Foggy Bottom and West End
Advisory Neighborhood Commission (ANC-2A)

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

June 1, 2001

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

Dear Chairperson Reid and Members of the Board:

Please accept the enclosed Findings of Fact and Conclusions of Law from ANC-2A as our final submission in the above-referenced appeal.

Sincerely,

Elizabeth B. Elliott

Chair, ANC-2A

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BZA
Case No. 16701
Exhibit No. 47

Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.47

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

ANC-2A concurs with and supports the West End Citizens Association's (WECA) in all points covered in its exhaustive and thorough Findings of Fact regarding BZA Appeal #16701 of the Zoning Administrator's (ZA) decision on the 1957 E Street, N.W. property.

This includes but is not limited to:
A. Conditional approval of AGC PUD and associated map change by the Zoning Commission (ZC) dependent on strict adherence to PUD Orders.

B. DC Rules Governing PUDs and PUD Amenities and the manner in which GWU's changes to the AGC PUD violates these rules and deprives the community of any amenities despite the granting of excess building rights.

C. The AGC plan, community involvement in the plan, and the AGC-community negotiated deal—including condominium housing, retail, tax benefit to DC, and two parking lots—cited throughout the PUD Orders.

D. GWU's plans and actions to acquire the AGC PUD, GWU's secret building plans, and GWU's many changes and modifications of varying degrees to the uses of the PUD, all with adverse impacts on the surrounding community.

E. GWU's incomplete compliance with the DC Environmental Policy Act including no traffic and parking analyses, unauthorized tree removal, and over-one-million-dollar-project size as a trigger for an EIS. Failure on ZA's part to recognize his responsibility to refuse building permit issuance to GWU until there was full compliance with the DC-EPA. And DC's non-responsiveness to ANC-2A's April 2000 resolution asking DC to require an environmental impact statement (EIS).

F. Errors by GWU and errors by DC, resulting in no public benefits accruing to the community despite that being the purpose of PUDs versus matter-of-right development. The ZA's approval of GWU's "annexation" of the AGC PUD for student-only housing and academic-only use will continue the adverse impact on the non-student community residents.

G. Problems and Errors in AGC PUD Covenant.

1. In his 4.24.01 response to a request from the BZA for additional information regarding the Associated General Contractor's (AGC) PUD Covenant, Mr. Michael Johnson, the ZA, wrote the following: (BZA Question) 3. Identify when DCRA/ZAO reviewed the covenant and when it was placed in the file. (ZA Answer) As a matter of process, covenants are not submitted to staff to be reviewed during the application process. It has been past practice that the Board makes such approvals.

In fact, Zoning Commission (ZC) Order No. 746, Decision #17 includes the following: "No building permit **shall** be issued for the PUD project until the applicant has recorded a covenant in the land records of the District of Columbia, between the owner and the District of Columbia, **satisfactory to the Office of the Corporation Counsel (CC) and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA)**." (Emphasis added.)

2. At the April 10, 2001 BZA hearing on this appeal, GWU Counsel produced a copy of the Associated General Contractors (AGC) PUD Covenant, dated February 15, 1999 and date-stamped into the D.C. records on April 21, 1999.

This was nearly six years after the original conditional PUD approval. At the time, AGC had "For Sale" signs on the 1957 E Street property for nearly a year and was in the process of selling said property. In his testimony (5.1.01 transcript, p.81 l.15-19), Mr. Tom Butcavage stated that "Around February of 1999, our firm was hired to evaluate for the University prior to their purchase of the property, to evaluate if complying with the requirements of the PUD would allow them to achieve their program on the site and their function on the site. Our firm had prepared the PUD in 1993..."

3. The PUD Covenant included and cited only Zoning Commission Orders No. 746 and 746A and not 746B. Order No. 746A extended Order No. 746 for a period of two years, giving the Applicant until December 10, 1997 to file for a building permit, and had expired by the February 15, 1999 date.

4. Additionally, at the time of the AGC's February 15, 1999 PUD Covenant filing, the April 8, 1993 Commission of Fine Arts (CFA) initial concept approval (required in Order No. 746, Decision #15-d) for the original AGC submissions, in effect for four years, had expired. Despite the lack of this required approval of the project, the covenant was filed and erroneously approved by then-ZA, Armando Lourenco.

5. Further on in his cross-examination (5.1.01 transcript, p.101 l.17-19), Mr. Butcavage stated: "We learned that the original Fine Arts approval on the 1993 PUD design had expired when we went to talk about resubmitting for approval." And again (5.1.01 transcript, p.102 l.1-2) "... in my professional opinion the PUD required Fine Arts approval and we received Fine Arts approval." What Mr. Butcavage did not mention was the timing of his firm's application (August 1999) and approval (September 1999) dates involving the CFA—well after the incorrect AGC PUD Covenant had been filed and AGC had sold the property to GWU. And, finally, after presenting himself as well-versed in PUD orders, Mr. Butcavage replied in cross (5.1.01 transcript, p.102 l.2-3), "I don't know anything about the relationship to the covenant."

6. The March 1, 1999 Interim OZ Director Sheri M. Pruitt-Williams signed off on the PUD Covenant including the statements in parts "a" and "b" indicating that there had been no change in the zoning regarding this PUD site since the effective date, December 10, 1993, of Orders No. 746 and 746A. WECA's Findings of Fact citation of the 12.31.01 passage by the City Council of the Comprehensive Plan Amendment Act, specifically excluding the 1957 E Street NW property from the Central Employment Area, contradicts the validity of that approval.

H. Numerous versions of project "approval" drawings and missing requested permit application drawings.

1. Set #1 – A copy of the AGC PUD approval drawings (dated, stamped by the ZC and initialed 5.27.93) obtained in April, 2001 by ANC-2A from the OZ file on PUD application Case No. 93-5F/91-18P. These drawings indicated 44 residential one- and two-bedroom apartment units, three separate entrances for Residential, AGC and Commercial, two separate and distinct parking entrances and garages, and balconies, a roof deck, a commercial kitchen and small commercial tenant spaces on the ground floor.

2. Set #2 – Facsimile copies of "schematic" concept drawings submitted on 9.16.99 by KCF/SHG Architects on behalf of GWU to the CFA for concept approval of the 1957 E Street site. (The original concept approval on the AGC schematics had expired in April, 1997.) Included were three perspective drawings of the E-Street façade, one plan of the roof, and one plan of the ground floor. Indicated in place of the apartment residences was a dormitory. The commercial and AGC areas had been combined into one set of classroom spaces with two separate entrances, and the Elliott School was indicated to be on the upper floors.
3. Set #3 – One elevation from the PUD approval drawings, two sections showing the proposed change—the elimination of two floors—in the classroom/Elliott School portion of the PUD, and some rough sketches of proposed changes—elimination of one entry-exit driveway and consolidation of garage into one space—indicated. These drawings came as an attachment to the above-cited 4.29.99 letter to Armando Lourenco and were submitted by GWU counsel at the 5.1.01 hearing.
4. Set #4 – Another set of the 2.26.93 PUD approval drawings requested by the Board for all parties at the 5.1.01 hearing and attached to a 5.18.01 letter from GWU counsel.
5. Missing Set – Also requested by the Board at the 5.1.01 hearing and referenced in the above-cited GWU counsel letter were a small version of a selection of plans submitted by the University for a building permit. They were missing from the letter. In April, ANC-2A Commissioner Elliott spent several hours at the Permit Office inspecting the full-size permit application drawings that the ZA submitted to the Board at the 5.1.01 hearing. Those drawings included electrical, plumbing, and HVAC as well as detailed design plans. On the residential portion of the design drawings, an occupancy rate of 220 persons was indicated on what was referred to as the "Residence Hall" portion of the PUD. Commissioner Elliott also inspected additional drawings indicating changes to the project dated 3.30.01 that were being held in the Office of Records.

I. As required by the law establishing ANCs, the Board has given great weight to this 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 (WECA Findings #11, #16 & #18) from that approved by the ZC for the AGC (WECA Findings #5-#9) require GWU to submit a PUD modification application to the ZC. 11 DCMR §§2400.1, 2400.2 and 2403.6 (WECA Finding #2) and Section 1327 of the Comprehensive Plan Amendment Act of 1999 (WECA Finding #3) 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 (WECA Findings #11 & #19).

11 DCMR §2409.2 (WECA Finding #17) 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 (WECA Findings #20 & #22). 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 (WECA Finding #18) 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**.