FOGGY BOTTOM
ASSOCIATION

c/o West End Library
24th and L Streets, NW
Washington, DC 20037



July 21, 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 Foggy Bottom Association, a neighborhood association in the Foggy Bottom and West End area of the District for over forty years. It will serve as the basis for testimony by Michael Thomas, president of the association, at the forum you have scheduled for July 27, 2000.

The FBA endorses the letter and proposal of the Federation of Citizens Associations dated July 14, 2000.

We are cognizant of the Commission's admonition against arguing the merits of particular proposed university campus plans, and we do not seek to do that. However, it is impossible to assess the urgency of the need for change without adverting to historical and existing examples of problems caused by the working of the current regulations under existing plans. Unsurprisingly, we use the examples we know best.

The campus planning process is not working. It is flawed in ways that have seriously injured communities that abut university campuses. There are two principal reasons this is so: 1) The key provision of the Zoning Regulations dealing with campus plans (11 DCMR 210) is so vague as to provide no enforceable protection to neighboring residential communities; and 2) there is no regulatory review of de facto campus expansion outside the sanctioned campus boundaries.

The Need for Enforceable Standards

Section 210.2 states that university uses are to be permitted only if "not likely to become objectionable to neighboring property because of noise, traffic, number of students or other objectionable conditions." That seemingly highly protective language

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provides no objectively measurable or enforceable standards. The resulting pattern of cases applying the provision is now both clear and dismaying. The university persuades the Board of Zoning Adjustment that it is a great boon to the District, that it needs wide flexibility in the number and types of students it enrolls (and therefore in the types and quantities of buildings it adds), and that any objectionable conditions that result can be ameliorated by conditions on approval. A long list of conditions may result, but they are often toothless (E.g.: ask suppliers to the GWU Hospital not to route their trucks through the adjacent historical residential district, and not to come before 7:00 am.). There are seldom provisions to track or enforce the conditions. When BZA decisions are appealed, they are almost invariably upheld; the test on appeal, however, is not whether the decision was wise, or whether it effectively protected adjoining neighborhoods from harm, but whether it was within the nearly limitless discretion of the Board.

The most egregious problem commonly caused by this lack of definition in the regulation is the flooding of neighboring residential areas with students seeking rental housing when enrollment is allowed to increase without mandatory provision for on-campus housing. This would seem to be a perfect example of university uses being "objectionable because of ... number of students," but the problem has not been effectively addressed as universities continue to grow. The most recent Comprehensive Plan provisions for Ward 2 describe the problem:

> Sec 1325.3. .... *Loss of housing stock is also a critical problem in Foggy Bottom/West End, aggravated by the lack of dormitory construction on the George Washington University (GWU) campus*... 46 DCR 1757-1758 (1999)).
>
> Sec 1358.1. The George Washington University constitutes a major institutional presence in a zone between the Central Employment Area and residential Foggy Bottom. The expansion of the University has resulted in the diminishment of housing and the construction of buildings for the University purposes. This and other commercial usage is of grave concern to the Foggy Bottom residential community. *Intense student pressure on Foggy Bottom's housing stock outside the campus, combined with the impact of university generated traffic has had a negative impact on residential Foggy Bottom. The University must continue to construct student dormitories to alleviate the pressure on the housing stock outside the boundaries of the campus plan*... (46 DCR 1775 (1999)).
>
> Sec. 1309.11. Parking in the residential neighborhoods of Ward 2 is a major problem.... Foggy Bottom and Georgetown are adversely affected by student parking from George Washington and Georgetown Universities; as such, efforts should be made by the universities to provide parking for these vehicles. (46 DCR 1738 (1999)).

(Italics added). On April 21, 2000, Andrew Altman, Director of the Office of Planning, filed a report with the BZA in Application No. 16553. In it, he said:

> Presently, there is insufficient housing within the boundary of the campus, and new housing will be needed. If GW continues to purchase land outside the campus plan area, and the number of students living in the Foggy Bottom community continues to increase, the residential community will reach a "tipping point" where the Foggy Bottom community simply transforms into a "University area." (Pages 2-3)

The "tipping point" has been reached in many large buildings in Foggy Bottom. Enclosed as Attachment A is a map of the Foggy Bottom area, setting forth the best information we have been able to collect with respect to the extent of GWU property acquisition and student renters beyond the university's sanctioned boundaries. Attachment C is an explanation of the student rental information portrayed on the map. Similar official statements, and similar maps, could be produced for communities adjoining each of the District's major universities.

