GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16553F of the George Washington University, pursuant to 11 D.C.M.R. § 3104.1, for a special exception for the review and approval of the University Foggy Bottom Campus Plan – Years 2000-2010 under Sections 210 and 507.

HEARING DATES: April 26, 2000; September 13, 2000; September 26, 2000; September 17, 2001; and September 21, 2001

DECISION DATES: December 12, 2000; February 13, 2001; October 9, 2001; October 30, 2001; and December 11, 2001

CORRECTED FINAL ORDER ON REMAND*

Following the Board's March 29, 2001, final Order in this proceeding, the University filed a petition for review with the District of Columbia Court of Appeals. It also filed a civil action in the federal district court against the Board, its members, the District of Columbia, and Mayor Anthony Williams. On June 15, 2000, the district court issued a preliminary injunction preventing enforcement of Condition 9 of the March 29, 2001, Board Order during academic year 2001-2002, or until further order of the court. The Corporation Counsel then filed a motion in the District of Columbia Court of Appeals to remand the case to the Board for further consideration of the Board decision in light of the preliminary injunction. On July 31, 2001, the Court of Appeals remanded the case without limitation as to the scope of the remand proceedings.

On remand, the Board ordered the University to respond to a number of questions. It also urged the parties to attempt to settle their differences, failing which the Board would hold additional evidentiary hearings. When the parties reported that their negotiations were fruitless, the Board held evidentiary hearings on September 17 and 21, 2001. In addition to eliciting further evidence, the Board directed the parties to suggest their alternatives to Condition 9, if any.

Following the Board's approval of a proposed Order, the parties were given an opportunity to file exceptions. The Applicant, ANC 2A, Foggy Bottom Association, Sol Shalit, and ANC Commissioner Maria Tyler filed exceptions. The Board modified this Order in light of these exceptions. Its explanation for approving some exceptions and for rejecting others appear in part III of this Order. The Board has also made a few formal changes on its own motion.

Exhibit No. 340

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* This Order is being issued to conform the language of the conditions on pages 21 and 22 to the precise language adopted by the Board on December 11. In condition 9.c, the word "purely" is omitted. In condition 17, the word "ascertain" is replaced by "gather information about" and the phrase "organized by postal zip codes" is moved to category (2). *See* Tr. December 11, 2001.

ZONING COMMISSION
District of Columbia
CASE NO.03-29
EXHIBIT NO.19K

This Order on Remand is based on the entire record of this proceeding, both before and after remand. It incorporates and adopts the Board's March 29, 2001, Order. To the extent of any inconsistency between the findings, conclusions, and conditions contained in the two Orders, this Order supersedes the earlier Order.

I. Supplemental Findings of Fact.

1. On August 24, 2001, the University's full-time undergraduate enrollment was 7881. Tr. September 17, 2001, at 29; Exhibit 297, attachment 5-6.

2. As of September 21, 2001, the University's full-time undergraduate enrollment was 8044. Exhibit No. 320, att. 3. Of those students, the University estimated that 1239 were students who commuted from outside the District of Columbia, held religious beliefs or had disabilities inconsistent with dormitory life, were married, or had children. *Id.* The University testified that the number of commuters (829) was a verifiable number and the rest were reasonable estimates. Tr. September 21, 2001, at 21-23; Tr. September 17, 2001, at 80.

3. In addition to the 8044 full-time undergraduate students, the University had between 6000 and 7000 full-time graduate students enrolled for academic year 2000-2001. *Id.* at 170. The total student body for academic year 2001-2002 is approximately the same size as in 1985, between 17,000 and 18,000. Tr. September 17, 2001, at 17. During the period, the number of undergraduates has increased and the number of graduate students has decreased. Tr. September 17, 2001, at 16-17.

4. The full-time undergraduate enrollment as of September 2001 is substantially larger than in previous years (Exhibit 297, attachments 5 & 6):

Year	Enrollment
1998 (Fall)	6339
1999 (Fall)	6857
2000 (Fall)	7410
2001 (Fall)	8044

5. The increase in student enrollment resulted in part from a substantial increase in the size of the freshman class for academic year 2001-2002. The University attributed this increase to an unusually high registration rate by applicants who had been offered admission. Tr. September 17, 2001, at 19. At the same time, however, the University offered more admissions for the 2001-2002 academic year than for previous years. The rates of acceptance from 1998 to 2001

consistently were between 48% and 49%. As a result, as the number of applicants increased, the number offered admission increased almost proportionately (exhibit 297, attachment 1):

Year	Applications	Acceptances	Percentage
1998	12,754	6227	48.2%
1999	13,584	6633	48.8%
2000	14,105	6882	48.7%
2001	14,591	7072	48.4%

6. Only 9.1% of the freshmen admissions (646 of 7072) for academic year 2001-2002 resulted from early admissions. Exhibit 297, attachment 3. The University freshmen admissions process varies only within a narrow range each year. "Early Decision I" offers are normally issued by December 15 with registration deposits due on January 15. *Id.* The timing of "Early Decision II" notifications varies. In 2000, those offers were issued on February 3 with registration deposits due March 3. *Id.* Regular admissions offers are generally mailed in the latter part of March, and deposits must be post-marked by May 1. That procedure was followed in 2001. Nevertheless, 54 freshmen were permitted to enroll after May 4. *Id.*

7. The admission of transfer students normally continues after the size of the freshman class is known. The University described the admission of transfer students as a "rolling process." Tr. September 21, 2001, at 168. In 2000, the University admitted 94.6% of its transfer students (579 out of 612) between May 7 and August 13. Exhibit 297, attachment 2.

8. Increases in enrollment have not been accompanied by commensurate increases in on-campus housing. As of September 2001, the University had 4108 beds on campus for its 8044 full-time undergraduate students (51.1%). Exhibit 307. Of the 4108 beds, 190 were added after the Board's initial Order on this application, partly as a result of converting lounges and reconfiguring rooms in existing dormitories and partly through the Board's expansion of the campus boundaries to encompass additional University-owned property. Exhibit 296, attachments A-C.

9. Following the Board's March 29, 2001, Order, the University accelerated plans for providing more on-campus housing. In August 2001, the University applied for special exceptions to build a 700-bed dormitory on Square 43 and a 200-bed dormitory on Square 57. Tr. September 21, 2001, at 25. The University expects both to be completed in time for the 2004-2005 academic year. *Id.* at 102; Exhibit 296, attachment F. Once completed, they will increase on-campus beds to 5008.

10. The University explained that its acceleration of the Squares 43 and 57 projects is to provide "housing that we can control that's close to where our students go to school." Tr. September 21, 2001, at 53.

11. The University has applied to the Zoning Commission for modification of a previously approved planned unit development (PUD) on University-owned property in Square 122. The

University application included plans for a 200-bed dormitory. Tr. September 17, 2001, at 25. If the PUD modification is approved and the project constructed accordingly, and if Square 122 were to be included within the campus, the number of beds on campus available by the fall of 2004 would increase by 1100 to 5208.

12. The University testified that it is ready to commit funds to build additional dormitories on campus. Lack of money is not an issue. Tr. September 21, 2001, at 54-55.

13. Besides on-campus dormitories, the University owns or leases off-campus buildings that it uses as dormitories containing 1380 beds in 2001. All are located in Foggy Bottom/West End. Exhibit 296, attachments B-C.

14. The University leased two off-campus properties that it converted into dormitories during the summer of 2001 in response to the increased enrollment for academic year 2001-2002. The University leased the former St. James Hotel (24th St. and Pennsylvania Avenue, N.W.) for 15 years, renamed it City Hall, and provided accommodations for 543 undergraduates. Exhibit 296, attachment C. It leased 78 apartment units in 2424 Pennsylvania Avenue, N.W. (Pennsylvania House) for three years. That building had previously been used partly for long-term renters and partly for transients. The University is providing 166 beds in the 78 leased units. *Id.* The Board credits the testimony of James McLeod, a resident of 2424 Pennsylvania Avenue and a party to this proceeding, that the influx of students has made the building much noisier, seriously disturbing long-term residents, many of whom are elderly. Tr. September 17, 2001, at 107-108; Exhibit 306 at 4.

15. The University explained it had not leased property outside Foggy Bottom once it became aware that the 2001-2002 class would be unusually large because the University administration believes that students want to live close to their school. Tr. September 21, 2001, at 197.

16. The University has a 28.55% limited partnership interest in Columbia Plaza, a multi-building 800-unit complex at 23rd Street and Virginia Avenue, N.W. Under the partnership agreement, the University is entitled to recommend University students for vacancies at Columbia Plaza. Tr. September 17, 2001, at 72. There was a dispute among the parties as to the number of students who now live there. The Board credits the University's statement that 240 students have been placed in the complex through the University's housing lottery system. *Id.* at 77. In addition, an undetermined number of other University students are Columbia Plaza residents. The Board credits the testimony of Dorothy Miller, a resident and a party to this proceeding, that the quality of life in the complex has diminished as the student population has grown. Exhibit 319 at 3.

II. Conclusions of Law and Opinion

The hearings on remand provided the Board with additional information about current student housing, University plans for future on-campus housing, admission practices, and other developments since the Board's previous consideration of this application. That information, together with the parties'

recommendations, has permitted the Board to revise its Order to ensure that the campus plan fully complies with the language and intent of the Zoning Regulations and is not inconsistent with the Comprehensive Plan.

The Board's initial decision in this case expressed concern that, unless conditions were imposed, the University's use of residentially-zoned property within the campus for non-residential uses, and its resulting failure to provide sufficient on-campus housing for undergraduate students, would cause the University's use of its property to become objectionable to neighboring property. The Board shared the concerns expressed by the Office of Planning ("OP") and ANC 2A about the continued vitality of the Foggy Bottom and West End neighborhoods, as pressures associated with University expansion threaten their livability and stable residential character.

The Board's fears have proved to be justified. The recent explosive increase in student enrollment has placed additional pressures on Foggy Bottom/West End. At the beginning of the 2001-2002 academic year, almost half of the 8044 undergraduates were forced to find housing outside the campus. Stated another way, at the start of the current academic year, the University was able to provide housing for a bare majority (4108 or 51.1%) of its undergraduate students on campus.

The University has traditionally chosen to export its student overflow to Foggy Bottom/West End. It did so again for the 2001-2002 academic year. It leased two buildings in Foggy Bottom/West End, one of which housed elderly long-term residents, and created dormitories for 709 additional undergraduates. In addition, it used its status as a limited partner in the Columbia Plaza complex to obtain housing for 240 of its students. These concentrations of students have vexed elderly long-term residents in those buildings. More important, the Board agrees with OP that the University's aggressive expansion into Foggy Bottom and the West End area has brought those neighborhoods to the "tipping point," if not beyond. Large swathes of Foggy Bottom/West End have effectively been transformed into an expanded campus at the expense of the prior variety of uses. The Board therefore concludes that the University's use of its residentially-zoned property within the campus boundaries for non-residential uses has become objectionable to the surrounding neighborhoods.

For these reasons (and for the reasons given in the Board's March 29, 2001, Order), the Board is willing to approve the proposed campus plan only if the University promptly takes decisive steps to provide housing for the bulk of its undergraduate students on campus. The Board agrees with ANC 2A that until there is a significant decrease in the number of students forced to live in the surrounding off-campus neighborhoods by virtue of insufficient on-campus housing, the campus plan is unacceptable. *See* Tr. September 13, 2000 at 315. The Board recognizes that the University needs time to construct dormitories on campus. This Order therefore provides the University considerable flexibility for the first five years of the plan. The Board encourages the University to take immediate steps to meet the conditions set by this Order.

The University will be required to make more intensive residential use of its campus property in two phases. In the first phase, starting in August 2002, the next academic year, the University will be required to make housing available for at least 5600 full-time undergraduate students on campus or in areas outside Foggy Bottom/West End. (That "base number" represents 70% of the undergraduate

enrollment of approximately 8000 in the fall of 2001. *See* above, findings 1-2). This is not an onerous requirement. The University's experience in the current academic year, when it was able to acquire 709 beds in a matter of a few months when faced with an uncharacteristically large freshman class—using short- and long-term leases—establishes that there should be no major impediment to the University's acquisition of housing accommodations in the universe outside Foggy Bottom/West End by next fall. For purposes of this Order, the Board adopts the following definition of the Foggy Bottom/West End Area: the area bounded by E Street on the south, Rock Creek Park on the west, N Street on the north, and 19th Street on the east, excluding the campus area as defined below.

A straight percentage requirement would not prevent further inundation of the Foggy Bottom/West End neighborhood by University dormitories and by students compelled to find housing outside the campus. As enrollment increases—the University has estimated that it may grow by at least another 500 students by 2005—the neighborhoods would likely be saturated by yet more student housing under a pure percentage goal. For that reason, the University will be required to provide one additional on-campus bed for each additional student whenever the University's full-time undergraduate enrollment exceeds 8000. The University will be free to increase its enrollment but, by providing one bed for each additional student, the total number of undergraduate students accommodated in Foggy Bottom/West End should not grow. This is in keeping with the "soft cap" originally proposed by the University. *See e.g.*, Tr. September 13, 2000, at 256.

Beginning in the fall of 2006, five years from now, approval of the campus plan is conditioned on the University providing housing for the bulk of its students on campus. The University must provide accommodations in on-campus dormitories for 70% of the first 8000 undergraduates (5600 beds) and an additional bed for each full-time undergraduate over 8000. As a result of this campus plan proceeding, the University has accelerated its campus housing program. It has applied for special exceptions to construct buildings on Squares 43 and 57 to add 900 new beds. The University expects to complete both buildings in time for academic year 2004-2005. In addition, the University has applied to the Zoning Commission to modify a PUD for University-owned property on Square 122 with a capacity of 200 more beds. If the Commission approves the PUD modification, the University may count those beds toward satisfying the housing requirements of this Order.

Even these 1100 new beds will be insufficient to satisfy the need. When completed, the University will be providing no more than 5208 on-campus beds for its current enrollment of 8044 undergraduate students (64.7%). Considering that the University projects its enrollment to increase over the life of the campus plan, an increase of 1100 beds becomes even more inadequate.

The University has identified at least three residentially-zoned squares on its campus suitable for additional dormitories. The University owns all of Square 54, the site of the current hospital. That large square will no longer be used as a hospital and will essentially be vacant in 2002. By itself, it is large enough to satisfy all of the University's housing requirements for the foreseeable future. The University also owns property in Square 103, where it estimated that housing for at least 200 students could currently be built. That square could be used more intensively for residential development if the University acquires the remaining lots, as it intends to do. Finally, the University owns a portion of Square 80, where it acknowledged that housing for 288 students could currently be built; if the District

of Columbia transfers public property in the square, it could accommodate at least 650 beds. Order, March 29, 2001, at 4. Finally, the ANC identified portions of Squares 56, 79, 101, and 103 as suitable for dormitories. Tr. September 29, 2001, at 80. This recitation of campus sites that are available to the University demonstrates that it enjoys considerable latitude in deciding how to satisfy the on-campus housing requirement.

