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BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

In Re: Board of Zoning Adjustment Order No. 16566

APPLICANT'S MOTION TO STRIKE

The President and Directors of Georgetown College ("Georgetown" or "The University"), hereby request that the Board strike the new "evidence" that the Citizens Association of Georgetown ("CAG") attempted to proffer in this remand proceeding and all portions of CAG's Proposed Order that rely on matters outside the record. Alternatively, if the Board chooses to consider CAG's new evidence, the University should be given an opportunity to rebut the improper inferences that CAG asks the Board to draw from this new information.

The Board could not have been clearer in its instructions to the parties on remand. First, it accepted recommendations from the parties as to the format of the proceedings on remand. CAG requested that the Board hold "a hearing to receive new evidence." Order No. 16566-D at 2. The University and the Hillandale Homeowners Association ("Hillandale") both opined that the Board should receive no new evidence, and that written submissions should be adequate. The Board "agree[d] with the Applicant and Hillandale that additional hearings are not needed for the Board to determine whether the application should be granted, and, if so, what conditions are required to mitigate … any potential adverse impacts or objectionable conditions arising from the university use." Order No. 165666-D at 2. The Board then directed all parties to file a proposed order, with supporting findings of fact and conclusions of law. It did not remotely suggest that any party could submit new evidence, and specifically rejected CAG's request that the Board hold a hearing for that purpose.

ORIGINAL

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EXHIBIT NO.285

BZA
Case No. 16566
Exhibit No. 285

Nevertheless, CAG did just what the Board said it could not do: it submitted new evidence, beyond the scope of the record, in alleged support of its proposed order. (Ironically, as explained below, rather than support its case, the data CAG submitted undermine the basic premise of its arguments.) CAG cited no authority for its proffer, other than to broadly state that, "Although not a part of the record in this case, these materials are properly before the Board and should be considered in making your ruling." (CAG December 23, 2004 cover letter.) These new data are admittedly outside the scope of the record on which the Board is to rely on remand. Given that the BZA has expressly told the parties that it would *not* hold a hearing to consider new evidence, CAG's submission of new evidence should not be permitted. Accordingly, the Board should strike this evidence and should not consider any references to it in CAG's proposed order, and should not adopt any proposed finding, conclusion or condition that relies on such evidence. Specifically, the Board should not consider pages 23-24 of CAG's Proposed Order (black-lined version) because those pages rely on CAG's newly submitted information.

CAG's new evidence consists largely of reports of calls to the University's hotline, which is the primary means by which the University's neighbors call in complaints of any nature regarding conduct that they attribute to students.[1] CAG essentially uses the gross numbers of

[1] CAG also discusses a further processing application that the University filed with the Zoning Commission after the initial Campus Plan Order (page 24) in which CAG urged the Commission to prohibit the University from continuing its historical practice of averaging its fall and spring enrollment to determine compliance with the enrollment cap. Ultimately, just prior to the Court's decision in this matter in which it vacated the Campus Plan Order, the Commission announced that it would stay its decision on the averaging issue for one year to allow the University to seek clarification or an amendment. Obviously, there could thereafter be no clarification or further proceeding as there was no longer any Campus Plan Order in effect. For CAG to advise this Board that the Commission gave the University one year "to comply." (CAG Proposed Order at 24)

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calls placed by neighbors since the original campus plan proceeding as a proxy for the level of student misconduct, and then argues that the University's Off-Campus Student Conduct initiatives are not working. Therefore, it argues, no new undergraduates should be enrolled because more students means more objectionable conduct. (*E.g.,* CAG Proposed Order (black-lined) at 23.) It is extremely interesting to note, however, that these data, even as CAG describes them, actually contradict CAG's fundamental premise, that more students means more misconduct. As CAG itself highlights in its discussion (*Id.*), apparently without focusing on the necessary implications, the data showed a significant *increase* in complaints regarding student conduct in the spring semester, when there are demonstrably *fewer* students (by 6-10% as CAG states). Therefore, the clearest conclusion one can draw from CAG's proffered data is that, as the University has tried to explain for some time now (and as the BZA acknowledged in its initial Campus Plan Order), issues related to student misconduct arise from a small minority of the student population. They are *not* by any means proportionate to the number of students enrolled, as amply demonstrated by CAG's own data.

CAG invites the use of this data to support its proposed Condition 2, which would both retain the undergraduate enrollment cap from the 1990 Campus Plan, *and* eliminate the University's acknowledged historical practice of averaging its spring and fall enrollments to determine compliance (spring being traditionally materially lower than fall enrollment). Thus, CAG uses these data to support a revised Condition 2 that would effect a net *reduction* in the

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is simply false. It also quotes from the Zoning Commission Order (No. 02-32) in that matter and distorts the Commission's ruling on reconsideration. This is a perfect example of the mischief in allowing parties to rely on matters outside the original record.

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pre-existing cap. Not only was the new evidence that CAG proffers to the Board improper procedurally, it is unfair in substance as CAG attempts to relate it to the issues at hand.

In short, the BZA logically concluded that its necessary revisions to the Campus Plan Order on remand should be based on the hearing record that underlay the original Campus Plan Order and was considered by the Court of Appeals. CAG's misguided effort to bolster the record and circumvent the BZA's ruling by adding incomplete evidence post-dating the record that the Court reviewed, in a fashion neither contemplated by the BZA nor the Court of Appeals, threatens to open the floodgates to new hearings regarding current off-campus student conduct and other conditions. If anything, CAG's proffered data flatly contradict CAG's argument concerning the relationship between the level of students enrollment and the level of objectionable conduct off-campus. The University respectfully urges the Board simply to strike the proffered evidence. Almost four years have elapsed since the BZA's issuance of its original Campus Plan Order in this matter and the University has no Campus Plan in effect. No

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It is grossly unfair unless the other parties are allowed to comment to correct any mischaracterizations.

constructive purpose could be served by opening the record and unnecessarily prolonging these proceedings.

Dated: February 1, 2005

Respectfully submitted,

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