



Foggy Bottom and West End
Advisory Neighborhood Commission (ANC-2A)

c/o St. Mary's Court 725 24th Street, NW Washington, DC 20037 (202) 736-1775

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D.C. OFFICE OF ZONING

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August 24, 2006

Carol Mitten, Chairperson
Zoning Commission of the District of Columbia
441 4th Street, NW, Suite 210 South
Washington, DC 20001
Deliver via Facsimile: (202) 727-6072

ZONING COMMISSION
District of Columbia

CASE NO. 06-11
EXHIBIT NO. 44

RE: Zoning Commission Cases #06-11 for a Special Exception Application for a Campus Plan by The George Washington University, #06-12 for a First Stage PUD and Related Map Amendments by The George Washington University, and #06-19 for a Related Text Amendment to Define FAR Changes

Dear Chairperson Mitten:

At its regularly scheduled meeting on August 16, 2006, the Foggy Bottom and West End Advisory Neighborhood Commission (Commission or ANC 2A) considered Zoning Commission Cases #06-11 for a Special Exception application for a Campus Plan by The George Washington University, #06-12 for a First Stage PUD and related map amendments by The George Washington University, and #06-19 for a related text amendment to define FAR changes. With five of six commissioners in attendance, a quorum at a duly called public meeting, the following motion was approved:

The Foggy Bottom and West End Advisory Neighborhood Commission opposes Zoning Commission Cases #06-11 for a Special Exception application for a Campus Plan by The George Washington University, #06-12 for a First Stage PUD and related map amendments by The George Washington University, and #06-19 for a related text amendment to define FAR changes.

The Commission's grounds for protest are noted below.

1. Condition 20 of the current campus plan for The George Washington University (University or GWU), as approved by the BZA in Order 16553-I and upheld by the courts, provides that no special exception application filed by the university may be granted unless the university first proves it has remained in substantial compliance with Conditions 1 through 19 of the Order. Such proof has not been forthcoming, and the applications should not be further considered until proof of compliance has been proffered and an opportunity granted to other parties to rebut the proffer. As to Condition 8, see ANC 2A Resolution #0306-RA4, dated March 15, 2006.
2. The Zoning Regulations, in order to limit the intensity of university uses and their attendant impacts, provide in 11 DCMR Sections 210.3 and 402.4 that the total bulk of all buildings and structures on the campus shall not exceed either 1.8 FAR or 3.5 FAR, depending upon the existing zoning of the residential properties in question. By means of Planned Unit Development processes applied campus-wide, GWU intends to request rezoning of major portions of its campus to C-3-C or C-4 and to request further relief under Chapter 24, 11 DCMR. That would have the effect of taking all major proposed construction out of the scope of the limitations of Section 210 and Section 402 by

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removing those parcels from residential zones. The Office of Planning's request for a text amendment would increase the bulk allowed for remaining residentially-zoned parcels from a maximum of 3.5 FAR to 4.0 FAR. The aggregate impact of the requested changes would be to increase the bulk of structures on the campus from a current limit of 3.5 FAR to 5.0 FAR or more, destroying the protection of the regulations and perverting the intended uses of PUDs. Neither re-zoning applications nor PUD applications should be considered in lieu of or as granting rights in addition to those set out in Section 210.

