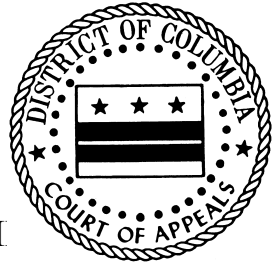


**APPEAL NUMBER 23-CV-278**

**IN THE COURT OF APPEALS OF THE DISTRICT OF COLUM**



Clerk of the Court  
Received 10/08/2024 08:18 PM  
Filed 10/08/2024 08:18 PM

---

**LAUREN SZYMKOWICZ and JOHN PAUL SZYMKOWICZ,**

**Appellants-Plaintiffs,**

**vs.**

**THE PRESIDENT AND DIRECTORS OF  
THE COLLEGE OF GEORGETOWN,  
WITHIN THE DISTRICT OF COLUMBIA  
(a/k/a/ "Georgetown University")**

**Appellee-Defendant.**

---

**On appeal from the Superior Court of the District of Columbia  
(Judge Maurice A. Ross)  
2022-CA-003391-B**

---

**LAUREN SZYMKOWICZ'S AND J.P. SZYMKOWICZ'S  
REPLY BRIEF**

---

**John T. Szymkowicz (D.C. Bar #946079)\*  
P.O. Box 57333  
Washington, DC 20037-0333  
(202) 862-8500**

**Counsel for Appellants-Plaintiffs  
Lauren Szymkowicz and John Paul Szymkowicz**

**\* Will appear on behalf of Mr. and Mrs. Szymkowicz at oral argument**

**LAUREN SZYMKOWICZ and JOHN PAUL SZYMKOWICZ,  
Plaintiffs-Appellants,**

**vs.**

**THE PRESIDENT AND DIRECTORS  
OF THE COLLEGE OF GEORGETOWN,  
WITHIN THE DISTRICT OF COLUMBIA  
(a/k/a/ “Georgetown University”),  
Defendant-Appellee.**

**Appeal Number: 23-CV-278**

**Superior Court Case Number: 2022-CA-003391-B**

**LAUREN SZYMKOWICZ’S AND J.P. SZYMKOWICZ’S REPLY BRIEF**

**TABLE OF CONTENTS**

Table of Contents.....i

Lauren Szymkowicz’s and J.P. Szymkowicz’s Reply Brief.....1

I. GEORGETOWN UNIVERSITY OWED DUTIES TO LAUREN AND J.P. ARISING OUT OF THE ZONING COMMISSION’S ORDER APPROVING THE CAMPUS PLAN.....1

    A. D.C. Code §6-641.09(a) authorizes civil actions for monetary damages by Plaintiffs such as Lauren and J.P. who have suffered “special damages” against a defendant whose violations of zoning ordinances caused these damages.....2

        1. Cases in the District of Columbia support claims for monetary damages under a nuisance theory of recovery where a defendant has violated zoning ordinances as long as the plaintiff suffered “special damages.”.....3

B. Acceptance of the Campus Plan was contingent upon community “buy-in” that resulted in Georgetown University assuming duties to its neighbors, including Lauren and J.P.....4

1. The Purpose of Zoning in the District of Columbia.....10

II. GEORGETOWN UNIVERSITY OWED DUTIES TO LAUREN AND J.P. THAT AROSE UNDER THE CAMPUS PLAN AND THE ZONING COMMISSION’S ORDER APPROVING THE CAMPUS PLAN.....12

III. LAUREN AND J.P. DID NOT HAVE THE OBLIGATION TO PURSUE THEIR CLAIMS BEFORE THE ZONING COMMISSION, WHICH CANNOT ADJUDICATE CLAIMS FOR MONETARY DAMAGES.....15

IV. LAUREN’S AND J.P.’S CLAIMS OF NEGLIGENCE AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS SHOULD SURVIVE DISMISSAL BECAUSE GEORGETOWN UNIVERSITY OWED DUTIES TO THEM AND BREACHED THOSE DUTIES, RESULTING IN DAMAGES TO LAUREN AND J.P.....15

V. LAUREN AND J.P. WERE INTENDED BENEFICIARIES OF THE CONTRACT BETWEEN THE UNIVERSITY AND THE DISTRICT OF COLUMBIA, AND THUS, THEIR BREACH OF CONTRACT CLAIM SHOULD SURVIVE DISMISSAL.....16

CONCLUSION.....18

CERTIFICATE OF SERVICE.....18

**Cases<sup>1</sup>**

*B&W Management, Inc. v. Tasea Investment Co.*, 451 A.2d 879 (D.C. 1982).....4, 5, 6, 12, 13, 16

*Board of Trustees of the University of the District of Columbia v. DiSalvo*, 974 A.2d 868 (D.C. 2009).....14

---

<sup>1</sup> Cases principally relied upon are represented by an asterisk.

<i>District of Columbia v. Beretta</i> , 872 A.2d 633 (D.C. 2005).....	13
<i>Hoehn v. United States</i> , 217 F. Supp. 2d 39 (D. D.C. 2002).....	13
* <i>Northeast Neighbors for Responsible Growth, Inc. v. Appletree Institute for Education Innovation, Inc.</i> , 92 A.3d 1114 (D.C. 2014).....	4, 12, 13, 16
<i>Sullivan v. AboveNet Communications, Inc.</i> , 112 A.3d 347 (D.C. 2015).....	15
<i>Varner v. District of Columbia</i> , 891 A.2d 260 (D.C. 2006).....	14
<i>Williams v. District of Columbia</i> , 2020 U.S. Dist. LEXIS 49615 (D. D.C. March 23, 2020).....	4, 12, 13, 16

**Statutes and Rules**

D.C. Code §6-641.01.....	11
D.C. Code §6-641.02.....	11
D.C. Code §6-641.09(a).....	2, 3, 4, 12, 13, 16

**LAUREN SZYMKOWICZ'S AND JOHN PAUL SZYMKOWICZ'S  
REPLY TO GEORGETOWN UNIVERSITY'S BRIEF<sup>1</sup>**

**I. GEORGETOWN UNIVERSITY OWED DUTIES TO LAUREN AND J.P. ARISING OUT OF THE ZONING COMMISSION'S ORDER APPROVING THE CAMPUS PLAN.**

The duties that Georgetown University owed to Lauren and J.P.

Szymkowicz are clearly stated in the Zoning Commission order approving the Campus Plan. [267-284]. This order states, in relevant part:

Quality of Life Initiatives

14. The University shall commit sufficient resources (financial, personnel, intellectual capital, etc.) to the University's Quality of Life Initiative to support a safe community, educate students to be good neighbors, and successfully mitigate the impacts of trash, noise and student behavior. [275].

...

15.

d. In addition to the foregoing, the University shall investigate reports of improper off-campus student conduct and respond to behavior found to violate the Student Code of Conduct promptly with appropriate sanctions. Egregious or repeat violations of the Code of Conduct shall be subject to serious sanctions up to and including separation from the University. [277].

---

<sup>1</sup> The numbers inside brackets indicate the page number of the Joint Appendix that relate to the statement immediately preceding the brackets.

Georgetown University did not properly investigate Lauren’s and J.P.’s complaints concerning the student’s marijuana smoking or “promptly” sanction the student for her violations of the Code of Student Conduct that caused Lauren and J.P. to suffer damages from exposure to the student’s secondhand smoke. Therefore, this Honorable Court should reverse the Superior Court’s dismissal of Lauren’s and J.P.’s claims (in both tort and in contract) and remand the entire case for further proceedings.

**A. D.C. Code §6-641.09(a) authorizes civil actions for monetary damages by Plaintiffs such as Lauren and J.P. who have suffered “special damages” against a defendant whose violations of zoning ordinances caused these damages.**

On page 23 of its Brief, Georgetown University claims that “[t]he Campus Plan and Zoning Commission order are ‘administrative documents’ that do not give rise to private enforceable duties. This statement is false. D.C. Code §6-641.09(a) provides, in relevant part, that:

It shall be unlawful to erect, construct, reconstruct, convert, or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit from [the Department of Consumer and Regulatory Affairs]. . . . It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections. . . . The Attorney General for the District of Columbia **or any neighboring property owner or occupant who would be specially damaged by any such violation** may, **in addition to all other remedies provided by law**, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction,

reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land. [emphasis added].

Georgetown University ignores that fact that under D.C. Code §6-641.09(a), the Zoning Commission's order provides the basis for duties that the University owed to Lauren and J.P. (as neighbors of the University who are "specially damaged" by the University's violations of the Zoning Commission's order) – duties that are enforceable in a suit for monetary damages in a court of law under a nuisance or a negligence theory of liability. In other words, Paragraphs 14-15 of the Zoning Commission's order specifically required Georgetown University to "investigate reports of improper off-campus student conduct and respond to behavior found to violate the Student Code of Conduct promptly with appropriate sanctions." [275-277]. While the University purportedly "investigated" Lauren's and J.P.'s numerous complaints (over several weeks) about the migration of the student's marijuana smoke into their house, the record is clear that the University never took action to "sanction" the student or discipline her in a manner designed to "encourage" her to abide by the Code of Student Conduct (*i.e.*, to stop smoking marijuana – which itself is a violation of the Code of Student Conduct – in a manner that causes secondhand smoke to migrate into Lauren's and J.P.'s home).<sup>2</sup>

---

<sup>2</sup> Paragraph 92 of Lauren's and J.P.'s complaint filed in the Superior Court states that "Upon information and belief, Georgetown University never conducted an investigation to determine if the student at issue smoked marijuana in her home,

**1. Cases in the District of Columbia support claims for monetary damages under a nuisance theory of recovery where a defendant has violated zoning ordinances as long as the plaintiff suffered “special damages.”**

In *Northeast Neighbors for Responsible Growth, Inc. v. Appletree Institute for Education Innovation, Inc.*, 92 A.3d 1114, 1123 n.17 (D.C. 2014), the court found that “[t]here are other remedies available outside D.C. Code § 6-641.09(a).

**A neighboring property owner may, for example, sue for damages under a common law public nuisance theory, based on violation of the zoning regulations.”** [emphasis added]. *Id.* at 1123 n.17. *See also Williams v. District of Columbia*, 2020 U.S. Dist. LEXIS 49615, \*1-2 (D. D.C. March 23, 2020).

In *B&W Management, Inc. v. Tasea Investment Co.*, 451 A.2d 879, 881-882 (D.C. 1982), the court discussed the differences between “public nuisance” and “private nuisance” claims:

---

for example, by asking her housemates or former housemates if they knew if she smoked marijuana in their presence.” [24].

Additionally, Georgetown University’s statement on page 9 of its Brief that “The neighbor moved out of the adjoining townhouse at the start of winter break on December 14, 2021, a little more than six weeks after Appellants first contacted Georgetown” is false. Paragraph 87 of Lauren’s and J.P.’s complaint filed in the Superior Court states that the student left her home for Winter Break (not permanently). [21]. Paragraph 91 of Lauren’s and J.P.’s complaint filed in the Superior Court states that Georgetown University’s official told J.P. on December 20, 2021 that “it is a ‘hard no’ that Georgetown University will enforce its Code of Student Conduct by requiring the student to move back into on-campus dormitories and implied that nothing would be done by Georgetown University over the Winter Break.” [24].



A public nuisance is an unreasonable interference with a right common to the general public. At common law, the term ‘public nuisance’ covered a variety of minor criminal offenses that interfered, for example, with the public health, safety, morals, peace, or convenience. As applied to land use, therefore, public nuisance theory provides the common law underpinning (subject to statutory modification) for injunctive and damage actions based on zoning violations.

In contrast, a ‘private nuisance’ is a substantial and unreasonable interference with private use and enjoyment of one’s land, for example, by interfering with the physical condition of the land, disturbing the comfort of its occupants, or threatening future injury or disturbance. Historically, the origin of private nuisance liability was purely tortious in character, not criminal; and the tort was developed, as needed, to protect use and enjoyment of land against nontrespassory interference.

While a private nuisance claim is thus inherently a private right of action, as a general proposition only governmental authorities or other representatives of the general public have standing to attack a public nuisance in court (absent statutory authorization). There is, however, a traditional exception: a private party may sustain an action to enjoin or recover damages for a public nuisance if that party can allege and prove ‘special damage, distinct from that common to the public.’

In *B&W Management*, the court added that a “public nuisance is an interference with the interests of the community, or the comfort or convenience of the general public.” *Id.* at 881, n.5. Moreover, “private nuisance is based on disturbance of rights in land while a public nuisance is not dependent upon a disturbance of rights in land but upon an interference with the rights of the community. *Id.* at 882, n.6.

The court in *B&W Management* added:

A private plaintiff must assert ‘special damage’ in order to enjoin a zoning violation. This rule grew out of the ‘special damage’ requirement in public nuisance actions. Thus, cases that provide analysis of the ‘special damages’ in actions to enjoin zoning violations will be applicable as well to damage actions premised on the argument that zoning violations are public nuisances. *Id.* at 883 n.8.

Additionally, the court in *B&W Management* provided:

Although a public nuisance, unlike a private nuisance, does not necessarily involve interference with use and enjoyment of land, when it does so it may also be a private nuisance, as when a bawdy house that interferes with the public morals and constitutes a crime also interferes with the use and enjoyment of land next door. In such a situation, the landowner may recover either on the basis of the particular harm to him resulting from the public nuisance or on the basis of the private nuisance. It follows, as a general common law proposition, that when interference with private use and enjoyment of one’s land is at issue, the nature and degree of ‘special damage’ necessary to create a private right of action for a public nuisance will be the same as the nature and degree of injury required to sustain a claim for a private nuisance. In sum, as to interferences with land use, a private nuisance and special damage from a public nuisance are the same. *Id.* at 882.

Georgetown University cannot physically house all of its students on campus; in order to offer the optimal complement of education programs, Georgetown University must place a certain number of residents in off-campus private housing. The exact number of students permitted to live off-campus was a heavily debated part of the Campus Plan [271-275], and it was clear that the University’s responsibility to protect the community from student harm applied

equally to students living on and off-campus. The fact that the student at issue rented a room in a private townhouse located off-campus (as opposed to living on-campus) is immaterial to the question whether Georgetown University is responsible for ensuring that the student adhered to the Code of Student Conduct. Under the Zoning Commission's order approving the Campus Plan, the Campus Plan itself, and the Code of Student Conduct, students may not cause damage to their neighbors, and if they do, and neighbors complain, the University must undertake prompt actions to stop the student from continuing this conduct. Therefore, Lauren and J.P. had standing to sue Georgetown University for its violation of its duties to promptly take action to enforce its Code of Student Conduct against the student whose secondhand smoke entered Lauren's and J.P.'s home, since the Campus Plan required the University to enforce the Code of Student Conduct.

**B. Acceptance of the Campus Plan was contingent upon community “buy-in” that resulted in Georgetown University assuming duties to its neighbors, including Lauren and J.P.**

The Campus Plan was extensively debated by the community at large and by the Advisory Neighborhood Commissions surrounding the University, changes were made to the Campus Plan based on these discussions, and it was only after this community “buy-in” that Georgetown University submitted the Campus Plan to the Zoning Commission for its approval. Thus, Georgetown University

undertook duties that it owed to its neighbors, including Lauren and J.P., which it submitted its Campus Plan to the Zoning Commission.

The Campus Plan for Georgetown University at issue in this litigation covers twenty years (2017-2036) and was approved by the Zoning Commission on December 1, 2016. [146-184]. The “Introduction” section of the Campus Plan states:

The University’s relationship with and commitment to its community and the District of Columbia is well established and takes many forms – as a leading employer and economic driver, a District partner in key social and policy initiatives, and **a good neighbor to residents with whom it shares the dynamic and historic community surrounding campus.** [emphasis added] [151].

The “Introduction” section also states:

All of the University’s long-range planning initiatives that undergird and support this twenty-year Campus Plan have sought to more fully understand the campus and its potential in the context of its surrounding community. **To that end, residents of the neighborhoods surrounding the campus are not only stakeholders but critical partners in this effort – partners who share a strong interest in the continued vitality of the University as well as in ensuring that its impacts are appropriately and effectively minimized and managed.** [emphasis added]. [155-156].

An earlier Campus Plan established the Georgetown Community Partnership “as a forum to facilitate discussion, information sharing, and consensus-based decision making among University administrators, students, and members of the community.” [156]. The Partnership is “led by a Steering Committee composed of representatives from ANC2E [which covers the area to the north and east of

campus] and ANC3D [which covers the area to the west of campus], the Citizens Association of Georgetown, the Burleith Citizens Association, the Foxhall Community Citizens Association, Georgetown University, and the Georgetown University Student Association. A representative from MedStar Georgetown University Hospital is an *ex-officio* member of the Steering Committee.” [156].

The Partnership “was created to promote openness, transparency and trust between members of the Georgetown community, including community members, students, and university officials to improve community conditions for all.” [157]. “Since the launch of the GCP in 2012, the University and members of the community have worked together to establish the framework, goals, and principles of the comprehensive master planning effort undertaken by the University. At the same time, working groups have also addressed specific issues associated with neighborhood impacts, including noise, trash removal and traffic considerations.” [158]. “Members of the University community (including students, faculty and staff) and residents of the neighborhoods surrounding campus were encouraged to review the draft [Campus Plan] and submit questions or comments.” [158]. The draft [Campus Plan] was also presented and discussed at several public meetings (including before ANC2E and ANC3E) during the Summer of 2016. [158]. After receiving feedback during these meetings and suggesting changes to the draft Plan, ANC2E and ANC3D approved the Campus Plan. [158-159].

The minutes of the July 6, 2016 meeting of ANC3D reflect the tension between Georgetown University and the communities surrounding the campus that led to the approval of the Campus Plan with protections for the community:

Georgetown University Campus Plan: Commissioner DeWitte provided brief background information on the 2010 Georgetown Campus Plan which was approved following a series of contentious zoning hearings. The period of the plan was for five years, during which time the university would work to bring its students back onto campus and exercise better control over issues of concern which were cited by the community during the zoning hearings. Throughout the five year period, a group of representatives, from the Georgetown, Burleith and Foxhall Citizens Associations; ANC 2E and 3D; Georgetown Hospital; and, Georgetown student representatives, worked to develop the 20-Year Georgetown Campus Plan to ensure that all voices were heard and to allow the university to work within a spirit of cooperation. *See* <https://www.dropbox.com/scl/fi/10ob4hh9vuufnjd4e75lg/2016-7-6-Minutes.pdf?rlkey=6wcmdqurhvrosq95pvaydf8pg&e=2&dl=0>

Therefore, in exchange for the community at large consenting to the Campus Plan, Georgetown University agreed to the imposition of duties on itself to control the behavior of its students in order to prevent adverse impacts on the neighborhoods surrounding its campus.

### **1. The Purpose of Zoning in the District of Columbia.**

Every business that seeks to operate in the District of Columbia, including an educational institution such as Georgetown University, must comply with zoning ordinances that place restrictions and conditions on the operation of the business. As an institution of higher learning with thousands of students, faculty

and employees, Georgetown University must obtain approval of a “Campus Plan” from the District of Columbia Zoning Commission, created pursuant to D.C. Code §6-621.01, “to protect the public health, secure the public safety, and to protect property in the District of Columbia.”

D.C. Code §6-641.01 states

To promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital, the Zoning Commission created by §6-621.01, is hereby empowered, . . . to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density of population, and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes.

D.C. Code §6-641.02 states:

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of 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.

Like any other business, in order to operate in the District of Columbia, Georgetown University must follow rules set out in zoning ordinances designed to minimize the impact of the business on surrounding neighbors. The adoption of the Campus Plan and the critical undertaking therein to adopt and enforce a code of student conduct was a critical step underpinning the approval of the University's ability to do business in the Georgetown neighborhood. To enact a plan explicitly designed to protect the community and then refuse to enforce it would render the plan a nullity. By failing to "promptly" investigate Lauren's and J.P.'s claims and sanction the student whose marijuana smoking caused them "special damages," Georgetown University violated the Zoning Ordinance, and these violations allow Lauren and J.P. to sue the University for monetary damages under tort and contract theories pursuant to D.C. Code §6-641.09(a), *Northeast Neighbors*, 92 A.3d at 1123 n.17, *Williams v. District of Columbia*, 2020 U.S. Dist. LEXIS 49615 at \*1-2 and *B&W Management*, 451 A.2d at 883, n.8.

## **II. GEORGETOWN UNIVERSITY OWED DUTIES TO LAUREN AND J.P. THAT AROSE UNDER THE CAMPUS PLAN AND THE ZONING COMMISSION'S ORDER APPROVING THE CAMPUS PLAN.**

Georgetown University bases its entire defense to Lauren's and J.P.'s claims under the theory that "Georgetown owed them no duty." See page 18 of Georgetown University's Brief. While defendants generally do not owe duties to third parties to control the actions of other third parties, in the instant matter,



Georgetown University owed duties to Lauren and J.P. that arose under the Campus Plan and the Zoning Commission's order approving the Campus Plan.

As the neighbors of the University who suffered "special damages" from the student's marijuana smoking, Lauren and J.P. were beneficiaries of the University's promises to control student behavior, and thus, stated causes of action in tort that should have survived dismissal. Since Lauren and J.P.'s claims are based upon a violation of the Zoning Commission's order, the University's claims that "D.C. law does not recognize any general duty to control the conduct of a third person as to prevent him from causing physical harm to another" and courts are "cautious in extending liability for their failure to control the conduct of others" are not relevant. *See* page 19 of Georgetown University's Brief, *citing Hoehn v. United States*, 217 F. Supp. 2d 39, 45-46 (D. D.C. 2002) and *District of Columbia v. Beretta*, 872 A.2d 633, 644 (D.C. 2005). Moreover, Georgetown University's statement on pages 19-20 of its Brief, that "D.C. law makes clear that Georgetown had no obligation to respond [to Lauren's and J.P.'s complaints] at all" is simply incorrect under D.C. Code §6-641.09(a), *Northeast Neighbors*, 92 A.3d at 1123 n.17, *Williams v. District of Columbia*, 2020 U.S. Dist. LEXIS 49615 at \*1-2 and *B&W Management*, 451 A.2d at 883, n.8. On the contrary, because of the community commitments made by the University to obtain the right to operate, the University had the duty under the Zoning Commission's order to "promptly"

investigate Lauren's and J.P.'s complaints and sanction the student for her actions in polluting the air in Lauren's and J.P.'s home with hazardous secondhand smoke – that is, to do what it had promised the community it would do. Georgetown University did not properly (or promptly) investigate the complaints or sanction the student. Rather, the intrusion of secondhand smoke persisted for many weeks, and the student only moved out in mid to late January (not early December, as the University falsely claims). Georgetown University's assertion that it eventually relocated the student callously underestimates the extent of the special damages caused to J.P., and particularly to the asthmatic Lauren, by weeks of deliberate inaction by the University.

The cases cited by Georgetown University for a lack of duty owed by a university to victims of violent acts committed by others (*Varner v. District of Columbia*, 891 A.2d 260, 272-73 (D.C. 2006) and *Board of Trustees of the University of the District of Columbia v. DiSalvo*, 974 A.2d 868, 870 (D.C. 2009)) are also not applicable to the facts of the instant case, where Georgetown University explicitly undertook in its Code of Student Conduct to control the non-criminal conduct of off-campus students. In the cases cited, the universities at issue could not have contemplated or prevented the criminal acts on their campuses that led to the plaintiffs' claims in those cases, but in Lauren's and J.P.'s situation, it was completely foreseeable and predictable that the student would continue her

smoking practices as long as Georgetown University failed to take action to discipline her under the Code of Student Conduct.

**III. LAUREN AND J.P. DID NOT HAVE THE OBLIGATION TO PURSUE THEIR CLAIMS BEFORE THE ZONING COMMISSION, WHICH CANNOT ADJUDICATE CLAIMS FOR MONETARY DAMAGES.**

Because the Zoning Commission cannot adjudicate claims for monetary damages, Lauren and J.P. did not have the obligation to pursue their claims before the Zoning Commission. On pages 26-27 of its Brief, Georgetown University claims that “alleged violations of the Zoning Commission order must be taken up, if at all, before the Zoning Commission.” While the Zoning Commission may have the ability to take action against Georgetown University for violations of the order approving the Campus Plan, it has no authority to award monetary damages to Lauren and J.P. (or any private individual or entity) due to such a violation. Only courts of law may award monetary damages.

**IV. LAUREN’S AND J.P.’S CLAIMS OF NEGLIGENCE AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS SHOULD SURVIVE DISMISSAL BECAUSE GEORGETOWN UNIVERSITY OWED DUTIES TO THEM AND BREACHED THOSE DUTIES, RESULTING IN DAMAGES TO LAUREN AND J.P.**

In *Sullivan v. AboveNet Communications, Inc.*, 112 A.3d 347, 354 (D.C. 2015), the court set forth the requirements for a negligence claim in the District of Columbia: (1) the defendant owes a duty of care to the plaintiff, (2) breaches that duty and (3) the plaintiff suffers damages proximately resulting from the breach. In

the instant case, the duties that Georgetown University owed to Lauren and J.P. are the duties to promptly investigate their claims that a student's marijuana smoking was causing them to suffer from the migration of hazardous secondhand smoke from her townhouse into Lauren's and J.P.'s adjoining townhouse, and the duty to take prompt action to sanction the student if "polite" requests failed to resolve the complaints. As previously cited in this Reply Brief, violations of zoning ordinances may give rise to claims for monetary damages under nuisance and negligence theories if the plaintiff suffers "special damages" (which Lauren and J.P. alleged in this case). *See* D.C. Code §6-641.09(a), *Northeast Neighbors*, 92 A.3d at 1123 n.17, *Williams v. District of Columbia*, 2020 U.S. Dist. LEXIS 49615 at \*1-2 and *B&W Management*, 451 A.2d at 883, n.8. Therefore, Lauren's and J.P.'s negligence, negligent infliction of emotional distress and nuisance claims should survive dismissal.

**V. LAUREN AND J.P. WERE INTENDED BENEFICIARIES OF THE CONTRACT BETWEEN THE UNIVERSITY AND THE DISTRICT OF COLUMBIA, AND THUS, THEIR BREACH OF CONTRACT CLAIM SHOULD SURVIVE DISMISSAL.**

The Campus Plan that the Zoning Commission approved was the product of extensive pre-approval "compromises" reached between Georgetown University and its neighbors. The Campus Plan states that:

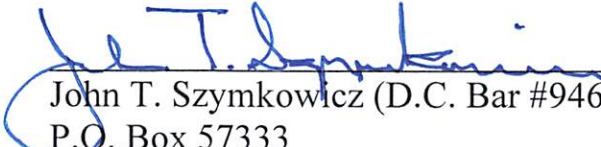
All of the University's long-range planning initiatives that undergird and support this twenty-year Campus Plan have sought to more fully understand the campus and its potential in the context of its surrounding community. To that end, **residents of the neighborhoods surrounding the campus are not only stakeholders but critical partners** in this effort – partners who share a strong interest in the continued vitality of the University as well as in ensuring that its impacts are appropriately and effectively managed. [155-156].

By inserting this language in the Campus Plan and submitting the Campus Plan to the Zoning Commission for approval, Georgetown University intended that residents of the neighborhoods surround the campus would be beneficiaries of the University's promises to these neighbors. If those impacted by the University's students were not intended beneficiaries of the Campus Plan's "effective management," it is difficult to understand why adoption of the Campus Plan was contingent on community participation and on amendment of the draft plan to incorporate community concerns. This was not a "typical" zoning ordinance that requires a property owner to do or not do particular things without any input from surrounding neighbors; the Campus Plan was extensively negotiated over a long period of time between Georgetown University and its neighbors, and incorporation of the community's demand for ongoing protection and vigilance by the University was essential to its efficacy. Thus, Lauren's and J.P.'s breach of contract claim should survive dismissal.

**CONCLUSION**

Appellants-Plaintiffs Lauren Szymkowicz and J.P. Szymkowicz respectfully request that this Honorable Court reverse the Superior Court’s order dismissing this case in its entirety and remand for further proceedings.

Respectfully submitted,

  
\_\_\_\_\_  
John T. Szymkowicz (D.C. Bar #946079)  
P.O. Box 57333  
Washington, DC 20037-0333  
(202) 862-8500  
john@szymkowicz.com

Attorneys for Appellants-Plaintiffs  
Lauren Szymkowicz and J.P. Szymkowicz

**CERTIFICATE OF SERVICE**

I hereby certify that on October 8, 2024, I delivered (via the Court’s electronic filing system) a copy of Lauren Szymkowicz’s and John Paul Szymkowicz’s Reply Brief to Georgetown University’s counsel, Bruce M. Berman, Esquire, Jeremy W. Brinster, Esquire, and Natalie Kirchhoff, Esquire, WILMER CUTLER PICKERING HALE AND DORR LLP, 2100 Pennsylvania Avenue, N.W., Washington, DC 20037, (202) 663-6000, bruce.berman@wilmerhale.com, jeremy.brinster@wilmerhale.com, and natalie.kirchhoff@wilmerhale.com.

  
\_\_\_\_\_  
John T. Szymkowicz (D.C. Bar #946079)