Government of the District of Columbia
OFFICE OF ZONING



ZONING COMMISSION
District of Columbia
CASE NO. 02-32
EXHIBIT NO. 72

Z.C. CASE NO.: 02-32

As Secretary to the Zoning Commission, I herby certify that on SEP 15 2006 copies of this Z.C. Order No. 02-32B were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*

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

3. Ed Solomon, Chair
ANC 2E
3265 S Street, NW
Washington, DC 20007

4. Commissioner Ed Solomon
ANC/SMD 2E01
3525 S Street, NW
Washington, DC 20007

5. Commissioner John Lever
ANC/SMD 2E02
1625 33rd Street NW
Washington, DC 20007

6. William Skelsey
ANC/SMD 2E03
1513 35th Street, N.W.
Washington, D.C. 20007

7. Commissioner Brett Clements
ANC/SMD 2E04
1419 37th Street, NW PMB #231
Washington, DC 20007

8. Bill Starrels
ANC/SMD 2E05
1045 31st Street, N.W., #502
Washington, D.C. 20057

9. Commissioner David Halley
ANC/SMD 2E06
1500 32nd Street, NW
Washington, DC 20007

10. Commissioner Charles Eason, Jr.
ANC/SMD 2E07
3027 Cambridge Place, NW
Washington, DC 20007

11. Burleith Citizens Association
3525 S Street, N.W.
Washington, D.C. 20007

12. Barbara Zartman, President
Cloisters in Georgetown, Inc. and
Citizens Assoc. of Georgetown
1642 35th Street, N.W.
Washington, D.C. 20007

13. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

14. Councilmember Jack Evans

15. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002

16. Office of Planning (Ellen McCarthy)

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17. Zoning Administrator (Bill Crews)

18. Ken Laden, DDOT

19. Office of the Attorney General
(Alan Bergstein)

ATTESTED BY: Sharon S. Schellin

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION ORDER NO. 02-32B
Order Denying Reconsideration
Case No. 02-32
(Georgetown University Campus Plan – Further Processing of Performing Arts Center)
November 14, 2005

This Order arises from an application by Georgetown University ("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 University, 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 University filed an opposition to CAG's motion. The Commission denied the motion and request for clarification by Order No. 02-32A, issued October 13, 2005.

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. The University's motion, opposed by CAG, sought to strike Paragraph 26 from Order No. 02-32, a provision stating 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.[2] Alternatively, the University requested a stay of enforcement of Paragraph 26.

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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. That order was later vacated by the District of Columbia Court of Appeals. *See President and Directors of Georgetown College v. District of Columbia Board of Zoning Adjustment*, 837 A.2d 58 (D.C. 2004). On June 7, 2005, the Board of Zoning Adjustment issued a Corrected Order on Remand (16566-F) that again approved the University's campus plan subject to conditions.

[2] 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

By Order No. 02-32A, the Commission denied the University's motion for reconsideration, because the Commission was not persuaded by the University that the use of average enrollment during an academic year to determine compliance with the cap on undergraduate enrollment was consistent with the intent of the Board of Zoning Adjustment ("BZA") in adopting the enrollment cap in Order No. 16566. However, the Commission also approved a one-year stay of its decision, finding that a phase-in of the enforcement of Paragraph 26 was appropriate to allow time for the University to come into compliance with the enrollment cap or to seek modification of the approved campus plan.

By motion dated November 7, 2005, the University requested reconsideration and clarification of Order No. 02-32A, noting that the BZA's original campus plan order had been superseded by its Remand Order, 16566-F. The University asserted that the Remand Order "explicitly countenances averaging as a means of compliance with the enrollment cap thus curing any arguable uncertainty about the BZA's intent." The University sought a clarification that the scope of Order No. 02-32A with respect to the enrollment cap issue was limited to the BZA's original campus plan order, and that the Commission did not intend its Order No. 02-32A to interpret or supersede the BZA's approval of averaging in the Remand Order.

The Commission notes that the BZA's Remand Order includes a condition that sets a cap on the University's undergraduate enrollment and provides for calculation of the cap as an average of the total undergraduate enrollment during the Fall and Spring semesters of the academic year.[3] The Commission concludes that its decision – finding that the Board of Zoning Adjustment, in its initial decision conditionally approving the University's campus plan, did not intend to permit averaging in determining compliance with the cap on undergraduate enrollment – was made moot by the later Remand Order.

Accordingly, it is ordered that the **MOTION** of the University for reconsideration and clarification of Order No. 02-32A is **GRANTED**.

VOTE: **5-0-0** (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Kevin Hildebrand to grant the motion as moot).

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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.

[3] Condition No. 2 of the Remand Order (16566-F) states:

> The Applicant shall not increase undergraduate enrollment above the cap of 6,016. This cap shall apply to traditional full-time undergraduate students (that is, undergraduate students who require housing) and shall be calculated as an average of the total enrollment of traditional undergraduate students during the Fall and Spring semesters of the academic year.

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
DIRECTOR, OFFICE OF ZONING

FINAL DATE OF ORDER: SEP 13 2006

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.