BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

BZA Application No. 16,566 of Georgetown University, under 11 DCMR 210 and 3104, for special exception approval of a proposed ten-year campus plan for the years 2000-2010.

HILLANDALE HOMEOWNERS ASSOCIATION'S COMMENTS ON APPLICANT'S PROPOSED CAMPUS PLAN REVISIONS

The Hillandale Homeowners Association provides the following comments on the proposed revisions submitted by Georgetown University ("GU") on November 14, 2001, of its proposed campus plan of May 30, 2000 (Exhibit 46A). These comments, like the proposed revisions, are submitted under Condition 18 of Order No. 16,566, of March 29, 2001, as modified by Order No. 16,566A of August 6, 2001 (the "Order"), which requires that such comments "be strictly limited to whether the revisions correctly and clearly reflect the Order." In sum, GU's proposed revisions generally do not reflect the Order correctly. We therefore recommend that the Board issue a corrective order along the lines set forth below.

I. The Proposed Revisions Do Not Reflect the Order

A. Most of the Order's Requirements Are Not Even Reflected in the Proposed Revised Plan.

Although the Order approved GU's proposed plan subject to 19 numbered conditions, GU's table of proposed changes surprisingly discloses only seven proposed changes. At first glance, seven changes seem insufficient to comply with 19 conditions, several of which (like Condition 16) each impose several requirements.

There is even less to GU's proposal than meets the eye. Of GU's seven disclosed proposed changes, the first only effectuates a non-substantive change in its proposed campus plan's date from May 30, 2000 to November 14, 2001. GU's six other disclosed proposed changes, moreover, reflect to some degree only four of the BZA Order's Conditions, namely Conditions 2, 4b), 6, and 16c).[1] Most of the BZA Order's requirements therefore are not reflected in GU's proposal in any way whatsoever.

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[1]GU Changes 2-4 reflect BZA Condition 2, and GU Change 7 reflects BZA Condition 16c). As discussed further in part I.B. below, GU Change 5(a) incorrectly reflects BZA Condition 4b), and GU Changes 5b) and 6 incorrectly reflect BZA Condition 6.

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Although campus plan changes may not be required by either BZA Condition 18 (which governs this proceeding's post-hearing procedures), or BZA Condition 19 (concerning the BZA Order's enforcement), other BZA conditions do require changes in GU's campus plan. GU's proposal nevertheless fails to mention, and therefore does not reflect, most of the modified BZA Order's requirements, namely those in BZA Conditions 1, 3, 3a), 3b), 3c), 4a), 5, 7-10, 11a), 11b), 12-15, 16a), 16b), 17a), 17b), 17c), 17d) and 17e).

B. Some BZA Order Requirements Are Not Accurately Reflected in GU's Proposed Revised Plan.

Of the four BZA Order requirements that are, to some degree, reflected in GU's six proposed changes, three of those proposed changes – GU Changes 5a), 5b), and 6 – do not accurately reflect the two requirements in BZA Conditions 4b) and 6 to which they appear to be related. Each of these two BZA conditions imposes a requirement which GU must follow during the life of the plan, which could extend as far into the future as December 31, 2010. GU's proposal would acknowledge these two requirements only to the limited extent of setting them forth as descriptions of GU's current practice on the proposed plan's submission, November 14, 2001.

C. Major Parts of GU's Proposed Plan Have Not Been Revised to Reflect the BZA Order.

GU's proposed campus plan has not been revised to reflect the main substantive point of the BZA Order, which is that the BZA only conditionally approved of the campus plan GU proposed last year (Exhibit 46A), because that plan failed to fulfill GU's basic zoning obligation, under 11 DCMR § 210, to mitigate and avoid potential adverse effects on neighboring property. GU's November 14, 2001 revised proposed plan nevertheless would continue to include, completely unchanged, several significant plan elements that are not consistent with the BZA Order.

GU's proposed "Campus Mission" statement would continue to assert, without change (at pages 3-4), that GU is committed to developing a campus plan that "is supportive" of the surrounding neighborhood only "by sharing the educational, recreational and cultural resources of the campus." Although such resource sharing is commendable, it neither reflects nor seeks to fulfill the basic zoning requirement underlying the BZA Order that GU's mission must include conducting itself so as to avoid

harm to neighboring property.

Likewise, GU's proposed campus plan continues to set forth "Campus Plan Goals" (at pages 7-8) which fail to mention GU's relationship to the neighborhood at all, even though it is precisely the zoning requirement concerning this very relationship which both necessitates GU's preparation and submission of such a campus plan for zoning approval, and which caused the plan GU submitted in 2000 not to have received the unconditional approval GU sought. GU's newly-revised plan's proposed "Campus Plan Goals" would instead continue, unchanged, to be completely self-centered, aimed at meeting only GU's institutional needs, regardless of the practical effect on neighboring property.

GU's proposed plan also continues to incorporate, without change, GU's pre-hearing arguments, which the BZA's Order in effect rejected, that last year's proposed plan meets applicable zoning requirements (part V, Zoning Regulations Compliance, pages 17-26).

II. Relief Requested

Since the November 14, 2001 proposed campus plan substantially does not correctly reflect the BZA's Order, it would be better if the BZA did not certify or approve that plan for filing in the Office of Zoning and the Office of the Zoning Administrator. Further proceedings, however, should be kept as short and simple as possible, because this proceeding has already drawn on, for nearly two years, into the proposed ten-year planning period, and two of the five Board members who heard the case are no longer available to participate in Board decisions. GU's proposed campus plan is a half-inch thick document with 26 pages of text. It could prove onerous to revise such a document in further legal proceedings, word by word, to conform with the Board's Orders.

We therefore suggest that the Board simply issue a short order along the lines of the draft order set forth below, which we believe would produce a planning document consistent with the Board's Orders that the Zoning Administration could administer, while minimizing the burden of further proceedings. The proposed Order would require Georgetown to modify its 2000 campus plan proposal, first by adding a new appendix containing the Board's Orders in this proceeding, secondly by a new first section indicating that the Board's Orders shall govern in any conflict between them and the proposed

plan, and thirdly by making a few necessary conforming changes.[2]

Although an order of the type suggested below represents our best recommendation, it would be acceptable to Hillandale if the Board alternatively adopted a corrective order of the type we understand that the Citizens Association of Georgetown ("CAG") and other neighborhood associations will propose. That proposed order would seek to rectify the same campus plan deficiencies by requiring GU to propose, for further comment, specific remedial amendments of GU's proposed campus plan. It would also be acceptable to Hillandale for the Board to combine the two suggested remedial approaches in one order which required GU to adopt the specific changes suggested in the draft order below, and which also required GU to propose the more specific campus plan amendments that the proposed order suggested by CAG and others would require.

Although nothing that GU can unilaterally do, in amending or failing to amend its proposed campus plan, can deprive the requirements in the Board's orders of their intended legal effect, allowing the adoption and filing of a plan that does not clearly and correctly comply with the BZA's requirements could needlessly encourage the evasion, and hamper the enforcement, of the requirements which the Board intends to impose. We therefore urge the Board not to allow the November 14, 2001 campus plan to be adopted and filed, and to take remedial action along the lines that CAG, others, and we have proposed.

Respectfully submitted,

Charles R. Braun
Representative
HILLANDALE HOMEOWNERS ASSOCIATION
BZA Application No. 16,566
December 14, 2001

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[2]A further deficiency of the November 14, 2001 proposal is that its table of contents continues to reflect, unchanged, the page numbering in GU's May 30, 2000 proposal (Exhibit 46A), even though, as a result of a proposed change, the page numbers on which several sections begin have in fact changed. An explicit Board order thus appears necessary to require GU to make appropriate revisions in its plan's table of contents.

PROPOSED ORDER ON REVISION AND APPROVAL OF CAMPUS PLAN

By Order issued March 29, 2001 (No. 16,566), the Board approved Applicant's proposed 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. By Reconsideration Order issued August 6, 2001 (No. 16,566A), the Board modified several of these conditions. By Order dated October 9, 2001, the Board denied Applicant's motion for a stay of the requirements in Conditions 7, 10, and 14 of the March 29 Order as modified. On November 14, 2001, Applicant submitted, for the Board's approval and certification, a revised campus plan which was so minimally different from Applicant's proposal that it did not reflect the Board's prior orders in this proceeding. In particular: (1) the proposal failed to include new material reflecting most of the conditions on which the Board had approved Applicant's proposed campus plan; (2) the proposal continued to include, unchanged, mission and planning goal statements and other material which does not reflect the Board's Orders; and (3) some the few proposed changes, although they did reflect two Board order requirements, did not reflect those requirements accurately. It is ACCORDINGLY HEREBY ORDERED AS FOLLOWS:

1. The Applicant shall prepare a revised campus plan and a table of changes that lists each page on which a change appears and describes each change.

2. The revised campus plan shall be prepared by altering the proposed campus plan submitted on May 30, 2000 (Exhibit 46A), including that plan's proposed appendices and figures, only in the following manner –

(a) by attaching, after Appendix N, a new Appendix O, which shall be entitled "Applicable Zoning Orders Concerning Proposed Plan," and which shall contain one (1) copy of the March 29 Order, one (1) copy of the August 16 Order, one (1) copy of the October 9 Order, and one (1) copy of this Order;

(b) by inserting, at the beginning of the proposed plan, before the first section of the proposed plan entitled "The University and the District of Columbia," a new beginning section, entitled "Conditional Approval," stating as follows:

"***Conditional Approval***

"The Proposed Campus Plan set forth below is not approved unchanged. It is only conditionally approved subject to all of the orders issued by the Board of Zoning Adjustment in conditionally approving the proposed plan, which are attached hereto as Appendix O below. Each requirement in each condition in the March 29 Order as modified by the August 16 Order must be construed as intended to modify the proposed plan significantly. No such requirement may be construed either as not intended to modify the proposed plan at all, or as not intended to modify it significantly. The University must modify its proposed mission, planning goals, plans, programs, activities, and all other proposed campus plan elements, as much as necessary to achieve full compliance with each of the requirements and purposes of the Board's Order as modified. In any conflict between a Board Order in Appendix O and the proposed plan otherwise set forth below, the Order shall control and be given full effect in accordance with its terms and intent, and the proposed campus plan must be considered as not having been adopted, and as having been modified, to the extent necessary to achieve full compliance with the requirements and purposes of the Board's Orders.";

(c) by making any necessary clerical conforming changes in the plan's table of contents, updating

it to include reference to the new first section and new Appendix O, and changing that table's page number references to the extent necessary (the Applicant shall make no other changes in its proposed revised plan than those directed by this Order); and,

(d) by making any necessary clerical conforming changes, such as by deleting the word "draft" wherever necessary, and by re-dating the proposed campus plan document to reflect its new date of filing and service.

3. The Applicant shall submit an original and 10 copies, both of the plan as thus revised and the new table of changes, to the Board no later than 14 days from the effective date of this Order, and shall, on the same day, serve a copy of that 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 Orders issued in this proceeding. 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 Board action before that date. Applicant shall submit copies of the approved plan to the Office of Zoning and the Office of the Zoning Administrator, and each Office shall maintain a copy of the approved plan at least for as long as such plan remains in effect.