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

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February 25, 2003

The Honorable Geoffrey H. Griffis
Chairman
D.C. Board of Zoning Adjustment
441-4th Street, N.W. – Suite 210
Washington, DC 20001

Re: BZA Appeal No. 16950 – WECA's Opposition to GWU's Request to Re-Open the Record

Dear Chairman Griffis and Members of the Board:

This letter responds to yesterday's request by the George Washington University (GWU) to re-open the record in BZA Appeal No. 16950, which was filed by the West End Citizens Association (WECA) on September 23, 2002, i.e., five months ago. The WECA objects to any re-opening of the record at this late date and strenuously disagrees with the substantive conclusion stated in GWU's letter: "We believe inclusion … in the record … will make WECA's appeal on this issue moot."

Untimely Request

At the January 14, 2003 continuation hearing of the Board of Zoning Adjustment (BZA) on this Appeal, the Board established a February 7th deadline for additional documents, a February 14th deadline for responses to additional documents, and a February 28th deadline for proposed Findings of Fact and Conclusions of Law. GWU's February 24th request to re-open the record to include a February 7th published document (50 DCR 1382) is not timely. Why didn't GWU make such a request either on February 7th or February 14th?

Outstanding Noncompliance

GWU has still not made its first $100,000 contribution to the Foggy Bottom Feeding Program Foundation, which Condition 9(a) of Zoning Commission Order No. 746-C required to be made no later than August 16, 2002. Under Zoning Commission Order No. 746-D, which was published on February 7, 2003, the 30-day clock for the Foundation to designate an existing feeding program for GWU's first contribution to the Foundation will not be over until March 7th. As a consequence, GWU has still not made the required $100,000 contribution and there is no evidence to suggest that it will do so after the Foundation acts. Thus, this continuing noncompliance issue is by no means moot.

In addition, WECA's Appeal contested not only the improper issuance by the Department of Consumer and Regulatory Affairs (DCRA) of an August 16, 2002 Certificate of

BZA
Case No. 16950
Exhibit No. 49

Board of Zoning Adjustment
District of Columbia
CASE NO.16950
EXHIBIT NO.49

Occupancy but also DCRA's failure to issue daily nondiscretionary fines under 11 DCMR §3201. There is no way that any action by GWU in March 2003 removes DCRA's obligation to issue daily fines on GWU since August 16, 2002.

As a consequence, the WECA requests that the Board deny GWU's request to re-open the record. WECA's proposed Findings of Fact and Conclusions of Law will be timely filed this week. This document will lay out the case record's history of "No $100,000 Contribution to the Foggy Bottom Feeding Program Foundation" (p. 4, Finding No. 11) and "No Daily Fines or Revocation" (p. 3, Finding No. 10).

Thank you for your consideration of the WECA's opposition to GWU's untimely request.

Sincerely,

John C. Batham
President

cc ANC-2A (c/o St. Mary's Court)
Phil Feola, Esq., Counsel for GWU