

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



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-11N
Z.C. Case No. 06-11N
The George Washington University
(2007 Foggy Bottom Campus Plan –
Modification of Conditions C-4 and C-7 of Z.C. Order No. 06-11/06-12)
May 4, 2015**

Application of The George Washington University (“University”) pursuant to 11 DCMR § 3129.7, for review and approval of modifications to Conditions C-4 and C-7 of Z.C. Order No. 06-11/06-12, which approved the 2007 Foggy Bottom Campus Plan. In accordance with § 3035.4 of the Zoning Regulations, this case was heard and decided by the Zoning Commission for the District of Columbia (“Commission”) using the rules of the Board of Zoning Adjustment at 11 DCMR §§ 3100 *et seq.* For the reasons stated below, the Commission hereby approves the requested modifications.

HEARING DATE: May 4, 2015

DECISION DATE: May 4, 2015 (bench decision)

FINDINGS OF FACT

Application, Parties, and Hearing

1. The property that is the subject of this application is the University’s Foggy Bottom Campus, which is defined in Condition C-2 of Z.C. Order No. 06-11/06-12 and consists of the following properties: Square 39, Square 40, Square 41, Square 42 (Lots 54, 55), Square 43 (Lot 26), Square 54, Square 55, Square 56, Square 57, Square 58 (Lots 1, 5, 6, 802, 803), Square 75 (Lots 33, 34, 41, 46, 47, 861, 864, 865, 866, 867, 868, 869, 870, 2097), Square 77, Square 79 (Lots 63, 64, 65, 808, 853, 854, 861, 862), Square 80 (Lots 2, 26, 27, 28, 29, 42, 43, 44, 45, 46, 47, 50, 51, 52, 54, 56, 800, 802, 811, 820, 822, 823, 824, 825, 828, 843), Square 81 (Lot 846), Square 101 (Lots 58, 60, 62, 879), Square 102, Square 103 (1, 33, 34, 35, 40, 41, 42, 43, 44, 45), Square 121 (Lot 819), and Square 122 (Lots 29, 824, 825) (hereinafter, “Foggy Bottom Campus”).

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2. By Z.C. Order No. 06-11/06-12, dated March 12, 2007, the Commission approved the most recent campus plan for the Foggy Bottom Campus (“Campus Plan Order”). The Commission affirmed and supplemented the reasons for its approval on remand from the D.C. Court of Appeals in Z.C. Order No. 06-11B/06-12B (“Remand Order”).
3. On February 4, 2015, the University submitted an application pursuant to § 3129.7 of the Zoning Regulations requesting modification of Conditions C-4 and C-7 of the Campus Plan Order to specify how the University will account for students associated with the recently acquired Corcoran College of Art and Design (“Corcoran College”). (Exhibit [“Ex.”]1.)
4. The Corcoran College, now known as the Corcoran School of the Arts and Design within the University’s Columbian College of Arts and Sciences, is located at 500 17th Street N.W. (Square 171, Lots 814 and 816) (“Corcoran”). (Ex. 1.)
5. The public hearing was scheduled for May 4, 2015. Notice of the public hearing was published in the *D.C. Register* on March 20, 2015 and was mailed to Advisory Neighborhood Commission (“ANC”) 2A and to owners of all property within 200 feet of the Foggy Bottom Campus. (Ex. 3, 4.) Notice of the public hearing was also posted on the Foggy Bottom Campus and the Corcoran pursuant to 11 DCMR §§ 3113.14 through 3113.20. (Ex. 7A, 7B, 11.)
6. On April 20, 2015, the University filed a pre-hearing statement updating and supplementing the original application. (Ex. 8-8C.)
7. The public hearing was conducted on May 4, 2015. The hearing was conducted in accordance with the provisions of 11 DCMR §§ 3022 and 3117.
8. At the May 4, 2015 public hearing, the University presented evidence and testimony from the University’s senior leadership. (Ex. 12.)
9. The Office of Planning (“OP”) submitted a report and provided testimony in support of the application. (Ex. 9.)
10. In addition to the University, ANC 2A was automatically a party in the application and submitted a report and provided testimony in opposition to the application. (Ex. 10.) The West End Citizens Association (“WECA”) also submitted a request for party status, which was granted by the Commission. (Ex. 5.) WECA also submitted testimony in opposition to the application. (Ex. 14.)

11. No other organizations or persons submitted evidence or provided testimony in support of or in opposition to the application.
12. After the close of the May 4th public hearing, the Commission deliberated on the matter and voted to approve the application in Z.C. Case No. 06-11N.

Background—Student Headcount

13. The Campus Plan Order includes a cap on student headcount as well as a detailed definition for who is included in the “Foggy Bottom student headcount.” The student headcount definition addresses the treatment of students at the University’s satellite campuses and other locations. The Foggy Bottom student headcount includes all University students with a “primary relationship” to the Foggy Bottom campus. Generally, students who take a class at the Foggy Bottom campus are considered to have a “primary relationship” with the Foggy Bottom campus and are therefore counted under the Foggy Bottom student headcount, even if those students take some or most of their classes at a satellite location. Conversely, students who have a primary relationship with another campus because they either live on that campus or take all of their classes at that campus (e.g., the Mount Vernon campus) are not counted under the Foggy Bottom student headcount.
14. In the Remand Order, the Commission reiterated its support for the headcount definition and the primary relationship test, including in particular the exclusion of University students who do not live or take classes at the Foggy Bottom campus.
15. The current Foggy Bottom student headcount definition does not count students who reside on the Foggy Bottom campus unless they also take a class on the Foggy Bottom campus.

Background – Corcoran

16. The Corcoran is located in the SP-2 Zone District. The existing Corcoran College is a permitted conforming use. Use as a college was first established in the late 1800s. When the current Zoning Regulations took effect in 1958, those regulations permitted a college use as a matter of right in the SP Zone District. Although the Zoning Regulations now require a special exception for a college or university use in the SP Zone District, the existing college use is permitted to remain as a pre-existing conforming use. (*See* 11 DCMR § 199, definition of “nonconforming use” (“A use lawfully in existence at the time of adoption or amendment of this title that would thereafter require special

exception approval ... shall not be deemed a nonconforming use. That nonconforming use shall be considered a conforming use, subject to the further provisions of §§ 3104.2 and 3104.3.)

17. The Corcoran is located approximately two blocks east of the Foggy Bottom campus. The Corcoran is surrounded by government office and institutional uses. There are no residential properties between the Foggy Bottom campus and the Corcoran. The Corcoran is located outside of the defined boundaries of the “Foggy Bottom/West End” residential area (which is defined in Condition P-1 of the Campus Plan Order as bounded by N Street, N.W. on the north, the Potomac River and Rock Creek Park on the west, Constitution Avenue, N.W. on the south, and 19th Street, N.W. on the east).

The University’s Acquisition and Integration of the Corcoran College

18. In August 2014, the University received ownership of the Corcoran and agreed to take over responsibility for its upkeep and maintenance. The University also agreed to take over operations of the Corcoran College and integrate it into the broader University curriculum.
19. When the University took control of the Corcoran College in August 2014, it enrolled approximately 400 existing Corcoran students as University students. These students were roughly equally divided between undergraduate and graduate students.

Modification to Condition C-4

20. The University anticipates that the bulk of the Corcoran classes in art and design will continue to be offered at the Corcoran. As University students, the Corcoran College students also have the opportunity to take classes at other University campuses, including the Foggy Bottom Campus. As the Corcoran College is integrated into the broader University curriculum, the University expects that Corcoran undergraduate students will take some of their courses on the Foggy Bottom campus as part of a core curriculum. Corcoran graduate students, by contrast, will generally tend to take all or most of their classes at the Corcoran.
21. The student headcount definition already accounts for the treatment of Corcoran College students. As Corcoran students are integrated into the Foggy Bottom curriculum, any student who takes one or more classes on the Foggy Bottom campus will, by definition, be counted toward the Foggy Bottom student headcount. Only Corcoran students who take all of their classes at a location other than the Foggy Bottom campus will not be

counted. To make this clear, the University proposed to amend Condition C-4 to explicitly reference the Corcoran.

22. As University students, the Corcoran College students also have the opportunity to live in University housing. As the campuses and programs are integrated, the University expects that, over time, some Corcoran students who will live on the Foggy Bottom campus will also take classes on the Foggy Bottom campus and therefore be counted toward the Foggy Bottom student headcount. However, other Corcoran students who will live on the Foggy Bottom campus will still take all of their classes at the Corcoran.
23. The current student headcount definition is silent on the treatment of students who live on the Foggy Bottom campus but do not take any classes on the Foggy Bottom campus. Consistent with the “primary relationship” standard, the University proposed to amend Condition C-4 to include any student who lives on the Foggy Bottom campus in the headcount, even if that student does not take any classes on campus.

Modification to Condition C-7

24. Under the current Foggy Bottom Campus Plan housing requirement, the University does not have any obligation to house any undergraduate Corcoran students unless they take a full-time course load on the Foggy Bottom campus. However, the University proposed to modify Condition C-7 to require freshmen and sophomore Corcoran students to live in University housing, regardless of where they take their classes, in order to direct these younger undergraduates to on-campus housing.
25. The University testified that it will begin implementation of the housing requirement with students who matriculate in the Fall of 2015, which is the first class of students admitted after the University’s acquisition of the Corcoran College. The University testified that it has sufficient housing stock to accommodate the additional Corcoran students.

OP Report

26. OP submitted a report in support of the application.

ANC 2A Report

27. At its April 2015 meeting, the ANC adopted a resolution recommending that the Commission count all Corcoran students as a part of the Foggy Bottom campus, even if the students do not take a class or reside on the Foggy Bottom campus. ANC 2A argued that because of the proximity of the Corcoran and the proposed integration of Corcoran

programs, even students who do not take a class or reside on the Foggy Bottom campus could still use the campus and have impacts on the surrounding residential neighborhood.

28. ANC 2A did not oppose the University's modification to Condition C-4 to count all students who reside on the Foggy Bottom campus as a part of the student headcount, nor did the ANC oppose the University's modification to Condition C-7 to extend the housing requirement to Corcoran students.

WECA Testimony

29. WECA similarly contended that all Corcoran students should be counted as a part of the Foggy Bottom student headcount because they may use other Foggy Bottom campus resources such as the library or fitness center or impose traffic and parking impacts on the Foggy Bottom Campus.

Contested Issue—Corcoran Students Who Take All Their Classes at the Corcoran

30. The sole contested issue in the case is the treatment of Corcoran students who do not take a class or reside on the Foggy Bottom Campus. ANC 2A and WECA proposed that all Corcoran students be counted as a part of the Foggy Bottom student headcount—effectively incorporating the Corcoran into the Foggy Bottom Campus—while the University and OP proposed that the campuses should remain separate and only those students who take a class or reside on the Foggy Bottom campus should be included in the Foggy Bottom student headcount.
31. The Commission is not persuaded by ANC 2A and WECA's rationale for the following reasons:
 - a. First, if the Commission were to incorporate all Corcoran students into the Foggy Bottom student headcount (or pull the Corcoran into the Foggy Bottom campus), then, as several Commissioners noted, the Commission would also need to make a concomitant adjustment to the headcount cap itself. The students associated with the Corcoran acquisition are not new; rather, the Corcoran College existed as an independent educational institution in the same location for over a century and with a student enrollment that, in recent years, matched or exceeded the current number of Corcoran students. The University's proposed method is, by contrast, more conservative, because it will count some Corcoran students toward the Foggy Bottom student headcount limit and therefore result in an overall reduction in the total number of students associated with the two campuses;

- b. Second, the Commission agrees with the University that many Corcoran students will attend classes, create, and study exclusively at the Corcoran. Counting every Corcoran student as a part of the Foggy Bottom campus would be unnecessarily overbroad;
- c. Third, the Commission does not agree with ANC and WECA that those Corcoran students who may not take a class or reside on campus but nevertheless come to the campus for some other reason, such as to use the library, health and wellness center, or other facilities, have impacts that warrant their inclusion in the Foggy Bottom student headcount cap. The Commission finds that the ANC and WECA failed to provide specific evidence that Corcoran students were actually resulting in the alleged impacts. With regard to the library, the Commission credits the University's testimony that modern technology and University policies continue to significantly reduce the need to come to the Foggy Bottom campus to use many facilities; research, book purchases, course registration, and other formerly centralized activities are all regularly conducted online. With regard to the health and wellness center, the Commission credits the University's testimony that the zoning order that regulates the use of this facility specifically addresses which students are eligible to use the facility (see Z.C. Order No. 02-26C);
- d. Fourth, the Commission does not agree with ANC and WECA's contention that Corcoran students will have traffic and parking impacts on the surrounding residential neighborhoods. Again, the ANC and WECA failed to provide specific evidence that Corcoran students had resulted in specific adverse impacts; rather the ANC and WECA merely complained about general parking difficulties in the neighborhood. The Commission credits the University's testimony that all Corcoran students will be subject to the same University Code of Conduct as other University students, which prohibits freshman and sophomore students bringing cars to the Foggy Bottom/West End Area and limits student parking in the streets adjacent to and surrounding the Foggy Bottom campus pursuant to Condition C-13 of the Campus Plan. Furthermore, the Commission credits the University's testimony that the Corcoran is located approximately four-to-five blocks from the Farragut West and Farragut North Metrorail entrances, and it is expected that Corcoran students will continue to use mass transit, walking, and biking as the primary means of traveling to and from campus; and
- e. Fifth and finally, the Commission finds that the relationship between the Foggy Bottom campus and the Corcoran is still new and will evolve over time. The next

Foggy Bottom campus plan will provide the Commission with an opportunity to re-evaluate the relationship between the two campuses and make adjustments as necessary.

