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4 October 2006

Zoning Commission of the District of Columbia
441 Fourth Street, NW
Washington, DC 20001

Re: Z.C. Case Nos. 06-11 and 06-12

Dear Members of the Commission:

Attached please find copies of the joint submission by ANC 2A and the Foggy Bottom Association regarding GWU's proposed conditions, as requested by the Commission at the hearing on 28 September 2006.

An electronic version of this document is being sent today to Bill Crews, the Zoning Administrator, and to all parties.

Very truly yours,



Cornish F. Hitchcock

ZONING COMMISSION
District of Columbia
CASE NO. 06-11
EXHIBIT NO. 207

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ZONING COMMISSION
District of Columbia
CASE NO.06-11
EXHIBIT NO.207

Plan Conditions Proposed by ANC 2A and the Foggy Bottom Association

The following conditions are proposed by Advisory Neighborhood Commission 2A, joined by the Foggy Bottom Association. They are set out in a manner which shows differences from the conditions proposed by The George Washington University and the Office of Planning in the current proceeding. They are not, however, intended as conditions to a new campus plan as proposed by GWU, but as amended or replacement conditions to the current plan. The effort has been to learn from the experience gained in the past several years under the current plan, and to propose changes that would make that plan capable of being more effectively and predictably implemented. ANC 2A and the FBA may submit additional language as the case proceeds.

Enforcement (Condition 20 of current plan, proposed Condition 7 in GWU's submission)

20. ~~No application or request for any further or additional rights, including but not limited to applications under Chapters 2 or 24, 11 DCMR, by the University shall be received for filing unless accompanied by a certification by the Zoning Administrator that the applicant is in strict compliance with Conditions 1-20 herein.~~ Further, any violation of these Conditions shall be grounds for the denial of any building permit or certificate of occupancy applied for by the University for any University building or use, and may result in the imposition of fines and penalties pursuant to the Civil Enforcement Act, D.C. Code §§ 6-2701 to 6-2723.

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Deleted: for second-stage review under the Foggy Bottom Campus Plan, 2006 - 2025 may be granted unless the University is in substantial compliance with Conditions 1-25 set forth herein as demonstrated by the most recently filed Foggy Bottom Campus Plan Compliance Report submitted to the Zoning Administrator.

Comment: There has been no enforcement of the current plan. The Zoning Administrator, when he finally opined -- on the day hearings began -- on GWU's proposal to replace the plan, essentially found that GWU had been out of compliance with student full time equivalent caps in the fall semester of 2005, and agreed with GWU not to audit other compliance issues, noting that there seemed to be no readily retrievable data for them anyway. But the Zoning Commission deemed even that weak and late effort irrelevant to GWU's right to proceed with massive new proposals, because Condition 20 had been written in a way which did not expressly apply to an application for a wholly new plan. For the condition to mean anything, it must be enforced whenever GWU asks for new or added rights.

Further, the measure of compliance should be literal, not "substantial." GWU's witnesses were unable to say what deviation from enrollment or other limits would equate to non-compliance. In their supplemental submission of September 21, GWU's counsel argues by analogy to, *inter alia*, 11 DCMR Section 2522, that deviation by two percent would be substantial compliance. That would mean that a 20,000 student headcount cap would be 20,400. Also, GWU's analogy is not apt because in that Section and the others GWU cited, the Zoning Regulations state with numerical precision the extent to which the Zoning Administrator may exceed applicable limits. None of those provisions uses such a vague or discretionary formulation as "substantial compliance" nor leaves it up to the Zoning Administrator to determine exactly what that means.

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Alternatively, GWU argues that “substantial compliance” means conduct falling short of strict compliance “but which affords ... the same protection that strict compliance would offer.” (citing *Jones vs. Short*, 696 P.2d 665, 667 (Alaska 1985)). Here, more students mean more intense use of the campus, and thus more impacts on the co-located residential neighborhood. The neighborhood has already been found by the BZA to have been suffering objectionable impacts from GWU’s on-campus activities in 2001, and GWU has already added significantly to the numbers of students and other persons using university facilities since 2001 as indicated in the 2000 Census. The neighborhood has no control at all over GWU’s enrollment or other factors driving the level of activity – only GWU has that control. As the burden of proof is on an applicant in obtaining a conditioned order, the onus should be on this same applicant to operate within the terms of the conditions, rather than foisting onto the protected community the effects of exceeding the limits set.

