

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY
APRIL 30, 2013

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The Regular Public Meeting
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:38 a.m., Lloyd Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chair
NICOLE SORG, Vice Chair
S. KATHRYN ALLEN, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Vice Chair
OFFICE OF ZONING STAFF PRESENT:
CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the
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1 P-R-O-C-E-E-D-I-N-G-S

2 9:38 a.m.

3 CHAIRPERSON JORDAN: Would the
4 hearing please come to order. Good morning,
5 ladies and gentlemen. We're located at the
6 Jerrily R. Kress Memorial Hearing Room at 441
7 4th Street, N.W.

8 Today's date is April 30, 2013.
9 We're here for the Board of Zoning Adjustment
10 public hearing and public meeting for cases
11 scheduled on the docket today.

12 My name is Lloyd Jordan,
13 Chairperson. To my right is S, Kathryn Allen,
14 Board Member. To her right Jeffrey Hinkle,
15 Board Member. To my left is Nicole Sorg, Vice
16 Chair. To her left is Marcie Cohen, Member of
17 the Zoning Commission.

18 Please be advised that this
19 proceeding are being recorded by a court
20 reporter and also being webcast live.

21 Therefore, I'm going to ask you refrain from
22 any disruptive noises here in the room today.

1 If there is anyone here who is
2 here to testify or provide testimony in any of
3 the cases on today's docket, would you please
4 stand and take the oath or affirmation being
5 given by the Board secretary.

6 (Whereupon, the witnesses were
7 sworn.)

8 CHAIRPERSON JORDAN: Additionally,
9 prior to your testimony, I need you to
10 complete two witness cards and hand those
11 witness cards to the court reporter seated to
12 my right.

13 Mr. Moy, do we have any
14 housekeeping things we need to do here this
15 morning?

16 MR. MOY: One very brief
17 announcement for the record, Mr. Chairman.
18 Three of the cases scheduled for public
19 hearing have been rescheduled. They are
20 Application No. 18533 of Perseus which has
21 been rescheduled to May 7, 2013.

22 And the two appeal cases, 18539

1 and 18540, both of 2101 Connecticut Avenue
2 Cooperative Apartments, Inc. Both have been
3 rescheduled to July 16th.

4 CHAIRPERSON JORDAN: And regarding
5 18531, did you mention that or did I miss it?
6 The Heritage Foundation.

7 MR. MOY: Later on the docket. In
8 other words, the decision for Application
9 18531 of the Heritage Foundation has been
10 moved toward the end of today's docket. Thank
11 you, Mr. Chairman.

12 CHAIRPERSON JORDAN: Then let's do
13 our first case.

14 MR. MOY: Very good. That would
15 be Application No. 18511 of Allyoop, LLC,
16 pursuant to 11 DCMR 3103.2, for a variance
17 from the use provisions under Subsection
18 330.4, a variance from the non-conforming
19 structure provisions under Subsection 2001.3,
20 and a variance from the building on alley lot
21 provisions under Section 2507.

22 This is to allow the use and

1 alteration of an alley lot to construct an
2 addition to an existing structure for a
3 mixed-use (office and a five residential
4 apartments) in the R-4 District at premises
5 rear 1018 Irving Street, N.W. Property located
6 at Square 2851, Lot 837.

7 As the Board will recall, on April
8 2, 2013 the Board completed public testimony,
9 closed the record, and scheduled this decision
10 on April 30th. The Board requested additional
11 information to supplement the record from both
12 the Applicant and other parties.

13 Those filings are entered in the
14 record and are in your case folders, Mr.
15 Chairman. The first is from the Applicants
16 which includes their proposed Findings of Fact
17 and Conclusions of Law and, I believe,
18 including letters of intent.

19 We are have filings from
20 opposition party, and that is identified under
21 Exhibit 42. My only note to that is a
22 preliminary matter in that it's untimely filed

1 by one day. That is under Exhibit 42. So
2 with that --

3 CHAIRPERSON JORDAN: What's the
4 number?

5 MR. MOY: Exhibit No. 42 with a
6 deadline given by the Board of April 23rd. I
7 believe it's date stamped April 24th. Other
8 than that, the Board is to act on the merits
9 of the request for variance relief, Mr.
10 Chairman.

