

Exhibit E

Georgetown University Campus Plan 2011-2020

Zoning Commission Case No. 10-32

Exhibit Prepared By:
Conrad J. DeWitte, Jr., Esq.
Foxhall Village Resident and Property Owner

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Legal Standard for Zoning Commission

Case law suggests that the Zoning Commission should make explicit findings that there is **substantial evidence** in the record that the University's bus road **as proposed** will **likely** become objectionable to neighboring property **because of noise and traffic**.

The bus road will skirt the eastern ridge of the park and introduce diesel-engine noise and exhaust into a tranquil National Park where currently there is none. There is substantial evidence in the record for the Commission to make the following findings of fact:

PROPOSED FINDING: That use of the planned service road along the eastern ridge of Glover-Archbold Park as part of the proposed bus loop road is likely to become objectionable to Glover-Archbold Park and private property along the western ridge of Glover-Archbold Park because of noise from buses and exhaust from bus traffic.

PROPOSED FINDING: That construction of the planned service road along the eastern ridge of Glover-Archbold Park as part of the proposed bus loop road is likely to become objectionable to Glover-Archbold Park and private property along the western ridge of Glover-Archbold Park because of removal of trees along the eastern slope of Glover-Archbold Park.

The D.C. Court of Appeals has stated that the Zoning Commission's findings must be based on substantial evidence. *See Foggy Bottom Ass'n v. D.C. Board of Zoning Comm'n*, 979 A.2d 1160, 1173 (D.C. 2009). The Court has observed that "[s]ubstantial evidence is relevant evidence which a reasonable trier of fact would find adequate to support at conclusion." *Citizen's Ass'n of Georgetown v. D.C. Board of Zoning Adjustment*, 925 A.2d 585, 589 (D.C. 2007).

Section 210.2 of Title 11 of the District of Columbia Regulations states that "[u]se as a college or university shall be located so that it is **not likely to become objectionable** to neighboring property because of **noise, traffic**, number of students, or other objectionable conditions." 11 DCMR § 210.2 (emphasis added).

The U.S. District Court of Appeals for the District of Columbia has held that the Board of Zoning Adjustment “can deny [a] university a special exception **only by an explicit finding** that the proposed use is likely to become “objectionable’. . . . [The Board] must rest the ‘objection[s]’ either on the criteria specified in § 210.2” or other legal provisions. *George Washington University v. District of Columbia*, 318 F.3d 203, 208 (D.C. Cir. 2003) (emphasis added).

The D.C. Circuit also noted, however, that “the final wrap up clause [‘other objectionable conditions’ found in 11 DCMR § 210.2] does not invite the BZA members to apply their own personal tastes.” *Id.*