

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

FORM 125 - APPEAL

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated.

Pursuant to §§ 3100 and 3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the

administrative decision of **DC Zoning Administrator** Name of administrative officer and title

made on **July 14, 2014** Date of decision that states **Approves American University building permit**

application #FD1400058 for the foundation to grade portion of the East Campus that allows excavation for a 2-story underground parking garage in non-compliance with ZC Order 11-07.

Address(es) of Affected Premises	Square(s)	Lot(s)	Zone/Districts
4400 Massachusetts Avenue NW	1601	3	R-5-B

Present use of Property: **Parking Lot**

Proposed use of Property: **University housing and office space**

Name of Owner of Property: **American University**

Address: **4400 Massachusetts Avenue NW, Washington, D C. 20016**

Phone No(s): **(202) 885-1000** Fax No.: **(202) 885-3278** E-Mail: **dower@american.edu**

Name of Lessee:

Address:

Phone No(s): Fax No.: E-Mail:

Name of Appellant, if other than Owner: **Spring Valley-Wesley Heights Citizens Association**

Address: **4601 Tilden Street NW**

Phone No(s): **(202) 364-7130** Fax No.: **(202) 363-4452** E-Mail: **tmfsmith@rcn.com**

I/We certify that the above information is true and correct to the best of my/our knowledge, information and belief. Any person(s) using a fictitious name or address and/or knowingly making any false statement on this appeal is in violation of D.C. Law and subject to a fine of not more than \$1,000 or 180 days imprisonment or both. (D.C. Official Code § 22-2405)

Date: **9/10/2014** Signature of Appellant: 

Waiver of Fee - Status of Appellant

☐ ANC ☐ DC Government Agency ☐ NCPC ☒ Citizens' Association/Association created for civic purposes that is not for profit

To be notified of hearing and decision (Appellant or Authorized Agent)

Name: **Michael Mazzuchi**

Address: **4430 Macomb Street NW, Washington, DC 20016**

Phone No(s): **(202) 364-2403** Fax No.: **(202) 363-4452** E-Mail: **mazzuchidc@gmail.com**

If an appeal is filed by the agent of the Appellant, Form 125 - Appeal shall be accompanied by a letter signed by the Appellant authorizing the agent to act on its behalf in this appeal.

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

CASE NO.18857
EXHIBIT NO.10

September 10, 2014

Mr. Lloyd Jordan, Chairperson
Board of Zoning Adjustment
441 4th Street NW Room 200S
Washington, D.C. 20001

Re: Form 125 Appeal of Zoning Administrator Decision On American University
Building Permit Application #FD1400058 – Supplemental Statement

Dear Chairperson Jordan:

The Spring Valley-Wesley Heights Citizens Association (SVWHCA), a non-profit civic association established to address issues directly impacting residents of the Spring Valley and Wesley Heights neighborhoods, is filing an appeal with the Board of Zoning Adjustment (BZA) of a decision by Zoning Administrator (ZA) Matthew LeGrant on July 14 approving Building Permit Application #FD1400058 for American University (AU) (the “ZA Decision”). The permit follows an order of the D.C. Zoning Commission (the “ZC”) granting a special exception and further processing in relation to the American University Campus Plan, Order No. 11-07 (the “Campus Plan Order”). This Supplemental Statement sets out the exceptions to ZA Decision and the manner in which SVWHCA will prove its case in accordance with the instructions to Form 125.

Exception to the ZA Decision

1. The ZA Decision improperly allows a substantial change – specifically, adding a second underground story to a single-story parking garage approved under the Campus Plan Order – that was not presented to the ZC or contemplated by the Campus Plan Order. Mr. LeGrant's reasoning in the ZA Decision - that drawings and plans submitted as part of the Campus Plan were for "illustrative purposes only" – is misguided and erroneous. Failure to require applicants to adhere to plans submitted as part of zoning approvals is a legal error which has the potential to create conditions in neighborhoods in which zoning outcomes vary significantly from plans approved by either the ZC or the BZA.

2. The ZA's decision was initially rendered on July 14, 2014 (Annex A). SVWHCA sought reconsideration of the decision by an email dated July 15, 2014 (Annex B). On August 7, the ZA denied reconsideration (Annex C). This appeal follows.

Elements of SVWHCA's Case. SVWHCA will establish the following (references to Exhibits are to the Exhibit file for Zoning Commission case No. 11-07)

1. In March, 2011, AU submitted its ten-year Campus Plan proposal for first stage review by the Zoning Commission. AU also submitted an application for Further Processing of the East Campus - the second stage review which requires a higher level of detail - in March 2011, to be considered simultaneously by the Zoning Commission. The East Campus, which was to be built on the site of a parking lot, was to consist of six buildings and include a single-story underground parking garage in

addition to surface parking.

2. The number of levels of underground parking at the site was important to residents because of concerns over damage to the foundations of residential homes adjacent to the site and the potential disruption of stormwater flow. In all community meetings in advance of filing the Further Processing of the East Campus, AU officials advised the community that it only wanted to excavate deep enough to build a one-story underground parking garage.

3. AU submitted its plans for the Further Processing of the East Campus on March 18, 2011 (Exhibit 8) which included narrative stating in Section 9.1.3(b) that the site would include a "single below grade level of parking."

4. In a May 20, 2011 filing with the Zoning Commission, AU submitted diagrams of the East Campus site that included the single level story of parking (Exhibit 50).

5. In their testimony at a ZC hearing on June 9, 2011, AU representatives testified that the underground parking garage would be one level and supplemented their comments with drawings and plans (Exhibit 242).

6. Although AU revised some aspects of its East Campus Plans throughout the course of the ZC proceedings on the Campus Plan, at no time did AU submit any information suggesting that it would build anything other than a single level underground parking garage.

7. ZC Order 11-07 references Exhibit 50 and Exhibit 242 in Paragraph 145. The Order contains no information that would suggest approval of anything other than the single level parking garage that was presented to the ZC.

8. Condition 28 of ZC Order 11-07 grants AU some design flexibility that includes "partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms." However, it does not list the depth of below grade structures or the number of levels as elements for which flexibility is granted.

9. Notwithstanding that the Order specifically references Exhibits calling for a single level of underground parking, the ZA allowed expansion of the parking garage to a two-level structure. The ZA justified his decision on the basis that plans and drawings submitted as part of the Further Processing case were "for illustrative purposes only." However, the submissions made by AU to the ZC were not characterized by AU or the ZC as being "for illustrative purposes".

10. Section 210.4(a) of the Zoning Code is very specific in requiring a University to submit a detailed plan for campus development that includes "buildings and parking and loading facilities" as a prerequisite to request a special exception. Drawings and plans convey the detail. No order can be reasonably expected to include narrative covering every aspect of architectural drawings and building plans. This is precisely why such plans and drawings are required to be submitted and then referenced in the order, as is the case with the single level of underground parking in this case.

11. The ZA's rationale would imply that any applicant for a special exception or variance is

free to revise their plans in material respects after approval by the ZC or the BZA, unless the ZC or BZA order itself – and not merely the applicant's submission -- was so detailed as to cover every single aspect of a building plan or architectural drawing. Such a rationale is plainly erroneous. Precisely the opposite is true, which is why orders include very specific language on what aspects of a project are entitled to "flexibility " No such flexibility was granted to AU for depth of construction or the number of underground levels.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Mazzuchi', with a stylized, flowing script.

Michael Mazzuchi
President
Spring Valley-Wesley Heights Citizens
Association

ANNEX A

From: LeGrant, Matt (DCRA) [<mailto:matt.legrant@dc.gov>]
Sent: Monday, July 14, 2014 11:47 AM
To: jkraskin@rcn.com, Thomas Smith
Cc: wksla@aol.com, Elisabeth Ross, Judith
Subject: American University- East Campus Plan- Foundation to Grade Building Permit

Messrs Smith and Kraskin-

I wanted to update you about my office's decision regarding an aspect of American University's East Campus building project. Last week, after a thorough review of the matter, my office approved AU's building permit for the foundation to grade portion of the development. This permit includes two levels of underground parking that has a total of 150 parking spaces. My decision is based on the following facts:

- There is no condition in the approved Campus Plan, under Zoning Commission Order #11-07 that specifies that the parking garage is to be one level. The only reference regarding the required parking is that Finding of Fact # 145 denotes that an underground parking garage would provide approximately 150 parking spaces, as well as loading facilities. This can, in my view, be satisfied by the two level garage proposed configuration.

- There is no reference as to the Commission requiring a specified number of parking garage levels in the finding of facts, or in the conclusions of law, in the text of the Order # 11-07, nor did my office find any mention of it in the transcript of the proceedings. The Record of the of Campus Plan proceedings does not have any other reference to this issue, except of the diagram of the garage level in Exhibits #50 and #242. I should note that there were a large number of exhibits in this Campus Plan case. And, as a result, the University is not necessarily bound by information included in two isolated exhibits, especially when there may be contradictory information in other exhibits. I interpret that this 'one level' garage plan was for illustrative purposes only, and did not bind American University to be limited to have only one level of underground parking, and therefore the underground garage can be two levels.

- Exhibits #50 and 242 refer to a charter bus parking area which appears to me was also for illustrative purposes only. There are no references or requirements for bus parking in the conditions, finding of facts, or in the conclusions of law of Order # 11-07, nor mention of it in the transcript of the proceedings. I conclude that the Commission imposed no requirement for a underground bus parking or 'turnaround' in the approved Campus Plan.

- The concern over the groundwater impacts, or for possible water quality/site contamination, is not a zoning issue, but is the purview of District Department of Environment (DDOE) regulation. Condition # 11 of Order #11-07 requires that AU inform DDOE, the Army Corps of Engineers, and the EPA, of its intent to conduct activities that may involve review by those applicable regulatory bodies. According to American University, in their letter of May 27, 2014 to me and DDOE Director Keith Anderson, they have done so. I have not found any Campus Plan requirement for additional measures beyond which is already required by District laws or regulation that is under the purview of DDOE.

In summary, my office finds that the foundation to grade building permit complies with the Zoning Commission's approved Campus Plan, under Order #11-07.

My office is now reviewing the building permit application for the above ground construction, and will evaluate it for conformance with all requirements under the approved Campus Plan. I will separately advise you of the result of my office's review.

Best Regards,

Matthew Le Grant
Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th St SW - Room 3100
Washington, DC 20024
Phone: 202 442-4652
Email: matt.legrant@dc.gov
Web: <http://dcra.dc.gov/service/zoning-dcra>

DC Public Schools' Beautification Day is on Saturday, August 23! Roll up your sleeves and help beautify our schools. [Sign up](#) to volunteer.

ANNEX B

From: Mazzuchi, Michael A.
Sent: Tuesday, July 15, 2014 3 22 PM
To: 'Thomas Smith'; 'LeGrant, Matt (DCRA)'
Cc: 'Reid, Rohan (DCRA)'; 'Beeton, Kathleen A. (DCRA)'; JLKraskin@rcn.com, 'Benjamin Tessler', 'Bob Herzstein', wksla@aol.com
Subject: RE American University- East Campus Plan- Foundation to Grade Building Permit

Dear Mr. LeGrant,

I am writing as President of the Spring Valley Wesley Heights Citizens Association ("SVWHCA") in relation to the below matter. SVWHCA was a party to the zoning proceedings regarding the American University Campus Plan and to the recent appeal of the Zoning Commission's decision which has resulted in the order being considered further on remand. I would like to add to ANC Commissioner Smith's question, and also respectfully suggest that the analysis you forwarded confuses the Campus Plan provisions with the conditions to the approval of the Campus Plan that are included in the Zoning Commission's order in Case No. 11-07. The zoning code requires the applicant to submit "a plan for developing the campus as a whole, showing the location, height, and bulk, where appropriate, of all present and proposed improvements, including but not limited to [b]uildings and parking and loading facilities." (DCMR 11-210). The applicant did this; they presented in Exhibit 50 several components of a campus plan and further processing request in relation to East Campus, one of which was a diagram showing a single level of parking for East Campus. In its opening statement to the Commission, the applicant specifically referred to "150 spaces located in a single below-grade level of parking that will be located under Building Nos. 1-6". (Ex. 50 p.6 (emphasis added)). The zoning hearing transcript of June 9, 2011 also shows the applicant presenting this plan to the Commission as a single level. ("This is the underground parking plan. You can see here that we will have access to this level for service as well as parking." (emphasis added)). As ANC Commissioner Smith states, to my knowledge the applicant never submitted a revised plan with respect to the parking garage during the proceedings after this point. Accordingly, Paragraph 145 of the Commission's order in 11-07, in describing parking, refers to these June 2011 exhibits, including Exhibit 50 from which I quoted above, as they appear to be the final statement on this subject in the proceedings. As the Commission approved the Campus Plan and referred to Exhibit 50 in its findings of fact, this description of the garage would seem clearly to be part of the plan it approved. The Commission of course did not list as a condition in the order elements of the proposal that it was already approving, but that of course does not grant the applicant the right to vary these elements. I would note also that while Condition 28 of the zoning order grants the applicant "flexibility to vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms" it does not list the depth of below grade structures as an element for which flexibility is given. Indeed, it states that permitted variations may not "change the exterior configurations of the structures." Adding another level to a garage is a change to an exterior configuration.

SVWHCA respectfully submits that your office's decision in this matter is incorrect; we would ask you to reconsider. Please advise us whether your office will pursue a reconsideration of this finding. Thank you very much for your review of this request.

Kind regards,

Michael Mazzuchi
President
Spring Valley Wesley Heights Citizens Association

ANNEX C

From: LeGrant, Matt (DCRA) [mailto:matt.legrant@dc.gov]

Sent: Thursday, August 07, 2014 10:43 AM

To: Thomas Smith

Cc: JLKraskin@rcn.com, Mazzuchi, Michael A., 'Bob Herzstein', rherzstein@sprynet.com, 'Benjamin Tessler', wellsleone@aol.com, wksla@aol.com, Beeton, Kathleen A. (DCRA), Jackson, Richard (DDOE), Reid, Rohan (DCRA), Sabbakhan, Rabbiah A. (DCRA)

Subject: American University - East Campus Plan - Foundation to Grade Permit Approval

ANC Commissioner 3D02 Thomas Smith, et al

Thank you for your email and please accept my apologies for the delay in responding. Both you and Mr. Mazzuchi asked that I reconsider my office's decision to approve American University's building permit application # FD1400058, for the foundation to grade portion of the East Campus building project that is still in process. I have reviewed the matter again and I do not find any basis to change my decision. I continue to affirm the decision of my office to approve the foundation to grade building permit application as it complies with the Zoning Commission's approved Campus Plan, under Order #11-07, for the reasons I set forth in my email to you of July 14, 2014.

I did consult with DDOE Acting Deputy Director Richard Jackson regarding groundwater and/or soil contamination concerns. He indicated to me that his office has requested the American University obtain further soil samples in order to do additional testing. These samples are needed in order to provide information before DDOE considers issuance of a required groundwater treatment system permit by DDOE. If and when DDOE issues such a groundwater treatment system permit, American University could then proceed with the construction related to DCRA's issued building permit for the foundation to grade phase of the project; as I understand it, that construction cannot start until DDOE issues the groundwater treatment system permit. In terms of DDOE's authority to overrule or void DCRA's issued building permit for the foundation to grade construction, Mr. Jackson indicated, after researching his agency's legal authority, that he does not have the authority to overrule DCRA's decision to issue a building permit at the site.

I conclude that the concerns that were raised over my office's approval of the foundation to grade permit have been wholly addressed. I do not see a reason to further discuss that approval as my finding is that the permit complies with the approved Campus Plan, as per Zoning Commission Order #11-07. As you are aware, any party that disputes a decision of my office has the right to appeal my decision to the BZA.

I will continue to keep all parties abreast of the approval and/or issuance of subsequent related building permits.

Best Regards,

Matthew Le Grant
Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
1100 4th St SW - Room 3100
Washington, DC 20024
Phone 202 442-4652
Email matt.legrant@dc.gov
Web <http://dcra.dc.gov/service/zoning-dcra>

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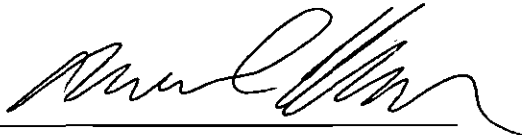
CERTIFICATE OF SERVICE

On September 10 I mailed a copy of the foregoing Form 125 Appeal of Zoning Administrator Decision On American University Building Permit Application #FD1400058 (and Form 125 Appeal of Zoning Administrator Decision On American University Building Permit Application #FD1400058 – Supplemental Statement) by first class mail, postage prepaid, to the following addressees:

Mr. David Dower
American University
4400 Massachusetts Avenue NW
Washington, D.C. 20016

Ms. Linda Argo
American University
4400 Massachusetts Avenue NW
Washington, D.C. 20016

Mr. Matthew LeGrant
Zoning Administrator
DC Department Of Consumer and Regulatory Affairs
1100 4th St, SW
Washington, D.C. 20024

A handwritten signature in black ink, appearing to read 'Michael Mazzuchi', written over a horizontal line.

Michael Mazzuchi