

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16389 of The George Washington University, pursuant to 11 DCMR § 3108.1, for a special exception under Section 210 for further processing of an approved campus plan to allow the construction and use of a new, replacement university hospital in an R-5-D/R-5-E District at premises 900 23rd Street, N.W. (Square 40, Lot 36).

HEARING DATES: November 18, 1998, January 5, 1999, April 7, 1999, April 22, 1999

DECISION DATE: May 19, 1999

DECISION AND ORDER

PRELIMINARY MATTERS:

1. The subject application was filed on July 23, 1998. On September 24, 1998, the Applicant, The George Washington University ("the University"), also filed BZA Application No. 16409, requesting a special exception under Section 210 of the Zoning Regulations and a variance from the maximum lot occupancy allowance under Subsection 403.2 to allow an addition to an existing parking garage on the University's campus. The Board granted a motion by the Applicant to consolidate the hearings in the subject application and Application No. 16409.
2. Advisory Neighborhood Commission (ANC) 2A was automatically a party to the subject application, and the Board granted party status to Ms. Maria Tyler, Commissioner of ANC 2A03, and to the Foggy Bottom Association (FBA). ANC 2A submitted reports dated November 18, 1998 and February 18, 1999 and presented testimony at the public hearings in opposition to the application. Ms. Tyler, a party in opposition to the application, presented testimony in conjunction with ANC 2A. The FBA, another party in opposition to the application, submitted two reports to the record, dated November 1998 and February 22, 1999, and presented testimony that paralleled the testimony of ANC 2A.
3. Mr. Steven Mandelbaum, the Single Member District Representative for ANC 2A06, the district encompassing the locations of both the existing and proposed University hospitals, presented testimony in support of the application. Mr. Mandelbaum stated that he was a new member of ANC 2A and did not have an opportunity to vote on the proposal as an ANC member.
4. On January 5, 1999, the Board denied further requests for party status, noting that the application had been adequately noticed and that persons seeking party status were required to make their requests known to the Board before or at the beginning of the public hearing in this matter.

5. Eight witnesses testified in support of the application, including residents of the Foggy Bottom area, the Medical Society of the District of Columbia, and Unity Health Care. The letters and testimony in support of the application sought approval of the proposed hospital because of its benefits to the community, the residents of the District of Columbia, the medical community, and the region.

6. Five persons presented testimony in opposition to the application, citing traffic and intrusion into the residential neighborhood of Foggy Bottom. Testimony in opposition was presented by two residents of Foggy Bottom, the Foggy Bottom Historic District Conservancy, the Foggy Bottom Mews Condominiums, and the Claridge House.

7. The Applicant presented rebuttal witnesses who provided expert testimony pertaining to the implementation of recommendations set forth in the December 30, 1998 report of the Department of Public Works (DPW).

8. ANC 2A argued that the Board could not act on the application until the Applicant complied with statutory environmental impact requirements set forth in D.C. Code § 6-983. However, the necessary environmental review will occur as part of the building review process if the Board granted the application. Section 4 of the District of Columbia Environmental Policy Act of 1989 (“DCEPA”), effective October 18, 1989, D.C. Law 8-36, § 4, 36 DCR 5741, D.C. Code § 6-983 (1995 Repl.), “Environmental Impact Statement requirements,” provides in part that:

whenever ... a board ... approves a major action that is likely to have substantial negative impact on the environment, if implemented, the ... board shall prepare or cause to be prepared ... a detailed EIS at least 60 days prior to implementation of the proposed major action, unless the Mayor determines that the proposed major action has been or is subject to the functional equivalent of an EIS.
D.C. Code § 6-983(a) (1995 Repl.).

Section 8 of the DCEPA directs the Mayor to “designate a lead agency to prepare an EIS ... when the preparation of the EIS requires the input of more than 1 agency. The lead agency shall, if necessary, oversee the preparation of a single, omnibus EIS...” D.C. Code § 6-987 (1995 Repl.). By Mayor’s Order 92-151, issued December 1, 1992, the Director of the Department of Consumer and Regulatory Affairs, or his or her designee, was delegated the authority to require preparation of an EIS and to designate a lead agency to prepare an EIS, or cause an EIS to be prepared. Pursuant to 20 DCMR § 7203.1(a), DCRA is generally the lead agency responsible for the coordination of the preparation and review of an EIS. The necessary environmental impact assessment will be carried out as part of the permitting process for construction of the new hospital.

SUMMARY OF EVIDENCE:

A. Applicant

1. The Applicant offered expert testimony and evidence from Dr. John Williams, Vice President for Health Affairs and Executive Dean of The George Washington University Medical Center; Philip Schaengold, Chief Executive Officer and Managing Director of The George

Washington University Hospital; Ronald Skaggs, Phillip Tobey, and Noel Barrick, architecture and design; Louis Slade, traffic and transportation; and Madeliene Dobbins, planning and land use. Dr. Williams provided testimony on the partnership between the University and Universal Health Services, Inc. and summarized the University-related hospital operations. Mr. Schaengold, provided testimony on the operation of the new replacement hospital.

2. The Applicant's traffic and transportation expert, Mr. Louis Slade, prepared a traffic report and testified that closing the surface parking lot on the project site and placing the new hospital there was a logical step to be taken on the University campus. Mr. Slade opined that a surface commuter parking lot atop a Metro station in downtown Washington was directly contrary to fundamental urban transportation planning principles. He concluded that, because the existing hospital is a very large generator of Metrorail patronage, the new replacement hospital should also be located at the Metro station. Mr. Slade testified that development of the proposed replacement hospital would seem like a relocation of the existing facility, because the existing facility has a loading dock and emergency area and relies on parking across the street and in other University parking facilities, and proposed new hospital would have the same characteristics.

3. With regard to vehicular traffic, Mr. Slade described a traffic impact analysis that reviewed eight intersections in the vicinity of the site. According to Mr. Slade, only one intersection – 23rd Street at Washington Circle – currently operates at level of service F, and would continue to operate at level of service F regardless of the subject proposal. He stated that all other intersections operate at acceptable levels of service – that is, D or better – and would continue to operate at D or better with the subject proposal.

4. With regard to pedestrian traffic, Mr. Slade testified that the sidewalk on the west side of 23rd street is very active and that the Metro station generates about 34,000 patron trips per day, 17,000 in and 17,000 out. He stated that the existing hospital generates about 2,600 of the 34,000 trips, or about seven to eight percent, and thus is an important component of the Metro station's patronage. Mr. Slade testified that pedestrians coming to the new hospital by Metrorail would not have to cross 23rd Street, but would come out of the station and walk down the sidewalk into the hospital. The sidewalk segment currently is about five and a half to six feet wide, and narrows down to three feet in some sections between the Metro station and Washington Circle. Mr. Slade stated that the sidewalk should be widened to adequately accommodate the pedestrian traffic.

5. The 23rd Street side of the new hospital would include three curb cuts across the sidewalk: the entrances to the emergency room access and the entrance and exit from the front-door porte cochere. The curb cuts would not create a hazardous situation but would be much like those in other downtown areas, except that there would be fewer vehicle trips in the driveways of the new hospital than in a comparable downtown area.

6. With regard to parking, Mr. Slade stated that the University had determined that it could maintain its parking above 2,700 spaces during the next three years. He testified that during the construction of all approved and proposed projects on campus, the number of off-street parking spaces would not fall below 2,700. According to Mr. Slade, the University's parking plan called

for additions and deletions of parking spaces over the next several years such that the University would always maintain compliance with the 2,700-3,000 parking space inventory required by the approved campus plan. He stated that additional parking capacity would be developed in existing facilities by using attendant-assisted parking (i.e., stacked parking), and a portion the additional parking supply would be provided at the Kennedy Center.

7. The Applicant stated that removal of the existing 265-space parking lot on the subject site would eliminate most of the approximately 1,300 automobile trips per day on the segment of New Hampshire Avenue between 23rd and I Streets generated by the parking lot. According to the Applicant, these passenger vehicles would be replaced by approximately 30 delivery vehicles per day to the loading dock on 24th Street. The Applicant testified that its truck mitigation proposals for the loading dock should help lessen the impacts from the truck traffic.

8. The Applicant also stated that it would include a clause in its construction contracts specifying that:

Parking is not available on campus and will not be provided at or near the construction site. The contractor shall be responsible for locating and providing parking as required for his forces, including subcontractors. The contractor shall also be responsible for providing his own shuttle and other forms of transportation from the remote parking site to the construction site.

9. With regard to the loading dock at the proposed new hospital, the Applicant's expert witness Mr. Slade testified that the facility would generate about 30 vehicles per day, or 60 truck trips per day. The types of vehicles involved would include small vans, automobiles, single-unit trucks, and one, or occasionally two, tractor-trailer trucks per day. According to Mr. Slade, the loading dock would work well for the majority of the 30 vehicles: the smaller trucks, vans, and automobiles could pull up in front of the dock and back into it. Mr. Slade stated that the tractor-trailer trucks would require some management, and someone would hold traffic while the truck backed in, as is commonplace in the city. The Applicant revised its originally proposed loading dock so that trucks could back completely into the dock and the doors of the dock could be closed at all times except when vehicles were entering or exiting.

10. Mr. Slade testified that the proposed location of the loading dock was the most appropriate on the subject site, because it was on the least-traveled of the three streets adjacent to the site and the planted island across from the proposed location would afford buffering between the dock and the neighborhood across 24th Street. He stated that it would be inappropriate to place a loading dock on 23rd Street, because there is too much pedestrian traffic adjacent to the Metrorail entrance, and a loading dock on Washington Circle was not an option.

11. The Applicant made certain modifications to the proposed replacement hospital following discussions with DPW of its concerns and recommendations with respect to the proposal. The Applicant testified that its modified emergency room access plan would increase traffic safety over its initial proposal, and its modified loading dock proposal would reduce potential truck/pedestrian conflicts even though it would still require that traffic on New Hampshire Avenue be stopped briefly when large trucks backed into the loading area. With regard to the

main entrance, the Applicant's expert stated that the modifications addressed most of the conflicts, even though the proposed main entrance presented slightly more potential pedestrian/vehicular conflicts than the existing hospital site, due to the greater amount of pedestrian traffic on the west side of 23rd Street.

12. The proposed emergency access – requiring emergency vehicles to enter the hospital site from 23rd Street and exit onto New Hampshire Avenue – is adequate for the proposed hospital.

13. The Applicant testified that the replacement hospital would not be a noise-intensive use and would not create objectionable noise impacts.

B. Testimony of the Office of Planning

1. The Office of Planning (OP), by its report dated November 13, 1998 and testimony presented at the January 5, 1999 hearing session, recommended approval of the application, provided that the Board determined that no deleterious area impacts would result. OP stated that, in its opinion, the Applicant had met the burden of proof for the requested special exception, because the use and operation of the proposed facility would not impair the intent, purpose, or integrity of the Zoning Regulations for R-5-D/R-5-E Districts and approval of the hospital would not be inconsistent with the Comprehensive Plan. According to OP, the proposed hospital would be consistent with the University's approved campus plan and would not significantly increase the number of students, faculty, or staff. OP testified further that, including the proposed project, the bulk and height of buildings on the University's campus would not exceed the limits adopted in the campus plan.

B. Testimony of the Department of Public Works

1. DPW submitted an initial report dated November 16, 1998 and a revised report on December 30, 1998, and presented testimony at the public hearing session on January 5, 1999. DPW concluded that the Applicant's proposal was very difficult to evaluate and analyze but was significant and had merit for the community. After review of the transportation impacts of the proposal, DPW expressed concerns regarding (1) the ability of pedestrians to travel north on 23rd Street on the west sidewalk where the main entrance to the hospital would be located; (2) the location of the proposed emergency access and egress, close to a very busy part of the circle where public safety issues might arise related to the ability of pedestrians to cross those access points safely; and (3) the location of the loading dock on 24th Street, which was more residential than 23rd Street and might be too narrow for trucks to maneuver.

2. Initially, DPW made recommendations concerning the sidewalks around the new hospital; the locations of the emergency room entrance, main entrance, and loading dock; a proposal to limit vehicular traffic one-way southbound on a segment of New Hampshire Avenue; and the provision of sufficient loading area within the building so that trucks could maneuver within the building site, underground in a garage or loading area, where they could unload and pull out front-first, rather than backing out. DPW noted that its recommendations were problematic, and indicated that the agency had not met with the Applicant to discuss the project.

3. At the public hearing session of April 22, 1999, DPW noted that it had submitted a revised report, dated February 8, 1999, after meeting with the Applicant and its traffic consultant as well as residents concerned about the proposed hospital. Thereafter, DPW altered its initial recommendations such that the configuration of the new hospital would remain as proposed by the Applicant and measures would be implemented to mitigate its traffic and transportation impacts. The recommended mitigation measures, which relate to the emergency entrance, the loading dock, and the main entrance, are as follows:

I. Emergency entrance

- a) Emergency vehicle access would remain just south of Washington Circle, and traffic would enter the emergency area from 23rd Street rather than New Hampshire Avenue, in order to reduce pedestrian and vehicular conflicts with emergency vehicles accessing the hospital.
- b) The hospital would provide an additional stoplight just south of the emergency access exit on New Hampshire Avenue, synchronized with the stoplight at Washington Circle to ensure that traffic stopped on New Hampshire Avenue waiting to enter the traffic circle would not block the emergency access exit.
- c) The hospital would install signs and flashing lights to warn vehicles and pedestrians of the location of the emergency entrance and exit.
- d) The hospital would use different paving material for the emergency access driveway than would be used for the sidewalk, to increase pedestrian safety by differentiating the driveway where it crossed the sidewalk.

II. Loading dock

- a) The hospital would increase the depth of the loading area within the building so that trucks could enter the building, and the loading dock doors would be kept closed except when trucks entered or left the loading area.
- b) When needed, the hospital would station staff on the street to stop vehicular and pedestrian traffic and to direct trucks as they entered or exited the facility.
- c) The hospital would place warning signs and lights near the loading area.
- d) The hospital would require that deliveries not occur before 7:00 a.m. or after 6:00 p.m., and would recommend that, to the greatest extent possible, deliveries should not occur during the morning and evening rush hours.

- e) The hospital would require that delivery vehicles not use Foggy Bottom residential streets to access the hospital; instead, trucks would be directed to access the hospital from 23rd Street, west on I Street, and north on 24th Street. DPW is expected to place traffic signs to prohibit through truck traffic on residential streets west of the hospital site.
- f) The hospital would use different paving material for the loading dock driveway than would be used for the sidewalk, to increase pedestrian safety by differentiating the driveway where it crossed the sidewalk.

III. Main entrance

- a) The hospital would widen sidewalks to increase pedestrian safety, especially on 23rd Street.
- b) The hospital would modify the pavement at the main entrance to highlight areas of potential pedestrian and vehicular conflict.

4. With the modifications to the emergency room access plan, DPW withdrew its recommendations to make New Hampshire Avenue one way southbound adjacent to the hospital and to move the loading dock and the main entrance. DPW noted that, due to site constraints, the proposed emergency entrance and loading dock presented a unique challenge to the development of a hospital on the subject site, but concluded that the Applicant made a reasonable effort, given the constraints, to address DPW's concerns. DPW stated that it would require implementation of the recommended mitigation measures through the public space permitting process.

D. Testimony of ANC 2A and the FBA

1. Dorothy Miller, former Chairperson, and Maria Tyler, Commissioner for ANC-2A03, testified on behalf of ANC 2A in opposition to the application. The ANC's testimony focused on the impact of the proposed building on the immediately adjacent residential area, especially the Foggy Bottom Historic District. The ANC expressed concerns about the proposed loading dock, specifically with respect to its alleged negative visual character; risks from hazardous material; noxious odors; truck noise, especially the warning beeps from trucks backing into the facility; the potential danger to pedestrians; and the substantial addition to traffic and congestion, especially when traffic would be halted so that trucks could back into the loading dock. The ANC stated that the proposed mitigation measures submitted by the University did not provide a basis for the ANC to alter its opposition to the application.

2. Ms. Tyler testified that relocation of the hospital to the proposed site, on the campus boundary, would transfer highly disruptive commercial hospital traffic to the heart of the residential neighborhood with a drastic, objectionable impact on the community. Ms. Tyler concluded that the proposed facility would overpower the abutting low-scale Foggy Bottom Historic District as well as the residential area outside the Historic District.

3. Ellen McCarthy, an expert in land use and urban planning, testified on behalf of ANC 2A. She contended that the Applicant had failed to demonstrate a lack of adverse impacts with respect to noise; traffic and parking; height, bulk, and design compatibility; and adherence to the campus plan. She testified that the proposed hospital would generate noise substantially more disruptive than residents of an R-3 neighborhood have a right to expect, and that the noise would be largely unique to the proposed hospital use, such as sirens and noise associated with operation of the loading dock.

4. Ms. McCarthy also testified that the proposed facility was incompatible with the surrounding area in terms of height, bulk, and design. She also stated that the proposed treatment of 23rd Street was incompatible with its status as a designated “special street” intended to unify vistas; in this case, linking Washington Circle visually with the Lincoln Memorial and the western end of the Mall.

5. The ANC’s traffic expert, Dr. Everett Carter, testified that his study of vehicle loading and unloading at the existing hospital demonstrated approximately 100 delivery truck movements per day, not the 60 that the Applicant described. Dr. Carter stated that this level of loading activity was inconsistent with the residential character of the neighborhood. According to the ANC, trucks backing into the loading dock would require that traffic be stopped on both New Hampshire Avenue and 24th Street for as long as two to three minutes as many as 50 times per day.

6. The FBA disputed the Applicant’s contention that traffic generated by the site would decrease following elimination of the surface parking lot, stating that the Applicant failed to consider the cumulative effect of new construction by taking into account the traffic generated by three new structures to be built by the University. The FBA contended that the Applicant failed to provide adequately for parking, because the 200 new parking spaces planned for the addition to the existing garage would not be built before the new hospital facility was opened, and because the Applicant had not specified the expected number of faculty, students, and daily visitors at the proposed facility, in addition to the anticipated staff of 2,000 people.

7. The ANC also disputed the Applicant’s parking plan, particularly with respect to the parking spaces located at the Kennedy Center. ANC 2A asserted that the Kennedy Center is not within the campus plan boundaries and thus parking spaces located at the Kennedy Center should not be counted toward the minimum of 2,700 spaces required by the campus plan. The ANC also contended that the University’s agreement with respect to the Kennedy Center spaces was not consistent with a “commitment” of 150 spaces, as claimed by the Applicant, because those spaces are available only from 6 a.m. to 7 p.m., while the Kennedy Center may use 150 spaces in one of the Applicant’s garages between 4:30 p.m. and 5 a.m.; either party may notify the other of the unavailability of the spaces “on any given date”; and the agreement may be terminated by either party with or without cause, upon ninety (90) days prior written notice.

8. The ANC testified that proposed facility would be a private, profit-making hospital operated by District Hospital Partners, L.P., a partnership composed of Universal Health Services, the third-largest health care corporation in the United States (80 percent) and the University (20 percent). According to the ANC, use by a profit-making hospital not controlled

by the University is not permitted by special exception in a residentially zoned district within a campus plan area, and that the proposed commercially owned and operated, profit-making hospital is not “Use as a college or university” as contemplated by Section 210 of the Zoning Regulations.

9. ANC 2A also testified that the Applicant was in violation of the section of the Comprehensive Plan stating that the University should provide written justification for non-dormitory development projects in lieu of providing additional on-campus dormitory accommodation for its undergraduate students.

10. Further, ANC 2A contended that the Board could not proceed in this matter until the Applicant submitted an environmental impact statement. According to the ANC, an environmental impact statement was required because the Applicant had requested that the Board take action in the form of issuing special exception relief to authorize construction and use of a new hospital.

F. Testimony of ANC2A06

1. Mr. Mandelbaum, the Single Member District (SMD) Representative for ANC 2A06, testified that there was a misconception that the community opposed the application for the new replacement hospital. He noted that his colleague Commissioner Richard Sheehy, the SMD Representative for ANC 2A01, joined him in supporting the application. He stated further that parking would be addressed with the expansion of the University parking garage, that closing the surface lot would reduce the vehicle trips to the site and to the New Hampshire Avenue area, and that the Applicant’s revisions to the loading dock successfully buffered the dock and minimized pedestrian dangers.

FINDINGS OF FACT:

1. The property that is the subject of this application is Lot 36 in Square 40, located at Washington Circle in the Foggy Bottom neighborhood of Ward 2. The premise address is 900 23rd Street, N.W.

2. The site contains approximately 95,717 square feet of land area. It is bounded on the north by Washington Circle, on the south by Square 41, on the east by 23rd Street, and on the west by New Hampshire Avenue and 24th Street, N.W. The site is nearly triangular in shape.

3. The site is currently developed as an interim surface parking lot with approximately 265 parking spaces. The site also contains a pedestrian mall in the closed right-of-way of I Street between 23rd and 24th Streets, as well as easements for elevator and escalator access to and from the Foggy Bottom/GWU Metrorail Station.

4. The site is split-zoned R-5-D and R-5-E. The R-5-D District permits matter-of-right medium-high density development of general residential uses, including single-family dwellings, flats, and apartment buildings to a maximum height of 90 feet, a maximum floor area ratio (FAR) of 3.5, and a maximum lot occupancy of 75 percent. The R-5-E District permits matter-

of-right high-density development of general residential uses, including single-family dwellings, flats, and apartment buildings to a maximum height of 90 feet, a maximum FAR of 6.0 for apartment houses or hotels and 5.0 for other structures, and a maximum lot occupancy of 75 percent.

5. Hospitals are permitted as a matter of right in both R-5-D and R-5-E zones. A college/university and its facilities, including a “university hospital,” are permitted in an R-5-D or R-5-E District if approved by the Board pursuant to Section 210.
6. The University and its partner, Universal Health Services, Inc., propose to construct a new hospital facility on the subject site.
7. The University owned and operated the existing hospital until 1997, when operations were transferred to District Hospital Partners, L.P., a partnership of the University and Universal Health Services, Inc. The transaction transferred only the operations and management of the hospital, while the academic and research programs housed at the hospital continued to be owned and conducted by the University.
8. Under the terms of the partnership agreement for the existing hospital, the University leases the real property and hospital building to the partnership on a long-term basis. The partnership continues the current name of the hospital and has hired its employees. The partnership employs and pays for the services of University medical faculty to manage the hospital’s clinical support services, as well as the services of the University’s interns and residents as staff at the hospital. The University continues to conduct research at the hospital, which is the primary teaching facility of the University’s School of Medicine and Health Sciences.
9. The University owns the site of the replacement hospital and will own the facility, which will be operated by a District Hospital Partners, L.P. The replacement hospital will be owned and operated in the same manner as the existing hospital and will provide all the services currently provided at the existing facility. The University will continue to conduct its academic and research programs housed at the hospital.
10. The replacement hospital will be a teaching hospital and will have medical students on site. However, the hospital will not increase the number of University students on the campus.
11. The proposed replacement hospital will have capacity for 458 licensed beds, 371 of which will be opened immediately. The proposed facility will be approximately 100,000 square feet smaller than the existing facility.
12. The proposed hospital – a six-story building of just under 400,000 square feet, with a footprint of approximately 61,000 square feet, including the Metro station – will be constructed on a site that is 95,717 square feet or 2.2 acres in size. The site FAR is 4.17. When adding the hospital project and three other proposed projects to the University’s current FAR, the sum is 2.81. The project’s lot occupancy will be 63.78 percent, which is within the 75 percent allowable. The proposed building will be approximately 87 feet in height, measured from

Washington Circle, and thus is within the 90 feet allowed under the Zoning Regulations. The penthouse structure will be 18 feet, 6 inches in height, meeting the 1-to-1 setback requirement. The rear yard will be 90 feet, exceeding the 34-foot required minimum.

13. The subject site is located within the boundaries of the approved campus plan, and is not located within the boundaries of the Foggy Bottom Historic District.

14. The site precinct is dominated by seven- to 12-story midrise buildings. Many of the surrounding buildings are both larger and taller than the proposed hospital building. Based on these factors, the Board concurs with the conclusion reached by the Applicant's architect, Mr. Philip Tobey, who determined that the project would cause no detrimental shadow impact on the neighborhood.

15. The primary building materials for the replacement hospital will be warm brick, accenting the standard brick with slightly darker brick to create an articulated base designed to reduce the mass and reinforce the human scale.

16. One or more dumpsters will be located within the loading dock for the purpose of trash storage.

17. With regard to vehicular traffic, the intersections in the vicinity of the hospital site will continue to operate at their current levels of service following development of the new replacement hospital. Removal of the existing interim surface parking lot on the subject site will eliminate many of the approximately 1,300 automobile trips per day on New Hampshire Avenue generated by the surface parking lot. Other potentially adverse traffic impacts associated with the replacement hospital will be diminished through effective mitigation measures taken pursuant to this Order, particularly with respect to the scheduling of deliveries to the loading dock so as to minimize congestion during morning and evening rush hours.

18. The replacement hospital will not create unduly hazardous conditions with regard to pedestrian traffic, and the mitigation measures taken pursuant to this Order will further minimize risks to pedestrians. These measures include widening the sidewalk on the west side of 23rd Street as well as the installation of warning lights and special paving to alert pedestrians to curb cuts across the sidewalk.

19. The existing hospital receives 10 ambulance trips per day, on average, but the number of varies and can be as high as 20 ambulances per day. The proposed emergency access – requiring emergency vehicles to enter the hospital site from 23rd Street and exit onto New Hampshire Avenue – is adequate for the proposed hospital.

20. The Applicant will provide at least 2,700 off-street parking spaces at all times, as required by the approved campus plan. While development of the replacement hospital will eliminate the 265 parking spaces in the existing surface lot, the Applicant has provided for additional parking spaces by enlarging an existing on-campus parking garage one block from the new hospital, by arranging reciprocal parking rights with the Kennedy Center, and by developing additional capacity in existing facilities through attendant-assisted parking.

21. The Applicant's proposals for locating the emergency access and loading dock are best suited for the subject site and, in conjunction with the conditions imposed by this Order, will minimize possible adverse impacts on traffic congestion and pedestrian safety associated with those functions.

22. Operation of the loading dock subject to the mitigation measures required by this Order will not create a significant adverse impact on the use of a neighboring property. The mitigation measures will ensure that potential traffic congestion and adverse noise impacts are minimized through appropriate scheduling of deliveries and limiting the number of 18-wheel trucks per day. The mitigation measures will also lessen any adverse visual impact by requiring that the loading dock doors be kept closed except when trucks are entering and exiting as well as by means of landscaping measures to buffer the loading dock from nearby residential uses.

CONCLUSIONS OF LAW AND OPINION:

The Applicant is seeking a special exception under Section 210 of the Zoning Regulations for further processing of an approved campus plan to allow the construction and use of a new, replacement university hospital in an R-5-D/R-5-E District. D.C. Code § 5-424(g)(2). The Board is authorized to grant a special exception where, in the judgment of the Board 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 affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to certain conditions specified in Section 210.11 DCMR § 3108.1.

Keeping this standard in mind, the Board notes that some of the evidence and testimony presented in this proceeding included discussion of matters that are not relevant to the Board's determination of whether the Applicant's request for a special exception should be granted. A great deal of time was devoted by the Applicant in describing the benefits the hospital would bestow upon the community and the University's need to replace its existing facility. Similarly, the parties in opposition argued that the replacement hospital was unnecessary or that better uses could be made for the site. Pursuant to Subsection 3108.1, the Board's inquiry in this case focused on whether the requested special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Maps and would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board's decision in this matter is based solely on the substantial evidence in the record pertaining to the effects of the proposed hospital facility on the use of neighboring property, and not on the purported merits or wisdom of constructing the proposed hospital.

As a preliminary matter, the Board concludes that the University is the proper applicant for a special exception in this matter, in light of its ownership of the site and of the proposed building, and the University's use of the replacement hospital to support its academic mission. The parties in opposition to this application have argued that the for-profit nature of the proposed hospital renders it inconsistent with the term "university hospital" as used in 11 DCMR §210.1. The Board disagrees. The Application is properly considered for further processing of the University's approved campus plan, because the site is located within the campus boundaries and the facility will be developed and owned by the University. Like the existing hospital, the

replacement facility will be used by the University to house academic and research programs conducted in furtherance of the academic mission of the University.

First, the Board notes that the proposed use is “located on the campus of a college or university,”¹¹ DCMR § 210.1 (Finding of Fact No. 8). Second, the Applicant has demonstrated the role of the replacement hospital in furtherance of the University’s academic mission, and that the University will exercise exclusive control over those aspects of hospital operation that relate to its academic program (Findings of Fact Nos. 9 and 10). Therefore the Board concludes that the hospital is in fact a “college or university hospital” use within the meaning of Section 210. The fact that the University has turned over responsibility for operating the facility to the partnership, of which the University is a member, or that the hospital will be operated for profit, does not alter the University’s use of the facility as a teaching hospital for academic and research purposes, or preclude special exception relief. *See Citizens Coalition et al. v. District of Columbia Bd. of Zoning Adjustment*, 619 A.2d 940 (App.D.C. 1993) (Court upheld BZA order granting special exception relief pursuant to campus plan permitting Georgetown University to construct, in an R-3 zone, an addition to a power plant, including a 56-megawatt cogeneration facility, to be constructed and operated by a separate corporation, that would generate power for sale to the local electric utility).

Turning to the merits of the application, the Board concludes that the Applicant has met the tests for the granting of a special exception because the proposed use, subject to the conditions enumerated in this Order, is in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. With respect to consistency with the general purpose and intent of the Zoning Regulations, the Board notes that the subject site is located in a relatively high density residential area, where medium-high and high density development of general residential uses is permitted as a matter of right. The replacement hospital will not exceed the limits prescribed in the Zoning Regulations with respect to height, floor area ratio, or lot occupancy (Finding of Fact No. 4). Moreover, hospitals are permitted as a matter of right in both R-5-D and R-5-E zones, while college or university uses are permitted with Board approval (Finding of Fact No. 5). We concur with the Office of Planning’s conclusion that the use and operation of the replacement hospital will not impair the intent, purpose, or integrity of the Zoning Regulations for R-5-D/R-5-E Districts, as well as its finding that approval of the hospital would not be inconsistent with the Comprehensive Plan or the University’s approved campus plan.

The Board concludes that the replacement hospital will not be incompatible with the surrounding neighborhood in terms of height, scale, or bulk. The Board accepts the conclusions of the Applicant’s expert witness that the six-story replacement hospital building will (1) occupy approximately 64 percent of its lot, where 75 percent lot occupancy is allowed, (2) will rise approximately 87 feet, measured from Washington Circle, where a height of 90 feet is allowed, and (3) will be within the FAR limit for the campus as a whole, so that the gross floor area of all buildings and structures on the campus, including the new hospital, will not exceed the allowed gross floor area for the entire campus. The Board also concurs with the conclusion of the Applicant’s expert that proposed hospital will blend with the context in terms of overall scale, massing, materials, color, and detailing. The facility will be constructed within the boundaries of

the University's approved campus plan, in the vicinity of several buildings of comparable size, and will satisfy applicable zoning requirements with regard to rear yard and setbacks.

The Board also concludes that the Applicant met its burden of demonstrating that the replacement hospital will not tend to affect adversely the use of neighboring property, subject to the conditions stated hereafter. The subject site is located in a relatively high density zone where any development could potentially have deleterious effects on the surrounding neighborhood. However, with the imposition of the additional mitigation measures, use of the site as a hospital will not create unduly adverse impacts on neighboring property. The mitigation measures that condition approval of the special exception are designed to limit any adverse impacts relating especially to traffic congestion, parking, pedestrian safety, noise, and visual impact.

The Board concludes that the replacement hospital will not have a deleterious effect on vehicular traffic, because intersections in the vicinity will continue to operate at their current levels of service following development of the new hospital (Finding of Fact No. 11). The Board also accepts the conclusion of the Applicant's expert witness that the curb cuts at the new hospital will be much like those in other downtown areas, and therefore concludes that the new hospital will not create a hazardous situation or otherwise have a deleterious effect on pedestrian traffic (Finding of Fact No. 12). With regard to parking, the Board concludes that the replacement hospital will not tend to affect adversely the use of neighboring property, because the University will continue to provide at least 2,7000 off-street parking spaces at all times, as required by the approved campus plan (Finding of Fact No. 13).

The replacement hospital is not likely to create objectionable noise impacts, particularly when compared to noise associated with other uses permitted on the site as a matter of right. The Board is not persuaded by the testimony of ANC witness McCarthy concerning alleged "disruptive" noise generated by the new hospital, and instead concurs with the Applicant that the hospital is not a noise-intensive use that would tend to create objectionable noise impacts. In addition, any adverse noise associated with the hospital will be diminished through effective mitigation measures taken pursuant to this Order, such as the prohibition against deliveries to the loading dock before 7:00 a.m. or after 6:00 p.m.

The Board accorded ANC 2A the "great weight" to which it is entitled. In doing so, the Board fully credited the unique vantage point that ANC 2A holds with respect to the impact of the proposed hospital upon the ANC's constituents. However, the Board concludes that the ANC has not offered persuasive advice that would cause the Board to find that the replacement hospital is contrary to the Zoning Regulations and would adversely affect the use of neighboring property, particularly in light of the conditions imposed on approval of the Applicant's proposal.

Specifically, the ANC raised concerns principally pertaining to traffic, pedestrian safety, and operation of the loading dock. The Board accepts the expert testimony offered by the Applicant on these issues, and, as discussed above, concludes that the replacement hospital will not adversely affect the use of neighboring property.

The Board concurs with the Office of Planning that the use and operation of the new hospital is not inconsistent with the Comprehensive Plan and will not impair the intent, purpose,

or integrity of the Zoning Regulations for the R-5-D and R-5-E districts. The Board is not persuaded by ANC 2A's arguments that mitigation measures, such as special paving and warning lights designed to enhance pedestrian safety, would impair any visual connection along 23rd Street between Washington Circle and the Lincoln Memorial.

Further, the Board finds no merit in the ANC's claim that, in accordance with the Comprehensive Plan, the Applicant "should provide written justification for non-dormitory development projects in lieu of providing additional on-campus dormitory accommodations for its undergraduate student[s]...[and] should also provide adequate on-campus parking and take account of the residential and historic district status of Foggy Bottom in any future development..." 10 DCMR § 1349.1(b) (1995). The cited provision is no longer in effect but was repealed by the Comprehensive Plan Amendment Act of 1998 (D.C. Act 12-609, effective April 27, 1998), which amended the District of Columbia Comprehensive Plan Act of 1984, effective April 10, 1984 (D.C. Law 5-76; D.C. Code § 1-245 *passim*) by modifying Section 3 (10 DCMR 1-19). Amendments to 10 DCMR 1-19 were published February 19, 1999 in the D.C. Register, 46 DCR 1441. The new Ward 2 element does not include any provision comparable to 10 DCMR § 1349.1(b) (1995) that would require or encourage GWU to provide written justification for non-dormitory development projects and adequate on-campus parking or take account of the residential and historic district status of Foggy Bottom in any future development.

CONDITIONS:

The issues and concerns raised by the ANC, as well as other witnesses, parties in opposition, and DPW, have convinced the Board that conditions must be attached to its approval. Approval of the Applicant's proposal to construct a replacement hospital facility is therefore granted subject to the Applicant's compliance with the following conditions. A violation of any condition shall be considered a failure to comply with this Order. The violation shall be deemed recurring. Chapter 32 of the Zoning Regulations sets forth provisions with respect to enforcement and penalties for violations of the regulations. Section 3205 requires compliance with conditions in orders of the Board and provides that, if a building permit or certificate of occupancy has been issued pursuant to a decision of the Board to approve a special exception, then each condition to the approval of that special exception shall be treated as a condition to the issuance of the building permit or certificate of occupancy as well.¹¹ DCMR § 3205.4 (1995). Failure to abide by the conditions, in whole or in part, shall be grounds for the revocation of any building permits or certificate of occupancy issued pursuant to this order.

The following conditions apply to the Board's decision to grant the requested special exception.

1. Emergency entrance

- a) Emergency vehicle access shall be located south of Washington Circle, and traffic shall enter the emergency area from 23rd Street rather than New Hampshire Avenue, in order to reduce pedestrian and vehicular conflicts with emergency vehicles accessing the hospital.

- b) The hospital shall request DPW to install an additional stoplight south of the emergency access exit on New Hampshire Avenue, synchronized with the stoplight at Washington Circle to ensure that traffic stopped on New Hampshire Avenue waiting to enter the traffic circle will not block the emergency access exit.
- c) The hospital shall request DPW to install signs and flashing lights to warn vehicles and pedestrians of the location of the emergency entrance and exit.
- d) Subject to DPW approval, the hospital shall use different paving material for the emergency access driveway than will be used for the sidewalk, to increase pedestrian safety by differentiating the driveway where it crosses the sidewalk.

2. Loading dock

- a) The hospital shall increase the depth of the loading area within the building so that trucks can fully enter the building.
- b) The loading dock doors shall be kept closed at all times except when trucks are entering or leaving the loading area.
- c) When needed, the hospital shall station staff on the street to stop vehicular and pedestrian traffic and to direct trucks as they enter or exit the facility.
- d) The hospital shall place warning signs and lights near the loading area in accordance with DPW regulations and approval.
- e) The hospital shall require that deliveries to the loading dock not occur before 7:00 a.m. or after 6:00 p.m., and shall recommend to vendors that, to the greatest extent possible, deliveries should not occur during the morning and evening rush hours.
- f) No more than two 18-wheel trucks per day shall make deliveries to the hospital.
- g) The apron of the loading dock shall be large enough to permit large trucks to maneuver on the apron rather than in the public space.
- h) The hospital shall require that delivery vehicles not use Foggy Bottom residential streets to access the hospital; instead, trucks shall be directed to access the hospital from 23rd Street, west on H Street, and north on 24th Street. The Applicant shall petition DPW to place traffic signs to prohibit through truck traffic on residential streets west of the hospital site.
- i) Subject to the approval of DPW, the hospital shall use different paving material for the loading dock driveway than will be used for the sidewalk, to increase pedestrian safety by differentiating the driveway where it crosses the sidewalk.
- j) The hospital shall add appropriate landscaping to buffer the loading dock from neighboring residential uses.

3. Main entrance

- a) Subject to DPW approval, the hospital shall widen sidewalks to increase pedestrian safety, especially on 23rd Street.
- b) Subject to DPW approval, the hospital shall modify the pavement at the main entrance to highlight areas of potential pedestrian and vehicular conflict.

4. Parking

- a) No certificate of occupancy shall be issued for the hospital until the garage that is the subject of Application No. 16409 is open and operational, and the Applicant has provided the Zoning Administrator sufficient evidence of its compliance with the parking provisions contained in the approved campus plan.
- b) The hospital shall include a clause in its construction contracts stating that:
Parking is not available on campus and will not be provided at or near the construction site. The contractor shall be responsible for locating and providing parking as required for his forces, including subcontractors. The contractor shall also be responsible for providing his own shuttle and other forms of transportation from the remote parking site to the construction site.
- c) A violation of the construction management plan shall constitute a violation of this Order if the Applicant fails to take appropriate action to ensure contractors' compliance with the plan.

For the reasons stated above, the Board concludes that the applicant has met the burden. It is hereby **ORDERED** that the application be **GRANTED**.

VOTE: 3-1 (Sheila Cross Reid, Herbert Franklin, and Jerry H. Gilreath to grant;
Betty King to deny. The elaboration of Ms. King's vote is in the record).

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

Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute the Decision and Order on his or her behalf.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: AUG - 6 1999

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 DC 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 SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3101.1, "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 AFTER THE EFFECTIVE DATE OF THE ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16389:

As Director of the Office of Zoning, I hereby certify and attest that on AUG - 6 1999 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 the matter, and who is listed below:

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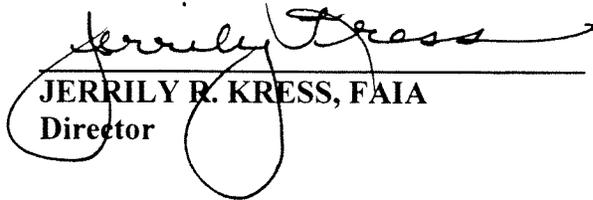
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Ellie Becker, Chairperson
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ATTESTED BY:



JERRILY R. KRESS, FAIA
Director

DATE: AUG - 6 1999