

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-11J/06-12J
Z.C. Case No. 06-11J/06-12J
The George Washington University Foggy Bottom Campus
(Second-Stage Planned Unit Development and
Further Processing of an Approved Campus Plan @ Square 77)
July 25, 2013

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on May 20, 2013, to consider an application of The George Washington University (the “University”) for the review and approval of the second-stage of an approved planned unit development (“PUD”) and further processing of an approved campus plan. The Commission considered the application pursuant to § 210, 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, and Hearing

1. The property that is the subject of the application is located in Square 77 and consists of Lots 5, part of 845, 846, and a portion of a public alley to be closed (the “Property”).
2. In December 2012, the University submitted an application for second-stage PUD approval of the Property. The University sought approval to develop the Property as a new residence hall. The University concurrently requested further processing approval of its approved campus plan to construct the new facility. (Exhibit [“Ex.”] 2.)
3. The application was set down for a public hearing at the Commission’s February 11, 2013 public meeting. Notice of the public hearing was published in the *D.C. Register* on March 22, 2013 (60 DCR 4603) and was mailed to Advisory Neighborhood Commission (“ANC”) 2A and to owners of property within 200 feet of the second-stage PUD site. (Ex. 14.)
4. A public hearing was conducted on May 20, 2013. The Commission accepted Alick Dearie as an expert in the field of architecture, Jami Milanovich as an expert in the field of traffic engineering, and Andi Adams as an expert in the field of historic preservation. 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”). (Ex. 13.)
6. At the hearing, the Commission heard testimony and received evidence from the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), and ANC 2A in support of the application, as well as testimony and evidence from WECA expressing objections to the application. (Ex. 18, 19, 20, 31.)
7. The Commission also heard testimony from area residents and students in support of the application. (Ex. 25-27.) Other than WECA, no other person or party testified in opposition to the application.
8. At the close of the hearing, the Commission recommended that the University continue to consider internal changes at the ground floor of the new residence hall. The University filed its post-hearing submission responding to the Commission’s recommendations on May 28, 2013. (Ex. 32.) The University filed an additional post-hearing submission regarding the ground-floor retail space on June 12, 2013.
9. At its public meeting on June 10, 2013, the Commission took proposed action to approve the application and plans that were submitted into the record.
10. The proposed action of the Commission was referred to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. NCPC, by action dated July 16, 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. (Ex. 38.)
11. The Commission took final action to approve the application on July 25, 2013.

Campus Plan and First-Stage PUD Approval

12. 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.
13. For the Property that is the subject of this application, the Campus Plan/PUD approved a building devoted to residential/campus life/athletic use with a height of 110 feet, lot

occupancy of 75% (based on a lot area of 37,666 square feet), and gross floor area of 316,500 square feet (8.4 floor area ratio [FAR], based on a lot area of 37,666 square feet).

14. The Campus Plan/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. For the Property that is the subject of this application, the Campus Plan/PUD approved a rezoning to the C-3-C Zone District
15. The historic preservation component of the Campus Plan/PUD called for the preservation of the front portions of the three existing residence halls on the Property (West End, Schenley, and Crawford Halls).
16. The Campus Plan/PUD called for the closure of the existing public alley on the square to accommodate the redevelopment.
17. The Campus Plan/PUD called for the University to discontinue the use of off-campus properties for undergraduate housing, including City Hall which will no longer be used to house undergraduate students by July 1, 2016.
18. The Campus Plan/PUD did not require ground-floor retail space on the Property because of the requirement to retain the historic portions of West End Hall.

Second-Stage PUD Approval/Further Processing

Overview of the Property

19. The Property is a rectangular through parcel located in the middle of Square 77 with frontage on both H Street, N.W. and I Street, N.W. The Property is currently improved with the West End, Schenley, and Crawford residence halls, as well as a public alley and surface parking in the interior of the site. The three residence halls currently accommodate up to 568 student beds. (Ex. 2.)
20. According to evidence and testimony from the University's expert architectural historian, the three eight-story residence halls were originally constructed as apartment buildings in the 1920s. As a part of the Campus Plan/PUD process, the University and its preservation consultants worked with the Historic Preservation Review Board ("HPRB") and its staff at the Historic Preservation Office ("HPO") to undertake a comprehensive assessment of potential historic resources throughout the campus. The three residence halls were identified as contributing buildings in the proposed historic district, but the stakeholders determined that only the front portions of the buildings were significant and the remainder of the structures could be demolished to accommodate the redevelopment of the Property.

21. Surrounding uses in the square include the Marvin Center (the student center) and the Academic Center (which contains student classrooms and faculty offices). To the south are Gelman Library, Kogan Plaza, and Lisner Auditorium. (Ex. 2.)
22. The entrance to the Foggy Bottom-GWU Metrorail station is located two blocks west of the Property. (Ex. 2.)

The Project

23. The University sought approval to retain the front portions of the West End, Schenley and Crawford residence halls and construct a 12-story infill addition that will create a new residence hall (the “Project”). The Project also includes two stories of below-grade student life and retail program space and a minimum of approximately 1,000 square feet of retail space fronting I Street N.W. The uses within the Project are consistent with the Property’s residential/campus life/ athletic designation under the approved Campus Plan. (Ex. 2, 17, 23.)
24. At the hearing, the University’s representatives explained that the Project will accommodate up to 898 student beds (or approximately 332 net new beds) through two planned types of housing: affinity-based group housing and more traditional units. The Project will also contain housing for faculty-in-residence, and the University requested flexibility to modify the number and type of housing within the Project. (Ex. 23.)
25. The University also explained that the Project would contain up to five retail spaces, including up to four potential retailers in the first below-grade level and an additional retail space at ground level along I Street. In response to community request, the University agreed to increase the size of the ground-floor retail space to a minimum of approximately 1,000 square feet and require that at least 50% of the retail spaces remain open until at least 9:00 p.m. (Ex. 17, 23.)
 - a. The Commission does not agree with WECA’s contentions regarding the ground-floor retail space. This development site was exempt from the requirement to provide ground-floor retail along the I Street Retail Corridor because of the historic status of the West End building. Notwithstanding that exemption, the University designed the Project to include such retail space in direct response to community requests for additional ground-floor retail space along I Street. Furthermore, the University voluntarily agreed to increase the size of the ground-floor retail space and committed to keep it open until at least 9:00 p.m.; and
 - b. The Commission also disagrees with WECA’s contentions that the proposed retail uses will not be “night-time activating.” First, the Campus Plan/PUD imposes no such requirement on the retail space. Second, the University presented testimony that, consistent with student lifestyles and preferences, the vast majority of its retail spaces within University buildings are open until well after 9:00 p.m. The

University's commitment is a minimum baseline and does not preclude later hours of operation, which will likely be supported by market demand.

26. The Project will feature multiple pedestrian entrances to both the public portions of the Project (that is, the retail and student life spaces) and the residential portions of the Project along H Street. The existing West End Hall entrance on I Street will serve as the entrance to the public and residential portions of the Project, as well as the ground-floor retail component, along I Street. (Ex. 2, 23.)
27. At the hearing, the project architect provided a detailed description of the building design intent, façade design, materials selection, and surrounding context. The University presented testimony and evidence that the proposed design of the Project had received concept approval from HPRB. The architect and architectural historian each noted the proposed components of the building design including type and color of materials, bays, and other modulations in the façade design, and location of the roof structure were all incorporated based on their compatibility with the retained portions of the existing historic structures pursuant discussions with HPRB and HPO. The University requested flexibility to continue to modify the design of the Project in response to comments from HPRB and HPO.
28. The Project and the related alley closing will create a significantly improved site plan for vehicular and pedestrian traffic over existing conditions. Through the alley closing, the University will seek approval to close the existing curb cut on H Street. The University will also convert an existing back-in loading area along I Street into a new front-in, front-out shared service and loading area for the Project and the Marvin Center. This will eliminate existing back-in loading activity along I Street. The University requested flexibility to further refine the design and operation of the Project in response to comments received and changes made during the alley closing process. (Ex. 2, 23.)
 - a. The University testified that all regular deliveries would take place in trucks no larger than a WB-40 (that is, trucks that are 45 feet or less in length), and that such trucks could safely maneuver in and out of the loading dock front-first. The University also agreed to implement a detailed Loading Management Plan to regulate loading activity on the square. In response to community request, the University agreed to eliminate a proposed on-street loading space and further agreed to require all trucks— even special deliveries that take place in trucks longer than 45 feet in length – to use the loading area within the square, rather than do so from the street; (Ex. 17.)
 - b. The Commission does not agree with WECA that the Project will negatively impact pedestrian safety. The elimination of the H Street curb cut and discontinuation of back-in loading on I Street, combined with the loading management measures proposed by the University, will improve pedestrian safety over current conditions. When combined with the planned streetscape

improvements that will widen the sidewalk width on both H and I Streets, the Project will result in improved and safe pedestrian conditions;

- c. The Commission does not agree with WECA that the University should be required to accommodate student move-in and move-out within the loading area similar to residential apartment buildings. As the University explained, student move-in and move-out is a unique situation that must manage all residents moving in within a compressed period of time, and such volume cannot be accommodated within the loading area. Furthermore, the University testified that it actively and carefully manages student move-in and move-out activities, including at the Property for the existing residence halls, and it will be able to accommodate the additional volume associated with the net new 332 beds resulting from the Project. Finally, the Project is located within the core of the campus and away from adjacent residential neighborhoods;
 - d. The Commission also finds that WECA's claims regarding student-related deliveries are unsupported and without merit. As the University explained, most student deliveries are processed through student mail services and are, therefore, not delivered directly to the building. Furthermore, the units will be furnished and will not require furniture, appliances or other large deliveries that are typically delivered directly to a building. WECA provided no evidence that such student-arranged deliveries were a regular occurrence. Finally, the Project is located within the core of the campus and away from residential neighborhoods, so even if such activity occasionally takes place, it is not likely to generate adverse or objectionable impacts on surrounding residential property; and
 - e. For these reasons, the Project will not generate adverse or objectionable impacts due to loading and service activity, including student move-in and move-out activity or other student deliveries.
29. The University testified that it is targeting the equivalent of a Silver rating for the Project under the US Green Building Council's LEED 2009 for New Construction rating system. Sustainable features include approximately 13,000 square feet of green roof. The University also testified that it is considering a solar hot water array, and requested design flexibility to incorporate the array at the University's discretion. (Ex. 23.)
30. The Project will provide approximately 112 bicycle parking spaces within the Project as well as an additional 40 bicycle parking spaces in public space. (Ex. 17.)
31. The total gross floor area for the Project is approximately 270,118 square feet for a total density of approximately 8.08 FAR and a lot occupancy of approximately 79.7%.¹ The building will reach a maximum height of approximately 110 feet. (Ex. 17, 23.)

¹ The proposed FAR and lot occupancy are each addressed in Finding of Fact 35.

32. The University requested flexibility from the court width requirements in order to accommodate the proposed design of the building relative to the underlying lot; flexibility from the roof structure requirements in order to accommodate the lack of setback and varying heights of the roof structure; flexibility from the loading requirements in order to eliminate the requirement for a 55-foot loading berth; and flexibility from the accessory structure requirements to permit the location of an accessory structure providing elevator access to the below-grade portions of the Project in the loading and service area, which is a closed court. (Ex. 2.) The University also requested flexibility to modify the design of the Project as is detailed in the conditions of approval.

Project Amenities and Public Benefits

33. The project amenities and public benefits of the PUD were proffered and accepted in conjunction with the Campus Plan/PUD process. The University indicated in its written submissions that it had started to implement many of these public benefits and project amenities. (Ex. 2.)
34. As detailed in the University's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits that were approved as part of the Campus Plan/PUD:
- 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 construction of an infill addition with new on-campus beds within the campus core and immediately proximate to other student life and academic buildings;
 - c. Effective and safe vehicular and pedestrian access and transportation management measures, including the improved loading and service area that permits trucks to turn around within the loading area and therefore enter and exit front-first and ample bicycle parking;
 - d. Environmental benefits, including approximately 13,000 square feet of green roof as well as a goal of achieving a minimum of the equivalent of a Silver rating under the LEED-NC 2009 rating system (which exceeds the minimum commitment of 16 points under Condition P-13 of the Campus Plan/PUD);
 - e. Uses of special value, including retail establishments within the first below-grade level and a minimum of approximately 1,000 square feet of ground-floor retail along I Street N.W. consistent with the University's commitment to build out an

“I Street Retail Corridor.” The Commission notes that the Property was exempt from the retail requirement and the proffered retail therefore represents an additional public benefit above what was proffered in the Campus Plan/PUD; and

- f. Historic preservation, through the retention of the historic front portions of the West End, Schenley, and Crawford buildings and construction of a compatible infill addition.

(Ex. 2, 17.)

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

35. Pursuant to Condition P-14 of Z.C. Order No. 06-11/06-12 (the “Order”), 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.
 - a. In the First-Stage PUD, the Commission initially approved a gross floor area of 316,500 square feet for the development site, which corresponded to a 8.4 FAR; accordingly, the Commission authorized the additional five percent of density permitted under § 2405.3 at that time. Similarly, the First-Stage PUD identified a lot coverage of 75% for the development site even though the C-3-C Zone District permits a lot occupancy of up to 100% for residential uses;
 - b. The First-Stage PUD assumed the development site had a land area of 37,666 square feet, and calculated the proposed FAR and lot coverage based on that land area. The actual development site, as proposed by the University, has a land area of 33,413 square feet, which is approximately 4,000 square feet smaller than what was originally contemplated;
 - c. The initial application for the Project identified a 7.68 FAR of and 73% occupancy based on the smaller lot area. At the hearing, the University explained that the size of the Project, and therefore the additional density and lot occupancy, had increased to 8.08 FAR and 79.7% lot occupancy, in order to address comments from HPRB and maintain the Project’s bed count; and
 - d. The Commission finds that, given the reduction in the lot area of the development site, the Project’s FAR and lot occupancy are consistent with the First-Stage PUD approval. In both cases, the building area and gross floor area are well within the maximum areas approved in the First-Stage PUD. Furthermore, the Commission previously approved the five percent increase in FAR under § 2405.3 as a part of the First-Stage PUD and the C-3-C Zone District permits a lot occupancy of 100%; accordingly, the Project’s FAR and lot coverage each comply with the requirements of the Zoning Regulations.

36. 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. (Ex. 2.)
37. 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. (Ex. 2.)
38. The Commission finds that the University has satisfied the above conditions and requirements of Z.C. Order No. 06-11/06-12.

Compliance with § 210 Standards

39. In evaluating a special exception to permit a college or university use in a residential zone district, the Commission must review whether the application meets the standards for approval under § 210 of the Zoning Regulations, including whether 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.” The Commission is also authorized under the Zoning Act to approve planned unit developments consistent with the requirements set forth in Chapter 24 of the Zoning Regulations. Even though the subject property is located in a commercial zone by virtue of a PUD-related map amendment granted in Z.C. Order No. 06-11/06-12, that same order determined that this and other commercial rezoned properties would still be subject to special exception review as part of their second stage PUD applications. *See* Z.C. Order No. 06-11/06-12 at page 30.
40. 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 for further processing of the approved campus plan to construct the Project.
41. The Project will increase the number of on-campus student beds and facilitate a concomitant reduction in the number of off-campus students and will therefore reduce the likelihood of objectionable impacts due to the number of students in the surrounding residential neighborhoods. (Ex. 2.)
42. The Commission credits the testimony of the University’s traffic consultant and DDOT and finds that the loading, service and other transportation impacts of the Project are not likely to become objectionable to neighboring property.

- a. The Project is located close to 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;
- b. The Project will generate very few additional trips and will not impose adverse or objectionable impacts on traffic operations in the surrounding area. For the reasons discussed elsewhere in this order, the proposed I Street loading and service entrance will accommodate the loading needs for the Project and minimize the impact of service and loading activity. The Commission also credits the testimony of DDOT that these measures are acceptable; and
- c. The proposed streetscape design and improvements will enhance the pedestrian experience around the entire perimeter of the square through a reduction in the number of curb cuts, elimination of back-in loading activity, and new streetscape improvements adjacent to the project on both H Street and I Street.

(Ex. 12, Tab B; Ex. 17, Tab C.)

43. The Commission credits the evidence submitted by the University that total campus FAR will remain well within the density limit approved for the residentially-zoned portions of the campus even after the construction of the Project. (Ex. 2, Tab I.)
44. 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. (Ex. 2, 18.)

Compliance with PUD Standards

45. 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. Here, 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 court, roof structure, loading and accessory structure requirements and satisfaction of the PUD standards.

- a. As this Commission has previously found (see Z.C. Order No. 06-11B1/06-12B1), WMATA has determined that a future second entrance to the Foggy Bottom-GWU Metrorail station could be located at the northwest corner of Square 77, at the intersection of 22nd and I Streets N.W. and adjacent to a development site under the Campus Plan/PUD. The University has already stated that it would accommodate space for a future second Metrorail entrance in conjunction with its buildout of that development site;
 - b. As the Commission has previously found, the University should not be required to fund or contribute to the construction of a second Metrorail entrance, either through the Project or through future development. 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; and
 - c. Notwithstanding the above, the Commission finds that the ground-floor and other retail included in the Project represents an additional public benefit that directly responded to community requests.
46. The Commission credits the testimony of the University and its architectural experts and finds that the additional on-campus student beds, superior design, site planning, streetscape, sustainable design, uses of special value (retail space), and historic preservation features of the Project all constitute acceptable project amenities and public benefits consistent with the Commission's first-stage approval.
 47. 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 closure of the public alley and related H Street curb cut, streetscape improvements, and transformation of the I Street curb cut into a front-in, front-out service entrance are consistent with the First-Stage PUD.
 48. For the reasons detailed in this Order, the Commission credits the testimony of the University's traffic consultant and finds that the loading, service, 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 also agrees with DDOT's conclusions regarding vehicular and pedestrian impacts and related issues with the proposed development. The proposed service and loading plan, with the loading management measures proffered by the University are acceptable and will mitigate potential pedestrian-vehicular conflicts. The Commission was not persuaded by WECA's testimony regarding the transportation impacts of the Project.

49. 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 as an Institutional use on the Future Land Use Map;
 - b. Land Use Element policies 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. Other policies in the Economic Development, Education, Transportation, Environmental Protection, Historic Preservation and Urban Design Elements related to the Land Use policies and goals stated above, including the provision of additional on-campus housing; and
 - d. Policies in the Near Northwest Area Element regarding additional on-campus housing, improved communication, increased density on-campus, and mitigation measures and amenities that improve the character of the area as a whole.

Agency Reports

50. By report dated May 10, 2013 and by testimony at the public hearing, OP recommended approval of the application, including the second-stage PUD and further processing of the campus plan. OP reviewed the application under the PUD and campus plan standards of the Zoning Regulations as well as the specific conditions of the Campus Plan/PUD Order, and concluded that the University had satisfied its burden of proof. (Ex. 18.)
51. By report dated May 10, 2013 and by testimony at the public hearing, DDOT recommended approval of the University's application based on its review of the vehicular, pedestrian, and other transportation impacts of the Project. (Ex. 19.)

ANC 2A Report

52. At a regularly scheduled meeting on April 17, 2013, with a quorum present, ANC 2A approved a resolution in support of the application subject to the Commission conditioning its approval to require that the University "fulfills its commitment to use this project to end the use of the off-campus City Hall building for undergraduate student housing," provides retail space both at the ground floor and on the first level below grade and commit that no less than half of the establishments in the project will close no earlier than 9:00 p.m., and schedules the limited large truck deliveries it expects during times when other deliveries are not being made to the Square. (Ex. 20.)

53. It is not necessary for the Commission to require that this project be used to fulfill the University's commitment to the end the use of City Hall for undergraduate housing. Condition P-8 (d) of Z.C. Order No. 06-11/06-12 requires the termination of that use by July 1, 2016. The Commission did not at the time of the approval of the Campus Plan PUD choose to dictate how the University would accomplish this result. The University proffered that it would end the use by July 1, 2016 and the Commission expects full and timely compliance. The requested second and third conditions are reflected in conditions 3.c and 6.b of this Order.

Testimony in Support

54. At the hearing, the Commission received evidence and heard testimony from students and neighbors in support of the Application. (Ex. 25-27.)

Testimony in Opposition

55. WECA presented testimony and evidence from Barbara Kahlow. WECA generally objected to the impacts of the proposed Project related to transportation impacts regarding loading activity, night-time retail use, and additional community amenities. (Ex. 31.)
56. For the reasons discussed in detail herein, the Commission does not agree with WECA's assertions regarding the impacts of the Project.
57. No other persons or organizations provided testimony in opposition to the application.

CONCLUSIONS OF LAW

1. The Applicant requested special exception approval, pursuant to 11 DCMR §§210, 3305, and 3104, of further processing of its approved campus plan, and approval, pursuant to 11 DCMR Chapter 24, of a second-stage planned unit development and modification to a first-stage planned unit development for its Foggy Bottom Campus. The Commission is authorized under the aforementioned provisions to grant 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. A special exception to allow use as a college or university in a Residence zone may be granted subject to the provisions contained in § 210, including that the university use must be "located so that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable conditions" and that 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.

2. 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 for special exception approval of further processing of its campus plan in accordance with § 210. In particular, the Commission concludes that the proposed Project will not create objectionable impacts on the surrounding community due to the number of students or loading and service impacts.
3. Also based on the above Findings of Fact, the Commission concludes that the University has satisfied the burden of proof for 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.”
4. The proposed PUD meets the minimum area requirements of 11 DCMR § 2401.1.
5. 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, including the parameters regarding location, use, height, bulk (including both FAR and lot occupancy), and parking set forth for the Property in the First-Stage PUD.
6. 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 court, roof structure, loading and accessory structure requirements can be granted without detriment to surrounding properties and without detriment to the zone plan or map.
7. 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.
8. 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.
9. 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.

10. The Commission concludes that this project 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 additional on-campus beds, urban design, site planning, efficient and safe traffic circulation, sustainable features, retail space, historic preservation, and streetscape improvements all are significant public benefits.
11. The Commission concludes that the impact of the Project is acceptable given the quality of the public benefits of the Project. The Commission agrees with the conclusions of the University's traffic expert that the proposed Project will not create adverse transportation impacts on the surrounding community.
12. 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 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, as well as related provisions in other citywide elements and policies in the Near Northwest Area Element related to additional on-campus housing and managing the impacts of campus development.
13. The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects, and concludes approval is warranted.
14. The Commission previously concluded in Z.C. Order No. 06-11/06-12 that the proposed PUD-related Zoning Map Amendment for the Property from the R-5-D to the C-3-C 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.
15. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04) to give great weight to OP recommendations. The Commission concurs with OP's view that second-stage approval and further processing approval should be granted.
16. 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 ANC Report contained in findings of fact numbered 52 and 53, the Commission accorded the issues and concerns raised by 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.

17. 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) second-stage PUD approval for property consisting of Square 77, Lots 5, part of 845, 846, and a portion of a public alley to be closed (“Property”); and (2) further processing approval of the 2007 Foggy Bottom Campus Plan. This approval is subject to the following guidelines, conditions, and standards:

1. This Project shall be developed in accordance with the plans marked as Tab B of Exhibit 17 of the record, as modified by guidelines, conditions, and standards herein.
2. The University shall have flexibility from the court, roof structure, loading and accessory structure provisions of the Zoning Regulations as shown on the approved plans.
3. The Project shall be used for residential/ campus life/athletic and retail uses.
 - a. The University shall have the flexibility to adjust the size, number, location and type of student beds and faculty and staff apartments within the Project depending on programming needs over the life of the Project;
 - b. The Project shall include a minimum of approximately 5,000 square feet of retail space, including a minimum of approximately 1,000 square feet of retail space on the ground floor of the building; and
 - c. A minimum of 50% of the retail establishments, including the ground-floor retail establishment, shall remain open until at least 9:00 p.m. on a regular basis (e.g. except during holidays, semester breaks, or extenuating circumstances).
4. The Project shall provide a minimum of approximately 112 bicycle parking spaces within the building and an additional 40 bicycle parking spaces in public space in front of the building, as shown on the approved plans. The final number and location of improvements in public space shall be subject to the discretion of DDOT.
5. The Project shall be designed to achieve the equivalent of a minimum Silver rating on the LEED-NC 2009 rating system, including a green roof with an approximate area of 13,000 square feet.

6. The Project shall provide loading consistent with the approved plans. Such loading may be utilized to serve both the Project and the Marvin Center. The University shall abide by the following loading management plan provisions:
 - a. Dock Manager. A member of the University staff shall be designated to serve as the on-site dock manager for the square, who shall be responsible for coordination of the schedule of deliveries to the extent possible. The dock manager shall also be responsible for disseminating information to tenants, vendors, suppliers, and service providers of the square regarding rules and regulations, preferred truck routes, and hours of operation. The dock manager may assume other duties when needed; however, the loading operations should be the primary task;
 - b. Size Restrictions. The University shall require all tenants, vendors, suppliers and service providers utilize the loading area for all deliveries. Regular deliveries in trucks longer than a WB-40 shall be prohibited. In the rare event that a truck longer than a WB-40 is required to make a special delivery, the dock manager shall be notified at least four weeks in advance so that the dock manager can schedule the delivery during a time when the loading area is otherwise not being utilized and can accommodate the delivery;
 - c. Truck Routes. Preferred truck routes shall be established in consultation with DDOT. The dock manager for the new building shall direct all deliveries and trash disposal services to use the preferred truck routes;
 - d. Truck Operations. All trucks shall obey all traffic control devices including signs, markings, and signals. Trucks shall yield to pedestrians upon entering and exiting the loading area. Truck idling shall not be permitted;
 - e. Hours of Operation. The dock manager shall notify trash service provider(s) that District of Columbia regulations prohibit trash collection by private haulers between the hours of 9:00 p.m. and 7:00 a.m. at this site; and
 - f. Enforcement. The dock manager shall be the primary point of contact responsible for ensuring compliance with this loading management plan. The University shall require its retail tenants to conform to the size restrictions of the loading management plan through a lease provision or similar mechanism. The University shall require that its vendors and service providers (not including commercial delivery services such as FedEx or UPS) to conform to the size restrictions of this loading management plan through a contract provision or similar mechanism.
7. Prior to the issuance of a certificate of occupancy for the Project, the University shall demonstrate that it has constructed the streetscape improvements as shown on the approved plans. The final design of any improvements in public space shall be subject to

final approval from DDOT and the University shall have flexibility to modify such improvements in response to DDOT direction as well as to modify the location of the proposed accessible I Street ramp to accommodate the final design of the ground floor of the Project. Such improvements shall also be subject to any required review and approval by historic preservation officials and may be modified in response to their direction.

8. The University 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 structure;
 - 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 or in response to comments received from the Historic Preservation Office and the Historic Preservation Review Board;
 - c. To modify the exterior design of the Project, including but not limited to the exterior window, door styles and light fixtures as well as the pattern of panels on the penthouse, the east façade elevator lobby, and west façade bays, to address comments received from the Historic Preservation Office and the Historic Preservation Review Board;
 - d. To modify the design and operation of the Project in response to modifications agreed to as a part of the alley closing process;
 - e. To modify the roof plan to incorporate the solar array described by the University at the public hearing;
 - f. 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 are needed to address the structural, mechanical, or operational needs of the building uses or systems;
 - g. To modify the location, number and type of doors on the roof and terraces as well as the emergency egress doors as needed to meet code requirements or accommodate changes in use over the life of the Project;
 - h. To vary the size, location and design features of the retail component of the Project, including the size, location, and design of windows, doors, awnings,

canopies, signage, and similar features, to accommodate the needs of specific retail tenants and storefront design; and

- i. To vary the size, location, type and other features of proposed building signage related to the university use or the retail use, provided that such signage is permitted under the applicable provisions of the Building Code and the Historic Landmark and Historic District Protection Act and related regulations.
9. 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 Commission.
 10. The application approved by this Commission shall be valid for a period of two (2) 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.
 11. 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 June 10, 2013, upon the motion of Chairman Hood, as seconded by Commissioner Miller, the Zoning Commission **APPROVED** the application at its public hearing 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 July 25, 2013, upon the motion of Commissioner May, as seconded by Commissioner Miller, the Order was **ADOPTED** by the Zoning Commission 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).

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In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on November 8, 2013.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING