

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18531 of The Heritage Foundation, pursuant to 11 DCMR §§ 3104.1, 3103.2, and 1202.1, for a variance from the floor area ratio requirements under § 771, a variance from the roof structure height provisions under § 1203.2(b), a variance from the nonconforming structure provisions under § 2001.3, a variance from the vehicle location and lot line requirements for a parking garage under § 2303.1(b), a variance from the structures in required open space under § 2503.2, and a special exception for accessory parking under § 214, to allow a commercial and residential project with below-grade parking in the CAP/CHC/C-2-A and CAP/R-4 Districts at premises 208, 214, and 236 Massachusetts Avenue, N.E. and 426-430 3rd Street, N.E. (Square 755, Lots 3, 26, 36, 836, 838, and 849).¹

HEARING DATE: April 9, 2013
DECISION DATE: April 30, 2013

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18531

EXHIBIT NO. 56

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission ("ANC") 6C, and to all owners of property within 200 feet of the property that is the subject to this application. The subject property is located within the jurisdiction of ANC 6C, which is automatically a party to this application. ANC 6C submitted two reports. The ANC first submitted a letter dated March 18, 2013, which indicated that the application came before the ANC on March 13, 2013, at a duly noticed, regularly scheduled

¹ The Applicant amended the application by withdrawing a request for zoning relief from roof structure requirements under § 411.11 and adding a request for zoning relief from structures in required open space under § 2503.2(b). The caption has been revised accordingly. The Applicant further amended the application by proposing to remove the half-floor at the fourth underground parking level. The final proposal is for 93 parking spaces, 87 dedicated to The Heritage Foundation, and six dedicated to the townhouse.

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BZA APPLICATION NO. 18531
PAGE NO. 2

monthly public meeting at which a quorum was present. The ANC stated that while it had previously voted on and supported the Historic Preservation Office application for this project, the ANC was requesting that the BZA record stay open so the ANC could review the District Department of Transportation's ("DDOT") traffic study and report on the application. (Exhibit 25.) Subsequently, the ANC submitted a second letter dated April 15, 2013, indicating that the application was also reviewed at a duly noticed, regularly scheduled public meeting on April 10, 2013, at which a quorum was present. The ANC stated that after reviewing the DDOT traffic impact study and the changes that were made to the project by the Applicant since March in response to community concerns, the ANC voted unanimously (5:0) to support the application with two caveats: the ANC would encourage the BZA to grant relief for the roof structure and the ANC welcomed the bike share station near the project. (Exhibit 50.)

The Office of Planning ("OP") submitted two reports. The first OP report, dated April 2, 2013, was timely and in support of the application subject to DDOT's recommendations for conditions. (Exhibit 33.) The Board gave leave for OP to supplement its report to respond to the Applicant's post-hearing submission including any proposed transportation demand management ("TDM") conditions. OP filed a supplemental report, dated April 23, 2013, that indicated that OP is "generally...supportive of the proposed transportation demand management conditions, but defers to any more specific recommendations or analysis provide in the DDOT report." (Exhibit 53.)

DDOT submitted two reports as well. The first, dated April 3, 2013, provided an analysis of the project's transportation and traffic impacts and acknowledged the Applicant's proffers of TDM measures, but provided no specific recommendations for conditions. (Exhibit 35.) The Board gave leave for DDOT to provide a response to the Applicant's post-hearing submission. DDOT submitted a supplemental report, dated April 23, 2013, that recommended that the Applicant's commitment of funding toward a Capital Bikeshare station be made a condition of the first certificate of occupancy issued for any phase of construction, provided that if an initial certificate of occupancy for the first completed phase is not issued prior to the end of calendar year 2015, then the Applicant should have to contribute the future-year cost for a 40-foot station and one year of operating and maintenance, as a condition for the grant of the occupancy certificate. (Exhibit 52.)

The Architect of the Capitol ("AOC") also submitted two letters. The first AOC letter, dated March 29, 2013, was timely and indicated that the project was "not inconsistent with the intent of the CAP/R-4 District." Nevertheless, the AOC cautioned that it could not at that time adequately assess the impact of increased parking on the adjacent area and the U.S. Capitol precinct based on the information the Applicant had provided up to then. The AOC requested that the Applicant provide the Board a Traffic Management Plan approved by DDOT that "clearly determines the nature of who will park in the new underground garage..., impacts on streets, and whether or not residents of their property on Massachusetts Avenue are eligible for RPP on adjacent streets. ...The Architect of the Capitol would also like the Applicant to address the issue of bicycle parking in the underground garage and above grade at its buildings." (Exhibit 30.)

BZA APPLICATION NO. 18531
PAGE NO. 3

At the public hearing on April 9th, the Board gave leave for the AOC to submit a response to the Applicant's post-hearing submissions. The Applicant submitted post-hearing submissions that indicated that the Applicant had addressed the AOC's requests. (Exhibit 54.) The second AOC letter, dated April 15, 2013, indicated that the AOC was satisfied after reviewing the additional material supplied by the Applicant's traffic engineers and DDOT as well as the Applicant's concurrence with DDOT's conditions and requirements and thus no longer had any issues with the project. (Exhibit 51.)

Ten letters and emails of support were submitted by neighbors and residents Charlotte McNaughton, 407 3rd Street, N.E., (Exhibit 34); Benjamin Robins, 429 3rd Street, N.E., (Exhibit 32); Michael Murphy, 322 E Street, N.E., (Exhibit 31), Susan Thigpen Carlson, 510 3rd Street, N.E., (Exhibit 39); Joseph and Joan Suntum, 514 3rd Street, N.E., (Exhibit 38); Andrew Glasow, 415 3rd Street, N.E.; Grant Griffith; H. Ryall Smith, Jr.; J. Fred Saddler, 415 3rd Street, N.E.; and Don Denton. (Exhibits 37 and 45.)

A statement in partial opposition was submitted by neighbors Holly and Stephen Gibbons, 221½ E Street, N.E. (Exhibit 26.)

Further, a party status request in opposition was submitted (Exhibit 28) but subsequently withdrawn by Glenn Cadoret, 225 E Street, N.E. Mr. Cadoret indicated that the Applicant had addressed his concerns to his satisfaction. (Exhibit 36.)

Variance Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary under § 3103.2, to establish the case for variances from the floor area ratio requirements under § 771, the roof structure height provisions under § 1203.2(b), the nonconforming structure provisions under § 2001.3, the vehicle location and lot line requirements for a parking garage under § 2303.1(b), and the structures in required open space under § 2503.2. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proving under 11 DCMR § 3103.2 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception

BZA APPLICATION NO. 18531
PAGE NO. 4

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under §§ 3104.1 and 1202.1 from the strict application of the regulations pertaining to accessory parking under § 214. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1, 1202.1, and 214, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 44 AND 54 AND THE FOLLOWING CONDITIONS:**

1. Heritage shall charge staff permit holders for the underground accessory parking a rate that is equal to or more than its ongoing operating costs.
2. Heritage shall maintain and continue its SmartBenefits program.
3. Heritage shall provide 36 bicycle parking spaces in the underground accessory parking, six bicycle parking spaces within 236 Massachusetts Avenue, and 10 bicycle parking spaces outside on Massachusetts Avenue adjacent to the buildings (subject to Public Space Committee approval).
4. Heritage shall pay the cost of installing and one year of operating costs for a 40-foot Capital Bikeshare station in the immediate vicinity of the Property at a location to be selected by DDOT.
5. Heritage shall be permitted to construct and occupy the project in phases, and issuance of a building permit for any portion of the project shall vest this Order.

VOTE: **4-0-1** (Nicole C. Sorg, S. Kathryn Allen, Jeffrey L. Hinkle, and Anthony J. Hood to Approve; Lloyd J. Jordan, not participating or voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 3, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION,

FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.