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October 20, 2000

Hon. Sheila Cross Reed
Chair
D.C. Board of Zoning Adjustment
441 Fourth Street, N.W. #210
Washington, D.C. 20001

Re: BZA Application No. 16553
George Washington University Foggy Bottom Campus Plan

Dear Ms. Reed:

The American Civil Liberties Union of the National Capital Area and the George Washington University Student Section of the ACLU recently became aware of the proposal by the District of Columbia Office of Planning to condition approval of the George Washington University campus development plan upon the university's agreement to prevent more of its students from living in nearby off-campus neighborhoods than now live there. We ask that the Board of Zoning Adjustment accept this letter as a statement of our strong opposition to that proposal.

It appears from the Recommendations of the Office of Planning that that Office considers large numbers of students living in Foggy Bottom neighborhoods to be an "adverse impact" that the government should seek to prevent. This is a surprising and dismaying attitude, and one that we believe is quite illegitimate, as well as unlawful.

The proper function of land use planning is to control the *manner* in which real estate is used. But it is emphatically not a proper function of land use planning to control the *identity* of the people who can live or work in a particular place.

This principle is perfectly obvious in other contexts. For example, no one would think that the D.C. government could legitimately seek to limit the number of African-Americans, or

BZA Case No. 16553
Exhibit No. X

ZONING COMMISSION
District of Columbia
CASE NO.99-10
EXHIBIT NO.53

ZONING
CASE No. 99-10
EXHIBIT No. 53

Irishmen, or divorced people, or welfare recipients who live in a given neighborhood. A person's status as a student is no different, as is recognized in the District of Columbia Human Rights law, which prohibits discrimination in employment, real estate transactions, or access to public accommodations based upon a person's matriculation. *See* D.C. Code §§ 1-2512, 2515, 2519.[1]

The idea that students constitute an "adverse impact" on a neighborhood is based on the stereotype that students are noisy and messy and inconsiderate and don't take care of the places where they live. No doubt some students act in those ways, but most do not—just as some African-Americans, or some Irishmen, or some divorced people, or some welfare recipients act in those ways, but most do not. It is the declared policy of the District of Columbia that people should be treated based upon their "individual merit," and *not* based upon the kinds of stereotypes that are so plainly at work here. D.C. Code § 1-2501. In short, students are real people, and should not be treated as second-class citizens.[2]

The proposed anti-student discrimination appears to be unconstitutional as well. In *Kirsch v. Prince George's County, Maryland*, 331 Md. 89, 626 A.2d 372 (Md. 1993), *cert. denied*, 510 U.S. 1011 (1993), the highest court of Maryland considered a county ordinance that regulated the rental of residential property to college students in certain neighborhoods. The court struck down the ordinance as unconstitutional under both the federal and state

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[1] "Matriculation" is defined as "being enrolled in a college, or university; or in a business, nursing, professional, secretarial, technical or vocational school; or in an adult education program." D.C. Code § 1-2502(18).

[2] We note that some doubt has been expressed about whether the Human Rights law applies to the actions of the Office of Planning and the Board of Zoning Adjustment. Such doubts are misplaced. The law is as follows:

> Offices and agencies of the District government are covered by the prohibitions of the Human Rights Act. There are no exceptions. . . . Each office or agency must interpret the laws which it executes in light of the Human Rights Act, in order to give effect to the compelling interest expressed in that act: namely, to end discrimination."

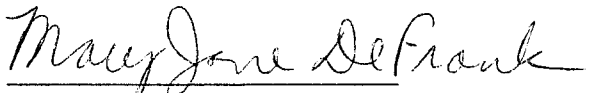
Mayor's Order No. 94-132, 41 D.C. Register 3252 (1994).

constitutions, finding that discrimination "between permissible residential tenant classes by creating more strenuous zoning requirements for some and less for others based solely on the occupation which the tenant pursues away from that residence is that sort of arbitrary classification forbidden under our constitutions." 331 Md. at 106, 626 A.2d at 380. The court relied, in part, on *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), where the Supreme Court struck down a local zoning law that discriminated against mentally ill residents based on similar illegitimate stereotyping. *See also College Area Renters and Landlord Ass'n v. City of San Diego,* 43 Cal. App. 4th 677, 50 Cal. Rptr. 2d 515 (1996) (striking down city "mini dormitory" law on equal protection grounds).

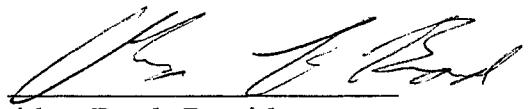
As noted above, we are not unaware that some students—like some non-students—act inappropriately and cause real problems for their neighbors. But the proper way to address such misbehavior by students is the same way it is addressed when engaged in by non-students: by enforcing the relevant District laws. We think it is also appropriate that the university, as a good neighbor, should play an educational role regarding the conduct of its students in the campus neighborhood.

For these reasons, the American Civil Liberties Union of the National Capital Area and the George Washington University Student Section of the ACLU believe it would be improper and unlawful for the D.C. Board of Zoning Adjustment to condition approval of the George Washington University campus development plan upon the university's agreement to restrict its students from living in nearby residential neighborhoods.

Very truly yours,



Mary Jane DeFrank, Executive Director
ACLU of the National Capital Area



Alan Boal, President
George Washington University
Student Section, ACLU

cc: See attached service list

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