Foggy Bottom and West End
Advisory Neighborhood Commission (ANC-2A)

c/o St. Mary's Court 725 24th Street, NW Washington, DC 20037 (202) 736-1775

June 8, 2004

Ms. Carol Mitten, Chair
District of Columbia Zoning Commission
441 Fourth Street, NW, Suite 210
Washington, DC 20001

Re: Z.C. Case No. 02-26 GWU- Health and Wellness Center; Square 42, Lot 847

Dear Chairperson Mitten:

ANC-2A request that the rules be waived and allow the late submission of the the proposed Order, Findings of Fact, and Conclusions of Law with respect to the above case on behalf of ANC-2A, due to having to handle a continuing and excessive number of ANC issues. ANC-2A requests assurance that the OZ will make every effort to submit this material as soon as possible o the Commission members for their consideration prior to the public meeting on this matter

Respectfully submitted
Dorothy Miller

Dorothy Miller
Advisory Neighborhood Commission 2A

Attachment

ZONING COMMISSION
District of Columbia
Case 02-26
Exhibit 93

ZONING COMMISSION
District of Columbia
CASE NO.02-26
EXHIBIT NO.93

ADVISORY NEIGHBORHOOD COMMISSION 2A
Proposed Findings of Fact and Conclusions of Law, June 10, 2004

Application No. 02-26 of the George Washington University, pursuant to 11DCMR § 3104 and 210 for further processing special exception relief under an existing campus plan to amend the Board of Zoning Adjustment's March 31, 1998 Order No. 16276 to modify condition number one restricting the classes of users at the Lerner Health and Wellness center and to amend condition number two to permit the Center to remain open until 1:00 a.m. on all days except Saturday. The Center is located at 2301 G Street, NW, (Square 42, Lot 847).

Hearing dates: December 2, 2002, February 19, and May 13, 2004
Decision Date:

FINDINGS OF FACT

This application was first filed in January 1994, almost ten years ago. The ANC-2A position was upheld in the first two hearings, and GWU requested reconsideration, which was granted. The BZA approval order issued after the reconsideration hearing countermanded previous BZA orders and zoning regulations, but ANC-2A credits the BZA with trying to mitigate the detrimental affect of its decision with guidelines and reservations which GWU is now asking this Commission to change. It is the opinion of the ANC that this special exception request should not be before the Zoning Commission at this time for the following reasons:

1. The University by its own testimony shows that it never intended to conform to the conditions of the Order, exemplified by:
   a. The building of the lockers for the Presidents Club Members;
   b. The building of a swimming pool in the Health Center without approval;
   c. The busing of students from other GWU locations that were not registered as being students of the Foggy Bottom campus.

2. Failed to notify residents adjacent to the Center of the Application filed to change the time of operation and the classes of use. Reference Dr. Kreuzer's letter and the letter from the law firm representing him, Thompson, O'Donnell, Markham, Norton & Hannon, dated June 8, 2004.

The ANC opposed this high-intensity use building located on the periphery of the campus and the BZA's original approval was granted with specific reservations and guidelines that limited membership and hours of operation so as to conform with the intent of the Comprehensive Plan and thus minimize disruption and disorder in the surrounding residential neighborhood. GWU testified that it would be a low-intensity use.

The limitations on the classes of use and hours of operation that GWU is now requesting to be waived are part of a finely crafted compromise with the community.

Had the University not agreed to these conditions it would have violated 11 DCMR 210.2: ***"use as a college or university shall be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions."*** The BZA restrictions so far seem to be working but with an additional 1,000 students and staff planned to be housed nearby the center all protections of this residential community will be removed.

The ANC letter filed on May 4 submitted evidence of GWU's failure to comply with the approved Campus boundary. This is another area of violation of the Campus Plan that should be resolved before the ZC considers any Special Exception request by the University.

The transcript of this hearing states that GWU gave the Remington $300 for the use of its parking lot in the construction of Square 43. In actuality, it was $300,000 and the promise that members of the coop could use the H&WC -- again a violation of the Order.

Since then GWU was granted approval for over 1,000 students and staff to be housed across "G" and 23rd Streets. Now the university wants to change the H&WC to a more intense use with extended hours, which will affect adversely the use of neighboring property, thus violating the Zoning Regulations and Zoning Map, especially the large number of students creating objectionable conditions for the surrounding residential neighborhood.

To commercialize a student facility to compete with the area's commercial health clubs would harm the FB/WE commercial community, and to allow this tax-exempt academic facility – built with tax-exempt bonds -- to be open and to operate for seven hours after the commercial health clubs are closed outweighs any benefit gained for a small number of residents' use of the center.

The Zoning Commission also heard and received testimony of the Executive Director of the International Health, Racquet & Sportsclub Association (IHRSA) in strong opposition to the granting of this change and detailed the devastating consequences it would have on its members trying to compete with a tax-exempt organization, as shown by what happened at the University of Texas, as was outlined in the testimony submitted by the IHRSA.

CONCLUSIONS OF LAW AND OPINION:

1. ANC-2A recommends that this request not be approved because it would violate the Zoning Regulations, the Comprehensive Plan and the Campus Plan; and that GWU be required to come into compliance with current zoning regulations and the Campus Plan before any further Special Exceptions or other applications are accepted. Reference ANC's submission of September

25, 2002 listing the requirements that GWU must follow in its submission of enrollment figures beginning February 2002 . . . [*Ibid* 9(D), emphasis added] under oath giving the number of full-time undergraduates then enrolled, the number of beds provided on campus and with details to enable verification and tracking and without assumptions and definitions underlying them. These requirements are not being complied with.

2. Although the Zoning Commission is not an enforcement agency it does write the conditions that are expected to be followed by the applicant when the Order is issued. The Zoning Office now has a person to verify that Orders are followed.

3. The Zoning Commission should remind GWU that it is not located in FB/WE as a "matter of right," and that the ZC and the BZA are charged with the protection of the residential neighborhoods both under the Campus Plan and Special Exception process from impacts created by the guest university.

In closing, ANC-2A is including some of the testimony by Barbara Spillinger, former Chair of ANC-2A: "One of the things that bothers me about this issue is the way it has come about. When it was first proposed, the community insisted that the building was too large and that being built for student use well into the evening hours should be placed in the interior of the campus, rather than on the periphery. It argued that this site was far better suited for dormitory use which would house a specific number of students, rather than be available to the entire student body. But, we did not prevail and the Health and Wellness Center was built where it is, near the residential community.

"And the fact now that the university says it is under-utilized and they want to expand it and open it up is just another example of the university's consistent habit of saying one thing to gain initial approval of a project and then attempting to change the ground rules to fit its overall, but not previously-enunciated position. And it's one of the things that has happened over and over again in the community and we find particularly disturbing.

"The second comment I would like to make is that there are other sports centers in the area. Yes, some of them are expensive, more so than others. But if this sports center is opened up to a larger group of people, you're putting a non-profit tax-supported sports center into competition with like taxpaying businesses and I think you should that factor that in your decision."

ANC-2A opposes the changes being requested and asks that the Zoning Commission deny this request and order GWU to stop, once and for all, asking for changes in the original order. The University has failed to comply with that order and the rules set in place by the Comprehensive Plan, the Zoning Regulations and the Campus Plan to protect the tax-paying residential community. The continuous quest to change the original Order borders on harassment.