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

RECEIVED
D.C. OFFICE OF ZONING
2003 FEB 28 PM 4:19

MS. JERRILY KRESS
Director
Zoning Commission
441 Fourth Street N.W. – Room 210
Washington, DC 20001

February 28, 2003

Re: 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)).

Dear Ms. Kress:

ANC-2A requests that the rules be waived and, if necessary, the file be reopened, to allow the late submission of two BZA-requested filings from ANC-2A in the above-titled case. Due to having to handle a continuing and excessive number of ANC issues, the ANC-2A was not able to file timely in this matter.

ANC 2A's 11-13-03 Resolution

Attached is a November 13, 2002 resolution, requested by the Board at the January 14, 2003 continuance hearing, peripherally addressing the above-titled Appeal as part of the ANC's maintaining its unwavering opposition to the GWU/AGC PUD project and related "amenities package." This resolution was constructed from notes and from an audio-taped recording of that meeting.

Through her correspondence, testimony, and her cross-examination of ANC 2A in this case, WECA representative Barbara Kahlow has pointed out that the ANC has not publicly debated the particulars of the above-cited appeal since it was filed. The ANC assumes that by focusing on this, Mrs. Kahlow is implying that the ANC had no right to comment in this appeal, while maintaining its position of neutrality, nor to raise issues, without opining on them, that the BZA might have otherwise overlooked.

Mrs. Kahlow, actually testifying during her cross-examination of ANC 2A, has repeatedly stressed to this Board the fact that at none of ANC's public meetings since its April 7, 2002 special meeting has the ANC discussed the WECA/GWU Agreement. The ANC would like to point out, that neither Mrs. Kahlow, who has testified to her attendance at ANC meetings, nor any other WECA representative, possibly in attendance at these same meetings, chose to raise the issue when there was ample opportunity to do so.

At the ANC's April 7, 2002 special meeting, the ANC took up the GWU/WECA Agreement, in conjunction with the so-called "amenities package" incorporating this collaboration between the University and several WECA members (note ANC 2A's January 14, 2003 attachment—a May 2, 2002 letter from WECA Board members Donald Kreuzer and Lucille Molinelli to the Zoning Commission regarding the GWU/WECA Agreement). The issue was thoroughly discussed by a broad cross-section of community members and there was unanimous opposition to this package, particularly the "feeding program foundation" concept. Mrs. Kahlow, who was in attendance and participating at that meeting,

BZA
Case No. 16950
Exhibit No. 52

Board of Zoning Adjustment
District of Columbia
CASE NO.16950
EXHIBIT NO.52

abruptly left when the AGC/GWU PUD amenities discussion began and did not return, again forgoing an opportunity to discuss WECA's collaboration with GWU in this matter.

In addition, Mrs. Kahlow sent a facsimile letter to Gottleib Simon of the D.C. Office of Advisory Neighborhood Commissions, complaining about the time and length of notice of the April 7, 2002 special meeting, which the ANC set up to respond to the extensive community opposition to this project and its attendant "amenities package" based almost wholly on the GWU/WECA Agreement.

Statement Regarding ANC's Questions to GWU/Foggy Bottom Feeding Program Board Member David Watts

In the Fall of 2002, after the WECA filed its BZA appeal #19950, after the Zoning Commission issued its final written order No. 746-C, and after the York Apartments Tenants Association filed its appeal of ZC Order No. 746-C, the ANC was advised of a non-public July 24, 2002 meeting convened by GWU's President Stephen Tractenburg and held in University facilities. This meeting was attended by representatives of four residential cooperative buildings located in ANC-2A. Mr. David Watts, who also sits on the Board of the newly-created Foggy Bottom Feeding Program Foundation, was in attendance at that meeting as a representative of the University.

President Tractenberg led the meeting, and among a number of issues involving GWU's presence and further acquisition and expansion plans in the Foggy Bottom community, he specifically discussed the feeding program originally slated for location at the Hall on Virginia Avenue (the former Howard Johnson's hotel on Virginia Avenue). President Tractenberg denied that the program was a GW project and incorrectly informed community participants at the meeting that the feeding program was "required at the instance (*sic.*) of the ANC and the BZA." Mr. Watts remained mute and did not attempt to correct President Tractenberg's misrepresentation.

President Tractenberg went on to state that it was GW's view that "the program cannot succeed as currently required. GW would much prefer to provide cash to one of the existing feeding programs or to offer scholarships for DC students in lieu thereof." It is clear that the University, including Mr. Watts, knew full well, and had known throughout the AGC/GWU PUD hearing process, that the establishment of a feeding program in University facilities was a change in use and would, at the least, require further hearings under the Campus Plan/Special Exception regulations and proceeded despite this.

Thank you for your consideration of the ANC's comments in this matter.

Sincerely,

Dorothy Miller

Dorothy Miller
Chair

(1) 2-page Attachment - November 13, 2002 Resolution

cc: Phil Feola, Shaw Pittman
Barbara Kahlow, West End Citizens Association

THE FOGGY BOTTOM AND WEST END ADVISORY NEIGHBORHOOD COMMISSION (ANC 2A) passed the following Resolution #02-11B

Zoning Commission Case No. 01-17MM/93-5F/91-18P (PUD AGC–1957 E Street NW), York Apartments Tenants Ass'n (YATA) v. Zoning Commission, No. 02-11-106 in the D.C. Court of Appeals,
and
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)).

WHEREAS, following public hearings and deliberation in Zoning Commission (ZC) Case No. 01-17MM/93-5F/91-18P (PUD AGC/GWU–1957 E Street NW), the Zoning Commission approved a modification of a Planned Unit Development ("PUD") for the George Washington University ("GWU") for Square 122, Lot 835 (now Lot 29) at 1957 E Street NW (Z.C. Orders No. 720 and 746, 746-A, 746-B), the final order for which (746-C) was issued on August 16, 2002; and

WHEREAS, ANC 2A opposed GWU's request and presented a substantial and thorough case with extensive unrefuted and unchallenged evidence, including testimony from an expert witness in economics, demonstrating why the ZC should reject GWU's application; and

WHEREAS, ANC 2A's case demonstrated, by a preponderance of the evidence, that GWU's Planned Unit Development ("PUD") modification was inconsistent with both the Commission's first- and second-stage approvals (Order No. 720, dated 7 August 1992, and Order No. 746, dated 8 June 1993); and

WHEREAS, ANC 2A believes that the Zoning Commission erred when: 1. It approved GWU's application for a PUD modification, and 2. It failed to give the ANC's views in this case "Great Weight"; and

WHEREAS, the West End Citizens Association (WECA), a neighborhood group, had been allowed to intervene in support of ANC 2A in its original January 19, 2001 BZA Appeal #16701 on this project and had later leveraged its intervenor status into party status, this time in support of GWU based on a private agreement it had signed with the University on August 17, 2001, in the ZC PUD modification case on GWU's 1957 E Street property; and

WHEREAS, on August 16, 2002, the same day the ZC written order in the PUD modification case was published in the D.C. Register, the D.C. Department of Consumer and Regulatory Affairs issued a Certificate of Occupancy for the "residential" (dormitory) and parking garage portions of the 1957 E Street project; and

WHEREAS, WECA claimed that GWU was not in compliance with various conditions in ZC Order No. 746-C, and subsequently filed its September 23, 2002 above-cited appeal of DCRA's and the 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)) with the Board of Zoning Adjustment (BZA Appeal No. 16950); and

WHEREAS, ANC 2A did not participate in nor support the GWU/WECA negotiations nor agreement; and

WHEREAS, ANC 2A is precluded by law from pursuing further legal action in an appeal of the ZC's decision in this case before the D.C. Court of Appeals; and

WHEREAS, on September 23, 2002, ZC Order No. 746-C, was challenged in the D.C. Court of Appeals by a petition for review, York Apartments Tenants Ass'n (YATA) v. Zoning Commission, No. 02-11-1061.

THEREFORE BE IT RESOLVED, that ANC 2A maintains its opposition to the Zoning Commission's final decision in Case No. 01-17MM/93-5F/91-18P (PUD AGC–1957 E Street NW) and strongly supports the YATA's petition for review, which continues the ANC's legacy by challenging the errors made by the ZC in its final decision on that case; and

THEREFORE BE IT FURTHER RESOLVED, that ANC 2A, while maintaining its continuing opposition to the AGC/GWU PUD, takes no position, for or against either party, in the WECA Appeal Case #16950 before the BZA; and

THEREFORE BE IT FURTHER RESOLVED, that ANC 2A, due to its unique perspective in the community and its "great weight" status in matters before the BZA and the ZC, reserves the right to provide the BZA with any and all material it believes is appropriate and related to the above-cited cases and germaine to making a decision in this case (BZA Appeal #16950), trusting that the Board has the capability to determine the relevance of that material.

November 13, 2002

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

Chair ANC-2A