GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

DATE: July 20, 2004

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. 17090
Bauer Property
2116 O Street, N.W.
Square 69 Lot 146

Summary

The applicant seeks an area variances from the following provisions:

1) From §101.5, which prohibits new structures on lots that do not meet the conditions of §2001.3;
2) From §2300.2, which requires a 12' minimum set back for garages from the centerline of the adjoining alley;
3) From §402.4, which permits a maximum FAR of 1.8, the applicant proposes an FAR of 2.1;
4) From §403.2, which permits a maximum lot occupancy of 60%, the applicant proposes a lot occupancy of 83.5%; and,
5) From §2500.3, which permits no more than 30% of the area of a required rear yard on any lot to be occupied by accessory buildings,

to allow construction of a detached garage with a roof top deck in the DC/R-5-B Zone District. The applicant may also need relief from rear yard requirements of §404.1 to permit a deck in the rear yard.

BZA
Case No. 17090
Exhibit No. 24

Board of Zoning Adjustment
District of Columbia
CASE NO. 17090
EXHIBIT NO. 24

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

- The applicant has not shown an exceptional situation that creates the need for the relief sought. The lot does not have an exceptional condition of narrowness (it is 22 feet wide), of shallowness (it is 95 feet deep), or of shape (it is rectangular). No evidence was provided, which showed an exceptional situation that would limit reasonable continued use of the property without a garage.
- No evidence has been provided to document that the strict application of the zoning regulations results in a practical difficulty to applicant. There remains reasonable use of the property.
- The intensified lot occupancy of this lot with structures and the impact on the privacy and enjoyment of properties across the alley as a result of the proposed construction is not consistent with the intent of the zone plan, the character of the DC/R-5-B zone, or the public good.

Background

The subject property is located on the south side and in the middle of the 2100 block of O Street, NW. The lot contains approximately 2,090 square feet of lot area and is occupied by a three-story structure with basement. The structure is used as a multi-family dwelling. The property is located in the Dupont Circle Historic District, and is a contributing structure to the District. The existing rear yard is approximately 33.6 feet. The rear of the lot abuts a narrow alley that is only 10 feet wide.

The surrounding neighborhood is developed mainly with row dwellings interspersed with some low-rise apartment buildings. Many of the row dwellings, including the subject property, have been converted to multi-family use. The adjacent property at 2114 O Street, NW has a detached garage and deck similar to what is proposed by the applicant. The Board of Zoning Adjustment granted the owners of 2114 O Street a variance from the lot occupancy and floor area ratio requirements to construct the accessory garage in BZA Order #14802, June 8, 1988. There is no evidence of relief being requested from the provisions of §2300.2(b) requiring a 12' setback from the centerline of the alley. The existing structure appears to be 5' from the centerline of the alley.

Project Description

The applicant proposes to construct a detached garage with a roof top deck at the rear of the lot. A set of wooden steps will transition from the deck to the existing brick patio at the rear of the building. The proposed garage will accommodate two vehicles and will open directly on the alley.

Comprehensive Plan

The property is identified as moderate density residential on the General Land Use map (See Attachment 2). The moderate density designation includes row houses and garden apartments as the predominant uses and may also include, as appropriate uses, low density housing (10 DCMR §1103.2).

A major theme of the Comprehensive Plan is to stabilize and improve District neighborhoods (10 DCMR §101.1(a)). The granting of a large variance to §403.2 (lot occupancy) and a variance to §402.4 (FAR) in the R-5-B zone would be a detriment to the character of the neighborhood. Therefore, granting this variance would be inconsistent with the objectives and policies of the Comprehensive Plan.

Zoning

The R-5-B Zone District permits a maximum lot occupancy of 60% for structures and the applicant is seeking relief under 11 DCMR §3103 for area variances from the following provisions

1) From §101.5, which prohibits new structures on lots that do not meet the regulations specifically the conditions of §2001.3;
2) From §2300.2, which requires a 12' minimum set back for garages from the centerline of the adjoining alley;
3) From §402.4, which permits a maximum FAR of 1.8, the applicant proposes an FAR of 2.1; and,
4) From §403.2, which permits a maximum lot occupancy of 60%, the applicant proposes a lot occupancy of 83.5%;
5) From §2500.3, which permits no more than 30% of the area of a required rear yard on any lot to be occupied by accessory buildings.

