

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-11L
Z.C. Case No. 06-11L**

**Hillel at The George Washington University and The George Washington University
(Variance and Special Exception Approval and an Amendment to and Further Processing
of the 2007 Foggy Bottom Campus Plan)
November 23, 2015**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing to consider: (1) an application from Hillel at The George Washington University (“Hillel”) for variance relief from the density (floor area ratio [“FAR”]), lot occupancy, rear yard, and parking requirements as well as special exception approval for roof structures that do not meet the setback requirements, to permit the construction of a new building for Hillel; and (2) an application from The George Washington University (“University”) for special exception approval of an amendment to the 2007 Foggy Bottom Campus Plan and further processing of the Campus Plan, to permit university use of leased space within the project, for property located in the R-5-D Zone District and within the boundaries of the Campus Plan at 2300 H Street, N.W. (Square 42, Lots 820 and 840).

HEARING DATE: June 23, 2014

DECISION DATE: November 23, 2015

FINDINGS OF FACT

Application, Parties, and Hearing

1. By Z.C. Order No. 06-11/06-12, dated March 12, 2007 (“Campus Plan/PUD Order”), the Commission approved the 2007 Campus Plan and a related first-stage PUD for the University’s Foggy Bottom campus (“Campus Plan”).
2. The property that is the subject of this application is located at 2300 H Street, N.W. (Square 42, Lots 820 and 840 (“Property”). The Property is located within the boundaries of the University’s Campus Plan.

3. On March 27, 2014, Hillel filed an application with the D.C. Board of Zoning Adjustment (“BZA”) for variance and special exception relief required to permit the construction of a new building on the Property for use by Hillel as a house of worship and related accessory uses (“Project”). The case was assigned BZA Case No. 18764 and scheduled for a public hearing before the BZA on June 3, 2014.
4. On April 22, 2014, the University filed an application for amendment and further processing of the Campus Plan in order to permit university use of leased space on two floors of the Project. (Exhibit [“Ex.”] 1-10.) Also on April 22, 2014, the University filed an application for approval of a minor modification of the Campus Plan/PUD Order to clarify that the proposed university use of leased space does not require second-stage PUD approval. That matter was docketed as Z.C. Case No. 06-11M/06-12M.
5. A public hearing on the University’s application was scheduled for Monday, June 23, 2014. Notice of the public hearing was published in the *D.C. Register* on May 2, 2014 and was mailed to Advisory Neighborhood Commission (“ANC”) 2A and to owners of all property within 200 feet of the Property. (Ex. 3, 4.)
6. At its May 12, 2014 public meeting, the Commission voted to consolidate BZA Case No. 18764 with Z.C. Case No. 06-11L. Pursuant to the Commission’s action, on May 14, 2014, the University and Hillel (together, “Applicant”) filed an amendment to the University’s original application to: (a) add Hillel as a co-applicant; and (b) request variance relief from the density, rear yard, lot occupancy, and parking requirements as well as special exception approval for roof structures that do not meet the setback requirements, to permit the construction of the Project. (Ex. 5-5D.)
7. A revised public hearing notice on the amended and consolidated application was published in the *D.C. Register* on May 23, 2014 and was mailed to ANC 2A and owners of all property within 200 feet of the Property. (Ex. 6, 8.)
8. On June 9, 2014, the Applicant filed a pre-hearing statement updating and supplementing the original application.
9. On June 19, 2014, St. Mary’s Episcopal Church (“Church”) filed a motion for continuance of the public hearing in order to give the Church and Hillel additional time to negotiate a resolution to the Church’s concerns regarding the construction impacts of the Project. On June 20, 2014, the Applicant filed a motion in opposition to the continuance, stating that the zoning issues regarding the application were ready for the public hearing, and that the issues regarding the construction agreement could be negotiated and addressed between the hearing and the Commission’s decision on the matter. At the public hearing, the Commission voted to deny the Church’s request because the issues raised by the Church focused on construction rather than zoning issues. (Transcript [“Tr.”] June 23, 2014 at pp. 16-17.)

10. The public hearing was conducted on June 23, 2014. The hearing was conducted in accordance with the provisions of 11 DCMR §§ 3022 and 3117.
11. At the hearing, the Applicant presented evidence from Rabbi Yoni Kaiser-Blueth of Hillel, Susi Cora of the University, Elba Morales of Hickok-Cole Architects, and Mic Burns of Prospera. Ms. Morales was qualified as an expert witness in the field of architecture, based on her level of education and years of practice in the field. Mr. Burns was qualified as an expert in the field of architecture, with a focus on development and construction, based on his years of practice and experience with construction involving historic structures in the District of Columbia. Counsel for the Church objected to Ms. Morales' qualification because she was not registered as an architect, but the Commission concluded that Ms. Morales' extensive experience as a lead project designer on multiple projects qualified her as an expert witness. (Tr. June 23, 2014 at pp. 19-33.)
12. The Office of Planning ("OP") submitted a report and provided testimony in conditional support of the application. (Ex. 31.) OP found that the application satisfied all the criteria for the requested relief for the Project, including that the properties are affected by an exceptional condition resulting in a practical difficulty and that there would be no adverse impact, subject to the conditions outlined in the OP report. OP further found that the application satisfied all of the criteria for the requested campus plan amendment and further processing approval pursuant to § 210 of the Zoning Regulations, again subject to the conditions outlined in the OP report. Finally, OP concluded that the proposed Project and collaboration between Hillel and GW was not inconsistent with the District of Columbia Comprehensive Plan, including the designation of the Property in the Institutional Land Use category on the Future Land Use Map.
13. The District Department of Transportation ("DDOT") also submitted a report and provided testimony in support of the application. (Ex. 24.) DDOT found that the vast majority of users of the Project are Foggy Bottom students that are expected to live within close proximity to the site and are highly likely to utilize non-automobile modes. DDOT further found that ample parking in nearby parking garages is available to accommodate those who choose to drive to the site. Finally, DDOT expressed no objection to the requested zoning relief and concluded that the Project's loading needs would be addressed through a curbside management plan to be determined as a part of the District's public space permitting process. (Tr. June 23, 2014 at pp. 168-70, 176.) In addition to the Applicant, ANC 2A was automatically a party to the application and submitted a report and testimony in conditional support of the application. (Ex. 36, 39.) The Commission waived the requirements of § 3012.5 to permit ANC 2A to submit a late report. (Tr. June 23, 2014 at p. 34.) ANC 2A voted 6-0-0 to conditionally support the Project, provided that the Applicant and Church enter into a construction management agreement, the Applicant address specific concern about appreciably negative impacts on the Church's light and air, the Applicant work to improve the curbside management for the Project, and be sensitive to potential construction impacts regarding the Project. The ANC also raised no objection to the campus plan amendment, provided that the University agree to limit the use of the Project by faculty and staff and forego the

development of Site 77D. The chair of the ANC also testified regarding the application at the public hearing.

14. In response to the conditions outlined in the OP report, the DDOT report, and the ANC report, the Applicant agreed that:
 - a. Hillel would abide by a construction management plan that included specific provisions to address the Church's concerns about appropriate monitoring to protect the Church from damage; (Ex. 73, Tab B.)
 - b. GW would use the GW-leased space within the Project for student life and academic uses only, and refrain from using the GW-leased space within the Project for GW faculty and staff offices except for staff offices directly related to the uses within the Project, as set forth in the conditions of approval; (Ex. 12.)
 - c. GW would forgo the development of approved development Site 77D as a square footage offset to the proposed expansion of university use in the Project, as set forth in the conditions of approval; (Ex. 12.)
 - d. Hillel would revise the location and design of the roof structure to reduce its visibility, and revise the design of the Project to respond to Church concerns about light and air; and (Ex. 73A.)
 - e. Hillel would agree to use trash bins rather than carts, and work with DDOT regarding curbside management through the public space process. (Ex. 73.)
15. On May 19, 2014, the West End Citizens Association ("WECA") filed an application for party status in opposition to the application, which was granted by the Commission. (Ex. 7.) WECA submitted testimony in opposition to the application. (Ex. 48.) WECA raised five major areas of concern: the reallocation of density from Site 77D to the Property; the lack of amenities to offset the impact of the Project; the impact of the lot occupancy and rear yard variances, the impact of the Project on pedestrian safety and parking as well as the loading impact of the Project, and the requirement for historic preservation review.
16. On June 6, 2014, the Church filed an application for party status in opposition to the application, which was also granted by the Commission. (Ex. 10.) The Church submitted evidence and provided testimony in opposition to the application. (Ex. 45-47, 49-50.)
 - a. The Church raised five major areas of concerns: the requested lot occupancy variance, the location of the building entrance, the impact of the Project on the Church's alleged right of access through the "north gate" from the Rectory, the proposed building projections, and potential construction impacts;

- b. The Church testified extensively about previous damage to the Church allegedly related to the construction of the GWU Health and Wellness Center. The Church acknowledged that the Church had not suffered damage from the construction of the original Hillel building in the 1980s, nor had it suffered damage from a recent earthquake. (Tr. June 23, 2014 at p. 265, pp. 267-268.) The Church also did not present evidence that the construction of other nearby large buildings in the square (for example, Amsterdam Hall or St. Mary's Court) had caused damage to the Church; and
 - c. The Church's structural engineer, John Matteo, was qualified as an expert in the field of structural engineering. Mr. Matteo attributed the previous alleged construction damage to the flexibility of the retention system given the depth of excavation and the level of monitoring of that system. (Tr. June 23, 2014 at pp. 257, 262.) Mr. Matteo stated, however, that when done properly, underpinning and other excavation could be done successfully, noted that monitoring systems were more advanced, and acknowledged that he had never experienced issues in his own construction projects. (*Id.* at p. 267, pp. 285-86.) Mr. Matteo stressed the most important measures for managing and protecting against construction impacts were in advance of review of the process and system for excavation, and appropriate levels of monitoring during construction for any building movement. (*Id.* at pp. 274, 277.)
17. The Commission received letters and testimony from numerous persons in support of the application. (Ex. 13-18, 20-23, 25-26, 28-30, 32-33, 35.) The Commission also received testimony from a person in opposition to the application. (Ex. 27, 38.)
18. At the close of the public hearing on June 23, 2014, the Commission closed the record except for certain items requested by the Commission and set the matter for decision at its July 28, 2014 public meeting. Following the public hearing, Hillel and the Church continued to negotiate to attempt to reach a mutually acceptable resolution of construction management concerns. During these negotiations, Hillel also redesigned the Project to address the Church's concerns about the impact of the Project: (Ex. 73.)
- a. On July 8, 2014, the Applicant requested a postponement of the final decision to the September 8, 2014 public meeting. (Ex. 53-54.) The Commission granted the request;
 - b. On August 13, 2014, the Applicant and the Church requested a joint postponement of decision to the October 20, 2014 public meeting. (Ex. 55.) The Commission granted the request;
 - c. On September 29, 2014, the Applicant and the Church requested a second joint postponement of the decision to the January 26, 2015 public meeting. (Ex. 57.) The Commission granted the request;

- d. On January 12, 2015, the Applicant and the Church requested a third joint postponement of the decision to the April 27, 2015 public meeting. (Ex. 58.) The Commission granted the request;
 - e. On March 25, 2015, WECA filed a request to dismiss the application based on the length of time since the public hearing. WECA alleged that Hillel lacked sufficient funds to continue its legal representation in the matter and that little progress had been made in discussions with the Church. On March 26, 2015, Hillel filed a response to WECA's request, documenting that significant progress had been made with the Church leading to a redesigned Project that had been approved in concept by both the Church and Hillel, but required further development of the design and review by the parties to reach full support;
 - f. On April 10, 2015, the Applicant and the Church requested a fourth joint postponement of the decision to the September 21, 2015 public meeting. (Ex. 61.) WECA opposed the request. (Ex. 62.) ANC 2A requested that the Commission permit the ANC to file its report by September 18, 2015, given the ANC's meeting schedule in September;
 - g. At its public meeting on April 15, 2014, the Commission voted to deny WECA's motion to dismiss, finding that additional time was warranted given the complexity of the site and the continued efforts by Hillel and the Church to work cooperatively, and granted the fourth postponement request as well as the ANC's request for additional time; (Tr. April 15, 2015 at p. 39.)
 - h. On September 8, 2015, the Applicant and the Church requested a fifth joint postponement of the decision to the October 19, 2015 public meeting. (Ex. 64.) WECA supported the request. (Ex. 65.) ANC 2A requested that the Commission delay its decision to permit the ANC to file the report after its October 21, 2015 meeting; (Ex. 66.)
 - i. At its public meeting on September 21, 2015, the Commission granted the fifth postponement request and set the decision date for November 9, 2015 in order to accommodate the ANC's meeting schedule; and
 - j. On October 2, 2015, the Applicant and the Church outlined the specific progress made to date and requested a final joint postponement of the Applicant's posthearing submission and the findings of fact and conclusions of law for all parties to October 19, 2015. (Ex. 67.) WECA opposed the request. (Ex. 68.) ANC 2A and FBA supported the request. (Ex. 70, 71.) The Commission granted the request.
19. On October 19, 2015, the Applicant filed its post-hearing submission responding to the issues raised by the Commission and the parties at the public hearing. (Ex. 73.) The post-hearing submission included revised plans reflecting revisions to the Project that

were made in response to the requests of the Commission as well as concerns of the Church. (Ex. 73A.) The post-hearing submission also included a construction management plan proffered by Hillel. (Ex. 73B.) Finally, in response to a letter from the Church dated August 19, 2014, in which the Church alleged that the University had not recorded an easement required pursuant to the approval of a residence hall adjacent to the Property and the Church in BZA Application No. 16036, the Applicant included a copy of an easement, which was executed by the University and the Church and recorded in the land records on December 23, 2014, providing the easement requested by the Church and required by the BZA order. (Ex. 73C.) The Applicant also filed its proposed findings of fact and conclusions of law. (Ex. 79.)

20. ANC 2A submitted a letter dated October 28, 2015. (Ex. 74.) The letter stated that because the Applicant and the Church were unable to reach a construction management agreement, the ANC was unable to pass a resolution in support of the application, and voted to re-submit its previous report stating its conditional support for the application.
21. The Church submitted a letter dated October 30, 2015. (Ex. 75.) The letter stated that despite the revisions to the Project design, the Church believed the revised design still would have an adverse impact on the light and air in the backyard of the Church's rectory, and result in the loss of use of the Church's North Gate and access to H Street via Hillel's parking lot. The letter stated the Church's reasons for concluding that the construction management plan offered by the Applicant was inadequate. The letter also stated that the Church believed that the pedestrian easement granted to the Church was not an adequate substitute for the loss of the Church's use of the North Gate or access to H Street through Hillel's parking lot, and that the Hillel project should be subject to a curbside management plan to address the loading needs of the Project.
22. WECA submitted a letter dated October 30, 2015. (Ex. 76.) The letter stated that WECA continued to object because the Applicant's revisions to its design were not sufficient to address WECA's objections and the Applicant's proposed construction management plan was not sufficient to protect the Church. The letter also listed what WECA believed were errors in the Applicant's proposed findings of fact and conclusions of law.
23. DDOT submitted a second report dated October 26, 2015. (Ex. 77.) The report stated that the bollards and sidewalk café shown in the revised plans are not likely to be approved in the public space permitting process.
24. On November 4, 2015, the Church submitted a motion requesting that the Commission re-open the record to permit St. Mary's to respond to the Applicant's proposed findings of fact and conclusions of law. (Ex. 78).
25. At its public meeting on November 9, 2015, the Commission granted the Church's motion and re-opened the record to receive the Church's response to the Applicant's proposed findings of fact and conclusions of law. (Ex. 80.) The Commission also announced that it would consider final action at its November 23, 2015 public meeting.

26. At its November 23, 2015 public meeting, the Commission took final action to approve the application.

The Property and Surrounding Context

27. The Property is located at the northeast corner of Square 42, at the intersection of 23rd and H Streets, N.W. The Property is currently improved with Hillel's existing structure and a driveway. (Ex. 12.)
28. The Property is a rectangular corner lot with 75 feet of frontage along H Street and 61 feet of frontage along 23rd Street, and a total area of 4,575 square feet. (Ex. 12.)
29. The Property is located in the R-5-D Zone District. The R-5-D Zone District is a medium-high density zone that permits residential and church uses as a matter of right. Other institutional uses, such as college and university use, are permitted with a special exception. The R-5-D Zone District generally permits construction to a height of 90 feet, density of 3.5 FAR, and lot occupancy of 75%.
30. The Property is located within the boundaries of the Foggy Bottom Campus Plan as set forth in the Campus Plan/PUD Order.
31. The Property is not designated as a historic landmark, nor is it located within the boundaries of a historic district.
32. To the south of the Property, along 23rd Street, is property owned by the Church. Most proximate to the Property is a rowhouse structure, located at 728 23rd Street, N.W. on Lot 822, that has been used by the Church as a rectory but has been rented out for the past four years. (Tr. June 23, 2014 at p. 283.) Other structures include the Parish Hall and the main sanctuary, which are located at 730 23rd Street, N.W. on Lot 821. The Church property and structures at 730 23rd Street are designated as a historic landmark under the D.C. Historic Landmark and Historic District Protection Act of 1978 ("HP Act"); the rowhouse is not listed as a historic landmark. (Ex. 73.)
33. To the west of the Property, along H Street, is an eight-story residence hall owned by the University. The residence hall was constructed pursuant to zoning approval in BZA Application No. 16036. To the north of the Property, across H Street, is a seven-story academic building owned by the University. To the east of the building, across 23rd Street, is a parking lot that is slated for redevelopment under the Campus Plan. (Ex. 12.)
34. The Church, the adjacent residence hall, and all other properties in Square 42 are located in the R-5-D Zone District and within the boundaries of the Foggy Bottom Campus Plan.
35. The Foggy Bottom-GWU Metrorail station is located approximately one block north of the Property.

The Project

36. The Applicant proposes to demolish the existing structure and construct a new four-story building. The Project will also contain one below-grade story. (Ex. 12.)
37. The majority of the Project will be used by Hillel as a place of worship and related accessory uses. The first floor will contain the primary chapel space as well as a lobby for informal student gathering. The second floor will contain offices and meeting spaces for student counseling. The lower level will contain a kosher food service facility (including separate kitchens for meat and dairy) as well as dining and student life space. (Ex. 12.)
38. The proposed building will provide more space for Hillel's activities: some proposed spaces will be larger than the spaces in the existing building, and others will be arranged so that they can be reconfigured into larger spaces depending on the event or activity. (Tr. June 23, 2014 at p. 151.)
39. Hillel will lease out the top two floors to the University for academic and student life uses. The lease will help fund the construction of the Project. (Ex. 12.)
40. The Property will not include any vehicular parking spaces. The Property will also not include an area for off-street loading or building service; off-street loading is not required for a house of worship with less than 30,000 square feet under § 2201 of the Zoning Regulations.
41. The Project will have a height of 56'1", which is within the matter-of-right height of 90'. The Project will have a density of 3.69 FAR, which slightly exceeds the matter-of-right FAR of 3.5. The use as a place of worship by Hillel is permitted as a matter of right in the R-5-D Zone District, as are Hillel's accessory uses related to the place of worship use. The use by the University in the R-5-D Zone District requires a special exception pursuant to § 210 of the Zoning Regulations. The Applicant requested relief from the lot occupancy, rear yard, parking, and roof structure regulations as set forth below. (Ex. 12, 73.)

Zoning Relief

Variance Relief

42. Variance relief from the lot occupancy, rear yard, and parking requirements of the Zoning Regulations is required for the Project, for the reasons stated in the findings of fact that follow:
43. The R-5-D Zone District establishes a maximum density of 3.5 FAR. (11 DCMR § 402.4.) As originally proposed, the Project would have had a density of 3.75 FAR. As revised in the post-hearing submission, the Project will have a density of 3.69 FAR

44. The R-5-D Zone District establishes a maximum lot occupancy of 75%. (11 DCMR § 403.2.) As originally proposed, the Project would have occupied 100% of the entire lot. As revised in the post-hearing submission, the Project will occupy 93% of the underlying lot.
45. The R-5-D Zone District establishes a minimum rear yard requirement based on the height of the building. As originally proposed, the Project would have had no rear yard. As revised in the post-hearing submission, the Project will have a rear yard of four feet, which is less than the minimum required rear yard of approximately 20' required under § 404.1 of the Zoning Regulations. Finally, it is well established that the Zoning Regulations do not require that a rear yard be located on the opposite side of the front entrance. (See, e.g. BZA Application No. 15644 at pp. 18-19, citing BZA Appeal No. 6186.)
46. The R-5-D Zone District establishes a minimum parking requirement based on the size and mix of uses within the building. (11 DCMR § 2101.1.) The Project will not provide any parking, which is less than the 22 parking spaces required for a house of worship with 220 seats. (Ex. 73.) No additional parking is required for the accessory uses within the Hillel portion of the Project. Furthermore, no additional parking is required for the university use within the Project, because the property is located within the boundaries of the University's campus plan. (Ex. 12.)

Exceptional Condition

47. The Property is confronted with the confluence of the following exceptional situations or conditions:
 - a. The Property has a size of 4,575 square feet, which is considerably smaller than the lots for other nearby religious institutions as well as the lots for synagogues in the District of Columbia;
 - b. The Property is located on a corner lot. Although not exceptional in and of itself, the configuration as a corner lot is exceptional in this case because the corner lot configuration creates street frontage on two fronts, the lot lacks rear alley access, and the lot is located in the high height and medium-high density R-5-D Zone District category; and
 - c. The Property is relatively narrow (6').(Ex. 12.)
48. The Property is owned by Hillel, which is an organization with unique institutional and religious needs that are not related to general conditions in the neighborhood as follows:
 - a. Hillel must also be able to accommodate religious services and practices unique to the Jewish faith. Hillel is a Jewish campus community that serves the needs of

and provides a wide array of opportunities for Jewish students at the University to shape their religious, educational, and cultural college experience. Hillel runs weekly classes and weekly Shabbat services and dinner as well as facilitates work in cultural events, spiritual practices, and educational opportunities. Hillel is consistently ranked among the top five Hillel programs at private universities; (Ex. 12; Tr. June 23, 2014 at p. 43.)

- b. Hillel's use is uniquely tied to the University. In order to accomplish its mission of serving GW students, Hillel must be located on or close to the Foggy Bottom campus. The Applicant provided evidence that there were no commercial properties for sale within Zip Code 20037, nor were there residential properties of the required lot size for sale in the same zip code; and (Ex. 12.)
- c. The existing facility provides Hillel with approximately 11,437 gross square feet, including one floor that is below grade. (Ex. 73.) The existing facility, including the chapel, student meeting spaces, kosher kitchens, and other accessory uses, are permitted as a church pursuant to the existing certificate of occupancy. (Ex. 5C.) Given the size of the University's Jewish population, the existing Hillel facility is small in both size and in size per student compared to Hillels at other educational institutions. (Ex. 73.) The existing Hillel facility is unable to accommodate existing demand for certain events, much less future planned growth:
 - i. The University has a population of approximately 4,500 Jewish students, including 3,000 undergraduate students and 1,500 graduate students. (Ex. 12.) Hillel is open to and available to all Jewish students at the University as well as students of all faiths and other community members; (Tr. June 23 at pp. 136-43.)
 - ii. Over the past four years, the number of students involved in Hillel activities has significantly increased. (Tr. June 23 at pp. 142-43.) Hillel testified that the organization has had to turn away people because of a lack of space, not only for holidays but also for regular Friday Shabbat services and dinner; and (*Id.* at p. 151.)
 - iii. Hillel has expanded its mission in recent years to include such initiatives as UJew, which reaches out to students seeking a non-conventional Jewish organization, and a partnership with Gather the Jews, a young adult network that has emerged as the pre-eminent resource for young adults seeking connections and information on Jewish religious, social, and educational opportunities in the D.C. area. (Ex. 12; Tr. June 23 at p. 140.)

Practical Difficulty—Lot Occupancy, and Rear Yard

- 49. The strict application of the lot occupancy and rear yard requirements of the Zoning Regulations cited above result in practical difficulty in complying with the regulations,

because they impair the ability of the Applicant to accommodate its existing and planned future needs on the Property:

- a. The Project must include the following features to accommodate Hillel's religious and programmatic needs:
 - i. A sanctuary large enough to accommodate worship services as well as vestibule to provide transition from the street to the sanctuary;
 - ii. A dining space large enough to accommodate regular Shabbat services as well as Seder during Passover and other holiday meals;
 - iii. Two kitchens to accommodate Kosher food preparation and provide Kosher food services to Jewish students at the University who keep Kosher;
 - iv. A rooftop that is large enough to accommodate the construction of a sukkah for outdoor religious services during the Sukkot holiday, as well as adequate elevator and stairway access to the roof;
 - v. Space for student counseling, ministry, and education; and
 - vi. Space for informal gathering and socializing to draw students into the facility; and
- b. Hillel's institutional needs translate into a physical need to include rooms that are large enough on each floor to provide adequate seating for growing student demand in each of the worship and dining spaces, as well as future expansion space for further projected growth both within Hillel's core mission and in affiliated efforts such as Gather the Jews.

(Ex. 12.)

50. The size, narrowness, and corner lot configuration of the Property combine with Hillel's specific institutional needs to create a practical difficulty in complying with the lot occupancy and rear yard requirements as follows:
 - a. Hillel's use is considered an assembly use under the building code, which drives requirements for multiple stairways, corridors, and plumbing uses that are larger than other types of construction. The use and occupant load also drives a practical requirement for multiple elevators. This impacts not only the layout of each floor, but also the roof layout; and
 - b. Multiple kitchen facilities required for Kosher food preparation require exhaust shafts that must be accommodated within the building core.

As a result, the Project has an exceptionally large building core. This core has a fixed size driven by the use and program, and it is proportionately very large compared to the small lot size. Furthermore, the corner lot configuration pushes the core to the west and south edges of the building, creating an inefficient single-loaded corridor layout. The narrowness of the lot further reduces the efficiency of the layout. (Ex. 12.)

51. Compliance with the rear yard and lot occupancy requirements would eliminate the ability to accommodate Hillel's program needs for the Property. Because the core size is fixed, a reduced floorplate eliminates program space and reduces the seating area in the worship and dining areas below Hillel's minimum requirements. Increasing the height of the building does not adequately recover the lost space or seating area because it results in significantly inefficient floor layouts on each floor, which imposes substantial cost, and it fractures the seating for the worship space, which impairs the fundamental worship practices of Hillel and its congregants. (Ex. 12.)

Public Good and Conformance with the Zone Plan—Lot Occupancy and Rear Yard

52. The Project serves the public good because it will permit Hillel to remain in place on the University campus and continue to provide the University's Jewish population with religious, educational, and social support including in particular larger worship spaces for religious services, and larger dining spaces and facilities to support Shabbat dinners as well as those students who keep Kosher.
53. Hillel's location on the Property, which is within the boundaries of the Campus Plan, is also in the public good and consistent with the intent and integrity of the zone plan. If Hillel were unable to remain in place, it would need to seek out property into the surrounding residential neighborhoods.
54. The lot occupancy and rear yard variances will not substantially impair the intent, purpose, and integrity of the zone plan. The Project as revised will not restrict light or air to the Church property compared to what could be constructed as a matter of right. A matter-of-right building could be structured to a height of 90' – 50% taller than the Project – and it could be constructed along the lot line with the Church property, which would provide for less light and air than the proposed Project. (Indeed, the existing Hillel building is constructed up to the lot line with the Church property.) (Ex. 12.)
55. The Applicant provided shadow studies that demonstrated that the Project, which is north of the Church property, will not impose additional shadow on the Church property to the south. (Ex. 12A.)
56. The Applicant provided evidence that a rear yard was not required to provide access to and from the rear yard of the Church rectory building. An easement had been provided from the University to the Church to permit access to the rear yard of the Church rectory building across University property to the public alley. (Ex. 73C.)

57. The Applicant relocated the entrance to the Project from 23rd Street (near the Church property) to H Street (away from the Church property), which will reduce the impact of the proximity of the Project to the Church property. (Ex. 73.)
58. Finally, the Applicant provided evidence that a rear yard was not required to accommodate the service and delivery needs of the Project:
 - a. First, off-street loading is not required under § 2201.1 of the Zoning Regulations;
 - b. Second, the Applicant and DDOT both testified that curbside loading could accommodate the Project's needs, and any required mitigation would be addressed through the public space review process. The Applicant provided evidence that the loading demand for the Project would be relatively minimal given the size and uses within the Project. (Ex. 12B.) The Applicant and DDOT provided evidence that the existing bus stop in front of the Property, which only serves one bus line, could be eliminated because there are other stops located one block to the west and one block to the south that are equally as proximate to the residential neighborhood, St. Mary's Court, and the main entrance to the Church. (Ex. 73; Tr. June 23, 2014 at pp. 168-76.) DDOT also testified that the elimination of the bus stop was consistent with WMATA policy for closely-sited bus stops, and that the elimination of the bus stop tends to improve service quality and operations. (Tr. June 23, 2014 at pp.169-70.) The elimination of the bus stop would free up space for curbside loading for the Project during the day and for additional parking in the evening; and (Ex. 73.)
 - c. Third, if loading were provided on the Property in a rear yard, the lack of alley access means that trucks would need to back-in or back-out over the sidewalk, increasing the likelihood of pedestrian-vehicular conflicts. (Ex. 12.) The Commission notes that WECA specifically supported a curbside loading zone for a nearby University building in Z.C. Case No. 06-11C/06-12C, and argued against a back-in loading berth for another recent University building in Case No. 06-11F/06-12F. (See Z.C. Order No. 06-11C/06-12C at pp. 9-10; Z.C. Order No. 06-11F/06-12F at pp. 9, 13.)

Practical Difficulty—FAR

59. The same lot configuration, core requirements, and layout needs create a practical difficulty in complying with the FAR requirement. A reduced floor plate at the top floor that would comply with the FAR constraints would also result in a floor plate that is largely building core and lacks actual useable space. Furthermore, the same partial floor results in a much smaller roof that is unable to accommodate Sukkot and other outdoor religious services. (Ex. 12.)
60. Therefore, compliance with the FAR requirements would require Hillel to eliminate an entire floor from the Project, which deprives Hillel of both the long-term expansion space

it needs to accommodate future growth and the short-term revenue it requires to construct the facility. Alternatively, compliance with the FAR requirements could be achieved by eliminating a fixed amount of space from each floor, but this would again reduce the amount of seating and program area and increase the inefficiency of each floor. (Ex. 12.)

Public Good and Conformance with the Zone Plan—FAR

61. The requested FAR variance is minor and represents a five percent increase over what is permitted as a matter of right, so it will not impair the integrity of the zone plan. Furthermore, the presence or absence of the FAR variance does not impact light and air to the Church property, because the excess FAR could be taken from portions of the Project that do not abut or face the Church property.

Practical Difficulty—Parking

62. The size, shape, and narrowness of the lot cannot efficiently accommodate parking spaces, ramps, and drive aisles without digging deeply for many parking levels at great expense. Furthermore, such underground parking would be highly inefficient, because the bulk of each floor would be devoted to ramps and drive aisles. Finally, parking would have adverse impacts on the programmed floors of the Project – the entrance and ramps would reduce the amount of area available for the worship and dining components, and additional intake and exhaust for the garage levels would exacerbate the already inefficient building core. (Ex. 12.)
63. Providing surface parking would also create practical difficulty because of the amount of area that would be lost at ground level for such spaces. (Ex. 12.)

Public Good and Conformance with the Zone Plan—Parking

64. The Property's lack of on-site parking will not impair the intent or integrity of the zone plan. The location on the Foggy Bottom Campus means that the vast majority of users – students at the University, will reside on or near campus and therefore be able to walk or bike to the Project. Furthermore, the Project is located a block from the Foggy Bottom-GWU Metrorail station and is also well-served by multiple bus lines, which means that students and staff who do not live on or near campus will still be able to use non-automobile modes of transportation to reach the Project. Finally, the campus includes multiple parking garages that will provide ample parking for those visitors and staff who choose to drive. (Ex. 12.)
65. The lack of below-grade parking also reduces the depth of excavation required to construct the Project, which reduces the risk of construction damage to the Church. (Tr. June 23 at p. 262.)

Special Exception Relief

66. The Zoning Regulations generally require that each building enclose all roof structures and mechanical equipment within in a single penthouse enclosure of uniform height that is set back one-to-one from all exterior walls. (11 DCMR §§ 400.7(b), 411.) As originally proposed, the Project located its penthouse parallel to and along the south side of the building, and requested setback relief from the east exterior wall. As revised in the post-hearing submission, the Project locates the penthouse against the west side of the building, adjacent to the taller Amsterdam Hall. The penthouse now runs perpendicular to the north and south walls, but is not set back from either wall, which requires special exception relief pursuant to § 411.11 of the Zoning Regulations.
67. The size and location of the penthouse is driven by the Commission's direction to relocate the penthouse to the west side of the Project and the need to provide multiple stairways, elevators, and accessory spaces to support religious ceremonies that will take place on the roof of the Project. (Ex. 12, 73.)
68. Providing a compliant setback for the penthouse would result in an impractical building design. Within the building, it would force the building's core elements to be located in the center of the Project, eliminating the ability to achieve the single contiguous area required for worship and dining areas. On the roof, the compliant penthouse would eliminate the ability to create an area large enough for Sukkot and other outdoor services. (Ex. 73.)

Section 210 Approval

69. The Zoning Regulations require that college or university use within the R-5-D Zone District secure special exception approval pursuant to § 210 of the Zoning Regulations. (11 DCMR § 210.1.) Furthermore, each use must be consistent with a "campus plan" that has been approved for the college or university campus. (11 DCMR § 210.4.) The Commission ordinarily approves changes to the campus plan as amendments to the campus plan, often in conjunction with further processing approval for the specific building or use requiring the amendment. (See, e.g. Z.C. Order No. 07-12, Z.C. Order No. 07-23.)
70. The campus plan for the Foggy Bottom campus was approved by the Commission in Z.C. Case No. 06-11/06-12. Pursuant to the approved Campus Plan, 16 development sites were approved. One such development site is located immediately across 23rd Street from the Property. (Z.C. Order No. 06-11/06-12.)
71. In order to permit the use of the top two floors of the Project by the University, the University requested an amendment to the Campus Plan to permit university use on the Property. The University also requested further processing approval for the proposed university use.

72. Pursuant to 11 DCMR § 210.2, the university use within the Project is not likely to become objectionable to neighboring property due to noise, traffic, number of students, or other objectionable conditions for the following reasons:
- a. The proposed space will be used for decompression space to accommodate existing or new programs and initiatives, and the University has not requested a change in the student or faculty and staff population caps;
 - b. At the request of ANC 2A, the University agreed to use the GW-leased space within the Project only for student life and academic uses, and refrain from using the space within the Project for faculty and staff offices, with an exception for staff offices directly related to the uses within the project. Therefore, the university use of the Property will directly serve students who are already located on the campus;
 - c. Also at the request of ANC 2A, the University agreed to forgo the development of approved development site 77D. Site 77D was approved for 9,504 square feet of gross floor area, and the university use within the Project will consist of approximately 8,382 square feet of gross floor area. Therefore, as a result of the swap, the university use of the Property will not increase the FAR for the campus above the amount approved by the Commission in Z.C. Case No. 06-11. The Commission notes that it has approved similar FAR reallocation in connection with other campus plan amendments; (See, Z.C. Order No. 07-12 at p. 3; Z.C. Order No. 07-23 as examples.)
 - d. The proposed use is minor, and is still located well within the boundaries of the campus, so it is unlikely to generate any noise or other objectionable impacts on the surrounding residential neighborhood. The Commission previously determined in Z.C. Case No. 06-11/06-12 that a major development site across the street from the Property would not impose objectionable impacts due to noise, traffic, number of students, or other objectionable conditions on the surrounding residential neighborhoods. Accordingly, the Commission finds that the small amount of additional student life or academic space proposed by the University is not likely to create objectionable impacts, either;
 - e. The building entrance will be located on H Street, which is a major east-west link for the campus populated by other large University buildings, and away from the Church on 23rd Street. This will reduce noise and other objectionable impacts on the Church; and
 - f. The university use will not generate any objectionable traffic or parking impacts, because the users of the space will already be located on the campus.

(Ex 12.)

73. In accordance with 11 DCMR §§ 210.3 and 210.8, the Applicant demonstrated that the proposed building will be within the FAR limit approved for the campus plan as a whole. The university use will increase the total FAR of the campus by 0.007 FAR, and the total FAR for the residentially-zoned portions of the campus will remain at 3.16 FAR, which is well within the 3.69 FAR approved in the Campus Plan. Finally, the University has agreed to reallocate FAR from Site 77D to accommodate the proposed campus plan amendment, which means that the total FAR for the campus will remain within the 3.69 FAR approved by the Commission. (Ex. 12.)
74. As required by 11 DCMR § 210.4, the Applicant demonstrated that the proposed mixed-use campus life and academic/administrative designation is consistent with the use designation for adjacent and nearby properties, which include a mix of residential, campus life and academic uses. (Ex. 12.)
75. Pursuant to 11 DCMR § 210.7, the proposed use is consistent with the Comprehensive Plan. The university and church uses are consistent with the Property's institutional designation on the Future Land Use Map. Moreover, the partnership between the University and Hillel is the type of partnership encouraged by Policy EDU-3.2 and EDU 3.3.2 of the Comprehensive Plan.
76. For all of the reasons set forth above, the proposed university use is 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 Maps. The Project's combination of student-focused religious, academic and student life uses is appropriate for the medium high-density location within the Foggy Bottom Campus Plan boundaries.

CONCLUSIONS OF LAW AND OPINION

Authority of the Commission

The Commission is authorized to hear and decide applications for special exception relief pursuant to §§ 210 and 3104 of the Zoning Regulations, pursuant to § 3035 of the Zoning Regulations. The Commission is also authorized to approve variance relief and special exception relief related to campus plan applications, provided that the applicant meets the burden of proof under the applicable standards of the Zoning Regulations.

Variance Relief

The Applicant seeks variances, pursuant to § 3103.2, from the FAR, lot occupancy, rear yard, and parking requirements to allow the construction of the Project. The Commission is authorized under § 8 of the Zoning Act (D.C. Official Code § 6-641.07(g)(3)) to grant variances, as provided in the Zoning Regulations, “[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographic conditions or other extraordinary or

exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Official Code §§ 641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.” (11 DCMR § 3103.2.)

The Board concludes that the Applicant has met the burden of proof under § 3103.2.

Exceptional Condition

For the reasons stated in Findings of Fact Nos. 47-48, the Commission finds that the Property is affected by an exceptional condition arising from a confluence of factors on the property. An exceptional condition affecting a property can arise from many factors – including history, shape, and location – and a confluence of factors may combine to give rise to the exceptional condition. (*Gilmartin v. D.C. Bd. of Zoning Adj.*, 579 A.2d 1164, 1168 (D.C. 1990).) In addition, it is not necessary that the property be unreservedly unique to satisfy the “exceptional condition” standard. Rather, the applicant must provide that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood. *Id.* Finally, the exceptional condition is not limited to the land or the improvements, but also applies to the needs of an organization devoted to public service which seeks to upgrade and expand its existing inadequate facilities. (*Monaco v. D.C. Bd. of Zoning Adj.*, 407 A.2d 1091, 1099 (D.C. 1979).) Factors creating an exceptional condition for an institutional use include the existence and purpose of the use and the proximity of the use to the people that it serves. (*Draude v. D.C. Bd. of Zoning Adj.*, 582 A.2d 949, 955-56 (D.C. 1990).)

In this case, the confluence of the identified features of the Property, combined with Hillel’s needs, satisfy this legal standard for an exceptional condition affecting it, because they lead to a practical difficulty for the Applicant in complying with the Zoning Regulations. Hillel has sufficiently demonstrated that it is an organization devoted to serving the public that must expand its existing facilities, and has further demonstrated that it must remain located within the campus in order to be proximate to and serve its constituents. The lot’s small size compared to other comparable lots for religious institutions as well as its narrowness and corner lot configuration all combine with Hillel’s need to create significant, insurmountable challenges in complying with the Zoning Regulations. As the Court found in *Draude* when it concluded that an exceptional condition existed, “In order to build a useful structure, efficient use of space [is] an absolute necessity. The narrowness and odd shape of the lot are exceptional conditions in that . . . the function of the Addition would have been seriously impaired if a variance were not granted.” *Draude*, 582 A.2d at 962.

Practical Difficulty

For the reasons stated in Findings of Fact No. 49-51, 59-60, and 62-63, the Commission finds that the strict application of the FAR, lot occupancy, rear yard, and parking requirements would result in a practical difficulty to the Applicant due to the exceptional conditions affecting the Property. The Applicant demonstrated with sufficient evidence and testimony that the strict application of the Zoning Regulations would result in an inefficient and uneconomical building design. Economic or efficiency burdens are among those that the Commission may evaluate as legitimate practical difficulties imposed by the Zoning Regulations on the owner of a property. *Palmer v. D.C. Bd. of Zoning Adj.*, 287 A.2d 535,542 (D.C. 1972). So, too, are factors related to institutional necessity. In such cases, the applicant must demonstrate that “the specific design it wants to build constitutes an institutional necessity, not merely the most desired of various options” and show “precisely how the needed design features require the specific variance sought.” *Draude v. D.C. Bd. of Zoning Adj.*, 527 A.2d 1242, 1256 (D.C. 1987) (summarizing the *Monaco* test).

Therefore, the demonstrated inefficient use of the Property and inefficient design of the building that would result from compliance with the FAR, lot occupancy, rear yard, and parking requirements would impose a practical difficulty upon the Applicant. Moreover, strict application of the Zoning Regulations would also impair Hillel’s ability to provide adequate seating for its worship and dining services, which are integral and fundamental to its religious practices. As a matter of law, these demonstrated inefficiencies and impairment constitute a practical difficulty that justifies variance relief.

For the reasons stated in the findings of fact cited above, the Commission finds that the Applicant would face a significant design and functionality burden if the Project were to comply with the minimum lot occupancy, rear yard, and FAR requirements. The code requirements and practical needs for the assembly use mandate that a large portion of the building area be devoted to circulation and core elements. A building that complies with the lot occupancy, rear yard, and FAR requirements would not yield enough useable space for the worship, dining, and program space required by Hillel. Adding floors would not resolve the problem, because each of the worship and dining spaces would need to be fractured to achieve Hillel’s demand. The Commission also finds that compliance with the parking requirements would impose a significant burden, because the layout of the garage would be highly inefficient, and the ramps associated with the parking would impose the same adverse impacts on Hillel’s space needs within the Project.

Practical Difficulty—Institutional Need

The Commission was not persuaded by the opposition’s arguments that Hillel lacks a need for more space, or that Hillel’s needs could be accommodated within a smaller, compliant structure. Hillel has satisfactorily proved that the specific design is driven by the institutional need for a single contiguous worship space and dining space of a certain size, and that such spaces could not be constructed in a facility that complies with the requirements of the Zoning Regulations. As in *Draude*, the loss of substantial space that renders the facility unacceptable for its stated

purpose and goals constitutes a practical difficulty. (*Draude*, 582 A.2d at 962 (quoting the BZA’s finding that “the further narrowing of the [building] would have resulted in a building not acceptable for ambulatory care services”).)

Likewise, the Commission was not persuaded by the Church’s argument that because two floors will be leased to the University, Hillel does not have an institutional need for the new facility. Hillel has shown that the need for the requested relief flows for a building with floor plates that are large enough to accommodate the institutional needs described above while still meeting code requirements.

Public Good and Integrity of the Zone Plan

The Commission finds that the variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.

With respect to the lot occupancy and rear yard variances, the Commission notes that the Zoning Regulations would allow for the rear yard to be located on either the south or west lot line. Furthermore, the Zoning Regulations allow a significantly taller structure as a matter of right. Put another way, no setback from the Church structure is required and it is incongruent to find that providing a four-foot rear yard setback, with a significantly shorter building than permitted as a matter of right, would impair the public good or impair the zone plan. The reduction of light and air suffered by the Church as a result of the construction of this project is actually less than could occur if a building that complied with matter of right zoning limits was built on the site.

With respect to the FAR variance, the Commission concludes that the relief is minor, and notes that both the Commission and the BZA have repeatedly found that FAR variances required to meet an organization’s institutional needs and mission do not violate the zone plan. (See, e.g. Z.C. Order No. 04-19 (granting FAR variance to D.C. Water), BZA Application Nos. 18007, 16654, and 16312 (granting multiple FAR variances for Sibley Memorial Hospital), BZA Application No 14261 (granting FAR and court width variances to the University for an addition to expand its ambulatory care facilities).)

With respect to the parking variance, the Commission concludes that the facility is located on the campus of the population it is intended to serve, so most users will walk to the facility. To the extent that visitors or staff travel from greater distances, the Property is well served by Metrorail and bus service, and there are many nearby parking garages for those who choose to drive. Moreover, the intent of the Zoning Regulations is to provide adequate parking where needed. Here, parking on-site is not necessary given the location within the campus setting. Indeed, allowing Hillel’s population (which is largely the University population) to rely on University parking facilities is actually consistent with the Zoning Regulations, which aggregate parking resources within a campus plan. (See 11 DCMR § 2106.1; Z.C. Order No 06-11/06-12.)

Public Good—qa2 “North Gate” Right of Access

The Commission was also not persuaded by the opposition’s arguments that Hillel was obligated to provide a rear yard or other open space on its lot to provide access to the rear of the Rectory building on the Church property. The Zoning Regulations do not require that Hillel provide the Church with a right of access across the Property, nor do they grant the Commission with the right to review and enforce any alleged easement rights. (Tr. June 23, 2014 at pp. 279-80.) Notwithstanding the foregoing, the Commission concludes that the University addressed the Church’s concern about access to the rear yard of the Rectory building through the provision of an easement memorializing the right of access across the University’s Amsterdam Hall property as required by BZA Application No. 16036. The Commission further concludes that nothing in BZA Application No. 16036 granted the Church a right of access across the Property.

Public Good—Location of the Building Entrance

The Commission was not persuaded by the opposition’s arguments that the entrance should be relocated from 23rd Street to H Street. The Zoning Regulations do not require or restrict the location of building entrances on the Property. Notwithstanding the foregoing, the Commission concludes that the Applicant addressed the Church’s concern because it moved the building entrance from 23rd Street to H Street.

Public Good—Parking and Transportation Impacts

The Commission was not persuaded by the opposition’s allegations that the parking variance would harm the public good because of the proximity of the facility to the population that it serves as well as the presence of adequate transit alternatives and nearby parking facilities.

The Commission was also not persuaded by the opposition’s arguments that space on the Property should be devoted to loading facilities, or that curbside loading would harm the public good. The opponents asserted that loading facilities should be provided for the Project and expressed concern about the use of curbside space to accommodate the Project’s loading demand. The Commission concludes that the building contains less than 30,000 square feet of floor area, and therefore does not trigger a requirement for off-street loading under § 2201.1 of the Zoning Regulations.

To the extent that the Applicant uses curbside space to accommodate service and delivery to the Project, the use of such space is governed by public space regulations and policies promulgated by DDOT. The Commission notes that DDOT’s representative expressed confidence that DDOT would be able to address the issue through the public space process. To the extent that DDOT and WMATA decide to eliminate the existing bus stop in front of the Project to accommodate service and delivery to the Project, such decision is governed by DDOT and WMATA’s decision making processes. The Commission notes that both the Applicant and DDOT provided testimony and evidence that the elimination of the bus stop would not adversely impact service

given the proximity of other bus stops and further would actually likely improve bus service and operations.

Public Good—Construction-Related Impacts

The Commission concludes that the opposition's arguments that granting the rear yard or lot occupancy variance will harm the public good due to the potential of adverse impact to the Church due to construction damage misconstrues the variance standard. The focus of the third prong of the variance test is whether harm will result from the structure as built with the variance, not the construction of the structure itself. Even if the issue were relevant, the opposition has not shown that the minor zoning relief granted under this Order would cause greater impacts to the Church than proceeding under a matter of right design. In fact, the Church's testimony from its structural engineer did not state that the Project as designed would actually cause construction damage and its expert acknowledged that the construction adjacent to historic structures can be done successfully, and the implementation of certain measures can decrease the likelihood of damage. Further, the Commission notes that the District's Construction Code and environmental regulations are intended to control and mitigate the safety and environmental impacts of construction activity, and they specifically govern the Church's concerns. The Construction Code requires the protection of adjacent property, 12 DCMR § 3307.1, and establishes a process for adjacent property owners to raise concerns about the potential impact of adjacent construction, and empower the Department of Consumer and Regulatory Affairs ("DCRA") with the responsibility for resolving any differences. (12A DCMR § 3307.2.) Finally, the protections afforded by current District law will be enhanced by the construction management plan that the Applicant submitted into the record, compliance with which is being made a condition into this Order.

Here, the Applicant has proffered a Construction Management Plan that will address concerns about construction impacts and will sufficiently satisfy the concerns raised by the Church and its structural engineer. Among other measures, the Construction Management Plan provides for monitoring of building movement, gives the Church's structural engineer a right to review the construction plans and make recommendations, and extends construction-related insurance coverage to the Church.

With respect to the opposition's claims that construction would impose adverse impacts on parking, or pedestrian or vehicular traffic, the Commission again notes that the Construction Code and the public space regulations govern such impacts. The Commission also notes that DDOT testified that such impacts are routinely addressed through the preparation and review of a traffic control plan in conjunction with construction permits. (Tr. June 23, 2014 at pp. 178-82.)

Special Exception Relief - Penthouse

Subsection 400.7 requires that, in Residential zones, housing for mechanical equipment and stairway or elevator penthouses on the roof of a building or structure must comply with § 411 and must be set back from all exterior walls a distance at least equal to its height above the roof on which it is located.

The Project will have a single penthouse of equal height, as required by § 411, but special exception relief is required from the setback requirements for both the north and south portions of the penthouse. The penthouse is not set back from either wall.

Subsection 411.11 permits the Commission to grant special exception relief from penthouse requirements when compliance would be “restrictive, prohibitively costly, or unreasonable” because of “operating difficulties, size of building lot, or other conditions relating to the building or surrounding area” provided, that the intent and purpose of Chapter 4 is not “materially impaired by the structure, and the light and air of adjacent building [is not] affected adversely.”

The Commission concludes that this standard has been met. The Commission finds that the Applicant sufficiently demonstrated how setting back the penthouse would create an unreasonably located roof structure that would impact the location of the building core and adversely impact Hillel’s program and space needs both within the building and on the roof. Furthermore, the Commission notes that the penthouse as revised imposes less impact on the light and air of the Church than the penthouse as originally proposed along the south wall, which would have been permitted as a matter of right because the south wall was not an “exterior wall.” As designed, the penthouse is pushed up against the taller Amsterdam Hall, which mitigates the visual impact of the penthouse. The integration of a four-foot parapet wall further reduces the apparent height of the penthouse.

Pursuant to §§ 411.11 and 3104.1, the Commission finds that the proposed special exception under § 411.11 will not materially impair the intent of Chapter 4 and will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The intent of the penthouse requirements is to minimize the visual appearance of penthouses. The Applicant has demonstrated that the proposed penthouse will minimize appearance more than a conforming penthouse.

Pursuant to § 3104.1, the Commission finds that the proposed special exception under § 411.11 will not tend to affect adversely the use of neighboring property and, as required by § 411.11, specifically finds that the light and air of adjacent buildings will not be affected adversely.

Special Exception - Campus Plan Amendment and Further Processing

The Applicant is seeking special exception approval, pursuant to §§ 210 and 3104.1 of the Zoning Regulations, for an amendment to and further processing of its approved campus plan for the Foggy Bottom campus to allow university use on two floors of the Project. 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 Map and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map, subject to certain conditions specified in § 210.

Based on Findings of Fact Nos. 72-75, the Commission approves the requested special exception for the university use within the Project. The proposed use is consistent with the University's use of its surrounding property for university uses, is consistent with the Zoning Regulations and Map, and will not tend to adversely affect the use of neighboring property. The proposed university use is consistent with the Comprehensive Plan.

The Commission concludes that the location of the university use on the Property, in conjunction with the conditions proffered by the University limiting the use of the property and forgoing an equivalent amount of density elsewhere on the campus, will ensure that the Project is not likely to become objectionable due to noise, traffic, number of students, or other objectionable conditions.

The Commission was not persuaded by testimony from the opposition that alleged that the reallocation of density from Site 77D to the Property would impose objectionable impacts on the surrounding residential neighborhoods. The Property is still located squarely within the boundaries of the campus plan and is one block from the campus plan boundary. Although the location is closer to the Foggy Bottom neighborhood than Site 77D, the opposition failed to produce any evidence that the proposed university use would generate objectionable conditions. Indeed, given the relatively small size of the use and the presence of other larger university uses in the immediate area, it is likely that the *de minimis* increase in university density will be imperceptible.

Amenities and Relationship to the Campus Plan First-Stage PUD

As a part of the Campus Plan, the Commission also approved a first-stage PUD for the campus. The University has filed a separate application for a minor modification to the Campus Plan/PUD Order in Z.C. Case No. 06-12M, the Order approving that application is being published concurrently with this Order.

Historic Preservation Review

The District of Columbia Historic Landmark and Historic District Protection Act of 1978 only governs the review of demolitions, alterations, subdivisions, and new construction of property that is improved with a historic landmark or property that is located within the boundary of a historic district. The Property that is the subject of this application is neither designated as a historic landmark nor is it located within the boundaries of a historic district. Therefore, the Act does not apply, and the Historic Preservation Review Board has no jurisdiction over the Project.

Building Projections

The agencies and parties raised concerns regarding the proposed building projections. Projections are governed by Chapter 32 of the District of Columbia Construction Codes (Title 12), rather than the Zoning Regulations (Title 11), and they are approved pursuant to Chapter 32 of the Construction Codes by DCRA. Accordingly, the Zoning Commission has no jurisdiction over the proposed projections in this matter. (Tr. June 23, 2014 at p. 281.) At the hearing, the

Applicant submitted evidence that the code modification for the projections had been approved by DCRA. (Ex. 44.)

Great Weight

The Commission is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 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.)).) As noted, ANC 2A voted unanimously to conditionally support the Project, provided that (1) the Applicant entered into a construction management agreement; (2) that the Applicant addressed specific concerns related to negative impacts on the Church’s access to light and air; (3) that the Applicant improved the curbside management for the Project; and (4) was sensitive to potential construction impacts regarding the Project. The ANC also stated that its support was conditioned on (5) the University limiting its use of the Project by faculty and staff; and (6) the University foregoing the development of Site 77D.

As stated above, construction related impacts of the Project are not germane to the variance standard and even if they were there is no evidence that the minor zoning relief granted would increase the likelihood of harm to the Church during construction. Indeed, the evidence is that the construction of the building as designed will not result in adverse impacts beyond the normal impacts associated with any construction project. Nevertheless, the Applicant volunteered to abide by a construction management plan that it submitted into the record, and a condition requiring it to do so has been incorporated into this Order.

With respect to the ANC’s concern regarding the Church’s access to light and air, the Commission believes that the reduction of height of the Project’s south exterior wall was sufficient to address this concern. Furthermore, as stated above, the Commission concludes that the Zoning Regulations would allow for the rear yard to be located on either the south or west lot line. Furthermore, the Zoning Regulations allow a significantly taller structure as a matter of right. Put another way, no setback from the Church structure is required and it is incongruent to find that providing a four-foot rear yard setback, with a significantly shorter building than permitted as a matter of right, would impair the public good or impair the zone plan. The reduction of light and air suffered by the Church as a result of the construction of this project is actually less than could occur if a building that complied with matter of right zoning limits was built on the site.

With respect to the ANC’s concerns regarding curbside management, its request that the University limit its use of the Project by faculty and staff, and its request that the University forego development of Site 77D, the Commission notes that the Applicant volunteered to comply with these requests, and appropriate conditions have been incorporated into this Order that the Commission believes are sufficient to adequately address these issues and concerns.

Having addressed all of the issues and concerns expressed by ANC 2A, the Commission has afforded ANC 2A the great weight it is entitled under the statute.

The Commission is required by § 5 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 (2012 Repl.)) to give “great weight” to the recommendation of OP. In this case, OP recommended that the application should be approved, subject to five conditions: (1) a construction management agreement between the Applicant and Church; (2) the University refrains from using the space in the Project for faculty and staff offices except for staff offices directly related to the student life uses within the project; (3) the University foregoes development on Site 77D; (4) refinement of the proposed roof structure materials and coloring to reduce potential visibility; and (5) the Project complies with any DDOT related recommendations, particularly as related to a limitation of the types of trash receptacles that are used. The Commission concludes that the Applicant has satisfied all of to OP’s conditions for approval, except for the condition regarding a construction management agreement agreed to by the Church. For reasons previously stated, the Commission concludes that such a plan is not required under the variance standard, but since the Applicant has proffered such a plan, has made compliance with the plan a condition of this order.

With respect to OP’s concerns regarding curbside management, its request that the University limit its use of the Project by faculty and staff, and its request that the University forego development of Site 77D, the Commission notes that the Applicant volunteered to comply with these requests, and appropriate conditions have been incorporated into this Order.

Public space approval issue

In its second report, DDOT stated that the bollards and sidewalk café shown in the Applicant’s plans are not likely to be approved in the public space permitting process. (Ex. 77.) The Commission does not believe it may deny an application based upon a mere prediction. If DDOT’S prediction proves correct, the Applicant may request any needed modification of this Order.

DECISION

Based on the findings of fact, and having given great weight to the recommendations of OP and ANC 2A, the Commission concludes that the Applicant has met its burden of proof and that the requested zoning relief can be approved. Accordingly, it is **THEREFORE ORDERED** that the variance relief from FAR, lot occupancy, rear yard, and parking requirements, special exception approval for relief from the penthouse setback requirements, and amendment to and further processing of the 2007 Foggy Bottom Campus Plan be **GRANTED** subject to the following conditions:

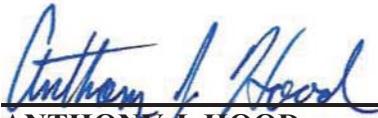
1. The Project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit 73A of the record, as modified by the guidelines, conditions, and standards herein;
2. The University shall be permitted to use the third and fourth floors of the Project for student life and academic uses only, and shall refrain from using the space within the

Project for faculty and staff offices except for staff offices directly related to the uses within the Project;

3. The University shall forgo the development of approved development on Site 77D;
4. **During construction of the Project**, Hillel shall abide by the provisions of the Construction Management Plan marked as Exhibit 73B of the record; and
5. **For the life of the Project**, the Applicant shall use trash bins rather than carts, unless DDOT specifically approves the use of carts through the public space process.

On November 23, 2015, upon a motion by Vice Chairperson Cohen, as seconded by Commissioner May, the Zoning Commission **APPROVED** the application and **ADOPTED** this Order at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, and Peter G. May to approve and adopt; Michael G. Turnbull not voting, not having participated).

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 May 6, 2016.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING