GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

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MEMORANDUM

DATE: February 10, 2003

TO: District of Columbia Board of Zoning Adjustment

THROUGH: Andrew Altman, Director OP
Ellen McCarthy, Deputy Director OP

FROM: David J. McGettigan, AICP

SUBJECT: Board of Zoning Adjustment Case No. 16980
Scott R. Gillis
301 12th Street, S.E.
Square 991 Lot 25

Summary

The applicants seeks a special exception from the provisions of 2003.1 to allow a change from one nonconforming use (grocery store) to another nonconforming use artist studio and variance relief from the requirements of §2003.5 from the requirement that the new nonconforming use is a "neighborhood facility". The subject property lies in the R-4 zone and the Capitol Hill Historic District.

Recommendation:
The Office of Planning recommends denial of the special exception and variance based on the following findings:

- The change from one nonconforming use to another assumes that there is existing nonconforming use of the site. Title 11 DCMR §2005.1 specifically addresses this issue. "Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. Any

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subsequent use shall conform to the regulations of the district in which the use is located."

- ❖ No evidence has been provided to document that a non-conforming use has continued on the property within the last three years.
- ❖ The request would be more appropriately considered as a use variance. Tests for a use variance have not been adequately provided.
- ❖ Given the above the applicant's proposal does not meet the intent and purposes of the Zoning Regulations.

Background

The applicant, Scott R. Gillis, owns 301 12th Street, SE (Square 991 Lot 25). The property lies in the R-4 Zoning District and contains approximately 1,120 square feet of land. The lot is improved with a two-story, historic row dwelling built in 1890 that began use as a grocery store in 1924. The second floor is occupied as a residential dwelling unit. The neighborhood is characterized by residential rowhouses and some residential flats. The nearest commercial district is at least two blocks to the south along Pennsylvania Avenue. The lot, at the corner of 12th Street and South Carolina Avenue does not abut an alley but is surrounded on its west and south by an adjoining residential lot.

Project Description

The applicant proposes use of the first floor unit as an artist studio. The studio would be used for the crafting of guitars. The artist produces approximately 15 guitars a year and has few customers (0-2 weekly), therefore vehicle trips and parking demand are projected to be minimal. The artist is the sole employee of the business and deliveries would be limited to 2 monthly. Trash collection required would be a small volume collected once a week. No exterior signage is proposed. The artist does not live on the site.

Zoning

The proposed commercial use is not permitted in the R-4 Zone District and the applicant is seeking relief under the non-conforming use provisions of Chapter 20. Specifically, §2003:

2003 CHANGING USES WITHIN STRUCTURES

2003.1 If approved by the Board of Zoning Adjustment, as authorized in §§ 3103 and 3104 for variances and special exceptions respectively, a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section.

2003.2 The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300 ft.) in all directions from the nonconforming use.

2003.3 The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

2003.4 When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use or less restrictive use.

2003.5 In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.

2003.6 For the purpose of this section, the districts established by this title are listed in the following order of decreased use restriction:
(a) R-1-A, R-1-B, R-2, R-3, R-5-A, R-4, R-5-B, R-5-C, R-5-D, and R-5-E;
(b) SP-1 and SP-2;
(c) C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, C-4, and C-5 (PAD);
(d) W-1, W-2, and W-3;
(e) CR; and
(f) C-M-1, C-M-2, C-M-3, and M.

2003.7 The Board may require the provision of or direct changes, modifications, or amendments to any design, plan, screening, landscaping, type of lighting, nature of any sign, pedestrian or vehicular access, parking and loading, hours of operation, or any other restriction or safeguard it deems necessary to protect the value, utilization, or enjoyment of property in the neighborhood.

In addition, §2005.1 states that discontinuance of a nonconforming use for more than three years shall be construed as evidence of no intention to resume active operation and any subsequent use must conform to the regulations.

Analysis

The provisions of §2005.1 make it incumbent upon the applicant to show that the grocery store use has not been discontinued for more than three years. Nothing in the applicant's application establishes that this is the case. The applicant must prove that the use has not been discontinued or request a use variance from this provision. Several neighbors have notified the Office of Planning of their intention to testify that the grocery store has not operated on the site for well over 3 years.

