

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

VIA IZIS

December 15, 2014

Mr. Lloyd Jordan, Chairman
Board of Zoning Adjustment
441 4th Street NW
Suite 210S
Washington, DC 20001

**RE: BZA Appeal No. 18857 – Opposition to DCRA’s Motion to
Hold Decision in Abeyance**

Dear Chairman Jordan and Members of the Board:

Advisory Neighborhood Commission (ANC) 3D filed an appeal with the Board of Zoning Adjustment (BZA) on August 20, 2014 (BZA Appeal No. 18857) challenging the decision of the DC Zoning Administrator (ZA) to issue a foundation-to-grade permit (Permit No. FD1400058) for American University (AU). AU submitted its permit application to the District Department of Consumer and Regulatory Affairs (DCRA) in January 2014. ANC 3D has argued before the BZA that the construction proposed in the permit application varied significantly from plans approved by the DC Zoning Commission (ZC), as outlined in the May 2012 Z.C. Order No. 11-07, and that, consequently, the ZA decision to approve the permit was inconsistent with the requirements outlined in *Sections 3125.7 and 3129* of the DC Zoning Code.

After DCRA and AU argued before the BZA on November 18 that AU was not required to file for a modification of ZC Order No. 11-07, AU subsequently submitted an application to the ZC on November 20 (ZC Case No. 11-07C) seeking approval for a minor modification for construction it began in July 2014 after having already received the permit from DCRA that is the subject of this case. After removing the case from its consent calendar, the ZC has scheduled a limited hearing on February 2, 2015 to consider the application.

DCRA is now asking the BZA to hold its decision in BZA Appeal No. 18857 in abeyance pending the outcome of the ZC hearing. ANC 3D opposes this motion on the basis that (1) the issues in the two cases are not the same; and (2) a decision in this case is in the public interest.

In filing its motion to hold the decision in abeyance, DCRA confuses what is a relatively straight-forward case now before the BZA by suggesting the issues in BZA Appeal No. 18857 and ZC Case No. 11-07C are exactly the same. They are not. The case before the BZA is a procedural matter relating to the permit issued by the ZA whereas the case before the ZC will

focus on whether the modification sought by AU meets the standards for approval established in **Section 210** of the DC Zoning Code (e.g. whether the modifications create objectionable conditions for neighboring property).

The issue at the heart of BZA Appeal No.18857 is whether the ZA exceeded his authority by failing to follow the rules outlined in **Section 3125.7** of the Zoning Code which state clearly that “approval of an application shall include approval of the plans submitted with the application for the construction;” **and Section 3129** of the Zoning Code which outlines clear procedures for approval of modifications – even so-called “minor modifications” – and reserves that authority in this case for the Zoning Commission.

Moreover, the decision by AU to file for a modification is an acknowledgment that the decision of the ZA to issue the construction permit – that is the subject of this case – was flawed and that AU should have sought approval for the modification from the ZC even before submitting its permit application nearly one year ago.

ANC 3D believes the public interest is best served when city agencies, such as DCRA, and American University are required to comply with the zoning laws of the District of Columbia. ANC 3D further believes that the public interest is best served by ensuring that ongoing construction which varies significantly from plans approved by the ZC is not allowed to exacerbate conditions that may have potentially damaging impacts on neighboring property until the ZC has the opportunity to review the potential impacts of these modifications in February 2015.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Gayle Trotter". The signature is fluid and cursive, with "Gayle" on the top line and "Trotter" on the bottom line.

Gayle Trotter
Chair, ANC 3D

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2014 a copy of the attached enclosure was delivered via e-mail to the following:

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Gayle Trotter