GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

★ ★ ★

Office of the Director

MEMORANDUM

DATE: April 6, 2004

TO: District of Columbia Board of Zoning Adjustment

FROM: Andrew Altman, Director

SUBJECT: Board of Zoning Adjustment Case No. 17147
Broad Branch Market, 5608 Broad Branch Road N.W.

Summary

The applicant is seeking to renovate the existing Broad Branch Market building and continue a non-conforming use. In addition, the applicant seeks special exception approval for a child development center for up to sixty children on the property. The Office of Planning **recommends approval** of the requested special exception and variance although OP contends that the variance may not be required based on the analysis below.

Site and Area Description

The subject property is located at 5608 Broad Branch Road N.W, Square 1997, Lot 78. The lot is 11,253 square feet, of which the building will occupy 4,500 square feet, or 40 percent. The existing building and addition will be two stories. The subject property and the surrounding neighborhood are zoned R-1-B. The immediate area is a single family detached residential neighborhood. Lafayette elementary school is located diagonally across the intersection.

Site History and Project Description

The original, historic Broad Branch Market building (c.1917) is two stories in height and occupies 1,800 square feet of the lot. It was built as a mixed-use building with the retail use originally on a portion of the ground floor and the rest of the building used as a residence for the owner. Subsequent additions to the main building were built over the following ten to twenty years resulting in the current layout. Over time between the original construction and the zoning changes of 1958, the retail use expanded to occupy the entire ground floor and a part of the basement. The market has been a legal

BZA
Case No. 17147
Exhibit No. 34

Board of Zoning Adjustment
District of Columbia
CASE NO. 17147
EXHIBIT NO. 34

nonconforming use of 4,005 square feet of this building since the adoption of the current zoning in this neighborhood. Currently, the market has been out of use for approximately one year. The applicant proposes removal and replacement of 1,707 square feet of additions on the west and north sides of the main building to consolidate the market use and to raise total ground floor area of the building to 4,500 square feet and overall area to 8,730 square feet.

The table below shows the existing and proposed uses for the building. The market use will stay at 4,005 square feet while the total building will be expanded to 8,730 square feet to accommodate the proposed child development center located mainly on the second floor.

Existing	**Market**	**CDC**	**Storage**	**Total**
Basement	500 sq ft	0 sq ft	0 sq ft	500 sq ft
1st floor	3,505 sq ft	0 sq ft	0 sq ft	3,505 sq ft
2nd floor	0 sq ft	0 sq ft	1,120 sq ft	1,120 sq ft
	4,005 sq ft	0 sq ft	1,120 sq ft	5,125 sq ft
New Const.				
Basement	0 sq ft	0 sq ft	500 sq ft	500 sq ft
1st floor	4,005 sq ft	495 sq ft	0 sq ft	4,500 sq ft
2nd floor	0 sq ft	3,730 sq ft	0 sq ft	3,730 sq ft
	4,005 sq ft	4,225 sq ft	500 sq ft	8,730 sq ft

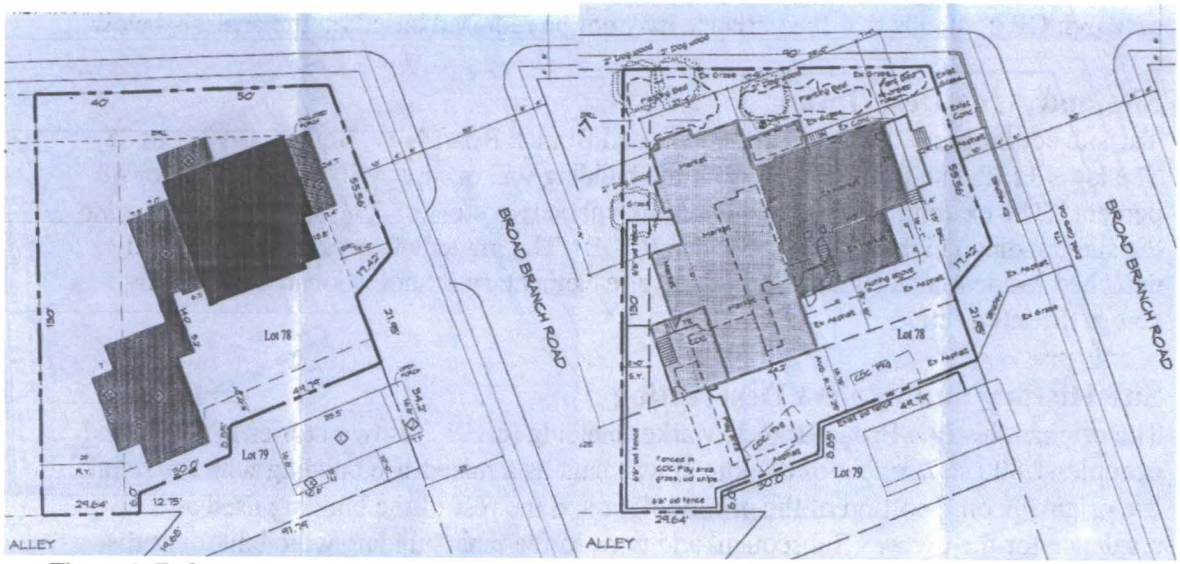


Figure 1: Before **After**

Zoning

The applicant is requesting a use variance from §§2002.3 & 404 to allow a retail use in a residential district and a special exception per §205 to allow a child development center. The proposed building will meet all zoning requirements for bulk and setback, including lot occupancy of 40 percent, rear yard setback of 25 feet, side yard setback of 8 feet, and height requirements. Neither retail uses nor child development centers are permitted as a matter of right in residential districts. Child development centers are permitted by special exception under §205 of the zoning code.



Figure 1: Aerial View

Variance Analysis

The zoning code allows for the continuance of a nonconforming use that has not been inactive for more than three years. Further, the code allows for the enlargement of a conforming structure housing a nonconforming use when the enlargement is devoted to a conforming use. This application proposes the modernization and reconfiguration of the additions to the main structure to allow a more usable market and additional space on the second story for the proposed child development center. The proposed changes will result in the exact same square footage of retail use as had been previously in existence. The applicant has requested a determination from the Board as to whether this proposal meets

the requirements of §§2002.3 and 2002.4 and has requested a variance from these sections if it is determined that it does not.

§2002.4 reads:
"Ordinary repairs, alterations, or modernizations may be made to a structure or portion of a structure devoted to a nonconforming use. Structural alterations shall not be allowed, except those required by other municipal law or regulation..."

OP is of the opinion that this project does fall within the intent of this section. The proposed changes are clearly structural alterations, however the existing additions currently do not comply with multiple municipal laws and regulations including, building, fire, electrical, ADA, or plumbing codes. Meeting all of these regulations would be impossible within the framework of the existing additions, therefore the structural changes proposed can be determined necessary as a result of said regulations if any modernizations or repairs are be made to this structure.

§2002.3 reads:
"A nonconforming use shall not be extended to portions of a structure not devoted to that nonconforming use at the time of enactment or amendment of this title, or to another structure."

This section is only relevant if the proposed alterations are considered new construction rather than a modernization of the existing building. Since the area dedicated to market use will not be increasing under the proposed plan and since the changes are a reconfiguration of an existing part of the market rather than a new addition, OP does not believe that the alterations constitute extension of the nonconforming use into new portions of the structure.

Based on examination of the above sections of the code, *OP concludes that no use variance is required in this instance.* The changes constitute alterations and modernizations required by municipal law and therefore allowed as a matter-of-right by the zoning code.

