GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director

DATE June 1, 2004

SUBJECT: BZA Application 17166 – Request filed by Graves & Horton, LLC for **a use variance and three area variances** to construct a four-unit apartment building at 430 Third Street, N.E., proposed by Dinesh Sharma and Murali Nadipelli.

APPLICATION
Application of Dinesh Sharma and Murali Nadipelli for:

1. **Variance to § 330.5(c) pursuant § 3103.2 of Title 11 DCMR** for a use variance to construct a four-unit apartment building;
2. **Variance to § 401.3 pursuant to § 3103.2 of Title 11 DCMR** for an area variance to permit use of an existing lot 14.0 feet in width and 1,372 square feet in area, less than the minimum 40 foot width and 4,000 square foot area required;
3. **Variance to § 403.2 pursuant to § 3103.2 of Title 11 DCMR** to increase the maximum permitted lot occupancy from 40 percent to 75 percent; and
4. **Variance to § 1203.3 pursuant to § 3103.2 of Title 11 DCMR** to increase the maximum floor area ratio (FAR) permitted from 1.80 to 2.33

for property located on the west side of Third Street, N.E., between E Street and Massachusetts Avenue, 430 Third Street, Square 835, Lot 755. The property is located within the R-4 (row dwellings, conversions, and apartments) Residence District, the Capitol Interest Overlay District (CAP) and the Capitol Hill Historic District.

The application also includes a variance request to reduce the number of off-street parking spaces from 2 to 1. § 2101.1 requires 1 parking space for every three apartment dwelling units within the R-4 Zone District, or 1.34 spaces for the proposed building. § 2118.6 states that "*any fraction under one-half shall be disregarded...*" As a result, the Office of Planning has determined that only one parking space is required and no variance is necessary to § 2101.1.

BZA
Case No. 17166
Exhibit No. 30

Board of Zoning Adjustment
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The application does not include a request for variance relief from § 1203.3 (CAP Height, Area, and Bulk Regulations). This section permits a maximum FAR of 1.80 within the overlay. The proposed FAR, based on a lot area of 1,372 square feet and building area of approximately 3,200 square feet as indicated in the application, is 2.33, in excess of the maximum 1.80 permitted. Therefore, the Office of Planning has included a review of this variance as a part of the application.

SUMMARY RECOMMENDATION
The Office of Planning recommends **DENIAL** of the application.

PROJECT DESCRIPTION
The applicant proposes to construct a three story plus basement apartment building with four dwelling units, each of which will consist of two-bedrooms and two full bathrooms on the subject property. Each apartment will occupy one entire level of the building, with one unit located on the lower level. One parking space is to be located at the rear of the site, accessible from the public alley.

SITE AND AREA DESCRIPTION
The property consists of Square 755, Lot 835 in the North East quadrant of the District, and is 1,372 square feet in area. A 25-foot wide public alley dead-ends into the rear of the subject property. It is a vacant lot that had been previously improved with a one-story brick row dwelling that was demolished in December 2002 (Permit No. B425431).

The surrounding neighborhood is a mixture of residential, office and retail uses, with the office and retail uses primarily located along Massachusetts Avenue. To the north is a 4-story, 8-unit apartment building constructed in 1959, beyond which is a two-story church, a parking lot and a four-story apartment building (Lincoln Towers) constructed in 1927. To the south is a 3-story flat, a vacant lot and two-story row houses used as either single or multi-family dwellings. To the east, across Third Street, are two-story row houses used as single-family dwellings, but also including one used as a church annex. To the west is a public alley and off-street parking for surrounding uses. All surrounding properties are located within the R-4 Zone District and the CAP Overlay District. The remainder of the square, those properties fronting on Massachusetts Avenue and Second Street, are improved with apartment buildings, office buildings and a gasoline service station, and are located within the C-2-A Zone District and the CAP Overlay District. All surrounding properties are located within the Capitol Hill Historic District.

ZONING REQUIREMENTS
The subject property is located in the R-4 row dwellings, conversions, and apartments residence district.

