GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

Appeal No. 16701-C of Foggy Bottom and West End Advisory Neighborhood Commission 2A, pursuant to 11 DCMR §§ 3100 and 3101, from the administrative decision of the Zoning Administrator, Zoning Review Branch, Department of Consumer and Regulatory Affairs, in the issuance of a building permit (No. B434036) on December 28, 2000, to The George Washington University to permit the construction of an 11-story, multi-use building to the effect that the permit violates the conditions of the planned unit development (PUD) including, but not limited to, the conversion of residential to dormitory and office to academic uses, increased property size, and adverse environmental impact in a C-3-C District at premises 1957 E Street, N.W. (Square 122, Lot 835).

HEARING DATES: **April 10, 2001; May 1, 2001**

DECISION DATES: **June 5, 2001; July 31, 2001; August 3, 2001; August 21, 2001; and September 4, 2001**

ORDER NO. 16701 - C

ORDER EXTENDING STAY
and
DIRECTING THAT MOTION FOR RECONSIDERATION BE HELD IN ABEYANCE

BZA
Case No.
Exhibit No. 82

This matter is before the Board of Zoning Adjustment pursuant to post-hearing motions filed by The George Washington University (GW) for reconsideration of the Board's final Decision and Order in this appeal, BZA Order No. 16701 dated July 12, 2001, and for a stay of the effectiveness of the Decision and Order. After several meetings in which the Board discussed the merits, the Board determined at its regularly scheduled public meeting held September 4, 2001, to hold the motion for reconsideration in abeyance and, at its executive session held August 21, 2001, to stay the effectiveness of the Decision and Order pending completion of related Planned Unit Development (PUD) modification proceedings by the Zoning Commission.

Procedural History

On January 19, 2001, the appellant, Advisory Neighborhood Commission (ANC) 2A, filed an appeal with the Board challenging on various grounds the decision of the Zoning Administrator to approve the issuance of a building permit to GW to construct an 11-story, multi-use building at 1957 E Street, N.W., pursuant to Z.C. Order No. 746, a Zoning Commission order approving a PUD and related Zoning Map amendment for the property. The Zoning

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Administrator is the Appellee in this case. Pursuant to 11 DCMR § 3199.1, GW, as the owner of the property that is the subject of the appeal, is automatically a party to the case. The Board granted West End Citizens Association (WECA) party status to intervene in the appeal in support of the appellant.

After a public hearing, the Board concluded that the Zoning Administrator had erred in approving the issuance of the building permit to construct the PUD because the building plans did not, as required by 11 DCMR § 2407.2 (1991), conform in all respects to the plans approved by the Zoning Commission, as modified by the PUD order. In its July 12, 2001, Decision and Order, the Board granted the appeal in part as to the Zoning Administrator's lack of authority to approve the (1) elimination of one of two separate garage entrances, (2) elimination of balconies on the residential component of the building, (3) change in exterior materials, and (4) change in use of the PUD from commercial and residential use to institutional or university use. The Board also denied the appeal in part on several grounds that are not relevant here. Pursuant to D.C. Code, 2001 Ed. § 6-641.07(g)(4) (formerly codified at D.C. Code § 5-424(g)(4) (1994 Repl.)), the Board reversed the Zoning Administrator's approval of the issuance of the building permit. Ex. 50.

GW timely filed a Motion for Reconsideration and to Re-Open the Record (hereafter, the "Motion for Reconsideration" on July 20, 2001, asking the Board to accept new evidence and reconsider its decision that the Zoning Administrator lacked authority to approve the four PUD modifications identified above. Ex. 56. WECA opposed the motion on July 23, 2001, arguing that it contained factual errors and requesting a hearing on the new materials included in the motion. Ex. 57. ANC 2A opposed the motion on July 27, 2001, and requested "that this PUD be returned immediately to the Zoning Commission for review." Ex. 59.

On July 27, 2001, GW filed a Motion for Stay of Decision asking the Board to stay the effectiveness of its Decision and Order pursuant to 11 DCMR § 3126.9 "until such time as the Board considers and reaches a decision regarding the University's Motion for Reconsideration and to Re-open the Record." Ex. 61. GW stated that construction on the 1957 E Street building was continuing pursuant to the disputed permit, and that if the Decision and Order were not stayed, GW would incur approximately $12 million in construction-related costs to stop work. GW filed an affidavit from Arthur J. Bean, Director of GW's Construction Programs, on July 30, 2001, providing additional information on the anticipated costs. Ex. 63.

Also on July 30th, the Board received a letter from ANC 2A in opposition to the requested stay. The ANC stated that it had not received a copy of GW's motion, and was thus prevented from responding to the motion. In its letter, the ANC again "respectfully requests that this PUD be returned immediately to the Zoning Commission for review." Ex. 65. WECA also submitted a partial response to the Motion for Stay on July 30th, arguing that GW's motion was not timely filed within the ten-day period after issuance of the Board's Decision and Order; that the motion was incomplete, since it did not address the four-part test used in deciding motions for stay; and that in any event, GW could not meet the four-part test. Ex. 62.

The Board, with four members present, took up consideration of GW's Motion for Reconsideration and Motion for Stay at a special public meeting on July 31, 2001. Board Member Anne M. Renshaw moved to deny GW's Motion for Reconsideration; however, her motion failed for lack of a second. Tr. at 79. Chairperson Sheila Cross Reid then moved to grant GW's Motion for Reconsideration for purposes of discussion, and Member Geoffrey H. Griffis seconded the motion. Tr. at 79-80. After discussion of the balconies, only one of the four matters that were the subject of GW's Motion for Reconsideration, bogged down, Member Griffis called for the question. The Board then voted 2 – 2 – 1; with two members voting grant reconsideration, two members opposed, and one member, the Zoning Commission representative, not present, not voting. Tr. at 94. Chairperson Reid then moved to reopen the record and rehear the matters addressed in the Motion for Reconsideration, which motion was seconded by Member Griffis. This motion also resulted in a 2 – 2 – 1 tie vote, with the Zoning Commission representative not present, not voting. Tr. at 94. The Board then decided to take the Motion for Reconsideration up again at its next regularly scheduled decision meeting on September 4, 2001. Tr. at 97.

The Board also discussed GW's Motion for Stay on July 31, 2001. Since the ANC and WECA had not had an adequate time in which to respond to the motion and supporting affidavit, the Board scheduled the motion for a special decision meeting on August 3rd, with the ANC and WECA to submit any additional responses to the motion by August 2nd. Tr. at 97-105.

On August 1, 2001, WECA filed additional objections to GW's Motion for Stay, including objections to the scheduling of the decision meeting on the motion. WECA again argued that GW had not demonstrated that it met the four-part test for stays. Ex. 64.

On August 2, 2001, ANC 2A filed a letter with the Board, authorizing James T. Draude from the law firm Driscoll & Draude to represent the ANC. Ex. 67. The ANC also filed a letter opposing both GW's Motion for Reconsideration and Motion for Stay. The ANC argued that as a result of the Board's tie vote on the Motion for Reconsideration on July 31, 2001, the Motion for Reconsideration was denied, making GW's Motion for Stay moot. The ANC argued that the Board lacks authority to reconsider a motion for reconsideration. It also argued that since Zoning Commissioner Herbert M. Franklin abstained from voting on the merits of the appeal on June 3, 2001, on the grounds that the appeal, if granted by the Board, might result in a Zoning Commission PUD proceeding, the remaining Zoning Commission members would be disqualified from participating in the Board case. Finally, the ANC stated that it had not received a copy of the Motion for Stay, despite the fact that GW certified that it was hand-delivered to the ANC. With the supplemental affidavit filed by GW on July 30, 2001, the ANC believed its response would not be due until August 6th at the earliest. The ANC concluded that for those reasons, any action by the Board on GW's Motion for Stay on August 3rd would be improper. Ex. 68.

GW filed a response to WECA's submissions on August 2, 2001, arguing that in light of the exigent circumstances, the Board could properly waive the normal seven-day time period allowed for response to post-hearing motions. GW pointed out that as a result of the Board's customary August recess, if the Board did not take up the Motion for Stay as soon as possible,

the Department of Consumer and Regulatory Affairs would be left without any guidance as to the disputed building permit. Ex. 69.

As Commissioner Franklin was unavailable due to an extended vacation, the Zoning Commission designated its Chairperson to participate in and decide on the post-hearing motions. At its August 3, 2001, special public meeting, the Board, by consensus, deferred action on GW's Motion for Stay, and decided instead, on its own motion, to issue a temporary stay until August 21, 2001. The Board selected that date based on information from the Zoning Commission Chairperson that the Zoning Commission was prepared to convene a special public meeting on August 21, 2001, to entertain an application from GW to amend the PUD. The Board, voting 4 - 0 – 1, with one member not present, not voting, granted GW a temporary stay in order to afford it the opportunity to explore the possibility of settlement negotiations with ANC 2A and WECA; to file a request with the Zoning Commission for modification of the PUD; and to supplement its Motion for Stay.

In its written order dated August 7, 2001, BZA Order No. 16701-A, Order Granting Temporary Stay, the Board established several deadlines within the temporary stay period. First, GW was given until Monday, August 13th, by which to file with the Zoning Commission a written PUD modification request. BZA Order 16701-A specified that any PUD modification request that GW might file would be without prejudice to the arguments advanced by GW in the BZA appeal case. Second, in accordance with 11 DCMR § 3030.8, ANC 2A, the only party to the PUD proceedings, was given until August 20th to respond to any request that GW might file with the Zoning Commission. Third, BZA Order 16701-A directed GW to file by August 20th, a written status report with the Zoning Commission, with a copy provided to the Board, regarding its request for PUD modification and the status of any settlement negotiations. Due to the limited time available, the order did not require ANC 2A to provide a written status report, but provided that both GW and ANC 2A were to provide oral reports to the Zoning Commission during the August 21st Zoning Commission meeting. The order also provided that WECA could request the Zoning Commission for an opportunity to present an oral report. Fourth, the order directed that any corrected or revised motion for stay by GW was to be filed with the Board by August 13th, with responses from ANC 2A and WECA due by August 20th. Finally, with the exception of the corrected or revised motion for stay, all submissions and reports due pursuant to the order were to be restricted to PUD modification issues. Ex. 71.

On August 13, 2001, GW filed a Supplemental Motion to Stay BZA Order No. 16701 until such time as the Board decides GW's Motion for Reconsideration. GW argues first that it will be irreparably harmed if a stay is not granted as a result of the costs that would be incurred in stopping construction work. GW also states that an indefinite suspension of construction would seriously harm the academic reputation and functioning of the Elliott School of International Affairs, which has been anticipating the availability of the new building for the 2002 academic year, as well as that of the Law School, which expects to move into the existing Elliott School building. Finally, a delay in the completion of the building would hamper GW's goal of increasing student housing on or near campus. Second, GW argues that a stay will not harm the appellants because the risk of continued construction falls entirely upon GW, not the appellants. GW acknowledges that if the Board ultimately denies its Motion for Reconsideration, GW will

either need to obtain Zoning Commission approval for its present plans or modify them to comport with the original PUD approval. Third, GW argues that the public interest favors a stay because the citizens of the District of Columbia have a great stake in the continued success of the University. Finally, citing federal case law relating to stays, GW argues that where the balance of hardships and the public interest weigh heavily in favor of a stay, a stay will issue if the moving party has demonstrated that there are serious issues going to the merits of its claims. Ex. 74.

GW filed a request to modify the PUD with the Zoning Commission on August 13, 2001. asking that the PUD be modified to permit the elimination of the garage door entrance, the elimination of the balconies, the change in building materials, and the change in use to institutional use. Ex. 79. Also, on August 13th, GW filed a Supplemental Motion to Stay BZA Order No. 16701 with the Board. Ex. 74. Subsequently, GW entered into a settlement agreement with WECA with respect to the PUD amenities and benefits and conditions that both parties believe should be included in any PUD modification order the Commission might approve. GW, however, was not able to arrive at an amicable resolution of the ANC issues by the August 20th status report deadline. Ex. 79.

On August 20, 2001, ANC 2A filed an opposition to GW's Supplemental Motion for Stay. The ANC argues that the Board lacks authority and jurisdiction to rule on GW's motion or to take further action in this case. The ANC argues that the effect of the Board's tie votes on July 31, 2001, on the motion to grant GW's Motion for Reconsideration and the motion to re-open the record, was to deny GW's Motion for Reconsideration. The ANC argues that as a result, all of the Board's subsequent actions, including its decision to grant a temporary stay and to schedule further consideration of GW's Motion for Reconsideration, are invalid. Finally, the ANC argues that when GW continued construction after the ANC had filed its appeal challenging the building permit, GW assumed the risk that the permit might be ultimately found to be in error and that any harm that GW might suffer if a stay is not granted would be self-inflicted. Ex. 77.

WECA filed a letter, dated August 20, 2001, supporting a stay until the Zoning Commission issues a final order on GW's PUD modification request. Ex. 78.