The University has acknowledged that financing new dormitories should not pose a problem and that five years would be sufficient time to construct new dormitories. Tr. September 17, 2001, at 21-22.

The housing requirements imposed as a condition for approval of the campus plan application are neither too severe nor too lax. The Order permits the University to avoid providing housing for up to 2400 undergraduates (30% of 8000). These may be housed in University dormitories or in private properties off campus, including in Foggy Bottom/West End. The University estimated that 15% of its student body normally would consist of students for whom dormitory life is unnecessary or unsuitable: commuters; married students; students with children; religious objectors; and students with disabilities. The University estimated that only 1239 of the 8044 undergraduates then registered in September 2001 (15.4%) fell into those categories. The Board Order therefore does not prevent the slightly more than 1100 other students to continue to be housed in University or private housing within the Foggy Bottom/West End neighborhoods. While that is significantly more than the parties in opposition want, the Board believes that a student population of that size—but no greater—is not incompatible with the Zoning Regulations or the Comprehensive Plan.

Because the housing condition is the essential element of the Board's approval of the application, the Order provides that if a court enjoins any aspect of the condition containing the housing requirement, or if the University fails to comply with the condition, no special exceptions or permits for non-residential uses will be granted; those already granted pursuant to the campus plan approved by this Order will be subject to suspension. The Order also requires the University to file and serve semiannual reports to facilitate the monitoring of compliance.

The University proposed a complex housing commitment. Essentially, the University proposed that it be allowed to count its off-campus housing (other than Pennsylvania House) toward meeting a goal of housing 70% (and effective 2004, 75%) of full-time undergraduates in University-controlled dormitories. The proposal was hedged with a number of restrictions. It excluded 15% of the student body, thereby lowering the base used for calculating the number of beds needed. It introduced a number of contingencies, such as voiding the housing requirement if graduate school enrollment falls. It also proposed to count beds in buildings that the University might construct outside the campus on Squares 58 and 81.

Aside from adding needless complexity, the proposal is inadequate because it essentially permits the University to continue to house an unacceptably large number of students in Foggy Bottom/West End. As the OP correctly noted, the University simply redefines terms to permit it to claim that it is housing a high percentage of its students while "actually not changing the situation on the ground, the protection of the Foggy Bottom neighborhood...." Tr. September 21, 2001, at 21. The University conceded that its students want to live nearest the school. Yet, perversely, the University's proposal maintains the

present status under which the campus is the one nearby place where a large portion of undergraduates cannot live.

The Board finds no justification for expanding the campus to include Squares 58 and 81. As noted, the University already has ample property within the campus plan boundaries specified by this Order to meet the Board's housing requirement condition. The University also recommended that the penalty for noncompliance with the housing requirement be a $100,000 "fine" payable to a public benefit program; the fine would be payable only if the University failed to cure the violation within one year. The Board believes that a fine of that magnitude (if within the Board's powers to impose at all) would constitute a nominal cost of doing business for an institution that at the end of fiscal year 2000 had total financial resources in excess of $781 million and has recently raised $394 million during a capital campaign. Exhibit 296, attachment D at 2. A year's delay in complying with the housing condition is unnecessary. The Board has phased in the requirement to accommodate students, and the record demonstrates that the University has sufficient control over its admissions process and size to match enrollment to housing availability.

ANC 2A offered two recommendations. One would force the University permanently to reduce its enrollment to 7380 students within two years and to accommodate all students on the campus immediately (except for waivers when specifically requested by individual students in certain categories). The Board concludes that a substantially reduced cap on enrollment is too onerous and inflexible and that the remainder of the proposal, for 100% on-campus housing, is probably infeasible during the life of the current plan. By contrast, the Board's solution, with its one- and five-year phases, is both feasible and reasonable. It freezes the number of students who need not be accommodated on campus to a reasonable number, including the estimated 15% for whom dormitory life would be inappropriate and unnecessary. It requires all the rest to be accommodated outside Foggy Bottom/West End beginning in August 2002 and on campus by August 2006. The second ANC proposal omits a cap on enrollment but would have the University prohibit any University undergraduate from living in Foggy Bottom. The proposal is misconceived. It places the ultimate burden on individual students, allowing the University to avoid using its campus to provide housing altogether. The focus of this campus plan proceeding, however, is on ensuring that the campus is used in a manner that does not adversely impact surrounding residential areas. It is the property owner's obligation to prevent such an impact, not that of innocent third parties. Moreover, requiring the Zoning Administrator to monitor and enforce a ban on where individuals reside would be extremely difficult at best, if not unlawful.

OP recommended that the University be required to accommodate 70% of its fall 2001 undergraduates on campus or in a "housing opportunity area." The housing opportunity area could include anywhere outside Foggy Bottom/West End, together with Square 122 and existing dormitories at the Aston apartment house and the "Hall on Virginia Avenue." Any enrollment increase beyond the fall 2001 base would also have to be accommodated on campus or in the housing opportunity area on a one-for-one basis. The Board has adopted these recommendations in part. The Board does not believe, however, that they go far enough to protect the surrounding communities. Indeed, OP candidly acknowledged that its proposal could theoretically permit the University to "have zero percent of their students on campus and still be in compliance." Tr. September 21, 2001, at 218. The Board therefore prefers that the University make more intensive use of its residentially-zoned campus. The Board is

also conscious that its Orders should not be instruments for exporting University housing into other neighborhoods in order to protect Foggy Bottom/West End. The Board realizes, of course, that a reasonable interim period of five years is necessary to permit the University to construct more dormitories on campus. Nevertheless, there is no justification for not having sufficient on-campus housing at the end of that time to satisfy OP's numerical goals. As for existing off-campus dormitories, the University will be able to use them for student housing or for any other use permitted by the Zoning Regulations. After August 2002, however, beds in those facilities will no longer count toward the housing requirements in this Order.

Finally, the Foggy Bottom Association ("FBA") proposed that undergraduate enrollment be capped at 7881 until 75% of undergraduate students are housed on campus or in any property the University might acquire outside the ANC-2A area. The University would have until 2004 to achieve the 75% goal. Thereafter, the University would be permitted to increase enrollment so long as it had an on-campus bed for each additional student above 7881. The University would also be required to remove its students from 2424 Pennsylvania Avenue and Columbia Plaza by 2004. The Board has concluded that a "hard" cap on the number of students is unnecessary, given the other steps the Board is mandating, even though the March 29th Order contained such a cap. It is unnecessary because the goal of preventing further adverse impact on neighboring property can be achieved by simply requiring the University to provide sufficient on-campus housing for its students. As the University grows, so do the number of accommodations that need to be constructed. Because the link between enrollment size and the adverse impact that the University's use of its campus property has on neighboring property is severed by the reasonable provisions of this Order, a hard cap on university growth is no longer essential. Its elimination is responsive to the University's plea that it be allowed to maintain flexibility in its enrollment in response to market conditions. The FBA proposal is also inadequate to bring sufficient student housing to the campus. With respect to 2424 Pennsylvania Avenue and Columbia Plaza, the Board prefers to give the University limited flexibility in meeting the housing requirement. As part of the University's proposal, it offered to remove its students from both properties. The Board believes, however, that its revised Order should serve as a strong incentive to do so.

The Board concludes that the issues and concerns of OP and ANC 2A are adequately addressed by this Order on Remand which requires future University growth to occur in conjunction with future increases in on-campus housing, thereby minimizing the University's incentive to acquire property outside the campus boundary to house its undergraduate students and decreasing the threat to permanent housing stock and other property uses in the Foggy Bottom/West End area.

