GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

★ ★ ★

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: JLS for Andrew Altman, Director

DATE July 21, 2003

SUBJECT: **BZA Application 17044– Request filed by Lucia and Claudio Rosan for a use variance** to establish an "inn/tourist house" at 2005 Columbia Road, N.W.

APPLICATION
Application of Lucia and Claudio Rosan for:

> **Variance to §350.4 pursuant §3103.2 of Title 11 DCMR** for a use variance to permit an inn/tourist house at property located on the east side of Columbia Road, 2005 Columbia Road, N.W., Square 2536, Lot 150. The property is located within the R-5-D, medium-high density general residence district.

SUMMARY RECOMMENDATION
The Office of Planning recommends denial of the request for a use variance.

PROJECT DESCRIPTION
The applicant proposes to establish an "inn/tourist house" within an existing row house that was last used as a rooming house, a use permitted as a matter of right under 11 DCMR §350.4(a). The applicant has submitted plans for repairs and alterations to the subject property for the operation of a 12-unit inn/tourist house.

SITE AND AREA DESCRIPTION
The property consists of Lot 150, Square 2536, in the North West quadrant of the District, and is improved with a row house that was constructed in 1898. The square in which the subject property is located contains a variety of uses, most of which are residential, including row houses, conversions and apartment buildings. Adjacent to the subject property to the southwest is a row house used as a single-family dwelling, and beyond that is a gallery, both of which are located within the R-5-D District. To the

BZA
Case No. 17044
Exhibit No. 29

Board of Zoning Adjustment
District of Columbia
CASE NO. 17044
EXHIBIT NO. 29

northeast is a row house used for residential purposes, also within the R-5-D District. Across Columbia Road from the subject property are five to nine-story apartment buildings within the R-5-D District.

The square also includes the Embassy of Malta, the Embassy of the Gabonese Republic and the Trade Representation of the Russian Federation in the USA. The majority of the square is located within the R-5-D District. However, an 8-story apartment building and a parking lot to the rear of the subject property are located within the R-5-B District.

HISTORY
A brief history of the use of the subject property is detailed below.

- The existing row house was constructed in 1898.
- In 1950 a permit was issued for the continued use of the property as a tenement house.
- In 1969 a permit was issued to use the subject property as an 8-unit rooming house.
- In 1984 the property was incorporated into the Kalorama Triangle Historic District.
- On January 12, 2000, DCRA issued a business license to the previous owner for a 15-unit rooming house.
- On March 13, 2003 the applicant purchased the subject property
- On March 20, 2003 the applicant was issued a permit for an 8-room rooming for the subject property.
- On April 7, 2003 DCRA denies the applicant a permit for an "Inn/Tourist Home" because it is not a permitted use within the R-5-D Zoning District.

ZONING REQUIREMENTS
The subject property is located in the R-5-D medium-high density residence district.

> *"The R-5 Districts are General Residence Districts designed to permit flexibility of design by permitting in a single district, except as provided in §§ 350 through §361, all types of urban residential development if they conform to the height, density, and area requirements established for these districts under chapter 4 of this title. The R-5 Districts shall also permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive Residence Districts."* (§350.1)

Inns and tourist houses are not specified as uses permitted as either matter of right under § 350.4, or by special exception under § 352, within the R-5-D District. Some of the uses permitted within the R-5-D District include:

- Bed and Breakfast Home Occupations (requiring that the occupant live on the premises. A maximum of 6 sleeping rooms are permitted by special exception within a historic district);
- Rooming House (the definition of rooming house, under § 199.1, states that a rooming house does not include an inn or a tourist home, but is a multiple dwelling);
- Row House;
- Flat;
- Art Gallery (by special exception); and
- Multiple dwellings.

With the exception of the use of the property for a single-family residence, the application does not list any other uses not suitable for the subject property, permitted either as a matter of right or by special exception. The application also does not specify why the subject property is not suitable for use as a single-family residence.

The application does state that the applicants "*were not allowed to continue with the special exemption granted to the previous owner to have transient guests...*". The 'exemption' was granted to the previous owner by the Rental Accommodations and Conversion Division of the Housing and Environmental Regulations Administration exempting the property from rent control because it was a small housing project.

A rooming house may not provide accommodations to transient guests, as per the criteria contained within § 330.6 of the Zoning Regulations, and the applicant did submit documentation that the previous owner was operating a business that included accommodations for transient guests. However, no documentation was submitted indicating that the transient accommodations portion of the business operated legally, and a use cannot be grandfathered unless it was legally established.

The applicant also submitted evidence that the previous owner was paying hotel taxes. However, the Office of Tax and Revenue informed the Office of Planning by telephone that it collects taxes based on use, and does not usually check to see if the use for which it is collecting taxes is permitted by the Zoning Regulations.

The applicant has been granted a "waiver of additional off-street parking spaces" because the subject property is located within a historic district.

RELIEF REQUESTED
Variance to the use provisions of §350.4, pursuant to §3103.2

The Board of Zoning Adjustment is empowered to grant variances as provided by Section 3103.2 as follows:

> *"With respect to variances, the Board has the power under § 8 of the Zoning Act, D.C. Code, 2001 Ed. § 6-641.07(g)(3) (formerly codified at D.C. Code § 5-*

424(g)(3) (1994 Repl.)), "[w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code, 2001 Ed. §§ 6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, a variance from the strict application so as to relieve such difficulties or hardship; provided, that the relief can 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 subject property is neither exceptionally narrow, shallow, of an exceptional shape, nor constrained by exceptional topographical conditions. The subject property was developed as a row house, a conforming use within the R-5-D District. The most recent use of the property, according DCRA, is a rooming house, a use permitted as a matter of right within the R-5-D District. The applicant now desires to change that use to inn/tourist house, a use not permitted within the R-5-D District. However, the application does not demonstrate why the subject property cannot be used for either a special exception or matter of right use. The applicant could use the property for a residential flat, a six-suite bed and breakfast or for a rooming house without limit on the number of rooms provided. However, the applicant could not establish a six-suite bed and breakfast in a part of the building and utilize the remainder of the structure for a rooming house due to the provisions of § 203.8 of the Zoning Regulations. Section 203.8, the specific criteria under which a bed and breakfast facility may be permitted, states that a bed and breakfast facility may not be located within a multiple dwelling, and § 199.1 defines a multiple dwelling as "*a building containing three (3) or more dwelling units or rooming units, ...*".

It is the Office of Planning's conclusion that the criteria for variance relief of §3103.2 has not been satisfied, in that it has not been documented that the subject property *"by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property... would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property..."* (§ 3103.2).

COMPREHENSIVE PLAN

The Generalized Land Use Map recommends the Moderate Density Residential land use category for the subject property- "Row houses and garden apartments are the predominant uses; may also include low density housing."

A land use objective of the Ward 1 plan *is "...to protect residential neighborhoods from disruptive uses, and to protect concentrations of non-residential uses in the ward's residential neighborhoods."* (§ 1229.1(a))

COMMUNITY COMMENTS

ANC 1C, in a letter to the Chairman of the Board of Zoning Adjustment dated July 7, 2003, indicated that they had passed a resolution recommending denial of the application at their meeting of July 2, 2003.

The Kalorama Citizens Association informed the Office of Planning by telephone on July 10, 2003 that they are opposed to the use variance.

Two neighborhood residents submitted letters to the file indicating their opposition to the application.

CONCLUSION

The subject property is improved with a building that was originally constructed as a single-family dwelling, a use permitted as a matter of right within the R-5-D District. It was most recently issued a Certificate of Occupancy for a rooming house, a use also permitted as a matter of right within the R-5-D District. DCRA has no records indicating that the subject property was permitted as an inn/tourist house.

The Zoning Regulations do permit a variety of other uses for the subject property, including Bed and Breakfast Facilities (up to six suites within a historic district), a gallery or a flat. The application indicates that the property is unsuitable for use a single-family dwelling, but fails to indicate specifically why the subject property is unsuitable for single-family use. The adjacent row house to the southwest is used as a single-family dwelling. In addition, the application fails to indicate why the subject property cannot be used for a use permitted as a matter of right or by special exception.

The proposed use is not permitted within the R-5-D residential district as a matter of right or by special exception. The Comprehensive Plan seeks to protect the neighborhood from nonresidential uses. As the use 'inn' is first permitted within the Zoning Regulations within the SP District, and not at all within the residential zoning categories, it is not a residential use as defined by the Zoning Regulations. The SP District is a zone intended to buffer residential areas from commercial areas. As the subject property is located within a residential area and not a special purpose or 'buffer' area, its introduction as a use for the subject property is inappropriate.

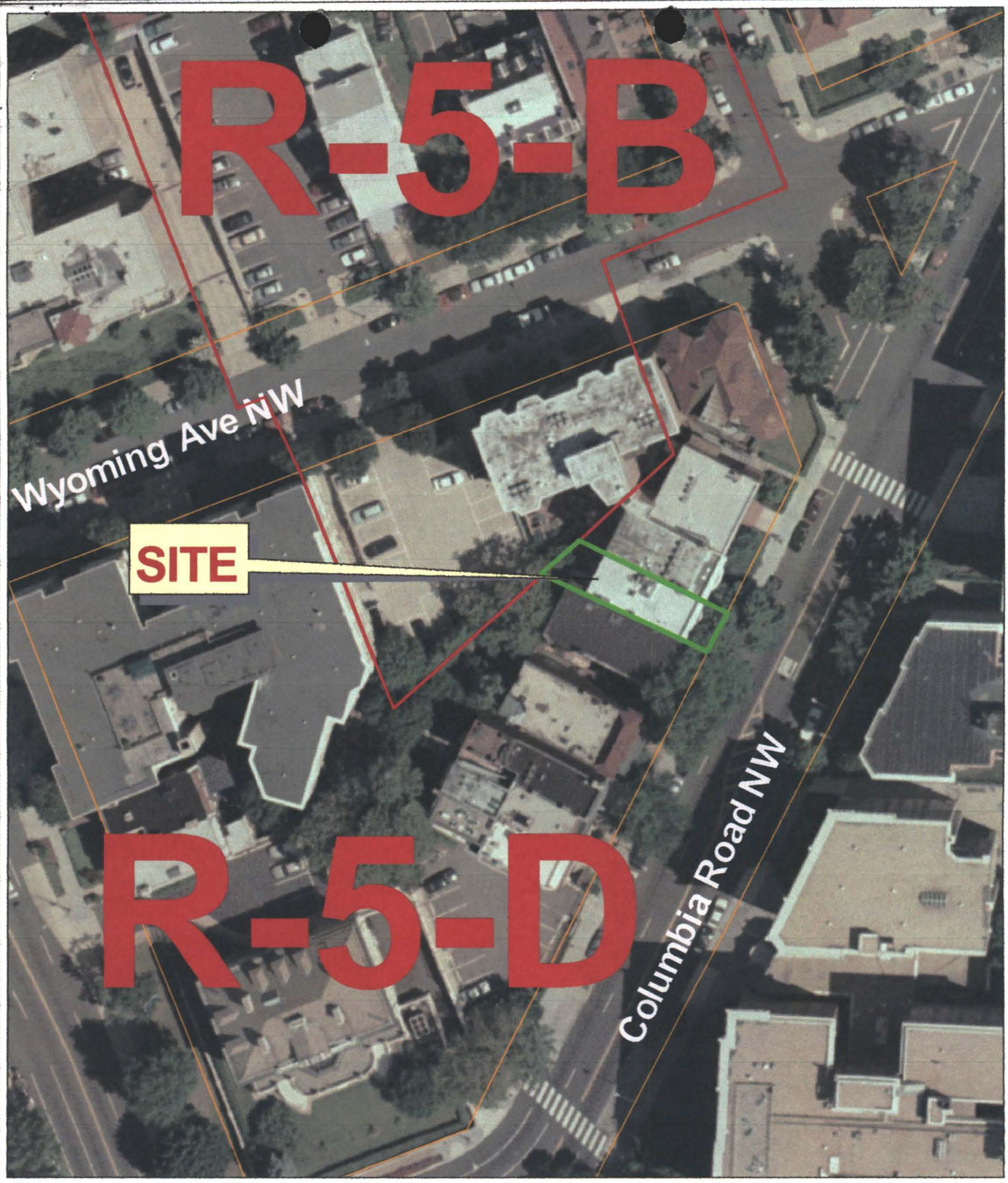
RECOMMENDATION

The Office of Planning has reviewed the application in terms of the property's zoning and the standards for a variance. The Office of Planning concludes that the proposal does not meet the required variance test and cannot 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 Office of Planning recommends denial of the following:

> **Variance to Section 350.4 pursuant to Section 3103.2 of Title 11 DCMR** to permit an inn/tourist house.

AA/sjm$_{AICP}$



Feature Key

Zoning Boundaries

Square Index

Ortho-Photography was taken in 1999.

Board of Zoning Adjustment
Application No. 17044

DC Office of Planning
June 19, 2003

N

Scale 1:738

25 0 25 50 75 100 Feet

Attachment 1