

July 12, 2019

BY HAND DELIVERY

Ms. Sharon Schellin
Secretary, D.C. Zoning Commission
441 4th Street NW, 2nd Floor
Washington, DC 20001

Re: Z.C. Case No. 02-26: Modification of Consequence of Condition of Approval for the Lerner Health and Wellness Center (Square 42, Lot 55)

Dear Ms. Schellin:

Enclosed please find an application requesting a modification of consequence to extend certain conditions of approval until December 31, 2020 in the above-referenced case. Briefly:

- In BZA Order No. 16276 (1998), the Board of Zoning Adjustment approved the construction and use of the Lerner Health and Wellness Center (“Center”) as a center for physical fitness and recreational activities. Use of the center was initially limited to students, faculty and staff of the University’s Foggy Bottom campus.
- In Z.C. Order No. 02-26 (2004), the Commission approved the expanded use of the Center by students, faculty, and staff at the Mount Vernon Campus, members of the University’s Board of Trustees, and students at the School Without Walls, a D.C. public school located within the boundaries of the University’s Foggy Bottom Campus (the “First Expanded Use Groups”). The expanded categories of membership were authorized for a period of three years.
- In Z.C. Order No. 02-26A (2007), the Commission reauthorized the expanded use of the Center by the First Expanded Use Groups and further approved use by up to 300 persons residing in St. Mary’s Court or the Remington Condominiums or belonging to St. Mary’s Episcopal Church as well as University alumni who reside in the Foggy Bottom/West End area (the “Second Expanded Use Groups”). Use by both the Initial and Second Expanded Use Groups was authorized for a period of five years.

- In Z.C. Order No. 02-26B (2013), the Commission approved a one-year extension for the First and Second Expanded Use Groups.
- In Z.C. Order No. 02-26C (2014) (attached as Exhibit B), the Commission (1) permanently approved use of the Center for the First and Second Expanded Use Groups, and (2) conditionally approved use of the Center for five years for (a) community members residing in zip codes 20006 and 20037, with a maximum of 150 permitted memberships (250 during the summer academic break), (b) athletic competitions that draw a limited number of non-GW users primarily as competitors and are not spectator-driven events, (c) periodic and short-term events that cater to the campus community, neighbors, and/or other non-GW participants that would otherwise be on the campus for mission-related purposes, and (d) persons housed in GW housing facilities during the summer term (a-d, collectively, the “Third Expanded Use Groups”).

Since 2014, the expanded use of the Center has not generated any objectionable impacts on the surrounding residential neighborhoods. The University has not received any complaints regarding the use of the Center and is otherwise unaware of any evidence of objectionable impacts generated by either the First, Second, or Third Expanded Use Groups.

The Zoning Commission’s conditional approval in Order No. 02-26C for the Third Expanded Use Groups is scheduled to expire in September of 2019. The University requests modification of Condition 3 of Z.C. Order No. 02-26C to permit an extension of approval for use of the Center by the Third Expanded Use Groups thru December 31, 2020. This application is appropriately considered a modification of consequence as the University is requesting a “proposed change to a condition in the final order” pursuant to 11-Z DCMR §703.4. The extension will not result in any objectionable impacts on the surrounding residential neighborhoods.

Over the next eighteen months, the University will conduct a further evaluation of the appropriate uses in the Center and discuss the review with Advisory Neighborhood Commission 2A (“ANC 2A”), the Campus Plan Advisory Committee, and other interested stakeholders in the Foggy Bottom / West End community. The University will return to the Commission after the completion of that review to address the appropriate use of the Center going forward.

Attached to this letter is an application for modification of the existing approval, a copy of Z.C. Order No. 02-26C, and a check for \$520, which represents the filing fee for this application.

Please feel free to contact the undersigned if you have any questions or comments regarding this modification of consequence.

Sincerely,

David Avitabile/is

David Avitabile

Meghan Hottel-Cox/is

Meghan Hottel-Cox

DA:mehc

cc: Alicia Knight, GW
Charles Barber, GW

CERTIFICATE OF SERVICE

On July 12, 2019, I caused a copy of the foregoing letter and enclosure to be delivered by hand or electronic mail to the following:

Jennifer Steingasser
D.C. Office of Planning
1100 4th Street, SW, Suite E650
Washington, DC 20024

Advisory Neighborhood Commission 2A
c/o West End Branch Library
2301 L Street NW
Washington, DC 20037

West End Citizens Association
c/o Barbara Kahlow
800 25th Street, NW #704
Washington, DC 20037

President, Foggy Bottom Association
c/o Marina Streznewski
904 New Hampshire Avenue NW
Washington, DC 20037



Meghan Hottel-Cox

EXHIBIT A

Form 105

(Revised 06/01/2016)



**BEFORE THE ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA**



Form 105 – Application for Minor Modification, Modification of Consequence, or Technical Correction

In accordance with the provisions of Subtitle Z, Chapter 7 - Zoning Regulations, request is hereby made for Minor Modification, Modification of Consequence, or Technical Correction as follows:

Minor Modification Modification of Consequence Technical Correction to Plans Technical Correction to Orders

| Square No. | Lot No. | Square Feet |
|------------|---------|-------------|
| 42 | 55 | 29,070 |
| | | |
| | | |
| | | |

Case Number: 02-26C

Address or boundary description of the premises: 2301 G Street NW

*** Points and Authorities (Provide an explanation why your application should be granted):**

Request for approval of a modification to Condition 3 of Z.C. Order No. 02-26C to permit a one-year extension of the Order, which is detailed in the attached letter.

Date NOI Sent: N/A *** How NOI Sent:** U.S Mail E-mail Other

Advisory Neighborhood(s): ANC 2A 05 **Date Presented at ANC(s):** N/A

Concurrent change of zoning (circle one): Yes / No

If applicable, Historic District(s) in which site is located: None

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this application is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both.
(D.C. Official Code § 22-2405)

Owner's Signature: *David M. Avitabile/is* **Date:** 07/12/2019

Owner's Name: David M. Avitabile on behalf of The George Washington University
Please Print

Person(s) to be notified of all actions:

Name: David Avitabile, Esq., Goulston & Storrs

Address: 1999 K Street NW, Suite 500, Washington, DC **Phone No(s):** 202-721-1137

Zip Code: 20006 **E-Mail:** davitabile@goulstonstorrs.com

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

EXHIBIT B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION ORDER NO. 02-26C
Z.C. Case No. 02-26C
The George Washington University – Lerner Health and Wellness Center
(Modification to Conditions of Approval)
July 21, 2014

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on July 21, 2014, and approved an application from The George Washington University (“University”) for a modification to Z.C. Order No. 02-26A, which approved certain categories of users of the Lerner Health and Wellness Center (Square 42, Lot 55) (“Lerner Center”)

FINDINGS OF FACT

In Application No 16276 (order issued March 31, 1998), the Board of Zoning Adjustment approved the construction and use of the Lerner Center by students, faculty, and staff of the University’s Foggy Bottom Campus. In Z.C. Order No. 02-26 (June 14, 2004), the Commission conditionally expanded the category of users to include students, faculty, and staff of the University’s Mount Vernon Campus, members of the University’s Board of Trustees; and students of the School Without Walls in organized activities under the supervision of school faculty (together, these additional users are the “2004 Additional Users”). The Commission authorized the use by the 2004 Additional Users for a period of three years and stated that, absent a new special exception approval at the end of that period, the users of the Lerner Center would revert to those authorized under the 1998 order.

In Z.C. Order No. 02-26A (order issued November 15, 2007), the Commission granted the University’s request to continue the use by the 2004 Additional Users, and also authorized the use of the Lerner Center by persons residing in St. Mary’s Court or the Remington Condominiums, or belonging to St. Mary’s Church (limited to a total of 50), and alumni of the University who reside in the Foggy Bottom/West End Area as defined in the approved 2007 Foggy Bottom Campus Plan (limited to a total of 250) (together, these 300 additional users are the “2007 Additional Users”). The Commission limited the use by the 2004 Additional Users and the 2007 Additional Users for a period of five years from the effective date of the order, or until February 8, 2013.

In Z.C. Order No. 02-26B (order issued May 29, 2013), the Commission approved a one-year extension of approval for the 2004 and 2007 Additional Users until May 29, 2014.

By letter dated May 5, 2014, counsel for the University requested (1) permanent approval for use of the Center by the 2004 and 2007 Additional Users; and (2) conditional approval for use of the Center by new use groups ("2014 Additional Users"). A hearing was held on this application on July 21, 2014, at which Deputy General Counsel Charles Barber and Director of Campus Planning Susi Cora testified on behalf of the University. The University representatives testified and the Commission finds that the use of the Center, including use by the 2004 and 2007 Additional Users, had not generated any objectionable impacts due to noise, traffic, number of students, or other objectionable conditions on the surrounding residential neighborhoods. The University representatives also testified and the Commission finds that the expansion of use by the 2014 Additional Users was also not likely to generate objectionable impacts because the user groups consist of populations that already live in or near the Center, and are therefore unlikely to generate objectionable impacts due to traffic, parking, or number of students. The University proposed to limit the use by the 2014 Additional Users to a period of five years, at which point the University would return to the Commission for further approval.

