

EXHIBIT A

Argument Refuting Allegation of Spot Zoning

At the October 30, 2006 Zoning Commission Public Hearing (the “**Public Hearing**”) in Case No. 06-17, the Zoning Commission requested that the District of Columbia Public Schools (“**DCPS**”) and The George Washington University (“**GW**” or “**the University**”) (collectively, the “**Applicant**”) provide information as to why the proposed Zoning Map amendment for Square 80, Lots 55 and 829 (the “**Subject Property**”) from R-5-D to SP-2 does not constitute illegal spot zoning. As set forth in analysis below, the proposed Zoning Map amendment clearly fails both prongs of the test and, accordingly, the allegation of spot zoning is completely unfounded.

The established case law in the District of Columbia is very clear regarding what constitutes illegal spot zoning. The D.C. Court of Appeals has defined spot zoning “as the ‘wrenching’ of a small parcel from its environment for the benefit of a single owner and without benefit to the public at large or the area affected.” *Daro Realty, Inc. v. District of Columbia Zoning Commission*, 581 A.2d 295, 299 (citing *Lee v. District of Columbia Zoning Commission*, 411 A.2d 635, 641 (D.C. 1980); *Citizens Association of Georgetown v. District of Columbia Zoning Commission*, 402 A.2d 36, 39-40 (D.C. 1979)). Two tests must be satisfied in order for the Court to determine that an action to zone property in the District rises to the level of illegitimate spot zoning.

To constitute illegal spot zoning, the Commission’s action must (1) pertain to a single parcel or a limited area – ordinarily for the benefit of a particular property owner or specially interested party – and (2) must be inconsistent with the city’s comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of the zoning regulation, i.e. the public health, safety and general welfare.

Daro, 581 A.2d at 299; see *Citizens Association of Georgetown*, 402 A.2d at 39.

In the *Daro* case, the Court of Appeals notes that:

To date we have issued four decisions on spot zoning. [footnote omitted]. All four involved the rezoning of small parcels of land to the benefit of single property owners and, thus, in all four the first prong of the test was satisfied. However, we affirmed the Commission in each case, because the petitioners failed to satisfy the second prong by showing that the rezoning either was inconsistent with the comprehensive plan and/or surrounding environment *or that it failed to serve the purposes of zoning by contributing to the public welfare.* (Emphasis added.)

Daro, 581 A.2d at 299.

The proposed amendment to the Zoning Map for the Subject Property does not fail either of these tests. First, the proposed Zoning Map Amendment benefits more than one owner or specially interested party. The District of Columbia owns Lot 829, which is the L-shaped portion of the Subject Property that contains the historic Grant School and surface parking lot. Under the terms of the Memorandum of Understanding (“**MOU**”) between DCPS and GW, DCPS will sell a small portion of Lot 829 that fronts on F Street to GW. In exchange for the parcel and additional

development rights generated by rezoning the land to SP-2 under the PUD, the University will pay DCPS approximately \$12 million.¹

DCPS will then use this funding, as well as additional DCPS funds, for the preservation, modernization, and expansion of the historic Grant School as the home of the School Without Walls. This alternative financing resource provides supplemental funding and supplants currently anticipated funding, which allows DCPS to reallocate existing funds to other high priority projects within the school system. Both the renovation and addition to the Grant School and the supplemental funding that frees up financial resources for other DCPS priorities provide benefits to the residents of the immediate neighborhood, Ward 2 and the District as a whole. The beneficiaries of the zoning application include the following: the present and future students, faculty, parents and staff at the School Without Walls; students, parents, and staff at other District of Columbia Public School facilities; and, indeed, all residents of the District of Columbia. The proposed Zoning Map amendment is clearly not intended to benefit a particular property owner or a specifically interested party.

The second element of the two prong spot zoning test is also not satisfied in this case. First, the proposed SP-2 zoning of the Subject Property is consistent with the SP-2 zoning in adjacent Square 81, located across F Street from Square 80, and nearby Square 122, which is located within the Campus Plan boundary.² Second, the proposed SP-2 zoning is fully consistent with the D.C. Comprehensive Plan (the "Plan"). The Generalized Land Use Map includes the Subject Property in the institutional land use category, and both the public school and proposed residence hall uses are entirely consistent with this land use designation. The proposed SP-2 zoning is also entirely consistent with the Generalized Land Use Map as the Subject Property is located adjacent to the high-density residential land use category to the south.

Furthermore, as described in the Applicant's June 23, 2006 pre-hearing submission, the proposed amendment to the Zoning Map fulfills many of the goals and objectives of the Plan. Specifically, the proposed rezoning will improve the neighborhood by enabling the renovation and expansion of the School Without Walls, a public facility, which, under the Plan, should be "stabilized and improved." 11 DCMR § 102.3. The proposed rezoning also improves the neighborhood by providing additional on-campus housing for GW undergraduate students. In addition to its benefit to the Foggy Bottom/West End neighborhood, the proposed rezoning will stabilize and improve other neighborhoods in the city as the public-private partnership between DCPS and GW enables DCPS to reallocate existing funds to other high priority projects in other areas of the District.

Finally, the Office of Planning has concluded that the proposed development is in conformance with the goals and policies of the Comprehensive Plan and recommended approval of the application. The Final OP Report, dated October 20, 2006, concluded that the "proposed development would be consistent with land use and policies of the Comprehensive Plan" and was also consistent with major themes and elements of the plan. Final OP Report at 6-7. Specific elements called out by the Office of Planning include § 1319.1 (preservation of historic features), §§

¹ As detailed in the Applicant's written submissions and oral testimony at the Public Hearing, the value in the development partnership is created through this rezoning. The rezoning of Lots 829 and 55 to SP-2 removes the development from the aggregate FAR cap that otherwise applies to residentially-zoned land within the Foggy Bottom Campus Plan boundaries, thereby creating value for which GW can pay DCPS.

² Other nearby SP-2 zoned squares include Squares 33, 59, and 104.

606 and 1311 (rehabilitation and maintenance of public facilities). The Office of Planning also found that the application was consistent with Condition 9 of GW's existing Foggy Bottom Campus Plan, which requires a significant majority of GW undergraduates to be housed on campus. The addition of approximately 474 new on-campus beds will also assist with the transition of off-campus undergraduate residential uses as set forth in the proposed conditions to the *Foggy Bottom Campus Plan: 2006 – 2025*, which is currently pending before the Zoning Commission..

As described above, the proposed Zoning Map amendment cannot be challenged as spot zoning since it does not meet the enumerated legal test. The proposal is completely consistent with the Comprehensive Plan and fulfills the Plan's historic preservation, housing, and public facilities goals for the neighborhood and the District as a whole. Further, the Office of Planning agrees that the proposal is consistent with the Comprehensive Plan and recommends approval of the Zoning Map amendment. Most importantly, the benefits of the rezoning do not merely apply to the Applicant, but rather, extend far beyond to benefit others including the present and future students, parents, teachers, and staff of the District of Columbia public school system.