

NEIGHBORS FOR A LIVABLE COMMUNITY

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December 11, 2008

BEFORE THE DC ZONING COMMISSION

Case # 08-06-7

**STATEMENT OF NEIGHBORS FOR A LIVABLE COMMUNITY
REGARDING AMENDMENTS TO THE ZONING REGULATION
REGARDING UNIVERSITY PRESENCE IN RESIDENTIALLY ZONED
COMMUNITIES**

Mr. Chairman and Members of the Zoning Commission:

I am Robert Herzstein, President of Neighbors for a Livable Community. For more than twenty years our organization has served the residents of Spring Valley concerned about the impacts of American University on our quiet residential community.¹

We have gained a great deal of experience with the problems created by this large institution crowded onto a small parcel of land abutting our homes, and we have also learned a lot about the processes of the DC government that are supposed to safeguard the interests of residents who rely on zoning to protect the enjoyment and value of their homes from non-residential uses.

We urge you to give attention to the small number of serious concerns we have regarding the Office of Planning recommendations affecting regulation of campus impacts.

We endorse the comments and recommendations made by our ANC Commissioners, Thomas M. Smith and Nan S. Wells, in their letter to you of December 9. Our concerns supplement theirs.

- 1. The Commission should make clear in its guidance to the Office of Planning that there should be no weakening of the basic standard regulating University uses contained in the existing regulation –**

¹ We also give close attention to impacts of commercial uses and the other nearby giant institution, Sibley Hospital.

ZONING COMMISSION
CASE No. 08-06-7
ZONING COMMISSION
EXHIBIT No. 21
District of Columbia
CASE NO. 08-06-7
EXHIBIT NO. 21

namely, that they “not [be] likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions.”

This policy is firmly established in the Comprehensive Plan, which directs that the planners:

“Ensure that . . . colleges and universities . . . that occupy large sites within residential areas are planned, designed and managed in a way that minimizes objectionable impacts on adjacent communities. The zoning regulations should ensure that the expansion of these uses is not permitted if the quality of life in adjacent residential areas is significantly adversely affected.”

As indicated in the following paragraphs, some of the OP proposals fall short of this mandate and would weaken the rather imperfect protection we currently have.

2. OPs recommendation # 3, which would codify campus plan criteria “that address the full range of possible impacts,” is a helpful step. However,
 - a. **New regulations should also make clear that the burden of establishing that these criteria have been met falls upon the university that is seeking approval of its plan.** At present, the regulations and the practice of this Commission have not made clear who has the burden of proof. Frequently the campus plan review process, both in OP and in this Commission, have seemed to proceed on the notion that a university’s proposed plan is approvable unless affected neighbors can establish that it has objectionable impacts. This puts a burden on individual neighbors and neighborhood groups, who have no organized planning and advocacy resources, to dig their way out of a hole. The burden should clearly fall on the university that (i) *is seeking an exception* to an established zoning rule designed to protect residents, (ii) *has significant benefits to gain* from the exception, and (iii) *has significant resources* in place to conduct the planning and factual research needed by those who are to determine whether the criteria have been satisfied – especially whether the proposed plan will “not [be] likely to become objectionable” to neighboring residents.
 - b. **The new regulations should also make clear that “economic development” or other macro benefits cannot trump the interests of individual homeowners, who have invested their resources and their efforts, often over many years, in establishing nice homes in peaceful environs.**

- c. **The criteria should make clear that a “cap” on the number of students and staff on a campus is expected.** The recommendations before you refer mysteriously to a “count” on students and staff, whereas past practice in campus plan cases has been to establish a “cap,” or firm limit, on campus population. A population cap is the most fundamental protection a residential neighborhood needs against creeping impacts by a university in its midst. Individual impacts from traffic, specific lighting conditions, noise generating activities, etc. must of course be regulated. But there are so many potential specific impacts, and their growth so hard to control over time, that regulation of specific impacts will become ineffective unless there is a firm cap on the underlying pressure that generates them – i.e. campus population.
3. **The second stage review process should not contain an exception for changes in a campus plan that do not exceed specified sizes, as proposed in OPs Recommendation # 4.** This would create a major loophole in regulation of non-conforming uses by universities and would greatly weaken the protection of established residential communities.
- a. Our experience over 20 years, covering two successive campus plan reviews, has made clear that most details of a University’s development over the next ten years simply cannot be anticipated when the plan is under consideration. The ten-year plan is just an outline, to some extent a “wish list.” The actual development often differs a great deal. The second stage review has been regarded by the Commissioners and staff as a fundamental protection for residential neighbors. It is only at that stage that traffic impacts, location of windows with light impacts, actual activities with noise impacts, etc. can be concretely understood so as to permit intelligent regulation.

Changes by a university following approval of its campus plan can have serious adverse impacts on neighboring residents even if they are under the square foot thresholds specified in the OP recommendations. A 3500 square foot structure on the border of the campus could of course generate noise or light or traffic or water runoff or other conditions that spoil the enjoyment of their homes by neighbors. *For example, AU has in the past few years erected a large lighted scoreboard on its playing field directly in the view of neighboring homes. The scoreboard also incorporates a noise horn used during games. This structure in the view of neighbors is not consistent with AU’s campus plan. Under the OP recommendations it could be erected with total impunity from any regulation.*

- b. Second stage review provides an important opportunity for neighbors to hold a university accountable for departures from its campus plan obligations. Enforcement of campus plans by the Zoning Administrator has been so weak as to be largely non-existent. This is a fact of life that the Commission, with its over-arching responsibilities, must recognize. Under such circumstances, often the only available tool for inducing a university to comply with its campus plan obligations is the threat that the Commission may deny its application for further exceptions during a second stage review.
4. We endorse the comment of ANC Commissioners Smith and Wells that university uses and other institutional uses are different and call for separate treatment in the new regulations, even though there may be similarities. There is little real economy of effort to be gained by attempting to combine all these uses under one regulation.

Respectfully submitted,

Robert Herzstein
President