

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION CORRECTED¹ ORDER NO. 06-11G/06-12G1

Z.C. Case No. 06-11G/06-12G

The George Washington University Foggy Bottom Campus
(Modification of a First-Stage Planned Unit Development (“PUD”) and Approval of a
Second-Stage PUD @ Square 75)
February 25, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on November 15, 2012, to consider an application of The George Washington University (“University”) for the review and approval of second-stage approval of an approved PUD and modification to the approved first-stage PUD and related amendment to the Zoning Map. The Commission considered the application pursuant to Chapter 24 and Chapter 30 of the District of Columbia 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. The Commission approves the application, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, Hearing, and Post-Hearing Submissions

1. The property that is the subject of the application is located in Square 75, Lots 23, 33, 34, 41, 42, 47, 863, and a portion of a public alley to be closed (the “Property”).²
2. In February 2012, the University submitted an application for second-stage PUD approval of the Property. The University sought approval to develop an 11-story commercial office building. The University concurrently applied for approval of a modification of the approved first-stage PUD and related Zoning Map amendment to incorporate Lot 863 and a portion of a public alley into the first-stage PUD (together, with the second-stage PUD application, the “Application”). (Exhibit [“Ex.”] 2.) The University supplemented the Application on July 17, 2012 to incorporate affordable housing as a public benefit of the PUD. (Ex. 10.)

¹ Decision paragraph 11 is being corrected to reflect the correct addresses of the third property listed; it was incorrectly listed as 2148 F Street, N.W. instead of 2150 F Street, N.W.

² Subsequent to filing of the Application, the University made certain modifications to the configuration of the proposed alley closure and dedication. As a result of these changes, a small portion of Lot 864 was also incorporated into the PUD Site.

3. The Application was set down for a public hearing at the Commission's July 30, 2012 public meeting. Notice of the public hearing was published in the *D.C. Register* on August 31, 2012 and was mailed to Advisory Neighborhood Commission ("ANC") 2A and to owners of property within 200 feet of the second-stage PUD site.
4. A public hearing was conducted on November 15, 2012. The Commission accepted Jeff Barber as an expert in the field of architecture and Jami Milanovich as an expert in the field of traffic engineering. The University provided testimony from these experts as well as from Alicia Knight, the University's Senior Associate Vice President for Operations.
5. In addition to the University, ANC 2A was automatically a party in this proceeding. The Commission also granted a request for party status in opposition to the application from the West End Citizens Association ("WECA") and the Foggy Bottom Association ("FBA"). (Ex. 20, 27.) The President Condominium Association, Inc. ("President") also submitted a request for party status in opposition, but withdrew the request based on the Applicant's proposed revisions to the Project. (Ex. 23, 37.)
6. At the hearing, the Commission heard testimony and received evidence from the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), the Department of Housing and Community Development ("DHCD"), ANC 2A, WECA, and FBA regarding the Application.
7. The Commission also heard testimony from area residents, students, and alumni in support of the application. Other than ANC 2A, WECA, and FBA, no other person or party testified in opposition to the Application.
8. At the close of the hearing, the Commission asked the University to refine the proposed affordable housing commitment and transportation demand management monitoring program, provide a copy of the settlement agreement with the President, and continue to engage ANC 2A in dialogue regarding the Project.
9. On December 21, 2012, ANC 2A filed a supplemental resolution regarding the Project. (Ex. 49.)
10. On December 28, 2012, the Applicant submitted its draft findings of fact and conclusions of law. (Ex. 51.)
11. On December 31, 2012, the University filed its post-hearing submission addressing the Commission's comments, responding to ANC 2A's supplemental resolution, and attaching revised plans. (Ex. 50.)

12. On January 3, 2013, DDOT submitted a request to reopen the record and a supplemental report. (Ex. 52, 53.)
13. On January 3, 2013, WECA submitted its response to the Applicant's post-hearing submission. (Ex. 54.)
14. On January 7, 2013, FBA submitted its response to the Applicant's post-hearing submission. (Ex. 55.)
15. On January 14, 2013, the Applicant submitted a request to re-open the record, a letter stating that it had agreed to use DHCD's form affordable housing covenant for the Project, and attached the covenant. (Ex. 56.) The Applicant submitted a second request to re-open the record, a letter stating that it agreed with DDOT regarding the transportation performance monitoring program, and the document memorializing the program. (Ex. 57.)
16. At its public meeting on January 14, 2013, the Commission took proposed action to approve the Application and plans that were submitted into the record.
17. At the January 14, 2013 public meeting, the Commission issued a procedural order directing the Applicant to submit a final list of the project's proffered benefits and amenities and draft conditions, and stipulating deadlines for the District of Columbia Office of the Attorney General ("OAG"), OZ, and OP, as well as the parties to submit comments on the proposed conditions. The order stated that the responses should be limited to the issue of whether the proposed conditions are specific and enforceable as to the proffers to which they relate. (Ex. 58.) On January 22, the Applicant submitted its responsive filing. (Ex. 61.) On January 29, OAG submitted comments to the Applicant. On February 4, 2013, the Applicant submitted its revised final list of proffers and conditions. (Ex. 62.) On February 8, 2013, WECA submitted its response to the Applicant's filing. (Ex. 63.) On February 11, 2013, ANC 2A submitted a response to the Applicant's filing. (Ex. 64.)
18. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the Home Rule Act. The Executive Director of NCPC, by delegated action dated February 14, 2013, found that the proposed PUD would not be not inconsistent with the Comprehensive Plan for the National Capital, nor would it adversely affect any other identified federal interests.
19. The Commission took final action to approve the Application on February 25, 2013.

First-Stage PUD Approval

20. In Z.C. Order No. 06-11/06-12, the Commission concurrently approved a new campus plan and first-stage PUD for the Foggy Bottom Campus (the “Campus Plan/PUD”). The Campus Plan incorporated a plan for developing the campus as a whole by concentrating height and density within the central campus core. The first-stage PUD is coterminous with the approved boundaries for the Foggy Bottom Campus, and includes all properties that were owned by the University at the time of approval of the Campus Plan/PUD. The approved first-stage PUD identified 16 development sites for future development as well as the uses, height, gross floor area, and lot occupancy for each development site.
21. The Property that is the subject of the Application is located in the C-3-C Zone District. The western portion of the Property was identified as Development Site 75A in the first-stage PUD and called for a building devoted to commercial/investment use with a height of 130 feet, lot occupancy of 100%, and gross floor area of 122,990 square feet (or a 10.0 floor area ratio (“FAR”) on Site 75A).
22. The first-stage PUD approved the rezoning of certain development sites in order to permit the University to achieve the height and density needed to achieve its forecasted academic and student housing needs. The first-stage PUD approved a PUD-related rezoning of the Development Site 75A to the C-4 Zone District.³

Modification of the First-Stage PUD

23. The University requested approval of a modification of the first-stage PUD in order to incorporate the eastern portion of the Property, which is improved with a commercial office building recently vacated by its primary tenant. The eastern portion of the Property is currently located in the C-3-C Zone District.
24. The University proposed rezoning of the eastern portion of the Property to the C-4 Zone District and development to a height of 130 feet, FAR of 10.0 and lot occupancy of up to 100%. The proposed zoning and development parameters are consistent with the zoning and parameters already approved for the western portion of the Property. The proposed modification provides the University with an opportunity to redevelop the Property with a more efficient footprint and floorplate that corresponds with market needs.

³ Pursuant to § 2028.9, that map amendment will not become effective until completion of the process required by chapter 24 and upon filing with the District of Columbia a covenant ensuring compliance with approved plans.

Alley Relocation

25. The first-stage PUD called for the relocation of the existing alley entrance that runs north-south from I Street, N.W.
26. In the Application, the University indicated that it would seek approval from the D.C. Council for adjustments to the public alley system in the square, including the relocation of the north-south portion of the public alley. At the public hearing, the University indicated that pursuant to an agreement with the President, the University agreed to maintain the north-south portion of the public alley in the current location at this time. Adjustments to the public alley would be limited to changes that would improve vehicular traffic flow within the alley and create a more efficient footprint and floorplate for the PUD. The adjustments will not increase the size of the Property or decrease the amount of public alley in the square. The University stated that it may seek a further relocation of the alley in the future, subject to applicable reviews by the D.C. Council and District agencies.

Second-Stage PUD Approval

Overview of the Property

27. The Property is a rectangular parcel located midblock along Pennsylvania Avenue, N.W. The western portion of the Property is currently improved with six low-scale rowhouses that are generally used for commercial retail and university uses. The eastern portion of the Property is improved with an eight-story commercial office building.
28. To the south of the Property, in Lot 858, are low-scale buildings that are generally used for university uses. Pursuant to the approved first-stage PUD, Lot 858 is proposed to be consolidated with adjacent property to the east to create another development site, Site 75B.
29. Surrounding uses include the 12 Burns Memorial Building and the Ambulatory Care Center to the west, an eight-story commercial office building to the east, and the President, a nine-story condominium building to the south. The President is the only non-University owned property in the Square. To the north, across Pennsylvania Avenue, is the 130-foot tall headquarters of the International Finance Corporation, a division of the World Bank.
30. The entrance to the Foggy Bottom-GWU Metrorail station is located approximately two blocks from the Property.

The Project

31. The University sought approval to develop the property for commercial uses as an 11-story office building (the “Project”). The Project also includes approximately 154 underground parking spaces and approximately 6,637 square feet of ground-floor retail use fronting Pennsylvania Avenue.
32. At the hearing, the University’s representatives explained that the Project will generate non-enrollment driven revenue that will support the University’s academic mission and permit the development of future academic sites and improvements outlined in the first-stage PUD. Such investment use was explicitly called for in the first-stage PUD. The University expects to select a development partner to construct the Project.
33. The architect provided a detailed description of the building design intent, façade design, materials selection, and surrounding context. The architect noted that the massing, scale and façade design are appropriate given the prominent Pennsylvania Avenue location. The proposed design employs many of the primary massing strategies used to moderate the scale of other successful large contemporary buildings along or near Pennsylvania Avenue.
34. The design also features an articulated two-story base as well as ground-floor retail uses that will provide human scale and improve the pedestrian experience. Representatives of the University testified that the Project would notably increase the amount of retail street frontage along Pennsylvania Avenue.
35. The rear of the building has also been fully designed; it incorporates an upper-story setback and other features to break down the building mass. The proposed Project will be further away from the President than the current office building. The University provided shadow studies that demonstrated the Project would not cast shadows on the President.
36. The Property is currently covered with impervious building and paving. The proposed Project will minimize environmental impacts, particularly compared to existing conditions. Specific features cited by the University’s representative include green and white roofs for the building. The University testified that it is targeting the equivalent of a Gold rating under the US Green Building Council’s LEED 2009 for Core and Shell rating system. The project will be designed to capture 1.2” of rainfall (exceeding current District Department of the Environment (“DDOE”) standards).
37. Consistent with DDOT standards, the Project’s parking and loading will be accessed from the public alley system at the rear of the Property. The alley system will be widened to minimize existing conflicts and facilitate safer and more convenient movement for truck deliveries not only to the Project but also to other uses within the square.

38. Streetscape improvements will be constructed along the Pennsylvania Avenue frontage.
39. The total gross floor area for the Project is approximately 250,000 square feet for a total density of approximately 10.0 FAR and a lot occupancy of approximately 95%. The building will reach a maximum height of approximately 130 feet.
40. The University requested flexibility from the court and rear yard requirements in order to accommodate the proposed design of the building relative to the underlying lot.⁴
41. In connection with the Project, the University will also construct improvements on other properties not included in the PUD site. Specifically:
 - a. The University will construct a new stair tower for the commercial office building located to the east of the Property on Lot 861, on land that will be reallocated to that parcel; and
 - b. The University will demolish the existing improvements on Lot 858 to permit widening of the public alley. The demolition of these properties was also called for in the first-stage PUD for the future development of Site 75B.

Project Amenities and Public Benefits

42. The project amenities and public benefits of the PUD were proffered and accepted in conjunction with the Campus Plan/PUD process.
 - a. In the Campus Plan/PUD Order, the Commission recognized that the University had developed its first-stage PUD, including the identification of project amenities and public benefits for the surrounding community, through a comprehensive community-based planning process that engaged a variety of stakeholders to elicit input and feedback. Z.C. Order No. 06-11/06-12 at 18 (FOF 71). During that proceeding, many persons and organizations, including residents of the surrounding neighborhoods, testified in support of the proposed benefits and amenities; and (See *id.* at 24 (FOF 96).)
 - b. In approving the Campus Plan/PUD, the Commission found that the proposed increases in height, density, and lot occupancy and related changes in zoning, were appropriate and concluded that the value of the project amenities and public benefits were acceptable in light of the degree of development incentives

⁴ The initial Application requested relief from the court requirements. At the public hearing, the University amended its request to include relief from the rear yard requirements, which was required after the University had adjusted the location of the public alley pursuant to the private settlement agreement with the President.

requested. (Z.C. Order No. 06-11/06-12 at 25 (COL 4).) On appeal, the D.C. Court of Appeals sustained the Commission's decision, specifically holding that the record contained substantial evidence to support the Commission's decision regarding the sufficiency of the amenities package. (*Foggy Bottom Ass'n v. D.C. Zoning Comm'n*, 979 A.2d 1160, 1172 (D.C. 2009).)

43. The University indicated in its written submissions and at the public hearing that it had started to implement many of these public benefits and project amenities pursuant to the conditions of approval of the Campus Plan/PUD Order, including:
- a. Transitioning the use of off-campus properties to uses other than undergraduate housing;
 - b. Refraining from purchasing residentially zoned properties in the Foggy Bottom/West End neighborhoods for university uses;
 - c. Designating six University properties as historic landmarks, including the Burns Memorial Building located on Square 75 adjacent to the proposed Project, and submitting the materials required for the District's Historic Preservation Office to create the campus historic district;
 - d. Developing and submitting a final campus streetscape plan to DDOT; and
 - e. Creating the Campus Plan Advisory Committee, with regular quarterly meetings since 2007.

The University also testified that it had recently submitted a minor modification to the Campus Plan/PUD Order, together with ANC 2A, that would encourage ANC 2A participation in the Advisory Committee.

44. In conjunction with the Project, the University agreed to provide additional public benefits commensurate with and proportional to the additional 44,275 square feet of net new gross floor area obtained through the proposed modification of the first-stage PUD to incorporate Lot 863 (that is, the increase from the 6.5 FAR permitted as a matter of right in the C-3-C Zone District to the 10.0 FAR permitted as a matter of right in the C-4 zoning sought in connection with the first-stage PUD modification).
45. As detailed in the University's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits that were either approved as part of the first-stage PUD or added pursuant to the proposed first-stage PUD modification:

- a. Exemplary urban design, architecture, and landscaping, including high-quality materials, pedestrian-oriented landscape improvements, clear separation of pedestrian and vehicular entrances and circulation patterns, and sustainable features;
- b. Site planning and efficient land utilization, through the redevelopment of a strategic underutilized site located along Pennsylvania Avenue within two blocks of a Metrorail station;
- c. Effective and safe vehicular and pedestrian access and transportation management measures. Specific features include:
 - i. Replacement of the existing uncoordinated loading and service activities associated with the retail and other tenants on the Property with one centralized loading and service area for the Project;
 - ii. Widening of the public alley and improved vehicular turning movement within the square;
 - iii. A loading management plan that includes a dock manager and peak hour delivery restrictions, which will regulate service and delivery activity and reduce potential vehicular conflicts and other adverse impact;
 - iv. Transportation demand management features, such as bicycle parking spaces; and
 - v. A detailed post-occupancy monitoring study;
- d. Environmental benefits, including green roof and white roof, specific building systems and design features that will reduce the overall energy demands and water usage, as well as a goal of achieving a minimum of the equivalent of a Gold rating under the LEED-CS 2009 rating system and a design intended to capture 1.2” of rainfall (exceeding current DDOE standards); and
- e. Uses of special value, including:
 - i. Approximately 7,209 square feet of affordable housing along F Street;
 - ii. Approximately 6,637 square feet of ground floor retail fronting Pennsylvania Avenue;
 - iii. Contribution of \$50,000-55,000 in landscaping and buffering improvements for the benefit of the President Condominium;

- iv. Contribution of \$100,000 to rent for office space for the Foggy Bottom/West End Village;
- v. Contribution of \$100,000 to the development and installation of a real-time transportation information board;
- vi. Contribution of \$50,000 to fund a fellowship position at the Francis-Stevens Education Campus;
- vii. Contribution of \$1,000 to the Francis-Stevens Parent-Teacher Association to support the PTA's marketing efforts to promote enrollment; and
- viii. Additional tax revenue for the District of Columbia.

Affordable Housing

- 46. As a key public benefit of the PUD, the University agreed to rehabilitate three existing uninhabitable rowhouses located at 2142, 2146, and 2150 F Street, N.W. as affordable housing, for a total of approximately 7,209 square feet of affordable housing. The University proffered the affordable housing program in response to a request from OP to provide affordable housing consistent with the housing linkage requirements even though the project was not subject to such requirements. (Ex. 10, 11.)
- 47. Location. The three rowhouses are owned by the University and located outside the campus boundaries in a residential zone district. The properties are located within the proposed Foggy Bottom campus historic district. To implement the affordable housing, the University agreed to contribute the value of the existing land and buildings (approximately \$2.5 million) and the approximately \$1 million worth of capital improvements necessary to rehabilitate the properties, as well as forego an estimated \$2 million worth of revenue that would have been generated by the property if operated as a market rate housing project, over the 30-year life of the affordable housing project.
- 48. Unit Type. The affordable housing consists of seven units within the three rowhouses, and includes a mix of one, two, and large three-bedroom units.
- 49. Term. The proposed affordable housing will be completed prior to the issuance of a certificate of occupancy for the Project and will be set aside for a term of 30 years.
- 50. Level of Affordability. The University originally proffered a mix of units set aside for households earning up to 80% AMI and 95% AMI. Prior to the public hearing, the University agreed to set aside all units for households earning up to 80% AMI.

51. Maximum Rent.

- a. The University originally proposed setting the maximum rent charged for each unit at 35% of household income (“HHI”) less the standard utility expense (meaning that the maximum rent has been adjusted downward to account for utility expenses);
 - b. At the hearing, DHCD expressed a preference for maximum rents of 30%, inclusive of utilities, based on the agency’s desire to implement uniform standards to streamline the administration of affordable units;
 - c. In a post-hearing submission and in response to comments from the Commission and DHCD, the University agreed to set the maximum rent charged for each unit at 30% HHI, exclusive of utilities. The University explained that, given the significant investment required to implement the affordable housing program, the University has not been able to modify the program to the full extent requested because additional costs would threaten the economic viability of the affordable housing program, which is budgeted to operate at a break-even level on an annualized basis following its inception; and
 - d. In its post-hearing submission, the University provided evidence that the total housing cost (including utility expense) for each unit will remain below the total housing cost standard of 38% HHI. The University also noted energy-efficient construction practices, including delivery of Energy-Star appliances and energy efficient building systems, which will be applied in the rehabilitation of the properties, will further reduce the total housing costs associated with the affordable units;
52. Further elaboration of the Applicant’s affordable housing program is set forth in Exhibit 50, Tab A of the Record (the “Affordability Requirements.”)
53. In response to concerns raised by the ANC and the other parties regarding the administration of the affordable housing program, the Applicant agreed to utilize a covenant similar in form to DHCD’s form affordable dwelling unit covenant (“ADU Covenant”). (Ex. 56A.) The ADU Covenant would bind the University to comply with the Affordability Requirements, which would be attached thereto. The administrative provisions of the ADU Covenant could be modified if accepted by both the University and DHCD.
54. The Commission finds that the proposed terms of the affordable housing program, including the maximum rent to be charged, represents a significant public benefit of the

PUD, particularly given the unique size, type, and location of the affordable housing units.

Transportation Issues

Traffic

55. The road network surrounding Square 75 consists of two two-way streets and two one-way streets. Two of the four street intersections are currently signalized; DDOT plans to install a signal at a third intersection in the near term as a result of payments made in connection with Z.C. Order No. 06-27.
56. The Project is located near several modes of transportation, including the nearby Foggy Bottom-GWU Metrorail station, Metrobus and D.C. Circulator lines, shuttle buses, bicycle facilities, a connected and developed urban network of pedestrian sidewalks and paths, and a connected network of arterial, collector, and local streets.
57. The University's traffic expert submitted a detailed transportation impact analysis that concluded that the proposed Project would not generate an adverse traffic impact on the surrounding roadway network or cause objectionable impacts in the surrounding neighborhood due to traffic or parking impacts. The University's traffic consultant also concluded that the location of the parking and loading entrances would accommodate the parking and loading needs for the Project and not generate adverse or objectionable impacts on neighboring property.
58. Prior to the hearing, DDOT submitted a late report that was accepted by the Commission and recommended that the University revise the transportation analysis to address "relatively minor" errors; reduce the number of parking spaces; provide an acceptable loading management plan; agree to establish goals for the TDM program and monitor the Project post-occupancy to ensure those goals are met; and revise the crash rate analysis.
59. At the public hearing, the University's traffic expert testified that the University had agreed to reduce the number of parking spaces, provide a detailed loading management plan that included restrictions on peak hour deliveries to the Project, agreed to maintain the alley in its current location at this time, and agreed to conduct a post-occupancy monitoring survey, all in response to the comments made by DDOT. The University's traffic expert concluded that the additional measures further reduced the projected traffic impacts of the Project. At the hearing, DDOT clarified that it did not oppose the Project and generally agreed with the University's traffic expert that the agreement to maintain the alley in the current location at this time and reduction in parking addressed DDOT's concerns regarding the alley location and the number of parking spaces.

60. The University's traffic expert also provided a supplemental analysis that addressed the remaining comments made in the DDOT report. The University's traffic expert concluded that initial analysis had been conducted in conformance with accepted engineering practices that conform with traffic studies typically submitted to the Commission. Only three intersections demonstrated a potential significant impact, and the transportation analysis proposed mitigation measures that would address these potential impacts. The University's traffic expert also concluded that even if the initial analysis had resulted in the errors alleged by DDOT, such errors were harmless because they resulted in a more conservative transportation analysis that overestimated the potential impacts of the Project yet still concluded that the Project would not generate adverse or objectionable impacts. The supplemental analysis also provided the revised crash rate analysis.
61. In a post-hearing submission and in response to comments from the Commission and DDOT, the University agreed to enhance its post-occupancy transportation performance monitoring plan, and the revised plan. (Ex. 57.) The University's proposed plan sets an ambitious vehicle trip reduction goal that exceeds the trip reduction estimate for the Foggy Bottom-GWU Metrorail station as well as trip reduction rate actually measured at the nearby Square 54 development. Annual monitoring studies will be conducted for a period of two to six years; if goals are met for two consecutive years then monitoring will cease, but if the goal is not met, then monitoring will continue and additional steps will be taken.
62. The Project will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the University's traffic expert:
 - a. The Commission finds that the Project will not impose adverse or objectionable impacts on the surrounding transportation network. The Commission credits the findings of the University's traffic expert that the Project will not create any adverse impacts when compared with future background conditions. The Commission finds that the scope and methodology of the transportation study was adequate and concludes that, to the extent that the study contained any of the errors alleged by DDOT, such errors were harmless because, as the University's traffic expert and DDOT itself both noted, the resulting study tended to be more conservative and overestimated the potential traffic impacts of the Project;
 - b. The Commission finds that the proposed reduction in the number of parking spaces addresses DDOT's concerns regarding traffic impacts as well as transportation demand management and concludes that the number of parking spaces will not result in adverse or objectionable conditions. The Commission credits the evidence presented by the University that the amount of parking was in line with similar projects elsewhere in the downtown core of the District;

- c. The Commission finds that the location of the parking and loading entrances, with the truck management measures proposed by the University, will not generate adverse or objectionable conditions. The Commission concludes that the University's proposed loading management plan, which includes a restriction on peak hour deliveries, will help avoid vehicular conflicts and sufficiently addresses the concerns raised by DDOT;
 - d. The Commission finds that the University's proposed transportation performance monitoring program adequately addresses the concerns raised by DDOT and will help ensure that the Project meets the trip reduction goals forecasted by the University's traffic expert; and
 - e. The Commission finds that the Project will not impose adverse or objectionable impacts on the surrounding pedestrian network. The Commission also credits DDOT's acceptance of the pedestrian and related streetscape measures proffered by the University subject to final approval by DDOT. The Commission recognizes that DDOT will determine the final measures to be installed through the public space approval process.
63. The Commission does not agree with assertions by ANC 2A or WECA that the Project will impose adverse impacts on traffic or parking. The Commission finds that the University has largely addressed ANC 2A and WECA's concerns through the measures adopted pursuant to the private settlement reached between the President and the University, the sole non-University property in the surrounding neighborhood. Accordingly the Commission concludes that the Project, with the changes to the alley location and loading management plan agreed to by the University, will not generate adverse or objectionable impacts on surrounding residential property due to traffic, parking, or loading activity. As demonstrated by the University's traffic consultant, the Project will not impose adverse impacts on surrounding intersections when compared to future background conditions without the Project, which is the proper point of comparison for analyzing the impact of this Project.

Compliance with Requirements of Order No. 06-11/06-12

64. Pursuant to Condition P-14 of Z.C. Order No. 06-11/06-12, the University demonstrated that the proposed second-stage PUD is consistent with the location, use, zoning, gross floor area, lot occupancy, and height set forth in the first-stage PUD as modified by the University in the Application.
65. Pursuant to Condition P-15 of the Order, the University demonstrated that the project met the special exception standards set forth in 11 DCMR §§ 210 and 3104.

- a. Section 210 requires proof that the “proposed use will be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable impacts.” During its consideration of the campus plan in Z.C. Case No. 06-11/06-12, the Commission determined that the use of the Foggy Bottom Campus as a whole, including the number of students, faculty and staff proposed and the related traffic and parking impacts associated with that use, would not become objectionable to neighboring property. Here, the Commission finds that the University has satisfied its burden of proof under the Zoning Regulations that the Project is not likely to become objectionable to neighboring property because of noise, traffic, number of students or other objectionable conditions:
 - i. The Commission concludes that the proposed Project, as amended by the University pursuant to the private settlement agreement with the President, is not likely to become objectionable to neighboring property due to noise;
 - ii. For the reasons detailed in this Order, the Commission credits the testimony of the University’s traffic consultant and finds that the traffic, parking, and other transportation impacts of the Project are not likely to become objectionable to neighboring property; and
 - iii. The Project is a commercial/investment use as set forth in the first-stage PUD, and the Commission concludes that the proposed Project is not likely to become objectionable due to number of students.
 - b. The Commission credits the evidence submitted by the University that total campus FAR would remain well within the density limit approved for the residentially zoned portions of the campus even after the construction of the Project; and
 - c. The Commission credits the evidence provided by the University and OP that the Project would not be inconsistent with the District of Columbia Comprehensive Plan, and will further the goals and policies of the Comprehensive Plan.
66. Pursuant to Condition P-16 of the Order, the University provided the compliance, impact analysis, and progress reports required for each second stage PUD in its initial PUD application.
 67. Pursuant to Condition P-17 of the Order, the University provided its most recently filed Foggy Bottom Campus Plan Compliance Report indicating substantial compliance with Z.C. Order No. 06-11/06-12.

68. The Commission finds that the University has satisfied the above conditions and requirements of Z.C. Order No. 06-11/06-12.

Compliance with PUD Standards

69. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” During its consideration of the first-stage PUD in Z.C. Case No. 06-11/06-12, the Commission determined that the development incentives and related rezoning for the entire campus were appropriate and fully justified by the superior benefits and amenities offered by the Campus Plan / PUD and this decision was affirmed by the District of Columbia Court of Appeals.
70. The University has proposed a modification to the approved first-stage PUD that would rezone a portion of the Property to the C-4 Zone District and increase the total gross floor area of the PUD by an additional 44,725 square feet. The Commission finds that additional development incentives and related rezoning are appropriate and fully justified by the additional public benefits and project amenities proffered by the University. The Commission credits the testimony of ANC 2A and FBA that acknowledged the value of many of the benefits and amenities provided by the University, but does not agree with ANC 2A, FBA, or WECA that the benefits and amenities are insufficient. The Commission finds, in particular, that the affordable housing proposed by the University represents a very significant public benefit not found in the other PUDs cited by the parties in opposition.
71. The Commission finds that the University has satisfied its burden of proof under the Zoning Regulations for this second-stage PUD, including the requested flexibility from the rear yard and court requirements and satisfaction of the PUD standards.
72. The Commission credits the testimony of the University and its architectural experts and finds that the superior design, site planning, streetscape, sustainable design, affordable housing, retail space, office space for the Foggy Bottom/West End Village, real-time transportation information board, and tax revenue features of the Project all constitute acceptable project amenities and public benefits consistent with the Commission’s first stage approval as amended by this Application.
73. The Commission finds that the character, scale, mix of uses and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high quality developments that provide public benefits. In addition, the Commission finds that the site plan and features of the Project, including the use of the Property for commercial/investment use, streetscape improvements, and use of the public alley for parking and loading access is consistent with the first-stage PUD.

74. For the reasons detailed in this Order, the Commission credits the testimony of the University's traffic consultant and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the University and are acceptable given the quality of the public benefits of the PUD. The Commission credits the findings of the University's traffic consultant that the proposed service and loading plan, with the loading management plan proffered by the University are acceptable and will mitigate potential vehicular conflicts. The Commission was not persuaded by ANC 2A or WECA's testimony regarding the transportation impacts of the Project.
75. The Commission credits the testimony of the University and OP regarding the compliance of the Project with the District of Columbia Comprehensive Plan. The development is fully consistent with and furthers the goals and policies in the map, citywide and area elements of the Plan, including:
- a. Designation of the Property as High-Density Commercial use on the Future Land Use Map;
 - b. Land Use Element policies promoting redevelopment around Metrorail stations and recognizing the important contribution of universities to the District economy and their efforts to address transportation issues and serve as corporate role models through high quality architecture and sustainable building methods;
 - c. Housing Element policies promoting affordable housing as a civic priority and calling for workforce housing and housing for families;
 - d. Other policies in the Economic Development, Education, Transportation, Environmental Protection, and Urban Design Elements related to the Land Use policies and goals stated above; and
 - e. Policies in the Near Northwest Area Element regarding improved communication, increased density on-campus, and mitigation measures and amenities that improve the character of the area as a whole.

Agency Reports

76. By report dated November 5, 2012 and by testimony at the public hearing, OP recommended approval of the application, including the first-stage PUD modification and second-stage PUD approval, provided that the affordable housing proffer is strengthened and the alley be located in order to mitigate impacts on the President. OP reviewed the application under the PUD standards of the Zoning Regulations as well as the specific conditions of the Campus Plan/PUD Order and the special exception standards of § 3104,

and concluded that the University had satisfied its burden of proof. At the public hearing, OP testified that it was “pleased” by the University’s agreement with the President.

77. By late report dated November 9, 2011, DDOT expressed concerns regarding the proposed Project based on its review of the vehicular and other transportation impacts of the Project. At the hearing, DDOT clarified that it did not oppose the Project, supported the University’s agreement to maintain the alley in the current location until the development of Site 75B and, with the reduction in parking, no longer expressed concern regarding the number of parking spaces. DDOT’s specific conclusions and recommendations are discussed elsewhere in this order.
78. By report and testimony at the public hearing, DHCD expressed support for the proposed affordable housing program, including the size and type of units and location in the Foggy Bottom/West End neighborhood. DHCD expressed a preference for maximum rents of 30%, inclusive of utilities, based on the agency’s desire to implement uniform standards to streamline the administration of affordable units. The University’s response to this request is discussed elsewhere in this Order. DHCD also requested that the University provide the rent calculation and agree to enter into a covenant regarding the affordable housing program, and the University provided this information.

ANC 2A Report

79. At a regularly scheduled meeting on November 1, 2012, with a quorum present, ANC 2A approved a resolution opposing the application unless the University agreed to amend the Campus Plan to ensure that the additional density gained through the modification is captured in the cumulative FAR for the Foggy Bottom campus; commit to nighttime-active, street-level retail; maintain and widen the alley in its current location to address the concerns of the President; and provide additional benefits and amenities. (Ex. 26.)
80. The University addressed the ANC’s concerns at the public hearing as follows:
 - a. No campus plan amendment is required. For the reasons set forth in the Conclusions of Law, § 210 does not apply. Furthermore, no amendment of the Campus Plan is required to ensure that the additional density is captured under the relevant FAR cap;
 - i. The first-stage PUD, not the campus plan, sets the FAR cap for all University-owned properties within the campus, including commercially zoned parcels such as the Property. The additional FAR gained through the first-stage PUD modification is captured under this overall FAR cap; and

- ii. The campus plan FAR cap, which only sets the FAR cap for residentially zoned properties, does not apply to the Property. Section 210 merely aggregates the FAR for the residentially zoned portions of the campus. The Property is commercially zoned and will remain so; therefore, it is not aggregated under § 210;
 - b. The University has agreed to provide 6,637 square feet of ground-floor retail space within the Project along Pennsylvania Avenue. The Project does not preclude the type of neighborhood-serving retail desired by ANC but, as the University's representative explained, the type of neighborhood-serving retail desired by ANC 2A, FBA, and WECA may not necessarily be appropriate for the Project given market demands. Furthermore, such neighborhood-serving retail is considered and provided throughout the Foggy Bottom campus. Finally, the 2007 Foggy Bottom Campus Plan/PUD will deliver neighborhood-serving retail one block from the Project along the I Street retail corridor that will be implemented through the Campus Plan/PUD;
 - c. Pursuant to a private settlement agreement with the President, the University agreed to maintain and widen the alley in its current location at this time. The University also agreed to provide the President with a construction management plan and provide other measures deemed acceptable by the President. At the hearing, the ANC representative expressed general support for the proposed agreement with the President. The Commission concludes that the additional mitigation measures listed in the ANC resolution regarding the President are unnecessary; and
 - d. The University has agreed to provide office space for the Foggy Bottom / West End Village and the real-time transportation information board requested by ANC 2A, which were specifically listed in the ANC resolution and supported by the ANC representative at the public hearing. Given these amenities, as well as the affordable housing, ground-floor retail, and agreement with the President, the Commission does not agree that the current amenities package is insufficient or that additional amenities are required to justify the development incentives granted for this Project. The other PUDs cited by ANC 2A are distinguishable from the Project; two did not include any affordable housing as a public benefit and the third project called for significant increases in density for both the residential and office components of the PUD that justified a different package of amenities.
81. Following the public hearing, ANC 2A filed a supplemental resolution ANC opposing the application unless the University agreed to provide a benefits and amenities package totaling \$350,000-500,000 and including the items set forth in the resolution. (Ex. 49.)

82. In a post-hearing submission, the University agreed to additional public benefits that, when totaled with the public benefits already proffered in response to ANC 2A's request, totaled over \$300,000. Again, for the reasons discussed above, the Commission finds that the amenities package responds to the ANC's requests and is sufficient when combined with the affordable housing program, sustainable design features, ground-floor retail, and other project amenities and public benefits given the degree of development incentives requested.
83. In response to the procedural order the Commission issued after it took proposed action, ANC 2A submitted a third report dated February 11, 2013. (Ex. 64.) The report reiterated the issues and concerns the ANC made in its prior reports, and described ways in which ANC 2A believed the proffered benefits and amenities were inadequate. These issues and concerns were outside the scope of the comments the Commission requested in its order, which was expressly limited to whether the proposed conditions are specific and enforceable as to the proffers to which they relate.
84. Nevertheless, because the Commission must give Great Weight to the issues and concerns raised by an ANC, the Commission will address the issues raised.
85. The report also stated two ways in which ANC 2A believed the draft conditions were inadequate to ensure that the proffered benefits and amenities were actualized. First, with respect to the required retail space, the ANC stated that condition did not state (a) when the retail must be in place, and (b) if the retail must be night-active. ANC 2A requested that the Commission condition the issuance of a certificate of occupancy on having a lease agreement in place for all of the retail space. ANC 2A also expressed a preference for night-active retail. Second, with respect to a real time transportation information board, ANC stated that it does not understand why the Applicant's revised condition included language making delivery of the transportation information board dependent on an agreement with the President Condominium, and recommended deletion of the final paragraph of this proposed condition.
86. The Commission considered the third report at its February 25, 2013 public meeting. With respect to ANC 2A's concern that the condition pertaining to the required retail space did not say when the retail must be in place, and if it must be night active the Zoning Commission concluded, consistent with its prior rulings, that it cannot require that Applicant agree to augment its public benefits in this way. Proffered public benefits are either sufficient or they are not. It is not the obligation of the Commission to cure a deficient public benefits package. However, there is no such deficiency here. As noted, the Commission considers the public benefits contained within the original First Approval as increased by the specific public benefits proffered as to this particular application to justify the development flexibility sought. Nevertheless, the Commission encourages the Applicant to include night-active retail in this space.

87. With respect to the ANC's information board comments, the Applicant has agreed to modify the condition to separate the provisions related to the landscaping and buffering improvements, and those that relate to the transportation information board.
88. The Commission has identified each legally relevant issue raised by the ANC and, for the reasons stated above, found some of its advice to be persuasive and some not. In doing so it has given the ANC the great weight required by statute.

Testimony in Support

89. At the hearing, the Commission received evidence and heard testimony from students and neighbors in support of the Application.

Testimony in Opposition

90. WECA presented testimony and evidence from Barbara Kahlow. WECA alleged that a campus plan amendment was required; alleged that the Project would decrease the amount of retail along Pennsylvania Avenue; requested additional amenities, such as a contribution to a second Metro entrance; and alleged that the Project would impose adverse impacts on the President as well as traffic impacts on the broader community. The Commission does not agree with WECA's assertions regarding the Project:
 - a. For the reasons set forth above, the Commission does not credit the testimony of WECA that the Project must be included in the aggregate FAR calculated under § 210;
 - b. As noted by the University's representative, the Project will significantly increase the amount of retail frontage and therefore the retail presence along Pennsylvania Avenue. The Commission finds that the proposed retail space does represent a public benefit of the PUD – the first-stage PUD did not require retail on the western portion of the Property and the eastern portion of the Property currently does not contain retail space. The Commission notes that although the amount of total retail space may have decreased from existing conditions, such existing retail space included less desirable second-story retail space;
 - c. The Commission does not agree with WECA's assertions the University should be required to fund or substantially contribute to the construction of a second Metrorail entrance. At the hearing, representatives for the University provided evidence that the cost of constructing a second entrance far exceeded any amount that could be realistically assembled through benefits and amenities associated with PUDs in the surrounding neighborhood. Furthermore, the University has already provided ample benefits and amenities through the Campus Plan/PUD, and no additional benefits are warranted because of the impact of this Project;

- d. For the reasons set forth above, additional amenities are not required and a contribution to a second Metrorail station is infeasible;
 - e. The settlement agreement between the University and the President provides evidence that potential adverse impacts on the President have been addressed; and
 - f. For the reasons set forth above, the Project will not impose adverse traffic impacts.
91. WECA also submitted a written submission on February 8, 2013 in response to the procedural order the Commission issued when it took proposed action. (Ex. 63.) Because WECA's comments were essentially similar to the ANC's, the Commission will not repeat its earlier discussion.
92. FBA presented testimony and evidence from Patrick Kennedy. FBA requested that the Project include subsidized ground-floor retail space for local businesses, called for the preservation of the existing buildings, expressed concern regarding the amendment of the campus plan to incorporate more investment use, alleged that the proposed amenities package was insufficient, and questioned the location of the proposed affordable housing.
93. The Commission does not agree with FBA's assertions regarding the Project:
- a. As noted above, the campus planning process identified the I Street Retail Corridor as the appropriate location for the type of retail called for by FBA;
 - b. In conjunction with the first-stage PUD, the University and its preservation consultants undertook a comprehensive assessment of potential historic resources throughout the campus. The structures located on the Property (Development Site 75A) and Lot 858 (Development Site 75B) were evaluated and determined not to merit preservation;
 - c. The Zoning Regulations explicitly permit modification of PUDs through a public process that permits an evaluation of the proposed change against the original approval. Here, the Commission concludes that the modification of the first-stage PUD is appropriate given the use, context, size, and benefits afforded through the PUD as a whole;
 - d. For the reasons set forth above, the Project provides ample benefits and amenities; and
 - e. The proposed affordable housing is not in an inappropriate location. The proposed location is residentially zoned and the proposed use is consistent with the zoning and character of the location. The Commission credits OP's testimony

that such affordable housing was not required under the Zoning Regulations, but rather was provided as a public benefit of the PUD. The Commission credits the testimony of DHCD and a local realtor, who appeared as a witness in support of the Project, that the affordable housing would be highly desirable given the relatively unique mix of character, size, and type of units, notwithstanding its location.

94. No other persons or organizations provided testimony in opposition to the application.

CONCLUSIONS OF LAW

1. The Applicant requested approval, pursuant to 11 DCMR Chapter 24, of a second-stage PUD and modification to a first-stage PUD for its Foggy Bottom Campus. The Commission is also authorized under the Zoning Act to approve PUDs consistent with the requirements set forth in Chapter 24 of the Zoning Regulations.
2. The Property is located in the C-3-C Zone District. Under the Zoning Regulations, a college or university use is permitted as a matter of right in commercial zone districts (11 DCMR § 701.6(b)) and it is well established that special exception approval under § 210 is not required. *See Glenbrook Road Ass'n v. D.C. Bd. of Zoning Adjustment*, 605 A.2d 22 (D.C. 1992). Furthermore, the proposed uses in this Project consist of commercial uses such as office and retail or service uses that do not require special exception approval. The Commission has previously approved multiple redevelopments for commercial office and retail use within the Foggy Bottom Campus Plan without requiring review and approval under § 210. *See, e.g., Z.C. Order No. 339 (1981) (approving redevelopment of Square 101 as "Red Lion Row" commercial office and retail development); see also Z.C. Order No. 960 (2002) (approving redevelopment of Square 119 as IMF HQ2, an office use).* Accordingly, the provisions of § 210, which only apply to university use of residentially zoned property within the boundaries of a campus plan, do not apply.⁵
3. Pursuant to Condition P-15 of the Campus Plan/PUD Order, the University is required to demonstrate that each second-stage PUD satisfies the special exception standards of §§ 210 and 3104. Here, because the Project is a commercially zoned office building, the Applicant contended that it was not required to review or seek approval under § 210, as the standards of §§ 210 and 3104 do not formally apply to the Project. The PUD condition made no such distinction and arguably it was intended to impose higher

⁵ This is different from other development sites in the campus. In the Campus Plan/PUD Order, the Commission noted that further processing approval under § 210 would continue to be required for university use of *development sites being rezoned from residential zoning* (generally, R-5-D zoning) to commercial zoning (generally, C-3-C zoning). (Z.C. Order No. 06-11/06-12 at 30 (2006).) This requirement does not apply to the Subject Property. Unlike the other rezonings approved under the First-Stage PUD, the rezoning of the Property is unique – it rezones property already in a commercial zone district to a higher-density commercial zone district.

standards upon otherwise matter-of-right commercial development. The Commission need not decide the issue because the University has met its burden of proof under these standards as well. The burden of proof under § 3104 generally permits approval of a special exception which, in the judgment of the Commission, 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. The burden of proof for under § 210 permits approval of a special exception 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 the 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.

4. Based on the above Findings of Fact and pursuant to Condition P-15 of Z.C. Order No. 06-11/06-12, the Commission concludes that the University has satisfied the burden of proof in accordance with §§ 210 and 3104. In particular, the Commission concludes that the proposed project will not create objectionable noise, traffic, parking, or other impacts on the surrounding community.
5. Also based on the above Findings of Fact, the Commission concludes that the University has satisfied the burden of proof for modification of the first-stage PUD and approval of the second-stage PUD under Chapter 24 of the Zoning Regulations. Approval of this Project will provide high-quality development that provides public benefits, is 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.”
6. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.
7. Under the PUD process and pursuant to Condition P-14 of Z.C. Order No. 06-11/06-12, the Commission has the authority to consider this application as a second-stage PUD. This second-stage review permits detailed design review of each project based on the conceptual height, density, and use parameters established in the first-stage PUD and the benefits and amenities approved in exchange for that height, density, and design flexibility. The Commission concludes that the Project is consistent with the first-stage PUD as modified in this Application, including the parameters regarding location, use, height, and bulk set forth for the Property in the first-stage PUD.
8. In approving the PUD, the Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards. In this application, the Commission concludes that the requested flexibility from the rear yard

and court requirements can be granted without detriment to surrounding properties and without detriment to the zone plan or map.

9. Based on the documentation included in the initial PUD application, the Commission concludes that the University has demonstrated compliance with the conditions of the first-stage PUD as detailed in Condition P-16 of Z.C. Order No. 06-11/06-12.
10. Based on the University's most recently filed Foggy Bottom Campus Plan Compliance Report, which was included in the initial application package, the Commission concludes that the University is in substantial compliance with Z.C. Order No. 06-11/06-12.
11. 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 attractive and efficient overall planning and design not achievable under matter-of-right standards. The character, scale, mix of uses, and design of uses in the proposed PUD are appropriate, and the proposed development is compatible with the citywide and area plans of the District of Columbia.
12. The Commission concludes that this project, including the additional benefits provided through the modification of the first-stage PUD, provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, site planning, efficient and safe traffic circulation, sustainable features, affordable housing, ground-floor retail, uses of special value, and streetscape improvements are all are significant public benefits.
13. The Commission concludes that the impact of the project is acceptable given the quality of the public benefits of the project, including those benefits provided through the first-stage PUD modification. The Commission agrees with the conclusions of the University's traffic expert that the proposed project will not create adverse traffic, parking, or pedestrian impacts on the surrounding community.
14. Approval of the PUD and further processing application is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the proposed project is consistent with the Property's High-Density Commercial Designation on the Future Land Use Map and furthers numerous goals and policies of the Comprehensive Plan, including the Land Use Element provisions related to educational institutions, transportation impacts, and corporate leadership in exemplary design, Housing Element provisions calling for affordable housing and housing for families, and provisions in other citywide elements and policies in the Near Northwest Area Element related to managing the impacts of campus development.

15. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, including the amenities and benefits provided through the first-stage PUD modification, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted.
16. The Commission previously concluded in Z.C. Order No. 06-11/06-12 that the proposed PUD-related Zoning Map Amendment for the western portion of the Property from the C-3-C to the C-4 Zone District was not inconsistent with the Comprehensive Plan and is appropriate given the superior features of the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives. The Commission concludes that the proposed PUD-related Zoning Map Amendment for the eastern portion of the Property from the C-3-C to the C-4 Zone District is not inconsistent with the Comprehensive Plan, including the Property's designation as High-Density Commercial on the Future Land Use Map, and is appropriate given the superior features of the PUD, the additional benefits and amenities provided through the first-stage PUD modification, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
17. The Commission is required under D.C. Official Code § 6-623.04 to give great weight to OP recommendations. OP recommended approval, provided that the University refined the affordable housing proposal and addressed the location of the public alley. The Commission concludes that the University addressed these conditions and, accordingly, the first-stage PUD modification and second-stage approval should be granted.
18. In accordance with § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) the Commission must give great weight to the written issues and concerns of the affected ANC. Through its discussion of the issues raised by ANC 2A in Findings of Facts 79 through 87, the Commission accorded those issues and concerns of ANC 2A the "great weight" to which they are entitled, and in so doing fully credited the unique vantage point that ANC 2A holds with respect to the impact of the proposed application on the ANC's constituents.
19. The Commission agrees with OP that the provisions of § 2404 do not apply to the Project, which does not increase the gross floor area devoted to office space over and above the amount of office space permitted as a matter of right in the C-4 Zone District, which is the zoning included as part of the PUD. Accordingly the proposed affordable housing represents a significant public benefit of the PUD.
20. The Commission concludes that the affordable housing proposed as part of the PUD does not constitute an inclusionary development pursuant to Chapter 26 of the Zoning Regulations. Accordingly, the University is not bound to the provisions of Chapter 26 and related administrative provisions under Title 14 of the D.C. Municipal Regulations in

the implementation of the proposed affordable housing program, provided that such affordable housing complies with the conditions of this Order.

21. Notice of the public hearing was provided in accordance with the Zoning Regulations.
22. The University is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia **ORDERS APPROVAL** of the applications for (1) modification of the approved First-Stage PUD for the Foggy Bottom Campus to incorporate Lot 863 and portions of a public alley to be closed into the first-stage PUD and (2) second-stage PUD approval for property consisting of Square 75, Lots 23, 33, 34, 41, 42, 47, 863, part of Lot 864, and a portion of a public alley to be closed (“Property”). This approval is subject to the following guidelines, conditions, and standards of this Order.

Compliance with the following conditions shall be the sole responsibility of the University, although the University may authorize others to perform on its behalf. If the University no longer holds title to the Property, then the University shall have no further obligations under this Order, and compliance with the following conditions shall be the sole responsibility of the successor-in-interest to the Property.

1. This project shall be developed in accordance with the plans marked as Tab D of Exhibit 50 of the record, as modified by guidelines, conditions, and standards herein.
2. The University shall have flexibility from the rear yard and court provisions of the Zoning Regulations as shown on the approved plans.
3. The project shall be used for any use permitted in the C-4 Zone District provided that at least 6,637 square feet of gross floor area on the ground floor is set aside for retail and service uses.
4. The project shall provide parking as shown on the approved plans, except that the University shall be permitted to make alterations to the size and design of the underground parking garage, provided that the garage contains approximately 154 striped parking spaces, which requirement may be satisfied with any combination of accessible, full-sized, compact, valet and tandem spaces. The Project shall provide a minimum of 52 bicycle spaces, as shown in the Plans.
5. The Project shall provide loading consistent with the approved plans. The University shall abide by the Loading Management Plan detailed on Exhibit 34, Tab C of the record.

6. The University shall submit with its building permit application a LEED checklist indicating that the Project includes sustainable design features such that the Project would be able to meet the standards for certification at a minimum of Gold rating on the LEED-CS 3.0 2009 rating system, although the University is not required to seek such LEED Gold certification for the Project. The University shall also submit evidence that the Project has been designed to capture a minimum of 1.2” of rainfall.
7. The University shall abide by the transportation performance monitoring study set forth in Exhibit 57, Tab A of the record.
8. The University will contribute up to \$100,000 for office space for the Foggy Bottom West End Village (“Village”). The Village will select and enter into a lease agreement with a to-be-identified landlord, and the Village may extend the term of the initial lease agreement and/or enter into a one or more replacement lease agreements for the same or new office space with the same or a new landlord. All such lease agreements shall be on terms and conditions satisfactory to the Village in its sole discretion. The University will make its contribution of rent directly to each such landlord. Rent is defined as all monies set out in each such lease agreement including but not limited to minimum rent, common area maintenance, real estate taxes, utilities, cost of cleaning services, and security as more specifically defined in each such lease agreement:
 - a. The University will commence payment of rent upon (a) the effective date of this Order and the expiration of any appeal period or, if an appeal is filed, completion of the appeal and related remand, and (b) the execution of the lease by the Village. The University will terminate the payment of rent upon (a) the exhaustion of the \$100,000 allowance, or (b) the termination of the final lease, whichever comes first. Compliance with this condition of approval shall be demonstrated prior to the issuance of the certificate of occupancy for the Project. If, prior to issuance of the building permit for the Project, the Village has not yet entered into the lease, the University shall be permitted to return to the Zoning Commission to identify a substitute public benefit; and
 - b. If requested in writing by the Village, the Village may allocate up to \$15,000 of the above \$100,000 contribution to expenses incurred by the Village in outfitting the office space and the University shall reimburse the Village for such reasonably documented expenses. Such expenses may include costs associated with adding computer lines, cable upgrades, or other improvements that would be considered an additional cost for the initial set up of office space for use by the Village. The University will approve and reimburse the Village for such reimbursable expenses within 30 days after the date they are submitted. Any amount reimbursed pursuant to this section shall be deducted from the University’s \$100,000 rent contribution.

9. The University shall contribute \$50,000 to fund a fellowship position at the Francis-Stevens Education Campus. The University shall work with the Francis-Stevens Parent Teacher Association to determine the specific educational role of the fellowship position based on the needs of the Francis-Stevens Education Campus, and the University shall fill the fellowship position with one or more students in the University's Columbian College or Graduate School of Education and Human Development. The fellowship position shall commence at the beginning of the next academic year following (a) the effective date of this Order and the expiration of any appeal period or, if an appeal is filed, completion of the appeal and related remand, and (b) the identification of the specific educational role of the fellowship position. The University shall terminate the fellowship position upon exhaustion of the \$50,000 contribution. Compliance with this condition shall be demonstrated prior to the issuance of a certificate of occupancy for the Project:
 - a. In the event that the University is unable to establish the fellowship position, the University shall contribute \$50,000 to the Francis-Stevens Parent Teacher Association to fund the establishment of an instructional or counseling position to be determined by the Francis-Stevens Parent Teacher Association that will support educational programs at Francis-Stevens Education Campus; and
 - b. In the event that the Francis-Stevens Education Campus is no longer in operation, the University shall work with ANC 2A to select another D.C. public school that serves ANC 2A for the fellowship position or instructional/counseling position.
10. The University shall contribute up to \$1,000 to the Francis-Stevens Parent Teacher Association to support marketing efforts for the Francis-Stevens Education Campus, such as advertisements in local media and printed materials for distribution. Compliance with this condition shall be demonstrated prior to the issuance of a certificate of occupancy for the Project.
11. Prior to the issuance of a certificate of occupancy for the Project, the University shall, in accordance with the affordability requirements outlined on Exhibit 50, Tab A of the record (the "Affordability Requirements"), convert the properties identified as 2142, 2146, and 2150 F Street N.W. to seven units containing approximately 7,209 square feet of affordable housing set aside for households earning up to 80% of the Area Median Income for the Washington, D.C. Metropolitan Statistical Area and adjusted for family size:
 - a. The maximum rent for each affordable housing unit shall be calculated as set forth in the Affordability Requirements;
 - b. Maximum annual household income upon recertification shall be determined as set forth in the Affordability Requirements;

- c. The term of the affordable housing program shall be for a period of 30 years beginning on the date of the lease of the first unit; and
 - d. Prior to or concurrent with the conversion of the properties, the University shall enter into a covenant that binds the University to comply with the Affordability Requirements, which shall be similar in form to the ADU covenant attached as Exhibit 56, Tab A of the Record (the "ADU Covenant"). The Affordability Requirements shall be attached to the ADU Covenant. The administrative provisions of the ADU covenant may be modified if accepted by both the University and DHCD.
12. Prior to the issuance of a certificate of occupancy for the Project, the University shall demonstrate that it has constructed the landscaping and buffering improvements as shown on the approved plans. The final design of any such improvements shall be subject to the terms of the University's agreement with the President Condominium dated November 15, 2012 and approval by the appropriate District permitting authorities, and the University shall have flexibility to modify such improvements per the agreement or in response to DDOT's direction.
13. Prior to the issuance of a certificate of occupancy for the Project, the University shall demonstrate that it has contributed up to \$100,000 to develop and install a real-time transportation information board. The board shall be provided by the University and located in a publicly visible location on University property within the Foggy Bottom/West End neighborhood. The board shall include information on Metrorail, Metrobus and the D.C. Circulator as provided by WMATA
14. The University shall have flexibility with the design of the PUD in the following areas:
- a. To modify the exterior design of the Project and the location and design of the public alley in response to comments received from District agencies, utilities, and the D.C. Council through the alley closing and dedication process, provided that the north-south portion of the public alley is located as shown on Exhibit 34, Tab A of the record;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structure;
 - c. To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction and to vary the frit pattern selected for the Project;

- d. To vary the final streetscape design and materials subject to review and approval by the appropriate District permitting authorities;
 - e. To make minor refinements to exterior details and dimensions, including balcony enclosures, belts, courses, sills, bases, cornices, railings, and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems;
 - f. To vary the number, size, location, and design features of retail entrances, including the size, location, and design of windows, doors, awnings, canopies, and similar features, to accommodate the needs of specific retail tenants and storefront design;
 - g. To vary the number, type, and location of doors related to the upper-story terrace as needed over the life of the Project to accommodate changes in building operation and function;
 - h. To vary the location of green roof areas and configuration of the trellis on the roof of the Project as needed over the life of the Project; and
 - i. To vary the number, size, location, and other features of proposed building signage, provided that such signage is consistent with the locations illustrated on the approved plans or is otherwise permitted under the applicable provisions of the Building Code.
15. No building permit shall be issued for this project until the University 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 and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the University 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.
16. The application approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for the building permit as specified in 11 DCMR § 2409.1.
17. The University is required to comply fully with the provisions of the Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01, et seq. (“Act”) and this Order is conditioned upon full compliance with those provisions. In accordance with the 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, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation,

genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex 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 January 14, 2013, upon the motion by Commissioner May, as seconded by Chairman Hood, the Zoning Commission **APPROVED** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve).

On February 25, 2013, upon the motion of Commissioner Miller, as seconded by Vice Chairman Cohen, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Corrected Order became final and effective upon its publication in the *D.C. Register* June 21, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING