

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-07G
Z.C. Case No. 11-07G
The American University
(Campus Plan Amendment and Further Processing of the
Campus Plan – Hall of Science Building)
March 19, 2018**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on November 20, 2017 to consider an application of The American University (“AU”, “University”, or “Applicant”) for an amendment to the 2011-2022 American University Campus Plan and special exception approval for further processing of the 2011-2022 American University Campus Plan to permit the construction of a new Hall of Science Building.

The Commission considered the further processing and campus plan amendment application pursuant to Subtitles X and Z of the District of Columbia Zoning Regulations. The public hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4 of the Zoning Regulations. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

Application, Parties, and Proceedings

1. The Commission approved the AU Campus Plan for the period from 2011-2022 (“Campus Plan”) pursuant to Z.C. Order No. 11-07. The Campus Plan included an addition to the existing chemistry building (“Beeghly Building”) on the Main Campus to allow consolidation of all science instruction and research into one facility. This application sought an amendment to the Campus Plan and a further processing of the approved Campus Plan in order to eliminate the planned addition to the Beeghly Building and instead construct a new separate Hall of Science Building. The application’s statement in support also sought what it characterized as a technical correction to Condition No. 14 of Z.C. Order No. 11-07 regarding the number of parking spaces that AU is required to provide on campus. (Exhibit [“Ex.”] 4.)
2. On April 21, 2017, the Applicant mailed a Notice of Intent to all required property owners, ANCs, and relevant community organizations in satisfaction of the requirement of Subtitle Z § 302.6. In accordance with Subtitle Z § 302.8, AU representatives attended ANC 3D’s May 3, 2017 public meeting, and made a preliminary presentation. (Ex. 4C.)

3. Notice of the public hearing was published in the *D.C. Register* on September 22, 2017, and mailed to ANC 3D and ANC 3E and to the owners of all property within 200 feet of the Main and Tenley Campus on September 12, 2017. (Ex. 9, 10.)
4. The public hearing on this application was conducted on November 20, 2017. The hearing was conducted in accordance with the provisions of Subtitle Z, Chapter 4.
5. In addition to the Applicant, ANC's 3D and 3E were automatically parties in this proceeding. ANC 3D submitted a report and provided oral testimony in support of the application. ANC 3D's report stated that at its regularly scheduled duly noticed meeting on September 6, 2017, the ANC voted 5-3-0 in favor of submitting a letter of conditional support noting the following issues and concerns with the application: (1) the potential for lighting from the new building to bleed into the surrounding neighborhood; (2) the proposed elimination of 75 parking spaces; and (3) the potential for community exposure to unacceptable concentrations of pollutants/emissions because of science laboratories in the proposed building, as well as the proposed building's location adjacent to the University power plant, which has existing smokestacks already emitting gases at the proposed new building's approximate height. (Ex. 12.) ANC 3E did not participate in this application.
6. The Commission received timely party status requests in support of the application from the Westover Place Homes Corporation ("WPHC") and the Spring Valley Neighborhood Association ("SVNA"). The Applicant had no objection to these requests for party status in support. The Commission granted party status in support of the application to WPHC and SVNA. (Ex. 25, 30, 31.) The Commission also received a request for party status in support of the application from Troy Kravitz, the Single Member District Commissioner for ANC 3D02. (Ex. 27.) At the public hearing, Mr. Kravitz withdrew his request for party status.
7. The Commission also received a timely joint party status request from the Spring Valley Wesley Heights Citizens Association ("SVWHCA"), Neighbors for a Livable Community ("NLC"), and eight individual neighbors in opposition to the application. The Applicant had no objection to this joint request for party status in opposition. At the public hearing, the Commission granted party status to SVWHCA/Neighbors for a Livable Community. (Ex. 29-29A, 31.) The Commission also received a timely party status request in opposition to the application from Ellen Siegler. The Applicant objected to the party status request of Ms. Siegler on the basis that Ms. Siegler will not likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than persons in the general public and her concerns can adequately be presented in person with opposition testimony. (Ex. 26, 31.) At the public hearing, the Commission denied the party status request of Ms. Siegler, noting that Ms. Siegler does not meet the standard of being more significantly, distinctively, or uniquely affected in character or kind by the proposed action than others in the general public. Nevertheless, the issue raised by Ms. Siegler concerning the University parking enforcement policy, was considered by the Commission and will be addressed later in this Order.

8. At the November 20, 2017 public hearing, the University presented evidence and testimony from Stephen Bartlett, AIA, LEED AP, Associate Principal/Senior Project Designer from Ballinger (Mr. Bartlett was admitted as an expert witness in the field of architecture); and Linda Argo, Assistant Vice President, External Relations and Auxiliary Services at American University. Ms. Argo, and Dan Nichols, Assistant Vice President, Risk, Safety and Transportation Programs at American University answered questions from the Commission and the Parties in opposition.
9. The Office of Planning (“OP”) filed a report in this case which was supportive of the application on the condition that the Applicant submit information as required by Subtitle Z § 302.10 (c) (1) about the location and size of existing trees to be removed on or adjacent to the proposed new building site. Also, OP suggested that the Applicant provide more specific information about what improvements and use changes would be made to the existing Beeghly Building post construction of the proposed Hall of Science Building. OP also noted the Applicant’s revisions to its proposal in response to community concerns about visibility of the proposed building from University Avenue and Quebec Street and potential for building light spillage into the adjacent neighborhood; and OP noted the Applicant’s commitment to undertake further modelling of dispersion of emissions from the laboratories. (Ex. 32.) A full discussion of the OP report occurs later in this Order.
10. The District Department of Transportation (“DDOT”) filed a report in this case which was supportive of the application with the conditions that the Applicant: (1) provide 46 short-term bicycle spaces as required by DC municipal regulations; and (2) add crosswalks and ADA curb ramps at a total of four locations identified in DDOT’s report. (Ex. 40, pp. 3, 12.) A full discussion of the DDOT report occurs later in this Order.
11. On January 8, 2018, the Applicant filed a post-hearing submission responding to issues raised by the opposition parties. (Ex. 58-58J.) A detailed discussion of the submission appears below in the post-hearing submission section of this Order.
12. On January 16, 2018, SVWHCA/NLC filed a post-hearing submission in response to the Applicant. (Ex. 61.) A detailed discussion of the submission appears below in the post-hearing submission section of this Order.
13. SVNA did not submit a response to the Applicant’s post-hearing submission.
14. At the Commission’s January 29, 2018 public meeting, it considered final action of the application. The Commission’s deliberations principally concerned whether the University had proved that it “has consistently remained in substantial compliance with the conditions set forth” in Z.C. Order No. 11-07, as required by Condition No. 11 of that Order.
15. One such condition was Condition No. 14, which required that the University maintain at least 2,500 parking spaces on campus. The University conceded that it was providing less than that amount, but that the “2,500” figure should have been “2,200”, which was consistent with an earlier finding of fact in that same Order, and with which the University had complied. The University requested that the Commission change the condition to reflect the lower as a technical correction to the Order. However, the Commission noted

that the Applicant did not follow the rules in 11 DCMR § 703 for making such a request, and it would not consider the question until those rules were complied with and a separate application filed. Since it could not determine whether the University had remained in substantial compliance with the conditions in Z.C. Order No. 11-07 until it determined what the parking figure should be, it deferred final action until that occurred. The Commission also requested additional information from the Applicant and SVWHCA/NLC on the number of trees and shrubs the Applicant has planted along the East Campus buffer to comply with condition 38 of Z.C. Order No. 11-07.

