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January 11, 2005

RECEIVED
D.C. OFFICE OF ZONING
2005 JAN 11 PM 2:11

Richard Nero
Chief, Administrative Services
Office of Zoning
441 4th Street, N.W.
Suite 225 South
Washington, DC 20001

Re: Board of Zoning Adjustment Appeal No. 17249

Dear Mr. Nero:

Enclosed for filing are one original and twenty (20) copies of the brief of the George Washington University in support of the decision of the D.C. Zoning Administrator to issue a Certificate of Occupancy in the above-referenced case. A copy of the enclosed document has been provided, by hand delivery on this date, to the Appellant, Dorothy Miller (Chair, Advisory Neighborhood Commission 2A) and to D.C. Zoning Administrator Toye Bello.

Our client, the George Washington University, has previously filed a Motion to Intervene in this record.

Thank you.

Sincerely,

Jerry A. Moore III

JAM/ydl

Enclosures

BZA
Case No. 17249
Exhibit No. 22

Board of Zoning Adjustment
District of Columbia
CASE NO. 17249
EXHIBIT NO. 22

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF
THE DISTRICT OF COLUMBIA

BZA Appeal No. 17249

THE GEORGE WASHINGTON UNIVERSITY'S MEMORANDUM IN SUPPORT OF THE ZONING ADMINISTRATOR'S ISSUANCE OF A CERTIFICATE OF OCCUPANCY TO COGGINS SANDWICH CORPORATION

I. INTRODUCTION AND SUMMARY

By resolution dated October 14, 2004, the Foggy Bottom and West End Advisory Neighborhood Commission (ANC 2A) authorized its representative, Dorothy Miller, to appeal the administrative decision of the D.C. Zoning Administrator to issue a Certificate of Occupancy to permit a food service venue operated by the Coggins Sandwich Corporation ("Coggins"). The Certificate of Occupancy permits Coggins to occupy a space within a dormitory building located at 616 23rd Street, NW. In pertinent part, the appeal erroneously claims that the Certificate of Occupancy authorizes a "commercial restaurant" use in a zone where such a use is not permitted by the D.C. Zoning Regulations.[1]

Actually, the food venue in question is located within the "Ivory Tower" dormitory complex (the "Dormitory") on the campus of the George Washington University (the "University"). Coggins has been contracted by the University to provide accessory services customary and subordinate to the principal use, in conjunction with and in furtherance to the University's core mission. The dormitory, including all of its food service venues, has been considered and approved by the D.C. Zoning Commission in Zoning Commission Order No. 958, dated January 14, 2002.

For this reason alone, the Zoning Administrator was clearly within his authority and acting properly in issuing Permit No. C081956. Accordingly, the ANC 2A appeal is without merit and must be denied. A discussion of the principles that underlie this conclusion follows.

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[1] The ANC also complains that Coggins is illegally using the adjacent public space for its purposes and that it does not provide a restroom on its premises as is required for "restaurants." Neither of these claims is within the jurisdiction of the Board of Zoning Adjustment and neither is correct. Nonetheless, for the record, the University responds that the building plans approved by the Zoning Commission clearly depict the ground floor food venue use - that is employed by Coggins - extending to the adjacent "patio." See: Exhibit A. Moreover, Coggins has obtained a permit from the D.C. Public Space Committee to use that area for its purposes. See: Exhibit C. The ANC is correct is stating that the D.C. Building Code requires "restaurants" to have an on-premises restroom. However, Coggins is not a restaurant but rather a food venue associated with the other approved venues which, together, comprise a food court. Food courts are only required to provide a single restroom that is accessible to all of its participants. That common restroom facility is provided as shown on the "Lower Level Plan" at Exhibit A.

II. BACKGROUND

On November 21, 2001, the University submitted to the Zoning Commission an application seeking special exception relief pursuant to Sections 210 and 3104.1 of the District of Columbia Zoning Regulations for "further processing," pursuant to an approved campus plan, to authorize the construction and use of the Dormitory in a R-5-D zone district.[2] Specifically, the University expressly sought approval for a 700 bed dormitory facility, on land owned by the University, on its central campus, on property zoned for dormitory use, together with spaces for food venue services on the lower and first levels. The venues are similar to those that are offered at the University's Marvin Center which are available primarily to University students, but also to University visitors.[3]

The University's application received wide-ranging support from both the District of Columbia government and community organizations. The D.C. Office of Planning concluded that the application satisfied the zoning requirements and recommended its approval, noting specifically that the construction and use of the Dormitory would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and would not tend to adversely affect the use of neighboring property. The D.C. Department of Public Works determined that the Dormitory would have no measurable impact on the surrounding street system. In addition, neither ANC 2A nor the Foggy Bottom Association, both active participants in the case, opposed the application.[4] Appended to the application and discussed at the public hearing held on December 6, 2001, were site plans, floor plans and elevations of the proposed building and use. The floor plan for the "Lower Level" and "Ground Floor" clearly depict the proposed food venues. See Exhibit "A." The Ground Floor plan shows the food venue site, with outdoor patio, that the Coggins service now occupies. (Ibid).

On January 14, 2002, the Zoning Commission issued Order No. 958 (the "Order"), wherein it unanimously approved the University's application for a special exception. Relying on Sections 210 and 3104.1 of the Zoning Regulations, which together establish the criteria for granting special exceptions for college or university uses in the R-5-D zone district, the Zoning Commission determined that granting the special exception would be in harmony with the general purpose and intent of the

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[2] The BZA approved the University's Campus Plan for the Year 2000 through the Year 2009 by order dated March 29, 2001.

[3] *See* The University's Statement in Support of Special Exception Application No. 01-21CP dated November 21, 2001, at 7.

[4] ANC 2A conditioned its support of the application on the satisfaction of several conditions wholly unrelated to the operation of food venues within the Dormitory: ANC 2A requested the University (i) to submit its overall plan and proposed timeline for student housing and its academic facilities, (ii) to reduce the number of students to be housed in the Dormitory from 700 to 350, (iii) to construct and design its dormitories, including the Dormitory, so that the residential character of the surrounding neighborhood is preserved, (iv) to increase the number of beds to be located at the Square 57 student dormitory residence, (v) to revisit its enrollment policies, and (vi) to conduct a study to determine if the proposed location of the underground parking garage would adversely affect the transportation system.

Zoning Regulations and the Zoning Maps and "the construction and use of the [Dormitory would] not tend to adversely affect the use of neighboring properties nor become objectionable to neighboring properties because of noise, number of students, or vehicular traffic."[5] The Zoning Commission also stated that the "application [would] not have an adverse effect on the use or enjoyment of neighboring property because of traffic."[6]

Pursuant to the Order, the Zoning Administrator subsequently issued Certificates of Occupancy to the University to occupy the entire building for "apartments, meeting rooms, food service, parking (adjunct to G.W. University)" and to Coggins to operate a food service venue on the first floor of the Dormitory.

III. POINTS AND AUTHORITIES

1. The Requirements of the Zoning Regulations Have Been Met

College and university uses, specifically including dormitories, are permitted in all residential districts with the special exception approval of the D.C. Zoning Commission. 11 DCMR Section 210. Accordingly, a special exception, pursuant to the approved George Washington University Campus Plan, was sought by the University in Case No. 01-21 CP/16553 and approved by the D.C. Zoning Commission in Order No. 958 (January 14, 2002). The approved application made specific reference in its text, its supporting drawings illustrating the proposed floor plans and at the public hearing to food service venues within the Dormitory that are similar to those which operate at the University's Marvin Center. The Marvin Center food venues primarily exist for the benefit of the students, faculty, staff of the University, but are also accessible to University visitors. See: BZA Order No. 15837. Like the food venues at the Marvin Center, the Coggins Food venue is an accessory use that is customarily incidental to the University dormitory use that is permitted in all residence districts. 11 DCMR Section 202.11.

2. A University Food Service That Does Not Exclude Incidental Public Users is an Accessory Use that Furthers the University's Mission

The Coggins' food service venue is customarily incidental and subordinate to the principal University use, reasonably related to the University's mission, is located on the same lot with the principal Dormitory and is sited entirely within the University's Campus Plan area. The ANC 2A did not contest these facts in the special exception process and offers no evidence to rebut them in this appeal.