By resolution dated July 2, 2014, which was adopted at a regularly scheduled and duly noticed public meeting on April 16, 2014, with a quorum present, Advisory Neighborhood Commission ("ANC") 2A voted to support the University's requests for modification. The ANC agreed with the University's recommendation to limit the 2014 Additional Users to an initial five-year term.

By report dated July 15, 2014, the Office of Planning ("OP") submitted a report recommending approval of the modifications. By report dated July 11, 2014, the District Department of Transportation ("DDOT") also submitted a report concluding that the modifications would not create objectionable traffic or parking impacts and recommending approval of the modifications.

At the public hearing, a representative of St. Mary's Episcopal Church presented testimony and outlined potential concerns about a separate private agreement between the Church and University regarding the Church's use of University parking facilities. The University presented testimony that it was in full compliance with its agreement with the Church and that it would continue to work with the Church regarding its concerns. The Commission finds that the Church's concerns are not related to the proposed modifications before the Commission but rather relate to a private agreement between the parties.

At the conclusion of the hearing, the Commission voted to approve the proposed modifications.

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicant's requested modifications to (1) permit permanent use of the Lerner Center by the 2004 Additional Users and the 2007 Additional Users and (2) expand the use of the Center to the 2014 Additional Users would not present an objectionable impact on the surrounding community. The Commission concludes that the modifications are in the best interest of the

District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan. The Commission also notes that the request is supported by both OP and ANC 2A, who are each entitled to "great weight," as well as DDOT.

DECISION

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the request to modify Z.C. Order No 02-26A to (1) permanently approve the use of the Lerner Center by the 2004 and 2007 Additional Users and (2) conditionally approve the use of the Lerner Center by the 2014 Additional Users for a term of five years as follows:

The three conditions to the approval of Z.C. Order No 02-26A are modified to read as follows:

1. Use of the Center shall be permanently approved for
 - (a) Students, faculty, and staff of the University's Foggy Bottom and Mount Vernon campuses,
 - (b) Members of the University's Board of Trustees;
 - (c) Students of the School Without Walls, in organized activities under the supervision of school faculty;
 - (d) Persons residing in certain facilities or belonging to certain organizations with facilities located in close proximity to the Center, specifically (i) St. Mary's Court, located at 725 24th Street, N.W.; (ii) St. Mary's Episcopal Church, located at 728 23rd Street, N.W.; and (iii) the Remington Condominium, located at 601 24th Street, N.W. with a maximum of 50 passes available, and
 - (e) University alumni who reside in the Foggy Bottom/West End zip codes 20006 and 20037, up to a maximum of 250 memberships

2. Use of the Center shall be conditionally approved for
 - (a) Community members residing in zip codes 20006 and 20037, with a maximum of 150 permitted memberships. The University is permitted to make an additional 100 community memberships available to this group during the summer academic break (for a total of 250 community memberships during the summer academic break),

- (b) Athletic competitions that draw a limited number of non-GW users primarily as competitors and are not spectator-driven events. These types of competitions include varsity squash, Intramural Sports and club sport activities such as basketball, volleyball, and table tennis,
 - (c) Periodic and short-term events that cater to the campus community, neighbors and/or other non-GW participants that would otherwise be on the campus for mission-related purposes. These types of events include items such as health-related training sessions (e.g., CPR training), the Clinton Global Initiative (hosted on campus, with the Lerner Center as one of multiple locations for activities), science fairs or other academically-based events, GW athletic pep events for athletic event ticket-holders, and youth camps, and
 - (d) Persons housed in GW housing facilities during the summer term
3. Approval of the expanded categories of membership enumerated in Condition 2 shall be effective for five years from the effective date of Z C Order No 02-26C.
4. 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.

VOTE: 5-0-0 (Michael G. Turnbull, Peter G. May, Marcie I. Cohen, Anthony J. Hood, and Robert E. Miller to approve).

BY ORDER OF THE D.C. ZONING COMMISSION
The majority of the Commission members approved the issuance of this Order.

ATTESTED BY: _____


SARA A. BARDIN
DIRECTOR, OFFICE OF ZONING

FINAL DATE OF ORDER: September 4, 2014