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June 10, 2004

BY HAND DELIVERY

Jerrily R. Kress, FAIA
Director, Office of Zoning
441 Fourth Street, N.W.
Suite 220 South
Washington, D.C. 20001

Re: Zoning Commission Case No. 02-26: The George Washington University Lerner Health and Wellness Center

Dear Mrs. Kress:

Dr. Donald W. Kreuzer, D.M.D., and his lawyers have submitted letters (with enclosures) dated June 8, 2004 for the purpose of inserting them into the record and inducing the Commission to take certain actions in this case.

It is our understanding that the record is closed to all documents that bear upon the substance of this application. As such, Section 3121.9 of the Zoning Regulations requires that the aforementioned documents should and must be returned by the Director and not received into the files or be considered by the Zoning Commission.

If you choose not to reject and return Dr. Kreuzer's submissions, kindly accept the attached letter that we have prepared in response to those documents.

Thank you.

Sincerely,

Jerry A. Moore III

Enclosure

cc: Charles K. Barber, Esq.
J. Michael Hannon, Esq.

ZONING COMMISSION
District of Columbia
CASE NO.02-26
EXHIBIT NO.90

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June 10, 2004

BY HAND DELIVERY

Carol J. Mitten, Chair
Zoning Commission of the
District of Columbia
441 – Fourth Street, N.W.
Suite 225
Washington, D.C. 20001

Re: Zoning Commission Case No. 02-26: The George Washington University Lerner Health and Wellness Center

Dear Ms. Mitten and Members of the Commission:

By letters dated June 8, 2004 Dr. Donald W. Kreuzer, D.M.D., and his lawyers have belatedly asked the Commission to reopen the record and grant him party status in this proceeding and schedule another public hearing for the purpose of taking testimony and evidence that he wants to proffer.

These requests are untimely, frivolous, without substance or relevance and should be quickly denied.

First, the record is closed in this proceeding. For that reason, we have written the Director asking that the staff not accept Dr. Kreuzer's submission into the record and return them promptly as required by 11 D.C.M.R. § 3121.9.

Second, Dr. Kreuzer's argument that he was entitled to receive notice of the May 13, 2004 public hearing in this matter fails by his own admission. He cites Section 3015.3(a) of the Zoning Regulations, which, according to him, requires the Commission to send notice to all property owners within 200 feet of the property at issue.[1] Yet, his letter goes on to admit that his property is located

[1] Section 3015.3(a) is not applicable to this proceeding. Dr. Kreuzer should be referring to Section 3113.13(b) as the applicable authority.

244 feet from the Lerner Center. Thus, he was not entitled to receive notice under the section that he claims to have been violated.[2]

Even if Dr. Kreuzer could legitimately make a request for party status in this case (the record is closed), his request to do so is not sustainable because it is more than two (2) years late. Section 3106.2 of the Zoning Regulations requires any person, other than the Advisory Neighborhood Commission, who seeks to participate as a party to file a detailed request to do so 14 days prior to the date of the hearing. The first hearing in this case was held on December 2, 2002, and the second on May 13, 2004. Dr. Kreuzer's request for party status is clearly out of time and thus, fails to meet the requirements of Section 3106.2 and 3106.3 of the Zoning Regulations.

The documents that Dr. Kreuzer and his lawyers attempt to place into the record are not only unacceptable as out of time, but irrelevant to the proceeding at hand. The deposition testimony that he seeks to admit was taken in conjunction with a lawsuit that Dr. Kreuzer filed that is associated with the development of the new university dormitory on Square 43. The Commission may recall that Dr. Kreuzer and his lawyers vehemently opposed the construction of that dormitory, claiming that it would have an adverse effect on use and enjoyment his adjacent property. However, the Commission ultimately rejected those arguments. He cannot be heard to make them again in this case because they are untimely and irrelevant to the consideration of the zoning issues associated with the conditions governing use of the Lerner Health and Wellness Center.

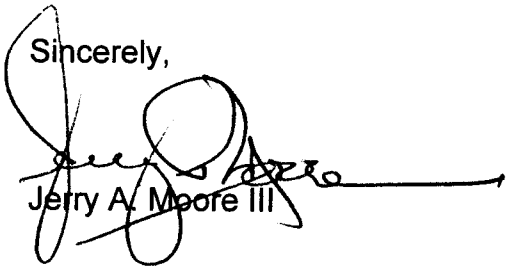
Dr. Kreuzer further seeks to introduce documents evidencing an agreement made between the University and the owners of the Remington Condominiums. These documents discuss certain issues related to the use of condominium property during the construction of the dormitory on Square 43. A part of that agreement also speaks to memberships that the University would seek to provide to the owners of the Remington Condominiums at the Lerner

[2] It worth noting that the May 13, 2004 public hearing was timely noticed in the D.C. Register and was posted on both street frontages of the Center on April 28, 2004. Evidence of those notifications are in the case record. We also note that Advisory Neighborhood Commission 2A and the Foggy Bottom Association, both of whose jurisdictions include Dr. Kreuzer's residence, have both testified on the record to some of the same allegations that he apparently wants to make in the event that the Commission grants his request to hold another public hearing.

Center. The existence of this agreement is neither sinister, unusual nor inappropriate. The agreement represents the effort of two willing parties to work together for their common benefit. If anything, the provision of the agreement that relates to the Center enhances the University's case that the requested memberships are intended to and will benefit the entire University community, including nearby property owners.

In sum, this eleventh hour maneuver by Dr. Kreuzer to insert himself into this case cannot and should be not countenanced by the Commission. Although he has every right to express his opinion on University related development matters as often as he chooses, he must do so in a way that is consistent with the Zoning Regulations and procedures and that is fair to all the parties and persons who have already timely participated in this two year process. He is not proposing to do that here and for that reason, the Commission should deny Dr. Kreuzer's requests and move to decide this case without further delay. Thank you.

Sincerely,



Jerry A. Moore III

cc: Charles K. Barber, Esq.
J. Michael Hannon, Esq.