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*A Limited Liability Partnership Including Professional Corporations*

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November 4, 2004

**VIA HAND DELIVERY**

Ms. Carol Mitten, Chair
District of Columbia Zoning Commission
441 4th Street, NW
Suite 210 South
Washington, DC 20001

**Re: Case No. 02-32 (Georgetown Performing Arts Center)**

Dear Ms. Mitten:

As counsel to the President and Directors of Georgetown College ("Georgetown University" or "the University"), we are writing simply to update the Commission on judicial and administrative activity relating to the University's Campus Plan Order and to confirm with the Commission the status of the stay of Paragraph 26 of its Order granting the University's application for approval of its Performing Arts Center ("PAC").

As the Commission is aware, last year Georgetown University filed a Motion for Reconsideration or Stay of Paragraph 26 of the PAC Order that relates to the University's calculation of its traditional full-time undergraduate enrollment for purposes of the cap (Condition 2 of Campus Plan Order No. 16566). Specifically, Paragraph 26 dictates that the University's future compliance with Condition 2 would not be measured in terms of the average between the University's spring and fall enrollments, as it historically had been measured. For reasons articulated in its motion, the University sought the Commission's reconsideration of that provision, or, alternatively, its stay. At its November 12, 2003 meeting, the Commission stated orally that it would stay enforcement of the provision for one year, during which time it suggested the University could seek clarification and/or amendment of Condition 2 of the Campus Plan Order either in court or in further proceedings at the Commission. No final written order has been issued.

Less than one month later, on December 4, 2003, the District of Columbia Court of Appeals issued its decision in the University's appeal of the Campus Plan Order. That decision vacated the Campus Plan Order and remanded the matter to the BZA for further proceedings consistent with the Court's opinion. *See President and Directors of*

ZONING COMMISSION
District of Columbia
CASE NO. 02-32
EXHIBIT NO. 64



ZONING COMMISSION
District of Columbia
CASE NO.02-32
EXHIBIT NO.64

*Georgetown College v. District of Columbia Bd. of Zoning Adjustment,* No. 01-AA-1182. The BZA has commenced but not completed its proceedings on remand; the BZA's latest Order in that proceeding, which was issued on October 15, 2004 (copy attached), outlines the procedure it has elected to follow on remand.

As a result of these related judicial and administrative actions, since last December the University has not had an effective Campus Plan to appeal or to amend. The University accordingly has not sought — and legally cannot seek — clarification of Condition 2 within the within the one-year time frame originally envisioned by the Commission. It is possible, of course, that action by the BZA in the remand proceeding will obviate the need for the Commission to further address the enrollment counting issue.

In summary, this letter seeks to explain the procedural posture of the University's Campus Plan Order and to confirm that the one-year time frame orally announced by the Commission on November 12, 2003, is, as a result, not in effect.

Sincerely,

Deborah B. Baum

Enclosure

ShawPittman LLP

**CERTIFICATE OF SERVICE**

I hereby certify that on November 4, 2004, the foregoing letter 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 20007

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

Barbara Downs, President
Citizens Association of Georgetown
3222 N Street, NW
Washington, DC 20007

Deborah B. Baum

Document #: 1439119 v.1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

**Application No. 16566-D of the President and Directors of Georgetown College**, pursuant to 11 DCMR § 3104.1, for a special exception for the review and approval of the University Campus Plan – years 2000-2010 under Section 210 in the R-3 and C-1 Districts at premises bounded by Glover Archbold Parkway to the west, the National Park Service property along the Chesapeake & Ohio Canal and Canal Road to the south, 35th Street, N Street to 36th Street, and 36th Street to P Street to the east and Reservoir Road to the north. (Square 1222, Lots 62, 801-810; Square 1223, Lots 85-86, 807-810, 812, 815, 826, 827, 831, 834, 846-847, 852-853, 855, and 857-858; Square 1226, Lots 91, 94-101, 104-105, 803-804, 806, and 811-815; Square 1248, Lots 122-125, 150-157, 800-802, 804-806, 829-831, and 834-835; Square 1321, Lots 815-817.)

**HEARING DATES:** June 13, and July 18, 2000

**DECISION DATES:** September 5, November 8, and December 5, 2000

**ORDER DATE:** March 29, 2001

**RECONSIDERATION DECISION DATE**: June 5, 2001

**STAY DECISION DATE**: September 4, 2001

## PROCEDURAL ORDER ON REMAND

By Order issued March 29, 2001, the Board approved the University Campus Plan until December 31, 2010, subject to conditions intended to mitigate any adverse impacts potentially arising from the location of a university use in a residentially zoned district. The Applicant appealed the Order to the District of Columbia Court of Appeals. On December 4, 2003, the Court of Appeals issued an opinion vacating the Board's decision because "a number of the conditions imposed by the BZA cannot be sustained." The case was remanded to the Board for further proceedings consistent with the Court's opinion.

In addition to the Applicant, parties to the proceeding are Advisory Neighborhood Commission 2E, the Burleith Citizens Association, Citizens Association of Georgetown ("CAG"), Cloisters in Georgetown Homeowner's Association, Foxhall Community Citizens Association, Georgetown Residents Alliance, and Hillandale Homeowners Association ("Hillandale").

At a public meeting on June 22, 2004, the Board indicated its intent to conduct further proceedings on the application, and requested submissions from the parties recommending issues they believe should be addressed on remand. Parties were also invited to comment on whether the Board should only receive written submissions on designated issues, or whether they believed that an additional hearing should be held on this matter.

By letter dated June 23, 2004, to the parties, the Office of Zoning indicated that submissions from parties were due on August 2, 2004. Submissions were received from the Applicant, CAG, and Hillandale. All three parties requested an opportunity to file written submissions. CAG also requested a hearing to receive new evidence on certain issues. All parties concurred that the focus of future submissions should be the reformulation of conditions imposed in this case so that they are consistent with the legal principles set forth in the Court's opinion. The Board agrees with the Applicant and Hillandale that additional hearings are not needed for the Board to determine whether the application should be granted, and, if so, what conditions are required to mitigate any potential adverse impacts or objectionable conditions arising from the university use.

The Board hereby directs any party that wishes to do so to submit to the Office of Zoning a proposed order, either granting or denying the application in whole or in part, including findings of facts and conclusions of law, no later than 3pm Friday, December 17, 2004. Pursuant to 11 DCMR § 3121.4, each party must serve any proposed findings of fact and conclusions of law on all other parties at the same time as they are filed with the Board. No responses to the proposed orders will be accepted.

Each finding of fact, other than those that relate to procedural matters, should include citations to the record evidence or testimony that support the statement made. Orders proposing to grant the application should include proposed conditions necessary to mitigate any potential adverse impacts identified, based on the existing record in this proceeding. The Applicant may also offer conditions intended to ameliorate the issues and concerns of the affected ANC or the other parties. Parties submitting orders proposing to deny the application may, without prejudice to their position, also attach proposed conditions. Each proposed condition should be followed by an explanation as to how it is consistent with the principles and concerns expressed in the Court of Appeal's decision and cite the specific finding(s) of fact or conclusion(s) of law that support its imposition.

Accordingly, it is **ORDERED** that the Board **APPROVES** the issuance of this Order.

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
Each concurring member (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II) has approved the issuance of this Order.

**ATTESTED BY:** Jerrily Kress
**JERRILY R. KRESS, FAIA**
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** OCT 15 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE 10 DAYS AFTER IT BECOMES FINAL. MN/rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 16566-D (Procedural Order on Remand)**

As Director of the Office of Zoning, I hereby certify and attest that on OCT 15 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Maureen E. Dwyer, Esq.
Shaw Pittman LLC
2300 M Street, N.W.
Washington, D.C. 20037-1128

Chairperson
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, D.C. 20007

General Manager
Hillandale Homeowners Association
3939 Hillandale Court, N.W.
Washington, D.C. 20007

Charles R. Braum
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Berkeley Springs, West Virginia
2511-3035

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3222 N Street, N.W.
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Edward Solomon, President
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Barbara Zartman, President
Cloisters in Georgetown Homeowners
Association, Inc.
1642 35th Street, N.W.
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Jack Evans, City Councilmember
Ward Two
1350 Pennsylvania Avenue, N.W.
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Washington, D.C. 20004

Acting Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Kenneth G. Laden, Administrator
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2000 14th Street, N.W.
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801 North Capitol Street, N.E.
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Alan Bergstein, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

**ATTESTED BY:**

**JERRILY R. KRESS, FAIA**
**Director, Office of Zoning**