

**Government of the District of Columbia
ADVISORY NEIGHBORHOOD COMMISSION 3D**

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**TESTIMONY OF
ADVISORY NEIGHBORHOOD COMMISSION (ANC) 3D
BEFORE THE DC ZONING COMMISSION
FEBRUARY 2, 2015**

**Z.C CASE NO. 11-07C: REQUEST FOR A MODIFICATION TO AN APPROVED
CAMPUS PLAN FURTHER PROCESSING APPLICATION – ZONING COMMISSION
ORDER NO. 11-07**

I am Alma Gates, Secretary of Advisory Neighborhood Commission (ANC) 3D, and have been designated by the commission to testify in this case.

Background

American University (AU) has requested that the Zoning Commission (ZC) review and approve a modification of an Approved Campus Plan Further Processing for a two-story underground parking garage on the East Campus. This modification request is before you because ANC 3D filed a challenge with the Board of Zoning Adjustment of the July 2014 decision by the DC Zoning Administrator (ZA) to issue a foundation-to-grade building permit. That permit allowed excavation for the two-story underground parking garage despite the fact that plans submitted by AU and approved by the ZC specified the garage would be one story (Z.C. Order No. 11-07, Paragraph 145). The ZA based his decision to issue the permit on the rationale that plans submitted by AU were for illustrative purposes only and therefore not binding.

The original plans also cited in Paragraph 145 of Z.C. Order No. 11-07 included a bus turn-around in the East Campus underground parking garage. AU has now indicated that engineering issues make an internal underground bus turn-around unfeasible.

AU filed this modification with the ZC on November 20 – just two days after the BZA hearing on ANC's 3D's appeal of the ZA's decision, but prior to a decision being issued in the case.

Since ANC 3D raised questions about the two-story garage – in response to concerns expressed to ANC 3D by residents in the community – AU has consistently said – even in its filing in this case – that AU's new building plans are consistent with the Campus Plan Application and Further Processing approval by the ZC. ANC 3D initiated the challenge to the BZA because we do not agree.

When the Zoning Commission met on December 8, AU requested that you act that night to approve this modification without a hearing. We are grateful to the Zoning Commission for

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providing time for ANC 3D to review and assess this modification application. ANC 3D finds the public interest has been served by ensuring time was made available to obtain public input, and offers a formal recommendation to the Zoning Commission based on the standards outlined in Section 210 of the DC Zoning Regulations.

ANC 3D Actions

At its regularly scheduled meeting on January 14, 2015, ANC 3D voted 8-2-0 to support – with conditions – AU’s application for a modification to the approved Campus Plan Further Processing.

AU proposed for consideration a single additional condition (No. 42) to Z.C. 11-07:

- AU shall not allow any charter buses or motor coaches to enter the east Campus property, including the surface parking lot.

However, ANC 3D concludes that the language of proposed Condition No. 42 is open-ended and ambiguous and in need of additional specificity to ensure that the intent of the motor coach and charter bus restrictions are clear and fully reflect the intent of AU, as stated to the ANC at its January 14, 2015 meeting. Therefore, ANC 3D suggests the following language for review and consideration by the ZC in this case:

- AU shall not allow any charter buses or motor coaches (defined by AU as large capacity buses that transport visitors to campus and excluding AU-owned and operated shuttle buses) to enter the East Campus property, including the surface parking lot, and shall not allow any loading or unloading of buses or motor coaches on public streets, including, but not limited to, New Mexico, Nebraska, or Massachusetts Avenues; and
- AU shall require all charter buses or motor coaches (defined by AU as large capacity buses that transport visitors to campus and excluding AU-owned and operated shuttle buses) to load, unload, and park at the AU Transportation Center on the main campus.

ANC 3D believes this specificity regarding charter buses and motor coaches is especially important given that DC regulations would include AU’s shuttle buses within the definition of a charter bus or motor coach. Additionally, AU advised ANC 3D at the ANC’s January 14 meeting that it is considering a plan to route its shuttle bus service onto the East Campus to pick up and discharge passengers.

ANC 3D also notes that many residents expressed concerns at the January 14 meeting that the deeper excavation required for the two-story garage may have unintended consequences from underground water flow that would result in damage to the foundations of adjacent homes. AU indicated that such damage was unlikely and cited DC agency review of the permit application. However, AU offered no evidence for its assertion that DC agencies had considered this specific issue; and, staff of the District Department of the Environment (DDOE), in several meetings with ANC 3D representatives about groundwater issues at the site, indicated its permit review process was limited and did not include an assessment of potential changes in underground flow stemming from the construction.

ANC 3D consequently considered recommending additional language for Condition No. 41(b) of Z.C. Order No. 11-07, which requires AU to repair damage to the properties of adjacent property owners “caused by and resulting from the construction work conducted on the East Campus.” After extensive discussion, ANC 3D affirmed its view that – based on the existing language of Condition No. 41(b) – AU would be responsible for repairing damage related to underground water flow, and asks the ZC to affirm the ANC’s position on this important issue.

ANC 3D also expressed concern that the modification requested by AU could impact access to the East Campus by emergency and service vehicles as lower height levels in the two-story underground parking garage might prevent ambulances and service vehicles from accessing the site, as originally proposed in the Campus Plan Further Processing proceeding; and, as a means of ensuring low intensity use of the site given it borders a townhome complex. At the ANC’s January 14 meeting, AU representatives outlined alternative plans for ambulances and large service vehicles to access the site that did not appear objectionable to neighbors and, consequently, to ANC 3D.

This hearing is the culmination of ANC 3D’s BZA filing in August 2014 seeking to ensure AU’s compliance with Z.C. Order No. 11-07. As AU has acknowledged to ANC 3D, its plans for the East Campus have evolved – and continue to evolve – since the Further Processing application was approved by the ZC in March 2013. Given the circumstances leading up to this hearing, ANC 3D also voted unanimously (10-0-0) at its January 14 meeting to offer two additional recommendations to the Zoning Commission:

- The language in Z.C. Order No. 11-07 is not always clear and concise and has the potential for interpretation which has led to ongoing disputes and/or misinterpretations of the Zoning Commission’s decisions. ANC 3D recommends that Zoning Orders be written more clearly to reflect the Zoning Commission’s decisions; and,
- Z.C. Case No.11-07C demonstrates the need for a more formalized definition of the role of the Zoning Administrator, which clarifies the scope of responsibility assigned to the position. This definition should be included in the DC Zoning regulations.

Conclusion

ANC 3D appreciates and commends the decision of the ZC in December 2014 to convene a hearing in this case, which provided an opportunity for ANC 3D and residents of the community to learn more about AU’s proposed changes to the plans approved by the ZC and to assess the potential impacts of these changes. Based on the outcome of ANC 3D’s January 14, 2015 meeting, it is apparent that many of the issues and concerns stemming from the proposed two-story garage modification could have been resolved a year ago – when permit applications were first filed by AU – had there been a willingness by AU to engage in a timely dialogue with the community, including ANC 3D, on the proposed modification. The efforts made by the ANC and the community to resolve these issues with AU are outlined in our December 1 filing in this case, so I will not repeat those tonight. Ultimately, it was the December 8 decision by the ZC to require a hearing in this case which encouraged that dialogue to occur.

It is important to note that ANC 3D's appeals to ensure compliance with Z.C. Order No. 11-07 have had no effect on the work schedule for completion of the East Campus, according to AU representatives. ANC 3D assures the ZC that it remains committed to working with AU and the community to ensure that the East Campus project is completed on schedule and consistent with Z.C. Order No.11-07.

Thank you for the opportunity to submit this testimony regarding Z.C. Case No. 11-07C on behalf of ANC 3D.