BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

In Re: Zoning Commission Order No. 02-32A

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

I. BACKGROUND

Pursuant to 11 DCMR § 3126.5, as incorporated by 11 DCMR § 3035.5, the Citizens Association of Georgetown ("CAG") files this answer in opposition to the motion for reconsideration filed by the President and Directors of Georgetown College (the "University") with respect to Zoning Commission Order No. 02-32A (the "Order"). The University's motion for reconsideration should be denied because the Order accurately reflects the decision of the Commission at its 2003 regular meeting and no additional evidence has been presented that has not already been considered by the Commission in reaching its decision. Additionally, the Commission should decline to reconsider the Order because the use of averaging to determine compliance with the enrollment cap is currently before the District of Columbia Court of Appeals. The University's argument that the Order creates potential confusion is disingenuous and simply an attempt to rewrite history to enhance its position before the Court of Appeals.

II. ARGUMENT

The Order arises from the proceedings on the application of the University for a special exception approval for further processing of the University's campus plan to allow for the construction and use of a performing arts center. In its order approving the performing arts center (the "PAC Order"), the Commission determined that the use of average enrollment during an academic year to determine compliance with the enrollment cap was inappropriate. It further

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stated that with respect to future applications, the Commission would not assess compliance with the enrollment cap on the basis of an average, but rather it will consider the enrollment cap to be the maximum permitted enrollment of undergraduate students at any given time during the academic year. (*See* Zoning Commission Order No. 02-32).

The University filed a motion for reconsideration or, in the alternative, a stay of the paragraph that prohibited averaging in the PAC Order. CAG responded that the Board of Zoning Adjustment Order approving the 2000 Campus Plan did not permit averaging, and that averaging was not consistent with the purposes of an enrollment cap. The Commission agreed, finding that the record in the Board of Zoning Adjustment's campus plan proceedings did not support the use of averaging. However, given the alleged burdens of complying immediately with the PAC Order, the Commission voted to stay enforcement of this provision for one year. (*See* Transcript of Zoning Commission Regular Meeting, November 12, 2003).

The Order, recently issued by the Commission, simply sets forth the Commission's decision at its November 12, 2003 Regular Meeting. The Order is very clear in its terms that the prohibition on averaging in the PAC Order is upheld, and enforcement of this prohibition is stayed for one year, to the extent that the decision of the Court of Appeals does not render it moot. The University has not presented any additional evidence that has not already been considered by the Commission in reaching its decision. The University has failed to demonstrate a legitimate need for reconsideration or clarification of the Order.

Additionally, the Commission should not reconsider the Order because the use of averaging for the purposes of determining compliance with the enrollment cap is currently an issue before the District of Columbia Court of Appeals. On remand, the Board of Zoning Adjustment issued a revised 2000 Campus Plan Order (the "Revised BZA Order") that permits

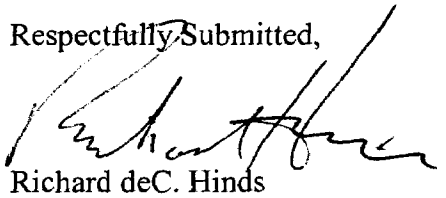
the use of averaging for purposes of complying with a new, enlarged enrollment cap. However, because its decision on averaging is arbitrary and capricious, and not supported by the record, CAG has petitioned the Court of Appeals to review the Revised BZA Order. The parties to the Court of Appeals petition are currently filing briefs; oral arguments and a decision will follow. Because the issue of averaging is currently before the Court, the Commission should not engage in unnecessary reconsideration of the Order.

III. CONCLUSION

For the foregoing reasons, CAG respectfully requests that the University's motion for reconsideration be denied.

Dated: November 16, 2005

Respectfully Submitted,



Richard deC. Hinds
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Answer in Opposition to Applicant's Motion for Reconsideration* were mailed, postage prepaid, on November 16, 2005 to the following:

Maureen E. Dwyer, Esq.
Pillsbury Winthrop Shaw Pittman LLP
2300 M Street, N.W.
Washington, DC 20037
Counsel for Applicant President and Directors of Georgetown College

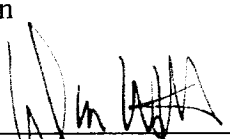
Advisory Neighborhood Commission 2E
3265 S Street, N.W.
Washington, DC 20007

Edward E. Schwab, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

Julie Lee
General Counsel
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002

Cloisters in Georgetown Homeowner's Association
c/o Barbara Zartman, President
1642 35th Street, NW
Washington, DC 20007

Charles R. Braun
P.O. Box 1035
Berkeley Springs, WV 25411-3035
Counsel for Hillandale Homeowners Association



Dana D.C. Westfall
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006