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GOVERNMENT OF THE DISTRICT OF COLUMBIA

Zoning Commission



JERRY A. MOORE III

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

ZONING COMMISSION ORDER NO. 02-26A

Z.C. CASE NO. 02-26A

**Application by George Washington University for Further Processing
of an Approved Campus Plan Under § 210 to Modify Conditions
of Approval of the Lerner Health & Wellness Center
at 2301 G Street, N.W., (Square 55, Lot 847)**

November 15, 2007

Pursuant to public notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on November 15, 2007, to consider an application from the George Washington University ("University" or "Applicant") pursuant to §§ 210 and 3104.4 of the Zoning Regulations for "further processing" special exception relief, under an existing campus plan, to modify the conditions of approval governing use of the Lerner Health and Wellness Center (the "Center"). The conditions were originally adopted by the Board of Zoning Adjustment ("BZA") and were subsequently modified by the Commission, subject to a three-year term of approval.

Procedural Background

Public Notice. The Office of Zoning published a notice of public hearing in the *D.C. Register* on October 5, 2007 (54 DCR 9531). The Office of Zoning also mailed a notice of public hearing to the owners of all property within 200 feet of the subject property; the Office of Planning; the District Department of Transportation; Advisory Neighborhood Commission ("ANC") 2A, the ANC for the area within which the property is located; the Ward 2 Councilmember; and the Applicant.

Preliminary Matters. In addition to the Applicant, ANC 2A was automatically a party in this proceeding. At the hearing, the Commission denied a request for party status submitted by Dorothy Miller.

Case History. In Application No. 16276 (order issued March 31, 1998), the BZA approved the construction and use of the Center by the students, faculty, and staff of the University's Foggy Bottom Campus. In Z.C. Order No. 02-26 (June 14, 2004), the Commission conditionally expanded user privileges to the Center to students, faculty, and staff of the University's Mount Vernon Campus, members of the University's Board of Trustees, and to students of the School Without Walls in organized activities under the supervision of school faculty. The Commission approved the expanded categories of users for a period of three years and stated that, absent a new special exception approval at the end of that period, the use of the Center would revert to the

students, faculty, and staff of the University's Foggy Bottom Campus (as approved in BZA Order No. 16276).

Applicant's Case. In this application, the University seeks permission to continue the expanded categories of users approved in 2004 in Z.C. Order No. 02-26 as well as the approval of two new classes of users. Specifically, the University requests approval to:

1. Allow the continued use of the Center by (a) the students, faculty, and staff of the University's Mount Vernon Campus; (b) members of the University's Board of Trustees; and (c) the students of the School Without Walls ("SWW") in organized activities under the supervision of SWW faculty;
2. Permit use of the Center by persons residing in certain facilities or belonging to certain organizations with facilities located in close proximity to the Center, specifically: (a) St. Mary's Court, located at 725 24th Street, N.W.; (b) St. Mary's Episcopal Church, located at 728 23rd Street, N.W.; and (c) the Remington Condominium, located at 601 24th Street, N.W.; and
3. Permit use of the Center by a limited number of University alumni who reside in the Foggy Bottom/West End area as defined in the University's approved Foggy Bottom Campus Plan (2007).

The modifications described in paragraphs 2 and 3 above would add a total of 300 users to those currently permitted to use the Center described in paragraph 1. The University also seeks to make permanent the user classes that were authorized in Z.C. Order No. 02-26.¹

The Applicant provided testimony from Alicia O'Neil, the Director of Real Estate Operations for the University, Charles K. Barber, Senior Counsel to the University, and a traffic expert, Nicole White of Symmetra Design. The witnesses described the University's mission to provide a high-quality education for students and to serve the community by providing academic, cultural, and recreational opportunities, noting that many University venues are open to the public even though their primary purpose is to contribute to the educational experience of the University students.

The witnesses testified that the Center has sufficient capacity to accommodate 300 additional users at all times when the Center is open, stating that, since opening in 2001, the Center has operated below its capacity of 1,973 users at any one time. According to the Applicant, the majority of the proposed new users will be located within a short walk to the Center, so that fewer than five percent of the new users will be expected to drive to the Center and that neither

¹ The University withdrew a request for authority to extend user privileges at the Center to members of the Odd Fellows Lodge located at 701 24th Street, N.W.

the continuation of the user classes approved in 2004 nor the addition of 300 new members from the requested categories will cause adverse impacts on traffic or parking in the area.

