

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



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

Z.C. Case No. 11-07A

American University

**(Special Exception Approval of a Further Processing of an Approved Campus Plan and
Variance Relief – North Hall)**

March 8, 2012

This case concerns an application of the American University (the “University” or “AU” or “Applicant”) requesting special exception approval under the campus plan provisions of the Zoning Regulations at 11 DCMR §§ 3104 and 210 for further processing under an approved campus plan, and variance relief from § 400.9 of the Zoning Regulations, pursuant to 11 DCMR § 3103.2, to allow the construction of the North Hall residence facility. In accordance with § 3035.4 of the Zoning Regulations, this case was heard and decided by the Zoning Commission for the District of Columbia (the “Commission”) using the rules of the D.C. Board of Zoning Adjustment at 11 DCMR §§ 3100 *et seq.* For the reasons stated below, the Commission hereby approves the applications, subject to conditions.

HEARING DATE: October 20, 2011

DECISION DATE: March 8, 2012

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

FINDINGS OF FACT

Application, Parties, and Hearing

1. On March 18, 2011, the University submitted an application seeking special exception review and approval of a new campus plan for the AU Campus (the “2011 Plan”), which includes the Main Campus, the East Campus, and the Tenley Campus (collectively, the “Campus”), and for further processing of an addition to the Mary Graydon Center, an addition to Nebraska Hall, and the development of the East Campus. The 2011 Plan was assigned Z.C. Case No. 11-07. The Campus Plan was approved by Z.C. Order No. 11-07.
2. The property that is the subject of this application (the “North Hall Site”) is part of the Main Campus of AU (4400 Massachusetts Avenue, N.W. - Square 1600, part of Lot 1).

3. Notice of the public hearing was published in the *D.C. Register* on July 29, 2011 and was mailed to Advisory Neighborhood Commissions (“ANC”) 3D and 3E and to owners of all property within 200 feet of the property.
4. The public hearing on the application was conducted on October 20, 2011. The hearing was conducted in accordance with the provisions of 11 DCMR §§ 3022 and 3117.
5. In addition to the Applicant, ANC 3D was automatically a party in this proceeding. ANC 3D submitted a report and resolution in support of the application with conditions. (Exhibit (“Ex.”) 14). ANC 3D also provided oral testimony at the public hearing. (Ex. 24.)
6. The Commission received timely party status requests from the Spring Valley Wesley Heights Citizens Association (“SVWHCA”) and the Neighbors for a Livable Community (“NLC”). (Ex. 11 and 13.) At the public hearing, the Commission noted that these parties had similar witnesses and, therefore, granted party status to SVWHCA and NLC as one Party in Opposition. No objection to this decision was raised by representatives of SVWHCA or NLC. (Transcript of October 20, 2011 Public Hearing (“Tr.”), pp. 7-11.)
7. At the October 20, 2011 hearing, the University presented evidence and testimony from Beth Buffington, who was qualified as an expert in architecture. Jorge Abud, Assistant Vice President of Facilities Development and Real Estate for AU, answered questions from the Commission and ANC 3D.
8. At the public hearing, the Commission heard testimony from the Office of Planning (“OP”) which addressed their report in support of the application. (Ex. 17.)
9. The District Department of Transportation (“DDOT”) filed a report in this case which was supportive of the application with recommendations. (Ex. 19.)
10. On December 1, 2011, the University filed a post-hearing submission which responded to the requests of the Commission. This information included additional details regarding the site plan (and number of bicycle spaces), façade treatments, balloon test results, the building’s relationship to Massachusetts Avenue, and the building’s gross floor area; additional information on the general character of this portion of Massachusetts Avenue and how the proposed North Hall will be consistent with that character; and the results of further dialogue between the Applicant and representatives of ANC 3D, SVWHCA, and NLC. (Ex. 29.)
11. On December 7, 2011, ANC 3D (along with SVWCHA and NLC) filed a response to the Applicant’s December 1, 2011 post-hearing submission. This response provided additional information on the community’s history of dialogue with the University; noted remaining design concerns with the project; noted that the community had not been able

to review the proposed landscape plan directly with the Applicant; noted the continued environmental concerns of the community; noted that the pictures of the balloon test provided by the Applicant occurred on a date when the community was not present; and provided additional information on the Massachusetts Avenue character. (Ex. 30.)

12. At a public meeting on January 23, 2012, the Commission took final action to approve the application in Z.C. Case No. 11-07A, subject to conditions.

The North Hall Site and Surrounding Area

13. The North Hall site is located at the northwest corner of the main campus of the University along AU's border with the Wesley Theological Seminary. The North Hall site is currently improved with a surface parking lot that includes 69 parking spaces. Massachusetts Avenue borders this site to the north and three residence halls (Leonard, McDowell, and Hughes Halls) are located to the south of the North Hall site. Nearby is the President's Office Building, a two-story formerly single-family dwelling that now contains the offices of AU's President and related support functions. Leonard Hall, Hughes Hall, and McDowell Hall, seven- and eight-story residence halls, currently make up the north residence community, and the proposed North Hall was designed to be integrated with this existing residential community. (Ex. 16, p. 2.)
14. The topography of this portion of the AU Campus includes significant variations in grade. The President's Office Building is located on a bluff (elevation 399.75 feet) that is approximately 45 feet above the elevation of Massachusetts Avenue (elevation 354.72 feet). The existing parking lot located behind the President's Office Building, the site of the proposed North Hall, is located at an elevation that slopes from 379 feet to 394 feet closest to Massachusetts Avenue. The proposed entrance to North Hall will occur at elevation 373.45 feet and the lawn/open space which will be provided between North Hall and the President's Office building will vary from elevation 383 feet to 387.45 feet. (Ex. 16, p.2; Tr. p. 18.)
15. AU's property line along this portion of Massachusetts Avenue is set back 42 feet from the back of the sidewalk. There is a significant change in grade, approximately 25 to 30 feet, in this portion of the public right of way. This steeply graded area between the public right of way and the property line includes significant tree cover and landscaping. Across Massachusetts Avenue from the North Hall site lays the Katzen Arts Center, which was constructed pursuant to the 2001-2011 Campus Plan. Further to the north, behind Katzen, is the Fort Gaines residential community. The Wesley Theological Seminary borders the site to the west and single-family homes in the Spring Valley neighborhood are located further to the west. (Ex. 16, pp. 2-3.)

16. The North Hall site is zoned D/R-5-A. The North Hall Site is located in the Institutional land use category on the Future Land Use Map and the Generalized Policy Map of the Comprehensive Plan.

Project Design and Impact

17. The University noted that development of the North Hall residence facility will achieve one of the primary goals of the 2011 Campus Plan, which is to support AU's Strategic Plan to improve and offer attractive student housing. As detailed in the written submission and testimony of the Applicant's architectural expert, North Hall is designed to integrate with the north side residence community, the President's Office Building, and the adjacent institutional and residential properties. (Ex. 16, p. 3; Tr. pp. 21-25.)
18. On July 19, 2011, the Applicant filed the Further Processing application for the construction of North Hall. The original application sought approval of a seven-story structure that would be set back from the Massachusetts Avenue property line by eight feet. Between July 19, 2011 and October 6, 2011, representatives of AU met with representatives of the Wesley Theological Seminary, ANC 3D, SVWHCA, NLC, and OP. In response to issues that were raised at those meetings regarding the building's appearance along Massachusetts Avenue, the Applicant revised the siting and massing of the proposed North Hall by pushing the building farther away from Massachusetts Avenue (by approximately 33 feet) and by adding an eighth floor to the portion of the building that would parallel McDowell Hall on the interior campus side of this site. (Ex. 16, p. 1.)
19. North Hall will contain approximately 116,519 square feet of gross floor area and will provide beds for approximately 360 students. The building was designed in an "L" shape with the narrowest portion of the building facing Massachusetts Avenue. The building will rise to a maximum height of 81 feet, eight inches (eight stories), as measured from the curb at the middle of the front of the building, which will be the portion of the building that fronts on the internal campus driveway, for the wing of the building that will parallel McDowell Hall and will be located on the interior side of campus. The wing of the building that will generally run parallel to the shared property line with Wesley Theological Seminary will remain seven stories (approximately 72 feet tall). The North Hall residence facility will maintain a separation of at least 42 feet from the President's Office Building, and will be set back 32 feet from the property line adjacent to the Wesley Theological Seminary. The North Hall residence facility will be set back 41 feet, eight inches from the property line along Massachusetts Avenue and set back approximately 84 feet from the back of the sidewalk along Massachusetts Avenue. (Ex. 16, pp. 3-4; Tr. p. 19; Ex. 29, Tab A.)
20. The North Hall site is located at elevation ranging from 379 feet to 394 feet, while the entrance to McDowell Hall is located at elevation 373.45 feet. The current entrance to

McDowell Hall is approximately two and one-half feet below the internal roadway. AU and its design team determined that the creation of a plaza between North Hall and McDowell Hall would help create a sense of community among all of these residential buildings. This plaza will be created by lowering the internal roadway so that the entrances to both North Hall and McDowell Hall will be at the same level. The entrance plaza to both structures will include a curbless drop-off zone, raised planters with seating, seating nodes, and different material treatment of the roadway to make drivers aware of the possible presence of pedestrians. (Ex. 16, p. 4.)

21. The lowering of the internal roadway will allow the ground floor of North Hall to fit naturally into the existing slope of the hill on this portion of the campus. The ground floor layout will allow for an efficient use of building equipment, storage space, and mechanical space; an expanded and more visible bicycle parking area (with room for 54 bikes); and a fitness facility of approximately 6,000 square feet (with a combination of group exercise rooms and machines for individual exercise). The fitness facility will be available to all students, but is expected to be predominantly utilized by residents of the north campus residence halls. (Ex. 16, pp. 4-5; Tr. pp. 19-20, 47-48.)
22. There will not be any parking spaces, a cafeteria, or ancillary retail space provided in North Hall. Floors two through eight above the ground floor will consist of the residential units, predominantly suite-style units with housing for four students in two double bedrooms that connect to a central living area and bathrooms shared by the four suitemates. No freshmen will be housed in North Hall. No kitchen facilities will be provided in the suites, but kitchen facilities will be provided in central locations on each residential floor. (Ex. 16, p. 5.)
23. The Applicant noted that its design for the entrance plaza will help create a transition between this structure and McDowell Hall. The Applicant also noted that the design and proposed landscape treatment will integrate North Hall with the President's Office Building and the existing topography of this portion of AU's campus. Residents and visitors to North Hall will walk from the entrance plaza area up to the lawn by a series of stone slab stairs bordered by a landscaped wall terrace. Flow-through planters will be installed along the building and landscaping will be strategically placed to provide both glimpses of the President's Office Building and appropriate visual buffering between the two structures. A woodland edge will be planted to help augment the landscaped buffer that already exists between this site and Massachusetts Avenue. (Ex. 16, p. 5; Ex. 29, Tab C.)
24. The President's Office Building is located at an elevation that is 12 to 16 feet higher than the lawn that will be adjacent to North Hall. The topography of the site, the proposed landscape treatment of the courtyard, and the 42-foot physical separation of North Hall from the President's Office Building will create an appropriate transition between these two buildings. The design of North Hall, its site features, and its relationship to the

President's Office Building have been reviewed with the District's Office of Historic Preservation, in addition to OP. (Ex. 16, p. 6.)

25. The Applicant's written statement noted that since North Hall will have a measured building height of 81 feet, eight inches, Section 400.9 requires that the building be set back from all property lines by at least 41 feet, eight inches (since the R-5-A Zone District permits a maximum building height of 40 feet). The North Hall structure will satisfy the setback requirement from the Massachusetts Avenue property line. However, the proposed 32-foot setback from the property line with the Wesley Theological Seminary requires a variance of nine feet, four inches. In satisfaction of the variance relief standards, the Applicant noted the following:

- (a) The site is unique because of the significant setback that occurs from the sidewalk along Massachusetts Avenue to AU's property line and because of the significant and varied topography on this portion of the AU Campus. In this area of the AU campus, the northern property line is set back 42 feet from the sidewalk along Massachusetts Avenue. However, the area between the property line and the sidewalk is heavily wooded like much of AU's campus perimeter, and this wooded area in public space seamlessly integrates with the wooded area on AU's property. In addition to the property line setback, the varied topography of the North Hall site and the location of the President's Office Building contribute to its exceptional condition. The site contains significant grade changes. The existing parking lot, which North Hall will replace, is located at an elevation ranging from 379 feet to 394 feet, and the elevation from the front of North Hall to the open space between it and the President's Office building changes by approximately 14 feet. Further, the site steeply slopes at its northern edge toward Massachusetts Avenue, with a grade change of approximately 25 to 30 feet. The confluence of these factors results in a site that is subject to an exceptional situation or condition;
- (b) AU satisfied the practical difficulty standard because strict compliance with § 400.9 would be unnecessarily burdensome for the university. The required setback from the property line shared with the Wesley Theological Seminary is 41 feet eight inches, which is based on the maximum height of the building. As described above, the majority of the wing of North Hall that will parallel the Wesley Theological Seminary property line is 72 feet tall (seven stories), so that the majority of the building will satisfy the intent of the one-to-one setback. A minority portion of the building abutting the Wesley Theological Seminary will not satisfy the setback requirement, but the requested variance relief is relatively minor. Moreover, if the entirety of the building was required to satisfy this setback requirement, the result might detrimentally impact the open space between the President's Office Building and North Hall. In addition, strict compliance with § 400.9 would impede the goal of providing more on-campus

housing set forth in the 2011-2020 Campus Plan. The proposed location of North Hall is well-suited for a student residence hall of this size. However, if the building were made smaller due to compliance with § 400.9, then AU would face further difficulties in achieving its goal of providing more student housing on campus while providing sufficient open space between North Hall and the President's Office Building; and

- (c) Granting the requested variance relief will not impair the Zone Plan. The Applicant designed the project to be harmonious with the adjacent buildings. Although the proposed setback from the Wesley Theological Seminary property line is nine feet, four inches shorter than required, the proposed 32-foot setback along this property line will provide a visual buffer to the adjacent institutional property. This setback from the Wesley Theological Seminary property line, combined with the large open space on that property, will ensure that the proposed North Hall will not appear overly large or imposing. Granting this requested relief will not cause substantial detriment to the public good and will not impair the intent, purpose or integrity of the Zone Plan. (Ex. 16, pp. 11-14.)
26. The Applicant submitted a pedestrian circulation plan which showed paths connecting to an existing stair on Wesley Theological Seminary property. The Applicant noted that it will work cooperatively with the seminary to determine how pedestrian travel is managed in this area. The only exit on the face of the building closest to Massachusetts Avenue will provide egress for a fire stair, and is therefore expected to have minimal use. (Ex. 16, p. 6; Tr. pp. 75-76.)
27. The Applicant's architectural expert noted that the architectural treatment of North Hall will allow the building to appropriately relate to the North Campus residence halls, as well as the President's Office Building. The ground floor of the building will include a fieldstone or masonry base, which is a common campus accent material. The beige and gray shades of the fieldstone will be consistent with the paving materials linking North Hall to McDowell Hall and the other North Campus residence halls. The upper floors of the building will have a coloring similar to that of Leonard, Hughes, and McDowell Halls and will include buff precast, cementitious or masonry panels, and a curtain wall with screen that will start at the entrance on the ground floor and continue all the way up the building. (Ex. 16, p. 6; Ex. 29, Tab A; Tr. pp. 52-55.)
28. The Applicant presented photo simulations of the North Hall structure located on the site in seasons with leaves on the trees and without. In addition, the Applicant submitted photographs of a balloon test which occurred on November 14, 2011. (Ex. 16, Tab A; Ex. 29, Tab A.)
29. In its presentation to the Commission at the October 20, 2011 hearing, the Applicant requested the flexibility to vary the location and design of all interior components,

including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms provided that the variations do not change the exterior configuration of the structure. In addition, the Applicant requested flexibility to vary the final selection of the exterior materials within the color ranges and material types as proposed, based on the availability at the time of construction. The Applicant also requested the flexibility to make refinements to exterior details and dimensions, including belt courses, sills, bases, façade patterns and articulation, railings, and trim. (Ex. 22; Tr. p. 26.)

30. In addition to the flow-through planters, it is anticipated that North Hall will be able to take advantage of existing chilled water loops on campus, using chiller capacity which already exists because of AU's campus standard of meeting or exceeding LEED Silver development. The project was designed for rooftop solar hot water and energy-efficient window and wall systems. The building will also include LED site lighting and will capture rainwater for irrigation. (Ex. 16, p. 7.)

Community Outreach and Dialogue

31. Representatives of AU met with representatives of numerous community organizations to review this application and the revised plans. These meetings included a presentation to the Community Taskforce on August 30, 2011, site visits and meetings with community members representing ANC 3D, SVWHCA, and NLC, and a balloon test to depict the perceived height of the proposed North Hall. The Applicant noted that the revised building design included in the October 6, 2011 pre-hearing statement was responsive to the concerns that were raised by members of the surrounding community. (Ex. 16, p. 1.)
32. In response to the request of the Commissioners at the October 20, 2011 public hearing, the Applicant met with representatives of ANC 3D, SVWHCA, and NLC on November 16, 2011. During the November 16, 2011 meeting, the following issues were discussed by the parties:
 - (a) Community representatives asked for assurance that material selections would not drastically change during the design process to different materials that would be objectionable. AU assured the community representatives that the requested material flexibility was needed to address color selections and textures within a small range of options and not to fundamentally alter materials that have been shared with the neighbors and presented to the Commission;
 - (b) The community representatives requested additional detail on the design of the metal screening. The AU representatives noted that the exact pattern of the design of the metal screening was not yet ready and was typically part of the final material selection during the development of the construction documents;

- (c) Neighbors requested additional details on landscape design. In response, the Applicant submitted an enhanced landscape plan which included a mix of large deciduous trees, evergreen trees, and small flowering trees along the property lines with the Wesley Theological Seminary and Massachusetts Avenue, and the interior of the site. Also included were pictures of these trees, the expected height at full growth of these trees, and the approximate mix of tree height at installation;
- (d) Neighbors asked that the location of the emergency generator be clearly marked on the plans. That notation was made on the plans;
- (e) Neighbors expressed dislike for the appearance of the service access roll-up door, which will face into the campus. AU proposed a glazed assembly service access door; and
- (f) The community representatives also noted their concerns about the potential adverse light impacts that will result from the glass-enclosed suite living room at the northwest corner of the building. AU proposed a fritting treatment on the glass, which will limit the amount of light that is visible from Massachusetts Avenue at this portion of the building's façade. (Ex. 29, pp. 2-4.)

Office of Planning

- 33. By report dated October 6, 2011, and by testimony at the public hearing, OP recommended approval of the University's application for the construction of the North Hall residence facility. OP reviewed the application under the standards for special exception approval for a campus plan and further processing under § 210, the general standards for special exception approval under § 3104 and the variance approval standards under § 3103.2. OP concluded that the University satisfied the burden of proof for the special exception and variance relief requested. OP concluded that: "The project should not adversely impact neighboring properties, given its anticipated use of the site. The project has been thoughtfully designed to complement current uses and building materials of neighboring buildings and spaces. The project would also reduce the number of vehicular trips to the site, create new open space, and utilize sustainable building materials and design features." (Ex. 17, pp. 1, 7.)
- 34. In its review of the specific § 210.2 standards, the OP report noted that the "proposed building would be well separated from any of the neighboring residents by other existing university buildings, Massachusetts Avenue, and the Wesley Theological Seminary. There it should not create objectionable noise conditions." The OP report also noted that "[t]he existing 69-space surface parking lot currently located on the North Hall site would be eliminated as part of this request, which should result in significantly fewer vehicle trips to the site." In regards to the number of students, the OP report noted that this

proposal would not “create additional increases in students or faculty, but would help accommodate the anticipated growth [proposed in the 2011 Plan] by adding to the number of student housing beds”. The OP report also noted that “the proposed building design takes advantage of existing site topography as it will only appear to be 6 stories tall from Massachusetts Avenue. The site design also locates the tallest portion of the structure along its southern edge, across from existing residence halls of a similar height. The proposed pedestrian plaza would link the building to an existing student residential community to the south and better define the entrance. A proposed woodland buffer and landscaped area would be located in front of the building, shielding some its view from Massachusetts Ave[nue] and from the adjacent Presidents’ building to the southeast.” (Ex. 17, pp. 5-6.)

35. In regard to the project’s consistency with the District elements of the Comprehensive Plan, the OP report noted numerous policies of the Comprehensive Plan that are relevant to this project. Those policies included: *Policy LU-2.3.5: Institutional Uses; Policy EDU-3.3.2: Balancing University Growth and Neighborhood Needs; Policy EDU-3.3.4: Student Housing; Policy EDU-3.3.5: Transportation Impacts of Colleges and Universities; Policy RCW-1.1.8: Managing Institutional Land Uses; and Policy RCW-1.1.14: Bicycle Facilities.* (Ex. 17, pp. 8-9.) The Commission agrees with OP that all of these Policies of the Comprehensive Plan are relevant to the proposed project. Moreover, the Commission finds that the proposed North Hall residence facility is not inconsistent with these stated policies of the Comprehensive Plan.

36. In regard to the variance standards of § 3103.2, the OP report concluded that the site was unique due to the exceptional topographical conditions and exceptional situation of the 15-foot grade change across the site, the 14-foot grade change between the entrance to the North Hall building and the President’s building (one of the first campus buildings constructed for the university and an important historic resource) and the significant separation of the site’s property lines from adjacent public rights of way and buildings/uses. The OP report also concluded that the Applicant was faced with a practical difficulty in satisfying the setback requirement as, “Compliance with the setback requirement would require shifting the proposed building to the east, making it practically difficult to retain the existing open space and hierarchical relationship between the site and the President’s Building”; “Alternatively, the top floor of the 8-story portion of the building would have to be eliminated to satisfy the setback requirement, resulting in a reduction in the number of student housing beds provided onsite.” In regard to the final prong of the variance test, the OP report stated, “The bulk of the building mass as well as its tallest features is oriented to the south, across from existing residence halls that are similar in height. The project would comply with the intent of the regulations since the building would be separated from neighboring uses and buildings by a vegetated buffer well in excess of the 41’ 8” required. As such, the proposal should not result in substantial detriment to the public good or impair the intent, purpose or integrity of the zone plan.” (Ex. 17, pp. 7-8.)

District Department of Transportation

37. By report dated October 13, 2011, DDOT noted that it had no objection to the North Hall further processing application, but recommended that AU should install a minimum of 10 bike racks for short-term parking outside the main entrance, in addition to the 30 secured spots located inside the building. (Ex. 19, p. 3.)
38. The Commission notes that in response to DDOT's request, and its own request that the Applicant provide more bicycle parking spaces, the Applicant proposed 20 exterior bicycle parking spaces near the entrance to the North Hall building and 54 bicycle parking spaces inside the building. (Ex. 29, p.1 and Tab A.)

ANC 3D

39. In a letter dated October 6, 2011, ANC 3D noted that at a meeting held on October 5, 2011, with a quorum present at all times, by a margin of 7-1 ANC 3D voted to support the application with the following conditions:
 - (a) American University submits a plan for stormwater management to the D.C. Department of the Environment ("DDOE") for review and comments; share those comments with ANC 3D; and make any revisions recommended by DDOE;
 - (b) American University agrees to setbacks from the Applicant's property line along Massachusetts Avenue, N.W. and Wesley Seminary of no less than 23 feet;
 - (c) American University ensures that the elevation of any building design at the site along Massachusetts Avenue minimizes the visual impact of the building for the neighboring residents;
 - (d) American University continues to work with residents on final design issues, including building facades; and
 - (e) American University develops a construction management plan and landscaping plan in cooperation with residential neighbors and the Wesley Seminary.

The letter also noted that American University has been meeting with residents of the community impacted by the proposed North Hall and that it was the ANC's understanding that those meetings were initiated by residents and that discussions have been productive, cooperative, and were continuing. (Ex. 14.)

40. At the October 20, 2011 public hearing, the Chair of ANC 3D provided oral testimony in opposition to the North Hall residence facility. The ANC 3D Chair stated that the

Applicant failed to engage with the community in a dialogue regarding North Hall, that the design of North Hall is a work in progress, the ANC's conditions of support have not been met by the Applicant, the Applicant's plans for the site exceed proposals previously rejected by the Commission, and the proposed North Hall Further Processing application is inconsistent with the District Elements of the Comprehensive Plan. In conclusion, the ANC 3D Chair stated that the Commission should reject the application and require AU to continue its dialogue with the community, "especially focusing on minimizing the visual impacts of the building, which includes (a) developing a comprehensive landscaping plan for the site facing the community that can help shroud the new structure; (b) ensuring an effective storm water management plan; and (c) enhancing the overall architectural design to fit the topography of the site." (Ex. 24; Tr. pp. 104-126.)

41. The Commission recognizes the ANC 3D resolution of conditional support for this project and the testimony of the ANC 3D Chair at the October 20, 2011 hearing. However, the Commission believes that the University has adequately responded to the five conditions noted in the ANC's October 6, 2011 letter submitted into the record and the testimony of the ANC 3D Chair at the October 20, 2011 public hearing. The Commission notes that the Applicant: (a) submitted information into the record detailing its dialogue with DDOE regarding the stormwater management plan concepts for this project; (b) the proposed North Hall structure will be set back at least 23 feet from the Massachusetts Avenue and Wesley Theological Seminary property lines; (c) the additional elevations, sections, photo simulations, and balloon test information submitted by the Applicant detail how the visual impact of the building along Massachusetts Avenue will be minimized; (d) the Applicant submitted additional details regarding the building facades; and (e) the Applicant submitted into the record an enhanced landscape plan and a list of construction management procedures that it will follow. (Ex. 29.)

Letter in Support

42. The Wesley Theological Seminary submitted a letter in support of the application into the record. (Ex. 20.)

Testimony in Opposition

43. The party in opposition presented written and oral testimony by Dr. Jeffrey Kraskin of SVWHCA and by Charles A. Hamilton in opposition to the North Hall residence facility. SVWHCA noted that it supports the creation of additional housing on the AU Campus and found the North Hall site to be a proper location for student housing as it is contiguous with existing housing. However, SVWCHA determined that the proposed North Hall structure would be too tall and large and would create unacceptable impacts on the Spring Valley community, the Wesley Theological Seminary, and the Massachusetts Avenue gateway to the District of Columbia. SVWHCA urged the

Commission to reject this application and direct AU to return to the affected parties for more discussion and an improved design. (Ex. 25; Tr. pp. 151-161.)

44. Charles A. Hamilton testified that while he thought the North Hall site was an appropriate development site for the University, the proposed North Hall structure would be too large and would result in a major departure from the style and ambiance of Massachusetts Avenue. (Ex. 23; Tr. pp. 161-166.)

Persons in Opposition

45. No persons testified or submitted letters in opposition to the application.

Section 210 Evaluation

46. As required by 11 DCMR § 210.2, the Commission finds that the University demonstrated that the proposed North Hall residence facility is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable impacts for the following reasons:

Noise

- (a) The North Hall building will be significantly set back from the sidewalk of Massachusetts Avenue (approximately 84 feet), and will be set back 41 feet, eight inches from the property line along Massachusetts Avenue. The building will be set back 32 feet from the shared property line with the Wesley Theological Seminary. The narrowest part of the building will be oriented toward Massachusetts Avenue and the building's entrance and tallest portion will be oriented toward the interior of the campus, facing the other residence halls of similar height. The open lawn with a wooded edge and significant landscaped buffer will provide green space, as well as additional buffering between North Hall and the President's Office Building and between North Hall and Massachusetts Avenue. The significant setback from Massachusetts Avenue and the large mature trees in the buffer area will obscure views of the building from Massachusetts Avenue and beyond, as well as buffer any noise from the proposed residence hall;

Traffic

- (b) The proposed North Hall will create no adverse traffic or parking impacts on adjacent properties. No additional vehicular trips will come to the AU Campus as a result of the construction of North Hall. As noted in the Applicant's written submission, those people that currently park in the existing surface parking lot located behind the President's Office Building will be able to park in the Katzen

parking garage, which currently has an ample supply of available parking spaces. Deliveries to North Hall will also come from the internal campus drive, and loading/trash facilities will be located inside the structure at the ground level;

Number of Students

- (c) The proposed North Hall will not create any adverse impacts related to the 360 new residential beds or as a result of the students and staff that will live and work in the building. AU noted that it has operated three large residence halls in the immediate vicinity of the North Hall site for many years. During that time, there have been very few, if any, complaints from nearby residents regarding the three residence halls. The Applicant noted that student behavior in all residential facilities is guided by the Housing and Residence Life license agreement and the Student Conduct code, which are enforced by AU staff and included that provision as a condition of approval of this application. The extensive setback from Massachusetts Avenue and the expansion of the landscaped buffer area between Massachusetts Avenue and North Hall will help ensure that the additional students in North Hall will not adversely impact nearby properties; and

Other Objectionable Conditions

- (d) The Commission finds that the Applicant has sensitively designed this structure and has effectively utilized the topography of the site. The Commission finds that the North Hall residence facility will not create any other objectionable impacts. The results of the photo simulations and balloon test show that the setback from Massachusetts Avenue and the significant landscape buffer will shroud views of the structure, while still allowing appropriate views of the new structure from Massachusetts Avenue. The Applicant also agreed to a series of construction management procedures that will minimize construction-related impacts on neighboring properties.
47. Under § 210.3, the total bulk of all buildings and structures on the Campus shall not exceed a density of 1.8 floor area ratio ("FAR"). As required under § 210.8, the University submitted evidence that the development plan would result in a density of 0.9 FAR, well within the density limit for the campus as a whole. As required by § 210.4, AU filed a campus plan application for the period 2011-2020 on March 18, 2011 and the North Hall Further Processing application was identified in the Campus Plan application materials. In accordance with § 210.5, AU is not proposing any interim use of land as part of this Further Processing application. In response to § 210.6, the University is not proposing any new use for this site, as it was identified in the Campus Plan application materials as a residential site. In accordance with § 210.7, the Applicant and OP noted that the development of the North Hall is not inconsistent with the policies of the District Elements of the Comprehensive Plan. Pursuant to § 210.9, the Commission received

reports in support from OP and DDOT regarding the North Hall application. (Ex. 16, p. 10; Ex. 17; Ex. 19.)

Variance Relief Evaluation

48. The Commission finds that the variance relief standards of 11 DCMR § 3103.2 have been satisfied with regard to the setback requirements of 11 DCMR § 400.9:

Uniqueness – Exceptional Topographical Situation and/or Other Exceptional Condition

- (a) The Commission finds that the North Hall site is unique in that it is subject to substantial grade changes across the site, large setbacks from adjacent public rights of way, and relative close proximity to the President's Office Building which has significant historical value to the development of the AU Campus. As noted by the Applicant and OP, the North Hall site has an elevation change of 15 feet across its boundaries, a 14-foot change of grade across the open space to the President's Office Building and the site steeply slopes at its northern edge towards Massachusetts Avenue, with a grade change of approximately 25 to 30 feet;

Practical Difficulty

- (b) The Commission finds that the Applicant is faced with a practical difficulty, as satisfying the setback requirement along the Wesley Theological Seminary property would be unnecessarily burdensome. Compliance with the setback requirement would require shifting the proposed building to the east, making it practically difficult to retain the existing open space between the site and the President's Building. Alternatively, the top floor of the eight-story portion of the building would have to be eliminated to satisfy the setback requirement, resulting in a reduction in the number of student housing beds provided on Campus, which is contrary to the goals of the approved campus plan; and

No Detriment to the Public Good or Impairment of the Intent, Purpose or Integrity of the Zone Plan

- (c) The Commission finds that granting the requested variance relief will not result in substantial detriment to the public good or impair the intent, purpose or integrity of the zone plan. The Commission agrees with the statements of the Applicant and OP that the bulk of the building mass as well as its tallest features will be oriented towards the interior of campus. The project will comply with the intent of the regulations since the building will be separated from neighboring uses and buildings on the adjacent Wesley Seminary property by a vegetated buffer and additional land area in excess of the 41' eight inch required setback.

CONCLUSIONS OF LAW

1. The Applicant requests special exception approval, pursuant to 11 DCMR §§ 210 and 3104, and variance approval, pursuant to 11 DCMR § 3103.2 from the setback requirements of § 400.9, for the construction of the North Hall residence facility. The Commission is authorized under the aforementioned provisions to grant a special exception when, in the judgment of the Commission based on a showing through substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. A special exception to allow use as a college or university in a residential zone district may be granted subject to the provisions contained in § 210, including that the university use must 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,” and that maximum bulk requirements may be increased for specific buildings, subject to restrictions based on the total bulk of all buildings and structures on the campus. (D.C. Official Code § 6-641.07(g)(2); 11 DCMR §§ 210.2 – 210.9.)
2. Based on the above Findings of Fact, the Commission concludes that the University has satisfied the burden of proof for special exception approval of the proposed North Hall residence facility in accordance with § 210. The siting, design, and façade treatment of the building, in conjunction with the conditions proffered by the University, will ensure that the North Hall residence facility is not likely to become objectionable because of noise, traffic, number of students, or other objectionable impacts. The proposed North Hall residence facility is also not inconsistent with relevant Policies of the Comprehensive Plan. The Commission notes that the University made modifications to the location and massing of the proposed structure and also enhanced the landscape buffer in response to issues raised by nearby property owners.
3. The Commission is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (D.C. Official Code § 6-641.07(g)(3); 11 DCMR § 3103.2.) As the Applicant notes, the District of Columbia Court of Appeals has held that “an exceptional or extraordinary situation or condition” may encompass the buildings on a property, not merely the land itself, and may arise due to a “confluence of factors.” See *Clerics of St. Viator v. District*

of Columbia Bd. of Zoning Adjustment, 320 A.2d 291 (D.C. 1974); *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990).

4. Based on the above Findings of Fact, the Commission concludes that the University has satisfied the burden of proof for variance relief from the setback requirements of § 400.9. The Commission concludes that the North Hall site is affected by an exceptional situation or condition due to a confluence of factors, and that those factors create a practical difficulty that impacts the Applicant's ability to develop the North Hall in a manner that is consistent with the setback requirements along the shared property line with the Wesley Theological Seminary. Finally, the Commission finds that due to the significant setbacks that will occur from Massachusetts Avenue, the fact that the tallest portion of the building is oriented towards the interior of the AU Campus, and the significant vegetated buffer that will be provided around the site; granting the proposed variance relief will not result in substantial detriment to the public good or impair the intent, purpose or integrity of the zone plan.
5. The Commission accorded the recommendation of OP the "great weight" to which it was entitled pursuant to D.C. Official Code § 6-623.04 (2001). As discussed in this Order, the Commission concurred with the recommendation of OP to grant the University's Further Processing application.
6. 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 the proposed North Hall residence facility on the ANC's constituents. The ANC has not offered persuasive evidence that would cause the Commission to find that the North Hall residence facility does not adequately address the five conditions noted in ANC 3D's October 6, 2011 letter and ANC 3D's specific objections noted in testimony at the October 20, 2011 hearing regarding landscaping, stormwater management, and general appropriateness of the design and its relationship to the topography of the site. As noted herein, the Commission concludes that the Applicant has adequately addressed these specific issues raised by ANC 3D.

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 §§ 210, 3104 and 310.3.2 and it is therefore **ORDERED** that American University's proposed North Hall residence facility be **GRANTED**, subject to the following conditions:

1. The North Hall residence facility shall be constructed in accordance with the plans included as Exhibit A of the University's October 6, 2011 pre-hearing submission

(Exhibit 16), and as modified by the plans filed by the University on December 1, 2011 (Exhibit 29), provided that the University shall have flexibility to modify the design as follows:

- To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms provided that the variations do not change the exterior configuration of the structure;
 - To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on the availability at the time of construction; and
 - To make refinements to exterior details and dimensions, including belt courses, sills, bases, façade patterns and articulation, railings, and trim.
2. The North Hall residence facility shall be designed to achieve the LEED Silver standard.
 3. Residents of the North Hall residence facility will be required to sign the Housing and Residence Life license agreement and Student Conduct Code, which will be enforced by AU Residence Life staff.
 4. AU will follow a construction management program that includes:
 - 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.
 5. No freshmen shall be housed in North Hall.
 6. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 2-1401.01 et seq. (Act), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex

Z.C. ORDER NO. 11-07A

Z.C. CASE NO. 11-07A

PAGE 19

discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

VOTE: 4-0-1 (Peter G. May, Michael G. Turnbull, and Anthony J. Hood to approve, Konrad W. Schlater to approve by absentee ballot; Marcie I. Cohen, not having participated, not voting).

BY ORDER OF THE D.C. ZONING COMMISSION

Each concurring member approved the issuance of this Order.

ATTESTED BY:



SARA A. BARDIN
OFFICE OF ZONING DIRECTOR

FINAL DATE OF ORDER: MAY 17 2012

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 11-07A:

As Secretary to the Commission, I hereby certify that on MAY 17 2012 copies of this Z.C. Order No. 11-07A were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|---|
| 1. <i>D.C. Register</i> | 7. DDOT (Martin Parker) |
| 2. Paul Tummonds, Esq.
Goulston & Storrs
1999 K Street, N.W.
Washington, D.C. 20006 | 8. Melinda Bolling,
Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, D.C. 20024 |
| 3. ANC 3D
P.O. Box 40846
Washington, D.C. 20016 | 9. Office of the Attorney General (Alan
Bergstein) |
| 4. Commissioner Tom Smith
ANC/SMD 3D02
4601 Tilden Street, N.W.
Washington, D.C. 20016 | 10. Spring Valley-Wesley Heights Neighborhood
Association
c/o Michael Mazzuchi
4430 Macomb Street, N.W.
Washington, D.C. 20016; and |
| 5. Commissioner Deon Jones
ANC/3D07
Letts Hall
4400 Massachusetts Avenue, N.W. #513
Washington, D.C. 20016 | 11. Neighbors for a Livable Community
c/o Laurie Horvitz, Esq.
4520 East-West Highway, Suite 700
Bethesda, Maryland 20016 |
| 6. Councilmember Mary Cheh | |

ATTESTED BY:

A handwritten signature in black ink that reads "S. S. Schellin".

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning