

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 11-07B
Z.C. Case No. 11-07B

**Application of American University for Special Exception Approval of a Further
Processing of a Campus Plan and Variance Relief – Relocation of the Washington College
of Law to the Tenley Campus**

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 the 2011-2020 campus plan, and variance relief from § 400.9 of the Zoning Regulations, pursuant to 11 DCMR §3103.2 of the Zoning Regulations, in order to allow the relocation of and construction of facilities for the Washington College of Law (“WCL”) at the Tenley Campus. In accordance with § 3035.4 of the Zoning Regulations, this case was heard and decided by the D.C. Zoning Commission (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 application, subject to conditions.

HEARING DATES: November 21 & December 1, 2011

DECISION DATE: _____, 2012

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

FINDINGS OF FACT

Applications, Parties, and Hearing

1. On August 29, 2011, the University submitted an application seeking special exception review and approval of a further processing of American University’s 2011-2020 campus plan (“2011 Plan”) for the relocation and construction of new facilities for the WCL at the Tenley Campus. As part of the further processing application, the University also requested variance relief from Section 400.9 of the Zoning Regulations. The Commission approved the 2011 Plan on January 23, 2012. (Ex. 1-5)
2. The Tenley Campus is located at 4340 Nebraska Avenue, which includes Square 1728, Lot 1. (Ex. 4)
3. Notice of the public hearing was published in the *D.C. Register* on _____ and was mailed to Advisory Neighborhood Commissions (“ANC”) 3E and 3F, and to owners of all property within 200 feet of the Property.
4. The public hearings on the application were conducted on November 21 and December 1, 2011. The hearings were conducted in accordance with the provisions of 11 DCMR §§ 3022 and 3117.

5. In addition to the Applicant, ANC 3E was automatically a party in this proceeding. ANC 3E submitted a report and resolution in support of the application with conditions. (Ex. 31, 57).
6. On November 4, 2011, the Commission received a request for party status from ANC 3D. The Commission denied party status to ANC 3D because the Tenley Campus is outside the bounds of ANC 3D, and it is approximately one-half mile from the boundary of ANC 3D. Accordingly, the Commission found that ANC 3D is not an affected ANC, and its interests will not be more uniquely or distinctly affected by the new Tenley Campus than members of the general public equally far from the Tenley Campus. (Ex. 16; 11/21 Tr. 15-18, 23-34)
7. On November 15, 2011, the Commission received a request for party status from ANC 3F. ANC 3F based its request on the fact that it is an “affected ANC” due to its proximity to the Tenley Campus. The Commission granted party status to ANC 3F. ANC 3F also requested more time to evaluate the updated plans for the Tenley Campus and to submit a report. Finding no prejudice, the Commission granted ANC 3F more time to review and respond to the plans for the Tenley Campus. (Ex. 26, 32; 11/21 Tr. 12-15)
8. The Commission received timely party status requests in opposition from the Tenley Campus Neighbors Association (“TCNA”) (Ex. 7), the Tenley Neighbors Association (“TNA”) (Ex. 13), and the Spring Valley Wesley Heights Citizens Association (“SVWHCA”) (Ex. 22). The Commission granted party status to TCNA and TNA. The Commission denied party status to SVWHCA because the Commission found that the boundaries of the SVWHCA do not include the Tenley Campus and are at least one-half mile from the Tenley Campus; thus, members of SVWHCA will not be more uniquely or distinctly affected by the new Tenley Campus than members of the general public. (11/21 Tr. 24-27)
9. The Commission received a timely party status request in support from Ward 3 Vision (“W3V”) (Ex. 20). The Commission granted party status to W3V. (11/21 Tr. 11)
10. Following the execution of a private agreement between TCNA and AU concerning the future development of the western portion of the Tenley Campus, TCNA withdrew its party status and did not have any further participation in this case. (Ex. 54)
11. At the November 21 hearing, the University presented evidence and testimony from David King, qualified as an expert in architecture; David Taylor, Chief of Staff, Office of the President; Jorge Abud, Assistant Vice President of Facilities Development and Real Estate; and Dan Van Pelt, qualified as an expert in traffic engineering. (11/21 Tr. 39-78)
12. At the public hearing, the Commission heard testimony and received a report from the Office of Planning (“OP”) in support of the application. (Ex. 25; 11/21 Tr. 184-189)
13. The District Department of Transportation (“DDOT”) filed a report in this case that was supportive of the application with recommendations. At the Commission’s request, DDOT also filed a supplemental report responding to issues raised by ANC 3D. (Ex. 43, 71; 11/21 Tr. 189-204)

14. On October 21, 2011, AU filed a detailed Transportation Impact Study (“Traffic Study”). (Ex. 11)
15. On November 7, 2011, AU filed a pre-hearing submission, which included updated architectural plans, a refinement of the requested variance relief from Section 400.9, and a copy of the Historic Preservation Office Staff Report recommending that the Historic Preservation Review Board approve the plans for the Tenley Campus. (Ex. 21)
16. On November 21, 2011, AU filed responses to the conditions of support stated in DDOT’s report. (Ex. 46)
17. On December 1, 2011, ANC 3D filed a letter in opposition as well as an objection to being denied party status. The Commission reconsidered the party status denial and found that its decision to deny party status was appropriate. The Commission found that its initial conclusions about ANC 3D not being uniquely or distinctly affected by the new Tenley Campus were correct. (Ex. 55; 12/1 Tr. 18-19)
18. On December 1, 2011, AU filed responses to issues and questions from the November 21 public hearing. AU’s submission included development data for both the existing and proposed Tenley Campus; additional measurements and information for the new Tenley Campus; a copy of the 1986 agreement between ANC 3E and AU; a copy of the November 21, 2011 agreement between TCNA and AU regarding future development of the Tenley Campus; slides from a WMATA presentation regarding capacity at the Tenleytown Metro station; a description of AU’s parking policy for WCL; and AU’s responses to ANC 3F’s 16 conditions of support. (Ex. 58)
19. After the close of the hearing, the University filed a post-hearing submission in response to the requests of the Commission, including responses to the report and testimony submitted by TNA, responses to traffic issues raised by ANC 3D, and clarifications of information previously submitted to the record. (Ex. 72)
20. At a public meeting on _____, the Commission took final action to approve the application in Case No. 11-07B, subject to conditions, by a vote of _____.

The Tenley Campus and Surrounding Area

21. The Tenley Campus is located in the Tenleytown neighborhood of Northwest Washington approximately one mile northeast of the Main Campus. The Tenley Campus contains eight acres of land and the following five primary buildings: freestanding Dunblane and Congressional Halls; and the connected Capital, Federal, and Constitution Halls. Except for Dunblane, the buildings are concentrated at the eastern edge of the site, and the western edge primarily contains trees, open green space, and recreation fields. The Tenley Campus is bounded by Tenley Circle, Nebraska Avenue, Warren Street, 42nd Street, and Yuma Street. The area surrounding the Tenley Campus includes a residential area and institutional uses.

The Tenleytown Metro Station is approximately one block to the north on Wisconsin Avenue. (Ex. 4)

22. The area surrounding the Tenley Campus includes single-family homes located to the west of 42nd Street and south of Warren Street. Institutional uses, such as St. Ann's Church and School and the Convent of Bon Secours, are located directly across Yuma Street to the north, with single family residential buildings further west along Yuma Street. Residential uses are also located across Nebraska Avenue from the Tenley Campus. The Wisconsin Avenue commercial corridor is directly to the east of the Tenley Campus. This commercial corridor contains moderate density commercial uses, most of which are retail. The two entrances to the Tenleytown Metro Station are located approximately one block north along Wisconsin Avenue. (Ex. 4)
23. The topography of the Tenley Campus varies significantly across the site with a high point of elevation 412' adjacent to Yuma Street and a low point of elevation 381' at Tenley Circle. The center of the proposed building façade along Yuma has a grade elevation of 406' at the curb line, which is approximately 20 feet higher than the 386' curb line elevation at the center of the new façade along Nebraska Avenue. Along Yuma Street and Nebraska Avenue, the grade elevation of the Tenley Campus and the adjacent right-of-way is approximately the same. However, along 42nd Street and the western portion of the property along Warren Street, the grade elevation of the Tenley Campus property is approximately 13 feet above these adjacent rights-of-way. (Ex. 4)
24. The Tenley Campus contains the housing, classrooms and offices for the Washington Semester Program, as well as offices for several administrative units. (Ex. 4)
25. The Tenleytown Historical Society ("THS") submitted three landmark applications for individual buildings located on the Tenley Campus, and ultimately the entire property. The first application (#08-11) was for Dunblane, a building located on the far western portion of the Tenley Campus that dates back to the mid-19th Century. That landmark application focused primarily on the house's nineteenth century significance. The second historic landmark application filed by THS (#09-04) was focused on the use of the Tenley Campus property by the Sisters of Providence of St. Mary of the Woods, which established a school for girls on the site, the Immaculata Seminary. The third historic landmark application (#11-08), revised application #09-04 and focused on the history and development of the Immaculata Seminary and specifically includes Dunblane, the buildings on the Tenley Campus that were constructed on or about 1955 (now known as Federal Hall, Congressional Hall, and the Constitution Building), and the entire Tenley Campus as elements of the significance of the landmark. (Ex. 4)
26. On August 22, 2011, the University filed a conceptual design review application (HPA #11-467) for the proposed WCL facilities with the Historic Preservation Review Board ("HPRB"). On October 27, 2011, HPRB voted to approve THS's HPA Application #09-04 which created a historic district for the Tenley Campus and also granted conceptual design approval to the University's proposed WCL facilities in HPA #11-467. (Ex. 21)

27. The Tenley Campus is zoned R-1-B and is located in the Institutional land use category on the Future Land Use Map and the Generalized Policy Map of the District of Columbia Comprehensive Plan.

Tenley Campus Design

28. The current WCL facility at 4801 Massachusetts Avenue and an additional 16,000 square feet of adjacent rented office space are not capable of supporting WCL's evolving operational and pedagogical needs. The WCL has leveraged every available resource over the last 15 years to promote its mission and sustain its growing prestige and national reputation, but continuing to achieve effective results is no longer viable within the existing facilities. The new facility at the Tenley Campus will allow WCL to satisfy its needs as well as advance the University's goals described in the 2011 Plan. (Ex. 4)

29. Development of the new WCL at the Tenley Campus will embrace and fully incorporate historic Capital Hall, its chapel, and Dunblane House. The University noted that the new building masses will be carefully located to preserve the existing academic courtyard and much of the existing topography, mature trees and landscape character. The proposed new construction will require the demolition of three existing structures: Congressional Hall, Federal Hall and Constitution Building. All three structures are considered not architecturally significant, nor are they viable for law school use based on a detailed building assessment commissioned by AU. (Ex. 4; 11/21 Tr. 49-60)

30. The new Tenley Campus will be a fully integrated 300,000 – 310,000 square foot law school facility, with parking for approximately 400 – 450 vehicles (approximately 400 parking spaces will be provided in two below-grade parking levels and approximately 40-50 parking spaces will be retained in an existing surface parking lot which will be accessed from an existing curb cut on Yuma Street). The new facility will support a student population of 2,000 and a faculty/staff population of 500. (Ex. 4, 21; 11/21 Tr. 45-60). The new Tenley Campus will incorporate the following projects:

a. Capital Hall will be renovated, with the primary focus on interior spaces. The chapel will be renovated to accommodate the WCL Trial Advocacy program, adapting the main sanctuary into a ceremonial moot courtroom and the lower level into multiple flexible teaching courtrooms. The remainder of the building will be renovated to accommodate administrative and student offices. Capital Hall's existing exterior service court will be enclosed and converted into an enclosed atrium to facilitate connections to a new Yuma Street building. No changes are proposed for the primary exterior façades of Capital Hall. Any work to the exterior at these locations will be focused on the restoration and maintenance of the historic structure. (Ex. 4, 21)

b. The new Nebraska Avenue building will serve as a formal entrance to the new WCL facility. The entry floor will accommodate WCL's ceremonial courtroom, a large lobby intended for small gatherings and receptions and several large format tiered classrooms. The second, third and fourth floors will accommodate the

Pence Law Library and feature both formal and informal study areas, group study rooms, library collections, public legal resources and administrative support areas. The building will be 63 feet tall. The closest corner of the building to Nebraska Avenue will be set back 12.74 feet from the property line. The Nebraska Avenue building will include approximately 87,000 square feet of above grade space, roughly distributed equally among the four levels. Driveways for a vehicular drop-off lane and entrance ramp to the two level below-grade parking structure will extend from the east façade of the building to Nebraska Avenue. (Ex. 4, 21)

- c. The new Yuma Street building will be four stories above grade. The Yuma Street façade will minimize the apparent mass of the structure relative to the nearby lower scale residential context. The exterior façades of the Yuma Street addition will be composed primarily of brick masonry with large expanses of glass and aluminum curtainwall and limestone veneer. The building will include approximately 158,000 square feet of space and will be 59 feet tall. The lowest building will include large instructional spaces, tiered classrooms, student organization offices, student lockers, meeting space, a dining facility and faculty offices. The Yuma Street building and the Nebraska Avenue building will be linked by a below-grade connector. (Ex. 4, 21)
 - d. The design will preserve most of the campus interior and Dunblane House. The building design will be configured to maintain existing pedestrian circulation patterns from Yuma Street and Nebraska Avenue, and the structured terrace that links the Nebraska Avenue and Yuma Street buildings will be furnished with flexible seating and tables. In response to concerns raised by various members of the surrounding community, AU will retain the historic components of the Dunblane House. AU anticipates that WCL uses of Dunblane will include administrative offices, Alumni Affairs offices, and offices for visiting faculty and scholars. The exterior appearance will remain unaltered from its current condition. (Ex. 4, 21)
31. Redevelopment of the Tenley Campus will redefine the lawn in front of Capital Hall to better engage pedestrian activity and public access from Tenley Circle. The Applicant noted that this aspect of the proposed design is a direct result of a constructive dialogue process with the community and addresses many of the concerns expressed by both neighbors and OP. The new lawn area will direct circulation around Capital Hall and focus access to two new primary entry courts that frame the foreground for the two new buildings on the Tenley Campus. (Ex. 4, 21; 11/21 Tr. 45-60)
32. A new Yuma Street court will facilitate convenient access from the Tenleytown Metro Station and provide entry directly into the academic courtyard, Capital Hall, and the new academic and office wing. A new Nebraska Avenue court will provide entry into the new academic and library wing while also providing access to the academic courtyard through an existing building “hyphen.” (Ex. 4, 21; 11/21 Tr. 45-60)

33. The balance of the Tenley Campus will be enhanced by a densely planted perimeter landscape zone which will include walking paths that encircle Dunblane House and extend along Warren Street, 42nd Street, and Yuma Street. (Ex. 4, 21)
34. The design for the Tenley Campus will prioritize and actively promote environmentally sustainable development principles. Carbon emissions and fossil fuel consumption will be minimized by the site's close proximity to multiple modes of public transportation, including city and campus buses and Metrorail. Site amenities will include bicycle racks and shower facilities to encourage bicycle commuting. Innovative management of solar heat gain, stormwater quantity and quality, potable water use and HVAC refrigerants will be implemented to minimize negative environmental effects. Building systems and site infrastructure will be designed for optimum performance to minimize energy consumption. Construction materials will be specified that require minimal embodied energy and maximize recycled content or are rapidly renewable. Interior spaces will promote healthy environments by minimizing airborne contaminants and maximizing personal comfort by providing effective and adaptable HVAC systems and by emphasizing access to natural light and views. The University designed the project to meet or exceed LEED Gold standards, and the University will aim for LEED Gold certification for the project. (Ex. 4, 21)
35. At its closest point to the Nebraska Avenue property line, the Nebraska Avenue building will be set back 12.74 feet from the property line. Since the Nebraska Avenue building will have a measured building height of 63 feet, and it is required to be set back from the Nebraska Avenue property line a distance of 23 feet, pursuant to Section 400.9. Therefore, the Applicant is requesting variance relief from Section 400.9 of the Zoning Regulations for the Nebraska Avenue building. (Ex. 4)
36. The design for the Tenley Campus was approved by the HPRB at its October 27, 2011 meeting. (Ex. 21)

Community Outreach and Dialogue

37. AU engaged in a dialogue with representatives of ANC 3E, TCNA, W3V, and nearby residents from late 2010 through spring 2011. The goal of this process was to allow each of the parties to articulate their goals and concerns for the development of the Tenley Campus and the relocation of the Washington College of Law to the Tenley Campus. This process included representatives from WCL and AU's architectural team, as well as an architect selected by TCNA. This group met six times. (Ex. 4; 11/21 Tr. 75-76)
38. In addition to these meetings, AU and its architects engaged in two design meetings with representatives of OP, the Historic Preservation Office ("HPO"), ANC 3E, ANC 3F, TCNA, the Tenleytown Historical Society, W3V, and other community representatives. These meetings were facilitated by OP Director Harriet Tregoning, who focused the group on the establishment of basic design principles which would then serve to guide potential modifications and refinements to specific elements of the campus design. Participants reviewed and discussed many issues, including the following: site development priorities; building massing; height and density; vehicular and pedestrian access; landscape character;

parking facilities; historic preservation; building program; and neighborhood amenities. (Ex. 4)

39. The group achieved consensus on eight design principles ranging from concentrating development on the eastern side of the site to creating accessible open areas and green space. (Ex. 4)
40. The University and TCNA entered into a mutually-satisfactory private agreement concerning the future development of the western portion of the Tenley Campus. The University agreed to restrict development on the western portion of the Tenley Campus until 2031. This restriction and associated conditions are included in the conditions of approval contained herein. (Ex. 58) As a result of this agreement, TCNA withdrew its party status in opposition. (Ex. 54)
41. The HPO Staff Report regarding the redevelopment of the Tenley Campus highlighted the effective community dialogue process during the development of the plans. The report noted that the design of the Tenley Campus resulted from “redesign and refinement undertaken in response to the design principles and feedback gathered at the community meetings.” Further, the report noted that the new buildings are compatible with the existing historic buildings. (Ex. 21)

Office of Planning

42. By report dated November 10, 2011, and by testimony at the public hearing, OP recommended approval of the further processing and variance application for the Tenley Campus. 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 stated, “The project should not adversely impact neighboring properties, given its site design, efforts made to encourage the use of public transit and bicycling, and the anticipated use of the site.” (Ex. 25; 11/21 Tr. 184-189)
43. In its review of the specific § 210.2 standards, the OP report concluded that the relocation of the WCL to the Tenley Campus is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions. With respect to noise, the OP report stated that the design and siting of the buildings means that the project is unlikely to cause objectionable noise impacts. In regards to the number of students, the OP report noted that OP supports AU’s efforts to mitigate its impact on traffic, parking and circulation and that the relocation of the WCL to the Tenley Campus will provide greater opportunities for students and faculty to use non-automobile forms of transportation. Also, the OP report stated that the proposed number of students and faculty are not likely to create objectionable conditions for neighboring properties because of the projects’ design and building siting. Finally, the OP report noted that the planned special events at the Tenley Campus are not likely to create objectionable conditions for the

neighbors because of AU's plans for managing the events and because of the nature of the events. (Ex. 25)

44. In regard to the variance standards of § 3103.2, the OP report concluded that the site is unique due to its irregular trapezoidal shape; proximity to both a major commercial corridor and institutional and single-family residences; a 26-foot grade change on the site; and its designation as a historic district with three contributing buildings. The OP report also concluded that the Applicant would be faced with a practical difficulty in satisfying the setback requirement for the Nebraska Avenue building by preserving the historic character of the campus and maintaining the relationships between existing and proposed buildings; a conforming setback would not allow for the goals to be met because of the resulting design. In regard to the final prong of the variance test, the OP report stated that the proposed setback of 12.74 feet would not adversely impact the provision of light and air on adjacent properties, would not create adverse visual impacts, and would not create disruptive noise; thus, the proposed setback would not impair the intent, purpose, or integrity of the Zone Plan. (Ex. 25)
45. The Commission credits OP's report and testimony. The Commission finds that OP's report and testimony sufficiently assessed the standards under § 210 to determine that the relocation of the WCL to the Tenley Campus is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions. Further, the Commission finds that OP conducted a thorough analysis in determining that the variance relief from § 400.9 is justified and warranted.

District Department of Transportation

46. By report dated November 17, 2011, DDOT supported the relocation of the WCL to the Tenley Campus with conditions. DDOT provided the following conditions of support: (1) implement traffic calming measures along 42nd Street in accordance with the Rock Creek West II Livability Study and the Janney Safe Routes to School Action Plan; (2) construct sidewalk and traffic calming on Warren Street; (3) widen the sidewalk along the northwest side of Nebraska Avenue between the Tenley and Main Campuses; (4) remove parking in critical locations to facilitate vehicular capacity; (5) modify site access design to meet DDOT standards; (6) commit to funding a significant suite of traffic demand management ("TDM") measures recommended in the body of the DDOT report; (7) increase bicycle parking proposed for main building entrances and in the parking garage; (8) submit to annual reporting for performance of TDM measures; (9) meet trip thresholds for turning movements into the main garage; (10) meet threshold for AU-related use of public curbside parking; and (11) meet threshold for AU-related neighborhood cut-through trips. (Ex. 43)
47. In its report, DDOT stated that it agrees with the methods, assumptions and conclusions in AU's Traffic Study. In particular DDOT noted that it agrees with AU's Traffic Study in the following respects: evaluation of trip generation; assessment of trip distribution and assignment; mode split change to increased usage of public transit as a result of relocation of the WCL to the Tenley Campus; scope of study area; and projected background growth of traffic; and loading access from Yuma Street. (Ex. 43)

48. In its report, DDOT stated that it agrees with AU's TDM measures and believes that these TDM measures will help mitigate potentially adverse impacts on traffic as a result of the redevelopment of the Tenley Campus. (Ex. 43)
49. By supplemental report dated December 8, 2011, at the request of the Commission, DDOT responded to issues raised in a letter submitted by ANC 3D. In its report, DDOT stated that 450 spaces is considerably larger than demand is likely to be and reiterated its position that the Tenley Campus should provide only 250 spaces. Also, DDOT stated that "it is confident that [AU's] work done to evaluate future conditions is accurate and reflects best industry practices." Finally, DDOT stated that AU's "suite of TDM programs will significantly reduce vehicular traffic demand to the site." DDOT also made some refinements to its recommended TDM measures. (Ex. 71)
50. The Commission credits DDOT's report and testimony. Based on evidence and information submitted by the University, the Commission concludes that the University has satisfied eight (nos. 1, 2, 6, 7, 8, 9, 10, & 11) of DDOT's conditions and has successfully rebutted four of DDOT's conditions. In particular, the Commission finds that AU's monitoring program will satisfy most of DDOT's conditions and will allow problems to be addressed if they arise. Furthermore, the Commission finds that DDOT's recommended sidewalk and traffic calming measures on Warren Street are unnecessary because of AU's planned pathways and other traffic calming measures. Also, DDOT's recommended sidewalk along the northwest side of Nebraska Avenue between the Main and Tenley Campuses is unwarranted in this Further Processing application, and its need is not supported by DDOT's report. In addition, the Commission does not credit DDOT's recommendation for a reduced number of parking spaces: AU sufficiently demonstrated that the proposed 400-450 spaces balances the need for parking with concerns of the neighboring community while not encouraging driving to the site. Also, the Commission finds that AU sufficiently demonstrated that the left turn lane from Nebraska Avenue is warranted. Finally, the Commission finds that, based on the evidence presented, AU's site access design satisfies all of the relevant DDOT standards.
51. The Commission credits DDOT's thorough analysis of the Applicant's Traffic Study and finds that DDOT adequately evaluated the Traffic Study. The Commission agrees with DDOT that the Applicant's Traffic Study satisfies DDOT's criteria for a complete, thorough, and accurate study, and that the data, methods, and scope of the Traffic Report were sufficient for a reliable study with verifiable conclusions.

ANC 3E

52. By resolution and testimony, ANC 3E supported the relocation of the WCL to the Tenley Campus. ANC 3E stated that the University's separate private agreement with TCNA demonstrated a successful collaboration between the University and the community. ANC 3E requested that the Commission adopt the conditions in the private agreement with a modification to the "lawsuit exception" in the private agreement, such that it applies only to lawsuits filed by non-TCNA members. ANC 3E also stated that the number of parking spaces should not be reduced from what the University proposed, that the University should

not be prohibited from renting out excess parking spaces, and that widening of the Nebraska Avenue sidewalk between the Main and Tenley Campuses should be reviewed further. (Ex. 57; 12/1 Tr. 30-39)

53. The Commission credits the reports and testimony of ANC 3E. The Commission agrees with ANC 3E that the negotiations between the University and TCNA demonstrated the open and extensive community involvement in planning for the redevelopment of the Tenley Campus. Based on evidence presented, the Commission agrees with ANC 3E that the number of parking spaces should not be reduced below 400-450, that the University should be permitted to rent out excess parking spaces, and that the Nebraska Avenue sidewalk widening is not warranted at this time. The Commission finds that modifying the “lawsuit exception” in the conditions contained herein could indirectly affect the intent of the agreement between TCNA and AU; any change to the “lawsuit exception” should be agreed upon by both parties.

ANC 3F

54. By report and testimony, ANC 3F stated that it does not object, with conditions, to the relocation of the WCL to the Tenley Campus. Based on the actions that AU will take in the redevelopment of the Tenley Campus, including reporting, TDM measures, and other design features, ANC 3F did not object to the redevelopment of the Tenley Campus. ANC 3F placed 16 conditions on its support. (Ex. 53; 12/1 Tr. 52-71)

55. The Commission credits the reports and testimony of ANC 3F. Based on testimony and evidence presented, the Commission finds that the University agreed to or satisfied all but two of ANC 3F’s 16 conditions of support. (Ex. 58). The University outright agreed to six of ANC 3F’s conditions, and AU will take the appropriate measures to address eight other conditions should the circumstances dictate. The Commission finds that the University sufficiently responded to conditions 10 and 13, so the University can be credited with the support of ANC 3F. The Commission finds that the University’s TDM measures will address the traffic mitigation concerns stated by ANC 3F, that a LEED Gold rating is a worthy and laudable goal for the project, and that the left turn lane from Nebraska Avenue into the Tenley Campus is warranted unless DDOT determines that removing parking is justified. Further, as described in Findings of Fact No. 85, the Commission finds that the University has satisfied the standards for variance relief such that relief from Section 400.9 is warranted and will not adversely impact residents of ANC 3F.

Testimony in Support

56. W3V presented oral testimony in support of the relocation of the WCL to the Tenley Campus and stated that the redevelopment of the Tenley Campus will be a great benefit to the community. W3V testified that the relocation of the WCL to the Tenley Campus will improve the vitality of the Wisconsin Avenue corridor. W3V also testified that stated that AU was receptive to community concerns and made adjustments to the design and layout in response. W3V testified that the green space at the front of the redeveloped Tenley Campus will provide an opportunity to provide a great public space and entrance to the campus. In addition, W3V testified that it generally supports the reduction of parking in new

developments near Metro stations and that DDOT did a thorough analysis of the Traffic Study. Further, Ellen McCarthy, qualified as an expert in land use and zoning, testified on behalf of W3V that there will not be an adverse impact from the project and that the project will be a positive development for the neighborhood. In particular, Ms. McCarthy testified that noise will be less than the existing use, that the project will have a large separation from single-family residential areas, that the proximity to public transit will encourage transit use and mitigate traffic impacts, that the number of students will not cause adverse impacts, and that the project complies with the general requirements for a special exception under Section 210 of the Zoning Regulations. (12/1 Tr. 78-94)

57. Four people presented oral testimony in support of the relocation of the WCL to the Tenley Campus. Supporters living near to the Tenley Campus testified that the prior relocation of the WCL did not have adverse impacts on neighboring areas and that the new relocation similarly will not have adverse impacts. Further, supporters testified that AU has always been a good neighbor, has worked with community groups, and has been successful in mitigating any possible impacts from its presence in the neighborhood. Also, supporters testified that the redevelopment of the Tenley Campus will benefit the neighborhood and will invigorate businesses along Wisconsin Avenue. Finally, the Coalition for Smarter Growth testified that the project will encourage the use of transit and that it supports AU's TDM measures. (12/1 Tr. 102-120)
58. The Commission agrees with the proponents and finds that the relocation of the WCL to the Tenley Campus will not have adverse impacts on the surrounding neighborhood. The Commission agrees with W3V's analysis that the project will benefit the nearby community and that the project will tend to reduce automobile use and will not adversely impact single-family residential uses in the vicinity of the Tenley Campus. The Commission agrees that the relocation of the WCL will encourage mass transit use, and WCL's relocation near multiple transit options will advance important smart growth principles. The Commission finds that the testimony of the proponents highlights AU's inclusive process for planning the redevelopment of the Tenley Campus. Further, the Commission finds that the relocation of the WCL will allow for greater activity at the eastern edge of the Tenley Campus through the creation of a new public space.

Testimony in Opposition

59. TNA submitted written and oral testimony in opposition to the application. TNA stated that AU's agreement with TCNA "pushed" the problems with the Tenley Campus closer to Nebraska Avenue. TNA testified that 2,000 students are too many for the campus and that the increase in students at the Tenley Campus will have noticeable impacts on surrounding properties. TNA stated that the 1986 agreement between neighbors and AU concerning development of the Tenley Campus is still in effect. TNA stated that the Tenley Campus will have far more students at one time than AU states, so traffic and other impacts will be worse than stated by the University, particularly neighborhood "cut-through" traffic. TNA testified that AU's Traffic Study does not adequately capture the adverse traffic impacts that will result from the redevelopment of the Tenley Campus and that the project will make the traffic congestion worse. TNA further testified that the number of parking spaces to be

provided is far less than what the demand will be and that the Good Neighbor Policy is ineffective in reducing off-campus on-street parking violations. TNA stated that AU should not be granted variance relief from Section 400.9 because the building will have adverse visual and light impacts on neighboring properties. Finally, TNA testified that the Tenley Campus should include more grass and trees at its eastern edge. (Ex. 67; 12/1 Trans. 120-141).

60. ANC 3D submitted two written submissions in opposition. ANC 3D stated that the Traffic Study is unreliable because of its limited scope. ANC 3D stated that the redevelopment of the Tenley Campus will exacerbate already congested streets in the vicinity of the Tenley Campus and that the TDM measures will be ineffective in reducing adverse traffic impacts. ANC 3D also stated that the redeveloped Tenley Campus will not provide adequate parking for the demand. ANC 3D stated that the University relied on suspect data from a transportation study prepared for the General Services Administration regarding future development of the Department of Homeland Security's Nebraska Avenue Complex ("NAC"). ANC 3D recommended that the University be required to adopt a trip cap as part of its TDM measures. (Ex. 35, 55)
61. The Commission received written testimony from individuals opposing the application. Most of this written testimony concerned the same issues: increased traffic congestion in the vicinity of the Tenley Campus; less on-street parking availability in the vicinity of the Tenley Campus; efficacy in preventing on-street parking; insufficient amount of on-campus parking; need for a more extensive traffic mitigation plan; future limits on growth of the Tenley Campus/preservation of green space; pedestrian safety concerns; cooperation by the University in planning for the redevelopment of the Tenley Campus; and incompatibility of the buildings with the surrounding neighborhood.
62. The Commission did not receive any oral testimony from persons in opposition.
63. For the reasons set forth in Findings of Fact Nos. 77 & 80, the Commission finds that the University's proposed redevelopment of the Tenley Campus will not have objectionable traffic or parking impacts and that the TDM measures and enhanced Good Neighbor Policy will adequately mitigate any potential adverse traffic and parking impacts.
64. For the reasons set forth in Findings of Fact Nos. 78 & 79, the Commission finds that the scope of the Traffic Study was appropriate, that the NAC Transportation Study data used by AU was valid, and that trip caps are not appropriate for the Tenley Campus.
65. For the reasons set forth in Finding of Fact No. 83, the Commission finds that a maximum of 2,000 students and 500 faculty/staff is appropriate for the redeveloped Tenley Campus.
66. The Commission finds that the preservation of the western edge of the Tenley Campus, the enhancements to the lawn in front of Capital Hall, and the extensive landscaping and open spaces throughout the campus will provide adequate green and open space so as to not cause objectionable impacts to members of TNA or other neighboring properties.

67. The Commission finds that AU worked collaboratively with the community in planning for the relocation of the WCL to the Tenley Campus. The HPRB review process and the private agreement between TCNA and the University demonstrated the University's substantial efforts to involve the community. The Commission disagrees with the opponents' assertions that AU did not adequately include the community in the process of developing the plan for the redevelopment of the Tenley Campus. The University's changes to the plans, proposed conditions, enhanced policies, and supplemental information ensure that the relocation of the WCL to the Tenley Campus is not likely to become objectionable to TNA, ANC 3D, or other nearby property owners.

Section 210 Evaluation

68. Pursuant to 11 DCMR § 210.1, American University is an academic institution of higher learning, chartered by Congress on February 24, 1893 and founded under the auspices of the United Methodist Church. (Ex. 4)

69. As required by 11 DCMR § 210.2, the Commission finds that the University demonstrated that the proposed Tenley Campus is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable impacts. Specifically, the University proposed conditions of approval to avoid the creation of adverse impacts as a result of the development of the Tenley Campus. These conditions of approval evolved in response to community, agency, and Commission comments. The plan for the Tenley Campus also will incorporate multiple, significant changes in response to community input.

Noise

70. The Commission finds that design of and activities on the Tenley Campus will not create objectionable noise impacts. The massing, siting, and functions of the new buildings on the Tenley Campus will minimize potentially adverse noise impacts on any neighboring properties. Development will be concentrated at the eastern end of the site, away from the nearby residential areas, and closer to commercial Wisconsin Avenue. The height and bulk of the new buildings will be located away from residential properties so that they will not create adverse noise or visual impacts on neighboring properties. The closest residential properties will be at least 112 feet from the buildings, so the distance will buffer any noise. Noticeable activity at the law school will be concentrated on its two principal entrances on Nebraska Avenue and on Yuma Street near Tenley Circle, which will mitigate any noise impacts on nearby residential properties because of their large distance from such residential properties. Open courtyards and outdoor gathering spaces will be primarily in the interior of the campus, so they will be buffered from surrounding areas by buildings. (Ex. 4, 21, 72)

Traffic

71. The University's Traffic Study prepared by the University's traffic expert concluded that the relocation of the WCL to the Tenley Campus will not have adverse impacts on the

surrounding transportation network. In addition, the Traffic Study recommended three measures for AU to adopt in order to mitigate potentially adverse traffic impacts. (Ex. 5, 11)

72. The University provided evidence and testimony that it will continue to encourage the use of public transportation by all members of the AU community, and this will particularly be the case for WCL students and staff at the Tenley Campus. Between 1995 and 2010, shuttlebus use nearly doubled, increasing by 95%. These shuttle buses connect the Main Campus with the Tenleytown Metrorail Station, the Tenley Campus, and the existing WCL campus. With the relocation of the WCL to the Tenley Campus, the University's projections indicate that shuttle bus ridership will increase, that use of public transit will increase (Metro and bus), and that use of automobiles will decrease. (Ex. 4, 5, 11)
73. The University testified that objectionable peak-hour traffic congestion exists currently and that relocation of the WCL to the Tenley Campus will not have a noticeable effect on the overall traffic conditions in the surrounding transportation system. AU's testimony concerning existing traffic and projected future traffic demonstrate that the additional traffic, an overall increase by approximately 2.3%, generated by the redevelopment of the Tenley Campus will not significantly contribute to traffic congestion in the proximity of the Tenley Campus. (Ex. 11, 72; 11/21 Tr. 60-74)
74. The University testified that the projected future demand for parking spaces based on the proposed increase in the student and staff/faculty population and the percentage of these populations that will drive to the Tenley Campus will be approximately 450 spaces. This projection is based on an assumption of no changes to mode splits of WCL students, faculty and staff. However, as the University demonstrated, a likely modest decrease in driving due to relocating the school close to the Metrorail station would decrease demand for parking spaces, to approximately 400 spaces at peak times. The University demonstrated that the approximately 400 – 450 provided spaces will be sufficient to accommodate the projected demand of 400 spaces, while not encouraging the use of automobiles. Non-typical demand, such as demand generated by larger special events will be accommodated with surplus parking supplies at the Tenley Campus or the Main Campus. (Ex. 4, 5, 11)
75. In order to ensure that the redevelopment of the Tenley Campus will not adversely affect traffic and parking conditions in the vicinity of the Tenley Campus, the University will adopt three recommendations from its traffic engineering expert: (1) a new left turn queuing lane on Nebraska Avenue in order to provide access to the underground parking garage; (2) the adoption of the TDM measures stated in the report and included herein; and (3) the enhancement of the University's off-campus on-street parking enforcement program (the "Good Neighbor Policy"). (Ex. 11)
76. The University testified that vehicular access to the Tenley Campus will not adversely impact Nebraska Avenue traffic. Access to the 400 below-grade parking spaces and a vehicular drop-off lane will be from Nebraska Avenue. This vehicular access point will be a one-way stop-controlled intersection with the north-and southbound approaches of Nebraska Avenue free-flowing through the intersection. The University testified that the proposed vehicular

entrance for the Tenley Campus from Nebraska Avenue is projected to operate under acceptable conditions during the morning and afternoon peak hours. (Ex. 4, 5, 11)

77. The University testified and presented evidence that the Good Neighbor Policy has been effective in preventing WCL-related on-street parking on nearby neighborhood streets. The continuation of the Good Neighbor Policy at the Tenley Campus will continue to prevent such unauthorized on-street parking. In response to community requests that the University increase the Good Neighbor Policy's enforcement mechanisms, the AU adopted changes to strengthen enforcement. The new policy will escalate fines to \$100 for violations after the first offense, and WCL members will be subject to "administrative penalties, up to and including Honor Code violations and/or disciplinary action" for violations. (Ex. 4, 5, 11)
78. The Commission finds that the Traffic Study included an appropriate scope for determining the potential impacts of the relocation of the WCL to the Tenley Campus. The scope of the Transportation Study accounted for traffic generated by changes to the network including planned and unbuilt developments using industry standard methodologies. The scope of the Traffic Study was discussed with and approved by DDOT. AU's traffic engineering experts and DDOT set the study area boundaries at the limits of where they believed relocation to the WCL could have a noticeable impact. The basis for this boundary was the predicted amount of vehicular traffic generated by the new WCL and the amount of traffic expected in the future (from existing and non-WCL sources in the future). AU's traffic engineering expert and DDOT selected the edge intersections based on accepted industry standards. (Ex. 11, 72)
79. The Commission finds that the Traffic Study's inclusion of certain data from a transportation study prepared for the General Services Administration regarding future development of the Department of Homeland Security's Nebraska Avenue Complex ("NAC") was appropriate. The Traffic Study used the following information from the NAC transportation study: (1) counts of existing traffic, (2) background growth assumptions, and (3) projections of traffic for the future NAC campus. AU's traffic engineering expert discussed the use of these study inputs with DDOT during the scoping of the Traffic Study, and DDOT agreed that these inputs were appropriate for use in the Traffic Study. (Ex. 72)
80. The Commission finds that a trip cap is not justified for the proposed redevelopment of the Tenley Campus. The University demonstrated that it has a very effective TDM program that has already had a positive impact on the reduction of vehicular trips attributable to AU, and its TDM program for the redevelopment of the Tenley Campus will continue to be effective. Overall AU trips have declined at a rate of 3.9% per year since the transportation analyses were conducted for the 2001 Campus Plan. Since the 2001 Campus Plan, the total amount of peak hour trips removed from the network due to TDM measures at the Main Campus is far more than the number of vehicular trips the new WCL facility is projected to generate. Other universities or schools agreeing to trip caps did so under very different circumstances. The implementation of a trip cap on AU related vehicular trips will likely have very little discernible impact on the overall levels of vehicular traffic on the surrounding transportation network, so it would not be justified. (Ex. 72)

81. The Commission finds that the redevelopment of the Tenley Campus will not create adverse traffic or parking impacts on neighboring properties. The Traffic Study included an appropriate scope agreed upon by DDOT. The relocation of the WCL to the Tenley Campus is likely to result in a greater portion of students and faculty/staff using public transit. The provision of 400-450 parking spaces will be sufficient to accommodate the expected parking demand for WCL students, faculty/staff, and visitors to WCL sponsored events. In addition, the provision of 400-450 parking spaces on the Tenley Campus will strike an appropriate balance between accommodating the expected parking demand for WCL uses and events, while not adversely impacting the surrounding transportation network by adding too many new vehicles. Also, the University adequately demonstrated that, through the study of existing and projected future traffic conditions, the relocation of the WCL to the Tenley Campus will not generate sufficient additional traffic to cause additional noticeable adverse impacts on the surrounding transportation network. Further, the University demonstrated that the Good Neighbor Policy will effectively address any adverse impacts regarding the availability of parking on the surrounding neighborhood streets. In addition, use of some data from the NAC transportation study was appropriate for the Traffic Study. Finally, the implementation of the TDM measures contained herein will effectively limit the adverse traffic and parking impacts of the redevelopment of the Tenley Campus, and a trip cap is not a justifiable means to mitigate such impacts.

Number of Students

82. The University testified that, for the existing WCL facility, the maximum number of people on the WCL campus at any one time is approximately 840 people, which occurs at 11:00 AM on Wednesdays. With the relocation of the WCL to the Tenley Campus, the University does not intend to make any major changes to classes, operations, or events. Thus, based on the ratio of current to future maximum populations, the University expects that no more than 950 people associated with WCL will be at the Tenley Campus at any one time when the WCL achieves the maximum populations of 2,000 students and 500 faculty/staff. (Ex. 4, 11, 72)
83. The University testified that the WCL's hosting of conferences and events, including CLE classes, will not have an adverse impact on the neighboring community. While many events are open to the public, the vast majority of attendees will continue to be AU faculty, staff or students. Typically, 27% of attendees at such events are non-University guests, and the University expects the percentage of this limited outside audience to continue at the Tenley Campus. The University will continue to schedule events so they do not conflict with the normal academic schedule or each other; thus, their impact on the day-to-day functioning of the law school will be minor. Given the rather small number of outside participants in these events and the careful scheduling of these events, WCL's hosting of CLE Programs and other events will not have an adverse impact on the neighboring community. (Ex. 4)
84. The Commission finds that the relocation of the WCL to the Tenley Campus will not cause objectionable impacts due to the number of students. The University provided ample evidence and testimony that the Tenley Campus will not contain more than approximately 950 people at any one time and that there never will be an instance during which all of the proposed 2,000 law students and all of the proposed 500 staff/faculty will be present on the

Tenley Campus simultaneously. Further, the University sufficiently demonstrated that the number of attendees at events and conferences will not be objectionably large or intrusive to neighboring properties. The University adequately demonstrated that the Tenley Campus will be able to accommodate the number of students, faculty/staff and event attendees without adversely affecting neighboring properties.

Other Objectionable Conditions

85. The Commission finds that the redevelopment of the Tenley Campus will not create any other adverse impacts or other objectionable conditions on nearby properties. The buildings will be concentrated away from the residential areas nearby, and the trees and landscaping along the campus perimeter will provide significant buffers from both sound and visual impacts. The Nebraska Avenue building will be located a significant distance from nearby residential properties, so that it will not cause adverse visual impacts on those residential properties. The historic buildings (Capital Hall and Dunblane) will be preserved and incorporated into the new campus, and new buildings will be constructed on existing footprints to the greatest extent possible; thus, the site will maintain its existing configuration and aesthetic. The design of the campus will include significant green space, and development on the western edge will be restricted. The Campus will have limited nighttime activity, and rooms will be equipped with light sensors to shut off all lights when rooms are not in use.

Variance Relief Evaluation

86. The Commission finds that the variance relief standards of 11 DCMR § 3103.2 have been satisfied for the Nebraska Avenue building with regard to the setback requirements of 11 DCMR § 400.9.

- a. Uniqueness: The Commission finds that the Tenley Campus site is unique because of its status as a historic district, the shape of the site, and the varied topography. The historic district is not related to general building types or patterns of development that occur throughout Tenleytown. Rather, the historic district refers to specific buildings (Capital Hall and Dunblane) on the Tenley Campus and the overall history of development on this specific site as an educational institution. The trapezoidal-shaped property and the significant grade changes of approximately 20 feet from Yuma Street to Nebraska Avenue are also factors that contribute to the uniqueness of this property. The confluence of these factors results in a site that is subject to an exceptional situation or condition.
- b. Practical Difficulty: The Commission finds that requiring the Applicant to push a portion of the Nebraska Avenue building further away from Nebraska Avenue would be unnecessarily burdensome and that the Applicant would be faced with a practical difficulty in satisfying the strict requirements of Section 400.9. The design, siting, and massing of the Nebraska Avenue building is guided by AU's goals of creating a dignified scale and presence to the Nebraska Avenue frontage of the Tenley Campus, with HPO's goals of retaining the 1955 "hyphen" structure

between Capital Hall and the new structure, and the nearby residential property owners' goals of pushing development towards the eastern part of the Tenley Campus. The trapezoidal shape of the Tenley Campus creates a pinch point where this structure approaches Nebraska Avenue, and it is at this pinch point that the structure will be setback from the Nebraska Avenue property line by 12.74 feet. This pinch point occurs near the intersection of Nebraska Avenue and Warren Street. The severity of the variance requested is minimal and the burden associated with strict compliance is great for the Applicant. The amount of the Nebraska Avenue building which will not be setback 23 feet from the Nebraska Avenue is not a large proportion of the overall size of the structure, but it will be vitally important to conveying the building's presence along Nebraska Avenue. If the Applicant were forced to push the building further away from Nebraska Avenue, then there would be detrimental impacts related to HPO's concerns regarding the relationship of the new structure to the 1955 building "hyphen" and WCL's goals of creating an appropriate presence for WCL along the Nebraska Avenue corridor.

- c. No Detriment to the Public Good or Impairment of the Intent, Purpose or Integrity of the Zone Plan: The Commission finds that granting the requested variance relief will not impair the intent, purpose or integrity of the Zone Plan. The Applicant has thoughtfully designed the Nebraska Avenue building to limit the adverse visual and noise impacts on surrounding residential properties. The amount of setback relief necessary to locate this building as depicted on the plans is insignificant compared to the benefits that the location of this building brings to the overall development of the Tenley Campus. Granting this relief will allow WCL to relocate its facilities to the Tenley Campus in a manner that effectively and appropriately addresses the needs and concerns of WCL, OP/HPO, and the surrounding residential community. Moreover, given the location of this pinch point in the property, where the nearest residential uses are located across the 100 foot wide right-of-way of Nebraska Avenue, there would be no adverse impact on the overall zone plan if this variance is granted.

CONCLUSIONS OF LAW

1. The Applicant requested 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 relocation of the WCL to the Tenley Campus. 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 relocation of the WCL to the Tenley Campus in accordance with § 210. The building siting, building design, landscaping, TDM measures, and conditions of approval proffered by the University will ensure that the redeveloped Tenley Campus is not likely to become objectionable because of noise, traffic, number of students, or other objectionable impacts. The new Tenley Campus is not inconsistent with relevant policies of the Comprehensive Plan. The University has made reasonable accommodations in the Tenley Campus' design to address the concerns of parties and persons in opposition. Finally, in response to community and agency comments, approval of the Tenley Campus will include conditions to mitigate any possible adverse impacts and to avoid creation of additional adverse impacts or objectionable conditions.
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 Tenley Campus 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 Nebraska Avenue building in a manner that is consistent with the setback requirements along Nebraska Avenue. Finally, the Commission finds that due to the landscaping, siting, and design features, 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 accords the recommendation of OP the "great weight" to which it is entitled pursuant to D.C. Official Code § 6-623.04 (2001). As discussed in this Order, the Commission concurs with the recommendation of OP to grant the University's further processing application for the Tenley Campus.

6. The Commission accords the recommendations of ANCs 3E and 3F 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 credits the unique vantage point that ANCs 3E & 3F hold with respect to the impact of the redeveloped Tenley Campus on the ANCs’ constituents. As discussed herein, ANC 3E supported this application with conditions. The University has agreed to all of ANC 3E’s conditions except for a proposed revision to the “lawsuit exception” in the agreement between TCNA and AU. As discussed above, the Commission concludes that any proposed modification to the “lawsuit exception” should be agreed upon by TCNA and AU. Similarly, the University has satisfactorily agreed to or responded to all but two of ANC 3F’s conditions. With respect to the two conditions that AU did not agree to, the Commission concludes that the University satisfactorily demonstrated that a LEED Gold rating is sufficient and that the left turn lane from Nebraska Avenue is justified. The Commission concludes that these two conditions are not imperative to ANC 3F’s support. Thus, the Commission finds that it has given the views of ANC 3E and ANC 3F the “great weight” to which they are entitled.
7. The Commission finds that the 1986 agreement between ANC 3E and AU is not germane to the approval of the relocation of the WCL to the Tenley Campus. The 1986 agreement expired with respect to approval of future campus plans once the Commission adopted the 2001 Campus Plan. The 1986 agreement did not extend the life of the 1989 Campus Plan, and is not relevant to whether the University satisfies the criteria for approval of a further processing application under Section 210. As noted in the Zoning Commission’s approval of the 2001 Campus Plan, the 1986 agreement has no binding effect on the Commission with respect to future campus plans or further processing applications.

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 3103.2 and it is therefore **ORDERED** that American University’s relocation of and construction of new facilities for the Washington College of Law at the Tenley Campus be **GRANTED**, subject to the following conditions:

1. **Restrictions on Future Development** – American University shall not propose any further development of any kind during the term of the 2011 Plan or in the next campus plan (currently expected to be for the period 2022-2031, but for whatever the term of the campus plan that follows the campus plan in Case No. 11-07) on the western portion of the property shown on **Exhibit A** (the “**Restricted Area**.”) If the next campus plan has a life longer than twenty years, this development proposal restriction will extend to the end of calendar year 2031. There will be no new facility proposed prior to 2031 in the Restricted Area, and this restriction is not intended to expire with the Zoning Order in Case No. 11-07B, notwithstanding that the District’s campus plan process currently contemplates a 10-year campus plan. In addition, construction on any such proposed future project, if approved, will not be initiated before 2032. This condition on development restriction shall automatically terminate in the event that TCNA or any property owner residing within 200 feet of the Tenley Campus, files any legal challenge to the Zoning Commission’s action in authorizing Washington College of Law’s

relocation to the Tenley Campus as proposed in Zoning Commission Case No. 11-07B, except that, in the case of an individual property owner, this condition shall not expire if such legal challenge is withdrawn within 60 days.

2. **Limited Exceptions to Foregoing Restrictions on Future Development.** If AU demolishes the 1970's era additions to the Dunblane house, which lies within the Restricted Area, it may build replacement square footage not to exceed what was demolished, and only on the area of the Tenley Campus outside the Restricted Area and subject to all necessary prior consents and approvals as may be required under law, including any historic preservation requirements. If American University chooses to eliminate the surface parking in the Restricted Area, such removal will not be deemed to violate the foregoing restriction, but no facility may be constructed on such surface parking area prior to 2032.
3. **Student Enrollment, Faculty/Staff Cap and Special Events** - The WCL shall limit its student enrollment to 2,000 students. All matriculated students at the WCL will be counted toward the cap. The 2,000 law student cap will be included in the university-wide student enrollment cap. The WCL enrollment cap will be phased-in, starting with 1,850 when the law school moves to the Tenley Campus and increasing by 50 students each year, until it reaches 2,000 students. The WCL shall also have a faculty and staff cap of 500.

AU shall limit the attendance of people not currently enrolled or employed at AU at all other events at the Washington College of Law – Tenley Campus, during hours of peak class enrollment. Hours of peak enrollment are defined as hours in which total matriculated enrollment is 800 or greater students. During the hours of peak enrollment, non-AU attendance to special events shall be limited to 150 people. AU will provide annually a report to ANC 3E, listing such events, dates, times, and AU and non-AU attendance.

4. **Transportation Demand Management and Annual Monitoring Reports** – AU shall implement the Transportation Demand Management Program outlined in the statement in support of the application (which includes, but is not limited to, the inclusion of car-sharing spaces on the Tenley Campus, enhanced bicycle facilities, and financial incentives to utilize public transportation as described in Exhibits 4 and 11 of the record). Starting the year after WCL commences activities on the Tenley Campus, AU will compile annual transportation demand management monitoring reports which will be submitted to ANC 3E, ANC 3F, the Tenley Campus Neighborhood Association, the Tenley Neighbors Association, the Office of Planning, and the District Department of Transportation. These reports will include the following information related to the Tenley Campus:
 - i) Mode split surveys of the campus population, broken down by students and employees;
 - ii) Current parking inventory and occupancy on a typical weekday;

- iii) Number of parking permits sold per year;
- iv) Parking availability on surrounding neighborhood streets;
- v) Statistics on the Good Neighborhood Program, including number of tickets issued and a catalog of punishments issued in connection with same, including without limitation any instances of academic or administrative discipline (specific counts of such instances of academic or administrative discipline shall be provided);
- vi) Number of registered carpools;
- vii) Car-sharing service and Capital Bikeshare usage data;
- viii) Number of people signed up for SmartBenefits;
- ix) AU Shuttle ridership; and
- x) Inventory and occupancy of bike racks.

Notwithstanding anything else herein, if the results of the annual monitoring reports show that some aspect of AU's transportation demand management program is not working as effectively as initially anticipated by AU, or that some other remedial measures are necessary, AU will implement the necessary measures as promptly as possible.

Prior to the opening of the Washington College of Law-Tenley Campus, AU will consider additional incentives to encourage use of non-automobile travel modes and report to ANC 3E and 3F on the findings of its study and its plans for the implementation of such incentives.

5. **Potential Future Changes to Adjacent Roadway Network** – AU will support any ANC 3E proposal, provided it is accompanied by any petition or other documentation required by DDOT, relating to converting Warren Street to be “One Way” or closed to thru traffic, at the time the WCL opens at the Tenley Campus or at any time during the period of approval of the 2011 Plan. AU will also support any ANC 3E proposal, provided it is accompanied by any petition or other documentation required by DDOT, by nearby neighbors to designate their block for Residential Permit Parking (RPP) or Resident Only parking.
6. **Traffic Calming Measures Identified in the Rock Creek West II Livability Study** – AU shall pay all costs, up to a maximum of \$400,000, necessary to implement each of the traffic calming measures identified in the Rock Creek West II Livability Study for the intersections of: (i) 42nd Street and Van Ness Street; (ii) 42nd Street and Warren Street; and (iii) 42nd Street and Yuma Street. If improvements to the above-listed intersections cost less than \$400,000, then the balance of the unspent funds will be allocated to improvements at 42nd and Albemarle Streets. Such contribution shall be made only when DDOT has committed to implementing the measures for the above-listed intersections.

7. **Construction Management** - AU will undertake the following actions to mitigate any adverse impact on adjacent properties resulting from construction activity related to the development of the Tenley Campus (the "Property").
- A. **Hours of Construction and Pre-Construction Community Meeting** - AU will limit construction hours to Monday – Friday 7:30 AM to 4:00 PM, including deliveries and truck access. However interior work not creating an impact on adjacent properties may take place outside of these hours. In addition, AU will hold a pre-construction community meeting to coordinate planned construction activities on the Property at least 90 days before construction activity starts. AU will schedule the meeting at a time that helps foster maximum community participation. Attendees of that meeting will include representatives of AU's general contractor and AU's on-site construction representative (discussed in detail below).
- B. **Site Management** - AU will erect and maintain construction fencing and barricades in order to screen and secure the site during the construction process. In order to comply with the Tree Preservation Plan on page 4.0 of Exhibit A in the November 7, 2011 Pre-Hearing Submission (Exhibit 21A of the record), all excavated materials will be removed from the Property via Nebraska Avenue, Yuma Street and Warren Street. Similarly, all construction-related deliveries to the Property will occur Monday – Friday 7:30 AM to 4:00 PM AU does not anticipate the need for any street closures as the result of the construction activity on the Property. Sidewalk closures may be needed to maintain a safe environment and such closures will be communicated in advance to the community. Parking spaces for all construction workers and deliveries will be provided on the Property. No construction-related parking will be permitted on nearby residential streets. AU will remove rubbish and construction debris continuously during the construction period during the normal construction workday. In addition, AU will monitor and police the construction site daily or more often as required to ensure cleanliness. AU will also undertake a program of pest control to ensure that no increase in pest activity occurs during the construction period. All excavation or back fill trucks will be covered before proceeding from the Property onto District streets. Dust and debris will be removed from the Property on an as needed basis.
- C. **Applicant's On-Site Construction Representative** - AU shall designate a representative to be the key contact during the period of construction on the Property. At any time construction activity is occurring on the Property, the AU representative or his/her designee shall be available on-site or by telephone to receive communications from the adjacent property owners. In addition, a name and telephone number of a person designated by AU to contact in case of emergency during hours in which no construction activity is occurring shall be readily available to the adjacent property owners. The AU representative and his/her designee will be able to answer questions and receive comments about the site activities and address any concerns the adjacent property owners might have throughout the construction process.

8. **LEED Standards** - American University will pursue the objective of achieving LEED Gold certification.
9. **Loading and Trash Removal Plan** – All deliveries and trash pickups shall occur between 7:30 AM and 7:30 PM, Monday through Friday, and 9:00 AM and 6:00 PM, Saturday and Sunday. Subject to District of Columbia approval, AU will configure the Yuma Street driveway and associated signage such that entrance to the site for commercial traffic is permitted only from the east, and exit from the site for commercial traffic is permitted exclusively eastward toward Tenley Circle. AU will notify its vendors that all truck traffic is to be directed to travel on major roads and Yuma Street only.
10. **Lighting Plan** - AU will abide by the lighting plan submitted on November 21, 2011 and included as **Exhibit B**. No light from the buildings, walkways or parking lot on the Tenley Campus will project onto neighboring properties at night. The walkways throughout the Tenley Campus will be lit with lamps that reflect light downwards. Where allowed by the building code, interior lighting will have occupancy sensors that will turn off lights in unoccupied spaces.
11. **Off-Campus Parking Enforcement** – AU shall continue its Good Neighbor Policy of enforcing the requirement that students, faculty, staff and vendors of AU and WCL will not park off campus on neighborhood streets. AU will adopt higher fines for repeat offenders and WCL members are now subject to “administrative penalties, up to and including Honor Code violations and/or disciplinary action” for failure to abide by AU’s “good neighbor” program. Additionally, AU will prohibit registration, receipt of grades, and graduation for any student with any outstanding unpaid or uncontested violations. Effective with the opening of the Washington College of Law-Tenley Campus, upon a third parking violation and any subsequent violations within a twelve month period of time, AU shall issue an "Admonition," as defined in the Honor Code, subject to students' rights to due process. AU will amend its parking policy to specify that Admonitions will be issued upon proven third or further parking violations, and that students with multiple parking violations may be subject to any further sanctions permitted by the Honor Code that the Honor Code Committee may decide to impose. AU will also amend its parking policy to make clear that students are expected obey District of Columbia parking regulations as well as AU regulations.
12. **Landscape Plan** – The densely planted perimeter landscape zone of the Tenley Campus shall be maintained and improved along 42nd Street in accordance with the amended landscape and tree preservation plan shown on pages 3.0 and 4.0 of Exhibit A of the November 7, 2011 Pre-Hearing Submission (Exhibit 21A of the record). Additional large shade trees will be added to the western portion of the site, and a walkable path/arboretum will be designed and incorporated on the western half. Further details regarding the use of, enhancement and maintenance of the landscape zone and potential location of new landscaping will be discussed in advance with representatives of the adjacent properties.
13. **Community Access to Tenley Campus and Use of WCL Facilities** - AU shall allow casual open access to the grounds of the Tenley Campus, subject to AU’s reasonable

control of its private property. WCL and AU agree to make space available to community organizations for meetings and events, subject to availability and upon proper request with reasonable notice.

14. **Seating Areas on the newly designed and proposed Capitol Hall Front Lawn** –AU shall seek approval from appropriate District of Columbia agencies to incorporate benches and any other appropriate place-making features on the Capitol Hall front lawn.

Exhibit A

Diagram of Restricted Area



Exhibit B

Lighting Plan

