DRISCOLL & DRAUDE
ATTORNEYS AT LAW

SECOND FLOOR
1230 THIRTY-FIRST STREET N.W.
WASHINGTON, D.C. 20007

(202) 333-0330
Fax (202) 298-6699

BRIAN G. DRISCOLL (DC, MD)
JAMES T. DRAUDE (DC, MD, VA)

Of Counsel
EDWIN E. HUDDLESON, III (DC, CA)

August 2, 2001

VIA FACSIMILE and
FIRST CLASS MAIL

Jerrily R. Kress
Director
Office of Zoning
Room 210
441 Fourth Street NW
Washington, D.C. 20004

Re: BZA Appeal No. 16701

Dear Ms. Kress:

We represent Advisory Neighborhood Commission 2A ("ANC 2A") in connection with the above-referenced case.

The Board of Zoning Adjustment ("Board") issued its final decision and order in this case on July 12, 2001.

On July 20, 2001, Intervenor George Washington University ("GWU") filed a "Motion for Reconsideration and to Reopen the Record". As proponent of the motion, GWU must obtain three affirmative votes of the members of the Board to grant the motion (D.C. Code 5-424(h)). At a duly noticed, regular meeting on July 31, 2001, the Board voted two-to-two on the motion. Thus, GWU failed to obtain the necessary votes and the motion was, therefore, denied.

On July 27, 2001, GWU filed a motion to stay the Board's final decision in this case until the Board decides GWU's motion for reconsideration. GWU added to the motion for stay by filing an affidavit on July 30, 2001. Since the Board denied the motion for reconsideration on July 31, 2001, GWU's motion for a stay now is moot.

Notwithstanding the foregoing, representatives of ANC 2A have been informed that at a meeting scheduled for tomorrow at 9:30 a.m., the Board intends to vote again on GWU's motion for reconsideration and to vote on GWU's motion for stay.

BZA
Case No. 16701
Exhibit No. 73

Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.73

The Board's Rules authorize a party to file a motion for reconsideration of a "final decision" within ten days (11 DCMR 3332.2). There is no authority for reconsideration of a motion for reconsideration (apparently what the Board intends to do tomorrow). Further, the Board does not have unfettered discretion in dealing with motions for reconsideration since, under the rules of the D.C. Court of Appeals, the pendency of such a motion tolls the time for filing an appeal of a Board decision with that Court, and the Board's denial of such a motion (as occurred in this case on July 31, 2001) again starts the running of the time for appeal. The Board does not have authority to manipulate the time for filing an appeal by repeated consideration of a motion for reconsideration.

As a member of the Zoning Commission, Mr. Franklin abstained from voting on the Board's substantive decision in this case because the effect of this appeal, if granted by the Board, will be that the case will come before the Zoning Commission again (assuming that GWU applies to the Zoning Commission for modification of the PUD). For the same reason, other members of the Zoning Commission are disqualified from voting in this case.

ANC 2A was not served with GWU's motion for stay, and the time for ANC 2A to respond to that motion has not yet expired. Counsel for GWU certified that the motion was hand delivered to ANC 2A at St. Mary's Court. Two searches at St. Mary's Court did not locate the motion. Ms. Elliott, Chair of ANC 2A, received the motion by fax from Ms. Barbara Kahlow on Monday, July 30, 2001. As noted, GWU added to the motion by filing an affidavit on that date. Since ANC 2A was never properly served with the motion, the time for ANC 2A's response has not begun to run. Even if the time for response runs from July 30, 2001, ANC 2A's response is not due until August 6, 2001, at the earliest.

For the foregoing reasons, further action by the Board in this case, tomorrow or in the future, is improper.

Sincerely,

James T. Draude

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Letter were mailed, postage prepaid, on August 2, 2001 to:

Arthur Parker
Brenda Walls
Charlotte Parker
Office of the Corporation Counsel
Suite 450N
441 Fourth Street NW
Washington, DC 20001

Phil T. Feola, Esquire
Shaw Pittman
2300 N Street NW
Washington, DC 20037

Michael D. Johnson
Zoning Administrator
Suite 2127
941 North Capitol Street NE
Washington, DC 20002

John C. Batham
President
West End Citizens Association
P.O. Box 58098
Washington, DC 20037

Barbara Kahlow
West End Citizens Association
2555 Pennsylvania Avenue NW #404
Washington, DC 20037

Honorable Jack Evans
Councilmember Ward 2
Suite 703
441 Fourth Street NW
Washington, DC 20001

Ellen McCarthy
Office of Planning
Suite 4000
801 North Capitol Street NE
Washington, DC 20002

James T. Draude

JAMES T. DRAUDE