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August 18, 2005

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VIA HAND DELIVERY

Carol Mitten
Chairperson
DC Zoning Commission
441 4th Street, Room 210
Washington, DC 20001

2005 AUG 18 PM 12:14
D.C.

Re: Z.C. Case No. 05-16 - American University - Minor Addition to the Kogod School of Business and the New Lecture Hall

Dear Chairperson Mitten and Members of the Commission

Enclosed please find the pre-hearing statement of American University (the "**Applicant**") in the above-mentioned application The Applicant looks forward to presenting this case at the September 1, 2005 public hearing

Sincerely yours,

Paul A. Tummonds

Paul A Tummonds, Jr

Enclosure

cc Jorge Abud/Hisham Khalid/David Taylor
Sarah Shapley, ANC 3D
Stephen Mordfin, Office of Planning

ZONING COMMISSION
District of Columbia
CASE NO. 05-16
EXHIBIT NO. 16

Document # 1495211 v 1

ZONING COMMISSION
District of Columbia
CASE NO.05-16
EXHIBIT NO.16

BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA

Application of American University	**Z.C. Case No. 05-16** **ANC 3D**
Campus Plan Further Processing Application for a Minor Addition to the Kogod School of Business	**Public Hearing : September 1, 2005**

2005 SEP 15 PM 12:15

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

Pursuant to 11 DCMR §3104 and in accordance with §210 of the Zoning Regulations, American University (hereinafter "**AU**" or "**Applicant**") requests special exception approval for the further processing of an approved Campus Plan to permit the construction of a minor addition to the existing Kogod School of Business. The proposed addition will connect the Kogod School of Business and the adjacent New Lecture Hall so that they may be used as a single integrated facility The connection will occur at a terrace level, and the first and second floors of both buildings. The entire proposed addition only consists of approximately 2,173 square feet of gross floor area.

No variances are requested in this application, and the requested special exception relief fully meets the requirements of the Zoning Regulations. Due to the minor nature of this addition, AU respectfully requests that the Commission expedite its consideration of this application.

II. HISTORY AND STATUS OF THE CAMPUS PLAN

AU submitted its proposed Campus Plan for the period 2000 through 2011 (the "**Campus Plan**") to the DC Board of Zoning Adjustment on August 24, 2000. Thereafter, responsibility for the review and approval of campus plans and further processing applications was transferred

to the DC Zoning Commission ("**Commission**"). The Zoning Commission approved the Campus Plan and three further processing applications (the construction of the Katzen Arts Center, an addition to the Mary Graydon Center, and the enclosure of the campus road under Butler Pavilion) on January 8, 2002 pursuant to Z.C. Order No. 949. On April 30, 2002, the Zoning Commission issued Order No. 949-A (the "**Order**") which restated the Commission's intent that the bleacher seats approved in the Campus Plan were to face the athletic fields, and adopted a new condition of approval that included certain commitments of AU that were offered during the public hearing process that were not included in Order No. 949.

Subsequently, the Commission's approval of the Campus Plan was appealed to the DC Court of Appeals. The Court of Appeals upheld the Commission's approval of the Campus Plan as rational, supported by substantial evidence in the record, and compliant with legal requirements in all but one respect. The Court of Appeals remanded the case to allow the Commission to articulate with particularity its reasons for declining to follow the recommendation of ANC 3E and ANC 3D that AU be required to place parking stickers in all AU-related vehicles

III. REQUESTED SPECIAL EXCEPTION - PROPOSED ADDITION TO KOGOD SCHOOL OF BUSINESS

AU plans to construct a minor addition to connect the Kogod School of Business to the New Lecture Hall and add new classrooms on the second floor of the New Lecture Hall (the "**Project**"). A map of the AU Campus (showing the location of the Kogod School of Business and the New Lecture Hall), plans, and elevations of the Project are attached as Exhibit A. The Project will add approximately 2,173 square feet of gross floor area to the combined area of the two existing structures As demonstrated in the plans, the addition will be architecturally compatible with the existing Kogod School of Business building and new exterior finishes will

be added to the New Lecture Hall

The requested further processing approval will allow students, faculty, and staff of the business school to travel from the Kogod School of Business to the New Lecture Hall without being exposed to the elements. It will also provide new lobbies and a lounge for students, faculty, and staff, as well as new classrooms on the second floor of the existing New Lecture Hall building. In addition, a new entrance will be created at the north end of the New Lecture Hall building.

IV. JURISDICTION OF THE COMMISSION

Effective December 8, 2000, the authority to hear and decide new campus plan and further processing applications became exclusively vested in the Zoning Commission pursuant to 11 DCMR §3035. Each case is processed and heard under the special exception provisions of §210 of the Zoning Regulations Uses that are permitted by special exception are presumed to be appropriate for the applicable zoning district as long as certain conditions are satisfied. In considering special exception applications, the Commission must consider only whether the relevant conditions and special exception criteria have been met. If the applicant meets its burden, the Commission ordinarily must grant the application . *See First Baptist Church of Washington v District of Columbia Board of Zoning Adjustment,* 432 A.2d 965 (1981); *Stewart v. District of Columbia Board of Zoning Adjustment,* 305 A.2d 516, 518 (1978).

The DC Court of Appeals has confirmed the reviewing agency's jurisdiction and scope of review in campus plan cases and has made clear that in reaching its decision the Commission may take into consideration such factors as institutional necessity. *See, e.g , Draude v. District of Columbia Board of Zoning Adjustment,* 582 A.2d 949, 955 (1990). Further, the Court of Appeals has distinguished the broader public good referenced in the Zoning Regulations from

the more narrow interests of neighboring property owners.

V. COMPLIANCE WITH THE REQUIREMENTS OF §210

In all respects, the requested special exception fully complies with §210 of the Zoning Regulations. The specific zoning requirements are addressed in detail below.

A. College or University Which is an Academic Institution of Higher Learning (Subsection 210.1)

AU was chartered by an Act of Congress in 1893 and founded under the auspices of the United Methodist Church. AU's use of the property qualifies as a college or university use in accordance with §210 of the Zoning Regulations.

B. The Use is Located so that it is Not Likely to Become Objectionable to Neighboring Property (Subsection 210.2)

The Project is a minor addition that will have virtually no impact on neighboring properties and will not cause objectionable noise, traffic, number of students, or other objectionable conditions. The Project will add only 2,173 square feet of gross floor area to the overall Campus Plan by connecting two adjacent buildings that are both currently used as academic/administrative space. Furthermore, it will be used by existing AU students, and will not generate a significant amount of traffic. It will generate no additional noise No other changes to existing campus uses or facilities or to the campus boundaries are proposed, nor is AU proposing any changes to its enrollment or staff numbers.

C. Compliance with the Maximum Bulk Requirements (Subsection 210.3)

AU's overall FAR is 0.55, which is well below the 1.8 FAR permitted under the Zoning Regulations. It should be noted that since the AU Campus Plan was approved, AU has added a net of approximately 46,059 square feet of academic/administrative space as a result of the demolition of several facilities and the construction of the Katzen Arts Center. Therefore, even

with the addition of 2,173 square feet of gross floor area proposed in this further processing application, the FAR will remain 0 55.

D. Submission of a Plan for Developing the Campus as a Whole (Subsection 210.4)

As noted above, AU's Campus Plan was approved by the Zoning Commission on January 8, 2002 and April 30, 2002. No changes to the Campus Plan are proposed as part of this special exception application.

E. No Interim Use of Land is Proposed (Subsection 210.5)

No interim use of land is requested as part of this campus plan.

F. No New Use Sought for Approved Site of Buildings Moved Off Campus (Subsection 210.6)

AU does not seek approval for any use of a previously approved building site and thus complies with this section

G. Compliance with the Policies of the District Elements of the Comprehensive Plan (Subsection 210.7)

The Project is not inconsistent with the policies of the District Elements of the Comprehensive Plan. The Project will further the goals and objectives of the Ward 3 Element of the Comprehensive Plan by enhancing educational facilities in the Ward without adversely impacting adjacent residential areas.

H. The Proposed Buildings Are within the Floor Area Limit for the Campus as a Whole (Subsection 210.8)

The existing Campus Plan FAR of 0.55 is within the permitted 1 8 FAR prescribed for the residentially zoned portions of the campus. As noted above, the additional square footage proposed by this application will have a negligible effect on the overall FAR for the campus.

I. Referral to the District of Columbia Office of Planning and the District of Columbia Department of Public Works (Subsection 210.9)

It is the Applicant's understanding that this application has been referred to the Office of Planning and District Department of Transportation for their review and report.

VI. COMPLIANCE WITH ZONING COMMISSION ORDER NO. 949-A

Condition No. 17 of the Order provides, in part:

> No special exception application filed by the University for further processing under this plan may be granted unless the University proves that it has consistently remained in substantial compliance with Conditions 1 through 16 set forth in this Order.

As set forth below, AU has consistently remained in substantial compliance with these conditions.

Condition No. 1 – Approval of the Campus Plan shall be until August 15, 2011.

The approved Campus Plan is still in effect.

Condition No. 2 – The approved Campus Plan boundary shall be as shown in the approved Campus Plan

The proposed special exception application does not seek any amendment to the approved Campus Plan boundaries.

Condition No. 3 – The maximum student enrollment (headcount) shall not exceed 10,600 students and the full-time equivalent shall not exceed 9,250 students. The number of employees shall not exceed 2,200.

Student enrollment headcount as of Fall of 2004 was 9,595 and 8,820 full time equivalent The faculty and staff population headcount is 1,507.

Condition No. 4 – AU shall maintain a supply of on-campus housing sufficient to make housing available for 85% of its full-time freshman and sophomore students (headcount) and for two-thirds of all full-time undergraduates (headcount).

AU currently has an on-campus housing supply of approximately 3,400 student beds. In

the Fall of 2004, AU enrolled 3,008 full-time freshman and sophomore students. AU therefore has on-campus housing available for 100% of its freshmen and sophomores and 65% of all undergraduates. AU has for many years been able to provide housing for all undergraduate students that requested housing. In previous years, this was accomplished by converting double rooms to triple rooms in dormitories on campus. The University recently increased its housing supply by leasing the Park Bethesda apartment building for use as student housing. The Park Bethesda is located at 5325 Westbard Avenue in Bethesda, Maryland – approximately 2 miles from the AU main campus. The Park Bethesda provides approximately 580 beds for primarily juniors and seniors. A free shuttle bus runs between the Park Bethesda and main campus every 15 to 30 minutes. Although the Park Bethesda is not located on campus, it provides additional housing for AU undergraduates and reduces the likelihood of students living in the neighborhoods surrounding the AU campus. With the lease of the Park Bethesda, AU has created a more attractive option for upper classmen that will encourage them to seek university-owned housing. If the 580 beds available in the Park Bethesda are counted as on-campus housing available to undergraduates, AU has the ability to house more than 67% of its undergraduates in university owned housing. Therefore, the Applicant believes that it is in substantial compliance with this condition.

Condition No. 5 – Campus Facilities built for instructional purposes may, from time to time, be used for conferences.

The Applicant has not used Campus facilities built for instructional purposes for conferences on more than an infrequent, occasional basis. The new seminar space included in the Project will be used primarily by students and faculty of the Kogod School of Business and not as conference facilities.

Condition No. 6 – The University shall work with community representatives to form a Liaison

Committee for the purpose of fostering consistent on-going communication between the University and the surrounding neighborhoods.

Since the adoption of the Campus Plan, the Applicant has held quarterly meetings with the Neighborhood Liaison Committee. In the last year, the meetings took place on June 7, 2005, February 23, 2005, November 18, 2004, and August 18, 2004. In addition, representatives of AU regularly meet with representatives of the Fort Gaines Citizens Association to review progress on the Katzen Arts Center.

Condition No. 7 – The University shall adopt a program regarding enforcement of student, faculty, staff and vendor off-campus parking.

AU has adopted the required program regarding enforcement of student, faculty, staff, and vendor off-campus parking.

Condition No. 8 – The Applicant shall designate at least 12 of the 76 existing parking spaces at the Tenley Campus for student use.

AU has designated 12 of the 76 existing parking spaces at the Tenley Campus for student use.

Condition No. 9 – The Applicant shall submit each individual request to construct a building described in the Campus Plan to the Zoning Commission as a special exception. The University shall submit information as to how the structure complies with the Plan, an updated traffic analysis, a report indicating the supply of on-campus housing, the number of undergraduate students, and the number of full-time freshman and sophomore students.

The Applicant has submitted the present request to construct the Project to the Zoning Commission as a special exception. The Campus Plan designates the use of the Kogod Business School and the New Lecture Hall buildings as academic/administrative space. The Project is consistent with this use of the buildings. Due to the small amount of gross floor area that is included in this Project and the fact that there will be no additional students or faculty added as a result of this project, the Applicant does not believe that is necessary to prepare a traffic analysis

for this application as there will be no additional traffic created by the Project. The issue of housing supplied by the Applicant for its undergraduate students, and the number of undergraduate students (including freshman and sophomore students) is addressed above.

Condition No. 10 – The Applicant shall not construct more than 400,000 square feet of new gross floor area during the term of this Campus Plan.

As previously noted, a net of approximately 46,059 square feet of new gross floor area has been added to the Campus since 2000. This minor addition consists of only 2,173 square feet of new gross floor area. Therefore, AU is well within the 400,000 square feet of new gross floor area permitted during the term of this Campus Plan.

Condition No. 11 – The University shall implement its "Neighborhood Action Program" to address off-campus conduct by students living in neighborhoods adjacent to the campus.

AU has implemented its Neighborhood Action Program to address off-campus conduct by students living in neighborhoods adjacent to the campus.

Condition No. 12 – The Applicant shall direct its students to register their vehicles in the District of Columbia, or obtain a reciprocity sticker if eligible to do so. The Applicant shall withhold parking privileges from students who do not comply with D.C. registration requirements.

AU has complied with this requirement

Condition No. 13 – The University shall adopt a Campus Lighting Plan.

AU has adopted and followed the approved Campus Lighting Plan.

Condition No. 14 – The University shall implement a Campus Landscape Plan that includes landscaping the interior ring road and the Katzen Arts Center. The University shall maintain all of the landscaped areas.

AU has implemented and followed the approved Campus Landscape Plan and all landscaping has been well-maintained to present an attractive and healthy appearance.

Condition No. 15 – Special Events held on the University's athletic fields on the western edge of the campus are subject to certain conditions.

The University has complied with all requirements for special events on the athletic fields There has been only one special event each year in 2004 and 2005

Condition No. 16 –The University shall provide notification to the D.C. Department of Health, the Army Corps of Engineers (Baltimore Office), and the U.S. Environmental Protection Agency, Region 3 each time that the University files a permit application for ground clearance, excavation, or other major construction that would implicate remedial work performed at or around the campus by the Army Corps of Engineers.

The University has satisfied this condition.

VII. COMMUNITY OUTREACH

AU has continually sought input on the application from members of the community. On June 1 and July 6, 2005, representatives of AU presented the Project to ANC 3D during its regularly scheduled, duly noticed public meetings. On July 6, with all seven commissioners present, ANC 3D voted unanimously to support the minor addition to the Kogod School of Business. A copy of the ANC's resolution is attached as Exhibit B.

VIII. EXHIBITS

Exhibit A. Campus Map and Plans/Elevations of the Project

Exhibit B. Letter in Support from ANC 3D.

Exhibit C. Outline of Witness Testimony.

IX. WITNESS

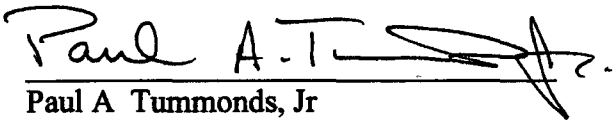
Jorge Abud, Assistant Vice President of Facilities and Administrative Services of American University.

X. CONCLUSION

For the reasons stated above, this application meets the special exception requirements and carries out the city's and the community's objectives for AU's campus. Accordingly, it is respectfully requested that the Commission approve the special exception application.

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN, LLP

By 

Paul A Tummonds, Jr
Land Use Counsel for American University