BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

In Re: Zoning Commission Order No. 02-32

APPLICANT'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, FOR STAY

2003 SEP 23 P 2:59

I.

Introduction

The President and Directors of Georgetown College ("Georgetown" or "The University"), pursuant to 11 DCMR §3029, hereby seek the Zoning Commission's reconsideration of Paragraph 26 of its Order No. 02-32, issued on September 5, 2003 ("the Order"), and specifically, request that Paragraph 26 be stricken from the Order.[1] In articulating a new methodology for measuring the University's future compliance with its undergraduate enrollment cap, Paragraph 26 unilaterally implements a Campus Plan amendment. It discards summarily the long and public history of the University's computation of its traditional full-time undergraduate enrollment[2] by averaging fall and spring numbers. Contrary to the 2000 Campus Plan, which explicitly authorized maintaining the University's preexisting enrollment cap, Paragraph 26 would appear to mandate a significant and immediate enrollment reduction. Because the University

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[1] While the Order was issued on September 5, 2003, a copy was not mailed to counsel for Georgetown until September 10, 2003, per the postmarked envelope attached hereto at Tab A, which makes Georgetown's Motion due on or before September 23, 2003, under 11 DCMR §3029 (ten days from service) and §3110.3 (three days for mailing).

[2] The enrollment cap under the Campus Plan Order, although generally referred to herein for brevity's sake as an "undergraduate enrollment cap," actually applies only to Georgetown's "traditional full-time undergraduate students; that is, undergraduate students who require housing." BZA Order No. 16566 at 12. The cap has never included "non-traditional students such as women returning to school, English as a second language students, commuters, and other non-traditional students not requiring housing." BZA Order No. 15302 at p. 9, ¶19.

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cannot responsibly or lawfully simply eliminate hundreds of undergraduates from its rosters, the new provision appears to place Georgetown in automatic — and, for all practical purposes, unavoidable — non-compliance with its Campus Plan Order.

Overview of Argument

Since 1990, Georgetown has carefully managed its fall and spring enrollment every year in order to stay beneath the 5,627 cap on full-time traditional undergraduates. In every fall semester but one since 1996, Georgetown's fall undergraduate enrollment has exceeded the 5,627 annual cap. In each of those academic years, the spring numbers have, for predictable academic reasons, been sufficiently smaller to result in an average annual enrollment that is under the cap. While current figures have not yet been fully tallied, the University expects its fall 2003 enrollment will again be substantially above 5,627, as it has been for most of the past decade, including in the fall of 2000, when Georgetown's enrollment methodology was squarely before the Board of Zoning Adjustment ("BZA").

During the 2000 Campus Plan proceeding, the BZA scrutinized enrollment figures to determine whether to permit the University's requested 500-student increase in the cap. At that time, the fall 2000 undergraduate enrollment was 5,840, obviously well above the annual cap. The University explicitly shared that number, and repeatedly explained its long-standing methodology of computing its enrollment numbers, with the BZA and the community. While the BZA ultimately did not see fit to *increase* the existing cap prior to completion of new on-campus housing (which was then under construction and is now complete and occupied), it never suggested that the University's fall 2000 enrollment, which was at that very time more than 200 students above the annual "cap," rendered the University non-compliant. Nor did it suggest that

the University had ever, much less consistently, been out of compliance for the previous years. And it certainly did not suggest, much less find, that the compliance methodology should be changed or the annual cap should be decreased.

The financial consequences of the enrollment decrease imposed by Paragraph 26 would be substantial and stark: a loss of even 100 fulltime traditional undergraduates would *annually* cost Georgetown approximately $3 million in lost tuition and fee revenue, revenues already tightly budgeted — in reliance upon the Campus Plan — to cover critical operating costs, including the operation of the new Southwest Quad residence hall complex designed to house an additional 780 undergraduates on campus. Attempting to come into compliance with this stunning reduction in the cap imposed by Paragraph 26, even over some period of time, would wreak havoc with the University's financial planning, and undercut its ability to afford the academic plans and mission, the faculty, staff, facilities, and program outlined in the Campus Plan and central to its continued success as a distinguished American research university.

As in 2000, Georgetown has projected that its 2003 enrollment numbers will be fully compliant with the Campus Plan Order as historically understood by the University and presented to the BZA and the University's opponents in the campus plan proceedings. The fall figures taken alone would, however, on their face undoubtedly exceed the annual cap if the Commission's new limitation under Paragraph 26 were sustained. Noncompliance with the Campus Plan Order could subject Georgetown not only to denial of future further processing applications, but also to fines, penalties, and revocation of building permits and certificates of occupancy. (Campus Plan Order, Condition 19.)

The University recognizes that the Commission was not a party to the 2000 Campus Plan proceedings, and that it may not have appreciated or intended the dramatic amendment of the Campus Plan Order or its severe and inequitable implications for Georgetown. Because those implications would seem to be the inevitable result of Paragraph 26, the University requests that this provision be stricken and the status quo restored, which can be effected without consequence to the balance of the Order. Alternatively, should the Commission decline to strike Paragraph 26 on reconsideration, the University requests that the Commission stay that provision pending further review, due to the untenable position in which this new limitation would place the University and the irreparable harm that its enforcement would cause both to the University and its students. Such review would be either through an administrative appeal to the District of Columbia Court of Appeals or, should the University opt to commence such a proceeding, by the Commission itself in a separate new proceeding in which the question of the proper construction of the enrollment cap could receive the Commission's fully informed and equitable consideration.

II.

Relevant Background

The Campus Plan Proceedings

The enrollment cap that is the subject of this motion was initially imposed in the 1990 Campus Plan. At that time, the BZA did not impose a cap as such, but instead adopted the University's proposed Campus Housing program, with the proviso that the projected 340-student increase in enrollment be capped at 340. It also ordered that the enrollment increase be phased in consistent with additional on-campus housing being built to accommodate the additional students, and all freshmen and sophomores being required to live on-campus. Order No. 15302 at

9, 36. The BZA noted in its 1990 Order that the University had not at that time yet reached its increased enrollment projections from its 1983 Plan.

In its 2000 Campus Plan application, the University sought a 500-student increase in undergraduate enrollment. Throughout the lengthy proceedings, substantial attention was devoted to the enrollment question and the opposition of some members of the community to any increase in undergraduates subject to the cap. After numerous meetings with the ANC, the University proposed a compromise position to which the ANC agreed--a 389-student increase to be phased in following the completion of the Southwest Quadrangle project, which includes three new residence halls designed to accommodate more than 780 additional undergraduates on-campus. Campus Plan Order at ¶¶2 and 31.

Some citizen activists were particularly focused on the enrollment issue, and continued to press the BZA on this subject. At one point in the proceeding, the BZA requested detailed information regarding a number of points in contention, including updated enrollment figures. The University responded by submitting a comprehensive chart that detailed its position and responses on several issues, including enrollment. In that chart, the University plainly and clearly articulated its enrollment methodology and the academic reasons for it as follows:

> The Fall enrollment number of traditional full-time undergraduate students is 5840. This compares with last year's Fall enrollment number of 5744. Fall and Spring enrollment are averaged to reflect the academic year. Historically, Spring numbers range from 6-10% less than Fall numbers due to students studying abroad, mid-year graduation, withdrawals, etc. When the projected Spring numbers are averaged with the Fall number, the projection is 5603, which is less than the projection of 5677 previously included in Appendix E to the plan.

See Tab B hereto, "Response to BZA's Request for Additional Information," submitted on October 6, 2000, at 8.

Even critics of the plan implicitly recognized that the relevant enrollment figures are reached by averaging the fall and spring numbers. On October 22, 2000, the University's opponents filed a collective "community response"[3] to the University's chart, and addressed enrollment, noting that, "The current reported enrollment, 5840 'traditional full-time undergraduates' is very high and *may lead* to a violation of the 5627 FTE enrollment *cap for the year*...." (Tab C hereto at 2098 (emphasis added).) It went on to elaborate that the current enrollment "is very close to the cap and may well exceed it, *depending on events in the spring.*" *Id.* at 2105. Obviously, if the relevant enrollment statistic were anything but an average, a current enrollment of 5,840 would by definition be an immediate violation, not a possible violation of the "cap for the year," and compliance, or not, can only "depend on events in the spring" if the two-semester average is the operative number. Unquestionably, the University's averaging methodology was understood and accepted as appropriate, even by those who opposed an enrollment increase in 2000, including the Citizens Association of Georgetown ("CAG"), which made the enrollment challenge in this proceeding.

In response to the opponent's arguments in the Campus Plan proceeding, Father Leo J. O'Donovan, S.J., then President of Georgetown University, submitted a letter to the BZA in which he again explained on behalf of the University:

> As we have indicated in our filing, the fall and spring "traditional full-time undergraduate" enrollment numbers have always been averaged to provide an overall academic year number. This method of determining enrollment, which has been accepted by the

[3] The response was filed by the five organizations opposing Georgetown's application: the Burleith Citzens Association; the Citizens Association of Georgetown ("CAG"); Cloisters in Georgetown; Foxhall Community Citizens Association and Georgetown Residents Alliance.

> BZA, is employed by other local universities as well. As we have stated on many occasions, the fall enrollment numbers are historically higher than the spring total, when many students are studying abroad. When fall and spring numbers are averaged to arrive at a final number for the 2001 academic year, we will be clearly below our current cap

See Tab D hereto, October 27, 2000 letter from Leo J. O'Donovan, S.J., to Sheila Cross Reid (emphasis original). Despite this open acknowledgement that the then-current fall number substantially exceeded the annual cap, the BZA never questioned or criticized the University's approach to computing its capped enrollment, nor even remotely suggested that the University was not in compliance with the current cap. To the contrary, the record strongly indicates a widespread understanding and acceptance of the University's method of computing its capped enrollment.

At the decisional meeting on the 2000 Campus Plan, the Board members present, Mr. Sockwell, Ms. Reid and Ms. Renshaw, all voted to approve an Order that, rather than increasing the enrollment cap immediately in the Campus Plan Order as the University had requested, "would have permitted the University to increase enrollment once the Southwest Quadrangle was completed." Order No. 16566 at Condition 2, footnote 1. At a later executive session, Commissioner Franklin, along with the other members, voted to modify the condition to leave the existing cap intact without permitting the automatic, phased-in future increase, thus requiring the University to return and request its desired enrollment increase after the opening of the Southwest Quadrangle. *Id.* Thus, Condition 2 specifies that the existing cap from the 1990 Plan would remain intact.

The Board clearly anticipated that the University would likely return to request the increase once the projected additional on-campus housing was complete, as it now is, and the off-

campus housing program implemented, as it also now is.[4] Even CAG acknowledges in its recent motion for reconsideration that the BZA capped undergraduate enrollment "until more on-campus student housing is built." (CAG Motion at 1.) What the BZA plainly did not find, suggest, intimate or intend was that its Order would require the University to *decrease* its enrollment. The BZA did not fault the University's method of computing and reporting its enrollment figures, and certainly provided no basis for concluding that the "cap" was intended to be applied to unaveraged semester — or even daily— figures. The BZA had been provided with ample information about the fluidity of enrollment over the course of the academic year, and the predictable and substantial differences between spring and fall enrollment at Georgetown. It would be anomalous to conclude that the BZA's reaffirmance of the existing enrollment cap was in any way intended to change the methodology by which the University's compliance is assessed. Certainly there is no reason to conclude that the BZA adopted a cap that thrust the University into immediate non-compliance without ever mentioning that fact. It is not reasonably debatable that, in maintaining the preexisting cap, the BZA also endorsed the preexisting methodology of measuring compliance with it.

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[4] *See, e.g.,* comments of Commissioner Franklin at Campus Plan R. 1934 (attached hereto at Tab E), stating that the Board wanted to be sure that all parties understood that: "I don't think we are taking these measures in a punitive frame of mind. It's really mostly a plea for the reallocation of resources to the off-campus housing program, so that within the existing revenue stream of the University it can become effective before we, in effect, open up the revenue stream for further enrollment." These comments also reveal that it knew well that the University's enrollment drove its budget in a direct way, and, as a result of the University's explanations, that the University had relied on an enrollment that was derived from an average population of undergraduates that fell within the cap.

The Performing Arts Center Application

This application for further processing was before the Commission on the University's application to create a Performing Arts Center by renovating and enlarging an existing building in the central campus. The proposed Performing Arts Center was designed to centralize and better support a variety of activities that are currently spread throughout Georgetown's campus and thereby furthers the University's goal of centering student activity on campus. Order at ¶11. Indeed, the Commission found not only that the project would add fewer square feet of floor area than was anticipated under the Campus Plan (Order at ¶12), but also that it was not likely to become objectionable to neighboring property because, among other reasons, "[t]he facility will not generate significant additional activity, because nearly all of the programs and performances that will take place in the Center already occur somewhere else on the campus." Order at ¶14(a). The Office of Planning recommended the project's approval (Order at ¶16), and it received the unanimous support of the ANC (Order at ¶18).

In its Performing Arts Center application, the University did not ask the Commission to review or amend the enrollment cap or any other aspect of the Campus Plan Order. Two neighborhood associations, however, opposed the Performing Arts Center application, arguing that the University was not in substantial compliance with certain conditions of the Campus Plan Order. Order at ¶20. Among the conditions one targeted was Condition 2, the cap on traditional full-time undergraduate enrollment retained from the 1990 Campus Plan Order. It was argued that the University was not compliant because its enrollment numbers for fall 2002 exceeded 5,627. Order at ¶24.

Georgetown explained that it has consistently, indeed since 1977, averaged its fall and spring enrollment numbers in reporting its statistics. It explained that the fall and spring numbers are historically quite different, and that, for academic reasons, the spring numbers are predictably substantially lower. Seeking to understand how Georgetown's undergraduate enrollment has been and should in the future be computed for purposes of the compliance with the cap, the Commission requested that the University provide evidence that in devising the Campus Plan Order the BZA understood that the enrollment figures before it were in fact averages. In response, the University provided extensive evidence of its submissions to the BZA that consistently and openly explained to the Board the University's averaging of enrollment figures and the academic reasons for it.[5]

Upon review of the evidence regarding the BZA submissions, the Commission recognized that "...certainly it's quite clear that the University brought averaging to [the BZA]. That's part of the record." (April 14, 2003 Transcript at p. 145.) There was no evidence that the overall level of traditional full-time undergraduate enrollment had materially changed since 2000 (when the fall enrollment was 5,840), and the Commission did not suggest that the Campus Plan Order either required or intimated that the enrollment numbers should decline. Indeed, the Commission never articulated that it understood that such a decrease would be the inevitable result of Paragraph 26 of its Order.

The only arguably relevant change that has occurred since fall 2000 is that the University has: 1) fully implemented its off-campus student housing program as required under the Campus

[5] Among other things, the University submitted copies of the correspondence and chart attached hereto as Tabs B - D.

Plan Order; and 2) completed its Southwest Quadrangle project, which has opened and currently houses on campus even more than the 780 students it was built to accommodate. The Commission itself recognized that the cap on enrollment increases was intended to relate to the amount of student housing on-campus: "There's a reason that drives the cap and in each of these cases it was related to student housing...there's supposed to be some relation between the amount of housing that's being provided on campus and the actual number of students." (April 14, 2003 Transcript at p. 146.)

Because the spring 2003 figures, which were before the Commission at the time of the decisional meeting on the Performing Arts Center application, were far below the cap, the Commission found the University to be in compliance at that time. (Order, ¶ 25.) Nevertheless, although no party to the proceeding sought an amendment of the Campus Plan Order, the Commission unilaterally crafted the new standard imposed by Paragraph 26, which precludes the University in the future from averaging its enrollment for purposes of demonstrating compliance with the Campus Plan. It did so despite the unequivocal evidence detailed above demonstrating that the BZA was well aware of, and content with, the University's historic methodology of averaging, and the lack of any evidence suggesting a basis for or an intention to decrease the current, stable, undergraduate enrollment levels upon which the funding of the University's operations are based.

III.

The Commission Should Strike Paragraph 26

By adopting Paragraph 26, the Commission has, perhaps unintentionally, amended Condition 2 of the Campus Plan Order by effectively *decreasing* the existing cap on traditional full-

time undergraduate enrollment by hundreds of students. Such a decrease would have a multi-million dollar, unwarranted, negative impact on the University's budget for years to come, even were it phased in gradually and in a manner that allowed the University some ability to manage its admissions process to implement in a measured way the reduction mandated by the Order.

In this case, however, the harm could be particularly severe. Paragraph 26, and thus a mandated reduction, appears to take effect immediately. Were the entirely novel standard of Paragraph 26 enforced, the University's current fall enrollment would undoubtedly render it non-compliant with the Campus Plan.[6] Under the circumstances, the University would face equally unacceptable choices: 1) it could summarily dismiss the requisite number—predictably hundreds— of undergraduates, in violation of all of its contracts with its students and its core educational and institutional mission and values; or 2) it could find itself out of compliance with the Campus Plan Order. The implications of the latter option are a bit more subtle than those of the former. Under Condition 19 of the Campus Plan Order, in addition to fines, penalties, and the inability to get future permits for additional beneficial projects, non-compliance would render the University subject to, among other things, having its permit for construction of the Performing Arts Center revoked by the District. *See* Order No. 16566A at Condition 19 (mandating that non-compliance with any of the Campus Plan Order's conditions will result in the University being subject to having permits or certificates of occupancy issued pursuant to the Plan revoked, and to other fines and penalties).

[6] Even if the Commission had signaled in April at its decisional meeting that it was planning to adopt such a provision, it would have been too late to retract admissions letters that had already gone out to Georgetown applicants.

The Commission's action, contemporaneously approving the development of the Performing Arts Center and rendering the University immediately subject to revocation of any permit to construct that very project, appears arbitrary, unjust and self-contradictory. The commentary of the Commissioners at the decisional meeting does not suggest that the Commission intended such a result. Respectfully, the University submits that the Commission should reconsider the lack of evidence to support Paragraph 26 (and indeed, the lack of any request or basis for an amendment of the Campus Plan Order), the unwarranted and unfair amendment of the Campus Plan Order that it constitutes, and the severe implications of that action.

The evidence before the Commission unequivocally demonstrated that, when it continued the enrollment cap from the 1989 Campus Plan, the BZA in 2000 intended the then-current cap to remain intact, and not be increased until the University had constructed substantial on-campus housing for additional undergraduates. Its intention, quite clearly, was to maintain the status quo, pending a future demonstration—by the University or another party—that changed circumstances warranted a change in the longstanding enrollment cap. No change in the enrollment cap was sought, and no "changed circumstances" that arguably warranted any adjustment of the enrollment cap were brought to the attention of the Zoning Commission in this proceeding.

Ironically, to the extent that circumstances have changed since the BZA's entry of the 2000 Campus Plan Order, those changes — which include the University's implementation of the off-campus housing program, the opening of the Southwest Quadrangle as a residence for hundreds of additional undergraduates, and the fact that the University is now housing over 90% of its traditional full-time undergraduates — under the BZA's analysis, favor the *increase* in the enrollment cap that the BZA anticipated the University would seek. The University has not to

date, and does not today, request an enrollment increase. It does, however, urgently object to the unsupported and unwarranted decrease in the enrollment cap retained by the BZA.

As it articulates a standard for application in future proceedings, Paragraph 26 is, by its terms, entirely severable from the rest of the Order in this proceeding and can thus be stricken from the Order without consequence to this proceeding. Therefore, for all of the reasons explained above, the University respectfully requests that the Commission honor the enrollment cap retained by the BZA in paragraph 2 of the Campus Plan Order and strike Paragraph 26 of Order No. 02-32. [7]

IV.

Alternatively, the Commission Should Stay Enforcement of Paragraph 26

If the Commission chooses not to strike Paragraph 26, the University will regrettably have no choice but to seek review of the Order in the District of Columbia Court of Appeals. It may also institute a separate, new proceeding before the Commission to amend the Campus Plan Order, and particularly, to reexamine the annual cap in light of current circumstances, as contemplated in the original proceedings. Given the dire impact of the new provision if enforced immediately, the University requests that the Commission stay the enforcement of Paragraph 26

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[7] For a variety of reasons, Georgetown contends that enrollment caps are in fact beyond the proper purview of a zoning body, particularly insofar as they are imposed with the expressed purpose of keeping undergraduates out of surrounding neighborhoods. *See* District of Columbia Human Rights Act, D.C. Code §§2-1401.01 *et seq.* The Commission has plenty of ammunition under the Campus Plan regulations to limit properly the density of the University's use of its campus without delving into the realm of enrollment caps, which go to the heart of the University's business rather than its use of its land. *See, e.g., National Black Child Dev. Ctr. v. Board of Zoning Adj.*, 483 A.2d 687, 691 (D.C. 1984) (regulation that goes to the property owner's conduct of its business rather than the use of

Footnote continued on next page

pending review either in the Court of Appeals or in a proceeding to amend the Campus Plan if the University opts to elect the latter course.[8]

These circumstances warrant granting a stay if the Commission opts not to strike the new provision altogether. In deciding whether to grant a motion for stay, the Commission must consider the following four factors: 1) whether the applicant is likely to prevail on the merits; 2) whether irreparable injury will result if the stay is denied; 3) whether the opposing parties will be harmed if the stay is granted; and 4) whether the public interest favors granting a stay. *Kuflom v. District of Columbia Bureau of Motor Vehicle Services*, 543 A.2d 340, 344 (D.C. 1988). All of those factors weigh in favor of granting a stay in this matter.

The Court concluded in *George Washington University v. District of Columbia Board of Zoning Adjustment*, 148 F. Supp. 2d 15, 18 (D.D.C. 2001), that placing a university in the position of having to violate a Campus Plan Order in order to maintain its compliance with other obligations to its students was by definition irreparable harm. In response to the BZA's contention in that case that the university could simply avoid the dire potential damages it articulated by "simply violating [the BZA Order]"; the Court responded that "[s]uch a suggestion is, of course, untenable for a great university, ..." *Id.* Moreover, in this case, were Georgetown to be forced into non-compliance, its construction of the long-awaited Performing Arts Center would have to be undertaken under the concededly irrational but apparently real threat of having the building

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Footnote continued from previous page

its land is *per se* unlawful). Georgetown would prefer that the Commission remove the cap altogether, but, failing that, seeks to have Paragraph 26 stricken.

[8] The University requests that any stay be effective until the earlier of an order mooting the issue either by the Court of Appeals or the Commission itself, or the completion of both proceedings.

permit revoked any day, an unfair and unwarranted restriction. With respect to the harm to the community if the stay is granted, it is hard to imagine how there could be any harm to the community by maintaining a student population consistent with that present over the past decade or more, pending judicial review. Indeed, the public has an interest in Georgetown's "reputation for integrity and fair dealing, and for its continued success as a premier university." *Id.* at 19.

Finally, the University is likely to succeed on the merits of a legal challenge to the Paragraph 26. First, the Commission had no authority to unilaterally amend a Campus Plan Order outside a proceeding to consider such an amendment. Second, even if it had the theoretical authority to do so, there was no evidentiary basis at all that would justify a reduction in the University's enrollment. Finally, the District of Columbia Court of Appeals has held that it is fundamental that the Board may regulate the use of land, but *may not* regulate the "business" of the user. *Nat'l Black Child Dev. Inst., Inc. v. D.C. Bd. of Zoning Adjustment*, 483 A.2d 687, 691 (D.C. 1984) ("Personal conditions impermissibly regulate the business conduct of the owner, rather than the use of his property, and are unlawful *per se*.") The Commission in this case has crossed the line between appropriate regulation of the University's use of its land, and has entered the realm of managing the details of its operations that directly impact its most fundamental university functions, the admission and retention of students. The University will in all likelihood succeed in its legal challenge to Paragraph 26's overreaching, irrational and essentially impossible limitation.

To grant a stay, the Commission need not even find that the University is affirmatively likely to prevail in its challenge. If it concludes that the University has established serious and substantial issues going to the merits of legal challenge to the Order, that would be sufficient under these circumstances. Where, as here, the balance of hardships and public interest weigh

heavily in favor of a stay, a stay will issue, if the moving party has demonstrated serious issues going to the merits of its claims. *See, e.g., Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (affirming stay of decision); *Barry v. Washington Post Co.*, 529 A.2d 319, 320-21 (D.C. 1987) ("When the last three factors strongly favor interim relief, only a 'substantial' showing of likelihood of success, not a 'mathematical probability,' is necessary for the Court to grant a stay.").

IV.
Conclusion

The University respectfully requests that the Commission strike Paragraph 26 of the Order. Alternatively, it requests that the Commission stay enforcement of Paragraph 26, pending the University's judicial appeal or a proceeding to amend the Campus Plan to reflect current cir cumstances.

Dated: September 23, 2003

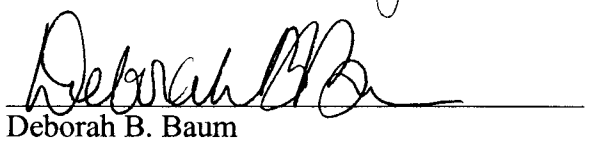
Respectfully submitted,

SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
Phone: 202-663-8000
Fax: 202-663-8007

By:



Maureen E. Dwyer



Deborah B. Baum

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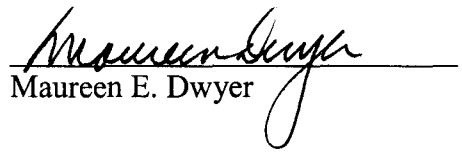
I hereby certify that on September 23, 2003, the foregoing document was served by hand delivery on the following:

Advisory Neighborhood Commission
(ANC) 2E
c/o Jellef Boys Club
3265 S Street, NW
Washington, DC 20007

Burleith Citizens Association
Edward Solomon, President
3525 S Street, NW
Washington, DC 2007

Cloisters in Georgetown Homeowner's
Association, Inc.
Barbara Zartman, President
1642 35th Street, NW
Washington, DC 20007

Richard deC Hinds
Cleary, Gottlieb, Steen & Hamilton
For Citizens Association of Georgetown
20000 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20006



Maureen E. Dwyer

Document #: 1351138 v.1

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Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004-1206

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Exhibit C

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MAUREEN E. DWYER
202.663.8834 Fax: 202.663.8007
maureen.dwyer@shawpittman.com

October 6, 2000

Ms. Sheila Cross Reid, Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, NW
Suite 210
Washington, DC 20001

Re: **Georgetown University Campus Plan**
BZA Application No. 16566

Dear Ms. Reid and Members of the Board:

At its September 5, 2000 public meeting, the Board postponed a decision on the above-referenced case pending receipt of additional information from the Applicant. The specific information requested by the Board is described in detail in the Applicant's point by point response chart with attached exhibits. With this filing, the Applicant trusts that it has fully responded to the Board's request for additional information and that the application can be approved by the Board at its November 8, 2000 public meeting. Both the University and MedStar have critical projects that are awaiting the decision of the Board before moving forward.

With the filing of these additional materials, the University believes that it has fully addressed the issue of impacts from its students off campus so as to enable the Board to approve the increase in enrollment. Specifically, the attached materials demonstrate that even prior to the Board's decision meeting of September 5th, the University had begun implementation of its new off campus housing program. The message had been sent to all students by President O'Donovan and University staff were already taking the proactive measures proposed in the new program, including student orientation, dissemination of information on the changes to its Code of Conduct, as well as the University absorbing the cost of private trash collection to ensure that the moving in of students at the start of the fall semester would not adversely impact the community.

One of the primary goals of this campus plan and, indeed, the focus of the University's efforts, is to re-center student life on campus. For that reason, the plan proposes the creation of new on campus spaces for student activities including the new Performing Arts Center, the McDonough Arena and the Harbin Field redesign, as well as other recreation areas for informal student use. Each of these projects will soon be

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Washington, Northern Va

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Identify how the school's Board of Review operates.	• As evidenced by the attached letter, the University's Board of Directors is behind this program 100 percent and is committed to providing the resources needed to ensure its successful implementation. (Exhibit P) • This commitment will survive any change in leadership and will ensure that the program continues as an obligation of the institution.
Provide an up-to-date count of traditional students, professional students, foreign students, etc.	• The following updates the information already provided in Appendix E to the Campus Plan: ➢ The Fall enrollment number of traditional full-time undergraduate students is 5840. This compares with last year's Fall enrollment number of 5744. Fall and Spring enrollment are averaged to reflect the academic year. Historically, Spring numbers range from 6 – 10% less than Fall numbers due to students studying abroad, mid-year graduation, withdrawals, etc. When the projected Spring numbers are averaged with the Fall number, the projection is 5603 which is less than the projection of 5677 previously included in Appendix E to the plan. ➢ Excluded from traditional full-time student numbers are 188 non-traditional students, such as veterans, students over the age of 25, commuters. ➢ The graduate number is 2,467 FFTE which is less than last year's 2,589 in Appendix E of the Campus Plan
Have the Student Council address how it intends to reach out to students who have disciplinary problems.	• The Georgetown University Student Association (GUSA) will be separately filing its own response to the BZA. • Student representatives were included in the University Task Force, which developed this program. (Exhibit C) • Additionally, the new Vice President for Student Affairs – Dr. Juan Gonzalez – has met on several occasions with student representatives to review the changes and to obtain the student community's input.
Identify how helicopter flights will be monitored to ensure that they are used exclusively for medical emergencies.	• MedStar coordinates and monitors the helicopter transports and must have the discretion to provide for transport based on the health needs of the patients. • The helipad is used for trauma and transplant patients as well as other types of patients, primarily cardiac and neuro-patient transports. • In the Campus Plan case, it was estimated that usage would be approximately 12 trips per week. Since July 1, the total number of transports has been 23.

Community response to the applicant's 6 October 2000 submission
Georgetown University campus plan, BZA application number 16566
October 22, 2000

This document consists of three parts:

A. Response to the applicant's cover letter
B. Critique of the "point by point" chart that was entitled "Response to BZA's Request for Additional Information"
C. A summary of the community proposals for the campus plan that are relevant to the applicant's response.

In addition, the submission includes several appendices.

A. Response to cover letter

1. Regarding enrollment: We acknowledge that, as described in their recent filings, the University has implemented several measures intended to reduce the negative impact of off-campus students on surrounding neighborhoods. We **disagree strongly** that these measures "address the issue of impacts from its students off campus so as to enable the Board to approve the increase in enrollment."
   D. First, the new measures have not been shown to significantly reduce off-campus student impact. To the contrary, the impact this year appears to be worse than ever, despite the unilateral implementation by the University of most of the elements of its plan. Documentation of continuing negative impact is attached in Appendix A. Certain elements of the plan have been in existence for years, others for a few months. The plan has no record of effectiveness, and any modest benefits it does produce could be far outweighed by the negative effects of increasing enrollment.
   E. Second, the new measures affect only behavior of off-campus students. Other neighborhood impacts noted in testimony were not addressed. These include negative effects on parking, traffic and housing.
   F. We note that **the University still refuses to provide full-time equivalent enrollment figures**, as specified in the approved 1990 campus plan. As noted in our testimony, "full-time equivalent" enrollment seems to be higher than "traditional full-time undergraduate" enrollment. **The current reported enrollment, 5840 "traditional full-time undergraduates" is very high** and may lead to a violation of the 5627 FTE enrollment cap for the year--even in terms of this different unit of measurement.
   G. It appears that, in addition to unilaterally implementing its own behavior management plan, the University is also unilaterally increasing its own enrollment cap. The point by point response chart indicates that the University's target enrollment for the current year was 5677, in excess of the existing 5627 FTE cap.
2. Regarding on-campus student life: The community supports the projects in the campus plan that seek to "re-center student life on campus." We believe that these projects should be given priority over other elements of the plan. However, we have asked that non-student use that could burden the neighborhood be restricted for all of the projects named in the letter--the Performing Arts Center, McDonough Arena and Harbin Field.

   We applaud the decision of Dr. Juan Gonzalez this year to oppose holding the Student Charity Block Party on public space as in the past. We have long opposed this event as contributing to a student culture of drinking, and the University itself once effectively prohibited it. (Until recently, students in University housing were required to sign an agreement that they would not petition the city for a block party). However, the student

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	Because of its shortcomings, the hotline has low credibility in the community and is underutilized. What is required instead is the community proposal (above) of a full-time, broad-scope hotline.
Identify how the Board of Review operates	We're not sure if the response addresses the question the Board intended to ask. However, we can comment that probably the most crucial requirement of the plan is the support of the University President. The impending departure of the current President is an important reason to limit the term of any approved plan.
Provide an up-to-date count of students	This information is inadequate: ⇒ Despite frequent requests, no FTE counts of undergraduate enrollment have been submitted The information provided is nonetheless disturbing: ⇒ The current enrollment is very close to the cap and may well exceed it, depending on events in the spring. ⇒ More comments on enrollment are given above, in point #1 of the response to the cover letter.
Student Council response	We received the GUSA response only with the applicant's October 20 submission. The Board had asked how the student council would reach out to students with disciplinary problems. The response indicates ⇒ The Student Council does not support the University program ⇒ The Student Council has identified no steps to reach out to students with disciplinary problems; instead, it proposes a public relations program with "non-student residents."

C. Community proposals for the University's off-campus student program

1. Taking responsibility: The University must in principle and in fact take responsibility for actions of their students. Note that most GU undergraduates are young and from outside the DC area. The University, in enrolling them and inducing them to live in the community, has an obligation to ensure that they understand and comply with local laws and customs. Examples of areas where the University should bear ultimate responsibility are
   - Noise disturbances
   - Maintenance of housing and trash
   - Health and safety (housing codes and zoning violations)
   - Parking impact: ensuring that students park legally and register their vehicles as required by law.
   - Generally, compliance with all laws relevant to neighborhood impact.

   University responsibility in these areas should include establishing
   - Means to inform students of their obligations and of resources available to them;
   - Procedures to remedy problems arising from noncompliance (such as removing garbage and towing cars) and other problems (such as working to obtain housing inspections and to improve city services); and
   - Procedures to sanction students who cause problems. Sanctions could include means to reimburse the University for costs that it incurs in remedying student-caused problems.
2. Community hotline: The University should institute a hotline that is manned at all hours of the day, every day of the week, to take complaints or comments by community members

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Exhibit E

GEORGETOWN UNIVERSITY

Office of the President

DIST. OF COL.
OCT 30 P5:40

October 27, 2000

Ms. Sheila Cross Reid, Chair
District of Columbia Board of Zoning Adjustment
441 - 4th Street, NW
Washington, DC 20001

Re: Georgetown University Campus Plan
BZA Application No. 16566

Dear Ms. Reid and Members of the Board:

I write to respond to the most recent filings by the parties in opposition in order to state clearly the commitment of Georgetown University to respond faithfully and wholeheartedly to the concerns that you and they have expressed. It is a commitment that begins at the highest levels of the University, including the Board of Directors, and has been communicated not only to all employees but also to our students, the parents of our students and the community.

Throughout this process, we have acknowledged the valid concerns of the community. In fact, during most of the summer, a high-level group of University administrators met twice weekly to develop a new program to respond to these concerns. This new program is now being implemented under the direction of our new Vice President for Student Affairs, Juan C. Gonzalez, Ph.D. There is no doubt that we have taken seriously these concerns and our new program.

I would like to provide a summary of the issues raised by the parties who continue to oppose our Plan despite the many productive steps we have taken to address their concerns.

(1) The New Off Campus Student Affairs Program: Since September, we have implemented all of the items we detailed for you in our August 10th submission. We have expanded our Hotline coverage, and we have leased a car for use by our SNAP's staff to make proactive late night tours of the neighborhood as well as twice weekly inspections of the neighborhood for trash violations. We believe these efforts are working and frankly question some of the letters that were filed to the contrary. For example,

BZA
Case No. 16566
Exhibit No. 2167

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immediately upon receipt of the September 26th letter, Ms. Jeanne Lord, our Assistant Dean for Off Campus Student Affairs, followed up. In a follow-up conversation in mid-October, Ms. Lord offered to do a walk-through, was told to hold off and that she would be informed if that became necessary. She has heard nothing since that time, and yet the letter filed with the BZA creates the impression that we had done nothing. And the University's own twice weekly inspections have shown that trash build-up has not been a problem in that area of the community.

Similarly, the letter from the Citizens Association of Georgetown (CAG) requesting a meeting about an issue on Prospect Street was received in my office just last week and a meeting has now been scheduled. The letter's filing with the BZA would seem to serve no purpose other than implying I have been unresponsive, which simply is not the case.

(2) The Code of Conduct. What we heard at the July hearing from the same parties was that the University's standards were not being enforced and there were no sanctions. We have strengthened our Code of Conduct and created new sanctions to address these concerns. We investigate purported violations and sanction students who have been deemed to violate the Code of Conduct. However, we must and will provide our students with appropriate due process and when they are found responsible for violations, we must issue sanctions suitable to the offense. Requests by the community to receive information about sanctions levied against specific students is not appropriate becausewe must adhere to federal law and our policies regarding student records. We must and will enforce our Code of Conduct in a manner that protects the privacy rights of our students.

(3) Alliance for Local Living (ALL): The purpose of this group is to bring special focus to the issues of off-campus student conduct by convening all viewpoints, including those of landlords, students living off campus, members of the community, the police, university administrators, and, when appropriate, relevant District agencies, such as DPW or DCRA. I asked Fr. Michael Garanzini, S.J., who serves as my special assistant, to convene this group. He informs me that he reached out to the Citizens Association of Georgetown, the Burleith Association, and ANC 2E, and has made it clear to other organizations, such as Foxhall Citizens, that all are welcome and encouraged to participate. Meeting notices and agendas are sent prior to each meeting, and minutes of each meeting are prepared, discussed and approved. The BZA Quarterly meetings focus on much broader issues and serve that function quite well. We are disappointed that some members of the community have chosen not to participate but believe that ALL will be an important vehicle to resolving many off campus issues in a way that considers and benefits from input received from all affected parties.

(4) A Ten-Year Plan: Approval of our Campus Plan for a ten-year period is critical to our long-range planning needs. Some members of the community have urged a

five-year approval period, but that is not sufficient to move forward with the goals and projects that are included in the plan which even opponents of the plan acknowledge are worthwhile. We must have clarity with respect to our modest plans for phased-in enrollment increases because the revenue generated by the tuition is essential for the ongoing operation and maintenance of the plan's projects. If it were left uncertain as to whether or not Georgetown could construct our planned Science and Business facilities, which we do not expect to begin until the middle years of the plan, it would be very difficult to hold onto donations pledged for these projects, much less to complete the fundraising we need. For our critical financial planning purposes, it is only fair that we be allowed to project accurately our ability to implement the modest enrollment increase we have requested. I would add that we have already agreed to reduce our original enrollment increase request and compromised on the manner in which it will be phased in *following* occupancy of the Southwest Quadrangle.

In response to concerns raised by the community, the University has proposed a series of steps to update the BZA on the University's success in achieving its goals. These steps include a variety of monthly updates to members of the community, annual reports to the Office of Planning and Office of Zoning, and full reports to the BZA each time the University comes before it for further processing of cases under the Campus Plan.

(5) Current Enrollment: Consistent with the BZA's approval of Georgetown's 1990 Campus Plan, the Georgetown student population historically has been determined using the definition of "traditional full-time undergraduate" students and has not been based on total FTE's. The BZA expressly endorsed this methodology in its 1990 Order because this formula focuses on students needing housing and therefore potentially affecting the community. In order to maintain continuity with prior Campus Plan approvals, the University continues to use the traditional full-time undergraduate definition. Thus, nontraditional students who do not need housing are subtracted from our undergraduate numbers.

In response to the statement that we may be currently exceeding the existing cap, please allow me to state that this is not the case. As we have indicated in our filing, the fall and spring "traditional full-time undergraduate" enrollment numbers have always been averaged to provide an overall academic year number. This method of determining enrollment, which has been accepted by the BZA, is employed by other local universities as well. As we have stated on many occasions, the fall enrollment numbers are historically higher than the spring total, when many students are studying abroad. When fall and spring numbers are averaged to arrive at a final number for the 2001 academic year, we will be clearly below our current cap.

(6) 24-Hour Hotline: The University is committed to having a Hotline that is

responsive to complaints raised by members of the community. As with all aspects of the Off Campus Student Affairs program, the University will continue to modify and make adjustments to improve the operation whenever necessary. Based on the information we have received from the community, we believe that it is not necessary to extend the Hotline service beyond Thursday, Friday and Saturday, except for the occasional weekday nights before a University holiday or other special occurrences. At all other times, the University's campus police can be reached by phone; they have been instructed to maintain a log of calls from the community so that we can assess whether further adjustments need to be made to accommodate such calls.

(7) Partnerships with DPW, DCRA and MPD: I believe strongly that we have created new and meaningful partnerships with DPW and MPD (as well as with members of the community) to address what are certainly community-wide issues. Our partnership with MPD includes inviting them to participate in University-sponsored forums with our students. (I enclose an article from one of our student papers describing the most recent of these). We have institutionalized receipt of relevant MPD official reports concerning our students and are in constant communication with MPD about such matters. Our partnership with DPW is evident from the letter we filed from the Acting Director, and as you are aware from our previous filings, we are presently conducting twice weekly tours of the neighborhood and assessing fines of $300 to student houses with trash violations. With respect to "illegal houses," we do view this as an enforcement issue more properly within the purview of DCRA and plan to address this particular issue through ALL, with the assistance of landlords.

(8) Helipad: As previously explained, the helicopter flights are not used exclusively for medical emergencies. Rather, the helipad is used for trauma and transplant patients as well as other types of patients, primarily cardiac and neuropatient transports. In fact, the use of the helipad since July 1st indicates that the total number of transports is less than what was projected. As the University testified, the helipad has been on campus since our 1973 Campus Plan with no objectionable impact on the community. Its continued use will likewise have no objectionable impact.

I hope that this information will provide the BZA with assurance as to the commitment of the University on all of the conditions described in its Campus Plan, including the successful implementation and monitoring of the New Off Campus Student Affairs Program.

I would like to take this opportunity to bring to your attention the fact that we continue to move forward on the Southwest Quadrangle project, which will bring 780 students out of the community and back onto campus in the Fall of 2003. I believe strongly that the opening of this new residence hall will have a profound and positive affect on the surrounding communities. Until such time as this occurs, as well as

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thereafter, the University commits itself to working in partnership with our neighbors to resolve effectively any off campus issues.

I respectfully ask for your approval of a 10-year Campus Plan at the November 8th public meeting and look forward to seeing you on that day. So that you can meet some of our new leaders responsible for our efforts, I have asked Dr. Gonzalez and Fr. Garanzini to join me in attendance on November 8th.

Sincerely,

Leo J. O'Donovan, S.J.

Enclosure

2111

to request that the University submit an up-to-date count of undergraduate, graduate, nontraditional and foreign students in the University, please, so that we have -- We have a count from last spring, but I'd like it brought up to date.

MS. KRESS: We'll put that on the list as well.

CHAIRPERSON REID: Mr. Franklin?

COMMISSIONER FRANKLIN: The only thing I have to add, Madam Chair, is that I think that the University and the community should understand that I don't think we are taking these measures in a punitive frame of mind.

It's really mostly a plea for the reallocation of resources to the off-campus housing program, so that within the existing revenue stream of the University it can become effective before we, in effect, open up that revenue stream for further enrollment.

CHAIRPERSON REID: Thank you. All right.

MS. KRESS: Thank you, Madam chair.

MS. PRUITT: I just wanted to make it clear for the audience, too, that the record is only open for those items that the Board requested. So it's not taking in any additional letters or anything