residence is different than  
21 a health care facility.

22 VICE CHAIRPERSON MILLER: I would strongly  
23 agree with that, yes.

24 CHAIRPERSON GRIFFIS: Okay. Good. Other  
25 members?

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1           COMMISSIONER HOOD: I don't know how much  
2 more, Mr. Chairman, I would need to add, but I would  
3 agree with Board Member Miller and her synopsis, and  
4 I'm glad that this was brought to our attention  
5 because I would hate to see something that moved in  
6 that direction and we not address it.

7           So I would clearly agree with all of her  
8 comments. I don't know how much more I can add to  
9 that.

10          CHAIRPERSON GRIFFIS: Okay, good. Anyone  
11 else?

12          I think it was very strongly stated,  
13 although succinctly, which is fine, and the point  
14 being that as we look at this health care facility and  
15 rooming house and the knowledge of how a rooming house  
16 is utilized and how health care facilities or this  
17 particular and based on the record how much support  
18 staff and others go into this, even if you look at,  
19 and I think the Board did do in its own deliberation,  
20 look at higher intensity uses than rooming houses, and  
21 going even to large multi-family or multi-dwelling, as  
22 appropriate, for the parking table, you look at the  
23 analogous use.

24          In an apartment building the parking is  
25 calculated out of unit count. Unit count obviously

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1 goes to how many cars one unit might have, but there  
2 is not the attendant staff that runs a multi-family or  
3 apartment building as one is aware of in health  
4 facilities.

5 Of course in the hospital, in the  
6 analogous use that is being proposed here, hospitals  
7 counts by bed, and one could say, "Well, you're  
8 counting bed. You're counting units. What's the  
9 difference?" But the hospital, it seems to be  
10 appropriately as one per one bed, meaning it seems  
11 like they're only creating this table fully realized  
12 that not everyone in a bed would necessarily be  
13 driving, but encapsulated the idea of what it takes to  
14 run and support a hospital in terms of staff and  
15 facility people, and it seemed to be an appropriate  
16 ratio from bed to the total number of people that  
17 would be coming in.

18 As we look at the health care facility and  
19 the use, I think it is very appropriately and much  
20 closer analogous to a hospital than it would, in fact,  
21 be to a rooming house.

22 Procedurally it seems to me that with this  
23 determination, if this motion does pass, that then  
24 this would actually go back to the Zoning  
25 Administrator for the exact calculation of the parking

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1 count. But I think the deliberation of the Board is  
2 direct enough and substantive enough to have a full  
3 understanding of how it should be done.

4 Yes?

5 MR. ETHERLY: Just one final piece, Mr.  
6 Chair, if I could. I definitely would like to thank  
7 our colleague, Ms. Miller, for kind of raising this  
8 issue in the very detailed way that she did. I  
9 believe during our earlier deliberation, you know,  
10 upon a review of the record, I had somewhat felt early  
11 on that we did have some measure of deliberation on  
12 the issue, but through Ms. Miller's work, I think it  
13 became clear that there was a need to perhaps resolve  
14 a little more clearly this issue.

15 One of the things that gave me some  
16 initial pause was as we had talked about at our  
17 earlier deliberation, the reconciliation of this  
18 application in this overall topic area with the Fair  
19 Housing Act, and I just wanted to piggyback on your  
20 comment regarding the parking because I think we are  
21 taking an action here on the parking aspect that is,  
22 indeed, in step and consistent with the Fair Housing  
23 Act and does not raise any concerns for me in that  
24 regard in terms of are we establishing a disparate  
25 treatment, so to speak.

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1 I raise that issue just in case if there  
2 is perhaps a remaining doubt out there, I think that  
3 this action is, indeed, consistent with the FHA if we  
4 look at parking and, in particular, as we look at the  
5 most appropriate analogous use as being a hospital  
6 because I think this helps if in no other way to  
7 further the goals and objectives of the Fair Housing  
8 Act by insuring that the level of services that are  
9 being provided at this site are, indeed, sufficient to  
10 serve the needs of the residents that are at issue  
11 here.

12 But I think simply suffice it to say that  
13 I don't have a concern about a continuing Fair Housing  
14 Act issue here because I think if I'm also not  
15 mistaken, clearly there is nevertheless parking  
16 requirements that are required for matter-of-right  
17 residential uses. So there is no issue here of  
18 disparate treatment, as I would see it, and I think  
19 this is an appropriate resolution of a very critical  
20 issue confronting this community.

21 CHAIRPERSON GRIFFIS: That's an excellent  
22 point, and you're absolutely correct. Matter of right  
23 does not mean that there are not requirements for  
24 parking and other compliance with the zoning  
25 regulations.

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1                   VICE CHAIRPERSON MILLER: Just to fill out  
2 the record, and I think I probably made reference to  
3 this case when we had our motion to reconsider before,  
4 but I just want to note that this Board had a previous  
5 case, 16839, of Advisory Neighborhood Commission 4A,  
6 in which it took a look at what was required , where  
7 there is no parking schedule set for a specific use  
8 and our case is consistent with that now, that we look  
9 to the nature and impact of the use on the public, and  
10 I think this is what we've done.

11                   CHAIRPERSON GRIFFIS: Thank you very much.

12                   MR. WOOLSEY: I think perhaps the last  
13 word on this and we've said it in the previous  
14 deliberation, but there seems to need to be some  
15 reconciliation within the rezoning regulations  
16 specifically looking at 330.5(i), and I know this  
17 Board will be sending our opinion of the direction  
18 that the Zoning Commission should take on this in  
19 terms of procedure of perhaps text amendments.

20                   That being said, we have a motion before  
21 us that has been seconded. Further deliberation?

22                   (No response.)

23                   CHAIRPERSON GRIFFIS: Not seeing any, I'd  
24 ask for all of those in favor of the motion signify by  
25 saying aye.

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1 (Chorus of ayes.)

2 CHAIRPERSON GRIFFIS: And opposed?

3 (No response.)

4 MR. MOY: Staff would record the vote as  
5 four, zero, zero, to grant the appeal in part and to  
6 deny in part, seconded by Mr. Hood. We have a proxy  
7 or absentee vote from Mr. Zaidain, who supports the  
8 motion. That gives a final result of five, zero,  
9 zero.

10 CHAIRPERSON GRIFFIS: Good, excellent.

11 Ms. Bailey, is there any other business  
12 for the Board this morning?

13 MS. BAILEY: No, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Excellent. In that  
15 case, we can conclude our morning session the 24th of  
16 February 2004.

17 (Whereupon, at 11:52 a.m., the special  
18 public meeting was concluded.)

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