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29 December 2008

Zoning Commission of the District of Columbia
441 Fourth Street, NW Suite 210 South
Washington, DC 20001

Re: ZC Case No. 08-06-7: Comprehensive Zoning Regulations Rewrite:
Campus/Institutional

Dear Members of the Zoning Commission:

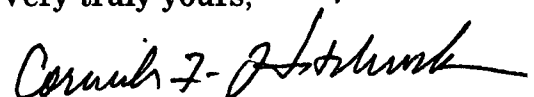
I write on behalf of the Foggy Bottom Association, a citizen group representing residents of the Foggy Bottom and West End neighborhoods. FBA endorses the comments being filed by Advisory Neighborhood Commission 2A, the Committee of 100 on the Federal City, and ANC Commissioners Smith and Wells. FBA residents are directly affected by the proximity of George Washington University, which is operating in a residential zone as a result of various approvals granted under the Commission's "campus plan" regulations and which has received permission to expand under recent planned unit development applications affecting the campus as a whole, as well as Square 54, the site of the former GWU Hospital.

As the Association has indicated in testimony before the Commission in these and prior cases, GWU's presence has produced various undesirable consequences over the years in light of the chronic over-enrollment of students, given available facilities; unacceptable noise levels for GW's neighbors, along with a failure to police rowdy and disruptive student behavior; as well as increased traffic and congestion.

FBA participated in proceedings before the Office of Planning and attaches a copy of comments submitted to OP during that process.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any further questions.

Very truly yours,



Cornish F. Hitchcock

cc: Joy Howell, President, FBA

ZONING COMMISSION
District of Columbia
CASE NO. 08-06-7
EXHIBIT NO. 29
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District of Columbia
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18 August 2008

Mr. Travis Parker, AICP
Mr. Stephen Varga, AICP
Office of Planning
801 North Capitol Street NE Suite 3000
Washington, DC 20002

Dear Travis and Steve:

The Foggy Bottom Association ("FBA") is pleased to submit the following comments regarding the OP recommendations dealing with the Campus/Institutional Subject Area in the ongoing review of the zoning regulations required by the approved Comprehensive Plan. FBA appreciates the opportunity to have participated in the roundtable discussions that OP sponsored last month. This letter will supplement the comments made during those sessions.

The FBA appreciates very much the time and effort that OP has put into this effort. Questions about the proper planning for campus and university uses are very important to FBA members, who reside in the "close-in" neighborhoods of Foggy Bottom and the West End. FBA members are particularly in need of planning and zoning protections that maintain clear distinctions between residential districts and uses, on the one hand, and non-residential districts and uses, on the other. We thus welcome OP's attempt to focus on drafting regulations that would improve the oversight of institutional uses in ways that protect, as well as respect, residential areas.

We have reviewed the five recommendations, as well as the *Best Practices* report canvassing practices in other cities. The following comments will focus on university uses and will not comment on separate issues regarding private schools and hospitals.

Recommendation 1: Apply section 210 of the Zoning Regulations to require the applicant to address the full range of impacts in a campus master plan.

FBA strongly supports this recommendation to upgrade the standard in

campus plan cases, and we believe that OP has correctly identified the pertinent issues in its report. Campus plan applications typically involve complex and large-scale development stretching over a decade or more. Under the circumstances, sound planning principles argue in favor of as full an examination of the proposal at the earliest possible stage. The need for such thoroughness is important not only for sound decision-making in individual cases, but also because university uses are not permitted as a matter of right in a residential zone. As a non-conforming use, university uses must affirmatively be shown to be compatible with the underlying zone.

Because FBA supports OP's analysis of the pertinent issues, we will not comment at length on each item, although we will highlight several key topics of importance from the community's perspective.

Edge conditions: It is critical to maintain clear boundaries with respect to university uses affecting the surrounding residential zone. To the extent that there is any discussion of a "transition," the transitional area should be clearly within the campus boundaries and property. The Foggy Bottom and West End areas are largely built out, and any university developments in this neighborhood will continue to push directly against residential uses.

Community benefits: During the roundtables, there were suggestions to include the "benefits" of universities as part of the calculus for considering a campus plan proposal. The cited benefits were often vague, amorphous and non-quantifiable slogans, *e.g.*, jobs associated with a university use. Moreover, no consideration was given to questions of costs associated with non-matter-of-right development, *e.g.*, the adverse effect on residential neighborhoods, particularly if university uses displace residential uses. There are several good reasons for treating these suggestions with care.

The District of Columbia is unique among the cities examined in the *Best Practices* report, in that any jobs created by a university use in another city will generate revenues that can be taxed at the local level or, at a minimum, at the state level. In the District of Columbia, however, a significant percentage of employees reside in the suburbs; their incomes are not subject to taxation in the District of Columbia, and their tax revenues go to Annapolis or Richmond. To the extent that the District's planning policies make it easy to displace permanent taxpaying residents in favor of non-residential uses (or residential uses that do not generate revenue, such as student housing and associated commercial dining venues), the District of Columbia will suffer as a result. Such displacement is inconsistent with the Comprehensive Plan.

Thus, university uses can impose significant costs on a given community in terms of diminished tax revenues, increased demand for city services, and increased

usage of city streets, resulting in wear-and-tear on public streets and sidewalks, for example. That is a reason why universities make a payment in lieu of taxes in some communities—to compensate the city for the costs associated with university uses.

The FBA believes that, to the extent that alleged benefits are taken into consideration, the consideration should be rigorous and should consider as well the costs, an analysis that can be provided in a Financial Impact Statement (“FIS”) to be filed by the applicant, which would present in quantifiable form a comparison of permitting a university use versus matter-of-right development. Such an FIS should quantify the anticipated benefits as well as the anticipated costs, including such items as the anticipated annual tax revenues that would be generated if a campus plan application is approved, compared with the tax revenues that would be generated if matter-of-right uses were permitted. The analysis should consider other items that are not typically considered at present, such as economic losses caused by additional usage of city streets and services, the value of lost time because of increased traffic, etc. There are economic models that attempt to quantify the pluses and minuses of given proposals. Such analysis can and should be brought to bear on a given issue.

Identification and mitigation of impacts: Any proposal for a non-conforming university use is likely to generate a greater intensity of use than would be the case under the default residential standard. In addition, any given proposal for a university use in a residential zone is likely to generate harmful effects that would not be permitted under the default zoning rule. The current standard in section 210 takes a “first, do no harm” approach by stating that the proposed uses shall be “not likely to be objectionable” because of the four enumerated factors. This contrasts with the standard in Planned Unit Development (“PUD”) cases, where the rules contemplate that objectionable results can occur, but the implication is that they can always be mitigated.

In our view, it would be a mistake to move away from a standard requiring that a non-conforming use shall not be objectionable to a standard that says “The results may be objectionable, but we hope that they will not be because of the mitigation measures being adopted. One example is a transportation management plan that assumes that UPS or FedEx or other delivery trucks will consistently park off the street when making deliveries, rather than double-park on the street. To the extent that mitigation measures may be considered in a given case, however, and without conceding the point, any campus plan application should contain as part of its submission the base costs if mitigation measures are needed and the additional costs if they do not work as hoped for.

Sustainability and environmental impacts: FBA strongly supports the OP proposal to consider these issues at the earliest possible stage. Indeed, it is hard to

imagine how, in the year 2008, one could argue that sound planning practices forbid the consideration of such factors in an undertaking as complex as a multi-year (or multi-decade) campus plan proposal.

Up to now, the Zoning Commission has considered sustainability issues on an *ad hoc* basis in given PUD cases as the occasion presents itself. Similarly, agency consideration of the environmental issues under the D.C. Environmental Policy Act has been deferred until the building permit stage, which is just about the last stage in the regulatory process. Whether this legal interpretation is valid is an open question that the D.C. Court of Appeals has yet to resolve, as is the question of whether PUDs are appropriately granted in lieu of following the campus plan regulations.

The Zoning Commission's practice of ignoring environmental issues at an early stage of a proceeding, when alternatives can be considered and implemented, places the Commission at odds with sound environmental and planning practices elsewhere, including consideration of environmental issues under the federal statute upon which the D.C. statute was based. The current zoning review provides an opportunity for the District government to re-assess and modernize its practice.

Student, faculty caps: The OP report notes that caps are among the tools currently used in campus plan cases, and there was some opposition to the concept from university representatives during the roundtable discussions. The FBA believes, based on its experience in various campus plan cases over the years, that caps on students, as well as faculty and staff, are an appropriate planning tool here in the District of Columbia.

The Zoning Commission's order in the George Washington University ("GWU") 2000 campus plan case documented the utility of caps as a planning tool. In one order the Zoning Commission recounted how undergraduate enrollment grew by 27% in only three years from fall 1998 to fall 2001 and had beds for barely half of those students. *Application No. 16553F*, <http://dcoz.dc.gov/orders/16553F.pdf> (2001), at pp. 2-3, ¶¶ 4, 8. One key issue in that case was GWU's failure to house its undergraduates on campus and its decision (as the BZA put it) to "export" its students into nearby residential buildings, where they caused significant noise and engaged in disruptive behavior. *Id.* at pp. 5, 1213. Indeed, the BZA expressed concern about the very "survival" of these residential neighborhoods (*id.* at 10) because of GWU's "aggressive expansion into Foggy Bottom and the West End," and the BZA accepted the Office of Planning's assessment that GWU's practices had "brought those neighborhoods to the 'tipping point,' if not beyond." *Id.* at 5.

This not-so-distant history should inform any analysis of the need for caps as a tool to prevent "aggressive expansion" into a residential neighborhood. Again, it is important to recall that university uses are not allowed as a matter of right in a residential zone, so it is entirely appropriate to protect residents through a

limitation on the extent of the intrusion.

Apart from limitations on the number of students, caps on faculty and staff are also an appropriate planning tool. In an era where college rankings in *U.S. News & World Reports* are avidly followed, the student/faculty ratio is an important metric that is used in assessments of a university's statute. There are thus pressures to add faculty as a means to improve that ratio in the eyes of high school juniors and seniors. Faculty caps are an important protection to a community, as are caps on staff, which serve the same purpose.

Planned Unit Developments: Although not explicitly addressed in the OP report, the interaction of PUDs and campus plan regulations was a topic discussed at the final roundtable. The FBA believes that, as a matter of sound planning, universities should not be allowed to use the PUD process for non-conforming uses in a residential zone.

The entire thrust of the drive for new regulations in this area is to have rules that are suitably tailored to the specific type of use and impact that a university campus would have on a residential neighborhood. Assuming that regulations are considered and crafted to achieve that end, it makes no sense to say that a university should be free to disregard those rules, simply to gain some additional FAR that it could not otherwise attain. That is not good planning.

The suggestion is made that it is somehow "unfair" to deprive universities of the right to avail themselves of the PUD process. That argument lacks an adequate planning rationale. Universities can impose different demands and burdens on a residential community than is the case for other non-conforming uses. For example, a PUD that turns an R zone into a C zone may introduce commercial uses, but those uses may be limited to business hours only; by contrast, a university is a round-the-clock operation that may (and frequently does) have activities on nights and weekends. Campus plan rules can and should be drafted with an eye towards that reality, and PUD regulations may not be similarly sensitive. That is why university uses in a residential zone should be subject to a particular set of rules geared specifically to that type of use.

Recommendation 2: Amend section 210 to create a threshold structure for second-stage review within campus plans.

This recommendation addresses the concern raised during the roundtable discussion about the current two-stage review process for campus plans. Simply put the point was made that if the rules are revised to "frontload" the review process by requiring a more extensive showing at the first stage, then the second stage (when actual buildings are being proposed) should require a less extensive showing and less elaborate proceedings.

To address this concern, OP is recommending a limitation on second-stage

review to additions that would add over 20,000 square feet of gross floor area (“GFA”), or any change in use of existing buildings totaling greater than 50,000 square feet of GFA. Additions or use changes not anticipated in the plan would require an update to the plan unless they contain less than 3500 square feet of GFA.

FBA understands the concern about providing some minor flexibility that would obviate the need for full-scale hearings in situations such as OP describes, *e.g.*, a new stairwell, new locker rooms, ADA compliance, required medical improvements, utility changes. (We assume too that whatever GFA measure would be selected would be consistent with the applicable zoning classification and not be in addition to it).

That said, we are concerned because the OP report does not provide a rationale for why the precise GFA measurements are appropriate for the District of Columbia. Why is 3500 square feet a suitable measure instead of 2500? Why 20,000 square feet? Or 50,000 square feet? The report provides no details; while it mentions that these metrics are currently used in the city of Boston, the *Best Practices* report contains no analysis of these figures or explanation of how they would affect development in the District of Columbia. Thus, even if some kind of threshold for reduced second-stage review were appropriate, it is not possible to evaluate the measures OP has proposed.

Also, assuming some kind of threshold is adopted, there is a need for an override mechanism for specific projects of concern. Campus plans are typically approved for a decade or more, and much can change between the time that regulatory approval is initially granted and a specific building is actually ready for construction. In the intervening years, the neighborhood may have changed, *e.g.* traffic may have become worse than anticipated, or other factors may have come into play that were not contemplated. Under the circumstances, there may be situations in which the community, or the Office of Planning or the Zoning Commission would find value in reviewing a new, unanticipated building of 19,500 square feet of GFA (just under the 20,000 square feet threshold proposed in the OP report).

There would be no mechanism for doing so, however. Assuming for argument’s sake that the policy judgment is made to have some kind of truncated second-stage review – a judgment that the FBA cannot make without more information – we believe that there should be an override mechanism in specific cases if there are specific concerns about a specific project. One possible approach would be a petition by the affected Advisory Neighborhood Commission to the Zoning Commission that asks the Zoning Commission to conduct a full second-stage review for projects of special concern.

Recommendation 4: All institutional uses in residentially-zoned areas containing 150,000 square feet or more of GFA within their campus would require the submission and approval of a campus master plan.

FBA expresses no opinion on issues other than the applicability of a campus plan requirement on colleges or universities (assuming that hospital uses on a university campus are considered as part of a campus plan case, as is now the practice). That said, we note the point made previously, namely, that the report is not clear as to the basis for choosing the specific threshold of 150,000 square feet of GFA, as opposed to another measure.

Thank you for the opportunity to submit these comments. Please do not hesitate to let us know if the Association can provide any further information.

Very truly yours,

/s/

Cornish F. Hitchcock