GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

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MEMORANDUM

DATE: October 7, 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. 17040
Miller Property
4417 Garfield Street, N.W.
Square 1614 Lot 59

Summary

The applicant seeks a variance from the accessory uses and buildings provision of §2500.4 to allow a 16.5-foot high accessory building where only 15' is allowed in the WH/R-1-B zone. The applicant seeks relief from an order by the District to abate or remove the garage. The approved plans for the house and garage did not include specific vertical dimensions on the elevations but the plans were drawn to a scale of ¼" = 1'-0", and the garage elevation measures approximately 17 feet in height. In addition, the approved building permit application as well as the printed permit indicates the garage to be 17 feet in height. The Board may determine it is estopped from denying the variance; however, this is a legal issue not addressed by this report. Except for the unusual situation of the District issuing a permit for the structure in question, no evidence is provided by the applicant showing an exceptional shape of lot or topographical condition that would create a practical difficulty. The additional height of the garage has little impact on the public good or the intent of the zone plan.

Recommendation:
If the Board determines in its evaluation of the evidence that the affirmative act of DCRA to approve the plans and issue a permit in error merits consideration as an exceptional

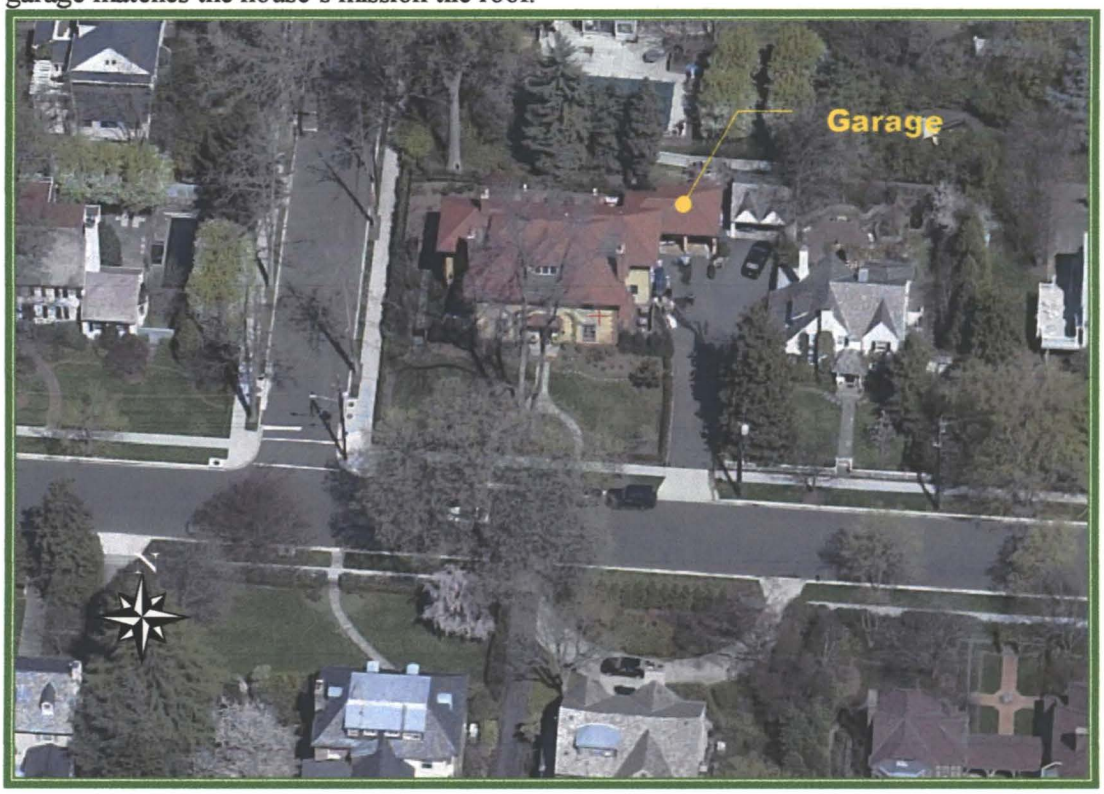
BZA
Case No. 17040
Exhibit No. 26

Board of Zoning Adjustment
District of Columbia
CASE NO. 17040
EXHIBIT NO. 26

If the Board determines in its evaluation of the evidence that the affirmative act of DCRA to approve the plans and issue a permit in error merits consideration as an exceptional condition of the property, the Office of Planning recommends approval.