11 CHAIRPERSON JORDAN: If there's
12 not any opposition from any other Board
13 member, then we accept that late filing.

14 Is the Board ready to deliberate
15 on 18511? Then let's proceed. I'll start us
16 off.

17 This is a case in which I'm having
18 difficulty granting the relief requested. I
19 think it's an awful lot of relief being
20 requested for this alley lot. I think the
21 special exception that's been argued is not
22 applicable here and that both standards

1 require a use variance in this matter.

2 This case is one where I believe,
3 as I said before, it's a heavy lift and that
4 it might need to be approached in a different
5 way but the relief requested by the Applicant
6 I'm not in favor of granting it.

7 Particularly regarding the
8 argument that this was a non-conforming use
9 that could slide in to be used for additional
10 non-conforming use that is standard. Use
11 variance standard applies, not a special
12 exception.

13 I believe the opinion of OP was
14 persuasive and consistent with our previous
15 ruling. This is an alley lot and there are
16 separate rules for alley lots in a separate
17 section in the regulations.

18 Can we have a couple phones
19 silenced, please?

20 2003 applies to conversion from
21 one use to another. Here we have two
22 additional floors being offered and not a

1 conversation to the same space. And 2003
2 applies to private garages as accessory
3 structures and private garages and an alley
4 with other dimension requirements that are not
5 met.

6 The Board has never found that
7 these sections apply to alley lots. I believe
8 the case of Application No. 16815 is also
9 controlling in this matter. Also, the use
10 variance requirements for 330.4 I do not
11 believe have been met.

12 Office use is not permitted in a
13 residential zone and, therefore, use variance
14 relief is needed for the distance from the
15 opposite side of the abutting alley to the
16 wall of the structure nearest the alley. The
17 proposed building rise is 39.5 feet and,
18 therefore, is not met.

19 I don't believe the case for undue
20 hardship has been met. In fact, I would tend
21 to, based upon the Findings of Fact and
22 Conclusions of Law after reading them, I am

1 more inclined to adopt the findings offered by
2 the opponent, the opposition party, and would
3 want to incorporate from my statement and, for
4 possible Board finding, findings contained in
5 that particular Findings of Fact:

6 No. 2, No. 3, No. 5, No. 7, 8, 9,
7 10, part of No. 12 in that the second floor
8 would house three units and the third floor
9 would contain two units and the building would
10 rise 39.5 feet in height and the current
11 height of the building is 18.5. No. 14 and
12 No. 15, No. 17, No. 18. Let me know if I'm
13 going too fast for you. I just had that
14 coffee lift I needed this morning.

15 The last thing I said 17, 18.
16 Although the ANC did testify, I don't think
17 there was reason to support the recommendation
18 of the ANC based upon what I've already said
19 and based upon the fact that we will certainly
20 give great weight and we are really thankful
21 for the ANC taking the concern.

22 We understand the ANC's concern

1 about having this alley property sitting as it
2 is but I don't think that its recommendation
3 runs contrary to what I have already placed in
4 this record.

5 Additionally, I would accept -- I
6 would offer the acceptance of finding 22 in
7 the same opposition, 24, 25, 26, 27, 29, 31
8 and 32, 35 -- the second sentence in 35 -- the
9 first part of 36 and conclude that based upon
10 the testimony and evidence in this matter.

11 The Board is not persuaded that
12 relief should be granted as set forth in 38,
13 39, 40, 41. I do not believe there has been
14 a showing of undue hardship. More
15 importantly, I believe that this is a self-
16 created hardship. There is some due diligence
17 for any buyer to enter into a property.

18 Here is one that we had testimony
19 that prior to the purchase of the property
20 that the Applicant knew that this property was
21 in some type of bad state, that it had some
22 environmental concerns but did not run

1 environmental reports on the property.

2 The financials there I don't
3 believe were strong because, there again, it
4 was based upon an 80/20 ratio of financing.
5 I would also based upon the opponent's
6 Findings of Fact and Conclusions of Law that
7 42, 43, 44, 48, 49, 50 should be adopted by
8 the Board.

9 That's my feeling in the case.
10 Does anybody else want to contribute?

11 VICE CHAIRMAN SORG: Thank you,
12 Mr. Chairman. I may not have followed all
13 your numbers but I think I'll talk about the
14 case in a slightly different way. As to your
15 opening, I agree that this is a really, really
16 tough one for me. It started out a little
17 rocky.

18 The Applicant had submitted what
19 was actually a very, you know, sensitive and
20 thoughtful plan with regard to community
21 amenities and safety such as taking care of
22 pedestrian walkways and careful management of

1 waste that would be produced by the proposed
2 projects as well as traffic mitigation and
3 protecting neighboring properties.

4 I thought on the face of it the
5 design and the units were nice, not a Zoning
6 term, but there was a substantial amount of
7 relief that is being requested. It's
8 certainly not with amenities that one can sort
9 of reach the hurdle of the relief that's
10 there.

11 I have spent a lot of time looking
12 at the regulations and the arguments. I guess
13 in no particular order I'll start by agreeing
14 with the Chair that I don't believe that a
15 special exception standard in 2003.1 applies
16 here.

17 My thought process behind that is
18 that when you really do look at the
19 regulations 2003.1 describes properties in
20 zoned districts and alleys are not described
21 in those zoned districts. That being said,
22 the Applicant did provide argument under the

1 use variance standard as an alternate and I
2 think that was the correct way to go.

3 It is worth mentioning there is a
4 good amount of support. There is a bunch of
5 neighbors in support. There is the ANC.
6 There is DDOT and they did mention the waste
7 management, traffic management, pedestrian
8 management plan.

9 When you look at the variance
10 test, even in the first hearing, we did all
11 agree that we felt that this property met the
12 first prong of the variance test. Clearly
13 it's a very large alley lot, 5,000-and-a-half
14 square feet.

15 It's got a rather deteriorated
16 existing building that was dedicated to a non-
17 conforming use for a really, really long time.
18 It's in an area -- it's also located in an
19 area that is very residential in nature. All
20 those things being said, I think the first
21 prong is quite easily met.

22 Coming to the second prong and

1 sort of holding in the Findings of Fact and
2 Conclusions of Law that we received, you know,
3 I was not as convinced by the opponent's
4 filings as I think the Chairman has indicated
5 that he was.

6 I felt that there were statements
7 in refutation of many of the Applicant's
8 claims including most of those that were
9 financial but I didn't find that the
10 opposition backed up their refutations with
11 information that would be compelling to be
12 able to go down on that side of things.

13 To me it felt a little bit more in
14 the nature of kind of he said/she said, you
15 know, "No, this can't be right and this is
16 right," but without, to my mind, you know, a
17 great deal of particular backup for the
18 counterclaims that were made with regard to
19 financing, with regard to equity to debt
20 ratios and so forth.

21 With regard to the self-imposed
22 hardship, I think that, you know,

1 understanding the manner in which this
2 property would have been purchased. I think
3 it's reasonable that the Applicant would have
4 known that there would be some level of
5 contamination and remediation required based
6 upon the use as an autobody shop.

7 I think there was plain to see, as
8 the opposition said, significant deterioration
9 to the existing building. However, the types
10 of environmental report that the opposition
11 indicates in their Findings of Fact are not
12 customarily to my mind performed prior to
13 purchasing these types of properties.

14 A larger commercial or larger
15 multi-family development project would do
16 that. I think the mounting of the cost
17 including refurbishing the existing building,
18 rebuilding it to a great extent, and greater
19 amount of remediation than was initially
20 considered. And the Applicant doesn't say
21 that -- well, they had no idea that there was
22 contamination. They had no idea that the

1 building was not in great shape.

2 All of that being said, I think
3 you can see that there are weights on either
4 side. Where I really come down is that with
5 regard to 2507.1 and 330.4 I think that the
6 case has been made for the uses being
7 appropriate for this lot; that being multi-
8 family residential use, not just a single
9 family use, as well as this type of office use
10 based upon the plans that are shown.

11 One of the arguments that the
12 opposition makes, which is a risk in these
13 types of developments, is that any type of
14 office could come in to this space.

15 When you do look at the plans,
16 which on any approval from the BZA are
17 contingent upon being built by the plans that
18 are submitted, the plans and the area
19 dedicated to the office on the first floor of
20 the existing building do not indicate a
21 certain type of use, one that is similar to
22 the use that the Applicant is indicating which

1 is an architectural office, a quieter, less
2 intense use.

3 A creative office, for example,
4 based upon the plans and the area that is
5 available within the existing building that is
6 being dedicated for office use. So if I can
7 agree with the uses in an abstract way under
8 those provisions and given the arguments under
9 the hardship claims, where I then end up with
10 trouble is height.

11 I was looking at this last night
12 and I was thinking, you know, there are
13 several buildings in the square that are not
14 as tall as this building. I don't think it's
15 necessarily proper to bring in the matter of
16 right height in an R-4. We have established
17 that 2003, in my mind, is not relevant here.
18 I was having a lot of trouble getting over the
19 variance for height under 2507.4

20 Then in the end I looked back at
21 the project as it's proposed, its intensity of
22 use, its design on the property. The project

1 that we're looking at on five-and-a-half
2 thousand or 6,000 square feet of land is five
3 residential units and a small office and
4 parking being kept on the interior of the
5 existing building.

6 When I look at it that way if I,
7 as I've laid out, am supportive of the uses
8 under the variance standard of multi-family
9 residential and of office, then it is at that
10 place where I think the intensity of the use
11 being only five units and in a place, frankly,
12 and in the city, frankly, that is desperate
13 for a greater housing stock, that's where I
14 look at this project as being an example of
15 creative in-fill development which even OP
16 says that they are theoretically in favor of.

17 That's where I think the
18 amenities, you know, pedestrian management,
19 traffic management, waste management,
20 protection of the safety of surrounding
21 properties, the placement of this lot on a
22 network of alleys, not on one alley.

1 And so when I looked at the use, I
2 looked at the plans and I think that this
3 isn't a palace and that the way that the five
4 units and the square feet devoted to those
5 five residential units and the square feet
6 devoted to that office use and the parking
7 inside the original building, the way those
8 things are laid out to me are reasonable and
9 that gets me over the hump, although just
10 barely, on 2507.4.

11 Which is a very, very long way of
12 saying that in the very end of this through a
13 lot of difficulty and a lot of thought and
14 careful looking at the plans and the project
15 and the specificity of the argument and those
16 which do carry weight and those which have and
17 have not been refuted by the opposition, in
18 the end I can be supportive of the
19 application.

20 CHAIRPERSON JORDAN: Ms. Cohen.

21 COMMISSIONER COHEN: Thank you,
22 Mr. Chairman. Actually, I do agree with my

1 colleague, Commissioner Sorg, in her analysis
2 of this project. I won't go into as great a
3 detail but the one thing I do want state is I
4 do believe the Applicant made a very
5 compelling case in regard to financial
6 hardship.

7 I know some of it appears to have
8 been self-created because of the lack of
9 moving forward with the phase 1. Many
10 developers of even larger sites do not
11 undertake that type of expense and due
12 diligence prior to and there may have been
13 timing requirements in executing the land
14 agreement.

15 However, putting on a hat that
16 I've worn for many years and that is in the
17 financial and investment community I think
18 this is a very, very financially risky deal.

19 I think that there will have to be
20 -- the lenders will be very conservative in
21 underwriting this and providing any debt. The
22 Applicant will have to come up with

1 significant resources to assure completion of
2 the project.

3 The one other area that I think
4 Ms. Sorg made a case for is, again, the
5 height. That would be the only area that gave
6 me -- well, the whole thing gave me a lot of
7 angst in reviewing it because it is a
8 difficulty case.

9 I think the design of the project
10 they called it sort of like a wedding cake
11 approach makes it more acceptable visually,
12 again, within the site as well as the fact
13 that it is not on a single alley. I am very
14 impressed that you received the approval of
15 not only the ANC but other neighbors, one of
16 which unfortunately is in opposition to this.

17 Frankly, I think you did a good
18 job in reaching out to the community. I do
19 believe that this particular project will
20 improve the community because the current use
21 is totally out of character. That's just to
22 add onto Ms. Sorg's analysis that I support.

1 Thank you.

2 CHAIRPERSON JORDAN: You're
3 welcome.

4 Ms. Allen.

5 MEMBER ALLEN: Thank you. We've
6 heard some very detailed analysis so I won't
7 go into that level either but I certainly do
8 applaud the Applicant, as Ms. Sorg indicated,
9 on the creative plan to in-fill this property.

10 However, like the Chairman, am not
11 able to support this application. I feel very
12 strongly that there really is -- our support
13 of this would seriously call into question
14 impairment of the Zoning Regs as regards to
15 multi-family use in an alley.

16 The fact that no zone in the
17 entire city would allow that was quite
18 dispositive for me. When I look at the plans
19 and the area where I think only 10 feet that
20 cars would have to go through and the damage
21 that has already happened to that particular
22 neighbor's home, the height that everyone has

1 talked about I thought was just way above and
2 beyond what was appropriate in terms of asking
3 for relief.

4 I did agree with the opposition
5 regarding the self-imposed hardship. There
6 were just too many hurdles for me to agree
7 that this should be supported by the Board.
8 I'll stop there.

9 CHAIRPERSON JORDAN: Anyone else?
10 Mr. Hinkle.

11 MEMBER HINKLE: Thank you, Mr.
12 Chair. This was a difficult project.
13 Following the four of you I feel like I'm in
14 a difficult position because I actually
15 support some of the relief but not all of it.

16 Essentially I'm following the
17 Office of Planning's report which I thought
18 was really well done and a very good analysis.
19 For me the regulations are relatively
20 straightforward in terms of placing multi-
21 family on alley lot.

22 I think it's a big hurdle to come

1 up with. It's actually a big hurdle in the
2 regulations to even place a single family
3 residential unit on an alley lot. I'm not
4 sure that the Applicant has made the case for
5 the multi-family.

6 Having said that, I could support
7 the use variance for the office use. This has
8 been an autobody shop since we had commercial
9 use there for many, many years. I think the
10 proposed office use is less intent. I think
11 the Applicant has made an argument in favor of
12 placing an office use in the alley.

13 The height I do have concerns
14 with. I have concerns with the variance under
15 2507.4. While there is an argument to be made
16 that what is being proposed is essentially the
17 same as what can be proposed if you just have
18 two opposing single-family houses upon an
19 alley this is really an intense use on an
20 alley lot.

21 I think when there are some
22 purchases made in the surrounding structures

1 in the single-family lots, you want the
2 assurance that there is at least some access
3 to the light and sun and all those efforts and
4 potentially purchase that property
5 understanding that there would be a low-
6 intensity use on that alley lot.

7 What is being requested is really
8 a significant amount of height. I think the
9 existing structure is 18 feet or so and what
10 is being proposed is something close to 40
11 feet. I feel that is relatively intense for
12 this alley site.

13 With that said, I would support
14 the use variance for the office under 330.4
15 but I cannot support the use variance for the
16 multi-family residential in 2507.1. With that
17 I can't support the height variance under
18 2507.4. That's it.

19 CHAIRPERSON JORDAN: Ms. Sorg.

20 VICE CHAIRMAN SORG: Thank you. I
21 just want to make a couple more briefer
22 points.

1 CHAIRPERSON JORDAN: If we've
2 already covered something, let's not recover
3 something.

4 VICE CHAIRMAN SORG: I think there
5 are some things that can be pointed out. I
6 agree with Ms. Allen actually. She did say
7 that there is no zoned district that would
8 allow this.

9 My sort of caveat or clarification
10 in my mind to that is that based on the
11 reading of 2003 this to me is not in a zoned
12 district and, therefore, is encapsulated under
13 those regulations in the alley lot which is
14 why, for example, I wouldn't look at the
15 height regulations and so forth in the R-4 in
16 that way.

17 With regard to the intensity of
18 use, I won't repeat what I mentioned about the
19 size of the lot but just doing a little bit of
20 math over here on the site plans, the shortest
21 distance between the building and the adjacent
22 lot is 12 feet.

1 Once you add a rear yard to that,
2 the regulations call that rear yard 20 feet.
3 Let's say it's a little bit less and you've
4 got about 30 feet. That's further away than
5 my house from the house across the street.
6 When we talk about -- I just want to make that
7 point when we talk about the light and air
8 that is available to the backs of those
9 properties.

10 I think when you really do
11 consider the distance it's pretty equivalent
12 to being across the street from somebody.
13 That is not a use variance test standard.
14 That's just sort of my way of looking at how
15 to understand what the distance effectively is
16 between the buildings that would be adjacent
17 to one another. So that's all I'll say.

18 CHAIRPERSON JORDAN: Seeing that
19 we've had great debate about this, I'm going
20 to ask -- I've been slightly persuaded here by
21 Mr. Hinkle's discussion of the office use.

22 Mr. Hinkle, do you think you are

1 ready to make a motion?

2 MEMBER HINKLE: Sure. I'll make a
3 motion to approve the use variance under 330.4
4 and then to deny the use variance under
5 2507.1, deny the area variance under 2507.4.
6 And, I think with that denial, we would also
7 deny the area variance under 2001.3.

8 MEMBER ALLEN: I'll second.

9 CHAIRPERSON JORDAN: Motion made
10 and seconded that we grant the relief
11 requested under 330.4 and deny the rest of the
12 Applicant's request. We've had debate on
13 this. Let's call for the vote.

14 PARTICIPANT: (Off mic.)

15 CHAIRPERSON JORDAN: We're at a
16 deliberation point at this point.

17 PARTICIPANT: (Off mic.)

18 CHAIRPERSON JORDAN: No. Let's --
19 what are you asking us?

20 PARTICIPANT: (Off mic.)

21 CHAIRPERSON JORDAN: We have a
22 motion pending before the Board and then there

1 is a request by the Applicant that the Board
2 allow them to take additional action. We have
3 to deal with the motion that's before us or
4 someone can make a motion to table the
5 decision pending a subsequent submission by
6 the Applicant to give them time to rework it
7 understanding that they've heard kind of the
8 flavor of where the Board is on this
9 application. If someone is willing to do
10 that, then we could be in parliamentary
11 procedure to allow that.

12 COMMISSIONER COHEN: Mr. Chairman,
13 I would move to table the Application 18511
14 Allyoop, LLC variances to allow mixed-use
15 development on an alley lot in the R-4 at rear
16 of 1018 Irving Street, N.W.

17 CHAIRPERSON JORDAN: Is there a
18 second to that motion?

19 VICE CHAIRMAN SORG: I'm not
20 seconding it but I would like an opportunity
21 to vote on this application.

22 CHAIRPERSON JORDAN: And that

1 would be to table it to a time certain if we
2 were to reschedule once we got the -- can I
3 assume that's in your motion?

4 COMMISSIONER COHEN: Yes.

5 CHAIRPERSON JORDAN: Does someone
6 want to second that?

7 Mr. Hinkle.

8 MEMBER HINKLE: I'll second that.

9 CHAIRPERSON JORDAN: Motion made
10 and seconded to table the application to a
11 time certain as fixed by a supplemental
12 submission by the Applicant. Any unreadiness?
13 Seeing none, all those in favor of the motion
14 signify by saying aye.

15 BOARD MEMBERS: Aye.

16 CHAIRPERSON JORDAN: All those
17 opposed nay. The motion carries.

18 Mr. Moy, let's work with some
19 dates.

20 VICE CHAIRMAN SORG: Mr. Chairman,
21 if I may before Mr. Moy reads the votes, I
22 would like to note for the record that I will

1 not be able to vote on this application when
2 it comes back up because this is my last day
3 serving on the Board so I would like to note
4 that this is an application that I would have
5 liked to have had the opportunity to extend to
6 and vote for.

7 CHAIRPERSON JORDAN: I think the
8 record is clear on your position. I really
9 appreciate the very thorough detail.

10 Ms. Allen.

11 MEMBER ALLEN: I'm sorry. I do
12 vote no for that table.

13 CHAIRPERSON JORDAN: Okay. So we
14 have three for the table and -- let's do it
15 again. All those in favor of the tabling say
16 aye.

17 BOARD MEMBERS: Aye.

18 CHAIRPERSON JORDAN: Those opposed
19 nay. Okay. I believe there is one nay.

20 MEMBER ALLEN: Yes. Nay.

21 CHAIRPERSON JORDAN: Mr. Moy,
22 would you poll the board?

1 MR. MOY: Yes, sir. I was
2 counting my fingers.

3 CHAIRPERSON JORDAN: It's going to
4 be one of those days.

5 MR. MOY: One of those days.
6 According to my notation I have a vote of
7 three to one to one on the motion of Ms. Cohen
8 to table the Board's decision to another
9 meeting date to be determined after a filing
10 of submission by the Applicant. Seconding the
11 motion was Mr. Hinkle. In support of that
12 motion would be Mr. Jordan, Chairman Jordan.
13 Opposed to that would be Ms. Allen and not
14 voting Ms. Sorg.

15 CHAIRPERSON JORDAN: Okay.

16 MR. MOY: The motion carries.

17 CHAIRPERSON JORDAN: Okay. And so
18 what would be a date?

19 MR. MOY: The next scheduled
20 decision for the Board --

21 CHAIRPERSON JORDAN: Let me ask
22 how soon can you do it?

1 MR. MOY: The next scheduled
2 decision for the Board is May 7th.

3 CHAIRPERSON JORDAN: Here's the
4 thing. If there is an addition submission,
5 it's like, yeah, the opposition party has to
6 be all involved. I mean, this thing is going
7 to be carried out, Mr. Moy. We are not doing
8 anything quick with this.

9 MR. MOY: I got it. The date then
10 would be May 21st.

11 CHAIRPERSON JORDAN: May 21st.
12 And then the response is back?

13 MR. MOY: Let's say a week before
14 so that would be May 14th.

15 CHAIRPERSON JORDAN: No, no, no.
16 We've got to have time. So the submission
17 would be what date?

18 MR. MOY: Let's make the
19 submission -- today is the 30th. Let's make
20 the submission one week from today which would
21 be May 7th.

22 CHAIRPERSON JORDAN: Okay. And

1 then a week for both OP and for all parties to
2 have a chance to respond to that.

3 MR. MOY: Another week. That
4 would be May 14th.

5 CHAIRPERSON JORDAN: We'll set
6 this for a hearing. You need your time so --

7 MR. MOY: The decision would be
8 May 21st.

9 CHAIRPERSON JORDAN: Okay. All
10 right. That would be our order in this case.

11 MR. GLAZER: I just wanted to know
12 if the Chair was considering stating for the
13 record what the purpose of the new submission
14 would be or what it would look like.

15 CHAIRPERSON JORDAN: I thought we
16 said that in the motion and the discussion was
17 that the Applicant is going to make a
18 subsequent submission in light of what I think
19 the tendency of the Board is.

20 MS. GLAZER: So consistent with
21 the Board?

22 CHAIRPERSON JORDAN: Well, no.

1 They understand the tenor of the discussion
2 here today and whatever they submit we will
3 take a look at.

4 Okay? So that's it. Thank you.

5 (Whereupon, at 10:20 a.m. off the
6 record until 12:50 p.m.)

7 CHAIRPERSON JORDAN: Let's come
8 back to order.

9 Mr. Moy, let's go ahead and
10 continue to call the docket. We'll start with
11 Heritage for that decision.

12 MR. MOY: Yes, sir. Thank you.
13 That then would be Application No. -- this is
14 the case for the Board for decision in the
15 Public Meeting.

16 This is Application No. 18531 of
17 the Heritage Foundation pursuant to 11 DCMR
18 3104.1, 3103.2 and 1202.1, for a variance from
19 the floor area ratio requirements under
20 Section 771, a variance from the roof
21 structure height provisions under Subsection
22 1203.2(b), a variance from the non-conforming

1 structure provisions under Subsection 2001.3,
2 a variance from the vehicle location and lot
3 line requirements for a parking garage under
4 Subsection 2303.1(b), and a special exception
5 for accessory parking under Section 214, to
6 allow a commercial and residential project
7 with below-grade parking in the CAP/CHC/C-2-A
8 and CAP/R-4 Districts at premises 208, 214 and
9 236 Massachusetts Avenue, N.E., and 426-430
10 3rd Street, N.E. Property located in Square
11 755, Lots 3, 26, 36, 836, 838 and 849.

12 I'll note that the Applicant had
13 amended the application to withdraw zoning
14 relief from roof structure requirements under
15 Section 411.11 but added variance relief from
16 structures in required open space under
17 Section 2503.2(b).

18 As the Board will recall on April
19 9, 2013, the Board completed both testimony,
20 closed the record, scheduled this decision on
21 April 30th. The Board requested additional
22 information to supplement the record from the

1 Applicant and allowing responses.

2 In your case folders, Mr.
3 Chairman, there is a post-hearing submission
4 from the Applicant identified in your case
5 folders under Exhibit 54, a supplemental
6 report from the Office of Planning under
7 Exhibit 53.

8 CHAIRPERSON JORDAN: Are you still
9 introducing this case?

10 MR. MOY: Yes, sir. DDOT report
11 under Exhibit 52, and ANC-6C letter under
12 Exhibit 50. I would note also there is a
13 follow-up letter from the Architect of the
14 Capitol under Exhibit 51.

15 So I'm going to conclude with
16 that. My belief is participating members on
17 this for voting is Vice Chairperson Sorg, Ms.
18 Allen, Mr. Hinkle, and Mr. Hood.

19 CHAIRPERSON JORDAN: I'm going to
20 turn the Chair over to Vice Chair Sorg to
21 handle the deliberation on this, please.

22 VICE CHAIRMAN SORG: Okay. So

1 given the long list that Mr. Moy read out,
2 there was some dotting of T's and crossing of
3 I's and clarifications that were required in
4 the post-hearing statement.

5 Happily, though, in my opinion,
6 regarding the deliberation, the OP
7 supplemental report, which was in support,
8 DDOT supplemental report, the ANC-6C second
9 report, as well as the clarification of the
10 Architect of the Capitol's letter, and after
11 having reviewed the Transportation Demand
12 Management Plan all show they are in favor.

13 I can support the application with
14 the relief that is requested in the amended
15 application. I guess we can see there's other
16 deliberations. Then I do have a note on the
17 proposed condition.

18 So the I will make a motion to
19 approve Application No. 18531 with the relief
20 as requested including the following five
21 conditions:

22 (1) Heritage will charge staff

1 permit holders for the underground accessory
2 parking at a rate that is equal to or more
3 than its ongoing operating cost.

4 (2) Heritage will maintain and
5 continue its Smart Benefits Program.

6 (3) Heritage will provide 36
7 bicycle parking spaces in the underground
8 accessory parking, six bicycle parking spaces
9 within 236 Mass Avenue, 10 bicycle spaces
10 outside on Mass Avenue adjacent to the
11 building which is subject to Public Space
12 Committee approval.

13 (4) Heritage will pay the cost of
14 installing and one year of operating cost for
15 a 40-foot Capital Bikeshare station in the
16 immediate vicinity of the property at a
17 location to be selected by DDOT.

18 (5) Heritage shall be permitted to
19 construct and occupy the project in phases and
20 the issuance of a building permit for any
21 portion shall vest this order.

22 MEMBER ALLEN: Second.

1 VICE CHAIRMAN SORG: A motion has
2 been made and seconded. All those in favor
3 say aye.

4 BOARD MEMBERS: Aye.

5 VICE CHAIRMAN SORG: All those
6 opposed.

7 Over to Mr. Moy, the secretary.

8 MR. MOY: Staff would record the
9 vote as four to zero to one on the motion of
10 Vice Chairperson Sorg to approve the
11 application with the five conditions as cited
12 for the record. Seconding the motion Ms.
13 Allen. Also in support Mr. Anthony Hood and
14 Mr. Jeffrey Hinkle. Mr. Jordan not
15 participating on this application.

16 CHAIRPERSON JORDAN: Well, I'm
17 here.

18 MR. MOY: Present but not
19 participating.

20 ZC CHAIR HOOD: Mr. Chairman, I
21 know that you all have an action-packed
22 afternoon. I also wanted to come and say a

1 few words about Vice Chair Sorg who is going
2 to be sorely missed. She has definitely
3 served this Board and this city very well and
4 we are going to miss her.

5 Especially I'm going to miss
6 teasing and messing with her up here on the
7 BZA. The work that she has put into this city
8 I think the city is a better place because Ms.
9 Sorg has come this way. I know you all will
10 probably say comments later but I have to go
11 back to work.

12 I wanted to just come by and stop
13 and say a few words about Ms. Sorg who I have
14 had the pleasure to work with. I'm sure all my
15 colleagues on the Commission would agree with
16 me. You are going to be sorely missed but we
17 are sure we will see you around the city
18 somewhere. Good luck to you.

19 VICE CHAIRMAN SORG: Can I just
20 make a comment? Before you walk out the door,
21 Mr. Hood, I want to say thank you to you. I
22 will bid farewell to my colleagues on the BZA

1 afterwards but I just want to say thank you to
2 you especially, and also to the other
3 colleagues on the Zoning Commission. You have
4 been very welcoming to me and my very
5 particular way of doing things.

6 It has been a really, really great
7 pleasure and learning experience to work with
8 you and everybody. I don't think this is the
9 last you're going to see me. Although I'm not
10 a lawyer so I'm not going to be up here.

11 CHAIRPERSON JORDAN: Normally I
12 have to separate these two from sitting with
13 each other. Listen to them today.

14 Let me just do a brief survey here
15 so I can decide what we're doing. We have two
16 cases left on today's docket. In regards to
17 18522 we have a party submission. I have a
18 party submission from the Applicant and a
19 party submission from the Government. I don't
20 have anything from the intervenor. Is that
21 correct on this on 18522, the Washington
22 Harbour Condo Association?

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Just briefly I'm trying to do an assessment for time factors. Is there a need for you to do any oral argument? Okay. You don't think your brief is sufficient enough? All right. Then we'll just keep you down where you are.

(Whereupon, at 12:58 p.m. the public meeting was adjourned.)

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This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 04-30-13

Place: Washington, DC

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Court Reporter

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