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June 11, 2007

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Hand Delivery

Ms. Carol Mitten, Chairperson  
District of Columbia Zoning Commission  
Office of Zoning  
441 4<sup>th</sup> Street, NW, Room 210  
Washington, DC 20001

**Re: Heritage Foundation (the "Applicant")  
Application to Amend the Zoning Map in  
Zoning Commission Case No. 07-01  
Proposed Findings of Fact and Conclusions of Law**

Dear Chairperson Mitten and Members of the Commission:

Enclosed please find twenty copies of the Applicant's Proposed Findings of Fact and Conclusions of Law for the above-captioned rezoning application.

If you have any questions or comments regarding these materials, please feel free to contact the undersigned.

Sincerely yours,

Kate Myers  
Associate

Enclosure

ZONING COMMISSION  
District of Columbia

CASE NO. 07-01


EXHIBIT NO. 24

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this proposed findings of fact and conclusions of law were delivered by first class mail to the following on June 11, 2007.

Douglas J. Woods, AICP, ASLA  
Development Review Specialist  
District of Columbia Office of Planning  
801 North Capitol Street, N.E., Suite 3000  
Washington, DC 20002

Karen Wirt  
Chairperson, ANC 6C  
P.O. Box 77876  
Washington, DC 20013-7787

  
Kate Myers

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**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**Zoning Commission Order No. 07-01**

**Amendment to the Zoning Map for the Heritage Foundation**  
**\_\_\_\_\_ , 2007**

Pursuant to public notice, the Zoning Commission for the District of Columbia (the "Commission") held a public hearing on June 4, 2007, pursuant to §102 of Title 11 of the District of Columbia Municipal Regulations ("DCMR"), to consider an application from the Heritage Foundation (the "Applicant"). The application requested a review and approval of an amendment to the Zoning Map of the District of Columbia to change the zoning for the portion of Square 755, Lot 3, that is zoned CAP/R-4 to CAP/CHC/C-2-A. The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022.

**PROCEDURAL BACKGROUND**

**Public Notice.** Notice of the public hearing was conducted in accordance with the provisions of 11 DCMR §§ 3014 and 3015.

**Office of Planning Report.** The Office of Planning ("OP") reviewed the Applicant's proposal and, in its March 2, 2007 report, recommended that the application be set down for public hearing. OP opined that the requested map amendment would be consistent with the Comprehensive Plan as amended and enacted by the Council of the District of Columbia in the "Comprehensive Plan Amendment Act of 2006" (the "Comprehensive Plan").

Prior to setting down the request from the Applicant, the Commission requested that OP report back on whether other properties in Square 755 should be included in the application. OP recommended against the expanded application and provided additional information for setdown in a report dated March 15, 2007. OP concluded that although there are two other properties in Square 755 that are also split-zoned, the zoning line does not cross actual buildings on these other sites. OP also recommended approval of the Applicant's requested map amendment through a written report dated, May 25, 2007 and orally during the Commission's June 4, 2007 public hearing.

**ANC Report.** By letter dated May 17, 2007, ANC 6C indicated that, at a duly noticed monthly meeting with a quorum present, the ANC voted unanimously to support the application.

**Public Hearing.** Following a presentation by OP, the Commission agreed to set the case down for a public hearing at its March 12, 2007 public meeting. On June 4, 2007, the Commission held a public hearing on the application. Mr. Tim Revere testified on behalf of the Applicant. Mr. Revere discussed the need for the map amendment and desire to be able to use an entire floor for commercial use which, at present, is impossible since the building is split-zoned.

Proposed Action. At the conclusion of the public hearing on June 4, 2007, the Commission took proposed action to approve the map amendment.

National Capital Planning Commission Review. Pursuant to the District of Columbia Home Rule Act, the Commission referred its proposed decision of approval to the National Capital Planning Commission (“NCPC”) for review and comment. By report and letter dated \_\_\_\_\_, 2007, NCPC found that the proposed map amendment \_\_\_\_\_.

Final Action. The Commission took final action to approve the map amendment at its regularly scheduled meeting held on \_\_\_\_\_, 2007.

### **FINDINGS OF FACT**

1. On January 3, 2007, the Applicant, the Heritage Foundation, filed an application for a map amendment with the Office of Zoning requesting that the Commission change the zoning of a portion of the subject property from CAP/R-4 to CAP/CHC/C-2-A.
2. The property that is the subject of this application, located at 208 Massachusetts Avenue, N.E. (Lot 3 in Square 755)(“Subject Property”), is split-zoned. The Subject Property is improved with a mixed-use eight-story brick and limestone building built in 1929 that occupies almost the entire lot. It is located in the Capitol Hill Neighborhood and is a contributing structure to the Capitol Hill Historic District.
3. The zone boundary line dividing the building between CAP/CHC/C-2-A and CAP/R-4 has existed since the adoption of the 1958 Zoning Map. The building is currently nonconforming as to height, floor area ratio, lot occupancy, rear yard restrictions, and use.
4. As a result of the split-zoning, the rear portion of the Subject Property, consisting of 3,080 square feet is subject to the requirements 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 front portions of the building are subject to the Capitol Interest (CAP) Overlay District. The properties in the vicinity provide a mixture of residential, office and retail uses. The office and retail uses are primarily along Massachusetts Avenue.
5. The Comprehensive Plan 2006 Future Land Use Map (“Comprehensive Plan Map”) depicts the area as “Moderate Density Commercial” which allows for shopping and service areas that generally provide a much broader range of goods and services and are the predominant use. The Comprehensive Plan Map clearly

shows the entirety of the Subject Property in the Moderate Density Commercial area.

6. Prior to the use of the building by the Applicant, 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, the Applicant converted it into apartments for interns, an educational lecture hall, and related offices. Due to the restriction imposed by the split-zoning, the Applicant is not permitted to use the back portion of the building for any commercial purposes. In the future, the Applicant would like the option of using an entire floor for commercial use. The map amendment will allow such use.
7. The building is and will remain a nonconforming structure despite the adjustment of the boundary line. While the building will remain a nonconforming structure, the apartment house portion of the use will become conforming with the elimination of the R-4 zoning in the rear of the Subject Property. 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 entirely to commercial use.
8. The Commission finds that the proposed map amendment is consistent with and fosters the goals and policies stated in various elements of the Comprehensive Plan, specifically:
  - a. Area Element: Capitol Hill Area Element - The Comprehensive Plan lays out general policies and actions that should guide growth and neighborhood decisions in the Capitol Hill neighborhood. Policy CH-1.1.3, § 1608.4, recommends upgrading commercial districts including Massachusetts Avenue between Union Station and Stanton Park, the area in which the Subject Property is located.
  - b. Implementation – The Implementation Element of the Plan describes how each of the policies and action in the plan will be carried out. Policy IM-1.3.2 specifically states that the “Home Rule Charter requires that zoning ‘shall not be inconsistent’ with the Comprehensive Plan/Zone Map.” It goes on to recommend making appropriate revisions to the Zone Map to improve its alignment with the Future Land Use Map and to eliminate clear inconsistencies. (§ 2504.4) In the Applicant’s case, the zone boundary needs to be changed to reflect the change made to the Comprehensive Plan Map showing all of the Subject Property in the land use category.
9. The requested map amendment will not produce objectionable traffic conditions.

## CONCLUSIONS OF LAW

1. The Zoning Commission is authorized under §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938, (52 Stat. 797, as amended, D.C. Official Code §6-641.01 et seq. (2001)), to amend the Zoning Map.
2. The public notice, public hearing, and NCPC referral requirements for the map amendment, including requirements in 11 DCMR §§ 102.6 – 102.9, 3015, and 3028, have been met.
3. The Commission concludes that approval of the requested map amendment from the CAP/R-4 to the CAP/CHC/C-2-A is not inconsistent with the Comprehensive Plan nor with the purposes of the Zoning Act. In fact, the Commission concludes that the requested map amendment will further the goals of the Comprehensive Plan and will promote orderly development in conformity with the entirety of the District of Columbia Zone Plan as embodied in the Zoning Regulations and Map.
4. The Commission further concludes that the proposed map amendment is consistent with the Comprehensive Plan Map's designation of the Subject Property as a "Moderate Density Commercial."
5. Based upon the findings and conclusions, the Commission also concludes that the requested map amendment is in the best interests of the District of Columbia and will benefit the community in which the subject property is located.
6. The Commission takes note of the recommendations in support of the map amendment of both the ANC 6C and OP and has accorded them the "great weight" to which they are entitled.

## DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the application for an amendment of the Zoning Map to change the zoning of a portion of Lot 3 in Square 755 from CAP/R-4 to CAP/CHC/C-2-A, such that the entirety of Lot 3 in Square 755 is zoned CAP/CHC/C-2-A.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be

tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish ground for the denial or, if issued, revocation of any building permits or certificates of occupancy pursuant to this Order.

At the public hearing on June 4, 2007, the Zoning Commission voted to **APPROVE** the application for proposed action by a vote of 5-0-0 (Carol J. Mitten, Michael G. Turnbull, John Parsons, and Gregory N. Jeffries to **APPROVE**).

The Order was **ADOPTED** by the Zoning Commission at its public meeting on \_\_\_\_\_, 2007, by a vote of \_\_\_\_\_ (\_\_\_\_\_ to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the D.C. Register on \_\_\_\_\_.

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**CAROL J. MITTEN**  
Chairman  
Zoning Commission

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**JERRILY R. KRESS, FAIA**  
Director  
Office of Zoning