Since BZA Order No. 16701-A, the Order Granting Temporary Stay, was due to expire at the close of business on August 21, 2001, the Board met in executive session on August 21st to review and consider GW's Supplemental Motion for Stay. After reviewing the motion and the responses thereto, the Board, voting 4 – 0 – 1, with one member not present, not voting, decided to extend the stay until the Zoning Commission's written order taking final action on GW's PUD modification request becomes final and effective. The Board ordered that if the Zoning Commission approves a PUD modification, the stay shall be automatically extended until the Department of Consumer and Regulatory Affairs issues GW a building permit pursuant to the PUD modification order. If GW withdraws its PUD modification request, the stay shall terminate automatically. Because time was of the essence, the Board issued a summary order, to be followed by a full order, this order, stating the Board's reasons for its actions. Ex. 80.

The Board took up GW's Motion for Reconsideration at its September 4, 2001, regularly scheduled decision meeting and voted 5 – 0 – 0 to defer consideration of the motion in accordance with the terms as the stay order.

Jurisdiction – The Effect of the Tie Votes

Under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799, as amended: D.C. Code, 2001 Ed. § 6-641.07(h)), "The concurring vote of not less than a full majority of the members of the Board shall be necessary for any decision or order." The Board's Rules of Practice and Procedure likewise provide in 11 DCMR § 3125.2 that "The concurring vote of at least a full majority of the Board shall be necessary for any decision." Since the Board is composed of five members, a decision to grant GW's Motion for Reconsideration requires at least three affirmative votes.

A tie vote occurs when 50 percent of a body votes in favor of a motion and 50 percent votes against the motion. If there is no way to break a tie vote, the motion is lost. A tie vote that is not broken by a subsequent vote thus operates to deny the relief that was the subject of the motion. *See Morrison v. District of Columbia Bd. of Zoning Adjustment,* 422 A.2d 347, 349 n.5 (D.C. 1980) (tie votes); *see also Hubbard v. District of Columbia Bd. of Zoning Adjustment,* 366 A.2d 427, 428 (D.C. 1976) (failure to achieve super-majority vote tantamount to denial of motion for rehearing).

In the instant case, however, the Board determined that it was possible to break the tie vote on the chairperson's motions to grant GW's Motion for Reconsideration and to re-open the record by requesting the Zoning Commission representative on the Board to review the record and participate in the decision. A similar situation occurred in *Morrison,* 422 A.2d at 349, and is described as follows:

> At a meeting on May 2, 1979, the Board, by a 2-2 vote, was unable to dispose of a motion to vacate the previous order in the case. The Board deferred consideration of the issue until June 6 and requested the chairman, who had previously recused himself, to read the record and participate in the case. The chairman assented to the Board's request, noting that the matters originally causing his recusal had been resolved. On July 9, 1979, the Board issued a final order reinstating and incorporating its January 30, 1979 order, which granted intervenor's application.

The court noted that "Had the chairman not participated in the decision and the vote remained at 2-2, intervenor would have been denied the application." 422 A. 2d at 349 n.5. Likewise in *Hubbard,* the court acknowledged that a new vote could be taken on remand on a motion to grant a motion for rehearing that had failed for lack of the required number of votes, but found such a procedure unwarranted in light of the protracted history of the *Hubbard* case. 366 A.2d at 428. *See also Robert's Rules of Order Newly Revised* 44, 66-68, 265-84, 343-44 (Sarah Corbin Robert ed. 1970); *Webster's New World Robert's Rules of Order: Simplified and Applied* 65-66, 278-82 (1999) (tie votes, motions to reconsider the vote).

Therefore, the chairperson's motions to grant reconsideration and to re-open the record are not lost as yet, and GW's Motion for Reconsideration remains pending. Contrary to the ANC's arguments, the Board has not lost jurisdiction over this case and may properly reschedule GW's Motion for Reconsideration for decision and decide GW's Supplemental Motion for Stay.

Composition of the Board

Herbert M. Franklin, the Zoning Commission representative on the Board of Zoning Adjustment for the hearing on the instant appeal, abstained from voting on the merits of the appeal, expressing concern that he might be called upon to decide a PUD modification request involving the subject property in a subsequent Zoning Commission proceeding. Tr. at 28-29 (June 5, 2001). Subsequently Commissioner Franklin went on an extended vacation, and was not available for the decision meetings at which GW's motions for reconsideration and stay were discussed. As a result of the tie votes on July 31, 2001, the Board asked the Zoning Commission to designate another Commissioner to participate in and decide on the post-hearing motions in this case. The Zoning Commission designated its Chairperson, Carol J. Mitten, who then read the record and transcripts in order to participate in the decision on the motions.[1] The ANC argues that since Commissioner Franklin abstained from voting, the other Commissioners would be disqualified from participating in this case.

A Board member is not required to cast a vote on a case, and may abstain from voting. The fact that Commissioner Franklin stated that he was 'inclined to abstain' from voting, Tr. at 28 (June 5, 2001), however, does not mean that he was disqualified, or that another Zoning Commissioner designated to replace him during his absence should likewise abstain from voting. In this case, while Commissioner Franklin expressed concern about his participation given the possibility of future PUD modification proceedings, he was not required by law to disqualify himself.

The District of Columbia Court of Appeals reviewed the statutory relationship between the Zoning Commission and the Board of Zoning Adjustment in *Sheridan-Kalorama Neighborhood Council v. District of Columbia Board of Zoning Adjustment*, 341 A.2d 312 (1975). The Zoning Act of 1938, which created the Board of Zoning Adjustment, expressly provides that one member of the Board shall be a member of the Zoning Commission or a member of the staff thereof, and that the Zoning Commission member of the Board serves, in effect, at the pleasure of the Commission. 341 A.2d at 317; *see* D.C. Code § 6-641.07(a)-(b). The court characterized the Board as "an adjunct of, and in a sense complimentary to, the Zoning Commission," 341 A.2d at 317, and recognized that the Zoning Commission member of the Board would be in regular contact with other Zoning Commission members and aware of their views as to matters actually pending before the Commission and matters of general policy. *Id.* at 317-18. The court stated that while the Zoning Commission member to the Board is thus authorized to express the Commission's general policy concerns to the Board and to cast his or her vote with full knowledge of the attitudes and policy positions of the other Commission

[1] Under 11 DCMR § 3126.8, "No member shall vote on any post-hearing motion unless the member participated in and voted on the original decision, or the member read the transcript of the hearings and reviewed the record."

members, he or she is bound to cast a vote in the Board proceedings based exclusively on the Board's record of proceedings. *Id.* at 318. The court concluded that there is "no essential conflict between serving as the Zoning Commission member of the Board and casting a vote based exclusively upon the record before it." *Id.* Therefore, the Zoning Commission representative to the Board in the instant case is not disqualified from participating in and deciding GW's post-hearing motions, provided the Zoning Commission representative bases his or her decision exclusively on the Board's record of proceedings.

Timeliness of the Motion for Stay

The Board's Rules of Practice and Procedure in 11 DCMR ch. 31 do not specify a deadline for the filing of a motion for stay pending reconsideration. Under 11 DCMR § 3126.9, "Unless the Board orders otherwise, neither the filing nor the granting of a motion for reconsideration or rehearing shall automatically stay the effect of a final decision." *See also* 11 DCMR § 3130.4 (stays pending appeal). Since GW filed its Motion for Stay when its Motion for Reconsideration was pending, the Motion for Stay is timely.

The Four-Part Test for Granting Stays

To prevail on its motion for stay, GW must demonstrate that it is likely to prevail 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 that the public interest favors the granting of a stay. *See Kuflom v. District of Columbia Bureau of Motor Vehicle Services,* 543 A.2d 340, 344 (D.C. 1988) (administrative agency required to consider the four specified factors in considering a motion for a stay). Where the last three factors strongly favor interim relief, only a "substantial" showing of likelihood of success, not a "mathematical probability," is necessary for an agency to grant a stay. *See Barry v. Washington Post Co.,* 529 A.2d 319, 321 (D.C. 1987).

First, with construction well underway, the Board is concerned that the denial of a stay would result in substantial, if not irreparable, financial injury to GW. As shown by the affidavits of Arthur J. Bean, Director of GW's Construction Programs, and Louis H. Katz, GW Vice-President and Treasurer, GW would incur approximately $12 million in costs to halt construction, including costs associated with labor, materials, termination of contracts, stabilization and securing the construction site, remobilization, and lost income. Delay in construction could harm the academic reputation and functioning of the Elliot School, which anticipates relocating to the new building for the 2002 academic year, as well as that of the Law School, which anticipates using the existing Elliott School building. A delay would also frustrate GW's goal of increasing student housing.

Second, ANC 2A will not be harmed by a stay because, as GW acknowledges, it continues construction at its own risk, with full knowledge that it may have to modify its building plans to revert back to the PUD as approved in 1993 or that some adjustment in the PUD benefits and amenities package may be required if the Zoning Commission ultimately approves a PUD modification. In opposing the stay, ANC 2A had requested that the PUD be returned

immediately to the Zoning Commission for review. Since GW's PUD modification request is presently pending before the Zoning Commission, the ANC is not harmed by the stay.

Third, for the same reasons that the ANC is not harmed by a stay, the public interest is not harmed by a stay.

Finally, because these three factors strongly favor relief, the Board has greater flexibility in weighing the criteria relating to GW's likelihood of success on the merits. *Barry,* 529 A.2d at 321. GW cites *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.,* 559 F.2d 841, 843 (D.C. Cir. 1977), for the proposition that where the balance of hardships and public interest weigh strongly in favor of interim relief, a stay will issue if the moving party has demonstrated serious issues going to the merits of its claims. This case stands for the proposition that a stay is appropriate where the moving party has raised questions that are "fair ground" for litigation and "for more deliberative investigation." In the instant case, GW's Motion for Reconsideration presents additional factual materials and arguments going to the merits that, if the record were to be re-opened and the issues reconsidered, would present fair ground for litigation and more deliberative investigation.

Moreover, under D.C. Code § 6-641.07(g)(4), the Board "may make such order as may be necessary to carry out its decision . . . ." Granting a stay in this case aids in carrying out the Board's decision. It allows GW and the parties to proceed with PUD modification proceedings before the Zoning Commission without the delay, uncertainties, and expense of further proceedings before the Board. Further Board proceedings may ultimately be unnecessary if the Zoning Commission approves GW's PUD modification request. Therefore, the Board has determined to stay the effectiveness of its decision pending completion of the PUD modification proceedings. If the Zoning Commission approves a PUD modification, the stay shall be extended until GW obtains a building permit pursuant to the terms of the PUD modification order. If, on the other hand, GW withdraws its request or the Zoning Commission disapproves the PUD modification, the stay shall terminate automatically.

Deferral of GW's Motion for Reconsideration

Since GW has filed a PUD modification request with the Zoning Commission which includes the four modifications identified by the Board in BZA Order No. 16701 as requiring Zoning Commission approval, the Board has determined that it is appropriate to hold GW's Motion for Reconsideration in abeyance pending completion of the Zoning Commission proceedings. Therefore, the Motion for Reconsideration shall be held in abeyance concurrent with the terms of the stay issued in this case.

ORDER

Based on the above, it is hereby **ORDERED** that:

1. The stay granted in BZA Order No. 16701-A, which stays the effectiveness of the Board's final Decision and Order, BZA Order No. 16701 dated July 12, 2001, is extended until such time as the Zoning Commission's written order taking final action on GW's PUD modification request (whether to approve, approve with modifications, or disapprove the request) becomes final and effective;

2. If the Zoning Commission approves a PUD modification, the stay shall automatically be extended until the Department of Consumer and Regulatory Affairs issues GW a building permit pursuant to the PUD modification order, at which time the stay shall terminate automatically;

3. If the Zoning Commission disapproves GW's PUD modification request, the stay shall terminate automatically when the Commission's written order disapproving the modification becomes final and effective;

4. If GW withdraws its PUD modification request, the stay shall terminate automatically upon the filing with the Zoning Commission of the notice of withdrawal;

5. GW's Motion for Reconsideration and to Re-Open the Record shall be held in abeyance for so long as the stay remains in place pursuant to paragraphs 1 through 4 of this order; and

6. GW shall immediately notify the Board in writing, with copies served on all parties, of:

   A. Any action taken by GW to request the withdrawal of its application for a PUD modification;

   B. Any final order that the Zoning Commission may enter with respect to GW's PUD modification request; and

   C. The issuance of a building permit to GW pursuant to any PUD modification order the Zoning Commission may approve.

Vote taken August 21, 2001, to extend the stay:

VOTE: 4 – 0 – 1 (Carol J. Mitten, Geoffrey H. Griffis, Sheila Cross Reid, and David Levy, to extend the stay; Anne M. Renshaw, not present, not voting).

Vote taken September 4, 2001, to order GW's Motion for Reconsideration and to Re-Open the Record held in abeyance:

VOTE: 5 - 0 - 0 (Sheila Cross Reid, David W. Levy, Anne M. Renshaw, Geoffrey H. Griffis, and Carol J. Mitten (by absentee vote), to approve).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: **JERRILY R. KRESS, FAIA**
Director

FINAL DATE OF ORDER: SEP 26 2001

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

MS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

BZA APPEAL NO. 16701-C

As Director of the Office of Zoning, I hereby certify and attest that on SEP 26 2001, a copy of the foregoing Order in BZA Appeal No. 16701-C was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing and who is listed below:

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ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning