GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

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MEMORANDUM

BZA
Case No. 16838
Exhibit No. 21

TO: Board of Zoning Adjustment

FROM: JLS for Andrew Altman, Director

DATE: March 5, 2002

SUBJECT: BZA Application #16838 (Application of George Nwanze/GOAL)
1717-19 5th Street, NW
Square 508N, Lots 801,808

I. APPLICATION-IN-BRIEF

Applicant:	George Nwanze/GOAL of Washington, D.C.
Relief Sought:	Variance from Land Area Requirements for Apartment Units Variance for Maximum Lot Occupancy
From Section:	11 DCMR §401.3 and §403.2
Zoning:	R-4
Regulations Require:	More Lot Area Per Apartment/Condominium Unit Less Lot Coverage
Relief Sought Under:	§3103.2

II. OFFICE OF PLANNING RECOMMENDATION

The Office of Planning (OP) recommends the application for a variance under Section 401.3 be denied, and that the variance under Section 403.2 be granted.

III. SITE AND AREA DESCRIPTION *(See Attachment 1)*

Square 508N in northwest Washington is bounded by:

- South: Rhode Island Avenue
- East: New Jersey Avenue
- North: S Street
- West: 5th Street.

Lots 801 and 808 are in the center of the east side of the 1700 block of 5th Street. Their sole frontage is on 5th Street, as they have no alley access in the rear. Lot 808 comprises 860 SF and is 17 feet wide and 50.58 feet deep. Lot 801 is an irregular lot: 17 feet wide, 74.08 feet deep on

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its northern side and 83.64 feet deep on its southern side. There is no alley serving the property, or the adjacent lots. The parcels, therefore, have no off-street parking.

The applicant has filed for consolidation of the lots, but their consolidation has not yet been recorded. When combined, the lots will comprise 2192.49 square feet. For purposes of this report, OP is considering the parcels as if their combination has been completed.

At the time the BZA application was filed, Lot 801 was improved with a 2-story, 2-unit flat that occupied 859.86 square feet of land. Parcel 808 had no structure on it.

As of February 23, 2001, the applicant had made substantial progress on construction of a two-story addition to the structure on Lot 801. This structure was built on Lot 808 and is essentially the mirror image of the structure on Lot 801. The roof for a rear porch extending the width of the entire structure has been added. The final structure occupies 1719.72 square feet of land , comprising 78.44 % lot occupancy. It is approximately 34 feet wide and 50.58 feet deep. It ends at the rear line of Lot 801, and is approximately 25 feet from the rear of Lot 808. The Zoning Administrator has determined that the structure will meet rear yard requirements once the lot-combination is completed.

The property is located in the Shaw neighborhood, which is experiencing significant change in its housing stock. The neighborhood consists primarily of row houses, some of which have been converted into flats or apartments. Building heights range from two to three stories. The row houses in the 1700 block of 5th Street, NW are two stories, although a few appear as high as three-story buildings because of English basements and grade changes.

IV. AREA ZONING AND HISTORIC DISTRICTS *(See Attachments 1 and 1a))*

The site is zoned R-4, as is the facing square and most of the two squares to the north. Other nearby zone districts are C-2-A, primarily mapped along arterial streets, and other R-4 zoned areas. The nearest historic district is LeDroit Park, which is two blocks to the north.

The R-4 district is designed for areas that have already been developed primarily with row houses, but where a substantial number of the row houses have been converted into residences for two families (i.e., a "flat" as defined by 11 DCMR Section 199.1) or more. However, 11 DCMR Section 330.3 specifically states that the R-4 district is not intended to be an apartment house district, unlike the R-5 general residence district. In the R-4- district, the conversion of a pre-1958 structure into flats or multiple dwellings is controlled by Section 330.5 and, by cross reference Section 401.3, which requires a minimum lot area of 900 square feet per dwelling unit. Given typical row-house lot sizes in the central part of the District, the lot area requirements of Section 401.3 usually result in structures being convertible to no more intensive use than flats as a matter-of right.

V. APPLICATION DESCRIPTION

The applicant received a building permit to construct an addition to a vacant row house that has a certificate of occupancy for a 2-unit flat. The permit was premised on two lots being combined into one in order to meet the area requirements, and the minimum lot width requirements. The new structure would also be a two unit flat, but the configuration would be significantly different. Instead of there being one flat on each of the two 860 square-foot floors of the row house at 1717 5th Street, the new enlarged structure would have one vertical flat on the two floors at 1717 5th Street, and one vertical flat on the two floors at 1715 5th Street. The applicant intends to sell these flats as condominium units. The applicant is now requesting variances to construct a third story that would be sold as a single horizontal condominium unit spanning the top floors of both 1717 and 1719 5th Street.

This Zoning Administrator has determined that adding the third unit would require a variance from the area requirements of 11 DCMR Section 401.3 and, from the lot occupancy requirements of 11 DCMR Section 403.2.
OP's analysis is based on the circumstances that will exist after the combination of the two lots.

VI. RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN *(See Attachment 2)*

The Comprehensive Plan's Generalized Land Use Map shows the area as being suitable for moderate density residential. Moderate Density Residential is typically associated with zone districts ranging from R-3 to R-5-B. Row houses and smaller apartments are the predominant uses.

The Ward 2 Element of the Comprehensive Plan stresses the provision of additional housing, and the need for neighborhood stabilization. It also promotes the creation of additional housing near Metro stations. The granting of the area variance would be consistent with all three of these Comprehensive Plan objectives: it would add housing; that housing would be within three blocks of the Shaw Metro station; it would help to stabilize the neighborhood by taking both a vacant shell and a vacant lot and convert them into units for home-ownership.

VII. REQUESTED ZONING RELIEF

The recent development history on these sites is somewhat complicated, and is relevant to the current application.

The vacant Lot 808 (1717 5th Street), by itself, would have required receiving numerous variances to render it usable by a new structure in this R-4 zone.

TABLE 1: Lot 808, Without Consolidation With Lot 801

Provision	11 DCMR Section	Matter of Right	Existing on Lot 808
Lot Size	401.3	1800 SF	860 SF
Lot Width	401.3	18'	17'
Lot Area	401.3	900 SF/unit	860 SF
Rear Yard (probable)	404.1	20 '	30'total lot depth
Lot Occupancy (probable)	403.1	Usual maximum is 60%	Would likely have required 100%
Parking	2101.1	1 per dwelling unit	0

Combining lots made development more feasible. The following chart includes both what is permitted as a matter of right on the combined lots 808 and 801, the variance that would be required for a flat, and the variance that would be required for constructing the three units the applicant has requested.

TABLE 2: Lots 808 and 801 Combined

Provision	11 DCMR Section	M-O-R Requirement	Existing on Combined Lots	Variance for Flat, As Now Constructed	Variance for Expansion to 3 Units, as Proposed
Lot Size	401.3	1800 SF	2192.49SF	None	None
Lot Width	401.3	18'	17'	None	None
Lot Area	401.3	900 SF/Unit	2192.49	None	507.51SF (18.8%)
Rear Yard	404.1	20 '	Approx 35'	None	None
Lot Occupancy	403.1	Usual maximum is 60%, but may be as little as 40% [*ZA had determined 60% allowed; OZ has determined 40 % allowed*]	1315.48 SF@ 60 % lot occ.; ---------- 877 SF @ 40% lot occ.; ---------- 1719.72 SF occupied after addition of new construction	404.24 SF (30.7%) @ 60% lot occupancy; ---------- 842.72 SF (96%) @ 40% lot occupancy	404.24 SF (30.7%) @ 60% lot occupancy; ---------- 842.72 SF (96%) @ 40% lot occupancy
Parking	2101.1	0: grandfathered as addition to pre-1958 structure	0	None, as addition to pre-1958 structure	None, as addition to pre-1958 structure

The applicant thus began the process of combining the lots in September, 2001, and received a building permit to start constructing a two-unit flat on the (in process) combined lots in October, 2001.

In conversations with OP, the applicant has said that he had always intended to construct three units on the combined lots to make the project financially feasible. However, in order to reduce the time he would need to carry the project's mortgage, he decided to proceed with two units, and apply for the minimum lot area variance for a third unit after construction of the first two units was underway. The first two units are now structurally complete and awaiting finish work, pending consideration of the application for the third unit.

The Zoning Administrator has advised the applicant that the following variances are required, which are summarized in the preceding table:

- **Section 401.3**: *lot area variance to construct 3 units on a (pending combination) lot of 2192.49 square feet, where 2700 square feet of lot area are required.*

  Other requirements having been satisfied, a pre-1958 building may be converted to apartment use in an R-4 zone. However, only one apartment unit may be created for each 900 square feet of land area. The applicant would thus be entitled to no more than two dwelling units on the 2,192.49 square foot property. Should the Board approve the area variance request, the desired three units would have, on average, approximately 731 square feet per unit. The 507.51 square foot variance would be for 18.44 % less square footage than Section 401.3 requires under matter of right zoning.

- **Section 403.2**: *lot occupancy variance to occupy 1719.72 square feet (78.44%) of a 2192.49 square foot lot.*

  At 40% permitted lot occupancy, an 842.72 square foot variance would be required (96 %). At 60% permitted lot occupancy, a 404.24 square foot variance would be required (30.7%). Either way, a variance is required.

  The Zoning Administrator originally advised the applicant that, as a "row dwelling [or] flat", the structure could occupy 60% of the lot under Section 403.2. (The applicant was later advised by the Office of Zoning that the final structure, which consists of the existing row house on Lot 808, plus the addition constructed on the (pending consolidation) Lot 801 came in under the 40% lot occupancy provision accorded to "all other structures" under Section 403.1.

VIII. AUTHORITY TO GRANT VARIANCES

11 DCMR, Sec. 3103.2 cites the D.C. code provision that authorizes the BZA to grant the requested variances *"where, by reason of*

- *exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption or 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 … would result in

- *peculiar and exceptional practical difficulties to or*
- *exceptional and undue hardship upon the owner of the property…;*

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".* (bullets added)

IX. DOES THE APPLICATION MEET THE VARIANCE TESTS FOR SECTION 401.3 AND 403.2?

A. Are there exceptional conditions that create a significant practical difficulty in using or developing the property under the strict application of the existing zoning:

Considered as consolidated lots, the application does not meet this test for a variance under Section 401.3, but does meet this test for a variance under Section 403.2.

Exceptional Conditions With Respect to Section 401.3: Because Lot 808 (1719 5th Street) has a certificate of occupancy for two dwelling units, it can be renovated as two rental or condominium two units, or converted to a single family dwelling.

Due to the replatting of the property to combine Lots 801 and 808, both units at the combined 1717-19 5th Streets conform to the lot area requirements, and would continue to conform with the lot area requirements with the addition of a 3rd floor should in be used by the two conforming units. However, the addition of a 3rd unit would make the structure non-conforming with respect to the lot area requirements.

Exceptional Conditions With Respect to Section 403.2: These exist.

- At approximately 65% lot occupancy, Lot 808 was would, by itself have required, a variance for an addition. With the 100% coverage of the existing Lot 801, the required variance simply became greater. The inability to build on the existing Lot 801, either as a standalone lot, or as a lot combined with Lot 808, constitutes an exceptional condition.

"Practical difficulties" that would be "unnecessarily burdensome" with respect to Section 401.3 area requirements : There are none that would keep the property from being developing in conformance with the zoning regulations once the lot consolidation is complete.

- This is evidenced by the fact that the renovation/reconfiguration of the two units (flat) is near completion. The applicant has shared information with OP documenting all hard and soft costs, as well as projected income from sales. It is clear that three units would provide more profit than two. However, under no scenario does the applicant actually lose money.

- The basic construction is complete for two self contained two-story units. Legally, it would also be possible to add a third story to each of these units if that were advantageous to the applicant. Constructing the same square footage and selling it as a third unit, however, is not permissible without a variance from the requirements of Section 401.3. . However, the applicant was under no obligation to begin renovation and new construction prior to seeking the variances required for a third unit.

Practical difficulties that would be unnecessarily burdensome with respect to lot occupancy under Section 403.2. These exist:

- Because the lot coverage for Lot 808 was already in excess of that permitted, any construction on Lot 801, even after the lots were combined, would have constituted an expansion of a non-conforming structure. The inability to build would constitute a practical difficulty. See Table 2 for details.

B. Can The Relief Be Granted Without Substantial Detriment to the Public Good?

It can, for both requested variances.

- The renovation appears to be substantial and well done.

- The Shaw neighborhood has experienced some tenant displacement for reasons including building abandonment and to gentrification. The applicant has already made substantial progress in converting an abandoned flat into two quality residential units that are able to be larger than the former flats, by virtue of the pending lot combination. The lot combination is also enabling the filling-in of an abandoned lot that had become an eyesore and problem for the neighborhood.

- Delivering an additional, third, housing unit to the market comports with the District's high-priority objective of retaining existing residents, and gaining 50,000 to 100,000 more residents within the next ten years.

- Because of the absence of alley access, no units on these lots would be able to provide parking. After lot combination is complete, the grandfathered parking credit for Lot 808 will apply to what is now Lot 801. No additional parking will be required for 1-3 units. The site is three blocks from a Metro.

- The additional lot coverage, which has already been completed, does not impact on the light or air of adjacent properties. The addition of a third story would not impact neighboring properties, either.

C. Can the Relief Be Granted Without Substantially Impairing the Intent, Purpose and Integrity of the Zone Plan as Embodied in the Zoning Regulations and Map?

The requested relief from the lot area/dwelling units requirements Section 401.3 cannot be granted without impairing the intent, purpose and integrity of the zone plan. The requested relief from occupancy requirements of Section 403.2 can be granted without impairment.

With respect to the lot area requirements of Section 401.3, the existence of three apartments in one 2560 square foot row house is not unusual in a row house in an R-4 zone. The zone district is mapped primarily in denser, older, often historic areas surrounding the central employment area of the District. However, as noted earlier, the intent of the R-4 zone is to avoid apartment houses becoming the predominant uses in this district. The R-5 zone is the district that is intended for general residence uses such as apartments. .

OP finds the granting of a variance for lot area per dwelling unit, absent the demonstration of either exceptional conditions or practical difficulty, to be contrary to the intent of the zoning regulations and the zone plan. OP is troubled by applicant's having started construction before receiving, or even having filed for, permission to construct the third unit, if he had wanted the third unit all along to justify his project. OP is concerned that the principal justification put forward by the applicant for this variance is financial rather than physical. In OP's opinion, granting a variance from the area requirements of Section 401.3 would undercut the intent of the zoning regulations and the integrity of the zone district, when the applicant's principal justification is that he chose to start a renovation and new construction whose alleged financial success is predicated on the ability to construct an additional unit, before receiving the required variance for such a unit.

With respect to Section 403.2, the zoning regulations are not intended to make non-conforming lots in the Old City unusable. The applicant has taken the logical step of

combining lots so as to minimize the variances needed for construction on the vacant Lot. Granting the requested variance would not be contrary to the intent of the zoning regulations.

XI. COMMUNITY COMMENTS

There were no objections to the application at the ANC's single-member district meeting where the project was reviewed. The full ANC 2C will review the project on March 6, 2002. There were no comments in the record as of February 25, 2002.

XII. OTHER AGENCY COMMENTS

No agency comments had been received as of February 25, 2002.

Aa/slc

Attachments (4)



Feature Key

Zoning Boundaries

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1717019 5th Street, N.W.

DC Office of Planning
February 27, 2002

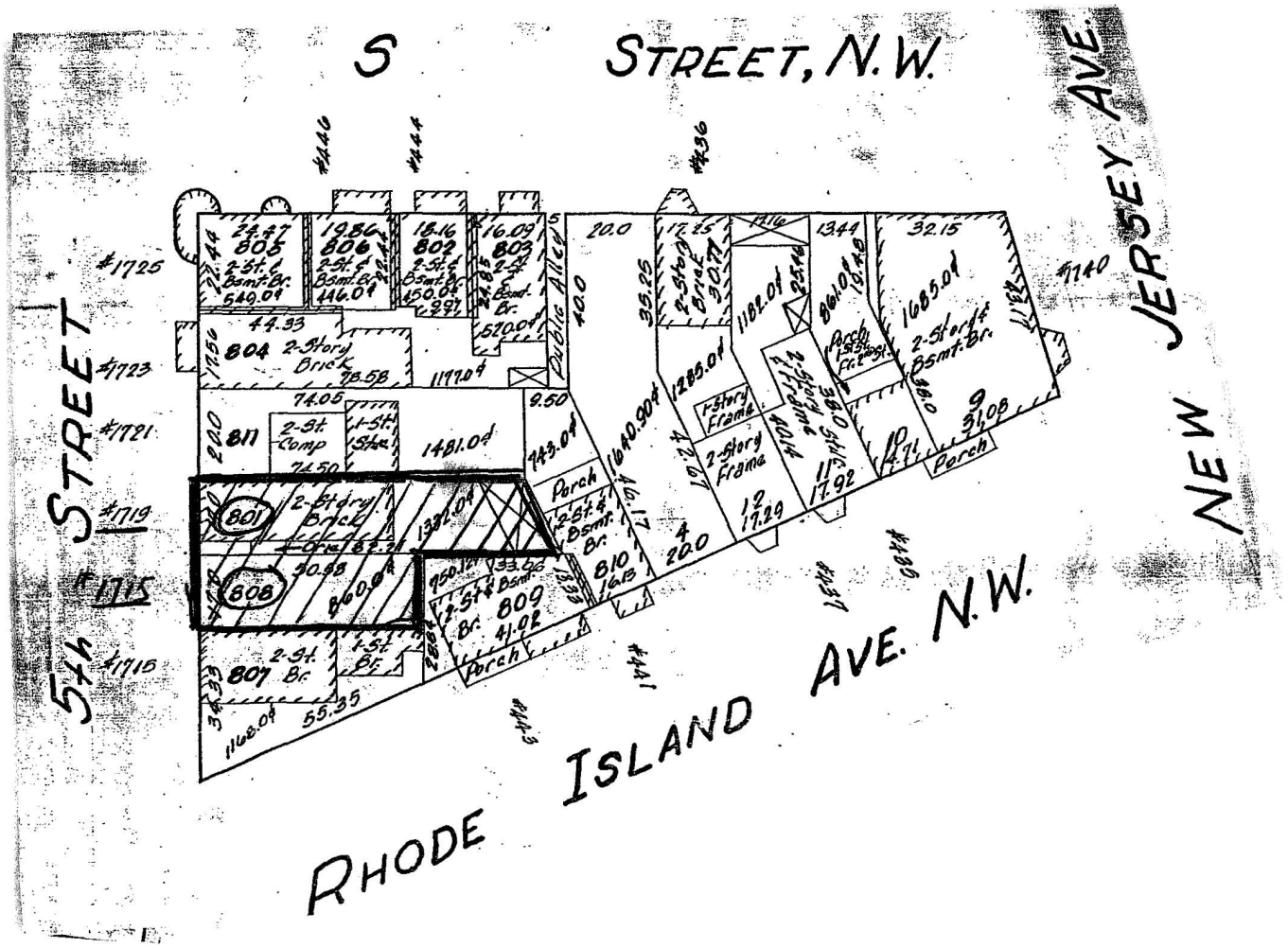
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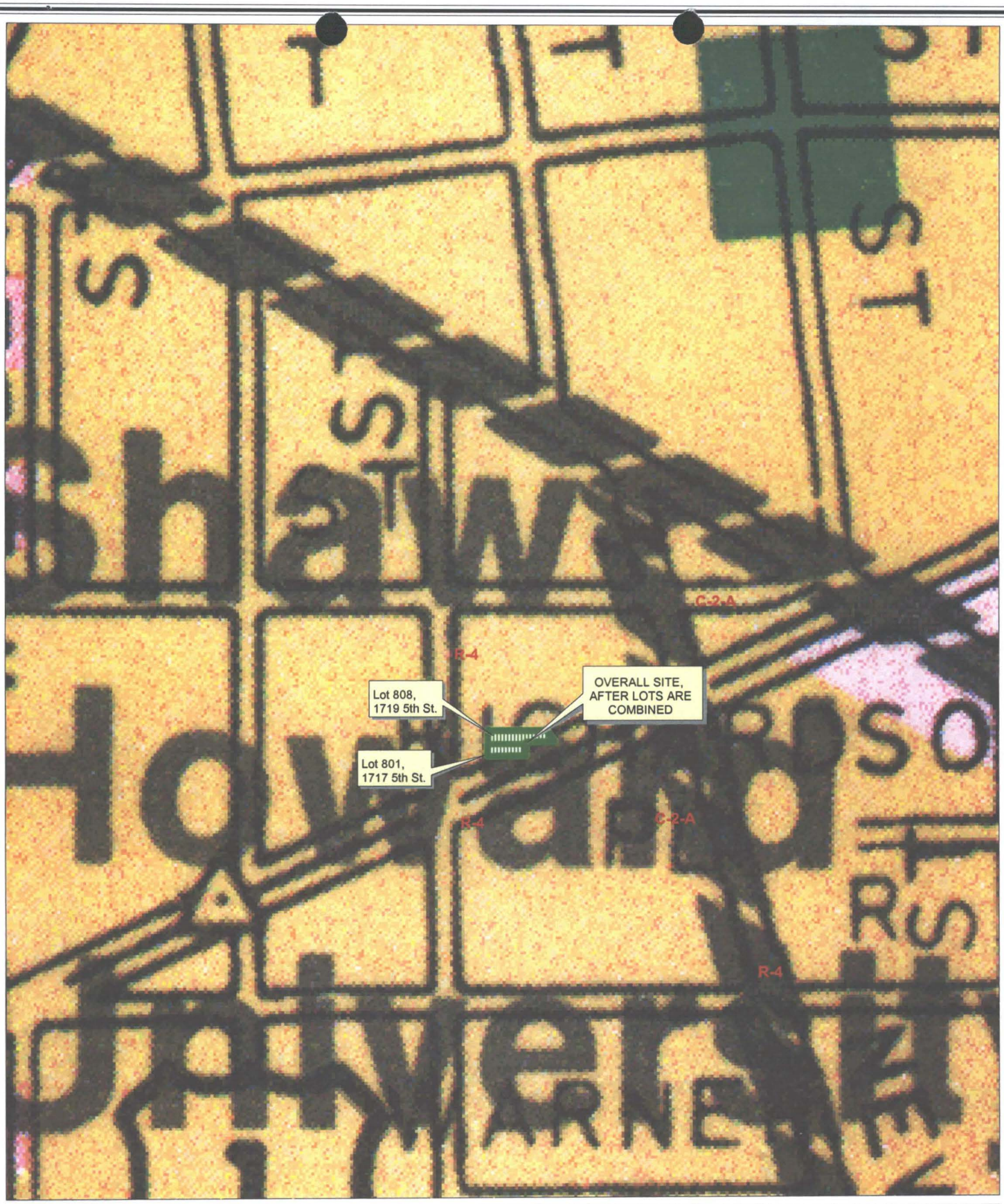
25 0 25 50 75 Feet

Attachment 1

ATTACHMENT 1a

SITE LOCATION AND ZONING





Generalized Land Use Key

- Residential Low Density
- Residential Moderate Density
- Residential Medium Density
- Residential High Density
- Water
- Commercial Low Density
- Commercial Moderate Density
- Commercial Medium Density
- Commercial Med.-high Density
- Commercial High Density
- Federal
- Institutional
- Local Public
- Parks, Recreation and Open Space
- Production and Technical Employment

Comprehensive Plan Landuse

DC Office of Planning
February 25, 2002

Scale 1:2131

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Attachment 2

ATTACHMENT 3

CONDITIONS PRIOR TO CONSTRUCTION



Figure 1: Conditions Prior to Construction: Lot 808, 1719 5th Street is Vacant Building on Left; Lot 801, 1717 5th Street is Vacant Lot on Right

ATTACHMENT 4

EXISTING CONDITIONS ILLUSTRATIONS



Fig. 2: Existing Conditions. Lot 808, 1719 5th Street, on Left; Lot 801, 1717 5th Street, on Right

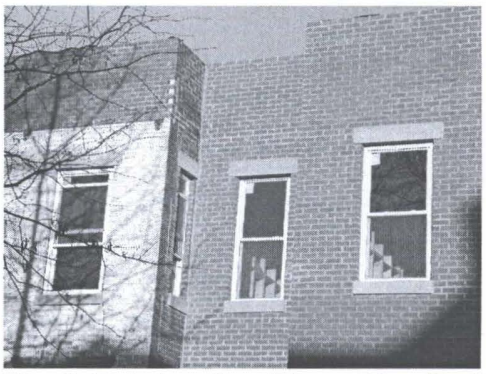


Fig. 3: Existing Conditions: Detail of Completed Construction on 2nd Floor



Fig. 4: Existing Conditions: Rear of Lot 801, 1717 5th Street on Left; Lot 808, 1719 5th Street, on Right.



Fig. 5: Neighborhood Context: Across 5th Street from Applicant's Property