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April 25, 2002

RECEIVED
D.C. OFFICE OF ZONING
2002 APR 25 PM 12:17

Carol J. Mitten, Chair
D.C. Zoning Commission
441 4th Street, N.W., Suite 220
Washington, DC 20001

Re: Zoning Commission Case No. 02-03: The George Washington University, Applicant

Dear Ms. Mitten and Members of the Commission:

On behalf of our client, The George Washington University, we are pleased to submit herewith the documents that were requested by the Commission at the April 11, 2002 Public Hearing on this application. Attached are: a) copies of the illustrative drawings used by the Applicant's expert architect at the public hearing; b) a copy of the transcript of the December 20, 2001 meeting of the Commission of Fine Arts at which the Applicant's building design for its new dormitory on Square 43 was approved in concept; c) the Applicant's proposed Findings of Fact and Conclusions of Law; and d) a letter from the Applicant's expert architect further explaining the delays that this development will suffer if this application is not approved. In addition, we discuss below the significance of the Advisory Neighborhood Commission 2A's letter and Resolution of April 11, 2002.

THE ANC RESOLUTION:

On April 11, 2002, the Commission granted Advisory Neighborhood Commission 2A's request that the Commission waive its rules and accept the letter of even date setting forth a resolution conditionally opposing this application. It is undisputed that the resolution received the affirmative votes of only two of the four Commissioners who were present at the time the motion was presented. Two of the Commissioners present abstained. Two Commissioners were absent. Counsel for the Applicant objected to the Zoning Commission accepting this resolution as an act of the ANC on the basis that it did not receive a majority of either the Commissioners who were present or on

ZONING COMMISSION
District of Columbia
Case 02-03
Exhibit 29

ZONING COMMISSION
District of Columbia
CASE NO.02-03
EXHIBIT NO.29

the Commission. The Commission decided to hear the ANC report, presented by its Chairwoman, and subsequently asked the Corporation Counsel and the Applicant to submit a statement discussing the validity of the ANC resolution to these proceedings.

ANALYSIS:

Under District of Columbia statutory authority an Advisory Neighborhood Commission is responsible for passing its own by-laws and voting procedures. § 1-309.11 (D.C. Code 2001). However, "where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order." Id. Robert's Rules states that:

> The basic principle of decision in a deliberative assembly is that, to become the act or choice of the body, a proposition must be adopted by a majority vote; that is, direct approval – implying assumption of responsibility for the act – must be registered by more than half of the members present and voting on the particular matter, in a regularly or properly called meeting at which the necessary minimum number of members, known as a quorum is present.

§ 1 RROO (10th ed). p. 4, l. 5-11. The number of members constituting a quorum is to be defined in the organization's bylaws. Id. at §3, p. 20, l. 15-20. However, a "quorum refers to the number of such members present, not to the number actually voting on a particular question." Id. at § 40, p. 334, l. 5-7. Thus, if a quorum is present, and a majority vote in favor of a resolution, under Robert's Rules the resolution passes.

> Such a standard is the default rule for:
>
> Whenever it is desired that the basis for decision by other than a majority vote or (where the normal rules of parliamentary law require it) a two-thirds vote or a vote of a majority of the entire membership, the desired basis should be precisely defined in the bylaws or in a special rule of order.

Id. at § 44, p. 391, l. 20-25. The difficulty comes in the definition of the word "majority." Robert's Rules states that:

> The word *majority* means "more than half"; and when the term *majority vote* is used without qualification – as in the basic requirement – it means more than half of the votes cast by persons

> legally entitled to vote, excluding blanks or abstentions, at a regularly or properly called meeting at which a quorum is present.

Id. at § 44, p. 387, l. 7-13. To further clarify, to abstain "means not to vote at all." Id. at § 4, p.43, l. 27-28. In other words, any one abstaining from the vote is not considered to be casting a negative ballot and the abstentions should not be called for or counted. Id. at § 4, p. 43, l. 27-30. Any abstention does not appear to impact on whether or not a quorum is present. Under Robert's Rules, "When such a vote is required, however, the chair must count those present immediately after the affirmative vote is taken, before any change can take place in attendance." Id. at § 44, p. 390, l. 22-24. Thus, it appears a resolution cannot be invalidated for lack of a quorum, as the quorum requirement is determined before any negative votes or abstentions are made.

Robert's Rules gives the following advice when determining which voting standard to adopt:

> Voting requirements based on the number of members present – a majority of those present, two thirds of those present, etc. – while possible, are generally undesirable. Since an abstention in such cases has the same effect as a negative vote, these bases deny members the right to maintain a neutral position by abstaining. For the same reason, members present who fail to vote through indifference rather than through deliberate neutrality may affect the result negatively.

Id. at § 44, p. 390, l. 13-21. It appears that the rules envision a voting membership of more than six in that the impact of any vote or non-vote a group with a small number becomes critical, especially when the outcome depends on the application of the voting standard in question.

APPLICATION TO PRESENT SITUATION:

There are six members of Advisory Neighborhood Commission 2A. Four of the six were present for the April 7, 2002, special meeting. Of those four, two abstained from the vote and two voted in favor of the resolution in question. The validity of the resolution, therefore, depends on what the ANC standard is for a resolution to pass. If the ANC bylaws require a majority vote, by the members of the commission, the resolution would fail, as it would need four affirmative votes to pass. If the bylaws require a majority of those present to pass a resolution, again the resolution fails, falling short of the necessary three votes. However, if the standard were a majority of those present and voting, then the resolution would pass. In this case, there are only two votes

and both are in favor of the resolution. The two abstentions are treated as non-votes, essentially as if those individuals were never present at the meeting. Even though the vote was only two for, zero against, with two abstentions, and two members absent, a majority of those present and casting a vote were in favor of the resolution and it would pass.

We have obtained a copy of the "Foggy Bottom and West End Advisory Neighborhood Commission Rules of Procedure and Bylaws". The document states that it was approved by the Commission on March 7, 1978, but we are advised that the document has since been updated to conform with the Robert's Rules of Order 10th Edition. The 1978 document provides that each Commissioner shall have one vote. Article 4, Section 4 of that document was apparently amended on June 21, 1995 to state that "in these bylaws, a majority is understood to be the majority of currently seated Commissioners at the Foggy Bottom/West End Advisory Neighborhood Commission present and forming a quorum." The amended document is silent on the effect that an abstaining vote may have on either a quorum or a majority. Thus, if the terms of Robert's Rules of Order are applied to resolve this silence, then the two members who voted in favor of this resolution will constitute a majority sufficient to pass the resolution. This is true even though four of the six ANC 2A Commissioners did not vote in favor of this resolution.

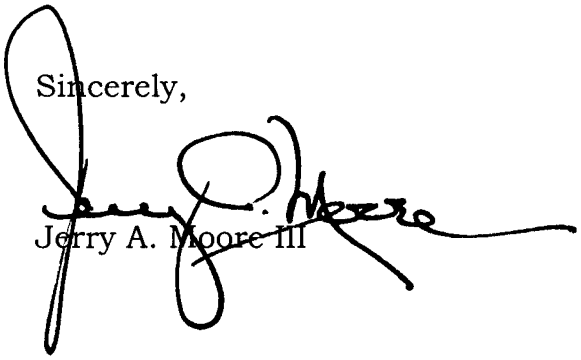
D.C. Code §1-309.10(d)(3)(A)(2001) requires government agencies and boards to give "great weight" to the views of Advisory Neighborhood Commissions. Although this provision provides no exception for ANC resolutions that "pass" with fewer than half of the Commissioners in favor, it does not require the Commission to ". . . accept the views of the ANC no matter what". All that the law demands is that the views of the ANC be specifically addressed, and not ignored or overlooked, in the . . .[board's] decision. Foggy Bottom Association v. D.C. Board of Zoning Adjustment, 791 A.2d 64 (D.C.C.A. February 14, 2002). "The ANCs do not enjoy expert status, entitled to special deference as such." Neighbors against Fox Hall Gridlock, et al. v. District of Columbia Board of Zoning Adjustment, 792 A.2d 246 (D.C.C.A. February 28, 2002) quoting Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1384 (D.C.C.A. 1977). "Rather, the agency must pay specific attention to the source as well as the content of ANC recommendations, giving them whatever deference they merit in the context of the entire proceedings, including the evidence and views presented by others." Kopff, 381 A.2d at 1384.

In this instance, the law requires the Commission to hear and consider the ANC concerns in the context of others presented, accord them whatever merit they deserve and articulate why the ANC does, or does not, offer persuasive advice under the circumstances.

Advisory Neighborhood Commission 2A has said, without proof, that the site is not unique and that the granting of the requested variance will not be in the public good because the adjoining Kreuzer property will be detrimentally affected. However, these unsupported allegations pale in the strength of the Applicant's expert architect's testimony that the site is, in fact, unique because of its irregular shape, sloping topography, location adjacent to a three foot wide public alley, on a special street at a gateway to the University's campus. Moreover, the D.C. Office of Planning has submitted similar evidence, have concluded that this application meets the requirements of Section 3103.2 and recommends that it be approved. Thus, there is overwhelming and expert evidence to persuade the Commission that the ANC's expressed concerns are without merit and should be rejected. The ample reasons for that rejection must be set forth in the Commission's final order. That is both what and all the law requires.

In conclusion, the Applicant submits that it has met its burden of proof by overwhelming evidence in the record and urges that this application be approved. Once zoning approval has been obtained, the University will act deliberately and expeditiously to develop this on-campus residence facility at the earliest practicable date.

Sincerely,



Jerry A. Moore III

cc: Parties of Record

The George Washington University
WASHINGTON DC

SQUARE 43 STUDENT RESIDENCE HALL



R5D Residential Zoning District
Building heigth allowable = 90'
F.A.R. allowable = 3.5
Lot Occupancy allowable = 75%
Parking Requirement =
1 space per 3 dwelling units

Possible Building Configuration
Building height possible (12' floor to floor) = 60'
F.A.R. achieved = 3.5
Lot Occupancy achieved = 75%
-Site Area = 3366.5 sq.ft.
-Site Coverage = 2524.9 sq.ft.
-Allowable Number of Floors = 4.67
(4 floors @ 2524.9 sq.ft. &
1 floor @ 1691.7 sq.ft.)

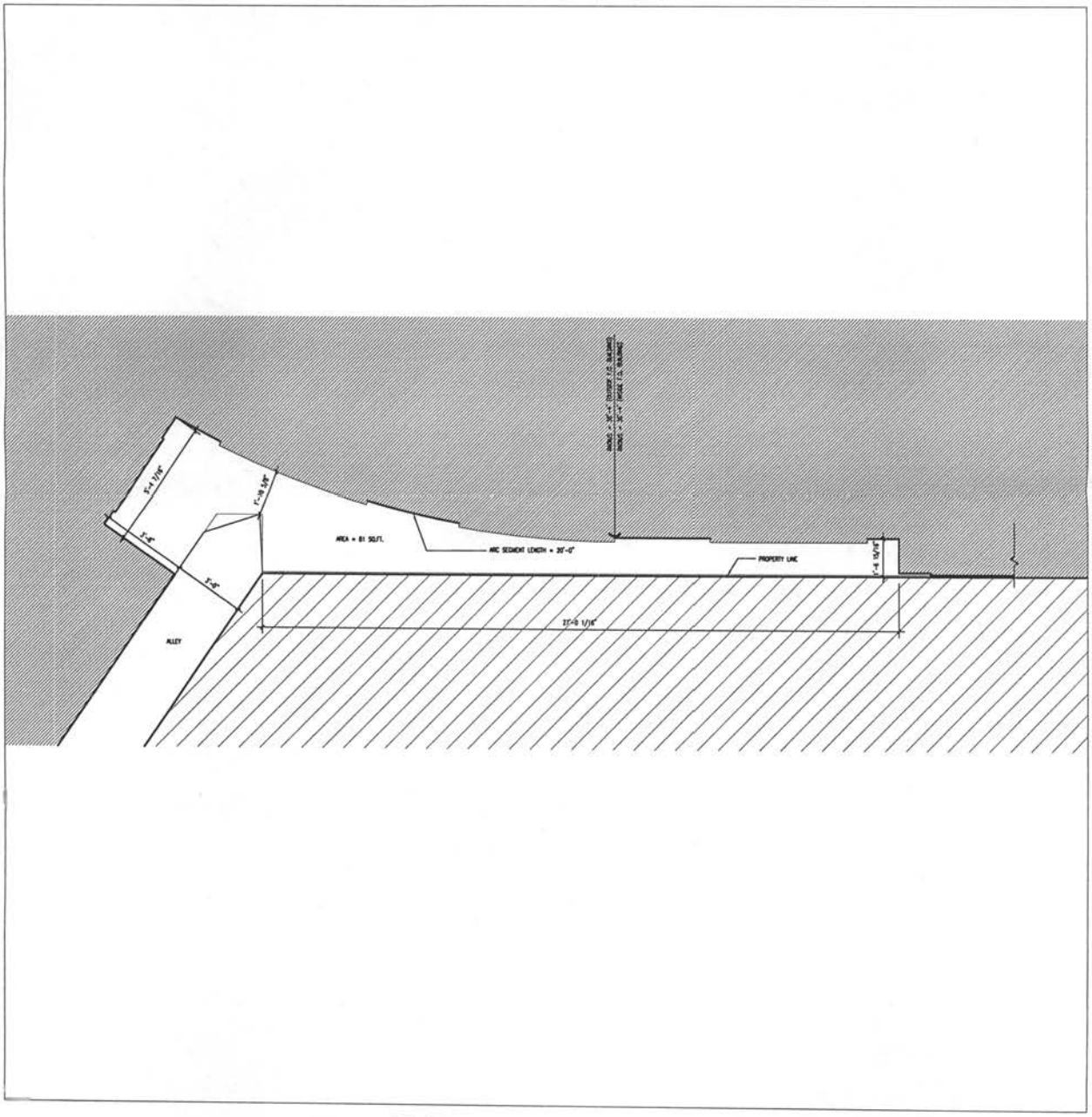
POSSIBLE BUILDING CONFIGURATION

AYERS SAINT GROSS

APRIL 11, 2002

The George Washington University
WASHINGTON DC

SQUARE 43 STUDENT RESIDENCE HALL



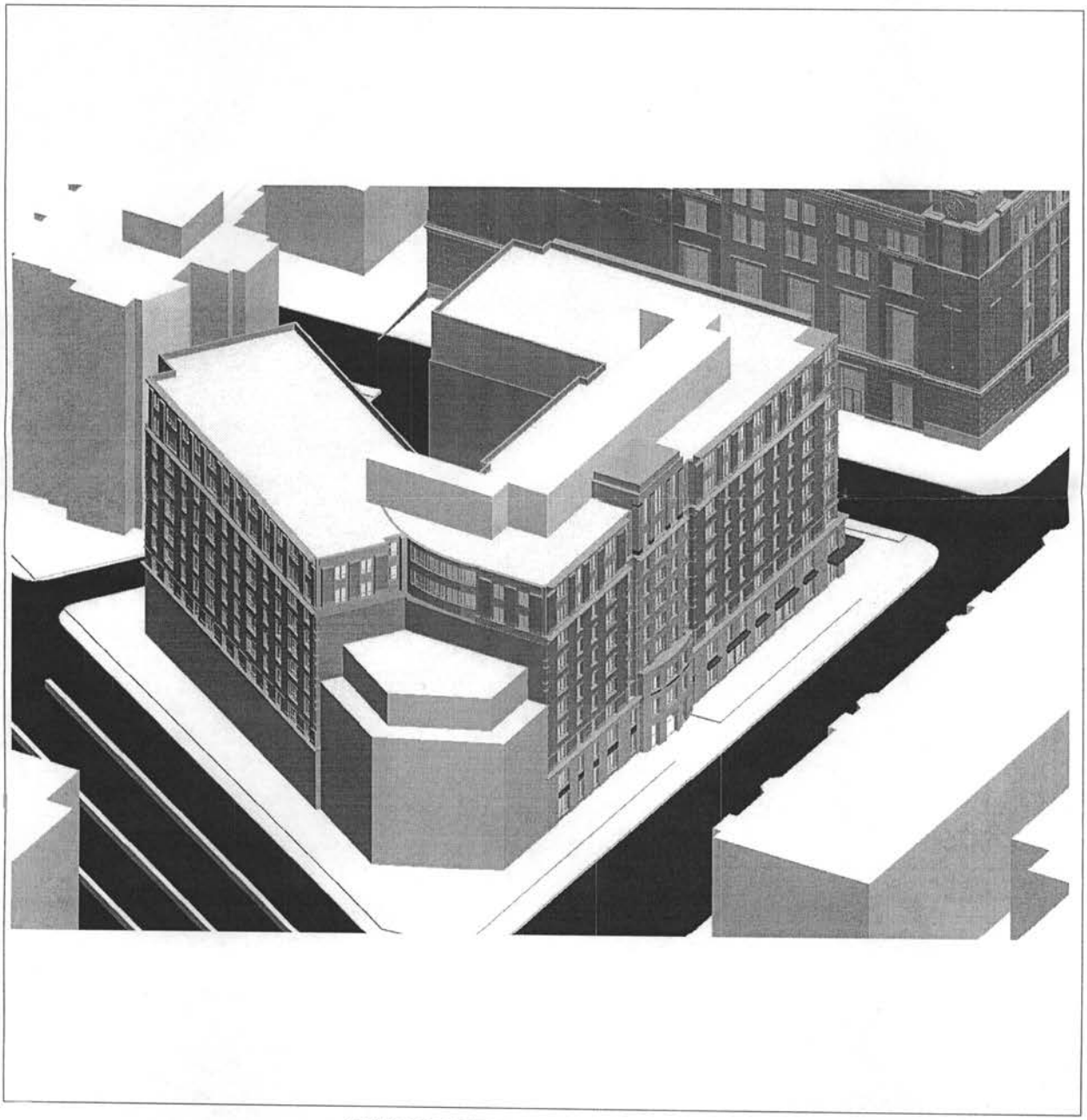
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SQUARE 43 STUDENT RESIDENCE HALL



POSSIBLE BUILDING CONFIGURATION

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APRIL 11, 2002

The George Washington University
WASHINGTON DC

SQUARE 43 STUDENT RESIDENCE HALL



R5D Legal Closed Court
Minimum width of Closed Court = 20'-7"
Diameter of Circle Inscribed = 20'-7"
Minimum area of Closed Court = 848sq.ft.

IMPACT OF LEGAL CLOSED COURT

AYERS SAINT GROSS

APRIL 11, 2002

THE COMMISSION OF FINE ARTS

COMMISSION MEETING ,

Washington, D.C.

* * *

The meeting of The Commission of Fine Arts was convened at 10:12 a.m., Thursday, December 20, 2001 at the Pension Building, 441 F Street, N.W., Suite 312, Washington, D.C. 20001, J. CARTER BROWN, Chairman, presiding.

In Attendance:

Members of the Commission of Fine Arts

J. CARTER BROWN, Chairman

HARRY G. ROBINSON, III, Vice Chairman

CAROLYN S. BRODY

EDEN RAFSHOON

DONALD A. CAPOCCIA

BARBARALEE DIAMONDSTEIN-SPIELVOGLE

PAMELA NELSON

Staff:

Charles H. Atherton, Secretary
Frederick Lindstrom, Assistant Secretary
Sue Kohler, Historian,
Jose Martinez-Canino, Architect
Susan M. Raposa, Information Specialist

Case 02-03
Exhibit 29 B

MR. ROBINSON: George Washington University.

MR. LINDSTROM: The next two submissions I'd like to introduce sort of as one. They both have been forwarded from George Washington University and they're for two new residence halls. You might interpret that as dormitories but we're calling it residence halls.

MR. ROBINSON: We don't use dormitories anymore.

MR. LINDSTROM: Residential halls. Both of these are located on opposite sides of 23rd Street in the 600 block. It's about at the intersection where Virginia Avenue crosses there. The university is very excited to have more housing but also it presents an opportunity as a gateway into the campus.

So before I say much more I'll turn it over to Michelle Honey, who is the director of engineering, architecture and construction. Did I get it right?

MS. HONEY: Close.

Good morning. Good afternoon, I should say. Thank you very much for having us here.

We have two projects, as Frederick mentioned. We'll start with the townhouse project.

Let me just give you a little background and then I'll introduce the architects to you.

The university has been tasked to add additional housing to the campus, within the campus, for our undergraduate students by the BZA. In that attempt we are providing at least 700 beds in a high-rise building off of 23rd Street, as Frederick mentioned earlier, and the two projects straddle each other off of 23rd Street with high-rise on the west side and the low-rise townhouse project, which we call affinity housing. It provides two different types of housing for our students--either apartment-style housing in the high-rise and affinity housing. We have eight units, 30 beds on the two end units and then six units internal, with about 24 beds each.

I will ask the architect from EYP, Mr. Kleinrock, and Mr. Goldfarb from Ayers Saint Gross, to give you a little bit more detail about the specifics about the architecture.

MR. KLEINROCK: Thank you. I want to start by talking about the context a little bit. Both projects, square 57, which I'll be presenting, and Barry Goldfarb will be presenting square 43, are on 23rd Street. At the north end is Washington Circle

and at the south end is the Lincoln Memorial. And the buildings around here, you can see directly to the north here is the Health and Wellness Building, which is a seven-story building, Fringer Hall. Both of these are Georgetown University--sorry, wrong project--George Washington University properties and this Fringer Hall, which is a seven-story building. Then to the south is the Allen Lee Hotel, which is a four-story building, then Columbia Square, which are high-rise apartments.

I think what's interesting is that we think that both of these buildings form a really good edge to the campus in that they're residential and high-rise and low-rise residential, which really connect to the privately owned apartment houses and residences around the site.

In terms of the site plan, one of the things we looked at is whether or not the building--when we designed these buildings is looking at its relationship to the D.C. Comprehensive Plan and by providing brick sidewalks, maintaining existing street trees and ornamental gardens that are residential in character along 23rd Street. There's a small bust of George Washington, which is in this location, which

will be removed during construction and put back to create sort of a nice small, gathering space. And as you'll see as we go through this, we think that the architecture is compatible with the Comprehensive Plan, as well.

Just to give you a little background information, the building, as Michelle said, is 204 beds. They're individual townhouse units. Each unit has its own entrance and on the ground floor there's a living room, dining room and kitchen, with the end units having an entrance on G Street and an entrance on F Street.

At the lower level there's a recreation room for each of the houses with utility rooms and mechanical space. Then on the upper floors there are bedrooms with two beds each. So each unit really forms a house.

The elevations are, I think, very straightforward in that they relate to the contextual architecture of the city, the rowhouses that exist in Washington. These are four stories tall. They're 45 feet tall. To enliven the street we have alternating bays of four stories, three-story bays and octagonal shaped 45-degree angle bays and rectilinear bays,

MR. GOLDFARB: So we're doing the project directly across the street, as Steve mentioned, which is square 43. There are some site photos here. Our side of the street, I think, in scale is a little bit taller. We have Columbia Plaza directly to the south across Virginia Avenue.

These are two shots, this one looking north on 23rd Street and you pick up an edge of Columbia Plaza. This is the Health and Wellness building that we just completed for George Washington University and our site is in between here, although it's kind of obscured by trees.

This is looking back down 23rd Street, this time with the Health and Wellness recreation center in the foreground, Columbia Plaza in the background. And then finally we're here positioned on G Street looking to the west, Health and Wellness. This picks up the Remington Apartments, which are on our block and I believe that's a nine-story building. Then in the panorama we've got Columbia Plaza over here and we're kind of the infill.

So site plan-wise here's 23rd Street, G Street. That Health and Wellness project is directly north. These are the Remington Apartments, Virginia

Avenue and then we have somewhat of a U-shaped project with a courtyard and there are some low townhouses on this out-parcel right here that are approximately two stories tall.

As Steve mentioned, we're doing a similar streetscape with the brick paving and things that we've done before just north of the Health and Wellness Center as far as Comprehensive Plan.

This is somewhat of a computer model shot just to show some of the heights, the relative heights of the buildings. This block representation bears no resemblance to the townhomes but this is the square 57 site. That, of course, is the Smith Center across the street. There's another view of it.

So this is the housing project and it's a 10-story project. We've got approximately 710 beds on 10 stores above grade and we've got parking below grade and also a venue level.

Just to give you a brief view of the floor plans, there's a parking level below this which is the same footprint. This is the venue level. The tan color represents what are three food venues and a dining area one level below grade with an areaway to get some light down to it.

MR. ROBINSON: We don't have authority on the interior.

MR. GOLDFARB: Right, just skip over?

MR. ROBINSON: Yes. But I'll say that I think you handled the turn of that corner very well on the interior circulation and the exterior expression.

MR. GOLDFARB: Thank you.

So moving on to the elevations, this is the 23rd Street elevation and we're using traditional materials--brick, very similar color to the Health and Wellness project. Limestone-like precast and a rusticated two-story base and we're trying to relate to the adjacent townhomes. We're also pulling out an entry bay here at the pedestrian entrance. Actually, the facility has two pedestrian entrances. This is the kind of formal entrance midblock on 23rd Street. The entrance to that venue level--this cuts right through the areaway, so the street obviously goes across. The venue entrance is at the corner of 23rd and G and more toward the center of campus, where most of the students are gravitating. Then we've developed a kind of tower-like element to mitigate the length of that long facade with the precast and bringing some more precast ornamentation into the top story and

trying to really make it look undormitory-like and more like the residence hall, an upscale residence building; the university wants to project that image.

Just to briefly show you, that's the same elevation. This is the G Street elevation. The building actually had--none of the elevations are really back elevations, given that it's viewed all around. We tried to be sensitive to the neighbors. The Remington Apartments look into the back so we've pretty much tried to carry the same consistent materials all the way around the building.

This shows kind of the prominent elevation as you come up West Virginia Avenue and then this is the area that's formed right in here, what we actually refer to as the hinge, but carrying as many windows around. We met with the staff and tried to develop that not as an end elevation, like you might see on some apartment buildings but again to carry the fenestration around. The courtyard elevations--again, the continuation of the same theme.

Then we have a similar representation to what Steve showed you with the building looking up 23rd Street. Thank you.

MR. ROBINSON: Are there comments or questions from the commissioners?

MR. CAPOCCIA: Your computer rending and this rendering have different colored bricks. What color were you--

MR. GOLDFARB: This is much closer. This is the same color brick. It's probably a little bit lighter. There's a fair amount of flashing to the brick and it's fairly traditional coloration.

The Health and Wellness project, there's another dorm that we did for the university around the corner on that same block with similar brick that we envision.

MS. NELSON: Is the only identity to the building on the 23rd Street side or is there other--

MR. GOLDFARB: There is one that we've been showing.

MS. NELSON: I see it on Virginia Avenue.

MR. GOLDFARB: Yes, on Virginia Avenue in that hinge area. It really doesn't show up here. Right here there's some incised lettering in that top band.

MS. NELSON: So it's just incised into the--

MR. GOLDFARB: Into the precast.

MR. CAPOCCIA: Staff seem to have had a problem with that.

MR. ROBINSON: They had a problem with that and with the placard on the rowhouse.

MR. LINDSTROM: In their initial proposal, which is the rendering on the right, you can see there are two large panels right here that have the university sign and staff thought it was a little bit overdone, more reminiscent of a commercial--more like a hotel sign. We didn't feel it was quite appropriate to the area. So they came back with a revision which very simply has Georgetown University.

MS. HONEY: George Washington, please.

MS. NELSON: The building will be lit?

MS. HONEY: The elevator lobby will be lit.

MR. GOLDFARB: So we responded and removed that element. And also responding to another staff comment, we've increased the amount of fenestration on those facades.

MR. ROBINSON: Good.

MR. LINDSTROM: We felt that this is a principal--as you're coming up 23rd this had the appearance of really being the end of the building. You just cut the building off. We thought that there

should be some more articulation to it and we requested them to go back and study that and they've come back with an additional row of windows and a little bit different articulation.

MR. ROBINSON: Big difference.

MR. LINDSTROM: Pulling the cornice around to really finish it off.

MR. ROBINSON: Fred, how about the panels on the rowhouse?

MR. LINDSTROM: This was not so much a problem because in this style of rowhouse very often you see a decorative cartouche or some type of cast or cut stone panel like that, as incorporated into the architecture. We felt that this had a much more comfortable presence and was more in keeping with that, whereas the other one just had more of a commercial appearance.

MR. ROBINSON: Your use of the word "comfortable" is quite appropriate. These are both comfortable buildings for this precinct of the city. I mean the taller building certainly fits in with the vernacular of apartments that you see on the West End. It has a base; it has a shaft; it has a cap. So I'm very pleased with these introductions.

Mrs. Brody?

MS. BRODY: I agree. I think they're very handsome.

MR. ROBINSON: Is there a motion to approve the concept?

MR. CAPOCCIA: So moved.

MS. BRODY: Second.

MR. ROBINSON: All in favor?

[Chorus of ayes.]

MR. ROBINSON: Thank you very much.

Appendix?

MR. LINDSTROM: One final item, the Shipstead-Luce Appendix. From what was circulated there was one late addition, which we thought we didn't need to hold until January. It was 02-018, 8000 16th Street. It was a replacement garage. They have an existing garage that I wouldn't park my car in. It looks like it's on the brink of collapsing. We felt that it was perfectly acceptable, the replacement garage.

MS. BRODY: Move approval.

MR. ROBINSON: Second? Is there a second?

MS. NELSON: Second.

MR. ROBINSON: In favor. Approved.

APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND SUMMARY ORDER

ZONING COMMISSION ORDER NO. ____
Case No. 02-03
(Campus Plan and Further Processing - The George Washington University)
April __, 2002

This Decision and Order arises from an application by the George Washington University ("University" or "Applicant") for relief under subsection 3103.2 of the Zoning Regulations, for an area variance from the minimum closed court area and width requirements at Section 406.1. In accordance with Section 210 of the Zoning Regulations, this case is being heard by the Zoning Commission using the rules of the Board of Zoning Adjustment at 11 D.C.M.R. §3100 et seq. Relief is requested to authorize the design of a closed court, as proposed, on a new student dormitory structure on the campus of the University in an R-5-D District at premises 616 23rd Street, N.W. (Square 43, Lot 26).

HEARING DATE: April 11, 2002

DECISION DATE: May __, 2002

SUMMARY ORDER

1. Advisory Neighborhood Commission ("ANC") 2A was a party in this proceeding. The Commission received a request for party status from Dr. Donald Kreuzer which was granted.

2. Pursuant to Commission practices relating to campus plans, this application was not accompanied by a self certification form or memorandum from the Zoning Administrator certifying the required zoning relief.

3. The Applicant submitted a plan for developing the campus as a whole, showing the location, height, and bulk of all present and proposed improvements as required by 11 D.C.M.R. §210.4. The Board of Zoning Adjustment ("BZA") approved that plan by order dated March 29, 2001. The Board clarified that order, on remand, by order dated December 21, 2001. The approved Campus Plan For The George Washington University For Years 2000 Through 2010 ("Approved Campus Plan") adds Square 43 to the campus boundary.

4. The BZA's order of March 29, 2001 and the remand order of December 21, 2001 require the University to take decisive steps to house 70% of its full-time undergraduate students within the campus boundaries. To that end, inter alia, the remand order directs the University to provide beds for at least 5,600 full-time undergraduate students on campus, or outside of the Foggy Bottom/West End area, no later than August 31, 2002. In addition, beginning in August 2002 the University was ordered to provide one bed on-campus, or outside of the Foggy Bottom/West End area, for each full-time undergraduate student in excess of the University enrollment of 8,000. The University was directed to meet the aforementioned housing requirements exclusively by on-campus housing no later than August 31, 2006. By Order dated April 12, 2002, the United States District Court for the District of Columbia declared that these provisions of the BZA's order are unconstitutional and ordered final summary judgment invalidating their effect. The court stated that it expected the University to continue to honor its commitment to increase the amount of on-campus housing.

5. The Applicant proposes to construct a new, state of the art dormitory on a lot it now owns on Square 43. By Zoning Commission Order No. 958, dated January 14, 2002, (Z.C. Case No. 01-21CP) the Zoning Commission granted special exception approval pursuant to 11 D.C.M.R. §3104.1 and in accordance with §210 of the Zoning Regulations authorizing the construction and use of this new dormitory facility on Square 43. This case comes to the Commission because the design of the approved building, revised since the submission of Case No. 01-21CP, requires an area variance.

6. The new dormitory's height, FAR, side and rear yard measurements are all consistent with the Zoning Regulations. However, the proposed building design provides an arched design feature at the southeastern corner of the structure which creates a closed court. The court is bounded by the walls of the proposed dormitory, a common lot line with an adjacent property and a public alley which is three feet wide. The court width is four feet, which is sixteen feet less than that regulations require. The court area is approximately seventy-seven square feet, which is less than the required minimum of four hundred square feet. The footprint of the dormitory building extends to the lot line adjacent to the neighboring property on the southeast and to the three foot public alley. The angular "hinge" which creates the closed court at issue here first appears on the dormitory building's southeastern lot line at a height of twenty eight feet above the ground and extends for sixty additional feet to the roof line. The curvature of the hinge feature creates a closed court at its base.

7. The site is located on a nearly triangular square bordered by G Street on the north, 23rd Street on the east, Virginia Avenue on the south, and 24th Street on the west. Lot 26 contains approximately 32,723 square feet of land area and is unimproved. The remainder of the square contains the Wellington Condominium residences and three single family structures. The Wellington Condominium was built in 1982 and contains 52 units. The three single family structures, located on the southeastern tip of the square are owned by Dr. Donald Kreuzer, who has expressed an intention to develop his property to the fullest extent of the zoning envelope and, perhaps, beyond.

8. The generalized land use map of the District of Columbia Comprehensive Plan Act designates the entire campus plan area for "institutional uses". The properties that lie adjacent to the campus are generally designed for high density residential and medium and high density commercial uses. Generally, medium to high density residential and commercial uses predominate to the west of the campus, while high density commercial uses dominate to the east.

9. The University's architect, who was recognized as an expert witness by the Commission, testified that the proposed dormitory is designed so as not to be objectionable to surrounding properties.

10. The University's architect also explained the architecture of the building and the specific hinge feature concept. He opined that the hinge feature articulates the rotation of the 23rd Street and Virginia Avenue wings of the building with an architectural device designed to heighten the interest of the building on 23rd Street, which has a "special street" status in the District of Columbia Elements of the Comprehensive Plan for the National Capital. He said that the dimensions of the closed court are quite small, being approximately one foot wide at its eastern most extreme, seven inches in dimension from the property line, approximately four feet in depth at Dr. Kreuzer's property where it then wraps around to a public alley, three feet wide, that exists between the applicant's lot and the townhouse properties. The architect calculated the width of the closed court at approximately twenty seven feet. He opined that the closed court is a very irregular shape.

11. The architect explained further that it is important to keep the proposed design, with the hinge feature and the resulting closed court, in order to meet the number of beds that the University seeks to put in this dormitory. If the closed court were eliminated, the architect testified that such would result in a significant loss of beds, approximately 120, that the building could offer. He opined further that elimination of the proposed hinge would be detrimental to the southeastern façade of the building and may not be supported by the Commission of Fine Arts.

noted that both the Office of Planning and the Commission of Fine Arts have recognized the importance of this gateway location and that the Commission of Fine Arts has approved this design feature in concept.

15. The Applicant submitted evidence that the Commission of Fine Arts has approved, in concept, the dormitory building design that includes the hinged building feature.

16. By letter dated April 11, 2002, the Foggy Bottom and West End Advisory Neighborhood Commission (ANC-2A) stated that it does not oppose the Applicant providing increased student housing within its campus boundary but opposes this application because the Applicant has not met the requirements of Section 3103.2. Specifically, the ANC alleges that the property is not unique, but if the property is found to be unique that the University made it that way and that the University has not shown the granting of the variance to be in the public good because the adjoining Kreuzer property will be detrimentally affected. The letter went on to state that if the variance is granted that it should not create a situation in which the applicant might use as a basis in the future to oppose the development of the Kreuzer property and that any variance approval be conditioned upon the University permanently closing the windows along the Kreuzer property in accord with the D.C. Building Code.

17. The Applicant objected to the ANC letter and resolution because it only earned the affirmative votes of two of the four Commissioners who were present and voted at the ANC special meeting at which this matter was discussed. The ANC Chairwoman responded that the full ANC consists of six members, that four of the members were present for the vote on this resolution, that two of the four voted "Aye" and the remaining two members abstained from voting. She testified in these circumstances that it is her understanding of the rules of order that the two abstentions are not counted as votes and that the two "Aye" votes constitute a majority of those present and voting, thus effectuating the resolution.

18. Counsel for Dr. Kreuzer and Dr. Kreuzer's architect appeared at the hearing and testified that Dr. Kreuzer didn't know ". . . how much in opposition to . . ." this application he was. But he does recognize that it is possible that the granting of the requested variance could have an adverse effect on his future development plans. His architect discussed some design possibilities for development on Dr. Kreuzer's property and emphasized the necessity that the dormitory windows on the hinge façade be closed should Dr. Kreuzer develop his property and that the presence of those windows not be used by the University to form the basis of an adverse impact complaint should Dr. Kreuzer choose to develop his property to his property line.

19. Dorothy Miller, the Commissioner on ANC-2A05 appeared and testified in general opposition to the application.

20. Charles Barber, Senior Counsel to the Applicant testified to the University's efforts to increase the number of on-campus beds it is able to provide to its full-time undergraduate students. He stated that the timing of this application is important because University housing is unlike other residential housing in that University housing must be brought on-line by August of a particular year or students will have made their housing plans for that academic year and the dormitory building will likely be without residents until the next class year.

21. The parties submitted post-hearing memoranda on the validity of the ANC resolution. The Commission decided to accept the resolution into the record.

FINDINGS OF FACT:

1. The Commission finds that the University has met the requisite burden of proof as set forth in Section 3103.2 of the Zoning Regulations. The Commission agrees with the Applicant's expert witness and the Office of Planning that the property is unique because of its irregular shape, the existence of the three foot alley and its location on a special street at the gateway of the University; that the strict application of the closed court requirements will create a practical difficulty in that the University will be unable to develop an important architectural design feature at an important intersection of the city. Not granting this closed court variance would also unreasonably force the Applicant to create a larger court at the expense of building space, an end that would result in the loss of a substantial number of dormitory beds that the Applicant has been ordered by the BZA to create.

2. The Commission finds that the variance can be granted without causing substantial detriment to the public good and will not impair the intent, purpose and integrity of the Zoning Regulations and map and will serve the public good by allowing the construction of a more attractive building at this gateway and special street location. Further, the Commission has already determined that the special exception required to build the dormitory as proposed will be in harmony with the general purpose and intent of the Zoning Regulations and zoning maps and will not tend to effect adversely the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps.

3. The Commission makes the following findings with respect to the concerns submitted by ANC-2A:

a. The Commission agrees with the testimony of the Office of Planning and the Applicant's expert witness that the property is unique because of its shape and location at the gateway to the University on a street designated as special in the Comprehensive Plan for the National Capitol.

b. There is no evidence in the record that the Applicant created the unique property configuration. The ANC presented no evidence that either the shape, the topography or the location of the site was created or affected by the Applicant.

c. The ANC failed to provide any evidence that the granting of this application will detrimentally effect Dr. Kreuzer's property. Indeed, the Applicant testified that should the Kreuzer property be developed, a proposition which is unclear in the record, it will be required by the D.C. Building Code to close those windows that face his property on the property line that they share. Neither the ANC nor Dr. Kreuzer made any colorable showing of this Application's adverse effect on the Kreuzer property.

d. The Commission cannot and does not evaluate the impact that the granting of this application may have on a future development that may be undertaken by Dr. Kreuzer. There is no showing on the record as to what that development may be, when it may be built, or if it will be built. As such, the Commission declines the ANC's invitation to condition this order on a future development of which it has no knowledge.

e. The Commission finds that the concerns submitted by Dorothy Miller, appearing in opposition to this application, are without substance and unpersuasive.

CONCLUSIONS OF LAW:

1. Based on the Findings of Fact and the evidence of record, the University is seeking an area variance under Section 3103.2 form the minimum closed court area and width requirements at Section 406.1 to authorize the design, as proposed, of a new student dormitory structure on its campus on Lot 26 and Square 43. The granting of this relief requires compliance with those provisions of Zoning Regulations. The Commission concludes that the University has met its burden of proof.
2. The Commission concludes that it has accorded ANC-2A the "great weight" to which it is entitled. Accordingly, it is ordered that this application is **GRANTED**.

Vote:

BY ORDER OF THE ZONING COMMISSION FOR DISTRICT OF COLUMBIA

Each concurring member has approved the issuance of the summary order.

AYERS
SAINT
GROSS

24 April 2002

Mr. Jerry Moore
Arter & Hadden
1801 K Street, NW
Suite 400K
Washington, DC 20006-1301

Re: GW Square 43 Dormitory
Zoning Variance Case No. 02-03
Ayers/Saint/Gross No. 20190.02

Dear Mr. Moore:

I am writing in regard to a response I gave in my testimony at our Thursday April 11, 2002 zoning variance hearing for the non-complying closed court in the Square 43 George Washington University Student Residence Hall project. I replied to a question by Commissioner May that it would take Ayers/Saint/Gross approximately one month to redesign the area in question if the variance was not approved. Upon further investigation and consideration of my response, I would like to clarify that the one month time frame I gave reflected only an estimate of direct ASG design time but did not take into account the time required for various reviews and approvals required by our client and the Commission of Fine Arts (CFA), nor did it fully consider the impact this would have on various permit submissions that have been scheduled to help expedite construction of this facility. The net result is that we anticipate that the construction completion will be delayed well in excess of one month.

Similar to the original design phase, we will need to make several design presentations to the University as we refine the design for this very important façade. The 'hinge' area and the overall south elevation received intensive scrutiny during our initial design work due to its high visibility. We anticipate presenting several different initial concept schemes for consideration by the University's Architecture, Engineering and Construction department (AEC). After selection of one of these conceptual designs we will move forward with preparing a schematic design that further refines the rough concept sketch. This phase will likely involve several intermediate meetings with AEC staff followed by a review and comment period once the final schematic design is submitted for approval. After ASG has made any required modifications to respond to these comments, AEC will present the revised elevation to the university's administration for comment and approval. We estimate that these various university reviews will add an additional four weeks to the redesign process.

Once we have a schematic design that the university has approved, we will need to seek the approval of CFA. This will first involve arranging separate meetings with Mr. Lynstrom, the CFA staff member responsible for this project. Once we have received initial comments and assuming that the design concept is generally acceptable, we will make any requested revisions. We will then present the revised façade and request a place on the calendar for revised conceptual approval at the next CFA meeting. This usually requires submission of drawing boards at least two weeks prior to the monthly meeting date. Once the concept approval is received we will need to make

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another submission to CFA for final approval. This requires the submission of detailed construction documents two weeks prior to the monthly meeting date. This approval is also key because we cannot get any of our required building permits without it. We anticipate that the CFA approval phase will take an additional nine weeks and the timing of submissions will be critical as the CFA meeting dates are fixed.

We are currently scheduled to submit drawings for CFA final approval on May 2 so that we can get on the calendar for its May 16 meeting. Taking into account the time delays outlined above, the aggregate delay will be approximately 17 weeks or about four months before we can obtain this CFA approval if the variance is rejected.

We are pursuing several early permits as a result of the fast track schedule that the University's construction manager has put together. This schedule has been refined over the last month and includes input from several meetings with our design team, the University and the University's permit expediter. This schedule expedites the construction of this facility so that it will be completed in time for student occupancy at the beginning of the Fall 2004 academic year. These early permits include sheeting, shoring and excavation, foundation-to-grade and structural frame projection. There are associated early bid packages as well. As stated above, the CFA final approval will be required before the release of any of these permits with the exception of sheeting, shoring and excavation. Of course it would be of no benefit and in fact potentially very costly and risky to begin excavation without the expectation that the subsequent early permits could be obtained in a timely manner. Therefore, we believe that this four month delay in the CFA approval will delay the construction completion a like amount causing the facility to not be ready for students at the beginning of the 2004 academic year. Because the scheduling is already very aggressive and fast-tracked, we do not see where it will be possible to recover this time during construction.

In conclusion, the construction delay that will result if we must redesign the project is considerable and consequential. The schedule impacts outlined above do not even attempt to take into account the lost production that will result from our manpower resources being shifted from this critical phase of construction document preparation to the redesign effort.

As always, please do not hesitate to call with any questions or if you wish to discuss this matter further.

AYERS
SAINT
GROSS

Sincerely,

AYERS/SAINT/GROSS, INC.

Barry A. Goldfarb
Senior Associate

BG:bag

xc: File, Michelle Honey, Charles Barber, Jeff Welter, Richard Ayers, Beth Long, Alick Dearie

12. The architect testified that the granting of this application will not limit Dr. Kreuzer's ability to develop his property, if he chooses. He said that the development of Dr. Kreuzer's property will necessitate the University permanently filling in its windows that face Dr. Kreuzer's property to the height of Kreuzer's building. He cited Volume 12, D.C.M.R. ¶705.3.36 as requiring windows on common lot lines to be closed in the event that a building on an adjacent lot is built to the lot line.

13. The architect testified that Lot 26 is unique in that it is L-shaped with irregular boundaries and a sloping topography. He said the lot is also unique because it borders on 23rd Street which is designated as a "special street" in the comprehensive plan. He said further that this location constitutes an important gateway to the campus of the University. He testified that a practical difficulty would arise from the losing of the hinged design feature in the building façade which would result in an unattractive flat building appearance at a very important location. He related that in his preliminary meetings with the Office of Planning and the staff of the Commission of Fine Arts it was suggested that this location requires a special gateway design because it is a special place. He said that the proposed closed court will not have an adverse impact on the light and air to either the University's building or to Dr. Kreuzer's property.

14. By memorandum dated April 4, 2002 and by oral testimony at the April 11, 2002 public hearing the D.C. Office of Planning opined that this Application satisfied the zoning requirements and recommended that it be approved. In so doing, the memorandum cited the irregular shape of lot 26 and the gateway status of the intersection of 23rd Street and Virginia Avenue. In addition, the Office of Planning stated that 23rd Street is designated as a "special street" in the Comprehensive Plan for the National Capitol. In reaching its recommendation, the Office of Planning noted that the closed court that is created by the hinge constitutes only a small part of the large dormitory building that has already been approved by the Commission; that the closed court limitations in the Zoning Regulations do not relate well to the relatively small area of the design feature that is proposed; and that the design feature is being proposed in order to improve the aesthetic appearance of the building. The memorandum concluded that the application meets the tests for an area variance and that the property is unique because of its shape and its location; that the strict application of the Zoning Regulations in this case would mean that the hinge design feature could not be built, thus lessening the attractiveness of the design of this building at an important location; and that the variance can be granted without causing substantial detriment to the public good by allowing the construction of a more attractive building at this gateway location. It