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January 3, 2003

BY HAND DELIVERY

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D.C. OFFICE OF ZONING
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Ms. Carol J. Mitten, Chair
Zoning Commission of the
District of Columbia
441 – 4th Street, N.W.
Suite 220 South
Washington, D.C. 20001

Re: Zoning Commission Case No. 02-26; The George Washington University, Further Processing of a Special Exception for the Lerner Health & Wellness Center

Dear Ms. Mitten and Members of the Commission:

Advisory Neighborhood Commission 2A ("the ANC") has submitted several post-hearing documents, purportedly to establish a reason that the Commission should deny George Washington University's (the "University") application to extend the membership and closing hour of the Lerner Health & Wellness Center ("Health & Wellness Center"). The University responds that it is not in violation of the March 31, 1998 BZA Order (Application No. 16276); that the letter from the Executive Director of the International Health, Racquet & Sports Club Association raises no issue that this Zoning Commission should consider; and that the D.C. Human Rights Act, as amended, does not preclude the Commission from limiting the Health & Wellness Center memberships to certain classes of the general public (if it should choose to do so). The University also encloses a copy of a recent editorial published in its student newspaper, The GW Hatchet, to provide the Commission a broader, more responsible view of student opinion than the one student letter that was submitted by the ANC.

Intercollegiate and Spectator Activities

The ANC alleges that the University has violated the terms of the BZA Order No. 16276 by "mov[ing] the apparently newly created men's and women's intercollegiate squash teams to the . . ." Health & Wellness Center. The ANC is factually and legally mistaken. Like other colleges and universities, GWU has formed a men and women's squash team, in accordance with NCAA regulations,

District of Columbia
Case 02-26
Exhibit 59

ZONING COMMISSION
District of Columbia
CASE NO.02-26
EXHIBIT NO.59

to compete in intercollegiate matches.[1/] To date, no intercollegiate squash matches have been either played or scheduled at the Health & Wellness Center. However, it is clearly desirable and appropriate that such matches be programmed at the Health & Wellness Center in the future. The BZA Order of March 31, 1998 contains no language that prohibits this activity. There are no spectator facilities associated with the squash courts at the Health & Wellness Center and none are planned.

Letter from the International Health, Racquet and Sports Club Association

The ANC makes much of the letter that was sent to it by John McCarthy, the Executive Director of the Boston, Massachusetts based trade association for commercial sports clubs. Mr. McCarthy complains of unfair competition, possible tax code violations and, for those reasons, calls upon the Zoning Commission to maintain the restrictions on the University's ability to offer the benefits of the Health & Wellness Center to only students, faculty and staff of its Foggy Bottom Campus. However, the special exception that the University seeks is by regulation, evaluated only on zoning related issues such as noise, traffic, number of students or other objectionable conditions. 11 D.C.M.R. § 210. Its arguable that the McCarthy letter adequately carries out the stated purposes of his association - "to grow, protect and promote the industry" - but it adds nothing to the issues that are legitimately before the Commission. The zoning regulations neither contemplate nor authorize the Commission to evaluate the impact, if any, this application might have on the business interests of Mr. McCarthy's membership. Accordingly, the Zoning Commission must accord them no merit.

The D.C. Human Rights Act, As Amended Does Not Apply to the Circumstances Presented by the ANC.

The Advisory Neighborhood Commission contends that the District of Columbia Human Rights Act, as amended, precludes the Commission from fashioning an order that would extend the University's ability to offer services at the Lerner Health and Wellness Center to non-University individuals who reside in the adjacent neighborhood. The ANC's theory seems to be that such a policy would constitute discrimination on the basis of "place of resident" in violation of the Act. Besides the unseemly stance of taking a position that is directly adverse to the interests of its own constituents, the ANC's position is directly contrary to the plain language of the Human Rights Act.

Section 2-1402.01 of the Human Rights Act is a general policy statement that contains no prohibitory language. While Section 2-1402.31 does prohibit discrimination on the basis of, inter alia, residency in a "place of public accommodation", the Lerner Health and Wellness Center is not such a place. Section 2-1402.02(24) defines "place of public accommodation" and expressly excludes "any institution, club, or place of accommodation which is in its nature distinctly

1 Squash courts are located at the Smith Center but they are not of regulation size and are, thus, unavailable for intercollegiate matches. The squash courts at the Health & Wellness Center are of regulation size.

private . . . ." Clearly, The George Washington University is a private institution and the Lerner Health and Wellness Center is a part of this private institution. Thus, the prohibition on discrimination on the basis of residency in Section-1402.31 does not apply to GW or the Center.

This conclusion is buttressed by the specific provision of the Human Rights Act applicable to institutions of higher education, Section 2-1402.41. This section was necessary precisely because institutions such a The George Washington University do not constitute a "place of public accommodation". Section 2-1402.41's prohibition against discrimination by institutions of higher education, however, contains no mention of "place of residence" as an unlawful basis of discrimination. Thus, the Human Rights Act does not prohibit an institution of higher education from discriminating on the basis of residency.

No other provisions of the Human Rights Act are relevant to this case.

The December 9, 2002 Student Letter to the Editor

The ANC encloses a recent letter apparently to support its view that there is little student support for this application. The University disagrees with this assessment and submits herewith a copy of a recent editorial published in The GW Hatchet which provides the Commission a broader more responsible view of the mood of the students with respect to the use of the Health & Wellness Center and the position of the Advisory Neighborhood Commission.

Conclusion

None of the reasons or evidence presented by the ANC is either relevant or sufficient to rebut the University's expert and substantial evidence that the granting of the requested special exception will not have an adverse impact on the use and enjoyment of neighboring property. Most neighboring property owners agree. For those reasons the University is entitled to the requested zoning relief.

Respectfully submitted,

Jerry A. Moore III

Enclosure
cc (By First Class Mail):
ANC 2A
The Foggy Bottom Association
Office of Planning (John Fondersmith)

Editorial Board
Elizabeth Brown Lauren Silva
Mosheh Oinounou Andrew Snow
Joshua Riezman Kate Stepan

OPINIONS

EDITORIAL

Give and take

At first glance, the University's appeal to the District Zoning Commission to extend the operating hours of the Health and Wellness Center seems like another attempt to impose its whims and further encroach on the Foggy Bottom community. Resident complaints, however, are not legitimate, as the University's proposal is the most practical solution to a non-controversial issue.

In 1998, the Board of Zoning Adjustment allowed the construction of the HWC only if the University agreed to restrict operating hours to closing at 10 p.m. Monday through Saturday and 8 p.m. on Sunday. The University's recent appeal to this restriction through the Advisory Neighborhood Commission was denied by a vote of 4-0, and now GW is petitioning the Zoning Commission directly.

Students have consistently requested extended gym hours, and the new proposal would allow the HWC to stay open until 1 a.m. Sunday through Friday and 11 p.m. on Saturday.

To offer something to the community in return for seemingly eschewing zoning procedure, the University has included a request to allow GW to sell up to 3,000 memberships to community members, alumni and parents for the low fee of near $300 a year.

The Zoning Commission should allow the extension of operating hours – it is better for students (shorter lines at treadmills) and it will not have a significant negative impact on the community (contrary to residents' belief, students are not exceptionally noisy on their way to work out). In fact, students going to bars make a lot more noise, and may be deterred from doing so if they could be in the gym during the late evening hours.

Community members should learn to pick their battles. They are understandably worried about the University's continuous intrusion into their neighborhood, but this proposal's benefits far outweigh the costs. Many residents will have the ability to join the state-of-the-art HWC at a very low price and students will be able to work out more often at hours conducive to college life.

Gore's comeback

"Let me ask you one simple question. Do you, Ambassador Zorin, deny the USSR is placing medium- and intermediate-range missiles and sights in Cuba? Don't wait for the translation! Yes or no? You are in the courtroom of world opinion right now, and you can answer yes or no. You have denied they exist, and I want to know whether I have understood you correctly. I am prepared to wait for my answer until hell freezes over, if that's your decision. And I am also prepared to present the evidence in this room."



David KAY
COLUMNIST

Ignoring the l

Throngs of protesters descended upon Washington D.C. on World AIDS Day Saturday to voice their discontent with the Bush administration's policy on AIDS. They clamored for more money for African countries to fight an epidemic that has enveloped the entire continent. Protesters shouted the names of countries deeply affected by AIDS – Botswana, South Africa, Ethiopia and Sudan. They expressed disgust at the administration's ambivalence toward the 8,000 people that die each day from AIDS.



Michael BARNETT
GUEST COLUMN

Protesters focusing on the AIDS epidemic half a world away have ignored the AIDS epidemic affecting thousands of people half a mile away.

In 2001, D.C had the fifth most reported cases of AIDS for any major American city, trailing only New York, Los Angeles, San Francisco and Miami. This statistic is even more startling after observing that some cities with populations double Washington's, like Chicago, Houston and Philadelphia, have fewer reported cases of AIDS. In 2998, the number of reported AIDS cases per 100,000 persons was 186 for Washington, D.C., as opposed to 20 nationally. Although death caused by AIDS has decreased since the remains the leading adults ages 25 to 44

Yet the AIDS situ

cases among men th women has soared. minority populations

As in Africa, tre not made their way those who are unabl Instead, thousands o rely on privately-fun the Whitman Walke Washington Free Cli basic needs for treatm are ill-equipped to d sands of infected ind by their government a ty.

The complacency minds of many individ to believe that the w the United States Individuals need not untrue. They can g American communiti

Local governmen

Students get the shaft from the District of Columbia. There's no doubt that as a group we're routinely screwed over by our representatives on every level of government.



Eric DALEO
GUEST COLUMN

In the summer of 1996, Jack Evans, our D.C. councilman, spearheaded the passage of emergency legislation that essentially prevented students from parking our cars on the streets of this ward. We were forever branded as "temporary residents," unable to receive the rights and privileges of our neighboring "residents" (i.e., parking our cars in the street for more than two hours).

Let's not forget about the campus plan debacle, when our representatives decided it would be a good University from buildi for us. Or the District's vent us from going

does policing an alarm crime.

Even in spending a college students are ov time now, as the vice ch Metropolitan-United (D.C. MUSA), I've beer dents to receive reduc

LETTERS TO THE EDITOR