ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

PHIL FEOLA
202-663-8789
Phil.Feola@shawpittman.com

August 2, 2001

VIA FACSIMILE, ORIGINAL BY HAND

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

Re: BZA Appeal No. 16701

Dear Chairperson Reid and Members of the Board:

At the July 31, 2001 Board of Zoning Adjustment ("**BZA**") public meeting, the BZA took up The George Washington University's (the "**University**") Motion for Reconsideration and to Reopen the Record, as well as the related Motion for Stay of Decision in BZA Appeal No. 16701.

In its response to the University's Motions, the West End Citizens Association ("**WECA**") made statements that are not supported by the record in this case. WECA reiterated its unsubstantiated position that when the Planned Unit Development ("**PUD**") was first approved by the Zoning Commission in 1993, an "agreement," involving, among other things, the inclusion of balconies on the building to be constructed, had been reached between the Associated General Contractors of America (the then-owner of the property) and the "community." No such agreement is in the BZA record, nor is such an agreement in the record of the PUD (Zoning Commission Case No. 93-5F/91-18P). No such "agreement" exists. Thus, WECA's reasoning that these "design elements are PUD amenities, the loss of which violates the "agreement", is without basis in fact.

WECA also states that University did not serve its Motion for Stay on ANC-2A. However, the courier receipt attached to this letter indicates that such a delivery was made to the ANC, and signed for, on July 27, 2001 at approximately 11:10 a.m. The University can not be faulted if its successfully delivered package was misplaced within the ANC office. At any rate, the ANC and WECA admit that the ANC knew of the Motion for Stay by July 30, 2001.

Also at the July 31 meeting, the BZA determined that it would continue discussion and vote on the Motion for Stay at a special BZA meeting to be held on Friday, August 3, 2001. WECA complains that neither WECA, nor the ANC will have adequate time to respond to the University's Motion for Stay in time for the August 3rd meeting. The University strongly disagrees. The Zoning Regulations give parties seven (7) days to respond to a motion. The BZA waived this rule, due to the exigency of the circumstances, and gave the parties six (6) days instead; hardly an egregious imposition on the parties who had already filed oppositions to the

Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.69

BZA 16701
Case No.
Exhibit No. 69

request. Further, a response to the Motion for Stay need not be a time-consuming endeavor. Either the parties agree to the stay of the decision or they give some compelling reason why it is necessary to put the University in danger of losing millions of dollars before it has exercised all of its potential remedies, especially since the remedy suggested by the BZA Order is to have the changes reviewed by the Zoning Commission, a time consuming, but "normal", administrative process. The University believes that no such compelling reason exists. Both WECA and the ANC know that by staying the decision and allowing construction to continue, no harm, perceived or actual, will be inflicted.

It is regrettable that in deciding upon such an important project, the Board does not have the luxury of time and that not every person's schedule can be accommodated; however, this is the reality. The Board does not meet in the month of August, and, thus, must take up the issue of the stay as soon as possible, or it sit unresolved throughout August, leaving the Department and Consumer and Regulatory Affairs without any guidance with regard to Building Permit No. 434036.

Finally, WECA indicates that the University's Motion for Stay is incomplete because it does not address the "four-part test required for such motions." The test WECA refers to is actually one applied by the Court of Appeals when it is deciding on whether, or not, to issue a temporary restraining order. There is nothing in the BZA rules or the Zoning Regulations requiring the Board apply such an analysis before making a ruling on a motion for stay.

For the reasons stated above, the University respectfully requests that the Board take up the University's Motion For Stay of BZA Appeal No. 16701 at its Friday, August 3, 2001 public meeting.

Respectfully submitted,

Phil T. Feola

Sarah E. Shaw

cc: David Clark, Director, DCRA
Karen Edwards, General Counsel, DCRA

Enclosure

Document #: 1147877 v.1

CERTIFICATE OF SERVICE

I hereby certify that, on August 2, 2001, a copy of the foregoing Intervenor GW's Reply to ANC and Intervenor WECA's Responses was served by facsimile and hand-delivery to:

Arthur Parker, Esq.
Brenda Walls, Esq.
Office of the Corporation Counsel
441 Fourth Street, N.W.
Suite 450 North
Washington, D.C. 20001

Marie Sansone, Esq.
Office of the Corporation Counsel
441 Fourth Street, N.W.
Sixth Floor
Washington, D.C. 20001

Michael Johnson
Zoning Administrator
DCRA
941 North Capitol, N.E.
Suite 2000
Washington, D.C. 20002

ANC 2A
c/o Elizabeth Elliott, Chairperson
St. Mary's Court
725 24th Street, N.W.
Washington, D.C. 20037

West End Citizens Association
c/o Barbara Kahlow
2555 Pennsylvania Avenue, N.W.
Apt. No. 404
Washington, D.C. 20037

Sarah E. Shaw

DRIVER NAME _____

DRIVER NO. 323

WASHINGTON EXPRESS SERVICES
DELIVERY MANIFEST

DATE 2/26/01 DAY Fri

MOST.	301-650-5353
FFL.	301-650-5340
DIM.	301-650-5357
MOPEDS	301-608-8237
BIKES/B	301-608-8090
BIKES/A	301-608-8190

CLIENT	FROM/TO	SIGNATURE	PRINT LAST NAME	TIME
	1450 G st	1)	Walker	11:30
	2130 H st			
	1450 G st	2) C Hamell	Hamell	11:34
	2000 Penn. Ave			
	1125 15th st	3) Neal	Neal	11:40
	1025 Conn. Ave			
	1300 19th st	4) Mahler	Mahler	11:38
	1025 Conn			
	1629 K st	5) Blackmon		
	1360 Conn			
	1300 19th st	6) Jett	Taylor	12:02
	1875 Penn. Ave			
Round Trip	1875 Conn	7)		12:30
	1331 Penn Ave			
	2300 N st	8)	Wade	11:10
	725 24th st			
	1300 19th st	9) Ransom	Ransom	11:49
	1015 19th st			
37 min Round Trip	1005 Conn			
	500 Indiana	10) Stewart	Stewart	4:30
	21 Dupont			
	1130 Conn Ave.	11) Ronald J Turner		1:55
Round Trip	1100 19th st			
	550 17th st	12) L. Plaistow	Plaistow	3:57
	1153 21st			
	1142 Conn. Ave	13)	Warner	2:14
	2300 N st			
	1300 I st	14) J. White	White	
	2300 N st			
	1150 Conn	15)	Shields	2:10
	1667 K st			
	1120 19th st	16) Slip option		4:45
	1800 Mass Ave			
	2001 Penn Ave	17) Karen Anderson	Anderson	4:38
	1125 15th			
	900 17th st	18)	George	4:27
B-30	1750 K st			
	1401 H st	19) P. Stapleton	STAPLETON	5:13
B30	1320 19th st			
	1211 Conn.	20)		5:30

CLASSIC FORMS & SYSTEMS, INC. (301) 870-1651 402