

November 20, 2014

VIA HAND DELIVERY

Chairman Anthony Hood
District of Columbia Zoning Commission
441 4th Street NW, Suite 210S
Washington, DC 20001

Re Request for a Minor Modification to an Approved Campus Plan Further Processing Application – Zoning Commission Order No. 11-07

Dear Chairman Hood and Members of the Commission

Pursuant to Section 3129 of the Zoning Regulations (11 DCMR § 3129), American University (“AU” or “**University**”) hereby submits an application for the review and approval of a minor modification to an approved Campus Plan Further Processing application¹. The University requests that the Zoning Commission consider this request at its next public meeting, December 8, 2014, so that AU can maintain its construction schedule on the East Campus in order to make available the required number of on-campus residential beds by the 2016 fall semester.

A. Background

The Zoning Commission (“**ZC**”) approved the AU Campus Plan and East Campus Further Processing application pursuant to Order No. 11-07 (the “**Order**,” copy attached as Exhibit A). ZC Order No. 11-07 approved the American University Campus Plan for the period from 2011-2022 and approved a Further Processing application for the construction of six buildings on the East Campus. The East Campus is located across Nebraska Avenue, NW from the central campus, and is bounded by Nebraska Avenue, NW, Massachusetts Avenue, NW, a shared property line with the Westover Place Townhomes, and New Mexico Avenue, NW.

For the East Campus, the ZC approved the development of 590 residential beds in three buildings, three additional academic and administrative buildings, and 150 parking spaces and

¹ A check for \$845, 26% of the original Further Processing Application Fee of \$3,250.00, is included with this filing.

loading facilities in an underground garage, pursuant to the special exception standards of 11 DCMR § 210 Finding of Fact No 145 of ZC Order No 11-07 stated the following with respect to the underground parking at the East Campus

The existing surface parking lot will be removed, except for a portion at the eastern end with space for approximately 200 vehicles (The University described the remaining surface parking lot as an area “reserved for a future signature academic building, similar to the Katzen Arts Center” sometime after 2020) An underground garage, providing approximately 150 parking spaces as well as loading facilities, will be constructed with access from New Mexico Avenue The development will result in a net loss of approximately 500 parking spaces (Ex 8, 50)

Exhibit 50 of the record, attached hereto as Exhibit B, shows one level of underground parking, and the intent of the ZC was clear that 150 spaces should be provided² The only conditions in the Order regarding the development of the East Campus (Condition Nos 38-41, p 67-69 of Exhibit A) address the siting of the six buildings, with a maximum of 590 beds for undergraduate students, and a maximum of 3,000 square feet of retail use (Condition No. 38), flexibility granted to the University (Condition Nos 39 and 40), and construction management issues (Condition No 41)

On January 14, 2014, the University submitted a foundation-to-grade building permit application for construction on the East Campus consistent with the Order On July 14, 2014, the Zoning Administrator (“ZA”) approved a foundation-to-grade permit for the underground parking garage and loading facilities The permit plans for the underground parking garage showed 150 parking spaces – the number referenced in the Order and to which AU committed – on two levels ANC 3D and the Spring Valley Wesley Heights Citizens Association (“SVWHCA”) appealed the permit to the Board of Zoning Adjustment (“BZA”), alleging that the ZA did not have the authority to approve two levels of underground parking, instead of one, and the removal of a bus turnaround in the below-grade parking level The appeal of ANC 3D and SVWHCA (BZA Appeal No 18857) had a public hearing on November 18, 2014 and a decision is scheduled for December 16, 2014

B. Request

1. Overview

AU requests a minor modification of the underground parking garage on the East Campus to construct two below-grade levels rather than one level As the Commission is well aware, the Order requires that AU make on-campus housing available to 67% of all full-time undergraduates by the fall semester of 2016 The completion of the 590 beds on the East Campus is essential to providing that required amount of housing Accordingly, in the interest of

² We have included only the relevant excerpt of Exhibit 50 which shows the East Campus underground parking level

expediency and in order to help assuage concerns raised by the BZA, the University requests this minor modification notwithstanding the pending appeal (BZA Appeal No 18857). The University believes that the interests of all parties (the BZA, the ZC, ANC 3D, SVHWCA, and AU) are best served by the ZC's prompt consideration of this minor modification application.

2. Description of Proposed Minor Modifications

After the ZC approved the Further Processing application for the East Campus, the University commenced preparation of the construction drawings necessary for building permits. Based upon further engineering and structural analysis, AU realized that it will not be possible to provide 150 below-grade parking spaces in a single level of parking and to provide a bus turnaround area below-grade. Instead, AU submitted plans that provide the required 150 below-grade parking spaces and loading facilities in two below-grade levels. The second below-grade level will be only a partial level and will not cover the same footprint as the first below-grade level. The two below-grade levels are shown on the plans attached as Exhibit C.

This requested modification is truly minor because it will only change the underground location of some of the parking spaces. The same number of parking spaces (150) will be provided in an underground garage, and entry/exit will still be from New Mexico Avenue, as the Zoning Commission approved in the Order. In addition, the proposed modification will not be publicly perceptible in any way since it will be entirely below grade. The change to the number of levels will have no effect on the location, height, or bulk of the buildings (11 DCMR § 210.4). Similarly, because it will be consistent with the Order's requirement for 150 underground parking spaces, the modification will not be objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions (11 DCMR § 210.2).

In regard to the removal of the below-grade bus turnaround, the University is willing to add a condition to the Order (proposed Condition No. 42) which states:

- 42 The University will not allow any charter buses or motor coaches to enter the East Campus property, including the surface parking lot.

This Condition addresses any issues or concerns that may be raised by any Parties regarding adverse impacts related to noise or odors from charter buses or motor coaches, as they will not be permitted to come to the East Campus property.

Despite the fact that this modification will have no exterior impact, ANC 3D raised concerns regarding potential adverse impacts on the flow of underground water, or the possibility of perchlorate contamination, that may occur as a result of a deeper excavation on the East Campus. While such environmental issues are not within the ZC's jurisdiction, AU believes that it is helpful for the ZC to know that it has received appropriate environmental approvals from all relevant District agencies for this two-level below-grade garage. To date, AU has received the following environmental approvals:

- Erosion and sediment control permit,
- Final erosion and sediment inspection approval to allow earth disturbance,
- Dewatering well permit,
- Temporary discharge approval, and
- Environmental Impact Screening Form

3. Satisfaction of Section 3129 Standards

As indicated below, this request satisfies the relevant standards for a minor modification set forth in Section 3129

(i) Section 3129 1 – Applies to Applications and Appeals to the BZA

Pursuant to Section 3035 5, the Zoning Commission shall review campus plans under the BZA rules in Chapter 31 of the Zoning Regulations

(ii) Section 3129 2 – Review of Minor Modifications to Plans

As described above, the requested modification is a minor change to the underground parking garage. The proposed changes are illustrated in the plans attached as Exhibit C and the proposed new Condition No. 42.

(iii) Section 3129 3 – Request for Minor Modification Shall be no Later than Two Years After the Final Date of the Order

Under Section 3130 5, an appeal of an order to the D.C. Court of Appeals tolls the time limits of that order. The Order was appealed to the D.C. Court of Appeals, and the Court of Appeals issued a final decision in that case on November 14, 2013. Accordingly, the two year time limit runs until November 13, 2015.

(iv) Section 3129 4 – Request Shall be Served on All Parties, who Shall have 10 Days to Respond

This minor modification request is being simultaneously served on all parties to ZC Case No. 11-07, as shown in the attached certificate of service. Such parties will have until December 1, 2014 to respond.

(v) Section 3129 5 – A Decision on the Minor Modification Request Shall be Made on the Basis of Written Materials

All of the information that the Zoning Commission needs to approve this request can be ascertained from the written filings of the Parties. Because the request is truly minor in nature, the amount of relevant written material will be limited, and no necessary additional information could be gained from a public hearing on this request.

(vi) *Section 3129.6 – No Change to the Material Facts*

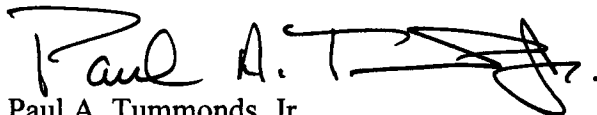
As described above, the requested minor modification will not change the material facts on which the original approval of the Further Processing application was based. The only material fact pertaining to underground parking on the East Campus was the number of parking spaces. The number of parking levels was not a contested issue, and the concerns since raised by ANC 3D about it are not germane to zoning. The East Campus will still provide 150 parking spaces in an underground garage, and the change to the number of levels will not have any publicly perceptible effect. AU's proposed Condition No. 42, to prohibit charter buses and motor coaches from coming to the East Campus property, removes any potential adverse impacts to neighboring properties that could result from the removal of the below-grade bus turnaround.

C Conclusion

The requested modification satisfies the requirements of Section 3129 of the Zoning Regulations for consideration by the Zoning Commission as a minor modification. The University requests that the Zoning Commission consider this request at its next public meeting, December 8, 2014, so that AU can maintain its construction schedule on the East Campus and provide the required number of on-campus residential beds by the 2016 fall semester.

If you or your staff have any questions regarding this minor modification application, please feel free to contact us.

Sincerely,



Paul A. Tummonds, Jr.



Cary R. Kadlecsek

Attachments

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2014, copies of the attached letter and enclosures were delivered via messenger or U.S. Mail to the following

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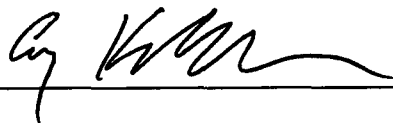
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Cary Kadlec

¹ Delivered by U.S. Mail