



Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007

David Avitabile
tel 202.663.9013
david.avitabile@pillsburylaw.com

October 6, 2008

Ms. Sharon Schellin, Secretary
D.C. Zoning Commission
Office of Zoning
441 4th Street N.W., Suite 210
Washington, DC 20001

Re: PUD Covenant for Z.C. Case No. 06-27

Dear Ms. Schellin:

Enclosed, for your records, please find a certified copy of the PUD Covenant for Z.C. Case No. 06-27. Please feel free to contact me with any questions.

Very truly yours,

David Avitabile

cc: Matthew LeGrant, Zoning Administrator, DCRA

ZONING COMMISSION
District of Columbia

CASE NO. 06-27

EXHIBIT NO. 107

RECEIVED
D.C. OFFICE OF ZONING
2008 OCT -9 PM 4:41



PUD COVENANT

THIS COVENANT, (this “**Covenant**”) is made as of this 23rd day of June, 2008, by and among The George Washington University, a federally chartered corporation (“**GW**”); Square 54 Residential Owner LLC, a Delaware limited liability company, and Square 54 Office Owner LLC, a Delaware limited liability company (together, the “**Developers**”); and the DISTRICT OF COLUMBIA, a municipal corporation (the “**District**”).

WITNESSETH:

WHEREAS, GW is the owner of Lot 30 in Square 54, premises located at 2200 Pennsylvania Avenue N.W. (such property hereinafter referred to as the “**Subject Site**”), as described in the attached Exhibit A; and

WHEREAS, GW has entered into a multi-year ground lease with the Developers to construct, rent, and manage the development of the Subject Site; and

WHEREAS, GW and the Developers shall hereinafter be referred to collectively as the Declarants (“**Declarants**”); and

WHEREAS, the Declarants intend to develop the Subject Site for use as a Planned Unit Development (hereinafter referred to as the “**Project**”) under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No. 06-27, effective October 12, 2007, in Zoning Case No. 06-27; and

WHEREAS, said Chapter 24 further requires that the Declarants, as the owner of the Subject Site, enter into this Covenant with the District of Columbia assuring the Declarants’ (and their respective successors in title) development and use of the Project as approved by the Zoning Commission for the District of Columbia (hereinafter referred to as the “**Zoning Commission**”) in Order No. 06-27 and all modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the Planned Unit Development under Order No. 06-27, effective October 12, 2007, in Zoning Case No. 06-27 (as the same may be amended and/or modified from time to time, the "Order"), are incorporated herein by reference and made a part hereof as Exhibit A and shall be considered a part of this Covenant. The Subject Site will be developed and used in accordance with the plans approved by said Order and in accordance with conditions and restrictions contained in said Order, subject to such changes thereto as the Zoning Commission and/or the Zoning Administrator of the District of Columbia may authorize pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. The Declarants covenant to use the Subject Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. Additional Time to Construct Planned Unit Development. If the Declarants should fail to file for a building permit and to commence construction of the approved Project within the time specified in Sections 2408.8 and 2408.9 of the Zoning Regulations and the Order, the Zoning Commission may duly consider an application for an extension of time for good cause shown in accordance with 11 DCMR § 2408.10.

3. Default. In the event that the Declarants fail to file for a building permit and to commence construction of the approved Project within the time specified in Sections 2408.8 and 2408.9 of the Zoning Regulations and the Order or within any extension of time granted by the

Zoning Commission for good cause shown, the benefits granted by the Order shall terminate pursuant to Section 2408.14 of the Zoning Regulations.

4. Future Conveyance. The Declarants covenant that if any conveyance of all or any part of the Subject Site takes place before completion of the Project in accordance with the approvals of the Zoning Commission as aforesaid, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant.

5. Successors and Assigns. The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein. For the purposes of this paragraph, the term "property interest" includes a leasehold interest.

6. Recordation. A Declarant shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.

7. Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. Rescission/Alteration of Chapter 24 Covenant. The covenants hereby created may not be extinguished without the prior written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or authorized by the

Zoning Commission, or in the event of a lapse of said Order by its terms, the District shall, upon the request of the Declarants, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be.

[signatures on following pages]

IN WITNESS WHEREOF, The George Washington University has as of the day and year first above written, caused this Covenant to be signed by Louis H. Katz, Executive Vice President and Treasurer of The George Washington University and attested by Beth Nolan, Senior Vice President and General Counsel of The George Washington University, and does hereby appoint the said Louis H. Katz to be its attorney-in-fact, and in its name to acknowledge and deliver this Covenant according to law.

THE GEORGE WASHINGTON UNIVERSITY,
a federally chartered corporation

ATTEST:

By: Beth Nolan
Its: Senior Vice President
and General Counsel

Louis H. Katz
Its: Executive Vice President and Treasurer

State of Washington
County of District of Columbia

I, Ariva Palmer, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Louis H. Katz, Executive Vice President and Treasurer of The George Washington University, party to the foregoing PUD Covenant bearing date as of the 23rd of June, 2008, the said Louis H. Katz being named as attorney-in-fact for said organization in the foregoing and annexed PUD Covenant, personally appeared before me and, being personally well known to me as such attorney-in-fact, acknowledged said PUD Covenant to be the act and deed of said organization and that he delivered the same as such.

GIVEN under my hand and seal this 26th day of June, 2008.

Ariva Palmer
Notary Public

My commission expires: _____.

Ariva Palmer
Notary Public, District of Columbia
My Commission Expires 11-30-2009

IN WITNESS WHEREOF, Square 54 Residential Owner LLC has as of the day and year first above written, caused this Covenant to be signed and the same to be acknowledged and delivered according to law.

SQUARE 54 RESIDENTIAL OWNER LLC,
a Delaware limited liability company

By: Boston Properties Management LLC,
a Delaware limited liability company,
its Sole Member

By: Boston Properties Limited Partnership
a Delaware limited partnership,
its Sole Member

By: Boston Properties, Inc.,
a Delaware corporation,
its General Partner

Witness:

By: J.J. [Signature]

By: [Signature]
Name: PETER D. JOHNSTON
Title: SENIOR VICE PRESIDENT

State of District of Columbia
County of DC

I, Kelly Johnson, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Peter Johnston, Senior Vice President of Boston Properties, Inc., a Delaware corporation and general partner of Boston Properties Limited Partnership, itself the sole member of Boston Properties Management LLC, itself the sole member of Square 54 Residential Owner LLC, party to the foregoing PUD Covenant bearing date as of the 23rd of June, 2008, the said Peter Johnston personally appeared before me and, being personally well known to me, acknowledged said PUD Covenant to be the act and deed of said organization and that he delivered the same as such.

GIVEN under my hand and seal this 30th day of July, 2008.

Kelly Johnson
Notary Public

My commission expires: September 30, 2010.

IN WITNESS WHEREOF, Square 54 Office Owner LLC has as of the day and year first above written, caused this Covenant to be signed and the same to be acknowledged and delivered according to law.

SQUARE 54 OFFICE OWNER LLC,
a Delaware limited liability company

By: BP/DC Properties, Inc.,
a Maryland corporation,
its Manager

WITNESS:

By: *J.J. [Signature]*

By: *[Signature]*
Name: PETER D. JOHNSTON
Title: SENIOR VICE PRESIDENT

State of District of Columbia
County of DC

I, Kelly Johnson, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Peter Johnston, Senior Vice President of BP/DC Properties, Inc., a Maryland corporation and manager of Square 54 Office Owner LLC, party to the foregoing PUD Covenant bearing date as of the 23rd of June, 2008, the said Peter Johnston personally appeared before me and, being personally well known to me, acknowledged said PUD Covenant to be the act and deed of said organization and that he delivered the same as such.

GIVEN under my hand and seal this 30th day of July, 2008.

Kelly Johnson
Notary Public

My commission expires: September 30, 2010.

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

WITNESS:

DISTRICT OF COLUMBIA
a Municipal Corporation

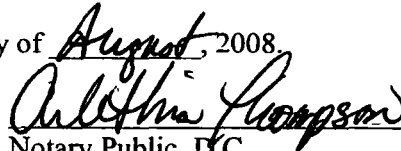
By: 
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that _____, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing PUD Covenant bearing date of the 23rd of June, 2008 and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

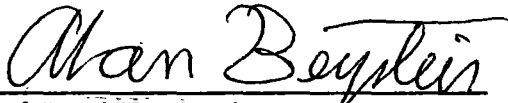
GIVEN under my hand and seal this 27 day of August, 2008.


