

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

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

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**REPLY TO GEORGETOWN UNIVERSITY'S OPPOSITION
TO THE MOTION OF CITIZENS ASSOCIATION OF GEORGETOWN**

Georgetown University's Opposition to the Motion of Citizens Association of Georgetown ("CAG") raises no valid objections to CAG's request that the Commission reinstate two procedural provisions governing further processing reviews. The provisions are essential to provide both the Commission and interested parties, such as CAG, vital information not otherwise available on the University's compliance with important conditions in the Campus Plan Order. The provisions also make clear what is otherwise unclear, that the University has the burden of establishing in its further processing applications that it is in "substantial compliance" with the conditions of the Campus Plan Order. The conditions are in the Order to ensure that the University's operations are not likely to become objectionable to the surrounding residential community.¹ A process of ensuring University compliance with the conditions in the Order is essential if the Order is to achieve its objective.

The only reason given by the Board of Zoning Adjustment ("BZA") for eliminating these provisions was that "while it was appropriate for BZA to customarily include a condition of this kind when they had the authority to decide further processing applications, so as to give notice of its understanding of the burden-of-proof, only the Zoning Commission may now establish the

¹ The District Zoning Regulations require the University to demonstrate that its use as a university in an area zoned for residential use is "not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions." 11 DCMR 210.2

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substantive and procedural prerequisites for obtain further processing approval.” (Order on Second Remand at p. 8).

While the University may now prefer to have no obligation to establish its compliance with the Campus Plan Order at any time, the University is estopped by its own prior actions from opposing the reinstatement of these provisions by the Zoning Commission. The University did not at any time oppose the imposition of these provisions in the original Campus Plan Order, it did not contest these provisions in the Court of Appeals, and on the First Remand to the BZA the University itself proposed the procedural provisions in question for inclusion in the Campus Plan Order.

CAG appealed the BZA’s arbitrary deletion of these provisions. The Court of Appeals decision is succinct:

The CAG argues that the Board acted in an arbitrary and capricious manner when it omitted certain conditions that were included both in the original Campus Plan and the proposed orders of the University and the CAG. We agree.
(*CAG II*, 925 A.2d at 592 (2007) (footnote deleted)).

Following the second remand, the BZA issued its recent decision explaining its actions. With respect to the procedural provisions in question, it stated that since it was not the body to hear further processing applications it could not speak for the Commission. The BZA specifically noted that if the Commission desires more than the minimum information set forth in the zoning regulations “it can specifically request additional information in a pre-hearing order or at any point thereafter.” (Order at p. 8).

Accordingly, CAG’s motion is both timely and appropriate for the Commission to consider. Indeed, because of the lengthy appellate process, this is the first opportunity CAG has had to ask the Commission to reinstate these procedural provisions. When CAG earlier asked this Commission to reinstate the restriction on commercial use of the University’s Harbin Field – one of the other uncontested conditions deleted without explanation by the BZA – the

Commission questioned its jurisdiction to grant the request because of CAG's pending appeal to the Court of Appeals. (Tr. November 28, 2005 at p.20: Vice-Chairperson Hood: "I don't see where it would be within our jurisdiction right now, since you are in the appeal process, for us to impose something. That decision is of a higher body then this one.")

CONCLUSION

CAG respectfully requests the Commission to enter a pre-hearing order reinstating the provisions in the original Campus Plan Order concerning further processing applications, with any modifications the Commission deems appropriate. The University's opposition to CAG's motion raises no substantive objections and its procedural objections are frivolous. Accordingly, we respectfully request that the Commission issue a pre-hearing Order at its October 15, 2007 public meeting, reinstating the procedural provisions and deferring further consideration of the above-captioned applications until the University has had an opportunity to supply the requested compliance information. Since the University should be able to supply that information promptly, the public hearing on its pending applications could be rescheduled for early November.

Respectfully submitted,

CITIZENS ASSOCIATION OF GEORGETOWN

By: Richard deC. Hinds
Richard deC. Hinds
CLEARY GOTTlieb STEEN & HAMILTON, LLC
Counsel for the Citizens Association of Georgetown
2000 Pennsylvania Avenue, NW, Suite 9000
Washington, DC 20006
202-974-1500

Dated: September 27, 2007

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Reply to Georgetown University's Opposition to the Motion of Citizens Association of Georgetown were hand delivered or mailed, postage prepaid, on September 27, 2007 to the following:

Office of the Clerk
Zoning Commission of
the District of Columbia
441 4th Street, NW, Suite 210-S
Washington, D.C. 20001

Don W. Crockett, Esq., Chairman
Georgetown Residents Alliance
3070 Q Street, N.W.
Washington, D.C. 20007

Maureen E. Dwyer
Deborah B. Baum
For Georgetown University
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037

R.D. Andrew, President
Foxhall Community Citizen's Association
1413 Foxhall Road, N.W.
Washington, D.C. 20007

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

Barbara Zartman, President
Cloisters in Georgetown Homeowner's
Association, Inc.
1642 35th Street, N.W.
Washington, D.C. 20007

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

President
Hillandale Homeowners Association
3905 Reservoir Road, N.W.
Washington, D.C. 20007-2144

Edward Solomon, President
Burleith Citizens Association
3525 S Street, N.W.
Washington, D.C. 20007



Deborah A. Newman
Cleary, Gottlieb, Steen & Hamilton, LLC for
Citizens Association of Georgetown
2000 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20006