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

ANC Report. ANC 2A submitted a letter stating that at a meeting held October 17, 2007, with a quorum present, ANC 2A voted 5 to 0, “to support continued access [to the Center] for Mount Vernon students, School Without Walls students and the University’s Board of Trustees and to allow access [to the Center] to St. Mary’s Court and to St. Mary’s Church.” The ANC also voted 4 to 1, “to support allowing access [to the Center] for the Remington Condominiums and to Foggy Bottom/West End alumni of the University.”

Persons in Support. Several persons from the Foggy Bottom/West End neighborhood testified in support of the application, including representatives from St. Mary’s Court, the Remington Condominiums, and St. Mary’s Church as well as a University students and alumni.

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

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

Campus Plan Proceedings. By Z.C. Order No. 06-11/06-12, effective October 26, 2007, the Commission approved the University’s 2007 Foggy Bottom Campus Plan for a 20-year period. The Lerner Health and Wellness Center, sited at its present location as a recreational facility, is a part of that Plan.

FINDINGS OF FACT

1. The subject property is located at 2301 G Street, N.W., at the northwest corner of the intersection of 23rd and G Streets, N.W. (Square 55, Lot 847). The subject property is located within the University’s campus plan boundaries and is zoned R-5-D.

2. The subject property is improved with a four-story structure with four underground levels, three of which are used for parking. The building houses the Lerner Health and Wellness Center, which is used for physical fitness and recreational activities.
3. Construction and use of the Center was conditionally approved by the BZA order issued March 31, 1998 in Application No. 16276. The conditions of approval require that: (a) use of the facility is limited to the students, faculty, and staff of the Foggy Bottom campus and (b) operation of the facility must end at 10:00 p.m., Monday through Saturday and 8:00 p.m. on Sundays.
4. The Center opened in August 2001. The Center is able to accommodate additional users, given that its capacity is almost 2,000 users at any given time, and peak usage is approximately 2,600 users in an entire day.
5. As approved in Z.C. Order No. 02-26, the Center now opens at 6:00 a.m. and closes at 11:30 p.m. daily. Peak hours of use are Monday through Wednesday, 5:00 p.m. to 8:00 p.m.
6. The University runs a shuttle bus service between the Foggy Bottom and Mount Vernon campuses 24 hours per day. Shuttle buses run every 10 minutes between 7:00 a.m. and 7:00 p.m., and are scheduled no less frequently than every 20 minutes during the school year. A shuttle bus stop is located one block from the Center. The shuttle buses have carried as many as 68,000 users in a one-month period and over 500,000 rides for each of the past two years.
7. Most Mount Vernon Campus students also take courses at the Foggy Bottom Campus and are not likely to create additional adverse impact.
8. The Commission credits the testimony of the Applicant's traffic expert that current use of the Center is not generating adverse traffic impacts in the surrounding neighborhood, and that most current users arrive at the Center on foot or by public transportation. The Commission also credits the expert's testimony that neither the continuation of the 2004 user classes nor the addition of 300 new users of the Center from the Foggy Bottom/West End community will cause adverse impacts on traffic or parking in the area.
9. SWW is a public high school located at 2135 G Street, N.W., within the University's campus plan boundaries. Some SWW students and faculty are enrolled in University classes and are permitted to use certain University facilities, such as the library and the Center. The SWW building is currently under renovations, and courses are being held at an alternate location. During this time, students are bused to the campus for certain events. SWW anticipates reoccupying its G Street building in Fall 2009.

10. The use of the Center by the students, faculty, and staff of the University's Foggy Bottom and Mount Vernon campuses, the students of SWW, and the University's Board of Trustees has not caused any objectionable conditions for neighboring properties.
11. The Center has a membership base of more than 29,000 University students, faculty, and staff who are eligible to use its facilities. The addition of 300 potential new users, all of whom are immediately adjacent neighbors or have a direct connection to the University, will be incidental to the principal university use of the Center.
14. The University will reserve 50 free passes allowing use of the Center by persons from St. Mary's Church, St. Mary's Court, and the Remington Condominiums, and will offer 250 paid memberships to University alumni who reside in the Foggy Bottom/West End Campus Plan area as defined in the approved 2007 Campus Plan. Alumni memberships will be valid for a renewable one-year period, and will be awarded generally on a first come, first serve basis.

CONCLUSIONS OF LAW

The Applicant is seeking special exception approval, pursuant to §§ 210 and 3104 of the Zoning Regulations, for further processing of its approved campus plan to continue, as modified, the conditions of approval for the use of the Lerner Health and Wellness Center previously adopted by the Commission in Z.C. Order No. 02-26. The Commission is authorized to grant a special exception where, in the judgment of the Commission based on a showing through substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to certain conditions specified in § 210.

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

The Commission concludes that the categories of expanded membership that were approved in Z.C. Order No. 02-26 can continue to be permitted consistent with the university use of the Center. They are: (a) students, faculty, and staff of the University's Mount Vernon campus;

(b) members of the University's Board of Trustees; and (c) students of the School Without Walls, provided that the high school students are engaged in organized activities at the Center under the supervision of school faculty.

The Commission further concludes that an additional 300 users from the Foggy Bottom/West End area, as proposed by the University, can be approved as incidental to the principal University use.

The Commission accorded the issues and concerns of ANC 2A the "great weight" to which they are entitled. In doing so, the Commission fully credited the unique vantage point that ANC 2A holds with respect to the impact of the proposed modifications of use of the Center on the ANC's constituents. The Commission also accorded "great weight" to the recommendation of the Office of Planning, which concluded that approval of the application would be consistent with the requirements of § 210 of the Zoning Regulations.

The expanded membership approved in this Order will maintain the university use of the Center and will not alter its character as a university support facility. The application is consistent with the approved 2007 Foggy Bottom Campus Plan and does not affect the Mount Vernon Campus Plan.

Based upon the record before the Commission, and having given great weight to the issues and concerns of the affected ANC and to the recommendation of the Office of Planning, the Commission concludes that the Applicant has met its burden of proof, pursuant to 11 DCMR §§ 3104.1 and 210.1, that the continuation of the conditions of Z.C. Order No. 02-26, as modified in this Order, 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. A five-year term of approval is appropriate for the expanded categories of users approved in this Order.

DECISION

In consideration of the findings and conclusions set forth in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS** that this application be **GRANTED**, subject to the following **CONDITIONS**:

1. Use of the Center shall be limited to:
 - (a) the students, faculty, and staff of the University's Foggy Bottom Campus;
 - (b) the students, faculty, and staff of the University's Mount Vernon Campus; the members of the University's Board of Trustees; and the students of the School Without Walls, in organized activities under the supervision of school faculty;


- (c) persons residing in St. Mary's Court or the Remington Condominiums, or belonging to St. Mary's Episcopal Church; and
 - (d) Alumni of the George Washington University who reside in the Foggy Bottom/West End area as defined in the approved 2007 George Washington University Foggy Bottom Campus Plan.
2. The maximum number of new user privileges authorized by this Order (*i.e.* persons subject to subparagraphs 1(c) or (d) above) shall be 300. At least 50 of the 300 new user privileges shall be allocated to persons subject to subparagraph 1(c) (*i.e.* residents of St. Mary's Court or the Remington Condominiums, or a member of St. Mary's Episcopal Church), and no more than 250 shall be offered to the persons defined in subparagraph 1(d) (*i.e.* University alumni living in the Foggy Bottom/West End area).
3. Approval of the expanded categories of membership enumerated in Condition No. 1 (b), 1(c), and 1(d) shall be effective for five years from the effective date of this Order.

VOTE: **4-0-1** to approve the application with conditions (Anthony J. Hood, Gregory N. Jeffries, Curtis Etherly, Jr., and Michael G. Turnbull to approve; John G. Parsons, not present, not voting);

3-1-1 to adopt a five-year term of approval for the categories of membership beyond those originally approved by the Board of Zoning Adjustment in Application No. 16276 (Anthony J. Hood, Curtis Etherly, Jr., and Michael G. Turnbull to approve in favor; Gregory N. Jeffries opposed; John G. Parsons, having not participated, not voting).

BY ORDER OF THE D.C. ZONING COMMISSION
Each concurring member approved the issuance of this Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
DIRECTOR, OFFICE OF ZONING

FINAL DATE OF ORDER: FEB 8 2008

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE COMMISSION ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., ("ACT"). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE 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 THAT 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. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



Z.C. CASE NO.: 02-26A

As Secretary to the Zoning Commission, I hereby certify that on FEB 7 2008 copies of this Z.C. Order No. 02-26A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Jerry A. Moore, III
Venable LLC
575 7th Street, NW
Washington, DC 20004
3. Asher Corson, Chair
ANC 2A
West End Branch Library
1101 24th Street, NW
Washington, DC 20037
4. Commissioner Eric Malinen
ANC/SMD 2A05
2440 Virginia Avenue NW
#D1207
Washington, DC 20037
5. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
6. Councilmember Jack Evans
7. Office of Planning (Harriet Tregoning)
8. DDOT (Ken Laden)
9. Zoning Administrator (Matt LeGrant)
10. Office of the Attorney General
(Alan Bergstein)

ATTESTED BY:

A handwritten signature in cursive script that reads "Sharon S. Schellin".

Sharon S. Schellin

Secretary to the Zoning Commission

