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March 3, 2000

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 George Washington University, Georgetown University, American University, Trinity College and the Consortium of Universities to express our views on the pending campus plan cases and to urge the Commission not to take precipitous action that would adversely impact colleges and universities in the District of Columbia. Specifically, it is our position that:

1. Any delay in the processing of the pending campus plan applications for George Washington University, Georgetown University and the American University would significantly prejudice these three universities, who have proceeded in good faith reliance on existing regulations.

2. The current zoning regulations, which provide specific and detailed requirements for campus plan review, are not "broken" and should not be changed.

3. Jurisdiction to review and approve campus plan applications has been with the Board of Zoning Adjustment ("BZA") since 1958 and it has exercised its authority effectively.

4. There is no basis for bifurcating campus plan review between the BZA and the Zoning Commission ("Commission").

ZONING COMMISSION
CASE No. 99-10
EXHIBIT No. 7

ZONING COMMISSION
District of Columbia
CASE NO.99-10
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5. In the event the Commission chooses to amend the regulations, that requires a careful, thoughtful and deliberative process with ample opportunity for not only the community groups, but all colleges and universities to participate and express their views.

6. The focus of any amendment to the campus plan regulations should be on streamlining the process, not imposing new requirements.

1. The Prejudicial Impacts of a Delay

As the Commission is aware, there are three major universities which have campus plans that are set to expire at the end of the year 2000 – George Washington University (GW), Georgetown University ("Georgetown") and American University ("American"). In 1998, the community groups surrounding GW petitioned the BZA to require GW to file its campus plan update early. After considering all views, the BZA determined that it would require GW to file its campus plan update no later than January 4, 2000 in order to provide ample opportunity for the community and the BZA to review the plan.

In full compliance with the Board's directive, GW filed its campus plan application on December 27, 1999. The other two major universities with the same expiration date took notice of the BZA's decision and made certain that they, too, would provide the BZA with ample time to complete its review. Accordingly, Georgetown University filed its campus plan application on January 31, 2000 and American University is planning to file its campus plan application in May of this year.

All three universities have expended significant resources in preparing their campus plans for review and approval by the Board. For a minimum of two years prior to the actual filing of the campus plan document, the universities engaged in internal review of programs and policies, meetings with all academic departments to project future needs, and consultation with outside consultants to determine how best to meet those needs within the campus plan framework.

Prior to filing the campus plan document with the BZA, all universities also engaged in an extensive outreach program with the community through the formation of campus plan working groups with participation by representatives of all community organizations. Architectural, transportation, landscape design, urban planning and other consultants were utilized by the universities to respond to community issues and to

develop the campus plan. The cost of the process all three universities have engaged in to date is significant and the filing of the document and the public hearings are but the final phase of an extensive campus planning process.

Were the Zoning Commission at this point in time to "change the rules", it would nullify all of the efforts expended to date at significant financial cost and prejudice to the three universities. Further, it would place in limbo important projects planned by all three of the universities on their campuses and place a cloud over university programs and activities. This precipitous action would have a devastating impact on what are three of the largest private employers in the District of Columbia. Accordingly, if any action is taken by the Zoning Commission to amend the campus plan regulations, fairness suggests that it can only be prospective and that the three universities that are currently deeply imbedded in the process should be permitted to complete their campus plan approval.

The proposal to change the regulations could also have a significant impact on smaller colleges in the District of Columbia including, for example, Trinity College ("Trinity"). Trinity recently completed its campus plan review in 1996 and also received at that time approval of a further processing application for a new campus center. Due to financial constraints beyond its control, Trinity has only recently been in a position to have the funding in place to go forward with that building. It will soon be filing an application with the BZA for reinstatement of its prior order to allow the needed campus center building to be constructed. For the Commission to change the rules may mean that Trinity could not go forward with this project after spending the last four years raising the necessary funds. It would also place in limbo similar projects by other colleges and universities that need to go forward with buildings and programs that have been on the books or in the planning stages for some time.

2. The Current Regulations Are Adequate and Do Not Need To Be Changed

From our perspective, the current process is not broken and does not need to be fixed. The BZA has over 40 years of experience in dealing with campus plan review and has handled that process well. In every campus plan case that has been appealed to the District of Columbia Court of Appeals, the court has affirmed the Board's decision. The BZA knows the campus plan issues and has been adept in applying the regulations to include time frames for campus plan review and approval, a quarterly meeting process to ensure maximum communication of campus plan issues to the surrounding communities, flexibility to meet the universities' needs, and a two-step public hearing process that

ensures full participation by all parties. The present controls are adequate and do not cry out for change.

3. There is No Basis for Transferring Jurisdiction to the Zoning Commission

The Zoning Commission has already devoted many public hearings and meetings to this issue in the last ten years and in each case has come to the conclusion that it is preferable to keep the process with the BZA. While the Comprehensive Plan does include language suggesting that the Commission look at modifying the regulations to require Commission approval (Section 115.1(k)), this is the identical language that was in the Comprehensive Plan the last time the Commission looked at the campus planning regulations; thus, the Commission has already addressed this issue. Further, the next paragraph of the Comprehensive Plan (Section 115.112) talks about modifying the regulations before the BZA. Thus, the Comprehensive Plan itself is contradictory.

4. There Is No Basis for Bifurcating Campus Plan Review Between The BZA and the Zoning Commission

One of the suggestions considered and rejected in the past was to bifurcate review between the Zoning Commission and the Board of Zoning Adjustment. The argument was that the Zoning Commission should review the campus plan document as a whole and the BZA should have the authority to review each new building under the existing further processing special exception provisions. While facially appealing, this argument has no merit.

First, it is difficult to divide jurisdiction between two agencies and to expect each to understand the reasoning and rationale of the other as they review campus plan cases. Specific buildings and further processing applications are necessarily an integral part of the campus plan as a whole and are best reviewed and understood by one agency, not two.

Second, in many instances, the BZA is reviewing not simply the campus plan update but also, at the same time, a further processing application for a specific building. This is often the case as a result of the need to move quickly with new buildings or for universities to "catch up" with development by the time they get through the arduous campus planning process. A case in point is the recent approval of the Mount Vernon campus plan which also requested approval of a new dormitory for that campus. To divide jurisdiction between two agencies would mean that the campus plan would have to be processed before the Zoning Commission and at the same time a concurrent application

would be filed for further processing before the BZA. Yet, the BZA would not be able to take action until the Zoning Commission first reviewed and approved the campus plan. The result would be a nightmare of bouncing between the two agencies and injecting significant delay into a process that is already significantly time consuming.

Third, in many instances the further processing application requires an amendment to the campus plan because of the need to relocate or redesign the parameters of a proposed building or, in other cases, to alter the use of the building. Again, it is difficult to have one agency review the building and at the same time a second agency review the campus plan amendment. Reason and administrative efficiency argue for keeping both reviews within the same agency. Further, the 40-year history of precedent cases before the BZA and the extensive history of D.C. Court of Appeals decisions interpreting those regulations, support keeping that jurisdiction with the BZA.

5. Any Zoning Commission Action Can Only Be Prospective and Requires Time for Full Input and Participation by All Affected Parties

In the event the Commission determines to engage in a review of the campus plan regulations, that review will necessarily be time consuming since the Commission would want to allow ample opportunity for not only the community but also OP and the major stakeholders in the process – the colleges and universities – to participate. In the past, when the Commission has entertained cases to revise the regulations, that process has taken a minimum of two years to complete. Following that same procedure would mean that the Commission's action could only be prospective and could not impact or delay the current campus plan applications.

The current regulations are also best understood by going through the current campus plan process with GW, Georgetown, and American, to understand how the regulations currently work and what, if any, changes need to be made. To do otherwise, may be to act precipitously and might subject any Commission action to a lengthy and protracted appeal process. It is particularly important to give the staff of OP – many of whom are recent appointees – an opportunity to gain experience with the current process.

Further, for the three universities currently undergoing pending campus plan review, to actively participate in the Commission's case would necessarily divert needed resources from their current campus plan applications and would have a significant impact on their ability to participate. Likewise, the communities surrounding these universities have limited resources and time. Accordingly, if the Commission chooses to go forward,

it is suggested that any public hearings not be scheduled at this point in time and instead that OP be asked to engage the community and the universities in a series of workshops to elicit their views. At the conclusion of these work sessions, OP would be in position to offer its expert recommendation to the Commission and a rationale upon which the Commission should proceed.

5. Any Zoning Commission Action Should Focus on Streamlining the Campus Plan Process

There is language in the Comprehensive Plan (Section 1100.5(b)) that asks the Office of Planning ("OP") to propose new administrative procedures to reduce the cost of institutional master plan review and implementation. This is new language that has not previously been addressed by the Zoning Commission. Accordingly, if the Commission does entertain a case, we believe that streamlining the process should be the focus. In that regard, we suggest the following:

- If the regulations are to be amended, they should be streamlined and the timing of the process reduced.

- Any amendment to the regulations should consider eliminating the two-stage process of review and allowing universities to construct buildings that are shown on the campus plan document without the requirement for a second further processing application.

- The regulations should provide more flexibility to the universities in their efforts to try and project ten years into the future.

- More discretion should be given to the Zoning Administrator to interpret and apply the campus plan document to avoid the necessity for BZA review of minor changes to the campus plan.

The Consortium of Universities, in 1997, conducted a study comparing the regulatory process in the District of Columbia with twelve other urban jurisdiction campus planning programs across the country. The results show that the D.C. two-step regulatory process is unique to that of other major cities. This information can be provided to the Zoning Commission in the context of any case looking at improving or streamlining the campus plan process.

Conclusion

For the foregoing reasons, we respectfully request that the Commission not entertain any action with respect to the campus plan regulations that would have the effect of delaying the review of pending applications or changing the rules midstream. Rather, it is submitted that the current regulations are adequate and should not be changed. Alternatively, if the Commission chooses to amend the regulations, we request that the Commission provide ample opportunity for the involvement of the colleges and universities up front and prior to the scheduling of any public hearings, as it has in the past.

Respectfully submitted,

GEORGE WASHINGTON UNIVERSITY

By: _____

GEORGETOWN UNIVERSITY

By: _____

AMERICAN UNIVERSITY

By: _____

TRINITY COLLEGE

By: _____

THE CONSORTIUM OF UNIVERSITIES
OF THE WASHINGTON
METROPOLITAN AREA

By: _____

cc: Mayor Anthony A. Williams
Eric Price, Deputy Mayor for Economic Development
Andrew Altman, Director, Office of Planning

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