GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-11/06-12
Z.C. Cases No. 06-11 and 06-12
Applications of George Washington University for Special Exception Approval of a Campus Plan and for Approval of a First-Stage Planned Unit Development and Related Zoning Map Amendments for the Foggy Bottom Campus
March 12, 2007

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing to consider two applications from George Washington University ("Applicant" or "University") concerning its Foggy Bottom campus: Z.C. Case No. 06-11, an application for special exception approval of a new Campus Plan[1] ("Campus Plan") and Z.C. Case No. 06-12, an application for review and first-stage approval of a planned unit development and related amendments to the Zoning Map of the District of Columbia applicable to University-owned properties within the campus boundaries. The Commission considered the application in Case No. 06-11 pursuant to §§ 210, 3035, and 3104 of the Zoning Regulations and the application in Case No. 06-12 pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications, subject to conditions.

FINDINGS OF FACT

Applications, Parties, and Hearing

1. On February 16, 2006, the University submitted an application seeking special exception review and approval of a new campus plan for the Foggy Bottom campus. Also on February 16, 2006, in conjunction with the campus plan application, the University submitted an application for first-stage approval of a planned unit development ("PUD") and related amendments to the Zoning Map of the District of Columbia. Both applications were subsequently amended by filings submitted on July 13, 2006 and on August 25, 2006, as well as through several additional submissions made during the

[1] The application sought approval of "The Foggy Bottom Campus Plan: 2006-2025." The Commission understands that the intent of the application was to seek approval of a twenty-year term. As will be explained later, the Commission has chosen to begin that term upon the effective date of this Order.

course of the public hearing in response to requests for further information by the Commission.

2. At a public meeting held April 20, 2006, the Commission voted to set down Case No. 06-12, the PUD application, for a public hearing. Pursuant to 11 DCMR § 3035.5, no setdown vote was required for Case No. 06-11, the request for approval of a new campus plan. The two applications were consolidated and heard simultaneously.[2] Notice of the public hearing was published in the *D.C. Register* on August 4, 2006 (53 DCR 6345) and was mailed to Advisory Neighborhood Commission ("ANC") 2A and to owners of all property within 200 feet of the subject property.

3. The public hearing on the applications was conducted on September 14, 21, 25, and 28, October 11, and November 30, 2006. The hearing was conducted in accordance with the provisions of 11 DCMR §§ 3022 and 3117.

4. In addition to the Applicant, ANC 2A was automatically a party in this proceeding. The Commission granted requests for party status in opposition to the applications from the Foggy Bottom Association ("FBA") and the West End Citizens Association ("WECA").

5. The Applicant provided testimony and evidence from Louis Katz, the University's executive vice president and treasurer; Dr. Lydia Thomas, vice president of the University's board of trustees; Charles Barber, senior counsel; Sherry Rutherford, managing director of real estate and planning at the University; Matt Bell, qualified as an expert witness in architecture; Laura Hughes, an architectural historian; Anne Adams, qualified as an expert witness in architectural history; and Martin Wells, qualified as a traffic expert.

6. At the public hearing the Commission heard testimony and received evidence from the Office of Planning ("OP"), including the Historic Preservation Office, and from the Zoning Administrator and the District Department of Transportation ("DDOT") as well as from ANC 2A and the two parties in opposition. The Commission also heard testimony from numerous persons either in support of or in opposition to the applications.

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[2] On April 10, 2006, the Office of Planning, on behalf of the District of Columbia, petitioned for a text amendment to amend the Zoning Regulations applicable to college and university uses located in Residence zones. The proposed amendment would have amended § 210 so as to increase the allowable aggregate floor area ratio ("FAR") permitted for a university use in R-5-D and R-5-E districts from 3.5 to 4.0 FAR. The proposed text amendment was assigned Z.C. Case No. 06-19 and, on April 20, 2006, was set down for public hearing immediately prior to the hearing for Cases No. 06-11 and 06-12. Before the public hearing, by memorandum dated September 5, 2006, OP asked to withdraw the text amendment as unnecessary. By letter dated September 8, 2006, the West End Citizens Association asked to become the petitioner for the proposed text amendment. At its September 11, 2006 public meeting, the Commission voted 5-0-0 to dismiss Case No. 06-19 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull voting to dismiss).

7. At a special public meeting on January 17, 2007, the Commission requested additional information from the Applicant with respect to the public benefits and amenities proffered in support of the PUD application. At a special public meeting on February 5, 2007, the Commission took proposed action to approve the proposed PUD and related Zoning Map amendments in Case No. 06-12, subject to conditions, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, John G. Parsons, and Michael G. Turnbull voting to approve; Gregory N. Jeffries not present, not voting).

8. The proposed action was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated March 1, 2007, found that the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

9. At a public meeting on March 12, 2007 the Commission took final action to approve the application in Case No. 06-12, subject to conditions, by a vote of 5-0-0. At the same public meeting, the Commission also voted to approve the application in Case No. 06-11, subject to conditions, by a vote of 5-0-0.

Preliminary Matters

10. The University's current campus plan was adopted by the Board of Zoning Adjustment by Order No. 16553-I, issued April 26, 2004. The campus plan was approved, subject to certain conditions, for a term ending June 30, 2009.

11. On August 31, 2006, FBA submitted a motion to dismiss the University's application for approval of a new campus plan on grounds that the Applicant failed to comply with Conditions 8 and 9(a) of Order No. 16553-I. According to the FBA, the University had "more students, fewer beds and more faculty" than allowed under Order No. 16553-I.

12. In its response, submitted September 11, 2006 in opposition to the FBA's motion, the Applicant asserted that the University "has continuously remained in substantial compliance with all of the Campus Plan conditions, and none of the grounds cited by the FBA or its expert in support of its motion provide any basis for its motion to dismiss." The Applicant also asserted that compliance with the existing campus plan was not a prerequisite for the filing of a new special exception application for approval of a new campus plan.

13. The Commission concurs with the Applicant that a finding of compliance with the existing campus plan was not required before the Commission could consider a request for approval of a new campus plan. The existing campus plan, by means of Condition

No. 20,[3] required the University to demonstrate its substantial compliance with that campus plan before any special exception application for further processing under that campus plan could be granted. Nothing in Condition No. 20, or any other provision of the existing campus plan or in the Zoning Regulations, precluded the filing of a new campus plan. The Commission makes no finding in this proceeding with respect to whether the University was in substantial compliance with the existing campus plan.

14. On August 31, 2006, FBA also filed a motion to postpone the proceeding pending the Applicant's preparation of a consolidated environmental review. FBA asserted that an environmental review of the Applicant's proposals was required before any zoning relief could be granted; specifically, FBA argued that the case should not proceed until the University had submitted an environmental impact screening form and the environmental review had occurred, which it claimed were required under the District of Columbia Environmental Policy Act of 1989 ("DCEPA"), D.C. Official Code § 8-109.01 *et seq*.

15. In its response, submitted September 11, 2006 in opposition to the FBA's motion, the Applicant asserted that "the environmental review process occurs as part of the building review process, not as part of planning review." The University argued that the DCEPA permits environmental review to take place after a major action has been approved but before it is implemented, that the District of Columbia Court of Appeals has held that environmental review is legally required to take place before construction actually commences rather than before zoning approval is granted, and that practical considerations necessitate that environmental review be conducted as part of the building permit stage rather than the planning review stage. According to the University, the Commission's consideration of environmental factors in reviewing the proposed PUD should be limited to the PUD evaluation standards set forth in 11 DCMR § 2400 *et seq*.

16. The Commission concurs with the Applicant that the proceeding should not be postponed pending the Applicant's preparation of a consolidated environmental review. Under the DCEPA, an environmental impact statement must address, among other things, the "relationship of the proposed major action to … requirements as promulgated by the Zoning Commission." (D.C. Official Code § 8-109.02 (a)(2).) The purpose of a campus plan and a first-stage PUD is to determine, respectively, what the requirements of the Commission will be for a particular university use and for a particular development for which zoning relief is being requested. Thus, the DCEPA process cannot begin until after these requirements are determined, which, for these two applications, could not be known while the proceedings were ongoing. (*See Concerned Citizens of Brentwood v. D.C. Board of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993) (BZA did not violate DCEPA by failing to require an environmental impact statement assessing proposed use of property where the BZA order did not result in the issuance of any

[3] Condition No. 20 is quoted in the Decision portion of this Order.

"license, permit, certificate, or authorization" and, therefore, requirements of DCEPA were not yet applicable) and *Foggy Bottom Association v. D.C. Board of Zoning Adjustment*, 791 A.2d 64, 71 (D.C. 2002) (affirming BZA order that declined to postpone consideration of a special exception application because necessary environmental review would occur as part of building review process).)

17. Further, the Commission's consideration of the University's applications is not an "action," which the DCEPA defines, in pertinent part, as "a project or activity that involves the issuance of a lease, permit, license, certificate, other entitlement, or permission to act by an agency of the District government." Approval of a campus plan and a first-stage PUD involves none of these things. Neither of these preliminary approvals would permit the University to obtain a building permit.

18. Nor can it be said that these approvals are permissions or entitlements, unless the Commission were to adopt the interpretation that granting a right to file an application is the type of permission or entitlement the Council was concerned with when it enacted the DCEPA. It is also worth noting that, while the word "permission" appears in the definition of the term "action," it is not to be found in the actual substantive provision of the DCEPA that the FBA relies upon. The requirement that an agency determine whether an Environmental Impact Statement is necessary applies "if the action involves the grant or issuance of a lease, permit, license, certificate, or other entitlement by a District agency." (D.C. Official Code § 8-109.03.) The absence of the word "permission" can only mean that an agency may approve an "action" that involves a "permission" without determining whether an EIS must be prepared.

19. In addition, an application for approval of a campus plan or a first-stage PUD is not a "major action" within the meaning of the DCEPA, because the actions being permitted – that is, the filing of a further-processing application or a second-stage PUD application – would not cost more than $1,000,000.

<u>Foggy Bottom Campus</u>

20. The property that is the subject of the campus plan application comprises the University's Foggy Bottom campus, as defined by the Board of Zoning Adjustment ("BZA") in its order approving the current campus plan. The subject property, located in Northwest Washington, has an area of approximately 43 acres and is bounded generally by K Street, Washington Circle, and Pennsylvania Avenue to the north; 24th Street to the west; F Street to the south; and 19th and 20th Streets to the east. The properties included within the campus boundaries are: Square 39, Lot 803; Square 40, Lot 36; Square 41, Lot 40; Square 42, Lots 14, 51, 52, 54, 55, 820, 821, 822, and 840; Square 43, Lot 26; Square 54, Lot 30; Square 55, Lots 28, 854, and 855; Square 56, Lots 30 and 31; Square 57, Lots 55 and 56; Square 58, Lots 1, 5, 6, and 800-804; Square 75, Lots 23, 33, 34, 41, 42, 46, 47,

858, 861, 863, 864, and 2001–2125; Square 77, Lots 5, 51, 59, 60, 845, 846, and 864; Square 79, Lots 5, 63-65, 806, 808, 853, 854, 861, and 862; Square 80, Lots 2, 26-30, 42-47, 50-52, 54, 55, 800, 802, 811, 820, 822-825, 828, 829, and 2001–2003; Square 81, Lot 846; Square 101, Lots 58, 60-62, 811, 839, 871, 874, and 879; Square 102, Lot 46; Square 103, Lots 1, 13, 14, 18, 26-28, 32-35, 40-42, 809, 812-814, 816, 819, and 820; Square 119, Lot 26; Square 121, Lot 17, 819, and 820; Square 122, Lots 29, 824, and 825; and Square N-101, Lot 800.[4]

21. The University's Foggy Bottom campus was first established in 1912. Within the campus boundaries, properties owned by the Applicant are devoted to a variety of university uses, including academic, administrative, medical, residential, campus life, and athletic, as well as to commercial and investment purposes.

22. Residential neighborhoods – Foggy Bottom and the West End – abut the campus to the west and north. The central employment area abuts the campus to the east; government offices and institutional uses predominate to the south.

23. Properties within the campus are zoned R-5-D, R-5-E, C-3-C, or SP-2. The campus is bounded by high-density zone districts, including C-3-C to the north, C-4 to the east, R-5-E and SP-2 to the south, and R-5-E to the west.

24. The campus is adjacent to the Foggy Bottom Historic District, located west of New Hampshire Avenue and zoned FB/R-3.

25. The campus includes 12 properties that have been designated historic landmarks, as well as numerous others that have been identified as either potential historic landmarks or buildings that would contribute to a potential historic district.

26. The Applicant submitted a plan for developing the campus as a whole, showing the location, height, and bulk of all present and proposed improvements, as required by 11 DCMR § 210.4. The development plan set forth in the proposed campus plan, to be implemented through the accompanying two-stage PUD, concentrates height and density within the central campus core, away from historically sensitive areas of campus and nearby residential neighborhoods.

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[4] Certain properties owned by the Applicant were included within the subject property of these applications and were also the subject of separate PUD applications before the Commission. These properties were (i) Square 54 (*see* Z.C. Case No. 06-27, concerning an application submitted May 30, 2006 by the University, Boston Properties, Inc., and KSI Services, Inc. for consolidated review and approval of a PUD and related map amendment to C-3-C to allow construction of a mixed-use development containing 333 dwelling units, 454,000 square feet of office space, and 84,000 square feet of retail space) and (ii) Square 80, Lot 55 (*see* Z.C. Order No. 06-17, effective February 23, 2007, approving an application by the University and D.C. Public Schools for consolidated review and approval of a PUD and related map amendment to SP-2 to allow construction of a new residence hall on property owned by the University as well as the renovation and expansion of the School Without Walls public high school).

27. No interim use of residentially-zoned land outside the Campus Plan boundaries was proposed as part of the campus plan. The Applicant indicated that, depending on the timing and sequencing of proposed development projects – particularly with respect to the redevelopment of the University Parking Garage – the University might need to utilize, on an interim basis, certain off-campus parking resources to maintain compliance with the 2,800-parking-space requirement. Any interim use of off-campus parking spaces shall be specifically addressed in connection with the second-stage PUD associated with the project triggering the interim parking use.

Campus Plan Application

28. The Applicant stated that the new campus plan was proposed as a means to "provide for predictable, planned growth consistent with surrounding development patterns and guided by 'smart growth' and transit-oriented development principles." According to the University, principal considerations underlying the proposed new campus plan included the constraints of limited space and financial resources and the redevelopment potential of Square 54, a large vacant parcel formerly the site of the University's hospital.

29. The proposed campus plan incorporated a development plan – known as "Grow Up, Not Out" – in reference to an effort to accommodate the University's forecasted academic and student housing needs within the campus boundaries – that calls for increased density targeted at specific locations within the campus boundaries. As noted, density will be concentrated in the core of the campus (especially along 22nd Street), away from residential areas. Some potential development sites were removed from consideration in favor of retaining historic resources on the campus.

30. The University described its need for additional space so as to provide new facilities that will address evolving technological and academic program needs and to increase the number of on-campus beds. According to the Applicant, growth is required to further the University's core academic mission and enhance the quality of its educational programs. The campus plan calls for the addition of approximately 1.5 million square feet of academic space.

31. The development plan set forth in the proposed campus plan provides for the differentiated character of pedestrian-oriented east-west streets to help define the existing and proposed campus activity and development patterns. Pursuant to the plan, F Street will serve as a transitional street between the campus and nearby residential and institutional uses; G Street will feature new development that will complement the existing built environment and maintain historic and architecturally relevant buildings; H Street will serve as the primary "campus street," the key location for future academic facilities and residential development, with active pedestrian traffic; and I Street will be

developed as an active retail corridor, providing campus and neighborhood-serving retail uses that will extend three blocks from the Foggy Bottom-GWU Metrorail Station to The Shops at 2000 Penn by incorporating ground-floor retail in University facilities as they are redeveloped.

32. The development plan identified 18 sites (including the sites of separate PUDs on Square 54 and Square 80) within the campus plan boundaries. Each site was designated a use category: Academic/Administrative/Medical, Residential/Campus Life/Athletic, or Commercial/Investment; three sites were designated for potential alternative uses. The development sites were selected based on each site's current use and condition, suitability for redevelopment, existing campus use patterns, and the University's forecasted space requirements. The proposed campus plan included a "development program summary" indicating the proposed height, site coverage, gross square footage, and net new beds and parking spaces for each development site.

33. The proposed campus plan proffered numerous conditions based on those previously adopted by the BZA as a condition of approval of the existing campus plan to avoid the creation of adverse impacts as a result of the location of university uses in a Residence zone. The Applicant's proposed campus plan restated all of the prior plan's conditions of approval, with certain modifications, and also incorporated some additional conditions to address concerns raised by residents of neighborhoods abutting the campus. The conditions address, among other things, the number of students, faculty, and staff at the Foggy Bottom campus; the number of beds available on campus for undergraduate students; student conduct; and transportation management, parking, and student vehicles.

<u>Noise</u>

34. The proposed campus plan contains provisions intended to avoid objectionable conditions arising from noise associated with student behavior. Pursuant to the current campus plan, the University established a hotline for use by members of the community to submit complaints and make inquiries regarding potential objectionable behavior by University students and other subjects of community concern. All calls are documented in an "incident report," and the reports are forwarded to the appropriate University offices, including the Dean of Students Office, the Office of District of Columbia and Foggy Bottom/West End Affairs, and University Relations. About 80 percent of calls to the hotline concern complaints of noise. University students found to have engaged in misconduct are subjected to University disciplinary action. The Student Code of Conduct provides for a progressive range of disciplinary actions based on the circumstances of each case to ensure appropriate treatment.

35. The Commission finds that the University policies regarding student conduct are appropriate and generally effective in seeking to avoid objectionable impacts on the surrounding residential community due to noise.

Traffic

36. The new campus plan did not propose to change the University's faculty and staff populations from the headcount and full-time equivalent levels approved in the existing campus plan; that is, a total headcount of 12,529 and a full-time equivalent of 10,550. The Applicant proposed to combine the faculty and staff counts into a single faculty/staff population cap to avoid complex distinctions among various categories of faculty and staff and to allow the University to report the employee population in a manner more consistent with existing business processes.

37. The campus is convenient to several modes of public transit, with the Foggy Bottom-GWU Metrorail Station located at 23rd and I Streets, N.W. and at least eight Metrobus lines as well as commuter buses providing service from locations throughout the District, Maryland, and Virginia. The University provides shuttle bus service between the Foggy Bottom campus and the Mount Vernon and Virginia (Loudoun County) campuses.

38. The University's traffic expert testified, and the Commission finds, that peak-hour vehicle trips are currently eight percent University-related during the morning peak and nine percent University-related during the afternoon peak. Future peak-hour vehicle trips were projected to be 11 percent University-related during the morning peak and 12 percent University-related during the afternoon peak.

39. The University's traffic expert testified, and the Commission finds, that the existing levels of service at intersections within the campus and in the immediate vicinity are primarily A through D during both the morning and evening peak. Lower levels of service were reported at the intersection of Pennsylvania Avenue and 24th Street (LOS F during both morning and evening peaks); the intersection of K Street and Washington Circle, on the west side of the circle (LOS F during the morning peak); the intersection of 21st and I Streets (LOS F during both morning and evening peaks); the intersection of Pennsylvania Avenue and 20th Street (LOS F during the morning peak); the intersection of Pennsylvania Avenue and I Street (LOS E during the morning peak); and the intersection of 23rd and I Streets (LOS E during the afternoon peak).

40. The University's traffic expert testified, and the Commission finds, that the total future levels of service at intersections within the campus and in the immediate vicinity, with projected improvements, were expected to remain primarily A through D during both the morning and evening peak. Lower levels of service were anticipated at the intersections currently experiencing lower levels of service, along with several other intersections

along the edges of the campus, especially F Street (LOS E during the morning peak at the intersections of F Street with 20th and 22nd Streets and during the afternoon peak at the intersection of F and 23rd Streets).

41. As part of the proposed campus plan, the University will enhance its existing Transportation Management Plan ("TMP") with additional measures to encourage greater transit use and minimize traffic impacts. The planned measures include utilization of a transportation management coordinator, technology initiatives, web-based transit purchases, a truck management plan, pedestrian and bicycle programs, parking management, and special-event management.

42. The Commission agrees with the conclusion of the Applicant's traffic expert that approval of the proposed campus plan, subject to conditions requiring implementation of measures to mitigate traffic impacts, will not tend to create conditions objectionable to neighboring property because of traffic.

Parking

43. The campus currently provides off-street parking in parking garages, both above and below grade, and in surface lots in various locations. The proposed campus plan identified several sites that could accommodate underground parking facilities, which the Applicant indicated would allow the University to meet the parking needs of the campus while providing flexibility necessary for the sequencing of development sites.

44. The Applicant proposed to maintain the current minimum parking requirement of 2,800 parking spaces on the campus.

45. The Commission finds that approval of the proposed campus plan will not tend to create conditions objectionable to neighboring property because of parking. Demand for parking is not likely to increase significantly, because the new campus plan will maintain the maximum student and faculty/staff populations permitted under the current campus plan, the University will attempt to reduce the number of trips to the campus by private vehicles through implementation of the TMP, and the campus will retain the current required minimum of 2,800 parking spaces within the campus boundaries.

Number of Students

46. The proposed campus plan contained the same enrollment caps as the current campus plan; *i.e.* a "Foggy Bottom student headcount" not to exceed 20,000 students and a "Foggy Bottom student full-time equivalent" not to exceed 16,553.

47. The Applicant proposed to define "Foggy Bottom student headcount" as the number of students in the student body at the University's Foggy Bottom and Mount Vernon campuses minus study-abroad students, continuous enrollment students, students who reside at the Mount Vernon campus, students who take all of their courses at the Mount Vernon campus, and Foggy Bottom faculty and staff who are also enrolled in one or more courses at the Foggy Bottom campus. The definition was designed to encompass all of the University's students enrolled in a creditable course who maintain a "primary relationship" with the Foggy Bottom campus.

48. The Applicant proposed to calculate the "Foggy Bottom student full-time equivalent" by assigning a fraction to part-time students included in the Foggy Bottom student headcount number based on the number of credits they are taking compared to a full-time course load (currently 12 credits for undergraduates and 9 credits for graduate and professional students) and adding the number of full-time students. The Applicant indicated that the formula for determining full-time equivalents might change over the term of the campus plan depending on program requirements or the restructuring of the academic calendar.

49. The University reported that, in Fall 1999, full-time undergraduate enrollment at the Foggy Bottom campus was 6,857 students, with 3,519 beds available to undergraduates on-campus (51 percent). By Fall 2006, full-time undergraduate enrollment at the Foggy Bottom campus was 8,204 students, with 6,381 beds available to undergraduates on-campus (78 percent).

50. The University calculated these figures based upon the methodology it had employed under the existing campus plan for calculating its full-time undergraduate enrollment. However, the University has proposed a modified methodology to be used under the new plan that, if immediately utilized, would result in the University being out of compliance with its on-campus housing requirement as stated in Condition C-7 of this Order. As a matter of fairness, the Commission is allowing the current methodology to be used for the purposes of determining compliance with that condition until the fall 2010 semester or until the completion and occupancy of the next GW residence hall project proposed in accordance with the Foggy Bottom or Mount Vernon Campus Plans, whichever occurs first.

51. The proposed campus plan incorporated the on-campus housing requirements set forth in the existing campus plan. The new campus plan proposed to make up to 1,000 additional beds available on-campus for undergraduate students, including approximately 474 beds in a new residence hall approved as part of a PUD for Square 80.

52. The Commission finds that approval of the proposed campus plan will not tend to create conditions objectionable to neighboring property because of the number of students. The

new campus plan will maintain the maximum headcount and full-time equivalent student populations permitted under the current campus plan; will continue to require the University to make beds available on-campus for 70 percent of the full-time undergraduate population, plus one bed for each additional undergraduate student in excess of 8,000; and will maintain measures implemented by the University to educate students on "good neighbor" issues and to address potential misconduct by students living off-campus.

Other Objectionable Conditions

53. The Commission does not find that approval of the proposed campus plan will tend to create other conditions objectionable to neighboring property.

PUD Application

54. The PUD site encompasses all properties owned by the University within the campus plan boundaries.[5] The affected properties are: Square 39, Lot 803; Square 40, Lot 36; Square 41, Lot 40; Square 42, Lots 54 and 55; Square 43, Lot 26; Square 54, Lot 30; Square 55, Lots 28, 854, and 855; Square 56, Lots 30 and 31; Square 57, Lots 55 and 56; Square 58, Lots 1, 5, 6, and 800-803; Square 75, Lots 23, 33, 34, 41, 42, 46, 47, 858, 861, 863, 864, and 2097; Square 77, Lots 5, 51, 59, 60, 845, 846, and 864; Square 79, Lots 63-65, 808, 853, 854, 861, and 862; Square 80, Lots 2, 26-29, 42-47, 50-52, 54, 55, 800, 811, 820, 822-825, and 828; Square 81, Lot 846; Square 101, Lots 58, 60, 62, and 879; Square 102, Lot 46; Square 103, Lots 1, 13, 14, 27, 28, 33-35, 40-42, 809, 812-814, 816, 819, and 820; Square 121, Lot 819; and Square 122, Lots 29, 824, and 825.

55. The land area of the PUD Site is approximately 1,669,744 square feet. The PUD Site exceeds the minimum area requirements specified in § 2401; the Zoning Regulations do not specify a maximum permitted area for a planned unit development.

56. The PUD Site is located in the Institutional land use category depicted on the District of Columbia Generalized Land Use Map. The areas immediately to the north and east of the campus plan boundaries are designated for high-density commercial use; the area immediately to the south is designated for high-density residential use; and the area to the west is designated for moderate-, medium-, and high-density residential use.

57. The PUD Site is located in the R-5-D, R-5-E, SP-2, and C-3-C Zone Districts. The R-5-D Zone District permits a maximum height of 90 feet, maximum lot occupancy of 75 percent, and maximum density of 3.5 FAR; the PUD guidelines for the R-5-D District

[5] Any properties within the campus boundaries acquired by the University after the campus plan and PUD filing and advertisement will not be included in the first-stage PUD unless the PUD is subsequently amended to include them. Those properties would be covered by the campus plan by virtue of their location within the campus boundaries.

allow a maximum height of 90 feet and maximum density of 4.5 FAR. The R-5-E Zone District permits a maximum height of 90 feet, maximum lot occupancy of 75 percent, and maximum density of 6.0 FAR; the PUD guidelines permit the same. The SP-2 Zone District permits a maximum height of 90 feet, a maximum lot occupancy of 80 percent for buildings devoted to residential use, and a maximum density of 6.0 FAR for buildings devoted to residential use; the PUD guidelines allow a height of 90 feet and a maximum density of 6.5 FAR for buildings devoted to residential use. The C-3-C Zone District permits a maximum height of 90 feet, maximum lot occupancy of 100 percent for all uses, and maximum density of 6.5 FAR; the PUD guidelines allow a maximum height of 130 feet and a maximum density of 8.0 FAR.

58. The proposed PUD identified specific development sites detailed in the campus plan as second-stage PUD projects. Additional density and height were targeted on specific development sites primarily located in the campus core.

59. To achieve the height and density necessary to accommodate the University's forecasted academic and student housing needs within the campus boundaries, the Applicant requested a zoning map amendment in conjunction with the PUD that would rezone certain properties within the PUD Site to the C-3-C Zone District and one site to the C-4 Zone District. The northeast corner of the campus is currently zoned C-3-C, and areas to the north and east of the campus are zoned C-3-C and C-4, respectively. The residential zoning of the remainder of the campus, specifically those areas adjacent to the existing residential communities to the west and south of campus and the development sites included in those areas, will remain unchanged.

60. The proposed rezoning of the identified sites to C-3-C and C-4 is consistent with current zoning within the campus boundaries and the zoning of the surrounding properties. The proposed rezoning is also consistent with the Comprehensive Plan's Generalized Land Use Map designations for the surrounding properties.

61. The first-stage PUD identified 16 potential development sites within the campus boundaries and designated the proposed uses, height, lot coverage, and gross floor area for each site. Consistent with the University's proposal, each development project identified in the PUD will require approval through a second-stage PUD, including a detailed site plan review, to confirm compliance with the first-stage approval and the applicable provisions of § 210.

62. The University proposed building heights up to 130 feet along Pennsylvania Avenue, consistent with the existing commercial zoning and surrounding high-density environment; up to 110 feet along 22nd Street between G and I Streets, reflecting the intensity of existing and proposed University uses and the desire to concentrate density in the campus core, away from surrounding residential neighborhoods; and up to a

maximum of 90 feet on the balance of campus, remaining sensitive to certain areas where a lower scale for new development is appropriate.

63. The existing density on campus is approximately 5.6 million square feet of gross floor area, creating a density of approximately 3.0 FAR in the Residence districts and 3.4 FAR for the campus as a whole. The Applicant sought to increase density through the first-stage PUD and related zoning map amendments to a total of 7.4 million square feet, for an overall density of 4.77 FAR and an aggregate density of 5.0 FAR for the campus (including the projects proposed in separate PUDs for Square 54 and Square 80).

64. The Commission finds that the proposed increases in density, at the identified locations, are appropriate. The Applicant's proposal will result in greater density in locations in the central core of the campus, further from the surrounding residential neighborhoods. The increased density will not violate § 210, which applies to university uses located in a Residence zone within the boundaries of an approved campus plan, because the proposed density for the residentially-zoned portions of the campus will be 3.69 FAR, less than the density of 4.5 FAR permitted under a PUD in the R-5-D zone.

65. The proposed PUD will provide the following project amenities and public benefits:

a. Streetscape Plan. The Streetscape Plan sets forth a framework for future streetscape improvements to occur over the next two decades in accordance with the new campus plan. The Streetscape Plan reflects the diversity of the campus — particularly the primary "campus streets" (G, H, and I Streets) — and focuses on areas where university activity is concentrated. The Streetscape Plan includes a block-by-block implementation plan for appropriate streetscape improvements to be made to all "enhanced" streetfronts. The University estimated that the cost to implement the sidewalk, curb, and gutter improvements associated with the Streetscape Plan will exceed $5.5 million (in current dollars). Street trees and lighting improvements are estimated to cost approximately $1.1 million (in current dollars). It is anticipated that DDOT will share some costs associated with the installation and maintenance of street trees and lighting improvements.

b. Sustainable Development Planning and Design Principles. The first-stage PUD will provide an approach to future campus development consistent with sustainable development and neighborhood planning standards advanced by the U.S. Green Building Council, the Congress for New Urbanism, and the Natural Resources Defense Council. In connection with each second-stage PUD application, the University will provide an overview of specific environmentally sensitive features to be incorporated into the design and construction of the project.

c. Historic Preservation Plan. The University worked with the Historic Preservation Office ("HPO") and a team of architectural historians to develop a comprehensive Foggy Bottom Campus Historic Preservation Plan, which proposed a historic district on the campus as well as the landmark designation of several additional campus buildings. The Applicant's historic preservation plan for the Foggy Bottom campus was presented to the Historic Preservation Review Board, as a master plan review at public meetings on June 29, 2006 and July 27, 2006. The University assumed the cost, approximately $100,000, associated with the preparation and submission of the multiple landmark applications and the preparation of the historic district application for submission by the HPO. Future University expenditures associated with the heightened maintenance associated with the designated structures, though difficult to quantify, will be significant and ongoing. The implementation of the University's preservation commitment will preserve and protect the historic built environment of the campus for the benefit of the University community, the Foggy Bottom and West End communities, and the city.

d. I Street Retail Corridor. The new campus plan contemplates the creation of a dynamic retail corridor along I Street, providing neighborhood-serving retail services. The I Street retail corridor concept, coupled with the retail program included in the proposed mixed-use development on Square 54, will help create a critical mass of retail extending from the Foggy Bottom-GWU Metro Station to The Shops at 2000 Penn. This effort will be implemented over time by including ground-floor retail in University facilities as they are redeveloped and will provide opportunities for a variety of retailers, including small local and "mom and pop" establishments, as University retail venues are often smaller in scale and retail rents charged by the University are generally below-market. Estimated rents for retail space along the proposed I Street retail corridor are expected to be approximately $25 per square foot (comparable to the grocery store rents contemplated on Square 54). The overall cost to the University of providing this amenity is the difference between the revenues generated from I Street retail rents and the cost of occupying other space (as a tenant) at an estimated $40 per square foot (average). The Applicant estimated the value of the I Street Retail Corridor amenity in excess of $4 million (assuming a capitalization rate of six percent).

e. Below-Grade Parking. The proposed campus plan calls for the construction of underground parking facilities at various sites dispersed throughout the campus and the elimination of the above-grade University Parking Garage (located at 22nd and I Streets) and other surface lots. The elimination of surface parking will reduce stormwater runoff, allow for more efficient utilization of existing space resources, and enhance the campus environment by distributing traffic and improving pedestrian safety. This element will result in substantial costs in

excess of those associated with providing spaces at or above grade. In current dollars, construction costs associated with below-grade parking are estimated at $58,000 per space.

f. Off-Campus Commitments. In response to concerns expressed by OP, ANC 2A, and neighborhood residents, the University made certain commitments with respect to off-campus properties. Specifically, the University proposed to limit its rights with respect to the acquisition and use of residentially-zoned properties outside of the campus plan boundaries in the Foggy Bottom/West End area. The commitment would not preclude the purchase of properties for investment purposes, but would restrict the University from purchasing a residentially-zoned property within the Foggy Bottom/West End area and changing its use to one limited to the University population. The University also proposed a schedule for ending the use of off-campus residence halls to house undergraduate students, with certain exceptions.

66. The Commission finds that the project amenities and public benefits proffered by the Applicant and adopted as conditions in this Order are commensurate with the additional height and density sought and warrant the planning flexibility available through the PUD process.

67. The proposed rezonings are not inconsistent with the Comprehensive Plan and are in keeping with the character of the surrounding neighborhood. The Commission credits the testimony of OP that the uses, buildings, and zoning changes described in the PUD are compatible and consistent with the institutional use designation of the campus area on the Comprehensive Plan Generalized Land Use Map and with the character of the surrounding neighborhood.

68. The PUD and Zoning Map amendments are consistent with the Major Themes of the Comprehensive Plan, especially those relating to stabilizing and improving the District's neighborhoods, respecting and improving the physical character of the District, and preserving the historic character of the District. The PUD will further the objectives and policies of several of the Major Elements of the Comprehensive Plan, including:

a. the Urban Design Element, through the preservation and enhancement of the outstanding physical qualities of District neighborhoods, use of appropriate arrangements of height, scale, mass, and buffering to complement the immediate region, development of a unifying system of well-designed streets and sidewalks, creation of a visually interesting environment in the public space that attracts people and stimulates redevelopment and commerce, respect of boundaries of areas having strong architectural character, both within the campus and relative to the Foggy Bottom/West End neighborhood;

b. the Preservation and Historic Features Element, through the continued appropriate use of historic properties, protection of the established form of development in historic districts, protection of the integrity of historic properties, and new construction that is compatible with the historical architectural character of the historic landmarks and district; and

c. the Land Use Element, by encouraging the development of adequate neighborhood shopping, protecting residential neighborhoods from disruptive uses, assuring neighborhood stability as non-government institutions grow, promoting the continued contributions by private institutions toward the economic and cultural vitality of the District, and recognizing the specialized land needs and unique economic and human development opportunities presented by colleges and universities.

69. The PUD and Zoning Map amendments are also consistent with objectives of the Ward 2 Element, including:

a. the alleviation of pressures caused by students on the housing stock outside the boundaries of the campus plan through commitments not to purchase residentially-zoned properties outside the campus boundaries and to end the use of existing off-campus residences to house undergraduates;

b. the implementation of the Streetscape Plan;

c. the improvement of the land-use mix and urban design qualities of areas around the Foggy Bottom-GWU Metrorail Station;

d. the development of new businesses, with a special emphasis on small and minority business development, compatibility of businesses with adjacent residential neighborhoods, and mixed-use residential and commercial uses;

e. the utilization of the potential of the District's universities to create an expanded center of knowledge and learning in the center of Washington; and

f. the designation of buildings and areas in Ward 2 meriting historic landmark and historic district protection, and preservation and reuse of historic landmarks and buildings in historic areas in Ward 2.

70. The impacts associated with the implementation of the PUD on the surrounding area and on public facilities and services are acceptable and commensurate with the public benefits of the PUD.

71. Consistent with § 2407.7, the Applicant described a "community-based planning process" undertaken by the University to engage a variety of interested stakeholders and elicit their input and feedback. The University retained Ehrenkrantz Eckstut & Kuhn as the lead architect/planner to study the future of the Foggy Bottom campus in the context of its surrounding neighborhoods; launched a website (www.neighborhood.gwu.edu) to make available relevant planning materials; and cosponsored, with OP, an Urban Land Institute Advisory Services Panel to evaluate the development potential of Square 54. The University also cosponsored, with OP and ANC 2A, a series of open community meetings moderated by an independent facilitator, at which a list of issues and concerns raised by participating stakeholders was compiled and made publicly available; the Applicant indicated that many of the issues and concerns resulted in changes to the proposed campus plan. Following the series of cosponsored meetings, the University continued to participate in outreach activities, including community meetings, small-group briefings, brown bag lunches, and one-on-one information sessions.

Office of Planning

72. By memorandum dated September 5, 2006, OP recommended approval of the University's applications, subject to certain conditions. OP reviewed the applications both under the standards for special exception approval of a campus plan under § 210 and under the guidelines for a PUD set forth in chapter 24 of the Zoning Regulations.

73. At the public hearing, OP testified that approval of the proposed campus plan would likely have no objectionable impacts in terms of noise, traffic, number of students, or other objectionable conditions under the special exception standards of § 210. OP also stated that the campus plan proposal was not inconsistent with the Comprehensive Plan, but would support Comprehensive Plan policies in the Land Use Element that advocated protection of established residential neighborhoods and economic development, as well as furthering the Ward 2 Plan's policy in favor of the protection of historic resources through the formation of a campus historic district.

74. OP stated that the proposed first-stage PUD identified specific development sites that would allow the University to meet its forecasted space needs but would limit development on the remainder of the campus. OP testified that the PUD process was the only mechanism that would adequately provide certainty about how the campus plan would be fulfilled. OP further found the commitments and benefits associated with the PUD to be commensurate with the density and flexibility sought through the PUD process, and to be likely to reduce the University's impacts on the surrounding community. OP testified that the proposed PUD-related zoning changes were not inconsistent with the Comprehensive Plan and were in keeping with the character of the surrounding neighborhood.

Zoning Administrator

75. The Zoning Administrator submitted a report on a "student count audit" undertaken by Walker & Company, LLP under contract with the Department of Consumer and Regulatory Affairs ("DCRA"). The audit considered "two core considerations: 1) what constitutes a 'student' and 2) verification of the student count numbers" provided by the University. Based on the auditor's finding, the Zoning Administrator recommended that the Commission "further refine and clarify the definition and methodology for conducting future headcounts" so as to count "all students physically present in the neighborhood by attending courses at the Foggy Bottom campus" without any double-counting (*e.g,*. a faculty or staff person who enrolled as a student).

76. By report dated October 11, 2006 and through testimony at the public hearing, the Zoning Administrator testified as to the enforceability of conditions proposed by the parties in their respective October 4, 2006 filings.

District Department of Transportation

77. By memorandum dated September 14, 2006, DDOT indicated its agreement with "most of the conclusions and recommendations" of the Applicant's transportation impact study and DDOT's support for the applications "provided that the University fully implement the proposed transportation management plan (TMP) that includes public transportation passes, shuttle bus service, [University] parking facility permits, carpool programs, attendant parking and a parking deduction program." DDOT agreed that University-related traffic accounted "for no more than 10 percent of all traffic on streets within the campus during the AM and PM peak hours."

78. DDOT commented favorably on the Applicant's plan "to disperse traffic across the campus by providing parking facilities at various locations, rather than concentrating parking at the University Parking Garage located at 2211 H Street, NW." According to DDOT, locating parking structures throughout the campus would minimize impacts on the surrounding neighborhoods and provide convenient access to major commuting routes.

79. DDOT indicated its support for the traffic management recommendations of the Applicant's transportation study. DDOT recommended that the University should continue its efforts to maximize many undergraduate residential facilities within the study area in order to reduce vehicle trips and congestion around the Foggy Bottom campus and to provide transit subsidies to faculty and staff to encourage transit use.

80. DDOT indicated that additional information was needed with respect to the Applicant's conclusion that certain curb parking spaces should be restricted during travel peak hours and to University parking policies applicable to first- and second-year undergraduate students. DDOT also requested the University to provide quarterly reports to DDOT and ANC 2A regarding utilization of transit services and the number of vehicles entering and leaving the campus daily. DDOT agreed to monitor traffic conditions in the study area to determine if additional transportation improvements were needed.

81. DDOT submitted a supplemental report, dated November 27, 2006, to provide additional information in response to issues raised by the FBA's traffic expert. DDOT indicated its continued support for the traffic management recommendations made by the University.

ANC 2A

82. At a regularly scheduled meeting on August 16, 2006, with a quorum present, ANC 2A approved a motion in opposition to the applications based upon the following issues and concerns:

    a. The applications should not be considered until proof of compliance with conditions of approval of the existing campus plan had been proffered, pursuant to Condition No. 20 of the current campus plan, which provides that no special exception application filed by the University may be granted unless the University first proves it has remained in substantial compliance with Conditions 1 through 19 of the order that approved the campus plan.

    b. The Zoning Regulations, in order to limit the intensity of university uses and their attendant impacts, provide in §§ 210.3 and 402.2 that the total bulk of all buildings and structures on the campus shall not exceed either 1.8 FAR or 3.5 FAR, depending on the zoning of the residential properties in question. By applying the PUD process campus-wide, the University requests rezoning of major portions of its campus to C-3-C or C-4 and requests further relief under Chapter 24, which would have the effect of taking all major proposed construction out of the scope of the limitation of §§ 210 and 402 by removing those parcels from the Residence zones. The aggregate impact of the requested changes would be to increase the bulk of structures on the campus from a current 3.5 FAR to 5.0 FAR or more, destroying the protection of the regulations and perverting the intended uses of PUDs. Neither rezoning applications nor PUD applications should be considered in lieu of or as granting rights in addition to those set out in § 210.

c. The University currently has the right to add an estimated 550,000 square feet of net new construction, while complying with §§ 210 and 402 without further Commission action. The pending applications anticipate construction of approximately 2.75 million square feet of net new construction on a campus of approximately 43 acres. Given the record of a tipping point reached between University expansion and preservation of the nearby residential neighborhoods, the impacts attendant to development for institutional uses of 2.75 million square feet of property currently zoned for residential use, some 2.2 million more square feet than is permissible under current zoning, would necessarily violate the standard of § 210. No development beyond the currently allowable 550,000 square feet should be considered and that should be allowed only upon the showings required by § 210.

d. There is no indication that satellite campuses have been considered, even though the effects of University growth on the co-located residential community have been the subject of administrative and judicial proceedings.

e. Square 54 is a large parcel located within the campus boundary that would accommodate the remaining needs of the University to house students in order to comply with Condition No. 9 of the current campus plan, as well as academic and university office uses. Its use as an entirely commercial development frustrates compliance with the current plan and the law and would create arguments and pressures for even greater development of other parcels within the campus. Separate consideration of the University's Square 54 proposal violates § 210.4, requiring that a university submit "a plan for developing the campus as a whole."

f. No further consideration should be given to the applications before the environmental impact review process is complete as to all proposed construction on Square 54 and elsewhere on or near the 23rd Street corridor, in light of a 1999 finding by the Department of Health that the area in the 23rd Street corridor just south of Washington Circle will experience peak carbon monoxide concentrations close to the applicable health standard, and because the DCEPA and applicable regulations require that the environmental impact statement process be initiated at the earliest stages of planning for major actions.

83. Through testimony at the public hearing, ANC 2A requested denial of the applications "as failing to satisfy either the legal requirements for campus plans or the public policies undergirding those requirements." The ANC noted that the Board of Zoning Adjustment, in adopting the Applicant's existing campus plan, had found that the Foggy Bottom/West End neighborhood was at a "tipping point," such that the continued vitality of the residential neighborhood was in jeopardy from pressures associated with University expansion. According to ANC 2A, the existing campus plan has not "produced a

diminution of impacts and a more secure residential community," but "traffic, noise, student behavior and other impacts have continued and increased."

84. ANC 2A objected that the Applicant had not shown the location, height, and bulk of all present and proposed improvements or analyzed "their interconnections and synergies and aggregate impacts." The ANC argued that the University should be required "to show no likelihood of objectionable impacts from the ***totality*** of their plan" (emphasis in original).

85. The ANC also objected to "the effects of framing this application as a massive Planned Unit Development rather than as a special exception under the protective provisions of Section 210." According to the ANC, "there is nothing in the regulations to indicate that Chapter 24 was intended to be applied to campus plans, overriding the protective provisions (FAR limit and finding of not objectionable impact) of Section 210."

Parties in Opposition

86. The Foggy Bottom Association presented testimony and evidence from George Oberlander, an expert in planning; Joe Mehra, an expert in traffic; Joy Howell; and Elizabeth Elliott. The FBA argued that the existing campus plan should remain in effect, subject to more stringent enforcement of the conditions of its approval. According to the FBA, "major problems" remained in the Foggy Bottom neighborhood despite the 2000 campus plan, particularly with respect student housing, misconduct, and activities that draw large numbers of students and visitors to the campus.

87. With respect to student enrollment, the FBA asserted that the University's compliance reports, submitted in accordance with the 2000 campus plan, omitted certain categories of students and that the University had understated its actual enrollment by changing its counting methodology. The FBA argued that the "focus should be on the total intensity of use of the Foggy Bottom campus," so that all students (and other persons using the campus) be counted.

88. The FBA opposed the University's proposed 20,000 student cap, stating that any cap "should set a limit that realistically measures the impact of usage of the Foggy Bottom campus." According to the FBA, "headcount (however defined)" was not a sufficient measure of total impact; rather, "the focus should be on the intensity of uses of the campus."

89. The FBA also argued that the Applicant's proposed conditions of approval of the new campus plan contained "several loopholes," particularly with respect to use of the Foggy Bottom campus by students living elsewhere, enforcement of the conditions, the

University's acquisition of off-campus properties, and the University's student disciplinary program.

90. According to the FBA, the applications should be denied because the Applicant failed to show that additional development would not be objectionable based on noise, traffic, number of students, or other objectionable conditions, but instead offered "alleged amenities" to divert the focus from problems associated with the requested increase in density.

91. The FBA objected to use of the PUD process in conjunction with the campus plan, stating that nothing in the Zoning Regulations contemplated a campus-wide PUD and that approval of a special exception pursuant to § 210 was "the only method in the Zoning Regulations to deal with the specific problems of allowing universities in a residential neighborhood."

92. The FBA argued that the Applicant's proposed benefits and amenities would not counter the objectionable impacts attendant to use of the campus under the proposed campus plan, in part because the University would not be precluded from expanding its operations to off-campus locations and because the amenities would not offset the detrimental impacts – additional traffic, activity, noise, and other negative effects on the neighborhood – associated with the increased density requested under the proposed PUD.

93. According to the FBA, the additional density called for under the proposed campus plan would exacerbate existing adverse conditions, while the requested PUD-related rezonings to C-3-C would circumvent the density maximums specified in § 210.

94. The FBA's traffic expert raised questions about the traffic study submitted by the Applicant, particularly concerning truck traffic and determinations of the levels of service at intersections on or near the campus.

95. WECA presented testimony and evidence from Barbara Kahlow. According to WECA, the Commission should postpone consideration of the University's proposed 20-year plan until the Zoning Regulations governing campus plans have been amended, in part, because the proposal – a combination of campus plan and planned unit development – was not permitted under current zoning. WECA objected to approval of an "omnibus" PUD of the size proposed by the Applicant and to approval for a 20-year term. According to WECA, a term longer than one year was not permissible for a first-stage planned unit development. WECA indicated its support for only limited expansion in Foggy Bottom by the University, possible development of satellite campuses in other locations, and the adoption of certain conditions that would limit the University's acquisition of off-campus properties, restrict freshman and sophomore students from bringing cars to the campus or parking in the Foggy Bottom/West End area, and require

the Applicant to submit an environmental impact statement before further processing of the approved campus plan as well as with each future "major action" proposal submitted to the Commission.

Persons in Support

96. The Commission heard testimony or received letters from numerous persons and organizations in support of the applications. The persons in support, who included many current and former students of the University, residents living in Foggy Bottom, and persons affiliated with neighborhood businesses, generally commented favorably on the University's "Grow Up, Not Out" concept, the development of a new retail "town center" along I Street as part of the redevelopment of Square 54, the University's commitment to house more undergraduates on campus, the University's need to upgrade its facilities, and the benefits to neighborhood residents offered by the University, such as the opportunity to take classes and use university facilities.

Persons in Opposition

97. The Commission also heard testimony or received letters from a number of persons and organizations in opposition to the applications. The persons in opposition, who included primarily residents living in Foggy Bottom, generally cited adverse impacts associated with the continued growth of a large institution in a residential neighborhood; the loss of permanent, taxpaying residents; objectionable behavior by students; the use of the PUD process, rather than special exceptions approved pursuant to § 210, for projects within the campus boundaries; and the uncertainty associated with the 20-year term of the proposed new campus plan.

CONCLUSIONS OF LAW

1. The Applicant requested special exception approval, pursuant to 11 DCMR §§ 210, 3035, and 3104, of a new campus plan for a term ending June 30, 2025, and approval, pursuant to 11 DCMR Chapter 24, of a first-stage planned unit development valid for 20 years and related Zoning Map amendments for its Foggy Bottom campus. The Commission is authorized under the aforementioned provisions to grant a special exception when, in the judgment of the Commission, 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 Residence zone 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. (11 DCMR §§ 210.2 – 210.9.) The Commission is also authorized under the Zoning Act to approve planned unit developments consistent with the requirements set forth in Chapter 24 of the Zoning Regulations.

2. Based on the above Findings Of Fact, the Commission concludes that the Applicant has satisfied the burden of proof for special exception approval of the proposed new campus plan in accordance with § 210. The new plan will carry over principal elements of the current plan, including the existing caps on student and faculty/staff populations and the existing minimum requirement for off-street parking spaces within the campus boundaries. The new campus plan will also continue to include the conditions of approval of the existing campus plan to avoid creation of adverse impacts or objectionable conditions, as well as some new conditions intended in part to document compliance with the conditions of approval.

3. Also based on the above Findings Of Fact, the Commission concludes that the Applicant has satisfied the burden of proof for approval of the proposed first-stage PUD and related Zoning Map amendments under Chapter 24 of the Zoning Regulations. The planned unit development process is an appropriate means to control the future development of the Foggy Bottom campus in a manner consistent with the best interests of the District of Columbia. Approval of the University's proposed PUD will encourage high-quality developments that provide public benefits, consistent with the overall goal of the PUD process to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare and convenience." (11 DCMR §§ 2400.1, 2400.2.)

4. The first-stage PUD sets the framework for new development on the campus in terms of bulk, height, and massing, and identifies specific sites that may be developed in future second-stage projects, with no other developments permitted, other than approved planned unit developments filed prior to the effective date of this Order. The Commission concludes that the increased density requested by the Applicant is appropriate for the campus and that the proposed placement of the density on the identified building sites, considering proposed height and lot occupancy parameters, will be acceptable. Under the University's proposal, the majority of the new development will place greater density toward the center core of the campus, maintaining lower densities on the perimeter, adjacent to residential neighborhoods, and preserving historic structures within the campus. The Commission also concludes that the relative value of the project amenities and public benefits offered by the Applicant is acceptable in light of the degree of development incentives requested.

5. The Zoning Regulations do not prohibit use of the PUD process in conjunction with the campus plan process, provided that the PUD process is not used to circumvent the intent and purposes of the Zoning Regulations, including § 210, or to result in action that is inconsistent with the Comprehensive Plan. (11 DCMR § 2400.4.) While some provisions of the regulations limit the amount of PUD flexibility that can be granted in certain circumstances, § 210 is silent on the matter. Moreover, § 210, like almost all special exception provisions, is concerned with a use, in this case a college or university. In contrast, a planned unit development focuses on structure and design and grants zoning flexibility from area requirement, such as FAR, height, and lot occupancy when the public will benefit commensurately as a result. The two processes are complementary. The Commission will not impose a disparate standard on this or any use that is neither expressly stated in nor furthers the purposes of the regulations. Thus, while the two-step approval process for college and university uses stated in Title 11 serves a legitimate land use purpose, disqualifying universities from benefiting from the PUD process serves no legitimate purpose.

6. The Commission, therefore, finds that approval of the Applicant's proposed campus plan, subject to the conditions of approval, is consistent with the requirements of §§ 210 and 3104 and that the associated first-stage PUD and related map amendments, which will serve as a mechanism to implement the new campus plan, will not circumvent the intent or purposes of the Zoning Regulations or result in action inconsistent with the Comprehensive Plan. Rather, approval of the proposed campus plan in tandem with the proposed first-stage PUD will provide greater certainty regarding the future development of the campus by specifying the sites and development parameters of all significant potential future development on the campus. The first-stage PUD has identified specific development sites; will provide for detailed design review with each second-stage PUD consistent with the conceptual height, density, and use parameters established in the first-stage; and offers project amenities and public benefits in exchange for greater height, density, and design flexibility.

7. The first-stage PUD will achieve an appropriate level of certainty, predictability, and control over development in the Foggy Bottom campus. The two-stage PUD process mirrors the two-stage campus plan process, in which individual projects are subject to approval after the initial approval of a campus plan that deals with large concepts and the location of uses and densities. The PUD process provides greater control and specificity, as well as public benefits and project amenities, and will limit future development to the identified sites.

8. In approving the PUD, the Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, penthouse setback, yards, or courts. The PUD process, either through individual PUDs or a campus-wide PUD, can be used by the Commission to increase the density of a campus above that allowed under § 210. Under § 210.3, the

FAR of the residentially-zoned areas of a campus is aggregated to a total based on the allowable FAR in the district, not to a specific number (e.g., 3.5). In this case, the R-5-D District that comprises most of the campus has a maximum matter-of-right density of 3.5 FAR, with a maximum density of 4.5 FAR achievable through the PUD process. Pursuant to § 210.3, the density limit is "the gross floor area prescribed by the R-5-D district," and the use of the PUD process is not proscribed to increase the allowable density within an approved campus plan.

9. The Commission has previously considered PUD applications submitted by the University for individual projects located within the campus boundaries.[6] The proposed long-term first-stage PUD approved in this Order will serve as a second mechanism – in addition to § 210 – to guide development within the campus boundaries by providing a framework for predictable development and precluding the University from submitting applications on an individual basis. The prior campus plan included a development plan that provided general guidance for new development in terms of use and sites; the new campus plan, in tandem with the first-stage PUD, will also define where height and bulk are appropriate on the campus and where the existing density and buildings should be maintained. The prior plan permitted further processing applications, so that developments not identified on the plan but generally consistent with it could be submitted for approval. Under the new plan, all new development on campus will be limited to those sites identified on the development plan at the specified heights and densities.

10. The Commission concludes that a 20-year term of approval is appropriate for the first-stage PUD and the associated campus plan. The regulations do not require the imposition of a term and, in fact, the Applicant's prior plans had no limit of duration until the mid-1980s. The term requested by the Applicant, while longer than the term of the immediately prior campus plan, is appropriate given the level of detail provided in the new plan, the development controls imposed by the PUD, and the realities of financing and designing the developments envisioned. The plan's length also provides greater certainty for the nearby residential neighborhoods as to the long-term build-out of the campus.

11. The first-stage PUD will have a term of 20 years consistent with the duration of the new campus plan. At the time each development project under the campus plan is approved through the second-stage PUD process, the underlying zoning and density associated with that particular development site will permanently vest. All of the densities and rezonings set forth in the first-stage PUD will permanently vest when 70 percent of the gross floor area of the proposed development plan has been approved through a second-stage PUD. In the event the 70-percent threshold is not achieved within the 20-year term of the first-

[6] *See* Z.C. Order No. 03-29, effective June 18, 2004, which approved a consolidated PUD for a new residence hall at 2025 F Street, N.W., as well as Z.C. Order No. 06-17 and Z.C. Case No. 06-27.

stage PUD, the remaining approved densities and rezonings will expire at the conclusion of the first-stage PUD. This vesting provision will provide reasonable assurance that the development plan set forth in the campus plan and first-stage PUD can be achieved and will provide the University with the requisite level of certainty necessary to maintain intact all of the commitments, benefits, and amenities proffered by the Applicant. It bears noting that the "vesting" is only of PUD-related zoning, which would not allow the university to proceed with any development not authorized through a second-stage PUD and then only if an approved campus plan is in place.

12. The Zoning Regulations provide that approval of a first-stage PUD "shall be valid for a period of one year, *unless a longer period is specified by the Commission*…", 11 DCMR § 2407.10 (emphasis added). According to WECA, the italicized phrase should be read as follows: "*unless a longer period is specified by the Commission* by a subsequent amendment of this regulation." Apart from stating the obvious, WECA's interpretation adds nothing to the substance of the provision. Clearly, the italicized text is intended to give the Commission the discretion to specify a period longer than one year in a given case, depending on the facts and circumstances presented.

13. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider this application as a two-stage PUD. The two-stage PUD process is appropriate in this case, because it involves a large site with multiple building types and complex site planning, transportation, and urban design issues. To a greater degree than would be possible under § 210 alone, the two-stage PUD process offers the Commission the opportunity to address campus development in a comprehensive manner and specifically allows the Commission to identify individual development sites and designate where additional height and density will be most appropriate.

14. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more efficient and attractive overall planning and design than that achievable under matter-of-right development. The character, scale, mixture of uses, and design of uses in the proposed PUD are appropriate, and the proposed development is compatible with the citywide, ward, and area plans of the District of Columbia. The development plan set forth in the campus plan and PUD is within the applicable height and bulk standards of the Zoning Regulations, and the height and density will not cause an adverse effect on nearby properties.

15. The Commission accorded the recommendation of OP the "great weight" to which it was entitled pursuant to D.C. Official Code § 6-623.04 (2001). As discussed in this Order, the Commission generally concurred with the recommendation of OP to grant the University's applications, subject to conditions. The Commission accorded the issues and concerns raised by ANC 2A the "great weight" to which they are entitled pursuant to D.C. Official Code § 1-308.10(d) (2001). In doing so, the Commission fully credited the

unique vantage point that ANC 2A holds with respect to the impact of the proposed campus plan and first-stage PUD on the ANC's constituents. However, the Commission concludes that the ANC has not offered persuasive advice that would cause the Commission to find that approval of the applications, subject to the conditions adopted in this Order, will be contrary to the Zoning Regulations or will adversely affect the use of neighboring property.

16. In recommending approval of the applications, ANC 2A expressed issues and concerns regarding the Applicant's failure to prove compliance with the existing campus plan, potential adverse impacts associated with the proposed increase in aggregate FAR of university uses permitted on the campus, contrary to the intended uses of PUDs and in violation of protections set for in § 210, the Applicant's failure to consider satellite campuses to alleviate the effects of the University growth pressures on residential neighborhoods near the Foggy Bottom campus; separate consideration of the proposed non-university use of Square 54; and the absence of an environmental impact review process for proposed new construction on the campus.

17. For the reasons stated in Finding of Fact 13, the Applicant was not required, under the Zoning Regulations or by the campus plan, to prove compliance with its current campus plan before seeking approval of a new plan, nor, for the reasons stated in Findings of Fact 16 though 19, was the Applicant required to engage in the environmental impact review process required to commence before the Commission takes action on the applications.

18. For purposes of showing future on-campus development, parking, and traffic impacts, the University's campus plan proposal considered the entire campus, including the sites of individual projects undertaken on Square 54 and Square 80 that were considered in separate proceedings, as was permissible under the prior campus plan. The Commission also notes that while the University has developed satellite campuses, the applications in this proceeding concerned specific requests for zoning approval applicable to the Foggy Bottom campus. (*See, e.g., Glenbrook Road Ass'n v. D.C. Board of Zoning Adjustment*, 605 A.2d 22 (D.C. 1992) (Zoning Regulations do not require that a university's needs be treated as irrelevant in determination of whether a reasonable accommodation has been made between the university and the neighbors that does not interfere with the legitimate interests of the latter; discretion to grant a special exception is limited to a determination whether the exception sought meets the requirements of the regulation.) Nor does the Commission agree that once a University is mapped in a Residence zone, it may never seek or obtain a map amendment that would be acceptable were it any other use. Finally, the Commission was not persuaded by the ANC's contentions that the proposed increase in height and density on the campus – not accompanied by increases in the University's student or faculty/staff caps – would result in objectionable conditions or adverse impacts on the use of neighboring property or would be contrary to the PUD process or in violation of § 210.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the applications for (1) special exception approval of the *Foggy Bottom Twenty-Year Campus Plan (2007)* for a twenty-year period commencing on the effective date of this Order ("**Campus Plan**" or **"Plan"**) to permit the continuation of a university use during that term at the level described herein[7] and (2) first-stage review of a planned unit development ("**PUD**") and related amendment to the Zoning Map for The George Washington University Foggy Bottom Campus.

Several of development sites are being rezoned to commercial districts (as shown on Exhibit C to the PUD application) where university uses are permitted as a matter of right without the need for "further processing" approvals. Nevertheless, such further processing approvals will be required by the PUD. Even with the PUD-related rezoning, the University remains within a predominantly residential environment. PUD-related rezonings often serve narrower purposes than traditional map amendments. In this case, the Commission viewed the PUD-related rezoning as an appropriate means to allow the University to grow within a defined area. It was not the Commission's intent that that the PUD-related rezoning be used to eliminate the further processing review analysis for each new project proposed. In any event, the Applicant has agreed to subject each project to the special exception standards.

As a matter of administrative efficiency, the Commission is exercising its option, as permitted by 11 DCMR § 2405.7, to hear each special exception request at the same time it considers an application for second-stage PUD approval. However, the Applicant must demonstrate that the proposed use will comply with the special exception standards, notwithstanding 11 DCMR § 2405.8, which permits, but does not require, the Commission to apply a lesser standard of review.

Several of the conditions that follow contemplate actions to be taken by persons and entities other than the Applicant, such as the Zoning Administrator, DDOT, OP, the Historic Preservation Review Board, and the Advisory Committee (to be formed pursuant to Condition P-7). Since the Applicant cannot be held responsible for the action or inaction of third parties, compliance with such conditions shall be determined based upon whether the University has undertaken good faith efforts to comply with the condition in question.

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[7] Although applications for campus plan approvals must be filed prior to the expiration of an existing plan, the Commission recognizes that its consideration of such applications can extend beyond the expiration date. Should that happen, the Commission would not expect that this or any other university would have to alter its operations while its application is pending before the Commission, other than the fact no further processing applications may be filed during any period when an approved campus plan is not in effect.

Each of the two approvals granted in this Order is subject to its own set of conditions, which in some instances cross-reference each other. To avoid confusion, each Campus Plan condition is preceded by a "C," and each PUD condition is preceded by a "P." No condition in this Order applies to or modifies any other planned unit development approved by this Commission, including those pertaining to Square 54 and Square 80.

Lastly, Condition 20 of the current Campus Plan provides recourse for the Zoning Administrator and the Zoning Commission in the event the University should not maintain compliance with any condition of the Campus Plan and reads as follows:

> 20. No special exception application filed by the University for further processing under this plan may be granted unless the University proves that it has consistently remained in substantial compliance with Conditions 1 through 19 set forth in this Order. Further, any violation of a condition of this Order shall be grounds for the denial or revocation of any building permit or certificate of occupancy applied for by, *or issued to*, the University for any University building or use *approved under this plan*, and may result in the imposition of fines and penalties pursuant to the Civil Enforcement Act, D.C. Code §§ 6-2701 to 6-2723.
>
> (Emphasis added).

The Applicant's draft conditions propose to delete the italicized text, thereby suggesting that the Zoning Administrator may not revoke a building permit or certificate of occupancy issued under the new campus plan if the University is in violation of a plan condition. The Commission notes that this provision was not struck by either the United States or the District of Columbia Courts of Appeals as part of their consideration of the University's legal challenge to the current campus plan, the Commission finds no merit in eliminating this important enforcement tool.

The same cannot be said for the absolute prohibition of non-residential further processing applications whenever the University is in non-compliance with its on-campus housing requirement (former Condition 9(d)). The University has demonstrated its commitment to on-campus housing. Moreover, the requirement that the University must demonstrate substantial compliance with this Order's conditions will suffice. However, like current Condition 9(d), an application to construct student housing will not be denied solely on the basis of the University's non-compliance with Condition C-6, otherwise there would be no means for the University to cure the violation.

In order to eliminate any confusion arising from the wording of the condition, the Commission has separated the first and second sentence into two separate conditions. The first sentence, new Condition P-17, governs the Commission's own processes and continues the past Plan's requirement that the University demonstrate "substantial compliance" with identified conditions

as a prerequisite to obtaining approval of an application under this Order. The second sentence, new Condition C-2, is addressed to the Zoning Administrator, and authorizes, but does not require, the denial or revocation of permits issued under this Order if the University violates one or more of the identified conditions. Since Condition C-2 leaves it to the discretion of the Zoning Administrator when enforcement action is appropriate, he or she will not be required to deny or revoke permits issued under this Order if the University violates one or more of the identified conditions. This should ameliorate the Zoning Administrator's concerns over how the phrase "substantial compliance" should be interpreted, since the responsibility for doing so rests exclusively with this Commission.[8]

First-Stage PUD Conditions:

The approval of the application a first-stage PUD is subject to the following conditions:

DEVELOPMENT CONTROL PROFFERS

P-1. The University shall not purchase, either directly or as a contract-purchaser, or enter into a master lease agreement or similar transaction for additional residentially-zoned properties outside of the Campus Plan boundaries in the Foggy Bottom/West End area (defined as the area bounded by the Potomac River and Rock Creek Park to the west, N Street to the north, 19th Street to the east, and Constitution Avenue to the south) for university use. This condition does not prohibit the University from purchasing any properties for investment purposes; however, it does prohibit the University from purchasing or entering into a master lease or similar transaction for a residentially-zoned property within the above-defined area and changing its use to one limited to the University population. The University shall not include any such investment property in its undergraduate student housing program or otherwise directly refer undergraduate students to any such property.

P-2. Except for minor renovation projects including those necessary to address building code compliance, no development on Campus resulting in additional density or change in use may be undertaken by the University unless approved by the Commission in accordance with Conditions P-14 through P-17. Such permitted developments shall be:

a. Limited to the "development sites" identified in Exhibit A of the PUD application;

[8] The Commission successfully applied the "substantial compliance" standard under the current plan in A*pplication by George Washington University for Further Processing of an Approved Campus Plan Under § 210 to Modify Conditions of Approval of the Lerner Health & Wellness Center at 2301 G Street, N.W. (Square 42, Lot 847,* Zoning Commission Order 02-26, 51 DCR 11931 (2004).)

b. Substantially in conformance with the Campus Plan as approved herein; and

c. Consistent with the primary use and zoning designations for the respective development site on Exhibits A and C of the PUD application.

P-3. The additional gross floor area for each project that is the subject of a second-stage application shall be consistent with the Tabulation of Development Data detailed in Exhibit B of the PUD application.

P-4. The lot occupancy for each development site shall be consistent with the Tabulation of Development Data detailed in Exhibit B of the PUD application.

P-5. The maximum building heights for the proposed development sites shall be consistent with Exhibit K of the PUD application.

P-6. The University shall notify the Office of Planning, ANC 2A, and the Advisory Committee described in Condition P-7 of its intent to develop a specific site on campus, following approval of the development proposal by appropriate University committees and the University's Board of Trustees, and prior to preparation of final detailed plans and specifications.

ADVISORY COMMITTEE PROFFER

P-7. The University shall work with community representatives to form an Advisory Committee for the purpose of fostering consistent communication between the University and the Foggy Bottom and West End communities, discussing issues of mutual interest and proposing solutions to problems that exist or arise in implementing the approved Foggy Bottom Campus Plan.

a. Key functions of the Advisory Committee include:

i. Reviewing the University's compliance reporting;

ii. Working with the Office of the Zoning Administrator to monitor compliance with the conditions of the Foggy Bottom Campus Plan; and

iii. Reviewing new University proposals to develop sites on the Foggy Bottom Campus.

b. Composition, Administrative Procedures, and Meeting Format:

i. The Advisory Committee shall consist of ten members: five representatives of the University to be selected by the University and five representatives of the community to be selected by ANC 2A. The ANC shall select no more than three ANC commissioners and shall select at least one member to represent Foggy Bottom and at least one member to represent the West End.

ii. The quorum for Advisory Committee meetings shall be five members.

iii. The first Advisory Committee meeting shall take place within two months after the effective date of this Order and include adoption of specific administrative procedures (subject to the terms of this Condition) that govern the operation of the body.

iv. The Advisory Committee shall schedule quarterly meetings open to the public and shall keep minutes of each meeting.

v. Upon request and at least on a semi-annual basis, the University shall report to the Advisory Committee data relevant to campus planning that includes, but is not limited to: report on student enrollment, planned development projects included in the University's capital program, historic preservation, implementation of the streetscape plan, public space permits, and reports on all conditions and commitments adopted as part of the Campus Plan.

UNDERGRADUATE HOUSING PROFFER

P-8. With respect to the housing of undergraduate students in off-campus properties that the University owns or in which it has an interest, except as otherwise provided by this Condition:

a. The University shall not house undergraduate students in The Hall on Virginia Avenue.

b. Effective August 31, 2007, the University shall not house undergraduate students in The Aston (1129 New Hampshire Avenue, N.W.).

c. Effective August 31, 2008, the University shall not house undergraduate students in units in Columbia Plaza, with the exception that juniors and seniors referred to Columbia Plaza (2400 Virginia Avenue, N.W.) as part of the University's student

housing program prior to August 31, 2008 may continue to reside in their respective units, subject to the rules and guidelines associated with the University's student housing program, until they graduate from the University or are no longer officially affiliated with the University.

d. Effective July 1, 2016, the University shall not house undergraduate students in City Hall (950 24th Street, N.W.).

Notwithstanding the foregoing, the University may offer housing in these off-campus facilities to freshmen and sophomore students who would have been required by Condition C-7 to reside on campus, but have been exempted by the University from that requirement pursuant to that condition. The University's efforts with respect to Condition P-8 shall be monitored by the Advisory Committee.

HISTORIC PRESERVATION & STREETSCAPE PLANS PROFFERS

P-9. Upon the effective date of this Order and the expiration of any appeal period, the University shall proceed within sixty (60) days to file the appropriate applications with the Historic Preservation Review Board to achieve the designations set forth in the Foggy Bottom Campus Historic Preservation Plan. Specifically, (a) the University shall prepare the applications for the University-owned individual landmarks identified in the Historic Preservation Plan and (b) the University shall work with the Historic Preservation Office to prepare the documentation for the proposed historic district, which shall be filed by the Historic Preservation Office. The University shall maintain University-owned historic landmarks as well as University-owned buildings identified as contributing within the proposed historic district in accordance with guidelines agreed to by the University and OP.

P-10. Upon the effective date of this Order and the expiration of any appeal period, the University shall proceed within sixty (60) days to initiate the process to obtain necessary approvals of the proposed Streetscape Plan from the DDOT. The costs and resources associated with the implementation of building identifiers (*e.g.*, flags, awnings, and placards), street furniture (*e.g.*, benches, trash receptacles, bike racks, and emergency call stations), way-finding elements (*e.g.*, campus maps, directional signage, and location symbols), street banners (*e.g.*, pedestrian, vehicular, and thematic banners often mounted on street light posts), and distinctive design elements (*e.g.*, public art, plaques, busts, clocks, paving medallions, and mid-block crossing treatments) as set forth in the proposed Streetscape Plan will be the responsibility of the University. The costs and resources associated with the implementation of other streetscape elements—including sidewalk paving materials, street lighting fixtures, and certain plantings (particularly street trees)—may be allocated among the University, DDOT, and, as appropriate and available, other outside sources (including organizations or foundations such as Casey

Trees for campus street trees). The University shall work with DDOT with respect to planning for future District streetscape improvement projects that impact the Foggy Bottom campus, and the specific allocation and contribution of costs associated with such improvement projects will be made on a project-by-project basis. Streetscape improvements associated with development projects identified in the Campus Plan and first-stage PUD shall be funded by the University and shall be specifically addressed as part of the second-stage PUD application for each project.

I STREET CORRIDOR PROFFER

P-11. Retail uses along the I Street Corridor shall include those retail uses permitted in the C-1 and C-2 Zone Districts, as limited by 11 DCMR §§ 701.1, 701.4, 721.2, and 721.3, with the exception that there shall be no restrictions on fast-food establishments, other than drive-through fast food establishments, which shall be prohibited.

P-12. At least 75% of the street frontage of each building developed along I Street pursuant to a second-stage PUD approval shall be occupied by retail space, with the following exceptions:

a. Space that is devoted to building entrances or required for fire control or life safety purposes; and

b. Sites 77A and 77D and other street frontages associated with buildings identified as historic resources under the Foggy Bottom Historic Preservation Plan that may not be suitable for retail use.

SUSTAINABLE DEVELOPMENT PROFFER

P-13. Each order granting a second-stage PUD application to construct a new building pursuant to this Order shall contains a condition substantially similar to the following:

> No building permit for the new construction authorized herein shall be issued unless the project architect has provided appropriate documentation (e.g., the LEED-NC[9] form checklist) demonstrating that the building will achieve the equivalent of a minimum LEED score of 16 points in accordance with the LEED-NC 2.2 Standard.

[9] LEED is an acronym for Leadership in Energy and Environmental Design.

SECOND STAGE APPLICATIONS

P-14. Subject to the exception and limitations of Conditions P-2 through P-5, the University shall submit a second-stage PUD application for any development on Campus resulting in additional density or a change in use.

P-15. In addition to satisfying the burden of proof for the approval of a second-stage PUD, the Applicant shall further demonstrate that each project meets the special exception standards set forth in 11 DCMR §§ 210 and 3104.

P-16. Each application for second stage PUD approval shall include:

a. Demonstration of compliance with applicable provisions of the zoning regulations and the contents of the approved *Foggy Bottom Twenty-Year Campus Plan (2007)*;

b. A showing that the use, height, bulk, and design (including the location of any means of ingress and egress) of the proposed structure is sensitive to and compatible with adjacent and nearby non-University-owned structures and uses;

c. An indication of any need for, amount of, and proposed locations of interim leased space necessary to accommodate housing and/or activities displaced by construction and/or activities intended to be located permanently in the completed structure;

d. A report recalculating the University's total FAR within the campus plan boundaries, which shall also be submitted directly to OP and the Zoning Administrator. Information included in the report shall be broken down by zoning district and include the following: existing FAR, gross floor area under development pursuant to Commission approval, and FAR upon completion of proposed structure;

e. The most recent Foggy Bottom Campus Plan Compliance Report (as set forth in Condition C-15) evidencing compliance with the approved *Foggy Bottom Twenty-Year Campus Plan (2007)*, including the most recent reported counts of Foggy Bottom student headcount, Foggy Bottom student full-time equivalent, Foggy Bottom faculty and staff headcount, Foggy Bottom faculty and staff full-time equivalent, full-time Foggy Bottom undergraduate students, on-campus beds, and full-time Foggy Bottom undergraduate students residing in the Foggy Bottom/West End Area outside of the campus plan boundaries;

f. A progress report on the implementation of the Streetscape Plan required by Condition P-10;

g. The number of off-street parking spaces within the campus plan boundaries as set forth in Condition C-13(b) as of 30 days prior to the application date, including documentation and an explanation of the methods and assumptions used in counting the parking spaces;

h. A status report on the Transportation Management Program required by Condition C-14;

i. Demonstration that the project has been presented to the Advisory Committee to be formed in accordance with Condition P-7 herein) for consideration, at a regularly scheduled or specially-called Advisory Committee meeting, at least 30 days prior to the filing of such an application; and

j. A list of "outsourcing activities" that have occurred since the last second-stage application. For the purposes of this Condition, an "outsourcing activity" shall be defined as termination within any 30-day period of 50 or more Foggy Bottom faculty or staff who are assigned to a specific University department or unit and are permanently replaced with contractors or other persons not employed by the University to perform on the Foggy Bottom campus the services of the terminated faculty or staff.

P-17. No second-stage PUD application filed by the University pursuant to this first-stage approval shall be granted unless the University is in substantial compliance with the foregoing conditions and Conditions P-1 through P-12 and C-4 through C-16 as demonstrated by the most recently filed Foggy Bottom Campus Plan Compliance Report. Proof of such compliance is not required as a prerequisite to the filing of a second-stage application pursuant to this Order or to the Commission holding a hearing or hearing or deliberating upon the case. Notwithstanding the above, lack of compliance with the on-campus housing requirement of Condition C-6 will not alone serve as grounds to deny an application to construct a project in which a student housing component would occupy at least 50% of the gross floor area of the structure.

GENERAL CONDITIONS

P-18. This first-stage PUD approval by the Zoning Commission shall be valid until October 26, 2027. At the time each development project is approved through the second-stage PUD process, the underlying zoning and density associated with that particular development site shall permanently vest with respect to that development. Notwithstanding the foregoing, *all* of the densities and rezonings set forth in the first-stage PUD will permanently vest at such time as 70 percent of the gross floor area of the proposed development plan has been approved through a second-stage PUD within the term of the first-stage PUD.

P-19. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code section 2-1401.01, et seq. ("Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above-protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

Campus Plan Conditions:

The Campus Plan approved pursuant to this Order replaces the George Washington University Foggy Bottom Campus Plan: Years 2000 through 2009 (BZA Order No. 16553-I) and is subject to the following conditions of approval:

C-1. This campus plan and the level of University operation it describes are approved until October 26, 2027, subject to the following conditions, or until such time prior to that date as the Zoning Commission determines that conditions warrant submission of a campus plan amendment or an updated campus plan.

C-2. The campus plan boundary for the *Foggy Bottom Twenty-Year Campus Plan (2007)* shall remain consistent with the campus plan boundary established by the Board of Zoning Adjustment with respect to the Foggy Bottom Campus Plan: Years 2000 through 2009 (Order No. 16553-1). The properties included within the Foggy Bottom Campus Plan boundary are depicted in Exhibit I of the Foggy Bottom Campus Plan Application and are specifically identified and listed in Appendix 1 attached hereto.

C-3. Any violation of the following Conditions furnish grounds for the denial of any building permit or certificate of occupancy applied for by the University for any University building or use, and may result in the imposition of fines and penalties pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq*.).

FOGGY BOTTOM CAMPUS POPULATION

C-4. For the duration of this Plan, the Foggy Bottom student headcount shall not exceed 20,000 students, and the Foggy Bottom student full-time equivalent shall not exceed 16,553.

a. For the purposes of this Condition:

i. **"Foggy Bottom student headcount"** shall be defined as the number of GW students in the "Foggy Bottom/Mount Vernon Campus Total Student Body"[10], minus: study abroad students, continuous enrollment students, students that reside at the Mount Vernon Campus, students that take all of their courses at the Mount Vernon Campus, and Foggy Bottom faculty and staff accounted for pursuant to Condition C-5 herein who are also enrolled in one or more courses at the Foggy Bottom campus.

ii. **"Foggy Bottom student full-time equivalent"** shall be determined by assigning a fraction to part-time students included in the Foggy Bottom student headcount number based on the number of credits they are taking compared to a full-time course load and adding the number of full-time students. Currently, the full-time course load for undergraduates is 12 credits, and the full-time course load for graduate and professional students is 9 credits. Formulas for determining full-time equivalents may change over the term of the proposed Foggy Bottom Campus Plan depending on program requirements or the restructuring of the academic calendar.

b. An audit of the Foggy Bottom student headcount and Foggy Bottom student full-time equivalent reported pursuant to Condition C-15 herein shall be conducted in a manner and by a firm previously approved by the Zoning Administrator and reported to the Advisory Committee. The audit shall be completed by January 10 of the year following each report submitted pursuant to Condition C-15 herein.

c. Compliance with this condition shall be based upon the data reported for the most recent semester in either the Foggy Bottom Campus Plan Compliance Report required in Condition C-15 or in the Interim Foggy Bottom Campus Plan Compliance Report required by Condition C-16.

C-5. For the duration of this Plan, the Foggy Bottom faculty and staff population shall not exceed a total of 12,529 on a headcount basis and 10,550 on a full-time equivalent basis.

a. For the purposes of this Condition:

i. "**Foggy Bottom faculty and staff headcount**" shall include: regular full-time faculty and staff; regular part-time faculty and staff; wage account staff that are not Foggy Bottom students accounted for pursuant to

[10] The "Foggy Bottom/Mount Vernon Campus Total Student Body" is compiled by the GW Office of Institutional Research (OIR) and is currently reported on the OIR online "GW Factbook" available at www.gwu.edu/~ire/.

Condition C-4; temporary part-time faculty (excluding part-time clinical faculty who are not paid employees of the University); affiliated faculty employed by the Medical Faculty Associates; and visiting instructional and research faculty. For the purposes of this Condition, Foggy Bottom faculty and staff shall not include faculty and staff whose primary office locations are not on the Foggy Bottom campus; employees of non-University owned or controlled entities that are located on the Foggy Bottom campus; and contractors that provide ancillary campus-related service functions who are not employees of the University.

ii. "**Foggy Bottom faculty and staff full-time equivalent**" shall be determined by assigning a fraction to part-time employees included in the Foggy Bottom faculty and staff headcount number based generally on the number of hours worked as compared to the standard full-time 40-hour work week.

b. Compliance with this Condition shall be based upon the data reported for the most recent semester in either the Foggy Bottom Campus Plan Compliance Report required in Condition C-15 or in the Interim Foggy Bottom Campus Plan Compliance Report required in Condition C-16, whichever is the most current.

ON-CAMPUS UNDERGRADUATE STUDENT HOUSING

C-6. For the duration of the Plan, the University shall make available on-campus beds for full-time Foggy Bottom undergraduate students equivalent to 70% of the full-time Foggy Bottom undergraduate student population up to an enrollment of 8,000, plus one bed per full-time Foggy Bottom undergraduate student over 8,000. Compliance with this condition shall be based upon the data reported for the most recent semester in either the Foggy Bottom Campus Plan Compliance Report required by Condition C-15 or in the Interim Foggy Bottom Campus Plan Compliance Report required by Condition C-16, whichever is the most current.

a. For the purposes of this Condition:

i. "**full-time Foggy Bottom undergraduate students"** shall be defined as follows:

(A) Until the fall 2010 semester or until the completion and occupancy of the next University residence hall project proposed in accordance with the Foggy Bottom or Mount Vernon Campus Plans, whichever event first occurs, the term shall mean the number of students in the "Foggy Bottom/Mount Vernon Campus

Total Student Body" minus graduate students, first professionals (JDs and MDs), undergraduates taking fewer than 12 credit hours at the Foggy Bottom campus, non-degree students, full-time undergraduate study abroad students, undergraduate continuous enrollment students, and full-time undergraduate students accounted for under the Mount Vernon Campus Plan Order (BZA Order No. 16505), which does not differentiate between resident and non-resident students.

(B) Once either of the above-described events occurs, the terms shall have the same meaning as above, except only full-time undergraduate students who reside on the Mount Vernon Campus Plan will be subtracted from the "Foggy Bottom/Mount Vernon Campus Total Student Body."

ii. The term "**on-campus beds**" shall include beds available to full-time Foggy Bottom undergraduate students in any property in which the University has an ownership, leasehold, or contractual interest, or beds otherwise occupied by full-time Foggy Bottom undergraduate students in fraternities, sororities, or other programs recognized by or affiliated with the University and located within the campus plan boundary.

b. The University's efforts with respect to this Condition shall be monitored by the Advisory Committee.

C-7. The University shall require all full-time Foggy Bottom freshmen and sophomores students to reside in housing located within the campus plan boundary. The University may exempt from this requirement those students who commute (i.e., students who have established permanent residency off-campus prior to enrollment at the University or students who live off-campus with a parent, guardian, or other family member), are married or have children, or have disabilities or religious beliefs inconsistent with residence hall life. The University's efforts with respect to this Condition shall be monitored by the Advisory Committee.

OFF-CAMPUS STUDENT HOUSING & STUDENT CONDUCT ISSUES

C-8. The University shall maintain a program to provide its students who are eligible to live off-campus with information about housing opportunities outside the Foggy Bottom/West End Area. The University's efforts with respect to this Condition shall be monitored by the Advisory Committee.

C-9. The University shall use disciplinary interventions for acts of misconduct by students living off-campus in the Foggy Bottom/West End Area, even if students are not in properties owned or controlled by the University. The University shall act on incident reports by residents, ANC 2A, community associations, building management, building association boards, University security officers, and the Metropolitan Police Department. The University shall maintain an outreach program with neighboring apartment buildings to educate management companies and tenant associations on the University's disciplinary program and its reporting requirements to facilitate effective use of its program. The University's efforts with respect to this Condition shall be monitored by the Advisory Committee.

C-10. The University shall maintain and publicize (through appropriate written and/or electronic publications) a hotline available 24 hours per day, seven days per week to receive calls about student conduct issues and safety and security concerns. The University shall maintain a log of all calls received and all actions taken, including all referrals made. The University shall maintain its Crimes Tips Hotline (presently 994-TIPS), where calls can be made anonymously to a recorded "tip" line. Calls needing a more immediate response shall be directed to the University police (presently 994-6110) 24 hours per day, seven days per week. The University police will aid off-campus complainants in obtaining assistance from the Metropolitan Police Department. Reports of improper off-campus student conduct will also be referred to the appropriate University departments for their attention. This process shall be fully described on the University website, published catalogs, and student handbooks. The University's efforts with respect to this Condition shall be monitored by the Advisory Committee.

C-11. The University shall maintain a mandatory program for its students that will address "good neighbor" issues, educating students about appropriate conduct in the off-campus community. This program will especially emphasize objectionable noise both inside and outside of buildings, restricted parking in the Foggy Bottom/West End Area, illegal underage drinking, and respect for personal and real property of the residential and private business communities. The University's efforts with respect to this Condition shall be monitored by the Advisory Committee.

C-12. The University shall gather information about the local addresses of the full-time Foggy Bottom undergraduate population. The University shall compile and report the number of full-time Foggy Bottom undergraduate students residing in (1) Foggy Bottom/West End outside the campus boundaries; (2) the District of Columbia outside both the campus boundaries and the Foggy Bottom/West End Area, organized by postal codes; (3) Maryland; and (4) Virginia. This information shall be reported as set forth in Condition 24 herein.

PARKING & TRAFFIC

C-13. The University shall implement the following measures to minimize adverse impacts associated with parking and traffic:

a. Support of Mass Transit: The University shall maintain the Metrocheck program offered by the Washington Metropolitan Area Transit Authority ("WMATA") to allow employees to pay for public transportation costs on a pre-tax basis. The University shall maintain an introduction to public transportation program for incoming students that includes provision of WMATA's "SmarTrip" cards to incoming students. The University will work with WMATA to schedule SmarTrip "carding events" at various locations around campus to provide additional information about public transportation to the University community. In the event these programs are discontinued over the term of the campus plan, the University will work to identify alterative programs to support the goal of encouraging mass transit ridership.

b. Parking: The University shall continue to provide at least 2,800 off-street parking spaces, including proposed spaces to be dedicated for University use on Square 54 and all University-owned parking spaces on Square 122 (specifically including the parking lot and garage spaces at Old Main located at 1922 F Street, N.W.). The number of off-street parking spaces required to be provided may be increased in any subsequent further processing order pursuant to this plan if necessary to mitigate the adverse impact of the approved uses on the University's parking resources. The University shall monitor its utilization of University parking facilities to determine usage patterns and conduct an ongoing assessment of parking needs.

c. Notice: The University shall notify affected property owners or occupants, ANC 2A, and members of the Advisory Committee in a timely manner of the occurrence of any temporary street closing necessary to accommodate University-related functions. For the purposes of this Condition "affected property owners or occupants" shall be defined in a manner consistent with the notice requirements of DDOT temporary street closure petition procedures.

d. Student Vehicles:

i. The University, through its Office of Parking Services, shall maintain an accurate record of the license plate numbers of motor vehicles kept by students in University parking facilities, to be updated annually at the beginning of each Fall semester.

ii. The University shall prohibit freshmen and sophomores from bringing cars to the Foggy Bottom / West End Area other than in exceptional circumstances. Exceptional circumstances may include, for example, transportation needs related to a disability or health condition of the student or member of his/her family. Requests for a policy exception due to exceptional circumstances must be documented by the student and approved by the University. If such an exception is granted, the vehicle must be parked in a University parking facility. Any violation of this policy shall be grounds for discipline under the University's Code of Student Conduct. The University shall appropriately sanction any discovered violators and keep a full accounting of all violations and sanctions.

iii. Notice of this restriction will be included in at least one written document (e.g., the college catalog) mailed to parents of prospective freshmen and returning sophomores. In addition, each freshman and sophomore must provide a signature to indicate he or she has read and understands this parking policy, regardless of whether he or she drives to school or is eligible to have a car on campus. In addition, the University shall notify all undergraduate and graduate students that parking is prohibited on the streets adjacent to and surrounding the Foggy Bottom campus

C-14. The University shall maintain, and periodically update, its comprehensive Transportation Management Plan ("TMP") addressing traffic and parking associated with events on campus that are attended by a significant number of persons not normally associated with the University and the campus. The transportation management plan shall include the following:

a. Measures to schedule events at times that reduce conflicts with other traffic and other demands for parking.

b. Measures to discourage travel by private automobile and encourage travel by public transportation.

c. Measures to encourage persons who drive to park in commercial or University PARKING garages.

d. Designation of a Transportation Management Coordinator responsible for implementing and monitoring the TMP program.

e. Promotion of various technology initiatives (currently including, e.g., the use of video conferencing, podcasts, online library resources, the Bb@GW on-line

course management system based on the Blackboard Learning System™, and administrative document management systems) to reduce the need for physical movement to and between the Foggy Bottom campus and other University campuses.

f. Evaluation of opportunities to provide access and links through appropriate website portals to allow members of the University community to purchase transit fare media, including SmarTrip fare cards and bus passes, online.

g. As necessary throughout the term of the Campus Plan, when existing parking facilities are being renovated or redeveloped, utilization of attendant parking at various campus parking facilities to ensure that campus parking demands are adequately met.

h. Implementation of a Truck Management Plan to avoid adverse impacts on the surrounding neighborhood.

These measures and their efficacy and appropriateness given changes in programs, technology, and parking demand shall be regularly reviewed, evaluated, and updated over the twenty-year term of the Campus Plan. The TMP shall be submitted to and reviewed by the Advisory Committee on an annual basis.

REPORTING & COMPLIANCE REVIEW

C-15. On November 20 of each year following the effective date of this Order or, if a Saturday, Sunday, or holiday, on the next business day thereafter, the University shall file a Foggy Bottom Campus Plan Compliance Report with the Commission, Zoning Administrator, OP, ANC 2A, and the Advisory Committee. The Foggy Bottom Campus Plan Compliance Report shall contain the following information, reported for the current and previous semester, and based upon actual numbers existing as of the end of the sixth week of each semester unless otherwise noted[11]:

a. Current fall and previous spring semester Foggy Bottom student headcount and Foggy Bottom student full-time equivalent in accordance with Condition C-4.

[11] The end of the sixth week of each semester is the date when the University currently makes its official count of student enrollment, which it refers to as the "Census Date". In the event the University modifies the Census Date due to changes in the academic calendar or other necessary administrative policy modifications, upon 60 days' written notice to the Commission, Zoning Administrator, OP, ANC 2A, and the Advisory Committee, the that date upon which the actual numbers will be based may be changed to accommodate the new Census Date.

b. Current fall and previous spring semester Foggy Bottom faculty and staff headcount and Foggy Bottom faculty and staff full-time equivalent in accordance with Condition C-5.

c. Data in connection with the on-campus undergraduate student housing requirement set forth in Condition C-6, specifically:

   i. Current fall and previous spring full-time Foggy Bottom undergraduate students.

   ii. The number of on-campus beds available to full-time Foggy Bottom undergraduate students;

   iii. The number of on-campus beds occupied by full-time Foggy Bottom undergraduate students;

   iv. The number of off-campus University-supplied beds within the Foggy Bottom/West End Area;

   v. The number of off-campus University-supplied beds within the Foggy Bottom/West End Area occupied by full-time Foggy Bottom undergraduate students;

   vi. The number of off-campus University-supplied beds outside the Foggy Bottom/West End Area; and

   vii. The number of off-campus University-supplied beds outside the Foggy Bottom/West End Area occupied by full-time Foggy Bottom undergraduate students.

d. Information evidencing compliance with Condition C-8.

e. Information evidencing compliance with Condition C-9.

f. Information evidencing compliance with Condition C-10.

g. Information evidencing compliance with Condition C-11.

h. Updated address information in accordance with Condition C-12.

i. Current inventory of University-owned parking spaces and other evidence of compliance with Condition C-13(b).

j. Information evidencing compliance with Condition C-14.

Each report shall be accompanied by supporting documentation and full explanations of methods, assumptions, and sources used to compile information in the report.

C-16. On April 15 of each year following the effective date of this Order, or, if a Saturday, Sunday, or holiday, the next business day thereafter, the University shall file an Interim Foggy Bottom Campus Plan Compliance Report with the Commission, Zoning Administrator, OP, ANC 2A, and the Advisory Committee. The Interim Foggy Bottom Campus Plan Compliance Report shall contain the following information, reported for the current and previous semester, and based upon actual numbers existing as of the end of the sixth week of each semester except under the circumstances noted in footnote 3, *infra*:

a. Current spring and previous fall semester Foggy Bottom student headcount and Foggy Bottom student full-time equivalent in accordance with Condition C-4.

b. A copy of the audit report of the previous fall semester Foggy Bottom student headcount and Foggy Bottom student full-time equivalent conducted pursuant to Condition C-4(c) herein.

c. Current spring and previous fall semester Foggy Bottom faculty and staff headcount and Foggy Bottom faculty and staff full-time equivalent in accordance with Condition C-5.

d. Data in connection with the on-campus undergraduate student housing requirement set forth in Condition C-6, specifically:

i. Current spring and previous fall full-time Foggy Bottom undergraduate students. For purposes of these Conditions, "full-time Foggy Bottom undergraduate students" shall be defined as the number of students in the Foggy Bottom/Mount Vernon campus total student body minus all graduate students, all first professionals (JDs and MDs), all undergraduates taking fewer than 12 credit hours at the Foggy Bottom campus, non-degree students, full-time undergraduate study abroad students, undergraduate continuous enrollment students, and full-time undergraduate students that reside at the Mount Vernon Campus.

ii. The number of on-campus beds available to full-time Foggy Bottom undergraduate students;

iii. The number of on-campus beds occupied by full-time Foggy Bottom undergraduate students;

iv. The number of off-campus University-supplied beds within the Foggy Bottom/West End Area;

v. The number of off-campus University-supplied beds within the Foggy Bottom/West End Area occupied by full-time Foggy Bottom undergraduate students;

vi. The number of off-campus University-supplied beds outside the Foggy Bottom/West End Area;

vii. The number of off-campus University-supplied beds outside the Foggy Bottom/West End Area occupied by full-time Foggy Bottom undergraduate students.

Each report shall be accompanied by supporting documentation and full explanations of methods, assumptions, and sources used to compile information in the report.

C-17. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code section 2-1401.01, et seq. ("Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above-protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On February 5, 2007, the Zoning Commission **APPROVED** Z.C. Case No. 06-12 by a vote of 4-0-1 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, and Michael G. Turnbull to approve; Gregory N. Jeffries not present, not voting).

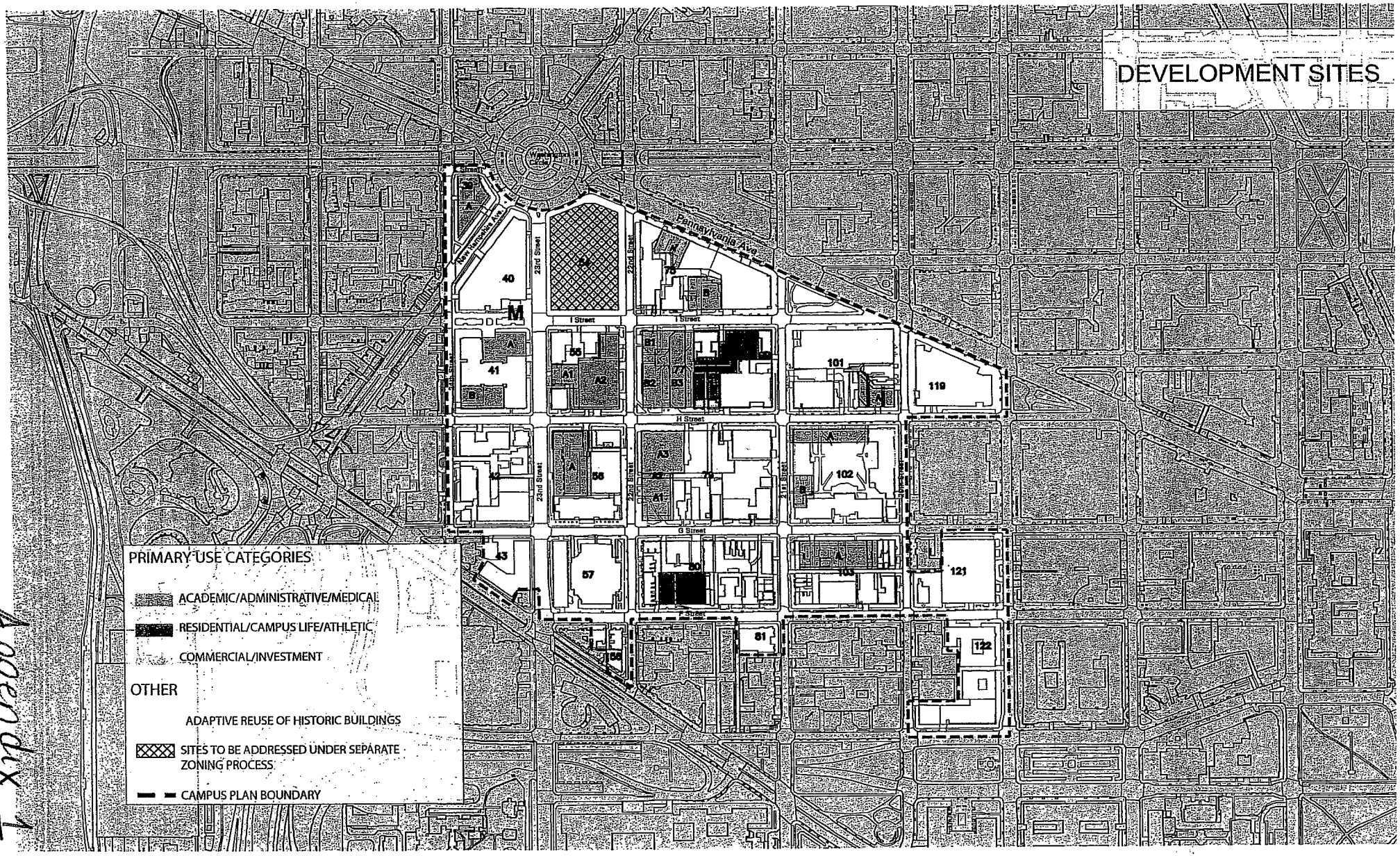
This Order was **ADOPTED** by the Zoning Commission at its public meeting on March 12, 2007 by a vote of 5-0-0 (Carol J. Mitten, John G. Parsons, Anthony J. Hood, Gregory N. Jeffries, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 2038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on OCT 26 2007.

CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION

JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

DEVELOPMENT SITES



Appendix 1

Ehrenkrantz Eckstut & Kuhn Architects

February 2006

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Z.C. CASE NOS.: 06-11 & 06-12

As Secretary to the Commission, I herby certify that on OCT 18 2007 copies of this Z.C. Order No. 06-11/06-12 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. *D.C. Register*
2. Maureen Dwyer, Esq.
   Pillsbury Winthrop Shaw Pittman LLP
   2300 N Street, N.W.
   Washington, D.C. 20037-1128
3. Asher Corson, Chair
   ANC 2A
   West End Branch Library
   1101 24th Street, NW
   Washington, DC 20037
4. Commissioner David Lehrman
   ANC/SMD 2A01
   2020 F Street, NW #431
   Washington, DC 20006
5. Commissioner Eric Malinen
   ANC/SMD 2A05
   2440 Virginia Avenue NW Apt. D1207
   Washington, DC 20037
6. Gottlieb Simon
   ANC
   1350 Pennsylvania Avenue, N.W.
   Washington, D.C. 20004
7. Councilmember Jack Evans
8. Office of Planning (Harriet Tregoning)
9. Ken Laden, DDOT
10. Matt LeGrant, Acting Zoning Administrator
11. Jill Stern, Esq.
    General Counsel - DCRA
    941 North Capitol Street, N.E.
    Suite 9400
    Washington, D.C. 20002
12. Office of the Attorney General
    (Alan Bergstein)
13. Foggy Bottom Association
    c/o Cornish F. Hitchcock
    1200 G Street, NW Suite 800
    Washington, DC 20005
14. West End Citizens Association
    c/o Barbara Kahlow
    West End Citizens Association
    800 25th Street, N.W. #704
    Washington, DC 20037

ATTESTED BY: Sharon S. Schellin
Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning