GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: JLS for Andrew Altman, Director

DATE June 29, 2004

SUBJECT: BZA Application 17179 – Request filed by Shaw Pittman, for **a special exception** and **three area variances** for the continued use of accessory parking spaces at 415 3rd Street, 416 4th Street and 424 4th Street, N.E., proposed by The Heritage Foundation.

APPLICATION
Application of Shaw Pittman for:

> **Special exception relief pursuant to § 214 of Title 11 DCMR** to permit the continued use of accessory parking spaces for a period of 10 years;
>
> **Variance relief pursuant to § 214.1 of Title 11 DCMR** to permit the use of accessory parking spaces for one-family dwellings on a lot other than the lot containing the main use so as to enable residents of the square to park within the spaces on weekends and evenings;
>
> **Variance relief pursuant to § 214.3 of Title 11 DCMR** to allow potential users and area residents that are not located within 200 feet of the spaces to use the accessory parking in the event the applicant no longer requires the spaces; and
>
> **Variance relief pursuant to § 214.4 of Title 11 DCMR** to allow accessory parking spaces that are not contiguous to or separated only by an alley from the use to which they are accessory;

for alley lots located within the center of a square bounded by E Street, F Street, 3rd Street and 4th Street, N.E. and surrounded entirely by public alleys internal to the square only, and known as 415 3rd Street, 416 4th Street and 424 4th Street, Square 780, Lots 43, 62 and 810. The properties are zoned CAP/R-4.

BZA
Case No. 17179
Exhibit No. 25

Board of Zoning Adjustment
District of Columbia
CASE NO. 17179
EXHIBIT NO. 25

The Office of Planning notes that only a portion of Lot 43 is located within 200 feet of The Heritage Foundation property. Therefore, a variance to § 214.3 is necessary to allow the applicant to use the subject properties as accessory parking spaces.

SUMMARY RECOMMENDATION

The Office of Planning recommends **APPROVAL** of the request for special exception relief to continue the use of all three of the lots as "accessory parking spaces", subject to the conditions imposed by the Board of Zoning Appeals under BZA Order No. 16250 on August 20, 1997, and subject to the following additional conditions:

1. That none of the parking spaces may be leased to other users, as this would constitute the establishment of "parking lots", as provided under § 213 of the Zoning Regulations, separate from "accessory parking spaces" regulated under § 214; and
2. Any uses other than The Heritage Foundation shall require Board approval pursuant to § 213 of the Zoning Regulations.

PROJECT DESCRIPTION

The applicant proposes to extend the special exception permitting accessory parking spaces on the subject properties. Lot 62 has been used as accessory parking spaces since 1975. Lots 43 and 810 have been used as accessory parking spaces since 1992. Permission was last granted by the BZA for all three of the lots for use as accessory parking spaces on July 16, 1997, 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."*

Based on the applicant's statement and a visual inspection of the site, the subject property appears to be in conformance with all of the conditions of the previous special exception approval (BZA No. 16250). A security guard was present at the time of the inspection.

SITE AND AREA DESCRIPTION

The properties consist of Lots 43, 62 and 810, Square 780, in the North East quadrant of the District. Each lot is asphalt paved. Lot 43 is improved with 18 spaces, Lot 62 is improved with 19 spaces and Lot 810 is improved with 18 spaces, for a total of 55 accessory parking spaces. No lighting is provided; however, 10 lampposts provide lighting for the public alleys within the square. Wheel stops are provided for each parking space, and all of the parking spaces clearly delineated with painted stripes. A sign is located on each of the lots identifying each lot as private, that towing is enforced from 8:00 am to 7:00 pm, and that the point of contact is The Heritage Foundation. The three lots, all alley lots, are not visible from the street as the lots that surround the perimeter of the square are developed with buildings.

The surrounding area is developed primarily with row houses, especially the lots located along the perimeter of the square. The rear yards of most of the lots are improved as either private residential garages or parking pads for the row houses within the square, although a few are improved as open space. The surrounding area also includes apartment and office buildings, and retail uses, especially along Massachusetts Avenue.

ZONING REQUIREMENTS

The subject property is located within the R-4 Zone District (row dwellings, conversions, and apartments residence district (§ 105.1(a)(4))) and the CAP (low to medium density Capitol Interest Overlay District (§ 105.1(j))) Overlay District.

