

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA

2 Office of Planning

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9 Zoning Commission

10 Case No. 11-07C American University - Modification
11 of Approved Further Processing Application

12 02/02/15

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16 6:32 p.m. to 8:34 p.m.

17 Monday, February 2, 2015

18

19 Jerrily R. Kress Memorial Hearing Room

20 Judiciary One Building

21 441 4th Street, N.W., Suite 220 South

22 Washington, D.C. 20001

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2 Board Members:

3 ANTHONY HOOD, Chairperson

4 MARCIE COHEN, Vice-Chairperson

5 ROBERT MILLER, Commissioner

6 PETER MAY, Commissioner

7 MR. TURNBULL, Commissioner

8

9 Office of Zoning:

10 SHARON SCHELLIN, Secretary

11

12 Office of Planning:

13 JENNIFER STEINGASSER

14

15 Other:

16 PAUL TUMMONDS

17 DAVID DOWER

18 LINDA ARGO

19 ALMA GATES

20 LARRY JOSEPH

21 TERESA S. GUZMAN

22 DAVID FEHRMANN

23 CHARLES PRIVOT

24 BEJAMIN TESSLER

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P R O C E E D I N G S

CHAIRPERSON HOOD: Okay. Good evening, ladies and gentlemen. This is the Public Hearing of the Zoning Commission for the District of Columbia. Today's date is February 2nd, 2015, and we're located in the Jerrily R. Kress Memorial Hearing Room.

My name is Anthony Hood. Joining me are Vice Chair Cohen, Commissioner Miller, Commissioner May, and Commissioner Turnbull, the Office of Zoning staff, Ms. Sharon Schellin, and I believe -- I'm pretty sure we'll be joined by the Office of Planning Staff, Ms. Steingasser and possibly Mr. Lawson. And possibly the District Department of Transportation.

This proceeding is being recorded by a court reporter. It is also webcast live. Accordingly we must ask you to refrain from any disruptive noises or actions in the hearing room, including the display of any signs or objects. Notice of today's hearing was published in the D.C. Register. Excuse me. And copies of that announcement are available to the left on the wall near the door.

The hearing will be conducted in

1 accordance with provisions of 11-DCMR 3117 as
2 follows; preliminary matters, applicant's case,
3 report of the Office of Planning, the report of
4 other government agencies, the report of the
5 Advisory Neighborhood Commission, organizations
6 and persons in support, organizations and persons
7 in opposition, rebuttal and closing by the
8 applicant.

9 The applicant in this case will have up
10 to -- has up to 16 minutes -- I mean 60 minutes,
11 but they can do it in 15 minutes. Organization,
12 five minutes, individuals, three minutes.

13 All persons appearing before the
14 Commission are to fill out two witness cards.
15 These cards are located to my left on the table
16 near the door.

17 Upon coming forward to speak to the
18 Commission, please give both cards to the reporter
19 sitting to my right before taking a seat at the
20 table. When presenting information to the
21 Commission, please turn on and speak into the
22 microphone, first stating your name and home
23 address. When you are finished speaking please
24 turn your microphone off so that your microphone
25 is no longer picking up sound or background noise.

1 The decision of the Commission in this
2 case must be based exclusively on the public
3 record. To avoid any appearance to the contrary
4 the Commission requests that persons present not
5 engage the members of the Commission in
6 conversation during any recess or at any time. In
7 addition there should be no direct contact
8 whatsoever with a commissioner concerning this
9 matter, be it written, electronic, or by
10 telephone.

11 Please turn off all beepers and cell
12 phones at this time so not to disrupt these
13 proceedings. Would all individuals wishing to
14 testify please rise to take the oath? Ms.
15 Schellin, would you please administer the oath?

16 MS. SCHELLIN: Yes. Please raise your
17 right hand.

18 (Oath administered to the participants.)

19 MS. SCHELLIN: Thank you.

20 CHAIRPERSON HOOD: Okay. We've been
21 joined by Ms. Steingasser. We've already
22 announced that and Mr. Lawson tonight too, or just
23 you?

24 MS. STEINGASSER: No, sir.

25 CHAIRPERSON HOOD: Okay. So Ms.

1 Steingasser will be joining us from Office of
2 Planning.

3 Okay, Ms. Schellin, do we have any
4 preliminary matters?

5 MS. SCHELLIN: Yes, sir. We do have a
6 request for party status in support from the
7 Westover Place Homes Incorporated. They are being
8 represented by Mr. Joseph. That's that Exhibit
9 14.

10 CHAIRPERSON HOOD: Anything else? That's
11 it?

12 MS. SCHELLIN: We've received the
13 affidavit of maintenance that is in order and the
14 applicant is not proffering any experts, so that's
15 it.

16 CHAIRPERSON HOOD: Okay. Thank you, Ms.
17 Schellin. Commissioners, we do have as stated by
18 Ms. Schellin, excuse me, Exhibit 14, which is
19 request for party status and support. What is
20 your pleasure?

21 MR. TURNBULL: I have no objections, Mr.
22 Chair.

23 CHAIRPERSON HOOD: Okay. No objections.
24 Is that the general consensus?

25 MS. COHEN: Yes.

1 CHAIRPERSON HOOD: Okay. Mr. Tummonds,
2 do you have any objections?

3 MR. TUMMONDS: No objections.

4 CHAIRPERSON HOOD: Okay. All right. So
5 let me see what's the name of the party. What's
6 the name of the party?

7 MS. SCHELLIN: Westover Place.

8 CHAIRPERSON HOOD: Westover. I'm sorry.
9 Yeah, Westover Place Homes Corporation will be a
10 party in support.

11 Do we have anything else, Ms. Schellin?

12 MS. SCHELLIN: No, sir.

13 CHAIRPERSON HOOD: Okay. Mr. Tummonds,
14 you may begin.

15 MR. TUMMONDS: Great. Good evening, Mr.
16 Chairman and Members of the Commission. I'm Paul
17 Tummonds of the Goulston & Storrs.

18 On behalf of American University we are
19 here tonight to present an application which seeks
20 your approval of minimal modifications to the
21 plans for the American University East Campus,
22 which were approved by the Zoning Commission in
23 Zoning Commission case number 11-07.

24 The Zoning Administrator and the Zoning
25 Review Branch of DCRA have determined that the

1 plans we are presenting to you this evening are
2 consistent with your approval of the AU East
3 Campus.

4 David Dower, Assistant Vice President for
5 Planning and Project Management AU will walk you
6 through these modifications and will address other
7 issues that have been raised by ANC 3D, Westover
8 Place residents, and the community regarding the
9 development of these campus. In addition, Linda
10 Argo, Assistant Vice President of External
11 Relations and Auxiliary Services at AU is also
12 here this evening to address any other questions
13 that may arise.

14 We note that the Office of Planning, the
15 Department of Transportation, and ANC 3D have
16 submitted reports in support of this application.
17 The Westover Place Homes Corporation, a party in
18 opposition to the original case, has requested
19 party status once again, but this time in support
20 of this application. In addition, we note that
21 the record includes over a dozen letters of
22 support from Westover Place residents.

23 As noted, we have a very simple case to
24 present to you this evening. We'll do it very
25 quickly and I will now have Mr. Dower present his

1 testimony.

2 MR. DOWER: Thank you, Paul. Mr.
3 Chairman, Commissioners, thank you for having me
4 this evening. I'd like to start by orienting you
5 to the site.

6 Up on the screen right now is a site plan
7 for the development of East Campus. It has two
8 accesses from public roads to the site, one on
9 Nebraska Avenue, which is at the top of the
10 screen, and one on New Mexico Avenue on the left
11 side of the screen. Massachusetts Avenue is to
12 the right-hand side, and Westover Place is to the
13 bottom of the drawing.

14 The access to the garage that we were
15 speaking to tonight is actually located off of New
16 Mexico Avenue by an existing curb cut.

17 Included in the underground parking
18 garage are 152 spaces distributed across two
19 levels, on Parking Level P1 and P2, as illustrated
20 in the two drawings provided.

21 The garage is accessed by a ramp at
22 Mexico Avenue, it has a 10 foot, six foot
23 clearance for trucks and vehicles to get in, and
24 goes down at an 13 and an eight percent slope to
25 get to the loading and parking levels of the

1 garage.

2 The garage essentially separates the
3 loading area from the parking area with the
4 loading area being to what is actually the west of
5 the ramp, or the top of the drawing, and the
6 parking which is to the east of the ramp, or the
7 bottom portion of the drawing. And this is
8 consistent on both levels of parking.

9 The parking garage is laid out on two
10 levels to accommodate the 150 spaces. As we begin
11 to get into the design of the building, structural
12 limitations, mechanical systems, and the like,
13 made it impossible for us to locate all of the
14 parking on one level and it's what drove us to two
15 levels of parking.

16 I put on the drawing here a diagrammatic
17 section through the garage so you can understand
18 what is going on here. And in fact our excavation
19 is only seven foot, two deeper than what a one-
20 level garage would be anyway, simply because we
21 had to get the loading and service in, and have
22 the headroom clearance for those vehicles to get
23 in it. And that is basically the delta between
24 the depth of the P2 level, which is 23 feet, 10
25 inches, and the loading level which is at 16 feet,

1 eight inches. So it's again, seven foot, two
2 inches approximately delta between those two.

3 Elevators from all of the buildings above
4 the parking garage, the lobbies land at the
5 parking level. Either the loading level or the P1
6 level. But they do not go down to the P2 level.
7 Only one set of elevators actually go down to that
8 level.

9 Included in our minor modification was a
10 prohibition of charter buses and motor coaches
11 from the site. We've had further discussions with
12 the ANC and they have proposed additional language
13 that we are okay with. Essentially what's
14 happening is we want to be able to preserve the
15 right to be able to bring AU shuttles, which is
16 basically shuttling students from all around
17 campus, including to Tenley Town, back and forth,
18 on to the site. The drawing that's up right now
19 illustrates how that would happen that these
20 shuttles would come on to the site, pick up the
21 students, leave the site, and continue on their
22 way. There's no parking of vehicles proposed on
23 this site at all.

24 In the course of conversations with the
25 ANC and the communities, several questions have

1 come up relative to what the actual buildings
2 would be. What you see here is Exhibit 602, where
3 I've overlaid where we've landed with the final
4 numbers. And essentially what we have is
5 accounting just for buildings 1, 2, 3, 4, and 6.
6 We are not currently seeking a building permit for
7 Building 5. When we compare the actual square
8 footage to those included in Exhibit 602, we end
9 up with a square foot difference of about 4,984
10 square feet. Or about 2.1 percent variance in the
11 gross floor area from again where we are now to
12 what was included within Exhibit 602.

13 Much of that square footage is
14 attributable to areas that were not tabulated in
15 the project data. They include entry porticos,
16 roof structures -- oh, pardon me. Roof
17 structures. The single biggest one, or the two
18 single biggest ones are actually the access to the
19 sites, to remind you that from Nebraska Avenue we
20 actually have a road that comes in, goes in
21 through the building, so there's a port hole cut
22 through the building, to access the site.

23 And then on New Mexico Avenue we have the
24 ramp that enters in and then begins down to get
25 down to the basement level. Those two areas were

1 not called out as a program element, and the gross
2 full area is simply not calculated within it.
3 Those are in large part the major driver to the
4 4,000 square feet.

5 There has been -- we are close in all
6 areas in terms of the height of the buildings.
7 The ones in questions or the ones that people had
8 questions with were really the buffer buildings,
9 Building 6 and 4 on the drawing. We have a
10 uniform height of 34 feet across all buildings.
11 They're all on one level for accessibility
12 reasons. They're all the same. It's academic
13 offices and classrooms and administrative offices.
14 So it's just one large building.

15 The difference is about two feet on one
16 side, which is Building 6, two feet shorter. But
17 we're actually a foot taller on Building 4 on the
18 other side, and it's simply a matter of striking a
19 straight line across and making the buildings
20 uniform in terms of height.

21 MR. TUMMONDS: Mr. Dower, and has the
22 Zoning Administrator's Office, the Zoning Review
23 Bench, approved the building permit application
24 for the above grade construction of these campus
25 buildings?

1 MR. DOWER: Yes, he has. We've submitted
2 the plans and all but one department, actually
3 it's not even a department of DCRA, has signed off
4 on those plans.

5 MR. TUMMONDS: All right. And the
6 materials that we're presenting this evening, are
7 those the same materials that you presented to the
8 ANC at their January public meeting?

9 MR. DOWER: That is correct. Yes.

10 MR. TUMMONDS: Great. Thank you.

11 Since the Zoning Commission's approval of
12 the campus plan, AU has been actively moving
13 forward with the construction of residential beds
14 as required by the Zoning Commission. Cassell
15 Hall, formerly known as North Hall, and the
16 additions to the Nebraska Hall dormitory were
17 completed and occupied by the fall semester of
18 2013.

19 Since September of 2013 AU has been
20 diligently preparing and processing the necessary
21 permits to construct the East Campus buildings so
22 that they are open and ready to provide rooms for
23 students in the fall of 2016. Unfortunately the
24 permitting process took significantly longer than
25 anticipated and construction activity has been

1 severely impacted due to numerous weather delays
2 this fall and winter.

3 Condition number 41C of the further
4 processing approval limited construction hours to
5 Monday through Friday from 7:30 to 4:00 while
6 allowing for interior work to occur outside of
7 these hours.

8 AU has begun discussions with the
9 Westover Place representatives and representatives
10 of ANC 3D regarding extending those permitted
11 construction hours to be more consistent with the
12 general limitations of construction that are
13 permitted by the D.C. Building Code.

14 While we're not here tonight to talk to
15 you and request that a modification be made to
16 Condition Number 41C, we want to put it -- make
17 the Zoning Commission aware that we are working
18 with the community, and we are hopeful that we
19 will be able to come back in the future for a
20 minor modification of those hours.

21 As you know, a dormitory building is
22 different than a normal residential building. If
23 those dormitory beds are not available at August
24 15th of 2016, those students will have to find
25 somewhere else to live. That decision for AU

1 needs to be made significantly earlier than that.
2 So with that in mind we know that it's very
3 important that we deliver this building by the
4 middle of August, 2016. So we'll hopefully be
5 back to you soon on that issue of the additional
6 construction hours.

7 That completes our testimony this
8 evening. As I said, there are not a lot of
9 significant issues to address here. We're able to
10 answer any questions that you may have.

11 CHAIRPERSON HOOD: Okay. Thank you very
12 much for that presentation. Let's see if there
13 are any questions up here. Vice Chair Cohen.

14 MS. COHEN: Thank you, Mr. Chairman. Are
15 you aware of a number of letters we got in today,
16 after 12:00 I believe it was, letters of
17 opposition. Have you seen them?

18 MR. TUMMONDS: I have seen a few of them.
19 They seem to be very similar in nature.

20 MS. COHEN: Yeah.

21 MR. TUMMONDS: And I think that obviously
22 Mr. Joseph and the Westover Place Homes
23 Corporation Board can talk to you as well about
24 the process that they have undertaken. As a Board
25 they have agreed to support this project. I think

1 when you look at the letters of support there's
2 lots of discussions about how this project, they
3 believe, has gone through the review process. It
4 is important that this construction schedule be
5 kept on pace. That AU be allowed to continue to
6 move forward.

7 With regards to those concerns about --
8 we know that there was a lot of concerns about
9 this underground --

10 MS. COHEN: Yeah.

11 MR. TUMMONDS: -- storm water management.
12 I think as we noted in our initial submission,
13 this is an interesting case in that normally when
14 a case is brought before you and issues of
15 underground storm water, they have not gone
16 through a review process by the District of
17 Columbia Department of Consumer Regulatory
18 Affairs, DDOE, D.C. Water. This is a case where
19 that has occurred. And the process by which AU is
20 dealing with the dewatering permit, dealing with
21 those issues, has been reviewed and approved by
22 all those agencies, and they have issued the
23 relevant permits to allow this to move forward.

24 CHAIRPERSON HOOD: Can I just piggyback
25 on that?

1 MS. COHEN: Sure.

2 CHAIRPERSON HOOD: One of the things that
3 concern me about this form letter, because that's
4 what it is, it says, "Please complete this by
5 February 2nd, noon." I've been reading just that
6 little part. I don't know whether somebody passed
7 this out and asked them to complete it and turn it
8 in, or whether they wanted to be in. But I can
9 ask, I'm sure some of the residents are here. But
10 at the bottom of it, it says, please complete this
11 by February 2nd, noon. So I'm trying to figure
12 out whether this is a last minute development or
13 what.

14 MR. TUMMONDS: I would say that this is
15 not a last minute -- the discussions about the
16 concerns of certain Westover Place residents have
17 been raised numerous times over -- and then maybe
18 I'll point to Ms. Argo who has been the person who
19 has gone to these various meetings, and talk about
20 the instances, the times in which these issues
21 have been raised.

22 MS. ARGO: We've had -- in fact I don't
23 have the piece of paper in front of me but we've
24 had nine -- I do have it in front of me. We've
25 had at least nine project update meetings to date

1 that have been provide to ANC, 3D, to residents of
2 Westover Place, and to the neighborhood at large.
3 So, in fact we first talked about needing to go to
4 the second level garage construction over a year
5 ago at the update meeting that we gave to the
6 community. We've had numerous conversations and
7 presentations. We've heard about concerns about
8 ground water and have tried to respond to those.
9 As they've come up, they are not new.

10 MR. TUMMONDS: No, and I think to give --

11 CHAIRPERSON HOOD: Ms. Argo, I'm really
12 confused with that because I'm trying to figure
13 out how we got here. Well, I know how we got
14 here. But if that discussion was being had with
15 the community, I don't know if the opposition
16 would have been there like it was the way I got
17 it. And maybe I misread it because I do make
18 mistakes. I make a lot of them.

19 But the way I got it was that part of the
20 problem was the way it was presented was like it
21 was trying to be treated as a consent calendar
22 item, if I'm going back too far.

23 But it looks as though the community
24 didn't have any input. I may be missing it,
25 because I do miss some things, but I do read.

1 MR. TUMMONDS: Sure. I mean, I think you
2 know, to give you a sense of the timing. So the
3 first project meeting update was held on May 15th,
4 2014, April 27th, 2014, May 15th, 2014. So these
5 meetings took place --

6 CHAIRPERSON HOOD: After you filed the
7 consent calendar?

8 MR. TUMMONDS: No, no, no.

9 CHAIRPERSON HOOD: Oh, before.

10 MR. TUMMONDS: This was six months. We
11 filed the consent calendar case on November 20th,
12 2014. These meetings occurred six months prior to
13 that.

14 CHAIRPERSON HOOD: Okay. I don't want to
15 take over the vice chair. I'll finish my
16 questions.

17 MR. TUMMONDS: Okay.

18 CHAIRPERSON HOOD: I'm going to go back
19 to that. Okay.

20 MS. COHEN: Okay. Can you also confirm
21 to me that there's still loading docks in the
22 garage?

23 MR. DOWER: Yes, there are loading docks
24 in the garage. It's on the upper portion of the
25 top portion of the drawing that you see there.

1 MS. COHEN: So they haven't changed?

2 MR. DOWER: No, hasn't changed.

3 MS. COHEN: Okay. There's --

4 MR. DOWER: No, and actually the layout
5 of the garage has not changed from the original
6 submission. The only thing that's changed is our
7 need to go to two levels to get to 150 spaces.

8 MS. COHEN: Okay. Thank you. Those were
9 my questions.

10 CHAIRPERSON HOOD: Okay. Anybody else?
11 Any questions over here?

12 MR. TURNBULL: Yeah. Mr. Chair --

13 CHAIRPERSON HOOD: Commissioner May.

14 MR. MAY: Oh, I'm sorry.

15 MR. TURNBULL: Yeah, just continuing on
16 what one of the comments from the form letters.
17 And I'm quite happy with, or satisfied with the
18 process going on with the environment. And the
19 beginning of their form letter talks about -- and
20 maybe you can submit it fairly quickly -- the two-
21 level garage will not allow emergency vehicles to
22 enter, which seems strange, but could you -- what
23 they're talking about is, they were concerned
24 about noise and having to have surface access for
25 emergency vehicles and on to -- into the buildings

1 rather than going underground.

2 MR. DOWER: So the clear height getting
3 into the garage is 10 foot, six inches. Depending
4 on the size of the response vehicle it would
5 dictate whether or not they could actually get
6 into the garage.

7 MR. TURNBULL: But an ambulance could get
8 down.

9 MR. DOWER: Oh, yes, absolutely. Yes.

10 MR. TURNBULL: A fire truck?

11 MR. TUMMONDS: No, but I don't think fire
12 trucks typically go down to --

13 MR. TURNBULL: I wouldn't think so
14 either. I'm thinking mainly ambulances and that.

15 MR. TUMMONDS: Yes, they can.

16 MR. TURNBULL: They can go down. Okay.
17 Thank you.

18 CHAIRPERSON HOOD: Okay. Commissioner
19 May?

20 MR. MAY: Yeah, so now I'm confused. Mr.
21 Cohen asked about loading, and then you just told
22 us that the clear height for getting into the
23 garage is 10 feet.

24 MR. DOWER: Ten foot six. Ten foot six.

25 MR. MAY: Well, okay. Ten foot six.

1 MR. DOWER: Yes.

2 MR. MAY: But you're going to have
3 loading in the garage?

4 MR. DOWER: If you --

5 MR. MAY: How do you do that with a ten
6 six clearance?

7 MR. DOWER: That's the size of our
8 vehicles to get down --

9 MR. MAY: Oh, so the only vehicles that
10 are going to be coming in are no more than ten
11 feet, six inches?

12 MR. DOWER: Yes. Yes, sorry. Yes.

13 MR. MAY: So you don't have regular
14 trucks, you have --

15 MR. DOWER: No.

16 MR. MAY: -- mini trucks.

17 MR. DOWER: No. Yes, we have a central
18 loading facility on campus.

19 MR. MAY: Right. Okay.

20 MR. TUMMONDS: There's no food service on
21 these campus.

22 MR. MAY: I don't know what's going in or
23 out, I'm just --

24 MR. DOWER: Okay. I'm sorry.

25 MR. MAY: You know, looking at the

1 original drawings showed a very clear loading dock
2 area and turn around, and it looked like a normal
3 loading dock from my perspective and what you're
4 describing is something that's much different, and
5 that's fine if it meets your needs and that's the
6 only thing that going to be in. There aren't
7 going to be any other larger trucks that will be
8 making deliveries off the street or anything like
9 that?

10 MR. TUMMONDS: No, we receive those on
11 main campus, actually.

12 MR. MAY: Yeah, okay. And Mr. Tummonds,
13 at one point you were talking about storm water
14 underground, and then, I mean, did you just mean
15 to say groundwater? Because I --

16 MR. TUMMONDS: I'm sorry, yes. I --

17 MR. MAY: Okay. Again, I got a little
18 bit confused about that because I didn't think we
19 had a storm water issue.

20 And then the last thing is just to
21 confirm, in some of the letters that we received
22 there were concerns about changes to the building
23 on the above ground. And if you summarize that,
24 you're a foot or two -- you're a foot lower on one
25 building and two feet higher on another, or vice-

1 versa. What was it again?

2 MR. DOWER: Okay. So in terms of the
3 height I will just go building by building.

4 Building -- so what was approved as part
5 of Exhibit 602 was a plus or minus for each of the
6 buildings. So what I will give you is the, what
7 was originally approved and where we are right
8 now.

9 So Building No. 1, which is the one on
10 the top part of the page was plus or minus 64
11 feet. We are at 65 feet right now. Building No.
12 2, which is parallel to New Mexico, it is a five
13 story building. It was plus or minus 54 feet. We
14 are at 55 feet. Building 3, which is a five story
15 building, we're approved for 54 feet. We are at
16 55 feet, plus or minus. Building 4, is a two
17 story building. It was approved at plus or minus
18 32 feet. We are at 33 feet on that building. And
19 Building 6, which is essentially the same
20 building, has two stories, was approved for 35
21 feet plus or minus, we are at 33 feet on that
22 building from a height perspective.

23 From a gross floor area perspective --

24 MR. MAY: That's okay. I understood the
25 GFA.

1 MR. DOWER: Oh, okay.

2 MR. MAY: It was the height differences.

3 MR. DOWER: Okay.

4 MR. TUMMONDS: And I think the reason why
5 we are presenting that as well is that, you know,
6 these were issues that had been raised by ANC 3D.
7 I think that there was some question about whether
8 or not those, what they call the buffer building,
9 Building 4, had been reduced too much, so that in
10 previous interactions we had looked at wanting to
11 minimize the visual impact. But then there was
12 the concern about making sure they kept the noise
13 buffer. So then we are at 33 feet, so we think
14 that is entirely consistent with the two stories,
15 the plus or minus building height that the Zoning
16 Commission approved. And again, the Zoning
17 Administrator has signed off on that as well.

18 MR. MAY: Okay. And then the last
19 question I have is, that same drawing that is up
20 on the screen there shows a previous building
21 outline. That was what was approved; the approved
22 building outline? Or was that an earlier
23 reiteration of the campus plan?

24 MR. DOWER: That was an earlier iteration
25 of the campus plan.

1 MR. MAY: Okay.

2 MR. DOWER: Yeah.

3 MR. MAY: Because I know things moved
4 around. All right. Thank you.

5 CHAIRPERSON HOOD: Commissioner Miller?

6 MR. MILLER: Thank you, Mr. Chairman. I
7 wanted to thank the applicant, American University
8 representatives for working with -- as a result of
9 our scheduling a public hearing on this case,
10 working with ANC 3D and with the Westover Place
11 Home Corporation to garner their support. And
12 thank you for agreeing to their strengthened
13 language on the prohibition on the motor coaches
14 and bus language. I appreciate that.

15 I just had one question, which was
16 referenced in the ANC resolution or letter dated
17 January 23rd, which was regarding the underground
18 water flow, and would AU be responsible for
19 repairing any damage related to that underground
20 water flow. There's an existing condition in that
21 11-07 order which requires AU to repair damage to
22 adjacent properties as a result of any
23 construction work.

24 Do you intend to -- do you agree with the
25 view of ANC 3D that the University will be

1 responsible for repairing any damage related to
2 underground water flow?

3 MR. DOWER: Yes.

4 MR. MILLER: Yes? Okay. Thank you.
5 That's very helpful.

6 CHAIRPERSON HOOD: You know, I think I'm
7 going to change my line of questioning. I don't
8 want to -- we all know really how we got here and
9 I think it was because of the input that was not
10 being had. But we're here. Looks like, I think,
11 the request of having a hearing or some mechanism
12 for clarification. And I would agree, we're
13 working on that here on the Commission.

14 I just had a problem of how we were going
15 back and forth. First it showed up as an appeal,
16 then it -- but I think there is a mechanism, I
17 think especially through ZR, at least I hope we're
18 doing this, would have asked us if there is a way
19 to clarify things that get missed, because that's
20 what happened here. We need to have an easier
21 way. I'm not going to -- I was going to go down
22 that line of questioning because I recall that
23 there's another way, having sat on the BZA case,
24 and then here, because I was very -- I had a issue
25 with where it was placed and how come the

1 Commission -- because I think four of us are still
2 here, or whatever the case is, or three of us.
3 And I thought it should have come back to this
4 Board for any clarification.

5 MR. TUMMONDS: And I think this is an
6 aside too, but in the ZRR we have this kind of
7 vaguery of the system that appeals of a decision
8 of the Zoning Administrator always go back to the
9 BZA, even if the underlying case, in this case it
10 was the Zoning Commission. It would have been
11 very easy because the Zoning Commission here are
12 acting as kind of the BZA with the special
13 exception approval, if it would have come straight
14 back.

15 Unfortunately that right -- the
16 legislative authority to hear appeals of the
17 Zoning Administrator only lies within the BZA.

18 CHAIRPERSON HOOD: Well, I'm hoping that
19 we changed it. I've got to remember -- help me
20 remember that.

21 MR. TUMMONDS: Absolutely.

22 CHAIRPERSON HOOD: Because that was one
23 of the things that we have had conversations with
24 in the past. It needs to come back to this board.

25 MR. TUMMONDS: Absolutely.

1 CHAIRPERSON HOOD: Okay. All right. I'm
2 not going to go down that road. It looks like
3 everything is, with the exception of a few letters
4 that we have, and I'm interested in hearing what
5 the concerns are there.

6 Any other questions up here? Okay, not
7 seeing any, do we have any cross-examination from
8 the ANC? Any cross?

9 Okay, Ms. Gates.

10 MS. GATES: Good evening, Chairman Hood.
11 I'm Alma Gates from ANC 3D.

12 I wanted to express a little concern I
13 have from what I've just heard, and make sure that
14 something doesn't slide in tonight that really is
15 not part of this case. The height of the buffer
16 buildings, as well as the hours of operation.
17 Both of those are separate matters. They were
18 raised at our ANC meeting. We did not take a vote
19 on this, we did not really consider it. So I just
20 want to be clear that the ANC has made no decision
21 on this. We have a meeting --

22 CHAIRPERSON HOOD: So that's a question
23 to -- because this is cross. So in that case
24 we're going to phrase it a question to Ms. Argo or
25 Mr. Tummonds, do they recall the ANC taking a

1 position on that, or was that even presented to
2 the ANC?

3 MS. GATES: No, no, I understand what
4 you're saying. I'm sorry. I just wanted to make
5 sure that we were clear on that.

6 CHAIRPERSON HOOD: But I want you to ask
7 them the question so they can answer it.

8 MS. GATES: Mr. Tummonds, thank you. Did
9 the ANC make any determination on -- oh, excuse
10 me. You were not there.

11 Did the ANC make any determination on
12 either the hours of operation or the height of the
13 buffer buildings at their meeting?

14 MS. ARGO: No.

15 MS. GATES: Okay. Were shuttle buses
16 ever anticipated on the East Campus in the
17 original plan?

18 MS. ARGO: I don't recall a particular
19 discussion about shuttle buses in the original
20 plan, but they were never disallowed either. I
21 think there was always an assumption on the part
22 of AU, since we will have close to 600 students on
23 that campus, that we would allow those students to
24 access the AU shuttle bus to get to different
25 campuses and to get to the metro stop.

1 MS. GATES: But wasn't the initial plan
2 that you would maintain the current AU bus stop on
3 Nebraska Avenue?

4 MS. ARGO: I don't recall that.

5 MS. GATES: Okay. And isn't the reason
6 ground water came up in this case initially
7 because high levels of mercury were found and it
8 had to be referred back to the Army Corps of
9 Engineers for consideration.

10 MR. TUMMONDS: Mr. Dower. Or, did you
11 want to say here?

12 MS. ARGO: Yeah, I can handle that. I
13 mean, the issues that have to do -- there were
14 issues about ground water and an initial anomalous
15 reading of mercury on the campus, but it has
16 nothing to do with the issues that I understand
17 that are now being raised that have to do with
18 groundwater flow as a result -- the neighbors are
19 raising as ground water flow as a result of the
20 additional construction to seven feet, you know,
21 an additional seven feet of construction which had
22 nothing to do with the initial -- with the
23 concerns about mercury.

24 What the mercury concerns had to do with
25 contamination and neighbors' concerns about that,

1 what we're talking about now is discharge and the
2 flow of ground water, the assumption that's being
3 made by some that the ground water could shift
4 somehow and there could be damage to adjacent
5 homes because of the additional seven feet of
6 construction.

7 And actually we knew that we were going
8 to -- and David could talk about this. We knew
9 that we were going to -- we encountered ground
10 water at 13 feet. If that's correct. So we were
11 going to encounter ground water in this excavation
12 whether it was one level or two.

13 So the contamination issue, and it was
14 not referred back to the army -- the neighbors
15 took it to the -- or the ANC took it the Corps of
16 Engineers, and the Corps of Engineers has a
17 separate process for dealing with this.

18 MS. GATES: And wasn't it taken to the
19 Corps because of the World War I munitions
20 activities that took place at AU? That is not
21 part of this case, however --

22 MS. ARGO: It is not part of this case.

23 MS. GATES: But you've taken my question
24 way beyond the answer that I was looking for.
25 Thank you.

1 But isn't the consideration of the
2 mercury issue, hasn't that put your schedule
3 behind where you should be today?

4 MS. ARGO: Yeah, David is probably better
5 qualified to answer that.

6 MS. GATES: It's yes or no. Yes or no?

7 MS. ARGO: Yes, because the --

8 MS. GATES: Thank you.

9 MS. ARGO: The activities of DDOE --

10 MS. GATES: Thank you.

11 MS. ARGO: -- in dealing with that --

12 MS. GATES: Thank you.

13 MS. ARGO: -- put us behind in our
14 initial excavation work.

15 MS. GATES: And, Mr. Dower, now I'd like
16 to turn to the loading dock for a minute. How
17 many student beds do you anticipate on the East
18 Campus?

19 MR. DOWER: Five hundred and ninety.

20 MS. GATES: And so you will be
21 transporting all the equipment, 590 beds, all the
22 furniture, et cetera, across Nebraska Avenue in
23 small trucks, rather than using your internal
24 loading dock?

25 MR. DOWER: No, we're actually, when we

1 build the building, before we open it, we will
2 load all the furniture in the building. It's left
3 there permanently. We don't move furniture back
4 and forth.

5 MS. GATES: How does the furniture get
6 there if it isn't delivered to the loading dock?

7 MR. TUMMONDS: I think the intention for
8 the loading dock is to be, once the buildings are
9 up and operational. While the initial materials
10 are delivered before all the kids move in, I think
11 we fully expect that they may come in off sort of
12 truly just as part of the construction activities
13 that are occurring. But as there will not be
14 move-in/move-outs every year where people take the
15 beds, take the beds --

16 MS. GATES: That's not what I'm talking
17 about. What I'm talking about is large piece of
18 equipment that will be necessary to get the East
19 Campus operational, the beds, the furniture for
20 the students, all the equipment that goes into
21 those buildings. You've just told us your loading
22 dock is not adequate.

23 MR. TUMMONDS: Yes, but -- no, but I
24 think what we're saying is, we envisioned that as
25 being part of the construction activity on the

1 site, not the ongoing operations.

2 MS. GATES: Okay. Thank you. I think
3 that's -- those are my questions.

4 CHAIRPERSON HOOD: Okay. Thank you.
5 Okay.

6 MR. MAY: Mr. Chairman, could I ask a
7 follow-up?

8 CHAIRPERSON HOOD: Sure.

9 MR. MAY: Of the applicant?

10 CHAIRPERSON HOOD: Sure.

11 MR. MAY: I just want to clarify with
12 regard to the other changes that Ms. Gates was
13 concerned about, as I understood -- what I
14 understood you to say was that you would be coming
15 back with a minor modification having to do with
16 the work hours.

17 MR. DOWER: Right.

18 MR. MAY: And that the height issue, you
19 consider that to be within the bounds of the order
20 and that the Zoning Administrator has already
21 approved that as being within the bounds of the
22 order.

23 MR. TUMMONDS: That is correct.

24 MR. DOWER: Correct.

25 CHAIRPERSON HOOD: We don't need to

1 clarify any of that, do we?

2 MR. TUMMONDS: We are here tonight so
3 that we hopefully will not be back here again. If
4 there --

5 CHAIRPERSON HOOD: I'm talking about the
6 other issues that -- well, let me now --

7 MR. TUMMONDS: Yeah. I mean, I think
8 what we want to make sure is that there will not
9 be an appeal of the Zoning Administrator's
10 approval of the building permit. We want to avoid
11 having to go through this process again, so that's
12 why we presented that information to you this
13 evening. We presented that information to the ANC
14 knowing that they had raised these questions.

15 CHAIRPERSON HOOD: Okay. Okay. Let's go
16 to the party in support. So you have any
17 questions? Any cross-examination?

18 MR. JOSEPH: No questions on cross-
19 examination, Mr. Chairman.

20 CHAIRPERSON HOOD: Okay. Thank you.

21 Okay. Let's go to the Office of
22 Planning's report. Ms. Steingasser.

23 MS. STEINGASSER: I'll be very quick,
24 Chairman and Commissioners. The Office of
25 Planning has no objections to the modifications as

1 requested.

2 CHAIRPERSON HOOD: Okay. And I'm going
3 to thank the Office of Planning because they
4 really kept their report very focused, and I was
5 actually going to use the report as we were moving
6 forward. But I really appreciate what was
7 submitted. It kept us focused on exactly what the
8 issues are.

9 Any questions of Office of Planning?

10 Okay. We do have a District Department
11 of Transportation, which basically there were no
12 objections also. Did I miss any other reports?

13 Okay. Not seeing any. Okay. That was
14 Exhibit 17.

15 Okay. Let's now go to the ANC's report.
16 Ms. Gates, ANC 3D.

17 MS. GATES: Good evening, Members of the
18 Zoning Commission. I am Alma Gates, Secretary of
19 Advisory Neighborhood Commission ANC 3D, and have
20 been designated by the Commission to testify in
21 this case.

22 American University has requested that
23 the Zoning Commission review and approve a
24 modification of an approved campus plan further
25 processing for a two story underground parking

1 garage on the East Campus. This modification
2 request is before you because ANC 3D filed a
3 challenge with the Board of Zoning Adjustment of
4 the July 2014 decision by the D.C. Zoning
5 Administrator to issue a foundation to grade
6 building permit.

7 That permit allowed excavation of the two
8 story underground parking garage despite the fact
9 that plans submitted by AU and approved by the
10 Zoning Commission specified the garage would be
11 only one story.

12 The Zoning Administrator based his
13 decision to issue the permit on the rationale that
14 plans submitted by AU were for illustrative
15 purposes only, and therefore not binding.

16 AU's original plans also included a bus
17 turn around in the East Campus underground parking
18 garage. AU has now indicate that engineering
19 issues make an internal underground bus turn
20 around unfeasible. AU filed this modification
21 with the Zoning Commission on November 20th, just
22 two days after the BZA hearing on ANC 3D's appeal
23 of the ZA's decision but prior to a decision being
24 issued in the case.

25 Since ANC 3D raised questions about the

1 two story garage, AU has consistently said, even
2 in its filing in this case, that AU's new building
3 plans were consistent with the campus plan.
4 Application and further processing approved by the
5 Zoning Commission.

6 ANC 3D initiated the challenge to the BZA
7 because we do not agree. When the Zoning
8 Commission met on December 8th, AU requested that
9 you act that night to approve this modification
10 without a hearing. We are grateful to the Zoning
11 Commission for providing time for ANC 3D to review
12 and assess this modification application. ANC 3D
13 finds the public interest has been served by
14 ensuring time was made available to obtain public
15 input and offers a formal recommendation to the
16 Zoning Commission based on the standards outlined
17 in Section 210 of the D.C. Zoning Regulations.

18 ANC 3D actions. At its regularly
19 scheduled meeting on January 14th, 2015, ANC 3D
20 voted eight to zero to support with conditions
21 AU's application for a modification to the
22 approved campus plan further processing. AU
23 proposed for consideration, the following single
24 edition condition, number 42 to the Zoning
25 Commission order number 1107.

1 AU shall not allow any charter buses or
2 motor coaches to enter the East Campus property,
3 including the surface parking lot.

4 However ANC 3D concludes that the
5 language of proposed condition number 42 is open-
6 ended and ambiguous and in need of additional
7 specificity to ensure that the intent of the motor
8 coach and charter bus restrictions are clear and
9 fully reflect the intent of AU as stated to the
10 ANC at its January meeting. Therefore, ANC 3D
11 suggests the following language for review in
12 consideration by the Zoning Commission in this
13 case.

