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Oct. 10, 2007

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Ms. Sharon Schellin
Secretary to the Zoning Commission
Office of Zoning
441 4th Street, Room 210
Washington, DC 20001

**Re: Application of the President & Directors of Georgetown College
("Georgetown University" or the "Applicant") for Special Exception
Approval for Further Processing of and Amendment to an Approved
Campus Plan and Related Relief**

Dear Ms. Schellin:

Attached is the Applicant's Pre-Hearing Submission in support of the above-mentioned Application for special exception approval for further processing of and an amendment to the Georgetown University Campus Plan, special exception to locate a rooftop structure within the required setback from the exterior walls, and variance relief in order to exceed the height limit for roof structures.

This submission, in conjunction with the materials submitted with the application on August 23, 2007, meet the requirements for approval under Section 210 of the District of Columbia Zoning Regulations. We look forward to presenting this case to the Zoning Commission at the public hearing on October 22, 2007. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely yours,


David Avitabile

Enclosures

cc: Andrea Salley
Linda Greenan

ZONING COMMISSION
District of Columbia
CASE NO. 07-23
EXHIBIT NO. 23
ZONING COMMISSION
District of Columbia
CASE NO. 07-23
EXHIBIT NO. 23

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this statement was delivered by hand on October 10, 2007.

Stephen Mordfin
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, DC 20001

ANC 2E
3265 S Street NW
Washington, DC 20007

Christopher Ziemann
District Department of Transportation
Reeves Center
2000 14th Street, NW, 7th Floor
Washington, DC 20009

A handwritten signature in black ink, appearing to read "David M. Avitabile", written over a horizontal line.

David M. Avitabile

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

**Application of the President and Directors
of Georgetown College**

**Z.C. Case No. 07-23
ANC 2E**

APPLICANT'S STATEMENT IN SUPPORT

I. NATURE OF RELIEF SOUGHT

Pursuant to 11 DCMR § 3104 and in accordance with § 210 of the Zoning Regulations, the President and Directors of Georgetown College (hereinafter the “University” or “Georgetown”) request special exception approval for the further processing of an approved campus development plan to permit the construction of a new Science Center, modifications to the Multi-Sports Facility, which was approved in Z.C. Order No. 05-31¹, and construction of a new Athletic Training Facility. All three projects are located in the center of Georgetown’s main campus. In conjunction with the proposed further processing applications, Georgetown seeks a campus plan amendment to reallocate density from the Multi-Sports Facility and other projects approved under the Campus Plan to the Athletic Training Facility.

Both the new Science Center and the Athletic Training Facility will be constructed to achieve LEED-Silver certification. In order to accommodate certain sustainable design features in the Science Center’s mechanical penthouse, the Applicant seeks a special exception pursuant to § 411.11 to locate the rooftop structure within the required setback from the exterior walls, as well as a variance pursuant to § 3103 to exceed the height limit for roof structures set forth in § 400.7. As demonstrated below, Georgetown fully satisfies the requirements for the requested relief. The University notes that ANC 2E has voted to approve all three further processing applications as well as the campus plan amendment and related relief.

¹ Order No. 05-31 is attached as Exhibit I.

ZONING COMMISSION
District of Columbia
CASE NO. 07-23
EXHIBIT NO. 23 A

II. INTRODUCTORY STATEMENT

History and Status of the Campus Plan

Georgetown submitted its proposed Campus Plan for the period 2000 through 2010 (the “**Campus Plan**”) to the Board of Zoning Adjustment (“**BZA**” or “**Board**”) on January 31, 2000. The Campus Plan was approved subject to conditions and was subsequently appealed by Georgetown to the D.C. Court of Appeals. The Court of Appeals determined that certain conditions relating to a freeze in student enrollment and student behavior off-campus were not supported by substantial evidence in the record. Accordingly, the Court vacated the order and remanded it to the BZA for further proceedings. On June 7, 2005, the Board issued a Corrected Order on Remand (BZA Order No. 16566-F) approving the Campus Plan until December 31, 2010. In accordance with the requirements of that Order, Georgetown submitted an updated Campus Plan document to the BZA and all parties on July 20, 2005.

The Citizens Association of Georgetown (“**CAG**”) then appealed the BZA’s Order on Remand to the Court of Appeals. On June 7, 2007, the Court of Appeals affirmed the BZA’s decision to allow the use of averaging for purposes of establishing an enrollment cap, but remanded the matter to the BZA for an explanation as to why several provisions included in the original campus plan were not included in the Corrected Order on Remand. On August 17, 2007, the BZA issued its Order on Second Remand, Order No. 16566-H (attached as Exhibit H), which set forth the BZA’s explanation as to why those provisions were not included in the Corrected Order on Remand. On September 21, 2007, the appeal period for the Order on Second Remand expired, and the Campus Plan became final.

III. REQUESTED SPECIAL EXCEPTION (CAMPUS PLAN)

Construction of the New Science Center Facility

Georgetown proposes to construct a new Science Center facility (the “NSC” or “Science Center”) on the mid-campus portion of the Georgetown Campus, as shown on the site plan included in the plans for the NSF attached as Exhibit A. The NSC will include five stories containing approximately 109,335 square feet of gross floor area, and will be constructed to achieve LEED-Silver certification.

The new Science Center will provide the physical infrastructure to support the mission and goals of Georgetown by housing classrooms, faculty offices, teaching laboratories, research laboratories, and support space that accommodate multiple scientific disciplines all within a single building. This design will enhance the University’s academic mission by facilitating interdisciplinary collaboration and cooperation among students, faculty, and other researchers. Furthermore, the Science Center’s sustainable design includes teaching tools that allow the building itself to contribute to its educational purpose.

The NSC’s massing, materials and detailing help integrate the building into the fabric of the historic campus core. The building’s façade will primarily feature brick with clean lines and large glass windows that complement the contemporary lines of the Bunn Intercultural Center, which lies to the east of the NSC. Meanwhile, the NSC’s gabled roof and brick façade fit with the traditional look of the adjacent Leavey Center to its north as well as the new MSB building that is currently under construction to its west. The Science Center will be connected to the Leavey Center, and this connection will provide students with direct access to the student center from the southwest end of campus. The area surrounding the NSC will include landscaping and brick, stone, asphalt and concrete hardscape features, and the Science Center will complete the

eastern half of a new academic quadrangle that also includes the McDonough School of Business ("MSB") facility that was approved by the Zoning Commission in Z.C. Order No. 05-31. Plans, elevations, and sections of the proposed NSC building are attached as Exhibit A.

Modification of the Multi-Sports Facility/Construction of the Athletic Training Facility

The Multi-Sports Facility (the "MSF") was approved in Z.C Order No. 05-31 for use year-round for practices and games for men's and women's lacrosse, men's football, and men's and women's soccer as well as university special events. The approved MSF was designed to accommodate a total seating capacity of 4,500 (2,000 in the east stands and 2,500 in the west stands) as well as approximately 41,397 square feet of gross floor area containing locker rooms, training facilities, concessions stands, and a press box that would alleviate overcrowding and improve upon the then-existing athletic facilities available at Harbin Field.

Since the MSF's approval, Georgetown re-evaluated the space and programming needs of its athletic programs on the entire campus and determined that other athletic programs, including women's volleyball and men's and women's basketball, also faced overcrowding concerns and facilities deficiencies. As a result, the University has determined that a new comprehensive Athletic Training Facility ("ATF" or "Training Facility") is required to provide Georgetown's student-athletes with the facilities and environment necessary to compete with peer institutions both on and off the field. The proposed ATF will be sited on the western edge of mid-campus, between McDonough Gymnasium and the MSF, on the approximate site of existing tennis courts. The ATF will contain five stories, three of which are above-grade, and approximately 94,280 square feet of gross floor area. Like the Science Center, the Training Facility will be constructed to achieve LEED-Silver certification.

The Athletic Training Facility will contain practice courts for basketball and volleyball,

training equipment, locker rooms, and offices that will serve Georgetown's student-athletes and allow GU to remain competitive with other peer institutions. The ATF provides the University with an efficient and centrally-located facility that will relieve overcrowding in McDonough Gymnasium and accommodate Georgetown's forecasted athletic needs—including those facilities and locker rooms originally planned for the MSF. As a result, the MSF will be decreased in size from 41,397 square feet to approximately 17,371 square feet of gross floor area. The modified MSF will still function as a main open space for the mid-campus and reinforces the urban and pedestrian nature of the campus. Plans and elevations of the revised MSF are attached as Exhibit B.

The Athletic Training Facility has been designed to accommodate GU's programming needs in a building that is compatible with the existing campus architecture and located so as to minimize impacts on the surrounding community. The ATF is located just to the west of mid-campus, close to the undergraduate residential and academic core. As mentioned earlier, its location in close proximity to both the MSF and McDonough Gym, as well as nearby Kehoe Field, allow it to serve existing campus athletic facilities. Plans, elevations, and sections of the ATF are attached as Exhibit C.

A minor amendment to the Campus Plan is requested to reallocate gross floor area from other approved campus projects in order to accommodate the ATF. Of the approximately 94,280 square feet of gross floor area required for the ATF, approximately 24,026 square feet comes from the MSF due to the relocation of planned training facilities and locker rooms to the ATF. The remaining approximate 70,254 square feet of density will be allocated from the Dahlgren Library addition approved under the Campus Plan as MHC-1.²

² Per Appendix B of the Campus Plan, the approved gross floor area for MHC-1 was 112,800 square feet. With approval of requested amendment, the revised gross floor area for MHC-1 will be 42,546 square feet.

IV. JURISDICTION OF THE COMMISSION

Effective December 8, 2000, the authority to hear and decide new campus plan and further processing applications became exclusively vested in the D.C. Zoning Commission (the “**Commission**”) pursuant to 11 DCMR § 3035. Each case is processed and heard under the special exception provisions of § 210 of 11 DCMR.

Uses that are permitted by special exception are presumed to be appropriate for the applicable zoning district as long as certain conditions are satisfied. In considering special exception applications, the Commission must consider only whether the relevant conditions and special exception criteria have been met. If the applicant meets its burden, the Commission ordinarily must grant the application. See First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment, 432 A.2d 965 (1981); Stewart v. District of Columbia Board of Zoning Adjustment, 305 A.2d 516, 518 (1978).

In recent decisions, the D. C. Court of Appeals has reaffirmed the reviewing agency's jurisdiction and scope of review in campus plan cases and has made clear that in reaching its decision the reviewing agency may take into consideration such factors as institutional necessity. See, e.g., Draude v. District of Columbia Board of Zoning Adjustment, 582 A.2d 949, 955 (1990). Further, the Court has distinguished the broader public good referenced in the Zoning Regulations from the more narrow interests of neighboring property owners.

V. COMPLIANCE WITH THE REQUIREMENTS OF §210

In all respects, the requested special exception approval fully complies with §210 of the Zoning Regulations. The specific zoning requirements, and Georgetown's satisfaction of those requirements, are addressed in detail below.

A. College or University Which is an Academic Institution of Higher Learning (Subsection 210.1)

Georgetown University was founded as an educational institution of higher learning in 1789 and received its federal charter in 1815.

B. The Use is Located so that it is Not Likely to Become Objectionable to Neighboring Property (Subsection 210.2)

1. Noise, Lighting, and Visual Impacts

The mid-campus location of the NSC, MSF, and ATF will help minimize any noise, lighting or visual impacts that the projects may have on neighboring properties. The projects will not have any visual impact because all three buildings will be lower than surrounding existing campus buildings. In particular, the MSF is located at an elevation that is substantially lower than any neighboring properties, and as a result existing campus buildings will help buffer any noise created by this use.

2. Number of Students

Neither the construction of the NSC, MSF nor the ATF will result in an increase in student enrollment levels, and the University does not request an increase in the student enrollment limit set by Condition 2 of the revised Campus Plan (BZA Order No. 16566-F). As required by Condition 3 and detailed in the revised Campus Plan, the University has undertaken a number of measures to address community concerns regarding its off-campus effects, primarily through the Office of Off-Campus Student Life ("OCSL", detailed in Appendix G and

Appendix O of the revised Campus Plan) and the Office of External Relations (Appendix H of the revised Campus Plan).

- Quarterly Meetings: The Office of External Affairs holds quarterly meetings with the community. The proposed further processing applications were presented to the community at its April 17, 2007 quarterly meeting. They were also presented at regularly scheduled public meetings of the local Advisory Neighborhood Commission, ANC 2E, at its May, July, September, and October meetings.
- Alliance for Local Living (“ALL”): OCSL has established a neighborhood council, the Alliance for Local Living (“ALL”), which holds monthly meetings among all community stakeholders, including students, residents, University staff, landlords, and the Metropolitan Police Department (“MPD”) to provide a system for enhanced communication and feedback and to proactively address issues.
- Off Campus Programs: The University has enhanced its Off-Campus Student Affairs Program with four tools that specifically address off-campus conduct:
 - First, the University holds mandatory orientation sessions for students living off campus. The sessions address local laws and ordinances as well as civic responsibility, and failure to attend results in the student’s inability to pre-register for spring semester classes.
 - Second, the University operates a hotline that is available 24/7.
 - Third, the University operates its Student Neighborhood Assistance Program (“SNAP”), which provides an expanded community presence during hours of increased activity. Through SNAP, a representative of OCSL rides along with a private security officer on Thursday, Friday, and Saturday evenings between 10 PM and 3 AM to proactively monitor for off-campus activity as well as respond to specific calls.
 - Fourth and finally, the University enforces its strict code of conduct which includes sanctions for off-campus misconduct (up to and including mandatory return to on-campus housing).
- MPD: The University’s Department of Off-Campus Student Affairs also works closely with the Metropolitan Police Department to secure reports on off-campus student incidents in order to follow up and implement appropriate disciplinary sanctions, and to ensure the safety and well-being of students and the community.

The University continues to work with representatives of ANC 2E, MPD and residents of the local community to improve its existing policies. For example, Georgetown University has

partnered with CAG to fund a private security detail on weekend evenings to improve safety for student and resident alike. GU's oversees the security patrol for West Georgetown (west of Wisconsin Avenue) and CAG oversees the security patrol for East Georgetown.

3. Traffic Impacts

The University has retained Gorove/Slade Associates ("GSA") as its transportation consultant, and GSA's Traffic and Parking Assessment is attached as Exhibit E. The report makes the following findings:

- Pursuant to Conditions 2 and 5 of the revised Campus Plan, the University is subject to caps on its undergraduate enrollment as well as its parking inventory. As a part of its report, GSA observes that no change to either the overall parking space cap or the number of students and staff is proposed by the new construction projects. As a result, there is no expected adverse impact due to parking or additional vehicular trips.
- Pursuant to Condition 4 of the revised Campus Plan, all athletic events at Harbin Field (the MSF) expected to draw over 100 visitors shall begin before 4:00 PM or after 7:00 PM, which GSA finds will suppress traffic and parking demand.
- As required by Condition 6 of the revised Campus Plan, the University has enacted a very comprehensive Transportation Management Program ("TMP") to ensure that the campus does not generate new vehicular trips, and details the components of the TMP.

The report concludes that the new facilities will not result in any significant increase in traffic or parking demand on residential streets surrounding the campus due to the parking and enrollment cap, restrictions on use of the MSF, and the University's enhanced TMP.

Indeed, the Commission has already reviewed the MSF and ascertained that it would not create any adverse impacts. In approving the MSF in Z.C. Order No. 05-31, the Zoning Commission determined GU had met the burden of proof pursuant to Section 210 and concluded that the MSF would not adversely affect the use of neighboring property in part because “the new facilities are not likely to increase campus related traffic on adjacent streets.” The proposed modifications to the MSF, which will reduce its size by approximately 24,026 square feet, do not result in an increase in the intensity of use of the MSF for athletic and other University events, and will therefore not create any adverse impact.

C. Compliance with the Maximum Bulk Requirements (Subsection 210.3)

Georgetown’s overall existing FAR is 1.164,³ which is well below the 1.8 FAR permitted under the zoning regulations. The three projects will result in a net addition of approximately 220,986 square feet of gross floor area to the Georgetown campus. The additional approximate 220,986 square feet of gross floor area will result in an overall FAR for the campus of 1.215.

D. Submission of a Plan for Developing the Campus as a Whole (Subsection 210.4)

As noted above, Georgetown filed its 2000 – 2010 Campus Plan on January 31, 2000. The Board issued a Corrected Order on Remand (BZA Order No. 16566-F) on June 7, 2005 approving the Campus Plan. The approved Campus Plan sets forth goals for increasing Georgetown’s contributions to research and discovery, and securing GU’s position as the premier Catholic and Jesuit institution. The Campus Plan notes that Georgetown’s further competitive success is compromised by a lack of sufficient facilities and calls for the development of an environment that will attract the talent required to remain competitive and

³ This includes the MSB approved by Order No. 05-31, which is currently under construction.

fulfill its goals. Accordingly, key Campus Plan strategies include alleviating overcrowding and replacing unsuitable spaces for existing programs, developing facilities to attract and retain faculty, adopting an inclusive planning process, and balancing thoughtful design guidelines that are sympathetic to Georgetown's historic character and institutional nature with sufficient flexibility to respond to change.

Both the NSC and the ATF provide sorely needed facilities that will greatly improve GU's science and athletic programs. The Campus Plan notes that "the primary facility deficiencies identified on campus are the need for new academic space to meet existing needs and enhanced student life/athletic space to improve the quality of campus life". (Approved Campus Plan dated Oct. 4, 2005, p. 16.) The proposed NSC and ATF projects address these deficiencies. Currently, the science departments are scattered throughout the campus in crowded facilities that are out-of-date. As described above, the proposed NSC building will house multiple scientific disciplines under one roof, which will encourage collaboration and cooperation among students and faculty researchers. With regard to athletic and recreational activities, the approved Campus Plan supports:

University's athletic and student life goals of providing athletic fields and facilities of sufficient number and quality in relative proximity, to allow the athletics department to compete effectively within its sports divisions and to provide students with the opportunity for informal play. General strategies to achieve these goals are:

- Increase the functionality of existing and planned facilities.
- Increase the utilization of facilities.
- Develop facilities that support Title 9 requirements.
- Develop facilities that meet NCAA requirements.

(Approved Campus Plan dated Oct. 4, 2005, p. 24.) The proposed ATF building, in combination with the modified MSF, will provide student athletes with proper practice and training facilities as well as areas for competitive play that support Title IX and NCAA requirements and are co-

located in close proximity to other existing athletic facilities.

The NSC is consistent with the Campus Plan's land use goal to locate academic and academic support uses in the center of the campus. Indeed, the development of a Science Center at this location was anticipated under the Campus Plan, and upon completion, the NSC and MSB will form a new academic quadrangle at the center of the Campus. Accordingly, the NSC is fully consistent with the existing Campus Plan, and no amendment is proposed to accommodate its construction.

Georgetown requests a minor amendment to the Campus Plan, however, for flexibility to reallocate density from the MSF and the unbuilt campus plan project identified as MHC-1 to accommodate the ATF. The Campus Plan specifically stresses the need for flexibility in planning facilities as priorities shift based on academic and campus life needs as well as financial resources, and this Campus Plan amendment will provide Georgetown with the flexibility to accommodate its athletic needs in a facility that is otherwise fully consistent with the both the strategic and land use goals of the Campus Plan. While the Campus Plan does not specifically envision a building at the proposed location of the ATF, the Plan calls for athletic uses to be located on the west portion of the campus near the proposed site. Further, the proposed location of the ATF is consistent with the Plan's land use objectives to locate athletic uses away from sensitive residential areas. Finally, the proposed reallocation will not result in an overall increase in the FAR permitted under the Campus Plan.

E. No Interim Use of Land is Proposed (Subsection 210.5)

No interim use of land is requested as a result of these special exception applications.

F. No New Use Sought for Approved Site of Buildings Moved Off Campus (Subsection 210.6)

Georgetown does not seek approval for any new use of a previously approved building site and thus complies with this section.

G. Compliance with the Policies of the District Elements of the Comprehensive Plan (Subsection 210.7)

The Project is not inconsistent with the policies of the District Elements of the Comprehensive Plan. The Project will further the goals and objectives of the Ward 2 Element of the Comprehensive Plan by enhancing educational facilities in the ward without adversely impacting adjacent residential areas.

H. The Proposed Buildings Are within the Floor Area Limit for the Campus as a Whole (Subsection 210.8)

The existing Campus Plan FAR of 1.164 is within the permitted 1.8 FAR prescribed for the residentially zoned portions of the campus. The Project will add approximately 220,986 square feet of gross floor area to the campus, which will result in a new campus FAR of 1.215.

I. Referral to the District of Columbia Office of Planning and the District of Columbia Department of Public Works (Subsection 210.9)

Georgetown has forwarded copies of the application and/or Traffic and Parking Assessment to the Office of Planning and DDOT for their review and report.

VI. REQUESTED SPECIAL EXCEPTION AND VARIANCE **(NSC ROOF STRUCTURE)**

As mentioned earlier, both the New Science Center and Athletic Training Facility will be constructed to achieve LEED-Silver certification. In order to incorporate certain sustainable design building systems necessary for the NSC to achieve LEED Silver certification and create a building design that fits in with surrounding campus architecture, the University requires relief from the setback and height requirements for the roof structure of the NSC.⁴

Specifically, Georgetown seeks special exception relief, pursuant to 11 DCMR §§ 3104 and 411, from Section 400.7 of the Regulations for the roof structure, which is not sufficiently set back from the roof edge. Georgetown also seeks variance relief, pursuant to 11 DCMR § 3103, from Section 400.7 for the roof structure, which exceeds the 18'6" height limitation for housing for mechanical equipment. As described below, the requested areas of relief are only technically required to accommodate the building's unique design, and the penthouse reads as an integral part of the building itself. Were the structure a standard 90-foot building with an 18'6" mechanical penthouse, it would comply with the requirements of the Regulations. The Applicant notes that similar requests for special exception relief from the roof structure requirements within the context of a campus plan further processing application were granted to The George Washington University in Z.C. Order No. 954, Howard University in Z.C. Order No. 06-38 and the Catholic University of America in Z.C. Order No. 06-39.

A. The Roof Structure Meets the Requirements for Special Exception Relief

In order to obtain special exception relief from the roof structure setback requirement, the

⁴ The mechanical structures for the Science Center must be located in the roof in order to accommodate the specialized venting and other needs required for the laboratories and other uses. By contrast, the Athletic Training Facility is able to accommodate the bulk of its mechanical equipment underground.

special exception must be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and must not tend to affect adversely the use of the neighboring property in accordance with the Zoning Regulations and Maps. 11 DCMR § 3104.1

1. The Requested Relief is in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps

The general purpose and intent of the zoning regulations and zoning maps is to promote the public health, safety, morals, convenience, order, prosperity, and general welfare. 11 DCMR § 101.1. Specifically, the requested relief must take into consideration the character of the respective districts as well as the suitability of each district for the uses permitted; and must be designed to encourage the stability of districts and of land values. *Id.* at § 101.2. The relevant sections of the Zoning Regulations provide guidelines, which are described in more detail below, by which to evaluate whether a special exception should be granted.

Pursuant to 11 DCMR § 400.7, all mechanical equipment or stairway or elevator penthouses are required to be set back from all exterior walls a distance at least equal to its height above the roof. The Zoning Regulations further provide that “[w]here impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable, the Board of Zoning Adjustment shall be empowered to approve, as a special exception under § 3104, the . . . location, design, number, and all other aspects of such structure . . . even if such structures do not meet the normal setback requirements . . . ; provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.” 11 DCMR § 411.11.

The building's design makes it difficult to set back the rooftop structure by the required amount. First, the roof structure must intrude into the setback area in order to accommodate the building systems required for the building to achieve LEED Silver certification. Second, the proposed design is subject to review and approval by the Old Georgetown Board, and the proposed building must fit into the broader context of Georgetown University. The proposed NSC design harmonizes with the design for the MSB to create the academic quadrangle called for in the Campus Plan, and OGB has granted the NSC concept design approval. Finally, the request for relief is a technical one, since the roof structure slopes and therefore gradually sets itself back.

The proposed design remains consistent with the intent of the Zoning Regulations and Zoning Map. The requested relief does not compromise the character of the R-3 Zone District or of the Georgetown University Campus. To the contrary, the penthouse represents a visual improvement as it reads as part of the building, and the requested relief will improve the functionality of the building as well as its aesthetic appeal and its sustainable design.

2. The Requested Relief Will Not Adversely Affect the Use of Neighboring Property

The encroachment into the standard setback will not adversely affect the use of neighboring property. As discussed in further detail below, when combined with the height of the building itself, the roof structure does not exceed height limits permitted under the Zoning Regulations. Further, the roof structure's sloped design minimizes its visual impact, and it does conform with the set back requirement above the structure's 90-foot height mark. Finally, the building is located in the heart of the Georgetown University Campus and the only properties that would be affected by this are owned by the University, as shown on the Site Section marked

A3.14 and included in Exhibit A. These considerations diminish the possibility that the lack of setback will have an adverse effect on neighboring properties.

B. The Application Meets the Requirements for Variance Relief

The burden of proof for an area variance relief is well established. The Applicant must demonstrate that the property is affected by an exceptional or extraordinary situation or condition, that the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As set forth below, the roof structure meets the three-part test for area variance relief.

1. The Property is Affected by an Exceptional Situation or Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A.2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land; and that “. . . property generally includes the permanent structures existing on the land [footnote omitted].” Id. at 293-94. The Court held that the exceptional situation standard of the variance test may be met where the required hardship is inherent in the improvements on the land (i.e. the building or structure) and not just the land itself.

Here, the Property meets the “exceptional conditions” element of the variance test. Most directly, the roof structure must exceed a height of 18’6” in order to accommodate building systems that will allow the NSC to achieve LEED Silver certification. The mechanical systems cannot be located elsewhere because of the specialized venting for laboratories and other needs of the Science Center. Furthermore, as noted above, because the design is subject to review and

approval by the Old Georgetown Board, the proposed building must fit into the broader context of other Georgetown University buildings. Here, the height and design of the proposed NSC corresponds with the height and design of surrounding buildings, including the nearby MSB, to create the academic quadrangle called for in the Campus Plan. Again, OGB has granted the NSC concept design approval.

2. Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

The requested relief is for an area variance, and the appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.”⁵ In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants are not required to show “undue hardship” but must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “. . . a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ Increased expense and inconvenience to applicant for a variance are among the factors for BZA’s consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992).

Thus, to demonstrate practical difficulty, the applicant must show that strict compliance

⁵ By contrast, the test of a use variance is “undue hardship,” which is a more stringent standard than required for area variances.

with the regulations is burdensome, not impossible. The Applicant meets this standard. Simply, the sustainable design features cannot be accommodated with the 18'6" height limitations for roof structures, as shown on the section marked A3.12 in Exhibit A. In order to comply with the requirement, the Applicant would be required to construct an artificial floor within the penthouse that divides it into two separate levels. The lower level, which would actually contain the bulk of the mechanical equipment, would actually become a sixth story of the building even though it contains no inhabitable space, while the upper level of the penthouse would become a "mechanical penthouse" even though it does not contain the bulk of the building's mechanical systems. Alternately, the University would have to abandon the building systems it has determined best fit the NSC and either: (1) pursue more costly sustainable design alternatives, which are economically infeasible, or (2) forego LEED certification altogether, which undermines the building's educational mission. As noted above, the special venting and other needs for the uses within the proposed Science Center prevent the University from relocating these mechanical structures to other areas within the building.

3. Relief Can Be Granted without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan

The granting of a variance from the penthouse height limit can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan. There will be no adverse impact from this variance. Despite the increased penthouse height, the overall height of the five-story NSC and its roof structure will not exceed the height of a more traditional 90-foot building and 18'6" penthouse. Further, as noted above and demonstrated on the plan marked A3.14 in Exhibit A, the NSC site is completely surrounded by other Georgetown University properties, and its height with the mechanical penthouse is consistent with the heights of surrounding structures. Finally, the variance is requested to

accommodate environmentally sensitive and sustainable building systems, which furthers the goals and policies of the District of Columbia Comprehensive Plan as well as the stated policies of the Zoning Commission. Therefore, for all the reasons stated above, the requested relief will neither cause substantial detriment to the public good nor will it impair the purpose, integrity, or intent of the zone plan.

VII. COMMISSION OF FINE ARTS

The Commission of Fine Arts, which has jurisdiction over the Georgetown Campus pursuant to The Old Georgetown Act, has granted concept approval of the design of both the NSC and MSF. A copy of the statement indicating the Commission's concept approval of the NSC is attached as Exhibit F. The University will continue to work with the Commission of Fine Arts to secure concept approval of the proposed ATF.

VIII. WITNESSES

Attached as Exhibit G is a list of witnesses as well as a summary of each witness' testimony.

IX. EXHIBITS IN SUPPORT OF APPLICATION

- Exhibit A: Plans for the proposed new Science Center.
- Exhibit B: Plans for the modified Multi-Sport Facility .
- Exhibit C: Plans for the proposed Athletic Training Facility
- Exhibit D: Site Plan
- Exhibit E: Traffic and Parking Assessment
- Exhibit F: Statement of no objection from the Commission of Fine Arts
- Exhibit G: Outlines of Witness Testimony

Exhibit H: BZA Order No. 16566-H (Order on Second Remand, August 16, 2007)

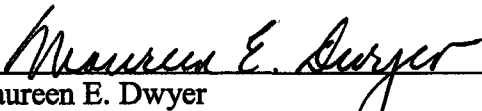
Exhibit I: Zoning Commission Order No. 05-31 (approval of MSB and MSF)

X. CONCLUSION

For the reasons stated above, the proposed NSC, ATF, and modification to the MSF projects satisfy the requirements for special exception approval for further processing of and an amendment to an approved campus plan in accordance with §210 of the Zoning Regulations. Furthermore, the requested relief from the roof structure setback and height requirements satisfy the requirements for special exception and variance relief, respectively. Accordingly, it is respectfully requested that the Commission approve this special exception application.

Respectfully submitted,

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