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MEMORANDUM

TO: District Board of Zoning Adjustment

FROM: ✓ Paul Goldstein, Case Manager
Joel Lawson, Associate Director Development Review

DATE: April 2, 2013

SUBJECT: BZA No 18531 - Request for area variances and a special exception to accommodate a multifaceted commercial and residential with below grade parking project (Square 755, Lots 3, 26, 36, 836, 838, and 849)

I. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) **recommends approval, subject to conditions**, of a multifaceted commercial and residential project with below grade parking at 208, 214, and 216 Massachusetts Avenue NE and 426-430 3rd Street NE requiring the following relief

Area Variances

- § 771 maximum FAR and maximum non-residential uses;
- § 2001 3 expanding a non-conformity in a structure devoted to a conforming use,
- § 2303 1(b) vehicle spaces located across lot lines in a parking lot,
- § 1203 2(b) maximum roof structure height; and
- § 2503 2(b) structures in required open space

Special exception

- § 214 accessory parking on a separate lot

The Heritage Foundation's (hereinafter, the "Applicant") March 26, 2013 supplemental submission requested two additional areas of relief. 1) an area variance from § 2503 2(b) and 2) a special exception from § 411 11. However, the Applicant subsequently indicated that relief from § 411 11 is not needed based on further consultation with the Zoning Administrator.

The OP recommendation is subject to the Applicant's adoption of any conditions proposed in the DDOT report

II. AREA AND SITE DESCRIPTION

Address	208, 214, and 216 Massachusetts Ave NE, and 426-430 3 rd Street NE
Legal Description	Square 755, Lots 3, 26, 36, 836, 838, and 849 (hereinafter, collectively the "Property") ¹
Ward/ANC	6/6C

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO 18531

EXHIBIT NO 33

¹ The application also provides that small portion (132 square feet) of Lot 839 is included in the site as a result of the Applicant's longstanding adverse possession of the space. The Applicant has indicated that an executed letter of support from the owner of Lot 839 would be entered into the record. OP also notes that Page A0 0 of the supplemental submission appears to incorrectly exclude the portion of Lot 839 from the proposed site area.



Lot Characteristics	The Property includes six existing lots which collectively total 43,293 square feet in land area. The Property borders Massachusetts Avenue to the south and 3rd Street to the east. Two of the lots (3 and 838) are located in the CAP/CHC/C-2-A zone, three lots (26, 36, and 836) are in the CAP/R-4 zone, and one lot (849) is split-zoned between the two. Nearly all of the subject lots, with the exception of Lot 83, are contiguous. To the west and northwest, the Property abuts an approximately 10' wide public alley which is depressed by several feet. A surface parking area is located to the north and northeast of Lot 849.
Zoning	CAP/CHC/C-2-A • CAP Capitol Interest Overlay District land use controls related to proximity to the U S Capitol • CHC Capitol Hill Commercial Overlay District encourages compatible construction and uses CAP/R-4 • CAP Capitol Interest Overlay District land use controls related to proximity to the U S Capitol • R-4 row dwellings and flats
Existing Development	The Property is improved with several buildings. On Lot 3 (hereinafter identified as "208 Mass") is an eight-story building containing a mix of residential use devoted to student intern housing and office uses for the Applicant. On Lot 849 (hereinafter identified as "214 Mass") is an eight-story building occupied by Applicant offices. On Lot 838 (hereinafter identified as "236 Mass") is a six-story building containing office and retail uses. An eight unit vacant apartment building is located at 428 3rd Street. At the rear of 214 Massachusetts is a paved parking area containing 21 accessory spaces accessed from 3rd Street.
Historic District	Capitol Hill Historic District
Adjacent Properties	At the corner of 3rd Street and Massachusetts Avenue, 236 Mass is bounded by a small retail building to the west (226 Massachusetts Avenue) and an apartment building to its north (412 3rd Street), both of which are not part of the application. Further north along 3rd Street, the Property is adjacent to a small vacant apartment building and row dwellings. To the west of 208 Mass is a gas station and low scale office buildings. Across the alley to the north of the Property are largely row dwellings.
Surrounding Neighborhood Character	In general, Massachusetts Avenue contains a mix of low to medium scale commercial and residential uses, and north of Massachusetts is characterized by row dwellings. The Square is located approximately 2 blocks east of Union Station.

III. PROJECT DESCRIPTION IN BRIEF

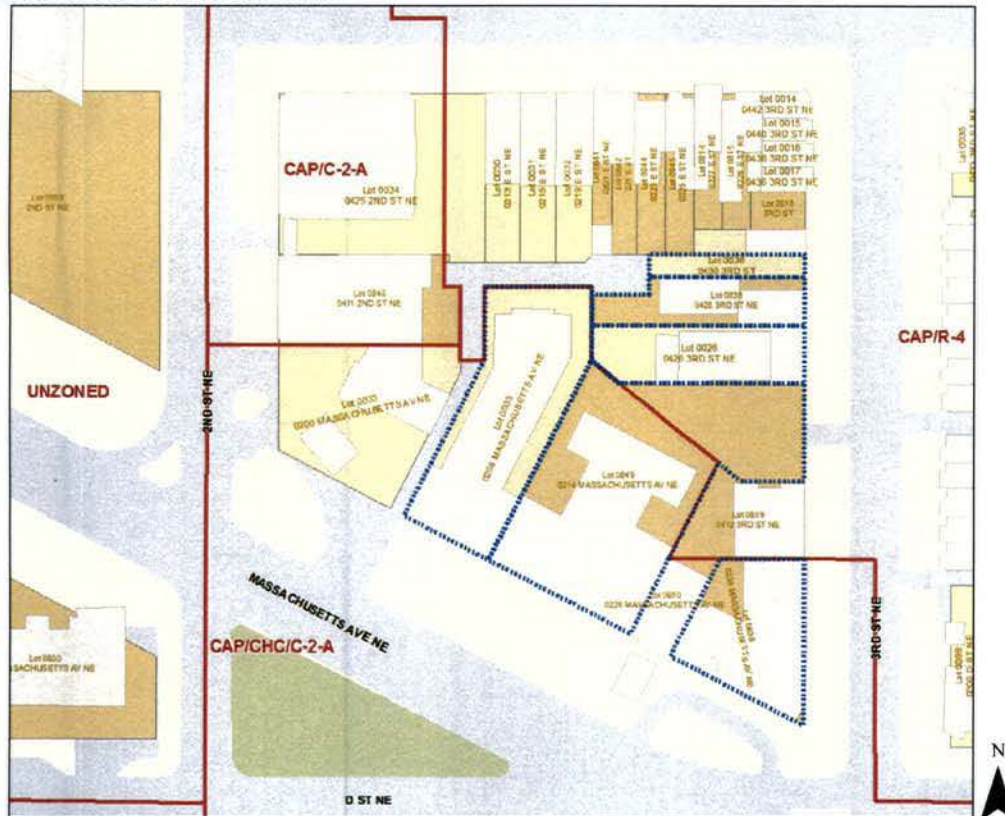
Applicants	The Heritage Foundation
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Proposal	The proposal has several facets. First, the Applicant proposes to transfer uses among the Massachusetts Avenue buildings. 208 Mass would be converted from a mixed office and residential building (with intern housing) to exclusively office use. 236 Mass would be converted from an all-commercial building to entirely residential use (with expanded ground floor retail) to accommodate the relocated intern housing. The swap results in a net gain of 1,074 square feet of commercial use. Second, both 208 and 214 Mass would be slightly enlarged to improve building functionality. More specifically, 208 Mass would be increased by 470 square feet to accommodate an enclosed service corridor and stairway at the back of the building. 214 Mass also would be enlarged with an 800 square foot rear addition to accommodate an egress stairway from the proposed underground accessory parking area. The Applicant further proposes to expand 236 Mass' existing penthouse to accommodate additional mechanical equipment. The penthouse would remain at the existing 12' height. A number of public space improvements also are proposed. Along 3rd Street, six new three-story single family row dwellings, each on a new lot, are proposed.² In association with the project, 428 3rd Street would be razed.³ Behind 214 Mass and beneath the new row houses, an underground accessory parking area would be developed. It would contain 3-5 levels of underground parking accessed through a single-story garage entry along 3rd Street at the location of the existing curb cut. The parking area would include 105 spaces, 99 of which would be accessory to 208 and 214 Mass with 6 dedicated to the row dwellings.
Relief Sought	§ 771 maximum FAR § 2001.3 expanding a non-conformity in a structure devoted to a conforming use § 2303.1(b) vehicles over lot lines in a parking lot § 1203.2(b) maximum roof structure height § 214 accessory parking § 2503.2(b) structures in required open space

² The Applicant indicates that the new row dwellings would be for-sale units.

³ The Historic Preservation Office report noted that 428 3rd Street NE is a non-contributing building due to its date of construction.

IV. IMAGES AND MAPS



Aerial view of the subject site (highlighted in blue)



View of the subject block looking north across Massachusetts Avenue NE (General Property location identified)



View of the subject block looking west across 3rd Street NE (General Property location identified). Additionally, image shows a building along 3rd Street which subsequently was razed.

V. ZONING REQUIREMENTS

The following table, which reflects information supplied by the Applicant, summarizes relevant zoning requirements for the project and the relief requested.

CAP/CHC/C-2-A Zoning	Restriction	Existing	Proposed	Relief
Lot area (sq. ft.)	No min.	• 208 Mass (Lot 3): 10,400 • 214 Mass (Lot 849): 17,634 • 236 Mass (Lot 838): 5,832	• 208 Mass (Lot 3): 10,400 • 214 Mass (Lot 849): 13,954 • 236 Mass (Lot 838): 5,832	Conforms
Floor area ratio	2.5 max. (all uses) 1.5 max. (non-residential)	• 208 Mass: 5.37 • 214 Mass: 3.84 • 236 Mass: 5.63	• 208 Mass: 5.42 • 214 Mass: 4.91 • 236 Mass: 5.63	Relief needed ⁴
Lot occupancy	100% max. (commercial), 60% max. (residential)	• 208 Mass: 68% • 214 Mass: 52% • 236 Mass: 88%	• 208 Mass: 72% • 214 Mass: 72% • 236 Mass: 88%	No change, but 236 Mass becomes non-conforming ⁵
Height (ft.)	50' max. ⁶	• 208 Mass: ~90' • 214 Mass: 90' • 236 Mass: 70'	• 208 Mass: ~90' • 214 Mass: 90' • 236 Mass: 70'	Non-conforming: no change proposed
Rear yard (ft.)	15' min.	• 208 Mass: 17' • 214 Mass: 25' to 60' • 236 Mass: 0'	• 208 Mass: 17' • 214 Mass: varies 62'7" • 236 Mass: 0'	Conforming for 208 & 214 Mass, non-conforming for 236 Mass (but no change is proposed)

⁴ The Applicant applied for relief from § 771 rather than § 1572.4, which provides a maximum FAR in the CAP/CHC overlays. Since § 771 appears equally if not more restrictive than § 1572.4 (limiting both total and non-residential FAR), it likely is the appropriate relief request since requesting relief from both provisions would seemingly be duplicative.

⁵ The Zoning Administrator indicated that no lot occupancy relief is required for the conversion of 236 Mass from commercial to residential use.

⁶ The Applicant's submission appears to incorrectly provide the standard as 40' and 3-stories.

Parking (number) § 2101.1	Parking is not required for historic buildings ⁷ (§ 2120)	• 21 shared between 208 & 214 Mass. • 236 Mass: 0	• 99 shared between 208 & 214 Mass. • 236 Mass: 0	Conforms
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CAP/R-4 Zoning	Restriction	Existing	Proposed	Relief
Lot area (sq. ft.)	1,800 min.	• Lot 26: 4,699 • Lot 836: 3,624 • Lot 36: 1,372	• Rowhouse #1: 4,007 • Rowhouse #2: 1,900 • Rowhouse #3: 1,900 • Rowhouse #4: 1,900 • Rowhouse #5: 1,889 • Rowhouse #6: 1,911	Conforms
Lot occupancy	60% residential max.	N/A (buildings will be razed)	• Rowhouse #1: 53% • Rowhouse #2: 60% • Rowhouse #3: 60% • Rowhouse #4: 60% • Rowhouse #5: 60% • Rowhouse #6: 60%	Conforms
FAR	1.8 max.	N/A (buildings will be razed)	• Rowhouse #1: .9 • Rowhouse #2: 1.8 • Rowhouse #3: 1.8 • Rowhouse #4: 1.8 • Rowhouse #5: 1.8 • Rowhouse #6: 1.8	Conforms
Height (ft.)	40' max. 3 stories max.	N/A (buildings will be razed)	40'/3 stories	Conforms
Rear yard (ft.)	20' min.	N/A (buildings will be razed)	• Rowhouse #1: 40' • Rowhouse #2: 40' • Rowhouse #3: 40' • Rowhouse #4: 40' • Rowhouse #5: 39' • Rowhouse #6: 39'	Conforms
Parking (number) § 2101.1	1 per each dwelling unit	N/A (buildings will be razed)	1 per each dwelling unit	Conforms

VI. RELIEF REQUESTED & OP ANALYSIS

The CAP/CHC/C-2-A limits the floor area ratio to 2.5, no more than 1.5 of which can be non-residential.⁸

208, 214, and 236 Mass are each presently non-conforming to the zone especially for FAR and height.

However, 208 and 214 would become more non-conforming for FAR due to the use redistribution, proposed additions, and the changing lot size in the case of 214 Mass (and require area variance relief from §§ 771 and 2001.3). The location of the shared underground parking spaces requires area variance relief from § 2303.1(b) (the restriction that spaces cannot cross lot lines) and special exception relief from § 214 (the requirement that parking being located on the same lot as the principal building). The Applicant also proposes to expand an existing 12' penthouse on the roof of 236 Mass, which already is a non-conforming height to the zone. However, even though the penthouse would remain the same height, area variance relief

⁷ The Applicant indicates that, if constructed new, the buildings with the existing uses would be required to provide 248 vehicle spaces.

⁸ C-2-A zoning generally limits FAR to 2.5 max, with no more than 1.5 for non-residential uses. If an affected property is in both the CHC Overlay District and the CAP Overlay District, the maximum permitted floor area ratio is 2.5 for all permitted uses (§ 1572.4).

from § 1203 2(b) is needed. Finally, the Applicant indicates that two structures would be located in required open spaces, necessitating area variance relief from § 2503 2

Area Variance Relief (§§ 771, 2001 3, 2303 1(b), 1203 2(b), and § 2503.2(b))

- **Does the property exhibit specific uniqueness with respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions?**

The Property does exhibit an exceptional situation based on a confluence of factors. The Property is irregularly shaped, split-zoned, and not entirely contiguous. It has a depressed alley at the rear. Three buildings (208, 214, and 236 Mass), which the Applicant operates in a campus-like fashion, are presently non-conforming to total FAR and height, and 208 and 214 Mass also are legally non-conforming to the maximum non-residential FAR. Of note, 208 Mass has 4-stories of residential use topped by 4-stories of office use, which is an atypical configuration. 208 Mass also is internally connected with the all commercial 214 Mass on certain floors, amounting to a less common condition. Further, the Applicant indicates that 236 Mass, which presently operates with commercial uses, was originally constructed for residential use.

- **Does the extraordinary or exceptional situation impose a practical difficulty which is unnecessarily burdensome to the applicant?**

FAR (§ 771)

The exceptional situation creates a practical difficulty in operating functionally efficient and modernized buildings. The Applicant proposes to create an entirely commercial building at 208 Mass and to repurpose 236 Mass to residential use (with ground floor retail). Surprisingly, given the differing building sizes, the reshuffling of the uses only would produce a net gain of 1,074 square feet of commercial use. The application indicates that the divided 208 Mass building (with 4 floors of residential use and 4 floors of commercial use) operates inadequately. For instance, the application describes how the HVAC system must run for 24 hours per day in 208 Mass when only the residential portion of the building is occupied outside of business hours. Additionally, the office functions of the Applicant are hampered by the being divided among three buildings. Consolidating the commercial and residential uses in single buildings would permit smoother operations –there could be a single point access control for a fully integrated 208 and 214 Mass as an example – while also returning 236 Mass to its intended residential use.

In addition, the 208 and 214 Mass would each expand their existing non-conforming FARs to accommodate the shuffled uses and to modernize the buildings. For 208 Mass, the proposed commercial FAR would increase by 2.77 to a total of 5.43, which exceeds the 1.5 non-residential FAR permitted in a C-2-A zone. 208 Mass also would be slightly enlarged (by 595 square feet) to house an enclosed service corridor and exit stairway.

214 Mass also would be increased slightly (800 square feet) to accommodate a rear addition containing an egress stairway from the underground parking garage. However, while relatively little square footage would be added to the property, the application indicates that the FAR would increase by 1.07. The bulk of this increase, which OP estimates to be 1.01 FAR, would result from the reconfiguration and reduction in size of Lot 849 (214 Mass) by 3,680 square feet. The Applicant indicates that the lot reduction is a result of the exceptional condition of the Property. Lot 849 has an irregular shape (it fronts on two streets which are roughly perpendicular yet it is not a corner lot), is split-zoned between C-2-A and R-4, and contains a non-conforming historic building and an existing driveway to access the rear parking. The project encounters a practical difficulty in creating a contextually appropriate series

of row dwellings on conforming R-4 lots along 3rd Street without a reconfiguration of the Lot 849. If the lot was not modified, a nearly 60' development gap likely would remain along 3rd Street for little practical gain since Lot 849 would still be non-conforming to the zone.

Vehicles over lot lines in a parking lot (§ 2303 1(b))

The exceptional condition creates a practical difficulty in complying with § 2303.1(b), which requires that lot lines not cross parking spaces. The Applicant proposes to construct an underground garage in the space roughly behind 214 Mass (the location of an existing surface parking lot) and beneath six new row dwellings fronting on 3rd Street. Due to the irregular shape of the Property, the proposed shared use of the spaces, the fulfillment of other parking lot standards, and the row dwelling construction on new lots along 3rd Street, the Applicant faces a practical difficulty in strictly complying with § 2303 1(b).

Maximum roof structure height (§ 1203 2(b))

The exceptional condition creates a practical difficulty in complying with § 1203 2(b), which limits roof structures in the CAP Overlay District to 10' in height (which is less than the 18.5' generally permitted in commercial zones). 236 Mass' current roof structure measures 12' in height; the application proposes to expand the roof structure at the existing height to accommodate new mechanical equipment. The application indicates that there are no other reasonable locations to locate the equipment. Additionally, a 10' tall roof structure expansion would be at odds with § 411, which requires that roof structures have a uniform height.

Structures in required open spaces (§ 2503 2(b))

The exceptional condition creates a practical difficulty in complying with § 2503 2(b), which disallows structures in excess of four feet to be located in required open space. The application indicates that a cooling tower already exists in the eastern court and rear yard of 208 and 214 Mass, respectively. The Applicant proposes to slightly alter its location, but that keeping the cooling tower in essentially the same location is important due to the proximity of the supporting infrastructure. The proposed egress stairway to the underground parking has been located in compliance with the Building Code. Finally, the proposed generator placement, in the eastern court of 208 Massachusetts and the western court of 214 Massachusetts, helps to avoid visual and noise impacts.

- **Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?**

FAR (§ 771)

Relief can be granted from the maximum FAR without substantial detriment to the public good or impair the intent of the zoning regulations. The reshuffling of uses would concentrate permitted commercial uses along the Massachusetts commercial corridor. 236 Mass would return to its historical function of predominately residential use (with ground floor retail) and support the residential character of the 400 block of 3rd Street. The buildings would essentially remain the same size.

Vehicles over lot lines in a parking lot (§ 2303 1(b))

Granting relief to permit vehicles to cross lot lines in a parking lot should not have an adverse impact. The spaces are located underground and the configuration of the spaces should not impede access to garage users.

Maximum roof structure height (§ 1203 2(b))

Granting relief to permit an expansion of the existing non-conforming roof structure at the current height of 12' should not have an adverse impact. The expansion would retain a consistent height and conforms to required setbacks.

Structures in required open spaces (§ 2503 2(b))

The locations of the cooling tower, egress stairway, and generator should not have an undue impact on neighboring properties. They would be placed at considerable distances from neighboring properties. In particular, the generator would be located about 100' feet away from neighbors.

Special Exception Relief

Accessory parking (§ 214)

OP does not anticipate that the accessory parking should have adverse impacts. The Applicant's traffic study indicated that the project's parking design would not cause detrimental impacts to the surrounding transportation network. OP understands that DDOT anticipates filing a more detailed analysis of the traffic study under separate cover. Further, OP encourages the Applicant to continue to address any DDOT or neighbor concerns about the parking design at the hearing.

The special exception criteria for the analysis are as follows:

§ 214.2 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.

The parking spaces would be located underground, except for portions of the facility including the entrance, an exhaust vent, and two required egress stairways.

§ 214.3 Accessory parking spaces shall be located in their entirety within two hundred feet (200 ft) of the area to which they are accessory.

The parking spaces would be located within 200' of the principal uses (208 and 214 Mass and the 3rd street row dwellings).

§ 214.4 Accessory parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory.

All of the parking spaces would be contiguous to 208 and 214 Mass.

§ 214.5 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.

OP does not recommend any additional conditions. The parking would be located underground and covered by new row dwellings (and rear yards) and courtyard space.

214.6 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 the following:

- (a) Strip zoning or shallow zoning depth,

- (b) Restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot,*
- (c) Unusual topography grades, shape, size, or dimensions of the lot,*
- (d) The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets, or*
- (e) Traffic hazards caused by unusual street grades or other conditions*

The location of the zoning line leaves little room for parking in the commercial zone. Due to the historic nature of buildings 208 and 214 Massachusetts, there is limited opportunity for parking to be located within a principal building or on a principal lot.

214.7 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

OP does not anticipate that the parking lot should cause objectionable conditions to neighboring properties, but encourages the Applicant to further address any neighbor concerns at the hearing. OP also anticipates that DDOT will submit a report further analyzing the parking design.

VII. ANC/COMMUNITY COMMENTS

To date, OP has not received an official submission from the ANC. OP has reviewed a petition, two letters, and an email in support of the project. OP also is aware that there are requests for party status in opposition to the proposal.

VIII. OTHER AGENCIES

At a March 7, 2013 hearing, HPRB approved the project in concept. OP anticipates that DDOT will submit a report under separate cover.