ShawPittman LLP

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August 13, 2001

By Hand Delivery

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

Re: Supplemental Motion to Stay BZA Order No. 16701

Dear Chairperson Reid and Members of the Board:

The George Washington University ("**GW**" or "**the University**") respectfully submits this supplemental motion to stay Board of Zoning Adjustment ("**BZA**") Order No. 16701 ("**Order**") until the BZA's decides the University's motion to reconsider the Order. The BZA has granted a temporary stay of the Order until August 21, 2001, when the Zoning Commission will review the University's request for a modification to Zoning Commission Order No. 746, as extended. The BZA should extend the stay for at least an additional two weeks to September 4, 2001 when it will hold a public meeting and review the motion to reconsider.

The University is entitled to an extended stay because it easily satisfies the four-factor test set forth in Kuflom v. District of Columbia Motor Vehicle Servs., 543 A.2d 340, 344 (D.C. 1988). First and foremost, a stay of the Order pending the BZA's decision is necessary to prevent irreparable harm to the University. Without a stay, the Order will result in the immediate revocation of the University's building permit and cessation of construction. Even if construction were stopped for only two weeks until the September 4, 2001 hearing, this delay would prove costly. To date, GW has paid almost $11 million in total construction costs. If construction is halted for only two weeks, the University would have to pay its contractors approximately $660,000 in labor costs simply to guarantee that construction workers would be available to resume construction after a two week work stoppage. If the University does not pay to guarantee worker availability, it is unlikely that, in this tight labor market, these workers would be available to begin construction immediately following the two week stoppage, thereby resulting in further delays and costs. (Declaration of Louis H. Katz, Vice President and Treasurer of the University, ¶ 5, attached hereto.)

BZA
Case No. 16701
Exhibit No. 74

Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.74

Furthermore, in the absence of a stay, it is very likely that the University would be without a permit for more than a two week period. The BZA issued a temporary stay, in part, to allow the Zoning Commission to hear, on August 21, 2001, the University's request for modifications to the PUD design and use. The Zoning Commission will not have ruled on these requests by August 21 or even September 4, if, for example, the requests are not placed on the Consent Calendar for expedited review. In any event, there is a very real possibility that BZA will not have the benefit of a Zoning Commission decision by September 4, 2001, and will accordingly postpone its decision on the motion to reconsider past that date to allow the Zoning Commission additional time to act. The University, as a result, would face a much longer – and indefinite – period without a building permit.

If construction is halted for a longer period of time due to permit revocation, the delay will cost the University tens of millions of dollars. The University would have to pay approximately $5 million to terminate existing contracts and $7 million for materials that have already been fabricated for the project. GW would have to pay an additional $2 million to stabilize and secure the construction site. These cost estimates do not include the cost of site acquisition, the additional (and to some extent incalculable) costs of new contracts and remobilization if GW is ultimately permitted to continue building, and the lost income from student housing if the building opens after the expected date in the fall of 2002. (Katz Dec. ¶ 6.)

Such an indefinite suspension of construction also would seriously harm the academic reputation and functioning of the Elliott School. The School's administration, faculty and students have been anticipating the new building for the 2002 academic year. Even a delay of a few months in resolving the pending requests before the Zoning Commission would postpone the completion of the Elliott School until the fall of 2003 at the earliest. The University has made representations to the Elliott School Dean, faculty, students and accrediting body about the new facility. Delay will result in lowered morale and possible loss of administrators and faculty as well. The lack of a new facility also will make it more difficult for the Elliott School to compete for the best staff and students during the next several years. (Katz Dec. ¶ 7.)

A delay in completion of the new Elliott School facility would similarly harm the GW School of Law. The existing Elliott School building is slated for law school use and has been so identified in the law school's submission to the American Bar Association's law school accreditation committee. A delay in the availability of that building to the law

school may hurt its ability to retain and attract top administrators, faculty and students. (Katz Dec. ¶ 8.)

Finally, a delay in completion of the new facility would hamper the University's goal of increasing University housing for students on or near campus – a goal that is ostensibly shared by the appellants. The University's budget incorporates these 200 beds in its planning for the 2002 academic year. Revocation of the building permit would force more of GW students to live off campus in non-University housing. (Katz Dec. ¶ 9.)

All of this harm not only is irreparable but may well be unnecessary because the Order itself likely will be mooted, in whole or part, by a decision of the Zoning Commission. On August 13, 2001, the University filed with the Zoning Commission a request to modify Zoning Commission Order No. 746 to permit minor modifications and university office use, and a request to have the modification placed on the Zoning Commission's Consent Calendar. The Zoning Commission will review these requests at an August 21, 2001 public meeting. If the Zoning Commission approves the minor modifications and university office use – either by placing it on the Consent Calendar or processing them as a second-stage PUD application – the Order is mooted. The immediate and real possibility of mooting the Order weighs heavily in favor of staying its harmful effects.

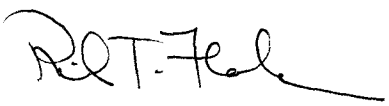
Second, allowing the University to continue construction during the pendency of the Zoning Commission and Board proceedings will not harm the appellants. The PUD Order clearly permits construction of a mixed-use project on the site, and the dispute relates to the design details of that building and to the use of the commercial portion of the building. If the BZA ultimately denies the motion to reconsider, the University will either need to obtain Zoning Commission approval for its present plans or modify those plans to comport with the BZA's restrictions. In short, the risk of continued construction falls entirely on the University, not the appellants.

Third, a stay in this case would serve the public interest because the citizens of the District of Columbia have a great stake in the continued success of the University. GW not only contributes financially to Foggy Bottom and the Washington region, it is a significant source of cultural and academic opportunities for thousands of area residents. Staying the Order, which limits educational uses of the site, unmistakably is in the public's best interests. See Glenbrook Road Ass'n v. D.C. Bd. of Zoning Adjustment, 605 A.2d 22, 32 (D.C. 1992) ("In general, uses of land for educational purposes are 'highly favored,' and it has long been recognized that universities serve the public welfare and morals in important ways.").

Fourth, the University satisfies the likelihood of success factor. The University, at a minimum, has established serious and substantial issues going to the merits of its motion to reconsider. Where, as here, the balance of hardships and public interest weigh heavily in favor of a stay, the likelihood of success factor is satisfied, and a stay will issue, if the moving party has demonstrated serious issues going to the merits of its claims. See, e.g., Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977) (affirming stay of decision); Vencor Nursing Ctrs., L. P. v. Shalala, 63 F. Supp.2d 1, 13 (D.D.C. 1999) ("'When the balance [of the hardships] tips decidedly in favor of the plaintiff . . . a preliminary injunction will be granted if the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberate investigation.'") (quoting Rum Creek Coal Sales v. Caperton, 926 F.2d 353, 359 (4th Cir. 1991)).

In summary, a stay of the Order is required to avoid irreparable harm to the University while the merits of its Zoning Commission requests and motion to reconsider are heard and decided.

Sincerely,



Phil T. Feola



Sarah E. Shaw

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

Enclosure

CERTIFICATE OF SERVICE

I hereby certify that, on August 13, 2001, a copy of the foregoing Intervenor GW's Supplemental Motion to Stay was served by 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

DECLARATION OF LOUIS H. KATZ

1. I am Vice President and Treasurer of The George Washington University (the "University" or "GW"). In that position I am principally responsible for overseeing all financial matters at the University, including among others the development of academic, administrative and residential facilities. I have been in my present position for almost 11 years.

2. In particular, I have been involved in the development of the site for a new building for the University's Elliott School of International Affairs ("Elliott School") at 1957 E Street, N.W., in Square 122. The Elliott School is an undergraduate and graduate program that is currently ranked among the top five in the nation among such institutions. For approximately five years, the Elliott School has been located in a building on the University's campus in Square 102, near the University's School of Law. That facility, however, is no longer adequate to meet the program's needs. In addition, the University needs that building to accommodate the growth and development of the law school.

3. On October 24, 2000, the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") issued a permit to GW for excavation and sheeting and shoring of the 1957 E Street PUD site. GW began construction on October 30, 2000, and the building excavation was completed by year end. This part of the project involved excavating an area of four levels below grade, between 19th and 20th Streets N.W.

4. On December 28, 2000, the DCRA issued the building permit. Since the issuance of the building permit, GW has completed construction of the lower floors of the structure and the concrete for the ground floor on the residential side of the building. Under the current plans, the facility will be ready for use in the academic year beginning in the fall of 2002.

5. A revocation of the building permit at this point would be extremely costly to the University, since it would require the termination of construction. To date, GW has paid almost $11 million in total construction costs. Substantial construction costs would continue to accrue during a two-week delay. If construction is halted for only two weeks, the University would

have to pay its contractors approximately $660,000 in labor costs simply to guarantee that construction workers would be available to resume construction after a two week work stoppage. If the University does not pay to guarantee worker availability, it is unlikely that, in this tight labor market, these workers would be available to begin construction immediately following the two week stoppage, thereby resulting in further delays and costs.

6. If construction were halted for a longer period of time, the University would have to pay approximately $5 million to terminate existing contracts and $7 million for materials that have already been fabricated for the project. GW would have to pay an additional $2 million to stabilize and secure the construction site. These cost estimates do not include the cost of site acquisition, the additional costs of new contracts and remobilization if GW is ultimately permitted to continue building, and the lost income from student housing if the building opens after the fall of 2002.

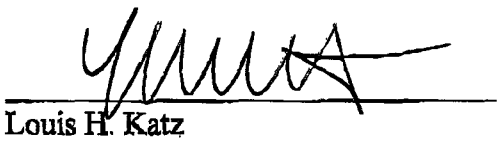
7. A lengthy suspension of construction also would seriously harm the academic reputation and functioning of the Elliott School. The School's administration, faculty and students have been anticipating the new building for the 2002 academic year. Even a delay of a few months in resolving the pending requests before the Zoning Commission would postpone the completion of the Elliott School until the fall of 2003 at the earliest. The University has made representations to the Elliott School Dean, faculty, students and accrediting body about the new facility. Delay will result in lowered morale and possible loss of administrators and faculty as well. The lack of a new facility also will make it more difficult for the Elliott School to compete for the best staff and students during the next several years.

8. A delay in completion of the new Elliott School facility would similarly harm the GW School of Law. The existing Elliott School building is slated for law school use and has been so identified in the law school's submission to the American Bar Association's law school accreditation committee. A delay in the availability of that building to the law school may hurt its ability to retain and attract top administrators, faculty and students.

9. Finally, delay in completion of the new facility would seriously hamper the University's goal of increasing University housing for students on or near campus. The addition of 200 beds in a facility adjacent to the existing campus, and surrounded by other University property, is consistent not only with our goals but of the expressed desires of the Board of Zoning Adjustment and our neighbors in Foggy Bottom that GW house more of its students in University facilities. Our budget incorporates these 200 beds in our planning for the 2002 academic year. Revocation of the building permit would force more of our students to live off campus in non-University housing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 13, 2001, in Washington, D.C.



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Washington, DC
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New York
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London

Aug-13-2001 04:20pm From-SHAW PITTMAN 2026638007 T-598 P.008/016 F-109

Furthermore, in the absence of a stay, it is very likely that the University would be without a permit for more than a two week period. The BZA issued a temporary stay, in part, to allow the Zoning Commission to hear, on August 21, 2001, the University's request for modifications to the PUD design and use. The Zoning Commission will not have ruled on these requests by August 21 or even September 4, if, for example, the requests are not placed on the Consent Calendar for expedited review. In any event, there is a very real possibility that BZA will not have the benefit of a Zoning Commission decision by September 4, 2001, and will accordingly postpone its decision on the motion to reconsider past that date to allow the Zoning Commission additional time to act. The University, as a result, would face a much longer – and indefinite – period without a building permit.

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Sarah E. Shaw

cc: David Clark, Director, DCRA
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Enclosure

Document #: 1150985 v 4

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 13, 2001, in Washington, D.C.



Louis H. Katz

Aug-13-2001 04:21pm From-SHAW PITTMAN 2026638007 T-598 P.015/016 F-109

CERTIFICATE OF SERVICE

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Arthur Parker, Esq.
Brenda Walls, Esq.
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441 Fourth Street, N.W.
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