

**The Committee of 100 on the Federal City
Statement in Opposition
George Washington University Campus Plan and PUD**

ZONING COMMISSION
District of Columbia

CASE NO. 06-11
EXHIBIT NO. 193

Thursday, September 28, 2006

The Commuter of 100 strongly opposes the applications before the Commission in connection with the existing George Washington University campus plan. We believe it greatly weakens the special exception process, upon which so many residential communities depend, opening the potential for parallel undermining of special exceptions across the District. We believe the Commission should end these proceedings because:

- It is not timely.
- PUDs may not be located in campus plans.
- It is inconsistent with the Comprehensive Plan.
- It is inconsistent with special exception regulations for campus plans.

1. The current plan has years to run. Initiating a process for superseding existing plans would be highly destabilizing. Communities should not be forced to fight continuing battles because of the development desires of large enterprises. OP is undermining the process by which the community has defended against litigation for years. Having consistently been supported by the courts, Foggy Bottom now finds its own government tossing aside the plan that the courts have agreed governs, in order to allow GWU to substitute a much more impactful and destructive plan. No community would have confidence in the rulings of this Commission if it allows hard-won agreements to be voided at the request of one party. There is no place in planning for Mulligans.

2. PUDs may not be located in campus plans. PUDs are improper in campus plans, adopted under the special regulations of 11 DCMR 210 and the PUD regulations of 11 DCMR 2400.

While 2405.7 advises "Notwithstanding the other prerogatives of the Commission in approving uses in PUDs, the Commission shall reserve the option to approve any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment," there is nothing to indicate the reverse - that PUDs may be included in special exception cases.

The obvious administrative step - to permit a case to proceed before a single zoning body - cannot be interpreted to plow new ground. Special exception processes are highly detailed; they are repeated verbatim in every Zone category. Any suggestion that 2405.7 is intended to authorize by omission through parallel potential extension the voiding of all those detailed exception standards is remarkable and unpersuasive.

We very much agree with the analysis provided by ANC 2A representative Michael Thomas, who noted in connection with the conflict between 210 and Chapter 2400:

"We submit that the result is impermissible, both as a matter of law and as a matter of policy. First, there is the hoary principle in the law that where two legal standards lead to different results, as Section 210 and Chapter 24 do here, the provision more narrowly drawn to address the facts at hand prevails. Particularly, where a provision is drawn to protect specified interests, it can be considered overruled or amended only by provisions that expressly state that as the intent. Here, Section 210 is drawn for the express purpose of setting the policy boundaries between university growth and preservation of residential neighborhoods."

We believe there is another difficulty with Chapter 24 as drawn: 2403.3 charges that the impact of a proposed PUD "on the surrounding area and the operation of city services and

ZONING COMMISSION
District of Columbia
CASE NO. 06-11
EXHIBIT NO. 193

facilities shall not be found to be unacceptable, but shall instead be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project." As written, this would appear to be an irrebuttable presumption (actually a reverse IP), denying affected areas the ability to argue harmful impact to any effect. Further, this mandate of acceptance undermines the independence of this Commission, making its action arbitrary and capricious, and it specifically denies the citizens the protections under 210 and their due process rights.

Moreover, the administrative rules adopted to transfer jurisdiction of campus plan approvals from the Board of Zoning Adjustment clearly directs that such plans be heard and decided "for special exception approval under 210" and the sequential Zone provisions (3035.1) and "the standards for special exception approval in 3104, subject to the conditions specified in 210, ... in reviewing and approving college and university uses (3035.4). The direction to use of BZA rules contains no provision to augment that BZA authority with borrowed authority from the Commission; if the BZA cannot approve PUDs in campus plans, the Commission, acting in accordance with BZA rules, cannot approve PUDs in campus plans.

3. The proposed PUD does not meet other requirements of 11 DCMR.

2400.4 provides for greater flexibility in planning and design than may be possible under conventional zoning procedures, but the PUD process "shall not be used to circumvent the intent and purposes of the Zoning Regulations, nor to result in action that is inconsistent with the Comprehensive Plan." OP cites just one Comprehensive Plan policy, referring to the need for landscaping, better lighting, and enhanced community policing to lessen the impact of university development plans. However, as shown in Attachment A, there are nearly two dozen specific policies in the Land Use Element or Ward 2 plan that are relevant, offering numerous Comprehensive Plan policies that conflict with the type and volume of development proposed under this Plan-plus-PUD proposal.

