

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



December 6, 2010

Christine Roddy
Goulston & Storrs
2001 K Street, NW, 11th Floor
Washington, DC 20001

Re: Affordable Housing Program in the Redevelopment of the Catholic University of
America's South Campus; Zoning Commission Case No. 08-24/08-24A-04-25

Dear Ms. Roddy:

You have asked me to confirm that the affordable housing program approved in Zoning Commission Case No. 08-24/08-24A-04-25 is provided in lieu of the inclusionary zoning requirements of Chapter 26 of the Zoning Regulations. I have reviewed the facts of this case as well as Zoning Commission Order No. 08-24/08-24A-04-25 ("Order") and conclude that the Zoning Commission approval is the final authority on all development parameters for the Project, as that term is defined below. In sum, the affordable housing program required in Condition No. 9 of the Order is in lieu of fulfilling the requirements of 11 DCMR Chapter 26. The basis for my determination is detailed below.

In Case No. 08-24/08-24A-04-25, the Zoning Commission approved a residential project on the South Campus of The Catholic University of America. The project consists of approximately 725-825 residential units and 75,000-85,000 square feet of retail use along Michigan Avenue and Monroe Street, NE ("Project"). It also includes 63,000 square feet of residential square footage that will be reserved for workforce affordable housing units available to residents with annual income no greater than 80% of the Area Median Income ("Affordable Program").

Upon my review of the Zoning Regulations, I conclude that the record is clear that it was the Commission's intention to approve the Affordable Program as fulfillment of any and all inclusionary zoning requirements applicable to the Project.

The Zoning Regulations authorize the Zoning Commission to make the final determination on the zoning parameters of a project per Section 2409.2, which states that "[t]he Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied." Thus, the plans submitted for a building permit must be consistent with the plans and conditions approved by the Zoning Commission. To that end, the first condition of approval in the Order states: "[t]he PUD project shall be developed in accordance with the plans and materials submitted by the Applicant

marked as Exhibit 71 of the record, as modified by the guidelines, conditions and standards of this order.” Accordingly, I find that the Zoning Commission’s approval of 63,000 square feet of affordable housing, per Condition No. 9 of the Order, controls. It would be contrary to the text of the Regulations and the Order to impose inclusionary zoning requirements that are different than what the Commission approved, as this would require a modification to the plans referenced in Condition No. 1 of the Order.

The Zoning Commission has the authority to approve projects that are not fully consistent with the requirements set forth in the Zoning Regulations. Specifically, Section 2400.5 gives the Commission the authority to “approve a PUD application with or without modifications. In carrying out the purposes of this chapter, the Commission may establish general standards and, in individual cases, set standards and conditions for height and bulk lesser or greater than the standards established for the affected districts in this chapter or elsewhere in this title.” Pursuant to its authority, the Zoning Commission approved the Affordable Program as fulfillment of the inclusionary zoning requirements for the Project.

The Office of Planning and the Zoning Commission acknowledged the Applicant’s intent to provide the Affordable Program in satisfaction of the inclusionary zoning requirements at the set down meeting for the application. See April 27, 2009, Transcript, pp. 10-11. It is clear that the Zoning Commission was aware that it was approving the Affordable Program that was proposed for the Project. Finding of Fact No. 44 provides “[t]his project will create approximately 725-825 residential units and approximately 63,000 square feet of workforce affordable housing (8% of the total amount of residential square footage in the project) for households earning up to 80% of the Area Median Income (“AMI”). The affordable housing units will be located in all of the multi-family buildings, and will be distributed throughout these buildings (except for the upper two stories of each building). In addition, three townhouses will be reserved for households earning up to 80% of AMI. The three affordable townhouses will be distributed evenly throughout the 21-unit townhouse string along Kearny Street.” See paragraph 44(a) of the Order. See also paragraph 21 of the Order.

The Zoning Commission was simultaneously aware of the Inclusionary Zoning Regulations, as these regulations were in effect at the time of the hearing. It is a sound assumption to presume the Commission approved the Affordable Program amid the greater context of the Inclusionary Zoning Regulations. In light of the foregoing, the Affordable Program that is ultimately implemented for the Project must be consistent with that which was approved by the Zoning Commission in Zoning Commission Case No. 08-24/08-24A-04-25.

If you have any questions, please feel free to contact me.

Sincerely,



Matthew Le Grant
Zoning Administrator