Special Exception Provisions

Approval of a special exception under §2003.1 is subject to the conditions outlined in 2003.2 through 2003.7.

§2003.2 Adverse Effects

Based on the number of employees, hours of operation, number of customers, projected vehicle trips, deliveries, trash collection, and signage aspects of the proposed use, the proposed use should have minimal adverse effects on the present character or future development of the surrounding area. However, it is not the intent of the R-4 zone that this use be permitted in this zone.

§2003.3 Deleterious External Effects

External effects such as noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects will not be created by the proposed use. As discussed above traffic, parking and loading impacts will be minimal. Noise associated with the production of the guitars due to the use of power tools is minimized by the use of soundproofing. Odors associated with the production are minuscule and filtered. No

external illuminated signage is proposed and no illumination above normal residential security illumination is proposed.

§2003.5 Residential Use Restrictions

In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility. The applicant requests a variance from this provision as an area variance (discussed below). OP does not agree that a guitar-making studio is a neighborhood-serving use, therefore, this would more properly be a use variance and not an area variance as listed in the application.

§2003.6 Order of Decreased Use

A grocery store is first permitted in the C-1 zone and an artist studio is first permitted in an SP zone; therefore, if the applicant can establish that the grocery store use has not been discontinued, then the change in use represents a decrease in use as defined in this section.

In addition, in accordance with §3104, the request must be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring properties. As discussed above the proposed use will not tend to affect adversely the use of neighboring properties. The intent of the Zoning Regulations, particularly Chapter 20, is to phase out or reduce nonconforming uses and structures. In requiring relief from compliance with §2003.5 and, possibly, §2005.1, the application is not in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

Variance Provisions

Extraordinary or Exceptional Situation

In accordance with §3103.2, which gives the Board the authority to grant a variance if by reason of exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, a variance from the strict application so as to relieve the difficulties or hardship may be granted by the BZA

The applicant lists two elements in its statement that create an exceptional situation.

1) The history of the site as a nonconforming use; and,
2) The unusual shape of the property.

The applicant states that the first floor has been used for commercial retail use in the past. Although the applicant, in a later submission, lists inadequacies of the space in terms of plumbing, heating and electrical configuration, the applicant does not show why these deficiencies cannot be remedied. Regarding the unusual shape of the property no further elucidation is provided on how the shape results in practical difficulties or undue hardships being imposed upon the property owner. The applicant, therefore, has not met

the burden of proof for this test. OP cannot conclude that the lot is unique within the Capitol Hill neighborhood or the Capitol Hill Historic District.

Practical Difficulty/Hardship

The practical difficulty identified by the applicant is the cost to convert the space to a permitted residential use. However, the applicant does not provide any evidence to support this statement and has, therefore, not met the burden of proof for this test. The Office of Planning believes that the relief requested from §2003.5 is more properly a use variance and the applicant must meet the stricter test of undue hardship.

Substantial Detriment

In addition to the above tests, §3103.2 further requires that the relief requested could be granted, provided that it will not be a substantial detriment to the public good or substantially impair the intent, purpose and integrity of the zone plan. The application provides two points that address this:

1) The proposed use is less intensive than a grocery store;
2) No external modifications will be made to the building to distinguish it from the surrounding residential neighborhood; and,
3) The adverse external impacts of the use will be minimal.

OP cannot conclude the commercial use will not impair the intent of the Zoning Regulations or the integrity of the Plan because §2000 intends to bring non-conforming uses and properties into conformance and provides a substantial 3-year period for discontinuance.

ANC Recommendation

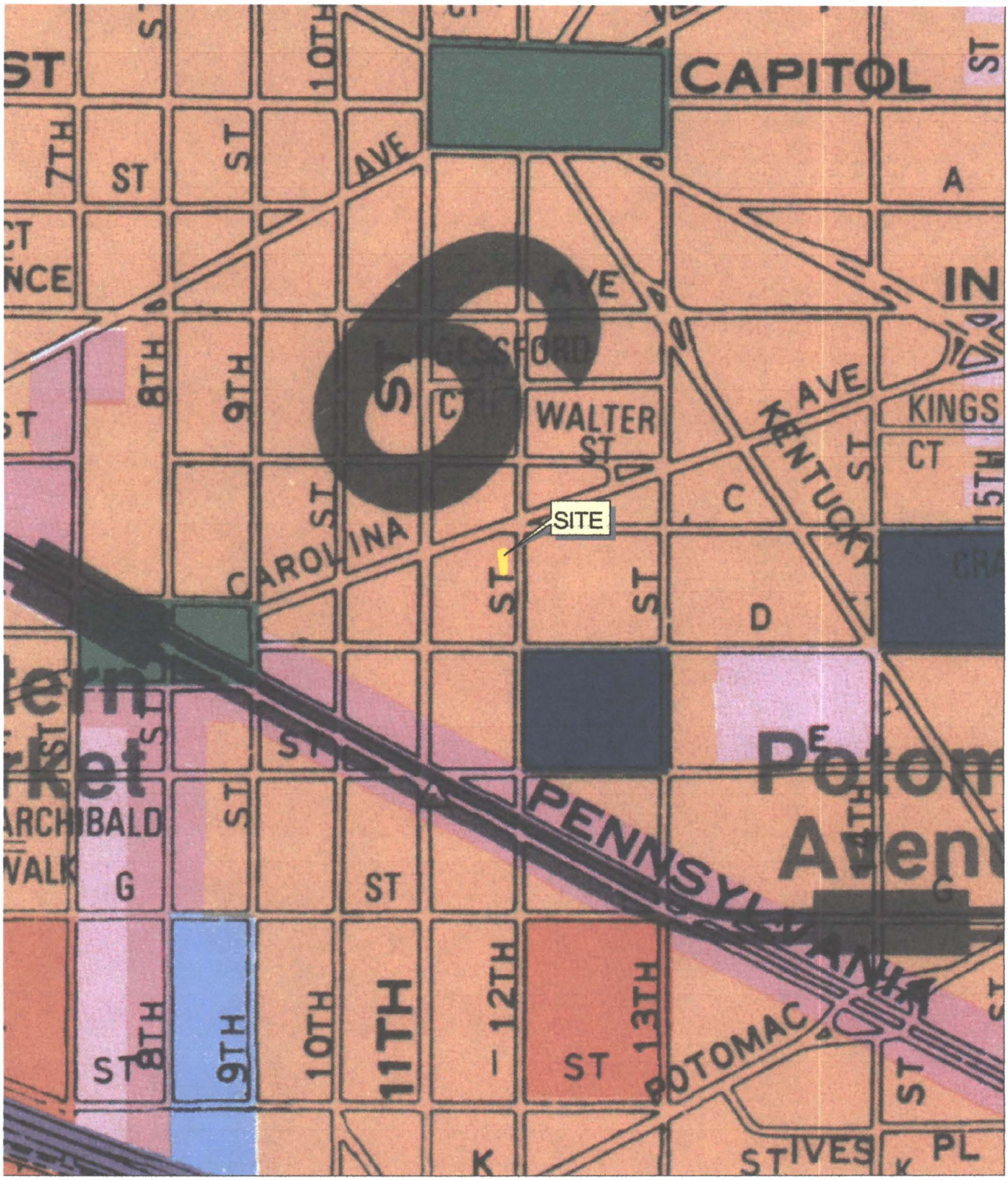
ANC 6B voted to support the application.

Recommendation

The applicant has not met the burden of proof for a special exception or a variance as outlined above and the applicant has not shown that the grocery store use was not discontinued as required by §2005.1. In addition, the relief requested from §2003.5 is more properly a use variance, which the applicant did not address. In late filings provided to the Office of Planning the applicant requested that the relief requested be changed to a use variance. Although, additional justification was provided with this filing, the burden of proof for a use variance has not been met. The Office of Planning recommends the case be denied.

Attachments:

1. Zoning and Use Map
2. Comp Plan Map
3. Aerial Photo



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

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Comprehensive Plan Landuse

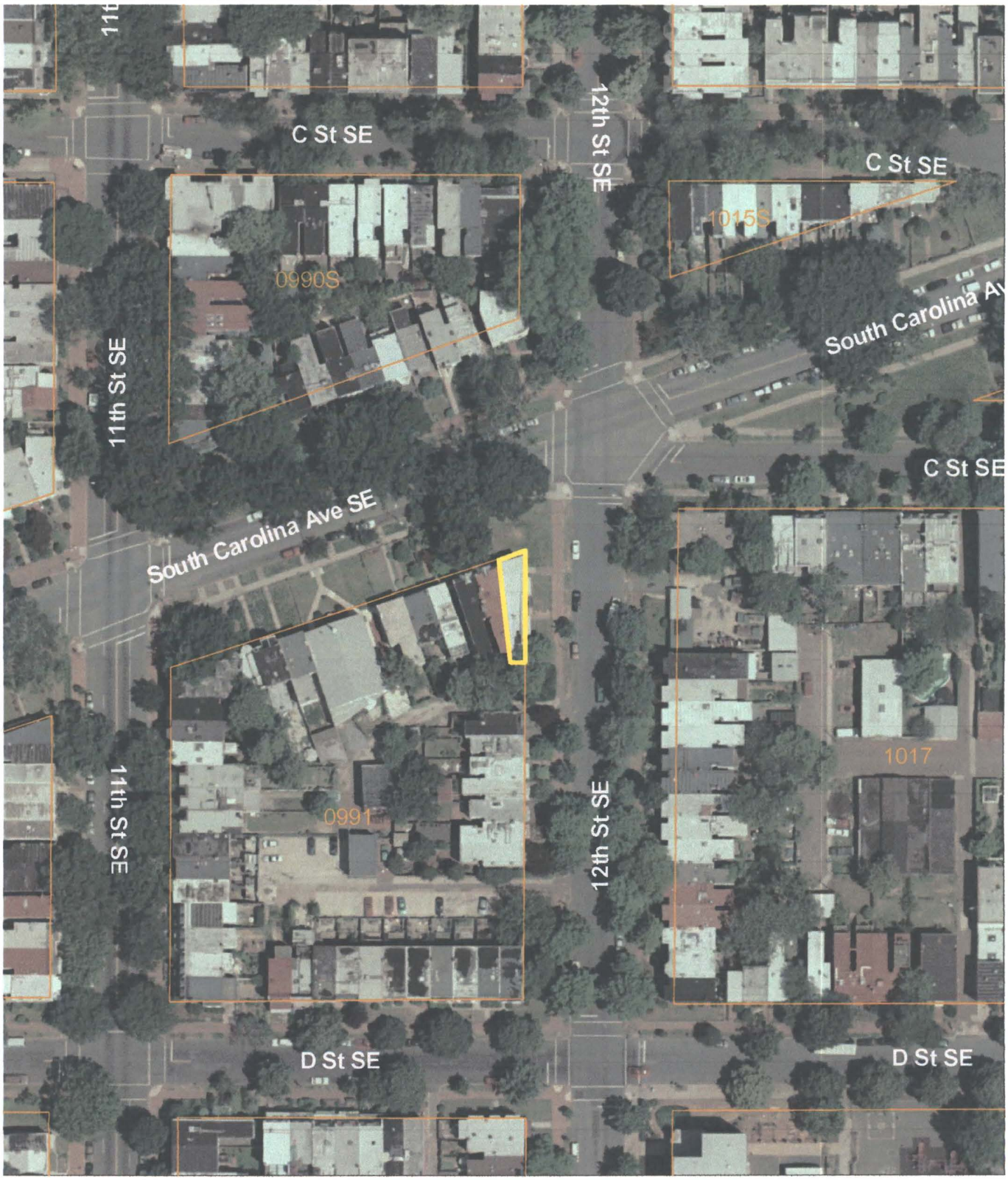
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Scale 1:6000

500 0 500 Feet

Attachment 2



Feature Key

- 301 12th Street, SE
- Square Index

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Aerial Photo

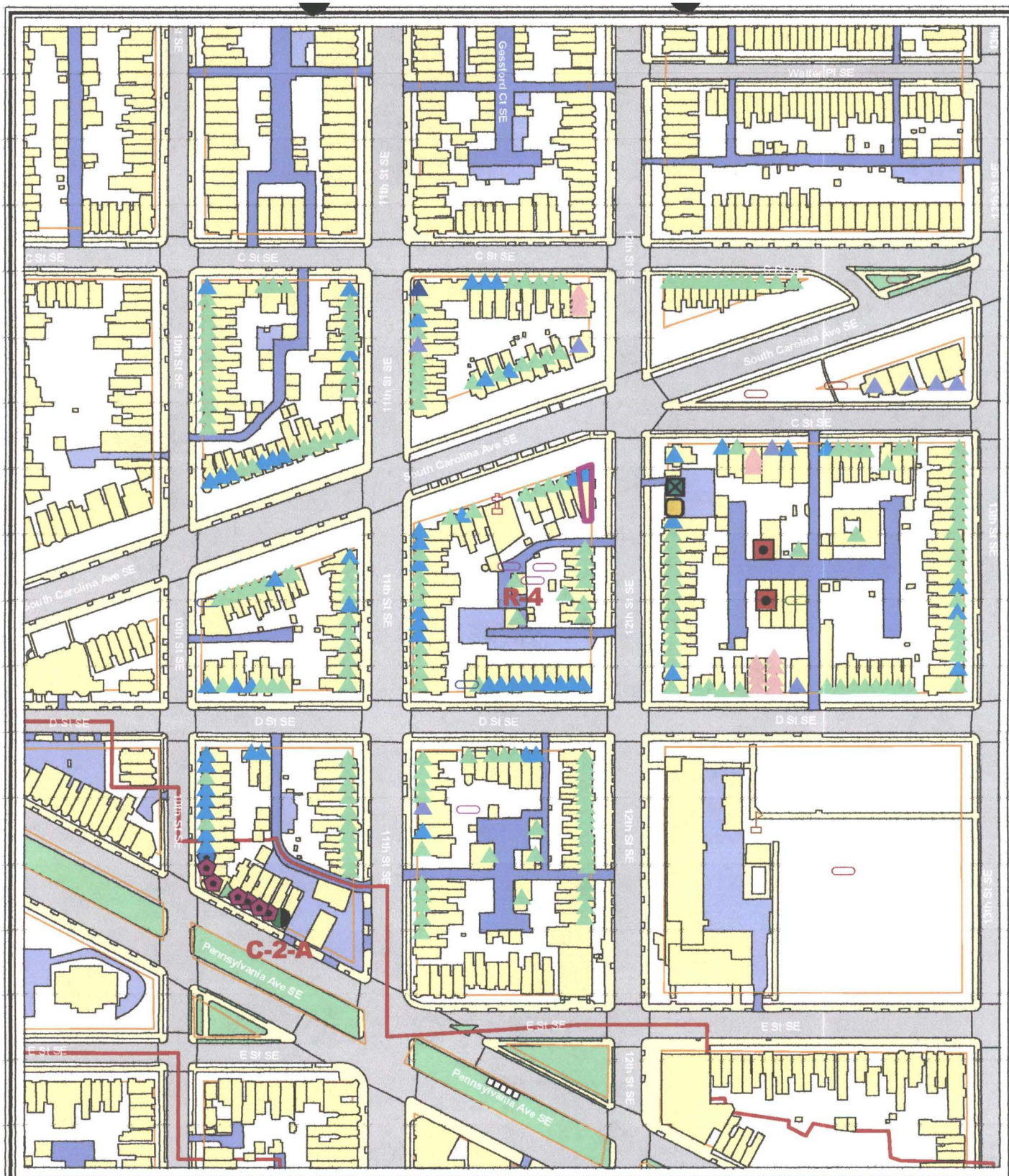
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100 0 100 Feet

Attachment 3



Feature Key

- Zoning Boundaries
- Square Index

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Scale 1:2334

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25 0 25 50 75 100 Feet

Attachment 1