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March 3, 2004

Carol Mitten
Chairperson
D.C. Zoning Commission
441 4th Street, N.W.
Room 210
Washington, DC 20001

Dear Chairperson Mitten and members of the Commission:

Enclosed please find an original and 20 copies of the Findings of Fact and Conclusions of Law proposed by ANC2A. If we can provide any further information, please let me know. Thanks you for your consideration.

Very truly yours,

Randell Hunt Norton

Encl.

cc: Allison Prince, Esq.

ZONING COMMISSION
District of Columbia
Case No. 03-29
Exhibit No. 53

ZONING COMMISSION
District of Columbia
CASE NO.03-29
EXHIBIT NO.53

PARTY ANC-2A'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Case No. 02-29 (Square 103 Residence Hall P.U.D. Application)

Pursuant to notice, the District of Columbia Zoning Commission held a public hearing on February 19, 2004 to consider The George Washington University's application for a planned unit development ("PUD") pursuant to Title 11, Chapter 24 of the District of Columbia Municipal Regulations. The hearing was conducted in accordance with § 3022 of the same title.



FINDINGS OF FACT:

1. On July 30, 2003, The George Washington University ("GW") filed an application for approval of a planned unit development ("PUD") for construction of a dormitory on Lot 817, Square 103 located in its Foggy Bottom campus.

2. On November 12, 2003, the Zoning Commission set down the application for a hearing in the existing R-5-D zoning. GW's proposed dormitory is 90 feet in height, and will include 379 beds – 100 more beds than would be permitted under existing zoning as a matter of right. The hearing was noticed for February 19, 2004.

3. At the February 19, 2004 hearing, the Commission heard testimony and received evidence from parties GW and ANC-2A, and from the Office of Planning. The Commission also heard statements from interested persons in support of and in opposition to the application.

4. As a preliminary matter, ANC-2A moved to reject the PUD application and for a refiling of the matter as a special exception/matter of right development. The ANC-2A noted that neither the carefully drafted Zoning Regulations for Campus Plans nor those for PUD applications permit the use of PUDs in a Campus Plan. The ANC's position was supported by letters from the Foggy Bottom Association, the Committee of 100, the Federation of Citizen's Associations, Neighbors for a Livable Community, and the Spring Valley -- Wesley Heights Citizens Association. Prior to the hearing, the Commission denied the ANC's motion, relying on GW's argument that the absence of an express prohibition implies the permissibility of using PUDs in a Campus Plan. The Applicant also argued that GW developed two other PUDs that are now included in the Campus Plan. The Commission notes, however, that one these properties was outside the Campus Plan when approved and was later included in the Campus Plan when GW expanded the campus boundaries and that in neither case was the issue specifically raised of whether a

PUD properly may be used in the context of an approved campus plan under the applicable statutes and regulations.

5. Under the Zoning Regulations, Campus Plans are intended to reflect a university's future development, and the regulations delineate when and where a special exception my be granted that would amend or alter the Campus Plan. The Zoning Commission, in considering the conditions under which a Campus Plan may be deviated from, did not denote the PUD as a measure for such deviation.

6. GW premises its application on several purported amenities and public benefits to the community.

a. GW's primary proposed amenity to the community is that the dormitory will aid the University in meeting its legal requirements for providing on-campus housing to its students. However, as GW concedes and the Commission finds, approval of this PUD will not by itself bring the University into compliance with the legal requirements imposed by the BZA.

b. As another alleged amenity to the community, the Applicant proposes to provide retail space intended for student use that is open to the public on the ground floor of the dormitory. As yet another benefit of permitting a PUD on lot 817 in Square 103, GW also proposes renovating Quigley's, an existing building on

another non-related lot in Square 103. Quigley's is not located on the proposed PUD. No specifics have been provided as to the type of retail planned. GW has asserted that the planned facilities would be for primarily "university use but open to the public." (Office of Planning Report at 8). The only purported benefit to the neighborhood is that the unspecified retail establishments will be open to the public. There is no evidence beyond speculation that such unspecified retail will provide any benefit to the neighborhood.

c. A third alleged amenity to the community is GW's proposal to build an attractive building made out of high quality materials on the PUD site. While the building design has been approved by the Commission of Fine Arts and is otherwise unobjectionable, there is nothing beyond mere speculation to indicate that this represents a substantial benefit to the community as opposed to a building that was not part of a PUD development.

d. The Office of Planning report reflects that "[o]riginally, attractive landscaping was indicated as an amenity." However, "[a]fter the building height was reduced, reducing the number of beds, GWU scaled

back this commitment." (Office of Planning Report at 8). As a result, the streetscape proposed by GW is not a substantial benefit to the community.

e. The Applicant proposes that approval of a 379-bed dormitory on Square 103 will have a positive impact on the overall transportation infrastructure by increasing pedestrian traffic. GW testified, however, that it does not prohibit students living on campus from owning cars.

f. GW asserts that the PUD, if approved, will stabilize the Foggy Bottom neighborhood by housing more students on campus. GW, however, also continues to increase student enrollment beyond its cap thereby increasing the number of students in Foggy Bottom and further destabilizing the Foggy Bottom neighborhood.

g. The applicant asserts a public benefit in creating an environmentally sound building, and eliminating a surface parking lot. The Office of Planning Report and the testimony of the Office of Planning representatives reflect that, at the suggestion of the Office of Planning, GW had stated its intent to utilize sustainable design practices to construct an environmentally responsible building, including obtaining basic LEED™ certification.

However, after the Zoning Commission setdown ruling, GW has scaled back its environmental proposals, including withdrawing the commitment "to go far enough to obtain the basic LEED™ certification." (Office of Planning Report at 9). As a result, the benefit, if any, to the public on this issue is speculative and illusory.

7. The Office of Planning hesitantly recommended approval of the planned dormitory, but noted that, while the proposal contains some benefits, several areas of amenities have been scaled back when Commission determined that the application would be considered in the existing R-5-D zoning. In its testimony, the Office of Planning expressed regret that so many of what GW had proposed as amenities had been scaled back and urged the Commission to push the university on these matters to reconcile the proposed amenities and potential adverse impacts including increased number of students, service access and student move-in and move-out periods. (Office of Planning Report).

8. The Applicant currently cannot comply with the BZA's on campus housing requirements and, at the same time, continue to increase enrollment. The applicant cited to an undergraduate enrollment figure of 8,066 students. (Applicant's Proposed Findings of Fact at p. 4). According

the figures submitted by the Foggy Bottom Association (taken from GW's own website), this figure appears not to include the part-time undergraduate enrollment for Fall 2002. Under the Applicant's submitted enrollment figure for 2002, the University would require 5660 beds to meet the BZA requirements. According to the same Office of Institutional Research ("OIR") figures, GW undergraduate total enrollment for Fall, 2003 is 9,223 full-time and 586 part-time students. (GW OIR at http://www.gwu.edu/~ire/unduplicated_e03.htm). Using the full-time undergraduate enrollment figures only, the University's obligation for providing beds has increased to 6,823 beds.

9. At the hearing, the Applicant provided a chart consisting of Fall, 2001 purported full-time undergraduate enrollment, and Spring and Fall, 2004 enrollment figures. The chart is incomplete and is inconsistent with the 9,223 full-time undergraduate enrollment figure for Fall, 2003 reported by the GW OIR. The Applicant did not submit evidence that it intends to reduce enrollment from the figures in 2003 to that proposed for Fall, 2004.

10. As the figures supplied by the Foggy Bottom Association, utilizing in large part GW's own figures, that GW has exceeded the 20,000-student enrollment cap mandated by the BZA by approximately 1,600 in 2001, by approximately

2,400 in 2002, and by approximately 2,800 in 2003. (BZA Order on Application No. 16553, condition 8).

11. The Commission credits the agency comments referenced by the Office of Planning, in which the Second Police District noted that it is unknown whether the 380 beds in the proposed project would be used to house current students or to increase student enrollment by 380 students.

12. The Office of Planning Report and the testimony of the Office of Planning representatives at the hearing reflect that the Office of Planning urged that GW make a specific commitment for future student housing at the old hospital site (Square 54). GW refused to provide such information to the Office of Planning, stating that "decisions have not been made for that site," and did not provide such information to the Commission at the hearing or otherwise. (Office of Planning Report at 8). GW has refused to provide such information despite it's own previous acknowledgement that the old hospital site would provide "enough housing for three or four universities." (Deposition of President Stephen J. Trachtenberg, Kreuzer v. GW, Case No.03-00003645, Nov. 24, 2003 at 71).

13. The Report of the Department of Transportation reflects mixed feelings about the project. The Report evidences concerns about this project regarding student

move-in and move-out procedures, which will increase traffic congestion. The DDOT's concerns are also reflected in its recommendation that GW impose restrictions on automobile use by the residents in then new dormitory. The DDOT, however, asserts that providing additional on-campus housing will reduce traffic congestion in Foggy Bottom, but does not provide supporting figures or studies for this assertion. The report also does not address the impact on traffic and parking that will result from a loss of 65 parking spaces that are currently located on the lot.

14. The Applicant's plans also lack any formal loading dock, and appear to rely solely on the existing on-street loading and unloading areas for the service building. The service building already serves as a distribution center for the entire GW Campus.

15. The Commission recognizes that the lack of a rear yard will not provide adequate light and air as contemplated by the Zoning Requirements for rear yard setbacks. As the Applicant does not own all of the abutting properties to the alleyway, permitting the Applicant to cut the rear-yard setback requirements in half would set provide poor precedent for future development along the alley.

16. The Commission recognizes the ANC's concerns that the proposed court dimensions and set-back waivers will not provide the measure of light and air as contemplated by the Zoning Regulations. GW has provided no specific justification for such waivers of the light and air requirements.

CONCLUSIONS OF LAW

The PUD concept is inappropriate to use in the context of an approved campus plan and contrary to the authority granted in the appropriate zoning regulations and to the spirit of those regulations. See Mason v. Rock Creek Plaza, Ind., 164 F. Supp. 269 (D.D.C. 1958), affirmed Rock Creek Plaza, Inc. v. Zimmerman, 266 F.2d 695, 105 U.S. App. D.C. 291, cert. denied 361 U.S. 833 (ambiguous sections of zoning ordinances should be interpreted according to intent of the enacting body); see also 11 D.C.M.R. § 2400.4; 11 D.C.M.R. § 210.4.

Similarly, the regulations regarding PUDs reflect that its use here is improper. The goal of the PUD is to provide flexibility of development provided "the project offers a commendable number or quality of public benefits and advances the public health, safety, welfare, and convenience." (11 D.C.M.R. § 2400.2). The PUD process,

however, "shall not be used to circumvent the intent and purposes of the Zoning Regulations, nor to result in action that is inconsistent with the Comprehensive Plan." (11 D.C.M.R. § 2400.4).

Pursuant to 9-641.02, amendments to zoning maps and regulations shall not be inconsistent with the Comprehensive Plan. Under the Campus Plan regulations, GW is already provided with the "significant flexibility" in its development for which it seeks approval of a PUD. PUDs allow for increased building height and density, similar to the flexibility the University is allowed in being able to aggregate its FAR under the Campus Plan.

The current application is an example of the dangers of considering PUD requests piecemeal where there is a campus plan in effect. The Commission finds that the application focuses too closely on the individual development involved and not sufficiently on the goals and directives of the Campus Plan. As an example, despite the urgings of the Office of Planning, the applicant has refused to make any specific commitment for student housing regarding Square 54 (the old hospital site) that would link the current proposed development with a comprehensive plan to meet applicant's student housing requirements.

Even assuming that the PUD mechanism is appropriate for consideration here, the proposed amenities do not represent a commendable number or quality of public benefits to justify approval of this PUD. Specifically, the increase of approximately 100 student beds does not represent a significant step towards meeting Applicant's student housing requirements, particularly when Applicant declines to inform the Commission of how other of its properties, which may be more appropriate for this use, are planned to be developed. The proposed amenities regarding retail space on the property and off the property at Quigley's are speculative and directed primarily towards GW students and not the neighborhood. The proposals for streetscaping and environmentally sustainable design have been scaled back by the applicant to the extent that they have become so vague that their purported benefit to the neighborhood is illusory.

The liabilities and detriment to the stability of the Foggy Bottom Community outweigh the purported amenities and benefits to the public outlined in GW's proposal.

Additionally, the Commission must accord great weight to the ANC's opposition to the application as required by D.C. Code § 1-308.10(d) (2001). The ANC has a unique vantage point in analyzing the impact of proposed

University developments on its constituents. (BZA Order on Application No. 16553 at 12). Accordingly, the Commission accords great weight to the well-reasoned opposition of the ANC.

In weighing all the proposed amenities against the detriments outlined herein, the Commission finds that the existing R-5-D zoning is adequate and that Applicant has not sustained its burden of showing the need for a PUD for this project.

In consideration of the Findings of Fact and Conclusions of Law contained herein, the Zoning Commission of the District of Columbia hereby orders that the application for consolidated review of a Planned Unit Development for the property located at 2025 F Street, NW (Lot 817, Square 103) be and it hereby is DISAPPROVED.

This Order was Adopted by the Zoning Commission at its public meeting held on March 8, 2004 by a vote of _____.

In accordance with the provisions of 11 DCMR §2038, this order shall become final and effective upon publication in the D.C. Register; that is, on _____.

_____
Carol J. Mitten, Chair
Zoning Commission

_____
Jerrily R. Kress, FAIA
Director, Office of Zoning

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2004, the foregoing "ANC2A's Proposed Findings of Fact and Conclusions of Law" was served by hand delivery on the following:

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