

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-33A
Z.C. Case No. 20-33A
The University of the District of Columbia
(Modification of Consequence to an Approved Campus Plan)
February 9, 2023

Pursuant to notice, at its February 9, 2023¹ public meeting, the Zoning Commission for the District of Columbia (the "Commission") deliberated upon the application (the "Application") of The University of the District of Columbia (the "University" or the "Applicant") for a Modification of Consequence to the University's 2020-2029 Van Ness Campus Plan (the "2020 Campus Plan") granted in Z.C. Order No. 20-33 for Part of Lot 812 in Square 1964 (the "Property") located at 4200 Connecticut Avenue, N.W. to expand tennis court hours past sunset. The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the "Zoning Regulations", to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

The Property

1. The Property is located in Northwest Washington, contains an area of approximately 21 acres, and is bounded generally by Yuma Street, N.W. to the north; Connecticut Avenue, N.W. to the east; Van Ness Street, N.W. to the south; and International Court, N.W., and a portion of the International Chancery Complex to the west.
2. The core of the Van Ness Campus is located at its southern end and consists of 10 academic and administrative buildings organized around Dennard Plaza, a large hardscaped plaza that connects many of these buildings. To the east of the campus core, at the intersection of Connecticut Avenue and Van Ness Street, is the student center, adjacent to the Van Ness-UDC Metrorail entrance. North of the campus core are buildings and space devoted to performing arts, including an auditorium, amphitheater, and music, dance, and theater space. Further to the north and west are athletic facilities, which include the athletic center, fields, and tennis courts.

¹ The Commission made a determination that the Application was a Modification of Consequence at its January 26, 2023 public meeting.

Prior Approval

3. Pursuant to Z.C. Order No. 20-33, effective May 6, 2022, the Commission approved the 2020 Campus Plan that governs the use and future development of the University's Van Ness Campus.

Parties and Notice

4. Advisory Neighborhood Commission ("ANC") 3F, in which the Property is located, is the "affected" ANC pursuant to Subtitle Z § 101.8, and automatically a party to the Application. In addition, Van Ness Residents' Association and Van Ness South Tenants' Association were parties to the original proceeding for Z.C. Case No. 20-33.
5. On January 3, 2023, the Applicant served the Application on ANC 3F, Van Ness Residents' Association, and Van Ness South Tenants' Association, the original parties to the proceeding, as well as the Office of Planning ("OP"), and the District Department of Transportation ("DDOT") as attested by the Certificate of Service². (Exhibit ["Ex."] 5 at 4.)

II. THE APPLICATION

6. On November 30, 2022, the Applicant filed an Application requesting a Modification of Consequence to Z.C. Order No. 20-33 to expand tennis court hours past sunset. The tennis courts are located on the northern end of the Van Ness Campus between academic and retail buildings facing Connecticut Avenue to the east and academic buildings to the west and south. The Yuma Gardens Apartments, a parking facility, and the Days Inn are located to the north across Yuma Street, N.W. The tennis courts are enjoyed by both the university community and the general public and were completely resurfaced and improved in 2021. Since the 2020 Campus Plan was approved, the Applicant has received requests from community members to expand the tennis court hours past sunset, particularly in the winter months. (Ex. 2, 5.)
7. The Application explained Condition 19 of Z.C. Order No. 20-33 states, among other things, that the tennis courts may be used between 7:00 a.m. and sunset every day and until 10:00 p.m. during tournaments that have been delayed by inclement weather. The Application proposes to modify Condition 19 to increase the tennis court hours of operation until 8:00 p.m. or sunset, whichever is later. The Applicant stated that the proposed increase will allow for additional playing time in the winter months and more flexibility and use by the community. (Ex. 2, 5.)
8. The Applicant further stated that before filing this Application, it conducted a test to gauge the community impact of expanding the tennis court hours of operation. Specifically, the

² At the initial filing of the Application on November 30, 2022, the Applicant inadvertently failed to serve the Application on the original parties; the Applicant cured this oversight and served the Application on January 3, 2023. (Ex. 5.)

Applicant provided notice to the Zoning Administrator, ANC 3F, and neighboring residences and left the tennis court lights on past sunset over three nights in August 2022, after which the Applicant surveyed neighboring residents. The Applicant received few responses to the survey and only one person surveyed noted that the tennis court lights impacted her home. (Ex. 2, 5.)

9. On February 2, 2023, the Applicant filed a letter in response to feedback on the Application the Commission provided at its January 23, 2023 public meeting. (Ex. 7.) The Applicant stated that it followed up by email with the Van Ness Residents' Association and the Van Ness South Tenants' Association regarding the Application; both organizations acknowledged the Applicant's email but only the former stated that it would coordinate a response. The Applicant noted that both organizations' involvement with the Van Ness Master Campus Plan process was based on concerns unrelated to the use of the tennis courts.
10. The Applicant's response letter also stated that the Applicant was supportive of OP's recommendation to revise the Application to allow the tennis courts to be used until 7:00 p.m. or sunset instead of the Applicant's original request of until 8:00 p.m. or sunset. The Applicant reiterated that it originally proposed until 8:00 p.m. or sunset based on the limited survey responses received following a test it conducted leaving the tennis court lights on until 8:00 p.m. for three nights in August 2022; the survey following the test yielded few responses from neighbors and only one response noting an impact from the tennis court lights. (Ex. 7.)

III. RESPONSES TO THE APPLICATION

11. OP submitted a report on December 30, 2022 (the "OP Report"). The OP Report concurred with the Applicant that the proposal is a modification of consequence. OP stated no objections to the Applicant's request and recommended that the proposal be approved with expanded tennis court hours limited to 7:00 p.m. instead of the requested 8:00 p.m. OP noted that Condition 19 was included in Z.C. Order No. 20-33 in response to the neighboring community's complaints about the tennis court lights being a nuisance. Because the responses to the survey following the Applicant's light test did reveal one complaint, OP believes limiting the tennis court hours of operation is still necessary. Allowing additional time is reasonable when the sun sets early in the evening, but an end time of 7:00 p.m. would be less of a nuisance. (Ex. 4.)

ANC

12. The Vice Chairman of ANC 3F filed a letter stating that the ANC would not take a formal vote on this Application; however, the ANC agrees with OP's recommendation to limit the tennis court hours to 7:00 p.m. instead of the requested 8:00 p.m. (Ex. 6.)

Other Party Responses

13. No responses were submitted to the record from the other parties, Van Ness Residents' Association and Van Ness South Tenants' Association.

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make Modifications of Consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a Modification of Consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.” Under Subtitle Z § 703.4, examples of a Modification of Consequence include “a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.”
3. The Commission concludes that the Application qualifies as a Modification of Consequence within the meaning of Subtitle Z § 703.3 and § 703.4, as a proposed change to a condition in the final order, and therefore the modification can be granted without a public hearing pursuant to Subtitle Z § 703.1.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 3F, Van Ness Residents' Association, and Van Ness South Tenants' Association.
5. In accordance with the requirements of Subtitle Z § 703.17(c)(2), the Commission established a timeframe for responses from all parties in the original proceeding at its January 26, 2023 public meeting and scheduled the request for deliberations on February 9, 2023. As noted above, ANC 3F did not take a formal vote on the Application but submitted a letter from its Vice-Chairman stating its agreement with OP's recommendations; and neither Van Ness Residents' Association nor Van Ness South Tenants' Association submitted a response to the Application. At its February 9, 2023 public meeting, the Commission proceeded with deliberating on this case.
6. The Commission finds the Applicant's original request to expand the tennis court hours to 8 p.m. or sunset reasonable. The Commission notes OP's recommendation to limit the expanded hours to 7:00 p.m. instead of 8:00 p.m., and ANC 3F's agreement with such recommendation. However, the Commission believes that allowing the general public additional playing time past sunset, particularly in the winter months, is beneficial. Based on neighbors' limited response to the Applicant's survey following the light test, the Commission finds the impacts associated with expanding the tennis court hours to 8:00 p.m. negligible. The Commission encourages modifications to the lighting to make sure it is not a direct bleed into someone's window but concludes that expanding the hours to 8:00 p.m. should not be an issue.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

7. The Commission must give "great weight" to the recommendations of OP pursuant to § 13(d) of the Office of Zoning Independence Act of 1990, effective September 20, 1990, (D.C. Law 8-163; D.C. Official Code §6-623.04 (2001)) and Subtitle Z §405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
8. The Commission finds OP's recommendation that the Commission approve the Application persuasive and concurs in that judgment. The Commission does not agree with OP's recommendation to limit the expanded tennis court hours to 7:00 p.m. Given the limited response to the Applicant's survey of neighbors following the light test, the Commission agrees with the Applicant's original request to extend tennis court hours to 8:00 p.m.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

9. The Commission must give "great weight" to the issues and concerns raised in a written report of an affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to §13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code §1-309.10(d) (2012 Repl.)) and Subtitle Z §406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
10. ANC 3F did not submit a written report as it did not take a formal vote on the Application; therefore, there is nothing to which the Commission can give great weight. The Commission acknowledges the letter from the ANC's Vice Chairman and does not agree with OP recommendation to limit expanded hours to 7:00 p.m. for the reasons stated above.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the University has satisfied its burden of proof and therefore **APPROVES** the Application's request for a Modification of Consequence to Z.C. Order No. 20-33, subject to the following:

The conditions of Z.C. Order No. 20-33 remain unchanged and in effect, except as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):

Condition 19 is hereby revised to read as follows:

19. The University shall offer a membership rate for the use of tennis courts and a daily rate for during open swim at the natatorium for non-University users who desire use of these facilities. The University shall limit hours of operation for the tennis court to 7:00 a.m. and **8:00 p.m.** or sunset, **whichever is later**, every day, except in situations where, during a tournament event, there is delay in the tournament activities due to inclement weather, and the tournament is paused during the inclement weather, and then resumes once the inclement weather has passed. During such situations, the tournament activity may continue past **8:00 p.m. or sunset** but not later than 10:00 p.m.

VOTE (February 9, 2023): 4-0-1 (Peter G. May, Anthony J. Hood, Robert E. Miller, and Joseph S. Imamura to **APPROVE**; 3rd Mayoral Appointee seat vacant, not voting)

In accordance with the provisions of Subtitle Z §604.9, this Order No. 20-33A shall become final and effective upon publication in the *D.C. Register*; that is on May 5, 2023.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.