32. Therefore, for all of the above reasons, the Commission finds that it is not necessary to include all of the Corcoran students within the Foggy Bottom Campus Plan headcount cap. The University's proposed modifications are tailored to capture and count those Corcoran students that will have impacts on the Foggy Bottom campus and surrounding area. Furthermore, because the Corcoran students were already present in the general area, the University is effectively absorbing a portion of the Corcoran population into its Foggy Bottom enrollment caps and reducing the total number of students associated with the combined institutions.

CONCLUSIONS OF LAW

Upon consideration of the record of this application, the Commission concludes that the Applicant's proposed modification is consistent with the intent of the Commission's prior approvals. The Commission concludes that the proposed modification is in the best interest of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and Zoning Act. The Commission is required under D.C. Official Code § 6-623.04 to give great weight to OP recommendations. The Commission concurs with OP's view that the modifications should be approved.

The Commission required the University to satisfy the burden of proving the elements of § 3129 of the Zoning Regulations, which are necessary to establish the case for modification of the Commission's previous approval. Here, the Commission concludes that the University provided sufficient evidence that the proposed modifications will not impact the Commission's original approval of the Foggy Bottom Campus Plan as set forth in the Campus Plan Order. The University's proposal is consistent with the "primary relationship" methodology approved by the Commission in the Campus Plan Order and affirmed by the Commission in the Remand Order. Furthermore, extension of this methodology to Corcoran students will not result in objectionable impacts to the residential neighborhoods surrounding the Foggy Bottom campus because the University will count those Corcoran students that take classes or live on the Foggy Bottom campus under the caps previously judged by the Commission to be acceptable.

In accordance with D.C. Official Code § 1-309.10(d), the Commission must give great weight to the written issues and concerns of the affected ANC. The Commission accorded the issues and

concerns raised by ANC 2A the “great weight” to which they are entitled, and in so doing fully credited the unique vantage point that ANC 2A holds with respect to the impact of the proposed application on the ANC’s constituents. For the reasons stated in Findings of Fact Nos. 31 and 32, the Commission did not find the ANC’s advice that that all Corcoran students should be counted as a part of the Foggy Bottom student headcount to be persuasive.

Based upon the record before the Commission, and having considered and given great weight to the reports of OP and ANC 2A, the Commission concludes that the University has met the burden of satisfying the applicable standards under 11 DCMR §§ 3129.

DECISION

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of modifications to Conditions C-4 and C-7 of Z.C. Order No. 06-11/06-12 as follows:

Condition C-4

For the duration of this Plan, the Foggy Bottom student headcount shall not exceed 20,000 students, and the Foggy Bottom student full-time equivalent shall not exceed 16,553.

a. For purposes of this Condition:

- i. “Foggy Bottom student headcount” shall be defined as the number of GW students in the “Foggy Bottom/Mount Vernon Campus Total Student Body”¹⁰, minus: study abroad students, continuous enrollment students, students that reside at the Mount Vernon Campus, students that take all of their courses at the Mount Vernon Campus, and Foggy Bottom faculty and staff accounted for pursuant to Condition C-5 herein who are also enrolled in one or more courses at the Foggy Bottom Campus. Notwithstanding the foregoing, students who reside in on-campus beds on the Foggy Bottom Campus shall each be counted toward the Foggy Bottom student headcount.

Note that students taking all of their courses at the Corcoran are not specifically deducted from this number as they are not included in the “Foggy Bottom/Mount Vernon Campus Total Student Body” by virtue of their courses not being located on the Foggy Bottom or Mount Vernon campuses.

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¹⁰ The “Foggy Bottom/Mount Vernon Campus Total Student Body” is compiled by the GW Office of Institutional Research (OIR) and is currently reported on the OIR online “GW Factbook” available at www.gwu.edu/~ire/.

Condition C-7

The University shall require all full-time Foggy Bottom and Corcoran freshmen and sophomore students to reside in housing located within the campus plan boundary. The University may exempt from this requirement those students who commute (i.e., students who have established permanent residency off-campus prior to enrollment at the University or students who live off-campus with a parent, guardian, or other family member), are married or have children, ~~or~~ have disabilities or religious beliefs inconsistent with residence hall life, or who matriculated at the Corcoran prior to the Fall 2015 semester. The University’s efforts with respect to this Condition shall be monitored by the Advisory Committee.

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

BY ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.

ATTESTED BY:



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

FINAL DATE OF ORDER: August 24, 2015