The Advisory Committee (Condition 3 of Current Plan, Condition 9 in GWU Submission)

3. The University will work with community representatives to form an Advisory Committee for the purpose of fostering consistent communication between the University and the Foggy Bottom and West End communities, discussing issues of mutual interest and proposing solutions to problems that exist or arise in implementing the approved Foggy Bottom Campus Plan.
- a. The Advisory Committee will provide a forum for the exchange of information and discussion of issues relating to the relationship between the University and the community, which may include:
- i. the University’s compliance with the provisions and conditions of this plan,
 - ii. new University proposals to develop sites on the Foggy Bottom Campus.
- b. Composition, Administrative Procedures & Meeting Format
- i. The Advisory Committee shall consist of ten members: ~~three~~ representatives of the University to be selected by GW and ~~seven~~ representatives of the community to be jointly selected by ANC 2A and the Foggy Bottom Association. They shall select at least one resident of Foggy Bottom and at least one resident of the West End.
 - ii. The quorum for Advisory Committee meetings will be ~~six~~ members.
 - iii. The first Advisory Committee meeting shall take place within two months of the adoption of the Campus Plan.
 - iv. The Advisory Committee shall schedule quarterly meetings open to the public, and shall keep minutes of each meeting.
 - v. ~~On at least a semiannual basis and otherwise as requested, the~~ University will report to the Advisory Committee data relevant to campus planning that includes, but is not limited to: report on student enrollment, planned development projects included in the University’s capital program, historic preservation, implementation of

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Deleted: Key functions of the Advisory Committee include:

Deleted: reviewing the University’s compliance reporting

Deleted: ii. working with the Office of the Zoning Administrator to monitor compliance with the conditions of the Foggy Bottom Campus Plan; and j

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Deleted: and include adoption of specific administrative procedures (subject to the terms of this Condition) that govern the operation of the body

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the streetscape plan, public space permits, and reports on all conditions and commitments adopted as part of the Campus Plan.

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Comment: Condition 3 of the current plan was never formally implemented, although there were multiple avenues of communication between the ANC (and others) and the University, through which many issues were effectively dealt with. GWU has, unfortunately, tended to treat the Advisory Committee issue as a public relations or regulatory “points-scoring” opportunity, and the proposal put forward in this application would exacerbate that problem. Further, we know from email messages produced in response to FOIA requests that some of those who negotiated the proposed new condition saw it as an opportunity to relieve the Zoning Administrator or others of enforcement obligations. The language of paragraphs a.1 and a.2 reflect their intention to make the Advisory Committee (and therefore the ANC) something of an enforcement entity. However, at the same time, the provision, unlike Condition 3 of the current plan, puts GWU firmly in the driver’s seat in the operation of the Committee. It does that by having equal numbers of GWU and community members, making a quorum the same number as GWU’s members, and having the rules set at a designated meeting. Predictably, GWU’s members, who are paid employees for whom attendance will be an obligation of employment, will attend faithfully. Just as predictably, attendance of community members (who are volunteers) will not be as uniform. The result will be that nothing can be done except as GWU wants it done. Such an Advisory Committee will never work, and if GWU gets its way in setting it up as proposed, it will be another issue that inflames as well as burdens the community.

The proposal has been re-written to provide for majority community membership, a higher quorum, and more flexibility.

ANC 2A and the FBA may proffer additional recommendations on Advisory Committee issues.

Student, Faculty and Staff Caps (Current Condition 8, Conditions 10 and 11 in GWU Submission)

8. For the duration of this Plan, Foggy Bottom student headcount shall not exceed 20,000 students, and Foggy Bottom student full-time equivalent shall not exceed 16,553. For the duration of this Plan, the Foggy Bottom faculty and staff population shall not exceed a total of 12,529 on a headcount basis, (consisting of no more than 2,336 faculty and no more than 10,293 staff) and 10,550 on a full-time equivalent basis (consisting of no more than 1,550 faculty and no more than 9,000 staff).

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- a. Definition. For the purposes of these Conditions, “Foggy Bottom student headcount” shall be defined as the number of persons being educated by GW who at any given time attend classes or have the right to use facilities at the Foggy Bottom campus.
- b. Calculation of full-time equivalent. For the purposes of these Conditions, “Foggy Bottom student full-time equivalent” shall be determined by assigning a fraction to part-time students included in the Foggy Bottom student headcount number based on the number of credits they are taking

Deleted: GW students in the “Foggy Bottom/Mount Vernon Campus Total Student Body”, minus: study abroad students, continuous enrollment students, students that reside at the Mount Vernon Campus, students that take all of their courses at the Mount Vernon Campus, and Foggy Bottom faculty and staff accounted for pursuant to Condition 11 herein who are also enrolled in one or more courses at the Foggy Bottom campus. ¶

compared to a full-time course load and adding the number of full-time students. ~~The full-time course load for undergraduates is 12 credits, and the full-time course load for graduate and professional students is 9 credits.~~

c. An audit of the Foggy Bottom student headcount and Foggy Bottom student full-time equivalent reported shall be conducted in a manner and by a firm previously approved by the Zoning Administrator and reported to the Advisory Committee. The audit shall be completed by January 10 of the year following each report.

d. ~~For the purposes of these Conditions, "Foggy Bottom faculty and staff headcount" shall include all faculty and staff who are obliged by their employment to discharge any of their duties at the Foggy Bottom campus or who have the right to use any Foggy Bottom campus facilities. For the purposes of these Conditions "Foggy Bottom faculty and staff full-time equivalent" shall be determined by assigning a fraction to part-time employees included in the Foggy Bottom faculty and staff headcount number based generally on the number of hours worked as compared to the standard full-time 40 hour work week.~~

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Deleted: Formulas for determining full-time equivalents may change over the term of the proposed Foggy Bottom Campus Plan depending on program requirements or the restructuring of the academic calendar. ¶

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Comment: For the reasons set out in FBA's motion, in which the ANC joined, the student counts should include every person educated by GWU. At the very least, they should include every person educated by the university who has rights to use the facilities provided students at the Foggy Bottom campus, since all such persons add to the intensity of uses and thereby the impacts on the co-located residential community. The OP Final Report notes that the intent is to "count every student having an individual effect in the neighborhood." (page 12). The Zoning Administrator recommended inclusion of Mount Vernon students who take classes at Foggy Bottom. That moves in the right direction, but still does not account for all persons being educated who have "an individual effect in the neighborhood."

Deleted: All Foggy Bottom student counts shall be reported biannually as specifically set forth in Conditions 24 and 25. ¶

Deleted: 11. For the duration of this Plan, the Foggy Bottom faculty and staff population shall not exceed a total of 12,529 on a headcount basis, and 10,550 on a full-time equivalent basis. ¶
a. For the purposes of these Conditions, "Foggy Bottom faculty and staff headcount" shall include: regular full-time faculty and staff; regular part-time faculty and staff; wage account staff that are not Foggy Bottom students accounted for pursuant to Condition 10; temporary part-time faculty (excluding part-time clinical faculty who are not paid employees of the University); and visiting instructional and research faculty. For the purposes of these Conditions, Foggy Bottom faculty and staff shall not include faculty and staff whose primary office locations are not on the Foggy Bottom campus; employees of non-GW owned or controlled entities which are located on the Foggy Bottom campus; and contractors that provide ancillary campus-related service functions who are not employees of the University. ¶
b. For the purposes of these Conditions "Foggy Bottom faculty and staff full-time equivalent" shall be determined by assigning a fraction to part-time employees included in the Foggy Bottom faculty and staff headcount number based generally on the number of hours worked as compared to the standard full-time 40 hour work week. ¶

As to proposed Condition 11, it is entirely unclear, even after all of GWU's submissions, whether this provision captures every person employed by GWU whose employment or associated benefits require or permit him or her to be present on the Foggy Bottom campus, e.g., researchers. It does not define the various categories it proposes, and some of them are poorly defined and explained. A much simpler definition would be to count all faculty and staff employed by the university and correct for duplication. The Zoning Administrator noted that the auditor reported practical difficulties in retrieving data about faculty and staff. That provides added support for the argument that the task should be as simple, and inclusive, as possible.

The fact is that there never has been an independent audit of faculty and staff figures, nor has there been a detailed breakdown of how many faculty and staff fall into the various subcategories that GWU proposes to exclude, an omission that is glaring when one considers the disparity between the numbers that GWU reports for present purposes and the numbers that GWU reports to the federal government and posts on its website. Moreover, GWU has offered no compelling reason for combining the two, and there are ways that GWU could increase density of usage, e.g., by outsourcing. A separate limitation

on faculty serves to reinforce the headcount limitation, given how universities prize a low student-faculty ratio.

New development (Proposed Condition 4)

New development on campus resulting in additional density or change in use shall substantially conform with the approved campus plan (as set forth in Condition 1), with the exception of minor renovation projects including those necessary to address building code compliance.

Comment: The phrase “minor renovation project” is not defined. How “minor” is minor? Additionally, renovation projects have been going on at GWU continuously since 2001. Currently, the Hall of Government is being renovated and the G Street sidewalk is closed to pedestrians. Many projects have been extended out into public space after renovation e.g. The new Speech and Language Center entrance on the NW corner of 21st and G Streets is wholly outside GWU’s property line in public space.

Disciplinary actions (Proposed Condition 16, based on Current Condition 13)

The University shall use disciplinary interventions for acts of misconduct by students living off-campus in the Foggy Bottom/West End Area, even if students are not in properties owned or controlled by the University. The University shall act on incident reports by residents, ANC 2A, community associations, building management, building association boards, University security officers, and police. The University shall maintain an outreach program with neighboring apartment buildings to educate management companies and tenant associations on the University’s disciplinary program and its reporting requirements to facilitate effective use of its program. The University shall maintain a uniform and complete reporting system that tracks all incident reports, regardless of the source from which they originated. All records of each such incident shall be made publicly available. The University shall include as to each incident report a statement of any and all disciplinary action that was taken against any GWU students. The University’s efforts with respect to this Condition, including the University’s efforts to deploy resources to areas where complaints are the greatest, shall be monitored by the Advisory Committee.

Comment: This proposal seeks to close the loop with respect to the current system in that GWU may track incidents, but there is no way for affected citizens to find out if any action was ultimately taken in response to their complaints. Though admittedly not every incident may result in discipline against specific individuals, there is value in learning the extent to which the University diligently follows up on complaints and is willing to assign security personnel to areas where problems appear to be acute.

There is now an uncorrectable, “structural” problem on the southern campus due to the overwhelmingly large portion of undergraduate students housed in university facilities along that boundary (described in FBA testimony), as well as the Elliott School facilities located on

E Street which draws constant shuttle bus traffic from MVC. There are additional issues that have cropped up related to servicing of all of these students, the impacts of the Elliott School facilities, and the related off-campus student population in the immediate vicinity. All of these need to be mitigated.