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[5] *See* Order, at 7.

[6] *See* Order, at 8.

Instead, the ANC 2A contends that the University should refuse service to all who cannot establish that they are students or staff of the University. Although the overwhelming number of beneficiaries of the Coggins service are directly associated with the University use, others including parents of the students and other incidental public users who are not directly affiliated with the University are also welcome.[7] Such is a well established practice that has been repeatedly approved for the University and for other institutions in the District of Columbia. Accessory uses encompasses a broad range of uses in addition to food services. They include such uses as child development centers, book stores, post offices and power plants.

This practice has been sustained in one key case, by the D.C. Court of Appeals. In *Citizens Coalition et al. v. Board of Zoning Adjustment*, 619 A.2d 940 (D.C. App. 1993), Georgetown University ("Georgetown") sought and obtained special exception authority to construct an electric cogeneration facility as an addition to its existing steam plant. The cogeneration facility was to be constructed on Georgetown's campus but operated by a private third party, the Potomac Electric Power Company ("PEPCO"). PEPCO was to purchase all of the electricity generated by the facility and sell back to the University enough electricity to meet its demands. The excess would be sold by PEPCO to its non-university customers.

An outraged "citizens coalition" opposed the application contending that the project was not an accessory university use but, instead tantamount to a commercial intrusion in a residential zone, because the electricity generated by the facility would not be delivered to and used exclusively by the University. Because the cogeneration facility would produce electricity for commercial sale and profit, the coalition alleged that the facility did not constitute a valid "accessory use" to Georgetown's principal mission. Ultimately, the BZA disagreed, concluded that the proposed facility and use plan did constitute a valid accessory use, and granted the special exception.

On appeal, a unanimous D.C. Court of Appeals again rejected the coalition's contentions and affirmed the decision by the BZA to grant a special exception to Georgetown on the basis that the facility constituted an accessory to the principal University use:

> Like food sold in a cafeteria to students, the energy generated by the facility, used to heat dormitories, classrooms, a hospital, and other campus buildings, would also be for the benefit of the students, and thus serve as an accessory use to the principal

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[7]The Coggins business plan depends on University users. Recent surveys have shown, for example, that more than 86% of Coggins' customers are University students. For this reason, Coggins' management decided to curtail the operating hours of the food service during the recent Christmas holiday break when school was not in session. The other food venues in the dormitory also shortened their hours of operation during the holiday break. "Normal hours" will return when the students resume classes. Normally, food service to incidental public users is unavailable after 10:00 p.m. but remains accessible to students until 2:00 a.m.

function of the University.
Id. at 951.

Allowing the benefits of the cogeneration facility to be offered to non University entities did not, the court ruled, diminish its status as an accessory use.

The ANC 2A challenge at hand falls squarely within the logic and ruling in *Citizens Coalition*. That the food venue services being provided by Coggins and other providers in the Dormitory are also available to incidental public users does not, as the ANC 2A claims, invalidate the fact that this use is an accessory use within the meaning of the Zoning Regulations. Nonexclusive food venues are clearly appropriate on university campuses provided that they are in furtherance of the university's essential mission and that they do not have substantial adverse impacts on the surrounding community. *See Citizens Coalition*, 619 A.2d at 951.

The Zoning Commission has clearly determined that all of the proposed food venue services in the Dormitory would not have a substantial adverse affect upon the surrounding community.[8] The University specifically stated during the special exception proceeding that each of the venues would be operated in the same nonexclusive manner as its other service facilities located elsewhere on campus. Contrary to the ANC's contention, the University was candid with the Commission and to the ANC that this University service would be operated in the same manner as similar facilities on this and other University campuses.

There are several additional reasons why the decision in *Citizens Coalition* controls this appeal. The Zoning Commission's decision in the Order to grant special exception relief to the University to construct the Dormitory was based on concluding that construction of the dormitory would be consistent with the general purpose and intent of the Zoning Regulations and would not adversely affect the use of neighboring properties or become objectionable to neighboring properties because of noise, number of students or vehicular traffic. Similarly, in *Citizens Coalition*, the BZA granted special exception relief to Georgetown and authorized the construction of the cogeneration facility based on these same reasons. As in *Citizens Coalition*, where the BZA took into consideration the District of Columbia government's recommendations to approve the construction of the cogeneration facility, in issuing the Order the Zoning Commission also relied on the recommendations given by the D.C. Office of Planning and the D.C. Department of Public Works to approve the University's application for a special exception.[9] In addition, the special exception relief granted to the University in the Order and to Georgetown in *Citizens Coalition* was done pursuant to an approved campus plan which included the planned construction. In the University's case, the approved plan specifically identifies the site where the Dormitory is located as an

[8] *See* Order, at 7-8.

[9] *See* Order, at 8.

appropriate site for construction of the Dormitory, together with space for food venues.[10] All of the grounds cited in *Citizens Coalition* as the basis for granting the special exception to Georgetown are evident in the present controversy and thus the same result of permitting the contested use should follow.

The accessory use here is incidental and reasonably related to the principal use. *See Citizens Coalition*, 619 A.2d at 954. Statistics show that from the time Coggins opened for business in the Dormitory, more than eighty-six percent (86%) of its customers are University students. Clearly, the food venue services offered in the Dormitory are primarily and predominantly for the benefit of those affiliated with the University, and therefore are reasonably related to the principal use of the Dormitory. The obvious intention of the University is to provide convenient housing for its undergraduate students together with the necessary amenities, including convenient access to food venues. *See Citizens Coalition*, 619 A.2d at 951.

In a similar vein, the principle that a food venue service furthers a university's charitable and educational mission has been recognized by the Internal Revenue Service. In the University's case , the accounting of income from its campus food service and other retail related venues as being directly related to its charitable and educational mission has not been questioned.

In a seminal ruling on this issue, the Internal Revenue Service in Revenue Ruling 58-194, 1958-1 C.B. 240, concluded that a corporation organized for the purpose of operating a book and supply store and a cafeteria and restaurant on the campus of a state university primarily for the convenience of its student body and the members of its faculty was considered operated exclusively for educational purposes. Based upon Rev. Rul. 58-194, *supra,* the Internal Revenue Service in Revenue Ruling 81-19, 1981-1 C.B. 353, ruled that a tax-exempt organization formed to assist a university would not be subject to the unrelated business income tax[11] in relation to its operations of machines that provide soft drink and food vending services as well as laundromat facilities on campus. The Ruling noted that:

> Like the organization described in Rev. Rul. 58-194, the subject organization's activities are an integral part of the exempt activities of the university, and the organization furthers the educational program of the university by operating facilities for the convenience of the university community.

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[10] The approved Campus Plan identifies this site as "residential/campus life/athletic," a category that includes "housing...auxiliary services...[and] student activity facilities." Approved Campus Plan at page 24.

[11] Although tax exempt charitable organizations are generally exempt from federal income taxation, Section 511(a) of the Internal Revenue Code of 1986 as amended (the "Code") imposes a tax on any income generated by a trade or business regularly carried on by an otherwise tax exempt organization to the extent the business activities are not substantially related to the organization's charitable purposes. This principle that an accessory use may further the charitable mission of an organization was ultimately codified as a "statutory convenience exception" to the unrelated business income tax rules. Code Section 513(a)(2) provides that any trade or business carried on by a Code Section 501(c)(3) tax exempt organization or by a governmental college or a university primarily for the convenience of its members, students, patients, officers or employees does not constitute an unrelated trade or business. *See also* Treasury Regulation §1.513-1(e)(2).

In addition to the university campus context, the Internal Revenue Service has also recognized the relationship of ancillary food services to an organization's charitable mission in connection with its review of cafeterias operated by hospitals and museums. For example, Rev. Rul. 69-268, 1969-1 C.B. 160, ruled that the operation of a cafeteria and coffee shop by a hospital for employees and visitors is related to the hospital's exempt purposes because it enables staff to work more efficiently and also enables visitors to spend more time with patients which assists in patient recovery, implicitly acknowledging that the general public was able to utilize the cafeteria and coffee shop but noted that the general public was not "encouraged" to use them. Likewise, Rev. Rul. 74-399, 1974-2 C.B. 172, held that a museum's operation of a dining room, cafeteria, and snack bar for use by the museum's staff, employees and members of the public visiting the museum did not constitute an unrelated trade or business or activity when the size of the facilities were commensurate with the accommodation of the patrons and was accessible from the museum's galleries and other public areas.

3. The BZA and the Zoning Commission Have Previously Authorized University Related Retail and Service Uses Being Available to Incidental Public Users in a Residential Zone District

The BZA and the Zoning Commission have a history of authorizing university related retail uses that are available to incidental public users on university campuses in residential zones, when those uses are in furtherance of the university's mission and are subordinate to the principal use. These precedents exist even with respect to the University's own campus.

In Application No. 16389 this same ANC 2A challenged the (new) George Washington University Hospital as a "university use" because it was to be managed by a for-profit private entity and was to offer its services to the public. However, this Board expressly rejected the ANC's contention, ruling instead that the proposed on-campus facility is sufficiently related to the University's mission to allow it to operate, as a university use.[12] The Hospital now serves the university community and the general public with medical services and retail related venues that are customary and incidental to university hospitals.[13]

In BZA Order No. 15837, the BZA approved the University's construction of an addition to the Marvin Center, which included a student center, offices, meeting spaces, a theater and a bookstore, all of which are open to University visitors. The BZA also approved the University's construction of the Lisner Auditorium on its campus, which serves as a venue for performance theater and is also open to the public. In these

[12] In so ruling, the board cited the progressive use authority the Citizens' Coalition court granted to universities to pursue their mission.

[13] By letter to the record dated December 20, 2004, the D.C. Hospital Association details and confirms some of the uses that are typically incidental to a principal hospital use.

instances, the BZA based its decisions on a determination that these uses constitute "accessory uses" within meaning of the Zoning Regulations.

Similarly, in Zoning Commission Order No. 949, the Zoning Commission approved the American University's "further processing" application to enclose a driveway beneath the Butler Pavilion, a building located on the campus of the American University ("American"), to allow American to create approximately 20,000 square feet of area to be used for university related retail and service purposes. These included retail shops, mail center and other services which would be open to the public. As in the present case, the Zoning Commission determined that the proposed uses were consistent with the Zoning Regulations and would not tend to affect adversely the use of neighboring properties.

In BZA Order No. 14185, the BZA approved American University's construction of a Sports and Convocation Center on the university campus on the basis that the center would be used for purposes in furtherance of American's mission. The primary purpose of the proposed structure was to provide a facility for athletic classes and intramural sports, both university related uses. An ancillary purpose was to provide a facility for intercollegiate sports and special functions such as lectures, concerts and graduation exercises that are open to the public. The Center is located in a residential zone.

Also located within a residential zone, The Catholic University of America has repeatedly been accorded zoning authority to operate retail related university uses such as a convenience store, a food service court (that is actually managed by Sodexho Marriott), a federal credit union and a theatre and box office. All are accessible to the university community and, incidentally, to the general public.

Howard University enjoys zoning authority to use a portion of its Blackburn Center to operate "Chick-fil-A," Sky Ranch Grill" and "Pandini's" food venues for the benefit of its community without service limitations being imposed on incidental public users. Moreover, until a late 1990's move to a retail center on Georgia Avenue, the Howard University Bookstore was housed in a dormitory on Fourth Street where it offered its wares in the same manner. Both the dormitory and the Blackburn Center are located on the university's campus in a residential zone where all university uses must obtain the approval of the Zoning Commission. 11 DCMR Section 210.

Administrative agencies must heed, respect and defer to its prior decisions or oblige itself to explain in detail why it chooses not to - *Brentwood Liquors v. D.C. Alcoholic Beverage Control Board*, 661 A.2d 652 (D.C. App. 1995); *Draude v. District of Columbia Bd. Of Zoning Adjustment*, 527 A.2d 1242, 1253 (D.C. 1987); *District of Columbia Hosp. Ass'n v. Barry*, 498 A.2d 216, 219 n. 5 (D.C. 1985); *see also Glenbrook Road Ass'n v. District of Columbia Bd. Of Zoning Adjustment*, 605 A.2d 22, 34 (D.C. 1992).[14] The uses contemplated in foregoing cases are similar to the use that is at

[14] See also: Georgetown Residents Alliance v. D.C. Board of Zoning Adjustment, 816 A.2d 41 (D.C. App. 2003), wherein the D.C. Court of Appeals affirmed a BZA finding that a child development center is an accessory use

issue in this case: all of the uses are located in a residential zone district. All are retail and service in nature. All are available to incidental public users. And all have previously been approved by the Zoning Commission or by the BZA and by the Zoning Administrator as accessory uses because all primarily serve to further the institution's overarching educational mission.

4. Retail Uses That Are Open to Incidental Public Users are Authorized on University Campuses Across the Nation

The BZA should also be influenced by the fact that institutions of higher education throughout the nation are permitted in their respective jurisdictions to use campus property located in residential zone districts for retail related uses that primarily serve the university but are also made available to the public, including food venues. Presented as Exhibit "C" is evidence that universities located in the States of California, Florida, Georgia, Louisiana, Maryland, Illinois, New Jersey, New York, Ohio and Tennessee all regularly offer food services, bookstores, card shops and parking facilities – created primarily for the University population – to all of those who are on the campus and choose to use them.[15]

The Board should also recognize and credit a letter in this record from the D.C. Hospital Association that demonstrates that this use practice and policy is approved and common among hospitals that are located in residential zones.

5. The Rules of Procedure and Public Policy Support the Denial of the Appeal

From a policy perspective it is important to note that Mrs. Miller and ANC 2A had ample opportunity to voice their concerns regarding the proposed food venues during the special exception proceeding. That neither chose to do so should accord them no leverage here. ANC 2A should not at this late stage be permitted to take actions which, if successful, would amount not only to a reversal of a reasonable and valid administrative decision but also, in effect, amend the Zoning Commission's Order granting the requested special exception relief to the University. The Zoning Administrator's issuance of the certificate of occupancy to Coggins was an act in direct furtherance of the Zoning Commission's final order, and for this reason, should not be

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("...clearly subordinate, incidental and related to the principal use of the University"). The BZA based this finding, in part, on evidence that "numerous colleges and universities nationwide have such centers on campus."

[15] Other retail related university uses are also common. For example, in New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 N.Y. 2d 413, 694 N.E. 2d 424 (1998) the Court of Appeals of New York affirmed an administrative ruling that a radio station and its attendant tower "...are clearly incidental to and customarily found on college campuses in New York and all over the United States." These judicial and administrative conclusions were made in response to the opponents' argument that the "...sheer extent of the [radio] operations," which reached "far beyond the immediate college community" showed that the station was not being operated as an adjunct to university programs but that it was essentially a commercial enterprise." University radio stations are also defined as accessory uses in the District of Columbia. Both Howard University and American University broadcast to the general public from studios located in residential zones within their respective campuses. Howard University also broadcasts television programming from the same campus residential zone.

overturned. The BZA should give due credit and deference to the fact that the Zoning Commission had full knowledge that the food venues operating in the Dormitory would also be open to the public, at the time it determined that granting a special exception to the University to construct and use the Dormitory was consistent with the general purpose and intent of the Zoning Regulations and would not adversely affect, or become objectionable, to neighboring properties. Such knowledge is implicit from the operations of similar retail related venues on the University's campus as well as on other campuses around the city. (See: Section 3, above.)

ANC 2A did not ask the Commission to reconsider its decision and no party to the case sought appellate relief. Instead, the ANC 2A has waited nearly three years after the Zoning Commission's final order to raise this accessory use issue for the first time. As a procedural and as a policy matter the Board should be unsympathetic to the ANC 2A's dilatory attempt to redress a decision that it did not oppose but later chose to challenge.

V. CONCLUSION

As hereinbefore demonstrated, this ANC 2A appeal asks this board to overrule a use that the D.C. Zoning Commission has already approved. The challenged Certificate of Occupancy was issued in accord with Zoning Commission's Order No. 958 and is also fully consistent with previous accessory use decisions of the Zoning Commission and of the BZA. The administrative decision to allow university uses to be accessible to incidental public users has been upheld by the D.C. Court of Appeals as consistent with the Zoning Regulations. Retail related university uses that are accessible to incidental public users are authorized and constitute the status quo on university campuses and hospital complexes in the District of Columbia and in other jurisdictions nationwide. There is no reason or authority, at this level, to repudiate an established use policy, especially one that has been found to have no adverse impact on the use of neighboring property.