III. Board Response to the Parties' Exceptions.

After reviewing exceptions filed by the parties, the Board made adjustments to its findings and conditions of approval of the campus plan and rejected other changes for the reasons that follow.[1]

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1. Parties other than those specifically identified in the text also submitted exceptions to the proposed order. Their exceptions are addressed in the following discussion.

A. ANC 2A (exhibit 333).

1. The ANC objected to the Board's conditional inclusion of part of Square 122 in the campus, subject to the Zoning Commission's approval of a PUD modification. The modification would permit University use of the property, including use as a dormitory. The ANC is a party to the Commission's proceedings. Here, the ANC complains that it received no prior notice that the PUD property might be included in the campus; the University had not applied for its inclusion; the Board did not hear evidence concerning the probable traffic consequences of the PUD modification; and the modification is inconsistent with the Comprehensive Plan.

The Board's contingent inclusion of the PUD property cannot legitimately be construed as endorsing approval or disapproval of the pending PUD modification. Rather, it is simply a necessary acceptance of a *fait accompli* if the Zoning Commission gives *its* approval. The Zoning Commission has sole say over the PUD process. The Board has no control over the use of the property, traffic generation, or other consequences of Commission action. In that sense, the ANC's protests are misdirected. Traffic, consistency with the Comprehensive Plan, and the like are matters that the ANC must direct to the Commission. If the Commission approves the University's proposed modification, however, thereby expanding the University beyond its current campus, no purpose would be served in the Board's refusal to recognize that expansion. If anything, inclusion of a modified PUD would help ensure that the property will be used to provide housing for a specified minimum number of undergraduate students over the life of the campus plan. Since the boundary change is essentially technical should the PUD modification be approved, the Board believes no prior notice to the ANC was necessary.

2. The ANC also objected to the Board's selection of 8000 as the base number for calculating the housing requirement in Condition 9. The ANC points out that the undergraduate population was only 6857 at the time the University filed its application in 1999 and 7380 when the Board voted to approve the campus plan (with conditions) on February 13, 2001.. According to the ANC, use of current enrollment as the base number "rewards" the University's "uncontrolled growth."

Although the ANC's criticism has some merit, the Board concludes that its selection of 8000 is justified. In the March 29, 2000, Order formally adopting the February 13 vote, the Board concluded that University use of its residentially-zoned campus for nonresidential purposes would imminently become objectionable. At the time, undergraduate enrollment stood at 7380, well above 1999's enrollment of 6857. The University's growth since February 13, forcing even more undergraduate students into Foggy Bottom/West End, has convinced the Board that the University's use of its campus has now become objectionable. It follows that some number greater than 7380 yields the "tipping point," the point at which the survival of the surrounding neighborhoods has become seriously threatened. That point cannot be determined with great precision. Using 8000 as the base number means that the University need not provide housing for 2400 undergraduates (30% of 8000); using 7380 translates into 2214 undergraduates without university housing (30% of 7380). Stated another way, using 8000 as the base number requires the University to supply 5600 on-campus accommodations; using 7380 would require 5786 beds ((7380 x 0.7 + (8000-7380)). Under either analysis, the difference is only 186, a relatively small number. While the Board might have chosen a different base

number, the number it chose was reasonable, especially if it makes satisfying Condition 9 during the life of this campus plan more feasible. The Board therefore declines to change the base number.

3. There is no need to reaffirm Condition 17, which requires the University to provide annual audited counts of the number of full-time undergraduates living in Foggy Bottom/West End to the Advisory Committee established in accordance with Condition 3. The March 29 Order remains in effect unless changed by this Order, expressly or by necessary implication.

Nevertheless, the ANC request, coupled with the Foggy Bottom Association's related request for additions to the reporting requirements in Condition 9, persuades the Board to modify its Order in two respects. First, the Board agrees that members of the Advisory Committee should be included among those to receive the semiannual reports required by Condition 9, just as they are included in Condition 17. Second, the Board agrees that the reports required by Condition 17 should be filed semiannually (rather than annually), contemporaneously with the related reports required by Condition 9; should be served on the ANC, Zoning Administrator, Zoning Commission, Office of Planning, and Advisory Committee; and should include more information than the Board initially requested.

B. The University (exhibit 334).

1. The University challenged the Board's conclusion that use of its campus for nonresidential purposes adversely affects the neighboring area.

The University's assertion that its off-campus housing facilities had previously been used as hotels or other transient or commercial uses is exaggerated. The University bought the Dakota apartment house in the 2100 block of F Street. Even if the Dakota housed a number of students when the University acquired it, its acquisition for student housing permanently removed it from housing stock available to non-students. Similarly, the Aston was classified as an apartment house when the University acquired it. Exhibit 165 at 3 (R. 1523).[2] The University also bought an interest in Columbia Plaza, a complex that had previously been used primarily for permanent residents and has a right of first refusal to buy a larger share of the property. Exhibit 92 at 3 (R. 503). Columbia Plaza's general partner notifies the University of vacancies "up to our investment percentage" and the University "recommends" students for the vacancies. Tr. September 17, 2001, at 72-73, 77. It is likely that those "recommendations" translate into preferences for students. *Compare id.* at 77 (University does not know whether students are given preference) *with* tr. September 26, 2000, at 173 (R. 2610) (testimony by tenants' association that preference is given). The University leased Pennsylvania House twice. The Board received evidence, which it credits, that the University's initial lease caused a remodeling of apartments into furnished suites for students. The remodeled suites were not restored to long-term housing stock when the University's leases lapsed. Exhibit 185 at 3 (R. 1554). The most conspicuous example of the loss of permanent housing stock is Square 43, which the Board in 1988 explicitly refused to include within

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2. References marked "R. __" refer to the pagination of the record on appeal to the District of Columbia Court of Appeals in *George Washington University v. Board of Zoning Adjustment*, No. 01-AA-571.

the campus in order to preserve long-term residential housing. Application of George Washington University, No. 14455, Order, Feb. 25, 1988, at 34 ("The board believes the removal of Square 43 to be essential to the preservation and enhancement of residential uses in the Foggy Bottom neighborhood"); *id.* at 41. The University acquired over two-thirds of the square and leveled 33 townhouses. Exhibit 25 at 3-4 (R. 308-309). The new use for the property is solely student housing, excluding other potential residents.

These examples demonstrate the erosion of the long-term residential housing in Foggy Bottom/West End. As the Foggy Bottom Association correctly observed, "[o]nce properties are part of the university's inventory, they are irretrievably lost to the residential community." Exhibit 191 at 7; (R. 1684).

The University's assertion that it had not displaced longtime residents is also beside the point. The Comprehensive Plan calls for retaining existing businesses and employment opportunities. 10 D.C.M.R. § 1301.1. The Plan regards hotels as "key element[s] of . . . economic development" and as "important activity generators," especially in Ward 2. 10 D.C.M.R. § 1331.1; *see* 10 D.C.M.R. § 1332.1 (creating an objective to increase hotel space in the ward). While increasing the concentration of transient facilities in Foggy Bottom/West End is undesirable, 10 D.C.M.R. § 1331.4, so is the loss of existing commercial activity, associated employment opportunities, and neighborhood amenities, such as hotel restaurants and public spaces. Even the loss of uses that are not purely residential, therefore, is a matter of proper concern. Moreover, as a witness cogently observed, a loss of short-term residential facilities exerts economic pressure to convert long-term residential properties to transient use. Tr. September 17, 2001, at 108-109.

Elimination of long-term residential housing and commercial properties through University off-campus acquisitions is not the only objectionable consequence of the University's failure to provide on-campus housing. It has forced large numbers of students to compete for housing in Foggy Bottom/West End. The Board received credible evidence that, in early 2000, students comprised more than 50% of the occupants of six large apartment houses and smaller but considerable percentages in several others. *See, e.g.,* Exhibit 93 (R. 510-511); exhibit 272, attachment B (R. 3322); exhibit 200, attachment III (R. 2141). As OP noted, the University was unable to confirm or refute this testimony because it kept no statistics as to where students live. Exhibit 190 at 7 (R. 1643); Tr. September 26, 2000, at 217 (R. 2517).

The Board heard credible evidence that these concentrations of students had effectively turned apartment houses into dormitories and townhouses into fraternity houses. Tr. September 26, 2000, at 64 (R. 2436). Such large transient populations, in addition to those housed in the University's off-campus dormitories, undermine the residential stability of the already fragile Foggy Bottom/West End neighborhoods. The Board also received evidence of student misconduct in private housing. The supplemental findings cite two examples, in Columbia Plaza and Pennsylvania House. There are others. A letter from a resident complained that "[l]ast week there was beer can bowling in the hallway of my [Columbia Plaza] apartment building." Exhibit 179 at 1 (R. 1539). The Board heard testimony from a neighbor of undergraduates at another location: "They're wild. They drink. They make a mess, and we have to call the police. . . ." Tr. September 26, 2000, at 170 (R. 2607). Another

witness spoke of having to summon the police on a weekly basis because of rowdy parties in a two-bedroom house occupied by six to ten students. Tr. September 26, 2000, at 186 (R. 2623); *see* Exhibit 236 & attachments (R. 2840, 2842-2844).

In short, there was substantial evidence before the Board to refute the University's contention that its failure to provide sufficient on-campus housing has not had objectionable consequences for the surrounding areas. As OP observed, the core issue is the "cumulative impact" of the University's actions. Tr. September 26, 2000 at 393-394 (R. 2765-2766). The communities' diversity has been so severely compromised that, at this point, the cumulative impact of increasing concentrations of students has become objectionable.

The University's protest, that the greatest damage to Foggy Bottom/West End was caused by freeway construction and other activities, is irrelevant to this campus plan proceeding even if true. Here, the only relevant issues are whether the plan should be approved and, if so, with what restrictions, if any. The evidence before the Board established that the University's failure to use its residential property for residential purposes was aggravating conditions in an already fragile neighborhood, whatever the initial cause for the area's decline. The Board heard credible testimony that university expansion is *now* the "driving force" in the neighborhoods' decline. Tr. September 26, 2000, at 323 (R. 2695). Conditions may only become worse without the Board's intervention. University expansion, without a corresponding provision of student housing, OP informed the Board, "will lead to the inevitable elimination of the Foggy Bottom Area as a recognizable residential neighborhood." Exhibit 190 at 19 (R. 1655); *see* Tr. September 26, 2001, at 218 (Tr. 2518) (expansion is objectionable because "there is so little left of the neighborhood housing stock and the neighborhood fabric"); *id.* at 232 (R. 2532) (Foggy Bottom/West End's problems are already "too acute"). There is therefore no need for the Board to explore the reasons for the onset of the neighborhoods' deterioration.

Finally, the Board rejects the University's argument that its burgeoning undergraduate population is irrelevant because the University's total student population has allegedly not increased, a proposition disputed by other parties. *See* Exhibit 191 attachment at 5 (R. 1682); *see also id.* attachment A (R. 1696) (showing growth of full-time undergraduate *and* undergraduate enrollment between 1985 and 1999). Even if the University's overall population has not varied, the growth in undergraduate enrollment is alone ample foundation for Condition 9. The University's own actions demonstrate why. With the surge of undergraduates over the past several years, the University acquired more dormitories in Foggy Bottom/West End. During the past academic year alone, it added more than 700 beds to its off-campus inventory to keep pace. Absent a showing by the University that the student population of Foggy Bottom/West End remained static, the Board must infer that the additional dormitories represent a net increase in the total Foggy Bottom/West End student population. The University told the Board that approximately 70% of its graduate students live outside the District of Columbia and that relatively few of the rest live in Foggy Bottom/West End. Exhibit 165 at 2 (R. 1522). That strongly implies that, as graduate enrollment falls and undergraduate enrollment rises, the number of students searching for housing in the two neighborhoods increases even without an overall increase in enrollment. The University previously acknowledged, however, that its student population will *not* remain static over the life of the campus plan. It expects a 20% increase in full-time equivalent student enrollment. Exhibit 21, appendix C (R.124). Since undergraduate students have recently formed the larger share

of that increase (Tr. September 13, 2000, at 168; R. 1934), ever larger masses would be forced to hunt for nearby housing.

2. The University's exceptions attempt to introduce new evidence well after the record closed, alleging that information it had previously provided to the Board in these lengthy hearings about the number of undergraduate students who commute understated the actual number by 50% to 100% or more.

The Board cannot accept the University's new evidence. It is inexcusably late. While the University contended that the information was never sought during the hearings, it bore the burden of proof on all matters in this proceeding under the District of Columbia Administrative Procedure Act: "In contested cases, except as may be otherwise provided by law, . . . the proponent of a rule or order shall have the burden of proof." D. C. Code § 2-509(b) (2001 ed.) The Board's Order on Fact Finding (September 13, 2001, at 2), offered the University "an opportunity to elaborate on or supplement the information provided in its responses to the Board's inquiries. . . ." The University declined the invitation by failing to "elaborate on or supplement" during the remand hearings. Even now, the University has not presented the Board with a proper motion to reopen the record to provide additional information.

The University cannot reasonably claim to have been unaware that a central element in the Board's inquiry in this campus plan proceeding was the number of students living in Foggy Bottom/West End. *See* 11 D.C.M.R. § 210.2. In fact, other parties explicitly complained repeatedly about the University's failure to provide data about its students' whereabouts. *See, e.g.*, Tr. September 26, 2000, at 223, 280-281 (R. 2523, 2652-2653).

To consider the University's new numbers at this late date would be unfairly prejudicial. Other parties have not had the opportunity to cross-examine or to submit rebuttal evidence. The figures may be based on double counting commuters who are also married, or have children, religious views, or disabilities. They may be aberrational. They may or may not be the direct consequence of the failure of the University to supply sufficient housing on campus for undergraduate students. No underlying data are before the Board to allow the new numbers' reliability to be evaluated. The University's previous submissions displayed substantial variability. During the hearings, for example, the University informed the Board that 1672 undergraduates lived in Foggy Bottom, 543 elsewhere in the District, and 1261 in Virginia and Maryland. Exhibit 230 at 2 (R. 2830). During the remand proceedings, the University informed the Board (as well as a United States district court) that only 829 students lived in Maryland and Virginia—a 50% discrepancy. Finding 2, above at 2. As Finding 2 reflects, the University assured the Board the latter number was reliable and verifiable. The problem is that these are all questions about which the Board would be forced to speculate. The current record provides the Board no basis to resolve them. The Board therefore rejects all exceptions based on information that was never introduced in the record.

Even if, however, the number of commuters is greater than the record evidence shows, the Board has noted that its conditional approval of the campus plan allows the University to avoid providing housing for 30% of its undergraduate students—the equivalent of, say, more than the entire senior class—and all of its graduate students. The Board's initial intention was to require the University to provide sufficient housing to accommodate the equivalent of all of its undergraduate students but to allow for

a "carve-out" for students for whom dormitory living was inappropriate or unnecessary. During the many hearings on the campus plan, the University estimated that 15% of undergraduate students fit that description. This Order allows the University to decline to provide housing for *twice* that number. Thus, the Board's 30% allowance provides a reasonable cushion even if the information the University provided to the Board during the course of these proceedings was incomplete or inaccurate.

The Board's references to undergraduate students should not be misinterpreted. The Order does not dictate which students are to occupy University housing; it is designed only to relieve pressure on the surrounding communities created by the University's failure to provide sufficient on-campus housing. The number of undergraduate students was chosen as a benchmark for several reasons. Undergraduates are the fastest growing segment of the University's population. They constitute the only category of students for whom the University has acquired housing outside the campus and for whom it has traditionally provided housing. They are also the group that the University characterizes as having more "behavioral problems" and of being less mature. Exhibit 165 at 2 (R. 1522) (graduate students "are generally older and more mature" and "present fewer behavioral problems compared to undergraduates"). By obliging the University to provide 5600 beds on campus, and an additional bed whenever undergraduate enrollment exceeds 8000, the Board expects the number of students forced to find housing off-campus to decline and pressure on Foggy Bottom/West End to ease significantly, even absent restrictions on which students can occupy the on-campus beds. Nothing in the Board's Order, it bears repeating, can legitimately be construed to tell students where they can or must live. Rather, the Order simply requires the University to add residential space on its residentially-zoned campus so that undergraduates are not forced into the surrounding communities.

3. The University repeatedly notes that the Zoning Regulations permit universities to establish dormitories in certain residential districts as a matter of right. The Board agrees with that proposition and so held in *Appeal of Sheridan*, No. 16507, Feb. 11, 2000. But that is not the end of the analysis. The Zoning Regulations also provide that University property must be used so as not to become objectionable to neighboring property and must be used consistently with the Comprehensive Plan. While the Board cannot prohibit the University's creation of off-campus dormitories, it must assess the impact of a university's decision to use residentially-zoned campus property for nonresidential purposes. The record in these proceedings reveals that this University's failure to provide on-campus housing has directly harmed the surrounding communities and that the University's own off-campus expansion is a symptom of that harm. Under those circumstances, it is plainly within the Board's power to regulate the use of *campus* property, irrespective of off-campus rights conferred by the Zoning Regulations, whenever *campus* uses have adverse external effects and are inconsistent with the Comprehensive Plan.

4. Contrary to the University's objections, the Board's refusal to expand the campus border to squares 58 and 81 is essential to protect the southern border of the campus against further encroachment. OP testified that the southern flank is at great risk. Tr. September 26, 2000, at 216 (R. 2516). The two squares contain a variety of current uses that the Comprehensive Plan suggests are worthwhile preserving, including a hotel, drug store, rooming house, offices, and residences, among others. To designate the squares as parts of the campus is to create hydraulic pressure on existing uses, as the University's previous on-campus expansion has demonstrated through the years. Considering the

availability of ample space for the construction of dormitories on the campus as currently designated, the Board sees no justification for further enlargement.

5. The University objected that compelling it to use residentially-zoned property for student housing gives an unwarranted preference to housing over other academic needs. Although the Board is sympathetic to the University's other needs, the Board's obligation is to ensure compliance with the Zoning Regulations and the Comprehensive Plan. Without Board intervention, there may be no remaining space on campus for student housing. The University took inconsistent positions on that likelihood. On the one hand, it told the Board that "we have a mature, older campus and it's getting to be a zero sum [game], that if you do academic, you can't do housing." Tr. September 13, 2000, at 176 (R. 1942). On the other hand, it told the Board that its "campus is not densely developed when compared to the surrounding commercial area." Exhibit 22 at 27 (R. 105); *id.* at 23 (R. 100) (even with planned growth, gross floor area will be "well below" the regulatory limit). In any event, the Order places no limit as to where the University can locate its academic buildings. OP and other witnesses cited Georgetown University's decision to move its law school outside its campus as an example of an option for George Washington University to consider. Tr. September 26, 2000, at 44, 259 (R. 2416, 2559). The University may also consider converting some commercially-zoned properties into classrooms or administrative offices.

6. The Board imposed the requirement that the University accommodate a minimum number of students on campus by late 2006 for three reasons: first, to absorb most of the excessive number of University students who live in Foggy Bottom/West End because of the absence of on-campus housing; second, to prevent the Board Order from being the unintentional instrument for placing strains on other neighborhoods; third, to ensure that the residentially-zoned campus is put to more intensive residential use. The first two reasons have been adequately addressed. The third deserves elaboration.

One of the Council's concerns in the Comprehensive Plan is to foster greater residential use downtown and in the ring of neighborhoods surrounding downtown. 10 D.C.M.R. § 1325.1. The Council expressed concern about the loss of housing stock in Foggy Bottom/West End, "aggravated by the lack of dormitory construction on the George Washington University (GWU) campus." 10 D.C.M.R. § 1325.3. Among the Plan's prime objectives are the conservation and enhancement of existing residential neighborhoods and the creation of new ones. 10 D.C.M.R. § 1326. If the campus is entirely devoted to nonresidential uses, it will be irrevocably lost to residential use despite its residential zoning. Institutional nonresidential space creates dead zones, robbing the area of vitality and diversity, especially after classes end in the evenings and during weekends, holidays, and school vacations. More intensive residential use should add "street vitality and safety." Tr. September 26, 2000, at 323 (R. 2695). It is therefore consistent with the Comprehensive Plan to direct the University not only to alleviate the pressures on Foggy Bottom/West End (10 D.C.M.R. § 1327.1(b)), but also to insist on a residential core on campus. See 10 D.C.M.R. § 1342.1 (University campus plans are to "take account of the residential . . . status of Foggy Bottom in any future development"). This is not a new concern. In the 1985 campus plan, the Board directed the University to retain on-campus apartment houses that it was in the process of acquiring for housing and to build at least one new on-campus dormitory. *Application of George Washington University*, No. 14455, February 25, 1988, at 37-38.

7. Although the University charged that the "record establishes that there is no way the University can meet this [on-campus] housing in the fall of 2006," it failed to cite any part of the record for support. If anything, the record contains testimony that can reasonably be interpreted to the contrary. The Board was informed that the University needed five years, measured from September 13, 2000, the date of the testimony, to construct dormitories satisfying its promise to add more beds: "We're going to add more beds than students in five years. But we need the five years. It takes time to build beds. . . ." Tr. September 13, 2000, at 153 (R. 1919); *see*, similarly, tr. September 17, 2001 at 21-22 ("We thought the five-year time frame made sense because we need time to build new residential facilities"). The Board has given the University an additional year, until August 2006, to supply more on-campus housing. In September 2000, the University also testified that it would shortly begin the process to allow construction of a 500-bed dormitory on campus, on Square 54 or elsewhere. It told the Board that it was so committed to moving "aggressively" to obtain approval for development of Square 54 that it "pledge[d]" to file at least a first-stage PUD application with the Zoning Commission "within 15 months." Tr. September 26, 2000, at 355 (R. 2727). That fifteen-month period ended December 13, 2001. The University also told the Board that it would be possible within five years to build a 500-bed dormitory on Square 54 or elsewhere on campus prior to commercial development of Square 54. Exhibit 196 at 3 (R. 1865); Tr. September 13, 2000, at 213 (R. 1979).

Based on the University's own testimony and other evidence in the record, the Board reasonably concluded that the University would be able to satisfy the Condition 9 requirements by August 2006. The University had 4108 on-campus beds as of September 2001. Finding 8, above at 3. Another 1093 will be built by fall 2004 (if Square 122 is included), raising the total of 5201. *See* above at 6. The University also has the ability to provide another 988 beds on campus: 500 on Square 54 or an alternate site; 200 on Square 103; and 288 on Square 80. *See* above at 6; exhibit 196 at 3 (R. 1865). That adds up to 6189 beds together, more than enough to satisfy Condition 9 absent large increases in enrollment.

There is, however, merit to the University's objection that Condition 9 does not provide relief if construction of on-campus dormitories is delayed for reasons outside the University's control. The Board understands that unusual circumstances may force construction delays despite the University's prompt, expeditious, and good-faith efforts.

The Board has therefore amended Condition 9 to allow for application to the Zoning Commission for additional time to meet on-campus housing goals under limited circumstances, after notice and hearing. The additional time is to be equivalent to time lost as a result of unusual delays by government agencies in processing applications for special exceptions or other construction permits; the resolution of third-party appeals to the District of Columbia Court of Appeals or to another judicial forum; or construction delay resulting from acts of God, contractor delays, or acts of third parties. Additional time is not authorized if the delay is fairly attributable to the University. In particular, the amendment does not authorize extensions of the Condition 9 deadlines for time lost as a result of delays in the processing of PUD applications. The University can build housing on campus through special exceptions, and the Board is unwilling to allow controversial nonresidential projects to hold campus housing hostage. The University remains free, of course, to apply for mixed-use PUDs but the University's choice to do so cannot serve to extend the time for providing urgently needed housing beyond the 2006 deadline.

It is worth noting that the principal sanction for failure to build sufficient housing by 2006 is the denial of permission to construct and occupy new nonresidential buildings. That penalty bites only when the University has given nonresidential projects priority over residential ones. In other circumstances, factors preventing the University from completing housing on time should normally delay other projects equally.

8. The Board declines the University's invitation to alter the requirement in Condition 9.a to provide more housing on campus or outside Foggy Bottom/West End between August 2002 and August 2006. The University asserted that it spent "millions of dollars" to acquire and convert its present inventory of off-campus housing. It also claimed that there is no record evidence that it will be able to acquire housing outside Foggy Bottom/West End for four years.

As the Board previously noted, above at 9, the Board Order does not prevent the University from continuing to use the Foggy Bottom acquisitions for dormitories. It only prevents such acquisitions from counting toward the undergraduate housing goal. If the University finds it infeasible to continue their current use, nothing in the record suggests an impediment to their return to pre-existing uses or to long-term residential use. On the contrary, the University already owns a number of structures that it uses for investment income. For example, the University owns One Washington Circle but continues to operate it as a hotel. Tr. September 17, 2001, at 103. The Board heard testimony (never rebutted) that at least one of the off-campus dormitories was acquired as investment property and was converted only to accommodate an unexpected spurt in enrollment. Tr. September 26, 2000, at 72 (R. 2444). More than 700 of the off-campus accommodations, moreover, were acquired after the Board clearly put the University on notice, in its March 29, 2000, Order (at 10-11), that the Board intended to prevent Foggy Bottom/West End from being forced to absorb additional dormitories.

Although it is true that the record does not specifically establish that the University can acquire four-year leases for off-campus housing, it does establish that the University has acquired property in a shorter time in a much smaller geographic area. Finding 14, above at 4. That evidence, combined with the University's ample financial resources, is sufficient for the Board to conclude that the University should be readily able to find the off-campus space necessary to comply with Condition 9 in the District or elsewhere in the metropolitan area. OP testified that it would be "more than happy" to assist in locating interim space. Tr. September 20, 2000, at 231 (R. 2531).

9. The University informed the Board that its application to the Zoning Commission for a PUD modification for Square 122 has been amended to reduce the number of projected student accommodations to 193 from 200. The University's explanation is that the reduction stems from agreement with the West End Citizens Association to provide neighborhood amenities such as retail space. Because the reduction is minor and the University remains subject to the housing requirements of Condition 9, the Board has modified Condition 2 to the extent of redrawing the campus boundary to include the Square 122 PUD once beds for at least 193 undergraduates are made available there.

10. In passing, the University asserted that the Board failed to consider the University's proposal to modify Condition 15(e) relating to student automobile registrations. The University made that proposal on remand (without objection) but presented no new evidence. Tr. September 21, 2001, at 194.

Absent a compelling reason to change, the Board retained Condition 15(e) and found no need to make additional findings on remand. The Board has placed a more stringent automobile registration condition in an Order approving another campus plan (*Application of Georgetown University,* No. 16566, Mar. 29, 2001), and the Zoning Commission has voted to include similar language in yet another campus plan order currently under consideration. *Application of American University*, Z.C. 00-36CP/16638.

C. The Foggy Bottom Association (exhibit 330).

1. The Foggy Bottom Association criticized the Board's use of 8000 as the base number in Condition 9, echoing the ANC. It regarded the growth of undergraduate enrollment to result from the "University's blatant disregard of the expressed intent" of the Board's February 13 oral decision and March 29 Order. The Association recommended that undergraduate enrollment be permanently capped at 7881 and the University be required to provide housing for 5911 of those students (75% of 7881).

The Board declines to revisit the formula contained in Condition 9 largely for the same reasons that the Board rejected the ANC's proposed change. The fact that two community organizations could plausibly come up with different formulations illustrates how people can reasonably disagree about precisely where the line should be drawn. In addition, however, the recommendation for a permanent cap on undergraduate enrollment remains unnecessary and undesirable. *See* above at 8, 9. The campus plan that the Board is approving achieves consistency with the Zoning Regulations and Comprehensive Plan through reasonable restrictions on land use. Within five years, the University must supply sufficient on-campus housing for at least 70% of its undergraduate students. Condition 9 will act as a "soft cap" on enrollment by requiring the University to have an additional on-campus bed available for each student it admits over the 8000 base number. Condition 9 is therefore a land-use tool that satisfies the Zoning Regulations and the Comprehensive Plan without intruding in the University's academic decisions.

2. The Association protests that the Order does not address the growth of graduate enrollment and the possibility that graduate students will fill accommodations in Foggy Bottom/West End vacated by undergraduates. However, there is little evidence in the record on which the Board could reasonably rely to evaluate the need for on-campus housing for graduate students. What evidence there is suggests that most graduate students (whose numbers appear to have been declining in recent years) do not live in Foggy Bottom/West End. *See* above at 13.

3. As noted above (at 11), the Board agrees with the need for modifications in the reporting requirements and has revised Conditions 9 and 17 accordingly.

4. The Association's apprehensions about enforcement of the Board Order appear baseless. The Board anticipates that the University will comply with this Order in good faith. If not, the remedies provided by this Order and by law should be sufficient to call the University to account. In particular, the Order's requirement that no nonresidential construction may take place when the University is out of compliance is a serious sanction. Tr. September 20, 2000, at 153 (R. 1919); Tr. September 26, 2000, at 366 (R. 2738). The Order provides the community, the Zoning Commission, which henceforth

reviews special exception applications for the campus (Z.C. Order No. 932, 47 D.C.R. 9725 (2000)), and the Department of Consumer and Regulatory Affairs with the information needed to monitor compliance closely. Aside from these provisions, violations of the campus plan can also be prosecuted under the Civil Infractions Act, D.C. Code § 2-1801.01 *et seq.* (2001 ed.), and the Zoning Act of 1938, D.C. Code § 6-641.09 (2001 ed.); *see* 11 D.C.M.R. §§ 3204.1-3204.5 (1995), 16 D.C.M.R. § 3229.1(c) (1993).

