

DISTRICT OF COLUMBIA COURT OF APPEALS

Spring Valley-Wesley Heights Citizens Association and Westover Place Homes Corporation v. District of Columbia Zoning Commission

Spring Valley-Wesley Heights · No. Nos. 12-AA-723 & 12-AA-724 · Decided March 27, 2014

SUMMARY

The District of Columbia Court of Appeals reviewed Zoning Commission orders approving American University's 2011 Campus Plan and a further-processing application for North Hall. The court upheld the North Hall order but remanded the Campus Plan order because the Commission inadequately explained material determinations concerning enrollment growth, potential neighborhood business displacement, and the allocation of on-campus housing to undergraduates.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Washington, Chief Judge; Glickman, Associate Judge; Ruiz, Senior Judge
JURISDICTION	District of Columbia
DECIDED	March 27, 2014
DOCKET	Nos. 12-AA-723 & 12-AA-724
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of two orders of the District of Columbia Zoning Commission approving American University's 2011 Campus Plan and granting a further processing application for construction of North Hall.
STANDARD OF REVIEW	The court reviews the Commission's decisions to determine whether they are arbitrary, capricious, or otherwise not in accordance with law. Absent a material procedural impropriety or error of law, the decision stands if it rationally flows from findings of fact supported by substantial evidence in the record as a whole.
PRECEDENTIAL VALUE	published
PARTIES	Spring Valley-Wesley Heights Citizens Association, Westover Place Homes Corporation v. District of Columbia Zoning Commission

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QUESTIONS PRESENTED

1. Whether the Zoning Commission adequately explained its decision to approve the proposed increase in American University's enrollment cap, including the effect of relocating the law school to campus.
2. Whether the Commission adequately addressed concerns about the University's expansion into the surrounding neighborhood and potential displacement of local businesses.
3. Whether the Commission adequately addressed the Office of Planning's recommendation concerning exclusive allocation of on-campus housing to undergraduates and the recommendation for a temporary enrollment freeze.
4. Whether the Commission adequately explained its approval of the East Campus project with respect to noise, the Horace Mann playground, the buffer zone, and related neighborhood impacts.
5. Whether the Commission adequately explained its reliance on the University's traffic study despite contrary expert criticisms.
6. Whether the Commission improperly denied petitioners an opportunity for further cross-examination concerning post-hearing traffic submissions.
7. Whether the Commission properly approved the North Hall further processing application and related setback variance.

HOLDINGS

1. The Commission inadequately explained its approval of the increased enrollment cap because it treated the increase as a 13 percent increase in total enrollment without addressing that, after the law school's relocation, on-campus enrollment could increase from 10,600 to 13,600 students, or by more than 28 percent.
2. The Commission was required to address on the merits whether expansion attributable to the University's proposed on-campus growth could create objectionable conditions through acquisition and use of surrounding neighborhood property or displacement of local businesses.
3. The Commission inadequately explained its failure to address the Office of Planning's recommendation that the on-campus housing counted toward the undergraduate availability requirement actually be reserved for undergraduate use.
4. The Commission had discretion to reject a temporary enrollment freeze, but its rejection of the recommendation required fuller explanation in light of the University's past failure to satisfy the existing undergraduate housing condition.

5. The Commission inadequately explained its approval of the East Campus because it failed to address specific, material concerns regarding nighttime noise, noise from buffer buildings, student use of the Horace Mann playground, the reduced width of part of the landscaped buffer, and the absence of a recommended fence.
6. The Commission inadequately explained why it credited the University's traffic study despite substantial contrary criticisms and expert evidence.
7. The Commission did not commit reversible procedural error by declining to provide further cross-examination because petitioners and the ANC did not request it or object to the post-hearing procedure, and the parties had equal opportunities to respond.
8. The Commission properly approved North Hall's further processing application and related setback variance.

KEY QUOTATIONS

“whether the proposed use would significantly increase objectionable qualities over their current levels in the area.” (at 6)

“Absent a material procedural impropriety or error of law, the Commission’s decision stands so long as it rationally flows from findings of fact supported by substantial evidence in the record as a whole.” (at 7)

“resident displacement from a university’s expanded presence in the vicinity of its campus can, in principle, constitute an objectionable condition justifying the Commission’s imposition on a campus development plan of reasonable measures to stem the tide.” (at 14)

FACTUAL BACKGROUND

American University operates campuses and a law school in residentially zoned areas of the District of Columbia and therefore must obtain zoning approval for campus plans and specific projects. In its 2011 Campus Plan, the University sought approval for increased enrollment, relocation of its law school to the Tenley Campus, construction of the East Campus and several residence halls, and construction of North Hall. Neighborhood associations, Advisory Neighborhood Commissions, and District agencies raised concerns about enrollment, housing, off-campus expansion and student behavior, density, noise, pedestrian and vehicular traffic, and the visual impact of North Hall.

PROCEDURAL HISTORY

American University submitted its 2011 Campus Plan and related further processing applications to the District of Columbia Zoning Commission. After hearings and written submissions, the Commission approved the Campus Plan and the North Hall application subject to conditions. The neighborhood petitioners sought appellate review. The court remanded the Campus Plan order in Appeal No. 12-AA-723 for further explanation of specified material issues and affirmed the North Hall order in Appeal No. 12-AA-724.

DISPOSITION

REMAND INSTRUCTIONS

Remand Appeal No. 12-AA-723 for the Commission to address the magnitude of the on-campus enrollment increase; the potential neighborhood effects of AU's off-campus expansion and displacement of local businesses; the Office of Planning's recommendation concerning undergraduate-only allocation of housing; the recommendation for a temporary undergraduate enrollment freeze; specific East Campus concerns regarding nighttime and buffer-building noise, student use of the Horace Mann playground, the reduced buffer width, and fencing; and the reasons for crediting AU's traffic study despite contrary expert criticisms. The Commission may conduct further proceedings in the manner it deems appropriate and consistent with its rules and the law. Appeal No. 12-AA-724, concerning North Hall, is affirmed.

CASES CITED

- Spring Valley-Wesley Heights Citizen Ass'n v. District of Columbia Zoning Comm'n, 856 A.2d 1174 (D.C. 2004)
- Glenbrook Rd. Ass'n v. D.C. Bd. of Zoning Adjustment, 605 A.2d 22 (D.C. 1992)
- George Washington Univ. v. District of Columbia Bd. of Zoning Adjustment, 831 A.2d 921 (D.C. 2003)
- Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n, 402 A.2d 36, 52 (D.C. 1979)
- D.C. Appleseed Ctr. for Law and Justice v. District of Columbia Dep't of Ins., Sec., and Banking, 54 A.3d 1188 (D.C. 2012)
- Dietrich v. District of Columbia Bd. of Zoning Adjustment, 293 A.2d 470 (D.C. 1972)
- President & Dirs. of Georgetown Coll. v. District of Columbia Bd. of Zoning Adjustment, 837 A.2d 58 (D.C. 2003)
- Watergate West, Inc. v. District of Columbia Bd. of Zoning Adjustment, 815 A.2d 762, 767 (D.C. 2003)
- Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment, 816 A.2d 41, 49 (D.C. 2003)
- Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment, 792 A.2d 246 (D.C. 2002)
- Don't Tear It Down, Inc. v. District of Columbia Dep't of Hous. & Cmty. Dev't, 428 A.2d 369, 379 (D.C. 1981)
- Johnson v. District of Columbia Office of Emp. Appeals, 912 A.2d 1181, 1185 (D.C. 2006)
- Darden v. District of Columbia Dep't of Empl. Servs., 911 A.2d 410, 416 (D.C. 2006)
- Universal Camera Corp. v. NLRB, 340 U.S. 474, 488 (1951)
- Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Reg., 716 A.2d 987, 993 (D.C. 1998)
- Durant v. District of Columbia Zoning Comm'n, 65 A.3d 1161, 1169 (D.C. 2013)
- French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995)
- Foggy Bottom Ass'n v. District of Columbia Bd. of Zoning Adjustment, 791 A.2d 64, 77 (D.C. 2002)

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