Attachment A

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

D.C. OFFICE OF ZONING
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2002 AUG 22 AM 9:45

August 20, 2002

The Honorable David A. Clark
Director
Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.E.
Washington, DC 20002

Mr. Robert Kelly
Zoning Administrator of DC
Dept. of Consumer & Regulatory Affairs
941 North Capitol Street, N.E.
Washington, DC 20002

Re: Certificate of Occupancy for GWU's 1957 E Street, N.W.

Dear Messrs Clark and Kelly:

The West End Citizens Association (WECA) believes that it would be premature for the Department of Consumer and Regulatory Affairs (DCRA) to issue a Certificate of Occupancy (CofO) for the George Washington University's (GWU's) 1957 E Street project. The Zoning Commission's Order No. 746-C, conditionally approving a modification of a previously-approved planned unit development (PUD), was published last Friday, August 16, 2002. The WECA believes that **GWU is out of compliance with at least three provisions in the Order**, all of which must be corrected before DCRA is legally able to issue a CofO. If DCRA has issued a CofO, nonetheless, the WECA requests that DCRA immediately revoke it under 12 DCMR §1184.3.

On August 14th, the WECA sent a fax to DCRA Director Dave Clark. It stated,

> ... before DCRA can legally issue a CofO it must ensure that GWU is in compliance with the PUD conditions. The conditions include a requirement for GWU to write a check for $100,000 to the Foggy Bottom Feeding Program Foundation, which GWU has <u>not</u> yet done (p. 10 of ZC Order No. 746-C). The condition reads, "The University shall contribute $500,000 over five (5) years ... The $500,000 contribution will be $100,000 a year for five (5) years to the Foggy Bottom Feeding Program Foundation, Inc. ... The first $100,000 contribution shall be made on the date of the Certificate of Occupancy for the Subject Property.

On August 15th, Zoning Administrator Bob Kelly followed up by calling the WECA. He informed the WECA that GWU had stated that the Foundation was not yet set up and that the Order allowed GWU to write a check <u>after</u> issuance of the CofO. The WECA informed Mr. Kelly that the Foundation was set up months ago and has held several Board meetings. In fact, the Foundation was incorporated on March 27th. However, it could not complete establishment of a new Feeding Program until the written Order was in hand -- especially since the Commission's July 8th oral vote left most of the conditions to be defined in the written Order. In fact, GWU acknowledged this in a March 29th memorandum to the WECA. GWU's

BZA
Case No. 16950
Exhibit No. 9

Board of Zoning Adjustment
District of Columbia
CASE NO.16950
EXHIBIT NO.9

memorandum stated, "The University representatives named in the Articles [of Incorporation] look forward to working with the representatives of the West End Citizens Association, once the GW PUD modification is approved." In addition, Mr. Kelly agreed with the WECA that GWU needed to issue a check before DCRA could issue a CofO. He decided to seek Counsel review of the Order's wording to be sure. The WECA referred him to Alan Bergstein, who served as Counsel to the Zoning Commission on this case.

On August 16th, GWU unilaterally tried to change the terms of the Order by setting up a Rube Goldberg-type non-traditional escrow account - with conditions no where found in the Order - in its bank (Riggs) instead of in the Foundation's bank (First Union). Yesterday, the WECA discovered that the Riggs account is captioned "George Washington University Elliott School Escrow Account" and includes no mention of Zoning Administrator Kelly, the supposed escrow agent (see Attachment A). Also, there is no mention whatsoever of the Foundation even though the Order requires GWU to issue a check to the Foundation. Lastly, the Employer Identification Number (EIN) for the account is undoubtably that of GWU instead of that for the Foundation. Under what authority could GWU create such an account and place any conditions on it? And, where in the Zoning rules does it provide for the Zoning Administrator to serve as an escrow agent?

Second, the Order states, "the University, by letter dated February 8, 2002, made part of this record, will voluntarily adopt and publish this [student parking restriction] policy beginning in University documents for Fall 2002" (#32, p. 7). On August 17, 2001, GWU wrote the WECA, stating the terms of the restriction - "a condition restricting Freshmen and Sophomores living in the Foggy Bottom/West End Area ... 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." A copy of this letter was also made a part of the Commission's case record. GWU's February 8, 2002 followup letter to the Commission stated, "the University will voluntarily adopt and publish this policy beginning in University documents for Fall 2002."

In a search of GWU's website, there was no statement restricting freshmen and sophomores from bringing cars to the Foggy Bottom/West End Area. Instead, GWU's website says, "Student Contract parking is available to all students at the University" (emphasis added) (see Attachment B, p. 2). Also, GWU's Fall 2002 Catalog (entitled "The George Washington University Bulletin: Undergraduate Programs 2002-2003") and its most current "Guide to Student Rights and Responsibilities" both do not include any policy statement restricting student parking in the Foggy Bottom/West End Area. On August 16th, the WECA asked GWU in an e-mail (cc Mr. Kelly) for proof of compliance with this provision. To date, GWU has not provided any proof.

Third, the August 17, 2001 Memorandum of Agreement between the WECA and GWU, which was made also part of the Commission's case record, provides, "**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" (#8, p. 5). However, since that date, GWU has failed to fully comply with the DC Environmental Policy Act for its proposed new dormitory project in Square 43, where there are clearly adverse environmental effects on the abutting property owner, Donald Kreuzer. Also, in the new GWU hospital case (BZA No. 16389), the DC Department of Health commented that air pollution levels are such that there "is essentially no remaining air resource margin in the 23rd Street corridor just south of Washington Circle," which will "experience peak CO concentrations that are just below the applicable health standard." When does GWU intend to prepare an environmental impact statement (EIS) for its Square 43 project, which is in the 23rd Street corridor south of Washington Circle?

In addition, the Order states, "The University shall comply with the D.C. Environmental Policy Act (D.C. Code § 6-981 *et seq.*), subject to any applicable amendments, regulations or judicial interpretation, on all future campus construction projects" (#12, p. 12). Where is GWU's proof of compliance with this requirement?

It is inconceivable to the WECA that Mayor Williams would approve of issuance of a CofO until there is proof of full compliance by GWU with the Order. Without such proof, the multi-year community battle (starting in April 2000) on this site would be a mockery of due process and fairness. If you have any questions about this letter, please call Barbara Kahlow on 226-3058. Thank you.

Sincerely,

John C. Batham
President

Attachments

cc The Honorable Anthony A. Williams, Mayor
The Honorable Carol Mitten, Chair, Zoning Commission
Dan Margolies, Esq., DC Corporation Counsel
Alan Bergstein, Esq., DC Corporation Counsel

Attachment A

RIGGS

NON PROFIT DIVISION
Memorandum

TO: **Pauline Brown**

FAX: [redacted]

FROM: **Amelia Fernandez**
Ext. 5225
Relationship Banking

DATE: **August 16, 2002**

RE: **George Washington University**
Elliott School Escrow Account / 25 313 732

Please open the above new account today, under RC #730, Type [redacted] (Corp.MMA), Branch 012.

Thanks

RIGGS

Date 8/16/02

George Washington University
2121 I St., NW, Suite 701
Washington, DC 20052

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25313732 100,000.00 CASH
16AUG02 15:54 100,000.00

BRANCH TELLER DATE TIME

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