R-4 Residence 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 for two (2) or more families."* (§ 330.1)

"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." (§ 330.2)

"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." (§ 330.3)

The subject property is also located within the CAP Overlay District.

"The Capitol Interest (CAP) Overlay District is established to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction, in a manner consistent with the goals and mandates of the United States Congress in title V of the Legislative Branch Appropriation Act, 1976 (Master Plan for Future Development of the Capitol Grounds and Related Areas), approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288), and in accordance with the plan submitted to the Congress pursuant to the Act." (§ 1200.1)

Apartments are not specified as a use permitted as a matter of right within the R-4 Zone District under § 330.5 and the CAP Overlay District does not permit the addition of apartments as a use permitted either as a matter of right or by special exception. The applicant does not have the option of converting an existing dwelling on the site to apartment units because the one-family structure that previously occupied the site was demolished. Therefore, a use variance must be obtained in order for the proposed four-unit apartment building to be permitted.

The application also requires that approval of three area variances in order to construct the building as proposed.

RELIEF REQUESTED
Variance to the use provisions of Section 330.5, pursuant to Section 3103.2

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

> *"As set forth in D.C. Code Ann. §5-424(g)(3) (1981), "[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 Ann. §§5-413 to 5-432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon*

the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the 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."

Use Variance pursuant to § 330.5

The application indicates that the cost of constructing a row dwelling or flat on the subject property would not yield a reasonable return to the applicants. The reason cited for this is the cost of custom sized materials that are necessary for the development of the subject property due to its small size, and that due to the increased cost associated with the customized building materials, four dwelling units are necessary to ensure a reasonable return for the applicants. No documentation was submitted as a part of the application related to this claim. The application also fails to define what the applicant considers to be a "reasonable return".

An apartment building on the subject property would reflect the existing development to the south at 428 Third Street (an 8-unit apartment building), and the five-story apartment building at 412 Third Street (Lincoln Towers). The application indicates that the proposed four-unit building "*will be consistent with the neighborhood*". However, the test for a use variance is not based on compatibility of the proposed use to the existing uses. It is based on extraordinary or exceptional situations. The extraordinary situation is the small lot width and lot area. Placement of four units on the subject property would substantially increase the intensity of the site, doubling the number of dwelling units permitted. A flat is two units, and flats are permitted as a matter of right within the R-4 Zone District. However, the application fails to document how an existing lot that is narrower and smaller than the minimum requirements and developed with twice the maximum number of dwelling units permitted, would not result in substantial detriment to the public good.

The subject property was developed as a conforming use (a one-family detached dwelling) at the time of the original adoption of the Zoning Regulations. The lot dimensions are less than the minimum requirements for lot dimensions for row dwellings, flats and single-family detached dwellings, as shown below:

Type of Dwelling	Minimum Lot Area	Minimum Lot Width
Required for row dwelling	1,800 square feet	18 feet
Required for flat	1,800 square feet	18 feet
Required for four-unit apartment building	4,000 square feet	40 feet
Provided	1,372 square feet	14 feet

As shown within the table above, the subject property is both narrow and small, not only for the development of a use other than a flat or row dwelling, but also for flats or row dwellings. The small size of the lot does not preclude its use in a manner consistent with the use provisions of the R-4 District, namely row dwellings and flats. The number of dwelling units per net acre of R-4 zoned land, if developed as flats, is 48. The resulting

density per net acre of the subject application is 127, substantially more than permitted as a matter of right. Therefore, the development of the subject property as a four-unit building cannot be permitted "*without impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.*" (§ 3103.2)

It is the Office of Planning's conclusion that the application does not meet the criteria for variance relief under § 3103.2, in that it has not been documented that the subject property *"by reason of exceptional narrowness, shallowness or shape...would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship..."*(§ 3103.2)

Area Variance pursuant to § 401.3
The subject property contains a lot area of 1,372 square feet and a lot width of 14 feet, less than the minimum 4,000 square feet and 40 feet required for "all other structures". The lot area is only 34.3 percent of that required and the lot width is only 35 percent of the minimum required. Although the lot exists and predates 1958, the amount of the variances required is a result of the applicant's desire to construct a four-unit apartment building on the site. The minimum lot area and lot width requirements for a row house or flat are less, reducing the amount of variance required. Minimum lot area and lot width for a row house or flat is 1,800 square feet and 18 feet, respectively. As a result, although variances would still be required to construct a row house or flat, the existing lot provides 76.2 percent of the required lot area and 77.8 percent of the required lot width required for a row house or flat.

Approval of variances reducing the minimum lot area and lot width to only approximately one-third of that required would have a substantial detrimental effect on the public good by significantly increasing the intensity of the use of the subject property. The extent of the variance requested is a direct result of the applicant's desire to allow a use not permitted within the R-4 Zone District. Therefore, the development of the subject property by reducing the lot area and lot width to one-third of that required cannot be permitted "*without impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.*" (§ 3103.2)

Area Variance pursuant to § 403.2
The maximum lot occupancy permitted for the proposed use, a four-unit apartment building, is 40 percent, the requirement for "all other structures." The application requests a lot occupancy of 75 percent, an increase of 87.5 percent and substantially more than permitted in order to provide twice the number of dwelling units permitted. The extent of this variance request is a direct result of the applicant's desire to construct a four-unit apartment building, a use not permitted within the R-4 Zone District which will have a substantial detriment on the public good by significantly increasing the maximum permitted lot occupancy in order to permit twice the number of dwelling units permitted. Therefore, the development of the subject property by increasing the maximum lot occupancy permitted by 87.5 percent cannot be permitted "*without impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.*" (§ 3103.2)

Area Variance pursuant to § 1203.3
The application proposes to increase the maximum the maximum floor area ratio (FAR) permitted from 1.80 to 2.33 to permit a four-unit apartment building within the CAP Overlay District. The application provides no justification for increasing the maximum FAR to 2.33, a 29.4 percent increase. As the proposed increase is to permit twice the number of dwellings units permitted, and the Office of Planning does not recommend approval of the use variance to permit those dwelling units, the Office of Planning recommends denial of the variance to increase the maximum permitted FAR within the CAP Overlay District because this variance would be permit a use the Office of Planning has determined cannot be permitted "*without impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.*" (§ 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."

COMMUNITY COMMENTS
ANC 6C, at its regularly scheduled meeting of May 12, 2004, unanimously passed a motion recommending denial of the application. The motion indicated that the ANC "*supported the request for minimum lot area and lot width variances in the event that the granting of these two variances would result in the construction of only a two-unit, two-story apartment building.*"

AGENCY COMMENTS
The Historic Preservation Review Board has not reviewed this proposal and no application has been received by the Historic Preservation Office. The Historic Preservation Office did sign off on the raze permit application for the previous structure in April 2002.

CONCLUSION
The subject property is a vacant lot that was previously developed with a one-family row dwelling that has since been razed. The lot size and lot width are less than the minimum required for the R-4 Zone District. Despite this, the application requests to double the number of dwelling units permitted, and as a result require substantial variances to lot area, lot width and lot occupancy within the R-4 Zone District. The application also proposes to increase the maximum FAR permitted within the CAP Overlay District, also a result of the request to allow twice the number of dwelling units permitted. If the subject property were developed with a use in conformance with the provisions of the

R-4 Zone District, many of the variances would not be necessary, or at least the extent of the variances would be reduced.

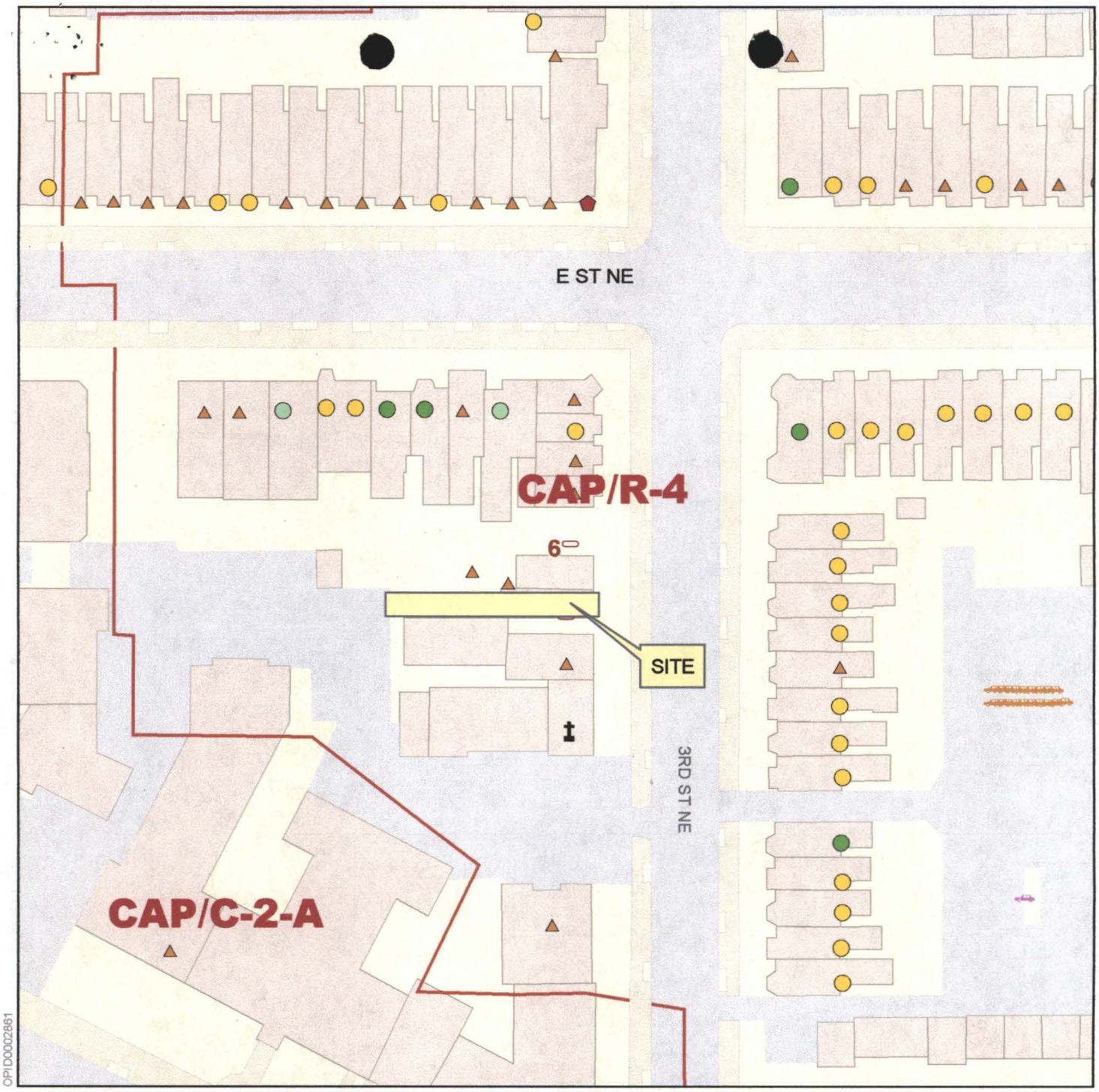
It is the conclusion of the Office of Planning that the need for the variances as requested is a result of the desire to provide a four-unit apartment building and not a result of any *"peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property"*, and that the variance therefore cannot "*be granted without substantially impairing the intent, purpose, and integrity of the zone plan embodied in the Zoning Regulations and Map."*

RECOMMENDATION

The Office of Planning has reviewed the application in terms of the property's zoning and the standards for a variance. OP concludes that the proposal does not meet the required variance tests 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 application.

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BZA APPLICATION NO. 17166
430 THIRD STREET, N.E.

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District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ May 18, 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.

- Rowhouse
- Single-Family Semi-Detached
- Multi-family
- Multi-Resid. Garage
- Parking - Special Purpose
- Religious
- Vacant

