

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 06-110/06-120
Z.C. Case Nos. 06-110 & 06-120

The George Washington University and Boston Properties
(Modification of First-Stage PUD, Related Zoning Map Amendment, Second-Stage PUD,
and Amendment to a Campus Plan @ Square 75, Lots 50 and 51)
February 12, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on October 12, 2017, to consider an application of The George Washington University (“University”) and Boston Properties (together, the “Applicant”) for the review and approval of modification of a first-stage planned unit development (“PUD”), a related Zoning Map amendment, a second-stage PUD, and an application for an amendment to a Campus Plan (together, the “Applications”). The Commission considered the Applications pursuant to Chapters 1, 3, and 5 of the District of Columbia Zoning Regulations, Title 11-X of the District of Columbia Municipal Regulations (“DCMR”). The public hearing was conducted in accordance with the provisions of 11-Z DCMR, Chapter 4. The Commission approves the Applications, subject to the conditions below.

FINDINGS OF FACT

Application, Parties, and Hearing

1. The property that is the subject of the Applications is located in Square 75, Lots 50 and 51 (“Property”).
2. On April 13, 2017, the Applicant filed the Applications.¹ With the Applications, the Applicant sought approval to develop an eleven-story commercial office building with ground floor retail. (Exhibits [“Ex.”] 1, 1A-1O, 2A1-2A6.)²
3. On June 16, 2017, the Office of Planning (“OP”) filed a report recommending that the Applications be set down for a public hearing. (Ex. 10.)
4. During its public meeting on June 26, 2017, the Commission voted to set down the Applications for a public hearing. At the public meeting, the Commission requested that the Applicant provide more information about the following: a relocation plan for the

¹ Although the Applications consist of two cases – one for the PUD and Zoning Map amendment and one for the Campus Plan amendment – the Commission agreed to hear and decide the cases together at the request of the Applicant.

² All citations to the record are for Z.C. Case No. 06-120.

university uses currently in Rice Hall; more curve projections on the building façades; the depth of the projections on the façades; materials detail; commitments to curved glass and LEED-Gold certification; streetscape dimensions; more definition of the proposed uses in the retail space; and more definition of the proffered benefits and amenities.

5. Notice of the public hearing was published in the *D.C. Register* on August 18, 2017 and was mailed to Advisory Neighborhood Commission (“ANC”) 2A and to owners of property within 200 feet of the Property. (Ex. 13.)
6. The Commission held a public hearing on the Applications on October 12, 2017. On behalf of the Applicant, the Commission accepted Rafael Pelli and Craig Copeland as experts in architecture and Jami Milanovich as an expert in traffic engineering. (Ex. 11B.) The Applicant provided testimony from these experts as well as from others.
7. In addition to the Applicant, ANC 2A was automatically a party in this proceeding. The Commission also granted a request for party status in opposition to the West End Citizens Association (“WECA”). (Ex. 19.)
8. At the hearing, the Commission heard testimony from OP, the District Department of Transportation (“DDOT”), ANC 2A, and WECA regarding the Applications.
9. The Commission also heard testimony from area residents and students in support of the Applications. Other than WECA, no other person or party testified in opposition to the Applications. One person testified neither in support nor opposition.
10. During the hearing, WECA discussed the Applicant’s commitment to contribute \$350,000 to the Washington Metropolitan Area Transit Authority (“WMATA”) to fund improvements to the existing Foggy Bottom Metrorail Station, with the final improvements to be selected by the Washington Area Metropolitan Transit Authority. WECA believed that the contribution should be held in escrow and used for the eventual construction of a second elevator at the station. A discussion of this issue appears later in this Order under the heading “Allocation of WMATA Contribution.”
11. At its public meeting on November 27, 2017, the Commission took proposed action to refer the Application to the National Capital Planning Commission (“NCPC”) pursuant to § 492 of the Home Rule Act. Through a letter dated January 4, 2018, the NCPC Executive Director indicated that through a delegated action dated December 28, 2017, he found that the proposed PUD would be inconsistent with the Comprehensive Plan for the National Capital and other federal interests because a portion of the mechanical penthouse was not setback from the open court it faces by an amount equal to its height. The Commission response to the report appears in Finding of Fact 64.
12. The Commission considered final action to approve the Applications at its January 29, 2018 public meeting, but determined that more information was needed from the Applicant regarding the height and width of a tenant sign planned for the 21st Street building façade, as depicted in Exhibit 18E of the case record, as well as clarification on the use of blade signs by ground-floor retail tenants, the use of illuminating signs, and the

use of digital moving signs. The Applicant agreed to respond to the Commission's request for additional information by February 5, 2018 and the Applications were moved to the final action agenda for consideration at the Commission's February 12, 2018 public meeting.

13. On February 2, 2018, the Applicant submitted additional information on the tenant signage as requested. (Ex. 43, 43A, 43B.) The Applicant explained that it would prefer to leave the signage planned for the 21st Street façade as outlined in Exhibit 18E, consisting of both letters and insignia at a height of 60 feet; however, the Applicant stated its willingness to limit the height of the letters to 36 feet while leaving the insignia at 60 feet. The Applicant also clarified that it anticipates both blade signs and illuminating signs for the ground-floor retail tenants, but no digital or moving signs.
14. The Commission took final action to approve the Applications on February 12, 2018. As to the Applicant's February 2nd submission regarding tenant signage, the Commission determined that 60 feet, as depicted in Exhibit 18E, was a reasonable height for both the letters and the insignia signage planned for the 21st Street façade.

Campus Plan and First-Stage PUD Approval

15. In Z.C. Order No. 06-11/06-12, the Commission concurrently approved a new campus plan and first-stage PUD for the George Washington University Foggy Bottom Campus ("Campus Plan/PUD"). The Campus Plan incorporated a plan for developing the campus as a whole by concentrating height and density within the central campus core. The first-stage PUD is coterminous with the approved boundaries for the Foggy Bottom Campus and includes all properties that were owned by the University at the time of approval of the Campus Plan/PUD. The approved first-stage PUD identified sixteen development sites for future development as well as the uses, height, gross floor area, and lot occupancy for each development site.
16. The first-stage PUD approved height and massing for Site 75B and rezoned it to the C-3-C Zone District (now MU-9 zone). The first-stage PUD identified it as an infill location appropriate for future redevelopment at a height of 110 feet and density of 7.2 floor area ratio ("FAR"). The Campus Plan identified Site 75B as a development site for academic/administrative/medical use for the University. Site 75B includes Lot 51.
17. The Campus Plan identified Lot 50 as a commercial/investment site, reflecting its current use as a commercial office building with ground floor retail and service uses. Lot 50 is not identified in the first-stage PUD as a development site.

Modification of the First-Stage PUD and Zoning Map Amendment

18. With the Applications, the Applicant proposed to divide Site 75B into two new development sites: 75B1 and 75B2. Site 75B1, which is presently coterminous with Lot 51, will then be expanded to incorporate Lot 50. The new Site 75B1 will be a development site for commercial/investment use to the height and density as proposed in these Applications. The intended use and development envelope of Site 75B2 – height of

110 feet and FAR of 7.2 – will remain as approved in the first-stage PUD and will not be developed as part of these Applications.

19. As a part of this first-stage PUD modification, the Applicant proposed a PUD-related Zoning Map amendment for Lot 50 (the eastern portion of Site 75B1) from the MU-9 zone to the MU-30 zone. Lot 51 (the western portion of Site 75B1) will remain zoned MU-9. The proposed modification and rezoning will provide the Applicant with an opportunity to redevelop the Property with a more efficient footprint and floorplate that corresponds with market needs.

Campus Plan Amendment

20. The University proposed to amend the Campus Plan to change the use designation for Lot 51 (part of Site 75B) to commercial/investment use. The remainder of Site 75B, which will become Site 75B2, will remain designated for academic/administrative/medical use for the University.
21. The University concluded that the amount of administrative space previously forecast for Site 75B is lower than what was initially contemplated in the Campus Plan. The University's existing and future demand originally anticipated for Site 75B can be accommodated within existing and already-approved Foggy Bottom campus development or on other University campuses.
22. At the hearing, the University provided an explanation of its proposed strategy for relocating and accommodating existing university uses displaced from Rice Hall (Lot 51) as a result of the Project. (10/12/17 Transcript ["Tr."] at 14-16.)

Second-Stage PUD Approval

Overview of the Property

23. The Property (Site 75B1) consists of two parcels: Lots 50 and Lot 51, which are located in the Foggy Bottom neighborhood of Ward 2. The Property is located at the northern edge of the University's Foggy Bottom Campus. The Foggy Bottom-GWU Metrorail station is approximately two blocks to the west of the Subject Property.
24. The Property contains a total approximately of 50,780 square feet of land area. The Property is triangular in shape and slopes significantly (approximately 12 feet downward) from northeast to southwest. (Ex. 1, 2A1-2A6.)
25. Lot 50 is located at the east end of Square 75, and it is bounded by Pennsylvania Avenue, N.W. on the north, 21st Street, N.W. on the east, I Street, N.W. on the south, and Lot 51 on the west. Lot 50 consists of approximately 39,718 square feet of land area and is improved with an eight-story commercial office building occupied by multiple office tenants as well as ground-floor retail uses. (Ex. 1, 2A1-2A6.)

