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

August 20, 2001

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

Re: BZA No. 16701A, Order Granting Temporary Stay on the Appeal of Zoning Administrator's Decisions on 1957 E Street, N.W. (Square 122, Lot 835)

Dear Chairperson Reid and Other Board Members:

This letter responds to the Supplemental Motion to Stay filed by the George Washington University (GWU) on August 13, 2001, as requested by the Board of Zoning Adjustment (BZA) in its August 7th Order No. 16701A regarding the Appeal of the Zoning Administrator's administrative decisions on 1957 E Street, N.W. (Square 122, Lot 835). The BZA's Order called for the West End Citizens Association (WECA) to respond by noon, August 20th.

Since the BZA's oral decision on August 3rd, the WECA entered into a settlement Agreement with GWU. This Agreement greatly benefits not only the immediately impacted community East of Washington Circle but also other elderly and poor residents of the District of Columbia and the homeless. The process to achieve this Agreement -- without any participation by the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) -- and the Agreement itself are further described in the WECA's August 20th letter to the Zoning Commission on Case No. 01-17MM/93-5F/91-18P, the Associated General Contractors (AGC) planned unit development (PUD) (enclosed). As a consequence, the WECA requests that the BZA extend its stay until the Zoning Commission issues a final Order on GWU's PUD modification request.

Thank you for your consideration of WECA's views.

Sincerely,

John C. Batham
President

Enclosure

cc Arthur Parker, Esq., Corporation Counsel
Marie Sansome, Esq., Corporation Counsel
Michael Johnson, Zoning Administrator
ANC-2A, c/o Jim Draude, Esq.
GWU, c/o Phil Feola, Esq., Shaw Pittman

BZA
Case No. 16701
Exhibit No. 78

Board of Zoning Adjustment
District of Columbia
CASE NO.16701
EXHIBIT NO.78

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

August 20, 2001

Ms. Carol Mitten
Chairperson
D.C. Zoning Commission
441-4th Street, N.W. - 2nd Floor
Washington, DC 20001

Re: Zoning Commission Case No. 01-17MM/ 93-5F/91-18P
AGC PUD - 1957 E Street, N.W. (Square 122, Lot 835)

Dear Chairperson Mitten and Other Commission Members:

This letter from the West End Citizens Association (WECA) provides a written status report and a request for a bench decision. The status report is on the results of successful settlement negotiations on the PUD modification request by the George Washington University (GWU) in Zoning Commission No. 01-17MM/93-5F/91-18P -- the Associated General Contractors (AGC) planned unit development (PUD) at 1957 E Street, N.W. The WECA is an Intervenor in the related Board of Zoning Adjustment (BZA) case -- BZA No. 16701, the appeal of the administrative decisions by the Zoning Administrator (ZA) for a building permit on this site (Square 122, Lot 835).

Background

The WECA, founded in 1910 and one of the oldest citizen associations in DC, is the principal community organization in the GWU neighborhood.

On September 25, 2000, before any on-site construction, the WECA initiated the Foggy Bottom-West End community's objections to GWU's plans for 1957 E Street by filing two motions with the Office of Zoning, including a request for party status for this PUD since, after ownership of the site was transferred from the AGC to GWU, the plans for the building and the associated amenities had changed. At its October 16th meeting, the Zoning Commission referred these motions to the ZA. On December 27th, the ZA sent the WECA a response. On December 28th, the ZA issued a building permit. On January 19, 2001, the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) filed an appeal of the ZA's administrator decisions.

On February 25th, the WECA requested party status. At the April 10th hearing, the BZA granted party status for the WECA to intervene in the appeal. The BZA's July 12th Decision and Order 16701 stated, "The Board granted WECA party status ... due to WECA's long-standing interest in maintaining and improving the quality of residential life in the immediate GW neighborhood" (pp. 1-2). The BZA's August 7th Order 16701A stated, "To avoid the continued uncertainties,

expense, and delay of litigation, whether in administrative or judicial setting, the parties are strongly encouraged to pursue settlement of this PUD dispute" (p. 2).

Status Report

After the BZA's oral decision on August 3rd, the WECA immediately approached both GWU and ANC-2A to enter settlement discussions and then reached a mutually agreeable date and time for all parties -- including ANC-2A Chair Elizabeth Elliott -- to participate. Subsequent to Ms. Elliott's agreement to participate, ANC-2A retained Jim Draude as Counsel for the ANC's appeal. On August 7th, Mr. Draude sent a letter, which was not properly noticed to all parties since the WECA was not copied, inaccurately stating, "Neither I nor any representative of ANC 2A agreed to that meeting." In addition, Mr. Draude never returned the WECA's two telephone calls to find a time agreeable for his participation in settlement discussions. The end result, incredibly, was that ANC-2A chose not to participate at all in the settlement discussions.

GWU and the WECA met several times, with helpful participation by the DC Corporation Counsel. I am happy to report that a settlement Agreement was reached on August 17th (Attachment A). The Agreement greatly benefits not only the immediately impacted community East of Washington Circle but also other elderly and poor residents of the District of Columbia and the homeless.

The Agreement provides 5,000 square feet of retail space, which is the exact amount the community expected from its PUD agreement with the AGC. In addition, the Agreement provides a $500,000 subsidy for the public benefit of the operation of a program at Sholl's Cafeteria to provide meals for no charge or at reduced rates to elderly and poor residents of the District of Columbia and the homeless. Examples of other provisions include GWU's agreement to: (a) comply with the DC Environmental Policy Act for all future campus construction projects; (b) restrict deliveries to its loading dock on 19th Street (which is heavily used by commuters) to non-morning and non-evening rush hours; (c) house on-site only juniors, seniors, graduate students, and students enrolled in an honors program; and (d) restrict student parking by GWU Freshmen and Sophomores living in the Foggy Bottom/West End Area.

After GWU and the WECA reached Agreement on August 17th, I understand that Mr. Draude contacted and then briefly met with GWU without inviting the WECA to the meeting.

In sum, the WECA supports GWU's PUD modification request on the condition that the Zoning Commission include in its Order all substantive provisions in the GWU-WECA Agreement.

Request for Bench Decision

Since ANC-2A chose not to participate in the settlement discussions and violated the Commission's procedures for communication with all other parties, the WECA requests a prompt bench decision. In addition, the BZA sought, "[t]o avoid the continued uncertainties, expense, and delay." A further delay for the ANC would be an unjust reward for its non-participation. Lastly, since the majority of the amenities to benefit the immediately-impacted community and

others in DC (such as new retail and meals at no charge or reduced rates) are dependent on the Commission's action, the WECA believes that it is in the public interest for the Commission to act promptly.

Thank you for your consideration of the WECA's status report and request for a bench decision.

Sincerely,

John C. Batham
President

Attachment

cc Charles Barber, Esq., GWU
GWU, c/o Phil Feola, Esq., Shaw Pittman
ANC-2A, c/o Jim Draude, Esq.
Marie Sansome, Esq., Corporation Counsel

AGREEMENT

THIS AGREEMENT ("Agreement") is made this 17th day of August, 2001, by and between THE GEORGE WASHINGTON UNIVERSITY ("GW"), a federally-chartered institution of higher education, its successors and assigns, and the WEST END CITIZENS ASSOCIATION ("WECA"), a non-profit organization in the District of Columbia.

RECITALS

WHEREAS, pursuant to Zoning Commission Orders No. 746, 746-A and 746-B (the "PUD Order"), the D.C. Zoning Commission (the "Zoning Commission") conditionally approved and extended a planned unit development ("PUD") and corresponding amendment to the Zoning Map for property located at address 1957 E Street, N.W., Washington, D.C. (Square 122, Lot 835) (the "Property"); and

WHEREAS, GW now owns the Property and wishes to develop the building provided for by the PUD (the "Building"); and

WHEREAS, on December 28, 2000, the Department of Consumer and Regulatory Affairs ("DCRA") issued GW Building Permit No. B434036 allowing construction of the Building, including certain modifications to the plans approved by the PUD Order, such modifications having been approved by the Zoning Administrator and the Commission of Fine Arts; and

WHEREAS, an appeal was made to the Board of Zoning Adjustment ("BZA"), appealing the issuance of Building Permit No. B434036, and BZA Order No. 16701 upheld the appeal, holding that Building Permit No. B434036 had been improperly issued; and

WHEREAS, without prejudice to GW's position in BZA Appeal No 16701, GW filed a PUD Modification Request with the Zoning Commission on August 13, 2001, attached as

Exhibit A, in order to obtain permission from the Zoning Commission to proceed with the construction and use of the Building as provided for by the current plans; and

WHEREAS, GW and the WECA agree to jointly request, in writing, that the BZA extend its stay until the Zoning Commission issues a final Order on GW's PUD Modification Request pursuant to BZA Order 16701-A and DCRA issues a building permit pursuant thereto, and the WECA agrees to support GW's defense of any appeal and GW's application for a Certificate of Occupancy; and

WHEREAS, GW has committed to the WECA to separately address student parking in the Foggy Bottom/West End Area; and

WHEREAS, as a condition of the WECA's support for the PUD Modification Request, in its entirety, GW and the WECA are desirous of entering into this Agreement, as outlined by the terms below.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Recitals**. The Recitals are incorporated by reference as though fully set forth herein.

2. **Retail square footage.**

(a) The Building shall include approximately 3300 square feet of on-site street level community-oriented retail space with doors to the retail opening on E and 20th Streets. This retail space will include an area formerly designated as the loading dock for the residential portion of the Building on 20th Street at the Northwest corner of the Building. As a result of providing this retail space, GW shall restrict all deliveries to the Building to the loading dock located on the 19th

Street side of the Building, the underground parking garage, and the E Street entrances. The WECA shall support, in writing, a modification to the PUD eliminating the loading dock on the residential side of the Building.

(b) GW shall also make available to the public, as well as its students, faculty and staff, approximately 1700 square feet of community-oriented retail space in Mitchell Hall, located at 514 19th Street, NW, immediately north of the Building. GW will encourage public use of this space through appropriate outdoor signage and changes to the landscaping in front of the retail area. In addition, GW will be responsible for building out the interior space, as needed, for a retail tenant. This retail space shall be maintained for a minimum of 10 years.

3. **Use of the loading docks.** GW shall restrict truck deliveries via the loading dock to times other than 7:00 a.m. to 9:30 a.m. and 4:00 p.m. to 6:30 p.m., Monday through Friday.

4. **Enforcement of construction hours.** The construction hours for the Building shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Saturday. Compliance with these construction hours shall be enforced by the District of Columbia government to the fullest extent of the law. GW shall appoint, and provide reasonable notice to the adjacent and nearby community residents of, a telephone contact for receiving and responding to complaints and inquiries from the surrounding community concerning excessive noise and construction outside of these hours. GW may request a special permit required to work extended hours from DCRA only to address circumstances constituting a threat to public safety, health and welfare. In seeking such a special permit, GW shall consult with a

committee (including invitations to ANC-2A and the WECA) of neighborhood residents to be established and take appropriate action to mitigate any adverse impact on surrounding properties from such extended work hours.

5. **Landscaping and Street Lighting.** GW shall implement the same landscaping plan for the PUD as that proposed by the Associated General Contractors in its PUD application, dated January 1993, Exhibit B in Z.C. Case No. 93-5F/91-18P, with additional landscaping for areas along 20th Street that will no longer be devoted to loading facilities. In addition, GW will provide street lighting for the Building.

6. **Residents of the Building.** GW shall restrict residential occupancy in the Building to (a) juniors, seniors and graduate students, and (b) students enrolled in an honors program.

7. **Subsidy to Foundation.** GW shall provide $100,000 after issuance by the Zoning Commission of its PUD modification Order, $100,000 upon issuance of the Certificate of Occupancy, and then $100,000 annually on the anniversary of the Certificate of Occupancy, for a period of three years, for a total of $500,000, to a non-profit entity ("Foundation") for the public benefit of the operation of a program at Sholl's Cafeteria to provide meals for no charge or at reduced rates to elderly and poor residents of the District of Columbia and the homeless. The Foundation shall be organized under governing documents that are approved in advance of filing by GW and the WECA and that are prepared pro bono or otherwise not at the WECA's expense. Until the GW donation is expended, the Foundation shall provide GW an annual report on the Foundation's operation and

permit GW to audit such operations upon reasonable notice. In addition, GW shall be afforded the opportunity to appoint one or more representatives to the Foundation board. Representatives from GW and the International Monetary Fund shall constitute less than the majority of the board.

8. **Environmental Compliance.** GW shall comply with the D.C. Environmental Policy Act (D.C. Code § 8-109.01 et seq., 2001), subject to any applicable amendments, regulations and judicial interpretation, on all future campus construction projects. This paragraph makes no determination as to GW's prior compliance with the D.C. Environmental Policy Act.

9. **WECA Commitments.** In exchange for GW's commitments identified in Section 2 - 8, above, the WECA agrees to support GW's PUD Modification Request, as amended by the request to eliminate the loading dock as referenced in Section 2, above, and the amenities described herein, as well as to support any GW request to the BZA in Appeal No. 16701 for a stay of the BZA Order, dated July 12, 2001, pending the Zoning Commission's issuance of a final Order on the PUD Modification Request. Further, the WECA agrees to support GW in any appeal of the Zoning Commission's Order for the PUD Modification Request, any building permit issued pursuant thereto, as well as GW's application for a Certificate of Occupancy.

10. **Conditions Necessary for GW's Performance.** GW's commitment to enforce construction hours, to convene a committee of adjacent and nearby community residents, and to appoint and provide notice of a telephone contact for construction-related complaints and inquiries, set forth in Section 4, above, shall

be effective immediately upon the execution of this Agreement. Upon approval by the Zoning Commission of the PUD Modification Request, GW will take all reasonable efforts to secure any additional necessary approvals required to complete the construction according to the PUD as modified, including any approvals required by the Commission of Fine Arts and DCRA. Upon securing such approvals, GW will take all reasonable efforts to complete construction on a timely basis and to complete the build-out of the retail space described herein within 6 months of GW's securing a Certificate of Occupancy for the Building. GW's performance of sections 2, 3, 5, 6 and 7 is dependent upon receipt of a Certificate of Occupancy for the Building pursuant to the PUD, as modified herein. GW agrees to make all reasonable efforts to secure such Certificate of Occupancy on a timely basis.

11. **Incorporation**. GW and the WECA shall request that this Agreement be attached to and incorporated in the Zoning Commission's Order for the PUD Modification Request.

12. **Remedies**. This Agreement does not limit any common law or statutory rights or remedies available to any entity or person relating to damages sustained to person or property attributable to activities of GW.

13. **Severability**. This Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the District of Columbia. If any term, provision, covenant or agreement contained herein, or the application thereof to any person or circumstances, shall be held to be invalid, illegal or unenforceable, the validity of the remainder of this Agreement or the

application of such term, provision, covenant or agreement to the persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

14. **Binding Effect**. This Agreement is binding upon and shall inure to the benefit of the heirs, successors, assigns, parents, and subsidiaries, affiliates and related entities of GW and the WECA, and shall run with the land.

15. **Authority to Execute**. Each of the parties executing this Agreement represents and warrants to each of the other parties hereto that: (i) it has the full power and authority to enter into this Agreement and to consummate the transaction described herein without obtaining any further approvals or consents, and (ii) the entering into of this Agreement will not constitute or result in a violation or breach by any such party of any judgment, order, writ, injunction or decree issued against or imposed upon it or any agreement to which it is a party or by which it is bound.

16. **Modification/Waiver/Breach**. No change or modification of this Agreement shall be valid unless the same is in writing and signed by GW and the WECA. No waiver of a breach or default shall be deemed a waiver of any subsequent breach or default.

17. **Notices**. Any notices permitted or required under this Agreement shall be in writing and delivered to the parties at the addresses set forth below or to such other addresses as a party may specify by written notice to the other(s). Notices shall be effective upon delivery to the party, with best efforts to ensure actual receipt by the party. Notices sent by Federal Express or other recognized

overnight courier services for next-day delivery shall be presumed received on the following business day. Notices sent by certified mail, return receipt requested and postage prepaid, shall be presumed received three business days after the date of mailing unless such notice is returned unclaimed.

To GW:	Charles K. Barber, Esq. Office of the General Counsel The George Washington University Suite 525 Washington, D.C. 20052
Copy to:	Phil T. Feola, Esq. Shaw Pittman LLP 2300 N Street, N.W. Washington, D.C. 20037
To WECA:	West End Citizens Association c/o Barbara F. Kahlow 2555 Pennsylvania Avenue, N.W. #404 Washington, D.C. 20037

18. Counterparts. This Agreement may be executed in counterparts and via original or facsimile signature.

IN WITNESS WHEREOF, the parties hereto have signed and delivered these presents as their own free act and deed as of the date and year first herein above written.

The George Washington University,
federally chartered institution of higher
education

By: _____

Its: Vice President and Treasurer

Subscribed and sworn to before me this 17th day of August 2001. Witness my hand and official seal.

_____
Notary Public

My Commission Expires: 06-30-2005

West End Citizens Association

By: John L. Batham

Its: President

Subscribed and sworn to before me this 17th day of August 2001. Witness my hand and official seal.

_____
Notary Public

My Commission Expires: 06-30-2005

The George Washington University
WASHINGTON DC

OFFICE OF THE VICE PRESIDENT AND TREASURER

August 17, 2001

Mr. John C. Batham
President
West End Citizens Association
P.O. 58098
Washington, D.C. 20037-8098

Ms. Sara Maddux
Board Member
Monroe House Condominium Association
522 21st Street, N.W.
Washington, D.C. 20006

Re: GW Campus Plan, BZA Application No. 16553

Dear Mr. Batham and Ms. Maddux:

Please be advised that the University commits to proffer to the Board of Zoning Adjustment (BZA) in the remand of the above referenced case a condition restricting Freshmen and Sophomores living in the Foggy Bottom/West End Area (as defined on page 11 of the BZA Order, dated March 29, 2001) from bringing cars to school or parking in the Foggy Bottom/West End Area. In essence, this condition would provide that the George Washington University (GW) publish in University documents (e.g., its catalog and Internet communications, including its website) its policy that Freshmen and Sophomores living in the Foggy Bottom/West End Area should not bring cars to school. For those few granted exceptions by the University, the University will arrange for parking in University parking facilities.

Both GW and the West End Citizens Association (WECA) recognize that neither GW nor the WECA have enforcement authority of this policy.

Sincerely,

Louis Katz
Vice President and Treasurer

2121 I STREET, N.W. • SUITE 701 • WASHINGTON, DC 20052 • (202) 994-6600 • FAX (202) 994-9304