GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

Rec'd
12/17/02

September 6, 2002

Foggy Bottom Feeding Program Foundation, Inc.
c/o Corporation Service Company (Registered Agent)
1090 Vermont Avenue, N.W.
Washington, D.C. 20005

Mr. John C. Batham
President
West End Citizen's Association
P.O. Box 58098
Washington, D.C.

Charles K. Barber, Esq.
Senior Counsel
The George Washington University
2100 Pennsylvania Avenue, NW, Suite 250
Washington, D.C. 20052

Re: Implementation of Zoning Commission Order 746-C (Decision, Paragraph 9) and Issuance of Certificate of Occupancy for 1957 E Street, NW, Washington, D.C.

Dear Sirs:

This letter will seek to respond to concerns that have been raised by representatives of both the West End Citizens Association and the George Washington University regarding implementation of that portion of Zoning Commission Order 746-C, which pertains to funding a feeding program in Foggy Bottom, and the issuance of a Certificate of Occupancy for 1957 E Street, NW, Washington, D.C.

The Order of the Zoning Commission (ZC Order) provides in Paragraph 9(a) of the Decision that George Washington University (hereinafter GWU or the University) "shall contribute $500,000 over five (5) years for the purpose of operating a program of providing meals at reduced rates for the needy, elderly, and other low-income residents of Foggy Bottom." The Order further provides that:

BZA
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Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO.16950
EXHIBIT NO.28

a) $100,000 a year is to be paid to the Foggy Bottom Feeding Program Foundation, Inc. (hereinafter Foundation);

b) "The Foundation will set the eligibility requirements and provide oversight for the Feeding Program."

c) "The first $100,000 contribution shall be made on the date of the Certificate of Occupancy" for 1957 E Street, NW."

d) If necessary, the University will pay up to $250,000 additional "for the build-out of University food service venues."

e) No portion of the $500,000 or the $250,000 can be used for salaries, expenses, or other administrative costs.

f) "The entirety of the $500,000 contribution paid by the University shall be conditioned upon its exclusive use to provide food and meals to needy, elderly, and other low-income residents."

g) "If, for any reason, the Feeding Program cannot operate as described above, or the Feeding Program fails to comply with the above-stated condition, then the University shall pay $100,000 a year to an existing, nonprofit food service program selected by the Foundation until (a) the Feeding Program begins or resumes operation; (b) the Feeding Program achieves compliance with the funding condition; or (c) the $500,000 is fully expended, whichever comes first."

The West End Citizen's Association (WECA) has urged that under the terms of the ZC Order, GWU should have issued a check for $100,000, to the Foundation, a duly incorporated non-profit corporation, prior to issuance of a Certificate of Occupancy by DCRA. Since a Certificate of Occupancy was in fact issued, prior to issuance of the check to the Foundation, WECA maintains that GWU should be required to issue a check to the Foundation immediately, or DCRA should revoke the C of O.

GWU, on the other hand, has expressed concern that while the Foundation exists, the Feeding Program itself has not been "established," as apparently there is no written plan describing how the feeding program will operate (eg: how food is to be distributed, location(s) from which food will be provided; who is eligible; how eligibility will be determined; etc.); nor is the Foundation currently implementing a feeding program. GWU is concerned that after it makes a contribution, if the Foundation fails to meet the

conditions in the ZC Order for operating a feeding program (e.g. that the money be used exclusively to provide food and that no portion of the money be used for administrative services), GWU will then be unable to comply with the ZC Order directing it to pay the money to another nonprofit food service program, as it will no longer have control over those funds.

Based upon these alleged concerns, GWU announced that, rather than issuing a check to the Foundation, it placed the $100,000 in an "escrow" account at Riggs Bank. GWU has provided DCRA with a copy of a letter to Riggs Bank directing that the $100,000 deposited in Riggs: a) be issued to the Foundation if the Zoning Administrator determines that the Foggy Bottom Feeding Program is established; b) be issued to an existing program selected by the Foundation; or c) remain is escrow until the Zoning Commission further instructs GWU.

The Zoning Administrator has reviewed the Zoning Commission Order, as well as the correspondence from both parties. While, under the terms of the ZC Order, it is arguable that GWU should have given a check directly to the Foundation on the date the Certificate of Occupancy was issued, it is also understandable that GWU had legitimate concerns with respect to whether it should send the money directly to the Foundation, without some evidence that the Foundation is prepared to operate a feeding program. Since GWU has placed $100,000 in an interest bearing account, to be paid to the Foundation or an entity selected by the Foundation upon direction by the Zoning Administrator,[1] the Zoning Administrator cannot conclude that GWU should be cited at this time for violating the terms of the ZC Order.

Upon review, it is clear that since under the ZC Order, the money goes either to the Foggy Bottom Feeding Program Foundation or to a feeding program selected by the Foundation, that it is necessary to hear directly and formally from the Foundation, with respect to the status of the feeding program and the wishes of the Foundation. Therefore, the Zoning Administrator hereby requests that the Foggy Bottom Feeding Program Foundation provide to the Zoning Administrator, either:

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[1] Although the directive to Riggs Bank references a 3-month holding period, DCRA has been advised that under the terms of the escrow, the money need not remain in the account for a full three months and that the Zoning Administrator can direct its disposition prior to that time. The Zoning Administrator did not ask to be "escrow agent" and in fact sent an e-mail to GWU to this effect. The Zoning Administrator recognizes, however, that DCRA has a role in interpreting and enforcing the terms of the ZC Order pursuant to 11 DCMR 3205.

1) A resolution by the Board of Directors, duly adopted in accordance with D.C. law and the bylaws of the Foundation, certifying that a feeding program has been established and that the Foundation is prepared to operate the feeding program in conformance with the requirements of the Zoning Commission Order; or

2) A resolution by the Board of Directors, duly adopted in accordance with D.C. law and the bylaws of the Foundation, designating an existing non profit food service program to receive the first $100,000, in lieu of the Foundation.

Upon receipt of one of the resolutions described above, the Zoning Administrator will direct appropriate disposition of the funds in escrow by GWU. If the required disbursement is not made, DCRA will pursue appropriate enforcement action.

Thank you for your consideration in this matter. I can be reached at 442-4576.

Sincerely,

Robert W. Kelly
Zoning Administrator

cc: David Clark, Director, DCRA
Therese Lewis, Deputy Director for Operations
J. Gregory Love, BLRA Administrator
Denzil Noble, Deputy Administrator, BLRA
Jerrily Kress, Director, Office of Zoning
Barbara Kahlow, WECA