3. Under the current law, GWU has the right to add an estimated 550,000 square feet of net new construction while complying with 11 DCMR Sections 210 and 402. The pending applications anticipate construction of approximately 2.75 million square feet of net new construction on a campus of approximately 43 acres. In 2004, the BZA and the courts agreed with the then Director of Planning that expansion of GWU in the Foggy Bottom area had brought the surrounding residential neighborhood to the " 'tipping point,' if not beyond." BZA Order 16553F, page 5. The Board concluded that "the University's use of its residentially-zoned property within the campus boundaries for non-residential uses *has become objectionable to the surrounding neighborhoods.*" (Ibid, italics added.) Given that record, the impacts attendant to development for institutional uses of 2.75 million square feet of property currently zoned residential as proposed by GWU and OP, some 2.2 million more square feet than permissible under current law, would necessarily violate the standard of Section 210. No development beyond the currently allowable 550,000 square feet should be considered, and that should be allowed only on the showing required by Section 210.
4. In his draft 2006 Comprehensive Plan, the Mayor states, "Looking forward, the development of satellite campuses is strongly encouraged to relieve growth pressure around existing campuses," and points to the employment, educational, and revitalization benefits of such satellite campuses. (July 2006 Mayor's Draft Comprehensive Plan, EDU-3.3, page 12-19). The first policy prescription under EDU-3.3, "College, Universities and Our Neighborhoods," would require promotion of satellite campuses "to accommodate university growth, relieve growth pressure on neighborhoods adjacent to existing campuses, spur economic development" where it is needed, and for other benefits. (Policy EDU-3.3.1, page 12-19) There is no indication that satellite campuses have been considered in the case of these applications, even though the effects of GWU growth pressure on the co-located residential community have been the subject of perennial administrative and judicial proceedings.
5. Square 54 is a large parcel of land located within the campus boundary, and would accommodate the remaining needs of GWU to house students in order to comply with Condition 9 of the current campus plan, as well as academic and university office uses. Its use as an entirely commercial development frustrates compliance with the current plan and the law, and artificially creates arguments and pressures for even greater development of other parcels within the campus. Separate consideration of GWU's Square 54 proposal violates 11 DCMR Sec 210.4, requiring that a university submit "a plan for developing the campus as a whole..."
6. On December 9, 1999, the Director of the District of Columbia Department of Health found in the context of the application to build the new GWU Hospital, since completed, that "there is essentially no remaining air resource margin in the 23rd Street corridor just south of Washington Circle. This area will experience peak CO concentrations that are just below the applicable health standard." There has been substantial development within three blocks of Washington Circle since 1999. DCEPA and applicable regulations require that the environmental impact statement (EIS) process be integrated at the earliest

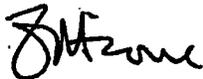
stages of planning for major actions, defined as those valued in excess of one million dollars that may have a significant impact on the environment. GWU has stated that the massive commercial project proposed for Square 54, just south of Washington Circle, is critical to their campus-wide planning. Given these facts, no further consideration should be given to the subject applications before the EIS process is complete as to all proposed construction at Square 54 and elsewhere on or near the 23d Street corridor.

7. A text amendment as recommended by OP should not be considered in a contested zoning case, but separately as a District-wide matter with possible impacts in several neighborhoods. Inasmuch as the relief requested in the proposed text amendment would make possible much of the construction proposed by GWU in the campus plan and Square 54 applications, the text amendment case should be heard and finalized first, and the other applications heard only thereafter.
8. The ANC reserves the right to revise and supplement the bases of its protest as the applicants and other parties make their submissions.

As the majority of the campus is within my Single Member District, I will serve as the Commission's representative in this matter. Commissioners Anne Savage and Michael Thomas will join me in representing the Commission's views and are authorized to represent ANC 2A in my absence. Please feel free to contact me on (202) 607-8429 or by email at anc2a@earthlink.net for additional information. Commissioner Savage may be reached on (202) 342-0409 or by email on asavage@wcanmiller.com. Commissioner Thomas may be reached on (202) 776-0577 or by email at mthomas.anc2a02@earthlink.net. Additionally ANC 2A may assign counsel to assist with legal matters related to this application. We will notify the Commission separately should we retain counsel.

ON BEHALF OF THE COMMISSION:

Sincerely,



Vince Micone
Chairperson

cc: Applicant

Attachments: ANC 2A Resolution #0306-RA4 and ANC 2A Resolution #05-11

THE FOGGY BOTTOM AND WEST END ADVISORY NEIGHBORHOOD
COMMISSION (ANC 2A) RESOLUTION #0306--RA4

*Resolution Pertaining to Instructions Provided by the Zoning Administrator for an Independent
Audit of the Enrollment Provisions of The George Washington University Campus Plan*

WHEREAS, Condition 8 of the currently effective campus plan for The George Washington University (Board of Zoning Adjustment (BZA) Orders Nos. 16553-F and 16553-I) provides in part: "Student enrollment (headcount) over the life of the plan shall not exceed 20,000 students...." and

WHEREAS, the University never challenged the enrollment limits before the BZA, and indeed stated that they should be continued (George Washington University v. District of Columbia Board of Zoning Adjustment, 831 A.2d 921, 937 (D.C. 2003)); and

WHEREAS, the Court of Appeals for the District of Columbia described the effect of the quoted portion of Condition 8 as follows: "As a condition of approval of the campus plan, Condition 8 imposes limitations on student enrollment....During the ten-year life of the plan, total student enrollment, both full and part-time may not exceed 20,000 at any one time"; and

WHEREAS, the Zoning Administrator for the District of Columbia is undertaking to determine, with the assistance of an independent audit, whether The George Washington University is in compliance with Condition 8; and

WHEREAS, The George Washington University has reported to the U.S. Department of Education, to the Office of Planning of the District of Columbia, and has posted on its own web site (http://www.gwu.edu/~ire/on_campus_e05.htm) enrollment figures for the fall semester of 2004 and for the fall semester of 2005 which appear to exceed the 20,000 limit imposed by Condition 8; and

WHEREAS, nowhere in the plan documents, the orders adopting the plan, or the court decisions construing the plan, is there any suggestion that the plain language of Condition 8 should not control, so that all students being educated by The George Washington University at any one time should be counted toward the limitation of the condition; and

WHEREAS, based on the language of Condition 8, there is no justification for the exclusion of any students, as may be suggested by the University or other parties. For example, students resident at the Mount Vernon campus are transported to and from the Foggy Bottom campus at all hours, where they take courses and participate in the full range of campus activities; and

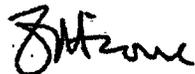
WHEREAS, the Zoning Administrator should determine whether persons not reported by the University for other purposes should properly be included in the enumeration of those within the limit of Condition 8. Such additional students could include, for example, exchange students, continuing students, and students in special or limited courses.

NOW THEREFORE, BE IT RESOLVED THAT ANC 2A requests the Zoning Administrator for the District of Columbia instruct the independent auditor retained for the purpose of auditing enrollment for The George Washington University to apply the plain language of Condition 8, which does not provide for exclusions of any classes of students.

BE IT FURTHER RESOLVED THAT ANC 2A requests that the Zoning Administrator require The George Washington University to disclose the numbers of all persons taking courses or participating in educational activities on any basis and for any length of time, and should instruct the auditors to include such persons within the applicable headcount for relevant dates.

DATE: March 15, 2006

ANC-2A SMD	AYE	NAY	ABSTAIN	ABSENT	MOVED	SECONDED
01 LEHRMAN				X		
02 THOMAS	X				X	
03 SAVAGE		X				
04 MORRIS		X				
05 MILLER	X					
06 MICONE	X					X


CHAIRPERSON

**THE FOGGY BOTTOM AND WEST END ADVISORY NEIGHBORHOOD
COMMISSION (ANC-2A) PASSED THE FOLLOWING RESOLUTION #05-11**

***Resolution Pertaining to George Washington University Plans for the
Redevelopment of Square 54, the Old GW Hospital Site***

WHEREAS, George Washington University (GWU), a non-profit educational institution, is one of the largest landholders in the District of Columbia after the United States Government; and

WHEREAS, GWU's academic and hospital uses are not by-right developments and are allowed to operate in a residentially-zoned neighborhood only under the D.C. zoning regulations with an approved campus plan following the Special Exception provisions of DCMR Chapter 11 regarding colleges and universities; and

WHEREAS, GWU's Campus Plan includes total student population (headcount) and building density limits for the protection of the Foggy Bottom/West End residential host community; and

WHEREAS, GWU's development activities under its campus plan may also not be inconsistent with the Comprehensive Plan of the National Capital; and

