BEFORE THE ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

In Re: Zoning Commission Case No. 02-32 (Georgetown Performing Arts Center)

MOTION FOR RECONSIDERATION OF ZONING COMMISSION ORDER NO. 02-32 OR, IN THE ALTERNATIVE, FOR CLARIFICATION OF BOARD OF ZONING ADJUSTMENT ORDER NO. 16566

INTRODUCTION

Pursuant to 11 DCMR § 3126.2, as incorporated by 11 DCMR § 3035.5, the Citizens Association of Georgetown ("CAG") hereby moves for reconsideration of Zoning Commission Order No. 02-32 or, in the alternative, for clarification of the Board of Zoning Adjustment Order No. 16566 which approved with Conditions the Georgetown University Campus Plan (hereinafter "Order No. 16566"). Specifically, CAG seeks reconsideration of the Zoning Commission's finding that Georgetown University was in substantial compliance with Conditions 3, 9, 14, and 17 of Order No. 16566. At a minimum, the Zoning Commission should clarify any ambiguities in those Conditions and warn Georgetown University that to obtain any future follow-on special exception approvals under the Campus Plan, it must more rigorously comply with each condition in Order No. 16566 to satisfy Condition 19, which requires the University to "consistently remain[] in substantial compliance" with the Conditions of approval of its Campus Plan.

When the Campus Plan was being considered by the Board of Zoning Adjustment (BZA) CAG, other civic associations and individual citizens presented a large body of evidence that the students of Georgetown University were having a substantial adverse impact on the neighborhood surrounding the University. The student misconduct set forth in the record of that proceeding was not limited to students living off-campus but included late night disturbances of the peace by students living on-campus. In response to this evidence the BZA placed several conditions on its approval of the Campus Plan, including provisions capping enrolment of undergraduates until more on-campus student housing is built (Condition 2), requiring the University to move on-campus students living off campus who were engaging in serious or repeated misconduct (Condition 3), requiring the University to set up a reporting program to advise the community of the University's response to each citizen complaint of student misbehavior off campus (Condition 9), and requiring the University to take steps to enforce DC laws governing registration of motor vehicles as a response to the increasing number of student cars registered out of state monopolizing the parking spaces in the neighborhood surrounding the University (Condition 14). The evidence presented to the Commission at its hearing on the Georgetown Performing Arts Center demonstrated that the University has not complied with any of those conditions. Under the BZA Order that failure should have lead to a suspension of approvals of all follow-on special exception applications until corrective action had been taken. While we can appreciate the difficulty this presented for the Commission because the Performing Arts Center application itself is non-controversial, unfortunately delaying such approvals is the only sanction for University failure to comply with the BZA Conditions. We are greatly

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concerned that letting off the University lightly in this instance is not an approach designed to obtain fuller compliance with these Conditions in the future and we therefore urge the Commission to reconsider its decision.

ARGUMENT

CONDITION 3: GEORGETOWN UNIVERSITY WAS NOT IN SUBSTANTIAL COMPLIANCE WITH ADMINISTERING OFF-CAMPUS HOUSING AS A PRIVILEGE

Order No. 02-03 concludes that Georgetown University was in substantial compliance with Condition 3 of Order No. 16566. Condition 3 states that "The Off Campus Student Affairs Program implemented and *enforced* by the Applicant shall specify that off-campus housing is a *privilege that can be revoked due to student misconduct*." Georgetown University submitted evidence that the sanction of revocation of off-campus housing privileges is contained in the Student Affairs Student Handbook (Georgetown letter of March 10, 2003, Exhibit G, recorded as Exhibit 53). Additionally, the University stated that in one case, a student's off-campus housing privileges were revoked. Despite evidence submitted by CAG and others that student misconduct off-campus was a continuing substantial problem for the community (*See* CAG Submission, Attachment C, recorded as Exhibit 40), the University contended that based on publication of the sanction in their Student Handbook and this single application of the sanction, it was in substantial compliance with Condition 3.

In fact Georgetown University has largely ignored student misconduct off-campus and has thus failed to comply with Condition 3 which specifically states that the provisions of the Off-Campus Student Affairs Program shall be *enforced*. Any doubt on that score is resolved by Condition 4 which states that "The Off-Campus Student Affairs Program shall adopt and *enforce* a Code of Student Conduct." Clearly, enforcement of the Conditions was intended when Order 16566 was approved. As Vice-Chairman Hood stated, "I just want to see a little more compliance....I have a problem sitting down there making up conditions and they're not enforced or they're not being abided by, because it's actually a waste of time." Zoning Commission Meeting, February 24, 2003 at 128:9-11.

Indeed, the University's own reports indicate that hundreds of incidents of student misconduct involving students living off campus have occurred over the past few years (Georgetown letter of March 10, 2003, Exhibit H, recorded as Exhibit 53). Further, the CAG Submission, Attachment C, recorded as Exhibit 40, contains detailed accounts of unruly behavior in the neighborhood ranging from noise and parties ("The noise out in the street on most nights between 1 and 4 am is beyond belief. The long parade of drunken students screaming into the night goes on still." E-mail to GAG dated January 10, 2003. "The students next door...are ruining our lives [there is] loud 'house music' shaking our house at 2 am...a tent of shower curtains over their back yard to prevent the police from seeing all the underage drinking at their party – it has been a year of living hell." Sallick Letter to CAG); to vandalism ("My neighbor returned home one night about 2:30 am to witness two GU students prying up bricks out of the sidewalk at 35th and Prospect and throwing them as hard as possible into the side of my car, breaking the windows and denting the fenders from front to rear." E-mail to GAG dated January

10, 2003. "Awoken from sleep by a rock breaking our bedroom window.... The glass shattered just above our heads. Letter to CAG dated January 15, 2003); to burglary ("We constantly have...stolen wreaths and plants" Sallick Letter to CAG "I have had my front door kicked in and split from top to bottom. I have had potted plants stolen from my porch." E-mail to GAG dated January 10, 2003); to assault and battery ("We have witnessed a brawl on our street. When we asked if the students watching the brawl would quiet down so that our baby could sleep, they screamed profanities at us. 'Stop acting like my [expletive] mom, [expletive],' was what I was told." Sallick Letter to CAG). While not every reported incident need result in the revocation of off-campus housing privileges, the University's failure to apply this sanction, except in a single instance, creates a prima facie case that the University has failed to meet its obligations under Condition 3.

Additionally, there is evidence that the University does not view off-campus housing as a *privilege* it should revoke in appropriate cases. In fact, just the opposite appears to be true – the University seems to view the neighborhood as a dumping ground for problem students. The Georgetown University Code of Student Conduct, attached as Exhibit A, contains sanctions that include suspension and expulsion from University housing – "Housing Suspension: loss of the privilege of living in any University housing for a specified period of time or until a specific condition or conditions are met. Housing Expulsion: loss of the privilege of living in any University housing at any time." The submission of Burleith Citizens Association dated January 16, 2003, filed as Exhibit 45, illustrates an instance where the University required a student with conduct problems to move *from* on-campus housing *to* off-campus housing.

At a minimum the University should be required to demonstrate compliance in the future by submitting information showing that off-campus housing privileges were revoked in all cases of serious, or repeated student misconduct off-campus. In the alternative, the University should be warned that, in the future, failure to revoke off-campus housing privileges when appropriate will be considered a violation of Order No. 16566.

CONDITION 9: GEORGETOWN UNIVERSITY HAS NOT PROVIDED THE OUTCOME OF EACH COMPLAINT REGARDING STUDENT MISCONDUCT IN ITS REPORTS TO THE COMMUNITY NOR ANY INFORMATION REGARDING ON-CAMPUS STUDENTS' BEHAVIOR WHEN IN THE COMMUNITY.

Order No. 02-03 concludes that Georgetown University was in substantial compliance with Condition 9 Order No. 16566. Condition 9 of Order No. 16566 mandates that the University "shall make publicly available data indicating the number and types of complaints received concerning student misconduct, and the outcome *of each complaint*, including whether sanctions were imposed and whether any fines paid."

The University provided only aggregate data in its quarterly reports and fails to cross-reference complaints received through the hotline with sanctions (*See* Georgetown letter of March 10, 2003, Exhibit H, recorded as Exhibit 53). When it suits its purposes, the University argues for a strict reading of Order No. 16566. The same strict reading of Condition 9 requires the University to make publicly available the outcome *of each complaint*, not an aggregate.

Quite simply, nothing in the reports submitted by the University satisfies the requirement of Condition 9.

The University argues that aggregate data must be provided so that student confidentiality is maintained. However, no identifying information need be provided to comply with this condition. Following a method used with great success by the Mayor's office, complaints could be logged with a case number which is given to the caller. Neighbors wanting to know how a complaint was resolved can then call and ask for information about their case number. This would give an aggrieved resident assurance that the University has addressed his or her individual complaint. Residents are currently discouraged by the ineffective handling of complaints by the University and have given up. As one resident noted, "Frankly, we have been disappointed in the response from the university. We have no idea if the students have even been reprimanded for their behavior." CAG Submission, Attachment C, recorded as Exhibit 40, Sallick Letter. Another resident stated, "Part of the reporting problem is that the hotline 'tracks' the complaints, but at 3 am, few neighbors, myself included, bother to call because it is totally ineffectual". CAG Submission, Attachment C, recorded as Exhibit 40, January 15, 2003 e-mail to CAG. The residents need concrete evidence that the University is addressing their concerns.

As previously noted, there is more to this request for information than allowing burdened neighbors to know the results of their complaints. Only complaint disposition information will permit the community to measure the success of the University's disciplinary program. Ultimately, if the Commission is asked by Georgetown to lift the enrollment cap in a few years, the members of the community and this Commission will need reports that are more then numeric generalities.

Even if the University is permitted to continue to provide information in aggregate form, the University should, at a minimum, be required to clarify and standardize the report from quarter to quarter. In the past, categories have changed from report to report (*e.g.* in one report Burleith data was separate from West Georgetown. In the next report that data was combined). The sanctions imposed also need to be clarified. Since an offense will often occur in one quarter and the sanction will not be imposed until a later quarter, making any sort of connection between the offense and the sanction under the current method of reporting is impossible. For example, the last quarter of 2002 saw 17 offenses committed by students living off-campus, but saw 45 sanctions imposed. There should be some method of determining a link between the sanction, type of offense and the time of the offense (*e.g.* 10 students were fined in Q2 for 3 noise complaints in Q2 and 4 noise complaints in Q1).

Additionally, we strongly urge the Commission to reconsider its decision to interpret Condition 9 of Order No. 16566 to apply only to off-campus students. Logically, the focus should be on where the offense occurred, not whether the student who committed the offense lives on-campus or off-campus. The resident is harmed in either instance. At the February 24, 2004 hearing, the Commission focused on Condition 6 as justification for limiting the scope of Condition 9 to include only off-campus students. Condition 6 states, "The Applicant shall maintain a telephone hotline to receive complaints regarding student misconduct. The hotline shall be staffed 24 hours per day, seven days per week, by University personnel who shall keep a

detailed record of each complaint received and shall forward each complaint to the appropriate authorities for immediate response." There is nothing in the language of Condition 6 to indicate that it was meant to apply only to students living off-campus. Hotline complaints are not limited to students living off-campus, the implication of the hotline is that it addresses off-campus behavior regardless of where the student lives. It follows that the reports generated from the hotline information should include *all* student misconduct that occurs off-campus.

When BZA was originally considering Application No 16566, Georgetown submitted information that indicated *all student misconduct* was to be covered by the off-campus reporting program – "All student conduct is included – both on and off campus." Response to BZA's Request for Additional Information, Georgetown letter of March 10, 2003, Exhibit I, filed as Exhibit 53. It was not until *after* Order 16566 was approved that Georgetown sought to limit the scope of the reporting program solely to off-campus students. It is clear from this evidence that Georgetown University and the BZA both intended that *all* students would be included in the reporting program created by this Condition. Accordingly the Commission should clarify that Condition 6 applies to off-campus student misconduct, whether the student is living on or off campus.

CONDITION 14: GEORGETOWN UNIVERSITY HAS NOT DEMONSTRATED THAT IT MAINTAINS AN ACCURATE RECORD OF STUDENT VEHICLES AND HAS FAILED TO ENFORCE ITS CODE OF CONDUCT WITH REGARD TO VIOLATION OF REGISTRATION LAWS.

Order No. 02-03 concludes that Georgetown University was in substantial compliance with Condition 14 Order No. 16566. In addition to other requirements which are not at issue, a strict reading of Condition 14 requires the that the University "*shall* maintain an *accurate record* of the license plate numbers of motor vehicles kept by all University students" and that "[f]ailure to abide by District law concerning registration of student vehicle *shall* constitute a violation of the Code of Student Conduct."

The University maintains that it meets the criteria set forth in the first requirement of Condition 14 because the University Registrar "asks students" to provide information related to their vehicles at the beginning of each semester. There is no indication that the provision of this information to the University is compulsory. Therefore, there is no reason to believe that this record is accurate as required by the Condition. To the contrary, evidence indicates that this list is either grossly incomplete, or that the University is not enforcing its Code of Student Conduct – either of which indicates a failure to comply with Condition 14. *See* Submission of Burleith Citizens Association dated January 16, 2003, filed as Exhibit 45, listing 123 cars located on the west side of Burleith believed to belong to students living off-campus. *See also* CAG Submission, Attachment C, recorded as Exhibit 40, January 15, 2003 e-mail to CAG, "Parking is always a problem when school is in session. It is truly remarkable to see the number of spaces available during school breaks." Students who fail to comply with District of Columbia vehicle registration laws are not only depriving law-abiding residents of scare parking, but also depriving the District of Columbia of revenue necessary to maintain its streets.

The University also demonstrated its noncompliance with Condition 14 in its January 22, 2003 letter filed with the Commission (filed as exhibit 44): "Students who subsequently failed to register their motor vehicles received follow-up electronic messages from the Office of Off-Campus Student life." Clearly, as stated in this letter, the University was aware of the fact that students were not complying with the District vehicle registration laws, yet took no disciplinary action – it simply sent them an e-mail.

The Georgetown University Code of Student Conduct classifies a violation of local laws that occurs on or off campus as a Category B offense. A violation of the District Law with regard to vehicle registration thus falls within this classification. The Code of Student Conduct states that "Category "B" offenses are subject to sanctions including but not limited to: housing probation, housing suspension, disciplinary probation, or disciplinary suspension." (*See* Code of Student Conduct, Attached as Exhibit A). Despite the evidence indicating that many students fail to register their vehicles in the District of Columbia, Georgetown has not submitted any evidence that any student has been sanctioned for a violation of the Code of Student Conduct for failure to abide by District law concerning vehicle registration. Condition 4 of Order 16566, which states "The Off-Campus Student Affairs Program shall adopt and enforce a Code of Student Conduct" requires the University to sanction students for violation of District vehicle registration laws, not just send them an e-mail.

The University has thus not even attempted to comply with the enforcement requirements of Condition 14. Because the record creates a prima facie case of non-compliance, the University should be required to comply with Condition 14 of Order No. 16566 by (1) taking appropriate actions to maintain an *accurate* record of the license plate numbers of motor vehicles kept by all University students and (2) taking disciplinary action against those students who fail to abide by District vehicle registration laws.

CONDITION 19: THE ZONING COMMISSION SHOULD CLARIFY THE TERM "SUBSTANTIAL COMPLIANCE" SO AS TO REQUIRE COMPLIANCE WITH ORDER NO. 16566.

In addition to assessing its compliance with each Condition, the Zoning Commission must assess Georgetown University's total performance with respect to all Conditions in determining whether the University is in substantial compliance with Order No. 16566. Even if the Zoning Commission finds Georgetown University in substantial compliance in this case, the University did not fully comply with several Conditions, including the student cap on enrollment (Condition 2). The Zoning Commission should clarify that the term "substantial compliance" in Condition 19 requires more evidence of compliance in the future.

Condition 19 states: "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."

Order No. 16566 should not be interpreted to allow Georgetown University to lurk on the line between compliance and non-compliance on so many Conditions. The Zoning Commission should at a minimum warn Georgetown University that, to obtain any future special exception approvals under the Campus Plan, it must more rigorously comply with each Condition of Order No. 16566. It should make clear that a failure by the University to demonstrate compliance in the face of evidence indicating non-compliance with more than one Condition will result in a finding that Georgetown has not consistently remained in substantial compliance with Order No. 16566.

CONCLUSION

The Citizens Association of Georgetown respectfully requests reconsideration of the finding in Order No. 02-32 that Georgetown University has "consistently remained in substantial compliance" with Order No. 16566. In the alternative, the Zoning Commission should clarify Georgetown University's obligations under Conditions 3, 9, 14, and 19 to provide appropriate guidance to the parties as to the University's obligations under those Conditions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing, *Motion for Reconsideration of Zoning Commission Order No. 02-32 or , in the Alternative, For Clarification of Board of Zoning Adjustment Order No. 16566* were hand delivered or mailed, postage prepaid, on September 15, 2003 to the following:

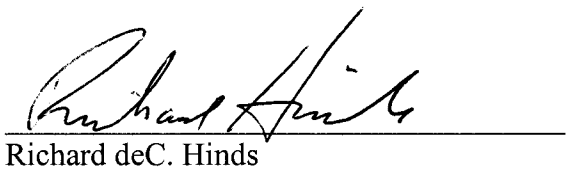
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