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 30, 2001

BZA
Case No. 16701
Exhibit No. 66

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 Stay of Decision, BZA Appeal No.16701 (1957 E Street, N.W.)

Dear Chairperson Reid and Members of the Board:

This letter provides an initial and partial response by Intervenor West End Citizens Association (WECA) to the July 27, 2001 "Motion for Stay of Decision" filed by Intervenor George Washington University (GWU). The WECA will complete its response by the 7-day deadline provided by the Board of Zoning Adjustment (BZA) Rules of Practice and Procedures (11 DCMR §3126.5) if this motion is retained for processing.

First, GWU's motion is not timely filed since it was not filed within the 10-day period after issuance of the Board's Order (11 DCMR §3126.2); therefore, the BZA should return it without further processing or consideration. Second, GWU's motion for a stay is incomplete. To prevail on a motion for a stay or a temporary restraining order (TRO), the requestor must meet a stringent 4-part test: that you are likely to succeed on the merits, that irreparable injury will result if the stay is denied, that the opposing parties will not be harmed by a stay, and the public interest favors the granting of the stay (see 8/2/00 BZA Order Denying Motion for Stay in Jewish Primary Day School Application No. 16556 and 11/16/00 BZA Order Denying Motions for Reconsideration and Stay Pending Appeal in Martin E. Hardy No. 16573). GWU neither addresses nor makes the case for each of the four tests. And, from WECA's point-of-view, GWU could possibly only meet one of the four tests: that GWU will suffer irreparable injury. However, since GWU's is a self-inflicted injury, WECA even questions that GWU could meet this stringent test.

Since April 2000, i.e., well over one year ago and many months before GWU turned its first shovel to construct a new building at 1957 E Street, the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) passed a resolution[1] asking Department of Consumer and

[1]ANC-2A's April 2000 resolution read in pertinent part, "Therefore, be it resolved, for the reasons recited above, that ANC-2A requests the Zoning Commission: (1) not extend the 1993 conditional PUD to GWU, (2) require GWU to present its plans that differ from the

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Regulatory Affairs (DCRA) to enforce compliance with the DC Environmental Policy Act for any project on this site, which lies outside the Central Employment Area, and contesting that GWU needs to file an amendment to the Associated General Contractors (AGC) planned unit development (PUD) for review of its plans that differ from those approved for the AGC. Incredibly, GWU has still not presented its plan to ANC-2A, has still not submitted a PUD modification application to the Zoning Commission (even after being directed to do so by the BZA on June 5, 2001), and has still not complied with the DC Environmental Policy Act. Instead, GWU, at its own risk, lawlessly proceeded. Also, DCRA has still not enforced GWU's compliance with the DC Environmental Policy Act. This enforcement is even more important now because of GWU's admission in its Motion for Stay that its actions have possibly made 19th Street, which is a major commuter artery, unstable.

The WECA also questions GWU's undocumented and seemingly incredible estimate of $12 million for it to comply with a stop work order. GWU should have shown due diligence after the Board's June 5, 2001 oral decision vacating the improperly-issued building permits, including stabilizing the site, filing a PUD modification with the Zoning Commission, and meeting with the Foggy Bottom community to reach a mutually agreeable PUD amenities package. On June 5th and subsequently, the WECA approached three GWU officials, offering to meet on an expedited basis. Instead of behaving like a good neighbor, GWU chose not to meet with the Foggy Bottom community and has proceeded to have even longer construction hours on the site, including construction both well before and well after allowable work hours. The immediately-impacted community is rightfully enraged.

Thank you for this opportunity to partially respond to Intervenor GWU's Motion and for your consideration of our comments. The WECA remains convinced that GWU's Motion for Reconsideration or Rehearing has no merit whatsoever. In fact, GWU's new evidence only reinforces the Foggy Bottom community's case.

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
David Clark, DCRA Administrator
Karen Edwards, DCRA/GC

1993 conditional PUD at a public hearing, and (3) require GWU to fully comply with the DC Environmental Policy Act prior to any construction on the site."