2403.4 indicates that the Commission must find that a proposed PUDs "is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site." The existing campus plan is such an adopted public policy and program.

Introduction of PUDs in campus plans vastly exceeds permitted FAR, burdening the community with densities and intensities on top of the already extraordinary demands made by GWU operations; the protections of 210 are made irrelevant.

PUDs deny communities the protections intended to be afforded by 210 and the special exception process. The massive upzoning of residential properties defeats the very process for which special exceptions in residential zones exist.

Moreover, PUDs were intended to be for unusual circumstances, but they have become the principal form of regulating most development of any size, leaving behind fewer and fewer specific protections for neighborhoods. They were also intended to be for limited periods of time; the OP report makes clear some of the buildings may not be developed for 20 years. This is not consistent even with PUD utilization, let alone campus plans and special exceptions.

4. The proposals violate the provisions intended to regulate the siting and operation of colleges and universities. 11 DCMR 210 gives the basic formulation for locating colleges and universities in residential zones. It prescribes that:

210.1 what comprises a college or university is " ... an academic institution of higher learning, including a college or university hospital, dormitory, fraternity, or sorority house proposed to be located on the campus of a college or university ..., subject to the provisions of this section" including

210.2 the special exception must be "not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions." The citizens of Foggy Bottom have demonstrated in repeated circumstances that operations of George Washington University have already become objectionable.

210.3 the maximum bulk is fixed, adding " ... it is the intent of this subsection to prevent unreasonable campus expansion into improved low-density districts." This has already been allowed to happen; it must not be allowed to further destroy a proud community.

210.4 the plan must address the "campus as a whole" with considerable specificity. The Public Hearing Notice for this very hearing makes clear that Square 54 is within the GWU campus boundaries. It must be evaluated under the standards for special exceptions.

Further, §3104.4 offers a chart of the types of special exceptions allowed in Zone Districts; it lists only:

College, university, or other academic institution of higher learning
Dormitory, fraternity, or sorority house on campus
Hospital - college or university, on campus.

There is no provision for investment property, revenue-generating use, or other such language.

5. The Office of Planning final report memorandum is overgenerous to GWU's interests and can thus mislead.

In OP's recitation of history, GWU's reputation for demolition and neglect of historic and other properties is ignored, even as it promises a different future. It speaks of preserving "several blocks of the campus where there are largely intact streetscapes of Victorian rowhouses ... " but doesn't refer to the many other blocks that have been razed to meet GWU's needs. Even retention of such properties does not assure they will be maintained appropriately, as the current condition of GWU rowhouses surely makes clear. It is unmentioned that these historic properties may be designated and protected by means totally divorced from GWU's actions and from consideration of this plan.

GWU's commitments under this plan are highly conditional, allowing abandonment upon mere disagreement. This Commission and the BZA have seen case after case in which such "commitments" fail to materialize, or are rejected because "needs have changed." In light of the litigious history of this institution, such reversals need to be anticipated.

The drafted conditions include terms that this Commission has had great difficulty defining, including "substantially conform." Included are terms such as "sensitive to" and "compatible with," which are used without standards. Attachment B suggests some professional standards that are employed by planners, offering some best practices about how such terms should be used, and they differ markedly from what has been the practice at GWU.

University students are required to obey laws just like everyone else. A student who resides in the District (on campus or not), who operates a motor vehicle, is required to register that vehicle after 30 days. Suggesting that GWU need only keep a list of license numbers of student vehicles in GWU parking facilities offers no benefit to the community. Nor does the suggestion about reciprocity stickers, since it is my understanding that such stickers are illegal for out-of-town students in both the GWU and GU campuses.

The "mechanism" proposed for monitoring progress is a contrivance, placing the applicant (who has the burden of proof) on at least an equal footing with the community. The provision of a quorum of five allows the University to virtually act on its own in the name of the "advisory committee." That is farcical.

The BZA for decades has used a quarterly meeting process - open to all, including the press -

for monitoring compliance. Combined with second-stage review for subsequent elements of development, it can provide a more transparent vehicle. It also provides the elected Advisory Neighborhood Commission with a proper and independent role and the "great weight" intended by statute.

OP's argument that PUDs will better protect the community's interests are unpersuasive. The regulatory mechanisms for monitoring a PUD's compliance are less meaningful than even the flawed campus plan process.

The chief benefit, it appears from the OP memorandum, is said to be certainty. Anyone who has lived in the District over the last 20 years certainly knows that nothing is less likely; even things that are truly set in stone, let alone those printed in myriad fonts, will change. Pretending otherwise, OP asks a proud community to forego the protections it currently has and understands, and exchange them for a poorly defined "advisory" structure, a nearly 50% increase in density, and a massive change in zoning for what had been a residential community.

We ask the Zoning Commission to reject the entire package. It will take courage, but it is time to reject the increasingly unacceptable abuses of nearby residential neighborhoods.

Barbara Zartman, Chair
Zoning Subcommittee
The Committee of 100 on the Federal City

Policy Statements from Comprehensive Plan
Land Use Element or Ward 8 Plan
Relating to Neighborhoods

Use existing regulatory controls and Campus Master Plan requirements to provide additional protection for the adjacent neighborhoods [W2-235]*

Prior to referring a case on a campus plan to the Board of Zoning Adjustment or the Zoning Commission, the Zoning Administrator shall verify and notify the Board of Zoning Adjustment or the Zoning Commission of the findings, whether the proposed project is within the floor area ratio ("FAR") limit as provided in a university's campus plan by keeping a list of the FAR for each building within the campus and the total FAR to date. [LU-22]

Recognize the specialized land needs and unique economic and human development opportunities presented by colleges, universities, and other institutional users of large tracts and require the development of detailed master plans, if none exist, that incorporate all land and facilities currently used or currently owned by the institution and anticipated for future use. [LU-85]

Development plans of local universities should not adversely impact surrounding residential areas, but rather should improve such neighborhoods by improved landscaping, better lighting, and enhanced community policing. [W2-233]

GW University must continue to construct student dormitories to alleviate the pressure on the housing stock outside the boundaries of the campus plan. The University must be sensitive to the surrounding residential neighborhood. [W2-271]

Require preparation of up-to-date master plans for any of the District's colleges, universities, and other institutional users of large tracts that do not have approved up-to-date master plans, to ensure coordination of their growth and development with community objectives and development goals. (Criteria for this master plan requirement and new review procedures should be developed by the Office of Planning.) [LU-105]

Ensure GWU campus plan includes sufficient dormitory space for the student body on campus to alleviate some of the pressure on housing by students. [W2-184]

Update campus plans for George Washington University and Georgetown University; as part of the campus plan the Foggy Bottom community needs to address: 1) student housing issues by planning for future dormitories, and 2) the on-campus parking issue. GWU must take account of the residential and historic district status of Foggy Bottom in any future development; and enforce Georgetown University's commitment to surrounding neighborhood to move student residence and university offices out of the local community and onto the campus. [W2-236]

Support modification of the Zoning Regulations to require Zoning Commission approval of college and university master plans and subsequent review and further processing with opportunity for citizen participation, in order to allow for more efficient review of plans and proposals while reducing adverse neighborhood impacts and alleviating uncertainty over future institutional activities. [LU-86]

Support modification of the Zoning Regulations to require Board of Zoning Adjustment approval of any expansion of an existing institution and approval of any change in the type of institutional use within or adjoining a residential district. [LU-87]

Control the external negative impact of new nonresidential uses that are permitted in residential areas to provide sufficient parking, loading areas, pick-up and drop-off access consistent with the activity level of the nonresidential uses, including schools, hospitals, churches, and clinics; this policy is designed to reduce the possible adverse impact of the nonresidential uses on the

residential area. [LU-12]

Protect residential areas adjoining new commercial centers from negative physical impacts through the use of open- and green-space buffers, use and intensity modulation between residential and nonresidential areas, traffic circulation and parking management initiatives and other related techniques, implemented by means of public actions to modify existing land use controls, traffic and parking regulations, and public sector and private sector sensitivity to neighborhood concerns. [LU-48]

Conserve and maintain the District's sound, established neighborhoods through the strict application and enforcement of housing, building, and zoning codes and the maintenance of the general level of existing residential uses, densities, and heights. [LU-3]

Promote the conservation, enhancement, and revitalization of the residential neighborhoods of the District for housing and neighborhood-related uses. [LU-2]

Conserve and enhance existing residential neighborhoods. [W2-177]

Maintain and enhance older established residential neighborhoods and areas ... [W2-180]

The residential character of neighborhoods [should] be maintained and improved. Pressures and potential adverse impacts (from development and redevelopment pressure) must be controlled to ensure that the character of our neighborhoods is preserved and enhanced. [GP-18]

Promoting and ensuring good quality neighborhoods is of utmost importance to the District ... Policies and strategies on increasing housing opportunities, neighborhood commercial facilities, and improving transportation in some neighborhoods will be combined with other District policies on historic preservation, environmental quality, and public facilities to conserve functioning, stable neighborhoods, and to stabilize or improve those which need redirection. [GP-20]

Support the retention of established residential neighborhoods adjacent to the Central Employment Area. [LU-16 Land Use]

Protect residential neighborhoods from incompatible uses and activities that generate excessive traffic, noise, litter, and other damaging environmental impacts, by consulting with neighborhood organizations to promote buffering and techniques that provide for appropriate separation of uses and mitigation of cut-through problems, which may require modification of the Zoning Regulations limitations on access to certain streets, or strict enforcement of traffic, antilittering, noise, and pollution regulations. [LU-10]

Protect low and moderate density residential neighborhoods that are also designated for commercial uses from uses that are incompatible with residential neighborhoods, and from activities, particularly those of a commercial nature that generate excessive traffic, late night activity, noise, litter, and other damaging environmental impacts. [LU-11]

** Codes in brackets refer to OP designation in the Comprehensive Plan Policy Analysis*

Standard and Best Practices in Evaluating Special Exception Proposals

Excerpts, with emphasis added, from "The Board of Adjustment," by V. Gail Easley, FAICP, and David A. Theriaque. Published by Planners Press, the American Planning Association, Chicago, 2005.

*In referring to special exceptions and other conditional uses (but **not** PUDs):*

It has long been established that it is desirable to have certain nonresidential uses within residential neighborhoods. Schools, churches, parks and playgrounds, day care centers, and neighborhood shops are all nice to have within walking distance or a short drive from the neighborhood. However, in order to allow such uses, the community wants to be able to assign conditions to limit impacts and ensure that a given use will be compatible. ...

To ensure that appropriate standards are applied, the ordinance should address the types of conditions that may be applied. The more guidance provided in the zoning ordinance, the better.

A community may implement conditional uses for several reasons: ...

The local government is unable to fully anticipate the impacts that may be associated with the conditional use. It is often impossible to anticipate the type, intensity, and impact of activities that may be part of the conditional use. In a conditional use review, activities are defined, impacts are identified, and conditions are set **to ensure that the use fits the neighborhood.** ...

Additional standards are needed in order to ensure that the conditional use meets these requirements:

- It will be compatible or in harmony with the area in which it is located;
- It will not endanger public health or safety;
- It will be appropriate in the specific location where it is proposed; and
- It will be designed in such a way as to mitigate potential conflicts with adjacent and nearby uses."

A good model for conditional uses is found in the *Growing Smart Legislative Guidebook**, which recommends that conditions be adopted that 'promote the intent and purpose of the local comprehensive plan and land development regulations.' The list should include conditions that:

- '(a) minimize the adverse effect of a development on the surrounding area and on any natural resources that will be affected by the development;
- '(b) require the submission and approval of a site plan, if authorized by the land development regulations, that specifies the location and nature of the development and any necessary improvements;
- '(c) guarantee the satisfactory completion and maintenance of any required improvements;
- '(d) control the sequence of development, including when it must be commenced and completed; and
- '(e) require detailed records, including drawings, maps, plats, or specifications.'"

CONCEPTS OF COMPATIBILITY

An essential ingredient in the planning and design of cities and neighborhoods is the relationship of buildings to neighboring buildings and streets, such that all of the parts add up to a coherent and balanced whole. 'Compatibility' is the term used to describe this relationship; however, the question of how to define the relationship plagues local government officials. **As a planning**

principle, this term is used to describe the situation where adjacent and nearby buildings, activities, and land uses fit together in a way to achieve balance and harmony in the neighborhood. The degree of 'fit' is based on the presence, absence, or mitigation of impacts from the new use or building to existing uses or buildings in the neighborhood.

This means that different uses can exist in the same neighborhood and can be adjacent to each other over a period of time without creating an unacceptable degree of negative impacts, which is called 'stability.' **Stability means that a community, neighborhood, or place has balance and endures as a place with consistent character. 'Instability' means unreasonable and unplanned change, a loss of identity, and a loss of the sense of place and comfort people want in their neighborhoods.** Compatibility does not mean absolute sameness nor lack of change, but it does mean that new uses **fit the neighborhood and that the degree of change or difference is not so great as to create excessive or inordinate impacts.** Because neighborhood stability is an essential component of compatibility, compatibility is measured in terms of how well a use will fit into the neighborhood where it is proposed.

Impacts of Development

'Impact' describes the effect of one use on another. It is the effect of some man-made action that alters the character of a land use, neighborhood, or community due to the introduction of a new land use or building. This new use or building interferes with the expected use or activity within the neighborhood or community.

An impact can be either positive or negative. ...

Consider the following negative impacts that may arise from a proposed new use or development:

- **Traffic impacts:** increased congestion, reduced safety, reduced efficiency, and increased noise
- **Visual impacts:** loss of important views or a less pleasing appearance of buildings and landscapes
- **Environmental impacts:** significant change in air, water, or land resources (e.g., increased pollution, loss of important habitats, or loss of important features such as wetlands)
- **Nuisance impacts:** increased noise, lights from vehicles, exterior lights in parking lots or around buildings, odor, or vibration
- **Privacy impacts:** encroachment of tall buildings, outdoor gathering places (e.g., recreation facilities), or increased density or intensity of development
- **Safety and welfare impacts:** decreased safety and reduced protection from hazards (e.g., fire, explosion, or flooding) ...

... other impacts are less readily quantified and regulated, such as **perceptions of crowding, a sense of comfort and privacy, the continuity of design features throughout a neighborhood, a change in the character of the neighborhood, and stability of the neighborhood.** All of the potential impacts are important in determining the compatibility of the proposed use and development of land.

PRINCIPLES OF COMPATIBILITY

Many planners agree that design is inherent in all regulations, whether explicit or hidden. The total effect of each aspect of regulation is the design of a project, which determines whether it will be considered compatible. This is an important point. Compatibility is not a beauty contest. There are specific factors of compatibility that can be measured and evaluated. These are the factors that should be identified and addressed in approving conditional uses.

The following principles are useful in guiding the assignment of conditions:

- **Principle 1: Compatible uses do not overwhelm other uses.** How can a use overwhelm its neighbors? A use would be considered overwhelming when its size or scale ... is significantly greater than its neighbors. A high-rise building in a low-rise neighborhood will overwhelm the

immediately adjacent buildings as well as the entire neighborhood. Large expanses of single- or two-story buildings with long walls unbroken by windows or doors also create an imposing neighborhood presence, as do the acres of paved parking needed to support them. The overall size of the new building may create a sense of overcrowding, even where the proposed building does not exceed density or intensity limits.

- **Principle 2: Compatible uses do not intrude into the neighborhood.** A new building may create a loss of privacy due to the height of the building relative to the surrounding buildings. Windows, balconies, or exterior hallways may provide a direct and often close view into adjacent buildings and yards. Intrusion may also take the form of blocked views, excess shadowing, or distinct differences in building style, color, or materials.

- **Principle 3: Compatible uses have appropriate site design features.** Traditional setbacks and buffers, even with fences or walls, may be useless to achieve compatibility among uses that are significantly different in intensity scale, height, and bulk. The placement of accessory structures - especially dumpsters, loudspeakers, and security lights - may have significant impacts on adjacent uses and the entire neighborhood. Driveways, parking lots, and outdoor gathering spaces are all site design features that have great potential for negative impacts.

- **Principle 4: Compatible uses have appropriate transitions from nearby uses.** "Transition" is a familiar concept when used to describe the gradual decrease in density and intensity of land use districts from an activity center outward. However, transition in site design features (e.g., building height, residential density, or lot size) may contribute significantly to achieving compatibility.

- **Principle 5: Compatible uses contribute to stable neighborhoods.** Cities and neighborhoods change over time. Unplanned and unwelcome change creates instability. Stable neighborhoods slowly change, if at all, over a period of time, but the change should not be forced through the introduction of incompatible uses.