

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-26**

Z.C. Case No. 06-26

**Consolidated Planned Unit Development and Related Zoning
Map Amendment for Rocky Gorge Development, LLC
(Square 3788, Lot 814)
February 12, 2007**

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on December 21, 2006 to consider an application from Rocky Gorge Development, LLC, for consolidated review and approval of a planned unit development and related Zoning Map amendment from the R-2 and FT/C-M-1 Districts to the R-4 District. The Commission considered the application pursuant to Chapters 24 and 30 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application, subject to the specified conditions.

FINDINGS OF FACT

Application, Parties, and Public Hearing

1. On May 26, 2006, Rocky Gorge Development, LLC (the "Applicant"), contract purchaser from Thos. Somerville Co. of Square 3788, Lot 814 (the "Property"), filed an application for the consolidated review and approval of a planned unit development ("PUD") and a related Zoning Map amendment for the Property.
2. At its July 24, 2006 public meeting, the Commission determined to set the application for public hearing.
3. The Commission held a public hearing on the application on December 21, 2006. The Commission heard testimony from the Applicant and from Advisory Neighborhood Commission ("ANC") 5A, the ANC within which the Property is located. The Applicant and ANC 5A were the only parties to the case.
4. At the end of the public hearing, the Commission took proposed action by a vote of 5-0-0 to approve the application with conditions.

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5. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated January 26, 2007, found that the proposed PUD and map amendment would not affect the federal interests in the National Capital and would not be inconsistent with the Comprehensive Plan for the National Capital.
6. The Commission took final action by a vote of 5-0-0 to approve the application at its public meeting on February 12, 2007.

Property and Surrounding Area

7. The Property is located in Square 3788. The total land area for the Property is approximately 182,600 square feet (4.19 acres), which exceeds the minimum area requirement of two acres for a PUD in the R-4 District established in § 2401.1(a) of the Zoning Regulations (11 DCMR).
8. The Property is currently occupied by an abandoned metal shed. Much of the Property is covered by a concrete slab, which was used to accommodate its previous outside storage use. The Property is otherwise vacant.
9. The Property is largely rectangular in shape and is roughly bounded on the north by the property approved for PUD development as the Rocky Gorge at Fort Totten Emerson Park Townhomes ("Emerson Park Phase I"), on the west by Lot 813 in Square 3788 (former Thos. Somerville Co. site), on the south by a number of detached dwellings fronting on 6th Place, N.E., and on the east by a strip of properties fronting on 7th Street, N.E., which have recently been developed as duplexes. The Property sits approximately 30 feet in elevation above both 7th Street, N.E. and Emerson Park Phase I.
10. The Fort Totten Metrorail Station is located approximately 1,700 feet (approximately one-quarter mile) to the northwest of the Property. The Comprehensive Plan's Generalized Land Use Map identifies mixed-use medium-density commercial and production and technical employment uses as appropriate on portions of the Property; low-density residential is indicated on other portions. The Comprehensive Plan's Generalized Land Use Policies Map includes the entire Property within both the Fort Totten Housing Opportunity Area and the Fort Totten Metrorail Station Development Opportunity Area.
11. To the northeast, east, and southeast of the PUD site, the immediately surrounding area is zoned R-2 and improved with a mixture of detached and semi-detached single-family residences.

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Existing and Proposed Zoning

12. The Property is split-zoned, with portions of the site located in the R-2 and FT/C-M-1 Districts. Residential uses are not permitted in the C-M District. Rowhouse development is not permitted in the R-2 District. A rezoning of the Property is necessary to permit the residential use proposed in the application.
13. The maximum permitted height in the R-2 District is 40 feet (within three stories). There is no prescribed floor area ratio ("FAR"), although the 40 percent lot occupancy allowed in the R-2 District yields a maximum potential density of 1.2 FAR. Calculated at a permitted density of 1.2 FAR, the R-2 portion of the Property alone would permit a development of approximately 144,364 square feet of gross floor area.
14. The maximum permitted height in the C-M-1 District for commercial and light manufacturing uses is also 40 feet (within three stories). New construction and redevelopment up to 3.0 FAR is permitted in the C-M-1 District. Overall, the C-M-1 portion of the Property alone allows for approximately 218,796 square feet (3.0 FAR x 72,392 square feet) of matter-of-right non-residential gross floor area.
15. The Applicant requested rezoning of the Property to R-4. The maximum permitted height in the R-4 District is 40 feet (within three stories). There is no maximum density in the R-4 District. The Applicant proposed the rezoning of the Property to R-4 in combination with the PUD in order to permit the development of multi-family housing on the site, which is not permitted under the existing zoning for the Property.

PUD Project

16. The Applicant proposed to redevelop the vacant site into 35 units of individually-owned townhouses (the "Project"). The townhouse units will be arranged around a landscaped common space in six buildings containing from five to eight dwelling units. The Project was designed to follow neo-traditional design principles, including rear-loaded garages accessed through an alley system and a coordinated internal sidewalk system that will allow for a high level of neighborhood walkability and easy connections to both nearby transit and other uses in the surrounding community. Vehicular access to the Project will be from 6th Street, N.E., and Emerson Street, N.E., through a road to be constructed as part of the Project and Emerson Park Phase I.
17. Two townhouse configurations will be constructed in the Project: (1) an 18-foot by 36-foot footprint with a rear-loaded large one-car garage integrated into the building, containing two or three bedrooms and approximately 1,950 gross square feet (including garage); and (2) a 20-foot by 40-foot footprint with a rear-loaded two-car garage integrated into the unit, containing two to four bedrooms and approximately 2,400 square feet (including garage). Each unit will have a rear deck.

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18. The units will be three stories in height, slab on grade or perhaps with partial basements, with attic space hidden behind a variety of rooflines including gables, hipped roofs, and dormers. Typical units will measure approximately 30 feet in height from finished grade to the ceiling of the unit's third story.
19. Twenty-four surface parallel parking spaces were proposed on the northern, southern, and eastern perimeters of the development, in addition to the 53 garage spaces that will be provided throughout the Property, which will be accessible in accordance with the Zoning Regulations.
20. Consistent with Emerson Park Phase I, the architectural treatment chosen for the Project, particularly the elevations of the townhouses, was inspired by the Federal-style townhouse design built throughout Washington in the late nineteenth and early twentieth centuries. Varied exterior elevations utilizing maintenance-free materials will provide a diverse streetscape throughout the Project. Some front elevations will be full-brick with intricate brick details, including header soldier courses, jack arches, and continuous rowlock sills. Other elevations will include a brick water table, with a combination of double five-inch and triple three-inch beaded horizontal vinyl lap siding with accent details such as vinyl accent strips and window header trim. The use of brick and vinyl will ensure that the exteriors of the townhouses maintain a fresh appearance. Roofing material will consist of self-sealing, asphalt shingles.
21. The Project will include a small central green that will serve as the focal point of the Project. The central green will be an elongated oval and will provide direct frontage for more than 50 percent of the units. In addition to, and connected with, this central green will be an eastern "pocket" green, a landscaped semi-circular area with lawn furniture and space for passive recreation. These greens will be connected by a landscaped walk that will run between Buildings 4 and 5. Both greens will be extensively landscaped using a variety of coordinated trees, shrubs, and groundcover. There will be landscaped seating areas with benches designated by elegant concrete pavers with parquet banding and running bond field for the eastern green. The central green was also designed to serve as a low impact "bio-retention" basin. Both greens will be accessible to all units in the Project.
22. The Project as a whole will include approximately 81,576 square of development, all of it residential, and measuring approximately 30 feet in height. Overall lot occupancy will total approximately 16 percent, less than the 60 percent permitted in the R-4 District as a matter-of-right.
23. The Project was intended to supplement the housing stock in an area of the District that historically has been underserved.

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24. No increase in building density was requested as part of the Project. Rather, only a fraction of the building density currently permitted on the site as a matter-of-right was proposed to be developed under the Project. Whereas more than 363,000 square feet could conceivably be developed on the site consistent with its existing zoning, less than 82,000 square feet will be developed through the PUD.
25. The Project includes a commitment by the Applicant to restrict the sale of two of the 18-foot by 36-foot townhouse units within the Project, for a period of 20 years, to those households that are qualified and determined by the District's Department of Housing and Community Development to be qualifying households with incomes not to exceed 85 percent of the Metropolitan Washington, D.C. Area Median Income.

Public Benefits and Project Amenities

26. The Commission finds that the following public benefits and project amenities will be created as a result of the Project:
 - a. *Housing.* The Project will convert an underutilized, vacant site into 35 residential units. This provision is especially important given that the site is located within the Fort Totten Housing Opportunity Area, and, as such, non-residential property is encouraged to be converted into residential property. In addition, two of the residential units will be dedicated as affordable housing for qualifying District residents with incomes not to exceed 85 percent of the Metropolitan Washington, D.C. Area Median Income.
 - b. *Urban Design and Architecture.* The Project will satisfy the criteria of transit-oriented development ("TOD"): (1) orientation and connectivity; (2) quality public realm and amenities; (3) pedestrian-friendly, safe environment; (4) attractive architecture and design; (5) mix of uses; and (6) creative parking management. The demonstrated results of successful TOD include increased property values, tax base, and economic strength throughout a neighborhood, as well as protection of the existing neighborhood character by focusing development nearest transit.
 - c. *Site Planning and Efficient Land Utilization.* The Project will make efficient use of the property, consistent with its shape and topography. The Project also represents an efficient and economical use of land in that it will generate revenue for the District in the form of increased property taxes and income taxes payable by new residents. The new occupants of the approximately 35 units will add to the market demand for existing neighboring retail uses and amenities, further invigorating the neighborhood.

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- d. *Transportation.* The Project will have an inconsequential impact on vehicular traffic. The Project will provide ample on-site parking to ensure that the Project does not increase the pressure on limited street parking in the neighborhood. The Property is well located within walking distance of a Metrorail station and several Metrobus routes. In addition, as part of the circulation plan for the Project, the Applicant proposed the construction and maintenance of a private road to connect 6th Street, N.E., which terminates at the southern boundary of the Property, with Emerson Street, N.E., to the north. This private connection, which will be paved in compliance with District Department of Transportation ("DDOT") requirements regarding pavement design and travel lane widths, will extend north along the western boundary of the Property from the terminus of 6th Street, N.E., and connect to the private drive extending south from Emerson Street, N.E., that was approved as part of the Emerson Park Phase I PUD.
- e. *Open Space and Landscaping.* The Project will include adequate open space through the landscaped areas provided. The planting of exotic ornamental species will be kept to a minimum.
- f. *Uses of Special Value to the Neighborhood or the District as a Whole.* The Project involves removing the Property from its longstanding underutilized and abandoned storage use and developing residential use consistent with the Comprehensive Plan, the District's stated TOD goals, and the indicated preferences of the neighboring community.
- g. *Other Public Benefits and Project Amenities.* The Applicant worked with ANC 5A, various community organizations, interested neighbors, and the District of Columbia's Office of Planning ("OP") and DDOT to arrive at a package of community benefits that will enhance the surrounding neighborhood. In addition to the dedication of two townhouse units to affordable housing, this package includes a financial contribution of \$75,000, payable to the Friends of North Michigan Park Civic Association ("FNMPCA"), a registered not-for-profit organization. In turn, the FNMPCA agreed to manage these funds for community enhancement programs and events within the North Michigan Park neighborhood. These programs may include: (a) improvements to the North Michigan Park Recreation Center; (b) a contribution to Food and Friends; (c) a contribution to the North Michigan Park Beautification Fund to address landscaping and maintenance issues; (d) sponsorship of community education seminars; (e) community-based agency donations; (f) sponsorship of the annual North Michigan Park Family Day at North Michigan Park Recreation Center, free to the community; (g) sponsorship of a back-to-school program for neighborhood children (including gifts of backpacks and school supplies); (h) sponsorship of the NMPCA annual awards dinner (for approximately 1,000 people); and (i) sponsorship of community Mothers Day/Fathers Day luncheons. The Applicant

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agreed to provide the funding in full to the FNMPCA within 30 days of the issuance of the building permit on the initial unit within the Project.

27. The Commission finds that the Project is consistent with many of the Comprehensive Plan's major themes, as follows:

- a. *Respecting and Improving the Physical Character of the District.* The PUD will ensure the development of an exceptional design and appropriate density in this established community. The Project will not only replace a vacant storage site with a residential development, but will accomplish this transformation in a manner that is consistent and complementary to the density and layout of the immediately surrounding neighborhood.
- b. *Stabilizing and Improving the District's Neighborhoods.* Promoting and ensuring good quality neighborhoods is of utmost importance to the District. To that end, included among the District Elements of the Comprehensive Plan are policies and strategies for increasing housing opportunities and improving transportation in some neighborhoods. The Project will help fulfill these important policy and strategic objectives.
- c. *Reaffirming and Strengthening the District's Role as the Economic Hub of the National Capital Region.* The Comprehensive Plan encourages making maximum use of the District's location at the center of the region's radial Metrorail and commuter rail systems. The Project will take advantage of this asset by its proximity to the Fort Totten Metrorail Station, as well as numerous routes of Metrobus. It will be consistent with the tenets of TOD and will further the efforts to create housing needed to bring additional residents to the District, especially within designated housing priority areas.
- d. *Preserving and Ensuring Community Input.* Community concerns as to density, parking, traffic, and community benefits issues were reviewed by the Applicant and incorporated into the application.

28. The Commission finds that the Project furthers the objectives and policies of many of the Comprehensive Plan's major elements as follows:

- a. *Economic Development Element.* According to the Economic Development Element of the Comprehensive Plan, the District places a high priority on stimulating and facilitating a variety of commercial, retail, and residential developments appropriate to selected Metrorail station areas outside of the Central Employment Area, consistent with the Land Use Element and ward plans, with sensitivity to the surrounding areas. (10 DCMR § 204.2(m).) The Project will

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serve to attract and retain residents, which will increase the tax base and create revenue for the District of Columbia.

- b. *Housing Element.* According to the Housing Element of the Comprehensive Plan, housing in the District is viewed as a key part of a total urban living system that includes access to transportation and shopping centers, the availability of employment and training for suitable employment, neighborhood schools, libraries, recreational facilities, playgrounds, and other public amenities. (10 DCMR § 300.4.) A policy of the Comprehensive Plan is to designate, as residential development opportunity areas, sites where significant housing development can appropriately occur. (10 DCMR § 302.2(d).) The Property is located within a designated Housing Opportunity Area, is located in close proximity to the Fort Totten Metrorail Station and Metrobus routes, and will further the total urban living system with its access to public transportation.
- c. *Transportation Element.* One underlying objective of the District's Transportation Element is to provide for the efficient movement of people and goods within the District and its metropolitan area. (10 DCMR § 500.2.) The policies established in support of the general transportation objectives include supporting land use arrangements that simplify and economize transportation services. (10 DCMR § 502.1(a).) The location of the Project near the Fort Totten Metrorail Station and Metrobus routes, as well as its location within a larger mixed-use area is appropriate and furthers this goal. The Commission accepts the conclusion of the Applicant's Traffic Impact Analysis that the Project will have no significant impact on vehicular traffic. The Commission further accepts the conclusion of DDOT that the proposed roadway to be constructed as part of the Project will serve as an asset to the existing street grid in the community.
- d. *Urban Design Element.* The Urban Design Element states that it is the District's goal to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. (10 DCMR § 701.1.) The Project was designed to improve the existing condition of the site, to enhance the physical character of the area, and to complement the materials, height, scale, and massing of the surrounding land uses. (10 DCMR § 708.2.) The streetscape objective of this element is to establish a clear classification of streets and sidewalks that is functionally efficient and visually coherent, enhances the pedestrian environment, and provides for the orderly movement of goods and services. (10 DCMR § 709.1.) The Project will provide efficient pedestrian connections both within and outside of the Property.

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- e. *Land Use Element.* The Land Use Element encourages a substantial amount of new housing primarily in housing opportunity areas and near Metrorail stations in order for the District to perform its role as the region's urban center providing the greatest density of jobs and housing. (10 DCMR § 1100.2(b).) The Land Use Element includes the Property within a Housing Opportunity Area, where the District expects and encourages either new housing or rehabilitated housing. Housing Opportunity Areas are not the only areas where new housing units will become available, but represent locations of significant potential concentrations. The conversion to residential uses of land in a Housing Opportunity Area that is currently zoned commercial-light manufacturing is consistent with this policy.
29. The Project also fulfills and furthers the specific objectives of the Comprehensive Plan for Ward 5, as follows:
- a. *Ward 5 Economic Development Element.* Development is sought in Ward 5 that will enhance and expand existing businesses, create new ownership opportunities, increase retail services and opportunities for ward residents, and promote the vitality of ward neighborhoods. Economic development potential in Ward 5 is perceived as particularly high in and around Ward 5's three Metrorail stations.
- b. *Ward 5 Housing Element.* Primary housing objectives in Ward 5 include the protection and preservation of the Ward's housing stock, the production of new housing, and the provision of incentives for housing at desired locations such as the Fort Totten Metrorail Station Special Treatment Area. (10 DCMR §§ 1608.1(a)(b)(c).) The Project, which is adjacent to the Fort Totten Metrorail Special Treatment Area, responds to these important objectives through its contribution to the housing stock.
- c. *Ward 5 Transportation Element.* Two of the primary objectives for transportation in Ward 5 are to increase the use of mass transit and to improve the pedestrian environment on major streets and roadways. (10 DCMR §§ 1614.1(a)(e).) The residents of the Project will be able to take advantage of the Property's proximity to the Fort Totten Metrorail Station and Metrobus routes, as well as the connection of the street grid provided by construction of the private road.
- d. *Ward 5 Urban Design Element.* The Project addresses objectives in the Ward 5 Urban Design Element, including: the promotion of a physical environment that upgrades the ward's aesthetic qualities, enhances neighborhood stability, emphasizes neighborhood identity and function, and physically enhances the gateways and entrance ways into the District (10 DCMR § 1620.1(a)) and the provision of special design attention to those areas in the ward that maintain a poor physical image, where new development can improve the neighborhood's

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visual qualities while providing needed services (10 DCMR § 1620.1(b)). The Project provides a well-designed residential development that will contribute to the physical revitalization of the Fort Totten area while creating a sense of community through its design.

- e. *Ward 5 Land Use/Zoning Element.* Important among the Ward 5 actions in support of land use and zoning is determining the appropriate mix of uses, scale, density, and design of development in the Fort Totten Special Treatment Area in order to fully realize the area's potential for development and to serve the Ward 5 community and District, and to protect and preserve the surrounding residential areas. (10 DCMR § 1630.1(b).) The Project will provide much needed residential development that will revitalize the neighborhood surrounding the Fort Totten Special Treatment Area.

Office of Planning Report

30. By final report dated December 11, 2006, and through testimony presented at the public hearing, OP recommended approval of the application with the Applicant's proposed amenities package: (1) two affordable housing units marketed at 85 percent of the metropolitan Washington area median income for a period of 20 years and (2) a contribution to FNMPCA in the amount of \$75,000 to support enumerated community activities. OP requested that the Applicant provide more detail about what amount of funding would be allocated to each program by FNMPCA. Prior to the public hearing, the Applicant submitted correspondence from FNMPCA dated December 19, 2006, providing additional details regarding the programs to which the funds would be directed.
31. OP also recommended that the Applicant provide protective fencing around all trees to be retained on the Property and that no fences be erected that would give the appearance of a "gated" community.

Other District Agencies

32. By memorandum dated December 21, 2006, DDOT supported the findings of the Applicant's Traffic Impact Analysis and recommended approval of the application. DDOT noted that the roadway proposed to be constructed as part of the Project will be an asset to the existing street grid in the community. The Commission concurs with DDOT's recommendation in support of the application.
33. By memorandum dated November 27, 2006, the Metropolitan Police Department indicated no objection to the application, provided that the Project would provide acceptable access for fire and emergency medical services vehicles and that new construction would comply with the construction codes. The memorandum noted that truck access to the private road connecting Emerson Street to 6th Street, N.E., will be

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limited due to the weight restrictions currently posted along Emerson, 8th Street, and 6th Place, N.E. Weight limits will be enforced by the Metropolitan Police Department.

ANC 5A

34. By letter dated November 29, 2006 and through testimony at the public hearing from ANC 5A Chair Franklyn Malone, ANC 5A indicated its support for the application.
35. At its September 27, 2006 monthly public meeting, with a quorum present, ANC 5A voted unanimously to support the application and directed that a task force meeting be held between the Applicant and interested community stakeholders to determine how the proposed community benefits funds should be directed, which meeting was held on November 28, 2006.

Development Flexibility

36. The Applicant requested approval of flexibility with respect to the following project features:
 - a. § 2516.5(b) requires that theoretical building lots maintain open space (front yard) in front of the building entrance equivalent to the required rear yard. While all of the buildings in the Project will provide more than 20 feet of open space in their respective fronts (20 feet is the minimum required rear yard in the R-4 district), the open space in front of a number of the theoretical lots will include area reserved for the private drive areas within the Project.
 - b. Extension of second floor decks into required rear yard setback, per § 2503.2.
37. Subsection 2405.7 of the Zoning Regulations provides, "notwithstanding the other prerogatives of the Commission in approving uses in PUDs, the Commission shall reserve the option to approve any use that is permitted as a special exception and that would otherwise require the approval of the Board of Zoning Adjustment." Further, § 2405.8 of the Zoning Regulations provides, "Approval of the Board shall not be required for any such use approved by the Commission under § 2405.7, and the Commission shall not be required to apply the special exception standards normally applied by the Board." Accordingly, the Applicant requested approval of certain project features pursuant to 11 DCMR § 2405.7, namely:
 - a. Approval of multiple buildings on a single record lot, pursuant to § 2516.1. Consistent with § 2516, the Project will involve the siting of multiple buildings on a single record lot. Because the buildings in the Project will have no public street frontage, the Applicant requested permission to divide the lots into theoretical building sites.

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- b. Minimum lot area for certain theoretical building sites, but not for the overall Project. As noted by OP, the Project as a whole will provide a significant amount of community common area for use by residents of the Project that typically would not be available in a matter-of-right R-4 development.

CONCLUSIONS OF LAW

1. Pursuant to § 2400.1 of the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that a 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.)
2. The objective of the PUD process is to encourage high-quality development that provides public benefits and project amenities by allowing applicants greater flexibility in planning and design than may be possible under conventional zoning procedures. Section 2403.9 of the Zoning Regulations provides categories of public benefits and project amenities for review by the Commission. In approving a PUD, the Commission must determine that the impact of a PUD on the surrounding area and on the operation of city services and facilities is either not unacceptable, is capable of being mitigated, or is acceptable given the quality of public benefits provided by said project. (11 DCMR §2403.3.)
3. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
4. The development of this Project advances the purposes of Chapter 24 of the Zoning Regulations to encourage the construction of well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design than that achievable under matter-of-right development.
5. The Project meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
6. The Project is within the applicable height, bulk, and density standards of the Zoning Regulations. The Project involves extensive improvement to an underutilized and largely unimproved storage site with a 35-unit, pedestrian-oriented townhouse development in a

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designated housing priority area, in keeping with the relative density of surrounding residential development. Accordingly, the Project should be approved. The impact of the Project on the surrounding area is not unacceptable. As set forth in the Findings of Fact, the proposed development has been appropriately designed to respect the neighboring residential properties in terms of height and mass and is complementary to adjacent buildings.

7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.
8. The Project's benefits and amenities are reasonable for the development proposed on the site.
9. Evaluating the Project according to the standards set forth in § 2403 of the Zoning Regulations, the Commission concludes that the application qualifies for approval. Judging, balancing, and reconciling the relative value of amenities and benefits in the application against the nature of the Applicant's request and any potential adverse effects, the Commission is persuaded that the proposed public benefits, in conjunction with the amenities discussed above, are appropriate in this case.
10. Approval of this Project is appropriate, because the proposed development is consistent with the present character of the area.
11. Approval of this Project and change of zoning are not inconsistent with the Comprehensive Plan.
12. Approval of this Project and change of zoning are not inconsistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, D.C. Official Code § 6-641.02, including as follows:
 - a. The proposed zone is not inconsistent with the Comprehensive Plan;
 - b. The proposed zone will not produce objectionable traffic conditions;
 - c. The proposed rezoning will not lead to the undue concentration of population and the overcrowding of land;
 - d. The Project will promote health and general welfare and tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and would tend to further economy and efficiency in the supply of public services.

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13. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2001) to give great weight to the affected ANC's recommendations. The Commission has carefully considered the ANC 5A's recommendation for approval and concurs in its recommendation. The Commission affords the views of ANC 5A the great weight to which they are entitled.
14. The application for a PUD and map amendment will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
15. The application for a PUD and map amendment 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 for the District of Columbia orders **APPROVAL** of the application for consolidated review of a planned unit development and for a related Zoning Map amendment from R-2, FT/C-M-1 to R-4 for the Property, located in Square 3788, Lot 814. This approval is subject to the following conditions:

1. The Project shall be developed in accordance with the plans prepared by Bowman Consulting and Cubellis DCA and submitted to the Commission on May 26 and August 14, 2006 (respectively, Exhibits 5 and 14), as modified by the materials submitted by the Applicant at the public hearing, and the guidelines, conditions, and standards herein.
2. The Project shall be a multi-family residential development consisting of not more than 35 townhouse units, 85,736 square feet of gross floor area, and approximately 0.47 FAR. The maximum lot occupancy shall be 16 percent. Approximately 16 percent overall lot occupancy shall be provided. Building heights shall measure no more than 30 feet from the finished grade of the building to the ceiling of the unit's third story. A minimum of 77 parking spaces shall be provided throughout the Project. No fences shall be erected that appear to create a "gated" community.
3. The Applicant shall have flexibility with the design of the Project 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 the variations do not change the exterior configuration of the buildings;
 - b. to vary the location and arrangement of parking spaces;

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- c. to vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;
 - d. to make minor refinements to exterior details and dimensions, including cornices, railings, and trim, or any other changes to comply with the D.C. construction codes or that are otherwise necessary to obtain a final building permit; and
 - e. to vary the final selection of landscaping materials to provide equivalent plant material dependent on market availability.
4. In coordination with OP, the Applicant shall make available and restrict the sale of two 18-foot by 36-foot townhouse units for a period of 20 years, as affordable housing to qualifying households not exceeding 85 percent Metropolitan Washington D.C. Area Median Income.
5. The Applicant shall agree to make the following contribution: \$75,000, payable to the Friends of North Michigan Park Civic Association (FNMPCA), a registered not-for-profit organization, to pay for community enhancement programs and events within the North Michigan Park neighborhood, such as (a) improvements to the North Michigan Park Recreation Center; (b) a contribution to Food and Friends; (c) a contribution to the North Michigan Park beautification fund to address landscaping and maintenance issues; (d) sponsorship of community education seminars; (e) community-based agency donations; (f) sponsorship of annual North Michigan Park Family Day at North Michigan Park Recreation Center, free to the community; (g) sponsorship of a back-to-school program for neighborhood children (including gifts of backpacks and school supplies); (h) sponsorship of NMPCA annual awards dinner (for approximately 1,000 people); and (i) sponsorship of community Mothers Day/Fathers Day luncheons. The Applicant shall provide the funding in full to the FNMPCA prior to the issuance of the building permit for the initial unit within the Project.
6. The Applicant shall grant an easement, in coordination with DDOT, to ensure public access to the private road to be constructed as part of the Project prior to the issuance of the first certificate of occupancy for the for the initial unit within the Project .
7. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the Land Records of the District of Columbia, between the property owner 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 ("DCRA") (the "PUD Covenant"). Such PUD Covenant shall bind the Applicant and all successors

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in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.

8. 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 PUD covenant with the records of the Zoning Commission.
9. The PUD approved by the Zoning 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 a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
10. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code §§ 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, personal appearance, 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 that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On December 21, 2006, the Zoning Commission **APPROVED** the application by a vote of 5-0-0 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, John G. Parsons, and Michael G. Turnbull to approve).

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

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 OCT 12 2007.

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., April 25, 2008

Plot for Building Permit of SQUARE 3788 LOT 814

Scale: 1 inch = 50 feet Recorded in A & T Book Page 3822-H

Receipt No. 27481

Furnished to: HOLLAND & KNIGHT

[Signature]
Surveyor, D.C.

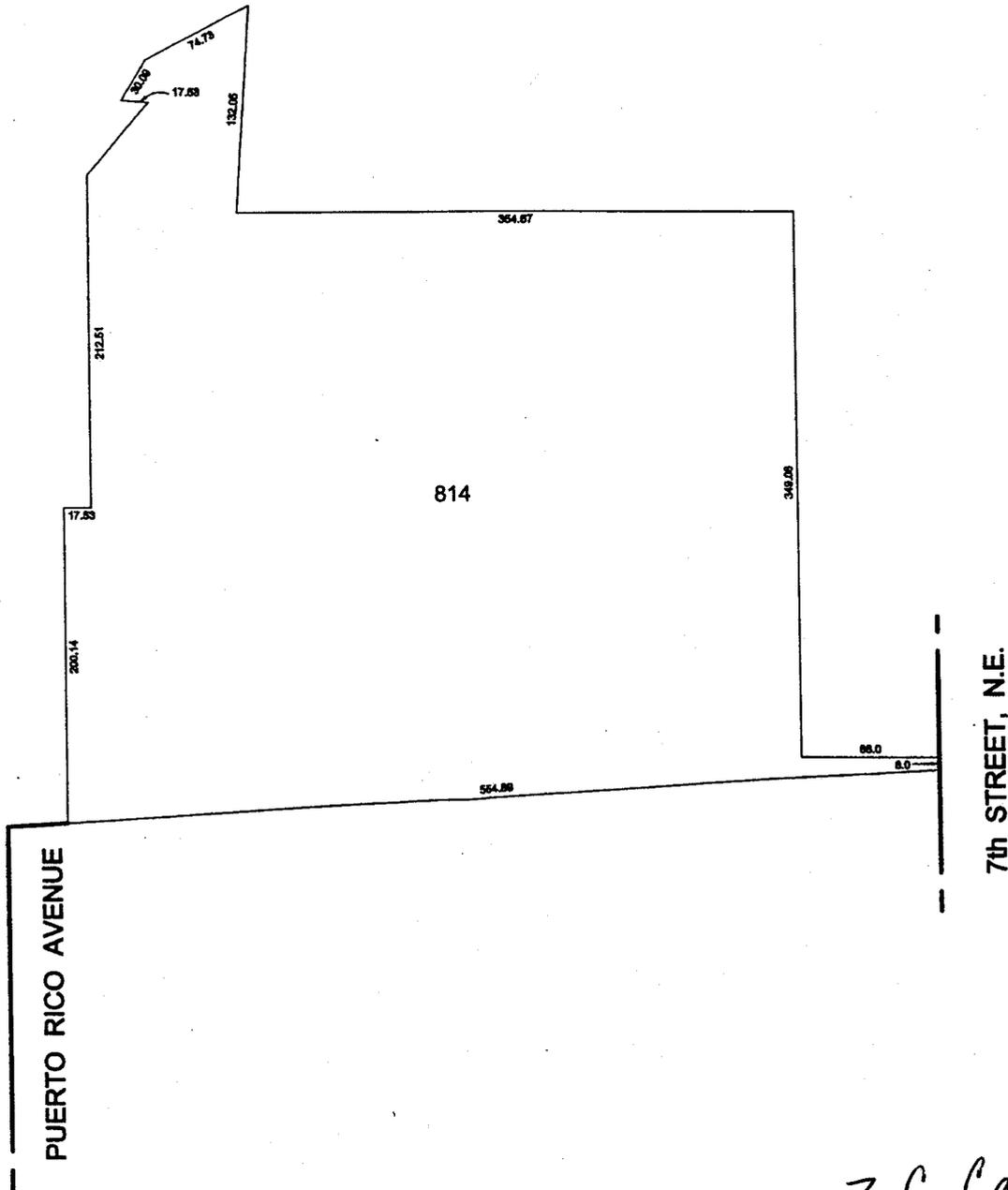
By: L.E.B. *[Signature]*

I hereby certify that all existing improvements shown herein, are completely discontinued, and are correctly plotted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and plotted and agree with plans accompanying the application; that the foundation plans as shown herein is shown, and dimensioned the accuracy to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected on these lots the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned herein. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along curbside of driveway at any point on private property in excess of 20% for single-family dwellings or less, or in excess of 22% at any point for other buildings. (The policy of the Highway Department provide a maximum driveway grade of 12% across the public parking and the private retained property.)

Date: _____

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Portions are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



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009926

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-27
Z.C. CASE NO. 06-27**

**Consolidated Planned Unit Development and Related Zoning Map Amendment – Boston
Properties, Inc., KSI Services Inc., and the George Washington University
(Square 54, Lot 30)
May 14, 2007**

Pursuant to proper notice, the Zoning Commission for the District of Columbia (the “Commission”) 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 for consolidated review and approval of a planned unit development 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 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 (“DCMR”). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application, subject to conditions.

FINDINGS OF FACT

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, 22nd Street, I Street, and 23rd Street, N.W. The Property contains approximately 115,715 square feet of land (approximately 2.66 acres) and is located in the R-5-D Zone District. The Property is located within boundaries established by the campus plan for George Washington University’s Foggy Bottom campus, 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 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.) The University will retain ownership of the land, and the Property will be developed by Boston Properties and KSI under a 60-year ground lease. (Tr. Nov. 20, 2006 at pp. 17, 20-22.)

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3. During its meeting on July 10, 2006, the Commission voted to set down this case 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 August 11, 2006, 53 *D.C. Reg.* 6528, and was mailed to owners of all property within 200 feet of the subject property and to Advisory Neighborhood Commission (“ANC”) 2A, whose boundaries include the project site.
4. Parties in this proceeding were the Applicant, ANC 2A, the Foggy Bottom Association (“FBA”), and the West End Citizens Association (“WECA”). ANC 2A, FBA, and WECA were parties in opposition; FBA and ANC 2A were jointly represented by counsel. The 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, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), ANC 2A, FBA, and WECA, as well as from persons and organizations in support of or in opposition to the application.
5. As a preliminary matter, on November 6, 2006, FBA filed a motion to postpone the hearing 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.) For reasons set forth in Findings of Fact numbers 64 and 65, the Commission denied the motion to postpone. (Tr. November 20, 2006 at pp. 8-10.)
6. 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 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 p. 8.)
7. 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.)
8. At a public meeting on February 26, 2007, the Commission requested revisions to the proposed design of the project, especially with respect to the proposed rise in building height from 90 to 120 feet along Washington Circle and the 130-foot building height facing 22nd Street. The Applicant submitted a revised design on March 12, 2007 (Ex. 92). Responses from the other parties were received March 19, 2007.
9. At a public meeting on March 26, 2007, the Commission took proposed action by a vote of 5-0-0 to approve the application as finally revised, subject to conditions.

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10. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated May 3, 2007, 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 on May 14, 2007 by a vote of 5-0-0.

Overview of the PUD Site

12. The Property is Lot 30 in Square 54, which is the entire city block bounded by Washington Circle, Pennsylvania Avenue, 22nd Street, I Street, and 23rd Street, N.W. The Property consists of approximately 115,715 square feet of land (approximately 2.66 acres). It is adjacent to the Foggy Bottom-GWU Metrorail Station, which is located across 23rd Street at the intersection of 23rd and I Streets. The Property is located within the Foggy Bottom campus plan boundaries of GW in the Foggy Bottom and West End neighborhoods of Ward 2, and is within the boundaries 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, 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 is located at the nexus of several land use types, 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 rowhouses of the Foggy Bottom Historic District. (Tr. Jan. 4, 2007 at pp. 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 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 along 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

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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 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 Twenty Year Campus Plan (2007)*¹ along I Street, particularly in the immediate vicinity of Square 54, are proposed to be redeveloped to heights of 110 feet. (Ex. 56.)

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 prompted the University to reevaluate its land use planning efforts, including the fundamental constraints of limited space and financial resources, the need 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 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 will 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 pp. 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 detailed the University's "Grow Up, Not Out" planning strategy and set forth a plan to accommodate GW's forecasted academic and

¹ The plan was originally referred to by the University as the Foggy Bottom Campus Plan: 2006 – 2025. The Commission approved the plan for a twenty-year term commencing upon the effective date of this Order.

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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 pp. 19-20.)

19. The Campus Plan and Campus Plan PUD were approved, subject to conditions, on March 12, 2007. 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. 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. (Ex. 4; Tr. Nov. 20, 2006 at pp. 17-18, 22-23.)
21. GW and OP co-sponsored an Urban Land Institute ("ULI") Advisory Services Panel in May 2005 to 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 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 pp. 18, 23-24.)
22. 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 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). 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 p. 18.)
23. Following the series of co-sponsored meetings, the Applicant continued to engage interested stakeholders in a number of outreach activities. The Applicant also launched two websites in order to make all relevant planning materials available to interested

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stakeholders throughout the planning and regulatory process, including the University's comprehensive neighborhood website (www.neighborhood.gwu.edu) and a Project-specific website (www.square54.com). (Ex. 4; Tr. Nov. 20, 2006 at 18-19.)

PUD Project

24. 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 building² 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 courtyard and a 60-foot-wide retail-oriented plaza along I Street; 333 to 336 residential units; approximately 436,000 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.)
25. 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 transitional context among institutional, residential, and commercial uses.
 - a. The office component will front on Pennsylvania Avenue, Washington Circle, and 23rd and 22nd Streets. This component will be constructed of glass, steel, and masonry elements and will be radial in form, stepping down in height toward Washington Circle to respond to the unique character of the site. A glass atrium lobby will aid the transition of building heights between 114 feet, six inches feet at Pennsylvania Avenue and 90 feet at Washington Circle and will also provide a visual passageway through to the interior courtyard area. This link through the courtyard and lobby will animate and enhance the pedestrian pathway from the Foggy Bottom-GWU Metrorail Station to the office component. The office component will include a total gross floor area of approximately 436,000 square feet.
 - b. The residential component of the project will include two elements entered off a common lobby near the center of the block on I Street. The 110-foot height of the residential component will reinforce the existing and proposed neighboring residential and campus scales. The residential building elements will shape and enclose an internal residential garden area proposed for use by the residential tenants. The residential component will include ground floor retail uses, and, at the southwestern portion of the block, the structure will be set back 60 feet from I Street

² NCPC concluded that there were two buildings, but since neither exceeded permissible heights, no adverse impact on the federal interest was found. The Zoning Commission agrees with the Applicant that the above-ground connection that exists between the residential and office portions of the Project creates a single building.

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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 333 to 336 apartments. (Ex. 4.)

- c. 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. The retail concept calls for approximately 84,000 square feet of ground-floor and below-grade retail space, including a combination of neighborhood-serving shops, restaurants, 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 below-grade. It will be accessible by escalators and elevators as well as from the underground parking and loading facilities. Additional retail space will be located at street level along the perimeter of the site, with certain venues accessible through the interior courtyard. As mentioned above, a 60-foot-wide retail-oriented plaza along I Street will draw activity from the Metrorail station to help to anchor the I Street Retail Corridor concept set forth in the *Foggy Bottom Twenty Year Campus Plan (2007)*. (Ex. 4.)
26. 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 pp. 282-83.)
27. The Project includes 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 along 22nd Street. Loading and service facilities will be self-contained beneath the Project as well, and will include three loading docks for 55-foot trucks and five docks for 30-foot trucks. The loading will also be accessed from a single entry located along 22nd Street, immediately to the south of the parking entrance. (Ex. 4.)
28. The center of the site will feature a landscaped interior courtyard of approximately 26,000 square feet. The building components that will surround the courtyard will be 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, and 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 and be secured at night. Finally, streetscape

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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.)

29. The building heights will vary from 90 feet to 114 feet, six inches within each component to respond to the surrounding context. Along Washington Circle and 23rd Street, the office component will rise to 90 feet, with an additional 24 feet, six inches of height set back 20 feet from the face of the building for a total height of 114 feet, six inches feet. Along Pennsylvania Avenue and 22nd Street, the office component will rise to a height of 114 feet, six inches. The residential component will have a height of 110 feet.
30. The total gross floor area included in the proposed PUD is approximately 834,610 square feet for a total density of approximately 7.5 FAR. The proposed Project will have a lot occupancy of 77 percent. (Ex. 4.)

Zoning Map Amendment

31. 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 density is 3.5 FAR. 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. Properties zoned C-3-C north of Pennsylvania Avenue are also located in the New Downtown TDR Receiving Zone, which permits buildings along K Street to reach heights of 130 feet through the purchase of transferable development rights. 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. 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.
32. The Applicant requested a PUD-related Zoning Map amendment for the Property to the C-3-C Zone District 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 density permitted is 8.0 FAR. It is necessary to rezone the Property to C-3-C 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

33. The Applicant requested approval to construct a building to a height of 114 feet, six inches and density of approximately 7.5 FAR, which are within the PUD standards set

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- 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 22nd and I Streets in order to accommodate the mechanical equipment necessary to the operation of the residential component and the grocery store.
34. 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 Commission as an expert) during the public hearing. According to the Applicant's traffic consultant, the traffic impacts will be mitigated by certain measures the Applicant has agreed to implement. These mitigation measures include additional signalization timing adjustments, curb parking restrictions during peak hours, and the installation of a traffic signal at the intersection of 22nd and I Streets. (Ex. 20.)
 35. 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 provide initiatives, information, and incentives to promote the use of public transportation. (Ex. 34.)
 36. The Applicant 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 distributed to all those responsible for regular deliveries. (Ex. 34.)
 37. As detailed in the 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 333 to 336 residential units with eight percent of the residential units reserved as affordable housing for residents earning up to 80 percent of the area median income, and five percent of the residential units reserved as workforce housing for residents earning up to 120 percent 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 p. 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 along 22nd Street, which will reduce the number of curb cuts on

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the perimeter of the site from nine to two. The below-grade loading structure will enable the Applicant to create an internal courtyard on the site. 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 Twenty Year Campus Plan (2007)*. The Project provides for pedestrian circulation around the perimeter of the site and through the internal public courtyard, in order 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 characteristics of exemplary urban design and architecture. The Applicant retained the firm of Pelli Clarke Pelli to design a structure that will be befitting to this unique parcel, which is located at 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 and contextual urban plans and design. High-density uses located near transit nodes demonstrate good urban design, and the Project will result in an urban development pattern that will capitalize on the transit-oriented location. The landscape design will visually define adjacent streets and public spaces while creating significant open space within the center of the Property, and, together with the ground-floor retail opportunities, will contribute to 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 – 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 pp. 25-26, 27.)
- f. 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.)

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- 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 will be set back 60 feet from the property line along I Street to create a retail-oriented plaza that will establish 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 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.
- g. Uses of Special Value.
- i. *WMATA Design and Engineering Contribution.* The Applicant shall contribute \$100,000 toward design and engineering fees assessed by the Washington Metropolitan Area Transit Authority ("WMATA") 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 shall contribute \$100,000 to the Housing Production Trust Fund. (Ex. 33.)
 - ii. *Traffic Signal at 22nd and I Streets.* The Applicant shall contribute the full cost of the traffic engineering and construction costs of the signalization of the intersection of 22nd 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.)
- h. Environmental Benefits. The Applicant shall provide approximately 26,000 square feet of green roof in the Project. This will include 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. For both the office and the residential components of the Project, the Applicant will utilize a variety of sustainable strategies

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that 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. (Ex. 14, 20, 33, 36.)

- i. 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

38. 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*. (Ex. 24.) OP testified that the Project 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 parking 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 p. 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 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 pp. 17-18, 55-57. OP's representative also stated that the proposed uses were in the appropriate locations and ratios. (Tr. Jan. 4 at pp. 45-47.) 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 pp. 15-16.)
39. By supplemental report dated March 15, 2007, OP recommended approval of the project as modified by the Applicant's submission of March 12, 2007.
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

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impacts would be mitigated by specific measures to be undertaken by the Applicant, including the Transportation Management Plan, traffic signal, and traffic signal timing optimization measures. (Ex. 26; Tr. Nov. 20, 2006 at pp. 194-95, 198-200, 195-96.) DDOT testified further that the amount of parking was sufficient and that the proposed parking garage entrance off 22nd 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 pp. 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 22nd 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; Tr. Nov. 20, 2006 at pp. 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 p. 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 § 210, therefore violating 11 DCMR § 2400.4; (2) the Project failed to provide any university use and therefore violated 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 did not outweigh the impacts of the Project and, in the case of the grocery store and other retail, were 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 pp. 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 pp. 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 pp.

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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 pp. 93-97.) 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 p. 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 pp. 84-85, 119, 128-29.)

Parties and Persons in Support

43. A number of individuals, including residents of Foggy Bottom and West End communities, current and former ANC commissioners, local business owners, a representative of the Washington Smart Growth Alliance, 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 p. 131.) Individuals testified that the Project, which will include market rate, workforce, and affordable housing, will help 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. (Ex. 27-29, 31, 35, 40-48, 54, 59-61, 65-74; Tr. Jan. 4 2007 at pp. 131-169.)

Parties and Persons in Opposition

44. FBA appeared as a party in opposition. The Commission qualified FBA's planning and traffic consultants as experts. A representative of 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, source of revenue, and the use of the PUD process; and argued that the amenities package was insufficient. (Tr. Jan. 4, 2007 at pp. 183-90.) 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) OP 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 pp. 190-203.) In

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response to cross-examination by the Applicant's counsel, however, 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 pp. 224-26.) FBA's traffic expert questioned the methodologies, assumptions, and data submitted by the Applicant's traffic consultant. (Tr. Jan. 4, 2007 at pp. 203-210.) The Commission requested that FBA's traffic expert share his findings with DDOT and further requested that DDOT provide a response. (Tr. Jan. 4, 2007 at pp. 215-16, 223-24.)

45. By letter dated March 19, 2007, counsel for ANC 2A and FBA indicated their opposition to the Applicant's revised design for the PUD because "even at the proposed levels, the height remains excessive and the proposed reduction does not reduce the project's massive appearance."
46. 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 were 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 pp. 226-42.) WECA also objected to the Applicant's final revised plan as only partially responsive to the Commission's concerns.
47. Several individuals wrote letters or testified in opposition to the Application at the public hearing. (Ex. 62, 79; Tr. pp. 170-79.)

Compliance with PUD Standards

48. 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 maximum height of 114 feet, six inches, density of approximately 7.5 FAR, and related rezoning to C-3-C are appropriate and are justified by the superior benefits and amenities offered by this Project.
49. The Commission credits the testimony of the Applicant and its architect and planning consultants in finding 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, and high-quality architecture and design all constitute project amenities and public benefits. The new traffic signal is found to be a mitigation measure.
50. 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,

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site planning, job training and employment opportunities, 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.

51. 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.
52. 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 Twenty Year Campus Plan (2007)*.
53. 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. 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. 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.
54. 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.
55. The Commission finds that the Applicant has offered to provide affordable housing for residents earning up to 80 percent of the area median income in an amount equal to eight percent 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 percent of the area median income in an amount equal to five percent of the residential units for the duration of the Project.
56. 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

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with the additional density and height sought through the PUD. The Commission credits OP's testimony that the impact of the PUD on the level of services is not unacceptable. The Commission credits OP's finding that the proposed uses are in the appropriate location and ratios.

57. 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. It will respect and improve the physical character of the District by providing a high-quality and pedestrian-oriented design containing significant public spaces at a transit-oriented location. 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.
58. 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. (Tr. Jan. 4, 2007 at pp. 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. The Commission concurs with OP that the PUD will 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 will further the Ward 2 Plan's policies because the Applicant will concentrate the height and density of the Project along 22nd and I Streets, toward the central core of the Foggy Bottom campus and away from existing residential neighborhoods to the south and west.
59. 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. (Tr. Jan. 4, 2007 at pp. 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 pp. 15, 48.) The Commission notes the Comprehensive Plan's Generalized Land Use Map continues the dual High-Density Commercial and Institutional designation for other

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commercial properties along Pennsylvania Avenue within the Foggy Bottom Campus Plan boundaries.

60. 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 policy for college and university master plan areas is to “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 approved *Foggy Bottom Twenty Year Campus Plan: (2007)* designated 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.
61. 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 approved *Foggy Bottom Twenty Year Campus Plan: 2007*, 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 consistent with the Generalized Land Use Policies Map and other goals and policies of the Comprehensive Plan.
62. The Commission agrees with DDOT’s conclusion that the Applicant has 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, 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.
63. The Commission accorded the issues and concerns raised by ANC 2A the “great weight” to which they are entitled pursuant to D.C. Official Code § 1-308.10(d) (2001). In doing so, the Commission credited the unique vantage point that ANC 2A holds with respect to the impact of the proposed PUD on the ANC’s constituents. However, the Commission concludes that the ANC has not offered persuasive evidence that would cause the Commission to find that approval of the application, subject to the conditions adopted in

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this Order, would be contrary to the Zoning Regulations or would adversely affect the use of neighboring property. 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 has previously allowed the use of the PUD and Zoning Map amendment process for individual developments within campus plan boundaries, including PUD-related map amendments that rezone portions of the campus to non-residential zone designations, thereby removing them from the aggregation requirements of § 210. (See, e.g., Z.C. Order No. 06-17 (effective February 23, 2007).)

64. 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 Twenty Year Campus Plan (2007)*, which allows Square 54 to be used as a commercial/investment property. (See Z.C. Case No. 06-11.) 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 will allow 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. The Commission disagrees with the ANC position regarding the preparation of an EIS, including an air quality study pursuant to the District of Columbia Environmental Policy Act of 1989 (“DCEPA”), D.C. Official Code § 8-109.01 *et seq.* Under the DCEPA, an EIS must address, among other things, the “relationship of the proposed major action to ... requirements as promulgated by the Zoning Commission.” D.C. Official Code § 8-109.02(a)(2). The purpose of a PUD is to permit a degree of flexibility from the Zoning Regulations, which then becomes the matter-of-right development for the project. The DCEPA provision is intended to ensure that a project is consistent with all zoning requirements, which – in the case of a PUD – cannot be known until an application is approved. See *Concerned Citizens of Brentwood v. D.C. Board of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993) (BZA did not violate DCEPA by failing to require an EIS assessing proposed use of property where BZA order did not result in the issuance of any “license, permit, certificate, or authorization” and therefore requirements of DCEPA were not yet applicable) and *Foggy Bottom Association v. D.C. Board of Zoning Adjustment*, 791 A.2d 64, 71 (D.C. 2002) (affirming BZA order that declined to postpone consideration of special exception application because necessary environmental review would occur as part of building review process).
65. Further, the Commission’s consideration of the University’s application is not an “action” within the meaning of the DCEPA. Approval of a PUD application does not grant a university specific permission to build, but only allows the university to later seek permission through the filing of application for a building permit. Even if this approval

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were to be considered a "permission," it bears noting that although the word "permission" appears in the definition of the term "action," it is not to be found in the actual substantive provision of the DCEPA upon which FBA relies. The requirement that an agency determine whether an EIS is necessary applies "if the action involves the grant or issuance of a lease, permit, license, certificate, or other entitlement by a District agency." D.C. Official Code § 8-109.03. The absence of the word "permission" can only mean that an agency may approve an "action" that involves a "permission" without determining whether an EIS must be prepared.

66. 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. 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 measures to the ANC as a condition of this PUD, which will allow the ANC to continue to monitor the Project's traffic impacts.
67. 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.
68. 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. The Commission reiterates that the Zoning Map amendment is justified, and the proposed PUD does not circumvent the

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intent and purposes of the Zoning Regulations. The requested C-3-C zoning is not inconsistent with the Campus Plan, the Comprehensive Plan, or the character of the campus and surrounding area. Moreover the PUD guidelines permit the Commission to grant the requested height and density, which allow for the creation of significant open space within the Project, a lot occupancy of 77 percent, and the retail and streetscape amenities.

CONCLUSIONS OF LAW

Appropriateness of PUD Zoning Mechanism

69. 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 finds that the application offers specific community benefits that advance the public interest.
70. The Zoning Regulations do not prohibit the application of the PUD process to property within the boundaries of an approved campus plan. The consolidated PUD review process provides for detailed design review as well as review of the project’s proposed height, density, and use, and requires substantial project amenities and public benefits in exchange for a higher overall height and density and design flexibility.
71. 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, 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

72. The development of this PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more efficient and attractive overall planning and design than that achievable under matter-of-right development. The character, scale, mixture of uses, and design of uses in the proposed PUD are appropriate, and the proposed development is compatible with the citywide, ward, and area plans of the District of Columbia as detailed below.

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73. The application meets the minimum area requirements of § 2401.1 and the contiguity requirements of § 2401.3 of the Zoning Regulations.
74. 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, are compatible with the height and density of surrounding properties, and are appropriate given the location adjacent to a Metrorail station. The mix of commercial, residential, and retail uses is 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 George Washington University.
75. 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. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the Project will be mitigated.
76. The Applicant 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-rate, workforce, and affordable housing, high-quality 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.
77. 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

78. Approval of the PUD and change in zoning is not inconsistent with the Comprehensive Plan, including the current designation of the Property within the Institutional land use category. The Commission considered the issue of non-institutional uses on properties designated as Institutional in Z.C. Case No. 03-11, where it 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

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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.)

79. 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;³
- the Property’s designation as a commercial/investment property that is appropriate for land use and zoning change in the recently approved *Foggy Bottom Twenty Year Campus Plan(2007)*;
- 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; and
- 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.

80. The PUD is 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.

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

³ Under the guideline applicable to Institutional land uses in the 2006 Comprehensive Plan, the Project’s density and intensity are comparable to those in the vicinity. The Project’s density and intensity of use are consistent with the approved *Foggy Bottom Campus Plan: 2006 – 2025*.

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- Housing. Through the construction of 333 to 336 new rental units and the proposal to dedicate 13 percent of the residential units as a combination of affordable and workforce housing, the Project will provide new housing to meet several 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 location of the proposed mixed-use development adjacent to the Foggy Bottom-GWU Metrorail Station, one of the busiest Metrorail stations in the system, will permit 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 will provide a functionally active commercial center within the District, create active use during both the day and evening hours, and create 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.

82. The Project is 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.

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

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consolidated review and approval of a planned unit development and related Zoning Map amendment for property consisting of Square 54, Lot 30. 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, 83, and 92 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 114 feet, six inches, as shown on the approved plans marked as Exhibits 4, 20, 36, 83, and 92 of the record. The total lot occupancy of the project shall not exceed 77 percent.
4. Approximately 328,000 square feet of gross floor area shall be devoted to residential use, resulting in 333 to 336 apartment units in the Project.
5. Approximately 84,000 total gross square feet, at or below grade, shall be devoted to retail use. Of this, no less than 25,000 square feet shall be restricted to grocery store use.
6. Approximately 436,000 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, 83, and 92.
8. Of the residential units in the Project, eight percent of the residential units shall be devoted to affordable housing for residents with an income that is no greater than 80 percent of the Area Median Income. Additionally, five percent of the residential units shall be devoted to workforce housing for residents with an income that is no greater than 120 percent 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 George Washington University and shall count towards the University's off-street parking requirement pursuant to the *Foggy Bottom Twenty Year Campus Plan (2007)*. At least three spaces shall be available for car-sharing 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.

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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. The Applicant shall coordinate transportation management activities with the University's Transportation Management Coordinator;
 - b. The Applicant shall 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. The Applicant shall provide DDOT and ANC 2A with an annual update on the anniversary of the date of this Order, as detailed in the DDOT Report dated December 4, 2007 and marked as Exhibit 51, that includes:
 - i. Details on the effectiveness of measures proposed in 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 car-sharing 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 DDOT for the final design of the curb cut on 22nd Street.
13. The Project shall include the following sustainable design features:
 - a. Provision of at least 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 that will achieve the equivalent of a minimum score of 16 points under U.S. Green Building Council's LEED for New Construction, version

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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 shall contribute \$100,000 to the Housing Production Trust Fund.
 - b. Traffic Signal at 22nd and I Streets: contribution of 100 percent of the traffic engineering and construction costs of the signalization of the intersection of 22nd 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, without reducing the quality of the materials, 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 at least 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 22nd and I Streets in order to accommodate necessary mechanical equipment, provided that

Washington, D. C., NOV 9 1999
 Plat for Building Permit of SQUARE 5A LOT 30

Scale: 1 inch = 50 feet Recorded in Book 153 page 85

Receipt No. 7192

Furnished to

[Signature]
 Surveyor, D. C.

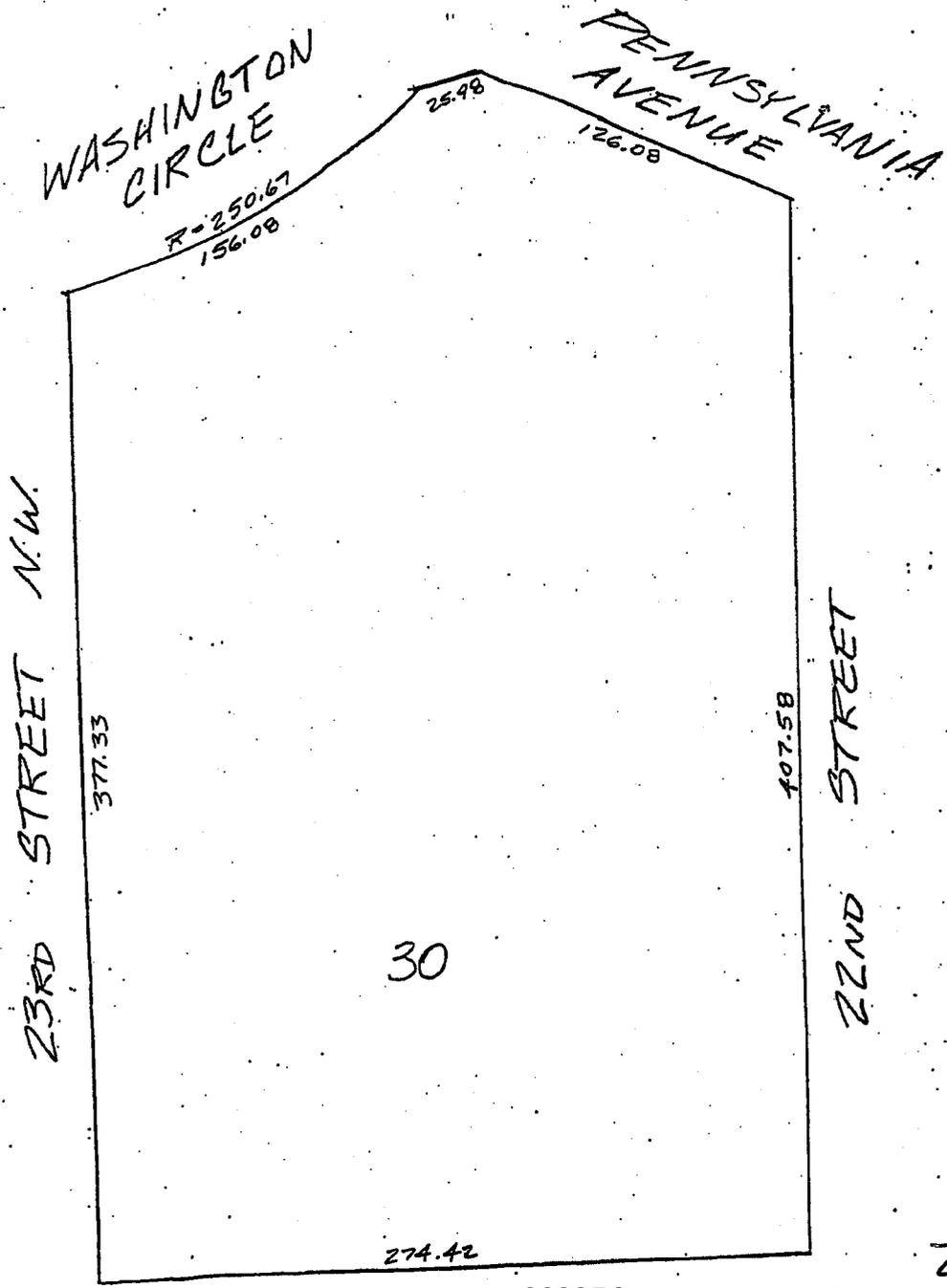
By: RED
OTMS

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly placed, thus all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and placed, and agree with plans accompanying the application; that the foundation plan as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb or alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 30% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private retained property).

Date

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



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"I" STREET

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-35**

Z.C. Case No. 06-35

**Application for Approval of a Consolidated Planned Unit Development –
CESC 1229-1231 TRS, Inc. and CESC 1227 LLC
(Square 24, Lots 109 and 883)
July 9, 2007**

Pursuant to proper notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on March 26, 2007 to consider an application by CESC 1229-1231 TRS Inc. and CESC 1227 LLC (the "Applicant") for consolidated review and approval of a planned unit development ("PUD") for Square 24, Lots 109 and 883 (the "Application"). The 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 ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons discussed herein, the Commission hereby approves the Application, subject to conditions.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The project site consists of Square 24, Lots 109 and 883 (the "Property") and fronts on 25th Street N.W. between M and N Streets, N.W. The Property contains approximately 75,317 square feet of land area (approximately 1.66 acres) and is located in the CR Zone District. The Property is currently occupied by three office buildings commonly referred to as the BNA buildings.
2. The Application for consolidated review and approval of a PUD was submitted on July 11, 2006 by CESC 1229-1231 TRS, Inc. and CESC 1227 LLC, the contract purchaser of the Property, on behalf of BNA Washington, Inc., the owner of the Property ("Owner"). Ex. _ (PUD Application dated July 7, 2006).
3. During its public meeting on November 13, 2006, the Commission unanimously voted to set down the case 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* ("DCR") on December 29, 2006, 53 DCR 10306, and was mailed to all property owners within 200 feet of the subject property and to Advisory Neighborhood Commission ("ANC") 2A.

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4. The Application was updated by a 60-day pre-hearing submission filed on November 20, 2006, a 20-day pre-hearing submission filed on March 6, 2007, and the Applicant's presentation at the public hearing. See Ex. 17 (60-Day Pre-Hearing Submission, Nov. 20, 2006); Ex. 27 (20-Day Pre-Hearing Submission, Mar. 6, 2007); Ex. 31 (Presentation, Mar. 26, 2007).
5. Parties in this proceeding were the Applicant, ANC 2A, the Friends of Francis Field ("FFF") as a party in support of the Application, and the Whitman Place Condominium Association ("WPCA") as a party in opposition. The Commission opened and closed the public hearing on March 26, 2007. During the public hearing, the Commission heard testimony and received evidence from the parties and the Office of Planning ("OP"), as well as from ANC 2B and from persons in support of or in opposition to the Application.
6. The Applicant further refined the plans and drawings in response to the Commission's comments and concerns at the public hearing, and submitted the revisions with other information requested by the Commission. Ex. 40 (Post-Hearing Submission, Apr. 9, 2007).
7. At a public meeting on May 14, 2007, the Commission took proposed action by a vote of 4-0-1 to approve the Application with conditions.
8. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter. NCPC, by action dated May 31, 2007, 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.
9. The Commission took final action to approve the Application on July 9, 2007 by a vote of 4-0-1.

Overview of the PUD Site

10. The Property is located at 1227-1231 25th Street N.W. (Lots 109 and 883 in Square 24). The Property consists of approximately 75,317 square feet of land area. It is located approximately six blocks from both the Foggy Bottom-GWU and Dupont Circle Metrorail stations. The Property is located in the West End neighborhood of Ward 2, and is within the boundaries of ANC 2A. The Property is currently improved with one 85-foot office building at 1227 25th Street (the "1227 Building") and two 68-foot office towers at 1229-1231 25th Street, connected at the ground level to create one building (the "1229-1231 Building"). They are collectively known as the BNA buildings.
11. The West End neighborhood is characterized by a mixture of land uses, including predominantly high-rise office buildings, hotels and apartment houses. The Property is

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located at the western edge of the neighborhood, across 25th Street from Francis Field, which is operated by the D.C. Department of Parks and Recreation (“DPR”). To the west of Francis Field is Rock Creek Park. To the immediate north is a mixed-use office and residential structure, approved as a PUD in Z.C. Order No. 573-A, which contains the American Association of Medical Colleges (“AAMC”) and the Whitman Place condominiums. Across N Street from the mixed-use building that houses the AAMC and Whitman Place is Francis Junior High School. To the east is the headquarters of the World Wildlife Fund (“WWF”), which was approved as a PUD in Z.C. Order No. 453. To the south of the site is an office building. Two other buildings in the square contain office, hotel, and ground-floor retail uses.

12. The District of Columbia Generalized Land Use map indicates that the Property is located in the Mixed-Use High-Density Residential/Medium Density Commercial Land Use category. Surrounding properties are also located in that category. Francis Field and Rock Creek Park to the west across 25th Street are located in the Parks, Recreation, and Open Space category.
13. The structures that compose the 1229–1231 Building were approved for development by the Board of Zoning Adjustment (“BZA”) in Orders No. 8549 (March 15, 1966) and 11157 (December 11, 1972). The structures were constructed in what was then the C-M-2 zone to a maximum floor area ratio (“FAR”) of 4.0 and a height of 68 feet, and contained office use. In the mid-1970s, the Commission rezoned the West End to the CR Zone District, and the structures became nonconforming as to FAR.
14. The 1227 Building, was constructed in the mid-1980s according to the requirements of the CR District for structures devoted to non-residential uses, and was built to a height of approximately 85 feet. The 1227 Building has a density of 3.64 FAR on Lot 109 alone; however, it is subject to a covenant, dated May 25, 1984, with the owner of Lot 880. As a result of the covenant, the 1227 Building achieves a conforming density of 3.0 FAR. The 1227 Building also holds two variances, per BZA Order No. 14336 (February 12, 1986), for a nonconforming side yard and to allow attendant parking.

PUD Project

15. The proposed project is a mixed-use development of residential and office uses that is intended to create an active pedestrian-oriented environment within walking distance of both the Foggy Bottom-GWU and Dupont Circle Metrorail Stations.
16. The Applicant will convert the 1229-1231 Building from office use to residential use, expand the current ground-level connection for the entire height of the structure, and add four floors to the building (the “Residential Building”). The new building will measure 110 feet tall.

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- a. The existing precast concrete and glass exterior of the 1229-1231 Building will be completely removed. The new street and open court façades will be constructed of a highly articulated metal and glass curtain wall, and will feature glass and metal railed projecting and inset balconies. The side and rear façades will be constructed of brick, and some units will feature metal railed balconies.
- b. As part of the conversion, the interior courtyard footprint will be expanded to provide more light and air and offer residents better views and exposure. The existing bay on the north side of the south tower will be shaved away by approximately one bay in order to open the courtyard, and will be replaced with a new angled wall that will maximize views to the park across the street. The new Residential Building will feature setbacks at the 7th, 9th, and 10th floors to diminish the apparent height and massing, and to provide significant private terraces. Additionally, the building will feature a rooftop pool and deck, open to all residents.
- c. The expanded courtyard will be landscaped to provide a semi-private realm for the residents of the Residential Building and extend the greenery of the park into the site. New trees and groundcover at the sidewalk entrance will enhance the pedestrian experience along 25th Street.
- d. The Residential Building will include approximately 7,667 gross square feet of affordable housing for residents earning up to 80 percent of the average median income ("AMI"), which is consistent with requirements for PUDs generating office use as well as new housing units. This amount of affordable housing will satisfy the housing linkage requirement for the office portion of the PUD and will exceed the requirements of the Inclusionary Zoning regulations approved by the Commission in Z.C. Order No. 04-33 ("IZ") as they apply to the residential portion of the PUD. In order to properly analyze the distinct affordable housing requirements for this project, the Applicant analyzed the residential and office structures as stand-alone buildings based on their underlying lots.
- e. In response to concerns from WPCA, the original design was modified to incorporate an approximately 10-foot setback of the top floor of the Residential Building. Additionally, the roof structure heights were reduced. As demonstrated by shadow studies presented by the Applicant at the public hearing, this setback will minimize the effect of the additional height requested through the PUD on the Whitman Place condominiums. In addition, the Applicant set back the northern line of the proposed rooftop trellis approximately two feet in order to eliminate additional shadow that might otherwise be created by the trellis. In response to concerns expressed by the Commission at its May 14, 2007 public meeting, the Applicant proffered a design that further reduced the size of the trellis, which will be significantly set back from the west-edge of the building.

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17. The Applicant also proposed to add two floors to the 1227 Building (the "Office Building") as part of the PUD, and to continue the existing office and office-related retail uses in the building. The Office Building will be expanded to 110 feet high. The existing precast concrete and ribbon-glazed exterior of the Office Building will remain, while the two-story rooftop addition will be constructed of metal panels and glass curtain wall and will feature a prominent cornice. A new metal canopy will extend from the 25th Street sidewalk along the south side yard to the main building entrance at the middle of the south façade.
18. The project will use the existing parking garages and loading facilities in both buildings, which will allow for separate parking garages and loading docks for the residential and office uses. Garage access ramps are located along 25th Street, N.W. The PUD features approximately 249 spaces for the Residential Building and approximately 112 spaces for the Office Building. Loading will be achieved through the existing private alley system in Square 24. The Residential Building's loading area will be accessed from the alley to the north of the building, and the Office Building's loading area will be accessed by the alley between the two buildings.
19. The project's adaptively reuse of the existing structures on the site will eliminate the most disruptive practices commonly associated with construction (i.e. excavation and blasting) and reduce the impact of demolition and new construction work. Further, the Applicant proposed a construction management plan for the Residential Building derived from agreements executed and successfully implemented previously at other developments in the District. Among other things, the proposed agreement included jobsite rules applicable to site management, cleanliness, deliveries, work hours, traffic restrictions, parking, and truck management, as well as provisions to establish lines of communication among the developer, general contractor, and the community. The Applicant revised its initial proposed construction management plan to expand the methods of communication and response, clarify and detail the jobsite rules and restrictions, and incorporate a dispute resolution mechanism and schedule of fines. The revised construction management plan includes the WPCA as well as the adjacent AAMC and WWF office buildings.
20. The project will be phased, with the Residential Building being constructed first, as detailed in Condition 1 of this Order.
21. The total gross floor area included in the proposed PUD is approximately 466,713 square feet for a total density of approximately 6.2 FAR. Both new buildings will have a height of 110 feet, with setbacks in the Residential Building as described above. The project will have a lot occupancy of approximately 70 percent. The project's density will be

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slightly above the maximum permitted as a matter-of-right and less than what is permitted under the PUD guidelines for the CR District (maximum density of 8.0 FAR and a maximum building height of 110 feet).

PUD Evaluation Standards

22. The Property is located in the CR Zone District. The CR zone permits a density of 6.0 FAR, of which no more than 3.0 FAR may be devoted to the non-residential uses. The maximum height allowed in the CR Zone District is 90 feet as a matter-of-right. Under the IZ regulations, the project would be able to achieve a height of 100 feet and density of 7.2 FAR as a matter-of-right provided it included the required amount of affordable housing, and OP indicated that the amount of affordable housing proposed meets the IZ requirements. The project's density is less than that permitted as a matter-of-right under IZ, and its height represents an increase of 10 feet over that permitted as a matter-of-right under IZ.
23. The Applicant has requested approval to construct the buildings to a height of 110 feet and density of 6.2 FAR, which is within the PUD standards set forth in 11 DCMR § 2405. In addition to height and density flexibility within the CR Zone District PUD guidelines, the Applicant requested relief from the rear and side yards, court, roof structures, parking (drive aisles and width), and loading requirements, which are triggered by adaptive reuse of the existing structures and, for the 1229-1231 Building, its conversion to residential use.²
24. The Commission of Fine Arts ("CFA") has jurisdiction over the Property. The Applicant received concept approval for the project from CFA in June 2006, and letters indicating that approval were included with the Application. The Applicant will continue to work with CFA and respond to comments and concerns. The Applicant, therefore, requested flexibility to address design refinements and materials selections that may be requested by CFA prior to the issuance of building permits.
25. 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 Commission as an expert, during the public hearing. According to the Applicant's traffic consultant, the project will have negligible impacts, due in large part to relatively low levels of automobile use. The Applicant will implement and maintain a Transportation Management Plan ("TMP") in order to continue to maintain strong levels of transit use. The Applicant committed to controls on the time and use of the residential loading dock as a condition of approval of the PUD.

² The Applicant originally also requested relief from the residential recreation space requirement. The publication of Z.C. Order No. 05-02 on April 6, 2007, however, eliminated the need for relief from that requirement.

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26. As detailed in Applicant's testimony and written submissions, the proposed PUD will provide the following project amenities and public benefits.
- a. Housing. The project will create new housing opportunities consistent with the Zoning Regulations and Comprehensive Plan as well as District planning policies. The conversion and expansion of the 1229-1231 Building from office to residential use will create approximately 275 to 295 residential units.
 - b. Urban Design, Architecture, and Open Spaces. The project exhibits characteristics of exemplary urban design and architecture. The Residential Building will feature a clean, modern, glassy façade and a semi-public landscaped open courtyard that engage the pedestrian, and will have a green roof over a significant portion of the main roof that will provide both environmental and aesthetic benefits. The Residential Building will be open to neighboring open space, providing its residents with views of Rock Creek Park and Georgetown. The project will result in streetscape improvements along both sides of 25th Street as well as improvements to nearby Francis Field. As a result, the project design also respects and enhances surrounding public spaces.
 - c. Site Planning, and Efficient and Economical Land Uses. The Project will utilize the existing structural footprint of the 1229–1231 Building, but will expand and refine it to create a desirable residential building that will offer ample light, air, and privacy to its residents. The Project was designed to provide open and inviting public and private spaces for entertainment and relaxation, including the spacious public court in the front of the building, a rooftop sun deck and pool, and, for a number of units, private terraces. The PUD will efficiently replace a mid-1960s office building with an attractive 21st-century residential development, yet will use the existing structural footprint and foundation to reduce the impact of development on the surrounding community.
 - d. Uses of Special Value. The PUD will include the following benefits to the surrounding neighborhoods as well as the District as a whole.
 - i. *Streetscape Improvements*. As shown on the plans, the project includes unique paving, landscaping, and streetscape elements for portions of both sides of 25th Street in front 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, that are consistent with existing improvements in the area.
 - ii. *Francis Field—Fence*. As part of the streetscape improvements to 25th Street, the Applicant will replace the existing chain-link fence around Francis Field with a new ornamental metal fence.

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- iii. *Francis Field—Other Improvements.* In addition to the new fence, the Applicant will (1) prepare a landscape plan for Francis Field that includes the addition of trees, park lighting, furniture, trash receptacles, and a drinking fountain and (2) following approval by DPR, install the improvements, valued at \$150,000.
- iv. *Francis Junior High School.* The Applicant will contribute needed computer equipment, library improvements, air conditioners, software, and signage to Francis Junior High School, valued at \$150,000.
- v. *Construction Management Plan.* The Applicant's adaptive reuse of existing structures will reduce the construction impact of the project. The Applicant developed a construction management plan in conjunction with its residential and office neighbors that will provide jobsite rules applicable to site management, cleanliness, deliveries, work hours, traffic restrictions, parking, and truck management; provisions to ensure communication among the developer, general contractor, and the community; and a dispute resolution mechanism and schedule of fines.
- e. Environmental Benefits. The Applicant will utilize a variety of sustainable strategies that achieve the equivalent of a minimum score of 20 points for the Residential Building and 16 points for the Office Building under U.S. Green Building Council's LEED for New Construction, version 2.2. Additionally, as shown on the plans, the Residential Building will feature a partial green roof.
- f. 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 D.C. Small and Local Business Opportunity Commission.

Government Agency Reports

27. By report dated March 16, 2007, and by testimony at the public hearing, OP recommended approval of the project. OP testified that the project would complement the character of the area through improved architecture and enliven the block through the conversion from office to residential use, and that the Property was an appropriate location for such conversion because of its proximity to Francis Field and Rock Creek Park. OP testified that the impact on services was not unacceptable and would indeed have a positive impact on the continued improvement of the area. OP testified that the proffered amenities were commensurate with the relief requested. OP testified that the project was consistent with the mix of High-Density Residential and Medium-Density Commercial Land Use map designations for the site, would further the goal of

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strengthening residential neighborhoods, and would remain consistent with the land use policies of the Comprehensive Plan. OP also testified that the Project was consistent with the major themes of the Comprehensive Plan, including stabilizing and improving District neighborhoods, respecting and improving the physical character of the District, and preserving and ensuring community input. OP further found that the project was consistent with the Housing and Ward 2 Elements of the Plan. OP found that the relief requested was largely due to existing conditions and would neither create any further difficulty for the surrounding neighborhood nor affect the intent or integrity of the Zoning Regulations. Finally, OP also testified that the project was consistent with elements of the 2006 Comprehensive Plan passed by the Council of the District of Columbia and pending final Congressional approval.

28. The District Department of Transportation (“DDOT”), by reports dated October 16, 2006 and March 26, 2007, supported approval of the project based on its analysis that the project will have a negligible impact on local streets and that the Applicant’s TMP was a proactive method for addressing future traffic demand. DDOT noted that the existing column grid of the 1229-1231 Building created the need for relief from the drive aisle and parking space width requirements of the Regulations. DDOT also stated that the private alley system and loading could accommodate the project’s loading requirements, as residents moving in and out of units typically reserve the loading ahead of time and use of the loading berth could be managed by the property owner.

ANC Report

29. ANC 2A, by letter dated February 28, 2007, indicated that at a regularly-scheduled meeting on February 21, 2007, the ANC approved a motion to protest the Application on the grounds that the amenities package was inadequate and that an appropriate construction management agreement had not been reached. However, at the public hearing, the ANC 2A representative indicated that ANC 2A now supported the Application based on the provision of additional amenities to Francis Field. ANC 2A’s support was conditioned on the provision of satisfactory construction management and loading plans. ANC 2A’s representative noted that the amenities would make a notable difference in improving the character and appearance of the immediate neighborhood as well as the conditions at Francis Junior High School.
30. A representative of ANC 2B testified in support of the PUD at the public hearing. The representative observed that the amenity package was remarkable in part because it included improvements to Francis Junior High School, which was located within the jurisdiction of ANC 2B.

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Party and Person in Support

31. FFF, a neighborhood organization devoted to the improvement of Francis Field, testified in support of the application. Representatives of FFF indicated particular support for the conversion to residential use, the landscape and streetscape improvements to both sides of 25th Street, the new fence along Francis Field, and the design improvements to Francis Field.
32. One individual, a resident located approximately one block of the Property, submitted a letter in support of the PUD. The individual also expressed concern about lighting and security in the immediate neighborhood.

Party and Person In Opposition

33. WPCA appeared as a party in opposition. A representative of WPCA testified regarding (1) the height of the Residential Building, (2) the impact of the building on parking and traffic, (3) the construction impacts, and (4) the adequacy of the amenities. The WPCA representative noted appreciation for the Applicant's outreach to WPCA and the design modifications that ameliorated the impacts. The WPCA representative also indicated that a satisfactory construction management plan would include clear language that provides for the workable enforcement of its terms, and include liaisons to the community, a dispute resolution mechanism, and a schedule of fines for violations. The WPCA representative indicated that the amenities package would improve the neighborhood and represented a positive result of the project.
34. One individual, a resident of the Whitman Place condominiums, testified in opposition to the Application at the public hearing, but also noted that the Applicant had demonstrated a commitment to open communication and observed that the setbacks were a welcome design revision.

Compliance with PUD Standards

35. 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 and requested flexibility from the Zoning Regulations are appropriate and are justified by the benefits and amenities offered by this project.
36. The Commission credits the testimony of the Applicant, OP, ANC 2A, FFF, and WPCA and finds that the proposed conversion to housing, superior architecture and design, streetscape improvements including the new fence along Francis Field, improvements to

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Francis Field, improvements to Francis Junior High School, construction management plan, and sustainable design elements all constitute project amenities and public benefits.

37. The Commission also finds that the project's public benefits and project amenities relating to housing; urban design, landscaping, and open space; site planning; uses of special value to the neighborhood and District as a whole; environmental benefits; and job training and employment opportunities to be either superior or acceptable.
38. 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.
39. The Commission finds that the Applicant has offered to provide approximately 7,667 gross square feet of affordable housing for residents earning up to 80 percent of the average median income, which is consistent with requirements for PUDs generating office use and exceeds the requirements of the IZ regulations approved by the Commission as they apply to the residential portion of the PUD.
40. 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.
41. 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 West End neighborhood by creating new housing opportunities, and 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. The Applicant's continued dialogue with ANC 2A and members of the community has ensured community input. The Commission credits the testimony of OP that the project is also consistent with many of the Comprehensive Plan's major elements, including the Land Use, Housing, and Ward 2 Elements.
42. 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 negligible and that the TMP will proactively address future transportation issues and ensure continued high levels of transit use.
43. The Commission finds that the Applicant's top story setback, reduced roof structure heights, and further design revisions to the trellis made in Exhibit B to the of the Applicant's letter to the Commission dated May 21, 2007 will mitigate the impact of the

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additional 10 feet of height requested through this PUD above the matter-of-right development available under IZ.

44. The Commission finds that the Applicant's proposed construction management plan, which, as revised, includes clear terms providing jobsite restrictions, communication between the developer and the community, and a dispute resolution mechanism and a schedule of fines, as well as a system for timely response and resolution of typical construction issues, is a public benefit as a proffer not available under matter-of-right development.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces and other amenities." (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)
2. 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, density, lot occupancy, parking and loading, yards, or courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA. (11 DCMR § 2405)
3. The development of the project will implement 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 and that would not be available under matter-of-right development.
4. The Application meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The Application meets the contiguity requirements of § 2401.3.
6. The PUD is within the applicable height and density standards of the Zoning Regulations. The proposed height and density will not cause a significant adverse effect on any nearby properties, is consistent with the height and density of surrounding properties, and is appropriate given the location within walking distance of two Metrorail stations. The

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mix of residential and commercial uses is appropriate for the site, which is located in the high-density mixed-use West End neighborhood.

7. The impact of the project on the surrounding area is not unacceptable. As demonstrated in the traffic study submitted by the Applicant, the project will not cause adverse traffic impacts and the Property is located in close proximity to mass transit.
8. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the project will be mitigated.
9. The Application seeks an increase in height and density as permitted under the PUD guidelines. The Application also seeks flexibility from the building control, rear and side yards, court, parking, loading, and roof structure requirements. The benefits and amenities provided by the project, particularly the conversion of office space to housing, the superior design of the buildings, the sustainable design features, the construction management plan, and the contributions toward public neighborhood facilities and institutions, are all reasonable trade-offs for the requested development flexibility.
10. Approval of the PUD is not inconsistent with the Comprehensive Plan, including the current designation of the Property as part of the Mixed-Use High-Density Residential/Medium-Density Commercial Land Use category. The PUD is also 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 the District's neighborhoods, respecting and improving the physical character of the District, and preserving and ensuring community input. The project is also consistent with many major elements of the Comprehensive Plan, including the Land Use, Housing, and Urban Design elements, as well as the goals and policies of the Ward 2 Element, especially the objective to assist in the completion of residential development in the West End.
11. The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2001) to give "great weight" to the issues and concerns of the affected ANC. As is reflected in the Findings of Fact, ANC 2A testified in support of approving the application. The Commission agrees with the ANC that this project should be approved.
12. The PUD 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.
13. The Application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

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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 the application for a consolidated review and approval of a planned unit development for property consisting of Square 24, Lots 109 and 883 (the "Property"). This approval is subject to the following guidelines, conditions, and standards, the satisfaction of which is the joint and several responsibility of the owner of the subject property and the Applicant, except where only the Applicant is referenced:

1. This PUD shall be developed in accordance with the plans prepared by Shalom Baranes Associates marked as Exhibits 27, 31, and 40 in the record, as modified by guidelines, conditions, and standards herein and as further revised by Exhibit B to the Applicant's Letter dated May 21, 2007 (Exhibit No. 45).
2. The project shall be developed as a mixed-use development and constructed to maximum density of 6.2 FAR. The height of the buildings shall measure 110 feet. The total lot percentage of the project shall not exceed 70 percent.
3. Approximately 323,380 square feet of gross floor area shall be devoted to residential use, resulting in approximately 275 to 295 units in the Project.
4. Approximately 143,333 square feet of gross floor area shall be devoted to office use.
5. Of the residential gross floor area for the project, a minimum of approximately 7,667 gross square feet, which represents 25 percent of the proposed increase in office spaces of 30,668 square feet, shall be devoted to affordable housing for residents with an income that is no greater than 80 percent of the area median income. The required affordable housing shall be distributed evenly throughout the lower half of the residential building, and shall reflect the overall unit mix of the building.
6. The project shall include parking as shown on the plans. The project shall make available at least two parking spaces for car-sharing purposes in the residential garage. The project shall also include at least 30 bicycle spaces in the residential garage and 12 bicycle parking spaces in the office garage.
7. The project shall provide off-street loading consistent with the approved plans. For the Residential Building loading dock: (i) move-ins and move-outs shall be done through the building loading dock; (ii) loading dock operation shall be scheduled between the hours of 7:00 a.m. to 7:00 p.m.; and (iii) building move-ins and move-outs shall be scheduled with building management in advance for three-hour blocks of time, with one move-in scheduled per three-hour block. No more than one simultaneous operation shall be permitted.

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8. The project shall comply with the transportation management plan ("TMP") included with the final Traffic Impact Analysis dated March 5, 2007 and marked as Exhibit 27 in the record. In addition to the carsharing and bicycle parking spaces detailed in Condition 6 of this Order, the TMP shall include the following components.
 - a. All new residents, upon move-in, shall receive a complimentary WMATA SmarTrip card (or its functional equivalent) with a \$20 balance in order to encourage mass transit;
 - b. An on-site business center shall be provided in the Residential Building;
 - c. A member of the Residential Building's management shall be designated as the individual responsible for coordination and implementation of transportation demand management measures; and
 - d. Employees in the Office Building shall be provided carpool spaces for registered rideshare groups. These parking spaces will be assigned and conveniently located as an incentive to form carpools. Additionally, a member of the building management for the Office Building shall be designated as the individual responsible for coordination and implementation of the carpool incentive program.
9. The project shall include the low-impact development features specified in Exhibit 32 of the record, including the following features:
 - a. Provision of a green roof on the residential component, as shown on the plans marked as Exhibits 27 and 31 in the record.
 - b. Sustainable strategies which will achieve the equivalent of a minimum score of 20 points for the residential component and 16 points for the office component under U.S. Green Building Council's LEED for New Construction, version 2.2. For purposes of this Condition, "office component" and "residential component" shall incorporate all shared components of the Project.
10. No certificate of occupancy for any building approved by this Order shall be issued until the following amenities have been provided:
 - a. Francis Junior High School: contribution of computer equipment, library improvements, air conditioners, software, and signage to Francis Junior High School consistent with the Memorandum of Understanding included as Exhibit 25 of the record, valued at \$150,000.
 - b. Francis Field: contribution of design, materials, and labor for improvements to Francis Field to (1) prepare a landscape plan for Francis Field that includes the addition of trees, park lighting, furniture, trash receptacles, and a drinking fountain

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- and (2) following approval by DPR, install the improvements, consistent with the Memorandum of Understanding included with Exhibit 40 of the record, valued at \$150,000.
- c. The landscape and streetscape improvements to 25th Street, N.W., in accordance with the plans marked as Exhibits 27, 31, and 40 of the record. These improvements shall include, subject to approval by the appropriate District agency or agencies, the removal of the existing chain-link fence along the west side of 25th Street N.W. and replacement with an ornamental metal fence.
11. The Applicant shall abide by the terms of the Development and Construction Management Plan included with Exhibit 45 of the record.
 12. The Applicant shall have flexibility with the design of the PUD in the following areas:
 - a. To vary the exterior design, signage, and landscaping in accordance with the final plans reviewed by the Commission of Fine Arts.
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration or appearance of the structures.
 - c. To vary final selection of the exterior materials within the color ranges and materials types as proposed based on availability at the time of construction.
 - d. 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.
 - e. To make alterations to the parking garage design, which need not conform to the parking garage requirements of the Zoning Regulations regarding aisle width and parking space width, provided that the office parking garage contains approximately 112 spaces and the residential parking garage contains approximately 249 spaces, which requirement may be satisfied with any combination of handicapped, full, compact, tandem, tandem compact, and valet spaces.
 13. The Applicant shall enter into a Memorandum of Understanding with the Department of Small and Local Business Opportunity Commission.
 14. The Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services.

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15. 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, the Applicant, 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 Owner, the Applicant, and all successors in title to construct on or use the Property in accordance with this Order, including, but not limited to, the affordable housing condition, and any amendment thereof by the Zoning Commission.
16. 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.
17. The PUD approved by the Commission shall be valid for a period of two (2) years from the effective date of this Order. The Applicant shall have the flexibility to construct the project in two phases: Phase 1 consists of the Residential Building and Phase 2 consists of the Office Building. Within such time, an application must be filed for building permit for Phase 1 as specified in 11 DCMR § 2409.1. Construction shall commence on Phase 1 within three (3) years from the effective date of this Order. The PUD shall vest upon the issuance of a certificate of occupancy for Phase 1.
18. The Applicant and Owner are 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 May 14, 2007, the Zoning Commission **APPROVED** the Application by a vote of 4-0-1 (Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull, and John G. Parsons to approve; Carol J. Mitten not having participated, not voting).

This Order was **ADOPTED** by the Zoning Commission at its public meeting on July 9, 2007 by a vote of 4-0-1 (Gregory N. Jeffries, John G. Parsons, Anthony J. Hood, and Michael G. Turnbull to approve; Carol J. Mitten not having participated, not voting).

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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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