

February 7, 2007

By Hand Delivery

Carol J. Mitten, Chairperson
District of Columbia Zoning Commission
Office of Zoning
441 4th Street, NW, Suite 210
Washington, DC 20001

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**Re: Zoning Commission Case Nos. 06-11 and 06-12
The George Washington University *Foggy Bottom Campus Plan: 2006–2025* and
related First-Stage PUD and Map Amendment
Supplemental Submission—Proposed Order**

Dear Chairperson Mitten and Members of the Commission:

As requested by the Commission, the Applicant has updated its proposed Findings of Fact and Conclusions of Law for the above-referenced applications, in order to address the supplemental January 4, 2007 and January 12, 2007 responses from the District Department of Transportation. Specifically, the Applicant proposes the following:

A. Insert Finding of Fact No. 9, as follows:

9. After the conclusion of the public hearings, DDOT submitted responses to supplemental cross-examination questions from the ANC/FBA. Ex. 244, 246. On January 11, 2007, the ANC/FBA filed a motion to strike the responses from the record on the basis that they were untimely, incomplete, and prejudiced the parties. Ex. 245. The Applicant filed its opposition to the motion on January 17, 2007. For reasons set forth in the Conclusions of Law below, the Commission denied the motion to strike.

B. Add the following to Finding of Fact No. 64 (as renumbered):

64. . . . On January 4, 2007 and January 12, 2007, DDOT filed supplemental responses in response to written cross examination questions submitted by the FBA/ANC, that reiterated DDOT's support for the Applicant's position that there are no objectionable traffic impacts generated by the proposed *Foggy Bottom Campus Plan: 2006 – 2025*. Ex. 244, 246.

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C. Add the following Conclusions of Law:

DDOT Responses

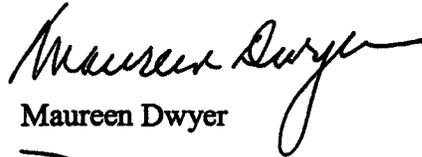
Finally, the Commission concludes that the ANC and FBA were not prejudiced by the opportunity afforded to them to submit detailed written questions to DDOT for response by the agency and consideration by the Commission. The Commission specifically offered counsel for the ANC/FBA the opportunity to submit written questions to DDOT in lieu of continued cross-examination, so that the answers could be further informed by experts within DDOT, including those who were not in attendance at the hearing. Tr. Nov. 30, 2006 at 79. At that time, counsel for the ANC/FBA agreed to submit the questions in writing and also agreed with the Commission that if the responses were not complete, it would be up to the Commission to request additional information from DDOT. *Id.* at 79 – 81.

Counsel for the ANC/FBA did not request the opportunity to respond to the supplemental answers by DDOT, nor is such an opportunity required on either a practical or procedural basis. During the course of the six public hearings on the applications, all parties had ample opportunity to cross-examine DDOT on the traffic and transportation issues, to meet with DDOT along with their experts to present their views, and to provide for the record their responses to DDOT's findings. The hearing process, along with the additional opportunity provided to the ANC/FBA to submit supplemental written cross-examination questions to DDOT, provided more than adequate opportunity for cross-examination and the development of a complete record.

As the D.C. Court of Appeals has recognized and as the Zoning Regulations make clear, the Zoning Commission has the authority to place reasonable restrictions on cross-examination and, at some point in time, cross-examination concludes and the cases is ready for decision by the Commission. 11 DCMR § 3020.2; see Glenbrook Road Ass'n v. D.C. Bd. of Zoning Adjustment, 605 A.2d 22, 39 (“The Board undoubtedly has broad discretion with respect to the nature, scope and duration of cross-examination.”). The responses by DDOT were complete and consistent with information already in the record. Further, the Campus Plan and first-stage PUD are overall “concept” plan approvals and do not independently authorize any specific development projects without further review and approval. Specifically, the parties, DDOT, and the Commission will all have the opportunity to evaluate the traffic impacts associated with the implementation of the Campus Plan and first-stage PUD as individuals projects are submitted for second-stage review and approval over the twenty-year term of the Campus Plan and PUD.

The Applicant believes that the information included in the record of this case fully satisfies the requirements for approval and looks forward to the Commission's final decision on these applications at an upcoming Public Meeting.

Very truly yours,

A handwritten signature in black ink, appearing to read "Maureen Dwyer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Maureen Dwyer

A handwritten signature in black ink, appearing to read "David Avitabile". The signature is cursive, with a large, prominent initial "D" and a long horizontal flourish extending to the right.

David Avitabile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this letter was delivered by hand delivery on
February 7, 2007.

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