

Historic Districts and the Imagined Community:  
A Study of the Impact of the Old Georgetown Act

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INTRODUCTION ..... 82

I: ZONING AND HISTORIC DISTRICTS..... 84

    A. The Rise of Historic Districts..... 85

    B. Purpose of Historic Districts..... 88

    C. General Structure of Historic District Legislation ... 89

    D. Arguments against Historic Districts ..... 91

II: ZONING AND HISTORIC PRESERVATION WITHIN THE  
    DISTRICT OF COLUMBIA..... 93

    A. Advisory Neighborhood Commissions ..... 93

    B. Historic Preservation in the District..... 97

    C. Zoning within the District ..... 100

PART III: GEORGETOWN UNIVERSITY’S DEVELOPMENT AND  
    CONFLICT WITH THE NEIGHBORHOOD ..... 103

    A. History of Conflict ..... 108

    B. The Current Athletic Training Facility Project ..... 113

PART IV: CONCLUSION ..... 117

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## INTRODUCTION

We must take seriously Vico's great observation that men make their own history, that what they can know is what they have made, and extend it to geography; as both geographical and cultural entities—to say nothing of historical entities—such locales, regions, geographical sectors as “Orient” and “Occident” are man-made.<sup>1</sup>

Communities have amorphous definitions and boundaries, yet the concept of identity is central to their formation. Benedict Anderson defined the idea of a nation as an “imagined political community.”<sup>2</sup> Members of the “imagined community” do not personally know every member of the community, “yet in the minds of each lives the image of their communion.”<sup>3</sup> The definition of a community hinges upon the way in which the members of the community imagine it.<sup>4</sup>

Although discussing the idea of community on a more macro level, Anderson's definition of the nation seems appropriate for discussing the contours of a city neighborhood. Neighbors may not know each other or interact. Still, they share a generalized conception of what constitutes the neighborhood, defining its boundaries. The neighborhood imagines its own community.

While one must not downplay the importance of self-identification in the process of forming a community, Edward Said rightly identifies the role outside forces play in both the definition and the study of a community. Of particular importance for this Comment, Professor Said develops the idea of “imagined geography.” Outside communities develop perceptions of a particular society and eventually the outsider's perception seeps into and effects the way the community defines itself and forms its borders. Said argues that human choices shape political geography, manipulating the subsequent formation of identity. Geographical and political boundaries are man-made, often by entities outside the established community.

Historic districts stand as a prime example of man-made geography and its impact on the imagined community.

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1. EDWARD W. SAID, *ORIENTALISM* 4-5 (1979).
  2. BENEDICT ANDERSON, *IMAGINED COMMUNITIES* 6 (new ed. 2006).
  3. *Id.*
  4. *Id.*

Government actors establish boundaries based upon various factors, such as the character of the architecture or the importance of a historical event. Basing the boundaries of a historic district on such factors fails to take into consideration the definition the community has developed on its own, the way in which the community imagines itself. As a result of the historic districting, the original community finds itself enclosed by boundaries it may not have originally defined as its own boundaries.

The modern trend within historic district legislation uses legislation to help with community identity. Governments instead should focus on how the community imagines itself when creating historic districts. Scholars have argued that historic districts help to establish a sense of place within the greater city.<sup>5</sup> Still, the community identity which results from the legislation may not comport with the realities of the original community. The historic district may promote one conception of community over another, distorting how the neighborhood defines itself and how the outside world defines the community. Geographic neighbors may share little in common in terms of identity, and yet, through a historic district, may find themselves bound together and forced to reexamine their identity.

This Comment examines the impact of the creation of the Old Georgetown Historic District on the neighborhood's oldest continuous resident: Georgetown University. In recent years, Georgetown has sought to construct a new Athletic Training Facility on campus. The new development project has met resistance from local residents and the historic district review board. This Comment will analyze the conflict within the Old Georgetown Historic District and provide an alternative approach for historic preservation there. Part I provides the reader with an overview of historic district regulations. Part II explains the process of land development and historic districting in the District of Columbia. Part III analyzes conflicts within the Old Georgetown Historic District, in particular when Georgetown University has sought to develop land on its campus. Part IV concludes the article by arguing for the removal of Georgetown University's campus from the Old Georgetown Historic District to form a separate historic

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5. *See infra* Part I.

district as a way to better take into account the imagined community of Georgetown.

### I: ZONING AND HISTORIC DISTRICTS

At the start of the Twentieth Century, city planners began to experiment with the use of government regulations to control the use of land within certain areas.<sup>6</sup> Opponents of these early attempts at zoning regulations challenged the regulations as exceeding the local government's police powers.<sup>7</sup> A shift in the law occurred in 1926 when the Supreme Court upheld the zoning schemes of a small Ohio city.<sup>8</sup> *Euclid v. Ambler Realty Co.* opened the door for local governments to shape a city's composition based upon land use.<sup>9</sup> The validation of zoning regulations, more importantly for this Comment, legitimized the practice of city governments in using zoning regulations to control the aesthetic features of a neighborhood and ultimately the creation of historic districts.

The Old Georgetown Historic District constitutes one of the many historic districts which populate the United States.<sup>10</sup> The idea of historic preservation—and with it historic districts—gradually took root in the United States.<sup>11</sup> As historic preservation legislation became an accepted role of government, the reasoning behind such governmental actions evolved. Today, historic preservation offers an opportunity for a community to define itself.<sup>12</sup>

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6. Rachel D. Godsil, *Viewing the Cathedral from behind the Color Line: Property Rules, Liability Rules, and Environmental Racism*, 53 EMORY L.J. 1807, 1859 (2004).

7. *Id.* at 1860.

8. See *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (restrictions on land use related to the health and safety of the community fall within the police power of the city).

9. *Id.*

10. See generally *National Register of Historic Places*, NAT'L PARK SERV., <http://www.nps.gov/nr/> (last visited July 23, 2013).

11. Historic preservation typically uses two means to achieve its goal: historic landmarking and historic districting. Because of the nature of the conflict in Georgetown, this article will focus solely on historic districting.

12. See generally Carol M. Rose, *Preservation and Community: New Directions in the Law of Historic Preservation*, 33 STAN. L. REV. 473 (1981) (arguing that modern historic preservation law focuses on the role of the community).

*A. The Rise of Historic Districts*

Historic preservation in the United States traces its beginnings to the early days of the republic when individual citizens and private groups sought to save buildings from destruction. The first example of historic preservation in the United States occurred in 1816 when the Pennsylvania state government proposed to sell the Old State House in Philadelphia.<sup>13</sup> The building (today known as Independence Hall) served as the meeting house of the Continental Congress and provided the setting for the Constitutional Convention.<sup>14</sup> A group of citizens, fearing the destruction of the building, convinced the state government to sell the building and surrounding land to the city of Philadelphia, which in turn preserved the land for all to enjoy.<sup>15</sup>

Prior to the Civil War, George Washington's estate became the subject of the first national movement for historic preservation. The owner of Mount Vernon sought to sell the property, first offering the land to the state of Virginia and then the federal government.<sup>16</sup> When both refused, the land seemed destined to be sold to private investors.<sup>17</sup> In response to this possibility, Ann Pamela Cunningham formed the Mount Vernon Ladies Association.<sup>18</sup> Within six years, the organization raised enough money through private donation to purchase Mount Vernon in 1858 and preserve the estate.<sup>19</sup>

The early examples of historic preservation focused mostly on individual buildings and plots of land. After the Civil War, preservationists sought to protect entire districts, now with the express support of state and federal governments. These districts did not feature urban neighborhoods, as many modern historic districts do. Instead, the preserved land consisted of battlefields from the recent war. In a move to preserve the land on which the Battle of Gettysburg took place, Congress ordered the purchase or condemnation of

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13. CHARLES B. HOSMER, JR., *PRESENCE OF THE PAST* 30 (1965).

14. *Independence Hall*, NAT'L PARK SERV., <http://www.nps.gov/inde/historyculture/places-independencehall.htm> (last visited July 23, 2013).

15. HOSMER, *supra* note 13, at 30.

16. *Id.* at 41.

17. *Id.* at 42.

18. *Id.*

19. *Id.* at 49.

private lands.<sup>20</sup> After the war, entrepreneurs constructed a trolley line around the battlefield to enable tourists to explore the terrain.<sup>21</sup> As part of the efforts to preserve the battlefield, federal commissioners used the power of eminent domain to gain control of the land containing the trolley tracks.<sup>22</sup> The resulting Supreme Court decision of *United States v. Gettysburg Elec. Ry. Co.*<sup>23</sup> confirmed the right of the federal government to preserve land of historic value.<sup>24</sup> Speaking for a unanimous court, Justice Peckham wrote: “[s]uch a use seems necessarily not only a public use, but one so closely connected with the welfare of the republic itself as to be within the powers granted Congress by the Constitution for the purpose of protecting and preserving the whole country.”<sup>25</sup> The Court recognized the importance a preserved site can have upon the national community.<sup>26</sup> A place of such national importance, like a Civil War battlefield, transcends its original purpose—a peach orchard, wheat field, or squat, forested hill—and becomes a symbol with which individuals identify, impressing itself upon the consciousness of the entire people of a nation.

In 1926, the Supreme Court upheld zoning ordinances as a valid action by local governments.<sup>27</sup> Afterwards, city governments began to experiment with zoning ordinances as a means of historic preservation.<sup>28</sup> Cities viewed preservation as a means of protecting the artistic virtue of the historic structures in a particular area.<sup>29</sup> In *Berman v. Parker*, the Supreme Court extended the holding of *Gettysburg*.<sup>30</sup> While *Gettysburg* upheld preservation for historic purposes, *Berman*

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20. J. Peter Byrne, *Hallowed Ground: The Gettysburg Battlefield in Historic Preservation Law*, 22 TUL. ENVTL. L.J. 203, 211 (2009).

21. *Id.* at 221-22.

22. *Id.* at 222.

23. 160 U.S. 668 (1896).

24. *Id.*

25. *Id.* at 682.

26. Rose, *supra* note 12, at 483.

27. See *Euclid v. Amber Realty Co.* 272 U.S. 365 (1926).

28. See DAVID HAMER, *HISTORY IN URBAN PLACES* 5-8 (1998) (discussing that New Orleans in 1926 and Charleston in 1931 were two of the first cities to utilize zoning ordinances as a means of protecting a “historic district.”).

29. *Id.* at 7 (noting that New Orleans’ Vieux Carré serves as a prime example of such a district; the area consists of many houses which survive from the original French colony).

30. *Berman v. Parker*, 348 U.S. 26 (1956).

legitimized the concept of aesthetic-zoning in America.<sup>31</sup> The Court stated:

The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.<sup>32</sup>

In an evaluation of what constitutes public welfare, one must use an expansive definition. As such, a desire to preserve a building because of its appearance—i.e. a unique historical style—helps ensure a beautiful community. Therefore, cities can craft historic preservation laws in order to protect old districts for the singular reason that their old-fashioned style appeals to the tastes of the community.<sup>33</sup>

In 1966, the federal government enacted the National Historic Preservation Act which recognizes the role of the federal government in historic preservation.<sup>34</sup> The act establishes the National Register of Historic Places maintained by the Secretary of the Interior.<sup>35</sup> Despite the declaration of federal involvement in historic preservation, much of the power to decide which areas to preserve and declare a historic district remains with the local community.<sup>36</sup> In fact, most of the places listed in the National Register are of local significance.<sup>37</sup> By the time Congress enacted of the National Historic Preservation Act, historic preservation had

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31. *Id.* at 33; *Berman v. Parker* is often referred to as paradoxical because the case involved the condemnation of an otherwise structurally sound building because it had the unfortunate location within an urban revitalization area.

32. *Berman*, 348 U.S. at 33.

33. Rose, *supra* note 12, at 484.

34. 16 U.S.C. § 470(b)(7) (2012):

Although major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation on the United States to expand and accelerate their historic preservation programs and activities.

35. 16 U.S.C. § 470(a)(1)(A) (2012).

36. § 470(a)(470a(2)).

37. HAMER. *supra* note 28, at 20.

become a widely accepted role of government at all levels. The Act reinforces what Supreme Court decisions have declared valid.

### *B. Purpose of Historic Districts*

In her seminal article on the evolution of historic preservation, Carol M. Rose argues that the reason behind historic preservation is not singular. Over time, three distinct purposes developed: (1) preservation in order to inspire patriotism; (2) preservation based on artistic merit; and (3) preservation as a means of creating a community identity and a sense of place within the city.<sup>38</sup>

Early preservation efforts of the nineteenth century, such as the drive to save Mount Vernon or protect Gettysburg, hoped to instill a sense of national, civic pride in visitors.<sup>39</sup> Justice Peckham channels this feeling in his opinion for *Gettysburg*:

By this use the government manifests for the benefit of all its citizens the value upon the services and exertions of the citizen soldiers of that period. Their successful effort to preserve the integrity and solidarity of the great republic of modern times is forcibly impressed upon everyone who looks over the field.<sup>40</sup>

By preserving the battlefield, the government offers a reminder of the destructive war fought to unite the nation, and in so doing allows citizens to appreciate fully the sacrifices made.<sup>41</sup>

The desire to protect the aesthetic features of a particular area fueled the creation of historic districts achieved through zoning ordinances from the early to mid-twentieth century.<sup>42</sup> The city of Charleston was the first city to enact historic districting in 1931.<sup>43</sup> The preservation laws developed as a response to the encroachment of gas stations into the downtown area.<sup>44</sup> Rather than focus on historical events that occurred in a particular area, preservationists sought to save

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38. Rose, *supra* note 12, at 479-81.

39. *Id.* at 481.

40. *United States v. Gettysburg Elec. R. Co.*, 160 U.S. 668, 682 (1896).

41. *Id.* 683.

42. Rose, *supra* note 12, at 484-88.

43. *Id.* at 505.

44. HAMER, *supra* note 28, at 5.

buildings because of their artistic value.<sup>45</sup> The buildings were seen as works of art, deserving of preservation on their own merits.<sup>46</sup> Zoning ordinances enable a city to ensure that the appealing architecture of the city's past do not suffer from future development.

The third, and modern, approach to historic preservation, advanced by Rose, focuses on the community itself.<sup>47</sup> Rather than preserving a neighborhood for one particular reason, preservation for the sake of the community combines the patriotic and aesthetic reasons in a way that gives the community meaning.<sup>48</sup> Age and historical significance constitute two of several factors when determining the validity of an area's need for historic preservation.<sup>49</sup> But the community-centered approach takes into account the current residents' and community's needs.<sup>50</sup> As a result, the community must play an important role in the procedures for historic preservation.<sup>51</sup> These procedures, Rose asserts, help to strengthen the community through organization.<sup>52</sup> Architects must work with the community when developing projects to ensure that the project blends with the community's self-identity.<sup>53</sup>

### *C. General Structure of Historic District Legislation*

Historic district ordinances and statutes typically follow the same format. Because historic districting laws trace their ancestry to zoning ordinances, historic districts operate in a similar fashion.<sup>54</sup> After describing the boundaries of the historic area, the ordinances have a "purpose" clause describing the reasons which necessitate the historic

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45. David F. Tipson, *Putting the History Back in Historic Preservation*, 36 URB. LAW. 289, 291 (2004).

46. *Id.*

47. Rose, *supra* note 12, at 488.

48. *Id.* at 480 (The community centered approach "stresses the 'sense of place' that older structure lend to a community, giving individuals interest, orientation, and a sense of familiarity in their surroundings.").

49. *Id.* at 491.

50. *Id.*

51. *Id.*

52. *Id.* at 492.

53. Rose, *supra* note 12, at 473.

54. *Id.* at 521

district.<sup>55</sup> Often, the purpose listed goes beyond the limitation of unsightly signage.<sup>56</sup> Promoting economic welfare and harmonious growth are typically placed on equal footing with historic preservation for educational purposes (i.e. historic preservation because of the history of the area or the historic architecture present in the area).<sup>57</sup> Next, the ordinances include guidelines to help ensure preservation.<sup>58</sup> The guidelines provide detailed visual protection for the area, ensuring that any future project or renovation maintains uniformity with existing structures.<sup>59</sup> To ensure the implementation of the guidelines, the ordinances establish review boards tasked with reviewing each proposed project.<sup>60</sup> Finally, the ordinances often provide a safety valve for projects, which would otherwise not satisfy design guidelines.<sup>61</sup> To qualify, a project must provide the public with an important public benefit.<sup>62</sup>

The Old Georgetown Act of 1950,<sup>63</sup> which governs the Old Georgetown Historic District, operates in a similar manner to modern historic district ordinances. The statute's purpose clause notes the area's national significance and architectural style while stating broad reasons for preservation. "In order to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features, and examples of the type of architecture used in the National capital in its initial years."<sup>64</sup> The statute next details the procedure for review of new projects. Prior to the issuance of any permit for construction, demolition, or renovation, the mayor must "refer the plans to the National Commission of Fine Arts for a report as to the exterior

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55. Tipson, *supra* note 45, at 294.

56. Rose, *supra* note 12, at 506.

57. Tipson, *supra* note 45, at 295-98.

58. *Id.* at 298.

59. Rose *supra* note 12, at 507-08.

60. *Id.* at 517-33 (detailing the various intricacies of review boards and the different forms a review board can take).

61. J. Peter Byrne, *Historic Preservation and Its Cultured Despisers: Reflections on the Contemporary Role of Preservation Law in Urban Development*, 19 GEO. MASON L. REV. 665, 672 (2012).

62. *Id.*

63. Old Georgetown Act of 1950, ch. 984, 64 Stat. 903, (1950) (codified at D.C. CODE § 6-1201 et. seq. (2012)).

64. D.C. CODE § 6-1202 (2012).

architectural features, height, appearance, color, and texture of the materials of exterior construction which is subject to public view from a public highway.”<sup>65</sup> The statute lacks any specific design guidelines by which to judge projects. Therefore, the Commission must rely on the purpose clause alone for guidance despite its vague language. As to the safety valve, the statute permits the Mayor to intercede to take actions, which “in his judgment are right and proper in the circumstances.”<sup>66</sup> Finally, the statute establishes the Old Georgetown Board, comprised of three architects appointed by the Commission of Fine Arts, to review proposals.<sup>67</sup>

#### *D. Arguments against Historic Districts*

While historic preservation laws allow a community to maintain aspects of the neighborhood the community finds important, the laws themselves may not actually live up to their name. Detractors of historic preservation argue that design guidelines do not actually promote historical accuracy.<sup>68</sup> The guidelines present an idealized picture of the historical period tainted by the misconceptions of the present.<sup>69</sup> Because of community needs or community aesthetic concerns, regulations may actually result in historical inaccuracies.<sup>70</sup> What remains for visitors of the district is quasi-historic at best.<sup>71</sup>

Moreover, legislators must tread carefully to ensure the historic district guidelines do not become too constrictive. Restrictions on buildings may impose a uniformity which stifles architectural imagination.<sup>72</sup> As a result, the community loses the ability to continue to evolve and grow.

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65. *Id.*

66. *Id.*

67. D.C. CODE § 6-1203 (2012).

68. Rose, *supra* note 12, at 509.

69. Tipson, *supra* note 45, at 311-12.

70. *Id.* at 311.

The old streets and sidewalks are paved in brick, even if historically the streets were not paved in brick—or were not paved at all. Urban-style lampposts are placed along the streets, regardless of what was there in the past. . . . These installations represent another example of ‘harmony’ trumping history, and yet somehow deriving legitimacy from history.

71. Rose, *supra* note 12, at 507.

72. *Id.* at 512.

To combat this concern, preservationists point to safety valve clauses in ordinances which permit the mayor to intercede on behalf of special projects.<sup>73</sup>

Perhaps the most compelling argument made against historic districts focuses on the effect the districting will have upon the community itself. Often the increase in housing prices typically accompanying historic districting results in the departure of many of the original residents – either because of increased rent or because the offer to sell became too tempting.<sup>74</sup> Consequently, a neighborhood which formerly had a distinct cultural identity might soon lose that cultural identity as members relocate.<sup>75</sup> Because of the economic benefits associated with historic districts—specifically the influx of business through increased tourism—the city at large may have a reason for advocating a historic district which differs greatly from the neighborhood in question.<sup>76</sup>

On a micro level, conflict may arise within the district itself: residents may not always share the same desire to become a historic district.<sup>77</sup> Proponents of historic districts respond to critics by pointing out that residents have access to procedures which allow an opportunity for input, most notably, the right to vote.<sup>78</sup>

The conflict between Georgetown University and local residents of the Old Georgetown Historic District appears to mirror the conflict among typical historic district residents. The university community and the local residents have different ideas of the neighborhood and different ideas of development within the district.<sup>79</sup> While the Old Georgetown Act does contain a safety valve, the city lacks a procedural structure that would place the university community on an equal footing with local residents. Undoubtedly, the District of Columbia offers various opportunities for the local

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73. Byrne, *supra* note 61, at 672.

74. Tipson, *supra* note 45, at 309; J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOW. L.J. 405, 412 (2003); David B. Fein, Note, *Historic Districts: Preserving City Neighborhoods for the Privileged*, 60 N.Y.U.L. REV. 64, 85 (1985).

75. Michael deHaven Newsom, *Blacks and Historic Preservation*, 36 LAW & CONTEMP. PROBS. 423, 424 (1971).

76. Rose, *supra* note 12, at 517.

77. *Id.* at 523.

78. Byrne, *supra* note 61, at 674.

79. *See infra* Part III.

community to review projects. The problem lies with the community dynamic in the Old Georgetown Historic District.

## II: ZONING AND HISTORIC PRESERVATION WITHIN THE DISTRICT OF COLUMBIA

While the Constitution expressly organizes the District of Columbia as something other than a state and subject to the direct authority of Congress,<sup>80</sup> the 1970s saw the creation of a new era in the District's governing structure. The Home Rule Act grants "certain legislative powers to the government of the District of Columbia"<sup>81</sup> and enumerates various powers the new government may exercise.<sup>82</sup> The Act also purports to "modernize, reorganize, and otherwise improve the governmental structure of the District of Columbia."<sup>83</sup> In granting legislative powers to a local government, Congress still expressly reserved the ultimate authority over the District<sup>84</sup> and continues to exercise its authority over the budget of the District.

Still, the Act marks a distinct shift in the District's governmental structure with an emphasis on locally elected officials dealing with purely local problems. With its newfound power, the District government quickly enacted legislation granting local communities a greater role in development projects. However, in the transition, District local government simply replaced the federal government, and many vestiges of the former approach remain.

### *A. Advisory Neighborhood Commissions*

As part of a move towards more control of the government in the hands of the city residents, the citizens of the District of Columbia voted in a referendum to permit the City Council to "divide the District of Columbia into neighborhood

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80. U.S. CONST. art. I, § 8, cl. 17: "Congress shall have Power. . . To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States. . . ."

81. D.C. CODE § 1-201.02(a) (2012).

82. *Id.*

83. *Id.*

84. *Id.*

commission areas and establish, for each area an Advisory Neighborhood Commission.”<sup>85</sup> However, it is for the local neighborhood to organize and establish the Advisory Neighborhood Commission on its own through a petition.<sup>86</sup> The newly elected commissioners then advise the city council on parochial matters.<sup>87</sup>

While not limiting the extent to which the ANC can counsel District government, § 1-309.10(a) provides a list of examples in which consultation with the local ANC may be appropriate, many of which are tied to land use.<sup>88</sup> District government must provide thirty days’ notice of intent to either “acquire an interest in real property” or “change the use of property owned or leased by or on behalf of the government.”<sup>89</sup> Notice must be given to the ANC prior to “any final policy decision or guideline with respect to grant applications, comprehensive plans, requested or proposed zoning changes, variances, public improvements, licenses, or permits affecting [the] Commission area.”<sup>90</sup> The statute specifically names the Office of Zoning as required to provide “notice of applications, public hearings, proposed actions and actions on all zoning cases.”<sup>91</sup> Upon receiving notice, the ANC then considers the new proposal and provides its recommendations in writing to the District.<sup>92</sup>

Once the ANC offers its recommendation, the District is not required to follow that advice, but it cannot simply ignore the concerns voiced by the commission. Rather, the District must give “great weight” to the issues and concerns raised by

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85. D.C. CODE § 1-309.01(a).

86. D.C. CODE § 1-309.04.

87. See D.C. CODE §§ 1-207.38 and 1-309.01-.15.

88. The following provides these examples:

Each Advisory Neighborhood Commission (“Commission”) may advise the Council of the District of Columbia, the Mayor and each executive agency, and all independent agencies, boards and commissions of the government of the District of Columbia with respect to all proposed matters of District government policy including, but not limited to, decisions regarding planning, streets, recreation, social services programs, education, health, safety, budget, and sanitation which affect the Commission area. . . .

D.C. CODE 1-309.10(a).

89. D.C. CODE § 1-309.10(b).

90. D.C. CODE § 1-309.10(c)(1).

91. D.C. CODE § 1-309.10(c)(4).

92. D.C. CODE § 1-309.10(d)(1).

the commission.<sup>93</sup> Also, it must draft its decision in writing paying special concern to the ANC:

In all cases the government entity is required to articulate its decision in writing. The written rationale of the decision shall articulate with *particularity and precision* the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing the, the government entity must articulate *specific findings and conclusions with respect to each issue and concern* raised by the Commission. Further, the government entity is required to support its position on the record.<sup>94</sup>

A cause of action would occur if the District failed to properly consider the recommendation of the ANC. However, the statute specifically denies the ability for an ANC to initiate legal action in either D.C. courts or federal courts.<sup>95</sup> Instead, an individual citizen, such as an ANC commissioner or a citizen organization, must initiate the action on its behalf.<sup>96</sup>

The use of the term “great weight,” contrary to what might be expected, does not imply a deferential standard that government agencies must use when considering the recommendations of the ANC. The phrase does not create “some kind of quantum or presumption of deference to be accorded ANCs.”<sup>97</sup> The fact that the ANC raises the issue remains critical to the agency’s analysis of the proposed action, but is not dispositive.<sup>98</sup> Representing the specific interest of its neighborhood, the ANC finds itself in a position to best identify the impact the new governmental program has on the neighborhood, but not necessarily the impact it has

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93. D.C. CODE § 1-309.10(d)(3).

94. D.C. CODE § 1-309.10(d)(3)(A) (emphasis added).

95. D.C. CODE § 1-309.10(g).

96. D.C. CODE § 1-309.10(g). *See also* Quincy Park Condo. Unit Owners’ Ass’n v. D.C. Bd. of Zoning Adjustment, 4 A.3d 1283 (D.C. 2010); Foggy Bottom Ass’n v. D.C. Bd. of Zoning Adjustment, 791 A.2d 64 (D.C. 2002); (both cases in which plaintiffs consisted of citizen associations); *Kopff v. D.C. Alcoholic Beverage Control Bd.*, 381 A.2d 1372 (D.C. 1977) (denying standing for an ANC to bring action while holding plaintiff individual citizens had standing to continue action).

97. *Kopff*, 381 A.2d at 1384.

98. *Id.* at 1384 (“In summary, government agencies are charged to pay specific attention to the source, as well as the content, of ANC recommendations, giving them whatever deference they merit in the context of the entire proceedings, including the evidence and views presented by others.”).

on the entire District.<sup>99</sup> The judgment of a governmental agency such as the District's Board of Zoning Adjustment still receives rational basis review: "It is well established that this court must uphold decisions made by the BZA if they rationally flow from findings of fact supported by substantial evidence in the record as a whole."<sup>100</sup>

Within the government of the District of Columbia, the ANC would therefore seem to hold nothing more than a titular position. Provided the governmental agency produces an order which specifically addresses the concerns of the ANC, the ANC would seem to have no cause for recourse.<sup>101</sup> Whether or not the commission actually grants approval, an early step in construction or renovation within the District of Columbia, therefore, would consist of a hearing at the local ANC meeting. Because the residents themselves define the area, the commission serves the community at the local level.

ANC 2E, in which Georgetown University resides, must grapple with representing a constituency not wholly capable of participation. ANC 2E has handled this problem by creating two districts comprised entirely of university dormitories.<sup>102</sup> In the process, however, two other student dormitories lie in residential districts.<sup>103</sup> These mixed districts create the perception of a singular community.<sup>104</sup> Nevertheless, the student community, and indeed the entire Georgetown University community, receives minority representation on the ANC. In effect, student and University concerns do not receive the same weight as those of the residential ANC community.

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99. *Id.* ("...[T]he agency must articulate why the particular ANC itself, given its vantage point, does—or does not—offer persuasive advice under the circumstances.").

100. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 765 (D.C. App. 2003) (citations omitted).

101. *See Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41 (D.C. 2003) (upholding the decision of the BZA); *Citizens Coal. v. D.C. Bd. of Zoning Adjustment*, 619 A.2d 940 (D.C. 1993) (same); *Citizens Ass'n of Georgetown v. D.C. Bd. of Zoning Adjustment*, 403 A.2d 737, 738 (D.C. 1979) (same).

102. *Revised Redistricting Plan Released*, THE GEORGETOWN METROPOLITAN (Sept. 30, 2011), <http://georgetownmetropolitan.com/2011/09/30/revised-redistricting-plan-released/>.

103. *Id.*

104. Braden McDonald, *ANC 2E: A Town-Gown Battleground*, THE HOYA (Feb. 3, 2012), [http://www.thehoya.com/news/anc-2e-a-town-gown-battleground-1.2764388#Uk27\\_SSTiwV](http://www.thehoya.com/news/anc-2e-a-town-gown-battleground-1.2764388#Uk27_SSTiwV). (comments of ANC 2E Chair Ron Lewis stressing the "one community" within ANC 2E).

### *B. Historic Preservation in the District*

Aside from the Old Georgetown Board, the District also has two more review boards for issues of historic preservation: the Commission on Fine Arts, which directly oversees the Old Georgetown Board, and the Historic Preservation Review Board.

Congress established the Commission on Fine Arts in 1910.<sup>105</sup> The commission itself consists of “seven well-qualified judges of the fine arts, appointed by the President.”<sup>106</sup> The commission advises on:

- (1) the location of statues, fountains, and monuments in the public squares, streets, and parks in the District of Columbia;
- (2) the selection of models for statues, fountains, and monuments erected under the authority of the Federal Government
- (3) the selection of artists to carry out clause (2); and
- (4) questions of art generally when required to do so by the President or a committee of Congress<sup>107</sup>

Historic preservation is not mentioned in the authorizing statute. Unlike the Old Georgetown Board which has a stated purpose for historic preservation, the commission serves a purely aesthetic purpose, and ensures public construction harmonizes the surrounding area.

The interplay between the two review boards offers an interesting anomaly because the Old Georgetown Board focuses on any construction within the historic district,<sup>108</sup> whereas the Commission on Fine Arts is limited in review to federal government actions.<sup>109</sup> The use of the experts appointed through the federal government for both the Old Georgetown Board and the Commission on Fine Arts divorces the historic preservation process from the affected community.<sup>110</sup> Basing judgment on technical expertise may not take into account the factors that make the area worthy of

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105. 40 U.S.C. § 9101 (2013); U.S. COMM’N OF FINE ARTS, <http://www.cfa.gov> (last visited July 24, 2013).

106. 40 U.S.C. § 9101.

107. 40 U.S.C. § 9102.

108. D.C. Code § 6-1202 (2012).

109. 40 U.S.C. § 9101.

110. Rose, *supra* note 12, at 519.

historic preservation.<sup>111</sup> In theory, through the election of the mayor and the safety valve in the Old Georgetown Act, residents have the final say in the development within the historic district; however, the ties are tenuous and the lack of community representation undermines the true nature of historic preservation laws.

In addition to the Commission on Fine Arts and the Old Georgetown Board, the District has a broader historic preservation review process. The 1978 Historical Landmark and Historic District Protection Act established the Historic Preservation Review Board to serve the District like a state historic review board.<sup>112</sup> The purpose of the District's historic preservation includes a wide-ranging list, a distinct difference from the architecturally-focused Old Georgetown Act.

Preservation under this statute occurs not simply because the vague "general welfare" of the District requires it or because the buildings are deemed architecturally significant. The community deems the buildings important because of "cultural, social, economic, political, and architectural history."<sup>113</sup> As a result of the more direct focus on historical

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111. *Id.*

112. D.C. CODE § 6-1103 (2012).

113. D.C. CODE § 6-1101:

(a) It is hereby declared as a matter of public policy that the protection, enhancement, and perpetuation of properties of historical, cultural, and esthetic merit are in the interests of the health, prosperity, and welfare of the people of the District of Columbia. Therefore, this subchapter is intended to:

(1) Effect and accomplish the protection, enhancement, and perpetuation of improvements and landscape features of landmarks and districts which represent distinctive elements of the city's cultural, social, economic, political, and architectural history;

(2) Safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks and districts;

(3) Foster civic pride in the accomplishments of the past;

(4) Protect and enhance the city's attraction to visitors and the support and stimulus to the economy thereby provided; and

(5) Promote the use of landmarks and historic districts for the education, pleasure, and welfare of the people of the District of Columbia.

(b) It is further declared that the purposes of this subchapter are:

(1) With respect to properties in historic districts:

(A) To retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use;

(B) To assure that alterations of existing structures are compatible with the character of the historic district; and

(C) To assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district;

preservation, the Historic Preservation Review Board retains the final say on actions that will have an impact on the historical integrity of a building but not necessarily on the architectural features of a building.<sup>114</sup>

The composition of the Historic Preservation Review Board also differs from that of the Old Georgetown Board. The Historic Preservation Review Board has nine members whose appointment seeks to reflect: “the composition of the adult population of the District of Columbia with regard to race, sex, geographic distribution and other demographic characteristics.”<sup>115</sup> In the language of the District’s more general historic preservation statute, one finds community-driven historic preservation. Unlike the Old Georgetown Board whose composition does not take into consideration the demographic characteristics of the historic district, the District’s Review Board must reflect the people it serves; therefore, the decisions reached by the Review Board would be a better reflection of the District’s residents. As such, the Historic Preservation Review Board has shown flexibility in its decisions, permitting the construction of “many tall buildings set behind or on top of historic row houses in commercial areas.”<sup>116</sup>

The statute also contains a “safety valve” similar to the one used by the Old Georgetown Board. The Historic Preservation Review Board advises the mayor, who makes the final decision.<sup>117</sup> If the Historic Preservation Review Board denies permits for a project, the District can still issue a permit provided the project exhibits “special merit.”<sup>118</sup> “Special merit” applies to “a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, special features of land planning, or social or other benefits having a

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114. The Old Georgetown Board will not act on projects which are not visible from a public thoroughfare and instead will refer the project to the Historic Preservation Review Board. See *Old Georgetown Appendix 19 April 2012*, U.S. COMM’N OF FINE ARTS (May 16, 2012), <http://www.cfa.gov/meetings/2012/apr/20120419og.html> (Alterations to North Kehoe Field by Georgetown University, returned without action, referred to Historic Preservation Review Board).

115. D.C. CODE § 6-1103.

116. Byrne, *supra* note 61, at 671.

117. D.C. CODE § 6-1103(c)(1).

118. D.C. CODE §§ 6-1102(8), 6-1107(f); Byrne, *supra* note 61, at 672.

high priority for community services.”<sup>119</sup> “Special merit” has been cited to enable the renovation of the interior of a school for use as a children’s advocacy center<sup>120</sup> as well as an addition to an art museum.<sup>121</sup>

### *C. Zoning within the District*

Prior to the granting of home rule, Congress established two inter-related agencies to deal with zoning issues within the District. First in 1920, Congress created the Zoning Commission.<sup>122</sup> With its authority based in the traditional police power of the government, the Zoning Commission’s stated purpose is “to protect the public health, secure the public safety, and to protect property in the District of Columbia.”<sup>123</sup> The Zoning Commission is comprised of a five member board: the Architect of the Capitol, the Director of the National Parks Service, and three members appointed by the mayor.<sup>124</sup> The Zoning Commission has sweeping powers to divide the district into zones and regulate construction, maintenance, and uses of buildings within the zones.<sup>125</sup> In the crafting of its regulations, the Commission must consider “the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.”<sup>126</sup>

Any affected property owner may propose amendments to

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119. D.C. CODE §6-1102(11).

120. *In the Matter of HPA #03-390, HPA #03-313, HPA #03-334*, GEORGETOWN LAW LIBRARY, [http://www.law.georgetown.edu/library/collections/histpres/get-document.cfm?id\\_no=145&display=text](http://www.law.georgetown.edu/library/collections/histpres/get-document.cfm?id_no=145&display=text) (last visited July 25, 2013).

121. *In re Application of The Corcoran Gallery of Art*, GEORGETOWN LAW LIBRARY, [http://www.law.georgetown.edu/library/collections/histpres/get-document.cfm?id\\_no=17&display=text](http://www.law.georgetown.edu/library/collections/histpres/get-document.cfm?id_no=17&display=text) (last visited Jul. 25, 2013).

122. Act of Mar. 1, 1920, ch. 92, 41 Stat. 500 (1920) (codified as D.C. CODE § 6-621.01) (regulating the height, area, and uses of buildings and establishing Zoning Commission for the District of Columbia). It must be noted that Congress passed the zoning commission prior to the decision of Euclid. This fact simply serves to show the movement towards the acceptance of zoning as a means for city planning.

123. D.C. CODE § 6-621.01(a).

124. *Id.* Because of its composition—two federal appointees and three local, city appointees—the Zoning Commission offers one of the many oddities of local government within the District of Columbia.

125. D.C. CODE § 6-641.01.

126. D.C. CODE § 6-641.02.

the zoning map or regulations, but the Zoning Commission alone considers the proposal.<sup>127</sup> Proceedings before the Commission may vary in impact. The regulations provide two specific categories of cases: “contested cases” and “rulemaking cases.” A contested case “will affect a relatively small number of persons or properties,” and may involve such things as an amendment for a specific property owner’s single lot.<sup>128</sup> Rulemaking cases involve zoning amendments which “may affect large numbers of persons or property or the public in general” such as a change in the development pattern of the city.<sup>129</sup> Rulemaking cases require the filing of a petition prior to review by the Commission.<sup>130</sup>

While the Zoning Commission has the power to create and amend the specific zones and regulations which will dictate the use of land within the zones,<sup>131</sup> it typically does not directly administer variances for specific situations. Instead, Congress created the Board of Zoning Adjustment in 1938 to fulfill this purpose.<sup>132</sup> An immediate difference between the two agencies consists of their compositions. Whereas the Zoning Commission consisted of several federal officials, the five-member Board consists solely of mayoral appointees.<sup>133</sup> Such composition would seem to imply a more insular nature for the Board than that of the Commission.

Indeed, the very powers granted to the Board of Zoning Adjustment reinforce this idea. The big picture outlook with which the Zoning Commission operates—carving specific zones on a map of the District and creating broad regulations for specific land-uses<sup>134</sup>—is replaced by day-to-day administration and neighborhood disputes. The Board of Zoning Adjustment is authorized by the Zoning Commission to “make special exceptions to the provisions of the zoning regulations in harmony with their general purpose and intent. . . to interpret the zoning maps and pass upon

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127. D.C. CODE MUN. REGS. tit.11 § 102 (2012).

128. D.C. CODE MUN. REGS. tit. 11 § 3010.2.

129. D.C. CODE MUN. REGS. tit.11 § 3010.4.

130. D.C. CODE MUN. REGS. tit. 11 § 3010.6.

131. D.C. CODE § 6-641.04.

132. Act of June 20, 1938, ch. 534, § 8, 52 Stat. 799 (1938) (codified at D.C. CODE § 6-641.07 (2012)).

133. D.C. CODE § 6-641.07.

134. D.C. CODE § 6-621-01.

disputed questions. . . as they arise in the administration of the regulations.”<sup>135</sup> The authorizing statute expressly limits the powers granted to the Board, denying it the ability to amend either regulations or the zoning map.<sup>136</sup> Still, individuals may appeal to the Board in instances where the zoning regulations have resulted in an unintended undue burden on a particular individual.<sup>137</sup> The power ensures that the individual’s concern, or the concerns of a citizens’ group, do not fall by the wayside as the city continues development; rather, the appeals process enables the individual to respond to both his own needs and that of his ever-changing neighborhood.

Because of its position, the Board of Zoning Adjustment becomes a focal point for neighborhood land-use battles within the District.<sup>138</sup> The decisions of the board are not final, and in fact, its decisions are still subject to judicial review. Nevertheless, District of Columbia courts will defer to the factual determinations of the Board.<sup>139</sup> Moreover, the Board’s ultimate decision itself receives strong deference from the court. The court will not set aside the Board’s decision if: “(1) the decision is accompanied by findings of fact sufficient to enable the reviewing court to reach a decision; (2) the decision reached by the agency follows as a matter of law from the facts; and (3) the facts so stated have substantial support in the evidence.”<sup>140</sup> Once the Board has made its decision, the court is not likely to overturn it. In order for the plaintiff to succeed, he or she must demonstrate the Board failed to provide sufficient facts to support its decision.<sup>141</sup>

As for the resident universities of DC, the schools must

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135. D.C. CODE §6-641.07(d).

136. D.C. CODE § 6-641.07(e).

137. D.C. CODE § 6-641.07(g)(3).

138. One need only to look at the names of cases which will be discussed in more detail in Part III to realize the kinds of controversies before the Board. *E.g.* *Citizens Ass’n of Georgetown v. D.C. Bd. of Zoning and Adjustment* 925 A.2d 585 (D.C. App. 2007); *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment* 816 A.2d 41 (D.C. App. 2003); *Citizens Coal. v. D. C. Bd. of Zoning Adjustment*, 619 A.2d 940 (D.C. App. 1993).

139. *Citizens Ass’n of Georgetown*, 925 A.2d at 590.

140. *Citizens Coal.*, 619 A.2d. at 947.

141. See *Citizens Ass’n of Georgetown v. D.C. Brd. of Zoning Adjustment*, 365 A.2d 372 (D.C. App. 1976)(court overturned the BZA decision lacked sufficient support).

submit a campus plan for review by the Commission.<sup>142</sup> The campus plan details the projected growth and development of the school over a specific period of time, typically ten years. Offering a glimpse into the idealized future of the university, campus plans provide not only a map of all present buildings on campus, but also all proposed improvements.<sup>143</sup> The university must also describe how it will use the buildings.<sup>144</sup> Unlike other private citizens and organizations, when a university seeks a special use exception, the Zoning Commission, and not the BZA, decides the case.<sup>145</sup> The reason for such a shift probably stems from the perceived large impact the change could have on the local community, thus equating it to a “rulemaking case.” In order to qualify for a special exception, the university must demonstrate that its plans “will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property . . . .”<sup>146</sup> Courts have noted that the regulations do not grant colleges or universities in the District any special privileges.<sup>147</sup> The university is simply one resident in the neighborhood, even though its actions in land development will have wide-reaching effects on the neighborhood.

### PART III: GEORGETOWN UNIVERSITY’S DEVELOPMENT AND CONFLICT WITH THE NEIGHBORHOOD

In 1789, on the banks of the Potomac River, Bishop John Carroll established the first Catholic college in the newly independent United States. Georgetown University, as the school is known today, sits nestled on a hilltop with its campus bounded by fences and imposing stone walls. Over the next two hundred years, the school would grow and develop its main campus as classroom buildings, dormitories, and libraries sprang up. As the school developed its educational infrastructure, athletics slowly became one more

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142. D.C. CODE MUN. REGS. tit. 11 § 210.4 & D.C. CODE MUN. REGS. tit. 11 § 507.3 (2012).

143. *Id.*

144. *Id.*

145. D.C. CODE MUN. REGS. tit.11 §3035.

146. D.C. CODE MUN. REGS. tit.11§ 3104.

147. Citizens Coal. v. D.C. Bd. of Zoning Adjustment, 619 A.2d 940, 957 (1993).

aspect of daily student life, and one sport in particular became the school's flagship athletic program: basketball.<sup>148</sup>

The neighborhood of Georgetown today evokes images of upscale stores and a rather wealthy community, yet the area has a rich history which would appear in direct contrast to the modern demographics. For much of its history, Georgetown enjoyed a large black population. The banks of the Potomac provided an ideal location for what would become a thriving port for tobacco and slaves during the 18<sup>th</sup> Century.<sup>149</sup> By 1800, Georgetown had a population of 5,120, including 1,449 slaves and 277 "free blacks."<sup>150</sup> In the five years after the Civil War, the black population increased from 1,935 to 3,271.<sup>151</sup> Black residents constituted forty percent of the community by 1930.<sup>152</sup> However, the 1950s saw the beginning of an urban renewal which dramatically shifted the demographics of the neighborhood. When the young Senator John F. Kennedy of Massachusetts bought his house on N Street in 1957, Georgetown had become known for its upscale political cocktail parties.<sup>153</sup>

Basketball came to Georgetown University at the beginning of the Twentieth Century. However, the school did not display any deep commitment to the sport until 1951 after the McDonough Arena was constructed.<sup>154</sup> At that time, the facility housed the nine varsity sports of the university.<sup>155</sup> Early in the building's history, it hosted one of President Eisenhower's inaugural balls.<sup>156</sup> Georgetown last built a new

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148. At this point, the reader should take a minute to find a highlight video of the John Thompson, Jr. era at Georgetown and enjoy it.

149. Andrew Stephen, *Georgetown's Hidden History*, WASH. POST (Jul. 16, 2006), [http://www.washingtonpost.com/wp-dyn/content/article/2006/07/14/AR2006071401398\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/07/14/AR2006071401398_pf.html).

150. *Id.*

151. *Id.*

152. Newsom, *supra* note 75, at 423.

153. Stephen, *supra* note 149.

154. *Dedicates Gymnasium: Georgetown U. Opens Memorial to Rev. Vincent McDonough*, N.Y. TIMES (Dec. 9, 1951), <http://query.nytimes.com/mem/archive/pdf?res=F60617F63A591A7B93CBA91789D95F458585F9>.

155. *In the Matter of: Further Processing & CP Amendment Georgetown University: Hearing Before The D.C. Zoning Comm'n*, 16 (2007) [hereinafter *Hearings 2007*] (Statement of Bernard Muir).

156. *McDonough Arena*, GUHOYAS, <http://www.guhoyas.com/facilities/gu-mcdonough-arena.html> (last visited Jul. 27, 2013).

athletic complex in 1971.<sup>157</sup> Yates Field House offers athletic and recreational facilities to all members of the campus community.<sup>158</sup> The 142,300 square foot facility includes an Astroturf roof<sup>159</sup> and a weight room specifically for the varsity sports teams.<sup>160</sup>

Basketball became *the* sport at Georgetown during the 1980s. Having joined the newly formed Big East Conference in 1979, the school would win the Conference's first tournament.<sup>161</sup> Led by Coach John Thompson, Jr. and the imposing Patrick Ewing, the school won its first and only national championship in 1984.<sup>162</sup> Throughout the first Thompson administration, the Hoyas remained a consistent threat to go deep into the NCAA tournament and the school produced a plethora of NBA talent. In 2007, Georgetown once again burst onto the national landscape with its run to the NCAA Final Four under the guidance of John Thompson, III.<sup>163</sup>

As it developed into a nationally recognized basketball program,<sup>164</sup> the school has continued to use the same facilities as in its fledgling years. Renovations to the facilities on campus have occurred many times to fit the needs of the ever-growing athletics department at Georgetown.<sup>165</sup> Today, twenty-nine varsity sports call McDonough Arena headquarters.<sup>166</sup>

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157. *Map of Yates Field House*, GEORGETOWN UNIVERSITY, <http://maps.georgetown.edu/yatesfieldhouse/143/> (last visited Jul. 27, 2013).

158. *Id.*

159. *Yates Field House*, GEORGETOWN UNIVERSITY, <http://yates.georgetown.edu/about/history/> (last visited Jul. 27, 2013).

160. *In the Matter of: Georgetown University – Athletic Training Facility – Modification of Approved Plans: Hearing Before the D.C. Zoning Comm'n*, 33 (2012) [hereinafter *Hearing 2012*] (statement of Brian Wiese).

161. *Media Guide 2008-09:Records*, GEORGETOWN UNIVERSITY BASKETBALL, [http://grfx.cstv.com/photos/schools/gu/sports/m-baskbl/auto\\_pdf/georgetownmbbrecords.pdf](http://grfx.cstv.com/photos/schools/gu/sports/m-baskbl/auto_pdf/georgetownmbbrecords.pdf) (last visited Jul. 27, 2013).

162. *Id.*

163. John Branch, *Hoyas' Past Is Becoming Present*, N.Y. TIMES (Mar. 24, 2007), <http://www.nytimes.com/2007/03/24/sports/ncaabasketball/24hoyas.html>.

164. *Greatest programs: No. 16, Georgetown*, BEYOND THE ARC (Jun. 25, 2008, 1:54AM), [http://beyondthearc.nbcnews.com/\\_news/2008/06/25/4341046-greatest-programs-no-16-georgetown](http://beyondthearc.nbcnews.com/_news/2008/06/25/4341046-greatest-programs-no-16-georgetown).

165. GUHOYAS, *supra* note 156.

166. *Campus Map*, GEORGETOWN UNIVERSITY, <http://maps.georgetown.edu/> (last visited July 27, 2013).

As part of its 2000 Campus Plan, Georgetown sought to update the athletic facilities on campus in order to stay competitive in college athletics. The original plan called for an expansion of the fifty-year-old McDonough Arena.<sup>167</sup> However, the school's need for more space prompted a desire to construct a new building to serve as the main practice facility for women's and men's basketball.<sup>168</sup> The new building, with the temporary self-evident moniker of the Athletic Training Facility, would sit in the back of campus surrounded by current buildings. The university first received approval to construct the facility in 2007 from the District of Columbia Zoning Commission, but a lack of sufficient funds postponed the start of construction.<sup>169</sup> As a result, the approval of local government agencies lapsed and the university needed to reapply in 2011.<sup>170</sup> In February 2013, the university announced that it had reached its fundraising goal for the new facility and would soon move to the construction phase.<sup>171</sup>

With the construction of the new Athletic Training Facility, Georgetown hopes to stay competitive in college athletics. Athletic facilities often serve as a centerpiece in the recruitment pitch to a prospective student athlete.<sup>172</sup> The current facilities on campus have been likened to a sling-shot in the arms race that is collegiate athletics.<sup>173</sup> Georgetown does not hope to construct the *crème-de-la-crème* of athletic facilities. The new facility is designed to bring the athletics department up to speed with the modern landscape of college athletics. In his testimony before the Zoning Commission, Coach John Thompson, III stated: “. . . I think we currently have a Pinto, and (the Athletic Training Facility) is just trying to be a good Chevy.”<sup>174</sup> The site chosen for the new

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167. Molly Redden, *Growing Pains: The University's Plan to Expand and the Neighbors' Struggle to Stop It*, THE GEORGETOWN VOICE, Nov. 18, 2009, <http://georgetownvoice.com/2009/11/18/campus-plan-ge>.

168. Emma Hinchliffe, *Modified ATF Plans Advance*, THE HOYA (Apr. 15, 2012), <http://www.thehoya.com/news/modified-atf-plans-advance-1.2848008#.UIVZmsXA-So>.

169. *Id.*

170. *Id.*

171. *Georgetown Begins Next Phase for Intercollegiate Athletics Center*, GUHOYAS, <http://www.guhoyas.com/genrel/022013aaa.html> (last visited Oct. 3, 2013).

172. *Hearings 2007*, *supra* note 145, at 16 (statement of Bernard Muir).

173. *Id.* at 27 (statement of David Urick).

174. *Id.* at 56-7 (statement of John Thompson, III).

building has minimal contact with the outside community. In fact, the building will be surrounded by student housing, the Jesuit residence, an on-campus power plant facility, and McDonough Arena.<sup>175</sup>

The Athletic Training Facility seems like a fairly simple project to gain approval because of its location, the need for the facility, and the proposed use. However, Georgetown, although having received re-approval from the Zoning Commission in April of 2012,<sup>176</sup> has yet to receive complete approval from all of the necessary review boards and commissions. Instead, Georgetown has had, and will continue, to go back with various design tweaks as the project moves along and the school receives feed-back from the government agencies. No formal group outright opposes the construction of the Athletic Training Facility,<sup>177</sup> yet government commissions have expressed various concerns throughout the design and approval process. In particular, Georgetown has received criticism on two fronts. First, the local Advisory Neighborhood Commission questioned the lack of student housing in the new facility.<sup>178</sup> Second, the Old Georgetown Board and the Commission on Fine Arts have both critiqued and rejected designs of the Athletic Training Facility because it would not look enough like a gym; specifically, facades on the new building would make look too much like the neighboring residence halls.<sup>179</sup>

Georgetown University's attempt to develop land on its campus provides a means for analyzing the unique governmental structure that is the District of Columbia. The university finds itself within the Old Georgetown Historic District. Any attempt at development on campus not only must proceed through the normal zoning review, but must also receive approval of the Old Georgetown Board and subsequently the Commission on Fine Arts, which both have the purpose of ensuring historic preservation within the

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175. *Id.* at 53 (Statement of Anthony Brangman).

176. Zoning Commission for the District of Columbia, Z.C. Order No. 07-23B, *Modification of Approved Plans for Athletic Training Facility* (Apr. 26, 2012).

177. *Hearing 2012*, *supra* note 160, at 65 (statement of Chairman Anthony Hood, noting lack of opposition).

178. *Id.*

179. *Meeting of the Comm'n of Fine Arts 19 Apr. 2012*, COMM'N OF FINE ARTS, <http://www.cfa.gov/meetings/2012/apr/20120419min.html> (last modified May 18, 2012).

Georgetown neighborhood.

The 1970s saw the start of what has been a recurring conflict between Georgetown University and the local residents over the use of university-owned property. Local residents often see new development by the university as an unwelcomed expansion which will disrupt their daily lives. For the university's part, it sees its development as a natural progression of its educational purpose. As a result, a trail of court cases litters the history of many university development projects. However, minor improvements to the university campus often go unchallenged, provided one cannot see such improvements from a public thoroughfare.

### *A. History of Conflict*

In 1977, Georgetown University sought to develop four blocks located outside of the main campus's front gates, of which the university owned ninety percent of the land.<sup>180</sup> After gaining approval by the Board of Zoning Adjustment, the university faced continued opposition from the Citizens Association of Georgetown.<sup>181</sup> The group argued that the project should be rejected because it constituted an "unreasonable campus expansion."<sup>182</sup> In addition, the Citizens Association charged the university with creating traffic congestion in the neighborhood which would become worse if the university could increase its land use.<sup>183</sup> With some deft legal maneuvering, the court held that the Board of Zoning Adjustments had "neither enlarged nor expanded the campus" because the board had designated the campus boundaries for the first time.<sup>184</sup> As to the traffic conditions, the court found that argument unpersuasive based upon a District of Columbia Department of Transportation assessment to the

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180. *Citizens Ass'n of Georgetown v. D.C. Bd. of Zoning Adjustment*, 403 A.2d 737, 738 (D.C. 1979).

181. The Citizens Association of Georgetown has a professed mission "to preserve the historic character, to develop the aesthetic values of Georgetown as a place in which the Nation's Capital was planned, to help protect the interests of the residents and homeowners, and to assist in making it a pleasant place in which to live." CITIZENS ASS'N OF GEORGETOWN, <http://www.cagtown.org/> (last visited Jul. 30, 2013).

182. *Citizens Ass'n of Georgetown*, 403 A.2d at 740.

183. *Id.* at 742.

184. *Id.*

contrary.<sup>185</sup> The outcome in *Citizens Association of Georgetown v. District of Columbia Board of Zoning Adjustment* was the first victory by Georgetown University in attempts to develop its campus. But the arguments by the Citizens Association became a repeated grievance with respect to any development by the school. On the land originally in dispute, Georgetown University completed construction of a new dormitory in 1983.<sup>186</sup>

The next major dispute with regards to Georgetown University land development occurred in 1993 when the university attempted to build an addition to an on-campus power plant.<sup>187</sup> As the campus had grown (both in population and in facilities), the university argued it needed the new power plant additions in order to meet current and future energy demands on campus.<sup>188</sup> A coalition of local neighborhood organizations attempted to block the project on grounds that the power plant was not an accessory use for the university and was inappropriate for a residential area.<sup>189</sup>

Like the 1979 case, the Board of Zoning Adjustment approved the university's plans for the power plant, concluding that:

- (1) The requested relief is in harmony with the general purpose and intent of the Zoning Regulations; (2) the proposed facility is designed to meet federal, local, environmental, and operational standards, (3) the facility is not likely to become objectionable to neighboring property; and (4) the facility complies with the bulk and area requirements of the Zoning regulations<sup>190</sup>

In particular, the board concluded that the construction of the facility "is an attendant and reasonably related to the principal use which is the function and operation of a University as it contributes to the health and well-being of its students . . . ."<sup>191</sup> Responding to concerns that the power plant would have a detrimental impact on the community, the board also found that ". . .the facility would improve the air

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185. *Id.* at 743.

186. *Map of Alumni Square*, GEORGETOWN UNIVERSITY, <http://maps.georgetown.edu/alumnisquare/> (last visited Jul. 30, 2013).

187. *Citizens Coal. v. D.C. Bd. of Zoning Adjustment*, 619 A.2d 940 (D.C. 1993).

188. *Id.* at 949.

189. *Id.* at 942.

190. *Id.* at 942.

191. *Id.* at 954.

quality by reducing toxic emissions from the existing power plant, by upgrading pollution control devices on campus and by reducing truck traffic.”<sup>192</sup> The board also noted that the location of the power plant on campus would not have an adverse impact on the local neighborhoods.<sup>193</sup> The court, after a thorough analysis of the board’s conclusions, held the findings of the board supported by substantial evidence and upheld the decision.<sup>194</sup>

In 2003, Georgetown University sought to convert a building outside its front gates to use as a child development center.<sup>195</sup> The building in question, Poulton Hall, had provided the university with classroom space and administrative offices in the past.<sup>196</sup> While the project required renovations and the installation of play equipment in order to accommodate sixty children of the university’s faculty, staff, and students, Poulton Hall itself would not require physical expansion.<sup>197</sup> After the local ANC denied approval of the proposal, the University nevertheless received permits to continue with the project based as a special exception.<sup>198</sup> The Board of Zoning Adjustment permitted the change in use of Poulton Hall as an “accessory use” because “the proposed use is intended to serve student, faculty, and staff of the University, as well as to support the teaching mission of the University, it is a proper University function . . .”; as such, the university did not require a special exception.<sup>199</sup> The Georgetown Residents Alliance argued that any child development center in residential areas required a

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192. *Id.* at 953.

193. *Citizens Coal.*, 619 A.2d at 948.

Noting that the proposed facility would not be visible from any University boundary, the BZA found that [t]he proposed facility is removed approximately 750 feet from the Foxhall neighborhood to the west; approximately 1,000 feet from the medical facility to the north; approximately 450 feet from the nearest on-campus residential facility and 1,300 feet from the Georgetown neighborhood to the east; and approximately 800 feet from Canal Road to the south. The closest proposed residential hall will be located approximately 300 feet from the facility.

194. *Id.* at 957.

195. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 816 A.2d 41 (D.C. 2003).

196. *Id.* at 44.

197. *Id.* at 43.

198. *Id.* at 44.

199. *Id.* at 45.

special exception as a prerequisite.<sup>200</sup> Upholding the Board of Zoning Adjustment's findings, the court concluded the BZA's actions as reasonable and consistent with the regulations because the child care center would be used only by university employees and students and because it was "clearly subordinate, incidental, and related to the principal use of the University."<sup>201</sup> Once more, local residents had sought to stop a perceived encroachment by Georgetown University into the residential sphere. However, because the building had already been used by the university, the court upheld the university's proposal.<sup>202</sup>

Throughout much of the first decade of the current century, the debate between the local residents and the University has revolved around limits on student enrollment.<sup>203</sup> Local residents complain that increases in the number of undergraduate students have an adverse effect on the local community.<sup>204</sup> Neighborhood groups, therefore, argued for a hard cap on the amount of students admitted to Georgetown under the campus plan.<sup>205</sup> In contrast, the university proposed an enrollment cap based upon the averaging of Spring and Fall semester students.<sup>206</sup> According to the university, numbers between the two semesters vary because of study abroad programs, mid-year graduations, and withdrawals.<sup>207</sup> The Board of Zoning Adjustment ultimately found in favor of the averaging system and the court upheld the decision.<sup>208</sup>

Georgetown University seeks to develop its property and increase its student body in order to remain a nationally recognized university. However, the university has reached an impasse as it has begun to run out of space on its main campus.<sup>209</sup> As a result, the university has been forced to

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200. *Id.*

201. *Georgetown Residents Alliance*, 816 A.2d at 45.

202. *Id.*

203. *See generally* *President and Dir. of Georgetown Coll. v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58 (D.C. 2003); *Citizens Ass'n of Georgetown v. D.C. Bd. of Zoning Adjustment*, 925 A.2d 585 (D.C. 2007).

204. *President and Dir. of Georgetown Col.*, 837 A.2d at 64.

205. *Citizens Ass'n of Georgetown*, 925 A.2d at 591.

206. *Id.* at 590.

207. *Id.*

208. *Id.* at 592

209. Jonathan O'Connell, *With Georgetown University fast running out of room,*

consider options outside of the Georgetown Historic District.<sup>210</sup> New buildings on campus may not provide enough space to accommodate every student.

The neighborhood residents seek to protect their community from college students.<sup>211</sup> ANC 2E released a report describing the situation in the neighborhood: “[s]imply put, because of how GU has conducted itself, *our* community is over-saturated with GU’s ever-expanding numbers of students, and the situation, unless remedied, will only get worse.”<sup>212</sup> The use of “our” is very telling. The students are not members of the community, but outsiders who disrupt the community comprised of non-student local residents. The local residents often express concerns for the loud late-night behavior by students<sup>213</sup> and the activities of students living off campus.<sup>214</sup> Throughout these disputes, the local residents characterize the students as excluded from the residential community.

Georgetown University’s location within the Old Georgetown Historic District entails added review for any development by the university. Prior to the issuance of any permit for construction or alteration of a building within the Historic District, the Old Georgetown Board reviews the project to ensure it does not clash with the nature of the neighborhood.<sup>215</sup> Over the past ten years, Georgetown University has sought approval from the Old Georgetown Board for various projects on campus: roof repair to the school

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*Virginia beckons*, WASH. POST (Jul. 6, 2011), [http://www.washingtonpost.com/business/capitalbusiness/with-georgetown-university-fast-running-out-of-room-virginia-beckons/2011/07/06/gIQAnNIN7H\\_story.html](http://www.washingtonpost.com/business/capitalbusiness/with-georgetown-university-fast-running-out-of-room-virginia-beckons/2011/07/06/gIQAnNIN7H_story.html).

210. Jonathan O’Connell, *Georgetown University is looking east in D.C. to expand*, WASH. POST (Jul. 19, 2012), [http://www.washingtonpost.com/local/georgetown-university-is-looking-east-in-dc-to-expand/2012/07/19/gJQA74YtwW\\_story.html](http://www.washingtonpost.com/local/georgetown-university-is-looking-east-in-dc-to-expand/2012/07/19/gJQA74YtwW_story.html).

211. *President and Dir. of Georgetown Coll. v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 64 (D.C. 2003).

212. *Findings and Recommendations of Advisory Neighborhood Commission 2E Adopted February 28, 2011, Regarding the Georgetown University Proposed 2010-2020 Campus Plan*, ADVISORY NEIGHBORHOOD COMM’N 2E, <http://anc2e.com/docs/ancguplan.pdf> (last visited Oct. 3, 2013).

213. *Id.*

214. Michelle Boorstein, *For Georgetown ‘Apostles,’ A Rowhouse Rebellion*, WASH. POST (Nov. 11, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/11/10/AR2006111001978.html>.

215. D.C. CODE § 6-1202 (2012).

chapel,<sup>216</sup> alterations to student dormitories,<sup>217</sup> and new rooftop antennas for administrative buildings.<sup>218</sup> The OGB has approved projects renovating the older buildings on campus.<sup>219</sup> During the construction of an on-campus performing arts center, the board denied approval of a new theatre marquee because the board deemed it out-of-scale and inappropriate to the character of the building and setting.<sup>220</sup> Throughout this period, minor renovations and improvements to Georgetown buildings routinely received authorization from the board. The larger projects received much closer scrutiny.

### *B. The Current Athletic Training Facility Project*

Although the Athletic Training Facility has not yet met any ardent resistance, the project needed to adapt to meet the concerns of both local residents and government agencies. The project first received approval from the Zoning Commission in 2007.<sup>221</sup> During this first hearing, the Citizens Association of Georgetown still voiced its concern that the new building could increase traffic to the neighborhood.<sup>222</sup> The group feared that the new facility could, in the future, serve as a venue for concerts and other revenue-generating events.<sup>223</sup> In his concluding remarks before the Zoning Commission, a representative for the Citizens Association of Georgetown stated: “. . . [T]he constant pushing of the envelope and weakening of the protections for the residential

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216. *Old Georgetown Board Appendix 17 June 2004*, COMM’N OF FINE ARTS, <http://www.cfa.gov/meetings/2004/jun/20040617og.html> (last modified Jun. 17, 2004).

217. *Old Georgetown Board Appendix 18 June 2009*, COMM’N OF FINE ARTS, <http://www.cfa.gov/meetings/2009/jun/20090618og.html> (last modified Jul. 1, 2009).

218. *Old Georgetown Board Appendix 18 Feb. 2010*, COMM’N OF FINE ARTS, <http://www.cfa.gov/meetings/2010/feb/20100218og.html> (last modified Mar. 3, 2010).

219. *Old Georgetown Appendix 16 Jun. 2011*, COMM’N OF FINE ARTS, <http://www.cfa.gov/meetings/2011/jun/20110616og.html> (last modified Jul. 29, 2011) (OGB offered no objection to replacement windows, repairs, and alterations to student dormitory, provided the university re-used as much salvaged material as possible with the new brick).

220. *Old Georgetown Appendix 20 Oct. 2005*, COMM’N OF FINE ARTS, <http://www.cfa.gov/meetings/2005/oct/20051020og.html> (last modified Oct. 20, 2005).

221. Zoning Commission for the District of Columbia, Z.C. Order No. 07-23B, Modification of Approved Plans for Athletic Training Facility (Apr. 26, 2012).

222. *Hearing 2007*, *supra* note 155, at 114 (statement of Barbara Zartman).

223. *Id.*

community in which the university sits, is something that is a constant difficulty for us and causes us to have to appear in opposition to proposals.”<sup>224</sup> In November 2008, the university submitted designs for the new facility but quickly withdrew the design at its own request.<sup>225</sup> The project would lie dormant for the next few years.

In late 2011, the university revived the project and once again submitted designs for the proposed building to the Old Georgetown Board.<sup>226</sup> The board approved the concept design in general; however, it recommended that the university reconsider the structure’s proposed “architectural vocabulary,” and did not approve the entire concept design.<sup>227</sup> The features in question included “Collegiate Gothic details that would match the nearby residential buildings in the southwestern part of the campus, with red brick facades and limestone or cast-stone details.”<sup>228</sup> When discussed before the Commission on Fine Arts, the members of the commission reiterated concern about the outside appearance of the Athletic Training Facility. One member noted that the form of the neighboring McDonough Gymnasium and power plant “clearly conveys the use of these buildings, without needing adornment nor signage.”<sup>229</sup> The chairman of the commission also expressed concerns “that the proposed design is too deferential to the nearby residential buildings, describing its appearance as ‘a dormitory wrapped around a gym.’”<sup>230</sup> Ultimately, the commission supported the approach of the Old Georgetown Board: approving the general concept of the building while requesting additional examination of the exterior features of the building.<sup>231</sup>

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224. *Id.* at 119.

225. *Old Georgetown Appendix 20 Nov. 2008*, COMM’N OF FINE ARTS, <http://www.cfa.gov/meetings/2008/nov/20081120og.html> (last modified Dec. 31, 2008).

226. *Meeting of the Comm’n of Fine Arts 19 Apr. 2012*, *supra* note 179.

227. *Report of the Old Georgetown Board to the Commission of Fine Arts 19 April 2012*, COMM’N OF FINE ARTS, <http://www.cfa.gov/meetings/2012/apr/og11282br.html> (last modified May 11, 2012).

228. *Meeting of the Comm’n of Fine Arts 19 Apr. 2012*, *supra* note 179.

229. *Id.*

230. *Id.*

231. Letter from Thomas E. Luebke Sec. of Comm’n of Fine Arts, to Lee Reed, Dir. of Intercollegiate Athletics, Georgetown University (Apr. 26, 2012) (available at *Georgetown University Athletic Training Facility*, COMM’N OF FINE ARTS, <http://www.cfa.gov/meetings/2012/apr/og11282.html> (last modified Apr. 27, 2012)).

Georgetown University needed to return to the Zoning Commission in April 2012 because the original approval the school received had expired. Unlike the 2007 hearing, the university received the approval of the commission without any opposition from the local residents.<sup>232</sup> Nevertheless, the commissioners voiced similar appearance concerns to the university. As one commissioner commented, the proposed building looked “too much like the dormitories” near it.<sup>233</sup> Somewhat inconsistently, the commissioners also expressed disappointment that the facility would not include student housing.<sup>234</sup> As noted, no organization directly opposed the construction of the Athletic Training Facility during the 2012 hearing, but the testimony of the area ANC illustrates the concerns of the local residents. The ANC commissioner stated that the new building should have been conceived as a mixed use building.<sup>235</sup> He also stated: “. . . [W]e think also that OGB and the Fine Arts Commission would have taken a very different approach had this been presented as a mixed use residential athletic facility, and would have not objected to using more of the site, and to building up.”<sup>236</sup>

After approval from the Zoning Commission, the university once again sought complete approval from the Old Georgetown Board and the Commission of Fine Arts in October 2012.<sup>237</sup> The Old Georgetown Board again withheld complete approval.<sup>238</sup> The exterior details once again became the sticking point for the board.<sup>239</sup> When the university presented the design to the Commission of Fine Arts, the commission expressed concerns for the ornamentation of the building.<sup>240</sup> Again, the university received the commission’s

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232. Z.C. Order No. 07-23B, *supra* note 176.

233. *Hearing 2012*, *supra* note 160, at 45.

234. *Id.*

235. *Id.* at 65 (statement of Councilmember Ron Lewis).

236. *Id.*

237. *Report of the Old Georgetown Board to the Comm’n of Fine Arts 18 Oct. 2012*, COMM’N OF FINE ARTS, <http://www.cfa.gov/meetings/2012/oct/og12291br.html> (last modified Nov. 1, 2012).

238. *Id.*

239. *Id.* (“The OGB also suggested simpler detailing of the blind panels, thermae window, and corner buttresses, and consideration of alternative treatments for the connection to McDonough Gymnasium”).

240. *Meeting of the Comm’n of Fine Arts 18 Oct. 2012*, COMM’N OF FINE ARTS, <http://www.cfa.gov/meetings/2012/oct/20121018min.html> (last modified Nov. 16, 2012).

overall support, but the commission still had reservations about exterior details. The secretary stated that the design's exterior features would be subject to continued approval by the commission as the project progressed.<sup>241</sup>

When Georgetown announced the Athletic Training Facility project, the school also proposed the building of a new science building.<sup>242</sup> Like the Athletic Training Facility, the science building received approval from the Zoning Commission in 2007.<sup>243</sup> At the 2007 hearings, the Citizens Association of Georgetown expressed concerns about the overall height of the proposed building, but those concerns stemmed from a misreading of the proposed plan.<sup>244</sup> Although during the 2012 hearings the ANC would express reservations about the Athletic Training Facility's single purpose—specifically, its lack of student housing—the 2007 hearing lacked any expression of such concerns for the science building.<sup>245</sup> The science center proposal passed through the Old Georgetown Board and the Commission of Fine Arts with very little opposition from the reviewers.<sup>246</sup> Of particular note, the commissioners did not call into question the materials to be used in construction nor the overall external ornamentation.<sup>247</sup> The final plans received approval in May of 2008 with the attached caveat that the university “erect a material samples panel on site” for review prior to starting complete construction.<sup>248</sup> The completed building, christened Regents Hall, officially opened in August 2012.<sup>249</sup>

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241. *Id.*

242. Lauren Zelt, *Board Approves GU Facility Plans*, THE HOYA (Oct. 23, 2007) <http://www.thehoya.com/board-approves-gu-facility-plans-1.1881843?compArticle=yes#.Ufm9qo2Thsm>.

243. Z. C. Order No. 07-23B, *supra* note 176.

244. *Hearing 2007*, *supra* note 145, at 128 (statement of Commissioner Curtis L. Etherly, Jr.).

245. *Id.* at 79-82 (statement of Commissioner Ed Solomon, offering support for science center and variances to build science center).

246. *Meeting of the Comm'n of Fine Arts 15 May 2008*, COMM'N OF FINE ARTS, <http://www.cfa.gov/meetings/2008/may/20080515min.html> (last modified May 20, 2008).

247. *Id.*

248. Letter from Thomas E. Leubke, Sec. of Comm'n of Fine Arts, to H. Alan Brangman, University Architect, Georgetown University (May 23, 2008) (*available at Georgetown University Science Center*, COMM'N OF FINE ARTS, <http://www.cfa.gov/meetings/2008/may/og08159.html> (last modified May 29, 2008)).

249. *New Science Center Opens*, GEORGETOWN UNIVERSITY (Aug. 29, 2012) <http://www.georgetown.edu/news/new-science-center-opens.html>.

The Athletic Training Facility has passed through much of the government approval process. Nevertheless, the government commissions designed to ensure historic preservation have slowed down the project because of aesthetic concerns about the building. As noted, the building is located in an area of campus removed from the neighboring community.<sup>250</sup> It is surrounded by dormitories, a gymnasium, and a power plant.<sup>251</sup> The most interesting concern expressed by the committees is that the Athletic Training Facility looks too much like one of the surrounding buildings: a dormitory.<sup>252</sup> If the intent of historic preservation seeks to ensure new construction does not clash with the original buildings, then Georgetown University would seem to have achieved this purpose through its designs.

Within the Georgetown Historic District, two distinct communities exist in conflict: the university and local residents. As a result, the historic preservation review process serves as a means for the local residents to stop the encroachment of the university deeper into the residential area and to contain the university within the campus boundaries.<sup>253</sup> Projects which have the potential to expand the school, particularly with regards to the student population (building dormitories outside the front gates or a power plant inside the main campus), have been met with strong opposition; in contrast, projects of a more traditional, academic purpose have received more universal support.

#### PART IV: CONCLUSION

Historic preservation has at its core the opportunity for community residents to define themselves. If the community-centric idea of historic districts is to have any validity, then governments must not impose boundaries upon the community members. In order to take into account the need for the community to imagine itself, governments must take into account the residents prior to the creation of a historic district. It is in the imagined community that historic

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250. *Citizens Coal. v. D.C. Bd. of Zoning Adjustment*, 619 A.2d 940, 948 (D.C. 1993).

251. *Id.*

252. *Meeting of the Comm'n of Fine Arts 19 Apr. 2012*, *supra* note 179.

253. See the comments by ANC 2E Commissioner Lewis concerning the OGB and Commission stance on the building *supra*, note 235.

districts will have the greatest effect. And it is through the imagined community that the historic district will have the most meaning.

The District of Columbia has operated with the intent of granting local residents more opportunities to review and comment on local projects. In particular, the Advisory Neighborhood Commissions grant local residents, with similar interests, the ability to define themselves. Without a doubt, the District of Columbia has provided a means of organizing to actively participate in decisions which will directly impact a neighborhood, and the residents of Georgetown have successfully used these procedures. The neighborhood has a clear identity, voiced by many of the local residents. The local residents have an imagined community united by a common identity of upper-middle class families. Georgetown University does not fit into this idea of community. It serves as a means against which the residents can define themselves.

On the part of Georgetown University, a similar situation has resulted. Members of the university community consist of a broad swath of people: current students, faculty, administration, and alumni. The shared identity of being a Hoya unites the diverse members forging a common identity. In so doing, the members have formed an imagined community within the university.

When Congress carved out the Old Georgetown Historic District, the plans included the university's campus within the boundaries. In so doing, the government failed to take into account the large population of students who live in Old Georgetown and with that population the unique interests of the university. If proper historic preservation orients itself around the community and if the ANCs are supposed to represent the community, then what has occurred in Georgetown fails in that regard. What has occurred instead is an on-going dispute between two separate imagined communities. Each community attempts to develop in accordance with its best interests, bringing it in direct conflict with the other. The two imagined communities remain married together through the geographical boundaries imposed upon them.

The constant review of the Athletic Training Facility serves as the prime example for how historic preservation

when not community-centric can lead to conflict. The Old Georgetown Board and the Commission on Fine Arts have withheld complete approval of the project, citing various aesthetic problems with the building's exterior. If a new building, in a historic district, looks too much like the surrounding buildings, hasn't the architect done an admirable job? Testimony during the hearing before the Zoning Commission in 2012 would seem to point at an entirely different reason behind the foot-dragging by the other review boards. In his testimony, a local ANC commissioner stated: ". . . [W]e think also that OGB and the Fine Arts Commission would have taken a very different approach had this been presented as a mixed use residential athletic facility, and would have not objected to using more of the site, and to building up." The concern of the neighbors is that university, through off-campus student housing, will continue to expand beyond the confines of the main campus. The vein of thought seems to require space on campus to be considered first for student dormitories. The design features which draw criticism from the review boards provide cover for the real concern of the local residents—the potential expansion of Georgetown University beyond the front gates.

By having to survive review by members of a distinct community in order to develop land on its campus, the Georgetown University community cannot define itself. Instead, outside organizations shape the university's identity. Much of this stems from the Old Georgetown Act and the local ANC which both lump the university inside the historic district. Without a doubt, the university's campus has many buildings worthy of historic preservation; however, the current review process does not permit the university's community to act on its own and thereby derive even greater meaning.

The District of Columbia should not consider the university and the local residents as one entity because of the two groups are not of the same imagined community. Instead, the government should craft the university's main campus into a separate historic district and remove it from ANC 2E. As such, projects on the campus would still come under the purview of the Historic Preservation Review Board, ensuring the university does not jeopardize the campus's historic buildings. The university community has the

greatest interest in preserving the aesthetic aspects of its campus. By forming a distinct historic district, the campus historic district would better take into account the concerns of the university imagined community: students, employees, and alumni. More importantly, such a move would allow for the historic district to reflect the imagined community it purports to preserve.