

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 14297, of the President Condominium Association and James T. Draude, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Zoning Administrator, dated April 12, 1985, that the construction of an addition to the H.B. Burns Building at 2150 Pennsylvania Avenue, N.W. does not require variance relief from Sections 7105 and 3308 of the Zoning Regulations for property located in an R-5-C and C-3-C District at premises 2150 Pennsylvania Avenue, N.W., (Square 75, Lots 855, 857, 849, 819, 818, 856 and 814).

Appeal No. 14344, of the President Condominium Association and James T. Draude, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Zoning Administrator, dated July 22, 1985, that construction of an addition to the H. B. Burns Building at 2150 Pennsylvania Avenue, N.W., under an alternative design (Scheme 2 for the proposed building addition in BZA application No. 14261) does not require variance from Paragraphs 7105.12 and 3308.12 of the Zoning Regulations in a C-3-C and R-5-C District, (Square 75, Lots 855, 857, 849, 819, 818, 856 and 814).

HEARING DATES: June 19, 26 and October 16, 1985

DECISION DATES: July 10 and November 6, 1985

FINDINGS OF FACT:

1. Appeal No. 14297 was heard at the public hearings of June 19 and June 26, 1985. The Board denied the appeal at its public meeting of July 10, 1985. A Stipulation Agreement (Exhibit No. 11 of the record) between the parties was filed in the Office of the Zoning Secretariat on October 1, 1985, in which the parties requested that the Board incorporate in Appeal No. 14344, the record in Appeal No. 14297, supplemented with the following documents (attachments to Exhibit No. 11 of the record):

- A. Letter dated June 21, 1985, from Michael B. McGovern to James J. Fahey;
- B. Letter dated June 21, 1985, from James T. Draude to James J. Fahey;
- C. Letter dated July 15, 1985, from William R. McKey to James J. Fahey; and

- D. Letter dated July 22, 1985, from James J. Fahey to Michael B. McGovern.

The stipulation further recited that the parties did not wish to present any additional evidence or argument on this Appeal. The parties requested that the Board decide Appeal No. 14344 on the basis of the record in Appeal No. 14297 as supplemented. The parties were of the opinion that the design differences between Scheme 1 and Scheme 2 did not affect the issues raised in Appeal No. 14297 and in Appeal No. 14297. In order to be consistent, the parties believed that the Board's decision in the two appeals should be the same. The Board concurs.

2. Both appeals are consolidated for the purpose of this decision.

3. The property which is the subject of the appeal is located at 2150 Pennsylvania Avenue, N.W. (Square 75, Lots 855, 857, 849, 819, 818, 856 and 814) and is currently improved with the H. B. Burns Memorial Building. The site is split-zoned C-3-C and R-5-C and is incorporated within the boundaries of the George Washington University Campus Plan that was reviewed and approved by the Board in 1970 in BZA Application No. 10403.

4. Appeal No. 14297 was filed on April 18, 1985, challenging the Zoning Administrator's April 12, 1985 determination that the applicant in BZA Application No. 14261 does not require additional variance relief in order to construct an addition to the H. B. Burns Memorial Building.

5. Appeal No. 14297 alleges that the Zoning Administrator was in error in determining that the permitted floor area ratio (FAR) for a university is dictated by its approved campus plan, which is based on a composite of all properties shown on the plan with their respective zoning, and that he was also in error in determining that the construction of a second roof structure, which does not exceed the permitted height limit, requires only a special exception under Section 3308 of the Zoning Regulations pertaining to the setback and enclosure requirements and not a variance from said section.

6. The subject appeal was filed by the President Condominium Association and James T. Draude. The President Condominium is located adjacent to the subject site at 2141 I Street, N.W. Mr. Draude is a resident in the condominium and President of the Association. Both appellants are intervenors in BZA Application No. 14261.

7. The owners of the subject site, the George Washington University (GWU), were represented by counsel and appeared at the public hearings as a party to the appeal pursuant to Section 100.7 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment.

8. The property owner has applied for special exception relief in BZA Application No. 14261 in order to construct an addition to the H. B. Burns Memorial Building. (The addition is to relieve overcrowded existing facilities and to allow the return to the campus of those medical school and hospital departments located in leased space outside of the campus. The addition will provide additional medical faculty office space, administrative office and support space, multiple exam and procedure rooms and ambulatory diagnostic services).

9. The proposed addition will be situated behind the existing Burns Building. It will have nine levels of medical space (eight stories and cellar) and a three level parking garage with 140 full size parking spaces. Access to the garage will be from I Street. The addition will be 90 feet in height as measured from Pennsylvania Avenue and will have a gross floor area of approximately 120,950 square feet. The building will be set back 32 feet from I Street.

10. The Burns building is located entirely in a C-3-C District. The permissible floor area ratio in a C-3-C District is 6.5 FAR (Section 5301.1). The existing Burns building exceeds the 6.5 FAR.

11. A small portion of GWU's proposed addition to the Burns building is located in the C-3-C District. The bulk of the proposed addition is in an R-5-C District. The permissible floor area ratio in an R-5-C District is 3.5 FAR (Section 3302.1). That portion of GWU's proposed addition that is within the R-5-C District exceeds 3.5 FAR.

12. The existing Burns building includes a roof structure. GWU's plans for the proposed addition include a separate roof structure. In Application No. 14261, the Zoning Administrator ruled that the proposed addition requires a special exception from the requirement in Section 3308.12 that roof structures be placed in a single enclosure with walls of equal height.

13. On March 7 and 8, 1985, the appellants filed memoranda with the Zoning Administrator requesting a ruling as to whether the property owner was required to seek variances from Sections 7105 and 3308 of the Zoning Regulations. The appellants argued that the proposed addition to the H. B.

Burns Memorial Building constituted an addition and enlargement of an existing nonconforming structure requiring a variance from Paragraph 7105.12 and that the roof structure of the proposed addition will be in a separate enclosure from the existing roof structure atop the Burns Building, requiring a variance from Paragraph 3308.12 of the Regulations.

14. On March 15, 1985, the property owner filed a response with the Zoning Administrator submitting that the proposed addition conforms to the permitted bulk requirements for the University and that no relief at all was required from the enclosure requirements for the proposed roof structure.

15. On March 22, 1985, the appellants filed a reply memorandum with the Zoning Administrator.

16. On April 12, 1985, the Zoning Administrator issued his written decision. He ruled that the proposed addition does not require any relief from Section 7105.12 and required a special exception, rather than a variance, from Section 3308. Specifically, with respect to the nonconforming structure issue, the Administrator held

The proposed addition to the aforementioned building was submitted to the Board of Zoning Adjustment pursuant to the campus plan that was approved by the Board in BZA Order No. 10403. The George Washington Universities in the city include not only properties in Residential Districts but Special Purpose and Commercial Districts as well. The permitted floor area ratio (FAR) for a university is dictated by its approved campus plan, which is based on a composite of all properties shown on the plan with their respective zoning. The bulk for residentially zoned areas of a university is covered by Section 3101.462 of the Zoning Regulations. This figure is combined with the permitted FAR for nonresidentially zoned areas achieving an aggregate FAR for the overall campus. In other words permitted bulk for universities is based on the university as a whole and not on a single site basis. In the case of George Washington University, the overall composite FAR is 3.6. The proposed addition does not exceed the permitted bulk limits for either the residentially zoned properties (3.5) or the permitted overall bulk (3.6); therefore, the case was referred to the Board of Zoning Adjustment as a special exception for further processing of the approved campus plan.

With respect to the roof structure issue, the Administrator stated that

In 1976 when the Zoning Commission amended the Zoning Regulations pertaining to roof structures it was clearly the intent of the Commission to give the Board

of Zoning Adjustment the right to grant special exceptions under Section 3308.2 when it was impracticable to have all penthouses in one enclosure or not meeting the setback requirements. The Board of Zoning Adjustment has consistently considered similar cases as special exceptions.

17. Section 8203.6 of the Zoning Regulations and Section 404.1 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment state that the appellants have the burden of proving that the decision of the Zoning Administrator, was erroneous and should be reversed.

18. On June 19 and 26, 1985, the Board heard testimony and argument on behalf of the appellants, testimony by the Zoning Administrator, and argument on behalf of GWU. The Board also received written statements from the Appellants (Ex. 14) and from GWU (Ex. 19) and a report from ANC - 2A (Ex. 18).

19. With respect to the campus FAR issue, the Board finds that all universities are required to submit master plans to the Board. These plans state policy framework and guide future growth. Paragraph 3101.463 of the Zoning Regulations states:

The applicant shall submit to the Board a plan for developing the campus as a whole, showing the present and proposed improvements, including, but not limited to buildings, parking and loading facilities, screening, signs, streets, and public utility facilities, and a description of all activities conducted or to be conducted therein, and of the capacity of all present proposed campus development.

This section specifically states that the Board must consider the plan for developing the campus as a whole. It does not limit the Board's jurisdiction to only residentially zoned land

20. The appellants argue that the proposed addition should be considered pursuant to Section 7105 of the Regulations regarding nonconforming structures devoted to conforming uses. Section 7105.12 states as follows:

Enlargements or additions may be made to such structure provided such structure is conforming as to percentage of lot occupancy, and further provided that the addition or enlargement itself is conforming as to use and structure, and does not increase or extend any existing nonconforming aspect of the structure, and does not create any new nonconformity of structure and addition combined. (Emphasis added).

The appellants allege that the addition increases a nonconforming aspect of the existing Burns Building in that it

further increases the bulk of the structure in the C-3-C portion of the site above the 6.5 FAR guideline.

21. The appellants rely upon Paragraph 3101.462 to support their contention that an addition may not be constructed in the C-3-C portion of the subject site. This section states as follows:

In R-1, R-2, R-3, R-4, R-5-A and R-5-B Districts the maximum bulk requirements normally applicable in such districts may be increased for specific buildings or structures provided the total bulk of all building and structures on the campus shall not exceed the gross floor area prescribed for the R-5-B District. In all other residential districts similar bulk increases may also be permitted provided the total bulk of all buildings and structures on the campus shall not exceed the gross floor area prescribed for the R-5-C District. Because of permissive increases as applicable to normal bulk requirements in the low-density districts regulated hereunder, it is the intent of this subparagraph to prevent unreasonable campus expansion into improved low-density districts.

The appellants argue that Section 3101.462 only allows exceptions to the density restrictions otherwise applicable in residential districts and does not apply to nonresidential districts.

22. All property devoted to university use must be shown in the campus plan when located within the plan boundaries regardless of the zoning classification. As the Board stated in Order No. 13416, dated March 22, 1982, regarding an amendment to the Howard University Campus Plan:

[I]n order to determine the overall impact of the University, and in order to insure that the proposed use would not be an "unreasonable campus expansion into improved low-density districts," the Board must consider the overall proposed plan for the entire campus, regardless of the zone district applicable to a particular property.

The George Washington University Campus Master Plan includes not only properties in residential districts but also SP and commercial zones as well.

23. The requirement that a college or university receive BZA approval to construct new buildings or additions only applies to properties located in residential districts. In all commercial zones, the use is permitted as a matter-of-right.

24. The Zoning Administrator, in following prior Board practice, determined that the permitted floor area ratio for

a college or university is dictated by its approved campus plan. The Zoning Administrator and the Board of Zoning Adjustment have consistently ruled that the maximum allowable floor area ratio for a university is a composite of all sites shown in the plan with their respective zoning. The bulk for residentially zoned areas of a university is governed by Paragraph 3101.462 of the regulations. This figure is combined with the permitted FAR for nonresidentially zoned areas, as dictated by the zoning requirements for each particular zone, to achieve an aggregate FAR for overall campus development.

25. The Board has applied the aggregate FAR principle in previous University applications. The maximum FAR for Howard University, as stated in Finding of Fact No. 16 in BZA Order No. 13416, was stated as follows:

The overall proposed floor area ratio for the total campus is 1.92. The maximum allowable floor area ratio is a composite of all sites with their respective zoning is 2.98.

Howard University's FAR was recognized by the Board as 2.98 because Howard has property located in the R-4 and R-5-B Districts (1.8), the SP-2 District (6.0), the C-2-A District (2.5), the C-M-1 District (3.0), the C-M-2 District (4.0) and the C-M-3 District (6.0). The Board finds that application of the appellants' position to Howard University would decrease its permitted building area by approximately 60 percent from 2.98 FAR to 1.8 FAR - a figure it already exceeds.

26. The George Washington University has property located in the R-5-C and R-5-D Districts (3.5), the SP-2 District (6.0) and the C-3-C District (6.5). The overall composite FAR permitted for the University is 3.6. This figure represents the bulk limitation for all university uses within the approved campus boundaries. Each new use, regardless of its zoning category, is governed by the overall bulk requirements. Buildings and uses are not judged on a lot-by-lot basis. The policy rationale behind this is to encourage a University to coordinate development in such a manner as to assemble uses in efficient locations and provide open space and other amenities. The appellants' position disregards this policy. Therefore, the Board finds that the proposed addition to the Burns Building does not violate the FAR provisions for C-3-C Districts since it does not cause the University to exceed the overall permitted bulk of 3.6.

27. The Board finds that the appellants have misinterpreted Paragraph 3101.462 applicable to FAR limits for residential properties and have failed to recognize the intent of the section. Paragraph 3101.462 has no

application to nonresidentially zoned properties used for college or university uses. Rather, the purpose of this provision is stated in the last sentence of the section:

Because of permissive increases as applicable to normal bulk requirements in low-density residential districts regulated hereunder, it is the intent of this subparagraph to prevent unreasonable campus expansion into approved low-density residential districts.

The proposed addition to the H. B. Burns Memorial Building does not involve campus expansion into a low-density residential district. Nor does it exceed the permitted bulk limits for residentially zoned properties in a campus (3.5) or the permitted overall university bulk (3.6). The proposed addition will increase the campus FAR in residential zones to 2.24 and will increase the overall campus FAR to 2.41. Both figures are well within prescribed limits.

28. Since neither the existing Burns Building nor the proposed addition exceed the permitted FAR for the University as a whole, the appellants are mistaken in their contention that the project violates Paragraph 7105.12 of the Regulations. The addition will not increase or extend any nonconforming aspect of the structure. The Burns Building is only nonconforming as to height. The proposed addition, however, has been designed to comply with the 90 foot height limitation. The addition is approximately 34 feet lower than the existing structure. Further, the Burns Building, including the addition, is conforming as to lot occupancy and use and does not create any new nonconformity.

29. The appellants' second allegation of error is that the proposed addition to the Burns Building requires an area variance, rather than a special exception, from the roof structure provisions of the Zoning Regulations in order to construct a separate roof structure for the addition. Paragraph 3308.12 requires that

All penthouses and mechanical equipment shall be placed in one enclosure, same to harmonize with the main structure in architectural character, material and color. Enclosing walls from roof level shall be of equal height and shall rise vertically to a roof except as provided in Paragraph 3308.13.

The proposed addition to the Burns Building requires a separate roof structure for separate elevator service and mechanical equipment. The roof structure will not have enclosing walls of equal height.

30. Section 3308.2 of the Zoning Regulations provides:

Where impracticable because of operating difficulties, size of building lot or other conditions relating to the building or surrounding area which would tend to make full compliance unduly restrictive, prohibitively costly or unreasonable, the Board of Zoning Adjustment is empowered to approve the location and design of any or all of such structures even if such structures do not meet the normal setback requirements of Paragraphs 3201.26, 4201.22, 4403.3, 4503.6, 5201.24 or 6201.22 when applicable, and to approve the material of enclosing construction used if not in accordance with Paragraph 3308.2, provided the intent and purpose of this section is not materially impaired thereby and the light and air of adjacent buildings are not affected adversely.

The language of this Section refers to the location and design of roof "structures" thus recognizing its application to instances where there are multiple structures. The language must be interpreted in light of and recognize the plural terminology. The Zoning Administrator testified that when this section was adopted in 1976, it was designed to give the Board authority to grant exceptions to all penthouse requirements, with the exception of height. It has been consistently construed in this fashion. The Board so finds.

31. The Board has consistently considered applications for separate roof structures as requiring a special exception pursuant to Section 3308.2. The Board stated in Finding of Fact No. 5 in Order No. 13877, dated April 27, 1983;

Paragraph 3308.12 requires that all penthouses and mechanical equipment shall be placed in one enclosure. The structure shall harmonize with the main structure in architectural character, material and color. Enclosing walls from roof level shall be of equal height and shall rise vertically to a roof. The Board is authorized by Sub-section 3308.2 to grant exceptions to the setback and enclosure requirements.

The Zoning Administrator and the Property Owner cited numerous applications wherein the Board treated multiple roof enclosures as requiring special exception relief. The appellants failed to cite a single application to support their position.

32. The appellants' contend that Section 3308.2 does not encompass authority to grant relief from the single enclosure requirement but relief only from the setback requirement and from the requirement regarding construction material. The appellants contend that their position is fortified by a comparison of Paragraph 3308.12 and 3308.2. Paragraph 3308.12 requires that all roof structures be

placed in a single enclosure with walls of equal height and that the material of the enclosure harmonize with the main structure. The fact that Section 3308.2 specifically refers to the requirement regarding construction material (contained in Paragraph 3308.12) but does not refer to the requirement for a single enclosure (also contained in Paragraph 3308.12) strongly implies that Section 3308.2 does not apply to the single enclosure requirement.

33. The appellants further contend if Section 3308.2 is a general authorization for the Board to grant special exceptions from all roof structure requirements, as the Zoning Administrator contends then the language in Section 3308.2 regarding construction material is superfluous because the general authorization would include authority to grant exceptions from the construction material requirement. The appellants contended that the Zoning Regulations should be construed to give effect to every word, clause, and sentence so that no part of the regulations is superfluous.

34. The appellants also contend that the Zoning Administrator relies on the intent of the Zoning Commission in amending the roof structure requirements in 1976, but the Zoning Administrator fails to cite the source from which he gleans that intent. Nothing in the public file on the roof structure amendments (File No. 76-10) addresses the question of relief from the requirement for a single enclosure with walls of equal height.

35. The appellants also argue that the Zoning Administrator also relies on three prior cases in which the Board granted special exceptions from the requirement for a single roof structure enclosure (Nos. 12949, 13877, and 14096). GWU cites additional such cases. All of those cases were either uncontested or involved no opposition to the requested roof structure relief. In each case, the Zoning Administrator certified the issue to the Board as a special exception. Since the applications were uncontested and there was no appeal from the Zoning Administrator's decision, the issue whether the requested relief should be a variance, rather than a special exception, was not before the Board and was not decided by the Board.

36. The Board finds that the appellants intentions and arguments recited in Paragraphs 32, 33, 34 and 35 are not persuasive in light of the Board's Findings of Fact Nos. 30 and 31. The number of applications the Board has heard on this issue and the special exception relief granted therein by the Board plus the uniform, consistent interpretation of the Zoning Administrator as to special exception relief required where more than one enclosure is proposed for penthouses is persuasive. It might well be argued that the lack of an appeal or opposition are the issue bespeaks in favor of the position of the University. If there is any ambiguity it may well be addressed by the Zoning Commission.

37. Advisory Neighborhood Commission 2A, by memorandum dated May 14, 1985, voted to recommend reversal of the Zoning Administrator's decision. The ANC report recited the arguments of the appellants. The Board finds these arguments have been addressed in the body of this Order.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the appeals should be denied. The Board concludes that the facts in these appeals are not at issue. The proposed addition to H. B. Burns Memorial Building would be located in the C-3-C and R-5-C Districts within the boundaries of the approved Campus Master Plan. The existing Burns Building exceeds 6.5 FAR on the site, exceeds the height limit for the C-3-C district, and the addition would exceed 3.5 FAR. The issues in this appeal stem from the Zoning Administrator's interpretation of the Zoning Regulations, based upon long standing Board practice, that a University's permitted FAR is an aggregate of all university owned land within its campus boundaries and that relief from the roof structure enclosure requirements to construct multiple enclosures is in the form of a special exception pursuant to Section 3308.2

The appellants have the burden of proving that the Zoning Administrator made an incorrect ruling on the two issues. Reversal of the Administrator's ruling would also reverse prior interpretations of the Zoning Regulations made by the Board. The Board will generally presume the validity of the Administrator's construction of the regulations and will defer to reasonable administrative interpretations. This is especially applicable in this instance since the Zoning Administrator's rulings were based upon long continuing actions of the Board. The ultimate test is the reasonableness of the decision.

With respect to the campus FAR issue and whether the addition constitutes an enlargement of a nonconforming structure, the Board concludes that the Zoning Regulations require that a college or university submit a plan to the Board for developing the campus as a whole. All property devoted to university use must be shown on the plan when located within the plan boundaries regardless of the zoning classification. The permitted FAR for a college or university is dictated by its approved campus master plan and the campus boundaries therein. The Board has traditionally ruled that the campus FAR is a composite of all sites shown in the plan with their respective zoning. The appellants correctly state that the bulk for residentially zoned areas of a university is governed by Section 3101.462. The FAR for residentially zoned areas, however, is combined with the permitted FAR for nonresidentially zoned areas to achieve an aggregate campus FAR for overall development. The policy rationale behind this is that University Campus Plans should

be designed to create and preserve open space on the campus. Building densities at specific sites are therefore permitted to be increased and accordingly other sites remain open and undeveloped. The reasoning behind this is equally applicable whether the land is zoned residential or nonresidential. The Board has clearly interpreted the regulations this way in prior applications. Therefore, the Board concludes that the Zoning Administrator gave a fair interpretation to Paragraph 3101.46. While the appellants have presented another way of looking at Paragraphs 3101.462 and 3101.463, it cannot be concluded that the Administrator's interpretation was clearly erroneous. The Administrator's ruling was consistent with the reasoning and policy behind the provisions. To construe it otherwise would impair the ability of universities to develop. Since neither the existing Burns Building nor the proposed addition exceed the permitted FAR for the University as a whole and both are located within the approved campus boundary, the Board further concludes that variance relief is not required pursuant to Paragraph 7105.12. The subject building is not nonconforming as to FAR since it is used for university purposes within the parameter of the approved Campus Master Plan.

Paragraph 3308.12 requires that all penthouses and mechanical equipment be placed in one enclosure, that the enclosure harmonize in architectural character, material and color as the main structure, and that enclosing walls be of equal height. Section 3308.2 specifically authorizes the Board to approve the location and design of any and all roof structures for a single building. The Board has granted such relief on numerous occasions. Based upon the language of Section 3308.2 and prior administrative determinations made by the Board, the Board concludes that the Zoning Administrator's interpretation of the regulation was reasonable in light of the purpose of the provision. The appellants have not met their burden of proving that the interpretation was not reasonable.

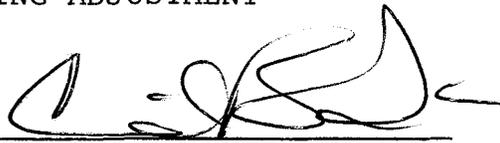
The Board concludes that it has accorded the "great weight" required by statute to the issues and concerns of the Advisory Neighborhood Commission 2A. Accordingly, for all of the above reasons, it is ORDERED that the Appeals are DENIED and the decision of the Zoning Administrator is UPHeld.

VOTE: 3-1 (William F. McIntosh, Charles R. Norris and Carrie L. Thornhill to deny; Lindsley Williams opposed; Douglas J. Patton not present, not voting).

VOTE: 3-1 (William F. McIntosh, Charles R. Norris and Carrie L. Thornhill to deny; Lindsley Williams opposed; Douglas J. Patton not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



CECIL B. TUCKER
Acting Executive Director

FINAL DATE OF ORDER: 28 JAN 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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