GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

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# MEMORANDUM

DATE: March 4, 2003

TO: District of Columbia Board of Zoning Adjustment

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

FROM: David J. McGettigan, AICP DJM

SUBJECT: Board of Zoning Adjustment Case No. 16989
William T. and Norma G. Byrd
714 10th Street, N.E.
Square 912 Lot 72

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## *Summary*

The applicants seek a variance from the use provisions of §330.4 to allow an office use in the R-4 zone. The existing row house was purchased by the applicant for office purposes based on real estate property information that indicated the lot was in the C-2-B zone. This misinformation led to the applicants' investment in the property, which resulted in the inability of the applicants' to purchase another property and is the basis for their hardship. The statement of the applicant indicates that the business will not be operated in a way that would be objectionable to neighboring residents and is in close proximity to the H Street commercial corridor; therefore, the variance will not substantially impair the intent, purpose and integrity of the Zoning Regulations and Map.

**Recommendation:**
The Office of Planning recommends denial of the variance based on the following findings:

- The applicant has not shown an exceptional situation. No unique physical aspect or condition of the property exists. The unit is a residential dwelling in the middle of a row of residential rowhouses on a residential street.

BZA
Case No. 16989
Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO. 16989
EXHIBIT NO. 23

- No evidence has been provided to document that the strict application of the zoning regulations results in a hardship. The property was appraised as a residential unit and retains this value as a residential property; therefore, the property can be put to any conforming use with fair and reasonable return.
- The commercial use of this property is not consistent with the intent of the zone plan, the character of the R-4 zone, or the public good. The property is surrounded by residential uses and is a middle rowhouse unit in a set of residential rowhouses. The H Street Commercial Corridor is in close proximity, but this proximity does not warrant a change in the residential character of the street.

## Background

The applicants, William T. and Norma G. Byrd, own 714 10th Street, N.E. (Square 912 Lot 72). The property lies in the R-4 Zoning District and contains approximately 1,528 square feet of land. The lot is improved with a two-story row dwelling and according to the Uniform Residential Appraisal Report supplied by the applicant contains a living room, dining room, kitchen, 2 bedrooms and 2.5 baths. The property to the east (rear) of the subject property is a high-rise apartment building in the R-5-D zone. Two rowhouses and an alley to the north separate the property from commercial retail uses in the C-2-B zone. Residential rowhouses are across the street. Except for the commercial district to the north along H Street and the apartment building to the west, the neighborhood is characterized by residential rowhouses.

The applicants purchased the property with the intention of providing new space for their small consulting business. Several documents are provided by the applicants that indicate that the subject property was located in the C-2-B Zone District. After purchasing the property and upgrading electric, telephone and data service the applicants applied for a Certificate of Occupancy as an office use, which was denied when Zoning Administration determined the property was located in the R-4 Zone District.

## Project Description

The applicants propose to use the two-story rowhouse as offices for their consulting business. The building will house 7 employees with standard working hours of 8:30 am to 5:00 pm, Monday through Friday. Traffic generated by the use will be minimal as clients do not generally visit the business. Deliveries will be mainly mail and infrequent special delivery. The property provides one off-street parking space in the rear.

## Comprehensive Plan

The property is identified as moderate density residential on the General Land Use map, which includes row houses and garden apartments as the predominant uses and may also include, as appropriate uses, low density housing. (See Attachment 2) The Ward 6 Housing element of the Comprehensive Plan sets a goal to discourage encroachment of non-residential use in residential areas (§1706.1(b)). One of the actions identified to

implement this goal, is to preserve the character of residential neighborhoods and curtail conversions of residential properties to commercial/office use (§1707.1(b)). Generally, the Comprehensive Plan seeks to stabilize and improve the District's neighborhoods. Commercial encroachments in residential neighborhoods will tend to destabilize them. The District is actively trying to revitalize the H Street corridor and opportunities exist along the corridor for a small business like the applicant's to find suitable office space. Providing opportunities for commercial business in the residential neighborhoods abutting this corridor will negatively impact the marketability of legitimate commercial space on H Street.

## *Zoning*

The proposed commercial use is not permitted in the R-4 Zone District and the applicant is seeking relief under 11 DCMR §3103 for a use variance from the provisions of §330.4. The R-4 District sets forth the following purposes:

> 330.1 The R-4 district is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families.
>
> 330.2 Very little vacant land shall be included within the R-4 district, since its primary purpose shall be the stabilization of remaining one-family dwellings,
>
> 330.3 The R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement.

Section 330.4 requires that no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except for one (1) or more of the uses listed in §§ 330 through 349. Office uses are not listed among these uses except as a home occupation in compliance with the conditions of §203, however the applicant does not intend to live on the premises.

## *Analysis*

The provisions of §3103.2 require the applicant to show a unique physical aspect or other extraordinary or exceptional situation or condition of a specific piece of property, undue hardship, and no harm to the public or to the zone plan.

**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.

There is no evidence that there is a unique or exceptional condition of this specific piece of property that creates a hardship. The appraisal provided by the applicant is a

residential appraisal showing that the property has a dining room, living room, two bedrooms and two and one-half baths; therefore, the property could be readily used for a residence. The unit is in the middle of a row of residential rowhouses on a residential street.

The only unique or exceptional situation identified by the applicant is in the claim that the District of Columbia provided inaccurate information about the zoning of the property, which the applicants relied on in their decision to purchase the property. However, variance relief from the Board of Zoning Adjustment is not the proper venue to seek relief for this issue. The applicant did not seek a zoning certification from the Office of Zoning,

**Undue Hardship**

The undue hardship identified by the applicant is financial hardship. The applicant claims that the hardship consists of the following factors:

1. The applicants have no other use for the property other than office space.
2. The applicants do not have the financial resources to buy another building.
3. The applicants do not have the option of leasing the subject property and leasing other office space as this is not financially practical.

However, the applicant does have the option of selling the property as a residential rowhouse and seeking an alternative location. The comparables used in appraising the subject property are all residential rowhouses in R-4 Zone Districts; therefore, the property has not lost residential value as anticipated in the R-4 zoning classification. No exceptional situation or condition prohibits the property from being put to any conforming use with a fair and reasonable return.

**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 three points that address this:

1) The proposed use as a management consulting business does not typically have client visits. Meetings are typically held at the clients' offices;
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.

However, OP cannot conclude the commercial use will not impair the intent of the Zoning Regulations or the integrity of the Plan, because the property is surrounded by residential uses and is a middle rowhouse unit in a set of residential rowhouses. The Comprehensive Plan identifies the land as residential and the property is zoned R-4. The H Street Commercial Corridor is in close proximity, but this proximity does not warrant a change in the residential character of the street. The additional parking, loading and trip generation of the proposed use is not compatible with the existing neighborhood. Though

the applicant indicates that these impacts are minimal they are still an increase over the single-family use of this property and cumulative impacts of commercial encroachments on the residential neighborhood could have substantial impacts. In addition, permitting office uses in the residential neighborhoods that border H Street, NE would negatively impact the viability of office space available in the commercially zoned areas of the corridor.

## *ANC Recommendation*

At the time of this report, ANC 6A has not heard the application. A representative from the Office of Planning attended the ANC 6A Zoning and Licensing Committee meeting in which the application was considered. The committee heard testimony from Marie-Claire Brown (resident) who expressed opposition to the application based on concerns about use of neighborhood parking for the employees, the presence of children in the area, the ready availability of commercial space on H Street NE, and the residential character of the identical houses on the block. The applicants did not provide any letters of support from owners of neighboring properties to the committee.

The committee voted unanimously to recommend that the ANC send a letter opposing the application to the BZA.

## *Recommendation*

The applicant has not met the burden of proof for a variance and the Office of Planning recommends the case be denied.

Attachments:

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




Board of Zoning Adjustment
Application No. #16989
Aerial Photograph

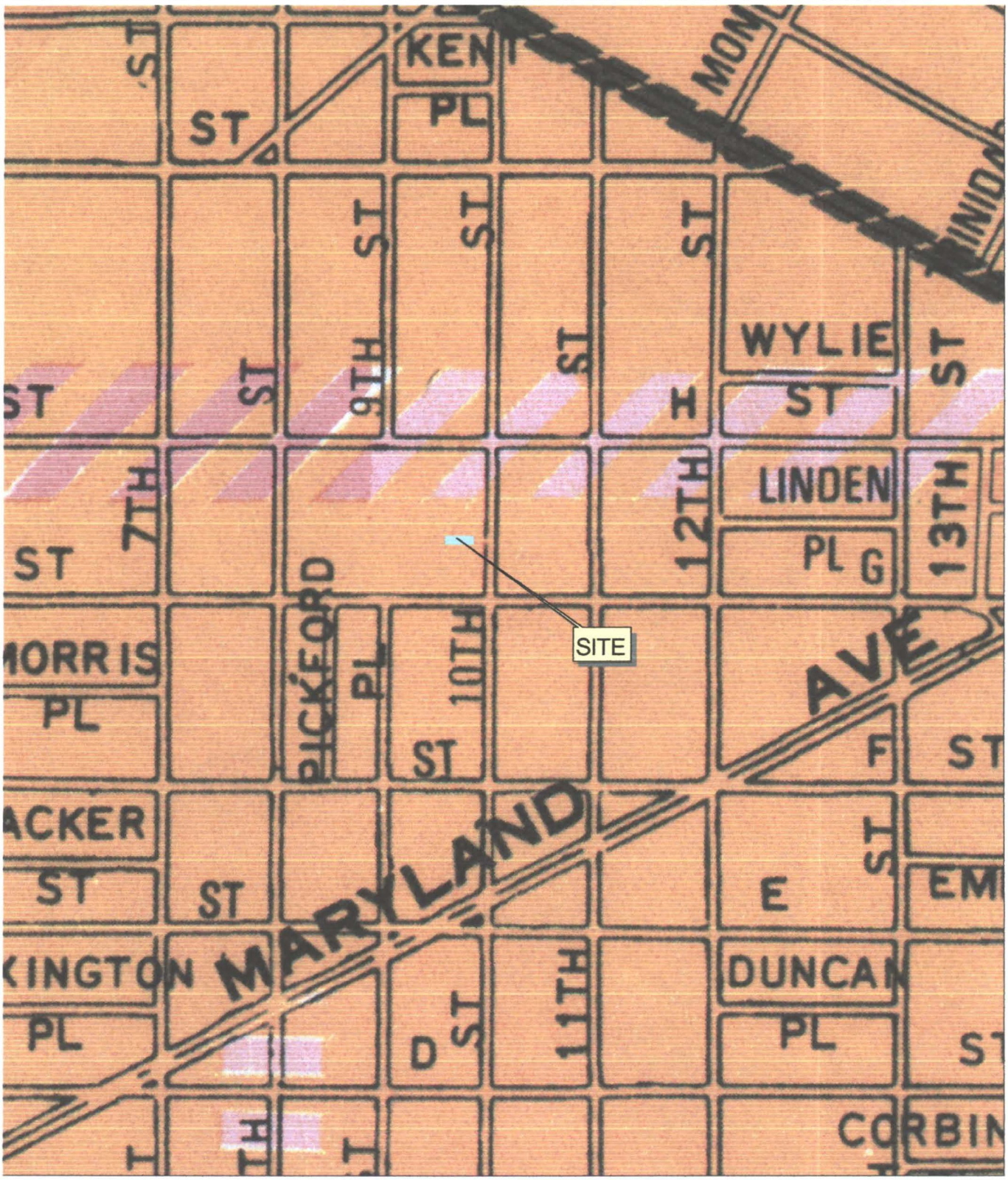
DC Office of Planning
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N

