GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

DATE: March 22, 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. 17138
Edmonds Property
1325 Fairmont Street, N.W.
Square 2860 Lot 819

Summary

The applicants seek a variance from the lot area provisions of §403.2 to allow a 4-unit multi-family dwelling in the R-4 zone. The applicant seeks to convert the existing 3-story with basement flat into an apartment building with a unit on each floor. The R-4 District permits the conversion of existing structures built before 1958 to apartment buildings as long as there is 900 square feet of lot area per unit. The subject property has 2,853 square feet, which is 747 square feet (20.75%) short of the 3,600 square feet required for four units.

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

- The applicant has not shown an exceptional situation. No unique physical aspect or condition of the property exists. The structure is one in a set of similarly constructed houses on the square. No evidence was provided that showed an exceptional situation that would warrant converting the existing 2-unit structure into a four-unit structure.
- No evidence has been provided to document that the strict application of the zoning regulations results in a practical difficulty. There remains

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reasonable use of the property as a flat or conversion to a three-unit structure.

- The intensified use of this property is not consistent with the intent of the zone plan, the character of the R-4 zone, or the public good. As stated in §330.3, the R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement.

Background

The applicants, James & Julie Edmonds, own 1325 Fairmont Street, N.W. (Square 2860 Lot 819). The property lies in the R-4 Zoning District and contains approximately 2,853 square feet of land. The lot is improved with a three-story flat with a basement. The property, built as a row dwelling, is a middle unit in a row of dwellings built in the early 1900's. Rowhouses and flats are the predominant uses in the zoning district.

The applicant has provided a list of prior Certificates of Occupancy showing that the structure was formerly used as rooming house as well as a flat.

Project Description

The applicant proposes to allow the use of each floor of the structure as a separate unit, permitting a total of four units in the structure. A common stairwell will serve the three upper floors and a separate entrance already serves the basement unit. Substantial physical interior modifications will be required to convert the structure to a four-unit apartment.

Comprehensive Plan

The property is on the boundary of moderate and medium density residential designation on the Generalized Land Use Map, the moderate density residential designation includes row houses and garden apartments as the predominant uses and may also include, as appropriate uses, low density housing. The moderate density residential designation includes multiple-unit housing and midrise apartment buildings as the predominant uses and may also include, as appropriate uses, low and moderate density housing. (See Attachment 2)

A major theme of the Comprehensive Plan is to stabilize and improve District neighborhoods (§101.1(a)). The granting of a variance to §401.3 in the R-4 zone would allow an increase in the intensity of the use of this property beyond that permitted by the zoning regulations that would increase parking and traffic, though minimally, in an area experiencing traffic congestion and parking shortages. Therefore, granting this variance would be inconsistent with the objectives and policies of the Comprehensive Plan.

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Square 2860 Lot 819
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Zoning

The proposed number of units is not permitted in the R-4 Zone District and the applicant is seeking relief under 11 DCMR §3103 for an area variance from the provisions of §403.2. The R-4 District sets forth the following purposes:

> 330.1 The R-4 district is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families.
>
> 330.2 Very little vacant land shall be included within the R-4 district, since its primary purpose shall be the stabilization of remaining one-family dwellings,
>
> 330.3 The R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement.

Section 403.2 requires that conversion of existing structures to apartments requires 900 square feet of lot area per unit. For four units a total of 3600 square feet would be required. The property only has 2,853 square feet.

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

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 structure was used as a flat, a use that can be reasonably continued. The applicant's statement presents three exceptional conditions to meet this test:

1) The applicant was provided with incorrect information by the Zoning Administrator's office regarding the lot area requirements prior to the applicant's investment in the property;
2) The dilapidated state of the existing structure; and,
3) Records from the D.C. Surveyor's Office reflect two different widths and areas of the lot.

The first condition, which when combined with the state of the existing structure, combine to cause a financial hardship, according to the applicant. No evidence is presented in the application that shows the Zoning Administrator's Office misinformed the applicant. It is not within the Office of Planning's purview to determine the merits of an estoppels claim, which is a legal matter, so OP's analysis evaluates the merits of this case without this condition.

The applicant discusses other evidence that misled the applicant into investing in the

property thinking it could be used as an apartment. Including the real estate listing as a multi-family unit and past use as a rooming house. However, a rooming house is not structurally the same as a multi-family dwelling unit and is permitted as a matter-of-right in the R-4 zone with special restrictions as identified in §330.6. The applicant's reliance on this information does not rise to the level of creating an exceptional situation.

The third exceptional condition enumerated by the applicant does not have any bearing on the practical difficulty and is an irrelevant incident in the case. The Office of Planning does not believe the application meets this test.

Practical Difficulty

The practical difficulties identified by the applicant that result from the strict application of §403.2 are:

1. The applicant is faced with a financial hardship.
2. No additional land is available for purchase to remedy the lack of lot size.

The applicant has not shown that there is no opportunity for a reasonable return from the use of the property as a flat or conversion to a three-unit building. The estimated construction cost is based on the substantial construction necessary to covert a flat into a four-unit apartment. An area variance cannot be granted on the ground that the property, which produces a reasonable income when conforming to the regulations, will, if put to another use, yield a greater return.[1]

As can be seen from the land use patterns and aerial photograph (Attachments 1 & 3), except for the apartment building to the east and the single-family detached structure to the north, the existing structure is similar in size and shape to the many rowhouses in the surrounding R-4 zone. The second difficulty assumes that this property was intended to be a four-unit apartment when it was created as a lot. The Office of Planning does not believe this is the case and accordingly the application does not meet this test.

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 application proposes that three points address this standard:

1) The proposed use is only a slight expansion;
2) The minimum area requirements are outdated based on "contemporary demographic realities";
3) There will not be a negative impact due to traffic, noise and lighting; and,
4) There are several other homes in the general vicinity that have been converted to multi-family use.

[1] Palmer v. Board of Zoning Adjustment, App. D.C., 287 A.2d 535 (1972).

However, OP cannot conclude the expansion will not impair the intent of the Zoning Regulations or the integrity of the Plan. As §330.3, specifically states, "*the R-4 District shall not be an apartment house district as contemplated under the General Residence (R-5) districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement.*" The minimum lot area per family requirement, found in §403.2, requires a minimum of 900 square feet of lot area per dwelling unit. The additional parking, loading and trip generation of the proposed use are not compatible with the existing neighborhood. Though the applicant indicates that these impacts are minimal they are still an increase over the matter-of-right use of this property and cumulative impacts of such "overcrowding" on the residential neighborhood could have substantial impacts.

ANC Recommendation

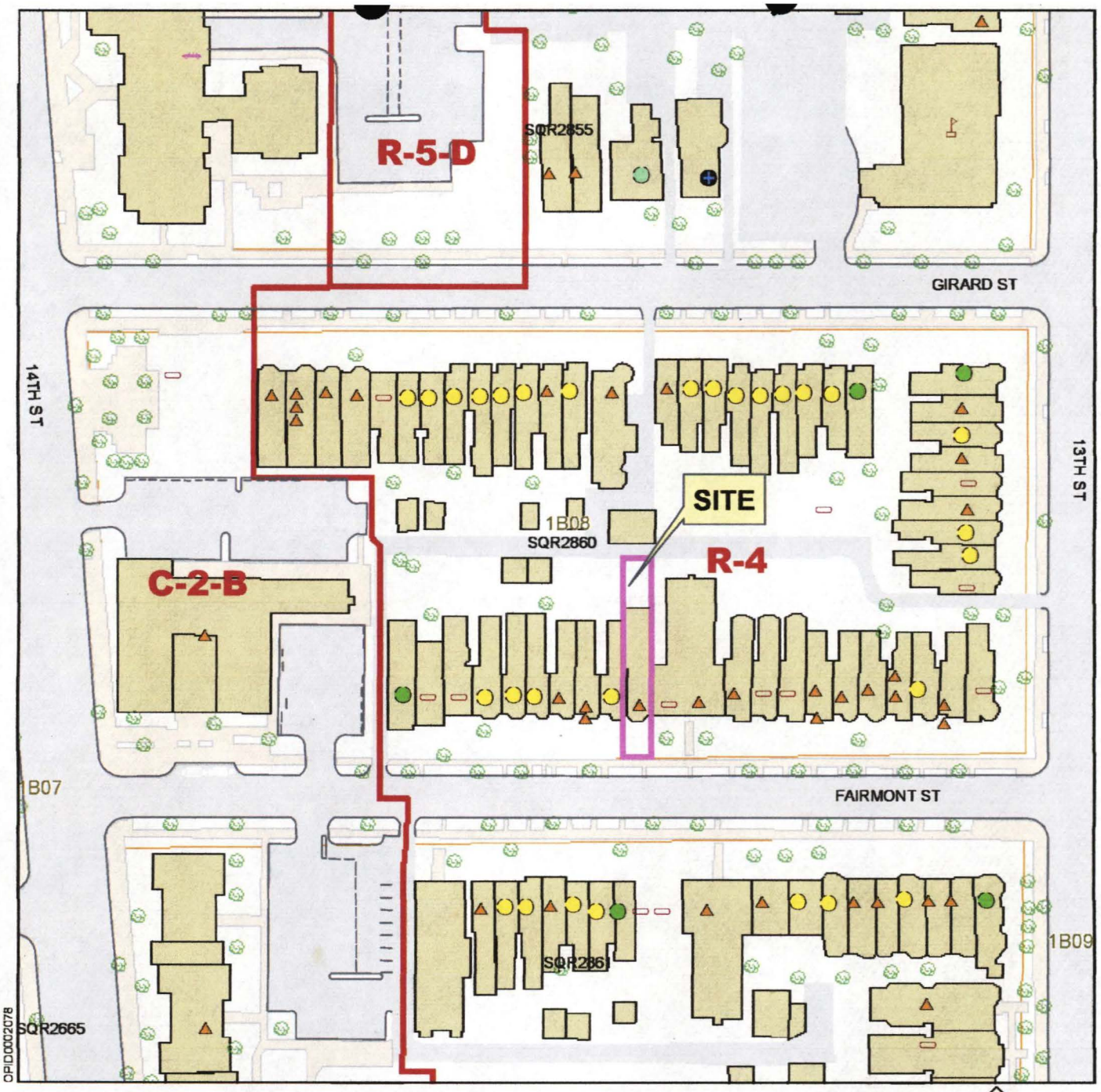
ANC 1B supports the application.

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. Aerial Obliques



Zoning and Land Use
BZA Application #17138
1325 Fairmont St., N.W.



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Feet

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Anthony A. Williams, Mayor

Office of Planning ~ March 10, 2004

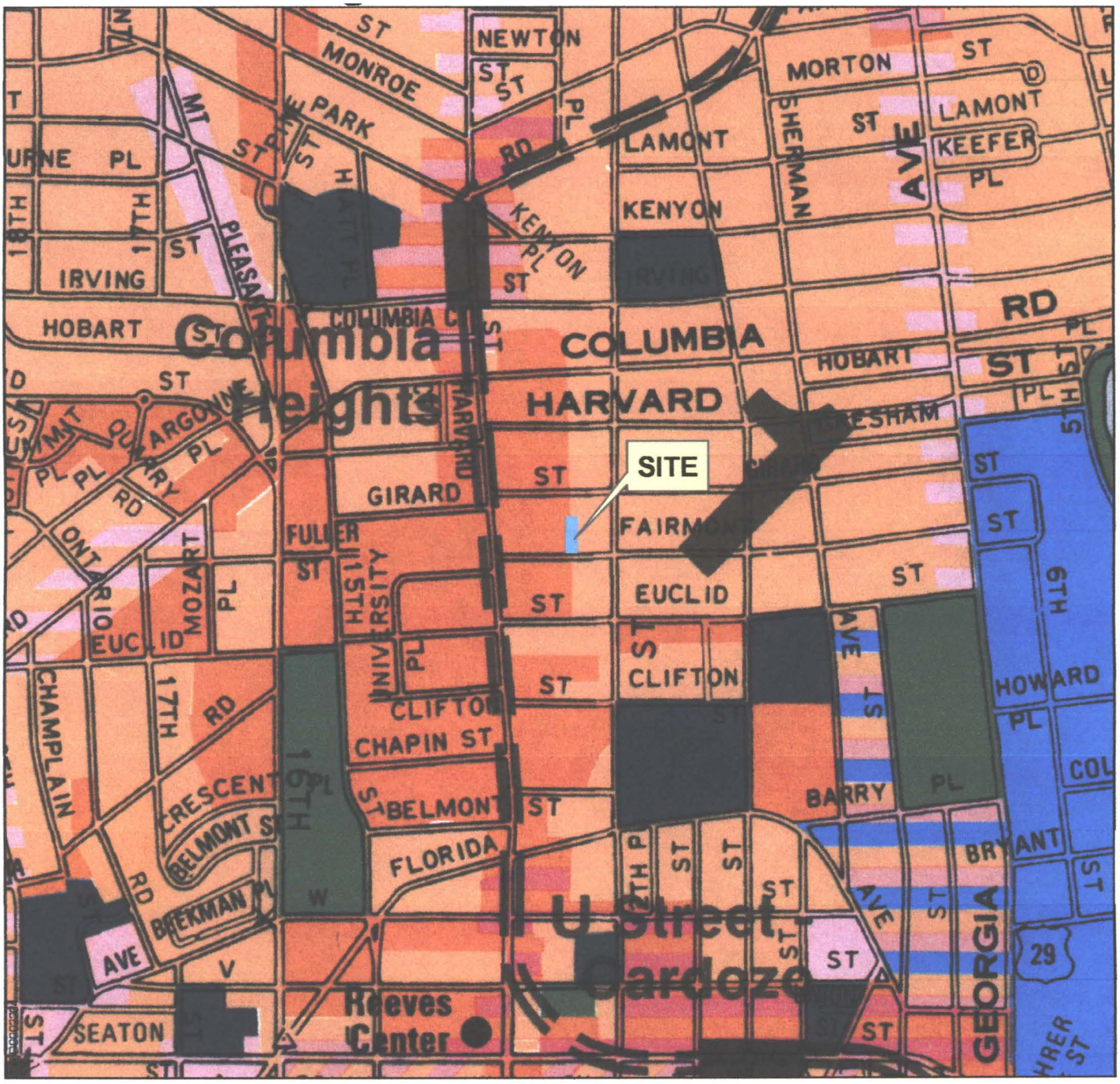
This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

Land Use Legend

- Non-conforming SF Use
- Rowhouse
- Single-Family Detached
- Single-Family Semi-Detached
- Resid. Garage
- Multi-family
- Multi-Resid. Garage
- Hotel
- Club
- Dormitory
- Fraternity/Sorority House
- Resid. Transient
- Store
- Office
- Parking - Special Purpose
- Restaurant
- *Religious*
- Medical
- Educational
- Embassy or Chancery
- Museum, Library, Gallery
- Special Purpose
- Vacant
- Vehicle Service Station

Note: Land Use Info based on OTR records.

Attachment 1



Comprehensive Plan Map
BZA Application #17138
1325 Fairmont Street, N.W.

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Feet

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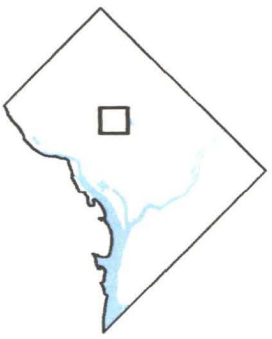
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Generalized Land Use Key

- 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
BZA Application #17138
1325 Fairmont Street, NW

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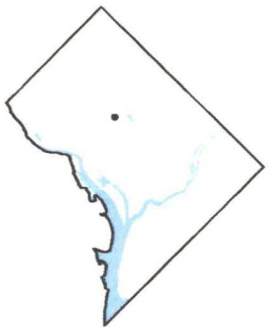
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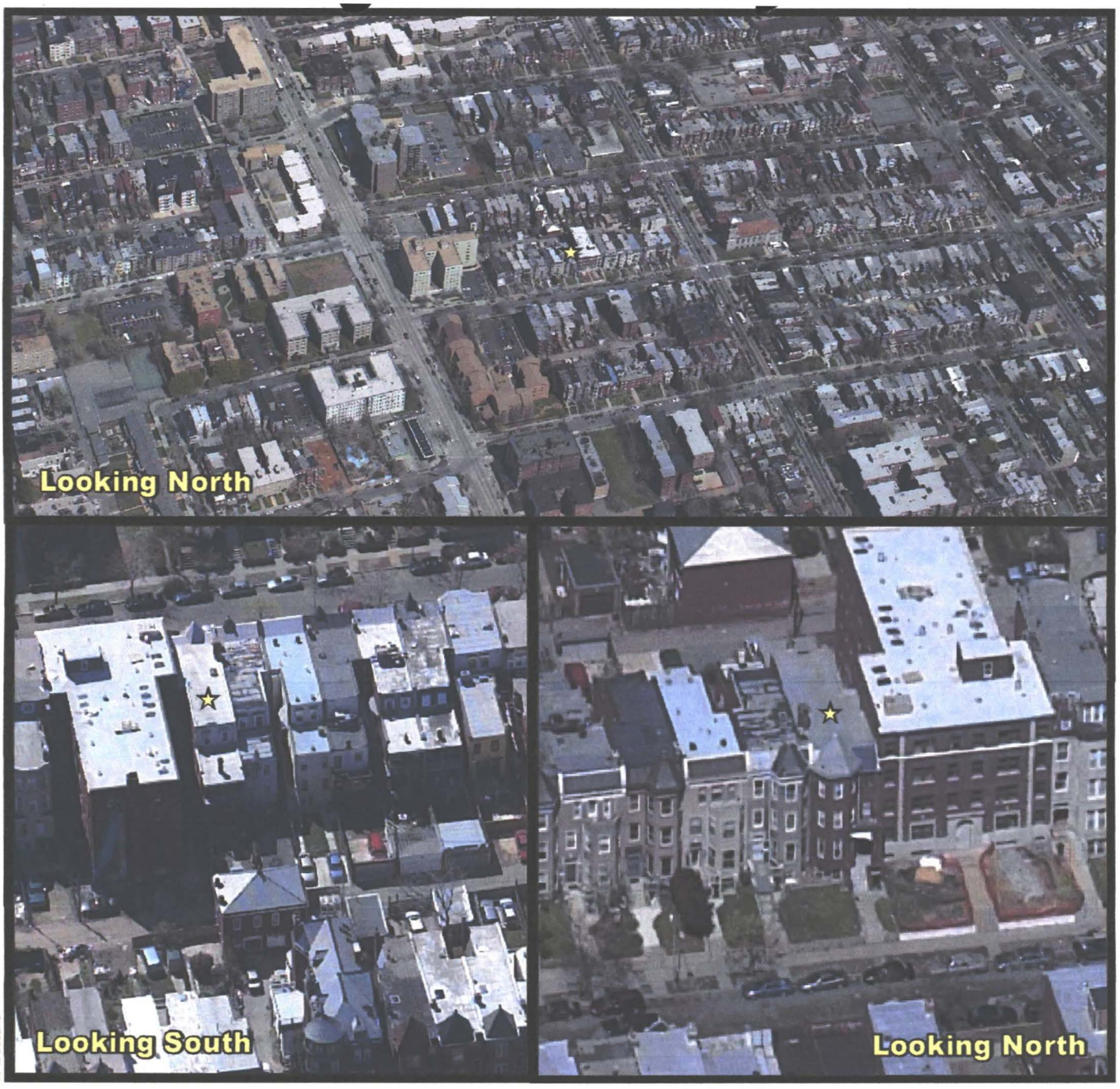
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Attachment 3



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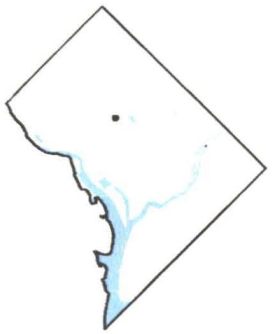
Aerial Oblique Photos
BZA Application #17138

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Office of Planning ~ March 18, 2004

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☆ Subject Site - 1325 Fairmont St., NW



Attachment 4