

76. The Commission credits the testimony of the Office of Planning that the Application meets the standards for a special exception under Section 210 and that the approval of this Campus Plan will likely have no objectionable impact in terms of noise, traffic, number of students, or other objectionable conditions.

77. The Commission credits the testimony of OP that the PUD process is an appropriate and, in fact, the most effective mechanism for providing specificity, clarity, and certainty to all stakeholders concerning how the proposed Campus Plan will be implemented.

78. The Commission agrees that the PUD process provides benefits and amenities of substantial value to the community and the District. These benefits are commensurate with the additional density and height sought through the Campus Plan PUD in order to provide GW with the opportunity to develop the space necessary to further its efforts to become a world-class university in the District of Columbia. See Tr. Sept. 21, 2006 at 84.

79. The Commission agrees that the proposed rezonings are not inconsistent with the Comprehensive Plan and are in keeping with the character of the surrounding neighborhood.

80. The Commission agrees with OP that the impacts associated with the implementation of the Campus Plan on the surrounding area and on public facilities and services are acceptable and commensurate with the public benefits of the Campus Plan PUD.

81. The Commission also credits the testimony of OP that the uses, buildings, and zoning changes described in the plan are completely compatible and consistent with the institutional use designation of the land included within the Campus Plan boundaries on the Comprehensive Plan Generalized Land Use Map and with the character of the surrounding neighborhood. Tr. Sept. 21, 2006 at 84. The Commission further agrees with OP that the Campus Plan supports Comprehensive Plan policies in the Land Use element that advocate protection of established residential neighborhoods and economic development. The Commission also agrees with OP that the Campus Plan meets the requirements of the Ward 2 Plan and furthers the Ward 2 Plan's policy in favor of the protection of historic resources through the formation of a campus historic district.

82. The Commission concurs with OP's recommendation that the permanent vesting of all densities and zoning set forth under the Campus Plan PUD should occur at such time as 70% of the proposed development program (as measured by developed square feet of gross floor area) has been approved through a second-stage PUD within the 20-year term of the first-stage PUD. This vesting provision will provide reasonable assurance that the development plan set forth in the Campus Plan can be achieved, and will provide the University with the requisite level of certainty necessary to maintain intact all of the proposed commitments, benefits and amenities included in the Applications.

83. The Commission agrees with OP that the pressures on the surrounding residential neighborhood that led OP and the BZA to impose the condition requiring additional on-campus housing for undergraduates have subsided, largely as a result of the BZA's imposition of the student housing condition under the Campus Plan 2000-2009, and the University's compliance therewith. Tr. Sept. 21, 2006 at 104.

84. The Commission agrees with DDOT's conclusion that the Applicant has fully addressed parking and traffic issues associated with the Campus Plan. The Commission credits DDOT's testimony that the Campus Plan will likely have no objectionable impact in terms of traffic or parking, provided that the proposed mitigation measures and TMP are implemented. The Commission credits DDOT's testimony regarding the acceptability of the Applicant's proposed future mitigation measures, including the restrictions on curb parking, provided that the Applicant obtain final approval from DDOT for any necessary signal timing adjustment associated with any future second-stage PUD project prior to obtaining any public space or building permits associated with such second-stage PUD project. Finally, The Commission credits DDOT's testimony regarding the contested issues raised by the FBA's traffic expert.

85. The Commission credits the testimony of the ZA that the conditions proposed by GW and OP are generally enforceable. Specifically, the Commission agrees with the ZA that Condition 10, the definition of Foggy Bottom student headcount, is enforceable as written, and that the population caps for Foggy Bottom faculty and staff should be combined in order to improve the enforceability of Condition 11. The Commission finds that the ZA's preference to delete "substantial" from the condition requiring continued compliance with all Campus Plan conditions, while understandable from the perspective of simplifying future compliance monitoring, does not adequately allow for the necessary flexibility to address the wide array of compliance issues that may arise with respect to the various conditions over the twenty-year term of the Campus Plan. See Ex. 230 (Nov. 15 Submission, Exhibit F).

86. The Commission finds the arguments of the ANC are not persuasive. First, the Commission disagrees with the ANC position regarding the University's compliance with the Foggy Bottom student enrollment cap. A voluntary independent audit confirmed that the University is in compliance with the Condition 8 of the existing Campus Plan. See Ex. 81. Furthermore, Condition 20 of the existing Campus Plan does not apply to a special exception application for approval of a new Campus Plan. See Ex. 54.

