December 2, 2002
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.

Testimony for ANC-2A/Elizabeth B. Elliott, Chair

Madam Chair and members of the Commission, thank you for considering the ANC's response to George Washington University's request and presentation this evening. The ANC would like to incorporate by reference the testimony at this hearing of the Foggy Bottom Association and that of Mr. Jim Bunnell, representing the Sports Club/LA.

Please keep in mind that the Foggy Bottom-West End Advisory Neighborhood Commission is a group elected by the majority of our constituents and carrying "great weight" in its recommendations to DC agencies. The ANC is an unpaid, volunteer group with limited human and financial resources, and is always working from a position of weakness in relation to the numerous, wealthy, and powerful non-profit organizations, particularly George Washington University, located throughout our neighborhood. We are appearing today without benefit of counsel.

Because we are usually at great disadvantage in these proceedings, the ANC relies particularly on the Zoning Commission (ZC) and the Board of Zoning Adjustment (BZA) to exercise their authority, as they are charged under the DC Municipal Regulations, the Comprehensive Plan, and the GW Campus Plan, to protect and enhance the neighborhoods. We especially rely on the ZC and the BZA regarding Universities, which are not located or allowed to develop by right in the midst of our residentially-zoned community, but are subject to the Special Exception process under the Campus Plan umbrella.

After rejecting GWU's original application and an appeal of that decision, the BZA finally approved the LH&WC on January 8, 1997. The BZA clearly based much of its approval of this building's location on the University's repeated testimony in all three appearances regarding the intended low-intensity use of this facility in an area that was also available for student residential housing, a use the community and the ANC would have preferred at least in part on this site, under the GW Campus Plan. (01-07-98 BZA Order No.16276 Finding of Fact No. 2. "The anticipated use is not a major use. High usage buildings are specifically listed in the campus plan and this is not one of them.")

In all three hearings, the BZA ultimately ignored the ANC's testimony and contention that the University presented no evidence justifying a facility of this size and scope with its potential for intensive use, particularly in this sensitive location away from the campus core. The ANC's position has been borne out by the University's own consultant study, demonstrating that a very small percentage of the University's own audience—for whom

ZONING COMMISSION
District of Columbia
Case No. 02-26
Exhibit 44

ZONING COMMISSION
District of Columbia
CASE NO.02-26
EXHIBIT NO.44

this facility was purportedly built—of 17,000+ students, 1,200+ faculty, and 9,800+ staff are using the facility.

GWU is contradicting its own representations upon which the LH&WC application was approved, now claiming that the intensity of use of the LH&WC is too low and the University needs to change (increase) the number of users of the facilities and extend the operating hours of the facility to increase use. In other words, to solve its self-induced problem of overbuilding this facility, the University needs to inflict an objectionable effect (higher-intensity use, excess traffic, commercial use, etc.) on its host community, and pass it off as an amenity to the community (membership, no doubt with a fee, access to the LH&WC for certain FBWE residents).

Even though the University is appearing here today to request changes to the conditions of BZA Order No. 16276, in fact, the conditions in this order have no impact on, nor relationship to, the University's inability to market this facility to its own captive audience. If the University's stated intent here is to increase the intensity of use, it needs to, as OP points out, market to its own BZA-approved audience of nearly 30,000 potential users.

Instead, as if this is not a large enough potential user base, the University is now proposing inclusion of, among thousands more potential users, the GWU's Mount Vernon Campus (Faculty, Staff, and Students), an entirely separate entity with its own Campus Plan subject to zoning review. Incredibly, OP is supporting this scheme to completely usurp the campus planning process by bypassing review of either the GWU Campus Plan or the GW Mount Vernon College Plan and to consider both campuses as one. (We have attached an article from GWU's 11-16-02 *By George!* alluding to the currently popular thinking by GW officials of a boundary-less campus including all of GWU's holdings.)

The addition of the potential nuisance of more traffic, people, and shuttle busses from Mount Vernon running in and out of this already overburdened neighborhood seven days a week almost pales in comparison to this outrageous attempt by GWU to subvert the campus planning process. A decision of this scope, particularly including another college campus in a separate neighborhood, requires additional public hearings and input.

Additionally, the University is inappropriately merging the facility's activities with those of the Smith Center (and consequently blurring the distinctions between the two facilities). Despite the fact that the final BZA order in this case precludes the LH&WC's use as an intercollegiate sports facility, (01-07-98 BZA Order No.16276, Summary of Evidence No. 3. *Excerpt* "Intercollegiate athletics will not be a part of programming, and space will not be used for any spectator events...") GW has simply announced in its filing that it has already moved the apparently newly-created men's and women's intercollegiate squash teams to the facility, a violation of this order.

In another "announcement," GW has stated in its application that it will now be opening the LH&WC facility beginning at 6 am despite evidence in its consultant report there is little or no use of the facility until 8 am.

The ANC is not opposed to the concept of non-University community residents being able to take advantage of a facility like the LH&WC, as some residents formerly were able to do at the Smith Center. Unfortunately, the issue is not that simple. As the ANC pointed out in its resolution, modifying the membership categories to include non-University parties can be construed as 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 action from any excluded party under the Act.

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. The use of this building primarily as an exercise facility—a kind of GW Gold's Gym—located far from the Campus Core and a block away from the nationally-landmarked, low-density Foggy Bottom Historic District, and abutting some of the last non-university owned or controlled residential housing in ANC-2A, and open to the general public is unacceptable.

Additionally, GW's charging of membership fees for any users, other than the currently BZA-approved users (Foggy Bottom Graduate and Undergraduate Students, Faculty, and Staff) also raises a host of legal issues regarding a tax-exempt, non-profit organization making profits in a quasi-commercial facility, as well as engaging in unfair competition (for patronage from GW alumni, State Dept. employees, e.g.) with the numerous for-profit, taxpaying exercise centers located, not only in ANC-2A but also throughout the District of Columbia.

ANC would like to further emphasize this case as yet another example of how GWU is exploiting the incredibly problematic bifurcation of the overarching Campus Plan (currently governed by the BZA until at least 2009) from the Special Exception process (now transferred to the auspices of the ZC). GW continues to manipulate loopholes in BZA orders, bypassing the governing Campus Plan and the Comprehensive Plan.

During the Campus Plan Remand hearings in the Fall of 2001, the ANC presented unrefuted evidence from the OP's SNAP Planning process and the 2000 U.S. Census that the Foggy Bottom Advisory Neighborhood Commission area, with a population count of 11,900+ (which the ANC believes is underestimated) and a median age of 25 years old, is now populated by a large majority of students both inside and outside GW's Campus Plan boundary.

There is a tremendous amount of lip service being given to the ANC about preserving and protecting our established residential neighborhood. We have reported to the Commission that more and more of the Foggy Bottom West End community, including our public space, is being swallowed up and converted to non-profit institutional use and

university use either "de facto" or "de jure," and the FBWE residential population is currently dominated by transient, primarily non-taxpaying, students.

It is clear that the DC Municipal Regulations, guiding the Special Exception review process, GW Campus Plan, and the Comprehensive Plan, are failing to protect our long-term, taxpaying residential neighborhood and are eliminating the City's much-needed tax base in FBWE. In particular, the GW Campus Plan is a mirage that the University's administration is even now planning to circumvent with a potential switch to a trimester system and an increase to 9,000 of GW's undergraduate population. (Attachment B - GWU's 11-16-02 *By George!*, "Trachtenburg Proposes Trimester Sytem for GW")

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.

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 its for-profit exercise businesses. ANC-2A contends that this should not be reconsidered, changed, or altered in any way other than to eliminate the loopholes (the 6 am opening) that subvert the Order's intent.

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.

The preponderance of the evidence supports the ANC's request that the ZC deny GWU's application to alter the conditions placed on the "Lerner Health and Wellness Center" (January 7, 1998) regarding membership and hours of operation.