

BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION

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Zoning Commission Case No. 11-07C

Meeting Date December 8, 2014

OPPOSITION TO REQUEST FOR MINOR MODIFICATION

Spring Valley-Wesley Heights Citizens Association ("SVWHCA") respectfully submits this statement in opposition to the Request for Minor Modification (the "Modification Request") to an Approved Campus Plan and Further Processing Application – Zoning Commission Order No 11-07 (the "March 2012 Order") filed by Applicant American University ("AU") SVWHCA requests that this Commission reject the Modification Request unless and until AU obtains modification of the March 2012 Order in accordance with proper notice and hearing procedures required by D C law.

1. AU's Request To Modify the Plan Without a Hearing Is Not Timely. AU filed this Modification Request under Section 3129 of the Zoning Regulations, 11 DCMR § 3129¹ But 11 DCMR § 3129 3 provides that "[a] request for minor modification of plans shall be filed with the [Commission] not later than two (2) years after the date of the final order approving the application" -- i e two years from the March 2012 Order. AU's request thus comes too late for this Commission to proceed without a hearing. Contrary to AU's contention, Section 3130.5 of the Zoning Regulations does not extend this time limit notwithstanding SVWHCA's appeal of the March 2012 Order to the D C Court of Appeals Section 3130 5 addresses the effect of an appeal on time limits to obtain permits and build structures authorized by a BZA order But

¹ This provision of the Board of Zoning Adjustment rules is applicable to proceedings before this Commission 11 DCMR §3104 5 states that "the Commission shall use the Board of Zoning Adjustment Rules of Practice and Procedure in this chapter" – which includes 11 DCMR § 3129 – "in processing, reviewing, and approving all applications for special exception approval for college and university uses, such that wherever a particular provision in this chapter refers to the Board of Zoning Adjustment, the word 'Board' shall mean Zoning Commission."

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Section 3130.5 only applies to “time limitations in this section” – i.e. Section 3130 itself – not to the time limits in different sections of the Zoning Regulations such as Section 3129. AU is misconstruing the Zoning Regulations and inviting a legal error here. Moreover, Section 3129 does not permit the Board or this Commission to extend the time limit in Section 3129.3. Where that time limit has expired, as it has here, Section 3129 provides that “[a] request to modify other aspects of a Board order may be made at any time, but shall require a hearing.” 11 DCMR § 3129.7 (emphasis added). That is the procedure which AU and this Commission are required to follow.

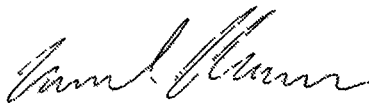
2. The Requested Modification Is Not Minor And Deserves a Hearing. As noted by AU in its Modification Request, both ANC3D and a large number of individual residents have “raised concerns regarding potential adverse impacts on the flow of underground water, or the possibility of perchlorate contamination, that may occur as a result of” the requested modification. AU Modification Request at p. 3. Those are not concerns that the Commission can or should dispose of without a hearing. Contrary to AU’s contention, environmental concerns are well within the jurisdiction of this Commission to consider, with input from appropriate D.C. agencies. This Commission may decide that the Modification Request is warranted despite such objections. But it should properly consider input from the affected ANC and residents in accordance with required procedures, rather than denying a hearing on the grounds that the modification is “minor.”

3. AU’s Request Is Improper Given Its Intervention In the BZA Proceeding As AU notes in its Modification Request, the Zoning Administrator has already issued a permit allowing the relevant construction, and the issuance of that permit has been appealed to the BZA by ANC3D and SVWHCA (BZA Appeal No. 18857 (the “BZA Proceeding”)), on the grounds that

it is inconsistent with the plans referenced in the March 2012 Order. But AU neglects to mention here that AU has actually intervened in the BZA Proceeding, contending that the Modification Request it makes here is unnecessary. Before the BZA, AU has denied that “only one level of below-grade parking is permitted by the Further Processing application,” and argued that its revised plans are already “consistent with the Zoning Commission’s approval.” American University’s Statement In Opposition, BZA Appeal No. 18857 Exhibit No. 16, p. 2. Indeed, before the BZA, AU contends that its parking garage plans were “were illustrative only.” Id. AU should not be permitted both to maintain before the BZA that the Modification Request is unnecessary, and to seek accelerated approval of the Modification Request before this Commission.

4. The Modification Request Should Be Rejected Absent a Required Hearing As is fully described in the submission of ANC3D, AU has been pursuing revisions to its plans for East Campus for quite some time. Had AU simply made a request to this Commission earlier this year, as it was well positioned to do, that request would have been resolved by now even with the required hearing. Instead, because AU is concerned that the BZA Proceeding may be decided adversely to it, it now attempts to obtain a rushed modification to the March 2012 Order in a manner that is procedurally improper. AU’s request is untimely and lacks merit, and should be rejected until AU initiates a hearing procedure that complies with D.C. law.

Respectfully submitted,



President, Spring Valley-Wesley Heights Citizens Association

December 1, 2014

CERTIFICATE OF SERVICE

The foregoing instrument was served by e-mail on December 1, 2014 on the following

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