West End Citizens Association
Washington, D.C.

Boundaries: 15th Street on the East • Potomac Park on the South
Rock Creek and the Potomac on the West • N Street on the North

May 25, 2001

Ms. Sheila Cross Reid
Chairperson
D.C. Board of Zoning Adjustment
441-4th Street, N.W. - 2nd Floor
Washington, DC 20001

Re BZA Appeal No.16701 (1957 E Street, N.W.)

Dear Chairperson Reid and Members of the Board:

This letter provides a response by the West End Citizens Association (WECA) to the materials relating to BZA Appeal No. 16701, which were due to be presented to the Board on May 18, 2001 by the DC Zoning Administrator (ZA), the DC Corporation Counsel, and the George Washington University (GWU). On May 4th, the Office of Zoning (OZ) prepared a "Memo to File" about what the Board had requested at the May 1st hearing. OZ faxed this Memo to all Parties on May 7th. Immediately upon receipt on May 7th, the WECA notified OZ by e-mail that its Memo contained two key errors. OZ responded orally that it could not correct its Memo until a transcript of the Board's May 1st hearing is available. Unfortunately, a transcript has not yet been provided to the WECA, and OZ has not yet corrected its Memo.

First, the OZ Memo stated, "3. The Zoning Administrator should review his records and identify when and with whom in the community he held meetings on the project. If possible, provide details about the meetings." The WECA commented to OZ,

> The community was unable to see the plans submitted for GW's proposed 1957 E Street project & was not provided them in response to a Freedom of Information Act (FOIA) request. Nonetheless, the transcript will show that the Zoning Administrator testified that he held "several" meetings with the community where he shared the building plans. As a consequence, Ms. Renshaw asked the Zoning Administrator to identify all meetings & their attendees (including who each person represented) where he shared GWU's building plans with the community, i.e., not discussion meetings he held on the project. Therefore, please change #3 to read:
>
> 3. The Zoning Administrator should review his records to identify when and with whom in the community (including who each person represented) he shared the building plans on the project. If possible, provide details about the meetings.

BZA
Case No. 16701
Exhibit No. 44

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Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.44

Second, the OZ Memo stated, "4. The Office of Corporation Counsel should advise the Board if Zoning Commission Orders 746, 746-A and 746-B are and in compliance with the PUD regulations." The WECA commented to OZ,

> The requirement as recorded by OZ is not understandable. ... No one questioned if the Zoning Commission's Orders were in compliance with the PUD regulations; instead, the community asserted that, under the PUD regulations, GW's modified plans (such as one vs two ingress/egress streets) required a PUD modification case to be submitted for review by the Zoning Commission & the public. Therefore, the requirement should read:
>
> 4. The Office of the Corporation Counsel should advise the Board if GW's modified plans require a PUD modification case under the PUD regulations.

Third, OZ Memo #5 stated, "5. The Office of Corporation Counsel should advise the Board what criteria the Zoning Commission uses to determine what is a 'minor modification' in contrast to what is a 'major modification' of an Order." In fact, 11 DCMR §2409.2 provides, "The Zoning Regulations Division of the Department of Consumer and Regulatory Affairs shall not approve a permit application unless the plans conform in **all** respects to the plans approved by the Zoning Commission" (emphasis added).

11 DCMR §2409.6 further provides, "The Chief of the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs shall have the authority to approve minor modifications in the final plans as approved by the Zoning Commission. These modifications shall be limited to the following: (a) A change not to exceed two percent (2%) in the height, percentage of lot occupancy, or gross floor area of any building; (b) A change not to exceed two percent (2%) in the number of residential units ... or gross floor area to be used for commercial or accessory uses; (c) A change not to exceed two percent (2%) in the number of parking or loading spaces; ..." The changes (such as one vs two ingress/egress streets) revealed to date by GWU do not fall within this 2% rule; instead, they require review by the Zoning Commission.

DC Responses

The ZA did not make any submission by the Board's May 18th deadline. Instead, on May 21st, the ZA provided a bureaucratic gobbledygook e-mail explanation about unavailable computer calendar records. Barbara Kahlow replied for the WECA to the ZA's Counsel, "Thank you for forwarding this information. As you know, we know of NO meetings where Michael Johnson shared GW's secret building plans with our community. I intend to make this point in our Findings of Fact."

The WECA understands that the DC Corporation Counsel did make a timely submission to the Board but it did not serve the other Parties, claiming attorney-client privilege.

GWU Submission

On May 18th, GWU made a timely submission and copied all Parties. Exhibit A, the small-scale building permit plans, are barely legible. It is impossible to determine from them what GWU's full plans are for 1957 E Street. Exhibit B, the January 1993 application by the Associated General Contractors (AGC) for final PUD approval helps make the WECA's case that GWU's plans differ from those approved for the AGC. First, the AGC's plans provided for retail uses (see 4.12: "Provide ancillary retail ... including, but not limited to, lobby shop, delicatessen, or book and publication sales") while GWU's unreadable plans do not appear to provide any retail.

Second, nearly half of the AGC's application presented traffic analyses, as required by the Zoning Commission (see Zoning Commission Condition #11 in 5.3: "The Applicant shall submit information about and address the following ... The level of service for traffic at peak hours for the intersections of 19th and F Streets, and 20th and F Streets ..."), to support its two ingress/egress streets (19th and 20th) plan.

Third, there are various statements to confirm AGC's intended non-dormitory residential use, such as "Reduce the number of residential units to allow for larger units, in response to market conditions" (in 4.12), and "the development will stimulate the production of new housing" and "increased District tax revenues" (in 8.2, Neighborhood Goals).

Thank you for this opportunity to respond to the various submissions requested by the Board.

Sincerely,

John. C. Batham
President

cc Arthur Parker, Esq., Corporation Counsel
Marie Sansone, Esq., Corporation Counsel
Michael Johnson, Zoning Administrator
Elizabeth Elliott, Chair, ANC-2A
GWU, c/o Phil Feola, Esq., Shaw Pittman