IV. Conditions.

Accordingly, it is **ORDERED** that the application is **GRANTED** subject to the following **CONDITIONS** contained in the Order of March 29, 2001, as amended in the following paragraphs:

Condition 2 is amended to read:

> 2. The campus boundary as depicted in the plan offered by the Applicant is modified and expanded to encompass certain University-owned properties located outside of and adjacent to the southern boundary as previously drawn. The campus plan boundary shall be redrawn to include within it the Dakota at 2100 F Street in Square 81; 2201 Virginia Avenue (Riverside Towers), addresses 518 through 526 22nd Street in Square 58; addresses 2206 and 2208 F Street in Square 58; and the University-owned property in Square 43. In addition, in the event that the Zoning Commission approves the University's application for modification of the approved PUD for Square 122, the campus boundary shall be redrawn to include the PUD property in Square 122 once at least 193 beds for undergraduates are made available there.

Condition 9 is amended to read:

> 9. The University must ameliorate the adverse consequences of its failure to supply sufficient housing for its full-time undergraduate students on campus by taking the following steps:
>
> a. Beginning no later than August 31, 2002, the University shall provide beds for at least 5600 full-time undergraduate students on campus or outside Foggy Bottom/West End (as the terms "campus" and "Foggy Bottom/West End" are defined in this Order).
>
> b. Beginning in August 2002, whenever the head count of full-time undergraduate enrollment exceeds 8000 (the "base number"), the University shall provide one bed on campus or outside the Foggy Bottom/West End area for each full-time undergraduate in excess of the base number.
>
> c. No later than August 31, 2006, the housing requirements in subparagraphs a. and b. of this condition shall be met exclusively by on-campus housing. The

Zoning Commission may extend this deadline after notice and public hearing but only (1) to the extent of time lost as a result of unusual delays by government agencies in processing applications for special exceptions for residential projects; (2) for the duration of third-party appeals to the District of Columbia Court of Appeals or to another judicial forum from the grant of a special exception for a residential project; (3) to the extent of time lost as a consequence of construction delay resulting from acts of God, contractor delays, or acts of third parties. No extension may be granted for delays fairly attributable to University actions or for delays resulting from the processing of Planned Unit Development (PUD) applications before the Zoning Commission or from judicial challenges to PUD approvals.

d. Beginning February 28, 2002, and semiannually thereafter in August and February, the University shall file with the Zoning Commission, Zoning Administrator, the Office of Planning, ANC 2A, and members of the Advisory Committee established in accordance with Condition 3 reports under oath giving (1) the number of full-time undergraduate students then enrolled; (2) the number of University-supplied beds (a) occupied by and (b) made available to full-time undergraduate students on campus; (3) the number and location of University-supplied beds (a) occupied by and (b) made available to its full-time undergraduate students outside the Foggy Bottom/West End area; (4) the number and location of University-supplied beds (a) occupied by and (b) made available to its full-time undergraduate students within Foggy Bottom/West End. For purposes of these reports, the term "University supplied beds" shall include beds in any property in which the University has an ownership, leasehold, or contractual interest. Each report shall be accompanied by supporting documentation and full explanations of methods, assumptions, and sources used to compile information in the report.

e. No special exception shall be granted and no permit to construct or occupy buildings for nonresidential use on campus may be issued, and existing special exceptions and permits issued pursuant to the campus plan approved by this Order shall be subject to suspension and revocation, whenever a semiannual report reveals that the University is not in compliance with the provisions of this condition except special exceptions and permits for projects in which a student housing component would occupy at least 50% of the FAR. In addition, Condition 20 of the March 29, 2001, Order, shall apply to violations of this condition.

f. The foregoing condition is an integral, non-severable aspect of the Board's approval of this application. If any portion of this condition is declared void for any reason by any court in any proceeding, no application for a special exception will be processed and no permit to construct or occupy buildings for

non-residential use on campus may be issued until and unless the Board thereafter orders otherwise.

Condition 17 is amended to read:

17. Starting in the Fall 2001 registration process, the University shall gather information about the local addresses of the full-time undergraduate population. The University shall update the information semiannually. Beginning February 28, 2002, and semiannually thereafter in August and February, the University shall provide the Zoning Commission, Zoning Administrator, ANC 2A, Office of Planning, and Advisory Committee with an audited census of the number of full-time undergraduate students residing in (1) Foggy Bottom/West End outside the campus plan boundaries; (2) the District of Columbia outside the campus plan boundaries and Foggy Bottom/West End, organized by postal zip codes; (3) Maryland; and (4) Virginia. Each semiannual report shall also include a good faith estimate of the number of married students and students with children encompassed in each category, (1)-(4). The latest semiannual report shall be included with each application for a special exception filed pursuant to the approved 2001 Campus Plan.

Vote on Remand to Alter Conditions 2 and 9:

5-0 (Sheila Cross Reid, Anne M. Renshaw, Carol J. Mitten, Geoffrey H. Griffis, David W. Levy, to grant subject to stated conditions).

Vote to Issue Proposed Remand Order for Exceptions:

4-0 (Geoffrey H. Griffis, Anne M. Renshaw, Carol J. Mitten, and David W. Levy, to issue the proposed order)

Vote to Issue Final Order:

4-0 (Geoffrey H. Griffis, Anne M. Renshaw, David W. Levy, and Carol J. Mitten (by absentee vote), to issue the final order as amended at the public meeting on December 11, 2001)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member has approved issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

4370.

Final Date of Order: JAN 23 2002

PURSUANT TO 11 D.C.M.R. §3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 D.C.M.R. §3125.9, THIS ORDER WILL BECOME EFFECTIVE 10 DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 D.C.M.R. § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER, AND MAY RESULT IN THE IMPOSITION OF FINES AND PENALTIES PURSUANT TO THE CIVIL INFRACTIONS ACT, D.C. CODE §§ 2-1801.01 TO 2-1803.03 (2001 ED.)

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 14 IN TITLE 2 OF THE D.C. CODE. *SEE* D.C. CODE § 2-1402.67 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

4371.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16553-F

As Director of the Office of Zoning, I hereby certify and attest that on JAN 2 3 2002, a copy of the foregoing Order was mailed first class, postage prepaid, to each party and public agency who appeared and participated in the public hearing concerning this matter, and who is listed below:

Maureen Dwyer, Esquire
ShawPittman
2300 N Street, NW
Washington, D.C. 20037-1128

Jack Evans, Councilmember
Ward Two
The John Wilson Building
1300 Pennsylvania Avenue, NW, Suite 106
Washington, D.C. 20004

Maria Tyler, Commissioner
Single Member District 2A03
949 25th Street, NW
Washington, D.C. 20037

Elizabeth B. Elliott, Chairperson
Advisory Neighborhood Commission 2A
C/O St. Mary's Court
725 24th Street, NW
Washington, D.C. 20037

Jeff Marootian, Commissioner
Single Member District 2A06
2212 I Street, NW, Suite #D206
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Richard Sheehey
Advisory Neighborhood Commission 2A
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Ellie Becker, Vice-President
Foggy Bottom Association
2528 I Street, NW
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Alan Bergstein
Office of the Corporation Counsel
441 4th Street, N.W., 7th Floor
Washington, DC 20001

Attested By: _____
JERRILY R. KRESS, FAIA
Director

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16553-F

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BZA
Case No. 16553F
Exhibit No. 34

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Sara Maddux, Representative
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JERRILY R. KRESS, FAIA
Director