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June 15, 2004

Geoffrey Griffis, Chairperson
D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, D.C. 20001

Re: BZA Application No. 17179 - Heritage Foundation
Parking Lot Renewal Statement Submission

Dear Chairman Griffis:

Enclosed, please find twenty copies and the original of the Heritage Foundation's Statement for BZA Application No. 17179.

Please call me at 202.663.8715 with any questions or comments.

Sincerely,

Jeffrey Utz

Enclosures

BZA
Case No. 17179
Exhibit No. 22

Board of Zoning Adjustment
District of Columbia
CASE NO. 17179
EXHIBIT NO. 22

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Heritage Foundation

BZA Application No. 17179
Public Hearing: June 29, 2004
ANC 6C

STATEMENT OF THE APPLICANT

I.
Introduction

The subject application involves three large alley lots that are situated in the interior of Square 780. The subject property, which is zoned CAP/R-4, is located in the Stanton Park section of Capitol Hill. The Applicant seeks special exception and variance approval for the continued use of the lots for a total of 55 accessory parking spaces. The requested relief was originally granted for all the Subject Lots (as hereinafter defined) in 1991 by the BZA in Order No. 15579 (attached as Exhibit A). The requested relief was again granted in 1997 by the BZA in Order No. 16250 (attached as Exhibit B). The lot has been in operation for twelve years. The Certificates of Occupancy that were issued pursuant to BZA Order No. 16250 expire on August 20, 2004.

The Applicant proposes to continue the accessory parking as a reasonable interim use for this site which has had a long history of unsuccessful development efforts. Given the parking lot's successful history of operation, the Applicant is seeking a renewed term of operation for ten years.

Prior to its use for parking purposes, the subject property had a long and complex Board of Zoning Adjustment ("Board" or "BZA") history. In 1984, the Board granted multiple area and use variances as well as special exception relief to approve a unified commercial and residential development involving the subject property. (BZA Orders No. 14033, 14034 and

14107 dated August 27, 1984, attached as Exhibit C). The 1984 Order was never implemented because the owner was unable to secure financing for the project. Subsequently, in 1988, the Board approved plans for a total of three apartment buildings, one on each of the three lots. (BZA Order No. 14759 dated December 16, 1988, attached as Exhibit D).

In both the 1984 and 1988 cases, the Board found ample support for the multiple variances that were requested. Some members of the community, however, opposed the scale and mass of both projects. In each case, concerns were also expressed about the potential impact of the project on parking in the neighborhood. The critical need for parking in the neighborhood was a continuous theme in both cases.

After the 1984 and 1988 approvals, the Applicant pursued other development plans including two different townhouse proposals. These proposals were abandoned due to community opposition.

The Applicant's current use of the lots for accessory parking has not generated complaints from the neighbors. The neighborhood directly benefits from the parking lot since the spaces are available at night and on weekends. Since the climate for the residential development of this property is not favorable, the Applicant is seeking the continuation of a well-controlled and beneficial use of the site pending its permanent development.

II.
Description of the Subject Site

As shown in the plat attached as Exhibit E, the present application involves three of the four interior alley lots in Square 780 (Lots 43, 62 and 810, the "Subject Lots"). The fourth lot, Lot 42, is bound by a covenant that precludes its inclusion in this application. The Subject Lots are the same three lots that were considered by the Board in 1984, 1988, and finally, for parking lot use in 1991 and 1997. One of the three lots, Lot 62, has been used for accessory parking

purposes by the Heritage Foundation since 1975 (BZA Order No. 12061, which was renewed in Order No. 14449, attached as Exhibit F). The remaining lots, Lots 43 and 810, were paved for parking lot purposes in 1991 after BZA approval of Order No. 15579. Throughout its existence, the parking lot has been operated without complaint and with minimal impact on the community.

The Subject Lots range in size from 3,850 square feet to 4,453 square feet. When compared to the lots surrounding the periphery of the square and with the alley lots in other squares in the surrounding area, it is clear that the Subject Lots are unusually large. The majority of lots in Square 780 are approximately one-third the size of the Subject Lots. The square, which is bounded by E Street, NE, to the north, D Street, NE to the south, Third Street, NE, to the east and Fourth Street, NE, to the west is characterized by an extensive alley system. A 10-foot wide alley runs north to E Street, NE. A 15-foot wide alley bisects the square in the east-west direction and provides access to the interior lots from both Third and Fourth Streets, NE. There are 25 and 30 foot wide interior alleys abutting the subject site. The substantial width of these alleys creates an open and accessible vehicular circulation system by including approximately 5,000 square feet of open area allowing ample maneuvering room. A survey of fifty squares surrounding the subject square indicates that not only are the Subject Lots unusually large, but also that the extensive alley system in Square 780 is unique in the area. (See Survey of Alley Systems in the Fifty Squares Surrounding Square 780, attached as Exhibit G).

III.
History of Efforts to
Develop the Subject Alley Lots

The previous attempts to develop the Subject Lots may be traced through an examination of their Board of Zoning Adjustment history. In 1984, the Board granted a special exception as well as use and area variances for a project involving the renovation and enlargement of the original stable structure on Lot 810 into a mixed-use building containing four duplex apartments

as well as office space. That project also consisted of the enlargement and conversion of the stable building on Lot 43 into four duplex apartments and office space. Finally, the Board approved a use variance and several area variances allowing for the construction of an apartment house containing four large units on Lot 62.

The Board found several compelling and exceptional circumstances affecting the development of the Subject Lots including their unusually large size, the existing buildings on two of the lots, the extensive nature of the internal alley system and the presence of the lots in the Capitol Hill Historic District. The Board concluded that practical difficulties and undue hardship would result absent relief from the Zoning Regulations. Noting that the use of the lots for single family dwelling purposes was neither feasible nor reasonable, the Board was persuaded that the proposed mixed-use project would dramatically improve the existing condition of the alley. The Board noted that because of the substantial width of the interior alley system, the development would be open, well-ventilated and naturally lighted. The Board also found that because of the large dimensions of the Subject Lots, multiple dwellings could be combined successfully with the proposed office use. The Board ultimately concluded that the positive impacts flowing from the revitalization of the Subject Lots would far outweigh any negative impacts associated with their development.

Subsequent to the granting of the 1984 Board approval, the Applicant in that case had difficulty obtaining financing for the project. Unfavorable market conditions ultimately forced the abandonment of the project.

In 1988, the Board approved a proposal to develop the Subject Lots with a residential project of virtually the same scale, massing, height and lot occupancy as the project that was approved by the Board in 1984. As in the previous case, the proposed buildings on Lots 43 and

810 were to occupy 100% of the lot. The third lot, Lot 62, was to contain a building that would occupy 60% of the lot. In approving the project, the Board recognized the numerous grounds for variance relief that were found relevant in the 1984 case. Community opposition, including an appeal of the BZA Order to the District of Columbia Court of Appeals, thwarted this development plan.

In the 1991 application for accessory parking use, the Board had little difficulty in finding that the burden of proof for variance relief had been satisfied. The Board's previous Orders granting variance relief clearly established that the property is affected by several exceptional conditions and that such relief was still appropriate for the Subject Lots.

In the 1997 application for the continuation of an accessory parking use, the Board concluded that the Applicant satisfied all necessary elements and that parking lot use could be granted in an affirmation of the 1991 Order.

IV.
Board's Jurisdiction

This Board has jurisdiction to grant the requested special exception and variance relief pursuant to Sections 3103 and 3104 of the Zoning Regulations.

V.
Points in Support of the Application

Before proceeding with a discussion of the merits of this application, the following exhibits are submitted:

Exhibit A: BZA Order No. 15579 dated September 28, 1992

Exhibit B: BZA Order No. 16250 dated August 20, 1997

Exhibit C: BZA Order Nos. 14033, 14034, and 14107, dated August 27, 1984 involving the Subject Lots.

Exhibit D: BZA Order No. 14759 dated December 16, 1988 involving the Subject

Lots.

Exhibit E: Plats of the Subject Site

Exhibit F: BZA Order No. 12061 dated April 7, 1976, and BZA Order No. 14449 dated September 23, 1986.

Exhibit G: Survey of alley systems in the 50 squares surrounding Square 780.

Exhibit H: Zoning Map indicating the zoning of the subject properties and the surrounding area.

Exhibit I: Photographs of the subject site.

Exhibit J: Outline of the statement of Ted Schelenski, representative of the Applicant.

Exhibit K: Parking Plan.

VI.
The Applicant Complies with the Provisions of Section 214 of the Zoning Regulations and is Therefore Entitled to Special Exception Relief.

Under Section 214 of the Zoning Regulations, in the R-1 zone, accessory parking spaces are permitted on a lot other than that containing the main use if approved by the Board of Zoning Adjustment. Accessory parking for a one-family dwelling is not permitted under this section, therefore, the Applicant is seeking variance relief from Section 214.1 to allow parking by residents of the square on evenings and weekends. Further, the granting of this variance will allow the Applicant to lease some of the parking spaces to area residents on a monthly basis, if requested by the community.

The Applicant complies with many relevant provisions of Section 214. First, the spaces are located in an open area as required by Section 214.2. In addition, they are located in their entirety within 200 feet of the area to which they are accessory as required by Section 214.3.

The parking spaces are used to serve as accessory parking for the Heritage Foundation at 214 Massachusetts Avenue, NE, which is located within 200 feet of the site. However, the Applicant is also seeking variance relief from this provision to allow accessory parking by other potential users, including area residents, located more than 200 feet away in the event that the Heritage Foundation no longer requires the spaces. The Applicant is also seeking a variance from the requirement under Section 214.4 that the accessory parking spaces must be contiguous to or separated only by an alley from the use to which they are an accessory. In this case, the Heritage Foundation is located across Third Street, NE, from the subject square.

Under Section 214.5, the Applicant must comply with Section 2303 of the Zoning Regulations. Certain of the requirements in this section do not pertain to the Subject Lots because, due to the surrounding alleys, there is no contiguous residential property. The Applicant has complied and will continue to comply with the requirement that the lot will be kept free of refuse and debris through daily cleaning. The lot has been paved and 5 percent of its surface is landscaped. Pursuant to the suggestion of a member of the community, the Applicant has planted trees in accordance with the prior approved landscape plan.

Under Section 214.6, the Applicant must demonstrate that it is 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 (i) strip zoning or shallow zoning depth, (ii) restricted lot size caused by adverse adjoining ownership or substantial improvements adjoining or on the lot, (iii) unusual topographical grades, shape, size or lot dimensions, (iv) the lack of appropriate egress or ingress, or (v) traffic hazards. The Applicant complies with this section because additional accessory parking for the Heritage Foundation cannot be located on the principal lot because of the restricted size of the lot caused by adverse adjoining ownership.

Further, accessory parking for many of the owners in the square cannot be located on their lots because of lack of appropriate egress and ingress and restricted lot size.

Section 214.7 requires that the parking spaces must be located so that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions. In connection with the 1991 and 1997 applications, the owner agreed to certain conditions after extensive discussions and meetings with community members to address any potential impacts.

In summary, these conditions address:

- The daily cleaning of the parking lot
- The lighting of the parking lot
- The layout of the parking spaces in a manner that provides ample access to the spaces
- The landscape plan which includes trees
- The designation of a community contact person to ensure that the parking lot is operated with minimal impact on the community
- The use of the spaces by community members after 7:00 p.m. and on the weekends
- The availability of five spaces for rental by area residents.

Significantly, a parking lot has operated on Lot 62 since 1975. This parking lot has had minimal impacts on the community. The expansion of the accessory parking to Lots 43 and 810 in 1991 has not created any adverse impacts on the community over the past twelve years.

VII.
Applicant Complies with the Provisions of Section 3103.2 so as to be Entitled to the Requested Area Variance Relief

The Applicant is seeking three minor variances in connection with the proposed accessory parking. These minor variances are needed to allow the use of the parking lot by

single family homeowners that might not be within 200 feet of the site and the use of the site for accessory parking for a principal use on a lot that is not contiguous to the site.

The test for variance relief is threefold. First, the Applicant must demonstrate that the property is affected by exceptional or extraordinary conditions. Second, it must be shown that in light of these conditions, the strict application of the Zoning Regulations would result in practical difficulties or undue hardship. Finally, the Applicant must show that the granting of the requested relief will not result in detriment to the neighborhood nor impair the intent, purpose and integrity of the zone plan.

A. The Subject Lots are Affected by Several Exceptional and Extraordinary Conditions.

There are several extraordinary or exceptional situations and conditions affecting the Subject Lots which the Board found compelling in the 1984, 1988, 1991 and 1997 cases and which remain equally relevant today:

- The unusually large size of the Subject Lots
- The extensive nature of the alley system surrounding the Subject Lots
- The lengthy history of efforts to develop the Subject Lots
- The location of the Subject Lots in an historic district
- The parking lot is located within 200 feet of the primary use that it will serve, however, it is separated from the use by more than an alley. The unusual interior location of these large lots and the predominant residential use in the square creates a situation where variance relief would be required for the use of the Subject Lots as accessory parking by virtually any user. In light of Section 214.4 of the Zoning Regulations, variance relief is required to use the Subject Lots as accessory parking for almost any commercial user since the commercial users in

need of accessory parking are located outside of Square 780.

B. Strict Application of the Zoning Regulations in this Case Would Impose Practical Difficulties on the Applicant.

As previously discussed, the practical difficulties standard applies to the requested area variances. Specifically, the test is whether, due to the existence of exceptional conditions affecting the property, it is practically difficult to comply with the Zoning Regulations. Further, the Applicant must establish that the granting of the area variance relief will not result in detriment to the public good nor impair the intent, purpose or integrity of the zone plan. The requested relief is necessary to allow for accessory parking spaces that will serve residents in the square and the Heritage Foundation, an area office use. If variance relief is not granted, the spaces could not be used by the residents who greatly need parking during evening and weekend hours. Further, the spaces could not be used by the Heritage Foundation or any nearby commercial users. It is well established from the record in the previous BZA cases that there is a critical need for parking in the area.

C. The Requested Special Exception and Area Variance Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Substantially Impairing the Intent, Purpose and Integrity of the Zone Plan.

The granting of the requested special exception and variance relief will allow for the continuation of a reasonable interim use of the site. In light of the community's clearly expressed concerns over the previously proposed projects, the Applicant's options for the site are severely limited. The use of the site for accessory parking addresses a need for parking in the neighborhood and will benefit a longstanding office use as well as residents of the area.

Further, there is wide community support for the Application. Advisory Neighborhood Commission (ANC) 6C voted to support the Application for seven years. The Capitol Hill Restoration Society unanimously approved the Application. Though no official action has been

taken by the Stanton Park Neighborhood Association (SPNA) as of the submission of this document, SPNA's meetings with the Applicant have been highly favorable and supportive of the Application.

VIII.
Witnesses

A. Ted Schelenski, Representative of the Applicant.

IX.
Conclusion

In summary, the Applicant's proposal offers a reasonable interim use for the site. The requested special exception and variance relief should be granted.

Respectfully submitted,

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Dated: June 15, 2004

Document #: 1401357 v.1

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15579 of the Ralph D. Kaiser Company, Inc., and the Carley Stables, Inc., pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 215* to establish accessory parking spaces, a variance to allow accessory parking spaces for single-family dwellings to be located elsewhere than on the same lot as the dwellings (Subsection 215.1), a variance to locate accessory parking spaces more than 200 feet from the area to which they are accessory (Subsection 215.3), and a variance to allow accessory parking spaces that are not contiguous to or separated by an alley from the area to which they are accessory (Subsection 215.4) for accessory parking spaces on alley lots in a CAP/R-4 District at premises 415 3rd Street, N.E., 416 and 424 4th Street, N.E. (Square 780, Lots 43, 62 and 810).

HEARDING DATE: November 20, 1991
DECISION DATES: December 4, 1991 and January 8, 1992

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The subject application involves lots 43, 62 and 810, three alley lots situated in the interior of Square 780. The boundaries of Square 780 are 4th Street N.E. to the east, 3rd Street N.E. to the west, E Street N.E. to the north and D Street N.E. to the south. The property is located on Capitol Hill in the Ward Six neighborhood of Stanton Park. The property is zoned CAP/R-4.

2. The subject lots are unusually large. The majority of the lots in Square 780 and in the surrounding area are about one third the size of the subject lots. Lot 43 contains 3,723 square feet in land area. Lot 810 contains 3,850 square feet of land area. These two lots contain badly deteriorated brick buildings that were originally constructed for use as stables and were later converted to commercial use. These buildings are in the process of being demolished. Lot 62 is comprised of 4,554 square feet of land area. The applicants currently use this lot as a 17-space accessory parking lot approved by the Board in 1986 (BZA Order No. 14449). The combined total land area of the three lots is 12,127 square feet. A fourth lot, Lot 42, is located in the interior of Square 780 and contains 15 parking spaces. However, Lot 42 is not included in the subject application.

*Section 214 in the September 1991 edition of 11 DCMR

3. The square is characterized by an extensive alley system. A 10-foot wide alley runs north to E Street. A 15-foot wide alley bisects the square in the east-west direction and provides access to the interior lots from both 3rd and 4th Streets. There are 25 and 30-foot wide interior alleys abutting the subject site. A survey of 50 squares surrounding the subject square indicates that the extensive alley system is unique for the area.

4. Most of the structures that are located on the street frontages (periphery) of Square 780 are single-family rowhouses. The applicant has indicated that 63 dwelling units and one office establishment are located within the square. The typical building is two stories high and contains approximately 2,000 square feet of gross floor area. Square 780 is zoned for moderate density residential development. Nonresidential-related pedestrian and vehicular traffic is limited with the exception of the applicant's existing parking lot.

5. Located one block north of the site is the Stuart-Hobson Middle School. Stanton Park is located to the south. Although the subject site and square are zoned for residential use, there are diverse land uses south and west of the site. Low-density commercial development (retail and office uses) are located along Massachusetts Avenue to the south. Union Station, a regional center that contains commercial activity, is located to the west. Medium and high-rise office development is also located to the west of the site.

6. The R-4 District permits matter-of-right development of residential uses including detached, semi-detached and single-family dwellings and flats with a minimum lot area of 1,800 square feet, a minimum rear yard depth of 20 feet and a maximum height limit of three stories/40 feet. A maximum lot occupancy of 60 percent is allowed for a row dwelling, flat, church or public school.

The Capitol Interest (CAP) District was established to promote and protect the public health, safety and general welfare of the U.S. Capitol precinct and the adjacent area in a manner consistent with the goals and mandates of the United States Congress.

7. The applicants propose to use the lots for accessory parking spaces. The applicants therefore request a special exception under Section 215 of the Zoning Regulations to establish the proposed use. Section 215 provides as follows:

215 **ACCESSORY PARKING SPACES (R-1)**

215.1 Accessory passenger automobile parking spaces elsewhere than on the same lot or part of a lot on which the main use is permitted, except for a one-family dwelling, shall

be permitted in an R-1 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title, subject to the provisions of this section.

215.2 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.

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

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

215.5 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 Section 2303.3 modify or waive the conditions specified in Section 2303.2 where compliance would serve no useful purpose.

215.6 It shall be 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.

215.7 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.

215.8 Before taking final action on an application for use as an accessory parking space, the Board shall submit the application to the D.C. Department of Public Works for review and report.

8. The applicants propose to create a total of 55 parking spaces to serve as accessory parking mainly for the Heritage Foundation at 214 Massachusetts Avenue, N.E. The applicants stated that the application complies with all of the relevant provisions of Section 215. The applicants stated, however, that they are seeking variances from Subsections 215.1, 215.3 and 215.4 for reasons provided herein.

9. Subsection 215.1. While the applicants will provide accessory parking for the Heritage Foundation, they also plan to lease five (5) parking spaces to area residents on a monthly basis. Therefore, the applicants are requesting a variance from Subsection 215.1 which does not allow accessory parking for single-family dwellings elsewhere than on the main lot where the main use is permitted.

10. Subsections 215.2 and 215.3. The applicants stated that the spaces are located in an open area within 200 feet of the area to which they are accessory. However, the applicant is seeking variance relief from Subsection 215.3 to allow accessory parking spaces more than 200 feet from the area to which they are accessory. The applicants wish to allow parking by other potential users, including area residents, located more than 200 feet away in the event that the Heritage Foundation no longer requires the spaces.

11. Subsection 215.4. The applicants are requesting a variance from the requirement that the parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory. The applicants stated that the Heritage Foundation is located across 3rd Street from the subject square. Therefore, more than an alley separates the parking lot and the main use site.

12. Subsection 215.5. The applicants testified that the relevant provisions of chapter 23 will be met as required by Subsection 213.5. For the subject application, Section 2303 would be applicable. However, the applicants pointed out that certain of the requirements in this section do not pertain to the subject lot because, due to the surrounding alleys, there is no contiguous residential property. The applicants stated that the proposal will comply with the requirements related to paving the lot. Also the lot will be kept free of refuse and debris. It will be cleaned on a daily basis. Further, five percent of the surface of the lot will be landscaped. The applicant has proposed to include trees in the landscape plan.

13. Subsection 215.6. The applicants testified that additional accessory parking for the Heritage Foundation cannot be located on the principal lot because of the restrictive size of the lot caused by adverse adjoining ownership.

14. Subsection 215.7. The applicants testified that as a result of extensive communication with members of the community, they are proposing several conditions for the operation of the lot to avoid any objectionable impact. These conditions address a number of issues.

Hours of operation. The lot shall operate between 7:00 a.m. and 7:00 p.m. Monday through Friday. The lot will be available for use by area residents between 7:00 a.m. and 7:00 p.m., Monday through Friday and all day on weekends.

Cleaning. The lot will be cleaned on a daily basis.

Lighting. Currently, there are four street lights in the interior of Square 780. Until recently, two of these lights were in disrepair. The applicants have arranged for the repair of these lights, which they believe now provide adequate lighting in the interior of the square.

Layout. The parking spaces are arranged so as to provide ample access.

Landscaping. Five percent of each lot will be landscaped. The rectangular portion in the center of each of the three lots constitutes the five percent landscaping. The applicants requested flexibility to increase the landscaped area if some of the parking spaces can be shortened. The applicants plan to use plantings that require little maintenance and water and will not soil the cars. They will place two or three trees in each planting square depending on the size of the trees.

Community liaison. The applicants will designate a community contact person to ensure that the lot is operated with minimal impact on the community. This contact person can be reached by community members to express any concern about the operation of the lot.

15. The applicants testified that the application meets the requirements for an area variance. There are exceptional or extraordinary conditions that create a practical difficulty or undue hardship for the owner. These conditions include the unusually large size of the lot, the extensive nature of the alley system surrounding the lots, the lengthy history of efforts to develop the lots and the location of the lots in the Capitol Hill Historic District.

The applicants testified that the proposed accessory parking is located within 200 feet of the use that it will serve. However, it is separated from the use by a street, not an alley. Variance relief is therefore required because of the unusual interior location of these lots and the predominant residential use of the square.

In addition, variance relief is required to allow community members to park in the lot during evening hours. The variance to allow use by single-family homeowners is necessary for this lot to serve the community as specifically requested by the community.

The applicants stated that if the variances are not granted the spaces could not be used by the Heritage Foundation or any nearby commercial users since the commercial establishments in need of accessory parking are not located in Square 780.

The applicants' traffic engineer evaluated the traffic and parking conditions in the area and the impact that the proposed use will have on traffic. He submitted extensive material on these issues, some of which are discussed herein.

Existing roadway and access conditions in the area. For purposes of this analysis, the study area was defined as the roadways bordering Square 780, and the alleys providing access to the interior of the square. The principal roadways serving the study area are as follows:

- Massachusetts Avenue: This is a major six-lane arterial running east-west just south of Square 780. This roadway provides three travel lanes in the peak direction of travel during the AM and PM peak hours, and two lanes in each direction during off-peak hours. Metered parking with two-hour time restrictions is provided along both sides of the roadway during the off-peak period. Massachusetts Avenue currently serves approximately 16,300 vehicles per day in the vicinity of Square 780.

- D Street: This is a 36-foot wide collector street, serving two-lane traffic flow one-way eastbound within the defined study area. Parking is allowed on both sides of the roadway.

- Fourth Street: This is a 36-foot wide collector roadway, serving a single lane of southbound traffic at all times.

Third Street and E Streets are both essentially local streets providing some through traffic service. This is typical of such streets within the downtown core of the city.

Existing traffic conditions. In order to evaluate existing traffic flow conditions, field observations were made within the defined study area during the morning and afternoon peak and off-peak periods. In addition, turning movement counts were undertaken at the four study area intersections. The PM peak hour turning movement volumes, and the lane configuration of the study area roadway network, were shown. Based on this data, capacity analyses were undertaken for these intersections. The results indicate that the intersections all currently operate at Level of Service B and better.

The field observations and preliminary capacity analyses indicate that vehicular operations at the intersections considered were quite efficient and acceptable, particularly considering the urban environment within which the subject property is situated. This is due in part to the fact that flow along several of the streets is restricted to one-way operation. The configuration of the Massachusetts Avenue/3rd Street/D Street intersection is somewhat complex; however, operations are facilitated because several approaches are one-way, and some conflicting turns are eliminated.

Existing traffic conditions - Interior of Square 780. The interior of Square 780 consists of four lots. A 15-foot alley runs east-west between 3rd and 4th Streets, and driveways of varying widths separate the lots and rowhouses which form the exterior portion of the square. Two ten-foot wide alley-stems, situated just north of D Street and just west of 4th Street, connect the interior of the square with 3rd Street, and with E Street, respectively. All of the alleys permit two-way traffic and the posted speed is 15 miles per hour. There are a total of 63 dwelling units and one office along the exterior portion of the square. Of these, 44 houses have rear yards with actual or potential garages requiring auto access. Of these 44 houses, 25 appear to utilize the interior portion of the square for actual garage access. Based on field observations on Thursday, October 17, 1991, and again on Tuesday, October 22, 1991, it was noted that the dwellings within Square 780 do not generate significant vehicular or pedestrian traffic within the interior of the square during the morning and afternoon peak periods. Based on the data collected and field observations, it is also apparent that an insignificant amount of through traffic uses the alley system to access 3rd Street from 4th Street, and vice versa. Illegal parking in the alleys was not found to be a major activity nor did such parking present a constraint to vehicular flow within the alley network.

General Parking Conditions. A total of 133 on-street parking spaces are provided on the roadways bounding Square 780. An inventory of the spaces provided is as follows:

Street	Parking Category	No. of Spaces	Percent of Total Spaces
D Street (between 3rd & 4th Streets)	Unmetered*	17	13%
	Metered	9	7%
E Street (between 3rd & 4th Streets)	Unmetered*	33	25%
3rd Street (between D & E Streets)	Unmetered*	32	24%
4th Street (between D & E Streets)	Unmetered*	42	31%
TOTAL		133	100%

* Time restricted, except for Zone 6 permit holders.

The field observations showed that except for D Street between 11:00 p.m. and 7:30 a.m., the streets are very heavily utilized for parking during a typical weekday. Field surveys were conducted on Tuesday, October 22, 1991, to observe vacant/available parking spaces. (The data was presented in the traffic report). The data indicated that during the 7:00 to 8:00 p.m. period, when the highest number of vacant parking spaces was observed, overall on-street occupancy was 85 percent. On-street occupancy was relatively high over the observed 2:00 to 8:00 p.m. period with the highest occupancy level (95 percent) being observed during the 5:00 to 6:00 p.m. period. Several drivers were observed circling the block in search of parking spaces at different times during the 9:00 a.m. to 6:00 p.m. period. Apart from the high demand for parking spaces around Square 780, another factor contributing to the observed tight parking situation is that parking restrictions were evidently not enforced. Thus, there is a low turnover of vehicles parked within the area. Based on the above information the provision of additional off-street parking spaces within Square 780 would improve the parking demand-supply situation currently observed on the roadways adjacent to this square.

Impact of the proposed use. The traffic engineer observed that the Heritage Foundation is located in Square 790, immediately to the north of Square 780. It generally operates between 9:00 a.m. and 5:30 p.m. on weekdays, and has a flexible work-hour program for its employees. The majority of the parking spaces on the subject lots will be used by the organization's employees. Visitors will not be allowed to use the lots. The general arrival/departure pattern for employee vehicles using the spaces will be as follows:

- Eighty percent (80%) of the spaces will be occupied on a daily basis allowing for typical absenteeism, travel etc;

- Morning arrivals would occur generally between 7:30 and 10:00 a.m., with about 50 percent (i.e., 25 vehicles) arriving during the a.m. peak hour. Departures during this period will be minimal;

- A range of 15-25 vehicles would leave and return to the lots between 11:00 a.m. and 2:00 p.m.;

- Peak occupancy would typically occur between 10:00 and 11:00 a.m., and between 2:00 and 3:00 p.m., when 80 percent of the spaces would be occupied; and

- Departures would occur generally between 4:30 and 7:00 p.m., with an estimated 40 percent (i.e., 20 vehicles) leaving during the p.m. peak hour. Arrivals during this period would be minimal.

The applicant has also indicated a readiness to designate someone as the contact person/parking coordinator, who will monitor the operation of the lots, and work with representatives of the residents of Square 780. Alternatively, the arrangement will be with a single user, and this will facilitate use patterns similar to those of the Heritage Foundation employees.

In addition to the operational elements discussed above, it is noted that the parking layout proposed for the subject lots would increase the widths of the adjacent alleys to a minimum of 15 feet, except for the 10-foot alley-stems connecting to 3rd Street and D Street. The proposal would thus enhance access and circulation within the square considerably. In fact, the main east-west alley will be 20 to 21 feet in width. The plan calls for 13 compact spaces to have direct access to the main alley serving the lots. This arrangement should result in approximately five vehicles entering or leaving the lots directly from the main east-west alley during the peak arrival or departure hours. Given the low volume of "through" traffic, this should not present a significant safety or operational constraint.

Based on the foregoing data and discussion, the traffic engineer stated that the proposed use of the three lots should not have a significant adverse traffic impact on the lots interior to Square 780. In fact, with the demolition of the existing structures on lots 43 and 810, visibility would be increased considerably, thus enhancing safety and operational efficiency. Given the applicants' proposal for the management of and parking operations on the site, the proposed use should result in no adverse impact to residents within the area.

Recommendations and the proposed management plan. In examining the elements of the proposed parking management plan, consideration was given to the following:

(a) guidelines and policies adopted by the District of Columbia pertaining to access and circulation within alleys;

(b) general guidelines recommended by network organizations such as the Institute of Transportation Engineers (ITE) and the American Association of State Highway and Transportaion Officials (AASHTO) for design and access management within alleys; and

(c) comments made by local residents pertaining to perceived operational problems and issues.

The District of Columbia Bureau of Traffic Services indicated that the city currently has no documented policies relating to the design and operation of alleys. However, the Bureau typically requires the following:

(i) Widths to be in the range of 15 feet or greater;

(ii) All-weather surfaces to be provided;

(iii) No speed bumps to be placed in alleys. (In fact, the city has a policy of not permitting speed bumps on any of its roadways).

(iv) Fifteen (15) MPH as the standard speed limit;

(v) No parking within alleways, normally to be enforced by the police; and

(vi) Any change in existing traffic directional flow (i.e., two-way to one-way, closure, etc.) can only be implemented based on a petition by a minimum of 80 percent of the property owners/residents served by that alley.

AASHTO and ITE recommend that alleys serving residential areas be a minimum of 16 feet wide. Where two alleys of such width intersect, a triangular corner cut-off of about ten feet should be provided. Also, curb return radii of at least five feet should be provided at intersections with adjacent streets. Other guidelines generally pertain to grades and drainage, subjects which are outside the scope of this study.

Based on the District of Columbia's policies and generally accepted guidelines, it is felt that the proposed parking layout, including the proposed increased alley widths, would quite adequately serve

the needs of Square 780. Furthermore, with the applicants' proposal for the management and supervision of the lots, and the user characteristics projected, safe and efficient improved operation should result.

Based on issues raised by residents of Square 780 during the Advisory Neighborhood Commission meeting held on October 16, 1991, this study has also examined potential modifications to the existing alleyway circulation pattern. It is the applicants' view that the existing access plan with the geometric adjustments proposed will be quite adequate. However, modification of the traffic flow patterns along the alley stems at the southwest and northeast corners of the square to one-way eastbound and one-way northbound, respectively, may enhance circulation to some degree.

The traffic engineer noted that this study has not determined the above-mentioned traffic flow modification to be necessary to facilitate the applicants' proposal. Should the residents desire this change, they would need to initiate the necessary action through procedures established by the city.

Accidents. In response to concerns about safety expressed by area residents, the traffic engineer obtained traffic accident data from the Department of Public Works, Bureau of Traffic Services. This data indicated that the number of accidents over the past three years at the adjacent intersections was very low.

At the intersection of Massachusetts Avenue and 3rd Street, where the highest number of accidents occurred, there was an average of three accidents. This number is very low considering the volume of traffic that uses this compound intersection of Massachusetts Avenue, 3rd and D Streets.

At 3rd and E Streets, there were no accidents. At Fourth and E Streets there was an average of 0.3 accidents, less than one accident per year. And at Fourth and D Streets, there was an average of 1.3 accidents per year.

Therefore, from the safety standpoint, no problems were found.

16. The applicants maintain that the parking spaces are located so that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions. The applicants requested approval of the application for a five year period.

17. The Office of Planning (OP) by memorandum dated November 15, 1991 and through testimony at the hearing recommended conditional approval of the subject application. The Office of Planning noted the location of the site, the proposed use and the applicable regulations.

OP stated that the site is located in the Capitol Interest (CAP) District. Section 1201.3,(a), (1) of the Zoning Regulations prohibits the use of R-4 zoned property in the CAP District for a parking lot if it did not exist on or before July 25, 1975. It should be noted, however, that the applicants are applying for zoning relief to use the site for accessory parking spaces rather than as a standard parking lot.

OP stated that five spaces on lot 43 and five spaces on lot 810 would be made available to neighborhood residents to rent at the market rate during the day. OP pointed out that there will be no parking attendant at the site. However, the applicant is willing to discuss other suggestions for operating the parking lots.

OP stated that the applicants are proposing to install nighttime lighting in the landscaped area that would be located in the center of each of the three lots. The proposed lighting would augment the lighting which is provided on public space within the interior of the square. The Office of Planning is, however, concerned about safety issues associated with the people who would be travelling to the site on foot, by alleyway at dusk or at night. OP recommends that the applicant identify ways to provide added security for employees of the Heritage Foundation, who would be using the accessory parking spaces, especially at night. Or suggested that people be encouraged to walk to the site in pairs or groups, when possible. Residents of the square could be asked to police the rear of their property on a regular basis. A sign could be posted on the property identifying a contact person for emergencies. OP indicated that it is not aware of how security is currently implemented, or if a security system is in place.

OP stated that the property is unique because of its location. It is surrounded by alleyways. Furthermore, there is only a limited number of squares in the city and in the Capitol Hill neighborhood that contain such a large land mass in their interior. In addition, Lot 62 has been used as a parking lot since 1976 and it appears that it has harmoniously existed within the community. (The applicants do not have a certificate of occupancy to operate the existing parking lot.) Accordingly, the requested variance in this case can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map. There is a limited number of matter-of-right uses to which the land could be put without zoning relief.

OP believes that the proposed accessory parking spaces would help to alleviate on-street parking problems and congestion in the neighborhood. However, OP acknowledges that there would be an increase of approximately 36 automobiles entering and leaving the site during the morning and evening hours. Accordingly, adequate controls should be in place to ensure that traffic congestion does

not occur; that noise is minimized; that the site is not used as a commercial parking lot; that precautions are taken to avoid security problems; and that the site is serviced on a regular basis to discourage illegal activities such as loitering and dumping.

OP is of the opinion that the proposal would be in harmony with the general purpose and intent of the Zoning Regulations and Map and would not have a substantial adverse effect on neighboring properties. OP recommended approval of the application subject to the following conditions:

(1) Approval should be for a period of two years.

(2) The number of parking spaces should not exceed 55 spaces. The parking layout should be as identified on the site plan contained in this application.

(3) The applicant should work with the community to fine-tune traffic flow patterns in the alleyway and to enhance the existing traffic circulation system.

(4) The site should be used primarily by a single user (the Heritage Foundation) and residents who reside within the surrounding neighborhood.

(5) All areas devoted to driveways, access lanes, and parking areas should be maintained with a paving material forming an all-weather impervious surface in accordance with the District's regulations and standards.

(6) Bumper stops should be erected and maintained.

(7) No vehicle or any part thereof should be permitted to project over the building line or on or over the public space.

(8) All parts of the lot should be kept free of debris and should be landscaped. Landscaping should be maintained in a healthy growing condition as well as in a neat and orderly appearance.

(9) No other use should be conducted from or upon the premises and no structure other than an attendant's shelter should be erected or used upon the premises unless such use or structure is otherwise permitted in the CAP/R-4 District.

10. Any lighting used to illuminate the parking lot or its accessory building should be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

18. The Office of Planning referred the application to the following government agencies for review and comment:

1. Department of Public Works;
2. D.C. Fire Department;
3. Metropolitan Police Department;
4. Department of Consumer and Regulatory Affairs; and
5. Department of Housing and Community Development.

Responses were received from the Department of Public Works, the Fire Department and the Police Department.

19. The Department of Public Works (DPW), by memorandum dated November 12, 1991, stated that the subject parking spaces will be located in the center of Square 780. A ten-foot wide public alley runs through the square from Third to Fourth Street.

The applicants have indicated that the parking spaces will conform to all DPW standards. The applicants will widen the ten-foot wide public alley by an additional five feet by way of an easement. Furthermore, the 15-foot wide public alley will be widened with a six-foot and a five-foot easement for lots 43 and 62, respectively.

The Department of Public Works does not believe that the applicants' proposal will have an adverse transportation impact in the neighborhood. Therefore, the department has no objection to the request.

20. By memorandum dated October 9, 1991, the Fire Department stated that it has evaluated the zoning request as listed in the application to determine its effect on emergency operations. Based on its review of the application the Fire Department stated that it has no objection to the relief requested.

21. By letter dated September 17, 1991, the Metropolitan Police Department stated that the property under review is located at 415 3rd Street, N.E.; 416 4th Street, N.E. and 424 4th Street, N.E. The property is located in the First District and is patrolled by Scout Car 20.

The Police Department stated that based upon its review of this application, it does not appear that the change proposed by this application will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Accordingly, the department does not oppose this application.

22. Advisory Neighborhood Commission (ANC) 6A, by report dated November 8, 1991, stated that the proposed accessory parking spaces will be located within the boundaries of the Capitol Hill

Historic District and have been the center of considerable community interest and debate with many previous unrealized proposals.

Both the community and the applicant recognize that this special exception and variances are temporary until a more suitable use of the lots may be agreed upon. However, the community expressed the following concerns:

- The proposed parking lots will create an additional traffic burden on the alleys, and combined with the current residential traffic,

will amount to a use of approximately 100 cars per day;

- The majority of the parking spaces will be leased to the Heritage Foundation, which will attract more cars to the area; and

- There are currently two day care centers adjacent to the lot, the increased traffic will pose a greater safety hazard to the children.

Upon consideration of the matter, the ANC voted to approve the application for a period not to exceed three years subject to the following provisions:

1. That the Department of Public Works conduct a traffic safety study at the applicants' expense;

2. That the BZA postpone a decision on this application until completion of the DPW safety study; and

3. That the applicants develop a comprehensive traffic management plan from the DPW safety study, which will be attached to the variance and special exception and will include the specific community concerns.

No one appeared at the public hearing to testify on behalf of ANC 6A.

23. The Capitol Hill Restoration Society (CHRS) submitted a letter dated November 19, 1991, stating that it supports the application for a two-year term. However, CHRS expressed concerns about ingress and egress, lighting, landscaping and crime.

24. One neighbor residing at 312 D Street, N.E. testified at the public hearing but did not support or oppose the application. She stated, however, that she has never supported the principle of locating parking lots in residential districts, especially residential areas that are located in an historic district and in the CAP overlay as in the subject application.

She expressed some concerns about the proposal. She stated that those who use the alley will have problems maneuvering, especially during peak hours in the morning and evening. She believes that the parking lot use will cause congestion because there are two day care centers in the area where children are dropped off in the morning and picked up in the evening. There is also a school bus that uses the alley to service the area. Furthermore, there are trash trucks that occasionally use the alleys. Sometimes they come at 6:00 or 7:00 a.m., and sometimes they do not come until 9:00 a.m. Also, there is a small restaurant at 320 D Street that has private trash collection. The witness testfied that to manage the traffic, the parking lot needs a manager.

The witness was also concerned about the exhaust fumes that will be released into the air and the adverse impact on the environment. She stated that it may be better for the cars to back into the parking spaces so that their exhaust fumes do not go into the residents' rear yards.

Finally, she testified that if the cars will be backing out of the parking spaces, the applicants should consider the use of mirrors to make maneuvering safer.

25. No other witnesses appeared at the hearing to testify in support or opposition to the application.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. According to the proposed plans, some of the alleyways will be widened. This will facilitate maneuvering within the square.

2. The applicants will designate a community liaison to monitor the operation of the lot and to address concerns expressed by area residents.

3. The subject property is unusual because of the location of the lots within the interior of the square and the configuration of the alley system surrounding the property.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking a special exception to establish an accessory parking lot in a CAP/R-4 District. The granting of a special exception requires a showing through substantial evidence that the relief requested is in harmony with the general purpose and intent of the Zoning

Regulations and Map and will not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The applicant must also meet the requirements of 11 DCMR 215 regulating accessory parking spaces.

The Board concludes that the applicant is also seeking variance relief from 11 DCMR 215.1, 215.3 and 215.4 to establish the lot on the subject property. The granting of a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the burden of proof established for variance relief. The Board concludes that the location of the property entirely within an alley system surrounded by residential uses is a unique condition which creates a practical difficulty for the owner in developing the property in accordance with the Zoning Regulations. The Board concludes that the application has been designed so that it will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

Having met the requirements for variances from Subsections 215.1, 215.3 and 215.4, the Board concludes that the applicant meets the remaining requirements of 11 DCMR 215 for special exception relief. The Board concludes further that the relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board concludes that the accessory parking lot use will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board has accorded ANC 6A the "great weight" to which it is entitled.

In light of the foregoing, the Board concludes that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of **FIVE YEARS.**

2. The number of parking spaces shall not exceed 55.

3. Wheel stops shall be erected and maintained at the top of each parking space.

4. Landscaping shall cover a minimum of five percent of each lot. The landscape plan shall include a minimum of four male ginko trees. The applicant shall retain flexibility to increase the amount of landscaped area.

5. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.

6. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.

7. All parts of the lots shall be kept free of refuse and debris and shall be landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

8. No other use shall be conducted from or upon the premises and no other structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

9. Any lighting used to illuminate the accessory parking areas shall be arranged so that all direct rays of such lighting are confined to the surface of the parking lot.

10. The lot shall be cleaned daily.

11. The applicant shall designate a community contact person to ensure that the lot is operated with minimal impact on the community. The contact person shall be able to be reached by community members to express any concerns about the operation of the lot.

12. The lot shall be available for use by community members after 7:00 p.m. and on the weekends.

13. A total of five spaces shall be made available at market rates for monthly rental by area residents.

VOTE: 4-0 (Paula L. Jewell, Sheri M. Pruitt, and Carrie L. Thornhill to grant; John G. Parsons to grant by proxy; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Robinson

MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: SEP 28 1992

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15579Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15579

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on SEP 28 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Allison C. Prince, Esquire
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Ralph D. Kaiser
2626 Pennsylvania Avenue, N.W., #301
Washington, D.C. 20037

Becky Fredriksson
312 D Street, N.E.
Washington, D.C. 20002

Craig Lisk, Chairperson
Advisory Neighborhood Commission 6A
1341 Maryland Avenue, N.E.
Washington, D.C. 20002

Madeliene H. Robinson

MADELIENE H. ROBINSON
Acting Director

DATE: SEP 28 1992

15579Att/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16250 of Kaiser Investments Company, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 214 to continue accessory parking spaces, a variance to allow accessory parking spaces for single-family dwellings to be located elsewhere than on the same lot as the dwellings (Subsection 214.1), a variance to locate accessory parking spaces more than 200 feet from the area to which they are accessory (Subsection 214.3), and a variance to allow accessory spaces that are not contiguous to or separated by an alley from the area to which they are accessory (Subsection 214.4) for accessory spaces on alley lots in a CAP/R-4 District at premises Rear 415 3rd Street, N.E., Rear 416 and 424 4th Street, N.E. (Square 780, Lots 43,62, and 810).

HEARING DATE: July 16, 1997
DECISION DATE: July 16, 1997 (Bench Decision)

SUMMARY ORDER

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 Advisory Neighborhood Commission (ANC) 6A and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 6A. ANC 6A, which is automatically a party to this application, did not file a written statement.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 214.1, 214.3, 214.4 and a special exception pursuant to 214. No person or entity appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107 that there exists an exceptional or extraordinary situation or condition related to the property which 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. The Board further concludes that the applicant has met the burden of proof pursuant to 11 DCMR 3108

and 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 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. It is therefore **ORDERED** that the application is **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. Approval shall be for a period of seven (7) years.

2. The number of parking spaces shall not exceed 55.

3. The lots shall be cleaned daily.

4. All parts of the lots shall be kept free of trash and debris.

5. The applicant shall maintain a liaison person to ensure that the lots operate with minimal impact on the community. Community residents must be able to reach the contact person to express any concerns about the operation of the lots.

6. The lots shall be available for use by community members after 7 p.m. and on the weekends.

7. Wheel stops shall be maintained at the top of each parking space.

8. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

9. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a material forming an all-weather impervious surface.

10. No vehicle or any part thereof shall be permitted to project over any lot or building line, or on or over the public space.

11. No other use shall be conducted from or upon the premises and no other structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

12. Any lighting used to illuminate the accessory parking spaces shall be arranged so that all direct rays are confined to the surface of the parking lot.

13. Signage shall be posted on the property, to include a telephone number, identifying the Heritage Foundation as the point of contact.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.1 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.

VOTE: 5-0 (Laura M. Richards, Susan Morgan Hinton, Sheila Cross Reid, Betty King and Maybelle Taylor Bennett to grant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: AUG 20 1997

PURSUANT TO D.C. CODE SEC.1-2531 (1987),SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 310.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

16250/bab

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16250

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 20 1997 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

Allison C. Prince
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W., Suite 1100
Washington, D.C.20006-2897

Ralph D. Kaiser
2500 Q Street, N.W., Suite 226
Washington, D.C. 20002

Marshall Williams, Chairperson
Advisory Neighborhood Commission 6A
MedLink Hospital
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Becky Fredriksson
312 D Street, N.E.
Washington, D.C. 20002

Gretchen Kugel
2604-H South Arlington Mill Drive
Arlington, Virginia 22206

Madeliene H. Dobbins

MADELIENE H. DOBBINS
Director

DATE: AUG 20 1997

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14033, of Stable Associates, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from designs of neon or gas tubing display on buildings to a flat and offices and for a variance from the prohibition against the enlargement of a structure devoted to a nonconforming use (Paragraph 7106.14) or in the alternative, a variance from the use provisions allowing a flat and offices in a building located on an alley lot (Sub-section 3104.3) and a variance from the prohibition against allowing a building on an alley lot to be renovated and enlarged (Sub-section 7606.1) for a proposed renovation and enlargement of a nonconforming structure to be used as a flat and offices on an alley lot in an R-4 District at premises rear 424 4th Street, N.E., (Square 780, Lot 810); and

Application No. 14034, of B.Y. Associates, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a non-conforming use from storage of building material to a flat and offices and variances from the prohibition against allowing an enlargement and addition to a structure devoted to a non-conforming use (Paragraph 7106.14) and from the height requirements (Sub-section 7606.4) or in the alternative, variances from the use provisions allowing a flat and offices in a building located on an alley lot (Sub-section 3104.3), from the prohibition against allowing a building which will be used as a flat and offices on an alley lot to be renovated and enlarged (Sub-section 7606.1) and from the height requirements (Sub-section 7606.4) for a proposed renovation and addition to a nonconforming structure to be used as a flat and offices on an alley lot in an R-4 District at premises rear 415 3rd Street, N.E., (Square 780, Lot 43); and

Application No. 14107, of the Heritage Foundation, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the lot occupancy requirements (Sub-section 3303.1), the rear yard requirements (Sub-section 3304.1), the side yard requirements (Sub-section 3305.1), the prohibition against the construction of an apartment house on an alley lot (Sub-section 7606.1) and from the height requirements (Sub-section 7606.4) to construct a new three story apartment house of four units in an R-4 District at premises rear 422 4th Street, N.E., (Square 780, Lot 62).

HEARING DATES: April 11 and June 27, 1984
DECISION DATES: May 2 and July 25, 1984

FINDINGS OF FACT:

1. The subject application were consolidated by the Board for the purpose of this order since all three lots are intended for consolidated development, many of the facts regarding the three cases are the same, and all three cases were heard and disposed of at the same time.

2. Application Nos. 14033 and 14034 were originally scheduled for hearing on November 16, 1983. At that hearing, the applicants requested, and the Board granted, postponement of the cases until April 11, 1984, to permit the applicants to acquire the third lot, Lot 62, and to file Application No. 14107. The postponement enabled the applicants to provide an overall scheme for development that provided a fifty-fifty mix of commercial and residential use.

3. The consolidated cases were originally heard by the Board on April 11, 1984. At its decision meeting of May 2, 1984, the Board deferred action and scheduled further hearing limited to two issues:

1. In Applications 14033 and 14034, whether the proposed office use is a neighborhood facility, as required by Sub-paragraph 7106.114.

2. In Applications 14033 and 14034, evidence in support of the use variance for flat and office use, and in Application No. 14107, evidence in support of the variance from Sub-section 7606.1 to construct an apartment house, which is also a use variance.

The further hearing was held on June 27, 1984.

4. The subject Lot 810 is located in the center of Square 780 on an alley lot, in an R-4 District, at premises known as rear of 424 4th Street, N.E. The site contains 3,850 square feet of land area and is developed with a three-story red brick stable, built in the 1890's. The stable occupies all of the lot area.

5. The subject Lot 43 is located in the center of Square 780 on an alley lot, in an R-4 District, at premises known as rear 415 3rd Street, N.E. The site contains 3,723 square feet of land area and is developed with a two and three story red brick stable, built in the 1890's. The stable occupies all of the lot area and has suffered extensive fire damage.

6. The subject Lot 62 is located in the center of Square 780 on an alley lot, in an R-4 District, at premises known as rear 422 4th Street, N.E. The site consists of 4,554 square feet of land area and is the largest of the three lots which are the subject of this order. The site is vacant and presently used to park automobiles. The east and south sides of the site abut ten and twenty-five foot wide public alleys, respectively. The site's north and west sides abut fifteen and thirty foot wide alleys, respectively. These sides of the property also face the subject Lots 810 and 43.

7. The square is developed with row dwellings on its street frontages. There is a small restaurant located at the intersection of 4th and D Streets.

8. There are no alley dwellings in Square 780. Several alley rights of way traverse the square. A ten-foot wide alley runs north through to E Street. A fifteen-foot wide alley bisects the square in an east/west direction from 3rd Street to 4th Street. A second east/west ten foot alley leads out to 3rd Street. There are thirty and twenty-foot wide alleys abutting the subject site. The substantial width of these alleys creates an open setting for the lots.

9. Lot 43 was originally a stable and was built in two sections. The exact date of construction of the first part is unknown, but it was not standing in 1887. City documents indicate that it had been completed in 1892. In 1893, the second, or three-story section was constructed. Both sections of the building are typical of late Victorian secondary structures. The materials relate to the other buildings in the alley by virtue of the common bond brick-work and the modest corbel at the roofline.

10. The building on Lot 810 was constructed during the summer of 1891 and was widely known in the neighborhood as the "Old Senate stables." Set on a brick foundation, the building has walls laid in American or common bond pattern. It is 70.4 feet wide and 54.8 feet long and thirty-five feet high at the tallest point of its roof. Original horse stall windows remain in both the east and north walls, the east wall being virtually original. The building's stylistic concept, adapted for utilitarian purposes, is an early example of the classic revival architecture prevalent on Capitol Hill just as the twentieth century began.

11. The use of Lots 810 and 43 as livery stables was relatively short-lived. In the early years of the twentieth century, private garages were constructed behind houses throughout the neighborhood and by 1910 the Stanton Park area had its own auto sales company. By the end of World War I, the building had been converted to commercial and manufacturing use. The last certificate of occupancy for

the building located on Lot 43 was issued November 29, 1962, to Adam Construction Corporation for storage of building materials. The last certificate of occupancy for the building located on Lot 810 was issued September 1, 1972, to World Art Products, Inc., for designing of neon or gas tubing display.

12. By letter dated January 18, 1982, the Mid-Atlantic Regional Office of the National Park Service conditionally determined that the buildings located on Lots 43 and 810 contribute to the historic significance of the Capitol Hill Historic District. The letter states:

> "These former carriage houses/livery stables, like other service and utilitarian structures, were important to the daily life of their neighborhood. For that reason, they make an important contribution to the sense of time and place conveyed by the present neighborhood, and can be certified for the purposes of the Tax Reform Act of 1976 and the Economic Recovery Tax Act of 1981. Since this contribution is dependent upon a narrowly defined character, and in order to ensure that this contribution will continue, certification of this structure is subject to the following condition:
>
> If these structures are rehabilitated, their rehabilitated character must be such that it conveys the original utilitarian nature of the structures."

The applicants proposal is designed to permit adaptive reuse of these structures in accordance with the Secretary of the Interior's "Standards for Rehabilitation."

13. Lots 810 and 43 (Application Nos. 14033 and 14034) were the subject of previous applications before the Board, have a history of nonconforming use, and are both improved with existing historic structures. In light of the similarity of facts as well as the similarity of relief requested, the Board will discuss both lots together for purposes of this order.

14. The applicants propose to restore and structurally alter the existing historic structures located on Lots 43 and 810 to permit conversion to mixed-use consisting of two duplex apartments each, and the remainder office space. Four parking spaces will be provided on Lot 43, one parking space for each residential unit and two to serve the proposed office tenants. Six parking spaces will be provided on Lot 810, one parking space for each residential unit and four to serve the proposed office tenants.

15. When originally filed, the applications proposed general office use. At the public hearing, the applicants

amended their applications to limit the proposed office use to SP-type office uses and lobbyist offices.

16. The proposed mixed use development on Lots 43 and 810 was advertised for relief under two alternative provisions of the Zoning Regulations, either as a special exception under the provisions of Paragraph 7106.11 to change a nonconforming use or as a use variance. For purposes of this Order, the Board will consider first the requested special exception relief for Lots 43 and 810.

17. The threshold requirement for a change in nonconforming use is that the proposed use must be permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right. In the subject case, the previous nonconforming warehouse and manufacturing uses would first be permitted in the C-M District. The proposed mixed use development is first permitted in the C-1 District.

18. The proposed use will not adversely affect the present character or future development of the neighborhood. The restoration of the subject buildings, which are historic structures, will dramatically improve the character of this square and will have a positive impact on the development of the other two alley lots. The proposed mixed use buildings will provide a twenty-four hour residential use to contribute to neighborhood safety and a low-intensity office use.

19. The proposed mixed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibrations, odor, and design and siting. The applicants' traffic and transportation consultant testified that no adverse traffic impacts will result from the granting of the application. Several alley rights of way traverse the square. The substantial width of these alleys creates an open and accessible vehicular circulation system for the square.

20. The applicants propose to provide ten parking spaces on Lots 810 and 43 in the interior of the buildings to ensure that there will be no adverse parking conditions from the renovation of the buildings. Additionally, the companion Lot 62 will provide nine parking spaces to serve the office use. The buildings are also convenient to Metrorail at Union Station to the northwest and the south, to bus routes and to neighborhood serving retail shopping, restaurants, and grocery stores on Massachusetts Avenue in the C-2-A District.

21. The traffic and transportation consultant testified that on the basis of Council of Governments data, an

estimated thirty percent of the employees could be expected to drive to work. With a maximum of forty-four employees, the proposed fifteen parking spaces would be more than adequate for the office employees. Automobile ownership by residents of the area is estimated at 0.4 cars per dwelling unit. With eight units there would be a need for four spaces. The applicants are providing eight spaces for the residential use. The Board finds that the proposed amount of parking is adequate.

22. The traffic and transportation consultant testified that the peak hour trips that could be expected from the development would be approximately seventeen. The intersections that surround Square 780 all operate at level of service "A" during peak hours, with volumes well below the street capacities. The addition of seventeen peak hour vehicles to this street system would have no perceivable effect on traffic operating conditions. The Board so finds.

23. The substantial width of the interior alley system creates an open, well-ventilated and naturally lighted setting for the lots. Further, the structures are of sufficiently large dimensions that multiple dwelling units and the proposed office use can be easily accommodated. As this Board previously found in Applications Nos. 13420 and 13421, this physical situation meets the concerns of Sub-section 7606.1 relating to limited light, ventilation and undue congestion on alley lots. In BZA Orders No. 13420 and 13421, the Board found the basis to grant changes in nonconforming uses to apartment house use. The Board so finds again.

24. The buildings will be renovated to include the retention of the exterior fenestration. Each residential unit will consist of a garage, two full baths, two bedrooms, kitchen, living room and dining room. All four units will have fireplaces, ample storage and closet space.

25. The building on Lot 43 has a flat roof which makes its utilization as a deck possible. Given the 100 percent lot occupancy, the deck access is a good means of achieving exterior residential space for the units. The applicant proposes to enlarge the existing cupola to enable the roof deck space to be used by all tenants of the building. Although this constitutes an enlargement of or addition to the building, this change will only be noticeable from the exterior of this site to a very small extent and is the identical change approved by the Board in the previous case.

26. As for the structure on Lot 810, the applicant proposes to lay a floor in the existing loft area to enable this space to be used by the occupants of the building as living space. Although this constitutes an enlargement of or addition to the building, this change is to the interior

only and therefore will not be noticeable from the exterior. This alteration greatly improves the interior living space and is the identical change approved by the Board in the previous case. For all of the above reasons, the Board finds that proposed use will not create any deleterious external effects.

27. The existing nonconforming uses have not been changed to a conforming or more restrictive use.

28. Pursuant to Subparagraph 7106.114, the proposed change of use is permitted provided the proposed use is a dwelling, flat, apartment house or neighborhood facility.

29. In determining whether a proposed use is a neighborhood facility, this Board considers the character of the surrounding neighborhood, the nature of the proposed use, and the impact on the surrounding neighborhood.

30. The neighborhood in question includes an area roughly within a three to four block radius of the subject property. This neighborhood is not exclusively residential but includes a mixture of commercial and residential uses, including the Capitol and the Senate office buildings. The subject properties are included within the boundaries of the Master Plan for the Capitol Grounds presently pending before Congress.

31. Because of the unique location of the property, the project was designed to attract office users who want proximity to the Capitol. The project also presents a unique opportunity for the living and working arrangement of a mixed use development.

32. The applicants have agreed to limitations on the nature of the office use, its size, and its hours of operation. The office use will be limited to SP-type office users and lobbyist offices. The hours of operation will be from 8:00 A.M. to 6:30 P.M. The gross floor area for the proposed office use will be limited to one-half of the gross floor area for the entire project. The number of office employees will be limited to a maximum of forty-four employees. A minimum of fifteen parking spaces will be provided for the proposed office occupants, one of which will be designated for delivery vehicles. No illuminated signs or displays will be used to advertise the office uses. With these limitations on the proposed office use, the Board finds that it will have minimal impact on the surrounding neighborhood.

33. The applicant and the architect testified that other types of neighborhood facilities such as dry cleaners, grocery stores, and restaurants could have an adverse impact as far as noise, odors, lighting, signage and traffic. The

subject buildings are sufficiently large enough to accommodate twenty small stores which would greatly increase the pedestrian and vehicular traffic in the square.

34. The applicant testified that the proposed mixed-use development would serve the neighborhood because of the opportunity to provide housing, the limited nature of the office use, the increased security of a mixed-use twenty-four hour environment, and the enhancement of what is now a blighted interior of the square. The Board so finds. The Board further finds that because of the unique alley lot location of these properties, the proposed mixed-use development is an appropriate neighborhood facility for this location and would serve the neighborhood.

35. The Board may require modification to the use or the plans to protect property in the neighborhood. The applicants have already made extensive modifications to the plans to address the concerns of the neighborhood and the Office of Planning. These modifications include the acquisition of Lot 62 to provide additional residential use, the redesign of the building on Lot 62 to provide parking for the office use, and the provision of a park and play area for children, in addition to the conditions on the nature, size and operation of the proposed office use as enumerated above.

36. For all of the above reasons, the Board finds that the applicants have met their burden of proof so as to be entitled to special exception relief for the proposed mixed use development. The Board finds that because of the unique location and existing size of these buildings, the proposed mixed-use development would serve the neighborhood to a far greater extent than other types of neighborhood facilities. The Board therefore does not address the need for a variance from the use provisions in Applications No. 14033 and 14034.

37. In applications Nos. 14033 and 14034, the Applicants are also requesting area variances to permit the proposed renovation work. The variances requested for Lots 43 and 810 are minor in nature. For Lot 810, the applicant proposes to lay a floor in the existing loft space to enable that space to be used by the occupants of the building as living space. Although this constitutes an enlargement of or addition to the building, the change will not be discernible from the exterior of the building. For lot 43, the applicant proposes to enlarge the existing cupola to enable the roof space to be used by the occupants of the building as outdoor recreation space. Although this constitutes an enlargement of or addition to the building, the change will be discernible from the exterior of the building to a very limited extent. Because this enlargement causes the height of this portion of the structure to violate the provisions of Sub-section 7606.4, a variance

from this Sub-section is also referenced even though the existing remaining portion of the structure is already in excess of the height permitted and is substantially higher than the portion of the building to be enlarged.

38. The extraordinary or exceptional situation or condition affecting the subject sites stems from the location of the properties in an historic district, the fact that on both the lots there are existing buildings which occupy one hundred percent of the lots, and the fact that the lots are alley lots.

39. The applicants' architect testified that without the requested variance for Lot 43, it is practically difficult to convert the building to multifamily use and provide each unit with access to outdoor recreation space. The roof area proposed to be utilized is existing space which, without the variance relief requested, would simply be left vacant. The Board so found in the previous Application No. 13421 and finds again.

40. The applicants' architect testified that without the requested variance for Lot 810, it is practically difficult to convert the building to multifamily use and allow each unit the desired amount of living space. The loft area proposed to be utilized is existing space which, without the variance relief requested, would simply be left vacant. The Board so found in the previous Application No. 13420 and so finds again.

41. The requested enlargement or addition to the buildings on Lots 810 and 43 will not be visible from the exteriors of the buildings. It enables the properties to be put to an adaptive reuse, adds four units to the housing stock of the city and permits restoration of historic structures.

42. Application No. 14107 is a variance application pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the lot occupancy requirements (Subsection 3303.1), the rear yard requirements (Sub-section 3304.1) the side yard requirements (Sub-section 3305.1) the prohibition against the construction of an apartment house on an alley lot (Sub-section 7606.1) and from the height requirements (Sub-section 7606.4) to construct a new three story apartment house of four units in an R-4 District at premises rear 422 4th Street, N.E. (Square 780, Lot 62).

43. Lot 62 is unimproved and has a history of use as private garages. These structures were condemned in the 1960's and razed in the early 1970's. The lot was first approved by the Board for use as a commercial parking lot pursuant to BZA Order No. 12061, dated April 7, 1976, and was most recently approved by the Board for a continuation

of the parking lot use in BZA Order No. 13811, which expired on April 7, 1984. Application No. 14151, has been filed by the applicants to continue the parking lot use in the event the subject applications are not granted.

44. Lot 62, which is presently unimproved, will be developed with a three-story apartment house consisting of four units and a swimming pool. The apartment house and pool will be built above the first floor in order to retain the existing fifteen parking spaces. The pool and the parking will be shared by the occupants of all three lots.

45. Section 7606 provides that except for use as a one-family dwelling, a structure shall not be erected, constructed, converted altered, remodeled, restored, or repaired for human habitation on an alley lot. This section further states that a one-family dwelling shall not be erected or constructed on an alley lot unless the alley lot abuts an alley thirty feet or more in width, and has from such alley access to a street through an alley or alleys not less than thirty feet in width. The applicants are requesting a use variance from this provision in order to construct the proposed apartment house.

46. Lot 62 is unique because of its large size, over 4,500 square feet, its location in the interior of the square as well as in an historic district, and the fact that it is intended to be developed as part of an overall development scheme for the three lots. Were Lot 62 not an alley lot, it could be subdivided as a matter-of-right into two lots with flats and provide four dwelling units, which is the same number of units the applicant proposes. Because of its alley lot location and its excessive size, development of the property for use as a single family residence creates undue hardship. Since the lot does not abut an alley thirty feet or more in width with access to a street through an alley not less than thirty feet in width, use of the lot as a single family residence would also require a variance. The excessive size of the lot, its location on an alley, and its location adjacent to two large nonconforming structures and uses, combine to make it infeasible to use the property for a single family residence.

47. The applicant and the architect testified that development of Lot 62 with residential use will have no adverse impact on the public good and will not impair the intent, purpose and integrity of the zone plan. The R-4 regulations provide that for conversion to apartment use, a minimum of 900 square feet of lot area be devoted to each unit. In the present case, the applicants are providing 1,100 square feet per unit, and the unit proposed is totally in keeping with the unit sizes in the surrounding neighborhood. The Board so finds.

48. The applicants are also requesting area variances from the lot occupancy, height, side and rear yard requirements to permit the proposed development on Lot 62.

49. Lot 62 is affected by several exceptional and unusal conditions. The variances requested in order to build the apartment house and pool on Lot 62 are due to the fact that the lot is an alley lot proposed to be developed as part of a comprehensive development plan as well as the applicants' and the neighborhood's desire to provide the maximum amount of residential space as well as parking space.

50. As the applicants' architect testified, without the requested variances for Lot 62 it is difficult to develop the property for residential use. The requested variance from the lot occupancy requirements would permit development of a structure with sixty percent lot occupancy. Given the size and location of the lot, the lot's adjaceny to two structures which presently occupy 100 percent of the lot, and the applicants' desire to provide the parking desired by the neighboring citizens, it is difficult to develop the property in keeping with the lot occupancy requirements.

51. As the applicant's architect testified, it is difficult to construct the proposed building in keeping with the height, side and rear yard requirements. The proposed building, in accordance with neighborhood requests, is expressly designed to retain the existing parking, as part of the overall development scheme. In order to do so, the building is being constructed one level above the existing parking. Without the requested height variance, it is difficult for the applicants to design a building that retains the parking and still provides functional living space for its occupants.

52. The applicants are providing 28.4 feet of open space at the rear of the building. Because of the elevated pool and deck, however, this space cannot be considered a rear yard. Were the applicants to eliminate the first level of parking, this space could be considered a rear yard. The pool and deck area, however, as well as the additional parking provided, are significant amenities which the project provides.

53. As to the requested height, side and rear yard variances, the architect testified that there is no adverse impact. The height of the proposed building is only twenty-five feet high on the side nearest the existing dwellings, and slopes upward to a height of thirty-five feet, in keeping with the height and design of the existing alley structures. At the request of the neighbors, the plans have been revised to provide a setback of fifteen feet at the ground floor to provide a park and play area for children.

On the second side nearest existing homes, there is a substantial setback of twenty-eight feet because of the pool as well as a twenty-five foot alley setback, thus providing a total distance of fifty-three feet before the thirty-five foot height is reached. On the remaining two sides, the proposed building abuts existing buildings of equal or greater height.

54. The Office of Planning, by report dated April 4, 1984, and by testimony presented at the public hearings, recommended that the applications be approved. As to the requested area variances for Lots 43 and 810, the Office of Planning was of the opinion that there are unique circumstances affecting the lots relating to the physical characteristics, historical background, the existence of the structures prior to the current Zoning Regulations and location of the subject properties. The Office of Planning was further of the opinion that the additions proposed will not cause any detriment to the public good or impair the intent and purpose of the Zoning Regulations.

55. As to the requested special exception for a change in nonconforming use for Lots 43 and 810, the Office of Planning noted that the majority of the area within a 300 feet radius of the subject property is zoned R-4 and developed with row dwellings in residential occupancy. The subject properties do not abut any commercially zoned properties and are completely surrounded by the rear yards of row dwellings on the perimeter of this square. Beyond the 300 foot radius the Capitol Hill neighborhood is comprised of a variety of uses including the Capitol Complex, Library of Congress, Folger Library, Supreme Court, Senate office building, House office buildings, and commercial shopping strips along Massachusetts and Pennsylvania Avenues containing both office and retail uses. All of these contribute to the neighborhood composition of the area surrounding the site. The Office of Planning was of the opinion that the proposed flat and apartment use of the subject properties will be consistent with the intent of this criterion. The Office of Planning notes however that the proposed office use of these properties needs to be clearly defined so as not to have any adverse effect on the future development and present character of the immediately surrounding area. The Office of Planning concluded that the proposed use will not create any deleterious external effects.

56. As to the requirement that in Residence Districts the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility, the Office of Planning reported that the proposed flats are clearly consistent with this provision. The Office of Planning was of the opinion that the SP type Office tenant proposed occupancy of the site can coexist with the neighborhood without any