

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ZONING COMMISSION**

ZONING COMMISSION ORDER NO. 06-11

Z.C. Cases Nos. 06-11 and 06-12

The George Washington University

(Special Exception Application for a Campus Plan

and

First Stage Planned Unit Development & Related Zoning Map Amendment)

_____ , 2007

Pursuant to notice, the Zoning Commission for the District of Columbia held public hearings to consider applications from The George Washington University (the "University" or "GWU") requesting special exception review and approval of the Foggy Bottom Campus Plan: 2006-2025 (the "Proposed Campus Plan") pursuant to DCMR §§ 3104 and 210. In conjunction with this campus plan application, GWU filed for first-stage approval of a planned unit development ("PUD") and related amendment of the Zoning Map of the District of Columbia. The applications for approval of the Campus Plan and the PUD with related Map Amendment were consolidated and heard simultaneously.

The property that is the subject of these applications includes the properties owned by the University and located within the area of its Foggy Bottom Campus, as defined in BZA Order No. 16553. These applications involve the following properties: Square 39; Square 40; Square 41; Square 42 (Lots 54 and 55); Square 43 (Lot 26); Square 54; Square 55; Square 56; Square 57; Square 58 (Lots 11, 5, 6, 800, 801, 802, 803); Square 75 (Lots 23, 33, 34, 41, 42, 46, 47, 858, 861, 863, 864, 2097); Square 77 (Lots 5, 51, 59, 60, 845, 846, 864); Square 79 (Lots 63, 64, 65, 808, 854, 861, 862); Square 80 (Lots 2, 26, 27, 28, 29, 42, 43, 45, 46, 47, 50, 51, 52, 54, 55, 800, 811, 820, 822, 823, 824, 825, 828); Square 81 (Lot 846); Square 101 (Lots 58, 60, 62, 816, 819, 820); Square 121 (Lot 819); and Square 122 (Lots 29, 824, 825).

HEARING DATES: September 14, September 21, September 25,
September 28, October 11 and November 30, 2006
DECISION DATE: January 17, 2007

**ZONING COMMISSION
District of Columbia**

CASE NO. 06-11

EXHIBIT NO. 242

*Proposed Findings of Fact and Conclusions
of Law of Foggy Bottom Association and
Advisory Neighborhood Commission 2A*

D.C. OFFICE OF ZONING

RECEIVED ZONING COMMISSION
District of Columbia
CASE NO.06-11
EXHIBIT NO.242

FINDINGS OF FACT

The Applications, Parties and Public Hearing

1. On February 16, 2006 the University filed an application requesting special exception relief and approval of the *Foggy Bottom Campus Plan: 2006-2025*, as well as an application for first-stage approval of a PUD and related map amendment, as described above. The cases were consolidated.
2. The Commission provided proper and timely notice of the public hearing on these applications by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission (“ANC”) 2A and to the owners of property within 200 feet.
3. The Commission received and granted requests for status as a party in opposition from the Foggy Bottom Association (“FBA”) and the West End Citizens Association (“WECA”), representing themselves and their members who live in close proximity to the GWU campus and who will be adversely affected by the Proposed Campus Plan and proposed PUD. The parties to these cases were GWU, ANC 2A, FBA and WECA.
4. The Commission held hearings on September 14, 21, 25 and 28, October 11, and November 30, 2006.

Preliminary Matters

5. The Commission received two motions from FBA. The first sought to dismiss the applications because GWU had failed to comply with Conditions 8 and 9(a) of BZA Order No. 16553-I, the GWU Campus Plan order now in effect (the “2000 Campus Plan Order” or the “2000 Order”). Specifically, the FBA relied upon an affidavit from George H.F. Oberlander, the FBA’s planning expert, who explained how GWU had more students, more faculty and fewer beds than these Conditions required. FBA sought dismissal on the ground that Condition 20 of the 2000 Campus Plan Order forbids the granting of further zoning relief so long as GWU was not in compliance with the enumerated conditions. GWU did not dispute the accuracy of Mr. Oberlander’s statistics (which were taken from GWU data provided to the Internal Revenue Service and the U.S. Department of Education), but argued that certain

categories of students and faculty did not have to be counted under the 2000 Campus Plan Order (a point FBA in turn disputed). In addition, GWU argued that Condition 20 applied only to requests for further relief under the 2000 Campus Plan Order; since GWU was seeking approval of a new campus plan, Condition 20 did not limit the ability of the Commission to consider the application. The Commission denied the FBA motion and repeatedly stated during the hearing that it was not interested in questions of GWU's compliance with the 2000 Campus Plan Order.

6. The FBA also moved to postpone the hearing on the ground that GWU had failed to comply with the District of Columbia Environmental Policy Act of 1989 D.C. Code § 8-109.01 *et seq.* ("DCEPA"). The FBA motion was supported by an expert affidavit from Scott Heiser, P.E., who testified that the applications presented environmental issues sufficient under DCEPA criteria to warrant environmental consideration before the applications were processed. The FBA argued as well that the DCEPA requires consideration of environmental concerns at the early stage of the process, before decisions are made, so that environmental consequences may be considered before a zoning decision is made, not afterwards. GWU opposed the motion, arguing that the DCEPA permitted the District government to delay environmental review until the building permit stage, *i.e.*, after the Commission has made a decision. The Commission agreed with this interpretation and denied the motion.

The Current and Proposed Campus Plans and Proposed First-Stage PUD

7. The boundaries of the GWU Foggy Bottom Campus encompass approximately 43 acres, generally extending from Pennsylvania Avenue on the north to F Street on the south and from 19th Street on the east to 24th Street on the west. Property within the campus boundaries is zoned R-5-D, R-5-E, SP-2 and C-3-C.
8. The campus is surrounded by areas with a variety of zoning classifications, including C-3-C to the north, C-4 to the east, R-5-E and SP-2 to the south, and R-5-E to the west. The campus also abuts the Foggy Bottom Historic District, located west of New Hampshire Avenue and zoned FB/R-3.
9. Development of the GWU campus has been guided by a series of campus

plans approved in past years by the BZA. The most recent of these, the 2000 Campus Plan, was approved in BZA Application No. 16553 and was intended to guide development from 2000 until mid-2009.

10. The 2000 Campus Plan Order responded to a series of neighborhood concerns that GWU had failed to provide enough on-campus housing for its undergraduate students. As a result, the university was exporting its students into the neighborhood, where they caused considerable disturbances to neighbors in terms of noise, offensive conduct, late-night activity and similar negative conditions. Moreover, the problem was compounding itself, as students moved into neighborhood apartment buildings and, by their disruptive behavior, forced many long-term residents to find housing elsewhere. The Office of Planning (“OP”) testified that the Foggy Bottom neighborhood was at a “tipping point” and recommended measures to provide more housing for GWU undergraduates on the Foggy Bottom campus.
11. The BZA found this testimony compelling and adopted a series of conditions to mitigate the damage caused by GWU’s unwillingness to provide enough housing for its undergraduate population. Specifically, Condition 8 capped student enrollment (defined as “headcount”) at 20,000 students over the life of the 2000 Campus Plan, with the student full-time equivalent (“FTE”) capped at 16,553. The number of FTE faculty and staff were capped at 1,550 and 9,000 respectively, while headcounts for faculty and staff were capped at 2,236 and 10,293 respectively. Condition 9 set forth conditions for adding to the number of on-campus beds for undergraduates with a goal of housing 70% of undergraduates starting in fall 2006.
12. Rather than allow the 2000 Campus Plan to run its course, however, GWU decided to file a new, 20-year campus plan that would take advantage of what GWU termed a “unique opportunity presented by the redevelopment potential of Square 54, the former GW hospital site,”¹ which GWU wants to develop as a “town center” for the campus of what it hoped to be a “world-

¹ GWU’s Prehearing Submission in Case No. 06-11, at 1.

class university.”² The University thus proposed a campus plan in tandem with a first-stage PUD application, the latter intended to provide the basis for additional development density beyond that permitted under applicable campus plan regulations (11 DCMR § 210). The salient elements of GWU’s applications, including the amenities that were being proffered as part of the PUD application, may be summarized as follows:

- a. The campus plan application proposed an increase in facilities such as a state-of-the art Science Center, modern classrooms with integrated technology and cutting-edge laboratories. GWU stated that it would add over 1.5 million square feet of additional academic program space. The PUD application indicated that GWU had identified 18 sites within the campus boundaries for future development; as to these, it proposed a change in the underlying zoning to C-3-C.
- b. The Proposed Campus Plan did not contemplate an increase in the number of students (as GWU defined the cap) and what would be a combined total of faculty and staff (again, as defined by GWU).
- c. GWU also contemplated increased on-campus housing, which was said to rest a “grow up, not out” philosophy that would concentrate new housing and housing density closer to the middle of the campus. GWU contemplated addition approximately 1,000 additional student housing beds. As the testimony during the hearing demonstrated, however, “grow up, not out” would not affect the current concentration of student housing on the southern edges of the campus, abutting the surrounding residential neighborhood. Nor would it change GWU’s plans to add to that concentration on Square 80 located on the southern campus boundary.
- d. GWU proposed a series of streetscape improvements over a 20-year

² Square 54, on the southeast corner of Washington Circle, is the subject of a separate PUD proceeding (Case No. 06-27). A PUD application involving the School Without Walls site on F Street (Square 80) was also considered separately (Case No. 06-17) and preliminarily approved, with the additional density intended to permit the construction of additional student housing, but not counting towards GWU’s aggregate FAR.

period. Neither GWU nor the District government provided details, however, about how such improvements would be phased in or as to the likelihood of funding contemplated street improvements from District government revenues.

- e. GWU committed to future campus development consistent with sustainable development and neighborhood planning standards advanced by the U.S. Green Building Council, the Congress for New Urbanism, and the Natural Resources Defense Council.
 - f. GWU has developed a Foggy Bottom Campus Preservation Plan that proposes a historic district on the Foggy Bottom campus, as well as landmark designation of several campus buildings. This plan will go forward if the applications under consideration are successful.
 - g. In tandem with the proposed redevelopment of Square 54, GWU will create an I Street retail corridor designed to help create a critical mass of retail extending from the Foggy Bottom-GWU Metro station to The Shops at 2000 Pennsylvania.
 - h. GWU proposes to eliminate an above-grade University Parking Garage (at 22nd and I Streets) and certain other surface lots and to create underground parking facilities at various sites throughout the campus.
 - i. GWU proposes to carry forward conditions from the 2000 Campus Plan Order, along with some conditions to transition the use of off-campus residence halls, including the Hall on Virginia venue, the Aston, Columbia Plaza (with respect to GWU's units) and City Hall.
13. The extent of additional development is summarized in Exhibit T to the campus plan application, which notes that current Gross Floor Area ("GFA") for the GWU campus is 5,613,986 square feet. The GFA under the proposed campus plan and first-stage PUD would rise to 7,402,231 square feet, an increase of 1,788,246 square feet. Adding in the Square 54 and Square 80 projects would increase the total GFA to 8,452,519 square feet.
14. The University provided testimony from eight witnesses on various aspects of the applications.

- a. **Louis Katz, GWU's executive vice president and treasurer, described GWU's proposed development strategies and how the applications will achieve GWU's strategic planning objectives, meet forecasted space needs and achieve new academic and technological needs.**
- b. **Lydia Thomas, vice chair of the GWU board of trustees, testified on the importance of academic facilities to the University's mission and the importance of technological improvements.**
- c. **Charles Barber, GWU's vice president and senior legal counsel, testified regarding student housing issues and compliance with respect to the 2000 Campus Plan and the Proposed Campus Plan.**
- d. **Sherry Rutherford, the GWU director for real estate, described the planning process that led up to the applications and reviewed GWU's proposed conditions.**
- e. **Matt Bell, who was qualified as an expert in architectural issues, provided an overview of the development process and what the University was hoping to achieve if the Proposed Campus Plan and PUD application are granted.**
- f. **Laura Hughes and Andi Adams, who were qualified as experts in historic preservation, described the historic preservation elements of the proposal and the proposed historic district and landmarks.**
- g. **Marty Wells, who was qualified as an expert in transportation, testified that his firm had conducted an analysis of the traffic and parking impacts of the proposals on the neighborhood. He testified that the percentage of GWU-related traffic crossing the campus boundaries would increase under the plan (from 7-8% to 11-12%) and that 34 of the 40 intersections that were now deemed acceptable in terms of their levels of service ("LOS") would remain acceptable or would be acceptable with mitigation measures. He acknowledged, however, that many of those intersections had levels of service no better than a D.**

Office of Planning

15. The Office of Planning submitted a report and testified in favor of granting the requested zoning relief with conditions.
- a. OP acknowledged that GWU had approached OP in late 2004 about developing Square 54 for investment purposes and that OP was unwilling to accede to non-academic uses unless GWU could provide a detailed plan showing that GWU's academic needs could be met on the remainder of the campus.
 - b. OP concluded that, with conditions, the proposal would satisfy the standards for campus plan review (11 DCMR § 210 ("Section 210")) and Planned Unit Development review (11 DCMR Chapter 24 ("Chapter 24")). OP favored the overall development plan, the historic preservation component and the use of the PUD process to develop specific sites within the campus boundaries. OP did so, recognizing that the PUD process would raise total density on campus, including commercially zoned sites, close to a floor area ratio ("FAR") of 5.0, whereas the total FAR limit under Section 210 criteria is 3.5. OP added that using the PUD process was proper within a campus because the PUD process permitted greater control over the specific location of buildings on the campus, arguing that Section 210 set limits in the aggregate, but did not control specific locations.
 - c. OP testified in favor of not exceeding the enrollment cap in the 2000 Campus Plan Order, although the agency acknowledged that there were differing interpretations about how to measure that cap. However, OP did propose that because the 2000 Campus Plan sought to mitigate negative impacts on the Foggy Bottom campus, and because GWU students residing on GWU's Mt. Vernon campus were traveling to and from Foggy Bottom regularly (there is 24-hour shuttle service between the two campuses), Condition 10 should be amended to count all students living elsewhere or traveling to the Foggy Bottom campus. Only those Mt. Vernon students who took all their classes at the Mt. Vernon campus would not be counted in the Foggy Bottom campus census.

District of Columbia Department of Transportation

16. The District of Columbia Department of Transportation ("DDOT") submitted several reports and testified in person.
- a. The first report, dated Sept. 14, 2006, agreed with most of the conclusions and recommendations of GWU's proposed Transportation Impact Study for the Proposed Campus Plan. DDOT acknowledged the community's concerns about additional congestion and agreed to monitor traffic conditions in the campus areas. DDOT supported the traffic management recommendations in GWU's study and asked that GWU continue efforts to make available as many undergraduate residential facilities within the campus area and take steps to reduce vehicle trips and congestion around the Foggy Bottom campus.
 - b. DDOT submitted a second report in November 2006 in response to testimony from FBA's transportation expert, who identified a number of discrepancies and gaps within the GWU transportation studies that DDOT had failed to address or analyze. DDOT's second report did not analyze these discrepancies, but simply repeated in general terms the agency's view that GWU's data should be credited.
 - c. DDOT was instructed to file by Dec. 21, 2006 a third report responding to specific issues raised by FBA's transportation expert about discrepancies in the GWU traffic reports that call into question the conclusion that the traffic effects will be benign. This procedure was adopted because DDOT had refused the Commission's request to send a suitable transportation expert who could answer the Commission's and parties' questions at the Nov. 30, 2006 hearing, after two prior failures by DDOT to provide witnesses with the requisite expertise. The Commission thus instructed FBA to submit questions in writing, which DDOT would answer in writing in sufficient time for the parties to consider them in preparing proposed findings of fact and conclusions of law. FBA objected to this procedure as inconsistent with its right to cross-examine witnesses. DDOT failed to file a timely report.

Advisory Neighborhood Commission 2A

17. Advisory Neighborhood Commission 2A submitted a report and testimony from Commissioner Michael Thomas from ANC 2A02. ANC 2A testified that the pertinent question for these proceedings is “Why are we here?”, given that the current campus plan has three more years to run. The ANC requested that the pending applications be denied because they failed to satisfy either the legal requirements for campus plans or the public policies undergirding those requirements.
- a. ANC 2A stated that the 2000 Campus Plan Order acknowledges the reality that university campuses are particularly unique uses of land, given their complexities, the level of activity at all hours, the massing of large numbers of young adults and other factors. The Comprehensive Plan, the BZA and the Commission have confirmed repeatedly that this unusually intense usage of land must be limited to prevent damage to and displacement of residential neighborhoods.
 - b. ANC 2A cited the BZA’s response in the 2000 Campus Plan Order about the “tipping point” and the finding that GWU’s use of residentially-zoned property within the campus boundaries for non-residential uses had become objectionable. The 2000 Order thus placed limits on GWU’s students, faculty and staff and required more undergraduate housing on campus.
 - c. Notwithstanding the limits acknowledged in the 2000 Campus Plan Order, GWU is now seeking what it estimates to be an aggregate of 2,837,602 square feet for new construction. This is 33% more than the 2.1 million square feet in the Empire State Building and 75% of the 3.8 million square feet in the Pentagon. The breakdown is as follows:
 - i. 1,788,245 square feet on the campus proper;
 - ii. 182,188 square feet for the GWU portion of Square 80;
 - iii. 867,169 square feet for Square 54.
 - d. ANC 2A testified that problems of traffic, noise, student behavior and other negative impacts have continued and increased notwithstanding the 2000 Campus Plan Order, noting in particular the negative impact on residents who live close to GWU’s boundaries, especially along F,

20th, 21st, 22nd and 23rd Streets and the new extended southern boundary, where a number of new residential facilities are located. GWU appears to acknowledge the problem by announcing the creation of an "F Street Task Force," although there is nothing in the record to indicate what this group has accomplished.

- e. ANC 2A testified that GWU's proposed use of the PUD process was inherently at odds with the concept of campus plan regulation under Section 210 and that the latter provision should govern, as it is more specifically tailored to the needs of residential communities in which universities seek to operate as a non-conforming use.
 - i. Section 210.4 speaks of "developing the campus as a whole," but in this case GWU has split the case into multiple applications, including the campus plan application, a first-stage PUD application, the School Without Walls application, and the Square 54 application. The net effect is to prevent the Commission from having an integrated plan presented, with no effort to develop an evidentiary basis for a finding that the proposals are "not likely to become objectionable" based on their aggregate impacts.
 - ii. Approving GWU to use the PUD process allows GWU to escape the FAR limit of 3.5 in Sections 210.3 and 402, with a resulting increase in FAR that goes 43% beyond the permissible limitation under these regulations.
 - iii. The FAR limits in Section 210 should be followed because they reflect the Commission's considered judgment about what type of density is permissible in the unique situation of a university seeking to operate within a residential zone without objectionable impacts on the neighbors. Allowing universities to substitute the PUD process for the Section 210 exception process permits greater density than is appropriate in such a setting.
 - iv. There is a difference also in the standards between campus plan applications and PUD applications. Section 210 requires approval only if the new development is "not likely to become

objectionable" in terms of noise, traffic, number of students or other factors. By contrast, the PUD process contemplates that there can be negative impacts on the community, but allows those negative impacts to be offset by public amenities and benefits, which may or may not benefit the immediately surrounding neighborhood, as well as the possibility of mitigation. There is thus an inherent inconsistency between allowing density above a 3.5 FAR in a residential zone and a university's ability to mitigate the adverse impacts of that added density.

- v. OP is incorrect in both its approach, which focuses on approving a development plan geared to approving GWU's perceived space needs, and its analysis, which argues that Section 210 does not offer the Commission or OP enough tools to control new construction. Sections 210.3 and 210.4 give the Commission enough tools to achieve the desired goal of certainty, give GWU the opportunity to increase the bulk of specific buildings, and embody the goal of developing the campus as a whole.
- f. ANC 2A testified that there are alternatives to achieving GWU's stated goal of being a "world-class university," citing Georgetown's model of pursuing excellence with a smaller enrollment, a self-contained campus, and use of a satellite campus for its law school in an area that needed and benefitted from development. By contrast, GWU has made no effort to investigate the use of independent satellite campuses here.
- g. In any event, GWU's enumerated "public benefits" do not satisfy the criteria for a PUD. Many of them are not public benefits, do not relate to the Campus Plan application or reflect GWU's pre-existing legal obligations. Other such proffers may be beneficial (*e.g.*, a historic district), but could be done by GWU without a PUD. Some proffered benefits (those relating to Square 54) are being offered twice. Moreover, the context in which they are offered – new development exceeding the size of the Empire State Building or 3/4 the size of the Pentagon – is inappropriate and destructive to the neighborhood.
- h. The proposed conditions offer too little to the community to warrant approval under either Section 210 or Chapter 24:

- i. Proposed Condition 1: As GWU and OP both acknowledged in their testimony, the fact that GWU is proposing a 20-year plan is meaningless. The 2000 Campus Plan was adopted for a ten-year period, yet GWU came back for a change only a few years after losing its legal challenges to the 2000 Order. There is no reason to believe that a future GWU president or a future Office of Planning Director will see himself or herself limited.**
- ii. Proposed Condition 2: By promising not to sue if the Commission accedes to GWU's demands, GWU suggests that it will sue if it does not get its way. However, GWU's threat of litigation should be discounted entirely, given the possibility of litigation – whatever the outcome – in a case of this complexity.**
- iii. Proposed Condition 6: This condition underscores the tension between using a PUD in the context of a campus plan case, as it is impossible to certify that the PUD is consistent with Section 210. The proposed condition reflects nothing more than an attempt to repeal the FAR limits in Section 210.**
- iv. Proposed Condition 7: This should be rewritten to forbid the scheduling of any matter dealing with campus plan development unless full compliance with the campus plan then in existence can be established. As the present case demonstrates, all a university has to do is change the caption on its papers from "proposed amendment" to "new application," and the condition has no effect.**
- v. Proposed Condition 8: The goal of GWU refraining from the purchase of residentially-zoned properties in Foggy Bottom/West End is laudable, but it still allows the purchase and conversion to university uses of non-residentially-zoned properties. This condition offers very little in practical terms.**
- vi. Proposed Condition 9: The concept of an advisory committee or other means of regular communication and consultation between GWU and the community has merit, but the proposal is**

structured to benefit GWU – which has paid employees, consultants and others who are assigned to community matters – and to benefit citizen volunteers.

- vii. Proposed Condition 10: For the reasons cited in the FBA’s motion to dismiss, GWU should count every person educated as part of the “headcount” in an enrollment cap. In the alternative, the Commission should count every person educated by the university who has rights to use the facilities at Foggy Bottom campus and who therefore adds to the intensity of use and the resulting impacts. OP and the Zoning Administrator move in the right direction with their views that Mt. Vernon students who take classes on the Foggy Bottom campus should be counted, but that can still understate the total effect.**
- viii. Proposed Condition 11: In terms of counting faculty and staff, it is still not clear whether GWU’s proposed condition captures every faculty or staff member whose employment or associated benefits requires or permits him or her to be present on the Foggy Bottom campus. A simpler definition would be to count all faculty and staff separately and to correct for duplication (i.e., staff who also teach a course, the only example cited by GWU for moving to a unified count for faculty and staff).**
- i. In response to questions from the Commission about the distance that exists between GWU and the community on the issues in this case, as well as questions about how to make an advisory committee operate effectively, the ANC, joined by the FBA, made a written submission identifying various ways that “town-gown” issues are effectively addressed in other cities. This filing argued that the experience in other communities offered alternatives that could be explored to achieve a more consensus-based development plan. The ANC and FBA argued as well that exploring these alternatives could be a productive use of time during the three years that remain on the current campus plan.**
- i. ANC 2A and the FBA cited a program operated by the Department of Housing and Urban Development called the Community**

Outreach Partnership Centers grant program. This program awards grants to help universities conduct applied research activities, including “[p]lanning activities that help local residents develop a vision for their community and a plan for implementing that vision. It was suggested that GWU could seek a grant under that HUD program.

- ii. In addition, there could be a collaborative planning project that focuses not on what GWU should look like in 2025, but on what Foggy Bottom and the West End – the host communities – should look like in 20 years. There are services available, including the American Planning Association’s Planning Advisory Service. Examples are available as well through the American Institute of Certified Planners and are reported in the Chronicle of Higher Education.**

Persons in Support

- 18. The Commission heard testimony in support of the applications from 40 individuals, many of whom were GWU students. Their testimony expressed support for GWU’s goal of turning itself into a world-class university.**

Foggy Bottom Association

- 19. The Foggy Bottom Association, a neighborhood association with over 400 residents who live in close proximity to (and some within) the GWU campus, testified as a party in opposition to the applications and urged that the applications be denied. FBA provided testimony from four witnesses:**
 - a. FBA president Joy Howell and FBA board member (and former ANC Commissioner) Elizabeth Elliott testified in favor of retaining the current campus plan and of requiring strict enforcement and compliance.**
 - i. The problems identified in 2000 are still present. They cited GWU’s decision to locate new undergraduate student housing on the periphery of the campus, thus continuing negative impacts for GWU’s neighbors in terms of noise, student rowdiness and**

the like. Other examples include:

- (1) Students travel up and down public sidewalks in large groups, crowding pedestrians off the sidewalks.
- (2) The university draws tour groups of thousands of potential students and their families.
- (3) Over half of the GWU undergraduate student body will be housed along four blocks of F Street (GWU's southern boundary) with the addition of the dormitory on Square 80. Most of GWU's freshmen will be housed in three blocks of this same area with the addition of this dormitory.
- (4) Many students begin their weekends on Thursday nights, and it is quite common for students to be partying on the street or in their apartments in a loud and raucous fashion in the early hours of Friday morning, when many residents have to go to work in a few hours.

- ii. Enforcement remains a major problem. The community believed that the 2000 Campus Plan Order would offer protections in the form of limits that the BZA adopted not only on FTE student enrollment, but also an overall "headcount" limit. Instead, GWU massaged the enrollment data, starting from the so-called IPEDS data reported to the Department of Education, which shows an enrollment exceeding 24,000. From that figure, GWU omits entire categories of students until the headcount is down to 19,000 students, some of whom are using the Foggy Bottom campus on a regular basis. An audit by the Zoning Administrator accepts GWU's figures at face value. FBA also supported maintaining the current separation for counting faculty and staff, citing the differences between the two categories and the possibility of GWU being able to increase faculty size through the "outsourcing" of staff positions that would thus not be counted as GWU employees.
- iii. Despite the BZA's requirements that GWU house more undergraduates on campus, GWU's August 2006 compliance report notes 6,200 beds to serve 8,200 undergraduates, which means that 1,800 undergraduates are not housed on campus – and that

another 10,000 graduate students and other students are housed off-campus. Also excluded are the 4,000 students that GWU is not counting in reporting enrollment at close to 19,000.

- iv. GWU's efforts at policing student behavior, along with disciplinary system, are inadequate. Incident reports may or may not lead to disciplinary actions or proper deployment of security personnel to areas where the need is greatest. Responses by the campus police are often inadequate and ineffective.
- v. GWU sponsors activities that draw people to the Foggy Bottom campus seven days a week, *e.g.*, activities at the Lisner Auditorium, the Marvin Center, the Elliott School and the Smith Center. During basketball season there are often boisterous crowds on the streets of this residential neighborhood before and after games. Performances at Lisner always create traffic jams.
- vi. The problem remains overenrollment, as well as the fact that GWU's methodology has not been fully disclosed and has changed over time.
 - (1) In its February 2003 compliance report, GWU *included* "continuous enrollment" students in its headcount figures.
 - (2) In its February 2005 and 2006 compliance reports, GWU *subtracted* "continuous enrollment" students from its headcount calculations.
- vii. The Zoning Administrator's audit accepts GWU's enrollment figures at face value, although there is one important recommendation he makes, namely, to count all students who are physically present in the neighborhood and attending classes at the Foggy Bottom campus, even if they live at the Mt. Vernon campus or elsewhere. As the Zoning Administrator indicated, GWU would have been out of compliance in Fall 2005 if this benchmark had been used. There is a need for an objective, clear and enforceable standard in setting headcount. If the Commission is inclined towards using GWU's definition, the numerical cap should be lowered.

- viii. **FBA agreed with the ANC that the criteria for Section 210 approval have not been met and that the PUD process should not be used in a campus plan setting, as it permits greater density than is permissible in a residential zone.**
 - ix. **The proffered amenities offer little, even if a PUD application could be considered here. GWU remains free to operate outside any approved campus boundaries, so long as the use is a matter of right. GWU can continue to buy residential buildings in Foggy Bottom for “investment purposes,” and so long as those buildings do not “directly refer” students to those buildings, these structures can transmogrify into student dwellings in the same manner that the BZA identified in the 2000 Campus Plan Order. The proposed Condition 8 is powerless to stop this. None of the proffered amenities is sufficient to justify constructing the massive new development being proposed.**
 - x. **There is no reason to believe that the proposed campus plan will provide a long-term solution to address the problems that were documented in the 2000 campus plan proceedings.**
- b. FBA also presented testimony from George H.F. Oberlander, AICP, who was qualified as an expert on planning issues. Mr. Oberlander submitted a report and testified in favor of denying the applications for the following reasons:**
- i. **The 2000 campus plan permits development of 5.6 million square feet of gross floor area (with 900,000 square feet that can still be built). That 5.6 million figure is itself the rough equivalent of 28 downtown office buildings (which average 200,000 square feet). The activity generated by that level of density can be substantial. Adding substantially to that level of development can have a negative impact on the community in terms of noise, traffic, number of students and the like.**
 - ii. **GWU proposes adding 1.7 million square feet in new on-campus development (excluding Square 54 and 80). This accounts for**

another eight to nine downtown office buildings and would bring the residentially-zoned areas in the campus boundary to an FAR of 3.65, exceeding the 3.5 FAR limit in Section 210. An Urban Land Institute study cited by GWU should have no bearing on this case, as the ULI study focuses solely on Square 54 and does not deal with the zoning issues presented here.

- iii. Concerns expressed in the 2000 Campus Plan Order about the neighborhood being at a “tipping point” are still salient. In addition, the Commission should use the campus plan regulations in Section 210 to guide development in this area, not the PUD process, which can yield, piecemeal, patchwork and incremental planning.
- iv. The OP report is seriously flawed in terms of crediting GWU’s proposal to adopt a 20-year plan. In addition, “Grow Up, Not Out” has no officially accepted planning policy rationale; it is a slogan. Building taller buildings in the center of campus does not reduce the impact of those buildings on surrounding, lower-density residential uses.
- v. The proposed conditions, even those that carry forward existing conditions, contain numerous flaws. For example, they do not resolve issues of enrollment caps and headcount, nor do they resolve the level of compliance that GWU must achieve, witness the loophole for “substantial compliance” with these caps.
- vi. The PUD process should not be used for developing a campus plan approval. Chapter 24 deals with specific development proposals, not the development of a campus “as a whole,” as Section 210 contemplates. A first-stage PUD does not provide certainty to all sides about how the plan will be fulfilled, as OP claims. There is a simpler way to achieve development goals, which is to require GWU to complete a substantial majority of its development plan before the 2009 expiration of the current plan and consider a new proposal only at that point, with the experience that has been gained from seeing the 2000 Order’s reforms fully implemented.

- vii. The provisions in the Comprehensive Plan that deal with this area are section 1340.2, which deal with GWU and Georgetown University and provide only general guidance, and section 1358, which addresses GWU specifically and states: “The expansion of the University has resulted in the diminishment of housing. . . This and other commercial usage is of grave concern to the Foggy Bottom residential community.” Section 1358 cites as well the “impact of University-generated traffic [which] has had a negative effect on residential Foggy Bottom.” Section 1358 thus argues against approval of these applications.
- c. Joe Mehra, P.E. submitted two reports and was qualified as an expert on transportation issues. Mr. Mehra focused on discrepancies in the traffic and parking studies filed by GWU’s expert, which came to a total of five in this case and the Square 54 case. His testimony included the following points:

 - i. GWU’s initial traffic study did not provide truck data. A later study showed that far from truck traffic constituting the normal default rate of two percent, the incidence of truck traffic ranged from 16% to 48%. Mr. Mehra concluded that the “default assumption in the Campus Plan Study is invalid and results in considerably better levels of service than when using observed truck volumes.”
 - ii. GWU’s traffic study did not adequately address the problem of “queuing,” *i.e.*, congestion on Pennsylvania Avenue and K Street during peak hours forces queues back into the adjacent intersections. This “spillback” can undercount the observed volumes; in addition, data collectors record fewer vehicles passing through an intersection than those who want to pass through the intersection, thus inflating levels of service artificially. He added that under “congested conditions, other techniques such as ‘saturation flow’ or ‘loaded cycles’ should be used.”
 - iii. There is almost a 50% discrepancy between the southbound traffic counts on 21st Street at I Street during the PM peak hour

(634), but GWU used 434 vehicles to compute levels of service. GWU argued that this difference was due to "volume balancing," owing to data being collected on different days, as well as human error. However, it is not true that 21st Street is sending 524 vehicles from I Street to H Street, whereas H Street is receiving 825 vehicles in the PM peak hour. If "volume balancing" had been conducted, then the southbound volumes on 21st Street should be 735 vehicles instead of the 434 upon which GWU relies.

- iv. There are discrepancies between street peak hours and GWU's estimates of GWU's peak hours. Data for 31 intersections studied by GWU show that 23 out of 31 intersections have street peaks earlier than are estimated for the AM peak, and that 21 out of 31 intersections have street peaks earlier than the peak hour identified by GWU. The GWU report in the Square 54 case shows street peaks identical to the GWU peaks, except for one 15-minute differential in the evening. If that is so, "most of the traffic analysis presented for future conditions with GWU expansion would be unduly optimistic and not valid."
- v. An analysis of existing trip generations shows a series of discrepancies in the travel survey of students and faculty/staff to obtain trip rates and mode of travel to and from the university. GWU's use of lower vehicle trip calculations can result in less vehicle trip generation and thus a better level of service. The vehicle trip generation estimates for increased faculty/staff vary by 315 vehicles in the AM peak hour, a difference that "will have a significant effect on the projected levels of service."
- vi. In considering future traffic conditions if these applications are approved, GWU assumed a 0.5% per year growth for through traffic to obtain background, whereas the DDOT *Lower West End Traffic Study* assumed a 1% growth for background conditions. Using the DDOT figure could increase the total number of trips forecast by 400 vehicles per hour. DDOT stated that both the 0.5% and 1.0% growth rates were "reasonable," not withstanding that discrepancy. DDOT also opined that the

difference between results under these two scenarios was only “slight,” but declined to discuss conditions past the fifth year of GWU’s proposed 20-year plan.

- vii. GWU’s projected growth in vehicle trips did not include vehicular traffic generated by private vehicles or non-GWU buses that may arrive from other campus.
 - viii. An analysis of the “levels of service” for this neighborhood shows that there are currently 9 out of 37 intersections with some failing approaches (LOS E or LOS F). With GWU’s proposed expansion, and using GWU’s assumed rate of growth, that number will grow to 14 of 37, even with mitigation and even with loss of curbside parking. If DDOT’s 1% assumed growth rate is used, however, an additional 12 intersections currently at LOS D may fail, resulting in a possible total of 26 failing intersections out of 37.
 - ix. GWU’s Transportation Management Plan, which is intended to mitigate the negative effects of increased traffic, is very generic. No specific or binding actions are presented, and the TMP may not result in any vehicle trip reductions.
 - x. DDOT’s analysis of traffic did not consider pedestrian safety, nor did it consider the effect of various projects now under consideration that could affect the Foggy Bottom and West End neighborhoods, including the Whitehurst Deconstruction Study, the reconfiguration of Juarez Circle and the addition of neighborhood bike lanes.
- d. As will be discussed more fully below in the Conclusions of Law, the Commission credits the expert testimony of the FBA witnesses on planning and transportation issues, finding their testimony to be more persuasive than the applicant’s testimony on these points.

West End Citizens Association

20. The West End Citizens Association testified as a party in opposition and

urged the Commission to deny the applications in their entirety. WECA's witness, Barbara Kahlow,³ testified against using the PUD process and in favor of judging this case under the Section 210 campus process. In addition, she described problems with respect to parking, student behavior, inadequate enforcement, an inadequate disciplinary process and similar matters.

Persons in Opposition

21. There was testimony from 13 organizations and individuals, the latter primarily residents of the Foggy Bottom and West End neighborhoods, who urged denial of the applications. Their testimony focused on ways that the problems of noise, overcrowding, rowdy student behavior and the like had not yet been remedied in their neighborhood despite the construction of new on-campus housing for undergraduates and the other steps that GWU is taking or contemplating. Examples included:
- a. vandalism of private property and vehicles;
 - b. loud and drunken behavior on public streets in the early morning hours, including weekdays;
 - c. GWU's expressed intent to keep expanding ownership of non-university owned housing in the neighborhood, including:
 - i. A threat by GWU's president to locate fraternity houses next to one resident's home if the resident did not sell his property to GWU, and GWU's later construction of a dormitory for over 700 students abutting that neighbor's property;
 - ii. Testimony from the President of the Columbia Plaza Tenants Association as to a statement by GWU's president that GWU "will wait until they [the tenants] all move to the graveyard" before buying up their apartment buildings, a trend that could accelerate the transformation of that complex into a predominantly student building.

³ As a preliminary matter, the Commission denied Ms. Kahlow's request to testify as an expert on the regulatory process.

The Zoning Administrator

22. Bill Crews, the Zoning Administrator, testified at the request of the Commission to respond to concerns about the enforceability of proposed conditions. Mr. Crews indicated that his testimony was not in the nature of policy recommendations about how the Commission should decide the case, but rather how conditions might be worded so as to make them capable of being enforced. His testimony included recommendations to alter some of GWU's proposed conditions, such as the use of "substantial compliance" as a measure of whether GWU was staying under the headcount limitations on student enrollment, as well as faculty and staff caps. He noted as well the desirability of a measure that includes Mt. Vernon students who actually use the Foggy Bottom campus being included in any count.

CONCLUSIONS OF LAW

1. GWU is seeking a special exception, pursuant to sections 210 and 3104 of the Zoning Regulations, for approval of a new campus plan for a period of 20 years. The Commission is authorized to grant a special exception where, in the judgment of the Commission and based on a showing of substantial evidence, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. D.C. Code § 6-641.07(g)(2) (2001), 11 DCMR § 3104.1.
2. In addition, GWU is seeking first-stage PUD review and approval and a Zoning Map amendment pursuant 11 DCMR Chapter 24. The purpose of this second application is to permit a rezoning of 18 selected, non-contiguous properties within the GWU campus to C-3-C. GWU estimates that this will be sufficient to accommodate its forecasted academic and student housing needs while retaining the numeric limitations of the 2000 Campus Plan Order, as interpreted by GWU. GWU proposes that the Foggy Bottom campus PUD will have a term of 20 years. Each of the proposed development sites specified in any first-stage PUD approval order would require approval through a second-stage PUD application, with a detailed site plan review to confirm compliance with the first-stage PUD approval. GWU proposes also that any second-stage review would incorporate the "further processing"

review that would continue to be required with respect to residentially-zoned properties under Section 210 of the Zoning Regulations.

3. The Commission has determined that consideration of a first-stage PUD application is not warranted in the context of a campus plan case under Section 210. Specifically, the Commission credits the testimony of the ANC and FBA, including the latter's expert testimony, that the two procedures are intended to address different situations and can produce different results in the same case, a result that is to be avoided if at all possible.
 - a. Section 210 of the Zoning Regulations is designed to govern a specific category of cases. Section 210 starts with the proposition that university uses are not permitted as a matter of right in a residential zone. Thus, in order for a university to be permitted, special exception relief is warranted, consistent with the criteria that the Commission established through rulemaking when it adopted Section 210 through rulemaking. Section 210 contains its own, self-contained set of criteria and its own limits on uses and density in a residential zone.
 - b. Imposing a PUD process on top of the campus plan process would produce results at odd with the goals of Section 210, namely, the uses of fixed criteria to protect a residential neighborhood. Perhaps the most significant difference is the greater density that is permitted under a PUD application such as the one at issue here. Under Section 210, the maximum FAR in the campus area at issue here would be 3.5. By contrast, creation of a set of C-3-C districts would have the effect of increasing the FAR to 5.0 – a 43% increase. Nothing in the text or structure of Section 210 suggests that an increase in density would be appropriate in a campus setting.
 - c. The limitations on density in Section 210 reflect the Commission's awareness of the intense uses that a university places on a residential neighborhood. A university such as GWU, with a range of academic and other activities, including activities on nights and weekends, and large faculty and staff populations and a student population with thousands of students (particularly undergraduates) living in close proximity to each other, imposes strains and stresses upon a residential community that are not present with other uses. Under the

circumstances, it is a sensible policy decision to observe and honor the FAR limitation that the Commission established in adopting Section 210 and to insist on development proceeding in a manner consistent with Section 210's criteria.

- d. This conclusion is buttressed by the fact that, even if a university is in full compliance with the overall *quantitative* FAR cap, a campus plan proposal may be rejected if the Commission determines that the application would result in conditions that objectionable because of noise, traffic, number of students or some other factor. These *qualitative* considerations operate in tandem with the quantitative FAR limitation and should not be discarded or superseded lightly.
- e. There is a risk that the protections intended by Section 210 will vanish if a university may use a PUD application to exceed the limits established by Section 210. Section 210.2 requires that a university must demonstrate that its campus plan proposal is "not likely to become objectionable" because of noise, traffic, number of students, etc. This is an objective standard that requires a university to show that the new plan will do no harm. By contrast, the PUD regulations contemplate that the zoning limitations on a given site may be exceeded and that there can be negative impacts on the community, so long as they are "capable of being mitigated" or are deemed "acceptable" because of the "quality of public benefits" in the project. 11 DCMR § 2403.3. There is a subtle, but important difference between a standard that says "Do no harm to the community" and a standard that says "It's permissible to do harm to a community so long the amenities are sufficient or the harm can be mitigated." Moreover, in a PUD setting, the public benefits may not all be available at or near the affected community that is being damaged, which is yet another reason why PUDs should not be employed in an area that is the subject of a separate regulatory regime, as is the case with campus plans.
- f. Moreover, using the PUD process in the manner GWU proposes here is inconsistent with the requirement in Section 210.4 that the campus be developed "as a whole." GWU has engaged in picking and choosing 18 sites for upzoning within a 43 acre campus, and it has done in a manner that meets GWU's expansion plans, but does not appear to be

based on any independent or cohesive planning effort. The result would be *ad hoc*, piecemeal planning that both Section 210 and the PUD process are intended to prevent.

- g. The Commission concludes that the reason perceived for preferring the PUD process – the supposed certainty in terms of locating specific buildings – is not persuasive. As the ANC testimony indicated, the Section 210 process provides for a level of certainty in terms of guiding future development on a university campus. The level of certainty is tangibly comparable to that provided under a first-stage PUD approval. In addition, the Section 210 process is superior to the PUD process for the reasons articulated above, namely, the fact that Section 210 provides explicit protections for a neighborhood that are notably lacking in the PUD process, which allows a community to suffer negative impacts so long as the offsetting “public benefits” are perceived as attractive enough.
- h. There is no precedent for using a PUD in a campus plan case as GWU is proposing here. In fact, the BZA’s handling of the Elliott School PUD case during the 2000 campus plan proceedings illustrates precisely the opposite.
- i. After the BZA had finalized its decision in the 2000 campus plan case, the Board was granted an ANC 2A appeal to require GWU to appear before the Commission for permission to modify a PUD to permit the construction (which was already underway) of the Elliott School and a student housing facility. The BZA was also aware that the proposed PUD site was *outside* the campus boundaries. Upon consideration of the size and nature of the proposed PUD project, as well as the changes that the BZA was making to the campus boundaries elsewhere, the BZA concluded *if* the Commission should approve the Elliott School PUD, the campus boundaries should be redrawn to include the Elliott School PUD on campus. BZA Order No. 16553-I, Appendix ¶ 2. In that case, there was a determination that the Elliott School building *would* fall within the overall limitations of Section 210, whereas in this case, GWU’s goal is to *exceed* those limits. The two situations are analytically different.

- i. There is, finally, an analytical flaw in GWU's argument and OP's support that is never addressed: If the PUD process is an acceptable means of engaging in campus planning, what purpose is served by having the Section 210 campus plan process on the books? Experience and the testimony in this case suggest that universities are always interested in expanding and growing. One is hard pressed to understand why a university would voluntarily operate under the limits imposed by Section 210 if, by contrast, the PUD regulations permit a university to exceed those limits and receive extra development rights in a manner that is inconsistent with campus plan standards.
4. Even if the Commission were inclined to consider GWU's application without regard to the density limits of Section 210, the Commission would still deny the application on the ground that GWU has failed to meet the criteria in section 210.2 for a finding that the project is "not objectionable."
- a. Noise:
 - i. The Commission has considered and found persuasive the testimony from the ANC, FBA and individual neighbors that noise remains a problem. The BZA was concerned in the 2000 proceeding about rowdy student behavior. The Commission credits testimony that, notwithstanding the additional on-campus housing for undergraduates, there are still episodes of students not being good neighbors and creating noise that is inconsistent with a residential neighborhood.
 - ii. The Commission believes that it would be better to consider any new campus plan that GWU may wish to proffer once there is greater experience with the reforms contemplated by the 2000 Campus Plan Order. In that regard, the Commission notes that a major feature of that order – the requirement of 70% of undergraduates being housed on campus only took effect in August 2006, so it is too early to gauge the success of that pivotal reform.
 - b. Traffic:
 - i. The Commission credits the testimony of the FBA's expert

witness, Joe Mehra, who has identified some significant ways in which GWU has undercounted and underestimated the potential impact of traffic and parking demands that will be created by GWU's applications.

- ii. As the FBA pointed out, GWU is proposing to add the equivalent of eight or nine K Street office building within its campus (and that is before considering the Square 54 or School Without Walls developments). It is impossible to conclude that the effects on traffic from such a significant project will be minimal, as GWU asserts, and Mr. Mehra has convincingly identified areas in which GWU has understated the potential effects of more traffic on the Foggy Bottom and West End neighborhoods.
 - iii. The DDOT analyses were superficial and incomplete and raised more questions than they answered, thus foreclosing any meaningful reliance on DDOT's views. The fact remains that GWU has the burden of establishing that the proposed traffic consequences will not be objectionable, and GWU has failed to carry its burden on that point.
- c. **Number of Students:**
- i. The student population has been steadily increasing since approval of the 2000 Campus Plan Order, and GWU's handling of this issue has been a subject of concern and a major source of the friction that marks "town-gown" relations between GWU and its neighbors.
 - ii. The Commission has stated that it does not intend to use this proceeding as a forum for reviewing questions about compliance with the 2000 Campus Plan Order. The Commission can nevertheless understand why the community would feel suspicious and mistrustful because that Order speaks of an overall "headcount" limit on the student population, without ever suggesting a belief by the BZA that GWU could, in its discretion, ignore the IPEDS criteria used by the U.S. Department of Education and make its own computations as to who should be counted.

- iii. The Commission notes as well that GWU's record has not been a model of consistency. For example, the compliance affidavits cited by the FBA witnesses show that GWU carved out "continuous enrollment" students in 2005 and 2006 after making no such carveout in 2003.
 - iv. There was testimony that if GWU's methodology is to be used (with whatever refinements may suggest themselves in the course of this proceeding), then the Commission should reduce the overall cap. That would be something worth considering in a future case involving the post-2009 period. At a minimum, there appears to be a consensus among parties other than GWU as to the need to count in some manner those students who make use of the Foggy Bottom campus, regardless of whether they live on the Mt. Vernon campus and commute to classes in Foggy Bottom or whether they attend one of GWU's other campus but have privileges allowing them access to facilities at the Foggy Bottom campus.
 - v. GWU has not provided adequate evidence to identify exactly how many students who live at Mt. Vernon and elsewhere are not being counted. Since the number of students is an important element of campus plan cases, since concerns about overenrollment were continuously expressed in the 2000 campus plan case and again in this case, this omission is serious. As a result, the Commission concludes that GWU has not carried its burden of proof on that point.
- d. Other factors: As noted above, one of the biggest drawbacks to approving a new campus plan at this time is a lack of information about how well the 2000 Campus Plan Order has worked. The requirement that GWU house 70% of its undergraduates on campus only recently took hold, and it is too early to state whether that reform has had the desired effect. Indeed, testimony during the hearing suggests that the problems described during the 2000 testimony are still salient and unresolved. Even with new construction of dormitory space, however, and GWU's purported interest in "Grow Up, Not Out," there are still

issues such as the concentration of undergraduate housing on the campus southern periphery that continue to exist. Under the circumstances, the Commission cannot conclude at this point that approving a new set of development projects would be lacking in “objectionable” criteria.

- e. It should be noted that these applications (which involve 18 proposed sites), along with the Square 54 and Square 80 cases, would have the effect to creating 20 construction zones in coming years, as GWU adds considerable density to the neighborhood. This level of intensity is certain to have a negative impact of the existing residential neighborhood
 - f. Under the circumstances, the Commission is not convinced that GWU has sustained its burden of proving that its applications are consistent with Section 210 of the Zoning Regulations. The Commission believes that GWU’s effort here is at best premature and that the most sensible approach would be to continue working to implement the 2000 Campus Plan Order, with GWU to file a new application only as the expiration of that 2000 order draws near.
5. The Commission notes that there exists an opportunity to use the remaining time well. The Commission is persuaded by the citations of ANC 2A and the FBA to several collaborative methods that could be used to find consensus on these town-gown issues. The Commission believes that there would be a benefit to all concerned if GWU and the community could find ways to make a collaborative process work more effectively.
6. Even if the Commission were inclined to consider this case using PUD criteria, the asserted “public benefits” fall far short of justifying the considerable expansion in GFA that GWU is seeking here. Helping GWU achieve its long-term development goals is a private benefit, not a public benefit, and other benefits (new retail, new tax revenues) can be achieved without a PUD. GWU’s supposed agreement to purchase Foggy Bottom residential real estate only for “investment purposes” and without “directly” referring students to those properties lacks substance and cannot be enforced. If anything, it confirms GWU’s right to continue buying up residential properties in the neighborhood. A new historic district is one possible element, if approved by

the Historic Preservation Review Board, but it also has flaws as presented and is not sufficient to warrant the massive increase in density that GWU is seeking, with the attendant problems of noise, traffic, student activity and related concerns that will inevitably accompany the construction of 1.7 million square feet of new facilities (and that is before considering Square 54 and Square 80).

7. Even if the Commission were inclined to consider this case under the applicable PUD criteria, the Commission would decline to do so here. Having considered the testimony over the course of six nights, the Commission has decided to reconsider its prior ruling and to grant the FBA's motion to postpone consideration of GWU's pending applications pending environmental review under the DCEPA. Although the BZA held in the 2000 Campus Plan Order that environmental review could be deferred until the building permit stage, the BZA's analysis is not binding on the Commission, and we find the arguments unpersuasive for the reasons cited in the FBA's motion. Moreover, the DCEPA is drafted generically and broadly so as to encompass a wide range of economic activity that could have environmental consequences. Under the circumstances, there may be other situations that are more streamlined than campus plan cases and PUD cases, such that environmental review until the project is about to start construction might be warranted. However, given that the entire thrust of the DCEPA is to permit consideration of environmental factors at an early phase of the regulatory process, before decisions are locked in and flexibility is eliminated, the Commission concludes that it would make no sense to defer consideration of environmental matters until after a zoning decision has been made. The building permit process is limited in scope and focuses on compliance with zoning and other decisions that have been already made. As a result, even if a given project is identified as having serious environmental consequences, it would be too late for the Zoning Commission to consider those consequences and possibly alter its ruling accordingly. Thus, if the Commission were inclined to consider this case, the Commission would adopt the reasoning set forth in the FBA motion to postpone and defer further action pending GWU's filing of the appropriate forms with the Department of Health (or any other appropriate agency) and the conclusion of that environmental review, at which point the Commission would be prepared to consider the applications with an awareness of the potential environmental concerns.

8. For the reasons set forth in the prior paragraphs, the Commission is of the view that the applications should be denied as inconsistent with Section 210 of the Zoning Regulations and Chapter 24 of the Zoning Regulations. Given the significant concerns that remain about implementation of the 2000 Campus Plan Order, the Commission concludes that a more constructive approach going forward would be for GWU and the community (a) to review the implementation of the 2000 Order as it continues to take hold and (b) to work towards a collaborative approach to planning issues that might produce a campus plan application governing the post-2009 period that reflects a greater effort to achieve consensus.
9. Although the Commission has determined that GWU's applications should be denied, experience in prior cases has made it clear that campus plan cases (and PUD cases as well) are often about conditions that are imposed if a proposal is approved. In this case, GWU came forward with 20 proposed conditions, some of them a carryover from the 2000 Campus Plan Order. In anticipation of the testimony of the Zoning Administrator, the Commission invited the parties to submit their own version of what conditions might be appropriate in a case of this sort, recognizing and respecting the fact that some parties urge denial of the applications, either with or without conditions. Although the Commission's determination on the merits precludes the need for discussing conditions, the subject sparked considerable discussion. If the Commission were to adopt conditions, it believes that those proffered by ANC 2A and FBA come closest to embodying the correct policy choices in this type of case.
10. Following are the text of certain key conditions that the Commission believes would be appropriate in this type of campus plan case. Each text also contains a commentary explaining the policy choices, and the ordering is according to the sequence according to GWU's proposed conditions:
 - a. **Enforcement (Condition 20 in 2000 Order, GWU's Proposed Condition 7)**
 - i. **Text:** "20. No application or request for any further or additional rights, including but not limited to applications under Chapters 2 or 24, 11 DCMR, by the University shall be received for filing unless accompanied by a certification by the Zoning

Administrator that the applicant is in strict compliance with Conditions 1-20 herein. Further, any violation of these Conditions shall be grounds for the denial of any building permit or certificate of occupancy applied for by the University for any University building or use, and may result in the imposition of fines and penalties pursuant to the Civil Enforcement Act, D.C. Code §§ 6-2701 to 6-2723.”

- ii. Comment: This responds to the concern about lack of enforcement of the 2000 Order. The Zoning Administrator’s audit requested by the community effectively found that GWU had been out of compliance with the FTE student cap in the fall semester of 2005, and agreed with GWU not to audit other compliance issues, noting that there seemed to be no readily retrievable data for them anyway. Moreover, the wording of the 2000 Campus Plan Order allowed GWU to evade enrollment limitations by filing a new application over an amended application.**

- iii. The measure of compliance should be literal, not “substantial.” GWU’s witnesses were unable to say what deviation from enrollment or other limits would equate to non-compliance. In their supplemental submission of September 21, 2006, GWU’s counsel argues by analogy to 11 DCMR §§ 2522, 407 and 2409 that deviation by two percent would be substantial compliance. That would mean that a 20,000 student headcount cap would allow 20,400.**

- iv. GWU’s analogy is not apt for various reasons. First, section 2522 and the other provisions GWU cites state with numerical precision the extent to which the owner may exceed applicable limits. In other words, the Commission has defined with exactitude how far above the threshold a property owner may proceed without having to worry about enforcement. None of the provisions cited by GWU uses such a vague or discretionary formulation as “substantial compliance” nor leaves it up to the Zoning Administrator to determine exactly what that means. Of particular relevance too, the Zoning Administrator favors deleting “substantial” before “compliance.”**

b. **The Advisory Committee (Condition 3 in 2000 Plan, GWU Proposed Condition 9)**

I. Text: “3. The University will work with community representatives to form an Advisory Committee for the purpose of fostering consistent communication between the University and the Foggy Bottom and West End communities, discussing issues of mutual interest and proposing solutions to problems that exist or arise in implementing the approved Foggy Bottom Campus Plan.

“a. The Advisory Committee will provide a forum for the exchange of information and discussion of issues relating to the relationship between the University and the community, which may include:

“i. the University’s compliance with the provisions and conditions of this plan,

“ii. new University proposals to develop sites on the Foggy Bottom Campus.

“b. Composition, Administrative Procedures & Meeting Format

“i. The Advisory Committee shall consist of ten members: three representatives of the University to be selected by GW and seven representatives of the community to be jointly selected by ANC 2A and the Foggy Bottom Association. They shall select at least one resident of Foggy Bottom and at least one resident of the West End.

“ii. The quorum for Advisory Committee meetings will be six members.

“iii. The first Advisory Committee meeting shall take place within two months of the adoption of the Campus Plan.

“iv. The Advisory Committee shall schedule quarterly meetings open to the public, and shall keep minutes of each meeting.

“v. On at least a semiannual basis and otherwise as requested, the University will report to the Advisory Committee data relevant to campus planning that includes, but is not limited to: report on student enrollment, planned development projects included in the University’s capital program, historic preservation, implementation of the street-

scape plan, public space permits, and reports on all conditions and commitments adopted as part of the Campus Plan.”

- i. **Comment:** Condition 3 of the current plan was never formally implemented, although there were multiple avenues of communication between the ANC (and others) and the University through which many issues were effectively addressed. The community has viewed GWU’s treatment of the Advisory Committee issue as a public relations tool or mechanism to “score points.” The proposal put forward in GWU’s application would exacerbate that problem. The language of paragraphs a.i and a.2 reflect GWU’s intention to make the Advisory Committee (and therefore the ANC) something of an enforcement entity. However, at the same time, the provision, unlike Condition 3 of the current plan, puts GWU firmly in the driver’s seat in the operation of the Committee. It does that by having equal numbers of GWU and community members, making a quorum the same number as GWU’s members, and having the rules set at a designated meeting. Predictably, GWU’s members, who are paid employees for whom attendance will be an obligation of employment, will attend faithfully. Just as predictably, attendance of community members (who are volunteers) will not be as uniform. The result will be that nothing can be done except as GWU wants it done. Such an Advisory Committee will never work, and if GWU gets its way in setting it up as proposed, it will be another issue that inflames as well as burdens the community. The proposal as re-written would provide for majority community membership, a higher quorum, and more flexibility.

c. **Student, Faculty and Staff Caps (Condition 8 in 2000 Order, GWU’s Proposed Conditions 10 and 11)**

- i. **Text:** “For the duration of this Plan, Foggy Bottom student headcount shall not exceed 20,000 students, and Foggy Bottom student full-time equivalent shall not exceed 16,553. For the duration of this Plan, the Foggy Bottom faculty and staff population shall not exceed a total of 12,529 on a headcount basis,

- (consisting of no more than 2,336 faculty and no more than 10,293 staff) and 10,550 on a full-time equivalent basis (consisting of no more than 1,550 faculty and no more than 9,000 staff).
- “a. Definition. For the purposes of these Conditions, “Foggy Bottom student headcount” shall be defined as the number of persons being educated by GW who at any given time attend classes or have the right to use facilities at the Foggy Bottom campus.
- “b. Calculation of full-time equivalent. For the purposes of these Conditions, “Foggy Bottom student full-time equivalent” shall be determined by assigning a fraction to part-time students included in the Foggy Bottom student headcount number based on the number of credits they are taking compared to a full-time course load and adding the number of full-time students. The full-time course load for undergraduates is 12 credits, and the full-time course load for graduate and professional students is 9 credits.
- “c. An audit of the Foggy Bottom student headcount and Foggy Bottom student full-time equivalent reported shall be conducted in a manner and by a firm previously approved by the Zoning Administrator and reported to the Advisory Committee. The audit shall be completed by January 10 of the year following each report.
- “d. For the purposes of these Conditions, “Foggy Bottom faculty and staff headcount” shall include all faculty and staff who are obliged by their employment to discharge any of their duties at the Foggy Bottom campus or who have the right to use any Foggy Bottom campus facilities. For the purposes of these Conditions “Foggy Bottom faculty and staff full-time equivalent” shall be determined by assigning a fraction to part-time employees included in the Foggy Bottom faculty and staff headcount number based generally on the number of hours worked as compared to the standard full-time 40 hour work week.”
- ii. Comment: Although FBA and ANC 2A have argued for counting every person educated at GWU, consistent with IPEDS criteria, at the very least, GWU should count every person educated by the university who has rights to use the facilities provided students at the Foggy Bottom campus, since all such

persons add to the intensity of uses and thereby the impacts on the co-located residential community. This is consistent with OP's final report which states (at p. 12) that the intent is to "count every student having an individual effect in the neighborhood." The Zoning Administrator recommended inclusion of Mount Vernon students who take classes at Foggy Bottom, which does not take account of all persons being educated who have "an individual effect in the neighborhood." This would be a step forward, but does not reflect the testimony at the hearing that additional students not housed on the Mt. Vernon campus but with access to the Foggy Bottom campus.

- iii. As to proposed Condition 11, it is unclear, even after all of GWU's submissions, whether this provision captures every person employed by GWU whose employment or associated benefits require or permit him or her to be present on the Foggy Bottom campus, *e.g.*, researchers. It does not define the various categories it proposes, and some of them are poorly defined and explained.
- iv. As FBA noted in its motion to dismiss, there are valid reasons for keeping faculty and staff counted separately, given that a university's desire to maintain a low faculty-student ratio operates as a "soft" cap on student enrollment.
- v. Merging the two together threatens to create a loophole in the form of "outsourcing," *i.e.*, transferring current staff to private companies, with the staff continuing to perform functions for the university. Such outsourcing, if carried out, could allow GWU to maintain or increase the intensity of use on its campus, while letting GWU increase the number of faculty. GWU did offer to report any outsourcing efforts under the WARN Act of 1989, which GWU testified has applied to the university for some years. However, the WARN Act is triggered only if there is an outsourcing of at least 50 employees within stated time periods, and GWU conceded that it has never had to report any outsourcing activity under that Act. Accordingly, the Commission concludes that the WARN Act does not mitigate the possibility that

GWU could use a single faculty/staff cap to increase the number of people on GWU's campus. The only rationale that GWU provided for combining the two is administrative convenience, given that an unspecified number of staff also teach an occasional course. That is not a valid reason to second-guess the policy judgment contained in the 2000 Campus Plan Order of counting faculty and staff separately. A much simpler definition would be to count all faculty and staff employed by the university and correct for duplication.

- vi. There never has been an independent audit of faculty and staff figures, nor has there been a detailed breakdown of how many faculty and staff fall into the various subcategories that GWU proposes to exclude. This omission is glaring when one considers the disparity between the numbers that GWU reports for present purposes and the numbers that GWU reports to the federal government and posts on its website. Moreover, GWU has offered no compelling reason for combining the two, and there are ways that GWU could increase density of usage, e.g., by outsourcing. A separate limitation on faculty serves to reinforce the headcount limitation, given how universities prize a low student-faculty ratio.

d. **Disciplinary actions (Condition 13 in 2000 Order, GWU's Proposed Condition 16)**

- i. Text: "The University shall use disciplinary interventions for acts of misconduct by students living off-campus in the Foggy Bottom/West End Area, even if students are not in properties owned or controlled by the University. The University shall act on incident reports by residents, ANC 2A, community associations, building management, building association boards, University security officers, and police. The University shall maintain an outreach program with neighboring apartment buildings to educate management companies and tenant associations on the University's disciplinary program and its reporting requirements to facilitate effective use of its program. The University shall maintain a uniform and complete reporting system that

tracks all incident reports, regardless of the source from which they originated. All records of each such incident shall be made publicly available. The University shall include as to each incident report a statement of any and all disciplinary action that was taken against any GWU students. The University's efforts with respect to this Condition, including the University's efforts to deploy resources to areas where complaints are the greatest, shall be monitored by the Advisory Committee."

- ii. Comment: This proposal seeks to close the loop with respect to the current system in that GWU may track incidents, but there is no way for affected citizens to find out if any action was ultimately taken in response to their complaints. Though admittedly not every incident may result in discipline against specific individuals, there is value in learning the extent to which the University diligently follows up on complaints and is willing to assign security personnel to areas where problems appear to be acute. This also burdens the community with the necessity of reporting and monitoring follow-ups of negative student behavior.
 - iii. The Commission was impressed by testimony from individuals about the inadequacy of GWU policies with respect to communicating information to the community regarding the GWU hotline, the community's lack of awareness of the ability to call the campus police in the event of student misconduct, and the lack of follow-through in terms of addressing disciplinary and enforcement issues. It is apparent that GWU is not doing an adequate job in terms of providing enforcement in a meaningful way that responds to neighbor concerns.
- e. **New development (No provision in 2000 Order; GWU Proposed Condition 4)**
- i. GWU's proposed text: "New development on campus resulting in additional density or change in use shall substantially conform with the approved campus plan (as set forth in Condition 1), with the exception of minor renovation projects including those

necessary to address building code compliance.”

- ii. Comment: GWU does not define how “minor” a project must be to fit within this definition. FBA and ANC 2A noted that renovation projects have been going on at GWU continuously since 2001. Currently, the Hall of Government and Quigley’s are being renovated, and sections of the G Street and 21st sidewalks are closed to pedestrians. Many projects have been extended out into public space after renovation *e.g.*, the new Speech and Language Center entrance on the northwest corner of 21st and G Streets is wholly outside GWU’s property line in public space.

CONCLUSION

Accordingly, for the reasons stated above, it is hereby

ORDERED that the application by The George Washington University for special exception review and approval of the Foggy Bottom Campus Plan: 2006-2025 pursuant to DCMR §§ 3104 and 210 is hereby **DENIED**; and it is further

ORDERED that the application by the George Washington University for first-stage approval of a planned unit development (“PUD”) and related amendment of the Zoning Map of the District of Columbia is hereby **DENIED**.

VOTE: __-__ ()

BY ORDER OF THE D.C. ZONING COMMISSION
Each concurring member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
DIRECTOR, OFFICE OF ZONING

FINAL DATE OF ORDER: _____

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL 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.D. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. CODE § 2-1401.01 *ET SEQ.*, (THE "ACT"), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, 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 THAT 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.

CERTIFICATE OF SERVICE

I hereby certify that copies of these proposed findings of fact and conclusions of law were served electronically this 29th day of December, 2006 upon Maureen E. Dwyer and David Avitabile, counsel for the applicant at maureen.dwyer@pillsburylaw.com and david.avitabile@pillsburylaw.com and upon Barbara Kahlow, on behalf of the West End Citizens Association, at barbara.kahlow@verison.net.


Cornish F. Hitchcock