GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

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MEMORANDUM

DATE: July 15, 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. 17039
McAdams Property
2708 44th Street, N.W.
Square 1340 Lot 35

Summary

The applicant seeks a variance from the height provisions of §400.1 to allow a four-story structure and the gross floor area provisions of §1543.3 in the WH/R-1-A zone. The applicant seeks relief from an order by the District to abate and remove the top story of the existing single-family structure. The initial approved plans for the structure did not include finishing of the attic space. A subsequent revision was permitted that added dormers and finished the attic space. The resulting usable attic space became a "story" as defined in the zoning regulations causing the structure to exceed the 3-story height limit. The Board may determine it is estopped from denying the variance; however, this is a legal issue not addressed by this report.

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

- The applicant has not shown an exceptional situation that creates the need for the relief sought. No unique physical aspect or condition of the property exists that is related to the need for the additional story. Many of the lots in the area have similar topographic conditions.

BZA
Case No. 17039
Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO. 17039
EXHIBIT NO. 32

- ❖ No evidence has been provided to document that the strict application of the zoning regulations results in a practical difficulty. Practical use remains of the structure without the added livable floor space in the attic.
- ❖ The intensified use of this property is not consistent with the intent of the zone plan, the character of the WH/R-1-A zone, or the public good.

Background

The applicants, Mr. & Mrs. John McAdams, own 2708 44th Street, N.W. (Square 1340 Lot 35). The property lies in the WH/R-1-A Zoning District and contains approximately 10,883.76 square feet of land. The subject property is located mid-block on the west side of 44th Street between Dexter Street and Edmunds Street. The lot is occupied by a roughly 44' x 45' single-family structure with an attached two-car garage. A steep driveway on the south side of the lot leads up from the street to the garage. A set of steps, elevated above grade, takes two 45-degree bends as it heads up to the front door. The front porch provides access to a deck over the garage. From the front the structure looks to be two stories with a basement partially revealed in the front. The gabled roof and dormers look properly proportioned to the rest of the house.



Figure 1 2708 44th Street, N.W.

Single-family residential structures flank the subject property to the north and south. Across 44th Street lies Glover Archibald Park. The rear lot line abuts the rear yards of houses facing Dexter and Edmonds Streets. The neighborhood is characterized by low-density single-family development (Attachment 1). The yard areas of the lot maintain a substantial number of mature trees. The existing structure is occupied as a single-family home and has a finished basement, two full stories, and a finished attic.

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Project Description

Based on the January 21, 1999 letter to Councilmember Patterson from Armando Lourenco, Administrator, Building and Land Regulation Administration, a building permit was issued on December 18, 1997 to construct a single-family dwelling at 2708 44th Street, NW. The site plan was later revised to meet the special setback requirements of the Wesley Heights Overlay District, which was not considered in the first review and a revised permit was issued on May 22, 1998. Subsequently, a permit was issued on August 26, 1998 for a revision to finish the attic space and provide new dormers in the structure. Based on a citizen complaint the property was inspected by DCRA – BLRA – Zoning Division and determined to be in compliance because the attic was being used for storage. However, on May 18th 2003 an order to abate and remove the top story was issued stating that the maximum allowable number of stories and gross floor area were not in compliance with the zoning regulations. The applicant seeks variance relief from the height (§400.1) and maximum gross floor area (§1543.3) regulations to continue using the finished attic space and to maintain the existing dormers.

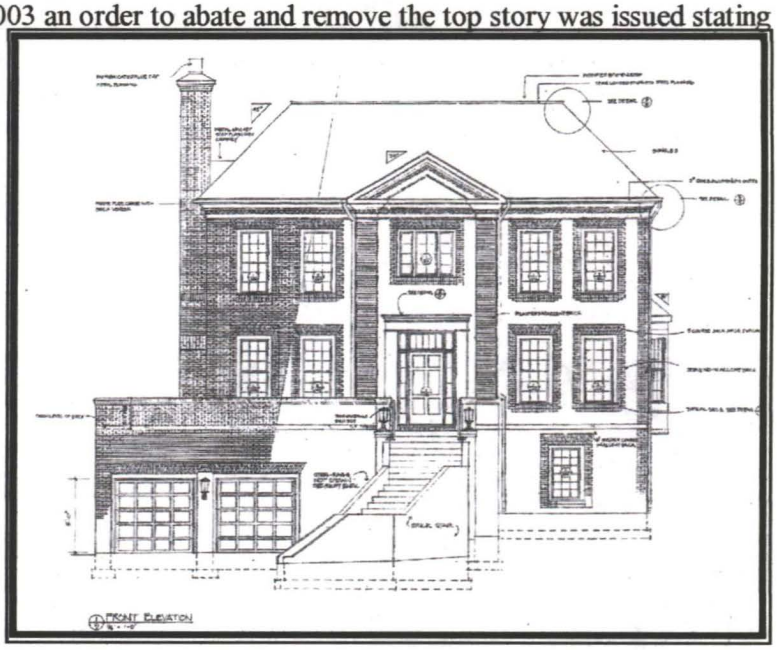


Figure 2 Front of Elevation

Comprehensive Plan

The property is identified as low density residential on the General Land Use map (See Attachment 2). The low density designation includes single-family detached and semi-detached housing as the predominant uses (§1103.1).

A major theme of the Comprehensive Plan is to stabilize and improve District neighborhoods (§101.1(a)). The granting of a variance to §400.1 and §1543,3 in the WH/R-1-A zone would allow an increase in gross livable floor area that represents an overuse of land and would not stabilize the neighborhood. Therefore, granting this variance would be inconsistent with the objectives and policies of the Comprehensive Plan.

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Zoning

The WH/R-1-A Zone District permits a maximum height of 3 stories and a maximum gross floor area of 6,353.2 square feet ((10,833.76 sq. ft. lot area x 40%) + 2000 sq. ft.). The applicant is seeking relief under 11 DCMR §3103 for an area variance from the provisions of §400.1 and 1543.3. The R-1-A District sets forth the following purposes:

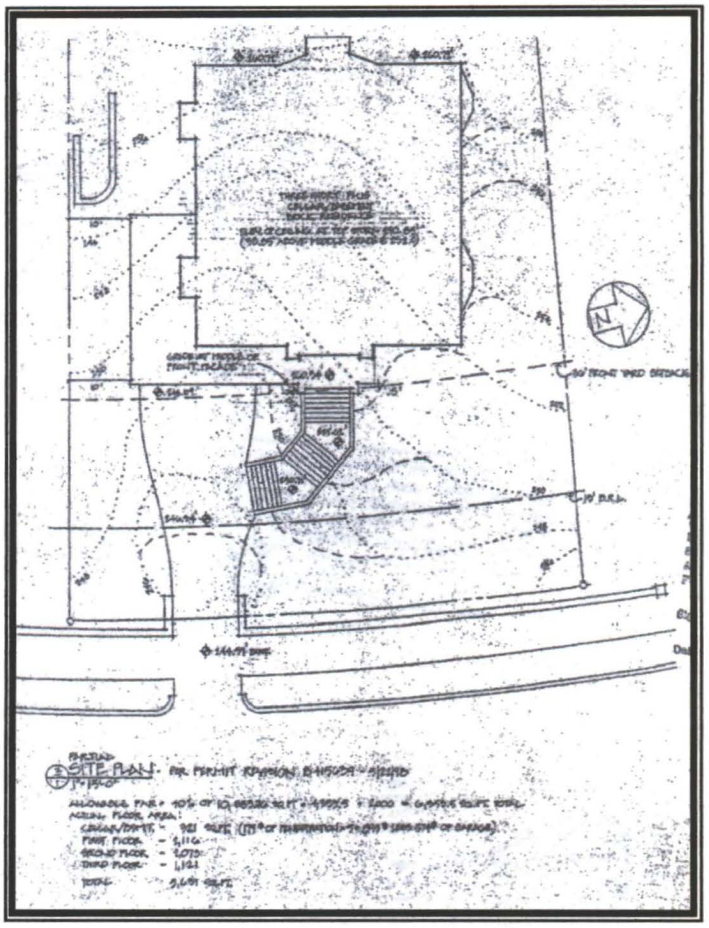


Figure 3 Site Layout Plan

> 200.1 The R-l district is designed to protect quiet residential areas now developed with one-family detached dwellings and adjoining vacant areas likely to be developed for those purposes.
> 200.2 The provisions of this chapter are intended to stabilize the residential areas and to promote a suitable environment for family life. For that reason, only a few additional and compatible uses shall be permitted..

As stated in §1541, the Wesley Heights Overlay District (WHOD) is established to preserve and enhance the low-density character of Wesley Heights by regulating construction and alteration of residential and other buildings in the area. The purpose of the WHOD shall be as follows:

(a) To preserve in general the current density of neighborhood;
(b) To allow reasonable opportunities for owners to expand their dwellings; and
(c) To preserve existing trees, access to air and light, and the harmonious design and attractive appearance of the neighborhood.

Section 400.1 requires that.

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Area Req.	Required/Allowed	Proposed	Variance	Code Ref.
Height	40'/3 Stories	38.85'/4 Stories	1 Story	§400.1
Min. Lot Area	7,500 SF	10,883.76 SF	None	§401.3
Lot Occupancy	30%	19-22%%	None	§403.2
GFA	6,353	See Note	See Note	§1543.3
Rear yard	25'	25'	None	§404.1
Side yard	8'	8'	None	§405.9
Front yard	36'	36'	None	§1543.4
Parking	1	2	None	§2100
Loading	None	0	None	§2200

Note: DCRA is recalculating this as discussed below under agency comments.

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 that creates an undue hardship or practical difficulty. In addition, there should be 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 may be granted.

There is no evidence provided that there is a unique or exceptional condition of this specific piece of property that would result in peculiar and exceptional practical difficulties. The applicant provides two points to address this test:

1) The topography of the site is an extraordinary physical condition of the site. The substantial change in grade of 9 feet from front to back presents an extraordinarily steep topographic condition.
2) The issuance of a building permit by DCRA and subsequent completion of construction under that permit presents an exceptional situation. The owner was not aware that the structure was not in conformance with the zoning regulations at the time of purchase and the owner was not notified until 3 ½ years after purchase.

The applicant has not established that the topographic conditions of the lot are exceptional. The Office of Planning does not concur that the subject property is unusually steep and creates practical difficulties in development of the site. The area is burdened by

many similarly steep lots and the subject property is not exceptional. (see Attachment 4) The error in granting a building permit for the dormers and interior renovations does create an exceptional situation.

Practical Difficulty

Regarding the practical difficulty test, the applicant establishes three arguments:

1) The slope of the lot restricts that amount of basement area that can be provided with windows for light and air. This limits the amount of livable space in the basement.
2) Only two of the permitted three stories are fully utilized. The gabled roof limits the usable are of the top floor.
3) The applicant, who has been occupying the house since April of 1999 is faced with the possibility of substantial renovations to the upper floor to make it uninhabited, so it will no longer be considered a story.

The applicant has not established that the limitations on the amount of usable space in the structure are a practical difficulty. The Office of Planning does not believe the strict application of the zoning regulations has deprived the applicant of reasonable use of the property. The house is still quite large and functional without the additional attic space.

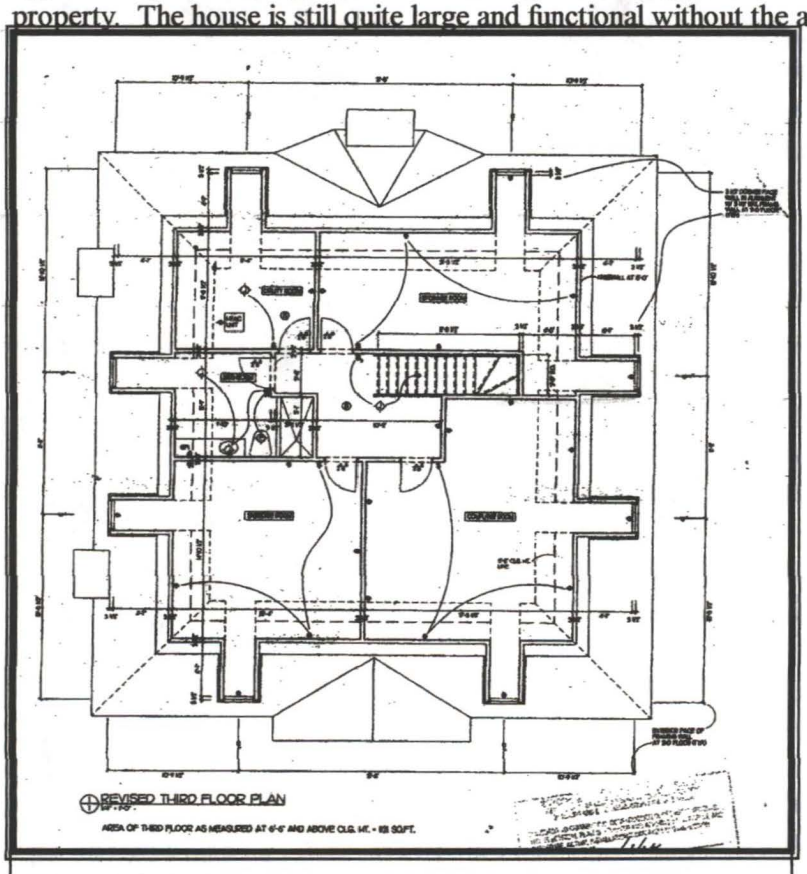


Figure 4 Attic Floor Plan

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 applicant makes four points to support this prong to the test:

1) The height and bulk of the house are similar to other houses in the neighborhood.
2) The houses on

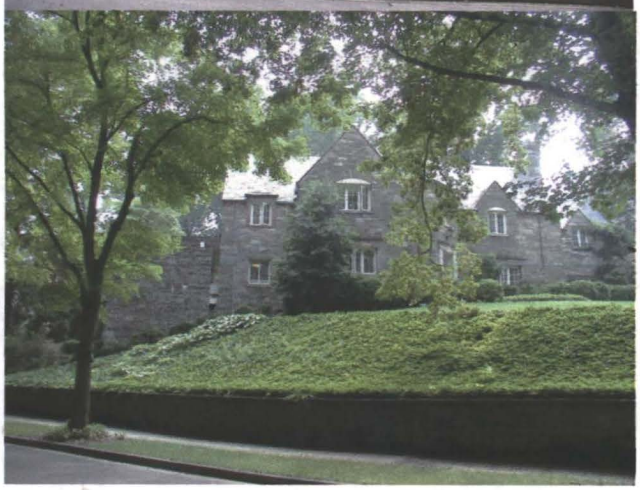
either side are large and not affected by the additional story

3) The additional story has no impact because it only violates the height requirements when converted to habitable space and the existing structure is within the 40 foot height limit.
4) The dormers are a valuable aesthetic addition to the structure.

The Wesley Heights Overlay specifically limits the gross floor area of structures to further the purposes of the Overlay District. Granting a variance for use of the additional space conflicts with these purposes.



Property to the South of Subject Site



Property to the North of Subject Site

Agency Comments

The Office of Planning met with the Zoning Administration Division at DCRA to review the application. The Order to Abate and Remove the Top Story is partially resolved in regard to the gross floor area requirements. The original letter correctly calculates the gross floor area limit imposed by the Wesley Heights Overlay as 6,353 square feet. However, the calculation of the approved gross floor area may not have accurately subtracted exclusions of area provided by §1543.3 (a) and (b). Therefore, the gross floor

area is being recalculated by DCRA and the structure may not exceed the gross floor area limit.

DCRA does affirm the violation of the maximum number of stories. However, the Board should reconsider the remedy. The initial Order requires the property owner to restore the area from the roof to the ceiling of the third story to house only the roof truss systems, ceiling joist, and any mechanical or electrical items. The definition of top story is "the uppermost portion of any building or structure that is **used** for purposes other than housing for mechanical equipment, or elevator or stairway penthouses" (emphasis added). Therefore, one could imply that use of a portion of the structure and not the physical improvements in that portion determine its classification as a story. If the applicant were to simply not use the attic for purposes other than housing for mechanical equipment and stairway penthouses, then presumably the applicant would be in compliance with the zoning regulations. Since the structure as initially approved meets the zoning requirements and the only aspect of the revision that creates a zoning violation is the creation of usable space in the existing interior of the attic, then the action creating the violation is the use of the space. There has been no suggestion that the remedy is to remove an entire story of the structure thereby lowering its height. On the contrary, the initial permit approved the existing structural shell. Though the revisions add dormers to the roof, these could be considered architectural embellishments for aesthetic reasons and be permitted. Therefore, the Board could conclude that the relief sought by the applicant is not from an expensive partial demolition of the house, but from the restricted use of the attic space.

The revised plan that was approved showed several uses in the attic space. Five rooms are shown with the following identification:

1. Computer Room;
2. Exercise Room;
3. Bathroom;
4. Utility Room; and,
5. Storage Room.

Except for the utility room, which logically houses mechanical equipment the first three uses would identify the space as a top story. In addition, the revised site plan identifies the house as a three-story with basement/cellar. The revised plan did not show a full elevation of the structure; so this is the main source of information on the revised plan indicating the number of stories. The definition of story includes basements but excludes cellars; therefore, contrary to DCRA's claim that the plans did not adequately reflect the height, the Board could reasonably conclude that the plans conveyed the construction of four stories.

A portion of the lowest level is cellar and a portion is basement; however, the method of determining weather or not this level is a story depends on the definition of story. The definition of story states, "The number of stories shall be counted at the point from which

the height of the building is measured." As indicated on the revised site plan the measuring point of the building is at elevation 252.0, since the finished elevation of the basement is 251.01 it could reasonably be considered a story.

ANC Recommendation

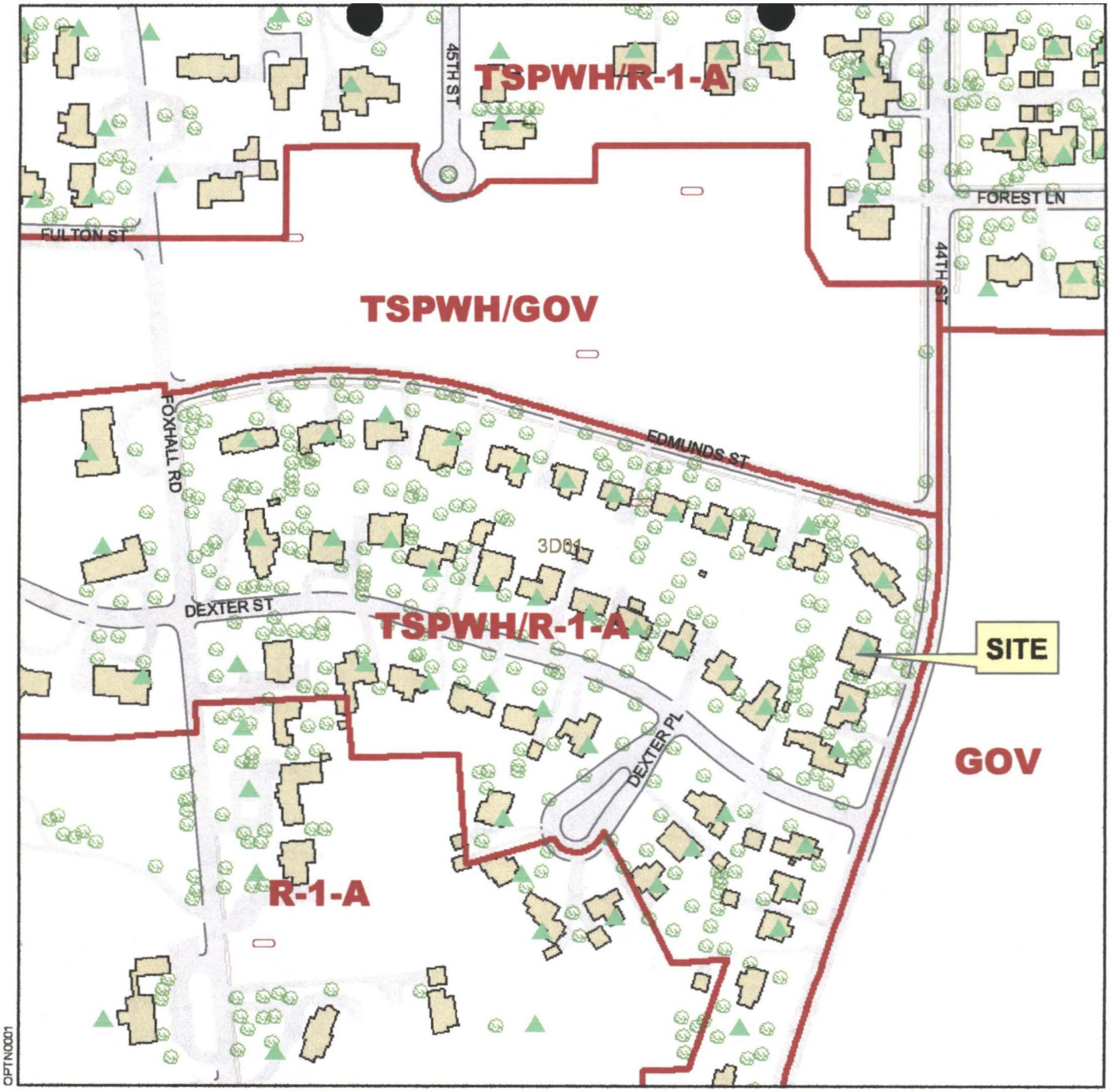
ANC 3G supports the application.

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
4. Slope Analysis



Zoning and Land Use
BZA Application #17039

N

Feet

0 100 200 300

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District of Columbia
Anthony A. Williams, Mayor

Office of Planning – July 14, 2003

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

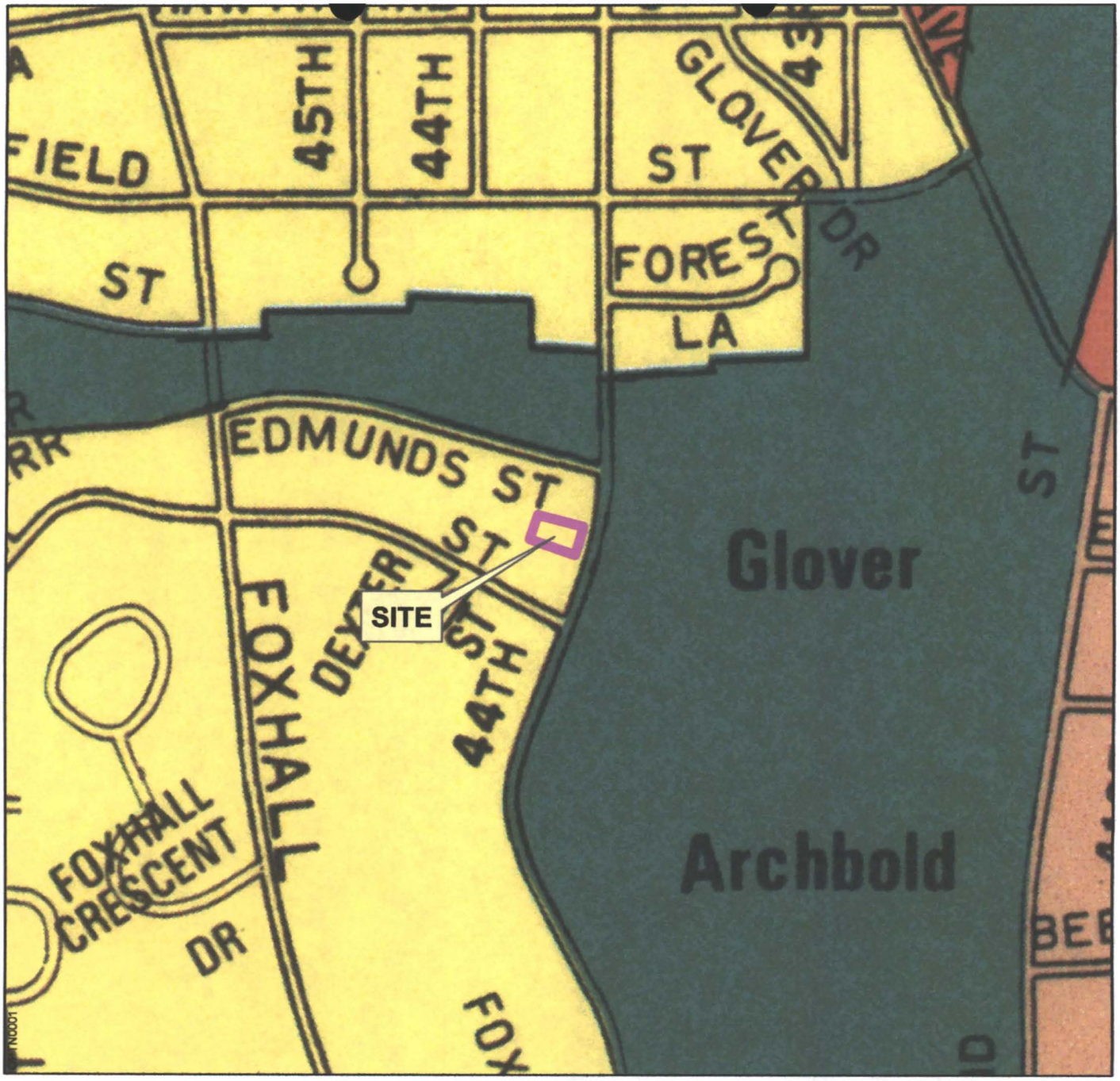
Note: Land Use Info based on OTR records.

Land Use Legend

- Non-Conforming
- Single Family Dwelling/Flat
- Res. Condo
- Multi-family Dwelling
- Hotel/Motel/Boarding
- Retail Store
- Restaurant
- Office
- Auto-oriented Service
- Parking Garage/Lot
- Theater
- Industrial
- Religious
- Medical
- Educational
- Public Service
- Museum, Library, Gallery
- Recreational
- Special Purpose
- Vacant



Attachment 1



Comprehensive Plan Map
BZA Application #17039

N

Feet

0 225 450 675

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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



Attachment 2



N

Feet

0 50 100 150

Aerial Photo
BZA Application #17039

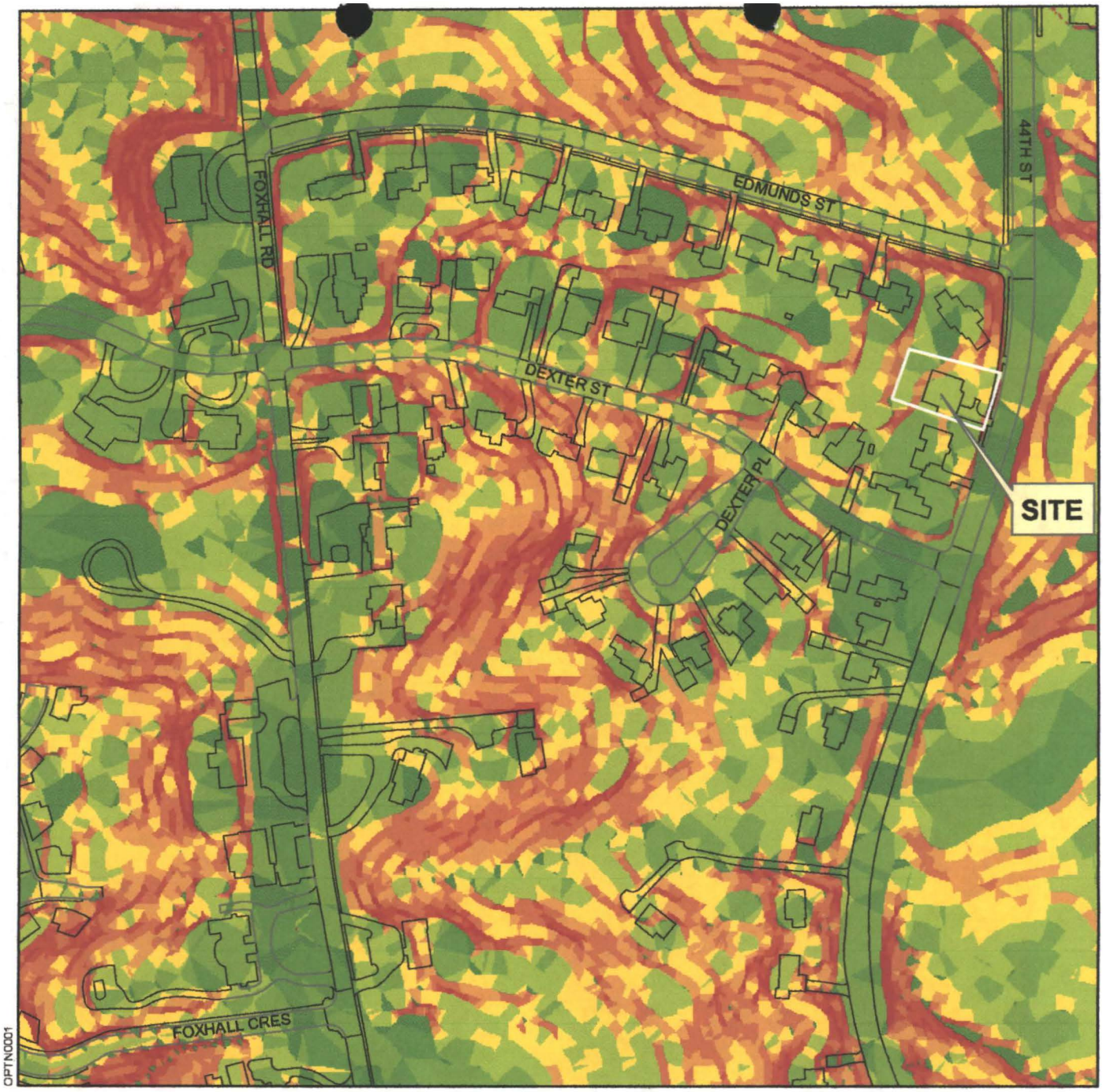
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Attachment 3



Slope Analysis
BZA Applicatoin #17039

N

Feet

0 100 200 300

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Legend
Slope Analysis
- 0 - 2
- 2.1 - 5
- 5.1 - 10
- 10.1 - 15
- 15.1 - 20
- 20.1 - 25
- 25.1 - 35
- 35.1 - 50
- 50.1 - 85



Note: Land Use Info based on OTR records.

Attachment 4