

**DISTRICT OF COLUMBIA
ZONING COMMISSION**

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University of the District of Columbia	)	
	)	Case No. 11-02
Campus Plan 2011-2021	)	
	)	
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**TESTIMONY OF VAN NESS SOUTH TENANTS' ASSOCIATION
PRESENTED BY
DAVID G. WILSON**

May 25, 2011

I am David G. Wilson, a tenant in the Archstone Van Ness apartment building at 3003 Van Ness Street, NW(previously known as Van Ness South). I am a member of the Van Ness South Tenants' Association ("VNSTA"), and am presenting testimony on its behalf. The primary concern of VNSTA is the use of our apartment building by the University of the District of Columbia ("UDC") as an off-campus dormitory for their students. We also share many of the concerns of other UDC neighbors testifying here and I shall briefly address these too.

I. BACKGROUND.

VNSTA became aware that UDC intended to turn part of Archstone Van Ness into a dormitory for its students around August 11, 2010, when it noticed extensive construction work on units in the building. To prepare 21 one-bedroom apartment units for occupancy by UDC students, UDC had a contractor install partition walls within each unit to provide additional space such that four students could occupy each unit by creating an additional bedroom. Each apartment unit so divided was not increased in size.

**ZONING COMMISSION
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CASE NO. 11-02A
EXHIBIT NO. 30

UDC, however, had neglected to obtain a building permit to engage in this construction work. The District building inspectors responded to our complaint and issued a notice of infraction and a stop work order. When UDC persisted in its construction work despite the District order, the inspectors returned and issued a second notice of infraction. In all, UDC was fined \$4,000 for its total disregard of District permit requirements, not an auspicious sign that it may be willing to abide by any restrictions imposed by this Commission in connection with the campus plan. UDC thereafter proceeded to obtain a building permit.

The one-bedroom apartment units leased by UDC are not contiguous, but located throughout the building and on different floors. UDC has asserted that a master lease covers all the 21 and other additional units, although we have not been allowed to examine the terms of that lease. The students who occupy these units have no leasing agreement with the landlord, Archstone, and are not tenants of Archstone. Instead, the students sign occupancy agreements with UDC pursuant to which they pay (or not pay) fees of \$8,400 per year for housing. Thus they are distinctly different than all other residents in the apartment building who, as tenants, have a direct legal relationship with their landlord and no relationship with UDC.

In addition to ignoring the building permit process, UDC also failed to provide the legally mandated thirty-day written notice to ANC3F and Ward Councilmember Cheh that UDC intended to lease property at Archstone Van Ness. DC Code § 1-309.10(b) requires that:

Thirty days written notice . . . of such District government actions or proposed actions, including (1) the intent to acquire an interest in real property, either through purchase or lease or (2) the intent to change the use of property owned or leased by or on behalf of the government, shall be given by first-class mail to the Office of Advisory Neighborhood Commissions, each affected Commission, the Commissioner representing a single-member district affected by said actions, and to each affected Ward Councilmember . . .

As an agency of the District of Columbia, UDC is required to comply with this law.

This further disregard of District legal requirements again gives VNSTA pause as to how well UDC may abide in the future by any conditions this Commission may impose on their continuing rental of Archstone units.

In addition to the 21 units subject to the building permit dispute, UDC states that it has leased another 10 units bringing their total number of units to 31 at present. At least three of these units are occupied not by students but by resident assistants who serve the same function they would in a student dormitory. UDC has also stated that its Board of Trustees has authorized it to lease up to 100 units at Archstone Van Ness for use by its students, but that it is willing to limit its units at Van Ness to 31 units and will attempt to rent as many as 69 other units in other apartment buildings.

