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**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-32**

Z.C. Case No. 10-32

**Application of Georgetown University for
Special Exception Approval of a New Campus Plan**

February 9, 2012

This case is an application by Georgetown University (the "University") requesting special exception approval under the campus plan provisions of the Zoning Regulations at 11 DCMR §§ 3104.4, 3035, and 210 for a new campus plan for the University's main campus. In accordance with §§ 210 and 3035.5 of the Zoning Regulations, this case was heard and decided by the Zoning Commission for the District of Columbia (the "Commission") using the rules of the Board of Zoning Adjustment ("BZA") at 11 DCMR §§ 3100 *et seq.* For the reasons stated below, the Commission hereby approves the application, subject to conditions.

HEARING DATE: April 14, May 12, May 16, June 2, June 6, June 20, and November 17, 2011

DECISION DATE: February 9, 2012

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

FINDINGS OF FACT

Applications, Parties, and Hearing

1. The University's current campus plan was adopted by the BZA by Order No. 16566-F, issued June 7, 2005 (the "2000 Plan"). The 2000 Plan was approved, subject to certain conditions, for a term ending December 31, 2010. Under the 2000 Plan, the University completed the construction of a new 780-bed residence hall in the Southwest Quadrangle as well as a new business school, science center, and performing arts center and an addition to the Georgetown University Hospital ("Hospital") for a Cyberknife medical facility. The University also received further processing approval for modifications to its multi-sport facility and construction of a new athletic training facility.
2. On December 30, 2010, the University submitted an application seeking special exception review and approval of a new campus plan (the "2010 Plan"). (Exhibit 8.) Portions of the application were subsequently amended by the University in its March 31,

2011 pre-hearing submission, May 12, 2011 supplemental submission, June 15, 2011 rebuttal submission, September 19, 2011 letter, October 28, 2011 letter, and November 17, 2011 rebuttal testimony. (Exhibit 25; Exhibit 102; Exhibit 273¹; Exhibit 338; Exhibit 340; Exhibit 354.)

3. Notice of the public hearing was published in the D.C. Register ("DCR") on ____ (____ DCR ____) and was mailed to Advisory Neighborhood Commission ("ANC") 2E and to owners of all property within 200 feet of the subject property.
4. The public hearing on the application was conducted on April 14, May 12, May 16, June 2, June 6, June 20, and November 17, 2011. The hearing was conducted in accordance with the provisions of 11 DCMR §§ 3022 and 3117.
5. In addition to the University, ANC 2E was automatically a party in this proceeding. ANC 2E submitted a report and provided testimony in opposition to the application. (Exhibits 15, 131, 132, 174, 175, 341, 342.)
6. On March 25, 2011, the Citizens Association of Georgetown ("CAG") and the Burleith Citizens Association ("BCA") each filed applications for party status in this proceeding. (Exhibit 20.) The Commission granted the request. Throughout the proceeding, CAG and BCA were each represented by counsel. (Exhibits 20, 74, and 95.) CAG and BCA presented testimony and evidence in opposition to the application, including testimony and evidence from George Oberlander, who was recognized as an expert in land planning and evidence from Joe Mehra, who was recognized as an expert in traffic engineering. (Exhibits 90, 127, 128, 144, 157, 192, 193, 195, 217, 245, 344, 345.)
7. On March 29, 2011, ANC 3D filed a request for party status in this proceeding. (Exhibit 21.) The Commission granted the request. ANC 3D submitted a report and provided testimony in opposition to the application. (Exhibit 39, 79, 134, 135, and 197.)
8. On March 30, 2011, the Foxhall Community Citizens Association ("FCCA") filed a request for party status in this proceeding. (Exhibit 22.) The Commission granted the request. FCCA submitted evidence and testimony in opposition to the application. (Exhibits 129, 130, and 194.)
9. The Commission also received requests for party status from four individuals: Barbara Downs, Edgar Russell, and Irene and Larry Schaffner. The Commission denied the

¹ The University submitted a corrected cover letter to the June 15, 2011 submission on June 20, 2011. (Exhibit 321.)

requests for party status because the individuals' interests were not sufficiently unique and were otherwise represented by CAG, BCA, and ANC 2E.

10. At the hearing, the University presented evidence and testimony from Dr. John J. DeGioia, the University President; Alexander Cooper, qualified as an expert witness in architecture and land planning; Dr. James O'Donnell, the University Provost; Dr. Todd Olson, the University Vice President for Student Affairs and Dean of Students; Eric Smart, qualified as an expert in real estate and economics consulting; and Daniel Van Pelt and Jami Milanovich, qualified as expert witnesses in transportation planning and traffic engineering.
11. On rebuttal, the University presented evidence and testimony from Dr. Olson. Additional testimony was provided by Dr. Jeanne Lord, the Associate Vice President for Student Affairs, and Rocco DeMonaco, the Vice President of University Safety, in response to questions from the Commission and the parties.
12. At the public hearing, the Commission heard testimony and received evidence from the Office of Planning ("OP") in support of the application, with conditions. (Exhibit 85.) OP submitted a supplemental report, dated December 22, 2011. (Exhibit 362.)
13. The Commission also received a report from the District Department of Transportation ("DDOT") in support of the application, with conditions. (Exhibit 347.) The report, which reviewed the University's comprehensive and final transportation report, supplemented and updated earlier comments submitted by DDOT. (Exhibits 84, 158, and 275.)
14. The Commission also heard testimony and received evidence from the parties in opposition to the application as well as multiple persons in support of and in opposition to the application.
15. At a public meeting on February 9, 2012, the Commission took final action to approve the application in Case No. 10-32, subject to conditions.

Procedural Requests and Motions

16. CAG and BCA requested additional time to present testimony regarding the application in their party status application. At the April 14, 2011 public hearing, the Commission denied the request and maintained the one-hour time limit for the parties in opposition, collectively, pursuant to the rules of procedure and established practice. (Tr. Apr. 14,

2011, p.14-20; *see* 11 DCMR § 3117.4.) Counsel for CAG/BCA agreed to the one-hour limitation for the parties in opposition, collectively. (Tr. Apr. 14, 2011, p. 20.)

17. On April 7, 2011, OP and DDOT each filed motions requesting additional time to prepare their reports regarding the application. (Exhibits 29 and 28.) The University, ANC 2E, CAG and BCA all supported the request. (Exhibits 32, 30, and 37.) The University also requested that the Commission confirm that the regular order of presentation be maintained through the hearing process. (Exhibit 32.) At a regularly scheduled meeting on April 11, 2011, the Commission reviewed the correspondence, granted the extension, and affirmed that the regular order of presentation would be maintained throughout the hearing process. Tr. Apr. 11, 2011, p. 50-55.
18. On June 15, 2011, the University requested a continuance of the public hearing in order to provide additional time for the University and DDOT to address outstanding issues regarding the review of the transportation analysis. (Exhibit 279.) DDOT supported the motion. (Exhibit 291.) CAG/BCA supported the continuance regarding transportation issues, but opposed the continuance of the remainder of the hearing. (Exhibit 310.) At the June 20, 2011 public hearing, the Commission voted 5-0-0 to grant the continuance of the hearing. (Tr. Jun. 20, 2011, p. 55-57.)
19. On November 8, 2011, CAG/BCA filed a motion requesting that the Commission impose an interim enrollment cap on the University for the academic year Fall 2012 – Spring 2013. (Exhibit 343.) ANC 2E supported the motion. (Exhibit 346.) At the November 17, 2011 public hearing, the Commission asked the University to voluntarily proffer an interim maximum for the Fall 2012 – Spring 2013 academic year. By letter dated December 15, 2011, the University demonstrated that the Main Campus headcount only grew by 66 students between Fall 2010 and Fall 2011, and voluntarily agreed to limit growth from Fall 2011 to Fall 2012 to no more than 100 students. (Exhibit 359.)
20. On November 8, 2011, ANC 2E and CAG/BCA each filed written sur-rebuttals to the University's written rebuttal. (Exhibits 341, 342, 344, and 345.) By motion dated November 9, 2011, the University requested that the Commission strike the supplemental submissions from the record because they violated the established rules of procedure and exceeded the narrow scope that had been outlined by the Commission at its June 20, 2011 public hearing. (Exhibit 348.) CAG/BCA opposed the motion. (Exhibit 349.) At the November 17, 2011 public hearing, the Commission accepted the submissions and permitted the University an opportunity to respond in writing. (Tr. Nov. 17, 2011, p. 9-11.)

The Main Campus and Surrounding Property

21. The property that is the subject of this application is the University's main campus (the "Campus").² The property is located in Northwest Washington, has an area of approximately 104 acres³, and is bounded generally by the Georgetown neighborhood to the east, Reservoir Road and the Burleith neighborhood to the north, Glover-Archbold Parkway and the Foxhall neighborhood to the west, and Canal Road to the south.
22. The University has been located on the Campus for over two centuries. Tr. Apr. 14, p. 30. The southern two-thirds of the Campus contain the majority of the University's academic, administrative, residential and athletic facilities. The northern third of the Campus is occupied by both Georgetown University Hospital, which is operated by MedStar ("Hospital"), and the Georgetown University Medical Center, which includes academic departments and research facilities operated by the University ("Medical Center"). New construction over the past two decades has been generally focused in the interior of the campus. (Exhibit 8, Tab F and Tab I.)
 - a. The majority of the Campus is located on a large parcel west of 37th Street. The Campus has historically and continues to include the majority of four city blocks east of 37th Street ("East Campus"). (Exhibit 8, Tab H.) The University has owned and used this property for a variety of medical, residential and academic uses since 1898. (Exhibit 8, Tab I.)
 - b. The University also owns rowhouses located along the 1400 block of 36th Street and the 3600 block of Prospect Street, immediately adjacent to, but just outside of, the campus plan boundary. The University provided evidence that it had owned many of these properties for decades and they are used for residential uses permitted under the Zoning Regulations. (Exhibit 102, Tab D and Tab I.)
 - c. The Georgetown University Law Center is currently located at a satellite location in downtown D.C.
23. The primary vehicular entrance to the Campus is located off Canal Road. Canal Road is classified by DDOT as a major commuter arterial roadway. Limited access to the

² The boundaries of the Campus were formally adopted by the National Capital Planning Commission ("NCPC") in 1966, as shown on NCPC Map File No. 71.3(02.20)-24498 (March 3, 1966), and have been recognized by the BZA as the boundaries of the Campus since that time.

³ The Campus includes multiple lots in Squares 1221, 1223, 1226, 1248, and 1321 as depicted and described in the initial application (see Exhibit 7) and corrected by the University in a subsequent letter (see Exhibit 9).

southern portion of the Campus is also available from Prospect Street. The north end of the Campus is accessed from four entrances along Reservoir Road. Reservoir Road is classified as a secondary commuter arterial roadway. (Exhibit 339, Tab A.)

24. Most of the Campus is located in the R-3 Zone District and is located in the Institutional Land Use category on the Future Land Use Map of the District of Columbia Comprehensive Plan ("Future Land Use Map"). A small portion of property located along 36th Street is located in the C-1 Zone District.
25. The residential neighborhoods surrounding the Campus are generally located in the R-3 Zone District and identified as Moderate Density Residential⁴ on the Future Land Use Map. (Exhibit 8; Exhibit 361.)
 - a. The neighborhood immediately east of the Campus is generally referred to as West Georgetown and contains a mix of rowhouses and larger buildings that have been converted to apartment uses. Institutional uses serve as a buffer between the University and the residential neighborhood. Local serving retail uses are also scattered throughout the neighborhood.
 - b. The neighborhood to the north of the Campus includes the Burleith and Hillandale neighborhoods. Burleith also contains a mix of rowhouses and institutional uses.
 - c. Immediately to the west of Campus is the Glover-Archbold Park; beyond the park is the Foxhall neighborhood. The park serves as a buffer between the University and the Foxhall neighborhood.
26. The M Street and Wisconsin Avenue commercial corridors are located within a few blocks of the Campus. They are identified as a part of a regional commercial center on the Generalized Policy Map of the District of Columbia Comprehensive Plan ("Generalized Policy Map"). (Exhibit 8; Exhibit 361.)
27. The University is a major contributor to the economic, social and cultural fabric of the District of Columbia. The University attracts talented students to the District, and many of its alumni (over 24,000) remain in the District and contribute to the city's economic, intellectual and cultural vibrancy. The University also provides more jobs than any other private employer in the District of Columbia, approximately 38% of which are held by District residents, and spends extensively on goods and services from District vendors, including Certified Local, Small or Disadvantaged Business Enterprises. The University

⁴ The Hillandale neighborhood, which was not a party to the application, is located in the Low Density Residential land use category.

also contributes to the local economy through tax revenue from the university itself as well as its faculty, staff, and students. The University and its students, faculty and staff also dedicate significant resources to aid neighborhoods and residents throughout the District of Columbia through an extensive series of educational, medical, and other projects and initiatives. (Exhibit 8; Tr. Apr. 14 at 32.)

28. In addition to its contributions to the District as a whole, the University provides benefits and services to its immediate residential neighbors. With the additional measures provided under the 2010 Plan, these include access to the Campus and all of the intellectual, cultural, and recreational resources it offers; a world-class hospital; increased public safety patrols by off-duty police officers; twice-a-day, seven-days-a-week trash collection; community cleanups; snow removal; and a student-run volunteer ambulance organization. (Exhibit 8; Exhibit 361.)

Campus Plan Application

29. In the 2010 Plan, the University set forth parameters for its development and operation over the next decade. Under the 2010 Plan, the University will maintain academic excellence as a top international university; enhance the campus environment with targeted improvements; provide continued leadership and innovation in managing off-campus impacts; lead in transportation solutions and sustainable design; and modernize and improve medical facilities to meet patient needs. According to the University, the features of the 2010 Plan were shaped by the above goals as well as the conditions that present challenges to the operation of the University, including physical space constraints on the Campus, the location of existing buildings, limited financial resources, and changing educational needs. (Exhibit 8, Tr. Apr. 14.)
 - a. The existing physical layout, size and development of the Campus, regulatory development parameters, significant changes in topography, and operational considerations all limit potential area for new construction and relocation of existing facilities. (Exhibit 8, Tab D; Exhibit 273, Tab H and Tab S; Tr. Apr. 14, p. 45-48.)
 - b. The University has a relatively modest endowment as compared to many of its peer institutions, and is financially dependent on tuition to fund new improvements and initiatives as well as maintain the operation of the University. (Exhibit 8; Exhibit 273, Tab O; Tr. Apr. 14, p. 208-11.)
 - c. The University requires continued measured growth in its graduate programs in order to advance the University's academic mission, continue to build its top-tier status as a

research-intensive university, and provide educational opportunities to enhance job skills for District residents. (Exhibit 8.)

30. As a result of the existing physical constraints of the Campus and the limited financial resources of the University, the proposed 2010 Plan contains relatively limited new construction beyond what was already approved and carried over from the 2000 Plan, and many of the proposed development sites are additions to existing structures or small infill developments.
- a. **Student Life.** The 2010 Plan includes a number of improvements intended to improve the on-campus experience for students, including improved pedestrian circulation on Campus and the renovation of the former New South dining hall into a student center at the heart of the undergraduate residential community. The new student center is being designed to draw students on campus; it will be active and welcoming during late night hours through, among other features, a pub available to students. (Exhibit 8; Exhibit 354.)
 - b. **Student Housing.** The 2010 Plan, as amended, calls for the addition of 250 new undergraduate beds, either on campus or off campus outside of the residential neighborhoods surrounding the Campus. The University specifically identified the conversion of the existing hotel at the Leavey Center into student housing as the most viable option for new beds, given the physical constraints of the Campus and limited financial resources of the University. (Exhibit 25; Exhibit 273, Tab S.)
 - c. **Academic Facilities.** The 2010 Plan includes only modest additions to academic facilities, such as an addition to Lauinger Library, renovation and expansion of the Reiss science building, and new academic and research facilities at the Medical Center. The University explained that keeping these facilities up-to-date is critical to sustaining the University's continued growth as a preeminent research-intensive university. (Exhibit 8.)
 - d. **Athletic Facilities.** The 2010 Plan carries forward the already-approved plans for a new athletic training facility and addition to the multi-sport facility, and includes additional planned improvements to other recreational facilities that are critical to both the competitiveness of the University's athletic programs and the well-being of the campus community as a whole. One such improvement is a roof over Kehoe Field, which will permit year-round use of that field and also address long-standing water damage issues that affect Yates Field House, which sits immediately below Kehoe Field. (Exhibit 8, Tab I.)

- e. **Hospital Facilities.** The 2010 Plan, as amended, carries forward planned Hospital improvements that were included in the 2000 Plan and consist of new medical and parking facilities to be constructed on existing surface parking lots adjacent to the current Hospital. The new facilities are needed to keep pace with current technological and regulatory changes and meet anticipated patient demands. (Exhibit 8.)
 - f. **Campus Circulation.** The 2010 Plan, as amended, calls for the construction of a bus turnaround at the core of the Campus. This new facility will improve access to the Georgetown University Transportation Shuttle (“GUTS”) bus system for much of the campus community. The turnaround will also permit the University to route major bus routes in and out of the Canal Road entrance and avoid the use of neighborhood streets.
31. The University presented evidence and testimony that the 2010 Plan was developed through a three-year planning process that included multiple avenues for direct community input and feedback. The dialogue included two-all-day community meetings to discuss campus plan concepts followed by eight community meetings to solicit feedback on initial plan proposals and address community issues raised at prior meetings; monthly discussions with community representatives at “leadership” meetings; at the request of OP, more formal discussions with neighborhood leadership led by an independent facilitator; and discussions with representatives of OP and DDOT. (Exhibit 8.)
32. The University testified that the 2010 Plan included a series of significant and substantial adjustments that were made in response to community and agency input.
- a. Prior to filing of the 2010 Plan, the University voluntarily adopted an overall enrollment maximum; agreed to maintain current traditional undergraduate enrollment levels and eliminate averaging; pledged to construct an on-campus turnaround in order to route GUTS buses off neighborhood streets; and removed planned developments such as a convocation center and an on-campus student housing development on East Campus.
 - b. Following the filing of the 2010 Plan and during the hearing process, the University added 250 additional undergraduate beds; reduced the maximum enrollment by over 1,000 students; agreed to locate 1,000 School of Continuing Studies (“SCS”) graduate students at off-campus locations; eliminated the proposed loop road and replaced it with a bus turnaround at the center of the Campus; implemented significant quality of life improvements in the surrounding neighborhoods, including seven off-duty MPD officers on weekend nights, twice-daily trash pickup, and late-night shuttle service to

M Street; and pledged funding for multiple intersection improvements along Reservoir Road. (Exhibit 8; Exhibit 361, Tab E.)

The above changes were commended and praised by OP, DDOT, and the parties in opposition.

33. The Commission finds that the 2010 Plan, as amended by the University over the course of the hearing process, included significant and meaningful accommodations made in response to community and agency input. The Commission credits the University's testimony regarding the physical limitations of the Campus and the limited financial resources of the University, and finds that the University has appropriately and creatively balanced the concerns of the surrounding community with its internal goals and limitations.
34. Pursuant to 11 DCMR § 210.1, the University is an academic institution of higher learning that was chartered as such by an Act of Congress dated September 19, 1814. (Exhibit 8, Tab A.)
35. As required by 11 DCMR § 210.2 and as described in greater detail below, the University demonstrated that the proposed use will be located so that it will not likely become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable impacts. In support of this provision, the University proposed numerous conditions of approval capturing the accommodations made and measures proposed by the University to avoid the creation of such objectionable impacts. (Exhibit 25, Tab A.) The University supplemented and refined these proposed conditions in response to community and agency comments and to integrate the additional accommodations made by the University over the course of the public hearing. (Exhibit XX. [Draft Order.]) Many of the conditions included details on the timing and completion of the proposed commitments.
 - a. The Commission credits the University's testimony that the proposed 2010 Plan, including the proposed conditions of approval, balances the University's interests in advancing its key goals with its responsibility to manage its comparatively limited financial resources and provide meaningful responses to community concerns. (Exhibit 8.)
 - b. The Commission credits the University's testimony that the proposed 2010 Plan, including its proposed conditions of approval and other related limitations, are expressly predicated upon adoption of all elements of the 2010 Plan, which are mutually interdependent on one another. (Exhibit 8.) The University reserved the right to reconsider these conditions if new conditions were imposed that the

University was not able to balance against its academic mission, financial limitations, and other goals. (Tr. Apr. 14, p. 27-28.)

- c. The Commission finds that, given the improvements, accommodations, and conditions proposed by the University as a part of the 2010 Plan, the proposed use of the Campus will be located so that it will not likely become objectionable to neighboring property.

36. The University submitted a plan for developing the campus a whole, showing the location, height, and bulk of all present and proposed improvements, as required by 11 DCMR § 210.4. (Exhibit 8, Tab E, Tab I, and Tab J.) Over the course of the public hearing, the plan was amended to accommodate community and agency comments.

- a. Buildings and parking and loading facilities. As set forth above, the 2010 Plan calls for relatively modest but critical new construction and additions to existing academic, medical, and campus life facilities. Many of the proposed improvements are carried over from the 2000 Plan. The 2010 Plan maintains existing parking and loading facilities. (Exhibit 8, Tab E, Tab J, Tab S and Tab T.)
 - i. Prior to the public hearing, the University withdrew its initial request to increase the number of parking spaces. (Exhibit 25.)
 - ii. During the course of the public hearing, the University amended the plan to include 250 additional undergraduate beds and identified the Leavey Center as the most viable location for such beds for financial, space, timing, and operational reasons. (Exhibit 25; Exhibit 27, Tab S.)
 - iii. During the course of the public hearing, the University eliminated development site MHC-5, a proposed 500,000 square foot infill development to the Hospital, from the 2010 Plan. (Exhibit 321.)
- b. Screening, signs, streets and public utility facilities. The 2010 Plan calls for a series of infrastructure improvements that will improve pedestrian and vehicular circulation within the Campus. (Exhibit 8, Tab U.)
 - i. Prior to filing, the University eliminated a proposal to increase the height of the on-campus heating and cooling plant's chimney. (Exhibit 8.)
 - ii. During the course of the public hearing, the University amended the 2010 Plan to eliminate a proposed "loop road" near the western perimeter of the Campus and replace it with a bus turnaround at the center of Campus that will improve on-campus access to the transportation system. (Exhibit 338, 353.)

iii. During the course of the public hearing, the University agreed to make certain improvements to vehicular entrances at Canal Road and Reservoir Road. (Exhibit 340.)

c. Athletic and other recreational facilities. The 2010 Plan sets forth plans for improvements to existing athletic and other recreational facilities, including completion of the already-approved athletic training center and multi-sport facility as well as improvements and additions to existing facilities. (Exhibit 8, Tab I.)

d. Description of all activities conducted or to be conducted on the campus, and of the capacity of all present and proposed campus development. Each present and proposed building is designated in one of the following use categories:

i. Academic/administrative: classrooms; laboratories; libraries, faculty offices; parking; administrative offices; conference facilities; auxiliary services; and accessory uses such as child development centers, heating and cooling plant, and limited support functions.

ii. Residential/campus life/athletic: housing (both temporary and long term); athletic facilities; auxiliary services; and student activity facilities.

iii. Medical/health care: hospital; clinics; physicians' offices; medical school; medical library; parking; conference facilities; research laboratories; and administrative and related support functions.

iv. Commercial/investment properties: commercial and/or income-producing properties.