It is for these reasons that the ANC appeal has no merit and, accordingly, must be denied.

Respectfully submitted,

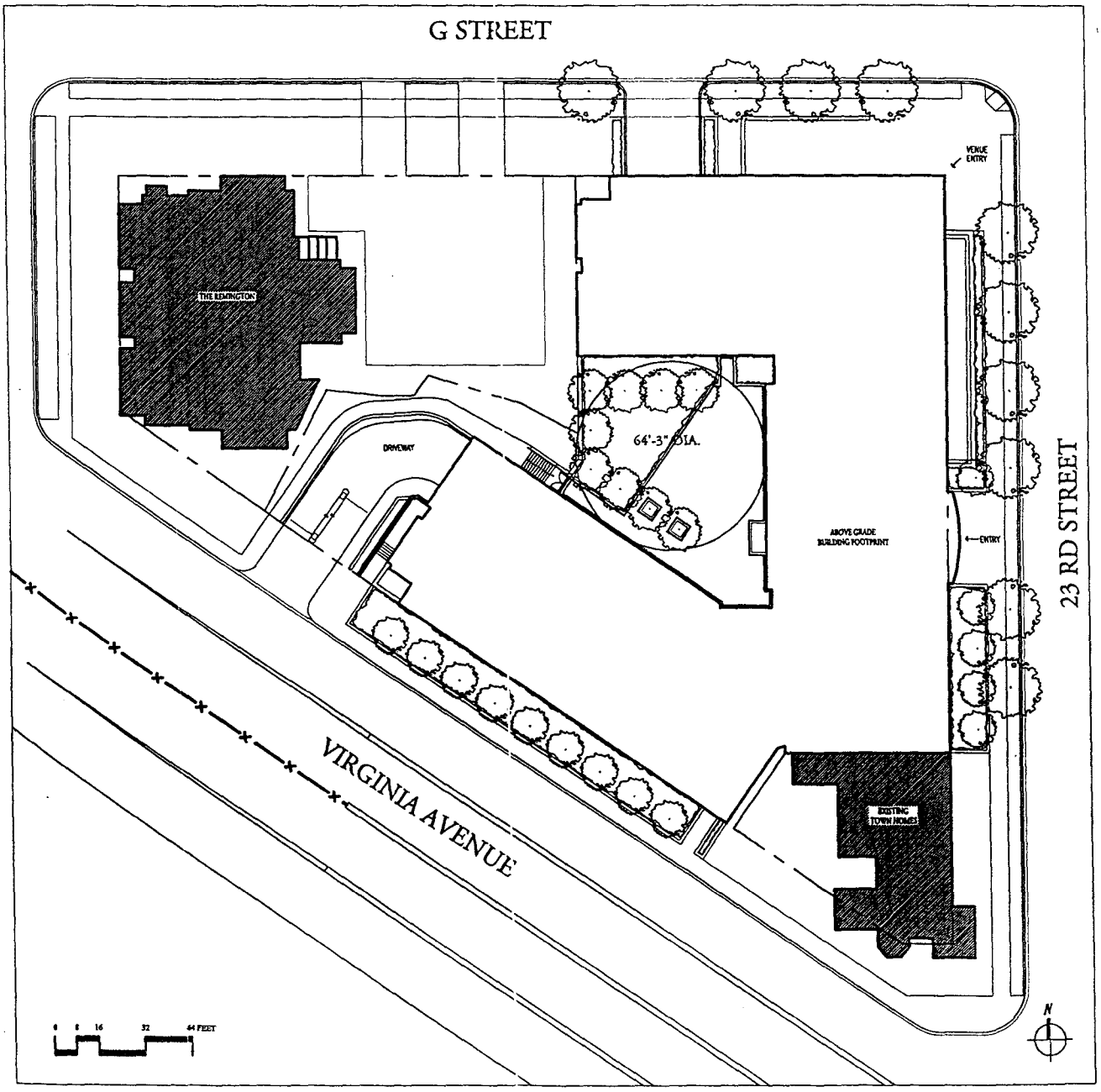
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Dated: January 11, 2005

EXHIBIT A

The George Washington University
WASHINGTON DC

SQUARE 43 STUDENT RESIDENCE HALL



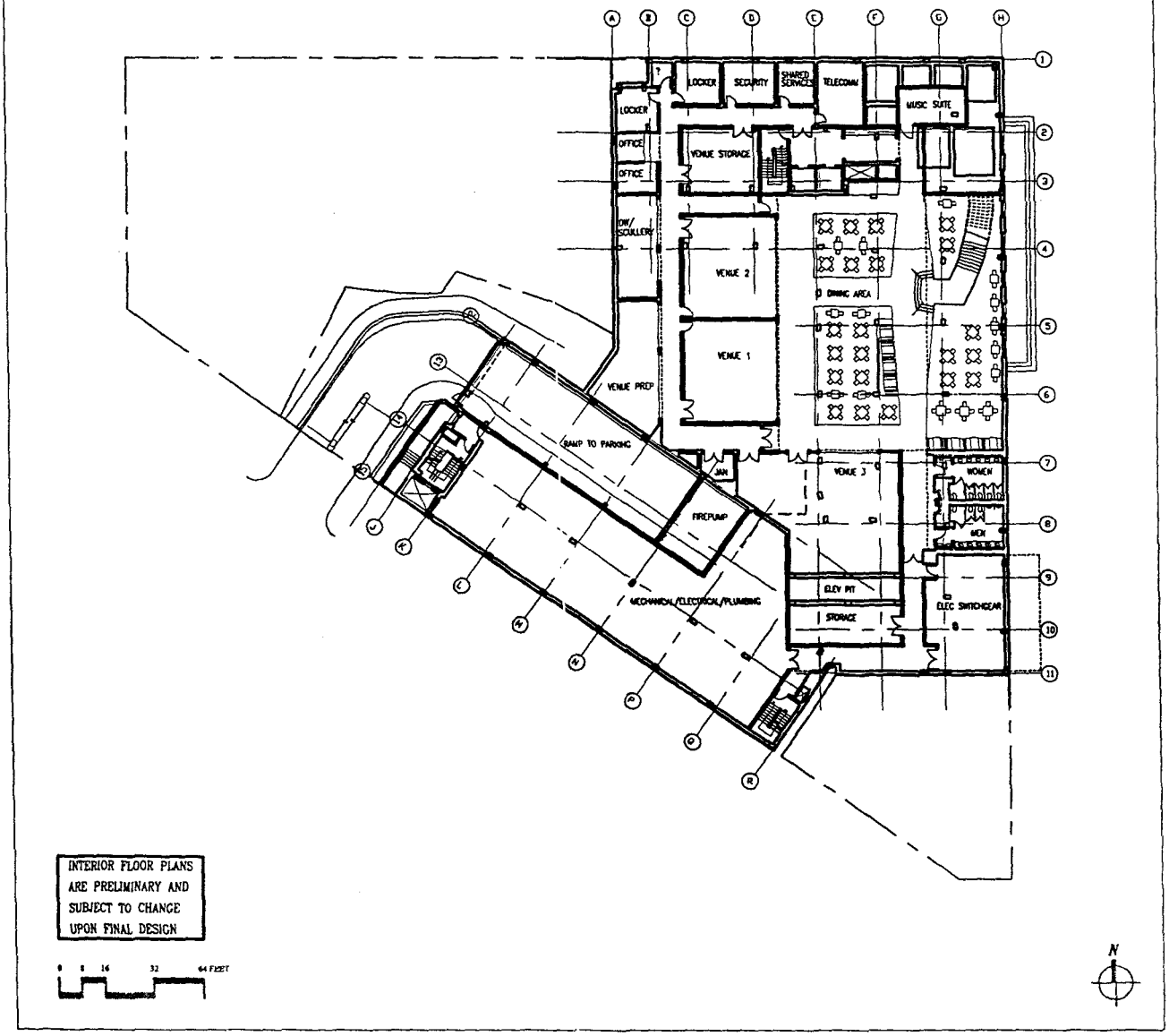
ZS-2 • SITE PLAN

AYERS SAINT GROSS

NOVEMBER 16, 2001

The George Washington University
WASHINGTON DC

SQUARE 43 STUDENT RESIDENCE HALL



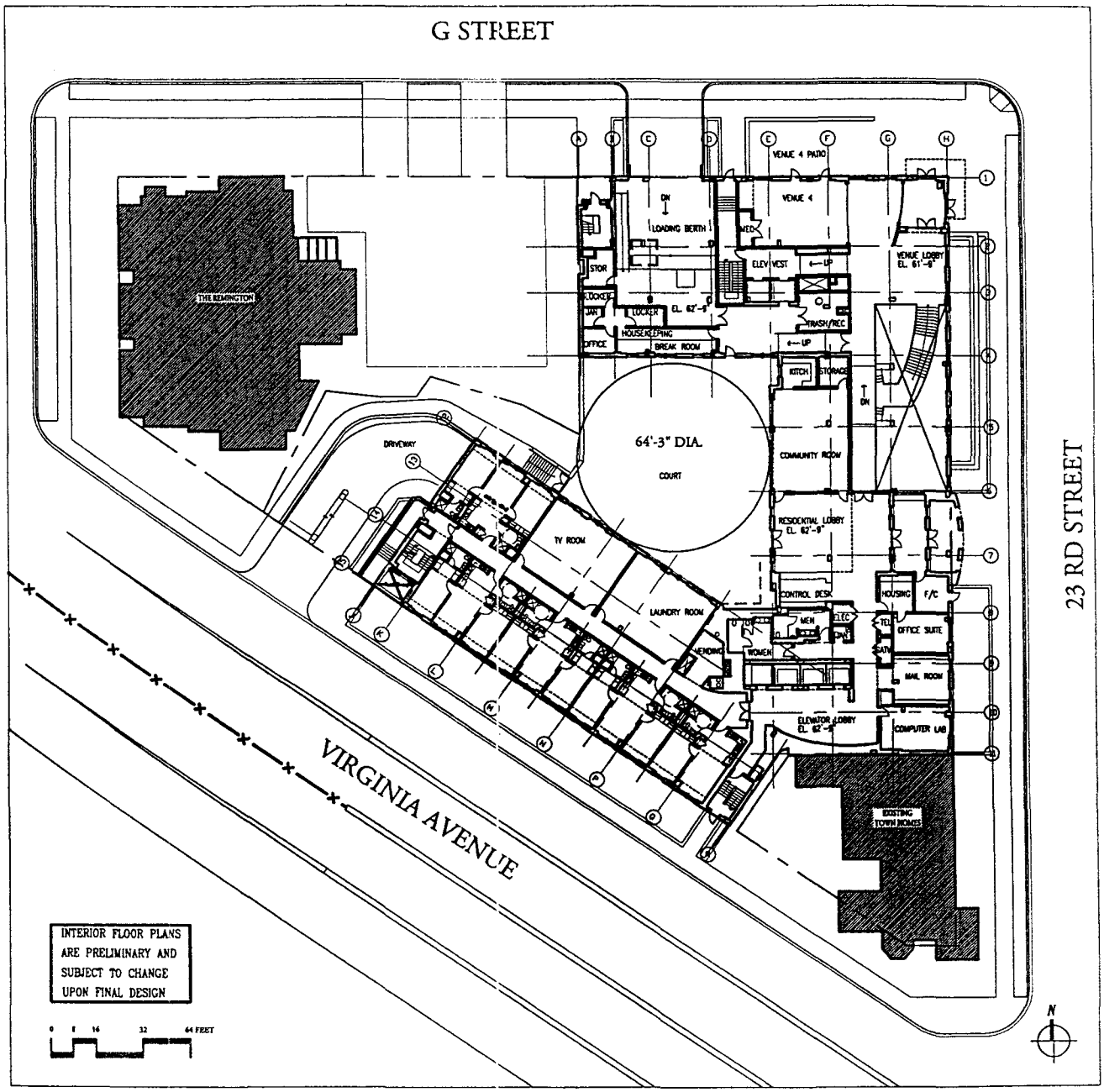
ZS-5 • LOWER LEVEL FLOOR PLAN

AYERS SAINT GROSS

NOVEMBER 16, 2001

The George Washington University
WASHINGTON DC

SQUARE 43 STUDENT RESIDENCE HALL



ZS-6 • GROUND FLOOR PLAN

AYERS SAINT GROSS

NOVEMBER 16, 2001

EXHIBIT B

Retail Related Accessory Uses at other Universities

In addition to the retail related accessory uses that are now validly operating in the District of Columbia at the George Washington University, the Georgetown University, The American University, Howard University, the Catholic University of America and at most, if not all, of the District of Columbia's hospitals, the George Washington University has informally inquired of other universities, nationwide, of their practices with respect to retail related accessory uses. The University made these inquiries based on its knowledge of university trending to relieve themselves of same retail related university necessities in favor of private contracting. This widespread and accepted practice allows universities to concentrate their primary efforts on their principal mission which is education.

To date, the University has received responses as follows:

- Emory University, Atlanta Georgia: Allows public access to its students center and all food service location around the campus. In addition, allows public access to its card shops and restaurants in its healthcare facilities. It is "broadly allowed" to operate retail establishments, so long as the focus of those establishments is on campus needs.

- University of Miami, Miami, Florida: Its food service convenience store and book store are open to all comers.

- Case Western Reserve University, Cleveland, Ohio: Its' book stores (operated by The Barnes & Noble Company), convenience stores and food services are open to all.

- University of Chicago, Chicago, Illinois: The public is welcome to its food service, book store (Barnes & Noble) and parking facilities (during off hours).

- New York University, New York City: Its food service, book store, parking garage are all open to the public.

- Princeton University, Trenton, New Jersey: Its book store and food court are open to the public.

- Johns Hopkins University; Baltimore, Maryland: Its coffee shops, restaurants and books stores are all open to the public.

- Vanderbilt University, Nashville, Tennessee: Its food service venues are open to "all comers."

- Stanford University, Palo Alto, California: Its dozen restaurants, book stores and convenient stores are all open to the public.

- Tulane University, New Orleans, Louisiana: Its book store, food services, bank and barber shop are all open to the public.

Two universities, Harvard and the University of North Carolina, Chapel Hill, reported that local law in those jurisdictions specifically limited each one's ability to extend retail related university services to the public. The logical conclusion is that in the absence of such a law, the universities would be free to permit public use of the retail services on their campuses.

EXHIBIT C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION

★ ★ ★

Office of Public Space
Management Administration

September 27, 2004

The George Washington University
2121 I Street, NW
Suite 701
Washington, DC 20052

Dear Property Owner:

On September 23, 2004, the District of Columbia Public Space Committee approved the request to use public space for an unenclosed sidewalk café for Coggins' Sandwich Manufactory, located at 616 23rd Street, NW. Approval was granted with the following conditions:

1. That the applicant secure the permit within six months of the date of this letter, or the approval granted herein will expire;
2. That the applicant secure a certificate of use within six (6) months of the issuance of the sidewalk café permit;
3. That a certificate of use be obtained yearly;
4. That the permit shall expire if the insurance to the benefit of the District of Columbia not be maintained;
5. That the permit is for the use of Coggins Sandwich Manufactory and is not transferable;
6. That there be no alcohol served;
7. That the property owner will be responsible for maintaining the area free of trash and debris;
8. That the property owner display no logos, insignias or advertising of any kind on any structure, fixture or material in public space;
9. That the applicant adheres to the hours of operation from 7:00am to 10:00pm seven (7) days a week;
10. That no material be placed in public space earlier than one half hour before opening and that all material be removed from public space within one half hour of the hours of operation;
11. That the applicant may use the café from April 1st through October 31st;
12. That the proposed installation shall be in accordance with the approved drawing, and no deviation from the drawing is allowed without prior approval from the Public Space Committee;
13. That the applicant adhere to the proposed use of 26 tables and 52 chairs with 5 umbrellas in the proposed design, for a total of 834 square feet;
14. That the use of public space to establish and operate an unenclosed sidewalk café at 616 23rd Street, NW, shall conform to all applicable provisions of Title 24 DCMR, Chapters 2 and 3; and
15. That the rental fee is paid annually in accordance with Title 24 DCMR, Chapter 3.