II. UDC NEED FOR OFF-CAMPUS HOUSING.

According to data provided by UDC, 54.7% of the UDC students are not residents of the District, while only 45.3% are District residents. In contrast to non-resident students, students residing in the District have ready access to public transportation to get to UDC and can avoid incurring housing expenses by living at their homes. This is unlike the state university situation where housing is needed for state residents because the great majority do not live geographically within commuting distance of the university. The primary beneficiaries of the off-campus housing, as well as the planned on campus housing, therefore are not District residents who are students at UDC, but non-resident students. District taxpayers, like those living as tenants at Archstone Van Ness, who finance the subsidies necessary to support student housing might not object if their taxes benefitted other deserving District residents. Instead, they find their hard earned dollars used for the benefit of students from everywhere but the District

This consequence is particularly striking in the case of the off-campus housing at Archstone Van Ness. Based on the above analysis, the students housed there can be assumed in very large part not to be residents of the District. In addition, almost all of the students living in Archstone Van Ness are athletes whose housing costs are totally subsidized by UDC. VNSTA presented a chart at the District Council hearing on the UDC budget showing the estimated cost to the taxpayers of the District of the apartments rented by UDC at Archstone Van Ness. A copy of that chart is attached hereto. VNSTA calculates that this cost is in the neighborhood of \$700,000 per year. This very high cost to a cash-strapped District government is due to the fact that almost all the units rented by UDC are occupied by athletes who pay nothing for housing. This chart was cited again at the ANC hearing on the Campus Plan on April 25. UDC stated that it would respond to it but never has so the estimates can be assumed to be relatively accurate. In times of budget deficits, it makes no sense for District taxpayers to subsidize athletes living in high rent apartments.

The UDC campus plan is thus dissimilar from all other campus plans in the District. No other campus plans involve expenditures that are or will be funded by District taxpayers rather than privately. The burden the plan places on District taxpayers such as the tenants of Archstone Van Ness (who are in the anomalous situation of paying for the burdens they must endure) should be given special consideration.

III. REASONS FOR VNSTA OPPOSITION TO UDC DORMITORY USE OF ARCHSTONE VAN NESS.

A. UDC has turned its units into rabbit warrens and overpopulated the building.

By partitioning the UDC one-bedroom units into two-bedroom units with four beds for four students, UDC has added a population to Archstone Van Ness that this building was never designed to support. Because the living rooms in the units occupied by the students have

essentially been eliminated by the partitioning, the students now use the lobby of the building, the business center, and the hallways as their living rooms and common areas. Moreover, the increased building population causes facilities such as the laundry rooms and exercise center to be less available to tenants. This Commission should not condone such adverse impacts by UDC upon its residential neighbors.

B. The UDC Dormitory Use of the Building is Very Different than Tenant Use.

The partitioned units have all the indicia of what normally constitutes a dormitory and is starkly different than what a tenant renter expects. The UDC Office of Residence Life maintains complete control over the units and landlord Archstone has no involvement. In addition:

- None of the students occupying the converted units has a lease with Archstone.
- Keys to the rooms are issued to the students, and lost keys are replaced by UDC, not Archstone. This can be a security issue for tenants.
- Resident Assistants have their own units at Archstone Van Ness and monitor the students in the converted units.
- The students must agree to attend mandatory housing meetings.
- The UDC campus police respond to disruptions involving the converted units, rather than Archstone.
- Archstone disavows responsibility for the UDC units although these are located within the Archstone housing accommodation. If tenants complain about disturbances emanating from the UDC units, Archstone instructs the tenants to direct their complaints to UDC, and refuses to accept responsibility notwithstanding their legal obligation under their leases with tenants to provide the tenants with quiet enjoyment of their premises.

Thus, if a tenant is disturbed by a tenant neighbor, the disturbed tenant can complain to the landlord. That tenant should not be forced to deal with a third party with whom the tenant has no relationship, legal or otherwise. Requiring the tenant to do so is not fair to tenants who thought they were renting in a residential apartment building, not a dormitory. The UDC's proposed standards of conduct policy for its students do not resolve this problem. While VNSTA commends UDC for its attempt to ensure that its students are good neighbors and that neighbors have an adequate procedure to complaint about poorly behaving students, tenants at

Archstone Van Ness do not wish to be involved in UDC self-governance policies. They prefer to deal with any obstreperous neighbors, UDC students or otherwise, by complaining directly to the building management or to the police. Nor do they wish to have UDC campus police responding to their complaints. The campus police have no jurisdiction within Archstone Van Ness and should not be used by UDC to control students there.

C. Dormitory use is not compatible with normal apartment use.

The joint use of Archstone Van Ness as a residential apartment building and a dormitory is incompatible. An 85 year old tenant who wishes to go to bed at 9:00 p.m. or married tenants with young children who thought they were living in a quiet residential apartment building should not suddenly find themselves living next to a dormitory room full of noisy students who are more likely than not to stay up all night studying or otherwise. Not all dormitories, of course, are animal houses; but then dormitory life is not truly part of the college experience if the students do not share some sort of excitement in the dormitories. The use of resident assistants will never eliminate all student frivolity in a dormitory setting.

VNSTA's complaint here, however, is not with the students. There are many students residing at Archstone Van Ness from many different schools such as Howard Law School and American University. These students occupy their rental units as tenants under leases with Archstone. They live as normal tenants, not as dormitory occupants associated with a particular school. Tenants having problems with other tenants have the right to resolve their issues pursuant to the provisions of their leases with their landlord Archstone. They do not have to deal with another entity (UDC) legally separate and distinct from their landlord and with whom the tenants have no legal relationship. Mixing such incompatible uses should not be permitted as part of a campus plan.

- D. Master leasing by UDC removes units from the rent control program contrary to the purposes of that program.

In the Rental Housing Act of 1985, the Council of the District of Columbia finds that:

(1) There is a severe shortage of rental housing available to citizens of the District of Columbia ("District").

(2) The shortage is growing due to the withdrawal of housing units from the housing market . . .

(3) The shortage of housing is felt most acutely among low-and moderate-income renters, who are finding a shrinking pool of available dwellings.

* * *

(11) This extension of the Rent Stabilization Program is required to preserve the public peace, health, safety, and general welfare.

District Code § 42-3501.01.

In enacting the Rental Housing Act, the District Council also supports the statutory purpose "[t]o protect the existing supply of rental housing from conversion to other uses."

District Code § 42-3501.02 (4). Presumably, the general welfares being preserved and promoted both by the Zoning Regulations and by the District Council are not in conflict and have consistent objectives. Archstone Van Ness is subject to the Rent Stabilization Program and, accordingly, is a source of affordable housing to moderate-income renters. Allowing UDC to withdraw 31 units from the Rent Stabilization Program and from availability as a source of affordable housing to moderate-income citizens of the District and to convert them to dorm-like use for students who are likely not to be citizens of the District, does not serve the general welfare of the District of Columbia. This Commission should not countenance such conversion.

IV. ACTIONS BY VNSTA TO PROTECT RIGHTS OF TENANTS.

VNSTA has taken a number of actions to protect the rights of the tenants at Archstone Van Ness and intends to pursue other remedies to prevent this apartment building from becoming a permanent UDC dormitory.

A. Board of Zoning Adjustment Appeal.

VNSTA appealed the issuance of the building permit to UDC to the BZA arguing that UDC had impermissibly changed the use of the units from that of “apartment “ use which is permitted as a matter of right in an R-5 District. The BZA denied the appeal on April 5, 2011, but has not yet issued a written decision. VNSTA fully reserves its right to appeal this decision, once it is issued in written form, to the District Court of Appeals.

B. Testimony at UDC Budget Hearing Before the District Council.

On April 13, 2011, VNSTA testified before the District Council Committee of the Whole with respect to the proposed budget for UDC. VNSTA urged the Council to include a proviso in the UDC budget authorization that UDC may use no funds to lease apartments in residential apartment buildings.

C. Complaint to Rent Administrator.

Also on April 13, 2011, VNSTA filed a complaint with the Rent Administrator about the failure of UDC to comply with the requirements of the rent control program. UDC has made itself a “housing provider” as defined in the Rental Housing Act. It is thus subject to all the rent control regulations in acting as a landlord by subletting 31 apartments and receiving money from persons occupying its units. A significant factor in UDC’s conversion of a part of our apartment building to dormitory use is the loss of these rent controlled units to the housing pool of the District.

D. Tenant Petition regarding Reduction in Facilities and Services.

VNSTA intends to file a tenant petition against its landlord Archstone based on the reduction in services and facilities its tenants have suffered as a consequence of putting partitions in one-bedroom apartments and turning them into a rabbit warren of two-bedroom apartments

with four students in what used to be a one bedroom apartment. Obviously this population increase places a burden on the common facilities available to all occupants in the building such as lobby areas, laundry rooms, and the business center. VNSTA will seek a rent reduction for all tenants in the building to compensate for the reduction in services and facilities caused by the UDC population explosion.

E. Exercise of Tenant Offer to Purchase Rights.

The current owner of Archstone Van Ness has put this building up for sale which allows it to avoid the consequences of its actions of throwing its tenants under the bus. VNSTA will be able to exercise its TOPA rights when and if a purchaser is identified. At that time, VNSTA intends to use all its legal rights to insure that it receives better treatment from a new landlord than it received from Archstone, including finding a solution to the UDC dormitory problem.

V. VNSTA POSITION ON UDC PROPOSED OFF-CAMPUS HOUSING CONDITIONS.

UDC has tried to throw some bones to the tenants at Archstone Van Ness. UDC has agreed to lease no more than 31 units at Archstone Van Ness, but still wishes to lease up to 100 units in total with the leasing expanded to include other nearby apartment buildings. Moreover, UDC asserts that it will end its off-campus leasing program within a fixed time of the completion and occupancy of on-campus housing. This proposal is not acceptable to VNSTA.

VNSTA objects to any off-campus housing in which UDC rents apartments and then provides these to students pursuant to its occupancy agreement. Although we are pleased that UDC is committing to limiting its Archstone units to 31, we do not wish to play beggar thy neighbor and burden unsuspecting tenants in other buildings with the same problems we have experienced. The offer to cease off-campus leasing within a fixed period of time after the construction of dormitories does nothing to assure that UDC students will ever be removed from

Archstone Van Ness. VNSTA has no way of knowing whether in the current District budget circumstances, money may soon be available for dormitory construction or whether UDC will ever actually build the dormitories it now envisions.

In summary, for all the reasons cited above, the leasing by UDC of *any* units at Archstone Van Ness is *not* acceptable to VNSTA. Dormitory use is not compatible with tenant residential use of the units; dormitory use over stresses the facilities of our building beyond their intended use; and it contradicts the objectives of the Rental Housing Act by removing rent-controlled units from the housing inventory of the District. Therefore, we urge this Commission to condition the approval of the UDC Campus Plan on their agreement to cease leasing units in Archstone Van Ness within a reasonable time and not to lease units in any other residential apartment buildings.

VI. OTHER VNSTA COMMENTS ON THE UDC CAMPUS PLAN.

A. Inclusion of Building 52 within the campus.

VNSTA supports the inclusion of Building 52 within the boundaries of the campus plan. Since this is the first campus plan for UDC, this Commission has not previously set boundaries for the campus of UDC. Building 52 is contiguous to what UDC claims is its campus. UDC acknowledges that it will be used for academic purposes. Therefore, its use should be governed by all the restrictions included in the conditions to the plan. Otherwise, Building 52 becomes a very large loophole in the conditions, allowing UDC to circumvent conditions they may find burdensome.

