BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of the President and Directors of Georgetown College

BZA Application No. 16565
Hearing Date: May 16, 2000
ANC 2E

'00 MAY 30 P2:32
OFFICE OF ZONING
DISTRICT
'00 MAY 30 P2:32

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Burleith Citizens Association and the Foxhall Community Citizens Association, respectfully submit the following proposed Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The District of Columbia Court of Appeals has specifically held that Georgetown University must apply for and obtain BZA approval for:

> **each of the improvements contemplated in the plan**. As part of this application, the University must show that the particular use it requests to develop will not open the door to conditions which will become objectionable to neighboring property.

Citizens Association of Georgetown v. BZA, 403 A.2d 737, 743 (D.C. 1979)(emphasis added).

2. In it application, the University claims that it is only seeking permission to build a "minor addition" to St. Mary's Hall which is "in accordance with the existing campus plan."

3. Converting St. Mary's Hall from its current primary use as a dormitory for 217 undergraduate students into an office building, however, is not one of "the improvements contemplated in the plan."

4. To the contrary, the only "improvements" to St. Mary's Hall "contemplated" in the Campus Plan are found in Paragraph 22 which specifically provides that St. Mary's Hall would not only be reconstructed, but that it would be expanded to add 200 additional beds:

> 22. The Bicentennial Campus Plan places a high priority on the development of on-campus housing and other facilities. The following list indicates the phasing of

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new development on-campus:

a. On-Campus housing: to meet its commitment to provide 925 new beds on campus by 1997, the University has identified the following three priority projects for new beds:

i. Rehabilitation of Loyola, Xavier and Ryder to create 225 new beds.

ii. Construction of a new dormitory to create 500 new beds.

iii. Reconstruction of St. Mary's to provide 200 new beds.

5. The other major "improvement" that was incorporated in the Campus Plan for the benefit of the residents was the University's express commitment to the long-term goal of housing 100% of its undergraduates on campus:

> 24. The University presently has housing for approximately 83 percent of its undergraduate students. As described in Appendix H to the Bicentennial Campus Plan, at the community's request, the University has agreed to significantly increase the supply of on-campus beds for undergraduate students and to create a residential college environment. Specifically, the Bicentennial Campus Plan proposes the following:
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> a. To adopt as a long term goal of the University, the ability to provide housing for 100 percent of its undergraduate students on campus.
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> b. To make a policy change to require all freshman student to live on campus beginning academic year 1991.
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> c. To extend this requirement to sophomore students upon completion of dormitory rehabilitation and new construction.

6. As a further means for insuring that the promised 925 new beds would actually be built by 1997, the Campus Plan limited any increase in undergraduate enrollment to 340 FTE, ¶ 50(c)(i). The Board set forth the purpose and intended effect of the enrollment cap in ¶ 66 b. as follows:

> To further ensure that there will be no adverse impacts, the Board incorporates as a condition to its Order a limitation on enrollment so that by the of 1997, the University will be providing beds on campus for essentially 100 percent of those undergraduate students requiring housing.

7. Thereafter, in Conclusions of Law No. 5, the Board took pains to insure compliance with the on-campus housing commitment by providing that:

> Further, any actual increase in undergraduate enrollment shall be conditioned upon and subject to the provision by the University of additional beds on campus to accommodate that increase. Th University may provide beds by: (1) moving graduate students and faculty off campus; (2) rehabilitation of existing buildings: or (3) construction of new dormitories. The number of new students admitted to the University pursuant to the authorized increase in enrollment shall not exceed the number of additional beds that the University shall have provided for occupancy before the start of any academic semester. Further, until all Freshmen an Sophomores live on campus, no students shall be admitted to the University pursuant to the authorized increase in enrollment.

8. The surrounding residents and their representatives relied upon the University's express commitments to reconstruct St. Mary's Hall to provide a total of 417 undergraduate beds by 1997, as well as the long-term commitment to house essentially 100% of undergraduates on campus by 1997, in ultimately giving their approval to the 1990 Bicentennial Campus Plan and thereby foregoing their rights to appellate review before the District of Columbia Court of Appeals.

9. When the Board approved the Campus Plan in 1990, St Mary's Hall was a dormitory that provided housing for 217 undergraduate students. That was and still is its primary approved use.

10. The fact that the Campus Plan describes the "future facilities" at that location as "education, educational support, student residence, mixed use," does not alter the fact that the actual primary use of St. Mary's at the time the plan was approved, as well as the future approved use, was for dormitory residence.

11. Rather than keeping its commitment to reconstruct St. Mary's Hall by 1997, however, the University closed the dormitory portion of St. Mary's Hall in 1996. That forced 217 students, who otherwise could have and should have been housed in those dormitory rooms, into the surrounding neighborhoods with all the attendant, noise, litter, and disturbance that the reconstruction of St. Mary's was designed to eliminate.

12. Evidence submitted by Barbara Zartman of the Cloister's Homeowners Association shows that instead of creating 925 new undergraduate beds by 1997, the number of existing beds actually decreased 107. Accordingly, the adverse impacts of undergraduate students living in group houses in the nearby residential communities actually worsened during the past ten years.

13. Moreover, because the 217 beds at St. Mary's were closed in 1996 rather than being expanded into 417 by 1997, as the University specifically committed to do, the percentage of undergraduate students who presently live on campus has actually regressed in the past ten years because the University now claims that only 78 % live on campus. Tr. 144

14. In addition to reneging on its specific commitments with respect to St. Mary's Hall, the University also reneged on its promise to construct a new 500 bed dormitory by 1997, even though the taxpayers of the District of Columbia issued millions of dollars in municipal bonds on behalf of the University to fund various construction projects including the promised new 925 student beds.

15. Although the University has recently committed to building a 780 person dormitory as part of the Southwest Quadrangle development, the earliest those beds could come on-line would be the Fall semester of 2002. In the meantime, the surrounding residents will continue to suffer the adverse affects of the University's failure to meet its explicit promises to provide 925 new beds and essentially meet its 100% on-campus housing goal by 1997.

CONCLUSIONS OF LAW

1. The University's proposal to convert St. Mary's Hall from "student residence" to 100% office building is not an "improvement contemplated in the plan." Consequently, this Board has no authority to consider the proposal for "further processing under the existing campus plan." *Stewart v. BZA*, 305 A.2d 516 (D.C. 1973).

2. Eliminating an existing "student residence" as the primary use for St. Hall is clearly a "change of use" within the meaning of the Zoning Regulations. *See, e.g., Marjorie Webster Junior College, Inc. v. BZA*, 309 A.2d 314 (D.C. 1973) (changes in curriculum and number of students required amendment of campus plan). *Levy v. BZA*, 570 A.2d at 749; *Draude, v. BZA*, 582 A.2d 949, 954 (D.C. 1990) (original campus plan "did not specifically provide for an extension of the Burns building, consequently, GWU first had to obtain a special exception to permit a change in its campus plan"); *Glenbrook*, 605 A.2d at 34 (the proper test is "whether the proposed use would significantly increase objectionable qualities over their current levels in the area").

3. Because the University's proposal to convert all of the existing (217) and proposed (200) dormitory space into office space simply ignores those current and future uses expressly set forth in the approved campus plan, it is clearly "inconsistent" with that plan.

4. Eliminating the 217 existing undergraduate beds at St. Mary's Hall is also inconsistent with paragraph 24 of the campus plan in which the University agreed to "significantly increase the supply of on-campus beds for undergraduate students" and to adopt, as a long term goal, "the ability to provide housing for 100 percent of its undergraduate students on campus."

5. Such a radical change in the currently approved use for St. Mary's Hall which would eliminate the 417 beds proposed by the University as part of its commitment to house 100% of its

undergraduate students on campus by 1997, would require an amendment of the Campus Plan. As the Court of Appeals for the District of Columbia has held:

> It would surely contravene the regulatory scheme for the BZA to approve a building plan, even one with broad outlines, **but then grant future special exception applications for specific buildings inconsistent with the plan.**
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> * * *
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> Consequently, GWU may not make improvements inconsistent with the plan **unless it obtains BZA approval of an amendment to the plan.**

Levy v. Bd. of Zoning Adjustment, 570 A.2d 739, 749 (D.C. 1990) (emphasis added).

6. Moreover, because the University is in default of its commitment construct 925 new student beds by 1997, including its specific commitment to reconstruct St. Mary's Hall into 417 dormitory beds, no applications for "further processing under the plan" should be entertained until such time as the University has met all of its specific commitments under the campus plan.

ORDER

Because the Board has no jurisdiction to consider the University's application for an exception that is inconsistent with the approved campus plan in a proceeding brought for further processing under that approved plan, the application is denied. Even if the Board had jurisdiction, however, the request would be denied because the University must meet all of its commitments under in the campus plan before being permitted to change the approved use of St. Mary's Hall from student dormitory to office building.

Respectfully submitted,

Don W. Crockett

Don W. Crockett,
Attorney for the above organizations

Dated May 30, 2000.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Proposed Finding of Fact and Conclusions of Law were served this 30th day of May, 2000, upon the Applicant by First Class United States mail addressed as follows:

Maureen Ellen Dwyer
Attorney for Applicant
Wilkes Artis, Chartered
1666 K Street, NW
Suite 300
Washington, D.C. 20006