Should the Board determine that a use variance is required, OP offers the following analysis of the variance tests:

The property is unique to this area due to its original pre-zoning 1917 construction as a retail establishment. Undue hardship would result for the owner if the use could not be modernized through a reconfiguration of the space to accommodate current health, fire and building codes because the applicant would be left with the original and still legally non-conforming space that would be smaller in size or empty. To reconfigure the space for another conforming use, the owner would lose the legal non-conforming use and would still be presented with the situation of major renovation and modernization. The use has been at this location for over 80 years and its continuation would not impair the

intent of the zoning regulations which, per Chapter 20, allow for the modernization (§2002.4) of non-conforming uses and their continuation (§ 2005) provided it is not discontinued for more than three years.

Based on this analysis, OP recommends approval of the requested variance if required by the Board.

Special Exception Analysis

Section 3104.1 grants the Board of Zoning Appeals (BZA) the authority "to grant special exceptions where in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps."

The referenced Special Exception is subject to provisions under Section 205 for a Child Development Center use in R-1-B. Below is an analysis of the requirements of Section 205 based on the applicant's submissions and an OP site visit.

Compliance with Section 205

The requirements under this section include:

205.2 The center shall be capable of meeting all applicable code and licensing requirements.

The application states that all applicable code and licensing requirements will be met. In addition, the Department of Health has submitted a memo recommending approval of the special exception and stating that licensure has been recommended by the department pending assessment of the facility.

205.3 The center shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children.

The applicant has submitted a traffic and parking study performed by Wells & Associates that concludes that no unsafe conditions for picking up and dropping off children will occur. The study recommends a transportation management plan that will coordinate drop off and pick up times as well as encourage legal parking and alternate forms of transportation. No review of the project has been received from DDOT as of this date.

205.4 The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors.

Four parking spaces will be provided on site for use by staff and employees. This will meet the zoning requirements for child development center parking of one per four employees.

ANC Recommendation

ANC 3/4G has submitted a letter expressing support of the application. This letter expresses many of the same reasons for approval as the applicant and is attached at the end of this report. OP is aware of no further comments on the application or opposition to this project from the neighborhood.

Recommendation

The Office of Planning concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3104.1 of the Zoning Regulations, for the granting of the requested special exception to permit a child development center with up to 60 children. Based on the standards of Section 205, the Office of Planning is of the opinion that the proposed child development center will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map, and will not adversely affect the use of the neighboring properties. Further, OP concludes that there is no need for the applicant to apply for a use variance from the requirements of §§2002.3 and 2002.4, however if the Board concludes that a variance is needed OP recommends its approval.

The Office of Planning **recommends approval** of the variance and special exception by the Board of Zoning Adjustment to allow a nonconforming market and child development center at 5608 Broad Branch Road N.W.

Attachment: Department of Health memo
ANC 3/4G letter

AA/tp

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health

Child & Residential Care Facilities Division

MEMORANDUM

TO: Ms. Jerilyn Kress, FAIA
Director
Office of Zoning

FROM: Valerie A. Ware
Program Manager

DATE: March 19, 2004

SUBJECT: BZA Order #17147
Bloom Builders, Inc.
5608 Broad Branch Road, NW
Square 1997, Lot 78
Washington, DC 20015

The Department of Health, Health Regulation Administration, Child and Residential Care Facilities Division (DOH/HRA/C&RCFD) recommends that the applicant be granted a variance and special exception relief from the DC Board of Zoning: in order to establish and maintain a child development center, at 5608 Broad Branch Road, NW. The proposed licensure capacity of sixty (60) children is recommended also pending the C&RCFD assessment of the proposed facility and identified program space.

An additional sixty (60) slots would assist in satisfying the City's dire need for licensed child care services for infant, preschool and school-aged children.

Should you have further questions, you may contact Denise Ryles-McKoy, Supervisory Human Services Licensing Specialist for the Child Care Branch, Child and Residential Care Facilities Division on 442-5929.

Sincerely,

Valerie A. Ware
Program Manager

3/4G Chevy Chase
Advisory Neighborhood Commission 3/4G
MAILING ADDRESS: P.O. BOX 6252 Northwest Station Washington, DC 20015

CHEVY CHASE OFFICE
5601 Connecticut Ave. NW
Washington, DC 20015
(202) 363-5803
FAX (202) 686-4366
E-mail uppernwdc@juno.com

March 26, 2004

Mr. Geoffrey Griffis
Chairman
Board of Zoning Adjustment
One Judiciary Square #210S
441 Fourth Street, N.W.
Washington, D.C. 20004

Re: BZA Application No.17147, Broad Branch Market, 5608 Broad Branch Road, N.W. (Sq. 1997, Lot 78)

Dear Mr. Griffis:

At its regular, public meeting of March 22, 2004, by a vote of six to zero, with one abstention (a quorum being four), ANC 3/4G (the "Commission") approved and agreed to support the following two requests for relief submitted by Paul Tummonds, Esq., Shaw Pittman, LLP, attorney for Lewis Bloom, of Bloom Builders, Chevy, Chase, MD, contract purchasers of the Broad Branch Market property (the "Property"):

A. Use Variance Relief (11 DCMR Sec. 3103.2 and 2002.3) in order to reconfigure the Broad Branch Market structure;
B. Special Exception approval (11 DCMR Sec. 3104.1 and 205) in order to establish a child development center with a maximum of 60 children and 8 staff members on the property at any time.

The Commission did not approve or endorse the requested Area Variance Relief (11 DCMR Sec. 3103.2 and 404) (rear yard requirement) at this time, pending the developer's decision to attempt to redesign the project to eliminate the need for this request.

The reasons for the Commission's support of the foregoing requests for relief include the following:

1. The Property was a neighborhood general store for over 80 years until 2003 when it was boarded up (the previous operator failed and had its lease cancelled by the owners of the Property). Many neighborhood residents and local school children (attending Lafayette School across the street) have for

many decades relied upon the store for a variety of food, beverage and snack needs. It has long been of great benefit to the neighborhood and the residents are anxious for it to return as a delightful and convenient nearby market and store for the whole family. The neighbors have filed an application to designate the Property as a historic structure (subsequently conditionally withdrawn) in order to preserve the Property as a neighborhood store.

2. The neighborhood strongly supports bringing the Property back to life as a local general market and a day care center. In fact, the neighbors mobilized last year to persuade the current owners to sell the Property solely for this purpose and not for any alternative uses. The application to designate the Property as a Historic Structure was filed by the neighbors in order to further that goal. The Property has been empty for a year now and is beginning to exhibit an unkempt appearance. The neighbors have been working closely with Mr. Bloom and his development team for over six months, along with a representative of the ANC (Vice Chair Jerry Levine, in whose SMD the Property is located) in order to achieve a design for the Property that redevelops it as an attractive and sustainable resource for the community.

3. The collaborative process described above has resulted in a favorable design that includes a community market on the first floor featuring gourmet food and wines, a small coffee bar and candy counter, and a branch of All Saints All Day Child Care development center on the second floor (proposal with All Saints is still pending as the prospective operator of the day care center).

4. The prospect of a new day care center on the second floor of the Property is particularly exciting to the neighborhood and to the Commission. It will bring a number of new, younger families into the neighborhood, many of whom will also be sending their children to Lafayette Elementary when they are ready for school. It is anticipated that the proposed new child development center will be operated by All Saints All Day Child Care, Inc., a well-respected neighborhood nonprofit organization. All Saints is an experienced operator of seven other child development centers in the metropolitan area. The child development center will include a maximum of 60 children on the Property at any one time and have a staff of 6 to 8 -- which will not result in crowded or unmanageable numbers of people on the Property. A protected, buffeted play area is also planned for the children on the Property, who will also have use of the nearby Lafayette Park playground.

5. The ANC has received only two objections to the redevelopment plan or to the items of relief requested by the redeveloper from the BZA from adjoining or other neighborhood homeowners or residents living in the vicinity of the Property: one from a nearby owner who is not opposed to the plan in its current state but who would oppose it if it included the razing of a house situated between his house and the Market; and another from a nearby owner who would prefer that the Property be sold for residential ownership use.

6. The results of a traffic and parking analysis performed by the redeveloper's traffic consultants were presented to the Commission's meeting of March 22. The study indicates no significant increase in traffic on neighborhood streets as a result of bringing the Market back or by adding the child development center. The report further indicates that the increase in temporary parking needs resulting from the use of both the Market and day care center can be accommodated by existing on-street parking (there are only three houses fronting on Broad Branch Road between McKinley and Northampton Streets). The staggered drop off hours in the morning for the day care center should alleviate any potential concerns that the child development center could substantially increase traffic at the same time as children are being dropped off for school at Lafayette Elementary in the morning. Likewise, the length of the hours for pick-up at the end of the day for the child development center will only conflict with pick-up times at Lafayette for about 30 minutes.

7. The redevelopment plan for the Property includes the addition of four new on-site parking spaces, a number that is expected to be provide sufficient parking facilities for child development center staff. As was the case for over 80 years of the Market's operations, customers of the Market itself will either walk to the Property from the neighborhood or park on neighborhood streets. It should be noted that the E4 and E6 buses stop near the Property and that these buses connect with the Friendship Heights metro stop and with the L2 bus on Connecticut Avenue.

8. The proposed redevelopment plan does not call for the use of an existing alley or the installation of any delivery platform. Adequate plans have been made for signage and lighting. Playground noise is not expected to be significant. Possible outdoor seating will be considered.

9. At the Commission's meeting of March 22, 2004, the redevelopment team for the Property also agreed to meet the following special conditions requested by the Commission in connection with this matter:

    - An existing, old cherry tree on the Property will be retained.
    - The back of the entire Property will be fenced in with a wood, six-foot high fence.
    - The day care center will afford a first-priority preference system in admission to existing or prospective neighborhood residents to the extent of a majority of the slots in the center's enrollment.
    - The redevelopment team will enter into a mutually-satisfactory construction agreement with the Commission.

10. The Commission believes the applicant has met the requirements for the granting of a use variance to operate the Market in an R-1-B zone. In this connection, we believe the longstanding use of the existing building on the

Property as a general store, the age of the structure, the significant cost of renovations that are necessary to bring the Market back into operation, and the filing (and subsequent withdrawal) of a historic landmark designation application for the Property all establish the necessary hardship obstacles that would otherwise prevent the applicant from making reasonable uses of the Property within the R-1-B matter-of-right uses. The group of neighbors working with Commissioner Levine and the various parties, including the seller, the developer, and their various attorneys and professionals, have been able to generate considerable support for this redevelopment proposal that will not only carry on the tradition of a beloved neighborhood landmark property, but also contribute a new day care center to the educational structure of our Chevy Chase community. The alternative to this proposal might well be complex and lengthy litigation, neighborhood dissatisfaction and concern, and a dilapidated building falling into further decay as a nuisance to the area.

11. The Commission further believes that the special exception should be granted for this Property in order to operate the proposed new day care center. This proposed use is in harmony with the general purpose and intent of the zoning regulations and complies with the provisions of Section 205 of the Zoning Regulations.

For all of the above reasons, ANC 3/4G strongly supports and endorses the applicant's above-cited two requests for relief from the BZA for this Property. If there is any additional information or materials needed or desired by the BZA from the ANC on this matter, please do not hesitate to contact Vice Chair Jerry Levine (202.775.4551 or jerry@sambergfdn.org) whom the ANC has designated as its representative to represent the Commission with respect to all proceedings relating to this matter.

Thank you for your consideration of this report and also for affording it "great weight" in your deliberations on this matter.

Sincerely,

Robert Gordon

Robert Gordon
Chair,
ANC 3/4G

cc: Mr. Lewis Bloom
Paul A. Tummonds, Esq.
Vice Chair Jerry Levine