GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman

DATE: January 13, 2004

SUBJECT: BZA Case 17100 Variance Request

APPLICATION

The application by Sandra Douglas requests, pursuant to 11 DCMR 3103, a variance from the residential requirements, to permit the establishment of a coffee shop in the R-4 District. Coffee shops are not a permitted use in R-4 districts. The subject premises are at 129 15th Street, N.E. Park Square 1069, Lot 801.

OFFICE OF PLANNING RECOMMENDATION-IN-BRIEF

The Office of Planning recommends denial of this variance application.

SITE AND AREA DESCRIPTION

The subject premises are in the Stanton Park Neighborhood of Ward Six. Constitution Avenue generally bounds the site to the north, A Street is to the south, 16th Street is to the east and 15th Street is to the west. The subject Square (1069) consists mostly of row dwellings and single-family semi-detached dwellings. However, the east side of the subject block is mostly commercial in character, with the exception of the Jesus Is The Way Church, which is south of the subject site.

HISTORY OF PROPERTY

The subject structure was built in 1936 as a semi-detached dwelling. Most of the dwellings on Square 1069 were constructed between 1900 and 1936, and thus predate the adoption of the Zoning Act of 1958. At some point in the past, the property was converted from residential to commercial use. During the 1960's and 1970's, the subject block consisted of strip commercial property. There is a Certificate of Occupancy (CO) for the property which dates back to 1965 that list the purposes of the premises as

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Exhibit No. 25

Board of Zoning Adjustment
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"Variety, Grocery and Medicine Store. According to the applicant, Jesus Is The Way Church purchased the property approximately three years ago. The church authorized Sandra Douglas of Deliverance, Production & Planning L.L.C., to file with the Department of Consumer and Regulatory Affairs to use the space for commercial purposes. The most recent CO dated June 25, 2003, lists the approved uses as "Variety, Grocery & Patient Medicine" which is the same as the previous approved uses.

APPLICANT'S PROPOSAL

The applicant is requesting a use variance to operate a coffee and sandwich shop in the R-4 residential zone. In addition to offering food and beverage, the applicant plans to sell tea and coffee pots, as well as gift baskets with packaged coffee items. The coffee shop would have inside seating as well as carryout sales.

RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN

The Comprehensive Plan Generalized Land Use Map depicts the subject area as Mixed Use, moderate density residential/low Density Commercial. A variety of uses are encouraged in mixed-use areas.

ZONING ANALYSIS

The subject premises are in the R-4 Residence Zone District. The R-4 district permits row dwellings, flats and conversions to apartments, at a moderate to medium density. A coffee/sandwich shop is not considered a compatible use in the R-4 District.

DOES THE APPLICATION MEET THE VARIANCE TEST

Is the property unique by reason of its exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situation or condition?

No. The property is not unique from other properties in the one hundred block of 15th Street, N.E., regarding its narrowness, shallowness, shape or topography, nor does the property have extraordinary or exceptional situation or condition.

The subject property was developed in 1936 for residential purposes consistent with the other properties in the block. At some point, the property was converted to a commercial use. However, the property is in the R-4 residence zone, a zone that does not permits a coffee shop as a matter of right.

With the exception of a large display window at the front of the subject building, there are no interior structural alterations that were specifically tailored for commercial purposes. It would not be difficult for the owner to convert the subject structure back to the originally intended residential use.

OP has seen no evidence that the property has maintained the non-conforming uses in the structure within the last three years. Section 2005 clearly states that if the non-conforming use has ceased operation for more than three year, any future use must conform to the zoning regulations:

> **2005 DISCONTINUANCE**
> 2005.1 Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as *prima facie* evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located. (emphasis added)

By reason of the aforementioned unique or exceptional condition of the property, will the strict application of the Zoning Regulations result in peculiar and exceptional practical difficulties or exceptional and undue hardship upon the owner of the property?

No. The strict application of the Zoning Regulation in this case will **not** result in an undue hardship upon the owner of the property. The applicant anticipated using the subject property to operate a coffee/sandwich shop. However, the property is in the R-4, a residential district within which the proposed commercial use is not permitted. The property has a history of being used for non-residential uses, such as variety, grocery and patient medicine stores. Those uses are also not permitted in the R-4 District.

Can the requested relief be granted without substantial detriment to the public good and without substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map?

No. The property is in the R-4 residence zone district. No evidence has been provided to claim that the property can not be used as originally constructed or for any other matter-of-right use within the R-4- zone.

The proposed use is commercial. Section 2003 permits a change of non-conforming uses with the following limitation in residence districts:

> **2003 CHANGING USES WITHIN STRUCTURES**
> 2003.5 In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility.

OP does not believe the use would constitute a neighborhood facility and has concerns about parking and the carry out operation.

2003.3 The proposed use shall not create any deleterious external effects, including but not limited to **noise, traffic, parking** and loading considerations, illumination, vibration, odor, and design and siting effects.

In combination with Section 2005 Discontinuance, cited above, OP concludes that the use variance would be contrary to the intent and purpose of these provisions of 11DCMR regarding non-conforming uses.

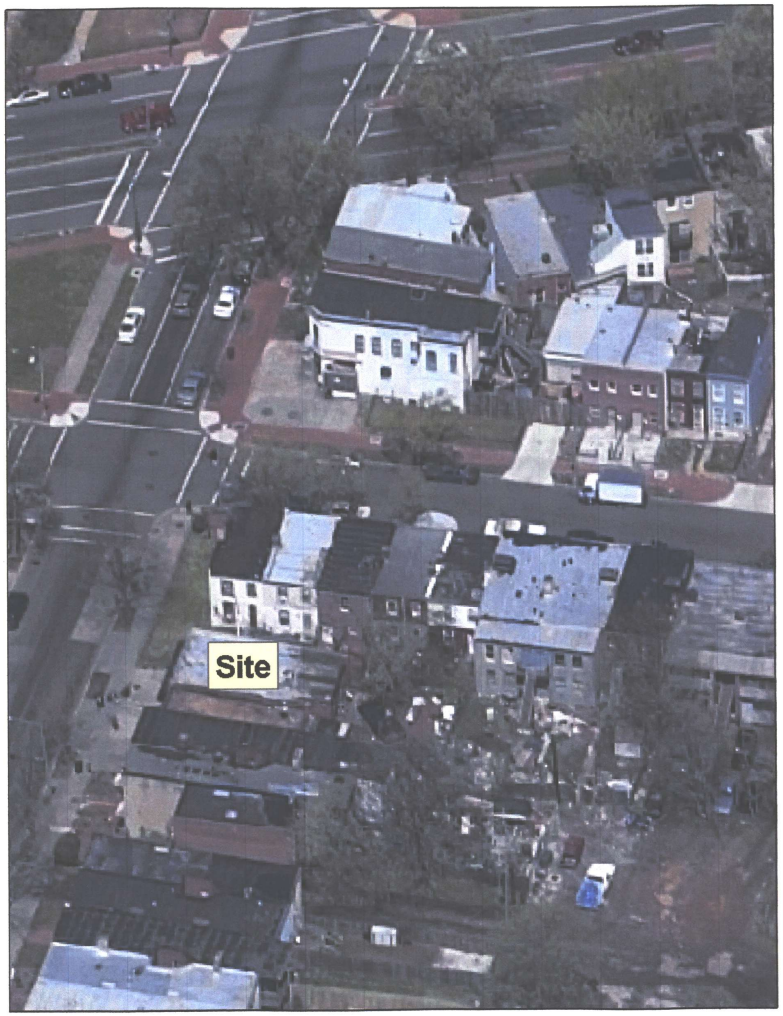
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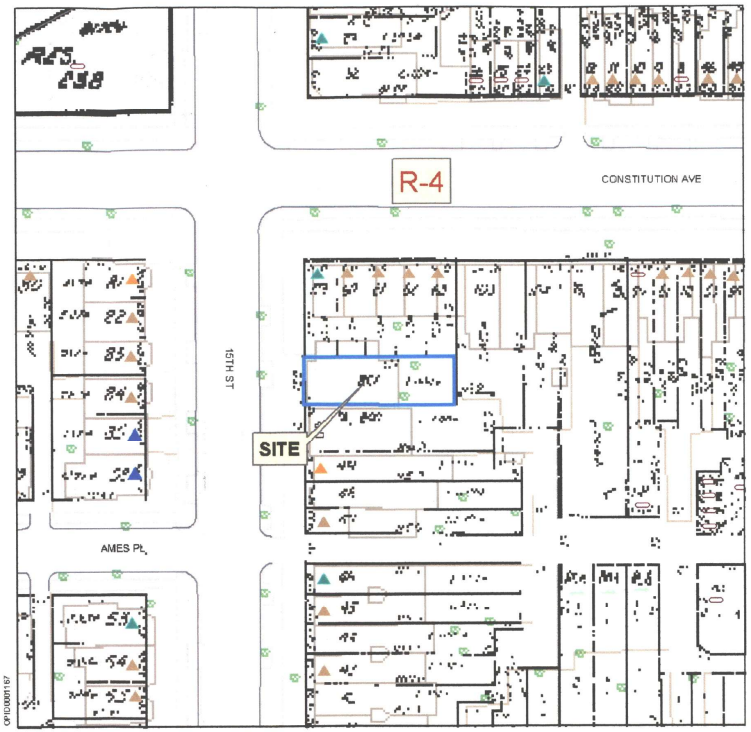
Advisory Neighborhood Commission (ANC) 6A, at its December 11, 2003 meeting voted to oppose the application for a coffee shop. It is the ANC's position that the subject block is transforming back to more residential. According to ANC 6A, the community is already struggling with loitering, parking and drug use problems. It is anticipated that a coffee shop on the block would further contribute to problems in the community.

The Capitol Hill Restoration Society, at its December 11, 2003 meeting, voted unanimously to support the application upon the condition that the variance is granted for three years.

OP RECOMMENDATION

After having reviewed BZA application 17100 requesting a use variance from the R-4 zone requirements to permit the operation of a coffee/sandwich shop, the Office of Planning recommends that the **Board deny the application**. The Office of Planning finds that the applicant does not qualify for relief from the requirements of §330, has not met the burden of proof under §3103 of the Zoning Regulations, and concludes that approval of the application would substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.





Zoning and Land Use
BZA Application #17100

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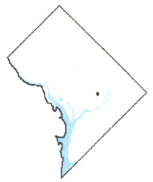
Government of the District of Columbia
Anthony A. Williams, Mayor

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. Oblique imagery ©2003 Pictometry International

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