Notary Public, D.C.

Arlethia Thompson
Notary Public, District of Columbia
My Commission Expires 9/14/2011

My commission expires: _____

APPROVED AS TO LEGAL SUFFICIENCY:

A handwritten signature in cursive script, reading "Alan Beystein". The signature is written in black ink and is positioned above a horizontal line.

Chief, Land Use Section
D.C. Office of the Attorney General


APPROVED AS SATISFACTORY:

Office of the Zoning Administrator
Department of Consumer and Regulatory Affairs
Government of the District of Columbia

APPROVED AS TO LEGAL SUFFICIENCY:

Chief, Land Use Section
D.C. Office of the Attorney General

APPROVED AS SATISFACTORY:


Office of the Zoning Administrator
Department of Consumer and Regulatory Affairs
Government of the District of Columbia

7-18-08

EXHIBIT A

Square 54, Lot 30, as recorded in the Office of the Surveyor in Record of Squares Book 153, Page 85.

EXHIBIT B

PUD ORDER

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



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.)

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.

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

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.

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

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.

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

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. 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

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

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.)

- 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

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

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.

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 provided 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

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,

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

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

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

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

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

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.

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

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*.

- 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

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.

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

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

all standards regarding the size, location, and use of the roof structures are maintained.

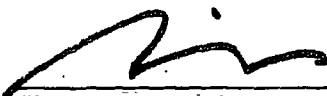
16. Prior to the issuance of a building permit for any building approved by this Order, the Applicant shall enter into a Memorandum of Understanding with the Department of Small and Local Business Development.
17. Prior to the issuance of a building permit for any building approved by this Order the Applicant shall enter into a First Source Employment Agreement with the Department of Employment Services.
18. No building permit shall be issued for this PUD until the Applicant has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the Applicant and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Zoning Commission.
19. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant with the records of the Zoning Commission.
20. Prior to the issuance of a certificate of occupancy for any building approved by this Order, the Applicant shall cause the recordation of a covenant in the land records of the District of Columbia that limits the use of the affordable and workforce housing units in the building required pursuant to this Order to affordable and workforce housing.
21. The PUD approved by the Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for building permit for Phase 1 (defined below) as specified in 11 DCMR § 2409.1. The Applicant shall have the flexibility to construct the Project in two phases.
 - a. Phase 1 consists of the underground parking and loading and below-grade retail space, including the grocery store. Within two (2) years of the receipt of a certificate of occupancy for the occupiable areas of the Phase 1 improvements, the Applicant shall commence construction of Phase 2 improvements (defined below).
 - b. Phase 2 consists of the office, residential, and retail components of the Project. A certificate of occupancy may be issued for any of the Phase 2 components of the Project provided that a building permit has been issued for the other Phase 2 components.

- c. If a certificate of occupancy has not been issued for a grocery store measuring no less than 25,000 square feet within two years of the issuance of certificates of occupancy for the residential and office components, the Applicant shall return to the Zoning Commission for reconsideration of the grocery store requirement and appropriate amendment of the PUD.
22. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 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.

In accordance with the provisions of 11 DCMR § 3038, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on OCT 12 2007.



CAROL J. MITTEN,
CHAIRMAN
ZONING COMMISSION



JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

OFFICE OF THE SURVEYOR

Washington, D. C., NOV 9 1999

Plat for Building Permits of SQUARE 54 LOT 30

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

Receipt No. 7192

Furnished to

[Signature]
Surveyor, D. C.

By: *[Signature]*

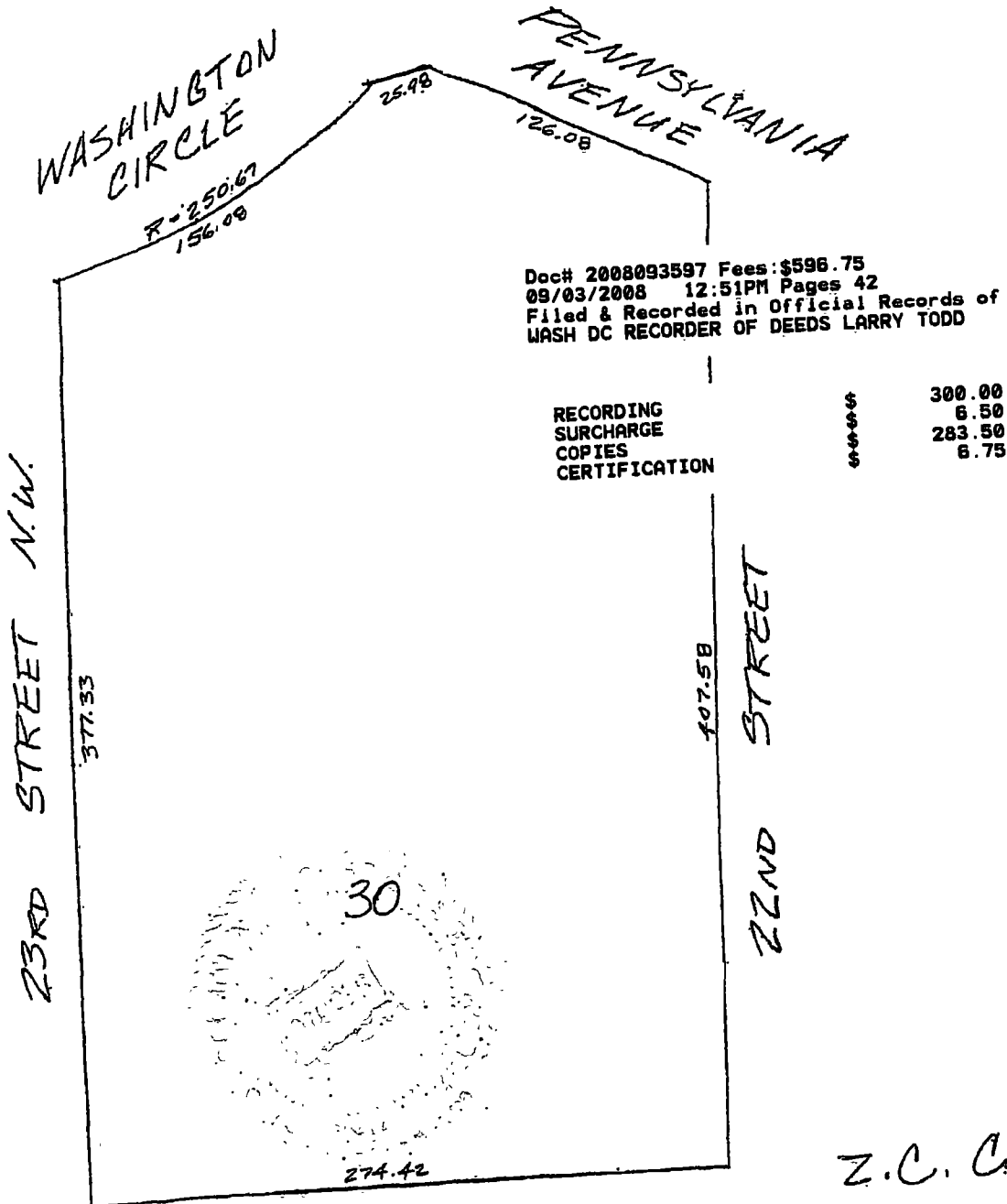
[Signature]

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly placed, that all proposed buildings or construction, or parts thereof, including owned parcels, 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 use 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 available parking area where required by the zoning regulations will be reserved in accordance with the zoning regulations, and that the area has been correctly drawn and dimensioned hereon, it is further agreed that the elevation of the available 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 20% for single-family dwellings or less, 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 rearward 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.



Z.C. Case 06-27

FEET

THIS IS TO CERTIFY THAT THIS IS A TRUE COPY

Veronica Parker
James A. Todd

Recorder of Deeds, D.C.

SEP 03 2008