ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW

2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402-2015
TEL: 612-349-8500 FAX: 612-339-4181
www.rkmc.com

Richard B. Nettler
(202) 775-0725

December 17, 2004

RECEIVED
D.C. OFFICE OF ZONING
2004 DEC 17 AM 11:57

BY HAND

Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

Re: BZA Application No. 16566-D

Dear Mr. Griffis:

I have enclosed for consideration by the Board of Zoning Adjustment, the Proposed Findings of Fact and Conclusions of Law requested for the Georgetown University Campus Plan. These Proposed Findings are being submitted on behalf of the Hillandale Homeowners Association.

I appreciate your consideration.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler

enclosure
cc: Scott Anderson, Hillandale Homeowners Association
Andrew Altman, Office of Planning (By Hand)
Parties

BZA
Case No. 16566-D
Exhibit No. 284

Board of Zoning Adjustment
District of Columbia
CASE NO.16566
EXHIBIT NO.284

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

BZA Application No. 16,566-D 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, for the University's main campus at 3700 O Street, N.W., and its Medical Center (north) campus at 3800 Reservoir Road, N.W.

Public Hearing Dates: June 13, 2000 and July 18, 2000

HILLANDALE HOMEOWNERS ASSOCIATION'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

These proposed findings are submitted by the Hillandale Homeowners Association ("Hillandale") in response to the Board's "PROCEDURAL ORDER ON REMAND," dated October 15, 2004, directing "any party that wishes to do so to submit to the Office of Zoning a proposed order, either granting or denying the application in whole or in part, including findings of facts and conclusions of law, no later than 3pm Friday, December 17, 2004."

I. PROPOSED FINDINGS OF FACT

1. Applicant Georgetown University ("Georgetown") applied for special exception approval of its proposed ten-year campus plan for the years 2000-2010 on January 31, 2000, proposing, among other things, construction of more than 400,000 square feet of net new gross floor area on applicant's north campus, BZA Application No. 16,566, Draft campus plan of January 31, 2000, Exhibit 6.[1] Nearly 300,000 square feet was proposed for three new north campus medical facilities consisting of a doctors' office building, a clinic, and an addition to the medical school library. The additional north campus proposed square footage was for new parking facilities that would replace valet parking spaces with regular parking spaces.

2. While the record was open, no change was proposed by any party in the overall 4,080 parking space "cap" (maximum number of off-street parking spaces) for both the main and north campus combined, a cap which had been included in this Board's 1983 and 1990 campus plan orders in order to mitigate the potential adverse effect of those plans, in terms of traffic generation, on neighboring properties.[2] Georgetown not only proposed

---

[1]All references herein to Exhibits are to Exhibits as numbered by the Board in this proceeding, BZA Application No. 16,566.

[2]The 1990 campus plan order provided: "6. The University shall provide 4,080 off-street parking spaces within the campus boundary.' BZA Application No. 15,302, Final Order of October 12, 1990, Order paragraph 6 at bottom of page 36. The order included the following finding fo fact: "All of these proposed programs enable the University to stay within the parking

(continued...)

that the cap be continued. Georgetown affirmatively contended, while the record was open, that its continuation of this cap, as part of its proposed Traffic Management Plan, and its imposition of parking rate increases under the Plan, as much as necessary to maintain an adequate number of vacant spaces in its parking lots, would assure that its proposed additional north campus construction would not generate additional traffic on Reservoir Road that would be harmful to neighboring property owners. No evidence was offered that even suggested that Georgetown could construct hundreds of thousands of square feet of new facilities on its north campus, without harming traffic on Reservoir Road, if the 4,080 parking space cap were removed. The record thus abundantly supports only a continuation of the 4,080 parking cap. Details of the evidence on the necessity for continuation of the cap are set forth in the Appendix, "Evidence Concerning 4,080 Parking Space Cap."

3. Hillandale Homeowners Association moved without objection for party status in this proceeding, in large part because of its concern about the effect of applicant's plans on traffic on Reservoir Road, Exhibit 32. Hillandale is a Zoning Commission-approved planned unit development of about 270 single family homes on the north side of Reservoir Road opposite applicant's north or medical center campus. Hillandale is a gated community having only one guarded entrance and exit on 39th Street, N.W. Reservoir Road traffic is already congested during rush hours. Since the only nearby minor arterial is Reservoir Road, vehicles exiting Hillandale are required to turn right (south) on 39th Street, and 39th Street southbound from the Hillandale exit leads only to Reservoir Road, adverse effects on Reservoir Road traffic are very objectionable to Hillandale. Traffic jams on Reservoir Road severely restrict the ability of Hillandale residents and their guests to enter and leave Hillandale homes by motor vehicle. Traffic jams on Reservoir Road also endanger health and safety because emergency vehicles (such as fire engines) may not have ready access to Hillandale if traffic on Reservoir Road is severely congested. Testimony of Hillandale representative Charles R. Braun at July 18, 2000 hearing; letter of Hillandale Homeowners Association President, August 4, 2000, attachment to Exhibit 167, and Exhibit 168 (identical copies of same 2-page letter). Nothing in applicant's evidence, testimony, closing statement, or rebuttal disputed the importance to Hillandale of the free flow of traffic on Reservoir Road. The Board granted Hillandale party status.

4. The original Board decision of March 29, 2001, included a Condition 15 which set 4,080 parking spaces as the *minimum*, rather than the *maximum,* number of off-street parking

---

[2](...continued)
cap of 4,080 spaces imposed by the Board at the time of the 1983 Plan. This parking cap also operates as a control on the number of employees and visitors to the University." Id. Finding of Fact No. 29 on the bottom of page 14.

spaces which Georgetown must provide on its campus. The Board explained its decision in this respect by citing its concern "that the supply of off-street parking on-campus may be insufficient to ensure that the surrounding neighborhoods are not adversely affected by University-related parking that may spill over from campus to the neighborhoods." R. 2343. These findings were inconsistent with the Board's basic conclusion, R. 2343, that Georgetown's proposed Transportation Management Program – a key element of which was the parking cap – is "reasonable." The Board's initial decision, then, was not supported in this respect by any record evidence. The neighborhood parking study which Georgetown had submitted -- the only expert testimony on this point -- had said that parking in the neighborhood was adequate if not "abundant," and would remain adequate if the cap were maintained.[3]

5. There followed a timely, and successful, reconsideration motion contending that the Board's order must be mistaken in this respect, among others. The evidence at the hearing did not support either the Board's findings or its reasoning in setting 4,080 parking spaces as the *minimum* rather than the *maximum* number of off-street parking spaces. The motion showed that the parking cap was part of Georgetown's plan for preventing harm to neighboring property, and that, notwithstanding the cap, there was and would continue to be, adequate if not abundant on-street parking in the neighborhood.

6. The Board's initial decision, moreover, was procedurally defective, because no notice had been given that removal of the parking cap had been proposed. Notice would have been required had the Board intended to consider increasing the on-campus parking cap. The Board was not bound to accept Georgetown's proposed continuation of the parking cap. But if the Board wanted to consider changing or removing the preexisting cap, which Georgetown had proposed to continue, then fairness obligated the Board to give notice of such a proposal to the parties, and give them an opportunity to present their evidence and views on such a proposal. The Board, after all, had initiated the proceeding only by providing notice of a hearing on Georgetown's application, which proposed the cap's continuation, and thus gave no notice that removal of the cap would be considered.

7. The reconsideration motion specifically stated two grounds for concluding that the Board had erred - " * * * [W]e wish to clarify that the Board did not intend to lift the parking cap to some greater number. The traffic studies and transportation management plans that were submitted to the Board were based on retaining the existing cap, and the MedStar application specifically included a retained cap. At no time were we aware of a request to increase on-campus parking; we would assuredly have presented arguments against such a change." Motion, April 11, 2001, p. 1. All the traffic studies in the record thus supported, or presupposed, the continuation of the cap which Georgetown itself had

---

[3]Appendix, pp. 1-4.

proposed and commissioned an expert study to support; and it would be procedurally unfair to reach a decision to remove the cap without any notice having been given that such a determination would be considered. Reconsideration was supported by timely written pleadings submitted by Hillandale, the Department of Public Works, and the Office of Planning, R. 2367-2371 (Hillandale); R. 2384-2387 (OP); R. 2389 (DPW). (Hillandale's pleading opposed the motion insofar as it sought rehearing on the ground that no new evidence had been offered.). Only Georgetown, in a 180-degree reversal of its position, opposed reconsideration of Condition 15, and revising it to continue the parking cap whose continuation Georgetown had proposed and supported. R. 2377. Georgetown thus first revealed it was seeking removal of the parking cap in a pleading not only filed after the record had closed, but also after the time had expired for anyone to move for rehearing or reconsideration.

II. PROPOSED CONCLUSIONS OF LAW

1. The eight conditions of the Board's order in this matter of March 29, 2001 (BZA No. 16,566), as revised by its reconsideration order of August 6, 20901 (BZA No. 16,566A), which were not challenged on appeal, should be left unchanged. These conditions are numbers 1, 11-13, and 16-19 as revised.

2. Of the eleven conditions challenged on appeal (numbers 2-10 and 14-15), Hillandale is affected only by Condition 15, relating to the 4,080 parking space cap. Hillandale therefore takes no position on whether or how Conditions 2-10 and 14 should be revised.

3. Condition 15 should be revised so that it only sets a parking cap of 4,080 on-campus off-street parking spaces, as in the 1983 and 1990 orders. The parts of Condition 15, as revised on August 6, 2001, which set 4,080 as the *minimum* number of such parking spaces, and which set a percentage of spaces which may be taken out of service for repair, should be deleted.

4. Such a revision should be made because the burden of proof in this proceeding is plainly on the applicant: "In all appeals and applications before the Board, the burden of proof shall rest with the appellant or applicant. If no evidence is presented in opposition to the case, the appellant or applicant shall not be relieved of this responsibility." 11 DCMR 3119.2. Here the applicant only met its burden of proof concerning the 4,080 parking space cap. There was no evidence whatsoever supporting the 4,080 parking space minimum, or the set-aside for spaces in need of repairs or servicing.

5. Such a revision should be made also because the only notice that parties received to the public hearings conducted in 2000 were of Georgetown's originally proposed campus

plans, in each variation of which Georgetown only proposed a continuation of the 4,080 parking cap, as a major way of mitigating traffic growth that might otherwise result from the implementation of its campus plan. No notice was ever given of any proposal to establish 4,080 as the *minimum* number of off-street parking spaces.

6. Such a revision should be made also because it is required by the Court of Appeals' decision.[4] While Georgetown appealed against the parking cap it had proposed, the Court of Appeals invalidated revised Condition 15, not because of the parking cap, but because it was arbitrary to make the 4,080 figure both a maximum and a minimum. The Court expressly rejected the University's appeal against the cap as follows: "The University now argues that in finally adopting the cap of 4080 spaces urged by the University and its traffic expert, the Board acted upon 'factually unsupported estimates and suppositions of University neighbors, which were based on nothing more than their own preconceived and generalized notions of parking problems in the area.' In light of the history that we have recited, the University's position is not well taken."[5] The Court, moreover, clearly stated that the record would support 4,080 parking spaces only as a cap: "We conclude that Revised Condition 15, if construed as a cap and only as a cap, would be supported by substantial evidence and would not be arbitrary or capricious."[6] After explaining why Revised Condition 15 cannot be construed this way, the Court then said: "Because, in our view, this number [4,080] cannot reasonably be both a maximum and a minimum, we must vacate Revised Condition 15 and direct the Board, on remand, to clarify it."[7] The only permissible clarification of Revised Condition 15 is to redraw it clearly as a cap.

III. PROPOSED ORDER

Accordingly, it is **ORDERED** that the application is **GRANTED SUBJECT** to the following **CONDITIONS**:

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.

---

[4]Georgetown v. BZA, No. 01-AA-1182, December 4, 2003, slip opinion, at pp. 35-38.

[5]Slip opinion at p. 37.

[6]Slip opinion at p. 37.

[7]Slip opinion at the top of p. 38.

2. [Hillandale takes no position on whether or how this condition should be revised.]

3. [Hillandale takes no position on whether or how this condition should be revised.]

4. [Hillandale takes no position on whether or how this condition should be revised.]

5. [Hillandale takes no position on whether or how this condition should be revised.]

6. [Hillandale takes no position on whether or how this condition should be revised.]

7. [Hillandale takes no position on whether or how this condition should be revised.]

8. [Hillandale takes no position on whether or how this condition should be revised.]

9. [Hillandale takes no position on whether or how this condition should be revised.]

10. [Hillandale takes no position on whether or how this condition should be revised.]

11. The Applicant shall avoid scheduling events that attract large numbers of visitors to the campus during the peak traffic times of 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. The Applicant shall employ campus personnel as necessary to direct visitors to campus parking areas and to ensure smooth flow of traffic into and out of the campus.

    a. All weekday evening performances at the Performing Arts Center expected to draw more than 100 visitors shall begin no earlier than 7:00 p.m.

    b. Athletic events at Harbin Field expected to draw over 100 visitors shall begin before 4:00 p.m. or after 7:00 p.m.

12. The Performing Arts Center, Harbin Field, and McDonough Arena shall be used for purposes related to the University or the community, and not for non-University events whose primary purpose is revenue generation.

13. The helipad shall be used on for medically necessary purposes. The Applicant shall provide monthly reports regarding use of the helipad, including credible evidence of medical necessity associated with its use, to ANC 2E, the Alliance for Local Living, and other community organizations that request the information.

14. [Hillandale takes no position on whether or how this condition should be revised.]

15. The Applicant shall maintain a parking inventory of not more than 4,080 off-street

parking spaces within the campus boundary.

16. The Applicant shall enhance its Transportation Management Program:

    a. To promote greater transit usage, including increased ridership of the GUTS bus service;

    b. To provide additional parking in satellite locations linked to the campus by shuttle bus;

    c. To work with the community, MedStar, and the Department of Public Works as part of a cooperative team effort to look at mitigation strategies for Reservoir Road.

17. The Applicant shall include, in all future applications for further processing of the campus plan, the following information:

    a. Actual enrollment of traditional undergraduate students, as of 30 days prior to the hearing date, including documentation and an explanation of the methods and assumptions used in the calculation;

    b. Whether the Southwest Quadrangle poject has been completed, and, if so, the date it began use as an undergraduate dormitory;

    c. A progress report on the implementation and operation of the Off-Campus Student Affairs Program, including information on number of complaints received concerning student misconduct, reported violations, and outcomes, including what sanctions were imposed and the fines paid, if any;

    d. The number of off--street parking spaces within campus boundaries, as of 30 days prior to the hearing date, including documentation and an explanation of the methods and assumptions used in the calculation; and

    e. A status report on the Transportation Management Program.

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.

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.

Respectfully submitted,



Charles R. Braun
Representative of
HILLANDALE HOMEOWNERS ASSOCIATION
P. O. Box 1035
Berkeley Springs, WV 25411
304 258-5472
202 487-8007

APPENDIX: EVIDENCE CONCERNING 4,080 PARKING SPACE CAP

A. *Georgetown's History of Campus Planning and the Parking Cap*

Georgetown's campus originated in a 1983 Board order governing its campus plan, and was continued by the Board's 1990 order on Georgetown's proposed "1989 Bicentennial Campus Plan." This cap originated *as a means of limiting the amount of traffic that Georgetown would generate to and from its campus*. The condition's original purpose, like its purpose in this case, was thus to ensure that Georgetown's campus plan not affect adversely the use of neighboring property in accordance with applicable Zoning Regulations and Maps.

B. *The Parking Cap in Georgetown's Proposed 2000-2010 Plan*

1. The Proposed Plan

The proposed plan which Georgetown first submitted to the Board in January 2000 proposed the continuation of the 4,080 parking space cap, which had been established in prior campus plan orders, as a means of showing that the plan was not likely to be injurious to neighboring property. Its proposed plan asserted in particular that parking demand, although expected to increase, would remain below the proposed cap; and that the cap would serve as a limit on the amount of traffic that Georgetown would generate in nearby neighborhoods.

> " * * * [T]he number of campus parking spaces (4080) has remained constant over the last 10 years and remains adequate." BZA Exhibit 6, 1/27/00 draft campus plan submitted on 1/31/00, bottom of p. 18. "The University's Transportation Management Plan (Appendix N) includes several key components: a maximum on the number of parking spaces which places a limit on automobile use, * * * . * * * . This 2000 plan maintains the [University's] commitment [to reduce traffic traversing through local neighborhoods] * * * by maintaining the campus parking cap." Exhibit 6, Appendix L, p. 1 (emphasis added). "The campus parking supply is limited to a maximum capacity of 4080 spaces * * * . Id. at p. 3 (emphasis added). "The 2000 Campus Plan projects no increases in parking demand, in fact, the expectation is that campus traffic and

> parking demand may decrease * * * . Therefore, the current campus parking cap will remain adequate through 2010." Id. at p. 7 (emphasis added). "The University parking space count is currently limited to 4,080 parking spaces * * * . The University has operated with this parking cap since 1983. Through annual increase in the cost of an individual parking space, demand for the spaces has not exceeded capacity." Id. Appendix N, section 1, at pp. 1-2. "Throughout the next ten years, the * * * [University's] commitments include: * * * Continued use of price as a determinant in controlling demand for on-campus parking." Proposed Campus Plan, January 2000, Appendix N, section 4.

The Applicant's pre-hearing "Statement" and its accompanying revised proposed campus plan, which Georgetown submitted on May 30, 2000, took essentially the same position supporting the 4,080 parking cap's continuation:

> "The campus parking supply is limited to a maximum of 4,080 spaces." Exhibit 46A, Statement of the Applicant, May 30, 2000, Supplemental Record (Supp. R.) 20 (emphasis added). "[T]he number of campus parking spaces (4080) has remained constant over the last 10 years and is to date, adequate." Revised Proposed Campus Plan, May 30, 2000, Exhibit 46A at bottom of p. 18, Supp. R. 48 (emphasis added). "This 2000 plan maintains * * * the campus parking cap." Id. Appendix L, p. 1, Supp. Rec. 89 (emphasis added). "The campus parking supply is limited to a maximum capacity of 4080 spaces * * * ." Id. at p. 3, Supp. R. 91. "The 2000 Campus Plan projects no increases in parking demand, in fact, the expectation is that campus traffic and parking demand may decrease * * * . Therefore, the current campus parking cap will remain adequate through 2010." Id. at 8, Supp. R. 96 (emphasis added). "The University parking space count is currently limited to 4,080 parking spaces * * * . The University has operated with this parking cap since 1983. Through annual increases in the cost of an individual parking space, demand for the spaces has not exceeded capacity. Demand for parking has been constant over the past four years. It is not anticipated that there will be an increased demand for parking in the foreseeable future." Id. Appendix M, section 2, pp. 1-2, Supp. R. 100-101.[1]

Thus, all of Georgetown's pre-hearing evidence assumed or supported a continuation of the very 4,080 parking space cap to which Georgetown objected in its appeal, both in terms of

---

[1]References hereinafter to "Supp. R." are to the supplemental record as filed with the Court.

the cap's adequacy in meeting Georgetown's needs, and in meeting the surrounding neighborhood's needs. The other parties to the proceeding thus had no notice, before the administrative hearing began, that discontinuation of the parking cap would be proposed by the applicant or considered by the Board.

2. The public hearings

In the two public hearings held on this application, Georgetown did not depart from its pre-hearing submissions supporting the parking cap's continuation. Georgetown instead proposed and continued to provide extensive evidentiary support for the 4,080 parking space "cap" that Georgetown later asked the Court to strike down as arbitrary, irrational, and lacking in substantial record evidentiary support.

Georgetown's expert witness on traffic, Louis J. Slade, testified at the June 13 hearing in part as follows:

> "My firm is responsible for the traffic and parking portions of this campus plan. * * * The keys to * * * [the success of Georgetown's proposed Traffic Management Plan or TMP] are * * * the University's commitment to intensive management of its parking system, and the fact that the University has a parking cap imposed by the BZA's last campus plan which will remain unchanged in this current campus plan. * * * There will be more parking demand. * * * However, the parking cap will remain in place. * * * So inasmuch as the capacity restriction that the parking cap creates to hold down traffic, that will all remain in place as it is today. * * * As I mentioned, the current cap on the entire campus is 4,080 spaces. * * * The demand for parking is currently about 3600 cars at the peak time, which is about 90 percent of the capacity, which provides an adequate excess capacity for people to usually find a space * * * . We developed projections for new demand levels, working with MedStar, their traffic consultants, and the University, as well as for University parking demand levels. The amount of parking demand will increase over what it is today, if there was [*sic*] no improvements in the transportation management plan. But because we will improve the transportation management plan extensively, * * * we'll keep the total demand at the 3600 level, with the same buffer of excess parking to allow people to usually find a space. * * * So based on these findings, we've determined

that the campus plan will not have an adverse effect on traffic or parking conditions in the area." R. 587, 588, 590-91, 593, 594, 595 (Tr. 118, 119, 121-122, 124, 125, 126) (emphasis added).[2]

Mr. Slade's prepared written testimony, which was submitted for the record at the Board's request, not only supported only a continuation of the 4,080 parking space cap; it also summarized the results of a traffic study showing that there was an "abundant" supply of on-street parking in the surrounding neighborhood.

> "First and foremost, the University will maintain its 4080 space parking cap [and two other traffic and parking control features of the preexisting plan] * * * . Therefore, traffic volumes and patterns will remain very similar to what they are today. * * * We estimated the impact of the University on neighborhood on-street parking. We conducted surveys of street parking in the area bounded by 37th Street, 39th Street, Reservoir Road and T Street where we enumerated the cars both on weekdays and on weekends at various times of the day. Almost the entire neighborhood is protected from long term parking by University or other non-resident parkers with zone 2 residential parking permits, or parking meters. At the worst times, on weekdays, 38% of the spaces were occupied by vehicles that did not display a zone 2 sticker. On weekends the number was 28%. Many, but not all of these parkers are medical center visitors and employees. It should be noted that during these time periods, there were abundant vacant parking spaces in this study area. * * * In summary, the findings of our studies indicate the following: * * * The parking cap * * * will remain as it is today so that the basic patterns of traffic will be similar in the future as they are today[;] * * * Traffic growth will be contained because the parking cap will not be increased[;] * * * . Based on these findings we have determined that the campus plan will have no objectionable impact on traffic and parking conditions." Exhibit 68, Prepared Testimony of Louis J. Slade, submitted to Board on July 12, 2000, by Letter dated July 11, 2000, Tab H, pp. 5, 7 -9, R. 911, 913-915 (emphasis added).

Thus, the parking cap continued to serve, during the hearing, as part of Georgetown's evidence for showing that its plan would not be injurious to Georgetown's neighbors.

---

[2] References to "R." are the record as filed with the Court. References to "Tr." are to the page numbers of the transcript.

Testimony from Hillandale's traffic expert, submitted in writing before the hearing, showed that he understood Georgetown's proposed plan to include a continuation of the 4,080 space parking cap, and he did not object to it. Exhibit 44, Attachment, p. 1, R. 137.

The Department of Public Works testimony, which the Office of Planning endorsed, similarly presupposed, and supported, the continuation of the parking cap to which Georgetown now objects. Exhibit 48, DPW Report, R. 412; Exhibit 52, OP Report, R. 446.

After the hearing, and before the Board's initial final order, Georgetown continued to litigate diligently in support of its proposed continuation of the parking cap. Georgetown's post-hearing proposed findings said, "The proposed Campus Plan maintains the current parking cap of 4,080 parking spaces to discourage additional cars from coming to the campus." Applicant's Proposed Findings of Fact and Conclusions of Law, August 24, 2000, ¶ 17 on p. 7, R. 1853 (emphasis added). "The proposed Campus Plan maintains the current parking cap of 4,080 parking spaces to discourage additional cars from coming to the campus." Id., proposed finding 7 at p. 23, R. 1869 (emphasis added).

3. ANC 2E's Support

ANC 2E's recommendation in support of Georgetown's proposed campus plan was explicitly premised on the ANC's expectation, based on Georgetown's pre-hearing representations, that the 4,080 parking space cap to which Georgetown has since objected would be continued. The ANC's resolution stated in pertinent part as follows,

> " * * * Whereas, Georgetown University's 2000-2010 campus plan proposes to maintain the current parking cap at 4080 cars; * * * Therefore, be it resolved, that ANC 2E supports Georgetown University's 2000-2010 campus plan as presented * * * ." (ANC 2E letter, June 8, 2000, R. 415-416 (emphasis added).

That Georgetown itself understood the ANC's recommendation of Georgetown's plan to be premised on Georgetown's continuation of the 4,080 space parking cap is shown by the following post-hearing proposed finding, which Georgetown submitted after the hearings were concluded:

> "As recommended by the ANC [2E], the Board is * * * prohibiting the University from increasing the cap of 4,080 parking spaces on campus." Georgetown's Proposed Finding 11 on p. 24, R. 1870 (emphasis added).

4. Community Comment

At the public hearing, while the record was open, Hillandale provided an expert traffic witness whose testimony expressly assumed, based on Georgetown's proposal, and Georgetown's supporting expert testimony, that the preexisting parking cap would be continued: " * * * an overall campus parking cap of 4,080 spaces would be maintained." Hillandale HOA Traffic Impact Evaluation, p. 2, R. 137.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Proposed Findings of Fact and Conclusions of Law of the Hillandale Homeowners Association was mailed, postage prepaid, on December 17, 2004 to:

Tom Birch, Chairperson
ANC 2E
3265 S Street, NW
Washington, DC 20007

Scott Anderson, General Manager
Hillandale Homeowners Association
3939 Hillandale Court, NW
Washington, DC 20007

Charles R. Braum
c/o Hillandale Homeowners Association
P.O. Box 1035
Berkeley Springs, WV 25411-3035

Barbara B. Downs, President
Citizens Association of Georgetown
3222 N Street, NW
Washington, DC 20007

Patricia Scolaro, President
Burleith Citizens Association
1807 37th Street, NW
Washington, DC 20007

Georgetown Residents Alliance
Down W. Crockett, Esq. Chairman
3070 Q Street, NW
Washington, DC 20007

R.D. Andrew, President
Foxhall Community Citizen's Association
1413 Foxhall Road, NW
Washington, DC 20007

Stephen A. Hopkins, President
Cloisters in Georgetown Homeowners Association, Inc.
3524 Reservoir Road, NW
Washington, DC 20007
Council Member Jack Evans, Ward Two
1350 Pennsylvania Avenue, NW
Suite 106
Washington, DC 20004

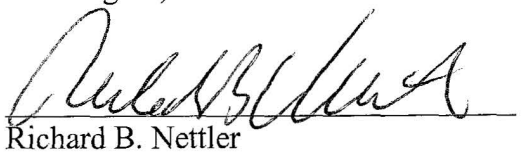
Denzil Noble, Acting Zoning Administrator
Building and Land Regulation Administration
DCRA - 941 N Capitol Street, NE
Washington, DC 20002

Kenneth G. Laden, Administrator
Department of Transportation
2000 14th Street, NW
Washington, DC 20009

Ellen McCarthy, Deputy Director
Office of Planning
801 N. Capital Street, NE - 4th Floor
Washington, DC 20002

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, NW - 6th Floor
Washington, DC 20001

Deborah B. Baum, Esquire
Shaw Pittman
2300 N Street, N.W.,
Washington, D.C. 20037



Richard B. Nettler