

March 12, 2007

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BY HAND DELIVERY

Zoning Commission for the  
District of Columbia  
441 4th Street, N.W., Suite 210S  
Washington, D.C. 20001

Re: Z.C. Case No. 06-12  
George Washington University PUD & Campus Plan

RECEIVED  
D.C. OFFICE OF ZONING  
2007 MAR 12 PM 2:55

Dear Commissioners:

On behalf of the owner of 2152-54 F Street, N.W., and other property owners within the boundaries of the George Washington (GW) University Campus Plan PUD, we urgently request postponement of final consideration of the above-referenced application, which is scheduled for a vote by the Commission this evening. The owners have just recently learned, without any prior notice from anyone whatsoever – not GW, the Historic Preservation Office or this Commission – that the proposed campus plan PUD requires property not owned by GW to be placed in a historic district as a *quid pro quo* for increasing the density of GW's campus. Such a designation could dramatically decrease the value of non-university property by limiting development rights of third parties for the sole benefit of GW. We therefore request the Commission to waive the rules of section 3024 to accept this letter and reopen the record pursuant to section 3024.5 in light of this extraordinary proffer at the expense of private property owners.

This proffer by the university and its acceptance by the Zoning Commission are inappropriate and unlawful for several reasons. First, the notice that was provided for this case was woefully inadequate and misleading in that it failed to identify any of the non-university property that would be burdened by the PUD. Copies of the notices are attached. These owners had no way of knowing that GW was offering their properties as a preservation planning amenity for the campus plan. Under section 2406.5 of the Zoning Regulations, each property owner included in the area to be developed is required to sign the PUD application form. Because these owners did not sign any application forms, they rightly assumed that the university could not encumber their property with any purported preservation amenity.

This failure of the university and Commission to provide notification of the proposed restrictions on third-party property violates the fundamental rights of these owners to the due process guaranteed by the U.S. Constitution and the D.C. Administrative Procedures Act

ZONING COMMISSION  
District of Columbia

ZONING COMMISSION  
District of Columbia  
CASE NO. 06-12  
EXHIBIT NO. 231

("APA"). Under the Fifth Amendment, no person shall be deprived of his property without due process of law.<sup>1</sup> Here, however, GW has proposed, and the Commission has endorsed, a plan where certain owners will have their property encumbered with historic preservation restrictions for the sole benefit of increased density for GW, *without providing any notice to the burdened property owners or the opportunity to challenge this proffer*. The APA requires that every party be given reasonable notice of a hearing and the issues involved. *See* D.C. Code 2-509(a) (2001 ed.). Instead, only GW properties were listed despite the fact that non-university properties were being offered up as an "amenity" for GW's increased density.

Second, in virtually every PUD proceeding, the Commission has required evidence from the applicant demonstrating that third-party beneficiaries of a proffered amenity have consented and are willing to participate in the amenity. Thus, for example, the Commission requires copies of agreements between an applicant and the Department of Employment Services or the Department of Small and Local Business Development when the applicant intends to use District residents as its first choice for employment or offer job opportunities to certified small and local businesses. Similarly, if an applicant proposes to renovate a federally-owned park or a District-owned school or library as an amenity, the Commission demands verification or acknowledgement from the affected owner that the amenity is reasonable and acceptable. Yet in this instance, where the "amenity" actually places restrictions on a property, neither the applicant nor the Commission saw fit to notify owners of the proposed deprivation of their property rights.

Third, the fact that the Historic Preservation Office ("HPO") participated in the PUD proceedings and actively negotiated with GW on the boundaries of the proposed historic district does not cure this due process defect. Had the property owners known of these discussions, they could have participated with likely different results. While the property owners still have a right to challenge the historic district before the D.C. Historic Preservation Review Board, that opportunity is a separate and distinct proceeding and cannot substitute for the full notice and fair hearing these owners were entitled to before the Zoning Commission. As HPO testified before the Zoning Commission on February 7, 2007, that office expects to see broad community support before it moves forward with an historic district application and that, in essence, it was only necessary to consult with GW as the major landholder in the area. No other property owners were notified as to their ability to negotiate the boundaries as part of the proffered PUD amenity.

Fourth, the property owners also question the propriety of permitting a single property owner, GW, to negotiate beneficial historic boundaries for itself to the detriment of other owners. For example, according to the Historic Preservation Office, GW was permitted to exclude its late-nineteenth century buildings in the 2100 block of Pennsylvania Avenue, N.W., because the university needs to demolish these structures for future development. Indeed, GW specifically stated that its PUD was contingent upon approval of the requested development sites and that any restrictions on these sites would result in changes to the historic district boundaries:

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<sup>1</sup> "No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.

[T]he historic district is conditioned upon the university being able to use certain development sites. So if there are changes to development sites, changes to the plan, it affects the historic district....[T]he university cannot designate historic sites and create a historic district if it does not know that it can achieve its development on the other sites.

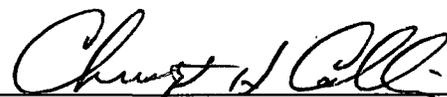
Representations of counsel for GW to the Zoning Commission in Case No. 06-12, October 11, 2006, Tr. at 159-60. Even the Historic Preservation Office recently acknowledged that if other owners were given the same opportunity as GW, they, too, might have been able to exclude their property from the proposed historic district.

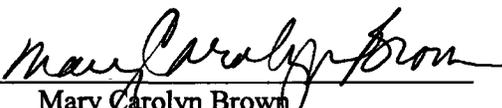
Thus, the failure to notify property owners that their property rights would be abrogated for the benefit of GW was a violation of the Due Process Clause and precluded the Zoning Commission from entertaining a full and fair hearing on all issues of the proposed GW Campus Plan PUD. Accordingly, the Zoning Commission should reopen the record and rehear the issue of GW's proposed amenities package, after providing adequate notice to each and every private property owner affected by GW's historic district proffer.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:   
Wayne S. Quin

By:   
Christopher H. Collins

By:   
Mary Carolyn Brown

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing letter was delivered this 12th day of March, 2007, by hand or electronic mail, to the following:

Maureen E. Dwyer, Esq.  
Pillsbury Winthrop Shaw Pittman  
2300 N Street, N.W.  
Washington, D.C. 20037-1122  
*By Hand*

Barbara Kahlow  
West End Citizens Association  
800 25th Street, N.W., #704  
Washington, D.C. 20037  
*By Electronic Mail*

Advisory Neighborhood Commission 2A  
St. Mary's Court  
724 24th Street, N.W.  
Washington, D.C. 20037  
*By Hand*

Cornish F. Hitchcock, Esq.  
5301 Wisconsin Avenue, N.W.  
Suite 350  
Washington, D.C. 20015-2022  
*By Hand*

Travis Parker  
Office of Planning  
801 North Capitol Street, N.E., 4th Floor  
Washington, D.C. 20001  
*By Electronic Mail*

Alan Bergstein, Esq.  
Office of the Attorney General  
441 4th Street, N.W., Sixth Floor  
Washington, D.C. 20001  
*By Electronic Mail*

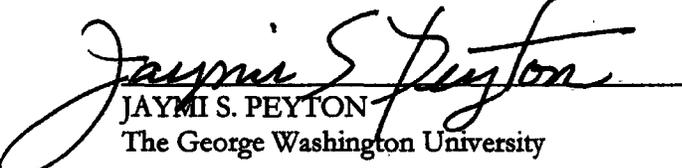


Mary Carolyn Brown

**EXHIBIT D**

***Certification of Mailing of Notice of Intent to File a Zoning Application***

I HEREBY CERTIFY that a copy of the attached *Notice of Intent to File a Zoning Application* for Application to the District of Columbia Zoning Commission for a Planned Unit Development and an Amendment to the Zoning Map of the District of Columbia with respect to the following properties: Square 39; Square 40; Square 41; Square 42 (Lots 54 and 55); Square 43 (Lot 26); Square 54; Square 55; Square 56; Square 57; Square 58 (Lots 1, 5, 6, 800, 801, 802, 803); Square 75 (Lots 23, 33, 34, 41, 42, 46, 47, 858, 861, 863, 864, 2097); Square 77; Square 79 (Lots 63, 64, 65, 808, 853, 854, 861, 862); Square 80 (Lots 2, 26, 27, 28, 29, 42, 43, 44, 45, 46, 47, 50, 51, 52, 54, 55, 800, 811, 820, 822, 823, 824, 825, 828); Square 81 (Lot 846); Square 101 (Lots 58, 60, 62, 879); Square 102; Square 103 (Lots 1, 13, 14, 27, 28, 33, 34, 35, 40, 41, 42, 809, 812, 813, 814, 816, 819, 820); Square 121 (Lot 819); and Square 122 (Lots 29, 824, 825), was mailed to Advisory Neighborhood Commission 2A and to the owners of all property within 200 feet of the perimeter of the subject properties on February 6, 2006, as required by the Zoning Regulations of the District of Columbia, 11 DCMR (Zoning) §§ 2406.7 -2406.10. The notice was also mailed to the Foggy Bottom Association and the West End Citizens' Association.

  
JAYMI S. PEYTON  
The George Washington University

## **NOTICE OF INTENT TO FILE A ZONING APPLICATION**

Application to the District of Columbia Zoning Commission  
for a Planned Unit Development and an  
Amendment to the Zoning Map of the District of Columbia

February 6, 2006

The George Washington University (the “**Applicant**” or “**GW**”) gives notice of its intent to file an application for First Stage review and approval of a Planned Unit Development (“**PUD**”) and an Amendment to the Zoning Map of the District of Columbia. This application will be filed with the District of Columbia Zoning Commission under Chapter 24 of the District of Columbia Zoning Regulations 11 DCMR (February 2003, as amended), not less than ten (10) days from this date. This notice is given pursuant to Section 2406.7 of the Zoning Regulations.

The property that is the subject of this application includes the properties owned by The George Washington University and located within the area of the GW Foggy Bottom Campus Plan boundaries, as defined in BZA Order NO. 16553. This application involves the following properties: Square 39; Square 40; Square 41; Square 42 (Lots 54 and 55); Square 43 (Lot 26); Square 54; Square 55; Square 56; Square 57; Square 58 (Lots 1, 5, 6, 800, 801, 802, 803); Square 75 (Lots 23, 33, 34, 41, 42, 46, 47, 858, 861, 863, 864, 2097); Square 77; Square 79 (Lots 63, 64, 65, 808, 853, 854, 861, 862); Square 80 (Lots 2, 26, 27, 28, 29, 42, 43, 44, 45, 46, 47, 50, 51, 52, 54, 55, 800, 811, 820, 822, 823, 824, 825, 828); Square 81 (Lot 846); Square 101 (Lots 58, 60, 62, 879); Square 102; Square 103 (Lots 1, 13, 14, 27, 28, 33, 34, 35, 40, 41, 42, 809, 812, 813, 814, 816, 819, 820); Square 121 (Lot 819); and Square 122 (Lots 29, 824, 825), herein after referred to as the “**Property**”. The Property is generally bounded by K Street, Washington Circle, and Pennsylvania Avenue to the north, 24<sup>th</sup> Street to the west, F Street to the south, and 19<sup>th</sup> and 20<sup>th</sup> Streets to the east. It is currently primarily devoted to University use. Please note that this application includes only those properties owned by The George Washington University. Although included in this PUD application, the properties owned by GW in Square 80 (Lot 55) and Square 54 will be the subject of separate consolidated PUD and rezoning applications.

The proposed two-stage PUD will provide numerous benefits. It will accommodate GW’s forecasted academic and student housing space requirements within the existing Campus Plan boundaries, concentrated within the campus core and away from existing residential neighborhoods. It also will result in increased retail services through the creation of an I Street retail corridor to serve the Foggy Bottom and West End neighborhoods, the District at large, and the GW community. The PUD will also result in the preservation of numerous buildings of architectural and historic significance on the Foggy Bottom campus.

The Property currently is located primarily in the R-5-D Zone district. Some properties located near Washington Circle and F Street are in the R-5-E Zone, and some properties located along Pennsylvania Avenue and between 19<sup>th</sup> and 22<sup>nd</sup> Street are in the C-3-C Zone. The Zoning Map Amendment application will request a rezoning of portions of Squares 55, 56, 75, 77, 79, and 101 to the C-3-C Zone. It will request a rezoning of a portion of Square 75, located along Pennsylvania Avenue, to the C-4 Zone. The remainder of the Property will remain in its existing R-5-D or R-5-E Zone under this PUD application; Square 80 (Lot 55) and Square 54 will be addressed under separate consolidated PUD and rezoning applications. For the portions of the Property located in the C-3-C and C-4 Zones, the maximum height will be 130 feet, or the

maximum height permitted under the 1910 Height Act, whichever is lesser. The FAR will continue to be aggregated, as required under Section 210 of the Zoning Regulations, among the residentially-zoned properties throughout the campus. The development sites that will be rezoned will be developed to an FAR of no greater than the permitted FAR under the PUD regulations for the C-3-C and C-4 Districts, as reviewed and approved by the Zoning Commission during the Second Stage PUD.

The developer of the PUD is The George Washington University, which has been located in the District of Columbia since 1821 and in Foggy Bottom since 1912. The Foggy Bottom Campus Plan architect/land planner is Ehrenkrantz Eckstut & Kuhn Architects. Land use counsel is Pillsbury Winthrop Shaw Pittman LLP. If you require additional information about the proposed PUD and Map Amendment application, please contact Maureen Dwyer (202) 663-8834 at Pillsbury Winthrop Shaw Pittman. Representatives of the University are available to discuss the proposed development with all interested and affected groups and individuals.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF PUBLIC HEARING**

**TIME AND PLACE:** **Thursday, September 14, 2006, @ 6:30 PM (2<sup>nd</sup>)**  
**Office of Zoning Hearing Room**  
**441 4<sup>th</sup> Street, N.W., Suite 220-South**  
**Washington , D.C. 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**Cases No. 06-11 (The George Washington University – Special Exception Application for a Campus Plan) and No. 06-12 (The George Washington University – First Stage Planned Unit Development & Related Zoning Map Amendment)**

**THIS CASE IS OF INTEREST TO ANC 2A**

On February 16, 2006, the Office of Zoning received an application from the George Washington University (“Applicant” or “University”) requesting special exception review and approval of the Foggy Bottom Campus Plan: 2006 – 2025 (“Campus Plan”) pursuant to 11 DCMR §§ 3104 and 210. Also on February 16, 2006, in conjunction with the campus plan application, the Applicant filed for first-stage approval of a planned unit development (“PUD”) and related amendment to the Zoning Map of the District of Columbia. The applications for approval of the Campus Plan and the PUD with related Map Amendment were consolidated and will be heard simultaneously. The Office of Planning provided its report on April 10, 2006, and the case was set down for hearing on April 20, 2006.

The property that is the subject of these applications includes the properties owned by the University and located within the area of its Foggy Bottom Campus, as defined in BZA Order No. 16553. This application involves the following properties: Square 39; Square 40; Square 41; Square 42 (Lots 54 and 55); Square 43 (Lot 26); Square 54; Square 55; Square 56; Square 57; Square 58 (Lots 1, 5, 6, 800, 801, 802, 803); Square 75 ( Lots 23, 33, 34, 41, 42, 46, 47, 858, 861, 863, 864, 2097); Square 77 (Lots 5, 51, 59, 60, 845, 846, 864); Square 79 (Lots 63, 64, 65, 808, 853, 854, 861, 862); Square 80 (Lots 2, 26, 27, 28, 29, 42, 43, 44, 45, 46, 47, 50, 51, 52, 54, 55, 800, 811, 820, 822, 823, 824, 825, 828); Square 81 (Lot 846); Square 101 (Lots 58, 60, 62, 879); Square 102; Square 103 (Lots 1, 13, 14; 27, 28, 33, 34, 35, 40, 41, 42, 809, 812, 813, 814, 816, 819, 820); Square 121 (Lot 819); and Square 122 (Lots 29, 824, 825), herein after referred to as the “Property”. The Property is generally bounded by K Street, Washington Circle, and Pennsylvania Avenue to the north, 24<sup>th</sup> Street to the west, F Street to the south, and 19<sup>th</sup> and 20<sup>th</sup> Streets to the east. It is currently devoted primarily to university use. Please note that this application includes only those properties owned by the University. Although included in the PUD application, certain properties owned by the Applicant in Square 80 (Lot 55) and Square 54 is the subject of a separate consolidated PUD and rezoning applications (ZC Case 06-27), which the Zoning Commission has also set down for a public hearing to be held at a yet to be determined date.

The Property currently is located primarily in the R-5-D Zone district. Some properties located near Washington Circle and F Street are in the R-5-E Zone, and some properties located along Pennsylvania Avenue and between 19<sup>th</sup> and 20<sup>th</sup> Street are in the C-3-C Zone. The Zoning Map Amendment application requests a PUD-related rezoning of portions of Squares 55, 56, 75, 77, 79, and 101 to the C-3-C Zone, and a PUD-related rezoning of a portion of Square 75, located along Pennsylvania Avenue, to the C-4 Zone. The remainder of the Property will remain in its existing R-5-D or R-5-E Zone, except for Squares 80 and 54, which will be the subject of separate PUD applications. For the portions of the Property located in the C-3-C and C-4 Zones, the maximum height will be 130 feet, or the maximum height permitted under the 1910 Height Act, whichever is less. The FAR will continue to be aggregated, as required under Section 210 of the Zoning Regulations, among the residentially-zoned properties throughout the campus to the maximum FAR set forth in the Zoning Regulations. (The maximum FAR permitted under Section 210 is the subject of a proposed text amendment currently under consideration in Z.C. Case No. 06-19, which will be heard immediately prior to these cases.) The development sites that will be rezoned will be developed to an FAR of no greater than the permitted FAR under the PUD regulations for the C-3-C and C-4 Districts, as reviewed and approved by the Zoning Commission during the Second Stage PUD.

The proposed Foggy Bottom Campus Plan: 2006 - 2025 is intended to address the University's forecasted academic and undergraduate student housing space requirements within the existing Foggy Bottom Campus Plan boundaries, concentrated within the campus core, as well as measures to preserve open spaces and buildings of architectural and historic significance on the campus. The plan calls for the creation of a retail corridor along I Street and proposes mechanisms for monitoring the University's compliance with the campus plan.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR § 3022.

**How to participate as a witness.**

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony is described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

**How to participate as a party.**

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3022.3.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations.

**Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. Persons seeking party status shall file with the Commission, not less than fourteen (14) days prior to the date set for the hearing, a written statement containing the following information:**

- (a) The person's name, address, and daytime telephone number;
- (b) A request to appear and participate as a party;
- (c) Whether the person will appear as a proponent or opponent of the application;
- (d) Whether the person will appear through legal counsel, and if so, the name and address of legal counsel;
- (e) A list of witnesses who will testify on the person's behalf;
- (f) A summary of the testimony of each witness;
- (g) An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts;
- (h) The total amount of time being requested to present their case; and
- (i) A written statement setting forth why the person should be granted party status, including reference to the following:
  - (1) The property owned or occupied by the person, or in which the person has an interest, that will be affected by the action requested of the Commission;
  - (2) The legal interest the person has in said property, such as owner, tenant, trustee, or mortgagee;
  - (3) The distance between the person's property and the property that is the subject of the application before the Commission;
  - (4) The economic, social, or other impacts likely to affect the person and/or the person's property if the action requested of the Commission is approved or denied; and
  - (5) An explanation of how the person's interest as identified in response to paragraph (4) would likely be more significantly, distinctively, or uniquely

affected in character or kind by the proposed zoning action than those of other persons in the general public.

The applicant shall also provide the information indicated in (e) through (h) to the extent that the information is not contained in the Applicant's prehearing submission as required by 11 DCMR § 3013.1. The information shall be filed no later than fourteen (14) days before the date of the hearing.

If an affected Advisory Neighborhood Commission (ANC) intends to participate at the hearing, the ANC shall submit the written report described in § 3012.5 no later than seven (7) days before the date of the hearing. The report shall also contain the information indicated in (e) through (h) above.

**Time limits.**

The following time limits for oral testimony shall be adhered to unless changed by the Commission, and no time may be ceded:

- |    |                                  |   |
|----|----------------------------------|---|
| 1. | Applicant and parties in support | 60 minutes collectively                   |
| 2. | Parties in opposition            | 15 minutes each (60 minutes collectively) |
| 3. | Organizations                    | 5 minutes each                            |
| 4. | Individuals                      | 3 minutes each                            |

Information responsive to this notice should be forwarded to the Director, Office of Zoning, Suite 210, 441 4<sup>th</sup> Street, N.W., Washington, D.C. 20001. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

**CAROL J. MITTEN, ANTHONY J. HOOD, JOHN G. PARSONS, MICHAEL G. TURNBULL, AND GREGORY N. JEFFRIES ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY JERRILY R. KRESS, FAIA, DIRECTOR AND BY SHARON SCHELLIN, SECRETARY TO THE ZONING COMMISSION.**