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OFFICE OF PLANNING

Office of the Director

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director

DATE: January 7, 2003

SUBJECT: BZA Application #16965
Application of 2914 11th St. NW, LLC
Square 2853, Lot 813 (including the former Lot 858)

I. APPLICATION SUMMARY

2914 11th Street, NW LLC wishes to convert a vacant 16-unit apartment building in an R-4 zone district in Ward 1 into eleven condominium units. The apartment building was built in 1909 and is known as The Nonquitt. The applicant is asking the Board of Zoning Adjustment (the BZA or the Board) to approve its request for multiple area variances.

Specifically, the applicant is requesting at least 4 or 5 variances from 11DCMR[1]:

- A variance from §406.1 for the minimum width of a closed court;
- A variance from §406.1 for the minimum width of an open court;
- A variance from §403.2 for the maximum lot occupancy allowed an apartment building in an R-4 zone;
- Variances from §2001.3 and §403.2 to allow construction of a lot occupancy-increasing addition to an existing non-conforming structure that is devoted to conforming uses in an R-4 zone.

All of the relief is being sought under §3103.2 of the Zoning Regulations.

II. OFFICE OF PLANNING SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends the Board approve the two requested variances from §406.1. OP recommends the Board not approve the requested variance from §2001.3 (a), nor the rear addition-related requested variance from §403.2 at this time. If the applicant is also requesting relief from §403.2 for the closed and open courts, OP recommends this request be approved.

[1] While the applicant's Statement of Existing and Proposed Use alludes to the lot occupancy restrictions of §403.2 in relation to new construction in the closed and open courts, there is no discussion of this.

BZA
Case No. 16965
Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO.16965
EXHIBIT NO.23

III. SITE AND AREA DESCRIPTION *(See Attachments 1 and 2)*

Square 2853 in Columbia Heights neighborhood of northwest Washington is bounded by:

- North: Columbia Road, NW
- East: 11th Street, NW
- South: Harvard Street, NW
- West: 13th Street, NW.

An east-west alley bisects the block at its mid-point. Lot 813 is a level site on the south side of this alley, at its eastern end. At the applicant's request, the former Lot 858, a vacant lot to the west, has been incorporated into Lot 813 in order to meet parking and rear yard requirements for the apartment building.

The subdivided Lot 813 comprises 5818 square feet and is bounded by the alley on the north, 11th Street on the east, a string of late 20th century row-house condominiums on the south side, and –on the west side--parking and access for some of the condominiums. The Nonquitt apartment building occupies approximately 68% of the approximately 100' x 48' rectangle of Lot 813's former boundaries. The approximately 25' x 30' rectangle of the former Lot 858 is behind and to the west of The Nonquitt.

There is a similar four story plus basement apartment building across the alley, to the north. Row houses face the applicant's property across 11th Street, to the east. The Harvard Condominium townhouse complex is to the south and west of the applicant's parking area. Many of these townhouses face 11th Street or Columbia Road. However, the 10-15 units face onto a landscaped parking area to the west and south of the Nonquitt, at its rear elevation.

The site is 3 blocks from the Columbia Heights Metro station. The nearby blocks contain a mix of row houses, flats, and apartment buildings.

IV. AREA ZONING AND HISTORIC DISTRICTS *(See Attachment 2)*

The site is zoned R-4, as is most of the surrounding neighborhood. The structure is not historically designated, nor is it located in an historic district.

V. PROJECT DESCRIPTION

The building is currently vacant and gutted to its structural walls and staircases. The exterior walls and interior staircases are sound.

There is an existing, zoning-compliant open court on the north side.

Along the south side there is a closed court and an open court. Neither complies with the Zoning Regulations. The closed court is to the west; the open to the east.

The closed court is almost fully occupied by a metal fire stair. (*See attached Illustration 1*) that the applicant's architect has determined to be unsound. The applicant proposes to retain the closed court, remove the stairs, and replace them with a combination of balconies and a new code-required fire escape.

The open court has remnants of former porches on its east side. *(See 3rd page of Applicant's photos*). The applicant proposes to retain the open court and replace the former porches with balconies at the first and third floors.

There also appear to have been either porches and/or wooden fire escapes along a portion of the rear of the building. (*See 2nd photo on 1st page of Applicant's report*). The applicant proposes replacing these porches with a 2½ story addition providing occupiable bays for the units in the basement, first and second floors, and balconies for units on the third floor.

The application is somewhat inconsistent about the intention and prior-condition precedent for the addition, as well as the proposed square footage of its lot occupancy. The Statement of Existing Conditions and Proposed Use states that the "applicant also proposes to install a fire escape on the rear of the structure which has been removed" whereas the architect's letter of August 19, 2002 seems to more accurately describe the construction at the rear as adding "130 *(sic)* square feet to the building area *(sic)* [to] provide additional floor space as well as create architectural interest". Based on the lot occupancy figures in the Self-Certification form, it appears to that the addition would actually add approximately 310 sf to the building footprint. Based on the submitted architectural drawings, the addition does not appear to have any fire egress function.

VI. RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN (*See Attachment 3)*

The Comprehensive Plan's Generalized Land Use Map shows the general 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 garden apartments are the predominant uses. Columbia Heights also contains many traditional apartment buildings, such as the Nonquitt, that have been grandfathered into the R-4 zone.

The Ward 1 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 requested area variances would not be inconsistent these Comprehensive Plan objectives: it would put housing stock back on the

market; help stabilize the neighborhood by enabling a vacant building to be re-occupied; and would locate that housing within easy walking distance of a Metro station.

VII. DOES THE APPLICATION MEET THE TESTS FOR THE REQUESTED ZONING RELIEF?

The applicant is requesting multiple area variances on a 5,818 square foot lot. These relief requests are summarized in the following table.

Type of Relief	Permitted or Required as Matter of Right	Existing Structure	Proposed	Degree of Relief Requested
Open Court, §406.1	15' min. width; 350 sf area	9.72'width; 15.75' depth'; 153.09 sf area, mostly occupied by fire stairs that count towards floor area	Same dimensions and areas as existing, occupied by smaller balconies and fire stairs that count towards floor area	6.22' in width; 56.26% area variance; i.e., at least 196.91 sf, possibly more if square footage of balconies and fire stairs must be subtracted
Closed Court, §406.1	10' min. width	7.04' x 17.58' (123.76 sf)	Same as existing	2.96 feet; i.e., 29.6% width variance
Lot Occupancy, §403.2[2]	40% (2327.2 sf)	67.9% (3951.8 sf)	73.3% (4261.8 sf)	+5.4% increase for total of 33.3% over permitted lot occupancy (15%)
(Lot Occupancy) Addition to Non-Conforming Structure, §2001.3[3]	40% (2327.2 sf)	67.9% (3951.8 sf)	Addition: 310.2 sf, adding an additional 5.3% lot occupancy Total with addition: 4261.8 sf. or 73.3% lot occupancy	Addition: 310 sf;, which is 5.3% additional lot occupancy.. Total with addition: 4261.8 sf, which is 33.3% over current lot occupancy standards.

[2] It is not clear where applicant's figures include fire stairs and porches/balconies -existing, former, or proposed. However, it appears that they may not be included in these figures or, at least, may not be completely reflected in them. If the proposed addition would occupy 310 square feet, and the lot occupancy would vary somewhat from the existing lot occupancy due simply to the changed configuration of fire exits and balconies in the closed court and open court, then the sole difference between existing lot occupancy and the proposed lot occupancy should not be simply 310 square feet. .

[3] ibid.

Variance Tests

A. Court Width and/or Court Area Variance Tests:

- *Uniqueness: Is the property exceptionally narrow, shallow, of a shape or with topography, or possessing of other extraordinary or exceptional situations or conditions of the specific piece of property that make it unique?*

Yes, with respect to both courts on the south side of the building.

The property is exceptional by virtue of its physical characteristics. These physical characteristics are not the land, per se. They are the physical improvements on the land, and their history[4].

The property is subject to the *Uniqueness or Exceptional Condition* constraint of the existing building's footprint in relation to the land, and the adjacent property to the south on 11th Street. The Nonquitt apartment building was constructed 50 years before the District's Zoning Regulations were adopted, and well before current building regulations governing matters such as fire egress. The courts are already configured and the south-adjacent structure already makes one of these courts a closed court.

- *Practical Difficulties or Hardship: Would there be "practical difficulties" that would be "unnecessarily burdensome" and impose "undue hardship to the Applicant" that result from the strict application of the Zoning Regulations?*

Yes. To comply with the zoning regulations the applicant would be required to demolish and rebuild three 3½ story load bearing walls for each court. In OP's view, this would be unnecessarily burdensome and impose undue hardship for such a relatively small building.

- *Can The Relief 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?*

It can.

Granting the court width and court area variances would not harm the *Public Good or the Intent of Zone Plan.* While the provision of a court is optional, granting the relief and allowing retention of the existing courts avoids the demolition and construction impacts

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[4] *Clerics of St. Viator Inc v. D.C. Board of Zoning Adjustment (320 A. 2d 291; 1974 D.C. App.)* the D.C. Court of Appeals concluded that it was permissible for the BZA to take into consideration not just a piece of land's difficult topography, etc., but also the difficult condition of its improvements, when determining uniqueness and hardship.

that would be entailed with reconstruction; and allows the provision of light, air, recreation space and – for the closed court – allows for provision of a code-required fire exit that does not block light and air, as an internal exit likely would.

B. **Lot Occupancy and (Rear) Addition to a Non-Conforming Structure With Conforming Uses Variances**

The applicant is requesting a variance from 11 DCMR Section 2001.3:

- *Enlargements or additions may be made to the structure* [in this case, a conforming use added to a non-conforming structure]; *Provided, that the following requirements shall be met:*
  (a) The structure shall conform to percentage of lot occupancy requirements; and
  (b) The addition or enlargement shall itself conform to use and structure requirements; and;
  (c) The addition or enlargement itself shall not increase or extend any existing nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined.

The structure is already a multiple dwelling. While the proposed addition to allow the construction of an addition that would occupy 310 sf of lot area meets the requirement of subsections (b), it does not meet the requirements of subsections (a) or (c). At 67.9% lot occupancy, the existing building exceeds the 40% lot occupancy limit for structures in an R-4 zone, and does not, in itself, meet §2001.3 (a). The 310.2 square foot footprint of the proposed addition would bring lot occupancy to 73.3%, exceeding the maximum permitted lot occupancy by one-third, thus failing to meet §2001.3 (c).

The proposed addition does not meet the standard variance tests.

- *Uniqueness: With respect to exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations or conditions of the specific piece of property:*

It does not meet this test.

While the existing building was built in 1909, prior to the adoption of the DC Zoning Regulations, essentially a rectangle over 48 feet wide and over 100 feet deep. While prior conditions establish uniqueness and hardship for the existing courts, there is nothing unique about a flat, 48' wide rear façade.

The structures that appear to have once extended from the rear of the building are no longer in place, nor has the applicant made any effort to document the prior structures or relate them to the proposed addition.

- *Practical Difficulties: With respect to the "Practical Difficulties" that would be "unnecessarily burdensome" and impose Undue Hardship to the Applicant should the application for a variance allowing the addition of a conforming use to a non-conforming structure not be approved:*

It does not meet the tests.

The proposed units, as designed, would likely be much more pleasant with the addition. For the basement through second floors, the addition would allow the northern tier of apartments a larger living room and the southern tier to have a 12 foot wide, rather than a 9 foot wide, dining and kitchen passage area. For the top floor, the northern unit would get its only outdoor space, and the southern unit would enjoy additional outdoor space. However, the applicant has not discussed how the strict application of the Zoning Regulations would result in a practical difficulty that could not be resolved through other design solutions.

- *Can The Relief 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?*

The addition would not have substantial detrimental impact on the public good. While the applicant has done no more than allude to the bays' adding "architectural interest", a site inspection reveals that several of the Harvard Condominium townhouses actually face the rear of The Nonquitt (*see Illustration 2*). Because the applicant has purchased Lot 858 and consolidated it with Lot 813 in order to meet rear yard requirements and provide parking, there will not be anything constructed between the rear of the Nonquitt and the front of the Harvard Condominium units. The addition would have no impact on the light or air of adjacent structures, and the public good would likely not be impaired by the rear addition. Even with the proposed addition the larger building would occupy less of the newly enlarged lot than the current structure had occupied of the smaller lot that existed prior to the recent subdivision and lot consolidation.

However, the intent of §2001.3 (the applicable sections of the Zoning Regulations is to avoid increasing the lot occupancy or density of buildings that already do not conform to the 1958 Zoning Regulations. It is OP's opinion that while the addition would be convenient for possible residents, and likely would be attractive to the public, approval of the addition would impair the integrity of the zone plan, especially when the applicant has not demonstrated how the application for the addition meets tests of uniqueness or practical difficulty.

C. Possibly-Requested Variances from §403.2, Maximum Lot Occupancy, for the Closed and Open Courts.

As noted above, it is not clear if the application includes these requests, although it appears that the application should. In OP's opinion:

- the pre-zoning regulation 1909 construction of this building make the two courts unique;
- the replacement of the existing fire stair in the closed court with a new external stair and balcony landings would enable the applicant to meet code requirements and contribute to safety and the public good while, though the construction of a fire stair and balconies that would occupy a smaller footprint than the existing fire stairs, decreasing the maximum lot occupancy from the present condition;
- and the re-creation and replacement of three former porches with two balconies in the open court would contribute to the public good by providing recreation space without intruding on the light or air of adjacent property, *albeit* while possibly increasing lot occupancy marginally from the current conditions.

VIII. COMMUNITY COMMENTS

The applicant had been scheduled to address ANC 1B in December 2002. The meeting was cancelled due to snow. The applicant is now due to present the project to the ANC in the second week of January 2003.

X. OTHER AGENCY COMMENTS

There are no other agency comments on file.

XI. OP RECOMMENDATION

The Office of Planning recommends the Board:

- approve the open court width variance from §406.1;
- approve the closed court width and area variance from §406.1;
- deny the requested variances from §2001.3 and §403.2 for the rear addition.

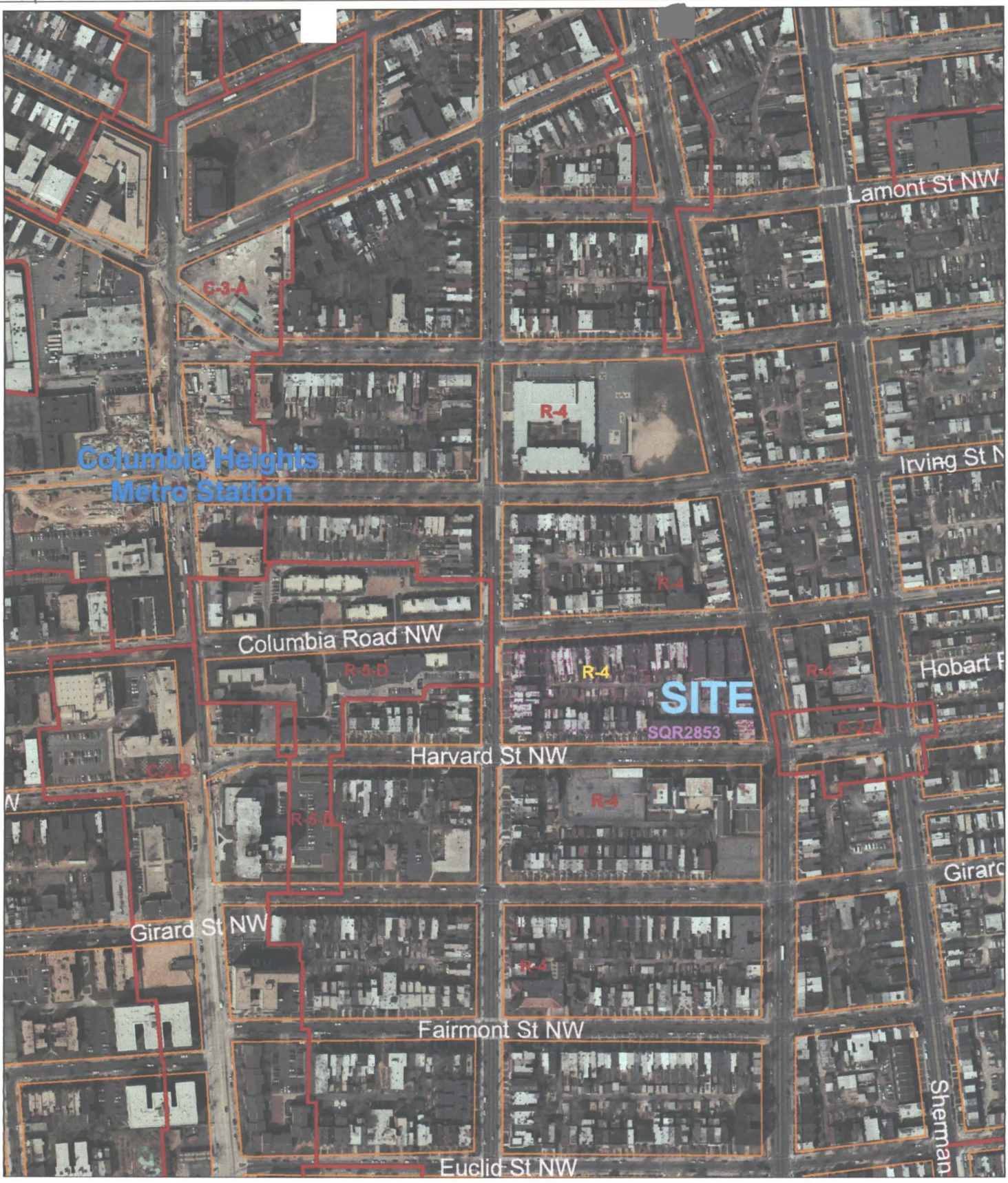
Should the Board also consider lot occupancy variances from §403.2 for the open and closed courts, OP would recommend the Board approve such variances.

AA/slc

Attachments

1: Location and Zoning Map
2: Site Ortho Photo
3: Comprehensive Plan Land Use Map

4: Illustration 1: existing fire stairs in closed court
Illustration 2: view of Harvard Court condominiums from rear of 2914 11th Street



Board of Zoning Adjustment
Application No. # 16965
2914 11th St., NW

DC Office of Planning
January 3, 2003

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Attachment 1



Board of Zoning Adjustment

Application No. # 16965

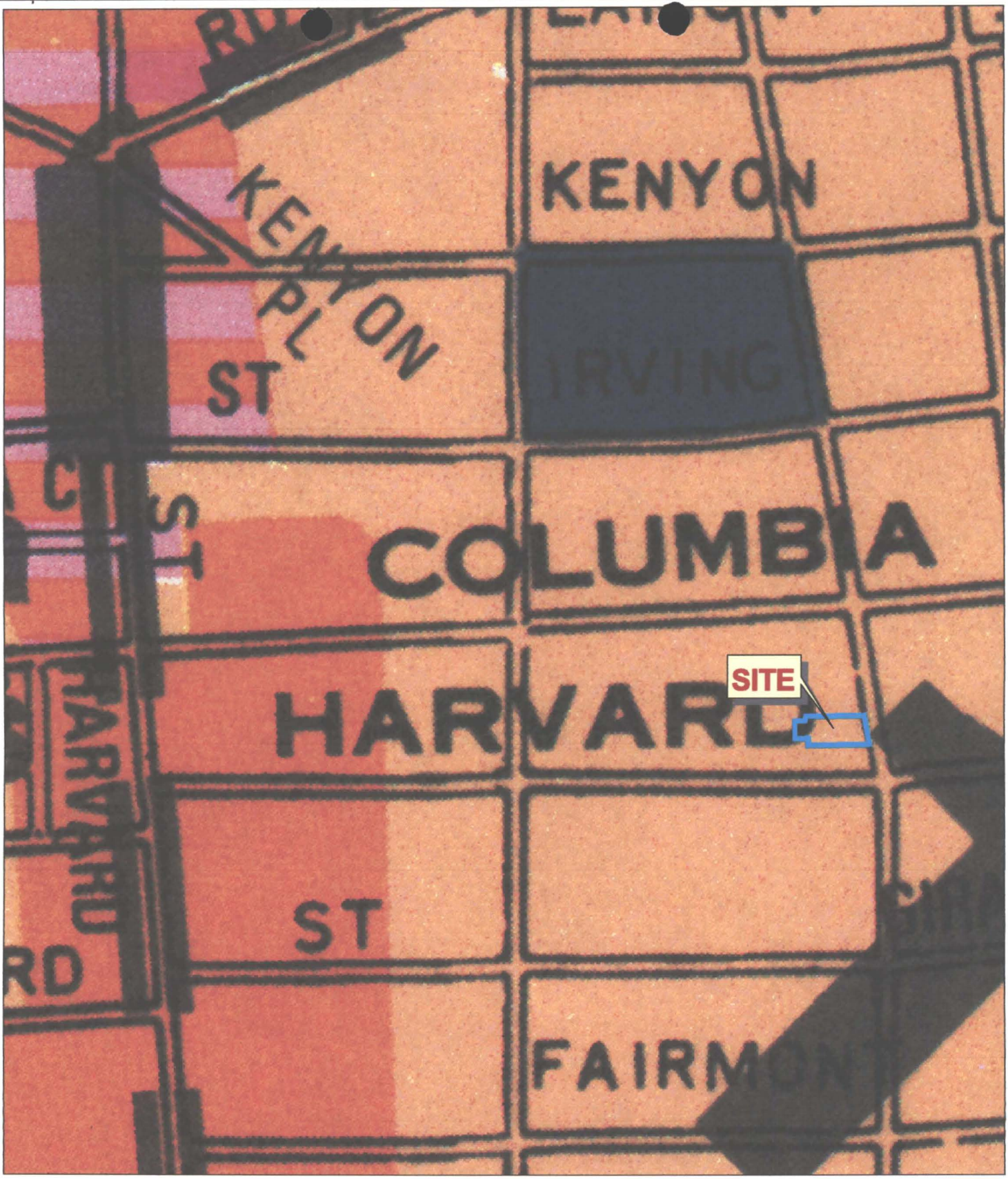
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Zoning Boundaries

Square Index

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Attachment 2



Board of Zoning Adjustment

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Scale 1:3178

DC Office of Planning
January 3, 2003

Attachment 3



Illustration 1: Closed Court



Illustration 2: Harvard Condominiums form 2914 11th St., NW