BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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Application of the President
And Directors of Georgetown College **BZA application No. 16566**

CITIZENS ASSOCIATION OF GEORGETOWN'S RESPONSE TO APPLICANT'S MOTION TO STRIKE

On February 1, 2005, The President and Directors of Georgetown College ("Georgetown") served a response to the proposed Findings of Fact and Conclusions of Law filed by the Citizens Association of Georgetown ("CAG") in conformity with Board Order 16566-D, styled as a motion to strike certain portions of CAG's submission. As a preliminary matter, we note that the Board's Order specifically precluded responses to the filings of other parties and the Board of Zoning Adjustment Rules of Practice and Procedure (the "BZA Rules"), 11 DCMR Chapter 31, do not permit Georgetown to file such a motion. The only motions permitted by the BZA Rules are motions for Reconsideration or Rehearing.[1] Accordingly, the Board should reject Georgetown's unauthorized motion. In the event that the Board decides to rule on Georgetown's motion, CAG offers the following response.

As part of its submission CAG included, for the convenience of the Board, copies of reports containing submitted by Georgetown to the Zoning Administrator on a quarterly basis pursuant to Condition 9 of the Campus Plan Order. It is well settled that an administrative agency may take judicial notice of its own records,[2] and that judicial notice may be taken at any time.[3] The reports Georgetown seeks to exclude were prepared by Georgetown and were submitted to the Zoning Administrator by Georgetown pursuant to this Board's Order.

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[1] *See* 11 DCMR 3126
[2] *See, e.g.,* Majerle Mgmt. v. D.C. Rental Hous. Comm'n, 2004 D.C. App. LEXIS 698 (D.C. 2004) and Renard v. D.C. Dep't of Employment Servs., 673 A.2d 1274, 1276 (D.C. 1996)
[3] Christopher v. Aguigui, 841 A.2d 310, 312 (D.C. 2003), *citing* United States v. Burch, 169 F.3d 666, 671 (10th Cir. 1999).

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CAG furthermore referred to these reports only to rebut any possible argument by Georgetown that since it had built a new dormitory, an increase in the cap and the concomitant number of undergraduate students living off campus should not create any problems in the community. These reports show that the present number of undergraduate students living off campus is still causing serious adverse effects on the neighboring community, underscoring the wisdom of the Board's reluctance in its Campus Plan Order to accept Georgetown's arguments that the completion of the new dormitory together with a strengthened Off-Campus Student Affairs Program should resolve the adverse impacts its students were having on the surrounding community.

Georgetown argues that because the reports show a increase in complaints in the Spring 2004 semester over the Fall 2003 semester, the data contradict CAG's contention (which is fully supported in the record) that student misconduct increases as the number of undergraduates living off campus increases. However the data in question do not support this strained argument. While Georgetown asserts that there is a 6-10% decrease in student enrollment during the Spring semester versus the Fall semester, there is no evidence to suggest that the number of students living off-campus decreases proportionally. Logic would dictate that since most residential leases are for one-year, the number of students living off-campus would not decline from the Fall semester to the Spring semester. Students who go abroad or graduate early will find someone else to fill their off-campus bed, therefore the number of students living in the surrounding neighborhood – which is the only relevant datum – will not decrease. Georgetown's focus on these reports also ignores the overall trend - over the past 15 years as the increase in undergraduate enrollment outpaced the supply of on campus student beds, off-campus misconduct has also increased. *See* CAG Proposed Findings of Fact ¶¶12-18.

What the reports clearly do demonstrate is the failure of the Off-Campus Student Affairs Plan to control student misconduct. Despite the modest reduction in students living off campus following the completion of the new dormitory, student misconduct in the surrounding community continues unabated. There is thus a clear need to retain the current cap on undergraduate enrollment and require Georgetown to be more proactive in dealing with misconduct by its still significant population of off-campus students. This is hardly a record (with or without the data Georgetown wants to strike) that justifies an increase in the number of undergraduates living off campus.

Georgetown also takes issue with CAG's citation to Zoning Commission Order 02-32 (the "ZC Order") for the purposes of establishing that averaging of spring and fall undergraduate enrollments is not permitted. While CAG does not dispute that Georgetown had the opportunity to seek clarification of the ZC Order, it is clear from the plain language of the ZC Order and the transcript of proceedings that the Zoning Commission believes that the use of averaging was inappropriate and gave Georgetown one year to comply with the order.[4] Accordingly the Board should require Georgetown to come into compliance with its prior Order without any further delay.

[4] Chairperson Mitten stated, "What I would propose is that we limit the stay of the enforcement of paragraph 26 or enforcement based on paragraph 26 for a year from now. In the meantime the university is just starting a new admission cycle so they are perfectly capable of coming into compliance with the cap as we interpret the gap for the BZA." Zoning Commission Transcript, November 12, 2003, 128:14-20. The Zoning Commission voted 4-0 in favor of the stay of enforcement. *Id.* at 131:1-6.

For the foregoing reasons, CAG respectfully requests that Georgetown's response to CAG's submission be rejected or in the alternative, denied.

Dated: February 7, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

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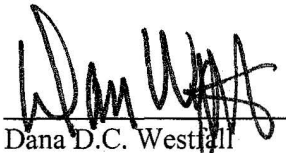
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