R-4 Residential District
"*The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families.*" (§ 330.1)

Capitol Interest Overlay District
"The Capitol Interest (CAP) Overlay District is established to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction, in a manner consistent with the goals and mandates of the United States Congress in title V of the Legislative Branch Appropriation Act, 1976 (Master Plan for Future Development of the Capitol Grounds and Related Areas), approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288), and in accordance with the plan submitted to the Congress pursuant to the Act." (§ 1200.1)

"Accessory parking spaces" is a permitted use within Residence Districts pursuant to § 214, subject to Board of Zoning Adjustment approval.

RELIEF REQUESTED
Special Exception pursuant to Section 214 – Accessory Parking Spaces
§ 214 sets forth the specific criteria under which accessory parking spaces may be permitted by special exception within residence districts by the Board of Zoning Appeals. The criteria are as follows:

214.1 Accessory passenger automobile parking spaces elsewhere than on the same lot or part of a lot on which any principal R-1 use is permitted, except for a one-family dwelling, shall be permitted as a special exception in an R-1 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

The subject application is primarily for the provision of accessory parking spaces for The Heritage Foundation, an office use, between the hours of 8:00 am and 7:00 pm, Monday through Friday. However, these same accessory parking spaces are made available to residents of the surrounding one-family row houses in the evenings and on weekends. Therefore, in order to enable those residents of the one-family dwellings to make use of these spaces the applicant has requested a variance to this provision.

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

All of the parking spaces are located within an open area.

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

The accessory parking spaces are not located within their entirety within 200 feet of the area to which they are accessory. Therefore, a variance to this provision is necessary for the applicant to continue using the subject lots as accessory parking.

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

The accessory parking spaces are neither contiguous nor separated only by an alley from the use to which they are accessory. The applicant has requested a variance to this provision.

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

2303.1 A parking lot in any district shall conform to the following provisions:

(a) All areas devoted to driveways, access lanes, and parking areas shall be paved and maintained with bituminous concrete or brick materials, or a combination of these materials or other material approved by the D.C. Department of Transportation as structurally equivalent or better, that form an all-weather impervious surface, and that are a minimum of four inches (4 in.) in thickness.

Each of the three lots is asphalt paved. However, the application does not indicate if the lots are paved to a minimum four-inch thickness.

(b) The parking lot shall be designed so that no vehicle or any part of a vehicle projects over any lot line or building line;

The existing parking spaces are in conformance with this provision.

(c) No other use shall be conducted from or upon the premises, and no structure other than an attendant' s shelter shall be erected or used upon the premises unless the use or structure is otherwise permitted in the district in which the parking lot is located;

The application indicates that five of the parking spaces will be made available to area residents for lease. Leased parking spaces are not accessory to any use, and therefore can only be permitted by special exception pursuant to § 213. Therefore, the leasing of any of the parking spaces cannot be permitted under this application.

No structures are provided, including an attendant's shelter.

(d) *No vehicular entrance or exit shall be within forty feet (40 ft.) of a street intersection as measured from the intersection of the curb lines extended;*

No vehicular entrances or exits are within 40 feet of a street intersection.

(e) *Any lighting used to illuminate a parking lot or its accessory buildings shall be arranged so that all direct rays of the lighting are confined to the surface of the parking lot; and*

No lighting is provided.

(f) *The parking lot 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. Landscaping with trees and shrubs shall cover a minimum of five percent (5%) of the total area of the parking lot, or an area as determined by the Board of Zoning Adjustment for a parking lot otherwise requiring Board approval.*

The application indicates that five percent of the total area is maintained as landscaping. A visual inspection of the three lots indicated that there are five trees that appeared to be in a healthy growing condition, that the landscaping was neat and orderly in appearance and that the lots were free of refuse and debris.

2303.2 In addition to the requirements of § 2303.1, a parking lot located in an R-1, R-2, R-3, R-4 or R-5-A District, and a parking lot located in any other district where such parking lot is contiguous to an R-1, R-2, R-3, R-4, or R-5-A District, shall be screened from all contiguous residential property located in the R-1, R-2, R-3, R-4, or R-5-A District by a solid brick or stone wall at least twelve inches (12 in.) thick and forty-two inches (42 in.) high or by evergreen hedges or evergreen trees that are thickly planted and maintained and at least forty-two inches (42 in.) in height when planted.

(a) *The parking lot shall be screened from all contiguous residential property located in an R-1, R-2, or R-3 District by a solid masonry wall at least twelve inches (12 in.) thick and forty-two inches (42 in.) high; and*

The subject lots are not contiguous to any other properties, as the subject lots are surrounded on all sides by public alleys.

(b) *All parts of the lot not devoted to parking areas, driveways, access lanes, attendant' s shelter, or required screening walls shall be kept free of refuse and debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.*

The lots are kept free of refuse and debris five percent of the lots is landscaped and maintained in a healthy growing condition.

2303.3 If approved by the Board of Zoning Adjustment as a special exception under § 3104, the conditions in § 2303.2 may be waived or modified.

The subject application does not request a waiver or modification.

2303.4 Before authorizing a waiver or modification, the Board shall consider:

(a) *The adequacy of protective and screening walls located on adjacent residential property;*

(b) *Topographic and traffic conditions; and*

(b) *Any adverse effect the requested waiver or modification of standards may have on adjacent residential property.*

This section is not applicable because the applicant has not requested a waiver or modification.

2303.5 The Board may require any special treatment of the premises that it deems necessary to protect the value of adjacent property.

214.6 It shall be deemed economically impracticable or unsafe to locate accessory parking spaces within the principal building or on the same lot on which the building or use is permitted because of the following:

(b) *Strip zoning or shallow zoning depth;*
(c) *Restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot;*

(c) *Unusual topographical grades, shape, size, or dimensions of the lot;*
(d) *The lack of an alley or lack or appropriate ingress or egress through existing or proposed alleys or streets; or*
(e) *Traffic hazards caused by unusual street grades or other conditions.*

Due to the size and development of the applicant's property, it is not possible to provide these 55 parking spaces on-site. A 24-space surface parking lot is located to the rear of 214 Massachusetts Avenue. No surface parking is provided to the rear of 208-210 Massachusetts Avenue, but the building is improved with a garage door at the rear accessible from the public alley. The application does not indicate how many, if any, parking spaces are available within this building.

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

The applicant offers the following to address any negative impacts that may result from the location of accessory parking spaces on the subject properties.

a. The daily cleaning of the lot;
b. The lighting of the lot;
c. The layout of the parking spaces in a manner that provides ample access to the spaces;
d. The landscape plan which includes trees;
e. The designation of a community contact person to ensure that the parking spaces are operated with minimal impact on the community;
f. The use of spaces by community members after 7:00 pm and on the weekends
g. The availability of five spaces for rental by area residents.

The cleaning of the lot is a requirement § 2303.2(b) and the applicant does not provide lighting for the accessory parking spaces. However, the parking spaces are all accessible directly from the public alleys, the lots are landscaped with a total of five trees and the parking spaces are available to the community after 7:00 pm and on weekends. Five of the parking spaces may be available for rental to area residents, but this is not permitted within the confines this special exception request.

The lots are also located within the center of the square and are not visible from the street. As such, the use of the lots has no adverse effect on the streetscape.

The use of the subject properties for daytime parking is a quiet use, and the support of the ANC's Planning and Zoning Committee indicates that the use of

the properties for the past 12 years as accessory parking spaces has not adversely affected the neighborhood. Therefore, the application is consistent with this provision.

214.8 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 Transportation for review and report.

Comments were solicited from the DC Department of Transportation, but none were received.

The subject application is in conformance with the provisions of § 214, provided the applicant not lease any of the parking spaces, and that the Board grants variances to § 214.1, to permit the use of the accessory spaces by residents of one-family dwellings, to § 214.3, to allow the accessory parking spaces to be not located 200 feet in their entirety from the use to which they are accessory, and to § 214.4, to allow accessory parking spaces that are not contiguous or separated by an alley from the use to which they are accessory.

Variances
The Board of Zoning Adjustment is empowered to grant variances as provided by Section 3103.2 as follows:

> *"As set forth in D.C. Code Ann. §5-424(g)(3) (1981), "[w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code Ann. §§5-413 to 5-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided, that the 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."*

Variance relief pursuant to § 214.1 of Title 11 DCMR
The applicant has requested relief from this provision so as to allow area residents to make use of the accessory spaces during the evenings and on weekends. The extraordinary or exceptional situation is that the subject properties will remain as parking lots in the evenings and on the weekends, whether or not they are used by area residents or not. In addition, by allowing the residents of the one-family dwellings to utilize these parking spaces, additional parking is made available to the neighborhood during the evenings and on weekends, when residential demand is greatest. Therefore, this variance can be granted, "*without impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.*" (§ 3103.2)

Variance relief pursuant to § 214.3 of Title 11 DCMR
The applicant has requested relief to allow potential users and area residents that are not located within 200 feet of the spaces to use the accessory parking in the event the applicant no longer requires the spaces. In addition, relief from this provision is necessary in order to allow the applicant to make use of all of the accessory parking spaces as the spaces are located in excess of 200 feet from the use to which they are accessory.

The extraordinary or exceptional situation for the accessory parking spaces to be located in excess of 200 feet from The Heritage Foundation is that the applicant is unable to provide for these spaces on the subject property due to the density in which the surrounding area is developed. In addition, the operation of these lots for the past 12 years has not been at the detriment of the surrounding residential community, as evidenced in the recommendation of approval by the ANC's Planning and Zoning Committee. Use of the parking spaces by area residents evenings and weekends allows the existing accessory parking spaces to be used by area residents when the spaces are not in use by the applicant. The unusual situation in allowing area residents to make use of the parking spaces during the evening hours and on weekends is that whether or not the applicant is making use of the spaces, their presence within the neighborhood remains. Therefore, allowing area residents that may live more than 200 feet from the parking spaces will not have an adverse affect on the neighborhood.

The request to allow other users to use the parking lots should the applicant have no need for them in the future converts the use from "accessory parking spaces" into a "parking lot". "Parking lot" is a separate use permitted under § 213 of the Zoning Regulations. Therefore, the Office of Planning cannot recommend approval of the use of the parking spaces should the applicant not require their use in the future.

This variance can be granted, "*without impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map*" (§ 3103.2), provided the applicant not be permitted to allow another user to make use of the parking spaces should The Heritage Foundation not need them in the future.

Variance relief pursuant to § 214.4 of Title 11 DCMR
The applicant has requested relief to allow accessory parking spaces that are not contiguous to or separated only by an alley from the use to which they are accessory. Again, the applicant extraordinary or exceptional situation is that the applicant is not able to provide accessory parking spaces that are contiguous or separated only by an alley from the use to which they are intended to serve due to the extent of the development of the surrounding area. In addition, the operation of these lots for the past 12 years has not been at the detriment of the surrounding residential community, as evidenced in the recommendation of approval by the ANC's Planning and Zoning Committee. Therefore, this variance can be granted, "*without impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.*" (§ 3103.2)

COMPREHENSIVE PLAN
The Generalized Land Use Map recommends the Moderate Density Residential land use for the subject property: "Row houses and garden apartments are the predominant uses; may also include low-density housing."

This proposal will contribute towards the following objective of the Ward 6 Plan:

> "*To acknowledge and protect the unique architectural character of Ward 6 and preserve the continuity of the well established, essential and historic areas;*" (1721.1(a))

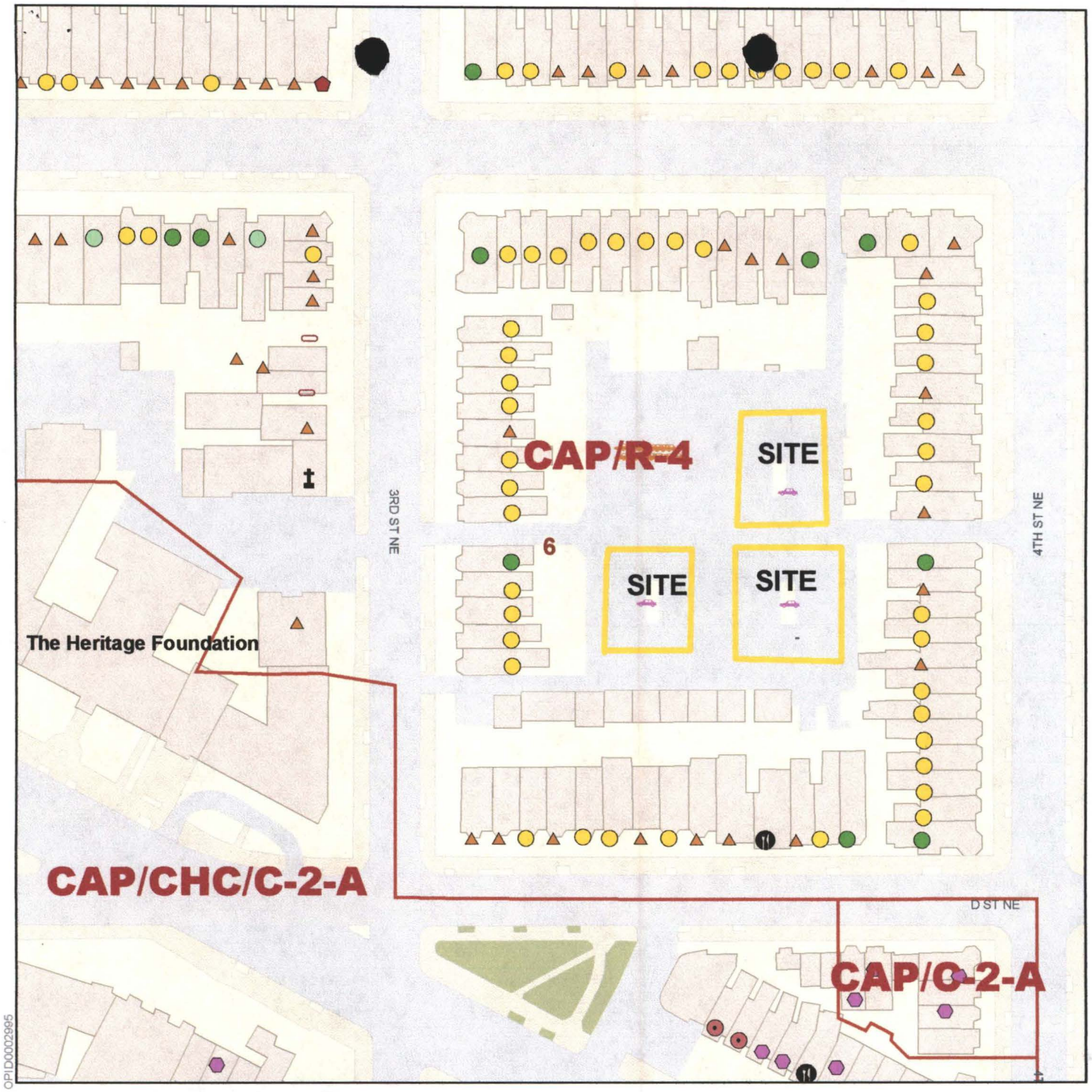
COMMUNITY COMMENTS
The **ANC 6C** Planning and Zoning Committee, at their meeting of June 2, 2004, voted to support the application provided the use only is renewed for a period of 7 years and that the use of parking spaces by community members be allowed not only after 7:00 pm daily and on weekends, but also on holidays.

RECOMMENDATION
The Office of Planning has reviewed the application in terms of the property's zoning, intensity of use, the character of the neighborhood and the standards for special exceptions and variances. The Office of Planning concludes that the special exception and variances meet the required tests and can be granted "*without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Map*" (§ 3103.2), provided none of the parking spaces are leased and that another user may not use the spaces should the applicant not need them in the future.

The Office of Planning recommends **APPROVAL** of the following:

> **Special exception pursuant to § 214 of Title 11 DCMR** to continue the use of all three of the lots as "accessory parking spaces", subject to the conditions imposed by the Board of Zoning Appeals under BZA Order No. 16250 on August 20, 1997, and subject to the following additional conditions:
>
> 1. That none of the parking spaces be leased to other users, as this would constitute the establishment of a second use, "parking lots", as provided under § 213 of the Zoning Regulations; and
> 2. That another user not be permitted to use the spaces should the applicant not need them in the future, unless approved by the Board under § 213 of the Zoning Regulations.

AA/sjm$_{AICP}$



BZA Application No. 17179

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★ ★ ★ Government of the District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ June 1, 2004

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

- Parking - Special Purpose
- Office
- Multi-Resid. Garage
- Multi-family
- Single-Family Semi-Detached
- Single-Family Detached
- Rowhouse
- Non-conforming SF Use
- Store
- Vacant
- Religious
- Restaurant

