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Federation of Citizens Associations of the District of Columbia

ORGANIZED MARCH 5, 1910 • INCORPORATED JUNE 3, 1940

July 14, 2000

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District of Columbia Zoning Commission
441 4th Street, N.W., Suite 220
Washington, D. C. 20001

Re: Zoning Commission Case Nos. 99-9 ("Campus Plan, Transfer of Review Authority") and 99-10 ("Campus Plan Review and Promulgation of New Regulations")

Dear Chairperson Anthony Hood and Members of the Commission:

This letter is submitted on behalf of the Federation of Citizens Associations of the District of Columbia, an association of over three dozen neighborhood and civic associations throughout the District. We write in part to respond to letters dated March 3, 2000 and July 7, 2000 by four universities and the Consortium of Universities of the Washington Metropolitan Area. We also seek to frame the issues that need to be addressed in the forum you have scheduled for July 27, as seen by our constituent neighborhood associations.

Summary

We urge transfer of campus plan approval authority from the BZA to this Commission. In addition, we urge amendment of the zoning regulations relating to campus plans to address the two most critical failings in the present regulatory scheme: unregulated expansion of university uses beyond the sanctioned campus boundaries, and authorization of enrollment increases without mandatory provision for adequate on-campus student housing and parking.

The Problem

Campus planning is meant to consider the interests of the university, neighboring residents, and the District as a whole, and to provide for a "campus" that does not deleteriously impact its neighbors. The current regulation purports to require strong protection of adjoining neighborhoods, allowing university uses only if they are "not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions." 11 DCMR 210.2. **It doesn't work.** The Council in two Comprehensive Plans, and the mayor in recent remarks to our Federation, have recognized that the current scheme is seriously flawed. Universities have been allowed to acquire, raze and convert properties outside their sanctioned boundaries at a

ZONING COMMISSION
Case No. 99-10
Exhibit No. 5

ZONING COMMISSION
District of Columbia
CASE NO.99-10
EXHIBIT NO.5

rate which threatens the separate existence of adjacent residential communities. Approved plans allow uses which are clearly "objectionable to neighboring property," sometimes in reliance on patently inadequate and unenforceable conditions. Enrollments are allowed to increase substantially with inadequate provision for student housing, further squeezing existing housing stock and the residential communities on which that stock depends.

Why does this happen? For three reasons: the universities cloud the real picture as to benefits and costs; the current regulations are weak and unenforceable; and responsibility is fractured.

Universities employ thousands of people and spend millions of dollars. However, they also take property worth hundreds of millions of dollars off District tax rolls while costing millions of dollars in tax-supported services. Their spending benefits mainly other jurisdictions. Extrapolating from figures provided by GWU's own consultant, over 78% of George Washington University's payroll is paid to non-District residents, and taxed by non-District taxing authorities. The District receives only 12.7% of the jobs and only 15% of the income generated by the aggregate spending of GWU and its students. Georgetown University reports that its employees are divided equally between the District, Maryland and Virginia.

Because they have been unregulated outside their sanctioned campuses, universities strangle residential communities. GWU has recently acquired over three dozen properties in Foggy Bottom outside its campus boundary, including hotels, apartment buildings, and many townhouses. In 1988, the BZA moved Square 43 outside the GWU boundary in order to provide a buffer for the adjoining residential community, finding the change "essential to the preservation and enhancement of residential uses in the Foggy Bottom neighborhood." Order of February 25, 1988 in BZA Application File 14455, page 34. This action of the BZA was cited by the then Director of the Office of Planning as evidence – in fact, his only evidence – of the Board's "increasingly vigorous handling" of campus plan cases. Based on the purported vigor and effectiveness of the Board's management, the director recommended against moving approval authority to this Commission. Memorandum of October 17, 1988, in Commission File 86-11 (also found in Commission Files 99-9 and 99-10). GWU then acquired and promptly razed all but three of the twenty residential townhouses on Square 43, with no campus plan review.

Students often constitute a majority of the residents of nearby residences in any event, because universities seldom provide adequate housing on campus. In its review of the pending GWU plan, the Office of Planning described the overall effect as being to push the community toward a "tipping point," beyond which Foggy Bottom "simply transforms into a 'University area'."

The law has proven to be too vague to require rejection or modification of university uses even when patently "objectionable to neighboring property." Because Section 210.2 sets no objective or quantifiable standards, the BZA has felt free to rely upon long lists of precatory and unenforceable "conditions" to protect neighboring

residential communities. An example: in approving the placement of a replacement GWU Hospital just south of Washington Circle, the BZA relied upon voluntary routing and scheduling of truck deliveries to the huge unified loading dock, which is to face the Foggy Bottom Historic District, to avoid impacts of substantial truck traffic through the residential community. There was no provision for enforcement, and of course it will not be enforced. Given the vagueness of the standard, and the implied wide discretion in the BZA, courts have uniformly upheld decisions, not because they are wise, but because they are permitted by the law.

As noted, even the weak review conducted of on-campus uses is not being required of properties outside the campus boundary, so long as zoning would permit the proposed use by non-university owners. Thus, a hotel far from the "campus" can be converted to a dormitory overnight, without notice to the community or any "campus plan" review. Essentially, the concept of "campus planning" has been set on its head: universities are free to expand their "campuses" without **any** review to determine whether the interests of the neighboring communities and the District as a whole are being appropriately protected, **so long as they do so outside the sanctioned boundaries.** It is easier to expand outside the "campus" than on, and since there is no review to determine whether a property should be subjected to university uses, there is no control on what properties are removed from the tax rolls.

Responsibility for this situation is currently fractured. The Council has spoken clearly and repeatedly, but waits for this Commission to change the regulations. The Commission can amend the regulations, but has left the responsibility to apply them to the BZA. The BZA has been reluctant to use the only leverage available, that of conditioning enrollment increases on needed changes.

The Commission, the author of the regulations, should not pass this important responsibility to a board that deals with variances and single-parcel issues. This Commission approves Planned Unit Developments, the nearest analogues to campus plans. The argument of the universities that chaos would result if plan approval authority is taken by the Commission is specious. Rather, the substantial expertise of the Commission in dealing with large and complex development proposals would be invaluable. Unchecked – indeed, unregulated – growth by universities presents complex issues of public policy which the current law, and the BZA, have not been able to deal with effectively.

In both 1994 and 1999, the Council found that "[l]oss of housing stock is ... a critical problem in Foggy Bottom/West End, aggravated by the lack of dormitory construction on the [GWU] campus," and that "a major cause" of the problem is conversion of apartments and other buildings to university uses. Similar conditions exist in communities impacted by other universities. The Council has favored moving plan approval authority to this Commission, has specified that "adjustments shall be made to existing zoning regulations and campus plans to address these problems," and has asked the Zoning Commission to open a text amendment case. A response is overdue.

The Solution

Attached to this letter is a proposed set of amendments to Section 210 designed to address the most important of the defects in the present regulatory scheme. The amendments accomplish three changes. First, approval authority for campus plans is moved to this Commission (parallel amendments to Sections 507 and 615 would be required). Second, a goal of housing students on campus is set, and a minimum standard going forward is established. Universities are required on a prospective basis to match enrollment **increases** with on-campus housing, with a provision allowing reasonable transitional measures for the first plan approved after the adoption of the amendment. Third, subjection of any property, whether inside or outside the previously sanctioned campus boundary, to university uses, is to be reviewed as part of the campus plan process. Before a property outside the sanctioned campus can be subjected to university uses, and thus removed from the tax rolls, the university must make additional showings that the net effect on the public fisc (tax revenues and tax-supported services) and on the District's economy will be neutral or positive.

The Commission asked for comment on whether Commission review should be by special exception, as is currently the case, or as a Planned Unit Development. Our approach has been to seek the most compact, targeted, and understandable changes to the regulation, and we have therefore cast them as amendments to the current 11 DCMR 210. However, it is possible that an approach combining aspects of each regime might be the ideal. Planned Unit Developments are generally more compact, and can be more rigid, than major university campuses. Some flexibility, including relaxation of height and density requirements, might be appropriate within the core of a major campus. However, we believe that those issues can be addressed adequately in the context of a special exception process.

Approval of a campus plan should require considering the interests of those affected (including the District taxpayer), protecting existing communities, and meaningful enforcement. There should be a sanctioned campus, within which the university can be afforded some relaxation of otherwise applicable standards. Outside the boundary, the burden on the university should be much higher, not lower, to justify expansion. Tax exemptions should not be available for non-complying uses. These are seemingly minimal concepts to guide planning for a "campus." They should be adopted **before** major universities are protected from meaningful oversight for another ten years.

Sincerely,



Guy Gwynne
President

Cc: Mayor Anthony A Williams
Members, District of Columbia Council
Andrew Altman, Director, Office of Planning

Attachment to Federation's July 14, 2000 Letter to Zoning Commission

Proposed Amendments to Campus Plan Regulation

1. Amend 11 DCMR 210 to replace "Board of Zoning Adjustment" with "Zoning Commission" wherever the former term appears.

2. Amend 11 DCMR 210.2 to add the following language:

   To the maximum extent feasible, colleges and universities will provide housing for students within the boundaries of the campus. The Commission shall permit an increase in student enrollment from that allowed under the previous campus plan only on condition that student housing and additional parking adequate to accommodate the proposed increase is provided within the boundaries of the campus. In considering the first campus plan for a particular campus after the adoption of the present amendment, the Commission shall permit an increase in student enrollment from that actually existing during the most recent school year only on condition that student housing and additional parking adequate to accommodate the proposed increase is provided within the boundaries of the campus. The Commission may adopt transitional measures which permit minor fluctuations in enrollment for such period as may be reasonably be required to acquire or construct sufficient qualified student housing to meet the requirements of this subsection.

3. Amend 11 DCMR 210 to add subsection 10 as follows:

   Property owned or controlled by a college or university outside the campus boundary set by the Commission may be used for college or university purposes only with prior Commission approval. The Commission shall approve such uses only if the conditions set out in this Section 210 are met, and in addition the applicant demonstrates both that the fiscal impact of the proposed use on the District is neutral or positive, and that the economic impact of the proposed use within the District is neutral or positive.

11 DCMR 210 as Amended
(Deletions in brackets, additions in bold)

Sec. 210.1. Use as a college or university that is an academic institution of higher learning shall be permitted in an R-1 District if approved by the [Board of Zoning Adjustment (BZA)] **Zoning Commission**.

Sec. 210.2. Use as a college or university shall be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of

students, or other objectionable conditions. **To the maximum extent feasible, colleges and universities will provide housing for students within the boundaries of the campus. The Commission shall permit an increase in student enrollment from that allowed under the previous campus plan only on condition that student housing and additional parking adequate to accommodate the proposed increase is provided within the boundaries of the campus. In considering the first campus plan for a particular campus after the adoption of the present amendment, the Commission shall permit an increase in student enrollment from that actually existing during the most recent school year only on condition that student housing and additional parking adequate to accommodate the proposed increase is provided within the boundaries of the campus. The Commission may adopt transitional measures which permit minor fluctuations in enrollment for such period as may be reasonably be required to acquire or construct sufficient qualified student housing to meet the requirements of this subsection.**

Sec. 210.3. In R-1, R-2, R-3, R-4, R-5-A and R-5-B districts, the maximum bulk may be increased for specific buildings provided the total bulk of all buildings do not exceed the gross floor area prescribed in R-5-B. In all residential districts similar bulk increases are permitted provided that the total bulk of all buildings on campus not exceed the gross floor area in the R-5-D District.[1]

Sec 210.4. The applicant shall submit to the [BZA] **Zoning Commission** a plan for developing the campus as a whole, showing the location, height, and bulk, where appropriate, of all present and proposed improvements, including but not limited to:
[a] buildings, and parking and loading facilities;
[b] screening, signs, and public utility facilities;
[c] athletic and other recreational facilities; and
[d] a description of all activities conducted or to be conducted on the campus, and of the capacity of all present and proposed campus development.

Sec. 210.5. Within a reasonable distance of the college or university campus, and subject to compliance with the provisions of Sec. 210.2, the [BZA] **Zoning Commission** may also permit the interim use of land or improved property with any use that the [BZA] **Zoning Commission** may determine is a proper college or university function.

Sec. 210.6. When a major new building that has been proposed in a campus plan is instead moved off-campus, the previously designated site shall not be designated for or devoted to a major new building until or unless the [BZA] **Zoning Commission** has approved an amendment to the campus plan applicable to the site; provided, that for this purpose a major new building is defined as one specifically identified in the campus plan.

Sec. 210.7. In reviewing and deciding a campus plan application or new building construction pursuant to a campus plan, the [BZA] **Zoning Commission** shall consider, to the extent they are relevant, the policies of the District Elements of the Comprehensive Plan.

Sec. 210.8. As an integral part of the application requesting approval of new building construction pursuant to a campus plan, the university shall certify and document that the proposed building or amendment is within the Floor Area Ratio (FAR) limit for the campus as a whole, based upon the computation included in the most recently approved campus plan and the FARs of any other buildings constructed or demolished since the campus plan was adopted.

Sec. 210.9. Before taking Final Action on an application for use as a college or university, the [BZA] **Zoning Commission** shall submit the application to the D. C. Office of Planning and the D. C. Department of Public Works for review and written reports.

Sec. 210.10. Property owned or controlled by a college or university outside the campus boundary set by the Commission may be used for college or university purposes only with prior Commission approval. The Commission shall approve such uses only if the conditions set out in this Section 210 are met, and in addition the applicant demonstrates both that the fiscal impact of the proposed use on the District is neutral or positive, and that the economic impact of the proposed use within the District is neutral or positive.