

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 "W. F. Krebs", is 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.

Paula Feeney

Subject: Case 11-07C (American University)

From: Paula Feeney PaulaFeeney2004@yahoo.com; Paula.Feeney@Cardno.com

Date: February 1, 2015

To: zcsubmissions@dc.gov

Subject: Case 11-07C

To the Zoning Commission Board:

As a resident of Westover Place since 1988, I would like to express my opposition to multiple changes proposed by American University:

- It is my understanding that the design change from a one level to a two level garage will not allow emergency vehicles such as ambulances to access the buildings from the garage and they will have to access from the surface creating potential safety risks to all involved.
- This change to the garage design will naturally increase the intense use of the East Campus site which, according to the plan approved by the Zoning Commission, would not have intense use – but would be residential (dormitories) buffered by administrative and faculty buildings - that would be empty at night. At the recent ANC meeting American University's representatives informed the community that they plan to have the office of Public Safety located in one of the East Campus buildings. This is a 24 hour a day operation and is not in compliance to that which was approved by the Zoning Commission. This will add to the noise and disturbance of the adjacent neighbors.
- The change in the garage design re: loading docks will also impact the amount of truck traffic. With the newest AU large trucks won't fit in the loading zone of the garage. Purportedly, deliveries will be made to the main campus, the loads will then be transferred to smaller trucks or service vehicles which will deliver to the East Campus using the less efficient/less accommodating loading dock in the garage. The increased number of off leads will increase the traffic in an already very congested traffic area at/surrounding the campus.
- We understand a two story garage will need more noisy equipment installed to ensure proper airflow.
- The deeper excavation could potentially affect the groundwater flow and could impact our neighborhood by diverting water into/onto our residential property. Westover has already suffered a significant sinkhole several years ago and we don't want to have to deal with water issues again.
- The language in the original order is not clear nor specific as to what is AU's responsibility to the Westover residents/community if water damage occurs at a result of their construction. Should the Zoning Commission, approve this new garage design - the legal language must be very specific as to what are AU's responsibilities to our community .
- We firmly believe that the garage can be redesigned to maintain the one level as originally planned by extending it under the space for building No. 6 or defining other options.

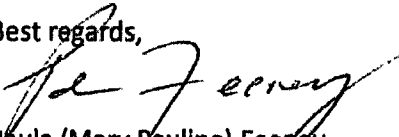
In presentations made by AU at several meetings with the community the heights of the buildings were changed in their plans. We pointed out these discrepancies took the height of the buildings back to what was originally presented to the Zoning Commission for approval. This project is a moving target and we feel the need to be alert or AU will construct whatever fits their needs.

Westover residents are truly disappointed with the lack of professional design and planning by AU. A project of this magnitude which impacts nearby residents must be thoroughly

analyzed by the Zoning Commission before construction starts and not be fly as construction time clocks are running.

AU also reported in the recent ANC meeting that it plans to have AU shuttle buses circulate through the East Campus in order to alleviate the traffic on Nebraska Ave. Again, this will be contradictory to the use of the East Campus space as approved by the original Zoning Order. The shuttle bus schedule provides daytime and night time service to eligible AU riders.

Thank you for taking into your calculations the thoughts and the voices of those neighbors impacted significantly by this AU East Campus project which increases our community's population size significantly – within direct eye sight and earshot.

Best regards,

Paula (Mary Pauline) Feeney

4455 Westover PL, NW
Washington, DC 20016
paulafeeney2004@yahoo.com

Benjamin Tessler

ZC Case 11-07C

I have lived in Spring Valley and Wesley Heights for over 30 years, and at Westover Place since 1991. I was a Westover Place Board member for 20 years and am currently on the Board of the Spring Valley Wesley Heights Citizens Assn.

In May of last year 107 of 149 homes of our community signed and delivered a statement to Matt LeGrant expressing our concern that AU is not in compliance with the specific terms of the Zoning Commission order 11-07, which is why we are here now.