(Exhibit 8, Tab G & Tab H.) The Program Development Summary indicates the current gross floor area and lot occupancy of the Campus and denotes the height, net new gross floor area, and net new lot occupancy of all proposed development.

(Exhibit 8, Tab J.)

37. Under 11 DCMR § 210.3, the total bulk of all buildings and structures on the campus must not exceed a floor area ratio (FAR) of 1.8. As required under 11 DCMR § 210.8, the University submitted evidence that the development plan would result in a density of no more than 1.56 FAR, which is within the maximum permitted FAR.

38. The 2010 Plan calls for building heights that are consistent with existing heights on Campus and would range from one to seven stories. (Exhibit 8, Tab J.)

39. **Under the 2010 plan, the University will occupy no more than 37.2% of the underlying lot. (Exhibit 8, Tab J.)**
40. **Pursuant to 11 DCMR § 210.5, the University did not propose the interim use of land or improved property outside the Campus with a college or university use.**
41. **Pursuant to 11 DCMR § 210.7, the University provided evidence that the 2010 Plan was not inconsistent with the Comprehensive Plan, including the designation of the Campus as “Institutional” and related provisions endorsing change and infill on university campuses consistent with campus plans. The University also provided evidence that the 2010 Plan was not inconsistent with other elements of the Comprehensive Plan, including the Land Use Element, Economic Development Element, Environmental Element, and Education Element. In particular, the University provides opportunities for new jobs and educational opportunities, continued commitment to transportation demand management measures, and the establishment of a satellite campus for the School of Continuing Studies, all of which are specifically endorsed by the Comprehensive Plan. (Exhibit 8; Exhibit XX [Jan. 13, 2012 OP Response.]) The Commission finds that the 2010 Plan will further the goals and policies of the Comprehensive Plan.**
- a. **The parties submitted conflicting evidence regarding the character and designation of the residential neighborhoods surrounding the Campus. The Commission credits the evidence submitted by the University that the surrounding neighborhoods are identified as moderate density, not low density neighborhoods, and further credits the evidence submitted by the University that other universities in the District, including The George Washington University, Howard University, Trinity University, The Catholic University of America, and Gallaudet University, are all located adjacent to similar moderate density neighborhoods zoned R-3 or R-4. (Exhibit 361.)**
- b. **The Commission also credits the evidence submitted by the University regarding the designation of the surrounding residential neighborhoods as “Neighborhood Conservation Areas” on the Generalized Policy Map. This designation applies to virtually all residential areas in the District of Columbia. (Exhibit 361.)**
- c. **The Commission does not credit the testimony of CAG’s planning expert regarding the Comprehensive Plan. CAG’s expert incorrectly asserted that the Zoning Act and Regulations required a finding that the 2010 Plan was “not inconsistent” with the Comprehensive Plan; such requirement does not apply to requests for special exceptions, which are not amendments to the Zoning Regulations or Maps. CAG’s expert erroneously identified the residential neighborhoods surrounding the Campus as “low-density residential” when such neighborhoods are actually identified as moderate-density residential on the Future Land Use Map. CAG’s expert also failed**

to consider evidence that the 2010 Plan was consistent with and furthered multiple relevant policies of the Comprehensive Plan.

42. Pursuant to 11 DCMR § 210.9, the application was referred to OP and DDOT. Both agencies submitted reports in support of the plan with recommended conditions of approval. The reports are addressed in detail below.

Section 210 Evaluation

Noise

43. **Campus Development.** Activities within the campus plan boundaries are located to minimize objectionable impacts due to noise. Institutional uses and parkland generally serve as a buffer between the Campus and surrounding residential neighborhoods and the bulk of campus activity is located at the center of the Campus.
- a. Development called for under the 2010 Plan near the edges of the Campus is limited and consists largely of additions to existing buildings devoted to academic and administrative uses that are not likely to generate noise. (Exhibit 8.)
 - b. As a part of the 2010 Plan, the University proposed a roof over Kehoe Field, which would reduce noise and light impacts related to the use of the field. The University also agreed to limit the use of the field to uses similar to its current athletic and recreational uses. The Commission finds that, in concept, the proposed Kehoe Field roof is not likely to generate objectionable impacts due to noise or light. (Exhibit 25.)
44. **GUTS Bus Activity.** The Commission finds that the 2010 Plan is not likely to become objectionable to neighboring property because of noise, vibration and other impacts from the University's GUTS bus system.
- a. The University agreed to construct an on-campus bus turnaround to address the concerns of ANC 2E, CAG and BCA regarding the noise, vibration, and other impacts of the University's GUTS buses on neighborhood streets. (Exhibit 8.) The University then agreed to withdraw its originally-proposed "loop road" at the western perimeter of Campus and replace it with the Mid-Campus bus turnaround at the center of the Campus to address the concerns of ANC 3D and FCCA regarding the impact of the loop road on the nearby park and Foxhall neighborhood. (Exhibit 338; Exhibit 353.)
 - b. The Commission finds that the proposed Mid-Campus turnaround will address the concerns of ANC 2E, CAG and BCA regarding the impact of GUTS buses on neighborhood streets and represents a major accommodation by the University to

reduce the impact of university use. The Commission finds that the location of the proposed Mid-Campus bus turnaround is located so that it is not likely to become objectionable to such property because of noise and other impacts. The Commission finds that the University's withdrawal of the loop road and substitution of the Mid-Campus bus turnaround represents a major accommodation by the University and notes that FCCA praised the University's responsiveness. (Exhibit 273, Tab H; Exhibit 338; Exhibit 339, Tab A; Exhibit 353; Tr. Nov. 17, p. 110-11.)

- c. The Commission credits the testimony of the University and its experts as well as DDOT that the turnaround will take up to two years to design and build given the physical and utility constraints on that portion of the Campus. (Tr. Nov. 17, p. 46-47.) Accordingly, the Commission finds that the timing is reasonable, particularly in light of the University's accommodation of ANC 3D and FCCA's concerns regarding the Loop Road. The Commission also finds that, until the Mid-Campus turnaround is completed, the continued interim routing of GUTS buses off Q Street during off-peak hours represents a reasonable accommodation by the University to reduce the noise impact of university use.

- 45. Student Noise. The University described its extensive efforts to address noise and other impacts related to students who live on and near campus through its comprehensive and effective Off Campus Student Life program, which is one of the most robust programs of its kind in the nation and is purposefully designed to minimize the impacts of students in the surrounding community. The University also submitted evidence demonstrating that the efforts were successful at reducing noise. (Exhibits 8, 25, 102, 273, and 361.)
- 46. The Commission credits the evidence presented by the University that its OCSL efforts match or exceed those at nearly twenty other comparable peer institutions in urban neighborhoods. The Commission notes, in particular, that the University does more than other major universities in the District of Columbia (Exhibit 273, Tab D.)
- 47. Over the past decade, the University has implemented a number of initiatives that have significantly reduced the noise related to students who live in and move through the surrounding residential neighborhoods. The University continues to operate a 24/7 hotline to receive concerns regarding student behavior. The University also developed the Student Neighborhood Assistance Program (SNAP), which actively patrols the neighborhood on weekend nights to deter student noise and respond to hotline calls. The University also took steps to improve coordination and communication with the Metropolitan Police Department (MPD) and enhanced police presence in the neighborhood by funding off-duty MPD officer patrols on weekend nights. Finally, the University developed regular late-night weekend neighborhood shuttle bus loops to take students off neighborhood streets. These measures were developed with community

input and in many cases were endorsed and applauded by CAG, BCA, and ANC 2E. (Exhibit 102, Tab H; Exhibit 361, Tab B.)

- a. The Commission finds that the University's OCSL efforts have successfully minimized noise in the surrounding community over the course of the past decade. Representatives of BCA, CAG and ANC 2E all endorsed the University's efforts to address noise and reported decreases in complaints about student noise and behavior, and the number of calls to 911 for disorderly conduct in the West Georgetown and Burleith neighborhoods decreased significantly each year over the past five years as the University ramped up its efforts to address noise and other impacts. (Exhibit 25, Tab D; Exhibit 273, Tab N) (Exhibit 361.) Even on the blocks closest to the Campus with the highest number of students, the total number of calls were low and showed a decline over the past five years. (Exhibit 25, Tab D; Exhibit 361.)
- b. The Commission credits testimony and evidence from the University as well as the parties in opposition that other neighborhood residents who are not students at the University, including young professionals, create noise and other objectionable impacts. (Exhibit 354; Exhibit 361.)
- c. The Commission does not credit the analysis of MPD data presented by CAG and relied upon by OP and ANC 2E to conclude that students who live off-campus create objectionable noise impacts. While the data shows some correlation between the blocks with a higher number of students and the number of complaints of disorderly conduct, the numbers lack context to demonstrate whether or not the level of complaint is objectionable.
 - i. As OP itself demonstrated in its Supplemental Report, the number of calls on a block with a high concentration of students is a mere fraction of the number of calls on a block near the commercial corridor.
 - ii. Furthermore, as demonstrated by the University and reflected in MPD data itself, the number of calls have decreased as the University has ramped up its efforts to deter noise and other misconduct.
 - iii. The Commission does not credit testimony provided by CAG that suggested the University was responsible for 1,650 calls to 911 in one year. That number represented the total number of calls for the entire Public Service Area (PSA), which includes the high activity commercial corridors along M Street and Wisconsin Avenue.

- iv. The Commission does not credit testimony presented by the parties in opposition regarding the number of noise complaints per month; the analysis aggregated calls from multiple sources yet did not control for multiple calls for the same incident and likely included calls not attributable to the University or its students.
- 48. Under the 2010 Plan and in response to community and agency comments, the University agreed to further enhance its successful efforts to address noise in the surrounding residential community. The new initiatives were all put in place prior to or during the public hearing process, and the University submitted evidence demonstrating that the enhancements were working.
 - a. The Commission finds that the University's SNAP patrols are effective in deterring noise and other misconduct. SNAP actively patrols, monitors, and interacts with students, both on the street and within their residences, to ensure compliance with the University's noise and conduct policies, and takes action as necessary. (Exhibit 102, Tab F.) Starting in 2010, the University doubled the number of SNAP vehicles patrolling the surrounding neighborhoods and added a patrol car during the summer session. (Exhibit 8.) The Commission credits evidence submitted by the University that shows the number of student addresses without any reported complaints increased following the doubling of the SNAP patrols (compare Exhibit 25, Tab C p.2 with Exhibit 25, Tab C p.2, Exhibit 273, Tab F, and Exhibit 354.), and the number of calls to 911 for disorderly conduct continued to decline (see Exhibit 25, Tab D and Exhibit 273, Tab N). The Commission also credits testimony and evidence provided by SNAP staff members as well as students at the University detailing operation and effectiveness of the SNAP patrols.
 - b. The Commission finds that the University's late night shuttle service is effective at deterring transient noise. Starting in 2005, the University began to operate late night shuttles in the West Georgetown and Burleith neighborhood to improve public safety and reduce street noise. Starting in Fall 2011 and at the request of the community and DDOT, the University added a new late-night weekend shuttle that transports students between the Campus and restaurants, bars, movie theaters and other Georgetown commercial district destinations on M Street. The new M Street shuttle service is popular with the student population and, when combined with other neighborhood shuttles, results in 800-900 fewer students walking through the neighborhoods on a weekend night. The University has also addressed concerns about street noise from students waiting for the shuttles through its extensive SNAP and MPD patrols as well as a mobile app that will allow students to track the shuttles on their smartphones and reduce the time spent waiting outside. (Exhibit 354; Exhibit 361.)

- c. The Commission finds that the University's partnership with the Metropolitan Police Department is effective and deters noise and other misconduct. Since 2007 the University has supplemented the police presence on weekend nights by funding additional off-duty MPD officers to patrol the surrounding residential community as a "reimbursable detail." Under the 2010 Plan, the University increased the number of officers to 3 in Fall 2010 and to 7 officers in Fall 2011.⁵ The University also enhanced the program by taking a more active role in educating, managing and directing the MPD patrols. (Exhibit 361.)
- i. The Commission finds that the reimbursable detail effectively delivers an increased police presence. MPD has provided the full complement of officers 90% of the nights (Tr. Nov. 17, p. 229) and the increased number allows the University to assign some officers to foot and bike patrols in areas with high pedestrian traffic as a fixed presence to proactively deter noise. The off-duty MPD officers have the same authority and discretion as any other MPD officers, including the ability to arrest students and deter potential misconduct.
 - ii. The Commission finds that the reimbursable detail officers are familiar with the neighborhood and the goals of the program. The University manages and directs the patrols through, among other efforts, a mandatory orientation run by Georgetown's Department of Public Safety, a roll call prior to each shift where officers are directed to specific foot, bicycle, or car patrol locations, active oversight by both MPD and University leadership during each shift, and weekly follow-up meetings to review prior weekend activity.
 - iii. The Commission finds that the reimbursable detail has contributed to the University's efforts to reduce noise and other misconduct. The number of calls to 911 for disorderly conduct are declining in high traffic areas as a result of the increased patrols, and 12 students have been arrested for a variety of offenses. The Commission also credits testimony that violent crime unrelated to the University has also declined following the implementation of the additional police presence. (Tr. Nov. 17, p. 197.)

(Exhibit 354; Exhibit 361.)

49. Based on the foregoing, the Commission concludes that the University's development plan (including the Mid-Campus bus turnaround) and off-campus student life efforts are

⁵ The University also funds additional officers on weekday nights and during the summer months.

appropriate and generally effective in seeking to avoid objectionable impacts on the surrounding residential communities due to noise.

Traffic and Parking

50. The Campus is directly served by Metrobus and the D.C. Circulator. The University also provides direct, express, and free shuttle service to nearby Metrorail stations and other destinations through GUTS, which carries over two million riders per year. (Exhibit 338, Tab A.)
51. The University has successfully implemented a comprehensive and far-reaching Transportation Demand Management (“TDM”) program that significantly reduces single-occupancy vehicle trips to and from the Campus. (Exhibit 8, Tab R.) The University, through its traffic expert, submitted uncontroverted evidence demonstrating that, over the past decade, fewer students, faculty, and staff are driving to the Campus. Population growth was largely accommodated through the GUTS system, which doubled its ridership between 2000 and 2010. As a result, the University population’s transit use exceeds the regional average for the inner core of the Washington, D.C. metropolitan area, which is particularly significant given that the Campus is not immediately adjacent to a Metrorail station. (Exhibit 339, Tab A.)
52. Transportation Report. The University submitted a comprehensive transportation report, prepared by its traffic expert, which demonstrated the proposed campus plan would not have an adverse impact on the operation of the surrounding transportation network.
 - a. The University, through its traffic expert, demonstrated that the scope, methodology, and assumptions in the report were jointly developed by the University and DDOT, were conservatively made and meet or exceed the level of analysis ordinarily conducted at the campus planning stage, and addressed all prior concerns raised by DDOT and the parties regarding earlier traffic analyses. In addition to a standard capacity analysis, the report included detailed simulation analyses of key intersections, a safety analysis, an on-street parking study, and an analysis of the impact of permitting left turns from the Canal Road entrance during the AM peak period. The report accounted for growth by all uses on the Campus, including the Hospital. (Exhibit 339, Tab A.)
 - b. The University, through its traffic expert, demonstrated that the modest development and population growth under the 2010 Plan would generally not have significant impacts on nearby roadway volumes and operations. The traffic expert submitted evidence that existing levels of service surrounding the Campus were primarily A

through D during both the morning and evening peak, and would continue to remain at such levels with the campus plan. (Exhibit 339, Tab A.)

- c. The University, through its traffic expert, identified potential mitigation measures to address the few intersections that could potentially be impacted by the campus plan, and the University agreed to implement these improvements as conditions of approval. (Exhibit 339, Tab A; Exhibit 340.)
 - d. The University provided testimony and evidence from a second traffic expert, who conducted a peer review of the comprehensive traffic report and concluded that the scope, methodology, assumptions, analysis and conclusions in the report were acceptable. (Exhibit 339, Tab B.)
53. The Commission finds that the scope, methodology, assumptions and conclusions of the transportation analysis were acceptable. The Commission also agrees with the conclusion of the University's traffic experts that the approval of the proposed campus plan, subject to conditions requiring implementation of measures to mitigate traffic impacts, will not tend to create conditions objectionable to neighboring property because of traffic.
54. The Commission does not credit the testimony and evidence offered by CAG's traffic expert challenging the transportation report. CAG's expert reviewed an earlier version of the report, and the issues and concerns raised by CAG's expert were addressed in a point by point analysis by the University's traffic expert (Exhibit 273, Tab G) as well as in the comprehensive and final traffic report (Exhibit 339, Tab A). As noted above, the University also provided testimony and evidence from a second traffic expert, who conducted a peer review of the comprehensive traffic report and agreed with the analysis and conclusions in the report. (Exhibit 339, Tab B.) The District Department of Transportation also endorsed the comprehensiveness and completeness of the analysis. (Tr. Nov. 17, p. 20.)
55. GUTS Bus System. The Commission finds that the existing and proposed operation of the University's GUTS bus system will not have an adverse impact on the operation of the surrounding road network.
- a. The GUTS bus system is a critical piece of the University's TDM package. With over 2,000,000 riders each year, the system provides a reliable and convenient transportation alternative for the University's students, faculty, staff and visitors, and takes over 7,000 vehicles off the streets each day. (Exhibit 339, Tab A.)

- b. The University, through its traffic expert, presented extensive testimony and evidence regarding existing physical and operational limitations on the Campus that prohibit the University from safely turning GUTS buses around within the Campus. Accordingly, some GUTS routes must use neighborhood streets to enter and/or exit the Campus. (Exhibit 273, Tab H; Tr. Nov. 17, p. 92-97.)
- c. While the GUTS buses currently use neighborhood streets to access the Campus, the traffic expert provided evidence that the impact is limited and appropriate given the designation of the roadways as collector streets and the overall positive benefit of the GUTS bus system. The University also provided evidence that, to the extent feasible without degrading service, the University has reduced the use of neighborhood streets through off-peak alternate routes. (Exhibit 339, Tab A; Exhibit 361.) DDOT confirmed that the use of collector streets by buses was consistent with DDOT policy. (Tr. Nov. 17, p. 43.)
- d. In response to community and agency request, to construct the Mid-Campus turnaround and route buses off neighborhood streets. The University, through its traffic expert, concluded that permitting left turns from the Campus to Canal Road during the AM peak period for GUTS buses would not adversely impact the surrounding roadway network. The University agreed to physical and operational limits that would restrict such AM left turn activity to GUTS buses only. (Exhibit 339, Tab A; Exhibit 340.)
- e. The University also provided evidence that, should DDOT continue to prohibit left turns from the Campus to Canal Road during the AM peak period, the Mid-Campus turnaround would still significantly reduce the volume of GUTS buses on neighborhood streets. (Exhibit 273, Tab H; Exhibit 339, Tab A.)
- f. The Commission credits the University on the success of the GUTS system, which in itself significantly reduces the number of vehicle trips on neighborhood streets attributable to the University. The Commission finds that the proposed Mid-Campus turnaround will therefore eliminate traffic impacts related to the University's GUTS buses and represents a major accommodation by the University to reduce the traffic impact of university use. The Commission also finds that, in the interim, the continued operation of the GUTS bus system on existing routes will not impose objectionable impacts. The Commission also finds that, should DDOT rescind approval for left turns onto Canal Road during the AM peak period, the Mid-Campus turnaround would still significantly reduce impacts from the GUTS buses such that they would not impose objectionable impacts due to noise, vibration, traffic or parking.

56. **Intersection Realignment and Cut-Through Traffic.** As a part of the proposed traffic mitigation measures, the University agreed to design and construct improvements to the intersection of 38th Street and Reservoir Road in order to create a left-turn lane for traffic entering the Campus at Gate #1. The University also agreed, as a condition of approval, to continue to evaluate whether Gate #1 should be realigned with 38th Street and, if DDOT determines such realignment is warranted, design and construct the improvements. The University agreed to include physical and/or operational measures to address potential cut-through traffic. The Commission finds that the above process will adequately address concerns expressed by ANC 2E and BCA regarding potential cut-through traffic, and notes that the ultimate decision regarding the alignment of the roadway remains with DDOT.
57. **Parking.** The Campus currently provides 4,080 off-street parking spaces in parking garages and on surface lots. The 2010 Plan, as amended, proposed to maintain the current number of parking spaces in response to the request of OP and DDOT. The University, through its traffic expert, provided testimony that the on-campus parking supply is well-utilized but is actively managed to accommodate demand. The University manages parking demand through its significant TDM program as well as market pricing for daily and monthly parking, limits on monthly parking permit issuance, and provision of satellite parking in nearby facilities. The Hospital uses similar policies to manage parking demand. (Exhibit 8, Tab R; Exhibit 339, Tab A.)
58. **Student Parking.** The University manages parking demand from its student population through a variety of policies and practices.
- a. Daytime commuter students are strongly discouraged from driving to the Campus. They are not eligible for permits to park on campus, and must either take transit or park in a satellite facility. As demonstrated by the University's mode split data, the vast majority of students do not drive to the Campus.
 - b. Evening students are more likely to drive, and the University provides discounted parking and improved access to encourage those students who choose to drive to park on campus rather than on neighborhood streets. Many of the evening students who drive are associated with the School of Continuing Studies.
 - c. As a part of the 2010 Plan, the University strengthened the rules regarding car ownership for students who live on or near the Campus. Students residing in University housing are prohibited from bringing cars to the Campus or the surrounding neighborhood. Students who reside off-campus must follow District regulations and register their car with the University as well. Violations are grounds for discipline under the Code of Conduct. The University also pledged to improve

transportation alternatives for students, such as Zipcar, bicycle parking and bikesharing, and other incentives as a part of its TDM package.

(Exhibit 273, Tab B; Exhibit 339, Tab A.)

59. On-Street Parking.

- a. The University, through its traffic expert, presented evidence that on-street parking is generally available in Burleith. The University presented evidence that on-street parking demand is well-utilized in West Georgetown due to demand from multiple sources, including residents, the commercial uses on M Street, and the University, but there is some availability. (Exhibit 339, Tab A.)
- b. Except for residents, on-street parking is limited to two hours. Residents may receive a permit that allows them to park on the street at all times, but to do so they must register their car with the District of Columbia and provide proof of residency. Students living in ANC 2E and ANC 3D (i.e., Georgetown students) are not permitted to receive a temporary "reciprocity" sticker and must therefore change their residency to get a D.C. drivers' license and register their cars in order to be eligible for a permit. District laws regarding on-street parking are rigidly enforced. (Exhibit 158; Exhibit 339, Tab A; Exhibit 361, Tab G.)

60. The Commission finds that the approval of the proposed campus plan will not tend to create conditions objectionable to neighboring property because of parking. The Commission finds that the University continues to provide an adequate number of parking spaces to meet demand of its students, faculty, staff and visitors. Demand for parking is not likely to increase significantly since the University will continue to reduce the demand for parking through implementation of its TMP and parking demand management measures. The establishment of a satellite location for the School of Continuing Studies will move those evening students away from the Campus and also further diminish parking demand.
61. The Commission does not credit the testimony of the parties in opposition regarding alleged objectionable impacts due to parking. The residential neighborhoods are located near a major regional commercial hub that generates significant potential on-street parking impacts. The neighborhood's parking supply is managed through a residential permit parking program that restricts non-residents from parking for over two hours without a permit, and University students are not eligible for a permit unless they live off-campus, change their residency, and register their car with the District. The Commission credits the testimony of the University that the University's enhanced parking policies discouraged students from bringing cars to the Campus in Fall 2011.

Number of Students – Enrollment Methodology and Growth

62. The University presented evidence that much of its enrollment growth over the past two decades was in graduate and nontraditional student programs. (Exhibit 273, Tab J.) The University also presented evidence that its growth under the 2000 Plan was consistent with forecasted projections that calculated graduate students on a financial full-time equivalent basis, rather than on a headcount basis. (Exhibit 25, Tab E.)
63. The Commission does not credit the testimony and evidence presented by OP and the parties in opposition regarding the University's enrollment numbers or patterns of growth. The Commission credits the University's expertise regarding its own enrollment statistics, and as demonstrated by the University, OP and the parties in opposition overstated the past or proposed growth in the student population by not using the correct methodology. (Exhibit 273, Tab J.)
64. Under the 2010 Plan, the University originally proposed growth in the overall headcount on the Campus by 2,100 students. (Exhibit 8, Tab K.) In response to community and agency concern, the University reduced its proposed growth to 967 students. (Exhibit 25; Exhibit 359.)
65. The University proposed to define the "Main Campus headcount" as the number of students in the total student body minus students enrolled in off-campus programs. (Exhibit 8, Tab K.) In response to OP, the University amended its definition to count all students registered for one or more courses on the Campus, even if the student is enrolled in a program based at an off-campus location. (Exhibit 359.) The University defined the total student body as the total number of students it reports each year under the standardized definition of student established by the National Center for Education Statistics, a division of the U.S. Department of Education. (Exhibit 8, Tab K; Exhibit 359.) The Commission credits the testimony of CAG's planning expert, who identified the IPEDS method as a "superior" method for counting students. (Exhibit 90.)
66. The Commission finds that the University's proposed definition and methodology, which is consistent with the Commission's previously adopted "primary relationship" standard for counting the number of students at universities with satellite campuses, is acceptable. See Order No. 06-11B/06-12B (2010). The Commission finds that it is proper to count only students who take a class on the Campus; students who do not take a class on the Campus have limited contact with the campus and are therefore unlikely to impose impacts on the surrounding neighborhood.

67. Under the 2010 Plan, the University agreed to maintain its traditional undergraduate student enrollment at current levels. The University also agreed to modify its method of counting traditional undergraduate students to eliminate averaging and simplify the count. The University proposed to define the "Traditional Undergraduate Program" student headcount as the number of students in the total student body minus students enrolled in graduate and professional programs as well as students enrolled in non-traditional undergraduate programs. (Exhibit 8, Tab I.)
68. The Commission finds that the University's proposed definition and methodology is reasonable as a simple and accurate method for reporting the number of traditional undergraduate students.
- a. The Commission finds it is reasonable to exclude students in nontraditional programs from the undergraduate maximum. The University demonstrated that students in these programs share the same characteristics of graduate students and are unlikely to choose to live near the Campus or otherwise impose impacts on the surrounding residential neighborhood. (Exhibit 273, Tab K; Exhibit 361.) The Commission also notes that these nontraditional undergraduate students will be captured under the University's proposed total enrollment maximum.
 - b. The Commission does not agree with the parties in opposition that the proposed change in methodology would increase the number of traditional undergraduate students. The University explained that, under the new definition, it would count a number of previously-excluded categories of students, such as students studying abroad and part-time students. Including these extra categories of students resulted in an increased count, but not an increase in the actual number of students enrolled. (Exhibit 361.)
 - c. The Commission does not agree with the parties in opposition that the proposed enrollment change will permit the University to increase its traditional undergraduate enrollment by restricting students from studying abroad. Again, the University explained that it cannot and does not manipulate the number of students studying abroad. The number may fluctuate, but it is entirely a function of student preferences. (Exhibit 361.)
 - d. The Commission credits the University's testimony that it would report its traditional undergraduate student enrollment under the old and new method for three years to demonstrate the consistency of the two methods.

Number of Students Housed by the University

69. The University currently provides 5,053 beds for its undergraduate students. This equates to 85% of the full-time, traditional undergraduate students under the 2000 Campus Plan methodology, or 76% of students in traditional undergraduate programs under the 2010 Plan methodology. (Exhibit 102, Tab A.) The occupancy rate exceeds 96%, and Georgetown provides beds for all students requesting on-campus housing. (Exhibit 102, Tab B and Tab C.)
70. The University has added 1,083 beds, or nearly two beds for each additional traditional undergraduate student, over the past twenty years. (Exhibit 42; Tr. Apr. 14, 2011 at 37.)
71. The Commission credits the testimony of both the University and OP that Georgetown provides beds for more undergraduate students than virtually any other University in the District of Columbia. (Exhibit 85.) The Commission also credits the evidence presented by the University that the University houses a comparable number of students to many of its self-identified peer institutions. (Exhibit 273, Tab O.)
72. The Commission does not credit the testimony and evidence provided by the parties in opposition regarding the percentage of students housed by the University, which (a) failed to compare the University to its relevant peer institutions and (b) made faulty adjustments to the percentage of students housed by the University that were not made to the other comparative data points.
73. Under the 2010 Plan, as amended, the University agreed to provide an additional 250 beds by Fall 2014 in response to requests from the community and OP to provide more housing. (Exhibit 25.)
 - a. The University identified the conversion of the existing hotel at the Leavey Center into student housing as the most viable option for the additional beds. (Exhibit 273, Tab S.) With the completion of the additional 250 beds, the University will house nearly 90% of the full-time, traditional undergraduate students under the 2000 Campus Plan methodology, or 80% of students in traditional undergraduate programs under the 2010 Plan methodology. (Exhibit 102, Tab A.)
 - b. The University testified that it had identified another potential housing site in East Campus during the planning process, but withdrew the proposal prior to filing at the request of the community. (Exhibit 8; Exhibit 273, Tab S.)
74. The Commission finds the University provides a sufficient number of beds to accommodate its traditional undergraduate population.

- a. The existing number of beds sufficiently accommodates demand, and with the additional 250 beds proposed under the 2010 Plan, the University will house over 80% of its students—more than any other major university in the District of Columbia and more than many of the University’s peers.
 - b. The Commission credits the University’s testimony that additional housing, either on campus or at a satellite location, is not physically, financially, and programmatically feasible given other institutional priorities. The Commission also credits the detailed analysis prepared by the University and its experts concluding that, other than the Leavey Center, other on-campus sites considered for housing did not meet the University’s criteria for undergraduate student housing. (Tr. April 14, p. 38-39, 208-10, 223-24; Tr. Nov. 17, p. 133-34; Exhibit 273, Tab S.)
 - c. The Commission also finds that the proposed on-campus location of the additional beds is not likely to become objectionable due to noise or other objectionable conditions. The proposed on-campus location at the Leavey Center, which does not require additional zoning review under Section 210 as it is already designated for residential use, is located in the center of Campus and is buffered by other University buildings, structures, and uses. The Commission also credits OP’s testimony in support of the proposed location. (Exhibit 85.)
75. The parties in opposition presented evidence and testimony suggesting that the University could build additional housing on the Campus, but the Commission does not find the evidence or testimony to be compelling. The University has demonstrated that physical, financial, and programmatic constraints preclude the construction of additional student housing, either on the Campus or at a satellite location. Furthermore, there is no reason to require additional beds because the University has met its burden of demonstrating that the proposed 2010 Plan, with over 5,300 beds as proposed by the University, is not likely to become objectionable to neighboring property. Finally, even if the University could construct additional beds, the Commission lacks the authority to compel such construction, for the reasons set forth in the Conclusions of Law.
- a. The Commission does not credit testimony that the University initially identified potential housing sites during the preparation of the 2010 Plan. The University presented rebuttal evidence explaining that these sites were ultimately not selected for student housing because of physical, financial, and programmatic reasons. Furthermore, to hold the University to construct everything identified during the initial conceptual stages of a campus plan would chill the University’s efforts to engage in an open, inclusive, and transparent planning process.

- b. The Commission does not credit the report prepared by the Scion Group, which merely offered a generalized overview of potential student housing options. The authors of the report admitted a lack of familiarity with the Campus, the 2010 Plan, and other specific constraints that impact the University. Furthermore, the University presented rebuttal evidence that it had considered, explored, and in many cases pursued the housing options recommended by the parties.

Number of Off-Campus Students

- 76. The University presented evidence that the number of Georgetown University students living in the surrounding residential neighborhoods had decreased over the last ten years, and that the number of Georgetown University undergraduate students, in particular, had notably decreased. (Exhibit 273, Tab M.) The University also provided evidence that the number of addresses with Georgetown University students had decreased. While the parties in opposition presented conflicting evidence regarding the number of students, the Commission credits the University's evidence, which was based on the University's official records. The Commission does not credit the evidence provided by the parties in opposition, which presented inconsistent data derived from multiple non-comparative sources and faulty methods of calculation.
- 77. The University presented evidence that the concentration of student "group houses" (that is, rowhouses rented to a group of students) did not impose objectionable impacts.
 - a. The University submitted a block-by-block analysis of the number of group houses with Georgetown University students in the surrounding residential neighborhoods. (January 13, 2012 submission, Tab __.) The analysis demonstrated that most of the squares in the surrounding neighborhoods contain few "student houses."
 - b. The University also provided evidence and testimony, including testimony from its expert witness in real estate and economics, that the number of group houses did not adversely affect the stability and continued vibrancy of the neighborhood housing market in Georgetown, Burleith and Foxhall. The population, homeownership rates, property values and number of families with children in the surrounding neighborhoods all increased between 2000 and 2010. (Exhibit 25, Tab I; Exhibit 273, Tab Q; Exhibit 361)
- 78. The University's expert in real estate and economics also testified that the limited increase in graduate student enrollment was not likely to lead to a noticeable increase in the number of graduate students or create demand for additional rental group houses in

Georgetown, Burleith and Foxhall, based on evidence that such graduate students generally do not prefer to live in the neighborhoods immediately surrounding the university or in group houses. (Exhibit 25, Tab I; Exhibit 273, Tab Q; Exhibit 361)

79. Based on the foregoing, the Commission finds that the number of students and presence of student group houses in the residential neighborhoods surrounding the University are not destabilizing or blighting these neighborhoods, and also finds that the 2010 Plan is not likely to cause such destabilization or otherwise objectionable impacts.
- a. Under the 2010 Plan, the number of undergraduate students living in the surrounding neighborhoods is likely to continue to decrease. The University will construct additional on-campus beds while maintaining the current level of undergraduate enrollment. And the University will continue to draw activity onto the Campus through, among other efforts, a new student center specifically designed to accommodate late-night activity.
 - b. Under the 2010 Plan, the number of graduate students living in the surrounding neighborhoods is not likely to increase or create demand for additional rental group houses, for the reasons explained by the University's expert witness in real estate.
 - c. The Commission does not credit the evidence presented by OP and the parties in opposition purportedly demonstrating the adverse impact of students who live in the surrounding neighborhoods.
 - i. The Commission finds that the block-by-block analysis relied upon by OP as well as the parties in opposition overstated the alleged impact because OP counted all addresses with students, not just group houses. As the parties in opposition admitted (see Exhibit 245), many of the addresses counted by OP are actually owner-occupied houses with a basement apartment that is rented to one or two students. (January 13, 2012 submission, Tab __; see also Exhibit 245 (40% of student addresses in Burleith and 60% of student addresses in West Georgetown are apartments or basement apartments).) Students in these basement apartments are not considered to generate objectionable impacts, even by the parties in opposition.
 - ii. Furthermore, the Commission does not find the report cited by OP and the parties regarding what constitutes a "tipping point" to be compelling; it has not been replicated or supported by comparable studies in the United States and the author of the study is an avowed advocate opposed to group housing. (Exhibit 361.)

- iii. Finally, even if there is such a concept as a “tipping point,” neither OP nor the parties have demonstrated that the number of students has reached that point or would continue to increase towards such a point. The evidence presented by the University and its expert clearly demonstrated that (1) the number of students decreased over the last decade and is likely to continue to decrease over the next decade and (2) neighborhood population, homeownership, and property values increased over the last decade notwithstanding the presence of students and related group houses.
- d. The Commission also does not credit the testimony of OP or the parties in opposition that suggests the University lags behind its peers in either providing housing or managing the impacts of students who live off campus. The University provided extensive evidence that both its off-campus student life programs and its on-campus housing policies exceed many of its peers in similar urban locations. (Exhibit 273, Tab D and Tab O.) The Commission credits testimony from the University and many of its students that living off campus is an important part of the university experience, particularly in a vibrant urban neighborhood such as the ones that surround the Campus. The examples cited by OP and the parties in opposition were select, non-random examples that are not comparable.
- e. The Commission does not agree with FCCA that the University’s real estate and economics expert understated the potential impact of its graduate student growth. The University presented evidence, and the Commission agrees, that the University accurately assessed the housing preferences and limited potential impact of graduate student growth on the local housing market. (Exhibit 273, Tab R; Exhibit 358.)
- f. Finally, the Commission agrees with the University that nothing in the record supports the assertion by OP and the parties in opposition that an increased housing requirement or reduced enrollment will significantly reduce the number of rental properties or related impacts. As the University and community both noted, the surrounding neighborhoods contain many rental properties not occupied by Georgetown students and they are likely to remain attractive to students from other universities and young professionals. Through its off-campus student life programs, the University provides protections and benefits that ameliorate the impacts of all group houses, regardless of whether they are occupied by Georgetown students or other individuals. (Exhibit 361.)

Number of Students – Findings and Conclusions

80. Based on the foregoing Findings of Fact and the substantial evidence in the record, the Commission finds that the approval of the 2011 Plan will not tend to create conditions objectionable to neighboring properties because of the number of students. Accordingly, the Commission finds that there is no basis in fact to support a requirement that the University provide housing for a greater number of undergraduate students or roll back its current or proposed growth in overall Main Campus enrollment.
- a. As is detailed throughout this Order, the University demonstrated that the proposed increase in the number of students, as well as the student population as a whole, will not result in objectionable impacts due to the many existing and proposed measures implemented by the University to mitigate noise, traffic, parking, student behavior and other impacts. Similarly, the University demonstrated that the proposed number of students is not likely to lead to an objectionable number of students or group houses in the surrounding neighborhoods.
 - b. The University agreed to maintain the number of traditional undergraduate students and Medical School students, who are more likely to choose to live near the Campus, at current levels. When combined with the proposed increase in beds, the 2010 Plan is likely to decrease the number of students who live in the surrounding neighborhoods and reduce their related impact.
 - c. The University demonstrated that the proposed growth under the 2010 Plan, as well as the prior growth under the 2000 Plan, consists almost entirely of graduate and other nontraditional students who have very little impact on the neighborhoods surrounding the university. The graduate and nontraditional students are older, often part-time students who tend to live by themselves and are unlikely to choose to live in the neighborhoods near the Campus. (Exhibit 25, Tab F and Tab G; Exhibit 273, Tab K and Tab M; Exhibit 361.) As a result and as demonstrated by the University's real estate economics expert, the proposed growth is not likely to create demand for or lead to the conversion of additional rowhouses to rental group houses. (Exhibit 25, Tab I; Exhibit 273, Tab Q.) The University also demonstrated that graduate students rarely result in reports of student noise or other misconduct (Exhibit 25, Tab H.) and that the vast majority of graduate students walk, bike, or take transit and do not drive to the Campus. (Exhibit 339, Tab A.)
 - d. The Commission credits the testimony of the University that the proposed number of students is appropriate given the size of the Campus as compared to other District of Columbia universities. (Exhibit 273, Tab P.) The Commission does not credit testimony of CAG and ANC 2E regarding the comparative density of other

universities, which are not located in the District and many of which otherwise do not face the constraints and competing demands for land that are faced by private urban institutions in the District of Columbia.

81. The Commission finds that the University's voluntary agreement to maintain its traditional undergraduate enrollment and Medical School enrollment at current levels, reduce its overall proposed growth, provide an additional 250 undergraduate beds, and establish a satellite location for its School of Continuing Studies are all reasonable accommodations made in response to community and agency concerns about the number of students.

Other Objectionable Conditions

University-owned Off-Campus Housing

82. The University provides a limited number of beds in rowhouses on 36th Street and Prospect Street. These properties are located in the same blocks as East Campus and they are immediately adjacent to the boundary of the Campus. The University has owned many of these properties for decades, and began to use them as undergraduate student housing per the BZA's approval of the 1989 Campus Plan. BZA Order No. 15302 (1990). Each rowhouse provides housing for up to four students. Along 36th Street, the rowhouses are operated as a selective living-learning community known as Magis Row, where students develop a theme-based program and community service project in conjunction with faculty. (Exhibit 8, Tab H; Exhibit 102, Tab D and Tab I; Exhibit 361.)
83. For the reasons detailed in the Conclusions of Law, the Commission finds that the use of these University-owned, off-campus properties as single-family row dwellings for up to four unrelated persons is permitted as a matter of right.
84. The parties in opposition alleged that the use of these University-owned, off-campus properties violates District of Columbia law because many of the properties do not have a Basic Business License ("BBL"). For the reasons detailed in the Conclusions of Law, the Commission finds that the claims regarding the licensing of properties are outside of the Commission's jurisdiction in this case as well as under the Zoning Regulations and Act. Furthermore, the University presented evidence that these properties were properly licensed and regularly inspected for safety. (Exhibit 361.)
85. The parties in opposition also alleged that the use of these University-owned, off-campus properties impose objectionable impacts due to noise, conduct, trash, and other impacts. The University demonstrated, however, that these properties are extensively supervised

and managed by the University. The University also provided evidence that few noise or conduct complaints are attributable to these properties, and the number of complaints are declining. The University also presented evidence that it had privatized the trash collection for these properties and moved all trash storage and collection to the rear of the properties, so that such storage and collection no longer took place on public streets opposite privately-owned houses. (Exhibit 102, Tab I; Exhibit 361.) Finally, the University submitted photographic evidence demonstrating that the properties were well-maintained. (Exhibit 102, Tab J.) For these reasons, the Commission finds that the University's continued use of these properties (for a use that is permitted as a matter of right) is not likely to become objectionable and does not represent an "unreasonable expansion" into the surrounding residential neighborhoods.

Student Behavior

86. The University documents and follows up on all reported instances of potential objectionable behavior by University students to determine whether the University's Code of Conduct has been violated. If University students are found to have engaged in misconduct, they are subjected to University disciplinary action. The Code of Conduct provides for a progressive range of disciplinary actions based on the circumstances of each case to ensure appropriate treatment. The Code of Conduct applies equally on and off campus, and it explicitly prohibits noise that "infringes upon the rights of others to reasonable peace and quiet" as well as other disorderly conduct. (Exhibit 8; Exhibit 102, Tab F and Tab G; Exhibit 361.)
87. As discussed in Findings of Fact 44 – 47 and for the reasons set forth below, the Commission finds that the University policies regarding student conduct are appropriate and generally effective in seeking to avoid objectionable impacts on the surrounding residential community due to noise and other disorderly conduct.
 - a. The University has developed a set of off-campus policies that are uniquely tailored to affect behavior in the off-campus context (where property is privately owned rather than controlled by the University), and through SNAP, the MPD reimbursable detail, community advisors, and other tools, University students who live off campus are subject to greater oversight and more supervision than their on-campus peers. (Exhibit 273, Tab E; Exhibit 361.)
 - b. The Commission finds that the University's educational programs are effective in deterring noise and other misconduct. The University actively educates its students on the rules and responsibilities for off-campus living through mandatory orientation,

and under the 2010 Plan, the University added significant additional resources, including oversight by the community advisors and a community contract, to reinforce the University's expectations regarding behavior. (Exhibit 8.) As a result, the vast majority of students are not the subject of any report of misconduct, much less a verified complaint, and following the implementation of the new resources under the 2010 Plan, the number of addresses without a reported complaint increased. (Compare Exhibit 25, Tab C p. 1 (Fall 2009 – Spring 2010) with Exhibit 25, Tab C p. 2 (Fall 2010); Exhibit 273, Tab F (Spring 2011) and Exhibit 354 (Fall 2011).)

- c. The Commission finds that the University's progressive range of disciplinary actions are effective in deterring noise and other misconduct. The University follows up on all reported claims of student behavior, including through an in-person meeting with a University administrator, and takes action when a violation of the Code of Conduct is confirmed. The sanctions employed by the University are effective, given that a very small number of off-campus students trigger repeated complaints. When students repeatedly violate the Code of Conduct or commit a serious violation, the University demonstrated that it takes serious action, including disciplinary probation and suspension. (Exhibit 8; Exhibit 102, Tab G; Exhibit 354; Exhibit 361.) The University also demonstrated that the number of serious sanctions (and related instances of repeated or serious misconduct) are rare and decreasing (Exhibit 102, Tab G.)

88. Based on the foregoing, the Commission concludes that the 2010 Plan is not likely to become objectionable to neighboring property because of student behavior.

- a. The Commission does not find compelling the evidence presented by the parties in opposition alleging that the University's comprehensive off-campus student life policies, programs, and sanctions do not work. The University demonstrated that the parties in opposition misconstrued or misrepresented the incidents it presented as evidence of objectionable student behavior. In one example, CAG claimed that a video portrayed MPD breaking up a student party, when in fact the event was the response to the attempted abduction of a student. (The University also presented evidence that the OCSL resources—including the Hotline, SNAP, and additional MPD presence—all played a role in deterring this serious crime.) In another example, ANC 2E alleged that the University failed to respond to multiple disturbances and a loud alcohol-fueled party, when in fact the University did respond to each instance and the University, SNAP, and MPD each confirmed that no alcohol was present at the party in question and the level of noise was reasonable. (Exhibit 361, Tab H and Tab I.)

- b. The Commission also does not credit the testimony of the parties in opposition that broadly assigned any perceived report of objectionable noise or misconduct to students at the University. The surrounding neighborhoods include many residents in both rental and owner-occupied houses that are in no way associated with the University, and these neighborhoods are adjacent to a vibrant commercial district with an active and well-known nightlife. Indeed, the University presented testimony that up to one-quarter of all complaints it receives and investigates are attributable to non-student residents of the surrounding neighborhood. The Commission also notes that the University's extensive patrol programs, including SNAP and the additional police presence, mitigate the impact of noise from these non-students, even though the University is not responsible for the behavior. (Exhibit 361.)
- c. The Commission recognizes that, on rare occasions University students are responsible for repeated or serious incidents of misconduct. However, the University has demonstrated that, with the additional policies and protections of the 2010 Plan, such instances will continue to be isolated and met with an appropriate and effective response by the University. Accordingly, the University has met its burden of demonstrating that the 2010 Plan is not likely to become objectionable to neighboring property because of student behavior.

Trash and Community Appearance

- 89. For more than a decade, the University has collected bulk trash during student move-in and move-out periods. To improve effectiveness, the duration of each pickup period was extended in 2003 and again in 2006. The University also partners with CAG and BCA to conduct spring and fall community cleanups. These efforts were praised by BCA and CAG for their success in cleaning up the neighborhood. (Exhibit 102, Tab K; Exhibit 361).
- 90. The University also expects its students to comply with District regulations regarding trash storage and disposal. The University's community advisors and other officials regularly patrol the neighborhood and issue citations to students who fail to comply with University policy and District law. (Exhibit 361.)
- 91. Starting in Fall 2011, the University commenced twice-a-day, seven-days-a-week trash collection in the West Georgetown and Burleith neighborhoods when school is in session. All trash not properly stored in a trash receptacle is picked up by the University from all addresses – regardless of whether the occupants are students at the University. (Exhibit 354; Exhibit 361.)

92. Also starting in Fall 2011, the University built on existing measures to partner with the Department of Consumer and Regulatory Affairs in a first-of-its-kind initiative to ensure that the properties rented to students are safe and legally compliant with District laws and regulations. (Exhibit 354.)
93. The Commission finds that the 2010 Plan is not likely to become objectionable due to trash or other objectionable impacts on community appearance. The University has expanded its already-successful efforts with regular trash collection services, which will minimize any potential impact related to its students and indeed serve as a benefit to all residents of West Georgetown and Burleith. The Commission also finds that the new trash collection is not likely to disincentivize students from following proper trash storage procedure because the University will continue to cite and fine students for such violations. The Commission does not credit the photographic evidence submitted by the parties in opposition allegedly depicting objectionable trash impacts. The photographs failed to convey that the conditions were either persistent or pervasive, and to the extent that such incidences occur, the University's daily trash collection will clearly ameliorate such occasional instances. Finally, the Commission credits the evidence presented regarding the DCRA partnership and finds that the effort will help to ensure rental properties are safe and maintained in accordance with District laws and regulations.

Sustainability

94. The University is a decades-long leader in sustainable design and practice, dating back to the construction of green roofs, solar panel arrays, and thermal storage tanks in the 1970s and 1980s. Current efforts include a commitment to achieve a minimum of LEED Silver certification for all new construction and major renovation and recycling or composting of all food waste from the student dining hall.
95. Under the 2010 Plan, the University will continue to target LEED Silver as the minimum standard for all new construction and major renovation and significantly reduce its carbon footprint. Many of the innovative transportation solutions previously described also advance the University's sustainability efforts.
96. The Commission finds that the 2010 Plan is not likely to become objectionable to neighboring property because of unsustainable practices. The University has and will continue to remain a thoughtful and committed leader in sustainable design and operation

Community Engagement

97. The University maintains communication with and outreach to its immediate residential neighbors through multiple avenues led by its Office of External Relations and its Office of Off Campus Student Life (OCSL). Over the past decade and beyond, University officials have regularly engaged the community through regular quarterly meetings to discuss campus plan issues and monthly meetings of the Alliance for Local Living to discuss specific issues related to off-campus students. The University also engaged in a series of monthly meetings with the leadership of ANC 2E, CAG and BCA in the two-year period leading up to the filing of the Campus Plan. (Exhibit 361, Tab C and Tab D.) Finally, for over fifteen years, a Georgetown student has served on the local Advisory Neighborhood Commission.
98. Under the 2010 Plan, the University agreed to measures that will continue to improve communication between the University and surrounding community. Starting in Fall 2010, the University began to employ additional professional staff members to live in the West Georgetown and Burleith neighborhoods as community advisors and serve as a liaison among the University, its students, and its neighbors. The University also established a new interactive website to share up-to-date information on its policies and programs and agreed to annual reporting on its compliance with the conditions of the campus plan. And in Fall 2011, the University formed a new community working group to again engage its neighbors in discussions, led by an independent facilitator, regarding the impacts of students in the surrounding neighborhood. (Exhibit 8; Exhibit 354.)
99. The Commission finds that the 2010 Plan includes continued tools for communication and discussion that will help ensure the university use is not likely to become objectionable.

OP Report

100. By report dated May 5, 2011 and by testimony at the public hearing, OP recommended approval of the 2010 Plan, subject to certain conditions. OP commended the accommodations made by the University prior to the public hearing to increase the number of undergraduate beds, create a satellite location for the School of Continuing Studies, and maintain the existing parking supply. OP recommended, however, that the Zoning Commission require the University to roll back its existing enrollment levels, provide housing for 100% of the traditional undergraduate program population, and deny campus plan approval for improvements to the Hospital. OP's conclusions and recommendations were based on the data in its report.

101. The University demonstrated, and the Commission finds, that the much of the key data underlying OP's recommendations and assumptions were incorrect.
- a. OP incorrectly identified the Comprehensive Plan land use designations north of the Campus. The Burleith neighborhood, which was the focus of the proceeding, is located in the Moderate Density Residential category. The Hillandale neighborhood, which was not party to the proceeding and contains very few students, is located in the Low Density Residential land use category.
 - b. As discussed in Finding of Fact 62 above, the Commission finds that OP over-represented the University's enrollment growth. (Exhibit 273, Tab J.)
 - c. As discussed in Finding of Fact 67, the Commission finds that the University provided evidence that the three categories of nontraditional students excluded from the Traditional Undergraduate Program calculation are not likely to impose objectionable impacts due to noise, traffic, number, or other objectionable conditions.
 - d. OP overstated the number of undergraduate students who live off campus. The University demonstrated that the number of undergraduate students who live off campus was some 400 fewer than the number cited by OP. OP failed to account for those students counted under the University's Traditional Undergraduate Program definition, such as students studying abroad and commuter students, who do not live either on campus or off campus in the surrounding residential neighborhoods.
 - e. The Commission does not credit the comparative data OP relied upon to recommend that the University require on-campus housing for 100% of its undergraduate students. OP only cited three examples and later ceded in its Supplemental Report that none of the examples required students to live on campus for four years. Furthermore, as noted in Finding of Fact 69 above, the University demonstrated that it houses more students than many of its peers not just in the District of Columbia but throughout the country.
 - f. As discussed in Findings of Fact 68 – 71, the University added nearly two beds for each additional traditional undergraduate student over the past twenty years and therefore increased the percentage of students housed by the University. OP incorrectly concluded that the number of traditional undergraduate students living on-campus has not increased over the past twenty years. The discrepancy between the percentage housed in the 2000 Campus Plan and 2010 Plan is due to the University's change in the way it counts undergraduate students, nothing more. And the University demonstrated that under either method, comparing apples to apples, the percentage of students housed will increase under the 2010 Plan.

- g. OP provided no support for its conclusion that the Commission should review and approve any proposed housing site, regardless of zone district, because of the potential for adverse traffic impacts. The University's traffic expert demonstrated, and DDOT concurred, that the University's TDM program is very successful and the vast majority of students do not drive to the Campus.
- h. As discussed in Finding of Fact 77 above, OP's conclusion that the number of students in the neighborhood has risen to objectionable levels was based on incorrect and unreliable data.
 - i. OP relied on data that over-represented the concentration of student houses in the surrounding community. OP's initial maps included errors that significantly misrepresented the number of student addresses. There is no block that contains 94% student houses—a misstatement of fact that was repeatedly referenced by OP in its initial report. Even with the corrected maps, OP failed to control for students who live in basement apartments. These are not "student houses" as the primary occupants are not students and, in any event, the community has agreed that such student residents do not impose objectionable impacts.
 - ii. OP also relied on a subjective and unsupported analysis regarding the alleged "tipping point" of a neighborhood, and this Commission does not credit the finding that when 20% of the student population or 10% of the housing stock is shared housing then the neighborhood has "tipped."
 - iii. OP provided no objective evidence to demonstrate that the number of students living in the surrounding neighborhoods had actually generated objectionable impacts on the character, property values, homeownership rates, and other characteristics of those neighborhoods.
- i. OP provided no support for its conclusion that the number of students living in a neighborhood creates an adverse impact simply because they are students. As the University and its students and other supporters demonstrated, many students make positive contributions both to the immediate residential neighborhoods and the District of Columbia as a whole. In any event, for reasons set forth in the Conclusions of Law, the Commission finds that the D.C. Human Rights Act sets forth "matriculation" as a protected class and therefore prohibits this Commission from taking any action directed against students simply because they are students.
- j. As discussed in Finding of Fact 46, OP's analysis of the data used to conclude that students who live off campus create objectionable noise impacts was flawed. The

presence of a correlation between the number of students and number of complaints does not, by itself, demonstrate that the impact is objectionable. As OP itself demonstrated in its Supplemental Report, the number of calls on a block with a high concentration of students is a mere fraction of the number of calls on a block near the commercial corridor. Furthermore, OP failed to acknowledge clear evidence that the number of calls decreased as the University ramped up its efforts to deter noise and other misconduct.

- k. Finally, OP's conclusion that the University's comprehensive off campus student life program does not address noise impacts was flawed. OP focused only on two aspects of the program—SNAP and sanctions—and did not consider the additional measures provided by the University, which include neighborhood shuttles, increased police presence, community advisors, and educational efforts. And OP offered no support for its conclusions that SNAP and sanctions were not effective. As discussed in Finding of Facts 46 – 47 and 84 – 86, the University has demonstrated that its comprehensive off-campus student life programming, including SNAP and its progressive sanctions policies, are effective in managing the impact of student noise and behavior.
102. In a Supplemental Report dated December 22, 2011, OP provided responses to questions from the Commission as well as corrections to its initial report. Other corrections and additional data failed, however, to correct the deficiencies in the initial Report.
- a. OP still failed to adjust its data to account for the negligible impact of students who live in basement apartments as well as the overall decline in the number of students over the past decade.
 - b. OP continued to incorrectly describe the University's enrollment numbers. Among other errors, OP suggested that the University sought an increase in undergraduate enrollment when, in fact, the University had agreed to maintain current levels.
 - c. In the Supplemental Report, OP corrected initial misrepresentations regarding the housing requirements of other universities, but then provided additional misrepresentations regarding the housing and off-campus policies at three other universities. The University addressed these errors in its response, and the Commission finds that the additional select non-random examples provided by OP were neither relevant nor persuasive.⁶

⁶ Of the seven examples cited by OP in its two reports, no example required students live on campus for all four years, one example is of a smaller institution not located in or near a major

- d. OP incorrectly concluded that the University had not added beds when it renovated the LXR residence hall in the early 1990s. The University added a net new 190 beds with this project. See BZA Order No. 15701 (1992).
 - e. OP incorrectly determined that the 2010 Plan was inconsistent with certain selected policies of the District of Columbia Comprehensive Plan. In addition, OP ignored other relevant policies and goals that are furthered by the 2010 Plan. Taken as a whole, the 2010 Plan is clearly not inconsistent with the Comprehensive Plan.
103. Based on the foregoing Findings of Fact and for reasons discussed in the Conclusions of Law, the Commission concludes that the University has met its burden of proof under the applicable regulations and that the extraordinary measures recommended by the Office of Planning, including a rollback of enrollment and mandatory exclusion of all undergraduate students from the surrounding residential neighborhoods, is unsupported in fact and runs contrary to established legal principles. Each of OP's recommended conditions are addressed below.
- a. Undergraduate Enrollment. The Commission finds that the University and OP are generally in agreement on the number of Traditional Undergraduate Program students and the method for counting them. The Commission finds, however, that the maximum should be 6,675 students, which is what the University proposed, and not 6,652 students, which is the number of students as of Fall 2010.
 - b. Maximum Total Enrollment. The Commission agrees with OP regarding the method of counting and finds that the University has revised its methodology in response to OP and will now account for all students who take a class on the Main Campus. The Commission finds, however, that OP's remaining recommendations regarding overall student enrollment are unsupported by the record. The University demonstrated that the burden of an enrollment rollback would be financially debilitating. The University also met its burden of proof and demonstrated that the overall number of students is not likely to become objectionable to neighboring property. There will be no growth in undergraduate and medical school students. The vast majority of graduate and nontraditional students do not live near the Campus, do not drive to the Campus, and do not otherwise impose objectionable conditions. Therefore, there is no justification for prohibiting the modest additional growth in graduate and nontraditional students proposed by the University, much less rolling back current enrollment levels.

city, and under the 2010 Plan the University will provide a comparable number of beds to four of the remaining six institutions.

- c. Campus Housing. The Commission agrees with OP and finds that the University has agreed to provide 250 beds by Fall 2014. The Commission does not agree, however, with OP's recommendations that the University either provide additional beds or roll back its Traditional Undergraduate Student enrollment. Again, the University demonstrated that the burden of either providing such additional housing or reducing its enrollment was physically, financially, and programmatically infeasible. And the University met its burden of proof and demonstrated that the number of undergraduate students, including the number of undergraduate students who live off-campus, are not likely to become objectionable to neighboring property due to noise, conduct, trash, or other objectionable conditions. The vast majority of students are not the subject of any reports of misconduct, and the multiple measures enacted by the University are successful in deterring and addressing issues so that they do not become objectionable. There is no justification for requiring that the University construct additional beds when it has already done so at twice the rate of undergraduate growth over the past two decades, and will add even more beds over the next decade without any further enrollment growth. Finally, such action would violate the D.C. Human Rights Act because it would discriminate against students as a class.
- i. The Commission does not agree with OP's recommendation that all housing, regardless of location, be subject to Zoning Commission review as a part of the Campus Plan. OP cited no evidence to support the assertion that such satellite housing locations could generate objectionable impacts and, in any event and as set forth in the Conclusions of Law, the Commission cannot restrain the University's use of property outside of the campus plan that is otherwise in accordance with the Zoning Regulations.
 - ii. The Commission also finds that OP's recommendation to prohibit the construction of additional beds in East Campus is unwarranted and unnecessary. Should the University choose to propose an alternative or additional location for student housing within East Campus (which has been a part of the Campus for over a century), the University would be required to secure approval under Section 210 and demonstrate that the proposed use is not likely to become objectionable to neighboring residential property. Nothing in the record supports a pre-emptive determination to the contrary.
- d. Enrollment Calculation. The Commission agrees with OP and credits the University's agreement to cease averaging of its enrollment numbers.
- e. Medical Facilities. The Commission does not agree with OP's recommendation regarding future improvements to the Hospital. Subsequent to the filing of the OP

Report, the University eliminated development site MHC-5, a proposed 500,000 square foot infill development to the Hospital, from the Plan. (Exhibit 321.) As a result, the only planned improvements to the Hospital consist of improvements already approved under the 2000 Plan and carried forward to the 2010 Plan. The height, gross floor area, and lot coverage for these improvements were set forth in the Campus Plan (Exhibit 8, Tab J) and the transportation impacts of these improvements were fully accounted for in the final transportation study (Exhibit 339, Tab A). DDOT supported the transportation analysis subject to conditions, and the University agreed to fulfill those conditions. The Commission finds that the University has addressed OP's concerns regarding the potential traffic impact of future Hospital improvements.

- f. Definition of Temporary Employees. The University provided the additional information requested by OP in its January 13, 2012 supplemental filing.

DDOT Report

104. By report dated November 8, 2011 and testimony at the public hearing, DDOT recommended approval of the 2010 Plan, subject to certain conditions. DDOT testified that the University's final transportation report was complete and permitted DDOT to conduct a full analysis of the transportation impacts of the 2010 Plan. DDOT also testified that while the 2010 Plan could potentially result in adverse transportation impacts, those impacts would be mitigated through the conditions proposed by DDOT and agreed to by the University. DDOT praised the University's continued cooperation regarding the evaluation of the transportation issues associated with the Plan.
105. In its final report, DDOT also required the University address certain issues outlined in DDOT's previous reports.
 - a. The Commission finds that the University, through its traffic expert, addressed DDOT's requirements regarding Transportation Demand Management Strategies in the University's final Transportation Report, and concludes that the TDM strategies are sufficient to address any potential impacts from the 2010 Plan. (Exhibit 339, Tab A.)
 - b. The Commission finds that the University addressed DDOT's requirements for Parking Management Strategies through the University's TDM strategies as well as through its enhanced student parking conditions. (Exhibit 273, Tab B.)
 - c. The Commission finds that the University addressed DDOT's requirements for Monitoring of Transportation Performance through the University's agreement to

conduct annual performance monitoring as detailed in the final Transportation Report as a condition of the 2010 Plan. (Exhibit 339, Tab A.)

- d. Should the University and MedStar choose to submit a campus plan amendment for the Hospital during the Campus Plan period, the Commission will assess the need for and adequacy of any related transportation study at that time.

The Commission finds that, through the submission of the University's final Transportation Report and DDOT's subsequent report and testimony regarding the University's Transportation Report, all other prior issues raised by DDOT regarding the scope, method, assumptions and conclusions of the transportation study were adequately addressed by the University and its traffic expert.

106. The University agreed to undertake each of the conditions of approval as set forth in the report and discussed at the hearing. The Commission finds that the University has reasonably addressed and satisfied DDOT's recommended conditions of approval.

ANC 2E Report

107. At a regularly scheduled meeting on February 28, 2011, with a quorum present, ANC 2E approved a motion in opposition to the applications based upon the following issues and concerns:
 - a. *Caps on student enrollment.* The Commission should impose separate caps on each sub-category of students calculated on a full-time equivalent basis. The Commission should roll back current enrollment levels, and should review and adjust the enrollment limits when the University establishes additional satellite campuses.
 - b. *Caps on the number of students living in the community.* The Commission should require the University re-adopt a goal of housing 100% of its undergraduate students either on the Campus (but not in East Campus) or outside of Zip Code 20007. The Commission should limit the number of students permitted to live in the surrounding community by requiring the University to either build more housing or reduce student enrollment levels to reduce the number of students living in the surrounding community.
 - c. *Audit.* The Commission should require an independent audit of the University's student enrollment and number of off-campus students.
 - d. *Magis Row.* The Commission should require that the University no longer provide undergraduate housing in the 1400 block of 36th Street.

- e. *Prohibition on further property acquisition.* The Commission should prohibit the University from acquiring additional property in Zip Code 20007 without prior approval from the Zoning Commission.
- f. *GUTS buses.* All GUTS buses should be required to enter and exit Campus on Canal Road.⁷ The Commission should require the University complete construction of its turnaround within one year of approval of the Campus Plan and require the University to purchase shorter buses or install a turntable to turn around buses on Campus prior to completion of the turnaround. GUTS buses should be permitted to make left turns on to Canal Road during the AM peak period. The Commission should require the University install tracking systems on all buses to ensure they remain off residential streets.
- g. *Vehicular access to the Hospital.* The University should construct a north-south road to permit Hospital access from Canal Road.
- h. *Parking.* The University should provide transportation incentives and satellite parking to discourage all students from parking cars on the streets in Zip Code 20007. Commuter students should be prohibited from parking in Zip Code 20007.
- i. *Satellite parking.* The University should create satellite parking to meet demand.
- j. *M Street shuttle.* The University should provide a late-night shuttle that transports students from the M Street commercial area to Campus via the Canal Road Entrance.
- k. *38th Street realignment.* Any realignment of the 38th Street / Reservoir Road intersection should be reviewed by DDOT and include measures to mitigate cut-through traffic.
- l. *Strengthened off-campus conduct policies and measures.* The Commission should require the University strengthen its off-campus conduct rules or impose enrollment and housing limits. The rules should apply equally on and off campus, apply to graduate and summer students as well as undergraduates, include effective sanctions, and not tolerate repeat offenders. The rules should also address late night transient noise.

⁷ At the hearing, ANC 2E's representative clarified that the University's existing Wisconsin Avenue shuttle could continue to use Reservoir Road.

- m. *Commitment to maintain off-campus conduct policies and measures.* The Commission should require that the University not weaken or eliminate its off-campus student life measures.
 - n. *Kehoe Field.* The University should agree to limit the use of Kehoe Field.
 - o. *Hospital improvements.* The proposed improvements for the Hospital should not be approved and University and MedStar should be required to present a new plan for future improvements.
108. Through testimony and additional supplemental information provided at the public hearing, ANC 2E advocated the above positions. ANC 2E provided additional testimony challenging the effectiveness of the off-campus student life measures proposed by the University, such as the MPD reimbursable detail and the daily trash collection program. (Exhibit 342.)
109. For the reasons discussed in the Findings in Fact throughout this Order, the Commission finds that the data underlying ANC 2E's recommendations and assumptions was incorrect.
110. Based on the foregoing Findings of Fact and for reasons discussed in the Conclusions of Law, the Commission concludes that the University has met its burden of proof under the applicable regulations. The Commission notes that that the University has satisfied many of the ANC's proposed conditions as discussed herein. The extraordinary measures recommended by ANC 2E, including a rollback of enrollment and exclusion of all undergraduate students from the surrounding residential neighborhoods, are unsupported in fact and runs contrary to established legal principles. Each of ANC 2E's recommended conditions are addressed below.
- a. *Caps on student enrollment.* As detailed in Finding of Fact 78 above, the Commission has concluded that the University's current and proposed enrollment is not likely to become objectionable due to number of students or any other objectionable impact. The University has voluntarily agreed to enrollment limits, including freezes on its Traditional Undergraduate Program and Medical School populations, has reduced its proposed enrollment growth by more than half, and has agreed to establish a satellite location for its School of Continuing Studies, all of which will ensure that the number of students will not become objectionable. The Commission has found that any additional reduction of enrollment is not supported by the record and could not be sustained by the University.

- i. For the reasons set forth in Finding of Fact 65, the Commission finds that the University's proposed method of counting the number of Main Campus students is reasonable and does not agree that a full time equivalent (FTE) limit is necessary.
 - ii. The Commission finds that it is not necessary to separately limit certain categories of students beyond the categories already voluntarily proffered by the University. Such limitations unnecessarily intrude into the University's academic mission. Furthermore, as discussed in Findings of Fact 67 and 78, the University has demonstrated that graduate and nontraditional undergraduate students are not likely to become objectionable—they are older, tend not to live in group houses in the surrounding neighborhoods, and are not likely to drive to Campus.
 - iii. Because the Commission has determined the proposed enrollment is acceptable, the Commission does not find it necessary to require the University to return to the Commission for an adjustment in its enrollment limitations when satellite locations are established. The University has adjusted its enrollment methodology so that it will capture all students who take a class on the Main Campus, even if they are enrolled in programs at a satellite location. The Commission notes that the Zoning Regulations constrain the Commission from regulating the University's use of such satellite locations if university use is otherwise in accordance with the Zoning Regulations.
- b. *Caps on the number of students living in the community.* As detailed in Findings of Fact 74 – 78 above, the Commission has found that the number of students living in the surrounding community is not likely to become objectionable to neighboring property due to noise, conduct, trash, or other objectionable conditions. The University has voluntarily agreed to construct an additional 250 beds either on campus at the Leavey Center or off campus outside of the R-1 and R-3 zoned portions of Zip Code 20007 that will ensure the proposed university use is not likely to become objectionable. And the University has demonstrated that the burden of either providing such additional housing or reducing its enrollment is physically, financially, and programmatically infeasible. Finally, as already explained in Finding of Fact 101, the Commission cannot require review of off-campus housing sites and will not pre-emptively prohibit the use of property in East Campus for student housing.
- c. *Audit.* Over the last two decades the University has been reporting its enrollment and student housing information at the quarterly meetings with the community. There is

nothing in ANC 2E's testimony to suggest the need for an outside audit and the University has agreed to an annual report to be filed with the Office of Zoning, the Zoning Administrator, OP and ANC 2E as well as the community working group.

- d. *Magis Row*. For reasons discussed in Finding of Fact 80-83, the Commission is constrained from limiting the University's use of "Magis Row" for student housing and otherwise finds that such use is not likely to become objectionable to neighboring property because of noise, trash, or other reasons.
- e. *Prohibition on further property acquisition*. For reasons discussed in the Conclusions of Law, the Commission is constrained from prohibiting the University's acquisition and use of property when such use is otherwise in accordance with the Zoning Regulations.
- f. *GUTS buses*. The Commission finds that the University has generally satisfied ANC 2E's recommendation. As discussed in Findings of Fact 43 and 54, the University's proposed Mid-Campus Turnaround will address both ANC 2E's desire for an on-Campus bus turnaround and ANC 3D and FCCA's desire to move the activity away from the western edge of the Campus.
 - i. The University has also agreed to use the Canal Road entrance and has secured conditional approval from DDOT to allow left turn activity during the AM peak period. The Commission notes that the ultimate determination regarding the left turn activity from the Canal Road entrance rests with DDOT.
 - ii. The Commission finds that the University's proposed timetable is reasonable, particularly given the physical constraints of the turnaround location and the University's efforts to balance the desires of its neighbors on both sides of the Campus.
 - iii. The Commission also finds that it is not necessary to compel the University to develop an interim plan while the turnaround is being constructed. The Commission credits the testimony of the University's traffic expert that the current impact of the buses is not objectionable and that any interim plan would create unsafe turning conditions.
 - iv. The Commission finds that it is not necessary to require the University install tracking systems on all buses. Once the turnaround is completed, buses will use the Canal Road entrance and avoid residential streets.

- g. *Vehicular access to the Hospital.* The Commission finds, based on the testimony of the University's traffic experts and DDOT, that the continued use of Reservoir Road for Hospital access is not likely to become objectionable due to traffic or parking. The Commission has conditioned its approval of the 2010 Plan upon the completion of improvements proposed by DDOT and agreed to by the University to mitigate any projected impacts along Reservoir Road. Accordingly, the Commission finds that it is not necessary to require a change in circulation or access patterns. The Commission notes that ANC 3D opposed the change in Hospital circulation patterns.
- h. *Parking.* The Commission finds that the University has generally satisfied ANC 2E's recommendation. As discussed in Findings of Fact 56 – 60, the Commission finds that the University has adopted an extensive series of transportation incentives and policies to discourage all students from parking cars on the streets in Zip Code 20007. Most students do not drive to Campus; of those that do, daytime commuter students are offered satellite parking and evening students are offered discounted parking on the Campus. The University's proposed satellite location for the School of Continuing Studies will also reduce the number of students who commute to the Campus by car. The Commission credits the testimony from DDOT that the neighborhood's street parking supply is managed through a residential permit program that restricts non-residents from parking for over two hours without a valid permit and does not permit students in the surrounding neighborhoods to seek a "reciprocity" permit.
- i. *Satellite parking.* The Commission finds that the University has generally satisfied ANC 2E's recommendation. The University actively promotes and utilizes satellite parking and will continue to do so under the 2010 Plan. The University provided evidence that its satellite parking facilities, which include sites in Rosslyn, Wisconsin Avenue, and Montgomery County, are well-utilized and contain additional capacity to meet demand. The University restricts the issuance of on-campus parking permits, and satellite parking prices are discounted to encourage their use. Under the 2010 Plan, the University outlined additional measures to further encourage use of satellite parking. (Exhibit 8, Tab R; Exhibit 339, Tab A.)
- j. *M Street shuttle.* The Commission finds that the University has generally satisfied ANC 2E's recommendation. The University agreed to provide this shuttle service and demonstrated that it was effective in reducing the number of late night transient students. The University also addressed concerns about late night noise from students waiting for the other late-night neighborhood shuttles. (Exhibit 361.)
- k. *38th Street realignment.* The Commission finds that the University has generally satisfied ANC 2E's recommendation. The University agreed to propose measures to

mitigate cut-through traffic in the proposed design of any intersection realignment. The Commission notes that the review and ultimate determination regarding the design of such improvements and any related measures to mitigate cut-through traffic ultimately rests with DDOT.

- l. *Strengthened off-campus student conduct policies and measures.* The Commission finds that the University has generally satisfied ANC 2E's recommendation. As discussed in Findings of Fact 44 – 47 and 84 – 86, the University demonstrated that it has developed a comprehensive series of policies and practices for its off-campus students that provide ample oversight and supervision.
 - i. The Commission finds that the Code of Conduct applies equally on and off campus and to all University students, and includes specific rules prohibiting unreasonable levels of noise. (Exhibit 361.)
 - ii. The Commission finds that ANC 2E mischaracterized the University's rules relating to off-campus conduct. While it is true that some on-campus rules and policies do not apply to students who live off-campus, the University has developed a set of off-campus policies that are uniquely tailored to affect behavior in the off-campus context (where property is privately owned rather than controlled by the University). Furthermore, through SNAP, the MPD reimbursable detail, community advisors, and other tools, University students who live off campus are subject to greater oversight and more supervision than their on-campus peers. (Exhibit 273, Tab E; Exhibit 361.)
 - iii. The University's sanctions effectively deter noise and other misconduct and include progressive and increasing sanctions for repeat or serious offenders.
 - iv. The OCSL program, as amended by the University, includes a series of measures that address late night transient noise, including SNAP, the increased MPD reimbursable detail, and the late-night shuttle system. The Commission also notes that the University has agreed to maintain elements of its program, including SNAP and the MPD reimbursable detail, during the summer months.
 - v. The OCSL program includes a number of initiatives where the University has stepped in to fund and manage increased city services, such as police presence and trash collection, to mitigate the impact of its students. The Commission finds that these measures will ensure that the university use is not likely to become objectionable and notes that the increased services also provide a direct benefit to all residents within the service area.

- m. *Commitment to maintain off-campus conduct policies and measures.* The Commission finds that the University has generally satisfied ANC 2E's recommendation. The Commission has conditioned approval of the 2010 Plan on the University's continued implementation of its OCSL programs at current levels. The conditions permit the appropriate level of flexibility to permit the University to continue to enhance the efficacy of these measures without diluting the protections they provide.
- n. *Kehoe Field.* The Commission finds that the University has generally satisfied ANC 2E's recommendation and has agreed to limit the use of Kehoe Field.
- o. *Hospital improvements.* The Commission finds that the 2010 Plan, as amended, merely carries forward Hospital improvements that were already approved in the 2000 Plan. Furthermore, the University has demonstrated that these improvements are not likely to become objectionable due to traffic, parking or other objectionable conditions. At the hearing the University presented testimony that it had agreed to allow MedStar to study a range of options on the Campus for the construction of a new hospital. Should the University and MedStar decide to pursue development of a site not identified on the Plan as amended, the University and MedStar would be required to secure approval for that site through the appropriate process.

ANC 3D Report

- 111. At a regularly scheduled meeting on March 2, 2011, with a quorum present, ANC 3D approved a motion in opposition to the application based upon the following issues and concerns:
 - a. The proposed increase in graduate student enrollment is likely to generate an increase in objectionable impacts due to the number of students, traffic, noise, parking, and related decreases in property values and conditions, and it should be reduced.
 - b. The proposed Loop Road and related use by GUTS buses as well as potential use by Hospital traffic will generate objectionable impacts on the adjacent property to the west of the Campus.
 - c. The proposed Kehoe Field roof will impose objectionable impacts due to its appearance and use.
 - d. The proposed addition to the existing Hospital (MHC-5) lacks sufficient detail.

112. The Commission finds that the University made significant modifications to the Plan in response to the concerns of ANC 3D over the course of the hearing and otherwise met its burden regarding ANC 3D's remaining concerns.
- a. The University reduced its proposed increase in graduate student enrollment and has otherwise demonstrated that the existing and proposed increase in graduate student enrollment is not likely to generate objectionable impacts due to the number of students, traffic, noise, or parking. The University's real estate expert demonstrated that notwithstanding the number of students living in Foxhall, property values and conditions had improved over the last decade, and the increase in graduate student enrollment was unlikely to result in a significant increase in the number of student group houses.
 - b. The University withdrew its proposed Loop Road and otherwise demonstrated that the proposed Mid-Campus bus turnaround and other traffic generated by the 2010 Plan would not impose objectionable impacts due to noise, traffic or parking.
 - c. The University demonstrated that the proposed Kehoe Field roof was not likely to impose adverse visual impacts (see Exhibit 25, Tab N), would reduce noise and light impacts, and agreed to limits on the use of the Field. Prior to constructing the roof, the University will return to the Commission for further processing approval, which will provide agencies and neighbors an opportunity to provide further feedback during the planning and design of the roof itself.
 - d. The University eliminated site MHC-5 from the 2010 Plan and otherwise demonstrated that the remaining proposed Hospital improvements were not likely to become objectionable due to traffic or parking.

Testimony in Support

113. At the hearing, the Commission received evidence and heard testimony from numerous persons and organizations in support of the application. The persons in support included many students and alumni, current and former ANC 2E commissioners as well as other residents living in the surrounding neighborhoods, persons affiliated with neighborhood businesses, and representatives of District community groups and organizations who benefit from the University's extensive outreach and service initiatives. Supporters generally commented favorably on the development plan, the University's off-campus student life initiatives, and the benefits offered by the University. They also opposed the

enrollment rollbacks and mandatory on-campus housing requirements proposed by OP and the parties in opposition.

114. Multiple members of the University's Student Neighborhood Assistance Program spoke in support of the application and testified regarding the operation and efficacy of SNAP.
115. The University also submitted evidence that a coalition of neighbors supported the off-campus student life measures implemented by the University, including the additional police patrols, daily trash collection and new M Street shuttle, as well as the removal of the Loop Road concept. The Washington Post Editorial Board also endorsed the 2010 Plan as modest and rejected the enrollment rollbacks and additional on-campus housing requirements. (Exhibit 361, Tab F.)

Testimony in Opposition

116. The Citizens Association of Georgetown presented testimony and evidence from George Oberlander, an expert in planning; Joe Mehra, an expert in traffic; Jennifer Altemus; and Luca Pivato. The Burleith Citizens Association presented testimony and evidence from Lenore Rubino and Bonnie Hardy.
 - a. CAG and BCA argued that the existing plan created major problems in the West Georgetown and Burleith neighborhoods with respect to student housing, misconduct, and traffic and parking. The associations presented evidence and testimony regarding the University's existing and proposed student enrollment, the number of students living in the surrounding neighborhoods, and related complaints regarding noise, student behavior, property conditions, and trash. The associations presented evidence and testimony alleging that the University's existing and proposed off-campus student life measures failed to address or mitigate issues generated by students living in the surrounding neighborhoods. The associations also presented evidence and testimony exploring potential alternatives for developing student housing.
 - b. CAG and BCA reiterated the issues and recommendations raised by ANC 2E, including (1) a rollback in student enrollment and changes to the method, calculation and caps on such enrollment; (2) a requirement that 100% of undergraduate students be housed on campus; and (3) improvements to the University's off-campus student life program.
117. The Foxhall Community Citizens Association presented testimony and evidence from Robert Avery. FCCA's testimony primarily focused on the alleged impact of the proposed Loop Road, and FCCA later testified in support of the University's withdrawal

of the Loop Road and proposed Mid-Campus Turnaround. FCCA also presented evidence and testimony expressing concern regarding the impact of the proposed increase in graduate student enrollment.

118. The Commission also heard testimony or received letters from a number of persons and organizations in opposition to the application. Approximately half of the letters were in opposition to the proposed Loop Road, and the Commission finds that the University addressed these concerns. The remaining letters in opposition included residents of Burleith and West Georgetown who generally cited adverse impacts associated with the continued growth of a large institution near a residential neighborhood including noise and other objectionable impacts associated with student lifestyles and behavior; traffic and parking impacts; and the impact of students on neighborhood conditions and property values.
119. The Commission finds that the University has made a number of significant, meaningful, and reasonable accommodations to address the concerns of CAG, BCA, and FCCA in the 2010 Plan. Most notably, the University rescinded its proposed Loop Road, which addressed the major concern of FCCA and approximately half of the letters in opposition. The University also reduced its proposed enrollment increase, agreed to construct 250 new undergraduate beds, and supplemented and enhanced its off-campus student life program. The University also satisfactorily addressed each of the concerns raised by CAG, BCA, and FCCA as is discussed elsewhere and throughout this Order. The University's proposed 2010 Plan, as amended and supplemented over the course of the hearing, ensures that it is not likely to become objectionable to CAG, BCA, FCCA, or other nearby property owners.
 - a. As discussed in Finding of Fact 53, the Commission does not credit the testimony of CAG's traffic expert.
 - b. The Commission does not credit the testimony of CAG's planning expert. The expert prepared much of the report prior to the filing of the 2010 Plan and failed to consider the multiple changes and accommodations made by the University over the course of the hearing. The expert relied on generalized reports and assertions rather than specific, credible evidence to support his conclusions regarding the alleged impacts of the 2010 Plan. The expert failed to account for or confront unchallenged data presented by the University's real estate and economics expert as well as U.S. Census data that demonstrated that property values, homeownership rates, and other relevant indicators of neighborhood health were increasing. (Tr. May 16, 2011 p. 302-03.) The expert also based his conclusions on the same faulty and unreliable data regarding the number of students and student houses described elsewhere in this

Order. (Tr. May 16, 2011 p. 309.) Finally, the expert misapplied key provisions of the Comprehensive Plan.

- c. As discussed in Finding of Fact 73, the Commission does not credit the report submitted by CAG that was prepared by the Scion Group.

[Conclusions of Law follow]

CONCLUSIONS OF LAW

Procedural Issues

Standard of Review

The University requested special exception approval, pursuant to 11 DCMR §§ 210, 3035, and 3104, of a new campus plan for a term ending December 31, 2020. The Commission is authorized under the aforementioned provisions to grant a special exception when, in the judgment of the Commission based on a showing through substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. A special exception to allow use as a college or university in a residential zone district may be granted subject to the provisions contained in § 210, including that the university use must 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,” and that maximum bulk requirements may be increased for specific buildings, subject to restrictions based on the total bulk of all buildings and structures on the campus. (11 DCMR §§ 210.2-210.9.)

When the Commission receives an application for approval of a campus plan, the application is reviewed as a whole, and the Commission’s “discretion . . . is limited to [determining] whether the [proposed] exception [satisfies] the . . . requirements” of the regulations and if the applicant meets its burden, “the [Commission] ordinarily must grant [the] application.” *First Washington Baptist Church v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. District of Columbia Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

As a threshold matter, the Zoning Commission is required to decide campus plan cases in a manner that accounts for the interests and rights of *both* the University and the neighbors, and which protects the University’s legal interests:

The University has rights and the neighbors have rights, and a temperate, rational, and balanced approach is called for. The BZA’s responsibility is to ‘determine whether a reasonable accommodation has been made between the University and the neighbors which does not interfere with the legitimate interests of the latter,’ (or we are constrained to add, with the legally protected interests of the former).

President and Directors of Georgetown Coll. v. District of Columbia Bd. of Zoning Adjustment, 837 A.2d 58 (D.C. 2003) (hereinafter “Georgetown”) (quoting *Glenbrook Road Ass’n. v. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d 22, 32 (D.C. 1992)). In reviewing the

application, the Commission must have due regard for the University's needs and prerogatives. *Spring Valley Wesley Heights Citizens Ass'n v. District of Columbia Zoning Comm'n*, 856 A.2d 1174, 1176 (D.C. 2004).

The court's observations in *American Univ. v. Prentiss*, 113 F. Supp. 389, 392 (D.D.C. 1953), *aff'd*, 214 F.2d 282 (D.C. Cir.), *cert. denied*, 348 U.S. 898 (1954), are noteworthy – and equally applicable – in this case:

It is important to note that the owners of the residences in [Georgetown and Burleith] purchased their property long after the [Georgetown] University was established and commenced its operations as an institution of higher learning, and even some time after the University campus was given its original zoning. The owners must have assumed that the University would keep growing and expanding and would create additional schools and departments, and that new buildings would be constructed on the campus from time to time to carry on activities suitable to a great University.

American Univ., 113 F. Supp. at 392 (reversing, as an unconstitutional taking in violation of the Fifth Amendment, Zoning Commission order that precluded American University from building a hospital on its campus property).

In *Glenbrook Rd. Ass'n*, the Court of Appeals affirmed the BZA's application of the "test" used in the context of the determination whether a university's proposed development under its campus plan "is likely to have objectionable consequences for the community." *Glenbrook Rd. Ass'n*, 605 A.2d at 34. That test, earlier articulated in *Draude v. District of Columbia Bd. of Zoning Adj.*, 527 A.2d 1242 (D.C. 1987) (GW Campus Plan case), was: "whether the proposed use would significantly increase objectionable qualities over their current levels in the area."

Authority of the Commission to Impose Limitations on Enrollment and Other University Prerogatives

The University has clearly argued in this case that the Commission does not have the authority to cap the University's enrollment. Upon careful consideration of the relevant cases, we agree. We are mindful of the D.C. Court of Appeals' instruction from the University's 2000 Campus Plan case that "the imposition by the BZA of an enrollment cap at least approaches (if, indeed, it does not cross) the line between the exercise of legitimate zoning and land use authority and an *ultra vires* intrusion upon the University's educational mission." *Georgetown*,

837 A.2d at 74-75.⁸ This conclusion is consistent with the law from other jurisdictions. For example, in *Summit School v. Neugent*, 82 A.D.2d 463, 442 N.Y.S.2d 73 (1981), the court considered a zoning authority's cap on a private school as a condition of granting the school's 'special use' permit. The court reversed the Board's action, holding that "the Board's actions went beyond land use concerns and 'impermissibly impinge[d] on the details of the teaching operation of [the] school facility.'" *Id.* at 76 (quoted in *Georgetown*, 837 A.2d at 71). As the Court of Appeals has long held, "[a]bsent express statutory or regulatory authority, a regulatory agency may not impose remedial measures." *Spring Valley Wesley Heights Citizens Ass'n*, 644 A.2d at 436 (quoting *Davidson v. District of Columbia Bd. of Medicine*, 562 A.2d 109, 112 (D.C. 1989)) (affirming BZA decision concluding that BZA did not have authority to prevent American University from using commercially zoned property in a by-right manner).

For similar reasons, the Commission may not impose conditions that intrude into the "details and mechanics" of university administration, such as the University's enforcement of student discipline and similar concerns that are outside of the Commission's expertise. *Georgetown*, 837 A.2d at 77. Accordingly, the Commission may consider, evaluate and weigh enrollment maximums, changes to student housing and conduct policies and similar limitations if they are voluntarily proffered by the University as a part of the application. The Commission is constrained, however, from unilaterally imposing conditions that direct a University's operation beyond any conditions that the University proposed in its application; and, unless the Commission approves the application as a whole, the Commission may not impose even these voluntarily proposed conditions when the University has explicitly conditioned such voluntary conditions upon approval of the application as a whole.

Finally, we note that to the extent the Commission imposes conditions upon the University, the record must support a finding that the University can achieve the conditions of approval required by the Commission. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 831 A.2d 921 (D.C. 2003).

The Court of Appeals also precisely described the detailed evidence on which the Commission would have to base any decision denying an enrollment increase to a university in a

⁸ In *Georgetown's* last Campus Plan case involving its 2000 Campus Plan, CAG and the District argued that, because the BZA was required to consider number of students, "the Board must necessarily have the authority to impose a cap." *Georgetown*, 837 A.2d at 71. The Court of Appeals rejected that contention, stating that "the merit of this argument is not self-evident." *Id.* It nevertheless declined to decide that question specifically because it had not been preserved. As noted above, the University repeatedly preserved this question in this case, making its position plainly known that its agreement to comply with a cap was expressly contingent on adoption of the entire 2010 Campus Plan.

campus plan proceeding.⁹ As the Court explained in its decision regarding Georgetown's 2000 Campus Plan, if the Commission is to deny a university its proposed enrollment increase, substantial record evidence must demonstrate that any proposed enrollment increase "would have contributed to or exacerbated objectionable conditions in the adjoining neighborhoods." *Georgetown*, 837 A.2d at 74. The Court also flatly rejected the "erroneous theory" that the University must conclusively demonstrate that there would be no adverse impact from the proposed enrollment increase. *Id.* The Court stressed that the Board would have to make findings "explicating how a small and gradual increase in enrollment, under a plan which [as here] significantly increased the number of students living on campus and reduced the need for off-campus housing, would adversely affect the adjoining neighborhoods." *Id.* The same rationale applies, even more pointedly, to any mandated decrease in enrollment, which would pose other serious legal implications, including constitutional issues, as discussed herein.

Notably, in the 2000 Campus Plan case, the Court looked to the decision in *Washington Ethical Society v. District of Columbia Bd. of Zoning Adj.*, 421 A.2d 14 (D.C. 1980). There the Court held that the BZA improperly refused to permit a 15-student increase (from 65 to 80) in a private school's enrollment, rejecting as "altogether inadequate" the BZA's reliance on a conclusion that the enrollment increase would cause the "existing problems" to be "magnified." *Id.* Applying the rule from *Washington Ethical Society*, the Court in the 2000 Campus Plan case identified specifically what the BZA must do when analyzing a university's requested enrollment increase: The BZA (or Commission) must "confront with . . . specificity the precise issue – whether, and how, a minimal yearly increase in enrollment . . . would significantly affect conditions in the neighboring communities."

Authority of the Commission Regarding Property Outside the Campus Plan

The Commission concludes that 11 DCMR § 210 applies to university uses in a residential zone within the boundaries of a campus plan, and does not apply to commercially zoned property or preclude a university's use of property, consistent with the Zoning Regulations, outside the boundaries of a campus plan. See *Glenbrook Road Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 605 A.2d 22 (D.C. 1992); *Watergate West, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 815 A.2d 762 (D.C. 2003). The Commission also notes that the D.C. Board of Zoning Adjustment recently has affirmed the right of universities to use residential property outside of campus boundaries for student housing and other uses consistent with the Zoning Regulations. See BZA Appeal No. 18151 (2011).

⁹ The Court had already concluded that the University waived any objection to the threshold principle that the imposition of any cap was beyond the BZA's authority, having proposed the increased enrollment cap without expressly reserving the objection.

The Commission is constrained from limiting the rights of universities to use property in a manner that is otherwise in accordance with the Zoning Regulations. See *National Black Child Development Institute v. District of Columbia Bd. of Zoning Adjustment*, 483 A.2d 687, 691 (1984) (“Personal conditions impermissibly regulate the business conduct of the owner, rather than the use of his property, and are unlawful *per se*.”) Therefore, the Commission concludes that it cannot constrain the University’s use of rowhouse properties outside of the campus plan boundaries for use as student housing, provided that such use is otherwise consistent with the Zoning Regulations. Nor can the Commission preclude the University’s future use of high-density residential or commercially-zoned properties outside the campus plan boundaries for use as a student dormitory or apartments, provided that such use is otherwise consistent with the Zoning Regulations.

Limitations Imposed by the D.C. Human Rights Act

The Court of Appeals has considered whether the District of Columbia Human Rights Act’s (“DCHRA”) prohibition on discrimination in housing on the basis of matriculation “invalidate[s] the zoning regulations” to the extent that they permit consideration of “number of students” in the context of campus plans. The Court has rejected the argument that consideration of “number of students” in and of itself is unlawful in every context. *Georgetown*, 837 A.2d 66 n.7 (citing *George Washington Univ.*, 831 A.2d at 938-44).

Significantly, however, the Court of Appeals did not suggest that consideration of “number of students” could justify the exclusion of students from a neighborhood. Any condition that excludes, or has the effect of excluding, students from a neighborhood would violate the DCHRA, which prohibits discrimination in housing on the basis of matriculation, among other criteria. See D.C. Code § 2-1402.21; *George Washington Univ.*, 831 A.2d at 939 (under DCHRA, “complete exclusion of students from an entire neighborhood . . . cannot be sustained”).

The Office of Attorney General (then Corporation Counsel) previously has considered whether the Commission may, consistent with the DCHRA, adopt measures that are designed to reduce the number of students living in the Georgetown neighborhood. In 1997, the Commission was asked to consider adopting an “overlay” that would reduce (from six to three) the number of unrelated persons who could live in a house in Georgetown (“Overlay”). The measure was expressly designed to address the precise kinds of issues raised by the same community in this case. The Office of Corporation Counsel (“OCC”) was asked to provide a legal opinion on whether the Overlay was legally sustainable; OCC opined that such an Overlay was not legally sustainable.

Specifically, OCC opined that the Overlay presented serious issues under the DCHRA due to the DCHRA’s prohibition on discrimination against students, noting too that the

“elimination of discriminatory barriers to availability of housing is a major goal of the Comprehensive Plan.” (July 14, 1997 OCC Opinion at 2.) In the Opinion, OCC notes the purported justification of the Overlay as addressed to “destabilization of the indicated neighborhoods by the unprecedented conversion of single-family housing in the areas around Georgetown University . . . into rental housing for groups of four or more unrelated individuals,” noting that “students” were the “groups” referred to. *Id.* at 3. OCC correctly noted that, in such a case

references to students in the proposed overlay regulation are noteworthy because, not only do they tend to demonstrate an adverse and disproportionate effect on students, but more importantly, they tend to evince a discriminatory intent. And whereas effect is significant when analyzing practices, statutes or regulations under the DCHRA, intent appears to be absolutely critical. Discriminatory intent usually proves to be fatal.

Id. (citing *Washington v. Davis*, 426 U.S. 229 (1976)). The Commission, relying in large part on OCC’s opinion, denied the petition for the Overlay. *See* Z.C. Order No. 836 (1998).

In the Overlay case, OCC also observed that, for similar reasons, the proposed overlay presented equal protection problems and could be challenged under the federal Fair Housing Act as well. Accordingly, OCC advised that the Commission not engage in “the invidious line-drawing that numerical restrictions appear to engender,” and that, under the DCHRA, “reducing student housing opportunities is not a permissible objective.”

Constitutional Limitations

Finally, the Commission acknowledges constitutional limitations on its authority to condition approval on enrollment and housing limitations.

As the United States Supreme Court has held, a zoning authority’s conditional grant of an application or permit must demonstrate an “essential nexus” between the condition imposed and the authority’s purposes in imposing that condition. *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825 (1987). The Supreme Court later refined that test in the land use context, holding that even when an “‘essential nexus’ exists between the ‘legitimate state interest’ and the permit condition exacted” by the government, *Dolan v. City of Tigard*, 512 U.S. 374, 386 (1994) (citing *Nolan*, 483 U.S. at 837), the government must demonstrate a “rough proportionality” between the goal and the land use restriction imposed in service of that goal. *Id.* at 391. Although “[n]o precise mathematical calculation is required, . . . the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.” *Id.*

The Supreme Court has stated that “unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but ‘an out-and-out plan of extortion.’” *Nollan*, 483 U.S. at 837 (quoting *J.E.D. Assocs. V. Atkinson*, 432 A.2d 12, 14-15 (N.H. 1981)).

The Merits of the Application

Satisfaction of the Burden of Proof

The Commission concludes that the burden of proof under the Zoning Regulations for the University is no different than any other applicant for approval for use as a college or university in a residential zone district. Other than the maximum bulk limitations set forth in Section 210.3, the provisions of Section 210 apply uniformly to all applications for special exception approval. The Commission must apply the same objective standards to its review, regardless of whether the University is located in a low-density, moderate-density or high-density zone district. Accordingly, the University’s location in the moderate-density R-3 zone district does not impose the higher standard of review urged by the parties in opposition to this application.

Based on the above Findings of Fact, the Commission concludes that the University has satisfied the burden of proof for special exception approval of the proposed new campus plan in accordance with Section 210. The 2010 Plan will provide limited new development as well as a modest increase in student enrollment in graduate and nontraditional students only. In addition, the 2010 Plan will freeze undergraduate enrollment at current levels and provide 250 additional undergraduate beds as well as multiple significant initiatives to manage the noise, trash, and other impacts of students who live off-campus. And the 2010 Plan will further reduce the already-limited impact of University operation on traffic and parking through the establishment of a satellite location for School of Continuing Studies students, commitment to transportation alternatives, and construction of a bus turnaround to route GUTS buses off neighborhood streets.

Accordingly, the new development and the modest enrollment increase requested by the University are not likely to become objectionable because of noise, traffic, number of students, or other objectionable impacts. The 2010 Plan is also consistent with the provisions of the Comprehensive Plan. And through the 2010 Plan, as amended and supplemented over the course of the public hearing, the University has made reasonable accommodations addressing the concerns of the parties and persons in opposition. Finally, the 2010 Plan will continue the conditions of approval of the 2000 Campus Plan to avoid adverse impacts or objectionable conditions, and will contain many new conditions that the University proffered in response to community and agency comment—including a maximum overall student enrollment and a freeze on undergraduate enrollment.

The Commission concludes that the extraordinary requirements, which OP proposed and the parties in opposition endorsed, to roll back the University's enrollment and house 100% of the University's traditional undergraduate student population on campus are not supported by the record evidence in this case and, in any event, are beyond the authority of the Commission. As discussed at length in the Findings of Fact, the University provided extensive, uncontroverted and detailed evidence that the proposed increase in enrollment consisted solely of graduate and nontraditional students that are older, not likely to live near campus, not likely to drive to campus, and who otherwise imposed limited, if any, impact on the surrounding residential neighborhoods. Neither OP nor the parties in opposition offered any specific and credible evidence to the contrary that would demonstrate that the incremental increase in students would materially contribute to or exacerbate objectionable conditions in the adjoining neighborhoods.

Likewise, the Commission has already concluded that the proposed university use, with the number of beds proposed by the University, will not impose objectionable impacts on neighboring property. Although some universities may accommodate most of their undergraduate students in university-provided housing, the record is clear that no university requires all of its students to do so. Additionally, such policies go to the fundamental nature of the college experience that many students choose when selecting the college they attend. As President DeGioia explained in his testimony, the ability to offer its undergraduates the opportunity to experience the independent urban life is an important factor in the overall educational experience that the University offers to potential students. If this Commission were to dictate so fundamental a policy affecting the operation and educational experience offered by a university, it would encroach well into the University's prerogative to chart its own academic mission -- such a directive would be unprecedented and well outside the authority of this zoning body. Moreover, the University demonstrated that the burden of complying with such a condition could not be achieved because of physical constraints on the campus, financial limitations and competing priorities, not to mention programmatic consequences that include the radical change in the educational experience as described above. Accordingly, this Commission shall not require the University to provide any additional housing beyond what the University has proposed in the 2010 Plan.¹⁰

Even if the Commission had the authority, under the Zoning Regulations or otherwise, to require the University to fundamentally change the University's housing policy and even if the record in the case supported such action, the Commission concludes that requiring all students to

¹⁰ The Commission concludes, for similar reasons, that a condition requiring the University to establish a satellite location or locations to house its undergraduate students would not withstand scrutiny. As explained by Dr. Olson, satellite campuses require not only beds but also campus life and academic facilities that fundamentally alter the student's educational and residential experience.

live on campus constitutes a complete exclusion of a category of persons from the surrounding neighborhood on the basis of their matriculation at the University, which is a violation of the D.C. Human Rights Act for the reasons discussed herein. This “complete exclusion of students from an entire neighborhood . . . cannot be sustained.” *George Washington Univ.*, 831 A.2d at 939.

Finally, and as discussed below, the housing and enrollment conditions that OP and the parties in opposition proposed would constitute an unconstitutional taking.

The District of Columbia Comprehensive Plan

Section 210 of the Zoning Regulations requires the Commission to evaluate the proposed campus plan against the relevant policies of the District of Columbia Comprehensive Plan. Taken as a whole, the Commission concludes that the proposed 2010 Plan is consistent with the Comprehensive Plan. In particular, the 2010 Plan provides an opportunity for new jobs and educational opportunities, continued commitment to transportation demand management measures, and the establishment of a satellite campus for the School of Continuing Studies, all of which are specifically endorsed by the Comprehensive Plan.

The Campus Plan is not inconsistent with the designations of the Campus and surrounding neighborhoods on the Future Land Use and Generalized Policy Maps of the Comprehensive Plan. Both Maps identify the campus as “institutional,” and the Comprehensive Plan explicitly calls for “change and infill” on such institutional land, consistent with approved campus plans. Further, the Future Land Use Map identifies the surrounding Georgetown, Burleith, and Foxhall neighborhoods as in the Moderate Density Residential land use category, which contains a mix of housing types that range from rowhouses and 2-4 unit buildings to low-rise apartments and, in older neighborhoods, existing apartment buildings. The Generalized Policy Map describes such neighborhoods as “Neighborhood Conservation Areas” as, indeed, the Policy Map identifies nearly all residential neighborhoods in the District of Columbia. The Comprehensive Plan calls for such neighborhood conservation areas to be conserved and enhanced; it also states that the “diversity of land uses and building types” in such areas “should be maintained.”

The above map designations, by themselves and when considered in conjunction with the other relevant policies of the Comprehensive Plan, clearly support the continued preservation and maintenance of the diverse mix of housing types and land uses in Georgetown, Burleith, and Foxhall—including uses that involve students. Contrary to the assertions of the OP and the parties in opposition, nothing in the Comprehensive Plan’s land use designations of either the Campus or the surrounding neighborhoods would support the complete elimination of undergraduate students and related group houses. Nor does the Comprehensive Plan suggest that

such uses should be limited. In neighborhoods near universities, students are an integral component of the diversity called for in moderate-density residential neighborhoods.

The 2010 Plan is also consistent with and fosters the goals and policies stated in other relevant elements of the Comprehensive Plan, including:

Land Use Element. The 2010 Plan will satisfy District goals that recognize the importance of institutional uses yet also ensure that the University proactively addresses neighborhood concerns such as noise, trash, and traffic and parking, and that the University leads by example through high quality design, low impact development, and adaptive reuse and preservation of historic resources.

Transportation Element. The 2010 Plan, through the University's TDM and other commitments, will promote District policies as well as fulfill specific action items that encourage transportation alternatives such as biking, transit, shuttle service, and carpooling as well as infrastructure improvements to the transportation system.

Environmental Element. The University will continue to advance important environmental goals and policies through innovative green features, leadership in building design, and sustainable operational practices.

Education Element. The 2010 Plan provides the balancing of university growth and neighborhood needs called for in this element through the many accommodations and commitments described above including, in particular, continued leadership in the provision of additional on-campus housing and the establishment of a new satellite location for the School of Continuing Studies.

Finally, the 2010 Plan is consistent with the objectives of the Rock Creek Area Element, which calls for managing the impact of institutional growth and the provision of additional housing.

The Office of Planning Report and Recommendation

The Commission accorded the recommendation of OP the "great weight" to which it was entitled pursuant to D.C. Code § 6-623.04 (2001). As discussed in this Order, the Commission concurs with OP's recommendation to grant the University's application. As discussed below and for the reasons set forth in the Findings of Fact, the Commission concludes, however, that many of the Office of Planning's recommended conditions of approval are based on faulty data and misapplications of the relevant legal test and applicable provisions of the Comprehensive Plan, are unsupported factually, and pose serious issues under District and federal law. For these reasons, the Commission finds that the majority of the conditions that OP recommended are not persuasive. They are unnecessary given the limited impact and extensive accommodations that

the University volunteered, and they exceed the Commission's authority under District of Columbia law and violate federal constitutional principles.

OP did not analyze the University's application under the standard of review set forth above, which requires a balancing of university and community needs as well as due regard for the University's prerogatives.

In OP's initial May 5 report and at the public hearing, OP conceded that, in developing recommendations and proposed conditions regarding on the 2010 Plan, OP did not believe that it was permitted to consider the University's positive attributes or rights. Instead, OP testified that it was required to consider only whether the proposed use of the campus would have any adverse impact on the community. (Exhibit 85; Tr. May 12, 2011, p. 92-93.) As OP's representative asserted, "we didn't have the ability to weigh the benefits and the outstanding external effects that the University brings to this." OP's representative stated that the regulations contained "a very clear structure" that "the University should have no objectionable conditions that result on the neighborhood, either due to traffic, students, noise, or other objectionable conditions. And we kept that very seriously in mind." (Tr. May 12, 2011, p. 92-93.)

Contrary to OP's testimony, the University is not required to demonstrate the proposed 2010 Plan will alleviate all objectionable conditions in the area. *See Citizens Ass'n of Georgetown v. District of Columbia Bd. of Zoning Adjustment*, 403 A.2d 737, 742 n.7 (D.C. 1979) (The "recognition [that existing traffic conditions cannot be attributed solely to the University] exposes the unreasonableness of a request that approval of the plan be conditioned on a showing that the University alleviate the objectionable traffic conditions in the area."). OP and other opponents acknowledged at the hearing, as they must, that the noise and other disruption that neighbors experience is not all due to University students; indeed, the transient noise, calls to 911 for disorderly conduct, and limited parking supply all correlated not only in their proximity to student residences, but were also correlated with proximity to restaurants and bars. Tr. May 12, 2011 at 121-22. As OP itself admitted, even if 100% of the students lived on-campus, neighbors' complaints regarding noise and disturbance would not be eliminated. Tr. May 12, 2011 at 131.

OP did not support its proposed limitations on student enrollment with specific factual information regarding the specific impacts of specific number of students.

As in the *Washington Ethical Society* case and Georgetown's 2000 Campus Plan case, the record is devoid of evidence that would support a decision by the Commission to impose a limitation on the University's enrollment beyond what the University has proposed. The record contains only generalized complaints about the alleged impact of the University's graduate and nontraditional students. As is set forth in the Findings of Fact, the record contains no specific

and credible factual information that would permit the Commission to make the required findings detailing the precise impacts of specific numbers of graduate and nontraditional students, and how those incremental numbers would “significantly affect conditions in the neighboring communities.” As the Court of Appeals observed, “the manner in which the zoning regulations are to be enforced cannot depend even on scientifically conducted public opinion polls, and certainly not on speculation as to what some undefined ‘community’ may find desirable.” *Id.* at 76. Contrary to the generalized and unsupported assertions regarding graduate and nontraditional students, the University demonstrated with specificity that the number, type and behavior of the proposed additional students would not be likely impose any objectionable impacts.

Similarly, the record contains no evidence that would permit the Commission to find that a freeze on undergraduate enrollment, combined with 250 additional beds, would be necessary to address significant specific incremental impacts from specific numbers of students. The evidence that OP and the parties in opposition introduced does not support their position that a 100% housing requirement would help ameliorate the complaints regarding disruptive behavior in the community. Nor can the Commission conclude that, to the extent that any such behavioral issues are related to students, moving student housing to on-campus housing or housing just outside of the 20007 zip code, for example up Wisconsin Avenue in a commercial district, would significantly improve the conduct in the surrounding neighborhoods. For example, as OP conceded, moving students to a location further up Wisconsin Avenue would logically not prevent students from attending the bars and restaurants along M Street and potentially creating the same kind of noise and traffic as currently exists. *See* Tr. May 12, 2011 at 125.

OP also attempted to justify its student housing proposal on the theory that student-occupied homes exacerbated the parking situation in Georgetown, and presented evidence regarding the particular narrowness of the streets in Georgetown and the absence of alleys. OP argued that parking would be freed up when student-occupied homes were replaced with single-family residents who were likely to have fewer cars, stating that the parking impact was “exponential” when houses occupied by students had three to six cars. Tr. May 12, 2011 at 140-41. This argument sidesteps the unavoidable fact that those homes might just as well be occupied by a non-traditional “family” (as defined by the Zoning Regulations), which can be up to six unrelated adults. Logically, six unrelated adults living in West Georgetown are likely to have *more* cars than six students who attend nearby Georgetown University.

OP’s proposed enrollment rollback and 100% housing policy represent unwarranted and invalid intrusions into the University’s academic mission and operations.

OP’s proposed enrollment rollback and requirement to house 100% of the traditional undergraduate students would exceed this Commission’s authority under the Zoning Regulations, the DCHRA, and federal constitutional principles.

As discussed above, limitations on enrollment exceed the Commission's land use and zoning authority and infringe on the University's educational mission and operation. So, too, would OP's mandatory 100% on-campus housing recommendation. The only logical interpretation of OP's proposed 100% housing requirement is that the University must implement a new policy requiring all undergraduates (with exceptions for married students and commuters) to live in University housing. As set forth above, such policies are an integral part of the fundamental nature of the college experience offered by the University and it would be unprecedented for this Commission to dictate so fundamental a policy affecting the operation and educational experience offered by a university.

Moreover, whether additional required undergraduate beds were located on or off campus, the University could not support the burden of building or obtaining those accommodations based on the physical, financial, and programmatic constraints set forth in the record. *See George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 831 A.2d 921 (D.C. 2003). Beyond the costs and challenges associated with such an endeavor, there is no explanation as to how OP's phased-in approach would be implemented as a practical matter, given the fact that there is no unsatisfied student demand for campus housing. Therefore, under OP's proposal, once the University adds enough beds to house 90% of its undergraduates, it would have more beds than students willing to occupy them. A requirement that the University expend its resources on constructing beds that no student is likely to want to use would be the height of irrationality.

OP's proposed mandatory housing requirement would also violate the DCHRA. By proposing a requirement that the University ultimately house 100% of its undergraduate students either on campus or outside of zip code 20007, OP and the parties in opposition have called for a complete exclusion of Georgetown students from the neighborhood surrounding the University. (The record is replete with references to the goal of reducing/eliminating the presence of students in the private neighborhoods within zip code 20007.) The disproportionate effect of this requirement, to say nothing of the discriminatory intent that underlies it, is clear and cannot withstand scrutiny under the DCHRA.

Finally, for the reasons discussed above, OP's proposed enrollment limitations and housing requirement would constitute an unconstitutional taking because the required "essential nexus" is completely lacking. In this case, in order to survive a takings challenge, OP's proposed enrollment limitations and housing requirements would have to demonstrably further the same goals as the Commission's alternative of denying the University the opportunity to undertake the development proposed in its campus plan would have served. Neither a cap on student enrollment, nor a requirement that students be housed on campus or outside 20007 is related in either nature or extent to the development proposed under the campus plan. The development proposed in the Campus Plan actually serves to further the objectives under the relevant regulations by concentrating more activity within the campus, moving 1,000 School of

Continuing Studies students away from campus, and otherwise better serving the community. The proposed conditions are not related to, and cannot be seen as offsetting the externalities from, the proposed development. And neither an enrollment freeze, nor the student housing requirements, nor certainly a mandatory decrease in enrollment, would bear any proportionality to the development plan. As such, OP's proposed conditions would fail the *Nollan* test.

Nor is there a nexus between OP's proposed enrollment restrictions and OP's ostensible objectives to reduce the noise and traffic in the Georgetown and Burleith neighborhoods. The record contains no evidence that OP's proposed enrollment restrictions would help ameliorate the complaints regarding disruptive behavior in the community.

Likewise, there is no nexus between OP's proposed housing requirement and OP's stated goals of eliminating group homes; eliminating rental properties in favor of owner-occupied homes; precluding students from other area universities, young professionals, or others with similar demographics from residing in group homes available for rent; and less noise and reduced incidences of objectionable behavior. Indeed, when significantly fewer undergraduates are living off-campus now than in 2000, and where the University already accommodates all of the demand for on-campus undergraduate housing, the factual predicate for the housing requirements and the "essential nexus" between those requirements and any legitimate purpose, is completely lacking. Moreover, as discussed above, neither reducing the number of students living in the neighborhood, reducing the number of group homes, nor reducing rental properties, are "legitimate governmental interests" in the first place.

OP also misapplied the selected provisions of the Comprehensive Plan that it identified as relevant—including a key provision that explicitly calls for balancing the needs of the University and the community—and failed to consider multiple other relevant policies and goals furthered by the 2010 Plan.

As described in the Findings of Fact, OP misapplied the Land Use Maps, which in no way endorse the wholesale exclusion of students from the surrounding residential neighborhoods. Nor do the Land Use Maps distinguish the Georgetown and Burleith neighborhoods as warranting any additional special protection distinct or different from that afforded to the other moderate-density residential neighborhoods near other District universities. OP also erred in its application of the Comprehensive Plan's policies, as a straightforward and balanced reading of these policies demonstrates that the 2010 Plan is not inconsistent with the District's goals.

The Advisory Neighborhood Commission Report and Recommendations

The Commission accorded the issues and concerns that ANC 2E and ANC 3D raised the "great weight" to which they are entitled pursuant to D.C. Code § 1-309.10(d) (2001). In doing

so, the Commission fully credited the unique vantage point that ANC 2E and ANC 3D holds with respect to the impact of the proposed campus plan on the ANC's constituents. The Commission nevertheless concludes that neither ANC offered persuasive evidence that would militate against the Commission refusing to grant the proposed campus plan subject to the University's proposed conditions. The University has met its burden of demonstrating that the proposed campus plan is not likely to become objectionable due to noise, traffic, number of students or other impacts.

The Commission finds that the University has also complied with many of the ANC's conditions. Most notably, the University agreed to provide the proposed on-campus bus turnaround that ANC 2E requested, yet also accommodated the change in location that ANC 3D advocated. As discussed herein, however, and for the reasons set forth in the Findings of Fact, the Commission concludes that ANC 2E's the remaining conditions would violate the Zoning Regulations and other applicable law, and in any event the Commission is not persuaded that such measures are warranted. On these areas of concern, the University has provided the reasonable accommodations required to meet its burden, and this Commission is constrained from requiring anything that would further encroach on the University's right to manage its own mission, particularly insofar as they bear on the overall educational experience that the University offers its students.

[decision and the University's proposed conditions follow]

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the 2010 Georgetown University Campus Plan (for purposes of these conditions, the "Campus Plan") and the level of University operation it describes, subject to the following conditions:

As a result of the University's engagement with the community, OP, and DDOT, the University's 2010 Plan (for purposes of these conditions, the "Campus Plan") proposes significant accommodations. The University's support of the conditions and related elements of the Campus Plan is expressly predicated on adoption of all elements of the Campus Plan, which are mutually interdependent on one another.

1. Term. The proposed campus plan for the Georgetown University Main Campus is approved until December 31, 2020.
2. Reporting and Compliance Review. By November 30 of each year of the Campus Plan period, the University shall file an annual compliance report with the Commission, the Zoning Administrator, the Office of Planning, ANC 2E and the community working group described in Condition 7 that addresses the University's compliance with the following conditions.
3. Campus Plan Boundary. The campus plan boundary shall remain consistent with the campus plan boundary established by the D.C. Board of Zoning Adjustment in 2000 Plan and depicted on Tab B of Exhibit 8 of the Record.
4. Main Campus Student Population.
 - a. For the Fall 2012 – Spring 2013 academic year, the Main Campus student headcount shall not exceed 13,553 students. For the Fall 2013 – Spring 2014 academic year and continuing for the duration of the Campus Plan, the Main Campus student headcount shall not exceed 14,354 students. For purposes of this condition, the Main Campus student headcount shall be defined as the Georgetown University total student body¹¹, minus the number of students (by headcount) who are not registered for any courses located at the Main Campus (e.g. students who are registered for courses located only at off-campus locations

¹¹ The Georgetown University total student body shall be defined as the total number of students reported under the Integrated Postsecondary Education Database System (IPEDS), which was established by the National Center for Education Statistics, a division of the U.S. Department of Education, and is a standardized definition for student enrollment at institutions of higher education in the United States. The official count of the Georgetown University total student body shall be taken on the census date identified by the University for purposes of its IPEDS reporting.

(such as the Law Center, SFS-Qatar, and other locations not at the Main Campus (“off-campus”)), students studying abroad, and continuous registration students).

- b. The Traditional Undergraduate Program student headcount shall not exceed 6,675 students. For purposes of this condition, the Traditional Undergraduate Program student headcount shall be defined as the Main Campus student headcount as defined in Condition 4(a) plus students studying abroad minus the number of graduate students, professional students, students enrolled in the School of Continuing Studies, non-degree students and students returning for their second degree in nursing, all by headcount.¹²
- c. The Medical Student Program headcount shall not exceed 830 students. For purposes of this condition, the Medical Student Program headcount shall be defined as all students enrolled in the Doctor of Medicine (MD) degree program.
- d. By December 31, 2013, Georgetown University shall locate at least 1,000 students enrolled in the School of Continuing Studies at one or more satellite locations.

5. Undergraduate Student Housing.

- a. For the duration of the Campus Plan, the University will continue to provide at least 5,053 beds as University housing, as those beds are defined under the 2000-2010 Campus Plan. By the Fall of 2014, Georgetown University shall provide at least 250 additional beds (as defined in this paragraph) either (a) on campus through the conversion of a portion of the Leavey Center for use as a residence hall or (b) at an off-campus location excluding property that is located in the R-1-B or R-3 zone districts in Zip Code 20007.
- b. The University shall require all Traditional Undergraduate Program (as defined in Condition 4(b)) freshman, sophomore and transfer students under the age of 21 to reside in University housing, except for study abroad students, commuters, veterans, married students, and students with medical conditions or disabilities, religious beliefs or other restrictions that are inconsistent with residence hall life.

6. Off-Campus Student Life.

- a. The University shall maintain a program to provide its students who are eligible to live off-campus with information about housing opportunities outside the West Georgetown and Burleith neighborhoods.

¹² For Fall 2012 – Spring 2013, Fall 2013 – Spring 2014, and Fall 2014 – Spring 2015 academic years, the University shall also report the number of full-time, traditional undergraduate students averaged over the fall and spring semesters, as defined under the 2000 Campus Plan.

- b. The University shall verify, before providing information to students about a housing opportunity in the West Georgetown and Burleith neighborhoods, that the landlord has a valid Basic Business License or its equivalent from the District of Columbia.
- c. The University shall continue to implement and enforce initiatives designed to mitigate off-campus impacts of students living in the West Georgetown and Burleith neighborhoods. Initiatives will be specifically designed to mitigate the impacts of trash, noise, conduct and parking issues, and shall be maintained for the duration of the Campus Plan. Initiatives will include programs of the types listed below. The University shall review and evaluate these programs periodically during the Campus Plan period with the goal of maximizing their effectiveness, and may be modified from time to time during the period to enhance efficacy. During the Campus Plan period, the University shall take the following measures:
 - i. Orientation. The University shall require all undergraduate students who live off campus during the academic year to attend an orientation program that will address “good neighbor” issues, reminding and educating students about appropriate conduct in the off-campus community. This program will especially emphasize objectionable noise both inside and outside of buildings, illegal underage drinking, applicable rules and standards regarding proper disposal of trash and recyclables, restricted parking in the West Georgetown and Burleith neighborhoods, and University expectations that all students conduct themselves in a respectful and responsible manner as members of the local residential community.
 - ii. Hotline. The University shall continue to maintain and publicize a hotline available 24 hours per day, seven days per week to receive calls about noise and other quality of life issues.
 - iii. Student Code of Conduct. The University shall continue to investigate reports of improper off-campus student conduct and to respond to behavior found to violate the Student Code of Conduct promptly with appropriate sanctions. Egregious or repeat violations of the Code of Conduct will be subject to serious sanctions up to and including separation from the University.
 - iv. Student Neighborhood Assistance Program (“SNAP”). The University shall continue to maintain operation of SNAP, or a comparable proactive education and enforcement program, in the West Georgetown and Burleith neighborhoods.
 - v. Safety and Noise Patrols. To improve safety and reduce walk-by noise, the University shall provide safety and quality of life patrols of the West

Georgetown and Burleith neighborhoods during late night hours of weekend evenings during the academic year and summer session. The effective presence of such patrols in such neighborhoods shall be maintained during the Campus Plan period.

- vi. **Trash and Litter Patrols.** The University shall continue to provide daily trash and litter patrols in the West Georgetown and Burleith neighborhoods during the academic year (except when the University is closed, such as holidays). Such patrols shall collect refuse or litter not stored in a proper trash receptacle and located within the public right-of-way. The University shall continue to provide bulk trash pickup during move-in and move-out periods of the Fall and Spring semesters.
 - vii. **Late-Night Shuttle Service.** The University shall continue to provide late-night weekend shuttle bus service to transport students to and from the Georgetown M Street commercial district and campus (the “M Street Night Shuttle”) during the academic year. The University shall make reasonable efforts to cause the M Street Night Shuttle to use the Canal Road entrance to enter and exit the campus.
7. **Community Dialogue.** The University shall hold regular meetings with community representatives for the purpose of fostering consistent communication between the University and the proximate neighborhoods, discussing issues of mutual interest and proposing solutions to problems that exist or arise in implementing the approved Campus Plan. The meetings shall take place no fewer than four times per year, shall be open to the public and the University shall keep minutes of each meeting and make such minutes publicly available.
8. **Transportation.**
- a. The University shall continue to adhere to its Transportation Management Plan (“TMP”), as detailed on pages 35 to 39 of Exhibit 339, Tab A of the Record, to promote greater use of the Georgetown University Transportation Shuttle (“GUTS”) bus system, transit, bicycling, carpooling, satellite parking, and other transportation alternatives. The University shall be permitted to update the TMP over the life of the Plan.
 - b. All weekday evening performances at the Performing Arts Center expected to draw more than 100 visitors shall begin no earlier than 7 PM.
 - c. Weekday athletic events at Harbin Field expected to draw over 100 visitors shall begin before 4 PM or after 7 PM.
 - d. Within two years after the final approval of the Campus Plan, the University shall complete the proposed on-campus bus turnaround (“Mid-Campus Turnaround”) depicted on Exhibit 353 of the Record, assuming no regulatory or other circumstances outside of the University’s control that delay construction.

Following the completion of the Mid-Campus Turnaround, all GUTS routes shall use the entrances as shown on Exhibit 353 of the Record.

- i. On or before the commencement of the use of the Mid-Campus Turnaround by GUTS vehicles, the University shall install traffic control gates (or similar devices) at the Canal Road entrance that will restrict use of the Canal Road entrance for left turns during the AM peak period (6:15 AM – 10:15 AM) to GUTS vehicles, which shall be the only vehicles equipped to activate such gates or devices during such period and to use the left turn lane to exit the campus during such period. The University will evaluate the effectiveness of such measures and, from time to time as appropriate, may modify the control mechanism or other operational measures limiting left turns to GUTS vehicles during the AM peak period.
 - ii. After completion of the Mid-Campus Turnaround and commencement of GUTS vehicle left turns on to Canal Road, the University shall conduct a six-month follow-up monitoring study of the Canal Road corridor to assess related impacts on Canal Road traffic conditions.
- e. No later than one year after the final approval of the Campus Plan, the University shall design, seek applicable DDOT and other regulatory approvals for and, following receipt of such approvals, construct improvements required to create a left turn lane for westbound traffic along Reservoir Road into Gate #1 (the “Reservoir Road Left Turn Lane”), assuming no regulatory or other circumstances outside of the University’s control that cause delays.
- f. For three years after commencement of the use of the Reservoir Road Left Turn Lane, the University shall conduct annual traffic studies of the Reservoir Road and 38th Street/Gate #1 intersection. The University shall provide such studies to DDOT. If, based on DDOT’s review of such studies, DDOT concludes and communicates to the University that the realignment of such intersection is warranted, then the University shall design, seek applicable DDOT and other regulatory approvals for and, following receipt of such approvals, construct such additional improvements to effect such realignment within one year after receipt of DDOT’s conclusion that the improvements are warranted (assuming no regulatory or other circumstances outside of the University’s control that cause delays). Any realignment design shall consider and shall include, as DDOT may deem appropriate, physical or operational measures to address potential cut-through traffic.
- g. Upon the Zoning Commission’s final approval of the Campus Plan, the University shall contribute the funding for the design and installation of a new traffic signal for Gate #3 and Reservoir Road. This contribution shall be held in escrow for during the Campus Plan period, and unless DDOT determines during the Campus Plan period that signalization is required, the contribution shall be refunded to the University promptly at the end of the Campus Plan period.

- h. During the Campus Plan period, the University shall conduct an annual transportation performance monitoring study as described on page 36 of Exhibit 339, Tab A of the Record and shall be furnished to DDOT by November 15 of each year (unless DDOT otherwise requests a later date).

9. Parking.

- a. The University shall continue to maintain a parking inventory of no more than 4,080 parking spaces within the campus boundary as defined in Condition 3; *provided that* spaces set aside for car-sharing vehicles such as Zipcar or as charging stations and spaces for electric vehicles shall not count towards such limit.

- b. Student Vehicles

- i. Students who reside in University-owned housing shall be prohibited from bringing cars to campus or the surrounding neighborhood. Violations of this policy will be grounds for discipline under the code of conduct, and violators shall be sanctioned.
- ii. Students who reside off-campus in the District of Columbia shall be required to adhere to University policy and applicable District requirements regarding car ownership and registration. Violations of this policy will be grounds for discipline under the Student Code of Conduct, and violators shall be sanctioned. Furthermore, the University shall request license plate and vehicle information from each Traditional Undergraduate Program student (as defined in Condition 4(b)) who resides off-campus in the District of Columbia and shall retain such information in University records during the applicable academic year.
- iii. Notices of these parking policies will be provided to students and to the parents of Traditional Undergraduate Program students (as defined in Condition 4(b)).

10. Kehoe Field.

- a. The University agrees to restrict the use of Kehoe Field to uses similar to the current uses of Kehoe Field, including sports and recreational purposes, and agrees that Kehoe Field will not be used as a convocation center or for concerts.
- b. The design of the proposed enclosure identified as RCA-1 of the Campus Plan will be addressed in a future further processing application. As a part of such further processing application, the University shall provide a viewshed analysis of such enclosure in connection with the further processing application.

11. The University is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance

with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code section 2-1401.01, et seq. ("Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above-protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 836
Case No. 96-15
(Text and Map Amendments – Georgetown
Overlay District)
March 9, 1998

On January 22, 1996, the Zoning Commission for the District of Columbia received a petition from the law firm of Robins, Kaplan, Miller & Ciresi on behalf of Advisory Neighborhood Commission (ANC) 2E, the Georgetown Homeowners Alliance, the Burleith Citizens Association, the Hillandale Homeowners Association, the Foxhall Citizens Association, the Cloisters of Georgetown Homeowners Association and the Cloisters West Homeowners Association requesting the Commission to adopt a text and map amendment for a proposed Georgetown Overlay District.

The area proposed for inclusion in the proposed Georgetown Overlay District is bounded by the Potomac River on the south, the Georgetown University Campus on the west, Whitehaven Parkway, N.W. on the north and the Rock Creek Park on the east. The Georgetown Foxhall, Hillandale and Burleith neighborhoods, which would constitute the proposed overlay area, are low scale residential, and historic in character.

The petitioners allege that the low scale residential and historic character of the neighborhoods is being disrupted by incompatible land uses, overcrowding, noise, proliferation of homes with large numbers of unrelated occupants and chronic parking shortages.

The purposes of the proposed Georgetown Overlay District are to enhance the residential character of the area, control the rental of houses to large numbers of unrelated persons, ensure compatibility of development with the Comprehensive Plan and the Ward 2 Plan, and to provide a family environment consistent with the zone plan for the R-3 District.

The R-3 District permits matter-of-right development of single-family residential uses including detached, semi-detached, and row dwellings with a minimum lot area of 2,000 square feet, a minimum lot occupancy of 60 percent, and a maximum height of three stories/40 feet.

The District of Columbia Office of Planning (OP), by memorandum dated October 31, 1997, analyzed the proposed overlay. The OP indicated that the issues raised in the petition are: the large number of group rental houses in the neighborhoods in question; unprecedented conversion of single-family homes into rental housing for groups of four or more unrelated individuals in the area, and their resultant undesirable neighborhood effects. The specific alleged adverse effects of group residences on neighbors and the neighborhoods are noise, parking problems, poor property maintenance, declining property values, and unstable neighborhood character whose residents are mainly transients.

ZONING COMMISSION ORDER NO. 836
CASE NO. 95-16
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The preliminary report stated that on May 22, 1997, the Mayor, together with several staff persons from the OP and other agencies attended a community meeting on the proposed overlay. After a wide range discussion of issues relative to the petition, the Mayor formed the Georgetown Overlay Task Force. The task force included representatives from the Georgetown University, Georgetown Students Association, Georgetown Residents and the Georgetown Rental Association. The Director of the Office of Planning was asked to lead the task force and produce a report on the issue.

The task force met four times. At the conclusion of these series of meetings, each group of participants submitted its final position statement. Copies of the submissions were attached to OP's preliminary report to assist the Commission in determining whether the petition had sufficient merit for a public hearing.

The OP also referred the petition to the Office of the Corporation Counsel (OCC) for advice as to whether the proposed overlay zone is discriminatory under the D.C. Human Rights Act or otherwise.

By memorandum dated July 14, 1997 attached to the OP report, the OCC responded to the OP referral. The OCC response in part stated as follows:

1. The proposed overlay zone may be inconsistent with the Human Rights Act and the Comprehensive Plan.
2. The Petition, as submitted to the Zoning Commission and as advocated by its supporters, repeatedly states that its principal purpose is to reduce the number of students renting property (or the number of students per house) in the affected neighborhoods. Students are a protected class under the Human Rights Act and are afforded protection against discrimination in housing, among other things.
3. Eliminating discrimination in the housing market is also a major goal of the Comprehensive Plan. The Zoning Commission must assure that the Zoning Regulations are consistent with D.C. laws and are not inconsistent with the Comprehensive Plan.
4. "These (virtually universal) references to students in the proposed overlay regulations are noteworthy because, not only do they tend to demonstrate an adverse and disproportionate effect on students, but importantly, they tend to evince a discriminatory intent. And whereas effect is significant...discriminatory intent usually proves fatal." (Opinion, p.3)
5. Various court precedents suggest that regulations of a narrowly limited type may be legally supportable. If the issue is overcrowding of small houses in Burleith,...consideration might be given to limiting the number of occupants in reasonable relation to sleeping and bathroom facilities or habitable floor space. Such a

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resolution has received the approbation of courts on both sides of the divisive issue of numerical restriction.”(p.8)

The Georgetown Residents' Report attached to the OP report supported the petition for the same reasons advanced by the petitioner. The residents report argued that improved enforcement of existing laws will not solve the problems and that zoning overlays can be used to check the decline in quality of life and property values and growing loss of residential character in the area. It added that there are no other effective alternative mechanisms to the proposed overlay. It urged the Commission to approve the petition and strengthen the regulatory framework for rental units by developing additional registration and licensing requirements for rental units.

The Georgetown University and the Georgetown University Student Association in a position statement attached to the OP report indicated that the Georgetown University's Community Relations Office convened an internal working group to review the proposed overlay. This group concurred with the Georgetown Task Force that overcrowding, trash, noise, and declining property value are the concerns of the petitioners. However, the University concluded that an overlay is not a solution to the problems. An overlay may not address those issues, achieve the desired outcome and may result in unintended adverse consequences.

The Georgetown University could not support the overlay for the following reasons.

1. The Overlay does not address the real problem – rental properties that are poorly maintained by their owners. The real problem is the failure of some landlords to manage their properties responsibly and comply with existing District housing codes.
2. The Overlay arbitrarily sets a cap on houses and doesn't take into account the size of houses or the diversity of families in the community. The arbitrary cap of three unrelated persons is clearly inappropriate for many larger homes in the neighborhood. In addition, would penalize adults of all ages – not just undergraduates, but also medical students, young professionals, domestic partners, responsible landlords, and many families, such as those with extended family members or live-in day care providers. And it would send a chilling message to individuals in many neighborhoods of this city that they are legally prohibited from moving into certain Northwest neighborhoods.
3. The Overlay is unenforceable. District officials acknowledge that they cannot enforce the city's current limit of six persons per house because of a severe shortage of housing inspectors –the Overlay would require even more inspections, and the District simply lacks the resources to perform them. Housing officials also admit that enforcing any limit is difficult because they often must accept the word of the landlord or tenant who can easily conceal the facts.

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4. The Overlay is potentially discriminatory against certain classes of people and certain types of families. Although petitioners make an occasional effort to suggest the Overlay is aimed broadly at "unrelated individuals, " in fact, it is aimed at Georgetown University students.

The Georgetown Student Association position paper in opposition stated in part, as follows:

1. We believe the proposal would not survive a legal challenge for three reasons. First, the Supreme Court has ruled that limitations restricting who lives in a house, such as family or non-family members, are subject to scrutiny under the Fair Housing Act. Second, the Overlay has a clear and undeniable discriminatory effect on university students. Third, although we have not studied this issue in great detail, some have suggested that the Overlay might violate the doctrine of equal protection, because it would create different definitions for a "family" in different parts of the same city.
2. The Overlay clearly has discriminatory intent against Georgetown University students. This intent becomes obvious upon even a cursory reading of the petition, and has been consistently repeated in frequent media interviews given by the overlay proponents.

The Office of Zoning received about 56 postcards through the Mayor's Correspondence Unit. 40 of the postcards indicated opposition to the overlay while 16 indicated support.

Councilmember Jack Evans, by a letter dated May 21, 1997, expressed his support the for overlay.

At its regular monthly meeting on November 10, 1997, the Commission reviewed and discussed the petition to determine whether the petition has sufficient merit to warrant a public hearing.

The Commission considered the preliminary report presented by the OP, the Office of Corporation Council advice; and other submissions in the record to the case. The OP report acknowledged that the petition presents legal, practical and enforcement issues, but recommended that the Commission set the case for a public hearing to enable the Commission to address the issues.

The Commission after reviewing and discussing the record of the case, found as follows:

1. The substantive issues that led to the filing of the petition are housing code enforcement problems and not zoning or land-use matters.
2. The petition seemed to target a segment of the city's population, the Georgetown University students.

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3. There is no likelihood that an overlay will solve the problems of noise, parking, overcrowding, late night parties by students, poor property maintenance, declining property values or put in check the transient characteristics of renters in the neighborhood.
4. There are other existing mechanisms to address the problems stated by the petitioners.
5. The petition as filed restricting the number of people living in a house may be in conflict with the Fair Housing Act.

In consideration of the above findings the Commission concluded as follows:

The reasons advanced by the petitioners for the Overlay were not persuasive enough to warrant a public hearing.

The Commission concurred with the Georgetown Task Force that the problems that prompted the petition for the Overlay are multifaceted and transcend regulatory and enforcement agency lines and cannot be addressed by zoning or other land-use techniques.

The Commission also concurred with the OCC that the Overlay targeted a protected class, Georgetown students. It is discriminatory to the students, may impose a barrier to elimination of discrimination in housing, and may be inconsistent with the Comprehensive Plan and the Fair Housing Act.

The Commission is of the opinion that the issues addressed in the petition are neither zoning nor land-use issues and doubts the legality of solving an enforcement problem with zoning.

The Commission believes that the petition lacks sufficient merit to be set-down for a public hearing.

The Commission also believes that the petition, as filed, is not in the best interest of the District of Columbia, is inconsistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is inconsistent with the Comprehensive Plan for the National Capital.

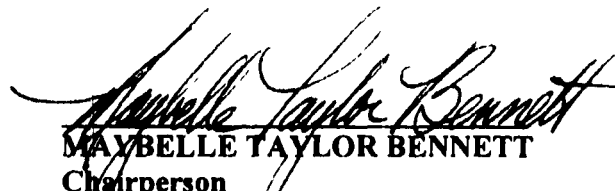
Upon consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby **ORDERS** that the petition in Z.C. Case No. 96-15 be **DENIED** without a public hearing.

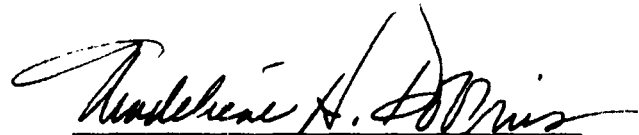
Vote of the Commission taken at its regular monthly meeting on November 10 1994: 3-0 (John G. Parsons, Herbert M. Franklin to deny the petition without a public hearing; Jerrily R. Kress, to deny the petition without a public hearing by absentee vote – Maybelle Taylor Bennett not voting, having recused herself).

ZONING COMMISSION ORDER NO. 836
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This order was adopted by the Zoning Commission at its regular monthly meeting of February 9, 1998 by a vote of 3-0: (Herbert M. Franklin, John G. Parsons, and Jerrily R. Kress, to adopt – Maybelle Taylor Bennett not voting, having recused herself).

In accordance with 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register; that is on MAR 27 1998.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


MADELIENE H. DOBBINS
Director
Director of Zoning

ZCO836/VCE/amb

Government of the District of Columbia
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 837
December 31, 1997

Case No. 97-15
(Text Amendments – Community - Based Residential Facilities)

**THIS CASE IS OF INTEREST TO ALL ADVISORY NEIGHBORHOOD
COMMISSIONS**

On October 20, 1997, the District of Columbia Office of Planning submitted a memorandum to the Zoning Commission recommending that the Commission amend the text of the District of Columbia Zoning Regulations, Title 11, of the District of Columbia Municipal Regulations (DCMR).

The proposed amendments pertain to zoning and other code regulations governing housing for handicapped individuals by updating the rules regarding community-based residential facilities (CBRFs) with the intent of eliminating any inconsistencies between the Zoning Regulations and the Fair Housing Amendments Act of 1988 (FHAA) and the Americans with Disabilities Act (ADA).

It is hereby **ORDERED** that Zoning Commission Case No. 97-15 be scheduled for a public hearing. A formal "Notice of Public Hearing" is forthcoming.

A handwritten signature in dark ink, reading "Madeliene H. Dobbins". The signature is fluid and cursive, with a large, sweeping initial "M".

MADELIENE H. DOBBINS
Director
Office Of Zoning

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

JUDICIARY SQUARE

441 FOURTH ST., N.W.

WASHINGTON, D. C. 20001



IN REPLY REFER TO:

July 14, 1997

MEMORANDUM

TO: Jill C. Dennis
Director, Office of Planning

THROUGH: Maria Holleran Rivera *MWR*
Deputy Corporation Counsel
Government Operations Division

FROM: James Randall *JR*
Chief, Land Use Section

SUBJECT: Georgetown Overlay Zone Petition

By memorandum of June 20, 1997, you requested legal advice concerning a petition (hereinafter the "Petition") from Advisory Neighborhood Commission 2E and several neighborhood associations. The Petition proposes the creation of a Georgetown Overlay Zone, which would reduce the number of unrelated persons who can occupy single-family dwellings from 6 to 3 in the neighborhoods around Georgetown University and west of Wisconsin Avenue, N.W. You asked whether the proposed regulation (hereinafter the "Regulation") would violate the District of Columbia Human Rights Act, D.C. Code §1-2501, *et seq.* (hereinafter, "DCHRA").

For the reasons hereinafter set forth, we have concluded that the Regulation may be inconsistent with the DCHRA, but that it is the Zoning Commission, in the first instance, that determines whether its regulations are consonant with District of Columbia law. We recommend modifying the Regulation to address the issue of overcrowding, but without flagging the issue of students' rights. Suggestions to this effect are included.

STATUTORY ANALYSIS UNDER THE DCHRA

The proposed overlay may be inconsistent with the DCHRA and the Comprehensive Plan, because the Petition on its face repeatedly indicates that one of its purposes, and arguably its principal purpose, is to reduce the number of Georgetown University students renting property in the affected neighborhoods. This purpose may be impermissible, because students are a protected class under the DCHRA and commitment to fair housing under the DCHRA is cited as one of the major policies of the Comprehensive Plan. D.C. Code §§1-2501 (one of purposes of DCHRA is to end discrimination based on, among other factors, matriculation), 1-2502(18) ("matriculation" defined as the condition of being enrolled in a college, or university), and 1-2515(a)(1) (unlawful real estate practice to refuse any transaction in real property or to require different terms based on status of matriculation); 10 DCMR §300.7 (1995) (commitment to fair housing under the DCHRA is a major policy of the Comprehensive Plan); 10 DCMR §300.8 (1995) (eliminating discriminatory barriers to availability of housing is a major goal of the Comprehensive Plan). Zoning regulations are required to be consistent with the Comprehensive Plan. D.C. Code §5-414 (1992); see Citizens Ass'n. of Georgetown v. Zoning Com. of District of Columbia, 392 A.2d 1027 (D.C. 1978).

The issue presented is whether a regulation that has the effect of imposing an obstacle to the availability of housing for Georgetown University students is inconsistent with two of the thirteen enumerated "Major Policies" of Chapter 3 (Housing) of the Comprehensive Plan. Specifically, is the proposed Georgetown Overlay regulation contrary to §§300.7 and 300.8 of the Comprehensive Plan, which recite, respectively, that the District is committed to fair housing under the DCHRA and that eliminating discriminatory barriers to the availability of housing is a major goal of the Plan. 10 DCMR §§300.7 and 300.8 (1995).

The determination of these issues lies within the sole province of the Zoning Commission, because it has exclusive authority to determine whether zoning regulations are inconsistent with the Comprehensive Plan. Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment, 550 A.2d 331, 341 (D.C. 1988), cert. denied, 489 U.S. 1082, 109 S. Ct. 1539 (1989). The Zoning Commission's determination is reversible only if a court finds it to be arbitrary, unreasonable, and having no substantial relationship to the general welfare. Citizens Ass'n of Georgetown v. Zoning Comm'n, 477 F.2d 402 (D.C. Cir. 1973); Lewis v. District of Columbia, 190 F.2d 25 (D.C. Cir. 1951).

The intent of the Council of the District of Columbia in enacting the DCHRA was to "secure an end in the District of Columbia to discrimination for any reason other than that of individual merit" D.C. Code §1-2501 (1992). To achieve this end the Council created numerous protected classes, including a class based on matriculation, i.e., students. *Id.* Matriculation is defined as the condition of being enrolled in a college or university. D.C. Code §1-2502(18) (1992).

The DCHRA outlaws discrimination in enumerated areas of life, including employment, education, public accommodations, and of particular bearing on the proposed overlay, the area of

real estate transactions. It proscribes the refusal to conduct any real estate transaction or the restriction of any real estate transaction, if that refusal or restriction is based on, among other reasons, the matriculation status of one of the parties. D.C. Code §§1-2515(a)(1) and (2) (1992). Moreover, it prohibits any practice that has the effect or consequence of refusing to conduct or restricting any real estate transaction with students. See D.C. Code §1-2532 (1992); Hershey v. Burden, 615 A.2d 562, 579 (D.C. 1992) (D.C. Code §1-2532 bans discriminatory practices which bear disproportionately on members of a protected class).

Although the proposed overlay is in the form of a regulation rather than a practice, it would tend to authorize practices that might otherwise be impermissible under the DCHRA. The proposed overlay regulation does not directly prohibit landlords in Georgetown from entering into transactions with students, but its intended effect appears to be to reduce the number of such transactions available to students in the affected area. The Petition is replete with references to students and student housing as being the essence of the "problem" necessitating the overlay. It defines the problem as one of the "destabilization of the indicated neighborhoods by the unprecedented conversion of single-family housing in the areas around Georgetown University . . . into rental housing for groups of four or more unrelated individuals." Petition to Zoning Commission for Adoption of Georgetown Area Overlay District, p. 1. It enumerates the number of students residing in the Burleith neighborhood, purportedly the area most affected by the conversions, and comments that the figures ". . . are generally considered by residents familiar with the situation to have grossly undercounted the number of students actually living in the affected area" *Id.* [Emphasis added.] Again, advertent to the "problem," the Petition states that "Clearly, these figures show that the problem of conversion of single-family housing to student rental is not confined to Burleith alone." Petition, p. 2. [Emphasis added.] Throughout the Petition "students" is the only class of persons specifically referenced as being subsumed under the category explicitly addressed in the proposed regulation, that of unrelated persons living together in a single house-keeping unit.

These references to students in the proposed overlay regulation are noteworthy because, not only do they tend to demonstrate an adverse and disproportionate effect on students, but more importantly, they tend to evince a discriminatory intent. And whereas effect is significant when analyzing practices, statutes or regulations under the DCHRA, intent appears to be absolutely critical. Discriminatory intent usually proves to be fatal. See Washington v. Davis, 426 U.S. 229, 96 S. Ct. 2040 (1976) (the purpose of a challenged statute is more important a factor than the impact); Griggs v. Duke Power Co., 401 U.S. 424, 91 S. Ct. 849 (1971) (practices are unlawful if they bear disproportionately on a protected class and are not independently justified for some nondiscriminatory reason); Gay Rights Coalition of Georgetown University Law Center v. Georgetown University, 536 A.2d 1 (D.C. 1987) (the Council imported into the DCHRA, by way of the "effects clause," §1-2532, the concept of disparate impact discrimination developed in Griggs v. Duke Power Co.).

The issue at this juncture of the inquiry, assuming discriminatory intent is clear, becomes whether the DCHRA can prohibit the Zoning Commission from promulgating a regulation amending the

definition of family, if that amendment would disproportionately and adversely affect a class protected by the DCHRA. The courts have found that not every discriminatory practice is prohibited, even when intent is clear and the class is protected by the DCHRA. See Evans v. United States, 682 A.2d 644, 648 (D.C. 1996) (age-based peremptory jury strikes not prohibited by DCHRA); Dean v. District of Columbia, 653 A.2d 307, 319 (D.C. 1995) (sex-based discrimination in issuance of marriage licenses not prohibited by DCHRA); NOW v. Mutual of Omaha Ins. Co., 531 A.2d 274, 277-278 (D.C. 1987) (gender distinctions in actuarial pricing policies not prohibited by DCHRA). In each of these cases the court found the challenged practice to involve well understood rights of longstanding that were specifically permitted by pre-existing statutes. Evans, *supra*, 682 A.2d at 648. In order to proscribe such practices the court required that the DCHRA reflect specific language expressing an intent to overcome distinctions elsewhere permitted by statute. *Id.* at 648.

For example, the court in Dean concluded that the issuance of marriage licenses to heterosexual couples only did indeed discriminate against homosexual couples. But because of the age-old nature of this practice, i.e., "a well understood right of longstanding," the court refused to alter it in the absence of a clear, explicit injunction in the DCHRA to do so. The courts applied the same type of reasoning to age-based peremptory jury strikes in the Evans case and actuarial pricing policies by insurance companies in the NOW case.

The proposed overlay regulation does not appear to fit into the category of court approved discriminatory practices against classes otherwise protected by the DCHRA, nor does it correspond to the exceptions expressly permitted by the DCHRA. Restriction of single-family occupancy to no more than 3 persons is not a well understood right of long-standing, nor is it a distinction permitted by a previously existing statute. The only express exceptions relating to real estate transactions are for owner-occupied buildings, D.C. Code §1-2518(a), and, significantly, for any restrictions on occupancy contained in previously enacted statutes or regulations, D.C. Code §1-2518(b).

The current restriction in the zoning regulations limiting occupancy in single-family households to 6 unrelated persons, 11 DCMR 199 (1995), would be exempt from challenge under the DCHRA, because of the exemption in §1-2518(b) for previously existing statutes. It was promulgated in 1958, and therefore pre-dates the enactment of the DCHRA, which was enacted in 1977. See §§ 1201 and 1202 of Zoning Regulations of the District of Columbia, effective May 12, 1958. Moreover, the current family definition is of general applicability and would apply to students in their real estate transactions throughout the District of Columbia, whereas the proposed regulation focuses only on neighborhoods surrounding a college campus. As indicated, this focus may be evidence of discriminatory intent against students.

The DCHRA is directly applicable to District of Columbia executive agencies, but not to the Zoning Commission. See D.C. Code §§1-2543 (1992), §427 (regulations of Mayor or Council must be consistent with zoning regulations); §492(e) of the District of Columbia Self-Government and Governmental Reorganization Act (Zoning Commission to exercise all the powers and

perform all the duties with respect to zoning in the District of Columbia). Section 1-2543 requires the Mayor to establish rules and procedures for the investigation of complaints against "District government agencies, officials and employees alleging violations of this chapter." The Zoning Commission, however, is not an executive agency, and there are no cases, statutes, or regulations indicating that the Mayor is empowered to investigate or make rules for it. See Tenley & Cleveland Park, 550 A.2d 331. Therefore regulations promulgated by the Zoning Commission are not directly subject to challenge under the DCHRA, because the DCHRA does not purport, on its face, to regulate the rulemaking functions of the Commission. They are, however, subject to indirect attack, because commitment to the DCHRA is a major goal of the Comprehensive Plan. See 10 DCMR §§300.7 and 300.8 (1995).

CONSTITUTIONAL ANALYSIS

Nevertheless, the proposed Regulation is problematical, even under traditional equal protection analysis for constitutionality. Such a standard would be less rigorous than statutory analysis under the DCHRA, because the constitutional categories of protected classes are much more restrictive than the bountiful formulations under the DCHRA. Understandably, the Petition relies heavily on the Supreme Court case of Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536 (1974). In that case a zoning ordinance that limited single-family occupancy to 2 unrelated persons was upheld under the traditional test for assessing economic and social legislation. Simply stated, the test is whether the legislation is reasonable, rather than arbitrary, and if so, whether it bears a rational relationship to a "permissible" state objective. Id., 416 U.S. at 2, 94 S. Ct. at 1540. With regard to the overlay, there is little doubt that seeking to reduce density and its attendant aggravations is a legitimate goal. Belle Terre establishes that pursuing this objective through a more restrictive definition of family constitutes a rational means. However, the language in which the Petition is couched flags the issue of permissibility in the overlay Petition, which on its face sets forth the objective of reducing the availability of student housing in the affected neighborhoods. In light of the DCHRA this may not constitute a permissible "state" objective in the District of Columbia.

The circumstances surrounding the overlay proposal are distinguishable from the facts of Belle Terre in other ways. The town of Belle Terre was a small village of only 700 inhabitants living exclusively in one-family dwellings. Belle Terre, supra, 416 U.S. at 2, 94 S. Ct. At 1537. Thus single family dwellings comprised the essence of the town. To threaten or dilute that concept was to undermine the very nature of the village of Belle Terre.

That claim cannot be made for the area around Georgetown University. Indeed, Georgetown University and its students are an integral part of the concept of Georgetown as an area. Moreover, while the Belle Terre ordinance applied uniformly throughout the village, the proposed overlay applies only to a small section of the District of Columbia and does not affect even all students in the District of Columbia equally.

OTHER STATES

Belle Terre established that zoning ordinances that restrict the number of unrelated persons who may live together in a residential zone do not violate equal protection standards under the constitution, and most state courts have followed its lead. See City of St. Joseph v. Preferred Family Healthcare, 859 S.W.2d 723 (Mo. App. 1993); Hayward v. Gaston, 542 A.2d 760 (Del. 1988)(upheld restriction of 4 unrelated persons); Macon Ass'n. for Retarded Citizens v. Macon-Bibb County Planning & Zoning Comm'n., 252 Ga. 484, 314 S.E.2d 218 (1984)(4 unrelated); Kirsch v. Prince George's County, 92 Md. App. 719, 610 A.2d 343 (Md.App. 1992)(upheld ordinance controlling detrimental effect caused by college students in "mini-dormitories"), rev'd, remanded, 331 Md. 89, 626 A.2d 372 (1993), cert. denied, 510 U.S. 1011 (1993); Ass'n. for Educ. Dev. v. Hayward, 533 S.W.2d 579 (Mo. 1976)(rebuffed challenge by clergyman and eight lay members of religious organization); Durham v. White Enterprises, Inc., 115 N.H. 645, 348 A.2d 706 (1975).

The Kirsch case, 92 Md. App. 619, 610 A.2d 343, is noteworthy because it involved an ordinance aimed at students in neighboring Prince George's County, Maryland. It also involved a challenge based on alleged violation of the Prince George's County Human Relations Act, Prince George's County Code, 1987 Edition, as amended, §§2-185, et seq. (hereinafter, "PGHRA"). The PGHRA created many protected classes, including "occupation," which included students. Nevertheless, the Court of Special Appeals, an intermediate state appellate court, held that the protected classes under the PGHRA were entitled to no more protection than they would receive under the Fourteenth Amendment of the United States Constitution, i.e., no more than the Supreme Court afforded in the Belle Terre case. Id. at 729, 610 A.2d at 349. Apparently, the legal tradition in Maryland has been to treat all equal protection claims, whether emanating from the United States Constitution, the Maryland Constitution, or the PGHRA "in like manner and to the same extent as the Equal Protection Clause" of the United States Constitution. Id., citing Murphy v. Edmonds, 325 Md. 342, 353, 601 A.2d 102 (1992)(quoting Attorney General v. Waldron, 289 Md. 683, 704-705, 426 A.2d 929 (1981)). Accordingly, the court applied the same traditional rational basis test as applied by the Supreme Court in Belle Terre. And just as in Belle Terre, the students lost, at least temporarily.

Subsequently, the case was reversed by the highest Maryland appellate court, which applied a stricter standard, requiring a more substantial relationship between the method used in the challenged zoning ordinance and the goal. Kirsch v. Prince George's County, 331 Md. 89, 626 A.2d 372 (1993)(hereafter, Kirsch II). The Kirsch II court determined that "classifying rental property on the basis of the occupations pursued by the lessees away from their residence" was arbitrary and irrational. Id. at 104-105, 626 A.2d at 379-380. The court indicated that a differentiation in the zoning ordinance based on the use of the property, as in Belle Terre (single-family use), rather than on the occupation of the occupants, would have been permissible. Under that standard, the Georgetown Overlay would be valid, because its terms apply only to single-family households, and the restriction applies to all persons, students and non-students alike. Thus, even though the Kirsch II court struck down the regulation aimed at students, the reasoning it employed, if applied to the Georgetown Overlay, would support a decision upholding it.

The traditional rational basis test, the one used in the Belle Terre case, requires merely a finding of a rational relationship between the classification in the ordinance and any permissible governmental objective. If this most minimal of standards is applied to the Georgetown Overlay, then it will be of no consequence that the adverse impact of the Regulation falls most heavily on students. The only significant inquiry would be whether the reduction of unrelated persons in a household from 6 to 3 bears a rational relationship to the legitimate goals of reducing, traffic, noise, parking, and maintaining the residential character of the neighborhoods. And, of course, it does.

The most salient criterion on which the DCHRA differs from the PGHRA involves the breadth it is accorded in construction. The DCHRA appears to warrant more consideration in its own right, rather than as a mere redundancy to the Equal Protection Clause of the Fourteenth Amendment. The District of Columbia courts have recognized it as a "powerful, flexible, and far-reaching prohibition against discrimination of many kinds . . ." Evans, 682 A.2d at 648, quoting Dean, 653 A.2d at 319. As previously indicated, the Georgetown Overlay does not appear to fit into any of the exceptions thus far enumerated by the local courts.

A minority of states have struck down ordinances establishing numerical limits on the number of unrelated persons who may live together. Most of these rulings were premised on state laws or constitutional standards that were found to supplement, rather than duplicate, federal constitutional protections. See Santa Barbara v. Adamson, 27 Cal.3d 123, 610 P.2d 436, 164 Cal. Rptr. 539 (1980)(stricter test applied than in Belle Terre based on right to privacy amendment to state constitution); State v. Baker, 81 NJ 99, 405 A.2d 368 (1979)(finding Belle Terre to be inconsistent with state constitutional provisions); McMinn v. Oyster Bay, 105 N.Y. App. Div.2d 46, 488 N.E.2d 1240, 482 N.Y.S.2d 773 (1984)(violated due process of state constitution); Eaton v. Eaton, 53 Pa. Commw. Ct. 216, 417 A.2d 830 (1980)(legitimate interest of population density control not advanced by exclusion of foster children); Kirsch Holding Co. v. Manasquan, 59 N.J. 241, 281 A.2d 513 (1971)(rejected as over inclusive). In light of the deference given the DCHRA in District law, its application to the proposed Georgetown Overlay regulation could very conceivably produce an outcome similar to that of these cases. In essence, the courts could find that the DCHRA supplements traditional constitutional protections, and therefore imposes a higher, stricter standard than the flaccid standard of Belle Terre.

FAIR HOUSING ISSUES

In addition to its numerical restriction on unrelated persons living together as a single housekeeping unit, the proposed overlay regulation limits to 7 the number of persons living in a group home protected by the Fair Housing Act, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§3601-19 (hereinafter, "FHA"). This limitation becomes problematical in view of the Supreme Court's decision in City of Edmonds v. Oxford House, 514 U.S. 725, 115 S. Ct. 1776 (1995). In that case the Court invalidated the application of a city ordinance in Edmonds, Washington to a group of 10-12 persons qualifying as handicapped under the FHA. The ordinance defined family as no more than 5 unrelated persons living together. The Court held

that the only numerical restrictions exempt from the FHA were those based on health and safety, which restricted the number of occupants in accordance with the physical space available. *Id.*

Moreover, the District is currently negotiating with the United States Department of Justice to more closely tailor its regulations to the dictates of the FHA. Regulations are being drafted to provide a process by which those qualifying under the FHA can seek exemptions from certain regulatory restrictions, such as numerical limits on unrelated persons living together.

In view of these developments, I would advise removing the reference to any specified numerical limit. The phrase in the Regulation, "a group home for not more than seven (7) individuals living together in a housekeeping unit," could be deleted and replaced by the phrase, "group homes eligible for reasonable accommodation treatment under the Fair Housing Act."

CONCLUSION

Precedential support exists for a decision in favor of and against promulgation of the proposed Georgetown Overlay regulation. On the one hand, a Supreme Court decision removes constitutional obstacles to support of the Regulation. But the DCHRA presents an imposing obstacle to adoption, permitting the Zoning Commission to find that reducing student housing opportunities is not a permissible objective. Other states, including California, have moved in this direction, finding protections in their state laws to supplement the basic protections under the Equal Protection Clause of the Fourteenth Amendment. Whichever way the Commission decides will be crucial, because its determinations are entitled to such great weight. As you most likely are aware, a decision in either direction is likely to encounter a robust challenge.

Consequently, you may wish to attempt a more conciliatory course at the outset. Rather than courting the invidious line-drawing that numerical restrictions appear to engender, I would advise that the Regulation be tailored to a less intrusive proportion before submitting it to the Zoning Commission. If the problem to be addressed is one of overcrowding, as indicated in several places in the Petition ("... lots are small ..."; "... it would reduce overcrowding in these small houses."; "Putting so many people in these houses ... creates a safety hazard ...", Petition, pp. 2-3), then, as suggested in the New Jersey *Kirsch* case, *Kirsch Holding Co. v. Manasquan*, 59 N.J. at 254, 281 A.2d at 520, consideration might be given to limiting the number of occupants in reasonable relation to sleeping and bathroom facilities or habitable floor space. Such a resolution has received the approbation of courts on both sides of the divisive issue of numerical restriction. See *City of Edmonds*, 514 U.S. 725, 115 S. Ct. 1776; *Kirsch Holding Company*, 59 N.J. 241, 281 A.2d 513. Ideally, such an approach could reduce the potential conflict surrounding the Regulation.