

December 11, 2007

**Copy by Electronic Mail &
Original by First Class Mail**

Sharon Schellin, Secretary
Zoning Commission for the
District of Columbia
D.C. Office of Zoning
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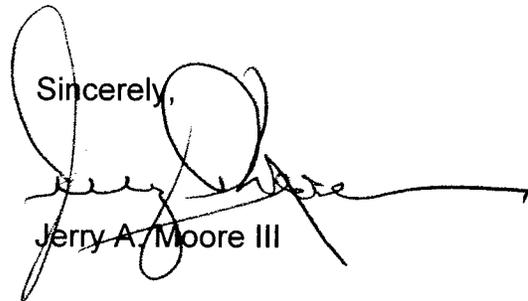
Re: Z.C. Case No. 02-26A: The George Washington University
(Lerner Health & Wellness Center), Applicant

Dear Ms. Schellin:

Attached for the Commission's consideration, are the Applicant's
Proposed Findings of Fact and Conclusions of Law and Order in the above-
referenced case.

Thank you.

Sincerely,



Jerry A. Moore III

JAM/ydl

Attachment

cc: Charles K. Barber, Esquire

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**

**ZONING COMMISSION ORDER NO. 02-26A
CASE NO. 02-26A
(Application by George Washington University for Further Processing
of an Approved Campus Plan Under § 210 to Modify Conditions
of Approval of the Lerner Health & Wellness Center
at 2301 G Street, N.W., (Square 55, Lot 847)
November 15, 2007**

Pursuant to public notice, the Zoning Commission for the District of Columbia held a public hearing on November 15, 2007 to consider an application from the George Washington University (“University” or “Applicant”) pursuant to §§ 210 and 3104.4 of the Zoning Regulations for “further processing” special exception relief, under an existing campus plan, to modify the conditions of Z.C. Order No. 02-26 pertaining to permitted users of the Lerner Health and Wellness Center (“the Center”).

Procedural Background

Public Notice. The Office of Zoning published a notice of public hearing in the *D.C. Register* on _____, 2007 (___ DCR ____). The Office of Zoning also mailed a notice of public hearing to the owners of all property within 200 feet of the subject property; the Office of Planning; the District Department of Transportation; Advisory Neighborhood Commission (“ANC”) 2A, the ANC for the area within which the property is located; the Ward 2 Councilmember; the Zoning Administrator; and the Applicant.

Preliminary Matters. Dorothy Miller and the West End Citizens’ Association submitted requests for party status pursuant to 11 DCMR § 3106.2. Prior to the public hearing, the West End Citizens’ Association withdrew its request for party status. The Commission

found that Ms. Miller was unable to meet the showing required by 11 DCMR § 3106.3 and denied her request for party status.

Case History. BZA Order No. 16276 (January 7, 1998) permanently approved the construction and use of the Lerner Center by the students, faculty and staff of the University's Foggy Bottom Campus. In Zoning Commission Order No. 02-26 (June 14, 2004) the Commission conditionally expanded user privileges to the Center to students, faculty and staff of the University's Mount Vernon campus, members of the University's Board of Trustees and to students of the School Without Walls in organized activities under the supervision of school faculty. The Commission approved the expanded users for a period of three years and stated that absent a new special exception approval at the end of that period, the use of the Center would revert to the students, faculty and staff of the University's Foggy Bottom campus (as approved in BZA Order No. 16276). This application seeks the re-approval of the expanded users that were first approved in 2004 and two new classes of users: (1) persons residing in residential facilities, or belonging to organizations with facilities, immediately adjacent to the Center, specifically, St. Mary's Court, St. Mary's Church, the Remington Condominiums; and (2) George Washington University alumni who reside in the Foggy Bottom/West End area.

Applicant's Current Case. Specifically, the University seeks to modify the conditions of Zoning Commission Order No. 02-26 as follows:

1. Allow the continued use of the Center by (a) the students, faculty and staff of the University's Mount Vernon campus; (b) members of the University's Board of Trustees; and (c) the students of the School Without Walls ("SWW") in organized activities under the supervision of SWW faculty;

2. Permit use of the Center by persons residing in facilities, or belonging to organizations with facilities located in close proximity to the Center, specifically (a) St. Mary's Court, located at 725 24th Street, N.W.; (b) St. Mary's Episcopal Church, located at 728 23rd Street, N.W.; and (c) the Remington Condominium, located at 601 24th Street, N.W.; and

3. Permit use of the Center by a limited number of University alumni who reside in the Foggy Bottom/West End area as defined in the University's approved Foggy Bottom Campus Plan (2007).

The modifications described in paragraphs 2 and 3 above would add a total of 300 users to those currently permitted to use the Center (described in paragraph 1 above and in BZA Order No. 16276). The University also seeks to make permanent the user classes that were authorized in Zoning Commission Order No. 02-26. The University withdrew its request for authority to extend user privileges at the Center to members of the Odd Fellows Lodge located at 701 24th Street, N.W., Washington, DC.

Alicia O'Neil, the Director of Real Estate Operations for the University elaborated on the context provided in the pre-hearing statement testifying that in addition to providing a high quality education for its students, it is a part of the University's mission to be a community serving institution by providing academic, cultural and recreational opportunities where students and members of the extended University community and the surrounding neighborhood can interact and learn from each other. She testified further that many University venues such as the Smith Center, Gelman Library, various food service uses, Lisner Auditorium and the Marvin Center are open to members of the

public even though their primary purpose is to contribute to the educational experience of the University students.

Ms. O'Neil further stated that the University had met with representatives of the adjacent property owners before the Center was constructed and offered to provide user privileges at the Center to the residents/members of St. Mary's Court, the Remington Condominiums and St. Mary's Church as a part of the University's efforts to share its University related uses with its neighbors. This application, according to Ms. O'Neil, is in part another attempt on the University's part to fulfill that promise.

Charles K. Barber, Senior Counsel to the University, pointed the Commission to evidence submitted by the University that the Center has sufficient capacity to accommodate 300 additional users at all times of the week and day that the Center is open. He testified that the University's plan is to reserve fifty user passes, at no cost, for use by St. Mary's Court, St. Mary's Church and the Remington Condominium, and to offer 250 paid memberships to University alumni who reside in the Foggy Bottom/West End area as defined in the 2007 Foggy Bottom Campus Plan. Mr. Barber said that alumni memberships would be for a one year period of time, renewable and be awarded generally on a first come, first serve basis, with some recognition of alumni who had provided special support to the University.

The University's traffic expert, Nicole White of Symmetra Design, prepared a study of traffic and parking based on 300 potential new users to the Center. She submitted that report in the record and testified that over the past 6 years since the Center was opened in 2001, it has continued to operate well below its capacity of 1,973 users at any one time and that the vast majority of the proposed new users will be located within a short

walk to the Center. She testified further that fewer than 5% of the new users would be expected to drive to the Center and that neither the continuation of the 2004 user classes nor the addition of 300 new members from the requested user categories would cause adverse impacts on traffic or parking in the area.

Government Reports. By a report dated November 8, 2007 and by testimony at the public hearing, the Office of Planning (“OP”) recommended approval of the modification and further processing application.

ANC Report. The Advisory Neighborhood Commission 2A submitted a letter stating that a meeting was properly noticed on October 10, 2007, and held on October 17, 2007, addressing this application. With a quorum present and all five seated commissioners seated and voting, ANC 2A took the following actions: “In a vote of 5 to 0 ANC 2A voted to support continued access [to the Center] for Mount Vernon students, School Without Walls students and the University’s Board of Trustees and to allow access [to the Center] to St. Mary’s Court and to St. Mary’s Church; and voted 4 to 1 to support allowing access [to the Center] for the Remington Condominiums and to Foggy Bottom/West End alumni of the University.”

Persons in Support. Twelve persons from the Foggy Bottom/West End neighborhood appeared at the hearing and testified in support of the application. Those persons included three representatives from St. Mary’s Court, three representatives from the Remington Condominiums, four GW alumni who reside in the Foggy Bottom/West End neighborhood, one student of the University and one representative of St. Mary’s Church. Each testified that they were anxious to accept the University’s offer for use privileges at the Center. The representatives from the Remington Condominiums and

the St. Mary's Court corroborated Ms. O'Neil's testimony that the University had offered each of their institutions use privileges when the building first sought zoning approval but was unable to make good on those offers because first the Board of Zoning Adjustment, and then the Zoning Commission, denied the University the zoning approval to do so. None of the persons in support expressed any reservations with the full approval of the application.

Persons in Opposition. Dorothy Miller, a neighborhood resident and former Single Member District Commissioner at ANC 2A submitted documents and testified at the public hearing. Ms. Miller supported the University's request to extend user privileges to St. Mary's Church and to St. Mary's Court and opposed the University's request to extend membership privileges to the Remington Condominiums and to University alumni who reside in the Foggy Bottom/West End area. She questioned whether extending user privileges to the Remington Condominiums and to University alumni who reside in the area constituted a sufficient connection to the University's mission in a residential district, whether the uses that she opposed were too intense for the western edge of the campus or constituted unfair competition to private health clubs, and whether the uses that she opposed constituted illegal discrimination against non-University alumni who live in the Foggy Bottom/West End area.

Elizabeth Elliott submitted a statement on behalf of the Foggy Bottom Association in which the Association expressed its support for the University's request to extend use privileges to St. Mary's Court and to St. Mary's Church but opposed the University's request to extend use privileges to University alumni and to the Remington Condominiums.

Campus Plan Proceedings. By Order No. 06-11/06-12, dated March 12, 2007, and effective October 26, 2007, the Commission approved the George Washington University's 2007 Foggy Bottom Campus Plan for a twenty year period. The Lerner Health and Wellness Center, cited at its present location as a recreational facility, is a part of that Plan.

Findings of Fact.

1. The subject property is located at 2301 G Street, N.W., at the northwest corner of the intersection of 23rd and G Streets, N.W. (Square 55, Lot 847). The subject property is located within the University's campus plan boundaries and is zoned R-5-D.
2. The subject property is improved with a four-story structure with four underground levels, three of which are used for parking. The building houses the Lerner Health and Wellness Center, which is used for physical fitness and recreational activities.
3. Construction and use of the Center was conditionally approved by the Board of Zoning Adjustment by order issued March 31, 1998 in Application No. 16276. The conditions of approval require that: (a) use of the facility is limited to the students, faculty, and staff of the Foggy Bottom campus and (b) operation of the facility must end at 10:00 p.m., Monday through Saturday and 8:00 p.m. on Sundays.
4. The Center opened in August 2001. The University testified that data gathered to track actual usage of the Center indicates that the Center is able to accommodate additional users, given that the Center was constructed to hold almost 2,000 users at any given time, and usage on a peak day is approximately 2,600 users in an entire day.

5. As approved in Z.C. Order No. 02-26, the Center opens at 6:00 a.m. and closes at 11:30 p.m. daily. Peak hours of use are Monday through Wednesday, 5:00 p.m. to 8:00 p.m.
6. The University runs a shuttle bus service between the Foggy Bottom and Mount Vernon campuses 24 hours per day. Shuttle buses run every 10 minutes between 7:00 a.m. and 7:00 p.m., and are scheduled no less frequently than every 20 minutes during the school year. A shuttle bus stop is located one block from the Center. The shuttle buses have carried as many as 68,000 users in a one-month period and over 500,000 rides for each of the past two years.
7. Most Mount Vernon Campus students also take courses at the Foggy Bottom Campus and are therefore, already present on the campus, therefore causing no additional adverse impact.
8. The Commission credits the testimony of the Applicant's traffic expert that current use of the Center is not generating adverse traffic impacts in the surrounding neighborhood, and that most current users arrive at the Center on foot or by public transportation. The Commission also credits the expert's testimony that neither the continuation of the 2004 user classes nor the addition of 300 new users of the Center from the Foggy Bottom/West End community will cause adverse impacts on traffic or parking in the area.
9. The School Without Walls is a public high school located at 2135 G Street, NW, within the University's campus plan boundaries. The University has a relationship with the school, so that some of its students and faculty are enrolled in University classes and are permitted to use certain University facilities, such as the library and the Center. The SWW building is currently under renovations, and courses are being held at an alternate location in NE Washington DC.

During this time, students are bused to the campus for certain events. The SWW anticipates reoccupying its G Street building in fall 2009.

10. The use of the Center by the students, faculty and staff of the University's Foggy Bottom and Mount Vernon campuses, the students, of the SWW and the University's Board of Trustees has not caused an adverse impact for zoning purposes.
11. The Commission finds that the Center has a membership base of more than 29,000 University students, faculty and staff who are eligible to use its facilities. Adding 300 potential users, all of whom are immediately adjacent neighbors or have a direct connection to the University, will be incidental to the principal University use of the Center.
12. The Commission credits OP's testimony and unconditional support for the application.
13. The Commission credits the ANC's unconditional support for the application.
14. The University testified that it will reserve a total of 50 free passes for the St. Mary's Church, St. Mary's Court and the Remington Condominiums and offer 250 paid memberships to University alumni who reside in the Foggy Bottom/West End Campus Plan area as defined in the approved 2007 Campus Plan.

CONCLUSIONS OF LAW

The Applicant is seeking special exception approval, pursuant to §§ 210 and 3104 of the Zoning Regulations, for further processing of its approved campus plan to modify the conditions of approval for the use of the Lerner Health and Wellness Center. The Commission is authorized to grant a special exception where, in the judgment of the Commission based on a showing through substantial evidence, the special exception will

be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to certain conditions specified in §§ 210 and 3104.1.

In considering the University's application, the Commission notes that the Center is a university use that would not be permitted in the R-5-D zone but for its approval as a special exception consistent with the University's approved campus plan. Accordingly, any changes to the conditions of approval adopted by the Board of Zoning Adjustment in initially approving the construction and use of the Center must maintain its purpose as a university use. The D.C. Court of Appeals, this Commission and the Board of Zoning Adjustment have all found that a University may offer the benefits of a university use to incidental users in the general public without diminishing that use's status as an accessory to a principal (University) use. Citizens Coalition et al. v. DC Board of Zoning Adjustment, 619 A.2d 440 (DC App. 1993), Z.C. Order No. 03-29, BZA Order No. 17249.

The Commission concludes that the categories of expanded membership that were approved by this Commission in Z.C. Order No. 02-26 can continue to be permitted consistent with the university use of the Center. They are: (a) students, faculty, and staff of the University's Mount Vernon campus, (b) members of the University's Board of Trustees; and (c) students of the School Without Walls, a public high school located within the campus plan boundary that has an on-going relationship with the University; provided that the high school students are engaged in organized activities at the Center under the supervision of school faculty.

The Commission further concludes that an additional 300 incidental users, from the area, as proposed by the University and supported by the Office of Planning, the ANC 2A and multiple persons who reside in the area of the Center, are insignificant in comparison with the number of potential users in the general University population and can be approved as incidental to the principal University use.

The Commission accorded ANC 2A the “great weight” to which it is entitled. In doing so, the Commission fully credited the unique vantage point that ANC 2A holds with respect to the impact of the proposed modifications of use of the Center on the ANC’s constituents.

The expanded membership approved in this Order will maintain the University use of the Center and thus will not alter its character as a low-intensity university support facility as first found by the BZA. The University’s application for further processing is consistent with the approved 2007 Foggy Bottom Campus Plan, and does not affect the Mount Vernon Campus Plan. The Commission is not persuaded by the opposition’s argument that modifying the membership categories to include non-University parties would violate the District of Columbia Human Rights Act. In any event, the University is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions.

Based upon the record before the Commission and having given “great weight” to the ANC, the Commission concludes that the Applicant has met its burden of proof, pursuant to 11 DCMR §§ 3104.1 and 210.1, that the requested modifications to the conditions of Z.C. Order No. 02-26 will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring

property in accordance with the Zoning Regulations and Map. Nonetheless, the Commission believes that a time limit should be placed on the modifications, so that the Commission can verify this conclusion after a suitable period of time has passed.

DECISION

In consideration of the findings and conclusions set forth in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS** that this application be **GRANTED** and that the conditions set forth in Zoning Commission Order No. 02-26 are modified to read as follows:

1. Use of the Center shall be limited to:
 - (a) the students, faculty, and staff of the University's Foggy Bottom campus, as provided in BZA Order No. 16276;
 - (b) the students, faculty and staff of the University's Mount Vernon campus; the members of the University's Board of Trustees; and the students of the School Without Walls, in organized activities under the supervision of school faculty;
 - (c) persons residing in residential facilities, or belonging to organizations with facilities, located immediately adjacent to the Center, specifically St. Mary's Court, St. Mary's Church, and the, Remington Condominiums; and
 - (d) Alumni of the George Washington University who reside in the Foggy Bottom/West End area as defined in the approved 2007 George Washington University Foggy Bottom Campus Plan.
2. The maximum number of new (subparagraphs 1(c) and (d) above) user privileges authorized by this order shall be 300, no more than 250 of which shall be offered to the persons defined in subparagraph 1(d) above.

3. The approval of the expanded categories of membership enumerated in Condition Nos. 1 (b), 1(c), and 1(d) shall be in effect for five years from the effective date of this Order.

Vote of the Zoning Commission taken at its public hearing on November 15, 2007: 4-0-1 (Anthony J. Hood, Curtis Etherly, Jr., and Gregory N. Jeffries and Michael G. Turnbull) to approve the application with conditions; John G. Parsons, not participating, not voting; 4-0-1 (Anthony J. Hood, Curtis Etherly, Jr., Gregory N. Jeffries and Michael G. Turnbull) to limit to five years this approval of all classes of membership except the students, faculty and staff of the George Washington University's Foggy Bottom Campus: John G. Parsons, not participating, not voting.

In accordance with the provisions of 11 DCMR § 3028, this order shall become final and effective upon publication in the D.C. Register: that is, on _____.

ANTHONY J. HOOD
Chairman
Zoning Commission

JERRILY R. KRESS, FAIA
Director
Office of Zoning