26. Lot 51 is located immediately west of Lot 50 along I Street, N.W. Lot 51 consists of approximately 11,062 square feet of land area and is improved with an eight-story office building for the University (Rice Hall). Rice Hall will be razed to make way for the construction of the proposed new building. (Ex. 1, 2A1-2A6.)
27. The Property is surrounded by multiple commercial and University-operated buildings. 2112 Pennsylvania Avenue, an 11-story office and retail building currently under construction on Development Site 75A, is located immediately to the west of the Property on Pennsylvania Avenue. Immediately to the west of the Property on I Street is a public alley that was widened and improved as part of the project on Site 75A. Also further to the west of the Property, along I Street, is the 90-foot tall President Condominium, the only non-University owned property within the Square. Further west from the Property, at the west end of the Square, are the 12-story H.B. Burns Memorial Building, a historic landmark, and the Ambulatory Care Center, both of which are operated by the GW Medical Faculty Associates, a medical affiliate of the University. (Ex. 1, 2A1-2A6.)
28. Surrounding property to the west, east, and north is located in a mix of zones that permit high-density commercial office development, including the MU-9 zone and the D-5 zone. Immediately to the west, Site 75A was rezoned to the C-4 Zone District (now the MU-30 zone) as a part of its PUD. Property to the south and west, within the Foggy Bottom Campus, includes property located in the RA-4 zone as well as sites rezoned to MU-9 in conjunction with the Campus Plan/PUD. (Ex. 1, 2A1-2A6.)

The Project

29. The proposed project will be an eleven-story commercial office building with a habitable penthouse, retail uses at the cellar and ground floors, three levels of below-grade parking, and at-grade loading ("Project").
30. The total gross floor area included in the Project will be approximately 452,799 square feet (equivalent to an 8.92 FAR), but the gross floor area may increase by up to two percent to accommodate certain infill spaces within the building. The Project will have a maximum height of approximately 130 feet, stepping down to approximately 110 feet along I Street, and a lot occupancy of approximately 98%. (Ex. 18F1-18F7, 25A1-25A4.)
31. The primary office entrance will be located at the intersection of Pennsylvania Avenue and 21st Street, where it will anchor this prominent corner with a three-story lobby that is appropriate given the scale of the intersection and open spaces created by Pennsylvania Avenue and the adjacent reservations. The primary retail entrances will be located on the southern portion of the Property, along I Street. Multiple slab breaks will be introduced to ensure that retail entrances are aligned with the adjacent sidewalk, and the change in grade will allow retail depth to fully extend within the building, underneath the office lobby.
32. The retail space, which will total approximately 30,000 square feet, will permit the Applicant to attract neighborhood-defining retail opportunities along I Street and

Pennsylvania Avenue, which will enhance the intended I Street retail corridor contemplated in the Campus Plan. “Retail” uses in the Project will include the arts, design, and creation; daytime care; eating and drinking establishments; entertainment, assembly, and performing arts; retail; and general or financial service use categories, except that financial services uses will not be located along the Project’s I Street ground-floor frontage.

33. The office component of the Project will be organized around two separate wings, each of which will overlook a central atrium element at the center of the building that will bring natural light in through both the western wall of the façade and a skylight above the atrium. Some office-related uses will be located on the ground floor along Pennsylvania Avenue.
34. The massing, scale, and façade design of the Project are intended to take advantage of the prominent Pennsylvania Avenue location. The façade design will be enhanced through a series of simple, flowing projecting curves on the I Street, 21st Street, and Pennsylvania Avenue façades. The upper two floors of the Project will be set back along I Street, which will provide a transition in height from the higher density central business district into the core of the Foggy Bottom campus to the south.
35. Parking and loading access to the Project will be separate, but both will be served from I Street, N.W. The Project will contain approximately 334 vehicular parking spaces as well as secured, covered parking for at least 124 bicycles within the underground garage. The Project also will include an area for loading and service vehicles, accessed at grade from the public alley to the west of the Property. The Applicant has designed the Project’s loading area so that it can accommodate front-in, front-out maneuvers for most of the Project’s deliveries. However, a separate driveway is needed for the Project’s vehicular parking to avoid overwhelming the public alley, which only has one ingress/egress point into the surrounding street network. The District’s Public Space Committee has given concept approval to the proposed driveway.
36. The Project will incorporate a series of sustainable features that represent an improvement over the existing impervious building and will reduce the impact of the redevelopment. The Project will attain LEED-Gold certification under the v4 Core and Shell standard and will include at least 1,000 square feet of solar panels on the roof. (Ex. 1, 2A1-2A6, 18F1-18F7.)
37. The Applicant will construct streetscape improvements along the Pennsylvania Avenue, 21st Street, and I Street frontages of the Property consistent with the GW Foggy Bottom Streetscape Plan. (Ex. 18F1-18F7.)
38. The Applicant will implement mitigation measures to offset impacts on the surrounding transportation network. These mitigation measures will include a comprehensive transportation demand management (“TDM”) program, a loading management plan, relocation of the Metrobus shelter near the intersection of Pennsylvania Avenue and 21st Street, relocation of the Capital Bikeshare station on I Street near 21st Street, signalization

of the intersection of 21st and I Streets, and pedestrian improvements at the intersection of 22nd and I Streets, N.W. (Ex. 27.)

PUD Flexibility

39. The Applicant requested relief from Subtitle C § 1502.1(c)(5) for a non-conforming penthouse setback. The penthouse on the northern wing of the Project will not set back one-to-one from the western edge of the building roof. The upper stories of the northern wing will be set back from the western property line, thereby creating an open court from which the penthouse must be set back. The proposed “V” shape of the building, combined with the large central atrium and corresponding skylight, creates a challenge in accommodating the building’s mechanical and operational needs on the available penthouse roof space. Each wing requires its own separate elevator and vertical circulation core, and these cores will be located near the junction of the “V” so that they are proximate to the building lobby on the ground floor. Accordingly, the only roof space that is wide enough and large enough to accommodate the Project’s mechanical equipment is on the northern wing in the proposed location. This relief is necessary only because of the setback from the adjacent building to the west. However, as the Applicant demonstrated with illustrations and testimony, the penthouse will be visible from Pennsylvania Avenue in this location from very limited locations; thus, the relief will not have an adverse visual impact on surrounding properties and will not impair the intent of the Zoning Regulations. (Ex. 1, 2A1-2A6, 25A1-25A2; 10/12/17 Tr. at 34-35).
40. The Applicant requested relief from Subtitle C § 1501.3 for an architectural embellishment larger than 30% of the wall on which it is located. The Project’s central atrium will be created by a glass curtainwall on the Project’s western alley-facing façade and a skylight over the atrium. The skylight and western wall will constitute a vertical architectural embellishment of the western curtainwall above the building height limit. The skylight/embellishment will be located on the alley-facing, least visible façade of the Project, and it will step back approximately 30 feet from the property line to further minimize its visibility of the embellishment. The degree of relief is relatively minor, and the width of the embellishment is solely a function of the amount of open space between the northern and southern wings of the Project. Narrowing the embellishment would require either widening the north and south office wings or narrowing the entire atrium, which would effectively pull the building façade back from the street and run contrary to established urban design policies and goals regarding streetwall design. Accordingly, relief from the embellishment limitation will not run contrary to the intent and purposes of the Zoning Regulations and would not have an adverse impact. (Ex. 18, 18F1-18F7.)
41. The Applicant also requested flexibility with respect to the design of the Project, which is described in the conditions of approval below.

Project Amenities and Public Benefits

42. With the Project, the Applicant will provide specific benefits and amenities commensurate with and proportional to the additional approximately 130,932 square feet of gross floor area gained through the proposed modification of the first-stage PUD and

Zoning Map amendment to incorporate and rezone Lot 50 (that is, the increase from the 6.5 FAR permitted as a matter of right in the C-3-C Zone District (MU-9 zone) to the 10.0 FAR permitted as a matter of right in the MU-30 zone sought in connection with the first-stage PUD modification and Zoning Map amendment).

43. As detailed in the Applicant's testimony and written submissions, the proposed Project will implement the following project amenities and public benefits:
- a. Superior urban design and architecture, and landscaping, including use of high-quality materials, building articulation and modulation, and context-specific design features that distinguish this building from typical commercial office development. The Project will deliver a signature office building with active ground-floor retail uses at a key intersection on Pennsylvania Avenue;
 - b. Site planning, and efficient land utilization, through providing an appropriately-sized development that complements the height and mass of other buildings along Pennsylvania Avenue yet also respects other nearby uses. The Project not only will create street-activating ground-level entrances and uses around the perimeter of the site; it also will take advantage of the change in grade to create an expanded retail space within the Project that will attract the type of retail user that will enhance and sustain the vibrancy of the I Street retail corridor;
 - c. The Project will include streetscape and public realm improvements along all three street frontages (I Street, 21st Street, and Pennsylvania Avenue), consistent with the approved standards for the Foggy Bottom campus;
 - d. Social services through the inclusion of a daycare, which will serve both the Project's tenants and the general public;
 - e. Environmental benefits, including the attainment and certification of a minimum of Gold under the LEED v4 Core and Shell standard, which significantly exceeds both the minimum requirements of the first-stage PUD and other applicable regulations. Further, the Project will incorporate at least 1,000 square feet of solar panels to be located on the main roof of the building;
 - f. Mass transit improvements, through the contribution of \$350,000 to WMATA to fund improvements to the existing Foggy Bottom Metrorail station;
 - g. Gardens and food production, through the \$36,865 funding of an urban farm for the "FRESHFARM FoodPrints" program at the School Without Walls at Francis Stevens School;
 - h. Establishment of a construction tours and advice program for high school students. During construction of the Project, the Applicant will offer tours and informal guidance and career advice to students from Phelps ACE High School, IDEA Public Charter School, The School Without Walls, and Cardozo High School;

- i. Ground-floor retail uses devoted to uses in the following categories: arts, design and creation; daytime care; eating and drinking establishments; entertainment, assembly, and performing arts; retail; and general or financial service use (provided, however, that financial service uses shall not be located along the Project's I Street ground-floor frontage); and
 - j. Uses of special value to the neighborhood, including:
 - i. 26th Street Park – Design and construct improvements to sidewalks, crosswalks, and ramps to improve access to the park, including landscaping and a public fountain/spigot for the park located in the 800 block of 26th Street, N.W.;
 - ii. Reservation 28 – Design and construct a minimum of \$150,000 worth of improvements to the existing triangular park across 21st Street, N.W. from the Project, including new landscape, hardscape, and furnishings, and maintain such improvements for the life of the Project; and
 - iii. Duke Ellington Park – Contribute \$30,000 to a non-profit entity to be established by representatives of the Foggy Bottom/West End neighborhood for artwork to be installed within the park at Reservation 140 located at the intersection of 21st Street, M Street, and New Hampshire Avenue, N.W.
44. The Applicant will contribute approximately \$8.5 million to the Housing Production Trust Fund, tied to both the PUD and the habitable penthouse space. The housing linkage payment associated with the increase in office space resulting from the PUD is \$8,030,550; this payment is based on the increase in permitted gross floor area for office use, which is calculated based on the increase over the total of the office density permitted as a matter of right on Lot 50 and the existing office density on Lot 51, using the assessed value for Lot 50 at the time that the Applications were filed. The contribution associated with the habitable penthouse space is \$553,169; again using the assessed value for Lot 50 at the time the Applications were filed. Although these payments are required, they are a significant public benefit of Project. (Ex. 18D.)