Background

The applicants, Mr. William and Elaine G. Miller, own 4417 Garfield Street, N.W. (Square 1614 Lot 59). The property lies in the WH/R-1-B Zoning District and contains approximately 9,000 square feet of land. The subject property is located on the northeast corner of Garfield Street and 44th Place, NW. The lot is occupied by single-family dwelling with a detached two-car garage. A driveway on the east side of the lot leads up from the street to the garage which is set at the rear east corner of the lot. The roof of the garage matches the house's mission tile roof.



Single-family residential structures flank the subject property to the north and east and across the street. The neighborhood is characterized by low-density single-family development (Attachment 1). The yard areas of the lot maintain a 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. A two-car detached garage occupies the northeast corner of the lot.

Miller Property
4417 Garfield Street, N.W.
Square 1614 Lot 59
October 7, 2003

Project Description

On September 30, 1998 building permit number B418971 was issued for the subject lot authorizing the construction of a "new 2 ½ story stucco house with detached garage. Garage, length 19 ft., width 29 ft., height 17 ft." However, on March 18th 2003 an order to abate and remove the garage was issued stating that the height of the garage at 16.5 feet was not in compliance with the zoning regulations, which allows a maximum height of 15 feet. The applicant seeks variance relief from the height of accessory structures regulations (§2500.4) to maintain the existing garage.

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 §2500.43 in the WH/R-1-B zone would allow an attractive existing garage to remain. Therefore, granting this variance would not be inconsistent with the objectives and policies of the Comprehensive Plan.

Zoning

The WH/R-1-B Zone District permits accessory buildings in accordance with the provisions of §2500. The applicant is seeking relief under 11 DCMR §3103 for an area variance from the provisions of §2500.4. The R-1-B District sets forth the following purposes:

> 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.

DCRA has determined that the existing garage is not in compliance with the provisions of §2500.4, which states, "An accessory building in any zone district shall not exceed one

(1) story or fifteen feet (15 ft.) in height." DCRA inspected the site and determined the garage to be at a height of 16.5 feet and in violation of this provision.

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.

The applicant provides two points to address this test:

1) The topography of the site is an extraordinary physical condition of the site. The applicant presents no evidence to support this statement.
2) The issuance of a building permit by DCRA and subsequent completion of construction under that permit presents an exceptional situation. A notice of violation for the height of the garage was not issued until November 4, 2002 more than three years after completion of the garage.

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 error in granting of the building permit for the garage and its subsequent construction has resulted in an exceptional situation for the property in that the garage now exists.

