

ATTACHMENT G

**AUGUST 7, 2014 E-MAIL
FROM ZONING ADMINISTRATOR
MATT LEGRANT REAFFIRMING
REASONS FOR DECISION TO ISSUE
PERMIT NO. FD1400058**

Thomas Smith

From: LeGrant, Matt (DCRA) <matthew.legrant@dc.gov>
Sent: Thursday, August 07, 2014 10:43 AM
To: Thomas Smith
Cc: JLKraskin@rcn.com; 'Michael A. Mazzuchi'; '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>

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

From: Thomas Smith [mailto:tmfsmith@rcn.com]

Sent: Friday, August 01, 2014 9:04 AM

To: LeGrant, Matt (DCRA)

Cc: JLKraskin@rcn.com; 'Michael A. Mazzuchi'; 'Bob Herzstein'; rherzstein@sprynet.com; 'Benjamin Tessler'; wellsleone@aol.com; wksla@aol.com; Beeton, Kathleen A. (DCRA)

Subject: Yesterday's voicemail

Matt,

Thanks for your voicemail. I am sorry to hear about family issues. Actually, I had suspected that something – other than a vacation – was keeping you from the office. That is why I was trying to reach Kathleen Beeton in your absence – primarily to ask a logistics question. The lack of any response prompted my latest e-mail to you.

Based on your e-mail, it is my understanding that you are considering the request from Mike Mazzuchi, president of the Spring Valley-Wesley Heights Citizens Association, and I have made asking you to reconsider your decision to approve a permit that allows AU to begin excavation at the parking lot construction site because AU's plans for a 2-story garage are inconsistent with the plans submitted by AU and approved by the Zoning Commission as part of the Further Processing. We have deferred submitting a filing to the BZA on this issue pending confirmation from you that this permit has actually been issued. The issue of potential mercury contamination at the site – prompted by the unusual discovery of mercury in the groundwater at the site—has raised additional questions about moving forward with excavation at the site. In a meeting last week with DDOE's Richard Jackson, the Acting Deputy Director, he told us that – if he had the authority – he would not allow excavation to begin at the site until additional testing for mercury had been completed at the site. (DDOE is working with AU to require such testing.) Mr. Jackson indicated that he may not have the authority to overrule your decision to issue a permit at the site. We have asked him to research the agency's legal authority. However, the lack of coordination among DC agencies in dealing with potential contamination at a site that is immediately adjacent to AU's Formerly Used Defense site – where for 23 years now the US Army Corps of Engineers has been working to clean up chemical contamination, including mercury – is of great concern to Spring Valley residents.

Again, thank you for your voicemail yesterday. I appreciate the phone call, but would also appreciate in the future if you would try to reach me on my landline phone at 202-364-7130 instead of my wireless phone. Thanks.

ATTACHMENT H

**MAY 9, 2014 LETTER FROM
ADVISORY NEIGHBORHOOD
COMMISSION (ANC) 3D TO ZONING
ADMINISTRATOR MATT LEGRANT
REPORTING ANC ACTION
REQUESTING THAT AMERICAN
UNIVERSITY BE REQUIRED TO
SEEK A MODIFICATION OF Z.C.
ORDER NO. 11-07 ON THE BASIS
THAT CONSTRUCTION PLANS FOR
THE EAST CAMPUS VARY
SIGNIFICANTLY FROM THOSE
APPROVED IN Z.C. ORDER NO. 11-07**

Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3-D
P.O. Box 40486
Palisades Station
Washington, D.C. 20016

May 9, 2014

Mr. Matt LeGrant
Zoning Administrator
DC Department of Consumer and
Regulatory Affairs (DCRA)
1100 4th Street SW
Washington, DC 20024

Re: Zoning Commission (Z.C.) Order 11-07 – American University Campus Plan
And Further Processings

Dear Mr. LeGrant:

Advisory Neighborhood Commission (ANC) 3D invited representatives of American University to its May 7, 2014 regularly scheduled monthly meeting to provide an update on plans for construction of the East Campus. As you know, a Further Processing for the East Campus was approved by the DC Zoning Commission on March 8, 2012. Zoning Commission Order 11-07 approving the Further Processing plans for the East Campus was issued on May 17, 2012 and outlines the specific plans and conditions for construction of six new buildings on the East Campus located on Nebraska Avenue NW between New Mexico Avenue NW and Ward Circle. The East Campus will include new student housing, classrooms, administrative offices, underground parking, and a surface parking lot. The 8-acre site is currently used as a surface parking lot.

ANC 3D included the East Campus construction update on its May 7, 2014 agenda due to concerns by residents – expressed during the Community Concerns section at the ANC 3D April 2, 2014 meeting – that AU's plans for construction of the East Campus were not in compliance with Z.C. Order 11-07. Residents, including representatives of the Spring Valley-Wesley Heights Citizens Association and Neighbors for a Livable Community, informed ANC 3D that AU representatives would not meet with them to discuss these concerns because final construction plans had not been completed. ANC 3D had invited AU to attend the April 2 meeting to provide an update on its East Campus construction plans, but representatives of AU with knowledge of the plans were not available to attend.

Consequently, Ms. Linda Argo, the Assistant Vice President for External Relations and Auxiliary Services, and Mr. David Dower, Assistant Vice President for Planning and Project Management, presented the updated information to ANC 3D and approximately 60 members of the public in attendance at the May 7 meeting.

Based on the information provided by AU representatives at its properly-noticed May 7, 2014 meeting held at the Lab School of Washington, ANC 3D voted 6-3, with a quorum present at all times, to request that you, as the Zoning Administrator, require that AU seek a modification of Z.C. Order 11-07 on the basis that its new construction plans vary significantly from those approved by the Zoning Commission, as outlined in Z.C. Order 11-07. Particularly significant is AU's plan to construct a two-story underground parking garage for 150 parking spaces when the Zoning Commission approved a plan for a one-story 150-space underground parking

garage with a charter bus turn-around. Consequently, we expect that you would withhold any permits for construction until the Zoning Commission has reviewed and approved the new plans, according to established procedures.

AU's plans for a one-story parking garage are outlined in Exhibit 50A of the record in Zoning Case 11-07. At no time during the zoning hearing process did AU indicate its plans for construction of a one-level underground parking garage had changed.

The underground parking garage was designed to have a bus turn-around so that charter buses would not use the surface parking lot that will be located immediately adjacent to residential homes. Currently, bus parking on the Nebraska Avenue surface lot has been a source of ongoing objections from adjacent residential homes because of the bus idling and exhaust fumes. AU representatives advised neighbors and the Zoning Commission during the campus plan hearing process that including the turn-around in the underground parking garage would provide relief to neighboring residents and address any objections to the more intense uses planned for the East Campus.

At the May 7, 2014 ANC 3D meeting, AU representatives indicated that there would no longer be a bus turn around in the two-story parking garage and refused to make any commitment about whether buses would use the remaining Nebraska Avenue surface lot – much as they do now.

AU representatives also said that it was necessary to expand the underground parking levels to two levels because it would not build one of the buildings approved for the site. The underground parking was to extend under a portion of this building. According to AU representatives, this necessitated dividing the parking spaces into two floors. However, that portion of the underground lot only included 10 parking spaces, as outlined in Exhibit 50.

AU representatives said that other engineering issues with the entrance off New Mexico Avenue necessitated the changes. However, errors by the design team do not immunize AU from adhering to the zoning rules, which require an applicant to seek a modification of a Zoning Order when the plans for that project must change – even due to human error.

Moreover, ANC 3D is deeply concerned about the impact of deeper excavations at the site and the potential for water damage to the foundations of neighboring homes. Precisely because AU had represented to the neighbors and the Zoning Commission that it was building only a one-story underground garage at the site, there was minimal attention to groundwater-related issues at the site. That groundwater at the site may be a source of perchlorate contamination – an issue still being explored by the U.S. Army Corps of Engineers – raises added concerns with respect to any water damage to neighboring property. In other words, the potential exists not only for property damage, but also risks to human health and well-being. There are four wells currently located at the site assessing levels of perchlorate in the ground water. The concerns are so significant as AU has already committed to monitor and sample the level of perchlorate in the groundwater during the construction process.

By excavating deeper, the project possibly exposes neighboring property to additional risks that were not anticipated as part of the proceedings two years ago that resulted in approval of a one-story underground parking garage.

Although AU is required under Z.C. Order 11-07 to compensate residents for any damage to their property due to construction, AU representatives refused to commit at the May 7, 2014 ANC meeting that this would include water damage to neighboring properties, including foundations and basements, resulting from

changes in water flow. The issue is particularly important for neighboring homes as they are down gradient from the new development.

A new proceeding would enable AU, residents, and their experts, including hydrologists and engineers, to assess and testify to the potential for added risks to property and health and determine if the proposed two story underground parking garage meets the zoning standards that it is “not likely to become objectionable to neighboring property because of noise, traffic, parking, number of students, or other objectionable conditions.” Such a determination should only be made by the Zoning Commission consistent with the standards outlined in the Zoning Code.

Although ANC 3D understands that residents may have other concerns that the plans are not in compliance with Z.C. Order 11-07, ANC 3D focused primarily on the underground garage due to time constraints on our agenda. That the ANC focused solely on the underground garage is not intended to dismiss other concerns from residents. ANC 3D, however, believes that the change from a one-story underground garage to a two-story underground garage (without a charter bus turn around) is so significant that it, alone, is sufficient to warrant a decision by the Zoning Administrator to require AU to file a request to modify the Order.

We are happy to meet with you to discuss this recommendation in more detail. Thank you for the opportunity to express our views and concerns on this project and we ask that you give this recommendation the great weight to which it is entitled under DC Statute 1-309.10(d)(3).

Sincerely,



Gayle Trotter
Chair

cc: Councilmember Vincent Orange
Councilmember Mary Cheh
Mr. Anthony Hood, Chairman
DC Zoning Commission