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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

June 1, 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 for 1957 E Street, N.W. (Square 122, Lot 835)

Dear Chairperson Reid and Members of the Board:

This letter transmits Intervenor West End Citizens Association's (WECA's) proposed Finding of Fact and Conclusions of Law for BZA Appeal No. 16701, 1957 E Street, N.W. (Square 122 Lot 835). Also enclosed is a disc with this document in WordPerfect format.

If any additional information is needed, please contact WECA Member Barbara Kahlow during the day on 226-3058.

Sincerely,

John C. Batham
President

Enclosures

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

BZA
Case No. 16701
Exhibit No. 46

Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.46

Findings of Fact and Conclusions of Law
for BZA Appeal No. 16701 for 1957 E Street, N.W. (Square 122, Lot 835)

FINDINGS OF FACT:

1. ZC Approval of AGC PUD. Lot 835, Square 122 at 1957 E Street, N.W. was zoned SP-2. On November 15, 1993, the Zoning Commission (ZC) conditionally approved a planned unit development (PUD) for the Associated General Contractors (AGC), with an associated map change to C-3-C if and only if the PUD was built according to the conditions in ZC Order No. 746 (Case No. 93-5F/91-18P) **(WECA Exhibit A)**. On March 11, 1996 and February 8, 1999, the ZC twice extended its approval for the AGC PUD in ZC Orders No. 746-A and 746-B, respectively **(WECA Exhibits B and C)**.

2. DC Rules Governing PUDs. 11 DCMR §2400.1 provides that, "The planned unit development (PUD) process is designed to encouraged (sic) high quality developments that provide public benefits." 11 DCMR §2400.2 explains, "The overall goal is to permit flexibility of development and other incentives, such as increased building height and density; Provided, that the project offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare and convenience." 11 DCMR §2403.6 explains, "Public benefits are superior features of a proposed planned unit development that benefit the surrounding neighborhood or the public in general to a significantly greater extent than would likely result from development of the site under the manner of right provisions of this title."

3. DC Law Governing PUD Amenities. On December 31, 1998, the DC City Council passed the Comprehensive Plan Amendment Act of 1999 (DC Act 12-609). Section 1327, Ward 2 Actions in Support of Residential Land Use Objectives, provides, "(j) A substantial part of the amenities provided in proposed Planned Unit Developments (PUDs) shall accrue to the community in which the PUD would have an impact."

4. DC Law Exclusion from the CEA. To ensure that any development on 1957 E Street would need to fully comply with the DC Environmental Policy Act, Section 199.1 of the Comprehensive Plan Amendment Act of 1999 (passed by the DC City Council on 12/31/98) specifically excluded 1957 E Street from the Central Employment Area (CEA). The George Washington University's (GWU's) June 1999 purchase of Lot 835, Square 122 was after the early 1999 effective date of this Act.

5. AGC Plan. The January 1993 AGC application (signed 2/24/93) for final PUD approval (GWU's 5/18/01 Exhibit B) provided for retail uses (see 4.12: "Provide ancillary retail including, but not limited to, lobby shop, delicatessen, or book and publication sales). Second, nearly half of the AGC's application presented traffic analyses, as required by the ZC (see ZC 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).

6. AGC-Community Negotiated Deal. The Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) supported the proposed PUD based on the public benefits to benefit the surrounding neighborhood and the public in general negotiated with the AGC. The quid pro quo for the community's support of excessive building rights in the PUD included: (a) a residential component with 47-56 condominium apartments with balconies for liveability, and with one dedicated parking space per apartment (to protect scarce neighborhood parking), which would also provide revenue for the AGC to support its expansion plans; (b) a retail component to replace community-oriented retail formerly on site, which would also provide rental income for the AGC to support its expansion plans; and (c) two ingress and egress streets (on 19th and 20th Streets) to evenly spread the traffic impact on the community. In addition, the PUD was fashioned to retain the AGC in the District of Columbia.

Sara Maddux, former ANC-2A Chair who led the community's negotiations with the AGC, testified, "The AGC pursued the PUD process in order to keep its headquarters building within the District of Columbia. This was, of course, in keeping with the city planning goals. In order to do this, the AGC needed more space that would be provided by a PUD to do three things: Build a condominium design structure in order to sell the units to pay for the other portions of the building; accommodate the needs of its headquarters organization; and have a portion of the office building for lease to generate income to support its building and to provide retail space to meet the needs of the residents and the commercial tenants. The residents of the neighborhood especially supported the portion which included the condominium units. This would contribute to a residential base which would generate property taxes and income taxes for the District of Columbia. Secondly, the 47 to 54 residential units were designed to be as homes including the balconies and in-house parking spaces which are typical of an upscale urban residential building. The PUD was expected to produce real estate condominium units as noted in section 15A 'in response to market conditions,' obviously units to be sold ... This was further supported by the letter filed by Mr. Feola during the last request for extension of the PUD ... This project will bring $3 million in revenues to the tax coffers of the District of Columbia" (5/1/01 transcript, pp. 124-5 & 176).

Ms. Maddux also explained, "When it was designed originally it was to balance out the traffic pattern flow on 20th Street and 19th Street. ... So there was an effort to balance the traffic impact in the neighborhood by having the two entrances, and also to balance off the truck traffic for servicing a commercial building and having a separate truck entrance for the condominium residential unit. We specifically worked on the design of that" (5/1/01 transcript, pp.145-6).

7. ZC Order for Model Residential. Finding of Fact #3 in ZC Order No. 746 shows that the AGC intended to develop a 47-56 unit apartment component as part of the project. Finding of Fact #14 provides for new residential housing units. Finding of Fact #17a shows that the AGC wanted flexibility to, "Vary the number of residential units to allow for larger or smaller units, in

response to market conditions, so long as there are no less than 47 residential units in the project with no reduction in the gross square footage devoted to residential use." Finding of Fact #26 states, "The Commission finds that the proposed PUD will provide essential housing in the Downtown area and will act as a model for mixed-use development in this transition area between the high-density Central Employment Area and the residential Foggy Bottom neighborhood." Decision #6 provides that the PUD will have 47-56 residential units. Decision #7 requires that there will be "at least one parking space designated for each residential unit."

8. ZC Order for Retail. Finding of Fact #17e in ZC Order No. 746 shows that the AGC intended to, "Provide not more than 5,000 square feet of ancillary, retail-oriented space on the ground floor of the property." Decision #15e shows that the AGC intended to, "Provide not more than 5,000 square feet of ancillary, retail space on the ground floor of the project."

9. ZC Order for Two Ingress/Egress Streets. Finding of Fact #13 in ZC Order No. 746 provides, "Loading and parking access to the office portion of the development will be from 19th Street, N.W. loading and parking access to the residential portion of the development will be from 20th Street, N.W." Decision #8 requires that, "Loading areas, driveways and walkways shall be located on the site as shown on Exhibit No. 5B of the record," i.e., with ingress/egress driveway both on 19th and 20th Streets.

10. GWU's Secret Plan. In June 1999, GWU purchased Lot 835, Square 122 from the AGC. To date, GWU has not presented its plans to: (a) the Board of Zoning Adjustment (BZA) which had jurisdiction over campus plans; (b) the ZC, which has jurisdiction over PUDs; (c) ANC-2A; or (d) the West End Citizens Association (WECA), the principal community organization in the GWU neighborhood. In response to a question about GWU's presenting its building plans to the ANC or the ZC, Zoning Administrator (ZA) Michael Johnson testified, "I did encourage the University to do so and open strong communication" (4/10/01 transcript, p. 93).

11. GWU's Plan to Assume PUD. GWU assumed that it could take advantage of the excessive building rights in the AGC PUD and make changes to the conditionally approved plans without any public review by the BZA, ZC, ANC-2A or WECA and without any public benefits to the surrounding neighborhood or the public in general - despite DC Rules Governing PUDs (see Finding #2 above) and DC Law Governing PUD Amenities (see Finding #3 above). The AGC has moved out of DC (to Virginia) and GWU is neither offering housing for additional permanent DC taxpaying residents nor neighborhood retail.

12. DC City Councilmember Request. At the request of the community to learn about GWU's secret plans, Ward 2 City Councilmember Jack Evans asked the Department of Consumer and Regulatory Affairs (DCRA) to provide him with all GWU permit applications and all DC-issued permits for 1957 E Street. On September 1, 2000, DCRA provided only four of the then six permit applications and permits (**WECA Exhibit I**): the application and permit for removal of an underground tank and the application and permit to raze the old AGC building. In

fact, Mr. Evans was not provided with GWU's December 7, 1999 application to construct a building and GWU's July 20, 2000 application for a sheet and shoring permit.

13. News of GWU's Plan. The only news of GWU's plans were in September 19, 2000 and October 19th news stories in GWU's publications (**WECA Exhibit E**). These articles revealed that GWU planned to move an on-campus institutional use off-campus and to build an undergraduate student dormitory at 1957 E Street.

14. WECA and ANC-2A Motions. On September 25, 2000, i.e., right after GWU's September 19th article (discussed in Finding #13 above) and before any on-site construction, the WECA initiated the Foggy Bottom-West End community's objections to GWU's "secret" plans by filing motions with the Office of Zoning (OZ) requesting party status for the 1993 conditionally approved PUD, and requesting that the ZC declare this PUD null and void. On September 25th the WECA also filed a motion with the OZ for a declaratory ruling of noncompliance with GWU's then current campus plan (BZA No. 14455). On October 2nd, ANC-2A filed nearly identical motions, passed at a September 20th ANC monthly meeting. At its October 16th meeting, the ZC referred these four motions to the ZA.

On November 17th, the WECA met with the ZA and asked if there were any pending applications. The WECA questioned the ZA, "Did we ask if there were any building application or other applications pending? Mr. Johnson: I believe that you did" (4/10/01 transcript, p. 126) The ZA said that there were none, i.e., he did not reveal GWU's pending December 7, 1999 application to construct a building. On December 5, 2000, the WECA requested copies of all GWU permit applications and permits from DCRA. After none were provided, on December 27th, the WECA filed a Freedom of Information Act (FOIA) request. Finally, on January 30, 2001, DCRA provided only six of the then 16 permit applications and permits to the WECA, i.e an incomplete reply to a valid FOIA request (**WECA Exhibit I**).

15. DC Stop Work Order. On October 19, 2000, the WECA obtained a stop work order from DCRA since the old AGC building had been razed but GWU was illegally proceeding with construction without the necessary permits (**WECA Exhibit H**). ANC-2A Chair Elizabeth Elliott testified, "And they were beginning construction, but it was described as continuance of demolition on the site" (4/10/01 transcript, p. 47).

16. GWU's Application. On December 7, 1999, GWU applied for a building permit for residential units (**WECA Exhibit D**), i.e., not 47-56 apartments, as required by ZC Order No. 746. On July 20, 2000, GWU applied for a sheet and shoring permit with no (0) residential units. Other subsequent GWU permit applications (on 10/26/00, 11/4/00, 12/19/00 & 4/5/01) also reflected no (0) residential units (**WECA Exhibit H**).

17. DC Rules Governing PUD Changes. 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." 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."

ZC Member Herbert Franklin stated, "If the PUD order does not contemplate modifications in the areas that are involved, then you have the question of does the Zoning Administrator under the regulations have the authority" (5/1/01 transcript, p. 192).

18. GWU's Changes to AGC PUD. In the Board's April 10, 2001 and May 1st hearings GWU identified several changes to the approved AGC PUD plans. These include: (a) one versus two ingress and egress street entrances, and one versus two parking garages (5/1/01 transcript, pp. 84-5, 92, 108, 129, 145-6 & 160); (b) no retail component (5/1/01 transcript, pp. 96-9, 119, 125, 138 & 146); (c) 220 student dormitory beds with a residence hall office instead of 47-56 condominium apartments with one dedicated parking place per unit (5/1/01 transcript, pp. 102-3, 118, 124-5, 129, 130, 144 & 175-6); (d) no residential apartment balconies (5/1/01 transcript, pp. 83, 96, 104-5, 108, 125, 129, 138, 145 & 160-1); (e) reduced floor area ratio (FAR) (5/1/01 transcript, pp. 84, 92, 119 & 160); and, (f) a change in the phases of construction (5/1/01 transcript, pp. 84-5).

None of these changes fall within the 2 percent rule of discretion given to the ZA in 11 DCMR §2409.6. As a consequence, these changes require a PUD modification case to be presented to the ZC for approval and public review. On different occasions, OZ Director and former ZC Member Jerrily Kress advised both ANC Commissioner Dorothy Miller and the WECA that a ZC modification case is necessary. Mrs. Miller testified, "I took a copy to Mrs. Kress. And she looked at it, and she says, 'They have to come back before the Zoning Commission'" (4/10/01 transcript, p. 65). ZC Member Franklin questioned the ZA, "Mr. Johnson, you said you had no compunctions about requiring something to go back to the Zoning Commission for modification. Had that occurred in this particular case, is it correct to infer that you have to issue a stop work order?" and then the ZA replied, "That is correct" (5/1/01 transcript, p. 167).

The ZA, after he was questioned if he found "any changes whatsoever from that approved by the Zoning Commission for the PUD" besides the removal of balconies, erroneously stated "I don't believe that was the case, no" (4/10/01 transcript, p. 132).

Current ANC-2A Chair Elizabeth Elliott testified, "The change in GW's plans, taking condominium apartments available to the community at large at market rates off of the market

and making them unavailable to nonstudents violated the heart of the PUD" (5/1/01 transcript p. 176).

19. No Public Benefits. 11 DCMR §§2400.1, 2400.2 and 2403.6 (cited in Finding #2 above) and Section 1327 of the Comprehensive Plan Amendment Act of 1999 (cited in Finding #3 above) require that a PUD must provide public benefits and that a substantial part of the amenities must accrue to the community in which the PUD would have an impact. GWU's assumption of the AGC PUD provides no known public benefits. ZC Member Franklin commented, "the purpose generally of granting a PUD has to do with its effect on the surrounding neighborhood and the benefits to be derived" (5/1/01 transcript, p. 87). Ms. Maddux explained, "A PUD is like a contract: benefits given by the District of Columbia for benefits received" (5/1/01 transcript, p 127).

BZA Chair Sheila Cross Reid questioned the ZA, "In regard to the PUD that is being discussed, there has been several assertions ... that in this instance, unlike the contract that was initially entered into with AGC, there was no public benefit derived as a result with George Washington. And I'd like someone to speak to that or to give us some light as to whether or not this in fact is true or, if it's not, and if there was a public benefit then what was it" and then the ZA responded, "There's a school of thought that thinks, and strongly believes that universities in the Nation's capital not only benefit locally, but they benefit people nationally and worldwide" (5/1/01 transcript, p. 165). The only so-called public benefit of any kind offered by any witness at the two-day hearing was this statement by the ZA.

20. Incomplete Compliance with DC Environmental Policy Act. GWU's undated and unsigned Environmental Impact Screening Form (Exhibit H in GWU's 4/10/01 & Exhibit J in GWU's 4/24/01 submissions) admits that its project exceeds $1 million. The DC Environmental Policy Act defines "major action" as "any action that costs over $1 million and that may have a significant impact on the environment." In April 2000, ANC-2A passed a resolution that asked DC to require an environmental impact statement (EIS) for this major action; however, it appears that DC did not give this ANC resolution great weight, as required by the ANC law, since the ANC never even received a response from DC (4/10/01 transcript, p. 121).

GWU's December 7, 1999 application for a building permit **(WECA Exhibit D)** shows that DC was supposed to have signoff by the Environmental Policy Review of the Environmental Regulation Administration before it issued a building permit. Ms. Miller's Exhibit 30 shows such signoff for the AGC's plans. DC's environmental regulations (20 DCMR §7204.3) require applicants to submit "traffic analyses" with their Environmental Impact Screening Form. GWU did not do so. The ZA, after he was questioned, "Was there a signoff by the Environmental Policy Division for all of the other kinds of environmental effects, such as traffic and parking? If so, where is that signoff? Where are those documents?," stated "I don't know the answer to that question, but I can presume that it was" (4/10/01 transcript, pp. 139-40). The ZA should not have issued a permit until GWU fully complied with DC's environmental regulations and until the Department of Public Works (DPW) considered not only the traffic but also the neighborhood

parking implications of GWU's application for a building permit. The record shows no DPW review or signoff to date. In addition, GWU's April 5, 2001 "Environmental Intake Form" answered "no" to "Will any mature trees be removed from the site?" since GWU had already removed them. The record does not include any permit for such environmental damage.

21. Adverse Impact on the Community. The WECA is primarily interested in maintaining a residential neighborhood in Foggy Bottom-West End. GWU's proposed site use for 1957 E Street would undermine the continued quality of residential life in Foggy Bottom-West End. Besides adverse environmental effects, such as reduced on-street parking and increased traffic and removal of mature trees, WECA Members could have substantial rent increases, property values negatively affected, and other adverse effects.

22. Errors by DC. First, in December 1999, DCRA did not notice ANC-2A, as required by the ANC law, after receipt of GWU's application for a building permit (4/10/01 transcript, p. 64). In fact, the ZA is apparently unfamiliar with the law governing ANCs since he erroneously testified, "The raze permits are not required to go back to the ANCs" (5/1/01 transcript, p. 193) Second, in September 2000, DCRA provided an incomplete reply to Ward 2 City Councilmember Jack Evans' request for all GWU permit applications and DC-issued permits (see Finding #12 above).

Third, on October 23, 2000, DCRA erroneously told GWU that Lot 835, Square 122 was located within the CEA (see Finding #4 above) and, thus, is "exempt" from some of the requirements of the DC Environmental Policy Act (Noble to Honey letter in ZA's 4/25/01 submission). Nonetheless, GWU Counsel Phil Feola was aware that this site was outside of the CEA since he participated in the public decision meetings on this exclusion while he represented the AGC. Fourth, DCRA failed to fully comply with the DC Environmental Policy Act for a major action and should not have signed off on GWU's building permit application until there was full compliance with the Act. DCRA, as lead agency under the DC Environmental Policy Act, was responsible for ensuring full compliance (4/10/01 transcript, pp. 99 & 106). DCRA was supposed to have signoff by the Environmental Policy Review of the Environmental Regulation Administration before the ZA issued a building permit (see Finding #20 above). Also, DC's environmental regulations (20 DCMR §7204.3) require applicants to submit "traffic analyses" with their Environmental Impact Screening Form. GWU did not do so and DCRA did not request DPW review and signoff for traffic and parking impacts. DC Corporation Counsel attorney Marie Sansome advised, "there is in the file that's in front of the Board at this time no final determination by DCRA whether [an EIS] was required or not" (5/1/01 transcript, p. 187). The ZA testified that the final signoff on a building permit is "Ultimately the director of the department [DCRA]" (5/1/01 transcript, p. 189). Since there was no final determination or signoff by the DCRA Administrator, the ZA should not have issued a building permit.

Fifth, on December 27, 2000, without citing any provision in law or the codified rules, ZA opined that, "It is premature for this Office to make any findings regarding the actual uses in the proposed buildings (sic)" (**WECA Exhibit F**). The ZA opined that GWU's change in use did not

need to be reviewed until the building was built. The body of legal requirements governing review of land use in DC requires review prior to permit issuance, not after a building is built. Sixth, on December 28, 2000, the ZA improperly issued a building permit **(WECA Exhibit G)**. The PUD regulations only allow the ZA to approve changes under the 2 percent rule; all other changes require submission of a PUD modification case to the ZC (see Finding #17 above).

Seventh, in January 2001, DCRA provided an incomplete reply in response to the WECA's FOIA request for all GWU permit applications and DC-issued permits (see Finding #14 above). Eighth, at the BZA's two-day hearing, the ZA mis-stated that he had several/seven/numerous meetings with community representatives where he shared GWU's building design plans; in fact, there were no such meetings (4/10/01 transcript, pp. 70-1, 93 & 123-4; 5/1/01 transcript, pp. 162-3 & 165). He also testified to meeting with Barbara Kahlow "numerous" and "several" times; in fact, there was only one such meeting where no design plans were shared since he stated that no building application was even pending (see Finding #14 above) (4/10/01 transcript, pp. 71 & 123; 5/1/01 transcript, p. 162).

23. Errors by GWU. - First, GWU's December 1999 and subsequent permit applications only reflect 5 or no (0) residential units (see Finding #16 above). Second, in October 2000, GWU began construction without required DC permits, necessitating a DC stop work order (see Finding #15 above). Third, GWU submitted an unsigned and undated Environmental Impact Screening Form and did not submit required traffic analyses (see Finding #20 above). Fourth, GWU plans to make several changes to the AGC's PUD which do not fall within the 2 percent discretion of the ZA (see Finding #17 above) and, thus, require a PUD modification case to be submitted to the ZC (see Finding #18 above). Fifth, GWU's plans for adoption of the AGC PUD remove all public benefits; in fact, there are no public benefits associated with the GWU plan (see Findings #11 & #19 above). Sixth, GWU's "expert" witnesses are apparently unfamiliar with DC's zoning rules governing PUDs since they differentiated between "minor," "major," and "major significant" changes even though there is no such distinction in 11 DCMR §2400 et seq. (5/1/01 transcript, pp. 83-4, 92, 94, 96-7, 99-100, 104-5, 107-8, 115-7, 129 & 160-1).

24. Great Weight to ANC-2A. As required by the law establishing the ANCs, the Board has given great weight to the appeal by ANC-2A.

CONCLUSIONS OF LAW:

Based on the findings of fact and evidence of record, the Board concludes that several changes in the GWU plan (Findings #11, #16 & #18 above) from that approved by the ZC for the AGC (Findings #5-#9 above) require GWU to submit a PUD modification application to the ZC.

11 DCMR §§2400.1, 2400.2 and 2403.6 (cited in Finding #2 above) and Section 1327 of the Comprehensive Plan Amendment Act of 1999 (cited in Finding #3 above) require that a PUD must provide public benefits and that a substantial part of the amenities must accrue to the community in which the PUD would have an impact. Based on the findings of fact and evidence

of record, the Board finds no known public benefits in the GWU plan (Findings #11 & #19 above).

11 DCMR §2409.2 (cited in Finding #17 above) specifically limits the modifications within the discretion of the ZA (basically the 2 percent rule). Based on the findings of fact and evidence of record, the Board finds that several changes in the GWU plan do not fall within the specific limits of the ZA's discretion. Thus, the ZA erred in issuing a building permit to GWU.

Based on the findings of fact and evidence of record, the Board finds that DCRA failed to fully comply with the DC Environmental Policy Act and its implementing rules (including 20 DCMR §7204.3) in its review of the GWU plan (cited in Findings #20 & #22 above). The Board directs GWU to fully comply with this Act and the governing rules prior to submission of a PUD modification application to the ZC.

Based on the findings of fact (Finding #18 above) and evidence of record, the Board directs DCRA to issue a stop work order until the ZC reviews and approves a PUD modification application by the GWU.

In light of the foregoing discussion, the Board concludes that applicant ANC-2A and Intervenor WECA have shown by a preponderance of the evidence that the ZA erred in issuing a building permit before the GWU submitted a PUD modification application to the ZC for its review and public comment. Therefore, the Board concludes that the appeal is **GRANTED**.