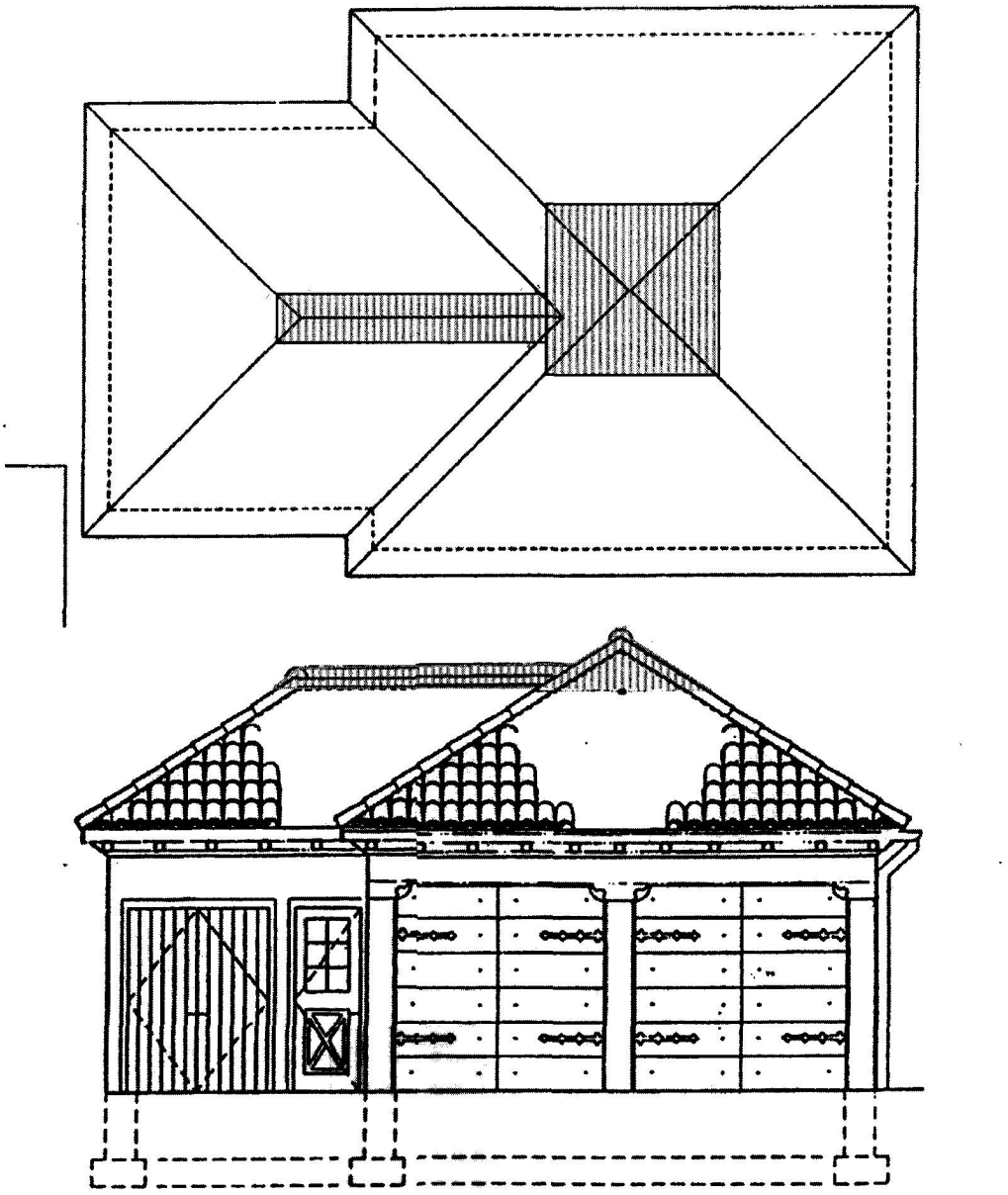
Practical Difficulty

Regarding the practical difficulty test, the applicant states, that the demolition and reconstruction of the roof would be an expensive remedy for the applicant for a very small benefit to the integrity of the zoning regulations. The Office of Planning concurs. If the Board determines from the evidence presented that the structure was built with reliance on DCRA's approval of the building permit, it is reasonable to conclude that partial demolition and reconstruction of the roof presents a practical difficulty, particularly in light of the amount of relief requested.

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. In addressing this

test the applicant indicates that he "feels" that the request for a variance would not create a substantial detriment to the public good. As demonstrated by the following illustrations the area of the roof that is not in compliance is very small and would not significantly impact light and air.



Additionally, the slope of the roof matches the house and reconstruction of the roof at a different pitch to meet the zoning regulations may be less desirable architecturally.

ANC Recommendation

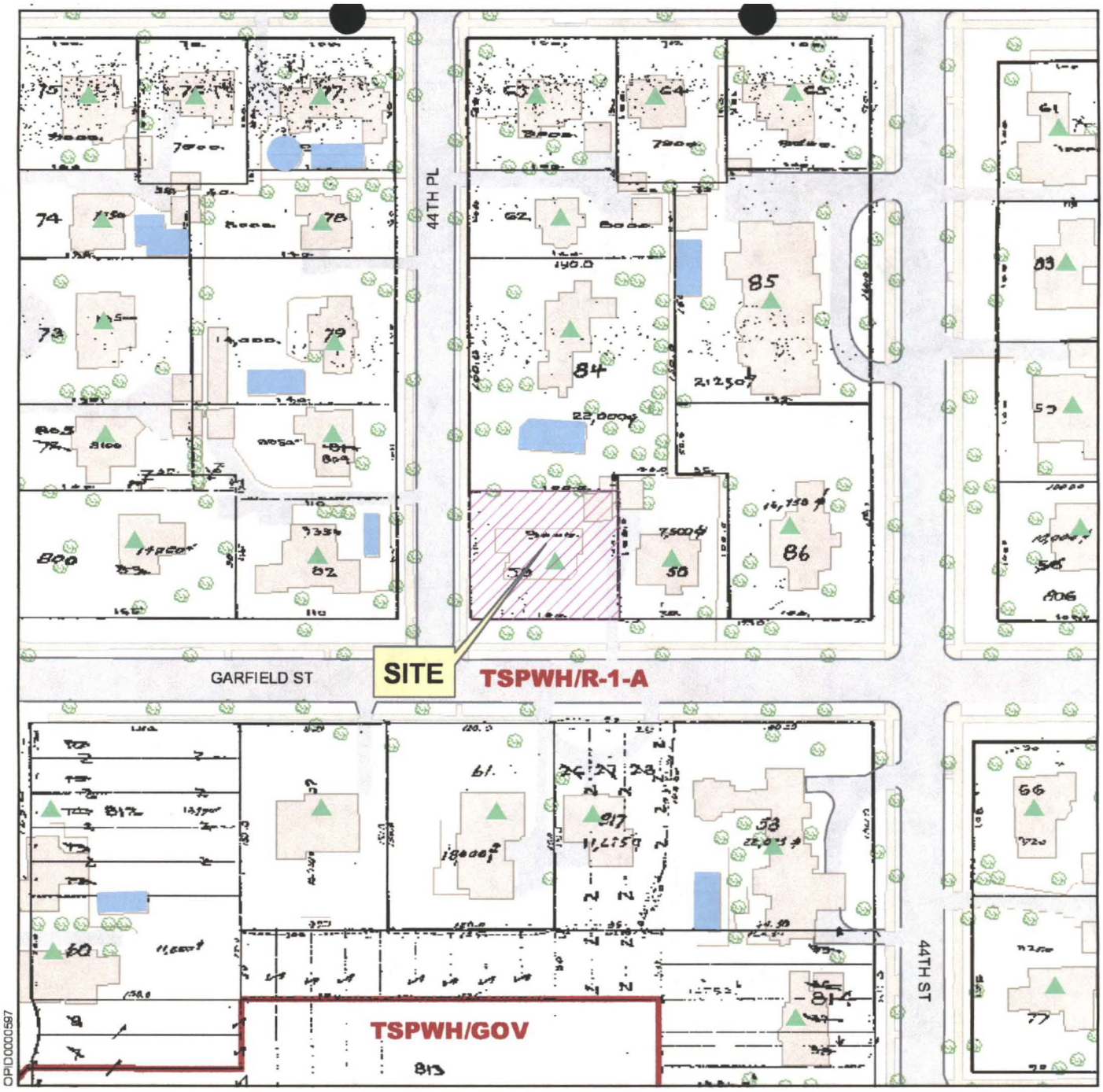
On October 1, 2003 ANC 3D considered the application and voted unanimously to support the application.

Recommendation

If the Board determines in its evaluation of the evidence that the affirmative act of DCRA to approve the plans and issue a permit in error merits consideration as an exceptional condition of the property, the Office of Planning recommends approval.

Attachments:

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



Zoning and Land Use
BZA Application #17040

N

Feet

0 50 100 150

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Anthony A. Williams, Mayor

Office of Planning ~ October 2, 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.

