

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15942 of The George Washington University, pursuant to 11 DCMR 3108.1, for special exceptions under Section 210 for further processing under an approved campus plan to construct a health, wellness and fitness center and Section 411 for roof structure set back requirements in an R-5-D District at premises 700 23<sup>rd</sup> Street, N.W. (Square 42, Lot 847).

**HEARING DATES:** June 15 and September 28, 1994

**DECISION DATE:** November 2, 1994

**DISPOSITION:** The Board **DENIED** the application by a vote of 3-2 (Laura M. Richards, Susan Morgan Hinton and Angel F. Clarens to deny; Craig Ellis opposed to the motion; William Johnson opposed to the motion by absentee vote).

**FINAL DATE OF ORDER:** February 21, 1997

**RECONSIDERATION AND REHEARING ORDER**

The Board denied the application by its order dated February 21, 1997. On March 5, 1997 George Washington University ("GWU" or "University") and St. Mary's Episcopal Church ("St. Mary's" or "Church") through their attorneys, filed a joint motion for reconsideration and rehearing of the application. In their motion, the University and the Church noted that the Board's denial was primarily based on the Board's determination that the proposed structure and use would have an adverse impact on the church and surrounding properties. The movants stated that Section 3332.6 authorizes the Board to consider and grant a rehearing upon presentation of new evidence that "could not reasonably have been presented at the original hearing." 11 DCMR Section 3332.6 (1995). They maintained that this requirement is met because the University has worked with the Church and other neighboring property owners to eliminate the objectionable aspects of the proposal. With regard to the Church, the University has made a number of design and programmatic changes, to wit:

- move the mass of the center away from the Church;
- obtain Church approval before constructing in the "garden area";
- purchase from the Church the land to be used for the garden;
- use the area below grade for parking;
- provide the Church with additional parking spaces at grade behind the garden;
- move the entrance of the center to G Street;
- provide 75 parking permits for parking on Sundays between 6:00 a.m. and 3:00 p.m.;

- limit organized group activities at the center to no more than 30 people before 1:00 p.m. on Sundays;
- provide opportunities for the Church members to use the center; and
- make reasonable efforts to keep the Church advised of the center's design development.

The Church has agreed to cooperate with the University in gaining the support of the community and the Board for the construction for the center as revised. It was also noted in the motion that the University has also reached agreements with St. Mary's Court, the International Order of Odd Fellows, the Gewirtz Hillel Fellowship and all property owners in Square 42.

Finally, the University revised the traffic study to meet the concerns of the Board, and the University decided to eliminate the health care facility and its related support functions from the intended uses at the center.

The movants maintained that a rehearing should be granted because the agreed-upon changes represent new evidence that "could not reasonably have been presented at the original hearing."

The movants maintained that this is not a new application, but rather the same application with new facts that became available in the two years after the Board's decision to deny the application initially.

The Board's rules require applicants in denied cases to wait until one year after the date of the final order to refile an application. The movants noted that the University has waited more than two years since the vote to deny. They stated that many of the issues associated with the University's use of this property have not changed and have been heard on the record. A rehearing based only on the new facts discussed in the motion will not prejudice the rights of any party. They maintained that denial of the motion to rehear may jeopardize the benefits received by the Church and others from the cooperative relationship that has been established. Therefore, the University and Church requested that the rehearing be approved.

The Board received letters in opposition to the motion from Advisory Neighborhood Commission (ANC) 2A, the Foggy Bottom Association and the Columbia Plaza Tenants Association.

The parties in opposition objected strenuously to any waiver of the one year period, contending that the applicant had not shown good cause for relief from the strict application of the Board's rules and arguing further that such a waiver would prejudice their position. Parties in opposition noted their status as volunteer citizens burdened by the demands of participating in a public process.

The ANC noted that while the Church and property owners in Square 42 are in support of the revised plans, there are many residents and organizations in Foggy Bottom and West End area who remain in opposition to the application.

The ANC indicated that the University demolished 15 townhouses in Square 43 and acquired others. By this action the University demonstrated how it will eliminate the residential character of Foggy Bottom and remove additional property from the tax rolls.

For these and other reasons ANC 2A opposed the motion for reconsideration and rehearing.

The Foggy Bottom Association (FBA) stated that a motion for reconsideration is not the proper procedure for presenting a new building design and usage profile. The FBA maintained that input from the community, not only the University and the Church, is necessary to make a determination about issue of the structure's bulk and the intensity of the use. Finally, the FBA was concerned that the issues of traffic, noise and objectionable impacts have not been addressed to the association's satisfaction. The association stated that a new application should be submitted with full opportunity for comment by all interested parties.

The Columbia Plaza Tenants Association (CPTA) filed a statement opposing the motion for the following reasons:

- The revised design will move the building 70 feet south, farther from the Church but closer to Columbia Plaza;
- The use is objectionable and the capacity of the building is problematic given the proposed increase in the number of users under the new agreement;
- The University removed 15 townhouses on 23<sup>rd</sup> Street and G Street to prevent additional objections to the Wellness Center; and
- The University refused to construct adequate undergraduate student housing on campus, thereby exacerbating the objectionable condition in the off-campus neighborhood in violation of campus plan provision of the Zoning Regulations and the Comprehensive Plan.

The CPTA requested that the Board place a hold on GWU's project until the University land use policy is assessed; obtain an audit of the formal enrollment records to ensure that the current enrollment numbers are in compliance with the approved campus plan; and ensure that the University provides a "crash dormitory construction program."

No other parties submitted statements related to the motion.

### **CONCLUSIONS OF LAW AND OPINION**

Upon consideration of the motions, the responses thereto and the record in the case, the Board noted that period of more than two years has elapsed between its decision of November 2, 1994 to deny the application, and the date of the final order, February 21, 1997. The Board noted that under 11 DCMR 3334.2, "an application...whose application has been denied shall not institute a new ... application on the same facts within one year from the date of the Order upon the previous... application. However, the Board pointed out that Subsection 3301.1 allows the Board to waive any of the provisions of Chapter 33 for good cause shown if in the judgement of the Board, the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

The Board believes that because the University has already waited two years for the order in the application, it would be an undue burden to require it to wait another year before it could file a new application. Therefore, the Board finds that there is good cause to waive the waiting period. The Board is of the view that the waiver will not prejudice the rights of any party because any prejudice that would have resulted from allowing the filing within a year of the initial decision was ameliorated by the two year delay in issuing the final order. Finally, the Board concludes that granting the waiver is not prohibited by law.

Therefore, the Board hereby **ORDERS** that the requirements of 11 DCMR 3334.6 be **WAIVED** to allow for the filing of a new revised application within one year of the time the application was denied.

Having determined to waive the one year filing provision, the Board concludes that it is unnecessary to address the motion for reconsideration and rehearing, and hereby **ORDERS DENIAL** of the motion for reconsideration and rehearing.

**VOTE: 3-0** (Angel F. Clarens, Susan Morgan Hinton and Laura M. Richards to approve a waiver of the supplemental rules to allow the application to be filed within one year of the denial of the application, and to deny the motion for reconsideration and rehearing; Sheila Cross Reid not voting, not having heard the case).

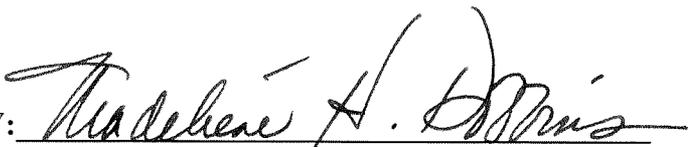
#### **THE EXCEPTIONS PROCESS**

At the time the draft reconsideration and rehearing order was prepared to go to the Board for review and adoption, the majority of the members who decided the motion were no longer members of the Board. Therefore, the order was issued as a proposed order pursuant to the provisions of D.C. Code Section 1-1509 (d), to allow the filing of exceptions. The proposed order was sent to all parties on August 21, 1997. The filing deadline for exceptions and arguments was September 26, 1997, and the deadline for responses to any exceptions was October 24, 1997. Exceptions and responses were filed timely with the Board. At the public meeting of the Board on November 5, 1997, Board members Sheila Cross Reid and Betty King indicated for the record that they had read the official record associated with the instant application, and were prepared to participate in the decision regarding exceptions taken to the Board's proposed order.

The Board considered the submissions and determined that the Board's waiver of the one year refiling provision of 11 DCMR 3334.6 did not prejudice the rights of any party and was not prohibited by law. After consideration of the exceptions and responses filed, the Board **ADOPTED** the proposed order, as amended.

**VOTE: 4-0** (Susan Morgan Hinton, Laura M. Richards, Sheila Cross Reid and Betty King to adopt, as amended; Angel F. Clarens not voting, no longer on the Board).

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

ATTESTED BY:   
**MADELIENE H. DOBBINS**  
**Director**

**FINAL DATE OF ORDER:** JAN 23 1998

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

**ORD15942/TWR/amb**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 15942**

As Director of the Board of Zoning Adjustment, I certify and attest that on JAN 23 1998 a copy of the order entered on that date in this matter was mailed first class, postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Wayne S. Quin, Esquire  
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Dorothy Miller  
Columbia Plaza Tenants Association  
2440 Virginia Avenue, N.W.  
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Attested By:

A handwritten signature in cursive script that reads "Madeliene H. Dobbins".

MADELIENE H. DOBBINS  
Director

DATE: JAN 23 1998