

March 25, 2015

RECEIVED
D.C. OFFICE OF ZONING
2015 MAR 25 AM 11:52

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 – Proposed Revision to Permitted Construction Hours

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. AU requests a minor modification of Condition No. 41(c) of ZC Order No. 11-07, in order to allow construction activity to occur on the East Campus between the hours of 7:00 AM to 5:00 PM Monday – Friday, and Saturday from 8:00 AM to 4:00 PM.

The University requests that the Zoning Commission consider this request at its April 13, 2015 public meeting, 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). 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.

ZONING COMMISSION
District of Columbia

CASE NO. 11-07D

¹ A check for \$845, 26% of the original Further Processing Application Fee of \$3,250.00, is included with this filing. EXHIBIT NO. 2

and loading facilities in an underground garage², pursuant to the special exception standards of 11 DCMR § 210

Condition No. 41(c) of ZC Order No 11-07 stated the following with respect to the permitted hours of construction at the East Campus

The University shall limit construction hours to Monday-Friday 7 30 a m to 4 00 p m Interior work not creating an impact on adjacent properties may take place outside of these hours

B. Request

1. Description of Proposed Minor Modification to Permitted Construction Hours

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 For this reason, AU requests a minor modification of Condition No 41(c) in order to allow construction activity to occur on the East Campus between the hours of 7 00 AM to 5 00 PM Monday – Friday, and Saturday from 8.00 AM to 4:00 PM.

A copy of the PowerPoint presentation that AU representatives intend to make at the ANC 3D April 1, 2015 public meeting is attached as Exhibit B This presentation

- highlights the efforts that AU has taken to mitigate construction impacts on the surrounding community,
- details the various construction-related meetings that AU has held with adjacent property owners and ANC representatives,
- describes the originally planned construction schedule (May 2014 – April 2016 - 24 months) and the actual/current schedule (September 2014 – July 2016 – 23 months) and the cause for the significant delay in starting construction activity (delay related to additional testing, design and permitting of the dewatering system),
- notes the number of days lost due to bad weather (50 days), and
- notes that there are no additional hours to make up this lost time

Now that construction activity has started on the East Campus, AU believes that the most effective means to mitigate construction impacts on neighboring properties is for the construction of the East Campus to be completed as expeditiously as possible. The District of Columbia

² On February 2, 2015, the Zoning Commission approved AU's modification application (11-07C) regarding the below-grade parking provided in the East Campus project and the ability of charter buses and motor coaches to enter the East Campus property

Building Code allows construction to occur in residential zones from 7:00 a.m. to 7:00 p.m., Monday through Saturday. The Applicant's proposed construction hours are still less than what is permitted in residential zones under the DC Building Code. AU will continue the process of open dialogue with the community in order to address day-to-day construction-related impacts on adjacent properties.

AU representatives have met with and engaged in numerous discussions with the Westover Place Homes Corporation Board of Directors ("Westover Place") regarding this application. The Westover Place Board of Directors agreed to support this application, provided AU agrees that the following new condition (Condition No. 43) be added to ZC Order No. 11-07.

- 43 AU shall expand the landscape buffer on the surface parking lot through the removal of the six parking spaces that were closest to the shared property line with Westover Place and the planting of additional landscaping material in that area. The surface parking lot will continue to include 200 parking spaces. AU will install cameras on the East Campus surface parking lot with a direct, live feed to the AU Public Safety Office in order to monitor activity on the surface parking lot.

AU proposes the addition of Condition No. 43 to ZC Order No. 11-07.

2. 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 permitted hours of construction activity.

(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. As noted above, representatives of AU will make a presentation regarding this request to Advisory Neighborhood Commission (“ANC”) 3D, at ANC 3D’s April 1, 2015 regularly scheduled public meeting. It is AU’s understanding that Westover Place supports this request. AU has no objection to all parties being able to provide their response to the Zoning Commission by April 6, 2015, after the presentation to ANC 3D and one week prior to the Zoning Commission’s potential review of this minor modification application.

(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, is for a temporary period of time, and the amount of relevant written material is limited, it is appropriate for the Zoning Commission to make its decision on this application based on the written submission of all parties.

(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. This minor modification is being requested solely to help assure that American University can deliver the required dormitory beds on the East Campus by the beginning of the fall 2016 semester. If the additional work hours are not permitted, AU is very concerned about its ability to deliver the dormitory beds in time for the beginning of the fall 2016 semester. As AU has noted in previous submissions and testimony before the Zoning Commission, even a two month delay in the completion of these dormitory buildings (to September or October of 2016) means that these beds will not be available for use by AU until the fall 2017 semester. As noted in the materials that will be presented to ANC 3D and attached as Exhibit B, AU has spent significant time and energy in mitigating any construction impacts on adjacent properties.

(vii) *Section 3129.7 – A Request to Modify Other Aspects of the Board Order Shall Require a Public Hearing*

AU requests that the Zoning Commission waive the requirement to have a hearing on this issue. The facts of the proposed request are straight-forward and as noted above and in the materials attached as Exhibit B, AU has and will continue to mitigate any construction impacts on adjacent properties. The period of construction activity is temporary and the proposed minor modification application does not impact the ultimate use and operation of the buildings on the East Campus, other than to place additional requirements on AU to assure that the use of the surface parking lot does not create objectionable impacts on neighboring properties. Holding a

public hearing on this limited and specific issue of the permitted hours of construction activity will not provide the Zoning Commission with any additional information that can't be obtained from the written responses of all interested Parties. It is AU's understanding that Westover Place supports this request to waive the public hearing.

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 April 13, 2015 public meeting, so that AU can maintain its construction schedule on the East Campus and provide the required number of on-campus residential beds by the fall 2016 semester.

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

Sincerely,


Paul A. Tummonds, Jr.


Cary R. Kadlec

Attachments

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2015, copies of the attached letter and enclosures were delivered via messenger or U S Mail to the following

Joel Lawson
D C Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024

ANC 3D
c/o Thomas Smith, Chair
4601 Tilden Street NW
Washington, DC 20016

ANC 3E*
c/o Lisner Home
5425 Western Avenue NW
Suite 219
Washington, DC 20015

William Spencer
SMD 3D01
2825 49th Street, NW
Washington, DC 20016

ANC 3F*
4401-A Connecticut Ave NW Box 244
Washington, DC 20008-2322

Tenley Campus Neighbors Association*
c/o Allison I Fultz
Kaplan Kirsch & Rockwell, LLP
1001 Connecticut Avenue NW
Suite 800
Washington, DC 20036

Spring Valley-Wesley Heights Citizens
Association
c/o Michael Mazzuchi
4430 Macomb Street NW
Washington, DC 20016

Tenley Neighbors Association*
c/o Judy Chesser
3901 Alton Place NW
Washington, DC 20016

Neighbors for a Livable Community*
c/o Laurie B Horvitz, Esq
Law Office of Laurie B Horvitz
4520 East West Highway
Suite 700
Bethesda, MD 20814

Westover Place Homes Corporation
c/o Larry Joseph
4373 Westover Place, NW
Washington, DC 20016

Nan S Wells
ANC 3D03
5057 Overlook Road NW
Washington, DC 20016

Stuart Ross
ANC 3D04
5445 Potomac Avenue NW
Washington, DC 20016

Alma H Gates
ANC 3D05
4911 Ashby Street NW
Washington, DC 20016

Stephen Gardner
ANC 3D06
4545 W Street NW
Washington, DC 20007

Regina A Monge
ANC 3D07
4400 Massachusetts Avenue NW
Washington, DC 20016

Mike Gold
ANC 3D07
3101 New Mexico Avenue NW #243
Washington, DC 20016

Conrad J DeWitte, Jr
ANC 3D09
1613 44th Street NW
Washington, DC 20007

Silvia Lucero
ANC 3D10
4323 Massachusetts Avenue NW
Washington, DC 20016


Cary Kadlec

*Delivered by U S Mail