16. On February 20, 2018, both the Applicant and SVWHCA/NLC made submissions to the record regarding the required number of tree and shrub plantings along the East Campus Buffer. (Ex. 66, 67, 67A, 67B.) A detailed description of both submissions appears below in the post-hearing submissions section of this Order.
17. At its February 26, 2018 public meeting, the Commission first considered the University's application for a technical correction to change the minimum number of on-campus parking spaces from 2,500 to 2,200. As will be explained in Z.C. Order No. 11-07H, the Commission found insufficient evidence to determine whether the 2,500 or 2,200 figure reflects its intent, but believed that the figure would likely have been in between those two numbers. Nevertheless, because the record in Z.C. Case Nos. 11-07 and 11-07G supported a reduction to 2,200 parking spaces going forward, the Commission granted the University's request as a modification of consequence.
18. The Commission then resumed its deliberation on this case. With respect to the threshold question as to whether the Applicant had remained in substantial compliance with the conditions of Z.C. Order No. 11-07, the Commission determined that more information was needed. Therefore, the Commission requested additional information from the Applicant regarding compliance with Condition Nos. 13, 14, 16, and 17. With respect to Conditions 13 and 14, the Commission requested an explanation for the Applicant's failure to provide transportation demand management monitoring reports and parking utilization reports from 2012-2015. With respect to Condition No. 16, the Commission requested information on the Applicant's community outreach efforts with the Community Liaison Committee. Finally, with respect to Condition No. 17, the Commission requested information on the number of non-university athletic events that occur at Jacob's Field and the noise impacts associated with those events.
19. On March 5, 2018, the Applicant submitted additional information to address the Commission's compliance questions. A detailed discussion of the information appears below in the post-hearing submission section of this Order.
20. On March 12, 2018, SVWHCA/NLC submitted a response to the Applicant's additional information on compliance with Condition Nos. 13, 14, 16, and 17. (Ex. 71.) A detailed discussion of the response appears below in the post-hearing submission section of this Order.
21. On March 12, 2018, ANC 3D filed a response to the Applicant's post-hearing submission explaining its community engagement experience with the Community Liaison Committee

and the Neighborhood Collaborative. (Ex. 72.) The response was signed by the ANC as well as several non-parties to this proceeding. A detailed discussion of the response appears below in the post-hearing submission section of this Order.

22. On March 13, 2018, SVWHCA/NLC filed a motion to strike the ANC's response from the record because it was signed by several non-parties to this proceeding. (Ex. 73.)
23. On March 19, 2018 Spring Valley Neighborhood Association (SVNA), a party in support of this application, filed a response opposing SVWHCA/NLC's motion to strike the ANC's response. (Ex. 74.)
24. At its March 19, 2018 special public meeting, the Commission denied SVWHCA/NLC's motion to strike the ANC's response from the record. The submission met all the requirements under the ANC Act and therefore it was accepted by the Commission. Although the Commission could have struck the additional signatures, doing so would not have erased the fact of these signatures from the Commission's memory. The fact that others agreed with the ANC's position did not make the ANC's views more persuasive.
25. The Commission then approved the application for the reasons stated in the findings of facts and conclusions of law that follow.

Proposed Campus Plan Amendment

26. Instead of constructing an addition to the Beeghly Building, the Applicant sought an amendment to the Campus Plan in order to retain the existing Beeghly Building and to construct a new consolidated science building (Hall of Science Building) at a new location immediately to the west of the Beeghly Building, on a portion of AU's Main Campus that is currently used as a surface parking lot, a steeply sloped green space, and AU's Costume Shop. (Ex. 4.)
27. The impetus behind the need for a new, consolidated science building is the large growth of student interest in the science, technology, engineering, and mathematics (STEM) fields, as well as the aging science facilities that the University currently utilizes. Since the approval of the Campus Plan, the University and its architects conducted an analysis of the existing Beeghly Building and its ability to be renovated and expanded to provide a facility that meets the requirements of a 21st Century higher education science and technology curriculum for instruction and research. The results of that analysis showed that due to the severe obsolescence of the existing Beeghly Building, it was not feasible to renovate and expand it to meet the requirements of the modern science program envisioned. Therefore, the University and its architects looked at other appropriate locations for a new science building. (Ex. 4.)
28. The University determined that the adjacent surface parking lot (known as the Asbury parking lot), the site of the AU Costume Shop, and a steeply sloped green area would be an appropriate location for a new consolidated science building. This site was deemed to be a better alternative than the previously approved addition location since it was: more internal to the campus and over 90 feet further removed from the AU's property line along

University Avenue; the views of the new Hall of Science Building will be partially obscured from University Avenue and Quebec Street by the existing Beeghly Building; and the Hall of Science Building will be adjacent to Asbury Hall and associated science facilities that are not as dated as those found in the Beeghly Building. (Ex. 4.)

Further Processing Application

Description of the Proposed Hall of Science Building and Responses to Dialogue with the Community

29. The Hall of Science Building will include teaching and research laboratories, a vivarium, classrooms, a lecture hall, collaboration spaces, and faculty offices. This building will be associated with instruction and research related to the Chemistry, Biology, Environmental Science, and Psychology Departments in AU's School of Arts and Sciences. The Hall of Science Building will have a measured building height of 54 feet, six inches¹, with a penthouse structure on top of the building that has been specifically designed to provide appropriate venting of laboratory fumes from the building. The building will include approximately 92,970 square feet of gross floor area and will achieve LEED-Gold Certification. The exterior of the building will include a mix of glass and masonry, with painted metal and cast stone trim. A landscaped area will be created between the Hall of Science Building and the Beeghly Building. This landscaped area is intended to provide passive recreation space as well as rain garden infiltration areas to help manage stormwater runoff. (Ex. 4.)

30. The Hall of Science Building has been sited and designed to minimize its visual impact on any adjacent residential properties. The visual impact height of the Hall of Science Building has been mitigated by burying a floor and half of the building into the existing grade on this part of the Main Campus. The building's longer façades will face the interior of campus or adjacent AU buildings. The façade that will face University Avenue, which is approximately 500 feet from AU's property line, is only 48 feet, 10 inches wide, with window fenestration of only 17 feet wide. The labs at the northwest corner of the building will have vacancy sensors to ensure that lighting is turned off when those spaces are unoccupied. In addition, AU has agreed to include automated light-filtering shades for these windows that will be lowered at dusk and raised at dawn. (Ex. 4, 58-58A.) The Commission therefore disagrees with SVWHCA/NLC's assertion in its January 16, 2018 submission that the Applicant's proposed lighting mitigations are insufficient and fail to fully address the issue of lighting spillage into the surrounding neighborhood.

31. Representatives of AU held formal and informal meetings with representatives of the following groups regarding this application: ANC 3D, ANC 3E, SVWHCA; Neighbors for a Livable Community; the Community Liaison Committee ("CLC"); and the newly formed Neighborhood Collaborative. The Applicant made an initial presentation to the

¹ The Building Height Measurement Point (BHMP) has been established as the mid-point of the east façade of the building and is adjacent to the primary entrance to the building, facing the interior of the Main Campus. At the northwest corner of the building, where all of the levels of the Hall of Science Building are exposed, the building is approximately 76 feet tall.

Neighborhood Collaborative on April 19, 2017. Thereafter, American University made seven additional presentations and updates at ANC 3D, Community Liaison Committee, and Neighborhood Collaborative meetings. (Ex. 58, 58B1.)

Satisfaction of the Special Exception Standards of Subtitle X § 101 of the Zoning Regulations

32. The Applicant provided evidence sufficient to meet its burden of proof that the proposed Campus Plan Amendment and Hall of Science Building Further Processing application satisfies the special exception standards enumerated in Subtitle X § 101 of the Zoning Regulations. The relevant zoning requirements², and the Applicant's satisfaction of those requirements are addressed below.
- A. The use shall be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students or other objectionable conditions. (§ 101.2.)

No Adverse Impacts or Objectionable Conditions Related to Noise Will Result from the Construction and Use of the Hall of Science Building

33. The location, siting, scale, and architecture of the Hall of Science Building minimize noise and visual impacts on any neighboring properties. The building will be significantly set back from any adjacent residential property. In fact, the proposed Hall of Science Building will be located over 500 feet from AU's closest property line adjacent to University Avenue. The Applicant provided views of the Hall of Science Building and its relationship to the residential properties along University Avenue and Quebec Street which showed that the visual impact of the Hall of Science Building will be minimal, as those views will be mostly obscured from neighboring properties or public streets by the extensive tree and landscaping buffer along University Avenue, the significant distance to the Hall of Science Building, and the existing Beeghly Building's location between the Hall of Science Building and University Avenue. (Ex. 4, 4B.) In response to a request from SVWHCA, AU conducted a balloon test on October 3, 2017 in order to provide an additional study of the potential visual impacts of the Hall of Science Building on University Avenue and Quebec Street neighbors. The results of the balloon test further validated the University's argument that Hall of Science Building will not create an adverse or objectionable visual impact on neighboring properties. (Ex. 23, 23AA.)

² The Applicant's statement submitted with the initial application provided detailed information as to how it satisfied: the maximum bulk requirements of the RA-1 Zone (§ 101.5); the Commission's previous approval for development of the campus as a whole, Z.C. Order No. 11-07 (§ 101.8); that no interim use of land was proposed (§ 101.10); that no new use is proposed for the site of the initially approved Beeghly addition (§ 101.10); that development of the Hall of Science Building is not inconsistent with the Policies of the District Elements of the Comprehensive Plan (§ 101.11); and the additional gross floor area associated with the construction of the Hall of Science Building will result in the entire campus having a FAR which is within the approved FAR for the campus approved in the Campus Plan (§101.12). The OP report noted that the Applicant has demonstrated that the application complies with all relevant regulations in Subtitle X § 101.

34. The largest noise emissions from the Hall of Science Building will be from the exhaust fans at the roof level. These exhaust fans will be located away from the neighboring residential area and oriented towards the center of campus. Silencer nozzles will be used to reduce noise, and acoustic dampening panels will line the inside of the roof well where these fans will be located. These fans will change to a lower velocity setback position at night when the building is not fully utilized and internal ventilation rates can be safely reduced.

No Adverse Impacts or Objectionable Conditions Related to Traffic and Parking Will Occur as a Result of the Construction of the Hall of Science Building

35. The Hall of Science Building will create no adverse or objectionable traffic impacts on adjacent properties, will not result in adverse parking impacts on adjacent properties, and the removal of the existing 75 parking spaces on this site is consistent with the University's intent to reduce the number of parking spaces provided on the AU Campus as part of the 2011 Campus Plan. Deliveries to the Hall of Science Building will also come from the internal campus drive, and loading/trash facilities will be located inside the structure at the ground level. (Ex. 4.)
36. The Applicant submitted a Transportation Summary prepared by Iain Banks of Nelson Nygaard (Mr. Banks was admitted as an expert in transportation engineering) which noted that no increase in the student, faculty, or staff count on campus will occur as a result of this application and concluded that the transportation and parking impacts of this application on the surrounding roadway network is anticipated to be minimal based on the following findings:
- The minimal increase in the number of peak hour vehicular trips resulting from this project (26) is the same as the estimated existing trip generation and will result in no impact on the surrounding roadway capacity and adjacent roadway network; and
 - The loss of 75 parking spaces will still allow AU to meet the required minimum number of parking spaces provided on campus (2,200) and will not create any adverse parking impacts on neighboring properties, as existing users of these 75 parking spaces will be able to park at the nearby Bender Arena lot. (Ex. 19A, 23.)
37. The Applicant's transportation engineer prepared a parking utilization study in response to the request of the Commission. This parking utilization study analyzed the use and availability of parking spaces for all 2,393 parking spaces provided on AU's Campus (which includes the Main Campus and the Washington College of Law Campus) and the utilization of each parking lot and area on the Main Campus and the Washington College of Law Campus. This study noted that utilization on the Main Campus parking supply is consistently between 69%-72% during the peak demand period of 11:00 a.m.-1:00 p.m. and is lower as the day progresses. The study concluded that the loss of approximately 75 parking spaces from the Hall of Science Building can be absorbed by the existing parking supply on campus, as during peak demand the Main Campus has over 500 parking spaces available for use. (Ex. 58, 58F.)

No Adverse Impacts or Objectionable Conditions Related to the Number of Students/Faculty/or Staff Will Occur as a Result of the Construction of the Hall of Science Building

38. The proposed Hall of Science Building will not create any adverse or objectionable impacts related to the number of students/faculty/staff, as the construction of this facility will not result in an increase in the student or faculty/staff caps that were established in the 2011 Campus Plan. The need for the Hall of Science Building is to bring AU's science facilities up to 21st Century standards, and will not increase the student or staff/faculty populations. (Ex. 4.)

No Adverse Impacts or Objectionable Conditions Related to Other Objectionable Conditions Will Occur as a Result of the Construction of the Hall of Science Building

39. In response to questions regarding the potential impacts of light spilling from the Hall of Science Building into the adjacent residential community, AU agreed to install vacancy sensors at the northwest corner of the building to ensure that lighting is off when those spaces are not in use. AU has further agreed to install automatic light filtering shades to block light transmission from the windows in the labs at the northwest corner of the building. The shades will be programmed to go down every night at dusk and then be raised every morning at dawn. (Ex. 4, 58.)
40. In response to the Commission's request at the November 20, 2017 public hearing, the Applicant prepared a series of pictures that show the landscape buffer along University Avenue in December (the pictures were taken on December 8, 2017) that can be compared to the results of the balloon test that were taken on October 3, 2017. As evidenced by these pictures, the majority of the landscaped buffer along University Avenue consists of evergreen trees, bushes, and landscaping materials which do not lose their leaves during the winter. These images show that the appearance of the Hall of Science Building remains mostly obscured from University Avenue during the late Fall and Winter, as well as the remainder of the year. (Ex. 58, 58A.)
41. In response to the request of ANC 3D and members of the community, AU agreed to supplement the landscape plan in the area between the proposed Hall of Science Building and the existing Beeghly Building in order to further diminish any potential objectionable conditions or adverse impacts from the interior lighting of the Hall of Science Building. AU added three additional flowering magnolia trees in the northwest corner of the landscaped plaza that will be created between the Hall of Science Building and the Beeghly Building. These evergreen (or semi-evergreen) species can reach a height of 30-50 feet at maturity. (Ex. 23.)
42. The fact that a small portion of the Hall of Science Building may be visible to some surrounding property owners does not mean that this building will create an adverse impact or objectionable condition on those neighboring properties. The siting of this building, as well as the proposed conditions related to the automated shades, automatic light shut-off, and the additional landscape buffering proposed at the Hall of Science Building site and

along University Avenue, will help assure that no adverse or objectionable visual impacts will result from the approval of this application. (Ex. 58.)

43. As to environmental concerns, the Hall of Science Building is being designed in accordance with the International Institute for Sustainable Laboratory (IISL) Best Practices. In response to concerns raised about potential laboratory fume emissions, the University took the following actions:
- Wind wake modeling for effluent dispersion - wind wake modeling is utilized to ensure the safety of building inhabitants and those people in the surroundings. At the request of the community, AU has agreed to undertake the wind tunnel testing in lieu of numeric modeling to estimate the dilution of effluents based on dispersion;
 - High dilution exhaust fans - located within a roof well to the east of the mechanical penthouse;
 - Manifolded exhaust system for pre-dilution – emissions are first diluted within the building; and
 - Exhaust discharge per ANSI Z9.5. (Ex. 4.)
44. In response to the community’s request for a construction management plan, AU proffered that it will minimize the impact of construction activity on neighboring properties by:
- Appointing a University staff liaison to address concerns and answer questions regarding construction activity;
 - Establishing a 24-hour construction contractor telephone contact for reporting Problems and establishing a process for timely response;
 - Holding a preconstruction community meeting to coordinate planned construction activities at least 90 days before construction to include construction managers; and
 - Prohibiting construction traffic and construction worker parking on the nearby residential streets. (Ex. 4.)
45. Subtitle C § 601.6 requires the Applicant to show how the building meets the Green Area Ratio (“GAR”) standards. The minimum GAR requirement in the RA-1 Zone is 0.4. The Applicant provided a GAR scoresheet and plan which indicated that the development of the land area associated with the Hall of Science Building will result in a GAR of 0.463. (Ex. 23, 23C.)

Satisfaction of Conditions of Z.C. Order No. 11-07

46. Condition No. 12 of Z.C. Order No. 11-07 stated that no further processing application will be approved unless the University proves that it has consistently remained in substantial compliance with the conditions of the 2011 Campus Plan Order. Condition Nos. 1-2 discussed the period of Campus Plan approval and boundaries of the Campus Plan and were therefore not relevant to this application. Condition No. 7 is related to the ability to use Campus facilities for conferences from time to time and is not relevant to this application. The Commission generally agrees with the Applicant that the reference in Condition No. 12 to “substantial compliance with the conditions of the 2011 Campus Plan Order” does not pertain to the conditions applicable to the further processing applications, *i.e.*, the Nebraska Hall addition (Condition Nos. 26-32), the Mary Graydon Center (Condition Nos. 33-37), and the East Campus (Condition Nos. 38-41). That does not mean that the Commission may ignore substantiated assertions of non-compliance with these further processing conditions. For that reason, the Commission included within its Condition No. 12 analysis the assertion that the Applicant’s initial statement as to the number of trees and shrubs it had planted along the East Campus buffer was less than the amount required by Condition No. 38.
47. The facts relevant to the Commission’s Condition No. 12 analysis follow.

TDM and Parking Utilization Reports

48. Of the applicable conditions, the Applicant concedes that it was in violation of two reporting requirements contained in Condition Nos. 13 and 14.
49. Condition No. 13(f) provides:
- (f). Monitoring. The University shall adopt a monitoring program to evaluate campus travel habits and the effectiveness of the various TDM strategies The University shall provide a monitoring report annually to ANCs 3D, 3E, and 3F, and shall make the reports available to the public.
50. The last sentence of Condition No. 4 required the University to “provide DDOT with annual reports on parking utilization that reflect the number of non-carpool passes sold each year relative to the number of full-time equivalent employees and the number of occupied spaces on a typical semester weekday.”
51. The Campus Plan became effective on May 17, 2012. The University did not file any of the required reports until 2016. The University characterized this as an “oversight” and indicated that internal procedures and mechanisms were now in place to ensure this will not happen again. (Ex. 69.) SVWHCA/NLC contended that this failure to report was part of an established pattern of non-compliance. (Ex. 72.)

52. As will be explained in the Conclusions of Law, the Commission found the Applicant's explanation credible and finds that the Applicant is in current compliance with its reporting requirements.

Minimum Number of On-Campus Parking Spaces

53. The parties all agree that there is a discrepancy between the number of parking spaces being provided on campus (2,393 pursuant to Exhibit 58F) and the 2,500-minimum required to be maintained by Condition No. 14 of Z.C. Order No. 11-07. The Applicant believed the 2,500 figure to be a typographical error, and that the actual figure should have been 2,200. The Commission considered the Applicant's claim in Z.C. Case No. 11-07H, but concluded that the record evidence did not sufficiently reflect the Commission's intent as to what the figure should be. The Commission nonetheless concluded that its likely intent was that the figure be between 2,200 and 2,500 and for the reasons stated in the Conclusion of Law, the Commission finds the University in compliance with the minimum parking space requirement. Also, in Z.C. Case No. 11-07H, the Commission found that a minimum of 2,200 parking spaces would suffice, and therefore granted a modification of consequence to Condition No. 14 to reflect that number.

Community Liaison Committee ("CLC")

54. Condition No. 16, stated in pertinent part:

The University shall continue to work with community representatives to maintain the Community Liaison Committee created in the 2001 Campus Plan... for the purpose of fostering consistent communication between the University and the surrounding neighborhoods, discussing issues of mutual interest, and proposing solutions to problems existing or that arise in implementing the approved campus plan.

55. In Z.C. Case No. 11-07F, the Commission granted a modification to several of the Campus Plan conditions that pertained to housing. In the course of that proceeding, issues concerning the effectiveness of the CLC arose, and the Applicant was able to reach an agreement with SVWHCA, and ANC 3D to restructure the CLC and create a new group to be known as the Neighborhood Collaborative. SVWHCA's signature on the agreement to create the Neighborhood Collaborative appears on page three of Exhibit 35A of that case. The University requested the Commission to add a proposed condition to accomplish these purposes, but the Commission declined because the proposal went beyond the scope of the hearing as advertised, and suggested that the University come forward with a separate modification proposal if it wanted the proposed Neighborhood Collaborative formally recognized with the Campus Plan. (See Z.C. Order No. 11-07F.)
56. The University however needed no permission to launch the Neighborhood Collaborative, and did so. The Neighborhood Collaborative and its working groups address concerns of neighbors living adjacent to the campus. These concerns include issues related to: enrollment; student housing; facilities planning; parking; transportation; and student

conduct. To assist in the organization, establishment and operations of the Collaborative, the University engaged Don Edwards of Justice and Sustainability Associates. Mr. Edwards continues to serve as adviser to the University and facilitator for both the Neighborhood Collaborative and the Community Liaison Committee. He has also convened a number of neighborhood forums designed to inform and educate the neighboring community and to build capacity to more effectively participate in collaborative planning and development decision-making with the University. (Ex. 4.)

57. The University indicated that it remains committed to making the CLC an effective tool for open dialogue between the University and community stakeholders and continues to satisfy this condition. In its March 5, 2018 post-hearing submission, the Applicant indicated that it holds quarterly meetings with the Community Liaison Committee, special meetings as requested, and maintains a website including the CLC's membership list, meeting agendas, minutes, and presentations.
58. In its March 12, 2018 submission, SVWHCA/NLC asserts that the Applicant created the Neighborhood Collaborative to undermine the Community Liaison Committee and restrict community dialogue only to certain community representatives. Further, in its operation of the Community Liaison Committee SVWHCA/NLC asserts that the Applicant has failed to provide a transparent and collaborative process to resolve identified community problems in a timely manner, instead the Community Liaison Committee is used as a means to provide quarterly AU departmental reports to community neighbors.
59. In a report dated March 12, 2018, ANC 3D found the Applicant's explanation of the Community Liaison Committee accurate, and that the Community Liaison Committee provides a forum through which the concerns of the University's neighbors can be raised and discussed. (Ex. 74.) The ANC considers the Neighborhood Collaborative to be an additional engagement framework and notes that discussions about the Neighborhood Collaborative occurred at Community Liaison Committee meetings in December 2016, March 2017, June 2017, and December 2017. Based on those discussions, the Neighborhood Collaborative established community-wide workgroups to focus on topics of university-community relations. In the ANC's view, the efforts to refine the Neighborhood Collaborative have not undermined the Community Liaison Committee, in fact, the Neighborhood Collaborative can help strengthen the operations of the Community Liaison Committee to both enhance dialogue between the University and relevant community stakeholders and inform the decision making of the Community Liaison Committee, the University, and the community as a whole.
60. For the reasons stated in the Conclusions of Law, the Commission finds no violation by the University of Condition No. 17.

Use of Jacobs Field

61. The University permits non-University athletic events at Jacobs Field. SVWHCA asserts that this is not permitted by the applicable conditions.

62. Condition No. 17 states that the University “shall be permitted to use Jacobs Field for university events”, which includes intercollegiate athletic events. The condition then states “[a]ll other uses of Jacobs Field shall be considered ‘special events’ (as defined below).” Thus, a non-university athletic event would be permitted if it was among the “special events” defined.
63. Condition No. 25 (in relevant part) states, “To the extent that Jacobs Field is used for a special event (i.e. not a University-related athletic event as defined in Condition No. 23), such as graduation, homecoming, picnics, receptions, or charitable events (such as the Juvenile Diabetes Research Foundation’s annual Real Estate Games), or exhibitions, the University shall comply with the following requirements...” (Emphasis added.) Condition No. 23 does not define “a University related athletic event.”
64. The Applicant argues that since non-university athletic events are “not a University-related athletic event” it follows that they are permitted.
65. SVWHCA/NLC asserts the language of Condition No. 17 is clear and unambiguous, i.e. the phrase the University “shall be permitted to use Jacobs Field for university events” means that the athletic use of the field is limited to AU athletic events. All other uses of Jacobs Field are to be limited ‘special events’ similar to the examples given in Condition No. 25, namely graduation, homecoming, picnics, receptions, or charitable events (such as the Juvenile Diabetes Research Foundation’s annual Real Estate Games). All the examples are one-time events and by “everyday common usage of the words ‘special event’ would naturally exclude recurring athletic games.”
66. Dr. Jessica Herzstein and Mr. Elliott Gerson, who reside at 4710 Woodway Lane, submitted a letter into the record which also claimed that AU is not in compliance regarding appropriate uses of Jacobs Field. Dr. Herzstein and Mr. Gerson’s letter stated that “Specifically, the plain language of the Order, the history of all conversations involving the Field and proceedings regarding it, and common sense, dictate that the only permissible athletic uses of the field are for AU students and teams.” Dr. Herzstein and Mr. Gerson noted that they have spent nearly two years trying to arrive at a solution with AU, and now there are reasons for at least hope that relief from the noise impacts may finally come with sound-insulating fencing. In conclusion, the letter stated that “We are not arguing that there can be no noise or no use of the field, but only that the use be limited and noise mitigated consistent with the requirements outlined in ZC 11-07.” (Ex. 37.)
67. In its March 5, 2018 submission, the Applicant indicated that that the majority of non-university athletic events at Jacobs Field occur in the spring and summer months and include charity events, high school field hockey tournaments, adult and child recreational soccer, and lacrosse and field hockey tryouts. The largest events are typically one-day events and the weeklong events typically have 20-30 participants. The Applicant believes all these events are considered special events and are permitted at Jacobs Field; the special events described in Condition No. 25 of Z.C. Order No. 11-07 are illustrative and not an exhaustive list of the special events that can occur at Jacobs Field.

68. As to the issue of noise impacts associated with these events, the Applicant notes that Condition No. 25 limits the number of special events that can utilize amplified sound to 12 events per year and in 2016 and 2017 only one non-university athletic event was authorized to use amplified sound, the USA Futures Field Hockey Tournament which occurred on weekends in May. Given that the majority of the special events occurring at Jacobs Field are smaller events with no amplified sound, the Applicant does not believe that these events create an objectionable noise impact on neighboring properties.
69. For the reasons stated in the Conclusions of Law, the Commission finds that the Applicant's interpretation of its ability to offer Jacobs Field for non-University athletic event is reasonable and in fact provides important opportunities for youth in the District.
70. American University is currently in discussions with the owners of 4710 Woodway Lane regarding the construction of a sound barrier wall. The wall would be approximately 360 linear feet long with a 200-foot-long, 15-foot-high segment in the center to cover the player bench area of Jacobs Field. The remaining 80-foot segments on either end of the wall will be 10 feet tall. The estimated cost of design and construction of the sound barrier wall system is approximately \$500,000. (Ex. 58.) The Commission expects the University to follow through on this expeditiously. (Transcript ["Tr."] of March 19, 2018 Public Meeting, p. 19.)

East Campus Buffer

71. Condition No. 38 of Z.C. Order No. 11-07 concerned the further processing approval of the East Campus and provided that Buildings 1 through 6 be sited as shown on Exhibits 589 and 602 of the record of that case. Those exhibits showed 458 trees and shrubs that were to be planted. Based upon one of the Applicant's submissions SVWHCA/NLC asserted that the Applicant has planted 323 plantings. The Applicant's February 28, 2018 submission clarifies that 396 plantings were completed as of November 2016, and beginning in December 2016 there were an additional 93 plantings in response to Westover Place residents, all 489 of which were planted in the original East Campus landscape buffer area.

Condition No. 20 – Landscaped Buffer along University Avenue

72. On November 15, 2017, SVWHCA/NLC filed a five-year plan for planting/landscaping that it provided to AU on October 10, 2017 as a means to mitigate objectionable conditions raised by neighbors along University Avenue. SVWHCA/NLC noted that this plan was intended to stress that additional planting is necessary along the perimeter of the campus primarily on the AU side of the fence along the property. (Ex. 39.)
73. In its first post-hearing submission, American University stated that it remains committed to working with adjacent neighbors, ANC 3D, and Spring Valley neighborhood associations, to ensure a deep and robust woodland buffer along University Avenue, N.W. To ensure this, the University will undertake the following actions:

- Planting seven mature trees (*Cryptomeria japonica* and *Cedrus deodara*) in the “gap” along University Avenue to provide additional screening from the Hall of Science building. AU noted that these evergreen species have been selected because they are fast growing (eight-10 feet tall at installation and a mature height of 50-60 feet), hardy, and excellent choices for screening;
- Revisiting with the ANC 3D02 Commissioner and the relevant surrounding neighborhood associations and property owners along University Avenue and/or Quebec Street about the plans for supplementing the University Avenue woodland buffer, originally shared with Neighbors for a Livable Community on October 15, 2014 (submitted into the record on November 20, 2017 as Exhibit No. 47);
- Engaging and working with the University Avenue neighbors, Spring Valley neighborhood associations and the ANC 3D02 Commissioner on a five-year plan for the further development and maintenance of the University Avenue woodland buffer; and
- As requested by Neighbors for a Livable Community, additional enhancements will include removing tree stumps, tree trimming, the creation of a mulched path for neighborhood dog walkers, replacing wildflower plantings with tall arborvitae/Leland cypress/large evergreens where possible, additional plantings along the boundary fence behind the field bleachers, and addressing concerns related to the condition of the existing berm. (Ex. 23, 58.)

The Remaining Applicable Conditions

74. The Applicant met its burden of proving compliance with the remaining applicable conditions.
75. Condition No. 3 includes a cap of 13,600 students. The total enrollment on the Main Campus in the Fall of 2017 was 11,490 students, less than the total enrollment cap of 13,360 students. The non-law school enrollment was 10,059 students (6,772 undergraduate students, 2,376 non-law school graduate students, and 911 other students), and the Washington College of Law had 1,431 students (the Washington School of Law has a separate cap of 2,000 law students). (Ex. 58.)
76. In its January 16, 2018, response to the Applicant’s post-hearing statement, SVWHCA/NLC claimed that the Applicant is using the temporary flexibility for undergraduate housing provided in Z.C. Case No. 11-07F as a means to increase its undergraduate enrollment. Despite earlier projections from the Applicant that undergraduate growth would be limited over time, undergraduate enrollment has increased by nearly 600 students in five years as of Fall 2016. Because undergraduate enrollment growth has not been minimal as projected, a cap on undergraduate enrollment should be considered by the Commission simultaneous with this proceeding to provide certainty for the community during the remaining four years of the Campus Plan approved in Z.C. Order No. 11-07.

77. The Applicant has demonstrated no adverse impacts as a result of its current undergraduate enrollment and therefore there is no need to consider imposing such a cap, which, in any event would be beyond the scope of this application.
78. Condition No. 4 includes a cap of 2,900 employees. In 2017, AU had a faculty and staff headcount of 2,486 individuals that work at properties which are included within the Campus Plan boundaries approved in 2011, per Z.C. Order No. 11-07. (Ex. 58, 58D.)
79. Condition No. 5 requires that American University make housing available for 67% of all full-time undergraduates by the start of the Fall 2017 semester.³ As of August 21, 2017 the University was making housing available to 68% of full-time undergraduates on campus (and a total of 71% including AU provided housing). (Ex. 4, 4E.)
80. Through its testimony and Exhibit No. 4, the Applicant also proved that it has remained in compliance with Condition No. 6 (University to enforce its residence hall regulations in all University provided housing), Condition No. 8 (University to require its students to abide by the terms of the student code of conduct and to continue to implement the “Neighborhood Action Program” and to promote the “Good Neighbor Guidelines), Condition No. 9 (University to abide by the terms of the approved lighting plan), Condition No. 11 (University to provide notification to the Army Corps of Engineers and various federal departments and authorities at the time it files a permit application with DCRA for any excavation, ground clearance, construction), and Condition No. 15 (the University’s off-campus parking enforcement program).
81. With regard to Condition No. 15, Ellen Siegler presented written and oral testimony at the public hearing to object to “AU’s overzealous and unlawful distortion of this Commission’s order as it relates to parking restrictions, which amounts to a violation of its current Campus Plan.” Ms. Siegler testified that she is not opposed to AU’s Good Neighbor Policy (“GNP”), she is challenging AU’s application of the policy to persons who were never intended to be covered by it. Ms. Siegler argued that AU’s interpretation of the GNP is not valid because AU makes it applicable to visitors and guests of AU (and gives tickets to those visitors and guests) when it should only apply to students, faculty, and staff and vendors servicing the campus; that AU applies the GNP to a broad area that has no boundaries; and that AU admits to no limits on its authority to treat members of the public (with no contractual relationship to AU) as if they were students, faculty, employees, or vendors. (Ex. 55A; Tr., pp. 171-173.)
82. Nancy Stanley submitted a letter into the record expressing similar concerns.

³ The Commission takes notice that Condition No. 5 of Z.C. Order No. 11-07F provides that: “Housing provided by the University through a master lease (such as the Berkshire apartments), and that is subject to AU residence hall regulations, may be considered to be “on campus” housing for the purpose of calculating the housing percentages noted above through the end of this Campus Plan (2022).”

83. AU was asked to respond to these issues in its post-hearing submission. AU noted that Ms. Siegler initially raised concerns regarding AU's ability to issue tickets associated with American University's Good Neighbor Parking Policy in a letter (dated April 5, 2016) to the General Counsel of American University. On April 18, 2016, American University provided a response to Ms. Siegler and noted the relevant conditions of Z.C. Order No. 11-07 which require AU to abide by the policies of the Good Neighbor Parking program, as well as the mechanism by which someone can have the ticket withdrawn and/or their vehicle placed on a "Do Not Ticket" list. (Ex. 58.)
84. American University noted that its Good Neighbor Parking Policy plays an important part in mitigating any adverse off-campus parking impacts by university or university-related uses. As noted by Commissioner May during deliberations on the 2011 Campus Plan:
- "I think that the Good Neighbor Policy is pretty aggressive, so aggressive that, you know, they have – it's so aggressive that I think we have complaints from some people who think that it causes a problem for them. People who live in the neighborhood and who were erroneously ticketed. So I think we have had testimony that it is perhaps too aggressive. I don't have any problem with it being that aggressive. And I think it is appropriate." (Ex. 58, 58C.)
85. American University concluded that it believed that the continued enforcement of the Good Neighbor Parking Policy, including its application to visitors and guests of AU (in addition to "students, faculty, staff and vendors servicing the campus") is consistent with the goals and intent of the Commission's approval of Z.C. Order No. 11-07. (Ex. 58.)

Office of Planning and Department of Transportation

86. By report dated November 9, 2017, and by testimony at the public hearing, OP concluded that it did not object to the Further Processing Application and Campus Plan Amendment application, with a condition that the Applicant provide information required by Subtitle Z §302.10 (c)(1) regarding the size of existing trees to be removed on or adjacent to the property (i.e., the proposed new building site). (Ex. 32.)
87. In testimony at the public hearing, the Applicant's expert in architecture (Stephen Bartlett) discussed the tree protection and removal plan that the Applicant will undertake.
88. The OP report noted that the "proposed project would be situated and designed to complement nearby campus uses and building materials. It would be partially sunk into an existing hillside and would be faced with two types of brick, a metal panel rain screen and an aluminum and glass curtain wall". In regard to the impacts on the neighborhood, the OP report noted:

The side of the building that faces towards University Avenue would be 500 feet east of the campus boundary line along University Avenue, which would be 90 feet further from the nearest residence than the Beeghly Building addition would have been. The proposed building would also be 20 feet, six inches shorter than the approved addition, and would

have automated features to reduce any spillover of building lighting into the adjacent neighborhood. While the Hall of Science would be approximately 33,000 square feet larger than the approved addition, the design and the additional tree plantings proposed by the applicant would likely result in the proposed building having less of an impact on the neighborhood than the approved addition may have had. (Ex. 24E.) This estimate of a minimal visual impact has been supported by recent balloon studies. (Ex. 23AA, 32.)

89. The OP report also noted that, “There have been no relevant new or amended policies added to the District elements of the Comprehensive Plan since the AU Campus Plan was adopted. Evaluation of the proposal against the Comprehensive Plan is detailed in Z.C. Order No. 11-07, and in the associated OP report and Applicant’s submissions. (Ex. 238.) All of the uses proposed for the Hall of Science building were included within the adopted campus plan. As noted earlier, the physical impact of the proposed building is likely to be equivalent to or less intense than the approved addition.” (Ex. 32.)
90. By report dated November 9, 2017, DDOT has no objection to the Hall of Science Building application with the conditions that the Applicant: provide 46 short-term bicycle parking spaces near the primary and secondary entrances to the building; and install DDOT proposed crosswalks and ADA curb ramps at noted locations on the interior of the campus adjacent to the Hall of Science Building site. (Ex. 40.)
91. Mr. Bartlett also addressed the conditions of support that were raised in the DDOT report. He noted the location of the bike racks on the exterior of the building, the loading facilities and delivery spaces that will be provided and the new crosswalks and ADA ramps that will be provided at the request of DDOT. The Applicant will be providing 30 exterior short-term bike parking spaces outside the entrances to the building. The Commission agrees with the Applicant that there is no demand for the 46 bike parking spaces noted in the DDOT report. (Tr. p. 24-25, 28; Ex. 40, 42A1, 42A2.)
92. The DDOT report noted that this application is not expected to generate a greater number of trips than proposed in the 2011-2022 Campus Plan since the new building will not add new staff, faculty or students beyond approved levels; the proposed project will eliminate 75 vehicle parking spaces which is in line with the parking requirements established in Z.C. Order No. 11-07; the existing Transportation Demand Management Plan (TDM) measures will serve to encourage non-auto use; and the Applicant has identified short-term bicycle parking facilities on site and within public parking. (Ex. 40.)

ANC 3D

93. ANC 3D submitted a letter to the record on September 21, 2017, which noted that at its regularly scheduled meeting on September 6, 2017 with a quorum present, the ANC voted 5-3-0 in favor of the application. ANC 3D noted that the primary issues of concern to the community were: lights from the building that may be seen from select locations in the surrounding neighborhood; elimination of parking spaces on campus; and safety of

emissions from the science laboratories. ANC 3D determined that AU adequately addressed these issues. In addition, ANC 3D's letter in support noted the following:

"The ANC applauds the applicant's considerable community outreach throughout the development of this project and acknowledges their responsiveness to and adequate resolution of community concerns. The ANC further acknowledges broad community support for the applicant's proposal in Zoning Case 11-07G and hopes this type of engagement becomes the norm for future construction proposals." (Ex. 12.)

94. As noted, the ANC submitted a second report concerning the Applicant compliance with Condition No. 16. (Ex. 72.)

CONCLUSIONS OF LAW

The Applicant requested that the Commission approve an amendment to the approved Campus Plan, and a Further Processing of the approved Campus Plan. The two requests were advertised in the same public hearing notice as is customarily the case due to the interrelated nature of the requests, and the Commission saw no basis for separate consideration. The Commission may grant special exception approval to authorize the construction of a new structure devoted to a university-related use, provided the requirements of Subtitle X § 101 of the Zoning Regulations are met.

Procedural Issue

Subsection 101.16 of Subtitle X provides:

- 101.16 A further processing of a campus building shall not be filed simultaneously with a full campus plan application. However, an amendment to an approved campus plan may be considered simultaneously with the further processing if determined necessary by the Zoning Commission.

The SVWHCA/NLC joint pre-hearing statement claimed that AU has offered no "need" for simultaneous action – other than the University's convenience. (Ex. 33.) OP's report in this case supported the simultaneous review of the campus plan amendment and further processing applications. OP concluded that, "The applicant has provided all the information needed for both a campus plan amendment and for further processing related to the Hall of Science. The campus plan amendment and the further processing are for the same proposed use and development. OP therefore recommends that the Commission simultaneously consider the two processes." (Ex. 32.) The Commission agreed with this recommendation since the amendment to the Campus Plan and the further processing application for the Hall of Science Building was for the same proposed use and development, it was necessary to process these applications simultaneously.

Substantial Compliance

Before considering the merits of this case, the Commission must first find that the Applicant met its burden to provide that it “has consistently remained in substantial compliance with the conditions set forth” in Z.C. Order No. 11-07, as required by Condition No. 11 of that Order.

Based on the information provided in the record of this case, the Commission finds that the Applicant has remained in substantial compliance with the Conditions of approval in the Campus Plan, including the student and employee caps and the percentage of on-campus housing that is made available for full-time undergraduate students.

However, the Commission does recognize that the University failed to file the annual reports regarding the effectiveness of TDM measures and parking utilization reports from the date the Campus Plan became effective until 2016. The Applicant claims that this was an oversight “pure and simple,” but the Commission finds nothing pure or simple about it. It is the same type of “oversight” that resulted in the University not realizing for five years that the parking space number in Condition No. 14 was a “typo.” Either the University did not read these conditions, or having read them, did not care what they said. Happily, no adverse impacts resulted, the University is now in compliance, and both DDOT and the ANC, which were to receive the reports, supported the present application. However, the Commission hopes that among the internal mechanisms that have been put in place is for the University to periodically review the conditions of approval that apply to the Campus Plan and the further processings granted.

Condition No. 14 also required the University to maintain 2,500 on-campus parking spaces. As previously noted, in Z.C. Case No. 11-07H, the Commission approved a modification of consequence changing the required number of on-campus parking spaces from 2,500 to 2,200 instead of a technical correction correcting a mistake in the original order. Because the University has acknowledged that it currently maintains approximately 2,393 parking spaces (Ex. 58F), less than the 2,500 required by the original Order, the Commission’s decision to modify the original Order potentially raises another area of non-compliance. However, in the Commission’s judgment, the 11-07 case record was unclear as to the number of required on-campus parking spaces the Commission intended. The Commission therefore concludes that its intent was a number of parking spaces between 2,200 and 2,500, and the University is substantially compliant by currently providing approximately 2,393 on-campus parking spaces.

The Commission also notes the Applicant’s written testimony and post-hearing submissions regarding how it is in compliance with the conditions related to the use of Jacobs Field. The Commission finds the Applicant’s interpretation of Condition Nos. 17 and 25 consistent with the spirit and intent of the original campus plan order. The types of non-university related athletic events described in the Applicant’s Exhibit No. 69B are exactly what the Commission intended by “special events,” and provide an important benefit to District citizens, particularly its youth. The Applicant has also demonstrated that these events do not use amplified sound and therefore will have little if no impacts due to noise. However, other events do have the potential for noise impacts and the Commission expects the University to expeditiously conclude its discussions with the owners of 4710 Woodway Lane regarding the construction of a sound barrier as described in Finding of Fact No. 70.

The Commission has considered the submissions received regarding the Applicant's compliance with its Community Liaison Committee obligations of Condition No. 16. The Commission finds the Applicant's community engagement efforts with the CLC to comply with requirements and its establishment of the Neighborhood Collaborative to further enhance its community engagement efforts. However, the Commission notes the SVWHCA/NLC concerns about the University's seeming preference for the Neighborhood Collaborative over the CLC as the means to resolve identified community problems. In Z.C. Case No. 11-07F, the submitted agreements signed by SVWHCA proffered conditions that restructured the CLC and gave formal recognition to the Neighborhood Collaborative. The Commission did not add those conditions because they were beyond the scope of that case, and similarly cannot unilaterally do so here, as the University suggests. Rather, if the University believes the settlement agreement and the implementing conditions should be part of this Campus Plan, it may apply to modify the Campus Plan, which arguably could be considered as a modification of consequence.

The Commission further found that the Applicant has planted more shrubs and trees than required in Condition No. 38 and that its implementation of the Good Neighbor Parking program is consistent with the Commission's expectations.

Therefore, notwithstanding the University's past noncompliance with portions of Condition Nos. 13 and 14, the Commission concludes that the University has remained in substantial compliance with the applicable conditions of approval in Z.C. Order No. 11-07, and the Commission may therefore consider the merits of the Applicant's further processing and campus plan amendment requests.

The Merits

The Commission concludes that the Applicant has satisfied the burden of proof related to the special exception criteria for further processing approval of the proposed Hall of Science Building. The Commission finds that no objectionable impacts related to noise will result from the construction and use of the Hall of Science Building. The Commission believes that the siting, massing, and location of the Hall of Science Building, approximately 500 feet from the campus boundary along University Avenue and partially obscured by the existing Beeghly Building, will ensure that there are no adverse or objectionable noise impacts from the operations of the Hall of Science Building. The Commission notes that the Applicant's architects have also designed the exhaust system of the building to minimize noise impacts through the use of silencer nozzles and acoustic dampening panels. The Commission also notes that the Applicant has proposed a construction management plan which will be a part of the approved application.

The Commission finds that no objectionable impacts related to traffic and parking will occur as a result of the construction of the Hall of Science Building. The Applicant relies on the reports and testimony of the Applicant's transportation engineer and DDOT that the new Hall of Science Building will not result in a number of increased vehicular trips to the campus that will cause adverse traffic impacts. The Commission notes the findings of the parking utilization study, which was submitted in the Applicant's post-hearing submission, which concluded that the utilization of the Main Campus parking spaces at peak hours was consistently between 69%-72% of the supply

and that the loss of 75 parking spaces can be absorbed by the 500 parking spaces that are available for use on the Main Campus during peak periods. The Commission also concludes that the proposed 30 short-term bicycle parking spaces provided near the pedestrian entrances to the building will be sufficient to meet the expected demand. The Commission notes that Subtitle C § 802.9 states that, “Uses governed by a campus plan are subject to the bicycle parking requirements approved by the Zoning Commission and are not subject to the bicycle parking requirements that are otherwise applicable.”

The Commission finds that no objectionable impacts related to the number of students/faculty/or staff will occur as a result of the construction of the Hall of Science Building. The Applicant has noted that the need for the new Hall of Science Building is the result of the large growth of student interest in the STEM fields and the aging science facilities that the University currently uses. It is not based on a desire to increase the number of students, faculty or staff on campus. The Commission notes that the University provided information into the record which addressed how AU is currently below its student and employee caps and it also provided data regarding the maximum headcount occupancy that could be on this portion of the campus at any time. The Commission finds that the siting and location of this new science building, over 500 feet from the campus property line along University Avenue and oriented towards the center of AU’s campus will result in no adverse impacts or objectionable impacts to neighboring properties once this building is complete. The Commission recognizes that the Applicant does not anticipate that this new science building will result in increases of students or faculty/staff, even if there is some increase in the number of people that are going to classes or are working in this new building, such increased activity level is not going to create an adverse impact or objectionable condition on neighboring properties.

The Commission finds that no objectionable or adverse impacts related to other objectionable conditions will occur as a result of the construction of the Hall of Science Building. Based on the information and testimony of the Applicant, and the report of OP, the Commission finds that the proposed Hall of Science Building has been located on a portion of AU’s campus and designed in a manner that minimizes its impact on neighboring properties. In regard to ensuring that the visual or light impacts of the building do not create objectionable conditions or adverse impacts on neighboring properties, the Applicant has sited the Hall of Science Building over 500 feet from the University Avenue property line and has oriented the building so that views of the building are blocked by the existing Beeghly Building. The façade of the Hall of Science building that faces University Avenue is only 48 feet, 10 inches wide, and the portion of that façade that includes window fenestration is approximately 17 feet wide. In addition, as a condition of approval, the Applicant has agreed that window shades (which will come down at dusk and go up at dawn) will be provided on these windows and light vacancy sensors will be included in those rooms. The Commission also notes that the Applicant has agreed to enhance the landscaped buffer along University Avenue with the planting of seven mature trees as well as the additional landscaping that the Applicant proposed on the Hall of Science Building site. The Commission wishes to clarify that only those adverse impacts that would be exacerbated by the proposed Hall of Science Building are relevant to the Commission’s analysis in this case. Any other existing adverse

impacts resulting from the original campus plan can and should be addressed with the next campus plan application.

The Commission also recognizes the Applicant's responsiveness to the environmental concerns that ANC 3D raised about laboratory fume emissions. The Commission will condition its approval of this application on the requirement that the Applicant provide the results of the wind wake modeling test prior to the issuance of a building permit for the Hall of Science Building. In addition, the Commission finds that not only is the Applicant compliant with the intent of the GAR regulations for this portion of the AU campus, it meets the actual GAR requirements for the Hall of Science Building site.

Great Weight

The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, ("the ANC Act") effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC. To satisfy the great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances.

SVWHCA/NLC questioned the validity and appropriateness of the ANC 3D resolution in this case and concluded that the ANC recommendation should not be entitled to "great weight" according to the standards established in the ANC Act. (Ex. 33.) ANC 3D05 Commissioner Alma Gates submitted a separate report in conditional support of the application and provided testimony at the public hearing. Commissioner Gates questioned the appropriateness of the ANC's decision to take a vote on this application at their September 6, 2017 Public Meeting and stated that the ANC's vote in this case was premature. In terms of the ANC Act, Commissioner Gates is correct.

The ANC Act requires the Office of Zoning to give notice of all applications to the affected ANC. D.C. Code 1-309.10(c)(4). Each ANC "so notified ... of the proposed District government action or actions shall consider each such action or actions in a meeting with notice given in accordance with § 1-309.11(c) which is open to the public in accordance with §1-309.11(g)." D.C. Code § 1-309.10(d)(1). The ANC Act requires that the "issues and concerns raised in the recommendations of the Commission shall be given great weight during the deliberations by the government entity, D.C. Official Code 1-309.10 (d)(3)(A) and its written decision "shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances." D.C. Official Code 1-309.10 (d)(3)(B).

The Office of the Attorney General interprets these provisions to mean that the only ANC recommendations that must be given "great weight" are those made at a meeting held in response to receipt of the notice required to be given under the ANC Act. In this case, the application was filed on August 25, 2017 and the required notice was mailed to the ANC on September 12, 2017. (Ex. 1.) The first ANC 3D report was approved at a meeting held on September 6, 2017 (Ex. 12.) and its second report was approved at meeting held on March 7, 2018. Therefore, it is only the issues and concerns raised in the second report to which great weight is owed because that is the only report submitted pursuant to a meeting held after notice of this application was given.

This is not from over substance. A District agency has the right to formulate a proposed policy before giving notice to an affected ANC. For an ANC to submit a written report based upon what it thinks a policy will be is premature. An ANC is free to advise an agency against the policy at any time, but it is only the advice given after notice of the proposed policy to which great weight is due. Although this case involves an application for which a notice of intent to file was given, the rule is the same. Any advice offered by an ANC on an application cannot be given great weight until the Office of Zoning has had an opportunity to review the application and, once it is determined to be complete, given notice of its filing.

The fact that the Commission is not obliged to give the first report great weight does not mean it can be ignored. ANC 3D is an automatic party to this case and therefore is entitled, like any party, to an explanation in this Order of why the ANC did or did not offer persuasive advice under the circumstances.

SVWHCA/NLC suggests that the Commission should ignore the first report because the ANC took formal action before sufficient notice was provided to allow time for neighbors to review the application, and in doing so it neglected to adequately consider neighbors' views, several of whom wanted changes and continued dialogue with the University prior to the ANC taking formal action. The SVWHCA/NLC statement noted that a group of neighbors at the September 6, 2017 meeting requested to defer formal action citing their concern about lighting impacts and the absence of a landscaping buffer plan as a serious flaw in the application. Finally, SVWHCA/NLC asserted that the ANC's recommendation ignored the University's past non-compliance issues, which the ANC voted unanimously to raise with the Commission in four previous modifications of this campus plan.

Whether great weight is given or not, the Commission will not second guess the result of an ANC deliberation during a meeting that was properly noticed and open to the public in accordance with the ANC Act.

In its first report, the ANC requested that the following conditions be included in any order approving the Application:

1. For the portion of the proposed Science Building that is closest to the neighborhood, designated the "northwest corner", require the University install vacancy sensors in windowed rooms and, further, to install automatic light-filtering shades in the windows to reduce light visibility at night;
2. For light emitted from the rest of the building, specifically from the central staircase portion of the building, should the lights be determined to have an objectionable impact upon neighbors once the building is constructed, require the University to resolve this issue through the planting of vegetation, partial shades or other means; and
3. For the emissions from the building, that AU not receive a building permit until it has conducted wind wake modeling and has assured the community on the basis of these results and any other relevant data that no adverse effects are likely to occur from these emissions,

even in the event of normal accidents such as the breaking of beakers in the laboratory. (Ex. 48, 49; Tr. pp. 73-76, 79-84.)

The Commission found this advice to be persuasive and the conditions have been included.

The Commission also finds that the Applicant has adequately addressed the five conditions of conditional support that were raised in the minority report of the ANC 3D05 Commissioner.

As to its second report, the ANC raised no issues or concerns about the Neighborhood Collaborative and suggested that it complemented the community engagement activities of the University. The Commission found this advice to be persuasive in finding that the University was not in violation with either the letter or spirit of Condition No. 16.

The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP recommendations. The Commission has carefully considered the OP's recommendation in support of the application and agrees that approval of the further processing, and Campus Plan amendment is appropriate.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of American University's proposed amendment to the 2011-2022 American University Campus Plan and further processing application for the construction of the Hall of Science Building. The approval of the development of the Hall of Science Building is subject to the following guidelines, conditions, and standards:

1. The Hall of Science Building will be constructed in accordance with the plans submitted into the record as Exhibits 4B, 23B, 42A1, 42A2, and 58A.

Prior to the issuance of the last Certificate of Occupancy, the Applicant shall demonstrate to the Zoning Administrator the following: The windowed laboratory spaces on the northwest corner of the Hall of Science Building shall include vacancy light sensors that turn off the lights when no one is in those spaces and shall also include automated light-filtering shades that will reduce light visibility and shall be lowered at dusk and raised at dawn.

2. **Prior to the issuance of the first Certificate of Occupancy**, the Applicant shall demonstrate to the Zoning Administrator that the Applicant has planted and maintained the trees and landscape materials depicted in Exhibits 23E and 42A1.

3. **Prior to the issuance of a building permit for the construction of the Hall of Science Building**, the Applicant shall provide evidence to the Zoning Administrator that it has shared the results of the wind wake wind tunnel model with Advisory Neighborhood Commission 3D and has assured ANC 3D based on the results that no adverse effects are

likely to occur from laboratory fume emissions, even in the event of normal accidents such as the breaking of beakers in the laboratory.

5. **Within 12 months after the issuance of the first Certificate of Occupancy for the Hall of Science Building**, the Applicant shall provide evidence to the Zoning Administrator that it has secured Gold Certification or higher from the U.S. Green Building Council under the LEED-v.2009 rating system. During all construction activity related to the development of the Hall of Science Building, the Applicant will abide by the following construction management plan:


- It will appoint a University staff liaison to address concerns and answer questions regarding construction activity;
- It will establish a 24-hour construction contractor telephone contact for reporting problems and establishing a process for timely response;
- It will hold a preconstruction community meeting to coordinate planned construction activities at least 90 days before construction to include construction managers; and
- It will prohibit construction traffic and construction worker parking on the nearby residential streets.

On March 19, 2018, upon motion by Vice Chairman Miller, as seconded by Chairman Hood, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its special public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Michael G. Turnbull, and Peter G. May to approve).


In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on August 24, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING