Board of Zoning Adjustment Appeal No. 16950
West End Citizens Association Appeal of Department of Consumer and Regulatory Affairs (DCRA) and Zoning Administrator's (ZA) Administrative Decision to Issue a Certificate of Occupancy for the Residential Property located at 1957 E Street NW/ The George Washington University (Square 122 Lot 835).

1-14-03 – Continuance Hearing – Testimony of Elizabeth B. Elliott for ANC-2A

Chairperson Griffis and members of the Board, thank you for considering the ANC's comments on members' of the West End Citizens Association (WECA) Appeal of the DCRA's and Zoning Administrator's decision to issue a Certificate of Occupancy to George Washington University (GWU) for the Residential and Parking Garage portion of its 1957 E Street project.

The ANC is appearing today without benefit of counsel. As Commissioner Miller indicated, at a special meeting held on December 29, 2002, the ANC did vote to appear, represented by Commissioner Miller and myself, at this hearing

Because the ANC did not participate in the August 2001 GWU-WECA negotiations that have ultimately spawned this appeal, at its regular monthly meeting on November 13, 2002, ANC-2A voted unanimously to take no position in this BZA appeal case and to reconfirm to the Board its original and ongoing opposition to the entire 1957 E Street project—the dormitory, academic, and parking garage portions (all university uses)—as well as the "amenities" package.

Also at that meeting, the ANC was informed that the Zoning Commission's final order No. 746-C had been challenged in the D.C. Court of Appeals by a petition for review, York Apartments Tenants Ass'n v. Zoning Commission, No. 02-11-1061. Although the ANC is precluded from participating in that litigation, ANC-2A unanimously voted to support YATA's appeal in the D.C. Court of Appeals. (In the interests of full disclosure, I am a resident of the York Apartments and a Board Member of the YATA.)

During the Zoning Commission's protracted deliberations in the Spring of 2002 on the AGC/GWU PUD modification case (01-17M), the ANC received numerous letters from various community groups supporting the ANC's position in the AGC/PUD modification case, and commenting on their opposition to the GWU "amenities" package. In particular, there was great consternation from our constituents about the previously non-existent "Foggy Bottom Feeding Program Foundation" and its potential, new subsidized feeding program.

We have attached some materials that are all in the record of the original AGC/GWU PUD Modification Case (01-17M) that we think are germane to this case and would be helpful in your deliberations.

Case No. 16950
Exhibit No. 43

Board of Zoning Adjustment
District of Columbia
CASE NO.16950
EXHIBIT NO.43

Included therein is an April 9, 2002 letter that was attached to the ANC's April 14, 2002 filing and in which a representative of the Board of Directors of Watergate West, Inc., raised several issues about the feeding program "amenity":

"It should be understood that acceptance by the ZC of the Feeding Program as part of the amenities package would be tantamount to their approval of a change of use of a property, namely from a student dining facility to a commercial venture and a social program to feed the needy and homeless. Despite the change in purpose, the activities will be conducted in a property owned by the university and presumably will still be governed in some measure by the host of regulations that relate to university use."

If the contention of the Watergate West is correct, and ANC-2A believes it is, in its final order on this case (ZC Order No. 746-C), the ZC memorialized and sanctioned an improper expansion of, and change in, uses on GWU property—the operation of a "feeding program" in university property—without a special exception hearing for a change in use. As Watergate West pointed out, under the Campus Plan Regulations, the Zoning Commission had no legal basis or authority to approve a change in use in any of GW's non-commercial facilities without a separate, public hearing.

ANC- 2A has only recently learned from its constituents that GWU officials hosted a July 24, 2002 meeting with representatives from four Foggy Bottom cooperative buildings and with Mr. David Watts, a Board member of the Foggy Bottom Feeding Program Foundation, in attendance. At that meeting, it was indicated by a GWU official that the program at the Virginia Avenue dormitory was not a project of GW, but was required at the insistence of the ANC and the BZA. This official further stated that it was GW's view that the feeding program could not succeed as currently required. It is clear that GW was aware of the unsupportability of a feeding program in University property without the proper hearings and proceeded despite this knowledge. It is also clear that GW misrepresented the ANC's position in this case to the ANC's own constituents.

Finally, the ANC would like to correct the Appellant's claim in this case that the Board of Zoning Adjustment (BZA) was responsible for and "directed" settlement negotiations. The BZA is an adjudicative body and does not have this authority.

Attachments:
1. Senior Advantage Program offered at GWU Hospital
2. ANC-2A August 20, 2001 filing opposing ZC Consent Calendar approval of the AGC/GWU PUD.
3. ANC-2A April 13, 2002 filing with attachments in response to revised "benefits and amenities" proffered by GWU in AGC/PUD.
4. April 17, 2002 Letter to ZC from Watergate Dental Associates.
5. May 2, 2002 Letter to ZC from WECA Board members, Donald Kreuzer and Lucille Molinelli.

DIRECTORY

- Home
- Physician Referrals
- Key Word Search
- Hospital Services, Treatment Options
- Patient Information
- Press Releases, News Updates
- Health News Magazine
- International Patients
- Hospital Overview
- Community Seminars & Support Groups
- GW Web Nursery
- Hospital Phone Numbers
- Directions & Maps
- Physician & Professional Education Programs
- Employment
- Be a Volunteer
- The Women's Board
- Medical Library
- Site Map
- Contact Us

CONTACT

George Washington University Hospital
900 23rd St., NW
Washington, DC 20037
(202) 715-4000

Seniors

THE GEORGE WASHINGTON UNIVERSITY HOSPITAL
UHS Universal Health

You are here: Health News Magazine > Seniors

Senior Advantage Program Offers a Wide Range of Valuable Benefits

The Senior Advantage program at The George Washington University Hospital is so popular, younger people are trying to get in, says Yolanda Joyner, Senior Advantage Coordinator. "A lot of people in their 50s have asked about joining. So, I've had to remind them that they aren't yet 'seniors.'"

That's because for a $10/individual and $15/couple one-time sign-up fee, members age 65 and older get lots of discounts, educational programs, and other benefits. In fact, members say the Senior Advantage program more than pays for itself. "You get such a wide variety of services for that one-time fee," says Joyner. Services include the following:

- Discounts on prescriptions, vision care, cafeteria meals, gift-shop purchases, transportation on the Metrorail system, exercise programs, and the Lifeline Personal Emergency Response Service
- Free hearing screenings
- Assistance understanding hospital bills through GW Hospital's Health Insurance Counseling program
- VIP hospital stays, including a private room, when available; gourmet meals; daily newspaper; a plant; and a free hour of daily parking for friends or relatives
- GW Hospital's free Physician Referral Line and Drug Information Service

Send us E-mail

CLICK HERE FOR Health Links

This information was accurate at the time of publication. Copyright 1999-2002

- Free and discounted special events, including seminars, health fairs, and support groups.

Seminars, often with refreshments, are popular with the program's 1,300 members. More benefits are being added as the program grows. "We care about the older adults in our community, and we want to offer them the best services," says Joyner.

To join, call 202-715-4192 for a brochure and registration form.

This article originally appeared in The George Washington University Hospital's Health News magazine in spring 2002.

DRISCOLL & DRAUDE
ATTORNEYS AT LAW

SECOND FLOOR
1230 THIRTY-FIRST STREET N.W.
WASHINGTON, D.C. 20007

(202) 333-0330
Fax (202) 298-6699

BRIAN G. DRISCOLL (DC, MD)
JAMES T. DRAUDE (DC, MD, VA)

Of Counsel
EDWIN E. HUDDLESON, III (DC, CA)

August 20, 2001

VIA FACSIMILE and
BY HAND DELIVERY

Jerrily R. Kress, Director
Office of Zoning
441 Fourth Street NW #210
Washington, D.C. 20004

Re: Z.C. Case No. 01-17MM/93-5F/
91-18P (PUD AGC - 1957 E Street NW)

Dear Ms. Kress:

This letter is Advisory Neighborhood Commission 2A's ("ANC 2A") opposition to George Washington University's ("GWU") application to the Zoning Commission ("Commission") for Consent Calendar approval of modifications to the above-referenced PUD ("AGC PUD").

At the outset, we note that the Commission's Consent Calendar rules, under which GWU filed its application, violate the requirements of the District of Columbia Administrative Procedure Act and of due process by purporting to allow the Commission to make decisions in contested cases without hearings and with truncated or no notice.

The modifications requested in GWU's application are not the "minor modifications and technical corrections" that the Consent Calendar rules address. The Board of Zoning Adjustment ("BZA") has already ruled, in a contested case in which GWU was a party (BZA Order No. 16701), that the modifications requested by GWU in this case are not minor modifications and exceed the scope of the AGC PUD as originally approved by the Commission. Given the unusual expedited proceedings that the Commission appears to be following in this case, ANC 2A hereby incorporates by reference in this case, in support of the BZA's Order No. 16701, all of the filings and testimony of all parties and persons appearing in BZA Case No. 16701.

GWU's request for modifications to the AGC PUD should not be granted because the requested modifications: 1) are a fundamental

change to the purpose, benefits, and amenities included in the AGC PUD as originally approved by the Commission, 2) are not consistent with the District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan"), and 3) are not consistent with GWU's campus plan as recently approved by the BZA.

AGC PUD Order

The underlying rationale of the Commission's Order No. 746 approving the AGC PUD ("PUD Order") was that the AGC PUD would allow the Associated General Contractors of America ("AGC") to retain its headquarters in the District of Columbia, with attendant benefits to the District of Columbia, and to provide essential housing in the Downtown area.

The AGC PUD, as approved by the Commission, allowed AGC to develop the site to 7.96 FAR "of which not more than 5.79 FAR shall be devoted to commercial use and not less than 2.17 FAR shall be devoted to residential use" (PUD Order, p. 9, para. 3). The AGC PUD included an office facility with space to accommodate the AGC's present and future headquarters needs with sufficient additional office rental space "to enable the AGC to remain in the District of Columbia" and with "a 47 - 56 unit apartment component" (PUD Order, p. 1, para. 3). The AGC PUD "would allow the retention of a major, national association; provide approximately 323 new, permanent jobs in the District of Columbia; * * * and result in an increase of approximately $2.54 million annually in tax revenues to the District of Columbia" (PUD Order, p. 3, para. 14). The Commission found "that the proposed PUD will provide essential housing in the Downtown area" (PUD Order, p. 7, para. 26). The Commission allowed AGC to "vary the number of residential units to allow for larger or smaller units, in response to market conditions" (PUD Order, p. 10, para. 15(a)). The Commission concluded that "the development of the project is compatible with District-wide and neighborhood goals, plans and programs" and "is not inconsistent with the Comprehensive Plan for the National Capital because it will produce needed housing * * * and increase employment opportunities" (PUD Order, p. 8, paras. 3 and 4).

GWU's request for modifications is fundamentally inconsistent with the rationale for the AGC PUD as approved. GWU proposes to use the portion of the AGC PUD designated as commercial to house GWU's Elliott School, which GWU is moving from an existing site within GWU's approved campus plan boundaries, thereby converting the commercial portion of the AGC PUD site from a commercial, tax-paying use to a tax exempt university use. The PUD Order did not approve any portion of the AGC PUD site for university use. Although GWU's application coyly describes as "residential" GWU's intended use of the residential portion of the AGC PUD site, GWU has stated publicly

that GWU intends to use the residential portion of the AGC PUD site as a dormitory, thereby converting it from a tax-paying residential use to a tax exempt university use. The PUD Order did not approve the AGC PUD site for dormitory use. The PUD Order describes the residential component of the AGC PUD as an "apartment". "Apartment" use and "dormitory" use are different uses under the Zoning Regulations (11 DCMR 199, 210.1, 330.3, 330.5(f), 350.4(c)). The PUD Order's references to providing essential housing in the Downtown area and to changing the number of residential units in response to market conditions plainly do not refer to dormitory use of the AGC PUD site.

Comprehensive Plan

The District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan") have been enacted into law by the District of Columbia Council (46 DCR 1441 et seq. (1999)). The Zoning Regulations require the Commission to determine that a PUD is not inconsistent with the Comprehensive Plan and to evaluate PUD public benefits and project amenities in the context of the Comprehensive Plan (11 DCMR 2403.4 and 2403.5).

One of the policies and objectives contained in the Comprehensive Plan is to preserve and expand the District of Columbia's tax revenue base, as set forth in the following sections of the Comprehensive Plan (emphasis added):

> Section 200.5: The District's overall economic development goals are to generate a high-performance economy, create job opportunities for District residents, expand the revenue base through a strong, growing citizen-business-government partnership * * * . (46 DCR 1473 (1999)).
>
> Section 200.9: Expansion of the District's preeminent role as the location for corporate and other headquarters, including the vast network of membership organizations representing business, labor, professional, social, and religious associations throughout the United Sates, is another priority. (46 DCR 1474 (1999)).
>
> Section 200.13: The generation of sufficient tax revenues to fund the District's budget is a top government priority. Economic development programs that contribute to this goal should be promoted. (46 DCR 1474 (1999)).

GWU's proposed modification of the AGC PUD is not consistent with the foregoing policies and objectives since it converts the AGC

PUD from tax-paying, job-generating uses to tax exempt university uses.

The Comprehensive Plan also includes numerous specific provisions regarding GWU and its impact on the Foggy Bottom/West End neighborhood. The site of the AGC PUD is outside the boundaries of GWU's approved campus plan. The Comprehensive Plan recognizes the deleterious effects of housing large numbers of GWU students in residential areas outside of GWU's current campus plan boundaries and includes a policy that GWU should provide housing for its student body within the current campus plan boundaries and should stop conversion of buildings outside the campus boundaries to dormitories. Relevant sections of the Comprehensive Plan are as follows (emphasis added):

> Section 1303.7: Institutional growth, commercial expansion, and rising housing costs have lessened the amount of housing available in the Foggy Bottom and West End neighborhoods. The Comprehensive Plan and campus master plans provide the means for institutions and residents to address these issues. (46 DCR 1730 (1999)).
>
> Section 1305.1(j): An important element causing housing problems has been the demolition and conversion of housing to provide commercial and institutional buildings, university dormitories, offices, classroom space, hotels, and medical clinics. * * * To improve the housing stock and to prevent further loss of housing, adjustments shall be made to existing zoning regulations and to campus plans to address these problems. (46 DCR 1732 (1999)).
>
> Section 1325.2: The overriding issues for Ward 2 neighborhoods [include] the impact from uses such as * * * university expansions. (46 DCR 1757 (1999)).
>
> Section 1325.3: Loss of housing stock is also a critical problem in Foggy Bottom/West End, aggravated by the lack of dormitory construction on the George Washington University (GWU) campus * * *. Conversions of housing units, particularly apartments to transient use (hotel, de facto hotels, and corporate apartments), to university dormitories and offices, and to medical offices/clinics is a major cause of depletion of the housing stock. (46 DCR 1757-1758

(1999)).

Section 1327.1(b): George Washington University continues to expand its operations in the Foggy Bottom area. Therefore, the University must work closely with the Foggy Bottom community on developing a campus plan. The campus plan should include sufficient dormitory space for the student body on campus to alleviate some of the pressure on housing by students. (46 DCR 1758-1759 (1999)).

Section 1342.1(b): The actions in support of the objective for major institutional complexes are as follows: * * * (b) Update campus plans for George Washington University and Georgetown University; as part of the campus plan the Foggy Bottom community needs to address: 1) the student housing issues by planning for future dormitories, and 2) the on-campus parking issue. GWU must take account of the residential and historic district status of Foggy Bottom in any future development. (46 DCR 1766 (1999)).

Section 1358.1: The George Washington University constitutes a major institutional presence in a zone between the Central Employment Area and residential Foggy Bottom. The expansion of the University has resulted in the diminishment of housing and the construction of buildings for the University purposes. This and other commercial usage is of grave concern to the Foggy Bottom residential community. Intense student pressure on Foggy Bottom's housing stock outside the campus, combined with the impact of university generated traffic has had a negative effect on residential Foggy Bottom. The University must continue to construct student dormitories to alleviate the pressure on the housing stock outside the boundaries of the campus plan. The University must be sensitive to the surrounding residential neighborhood.

GWU's proposed conversion of the AGC PUD (outside GWU's campus plan boundaries) to dormitory use is not consistent with the foregoing provisions of the Comprehensive Plan, which have been in the Comprehensive Plan since 1994 (41 DCR 5643, 5645, 5667, 5671, 5674, 5675-76, 5680 (1994)).

Campus Plan

As noted above, the site of the AGC PUD is outside the boundaries of GWU's campus plan as recently approved by the BZA and, indeed, is outside the campus plan boundaries that have been in effect since 1985. In addition to consideration of the Comprehensive Plan, the Zoning Regulations require the Commission to determine that a PUD is not inconsistent "with other adopted public policies and active programs related to the subject site" (11 DCMR 2403.4).

The underlying zoning of the AGC PUD site is SP-2 (PUD Order, p. 1, para. 1). University uses are not permitted in an SP-2 zone unless they are included in an approved campus plan and receive a special exception (11 DCMR 507). The BZA correctly rejected GWU's bootstrap argument that re-zoning of the AGC PUD site to C-3-C allows GWU to use the site for university uses as a matter of right, independent of the requirements of the approved AGC PUD (BZA Order No. 16701, pp. 18-20).