The proposed project is a permitted use in the zone. The following table summarizes the area requirements:

Area Req.	Existing	Required/Allowed	Proposed	Variance	Code Ref.
Height	Not Provided	50'	No Change	None	§400.1
Min. Lot Area	2,090 SF	None Prescribed	No Change	None	§401.3
Min. Lot Width	22'	None Prescribed	No Change	None	§401.3
Lot Occupancy	65%	60%	83.5%	23.5%	§403.2
Rear yard	33.6'+	15'	0'	None	§404.1
Side yard	None	None	None	None	§405.9

Parking	2	2	2	None	§2100
Loading	0	None	0	None	§2200
Garage Setback	N/A	12'	5'	7' (58.33%)	§2300.2

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

The applicant has not shown an exceptional situation that creates the need for the lot occupancy relief sought. The lot does not have an exceptional condition of narrowness (it is 22 feet wide), of shallowness (it is 95 feet deep), or of shape (it is rectangular). No evidence was provided, which showed an exceptional situation that would limit reasonable continued use of the property without a garage.

Practical Difficulty

No evidence has been provided to document that the strict application of the zoning regulations results in a practical difficulty to applicant. There remains reasonable use of the property.

Substantial Detriment

1. 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 following addresses this test for each relief requested:

1) The intent of Section 2000 (found in Section 2000.2) is "that nonconformities may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same district." Section 2001.3 applies to the applicant's project, which meets none of the items enumerated for a permitted addition:
    a. "The structure shall conform to percentage of lot occupancy requirements." The proposed structure does not conform to the percentage of lot occupancy requirements as it is already at 65%.
    b. The addition shall:
        i. "Conform to use and structure requirements." The proposed addition will not conform to the requirements of 2300.2 (Garages), 402.4 (FAR) or 403.2 (Lot Occupancy).

ii. "Neither increase or extend any existing, nonconforming aspect of the structure". The applicant is increasing the nonconforming lot occupancy, the non-conforming FAR, and creating a new nonconformity with respect to the setback of garages from the centerline of the alley.
iii. "Nor create any new nonconformity of structure and addition combined". As mentioned above the applicant is creating a new non-conformity.

The Office of Planning believes that the project will substantially impair the intent of this regulation.

2) The setback provisions of Section 2300 have two of purposes: to provide adequate separation between structures facing the alley for the purposes of having adequate light, air and privacy; and, to allow for adequate maneuverability for vehicles in the alley. The existing 10' alley is exceptionally narrow. The construction of the garage will further impede access to the two parking spaces currently provided by decreasing the access width from 22' to approximately 19'. The alley is already substantially burdened by other structures and walls built to the lot line. Construction of the proposed garage will further diminish the alley's functionality. The alley also functions as a separation between the rear of the dwellings on O Street from the dwellings on Newport Place. By creating a deck over the garage, occupancy and activity is placed 33.6' closer at 8' above the alley. This would diminish the privacy of the dwellings across the 10' alley from the property.
3) The intent of 402 and 403 is to provide adequate light and air, prevent undue concentration of population and the overcrowding of land, and to promote the character of the respective districts. The existing brick patio will be substantially diminished in functionality as it is reduced from 15'-8" in depth to approximately 7' in depth. The property is already overburdened with intense use as it accommodates four units of housing and exceeds the lot occupancy.

OP cannot conclude the expansion will not impair the intent of the Zoning Regulations or the integrity of the Plan as it will result in an expansion of a non-conforming structure and excessive build-out of 83.5% lot occupancy, where 60% is permitted.

ANC Recommendation

ANC 2B has not heard or acted on the application.