14 AU shall not allow any charter buses or
15 motor coaches, defined by AU as large-capacity
16 buses that transport visitors to campus and
17 excluding AU owned and operated shuttle buses to
18 enter the East Campus property, including the
19 surface parking lot, and shall not allow any
20 loading or unloading of buses or motor coaches on
21 public streets, including but not limited to New
22 Mexico, Nebraska, or Massachusetts Avenues. And
23 AU shall require all charter buses or motor
24 coaches defined by AU as large capacity buses that
25 transport visitors to campus and excluding AU

1 owned and operated shuttle buses to load, unload,
2 and park at the AU transportation center on the
3 main campus.

4 ANC 3D believes this specificity
5 regarding charter buses and motor coaches is
6 especially important given that D.C. regulations
7 would include AU shuttle buses within the
8 definition of a charter bus or motor coach.
9 Additionally AU advised ANC 3D at its January
10 meeting that it is considering a plan to route its
11 shuttle bus service on to the East campus to pick
12 up and discharge passengers.

13 ANC 3D also notes that many residents
14 expressed concerns at the January meeting, that
15 the deeper excavation required for the two story
16 garage may have unintended consequences from
17 underground water flow that would result in damage
18 to the foundations of adjacent homes.

19 AU indicated that such damage was
20 unlikely and cited D.C. Agency review of the
21 permit application. However, AU offered no
22 evidence for its assertion that D.C. Agencies had
23 considered this specific issue, and staff of the
24 District Department of the Environment and several
25 meetings with ANC 3D representatives about ground

1 water issues at the site, indicated its permit
2 review process was limited and did not include an
3 assessment of potential changes in underground
4 flow stemming from the construction.

5 ANC 3D consequently considered
6 recommending additional language for Condition
7 Number 41B of the order, which requires AU to
8 repair damage to the properties of adjacent
9 property owners caused by and resulting from the
10 construction work conducted on the East Campus.

11 After extensive discussion ANC 3D
12 affirmed its view that based on the existing
13 language of Condition No. 41B, AU would be
14 responsible for repairing damage related to
15 underground water flow, and asks the Zoning
16 Commission to affirm the ANC's position on this
17 important issue.

18 ANC 3D also expressed concern that the
19 modification requested by AU would impact access
20 to the East Campus by emergency and service
21 vehicles, as lower height levels in the two story
22 underground parking garage might prevent
23 ambulances and service vehicles from accessing the
24 site as originally proposed in the campus plan
25 further processing proceeding.

1 And this is a means of ensuring low-
2 density use of the site given it borders a
3 townhouse complex.

4 At the ANC's January meeting, AU
5 representatives outlined alternative plans for
6 ambulances and large service vehicles to access
7 the site that did not appear objectionable to
8 neighbors and consequently to ANC 3D.

9 This hearing is the culmination of ANC
10 3D's BZA filing in August 2014, seeking to ensure
11 AU's compliance with Zoning Commission Order
12 Number 11-07. As AU has acknowledged to ANC 3D,
13 its plans for the East Campus have evolved and
14 continue to evolve since the further processing
15 application was approved by the Zoning Commission
16 in March 2013.

17 Given the circumstances leading up to
18 this hearing, ANC 3D also voted unanimously, 10,
19 zero, zero at its January meeting to offer two
20 additional recommendations to the Zoning
21 Commission. The language in Zoning Commission
22 Order Number 11-07 is not always clear and
23 concise, and has the potential for interpretation
24 which has led to ongoing disputes and/or
25 misinterpretations of the Zoning Commission's

1 decisions.

2 ANC 3D recommends that zoning orders be
3 written more clearly to reflect the Zoning
4 Commission's decisions and Zoning Commission Case
5 Number 11-07C demonstrates the need for a more
6 formalized definition of the role of the Zoning
7 Administrator, which clarifies the scope of
8 responsibility assigned to the position. This
9 definition should be included in the D.C. Zoning
10 Regulations.

11 Conclusion; ANC 3D appreciates and
12 commends the decision of the Zoning Commission in
13 December 2014 to convene a hearing in this case,
14 which provided an opportunity for ANC 3D and
15 residents of the community to learn more about
16 AU's proposed changes to the plans approved by the
17 Zoning Commission, and to assess the potential
18 impacts of these changes. Based on the outcome of
19 ANC 3D's January 14 meeting it is apparent that
20 many of the issues and concerns stemming from the
21 proposed two story garage modification could have
22 been resolved a year ago when permit applications
23 were first filed by AU. Had there been a
24 willingness by AU to engage in a timely dialog
25 with the community, including ANC 3D on the

1 proposed modification.

2 The efforts made by the ANC and the
3 community to resolve these issues with AU are
4 outlined in our December 1 filing in this case, so
5 I will not repeat those tonight.

6 Ultimately it was the December 8 decision
7 of the Zoning Commission to require a hearing in
8 this case which encouraged that dialog to occur.

9 It is important to note that ANC 3D's
10 appeals to ensure compliance with Zoning
11 Commission Order 11-07 have had no effect on the
12 work schedule for completing of the East Campus
13 according to AU representatives. ANC 3D assures
14 the Zoning Commission that it remains committed to
15 working with AU and the community to ensure that
16 the East Campus project is completed on schedule
17 and consistent with Zoning Commission order 11-07.

18 Thank you for the opportunities to submit
19 this testimony regarding Zoning Commission Case
20 No. 11-07 on behalf of ANC 3D.

21 CHAIRPERSON HOOD: Okay. Thank you very
22 much Commissioner Gates. Let me pause on
23 Commissioner Gates' testimony right quick because
24 I forgot to do something. Can any body tell me
25 what I forgot to do? Vice Chair, can you help me?

1 Anyway, what I forgot to do was cross-
2 examination of the Office of Planning. Did I do
3 that? No, I did not.

4 Does the applicant have any cross-
5 examination of the Office of Planning? Does the
6 ANC have any cross-examination of the Office of
7 Planning?

8 MS. GATES: No.

9 CHAIRPERSON HOOD: Does Westover have any
10 cross-examination.

11 MR. JOSEPH: No, Mr. Chair.

12 CHAIRPERSON HOOD: Okay. Thank you for
13 indulging me. Thank you, Vice Chairman for your
14 help.

15 CHAIRPERSON HOOD: I just went to the
16 party. That's oaky. Thank you.

17 Okay. Any questions of Ms. Gates? And
18 I'm just picking on the Vice Chair. I forgot.

19 MR. TURNBULL: Yes, Mr. Chair, I just
20 have one. On page two of tonight's -- on page 3,
21 you mention that -- excuse me -- AU representative
22 has outlined alternative plans for ambulances and
23 large service vehicles to access the site. I
24 don't think we heard anything about that earlier.
25 I wonder if you could tell us what the alternative

1 plans are?

2 MS. GATES: I think we did hear them
3 tonight.

4 MR. TURNBULL: Did we?

5 MS. GATES: They plan to have ambulances
6 and the fire trucks access the campus, possibly
7 ambulances through the garage and fire trucks on
8 the east campus itself. On the surface.

9 MR. TURNBULL: Okay. So that was the
10 alternative plan for large service vehicles?

11 MS. GATES: No, sir. Only for emergency
12 vehicles.

13 MR. TURNBULL: Only for emergency.

14 MS. GATES: Large service vehicles will -
15 -

16 MR. TURNBULL: I guess what really is
17 that you noted large service vehicles and I was
18 just curious what that meant.

19 MS. GATES: Thank you for drawing that to
20 our attention. They were referring to the fire
21 trucks and ambulance.

22 MR. TURNBULL: Primarily emergency
23 vehicles.

24 MS. GATES: Yes.

25 MR. TURNBULL: Okay. I was just curious.

1 Thank you.

2 MS. GATES: But it is our understanding
3 that large service vehicles such as trucks, large
4 trucks, will load and unload on the main campus.

5 MR. TURNBULL: Right.

6 MS. GATES: And then be shuttled or
7 transported by smaller vehicles into the loading
8 dock.

9 MR. TURNBULL: Into the East Campus,
10 right. Okay. I was just curious. I just saw
11 that and I was -- I know you're pretty precise
12 about what you say so I was pretty -- just wanted
13 to --

14 MS. GATES: Thank you. I think that
15 avoided maybe an unintended consequence.

16 MR. TURNBULL: Okay. Thank you.

17 CHAIRPERSON HOOD: Okay. Any other
18 questions? Okay. Commissioner Miller.

19 MR. MILLER: Thank you. Ms. Gates, I
20 just wanted to make sure you -- to confirm that
21 you did hear AU's testimony earlier this evening
22 that they did agree to the strengthened condition
23 that the ANC had suggested, the more specific
24 language on the large charter buses and motor
25 coaches.

1 MS. GATES: Yes, Commissioner Miller,
2 they did agree.

3 MR. MILLER: And you did hear them affirm
4 the ANC's view that the existing condition number
5 41B, regarding AU being responsible for any damage
6 from the construction would apply to any damage
7 resulting from the underground water flow?

8 MS. GATES: Yes.

9 MR. MILLER: Okay. Thank you.

10 CHAIRPERSON HOOD: Any other questions?
11 Okay, Commissioner Gates, on page 3 you have two
12 other bullet points that the ANC approved. I
13 think those are recommendations. I think those
14 are recommendations to us.

15 MS. GATES: That's right.

16 CHAIRPERSON HOOD: Okay. So noted. And
17 I think we might need to do some of this so I'm
18 hoping that you can help because if I can't
19 remember to do cross-examination hopefully you can
20 help to remember that when we do the final part of
21 our final -- of our ZR because I think these two
22 statements are very important and I want to make
23 sure that we capture that. Okay?

24 MS. GATES: Thank you.

25 CHAIRPERSON HOOD: Any other questions.

1 Okay. Let's see if there's any cross. Does the
2 applicant have any cross? Westover, you have any
3 cross?

4 (No audible response.)

5 CHAIRPERSON HOOD: Thank you very much.
6 We appreciate your testimony.

7 I think we captured it, but I don't know
8 if we went to this extent, colleagues, so this is
9 something I think they bring up two good points
10 for us as we move forward. I think we captured,
11 Ms. Steingasser. I'm not sure.

12 Well, let's make sure we are.

13 MS. STEINGASSER: We'll check.

14 CHAIRPERSON HOOD: Okay. Okay, great.
15 Okay. Let's go to organizations in support.
16 Parties in support. What did I say,
17 organizations? Okay. Party in support. I meant
18 the parties.

19 How many people do we have who are going
20 to be testifying tonight in support? If you can
21 raise your hand. Okay. Great. No, I said
22 support. I haven't got to opposition yet. I said
23 all those who testify in support. Okay. I see
24 one hand. Okay.

25 Identify yourself and you may begin.

1 MR. JOSEPH: Chairman Hood and members of
2 the Zoning Commission --

3 CHAIRPERSON HOOD: Is your mic -- or
4 maybe you just need to pull your mic down.

5 MR. JOSEPH: Sorry.

6 CHAIRPERSON HOOD: Okay.

7 MR. JOSEPH: Chairman Hood and members of
8 the Zoning Commission, my name is Larry Joseph. I
9 live at 4373 Westover Place, and I am president of
10 the Board of Directors for Westover Place Homes
11 Corporation. We appeared before you on multiple
12 occasions during the deliberations of the American
13 University Campus Plan. Westover Place Homes
14 Corporation is legally constituted under the laws
15 and regulations of the District of Columbia and
16 has been in existence for over 35 years dating to
17 the beginning of our community.

18 The shareholders of Westover Place Homes
19 Corporation are the 149 townhome owners. The
20 Westover Place Board of Directors has the legal
21 and fiduciary responsibility for the care of an
22 eight acre site and the welfare of its 149 homes,
23 and roughly 300 residents. We also share a
24 roughly 950 border with East Campus. We are
25 arguably the community most affected by the

1 ongoing activities on the East Campus site.

2 During the campus plan process Westover
3 Place was joined by other neighborhood
4 associations, as well as the ANC in actively
5 opposing development on the East Campus. We
6 presented alternative plans that demonstrated that
7 AU could meet its stated housing needs without the
8 proposed dormitory construction on East Campus.

9 In opposing the plans as presented in the
10 campus plan, our concerns related to the
11 objectionable conditions raised by the manner in
12 which AU proposed to develop the site. My
13 purpose, however, is not to reopen the campus plan
14 as the Zoning Commission has already ruled on that
15 matter in Order 11-07, and the D.C. Court of
16 Appeals ruled that the East Campus development was
17 valid.

18 East Campus is going to be our neighbor
19 for a long, long time. Westover Place has a
20 vested interest in ensuring that East Campus fits
21 into the existing neighborhood.

22 In its request for a minor modification
23 American University has made two requests of the
24 Zoning Commission, one dealing with the below
25 grade garage on East Campus, and a second dealing

1 with motor coach traffic on site. Reviewing the
2 voluminous filings in the original 11-07 case, I
3 find the University offered a number of documents
4 under the underground garage proposing several
5 different garage capacities. The University
6 testified that the garage would provide
7 underground parking for the East Campus, and would
8 be a method for service vehicles and buses to
9 serve retail, academic, and administrative and
10 housing on East Campus.

11 This included the underground bus turn-
12 around. The drawings from the underground garage
13 in its original submission appears to have 119
14 parking spaces while the final submission the
15 garage seems to contain 150 underground parking
16 spaces. The office of planning in their report to
17 the Zoning Commission, endorsed the 150 car
18 garage, and the Commission included it as part of
19 its order 11-07. Westover Place support the large
20 garage during our campus plan testimony, and we
21 still support the concept.

22 Reducing automobile traffic by taking
23 that many cars off the street, not exacerbating an
24 already difficult parking situation and dampening
25 noise by being below grade, all speak to

1 minimizing to the impact on our community.

2 There are concerns in the community about
3 the garage disrupting groundwater flow and
4 possibly impacting Westover Homes. In its order
5 11-07, the Zoning Commission order granted the
6 campus plan subject to conditions. One of those
7 conditions was a 41B, which has been discussed
8 already.

9 The Westover Board of Directors did not
10 believe that the University would intentionally
11 construct East Campus in a manner that would
12 imperil our homes and structures. In knowing that
13 a condition in the order further clarifies the
14 responsible party if any property damage results,
15 we believe that this portion of the request should
16 be approved.

17 In the second part of its request
18 American University has offered to prohibit
19 charger buses and motor homes from entering the
20 East Campus property. This is a step in the right
21 direction as any action that reduces traffic and
22 its ensuing noise on East Campus reduces a
23 potential objectionable condition and thus has a
24 positive impact on our community.

25 The Westover Place Board of Directors

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1 supports the University request to prohibit
2 charter buses and motor homes from entering East
3 Campus. We are, however, concerned about all of
4 the traffic into and out of East Campus.

5 To address this issue we request that the
6 University agree to hold a discussion with the
7 community on East Campus traffic routes during its
8 next construction update meeting. The University
9 should review planning regarding traffic into and
10 out of East Campus, as well as the impact of
11 traffic on adjacent arteries and supporting
12 neighborhood streets.

13 Since Traffic management addresses post-
14 construction activity, this request should not
15 further delay the ongoing construction.

16 To summarize, we support the request for
17 the minor modification subject to the presentation
18 of further detail on traffic management. At its
19 January 14th meeting ANC 3D also voted to support,
20 with conditions, the AU request for a minor
21 modification.

22 Westover Place is currently dealing with
23 all the ramifications of an active construction
24 site, noise, dust, and ground vibrations just to
25 name a few concerns. We request that in its

1 deliberations regarding this request by AU, the
2 Commission resists any action that may cause
3 further delay to the schedule as outlined in
4 Zoning Commission order 11-07. Any delay, even a
5 minor one, stretches out the inconvenience and
6 disruption to our community.

7 Thank you for your time and attention.

8 CHAIRPERSON HOOD: Okay. Thank you very
9 much, Mr. Joseph. Let's see if there are any
10 questions up here. Any questions?

11 Okay.

12 MR. TURNBULL: Mr. Chair, I just had -- I
13 want to express my appreciation to Mr. Joseph and
14 I just want to clarify. It's in his report, but I
15 don't know whether you want to get on the road and
16 travel, but you mentioned motor homes instead of
17 motor coaches. I just want to clarify.

18 MR. JOSEPH: Thank you for the
19 corrections, Mr. Turnbull.

20 MR. TURNBULL: I'm like, boy, you really
21 do want to travel. But thank you very much.

22 CHAIRPERSON HOOD: Okay. Does the
23 applicant -- no cross. Does the ANC have any
24 cross?

25 MS. GATES: No.

1 CHAIRPERSON HOOD: Okay. Thank you very
2 much, Mr. Joseph.

3 MR. JOSEPH: Thank you, Mr. Hood.

4 CHAIRPERSON HOOD: Okay. Do we have any
5 organizations in opposition?

6 What about -- was there a person who
7 wanted to testify in support?

8 Okay. Come forward. Okay. Whenever
9 you're ready, you may begin.

10 MR. FEHRMANN: Thank you, Chairman Hood
11 and Zoning Commission Commissioners. My name is
12 David Fehrmann. I live at 4296 Massachusetts
13 Avenue Northwest in Washington, D.C., and I am an
14 American University Neighbor living in Westover
15 Place.

16 I attended every American University
17 Campus Plan Development meeting, starting several
18 years ago. I attended every ANC Campus Plan
19 Meeting. I attended every Zoning Commission
20 hearing on Case 11-07 in this room. And I even
21 attended the Court of Appeals oral arguments
22 regarding this case.

23 I think have perspective. I think I have
24 perspective on this case and I feel like I
25 represent the silent majority of Westover Place

1 owners. Westover Place being 149 individually
2 owned townhomes on approximately eight acres of
3 property adjacent to American University, and
4 housing approximately 300 occupants.

5 Others who are relatively newcomers to
6 the process, approximately a dozen very vocal
7 homeowners, who are probably going to testify
8 tonight, might lack that same perspective. Their
9 sole goal seems to be, create a road block to
10 delay the inevitable development of East Campus.
11 They seem to forget that the Zoning Commission has
12 ruled. They seem to forget that the D.C. Court of
13 Appeals has ruled, and they seem to forget that
14 American University has the right to move forward
15 with construction on this site.

16 Further delay of East Campus construction
17 is not in the best interest of Westover Place or
18 the greater neighborhood. Further delay only
19 extends the agony, the dirt, and the noise, the
20 traffic, the trash, and certain the sight of a
21 construction in progress immediately adjacent to
22 our homes.

23 Let's get this all behind us so that we
24 can get on with our lives. I support the American
25 University request for a two level garage, and 150

1 below ground parking spaces. I also support the
2 American University offered condition to prohibit
3 motor coach traffic from the East Campus.

4 CHAIRPERSON HOOD: Okay. Any questions
5 up here?

6 Mr. Fehrmann, let me commend you because
7 when I look at how you've been dealing with
8 American University, the American University Plan
9 Development meeting, the ANC meeting, and I know
10 how many Zoning Commission hearings, and then you
11 even went to the Court of Appeals. Can I ask you,
12 did they mention my name? No, I'm only kidding.
13 I'm not going to even go there.

14 But let me commend you for stand to it;
15 stand to the issue in your neighborhood. Whether
16 people agree with you or disagree, this shows
17 commitment of a community neighbor. I wish you
18 would move in my neighborhood. But anyway, this
19 means a lot to people when somebody is involved
20 and they stay that involved. So I want to commend
21 you for standing to it.

22 MR. FEHRMANN: Thank you, sir.

23 CHAIRPERSON HOOD: Okay. Any questions
24 up here? Let's see if we have any cross? Any
25 cross? Applicant, no cross. Does the ANC have

1 any cross?

2 MS. GATES: Mr. Fehrmann, I heard you
3 insinuate, I think is probably -- or infer, just
4 as Mr. Joseph did, that you don't want any further
5 delay in the campus -- in the processing of this
6 plan. However, do you understand a zoning order
7 is law? That the University is bound to abide by
8 it? And that's why we're here tonight.

9 MR. FEHRMANN: I do.

10 MS. GATES: Okay. Well, I just wanted to
11 be sure that you understood the importance of the
12 order and the fact that the reason the ANC filed
13 in this case was that American University did not
14 abide by the order.

15 MR. FEHRMANN: I'm not qualified to
16 answer that question.

17 MS. GATES: Thank you.

18 CHAIRPERSON HOOD: Thank you. Does the
19 organizations -- okay. Thank you very much, Mr.
20 Fehrmann. Appreciate your testimony.

21 Okay. Let's go up to persons in
22 opposition. I do have -- let me see, how many
23 people are here to testify in opposition?

24 I won't need to call the list. Just come
25 forward. We have eight seats and I think I saw

1 three hands. Four hands. Three hands.

2 We keep going back from three to four.

3 Right now I see three, Commissioner May has four.

4 So he's seeing a hand. Does anybody have any
5 glass -- you need your glasses cleaned, or --

6 MR. MAY: He raised his hand.

7 CHAIRPERSON HOOD: Okay. We're going to
8 start with the young lady first and we'll go from
9 there.

10 MS. GUZMAN: Thank you for calling me.
11 Thank you for calling me young lady, first of all.
12 My name is Theresa Guzman. I live in 4451
13 Westover Place. We have lived there for 12 years
14 now, so I'm not new to Westover and I'm very well
15 aware of the hearings and the meetings and the
16 process. And I'm not here to be against American
17 University. Two of my children graduated from
18 American University, as a matter of fact, and I'm
19 not here to delay them. But I'm here to request
20 that the board, the Zoning Commission oppose these
21 change in the garage because I firmly believe that
22 we will influence the amount of noise that we will
23 be subject to, since most of the servicing
24 vehicles will not be able to enter the garage as
25 we were told in our last meeting with the American

1 University.

2 We were told that the ambulances will not
3 fit under the garage with the new design. Now
4 they're telling you that they are going to fit and
5 they're going to service the buildings from under
6 the garage. So there are two different scenarios
7 there.

8 The change in the garage is also going to
9 impact the amount of traffic because now the big
10 loads that were going to be delivered through the
11 loading dock before, the large vehicles will not
12 be able to enter the loading dock, so everything
13 is going to be delivered to the main campus and
14 then transferred to smaller vehicles who are going
15 to deliver the goods to the east campus. That is
16 going to increase traffic in an already congested
17 area, heavy congested area.

18 The deeper excavation, we are really
19 concerned that it's going to influence the
20 groundwater flow, and could impact our
21 neighborhood by diverting water that could seep in
22 our basement. The people that live along that
23 wall are really concerned about this issue.

24 In addition with the deeper garage, they
25 will have to install a bigger air in-flow for the

1 bigger garage, and that's closer to our wall, will
2 probably create more noise.

3 At the last ANC meeting American
4 University representatives informed the community
5 that they planned to have the Office of Public
6 Safety located in the East Campus. This is a 24
7 hour operation and it's totally in opposition to
8 what was approved by the Zoning Commission
9 regarding this space being vacant at night, except
10 for the dorms. So this is another issue that will
11 add noise and disturbance to the adjacent
12 neighbors.

13 American University also revealed in the
14 last ANC meeting that they have to have their
15 shuttle buses circulated through the East Campus
16 in order to alleviate the traffic on Nebraska
17 Avenue. Again, this will be contradictory to the
18 use of this space as approved by the original
19 zoning order.

20 We are amazed at the lack of design and
21 planning by American University that realized all
22 these issues with the garage after the fact. I
23 believe a project of this magnitude should be
24 thoroughly thought and planned before the
25 construction starts and not as the project is

1 progressing.

2 So with all these facts I really want to
3 record our opposition to this change. Thank you
4 very much.

5 CHAIRPERSON HOOD: Okay. Thank you.
6 Next, we'll go to your left, my right. To you.

7 MR. PRIVOT: Do you mind if we go --

8 CHAIRPERSON HOOD: Oh, sure. We'll go to
9 my left, your right.

10 MR. PRIVOT: Thank you, all. My name is
11 Charles Privot. I live at 4461 Westover Place.
12 We have lived there 12 years and we're not -- I'm
13 not just recently a new resident. The 12 people
14 that David referred to is in inappropriate number.
15 There are a lot more people unhappy with what's
16 going on. Sorry for the extraneous remarks.

17 Thank you for allowing me time to
18 register my protest to AU's request to alter their
19 parking permit from one level to two. I'd also
20 like to thank the six different city departments
21 that help me whenever I called. It was a real
22 testimony to the friendliness and help that the
23 city government offers.

24 AU submitted plans and received
25 permission to construct a single one-level below

1 grade parking garage for 150 spaces approximately
2 two years ago. The depth almost -- of the parking
3 garage was such that it could accommodate delivery
4 trucks, full sized AU buses, and emergency
5 vehicles, and you told the community that a single
6 level parking garage would have not much of an
7 environmental impact, and the site would remain as
8 a low-use site. They would create -- this would
9 create an intense situation with the Westover
10 neighborhood.

11 And now the parking garage is closer to
12 25 feet deep. Recently AU made an independent
13 decision to alter current plans, to double the
14 parking for a two-level garage which will not
15 accommodate delivery trucks, AU buses, and
16 emergency vehicles. If I may go extraneous for a
17 minute, what if the ambulance is like a, you know,
18 BCC emergency vehicle. That would never fit in a
19 seven foot ceiling on a second level. And then
20 aren't there lights and water, you know, fire
21 things. So even though it may be seven feet, the
22 actual clearance may be six. You can of course
23 address that, but I would assume that's part of
24 the process. So the height is, I think, a little
25 extraneous.

1 When the request -- or when this request
2 was first brought to the local ANC the ANC
3 referred it to the BZA, Westover neighbors, and
4 the ANC 3D objected to this change. Without
5 regard to the approval process AU has continued to
6 excavate the garage down to two levels, 25 feet,
7 even though they were advised by the Zoning
8 Commission that there was no guarantee that their
9 exception would be granted. AU said that they
10 could backfill in a week or so if the exception as
11 denied. So significant delays are not really an
12 issue, and we're not here to discuss delays.
13 We're here to discuss parking and the parking
14 garage.

15 I'm going to skip the next paragraph
16 because AU has agreed to take care of any water
17 damage that may occur. I assume that there is an
18 open-ended time period for that water invasion, if
19 you will.

20 The crux of this meeting is two issues.
21 Will there be an impact from a deeper parking
22 area, and does AU's decision invalidate the number
23 of parking spaces originally approved. I believe
24 the answer to both is yes. AU's short notice
25 reduces the City's ability to properly evaluate

1 the total impact of the deeper garage. Please
2 consider that the East Campus site was presented
3 to the community as an environmentally friendly
4 project. The one level garage was supposed to
5 receive all AU buses and emergency vehicles. Now
6 the AU -- will AU garage can accommodate them,
7 vehicles that would have gone through the garage
8 cannot. They'll be -- well, let me skip that.

9 AU has an amazing shuttle service that
10 runs at least 18 hours a day. It runs weeknights
11 until midnight, and 3:00 a.m. on weekends. AU now
12 wants to run their shuttle on the surface of the
13 East Campus. Then why add the needed parking
14 spaces?

15 Times are different now in 2015. Every
16 D.C. office and department involved with
17 development is challenged with traffic congestion
18 and ultimately parking. All are publishing papers
19 and plans to reduce traffic as much as possible.
20 The future of D.C.'s development is the
21 intelligent expansion of public transportation.
22 Isn't it worth nothing that after AU finishes this
23 phase of the East Campus, there will be Phase 2,
24 bringing more congestion to the neighborhood?

25 Homeland Security is in the process of

1 developing their own plans of expansion of their
2 campus. It's easy to see that parking spaces are
3 not going to increase because the city expects
4 projects to offer shuttle services or public
5 transportation to the Metro. Commuter traffic
6 coming from the suburbs is going to be horrendous
7 soon. There is a World Circle Traffic report
8 coming out soon, looking for ways to reduce
9 congestion. That report will be interesting if
10 it's able to significantly solve our traffic
11 congestion.

12 It's surprising that American University,
13 who has a great reputation in the community for
14 doing the right thing, would ignore the future and
15 add parking spaces when they already have a
16 shuttle service running 18 hours a day that solves
17 so many issues. When the permitting process began
18 there was a commitment from AU not to develop the
19 East Campus to such a point that it would create,
20 quote/unquote, "An intense environment to its
21 immediate neighbors, Westover Place." That
22 commitment seems to have gone out the door.

23 With this in mind I hope the Zoning
24 Commission can reverse its earlier permit and
25 limit AU to a single level garage, with them

1 placing as many spaces that they can. Losing 20
2 or 30 spaces when there's a shuttle system out
3 there seems petty on AU's part.

4 Thank you for your time and if I may, I
5 don't know if it's admissible, but I have over 25
6 e-mails from various neighbors supporting my
7 position. If that's admissible.

8 And Commissioner Hood, you mentioned that
9 12 people registered in support in the past 24, 48
10 hours there was a barrage of, against. Do you
11 mind mentioning that number of opposition? Is
12 that an appropriate question?

13 CHAIRPERSON HOOD: Yeah, you're asking --
14 I don't mind. I'm saying -- did I say 12?

15 MR. PRIVOT: Well, yes. You said a dozen
16 people registered in support.

17 CHAIRPERSON HOOD: I don't think I said a
18 number. I said we have --

19 MR. PRIVOT: I stand corrected.

20 CHAIRPERSON HOOD: I'm going to be
21 frankly honest, I don't even know if I said that.
22 I said so much stuff that I don't know if I said
23 that. I'll have to look at the transcript.

24 MR. PRIVOT: My error.

25 CHAIRPERSON HOOD: Oh, I didn't say it.

1 But I will tell you, I get credit for what a lot
2 of other people say. But actually I didn't say
3 it, the applicant said it.

4 MR. PRIVOT: The applicant, yeah.

5 CHAIRPERSON HOOD: The applicant said it,
6 but I usually get credit for that too. So the
7 applicant said it. I didn't say it.

8 MR. PRIVOT: Did you say the adversary
9 number?

10 CHAIRPERSON HOOD: No, the applicant
11 mentioned about the 12 letters in support.

12 MR. PRIVOT: Oh, okay.

13 CHAIRPERSON HOOD: It was not me.

14 MR. PRIVOT: Is it reasonable for me to
15 ask how many people registered opposed?

16 CHAIRPERSON HOOD: We have some -- let me
17 answer your question, because I think, I don't
18 have any problems doing that.

19 MR. MAY: I can tell you, I just need to
20 count it. It was 36.

21 MR. PRIVOT: Thirty-six people.

22 MR. MAY: Letters of opposition on some
23 level. Most of them are form letters.

24 MR. PRIVOT: Yes. It's a form letter
25 that I helped write.

1 MR. MAY: Right. Well, and you know, I
2 didn't compare that list against this. This is
3 another 30 or so.

4 MR. PRIVOT: If you'd like it, if you
5 don't want it, it's --

6 CHAIRPERSON HOOD: Are these the same
7 that we have here on this form letter, though, the
8 same thing?

9 MR. PRIVOT: There are some duplication.
10 Yeah. The reason why, if you would like an
11 explanation --

12 CHAIRPERSON HOOD: No, I mean, nothing is
13 wrong with it.

14 MR. PRIVOT: Okay.

15 CHAIRPERSON HOOD: We don't have an
16 issue. I don't have an issue with it. I don't
17 know if my colleagues do. I don't have an issue
18 with it. It actually shows again, your effort,
19 whether pro or con, whether you agree or not, it
20 shows an effort of a resident. And obviously the
21 people who signed on agree with you.

22 MR. PRIVOT: Yeah.

23 CHAIRPERSON HOOD: Okay. I understand
24 that?

25 MR. PRIVOT: And the only reason why --

1 it was curious why we said noon.

2 CHAIRPERSON HOOD: Yeah, I was curious
3 about that noon.

4 MR. PRIVOT: Well, we just figure if we
5 said by 4:00 it may not get into the system. So
6 frankly we thought, or I thought, noon would kind
7 of create an urgency so that people would --

8 CHAIRPERSON HOOD: Noon to us or noon to
9 you?

10 MR. PRIVOT: No, noon to the people that
11 we were sending this to, and --

12 CHAIRPERSON HOOD: Okay. I was just
13 curious.

14 MR. PRIVOT: And that was that. And I
15 must say, I appreciate -- I forget your name from
16 the ANC representing Tom Smith's letter.

17 CHAIRPERSON HOOD: Commissioner Gates.

18 MR. PRIVOT: Commissioner. But I want to
19 thank you for reading that because so much of what
20 I wanted to say was addressed by that. And also I
21 want to thank you, AU, because you're --

22 CHAIRPERSON HOOD: You want to speak into
23 the mic so we can -- speak into the mic so we can
24 hear you.

25 MR. PRIVOT: Oh. Your acknowledgement of

1 being responsible for potential water damage is
2 appreciated and that's important. Though I still
3 think one level is more than enough with a
4 shuttle.

5 CHAIRPERSON HOOD: Okay.

6 MR. PRIVOT: And with that I want to
7 thank you for allowing me.

8 CHAIRPERSON HOOD: Okay. Just hold your
9 seat, we may have some questions for you. Okay.
10 Next.

11 MR. TESSLER: I'm Ben Tessler. I live at
12 Westover Place. I've lived there, gosh, for 20
13 some -- 26 years. I've lived in Spring Valley,
14 Wesley Heights for about 35 years. I was on the
15 Board at Westover Place for 20 years and am
16 currently on the Spring Valley, Wesley Heights
17 Citizen Association Board.

18 The packet that I gave to you contained
19 testimonies from two people, Paula Feeney and
20 William Crebs (phonetic). The reason I put them
21 in there is Mr. Crebs wrote it but it was sent
22 here after about 3:20 or 3:30, so he didn't know
23 if there would be time for you to make copies of
24 it, so I did.

25 It really is quite good and quite

1 insightful. It's really worth reading. Also in
2 the packet that I gave you are 38 signed letters
3 from people who are from Westover Place mostly,
4 but some in Spring Valley who are in opposition to
5 the changes proposed by American University. So
6 if indeed you had 30 some letters in opposition
7 before, well, you have another 38.

8 Many of the things that I wanted to
9 discuss already have been stated, so I'm not going
10 to go through them again.

11 I'm hoping that -- I know that the ANC
12 has great weight and I know that the Westover
13 Board has given their opinion. Certainly not
14 everyone in Westover Place, and clearly with the
15 number of letters you have, do not agree with
16 everything that they said, and we are in agreement
17 on some things.

18 What we've thought we were going to get
19 is like a little village next to us, and it's
20 turning into more of a kind of a major city. We
21 are in opposition to the two story garage. We
22 hope that they can make this happen with one
23 story. If they need more spaces they could go
24 into the one area where they were granted
25 permission to build a building and then build some

1 more spaces there, maybe put a park on top of it.

2 The other thing that I wanted to talk
3 about, we discussed public safety already and we
4 discussed the shuttle buses coming in on the
5 campus. The last issue, and sincerely I'm not
6 trying to split hairs here, but if you care to
7 look at my testimony that you have a copy of, on
8 the third page it addresses the language for any
9 repair -- repairs to our property and any
10 destruction of our property. And what is in there
11 right now is that responsibility for damage to
12 adjacent properties, the university shall repair
13 at its own expense and as promptly as reasonably
14 possible, any damage to the properties of an
15 adjacent property owner and any improvements that
16 caused by and resulting from the construction work
17 conducted on the East Campus.

18 I have a few paragraphs that I got from
19 an attorney who -- from two attorneys, actually.
20 Bob Hertstein (phonetic) is one of them who I know
21 many of you know, discussing what they find
22 lacking in this and that it is really -- when it
23 talks about adjacent properties, well, legally
24 adjacent, they say, is touching. Well, adjacent
25 is our perimeter wall of our community, and then

1 adjacent is a sidewalk, and then come our
2 properties.

3 So it depends on how specific an attorney
4 is going to be with those words as to whether any
5 of our properties are adjacent to that parking
6 lot.

7 I can read the language that was
8 recommended to me by these attorneys if you'd
9 like, but I have it highlighted in my testimony
10 there.

11 The reason that this came up is that in
12 conversations with AU and even at the ANC meeting,
13 they weren't quite so encouraging as to what
14 damages they would be responsible for if it was
15 going to be water damages, et cetera. So the
16 legal verbiage at the page 3 of what I have there
17 in red at the bottom, is what was proposed and I'm
18 going to say maybe, might be considered to be a
19 little bit better for our community. That's it.

20 CHAIRPERSON HOOD: Okay. Mr. Tessler,
21 let me first of say that the Office of Zoning, the
22 award winning Office of Zoning has both
23 testimonies that you brought, we have them.

24 MR. TESSLER: Okay.

25 CHAIRPERSON HOOD: Okay. That's the

1 first thing. Kudos to the Office of Zoning.

2 The other thing is, so I'm trying to
3 understand you. So you live in Westover Place,
4 right?

5 MR. TESSLER: Uh-huh.

6 CHAIRPERSON HOOD: You live in there.
7 And I've quickly looked up the definition for
8 adjacent. So I understand what your comments are.
9 So your issue is kind -- does everyone kind of
10 agree with your issues, with the exception of the
11 gentleman here? I mean, you all kind of have the
12 same opposition. Is the adjacency the major
13 issue?

14 I mean, I heard some other things.

15 MR. TESSLER: No, I'm only --

16 CHAIRPERSON HOOD: You're only speaking
17 for you and those two --

18 MR. TESSLER: For that issue because many
19 of the other issues --

20 CHAIRPERSON HOOD: Have already been --

21 MR. TESSLER: -- have already been
22 addressed.

23 CHAIRPERSON HOOD: Okay. So you're just
24 piggy-backing on what already has been said.

25 MR. TESSLER: Indeed. And I beg your

1 pardon. The reason that that said noon, just to
2 let you know, is that we were waiting to hear what
3 the ANC was going to say. We were waiting to hear
4 what Westover Place was going to say. That came
5 out, I believe, Friday.

6 So this past Friday we had a meeting at
7 my house of several people in the community on
8 Saturday morning and --

9 CHAIRPERSON HOOD: Okay.

10 MR. TESSLER: -- this was drawn up. So
11 the 60, 70 -- if that is the number -- people in
12 opposition since that time, got those to us by
13 noon today.

14 CHAIRPERSON HOOD: Okay. So there was
15 some late developments that you all were waiting
16 on before you got it. Okay.

17 MR. TESSLER: Exactly correct.

18 CHAIRPERSON HOOD: I got you. That's
19 clear. Okay. Let's see, any questions of this
20 panel, colleagues? Any questions or comments?
21 Commissioner May.

22 MR. MAY: Yeah. So I'm a little confused
23 to the reference to emergency vehicles. I mean,
24 was that something that was in the order that all
25 emergency vehicles are going to be accessing the

1 property from the garage?

2 Anybody who can answer that because you
3 all -- well, you wrote the form letter.

4 MR. PRIVOT: I mentioned it because that
5 was, I think, considered. And it could have just
6 been rumor in the air that emergency vehicles
7 could still have access to the bottom --

8 MR. MAY: Okay. All right. Well, I mean,
9 I'm asking because I, you know, I have --

10 MR. PRIVOT: It just occurred to me while
11 listening to be honest.

12 MR. MAY: I did not just sit here and
13 read the entire order, but I am able to search the
14 order and I couldn't find emergency ambulance
15 emergency vehicles. Nothing like that in the
16 order.

17 MR. PRIVOT: It was --

18 MR. MAY: I also question the wisdom of
19 making emergency vehicles travel into the garage
20 of a building. I know that if my child was at
21 American University and there was an emergency, I
22 would want the ambulance to get there as quickly
23 as possible. And stopping to go through a gate
24 and into a garage is not the way I would want them
25 to be treated.

1 MR. PRIVOT: You're absolutely right.

2 MR. MAY: Right. So, I was just curious
3 whether there was something that I missed in the
4 order. But apparently I did not.

5 I think that's it for my questions. I
6 just had -- that was the one thing that confused
7 me. So, thank you.

8 MR. TESSLER: It was our understanding,
9 though, that emergency vehicles were going to be
10 accessed into the garage and trucks and --

11 MR. MAY: Well, I mean, you know, the
12 ability to have emergency vehicle go in, you know,
13 if they're going to be going in I'm assuming it's
14 not going to be an emergency circumstance. I
15 mean, certainly fire trucks are not going to use a
16 garage to access a building on fire. And an
17 ambulance responding to an emergency is also not
18 going to go into a garage. They don't, you know -
19 - I won't give you any comments about their
20 ability to even find the address. But they're not
21 going to go into a garage to do that, I think as a
22 matter of course.

23 Now, if there is some other -- you know,
24 if you have a plumbing emergency or something like
25 that, yeah, they're going to be able to get in and

1 go into a garage and you know -- but chances are
2 they're going to pull up and park in the driveway
3 on that site anyway, in that kind of an emergency.

4 And I'm not sure why this was an issue
5 for you anyway. Is it just because ambulances
6 with loud sirens, is that what the concern was?

7 MR. PRIVOT: No, I think somewhere in the
8 verbiage the word emergency vehicles was
9 mentioned. So I may have taken it too far --

10 MR. MAY: Yeah I didn't find --

11 MR. TESSLER: That was my understanding
12 too.

13 MR. MAY: Yeah.

14 MR. PRIVOT: I may have taken it too far,
15 assuming, and poorly assuming, in fact.

16 MR. MAY: Yeah. I mean, I could not find
17 emergency vehicles in the order. I found the word
18 emergency twice, and it did not reply to --

19 MR. PRIVOT: If I misrepresented, I
20 apologize.

21 MR. MAY: Yeah. No, no, no, I'm not --

22 MR. PRIVOT: I know.

23 MR. MAY: That's okay.

24 MR. PRIVOT: May I make another comment,
25 please? I already forgot it.

1 Oh, there has been a lot of discussions
2 about how AU, the ANC, and Westover have gotten
3 together multiple times the past year or two. And
4 my own involvement occurred maybe a year and a
5 half ago, and I think more time was spent, and
6 more focus was directed on the water issues in
7 terms of mercury and all the heavy metals that
8 supposedly follow, and nobody gave any thought
9 whatsoever about a parking lot. They were just
10 concerned about the disruption of a parking lot.

11 It was only in the past three or four
12 months that it occurred to us that the parking lot
13 was going to go forward. And not only that but
14 that it was going to not go down 17 feet, but 65
15 feet away from our boundary line is a 25 foot
16 retaining wall the length of a football field.
17 That is a rather large trough. And over time
18 really poses, I think, a risk. Though, I'm not an
19 expert, for water seepage. It's got to go
20 somewhere. Does that make sense?

21 MR. MAY: No. And so you have a concern
22 that there's a retaining wall and the water --

23 MR. PRIVOT: No, in the parking lot --

24 MR. MAY: Yeah.

25 MR. PRIVOT: -- the retaining wall

1 closest to Westover Place --

2 MR. MAY: Right.

3 MR. PRIVOT: -- retaining wall is roughly
4 25 feet below grade.

5 MR. MAY: Right.

6 MR. PRIVOT: And at least half the length
7 of a football field.

8 MR. MAY: Right.

9 MR. PRIVOT: Imagine that, and then 65
10 feet away is Ben's house.

11 MR. MAY: Okay. So is there -- I mean,
12 is there an existing underground stream through
13 the property?

14 MR. PRIVOT: Not that I know. But you
15 could imagine that --

16 MR. TESSLER: There's lots of water going
17 through that.

18 MR. PRIVOT: There's water going --

19 MR. MAY: There's water -- there's water
20 everywhere.

21 MR. PRIVOT: Yeah.

22 MR. MAY: There's water running through
23 my basement.

24 MR. PRIVOT: But there --

25 MR. TESSLER: Yeah, but I don't want it

1 running through mine.

2 MR. MAY: Well, I know. But it happens
3 in some places and there are ways to know that, to
4 study that, and to deal with it. So --

5 MR. PRIVOT: And this is what we --

6 MR. MAY: And just like I dealt with it
7 in my basement. But you shouldn't have to do that
8 if there is in fact a stream running across the
9 property. But the question is, is there a stream
10 running across the property? The applicant can
11 testify to that in rebuttal when they come back
12 up.

13 When they're done -- sir, sir, just turn
14 around. When they're done they'll come up and
15 will testify about it.

16 MR. PRIVOT: Sorry for being --

17 MR. MAY: No, that's okay. We do this
18 process all the time. You only get here, you
19 know, once in a blue moon. So I appreciate your
20 even coming.

21 MR. PRIVOT: Thank you.

22 MR. MAY: So, you know, generally
23 speaking the problem with groundwater is going to
24 be with the dewatering for construction, because
25 once its built that thing is a fixed object within

1 the Earth, and the water settles in around it and
2 it rebalances after everything is constructed.
3 The dewatering that's necessary for construction
4 that can pose the greatest threat, typically, at
5 least that's what we see here because when you
6 take the water out of the ground it makes it more
7 likely to settle, and so buildings settle, and
8 sometimes there are cracks and so on. There are
9 ways to deal with that, and the dewatering plans
10 actually are reviewed and approved by DCRA.

11 So, that's what we would ordinarily be
12 assuming in this case. We don't usually get into
13 issues of dewatering or anything like that. And
14 the only thing that I could see that might be
15 relevant in terms of the concerns that were raised
16 here tonight is whether there actually is a stream
17 running through the site. And that happens
18 sometimes, that there are known -- and, you know,
19 they usually figure that out in the early testing
20 on the site, whether there's actually water flow
21 through the site; knowing that there's groundwater
22 there, I mean, there's groundwater everywhere if
23 you dig deep enough, unless you hit rock.

24 And so, it's something that can be dealt
25 with by a responsible contractor and I assume

1 that's what would happen here. Thanks.

2 CHAIRPERSON HOOD: Okay. Thank you. Any
3 other questions up here? Any other questions?

4 I'm actually going to -- let me see first
5 if there's any -- any cross-examination from the
6 applicant?

7 MR. TUMMONDS: No.

8 CHAIRPERSON HOOD: Does the ANC have some
9 cross? And I'm glad you're coming to the table,
10 Ms. Gates, because I have a question for you. Let
11 me ask your question first before you ask your
12 questions

13 The vote was eight to two, I believe.
14 Were the two commissioners, where Westover is, is
15 that part of that single-member district?

16 MS. GATES: One was.

17 UNIDENTIFIED SPEAKER: No, no, no.
18 Absolutely not. I think Westover, I voted yes.

19 MS. GATES: Oh, I'm sorry.

20 CHAIRPERSON HOOD: So those two did not
21 have Westover.

22 MS. GATES: The line is right -- it's
23 right between Westover and the parking lot, isn't
24 it?

25 MR. SPENCER: The line is at East Campus

1 and Westover.

2 CHAIRPERSON HOOD: Here's the thing, I
3 need you to, if you're going to answer my
4 question, you be identified. Have you been sworn
5 in?

6 MR. SPENCER: Yeah.

7 CHAIRPERSON HOOD: Okay. You've been
8 sworn in so you can come --

9 MR. SPENCER: No, I'm not sworn in.

10 MS. GATES: The line is east --

11 CHAIRPERSON HOOD: Do me a favor, just
12 whisper it to Ms. Gates and let her tell me what
13 the answer is because I do want to know.

14 MR. SPENCER: East Campus is ANC 07,
15 which is the -- we voted for the resolution.

16 MS. GATES: The East Campus is --

17 MR. SPENCER: East Campus is in 07,
18 Westover is in 01, which is (indiscernible).

19 MS. GATES: Okay. The East Campus is in
20 07. Westover is in 01, which is immediately
21 adjacent and thank you for raising that question.

22 CHAIRPERSON HOOD: So help me understand.
23 So, one and seven -- one voted for it.

24 MS. GATES: That's right.

25 CHAIRPERSON HOOD: Seven was the

1 Westhomes, voted against it.

2 MR. SPENCER: No, seven voted for it.

3 CHAIRPERSON HOOD: So it's reverse to
4 what I just said.

5 MR. SPENCER: No.

6 CHAIRPERSON HOOD: So nobody voted?

7 MS. GATES: Could we ask Commissioner
8 Spencer to come up, please?

9 CHAIRPERSON HOOD: Could you stand and
10 take the oath? Not that we don't believe you.

11 (Oath administered to Commissioner
12 Spencer.)

13 CHAIRPERSON HOOD: All I really want to
14 know is the two dissenting votes.

15 MR. SPENCER: The two dissenting votes
16 came from ANC 10, which is on the other side of
17 Massachusetts Avenue, or SMD 10, and the other one
18 was AU Park, which is to the north of AU Campus.
19 Those are the two dissenting votes. Everybody
20 else voted yes in support of the resolution.

21 CHAIRPERSON HOOD: So there's some in the
22 District who represents -- I hope I'm not putting
23 them in the bad, I'm just curious -- who voted for
24 this modification?

25 MR. SPENCER: Sylvia --

1 CHAIRPERSON HOOD: I don't want to call
2 her name because I don't want to get her out of
3 office. But the person who voted -- she voted for
4 this?

5 PARTICIPANT: No, no, Spring Valley.

6 MR. SPENCER: Spring Valley.

7 CHAIRPERSON HOOD: Okay.

8 MS. GATES: And he is the East Campus --

9 MR. SPENCER: They're north of the
10 campus.

11 MS. GATES: He is the East Campus.

12 PARTICIPANT: They voted against, as did
13 the apartments, the person who represents the
14 apartments.

15 MR. SPENCER: It was Tom Smith who --

16 PARTICIPANT: Yeah, Tom Smith voted
17 against it.

18 MR. SPENCER: Who has Spring Valley?

19 MS. GATES: And the East Campus.

20 PARTICIPANT: No, he's not out of group.

21 CHAIRPERSON HOOD: You know, what? I'm
22 more confused now before I even did all this. So
23 I'll tell you what we're going to do. We're going
24 to disregard the question, I'm going to take the
25 question off and I'll try to figure this out

1 myself.

2 MR. SPENCER: I can tell you, it's Tom
3 Smith and Sylvia Lacero are the --

4 CHAIRPERSON HOOD: Okay. Thank you all
5 very much for at least trying.

6 MR. SPENCER: I can get you a map if you
7 want.

8 CHAIRPERSON HOOD: No, that's all right.
9 I'm trying to still get a map of my neighborhood,
10 but so thank you, I really appreciate that. Okay,
11 Ms. Gates. And thank you, Commissioner, I
12 appreciate it.

13 MS. GATES: Mr. Chairman, the term
14 "adjacent" came up tonight. This is another of
15 those terms that we grappled over, grappled with
16 during the ZRR. The term was abut. We obviously
17 have not resolved that yet.

18 So could we put that on the list of
19 things to watch for?

20 But I do have some cross-examination.

21 CHAIRPERSON HOOD: Okay. Great. Thank
22 you.

23 MS. GATES: And this really goes to
24 either Mr. Tessler or Mr. Privot. Are you aware
25 of any time period that has been set aside by AU

1 during which these potential damages will be
2 covered?

3 MR. PRIVOT: A time limit?

4 MS. GATES: Uh-huh.

5 MR. PRIVOT: No, I've heard nothing of
6 the sort.

7 MS. GATES: Would it be helpful to have
8 that included?

9 MR. PRIVOT: Oh, yes. I think at least
10 five years.

11 MS. GATES: And have --

12 MR. TESSLER: It's right there. It says
13 nothing about a time limit.

14 MS. GATES: Okay. Also, Commissioner May
15 asked -- mentioned the groundwater and is there an
16 underground stream. Were you at the ANC meeting
17 when this came up? Not the underground stream,
18 but the groundwater; the flow of groundwater?

19 MR. TESSLER: Can you give me the date,
20 please?

21 MR. PRIVOT: At the ANC meeting?

22 MS. GATES: Just the past ANC meeting.
23 The 14th of --

24 MR. PRIVOT: No, I was out of town.

25 MS. GATES: Okay.

1 MR. PRIVOT: My mother-in-law was ill.

2 So.

3 MS. GATES: But you were there. Mr.

4 Tessler, thank you.

5 Do you recall a discussion about the fact
6 that the Department of the Environment only looks
7 at surface water?

8 MR. TESSLER: I believe so. I believe
9 that's true.

10 CHAIRPERSON HOOD: Speak into the
11 microphone so we make sure to --

12 MR. TESSLER: I believe that's true, yes.

13 MS. GATES: And so have we seen any kind
14 of hydrology reports? Has any been -- that would
15 confirm whether or not there is an underground
16 stream?

17 MR. TESSLER: No. Not that I know of,
18 no.

19 MS. GATES: Okay. Thank you.

20 CHAIRPERSON HOOD: Thank you.

21 MR. TESSLER: May I just say, the reason
22 I was --

23 CHAIRPERSON HOOD: Is this in response to
24 one of her questions? This is cross-examination.

25 MR. TESSLER: Well, about damage. I

1 think you asked about damage and the time period.
2 I just wanted to address the damages.

3 CHAIRPERSON HOOD: Okay. If that's
4 responsive to one of her questions.

5 MR. TESSLER: Yes, I'm sorry. When I
6 looked at the language that is currently there, I
7 called a couple of attorneys because I said,
8 there's something wrong with this. And when I
9 asked them -- one of the attorneys I spoke with
10 was in charge of one of the largest construction
11 projects in Europe at the time and is pretty well
12 versed in those things. Bob Hertstein is the
13 other person that I asked.

14 And so I'm just saying that really they
15 were not too happy with the language that was
16 there. They didn't see that it protected our
17 community very well, and so that's why the other
18 language that is in -- that I've given to you,
19 they think is much better. And I'm just looking
20 for protection for our homes. And not someone
21 trying to weasel out of doing something.

22 Now, while they said tonight that yes,
23 they're acknowledging if there is water damage to
24 our properties that they'll be responsible, but
25 that's not exactly what was said at the ANC

1 meeting. Now maybe they've gotten more
2 information since then, but it's not the
3 impression that we got at the ANC meeting.

4 CHAIRPERSON HOOD: Okay. Actually --

5 MS. GATES: Was the impression --

6 CHAIRPERSON HOOD: Actually, let me just
7 say this, actually that was testimony. But I
8 wanted you to get your point in because you were
9 responding to Ms. Gates' question.

10 MR. TESSLER: Sorry.

11 CHAIRPERSON HOOD: Okay. You have an
12 additional question?

13 MS. GATES: At the ANC meeting what was
14 the response?

15 MR. TESSLER: They were very noncommittal
16 as to what they were going to be --

17 MS. GATES: Did they not say that they
18 would include groundwater damage to foundations?

19 MR. TESSLER: I don't remember that. I
20 said no. No, I don't remember that.

21 MS. GATES: Okay. Thank you.

22 CHAIRPERSON HOOD: Okay. Thank you. You
23 have any questions? Okay. Come forward.

24 Mr. Joseph has a few questions.

25 MR. JOSEPH: This is a question for Mr.

1 Privot. So, it's a question for Mr. Privot. Mr.
2 Tessler admitted that in the 30 references that he
3 had to letters in opposition included nonresidents
4 and non-owners of Westover Place. Of the 20-odd
5 that you mentioned could you tell us how many of
6 those were duplicates of the ones that Mr. Tessler
7 mentioned, and how many were non-owners of
8 Westover Place?

9 MR. PRIVOT: None of my respondents are -
10 - let's put it this way, they're all residents of
11 Westover. And I have not bothered to cross-
12 reference my list which was dated last week or the
13 week before. Sir, there is, yes, I'm sure some
14 overlap.

15 MR. JOSEPH: Thank you.

16 MR. TESSLER: I can respond to that if I
17 may.

18 CHAIRPERSON HOOD: I think he -- yeah, he
19 didn't ask you the question, so we got it. Thank
20 you. Any other questions?

21 Okay. I want to thank this panel. We
22 appreciate it. Thank you very much.

23 MR. JOSEPH: Thank you.

24 MS. GATES: Thank you.

25 CHAIRPERSON HOOD: Okay. We're going to

1 take two minutes, and we're going to do rebuttal.
2 Get you time to get rebuttal and closing. And
3 we'll take two minutes.

4 (Off the record from 8:19 p.m. until 8:24
5 p.m.)

6 CHAIRPERSON HOOD: Okay. Let's go back
7 on the record. Mr. Tummonds, any rebuttal?

8 MR. TUMMONDS: Yes, just --

9 CHAIRPERSON HOOD: Rebuttal on anything?

10 MR. TUMMONDS: -- three brief issues.
11 First, the Westover Place party in support
12 requested that AU agree to hold a discussion
13 regarding East Campus traffic routes during the
14 next construction update meeting. We'll agree to
15 do that.

16 Second, I have a question for Mr. Dower.
17 Mr. Dower, are you aware of any underground
18 streams on the property?

19 MR. DOWER: No, I'm not.

20 MR. TUMMONDS: Does AU have a dewatering
21 permit for the property?

22 MR. DOWER: Yes, we do.

23 MR. TUMMONDS: And who issues the
24 dewatering permit?

25 MR. DOWER: DCRA issues it but DDOE

1 reviews it.

2 MR. TUMMONDS: Thank you. Second, Ms.
3 Argo, could you discuss the process that AU
4 undertook for preconstruction surveys for the
5 Westover Place Homeowner's Association?

6 MS. ARGO: Sure. For a period of time
7 before we began construction we offered with the
8 professional services of a company that was
9 retained by our primary contractor, we offered
10 preconstruction surveys. There is a condition in
11 the order that calls for preconstruction and post-
12 construction surveys. Rather than offer that just
13 to homeowners of Westover Place, which is the only
14 abutting property line for us rather than just
15 those that were adjacent, we offered it to all 149
16 Westover Townhome owners. We're available to get
17 a preconstruction survey from the company that we
18 retained.

19 Of the 149 homeowners, 64 took advantage
20 of the preconstruction survey. We did
21 approximately, along the property wall, the wall
22 that separates our properties, we did I think the
23 about 30 townhomes that are along the wall, and I
24 believe about 25 of those took advantage of the
25 preconstruction survey. But we also -- I can make

1 this available to the commissioners. We did
2 surveys for homes in the Westover community that
3 are at least -- there's a whole bunch of them
4 there. That are at least 400 to 450 feet from the
5 property line.

6 So, there were folks all over the
7 townhome community that took advantage of this.
8 And those went on -- I think we did those were
9 done primarily in April and May of this year.

10 MR. TURNBULL: That answer your question?
11 Great. That concludes our --

12 MS. ARGO: Last year. Sorry. Last year.

13 MR. TUMMONDS: That concludes our
14 rebuttal testimony.

15 CHAIRPERSON HOOD: Okay. Let's see, did
16 we have any cross on rebuttal?

17 MR. TURNBULL: Mr. Chair, I just wanted
18 to point out that what Mr. Tummonds was referring
19 to was Item 41A, is the one -- or what Ms. Argo
20 maybe referred to, the preconstruction surveys is
21 41A in the order.

22 MS. ARGO: Correct.

23 CHAIRPERSON HOOD: Okay. Okay. Any
24 other questions up here? Vice Chair Cohen?

25 MS. COHEN: Yes, I'd just like to know,

1 why did only 25 of the 30 that are abutting the
2 property take advantage? Why wouldn't all of them
3 have done so?

4 MS. ARGO: I can't answer that.

5 MS. COHEN: So you did not in any way do
6 a preconstruction on those five who did not take
7 advantage?

8 MS. ARGO: Correct. We offered the
9 survey, we sent letters, we had the cooperation --
10 this was all coordinated through representatives
11 of the Board of Directors of the Westover
12 Townhomes Corporation. They helped us with this
13 and reached out to all the owners several times
14 during a schedule. We immediately -- initially
15 said that we were going to do it within a certain
16 time frame. We extended the time frame to make
17 sure that everybody could get a preconstruction
18 survey that wanted them within the development.

19 MR. TUMMONDS: And, Ms. Argo, the survey
20 requires you to go on to that person's property,
21 go into their home?

22 MS. ARGO: Right.

23 MR. TUMMONDS: Yeah.

24 MS. ARGO: Right. There were visual and
25 there were also videos made of the properties.

1 They were surveyed in the way that they're done
2 within that profession. This was a company that
3 does this all the time.

4 MS. COHEN: Thank you.

5 CHAIRPERSON HOOD: Okay. Any other
6 questions up here?

7 Okay. Let's go to any cross on rebuttal
8 to ANC.

9 MS. GATES: What happens to any homeowner
10 who did not participate in the survey?

11 MS. ARGO: What happens in one situation?
12 That's pretty open-ended. I'm not sure what you
13 mean.

14 MR. TUMMONDS: Obviously the purpose of
15 the survey is so that someone can say, this was
16 the condition of my property prior to --

17 MS. GATES: I understand that, Paul.

18 MR. TUMMONDS: But I'm answering your
19 question. So it establishes a baseline, such that
20 if someone were to come later at the end of
21 construction and say, here is the study, this was
22 not on my property before and now here it is.
23 Therefore we can assume this case of damage to my
24 property was the result of your construction
25 activity.

1 If someone chose not to partake of that
2 preconstruction survey it will be, I think, that
3 much tougher for that person to show you that this
4 crack --

5 MS. ARGO: Was a cause and effect.

6 MR. TUMMONDS: -- was caused by
7 construction activity.

8 MS. GATES: But will the University
9 entertain their concerns, complaints, what have
10 you?

11 MR. TUMMONDS: Of course. I mean,
12 absolutely entertain. I mean, it would be -- but
13 the University would also want to make sure that
14 you know, any sort of damage was in fact -- if it
15 were to occur, was in fact the result of
16 construction activity and was not a preexisting
17 condition.

18 MS. GATES: Thank you.

19 CHAIRPERSON HOOD: Okay. Mr. Joseph, you
20 have any cross?

21 MR. JOSEPH: No, Mr. Chairman.

22 CHAIRPERSON HOOD: Okay. Thank you very
23 much. Okay. Mr. Tummonds, you have a closing?

24 MR. TUMMONDS: Very brief. Our goal this
25 evening was to make sure that this is the last

1 time that the Zoning Commission will need to
2 review the consistency of the East Campus
3 buildings as depicted in our approved building
4 permits with the Zoning Commission's further
5 processing approval of the East Campus.

6 We believe that our presentation and
7 testimony this evening has accomplished that goal.
8 We believe that these minimal modifications
9 presented this evening as part of Zoning
10 Commission Case No. 11-07C are entirely consistent
11 with the Zoning Commission's original approval of
12 development of the East Campus and we therefore
13 request that you approve this application. Thank
14 you very much.

15 CHAIRPERSON HOOD: Okay. Thank you very
16 much. Commissioner, is there any closing
17 comments?

18 I will tell you that I think that this
19 started off with being a more of a clarification
20 from my standpoint. I would be inclined to go
21 ahead and move forward. I think the evidence,
22 while I know there is some opposition, hopefully
23 AU will continue to work with those in the
24 community. And being a community person I'm not
25 pro just doing things, but I think the evidence in

1 the record is complete and I think that the
2 clarification is exactly how we got here. That's
3 what I started off with earlier, was a
4 clarification of what was going on prior.

5 But anyway, that's my thought and I will
6 open it up for any comments. Even though I can
7 tell you, we brought a lot more stuff, I believe,
8 into this than I thought we should have for the
9 most part.

10 But anyway, Commissioner May?

11 MR. MAY: Mr. Chairman, I agree with you.
12 You know, this was a helpful clarification. I
13 think it's also helpful that we heard from the ANC
14 supporting the modification and from the Westover
15 Homes Corporation or Association, whatever it is,
16 in support. And you know, I think I understand
17 the concerns that have been raised. I'm not sure
18 that they are material to the decision that was
19 already made by the Zoning Commission, and I would
20 support moving forward tonight and making a
21 decision in this case.

22 CHAIRPERSON HOOD: Okay. Anyone else?
23 Any comments?

24 Is everyone okay with moving forward or -
25 -

1 MS. COHEN: Yes.

2 CHAIRPERSON HOOD: Okay. Somebody like
3 to make a motion?

4 MS. COHEN: Mr. Chairman --

5 MR. MILLER: Go ahead, Ms. Vice Chair.

6 MS. COHEN: No, you go.

7 MR. MILLER: Okay.

8 CHAIRPERSON HOOD: You go ahead,
9 Commissioner Miller, because she's going to second
10 it.

11 MR. MILLER: Okay. Thank you, Mr.
12 Chairman. I agree with the comments that you have
13 made and by Commissioner May, and the applicant's
14 commitment to strengthen the condition on the
15 prohibition on motor coaches and bus turn around
16 and agreeing to the interpretation of the ANC that
17 the damage includes any water damage underneath.
18 And obviously the preconstruction survey includes
19 properties all over Westover Place.

20 Anyway, without having all that said I
21 would move that the Zoning Commission approve Case
22 No. 11-07C and ask for a second.

23 CHAIRPERSON HOOD: I'll second it. I
24 know how to be able to get a second myself. So
25 I'm going to second that. It's been moved and

1 properly seconded. Any further discussion
2 Commissioner May?

3 MR. MAY: Yeah, Mr. Chairman I would
4 just, before we take the vote, make the
5 observation that I think that what we saw tonight
6 was the importance of really good communication
7 between the University and the neighbors on all
8 aspects of the execution of the campus plan. And
9 you know, I think the University representatives
10 probably believe they've done everything they can.
11 I think that we've seen some indication that maybe
12 a little more could be done, and I think, you
13 know, more the better. It will hopefully absolve
14 -- I mean, if this is what's going to happen any
15 time we wind up with a disagreement I don't think
16 that -- I think that maybe the University is going
17 to want to do more on the front end to avoid
18 having to come back again on cases like this. So.

19 CHAIRPERSON HOOD: I think that was well
20 said. Any other discussion?

21 MR. MAY: No.

22 CHAIRPERSON HOOD: All those in favor,
23 aye.

24 ALL: Aye.

25 CHAIRPERSON HOOD: Any opposition? Not

1 hearing any, Ms. Schellin, would you record the
2 vote?

3 MS. SCHELLIN: Yes, sir. Staff records
4 the vote five to zero to zero to approve final
5 action in Zoning Commission Case No. 11-07C,
6 Commissioner Miller moving, Commissioner Hood
7 seconding, Commissioners Turnbull, Cohen, and May
8 in support.

9 CHAIRPERSON HOOD: Ms. Schellin, do we
10 have anything else?

11 MS. SCHELLIN: No, sir.

12 CHAIRPERSON HOOD: Okay. So with that I
13 want to thank everyone for their participation
14 tonight and this hearing is adjourned.

15 (Hearing adjourned at 8:34 p.m.)
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