The thrust of the Zoning Regulations is to keep universities from expanding into residential neighborhoods without control. George Washington University v. District of Columbia Board of Zoning Adjustment, 429 A.2d 1342, 1348-1349 (D.C. App. 1981). The purpose of review of a campus plan is to evaluate the effect of the campus plan as a whole on the surrounding neighborhoods. Levy v. District of Columbia Board of Zoning Adjustment, 570 A.2d 739, 742 (D.C. App. 1990). GWU's approved campus plan does not include the AGC PUD site. Allowing GWU to use the site for university uses without including it in the campus plan is not consistent with the requirement that a campus plan must be a "plan for developing the campus as a whole" (11 DCMR 210). Use of the AGC PUD site for university uses is an unauthorized de facto expansion of the campus plan boundaries.

In sum, GWU's proposed conversion of the AGC PUD site to university uses is not consistent with GWU's approved campus plan.

Conclusion

For the foregoing reasons, ANC 2A requests the Commission to deny GWU's application for Consent Calendar approval of modifications to the AGC PUD.

Sincerely,

James T. Draude

James T. Draude

Attorney for ANC 2A

RECEIVED
4-13-02

ADVISORY NEIGHBORHOOD COMMISSION 2A'S RESPONSE
TO APPLICANT'S REVISED "BENEFITS AND AMENITIES"

Advisory Neighborhood Commission 2A ("ANC 2A") hereby responds to the revised "benefits and amenities" proffered by George Washington University ("GWU") by letter dated March 27, 2002.

Standard for Evaluating
Benefits and Amenities in This Case

The standard against which to measure the benefits and amenities proffered by GWU in this case is the level of benefits and amenities required by the Zoning Commission's first-stage approval of the AGC PUD.

The PUD process allows a property owner to obtain zoning incentives, such as increased building height and density, in exchange for public benefits and amenities created by the proposed project (11 DCMR 2400.2). The relevant benefits and amenities are those created by the proposed PUD project (11 DCMR 2400.2, 2400.3, 2403.5, 2403.6, 2403.7). The public benefits generated by the PUD project must be significantly greater than benefits that would result from matter-of-right development of the site (11 DCMR 2403.6). "Benefits and amenities" that are a legal obligation of the property owner, independent of the PUD, cannot be credited as benefits and amenities generated by the PUD project.

GWU's application for modification of the AGC PUD is processed as a second-stage PUD (11 DCMR 2409.9). The first-stage PUD order (Z.C. Order No. 720) remains in effect. A second-stage PUD application must demonstrate compliance with the

first-stage approval (11 DCMR 2408.6).

The underlying zoning on the site is SP-2. University use is not a matter-of-right use in the SP-2 zone, and non-residential use is limited to 3.5 FAR. Order No. 720 rezoned the site to C-3-C, which allows significantly broader uses than SP-2, and allowed 5.79 FAR for non-residential use and an increase in height. In exchange for those zoning concessions, Order No. 720 requires the owner of the site to provide significant benefits and amenities (e.g., creation of permanent resident housing on the site; 323 new, permanent jobs; $2,540,000 in additional annual tax revenues). Since GWU wishes to avail itself of the zoning concessions granted by Order No. 720, GWU is required to provide a level of benefits and amenities equal to the benefits and amenities required by Order No. 720.

The fundamental legal flaw in GWU's case is its assertion that "the University, or any owner, could build the AGC PUD as a matter-of-right without further approval of the Commission". An owner could develop the AGC PUD without further Commission action only if the development produced the benefits and amenities required by the first- and second-stage PUD approvals.

Similarly flawed is GWU's argument that GWU need not provide comparable benefits and amenities because AGC did not construct the AGC PUD and the benefits and amenities were not realized. If a PUD is not constructed, for whatever reason, the benefits and amenities contemplated by the PUD are not realized, but the property owner is not entitled to retain the zoning increases

granted by the PUD -- the property reverts to the underlying zoning (in this case, SP-2) (11 DCMR 2400.7).

The fact that the GWU PUD contains somewhat less gross floor area than allowed by the AGC PUD does not alter the requirements of Order No. 720. The size of the building envelope of the GWU PUD is the same as the building envelope of the AGC PUD.

Benefits and Amenities Proffered by GWU

GWU has now been given three opportunities to proffer benefits and amenities in this case (initial application, supplemental submission on December 14, 2001, and supplemental submission on March 27, 2002).

The GWU PUD eliminates the major benefits of the AGC PUD. The GWU PUD eliminates the permanent resident housing that the Commission found was a "critical amenity" of the AGC PUD. The housing units in the AGC PUD would have provided housing for permanent, tax-paying residents of the District of Columbia. The GWU PUD proposes to use this portion of the PUD as student housing. The GWU PUD does not involve creation of any new permanent jobs since its proposed use is for existing GWU programs that are being re-located to the GWU PUD site. The entire benefit of the new permanent jobs involved in the AGC PUD is lost in the GWU PUD. The GWU PUD converts the tax-paying commercial and residential uses of the AGC PUD to tax exempt university use. The entire value of the $2,540,000 of annual tax revenues involved in the AGC PUD is lost in the GWU PUD.

GWU has proffered various alleged benefits and amenities

that, even if accepted at face value, do not approach the level of benefits and amenities required by Order No. 720. Expert testimony in this case establishes that the present value of the benefits and amenities proffered by GWU (through the 1/17/02 hearing) is $56,580,000 less than the present value of the benefits and amenities included in the AGC PUD. The revised benefits and amenities recently proffered by GWU do not cure that gross imbalance.

GWU asserts that educational benefits to the community, society, the District, the nation and to international affairs generated by the Elliott School should be considered benefits of the GWU PUD. The Elliott School already exists several blocks from the PUD site and already generates such benefits. GWU offers no evidence that relocation of the Elliott School several blocks from its current site (inside the campus plan boundary) will create any additional benefits, economic or otherwise, that could be attributed to the GWU PUD.

Revised Benefits and Amenities
Recently Proffered by GWU

In accordance with ANC 2A Resolution #02-4A (copy attached), ANC 2A hereby incorporates by reference the attached written statements received from neighborhood groups and individuals.

In general, the revised benefits and amenities recently proffered by GWU are inadequate because a) they last for only five years (in exchange for permanent zoning concessions granted by the AGC PUD), b) there is no evidence that many of the alleged "benefits" are needed in ANC 2A, c) some are not benefits but are

actually harmful, d) most are only vaguely described, and/or e) there is no meaningful mechanism for enforcement (ANC 2A's experience is that many benefits approved in PUD orders are not implemented by the developers and are not enforced by the District government).

1. Food Program for Elderly and Low Income Residents.

The area represented by ANC 2A already includes two homeless feeding programs (one at Western Presbyterian Church, known as Miriam's Kitchen, and one from the recently approved IMF PUD) and receives further assistance from mobile vans operated by various groups. St. Mary's Court, three blocks from GWU's proposed site, already operates a subsidized lunch and dinner program for the elderly.

GWU's proposal refers to "elderly and low income residents of Foggy Bottom". Does this exclude the homeless? Does it include students (many have no or low income)? Who will decide who is a qualified, bona fide resident of Foggy Bottom? The cafeteria operator? The unknown Foundation (see below)?

There is no information on the "Foggy Bottom Feeding Program Foundation, Inc." ANC 2A has never heard of it. What is its track record? When was the Foundation established (we suspect sometime after March 11, 2002)?

There is no evidence that GWU consulted with the people who previously operated Sholl's cafeteria in connection with this proposal (the fact that GWU consistently mis-spells the name suggests otherwise). There is no evidence that the people who

previously operated Sholl's (or anyone else) would be willing to open a cafeteria at the proposed site or elsewhere (the $500,000 subsidy does not benefit the operator) or believe that $250,000 is sufficient for build-out of the space. In sum, there is no evidence that this proposal makes any economic sense.

In the event that GWU is unable to induce Sholl's (or anyone else) to operate a cafeteria, as seems likely, the unknown Foundation decides what to do (including moving D.C. Central Kitchen's homeless feeding program to Foggy Bottom).

If the Zoning Commission includes this "benefit" in its order in this case, there is no credible mechanism to assure that GWU actually performs its commitments or that the program will actually occur.

2. Retail Space. The amount of space remains insignificant. There is no definition of what type of retail is acceptable. The immediate Single Member District (ANC 2A01) already suffers the consequences of a fast food outlet open until 3:00 a.m. to cater to students. Even if there were a definition of acceptable retail uses, there is no evidence that such uses are economically viable.

3. Extra Security Patrols. This benefit is limited "to the extent of [GWU's] authority" and is contingent on an agreement with the D.C. police. The proposal is so limited and vague that it is virtually unenforceable. Even if it were included in the Zoning Commission's order in this case, how will anyone know whether GWU is in compliance or in violation?

4. Litter. The presence of large numbers of GWU students (20,500) creates this problem in Foggy Bottom. Independent of this PUD, GWU should have and enforce rules for students to prevent this problem. Once again, this "benefit" is so vague that, even if it is included in the Zoning Commission's order in this case, there is no way to determine whether GWU is in compliance or in violation.

5. Traffic Light. This "benefit" is contingent on approval by D.C. officials and, therefore, may never occur (D.C. officials have opposed this proposal for over seven years). Its quantifiable value of $10,000 is insignificant compared to the level of benefits required by the AGC PUD.

6. School Without Walls. The avowed purpose of this "benefit" is to "expand the concept of a 'school without walls' to a global perspective". This does not benefit the residents of ANC 2A. How will anyone determine whether GWU is implementing this vaguely defined academic program?

7. Crossfire. GWU already advertises (city-wide) the availability of free admission for the Crossfire audience. There is no evidence that residents of ANC 2A are interested in this "benefit". The only quantifiable aspect of this proposal (the amount of reserved seating) is omitted. The proposal is for "Foggy Bottom residents". Who decides who is a bona fide Foggy Bottom resident (do students qualify)? Once again, there is no viable enforcement mechanism.

8. West End Public Library Outreach. There is no need for

"outreach". The residents of ANC 2A are well aware of the existence of the library and its services.

9. First Source Programs. GWU admits that the First Source Employment Opportunities and Local, Small or Disadvantaged Business Enterprises Opportunities programs (collectively "First Source") are required by the terms of the Industrial Revenue Bond ("IRB") program that GWU is using to finance the GWU PUD and other projects. The IRB program allows GWU to borrow money at lower interest rates than it could otherwise, saving GWU millions of dollars in financing costs. In exchange, the District of Columbia imposes certain obligations on GWU, including the obligation to operate First Source programs. Those obligations are independent of the GWU PUD. GWU's compliance with the terms of its bonds is not a benefit arising from the GWU PUD.

GWU argues that its First Source programs should be considered benefits of the GWU PUD because GWU would have filed its application in this case prior to approval of its bond financing. There is no evidence to support that speculation. The bond financing was approved by the D.C. Council in 1999 and covered twenty-five projects in addition to the GWU PUD. GWU did not commence construction of the GWU PUD until December, 2000.

Negotiations with GWU

GWU's assertions that ANC 2A refused to negotiate with GWU concerning benefits and amenities for this PUD are simply public posturing by GWU -- GWU expects the Zoning Commission and the public to accept those assertions at face value. ANC 2A has

learned through this and other cases that GWU's "negotiations" with the neighborhood are themselves nothing more than public relations posturing. All that GWU ever proposes are "benefits" similar to the revised "benefits and amenities" proffered in this case -- vaguely defined, unenforceable, and of little real value to the community. GWU has not discussed its proposals with neighborhood groups (see attached correspondence).

GWU's actions in connection with this case make clear that GWU does not intend to discuss or provide any meaningful and significant benefits to the community represented by ANC 2A.

In August, 2001, as part of settlement discussions, ANC 2A proposed to GWU various measures that would address the problems created by GWU's housing policies and practices in exchange for various concessions by ANC 2A. GWU rejected ANC 2A's proposal and claimed that the schedule in this case and the campus plan case prevented any extended negotiations.

ANC 2A's experience demonstrates that GWU will not take seriously any proposals from ANC 2A that require GWU to provide significant and meaningful benefits to the residents of ANC 2A that address the significant and continuing adverse effects that GWU causes in Foggy Bottom/West End. That experience is confirmed by the insignificance of the revised benefits and amenities recently proffered by GWU.

Conclusion

For the foregoing reasons, and the reasons set forth in ANC 2A's resolution and report (filed on November 8, 2001) and ANC 2A's proposed findings of fact and conclusions of law (filed on February 12, 2002), ANC 2A recommends that the Zoning Commission deny GWU's application.

Foggy Bottom and West End
Advisory Neighborhood Commission (ANC-2A)

c/o St. Mary's Court 725 24th Street, N.W. Washington, D.C. 20037 (202) 736-1775

April 9, 2002

Ms. Jerrily Kress
Director
D.C. Office of Zoning
Suite 210
Washington, D.C. 20004

RE: Z.C. Case No. 01-17MM/93-5F/91-18P (PUD AGC-1957 E Street, N.W.)

Dear Ms. Kress:

This will certify that Advisory Neighborhood Commission 2A (ANC-2A), at a properly noticed special public meeting held on April 7, 2002 at which five of six ANC Commissioners were present, unanimously adopted the attached Resolution No. 02-4A on the above-titled project.

The Home Rule Charter for the District gave ANC's the power to represent local residents in expressing community concerns before District agencies and decreed that the concerns expressed by the ANC be given "great weight" and that a written rationale be given should the agency take a position different from that of the ANC.

Sincerely,

Elizabeth B. Elliott
Chair, ANC-2A

Attachments: 1 Resolution #02-4A

THE FOGGY BOTTOM AND WEST END ADVISORY NEIGHBORHOOD COMMISSION (ANC-2A) passed the following Resolution #02-4A

Zoning Commission Case No. 01-17MM/93-5F/91-18P
(PUD AGC - 1957 E Street NW)

WHEREAS, on March 11, 2002 during its regular, monthly meeting, the Zoning Commission (ZC) instructed The George Washington University ("GWU") to revise its January 17, 2002 benefits and amenities proposal for the above-titled project and to submit it to the ZC by noon March 22, 2002; and

WHEREAS, on March 27, 2002, the GWU late-filed a revised benefits and amenities proposal, and;

WHEREAS, following the publication of said proposal, the Chair of ANC-2A was contacted by numerous constituents, both individuals and groups, throughout the Commission's area who will be adversely affected by these new proposals; and

WHEREAS, since these individuals and groups are not parties to this case, had no prior notice of, nor opportunity to comment on, these proposals prior to March 27, 2002, ANC-2A held a Special Meeting on Sunday, April 7, 2002, for additional community input and comment to be included with its response to the GWU proposal and entered into the record of this case;

THEREFORE BE IT RESOLVED, that ANC-2A supports the opportunity for, and includes the statements and letters of, groups and individuals to be entered into the record with its response to GWU's revised "benefits and amenities" proposal.

DATE: April 7, 2002

SMD	AYE	NAY	ABSTAIN	ABSENT	MOVED	SECONDED
01 Elliott	X				X	
02 Price	X					
03 Tyler	X					X
04 Morency				X		
05 Miller	X					
06 Marootian	X					

CHAIRPERSON

FOGGY BOTTOM ASSOCIATION
c/o West End Library
24th and L Streets, NW
Washington, DC 20037

April 9, 2002

Ms. Elizabeth Elliott
Chair
Advisory Neighborhood
Commission 2A
532 20th Street, N.W. – Apt 501
Washington, D. C. 20006

Dear Commissioner Elliott:

The Foggy Bottom Association has reviewed The George Washington University's benefits/amenities package submitted on March 27, 2002, with regard to the PUD modification it is seeking in connection with its development of the property at 1957 E Street, N.W.

The FBA believes that the benefits and amenities package offered by GWU is gravely deficient both in terms of addressing needs in the community and in resources proffered to meet those needs, e.g. the offer of staff support for the West End Library; increased access for Foggy Bottom residents to GW events; enforcement of the prohibition on the placement of posters, flyers and similar materials; extension of GW security patrols, etc. These are activities the University should be carrying out routinely to enhance the neighborhood in which it is allowed, not by matter-of-right but through special exceptions to the zoning laws, to occupy large tracts of land in a residential area. These are not amenities that in any way equal the economic gain to GWU by allowing it to increase the height and density of the building it is constructing at 1957 E.

The one "benefit" that has any significant amount of funds attached to it, the proposed subsidized food program to be provided through Sholl's Cafeteria at the Hall on Virginia Avenue, does not meet a community need, i.e. it does not fulfill a demand in this location. All one has to do is check the demographics of this area to know that the intended beneficiaries, "elderly residents in need or other low income residents," do not live in this neighborhood in any great numbers. There is a subsidized meal program for elderly neighborhood residents at St. Mary's Court at 725 24th Street, and, in addition, a feeding site at Miriam's Kitchen located two blocks from the Hall on Virginia Avenue in the Western Presbyterian Church. This latter feeding program came to this area from its previous site at 19th and I Street, N.W. when the church was relocated to make way for

the new World Bank building. It brought with it the clients from the downtown area that it had been serving at that site. We contend that GWU's proposed program would not serve this neighborhood nor would it serve the targeted population that does not have easy access to this area.

Further, we contend there would be an additional negative impact on our residential neighborhood were Sholl's Cafeteria to relocate to Virginia Avenue. Sholl's was housed for many years in the business district and served such walk-by traffic as office workers and tourists and, most significantly, tourists who were brought to the restaurant in tour buses. (It was not unusual to see two or three tour buses double-parked in front of the restaurant.) There would be no walk-by traffic or access by public transportation at the proposed location. Sholl's would become increasingly dependent upon charter bus trade. This would bring additional noise and traffic to this area which is – I repeat – a residential neighborhood.

For the reasons stated above, the FBA is asking that ANC 2A recommend to the Zoning Commission that GWU's amenities package be declared unacceptable.

Sincerely,

Jacqueline G. Lemire

Jacqueline G. Lemire
President

J. Edward Sheridan
2700 Virginia Ave. NW
Washington, DC
20037

9 April, 2002

Hon. Elizabeth Elliot
Chair, ANC 2A
532 20th St, NW #501
Washington, DC 20006

Dear Chairwoman Elliot:

On behalf of Watergate West Inc. as Co-Chairman of a subcommittee of the Board of Directors established to address matters relating to community relations, I hereby write in opposition to the proposed "enhanced benefits/amenities package" as described in a document dated March 27, 2002, bearing the letterhead of Shaw Pittman LLP, submitted on behalf of The George Washington University (GWU) and addressed to the Chairperson of the District of Columbia District of Columbia Zoning Commission (ZC). The "enhanced amenities package" relates to the PUD modification sought for the PUD for 1957 E Street NW (Zoning Commission Case #01-17M/93-5F).

Watergate West learned of the proposed amenities package just last week and was represented by the undersigned at a meeting of ANC 2A held on 7 April 2002 to discuss the matter. Without advice of counsel and the opportunity to study in depth all of the circumstances surrounding the PUD for 1957 E Street NW, it would be difficult for Watergate West to offer comprehensive comments. However, by inclusion of the proposed transformation of the student dining facility at 2801 Virginia Ave. NW into a commercial cafeteria and the establishment of a subsidized feeding program for the elderly and low income residents, Watergate West, located directly across the street, is indeed a party at interest and intends to speak out.

Cloaked in the guise of a well-meaning gesture to the needy of the community and obscured in a vaguely described proposition embracing the much beloved but defunct Scholl's Cafeteria and the hitherto unknown Foggy Bottom Feeding Program Foundation, Inc. this program was apparently engineered with the help of the West End Citizens Association, which to my knowledge in no way represents Watergate West. ANC 2A, which does represent the Watergate West citizens, apparently opposes the project. It should be noted that Watergate West has not been advised of this proposal by the University, a total breach of faith in their agreement to keep Watergate West apprised of events and proposals that could affect its residents.

It should be understood that acceptance by the ZC of the Feeding Program as part of the amenities package would be tantamount to their approval of a change of use of a

property, namely from a student dining facility to a commercial venture and a social program to feed the needy and homeless. Despite the change in purpose, the activities will be conducted in a property owned by the university and presumably will still be governed in some measure by the host of regulations that relate to university use.

This could include provisions of the Campus Plan approved by the BZA but rejected by GWU, which filed suit against the BZA and the DC Government in the U.S. District Court. This Feeding Program proposal raises a host of legal questions in a very complicated environment in which it may become involved with many other open questions.

It should be recalled that for three years Watergate West has vigorously pursued action opposing and protesting the initial conversion of the Howard Johnson Hotel into a freshman dormitory by GWU. Many of the issues that were raised in this action could also impact how the Feeding Proposal is viewed should the matter be taken to litigation. This matter is still under consideration by the Court of Appeals of the District of Columbia.

Watergate West asks ANC 2A to convey to the DC Zoning Commission its strong view that inclusion of the proposed Feeding Plan in the amenities package for 1957 E Street NW should be reconsidered. Watergate West believes that if a Feeding Program for Foggy Bottom is needed in the interest of the public good, it should be done as an independent matter with its own notice and hearings. Further, considering the pending cases in the U.S. District Court and the DC Court of Appeals, Watergate West feels it would be wise for the ZC to await the guidance on associated questions that would be forthcoming as decisions are handed down.

Kindly, advise Chairperson Carol Mitten, that the residents of Watergate West intend in no way to be obstructionists and they desire only to be part of a fair and orderly process that takes into consideration the interests of all parties including the elderly and low income residents of Foggy Bottom and of the District as a whole. However, we have felt for some time that there should be a counterbalance to the power of the institutions which this city hosts. We believe it is the epitome of good citizenship that we should speak out when we have concerns. It also should be apparent that we will vigorously defend the right to the quiet enjoyment of our homes and neighborhood.

Yours very truly,

J. Edward Sheridan

Statement of Ronald Cocome before a Special Meeting of ANC 2A
April 7, 2002

I am Ron Cocome, a resident of Watergate East. I am here this evening to present a letter to you from Mr. Louis Hering, President of Watergate East, Inc.

First, however, I would like to inform the ANC members that at our annual meeting, held last Monday, April 1 at the Swiss Hotel, the Watergate East established a new sub-committee to expressedly deal with the ever expanding threat presented by our predatory university neighbor.

The members of this subcommittee are: your former Chairwoman, Barbara Spillinger; Dr. Sol Shalit; and I. We look forward to working with you, with our sister buildings at the Watergate, other neighborhood coop and condo boards and the Foggy Bottom Association to protect and improve the Foggy Bottom residential community.

I will now read the letter from Louis Hering addressed to the Chairwoman of ANC 2A.

See attached.

If I may try your patience a little further, I would like to add a few words of my own. The amenities package, or more correctly the disamenities package before you is an affront to our entire community. In point of fact, the only amenities package which should be imposed by our Zoning Commission should be for the University to comply with all the commitments it made to the community and the City when the PUD for this project was approved. The unilateral and radical changes now proposed to that PUD by the University are illegal, unethical and simply prove the character of the leadership of the institution with which we are forced to live.

The role of our City Government in these matters also leaves a lot to be desired. The Watergate East was never given notice about plans which would seriously effect our property and our living conditions. Although, we could never have imagined from the original PUD that we might be effected so directly, we are now told by our Zoning Commission that we have no independent standing. This says nothing good about representative democracy in the District.

Further, we were never consulted by the West End Citizens Association, which purports to represent our community. What reasonableness is there in any system which permits a group with a few active members to decide for an entire community, while our Cooperative alone, representing well over 300 Foggy Bottom residents goes unheard.

It is my hope that the Zoning Commission will think long and hard before it inflicts more feeding programs on our fragile residential community in the obscene guise of an amenities package.

TELEPHONE: (202) 965 2900
FAX: (202) 333-8585

ıtergate East 2500 VIRGINIA AVENUE, N.W. WASHINGTON, D.C. 20037-1901

April 5, 2002

Hon. Elizabeth Elliott
Chair, ANC 2A
532 20th St., NW #501
Washington, DC 20006

Dear Chairwoman Elliott:

I write to oppose the "enhanced benefit/amenities package" filed by George Washington University as a part of its sought PUD for 1957 E Street, NW (Zoning Commission Case #01-17M/93-5F).

This package, in particular the planned incorporation of the "Foggy Bottom Feeding Foundation, Inc." and the commitment to donate $500,000 over the next five years to this feeding program is harmful, not helpful, to our residential community.

Given its size and population, our Foggy Bottom neighborhood already has more than its fair share of feeding programs for the indigent. Our residential community needs to be stabilized and improved, not the reverse, as this latest University plan would accomplish.

I ask you to secure a motion of disapproval of the "amenity package" by ANC 2A and that this letter be included in that motion of disapproval in your transmission to the District of Columbia Zoning Commission.

Sincerely,

Louis Hering
President, Watergate East, Inc.

ATTN:
ELIZABETH ELLIOT

Watergate Dental Associates
The Watergate • 2506 Virginia Avenue, N.W. • Washington, D.C. 20037 • (202) 965-5400 • FAX (202) 298-7761

April 17, 2002

Ms. Carol J. Mitten
Chair
District of Columbia Zoning Commission
441-4th Street. NW, Suite 210
Washington, DC 20001

Dear Ms. Mitten:

As a member of the Foggy Bottom community for 27 years as well as a current board member of the West End Citizens Association (WECA), I am writing in response to the revised "benefits and amenities" proposed by George Washington University (GWU) in their letter of March 27, 2002, concerning the PUD modification relating to GWU's development of the 1957 E Street, NW, property. My specific concerns are as follows:

- **Feeding Program for the Elderly and Low Income Residents of Foggy Bottom:**

  I disagree with the position taken by the WECA on this issue. The proposal of a subsidized feeding program to be located in the Hall on Virginia Avenue and operated by Sholl's Cafeteria is, at the very least, disingenuous. In the first place, Sholl's is no longer in operation and I question whether or not the former management of the cafeteria has agreed to this arrangement or, for that matter even been approached with this idea.

  Secondly, the residents of this community **do not need** another feeding center. At present there are two other feeding programs in existence in Foggy Bottom -- one subsidized program for elderly residents located at St. Mary's Court and the other for the homeless at Miriam's Kitchen located in the Western Presbyterian Church.

- **Substitution of permanent resident housing for student housing:**

  What the Foggy Bottom community **does need** is moderately priced housing for permanent, tax-paying residents. This need has grown as GWU has moved outside of the established campus boundaries into what were once residential areas. In my square alone, which is outside of the campus boundaries, GWU has purchased and demolished 27 row houses,

For these reasons I ask that the DC Zoning Commission reject the benefits and amenities package proposed by GWU in the above referenced letter.

Sincerely yours,

Donald W. Kreuzer, DMD

May 2, 2002

Ms. Carol Mitten
Chairperson
District of Columbia Zoning Commission
441 4th Street, NW
Suite 210
Washington, DC 20004

Re: Zoning Commission Case #01-17M/93-5F

Dear Chairperson Mitten:

On our behalf as board members of the West End Citizens Association (WECA), we would like to bring to your attention some very important facts relevant to the above cited case. We are party to this case and believe our views have not been represented. These facts have a substantial effect on this case before you and they are as follows:

1) WECA does not, in this situation, represent the residents or property owners within the area affected by this project. WECA does not have the authority to enter into any agreement with the George Washington University on behalf of the community. Contrary to Ms. Barbara Kahlow's testimony, **WECA is not the principal community organization in the neighborhood.** It is one of several organizations within the west end boundaries and enjoys the position of being the second oldest organization and possesses a reputable history.

2) There was **no vote taken of the board members** (therefore our views were not considered) and the decision was unilaterally made by only two members of the board. This action resulted in board members and others resigning from the organization.

3) There was **no public meeting, no discussion, no votes taken, nor any notification to the WECA membership.** A small group of individuals does not have the authority to make unilateral decisions without the involvement of the WECA membership.

4) The membership of WECA alone cannot and does not represent the voices of all the residents of Foggy Bottom. In the past WECA has worked closely with other organizations and never operated alone; however, in this case **no other neighborhood organization was consulted.** This action of WECA has caused outrage among members of other Foggy Bottom citizen organizations.

The concerns of the ANC-2A and the Foggy Bottom Citizens Association as well as tenant associations should have equal weight with WECA since combined they truly represent all the Foggy Bottom community. These members of WECA are well intentioned but have erred in this situation by not consulting with the community as a whole.

We, as WECA board members, reject the agreement as described in the Finding of Fact and Conclusions of Law submitted by ShawPittman LLP on behalf of the GW University

WECA must return to the community and work with the other citizens' organizations on this issue if it is to reflect a true consensus of the desires of the Foggy Bottom community. We would hope that you direct WECA to present this issue to its full membership for a vote that fully represents the organization.

Respectfully,

DONALD W. KREUZER
Board Member
WECA

LUCILLE MOLINELLI
Board Member & Treasurer
WECA

cc: Mr. James T. Draude
DC Office of Planning
Mr. Jack Batham, WECA
Ms. Elizabeth Elliott, ANC-2A
Mr. Phil T. Feola, ShawPittman LLP