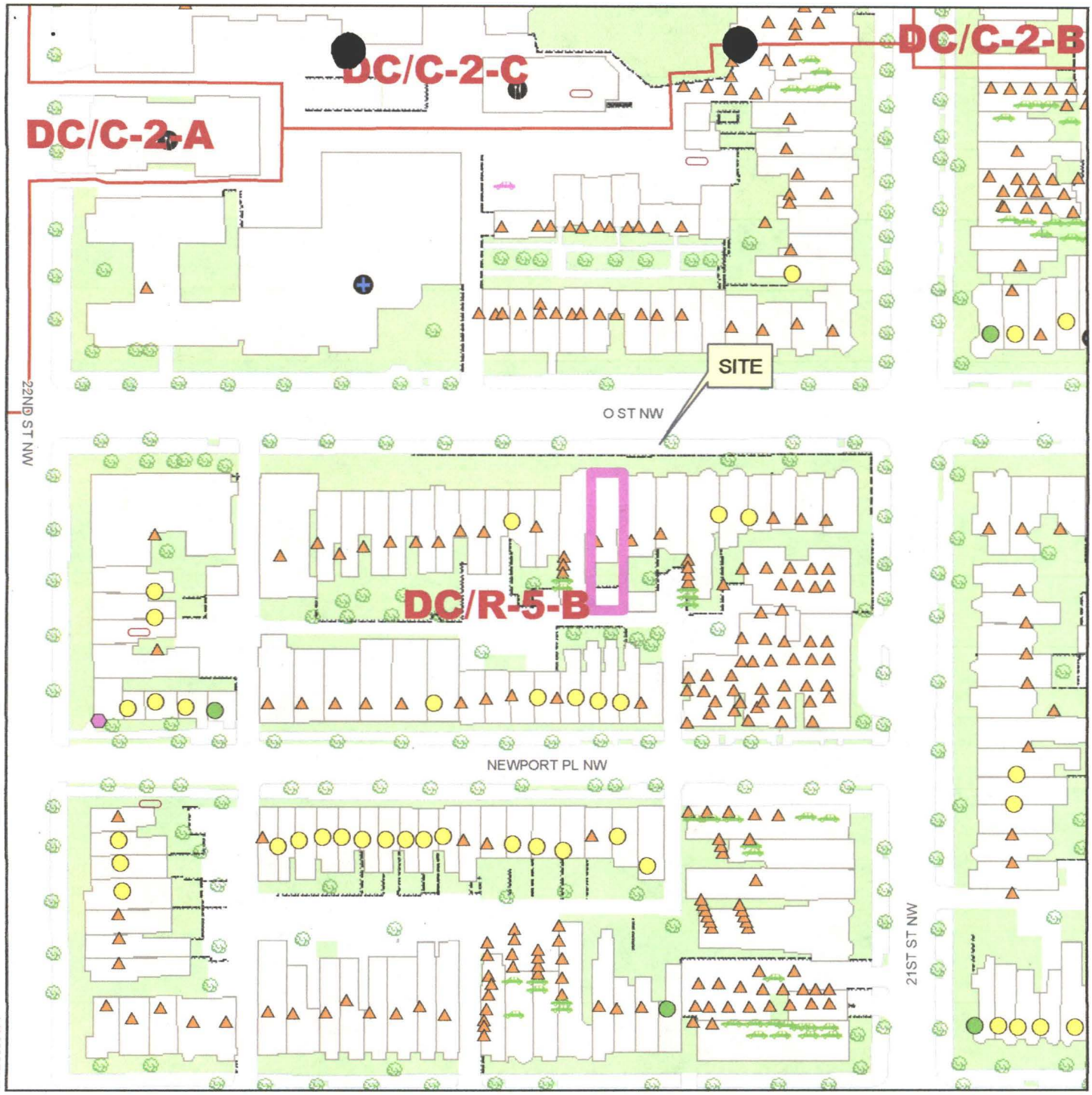
Recommendation

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

Attachments:

Bauer Property
2116 O Street, N.W.
Square 69 Lot 146
July 20, 2004

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

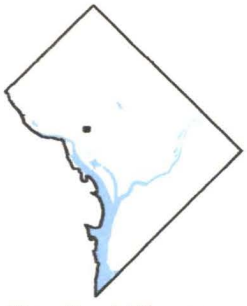


Zoning and Land Use Map
BZA Application #17090
2116 O Street, NW

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Feet

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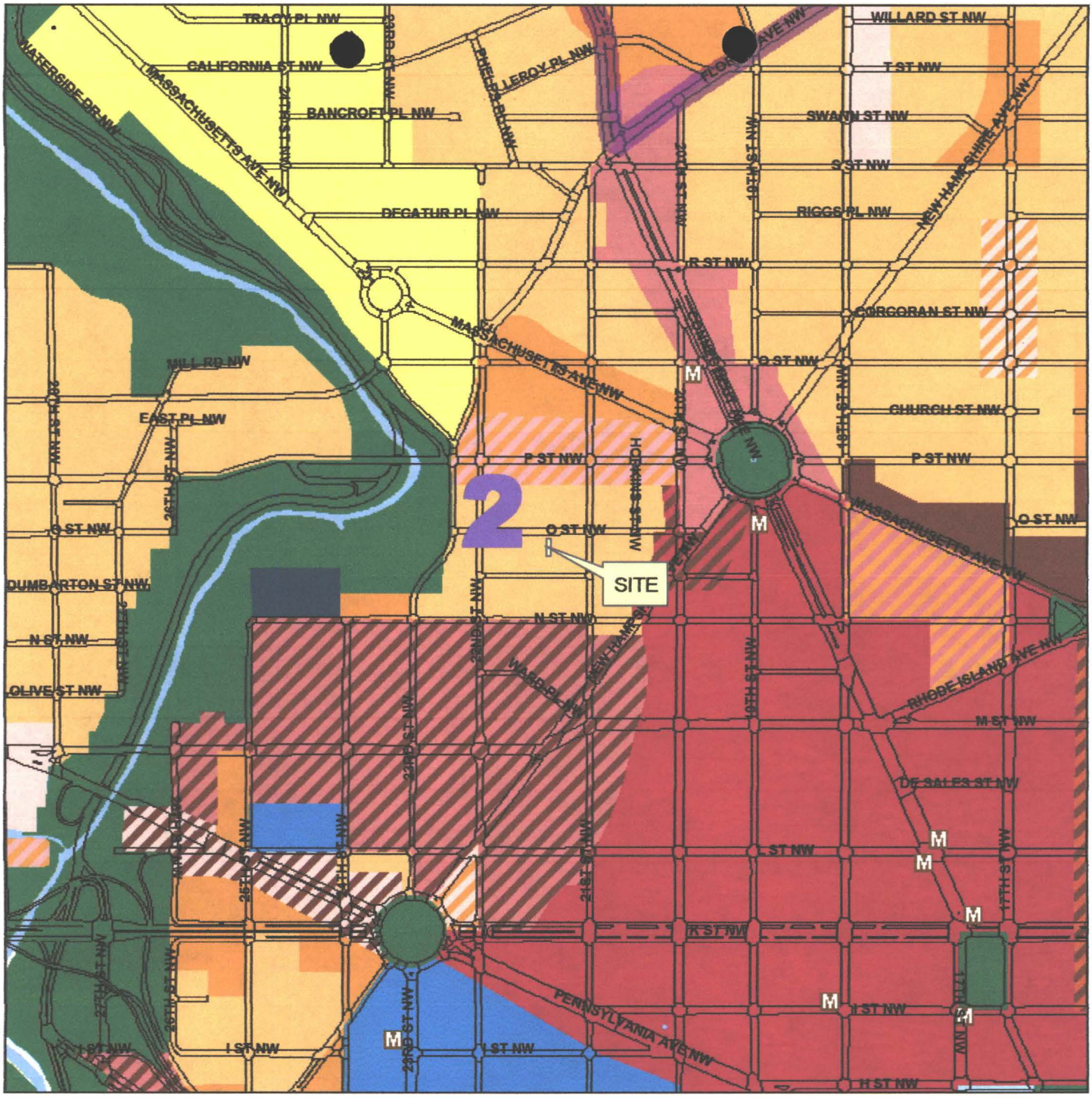
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This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

Land Use Legend

- Non-conforming SF Use
- Rowhouse
- Single-Family Detached
- Single-Family Semi-Detached
- Resid. Garage
- Multi-family
- Small Hotel
- Large Hotel
- Fraternity/Sorority House
- Store
- Restaurant
- Office
- Parking - Special Purpose
- Religious
- Educational
- Embassy/Chancery
- Special Purpose
- Vacant

Attachment 1



Comprehensive Plan
BZA Application #17090
2116 O Street, NW

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Feet

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Generalized Land Use Key

- Residential-Low Density
- Residential-Moderate Density
- Residential-Medium Density
- Residential-High Density
- Commercial-Low Density
- Commercial-Moderate Density
- Commercial-Medium Density
- Commercial-Medium-High Density
- Commercial-High Density
- Institutional
- Federal
- Local Public Facilities
- Parks, Recreation, and Open Space
- Production and Technical Employment
- Mixed Use

Attachment 2

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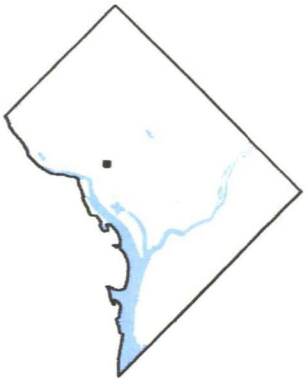


DC Orthophoto
BZA Application #17090
2116 O Street, NW

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Feet

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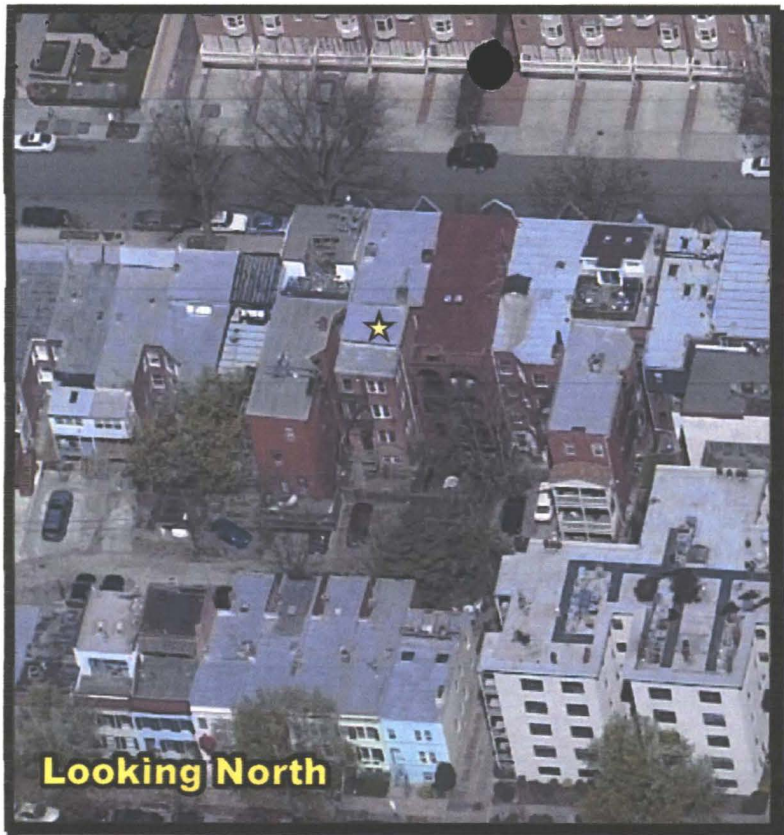


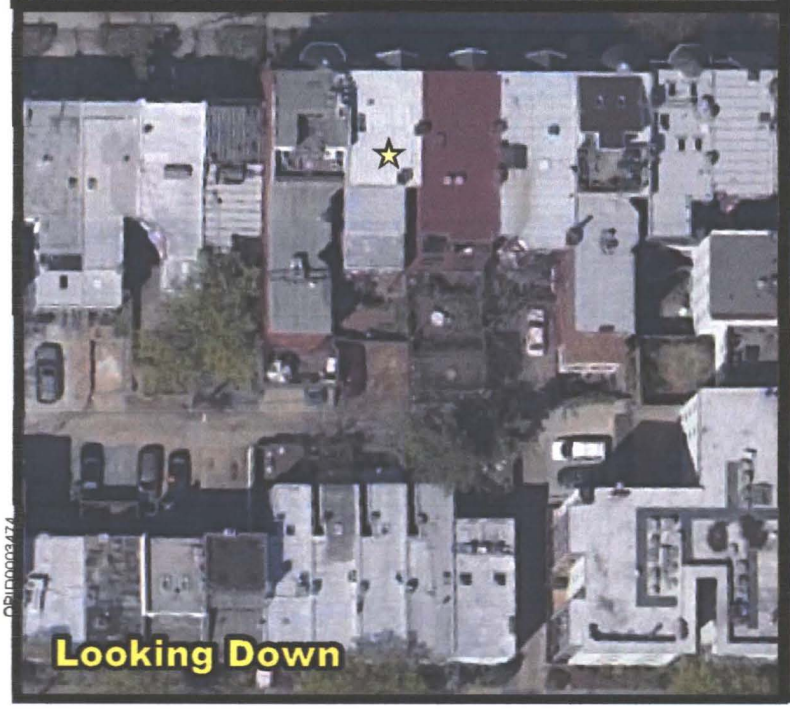
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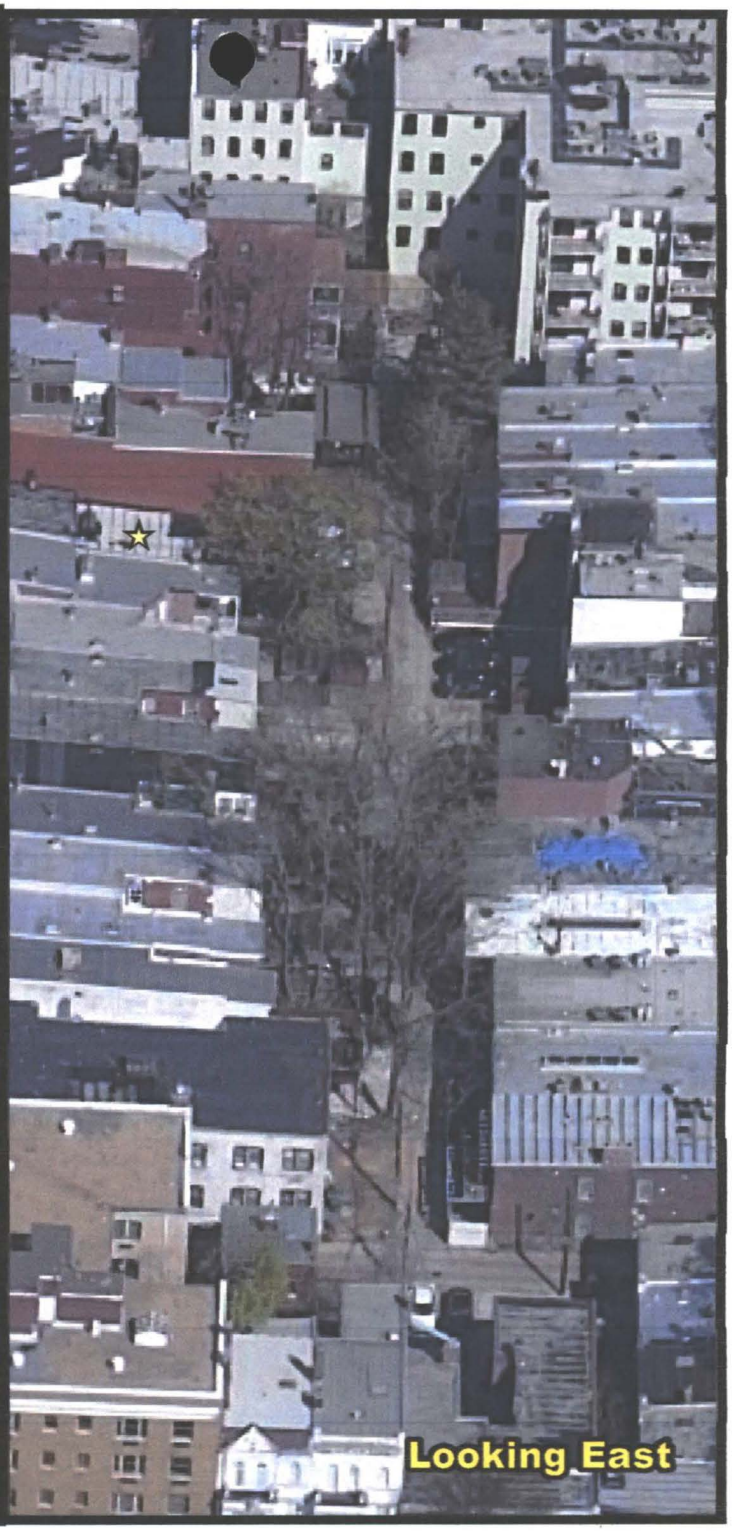
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Attachement 3







Aerial Oblique Photos
BZA Application #17090

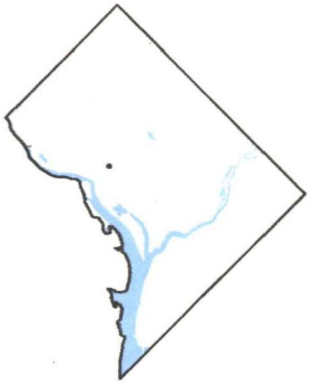
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☆ Subject Site - 2116 O Street, NW



Attachment 4