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November 1, 2006

Maureen E. Dwyer
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By Hand Delivery

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

**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
Post-Hearing Submission**

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").

In response to issues raised by members of the Zoning Commission at the Applicant's public hearing for the above-mentioned case, the Applicant respectfully submits the following materials:

- (1) opinion of Applicant's counsel addressing "spot zoning" attached as Exhibit A;
- (2) written statement addressing the Commission's consistent position that an Environmental Impact Study ("EIS") is not required as part of the zoning review process, attached as Exhibit B;
- (3) written statements providing further explanation of the proposed PUD's sustainable design features, attached as Exhibit C;

November 1, 2006

Page 2

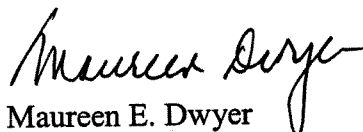
- (4) plans providing further detail on the proposed PUD's landscape and streetscape elements, attached as Exhibit D; and
- (5) written statement and plans responding to issues raised by the District Department of Transportation ("DDOT"), attached as Exhibit E.

The Applicant's written closing statement is being filed separately since no response to that is permitted by any party pursuant to the Zoning Commission Rules of Practice and Procedure.

Conclusion

The attached documents fully address the outstanding issues that were raised by the Commissioners at the October 30, 2006 Public Hearing in this matter. 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

Enclosures

November 1, 2006

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this letter and enclosures were hand
delivered on November 1, 2006.

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ANC 2A
St. Mary's Court
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District Department of Transportation
2000 14th Street NW
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School Without Walls Senior High School
Home and School Association
2130 G Street, N.W.
Washington, DC 20037



David M. Avitabile

EXHIBIT A

Argument Refuting Allegation of Spot Zoning

At the October 30, 2006 Zoning Commission Public Hearing (the “Public Hearing”) in Case No. 06-17, the Zoning Commission requested that the District of Columbia Public Schools (“DCPS”) and The George Washington University (“GW” or “the University”) (collectively, the “Applicant”) provide information as to why the proposed Zoning Map amendment for Square 80, Lots 55 and 829 (the “Subject Property”) from R-5-D to SP-2 does not constitute illegal spot zoning. As set forth in analysis below, the proposed Zoning Map amendment clearly fails both prongs of the test and, accordingly, the allegation of spot zoning is completely unfounded.

The established case law in the District of Columbia is very clear regarding what constitutes illegal spot zoning. The D.C. Court of Appeals has defined spot zoning “as the ‘wrenching’ of a small parcel from its environment for the benefit of a single owner and without benefit to the public at large or the area affected.” *Daro Realty, Inc. v. District of Columbia Zoning Commission*, 581 A.2d 295, 299 (citing *Lee v. District of Columbia Zoning Commission*, 411 A.2d 635, 641 (D.C. 1980); *Citizens Association of Georgetown v. District of Columbia Zoning Commission*, 402 A.2d 36, 39-40 (D.C. 1979)). Two tests must be satisfied in order for the Court to determine that an action to zone property in the District rises to the level of illegitimate spot zoning.

To constitute illegal spot zoning, the Commission’s action must (1) pertain to a single parcel or a limited area – ordinarily for the benefit of a particular property owner or specially interested party – and (2) must be inconsistent with the city’s comprehensive plan, or if there is none, with the character and zoning of the surrounding area, or the purposes of the zoning regulation, i.e. the public health, safety and general welfare.

Daro, 581 A.2d at 299; see *Citizens Association of Georgetown*, 402 A.2d at 39.

In the *Daro* case, the Court of Appeals notes that:

To date we have issued four decisions on spot zoning. [footnote omitted]. All four involved the rezoning of small parcels of land to the benefit of single property owners and, thus, in all four the first prong of the test was satisfied. However, we affirmed the Commission in each case, because the petitioners failed to satisfy the second prong by showing that the rezoning either was inconsistent with the comprehensive plan and/or surrounding environment *or that it failed to serve the purposes of zoning by contributing to the public welfare.* (Emphasis added.)

Daro, 581 A.2d at 299.

The proposed amendment to the Zoning Map for the Subject Property does not fail either of these tests. First, the proposed Zoning Map Amendment benefits more than one owner or specially interested party. The District of Columbia owns Lot 829, which is the L-shaped portion of the Subject Property that contains the historic Grant School and surface parking lot. Under the terms of the Memorandum of Understanding (“MOU”) between DCPS and GW, DCPS will sell a small portion of Lot 829 that fronts on F Street to GW. In exchange for the parcel and additional

development rights generated by rezoning the land to SP-2 under the PUD, the University will pay DCPS approximately \$12 million.¹

DCPS will then use this funding, as well as additional DCPS funds, for the preservation, modernization, and expansion of the historic Grant School as the home of the School Without Walls. This alternative financing resource provides supplemental funding and supplants currently anticipated funding, which allows DCPS to reallocate existing funds to other high priority projects within the school system. Both the renovation and addition to the Grant School and the supplemental funding that frees up financial resources for other DCPS priorities provide benefits to the residents of the immediate neighborhood, Ward 2 and the District as a whole. The beneficiaries of the zoning application include the following: the present and future students, faculty, parents and staff at the School Without Walls; students, parents, and staff at other District of Columbia Public School facilities; and, indeed, all residents of the District of Columbia. The proposed Zoning Map amendment is clearly not intended to benefit a particular property owner or a specifically interested party.

The second element of the two prong spot zoning test is also not satisfied in this case. First, the proposed SP-2 zoning of the Subject Property is consistent with the SP-2 zoning in adjacent Square 81, located across F Street from Square 80, and nearby Square 122, which is located within the Campus Plan boundary.² Second, the proposed SP-2 zoning is fully consistent with the D.C. Comprehensive Plan (the "Plan"). The Generalized Land Use Map includes the Subject Property in the institutional land use category, and both the public school and proposed residence hall uses are entirely consistent with this land use designation. The proposed SP-2 zoning is also entirely consistent with the Generalized Land Use Map as the Subject Property is located adjacent to the high-density residential land use category to the south.

Furthermore, as described in the Applicant's June 23, 2006 pre-hearing submission, the proposed amendment to the Zoning Map fulfills many of the goals and objectives of the Plan. Specifically, the proposed rezoning will improve the neighborhood by enabling the renovation and expansion of the School Without Walls, a public facility, which, under the Plan, should be "stabilized and improved." 11 DCMR § 102.3. The proposed rezoning also improves the neighborhood by providing additional on-campus housing for GW undergraduate students. In addition to its benefit to the Foggy Bottom/West End neighborhood, the proposed rezoning will stabilize and improve other neighborhoods in the city as the public-private partnership between DCPS and GW enables DCPS to reallocate existing funds to other high priority projects in other areas of the District.

Finally, the Office of Planning has concluded that the proposed development is in conformance with the goals and policies of the Comprehensive Plan and recommended approval of the application. The Final OP Report, dated October 20, 2006, concluded that the "proposed development would be consistent with land use and policies of the Comprehensive Plan" and was also consistent with major themes and elements of the plan. Final OP Report at 6-7. Specific elements called out by the Office of Planning include § 1319.1 (preservation of historic features), §§

¹ As detailed in the Applicant's written submissions and oral testimony at the Public Hearing, the value in the development partnership is created through this rezoning. The rezoning of Lots 829 and 55 to SP-2 removes the development from the aggregate FAR cap that otherwise applies to residentially-zoned land within the Foggy Bottom Campus Plan boundaries, thereby creating value for which GW can pay DCPS.

² Other nearby SP-2 zoned squares include Squares 33, 59, and 104.

606 and 1311 (rehabilitation and maintenance of public facilities). The Office of Planning also found that the application was consistent with Condition 9 of GW's existing Foggy Bottom Campus Plan, which requires a significant majority of GW undergraduates to be housed on campus. The addition of approximately 474 new on-campus beds will also assist with the transition of off-campus undergraduate residential uses as set forth in the proposed conditions to the *Foggy Bottom Campus Plan: 2006 – 2025*, which is currently pending before the Zoning Commission..

As described above, the proposed Zoning Map amendment cannot be challenged as spot zoning since it does not meet the enumerated legal test. The proposal is completely consistent with the Comprehensive Plan and fulfills the Plan's historic preservation, housing, and public facilities goals for the neighborhood and the District as a whole. Further, the Office of Planning agrees that the proposal is consistent with the Comprehensive Plan and recommends approval of the Zoning Map amendment. Most importantly, the benefits of the rezoning do not merely apply to the Applicant, but rather, extend far beyond to benefit others including the present and future students, parents, teachers, and staff of the District of Columbia public school system.

EXHIBIT B

Statement Regarding Environmental Impact Studies

The Zoning Commission and Board of Zoning Adjustment have both repeatedly held—and the D.C. Court of Appeals has affirmed—that the preparation of an environmental impact statement (“EIS”) is part of the building permit review process, not the zoning review process, and therefore takes place subsequent to any review by the Zoning Commission or Board of Zoning Adjustment. This issue was raised most recently in Case Nos. 06-11 and 06-12, the *Foggy Bottom Campus Plan: 2006 – 2025* and related first-stage PUD and Zoning Map amendment, in a preliminary motion by the Foggy Bottom Association. In moving to dismiss the motion, Chairperson Mitten stated the following:

I think our position should be as it has been in the past that this is - - that we are not the lone agency in these matters. This has been actually litigated a couple of times whether it should, in fact, be done at this stage. And I don't think we need to revisit it. And I would move that we deny the motion to postpone the case pending preparation.

Z.C. Case Nos. 06-11 & 06-12 Public Hr'g Tr. 9, Sept. 14, 2006 (emphasis added). The Commission voted 5-0-0 to dismiss the motion. A copy of the relevant portions of the transcript is attached. Also attached is a copy of The George Washington University's opposition motion in that case, which sets forth the established District law in greater detail.

The issue was also raised in Case No. 03-29, an application by The George Washington University for consolidated review and approval of the recently-constructed Square 103 residence hall. When counsel for Advisory Neighborhood Commission (“ANC”) 2A argued that preparation of an EIS was important for the Commission's consideration of the proposed consolidated PUD, Chairperson Mitten replied:

Just - - just let me clarify something for you because this comes up periodically. That's a part of the - - of the building permitting process and that's not a part of the review that takes place before the Zoning Commission.

Z.C. Case No. 03-29 Public Hr'g Tr. 100, Feb. 19, 2004. Counsel for ANC 2A continued to push on the issue, but Chairperson Mitten reiterated that the Zoning Commission does not consider environmental issues, and that counsel should “move on to another subject.” *Id.* at 100-01. A copy of the relevant portions of the transcript is attached.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
TRAVIS PARKER
JENNIFER STEINGASSER
ELLEN MCCARTHY

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

The transcript constitutes the minutes
from the Public Hearing held on September 14, 2006.

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1 MS. SCHELLIN: Staff would record the vote
2 5-0-0 to approve party status to West End Citizens'
3 Association and the Foggy Bottom Association.
4 Commissioner Mitten moving, Commissioner Parsons
5 seconding, Commissioners Jeffries, Hood and Turnbull
6 in favor.

7 CHAIRPERSON MITTEN: Thank you. Next we
8 have two motions from the Foggy Bottom Association.
9 We have a motion from them to postpone the case
10 pending preparation of a consolidated environmental
11 review. We won't be taking all arguments on these
12 motions. We have had a response to the motion from
13 the applicant and this has been -- this is a matter
14 that has come before the Commission and the BZA a
15 number of times.

16 I think our position should be as it has
17 been in the past that this is -- that we are not the
18 lone agency in these matters. This has been actually
19 litigated a couple of times whether it should, in
20 fact, be done at this stage. And I don't think we
21 need to revisit it. And I would move that we deny the
22 motion to postpone the case pending preparation.

23 MR. THOMAS: Madam Chair, Michael Thomas,
24 ANC-2A02. If I could, just as a preliminary matter,
25 state for the record that the ANC is also represented

1 by Mr. Hitchcock.

2 CHAIRPERSON MITTEN: Okay.

3 MR. THOMAS: And that we do join in these
4 two motions. And unless and until on a specific we
5 notify the Commission that we have a different
6 position, the positions that he puts forward will be
7 the positions of the ANC.

8 CHAIRPERSON MITTEN: Okay.

9 MR. HITCHCOCK: Yes.

10 CHAIRPERSON MITTEN: Thank you.

11 MR. HITCHCOCK: And we will try to clarify
12 that. May I add one point, Madam Chair? I don't want
13 to revisit the issue, but there is a separate issue
14 presented here that was not presented previously and
15 that's the issue of piecemealing or segmentations
16 splitting these matters up into a number of different
17 procedures -- proceedings which have the effect of
18 limiting the ability of this Commission, the Health
19 Department, whomever to provide the kind of cumulative
20 or comprehensive review that the statute provides.

21 We have cited authority in our motion for
22 why this is the sort of thing that's not allowed at
23 the federal level. I would revisit the arguments that
24 have been put forward for why it is important to
25 consider environmental issues earlier rather than

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1 later. But this is a separate issue here.

2 CHAIRPERSON MITTEN: I understand.

3 MR. HITCHCOCK: Apart from the others.

4 Thank you.

5 CHAIRPERSON MITTEN: Thank you. And just
6 for clarification, not on this point, but to Mr.
7 Thomas' point, when it is time for cross examination
8 by the ANC, Mr. Hitchcock will do it for both Foggy
9 Bottom and the ANC together. We will not have
10 separate representations. Is that right?

11 MR. HITCHCOCK: Yes.

12 CHAIRPERSON MITTEN: Okay.

13 MR. HITCHCOCK: That's the principal
14 intent.

15 CHAIRPERSON MITTEN: Okay.

16 MR. HITCHCOCK: ANC-2A will be making its
17 own presentation.

18 CHAIRPERSON MITTEN: Okay.

19 MR. HITCHCOCK: Foggy Bottom will be
20 making its own presentation, but in an effort to try
21 to streamline the process, I'll be doing work for
22 both.

23 CHAIRPERSON MITTEN: That's great. Okay.
24 Great. Thank you.

25 MR. HITCHCOCK: So we'll be done in less

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1 than six nights.

2 CHAIRPERSON MITTEN: Good, because we only
3 scheduled four. Okay. So back to the motion. I move
4 that we deny the motion to postpone the case pending
5 preparation of a consolidated environmental review.
6 And just to your specific point, I mean, I think, you
7 know, we have had counsel from the Office of the
8 Attorney General and we will, in our order on this,
9 set forth the analysis. But, you know, the fact of
10 the matter is is that this is a first-stage PUD and so
11 there's no permissions being granted. No specific
12 permissions being granted. So there's other matters
13 that -- as to what is before us. These are not
14 permissions to even build specific buildings. So I
15 just wanted to make that point. We're not going to
16 have a little discussion here.

17 Okay. Can I get a second on the motion?

18 COMMISSIONER TURNBULL: Second.

19 CHAIRPERSON MITTEN: Thank you. Any
20 discussion on the motion? All those in favor, please,
21 say aye.

22 ALL: Aye.

23 CHAIRPERSON MITTEN: Those opposed,
24 please, say no. Mrs. Schellin?

25 MS. SCHELLIN: Staff will record the vote

1 5-0-0 to deny the motion for postponement for
2 environmental impact study. Commissioner Mitten
3 moving, Commissioner Turnbull seconding, Commissioners
4 Jeffries, Parsons and Hood in favor of denial.

5 CHAIRPERSON MITTEN: Thank you. Next is
6 the motion of the Foggy Bottom Association to dismiss
7 the case for noncompliance with BZA Order No. 16553I
8 and this has to do with the view of the Foggy Bottom
9 Association that the university is out of compliance
10 with the order and there is a condition of that order
11 that says in part that "No special exception
12 application filed by the university for further
13 processing under this plan may be granted, unless the
14 university proves that it has remained in substantial
15 compliance with Conditions 1 through 19 set forth in
16 this order."

17 There is more that I could say about why
18 I think this motion should be denied, but the emphasis
19 that I just want to make is that the idea was special
20 exception for further processing shall not be granted.
21 So there's two points. One is this is not an
22 application for further processing as we use that
23 terminology. This is to review a new Campus Plan
24 proposal and for a PUD. So it's not further
25 processing and it's also that such -- the intent of

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THE GEORGE WASHINGTON UNIVERSITY
FOGGY BOTTOM CAMPUS PLAN: 2006-2025 AND
FIRST-STAGE PLANNED UNIT DEVELOPMENT
AND ZONING MAP AMENDMENT

Z.C. Nos. 06-11 &
06-12

The George Washington University ("University"), through its counsel, opposes the request of the Foggy Bottom Association ("FBA") that this Commission defer consideration of the Campus Plan and related applications for zoning approval pending the completion of a consolidated environmental review. The purpose of this motion is to delay action on the above-captioned applications,¹ which involve concept approval for a new campus plan and related first-stage planned unit development. None of the grounds cited by the FBA or its expert in support of its motion provide any basis for postponement of the public hearing. Rather, it is well-established as a matter of law that the environmental review process occurs as part of the building review process, not as part of planning review. Specifically, the University submits that:

1. The District of Columbia Environmental Protection Act specifically permits environmental review to take place after a major action has already been approved, but before it has been implemented.
2. The District of Columbia Court of Appeals has held that environmental review is legally required to take place before construction actually commences, not before zoning approval is granted.

¹ The FBA Motion also references two related applications pertaining to proposed development of the University's campus. The two related applications are an application for the consolidated review and approval of a PUD involving the School Without Walls in the 2100 block of F Street, NW (Z.C. Case No. 06-17) and an application for the consolidated review and approval of a PUD involving Square 54, the former site of the GW Hospital (Z.C. Case No. 06-27). Both applications have been scheduled for public hearings before this Commission later this fall.

3. The Zoning Commission and the Board of Zoning Adjustment have repeatedly held that environmental review is part of the building review process and not the zoning approval process. Most relevantly, in Z.C. Case No. 03-29, a case involving the University's application for consolidated review and approval of a planned unit development, this Commission reiterated this position.
4. Practical considerations necessitate that environmental review be conducted as part of the building permit stage, not the planning review stage.

Accordingly, we request that this Commission proceed with its consideration of the above-captioned applications without delay at the scheduled public hearings.

ARGUMENT

1. The District of Columbia Environmental Protection Act specifically permits environmental review to take place after a major action has already been approved, but before it has been implemented.

In its Motion to Postpone Case Pending Preparation of a Consolidated Environmental Review ("FBA Motion"), dated August 31, 2006, counsel for the FBA asserts that the Zoning Commission should defer consideration of the above-captioned cases pending the completion of the environmental review required by the DCEPA." *FBA Motion at 15*. The FBA claims that the PUD is a "major action" under the District of Columbia Environmental Policy Act of 1989 ("DCEPA" or the "Act"), D.C. Code § 8-109.01, which requires the completion of an Environmental Impact Screening Form ("EISF") and, if necessary, the preparation of an Environmental Impact Statement ("EIS"). *FBA Motion at 6-7*. According to the FBA, the Zoning Commission's consideration of the PUD should be postponed until the EISF and EIS are completed.

Assuming an EIS is required for this project, it is well-established in the District of Columbia that the environmental review process occurs as part of the building review process, which is performed by the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA") following an application for a building permit. *See sources cited supra* Section 3.

The building permit application and review takes place when construction of the building is imminent, following any applicable reviews or approvals by the Zoning Commission or Board of Zoning Adjustment. As detailed on the Environmental Review Process page on its website, DCRA integrates environmental review into building review on its website, including how it determines whether preparation of an EISF or EIS is required. See DCRA, Environmental Review Process at <http://dcra.dc.gov> (follow “Building/Land Regulations” hyperlink, then “Environmental Review Process” hyperlink).² As the Office of Planning noted in its September 5, 2006 Final Report (“OP Final Report”), “the regulations call for this process to be completed at the building permit stage and not at the time of a first-stage PUD where there are no building plans or designs.” OP Final Report at 23.

Review of the EIS at the permitting stage is appropriate. D.C. Code § 8-109.3(a) (2001) requires that the EIS be prepared at least sixty days “prior to implementation of the proposed major action” (emphasis added). The D.C. Court of Appeals has held that “implementation” of a zoning approval occurs when construction actually begins. See *Foggy Bottom Ass’n v. D.C. Bd. of Zoning Adjustment*, 791 A.2d 64, 73 (D.C. 2002). The DCEPA specifically permits the environmental review to take place after a “major action” has already been “approved,” but before it has been “implemented.” Section 8-109.03(a) provides: “Whenever . . . a . . . commission . . . proposes or approves a major action that is likely to have substantial negative impact on the environment, if implemented, the . . . commission . . . shall prepare . . . a detailed EIS at least 60 days prior to implementation of the proposed major action” (emphasis added).

² The direct link can be found at <http://dcra.dc.gov/dcra/cwp/view,a,1342,q,600463,dcraNav,%7C33408%7C.asp>.

Accordingly, it is entirely appropriate and consistent with the DCEPA that the environmental review occur following review by the Office of Planning and Zoning Commission but before actual construction of the building. Under § 8-109.03(a)(10) of the DCEPA, the FBA, Advisory Neighborhood Commission ("ANC"), and other "interested members of the public" will have an opportunity to comment on the EIS when the environmental impact is assessed by the DCRA, which has been designated by the Mayor as the "lead agency" for such environmental review.

Furthermore, the DCEPA expressly exempts planning review from the EIS requirements. Under D.C. Code § 8-109.06(a)(2) an EIS is not required with respect to actions "[f]or which a request has been made for the authorization or allocation of funds for a project that involves only a feasibility or planning study for a possible future action that has not been approved, adopted, or funded." Although the Zoning Commission may consider environmental factors in its review of the proposed PUD, its review of environmental factors should be limited to addressing issues related to the PUD evaluation standards set forth in 11 DCMR § 2400, *et seq.*

2. **The District of Columbia Court of Appeals has held that environmental review is legally required to take place before construction actually commences, not before zoning approval is granted.**

The District of Columbia Court of Appeals addressed this issue in great detail in *Foggy Bottom*, a case involving the same parties and in which the FBA made the same argument. In that case, the FBA claimed the Board of Zoning Adjustment ("BZA") erred by failing to postpone its proceedings until the EIS review was completed. The Court upheld the BZA's decision, finding that any error by the BZA in failing to postpone the proceedings was harmless because the Department of Health later determined that the EIS was not necessary and because the review occurred before construction actually began on the project. *Foggy Bottom*, 791 A.2d

at 71. Again, the Court held that “implementation” of a zoning approval occurs when construction actually begins. *Id.* at 73. Accordingly, because the EIS review took place in the course of applying for a building permit, the “key requirement” of the DCEPA was met: namely, “that the EIS review occur before the major action is actually ‘implemented’”; that is, before construction on the building actually commenced. *Id.*

3. **The Zoning Commission and Board of Zoning Adjustment have repeatedly held that environmental review is part of the building permit process and not a part of zoning review.**

Both the Zoning Commission and Board of Zoning Adjustment (“BZA”) have held that the determination of whether an EIS is required, and any subsequent environmental review, is within the purview of DCRA and should be considered during the review of a building permit application. *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.

In Z.C. Case No. 03-29, this Commission considered an application by the University for consolidated review and approval of a PUD for Square 103. In that case, the FBA again argued that the project required an environmental impact statement. Z.C. Order No. 03-29 at 7. During the public hearing, counsel for Advisory Neighborhood Commission (“ANC”) 2A, which also opposed the project, argued that the preparation of an EIS was important for the Commission’s consideration of the proposed PUD. *See* Z.C. Case No. 03-29 Public Hr’g Tr., 98–101, Feb. 19, 2004 (the “Public Hearing”).³ The Chair of the Commission replied: “Just -- just let me clarify something for you because this comes up periodically. That’s a part of the – of the building permitting process and that’s not a part of the review that takes place before the Zoning

³ A copy of the relevant portions of the transcript is attached to this motion as Exhibit A.

Commission.” *Id.* at 100. Counsel for ANC 2A continued to push on the issue, but the Chair reiterated that the Zoning Commission does not consider environmental issues, and that counsel should “move on to another subject.” *Id.* at 100-01.

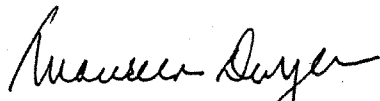
4. **Practical considerations necessitate that environmental review be conducted as part of the building permit stage, not the planning review stage.**

Finally, environmental reviews should be conducted at the building permit stage both as a practical matter and as a matter of government efficiency. Frequently, a complete environmental review must consider aspects of interior design of a building that are beyond the scope of a zoning hearing. For example, air quality reviews may focus on the exterior ventilation of vehicle exhaust from parking garages. It is only when the building is fully designed that environmental regulators can get a complete picture of the impact of a proposed building. Indeed, there is even less justification for environmental review for a campus plan or first-stage planned unit development. With campus plans and first-stage PUDs, buildings are presented only in concept, and the plans fail to present enough information about each specific structure for a full and proper environmental assessment.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the FBA’s motion be denied and that the Zoning Commission continue its consideration of the Foggy Bottom Campus Plan: 2006-2025 and First Stage Planned Unit Development and Zoning Map Amendment without delay at the scheduled public hearings. We look forward to addressing any issues or concerns the Zoning Commission may have about the proposed campus plan, PUD, and zoning map amendment during that hearing.

Respectfully submitted,



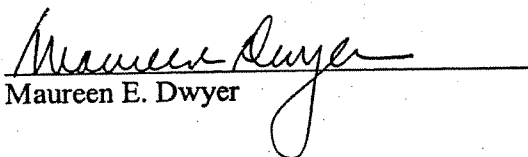
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Attorney for:
The George Washington University

September 11, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this motion was served by e-mail and first-class mail, postage prepaid, upon Cornish F. Hitchcock, 5301 Wisconsin Avenue, NW, Suite 350, Washington, DC 20015.


Maureen E. Dwyer

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING
CASE NO 03-29
THE GEORGE WASHINGTON UNIVERSITY -- NEW RESIDENCE
HALL

+ + + + +

THURSDAY

FEBRUARY 19, 2004

+ + + + +

The Public Hearing of the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Carol Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
JOHN G. PARSONS	Commissioner (National Park Service)

OFFICE OF ZONING STAFF PRESENT:

Alberto P. Bastida,	Secretary, ZC
Sharon Schellin,	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

John Fondersmith,	Office of Planning
Ellen McCarthy,	Office of Planning

OFFICE OF CORPORATION COUNSEL STAFF PRESENT:

Mary Nagelhout, Esq.

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1 capital gain would have a different motivation behind
2 and if it wasn't subject to the same kind of scrutiny
3 that the -- that this institution has, it could get by
4 and pass with far less and I think that that's
5 something that is -- that is -- that everybody has to
6 recognize.

7 MR. NORTON: All right. Now, with respect
8 to the sustainable design in the environmentally sound
9 aspects which I think have been listed as a -- as a
10 possible amenity, did -- did GW prepare an
11 environmental impact statement under the D.C.
12 Environmental Control Act?

13 MR. DUTTON: We will be doing that as part
14 of the process, but it hasn't been done yet.

15 MR. NORTON: Has not been done yet?

16 MR. DUTTON: No, because --

17 MR. BARBER: Excuse me. This is not an
18 environmental impact statement. We will comply during
19 the building process. Applying for the building
20 permit process with all the environmental laws which
21 requires initially an environmental screening form and
22 then the Department of Health determines whether the
23 environmental impact statement is required.

24 MR. NORTON: Well, just so we're clear
25 though. This is not exempt from that. Is it? It's

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1 over a million dollars and it's outside the central
2 employment area.

3 MR. BARBER: No, it -- it -- it is covered
4 by that.

5 MR. NORTON: Okay. But, in any event,
6 there hasn't been any environmental impact statement
7 done yet. Is that correct?

8 MR. DUTTON: The -- the form has not been
9 filled out or handed in yet. It will be part of the
10 process. We'll determine whether the impact statement
11 is required. That hasn't been --

12 MR. NORTON: Okay.

13 MR. DUTTON: The city determines whether
14 you need to do that.

15 MR. NORTON: Just for purposes of this
16 Board, have -- have -- has the information that would
17 be provided on the environmental forms that have to be
18 filed with the -- with the city, have -- has that been
19 provided to this Board?

20 MS. HONEY: None -- none of that's been
21 collected yet. It's not been done.

22 MR. NORTON: So, in terms of -- of
23 analyzing and weighing the issues with respect to the
24 PUD and the -- the amenities and the -- the minuses,
25 this Board doesn't have that information. Is that

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1 correct?

2 MS. HONEY: Correct.

3 MR. NORTON: Okay.

4 CHAIR MITTEN: Just -- just let me clarify
5 something for you because this comes up periodically.

6 That's a part of the -- of the building permitting
7 process and that's not part of the review that takes
8 place before the Zoning Commission.

9 MR. NORTON: I understand that and the
10 only reason, Madam Chairman, that I raise it is -- is
11 that this is a -- I mean when you're asking for a PUD,
12 it becomes a -- a -- a -- essentially a weighing of
13 benefits issue. In other words, are the amenities
14 sufficient to outweigh the detriment in that sort of
15 thing and it seems to me that at least that's
16 something that ought to be considered in connection
17 with this.

18 CHAIR MITTEN: But, to the extent that
19 there's anything --

20 MR. NORTON: I mean you don't have to make
21 the final determination as to exactly whether this
22 meets environmental standards, but it seems to me with
23 respect to -- particularly in a place like this where
24 there's a -- you know, we're talking about a lot of
25 people that are being put in there. It's something

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1 that -- that this Board should at least consider in
2 weighing these issues.

3 CHAIR MITTEN: That's what I'm trying to
4 tell you is that we don't.

5 MR. NORTON: Well --

6 CHAIR MITTEN: We -- we don't. So, I -- I
7 just need you to move on to another subject.

8 MR. NORTON: Well, I -- I will move on.

9 CHAIR MITTEN: Yes, there you go.

10 MR. NORTON: I will move on then. Thank
11 you very much.

12 Originally as I understand it when you
13 were trying to do a 14-story building, GW agreed to
14 attempt to get a LEED certification that this was an
15 environmentally sustainable building. Isn't that
16 correct?

17 MR. BARBER: No, we had talked about
18 pursuing an -- an LEED certification. That was one of
19 the things we had discussed at that time.

20 MR. NORTON: And you didn't -- you didn't
21 indicate that to the -- to the Planning Commission or
22 to the -- the Office of Planning?

23 MR. BARBER: I indicated what I said --

24 MR. NORTON: Did you do that?

25 MR. BARBER: -- that -- that we would

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EXHIBIT C.1

Sustainable Design Features – GW Residence Hall

The George Washington University is committed to incorporating sustainable design principles into new campus developments and as such will design the new residence hall in an environmentally sensitive manner.

The following provides an outline of specific environmental features which are to be incorporated into the design and construction of the new residence hall as well as those features which are still being explored and considered for implementation.

SUSTAINABLE SITES

Features to be incorporated into the design:

- Erosion and sediment control during construction
- Development on a non-greenfield, dense urban site
- Convenient to Metro and both public and campus bus lines
- Bicycle storage for 5% of building occupants (25 spaces)
- Stormwater management through the use of a sand filtration structure
- Reduction of light pollution from the building interior and site through the use of low level, shielded, or cut-off fixtures

Additional features still being explored:

- Reduction of heat island effect by using high albedo Energy Star roof

WATER EFFICIENCY

Features to be incorporated into the design:

- Use of high-efficiency irrigation technology
- Use of high-efficiency, low-flow fixtures

ENERGY AND ATMOSPHERE

Features to be incorporated into the design:

- Fundamental building systems commissioning by independent commissioning agent
- Energy efficient building systems designed to comply with DC Energy Conservation Code
- Eliminate use of HCFCs in major HVAC equipment

Additional features still being explored:

- Use of Energy Star ventless washer / dryer units to conserve energy and water

MATERIALS AND RESOURCES

Features to be incorporated into the design:

- Provide designated areas on each floor (and at the service bay) for the collection, separation, and storage of recycled paper, cardboard, glass, plastic, and aluminum
- Use of locally manufactured building materials where possible

MATERIALS AND RESOURCES (CTD)

Additional features still being explored:

- Use of certified wood for doors and millwork
- Use of rapidly renewable materials for flooring and millwork

INDOOR ENVIRONMENT QUALITY

Features to be incorporated into the design:

- Prohibit smoking inside of building as well as at building entries
- Reduce the quantity of indoor air contaminants by specifying low-emitting adhesives, sealants, paints, carpet, and composite wood
- Minimize pollutants by providing permanent entryway grated walk-off mats.
- Provide one operable window and one lighting control for each regularly occupied space
- Provide daylight and views for all regularly occupied spaces.
- Provide LED exit lights and energy efficient light fixtures (T-8 or T-5 florescent tubes)
- Provide occupancy sensors to control lighting in public spaces
- Provide localized temperature controls within each apartment unit

EXHIBIT C.2

Sustainable Design Features – School Without Walls

The overall goal of the design of the School Without Walls renovation and modernization is to create a sustainable, high performance learning environment that conserves energy and natural resources and minimizes its impact on our urban eco-systems. The sustainable design approach that supports this goal is multi-faceted and draws upon the inherent attributes of the building, its site, and its relationship to the University and the District of Columbia.

For example, the renovation and reuse of the historic Grant School building, the school's dense urban context, the convenient location of Metro and the joint-use of facilities by the school and the University provide a fundamentally, sustainable foundation for the design. In concert with a design that emphasizes natural light, appropriate acoustics, use of recycled materials, indoor air quality and energy conservation, these elements combine to create an exciting, urban learning environment that can become a model of sustainable design.

The following briefly describes specific design elements and attributes that are being explored in the design process. As the design process is on-going, these options continue to be evaluated by the design team and DCPS to confirm their appropriateness, operational implications and associated costs/benefits.

SUSTAINABLE SITES

As noted above, the urban site of the school Without Walls has many attributes that foster a sustainable design ranging from its connection to the surrounding, mixed-use academic district and its access to alternative modes of transportation including Metro.

Strategies being explored include:

- Dense, urban site & connected to community
- Convenient to Metro
- Energy Star (high albedo) roofing
- Erosion & sedimentation control during construction
- Convenient bicycle racks

WATER EFFICIENCY

Several options are being explored to reduce the potable water required for the operation of the school.

Strategies being explored include:

Subject to DCPS approval, these strategies might include the specification of water-less or "low flow" fixtures for installation in the restrooms, including:

- Water-less urinals
- Sensor- controlled, low-flow faucets
- Low flow/dual flush toilets

ENERGY & ATMOSPHERE

Energy efficiency options being explored in the design of the Grant School address the new and historic building shells, windows and HVAC and lighting systems. Considering the landmark status of the building, building shell interventions need to respect the historic fabric and finishes of the Grant School including the single-paned, wood windows while increasing the overall performance of the building.