GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA
Case No. 16566A
Exhibit No. 249

Office of Zoning

Application No. 16566A of the President and Directors of Georgetown College, pursuant to 11 DCMR § 3104.1, for a special exception for the review and approval of the University Campus Plan – years 2000-2010 under Section 210 in the R-3 and C-1 Districts at premises bounded by Glover Archbold Parkway to the west, the National Park Service property along the Chesapeake & Ohio Canal and Canal Road to the south, 35th Street, N Street to 36th Street, and 36th Street to P Street to the east and Reservoir Road to the north. (Square 1222, Lots 62, 801-810; Square 1223, Lots 85-86, 807-810, 812, 815, 826, 827, 831, 834, 846-847, 852-853, 855, and 857-858; Square 1226, Lots 91, 94-101, 104-105, 803-804, 806, and 811-815; Square 1248, Lots 122-125, 150-157, 800-802, 804-806, 829-831, and 834-835; Square 1321, Lots 815-817.)

HEARING DATES:	June 13, and July 18, 2000
DECISION DATES:	September 5, November 8, and December 5, 2000
ORDER DATE:	March 29, 2001
RECONSIDERATION DECISION DATES:	June 5 and July 31, 2001

ORDER ON RECONSIDERATION

PRELIMINARY MATTERS:

By Order issued March 29, 2001, the Board approved the University Campus Plan until December 31, 2010, subject to conditions intended to mitigate any adverse impacts potentially arising from the location of a university in a residentially zoned district. In addition to the President and Directors of Georgetown College (hereinafter "University" or "Applicant"), parties to the proceeding were Advisory Neighborhood Commission (ANC) 2E, the Burleith Citizens Association "Burleith"), Citizens Association of Georgetown ("CAG"), Cloisters in Georgetown Homeowner's Association ("Cloisters"), Foxhall Community Citizens Association, Georgetown Residents Alliance, and Hillandale Homeowners Association ("Hillandale").

On April 11, 2001, Cloisters submitted a timely request for reconsideration of the Order, seeking clarification of conditions concerning parking, student vehicles, and the parties' opportunity to comment on the revised campus plan submitted by the Applicant to conform to the Board's Order. By responses dated May 10, 2001, CAG and Burleith supported reconsideration of the

Board of Zoning Adjustment
District of Columbia
CASE NO.16566
EXHIBIT NO.249

three issues specified by Cloisters, while Hillandale recommended in favor of reconsideration of the condition concerning on-campus parking spaces. Also on May 10, 2001, the Applicant filed a response that addressed Cloisters' motion for reconsideration and raised additional "questions and concerns" about the Order conditionally approving the Campus Plan.

The Department of Public Works ("DPW") filed a response May 9, 2001, and the Office of Planning ("OP") submitted comments on May 10, 2001, which were subsequently revised by supplemental comments submitted May 31, 2001.

FINDINGS OF FACT:

1. Condition No. 14 of the Order, among other things, directed the Applicant (a) to require students to register their vehicles in the District of Columbia or obtain a reciprocity sticker, (b) to withhold parking privileges to students who do not comply with D.C. registration or reciprocity requirements, and (c) to consider a student's failure to register his or her vehicle in the District or to obtain a reciprocity sticker a violation of the Code of Student Conduct.

2. Cloisters noted that reciprocity stickers were eliminated for student vehicles in high-impact areas around the University, and sought clarification of Condition No. 14 to avoid "creat[ing] the impression that returning to reciprocity stickers for students would be in anyway beneficial to the impacted communities."

3. The Office of Planning recommended revision of Condition No. 14 "to eliminate any confusion about reciprocity stickers," noting that students living in the ANC 2E area cannot obtain reciprocity stickers while students living elsewhere must register their cars or obtain a reciprocity sticker.

4. Burleith and CAG stated that reciprocity stickers for undergraduates would be harmful to the communities impacted by the University.

5. Condition No. 15 of the Order directed the Applicant to maintain at least 4,080 off-street parking spaces within its campus boundary to avoid encouraging additional cars off campus.

6. Cloisters requested reconsideration of whether the Board intended to lift the parking cap established in the Applicant's prior campus plan. Cloisters stated that the traffic studies and transportation management plans submitted to the Board were based on retention of the prior cap, and that Cloisters would have argued against an increase in the parking cap.

7. Burleith and CAG also stated that they were not aware of a request to increase the on-campus parking, and would have argued against such a request.

8. Hillandale asserted that Condition No. 15 was erroneous because the previous campus plan order established 4,080 parking spaces as the maximum number that the Applicant

could provide on-campus, and the Applicant had proposed to continue that cap as a major component of its Traffic Management Program in limiting the amount of vehicular traffic that the University would generate on local streets.

9. Hillandale recommended revision of Condition No. 15 to state that the Applicant must not provide more than 4,080 off-street parking spaces within the campus, so as to avoid excessively stimulating vehicular traffic to and from the campus, and must also generally maintain at least 4,080 off-street parking spaces within the campus boundary, to avoid encouraging the parking of additional cars off-campus. Hillandale also proposed that a reasonable number of off-street parking spaces, not to exceed one percent of the 4,080 cap at any one time, could be taken out of service temporarily for the limited purpose of expeditiously performing maintenance and making repairs.

10. OP recommended that the University's parking cap should remain at 4,080 spaces.

11. DPW commented that a parking ceiling of 4,080 appears to be a reasonable peak parking demand. DPW did not recommend any increase in the parking ceiling, so as to avoid further encouraging students, faculty, and staff to drive to the campus rather than use mass transit or the University shuttle bus system.

12. The Applicant stated that Condition No. 15 was a sound response to concerns about availability of on-street parking in the neighborhoods surrounding the University.

13. Condition No. 18 of the Order directed the Applicant to prepare a revised campus plan consistent with the Order, and to submit the revised plan to the Board along with a table of changes listing each page on which a change appears. Pursuant to Condition No. 18, the Board would certify the revised copy as the approved campus plan, copies of which would be maintained in the Office of Zoning and the Office of the Zoning Administrator.

14. In its request for reconsideration, Cloisters sought clarification of the parties' opportunity to comment on any changes made by the Applicant in rewriting the campus plan to conform with the Board's Order.

15. Burleith and CAG also sought permission to comment on any changes made by the University in rewriting the campus plan.

16. Hillandale contended that Condition No. 18 should have allowed the other parties to the proceeding a reasonable time to respond to the Applicant's revised plan. Hillandale recommended revision of Condition No. 18 to require the Applicant to serve copies of its proposed revised plan on the other parties, who would have 30 days to submit comments and recommendations to the Board.

17. The Board, on its own motion, has reconsidered the Order and determined that clarification is warranted with respect to the enforcement provision set forth in Condition No. 19 and with respect to the possible modification of the approved campus plan in case

of changed circumstances.

CONCLUSIONS OF LAW:

Pursuant to the Board's Rules of Practice and Procedure, that any party may file a motion for reconsideration or rehearing of any decision of the Board, provided that the motion is filed within 10 days from the issuance of a final written order. 11 DCMR § 3126.2. The prescribed 10-day period is extended by three days to account for service by mail. 11 DCMR § 3110.2. In this case, the written order was issued and mailed to the parties on March 29, 2001, and, accordingly, timely motions for reconsideration or rehearing were due by April 11, 2001.

The Board may waive certain of its procedural rules for good cause shown and when the waiver will not prejudice the rights of any party and is not otherwise prohibited by law. 11 DCMR § 3101.6. However, the Board declines to waive the 10-day deadline to consider the "issues and concerns" raised by the Applicant's submission, purportedly in response to the timely Cloisters filing. The Applicant makes no showing of good cause as to why its request for reconsideration was not timely, and the Board's consideration of the Applicant's submission, beyond that portion that responds to the Cloisters motion, would prejudice the rights of the other parties, who did not have an opportunity to respond to the Applicant's filing.

With regard to Condition No. 14, the Board concludes that some clarification is warranted to avoid creating any impression that all University undergraduates should be eligible for reciprocity stickers. Condition No. 14 directs the Applicant to take certain steps intended to ensure student compliance with District of Columbia law governing the registration of vehicles.

Generally, a person who is enrolled as a full-time student engaged in higher education and who is not a resident of the District of Columbia is exempt from D.C. statutes and regulations governing motor vehicle registration, provided that the student has complied with the laws of another jurisdiction and provided that the student obtains a valid reciprocity sticker. D.C. Code 40-303(e). Student reciprocity stickers are valid for one year and are renewable annually with proof that the student is a full-time student. D.C. Code 40-303(e)(2). The statute specifically excludes "full-time students who reside within the boundaries of Advisory Neighborhood Commissions 2A and 2E" from eligibility for the student reciprocity sticker. D.C. Code 40-303(e)(4).

It is not the role of the Board of Zoning Adjustment to interpret statutes that apply to other agencies, in this case the Department of Motor Vehicles. Rather, Condition No. 14 was intended to ensure that the Applicant's students comply with the District's laws concerning the registration of motor vehicles. Condition No. 14 was not intended to, nor could it, alter the statutory scheme concerning student eligibility for reciprocity stickers. Accordingly, consistent with the recommendation of the Office of Planning, the Board clarifies Condition No. 14 by reiterating its intent that the Applicant will ensure student compliance with all District of Columbia laws governing motor vehicles.

To clarify its intent with regard to student vehicles, the Board revises Condition No. 14 to read as follows:

14. The Applicant, through its Office of the Registrar, shall maintain an accurate record of the license plate numbers of motor vehicles kept by all University students. The Applicant shall direct its students to register their vehicles in the District of Columbia, or obtain a reciprocity sticker if eligible to do so, and shall consult with the D.C. Department of Motor Vehicles to determine whether such registration is completed or such stickers are obtained. The Applicant shall withhold parking privileges to students who do not comply with D.C. registration requirements. Failure to abide by District law concerning registration of student vehicles shall constitute a violation of the Code of Student Conduct.

With regard to the supply of parking spaces on campus, the Board, upon reconsideration, concurs with the neighborhood associations, OP, and DPW that Condition No. 15 should be revised to reflect that the supply of off-street parking spaces on campus should not exceed 4,080. While a larger parking supply could alleviate any potential for campus-related parking that might spill over into the residential communities surrounding the campus, the Board notes that an excessive supply of off-street parking on campus would likely discourage the use of the University shuttle bus system, mass transit, and other alternative forms of transportation. To ensure that the University will continue to provide an adequate supply of on-campus parking, the Board will adopt Hillandale's recommendation that no more than one percent of the on-campus parking inventory can be taken out of service at any one time. Accordingly, Condition No. 15 of the Order conditionally approving the Applicant's campus plan is hereby revised to read as follows:

15. The Applicant shall maintain a parking inventory of 4,080 off-street parking spaces within the campus boundary, and shall ensure that not more than one percent of the parking inventory is taken out of service at any one time.

With regard to the revised campus plan to be submitted by the Applicant, the Board, upon reconsideration, concurs with the neighborhood associations that the other parties in the proceeding should be given reasonable opportunity to submit comments on whether the revisions submitted by the Applicant are consistent with the conditions adopted by the Board in approving the new campus plan. Accordingly, the Board adopts the recommendation of Hillandale and revises Condition No. 18 to read as follows:

18. The Applicant shall prepare a revised campus plan that is consistent with this Order, accompanied by a table of changes that lists each page on which a change appears and describes each change. The Applicant shall submit an original and 10 copies of the revised plan to the Board no later than 90 days from the effective date of this Order, and shall, on the same day, serve a copy of the revised plan and table of changes on each party to this proceeding. Each party shall have 30 days in which to submit to the Board, and to serve on all other parties, its comments on the Applicant's proposed changes. Comments on the revisions shall be strictly limited to whether the revisions correctly and clearly reflect the Order. After review

> of the Applicant's proposed revised plan and the parties' comments, the Board shall determine whether further proceedings are warranted or shall certify the revised plan as the approved campus plan. The revised plan shall be deemed approved 60 days after submission, absent action by the Board before that date. Copies of the approved plan shall be maintained in the Office of Zoning and the Office of the Zoning Administrator.

In its Order conditionally approving the new campus plan, the Board adopted Condition No. 19 for the purpose of ensuring the Applicant's substantial compliance with the provisions of the Order for the duration of the approved campus plan. Condition No. 19 is intended to apply to all building permits and certificates of occupancy issued to the Applicant pursuant to the newly approved plan, and not to any building permits or certificates of occupancy already issued to the University pursuant to prior campus plans. Upon reconsideration, the Board concludes that Condition No. 19 should be clarified to better express its intent; accordingly, Condition No. 19 is revised to read as follows:

> 19. No special exception application filed by the University for further processing under this plan may be granted unless the University proves that it has consistently remained in substantial compliance with Conditions 1 through 18 set forth in this Order. Further, any violation of a condition of this Order shall be grounds for the denial or revocation of any building permit or certificate of occupancy applied for by, or issued to, the University for any University building or use approved under this plan, and may result in the imposition of fines and penalties pursuant to the Civil Enforcement Act, D.C. Code §§ 6-2701 to 6-2723.

As stated in the Order, the new campus plan was approved for a term that will expire December 31, 2010. However, the Board notes that circumstances may change to an extent that renders the new plan, or a condition of its approval, in some way out of date or inapplicable. On reconsideration, the Board concludes that Condition No. 1 should be modified to specifically state that the campus plan may be modified before it would otherwise expire, upon a finding of good cause by the Zoning Commission. Such modifications could include, but are not limited to, increases in student enrollment based upon facts not presently in the record. Accordingly, Condition No. 1 is revised to read as follows:

1. The Applicant's proposed campus plan is approved until December 31, 2010, subject to the following conditions intended to mitigate any adverse impacts potentially arising from the location of a university use in a residentially zoned district, or until such time prior to December 31, 2010 as the Zoning Commission determines that conditions warrant submission of an updated campus plan or grants a request to amend the plan.

Accordingly, it is **ORDERED** that the motion for reconsideration is **GRANTED.**

VOTE: **3-0-2** (Sheila Cross Reid, Anne M. Renshaw, and Herbert Franklin to grant; Susan Morgan Hinton and Geoffrey H. Griffis not hearing the case, not voting.)

Accordingly, it is **ORDERED** that the Board's motion to reconsider Condition No. 1 and Condition No. 19 is **APPROVED.**

VOTE: **3-0-2** Sheila Cross Reid and Anne Mohnkern Renshaw to grant; Herbert M. Franklin to grant by proxy; Geoffrey H. Griffis and David Levy not hearing the case, not voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring member approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

Final Date of Order: AUG - 6 2001

PURSUANT TO 11 DCMR §3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR §3125.9, THIS ORDER WILL BECOME EFFECTIVE 10 DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 OF THE D.C. CODE. *SEE* D.C. CODE § 1-2531 (1999). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.