Please contact 202.442.4670 to arrange to pick up of your permit at 941 North Capitol Street, Suite 2300. If you have any questions, please contact me directly at 202.535.2699. Thank you.

Sincerely,

Denise L. Wiktor
Executive Secretary

Cc: Andrew W. Kline
ANC 2A

EXHIBIT D

Government of the District of Columbia
ZONING COMMISSION

ZONING COMMISSION ORDER NO. 958
Case No. 01-21CP/16553
(Campus Plan and Further Processing – George Washington University)
January 14, 2002

This Decision and Order arises out of an application by the George Washington University ("University" or "Applicant") for special exception approval pursuant to 11 DCMR § 3104.1 and in accordance with § 210 of the Zoning Regulations for further processing under an approved campus plan to authorize the construction and use of a new dormitory on the campus of the University in an R-5-D District at premises 616 23rd Street, N.W. (Square 43, Lot 26).

HEARING DATE: December 6, 2002

DECISION DATE: January 14, 2002

SUMMARY ORDER

1. Advisory Neighborhood Commission ("ANC") 2A was a party in this proceeding. The Commission received requests for party status from Dr. Donald Kreuzer, Robin Meigel, Marilyn Manolo, and Dorothy Miller. The Commission granted the request of Dr. Kreuzer and denied the requests of Ms. Meigel, Ms. Manolo, and Ms. Miller. St. Mary's Episcopal Church filed a letter stating that it had not received notice of the hearing as required by § 3113.13(b) of the Zoning Regulations. The Applicant replied, and it was later determined, that St. Mary's Episcopal Church is not located within 200 feet of the property that is the subject of this application and thus was not required by § 3113.13(b) to receive notice from the Applicant. The Commission noted that the record would remain open after the public hearing for the St. Mary's Episcopal Church to submit comments.

2. Pursuant to Commission practices relating to campus plans, this application was not accompanied by a self-certification form or a memorandum from the Zoning Administrator certifying the required zoning relief.

3. The Applicant submitted a plan for developing the campus as a whole, showing the location, height, and bulk of all present and proposed improvements as required by 11 DCMR § 210.4. The Board of Zoning Adjustment ("BZA") approved that plan by order

dated March 29, 2001. The Board clarified that order, on remand, by order dated December 21, 2001. The approved Campus Plan For The George Washington University For Years 2000 Through 2010 ("approved Campus Plan") adds Square 43 to the campus boundary. The BZA's order of March 29, 2001, and the remand order of December 21, 2001, direct the University to take decisive steps to house 70% of its full-time undergraduate students within the campus boundaries. To that end, the remand order directs the University to provide beds for at least 5,600 full-time undergraduate students on campus, or outside of the Foggy Bottom/West End area, no later than August 31, 2002. In addition, beginning in August 2002, to provide one bed on campus, or outside of the Foggy Bottom/West End area, for each full-time undergraduate student in excess of the University enrollment of 8,000, and directs the University to meet the aforementioned housing requirements exclusively by on-campus housing no later than August 31, 2006.

4. The Applicant proposes to construct a new, state-of-the-art dormitory on a vacant lot it now owns on Square 43. The new dormitory will be located across G Street to the south of the University's Health and Wellness Center and across 23rd Street to the west from the Charles E. Smith Athletic Center and another dormitory that the Applicant is currently proposing to build on Square 57.

5. The proposed dormitory will contain approximately 237,000 gross square feet of floor area, will consist of a nine-story structure with a ground floor and basement, and will have a capacity of approximately 700 beds. The maximum height of the building will be 90 feet from 23rd Street and the floor area ratio and parking requirements for the facility are considered in the overall FAR and parking requirements for the University as a whole pursuant to the approved Campus Plan. The University has submitted a certification, as required by 11 DCMR § 210.8 that this proposed building is within the FAR limit for the campus as a whole, based upon the computation in the approved Campus Plan and the FARs of other buildings constructed or demolished since the Campus Plan was approved.

6. The dormitory will be located on Lot 26, which is owned by the University and located on its central campus and on property that is properly zoned for dormitory uses.

7. The dormitory will contain dormitory residence rooms for male and female underclassmen, 88 below grade parking spaces, and spaces for three or four food venue services on the lower and first levels.

8. The site is located on a nearly triangular square bordered by G Street on the north, 23rd Street on the east, Virginia Avenue on the south, and 24th Street on the west. Lot 26 contains approximately 32,723 square feet of land area and is vacant. The remainder of the square contains The Wellington Condominium residences and three single family structures. The Wellington Condominium was built in 1982 and contains 52 units. The three single family structures, located on the southeastern tip of the square, are owned by Dr. Kreuzer, who at the hearing expressed his intention to develop his property to the fullest extent of the zoning envelope.

9. The University enrolled 8,058 full-time undergraduate students in the fall of 2001. It provides 4,056 beds on campus and 1,395 beds off-campus in University owned or controlled facilities. The dormitory that is proposed on Square 43 will add 700 on-campus beds in 2004. In addition, the proposed dormitory on Square 57, if approved, will add another 204 beds and the residential facilities at the Elliott School building, if approved, will add an additional 193 beds. Thus, if all three of the aforementioned residential facilities are approved and built, 1,097 additional beds will be added to the campus inventory, thus raising the number of on-campus beds to 5,153 or approximately 64% of the University's Fall 2001 full-time undergraduate population.

10. The Commission finds that there is an immediate need for the University to construct and open on-campus dormitory facilities if it is to meet the on-campus housing requirement imposed by the BZA in its remand order of December 21, 2001.

11. The University maintains that the proposed use meets the requirements of the Zoning Regulations and of the approved Campus Plan. It provided information about the proposed use, the appropriateness of its location, and the proposed project's compatibility with surrounding uses.

12. In accordance with the BZA order of March 29, 2001, and the remand order of December 21, 2001, the University has submitted evidence in the record that shows that it has consistently remained in substantial compliance with conditions 1-19 therein with the exception of condition 9 which is the subject of a preliminary injunction in The George Washington University v. District of Columbia, Civil No. 01-0895 (D. D.C. 2001).

13. The generalized land use map of the District of Columbia Comprehensive Plan Act designates the entire campus plan area for "institutional uses". The properties that lie adjacent to the campus are generally designed for high density residential, and medium and high density commercial uses. Generally, medium to high density residential and commercial uses predominate to the west of the campus, while high density commercial uses dominate to the east.

14. The University's architect, who was recognized as an expert witness by the Commission, testified that the proposed dormitory is designed so as not to be objectionable to surrounding properties.

15. The University's architect also testified that the proposed design of the dormitory responds to the urban context and neighborhood with respect to its site configuration, massing, and building materials. He testified that the building is in keeping with the District of Columbia's tradition of creating vistas and strong street edges by following the diagonal of Virginia Avenue while, at the same time, holding the orthogonal boundaries of G Street and 23rd Street, N.W. The proposed line modulates the proposed 90 foot height by creating a clear base, middle, and top of the structure. The scale of the adjacent townhouses is further echoed by the introduction of a three-story bay projection at the dormitory building's main entrance. Two belt course projections relating to some of the articulations found on the façade of the Health and Wellness Center across G Street to the

north are included. Along 23rd Street, an entry tower is proposed and is defined by recessing the adjacent windows and spandrel panels. The architect testified further that another significant element, which has been given special consideration, is the "hinge" which rises above the adjacent townhouses at the intersection of 23rd Street and Virginia Avenue. The hinge consists of a sweeping curve of precast concrete and glass which sets back slightly from the property line to allow the masonry blocks which front the streets to be expressed. The windows in the curve provide light and views for the elevator lobby. Finally, the architect testified that the exterior material plate is consistent with that use in other recent University buildings on the adjacent squares. He testified that the architectural design of this dormitory is entirely consistent with the "special street" status of 23rd Street as designated in the District Elements of the D.C. Comprehensive Plan.

16. The University's architect submitted a statement to the record that structural design adjustments, suggested by the staff of the Commission of Fine Arts and adopted by the University, have resulted in the creation of a closed court on the southeast "hinge" of the proposed dormitory structure and that this same closed court does not meet the minimum width or area requirements at § 406.1 of the Zoning Regulations. The University acknowledged that variance relief, in addition to this special exception, will be required to obtain full zoning approval for this proposed dormitory structure.

17. The proposed dormitory project provides appropriate vehicular access to the site. A loading dock with two twelve-foot by thirty-foot bays accessed from G Street is included. The project also includes one and one-half levels of below grade parking which provide approximately 88 parking spaces. Parking access is from Virginia Avenue with a driveway located within the side yard setback. The garage will be self-park with a card reader and gate located at the driveway entrance.

18. The University's traffic and parking consultant, who was also admitted as an expert witness, testified that he had performed and submitted into the record a transportation and parking analysis which assesses the impact that the proposed dormitory will have on existing traffic and parking in the area. He testified that there were relatively no new traffic impact caused by the proposed dormitory and that the proposed site access would not have an adverse impact on pedestrians or the surrounding street network. He testified further that the approval of this application would not cause any of the intersections in the surrounding areas to operate at unacceptable levels of service, with the exception of the Virginia Avenue and 23rd Street intersection during the morning peak hour. That intersection is projected to continue to operate at a failing level of service during future conditions but that the approval of this application will not exacerbate the existing level of service because the morning congestion is attributable to commuter rather than to local traffic. He also testified that the University would remain in compliance with its campus plan's minimum parking requirement of 2,800 spaces if this application is approved. The University's parking manager collaborated that conclusion in subsequent testimony. Finally, the traffic and parking expert recommended that fluorescent orange guideposts be installed along the Virginia Avenue roadway at it exits, at ground level, from the underpass that is adjacent to the site. These guideposts, he testified, would prevent traffic

from having an adverse confluence with Virginia Avenue traffic that is immediately in front of the site. The Commission credits this testimony.

19. Based on these conclusions and recommendations, the University's traffic and parking expert concluded that the development of the proposed dormitory on Square 43 would not have an adverse impact because of traffic, parking, or loading. In reaching this conclusion, he testified that his study has taken into account all developments and transportation system changes since the approval of the campus master plan and through the foreseeable future.

20. The dormitory will contain three or four food venue locations: three on the lower level and one at ground level. No alcoholic beverages will be served at any of these venues.

21. By memorandum dated November 30, 2001, and by oral testimony at the December 6, 2001, public hearing, the D.C. Office of Planning opined that this application satisfied the zoning requirements and recommended that it be approved. In so doing, the memorandum noted that the development of a residential facility on Square 43 is compatible with the general development pattern along 23rd Street, that the development of a student residence facility on Square 43 is in keeping with the BZA's campus plan order, and that the building of a new dormitory on Square 43 is responsive to many of the concerns and policies of the Comprehensive Plan. The Office of Planning's memorandum further states that the height of the proposed dormitory is within that permitted in the R-5-D District, and that it is not good design practice to restrict the height of the new dormitory to adjust to the height of the remaining townhouses. Finally, the Office of Planning concluded that the granting of a special exception to permit the proposed dormitory on Square 43 will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to adversely affect the use of neighboring property. In reaching this conclusion, the Office of Planning expressed concern that the architecture and landscaping plan be refined to reflect the "special street" status accorded to 23rd Street in the District of Columbia Elements of the Comprehensive Plan for the National Capital. The Office of Planning also recommended that additional coordination be undertaken with the D.C. Department of Transportation with respect to the control of turning movements into the parking driveway from Virginia Avenue.

22. By memorandum dated November 30, 2001, the D.C. Department of Public Works ("DPW"), Office of Transportation Planning concluded that the proposed dormitory project on Square 43 will have no measurable impact on the surrounding street system. As such, DPW stated its support for this application.

23. By letters dated November 28, 2001, and January 2, 2002, the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) stated that it does not oppose the construction of a dormitory on Square 43 subject to certain conditions:

    a. That the University submit its overall plan and proposed timeline for student housing, as well as its academic facilities plans within its current campus boundary as provided by the approved Campus Plan;

b. That the University "revisit and adopt as closely as possible" its December 1999 campus plan proposal to house 350 not 700 students on Square 43;

c. That the University revisit the design of dormitory housing on Square 57 and increase the number of beds at that location to the maximum permitted under the Zoning Regulations, so that any shortfall in the number of beds from Square 43 can be provided for on Square 57;

d. That the University revisit an alleged pledge to retain the Foggy Bottom/West End historic ambiance by incorporating the original Square 43 townhouse façades or replicas thereof on the fronts of the Square 43 and Square 57 dormitory projects;

e. That the University plan and design a dormitory residence hall, with suitable capacity, for the remaining lot on Square 56; and

f. That unless the aforementioned conditions are met, the ANC will oppose the approval of zoning authority for the new dormitories on Squares 43 and 57 and for the School of Business and Public Management addition to Funger Hall on Square 56.

24. The ANC-2A's letters also raised the following concerns:

a. That the University's enrollment policies have resulted in adverse effects to the residential Foggy Bottom/West End neighborhood;

b. That the University has not offered a plan that shows how it will meet the undergraduate housing requirements mandated by the Board of Zoning Adjustment in its Orders of March 29, 2001, and December 21, 2001;

c. That the size of the proposed dormitory on Square 43 "dwarfs" the neighboring townhouses and is architecturally out of character with the "townhouse" residential character of Foggy Bottom; and

d. That the Virginia Avenue location of the access to the proposed underground parking garage requires an independent study to determine if this location will have an adverse effect on the transportation system.

25. Dr. Donald Kreuzer appeared at the hearing with counsel and an architect. Subsequently, each submitted letters to the record. In testimony and in written documents, Dr. Kreuzer and his associates testified that to his disappointment the University had purchased and subsequently demolished the other townhouses on Square 43. He further testified this was contrary to the BZA's final order in Application No. 14455, and at odds with the University's "original" plan to employ those "low-scale" townhouses as buffers between the University and the non-University residential community. He alleged that the University's plan to build a high-density dormitory on the square forces him to develop a residential structure that is "compatible" with the development pattern of the University. His attorney noted that such a development would require one or more variances from the

Zoning Regulations, architectural cooperation from the University, and a Commission order requiring the University to reserve parking in its proposed structure to accommodate the off-street parking requirement for Dr. Kreuzer's building. Dr. Kreuzer's architect wrote of his concerns with the relationship of the southeastern façade of the proposed dormitory to Dr. Kreuzer's existing property and to the property development that he proposes. The architect contended that the University's plan to include windows on the southeastern façade of its proposed dormitory building impermissibly and adversely affects the privacy of Dr. Kreuzer's property. He suggested that all windows on the two southeast façades, including the elevator lobby windows, be made of opaque spandrel glass and be non-operable so as to prevent the transmittance of sound from the dormitory to Dr. Kreuzer's property. He also requested that no windows be approved in the walls of the University building facing Dr. Kreuzer's property up to a height of 20 feet, also to prevent unnecessary intrusion into the privacy of Dr. Kreuzer's property.

26. By letter dated November 30, 2001, the Foggy Bottom Association ("FBA") stated its general agreement with the position of ANC-2A as stated in the record. Specifically, it stated that the FBA does not oppose the construction of a dormitory residence hall and ancillary services project on Square 43 with the stipulation that it be designed for 350 beds rather than the 700 currently proposed. The FBA further stated its support for the concept of a townhouse façade with the Square 43 dormitory along its 23rd Street frontage. Mrs. Barbara Spillinger appeared at the hearing to give the FBA report.

27. The West End Citizens Association submitted a letter to the record on November 29, 2001, stating that the proposed building on Square 43 should be reduced in bulk and have an alternative design, that the windows on the southeast hinge of the structure be blocked in so as to preserve the privacy of Dr. Kreuzer's property, and that the vehicular and pedestrian traffic patterns that are adjacent to the site need modification for noise and safety reasons.

28. Four persons appeared and testified in opposition to the application. Two were residents at the Remington Condominium; one testified as the President of the Columbia Plaza Tenants Association; and the other testified in her capacity as the ANC Commissioner for a single member district that is adjacent to the site. All stated that the proposed dormitory on Square 43 is too large and, as such, will cause adverse effects on the use and enjoyment of neighboring property because of noise, the height of the building, traffic problems and the number of students that will be frequenting the square.

Findings of Fact:

1. The Commission finds that the University has met the requisite burden of proof as set forth in §§ 210 and 3104.1 of the Zoning Regulations. The construction and use of the proposed student dormitory on Square 43 will not tend to adversely affect the use of neighboring properties nor become objectionable to neighboring properties because of noise, number of students, or vehicular traffic. In so finding, the Commission credits the

expert testimonies and record evidence of the University's architect, its traffic consultant, and the findings and recommendations of the D.C. Office of Planning and DPW.

2. The Commission credits the report of the University's expert traffic consultant that all intersections in the vicinity of Square 43 will operate at acceptable levels of service except the intersection of Virginia Avenue and 23rd Street at certain periods of the day. The Commission notes in the expert traffic consultant's testimony that the Virginia Avenue and 23rd Street intersection currently operates at a below acceptable level of service in the morning peak hour and that the development of the proposed dormitory on Square 43 will not cause the level of service at that intersection to further deteriorate. The Commission is especially mindful of the testimony of the University's parking manager who testified that it is the University's experience that very few students, less than 1%, are likely to bring cars to the proposed dormitory once it is opened. The Commission finds further that there are a sufficient number of off-street parking spaces provided in the facility and on the campus as a whole to accommodate the development of the dormitory on Square 43. For these reasons, the Commission concludes that the approval of this application will not have an adverse effect on the use or enjoyment of neighboring property because of traffic.

3. The Commission makes the following findings with respect to the concerns submitted by ANC-2A:

   a. The University must present its overall plan for housing full-time undergraduate students on campus. The BZA, in its order dated March 29, 2001, approving the University's campus plan for the years 2000 through 2010, ordered the University to freeze its full-time undergraduate population until it housed 70% of such population on campus. On June 15, 2001, the enforcement of condition 9 of this order was enjoined by the United States District Court. In addition, the District of Columbia sought and obtained a remand of this order from the D.C. Court of Appeals. After hearings on remand, the BZA issued a proposed order on November 1, 2001, which was issued in written form on December 21, 2001. In the interim, the University has moved aggressively to create three development proposals that will increase the number of on-campus beds by 1,097, or 14%. Given the legal controversy surrounding this issue, the University's substantive steps to increase the number of on-campus beds and the timing of the remand order, the Commission is satisfied that the University is taking reasonable steps to produce an overall housing plan in a timely manner. Further, the BZA has heard substantial testimony and considered numerous documents concerning the appropriate balance between the University's interest in being a thriving, attractive, and modern central city University campus and the Foggy Bottom/West End citizens' concern that the University is diminishing the fabric and quality of non-university residential life in that neighborhood. The Commission defers to the BZA's order approving the campus plan which, together with the substantive and strict conditions that are set forth therein, strikes a reasonable balance between these competing and conflicting interests. The Commission is obliged to apply these strict standards regarding student enrollment, on-campus undergraduate student housing and the development

of academic and support facilities, on a case-by-case basis, adhering strictly to the balances fashioned by the BZA;

b. The University should limit student beds on Square 43 to 350. Given the Commission's determination that Square 43 is an appropriate location to develop high density residential facilities, the BZA's order to the University to substantially increase the number of on-campus beds for its full-time undergraduate students and the Commission's finding that the housing of 700 students on Square 43 will not have an adverse impact upon the use and enjoyment of neighboring property, the Commission finds that limiting the number of students on Square 43 is unrealistic, unnecessary, and counterproductive to the goal, which the ANC urged be imposed on the University, of the University housing 80% of its undergraduate students on its downtown campus;

c. The University should redesign its proposed dormitory on Square 57 so as to increase the number of beds on Square 57 and decrease the number of beds on Square 43. For the reasons given above, the Commission has found the proposed number of beds on Square 43 to be reasonable and in keeping with the requirements of the Zoning Regulations. The ANC has given no persuasive reason why the number of beds should be increased on Square 57 and decreased on Square 43;

d. The University should incorporate a townhouse façade on the 23rd Street face of the dormitory project. The Commission finds that the Zoning Regulations do not require the University, nor compel the Commission to establish a particular architectural style on any development. The Commission's function is to determine whether the proposed architecture will have an adverse effect on the use and enjoyment of neighboring property. The Commission notes that the underlying R-5-D zone district fully contemplates and supports the development of high density residential facilities on this square. Certainly the University could have considered a townhouse façade on Square 43 if it chose. But the Commission will not require it to do so because the Zoning Regulations don't require it to do so. Further, the Commission has found that the proposed architecture will not have an adverse effect on the use and enjoyment of neighboring property. The ANC has presented no evidence to the contrary;

e. The University should plan and construct a dormitory residence on the remaining lot that it owns on Square 56. The Commission finds that this condition has no relevance to its evaluation of the proposed development on Square 43. The ANC has submitted no evidence to the contrary;

f. The Commission finds that the ANC's concern that the proposed dormitory on Square 43 "dwarfs the neighboring adjacent townhouses" to be without effect. In so finding, the Commission notes that the underlying zoning envelope, as well as the Comprehensive Plan authorizes and promotes large scale, high density development on Square 43. All property owners on that square are entitled by the

Zoning Regulations to build their property to the maximum that the law will allow. The University has chosen to do that; others are entitled to do the same; and

g. The Commission finds that the ANC's concern with the north Virginia Avenue location of the access drive to the underground parking garage to be without merit. In so finding, the Commission credits the expert testimony of the University's parking consultant which is substantiated, in pertinent part, by the findings and recommendations of the D.C. Department of Transportation that this proposed location will have no adverse effects on traffic.

4. The Commission finds that the alleged zoning violation, privacy, and potential impact concerns presented by Dr. Kreuzer and his associates to be unsubstantiated and/or without merit. First, the Commission is not authorized in this process to determine whether the University violated a mandate of BZA Order No. 14455 when it demolished the residential structures it owned on Square 43. Even so, a plain reading at the BZA order readily reveals that the BZA did not prohibit the University from demolishing residential structures on Square 43. Second, the University proposes to build its dormitory to a height and at a lot occupancy that is permitted by the Zoning Regulations. But for the fact that this is a University use in a residential district, another property owner would be entitled by right to build a structure of similar height and lot occupancy adjacent to Dr. Kreuzer's property. Third, Dr. Kreuzer has not presented the Commission with any tangible or reliable evidence of what his proposed development may be or the impact that the University's proposed dormitory may have on a structure he may or may not build in the future. There is no evidence of what, when, or if Dr. Kreuzer will develop. Further, he has failed to substantiate that his existing property will be adversely affected by the University's proposed development. His objection that the proposed height of the University dormitory will adversely affect his personal privacy is not sustainable given the 90 foot heights and the medium-to-high density development that the Zoning Regulations permit on all properties on that square. In sum, Dr. Kreuzer has not placed into the record sufficient or convincing evidence to allow the Commission to evaluate, or to persuade the Commission to credit his concerns with respect to the impact of that the University's proposed dormitory may have on a structure he has yet to plan or to develop. His concerns with respect to the impact on his existing property are rejected.

5. The Commission finds that the concerns submitted by persons appearing in opposition to the application are substantively similar to those submitted by ANC-2A and that the findings herein with respect to the ANC concerns adequately address the concerns submitted by those persons.

6. The Commission finds further that the University has submitted into the record a suitable statement discussing the status of the conditions imposed by the BZA in its order of March 29, 2001, and its remand order of December 21, 2001.

Conclusions of Law:

1. Based on the Findings of Fact and the evidence of record, the University is seeking a special exception under § 210 of the Zoning Regulations for further processing under an existing campus plan authorizing the construction and use of a new student dormitory on the campus of the University at 616 23rd Street, N.W. The granting of this relief requires compliance with the provisions of §§ 210 and 3104.1 of the Zoning Regulations. The Commission concludes that the University has met its burden of proof.

2. The Commission further concludes that the proposed dormitory on Square 43 is located so as not to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions. The Commission further concludes that the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.

3. The Commission concludes that it has accorded ANC-2A the "great weight" to which it is entitled. Accordingly, it is ordered that the application is **GRANTED**.

VOTE: **5-0-0** (John G. Parsons, Anthony J. Hood, Carol J. Mitten, James H. Hannaham, and Peter J. May to approve.)

[SIGNATURE ON FOLLOWING PAGE]

BY ORDER OF THE ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Each concurring member has approved the issuance of this Summary Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: APR - 3 2002

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURES AND RENOVATIONS WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999 Repl.). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.