



Pillsbury  
Winthrop  
Shaw  
Pittman<sub>LLP</sub>

2300 N Street NW  
Washington, DC 20037-1122

Tel 202.663.8000  
Fax 202.663.8007  
www.pillsburylaw.com

November 1, 2006

By Hand Delivery

Carol J. Mitten, Chairperson  
District of Columbia Zoning Commission  
441 4th Street, N.W.  
Suite 210  
Washington, DC 20001

Maureen E. Dwyer  
Phone: 202.663.8834  
maureen.dwyer@pillsburylaw.com

**Re: Zoning Commission Case No. 06-17  
Application of The District of Columbia Public Schools and The George  
Washington University for Consolidated Review and Approval of a Planned  
Unit Development and Amendment to the Zoning Map  
Closing Statement**

---

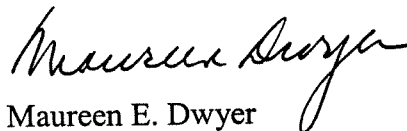
Dear Chairperson Mitten and Members of the Commission:

On October 30, 2006, the Zoning Commission held a public hearing to consider an application from District of Columbia Public Schools ("DCPS") and The George Washington University ("the University" or "GW") (collectively, the "Applicant") for Consolidated Approval of a Planned Unit Development ("PUD") and a Zoning Map amendment for property located in Lots 829 and 55 in Square 80 (the "Subject Property").

Enclosed herein is the Applicant's closing statement, which is being filed separately from the Applicant's post-hearing submission. No response to this closing statement is permitted by any party pursuant to the Zoning Commission Rules of Practice and Procedure.

The Applicant believes that the information included in the record of this case fully satisfies the requirements for PUD and Zoning Map Amendment approval and looks forward to the Commission's decision on this case at the November 13, 2006 Public Meeting.

Sincerely,

  
Maureen E. Dwyer

  
David M. Avitabile

Enclosure

November 1, 2006  
Page 2

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this letter and enclosures were hand delivered on

November 1, 2006.

Ellen McCarthy  
Office of Planning  
801 North Capitol Street, N.E.  
4<sup>th</sup> Floor  
Washington, DC 20001

Travis Parker  
Office of Planning  
801 North Capitol Street, N.E.  
4<sup>th</sup> Floor  
Washington, DC 20001

ANC 2A  
St. Mary's Court  
725 24<sup>th</sup> Street, N.W.  
Washington, DC 20037

Andrea Bagwell  
School Without Walls Senior High School  
Home and School Association  
2130 G Street, N.W.  
Washington, DC 20037

---

David M. Avitabile

**ZONING COMMISSION CASE NO. 06-17**  
**APPLICATION OF DCPS AND GEORGE WASHINGTON UNIVERSITY**

**CLOSING STATEMENT**

*Introduction*

As we stated at the outset of this hearing, this case provides a unique opportunity for two educational institutions to build upon their 25 year history of partnership and create a model public/private development partnership that achieves important educational, community and city goals. With your approval, this will serve as a model of excellence for other educational institutions both in the District of Columbia and nation-wide.

The PUD with rezoning is the appropriate tool to achieve the objectives of the partnership – and all of the requirements of the PUD and map amendment processes have been fully met. Indeed, the application is supported by the Office of Planning, the D.C. Department of Transportation, the D.C Public Schools, the District of Columbia City Council, the Home and School Association for the School Without Walls, the Office of Community Affairs of the Executive Office of the Mayor, and a multitude of individual students, teachers, alumni and community representatives who testified at the public hearing and/or submitted letters of support.

*Legal and Factual Basis for Approval*

This PUD and rezoning application has been filed and processed in full accordance with the requirements of Chapter 24 of the Zoning Regulations. All required plans and supporting materials have been filed in the record and the project carries out the intent and purpose of the PUD regulations in the following important respects:

- It is a high quality development that provides public benefits (Section 2400.1);
- It provides for flexibility of development in exchange for a commendable number or quality of public benefits and it protects and advances the public health, safety, welfare, and convenience (Section 2400.2);
- The Zoning Commission has conducted a comprehensive and public review of the specific development proposal (Section 2400.3);
- While flexibility in planning and design has been requested, the end result is a project that is in keeping with the intent and purposes of the Zoning Regulations and is not inconsistent with the Comprehensive Plan (Section 2400.4).

As we stated at the public hearing, and as the plans make clear, we are not requesting any incentives in terms of additional height or density. The 90 foot height is the same height as permitted under the matter of right SP zoning and the 5.29 FAR is less than the permitted matter

of right FAR of 6.0. Nonetheless, we are providing significant public benefits and amenities, including the following:

- Renovation and modernization of the Grant School building;
- Enhanced programmatic collaboration between the two institutions;
- Historically sensitive modernization and addition to the Grant School;
- Implementation of streetscape improvements consistent with the proposed GW Foggy Bottom Campus Streetscape Plan for the entire frontage of the north side of F Street and the south side of G Street;
- Implementation of sustainable design principles; and
- Additional on-campus undergraduate student housing.

Finally, the project is fully consistent with the planning initiatives of both institutions - the University's 2000 Campus Plan as well as its proposed Foggy Bottom Campus Plan 2006-2025 (currently before this Commission) and the DCPS Master Facilities Plan. The project is also not inconsistent with the District of Columbia's current Comprehensive Plan as well as the draft new Comprehensive Plan pending before the City Council which specifically includes as policy objectives:

- "Encourage partnerships between the city's universities, anchor institutions and K-12 schools to create additional pathways to learning for District students and young adults." (Policy EDU-3.2.1: University Partnerships.)
- "Continue to encourage the provision of on-campus student housing in order to reduce college and university impacts on the housing stock in adjacent neighborhoods." (Policy EDU-3.3.4: Student Housing.)

Both goals are achieved in this important project.

### ***Response to Opposition Issues:***

The issues raised by the opposition have been addressed in the filings and public hearing testimony as well as by the reports of the city agencies and the testimony of the party and persons in support. Based on the substantial evidence and testimony of record, the long-standing precedent of the Commission, and the decisions of the DC Court of Appeals, it is clear that none of the issues raised by the opposition has merit. Specifically, we submit the following:

#### **The PUD Process is Appropriate:**

This precise issue was raised in the PUD case for the Square 103 project just down F Street from the subject PUD. In that case, the Commission squarely held that the PUD process was appropriate and stated:

“The Commission is not persuaded by ANC 2A’s assertions that the PUD process is not available to properties subject to a campus plan, or would result in negative consequences. The filing of a PUD application for a property within the boundaries of an approved campus plan may be made pursuant to 11 DCMR Section 2405.7. *The PUD process is appropriately used to encourage high-quality developments that provide public benefits, and offers flexibility of development for projects that offer a commendable number or quality of public benefits. (Emphasis added.)* 11 DCMR sections 2400.1, 2400.2. The PUD process offers flexibility that is not otherwise available under the campus plan process.”

Thus, this threshold issue has already been affirmatively decided by the Commission.<sup>1</sup>

#### R-5-E Zoning Would Not Achieve the Same Objectives

The underpinning for the MOU between DCPS and the University is the creation of value with respect to what DCPS could transfer to GW in order to realize the \$12M it needs to complete the school renovation. R-5-E zoning would bring this entire project within the University’s aggregate residential FAR cap and thus for all practical purposes, eliminates the value that could be derived from this transaction. It is disingenuous for the ANC to suggest that it fully supports the School Without Walls component of the PUD while at the same time it objects to the only mechanism that allows the school to obtain the funds to fulfill its goal of providing a state-of-the-art school now – as opposed to some future time when other funding is set aside for this project. As the Home and School Association so eloquently said, trading their small back parking lot for a new school is the best opportunity to fulfill the dream of a safe and modern School Without Walls.

In addition, rezoning to R-5-E alone would not accommodate the development program set forth in this Application without variance relief obtained through a separate BZA process.

#### SP-2 Zoning Does Not Constitute Spot Zoning

By memorandum in the record we have addressed this issue in detail. In summary, SP-2 zoning at this location is clearly not spot zoning since it is not inconsistent with the Comprehensive Plan, the character and zoning of the surrounding area, or the purposes of the Zoning Regulations. Further, in Z.C. Case No. 91-20, faced with the identical issue, the Zoning Commission rezoned a portion of the Howard University campus from R-5-B to SP-2 for many of the same reasons as requested here. That case provides ample precedent for a finding of no spot zoning.

---

<sup>1</sup> In that case, Z.C. Order No. 03-29, the Commission also approved rear yard, court width, and lot occupancy flexibility finding that the requested relief would not adversely affect the use of neighboring property (owned by the University as is the case here) or create adverse impacts for the proposed residence hall.

### This Project is Included in the University's Campus Plan

The argument that this project is not included in the Campus Plan as a whole is simply unsupported by the facts. First, this site was specifically identified in the existing Campus Plan (2000-2009) as a housing opportunity site and BZA Order No. 16553 references in finding of fact #12 the plans to maximize beds on this site as follows:

“650 beds on Square 80 provided that the District of Columbia transfers property it owns on that site to the University for redevelopment including new space for School Without Walls, or alternatively, approximately 288 beds if the property is not transferred.”

Likewise, this project is included and identified in the pending Foggy Bottom Campus Plan 2006-2025 and accompanying first-stage PUD which provides specific information on the public/private partnership, the number of beds, the number of parking spaces, and the proposed height and density. The development approved under this PUD is included in the overall campus gross floor area and FAR calculations set forth in the pending Campus Plan application. In addition, by increasing the capacity of undergraduate housing on this site, GW is able to preserve other sites on its campus that were previously designated for future residential development and include these sites within the proposed Historic District that is set forth under the Foggy Bottom Campus Plan: 2006-2025.

Thus, there is no question that this project has been included in the University's Campus Plans, both the existing plan and the proposed, pending application.

### The Location of This Project on the Periphery of the Campus is Appropriate

While the pending *Foggy Bottom Campus Plan 2006 – 2025* calls for the *concentration* of high-intensity uses in the core of the campus, it clearly specifies where each proposed development site – including this project – is located. Furthermore, this location was identified and approved for student housing use in the existing Campus Plan (2000 – 2009). By virtue of the fact that the School Without Walls is physically located in Square 80, there is no way to move the project from its present location. Substantial efforts have been made, however, to minimize impacts associated with student residential use of this site by orienting student access from the courtyard to G Street and the core of the campus.

### An EIS Is Not Required

The Commission and the Office of the Attorney General have consistently stated that an EIS is not required at the PUD approval stage but rather that environmental review occurs during the building permit process. This issue was raised most recently as a preliminary matter at the start of the hearing process for the *Foggy Bottom Campus Plan 2006 - 2025* and the Commission reiterated its position and denied the motion. This issue was also raised by the FBA in the Square 103 PUD case and the Chair of the Commission clearly stated that environmental review is part of the permitting process and is not part of the review that takes place before the Zoning Commission. This is consistent with the long-standing precedent of both the BZA and the Zoning Commission. *See, e.g., Z.C. Order No. 02-30 at 16; Z.C. Order No. 842 at 9; BZA Order*

No. 16389 at 2; BZA Order No. 16457 at 8; BZA Order No. 16138 at 8, 9; BZA Order No. 15519-B, at 9; BZA Order No. 15434 at 19; BZA Order No. 15435 at 7, all of which are matters of public record.

### *Conclusion*

In summary, this project has been carefully conceived, designed and shared with the community and represents the culmination of years of planning and inspiration. It fully meets the PUD and campus plan requirements, it has been vetted in a transparent and collaborative process with the community, and it merits your approval. We greatly appreciate your careful consideration and expedited review and look forward to a favorable decision so that both institutions can move quickly to make their vision a reality.