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District of Columbia Zoning Commission
441 4th Street, NW
Suite 210
Washington, DC 20037

Re: University of Notre Dame, Zoning Commission Case No. 02-25, 1615 New Hampshire Ave., NW ("Property")

Dear Chair Mitten and Members of the Commission:

This is a response, on behalf of the University of Notre Dame, to the Motion to Reconsider ("**Motion**") filed on behalf of the Corcoran Mews Condominium Association and Kathleen Lynch, Kristen Holtz, Tim Foley, and Jean E. Berube ("**Opponents**") on November 6, 2002. [1] The grounds articulated in the Motion are without merit and the Motion is contrary to the standards set forth in the Zoning Regulations and should be denied.

A. Standing to file a Motion to Reconsider

Under Section 3126.2 of the Zoning Regulations, only a party may file a motion for reconsideration (11 DCMR § 3126.2)[2]. The Opponents are not parties in this case. Indeed, they never even requested party status. The Opponents claim that they would have formally intervened as parties had they "together or individually been provided formal notice of the UND proposal as required by DC law." This claim is frivolous and untrue. Each of the opponents was provided adequate notice of the hearing. The Property was properly posted, and each of the Opponents was listed on the property owner list submitted by the University of Notre Dame as part of its application. The Office of Zoning sent out notices of the hearing to all addressees so listed in the

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1 It should be pointed out that the Regulations require that any such Motion be served on the parties (11 DCMR § 3126.3). The University was never served with this pleading.

2 As the Commission is aware, for campus plans, the Commission operates under the rules of the Board of Zoning Adjustment.

ZONING COMMISSION
District of Columbia
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Exhibit 53

ZONING COMMISSION
District of Columbia
CASE NO.02-25
EXHIBIT NO.53

University's application, including Opponents, and did not receive any "returns" from the Post Office from the Opponents' addresses.

Further, the Opponents clearly received actual notice of the application and the hearing. Jean Berube and Kathleen Lynch both appeared at the hearing held on September 12, 2002 and testified. Neither responded when the Chair requested to hear preliminary matters, including requests to be "parties" in the case. Also, the Corcoran Mews Condominium Association, Ms. Holtz, Mr. Foley, Mr. Berube, and Ms. Lynch each submitted letters and a petition into the record prior to the Commission's decision. The Opponents' concerns were heard by the Commission both in person and in writing prior to its decision of October 28, 2002. Even so, despite their knowledge of this case and appearance at the hearing, none of the Opponents ever requested party status. Thus, pursuant to the Zoning Regulations, this Motion is not properly before the Commission.

B. Purpose of Reconsideration

The Zoning Regulations do not allow a reconsideration or rehearing of this case to be considered. Section 3126.6 requires that such a request shall not be considered unless "new evidence is submitted that could not reasonably have been presented at the original hearing" (11 DCMR § 3126.6). The arguments advanced by the Opponents are the same arguments they advanced both in person during the hearing and in their written submissions. They have failed to identify any new evidence or to explain why such evidence could not reasonably been presented during the original hearing.

C. Claims Without Merit

Finally, the grounds for the Motion are without merit. The Commission heard all the evidence in this case, weighed it properly and made its decision. It is clear that the Opponents are not satisfied with the decision, but that does not negate the Commission's sound and deliberate action. The Opponents' complaints are without merit.

D. Conclusion

The Opponents clearly had notice of this application and of the public hearing. The arguments they advance in their Motion are the same arguments they advanced during the two ANC meetings, during the original public hearing, and in their written submissions. They never requested "party" status. Accordingly, the University of Notre

Dame respectfully requests that the Motion to Reconsider University of Notre Dame Program at 1615 New Hampshire Avenue, N.W. be denied.

Respectfully submitted,

Phil Feola

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cc: Thomas Kellenberg
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Steve Teitelbaum, Esq.
ANC 2B

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