

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

APPLICATION TO AMEND THE ZONING MAP

Before filling out this form, please see the instructions on the reverse side. Print or type all information unless otherwise indicated.

In accordance with the provisions of Section 102 of the Zoning Regulations, request is hereby made for an amendment to the Zoning Map as follows:

Square No. 755 Lot No. 3 Existing Zoning Split-Zoned CAP/CHC/C-2-A and CAP/R-4 Requested Zoning CAP/CHC/C-2-A

Address or description of the premises: 208 Massachusetts Ave, NE Washington, DC 20002.

Area of the Site: 3,080.62 square feet

Baist Atlas No. 2, Page 7.

The above information and attached documents are true to the best of my knowledge.

Ted E. Schelenski (handwritten signature)

12/22/06 (handwritten date)

Owner's Signature

Date

TED E. SCHELENSKI (printed name)

The Heritage Foundation (organization name)

Owner's Printed Name

Person to be notified of all actions:

Allison C. Prince (name)

(202) 663-8853 (phone number)

Name

Telephone Number

2300 N Street, N.W. Washington, D.C. (address)

20037 (zip code)

Address

Zip Code

DO NOT WRITE BELOW THIS LINE

Date Received:

Date Accepted:

Z.C. Case No.

RECEIVED D.C. OFFICE OF ZONING 2007 JAN -3 PM 12:47

ZONING COMMISSION District of Columbia

CASE NO. 07-01

EXHIBIT NO. 3

ZONING COMMISSION District of Columbia CASE NO. 07-01 EXHIBIT NO. 3

**BEFORE THE ZONING COMMISSION  
OF THE DISTRICT OF COLUMBIA**

Application of the Heritage Foundation  
Rezoning Request for  
208 Massachusetts Ave, N.E.  
(Square 755, Portion of Lot 3)

Z.C. Case No. \_\_\_\_\_  
ANC 6C

**STATEMENT OF THE APPLICANT**

The Heritage Foundation (“**Heritage**”) requests, for zoning consistency purposes, that the zone district boundary dividing its property be adjusted so that the lot is in a single zone. Founded in 1973, Heritage is a research and educational institute - a think tank - whose mission is to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. Heritage owns the building located at 208 Massachusetts Avenue, N.E. (Square 755, Lot 3) (the “**Property**”). The Property is improved with a mixed-use building that occupies almost the entire lot. As a result of the split-zoning, the building is subject to two different zoning districts, the CAP/CHC/C-2-A and CAP/R-4 Zones (Exhibit A).

**Background**

The Property, an eight-story brick and limestone building built in 1929, is a contributing structure in the Capitol Hill Historic District. Properties in the vicinity provide a mixture of residential, office and retail uses. The office and retail uses are primarily located along Massachusetts Avenue. The 1958 Baist Zoning Map shows the Property is split-zoned (Exhibit B).

Since the Property is split-zoned, the rear portion of the building is subject to the requirement of the R-4 Zoning District while the front portion of the building is subject to the requirements of the C-2-A Zoning District and the Capitol Hill Commercial Overlay District (“**CHC**”). Both the rear and the front are subject to the Capitol Interest Overlay District (“**CAP**”). Prior to the use of the building by Heritage, the split-zoning was not an issue because the building was used as an apartment building with ground floor retail located only in the commercially-zoned portion of the site.

After acquiring the building in 2001, Heritage converted it into apartments for interns, an educational lecture hall, and related offices. Due to the restriction imposed by the split-zoning, Heritage is not permitted to use the back portion of the building for any commercial purposes. In the future, Heritage would like the option of using an entire floor for commercial use, which, due to the split-zoning, is currently prohibited. The rezoning of the 3,080 square foot portion of the site that is now zoned CAP/R-4 will resolve the issues created by the split-zoning.

### Existing Building

The building is nonconforming as to both area and use. The building does not meet the current height, Floor Area Ratio (“**FAR**”), and lot occupancy restrictions. In addition, the apartment house use in the R-4 portion of this building is nonconforming.

### Proposed Use

Heritage does not intend to increase the size of the building and its nonconformity would preclude any addition. Heritage seeks only to secure uniform zoning for the

property and therefore requests that the Commission rezone the R-4 zoned portion to CAP/CHC/C-2-A. This will enable Heritage to use an entire floor for a single purpose. Due to practical operational issues, building code considerations, and security constraints, it is presently difficult for Heritage to use a single floor for multiple purposes. While the building will remain a nonconforming structure, the entire use will become conforming with the elimination of the R-4 zoning. This will allow the entire apartment house portion of the use to become conforming. Since the CAP/CHC/C-2-A has a limit of 2.5 on commercial FAR the building will remain mixed-use and will not convert to entirely commercial use.

#### Consistency With Zoning Regulations

The proposed rezoning is consistent with the Zoning Regulations. According to 11 DCMR § 107.3, the “[d]imensioned district boundaries showing on the Zoning Map are intended to coincide generally with lot lines.” This is clearly not the case with the Heritage building. Instead, the lot line is drawn so that it arbitrarily crosses through Square 755, Lot 3 and through the existing building. The exact location of the zone boundary line has caused Heritage considerable confusion. The original version of the zoning map on the Office of Zoning’s website showed the site as being located entirely in the CAP/C-2-A zone. That map has since been corrected.

Section 107.5 of the regulations states that “zone boundary lines shall be intended to follow existing lot lines, the center lines of streets, alleys . . .” Heritage proposes that the Zoning Commission adjust the zoning line using the middle of the alley behind the Property as the boundary. This will be more in keeping with the Zoning Regulations.

Although the concept of the difficulties created by split-zoning was anticipated in the Zoning Regulations, Heritage is unable to take advantage of the exception that § 2514.2 provides for split-zoned lots. Under that section, the Board of Zoning Adjustment may permit the regulations applicable to that portion of a lot located in a lesser restrictive use district to apply to the portion of the lot located in the more restrictive zone. This section contains a limitation. It only applies to the more restrictive zone property located within 35 feet of the zone boundary line. Unfortunately the rear portion of the Property, zoned R-4, is 47 feet in depth. Therefore the application of this section would leave a 12 foot strip of property in the R-4 zone.

#### The Comprehensive Plan Supports Rezoning

The existing and proposed Comprehensive Plan Maps depict the area as “Moderate Density Commercial” (Exhibit C), which allows for shopping and service areas that generally provide a much broader range of goods and services and are the predominant uses. The City Council made a small change to the proposed Comprehensive Plan Map which now clearly shows the entire Property is in the moderate density commercial area whereas before all but a small portion of the rear was in that category.

The proposed Comprehensive Plan Policy Map depicts this area as “Main Street Mixed Use Corridors.” (Exhibit D) Within this area, “any development or redevelopment that occurs should support transit use and enhance the pedestrian environment.” The policy for this is to reinforce and upgrade the major commercial districts of Capitol Hill including, “Massachusetts Avenue between Union Station and Stanton Park.” The

Property is included within this area. The proposed rezoning is entirely consistent with the Maps.

Exhibits

- Exhibit A: Portion of the Zoning Map showing the Property outlined in red.
- Exhibit B: Portion of the 1958 Baist Map showing the Property outlined in red.
- Exhibit C: Portion of the Comprehensive Plan Map showing the Property in red.
- Exhibit D: Proposed Comprehensive Plan Policy Map.
- Exhibit E: Photos of the Property and the surrounding area.
- Exhibit F: Certified Plat of Survey for the Property.

Conclusion

We request that the Zoning Commission move the zone district boundary dividing the Heritage Property so that it coincides with the lot line. The requested zoning change is consistent with the Comprehensive Plan and can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the Zoning Plan as embodied in the Zoning Regulations and Maps.

Respectfully submitted,

PILLSBURY WINTHROP SHAW  
PITTMAN LLP

By: Allison C. Prince  
Allison C. Prince

By: Kate I. Myers  
Kate I. Myers