BEFORE THE DISTRICT OF COLUMBIA
ZONING COMMISSION

Application of American University

ANC 3D & 3E
Hearing Date: October 20, 2011

APPLICATION FOR FURTHER PROCESSING OF A CAMPUS PLAN FOR CONSTRUCTION OF A NEW STUDENT RESIDENCE HALL – PRE-HEARING STATEMENT OF THE APPLICANT

I. INTRODUCTION

On July 19, 2011, American University ("**AU**" or "**Applicant**") filed a Further Processing application which requested approval of the construction of North Hall, a new student residence hall for approximately 360 students, on property that is currently a surface parking lot located adjacent to Leonard Hall, McDowell Hall and the President's Office Building. Since the filing of this Further Processing application, representatives of AU have met with representatives of the Wesley Theological Seminary, ANC 3D, the Spring Valley Wesley Heights Citizens Association (**SVWHCA**), Neighbors for a Livable Community (**NLC**) and the Office of Planning (**OP**). In response to issues that were raised at those meetings regarding the building's appearance along Massachusetts Avenue, the Applicant has 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 8th floor to the portion of the building that parallels McDowell Hall on the interior campus side of this site. The Applicant believes that the revised building described in this pre-hearing statement and shown in the attached Exhibit A is truly responsive to the concerns that were raised by some members of the surrounding community and satisfies the relevant special exception and variance standards.

II. DESCRIPTION OF THE NORTH HALL SITE AND THE SURROUNDING AREA

The property that is the subject of this application is part of the campus of American University (4400 Massachusetts Avenue NW - Square 1600, part of Lot 1). The North Hall site is located at the northwest corner of the main campus of American 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 has been designed to be fully integrated with this existing residential community.

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') that is approximately 45 feet above the elevation of Massachusetts Avenue (elevation 354.72'). The existing parking lot located behind the President's Office Building is located at an elevation that slopes from 379' to 394' closest to Massachusetts Avenue. The proposed entrance to North Hall will occur at elevation 373.45' and the lawn/open space which will be provided between North Hall and the President's Office building will vary from elevation 383' to 387.45'. These topographic elevations are generally shown on pages 1 and 10-12 of Exhibit A.

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 25-30 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 lies the Katzen Arts Center, which was constructed pursuant to the 2001-2011 Campus Plan. Further to the north, behind Katzen, is the Ft. 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.

III. FUNCTIONAL, SENSITIVE, AND APPROPRIATE DESIGN

a. Development Goals and Community Dialogue Process

The development of the proposed North Hall achieves 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. North Hall is designed to integrate seamlessly with the north side residence community, the President's Office Building, and the adjacent institutional and residential properties. The proposed North Hall will allow AU to achieve its goals of providing more on-campus housing and enhancing the undergraduate student housing experience at AU, while having negligible impacts on neighboring properties.

As described above, representatives of AU have 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 with community members, and a balloon test to depict the perceived height of the proposed North Hall. Wesley Seminary and the Ft. Gaines Citizens Association have expressed their support for this project.

b. Detailed Description of the Revised North Hall

As depicted in the materials included in Exhibit A, North Hall will contain approximately 126,500 square feet of gross floor area and will provide beds for approximately 358 students. The building is 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, 8 inches[1] (eight stories), as measured from the curb at the middle of the front of the building which is the portion of the building that fronts on the internal campus driveway, for the wing of the building which parallels McDowell Hall and is located on the interior side of campus. The wing of the building which generally runs parallel to the shared property line with Wesley Seminary will remain seven stories (approximately 72 feet tall). The revised North Hall maintains a separation of at least 42 feet from the President's Office Building, and is set back 32 feet from the property line adjacent to the Wesley Theological Seminary. The revised North Hall is now set back 41 feet, 8 inches from the property line along Massachusetts Avenue and set back almost 84 feet from the back of the sidewalk along Massachusetts Avenue.

As noted above, the existing surface parking lot behind the President's Office Building is located at elevation ranging from 379' to 394', while the entrance to McDowell Hall is located at elevation 373.45'. As seen in the pictures of McDowell Hall included in Exhibit A, the current entrance to McDowell Hall is approximately 2.5 feet below the internal roadway. AU and its design team determined that the creation of a true plaza between North Hall and McDowell Hall will help create a sense of community among all of these residential buildings. This plaza is created by lowering the internal roadway so that the entrances to both North Hall and McDowell Hall will be at the same level. As seen in the illustrated site plan in Exhibit A, 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.

The lowering of the internal roadway allows the ground floor of North Hall to fit naturally into the existing slope of the hill on this portion of the campus. Since the filing of this application, the Applicant's design team has significantly revised the layout of the ground floor of North Hall.

[1] As discussed in detail in Section V of this Statement, the Applicant is requesting that the Zoning Commission grant variance relief from Section 400.9 of the Zoning Regulations to allow the proposed North Hall to be sited as shown in the plans included in the attached Exhibit A.

The ground floor layout now allows for a more efficient use of building equipment, storage space, and mechanical space; an expanded and more visible bicycle parking area (which now includes room for 45 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.

There will not be any parking spaces, a cafeteria, or ancillary retail space provided in North Hall. Floors 2-8 above the ground floor will consist of the residential units which are 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 are provided in the suites, but kitchen facilities are provided in central locations on each residential floor.

As discussed above, AU and its design team have sought to design an entrance plaza that helps create a seamless transition between this structure and McDowell Hall. The design and proposed landscape treatment will also seamlessly integrate North Hall with the President's Office Building and the existing topography of this portion of AU's campus. As discussed above (and as shown in the illustrated site plan in Exhibit A), there is an elevation change of approximately 14 feet from the building entrance plaza to the top of the lawn/open space which surrounds North Hall as it looks out towards Massachusetts Avenue. Residents and visitors to North Hall will walk from the entrance plaza area up to the lawn by a series of stone slab stairs that are 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 significant landscaped buffer that already exists between this site and Massachusetts Avenue.

The President's Office Building is located at an elevation that is 12-16 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 creates 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.

A pedestrian circulation plan is included in Exhibit A, which shows paths connecting to an existing stair on Wesley Seminary property. This area also contains a mature landscape buffer between the university and Wesley Seminary. AU will work cooperatively with Wesley 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.

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 starts at the entrance on the ground floor and continues all the way up the building. The Applicant and its architects believe that the use of bays in the building's facade helps reduce the scale and massing of North Hall, an articulation pattern which is not used in the surrounding north side residence community buildings and thus may contribute to a sense of larger scale and massing for those buildings.

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 is being designed for rooftop solar hot water and energy very efficient window and wall systems. The building will also include LED site lighting and will capture rainwater for irrigation.

IV. COMPLIANCE WITH THE REQUIREMENTS OF SECTION 210 OF THE ZONING REGULATIONS

As described in detail below, the proposed North Hall satisfies the special exception standards enumerated in Section 210 of the Zoning Regulations.

a. College or university which is an academic institution of higher learning (Subsection 210.1)

AU was chartered by an Act of Congress in 1893 and founded under the auspices of the United Methodist Church. AU's proposed development of a residence hall in this application qualifies as a college or university use in accordance with Section 210 of the Zoning Regulations.

b. Use as a college or university shall be so located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students or other objectionable conditions (Subsection 210.2)

1. *No Adverse Impacts Related to Noise Will Result from the Use of North Hall as a Residence Facility*

All student access to North Hall will be made from the main entrance on the southwest side of the building, facing the interior of the campus. No ingress or egress to the building will be able to be accessed from the rear or side of the building adjacent to Massachusetts Avenue and Wesley Theological Seminary, respectively.

The location and scale of North Hall have been carefully selected to minimize noise and visual impacts on any neighboring properties through the maintenance of the campus' green aesthetic. The new building will be significantly set back from the sidewalk of Massachusetts Avenue (approximately 84 feet), and will be set back 41 feet, 8 inches from the property line, along

Massachusetts Avenue. The modified building will continue to be setback 32 feet from the shared property line with the Wesley Theological Seminary. The narrowest part of the building will be oriented toward Massachusetts Avenue. The building's entrance and the eight story portion of the building will be oriented toward the interior of the campus, facing the other residence halls. The open lawn with a wooded edge 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 set back from Massachusetts Avenue and the large mature trees in the buffer area will almost entirely obscure any view of the building from Massachusetts Avenue or beyond, as well as buffer any noise from the proposed residence hall. Photo simulations of the building and its appearance from Massachusetts Avenue are included in Exhibit A. All of the trees depicted in these photo simulations will remain during the construction and operation of North Hall.

2. *No Adverse Impacts Related to Traffic and Parking Will Occur as a Result of the Construction of North Hall*

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. In fact, the creation of 360 additional beds on the North Hall site reduces the number of pedestrians that need to cross Nebraska or Massachusetts Avenues to come to the Central Campus. 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 (on average about 300 excess parking spaces are available at peak parking times in the Katzen parking garage). The removal of the existing 69 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 North Hall will also come from the internal campus drive, and loading/trash facilities are located inside the structure at the ground level.

3. No Adverse Impacts Related to the Number of Students/Faculty/or Staff Will Occur as a Result of the Construction of North Hall

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 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. As discussed in detail during the Campus Plan process, AU has a robust Campus Life program that effectively monitors and guides student behavior in the residence halls. The location of North Hall, on an existing surface parking lot, the expanded set back from Massachusetts Avenue, and the expansion of the sizable 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. Furthermore, the addition of North Hall will make it possible for more students to live on campus.

4. No Adverse Impacts Related to Other Objectionable Conditions Will Occur as a Result of the Construction of North Hall

The proposed North Hall will not create any other adverse impacts or other objectionable conditions on nearby properties. The building will be significantly set back from any public space, and it will be mostly obscured from neighboring properties or public streets by the extensive tree and landscaping buffer along Massachusetts Avenue. AU proposes the following conditions of approval for the proposed North Hall.

1. The Housing and Residence Life license agreement and Student Conduct Code set expectations for appropriate student behavior and will be enforced by AU staff.

2. AU 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.

c. Compliance with the Maximum Bulk Requirements (Subsection 210.3)

AU's 2011 Campus Plan proposes a total FAR of 0.9, which is well within the 1.8 FAR permitted in the R-5-A Residential District.

d. Submission of a Plan for Developing the Campus as a Whole (Subsection 210.4)

As noted above, AU filed a Campus Plan application for the period 2011-2020 on March 18, 2011. The North Hall project proposed in this Further Processing application was identified in the Campus Plan application materials.

e. No Interim Use of Land is Proposed (Subsection 210.5)

No interim use of land is requested as part of this Further Processing application or the Campus Plan application.

f. No New Use Sought for Approved Site of Buildings Moved Off Campus (Subsection 210.6)

The proposed North Hall project is proposed in the pending 2011 Campus Plan application, so there is no new use proposed for the site.

g. Compliance with the Policies of the District Elements of the Comprehensive Plan (Subsection 210.7)

The development of the proposed North Hall residence project is not inconsistent with the policies of the District Elements of the Comprehensive Plan.

h. The Proposed Buildings are Within the Floor Area Limit for the Campus as a Whole (Subsection 210.8)

AU certifies that the additional 110,000 square feet of gross floor area associated with the construction of North Hall will result in the entire campus having a FAR of approximately 0.9, which is within the approved FAR for the campus as a whole under the proposed campus plan.

V. REQUESTED VARIANCE RELIEF

Section 400.9 of the Zoning Regulations states:

> An institutional building or structure may be erected to an height not exceeding ninety feet (90 ft.); provided, that the building or structure shall be removed from all lot lines of its lot a distance of not less than one foot (1 ft.) for each foot of height in excess of that authorized in the district in which it is located.

Since North Hall will have a measured building height of 81 feet, 8 inches, Section 400.9 requires that the building be set back from all property lines by at least 41 feet, 8 inches (since the R-5-A Zone District permits a maximum building height of 40 feet). The revised North Hall now satisfies the set back requirement from the Massachusetts Avenue property line. However, the 32 foot set back from the property line with the Wesley Seminary requires a variance of 9 feet, 4 inches. Therefore, the Applicant is requesting variance relief from Section 400.9 of the Zoning Regulations.

The burden of proof for area variance relief is well established. The Applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that (3) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). As outlined below, this project satisfies the three-part test for area variance relief.

A. *The Property is Affected by an Exceptional Condition*

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C.

1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a "confluence of factors." Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

In this case, the Property 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. Further, it is typically the case that a property line in the District begins at the edge of a public sidewalk or street, and it is rare that this is not the case. These factors create the perception to any pedestrian or motorist on Massachusetts Avenue that AU's property line is adjacent to the Massachusetts Avenue sidewalk.

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. As described above in Section II, the site contains significant grade changes. The existing parking lot, which North Hall will replace, is located at an elevation ranging from 379' to 394', 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 25-30 feet. The confluence of these factors results in a site that is subject to an exceptional situation or condition.

B. *Strict Application of the Zoning Regulations would Result in a Practical Difficulty*

The appropriate test is whether the strict application of the zoning regulations results in a "practical difficulty." In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." In area variances, applicants are not required to show "undue hardship" but must satisfy only "the lower 'practical difficulty' standards." Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider "a wide range of factors in determining whether there is an 'unnecessary burden' or 'practical difficulty' . . . Increased expense and inconvenience to the applicant for a variance are among the factors for BZA's consideration." Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: "the severity of the variance(s) requested"; "the weight of the burden of strict compliance"; and "the effect the proposed variance(s) would have on the overall zone plan." Gilmartin, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome, not impossible.

In this case, AU satisfies the proposed practical difficulty standard because strict compliance with Section 400.9 would be unnecessarily burdensome for the university. The required setback from the property line shared with the Wesley Seminary is 41 feet 8 inches, which is based on the maximum height of the building. As described above, the majority of the wing of North Hall that parallels the Wesley Seminary property line is only 72 feet tall (7 stories). So the majority of the building in fact satisfies the intent of the 1:1 setback. A minority portion of the building along the

Wesley Seminary site does not satisfy the set back requirement. The severity of the variance requested is quite small. Moreover, if the entirety of the building is required to satisfy this set back requirement, the Applicant (and OP) is concerned that it may detrimentally impact the open space between the President's Office Building and North Hall. Thus, the weight of the burden of strict compliance is significant.

In addition, strict compliance with Section 400.9 would severely impede the goal of providing more on-campus housing. AU, OP, and many of the parties agree that providing more on-campus housing is a worthy goal of 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 from complying with Section 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.

C. *Relief can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan*

Granting the requested variance relief will not impair the Zone Plan. The Applicant has thoughtfully designed the project to be harmonious with the adjacent buildings. Although the proposed setback from the Wesley Seminary property line is 9 feet, 4 inches shorter than what is required, the proposed 32 foot setback along this property line provides a significant visual buffer to the adjacent institutional property. This setback from the Wesley Seminary property line combined with the large open space on the Wesley Seminary Property will result in the proposed North Hall not appearing 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.

VI. EXHIBITS

In support of this application, the following exhibits are attached to this document:

EXHIBIT A Architectural plans, photographs of the site and surrounding buildings

EXHIBIT B Resume of Proposed Expert Witness (Beth Buffington – Little Diversified Architects) and Outline of Witness Testimony

VII. CONCLUSION

For all of the reasons above, the University respectfully requests that the Zoning Commission approve the further processing of the Campus Plan as described herein and related area of relief.

GOULSTON AND STORRS, P.C.

Paul Tummonds

Cary Kadlecek

Date: October 6, 2011