Georgetown Residents Alliance
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July 17, 2000

STATEMENT OF THE GEORGETOWN RESIDENTS ALLIANCE IN OPPOSITION TO CERTAIN ASPECTS OF THE PROPOSED GEORGETOWN UNIVERSITY CAMPUS PLAN, BZA No. 16566

The Georgetown Residents Alliance (GRA) supports virtually all of the objections to the proposed campus plan submitted by the other civic associations who are parties in this proceeding.[1] It will, however, focus its comments and objections on three potential problems that are of greatest concern to its membership: (1) The failure of the University to meet its commitment to the surrounding residential neighborhoods in the 1990 campus plan to house 100% of its undergraduate students on campus. (2) The University's current proposal to renege on its 100% housing commitment while at the same time increasing enrollment of both undergraduates and graduates at its main Georgetown campus. (3) The failure of the proposed plan to comply with § 210.4 of the Zoning Regulations by describing "all activities conducted or to be conducted on the campus, and of the capacity of all present and proposed campus development."

1. The BZA should enforce the express terms of its 1990 Order, requiring the University house 100% of its undergraduate students on campus by 1997 and that undergraduate enrollment be limited to the number of undergraduate bed on campus.

In Appendix H to the 1990 campus plan, the University stated that while it had the highest percentage of undergraduates living on campus (83%) of all universities in the District of Columbia:

> The University is nonetheless committed to increasing the percentage of student living on campus, not only in response to community concerns but, more importantly, because the University believes that on-campus residence as a member of an academic community is a critical component of a students's

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[1]GRA members were shocked by the action of a 5 member majority of ANC 2E who had secretly agreed in advance of the long-scheduled "town meeting" to approve a thoughtless and meaningless blanket endorsement of the proposed plan regardless of what problems were raised by the residents at the meeting. In GRA's view, three of those members had serious conflicts-of-interest which should have disqualified them from voting on the campus plan issue. Matthew Payne is a GU student, William Starrel's wife is employed by GU, and the late Art Schultz looked to the University's law firm, Wilkes Artis, for public relations contracts.

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university experience. To this end, the University has adopted as a long term goal the ability to provide housing for 100% of its undergraduate students on campus. Since there is presently insufficient space on campus to achieve this goal, the University recognized that time will be needed to phase in the new dormitory construction and that funding and community support will be necessary to make the goal a reality.

Appendix H, p. 7. As a result of the above, together with other specific commitments necessary to achieve the 100% goal by 1997, the community organizations agreed to withdraw their objections to the remainder of the University's proposed 1990 plan.

In its Order approving the 1990 campus plan, this Board first incorporated Appendix H as an enforceable part of the Order and then laid down the following additional requirement:

> "66 b. 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 end of 1997, the University will be providing beds on campus for essentially 100 percent of those undergraduate students requiring housing.*"

Thereafter, the University obtained the required financing for the housing projects in the amount of $52 million from the sale of District of Columbia municipal bonds, and embarked on the first housing project specified in the campus plan, namely, the renovation Loyola, Xavier and Ryder (LXR) to create 225 new beds.

The completion of that project, however, marked the end of the University's commitment to achieve the 100% long term goal by 1997. The other two projects were never even started and in 1997, the University closed the existing 214 beds at St. Mary's Hall, thereby negating the gain at LXR and reducing the percentage of students housed on campus to 78%.

The University now seeks to excuse its failure by noting that its obligation to construct 925 new housing units by 1997 was "contingent" upon the approval of its proposed "cogenerator plant. See ¶ 24 of the Order, which provides that the University will:

> commit to providing a total of 925 beds by the fall of 1997, contingent on the ability to finance, approval of bond money, approval of the Campus Plan, and approval of the cogeneration facility. This 925 beds is in addition to the 2,170 beds the University has constructed since 1976.

The University's failure to comply with the Board's Order should not be excused. In the first place, the University's written commitment for the 925 new beds **was contingent only upon the "approval" of the cogeneration facility.** That facility was, in fact, "approved" by the BZA and was subsequently affirmed by the District of Columbia Court of Appeals in *Citizens Coalition v. BZA*, 619 A.2d 940 (D.C. 1993).

The facility was never built, however, because the District of Columbia government subsequently alleged that the partners in that project, the University and Dominion Power, had made fraudulent misrepresentations concerning the environmental impact and other matters and sued the partners for fraud. It was that action by the D.C. government, not the residents, which killed the project. We don't even know the details because the terms of the subsequent settlement agreement remain secret.

Thus, while the University itself was solely responsible for the failure of its cogeneration project, the innocent surrounding neighbors, who had nothing to do with that failure, continue to bear the consequences of the lack of dormitories that University promised to correct under the 1990 plan. Moreover, the University also broke faith with the neighbors by spending the $52 million, that had been specifically earmarked in the bonding for dormitories, on other projects.

Finally, the upgrading of the University's aging heating plant was only a minor factor in the $52 million new housing equation. The University explained its significance as follows in its July 27, 1990 letter to this Board:

> As we have also testified, the proposed cogeneration facility is essential to the new dormitory development for two reasons. One, it will provide a modern, reliable steam supply and the additional cooling needed to serve the new beds on campus. Two, though the economies of cogenerating electricity and steam together, the University will be able to realize an estimated $500,00 per year savings in its energy costs. This savings enables the University to help offset the cost of the new dormitory.

On the basis of the above, the University now asks this Board to excuse its failure to build 925 new beds by 1997. We don't buy that and this Board should not buy it.

Nothing has changed since 1990 when this Board conditioned its Order approving the campus plan "on the University's implementation of the program outlined in Appendix H." ¶ 66 i, and also conditioned enrollment so "that by the year of 1997, the University will be providing beds on campus for essentially 100 percent of those undergraduate students requiring housing." ¶ 66 b. Those requirements were necessary in 1990 and are even more urrgent today in order to alleviate the acknowledged adverse impacts on the surrounding neighborhoods.

Therefore, the Board should require the University to fully comply with the Board's 1990 Order before any proposals for additional undergraduate enrollment increases are even considered.

2. The BZA should not allow any enrollment increases whatsoever at the main Georgetown campus and require that any proposed expansion take place at some other location.

Georgetown University, like many other older universities, has become land-locked. It is surrounded by the Potomac river on one side and various residential communities including the Georgetown Historic District on the other sides. Because it is located in a residential zone, it may increase its activities and enrollment only if those increases are "not likely to become objectionable to neighboring property because of noise, traffic number of students, or other objectionable conditions." 11 DCMR § 210.2.

As the District of Columbia Court of Appeals has stated:

> The Zoning Regulations of the District of Columbia, as well as those of many jurisdictions, **afford no privileged position to colleges or universities. Indeed, other jurisdictions exclude colleges and universities entirely from residentially zoned districts**. *See Yanow v. Seven Oaks Park, Inc.*, 11 N.J. 341, 94 A.2d 482 (1953). Under our zoning regulations, a college has no right to locate in a residentially zoned district unless it conforms to all of the requirements outlined in Zoning Reg. s 3101.46

Marjorie Webster Junior College, Inc. v. BZA, 309 A.2d 314 (D.C. 1973) (emphasis added).

Unfortunately, Georgetown University's main campus has long since reached the point where any increases in its enrollment will inflict severe adverse impacts on the surrounding residential neighborhoods. That is why its law school is now located on Capitol Hill. That is also why any further increases in either its undergraduate or graduate programs must take place only at some other location. The University could, for example, move its business school to a different urban campus, thereby reducing the number of students on the main campus. Other university's such as GWU have been forced to take that course. It is time that all concerned face the fact that the main campus has reached its saturation point and that no further expansion of that campus, including the number of students, can be allowed in this R-3 zone under § 210 of the Zoning Regulations.

Instead of seeking other locations for its desired expansion, however, the University now asks this Board to significantly increase both its undergraduate and graduate enrollment on the main campus. The University's President candidly stated that those proposed enrollment increases are needed to generate revenue to cover the $218 million lost by the Medical Center from 1996 to 1999. The University's profit and loss statement and its desire to remain a "world class" university, however, have no relevance whatsoever to zoning. The University's problems with its medical center, regardless of who is at fault, simply cannot be transferred to the surrounding neighborhoods by packing more students into group houses.

The sole purpose of the zoning regulations under § 210 is to protect existing residential zones and to "prevent unreasonable campus expansion into improved low-density districts." § 210.3. It makes no difference whether the campus in question belongs to Georgetown University or "Podunk" University. They are all the same under the regulations. The only issue this Board is authorized to decide in this proceeding is whether the requested increases will "not tend to affect adversely the use of neighboring property." §3108. Questions concerning the University's noble goals, its solvency, and its contributions to the city are within the purview of the Mayor, the City Council, and Congress – not this Board.

On the narrow issues within the purview of the BZA, this Board has already determined that because of the acknowledged adverse impacts on the surrounding community, no undergraduate enrollment increases would be permitted until 100% of the University's undergraduates are housed on campus. 1990 Order, ¶ 66. Ten years later, and after failing to comply with the 1990 Order, the University now asks this Board to ignore these long-standing adverse impacts and put even more students in the residential community. Because nothing has changed since 1990, this Board has no basis under the Zoning Regulations for permitting any such enrollment increases.

3. The BZA should require the University to comply with both the letter and the spirit of §210.4 of the Zoning Regulations by accurately describing "all activities" and the "capacity of all present and proposed campus development" for those activities.

While the 1990 plan reasonably described the activities to be conducted in the various buildings on campus, the 2000 proposed plan does not. Instead, the new plan contains only four general categories: (1) residential/campus life/athletic; (2) academic/administrative; (3) Medical/health care; and (4) commercial/investment properties.

These vague categories do not meet the specific requirements of § 210.4 (d) that a proposed plan contain:

> A description of **all activities conducted or to be conducted on the campus,** and of the capacity of all present and proposed campus development.

This issue was raised and argued before this Board several years ago when the University constructed a new child care center in its former printing plant without first amending its campus plan pursuant to § 210. BZA Appeal No. 16246, July 16, 1997, currently on appeal to the D.C. Court of Appeals in No. 98-AA-1819. In the course of the hearing before this Board, the University and its law firm took the position that once a plan was in place, everything was a "university use" that could be moved from one place to another without the approval of the BZA. Indeed, the University's expert, Steven Sher, went so far as to claim that it could unilaterally convert its printing plant into either a hotel or a band practice facility even though those new uses might have adverse impacts on the nearby homes. TR 432. Board Member Betty King asked him how that could be the case:

> But what Mr. Sher is saying is that once [a campus] plan has been established and approved by the community and the University and the BZA that then we should all turn our backs and allow them to make any amendments to it that they see fit within the broad, general category of educational purposes. Is that not what you were saying? In other words, it's merely a license to do what you will.

The Board's former chairperson, Susan Hinton, then examined Mr. Sher on the University's theory and concluded:

> The way you seem to explain this is, anything that the university does is a university use, and therefore can go in a university building. And it seems to me that actually the whole reason that we have campus plans is so everyone can understand where certain uses are going to go, and what the impacts of those uses might be, so everyone can sort of anticipate and maybe look out for those things.

The board members' understanding of the regulations was, of course, correct because there would be no point in having a campus plan if a university could unilaterally change its uses and activities around without the permission of the Board. Indeed, under the general description of "residential/campus life/athletic," the University could turn a town house on a residential street into a cafeteria or a student pub, or a parking lot into a basket ball court regardless on the adverse effects on the neighbors.

Accordingly, the Board should reject the four vague categories and require the University to fully comply with § 210.4 and describe all of the activities on campus showing both where they are currently located and where they will be located in the future

Sincerely,

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