The solution is to amend the regulation to require on-campus housing (and parking) to correlate with enrollment. As a practical matter, it will not be feasible in the near term to require on-campus housing for all students. However, a goal of making housing available to all students on campus can be clearly stated, and a minimum standard can be set, matching any prospective increase in enrollment with adequate on-campus housing and parking. A further provision permitting transitional measures for the first plan adopted after the adoption of the amendment would allow time for construction of student housing needed to account for near-term enrollment increases. This is the approach proposed by the Federation in its submission of July 14, 2000. Anything less would fail to stem, much less turn, the tide rolling over communities such as Foggy Bottom.

Ending Unregulated Growth

The most startling and pernicious feature of the present process of planning a "campus" is that expansion of university uses outside the sanctioned boundary set by the BZA is not regulated at all. As the most recent example, GWU bought the Howard Johnson Hotel at 2601 Virginia Avenue N.W., converted it to a 388-bed dormitory, and took it off the tax rolls, all without any review under 11 DCMR 210. The Acting Zoning Administrator found that BZA approval was not required for a dormitory outside a campus so long as the property in issue was zoned for residential use, although such approval would have been required for such use on a campus. The BZA upheld that interpretation, and even concluded that a contrary determination would have been arbitrary and capricious. Order dated February 11, 2000 in BZA Appeal No.16507.

Thus, it is much easier for a university to expand outside a "campus" than within one, and particularly easy within communities zoned residential. Long-standing residential communities, intended beneficiaries of the law, are in fact defenseless.

Over the course of the fifteen years of the expiring George Washington University campus plan, GWU has acquired over three dozen properties outside its sanctioned boundaries but within Foggy Bottom. They include hotels, apartment houses, and many individual residences. Those we have confirmed are shown in red on Attachment A. (Explanations of the map information are at Attachment B). In addition, GWU has acquired an undivided 28.55% interest in the limited partnership that owns Columbia Plaza, an apartment complex of over 800 units financed by HUD to provide affordable downtown housing. GWU has written agreements with other owners of Columbia Plaza giving the university a right of first offer when those rights are sold. We believe that students already occupy a majority of the units in three of the large buildings of that complex.

Most recently, GWU has apparently acquired the hotel at One Washington Circle. While the rumors are that it is to be maintained as commercial property, nothing in the current regime would prevent, or even review, a decision next week to convert it to another dormitory.

The clearest example of the futility of efforts under the present regulations to protect residential communities is the saga of Square 43, just south of the current campus boundary of GWU. In its 1988 order approving the GWU plan, the BZA removed Square 43 from the sanctioned campus, finding that boundary change to be "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. Instead, it had the effect of stripping the Board of any authority to review or disallow expansion of the university into the intended buffer zone. GWU purchased seventeen out of twenty townhouses on Square 43 (the owner of the remaining three refused to sell) and promptly razed them. Square 43 has become one more block of de facto campus, contrary to the policy of the Comprehensive Plan, contrary to the policy behind the regulation, and contrary to the intention of the body charged with regulating campuses.

Ironically, in 1988 there was pending before this Commission a proposal to move campus plan approval authority to the Commission from the Board. The then Director of the Office of Planning recommended against the change, based in part on his perception that the Board was beginning to deal more effectively with campus planning. His only cited evidence for "increasingly vigorous handling" of such cases was the Board's moving of Square 43 outside the GWU campus. Memorandum of October 17, 1988 in Commission File 86-11, page 4. The story of Block 43 is rather evidence of the glaring need to amend the regulation to require prior approval of university uses outside the sanctioned campus.

The Council has repeatedly recognized this uncontrolled institutionalization of residential areas as a serious problem in need of remedy in the regulations:

> Sec. 1305.1[j]. An important element causing housing problems has been the demolition and conversion of housing to provide commercial and institutional buildings, university dormitories, offices, classroom space, hotels, and medical clinics... *To improve the housing stock and to prevent further loss of housing, adjustments shall be made to existing zoning regulations and campus plans to address these problems....* (46 DCR 1732 (1999)).
>
> Sec. 1325.2. The overriding issues for Ward 2 neighborhoods [include] the impact from uses such as ... university expansions. (46 DCR 1757 (1999)).
>
> Sec 1325.3. Loss of housing stock is also a critical problem in Foggy Bottom/West End, aggravated by the lack of dormitory construction on the George Washington University (GWU) campus... *Conversions of housing units, particularly apartments to transient use (hotel, de facto hotels, and corporate apartments), to university dormitories and offices, and to medical offices/clinics is a major cause of depletion of the housing stock....* (46 DCR 1757-1758 (1999)).

(Italics added)

Approval of off-campus university uses must entail a more demanding showing than approval of such uses within the approved boundaries. If all that is done is to apply the current Section 210, whether the property is on or off the campus, then the campus boundary is meaningless. The preferable alternative from the perspective of the neighboring residents is to require as compact and contiguous a campus as possible (putting aside the possibility of distant satellite campuses) and require all expansion to be contained within the "campus" that is being planned. Universities could own property wherever they wanted, but could change residential property into institutional property, and take it off the tax rolls, only within the campus. There could then be debates about where to draw the campus boundary, but all expansion would be subject to (hopefully meaningful) regulatory review.

The Federation of Citizens Associations has suggested a slightly less strict test in its submission of July 14, 2000: Allow the "spot zoning" and incremental institutionalization of residential communities only if the tests of Section 210 (as amended to include a student housing requirement) are met, and if in addition the applicant can demonstrate that the fiscal and economic impact of the use sought would be neutral or better. That is an appropriately tough set of showings. At least new students would be housed on campus and the District as a whole would not lose fiscally and economically from the added incursion.

Approval Authority Should Be Moved to the Zoning Commission

We do not favor use of Planned Unit Development processes in approving campus plans. Those have been evolved to meet the needs commercial developers to design a particularized set of requirements for a discrete tract, and would require significant modification in order to fit the very different problems inherent in multi-year plans for major educational institutions. Nevertheless, we strongly urge moving approval authority to this Commission, for the following reasons:

- The Commission has, through its experience with PUDs and otherwise, more experience with complex large or multi-tract proposals. Campus plans are, to the best of our knowledge, unique in the jurisdiction of the BZA, in that the Board's decisions generally deal with variances and similar single-parcel issues.

- The Commission writes the regulations, and is responsible for overall zoning policy in the District. GWU is the second-largest landowner in the District, after the federal government, and universities in the aggregate constitute major sources of the issues that impact long-term land use planning in the District. The Comprehensive Plan has repeatedly called for preservation of residential communities, especially those in the ring around the CBD; universities are among the greatest challenges to that policy. Direct review and regulation of these major engines of change by the Commission would provide the most effective and efficient means of insuring consistent effectuation of public land use policy.

- Scheduling problems could be averted. The Commission is currently reviewing what changes are needed in the campus planning process, even as the three largest universities (GWU, Georgetown and AU) are seeking approval for proposed ten-year plans. Assuming that the BZA saw the need for amendments to the regulations, it has little choice but to undertake review under the existing flawed regulations. The Commission could address amendments as a priority, based on its first-hand knowledge of the issues, before undertaking review of the plans.

The Council has called for transfer of the approval authority to the Commission. Comprehensive Plan Section 1115.1, 46 DCR 1640-1641 (1999).

Pending Plans Should Not Be Approved Until Needed Amendments Are Made

We submit that the need for amendment to the regulations is compelling. The Council has called for amendments addressing these subjects, because of the serious and

ongoing damage to the residential communities adjoining major universities. Three of the largest universities have plans expiring this year, and are requesting approval of ten-year plans. Allowing those plans to be approved under the current flawed system would invite substantial further injury.

The injuries, once they occur, are essentially irreversible. Once properties are purchased, subjected to university uses, and removed from the tax rolls, there is a very strong argument that the zoning cannot be changed except by paying for the constitutional "taking" of the difference in value to the owner. Universities, and particularly GWU, are aggressively acquiring properties outside their sanctioned boundaries. Foggy Bottom, as the Director of Planning has noted, is near a "tipping point," beyond which it will be, and remain, a "university area." Similarly, once enrollments have increased without allocating on-campus space to housing, it is difficult to reverse the impact on the private market.

In letters dated March 3 and July 7, 2000, the consortium of local universities argued that any delay in the processing of pending campus plan applications would "significantly prejudice" the universities involved. The argument should be unavailing for several reasons:

- Most of the work that has been done in preparing the plans submitted by GWU and Georgetown would have been done in any event, and will not be affected by the proposed amendments. For example, surveys of academic needs, work by consultants on issues relating to physical aspects of the sanctioned campus, and community outreach (to the extent that there was any) will remain as valuable as they were.

- Continuation under the present plans is unlikely to have substantial effect on the two universities. Georgetown is asking for increased enrollment, for example, but has unused capacity under the expiring plan. The GWU plan for 1985 through 2000 was not approved until 1988; while we certainly do not suggest that kind of delay should be the rule, some delay to get the process fixed is tolerable.

- The prejudice to the communities entailed in proceeding under the current flawed system is very substantial, well documented, and irreversible.

In the Arab-Israeli conflict, there are those who advocate stalling negotiations as long as possible while the "facts on the ground" are changed, perhaps irreversibly, by building settlements. Whatever one believes the end result of Middle East negotiations should be, it must be conceded that the tactic is very effective. If the Commission is persuaded that changes are needed to the regulations in order to protect residential communities, it should not countenance proceeding in such a way as to allow the universities ten years to change the facts on the ground. We very much fear that another

ten years like the last ten years will push our community irrevocably past the tipping point.

Conclusion

For the foregoing reasons, we ask that the Commission initiate a text amendment case, and adopt the amendments to the regulations proposed by the Federation of Citizens Associations. (A copy of that proposal is attached as Attachment D). In addition, we request that the Commission take whatever action may be required to suspend approval of pending plans until needed amendments are considered and adopted.

Respectfully submitted,

FOGGY BOTTOM ASSOCIATION

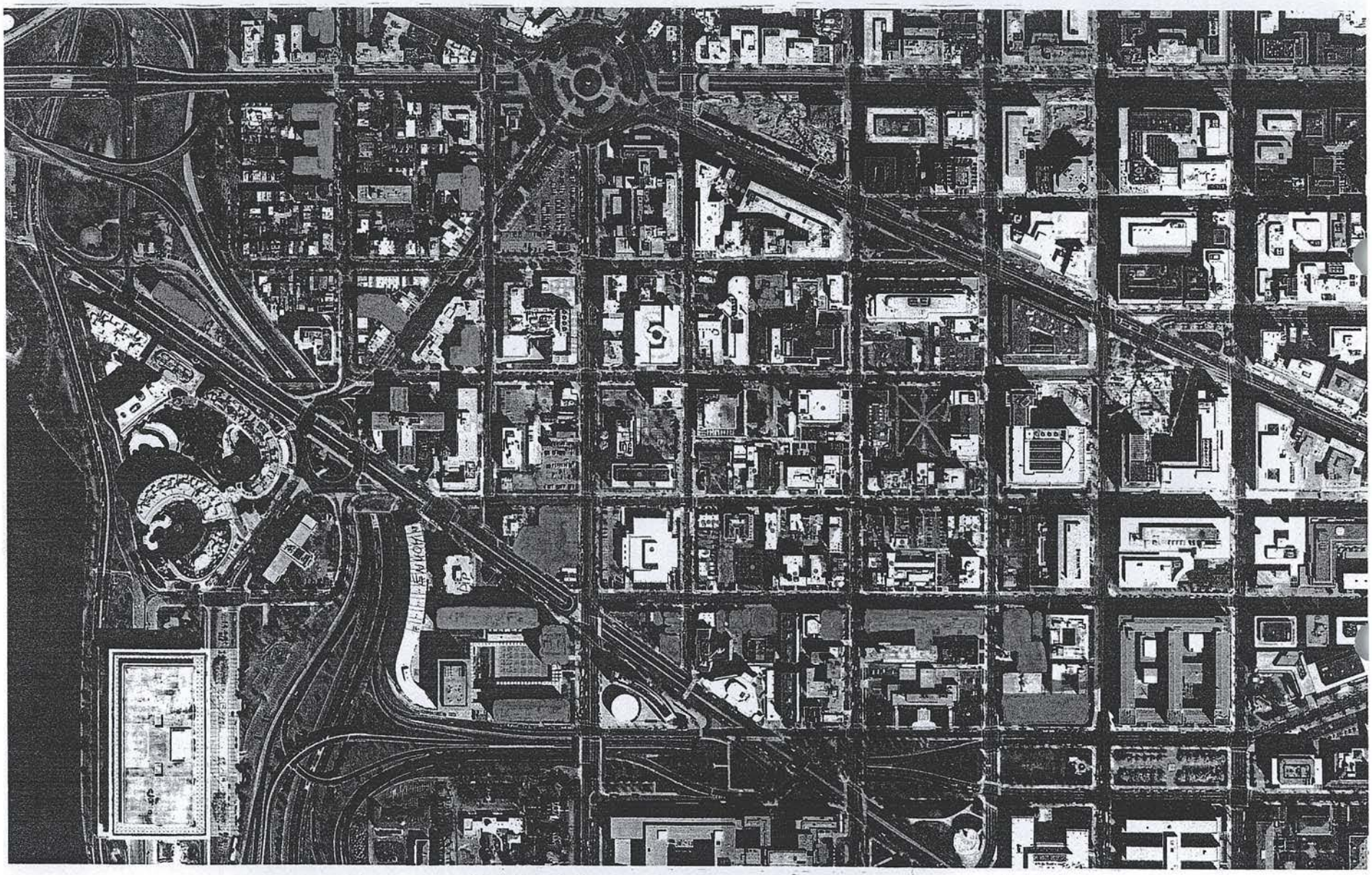
By: _____
Michael Thomas, President

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

The George Washington University

Properties Owned Outside Sanctioned Campus Boundary

Buildings With 50% Or More Of Units Student Occupied



Sanctioned Campus Boundaries

ATTACHMENT A

Attachment B

THE GEORGE WASHINGTON UNIVERSITY
Properties Owned Within Foggy Bottom
Outside Sanctioned Campus Boundaries

Note on Sources: Addresses are from a list furnished by GWU of properties acquired since approval of the present campus plan in 1988, with the exception of those followed by an asterisk (*). Those addresses were obtained in cross-checking the information obtained from GWU with the Mayor's Office of Planning. The University has refused to provide comprehensive information about the ownership and use of real estate outside the boundaries as set in the current campus plan, and we are not sure that all properties acquired recently are included. The University has also acquired an undivided 28.55% interest in the multi-building Columbia Plaza complex, and has agreements with additional limited partner owners of that complex that guarantee GWU a first right of offer if those owners wish to sell.

E Street Northwwest

1901 (Parking lot)
1957 (Formerly AGC Building)

F Street Northwest

1916 (Townhouse converted to University Club)
1918 (Townhouse converted to University Club)
1922 (Formerly National Association of Life Underwriters Building)
2100 (Dakota Apartments)
2106 (*)
2138 (Razed townhouse)
2140 (Foggy Bottom Grocery)
2144 (Townhouse)
2150 (Townhouse)
2206 (Townhouse)
2208 (Townhouse)

22d Street Northwest

520 (Townhouse used as Community Policing Center)
524 (Townhouse)
526 (Large house at corner of F Street Northwest)

23d Street Northwest

606 (*)(Razed townhouse)
608 (*)(Razed townhouse)
610 (*)(Razed townhouse)
612 (*)(Razed townhouse)
___ (*)(Lot 856 next to 612 – 23d Street, which is Lot 857)

New Hampshire Avenue Northwest

824 (Former Foggy Bottom Inn, now George Washington University Inn)
1129 (Aston Apartments)

Virginia Avenue Northwest

2201 (Riverside Towers Hall)
2307 (*)(Razed townhouse)
2309 (*)(Razed townhouse)
2311 (*)(Razed townhouse)
2313 (*)(Razed townhouse)
2317 (*)(Razed townhouse)
2321 (*)(Razed townhouse)
2325 (*)(Razed townhouse)
2327 (*)(Razed townhouse)
2331 (*)(Razed townhouse)
2601 (Former Howard Johnson Hotel, now "Hall on Virginia Avenue")

Attachment C

THE GEORGE WASHINGTON UNIVERSITY
Properties Outside Sanctioned Campus Boundaries
In Which Fifty Percent or More of the Units Are Student Occupied

Note on Sources: Commissioner Maria Tyler of ANC-2A surveyed management companies and association boards of privately-owned residential housing in the Foggy Bottom area, and obtained information including number of units occupied by students and total number of units. The information is incomplete, and other apartment and condominium buildings may well belong on this list. Also, several buildings reported substantial occupancy by students, but not as much as 50%. The total number of units identified to Mrs. Tyler as being occupied by students exceeded 1600. Most units probably house more than one student. The University has been unable to provide reliable information concerning where their students live, but take the position that these data overstate the numbers by including students at other schools and in other ways.

E Street Northwest
2301 (Columbia Plaza – Baron Building)

F Street Northwest
2000 (Empire Apartments)
2020 (Statesman Apartments)
2030 (Letterman House)

H Street Northwest
2401 (Bonwitt Plaza Condominium)

L Street Northwest
2201 (Carriage House)

24th Street Northwest
922 (Jefferson House Condominium)

25th Street Northwest
940 (Claridge House Condominium)
1010 (Swarthmore Condominium)

New Hampshire Avenue Northwest
1101 (Savoy Apartments)

Virginia Avenue Northwest
2400 (Columbia Plaza – Consul Building)
2400 (Columbia Plaza – Ambassador Building)

Tab D
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 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.