

9/14/06 Testimony of Barbara Kahlow
on Zoning Commission Case Nos. 06-11 & 06-12 - GWU

I, Barbara Kahlow, live at 800-25th Street, N.W. I will be testifying today on behalf of the West End Citizens Association (WECA), the oldest citizens organization in the Foggy Bottom-West End area. In fact, the WECA is the only citizens organization centered East of 23rd Street, i.e., in the heart of the George Washington University (GWU)¹.

Since my oral testimony is limited to 15 minutes, I have attached various documents. Also, since I have many points to cover today, I will be approaching each in bullet form.

- **Why now?** – Since GWU’s current campus plan ends in 2009, why shouldn’t the Zoning Commission wait until revised and appropriate campus plan rules are in place to consider its massive 20-year expansion dream? This dream incredibly calls for a 43 percent increase in allowable floor area ratio (FAR) – from a maximum of 3.5 to 5.0. And, this is despite the fact that the Office of Planning (OP) opined 6 years ago (in April 2000) that the residential community was near a “tipping point” where it could transform into a “University area.”

The Commission’s April 20, 2006 setdown for the GWU cases questioned the timing. Chair Mitten stated, “we had made a commitment that we were going to rewrite the campus plan regulations ... and here we are without ... we’re still kind of cobbling together the tools that are existing. We don’t have new campus plan regulations to guide us” (transcript, pp. 53-4). Vice Chair Hood perceptively stated, “The campus plan regulations ... I’m wondering if we’re preempting the move forward” (transcript, p. 55).

- **Is the plan allowable without amendments to the current zoning rules?** – The answer is clearly “no.” In reviewing the legislative history – back to 1958 - of DC’s campus plan rules and its rules governing Planned Unit Developments (PUDs), the Commission’s intent is clear.

Campus Plan Rules

For example, the 1958 rules governing campus plans stated, “the Board [now Commission] may vary the height, area, and density regulations for the *district* in which located, but in no case shall the height, area, and density of any proposed *buildings* or other *structures* exceed the limitations prescribed for an R-5-A District” (Sec. 3101.46(b), effective 5/12/58). The bottom line intent was that all buildings in whatever zoning district were subject to a cap, i.e., upzonings (such as to SP-2, C-3-C or C-4) would not exempt buildings from the height and density caps.

Currently (since 2000), Sec. 210.3 provides, “In R-1, R-2, R-3, R-4, R-5-A, and R-5-B Districts, ... the total bulk of all buildings and structures on the campus shall not exceed the gross floor area prescribed for the R-5-B District.” Sec. 210.4 speaks to

¹ The Foggy Bottom Association (FBA) is centered West of 23rd Street, i.e., around the Foggy Bottom Historic District.

“the campus as a whole.” And, Sec. 210.8 requires each new building to be “within the floor area ratio (FAR) limit for the campus as a whole.”

In fact, GWU’s documents contain a “smoking gun.” The bottom line is that, since the current rules governing universities do not establish a FAR cap outside of the cap in Sec. 210.3 for R zoned properties, GWU is seeking to upzone various sites (from a R zoning to a SP or C zoning) to exempt these sites from the FAR cap. In its June 23, 2006 Pre-Hearing Submission for Square 80 (the School without Walls site), the footnote on p. 3 states, “Under the MOU between DCPS and GW, the University will compensate DCPS for additional development rights generated by rezoning to SP-2 under the PUD, which will remove the development from the aggregate floor-area-ratio cap that applies to residentially-zoned land within the Foggy Bottom Campus Plan boundaries.”

Provision 5 in Exhibit A (the MOU) is even more revealing. It states, “Avoidance of Aggregation Rule. For the density to have the maximum value for GW, it must avoid the ‘aggregation rule’ set forth in 11 DCMR § 210.8, which limits overall development on its campus ... To ensure this development will not count against the University’s aggregate cap, the PUD site (currently zoned R-5-D) must be rezoned to a non-residential zone” (p. 5). Provision 5 further states, “Termination. In the event that GW and DCPS are unable to obtain approval to rezone the PUD Site to a non-residential zone, or if the aggregation rule as set forth in 11 DCMR § 201.8 applies to this PUD ... then either party shall have the right to terminate this MOU” (p. 6).

PUD Rules

For example, in 1994, the Commission proposed longer time periods for PUDs. But, in Order No. 785 (Case No. 94-15/84-3, 9/11/95, published 12/1/95), the Order stated, “The Vice President of the Foggy Bottom Association (FBA) [then me] testified in opposition to the proposal” and “criticized and opposed the five years approved/action time period proposed in Section 2407.8. The association preferred the current two year approval/action time period provided in Section 2406.8” (42 DCR 6724)². The final rule stated, “The first-stage approval shall be valid for a period of one year, unless a longer period is specified by the Commission”³ (Sec. 2407.10, 42 DCR 6626), which remains the identical language today. It further stated for second-stage PUDs, “The final planned unit development approved by the Zoning Commission shall be valid for a period of two (2) years, within which time application shall be filed for a building permit” (Sec. 2408.8, 42 DCR 6628), which remains today.

² I further testified, “Under the existing rules, we in Foggy Bottom have seen approved PUD parcels stay undeveloped for years, e.g., at 26th and L Streets. Thus, to increase the approval time period is an incredible change with enormous implications for communities like Foggy Bottom-West End which has been subject to incredible development pressures in recent years.”

³ The Commission’s 2/8/79 PUD rules are identical, i.e., providing for first-stage approval for one year only (Sec. 7501.67). Even in 1979, the zoning rules stated, “the planned unit development process shall not be used to circumvent the intent and purposes of the Zoning Regulations” (Sec. 7501.12 then and Sec. 2400.4 now).

- **Are there any precedents like GWU's plan?** – The answer is clearly “no.” The rules do not anticipate the filing of an “omnibus” PUD covering 20 Squares and with first-stage or even first and second-stage approval for 20 years. **Attachment A** compares GWU's plan with each of the other cases cited either by OP or GWU. The chart reveals that only 1 case involved more than 2 Squares (a federally-funded public housing project) and no case involved first-stage approval for more than 3 years. The OP report (9/5/06, p. 19) cites to the Washington Hospital Center/MedStar Health case but it involves only 1 large Square, a 1-year first-stage approval, and with the support of its Advisory Neighborhood Commission (ANC), i.e., it in no way resembles GWU's plan.

- **Does GWU always honor its commitments and comply with all Federal and DC laws?** – Sadly the answer is “no.” I will cite 4 examples.
 - **Americans with Disabilities Act (ADA)** – On February 22, 2006, after trying unsuccessfully for months to work with GWU to bring it into compliance with Federal law -- which is required for every recipient of Federal funds -- I filed with the U.S. Department of Justice a “Title II of the Americans with Disabilities Act - Section 504 of the Rehabilitation Act of 1973 - Discrimination Complaint Form.” In a nutshell, on November 10, 2005, I attended a public event (musical play) in a GWU below ground theater with no elevator access for the handicapped and with no bathroom facility downstairs. Elderly and disabled attendees begged for my help.

 - **Student Parking** – **Attachment B** is a copy of an August 17, 2001 letter from GWU Vice President and Treasurer Lou Katz to WECA to “restrict” Freshmen and Sophomores living in the Foggy Bottom/West End Area from bringing cars to school or parking in the Foggy Bottom/West End Area. According to my web research and several GWU student interns of mine in Congress, GWU has never alerted Freshmen and Sophomores to this restriction. Instead, GWU has only “discouraged” cars.

 - **Quigley's, 2036 G Street** – In an ANC meeting, GWU promised to convert this campus-owned space to a family-friendly restaurant. But, the June 16, 2006 DC Register (53 DCR 4779) included an Alcoholic Beverage application for a restaurant “with occasional DJ or live band; 6 pieces maximum ... Temporary dance floor in banquet space only” and with requested hours until 2 AM on Sun.-Thurs. and until 3 AM on Fri. and Sat. This disco-equivalent would be near not only many residential apartment buildings but also many dorms.

 - **Compliance with Federal and DC environmental laws and rules** – In an August 17, 2001 Agreement (MOU) with WECA, after GWU failed to do an EIS for its then new hospital despite the community's request for one, GWU agreed to comply with the D.C. Environmental Policy Act “on all future campus construction projects” (Provision 8, p. 5). Federal rules state, “Timing. An agency shall commence preparation of an environmental impact

statement as close as possible to the time the agency is developing or is presented with a proposal ... The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made” and “shall be commenced no later than immediately after the application is received” (40 CFR § 1502.5).

DC rules provide, “Agencies, boards, and commissions ... shall integrate ... the Environmental Impact Statement (EIS) process with other planning processes at the earliest stages of their planning for major actions ... when the widest range of feasible alternatives is open for consideration” (20 DCMR § 7200.2). Incredibly, on August 30, 2006, in a public meeting on its proposed streetscape plan, GWU admitted that it has “not yet begun an environmental analysis” and then boldly asserted that it is a “building permit issue.” This is even more remarkable in light of the DC Department of Health’s December 9, 1999 finding that “there is essentially no remaining air resource margin in the 23rd Street corridor just south of Washington Circle.”

- Errors in GWU’s filings – **Attachment C** cites some of the many errors.
- **Should some of GWU’s proposed growth be moved to satellite sites?** – The Mayor’s draft July 2006 revision to the DC Comprehensive Plan states, “Promote the development of satellite campuses to accommodate university growth, relieve growth pressure on neighborhoods adjacent to existing campuses, spur economic development and revitalization in neighborhoods lagging in market activity”(EDU-3.3.1, p. 12-19). Speaking as an individual (vs. representing the WECA), I have been a broken record for years about GWU’s need to explore putting its law school, etc. elsewhere in DC, as Georgetown successfully did.
- **What conditions need to be added or changed?** – After the Commission adopts revised final rules governing universities and possibly also PUDs (if a 20-year omnibus PUD is the approach to be used instead of a traditional campus plan), the Commission should :
 - Amend condition #8, additional GWU purchases in Foggy Bottom-West End – revise the proposed condition to include a prohibition on GWU’s purchasing not only additional residentially-zoned properties outside of the Campus Plan boundaries in the Foggy Bottom/West End area for university use but also SP-zoned properties, especially since current zoning rules allow dormitory use in a SP-zoned property.
 - Amend condition #23b, Student parking – Replace the unenforceable “discourage” with a restriction. Instead, “restrict” Freshmen and Sophomores living in the Foggy Bottom/West End Area from bringing cars to school or parking in the Foggy Bottom/West End Area. This provision is enforceable since GWU could suspend any violators. Also, if GWU can “require” all

Freshmen and Sophomores to reside in housing within the campus plan boundary (Condition #13), GWU can also restrict student parking.

- Add a new condition, Environmental compliance – require GWU to submit an EIS before further processing by the Commission of Case Nos. 06-11 and 06-12 and require GWU to simultaneously submit an EIS with each future “major action” proposal submitted to the Commission.
- **What should become of Square 54?** – The WECA has consistently maintained that for various reasons, including safety, the frontage on Washington Circle should be no higher than current zoning allows (i.e., not 90 feet for a short distance and then rising to 110 feet or 130 feet, as proposed) and restricted to residential use (consistent with both sides of Penn. Ave. in the Foggy Bottom-West End area West of the Circle and around the Circle). The expanded views of WECA will be presented in the separate hearing on Case No. 06-27.
- **What does WECA support?** - Currently, DC’s zoning rules provide a cumulative FAR cap of 3.5 on height and bulk within the GWU campus plan area. GWU is proposing an expansion to 5.0 FAR, i.e., a 43 percent increase. GWU’s plan seeks to exclude two large parcels⁴ in this area from its cumulative FAR limits by upzoning these properties from residential to commercial and mixed use zoning and doing so via PUDs. We believe that the Commission should approve only limited GWU expansion in Foggy Bottom. Also, many Foggy Bottom residents currently live in the various townhouses and high-rise apartment buildings within or abutting GWU’s campus plan boundaries and East of 23rd Street. Therefore, limiting expansion to East of 23rd Street is still problematic. The WECA opposes any exemption of upzoned land from GWU’s aggregate FAR limits and believes that GWU should be exploring expansion via satellite campuses in underdeveloped areas of DC instead of in Foggy Bottom-West End.

Attachment D is a copy of the WECA’s testimony on a needed Text Amendment for finalization before the Commission acts on Case Nos. 06-11 and 06-12.

Thank you for consideration of the WECA’s views.

Attachments

⁴ The two parcels are Squares 54 (the old GWU Hospital site) and 80 (the School without Walls).

Attachment A: Comparison of Zoning Cases Cited by OP or GWU

ZC Case #	Applicant	University	# Squares	# Years for 1 st Stage PUD Approval	ANC Support	Comment
06-11/06-12	GWU	Yes	20	20	No (ANC-2A)	no 3 rd PUD Stage
94-21C	Washington Hospital Center	No	1	2 (but w/o 2 Stages)	Yes (ANC-4D)	only case cited in OP report
00-02 (later 02-43)	MedStar Health	No	1	1	Yes (ANC-5C/ now 4D)	2 nd ZC Order (02-43) gave 2 nd Stage approval for 2 yrs.
05-17/05-32	Atlantic Plumbing	No	2 (but 2 PUDs)	2 (but w/o 2 Stages)	Yes (ANC-1B)	
03-12/03-13	Capper/Carrollsborg	No	14	2 (but 1 st needs to be filed w/i 18 mos.)	No (ANC-6D)	federally-funded public housing project
02-38	Waterside Mall	No	2	3	No (ANC-6D)	related Text Amendment case No. 01-35P; all buildings need 2 nd Stage PUD submission w/i 5 yrs.; all need 3 rd Stage w/i 17 yrs. if 1 st Stage w/i 3 yrs. & rest w/i 5 yrs.



OFFICE OF THE VICE PRESIDENT AND TREASURER

August 17, 2001

Mr. John C. Batham
President
West End Citizens Association
P.O. 58098
Washington, D.C. 20037-8098

Ms. Sara Maddux
Board Member
Monroe House Condominium Association
522 21st Street, N.W.
Washington, D.C. 20006

Re: GW Campus Plan, BZA Application No. 16553

Dear Mr. Batham and Ms. Maddux:

Please be advised that the University commits to proffer to the Board of Zoning Adjustment (BZA) in the remand of the above referenced case a condition restricting Freshmen and Sophomores living in the Foggy Bottom/West End Area (as defined on page 11 of the BZA Order, dated March 29, 2001) from bringing cars to school or parking in the Foggy Bottom/West End Area. In essence, this condition would provide that the George Washington University (GW) publish in University documents (e.g., its catalog and Internet communications, including its website) its policy that Freshmen and Sophomores living in the Foggy Bottom/West End Area should not bring cars to school. For those few granted exceptions by the University, the University will arrange for parking in University parking facilities.

Both GW and the West End Citizens Association (WECA) recognize that neither GW nor the WECA have enforcement authority of this policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis Katz".

Louis Katz
Vice President and Treasurer

Attachment C: Examples of Errors in GWU's Filing

- GWU's community-based planning process was not responsive to most of the input from the residential community
 - "To this end, the University launched a comprehensive community-based planning effort which resulted in a plan for the future of the campus that responds to the interests and input of a wide range of stakeholders" (7/13/06 PUD Pre-Hearing Submission, p. 2)
- GWU's "Issues Exhibit" is biased and not comprehensive, e.g., it does not include most of the substantive issues raised by the community and mis-characterizes many issues raised
 - "Community input, issues and concerns raised during the series of meetings were captured and documented in a comprehensive 'Issues Exhibit' developed by the community facilitator and the co-sponsors" (7/13/06 Campus Plan (with Pre-Hearing Submission), p. 4)
 - "Community issues and concerns raised during the series of meetings regarding the campus and Square 54 were captured and documented in a comprehensive 'Issues Exhibit'" (5/30/06 Square 54 Application, p. 6)
- GWU's ULI process was not responsive to most of the issues raised by the residential community, e.g., scale, safety, and the residential quality of Washington Circle
 - "The development proposal presented in this PUD application is consistent with the recommendations of the ULI panel and is responsive to issues raised by members of the community and the Office of Planning throughout the community-based planning process" (7/14/06 Square 54 Pre-Hearing Submission, p. 2)
 - "The concept presented in this application is consistent with the recommendations of the ULI panel and is responsive to issues raised by members of the community and the Office of Planning throughout the community-based planning process" (5/30/06 Square 54 Application, p. 8)
- Upzoning Square 54 would have multiple adverse effects on nearby and adjacent properties, e.g., on public safety
 - "The proposed Zoning Map Amendment can be granted without adversely affecting nearby and adjacent zone districts or properties" (5/30/06 Square 54 Application, p. 15)
- Upzoning Square 54 to heights of 110' and 130' will be completely out-of-scale with the residential buildings (mostly not exceeding 90') in the vicinity
 - "The residential buildings will reflect the scale of the existing and proposed buildings in the vicinity of the site" (5/30/06 Square 54 Application, p. 23)
- Square 54 is in Foggy Bottom (south of Penn. Ave.), not the West End (north of Penn. Ave.)
 - "Complete residential (non-hotel) development in the West End" (5/30/06 Square 54 Application, p. 32)

Attachment D: 9/14/06 Testimony of Barbara Kahlow
on Zoning Commission Case No. 06-19 – Text Amendment

I, Barbara Kahlow, live at 800-25th Street, N.W. I will be testifying today on behalf of the West End Citizens Association (WECA), the oldest citizens organization in the Foggy Bottom-West End area. In fact, the WECA is the only citizens organization centered East of 23rd Street, i.e., in the heart of the George Washington University (GWU)¹.

Since I have several points to cover today and my oral testimony is limited to 5 minutes, I will be approaching each in bullet form.

- **Are changes needed in the current zoning rules for the Commission to hear the GWU plan (Case Nos. 06-11 and 06-12)?** - The answer is clearly “yes” and it would be a waste of public resources to hear cases that cannot be approved without a regulatory change. In reviewing the legislative history – back to 1958 - of DC’s campus plan rules (now in Sec. 210) and its rules governing Planned Unit Developments (PUDs) (now in Chapter 24), the Commission’s intent is clear. The Commission has consistently sought rules to protect residential neighborhoods from unbridled university growth.

Before I discuss Sec. 210, I will briefly discuss Chapter 24. First, Chapter 24 includes no mention of Universities. Second, Chapter 24 includes no mention of an “omnibus” PUD, where an Applicant seeks simultaneous approval for multiple City Squares – in GWU’s case for 20 Squares. Third, Chapter 24 sets reasonable, short-term time limits on PUDs. The WECA believes that, if the Commission decides to consider GWU’s proposed omnibus PUD and with first-stage approval for 20 years, it will need to amend Chapter 24 accordingly. However, if the Commission decides, instead, to consider a traditional replacement campus plan, changes may not be needed in Chapter 24. It is for this reason that WECA’s September 8, 2006 petition to replace the Office of Planning (OP) for this case is restricted to needed and perfecting changes in Sec. 210.

To provide the Commission with some important background in which to consider GWU’s applications, in 1994, the Commission proposed longer time periods for PUDs. Its 1995 Order No. 785 (Case No. 94-15/84-3, 9/11/95, published 12/1/95) stated, “The Vice President of the Foggy Bottom Association (FBA) [then me] testified in opposition to the proposal” and “criticized and opposed the five years approved/action time period proposed in Section 2407.8. The association preferred the current two year approval/action time period provided in Section 2406.8” (42 DCR 6724). The final rule stated, “The first-stage approval shall be valid for a period of one year, unless a longer period is specified by the Commission” (Sec. 2407.10, 42 DCR 6626), which remains the identical language today. It further stated for second-stage PUDs, “The final planned unit development approved by the Zoning Commission shall be valid for a period of two (2) years, within which time application shall be filed for a building permit” (Sec. 2408.8, 42 DCR 6628), which remains today.

¹ The Foggy Bottom Association (FBA) is centered West of 23rd Street, i.e., around the Foggy Bottom Historic District.

- **Are there any precedents like GWU's plan?** – The answer is clearly “no.” Current rules do not anticipate the filing of an omnibus PUD covering 20 Squares and with first-stage or even first and second-stage approval for 20 years. Attachment A to my Testimony on Case Nos. 06-11 and 06-12 compares GWU's plan with each of the other cases cited either by OP or GWU. The chart reveals that only 1 case involved more than 2 Squares (a federally-funded public housing project) and no case involved first-stage approval for more than 3 years. The OP report (9/5/06, p. 19) cites to the Washington Hospital Center/MedStar Health case but it involves only 1 large Square, a 1-year first-stage approval, and with the support of its Advisory Neighborhood Commission (ANC), i.e., it in no way resembles GWU's plan.
- **What changes are needed in Sec. 210 for the Commission to hear the GWU plan?** - To provide the Commission some important background in which to consider GWU's applications, the 1958 initial rules governing campus plans stated, “the Board [now Commission] may vary the height, area, and density regulations for the *district* in which located, but in no case shall the height, area, and density of any proposed *buildings* or other *structures* exceed the limitations prescribed for an R-5-A District” (Sec. 3101.46(b), effective 5/12/58). The bottom line intent was that all buildings in whatever zoning district were subject to a cap, i.e., upzonings (such as to SP-2, C-3-C or C-4) would not exempt buildings from the height and density caps.

Currently (since 2000), Sec. 210.3 provides, “In R-1, R-2, R-3, R-4, R-5-A, and R-5-B Districts, ... the total bulk of all buildings and structures on the campus shall not exceed the gross floor area [3.5] prescribed for the R-5-B District.” Sec. 210.4 speaks to “the campus as a whole.” And, Sec. 210.8 requires each new building to be “within the floor area ratio (FAR) limit for the campus as a whole” but sets no aggregate FAR limit.

GWU is proposing an expansion from a cap of 3.5 to 5.0 FAR, i.e., a 43 percent increase. GWU seeks to exclude certain sites from any cumulative FAR limit by upzoning certain properties from residential to commercial or mixed use zoning and doing so via PUDs. The WECA opposes any exemption of upzoned land from an aggregate FAR limit for GWU.

The proposed Text Amendment seeks to change the cap in Sec. 210.3 from 3.5 to 4.0 (or 4.5, as stated in various GWU filings). The WECA has the following perfecting changes to OP's language for the Commission's consideration:

1. 2nd sentence - delete “Residence” before Districts to read, “In all other ~~Residence~~ Districts, similar bulk increases may also be permitted” – this change would ensure that upzoned sites are not excluded from the cap.
2. 2nd sentence – replace “the R-5-D and R-5-E” with “all other” to read, “provided, that the total bulk of all buildings and structures on campus shall not exceed 4.0 in ~~the R-5-D and R-5-E~~ all other Districts – this change would also ensure that upzoned sites are not excluded from the cap.

Additionally, Sec. 210.8 could be amended to set an aggregate cap of 4.0 (or some other number) to read, “within the floor area ratio (FAR) limit of 4.0 for the campus as a whole.”

Thank you for consideration of the WECA's views.