

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 02-26D

Z.C. Case No. 02-26D

George Washington University

(Modification of Consequence to Campus Plan @ 2301 G Street N.W. (Square 42, Lot 55))
September 23, 2019

Pursuant to notice, at its September 23, 2019 public meeting the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of George Washington University (“GW”) for a Modification of Consequence to modify Condition No. 3 of Z.C. Order No. 02-26C, the latest of a series of modifications of a Campus Plan originally approved by Board of Zoning Adjustment (“BZA”) Order No. 16276, for Lot 55 in Square 42, with a street address of 2301 G Street N.W. (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (the “Zoning Regulations”, to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Background

1. By BZA Order No. 16726, the BZA approved special exceptions for the construction of the Lerner Health and Wellness Center (the “Center”) and for its use by GW students, faculty, and staff.
2. By Z.C. Order 02-26 (effective December 24, 2004), the Commission expanded the approved users of the Center to include students, faculty, and staff at GW’s Mount Vernon Campus, GW’s Board of Trustees, and students at the School Without Walls, a D.C. public school within the boundaries of GW’s Foggy Bottom Campus (the “Initial Expanded Use Groups”). The use by the Initial Expanded Use Groups was authorized for a period of three years.
3. By Z.C. Order 02-26A (effective February 8, 2008), the Commission further expanded the Center’s use by up to 300 persons residing in St. Mary’s Court or the Remington Condominiums or belonging to St. Mary’s Episcopal Church as well as GW alumni residing in the Foggy Bottom/West End area (the “Additional Expanded Use Groups”). Condition No. 3 of Order No. 02-26A authorized use by both the Initial and Additional Expanded Use Groups for a period of five years.

4. By Z.C. Order 02-26B (effective June 7, 2013), the Commission approved a one-year extension of Z.C. Order No. 02-26A's approval of the Initial and Additional Expanded User Groups.
5. By Z.C. Order No. 02-26C (effective September 12, 2014), the Commission modified the conditions of Z.C. Order 02-26A as summarized below:

Condition No. 1: Permitted permanent use of the Center by the Initial and Additional Expanded Use Groups.

Condition No. 2: Approved a "Third Expanded Use Group" that included:

- a. Residents of zip codes 20006 and 20037, to a maximum of 150 permitted memberships, with an additional 100 memberships during the summer academic breaks (for a total of 250 memberships during the summer);
- b. Athletic competitions drawing a limited number of non-GW users as competitors, and with limited spectators;
- c. Periodic/short-term events catering to the GW community, neighbors and/or other non-GW participants that would otherwise be on the campus for mission-related purposes; and
- d. Persons using GW housing facilities during the summer term.

Condition No. 3: Limited the approval of the Third Expanded Use Group to a period of five years, ending September 12, 2019.

Parties

6. The only party to the Z.C Case No. 02-26C and the earlier approvals, other than GW, was Advisory Neighborhood Commission ("ANC") 2A, the "affected" ANC pursuant to Subtitle Z § 101.8.

The Application

7. On July 12, 2019, GW filed the Application requesting a Modification of Consequence to authorize a modification to Condition No. 3 of Z.C. Order No. 02-26C to extend the approval of the use of the Center by the Third Expanded Use Groups through December 31, 2020.
8. The Application explained that GW intends to use this extended time period to discuss the use of the Center with the surrounding community, the ANC, and the Campus Plan Advisory Committee and will return to the Commission at the end of that review to address the appropriate use of the Center going forward.
9. On July 12, 2019, GW served the Application on ANC 2A, the Office of Planning ("OP"), the West End Citizens Association, and the Foggy Bottom Association, as attested by the Certificate of Service submitted with the Application. (Exhibit ["Ex."] 1.)

10. OP submitted a report dated September 11, 2019, stating no objection to the Application being considered as a Modification of Consequence and recommending approval of the Application (the “OP Report”). (Ex. 3.)
11. ANC 2A submitted a written report stating that at its duly noticed public meeting of September 18, 2019, at which a quorum was present, ANC 2A voted to support the Application (the “ANC Report”). (Ex. 4.)

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make Modifications of Consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a Modification of Consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance”.
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” and “a redesign or relocation of architectural elements” as examples of Modifications of Consequence.
4. The Commission concludes that GW satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 2A.
5. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify Condition No. 3 approved by Z.C. Case No. 02-26C, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that because ANC 2A, the only party other than GW to the Application, had filed a response to the Application, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for responses by all parties to the original proceeding had been met, and therefore the Commission could consider the merits of the Application at its September 23, 2019 public meeting.
7. The Commission finds that the modification proposed by the Application is consistent with the approved Campus Plan because the modification to the condition does not change any of the material facts upon which the Commission based its original approval, and merely extends the duration of the Commission’s prior approval in Z.C. Order No. 02-26C.

“Great Weight” to the Recommendations of OP

8. D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8 require the Commission to give “great weight” to the recommendations contained in the OP Report.

9. The Commission notes OP's lack of objection to the Application being considered as a Modification of Consequence and finds persuasive OP's recommendation that the Commission approve the Application and concurs in that judgment.

“Great Weight” to the Written Report of the ANC

10. D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.) and Subtitle Z §406.2 require the Commission to give “great weight” to the issues and concerns contained in the written report of an affected ANC. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).
11. The Commission finds the ANC Report's support for the Application persuasive and concurs in that judgment.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that GW has satisfied its burden of proof and therefore **APPROVES** the Applicant's request for a Modification of Consequence to revise Condition No. 3 of Z.C. Case No. 02-26C.

The conditions in Z.C. Order 02-26C remain unchanged and in effect, except that Condition No. 3 is hereby revised as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions shown in **bold** and underlined text):


3. Approval of the expanded categories of membership enumerated in Condition 2 shall be effective ~~for five years from the effective date of Z.C. Order No. 02-26C~~ **until December 31, 2020.**

VOTE (September 23, 2019): **5-0-0** (Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order 02-26D shall become final and effective upon publication in the *DC Register*; that is, on October 25, 2019.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.