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

May 2, 2002

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

Re: Filing of Proposed Findings of Fact and Conclusions of Law for
The George Washington University Z.C. Case No. 02-03
(Relief for an area variance from the minimum closed court area and width requirements at section 406.1 to authorize the design, as proposed, of a new student Dormitory Housing Facility in Lot 26 Square 43.)

Dear Ms. Kress:

As cited in its prior letters regarding this case, ANC-2A is involved in an inordinate number of ongoing neighborhood issues and cases with very limited resources. ANC-2A requests that the rules be waived to allow the late filing of ANC-2A's Findings of Fact and Conclusions of Law to the Zoning Commission in the above-titled matter.

Additionally, we request that the Commission note that 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

(3) attachments: ANC-2A Proposed Findings of Fact and Conclusions of Law
ANC-2A's 4-24-02 letter substantiating the vote on ANC-2A Resolution #02-04B
ANC-2A's Resolution #02-04B of April 7, 2002

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cc: Jerry A. Moore, III, Arter & Hadden for GWU
Jonathan L. Farmer, Griffin, Farmer & Murphy, LLP for Dr. Donald Kreuzer

ZONING COMMISSION
District of Columbia
Case 02-03
Exhibit 31

ZONING COMMISSION
District of Columbia
CASE NO.02-03
EXHIBIT NO.31

FOGGY BOTTOM WEST END ADVISORY NEIGHBORHOOD COMMISSION 2A (ANC-2A)
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR

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ZONING COMMISSION ORDER NO._____
Case No. 02-03C/16553
(Campus Plan and Further Processing— George Washington University)
Date_____

HEARING DATE: April 11, 2002

DECISION DATE: _____

SUMMARY ORDER

This Decision and Order arises out of an application by the George Washington University ("University" or "Applicant") for a special exception approval pursuant to 11 DCMR § 3104.1 and in accordance with Section § 210 of the Zoning Regulations for further processing under an approved campus plan and for relief for an area variance from the minimum closed court area and width requirements at section 406.1 to authorize the design, as proposed, of a new student Dormitory Housing Facility in Lot 26 Square 43.

Background

1. Applicant, The George Washington University (GWU), has received preliminary conceptual approval from the Commission of Fine Arts and approval from the Commission in Z.C. Case 01-21CP to build a Dormitory Housing Facility in Lot 26 Square 43 at 616 23rd Street, N.W.

2. Prior to this approval, GWU violated Zoning Order No. 14455, dated February 25, 1988, by raising 27 townhouses on Square 43. Zoning Order No. 14455 specifically stated that Square 43 would be removed from within the campus boundary and that any new structures would not adversely affect the height, bulk, and design of adjacent, non-University-owned structures. The order further stated that all townhouse structures in Square 43 shall be preserved with the provision that the University may renovate and convert the structures to University use.

FINDINGS OF FACT

3. The University has attempted to throw out the ANC's resolution in this matter based on the vote of 2-0-2, implying that the two abstentions of the quorum of Commissioners present at a special meeting dealing with this issue were in support of the University's request. In fact, on the ANC's taped version of this meeting, it is clear that, because of the University's deliberate obfuscation of the issues surrounding its presentation at that meeting, two of the Commissioners abstained from voting rather than voting on the project with an incorrect understanding of the facts.

4. ANC-2A, at the hearing through its Chairperson, requested that the Zoning Commission reject the University's relief request because it had failed to demonstrate, under the 3-part test of Section 3103.2, that relief should be granted, i.e.,

   1. The property is unique, 2. By reason of the aforementioned uniqueness, e.c.: GWU created the property configuration. (Additionally, GWU's original design did not need a variance); and 3. The variance will not cause substantial detriment to the public good under 11 DCMR Section 210.2 by reason of objectionable impact on the neighboring Kruezer properties.

Number of Beds/Size of Project

5. Despite the fact that was it was suing the District of Columbia in Civil Action No. 01-0895 (LFO) and in the D.C. Appeals Court—in part over BZA-imposed limitations on GWU's housing of its undergraduate student population in the 2000-2010 GWU Campus Plan—the University has repeatedly insinuated that BZA Order No. 16554 is directing the University to build student housing of a certain capacity on certain University-owned property. The Commission notes that GWU has rebutted that possibility with its own testimony.

6. GWU's Director of Engineering, Architecture and Construction testified at the 12-20-01 Commission of Fine Arts (CFA) hearing..."The University has been tasked to add additional housing to the campus, within the campus, for our undergraduate students by the BZA (Board of Zoning Adjustment). In that attempt *we are providing* at least 700 beds in a high-rise building off of 23rd Street..."

7. GWU's outside architectural expert testified that the non-conforming court was created primarily as a result of the program, i.e., the number of dormitory beds, that the University wanted to include in this facility: (4-11-02 Z.C. trans. pg. 11, lines 10-13) "The *University wished us to construct a large facility for 700-plus beds*, and that basically dictated the shape of the project and its filling out the lot on the basis to Dr. Kruezer's property...."

8. GWU's architectural expert further testified that the form of the building, and hence, the "hinge" was dictated (4-11-02 Z.C. trans. pg. 15, lines 1-3) *by the number of beds needed by the University*: "It's the most efficient form in order to accommodate those beds, and certain things fell into place from that in terms of location of the elevators." (4-17-02 Z.C. trans. pg. 17, lines 16-19) "In terms of accommodations the project made to lessen the impact on Dr. Kreuzer's property, unfortunately as I explained before, *in order to get the number of beds in the project*, it mandates that we build out to the property lines." (4-17-02 Z.C. trans. pg. 18, lines 21-23) "I've already explained how the shape of that site and *the program (i.e., the number of beds chosen for that site by GWU)* for the building dictated a project in the shape we have."

9. In its final Order No. 16554, the BZA noted numerous other sites available to the University within the Campus Boundary which the ANC-2A believes would have prevented the concentration of large numbers of students in one area resulting in potentially objectionable impacts on the abutting non-University residential properties.

10. The Commission notes that nowhere in the record of the Campus Plan Case or the BZA Order is there a directive to GWU to build its Square 43 property (or any other of its properties, for that matter) to the maximum density/occupancy possible.

11. The Commission rejects the University's implication in its testimony that there is any evidence in the record in this case or the Campus Plan Case that supports the University's claim that the number of beds (722 beds + Support Staff) on this site was necessitated by anything other than the University's plans to maximize the number of student beds in one location.

The Hinge

12. The Commission finds that the University, through its architectural expert, provided copious and contradictory testimony on the evolution and definition of the "hinge" design at the intersection of 23rd Street and Virginia Avenue, N.W., none of which supports the University's claim that this is a special design. Additionally, the Commission finds that the aesthetics of the design,

while related to other University projects on the streetscape, are not necessarily reflective of the historic neighborhood character.

13. (4-11-02 Z.C. trans. pg. 12, lines 5-8) "There was a court in terms of this hinge element, and we call it a hinge because essentially we have these wings of the building that held the street lines and the avenue, and essentially it articulates the rotation of these two wings." (4-11-02 Z.C. trans. pg. 12, lines 14-19) "The recess of the course, essentially without it, where the *hinge*, which is a *sweeping curve* which isn't shown too well here, but this is a blow-up of the hinge area in that court, is meant to enliven that façade and to help articulate it. Without that, it would be a very flat façade and lacking in character." (4-11-02 Z.C. trans. pg. 14, lines 8-15), "In terms of why we feel the court is necessary, I think I mentioned that before. It creates an articulation of the façade. Without it this would just be a plain flat facade .... We also typically like to employ such devices as plane changes, slight as they may be. We do change materials in this manner, but it also defines a *wing* here that's at the end of that, and that intermediate element that helps turn the *corner*."

14. The Commission finds that the "hinge" effect—a column of glass windows looking in on the elevator banks of the project—is not a special design and should not receive special attention, particularly since the possibility the new construction would force its ultimate closure.

The Gateway

15. Similarly, the University Architect and Architectural Expert have testified that the project, by virtue solely of its location at the intersection of 23rd Street and Virginia Avenue, should be granted some kind of special status. (4-11-02 Z.C. trans. pg. 18, lines 21-23) "And then by the very nature of this project on 23rd Street, as we've mentioned several times, it, of course, forms an important *gateway* to the campus." (4-11-02 Z.C. trans. pg. 19, lines 1-4) "We were commissioned before we got involved with the Office of Planning, Commission of Fine Arts, by the University... *they directed us to make a special gateway.*"

16. The University has variously attempted to present this project as a gateway, a special place, and a niche, implying that the project's design, including the "hinge" effect, was dictated by the Commission of Fine Arts (CFA). This is not supported by any correspondence in the Record of this case from the CFA including the transcript of the 12-20-01 CFA hearing, which makes only a passing reference to this feature and accepts the University's definition of what constitutes a "special" design.

CONCLUSIONS OF LAW

After consideration of the above facts, the Commission concludes that the Applicant has not met its burden of proof for variance in this case. The property is not unique in size and shape and any hardships the University suffers result from the University's decision to design the project as it has been presented to the Commission. There is no structural or architectural difficulty in offsetting a building at the corner of the square. The University can design a structure which sets back from the existing property lines as required by existing law and regulations.

The University can build a common wall with the adjoining property—particularly if the development plans presented by Dr. Kreuzer are approved and built as shown during his representatives' testimony. The University can comply with the regulations and can build a conforming court. The number of beds that the University desires to locate on this site may be

met through an appropriate design. The variance requested cannot be justified as a matter solely of self-proclained "good architecture" nor does the streetscape dictate that this particular design must be built as proposed.

The Commission hereby stipulates that any building design proposed by the University include provisions that do not allow the walls to the adjoining property or the walls of a non-conforming court to create a situation or physical condition which the University might use to oppose further development adjacent to its site. The University cannot use its design as the basis of an adverse impact complaint against any future designs on the adjacent site.

The Commission concludes that it has accorded ANC-2A the "great weight" to which it is entitled.

Accordingly, the Commission concludes that the Applicant's request for variance should be and is hereby DENIED.

VOTE: _____ (Anthony J. Hood, James H. Hannaham, Carol J. Mitten, John G. Parsons, and Peter J. May _____.)

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 24, 2002

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

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Re: Response to the Zoning Commission's Request for Further Information on ANC-2A's April 7, 2002 Resolution #02-04B Regarding The George Washington University Z.C. Case No. 02-03
(Relief for an area variance from the minimum closed court area and width requirements at section 406.1 to authorize the design, as proposed, of a new student Dormitory Housing Facility in Lot 26 Square 43.)

Dear Ms. Kress:

At the conclusion of the April 11 hearing on the above-titled case before the Zoning Commission, Z.C. Chairperson Carol Mitten requested of any and all of the Parties, a clarification of the rules and procedures governing ANC-2A's vote on Resolution #02-04B of April 7, 2002, to determine what constituted a majority of the votes needed to pass the resolution, under Edition 10 of Roberts' Rules of Order.

After presentations by the University, a presentation by neighboring property owner Dr. Donald Kreuzer, a protracted debate and discussion by the Commissioners present, and additional community input, the vote was called on a proposed resolution. The Commission Chair incorrectly opined that the proposed resolution to oppose the grant of a special exception for an area variance from the minimum closed court area and width requirements failed with two "yeas" and two "abstentions," with four of six Commissioners present.

At the April 11, 2002 Zoning Commission hearing on this case, the University attempted to have the Resolution thrown out. Despite the University's vociferous opposition to the ANC's resolution and mischaracterization of the resolution as passing "in part" or not at all, Resolution #02-04B passed in a 2-0-2 vote and is binding. Our authority is Robert's Rules of Order, 10th Edition, Newly Revised. See Chapter XIII, "Voting" (page 387):

> Majority Vote–the Basic Requirement
> As stated on page 4, the basic requirement for approval of an action or choice by a deliberative assembly, except where a rule provides otherwise, is a majority vote. The word *majority* means "more than half"; and when the term *majority vote* is used without qualification—as in the case of the basic requirement—it means more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting at which a quorum is present.

Note that Robert's clearly says, "excluding blanks or abstentions." Robert's goes on to describe other systems of voting that may be used in special circumstances or may be adopted through special provision in the bylaws, and in some of those "modifications of usual bases for decision" an abstention might count as a negative vote. But a normal vote on a motion at ANC-2A's meetings follows the normal rule, and abstentions simply don't count.

During its final argument at the April 11 hearing, the University also raised the issue of the number of Commissioners present, four of six, at the meeting, and the "fairness" of the correct outcome of that final vote, passing the ANC's resolution. Please note that there was no concern on the University's part at the April 7 meeting when the outcome of the vote appeared, incorrectly, to be in the University's favor.

Please note that under the February 1999 revised District Code pertaining to Advisory Neighborhood Commissions (in particular Provision 1-262 subsection (e)), "where not otherwise provided, the procedures of the Commission shall be governed by Robert's Rules of Order." The section regarding what constitutes a quorum under ANC-2A's Rules of Procedure and Bylaws, originally approved and instituted on 3-7-78, was amended on 6-21-95 by the Commission. Article VI, Section 4 now reads: "In these by-laws, a majority is understood to be the majority of currently seated commissioners of the Foggy Bottom/West End Advisory Neighborhood Commission present and forming a quorum." In Article VIII, Parliamentary Authority, the by-laws go on to affirm "Robert's Rules of Order Newly Revised shall govern the Commission in all cases in which they are not inconsistent with these bylaws and any special rules of order the Commission may adopt."

It is clear from the foregoing that there was a proper quorum at the April 7, 2002 Special Meeting, and that ANC-2A's Resolution #02-04B in opposition to the University's above-titled request passed on a 2-0-2 vote.

Sincerely,

Elizabeth B. Elliott
ANC-2A/Chair

(1) Attachment: Citation from 10th Edition/Robert's Rules of Order on Voting

ROBERT'S RULES OF ORDER
NEWLY REVISED

10TH EDITION

GENERAL HENRY M. ROBERT
U.S. Army

A New and Enlarged Edition by
SARAH CORBIN ROBERT
HENRY M. ROBERT III
WILLIAM J. EVANS
DANIEL H. HONEMANN
THOMAS J. BALCH

PERSEUS PUBLISHING
Cambridge, Massachusetts

CHAPTER XIII

VOTING

§44. BASES FOR DETERMINING A VOTING RESULT

Majority Vote—the Basic Requirement

As stated on page 4, the basic requirement for approval of an action or choice by a deliberative assembly, except where a rule provides otherwise, is a ***majority vote.*** The word ***majority*** means "more than half"; and when the term ***majority vote*** is used without qualification—as in the case of the basic requirement—it means more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting at which a quorum (40) is present. For example, at such a meeting (assuming that there are no voters having fractions of a vote, as may occur in some conventions):

- If 19 votes are cast, a majority (more than 9½) is 10.
- If 20 votes are cast, a majority (more than 10) is 11.
- If 21 votes are cast, a majority (more than 10½) is 11.

Other bases for determining a voting result, as described below, are required under parliamentary law for certain procedures, or may be prescribed by the rules of the particular body—for decisions in general or for questions of a specified nature (see also Standard Characteristic 7, pp. 98–99).

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Advisory Neighborhood Commission (ANC-2A)

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

April 11, 2002

The George Washington University – Z.C. Case No. 02-03
(Relief for an area variance from the minimum closed court area and width requirements at section 406.1 to authorize the design, as proposed, of a new student Dormitory Housing Facility in Lot 26 Square 43)

Dear Ms. Kress:

Advisory Neighborhood Commission 2A (ANC-2A) requests a waiver of the rules for late submission to accept ANC-2A's Resolution. As you are aware, ANC-2A has been under continuing pressures with involvement in an excessive number of large, contested cases in front of the BZA and the ZC as well as a number of smaller cases. Also, through an oversight and no fault of its own, the University did not come before the ANC until a special meeting held on Sunday, April 7.

In addition, ANC-2A did not receive the Office of Planning Report, which was late-filed on April 5, on this case until the day after our special meeting, the written order for the approved dormitory (Z.C. Case 01-21CP) case was not issued until April 3, and the ANC-2A has not had an opportunity to review the transcript of the University's December 20, 2002.

Sincerely,

Elizabeth B. Elliott
Chair

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cc: Michele Honey, GWU, Via Facsimile
cc: Dr. Donald Kreuzer, Via Facsimile

THE FOGGY BOTTOM AND WEST END ADVISORY NEIGHBORHOOD COMMISSION (ANC-2A) passed the following Resolution #02-04B

The George Washington University – Z.C. Case No. 02-03
(Relief for an area variance from the minimum closed court area and width requirements at section 406.1 to authorize the design, as proposed, of a new student Dormitory Housing Facility in Lot 26 Square 43)

WHEREAS, the George Washington University (GWU) has applied for a variance from minimum closed court area and width requirements on a previously-approved Application (Z.C. Case 01-21CP); and

WHEREAS, ANC-2A does not oppose the provision by GWU of increased student housing within its campus boundary, including this site; and

WHEREAS, GWU has not demonstrated under the 3-part test of Section 3103.2 that relief should be granted, i.e.,

1. The property is unique, etc.: GWU purchased units of the property over time and was well aware of what the limitations were.
2. By reason of the aforementioned uniqueness, etc.: (see 1 above) GWU created the property configuration. Additionally, GWU's original design did not need a variance.
3. The variance will not cause substantial detriment to the public good, etc.: there is testimony before the Commission that the adjoining Kreuzer property will be detrimentally affected; and

THEREFORE BE IT RESOLVED, that ANC-2A opposes the granting of the variance based on the failure of GWU to demonstrate credible evidence to pass any of the 3 parts of the 3-part test required for a variance; and

THEREFORE BE IT FURTHER RESOLVED, that should the Commission approve the above-titled relief, ANC-2A requests that the granting of relief (i.e., the walls of the non-conforming court) not create a situation or condition which the University might use in the future as the basis for an adverse impact complaint against any future variances requested by Dr. Kreuzer for any proposed future development on his property; and

THEREFORE BE IT FURTHER RESOLVED, should the relief be granted by the Commission and the non-conforming court be built, that, in the event that the Kruezer property is developed in such a way that his development abuts or encloses this non-conforming court, that the Commission condition the relief to include a provision that the non-conforming court must be closed up and a fire wall built by GWU at the property line, in a similar fashion to the closing up of the GWU property line windows required by the D.C. Construction Code.

DATE: April 7, 2002

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

CHAIRPERSON