Government of the District of Columbia
OFFICE OF ZONING

MEMORANDUM

TO: Arnold R. Finlayson, Administrator
Office of Documents and Administrative Issuance

FROM: Sharon S. Schellin
Acting Secretary to the Zoning Commission

DATE: October 19, 2005

SUBJECT: Publication for the Office of Zoning

2005 OCT 19 PM 1:01
Office of Documents and Administrative Issuances

Please publish the following in the *D.C. Register* on October 28, 2005:

1. Z.C. Notice of Public Hearing (Case No. 03-12A/03-13A);
2. Z.C. Order No. 02-32A (Case No. 02-32);
3. Z.C. Order No. 03-03A (Case No. 03-03A);
4. Z.C. Order No. 03-29A (Case No. 03-29A);
5. Z.C. Order No. 04-23 (Case No. 04-23);
6. Z.C. Order No. 05-13 (Case No. 05-13); and
7. Z.C. Notice of Final Rulemaking & Z.C. Order No. 04-31 (Case No. 04-31).

The Final Rulemaking is also included on the enclosed diskette.

Attachments

ZONING COMMISSION
District of Columbia
CASE NO. 02-32
EXHIBIT NO. 65

441 4th St., N.W., Suite 210-S, Washington, D.C. 20001
Telephone: (202) 727-6311 E-Mail Address: zoning_info@dcoz.dc.gov Web Site: www.dcoz.dc.gov

ZONING COMMISSION
District of Columbia
CASE NO.02-32
EXHIBIT NO.65

ZONING COMMISSION ORDER NO. 02-32A
Order on Reconsideration
Z.C. Case No. 02-32
(Georgetown University Campus Plan – Further Processing of Performing Arts Center)
October 20, 2003 and
November 12, 2003

This Order arises from an application by the President and Directors of Georgetown College, also known as Georgetown University, ("Applicant" or "University") requesting special exception approval under the campus provisions of the Zoning Regulations at 11 DCMR §§ 3104.1 and 210 for further processing of the University's approved campus plan to allow construction and use of a performing arts center. Following a public hearing, the Commission voted on April 14, 2003 to grant the requested special exception; Order No. 02-32 was issued August 26, 2003.

Parties in this proceeding, in addition to the Applicant, are Advisory Neighborhood Commission 2E, the Citizens Association of Georgetown ("CAG"), the Burleith Citizens Association, and Cloisters in Georgetown, Inc. On September 15, 2003, CAG filed a motion for reconsideration of Order No. 02-32 or, in the alternative, for clarification of Board of Zoning Adjustment Order No. 16566.[1] The Applicant filed an opposition to CAG's motion. On September 23, 2003, the University filed a motion for reconsideration or, in the alternative, for stay of Paragraph 26 of Order No. 02-32. CAG opposed the Applicant's motion.

CAG's motion. The Citizens Association of Georgetown sought reconsideration of the Commission's finding that the University was in substantial compliance with certain conditions of approval of its campus plan[2]; specifically Conditions No. 3, 9, and 14. CAG also sought clarification of the term "substantial compliance" in Condition No. 19 so that, to obtain any future special exception approvals under the campus plan, the University would be required to "more rigorously comply" with each condition in Order No. 16566. The University argued that

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[1] BZA Order No. 16566, issued March 29, 2001, conditionally approved the University's campus plan for a term ending December 31, 2010.

[2] Since the Commission's public vote on this, the Order approving the Campus Plan, including the conditions that CAG claims to have been violated, was vacated in its entirety by the District of Columbia Court of Appeals. *President and Directors of Georgetown College v. District of Columbia Board of Zoning Adjustment*, 837 A.2d 58 (D.C. 2004).

CAG's motion should be denied, in part because the motion "largely repeats evidence and argument that the Commission heard, assessed, and factored into its decision" that the Applicant was in substantial compliance with the conditions of approval of the campus plan.

The Commission concurs with the Applicant that CAG does not present any new information or argument in its motion that was not already considered by the Commission in deliberating on the application to allow construction and use of the performing arts center. Accordingly, the Commission denies CAG's motion for reconsideration or clarification.

Applicant's motion. The Applicant's motion for reconsideration sought to strike Paragraph 26 from Order No. 02-32, which states that, for purposes of determining the University's compliance with the conditions of approval of its campus plan, the Commission would consider the enrollment cap the "maximum permitted enrollment of undergraduate students at any given time," and would not permit the University to demonstrate compliance with the cap using an average of fall and spring enrollment figures.[3] Alternatively, the Applicant requested a stay of enforcement of Paragraph 26. The University argued that Paragraph 26 represented a new methodology for measuring its future compliance with its undergraduate enrollment cap, contrary to the University's practice of computing its traditional full-time undergraduate enrollment by averaging fall and spring numbers. According to the University, Paragraph 26 appeared to amend the approved campus plan by effectively decreasing the existing cap on traditional full-time undergraduate enrollment by hundreds of students, a result that would have "severe and inequitable implications" for the University.

In opposing the Applicant's motion, CAG asserted that the enrollment cap adopted by the BZA was the maximum number of students permitted to be enrolled at any one time, not an average. CAG stated it was unaware that the University was using averaging to measure its compliance with the enrollment caps imposed in the 1990 and 2000 campus plans, and that CAG would have opposed that procedure in the campus plan proceedings.

The Commission is not persuaded by the Applicant that the use of average enrollment during an academic year to determine compliance with the cap on undergraduate enrollment is consistent with the intent of the Board of Zoning Adjustment in adopting the enrollment cap. This conclusion is reinforced by a review of the record in the Board's proceeding, in which the cap was apparently considered a fixed number, and by the Board's adoption of a reporting requirement that obligates the Applicant to submit a statement of enrollment, not average enrollment, on the date 30 days prior to any application for further processing under the

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[3] Finding of Fact No. 26 of Z.C. Order No. 02-32 states:

> The Commission does not agree with the Applicant that the use of average enrollment during an academic year is appropriate for purposes of determining compliance with the cap on undergraduate enrollment established in the Campus Plan. With respect to further processing applications that may be filed in the future, the Commission will not assess compliance with the enrollment cap on the basis of an average of the fall and spring semesters of the academic year, but will consider the enrollment cap to be the maximum permitted enrollment of undergraduate students at any given time during the academic year.

approved plan. Accordingly, the Commission denies the University's motion for reconsideration of Paragraph 26.

The Commission also concludes that a phase-in of the enforcement of Paragraph 26 is appropriate in light of the University's past practice of computing its traditional full-time undergraduate enrollment by averaging fall and spring numbers. Accordingly, the Commission stays enforcement of Paragraph 26, to the extent, if any, that is has not been made moot by the Court of Appeals decision referenced in footnote 2, for one year from the effective date of this Order.

Accordingly, it is ordered that (i) the **MOTION** of the Citizens Association of Georgetown for reconsideration is **DENIED**; and (ii) the **MOTION** of Georgetown University for reconsideration or stay is **DENIED** in part and **GRANTED** in part.

VOTE: **3-0-2** (Carol J. Mitten, Anthony J. Hood, and Peter G. May to deny the motion of CAG for reconsideration or clarification of the order; James Hannaham and John G. Parsons not present, not voting).

VOTE: **3-0-2** (Carol J. Mitten, Anthony J. Hood, and Peter G. May to deny in part and grant in part the motion of Georgetown University for reconsideration and stay; James Hannaham and John G. Parsons not present, not voting).

VOTE: **4-0-1** (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Peter G. May to grant the motion of Georgetown University for stay for a period of one year; James Hannaham not present, not voting).

BY ORDER OF THE D.C. ZONING COMMISSION
Each concurring member approved the issuance of this order.

FINAL DATE OF ORDER: OCT 13 2005

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 TEN DAYS AFTER IT BECOMES FINAL.