WHEREAS, on September 16, 2005, Judge Louis Oberdorfer of the U.S. Court of Appeals D.C. Circuit upheld the GWU Campus Plan 2000-2010 (Board of Zoning Adjustment Order No. 16553); and

WHEREAS, according to its required filings with the U.S. Internal Revenue Service, the GWU has been out of compliance with its total student headcount limit of 20,000 students at least since the Fall of 1999; and

WHEREAS, GWU has created admittedly adverse neighborhood impacts—including but not limited to the inappropriate use of the PUD development tool—due in part to its unfettered growth in violation of the policies contained in the Comprehensive Plan and now recognized by the federal Court of Appeals decision in its upholding of the BZA Campus Plan Order 16553; and

WHEREAS, GWU has never presented to ANC-2A an overall plan for housing its students within its current campus boundary or for developing its overall academic program and has adopted an "ad hoc" approach as demonstrated repeatedly by its development over the last 10 years and its current Square 54 proposed plan and related development "wish list" for other portions of its campus; and

WHEREAS, it is in the public domain that GWU has spent the last two years building a case to develop—through the use of the PUD tool—its old hospital site, the entirety of Square 54, which is located inside its campus boundary, for non-university uses and far beyond its overall current density limits and in direct contradiction of its campus plan; and

WHEREAS, GWU's plans also include at least an additional 2 million square feet of development within other parts of its campus which would effectively exceed the FAR (density) limits of the campus plan process, render the campus plan process meaningless, and establish an improper citywide precedent; and

WHEREAS, neither the Zoning Regulations for a Campus Plan nor the Zoning Regulations for a PUD state that a PUD is permitted under a Campus Plan, and absence of a reference in either the Campus Plan regulations or PUD regulations does not imply permission to use the PUD tool; and

WHEREAS, under the Campus Plan regulations, an applicant university or college already is provided significant flexibility of development and possible bonuses in exchange for the submission and approval of a Campus Plan; and

WHEREAS, GWU has repeatedly asserted that its students want to reside in close proximity to the academic “Campus Core” area (Squares 56, 77, 79, 102, 101 Lot 879, northern portions of Square 80, and Square 103 Lots 27, 28, 35, 40, 813, 814, 816, 817) which is located wholly within its current campus boundary; and

WHEREAS, GWU has, in fact, created extremely large and densely populated dormitory facilities abutting non-university, non-campus residential property and is migrating its academic core southward, as recorded in testimony from the Office of Planning and noted on the record by the Zoning Commission during the GWU Campus Plan 2000-2010 hearings; and

WHEREAS, in a December 9, 1999, letter to the Director of DCRA, the DC Department of Health Director explained his department’s decision to allow the new GWU hospital to proceed without an EIS, with the caveat “But there is essentially no remaining air resource margin in the 23rd Street corridor just South of Washington Circle. This area will experience peak CO concentrations that are just below the applicable health standard.”

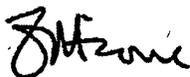
THEREFORE, BE IT RESOLVED THAT, ANC-2A opposes any consideration of further development of the GWU campus until GWU comes into compliance—through an independent audit—with its student headcount limits;

THEREFORE, BE IT FURTHER RESOLVED THAT, should GWU come into compliance with its campus plan, ANC-2A opposes any further development of the GWU campus, without consideration of the following:

1. A full Environmental Impact Statement of any future development, including Square 54, of its campus;
2. No further use of the PUD zoning tool—an inappropriate and unneeded tool for Campus Plan development—within the Campus Plan boundaries;
3. No further development of GWU’s campus beyond its remaining 550,000 square feet of developable rights contained in the 2000-2010 Campus plan and no increase in FAR;
4. Development of academic and residential facilities only within GWU’s remaining 550,000 square feet of developable rights.

DATE: November 16, 2005

SMD	AYE	NAY	ABSTAIN	ABSENT	MOVED	SECONDED
01 Lehrman				X		
02 Price	X				X	
03 Savage	X					
04 Morris		X				
05 Miller	X					X
06 Micone	X					



Chairperson