

DISTRICT OF COLUMBIA ZONING COMMISSION

In the Matter of Application of American University

Z.C. Case No. 11-07C

WRITTEN STATEMENT IN LIEU OF TESTIMONY OF
WILLIAM F KREBS, ESQUIRE

As a resident of ANC 3D I would like to express my strong opposition to the changes proposed by American University from a one level to a two level garage for the following reasons:

1. I have lived on Tilden Street, N.W., for over 34 years and have been active in matters affecting this area, including the Spring Valley neighborhood and the AU Campus, particularly the impact that On Campus activity may have on the non-university community. To that end, I am a Community Member of the Army Corps of Engineers' Spring Valley Restoration Advisory Board ("RAB"), the Secretary and a Board member of the Spring Valley and Wesley Heights Citizens Association and a delegate to the Ward Three Democratic Committee and its Precinct Captain for the 9th Precinct, Ward 3. I regularly attended the Master Plan Community meetings and continue to attend the AU Community Liaison Committee meetings.
2. I am an attorney licensed to practice law in the District of Columbia and Commonwealth of Virginia, as well as the United States Supreme Court, and various United States Circuit Courts of Appeals and United States District Courts. I am a shareholder and a senior litigation counsel for the Arlington, Virginia firm of Bean, Kinney & Korman, P.C. A summary of my background can be found on the Firm's website, www.beankinney.com.
3. During the extensive approval process for the American University Master Plan, AU's Application included a one level unground parking garage to be located below the soon to be constructed East Campus. That proposed garage had a number of unique features, including a proposed loading dock and modifications to accommodate the vertical and horizontal space necessary for the trucks to maneuver within the garage at the loading dock. The garage as presented was the subject of discussions, if not debate. While I am aware that there have been and continues to be legal challenges to aspects of the Master Plan, as approved, at the very least the community had some opportunity to evaluate that proposal. I am quite concerned that the Community may not be provided with either the necessary facts or time to properly evaluate that which appears to me to be a major change from that which was approved.
4. I am most concerned with the apparent attempt to fast track this issue. While I am sympathetic to AU's efforts to stay within its construction schedule, that schedule is a self-imposed constraint on AU as to which the community has had little to no input and the need to obtain approval for the current plan is the direct result of AU's change in that which it wants. A change in heart is not a justification to shortcut the deliberative process.
5. I am also troubled by the procedural posture in which we find ourselves. The Master Plan is result of hundreds of hours of work, analysis, debate, cajoling and downright begging. Frequently individual points are finalized and approved not solely on their individual merits, but also in the context of trade-offs arising in negotiations. For that reason, the Applicant should be estopped from seeking changes as to isolated, cherry picked issues. To revisit matters that were

resolved in the Planning process by application to modify on a item by item approach ignores the dynamic, interdependent and holistic nature of the Master Plan process.

6. I am aware of the specific concerns raised by the ANC and members of the Community, particularly residents of Westover Place. The issues that they have raised are serious and certainly not merely speculative. I do not have sufficient facts to predict the ultimate resolution of those concerns if AU's application were to be granted. However to simply brush them off would be wrong.
7. My greatest substantive concerns stem from the geological constraints placed on that land. I am aware that from Virginia through the District of Columbia, Maryland, Pennsylvania to New York the bedrock is unusually close to the surface and runs quite deep. This vein of Diabase stone so close to the surface greatly affects issues concerning the water table as well as its impact on construction. By taking the garage lower, the more diabase stone is likely to be encountered. To my knowledge the two preferred methods of removing bedrock are blasting or jack hammering, both of which present serious inconvenience to the residents.
8. Similarly, I do not know what effect the additional construction activity will have on the water table or aquifer. However, its diversion has impact on both the new channel as well as the channel from which it may be diverted. Simply put, the requested change appear to me to present environmental impacts that appear to be either under investigated or under disclosed. Moreover, it appears that the applicant seeks to have the residents bear the burden of damages resulting from the unintended consequences of the change in the garage. What if any remedy does the resident whose basement may now flood because the water table has been altered to divert the water to his house? Who pays for cracked foundation walls, personal items broken in falls from shelving due to vibrations in the bedrock, or damage arising from the house settling because of the mining activities? Who bears the burden of proving or disproving the causation?
9. It is apparent that this change may be a harbinger of a decision to increase the use of the East Campus beyond that contemplated in the Master Plan, but I will defer to the Westover Place and Wesley Heights residents who also have those concerns and would be more directly affected by that activity.
10. I believe that, so long as it is consistent with the constraints placed on the University by virtue of its location within residential area, AU has the freedom to manage and plan the uses for its own property. I also am in favor of AU building and operating parking availability on campus to relieve some of the pressure to park on the neighborhood streets. However, AU was able to and did address those issues in the Master Plan approval process and it received the relief for which it asked. AU has not proffered that there has been any change in circumstances or that it possesses newly discovered facts to justify reopening the completed record. Having received that for which it asked, AU current application should be dismissed.

Thank you for your consideration of this matter,

Sincerely yours,

A handwritten signature in black ink, appearing to read "William F. Krebs", written over a horizontal line.

William F. Krebs, Esquire
4628 Tilden St. NW.
Washington, DC 20016
703/525-4000

Dated this 2nd day of February, 2015.