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Federation of Citizens Associations of the District of Columbia

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D.C. OFFICE OF ZONING

2006 OCT 11 PM 2:56

October 11, 2006

Sharon Schellin
Secretary
Zoning Commission
441 4th Street, N.W. Suite 210S
Washington, D.C. 20001

Re: No. 06-11 & 12, GWU -- Campus Plan & PUD

To the Members of the Commission:

The Federation of Citizens Associations of the District of Columbia on behalf of its over 45 member organizations hereby opposes the applications before the Commission in connection with the existing George Washington University campus plan. We believe the applications greatly weaken the special exception process, upon which so many residential communities depend, opening the potential for parallel undermining of special exceptions across the District. There is no need for one of the pillars of zoning, the special exception process, to effectively become a dead letter.

There is no need to reach such drastic action in these cases.

1. The GWU campus plan has many years left to run. If these proceedings continue, neighborhoods across the City will be left to the mercy of universities and their endless expansion plans. Residents who fought for campus plans and made significant compromises in reaching their terms will be told that all their efforts were for naught. The protections that new purchasers thought they had under the law will disappear, and our residential property tax base, upon which so much of the City's revenues depend, will be endangered for non-taxing institutions.

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 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.

ZONING COMMISSION
District of Columbia

CASE NO. 06-12

EXHIBIT NO. 189

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

As the Committee of 100 has urged, § 2405.7 states that “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,” but there is nothing in the regulations to indicate the reverse – that PUDs may be included in special exception cases.

The obvious administrative step taken at a time of transfer of authority – to permit a case to proceed before a single zoning body – cannot be interpreted so broadly. 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 the voiding of all those detailed exception standards is remarkable and unpersuasive.

We endorse 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.”

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 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 one), 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. Putting it another way, a person or party opposing a PUD application can never succeed on a showing of adverse impact because the rules create an irrebuttable presumption that negative impacts on the community can never be unacceptable and therefore the basis for denying a PUD. The presumption is arbitrary and capricious as to opponents of a PUD because they can never obtain the relief of having a PUD denied. Opponents may raise only procedural and substantive due process claims.

Moreover, the administrative rules adopted to transfer jurisdiction of campus plan approvals from the Board of Zoning Adjustment clearly direct 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.

Finally it is no answer that this Commission may believe that it has granted PUDs for universities in the past. PUDs tend to be site-specific (e.g., Elliott School) and not to involve massive, multi-square developments that include university properties as well as private properties that happen to be within the university boundaries.

3. 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:

§210.1 -- 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 under

§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.

Under §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.

Under §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:

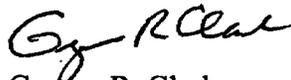
- College, university, or other academic institution of higher learning
- Dormitory, fraternity, or sorority house on campus
- Hospital - college or university, on campus.

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

If this application is approved, the Federation foresees a rush of similar filings. Our great residential neighborhoods will become home to massive commercial development, all in the name of non-profit education. This makes no sense and this Commission should stop this overgrown camel's nose from upsetting the entire tent of our City's precious residential neighborhoods.

Respectfully submitted,



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