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

July 23, 2001

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

Re GWU's Motion for Reconsideration and To Reopen the Record
BZA Appeal No.16701 (1957 E Street, N.W.)

Dear Chairperson Reid and Members of the Board:

This letter provides a response by Intervenor West End Citizens Association (WECA) to the July 20, 2001 "Motion for Reconsideration and To Reopen the Record" filed by Intervenor George Washington University (GWU). GWU's filing is replete with factual errors (e.g., the staff of the Commission of Fine Arts (CFA) mistakingly believes that the Board of Zoning Adjustment (BZA) mandated design changes in its Appeal Order instead of the staff's being aware of their prior approval in the Zoning Commission's PUD Order, Exhibit A-1) and misinformation (e.g., the nonexistence of meetings between the Zoning Administrator and the Foggy Bottom community organizations about GWU's building permit application, p. 6). Thirteen examples of these errors are provided in the Attachment. Because of these errors, if the BZA decides to reopen the appeal, the WECA requests full notice in the DC Register, an opportunity to be heard and have cross examination at a public hearing (especially about the new material for the record included in GWU's submission), and an opportunity to respond.

This new material provides evidence to substantiate previous testimony by Appellant Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) and Intervenor WECA that the residential apartments approved by the Zoning Commission were intended to be condominiums. In the transcript of the September 16, 1999 CFA meeting, GWU testified , "It had a condominium apartment house on the left-hand side that actually had balconies" (Exhibit A-7, p. 3). This transcript also reveals startling new information that GWU intends to extend its campus boundaries to E Street. GWU testified, "we're very pleased to be here and very excited about this major project to create a new entrance for the campus on Rawlings Park ... E Street" (Exhibit A-7, p. 1).

Incredibly, GWU stated that "It is difficult to see how the University could have been more thorough and/or diligent" (p. 14) and "This is not a situation where the University plowed ahead with its plans, failing to seek outside input" (p. 15). In fact, it is precisely a situation where GWU was not diligent and plowed ahead with its secret plans and modifications without any

BZA
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Exhibit No. 57

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presentation to ANC-2A, the BZA or the Zoning Commission. The community questioned GWU's secret plans well before any shovel of dirt was turned. As a consequence, GWU faces a self-inflicted injury since the Board vacated the improperly-issued building permit.

It is clear from the CFA staff"s recent letter, presented as part of GWU's new information, that the changes made by GWU to the approved PUD "significantly alter the final design" (Exhibit A-1). As a consequence, it is clear that the BZA's decision requiring a PUD modification was both justified and necessary.

Thank you for this opportunity to respond to Intervenor GWU's Motion and for your consideration of our comments.

Sincerely,

John. C. Batham
President

Attachment

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

13 Examples of Errors in GWU's July 20, 2001 Motion
(in order of their appearance vs importance)

- pp. 1, 6 & 7, "minor" modifications to the building plans & "slight" modifications from the plans approved as part of the planned unit development (PUD) - the changes made by the George Washington University (GWU) to the Associated General Contractors (AGC) PUD are by no means minor or slight. For an enumeration of some of the known changes, see #18 on pp. 5-6 in the West End Citizens Association's (WECA's) June 1, 2001 Findings of Fact and Conclusions of Law.

- pp. 2 & Exhibit A-1, "BZA has requested changes that could **significantly** alter the final design ... (1) replacing cast stone as exterior ..., (2) adding an additional garage entrance, and (3) adding balconies" (emphasis added) and "BZA action mandating ... design changes" - the June 20, 2001 letter from staff of the Commission of Fine Arts (CFA) shows that the CFA staff mistakingly believes that the BZA mandated design changes in its Appeal Order and the CFA staff was apparently unaware of the specifics in the Zoning Commission's PUD Order, the AGC's application and its oral testimony. Exhibit A-8 shows that CFA's approval for the AGC PUD expired on April 8, 1993 so GWU presented anew.

- p. 3, "none of the bases for granting the appeal were the subject of testimony or other credible evidence from the appellant" - both Appellant Advisory Neighborhood Commission (ANC) 2A and Intervenor WECA provided ample testimony about the bases for the Board's granting the appeal, e.g., about the previously-negotiated balconies and two garage entrances (see the WECA's 6/1/01 9-page Findings of Fact and Conclusions of Law for these bases and many more).

- pp. 3-4, the PUD changed the zoning of the property from SP-2 to C-3-C - in fact, the change in zoning was conditioned on exact compliance with not only the PUD Order but also the AGC's application and its oral testimony.

- pp. 5 & 16, the PUD meant "implicitly University use" and "There are many uses that are permitted as a matter of right in the C-3-C Zone District including a university" - the purpose of a campus plan is to keep university uses within the campus plan boundaries and there was no "implicit" approval in the PUD Order for university use at this off-campus site; in addition, C-3-C zoning only applied to the exact conditionally-approved PUD so it is irrelevant if university use is allowed in a C-3-C zone.

- pp. 5-6, elimination of the garage on 20th Street was permissible pursuant to the flexibility of the PUD order - elimination of the split traffic impact was clearly not within the Order's flexibility.

- p. 6, "During the pendency of the building permit application, Mr. Johnson had several meetings with representatives of ANC 2A and the West End Citizens Association" - this is flatly untrue.

- p. 7, balconies - even if the PUD Order is silent on them, they were included both in the AGC's application and oral testimony as well as the AGC's negotiated agreement with the community.

- p. 8, balconies are a "window detail" - balconies are clearly not a window detail; in fact, they were part of the AGC's negotiated agreement with the community to ensure long-term residential use.

- p. 11, change in exterior materials is "minor" - this is clearly not the case. In fact, GWU's exterior plans look very different from those of the AGC, including less attractive detail In Appendix A-7 (p. 3), GWU states that it "tried to get the ornamentation to be a little simpler."

- pp. 13-14, the two garage entrances were "not an issue that even warranted discussion during the Zoning Commission deliberations on the AGC PUD" and were not "a major land use decision" - the two garage entrances to spread the traffic on 19th and 20th Streets were part of the pre-PUD hearing negotiated AGC-community agreement and they were an important land use consideration to the community.

- p. 21, the appellant did not meet its burden of proof by the preponderance of the evidence - this is untrue. Intervenor WECA's June 1, 2001 9-page Findings of Fact and Conclusions of Law clearly lays out the Appellant/Intervenor WECA's case, including proof by the preponderance of the evidence.

- p. 21, the appellant "barely" mentioned the elimination of the balconies and one garage entrance - this is untrue. See pages 5-6 in the WECA's Findings of Fact and Conclusions of Law, including many page references in the hearing transcripts to both.

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From:	Barbara F. Kahlow for Intervenor West End Citizens Association		
Subject:	WECA's Response to GWU's 7/20/01 Motion for Reconsideration and To Reopen the Record, BZA Appeal No. 16701 (1957 E Street, N.W.)		

COMMENTS: