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

BY FACSIMILE 11-26-02 AND BY HAND 11-27-02

November 26, 2002

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

RECEIVED
D.C. OFFICE OF ZONING
2002 NOV 27 AM 9:40

Re: Zoning Commission Case No. 02-26
The George Washington University (GWU) Application for Further Processing of a Special Exception for the Lerner Health & Wellness Center (Square 42, Lot 847)

Dear Ms. Kress:

ANC-2A requests that the rules be waived and, if necessary, the file be reopened, to allow the late submission (after 12:00 noon on November 25, 2002) of ANC-2A's November 13, 2002 resolution on the above-titled GWU further processing Zoning Commission case. Due to having to handle a continuing and excessive number of ANC issues, the University not serving the ANC with its 11-18-02 pre-hearing submission, and the ANC not receiving the Office of Planning Report (filed with the ZC at 6:45pm on 11-25-02) until today, the ANC-2A was not able to file timely on the above-titled case. ANC-2A requests assurance that the OZ will make every effort to submit this material as soon as possible to the Commission members for their consideration prior to the public meeting on this matter

The ANC again reminds the Zoning Commission that GWU is not located in Foggy Bottom as a matter of right, and that the ZC, as well as the BZA, is charged with the protection of the residential neighborhoods, both under the Campus Plan and Special Exception processes, from adverse impacts created by their university guests. Both of these processes have been challenged by GWU, with the outcome either pending (in the U.S. District Court) or yet to be heard (in the DC Court of Appeals). ANC-2A would again recommend that the ZC not consider this case until all decisions and appeals have been considered and handed down in these matters.

Additionally, the ANC is concerned that the Zoning Commission is even considering this case as simply a change in conditions, which it is not. This facility was approved as a low-intensity use facility abutting the residential community at the Western campus boundary and the University is requesting changing these conditions to change, among other things, to a higher-intensity use something that was not even considered much less approved under the BZA order governing this facility.

The ANC will be testifying at the December 2, 2002 hearing and will be represented by its Chair.

ZONING COMMISSION
District of Columbia
Case 02-26
Exhibit 26

ZONING COMMISSION
District of Columbia
CASE NO 02-26
EXHIBIT NO.26

In closing, please 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

(1) 3-page Attachment - November 13, 2002 Resolution

cc: Jerry Moore, Arter & Hadden for GWU
Andrew Altman, Office of Planning
John Fondersmith, Office of Planning
Councilmember Jack Evans, DC City Council
Mayor Anthony Williams
Ron Cocome, President, Foggy Bottom Association

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

RECEIVED
D.C. OFFICE OF ZONING
2002 NOV 27 AM 9:40

Resolution pertaining to Zoning Commission Case No. 02-26–
The George Washington University Application (Square 42, Lot 847)
For further processing of a Special Exception for the Lerner Health & Wellness Center.

WHEREAS, the George Washington University (GWU) has finished the construction of the Lerner Health & Wellness Center (LH&WC) on the premises of 2301 G Street, NW (Square 42, Lot 847); and

WHEREAS, ANC-2A opposed the University's application for construction of the facility in a September 17, 1997 Resolution and in testimony at the public hearings; and

WHEREAS, the Board of Zoning Adjustment (BZA), in its January 7, 1998 meeting and its subsequent March 31, 1998 written Order #16276, approved the University's application and placed conditions on the hours of operation and use of the building pursuant to ANC-2A's finding of fact; and

WHEREAS, the BZA concluded in condition #1 that, "use of the facility shall be limited to the students, faculty, and staff of the Foggy Bottom campus only;" and

WHEREAS, the BZA concluded in condition #2 that, "operation of the facility shall end at 10:00 PM, Monday through Saturday and at 8:00 PM on Sundays;" and

WHEREAS, GWU contends it is only asking for changes to these BZA-ordered conditions in Order #16276, it is actually requesting changes to the BZA-Ordered use of the facility, without Special Exception Review of these modifications that were not included in the original BZA order; e.g.:

1. Change from an approved, low-intensity support facility to a more intensely-used facility;
2. Inclusion of the GWU's Mount Vernon Campus (Faculty, Staff, and Students), a completely separate entity with its own Campus Plan subject to zoning review, without review of either the GWU Campus Plan or the GW Mount Vernon College Plan, and expansion of "boundary" definitions of who lives and works in Foggy Bottom;
3. Inclusion of additional unapproved changes (e.g. earlier opening hours, inclusion of greater numbers of users of the facility, and inclusion of intercollegiate sports activities); and

WHEREAS, GWU testified during the hearings before the BZA and received its further processing approval based on the following:

1. That the LH&WC would be a support facility, containing only recreational and intramural activities, no intercollegiate sports programs, and that the number of individuals using this facility would be low by itself and compared to other facilities at the core of the campus;
2. That the LH&WC, even though it contained other, more intensive uses, because of its low intensity of usage, would be appropriately situated on this site at the edge of the campus, abutting a sensitive, non-university residential area; and
3. That the LH&WC, in keeping its low-intensity use intact, would be used by a maximum of slightly over 2,000 users per day or 122 users per hour; and

WHEREAS, GWU, contradicting its own representations upon which the LH&WC application was approved, is now requesting the following:

1. The University is stating that the intensity of use of the LH&WC is too low and that the University needs to change (increase) the number of users of the facilities and the operating hours of the facility to increase use;
2. The University is announcing that it is changing the intensity of use by introducing intercollegiate sports activities currently located at the Smith Center and increasing the existing hours by opening the LH&WC at 6:00 am;
3. After suing the District in Federal Court (decision pending) and the District Court of Appeals (cases pending) over various "caps" on its population in the BZA GWU Campus Plan order, the University is stating that it needs 3,000 additional members (and is proposing a "cap" at the +3,000 additional) over the 2,018 approved members to increase intensity of use of the LH&WC; and

WHEREAS, ANC-2A contends, and has conveyed this contention to the Office of Planning, that modifying the membership categories to include non-University parties is a violation of the District of Columbia Human Rights Act and will expose not only the University but also the City and the Zoning Commission to legal recourse from any excluded party under the Act; and

WHEREAS, ANC-2A believes that such legal action will result in the opening of the LH&WC to a universal public, creating a quasi-commercial facility, not applied for in GW's original application and with little, if any, connection to GWU's educational mission; and

WHEREAS, GW's charging of membership fees for any users, other than Foggy Bottom Graduate and Undergraduate Students, Faculty, and Staff, would also raise the issue of a tax-exempt, non-profit organization making profits in a quasi-commercial facility; and

WHEREAS, ANC-2A believes that the ZC's approval of any change to either of the BZA's conditions in its final order approving the LH&WC would, in fact, be tantamount to its approval of a change in use from the original order and would be grounds for reopening the original BZA Special Exception Application #16276 as well as the BZA-approved GWU Campus Plan #16553.

BE IT THEREFORE RESOLVED THAT ANC-2A is satisfied that the conditions created by the BZA in this order, limiting the categories of users and limiting the hours of operation, are clearly working to prevent the University from creating any further objectionable effects (including increased traffic, noise, and too-intense use, e.g.) with this facility that would impact negatively on the Foggy Bottom host community and should not be reconsidered, changed, or altered in any way; and

BE IT FURTHER RESOLVED THAT ANC-2A requests the BZA deny GWU's request to alter the conditions placed on the "Lerner Health and Wellness Center" (January 7, 1998) regarding membership and hours of operation.

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