B. Expansion of area considered as possible location for future dormitories.

Discussions with UDC have shown that there are valid concerns about the site currently envisioned for future dormitories. The precise configuration of any future dormitories which is currently unknown may make alternate locations more desirable. This is not an issue that needs

to be resolved at this time and should not be decided now. VNSTA therefore supports the expansion of the area designated for future on campus housing use to cover all possible eventualities.

C. Traffic management.

VNSTA concurs with the findings of the ANC traffic consultant that more study on traffic management is necessary and that additional steps can be taken to ameliorate traffic problems. VNSTA urges the Commission to allow the ANC and UDC sufficient time to pursue this issue and to try to reach an agreement that will best protect the UDC's neighbors.

D. Maintenance.

The campus plan envisions UDC as being a "green" university with a rain forest as part of its student center. UDC, however, has a woefully inadequate record in maintaining its existing facilities. For example, after the Chinese returned the UDC playing field they had used as a staging area to build their embassy, the field was returned in better shape than it had previously been and a number of large trees planted along Van Ness street in front of the re-sodded playing field. All those trees are now dead, presumably for lack of watering. Similarly, UDC has created a rose garden adjacent to Dennard Plaza. Although there are some beautiful roses there, they are choked by an overgrown jungle of weeds.

UDC employs 1,691 persons to take care of 2,293 FTE students. Of this number of employees, over 1,400 are staff and less than 300 faculty. If UDC cannot find sufficient personnel in its very numerous staff to keep its current green space alive now, what may happen to new green space after it is created. The campus plan should include provisions to insure that all green space is fully maintained in the future.

Thank you for allowing VNSTA to present this testimony. I shall be happy to answer any questions you may have.

Respectfully submitted,

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May 25, 2011

APARTMENTS AT ARCHSTONE VAN NESS

Fall 2010 Semester – 26 Apartments

Non-Athlete - \$4,200 per Semester; \$8,400 per Academic Year

Athlete - \$0

Prices do not include furniture - Each apartment furnished with 4 beds, 4 dressers, 4 large desks, bedroom standing lamps & desk lamps

Prices do not include contractor to subdivide 21 of the one-bedroom apartments – \$25,595

** Indicates apartments subdivided

Fines for building without permit & building after stop work order issued - \$4,000

Permit Fee for 21 apartments: \$927.41

Apartment	Monthly Rent	Yearly Rent	Occupants	Revenue per Semester	Revenue per Year	Balance
W-121 **	\$2,150	\$25,800	Track & Field Non Athlete Non Athlete	0 \$4,200 \$4,200	0 \$8,400 \$8,400	- \$ 9,000
W-122 **	\$2,218	\$26,616	Tennis Tennis Tennis Tennis	0	0	- \$ 26,616
W-231	\$1,995	\$23,940	Director of Residence Life	0	0	- \$ 23,940
W-323 **	\$2,218	\$26,616	Tennis Tennis Track & Field Track & Field	0	0	- \$ 26,616
W-329 **	\$2,218	\$26,616	Non Athlete Non Athlete W Basketball W Basketball	\$4,200 \$4,200 0 0	\$8,400 \$8,400 0 0	- \$ 9,816
W-417 **	\$2,264	\$27,168	M Basketball M Basketball M Basketball M Basketball	0	00	- \$ 27,168
W-521 **	\$2,150	\$25,800	Track & Field Track & Field W Basketball	0	0	- \$ 25,800
W-529 **	\$2,218	\$26,616	Non Athlete Track & Field Track & Field	\$4,200 0 0	\$8,400	- \$ 18,216

Apartment	Monthly Rent	Yearly Rent	Occupants	Revenue per Semester	Revenue per Year	Balance
			Tennis	0		
W-720 **	\$2,264	\$27,168	Soccer Soccer Soccer Soccer	0	0	- \$ 13,584
W-725	\$1,876	\$22,512	Staff Residence Assistant	0	0	- \$ 22,512
W-922 **	\$2,368	\$28,416	Volleyball Volleyball Track & Field Tennis	0	0	- \$ 28,416
W-929 **	\$2,367	\$28,404	Non Athlete Non Athlete Non Athlete Non Athlete	\$4,200 \$4,200 \$4,200 \$4,200	\$8,400 \$8,400 \$8,400 \$8,400	+ \$ 5,196
W-1006 **	\$2,156	\$25,872	Non Athlete Volleyball Volleyball Track & Field	\$4,200 0 0 0	\$8,400 0 0 0	- \$ 17,472
W-1020 **	\$2,264	\$27,168	Non Athlete Non Athlete Track & Field Track & Field	\$4,200 \$4,200 0 0	\$8,400 \$8,400 0 0	- \$ 11,168
W-1112 **	\$2,264	\$27,168	Non Athlete M Cross Country M Cross Country M Cross Country	\$4,200 0 0 	\$8,400 0 0 	- \$ 18,768
W-1130	\$2,218	\$26,616	Track & Field Track & Field Volleyball Volleyball	0	0	- \$ 26,616
S-308 **	\$2,288	\$27,456	Soccer Soccer M Basketball	0	0	- \$ 27,456
S-309 **	\$2,185	\$26,220	Non Athlete Non Athlete M Cross Country M Cross Country	\$4,200 \$4,200 0 0 	\$8,400 \$8,400 0 0 	- \$ 9,420
S-314 **	\$2,264	\$27,168	M Basketball M Basketball	0	0	- \$ 27,168

Apartment	Monthly Rent	Yearly Rent	Occupants	Revenue per Semester	Revenue per Year	Balance
			M Basketball M Basketball			
S-617	\$1,915 + \$160 parking	\$22,980 + <u>\$ 1,920</u> \$24,900	Staff Resident Assistant	0	0	- \$ 24,900
S-711 **	\$2,350	\$28,200	Track & Field Track & Field W Basketball W Basketball	0	0	- \$ 28,200
S-718 **	\$2,279	\$27,348	Volleyball Volleyball W Basketball W Basketball/VB	0	0	- \$ 27,348
S-807 **	\$1,950	\$23,400	W Basketball W Basketball W Basketball	0	0	- \$ 23,400
S-811 **	\$2,264	\$27,168	W Basketball W Basketball W Basketball W Basketball	0	0	- \$ 27,168
S-819	\$1,969	\$23,628	Staff Residence Assistant	0	0	- \$ 23,628
S-1009 **	\$2,185	\$26,220	Soccer Soccer M Basketball M Basketball	0	0	- \$ 26,220
S-1017	\$1,765	\$21,180		0	0	- \$ 21,180
					TOTAL	-\$ 571,600

Spring Semester 2011 – Total 31 Apartments

Does Not Include Permit Fee or Contractor Fee to Subdivide Apartments

Construction Permits Granted for W-519, W-816, W-919, S-312

Apartment	Monthly Rent	Yearly Rent	Occupants	Revenue Per Semester	Revenue Per Year	Balance
All of the apartments above plus						
W-519	\$2,350	\$28,200	?	?	?	?

W-816	\$2,350	\$28,200	?	?	?	?
W-919	\$2,350	\$28,200	?	?	?	?
S-720	\$2,610	\$31,320	Athlete Non-Athlete Non-Athlete Non-Athlete	0 \$4,200 \$4,200 \$4,200	0 \$8,400 \$8,400 \$8,400	- \$ 6,120
S-312	\$2,350	\$28,200	?	?	?	?

TOTAL COSTS TO UDC

BALANCES ON APARTMENTS

FALL 2010

\$ 571,600

SPRING 2011

\$ 6,120

IF FOUR SPRING UNITS OCCUPIED BY ATHLETES

\$ 112,800

(4 X \$28,200)

CONSTRUCTION COSTS OF WALLS

\$ 25,595

DCRA FINES

\$ 4,000

BUILDING PERMIT

\$ 927

GRAND TOTAL

\$ 721,042