

**APPLICANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
CONDITIONS OF APPROVAL**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ZONING COMMISSION ORDER NO. 06-27**

**Z.C. Case No. 06-27 (Joint Application by Boston Properties, Inc., KSI Services Inc., and  
The George Washington University – Consolidated Planned Unit Development and Related  
Zoning Map Amendment)**

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on November 20, 2006 and January 4, 2007 to consider an application by Boston Properties, Inc., KSI Services, Inc. and The George Washington University (collectively, the “**Applicant**”) for consolidated review and approval of a planned unit development (“**PUD**”) and related amendment to the Zoning Map of the District of Columbia from R-5-D to C-3-C for Square 54, Lot 30 (the “**Application**”). The Zoning Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. The Zoning Commission APPROVES the Application, subject to the conditions below.

**FINDINGS OF FACT**

**The Application, Parties, and Hearing**

1. The project site consists of Square 54, Lot 30 (the “**Property**” or “**Square 54**”) and is bounded by Washington Circle, Pennsylvania Avenue, 22<sup>nd</sup> Street, I Street and 23<sup>rd</sup> Street, NW. The Property contains approximately 115,715 square feet of land area (approximately 2.66 acres) and is located in the R-5-D Zone District. The Property is located within The George Washington University Foggy Bottom Campus Plan boundaries and is the former site of The George Washington University Hospital. The Property has been vacant since 2004.
2. On May 30, 2006, Boston Properties, Inc. (“**Boston Properties**”), KSI Services, Inc. (“**KSI**”), and The George Washington University (“**GW**” or “**the University**”) (collectively, the “**Applicant**”) filed an application for a Consolidated Review and Approval of a Planned Unit Development (“**PUD**”) and related Zoning Map Amendment from R-5-D to C-3-C. Ex. 4 (PUD Application, May 30, 2006).
3. During its meeting on July 10, 2006, the Zoning Commission unanimously voted to set down Case No. 06-27 for a hearing. Notice of the public hearing, including a description of the subject property and the proposed development, was published in the D.C. Register on [date], [ ] D.C. Reg. [\_\_\_\_], and was mailed to all property owners within 200 feet of the subject property and to Advisory Neighborhood Commission (“**ANC**”) 2A.
4. The Application was further updated by a sixty-day pre-hearing submission filed on July 14, 2006; a twenty-day pre-hearing submission filed on October 31, 2006; and several additional submissions filed throughout the course of the public hearings in response to requests for further information by the Zoning Commission. See Ex. 14 (Sixty-Day Pre-Hearing Submission, July

14, 2006); Ex. 20 (Twenty-Day Pre-Hearing Submission, October 31, 2006); Ex. 36 (Direct Testimony, Nov. 20, 2006); Ex. 56 (December 26, 2006 Submission, Dec. 26, 2006); Ex. 77 (Rebuttal Testimony, Jan. 4, 2007).

5. Parties in this proceeding included the Applicant; the Foggy Bottom Association (“FBA”) and the West End Citizens Association (“WECA”) as parties in opposition; and ANC 2A. The FBA and ANC 2A were jointly represented by counsel. The Zoning Commission opened the public hearing on November 20, 2006 and closed the public hearing on January 4, 2007. During the public hearing, the Commission heard testimony and received evidence from the Applicant, FBA, WECA, ANC 2A, the D.C. Office of Planning (“OP”), and the District Department of Transportation (“DDOT”), as well as from persons and organizations in support of, and in opposition to, the Application.

6. As a preliminary matter, on November 6, 2006, the FBA filed a motion to postpone the Application pending the Applicant’s preparation of a consolidated environmental review. Ex. 22. The Applicant filed its opposition to the motion on November 13, 2006. Ex. 23. Based on the reasoning for its denial of the identical motion filed by the same parties in Case No. 06-11/06-12, and for reasons set forth in the Conclusions of Law, the Commission denied the FBA motion to postpone. Tr. November 20, 2006 at 8-10.

7. As an additional matter, on December 22, 2006, after the opening of the public hearing, the Commission received a request for party status submitted by Michael Kimmel. Ex. 55. On January 4, 2007, the Applicant submitted a written objection to Mr. Kimmel’s application on the grounds that: (1) he lacked standing; (2) the request was late; and (3) a grant of party status would prejudice the Applicant. Ex. 58. During the January 4, 2007 hearing session, the Commission unanimously voted to deny Mr. Kimmel’s request for party status because his request was untimely, but invited Mr. Kimmel to participate as a person in opposition. Tr. January 4, 2007 at 8.

8. The Applicant further refined the plans, drawings, and elevations in response to the Commission’s comments and concerns at the public hearing, and accordingly submitted them with the Applicant’s post-hearing submission dated January 25, 2007. Ex. 83.

9. At a public meeting on \_\_\_\_\_, the Commission took proposed action by a vote of \_\_\_\_\_ to approve the Application in Case No. 06-27 with conditions.

10. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to the District of Columbia Home Rule Act. NCPC, by action dated \_\_\_\_\_, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

11. The Commission took final action to approve the Application in Case No. 06-27 on \_\_\_\_\_ by a vote of \_\_\_\_\_.

### **Overview of the PUD Site**

12. The Property is Lot 30 in Square 54, which is the city block bounded by Washington Circle, Pennsylvania Avenue, 22<sup>nd</sup> Street, I Street, and 23<sup>rd</sup> Street, NW. The Property consists of approximately 115,715 square feet of land area (approximately 2.66 acres). It is adjacent to the Foggy Bottom-GWU Metrorail station, which is located across 23<sup>rd</sup> Street at the intersection of 23<sup>rd</sup> and I Streets. The Property is located within the Foggy Bottom Campus Plan boundaries in the Foggy Bottom and West End neighborhoods of Ward 2, and is within the jurisdiction of ANC 2A. The Property is the former site of The George Washington University Hospital and has been vacant since 2004. Ex. 4.

13. The Foggy Bottom and West End neighborhoods are characterized by a mixture of land uses, including predominantly high-rise office buildings, hotels and apartment houses and a broad range of institutional uses. Retail uses are generally included within the first floor of high-rise buildings devoted to other uses. The Property itself is located at the nexus of several neighborhoods, including the high-rise commercial office buildings of the Golden Triangle, GW's Foggy Bottom campus, the apartment buildings and hotels of the West End, and the row houses of the Foggy Bottom Historic District. Tr. Jan. 4, 2007 at 11-12. To the west, south, and east are properties owned by the University that are included within the Campus Plan boundaries. To the northeast, at the intersection of Pennsylvania Avenue and K Street with Washington Circle, is the headquarters of the International Finance Corporation ("**IFC Headquarters**"), which is part of the World Bank Group. Across Washington Circle and K Street are office buildings, residential buildings, and a hotel.

14. The District of Columbia Generalized Land Use map indicates that the Property is located at the nexus of a number of different land use designations. The Property itself is located primarily in the Institutional land use category, in recognition of the long-standing university and hospital use, with the northern portion bordering Pennsylvania Avenue located in the High Density Commercial land use category, in recognition of the high-density commercial uses on Pennsylvania Avenue. The Property to the east is located in the High Density Commercial and Institutional land use categories, while property across Washington Circle to the north and northeast is located in both the mixed use High Density Residential/Medium Density Commercial and mixed use Medium Density Residential/Moderate Density Commercial land use categories.

15. Immediately to the west of the site is the location of the new George Washington University Hospital, which is 90 feet in height. Immediately to the east of the site is the Burns Building/Ambulatory Care Center, which is a medical office building owned by the University that measures 123 feet at its highest point. The IFC Headquarters immediately to the northeast measures 130 feet in height. To the south, across I Street, are University buildings up to 85 feet in height. Pursuant to the development plan set forth in the *Foggy Bottom Campus Plan: 2006 – 2025*,<sup>1</sup> many sites along I Street, particularly in the immediate vicinity of Square 54, are proposed to be redeveloped to heights of 110 feet. See Ex. 56.

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<sup>1</sup> The Campus Plan, Z.C. Case No. 06-11 and related first-stage PUD and Zoning Map Amendment, Z.C. Case No. 06-12, were approved by the Zoning Commission on \_\_\_\_\_. *Note to the Commission:* *Given the closely integrated nature of the Project and the Foggy Bottom Campus Plan 2006 - 2025, this draft order is based on the assumption that the Commission will have taken final action in Case Nos. 06-11 and 06-12 before final action is taken in this case.*

## GW's Integrated Development Strategy and the Community-Based Planning Process

16. The Project is a key component of GW's integrated development strategy, which proposes a comprehensive plan for the future of the Foggy Bottom campus in the context of the surrounding neighborhoods. In recent years, several factors have prompted the University to closely evaluate its land use planning efforts, including the fundamental constraints of limited space and financial resources, a desire to proactively address concerns expressed by residents of the surrounding neighborhood with respect to University growth and development, and the unique opportunity presented by the redevelopment potential of Square 54. As a result, the University has developed an integrated development strategy that accommodates its forecasted academic and student housing needs within the existing Campus Plan boundaries (including approximately 474 new on-campus beds through the recently-approved joint D.C. Public Schools /GW School Without Walls development project), and allows for the redevelopment of Square 54 as a dynamic town center that would enhance the *GW Living and Learning* environment and provide a major source of non-enrollment driven revenue to fund the core academic mission of the University. Ex. 4; Tr. Nov. 20, 2006 at 15-16.

17. In order to consider the use of Square 54 for non-university purposes, OP required that the University demonstrate that it could accommodate its forecasted academic and undergraduate student housing needs within the existing Foggy Bottom campus, exclusive of Square 54. Ex. 24. Accordingly, the University applied for approval of the *Foggy Bottom Campus Plan 2006 – 2025* in Case No. 06-11 and a related first-stage PUD and Zoning Map Amendment for all properties owned by the University within the Campus Plan boundaries in Case No. 06-12.

18. The Campus Plan and related PUD detail the University's "Grow Up, Not Out" planning strategy, and set forth a plan to accommodate GW's forecasted academic and undergraduate student housing space needs within the existing Campus Plan boundaries. The University's planning strategy provides for predictable, planned growth consistent with surrounding development patterns and guided by "smart growth" and transit-oriented development planning principles; preserves and enhances the District's tax base by making more efficient use of properties already owned by the University and utilizing Square 54 for commercial purposes; and addresses community concerns regarding University expansion into surrounding residential neighborhoods outside the Campus Plan boundaries. Ex. 4; Tr. Nov. 20, 2006 at 19-20.

19. The Campus Plan and Campus Plan PUD were approved by the Commission on \_\_\_\_\_. The Commission found that the University had submitted a plan for developing the campus as a whole, showing the location, height, and bulk of all present and proposed improvements, as required by 11 DCMR § 210.4. The gross floor area of the Square 54 Project, which is the subject of this application, was included in the campus-wide FAR calculations set forth in the Campus Plan.

20. The University assembled a world class team of professionals for the Square 54 Project. The Boston Properties/KSI development team was selected by the University in 2005 after an extensive competitive process based on their experience in mixed-use development in the District, a vision for the potential of the site, and the outstanding project and design team. While the University will retain ownership of the land, the Property will be developed by Boston Properties and KSI under a sixty-year ground lease. Tr. Nov. 20, 2006 at 17, 20-22.

21. For more than a year prior to the May 30, 2006 filing of the PUD application, the University, at the request of OP, engaged in a comprehensive community-based planning process in order to elicit input and feedback from a wide variety of interested stakeholders. The Square 54 development team took an active part in this open and inclusive planning process. Ex. 4; Tr. Nov. 20, 2006 at 17-18, 22-23.

22. GW and OP co-sponsored an Urban Land Institute (“ULI”) Advisory Services Panel in May 2005 to specifically evaluate the development potential of Square 54. The Panel recommended mixed-use commercial development of Square 54 at a density between 7.0 and 8.0 FAR, under the assumption that the University would be able to accommodate its forecasted academic and student housing needs on other sites located within the Campus Plan boundaries. The ULI Report further supported the location of the office component of the mixed-use development along Pennsylvania Avenue and the location of the residential component along I Street. The ULI Report also recommended that open space be a major theme in the design concept for the site. Ex. 4; Tr. Nov. 20, 2006 at 18, 23-24.

23. GW, OP, and ANC 2A co-sponsored a series of open community meetings throughout the summer and fall of 2005. These meetings were moderated by an independent facilitator, and all of the issues and concerns raised by participating stakeholders throughout the series of meetings were documented in a comprehensive “Issues Exhibit” made publicly available at the community meetings and on the neighborhood website ([www.neighborhood.gwu.edu](http://www.neighborhood.gwu.edu)). All of these issues were taken into consideration and many resulted in specific changes, modifications, and adjustments to the Square 54 proposal as it evolved throughout the planning process. Ex. 4; Tr. Nov. 20, 2006 at 18.

24. Following the series of co-sponsored meetings, the Applicant continued to engage interested stakeholders in a number of outreach activities, including community meetings, small group briefings, brown bag lunches and one-on-one information sessions. The Applicant also launched two websites in order to make all relevant planning materials available to interested stakeholders throughout the planning and regulatory process, including the University’s comprehensive neighborhood website ([www.neighborhood.gwu.edu](http://www.neighborhood.gwu.edu)), and a Project-specific website ([www.square54.com](http://www.square54.com)). Ex. 4; Tr. Nov. 20, 2006 at 18-19.

### **The PUD Project**

25. The proposed Project is a mixed-use development of residential, office and retail uses that is intended to create an active transit-oriented environment adjacent to the Foggy Bottom-GWU Metrorail Station. The proposed Project consists of one building but reads as separate and distinct components, and the design is shaped by both a consideration for the surrounding context as well as the intended mixed-use program for the subject site. The Project includes a 26,000 square foot open space courtyard and a 60-foot wide retail-oriented plaza along I Street; approximately 333 - 336 residential units; approximately 454,000 square feet of office space; and approximately 84,000 square feet of at- and below-grade retail space, including space that will accommodate a grocery store of up to 42,000 square feet. Ex. 4.

26. As presented by the Applicant's architect and landscape designers, recognized as experts by the Commission, and set forth in the Applicant's submissions, the Project includes different uses, scales, and design elements that respond to the site's context as a transition between institutional, residential and commercial uses.

- The office component fronts on Pennsylvania Avenue, Washington Circle, and 23<sup>rd</sup> and 22nd Streets. This component will be constructed of glass, steel, and masonry elements and is radial in form, stepping down in height toward Washington Circle to respond to the unique character of the site. A glass atrium lobby aids the transition of building heights between 130 feet at Pennsylvania Avenue and 90 feet at Washington Circle and also provides a visual passageway through to the interior courtyard area. This link through the courtyard and lobby animates and enhances the pedestrian pathway from the Foggy Bottom-GWU Metrorail Station to the office component. The character of the design has been developed to give depth and sculptural relief in the façade, responding in a contemporary way to the richness and variety of the nearby architecture. The office component includes a total gross floor area of approximately 454,000 square feet. Ex. 4.
- The residential component of the project includes two elements entered off a common lobby near the center of the block on I Street. The heights of the residential component reinforce the existing and proposed neighboring residential and campus scales. In particular, the building element along 23rd Street is 110 feet in height while the building element along 22nd Street is 130 feet. The location of the various heights throughout the site is consistent with the planning principles approved by the Commission in Case Nos. 06-11 and 06-12, which concentrate height and density in the central core of campus, particularly along 22<sup>nd</sup> Street. Collectively, the residential building elements shape and enclose an internal residential garden area proposed for use by the residential tenants. The residential component includes ground floor retail uses, and at the southwestern portion of the block, the structure is set back 60 feet from I Street to create a retail-oriented pedestrian plaza. As with the office component of the project, the façade expression will be contemporary and sympathetic to the surrounding context. The residential component will include approximately 333 - 336 apartments. Ex. 4.
- The retail program is a key element of the development plan, and the Applicant has worked closely with a team of retail consultants and brokers to ensure a vibrant retail experience on Square 54 that is responsive to the needs of the community and will continue to benefit Foggy Bottom and the West End for decades to come. The retail concept for the Project calls for approximately 84,000 square feet of ground-floor and below-grade retail space, including a combination of neighborhood-serving shops, restaurants and cafes, and a grocery store. The main entry to the grocery store will anchor the corner of 22nd and I Streets, although most of the store will be efficiently accommodated below grade. It will be accessible by escalators and elevators as well as from the underground parking and loading facilities. Additional retail will be strategically located at street level along the perimeter of the site, with certain venues accessible through the interior courtyard. As detailed above, a 60 foot wide retail-oriented plaza along I Street will draw activity from the Metrorail station to help to establish the street as an inviting pedestrian corridor, and anchor the I Street Retail Corridor concept set forth in the *Foggy Bottom Campus Plan: 2006 – 2025*. The retail uses will attract office

workers, local residents, and members of the University community, making the area an active center for a diverse population. Ex. 4.

27. The Project will be phased, as detailed in Condition 21 of the Order. As noted by the Applicant, construction of the first phase, with its sizeable infrastructure and associated costs, will make it necessary to proceed expeditiously with the second phase. Tr. Jan. 4, 2007 at 282-83.

28. The Project features underground parking for office workers, residents, and shoppers as well as approximately 362 spaces for use by the University. In total, the multi-story underground parking structure will accommodate approximately 1,026 parking spaces. The parking will be accessed from a single entrance located midblock on 22<sup>nd</sup> Street. Loading and service facilities are self-contained beneath the Project as well, and include three loading docks for 55-foot trucks and five docks for 30-foot trucks that will satisfy the service and loading needs of the Project. The loading will also be accessed from a single entry located on 22<sup>nd</sup> Street, immediately to the south of the parking entrance. Ex. 4.

29. The center of the site will feature a unique urban landscaped interior courtyard of approximately 26,000 square feet. The building components that surround the courtyard are separated at critical locations to allow views and access into and out of the courtyard. These separations will also allow a greater amount of light and air into the space than a typical urban courtyard, and will help to break the scale of the overall development into smaller elements that transition to the scale of the surrounding built environment. The northern portion of the courtyard will include a landscaped plaza area that can accommodate outdoor retail or dining venues for public use, while the residential garden to the south will provide a private common space for the apartment residents. The plaza area will be open during the day but secured at night. Finally, streetscape improvements around the perimeter of the site will include a variety of treatments and plantings that respond to the context of each street type, including the proposed 60-foot I Street retail plaza. Ex. 4.

30. The building height varies within each component to respond to the surrounding context. Along Washington Circle and 23<sup>rd</sup> Street, the office component rises to 90 feet, with an additional 30 feet of height set back 20 feet from the face of the building for a total height of 120 feet. Along Pennsylvania Avenue and 22<sup>nd</sup> Street, the office component rises to a height of 130 feet. The residential component continues the height of 130 feet along 22<sup>nd</sup> Street, and has a height of 110 feet along 23<sup>rd</sup> Street and I Street. Ex. 4. Further, as demonstrated by the height study diagrams submitted by the Applicant in the December 26, 2006 and January 25, 2007 submissions, the height of the Project is appropriate given existing conditions and proposed conditions under the approved *Foggy Bottom Campus Plan: 2006 – 2025*. See Ex. 56, 83.

31. The total gross floor area included in the proposed PUD is approximately 867,169 square feet for a total FAR of 7.5. As mentioned above, the building height varies from 90 to 130 feet. The proposed Project will have a lot occupancy of 77%. The proposed project has a FAR and lot occupancy that is significantly less than what is permitted in the C-3-C Zone District under the PUD guidelines (maximum FAR of 8.0 and lot occupancy of 100%). Ex. 4.

## **Zoning Map Amendment**

32. The Property is located in the R-5-D Zone District. The maximum height allowed in the R-5-D Zone District is 90 feet, and the maximum FAR is 3.5. The zones surrounding the Property permit a mix of development. Immediately to the east and northeast along K Street and Pennsylvania Avenue is land in the C-3-C Zone District.<sup>2</sup> To the north and northwest are properties located in the R-5-E Zone District. To the west, south, and southeast are properties located in the R-5-D Zone District, including properties within the Foggy Bottom Campus Plan boundaries. Recently, in Z.C. Case No. 06-12, the Commission approved a Zoning Map amendment for certain adjacent and nearby sites in Squares 55, 75, and 77 to the C-3-C Zone District as part of the first-stage PUD for the Foggy Bottom Campus.<sup>3</sup>

33. The Applicant has requested a PUD-related Zoning Map amendment for the Property to the C-3-C Zone District, in order to allow the retail and office uses and to permit the structures to reach the requested height and density. The maximum building height permitted in the C-3-C Zone District under the PUD guidelines is 130 feet, and the maximum FAR permitted is 8.0. It is necessary to rezone the Property to the C-3-C Zone in order to allow for the office and retail uses and to allow the Project to achieve the requested height and density.

## **PUD Evaluation Standards**

34. The Applicant has requested approval to construct a building to a height of 130 feet and FAR of 7.5, which is within the PUD standards set forth in 11 DCMR § 2405, as well as a PUD-related Zoning Map amendment for the Property to the C-3-C Zone District, with the flexibility to revise the design of the roof structure of the residential component at 22<sup>nd</sup> and I Streets in order to accommodate the mechanical equipment necessary to the operation of the residential component and the grocery store.

35. The Project will not cause adverse traffic impacts, as demonstrated by the Applicant's Traffic Study and the testimony presented by the Applicant's traffic consultant, recognized by the Zoning Commission as an expert, during the public hearing. According to the Applicant's traffic consultant, the traffic impacts would be mitigated by certain measures the Applicant has agreed to implement. These mitigation measures include the implementation of additional signalization timing adjustments, curb parking restrictions during peak hours, and the installation of a traffic signal at the intersection of 22<sup>nd</sup> and I Streets. See Ex. 20.

36. Additionally, the Applicant will implement and maintain a Transportation Management Plan ("TMP"). Under this TMP, Boston Properties and KSI will coordinate transportation management activities with the University's Transportation Management Coordinator and

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<sup>2</sup> Further, properties zoned C-3-C north of Pennsylvania Avenue are also located in the New Downtown Receiving Zone, which permits buildings along K Street to reach heights of 130 feet through the purchase of transferable development rights.

<sup>3</sup> The Commission also approved a Map Amendment for a nearby site in Square 79 to the C-4 District as part of the first-stage PUD.



provide initiatives, information, and incentives to promote the use of public transportation. Ex. 34.

37. Finally, the Applicant has proposed a Truck Management Plan, which will promote the use of the internal below-grade loading facility by encouraging all deliveries and trash disposal services, including that of the retail tenants, to occur within the internal loading dock facility only. Boston Properties and KSI will provide a loading dock coordinator to help facilitate deliveries and trash disposal services, and will provide retail tenants with a recommended truck circulation route to be circulated to all those responsible for regular deliveries. Ex. 34.

38. As detailed in Applicant's testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits.

- a. Housing and Affordable Housing. The Project will create new housing opportunities consistent with the Zoning Regulations and Comprehensive Plan as well as District planning policies. The Project will create approximately 333 – 336 residential units with 8% of the residential units reserved as affordable housing for residents earning up to 80% of the area median income and 5% of the residential units reserved as workforce housing for residents earning up to 120% of the area median income. Both the affordable and workforce housing commitments will remain in place for the duration of the Project. Ex. 14, 33; Tr. Nov. 20, 2006 at 27.
- b. Efficient and Safe Vehicular and Pedestrian Access. The Applicant will accommodate all parking and loading in an underground facility, to be accessed by dedicated entrances on 22<sup>nd</sup> Street, which reduces the number of curb cuts on the perimeter of the site from 9 to 2. The below-grade loading structure enables the Applicant to create the internal courtyard referenced above. Further, approximately 362 parking spaces will be allocated to GW for general University use, which will assist the University in maintaining its required off-street parking inventory, particularly in light of GW's intent to redevelop the above-grade University Parking Garage (located at 22nd and I Streets) as set forth in the *Foggy Bottom Campus Plan: 2006 – 2025*. The Project provides for pedestrian circulation around the perimeter of the site and through the internal public courtyard, reflecting the effort to capitalize on the Property's transit-oriented location and transform the block into an active public pedestrian experience. Ex. 4, 33.
- c. Urban Design, Architecture, and Open Spaces. The Project exhibits all of the characteristics of exemplary urban design and architecture. The Applicant retained the architecture firm of Pelli Clarke Pelli to design a world-class structure that will be befitting to this unique parcel, which stands as the western gateway to downtown. To assist with the design of the project, Pelli Clarke Pelli worked closely with urban planners Sasaki and Associates, a firm that is known for its creative, compelling, and contextual urban plans and design. High density uses located near transit nodes demonstrate good urban design, and the Project results in an urban development pattern that capitalizes on the strategic, transit-oriented location. Further, the landscape design visually defines adjacent streets and public spaces while creating significant open space within the center of the Property, and, together with the ground

floor retail opportunities, contributes to the creation of an attractive pedestrian streetscape. Ex. 4, 33.

- d. Site Planning, and Efficient and Economical Land Uses. The Project seeks to reinforce and strengthen the surrounding streets and take advantage of the adjacent Foggy Bottom-GWU Metrorail station through the careful location and form of building and its various components. The mixed-use program is intended to complement the existing residential, institutional, and commercial uses surrounding the site and create a unique town center in the heart of the Foggy Bottom and West End neighborhoods. Ex. 4, 33.
- e. Uses of Special Value—Revenue for the District. The Applicant testified that the project will generate approximately \$12 million in annual District tax revenue, over \$4 million in one-time District tax revenue from recordation, development processing, and permitting fees, and over \$75 million annually through additional economic activity generated by the visitors and vendors affiliated with the office, retail, and residential components. Tr. Nov. 20, 2006 at 26.
- f. Uses of Special Value—Grocery Store. The Applicant will include a grocery store use in the retail program for Square 54. Specifically, the Applicant has agreed to commit to a grocery store use of no less than 25,000 square feet, and the site has been designed to include a grocery store of approximately 42,000 square feet of both above- and below-grade space. Further, the Applicant will set aside dedicated grocery parking spaces in the below-grade garage. Ex. 4, 14, 20, 33. Tr. Nov. 20, 2006 at 25-26, 27.
- g. Uses of Special Value—Public Spaces. The PUD will include the following project amenities, which also provide public benefits to the surrounding neighborhoods as well as the District as a whole. Ex. 4, 33.
  - i. *Courtyard.* The center of the Project will include an approximately 26,000 square foot courtyard, which will be improved with streetscape-enlivening landscaping, including a water feature, tables, and chairs. The northern portion of the courtyard will be open to the public and will include a landscaped plaza area that can accommodate outdoor retail or dining venues. The southern portion of the courtyard will provide a private common space for use by the apartment residents.
  - ii. *Retail Plaza.* The residential component is set back 60 feet from the property line along I Street to create a retail-oriented plaza that establishes an inviting pedestrian corridor, drawing activity from the nearby Foggy Bottom-GWU Metrorail Station. The landscaped plaza will include trees, benches, and tables that can accommodate outdoor dining.
  - iii. *Streetscape Improvements.* The Project includes unique paving, landscaping, and streetscape elements for the sidewalks surrounding the entire perimeter of the Property that will create a vibrant urban street environment. Specifically, the Applicant will make appropriate streetscape improvements, including

sidewalk, curb and gutter improvements as well as street trees and lighting improvements designed to enhance the streetscape.

h. Uses of Special Value.

- i. *WMATA Design and Engineering Contribution.* The Applicant will contribute \$100,000 towards WMATA's design and engineering fees associated with the potential second entrance to the Foggy Bottom-GWU Metrorail station. If the WMATA design does not go forward prior to the issuance of a building permit for the project, the Applicant will contribute \$100,000 to the Housing Production Trust Fund. Ex. 33.
  - ii. *Traffic Signal at 22<sup>nd</sup> and I Streets.* The Applicant will contribute the full cost of the traffic engineering and construction costs of the signalization of the intersection of 22<sup>nd</sup> Street and I Street, in order to help mitigate the traffic impacts associated with the proposed development. The proposed cost of this signal is approximately \$150,000. Ex. 33.
- i. Environmental Benefits. The Applicant will provide approximately 26,000 square feet of green roof structure in the Project. This includes approximately 4,000 square feet of green roof on the office component, approximately 4,000 square feet of green roof on the residential component, and at least 18,000 square feet of the internal courtyard (i.e., the roof of the below-grade parking and loading structure), which will be designed to function as a green roof. Furthermore, for both the office and the residential components of the Project, the Applicant will utilize a variety of sustainable strategies that achieve the equivalent of a minimum score of 16 points under U.S. Green Building Council's LEED for New Construction, version 2.2. Ex. 14, 20, 33, 36.
  - j. Employment and Training Opportunities. In order to further the District's policies relating to the creation of employment and training opportunities, the Applicant will participate in a First Source Agreement with the District of Columbia Department of Employment Services. The Applicant will also enter into a Memorandum of Understanding with the Local Business Opportunity Commission. Ex. 4.

**Government Agency Reports**

39. By report dated November 10, 2006, and by testimony at the public hearing on January 4, 2007, OP recommended approval of the Project subject to the approval of the *Foggy Bottom Campus Plan 2006 – 2025*. See Ex. 24. OP testified that the Project was a great opportunity and offered significant benefits to the neighborhood and District as a whole, including a full-service grocery store, rental apartments (that might also relieve student housing pressures on the surrounding rental market), retail activity in support of the University's "I Street Retail Corridor" initiative, University parking spaces that would help enable GW to redevelop the University Parking Garage, and public spaces. Id. OP testified that the impact on services was not unacceptable. Id. OP testified that the proffered amenities were acceptable given the development incentives requested. Id. OP testified that the Project was consistent with the High

Density Commercial Generalized Land Use Map designation on a portion of the site, and that the commercial use, as part of the University's Campus Plan, was consistent with the Land Use Element goals and policies. *Id.*; Tr. Jan. 4, 2007 at 15. OP also testified that the Project was consistent with the major themes of the Comprehensive Plan, including stabilizing and improving District neighborhoods, increasing the quality and quantity of employment opportunities, respecting and improving the physical character of the District, and reaffirming the District as a economic hub. Ex. 24. OP further found that the project was consistent with numerous elements of the Comprehensive Plan, including the Housing, Transportation, Urban Design, and Land Use elements, and that the Project did not conflict with the Ward 2 Element. *Id.* OP's representative stated that the height and proposed C-3-C zoning was consistent with existing and proposed development surrounding the Project. Tr. Jan. 4 at 17-18, 55-57. OP's representative also stated that the proposed uses were in the appropriate locations and ratios. Tr. Jan. 4 at 45-47. Finally, OP also testified that the Project was consistent with the 2006 Comprehensive Plan passed by the Council of the District of Columbia and pending final Congressional approval. Tr. Jan. 4, 2007 at 15-16.

40. DDOT, by report dated November 15, 2006 and by testimony at the public hearing on November 20, 2006, supported approval of the Project based on its analysis that any impacts would be mitigated by specific measures to be undertaken by the Applicant, including the Transportation Management Plan ("TMP"), traffic signal, and traffic signal timing optimization measures. Ex. 26; Tr. Nov. 20, 2006 at 194-95, 198-200, 195-96. DDOT testified further that the amount of parking was sufficient and that the proposed parking garage entrance off 22<sup>nd</sup> Street was the best location for such entrance, and stated that the location of the vehicular entrance combined with the mix of land uses in the Project and surrounding area would mitigate the Project's traffic impact. Tr. Nov. 20, 2006 at 197-98; 220-21. In response to DDOT's request for additional information and commitments to additional TMP and truck management measures as well as an annual report on the effectiveness of those measures, the Applicant provided such information and commitments, and DDOT indicated its acceptance of the Applicant's responses in its supplemental report dated December 4, 2006. Ex. 51. DDOT also requested additional study of the curb cut design for the vehicular entrance on 22<sup>nd</sup> Street. The Applicant provided a proposed potential solution in its December 26, 2006 submission, and indicated that it will continue to work with DDOT to ensure that the issue is fully resolved. Ex. 56. Finally, DDOT indicated by report dated January 23, 2007 that it did not find the conclusions of the FBA's traffic expert persuasive. Ex. 82; see also Tr. Nov. 20, 2006 at 215-217.

#### **Advisory Neighborhood Commission Report**

41. ANC 2A, by letter dated November 10, 2006 and by testimony at the public hearing on January 4, 2007, indicated that at a regularly scheduled meeting on November 9, 2006, the ANC approved a motion to oppose the Project. Ex. 25; Tr. Jan. 4, 2007 at 83. The ANC recommended against approval of the Project based on the following concerns: (1) the application was defective because it represented a partial plan for a university campus in violation of 11 DCMR § 210.4 and used the PUD process to evade the standards of Section 210, therefore violating 11 DCMR § 2400.4; (2) the Project fails to provide any University use and

therefore violates the *Foggy Bottom Campus Plan: 2000 – 2009*; (3) the Applicant failed to prepare an Environmental Impact Statement (“EIS”) that measured the impact of the Project on air quality; (4) the traffic study prepared by the Applicant’s consultant did not present a credible showing of no likelihood of objectionable impact; and (5) the proffered amenities do not outweigh the impacts of the Project and, in the case of the grocery store and other retail, are not likely to be delivered. *Id.*

42. At the January 4, 2007 hearing, two ANC representatives further testified on behalf of ANC 2A. Tr. Jan. 4, 2007 at 81-130. Commissioner Micone, Chairperson of ANC 2A, testified that the ANC vote on November 9, 2006 to oppose the Application was not unanimous and “reflected the intensity of the debate” in the ANC and community. Tr. Jan. 4, 2007 at 81-83; 125-28. Commissioner Thomas supplemented portions of the ANC report and testified regarding the failure to accommodate University uses on the site, as well as the insufficiency of the amenities and the traffic study. Tr. Jan. 4, 2007 at 94-95, 97-102; 103-05. Commissioner Thomas offered additional testimony objecting to the height and massing of the Project. Tr. Jan. 4, 2007 at 93-97. Commissioner Thomas also offered commentary regarding the ANC’s objection to the requested rezoning and application of the PUD guidelines in Case No. 06-11, the then-pending Campus Plan case. Tr. Jan. 4, 2007 at 88-93. Finally, Commissioner Thomas discussed the proposed construction and phasing plan, and introduced commentary purportedly made by a representative of the Applicant regarding the Project’s construction schedule. Tr. Jan. 4, 2007 at 102. The Applicant objected to the portions of Commissioner Thomas’s testimony that were not approved by vote by ANC 2A at a public meeting and extended beyond the findings laid out in the ANC Report. Tr. Jan. 4, 2007 at 84-85, 119, 128-29.

### **Parties and Persons in Support**

43. Approximately 117 individuals, including residents of Foggy Bottom and West End communities, current and former ANC commissioners, local business owners, and GW students and alumni, wrote letters or testified in support of the Project at the public hearing, stating that the Project merited consideration and approval as a “great compromise on the part of GW” and “a much needed project for the Foggy Bottom neighborhood.” Tr. Jan. 4, 2007, at 131. Individuals testified that the Project, which includes both market rate, workforce, and affordable housing helps the District of Columbia meet its goal of attracting 100,000 new taxpaying residents to the District. They also indicated support for the Project because of its commitment to sustainable design and adoption of green roofs. Furthermore, individuals testified that they were excited about the new retail options, including the grocery store. Finally, they also testified that they participated in the community-based planning process and described the University’s planning effort as open and inclusive. See Ex. 27-29, 31, 35, 40-48, 54, 59-61, 65-74; Tr. Jan. 4 2007 at 131-169.

44. James Morris, former Commissioner for ANC 2A04, David Lehrman, Commissioner for ANC 2A01, and Anne Savage, former Commissioner for ANC 2A03, testified in support of the Project at the public hearing. They indicated that they supported the University’s use of Square 54 as an investment property rather than for academic or student housing purposes, and they stated that they believed the Project was exemplary and would improve the attractiveness of the Foggy Bottom and West End neighborhoods. Tr. Jan. 4, 2007 at 146-62. These individuals

specifically testified in support of the Project's height, density and mix of uses, stated that they found the amenities, including the grocery store, underground loading and green design, to be significant and sufficient, and believed that the retail program could succeed. Id. Indeed, upon cross-examination by counsel for the FBA/ANC, all three individuals indicated support for the Project even if the Applicant proved unable to secure a grocery store and replaced it with some other retail use. Id. at 159-62.

45. John Bailey, the Executive Director of the Washington Smart Growth Alliance ("SGA"), testified in support of the Project on behalf of the SGA at the January 4, 2007 hearing. Tr. Jan. 4, 2007 at 165-68; see also Ex. 74. In his testimony, Mr. Bailey stated that the Project was reviewed by an SGA jury on July 13, 2006 and that the jury concluded that the proposed development represented a significant opportunity for the West End and Foggy Bottom neighborhoods and the District as a whole. Tr. Jan. 4, 2007 at 167. In addition, Mr. Bailey testified that the SGA found the density and design of the proposal to be appropriate for the transit-oriented location, and that the SGA was impressed by the interior courtyard which would provide better pedestrian access to the Metrorail station and create an inviting, open, public space. Tr. Jan. 4, 2007 at 168.

#### **Parties and Persons In Opposition**

46. The FBA appeared as a party in opposition. The Commission qualified the FBA's planning and traffic consultants as experts. A representative of the FBA testified that the Project violated the *Foggy Bottom Campus Plan 2000 – 2009* and was too dense, objected to the University's use of Square 54 as an investment property and source of revenue and the use of the PUD process, and argued that the amenities package was insufficient. Tr. Jan. 4, 2007 at 183-90. The FBA's planning expert testified that (1) the proposed PUD was inconsistent with the Property's primary Institutional land use designation on the Generalized Land Use Map and was otherwise not supported by the text of the Comprehensive Plan, (2) the proposed height, density, and uses were not compatible with the character of the surrounding neighborhood, (3) the PUD process should not be used within the boundaries of a Campus Plan, and (4) the Office of Planning failed to provide sufficient basis for its support of the height, density, and zoning of the proposed Project because the amenities were insufficient and the Project was inconsistent with the Generalized Land Use map and text of the Comprehensive Plan. Tr. Jan. 4, 2007 at 190-203. In response to cross-examination by the Applicant's counsel, however, the FBA's planning expert acknowledged that the Comprehensive Plan also contains goals and policies supporting the creation of housing, economic development, environmental benefits, and quality urban design. Tr. Jan. 4, 2007 at 224-26. The FBA's traffic expert questioned the methodologies, assumptions, and data submitted by the Applicant's traffic consultant. Tr. Jan. 4, 2007 at 203-210. The Commission requested that the FBA's traffic expert share his findings with DDOT and further requested that DDOT provide a response. Tr. Jan. 4, 2007 at 215-16, 223-24.

47. WECA appeared as a party in opposition. WECA testified that: (1) the requested rezoning was not justified, (2) the Project's mix and location of uses was not appropriate, (3) the Project required completion of an EIS prior to zoning action by the Commission, and (4) the traffic impacts could not be mitigated. Tr. Jan. 4, 2007 at 226-42.

48. Three individuals wrote letters or testified in opposition to the Application at the public hearing. Ex. 62, 79; Tr. 170-79.

### **Compliance with PUD Standards**

49. 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.” 11 DCMR § 2403.8. The Commission finds that the development incentives for the proposed 130 foot height, 7.5 FAR, and related rezoning to C-3-C are appropriate and are fully justified by the superior benefits and amenities offered by this Project.

50. The Commission credits the testimony of the Applicant and its architect and planning consultants, and finds that the proposed neighborhood retail (including a grocery store), affordable and workforce housing, sustainable design elements, internal courtyard, streetscape improvements, below-grade loading and parking, WMATA engineering study contribution, new traffic signal, and superior architecture and design all constitute project amenities and public benefits.

51. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities, and is superior in public benefits and project amenities relating to urban design, landscaping and open space, housing and affordable housing, site planning, job training and employment opportunities, transportation measures, environmental benefits and uses of special value to the neighborhood and District as a whole. The Commission credits the testimony of the Applicant and OP regarding the collaborative planning effort that led to the development of the Square 54 Project, and finds that the proffered amenities provide shared benefits for all stakeholders.

52. The Commission finds the Property is a suitable site for the proposed PUD and 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. Specifically, the Commission credits the testimony of the Applicant’s architect and planning consultants that the superior site plan consisting of mixed-use office, residential and retail development will create an active transit-oriented environment adjacent to the Foggy Bottom-GWU Metrorail station.

53. The Commission credits the testimony of the Applicant’s architect, as well as the testimony of numerous persons in support of the PUD, and finds that the proposed building height is consistent with existing conditions and proposed conditions under the approved *Foggy Bottom Campus Plan: 2006 – 2025*.

54. The Commission finds that the proposed C-3-C zoning is consistent with existing zoning as well as the rezoning approved for nearby sites on the Foggy Bottom campus under the approved first-stage PUD in Zoning Commission Case No. 06-12. Further, the rezoning is part of a PUD application, which allows the Zoning Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning relief. Finally, the proposed zoning is consistent with the Property’s location adjacent to a Metrorail station and is

necessary to permit the mix and density of uses appropriate for transit-oriented development at this strategic site.

55. The Commission credits the testimony of the Applicant's transportation consultant and DDOT and finds that the traffic and other impacts of the Project on the surrounding area are capable of being mitigated through the mitigation measures, TMP, and truck management plan proposed by the Applicant, and are acceptable given the quality of public benefits in the Project.

56. The Commission finds that the Applicant has offered to provide affordable housing for residents earning up to 80% of the area median income in an amount equal to 8% of the residential units for the duration of the Project. Further, the Commission finds that the Applicant has offered to provide workforce housing for residents earning up to 120% of the area median income in an amount equal to 5% of the residential units for the duration of the Project.

57. The Commission credits the testimony of OP that the Project provides benefits and amenities of substantial value to the community and the District that are commensurate with the additional density and height sought through the PUD. Further, the Commission credits OP's testimony that the impact of the PUD on the level of services is not unacceptable. Finally, the Commission credits OP's finding that the proposed uses are in the appropriate location and ratios.

58. The Commission credits the testimony of OP that the PUD is consistent with many of the major themes of the Comprehensive Plan. It will stabilize and improve the Foggy Bottom and West End neighborhoods by creating new housing and retail opportunities, including a full-service grocery store, at the center of the community adjacent to the Foggy Bottom-GWU Metrorail station. It will also increase the quantity and quality of employment opportunities through its commercial and retail components. Further, it will respect and improve the physical character of the District by providing an exceptional high-quality and pedestrian-oriented design containing significant public spaces at a transit-oriented location. Finally, it will reaffirm and strengthen the District's role as an economic hub by capitalizing on the development potential of a strategic parcel adjacent to a Metrorail station as a vibrant mixed-use development.

59. The Commission credits the testimony of OP that the Project is also consistent with many of the Comprehensive Plan's major elements, including the Housing, Transportation, Urban Design, and Economic Development elements. See also Tr. Jan. 4, 2007 at 224-26. The Commission further agrees with OP that the Project supports the Land Use policy that encourages transit oriented development and development near transit nodes. Finally, the Commission concurs with OP that the PUD should not conflict with the policies of the Ward 2 Plan because it will improve the neighborhood surrounding GW by improving landscaping, creating better lighting, and enhancing community. The Commission agrees that the Project furthers the Ward 2 Plan's policy because the Applicant is planning to concentrate the height and density of the Project along 22<sup>nd</sup> and I Streets, towards the central core of the Foggy Bottom campus and away from existing residential neighborhoods to the south and west.

60. The Commission finds that the designation of this site in the Institutional land use category on the Generalized Land Use map is a reflection of its former use as a hospital within the Foggy Bottom Campus Plan boundaries and does not provide any guidance regarding the



appropriate zoning, uses, height, or density. See Tr. Jan. 4, 2007 at 48-49, 222-23. The Project calls for the infill of a vacant city block adjacent to a Metrorail station and the Central Employment Area with a mixed-use development, and the Commission credits OP's testimony that the PUD's density and uses are consistent with the portion of the Property designated High Density Commercial and surrounding land use designations, which include High Density Commercial and mixed use High Density Residential/Medium Density Commercial land use designations. Tr. Jan. 4, 2007 at 15, 48. Additionally, the Commission notes the Comprehensive Plan's Generalized Land Use map continues the dual High Density Commercial and Institutional designation for other commercial properties along Pennsylvania Avenue within the Foggy Bottom Campus Plan boundaries.

61. The Commission finds that the Foggy Bottom campus is a "specialized planning area" as depicted on the Generalized Land Use Policies Map, and is therefore subject to the applicable provisions of the Comprehensive Plan. 10 DCMR § 1118.9. Specifically, the Comprehensive Plan advocates the following policy for College and University master plan areas:

Develop detailed plans, setting forth objectives, policies, and implementation strategies which may include . . . land use and zoning changes . . . .

11 DCMR § 1119.1(a) (emphasis added). The recently adopted *Foggy Bottom Campus Plan: 2006 – 2025* designates Square 54 as a commercial/investment property as well as a property appropriate for land use and zoning change, and the Commission finds the proposed change use and zoning consistent with the Comprehensive Plan. See Z.C. Case No. 06-11 (\_\_\_\_ [date of decision] \_\_\_\_).

62. Based on the compatibility of the PUD's height, density, uses and zoning with the designation of surrounding properties on the Comprehensive Plan's Generalized Land Use map, the designation of the Property as a commercial/investment property appropriate for land use and zoning change in the recently adopted *Foggy Bottom Campus Plan: 2006 – 2025*, and the Project's compatibility with numerous themes, elements, goals and policies of the Comprehensive Plan, the Commission finds that the replacement of a former non-residential building with residential, retail, and office uses adjacent to the Foggy Bottom-GWU Metrorail station is not inconsistent with the Comprehensive Plan's designation of the site in the Institutional land use category. Further, the PUD and related rezoning is completely consistent with the Generalized Land Use Policies Map and other goals and policies of the Comprehensive Plan. See FOF 57-62.

63. The Commission agrees with DDOT's conclusion that the Applicant has fully addressed parking and traffic issues associated with the proposed development. The Commission credits DDOT's testimony, including its evaluation of issues raised by the FBA traffic consultant, that the traffic impacts of the Project will be mitigated by specific measures, including the TMP, a new traffic signal and traffic signal optimization measures, and a truck management plan. The Commission concurs with DDOT that the additional TMP measures and annual report will ensure that the Project's traffic impacts continue to be mitigated and credits DDOT's testimony regarding the acceptability of the Applicant's proposed future mitigation measures, provided that the Applicant obtain final approval from DDOT for any necessary signal timing adjustments.

64. The Commission does not find the arguments raised by the ANC persuasive. The Commission disagrees with the ANC that the Project represents a “partial plan for a university campus” and therefore violates 11 DCMR § 210.4. The Commission recently approved the *Foggy Bottom Campus Plan: 2006 – 2025*, which specifically addressed the Project. Moreover, this Commission has previously allowed the use of the PUD and zoning map amendment process for individual developments within campus plans, including PUD-related map amendments that rezone portions of the campus to non-residential zone designations, thereby removing them from the aggregation requirements of Section 210. See, e.g., Z.C. Case No. 06-17 (order pending).

65. The Commission also disagrees with the ANC’s contention that the PUD violates the provisions of the *Foggy Bottom Campus Plan: 2000 – 2009* that require University uses on Square 54. First, the 2000 – 2009 Plan permitted a variety of uses on Square 54, specifically including commercial uses. Second, the Commission finds that the ANC’s argument is mooted by the recent adoption of the *Foggy Bottom Campus Plan: 2006 – 2025*, which calls for Square 54 to be used as a commercial/investment property. See Z.C. Case No. 06-11 (order pending). The Commission credits the Applicant’s testimony that the University will be able to accommodate its forecasted academic and undergraduate student housing needs on the balance of the campus as set forth in the new Campus Plan, which allows the University to devote Square 54 to commercial and investment purposes. Again, the Commission notes that such land use and zoning change is consistent with both the existing and the 2006 Comprehensive Plan.

66. The Commission disagrees with the ANC position regarding the preparation of an EIS, including an air quality study. 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.

67. The Commission is not persuaded by the ANC position that the traffic study did not provide a credible showing of no likelihood of objectionable impact. The Commission notes that the PUD standards require a showing that the impacts of the PUD are either favorable, capable of being mitigated, or are offset by the PUD’s public benefits, not a demonstration of no likelihood of objectionable impact. Further, the Commission credits the findings of the Applicant’s traffic consultant, and agrees with DDOT that any impacts will be mitigated by the proposed TMP, traffic light and traffic light optimization, and truck management measures. The Commission notes that the Applicant will be required to submit its annual report on the effectiveness of the TMP and other mitigation measure to the ANC as a condition of this PUD, which will allow the ANC to continue to monitor the Project’s traffic impacts.

68. The Commission disagrees with the ANC position that the proposed amenities are insufficient. The Commission credits the testimony of OP and numerous persons in support that the PUD provides significant and sufficient public benefits and project amenities. In addition, the Commission credits the testimony of the Applicant’s retail consultant that the proposed retail program will likely succeed given the Project’s location on the Foggy Bottom campus, within the Foggy Bottom and West End neighborhoods, and adjacent to an active Metrorail station; the mix of uses within the Project; and the provision of a full-service grocery store as a component of the retail program and amenity of the Project. The Commission further credits the testimony of the Applicant and OP that it is infeasible to secure a letter of intent from any potential grocery store

tenant prior to zoning approval, and therefore disagrees with the ANC's request to condition approval on receipt of a firm letter of intent from a grocery store tenant.

69. The Commission concurs with the Applicant that portions of the testimony provided by the ANC's representative at the hearing exceeded the scope of the ANC Report and should not be afforded "great weight." Nevertheless, the Commission also disagrees with the ANC regarding the Project's height and massing, and finds it appropriate given the existing and proposed building heights surrounding the Property, the surrounding High Density Commercial and Mixed Use High Density Residential/Medium Density Commercial designations on the Generalized Land Use map, and the Property's location adjacent to the Foggy Bottom-GWU Metrorail station. Further, the Commission finds that the ANC commentary regarding the requested rezoning and application of the PUD guidelines in Case No. 06-11 was not directly relevant to application under consideration in this case. The Commission reiterates that the Zoning Map amendment is justified, and the proposed PUD does not use the PUD process to circumvent the intent and purposes of the Zoning Regulations. The requested C-3-C zoning is not inconsistent with the Campus Plan, the Comprehensive Plan and the character of the campus and surrounding area. Moreover the PUD guidelines permit the Commission to grant the requested height and density development incentives, which allow for the creation of significant open space within the Project, a lot occupancy of 77%, and the retail and streetscape amenities.

## CONCLUSIONS OF LAW

### *Appropriateness of PUD Zoning Mechanism*

The Commission concludes that the PUD process is an appropriate means of controlling future development of Square 54 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 Application offers specific community benefits that significantly advance the public interest.

The Zoning Regulations do not prohibit the application of the PUD process to property within a campus plan. In fact, the PUD process supplements and enhances the protections afforded by the campus plan regulations: the consolidated PUD review process provides for detailed design review as well as review of the project’s proposed height, density, and use, and offers substantial project amenities and public benefits in exchange for a higher overall height and density and design flexibility.

Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. 11 DCMR § 2402.5 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. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. 11 DCMR § 2405.

### *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.

The application meets the minimum area requirements of § 2401.1 and the contiguity requirements of § 2401.3 of the Zoning Regulations.

The PUD is within the applicable height and bulk standards of the Zoning Regulations. The proposed height and density will not cause an adverse effect on nearby properties, is consistent with the height and density of surrounding properties, and is appropriate given the location adjacent to a Metrorail station. The mix of commercial, residential, and retail uses are appropriate for the site, which is located at the nexus of the Central Employment Area, Foggy Bottom and West End neighborhoods, and Foggy Bottom campus of The George Washington University.

The impact of the proposed PUD on the surrounding area and upon the operation of city services and facilities is acceptable. As demonstrated in the Traffic Study submitted by the Applicant and the reports and testimony of DDOT, the Project will not cause adverse traffic impacts and the Property is well served by major arterial streets, numerous bus lines, and, most importantly, the adjacent Foggy Bottom-GWU Metrorail station. Further, the application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.

The application seeks a PUD-related zoning map amendment to the C-3-C District, and an increase in height and density as permitted under the PUD guidelines, with flexibility for the roof structure of the residential component. The benefits and amenities provided by the Project, particularly the provision of market, workforce, and affordable housing, exemplary architecture, significant public open spaces, below grade parking and loading, grocery store and other neighborhood-serving retail, and sustainable design features are reasonable for the development incentives proposed in this application.

The PUD and rezoning for the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

#### *The Comprehensive Plan*

Approval of the PUD and change in zoning is not inconsistent with the Comprehensive Plan, including the current designation of the Property as part of the Institutional land use category. The Zoning Commission directly considered the issue of non-institutional uses on properties designated as Institutional in Z.C. Case No. 03-11, where it explicitly permitted residential and commercial uses on the site of the former Columbia Hospital for Women, which is designated as for Institutional use. There, the Commission observed that “the designation of the site in the Institutional land use category on the Generalized Land Use map is a reflection of its former use as a hospital” and found that the “replacement of a non-residential building with residential uses” is not inconsistent with Institutional land use designation. Z.C. Order No. 03-11 at FOF 29(e). In order to ascertain the appropriate intensity of use for the proposed residential and retail uses, the Commission looked beyond the Institutional land use designation to the designation of “the general area of the site in the mixed use category of high-density residential and medium density commercial.” *Id.* at FOF 10. The Commission concluded as a matter of law that approval of the PUD and change of zoning was not inconsistent with the Comprehensive Plan. *Id.* at COL 9.

Here, the replacement of a former hospital building and currently vacant lot with residential, retail and office uses, on a site adjacent to the Foggy Bottom-GWU Metrorail station, is also not inconsistent with the Comprehensive Plan’s designation of the site in the Institutional land use category based on:

- the compatibility of the PUD’s height, density, uses and zoning with the designation of surrounding properties on the Comprehensive Plan’s Generalized Land Use map;<sup>4</sup>
- the Property’s designation as a commercial/investment property that is appropriate for land use and zoning change in the recently adopted *Foggy Bottom Campus Plan: 2006 – 2025*;
- designation of the Foggy Bottom campus as a “specialized planning area” under the Generalized Land Use Policies Map, and related policies that anticipate “land use and zoning change” consistent with campus plans;
- the Project’s compatibility with numerous themes, elements, goals and policies of the Comprehensive Plan regarding housing, transportation, urban design and economic development, as detailed below.

The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The Project is consistent with the following major themes of the Comprehensive Plan:

- stabilizing and improving the District’s neighborhoods,
- increasing the quantity and quality of employment opportunities in the District, respecting and improving the physical character of the District; and
- reaffirming and strengthening the District’s role as an economic hub of the National Capital Region.

The Project also furthers the objectives and policies of several major elements of the Comprehensive Plan:

- Housing. Through the construction of approximately 333 – 336 new rental units and the proposal to dedicate 13% of the residential units as a combination of affordable and workforce housing, the Project provides new housing to meet all levels of need and demand and, because of the Project’s location on the Foggy Bottom campus, may relieve student housing pressures on the surrounding residential rental market;
- Transportation. The proposed mixed-use development is adjacent to the Foggy Bottom-GWU Metrorail station, one of the busiest Metrorail stations in the system, permits the co-location of high density residential and non-residential uses at a strategic transit-oriented location.
- Urban Design. The Project’s significant retail component and public open spaces adjacent to the Foggy Bottom-GWU Metrorail station provides a functionally

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<sup>4</sup> Under the guideline applicable to Institutional land uses in the 2006 Comprehensive Plan, the Project’s density and intensity is comparable to those in the vicinity. Further, the Project’s density and intensity of use is fully consistent with the approved *Foggy Bottom Campus Plan: 2006 – 2025*.

active commercial center within the District, creates active use during both the day and evening hours, and creates aesthetically pleasing physical concentrations of activity and development around a Metrorail station.

- Land Use. The transit-oriented, mixed use development satisfies District goals for development in Metrorail station areas that assure orderly growth, compatible mixes of uses, appropriate densities, good pedestrian and vehicular circulation, appropriate combinations of public and private action, and the promotion of appropriate commercial development, including centers for retail and office uses to serve the economic needs of the District and its neighborhoods.

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

- Contributing to the health and vibrancy of the Foggy Bottom neighborhood with the inclusion of neighborhood-serving retail, enlivened streetscape, the wide pedestrian plaza on I Street and the public courtyard interior to the site between the office and residential components;
- Increasing the District tax revenue by expanding economic activity in Ward 2;
- Assisting in the completion of residential development in the West End;
- Improving the land use mix and urban design qualities of areas around the Foggy Bottom-GWU Metrorail station; and
- Developing 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.

#### *ANC “Great Weight”*

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 recommendations raised in the ANC Report are not persuasive.

First, the Commission disagrees with the ANC that the Project represents a “partial plan for a university campus” and therefore violates 11 DCMR § 210.4. The Commission recently approved the *Foggy Bottom Campus Plan: 2006 – 2025*, which specifically addressed the Project. Moreover, this Commission has previously allowed the use of the PUD and zoning map amendment process for individual developments within campus plans, including PUD-related map amendments that rezone portions of the campus to non-residential zone designations, thereby removing them from the aggregation requirements of Section 210. See, e.g., Z.C. Case No. 06-17 (order pending).

Second, the Commission also disagrees with the ANC’s contention that the PUD violates the provisions of the *Foggy Bottom Campus Plan: 2000 – 2009* that require University uses on Square 54. In fact, the 2000 – 2009 Plan permits a variety of uses on Square 54, specifically including commercial uses. Moreover, the ANC’s argument is mooted by the Commission’s

recent approval of the *Foggy Bottom Campus Plan: 2006 – 2025*, which calls for Square 54 to be used as a commercial/investment property. See Z.C. Case No. 06-11 (order pending). Under the new Campus Plan, the University will be able to accommodate its forecasted academic and undergraduate student housing needs on the balance of the campus, which allows the University to use Square 54 to commercial and investment purposes. The Commission reiterates that the contemplated land use and zoning change is consistent with both the existing and the 2006 Comprehensive Plan.

Third, the Commission concludes that an EIS was not required prior to zoning approval. 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. Moreover, as to the ANC's 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.

Fourth, the Commission is not persuaded by the ANC position that the traffic study did not provide a credible showing of no likelihood of objectionable impact. First, the ANC seeks to apply the incorrect standard of review. The PUD standards require a showing that the impacts of the PUD are either favorable, capable of being mitigated, or are offset by the PUD's public benefits, not a demonstration of no likelihood of objectionable impact. The ANC invokes the Campus Plan standards under Section 210. Second, the Commission has credited the findings of the Applicant's traffic consultant, and agrees with DDOT that any impacts will be mitigated by the proposed TMP, traffic light and traffic light optimization, and truck management measures.

Fifth, the Commission disagrees with the ANC position that the proposed amenities are insufficient. The PUD provides significant and sufficient public benefits and project amenities. See FOF 38. Specifically, the proposed retail program is likely to succeed given the Project's location on the Foggy Bottom Campus, within the Foggy Bottom and West End neighborhoods, and adjacent to an active Metrorail station; the mix of uses within the Project; and the provision of a full-service grocery store as a component of the retail program and amenity of the Project. The Commission credits the testimony of the Applicant of the good faith steps it has taken to date to secure a grocery store tenant and concludes that it is infeasible to secure a letter of intent from any potential grocery tenant prior to zoning approval, and therefore disagrees with the ANC's request to condition approval on receipt of a firm letter of intent from such a tenant.

Sixth, the Commission also disagrees with the ANC's objection regarding the Project's height and massing, and has concluded that the height and density are appropriate given the existing and proposed building heights surrounding the Property, the surrounding land use designations, and the location adjacent to the Foggy Bottom-GWU Metrorail station.

Finally, the Commission concludes that the Zoning Map amendment is justified and the proposed PUD does not use the PUD process to circumvent the intent and purposes of the Zoning Regulations. The requested C-3-C zoning is not inconsistent with the Comprehensive Plan, the Campus Plan, and the character of the campus and surrounding area. Moreover, the



height and density development incentives that are permitted under the PUD guidelines allow for the creation of significant open space within the Project and the retail and streetscape amenities.

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## 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 an application for a Consolidated Review and Approval of a Planned Unit Development (“**PUD**”) and related Zoning Map Amendment for property consisting of Square 54, Lot 30 (the “**Property**” or “**Square 54**”). This approval is subject to the following guidelines, conditions, and standards:

1. This PUD shall be developed in accordance with the plans prepared by Pelli Clarke Pelli Architects and Sasaki & Associates marked as Exhibits 4, 20, 36, and 83 in the record, as modified by guidelines, conditions and standards herein.
2. The Property shall be rezoned from R-5-D to C-3-C.
3. The Project shall be developed as a mixed-use development and constructed to maximum density of 7.5 FAR. The height of the building shall range from 90 to 130 feet, as shown on the approved plans marked as Exhibits 4, 20, 36, and 83 of the record. The total lot percentage of the project shall not exceed 77 percent.
4. Approximately 343,000 square feet of gross floor area shall be devoted to residential use, resulting in approximately 333 – 336 apartment units in the Project.
5. Approximately 84,000 total at- and below-grade gross square feet will be devoted to retail use. Of this, no less than 25,000 square feet shall be restricted to grocery store use.
6. Approximately 454,000 square feet of gross floor area shall be devoted to office use.
7. The Project shall include an internal courtyard designed in accordance with the plans marked as Exhibits 4, 20, 36, and 83.
8. Of the residential units in the Project, 8% of the residential units shall be devoted to affordable housing for residents with an income that is no greater than 80% of the area median income. Additionally, 5% of the residential units shall be devoted to workforce housing for residents with an income that is no greater than 120% of the area median income.
9. The Project shall include parking as shown on the plans referenced above. A total of approximately 362 spaces shall be set aside for exclusive use by The George Washington University, and shall count towards the University’s off-street parking requirement pursuant to the *Foggy Bottom Campus Plan: 2006 – 2025*. The Project shall make available at least 3 spaces for carsharing purposes. The Project shall also include at least 33 bicycle spaces in the garage complex.
10. The Project shall provide off-street loading consistent with the approved plans. The Applicant shall comply with the proposed Truck Management Plan dated November 14, 2006 and marked as Exhibit 34 in the Record.

11. The Applicant shall comply with the Transportation Management Plan (“TMP”) dated November 14, 2006 and marked as Exhibit 34 in the Record. The TMP shall include the following components.
  - a. Boston Properties and KSI will coordinate transportation management activities with the University’s Transportation Management Coordinator;
  - b. Boston Properties and KSI will provide transit and telecommuting incentives to the employees and residents of the Project, as detailed in the TMP, as well as information dissemination regarding public transportation options to residents, tenants, and employees; and
  - c. Boston Properties and KSI will provide DDOT and ANC 2A with an annual update on the anniversary of the date of this order, detailed in the DDOT Report dated December 4, 2007 and marked as Exhibit 51, that includes:
    - i. Details on the effectiveness of measures proposed by the TMP, including the modal split for major building tenant types, the use of transit incentives by each major building tenant type, and the demand for carsharing spaces;
    - ii. A report detailing the use and effectiveness of the underground loading facility;
    - iii. A report detailing parking garage access queuing; and
    - iv. A general description of major accomplishments and issues related to TMP implementation and management, and steps taken to address those issues.
12. The Applicant shall secure the approval of the District Department of Transportation for the final design of curb cut on 22<sup>nd</sup> Street.
13. The Project shall include the following sustainable design features:
  - a. Provision of approximately 26,000 square feet of green roof elements, including approximately 4,000 square feet of green roof structure on the office component, approximately 4,000 square feet of green roof structure on the residential component, and approximately 18,000 square feet of the internal courtyard (i.e., the roof of the below-grade parking and loading structure) designed to function as a green roof, as shown on the approved plans marked as Exhibit 36 in the record.
  - b. Sustainable strategies which will achieve the equivalent of a minimum score of 16 points under U.S. Green Building Council’s LEED for New Construction, version 2.2 for both the office and residential components of the Project. For purposes of this Condition, “office component” and “residential component” shall incorporate all shared components of the Project.

14. Prior to the issuance of a building permit for any building approved by this Order, the Applicant shall provide the following amenities:
  - a. WMATA Design and Engineering Contribution: contribution of \$100,000 to the Washington Metropolitan Area Transit Authority toward the design and engineering fees associated with the potential second entrance at the Foggy Bottom-GWU Metrorail station. If the WMATA design does not go forward prior to the issuance of a building permit for the Project, the Applicant will contribute \$100,000 to the Housing Production Trust Fund.
  - b. Traffic Signal at 22<sup>nd</sup> and I Streets: contribution of 100% of the traffic engineering and construction costs of the signalization of the intersection of 22<sup>nd</sup> Street and I Street.
15. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - a. 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 structures.
  - b. 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.
  - c. 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.
  - d. To vary the size and location of retail entrances to accommodate the needs of specific retail tenants and storefront design.
  - e. To make alterations to the parking garage design provided that the parking garage contains approximately 1,026 parking spaces, which requirement may be satisfied with any combination of compact and full-sized spaces, and conforms to the Zoning Regulations regarding parking garages, such as but not limited to aisle width.
  - f. To revise the design of the roof structure on the residential component at 22<sup>nd</sup> and I Streets in order to accommodate necessary mechanical equipment.
16. The Applicant shall enter into a Memorandum of Understanding with the Office of Local Business Development.
17. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services.

18. 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 Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs. 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.
19. 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.
20. Prior to the issuance of a certificate of occupancy for any building approved by this Order, the Applicant shall cause the recordation of a covenant in the land records of the District of Columbia that limits the use of the affordable and workforce housing units in the building required pursuant to this Order to affordable and workforce housing.
21. The PUD approved by the 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 building permit for Phase 1 (defined below) as specified in 11 DCMR § 2409.1. The Applicant shall have the flexibility to construct the Project in two phases.
  - a. Phase 1 consists of the underground parking and loading and below-grade retail space, including the grocery store. Within two (2) years of the receipt of a certificate of occupancy for the occupiable areas of the Phase 1 improvements, the Applicant shall commence construction of Phase 2 improvements (defined below).
  - b. Phase 2 consists of the office, residential and retail components of the Project. A certificate of occupancy may be issued for any of the Phase 2 components of the Project provided that a building permit has been issued for the other Phase 2 components.
  - c. If a certificate of occupancy has not been issued for a grocery store measuring no less than 25,000 square feet within two years of the issuance of certificates of occupancy for the residential and office components, the Applicant shall return to the Zoning Commission for reconsideration of the grocery store requirement and appropriate amendment of the PUD.
22. 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 \_\_\_\_\_.

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Carol J. Mitten, Chairman  
Zoning Commission

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Jerrily R. Kress, FAIA  
Director, Office of Zoning