Compliance with the Comprehensive Plan

- 45. The Project will be not inconsistent with the Comprehensive Plan (“Plan”), including the Future Land Use Map (“FLUM”), Generalized Policy Map (“GPM”), and multiple written policies as further described below.
- 46. The Commission previously found that the Campus Plan/PUD was consistent with the Comprehensive Plan and would further the objectives and policies of the Plan including the land use, urban design, and preservation elements of the Plan, as well as the Ward 2 elements. The proposed Project significantly advances these purposes by furthering the

social and economic development of the District through increased commercial office space and the continued improvement of the University. (Ex. 1.)

47. In its consideration of the Campus Plan/PUD, the Commission found that the uses, buildings, and zoning changes described in the first-stage PUD were compatible and consistent with the Institutional land use designation of the campus and the character of the surrounding neighborhood.
48. The majority of the Property (Lot 50 and a portion of Lot 51) is located in the High Density Commercial land use category on the FLUM, and a smaller portion (the remainder of Lot 51) is located in the Institutional land use category on the FLUM. (Ex. 1.)
49. The Property is located in the Institutional category on the GPM. The Property is also located approximately one block from the defined boundary of the Central Employment Area. (Ex. 1.)
50. The Project will advance the following Guiding Principles from the Framework Element of the Plan:
 - a. Change in the District of Columbia is both inevitable and desirable. The key is to manage change in ways that protect the positive aspects of life in the city and reduce negatives such as poverty, crime, and homelessness; (217.1.)
 - b. The District needs both residential and non-residential growth to survive. Nonresidential growth benefits residents by creating jobs and opportunities for less affluent households to increase their income; (217.4.)
 - c. Redevelopment and infill opportunities along corridors and near transit stations will be an important component of reinvigorating and enhancing our neighborhoods. Development on such sites must not compromise the integrity of stable neighborhoods and must be designed to respect the broader community context. Adequate infrastructure capacity should be ensured as growth occurs; (217.6.)
 - d. Growth in the District benefits not only District residents, but the region as well. By accommodating a larger number of jobs and residents, we can create the critical mass needed to support new services, sustain public transit, and improve regional environmental quality; (217.7.)
 - e. Downtown should be strengthened as the region's major employment center, as its cultural center; as a center for government, tourism and international business; and as an exciting urban mixed-use neighborhood. Policies should strive to increase the number of jobs for District residents, enhance retail opportunities, promote access to Downtown from across the District and the region, and restore Downtown's prominence as the heart of the city; and (219.8.)

- f. Washington's wide avenues are a lasting legacy of the 1791 L'Enfant Plan and are still one of the city's most distinctive features. The "great streets" of the city should be reinforced as an element of Washington's design through transportation, streetscape, and economic development programs. (220.3.)

51. The Project will advance the following policies of the Land Use element of the Plan:

- a. Policy LU-1.1.1: Sustaining a Strong City Center - Provide for the continued vitality of Central Washington as a thriving business, government, retail, financial, hospitality, cultural, and residential center. Promote continued reinvestment in central city buildings, infrastructure, and public spaces; continued preservation and restoration of historic resources; and continued efforts to create safe, attractive, and pedestrian-friendly environments;
- b. Policy LU-1.1.3: Central Employment Area - Continue the joint federal/District designation of a "Central Employment Area" (CEA) within the District of Columbia. The CEA shall include existing "core" federal facilities such as the US Capitol Building, the White House, and the Supreme Court, and most of the legislative, judicial, and executive administrative headquarters of the United States Government. Additionally, the CEA shall include the greatest concentration of the city's private office development, and higher density mixed land uses, including commercial/retail, hotel, residential, and entertainment uses. Given federally-imposed height limits, the scarcity of vacant land in the core of the city, and the importance of protecting historic resources, the CEA may include additional land necessary to support economic growth and federal expansion. The CEA may be used to guide the District's economic development initiatives, and may be incorporated in its planning and building standards (for example, parking requirements) to reinforce urban character. The CEA is also important because it is part of the "point system" used by the General Services Administration to establish federal leases;
- c. Policy LU-1.3.1: Station Areas as Neighborhood Centers - Encourage the development of Metro stations as anchors for economic and civic development in locations that currently lack adequate neighborhood shopping opportunities and employment. The establishment and growth of mixed use centers at Metrorail stations should be supported as a way to reduce automobile congestion, improve air quality, increase jobs, provide a range of retail goods and services, reduce reliance on the automobile, enhance neighborhood stability, create a stronger sense of place, provide civic gathering places, and capitalize on the development and public transportation opportunities which the stations provide. This policy should not be interpreted to outweigh other land use policies which call for neighborhood conservation. Each Metro station area is unique and must be treated as such in planning and development decisions. The Future Land Use Map expresses the desired intensity and mix of uses around each station, and the Area Elements (and in some cases Small Area Plans) provide more detailed direction for each station area;

- d. Policy LU-1.3.2: Development Around Metrorail Stations - Concentrate redevelopment efforts on those Metrorail station areas which offer the greatest opportunities for infill development and growth, particularly stations in areas with weak market demand, or with large amounts of vacant or poorly utilized land in the vicinity of the station entrance. Ensure that development above and around such stations emphasizes land uses and building forms which minimize the necessity of automobile use and maximize transit ridership while reflecting the design capacity of each station and respecting the character and needs of the surrounding areas;
- e. Policy LU-1.4.1: Infill Development - Encourage infill development on vacant land within the city, particularly in areas where there are vacant lots that create “gaps” in the urban fabric and detract from the character of a commercial or residential street. Such development should complement the established character of the area and should not create sharp changes in the physical development pattern;
- f. Policy LU-2.4.6: Scale and Design of New Commercial Uses - Ensure that new uses within commercial districts are developed at a height, mass, scale, and design that is appropriate and compatible with surrounding areas;
- g. Policy LU-2.4.10: Use of Public Space within Commercial Centers - Carefully manage the use of sidewalks and other public spaces within commercial districts to avoid pedestrian obstructions and to provide an attractive and accessible environment for shoppers. Where feasible, the development of outdoor sidewalks cafes, flower stands, and similar uses which “animate” the street should be encouraged. Conversely, the enclosure of outdoor sidewalk space with permanent structures should generally be discouraged;
- h. Policy LU-3.2.1: Transportation Impacts of Institutional Uses - Support ongoing efforts by District institutions to mitigate their traffic and parking impacts by promoting ridesharing, carpooling, public transportation, shuttle service and bicycling; providing on-site parking; and undertaking other transportation demand management measures; and
- i. Policy LU-3.2.2: Corporate Citizenship - Support continued “corporate citizenship” among the city’s large institutions, including its colleges, universities, hospitals, private schools, and non-profits. Given the large land area occupied by these uses and their prominence in the community, the city’s institutions (along with the District itself) should be encouraged to be role models for smaller employers in efforts to improve the city’s physical environment. This should include a continued commitment to high quality architecture and design on local campuses, expanded use of “green building” methods and low impact development, and the adaptive reuse and preservation of historic buildings.

52. The Project will advance the following policies and actions of the Transportation Element of the Plan:
- a. Policy T-2.2.1: Multi-Modal Connections - Create more direct connections between the various transit modes consistent with the federal requirement to plan and implement intermodal transportation systems;
 - b. Action T-2.2.B: Pedestrian Connections - Work in concert with WMATA to undertake pedestrian capacity and connection improvements at selected transit stations and stops and at major transfer facilities to enhance pedestrian flow, efficiency, and operations;
 - c. Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning - Integrate bicycle and pedestrian planning and safety considerations more fully into the planning and design of District roads, transit facilities, public buildings, and parks; and
 - d. Policy T-2.4.1: Pedestrian Network - Develop, maintain, and improve pedestrian facilities. Improve the city's sidewalk system to form a network that links residents across the city.
53. The Project will advance the following policies of the Environmental Protection Element:
- a. Policy E-3.2.1: Support for Green Building - Encourage the use of green building methods in new construction and rehabilitation projects, and develop green building methods for operation and maintenance activities;
 - b. Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff - Promote an increase in tree planting and landscaping to reduce stormwater runoff, including the expanded use of green roofs in new construction and adaptive reuse, and the application of tree and landscaping standards for parking lots and other large paved surfaces; and
 - c. Policy E-3.1.3: Green Engineering - Promote green engineering practices for water and wastewater systems. These practices include design techniques, operational methods, and technology to reduce environmental damage and the toxicity of waste generated.
54. The Project will advance the following policies of the Economic Development Element:
- a. Policy ED-1.1.1: Core Industries - Continue to support and grow the District's core industries, particularly the federal government, professional and technical services, membership associations, education, hospitality, health care, and administrative support services;
 - b. Policy ED-2.1.1: Office Growth - Plan for an office sector that will continue to accommodate growth in government, government contractors, legal services,

international business, trade associations, and other service-sector office industries. The primary location for this growth should be in Central Washington and in the emerging office centers along South Capitol Street and the Anacostia Waterfront;

- c. Policy ED-2.1.3: Signature Office Building - Emphasize opportunities for build-to-suit/signature office buildings in order to accommodate high-end tenants and users and corporate headquarters. Consider sites in secondary office centers such as NoMA and the Near Southeast for this type of development;
- d. Policy ED-2.1.5: Infill and Renovation - Support the continued growth of the office sector through infill and renovation within established commercial districts to more efficiently use available space while providing additional opportunities for new space;
- e. Policy ED-2.4.1: Institutional Growth - Support growth in the higher education and health care sectors. Recognize the potential of these industries to provide employment and income opportunities for District residents, and to enhance the District's array of cultural amenities and health care options; and
- f. Policy ED-3.1.1: Neighborhood Commercial Vitality - Promote the vitality and diversity of Washington's neighborhood commercial areas by retaining existing businesses, attracting new businesses, and improving the mix of goods and services available to residents.

55. The Project will advance the following policies of the Urban Design Element:

- a. Policy UD-1.1.2: Reinforcing the L'Enfant and McMillan Plans - Respect and reinforce the L'Enfant and McMillan Plans to maintain the District's unique, historic and grand character. This policy should be achieved through a variety of urban design measures, including appropriate building placement, view protection, enhancement of L'Enfant Plan reservations (green spaces), limits on street and alley closings (see Figure 9.3), and the siting of new monuments and memorials in locations of visual prominence. Restore as appropriate and where possible, previously closed streets and alleys, and obstructed vistas or viewsheds;
- b. Policy UD-1.4.1: Avenues/Boulevards and Urban Form - Use Washington's major avenues/boulevards as a way to reinforce the form and identity of the city, connect its neighborhoods, and improve its aesthetic and visual character. Focus improvement efforts on avenues/boulevards in emerging neighborhoods, particularly those that provide important gateways or view corridors within the city; and
- c. Policy UD-2.2.5: Creating Attractive Facades - Create visual interest through well-designed building facades, storefront windows, and attractive signage and lighting. Avoid monolithic or box-like building forms, or long blank walls which detract from the human quality of the street.

56. The Project will advance the following policies of the Educational Facilities Element:

- a. Policy EDU-3.2.2: Corporate Citizenship - Support continued “corporate citizenship” among the city’s large institutions, including its colleges, universities, hospitals, private schools, and non-profits. This should include a continued commitment to high quality architecture and design on local campuses, expanded use of “green building” methods and low impact development, and the adaptive reuse and preservation of historic buildings; and
- b. Policy EDU-3.3.2: Balancing University Growth and Neighborhood Needs - Encourage the growth and development of local colleges and universities in a manner that recognizes the role these institutions play in contributing to the District’s character, culture, economy, and is also consistent with and supports community improvement and neighborhood conservation objectives. Discourage university actions that would adversely affect the character or quality of life in surrounding residential areas.

57. The Project will advance the following policies of the Near Northwest Area Element:

- a. Policy NNW-2.5.1: GWU/Foggy Bottom Coordination - Encourage continued efforts to improve communication and coordination between George Washington University (GWU) and the Foggy Bottom and West End communities. Campus Plans for the university must demonstrate how the campus can manage its academic mission within its current boundaries and enrollment. These efforts must ensure protection of the residential character of Foggy Bottom; and
- b. Policy NNW-2.5.3: GWU Building Intensity - Consider in principle the concept of increasing density on the existing George Washington University campus for future space and facility needs (as measured by the enrollment, staff, and faculty limits set in the approved Campus Plan) provided that steps are taken to avoid sharp contrasts in height and bulk between the campus and the surrounding community, and to mitigate the effects of increased traffic, parking, and other impacts.

The process of planning the Project involved extensive communication between the Applicant and the ANC, WECA, FBA, and surrounding property owners, as the broad proffers of benefits and amenities reflect. Furthermore, the Project will protect the residential character of Foggy Bottom by not eliminating or reducing any housing and by incorporating design elements (such as the setback above 110 feet in height along I Street) to be sensitive to nearby residences, so the Project’s height and density will be compatible with its surroundings. Finally, the many mitigation measures that the Applicant will implement will offset the impacts of the Project.

Agency Reports

58. By report dated October 2, 2017 and by testimony at the public hearing, OP recommended approval of the Campus Plan amendment, modification of first-stage PUD,

second-stage PUD, and related Zoning Map amendment with a recommendation for additional information and conditions. OP requested more information about a First Source or job training program, a commitment that the daycare not be located below ground, and a commitment to LEED-Gold certification. OP also recommended conditions that vertical mullions not project more than eight inches from the surface of the glass and that curved glass be used in identified locations: (Ex. 21.)

- a. The Applicant agreed to OP's two proposed conditions regarding the mullions and the curved glass; and (10/12/17 Tr. at 19; Ex. 27, 27A).
 - b. The Applicant responded to OP's requests for more information on the job training program by proffering the high school construction tours and advice program, which will satisfy OP's goals for such a program. Also, the Applicant agreed to attain LEED-Gold certification (v4 Core and Shell standard). The Applicant did not agree to OP's condition that the daycare be prohibited from being located in the cellar. (Ex. 27; 10/12/17 Tr. at 21-22).
59. By its October 2, 2017 report and testimony at the public hearing, OP found the relief from the Zoning Regulations and design flexibility that the Applicant requested to be acceptable. OP concluded that the first-stage PUD, second-stage PUD, and Zoning Map amendment would be not inconsistent with the Comprehensive Plan, including the FLUM and GPM, and would further the objectives of the Guiding Principles, Land Use, Transportation, Environmental Protection, Economic Development, Urban Design, Educational Facilities, and Near Northwest elements. OP evaluated the modification of the first-stage PUD, second-stage PUD, and Zoning Map amendment under the standards set forth in Subtitle X, Chapter 3 of the Zoning Regulations and concluded that the Project satisfies the standards. OP found that the benefits and amenities proffered for the Project are commensurate with the amount of development and flexibility sought by the Project. OP also testified that the signage plan proposed by the Applicant was consistent with other PUDs and acceptable. In addition, OP evaluated the Campus Plan amendment under the standards set forth in Subtitle X § 101 of the Zoning Regulations and concluded that it satisfies the standards, including that the uses on the Property would not be objectionable because of noise or number of students. (Ex. 27.)
60. OP stated that it solicited review and comments on the Applications from the Department of Energy and the Environment ("DOEE"); Department of Housing and Community Development ("DHCD"); Department of Employment Services ("DOES"); Department of Parks and Recreation ("DPR"); Department of Public Works ("DPW"); DC Public Schools ("DCPS"); Office of the State Superintendent of Education ("OSSE"); Fire and Emergency Medical Services ("FEMS"); Metropolitan Police Department ("MPD"); DC Water; and WMATA. WMATA stated via email to OP that it did not object to the Applications, but suggested that the Applicant consult the WMATA Adjacent Construction Manual since the metro tunnel runs under I Street. Because the Project contains no residential use, DHCD stated in an email to OP that they had no objections to the proposal but appreciate the affordable housing trust fund contributions. OP also

noted that DOEE has participated in meetings with the Applicant and provided feedback about the sustainability of the Project. (Ex. 21.)

61. By report dated October 2, 2017 and testimony at the public hearing, DDOT found that the conclusions and analysis in the Applicant's Comprehensive Transportation Review ("CTR") were sound with respect to site design, travel assumption, and mitigations and stated that it did not object to the Applications, with conditions and recommendations for mitigation. DDOT concluded that the Project will generate more trips than existing conditions but is expected to have only minor impact on travel delay in the area and that transit service should have capacity to accommodate demand from the Project. DDOT supported the Applicant's proffer of a \$350,000 contribution to WMATA for improvements to the Foggy Bottom Metrorail station. DDOT agreed with the Applicant's TDM plan to mitigate impacts, but stated that the TDM plan should be enhanced to mitigate impacts to 23rd and I Streets, trip generation, on-site vehicle parking, and nearby intersections to further encourage higher transit use. DDOT also recommended further coordination of the design for improvements in public space adjacent to the Project site to offset Project impacts, and to ensure that all public space improvements are constructed in accordance with DDOT standards. (Ex. 22.) The Applicant responded as follows:
 - a. The Applicant agreed to all of DDOT's TDM enhancement recommendations regarding providing six electric car charging stations and scheduling deliveries of WB-40 trucks for off-peak times to sufficiently mitigate impacts. The Applicant also agreed to provide either two car sharing spaces or \$25,000 worth of Bikeshare memberships for building tenants; and (Ex. 25A1-25A4, 27; 10/12/17 Tr. at 18-19).
 - b. The Applicant agreed to DDOT's recommendation to fund and install pedestrian improvements at 22nd and I Streets and a new traffic signal at 21st and I Streets to sufficiently mitigate impacts from failing intersections. However, the Applicant did not agree to DDOT's recommendation for an additional \$80,000 contribution to WMATA for the Foggy Bottom Metrorail station to offset the impacts at the intersection of 23rd and I Streets. (Ex. 27; 10/12/17 Tr. at 19.)
62. OP initially expressed concern that the daycare could be located below grade and recommended that the location of the daycare be limited to above grade within the Project. At the November 27th public meeting, OP withdrew its concern, explaining that it would defer to OSSE licensing requirements to determine the appropriateness of the daycare's location in the cellar. In addition, the Commission notes that Subtitle X § 305.5(i) specifically identifies a daycare facility as a public benefit with no limitation on location.

ANC 2A Report

63. By report dated September 29, 2017 and testimony at the public hearing, ANC 2A voted unanimously to adopt a resolution supporting the Applications. In particular, the ANC stated its appreciation for the Project's design and the retail spaces in the Project. In

addition, the ANC stated its strong support for the Project's proffered benefits and amenities. However, the ANC conditioned its support on an understanding from the University where the relocated uses in Rice Hall would be accommodated and that academic and that student life uses would not be displaced by the relocated uses. The ANC also noted its concern that the redesignation of the Rice Hall parcel to investment use not be precedent setting as far as encouraging additional redesignations to investment use from other functions more directly related to the University's core mission. Further, the ANC requested that the Applicant work to facilitate the relocation of the small business in the existing building be accommodated in similar spaces nearby. (Ex. 20.) The Applicant responded as follows:

- a. The University provided testimony regarding its strategy and timeline for relocating the Rice Hall uses. The University testified that overall administrative space requirements have changed, and future space requirements for the relocated uses will be less. Affected departments/units will be relocated to all three of the University's campuses and will consolidate into existing buildings. The University also provided detailed information about affected buildings, identified relocation destinations, and affected departments/units as part of this process. The ANC stated that this explanation satisfied its concerns. In response to the ANC's concern about displaced student life uses, the University committed to a condition that uses being relocated from Rice Hall will not displace spaces assigned to student organizations on the 4th Floor of the Marvin Center; and (Ex. 27.)
- b. Regarding the relocation of small business currently at the Property, the University testified that it has been in communication with these businesses and that it is trying to work with accommodating those business that are interested in relocating in the vicinity of the site.

NCPC Report

64. As noted earlier, the NCPC Executive Director, through a delegated action dated December 28, 2017, found that the proposed PUD would be inconsistent with the Comprehensive Plan for the National Capital and other federal interests. The delegated action noted that northwest wall of the mechanical penthouse faced the upper level open court adjacent to Pennsylvania Avenue and concluded that the setback is less than required by the Height Act when a penthouse faces an exterior wall. Although NCPC considers a court open to the street to be an exterior wall, the Zoning Administrator for the District of Columbia does not. Since the Height Act was adopted by Congress as a local District law, it may only be interpreted by a District official, which currently is the Zoning Administrator. Although the Commission could deny a PUD that clearly violates the Height Act, it must defer to the Zoning Administrator when an interpretation is needed.

Testimony in Support

65. Five George Washington University students, Robert Dickson, Anna Gallicchio, Colin O'Brien, Finley Wetmore, and Meredith Liu, testified in support of the Applications. They stated that the investment properties are important to supporting the students and the University, that the retail along I Street will be a significant benefit and enhancement to the neighborhood, that the sustainability of the Project are important to the University and a significant benefit, and that the improvements to public facilities will be an important benefit to the community. (10/12/17 Tr. at 90-96).
66. The Foggy Bottom Association ("FBA"), a party in opposition in the original Campus Plan/PUD, submitted a letter in support of the Applications. FBA stated its appreciation for the Project's design and retail space. FBA also stated that it supports the proffered benefits and amenities and believes them to be commensurate with the relief and flexibility proposed in the PUD. FBA also requested that the Applicant facilitate the relocation of small business currently on the Property, and seek a tenant mix that respects the neighborhood's unique retail needs while maintaining some of the services provided by the current tenants. (Ex. 24.)

Testimony in Opposition

67. WECA testified as a party in opposition to the Applications. First, WECA testified that the proffered \$350,000 contribution for the improvements to the Foggy Bottom Metrorail station should be used for the addition of an elevator and should be the priority for those funds because of the necessity of a working elevator. (10/12/17 Tr. at 103-104.)
68. WECA testified that the relocated Capital Bikeshare station should not be located at Reservation 28, as the Applicant proposed. WECA stated that the preferred location for the station should be on site or elsewhere nearby but not on federal property. WECA opposed the use of federal parkland for a Capital Bikeshare station. (10/12/17 Tr. at 104.)
69. WECA testified that the Metrobus stop on Pennsylvania Avenue near 21st Street should not be moved because it is heavily used and is important to members of the community. WECA stated its preference is that the bus stop remain in its current location. (10/12/17 Tr. at 104-105.)
70. With respect to the design of the Project, WECA testified in opposition to the height above 110 feet along I Street because it would set a bad precedent for the neighborhood. WECA also testified that that commercial use in the penthouse is undesirable and sets a bad precedent as effectively allowing another floor. (10/12/17 Tr. at 105-107.)

Undeclared Testimony

71. Eugene Abravanel testified neither in support nor opposition to the Applications. He stated that I Street may be too crowded to allow more density. He also suggested that I

Street should be used more sustainably rather than adding a building. (10/12/17 Tr. at 111-115.)

Contested Issues

Traffic and Transportation

72. The Applicant's traffic expert submitted a detailed CTR that concluded that the Project would not generate an overall adverse traffic impact on the surrounding roadway network or cause objectionable impacts in the surrounding neighborhood due to traffic or parking impacts, provided that mitigation measures are adopted. The CTR identified two intersections – 21st and I Streets and 22nd and I Streets – that would be adversely affected and should be mitigated. The CTR concluded that the subject site is well served by an abundance of transportation facilities and services and that the Project is anticipated to generate 35 net new AM peak hour vehicle trips and 46 net new p.m. peak-hour vehicle trips. The CTR also concluded that loading can be accommodated in the alley but that parking access cannot, so the parking garage will be accessed by a separate curb cut on I Street. (Ex. 15A.)
73. In order to mitigate the impacts of the development, the Applicant proposed a TDM plan, a loading management plan, and improvements to the intersections of 21st and I Street and 22nd and I Streets. In addition, as described above, the Applicant agreed to increase its mitigation commitments as recommended by DDOT, except as explained below. (Ex. 15A.)
74. DDOT recommended that the Applicant contribute an additional \$80,000 to WMATA on top of the \$350,000 already proffered for improvements to the Foggy Bottom Metrorail station to further mitigate impacts from the Project. DDOT did not support the Applicant's proposed signal timing adjustments at the 22nd Street and I Street intersection and recommended the contribution. In response and as an equivalent alternative, the Applicant proposed to construct intersection improvements at the 22nd and I Street intersection at an estimated cost of at least \$175,000. As the Applicant's transportation expert testified, these proposed intersection improvements will provide a tangible improvement to the pedestrian network that will promote pedestrian and transit use for the Project, and the Applicant agreed to undertake them more quickly.
75. DDOT's request for an additional \$80,000 would be appropriate only if the Applicant had failed to adequately mitigate the potential transportation impacts of the Project. Since the Commission found that the Applicant has already adequately mitigated such impacts, the additional contribution serves no mitigation purpose. Further, DDOT has not explained how such a contribution could plausibly mitigate the impacts identified. Instead, WMATA may use the money to make such improvements to the Metro station as it considers to be needed. While such improvements may result in additional use of the station, that alone is not sufficient for the Commission to compel a contribution. Instead, the \$350,000 contribution is a public benefit of the PUD, because it will result in "transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the application." (11 DCMR § 305.5(o).)

76. DDOT identified potential impacts at a third intersection – 3rd and I Streets. The Applicant’s transportation expert explained that the impact is limited to one approach to the intersection and only minimally increases the delay to that approach. Further, the impact of the Applicant’s improvements to the intersection of 22nd and I Streets are enough to offset any adverse impact on the transportation network in the neighborhood. Thus, the overall intersection will not be adversely impacted by the Project. (10/12/17 Tr. at 122-123.)
77. The Project will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the Applicant’s traffic expert as follows:
- a. The Commission finds that the Project will not impose adverse or objectionable impacts on the surrounding transportation and pedestrian network. The Commission credits the findings of the Applicant’s traffic expert that the Project will not create any adverse impacts when compared with future background conditions and when appropriately mitigated. The Commission finds that the scope and methodology of the transportation study, including the identified impacted intersections, was adequate; and
 - b. The Commission finds that the Applicant’s proposed mitigation measures, including the TDM plan, loading plan, intersection improvements, and agreement to nearly all of DDOT’s recommendations, should sufficiently offset the adverse impacts of the Project and do adequately address all of DDOT’s concerns regarding the necessity of further mitigation. The Commission disagrees with DDOT and credits the testimony and evidence presented by the Applicant regarding the expected impact of its proposed mitigation measures and finds that an additional contribution of \$80,000 to WMATA serves no mitigation purpose and therefore is not warranted.

Displaced Uses from Rice Hall

78. ANC 2A conditioned its support of the Applications on a commitment from the University that academic and student life uses in the Marvin Center would not be displaced by the relocated uses from Rice Hall. In addition to the Applicant’s explanation of its strategy for relocation and changing needs for space, the Applicant committed to a condition that would specifically prevent the displacement of student organizations on the 4th floor of the Marvin Center. Accordingly, the Commission finds that the Applicant has adequately responded to the ANC’s concern to prevent displacement. (10/12/17 Tr. at 81; Ex. 27.)

Allocation of WMATA Contribution

79. One of the public benefits proffered by the Applicant is to contribute \$350,000 to WMATA to fund improvements to the existing Foggy Bottom Metrorail Station, with the final improvements to be selected by the WMATA. WECA testified that the \$350,000 contribution should be dedicated to the addition of a new elevator or replacement of the

existing elevator, and that until WMATA was ready to proceed the funds should be escrowed. The Applicant would not agree to change the proffer arguing that it was premature to dedicate money for an elevator improvement not approved by WMATA.

80. WECA seemed to believe that the Commission could force the Applicant to change its mind, but that is not correct. The PUD regulations provide:

The Zoning Commission may not compel an applicant to add to proffered public benefits, but shall deny a PUD application if the proffered benefits do not justify the degree of development incentives requested (including any requested map amendment). Nevertheless, the Zoning Commission may at any time note the insufficiency of the public benefits and suggest how the benefits may be improved

(11 DCMR § 305.11.)

81. Therefore, even if WMATA General Manager was in favor of the escrow, which he was not³, the Commission could not compel the applicant to revise its proffered benefit to include it.
82. The Applicant did agree to revise its proffer to include its agreement to encourage WMATA to consult with community stakeholders, including WECA, ANC 2A, and FBA, including consideration of an elevator, when deciding the improvements to the Foggy Bottom Metrorail station. (Ex. 27.) WECA requested that the Commission revise the condition to eliminate references to FBA and ANC 2A while leaving the reference to WECA. The Applicant has not consented to the revision.
83. The Commission finds that referencing specific community stakeholders in the condition language is unnecessary because the language already encourages WMATA to consult with community stakeholders, generally, and this would include WECA, FBA, and ANC 2A without mentioning any of them specifically. This does not represent a substantive change to the Applicant's proffer, but is less restrictive than originally proposed.

Relocation of Capital Bikeshare Station

84. WECA testified that the Capital Bikeshare station should not be relocated to federal Reservation 28. However, the Applicant testified and provided evidence that other federal parkland (namely the National Mall) contains Capital Bikeshare stations and that relocating there would require a review and approval process by the National Park Service. In response to WECA's concerns, the Applicant proposed a condition that input from ANC 2A would be part of the public space permitting process for relocating the

³ Through an email dated December 19, 2017, WMATA's General Manager, Paul Wiedefeld, indicated that he would not support escrowing funds for a second elevator because WMATA has not performed a Development and Evaluation process to determine whether a second elevator at Foggy Bottom Station is a priority within Metro's overall capital budget; and a second elevator project at the station will cost much more than the \$350,000 contribution and require an agreement with the University since WMATA owns very little property at the station. (Ex. 40A.)

station. Thus, the Commission disagrees with WECA and finds that Reservation 28 could be an appropriate location for the relocated Capital Bikeshare station and that the inclusion of community input in the decision process will adequately address WECA's concerns. (Ex. 27.)

Relocation of Bus Stop/Shelter

85. At the public hearing, WECA raised concerns about the relocation of the Metrobus station on Pennsylvania Avenue at 21st Street. The Applicant and DDOT explained that the stop would remain in the same general location at that intersection, but the location of the shelter would be adjusted to improve accessibility around the bus shelter, with the final location to be determined by WMATA. In response to WECA's concerns, the Applicant proposed a condition that input from ANC 2A would be part of the public space permitting process for relocating the shelter. Accordingly, the Commission finds that the shelter can be relocated to better accommodate accessibility requirements without significantly changing the location of the stop to the detriment of users and that the Applicant's proposed condition adequately responds to WECA's concerns. (Ex. 27.)

Building Design

86. At the public hearing, WECA raised concerns about the height of the building and the habitable penthouse space. The Applicant testified that 130 feet in height, with a step down to 110 feet along I Street, is appropriate for the proposed height because of the existing zone for most of the site already permits 130 feet, the FLUM supports high density on the site, and the setbacks on the building along I Street above 110 feet moderate the appearance of its height to be commensurate with surrounding buildings on I Street. Thus, the Commission credits the Applicant's testimony and finds that the Project's height along I Street is appropriate and justified

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

87. Pursuant to Condition P-14 of Z.C. Order No. 06-11/06-12, the Applicant demonstrated that the proposed second-stage PUD is consistent with the location, use, zoning, gross floor area, lot occupancy, and height set forth in the first-stage PUD, as modified by the Applications herein. (Ex. 1, 1H, 2A1-2A6, 18F1-18F7.)
88. Pursuant to Condition P-15 of Z.C. Order No. 06-11/06-12, the Applicant demonstrated that the Project met the special exception standards for a campus plan set forth in Subtitle X § 101 (formerly 11 DCMR §§ 210 and 3104). Subtitle X § 101 requires demonstrating that the proposed use will satisfy the specific conditions, including "that it is not likely to become objectionable to neighboring property because of noise, traffic, number of students, or other objectionable impacts." During its consideration of the Campus Plan in Z.C. Case No. 06-11/06-12, the Commission determined that the use of the Foggy Bottom Campus as a whole, including the number of students, faculty, and staff proposed and the related traffic and parking impacts associated with that use, would not become objectionable to neighboring property. For the reasons described below and elsewhere in this Order, the Commission finds that the Applicant has satisfied its burden of proof

under Subtitle X § 101 of the Zoning Regulations and that the proposed Project and Campus Plan amendment satisfy the specific criteria stated therein:

- a. The Project shall be located so that it is not likely to become objectionable to neighboring property because of noise, traffic, parking, number of students, or other objectionable conditions. The existing use of the Property consists of commercial office, university office, and retail uses. As a proposed commercial office/retail use, the Project will not generate objectionable noise, and it will be located far enough away from any residential property so that any noise will not be objectionable in any case. As described above, the Project will not generate objectionable traffic or parking impacts. The Project will include mitigation and other measures to ensure any adverse effects on traffic and parking are minimized. As a commercial building, the Project will not affect the number of students. Further, a commercial building is appropriate for this location given its placement among other similar building and uses, so it is not likely to cause other objectionable conditions. In addition, the relocation of the existing uses on Site 75A1 will be accommodated by the University without adverse impacts;
- b. The proposed amendment to the Campus Plan to designate Lot 51 for commercial/investment use is not inconsistent with either the Comprehensive Plan, which designates the Property for Institutional and High-Density Commercial Use, or the Campus Plan, which specifically recognizes the importance of commercial uses as investment properties that help fund the University's academic mission. The Project will be located on Property that is primarily designated as High Density Commercial under the Future Land Use Map of the Comprehensive Plan, zoned for high-density commercial use, and designated for commercial/investment use under the Campus Plan. Also, as part of the Campus Plan/PUD, Lot 51 was rezoned to C-3-C (now MU-9). Furthermore, the incorporation of Lot 51 into the Project will help facilitate the I Street retail corridor, which is a key benefit of the Campus Plan/PUD;
- c. Further processing approval in itself is not required for the Project since it does not contain University use in a residential zone. As described herein, the Project is generally consistent with and furthers the Campus Plan. The Campus Plan generally recognized the continued use of the Property for commercial/investment and office use, and the University will continue to be able to accommodate its forecasted needs within the remainder of the Campus. To the extent that the Campus Plan/PUD must be modified, the Applicant has sought the appropriate changes through these Applications. The Project is being approved through a second-stage PUD, consistent with the conditions of the approved Campus Plan/PUD and in satisfaction of the criteria in Subtitle X § 101.8;
- d. With the construction of the Project, the FAR for the residentially-zoned portions of the Campus will be 3.12 FAR, and the FAR for the Campus as a whole will be 4.23 FAR, each of which is within the limit established by the Campus Plan/PUD, as modified by these Applications; and (Ex. 1H.)

- e. As described above and throughout this Order, the Project will not adversely affect neighboring properties. As a high-density commercial building adjacent to the central business district, the Project will be in harmony with the purpose and intent of the Zoning Regulations and Maps and the surrounding context. (Ex. 1.)
- 89. Pursuant to Condition P-16 of Z.C. Order No. 06-11/06-12, the University provided the compliance, impact analysis and progress reports required for the second-stage PUD. (Ex. 1I-1N.)
- 90. Pursuant to Condition P-17 of the Z.C. Order No. 06-11/06-12, the University provided its most recently filed Foggy Bottom Campus Plan Compliance Report indicating substantial compliance with Z.C. Order No. 06-11/06-12. (Ex. 1I.)
- 91. The Commission finds that the University has satisfied the above conditions and requirements of Z.C. Order No. 06-11/06-12 for approval of a second-stage PUD.

CONCLUSIONS OF LAW

- 1. The Applicant requested approval, pursuant to Subtitle X § 101; Subtitle X, Chapter 3; Subtitle X, Chapter 5; and Subtitle Z, Chapter 3, of a modification of a first-stage PUD, a second-stage PUD, Zoning Map amendment, and a campus plan amendment. The Commission is authorized under the Zoning Act to approve a planned unit development and Zoning Map amendment consistent with the requirements set forth in Subtitle X §§ 304 and 500 of the Zoning Regulations. The Commission is authorized to approve a Campus Plan consistent with the requirements in Subtitle X § 101 of the Zoning Regulations.
- 2. Pursuant to Condition P-15 of the campus plan/PUD Order, the Applicant is required to demonstrate that each second-stage PUD satisfies the special exception standards of Subtitle X § 101 (formerly §§ 210 and 3104) of the Zoning Regulations. As described above in the Findings of Fact, the Applicant has met its burden of proof under the specific provisions of Subtitle X § 101. In particular, the Commission concludes that the proposed Project and Campus Plan amendment will not create objectionable noise, traffic, parking, or other impacts on the surrounding community.
- 3. The proposed PUD meets the minimum area requirements of 11-X DCMR § 301.1.
- 4. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.” During its consideration of the first-stage PUD in Z.C. Case No. 06-11/06-12, the Commission determined that the development incentives and related rezoning for the entire campus were justified by the benefits and amenities offered by the campus plan/PUD, and this decision was affirmed by the District of Columbia Court of Appeals.
- 5. Based on the above Findings of Fact above, the Commission concludes that the Applicant has satisfied the burden of proof for modification of the first-stage PUD and approval of

the second-stage PUD under the PUD evaluation standards in Subtitle X § 304 of the Zoning Regulations. Approval of this Project will provide a high-quality development that provides specific public benefits and project amenities, does not result in unacceptable impacts that are incapable of being mitigated and are acceptable given the quality of public benefits, and is not inconsistent with the Comprehensive Plan.

6. The Applicant has proposed a modification to the approved first-stage PUD and Zoning Map amendment that would rezone a portion of the Property (Lot 50) to the MU-30 zone and increase the total gross floor area of the PUD by an additional approximately 130,932 square feet over the matter-of-right limit. The Commission finds that additional development incentives, flexibility, and related rezoning are justified by the public benefits and project amenities proffered by the Applicant. The Commission credits the testimony of ANC 2A, which acknowledged the strength of the many benefits and amenities provided by the Project.
7. Under the PUD process and pursuant to Condition P-14 of Z.C. Order No. 06-11/06-12, the Commission has the authority to consider the proposed second-stage PUD. This second-stage review permits detailed design review of each project based on the conceptual height, density, and use parameters established in the first-stage PUD, as modified, and the benefits and amenities approved in exchange for that height, density, and design flexibility. The Commission concludes that the Project is consistent with the first-stage PUD as modified in these Applications, including the parameters regarding location, use, height, and bulk set forth for the Property in the first-stage PUD.
8. Based on the documentation included in the Applications and described above, the Commission concludes that the University has demonstrated compliance with the conditions of the first-stage PUD as detailed in Condition P-16 of Z.C. Order No. 06-11/06-12.
9. Based on the University's Foggy Bottom Campus Plan Compliance Report, the Commission concludes that the University is in compliance with Z.C. Order No. 06-11/06-12.
10. In approving the PUD, the Commission may grant flexibility from the matter-of-right development standards, pursuant to Subtitle X § 303.11 of the Zoning Regulations. Accordingly, the Commission concludes that the requested flexibility from the penthouse setback and architectural embellishment requirements can be granted without detriment to surrounding properties and without detriment to the Zone Plan or Map.
11. The development of this PUD will carry out the purposes stated in Subtitle X § 300 of the Zoning Regulations to encourage higher quality developments that will result in a project "superior to what would result from the matter-of-right standards," offering "a commendable number or quality of public benefits" and by protecting and advancing "the public health, safety, welfare, and convenience." The character, scale, mix of uses, and design of uses in the proposed PUD will satisfy these purposes, and the proposed development is compatible with the citywide and area plans of the District of Columbia. In addition, the Commission finds that the site plan and features of the Project, including

the use of the Property for commercial/investment use, streetscape improvements, and use of the public alley for loading access are consistent with the first-stage PUD.

12. The Commission concludes that the Project will provide specific project benefits and public amenities that will benefit the surrounding neighborhood and the public in general to a significantly greater extent than a matter-of-right development on the Property would provide. The Commission finds that the urban design, architecture, landscaping, site planning and economical land utilization, employment and training opportunities, social services, sustainable elements, streetscape plans, mass transit improvements, and uses of special value to the neighborhood all are significant public benefits. To this end, the Commission finds that the manner by which the Applicant proposes to implement the mass transit public benefit addresses the concerns of WECA.
13. The Commission finds that the Project will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities. In particular, for the reasons detailed in this Order, the Commission credits the testimony of the Applicant's transportation expert and finds that the traffic, parking, pedestrian, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicants and are acceptable given the quality of the public benefits of the PUD. The Commission credits the findings of the Applicant's transportation expert that the Applicant's proposed TDM plan, loading management plan, and intersection improvements are acceptable and will mitigate vehicular and pedestrian impacts from the Project. Given this finding, the Commission was not persuaded by DDOT that an additional contribution of \$80,000 to WMATA for the Foggy Bottom Metrorail station was necessary. Further, the Commission finds that the manner by which the Applicant proposes to implement its mitigation measures will sufficiently address the concerns of WECA.
14. The Commission concludes that approval of the first-stage PUD modification and second-stage PUD is not inconsistent with the Comprehensive Plan. The Commission agrees with the determination of OP and finds that the Project is not inconsistent with the Property's High-Density Commercial designation on the Future Land Use Map and its Institutional designation on the Generalized Policy Map, and that it will further numerous goals and policies of the Comprehensive Plan, as described above. The Framework Element of the Plan provides guidelines for using the FLUM and GPM. This Element states that the FLUM should be interpreted "broadly" and that zoning for an area should be guided by the FLUM interpreted in conjunction with the text of the Plan. The Element also clearly provides that density and height gained through the PUD process as bonuses that may exceed the typical ranges cited for each land use category. The Element also states that, for institutional land, "change and infill can be expected on each campus consistent with campus plans," and changes in use should be "comparable in density or intensity to those in the vicinity, unless otherwise stated in the Comprehensive Plan Area Elements or in an approved Campus Plan." (10 DCMR §§ 223.22, 226.1(h).) Accordingly, the proposed commercial office/retail building, with the proposed height and density, is not inconsistent with the FLUM and the GPM. Further, the Project is compatible with the nearby mix of commercial, institutional, and residential uses,

particularly given the Property's location near the Foggy Bottom-GWU Metrorail station and the CEA.

15. The Commission credits the determination of OP and concludes that the proposed PUD-related Zoning Map amendment for Lot 51 from the MU-9 to the MU-30 zone is not inconsistent with the Comprehensive Plan, including Lot 50's designation for High-Density Commercial use on the FLUM, and is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the Comprehensive Plan, and other District of Columbia policies and objectives.
16. The Commission has judged, balanced, and reconciled the relative value of the Project amenities and public benefits offered, the degree of development incentives and flexibility requested, and any potential adverse effects, and concludes approval is warranted.
17. The Commission is required under D.C. Official Code § 6-623.04 to give great weight to OP recommendations. OP recommended approval, with certain conditions. As previously mentioned, initially OP conditioned its approval on the location of the daycare not being in the cellar of the building. However, ultimately OP deferred to OSSE's licensing requirements to determine the location of the daycare because the Zoning Regulations specifically describe a daycare facility as a public benefit with no limitation on location. Accordingly, the Commission concludes that the Applicant adequately agreed to or addressed OP's conditions.
18. In accordance with D.C. Official Code § 1-309.10(d), the Commission must give great weight to the written issues and concerns of the affected ANC. Although the ANC voted to support the applications, its support was conditioned upon the resolution of certain issues, as discussed in Finding of Fact 63. For the reasons stated in that finding, the Commission concludes that the Applicant has resolved those issues and concerns. Notice of the public hearing was provided in accordance with the Zoning Regulations.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the Applications for a modification of a first-stage PUD, a second-stage PUD, a Zoning Map amendment, and a Campus Plan amendment. This approval is subject to the following guidelines, conditions, and standards of this Order:

A. Project Development

1. The Project shall be developed in accordance with the plans marked as Exhibits 18F1-18F7 of the record, as modified by the plans marked as Exhibit 27A of the Record, and as modified by guidelines, conditions, and standards herein (collectively, the "Plans").

2. The portion of the Property that is currently known as Lot 50 shall be rezoned from the MU-9 zone to the MU-30 zone. Pursuant to 11-X DCMR § 311.4, the change in zoning shall be effective upon the recordation of the covenant discussed in Condition No. D.1.
3. The Project shall include a mixed-use building including uses permitted in the MU-9 and MU-30 zones, provided:
 - a. The Project shall reserve the areas marked as “Retail” on pages A103-A105 of the Plans for uses in the following categories: arts, design, and creation; daytime care; eating and drinking establishments; entertainment, assembly, and performing arts; retail; and general or financial service use (provided, however, that financial service uses shall not be located along the Project’s I Street ground-floor frontage);
 - b. The Applicant may adjust the location of the daycare facility within the Project over the life of the Project; and
 - c. The Project shall include a parking garage with approximately 334 vehicular parking spaces, including compact spaces and tandem spaces, and approximately 124 bicycle parking spaces, as shown on the Plans.
4. The Project shall be constructed to a maximum height of 130 feet and a maximum density of approximately 8.92 FAR and shall have flexibility from the roof structure setback and architectural embellishment width requirements of the Zoning Regulations, as shown on the Plans.
5. 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 structure;
 - b. To vary the final selection of the colors of exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Plans;
 - c. To make minor refinements to exterior details and dimensions, including belt courses, sills, bases, courses, mullions, coping, railings, and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, or to address the structural, mechanical, or operational needs of the building uses or systems that do not significantly alter the exterior design as shown on the plans. Notwithstanding the foregoing:

- i. The exterior of the Project shall include principal vertical mullions with a minimum depth of at least eight inches as shown on page A-400 of the Plans; and
- ii. The exterior of the Project shall include curved glass where indicated on the drawings in Exhibit 27A in the record, except that the Applicant may adjust the exterior design of the Project as it meets the adjacent building in the location identified on the drawing in Exhibit 27A of the record in order to accommodate constructability needs for each building;
- d. To vary the final landscaping materials of the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, Department of Energy and Environment, Department of Consumer and Regulatory Affairs, or other applicable regulatory body;
- e. To vary the location and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy any permitting requirements;
- f. To vary the final streetscape design and materials in the public right-of-way in response to direction received from District public space permitting authorities;
- g. To vary the final design of the retail storefront and signage as shown on pages A-300 to A-310 and A-316 to A-319 of the Plans, including the number, size, design, and location of retail windows and entrances, signage, awnings, canopies, and similar features, to accommodate the needs of specific retail tenants and storefront design within the parameters set forth in the Storefront and Signage Plan included as Exhibit 18E in the record, and also including the ability to apply a film or frit to the glass surface along the ground-level elevation along the alley side of the Project as shown on Exhibit 27A of the record to accommodate retail tenant preferences in that location;
- h. To vary other building tenant and identification signage as shown on pages A-300 to A-310 and A-316 to A-319 of the Plans consistent with the Storefront and Signage Plan included as Exhibit 18E in the record;
- i. To vary the location and number of terrace and penthouse access doors to meet tenant needs and code requirements;
- j. To vary the final number of parking spaces plus or minus five percent; and

- k. To vary the final gross floor area of the Project plus or minus two percent in order to accommodate interior modifications such as mezzanine spaces, atrium infill, and connection opportunities;

B. Public Benefits

1. Mass transit improvements: Contribution to WMATA. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant will contribute \$350,000 to fund improvements to the existing Foggy Bottom Metrorail Station, with the final improvements to be selected by the Washington Area Metropolitan Transit Authority. In addition:
 - a. The Applicant shall strongly encourage WMATA to consider input and priorities of community stakeholders, including consideration of the use of the funds for elevator-related improvements at the existing station, in accordance with WMATA's established evaluation process; and
 - b. Compliance with this condition shall be demonstrated through evidence submitted by the Applicant that (1) the Applicant has requested that WMATA consider community input as described above; (2) the Applicant has completed the contribution to WMATA; and (3) WMATA has identified the improvements to be funded by the contribution in its six-year capital improvements plan.
2. Employment and training opportunities: High School Construction Tours and Advice Program. **Prior to the issuance of a Certificate of Occupancy for the Project**, the Applicant shall demonstrate that it has developed and implemented the following employment guidance and mentoring program:
 - a. During the construction of the Project, the Applicant shall offer regular tours to students interested in design and construction from each of the following schools: Phelps ACE High School, IDEA Public Charter School, The School Without Walls, and Cardozo High School. The tours shall be offered to each school no less than three times each year. The tours will focus on various activities being performed on the Project site, allowing students to connect with professionals and providing a hands-on education detailing how design evolves into construction;
 - b. During the course of such tours, representatives of the Applicant will provide informal guidance and career advice to students. Additionally, the Applicant will ensure that representatives from the design team, general contractor, and subcontracting community are present to provide a direct connection and answer questions from students interested in pursuing specific career paths in the architecture, engineering, and construction fields; and

- c. Compliance with this condition shall be demonstrated by documentation prepared by the Applicant that summarize the number of tours offered and provided, the approximate number of students attending each tour, and the name and title of representatives of the Applicant, design team, general contractor, and subcontracting community that participated in each tour.
3. Uses of special value: Park Improvements. Prior to the issuance of a Certificate of Occupancy for the Project, the Applicant shall demonstrate to the Zoning Administrator that it has completed the following:
- a. 26th Street Park (located in the 900 block of 26th Street, N.W.): Design and construct improvements to sidewalks, crosswalks, and ramps to improve access to the park, including landscaping and a public fountain/spigot as shown on Exhibit 18A of the record. Final design and construction plans shall be subject to review and approval by District agencies during the permitting process;
 - b. Reservation 28 (bounded by Pennsylvania Avenue, I Street, and 21st Street, N.W.): Design and construct improvements to the existing triangular park, including new landscape, hardscape, and furnishings;
 - i. Final scope, design, and construction of such improvements shall be subject to approval by the National Park Service and other relevant federal agencies, and shall include a minimum of \$150,000 in improvements; and
 - ii. In addition to the funding of the initial improvements, the Applicant shall maintain such improvements or fund such maintenance for the life of the Project;
 - c. Duke Ellington Park (aka Reservation 140 bounded by 21st Street, M Street, and New Hampshire Avenue, N.W.): Contribute \$30,000 to a non-profit entity to be established by representatives of the Foggy Bottom/West End neighborhood toward artwork to be installed within the park. Final design and construction of the artwork shall be subject to selection, review, and approval by relevant District agencies; and
 - d. School Without Walls @ Francis-Stevens—Urban Farm: Contribute \$36,865 for an urban farm for the “FRESHFARM FoodPrints” program at the School Without Walls @ Francis Stevens school consistent with scope included as Exhibit 27B in the record.

Compliance with the above conditions shall be demonstrated by letters to the Zoning Administrator evidencing that the improvements have been or are being provided and/or photographs of the completed improvements.

The Project shall reserve the areas marked as “Retail” on pages A103-A105 of the Plans for uses in the following categories: arts, design, and creation; daytime care; eating and drinking establishments; entertainment, assembly, and performing arts; retail; and general or financial service use (provided, however, that financial service uses shall not be located along the Project’s I Street ground-floor frontage).

4. Environmental and sustainable benefits. Prior to issuance of a Certificate of Occupancy, the Applicant shall:
 - a. Demonstrate to the Zoning Administrator that it has registered the Project with the USGBC to commence the LEED certification process;
 - b. Furnish a copy of its LEED certification application submitted to the USGBC to the Zoning Administrator. The application shall indicate that the building has been designed to include at least the minimum number of points necessary to achieve LEED-Gold certification under the v4 Core and Shell standard; and
 - c. Incorporate solar panels on a 1,000-square-foot area of the roof of the Project as shown on pages L-06 to L-07 of the Plans.
5. Streetscape and public realm improvements. Prior to the issuance of a Certificate of Occupancy for the Project, the Applicant shall:
 - a. Construct the streetscape improvements as shown on pages L-01 to L-03 of the Plans. The final design of such improvements shall be subject to approval of the appropriate District public space officials;
 - b. Adjust the location of the existing bus stop shelter on the south side of Pennsylvania Avenue at 21st Street with the final location to be determined by District public space permitting officials and WMATA, with input from ANC 2A through the public space permitting process; and
 - c. Relocate the existing Capital Bikeshare station from the north side of I Street at 21st Street to either an on-site or off-site location, with the final location to be determined by District public space permitting officials and all other relevant agencies, with input from ANC 2A through the public space permitting process.
6. Social services and facilities. For the life of the Project, the Project shall include a daycare facility available to both the tenants and the general public, subject to the granted flexibility for its location within the Project.
7. Housing Linkage. Prior to the issuance of Certificate of Occupancy for the Project, the Applicant shall demonstrate to the Zoning Administrator that 100% of the PUD Housing Linkage and 100% of the Penthouse Housing Linkage

contributions have been made to the Housing Production Trust Fund based on the amounts and timeframes stated immediately below:

- a. PUD Housing Linkage. The Applicant shall contribute to the Housing Production Trust Fund, established under § 3 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202, D.C. Official Code § 42-2802) or such other housing trust fund defined under § 2499.2 of the Zoning Regulations (“Housing Production Trust Fund”) an amount equal to \$8,030,550.44 (“PUD Linkage Contribution”), which is one-half of the assessed value of the increased commercial density associated with the Project as of the date of the PUD application, as set forth on Exhibit 18D of the record. Consistent with 11-X DCMR § 306.8, not less than one-half of the PUD Linkage Contribution shall be made prior to the issuance of a building permit, and the balance of the PUD Linkage Contribution shall be made prior to the issuance of a certificate of occupancy; and
- b. Penthouse Housing Linkage. The Applicant shall contribute to the Housing Production Trust Fund an additional amount equal to \$553,169 (“Penthouse Linkage Contribution”), which is one-half of the assessed value of the proposed penthouse habitable space associated with the Project as of the date of the PUD application, as set forth on Exhibit 18D of the record. Consistent with 11-C DCMR § 1505.16, not less than one-half of the Penthouse Linkage Contribution shall be made prior to the issuance of a building permit, and the balance of the Penthouse Linkage Contribution shall be made prior to the issuance of a certificate of occupancy.

C. Mitigation

1. Prior to the issuance of Certificate of Occupancy for the Project, the Applicant shall pay the costs of and construct the signalization of the intersection of 21st and I Streets, N.W. The timing of installation, traffic engineering, exact placement of the signal, and construction parameters shall be subject to final approval from DDOT.
2. Prior to the issuance of a Certificate of Occupancy for the Project, the Applicant shall complete the final design, approval, and construction of pedestrian improvements at the intersection of 22nd and I Streets, N.W., as described in Exhibits 15A and 25A1-25A4 in the record. Notwithstanding the foregoing, the Applicant shall commence final design of the improvements promptly upon the expiration of all appeals periods for this Order, and it shall endeavor to complete construction of the improvements within eight months after receipt of all required approvals from DDOT and other agencies.

3. **For the life of the Project**, the Applicant shall implement the Loading Management Plan and Transportation Demand Management Plan described on pages 44-45 and 50-51, respectively, in Exhibit 15A in the record, with the following additional provisions:
 - a. If within one year after the issuance of the Certificate of Occupancy for the Project, a car sharing company has not been identified to use the two car-sharing spaces in the garage, then the Applicant shall provide a minimum of \$25,000 in Capital Bikeshare memberships to building tenants;
 - b. The Project shall include at least six electric vehicle charging stations;
 - c. The Applicant shall schedule deliveries using WB-40 trucks for non-peak times; and
 - d. Uses being relocated from Site 75B1 as a part of this Project shall not displace spaces currently assigned to student organizations on the 4th floor of the Marvin Center.

D. Miscellaneous

1. No building permit shall be issued for this Project until the owner of the Property has recorded a covenant among the land records of the District of Columbia between the owners and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs. Such covenant shall bind the owner of the Property and all successors in title to construct on or use the Property in accordance with this Order and any amendment thereof by the Commission.
2. The Applications approved by this Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11-Z DCMR § 702.2. Construction must commence no later than three years after the effective date of this Order.
3. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.
4. 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, personal appearance, sexual orientation, gender identity and expression, familial status, family

responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On November 27, 2017, upon the motion of Commissioner Shapiro, as seconded by Vice Chairman Miller, the Zoning Commission took **PROPOSED ACTION** to **APPROVE** the application for Z.C. Case No. 06-12O at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to approve; Michael G. Turnbull, not present, not voting).

On February 12, 2018, upon the motion of Commissioner May, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the applications for Z.C. Case Nos. 06-11O and 06-12O at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to approve; Michael G. Turnbull abstained).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is on July 27, 2018.

BY THE ORDER OF THE D.C. ZONING COMMISSION

A majority of the Commission members approved the issuance of this Order.



ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING