

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

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Statement in Partial Opposition to
Application of the Heritage Foundation

Case No. 18531

**STATEMENT OF HOLLY J.A. AND STEPHEN A. GIBBONS IN PARTIAL
OPPOSITION TO APPLICATION OF THE HERITAGE FOUNDATION FOR
VARIANCE AND SPECIAL EXEMPTION FOR ACCESSORY PARKING**

Holly J.A. Gibbons and Stephen A. Gibbons (the "Gibbons"), owners and residents of 221 ½ E Street, NE, come before the Board of Zoning Adjustment of the District of Columbia in partial opposition to the application of the Heritage Foundation (the "Applicant") filed on January 23, 2013, in Case Number 18531. In particular, the Gibbons respectfully request that the Board deny the special exception under Section 213 (special exception for accessory parking located in an R-4 zone) and variance from Section 2303.1(b).

RELEVANT FACTS

The Gibbons are the owners and residents of the row house located at 221 ½ E Street, NE (square 755, lot 842).¹ The rear portion of the Gibbons property lies just north of the proposed project and just feet from the accessory parking structure and the structure's exhaust vent. Accordingly, the Gibbons are uniquely and adversely impacted by this project.

¹ The Gibbons property is shown in relation to the proposed project on copy of drawing A2.0 taken from the Applicant's Architectural Plans and Site Plans submitted to the Historic Preservation Review Board on December 28, 2012, and attached hereto as Exhibit A. The Gibbons have marked their property – Lot 0842 – on the drawing.

ARGUMENT

I. The Board Should Not Grant a Special Exemption for the Proposed Accessory Parking Structure

The application for a special exemption under Section 214 should be denied because the Applicant does not and cannot satisfy the criterion under 214.7. Further, granting such an exemption will adversely effect the use of the neighboring property – namely the Gibbons lot at 221 ½ E Street, NE.

A. The Location of the Accessory Parking Structure Will Become Objectionable to Nearby Property Because of Traffic

In seeking a special exemption, the Applicant admits, as it must, that the proposed accessory parking structure is located almost entirely in the R-4 Zone. Granting the special exemption necessarily forces 100 new vehicles into that particular part of the residential zone to enter and leave the parking structure five days per week and on nights and weekends when Applicant hold special events. Because Third Street, NE between D and E is a two-lane residential street (with 1 row of parking on each side) as are most adjacent streets, save Massachusetts Avenue, the added traffic will become objectionable.

The added traffic burden is compounded by the fact that the Applicant already uses a surface parking lot in the courtyard between 3rd, 4th, D, and E Streets. At least some of the vehicles enter and exit this lot from 3rd Street – the very same location as the ingress and egress for the accessory parking facility. After construction, the Gibbons believe that the Applicant will continue to use this courtyard parking to its full capacity. In other words, 3rd Street and streets that immediately surround it, including the Gibbons' block of E Street, will be faced with approximately 150 vehicles concentrated on neighborhood streets lining up to enter one of the two parking areas.

The additional 100+ vehicles also create other objectionable traffic concerns. Vehicles waiting to enter the underground garage or those that have just exited and are waiting for the light at the top of 3rd Street to change will turn 3rd Street into a virtual parking lot of idling cars during rush hour. Likewise, once those cars do exit the garage they will either enter the already complicated intersection of 3rd Street, D Street, and Massachusetts Avenue, or will turn north and drive right through the residential neighborhood.

Applicants arguments to the contrary are belied by the very traffic study that it commissioned and submitted to the Advisory Neighborhood Commission 6C.² This study makes clear that the accessory parking structure will bring additional traffic into the R-4 zone. As just one example, the bar graph on page ii illustrates that approximately 25 employees currently park in a public garage, cited on page 17 of the study as "approximately six blocks away, and several are located on the west side of Union Station." Because this parking is not in the immediate vicinity of the proposed project, all 25 of these vehicles would represent new traffic being introduced into the immediate neighborhood were they to utilize the accessory parking structure. Likewise, the page ii of the study shows that approximately 18 employees park in other off-street locations and 39 use on-street parking spaces. All of these vehicles would be forced not only into the R-4 zone (if they are not there already), but onto 3rd Street where they would enter and exit the accessory parking structure.

The parking study also recognizes, at various points, that the intersection of 3rd Street, Massachusetts Avenue, and D Street already poses a traffic concern. On page iii,

² Relevant pages of the study commissioned by the Applicant, titled "Transportation and Impact Study: 3rd & Mass" are attached hereto as Exhibit B.

it recognizes "concerns from [the Applicant's] staff and community members regarding frequent congestion and queuing at the intersection." Clearly, introducing 105 vehicles to this immediate intersection would make an already objectionable traffic situation worse.

And the Gibbons are not the only neighbors concerned about this issue. Using the same address list that this Board uses to announce its hearings, the Gibbons sent an unbiased survey to their neighbors with a self-addressed stamped envelope. In that survey, they asked neighbors for their opinions and any comments, questions, or concerns they would like to raise, specific to the parking garage component of the proposal. The Gibbons received 11 responses by mail, and two by e-mail. Of the 11 responses by mail, five oppose (in addition to the Gibbons own opposition), two had no opinion (and no specific comment), and four support the proposal. The e-mail responses did not take a specific position, but did express interest in learning more about the project and traffic impact. Notably, two of the responses in opposition cited concerns about traffic issues (one specifically noting traffic on 3rd Street). In fact, even one response in support of the proposal noted "my only concern is that entry/egress [of] the parking lot does not back up traffic on 3rd Street."³

B. Other Objectionable Conditions, Namely Exhaust Emissions, Make the Location of the Accessory Parking Structure Objectionable to Nearby Property

Drawing A2.0 of the Applicant's Architectural Plans and Site Plans submitted to the Historic Preservation Review Board on December 28, 2012 show that the single exhaust vent for the accessory parking structure will be located less than 30 feet from the

³ Copies of these responses have been provided to ANC 6C Commissioner Karen Wirt and will be provided to this Board upon request.

Gibbons property.⁴ The placement of this vent – which the Gibbons understand to be a necessary part of the accessory parking structure – is an objectionable condition. The introduction of exhaust components that are known to be harmful to human health – including carbon monoxide, nitrogen dioxide, and particulate matter – so close to residential properties, and particularly to children, is of critical concern. Although the Applicant may claim that the emissions will “meet code,” the Gibbons question whether the drafters of the D.C. Code for parking garage emissions standards contemplated venting the exhaust of 105 vehicles less than 30 feet from an active residential lot and just 17 feet above grade.

C. Increased Noise Make the Location of the Accessory Parking Structure Objectionable to Nearby Property

Finally, the accessory parking structure is objectionable to those nearby properties that share the alley behind 208 and 214 Massachusetts Avenue and the Gibbons property located at 221 ½ E Street because of the increase in noise that the parking vent fans will create. The alley is already noisy as a result of the HVAC systems that the Applicant operates to support its buildings. Permitting the installation of an accessory parking structure in the R-4 zone that comes with a fan-blown exhaust vent will only add to this noise, making time spent in the backyards on E Street less enjoyable.

II. The Application Does Not Meet the Requirements for Variance Relief From Section 2303.1(b) as it Pertains to Accessory Parking and Should Be Denied

Here, the Applicant fails to satisfy two of the three necessary criteria set forth in *Palmer v. D.C. Bd. Of Zoning Adj.*, 287 A.2d 535, 541 (D.C. 1972). First, it has not

⁴ See Exhibit A. The Gibbons understand that the Applicant may in the future propose an alternate location for the parking vent. This alternate location is likely to be equally objectionable, approximately 20 feet from the current location.

shown that strict application of the zoning regulations would result in a practical difficulty. Were the zoning regulations strictly applied here, the Applicant would not be permitted to excavate and build a three-and-a-half story underground parking garage almost entirely in the R-4 zone. The inability to build additional parking is not, however, a practical difficulty. Although the Applicant may not have all of the parking that it desires, its employees all presumably find a way to get to work each morning.

Second, granting this variance will cause substantial detriment to the public good. As stated above, the accessory parking structure will introduce a significant amount of new traffic onto 3rd Street and the surrounding residential streets – including E Street between 2nd and 3rd Streets and into an intersection already known to be a traffic problem.

Finally, a three-and-a-half story underground parking structure located almost entirely in the R-4 zone where approximately 94% of the spots are for commercial use cannot help but impair the intent, purpose, and integrity of the zone plan.⁵

III. Permitting A Commercial Interest to Develop Residential Property that Includes Parking Exclusively Serving the Commercial Interest Sets Dangerous Precedent

This addition of accessory parking proposed by the Applicant appears to be unprecedented on Capitol Hill and permitting it to go forward may have larger consequences. The Gibbons are not aware of any projects on Capitol Hill where residential property has been acquired by a commercial interest that proposes to build historically-conforming residential homes, but also a massive underground parking

⁵ See Application Statement of the Applicant at p. 1 (describing the project as “a multi-faceted *commercial* and residential with below-grade parking project” (emphasis added)).

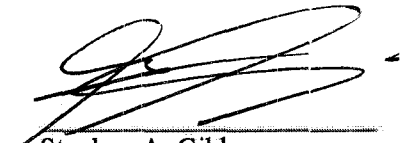
complex to serve primarily the commercial interest. In other words, the Gibbons are unaware of any 6-unit residential developments that have attached parking for 99 additional vehicles. Granting the special exception for accessory parking and the variance under 2303.1(b) ultimately sends the message that developers may undertake massive underground construction provided that the above-ground development – whatever it may be – comports with historical preservation requirements.

EXHIBITS

- EXHIBIT A Drawing A2.0 from Applicant's Historic Preservation Review Board Submittal, dated December 28, 2012
- EXHIBIT B Relevant Excerpts from "Transportation and Impact Study: 3rd & Mass," Gorove/Slade Transportation Planners and Engineers, February 28, 2013

CONCLUSION

WHEREFORE, the Gibbons respectfully request that the Board deny the special exception under Section 213 (special exception for accessory parking located in an R-4 zone) and variance from Section 2303.1(b). Further, the Gibbons respectfully request an opportunity to address the issues set forth herein and others at the April 9, 2013 hearing on this matter.


Stephen A. Gibbons

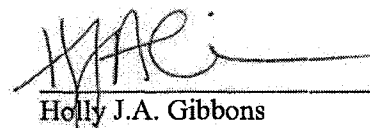

Holly J.A. Gibbons

Exhibit A

BUREAU
GIRARD ENGINEERING, PC (M.E.P.)
SK&A, PLLC (STRUCTURAL)

3RD STREET ROWHOUSES
GROUND FLOOR PLAN

SCALE: 1/16" = 1'-0"

3RD & MASS

420-430 3RD STREET, NE,
208, 214 & 236 MASS. AVE. NE
WASHINGTON, DC 20002

DATE: 12.4

A2.0

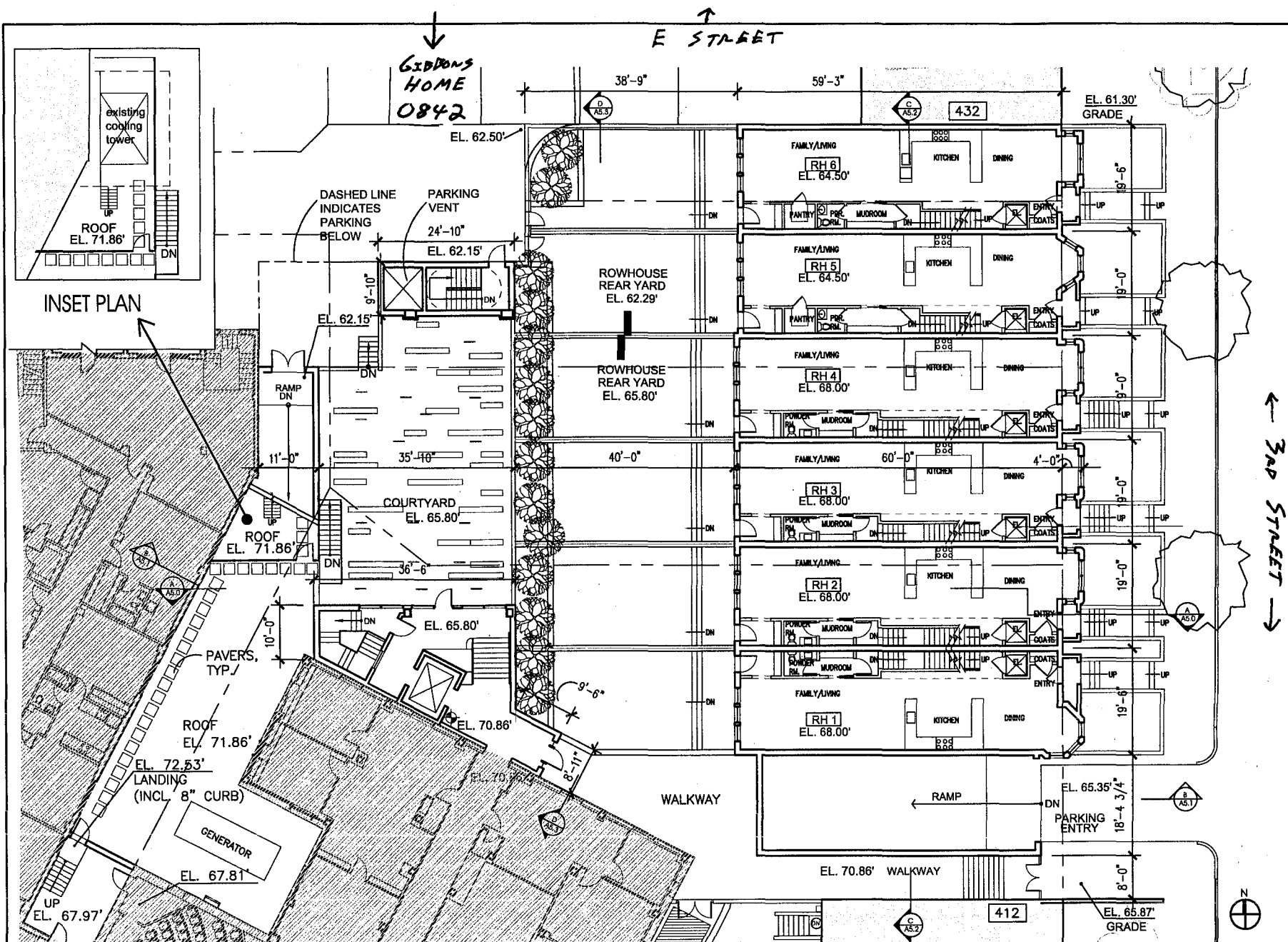
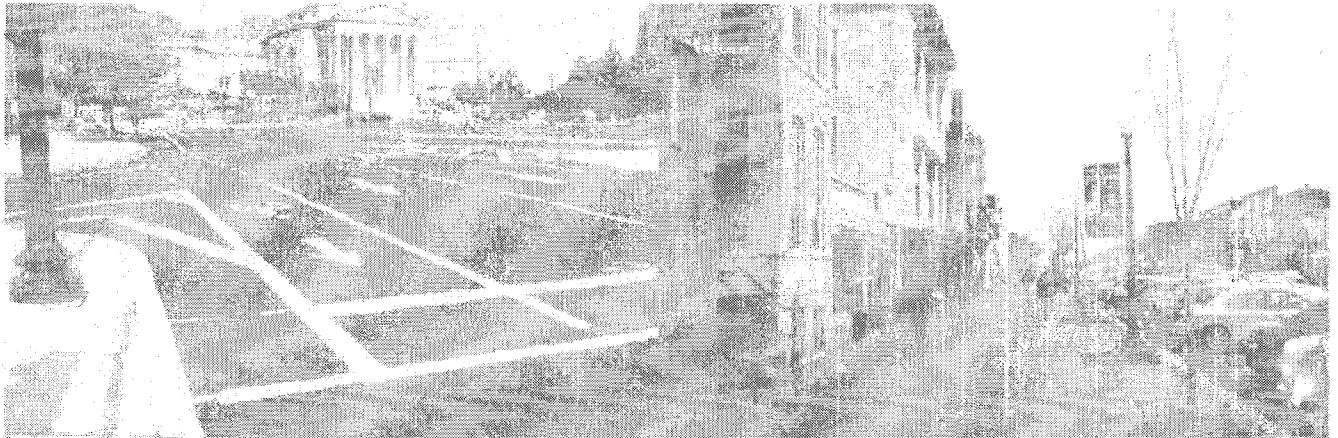


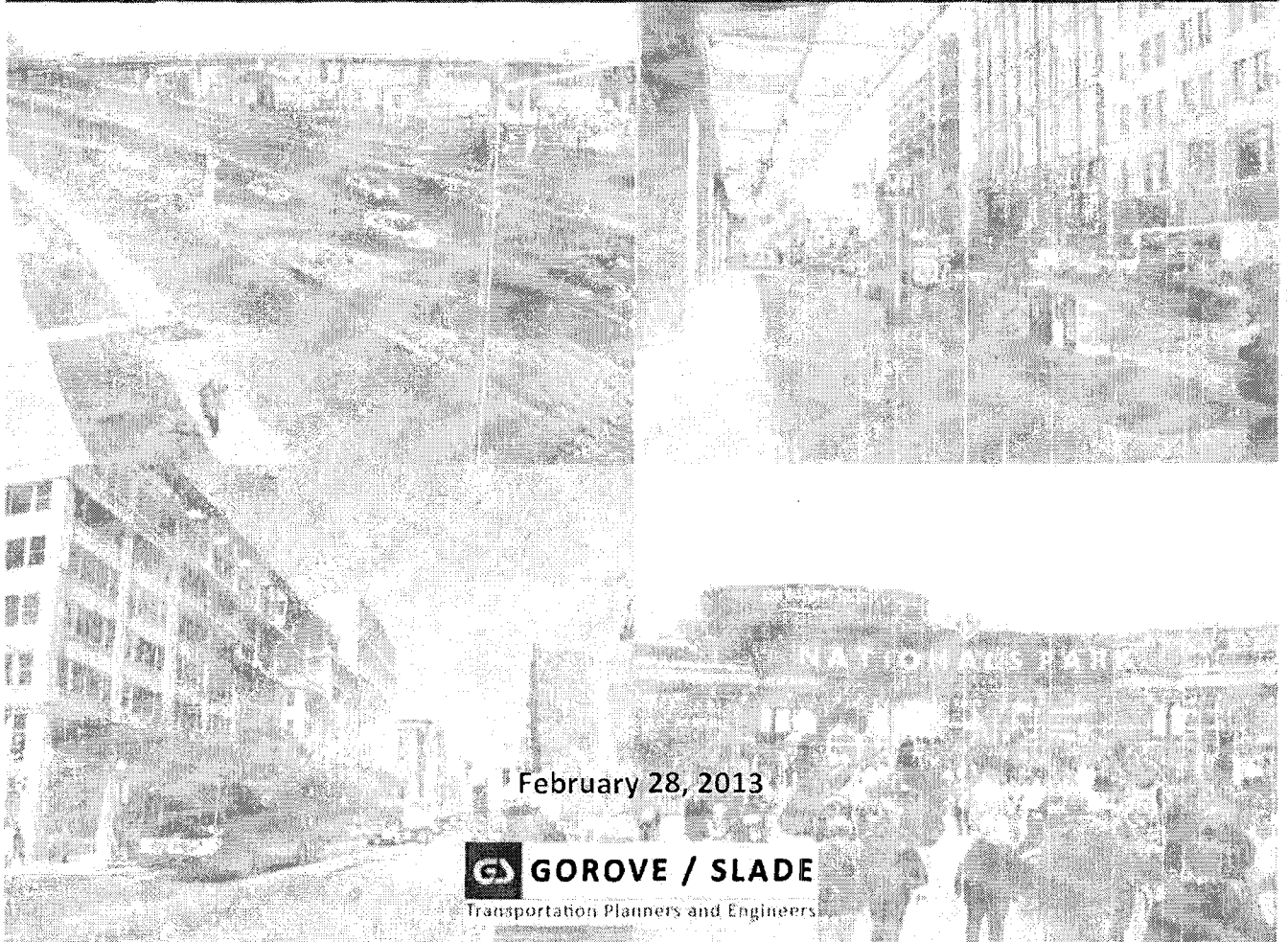
Exhibit B



TRANSPORTATION IMPACT STUDY

3RD & MASS

WASHINGTON, DC



February 28, 2013



GOROVE / SLADE

Transportation Planners and Engineers



EXECUTIVE SUMMARY

The following report is a TIS (Transportation Impact Study) for the Heritage Foundation's BZA (Board of Zoning Adjustment) application, also known as 3rd & Mass.

The Heritage Foundation is located at 214 Massachusetts Avenue between Union Station and Stanton Park. Heritage currently resides in 214 and 208 Massachusetts Avenue. The overall goal of the application is to improve on and expand the quality of Heritage's facilities and restore the surrounding neighborhood. The graphic below summarizes the plan elements and major changes.

Mode Split

Since there is an existing population of employees on the site today, a survey was used to help project future transportation needs. Mode split surveys showed that the existing population has a very low percentage of people that drive alone to work. Heritage employees have a Drive Alone mode split of 31.8% compared to the DC average of 42%. Transit is the highest mode used at 42.4%, very close to the DC average of 43%. The main difference between Heritage employees and the DC average is their bike/walk mode split, which is much higher than average.

Project Summary

Applicant: The Heritage Foundation

Location: Several Properties located near the intersection of Massachusetts Ave and 3rd Street NE

Case Type: BZA, requesting: a variance from the FAR requirements, a variance from roof structure height provisions, a variance from the nonconforming structure dedicated to a conforming use provisions, a variance from the vehicle location and lot line requirements for an underground accessory parking facility, and a special exception for accessory parking.

Case Number: 18531

Site Access: Existing and proposed access is from 3rd St NE

Parking Provided: 105 spaces on-site (55 in annex lot across 3rd St)

Bicycle Parking: 60 spaces (50 long-term, 10 short-term)

Building(s)	Existing Use	Proposed Use
208 Mass Ave	Office (Heritage) & Residential (Heritage Interns)	Office (Heritage), with some improvements & modernization
214 Mass Ave	Office (Heritage)	Office (Heritage), with some improvements & modernization
236 Mass Ave	Office (not Heritage) & ground floor retail	Residential (Heritage interns), ground floor retail
3 rd St Properties	Former church, vacant residential lot, 8 unit apartment building	6 townhomes, underground parking (parts of structure are under other properties)

Component	Existing Amount	Proposed Amount
Approx. Office SF	125,700	124,900
Approx. Retail SF	2,500	5,100
Residential Units	8 Apartments 34 Intern Units	6 Townhomes 28 Intern Units
Commuting Employees (excludes interns)	423	383
On-Site Parking	34 Spaces (plus 55 spaces in an annex lot across 3 rd St)	105 Spaces

Parking

The survey was also used to determine where employees of Heritage and 236 Massachusetts Avenue (presently non-Heritage) park. The surveys show that most Heritage employees and all employees of 236 Massachusetts Avenue do not park on-site. In addition, survey information was used to estimate existing and proposed parking demand. The chart below combines the parking location and demand projections, and shows how the overall parking demand is expected to go down (due to fewer commuting employees overall), and how the proposed parking supply will accommodate all users on site and across 3rd Street in the annex lot (the calculated parking demand of 160 spaces matches the proposed supply of 160 spaces).

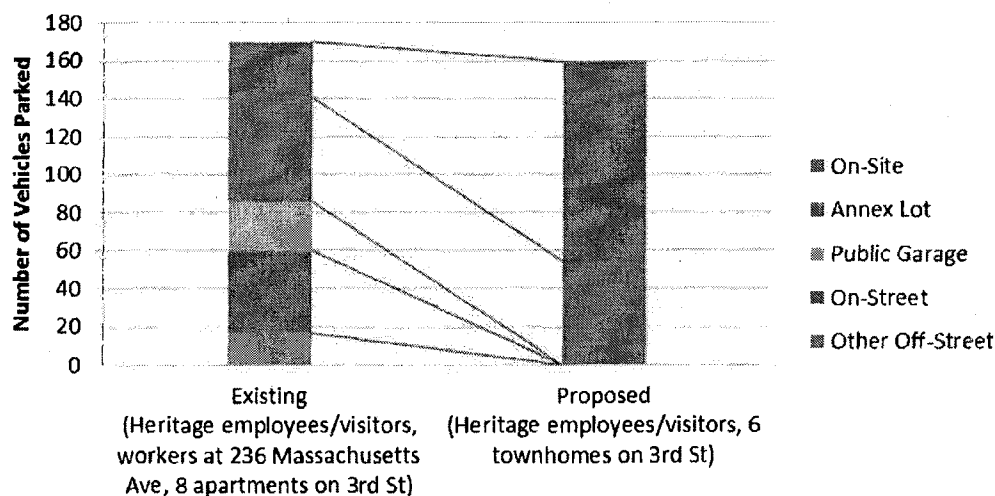
Although the total supply of 160 spaces may seem large, it is actually a relatively small amount of parking when compared to the currently proposed Heritage population of 473 employees (including interns). The proposed parking supply was chosen as a balance between providing quality transportation options for Heritage employees so they do not overspill onto neighborhood streets, while not encouraging driving as a mode.

Based on the data collected, approximately 39 on-street parking spaces are used by the existing uses on the project site during the day. These cars that now park on-street during the day will shift to parking in the new underground accessory parking facility.

This could be a benefit to the local Residential Parking Permit (RPP) program, as RPP parking within a quarter-mile walkshed of the site is very full with a utilization rate of 88% to 89% during the morning, afternoon, and evening (any occupancy rate approaching 90% is considered practically full). The main component of this potential removal of cars from on-street parking is the current population at 236 Massachusetts Avenue.

Overall, the implementation of more off-street parking spaces for the Heritage Foundation employees, and the removal of 236 Massachusetts employees benefits the surrounding on-street parking facilities. In an area where parking utilization for RPP spaces is extremely high, the community may benefit by seeing an increase of available on-street parking spaces.

Parking by Location, Existing & Proposed





Vehicular Capacity

Taken as a whole, the changes proposed in this application will result in an overall decrease in transportation demand generated. Although there is an expected regional decrease, local impacts could occur from the concentration of parking on 3rd Street that was previously spread out to different locations. The TIS contained an analysis using tailored and conservative assumptions to test whether a local impact would occur from this project. The results of the vehicular capacity analysis showed that although some additional trips would pass through intersections near the site driveway, these trips would be negligible compared to the existing traffic and therefore would not generate a negative impact. No mitigation measures are needed to alleviate impacts due to traffic generated by the project.

At the request of the applicant, GoroveSlade reviewed in further detail the intersections of Massachusetts Avenue, 3rd Street and D Street. This request was made due to concerns from Heritage staff and community members regarding frequent congestion and queuing at the intersection. The following TIS contains a section reviewing potential short and long term strategies for alleviating congestion at this intersection. All ideas would require more study to determine their impact to other adjacent intersections and the corridor as a whole. Thus, this TIS provides a discussion of these options in order to begin dialogue between DDOT and the community if they desire to explore such ideas further, but this TIS does not contain a formal recommendation on any short or long term improvements for these intersections.

Conclusions

Based on the following analyses, the TIS concluded that approval of this BZA application would not lead to detrimental impacts to the surrounding transportation network, for the following reasons:

- The existing population has a very low drive-alone mode split.
- The site is located in an area of the District well served by non-auto modes of travel, and there are no impediments for the project's residents, employees and visitors from using these modes and maintaining a low drive-alone mode split.
- The future parking demand, which for all properties contained in the application is expected to have a net decrease, is entirely accommodated on-site and in a Heritage controlled parking lot across 3rd Street.
- The relocation of traffic from existing parking locations spread out in the surrounding neighborhood to the underground accessory parking facility on 3rd Street does not generate a detrimental impact to nearby intersections.

In addition, the application has positive impacts to the surrounding transportation network as follows:

- Due to the reduction in overall employees that commute to the site, the regional transportation demand will decrease slightly.
- The accommodation of all parking on-site will reduce the site's demand on nearby on-street parking including RPP parking.
- The site plan calls for removing a semi-circular drive on Massachusetts Avenue including two curb cuts. This combined with the streetscape improvements in front of 236 Massachusetts Avenue and the 6 townhomes on 3rd Street will provide a significant benefit to the pedestrian experience walking along the site.

INTRODUCTION

This report is a TIS (Transportation Impact Study) for the Heritage Foundation's BZA (Board of Zoning Adjustment) application case number 18531, also known as 3rd & Mass. It includes a summary of the transportation components of the application, and reviews potential transportation impacts.

PROJECT SUMMARY

The Heritage Foundation is located at 214 Massachusetts Avenue between Union Station and Stanton Park, shown in Figure 1. Heritage uses currently reside in 214 and 208 Massachusetts Avenue. The overall goal of the application is to improve on and expand the quality of Heritage's facilities and restore the surrounding neighborhood. Heritage will accomplish this goal through several other properties they control nearby, including 236 Massachusetts Avenue, and several parcels on 3rd Street NE, around the corner. The end result contains improved existing facilities, the extension of Heritage use to 236 Massachusetts Avenue, the development of six townhouses on 3rd Street, an underground parking facility to serve all Heritage buildings, and an improved public realm. The plan is described in detail later in this report.

PURPOSE OF STUDY

This report's purpose is to review the project for potential negative impacts to transportation. A negative impact occurs when the project creates an unacceptable level of service to a component of the surrounding transportation network. This report determines if a negative impact occurs by comparing two project future scenarios, (1) without the proposed application being approved (referred to as *background conditions*), and (2) with the application approved and constructed (referred to as *total future conditions*).

Thus, the analyses contained in the TIS are tailored to reach this comparison. They are not designed to analyze general neighborhood congestion, existing concerns, or long-term construction impacts.

In addition to searching for impacts by comparing these two future scenarios, another component of the TIS is to review how the application minimizes potential impacts. In an urban setting like the District, it is important for new projects, regardless of whether they generate negative impacts, to minimize their impacts. This report addresses this by reviewing the application's site plans and TDM (Transportation Demand Management) measures and identifying ways that the project minimizes impacts.

CONTENTS OF STUDY

This report contains three sections as follows:

- **Site Review** – A summary of major transportation features near and adjacent to the project, provided for background information and as a reference for the following sections.
- **Design Review** – A section reviewing the transportation components of the project, including reviewing the site plan and TDM elements.
- **Impacts Review** – A section reviewing the potential impacts of the project, through a comparison of two future scenarios, one with the project and one without. For each mode of transportation, the negative impacts of the project are discussed and mitigation measures suggested. In addition, this TIS per a request of the applicant, contains a review of potential improvements to the intersection of Massachusetts Avenue with 3rd and D Streets, NE.

What is the BZA?

The Board of Zoning Adjustment (BZA) is an independent, quasi-judicial body. It is empowered to grant relief from the strict application of the Zoning Regulations (variances), approve certain uses of land (special exceptions), and hear appeals of actions taken by the Zoning Administrator at DCRA.

This application is seeking a number of variances and special exceptions. In summary, the above ground improvements and the new townhomes meet zoning requirements, but the proposed underground accessory parking facility does not. Details are included in other application documents.

TIS Scoping

In order to ensure that this TIS provides a sufficient review and conforms to DDOT (District Department of Transportation) guidelines, GoroveSlade and DDOT had a scoping meeting on January 25, 2013 and GoroveSlade submitted a scoping form. DDOT responded to the scoping form on February 20, 2013.



236 Massachusetts Avenue Mode Split

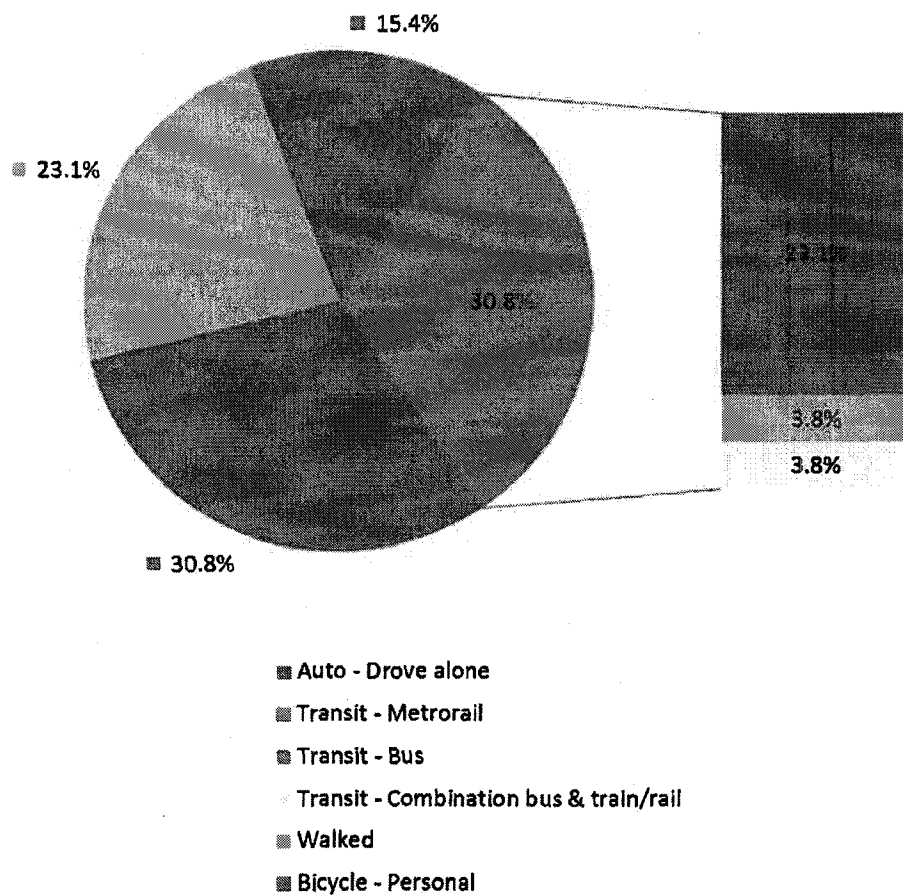


Figure 11: Existing 236 Massachusetts Ave Mode Split

Note: There is no auto-breakdown for 236 Mass Ave because all auto respondents drove alone.



Parking

The survey was also used to determine where employees of Heritage and 236 Massachusetts Avenue park.

The parking locations available for Heritage employees include:

- **On-Site** – Heritage has 34 parking spaces currently on-site.
- **Annex Lot** – this is a surface parking lot across 3rd Street from Heritage that provides 55 parking spaces.
- **Public Garages** – the closest public garages that offer daily/monthly commuter parking are approximately 6 blocks away, and several are located on the west side of Union Station
- **On-Street** – includes both RPP and metered spaces
- **Private Parking Spaces Off-Street** – arrangements made to park in other off street facilities

Currently, the majority of Heritage visitors (during office-hours) do not have a designated place to park. The residents of the apartment building on 3rd Street are accommodated through four off-site spaces and the on-street parking only.

Employees of 236 Massachusetts Avenue do not have a dedicated parking supply.

The surveys show that most Heritage employees and all employees of 236 Massachusetts Avenue do not park on-site.

The existing parking demand for the properties included in the BZA application is estimated as 170 spaces, as follows:

- **Heritage** – 120 spaces for employees (based on population of 323 commuting employees and 37% drive mode split), 10 spaces for visitors (an estimate)
- **236 Massachusetts** – 31 spaces for employees (based on population of 100 employees and 31% drive mode split)
- **3rd Street Apartments** – 9 spaces (based on the 2011 ACS 5-Year estimate of 1.07 cars per household in census tract 3.01)

Based on the survey results, approximately 24 employees park on street, 6 from Heritage, and 18 from 236 Massachusetts Avenue. In addition, Heritage visitors (10 spaces) and the existing apartment (5 spaces) generate 15 spaces on-street parking demand. Thus, a total of 39 on-street parking spaces are used by the existing uses on the project site.

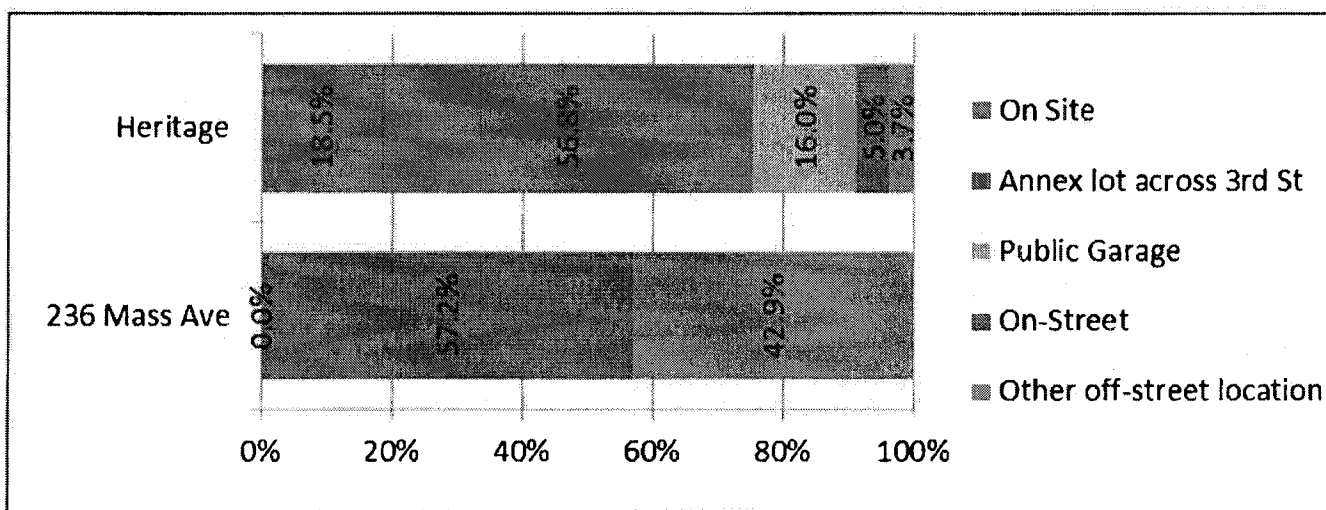


Figure 12: Parking Location for Existing Employees

PROPOSED PARKING

The parking demand after the project is complete is 160 spaces, as follows:

- Heritage – 142 spaces for employees (based on population of 383 commuting employees and 37% drive mode split), 10 spaces for visitors (an estimate)
- 3rd Street Townhomes – 8 spaces (based on the 2011 ACS 5-Year estimate of 1.31 cars per household in census tract 3.01, for households greater than one person).

The proposed parking supply includes the new underground accessory parking facility, with 105 spaces, and the annex lot across 3rd street, with 55 spaces, for a total of 160 spaces. The amount of parking proposed in the application matches the estimated demand.

Although the total supply of 160 spaces may seem large, it is actually a relatively small amount of parking when compared to the currently proposed Heritage population of 473 employees (including interns). The proposed parking supply was chosen as a balance between providing quality transportation options for Heritage employees so they do not overspill onto neighborhood streets, while not encouraging driving as a mode.

Additionally, DC zoning requirements specify that office space of approximately 124,900 SF, retail space of 5,100 SF, and 34 residential units with a zoning of C-2-A, would have a zoning requirements of 229 parking spaces. Parking under what would be the zoning minimum highlights how Heritage is not proposing an excess of parking to serve its buildings.

VEHICULAR ACCESS

All access to the underground parking accessory facility will be located from one driveway with full access on 3rd Street NE. This access will replace the current access on 3rd Street NE, shifting it slightly to the south to better facilitate the proposed site plan. Under existing conditions this curb cut was used to access a surface parking lot, but in the proposed plan it will be used to access the below-grade parking facility.

Additionally, two curb cuts along Massachusetts Avenue, which currently serve a circular driveway, are being removed. By reducing the number of curb cuts serving the property from three to one, the project's design allows for minimal impacts to public space and improves pedestrian facilities.

Loading and service access for the site occurs from a public alley adjacent to 208 Massachusetts Avenue. Currently, 214 Massachusetts Avenue loads from the street or the existing surface parking lot, but as part of the renovation the building will now be able to accommodate more loading activity through the alley. Per the zoning regulations, no loading facilities are proposed for the six dwelling units although all trash will be collected within the parking facility and loaded out through the alley.

The proposed application is not expected to significantly change the amount, type, or frequency of existing loading activity. The amount of trash trucks serving the site is expected to decrease, as the two different trash trucks that serve 208 and 214 Massachusetts Avenue will be replaced with a single truck picking up trash for both buildings during the same trip.