I add today 38 signed letters to many that have been faxed in from many of these same residents opposing the changes proposed by American University from a one level to a two level garage to add the many that have already been faxed to you. In addition I have copied 2 in-depth and very insightful testimonies from Paula Feeney and William Krebs.

Section 210 of the Zoning code states that a university structure can be located in a residential community only "so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions".

While the ANC and the Board of Westover will testify here, I hope that the residents and people most affected, those of us overlooking the Nebraska Ave parking lot, will be heard and their statements given great weight.

Many of us do not want the 2 level garage. Noise and damage to homes are major concerns for most people who we have spoken to in the community. Other issues are the increased intensity of use coming from the East Campus. It's like a little city now instead of a sleepy village, as AU had initially told the Zoning Commission.

- Clarification over whether AU will cover the costs of any damage stemming from water flow (AU was beyond equivocal at the ANC meeting) stemming from deeper excavations; and We have contacted an atty who has given more comprehensive language.

What is most stunning is the increase in the overall intensity of use of the site. This is a big departure from the Zoning Order. Consider the plan approved by the Zoning Commission and what we have now. In approving the original plan, the Zoning Commission emphasized that the site would not have intense uses - it would be

residential - buffered by administrative and faculty buildings that would be empty at night. This is what AU told the Zoning Commission at the time. Only the residence halls would be populated in the evening hours. Emergency vehicles (with the exception of fire trucks) would access the building through the garage so that they would not disturb the neighboring homes and the garage was laid out so that there was an entrance underground accessible by emergency vehicles for each building.

So, now what do we have: emergency vehicles (e.g. ambulances) will access the building from the street, not the parking lot. The only way for an emergency vehicle to fit in the underground garage is to park at the loading zone. It is not too efficient for an ambulance to park at a loading zone and then walk across the whole parking lot to access one of the building entrances. You have public safety operating on the East Campus including the dispatchers who would be dispatching personnel from the East Campus on a 24/7 basis - yes it is an administrative operation, however the buildings were to be empty at night except for the dorms. And now, we have AU shuttle buses regularly - day and night - circulating through the East Campus surface parking lot - lights on at night - with all the brake noise and other noise associated with buses - and operating where the buffer is the smallest and least planted. It's like a little city now instead of a village, as AU had initially told the Zoning Commission.

The plan to have shuttle buses on the East Campus is a major departure from the campus plan that was approved by the zoning commission and changes the equation. This is another major change being announced - three years after the Zoning Commission approved the plan and nearly a year since construction began.

Plans approved by the Zoning Commission are not intended to evolve over the course of the construction phase. It reflects how poorly designed the building originally was when it was considered by the zoning commission.

By not properly accounting for lost spaces in their buildings due to support beams the University lost spaces. Why when they were drawing up plans did they not find that they would lose spaces due to these support beams. And, why when detailed plans were reviewed by city agencies with the University was this not discovered.

Instead of 150 spaces, why not use 100. There will be an additional 400 spaces on the surface parking lot.

Regarding Water - There are 260+ wells to remove ground water from the East Campus. That's a lot of water. What impact will digging deeper have on water flow and our homes? Indeed, what impact will there be with a one story garage? It is clear from the AU representative's at the ANC meeting that there is some ambiguity in the language describing liability, and that there would be a financial

incentive for AU to take a very narrow reading of the liability language in the zoning order in order to avoid liability.

This is the language that is in the Zoning Commission Order - Z.C. Order No. 11-07, Z.C. Case No. 11-07 Page 68

Responsibility for Damage to Adjacent Properties - The University shall repair, at its own expense and as promptly as reasonably possible, any damage to the properties of an adjacent property owner, and any improvements thereon, caused by and resulting from the construction work conducted on the East Campus;

To clarify, there are no private property owners adjacent to the East Campus within our community in the most restrictive use of the term. The term adjacent legally means touching. The property that is adjacent to the East Campus is our community perimeter wall and the sidewalk inside that wall. Beyond that for most of us, are our gates and patios, then our homes, which is our private property. Therefore the limitation to adjacent properties may not protect any private homes in our community.

Damage could happen above or below grade to homes that are in any location in our community. Furthermore, the damage to the underground rock and shell formation resulting from the construction may change the underground water flow to damage property further into the community.

The cause of the damage resulting from the disturbance of the underground rock and shell formation could be a direct or indirect cause for damage to a home. The language used by the University restricts cause - they are talking about direct cause, and may exclude an indirect cause. Cause is limited now to adjacent properties and may not protect properties within the community. It depends upon one's interpretation.

Proposed language suggested to us that would be broader and more protective is:

It is clearly understood and agreed that American University shall pay for any and all damages to the properties of Westover Place resulting directly or indirectly from any and all construction work of any nature performed by them and or on their behalf by any and all contractors or subcontractors retained by them and or on behalf of them to perform work on the property situated at (East Campus) address, Washington DC, after 1/1/2014.

The University shall also be responsible to assure that there is no interruption in the enjoyment or solitude of adjacent property Owners by the students, faculty or staff on the East Campus.

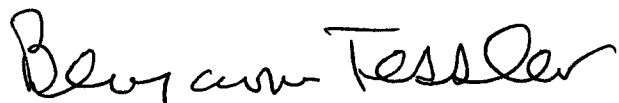
AU's plan to excavate another 7 feet for a two story garage on the East Campus will require constant pumping and discharging of the groundwater, which will alter the groundwater flow in the area.

Based on the Army Corps investigation, groundwater on the AU Campus and Spring Valley flows to the west. Based on AU's Apex report, groundwater on the East Campus flows to the South. Some of the groundwater on the north side of Nebraska Avenue that currently flows to the West, will likely flow to south side of Nebraska Avenue - toward the East Campus and Westover Place.

Complicating the situation, the Army Corps detected arsenic on the AU Campus, near the Ward Circle Building, but the Army Corps, EPA and AU decided not to remediate. The Army Corps has not installed any groundwater monitoring wells in this area and the investigation of the Nebraska Avenue parking lot was limited, with no or limited sampling of groundwater, soil or air. AU's contractors detected mercury during geotechnical borings on the East Campus. It would be prudent to determine the source and extent of the contamination.

Respectfully,

Benjamin Tessler - 4446 Westover Place NW btessler@msn.com



2/2/2015

Ms. Donna Hanousek – Zoning Case 11-07C / Feb 2nd, 2015

Zoning Commission Board:

As residents of Westover Place we would like to express our opposition to the changes proposed by American University from a one level to a two level garage for the following reasons:

- The new design of the two level garage will not allow emergency vehicles such as ambulances to access the buildings from the garage. They will have to access from the surface creating noisy conditions for the neighbors. This change to the garage design will increase the intense use of the space. According to the plan approved by the Zoning Commission, the site would not have intense uses it would be residential buffered by administrative and faculty buildings that would be empty at night except for the dorms.
- The change in the garage design will also impact the amount of traffic as now big loading vehicles can't fit in the loading zone of the garage and the deliveries will be made to the main campus. The loads will then be transferred to smaller trucks or service vehicles which will then deliver to the East Campus using the loading dock in the garage; all these transfers will increase the traffic in an already extremely congested area.
- The deeper excavation could potentially affect the groundwater flow and could impact our neighborhood by diverting water that can seep in our basements. It's like adding half a football field, 7 feet deep.
- The language in the original order is too vague as to what is AU's responsibility to the Westover residents if water damage occurs at a result of their construction; if they are allowed to proceed with this new design the legal language in the order must be very specific as to what AU will be responsible to our community.
- In addition at the last ANC meeting American University's representatives informed the community that they plan to have the office of Public Safety located in one of the East Campus buildings, this is a 24 hours operation an in total opposition as to what approved by the Zoning Commission regarding the space being vacant at night except for the dorms, this will add to the noise and disturbance of the adjacent neighbors.
- AU also revealed in the last ANC meeting that they plan to have their shuttle buses circulate through the East Campus in order to alleviate the traffic on Nebraska Ave. Again this will be contradictory to the use of the space as approved by the original Zoning Order. If AU wanted to alleviate the traffic on Nebraska Ave. they should have not constructed on the East Campus adding more students and traffic in the area. Why add more parking if the shuttle runs Monday thru Saturday over 18 hour daily? (Weekends till 3 am)
- We are amazed at the lack of design and planning by AU that realized all these issues with the garage after the fact; a project of this magnitude should be thoroughly thought and planned before construction starts and not on the fly as the project is progressing. In presentations made by AU at several meetings with the community the heights of the buildings were changed in their plans, since we pointed these discrepancies now the height of the buildings are back to what they originally presented to the Zoning Commission for approval; this project is like a moving target and we feel the need to be alert or AU will construct whatever fits their needs at the moment. We firmly believe that the garage can be redesigned to maintain the one level as originally planned by extending it under the space for building No. 6 or looking for other options. If AU losses parking spaces they will have to figure out a way to make them or adapt to the new number of spaces.

Respectfully submitted

Name

Bernard C. McGuire

Address

4421 Westover Place, NW
Washington, DC, 20016

Signed


Please sign and Fax to 202.727.6072 - -
or email PDF to zcsubmissions@dc.gov

Please complete this by February 2nd, noon

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Respectfully submitted

Name John C. Munn

Address 4438 Westover Pl, NW, Washington DC, 20016

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Respectfully submitted

Name JACQUES LAURENT

Address 4371 WESTOVER PL NW Washington DC 20016

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Name

DORIE LAURENT

Address

4371 Westover Pl NW 20016 Washington DC

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Respectfully submitted

Name John C. Murrell

Address 4438 Westover Pl., NW, Washington DC, 20016

Please sign and Fax to 202.727.6072 - -
or email PDF to zcsubmissions@dc.gov

Please complete this by February 2nd, noon

Ms. Donna Hanousek – Zoning Case 11-07C / Feb 2nd, 2015

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Name Hosun Chung *Hosun Chung*
Address 4381 Westover Pl. N.W. Washington DC 20016

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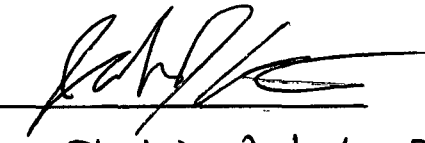
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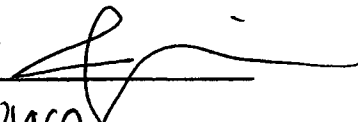
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Name

Jamie Lander 

Address

4300 Westover Place

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Address 4315 Westover Pl

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Respectfully submitted

Name

J.W. Noonan

Address

4374 Westover Pl NW

I live along the house line next to the East Campus Yes (yes or no)

PP

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Respectfully submitted

Name: Donna Hanousek

Address: 4366 Westover Pl. NW. Washington DC 20016

Please sign and Fax to 202.727.6072 - -
or email PDF to zesubmissions@dc.gov

Please complete this by February 2nd, noon

Ms. Donna Hanousek – Zoning Case 11-07C / Feb 2nd, 2015

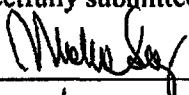
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Respectfully submitted

Name

 Michael Seay

Address

4998 Warden St NW, Washington D.C. 20016

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Address 4998 Warren St Washington D.C.

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Respectfully submitted

Name Leonard M Green M.D., Ph.D. Uddell Green Ph.D.
Address 4407 Westover Pl NW Wash DC 20006
2/1/15

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or email PDF to zcsubmissions@dc.gov

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Respectfully submitted

Name Benjamin Tessler

Address 4446 Westover Place NW
Washington DC

I live along the house line next to the East Campus 1 (yes or no)

PP

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To:
The Zoning Commission
Washington, DC

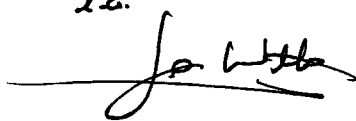
Email: zcsubmissions@dc.gov

With reference to:

Z.C. Case No. 11-07C

Please register my vote **against** the zoning commission approving Z.C. Case No. 11-07C for American University adding a 2nd parking level to the garage, or any modifications to the agreed upon Campus Plan.

Thank you,

Jo Wills


Jo Wills and Werner Schumann
4330 Westover Place, NW
Washington DC 20016

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Respectfully submitted

Name Jo Wills

Address 4330 WESTOVER PL. NW,
WASHINGTON DC, 20016.

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Name

Paula K. H. KinnPATrick

Address

4318 Westover

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Name

Tiavella Con Conetto

Address

4292 Mass AU NW WASH DC 20016

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Name

Gerald A. Gabb

Address

4409 Westover place NW

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Name Charlotte M. Qiblin
Address 4409 Westover Pl NW

Please sign and Fax to 202.727.6072 - -
or email PDF to zcsubmissions@dc.gov

Please complete this by February 2nd, noon

Ms. Donna Hanousek – Zoning Case 11-07C / Feb 2nd, 2015

Zoning Commission Board:

As residents of Westover Place we would like to express our opposition to the changes proposed by American University from a one level to a two level garage for the following reasons:

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Respectfully submitted

Name

Address

I live along the house line next to the East Campus

PP

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Respectfully submitted

Name

Jonathan Talcott

Address

5001 Rockwood

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Respectfully submitted

Name Scarlett Talcott

Address 5001 Rockwood Pl Key MD

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Respectfully submitted

Name



JAEHYANG SO

Address

436A WESTOVER PLACE NW, WASHINGTON DC 20016

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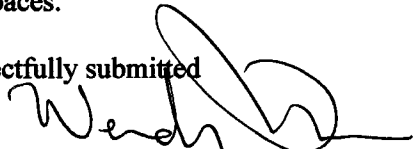
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Respectfully submitted

Name

 (Wendy Owen)

Address

4290 Massachusetts Ave. NW
(Westover Place) DC 20016

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Respectfully submitted

Name

Alan J. Baron

Address

4290 Mass. Ave. N.W. (Westover Place)
Wash, D.C. 20016

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Respectfully submitted

Name

Fath P. Damm

Address

5121 Yuma St. NW
W DC 20016

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Respectfully submitted

Name Elaine H. Patterson
Address 4315 WESTOVER PLACE NW
WASHINGTON, DC 20016

Please sign and Fax to 202.727.6072 --
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MAILING ADDRESS

Elaine Patterson
1801 S Flagler Drive PH3
West Palm Beach, FL 33401

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Respectfully submitted

Name Kerri Edwards

Address 4412 Westover Pl NW WDC 20016

I live along the house line next to the East Campus yes (yes or no)

PP

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Respectfully submitted

Name LAURA and SELIM ELEKDAG

Address 4400 WESTOVER PL NW, WASHINGTON, DC 20016



Please sign and Fax to 202.727.6072 - -
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Please complete this by February 2nd, noon

Ms. Donna Hanousek – Zoning Case 11-07C / Feb 2nd, 2015

Zoning Commission Board:

As residents of Westover Place we would like to express our opposition to the changes proposed by American University from a one level to a two level garage for the following reasons:

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- The change in the garage design will also impact the amount of traffic as now big loading vehicles can't fit in the loading zone of the garage and the deliveries will be made to the main campus. The loads will then be transferred to smaller trucks or service vehicles which will then deliver to the East Campus using the loading dock in the garage; all these transfers will increase the traffic in an already **extremely congested area**.
- The deeper excavation could potentially affect the groundwater flow and could impact our neighborhood by diverting water that can seep in our basements. It's like adding half a football field, 7 feet deep.
- The language in the original order is too vague as to what is AU's responsibility to the Westover residents if water damage occurs at a result of their construction; if they are allowed to proceed with this new design the legal language in the order must be very specific as to what AU will be responsible to our community.
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Name Diana Berni

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