CONSORTIUM OF UNIVERSITIES
OF THE WASHINGTON METROPOLITAN AREA
One Dupont Circle, NW, Suite 200, Washington, DC 20036-1110
(202) 331-8080 • (202) 331-7925 fax • (202) 331-7955 TTY • http://www.consortium.org

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December 23, 2003

Alberto Bastida
Secretary to the Zoning Commission
Office of Zoning
441 4th Street, N.W.
Suite 210-S
Washington, D.C. 20001

ZONING COMMISSION
District of Columbia
Case 03-06
Exhibit 58

Re: Notice of Proposed Rulemaking. ZC Case No. 03-06 (Map Amendment & Southeast Federal Center Overlay District)

Dear Mr. Bastida:

The following comments are submitted for the record of the above titled case. We welcome the Commission's consideration of our position and stand ready to provide any additional information the Commission may wish on this position.

The Consortium of Universities of the Washington Metropolitan Area is a regional organization representing the fourteen major institutions of higher education in the greater Washington community. The issue of zoning regulation in the District of Columbia is primarily of interest to the eight D.C. institutions that are governed or may be governed in the future by the campus planning process. Those institutions are: American University, The Catholic University of America, Gallaudet University, The George Washington University, Georgetown University, Howard University, Southeastern University and Trinity College.

On behalf of these institutions, the Consortium of Universities strongly recommends the removal of language from the proposed rulemaking that would bar "buildings, structures, and uses" by colleges and universities (see proposed sections 1803.1(a) and 1804.1(a)) in the newly zoned Southeast Federal Center ("SEFC") site.

Neither the Consortium nor any of its members are currently planning to initiate a college or university facility or program in the SEFC area. Nonetheless, banning all college and university activity from the site would be shortsighted for the District's economic development and impede the post-secondary educational needs of the citizens who would choose the SEFC neighborhood as home. Moreover, designating college and university use as the only banned institutional activity on the site[1] raises questions about compliance with the Comprehensive Plan and current zoning regulations that govern CR and R-5 districts.

[1] The proposed rulemaking also suggests banning parking lots from the proposed SEFC/CR and R-5-D and E districts as well as single-family dwellings and sanitariums from the R-5 districts.



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Colleges and universities and their affiliated teaching hospitals currently represent 9 of the District's top 20 private employers. Universities provide 21,829 jobs for District residents resulting in $40 million worth of income taxes paid to the city. District higher education institutions circulate $309 million dollars within the District's economy, entertain more than 530,000 visitors a year and purchase goods and services valued at $2.5 billion. Howard University Hospital's emergency room treated more than 47,000 patients in 2002. Seventy-five thousand District residents, more than half of them graduate students and adult learners, are enrolled in D.C. institutions.

From a simple economic argument, therefore, the District would be shortsighted in prohibiting postsecondary educational use on the 42 acres covered by the proposed new zoning rules. The Office of Planning Final Report on the case gave no explanation for its recommendation to add "College or University" as a prohibited use, but staff at the Office of Planning indicated that large institutional facilities would not fit into the "vision" for the site as a mixed-use, high density, predominantly residential area. This argument could make sense but for the fact that libraries, museums and private schools are permitted with Zoning Commission approval in the new SEFC/CR District and hospitals, private schools and arts uses are permitted with Zoning Commission approval in the new SEFC/R-5-D and R-5-E districts. Indeed, in some instances, a post-secondary facility or program could be smaller than a museum or arts facility. Not all college and university facilities and programs require the large footprint OP envisioned when it recommended banning post-secondary use. Clearly, therefore, it is not institutional use that the Zoning Commission is seeking to prohibit but specifically post-secondary educational use.

Given the current demands for post-secondary educational services, this prohibition is particularly nonsensical. The greatest increase in higher education enrollment in the District of Columbia since the late nineties has been in graduate programs and professional development courses. More and more adults see enhanced education as their opportunity to better themselves and increase their paychecks. Residents in the southeast quadrant of the city have been particularly disadvantaged in access to post-secondary educational facilities. There are no higher education institutions east of the Anacostia River and only two—Southeastern University and Georgetown University Law Center—in the vicinity of the SEFC site. By further limiting post-secondary educational development in this already underserved part of the city, District residents will be harmed.

More worrisome, the prohibition on post-secondary educational use, not just facilities, could adversely impact some businesses in the new neighborhood. For example, every company strives to enhance its workers' skills and knowledge. Would this bar make company training programs illegal? Would the zoning prohibit all kinds of post-secondary educational services such as professional development?

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Obviously, these uses are very different from college and university use and their exclusion will not be addressed by these comments.

The proposed ban also raises a question of whether the Commission can limit a use that zoning regulations specifically permit in like-zoned neighborhoods across the city. The United States Court of Appeals in a recent case described the District's regulation of university land use:

> "The District's zoning scheme for universities, promulgated by the Zoning Commission pursuant to authority granted by D.C. Code sec. 6-641 and codified at 11 District of Columbia Municipal Regulations ("DCMR") sec. 210, 302.2 & 507 permits university use as a matter of right in areas zoned for high-density commercial use. For land zoned residential or "special purpose," it permits university use as a special exception. . ." .George Washington University v. District of Columbia Board of Zoning Adjustment, 831 A.2d 921 (D.C. 2003).

Arguably, university use should be permitted as matter-of-right in all CR districts. In this instance, the Commission seeks to limit matter-of-right development that is permitted in other CR Districts. But, there is an extensive list of uses that can occur with Commission approval. Even under this limited scheme, it is completely inexplicable how university use (prohibited) differs from private secondary school use (permitted) in terms of impact on the proposed new CR district. Likewise, banning post-secondary educational use and facilities from an R-5 district presents the same problem and poses a dangerous precedent for future zoning cases issued by the Commission. This case presents the first instance of universities being excluded from an area that would otherwise be zoned to permit their presence, but for explicit Zoning Commission action.

The Commission similarly banned post-secondary educational use from the newly created W-O districts, but universities understood the Commission's stated purpose—to create a "park-like" setting next to the river to take advantage of the District's unique Potomac and Anacostia frontage. All other large institutions were banned as well. Moreover, in that case, there were no similarly zoned areas across the city for comparison where large institutions, other than universities, were allowed.[2]

This is not the case with the newly proposed FESC proposed rules. It would be unfortunate if the Commission chose this time, while embarking on an exciting piece of a large new project—development of the Anacostia Waterfront—to create new zoning precedent for excluding higher education uses from areas with appropriate densities for such a use. Since both the new W-O areas and the FESC site were recently acquired from the federal government, this case also establishes unfortunate precedent for rezoning federal parcels as well.

In the recent Georgetown University case, the D.C. Court of Appeals wrote:

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[2] See Zoning Commission for the District of Columbia Notice of Proposed Rulemaking, Case No. 02-42 (Text Amendment-Waterfront Open Space Zone District W-O).

> Generally in the District of Columbia as elsewhere, "uses of land for post-secondary educational purposes are 'highly favored,'" 2 Robert M. Anderson, American Law of Zoning sec. 12.09, at 508 and it has long been recognized that universities serve the public welfare and morals in important ways." The President and Directors of Georgetown College v. District of Columbia Board of Zoning Adjustment, No. 01-AA-1182 (D.C. Circ. Dec. 4, 2003) quoting Glenbrook Road Association v. District of Columbia Board of Zoning Adjustment, 605 A2d at 22, 34 (D.C. 1992) (citing Cornell Univ. v. Bagnardi, 503 N.E. 2d, 509, 514 (N.Y. 1986)).

Footnote 11 of that case added from the Glenbrook Road case states that:

> "'a university . . . is not presumed, for purposes of the Zoning Regulations, to be the land use equivalent of the bubonic plague.'" Id at 32.

In contrast, this particular zoning case designates universities on a par with sanitariums. The Comprehensive Plan takes a different view. Section 203.2 of the land use elements of the Comprehensive Plan states that policies should be established that "encourage interaction between the District's universities and the District's business community to further the District's economic development program, particularly as it relates to the research and development sectors." Section 204.2 suggests the District should adopt policies to stimulate private sector growth objectives by "encouraging increasing university participation in economic development efforts." Barring universities from even as small a portion as 42 acres runs counter to this objective and could therefore impermissibly run afoul of the Comprehensive Plan.

For all of these reasons, the Consortium of Universities urges the Commission to strike the prohibition on post-secondary educational facility and use from the proposed SEFC zoning regulations. Instead, include universities, like other large institutions, as permissible by decision of the Commission.

Thank you for your consideration of our position.

Sincerely,

John B. Childers

John B. Childers
President and CEO
Consortium of Universities