

EXHIBIT C

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 20-31B

American University
(Further Processing Application of the 2021 Campus Plan for the
Construction of the Alan and Amy Meltzer Center for Athletic Performance
and Sports Center Annex @ Square 1600, Lots 801 & 816)
July 6, 2023

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on July 6, 2023, to consider an application of American University (the “University”, “AU”, or the “Applicant”) for the review and approval of a Further Processing Application of the American University 2021 Campus Plan for the construction of the Alan and Amy Meltzer Center for Athletic Performance and the Sports Center Annex on the University’s Main Campus. The Commission considered the Application pursuant to Chapter 1 of the District of Columbia Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, the “Zoning Regulations” of 2016, to which all subsequent citations refer unless otherwise specified). The public hearing was conducted in accordance with the provisions of Chapter 4, Subtitle Z. For the reasons stated below, the Commission approves the Application.

I. FINDINGS OF FACT

Notice

1. On January 31, 2023, the University mailed a Notice of Intent to Advisory Neighborhood Commissions (“ANC”) 3D, 3E, 3A, and 3B¹, and all property owners as required by Subtitle Z § 302.6. (Exhibit [“Ex.”] 4). In accordance with Subtitle Z § 302.8, representatives of the University made a presentation at the March 9, 2023, ANC 3E public meeting. In accordance with Subtitle Z § 302.8, representatives of the University made a presentation at the March 1, 2023 ANC 3D public meeting. In accordance with Subtitle Z § 302.8, representatives of the University made a presentation at the March 21, 2023 ANC 3A public meeting. (Ex. 2I.)
2. On May 2, 2023, the Office of Zoning (“OZ”) sent notice of the public hearing to:
 - The affected ANCs 3E, 3D, and 3A;
 - The affected ANC Single Member Districts (“SMD”) 3E07 and 3E08;
 - The Office of ANC (“OANC”);
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”);
 - The Department of Buildings (“DOB”);

¹ ANC 3B is not an affected ANC with regard to this Application as it pertains to the Main Campus only.

- The Lead Attorney for the Zoning Commission;
 - The Department of Energy and Environment (“DOEE”);
 - The Ward 3 and At-Large DC Councilmembers; and
 - Property owners within 200 feet of the Property.
- (Ex. 6, 7.)
3. OZ also published notice of the July 6, 2023 virtual public hearing, in the *District of Columbia Register* on May 12, 2023, (70 DCR 006846 *et seq.*) as well as through the calendar on OZ’s website (Ex. 5.)
 4. Pursuant to Subtitle Z § 402.3, the Applicant posted notice of the hearing on the Property on May 25, 2023, and maintained such notice in accordance with Subtitle Z § 402.10. (Ex. 9, 27.)

Parties in Support and Opposition

5. On June 20, 2023, the American University Neighborhood Partnership (“AU Neighborhood Partnership” or “Partnership”) filed a request for party status as a party in support of the Further Processing application. (Ex. 15.) The Commission granted the AU Neighborhood Partnership’s request for party status.
6. On June 21, 2023, Neighbors for a Livable Community (“NLC”) filed a request for party status as a party in opposition to the Further Processing application. (Ex. 16.) The Commission granted NLC’s request for party status.
7. In addition to the Applicant, ANCs 3E, 3D, and 3A were automatically parties to the case.

The Site

8. The property that is the subject of the Further Processing Application includes a portion of the University’s Main Campus located in the RA-1 zone which is surrounded by the campus boundary with the Wesley Theological Seminary to the north, a vegetative boundary along the campus boundary with University Avenue, N.W. to the west, the University’s Reeves Field to the south, and the University’s Bender Sports Center to the east. Single family properties are located to the west and are included in the R-1-A and R-1-B zones. (Ex. 2K1.)

II. The Application

9. On April 10, 2023, the University filed the Further Processing Application for review and approval of the construction of the Alan and Amy Meltzer Center for Athletic Performance (“Meltzer Center”) and the Sports Center Annex (“SCAN”) on the University’s Main Campus. (Ex. 2, 2A-2K2.)

Applicant’s Statement

10. The proposed location of the Meltzer Center and SCAN are consistent with the location of Sites 3 and 5 respectively that were reviewed and approved by the Commission in

connection with the University's 2021 Campus Plan proceedings. (*See* Z.C. Order No. 20-31). The Meltzer Center and SCAN were highlighted as important elements of the development of the northwest quadrant of the main campus, described as follows:

Proposed development on the northwest quadrant of the campus (West Campus) will create an athletic, residential, and campus life village, including a new Center for Athletic Performance, consolidated and enhanced student health and wellness facilities, and additional student housing opportunities in competitive and marketable unit configurations to encourage more students to remain on campus during their time at AU. This collection of new development will effectively transform what is now "back of house" and service areas of campus into a vibrant campus destination, while maintaining a substantial distance (e.g., approximately 400 feet from Site 2, 220 feet from Site 4, and 110 to 140 feet from Site 3 to the western campus boundary) and appropriate buffers (e.g., landscaping and trees along both sides of the university's fence line adjacent to University Avenue) from neighboring properties. (*See* Z.C. Order No. 20-31, Finding of Fact ["FF"] No. 43.)

11. The Applicant noted that it worked closely with the AU Neighborhood Partnership Facilities and Planning Working Group, the AU Neighborhood Partnership Steering Committee, the Community Liaison Committee ("CLC"), and engaged directly with members of the community, specifically those living on and around University Avenue, to discuss and evaluate the Meltzer Center and the SCAN building and ensure that any potential impacts on neighboring properties are effectively mitigated. As a result of this constructive dialogue, the AU Neighborhood Partnership Facilities and Planning Working Group concluded that the Application was well-considered and should be submitted to the Zoning Commission for review and approval. Based on the recommendation of the Facilities and Planning Working Group, and in its own review of the Application, the AU Neighborhood Partnership Steering Committee provided their consensus support for the submission of the Application. Detailed information regarding the community outreach activities, engagement process, and meeting presentations were included in the Application. (Ex. 2G, 2I.)
12. The Meltzer Center was identified as Site 3 in the 2021 Campus Plan. The Campus Plan approved a building for Site 3 that was up to 60 feet tall, included 75,000 square feet of gross floor area and was located a minimum distance of 110 feet from AU's property line adjacent to University Avenue. The Meltzer Center as proposed in the Application is smaller than the development approved in the Campus Plan, as it is approximately 51 feet tall, includes approximately 57,000 square feet of gross floor area, and is located a minimum distance of 198 feet from AU's property line adjacent to University Avenue. (Ex. 2G, 32.)
13. The SCAN Building was identified as Site 5 in the 2021 Campus Plan. The Campus Plan approved a building for Site 5 that was up to 60 feet tall and included 55,000 square feet of gross floor area. The SCAN Building proposed in the Application is smaller than

approved in the Campus Plan as it is approximately 51 feet tall and includes approximately 35,000 square feet of gross floor area. (Ex. 2G, 32.)

14. The Meltzer Center is a multi-purpose facility that has been specifically designed to address AU's stated need to provide competition, practice, and training space for existing AU athletics programs that are currently not adequately accommodated in the Bender Arena and Sports Center. It will host intercollegiate women's volleyball and men's wrestling competitions and will be able to accommodate up to 750 spectators for these events. The gymnasium will provide two 94-foot practice courts and a NCAA-regulation performance court for basketball, along with two 42-foot by 42-foot athletic foam mats. The gymnasium is also intended to provide practice facilities for these programs, the men's and women's soccer programs, and for both club-level sports as well as recreational activities for University's students. The Meltzer Center also features a strength and conditioning room and sports medicine facilities. (Ex. 2G.)
15. The Meltzer Center will include grab-and-go concessions for students and spectators, as well as lounges for student-athletes and the general student population. Gender inclusive bathrooms are provided throughout the building as well as locker areas for student athletes and the general student population and visiting teams. Immediately adjacent to the first floor of the Meltzer Center is an outdoor health and wellness court that will be used by student athletes to engage in motion and movement exercises, to help student athletes recover from injuries, and will also be an informal area where students can socialize and engage in informal athletic events. It is not an area in which events with spectators will occur. (Ex. 2G.)
16. The second floor of the Meltzer Center includes the wrestling practice area, locker room and offices for coaching staff, and access to an outdoor terrace facing the Reeves Field. This level also includes a direct connection to Bender Arena and the SCAN building via a bridge connecting the second level of the SCAN building with the lobby of Bender Arena. The University noted that as a key component of AU's broader *Student Thriving Complex*, the SCAN building will house critical student support services that promote and foster overall student well-being. Consistent with the goals noted in the 2021 Campus Plan, the SCAN building will include space for the University's wellbeing program, including a mind/body center, a musical performance area and various social and fitness areas. The SCAN building will include locker areas for the women's and men's basketball programs with direct access to the Bender Arena playing floor. The second level of the SCAN building provides office space for a number of athletic programs and for administrative staff. The third level of SCAN includes a lounge which provides views directly into Bender Arena, as well as access to an outdoor terrace. (Ex. 2G.)
17. The Meltzer Center and SCAN buildings are both majority masonry buildings with metal panels and painted metal accents in light and medium gray tones. Both buildings have contrasting brick tones but share similar brick detailing. (Ex. 2G.)

18. The Applicant's Statement noted that the Campus Plan approved in Z.C. Order No. 20-31 included the information that is required by Subtitle Z, §302.10 (c) – (l) for Campus Plan approval. The Applicant's Statement provided additional information that addressed AU's satisfaction of the various conditions of the 2021 Campus Plan. (Ex. 2J.)
19. The Applicant stated that the proposed Meltzer Center and SCAN buildings meet the applicable campus plan standards of Subtitle X § 101 and the further processing and special exception standards of Subtitle X §§ 101, 901, for the following reasons: (Ex. 2G.)

Noise. The University's Design Team and consultants prepared an analysis of the potential noise generated by this Application. (Ex. 2F.) The noise study notes that there are five elements of the siting, design, and operations of the Meltzer Center and SCAN buildings that mitigate noise impacts. Those elements are:

- Significant setback. The Meltzer Center is located approximately 198 feet from the University Avenue property line and the SCAN building is located even further into the AU campus;
- Location of noise generating activity. The noisiest activities associated with the Meltzer Center and the SCAN buildings will occur inside the buildings;
- Sound attenuation materials. The Meltzer Center will include sound attenuation materials inside and on the exterior of the building;
- Natural berm at property line. The University Avenue property line occurs at an elevation that is approximately 10 feet above the Wellness Court that is proposed as part of this Application, this change in grade helps buffer noise from any activities at the Meltzer Center and the Wellness Court; and
- Infill landscaping along University Avenue property line. AU has committed to providing additional landscape screening along the University Avenue property line that serves as both a visual and auditory buffer. (Ex. 2K1.)

The noise study includes the following key findings:

- The predicted noise levels for residents of University Avenue are between 45 and 50 dBa, which are consistent with what may be expected in a quiet suburban residential neighborhood (and lower than ambient background noise levels);
- There is no noticeable difference in noise levels between the first and second floors of the residences along University Avenue; and
- The highest noise levels will occur when the emergency generator is running during scheduled testing or unplanned power outages, which will occur very infrequently.

For these reasons, the proposed Meltzer Center/SCAN project will create no adverse noise impacts on neighboring properties. (Ex. 2F.)

Traffic and Parking. The University stated that the proposed Meltzer Center and SCAN will create no adverse traffic impacts on adjacent properties, as there is no impact on the number of parking spaces provided on campus as result of the development of these

structures and no new vehicular trips are expected to come to campus as a result of the construction of these structures. (Ex. 2G.) In addition, the University provided a Transportation Mobility Summary prepared by a traffic consultant, Nelson Nygaard Consulting Associates, which assessed site access, vehicle and bicycle parking, and trip generation, and concluded that the proposed development will not result in any changes beyond the scope already contemplated by the 2021 Campus Plan. (Ex. 11A.)

Number of Students or Other Objectionable Conditions. The University stated that the proposed Meltzer Center and SCAN will not create any adverse impacts related to the number of students, faculty, or staff, as the construction of these structures will not result in an increase in the student and faculty/staff caps that were established in the 2021 Campus Plan. (Ex. 2G.)

The Application will not Tend to Adversely Affect the use of Neighboring Property and is in Harmony with General Purpose and Intent of the Zoning Regulations and Map. The Applicant concluded that the construction of the proposed Meltzer Center and SCAN buildings will not tend to adversely affect the use of neighboring properties. The proposed Meltzer Center and SCAN buildings will not create any adverse visual impacts on neighboring properties along University Avenue or for the adjacent Wesley Seminary due to the siting, height, massing, and architecture of the buildings. The Applicant noted that the increase in the setback distance of the Meltzer Center from the University Avenue property line is significant. At its closest point to the University Avenue property line, the Meltzer Center is setback 198 feet, and this is the portion of the Meltzer Center that is only one-story (approximately 22 feet) tall. In addition, the decrease in the overall height and massing of the Meltzer Center further mitigates any adverse impact that this building will have on University Avenue properties. (Ex. 2K1.)

Lighting. The Applicant also prepared a lighting study (Ex. 2E) which addresses the steps that the University has taken to mitigate any potential adverse impacts from the lighting of the buildings (interior and exterior), while still creating a safe and inviting environment for AU students and visitors. The lighting study identifies the following exterior lighting goals and actions to mitigate any adverse impacts:

- Address public safety by providing adequate illumination;
- Enhance character of both open spaces and buildings;
- Limit light trespass in the sky and beyond property lines, provide automated black-out shades at the second level of the building facing University Avenue;
- Provide full-cut luminaires where applicable;
- Provide energy code controls to dim exterior luminaires and occupancy sensors inside the building to turn off lights when the interior spaces are not in use; and
- Provide warm/neutral illumination.

Enhanced Landscape Buffer along University Avenue. As a final means to mitigate any adverse visual impacts on neighboring properties, the Applicant provided information as to how it will further enhance the existing landscape buffer along University Avenue. The Applicant's landscape architect created an analysis of the existing landscape buffer area and the opportunities for enhancement of that buffer. The enhanced landscape buffer will further obscure any views of the Meltzer Center and SCAN buildings from University Avenue. (Ex. 2G, 2K1, 14B1-14B5, 32.)

Construction Management. The Applicant prepared a Construction Management Plan that will guide construction activity related to the Application and proposed that the construction management plan be included as a condition of the Commission's approval of the Application. (Ex. 2G, 2K, 14, 14A.)

20. The Applicant stated that the Meltzer Center will include "grab-and-go" concessions for students and spectators. The total area proposed for this use in the Meltzer Center is approximately 400 square feet of the approximately 57,000 square foot facility and is consistent with the requirements of Subtitle X § 101.3 that any proposed commercial use is customarily incidental to a university use and there "shall be a demonstrated and necessary relationship between the use and university functions." The proposed commercial use is also consistent with the requirements of Subtitle X § 101.3(b) because the size of the concession area will not result in more than 10% of the gross floor area of the total campus plan floor area being devoted to commercial use. Also, the size and location of the concession area – 400 square feet, inside of the Meltzer Center – will not result in any objectionable impacts to non-university residential neighbors due to hours of operation, noise, parking, loading, lighting, trash or any other operational characteristics. (Ex. 2G.)
21. Pursuant to the requirements of Condition 8 of the 2021 Campus Plan, AU evaluated the retail services available at other existing campus locations to determine whether to include any commercial concessions use at the Meltzer Center. In light of the fact that there are no other concession spaces within approximately 1,200 feet of the proposed development, and that the University's existing campus retail locations are staffed venues with limited evening and weekend hours, AU concluded that providing this limited retail component was appropriate in the Meltzer Center. (Ex. 2G.)
22. The Applicant confirmed that development of the Meltzer Center and SCAN buildings did not exceed the maximum bulk requirements and floor area limit for the Campus as a whole. AU's 2021 Campus Plan approved a total FAR of 0.91 including all proposed development sites, which is well within the 1.8 FAR permitted in the RA-1 Zone. The construction of the Meltzer Center and the SCAN buildings (Campus Plan development sites 3 and 5) will result in the creation of approximately 92,374 square feet of GFA. (Ex. 2G, 32.)

23. The University's plan for developing the Campus as a whole, as required under Subtitle X § 101.8, was approved by the Zoning Commission in Z.C. Order No. 20-31. (Ex. 2H.) The approved Campus Plan includes details on buildings, parking, and loading facilities; screening, signs, streets, and public utility facilities; athletic and other recreational facilities; and a description of all activities and of the capacity of all present and proposed development. The construction of the Meltzer Center and SCAN buildings were both contemplated and discussed in the 2021 Campus Plan. As noted above, the size and height of both buildings have been reduced from that which was contemplated in the 2021 Campus Plan. (Ex. 2G.)
24. The Applicant confirmed that no interim use of land is proposed as part of this Application. (Ex. 2G.)
25. The Applicant provided information demonstrating that the Application complies with, and advances policies and goals of the Comprehensive Plan as identified in Z.C. Order No. 20-31, Findings of Fact Nos. 88, 90, and 91. (Ex. 2H.) In particular, the Application is consistent with Land Use Policy 3.2.3 that seeks to ensure that colleges and universities that are located within residential areas are planned, designed and managed in a way that minimizes impacts on adjacent communities. The Application is also consistent with the Educational Facilities Element Policies 3.3.2 and 3.3.3 that encourage university growth and development through the campus plan process and attention to community issues and concerns. Finally, the Application is consistent with Policy 1.1.8 of the Rock Creek West Area Element which notes that redevelopment or expansion of institutional land uses need to be compatible with the physical character of the community, states that density of future institutional development should reflect surrounding land uses as well as input from the local community and encourages the minimization of potential adverse impacts. (Ex. 2G.)
26. The Applicant noted that the Commission is tasked with evaluating a zoning action's consistency with the Comprehensive Plan through a racial equity lens. (10A DCMR § 2501.4-2501.8.) Equity is conveyed throughout the Comprehensive Plan, and the Framework Element notes that "[e]quitable development is a participatory approach for meeting the needs of underserved communities through policies, programs and/or practices [and] holistically considers land use, transportation, housing, environmental, and cultural conditions, and creates access to education, services, health care, technology, workforce development, and employment opportunities." (10A DCMR § 213.7.) The scope and extent of the Commission's racial equity analysis within its overall Comprehensive Plan consistency analysis can vary depending on the unique characteristics of the proposed zoning action. In reviewing and deciding a campus plan or further processing, the Zoning Regulations require that the Commission shall consider "to the extent they are relevant, the policies of the District Elements of the Comprehensive Plan." (See Subtitle X § 101.11.) The Applicant stated that the Application is consistent with District Element (or Citywide Element) policies noted in the Land Use and Educational Facilities Elements of the Comprehensive Plan. See Finding of Fact ["FF"] No. 25. The Applicant also stated that the Application is consistent with Rock Creek West Area Element Policy 1.1.8. (*Id.*) The Applicant noted that the Application's proposed athletic and student life uses, entirely

within the AU campus, are limited in scope with no potential housing related impact. Therefore, most of the Comprehensive Plan policies that address racial equity related goals and issues are not particularly relevant to this Application. (Ex.14.) The Applicant further noted the Commission's consideration of community outreach and engagement in its Racial Equity Analysis Tool², and provided a detailed description of its community outreach and engagement efforts. (Ex. 2I; *see also* FF No. 11.) For purposes of evaluating the Application's consistency with the Comprehensive Plan through a racial equity lens, the Applicant concluded that only a review of the Application's consistency with Citywide and Area Element policies was appropriate, given the limited scope of the proposal and its potential impacts. (Ex. 14.)

III. Responses to Application

Office of Planning ("OP") and Department of Transportation ("DDOT")

27. OP filed its report in this case on June 26, 2023. In its report, OP recommended approval of the further processing application for construction of the Meltzer and SCAN buildings, and also indicated support for the conditions of approval proposed by the Applicant. (Ex. 20.)
28. The OP report confirmed that the Applicant met the terms of Condition 21 of the 2021 Campus Plan, which prohibited the University from applying for any other further processing request before the further processing application was submitted to construct the acoustical sound barrier wall between the William I. Jacobs Recreational Complex and property located at 4710 Woodway Lane NW. This requirement was met in that the University applied for and received approval of further processing for the construction of the acoustical sound barrier wall in Z.C. Order No. 20-31A. (Ex. 20.)
29. The OP report described its Comprehensive Plan consistency analysis and concluded that the Application would not be inconsistent with the Comprehensive Plan, including when viewed through a racial equity lens. The OP report stated that the Application would not be inconsistent with the Comprehensive Plan Maps or many Citywide Element policies of the Land Use, Transportation, Environment, and Educational Facilities Elements; and policies of the Rock Creek West Area Element. The OP report also described its review of the Application through a racial equity lens utilizing the Commission's Racial Equity Analysis Tool. OP noted the University's community outreach and engagement activities regarding the Meltzer Center and SCAN buildings and that the conditions of approval provide that members of the community may use the Health and Wellness Court when it is not scheduled for use by AU students and personnel. OP concluded that the Meltzer Center and SCAN buildings proposed athletic and student life uses would not cause any

² Consistent with Comprehensive Plan guidance, the Commission utilizes a Racial Equity Analysis Tool in evaluating zoning actions through a racial equity lens. The Commission released a revised Tool on February 3, 2023. The Tool requires submissions from applicants and the Office of Planning analyzing the zoning action's consistency with the Citywide and Area Elements of the Comprehensive Plan; a submission from applicants including information about their community outreach and engagement efforts regarding the zoning action; and a submission from the Office of Planning including disaggregated race and ethnicity data for the Planning Area affected by the zoning action.

displacement of residents or students, cause any change in demographics of the area or student enrollment, or create any new residential use. For these reasons, OP determined that disaggregated race and ethnicity data was not relevant in evaluating this Application through a racial equity lens. (Ex. 20.)

30. The OP report detailed how the Meltzer Center and SCAN buildings meet the further processing requirements of the 2021 Campus Plan, Z.C. Order 20-31, particularly with respect to buffering and landscaping, lighting, noise, traffic, and retail uses. (Ex. 20.) With respect to buffering and landscaping, OP noted that the proposed buildings will be significantly set back to both physically and visually buffer them from residences across University Avenue with the Meltzer Building, closest to the property line, set back 180-200 feet; the University has provided a planting plan and will provide additional evergreen and deciduous trees and shrub trees both on campus and within public space along University Avenue; and the University has provided landscape plans showing the trees to be removed, saved, replaced and relocated. (Ex. 20, p. 7-8.)
31. The OP report confirmed that construction of the Meltzer Center and SCAN buildings would be consistent with the intent of the Zoning Regulations, and would meet the applicable campus plan, further processing and special exception requirements of Subtitle X §§ 101, 901. OP also confirmed that the University addressed the status of the conditions of approval in Z.C. Order No. 20-31 and stated that it believes the University has remained in substantial compliance with the conditions. (Ex. 20.)
32. DDOT filed its report in this case on June 23, 2023. In its report, DDOT indicated no objection to the approval of the further processing application, with the following conditions:
 - The existing long-term bicycle parking storage room and showers/lockers at Cassell Hall will be made available to any of the staff or employees that work at Bender Arena, Meltzer Center, or Sports Center Annex Building. AU will actively promote the availability of these amenities to eligible staff and employees;
 - Prior to the issuance of a Certificate of Occupancy for the Project, AU will install 50 short-term bicycle spaces (25 inverted U-racks), adjacent to the Meltzer Center; and
 - Prior to the issuance of a Certificate of Occupancy for the Project, AU shall provide written evidence to the Zoning Administrator that it has made a financial contribution to the District Department of Transportation to pay for all costs associated with the expansion of two existing Capital BikeShare stations and the installation of a new 19-dock Capital BikeShare station, as required by Condition 47 of Z.C. Order No. 20-31. (Ex. 18.)
33. The DDOT report concluded that the proposed new buildings will serve as an expansion of existing University facilities; that the project is located on private property and does not impact public right-of-way; access for loading and pick-up/drop-off operations are from internal private driveways; the land uses and operations of the buildings appear to be consistent with the approved 2021 Campus Plan, except for the reduction in square footage

of the buildings; the project proposes no new vehicle parking and will not impact the 3,000 parking space cap; long-term bike parking is not proposed within the new buildings; and the buildings will be covered by the Transportation Demand Management and Performance Monitoring Plans approved in Campus Plan Z.C. Order No. 20-31 (Ex. 18, 2H.)

Advisory Neighborhood Commission 3E

34. By resolution entered into the record on July 5, 2023, ANC 3E indicated that, at its publicly noticed June 15, 2023 meeting, at which a quorum of Commissioners was present, ANC 3E voted 7-0-0 to support the Application. (Ex. 31.) The resolution stated that the Application proposes few burdens on residents other than the displacement of the open space presently used as a community garden and noted the University's stated plan to relocate the community garden in an alternative space.

Advisory Neighborhood Commission 3D

35. In a statement entered into the record on June 9, 2023, ANC 3D indicated that, in a properly noticed monthly meeting on June 7, 2023, at which a quorum was present, ANC 3D voted unanimously to recommend approval of the Meltzer Center and SCAN further processing application. (Ex. 12.)
36. ANC 3D acknowledged that the University made special effort during the development process to identify and address the potential objectionable impacts of the Meltzer Center and SCAN buildings and shared this list with the AU Neighborhood Partnership Facilities Planning Working Group. During the course of several working group meetings, the University addressed these various potential impacts and indicated how their plans mitigated or eliminate any such impacts. Of particular note were detailed modeling of potential noise impacts of rooftop mechanical equipment on homes along University Avenue as well as any possible disturbance because of lighting of the Meltzer Center and SCAN buildings and the surrounding area. Finally, plans for landscaping of the buffer along University Avenue were provided and as a result of extensive discussions with community stakeholders the University improved the final landscaping plans. (Ex. 12.)
37. ANC 3D commended the University for their extensive outreach to engage neighbors who might potentially be affected by the Meltzer Center and SCAN buildings—including visiting many of the residences, hand-delivering flyers, sending invitations to two neighborhood information forums—which, together with its own briefings, gave ANC 3D confidence that neighbors had more than adequate opportunity to inform the University, the AU Neighborhood Partnership, and ANC 3D of any concerns. (Ex. 12.)
38. ANC 3D also noted that no issues of non-compliance with the 2021 Campus Plan had been brought to the attention of the ANC as of the most current academic year. (Ex.12.)
39. Additionally, ANC 3D filed a response to Neighbors for a Livable Community's ("NLC") request for party status in opposition on June 28, 2023. The ANC did not request that the Commission deny NLC's request but observed that NLC has chosen to avoid the established community consultation process for the AU campus plan and make the

Commission the forum of first review of its concerns. The ANC recommended that the Commission instruct NLC “that, in the future, it should participate in the community process that is designed to examine these kinds of particular concerns of neighbors in detail before the Zoning Commission hearing.” (Ex. 25.)

Advisory Neighborhood Commission 3A

40. The University provided ANC 3A with briefings on the Application on March 21, 2023, and June 20, 2023. (Ex. 21.) ANC 3A did not participate in this case.

American University Neighborhood Partnership

41. In its Request for Party Status in support submitted to the record on June 20, 2023 (Ex. 15), the AU Neighborhood Partnership indicated its support for the Meltzer Center and SCAN buildings and the AU Neighborhood Partnership’s role in the planning effort associated with the Application and urged approval by the Commission.

Neighbors for a Livable Community

42. In its Request for Party Status in opposition, submitted to the record on June 21, 2023, and Statements of Testimony submitted to the record on July 5, 2023, NLC indicated that it had no objection to the design and construction of the Meltzer Center and SCAN buildings. However, NLC noted concerns with the landscape buffer between the proposed development and University Avenue, the ongoing failure to address landscape screening problems, potential adverse lighting impacts, and the loss of the existing tennis courts. (Ex. 16, 28, 30.)
43. NLC requested that the University provide an enhanced four-season landscape screen along University Avenue and noted that it had been advised by a professional landscape design firm that the existing tree canopy along University Avenue is not likely to support the additional evergreen trees that the University is planning because the existing white pines at the site will prevent the new plantings from receiving adequate sunlight to grow and will therefore compromise the screen that the Applicant expects to achieve. The NLC also stated that the additional deciduous trees will provide the area with coverage in the late spring and summer months but will lose their leaves during the peak periods of university operations in the fall and winter. NLC also alleged that the University has shown a pattern of failing to meet its commitments with regard to maintaining the landscape screening along University Avenue. (Ex. 28, 30.)
44. The NLC asked the Commission to direct the University to work with the University Avenue neighbors collaboratively over the next year to develop a multi-year plan to provide a year-round landscape screen along University Avenue. NLC requested that this be a condition of the Commission’s approval of the Application. (Ex. 28, 30.)

Persons In Support

45. Several statements of support were entered into the record by residents of the neighborhood surrounding the University campus, University students, and other interested stakeholders.

(Ex. 17, 19, 21-24, 26.) No persons in support testified at the public hearing on July 6, 2023.

Applicant's Supplemental Statement

46. On June 15, 2023, the Applicant filed a Supplemental Statement (Ex. 14, 14A-F.) which provided information responsive to issues raised as a result of additional dialogue with relevant stakeholders, including proposed conditions of approval (Ex. 14A.); updated landscape plan (Ex. 14B1-14B5.); tree preservation and removal plan (Ex. 14C1-14C3.); refinements to the facades of the Meltzer Center and SCAN buildings (Ex. 14D1-14D6.); satisfaction of GAR requirements (Ex. 14E.); racial equity analysis (Ex. 14.); and a list of the Applicant's witnesses at the public hearing. (Ex. 14F.)

Public Hearing of July 6, 2023

47. The Commission held a public hearing on the Application pursuant to notice and convened via videoconference at 4:00 p.m. on July 6, 2023. (Transcript ("Tr.") of July 6, 2023 hearing at p. 3-4.)
48. The Commission granted party status to the AU Neighborhood Partnership as a party in support. (Tr. of July 6, 2023 hearing at p. 5.)
49. The Commission granted party status to NLC as a party in opposition. (Tr. of July 6, 2023 hearing at p. 5-12.)
50. The Commission accepted Applicant's expert witnesses Iain Banks in transportation and Matthew Bell and Tim Bertschinger in architecture. (Tr. of July 6, 2023 hearing at p. 12-14.)

Applicant's Testimony

51. The Applicant presented the testimony of Cory Peterson, Assistant Vice President for Community and Government Relations at American University; Matthew Bell and Tim Bertschinger from Perkins Eastman; and Jonathan Ceci from Jonathan Ceci Landscape Architects. (Tr. of July 6, 2023 hearing at p. 16-32.)
52. Mr. Peterson presented testimony regarding the importance of athletics, recreation and fitness, and well-being programs at the University. Mr. Peterson described how AU's new *Student Thriving Complex*, of which the Meltzer Center and SCAN buildings are critical components, will accomplish the priorities set forth in the 2021 Campus Plan to enhance well-being programs and expand student support facilities, while transforming what is now a "back of house" area of campus into a vibrant campus destination. (Tr. of July 6, 2023 hearing at p. 16-18.)
53. Mr. Peterson described the robust and comprehensive community engagement effort which AU launched in 2022 for the Meltzer Center and SCAN buildings. As part of the planning process, the University reached out to nearby neighbors through mailings, listserv posts, and visiting University Avenue neighbor's door-to-door to gather their feedback. The AU

Neighborhood Partnership focused extensively on this project, convening nine Facilities Planning Working Group meetings and three Steering Committee meetings to allow members of the community to review proposals, ask questions, and provide feedback that significantly shaped the project. AU also discussed the projects at two Community Liaison Committee (CLC) meetings, including the annual town hall with AU University President, Sylvia Burwell, and held two open Neighborhood Information Forums to ensure all members of the community had an opportunity to directly participate in the planning process. Additionally, AU presented at the March and June meetings of ANC 3D, 3E and 3A. (Tr. of July 6, 2023 hearing at p. 18-19.)

54. Mr. Peterson noted that throughout the planning process, AU maintained an online community input portal, where individuals could submit questions and comments at any time and responses were posted for all members of the community to review. (Tr. of July 6, 2023 hearing at p. 19.)
55. Mr. Peterson shared that support for the Application has been received from a broad array of stakeholders, notably including consensus support from the AU Neighborhood Partnership; unanimous support from both ANC 3D and 3E; individual letters of support from nearby neighbors including residents of University Avenue, several students, and community organizations; and agency support from both DDOT and the Office of Planning. (Tr. of July 6, 2023 hearing at p. 20.)
56. Mr. Bell and Mr. Bertschinger provided a design overview of the Meltzer Center and SCAN buildings, and information regarding the noise and light studies conducted by the project team. (Tr. of July 6, 2023 hearing at p. 20-28.)
57. Mr. Bell described the Meltzer Center and SCAN buildings in the context of the 2021 Campus Plan, identified the major components of the buildings including the adjacent Health and Wellness Court, and explained how the height and GFA of both the Meltzer Center and SCAN buildings are smaller than the projects approved for Sites 3 and 5 in the 2021 Campus Plan. (Tr. of July 6, 2023 hearing at p. 21-22.)
58. Mr. Bertschinger detailed site sections of the Meltzer Center and SCAN buildings to help illustrate the relationship of the structures and sightlines to residences on University Avenue as well as the existing landscape buffer and berm along the University boundary with University Avenue. (Tr. of July 6, 2023 hearing at p. 22-23.)
59. Mr. Bell presented concept renderings from various viewpoints and explained the University's architectural approach to the buildings and design considerations aimed at minimizing the project's impact on neighboring residences. (Tr. of July 6, 2023 hearing at p. 23-24.)
60. Mr. Bertschinger explained the noise analysis conducted as part of the planning process and mitigation measures included in the project design, which focused on noise sources within the buildings as well as the mechanical equipment that will operate on the rooftop

of the new structures. Key findings of the Applicant's noise analysis included the predicted noise levels at the receive location at University Avenue are between 45 and 50 dBA and are consistent with what may be expected in a quiet suburban residential neighborhood; the noise level of roof top mechanical units is anticipated to be approximately 45 dBA; no appreciable difference in noise levels is anticipated for first and second story levels at residences; and the highest anticipated noise level will occur when the emergency generator is running during scheduled testing or unplanned power outages to support life-safety operations. (Tr. of July 6, 2023 hearing at p. 24-26.)

61. Mr. Bertschinger outlined the lighting goals identified by the Applicant during the planning process, including addressing public safety by providing adequate illumination; enhancing the character of both open spaces and buildings; limiting light trespass to the sky and beyond property lines; providing full cut-off luminaires where applicable; providing energy code controls to dim exterior luminaires after midnight; and providing 3000k or 3500k color temperature for warm/neutral illumination. (Tr. of July 6, 2023 hearing at p. 27-28.)
62. Mr. Bertschinger shared information regarding light level recommendation for the project and a rendering to illustrate the anticipated impacts associated with various elements of the Applicant's lighting plan. (Tr. of July 6, 2023 hearing at p. 28.)
63. Mr. Ceci presented testimony regarding the Applicant's approach to landscaping elements of the project, including enhancements to the vegetative buffer along the campus boundary with University Avenue. (Tr. of July 6, 2023 hearing at p. 29-32.)
64. Mr. Ceci outlined the University's hybrid planting approach, which was informed by input from the community, and would focus on opportunities to create dense clusters of new evergreen plantings in gaps in the canopy or where existing trees are aging or are structurally unsound while preserving a sense of maturity and special and heritage trees along the campus edge. Mr. Ceci also detailed the various trees, shrubs, and small shrub species that would be incorporated into the University's planting plan. (Tr. of July 6, 2023 hearing at p. 29-30.)
65. Mr. Ceci provided an overview of the proposed planting and selective pruning plan, and shared rendered views of the vegetative buffer along University Avenue that depict how the proposed plantings will enhance the existing conditions and maximize the infill potential throughout the buffer to provide additional density and visual screening. (Tr. of July 6, 2023 hearing at p. 31-32.)

Commissioner Questions and Comments Regarding Applicant's Testimony

66. Vice Chair Miller asked about the loss of the AU tennis courts and whether the site could be reconfigured to accommodate the tennis courts as suggested by NLC. Mr. Peterson responded that the removal of the tennis courts was addressed in the 2021 Campus Plan, and that the new Health and Wellness Court would provide shared recreational opportunities for the University and surrounding community. Mr. Peterson added that the

University does not have a plan at this time to relocate the tennis courts on the University's Main Campus. In addition, Mr. Bertschinger noted that the area of the Health and Wellness Court could only potentially accommodate one tennis court and would preclude the use of the Health and Wellness Court as the University and neighborhood stakeholders have envisioned it. (Tr. of July 6, 2023 hearing at p. 35-36.)

67. Chairman Hood asked whether the Applicant reached out to NLC as part of its community engagement efforts. Mr. Peterson responded that the University collaborated with the NLC throughout the planning process and the Application reflects many, but not all, of the changes they sought. The University has confidence in the landscape plan developed with its neighborhood partners but is always willing to continue to collaborate. (Tr. of July 6, 2023 hearing at p. 37-38.)

Cross-Examination of Applicant's Testimony

68. On behalf of NLC, Alma Gates asked Counsel for the Applicant, Mr. Paul Tummonds, if he is aware of any statutorily established community procedures which would cause the Commission to look unfavorably on NLC for requesting that the University install landscaping that has been included in the record of almost every AU case since 1989. Mr. Tummonds responded that AU has been consistently in compliance with all of the Campus Plan requirements with respect to landscape screening and buffers along University Avenue and in all of the conditions of the 2021 Campus Plan with regard to maintaining an effective landscape buffer along University Avenue. (Tr. of July 6, 2023 hearing at p. 44-45.)
69. Ms. Gates asked Mr. Ceci if he had seen the suggestions provided by Shorb Landscaping. (Ex 28.) And if there is anything he incorporated into his plan. Mr. Ceci responded that he has seen the suggestions provided by Shorb Landscaping and that some of their ideas and design principles have been incorporated, while others, such as removing the white pine trees that are protected as either special or heritage trees, were not incorporated into the University's landscape plan. (Tr. of July 6, 2023 hearing at p. 46-47.)
70. Ms. Gates commented that the landscaping plan indicates that gaps will remain and asked how they can be removed. Mr. Ceci responded that the landscape plan identified where gaps currently exist when vegetation is defoliated, and the placement of new plantings is based on where those gaps are located. (Tr. of July 6, 2023 hearing at p. 47.)
71. Ms. Gates asked whether there was any consideration given to putting the tennis courts on the East Campus. Mr. Peterson responded that it was not a consideration during the planning process but that the University could take a look at that possibility. (Tr. of July 6, 2023 hearing at p. 47.)

District Agency Testimony

72. Maxine Brown-Roberts testified on behalf of the Office of Planning. Ms. Brown-Roberts noted that the Meltzer Center and SCAN buildings represented the implementation of the development of Sites 3 and 5 in the 202 Campus Plan. Ms. Brown-Roberts noted that the

approved 2021 Campus Plan was found to not be inconsistent with the policies and the recommendations of the Comprehensive Plan and that implementation of the Application would not change that. (Tr. of July 6, 2023 hearing at p. 49-50.)

73. Ms. Brown-Roberts testified that the University established setbacks of the buildings from University Avenue, buffers, and lighting considerations to effectively mitigate potential adverse visual and sound impacts associated with the buildings and to respect the surrounding residential properties. (Tr. of July 6, 2023 hearing at p. 50.)
74. Ms. Brown-Roberts testified that the Office of Planning recommends approval of the Application and supports the University's proposed conditions of approval. (Tr. of July 6, 2023 hearing at p. 50.)

ANC 3D Testimony

75. ANC 3D Chair Tricia Duncan presented testimony on behalf of ANC 3D and noted the ANC's support for the Application. Chair Duncan indicated that the Applicant updated ANC 3D almost every month at the ANC's regularly scheduled meetings, and that ANC 3D was represented on the AU Neighborhood Partnership Facilities Planning Working Group by at least one Commissioner. (Tr. of July 6, 2023 hearing at p. 52; Ex. 29.)
76. Chair Duncan outlined the planning process and the manner in which the Applicant identified and addressed potential impacts associated with the project and how the University worked to mitigate or eliminate such impacts. Of specific note were detailed noise modeling and plans for enhancing the landscape buffer along University Avenue. (Tr. of July 6, 2023 hearing at p. 53; Ex. 29.)
77. Chair Duncan testified that the Applicant's extensive outreach to members of the community, including hand-delivered, mailed, and e-mailed invitations to neighborhood information forums gives the ANC confidence that the neighbors have had more than adequate opportunity to inform the Applicant, the AU Neighborhood Partnership, and the ANC of any concerns with the Application. (Tr. of July 6, 2023 hearing at p. 53; Ex. 29.)
78. Chair Duncan raised concerns about the opposition of the NLC and their approach of bypassing the established community consultation process and submitted their concerns directly to the Zoning Commission. Chair Duncan testified that this undermines the process designed for proper vetting of issues and requested that the Commission make it clear that in the future the NLC should participate in the established processes in the run-up to the Zoning Commission hearing and to bring issues to the Zoning Commission only if they have not been adequately resolved in those community-engagement processes. (Tr. of July 6, 2023 hearing at p. 53-54; Ex. 29.)

Commissioner Questions for ANC 3D

79. Chairman Hood asked whether anyone from NLC is on the CLC or on any of the AU Neighborhood Partnership Working Groups. Chair Duncan responded that members of the

NLC who live on University Avenue have attended CLC meetings. (Tr. of July 6, 2023 hearing at p. 61.)

80. Chairman Hood asked how the CLC works with the Neighborhood Partnership. Chair Duncan responded that the CLC and the Neighborhood Partnership are necessary to do all of the “staff work” associated with these types of major development. Anyone can come to the CLC meetings, but if you are on a Neighborhood Partnership Working Group, you are expected to make a commitment and attend meetings and participate regularly. (Tr. of July 6, 2023 hearing at p. 63-64.)

ANC 3E Testimony

81. Chairman Hood read ANC3E’s resolution at Ex. 31 into the record, noting that the ANC 3E voted 7-0-0 to support the Application (Tr. of July 6, 2023 hearing at p. 70.)

Party in Support (AU Neighborhood Partnership)

82. William Clarkson, Community Co-Chair of the AU Neighborhood Partnership, presented testimony in support of the Application. Mr. Clarkson noted that the Partnership has been actively engaged with the University, affected ANCs, and other community stakeholders on this project. The Partnership’s Facilities Planning Working Group, in particular, worked in close collaboration with the various stakeholders to identify and consider potential concerns. (Tr. of July 6, 2023 hearing at p. 70-71.)
83. Mr. Clarkson discussed the significant efforts made by the University to understand the surrounding acoustical, lighting, and landscape environment and to propose measures designed to eliminate potential objectionable impacts on nearby properties. Consistent with the Facilities Planning Working Group report (including in Ex. 15.), the Partnership believes that the further processing application should be approved. (Tr. of July 6, 2023 hearing at p. 71.)
84. Mr. Clarkson also highlighted the extensive community engagement undertaken by the University and their proactive efforts to anticipate and identify the concerns and questions that would be of most interest to nearby neighbors, particularly those neighbors living on University Avenue in Spring Valley. The University also reached out directly to neighbors who had not participated in the Partnership, including those who had opposed the Partnership and refused to participate in the past. (Tr. of July 6, 2023 hearing at p. 71-72.)
85. Mr. Clarkson noted that in addition to the University’s direct outreach efforts to individual neighbors, the Partnership held two Neighborhood Information Forums in January and March for neighbors to learn about the proposed project, pose questions, and express any concerns. Since December 2022, the Partnership’s Facilities Planning Working Group and Steering Committee held twelve meetings on various aspects of the project. (Tr. of July 6, 2023 hearing at p. 72.)
86. Mr. Clarkson further noted that representatives of NLC participated in both Neighborhood Information Forums and in three Facilities Planning Working Group meetings of the

Partnership related to this project, and therefore it is even more unfortunate that despite the good faith effort made by the University and members of the AU Neighborhood Partnership, NLC chose to file as a party in opposition when their recent demands were not immediately met by the University without meaningful community engagement and input. (Tr. of July 6, 2023 hearing at p. 72-73.)

87. Mr. Clarkson concluded that the AU Neighborhood Partnership continues to play a critically important role in ensuring that AU follows through on its commitments to mitigate any adverse impacts associated with the Campus Plan and associated further processing applications and looks forward to continued collaboration with the University. (Tr. of July 6, 2023 hearing at p. 73.)

Party in Opposition (NLC)

88. Blaine Carter presented testimony on behalf of NLC. Mr. Carter has lived on University Avenue for 20 years, has been a DC resident for 40 years, has worked as a project manager in the commercial real estate industry for 39 years, and is a board member of NLC. Mr. Carter indicated that he was asked to present for NLC by Dennis Paul, one of the organization's co-founders and its President, who has lived on University Avenue for 53 years. Mr. Carter indicated that NLC is also representing a group of neighbors who have signed a petition authorizing NLC to speak on their behalf. (Tr. of July 6, 2023 hearing at p. 77-78; Ex. 28, 30.)
89. Mr. Carter testified that AU has not complied with Z.C. Order No. 11-07G and other zoning orders related to landscaping requirements on University Avenue, and the proposed landscaping plan for the Application is deficient. (Tr. of July 6, 2023 hearing at p. 78-79; Ex. 28, 30.)
90. Mr. Carter confirmed that the NLC has no objections to the design and construction of the Meltzer Center and SCAN buildings. (Tr. of July 6, 2023 hearing at p. 79; Ex. 28, 30.)
91. Mr. Carter testified that the proposed landscaping plan will not adequately buffer the residences along University Avenue, particularly those at the intersection of University Avenue and Quebec Street, for all four seasons, and that NLC has provided a series of recommendations for trees and plantings along University Avenue provided by a highly-qualified professional landscape company. (Tr. of July 6, 2023 hearing at p. 79-82; Ex. 28, 30.)
92. On behalf of NLC, Mr. Carter requested the Commission to include a condition requiring the Applicant to work with NLC to develop a multi-year plan to provide a year-round landscape screen along University Avenue as part of the Order in this proceeding. (Tr. of July 6, 2023 hearing at p. 82; Ex. 28, 30.)

Commissioner Questions for NLC

93. Commissioner May asked Mr. Carter if it was his contention that the University is bound by all of the past zoning approvals referenced in NLC's testimony and filings. (Tr. of July 6, 2023 hearing at p. 85-86.)
94. Mr. Carter responded that the University is bound by former and current Campus Plan orders; Ms. Gates agreed and noted that the orders do not just go away if the conditions are not completed. (Tr. of July 6, 2023 hearing at p. 86-87.)
95. Commissioner May also asked the Applicant's Counsel, Mr. Tummonds, if he agreed that the University is bound by all of the past order approvals. Mr. Tummonds responded that he does not agree as campus plan approvals are usually valid for 10 years, and that is why new applications are applied for every 10 years and there are a series of new conditions in each new campus plan. Thus, the University is beholden to the conditions in the 2021 Campus Plan. (Tr. of July 6, 2023 hearing at p. 98.)
96. Commissioner Imamura asked Mr. Carter to further clarify what he finds insufficient about the landscape buffer, specifically in relation to the topography he described. Mr. Carter responded that his concern is loss of leaves at the most important times and that planting larger more mature evergreens would provide more immediate screening than the hybrid planting of deciduous trees that lose their leaves. (Tr. of July 6, 2023 hearing at p. 89-91.)
97. Chairman Hood asked Ms. Gates if she believed NLC would still be in opposition if someone from NLC was on the Steering Committee of the AU Neighborhood Partnership. Ms. Gates explained that it was a hard question to answer. She stated that she felt a degree of hostility from members of the Partnership, which does not encourage members of NLC to become members of the Partnership. She also stated that the set of rules the Partnership adheres to makes it difficult for one person to express a position. (Tr. of July 6, 2023 hearing at p. 93-94.)

Post-Hearing Submissions

98. On July 27, 2023, the Applicant submitted Proposed Findings of Fact and Conclusions of Law. (Ex. 34.)
99. On August 18, 2023, ANC 3D submitted Proposed Findings of Fact and Conclusions of Law³, stating that at its August 14, 2023 duly noticed public meeting, with a quorum present, the ANC voted 6-0-0 to ask the Zoning Commission to include the following statement in the final Order: "ANC 3D representatives urged the Commission to encourage all neighborhood neighbors and potential parties in the future to participate in the established neighborhood-engagement pre-hearing procedures for the campus plan, including the Community Liaison Committee, the American University/Neighborhood Partnership, and sessions of the respective Advisory Neighborhood Commissions. The

³ The Commission Chairman authorized the submission of these Proposed Findings of Fact and Conclusions of Law.

Commission agrees that such participation would be helpful in the future and strongly encourages all neighbors and potential parties to do so.” (Ex. 35.)

CONCLUSIONS OF LAW

1. The Commission is authorized under the Zoning Act, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)) to grant campus plan approvals consistent with the requirements set forth in Subtitle X § 101 and Subtitle Z § 302. Pursuant to Subtitle X § 101.9, the Commission shall evaluate an application for further processing of a campus plan as a special exception.
2. In reviewing an application for special exception relief, the Commission’s discretion is “limited to a determination whether the exception sought meets the requirements of the regulation.” (*Glenbrook Road Ass’n v. District of Columbia Board of Zoning Adjustment*, 605A.2d 22, 30 (D.C. 1992).) In this case, the Applicant has the burden of showing that its proposal meets the requirements enumerated in Subtitle X § 101 as well as satisfying the general standard for special exception approval set forth in Subtitle X § 901; and “if the applicant meets its burden the [Commission] ordinarily must grant the application.” (*First Washington Baptist Church v. D.C. Bd. Of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. (1981) (quoting *Stewart v. D.C. Bd. Of Zoning Adjustment*, 305 A. 2d 516, 518 (D.C. 1973))).)
3. Based upon the record before the Commission, the Commission concludes that the Applicant has satisfied all applicable standards set forth in Subtitle X § 101, as well as the general standard for granting a special exception in Subtitle X § 901 that the requested relief for further processing of a campus plan to construct the Meltzer Center and SCAN buildings can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map; and will not tend to adversely affect the use of neighboring property. (FF Nos. 19, 31.)
4. Based on the findings of fact, the Commission concludes that the Applicant has satisfied the burden of proving that the construction and operation of the Meltzer Center and SCAN buildings will satisfy the Subtitle X § 101.2 requirements, as they are not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions. (FF Nos. 19, 30.) The Commission also determines, as required by Subtitle C § 601.6, that the Meltzer Center and SCAN buildings are compliant with the intent of the GAR Regulations. (FF No. 46.)
5. Based on the findings of fact and particularly OP’s report, the Commission concludes that the Application would not be inconsistent with the Comprehensive Plan, including when viewed through a racial equity lens; would not be inconsistent with the Comprehensive Plan Maps; and would further policies of the Citywide Elements and the Rock Creek West Area Element. (FF Nos. 25, 29; *see also* Ex. 14, 20.) The Commission finds that the racial equity analyses provided by OP and the Applicant address the relevant components of the Commission’s Racial Equity Analysis Tool, with respect to this Application. (FF Nos. 26,

29; Ex. 14, 20.) The Commission notes and commends the Applicant's thorough and robust community outreach and engagement efforts. (FF Nos. 11, 53, 54, 77, 84, 85.) Given the limited scope of this Application—the proposed development of athletic and student life uses on a campus—the Commission finds that most Comprehensive Plan policies related to racial equity are irrelevant to the Application, and that consideration of disaggregated race and ethnicity data is irrelevant to the Commission's evaluation of the Application through a racial equity lens. (FF Nos. 26, 29.)

6. The Commission notes that the written and oral testimony of NLC confirmed that it has no objection to the proposed design and construction of the Meltzer Center and SCAN buildings, and its concerns relate to the landscape buffer, the removal of the tennis courts, and potential adverse lighting impacts. The Commission acknowledges NLC's arguments that the Application's proposed landscape buffer is deficient, and that the University has a pattern of failing to comply with landscape buffer requirements of past approvals. The Commission also acknowledges NLC's request that the Commission include a condition of approval in this Order directing AU to work with the University Avenue neighbors collaboratively over the next year to develop a multi-year plan to provide a year-round landscape screen along University Avenue. The Commission finds that the University's hybrid planting approach for the landscaped buffer area adjacent to University Avenue, which was informed by input from the community, will enhance the existing conditions and maximize the infill potential throughout the buffer to provide additional density and visual screening. The Commission concludes that, once it reaches full maturity, this enhanced landscape buffer will further obscure views of the Meltzer Center and SCAN buildings from University Avenue and will mitigate any potential adverse impacts on University Avenue property owners. Accordingly, the Commission does not agree with imposing the condition of approval suggested by NLC. The Commission also notes that the removal of the tennis courts from their current location was identified in the 2021 Campus Plan and is not relevant to the review of this Application. The Commission finds that the Applicant undertook an extensive analysis of the lighting impacts of the Application and that the Applicant has mitigated any potential adverse lighting impacts on neighboring properties. The Commission also notes that the requirements and conditions of an approved Campus Plan expire when the term of the Campus Plan expires. Accordingly, conditions and requirements of previous Campus Plan approvals are not cumulative.
7. The Commission strongly encourages broad participation from neighbors and potential parties in the established neighborhood engagement and pre-hearing procedures for AU campus plans with the Community Liaison Committee, the American University Neighborhood Partnership, and the affected ANCs. The Commission cannot compel or mandate NLC members, other neighbors, or potential parties to participate in the established neighborhood engagement and pre-hearing procedures. However, the Commission believes that such participation will give the University an opportunity to substantively respond to community input regarding campus plan proposals prior to hearings. The Commission asks that NLC members and other neighbors be part of the

Partnership; and asks that the Partnership find ways to make NLC members and other neighbors feel included in its procedures and processes. The Commission wants to ensure that all community members and residents are included in the established neighborhood processes and expects the various community organizations involved to make efforts to bridge gaps when they arise. The Commission looks forward to continued progress on the collaboration between the various community organizations.

8. The Commission recognizes the constructive dialogue that has occurred between the University and residents of the surrounding community in connection with the development and implementation of the 2021 Campus Plan, including this Application. The Commission believes that the adoption of the conditions listed below regarding the project and the construction management plan are appropriate mechanisms to mitigate any adverse impacts of the Application on the neighboring residential properties.

“Great Weight” to the Recommendations of OP

9. Pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163); D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. (*Metropole Condo. Ass’n v. D.C. Bd. Of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
10. OP submitted a written report recommending approval of the further processing Application (Ex. 20.) The Commission finds persuasive, the analyses in OP’s report, and its recommendation that the Commission approve the Application and therefore concurs in that judgment.

“Great Weight” to the Written Reports of the ANC 3D and 3E

11. Pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public. To satisfy this great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole*, 141 A.3d at 1087.) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
12. ANC 3D submitted a written report and provided testimony recommending approval of the Application (Ex. 12, 29, 29A.) The Commission finds persuasive ANC 3D’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

13. ANC 3E submitted a written report recommending approval of the Application (Ex. 31.) The Commission finds persuasive ANC 3E's recommendation that the Commission approve the Application and therefore concurs in that judgment. The Commission also notes the Applicant's commitment to relocate the existing community garden in response to the ANC's concerns.
14. As noted above, ANC 3A did not participate in this proceeding. (FF No. 40.)

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the further processing application, subject to the following guidelines, conditions, and standards:

Project

1. The Alan and Amy Meltzer Center for Athletic Performance ("Meltzer Center") and the Sports Center Annex building (collectively, the "Project") shall be constructed in accordance with the plans prepared by Perkins Eastman, dated April 4, 2023, and included in the record as Ex. 2K1 and 2K2 as supplemented by Ex. 14B-14E.
2. **Prior to the issuance of a certificate of occupancy for the Project**, AU shall provide the Zoning Administrator with evidence that the Project has or will achieve the requisite number of prerequisites and points necessary to secure LEED Gold certification from the U.S. Green Building Council.
3. **Prior to the issuance of a certificate of occupancy for the Project**, AU shall complete the relocation of the existing community garden on the campus to a similarly sized area adjacent to the Katzen Center or other location to be determined by the University in consultation with the AU Neighborhood Partnership.

Construction Management

4. The General Contractor, and all subcontractors, for the Project will follow DDOT truck routes based on the December 2020 DDOT Truck Map brochure.
5. AU, and its general contractor and all subcontractors, will comply with the terms of the Construction Management Plan included in the record as Ex. 2K.

Lighting

6. All exterior lighting for the Project will be consistent with the Lighting Study prepared by Perkins Eastman, dated April 4, 2023, and included in the record as Ex. 2E.
7. All windows on the side of the Meltzer Center facing University Avenue will have automatic shades and all rooms with windows in the Meltzer Center located on the side of

the building that faces University Avenue will have occupancy sensors to ensure lights are turned off when unoccupied.

8. Only lighting that is required for safety and security shall be provided at the Health and Wellness Court, adjacent to the Meltzer Center.

Noise

9. Sound levels generated by mechanical equipment associated with the Project shall not exceed sustained levels of 50 dBA at the residences along University Avenue as detailed in the Noise Study included in the record as Ex. 2F.
10. To mitigate objectionable noise resulting from activities occurring inside the building, construction of the building shall comply with the STC ratings shown in the record as Ex. 2F.
11. No amplified sound shall be permitted at the Health and Wellness Court, adjacent to the Meltzer Center.

Landscape Buffer

12. AU will maintain and enhance the vegetative buffer along University Avenue in accordance with the plans included in the record as part of Exhibit 2K1 as supplemented by Ex. 14B1-14C3.

Building Operations

13. The Meltzer Center and SCAN buildings will be accessible Monday through Sunday, from 6:00 A.M. to 12:00 A.M. After-hours access will be restricted to those with AU card access (expected to be AU Student Athletes, Athletics staff, and custodial staff) only.
14. The Health and Wellness Court, adjacent to the Meltzer Center, will only be accessible during daylight hours.
15. The Health and Wellness Court, adjacent to the Meltzer Center, may be used by members of the adjacent community when it is not scheduled for use by AU students and personnel.

Bicycle Parking

16. The existing long-term bicycle parking storage room and showers/lockers at Cassell Hall will be made available to any of the staff or employees that work at Bender Arena, Meltzer Center, or Sports Center Annex Building. AU will actively promote the availability of these amenities to eligible staff and employees.
17. **Prior to the issuance of a Certificate of Occupancy for the Project**, AU will install 50 short-term bicycle spaces (25 inverted U-racks), adjacent to the Meltzer Center.
18. **Prior to the issuance of a Certificate of Occupancy for the Project**, AU shall provide written evidence to the Zoning Administrator that it has made a financial contribution to

the District Department of Transportation to pay for all costs associated with the expansion of two existing Capital BikeShare stations and the installation of a new 19-dock Capital BikeShare station, as required by Condition 47 of Z.C. Order No. 20-31.

Term and Validity

19. The Application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application for a building permit must be filed as specified in Subtitle Z § 702.2. Construction must begin within three years after the effective date of this Order. (Subtitle Z § 702.3.)


VOTE FINAL ACTION:

On July 6, 2023, upon a motion by Commissioner Imamura, as seconded by Commissioner Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Joseph S. Imamura, Robert E. Miller, Anthony J. Hood and Peter G. May to approve; the third mayoral appointee seat vacant, not voting).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order 20-31B shall become final and effective upon publication in the *District of Columbia Register*; that is, on November 24, 2023.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA B. BARDIN
DIRECTOR
OFFICE OF ZONING

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.