

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 949-B  
Case No. 00-36CP/16638  
(Campus Plan and Further Processing – American University  
Order on Remand)  
October 17, 2005**

Zoning Commission Order No. 949, issued January 8, 2002, approved, with conditions, an application by American University ("University") for special exception approval pursuant to 11 DCMR §§ 210 and 3104 of an updated campus plan and for further processing approval, under the approved campus plan, of certain construction on the University's campus in Northwest Washington, D.C. By Z.C. Order No. 949-A, issued April 30, 2002, the Commission decided two motions for reconsideration. The District of Columbia Court of Appeals subsequently upheld the Commission's decision in major part but remanded the matter solely for the Commission to address a recommendation made by participating Advisory Neighborhood Commissions concerning the University's off-campus parking program. See *Spring Valley-Wesley Heights Citizens Association v. D.C. Zoning Commission*, 856 A.2d 1174 (D.C. 2004).

**Procedural History**

The Applicant submitted applications for approval of the American University Campus Plan for Years 2000-2010 and further processing applications to construct the Katzen Arts Center, an addition to the Mary Graydon Center, and the enclosure of the driveway underneath the Butler Pavilion and Sports Center Complex. By Order No. 949, the Commission approved the applications subject to conditions necessary to minimize the impacts on neighboring property from existing conditions and any potential impacts from planned future development.

In addition to the Applicant, Advisory Neighborhood Commissions ("ANCs") 3D and 3E were automatically parties to this case. The Commission granted party status to Neighbors for a Livable Community, Spring Valley-Wesley Heights Citizens Association, Fort Gaines Citizens Association, American University Park Citizens Association, and Spring Valley Court Association (collectively, the "Neighborhood Associations"), Tenley Campus Neighbors Association ("TCNA"), Robert Herzstein, and Priscilla Holmes.

Motions for reconsideration of Order No. 949 were filed by TCNA and by the Neighborhood Associations. The University opposed both motions, arguing that all issues raised in the motions had been adequately addressed by the Commission in Order No. 949 and that the motions presented no basis for reversing or modifying the Order. At a public meeting on March 11, 2002, the Commission denied TCNA's motion, which primarily concerned issues pertaining to the University's Tenley campus.

At the same public meeting, the Commission considered the motion for reconsideration filed by the Neighborhood Associations, whose claims of error included an issue concerning University-related parking on neighborhood streets in the vicinity of the campus. As part of its campus plan application, the University had proposed to implement an off-campus parking enforcement program, similar to a program previously adopted by the Board of Zoning Adjustment for the Mount Vernon Campus of George Washington University, that would require the University to take certain measures to **discourage** students, faculty, staff, visitors, and vendors servicing the campus from parking on the streets adjacent to and surrounding the campus. The Commission found that University-related parking persisted on streets in the neighborhoods surrounding the Main and Tenley Campuses despite the University's efforts to provide adequate on-campus parking and to promote alternative forms of transportation to the campus. Therefore, as a condition of approval of the Campus Plan, in Order No. 949 the Commission adopted Condition No. 7 directing the University to enhance its parking program to address off-campus parking and mitigate adverse impacts associated with University-related parking on neighborhood streets.<sup>1</sup>

The Commission denied the motion for reconsideration submitted by the Neighborhood Associations with respect to most of its claims of error, including the off-campus parking enforcement program.<sup>2</sup> Finding that the Neighborhood Associations had not provided a persuasive reason to revisit its decisions on these issues, the Commission concurred with University that the issues had been fully reviewed during the course of the proceeding and appropriately addressed in Order No. 949.

An appeal of the Commission's decision was filed in the D.C. Court of Appeals by the Spring Valley-Wesley Heights Citizens Association, the Spring Valley Court Association, the Fort

---

<sup>1</sup> Condition No. 7 states:

The University shall adopt the following program regarding enforcement of student, faculty, staff, and vendor off-campus parking:

- (a) The University shall use its best efforts to require all students, faculty, staff, and vendors servicing the campus to park on the campus and shall prohibit, to the extent permitted by law, students, faculty, staff, and vendors from parking on the streets adjacent to and surrounding the campus. The University shall use its best efforts to cause other University-related vehicles to park on the campus. To accomplish these purposes, the University shall have in place a system of administrative actions, contract penalties, fines (which may be adjusted from time to time as needed), and/or termination of contracts for violations.
- (b) Construction employees, contractors, and subcontractors shall by contract be prohibited from parking on residential streets, subject to contractual penalties or termination. Visitors to the campus, including attendees of all conferences, shall be encouraged to use on-campus parking and, where feasible, notified in advance to do so.
- (c) For conferences and large special events, the Applicant shall work with area institutions in order to provide additional parking as needed.

<sup>2</sup> The motion was granted in part to clarify Order No. 949 with respect to the location of 250 new permanent bleacher seats in a component of the Campus Plan known as Project C, and to incorporate into the conditions of approval certain commitments made by the University during the course of the public hearing with respect to controls on vehicular and pedestrian traffic in designated locations on the campus.

Gaines Citizens Association, Neighbors for a Livable Community, Robert Herzstein, and Priscilla Holmes. The petitioners contended, inter alia, that the Commission should have required the University to utilize parking stickers as part of its off-campus parking program, as petitioners and the participating ANCs had recommended.

The Court of Appeals upheld the Commission's conditional approval of the University's Campus Plan except for a remand to address the off-campus parking recommendation of the ANCs. The Court stated that "the Zoning Commission needed to explain in its Order why it rejected the ANC-supported recommendation that students and others affiliated with the University be required to have parking stickers in order to facilitate the enforcement of Condition No. 7." 856 A.2d 1174,1180.

### Decision

The Court of Appeals held that the Commission did not act improperly "in imposing an off-campus parking plan without specifying the means by which it would be enforced." The absence of prescriptive detail, such as the parking sticker regime that petitioners and the ANCs recommended, did "not render the condition ineffective and nugatory," in part because the University remained subject to continuing oversight by the Commission and would "face the prospect of serious consequences if it fails to fulfill its obligations." *Id.* at 1179. Rather, "it was entirely reasonable for the Commission to state a general condition and to leave 'the details and mechanics' of its enforcement to the University." *Id.* at 1180, citing *President & Dirs. of Georgetown College v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 77 (D.C. 2003).

The participating ANCs had recommended that, as part of its campus plan approval, the Commission should direct the University to require the use of parking stickers in the off-campus parking enforcement program so that any University-affiliated vehicle could be identified as such. The University's proposal had been modeled after an off-campus parking program already approved for use in another campus plan; that plan did not mandate the use of parking stickers as a means of enforcement, nor did the University add such a mandate to its proposal in this proceeding, stating that parking stickers were not required in order to identify University-affiliated vehicles.

The Commission accorded ANCs 3D and 3E the "great weight" to which they are entitled, and fully credited the unique vantage point that the ANCs hold with respect to the impact of the University's off-campus parking program on their constituents. However, the Commission concludes that the ANCs have not offered persuasive advice with respect to the recommended use of parking stickers that would cause the Commission to find that parking stickers are essential to the successful implementation of the parking enforcement program or that the failure to use parking stickers would create objectionable parking impacts that would adversely affect the use of neighboring property.

Condition No. 7 addresses a range of types of University-affiliated vehicles, encompassing regular, occasional, and potentially one-time visitors to the campus. While parking stickers may

be effective for identification of some types of vehicles that create University-related parking demand (such as that created by students, faculty, and staff), stickers could well prove impractical or ineffective under other circumstances, such as those pertaining to vehicles driven by vendors servicing the campus; by construction employees, contractors, and subcontractors; or by visitors to the campus, including persons attending conferences and other special events. The ANCs did not suggest that parking stickers are the sole means by which all University-related vehicles could be identified, and the University indicated that parking stickers are in fact not required for identification of University-related vehicles.

Condition No. 7 requires the University to use its best efforts to cause all University-related vehicles to park on campus and, to achieve that purpose, to have in place a system of sanctions including administrative actions, contract penalties, fines, and termination of contracts for violations. The Commission was not persuaded by the ANCs that parking stickers would be essential to the effective operation of the University's off-campus parking program, or that any particular enforcement mechanism needed to be specified to ensure the successful implementation of the program. Rather, the University should be accorded the flexibility to decide how best to implement the requirements of Condition No. 7, recognizing that its failure to comply with the condition could prevent the University from carrying out development projects anticipated by the approved campus plan.<sup>3</sup>

For the reasons stated above, the Commission reaffirms its decision in Z.C. Order No. 949 and Z.C. Order No. 949-A not to adopt the recommendation of ANCs 3D and 3E to require the University to use parking stickers as part of its off-campus parking enforcement program.

VOTE: 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Kevin L. Hildebrand to approve).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the D.C. Register; that is, on NOV 18 2005.

  
\_\_\_\_\_  
**CAROL J. MITTEN**  
Chairman  
Zoning Commission

  
\_\_\_\_\_  
**JERRILY R. KRESS, FAIA**  
Director  
Office of Zoning

<sup>3</sup> Pursuant to Condition No. 17 of the approved campus plan, no special exception application filed by the University for further processing under the approved campus plan may be granted unless the University proves that it has consistently remained in substantial compliance with the conditions of approval of the plan. Any violation of a condition of Order No. 949 would be grounds for the denial or revocation of a building permit or certificate of occupancy applied for by, or issued to, the University for any University building or use approved under the plan, and might result in the imposition of fines and penalties pursuant to the Civil Enforcement Act, D.C. Official Code §§ 2-1801.01 to 2-1803.03 (2001).

# Government of the District of Columbia

## OFFICE OF ZONING



### Z.C. CASE NO.: 00-36CP/16638

As Secretary to the Zoning Commission, I hereby certify that on November 21, 2005, copies of Z.C. Order No. 949-B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. Maureen E. Dwyer, Esq.  
Paul A. Tumronds, Jr., Esq.  
Pillsbury Winthrop Shaw Pittman  
2300 N Street, NW  
Washington, D.C. 20037-1128
2. Alma Gates, Chair  
ANC 3D  
P.O. Box 40846 - Palisades Station  
Washington, DC 20016
3. Amy B. McVey, Chair  
ANC 3E  
St. Mary's Church  
5425 Western Avenue, NW  
Washington, DC 20015
2. Neighbors for a Livable Community  
4710 Woodway Lane, NW  
Washington, D.C. 20016
3. Spring Valley-Wesley Heights Citizens Assoc.  
3615 49<sup>th</sup> Street, NW  
Washington, D.C. 20016
4. Fort Gaines Citizens Assoc.  
c/o Mike Bilecky  
4444 Sedgwick Street, NW  
Washington, D.C. 20016
5. American University Park Citizens Assoc.  
4735 Buttenthorn Place, NW  
Washington, D.C. 20016
6. Spring Valley Court Assoc.  
4736 Massachusetts Avenue, NW  
Washington, D.C. 20016
7. Tenley Campus Neighbors Assoc.  
c/o David A. Wilson  
4137 Yuma Street, NW  
Washington, D.C. 20016
8. Robert Herzstein  
4710 Woodway Lane, NW  
Washington, D.C. 20016
9. Pricilla Holmes  
4710 Woodway Lane, NW  
Washington, D.C. 20016
10. Councilmember Kathleen Patterson
11. Zoning Administrator
12. Ellen McCarthy, Office of Planning
13. Alan Bergstein, Esq., Office of the Attorney General
14. Robert R. Elliott, Esq.  
Elliott & Sugarman  
3251 Prospect Street, NW  
Washington, D.C. 20007
15. Julie Lee  
General Counsel  
941 North Capitol Street, N.E.  
Suite 9400  
Washington, D.C. 20002

ATTESTED BY:

Sharon S. Schellin  
Acting Secretary to the Zoning Commission  
Office of Zoning