

September 30, 2015

VIA HAND DELIVERY

Chairman Anthony Hood
District of Columbia Zoning Commission
441 4th Street NW, Suite 210S
Washington, DC 20001

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OFFICE OF ZONING
2015 SEP 30 PM 1:15

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 to Allow Work on Saturdays

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 application. AU requests a minor modification of Condition No 41(c) of ZC Order No 11-07D, in order to allow construction activities to occur on the East Campus on Saturdays from 8 00 AM to 4.00 PM.

The University requests that the Zoning Commission consider this minor modification request at its October 19, 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

Earlier this year, the Zoning Commission (“ZC”) approved a minor modification to the East Campus Further Processing application pursuant to Order No. 11-07D (the “Order,” copy attached as Exhibit A). The Order amended Condition No 41(c) of ZC Order No 11-07 and 11-07C to read as follows:

41 (c) The University shall be permitted construction hours of Monday-Friday 7 00 a.m. to 7 00 p.m. From September 1, 2015 to the completion of outdoor construction work (expected to occur on or around February 29, 2016), AU will be able to work on Saturdays from 8.00 a.m. to 4 00 p.m. only in the event that the University experiences a lost day of construction activity due to weather. The University will inform Westover Home Owners Corporation, for

ZONING COMMISSION
District of Columbia
CASE NO. 11-07E
EXHIBIT NO. 1, 1A+1B

distribution to their resident home owners, and the ANC of a lost day of construction activity by 9 00 a m on the day of lost construction activity 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, ZC Order No. 11-07 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 the required amount of housing on-campus In Zoning Commission Case No 11-07D, AU originally requested the ability to work every Saturday from 8 00 am – 4.00 pm At the request of the Westover Place Homes Corporation Board of Directors (“**Westover Place**”), AU agreed to remove the request to work on Saturdays this past summer, and agreed to the further limitation that work on Saturdays (after September 1, 2015) could only occur if there was a lost day of construction activity due to weather

On September 17, 2015, AU representatives made a presentation at the regularly scheduled East Campus project update meeting (which included numerous Westover Place residents) and on September 24, 2015, AU representatives made a presentation to the Community Liaison Committee (“CLC”) regarding the current status of construction activity on the East Campus This presentation noted that 33 work days were impacted due to rain during the period of April – August, 2015 Due to the restrictions on Saturday work prior to September 1, 2015, these days were not able to be made up A copy of the PowerPoint presentation presented at those meetings related to the East Campus construction is attached to this letter as Exhibit B.

AU and its general contractor now believe that their ability to maintain schedule and complete construction of the East Campus prior to the start of the fall 2016 semester will be impacted unless they are able to work each and every Saturday until the project is completed For this reason, AU requests a minor modification of Condition No 41(c) of the Order so that the permitted hours of construction are as follows

41 (c) The University shall be permitted construction hours of Monday-Friday 7:00 a m to 7 00 p m., and Saturdays from 8 00 a m to 4.00 p m

The District of Columbia 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 discussions with the Westover Place Board of Directors regarding this request. AU will be making a presentation to ANC 3D on October 7, 2015, regarding this minor modification application.

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 ANC 3D, at ANC 3D's October 7, 2015 regularly scheduled public meeting. AU will continue to its dialogue with Westover Place regarding this application. AU has no objection to all parties being able to provide their response to the Zoning Commission by October 12, 2015, 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.

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

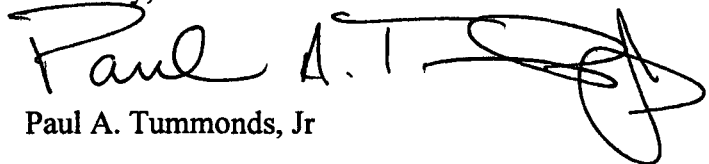
AU requests that the Zoning Commission waive the requirement to have a hearing on this issue. The facts of the proposed request are straight-forward. The period of construction activity is temporary and the proposed minor modification application does not impact the ultimate use and operation of the buildings on the East Campus. 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. Moreover, the scheduling of a public hearing in this case will cause AU and its general contractor to miss additional Saturdays of construction activity. Simply put, AU needs to be able to work each and every Saturday until the project is completed.

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 October 19, 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.



BEFORE THE ZONING COMMISSION
OF THE DISTRICT OF COLUMBIA



FORM 151 – APPLICATION FOR MINOR MODIFICATION

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 11-07

Motion for Minor Modification to:

☒ Final Order

☐ Approved Plan

☐ Amount of Relief

☐ Other _____

Address or boundary description of the premises:

American University - East Campus

3501 Nebraska Avenue NW

Square No.(s)

1601

Lot No. (s)

3

ANC

3D

Points and Authorities:

Below and/or on a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) should grant your motion, including relevant references to the Zoning Regulations or Map.

See attached letter

CERTIFICATE OF SERVICE

I hereby certify that on this

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day of

September

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I served a copy of the forgoing motion or request to each Applicant, Petitioner, Appellant, Party, and the Office of Planning on

the above referenced ZC case via:

☒ Mailed letter

☐ Hand delivery

☐ E-Mail

☐ Other _____

Signature:

Print Name:

Paul Tummonds

Firm/Organization:

Goulston & Storrs PC

Address:

1999 K Street NW, Suite 500, Washington DC 20006

Phone No.:

202-721-1157

E-Mail

ptummonds@goulstonstorrs.com

To be notified of hearing and decision: (Applicant or Authorized Agent)

In the event an authorized agent files an application on behalf of the Applicant for the Minor Modification, a letter signed by the Applicant for the Minor Modification authorizing the agent to act on his/her behalf shall accompany the notice of application, petition, or appeal.

Print Name:

Paul Tummonds, Goulston & Storrs PC

Address:

1999 K Street NW, Suite 500, Washington DC 20006

Phone No.:

202-721-1157

E-Mail:

ptummonds@goulstonstorrs.com

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 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
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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 Mazzuchini
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
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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
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Washington, DC 20016

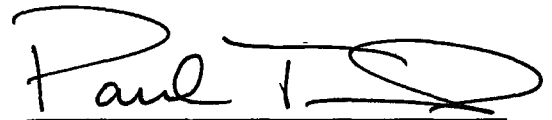
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Paul Tummonds

*Delivered by U S Mail