

**BEFORE THE ZONING COMMISSION OF
THE DISTRICT OF COLUMBIA**

In re: Georgetown University 2000 Campus Plan (Case No. ZC 07-23)

**MOTION TO REINSTATE PROCEDURAL PROVISIONS FOR THE FURTHER
PROCESSING OF GEORGETOWN UNIVERSITY APPLICATIONS**

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The Citizens Association of Georgetown (CAG) respectfully requests the Zoning Commission to issue a pre-hearing order reinstating certain procedural provisions in the 2000 Georgetown University Campus Plan (Order Number 16566-F) governing further processing reviews. We also request that further processing of University applications for follow on review be deferred until the procedures are established.

By decision dated February 3, 2006, the Board of Zoning Adjustment ("BZA") removed provisions in the original 2000 Campus Plan Order issued August 6, 2001 (Order No. 16566-A) requiring Georgetown University in its further processing applications to demonstrate compliance with the terms of the Campus Plan Order. CAG appealed that Order and the Court of Appeals remanded the case to the BZA for an explanation of why this and other undisputed provisions in the original Campus Plan Order were removed. *Citizen Association of Georgetown vs. DC Board of Zoning Adjustment, 925 A.2d 585 (2007) (Georgetown II)*. In its recent decision dated August 17, 2007 (attached as Exhibit A) the BZA explained it removed those provisions because the Commission is now in charge of reviewing applications under the Campus Plan and it should establish its own procedures.

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As a result of this BZA action, there is no longer any effective procedure for establishing University compliance with the conditions in the Campus Plan Order and vital compliance information is no longer required to be supplied by the University in its further processing applications. The Commission, CAG and other interested parties are thereby deprived of any means of evaluating and ensuring compliance by the University with the terms of the Campus Plan Order. The Commission should act promptly to correct this anomalous situation since the University has publicly announced it has recently filed applications for Commission approval of various projects.

The 2000 Georgetown University Campus Plan has been the subject of appeals first by Georgetown University and then by the CAG to the Court of Appeals. Following the first remand to BZA, the BZA stripped from the Campus Plan Order various provisions which had not been in dispute in the prior appeal, even though they were proposed for inclusion in the Order on remand by both the University and CAG. CAG took an appeal from that order of the BZA and the Court of Appeals remanded the case once again to the BZA to explain why the undisputed provisions in the prior order had been eliminated. (*Georgetown II*). With respect to the procedural provisions governing follow on reviews the BZA explained in its recent order dated August 17, 2007 (attached) that since the Zoning Commission now has exclusive authority to hear further processing applications, maintaining these procedural provisions in the Order “would constitute as infringement upon the Zoning Commission’s authority in this area.” and “only the Zoning Commission may now establish the substantive and procedural prerequisites for obtaining further processing approval.” (Order at 7- 8)

The procedural provisions in question are set forth below.

17. The Application shall include, in all future applications for further processing of the campus plan, the following information:

- a. Actual enrollment of traditional undergraduate students, as of 30 days prior to the hearing date, including documentation and an explanation of the methods and assumptions used in the calculation;
- b. Whether the Southwest Quadrangle project has been completed, and, if so, the date it began use as an undergraduate dormitory;
- c. A progress report on the implementation and operation of the Off-Campus Student Affairs Program, including information on number of complaints received concerning student misconduct, reported violations, and outcomes, including what sanctions were imposed and the fine paid, if any;
- d. A status report on the Transportation Management Program.

[Referred to as Condition 13 in *Georgetown II*].

19. No special exception application filed by the University for further processing under this plan may be granted unless the University proves that it has consistently remained in substantial compliance with Conditions 1 through 18 set forth in this Order. Further, any violation of a condition of this Order shall be grounds for denial or revocation of any building permit or certificate of occupancy applied for by, or issued to, the University for any University building or use approved under this plan, and may result in the imposition of fines and penalties pursuant to the Civil Enforcement Act, D.C. Code §§ 6-2701 to 6-2723.

[Referred to as Condition 14 in *Georgetown II*].

The purpose of these provisions is to require the University to establish that it is in substantial compliance with the terms of the Campus Plan Order as a condition of obtaining approval of further processing applications. The conditions in turn are included in the Order to ensure that Georgetown University's activities are not likely to become objectionable to the surrounding community. There are no other procedures established by the Zoning Commission to ensure compliance with the Campus Plan Order and without the information required to be submitted by the University in its further processing applications neither the Commission nor interested parties such as CAG can evaluate the University's compliance with the terms of the Campus Plan Order. For example, information on the actual enrollment of traditional undergraduate students is an important piece of data in determining whether the University is in compliance with the cap on undergraduate enrollment in the Order.

Secondly, the BZA granted the University a substantial increase in the undergraduate enrollment cap based in large part on the University's pledge to implement an Off-Campus Students Affairs Program. It is accordingly appropriate to ask the University in its further processing applications to provide a progress report on the implementation and results achieved by that Program.

Since parking and traffic issues are also important issues presented by the University Campus Plan, it is also appropriate to require the University to state the number of off-street parking spaces it is providing and to provide a status report on its implementation of the Transportation Management Program.

Finally, Condition 19 provides that no further processing application may be granted unless the University establishes that it is "in substantial compliance" with the conditions in the

Campus Plan Order. Condition 19 thus makes clear that the University has the burden of proving it is in compliance as opposed to the Commission or CAG having to prove that is not in compliance. For example because of the BZA's decision to allow the University to average Spring and Fall traditional undergraduate enrollment to establish compliance with the enrollment cap, the University will have to explain that it expects an enrollment in the Fall that is higher than the cap will be offset by a Spring enrollment that is lower than the cap.

Taken as a whole these procedural provisions provide the only method for the Zoning Commission and interested parties such as CAG, to obtain information on the University's compliance with the Campus Plan Order and to ensure that it is in compliance with that Order. In short, without these provisions the various conditions imposed in the Campus Plan Order are effectively neutralized because there is no way to evaluate University compliance with them.

Accordingly, CAG respectfully request that the Commission issue a pre-hearing order containing procedural provisions modeled on former Conditions 17 and 19 as procedural provisions applicable to any further processing proceeding under the 2000 Georgetown Campus Plan. It should be noted in this connection that both the University and CAG requested that essentially identical provisions be included in the Campus Plan Order following the first remand, and that the University has for several years had no difficulty complying with those provisions.

In addition substantially similar provisions are contained in the George Washington University Campus Plan Order and govern all follow on further processing reviews by this Commission under that Order.

Respectfully submitted,

CITIZENS ASSOCIATION OF GEORGETOWN

By: Richard Hinds
Richard deC. Hinds
Counsel for CAG
CLEARY GOTTlieb STEEN & HAMILTON, LLC
2000 Pennsylvania Avenue, NW, Suite 9000
Washington, DC 20006

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