BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

In Re: Zoning Commission Order No. 02-32

APPLICANT'S OPPOSITION TO MOTION FOR RECONSIDERATION OF CITIZENS' ASSOCIATION OF GEORGETOWN

The President and Directors of Georgetown College ("Georgetown" or "The University"), hereby oppose the Motion for Reconsideration filed by the Citizens' Association of Georgetown ("CAG"). CAG's motion recklessly demeans Georgetown's good faith, substantial and continuing compliance with the multiple, demanding conditions imposed by the BZA in the Campus Plan, and again invites the Zoning Commission to expand the challenged conditions (3, 9, 14 and 19) beyond their terms and logic. CAG's motion largely repeats evidence and argument that the Commission heard, assessed, and factored into its decision that Georgetown was in substantial compliance with its Campus Plan Order. Georgetown would strongly oppose any effort to re-open the proceeding merely to re-weigh that evidence.

The University does not, therefore, undertake to respond to every mischaracterization of the evidence on which both parties have already been heard. It does, however, feel compelled to respond to several points that fairness requires be corrected:

1. **Condition 3.** CAG's erroneous and disappointing statement that "Georgetown University has largely ignored student misconduct off-campus" is belied by the substantial evidence of University efforts, and findings made by the Commission, in this proceeding. In particular, consistent with Condition 3, the evidence clearly established and the Commission found that the

ZONING COMMISSION
District of Columbia
Case 02-32
Exhibit 61

ORIGINAL

ZONING COMMISSION
District of Columbia
CASE NO.02-32
EXHIBIT NO.61

sanction of revoking off-campus housing is available under the student code and has in fact been imposed by the University.

CAG's argument regarding Condition 3 seems to suggest that it believes that the University can never be in substantial compliance with its Campus Plan Order as long as there are incidents of misconduct attributed to students anywhere near the campus. Georgetown, of course, wishes that it were possible for it, or any university, to meet such a standard, but recognizes its practical impossibility, as, apparently, did the BZA and the Commission. The conditions of the Campus Plan ask a lot of the University, and the University has responded comprehensively to the Plan. They do not, however, make Georgetown the absolute guarantor of impeccable student conduct nor CAG the arbiter of appropriate disciplinary sanctions in individual cases.

The Commission has properly recognized that Condition 3 requires that the sanction of revoking off-campus housing "privileges" is but one possible sanction that must be available to the University, and that it need not be the sanction that is necessarily imposed in all cases of misconduct. *See* Z.C. Order No. 02-32 at ¶28.

2. **Condition 9.** CAG argues that Georgetown has not complied with Condition 9 because it provides only "aggregate data in its quarterly reports and fails to cross-reference complaints ... with sanctions." First, aggregate data is all that is required. Second, the cross-referencing of complaints that CAG demands would inevitably run afoul of the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g (2002), which prohibits the publication of such information if it is identifiable to a particular student. Therefore, even if Georgetown wished to go beyond what the BZA ordered in Condition 9, it would likely be legally precluded from doing so. *See also* Z.C. Order No. 02-32 at ¶30 (finding that aggregate

form of reports is "more useful in assessing potential impacts and appropriate in light of student privacy concerns.") Finally, CAG suggests that Georgetown's reports have been "changed from report to report," making them difficult to interpret. To the extent that the format of the reporting has been modified in the past, it has been in an effort to *improve* the quality of the reports. Georgetown does not currently expect to materially change the format in the future, so this issue is not likely to recur.

3. **Condition 14.** CAG even contends that the University has not complied with Condition 14's requirement that it maintain "an accurate record of license plate numbers of motor vehicles kept by all University students," despite the DMV's already having confirmed for the District that there was no plausible benefit to the "consultation" that Georgetown was supposed to conduct, once armed with its compiled license plate information. Despite CAG's protestations, the evidence demonstrated that Georgetown has complied with every element of Condition 14, and CAG's motion provides no basis for a contrary conclusion.

4. **Condition 19.** Finally, CAG suggests that the Commission should in the future rigidly assess compliance, or not, with the Campus Plan Order by applying a "two condition" standard. CAG asks the Commission to read into Condition 19 something that the BZA did not insert: a strict definition of substantial compliance that precludes any variance at all from two or more conditions. Such a standard, while it would have no impact here, simply is not imposed by the Order. To the contrary, it is clear that the BZA intended, and the Commission understood, that the Commission would determine substantial compliance by weighing the entire record presented, on a case-by-case basis, each time the issue were before it. In this proceeding, the Commission considered every challenge made by the application's opponents, and concluded

that Georgetown established its substantial compliance both with every challenged condition and with the overall Campus Plan.

Conclusion

The University respectfully requests that the Commission deny CAG's Motion for Re-consideration.

Dated: September 25, 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 by MED

Certificate of Service

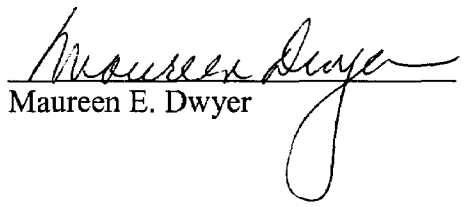
I hereby certify that on September 25, 2003, the foregoing document was served by first class mail, postage prepaid, on the following:

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