

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-07H

Z.C. Case No. 11-07H

American University

(Campus Plan Modification of Consequence @ Squares 1560, 1599, 1600, 1601, & 1728)

February 26, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on February 26, 2018. At that meeting, the Commission reviewed the request of American University (“Applicant” or “University”) for a technical correction of Z.C. Order No. 11-07, the 2011-2022 American University Campus Plan Order, to correct Condition No. 14 so that AU is required to maintain an inventory of approximately 2,200 parking spaces on campus.

At the public meeting, the Commission determined that this request was more properly a modification of consequence and because all relevant parties had submitted information into the record the Commission was able to deliberate on this request at the public meeting. The technical correction application and modification of consequence were reviewed pursuant to § 703 of the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

FINDINGS OF FACT

BACKGROUND INFORMATION

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 became effective on May 17, 2012.
2. The first line of Condition No. 14 of that Order provided:

The University shall maintain an inventory of approximately 2,500 parking spaces on campus.
3. Finding of Fact No. 67 of the Order stated in part:

In the 2011 Plan, the University proposed to reduce the number of on-campus parking spaces by 429, to approximately 2,200 spaces . . .
4. The University is providing 2,393 parking spaces.

5. The Applicant apparently did not notice the discrepancy until approximately five years later, when on August 25, 2017, it submitted to the Commission an application which sought approval for a Campus Plan Amendment and Further Processing application for the proposed construction of the Hall of Science Building (which is the subject of Z.C. Case No. 11-07G).
6. As part of any further processing application, the Applicant must prove that it has remained in substantial compliance with the conditions of the Campus Plan Order, including Condition No. 14.
7. Since it clearly was not in compliance with that Condition, the Applicant indicated within its statement of support that because the Finding of Fact noted it had proposed a reduction of its parking space requirement from 2,649 to 2,200, the latter figure as stated in Condition No. 14, must have been a typographical error. The other explanation of course is that the Commission did not fully accept the University's proposal and instead reduced the number of parking spaces from the 2,649 required in the prior campus plan to 2,500.
8. Based upon its typographical error theory, the Applicant's statement in support indicated that it was requesting a technical correction to Z.C. Order No. 11-07 to change the figure to what it had proposed.
9. At its January 29, 2018 public meeting, during the Commission's deliberations regarding Z.C. Case No. 11-07G, the Commission noted that the Applicant did not follow the rules in 11-Z 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 Applicant filed that request on February 7, 2018, which became known as this case, Z.C. Case No. 11-07H.
10. In satisfaction of § 703.13 of Subtitle Z, the Applicant provided a Certificate of Service, which noted that all parties to Z.C. Case No. 11-07 were served with this application. The Applicant noted that at the time of Z.C. Case No. 11-07, some properties that were located within 200 feet of the AU Tenley Campus on the east side of Wisconsin Avenue were located in Advisory Neighborhood Commission ("ANC") 3F. Those properties are no longer located in ANC 3F, but they are now located in ANC 3E. ANC 3E was served with a copy of the technical correction request. (Exhibit ["Ex."] 2.)
11. ANC 3D did not submit a report in this case. However, on September 21, 2017, ANC 3D submitted a letter to the Commission which supported the proposed Campus Plan Amendment and Further Processing application for the Hall of Science Building, as well as the technical correction to Condition No. 14 of Z.C. Order No. 11-07. (Ex. 12 of Z.C. Case No. 11-07G.) This letter noted:

Members of the ANC and the community have reviewed parking reports provided by American University in support of this application. We do not raise an

objection to American University's request for a technical correction to Condition No. 14 and the ANC further believes the expected loss of approximately 75 parking spaces will not pose an objectionable impact on the community. (Ex. 2D.)

12. The Office of Planning ("OP") did not submit a report in this case. However, on November 9, 2017, OP submitted a report in Z.C. Case No. 11-07G, which recommended that the Commission approve the requested amendment to the approved Campus Plan and the further processing of the campus plan, with conditions related to the submission of some additional information. (Ex. 32 of Z.C. Case No. 11-07G.) In regard to the proposed technical correction of the number of parking spaces, the OP report stated:

The applicant has also requested that the Zoning Commission correct the number of required on-campus parking spaces from 2,500 to 2,200 citing differences between ZC Order No. 11-07 Condition No. 14 and ZC Order 11-07 Finding of Fact 67 (Exhibit 4, page 13). OP agrees with this correction as the Case 11-07 record and testimony supports the 2,200 space requirement; the applicant will submit additional information from the original record to the record for this case to further substantiate this request. (Ex. 2E.)

13. The Department of Transportation did not submit a report in this case, and its report for Z.C. Case No. 11-07G does not make any specific reference to the proposed technical correction. (Ex. 40 of Z.C. Case No. 11-07G.)
14. On November 13, 2017, the Spring Valley Wesley Heights Citizens Association ("SVWHCA") and the Neighbors for a Livable Community ("NLC"), a Party in Opposition in Z.C. Case No. 11-07G, submitted a pre-hearing submission to the Commission. (Ex. 33 of Z.C. Case No. 11-07G). In that submission, SVWHCA/NLC noted their opposition to the Applicant's request for a technical correction to the number of parking spaces that AU is required to maintain on campus. (Ex. 2F, 2G.) SVWHCA/NLC provided oral testimony on this issue at the November 20, 2017 public hearing in Z.C. Case No. 11-07G. SVWHCA/NLC continued to address the issue of the proposed technical correction in their post-hearing submission in Z.C. Case No. 11-07G, which indicated: (Ex. 61 of Z.C. Case No. 11-07G.)

We stand on the testimony we provided in this case that there is no evidence in the record to indicate the Commission approved "2,200" as opposed to "approximately 2,500" as the parking space requirement. Many numbers for parking spaces were discussed in the course of Z.C. 11-07, including testimony from AU that it only needed 1,500 parking spaces to meet its needs. So, AU's suggestion that the Commission adopted the "2,200" figure is arbitrary and convenient, especially since AU now is not in compliance with Condition No. 14.

15. On February 20, 2018, SVWHCA/NLC filed a statement in opposition to the Applicant's application for a technical correction to Condition No. 14 of Z.C. Order No. 11-07. SVWHCA/NLC argued that the University's request does not meet the standards for a technical correction. Instead, pursuant to Subtitle Z §703.6, the University should apply

for a modification of significance because the University seeks additional zoning relief to allow for a 300 parking space reduction in the on campus parking requirement and such relief may result in objectionable conditions for neighbors. (Ex. 4.)

16. SVWHCA/NLC's statement in opposition to the technical correction of Condition No. 14 of Z.C. Order No. 11-07, states that a technical correction would only be appropriate if the University was able to prove that an error—in the form of a typo—was made in drafting the Order. SVWHCA/NLC asserts that the Z.C. Case No. 11-07 record does not support the University's argument, noting: when the Commission began its deliberations in Z.C. Case No. 11-07, the University's proposal for its on-campus parking inventory was to provide approximately 2,500 parking spaces, according to the University's draft order filed one month earlier in the case record; though the Commission supported reducing the number of parking spaces on campus over the term of the Campus Plan, its decision in Z.C. Case No. 11-07 did not clearly identify the number of parking spaces that were to be reduced. (Ex. 4.)
17. The SVWHCA/NLC statement in opposition also questioned the potential objectionable impacts that the reduction of parking spaces to 2,200, the University's increased parking utilization rate (now at least 80%), and the increase in undergraduate enrollment have on the surrounding community. The SVWHCA/NLC statement in opposition requested that the Commission hold a public hearing to review the factors resulting in the increased rate of parking utilization on campus and what steps might be needed to further reduce on-campus parking demand, including, but not limited to, additional traffic demand strategies or more effective monitoring of existing traffic demand programs. (Ex. 4.)
18. Based upon the Commission's review of the record in this case, there is no clear indication as to whether the 2,500 figure represented a typographical error or a compromise reached by the Commission.
19. The Commission, nonetheless, believes that it likely intended a figure between 2,200 and 2,500.
20. The record in Z.C. Case No. 11-07G indicates that no objectionable conditions result from the current parking space inventory and given the parking utilization on campus, a reduction to 2,200 would be appropriate.

CONCLUSIONS OF LAW

The Applicant filed this application as a technical correction of Condition No. 14 of Z.C. Order No. 11-07. The Commission agrees with SVWHCA/NLC that this case should not be reviewed as a technical correction of Z.C. Order No. 11-07. However, the Commission does not agree with SVWHCA/NLC's argument that a modification of significance application, and a public hearing, is necessary for the Commission to thoroughly review the relevant issues related to this application. The Commission concludes that ample evidence was presented in this case, and in Z.C. Case No. 11-07G, regarding the number of required on-campus parking spaces. The record of this case and of Z.C. Case Nos. 11-07 and 11-07G support the conclusion that the Commission agreed with decreasing the number of on-campus parking spaces. However, the

Commission could not consider this application a technical correction because the Commission's intent as to the number of required on-campus parking spaces at the time of its decision in Z.C. Case No. 11-07 is unclear. A technical correction would only be appropriate if the Commission could definitively conclude that it intended for the required number of parking spaces to be approximately 2,200 at the time of its deliberations in Z.C. Case No. 11-07, and that the 2,500 figure appeared in the final Z.C. Order No. 11-07 by mistake. The Commission can, however, conclude that its intent was a number of required parking spaces between approximately 2,200 and 2,500. Therefore, the Commission finds that the modification to Condition No. 14 of Z.C. Order No. 11-07, described in the above findings of fact, is a modification of consequence, and therefore can be granted without a public hearing.

Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make "modifications of consequence" to final orders and plans without a public hearing. A modification of consequence means "A modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance." (11-Z DCMR § 703.3.) Examples of modifications of consequence "include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission." (11-Z DCMR § 703.4.)

The Commission finds that in the original Campus Plan case, Z.C. Case No. 11-07, it was the intent of OP, AU, DDOT, and the Commission to reduce the number of required parking spaces on campus. The Commission recognizes the overall benefit to the District that occurs with having a reduced number of parking spaces on campus, and it also acknowledges the need to make sure that the number of on-campus parking spaces provided by the University does not lead to adverse impacts on the surrounding community. Based on the evidence provided in this case and in Z.C. Case No. 11-07G, the Commission finds that ample parking spaces currently exist on American University's campus at the current inventory of approximately 2,400 parking spaces. The Commission also concludes that it was not presented with evidence, in this case or in Z.C. Case No. 11-07G, that negative impacts on the surrounding community were occurring based on AU related parking in the surrounding community. Therefore, the Commission concludes that the reduction of required on campus parking spaces to 2,200 going forward may be granted as a modification of consequence, and can be accomplished without the need for any further mitigation by the Applicant.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A)(2012 Repl.) to give "great weight" to the issues and concerns of the affected ANC's. As is reflected in the Findings of Fact, ANC 3D voted to support the modification to Condition No. 14 of Z.C. Order No. 11-07 as a Technical Correction.

The Commission is required give great weight to the recommendations of OP (See D.C. Official Code § 6-623.04 (2012 Repl.)). The Commission concurs with OP's recommendation to approve the reduction in the number of required parking spaces on campus. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the modification of Condition No. 14 of Z.C. Order No. 11-07, as a modification of consequence. The conditions in Z.C. Order No. 11-07 remain unchanged except the following condition replaces Condition No. 14:

14. The University shall maintain an inventory of approximately 2,200 parking spaces on campus. The University shall continually evaluate its pricing policies for parking with the intention of discouraging vehicle trips to campus without generating demand for off-campus parking by university-affiliated vehicles. The University shall 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.

On February 26, 2018, upon the motion of Commissioner May, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull 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 3, 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