Scale 1:1200

25 0 25 50 75 100 Feet

Attachment 3




**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

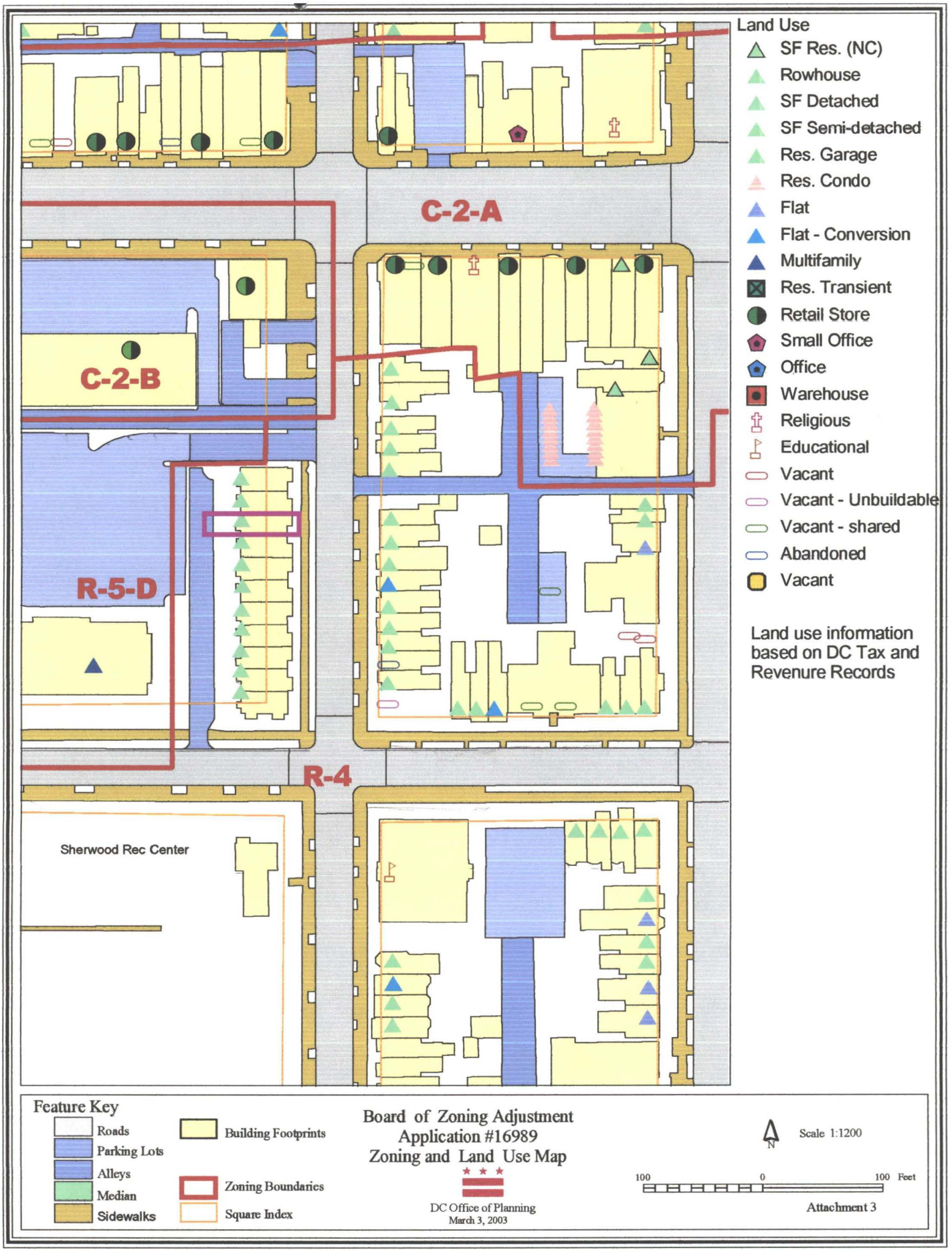
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Scale 1:4800

400 0 400 Feet

DC Office of Planning
March 3, 2003

Attachment 2


C-2-A
C-2-B
R-5-D
R-4
Sherwood Rec Center
Land Use
SF Res. (NC)
Rowhouse
SF Detached
SF Semi-detached
Res. Garage
Res. Condo
Flat
Flat - Conversion
Multifamily
Res. Transient
Retail Store
Small Office
Office
Warehouse
Religious
Educational
Vacant
Vacant - Unbuildable
Vacant - shared
Abandoned
Vacant
Land use information based on DC Tax and Revenure Records
Feature Key
Roads
Parking Lots
Alleys
Median
Sidewalks
Building Footprints
Zoning Boundaries
Square Index
Board of Zoning Adjustment
Application #16989
Zoning and Land Use Map
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N
Scale 1:1200
100 0 100 Feet
Attachment 3