

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



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

**Z.C. Case No. 11-07D**

**The American University**

**(Application for Minor Modification of an Approved Further Processing Application)**  
**April 13, 2015**

Application of The American University (“AU” or “Applicant”), pursuant to § 3129 of the Zoning Regulations, requesting approval of a modification to an approved further processing application for the development of the AU East Campus. In accordance with § 3035.4 of the Zoning Regulations, this case was heard and decided by the Zoning Commission for the District of Columbia (“Commission”) using the rules of the Board of Zoning Adjustment at 11 DCMR §§ 3100 *et seq.* For the reasons stated below, the Commission hereby approves the modification application, subject to conditions.

**FINDINGS OF FACT**

1. The Zoning Commission (“Commission”) approved the AU Campus Plan and East Campus Further Processing application pursuant to Z.C. Order No. 11-07. Z.C. Order No. 11-07 approved the American University Campus Plan for the period from 2011-2022 and approved a Further Processing application for the construction of six buildings on the East Campus. The East Campus is located across Nebraska Avenue, N.W. from the central campus, and is bounded by Nebraska Avenue, N.W., Massachusetts Avenue, N.W., a shared property line with the Westover Place Townhomes, and New Mexico Avenue, N.W. (Exhibit [“Ex.”] Ex. 1-2B.)
2. For the East Campus, the Commission approved the development of 590 residential beds in three buildings, three additional academic and administrative buildings, and 150 parking spaces and loading facilities in an underground garage, pursuant to the special exception standards of 11 DCMR § 210. (Ex. 1-2B.)
3. On February 2, 2015, the Commission approved in Z.C. Case No. 11-07C, a modification of the underground parking garage on the East Campus to construct two below-grade parking levels, rather than one level, and the removal of a below-grade bus turnaround. The Commission added a new condition to Z.C. Order No. 11-07, Condition No. 42, which addressed the ability of charter buses and motor coaches to enter the East Campus property.
4. On March 25, 2015, AU filed a minor modification application with the Commission in order to amend Condition No. 41(c) of Z.C. Order No. 11-07, which limited the hours of

construction activity on the East Campus to Monday-Friday 7:30 a.m. to 4:30 p.m. The minor modification application proposed the amendment of Condition No. 41(c) to allow construction activity to occur on the East Campus between the hours of 7:00 a.m. to 5:00 p.m. Monday-Friday, and Saturday from 8:00 a.m. to 4:00 p.m. (Ex. 1-2B.)

5. In addition, AU's March 25, 2015, filing noted that it met with and engaged in numerous discussions with the Westover Place Homes Corporation Board of Directors ("Westover Place") regarding this application. AU's minor modification application also proposed modifications to the surface parking lot on the East Campus, those modifications included: expansion of the landscape buffer on the surface parking lot through the removal of the six parking spaces that were closest to the shared property line with Westover Place and the planting of additional landscaping material in that area (the surface parking lot will continue to include 200 parking spaces); and the installation of cameras on the East Campus surface parking lot with a direct live feed to the AU Public Safety Office in order to monitor activity on the surface parking lot. (Ex. 1-2B.)
6. The requested minor modification will not change the material facts on which the original approval of the Further Processing application was based. The minor modification is being requested solely to help assure that AU can deliver the required dormitory beds on the East Campus by the beginning of the fall 2016 semester. If the additional work hours are not permitted, it was very concerned about its ability to deliver the dormitory beds in time for the beginning of the fall 2016 semester. As AU has noted in previous submissions and testimony before the Commission, even a two month delay in the completion of these dormitory buildings (to September or October of 2016) means that these beds will not be available for use by AU until the Fall 2017 semester. (Ex. 1-2B.)
7. AU's March 25, 2015 filing discussed the satisfaction of the requirements of 11 DCMR § 3129 *et seq.* In regard to § 3129.7, AU requested that the Commission waive the requirement to have a hearing on this application. AU argued that the facts of the proposed request are straight-forward, the period of construction activity is temporary, and the proposed minor modification application does not impact the ultimate use and operation of the buildings on the East Campus, other than to place additional requirements on AU to assure that the use of the surface parking lot does not create objectionable impacts on neighboring properties. (Ex. 1-2B.)
8. In a letter dated April 6, 2015, AU noted that based on concerns raised about the impact of Saturday construction activity on Westover Place residents, while still recognizing the need for additional construction hours to occur on the East Campus, AU, Advisory Neighborhood Commission ("ANC") 3D, and Westover Place agreed to the following hours of construction activity on the East Campus:
  - AU shall be permitted construction hours of Monday-Friday from 7:00 a.m. to 7:00 p.m.; and

- From September 1, 2015 to the completion of outdoor construction work (expected to occur on or around February 29, 2016), AU will be able to work on Saturdays from 8:00 a.m. to 4:00 p.m. only in the event that it experiences a lost day of construction activity due to weather. AU will inform Westover Home Owners Corporation, for distribution to their resident home owners, and the ANC of a lost day of construction activity by 9:00 a.m. on the day of lost construction activity. (Ex. 6.)
9. ANCs 3D and 3E were automatically parties in this proceeding. ANC 3D submitted a letter in support of the application. ANC 3E did not participate in this application.
  10. In a letter dated April 3, 2015, ANC 3D noted that at a regularly scheduled public meeting on April 1, 2015, with a quorum present at all times, the ANC voted 8-0-1 to support the minor modification application, as amended to permit the construction hours of Monday-Friday from 7:00 a.m. to 7:00 p.m. and outdoor construction on Saturdays from 8:00 a.m. to 4 p.m., beginning September 1, 2015 through the completion of outdoor construction work expected to be on or about February 29, 2016 (Saturday construction work would only be allowed in the event that AU experiences a lost day of construction due to weather, and AU would be required to inform the adjacent neighbors and the ANC of a lost day of construction activity by 9:00 a.m. on the day of the lost construction activity). ANC 3D also noted its support for the proposed new Condition No. 43 regarding the surface parking lot. ANC 3D requested that the Commission expedite this application and defer a public hearing on this application. (Ex. 5.)
  11. Westover Place submitted a letter in support of the application. Westover Place noted its support for the proposed change in construction hours, support for the new condition regarding the design and use of the surface parking lot, and support of AU's request to waive the requirement to have a hearing on this case. (Ex. 6, Tab A.)

### **CONCLUSIONS OF LAW**

1. The Applicant requested that the Commission approve an application to modify an approved condition of the Commission's approval of the American University East Campus, pursuant to 11 DCMR § 3129 *et seq.* Based upon the record in this case, the Commission concludes that AU has satisfied the filing and notice requirements of 11 DCMR §§ 3129 *et seq.* The parties to the original application were served a copy of the modification application, and ANC 3D and The Westover Place Homes Corporation submitted letters in support of the modification application.
2. The Commission also concludes that the Applicant has satisfied the burden of proof, that "[a]pproval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts upon which the Board [Commission]

based its original approval of the application.” (11 DCMR § 3129.6.) The Commission concludes that the proposal to change the hours of permitted construction activity is appropriate and that the proposed new Condition No. 43 will further mitigate any possible adverse impacts that the use of the surface parking lot may have on adjacent properties.

3. The Commission agrees with the Applicant that holding a public hearing on this limited and specific issue of the permitted hours of construction activity would not provide the Commission with any additional information that could not be obtained from the written responses of all interested parties. In addition, the Commission notes that ANC 3D and Westover Place were supportive of this application. For these reasons, the Commission determined that it was not necessary to hold a public hearing on this application.
4. The Commission accorded the issues and concerns raised by ANC 3D the “great weight” to which they are entitled pursuant to D.C. Official Code § 1-309.10(d) (2001). In doing so, the Commission fully credited the unique vantage point that ANC 3D holds with respect to the impact of construction hours and the surface parking lot.

### DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3129 and it is therefore **ORDERED** that American University’s proposed modification to the approved conditions for the East Campus be **GRANTED**. The Conditions in Z.C. Order Nos. 11-07 and 11-07C remain unchanged except as follows:

Condition No. 41(c) of Z.C. Order Nos. 11-07 and 11-07C is amended to read as:

41.(c) The University shall be permitted construction hours of Monday-Friday from 7:00 a.m. to 7:00 p.m. From September 1, 2015 to the completion of outdoor construction work (expected to occur on or around February 29, 2016), AU will be able to work on Saturdays from 8:00 a.m. to 4:00 p.m. only in the event that the University experiences a lost day of construction activity due to weather. The University will inform Westover Home Owners Corporation, for distribution to their resident home owners, and the ANC of a lost day of construction activity by 9:00 a.m. on the day of lost construction activity. Interior work not creating an impact on adjacent properties may take place outside of these hours.

Proposed new condition (Condition No. 43) shall be added to Z.C. Order Nos. 11-07 and 11-07C:

43. AU shall expand the landscape buffer on the surface parking lot through the removal of the six parking spaces that were closest to the shared property line with Westover Place and the planting of additional landscaping material in that area. The surface parking lot will continue to include 200 parking spaces. AU will install cameras on the East Campus surface parking lot with a direct, live feed to the AU Public Safety Office in order to monitor activity on the surface parking lot.

**VOTE: 4-0-1** (Anthony J. Hood, Michael G. Turnbull, Marcie I. Cohen, and Robert E. Miller to adopt, Peter G. May not present, not voting).

**BY ORDER OF THE D.C. ZONING COMMISSION**

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

ATTESTED BY: \_\_\_\_\_

  
**SARA A. BARDIN**  
**DIRECTOR**  
**OFFICE OF THE ZONING**

**FINAL DATE OF THE ORDER: August 24, 2015**