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March 26, 2013

VIA HAND DELIVERY

Chairman Lloyd Jordan
D.C. Board of Zoning Adjustment
441 4th Street NW, Suite 210S
Washington, DC 20001

Re: BZA Case No. 18531 – Applicant's Pre-Hearing Submission

Dear Chairman Jordan and Members of the Board:

Enclosed please find one original and 20 copies of the applicant's pre-hearing submission for the above-referenced case scheduled for a public hearing on April 9, 2013. Please note that the original application has been revised to include two additional areas of relief. This additional relief is discussed in detail in the accompanying statement.

Should you or your staff have any questions, please do not hesitate to contact me.

Sincerely,



Cary R. Kadlecsek

Enclosures
DCDOCS\7066635.1

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18531

EXHIBIT NO. 27

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2013, copies of the attached letter and enclosures were delivered via U.S. Mail or email to the following:

Paul Goldstein
D.C. Office of Planning
1100 4th Street SW, Suite E650
Washington, DC 20024
paul.goldstein@dc.gov

Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, DC 20013-7787



Cary Kadlecek

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Application of The Heritage Foundation
ANC 6C

BZA Application No. 18531
Hearing Date: April 9, 2013

APPLICANT'S PRE-HEARING STATEMENT

This is the pre-hearing statement of The Heritage Foundation ("**Heritage**" or "**Applicant**") for variance and special exception relief to allow a multi-faceted commercial and residential project with below-grade parking. The property that is the subject of this application is 208, 214 & 236 Massachusetts Avenue, NE and 426-430 3rd Street, NE (Square 755, Lots 3, 26, 36, 836, 838, & 849) (the "**Property**").¹ The Property is split-zoned in both the CAP/CHC/C-2-A and CAP/R-4 Zone Districts.

I. NATURE OF RELIEF SOUGHT

The Applicant requests that the Board of Zoning Adjustment ("**BZA**" or "**Board**") approve the following areas of relief:²

1. A variance from Section 771 (maximum FAR). The maximum permitted FAR is 2.5. The proposed project will convert the existing mixed-use office/residential building at 208 Massachusetts Avenue to all commercial use in order to facilitate the conversion of an all-commercial building (236 Massachusetts) to residential use.
2. A variance from Section 2001.3 (restriction on expanding a nonconformity in a structure devoted to a conforming use). The existing buildings at both 208 and 214 Massachusetts Avenue are nonconforming as to FAR. With the proposed project, both buildings will slightly increase in FAR.

¹ The Property includes a small triangular piece of Lot 839 that the Applicant has continuously used for many years.

² The application now includes two additional areas of relief not previously identified in the original application. There has been ample notice of this application and multiple community meetings.

3. A variance from Section 2303.1(b) (vehicles over lot lines in a parking lot). The requirements for the special exception for accessory parking under Section 214 require compliance with the parking lot provisions in Section 2303. Section 2303.1(b) requires that no vehicle or part of any vehicle projects over any lot line. Several lot lines will cross over the accessory parking area and some of the parking spaces.
4. A variance from Section 1203.2(b) (roof structure height). The maximum permitted height of a roof structure in the CAP Overlay is 10 feet. The existing nonconforming roof structure for 236 Massachusetts is 12 feet tall, and a new screen wall will abut the existing structure and new mechanical equipment. The screen wall will have a height of 12 feet.
5. A variance from Section 2503.2 (structure in a required open space). A structure more than four feet above grade is not permitted in a required open space. The rear yard of 214 Massachusetts and eastern court of 208 Massachusetts will contain an unenclosed screen wall for HVAC equipment that will be 22.5 feet above grade. The western court of 214 Massachusetts will contain a generator that will be 12 feet above grade.
6. A special exception under Section 411.11 (roof structure). A roof structure must be set back from all exterior walls a distance equal to its height. The proposed roof structure for 236 Massachusetts will be set back from a rear court a distance that is less than its height of 12 feet. While the Zoning Administrator determined that relief was not required, we are pursuing relief at the request of an ANC member who was concerned that such relief has been required in similar cases.
7. A special exception under Section 214 (accessory parking). The project will include a parking area accessory to 208 and 214 Massachusetts Avenue, as well as the 3rd Street townhouses, and located almost entirely in the R-4 zone.

II. JURISDICTION OF THE BOARD

The Board has jurisdiction to grant the relief requested pursuant to Sections 3103.1 and 3104.1 of the Zoning Regulations (11 DCMR §§ 3103.1 & 3104.1).

III. DESCRIPTION OF PROPERTY AND SURROUNDING AREA

The Property is located in the Stanton Park neighborhood of Ward 6. It is also included in the Capitol Hill Historic District. The Property is large, split-zoned, irregularly-shaped, and contains approximately 43,693 square feet of land area. The Property, all of which Heritage owns, occupies much of the southeast section of Square 755 and contains three buildings fronting on Massachusetts Avenue. 208 and 214 Massachusetts Avenue stand on the north side of Massachusetts Avenue between 2nd and 3rd Streets. 208 Massachusetts is bounded to the west and north by a 10-foot public alley. 214 Massachusetts is located directly east of 208 Massachusetts, and it is bounded to the north by a surface parking area and a small retail building (excluded from this application) to the east. At the corner of 3rd and Massachusetts, 236 Massachusetts is bounded by the small retail building to the west and an apartment house (also excluded from this application) to its north. The properties along 3rd Street are bounded on the north by townhouses, to the south by the surface parking area for 214 Massachusetts, to the west by 208 Massachusetts and the public alley, and to the east by 3rd Street.

The Property is improved with four buildings and a surface parking area.³ The building at 208 Massachusetts is an eight-story building containing a mix of residential and office uses. The residential use on the first four floors is for student intern housing administered by Heritage, and the offices on the top four floors are for Heritage's offices. The eight story building at 214 Massachusetts Avenue is fully occupied by Heritage offices. The 208 and 214 Massachusetts

³ A small eight-unit apartment house on 3rd Street is one of the buildings on the Property, but Heritage will raze it to make way for the proposed project. The building does not contribute to the historic district.

buildings have some internal connections to allow free passage of Heritage's employees between the two. The building at 236 Massachusetts Avenue is a six-story building, constructed as an apartment house, containing office and retail uses. Although 236 Massachusetts is nonconforming as to commercial and overall FAR, the office uses are grandfathered with valid Certificates of Occupancy. See the chart attached as Exhibit A for a depiction of the gross floor area and FAR of the Massachusetts Avenue properties.

At the rear of 214 Massachusetts Avenue is a paved surface parking area. The parking area extends to the north and east to 3rd Street. The parking area abuts the area south of 426 and 428 3rd Street.

The Property is oddly shaped, with a significant change in grade at the rear alley. The alley is approximately nine feet lower than the rear of 214 Massachusetts. The Property is also split-zoned, with all of the 3rd Street properties and a portion of the parking area (on the lot of 214 Massachusetts) in the CAP/R-4 zone. The remainder of the Property, fronting on Massachusetts Avenue, is zoned CAP/CHC/C-2-A. The building at 208 Massachusetts is irregularly shaped and is connected to 214 Massachusetts. Finally, the Property is not contiguous, with 236 Massachusetts being separated from the rest of the Property by a small retail building to its west and a small apartment building to its north.

The surrounding area is predominantly moderate-density residential to the east and north, which is dominated by row dwellings. Office buildings with ground floor retail dominate Massachusetts Avenue across the street, and a gas station and office buildings line the block of 2nd Street to the west. Slightly further to the west is a large federal building, and to the southwest is a large surface parking area for the U.S. Capitol.

Heritage has been located in Square 755 since 1983. Since that time, Heritage has been acknowledged to be a good neighbor, a responsible steward of its buildings, and a friend to the

community. Over time, it has expanded its presence in the square and has created a compact “campus” for most of its institutional functions. It has improved its buildings and the adjacent public space, adding significant landscaping and mature trees to the block. The proposed project will not be for the benefit of a new organization moving to the neighborhood; rather, it will be for an important and appreciated neighbor. Only nominally new commercial space will be constructed, and it will be limited to Heritage’s use. This project will allow Heritage to maintain its presence, to help improve and restore the neighborhood and to eliminate a nonconforming apartment house (428 3rd Street) and the rear surface parking lot.

IV. THE PROPOSED PROJECT

The proposed project will include office, residential, and parking elements. First, the building at 208 Massachusetts will be converted from mixed office and residential uses to all office use. Also, the office use in 236 Massachusetts will be converted to all residential use to accommodate the student intern housing that will be relocated from 208 Massachusetts. Effectively, the office use in 236 Massachusetts (30,319 square feet) will be swapped with the residential use in 208 Massachusetts (28,200 square feet), and the ground floor retail at 236 Massachusetts will be expanded with retail replacing the limited office use on the ground floor. The goal is to have each building devoted to one use, either commercial or residential (with ground floor retail), with no net increase in commercial use for the entire Property. Collectively for 208 and 236 Massachusetts, the existing amount of commercial use is 60,469 square feet. Because of the project, there will be 61,543 of commercial use between the two buildings; thus, there will be a small net increase of 1074 square feet of commercial use because of the difference in building sizes and the enclosure of the rear passageway.⁴ The resulting commercial FAR for 208 Massachusetts will be 5.43, and the resulting residential FAR for 236 Massachusetts will be 4.76. See the table

⁴ Without the additional gross floor area attributable to the enclosure of the rear passageway, the net increase in commercial use would only be 479 square feet.

attached as Exhibit A for more detail about the existing and proposed Massachusetts Avenue buildings.

Second, the building at 428 3rd Street will be razed, and the entire 3rd Street frontage of the Property, including most of the existing surface parking lot, will be redeveloped with six single-family townhouses more appropriate for the street. These townhouses will fully conform to the Zoning Regulations.

Third, the area directly behind 214 Massachusetts Avenue and beneath the new townhouses will be developed with an underground accessory parking area. This parking area will include 3.5 levels of underground parking accessed from 3rd Street. The accessory parking area will include 105 spaces, of which 99 will be accessory to 208 and 214 Massachusetts and six will be for the townhouses. Each space for the townhouses will be below the townhouse to which it belongs.

Fourth, both 208 and 214 Massachusetts will be enlarged very slightly. 208 Massachusetts will be enlarged by 595 square feet to accommodate an enclosed service corridor and exit stairway. The area for the corridor currently exists inside the courtyard of the building, but it will be enclosed and slightly modified. With the grade change from the accessory parking area, the new enclosed corridor will nominally add 595 square feet of density chargeable to FAR, so the resulting FAR of 208 Massachusetts will be 5.43. Also, 214 Massachusetts will receive a slight addition of 800 square feet at its rear. The rear addition will accommodate a required egress stairway from the underground accessory parking area.

Fifth, structures will be added to courts and rear yards. Above the new service corridor, Heritage will slightly relocate mechanical equipment (a cooling tower) for 208 Massachusetts' HVAC system. A large cooling tower currently exists above the corridor, but, as part of the project, Heritage will replace the cooling tower and place it in a slightly different location above the newly-enclosed corridor. The cooling tower will be enclosed by a screen to mitigate any potential visual

or noise impacts. To the south of the cooling tower, the generator will be in the western court of 214 Massachusetts.

Sixth, 236 Massachusetts will be renovated to accommodate all of Heritage's student intern housing. The building will be modernized and brought current to applicable Building Codes. The existing penthouse is nonconforming with a height of 12 feet. As part of the renovation, new mechanical equipment will be added to the roof, and the equipment and the existing penthouse will be surrounded by a screen. The existing penthouse is large enough for only the elevator machinery and a small stairway. The screen will have a nonconforming height of 12 feet to match the existing penthouse. It will be set back from the building's 3rd Street and Massachusetts Avenue frontages by 14 feet and 21.5 feet, respectively, which matches the existing penthouse's setback. However, the screen will not be set back from the rear court.

Photos of the Property and plans of the proposed project are included in the separately enclosed Appendix.

V. THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF

The burden of proof for area variance relief is well established. The Applicant must demonstrate that (1) the property is affected by an exceptional or extraordinary situation or condition, that (2) the strict application of the Zoning Regulations will result in a practical difficulty to the Applicant, and that (3) the granting of the variance will not cause substantial detriment to the public good nor substantially impair the intent, purpose or integrity of the zone plan. Palmer v. D.C. Bd. of Zoning Adj., 287 A.2d 535, 541 (D.C. 1972). In addition, the Court of Appeals has held that the variance test may be applied with greater flexibility to nonprofit entities. Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d, 1091, 1099 (D.C. 1979) (attached as Exhibit B). As outlined below, the Applicant demonstrates that the Property meets the three-part test for area variance relief.

A. The Property is Affected by an Exceptional Condition

The Court of Appeals held in Clerics of St. Viator v. D.C. Bd. of Zoning Adj., 320 A. 2d. 291 (D.C. 1974) that the exceptional situation or condition standard goes to the property, not just the land. The Court in Monaco v. D.C. Bd. of Zoning Adj., 407 A.2d 1091 (D.C. 1979) went even further and noted that the exceptional situation or condition is not limited to the land or the physical improvements on the land, but applies also to the history of the property. In Monaco, the Court accepted the past zoning history of the property as evidence of uniqueness. Furthermore, the Court of Appeals held in Gilmartin v. D.C. Board of Zoning Adjustment, 579 A.2d 1164, 1167 (D.C. 1990), that it is not necessary that the exceptional situation or condition arise from a single situation or condition on the property. Rather, it may arise from a “confluence of factors.” Id. Finally, it is not necessary that the Property be unreservedly unique. Rather, applicants must prove that a property is affected by a condition that is unique to the property and not related to general conditions in the neighborhood.

In this case, the Property is unique because of a confluence of many factors. Collectively, the Property is unique that it is controlled and operated as a “campus” by one entity with many functions (Heritage), including offices, student intern housing, and employee parking. Few – if any other – nonprofit institutions have exclusive control of many properties in such close proximity mostly within a commercial zone. The Property it is not entirely contiguous, it is split-zoned CAP/CHC/C-2-A and CAP/R-4, it is irregularly shaped, and it is in a historic district.

With respect to the individual buildings, they are also unique. Both 208 and 236 Massachusetts are contributing buildings in the historic district, and both are nonconforming as to FAR and height. 236 Massachusetts is irregularly shaped in a somewhat triangular manner and does not have a rear yard. In addition, 214 Massachusetts is irregularly shaped with a large portion

of its rear lot, containing parking, extending east into the R-4 zone. 214 Massachusetts is nonconforming as to FAR and height and is a contributing building in the historic district.

B. Strict Application of the Zoning Regulations would Result in a Practical Difficulty

The appropriate test is whether the strict application of the zoning regulations results in a “practical difficulty.” In reviewing the standard for practical difficulty, the D.C. Court of Appeals stated in Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 542 (D.C. App. 1972), that “[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. [Footnote omitted.] The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case.” In area variances, applicants must satisfy only “the lower ‘practical difficulty’ standards.” Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1365 (D.C. 1992) (citing Gilmartin v. Bd. of Zoning Adj., 579 A.2d 1164, 1167 (D.C. 1990)). Finally, it is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’ . . . Increased expense and inconvenience to applicant for a variance are among the factors for BZA’s consideration.” Gilmartin, 579 A.2d at 1171 (citing Barbour v. D.C. Bd. of Zoning Adj., 358 A.2d 326, 327 (D.C. 1976)); see also Tyler v. D.C. Bd. of Zoning Adj., 606 A.2d 1362, 1367 (D.C. 1992). Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Gilmartin, 579 A.2d at 1171. Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is *burdensome*, not impossible. Indeed, the practical difficulty is not about need; it is about Heritage being able to use its property most efficiently as a result of the unique conditions.

In this case, the proposed project meets the practical difficulty standard with respect to the four variances requested. First, regarding the variance to increase the commercial FAR for 208 Massachusetts (to effectuate the residential swap with 236 Massachusetts), the unique situation of the campus-like condition gives rise to a practical difficulty in Heritage's operation of both office space and intern housing in one building.⁵ The inefficient operation of its facilities at 208 Massachusetts would be compounded if that building must remain mixed-use and 236 Massachusetts must remain as office space. 208 and 214 Massachusetts are internally connected, the primary access for both buildings is through 214 Massachusetts, and the main office operations for The Heritage Foundation are operated out of them both as one facility. As a large nonconforming building in a commercial zone adjacent to a large all-commercial building, 208 Massachusetts will function far more efficiently as an all-commercial building connected to the all-commercial 214 Massachusetts. The presence of intern housing amidst office use creates an inefficient operation disconnected from the surrounding commercial uses along Massachusetts Avenue and particularly amidst Heritage's office use. The HVAC system for all of 208 Massachusetts must run 24 hours per day when only the intern housing – half of the building – is occupied outside of business hours. If Heritage were able to operate both 208 and 214 Massachusetts as one contiguous office, then it would be able to significantly increase the efficiency of its operations. For example, there would be single point access control for the connected 208 and 214 Massachusetts – rather than the existing two access controls for both 208/214 and 236 Massachusetts – and there would be no need to exit the buildings to go to other office space at 236 Massachusetts.

⁵ Indeed, if the Massachusetts Avenue properties were regulated as a campus under the Zoning Regulations, then Heritage would be free to distribute commercial and residential uses as its needs dictate.

The operation of 236 Massachusetts as office space is even more inefficient than 208 Massachusetts, and it is better suited for residential use. This building was originally designed as an apartment house, and over time it was converted to office use without updating the interior for that new use. For example, the bathrooms still contain bathtubs. The result is that the office space is not very functional and not well suited to modern office demands. However, because the office use is grandfathered, there is no incentive to abandon it if it cannot be retained elsewhere. Heritage would face considerable operational burdens by having an increased office presence in 236 Massachusetts while maintaining intern housing in 208 Massachusetts. It makes much more sense from an operational and planning perspective to locate the student intern housing in a building that was designed for residential use (236 Massachusetts) and to locate a single-user office in a building that is fully devoted to office use (208/214 Massachusetts).

Second, with respect to the variance to increase the nonconforming FAR for both 208 and 214 Massachusetts, the existing nonconforming FAR and Property's grade change at the rear give rise to a practical difficulty in complying with the Zoning Regulations. 208 Massachusetts already has a service corridor at its rear, but it must be enclosed to improve security, to allow better operating efficiencies, to control light and noise emanating to neighboring properties, and to create a watertight structure that will prevent basement flooding. As a result of the grade change, some of the enclosed corridor will be above grade and chargeable to FAR. However, the increase in FAR is a miniscule 0.06. If Heritage were not permitted to nominally increase the FAR of 208 Massachusetts by enclosing the corridor, then Heritage would confront many safety, operational, and external effect difficulties.

Also, the underground accessory parking area at the rear of 214 Massachusetts must have at least two egress stairs to be Building Code compliant. One of these means of egress will be through

a small one-story addition at the rear of 214 Massachusetts so that the parking may be accessed directly from 214 Massachusetts. Without the ability to construct this small addition to 214 Massachusetts, the Applicant would face a considerable burden in designing a parking facility that accommodates the requisite egress stairs. If the egress stair were not permitted in this location, then the parking area would have an impractical layout. There is only a limited amount of area within the footprint of the parking facility that is not covered by the townhouse lots, parking ramp, and pedestrian walkway. According to Building Code, the stairs must exit to the exterior, and the two stairs must be remotely spaced. In order to satisfy these requirements, Heritage located the egress stairways at the most northern and southern edges of the parking facility that are not covered by the townhouse lots. This addition to 214 Massachusetts will increase its effective FAR by a nominal 0.05.⁶

Third, regarding the variance from the prohibition on structures greater than four feet above grade in required open space (Section 2503.2), the existing nonconforming nature of 208 and 214 Massachusetts creates a practical difficulty in complying with this regulation. The cooling tower already exists in the eastern court and rear yard of 208 and 214 Massachusetts, respectively. Heritage will change its location only slightly, but this is an ideal location because it is the only location with enough room (other than the roof) and all power, controls, and piping already run to this location. If Heritage were required to relocate the cooling tower to the roof of 208 Massachusetts, then the roof structure likely would not satisfy the required exterior wall setback requirement. In addition, the roof would need to be strengthened structurally to carry the equipment's weight. Further, all power, controls, and piping would need to be extended from the basement to the roof at considerable expense and either disruption to the interior building

⁶ The FAR will actually increase to 4.91, but that is because of a reconfiguration of the lot to accommodate the townhouses. Only a tiny amount of density will be added to the building, so this is what the FAR would be but for the lot reconfiguration.

configuration or creating an unsightly array of piping, supports, and conduit along the building's exterior. Similarly, as described above, the egress stairways for the underground parking have been so located in order to comply with the Building Code. Finally, the generator must be relocated from the eastern court of 208 Massachusetts to the western court of 214 Massachusetts because it is the only location that allows for the most extensive mitigation of visual and noise impacts. Otherwise, it would continue to create disruptive noise to nearby residents and occupants of 208 Massachusetts, and it would continue to visually intrude on neighboring properties.

Fourth, with respect to the variance from the requirement that lot lines not cross parking spaces (Section 2303.1(b)), the Applicant would face a considerable burden in complying with this regulation because of the Property's irregular shape. The parking spaces will be underground and will serve six townhouses and two buildings (208 and 214 Massachusetts Avenue). To design the parking area so that none of the lot lines cross over any of the underground accessory parking spaces would be nearly impossible given the irregular shape of the Property and the necessary dimensions of drive aisles, parking space sizes, and parking space configuration. The design of the parking is already less efficient than it would otherwise be on a more regular site. Because of the odd configuration of the site, if the parking facility were to comply with the regulation, then the resulting layout of the parking would be so irregular and inefficient that it would not be practical to build it.

Finally, regarding the variance from roof structure height for 236 Massachusetts, the fact that the building contributes to the historic district, that it is nonconforming, and that it has an unusual shape gives rise to a practical difficulty in complying with this regulation. The roof structure height limit of 10 feet in the CAP Overlay is significantly lower than the 18.5 feet limit otherwise allowed. In this case, the new screen must be added to create the appearance of one roof structure for the new

mechanical equipment that will allow for the modernization of the building. The modernization of the building will enhance the historic appearance of the building by eliminating the window air conditioning units. The existing roof structure is far too small to contain anything but the elevator and a small access stairway. Also, because the building occupies most of the lot and has no rear yard, there is very limited space for mechanical equipment on the ground. Therefore, the only feasible location for most of the equipment is on the roof. The Zoning Regulations prohibit a roof structure comprised of walls of differing heights, so the nonconforming 12-foot height of the structure must be maintained or another type of relief would be required. Furthermore, the Historic Preservation Review Board preferred a uniform roof structure height over one that varies. Accordingly, because of the unusual shape and the fact that the building contributes to the historic district, Heritage would face a considerable burden by constructing a roof structure addition that complies with the Zoning Regulations.

C. Relief can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan

Granting all of the requested relief will not harm the Zone Plan. The Applicant has designed the project to minimize any adverse impacts on neighboring properties. The surrounding properties will experience negligible, if any, adverse impacts as a result of the requested relief.

First, with respect to the “use swap” between 208 and 236 Massachusetts Avenue, the neighborhood will benefit. With the new townhouses, the length of the west side of the 3rd Street block will be returned to entirely residential use once 236 Massachusetts becomes residential again.⁷ This will add harmony and consistency to the surrounding residential neighborhood. In addition, there will not be any new impacts from the commercial use. But for the nominal increase because of the difference in building sizes and to accommodate necessary functions, there will not

⁷ The ground floor retail in 236 Massachusetts will remain, which the community supports.

be any “new” commercial use on the Property. After the swap, the commercial uses will be concentrated on Massachusetts Avenue away from the residential neighborhood, thereby resulting in a decrease in the impacts from the existing office uses spread all the way to 3rd Street.

Second, with respect to increasing the nonconforming FAR for 208 and 214 Massachusetts, there will be no adverse impacts on the surrounding neighborhood. As explained above, the nominal increases in FAR will not be functional commercial space. For 208 Massachusetts, it will be an enclosed service passageway and egress stairway in an internal courtyard that already exists, and for 214 Massachusetts, it will be a stairway egress for the underground parking. These minor expansions will not allow for an increase in employees or visitors, so there will not be any adverse impact.

In addition, the fact that the commercial FAR for 214 Massachusetts will increase because of the lot reconfiguration will not create an adverse impact or an undesirable precedent. Pursuant to Section 2514, because much of the existing 214 Massachusetts lot is in the residential (R-4) zone, the “lost” FAR from reconfiguring the lot is less than if the lot were uniformly zoned. Approximately 4656 square feet (out of 17,634) of the existing lot is within the R-4 zone, with the balance in the C-2-A zone. When a lot is split-zoned, under Section 2514.1(d), a portion of the density in the residential zone may be “borrowed” for a commercial building on the commercial part of the lot. However, that borrowed density is limited due to the R-4 zoning. In the case of 214 Massachusetts, the allowable FAR attributable to the portion of the lot in the R-4 zone is only 0.9, so up to 4190 square feet of maximum density may be “borrowed” from the R-4 zone section of the lot to be attributed to the commercial building in the C-2-A zone. Thus, when Heritage reconfigures the lot to accommodate the townhouses, only 4190 square feet of density is technically

“lost” from the lot. This is considerably less density than if the entire lot was zoned C-2-A, so the relative “increase” in FAR is much less than if one was dividing a uniformly zoned lot in two.

Third, there will not be any adverse impact by allowing lot lines to cross underground parking spaces. Clearly, the intent of this regulation is to prevent parking spaces that obstruct development on lots or passage between lots. That is not the case here. The parking spaces are all underground and do not burden the properties above them in any manner; in fact, the underground parking is an asset to the properties above it. The Applicant will have the appropriate easements and covenants to ensure that all of the spaces will be accessible.

Finally, there will not be any adverse impact by maintaining the 12-foot roof structure height for the roof structure expansion. The uniformity of the height will comply with the Zoning Regulations, and it will be preferable from a historic preservation standpoint. Also, the expanded roof structure will not have an adverse impact on neighboring light and air since it will comply with all required setbacks from adjacent streets. Aesthetically, there will be no impact since a nonconforming 12-foot roof structure already exists, and expanding it horizontally will not exacerbate this condition.

Accordingly, because the requested variance relief will not have any adverse impact, it will not impair the intent, purpose, and integrity of the Zone Plan.

VI. THE APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF FOR ACCESSORY PARKING

Sections 214.2 – 214.7 set forth the special exception criteria that the application must satisfy for the Board to approve accessory parking spaces. As described below, this project satisfies these requirements.

- A. Accessory parking spaces shall be in an open area or in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade (Section 214.2).*

As described above, the parking spaces shall be entirely underground. The only portion of the parking facility that will be above grade will be the entrance, an exhaust vent, and two required egress stairways.

- B. Accessory parking spaces shall be located in their entirety within 200 feet of the area to which they are accessory (Section 214.3).*

The parking spaces will be accessory to 208 and 214 Massachusetts Avenue as well as the 3rd Street townhouses. No parking space will be located more than approximately 150 feet from any of these buildings.

- C. Accessory parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory (Section 214.4).*

All of the accessory parking spaces will be contiguous to either 208 or 214 Massachusetts Avenue. Most of the spaces will be on the lot of 214 Massachusetts, which will make them contiguous to 208 Massachusetts. Some of the accessory parking spaces will extend onto the lots of the townhouses (underground), but they will be contiguous to 214 Massachusetts.

- D. All provisions of chapter 23 of this title regulating parking lots shall be complied with, except that the Board may in an appropriate case under § 2303.3 modify or waive the conditions specified in § 2303.2 where compliance would serve no useful purpose (Section 214.5).*

The parking area will comply with all provisions of Section 2303.1 except for subsection (b), as discussed above in the variance relief request. Exterior lighting will be unnecessary since the parking spaces will be entirely underground. The area above the parking area will be landscaped to the extent possible, but none of the parking spaces will be visible from outside, so excessive landscaping to shield nearby properties from the parking area is unnecessary. Furthermore, the

screening requirements in Section 2303.2 are inapplicable since the parking spaces will be entirely underground and invisible from the outside, so the Applicant requests that the Board waive this provision. Because the parking spaces will be entirely underground and will provide additional parking in a neighborhood already burdened with a shortage of on-street parking, the proposed parking facility will not have any adverse impacts on adjacent residential property. In addition, because the parking facility will not adversely impact residential properties, no additional treatment of the premises is necessary.

E. It shall be deemed economically impracticable or unsafe to locate accessory parking spaces within the principal building or on the same lot on which the building or use is permitted because of (a) strip zoning or shallow depth and (b) restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot (Section 214.6).

As the zoning map illustrates, the zone line cuts off the majority of the rear of the lot of 214 Massachusetts, leaving almost no room where the parking could be located within the commercial zone. Similarly, the zone line hugs the rear of 208 Massachusetts, leaving no room for locating parking within the commercial zone. In addition, the building at 208 Massachusetts occupies nearly all its lot, leaving no space on the lot where parking could be located. And because 208 Massachusetts is a historic building, alterations to it, such as changes to add parking beneath the building, would require approval. Even if such approval could be obtained, the project would be prohibitively expensive. Furthermore, the proposal removes a nonconforming parking lot from the R-4 zone.

F. Accessory parking spaces shall be so located, and facilities in relation to the parking lot shall be so designed, that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions (Section 214.7).

By being located entirely underground, the accessory parking spaces are not likely to become objectionable to adjoining or nearby properties. The underground location with an automatic door

at its entrance will eliminate any noise that cars may generate. Also, traffic will not increase. The cars that will park in this facility already drive to the neighborhood; they just park on the street and in other locations. This parking will eliminate the pressure to use on-street parking and will not generate any new traffic. The underground location will minimize, if not eliminate, any possible objectionable conditions, such as lighting and undesirable visual impacts, that may otherwise result from an above-ground facility. The Applicant designed the modest entrance to the parking so that it would be associated with the townhouses and would not give pedestrians or residents any sense of the size of the underground facility.

G. The Requested Relief will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps and will not Tend to Affect Adversely the Use of Neighboring Property

The accessory parking will not adversely affect the use of neighboring property, as the traffic impact study, attached as Exhibit C, demonstrates. At great expense, the Applicant will locate all of the parking underground in order to minimize any possibility of adverse impacts. Since the project will satisfy the requirements for special exception relief set forth in Sections 214.2 – 214.7, the requested relief will be in harmony with the purpose and intent of the Zoning Regulations and Zoning Map.

VII. THIS APPLICATION MEETS THE REQUIREMENTS FOR SPECIAL EXCEPTION RELIEF FOR A ROOF STRUCTURE

Section 411.11 allows the Board to approve, by special exception, a roof structure that does not satisfy the set back requirements under Section 400.7 when compliance would be restrictive, prohibitively costly, or unreasonable because of conditions of relating to the building. Under Section 400.7, a roof structure must be set back from all exterior walls a distance equal to its height. The roof structure on 236 Massachusetts will not be set back from the rear court even though it will be 12 feet tall.

The fact that the building is a contributing building to the historic district with an existing penthouse makes complying with the required setback from the rear court unreasonable and restrictive. Heritage will add a screen the roof structure in its existing location near the rear court to accommodate additional mechanical equipment, and a screen of the equipment is required to create the appearance of one roof structure. Heritage aims to minimize the appearance of the roof structure from the public streets, and the proposed location will accomplish this goal. If the new mechanical equipment were located elsewhere on the roof, then the screen would intrude on the street frontages and disrupt the historic compatibility of the building. The proposed location minimizes both the amount of building reconfiguration and the appearance of the screen, so compliance would be patently unreasonable and restrictive to Heritage.

Because Heritage will expand the roof structure as little as possible and as far away from neighboring properties as possible, its nonconforming set back will not adversely affect neighboring properties. The roof structure will have the least visual impact from the proposed location near the rear court, and it will not restrict light and air to neighboring properties. Accordingly, the requested roof structure relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

VIII. EXHIBITS & APPENDIX

EXHIBIT A	Massachusetts Avenue Building Data Table
EXHIBIT B	<u>Monaco v. D.C. Board of Zoning Adjustment</u>
EXHIBIT C	Transportation Impact Study
APPENDIX	Architectural Plans and Site Plan, Including Photos of Property

IX. CONCLUSION

Based on the foregoing analysis and conclusions, the Applicant respectfully requests that the Board grant the variance and special exception relief requested.

Respectfully submitted,
GOULSTON & STORRS, P.C.



Allison C. Prince



Cary R. Kadlecek