87. The Commission also disagrees with the ANC regarding the appropriateness of the PUD process and zoning map amendments for university campuses. This Commission has previously allowed the use of the PUD and zoning map amendment process for individual developments pursuant to the existing Foggy Bottom Campus Plan. See FOF 11. In this regard, the Commission specifically credits the approach of GW and OP, which is to use the first-stage PUD process to plan for the whole campus in a comprehensive, rather than an incremental manner. See Tr. Sept. 21, 2006, at 184. Further, the PUD process allows the Commission to control precisely where development will occur over the twenty-year term of the Campus Plan. This represents a significantly higher level of detail than the Campus Plan regulations themselves, which do not specifically control where development is located or the density of specific sites, so long as it is within the aggregate FAR cap. Tr. Sept. 28, 2006, at 98-100. Finally, the Commission finds that the concept of increasing density within the boundaries of a Campus Plan, primarily focused within the campus core, is a planning approach that is consistent with District planning principles set forth in both current and historical planning documents. See Tr. Sept. 28, 2006, at 126-30.

88. The Commission also disagrees with the ANC's contention that the requested Zoning Map amendment is unjustified and uses the PUD process to circumvent the intent and purposes

of the Zoning Regulations. The requested C-3-C and C-4 zoning is not inconsistent with the Campus Plan, the Comprehensive Plan and the character of the campus and surrounding area. See FOF 49. The PUD provides the flexibility needed to permit the targeted increases in height and density, which allows for the retention of historically-sensitive areas of the campus, lower heights adjacent to existing residential neighborhoods (particularly to the west of campus), and the substantial University commitments regarding limits on off-campus uses and acquisition. See FOF 53, 56-57, 59-61.

89. The Commission also disagrees with the ANC regarding its assertion that any density increase in excess of that permitted by Section 210 as a matter of right will necessarily violate Section 210. Section 210 of the Zoning Regulations only applies to residentially-zoned properties, and the University's proposed density for the remaining residentially-zoned portions of the campus of 3.69 FAR is well within the permitted density of 4.5 FAR under a PUD for properties zoned R-5-D. As stated in the Conclusions of Law, the use of the PUD process is an appropriate land use tool for the Foggy Bottom campus. The Commission credits the testimony of the FBA's planning expert that there is no specific density established for the University's campus by the Generalized Land Use Map of the Comprehensive Plan. Tr. Sept. 28, 2006, at 115.

90. The Commission also disagrees with the ANC that there is no indication that satellite campuses have been considered by the University. To the contrary, the University utilizes satellite campuses, and the Commission credits the testimony of the University regarding its existing satellite campuses both in the District at its Mount Vernon campus and in northern Virginia at its Loudoun County campus. See also Tr. Sept. 21, 2006, at 194. The Commission agrees with the University that, in light of the increasingly important role satellite campuses play in the delivery of higher education, the determination of whether a student enrolled in a creditable course at GW should be included in the definition of Foggy Bottom student enrollment should be based on whether that student maintains a *primary relationship* with the Foggy Bottom campus (as the term *primary relationship* is discussed and detailed more fully in Exhibit B of the Applicant's September 21, 2006 supplemental filing). Ex. 99. The Commission notes that other institutions of higher education in the District of Columbia with satellite campuses do not count the students at such satellite locations within the applicable population counts for the main campus. For these reasons, the Commission affirms the Foggy Bottom student enrollment methodology set forth by the Applicant and OP. See Tr. Sept. 28, 2006 at 142.

91. The Commission disagrees with the ANC that the Applicant's plan is lacking due to the omission of the Square 80 (School Without Walls) PUD and the Square 54 PUD. The University has submitted a plan for developing the campus of a whole as required by 11 DCMR § 210.4. The proposed Campus Plan includes the height, bulk, traffic and parking impacts of the recently-approved Square 80 (School Without Walls) and proposed Square 54 developments, even though these projects were each properly submitted for review by the Commission as separate consolidated PUD applications. See FOF 18.

92. The Commission disagrees with the ANC position regarding the preparation of an EIS. It is well-established in the District that the determination of whether an EIS is required occurs at the building permit stage, and that such a determination is not required as a condition precedent to any zoning decision. See FOF 7.

93. The Commission finds that the ANC's position regarding the text amendment is moot because the proposed text amendment was dismissed. See FOF 5.

94. The Commission credits the testimony of the ANC regarding the benefits of the historic preservation plan. The Commission also credits the testimony of the FBA's planning expert that the historic district, streetscape plan, and retail corridor represent amenities. Tr. Sept. 28, 2006, at 85-87.

95. The Commission credits the testimony of the Applicant and OP regarding the collaborative planning effort that led to the development of the Campus Plan. See FOF 22 – 27. Further, the Commission finds that the carefully balanced and closely interrelated nature of the various components of the Campus Plan, proffered amenities and conditions of approval taken as a whole result in an overall plan for the future of the Foggy Bottom campus that provides shared benefits for all stakeholders.

## CONCLUSIONS OF LAW

### *Compliance with Campus Plan Regulations*

The Applicant is seeking special exception approval, pursuant to sections 210 and 3104 of the Zoning Regulations, for approval of a new campus plan for a period of 20 years. The Zoning Commission is authorized to grant a special exception where in the judgment of the Commission based on a showing through substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. D.C. Code § 5-424(g)(2); 11 DCMR § 3104.1.

The Zoning Regulations specify that the application must be for the “campus as a whole.” 11 DCMR § 210.4. The Commission concludes that the Applicant has met this requirement; specifically, the Applicant has included the use, height, bulk, parking, and zoning of the development of the entire Foggy Bottom campus, including specifically the site which was the subject of the joint DCPS/GW “School Without Walls” project in Square 80, recently approved by the Zoning Commission as a consolidated PUD in Case No. 06-17, and Square 54, which is currently the subject of a consolidated PUD before the Commission in Case No. 06-27. See Tr. Sept. 21, 2006 at 86-87; see also Tr. Sept. 28, 2006, at 120-24.

The Zoning Regulations specify that use as a university in a residential zone shall 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. 11 DCMR § 210.2 In reviewing and deciding a campus plan application, the Commission must consider relevant policies of the District Elements of the Comprehensive Plan. 11 DCMR § 210.7. The Ward 2 Element of the Comprehensive Plan provides that “the University must work closely with the Foggy Bottom community on developing a campus plan. The campus plan should include sufficient dormitory space for the student body on campus to alleviate some of the pressure on housing by students.” 10 DCMR § 1327.1(b).

The Commission concludes that the Applicant has met its burden of showing that the university use will not be objectionable to neighboring property. The Applicant, through its community based planning process, has worked closely with the Foggy Bottom community and the resulting Plan provides additional student housing on campus, in excess of the Campus Plan housing requirement. The Commission further concludes that the proposed conditions will minimize any impacts from existing conditions. Finally, the Commission concludes that the proposed development plan, including the PUD, rezoning and concentration of development primarily at the campus core, will, in conjunction with the proposed conditions, minimize potential impacts from future Campus Plan developments.

The Commission concludes further that the Applications may be considered notwithstanding the fact that the Campus Plan 2000 – 2009 has not yet expired. There is no requirement in the Zoning Regulations that would prohibit the filing or approval of a new campus plan prior to the expiration of an existing campus plan. The Commission retains the inherent authority to approve a new plan at any time when it determines that such a plan 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.

### *Student Enrollment*

The Zoning Regulations specify that the number of students is one factor that the Commission must take into account when assessing whether a university use in a residential zone is likely to become objectionable to the neighboring property. See 11 DCMR § 210.2. The Commission notes that other institutions of higher education in the District of Columbia with satellite campuses do not count the students at such satellite locations within the applicable population counts for the main campus. Given the nature of the delivery of education in a complex institution of higher education with multiple campuses and learning centers, the Applicant has proposed a Foggy Bottom campus enrollment methodology that is based upon whether a student enrolled in a creditable GW course maintains a *primary relationship* with the Foggy Bottom campus (as the term *primary relationship* is discussed and detailed more fully in Exhibit B of the Applicant's September 21, 2006 supplemental filing). The Commission concludes that the Foggy Bottom student enrollment methodology set forth by the Applicant and OP provides the appropriate standard by which to measure student impacts associated with the Foggy Bottom Campus Plan.

Furthermore, the Applicant has demonstrated that it has minimized the impact of the number of Foggy Bottom students on the surrounding residential neighborhoods through its compliance with the existing Campus Plan student housing conditions. The Commission concludes that these conditions should be carried forward to the proposed Campus Plan in order to continue to mitigate the impact of the number of students on neighboring property.

### *Off-Campus Properties*

The Applicant has also proposed new conditions that require the University to transition the use of existing off-campus undergraduate student housing facilities to uses other than undergraduate housing and restrict the University from purchasing off-campus properties in residentially-zoned areas of the Foggy Bottom/West End area for other than investment purposes. These conditions are in direct response to explicit requests made by members of the community and ANC 2A. The Commission concludes that the Campus Plan conditions proposed by GW and OP adequately address the issues of university uses in residential zones off-campus which have been source of concern predating the existing Campus Plan 2000–2009, as well as other issues and concerns raised by ANC 2A.

### *Substantial Compliance*

The Commission concludes the arguments of the ANC/FBA and ZA regarding the term “substantial” are not persuasive. As detailed by the Applicant in its November 15, 2006 supplemental filing, there are numerous examples of provisions of the Zoning Regulations that use both the precise phrase “substantial compliance” (including the Foggy Bottom Campus Plan 2000 – 2009 order and the current American and Georgetown University campus plan orders), as well as phrases similar in intent. These examples demonstrate that the ZC, BZA, and the ZA each have a long-standing history of appropriately exercising their judgment in interpreting the meaning of “substantial compliance.” While a more simplistic, formulaic approach of requiring strict numeric compliance under certain Campus Plan conditions may appear easier to enforce, the complexities of the various compliance issues of each of the 26 proposed conditions necessitate the exercise of discretion and judgment under the “substantial compliance” standard in connection with these Applications.

### *Appropriateness of PUD Zoning Mechanism*

The Commission concludes that the PUD process is an appropriate means of controlling future development of the Foggy Bottom campus in a manner consistent with the best interests of the District of Columbia. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality developments that provide public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is 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 § 2400.2. The Commission has found that the *Foggy Bottom Campus Plan: 2006 – 2025* and accompanying First-Stage PUD offer specific community benefits that significantly advance the public interest.

The Zoning Regulations do not prohibit the application of the PUD process to a campus plan. Further, Section 2405.7 of the Zoning Regulations expressly permit the Commission to approve any use that is permitted as a special exception, including campus plans, and Section 2405.8 permits the Commission to approve any use without even applying the special exception standards. In fact, the PUD process supplements and enhances the protections afforded by the campus plan regulations: it identifies specific development sites, provides 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 substantial project amenities and public benefits in exchange for a higher overall height and density and design flexibility.

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, or yards or courts. Specifically, the PUD process, either through individual PUDs or comprehensively as proposed, can be used by the Commission to increase the density of a campus above that allowed under Section 210. Section 210.3 aggregates the FAR of the residentially-zoned areas of a campus to a total based on the allowable FAR in the district, and not to a specific number (e.g., 3.5). In this case, the R-5-D district that comprises most of the Foggy Bottom 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. Section 210.3 clearly states

that the density limit is “the gross floor area prescribed by the R-5-D district” but does not preclude use of the PUD process to increase the allowable density within an approved campus plan.

Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a two-stage PUD. The two-stage PUD process is appropriate in this case as it involves a large site with multiple building types and complex site planning, transportation, and urban design issues.<sup>6</sup> This first-stage order governs site identification, land use planning, traffic and parking, and similar broad issues. The second-stage PUD process will consist of reviews of more detailed development plans and a determination of consistency with the intent and standards of this first-stage PUD order. Recent examples of approved first-stage PUDs applied to large tracts with multiple building types and complex site planning, transportation, and design issues include Z.C. Order No. 969, Oct. 17, 2002 (MedStar Health—Washington Hospital Center: 33.53 acres); Z.C. Order Nos. 03-12/03-13, Feb. 6, 2004 (Arthur Capper/Carrollsborg: 33 acres); Z.C. Order No. 02-38, July 31, 2003 (Waterside Mall: 13.42 acres); and Z.C. Case No. 05-28, June 12, 2006 (Parkside: 15.5 acres) (order pending).

#### *PUD Term and Vesting*

Pursuant to section 2407.10 and 2407.11 of the Zoning Regulations, the Commission has the authority to specify the period of approval for a first-stage PUD and to provide that the rights and conditions associated with the PUD shall remain in effect for the duration of the full term. The first-stage PUD will have a term of twenty years consistent with the duration of the 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 shall permanently vest. Notwithstanding the foregoing, *all* of the densities and rezonings set forth in the first-stage PUD will permanently vest at such time as seventy percent of the gross floor area of the proposed development plan has been approved through a second-stage PUD within the twenty-year term of the first-stage PUD. In the event the 70 percent threshold is not achieved within the twenty-year term of the first-stage PUD, the remaining approved densities and rezonings would expire at the conclusion of the first-stage PUD, unless otherwise ordered by the Commission or successor zoning authority. 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 proposed commitments, benefits and amenities included in the Applications.

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<sup>6</sup> The Foggy Bottom campus is a suitable PUD site, and the proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1. The Zoning Regulations do not specify a maximum area requirement. The Commission has recently approved first-stage PUDs applying to tracts measuring 33.53 acres (Z.C. Order No. 969) and 33 acres (Z.C. Order Nos. 03-12/03-13).



### *Compliance with PUD Regulations*

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 not 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 as detailed below. Furthermore, the development plan set forth in the Campus Plan and PUD is within the applicable height and bulk standards of the Zoning Regulations. The height and density will not cause an adverse effect on nearby properties, and the campus is well served by major arterial streets, numerous bus lines, and an on-site Metrorail station.

The impact of the proposed PUD on the surrounding area and upon the operation of city services and facilities is acceptable given the quality of public benefits in the project. The proposed PUD will be approved with accompanying conditions that ensure that the development will enhance the neighborhood and ensure neighborhood stability. First-stage approval of the PUD Application will promote the orderly development of the campus in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.

The Commission finds that the Campus Plan and accompanying PUD includes a public benefits and community amenities package that provides superior features that benefit the surrounding neighborhood to a significantly greater extent than development under the campus plan regulations alone would provide. The approval of the Campus Plan and accompanying PUD is not inconsistent with the Comprehensive Plan or with other adopted policies and programs related to the campus.

The proposed PUD and Zoning Map amendment is 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 proposed PUD also furthers the objectives and policies of several of the Major Elements of the Comprehensive Plan:

- 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;
- 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

actually litigated a couple of times whether it should, in fact, be done at this stage. And I don't think we need to revisit it. And I would move that we deny the motion to postpone the case pending preparation. Tr. Sept. 14, 2006, at 9 (emphasis added).

The Commission voted 5-0-0 to dismiss the motion. The issue was also raised in Case No. 03-29, an application by The George Washington University for consolidated review and approval of the recently-constructed Square 103 residence hall. When counsel for Advisory Neighborhood Commission ("ANC") 2A argued that preparation of an EIS was important for the Commission's consideration of the proposed consolidated PUD, the Chairperson of the Commission explained that environmental review is part of the building permitting process and not part of the review that takes place before the Zoning Commission.

- Seventh, the Commission concludes that the ANC and WECA's positions regarding the text amendment are moot because the proposed text amendment was dismissed.

#### *Spot Zoning*

Finally, the Commission concludes that the commercial rezoning included in the Map Amendment does not constitute "spot zoning". The rezoning is consistent with the Comprehensive Plan, and is in keeping with the high density character of the surrounding area. The additional density provided by the rezoning makes possible the significant amenities proffered by the Applicant for the benefit of the public, including the historic district and Campus Plan conditions restricting the University's use and acquisition of off-campus properties. Accordingly, the rezoning does not meet the standards for spot zoning established by the courts. See, e.g., Daro Realty, Inc. v. D.C. Zoning Comm'n, 581 A.2d 295 (D.C. 1990).

- 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.

Finally, the project is highly consistent with the objectives of the Ward 2 Element, including:

- the alleviation of pressures caused by students on the housing stock outside the boundaries of the Campus Plan through the continued construction of on-campus student dormitories, the commitment not to purchase residentially-zoned properties outside the Campus Plan, and the commitment to end the use of existing off-campus facilities as undergraduate residences;
- the inclusion of improvements in landscaping, lighting, and enhanced community policing in the Campus Plan;
- the improvement of the land use mix and urban design qualities of areas around the Foggy Bottom-GWU Metrorail station;
- 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;
- 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
- 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.

#### *ANC 2A*

The Commission is required under D.C. Code § 1-308.10(d) (2001) to give *great weight* to the issues and concerns raised in the recommendations of the affected ANC. The Commission has considered the position of ANC 2A. As set forth above in the Findings of Fact, the Commission finds the ANC's arguments are not persuasive.

- First, the Commission concludes that the University is in compliance with the student enrollment cap, based on the determination of the Zoning Administrator and supporting results of a voluntary independent audit that was conducted and submitted into the record on September 14, 2006. In addition, the Commission concludes that any alleged noncompliance would not be a basis for denying the application for a new Campus Plan.
- Second, the Commission concludes that the PUD and Zoning Map Amendment processes may be applied within the context of the campus plan regulations. Indeed, the Commission notes that three projects within the Foggy Bottom Campus Plan boundaries were developed

pursuant to the PUD process<sup>7</sup>, and a fourth was recently granted approval. Further, the two-stage PUD process offers the Commission an opportunity to address campus development in a comprehensive and thorough manner and specifically allows the Commission to identify individual development sites and designate where additional height and density is most appropriate. Finally, the Commission concludes that the requested zoning map amendment is consistent with the Campus Plan, the Comprehensive Plan, and the character of the campus and surrounding area, and enables the University to target increased density in its central campus core and away from historically sensitive areas of campus and surrounding residential neighborhoods.

- Third, the Commission concludes that the density increase requested by the University does not violate the limits of Section 210. Section 210 only applies to residentially-zoned property within the boundaries of an approved campus plan, and the University's proposed density for the remaining residentially-zoned portions of the campus of 3.69 FAR is well within the permitted density of 4.5 FAR under a PUD for properties zoned R-5-D.
- Fourth, the Commission concludes that GW has made appropriate use of satellite campuses to manage its growth, including the Mount Vernon and Virginia campuses. In light of the increasingly important role that satellite campuses play in the delivery of higher education, the determination of whether a student enrolled in a creditable GW course should be included in the definition of Foggy Bottom student enrollment, is properly based on whether that student maintains a *primary relationship* with the Foggy Bottom campus (as the term *primary relationship* is discussed and detailed more fully in Exhibit B of the Applicant's September 21, 2006 supplemental filing). For this reason, the Commission concludes that the Foggy Bottom student enrollment methodology set forth by the Applicant and OP provides the appropriate standard by which to measure student impacts associated with the Foggy Bottom Campus Plan.
- Fifth, the Commission concludes that the University has submitted a plan for developing the campus of a whole as required by 11 DCMR § 210.4. The Campus Plan includes the height, bulk, traffic and parking impacts of proposed developments for the entire campus, including the recently-approved Square 80 (School Without Walls) project and the pending Square 54 PUD.
- Sixth, as to the argument that an EIS is required, the Zoning Commission and Board of Zoning Adjustment have both repeatedly held—and the D.C. Court of Appeals has affirmed—that environmental review is part of the building permit review process, not the zoning review process, and therefore takes place subsequent to any review by the Zoning Commission or Board of Zoning Adjustment. As stated at the opening of the instant proceedings, on a preliminary motion regarding this issue:

I think our position should be as it has been in the past that this is – that we are not the lone agency in these matters. This has been

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<sup>7</sup> These properties include 2000 Pennsylvania Ave., N.W. (Z.C. Order No. 339), 1957 E St., N.W. (Z.C. Order No. 712), and the Potomac House (Z.C. Order No. 03-29).

actually litigated a couple of times whether it should, in fact, be done at this stage. And I don't think we need to revisit it. And I would move that we deny the motion to postpone the case pending preparation. Tr. Sept. 14, 2006, at 9 (emphasis added).

The Commission voted 5-0-0 to dismiss the motion. The issue was also raised in Case No. 03-29, an application by The George Washington University for consolidated review and approval of the recently-constructed Square 103 residence hall. When counsel for Advisory Neighborhood Commission ("ANC") 2A argued that preparation of an EIS was important for the Commission's consideration of the proposed consolidated PUD, the Chairperson of the Commission explained that environmental review is part of the building permitting process and not part of the review that takes place before the Zoning Commission.

- Seventh, the Commission concludes that the ANC and WECA's positions regarding the text amendment are moot because the proposed text amendment was dismissed.

### *Spot Zoning*

Finally, the Commission concludes that the commercial rezoning included in the Map Amendment does not constitute "spot zoning". The rezoning is consistent with the Comprehensive Plan, and is in keeping with the high density character of the surrounding area. The additional density provided by the rezoning makes possible the significant amenities proffered by the Applicant for the benefit of the public, including the historic district and Campus Plan conditions restricting the University's use and acquisition of off-campus properties. Accordingly, the rezoning does not meet the standards for spot zoning established by the courts. See, e.g., Daro Realty, Inc. v. D.C. Zoning Comm'n, 581 A.2d 295 (D.C. 1990).

## 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 special exception approval of the *Foggy Bottom Campus Plan: 2006 – 2025* (“**Campus Plan**”) and first-stage review of a planned unit development (“**Campus Plan PUD**”) and related amendment to the Zoning Map for The George Washington University Foggy Bottom Campus.

The approval of the Campus Plan is subject to the proposed conditions of approval of the *Foggy Bottom Campus Plan: 2006 – 2025* as set forth in Appendix A hereto. Furthermore, the Campus Plan PUD is subject to the following conditions:

1. The development sites shall be limited to those identified in Exhibit A of the Campus Plan PUD.
2. This first-stage PUD approval by the Zoning Commission shall be valid for a period of twenty years from the effective date of this order. 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. Notwithstanding the foregoing, *all* of the densities and rezonings set forth in the first-stage PUD will permanently vest at such time as seventy percent of the gross floor area of the proposed development plan has been approved through a second-stage PUD within the twenty-year term of the first-stage PUD.
3. The zoning that shall accompany the PUD shall be consistent with that shown on Exhibit C of the Campus Plan PUD.
4. The additional gross floor area achieved under the PUD shall be consistent with the Tabulation of Development Data detailed in Exhibit B of the Campus Plan PUD.
5. The lot occupancy for each development site shall be consistent with the Tabulation of Development Data detailed in Exhibit B of the Campus Plan PUD.
6. The maximum building heights for the proposed development sites shall be consistent with Exhibit K of the Campus Plan.
7. The University shall submit a second-stage PUD application for each development site identified in Exhibit A of the Campus Plan PUD consistent with Condition 6 of the Campus Plan and subject to Condition 7 of the Campus Plan.
8. No building permit shall be issued for this PUD until the Applicant has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General for the District of Columbia and the Zoning Division of the Department of Consumer and Regulatory Affairs (“**DCRA**”). Such covenant shall bind the Applicant and all successors in title to construct on or use the property in accordance with this order and any amendment thereof by the Zoning Commission.

9. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
10. The zoning designations approved herein shall not become effective until the covenant required by 11 DCMR 2409.3 has been recorded.
11. 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. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.

On \_\_\_\_\_, 2006, the Zoning Commission approved the application by a vote of \_\_\_\_\_. This order was adopted by the Zoning Commission at its public meeting held on \_\_\_\_\_, by a vote of \_\_\_\_\_.

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 \_\_\_\_\_.

\_\_\_\_\_  
Carol J. Mitten, Chairman  
Zoning Commission

\_\_\_\_\_  
Jerrily R. Kress, FAIA  
Director, Office of Zoning

## **Appendix A**

### **Conditions of Approval of the *Foggy Bottom Campus Plan: 2006 - 2025***

The Campus Plan conditions proposed by GW and the Office of Planning are the result of many hours of collaboration and effort, informed by community input and feedback. This effort was aimed not only to clarify and strengthen the language of conditions from the Campus Plan 2000 – 2009, but also to develop additional conditions that, together with the other components of the Campus Plan, provide a carefully balanced and closely integrated overall plan for the future of the Foggy Bottom campus. The result is a comprehensive Campus Plan and proposed conditions of approval which together provide shared benefits and an appropriate level of certainty for all stakeholders.

The conditions are substantially consistent with Exhibit Y of the Campus Plan and the OP setdown and final reports to the Zoning Commission (Ex. 23, 51), with limited changes to the following conditions, in response to issues raised throughout the Campus Plan hearings and filings submitted by West End Citizens Association (Ex. 206) and the Foggy Bottom Association/ANC 2A (Ex. 207):

- Condition 6 (regarding an established notice period to the Advisory Committee with respect to of second-stage PUD applications)
- Condition 8 (regarding contract purchaser transactions with respect to the acquisition of off-campus properties)
- Condition 11 (regarding the faculty and staff population definition)
- Condition 17 (regarding publication of “hotline” information)
- Condition 20 (regarding the implementation of the Historic Preservation Plan)
- Condition 21 (regarding the implementation of the Streetscape Plan)
- Condition 22(d) (regarding the student parking policy)
- Condition 23 (regarding the Transportation Management Plan)
- new Condition 24 (regarding potential second entrance for Foggy Bottom-GWU Metrorail station)
- new Condition 27 (regarding compliance with conditions requiring the action of third parties)
- new Condition 28 (regarding the Applicant’s submission of a revised copy of the Campus Plan and Campus Plan PUD)
- and renumbered Conditions 25 and 26 (as a result of new Condition 24).

Additional language is noted in brackets so it can be clearly identified.

#### **GENERAL CONDITIONS**

1. The Applicant’s proposed campus plan replaces the George Washington University Foggy Bottom Campus Plan: Years 2000 through 2009. This campus plan is approved until June 30, 2025, subject to the following conditions, or until such time prior to June 30, 2025 as the Zoning Commission determines that conditions warrant submission of a campus plan amendment or an updated campus plan.



*In light of the level of planning involved in this plan as well as the scope of the proposed development and the commitments the University has made, the twenty-year term is appropriate. The twenty-year term, coupled with the vesting provision of the Campus Plan PUD, 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 proffer all of the proposed commitments, benefits and amenities included in the Applications. The twenty-year term also provides members of the community with a level of certainty and predictability with respect to future campus development, and establishes the same long-term time horizon with respect to the proposed conditions limiting the future use and acquisition of off-campus properties.*

2. The Applicant will not initiate litigation challenging Zoning Commission action which approves the Foggy Bottom Campus Plan: 2006 – 2025 as submitted by the University, including these Conditions 1-26, so long as such approval is not contingent on additional conditions to which the Applicant has not specifically agreed.

*The Office of Planning strongly advocated for the inclusion of this condition to reinforce the University's commitment to the Foggy Bottom Campus Plan: 2006 – 2025 and proposed conditions which together represent the joint effort of GW, OP and the community to identify and address as many issues as possible and create an overall Plan that benefits all stakeholders. It is in all parties' best interests to avoid protracted litigation in the future, and this collaboratively-developed and balanced Plan and the accompanying conditions provide that opportunity.*

3. The campus plan boundary for the Foggy Bottom Campus Plan: 2006 – 2025 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 proposed Foggy Bottom Campus Plan: 2006 – 2025 and are specifically identified and listed in Appendix 2 attached hereto.

*From the earliest stages of this process, the development plan set forth in the Foggy Bottom Campus Plan: 2006 – 2025 has been aimed at accommodating GW's forecasted academic and student housing space needs within the Campus Plan boundaries. In an effort to maintain consistency with the existing Campus Plan where possible, the Campus Plan does not make any changes to the existing Campus Plan boundaries.*

4. New development on campus resulting in additional density or change in use shall substantially conform with the approved campus plan (as set forth in Condition 1), with the exception of minor renovation projects including those necessary to address building code compliance.

*As a result of the PUD zoning mechanism, future campus development is limited to those locations identified in the development plan and PUD, providing certainty and predictability to all stakeholders with respect to future campus development. The only limited exception to the application of this requirement is for minor renovation projects (e.g., the addition of an elevator or stair tower necessary for building code compliance or other exigent circumstances) that do not result in a substantial increase to the overall campus gross floor area. Under the existing*

*Campus Plan regulations alone, the University would not be subject to this level of specificity with respect to the location of new campus development.*

5. The University shall notify the Office of Planning, ANC 2A, and the Advisory Committee (established pursuant to Condition 9) 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.

*This condition reflects the University's commitment to continue its engagement with District agencies and interested stakeholders, including members of the Foggy Bottom and West End communities, with respect to future campus development projects. This collaboration has resulted in significant and positive changes to the development plan as it evolved throughout the planning process. The condition further underscores the need for an active Advisory Committee to provide a forum for continued discussion moving forward as the Campus Plan is implemented.*

6. The University shall submit a second-stage Planned Unit Development application for each new development the University proposes over the term of the Foggy Bottom Campus Plan: 2006 – 2025. Each application shall include the following:
  - a. Demonstration of compliance with applicable provisions of the zoning regulations and the contents of the approved Foggy Bottom Campus Plan: 2006 – 2025;
  - 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 the Office of Zoning and the Zoning Administrator. Information included in the report shall be broken down by zoning district and include the following: existing FAR, FAR 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 25) evidencing compliance with the approved Foggy Bottom Campus Plan: 2006 – 2025, 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 21;
- h. The number of off-street parking spaces within the campus plan boundaries as set forth in Condition 22(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;
- i. A status report on the Transportation Management Program required by Condition 23; and
- j. Demonstration that the project has been presented to the Advisory Committee (as the Committee is defined in Condition 9 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.]

*This condition specifies the second-stage PUD filing requirements for each future campus development project (in addition to the statutory requirements). These additional requirements included at the suggestion of the Office of Planning, will provide additional relevant information to readily demonstrate the University's compliance with key Campus Plan conditions for the benefit of the Zoning Administrator, Zoning Commission, ANC 2A, Advisory Committee, and other interested stakeholders. This condition reinforces that continued and consistent transparency with respect to the reporting of clearly-specified data will help maintain the confidence of all parties in the implementation of the Campus Plan through the District's regulatory process.*

*In response to a comment raised by WECA, a minimum thirty-day notice period has been defined with respect to presentation of a second-stage PUD project to the Advisory Committee (subsection j).*

- 7. No PUD application filed by the University for second-stage review under the Foggy Bottom Campus Plan: 2006 – 2025 may be granted unless the University is in substantial compliance with Conditions 1-26 set forth herein as demonstrated by the most recently filed Foggy Bottom Campus Plan Compliance Report submitted to the Zoning Administrator. Further, any violation of these Conditions shall be 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 Civil Enforcement Act, D.C. Code §§ 6-2701 to 6-2723.

*Condition 7 carries forward the final condition of the 2000 Campus Plan providing recourse for the Zoning Administrator and Zoning Commission in the event GW should not maintain compliance with any condition of the Campus Plan. In his testimony, the Zoning Administrator indicated a preference to delete "substantial" from this condition. While understandable from*

*the perspective of simplifying future compliance monitoring, this modification does not adequately allow for the necessary flexibility to address the wide array of compliance issues that may arise with respect to the various conditions over the twenty-year term of the Campus Plan. Therefore, "substantial compliance" remains the appropriate standard upon which to measure Campus Plan compliance.*

8. The University will not purchase, [either directly or as a contract-purchaser], 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, 19<sup>th</sup> Street to the east, and Constitution Avenue to the south) for university use. This commitment would not preclude the purchase of any properties for investment purposes; however, it would restrict the University from purchasing 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.

*Condition 8 includes a significant commitment made by the University at the behest of the Office of Planning with respect to the future acquisition and use of off-campus residentially-zoned properties within the Foggy Bottom/West End area. This condition also directly responds to concerns raised by ANC 2A in connection with the Campus Plan 2000 – 2009 case. The University is in a position to make this substantial commitment at this time as a result of the opportunities created by the scope of the proposed development plan, as well as the balance provided by the Campus Plan and proposed conditions as a whole.*

*In response to a question raised by counsel for ANC 2A and the Foggy Bottom Association, the language of the condition has been expanded to include contract purchaser transactions (see bracketed language above).*

#### ADVISORY COMMITTEE

9. The University will 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
    - ii. reviewing new University proposals to develop sites on the Foggy Bottom Campus.
  - b. Composition, Administrative Procedures & Meeting Format
    - i. The Advisory Committee shall consist of ten members: five representatives of the University to be selected by GW and five representatives of the community to be selected by ANC 2A. The ANC