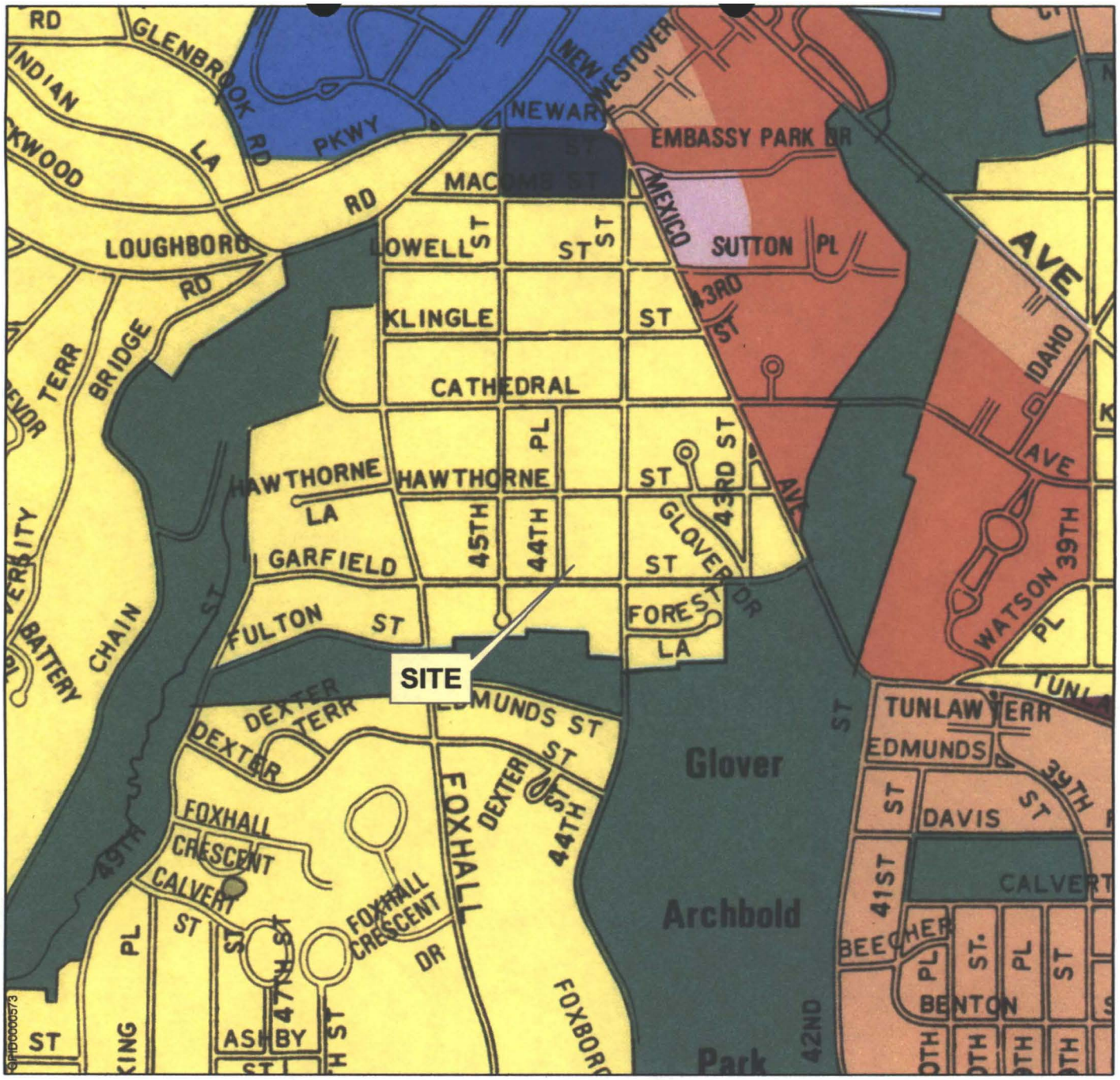
Note: Land Use Info based on OTR records.

Land Use Legend

- Single-family Detached
- Single-family Semi-detached
- Row house
- Accessory Garage
- Singlefamily Mixed Use
- Single-family Misc
- Multi-family Dwelling
- Office
- Parking Garage/Lot
- Religious
- Educational
- Vacant



Attachment 1



N

Feet

0 500 1,000

Comprehensive Plan Map
BZA Application #17040

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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

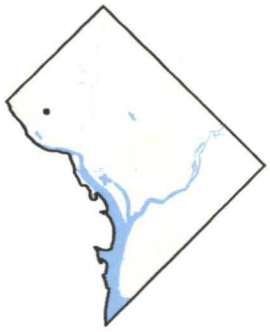


Aerial Photo
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Attachment 3