GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

Memorandum

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director
Office of Planning

BZA
Case No. 17202
Exhibit No. 26

DATE: September 7, 2004

SUBJECT: BZA Application #17202
For a Parking Lot in the DD/C-2-C Zone at 1017 4th Street, NW
Squares 526, Lot 808

I. SUMMARY DESCRIPTION AND RECOMMENDATION

The application by First Washington Equities, LLC/Kenneth Loewinger requests, pursuant to 11 DCMR 1702.7(c), a use variance to allow an all-day commuter parking lot with eight (8) spaces on a vacant 2,552 square foot lot in the DD/C-2-C District. 11DCMR §1702.7(c) specifies that the requested parking lot may be permitted if it is approved as a variance by the BZA pursuant to 11DCMR §3103, and if it provides all-day commuter parking.

The Office of Planning (OP) recommends **Denial** of the proposed parking lot.

II. SITE AND AREA DESCRIPTION

The subject site (*Attachment 1*) is in the Mount Vernon Triangle area of northwest Washington, just north of the boundary of the central employment area. The Mount Vernon Triangle is bounded by New York, New Jersey and Massachusetts Avenues. It lies generally between 3rd and 7th Streets in Northwest Washington. The Square in which the site is located is bounded by K Street on the south, 4th Street on the west (one-way southbound), the former right of way of L Street on the north (now Square 525, vacant Lot 837), and the right of way 3rd Street on the east (now within the right of way of the Center Leg freeway). The site is on the western side of the Square, midway between K Street and the former L Street. It is 27.33 feet wide and 93.38 feet deep. It does not have alley access. The site is vacant. Its last certificate of occupancy was for a church building seating less than 50 persons.

Thirteen percent of the Square is used as follows: four lots are used for duplex rowhouses, two lots are converted rowhouses used for commercial purposes (a delicatessen and an auto repair shop), and one lot has an abandoned rowhouse-type structure on it. The remaining eighty-seven percent of the Square is classified as vacant land. Of the 60, 815 square feet in the Square, the District of Columbia government has title to over 37,000 square feet. As Attachment 1 shows, much of this is land adjacent to the

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freeway or in former street rights of way is vacant; but a substantial portion of this officially-vacant District-owned land appears to be used for non-commercial parking, and to store vehicles. The land immediately north of the applicant's currently displays a sign advertising a "Future Parking Lot", although the land is now vacant and no application has been filed with the BZA.

Immediately west, across 4th Street from the applicant's site, on Square 516 is the District-owned Museum Square apartments for the elderly. The remainder of that Square is the site of the former Wax Museum, now used as a parking lot, and slated for mixed-use development by the National Capital Revitalization Corporation. To the northwest, Square 515N is used primarily for parking lots, or is vacant or underutilized land being assembled by one land owner for future development. To the north is vacant District-owned land that was purchased in conjunction with construction of the Center Leg Freeway. The freeway is to the east. To the south, in Square 527, is land being assembled by a private developmenet group and Mt. Carmel Baptist Church for a mixed use development. To the southwest, Square 516 is a mixture of office uses, other retail and light industrial uses, and a large parcel that has been assembled for office development.

There is a significant amount of pre-development activity in the Mount Vernon Triangle area. Much of this activity involves the existing parking lots illustrated in Attachments 2 and 3. The National Capital Revitalization Corporation has awarded an exclusive rights agreement for the 3.5 acre Wax Museum site, in the Square to the west of the applicant's site. The Steuart Companies are consolidating holdings in Square 515N, to the northwest of the applicant's site. The Mount Vernon Development Group and Associated companies have assembled land and developed site plans for their holdings in Square 516, to the southwest of the applicant's site and in Square 527 to the south of the applicant's site (where an alley closing request is pending). The District government is resolving legal matters governing the development of the current parking deck and air rights in Square 560, to the east of the applicant's site.

III. PROPOSAL

This description is based on the revised plans given to OP on August 30, 2004 (*Attachment 3*). The site is a rectangle measuring 27.33 wide feet along 4th street and extending 93.38 feet deep to the east. The applicant proposes to operate an all-day commuter parking lot with 8 parking spaces. There would be a central east-west drive aisle flanked by 4 parking spaces on either side of the aisle. There would be rain gardens at the eastern edge of the two parking aisles and a landscaped edge on the southern side. The applicant would also need to secure a curb cut on 4th Street. The property would be fenced and lighted and would have an attendant booth. The applicant proposes to make the spaces available to staff and employees of the applicant's Loewinger & Brand PLLC law firm located at 471 H Street, NW, as well as to other people working or living in the neighborhood. The applicant has told OP that the proposed parking lot is an interim use until someone incorporates the 2552 square foot property into an assemblage for future development. However the application proposes no time limit for the BZA's approval of the parking lot use.

IV. ZONING

The subject property is in the DD/ C-2-C zone District. While outside the border of the central employment area, it is within the Downtown Development District (DD) Overlay, whose purpose generally is to create a balanced mixture of uses in the downtown area.

V. COMPREHENSIVE PLAN

The Comprehensive Plan generalized land use map (*Attachment 2*) designates this area for mixed use medium-density residential / medium density commercial uses.

VI. ZONING ANALYSIS

A. Zoning Relief Tests.

Requirements

Section 1702.7(c) requires evaluation by the BZA using the standards outlined in Section 3103.2 for review of all-day, commuter parking lots in the DD Overlay District.

> *§1702.7: A parking lot...shall be permitted as follows:*
> *(c) The parking facility shall require Board of Zoning Adjustment approval as a variance pursuant to §3103 if it provides all-day, commuter parking*

Evaluation

In OP's opinion, the applicant has not demonstrated that it meets the three-pronged standard for a use variance.

i. UNIQUENESS: The property is unique by reason of its exceptional narrowness, shallowess, shape, topography or other extraordinary or exceptional situation or condition.

OP does not believe the applicant has demonstrated that the property is unique. It is an undeveloped level rectangle, approximately 27 1/3 feet wide and 93 1/3 feet deep. It lacks alley access and, for a downtown site, is relatively small and narrow. However, it is wider than any parcel in the Square other than those that have been consolidated by the District government.

The applicant believes that the property is unique because, to be developed with a use, and at a density appropriate to its location, it would need to be combined with adjacent parcels. OP does not believe the applicant has demonstrated that the property is not developable without consolidation with other lots, nor that the property's current status makes it unique. In Square 526 – the applicant's Square -- there are nine other vacant, privately-held parcels and six "underdeveloped" privately-held parcels. All of these are, presumably, awaiting assemblage for future development.

The applicant has cited two instances where the BZA has recently approved commuter parking lot in the DD, most notably BZA Case No. 17145, for the site of the former convention center. OP believes the applicant's site and the site involved in Case No. 17145 to be dissimilar. The applicant's site is not publicly owned and has no Exclusive Rights Agreements that impact its future development and impose no extraordinary conditions for its interim and permanent development. There are several factors that mitigate against the site's development at present. These include its relatively small size and lack of alley access, as well as the market conditions, land prices and expectations of the District for future development of this site as part of the Mount Vernon Triangle. However, these same conditions apply to the other vacant private properties in the Square. The applicant's parcel is not unique.

ii. ***UNDUE HARDSHIP: By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property.***

While OP does not believe the applicant has demonstrated the site's uniqueness, OP does believe the applicant has demonstrated that it would not be possible to develop a parking lot that would be permissible as a matter of right on this site. OP's evaluation of this follows:

- *§1702.7 (a): The parking facility shall be permitted as a matter of right if it provides only short-term parking and all of the parking spaces are leased to merchants or a park-and-shop organization;*

  OP believes the applicant has demonstrated that, given the distances between the applicant's site and existing retail concentrations along 7th Street, it would be impractical for merchants, or an as-yet-to-be created park-and-shop organization to lease eight spaces that are not proximate to shopping.

- *§1702.7(b): The parking facility shall be permitted as a matter of right if it provides parking only for residents;*

  The proximate residential densities are not yet sufficient, nor is the gap large enough between the number of residents and the amount of parking in those residential buildings, to justify parking only for residents, who would not be on-site residents. The nearest major residential developments are two blocks to the north at M and 4th Streets, or three blocks to the south, at 3rd Street and Massachusetts Avenue. Given these distances, the amount of parking contained in the newer residential buildings along Massachusetts Avenue, and the perceived lack of late-night safety in the vicinity of the applicant's property, it is unlikely that the spaces could be leased only for residential patrons.

The nearest concentration of retail uses or residential buildings are several blocks away. Because of this it would not be possible for the applicant to construct a parking lot and meet the conditions of either 11DCMR§1702.7 (a) or 11DCMR§1702.7(b).

The applicant has also alluded to there being market logic in not developing this site with a permanent use at this time. OP does not believe the applicant has actually demonstrated this. The applicable test for a variance is not whether a matter of right use offers the best return to the applicant; it is whether not being granted permission for the requested use variance would impose undue hardship on the owner. OP does not believe the applicant has demonstrated this.

From the applicant's conversations with OP, it is clear that the applicant expects the parcel ultimately to be assembled and developed with a large structure. As noted in Section II of this report, there is assemblage and pre-development activity happening all around the applicant's site. OP notes that there has been no change in the zoning or land use regulations affecting this property since its recent purchase by the applicant. While it might, from the applicant's standpoint, be preferable not to develop the parcel with a permanent structure until the parcel is combined with other parcels, that preference is a function of the marketplace, not of requirement of the zoning regulations. The site could accommodate approximately 15,000 square feet of commercial or mixed-use development under a matter-of right scenario, and as much as approximately 25,000 square feet of all-residential development given the special provisions within the DD for all-residential buildings. While the absence of alley access might require the loss of a certain amount of FAR to accommodate required parking, the applicant has not, in OP's opinion demonstrated that the site is not practically developable with a matter of right use and that strict application of the zoning regulations would result in undue hardship.

iii. NO SUBSTANTIAL HARM TO PUBLIC OR ZONE PLAN: The variance will not cause substantial detriment to the public good and will not impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

OP believes the applicant has demonstrated that a variance for an all-day commuter parking lot on the property would not be a detriment to the public good:

- The site is already vacant and, as witnessed by both the applicant and by OP staff, occasionally used for socially-undersirable purposes. In OP's opinion, the use of the site as a parking lot, along with the proposed fencing, landscaping and lighting, could actually improve the public environment.

- The proposed interim use is temporary. It will provide parking for commuters until the land is assembled for other purposes, and at a location where no other existing structures or lawful uses would be displaced.

However, OP believes the applicant has not demonstrated that the proposed variance would impair the intent, purpose and integrity of the zone plan:

- OP notes that the DD overlay, which covers this site, specifically made it more difficult to develop commuter parking lots within the DD than to develop them within other commercial or industrial areas. This provision:
    - Provided a disincentive to tearing down older buildings that might be renovated or adapted to other uses;

- Provided an indirect incentive to nearer-term development of a site for permanent uses, rather than permitting an easy, low-investment matter of right use that might encourage holding land back from development until it could be assembled or re-sold for greater return.

- The first reason – disincentive to tear-down – is not applicable to this site.
- The second reason – disincentive to letting land remain underdeveloped – is applicable. Permitting interim use of the site for parking undercuts the DD regulations' intentions to promote conditions that would encourage more proximate development of permanent uses. OP has noted, in Section II, the pre-development activity surrounding the applicant's site and believes that development of a parking lot on the applicant's site would not help to hasten more permanent development of the site. While the applicant's parcel is small, the incremental impact of adding many small parking lots to the Mount Vernon Triangle is large.

VI. OTHER APPLICABLE ZONING REGULATIONS

The applicant is not seeking relief from other sections of the Zoning Regulations. The following examines whether the proposal complies with the other relevant sections of the regulations

Parking Lots §2302.1

- Subsection (a) requires *"All areas devoted to driveways, access lanes, and parking areas shall be paved and maintained with bituminous concrete or brick materials, or a combination of these materials or other materials approved by the D.C. Department of Transportation as structurally equivalent or better, that form an all-weather impervious service, and that are a minimum of four inches (4 in.) in thickness."* The applicant's drawings specify such materials.

- Subsection (b) precludes vehicles from projecting over building or lot lines. The application meets this requirement.

- Subsection (c) prohibits shared uses on the premises. The application meets this requirement.

- Subsection (d) prohibits vehicular entrances or exists within 40 feet of a street intersection. If the applicant receives permission for a driveway and curb cut, the applicant will meet this requirement.

- Subsection (e) requires that illumination be directed at and confined to the parking lot surface. The applicant has not indicated it will light the lot, in response to ANC concerns.

- Subsection (f) requires that landscaping with shrubs and trees cover at least 5% of the total lot area, including drive aisles, or an area determined by the BZA if the parking lot otherwise requires BZA approval, and if the parking lot has at least ten spaces. The proposed 8-space parking lot would not have to meet this requirement. However, the preliminary drawings indicate that at least 12% of the area will be a rain garden. The drawings do not specify planting of any shrubs or trees.

VII. COMMENTS OF OTHER GOVERNMENT AGENCIES

OP is aware of no other government agencies having commented.

VIII. COMMUNITY COMMENTS

Although the applicant had consulted with members of ANC 6C, the full ANC had not voted on the application at the time this OP report was written.

IX. RECOMMENDATION

OP believes that the applicant has failed to demonstrate that the property is unique, or that the applicant would suffer undue hardship should the application be denied. OP does believe the applicant has demonstrated that approval of the application would not bring substantial harm to the public. However, OP believes that the applicant has not demonstrated that the approval of the application will not cause substantial harm to the integrity of the zone plan.

Accordingly, OP recommends that the BZA **deny** the application.

Attachments (4)

Aa/slc

ATTACHMENT # 3

To: PAUL TUMMONDS
(202) 663-8007

* Perimeter of Property to be Enclosed by a Chain-Link Fence.

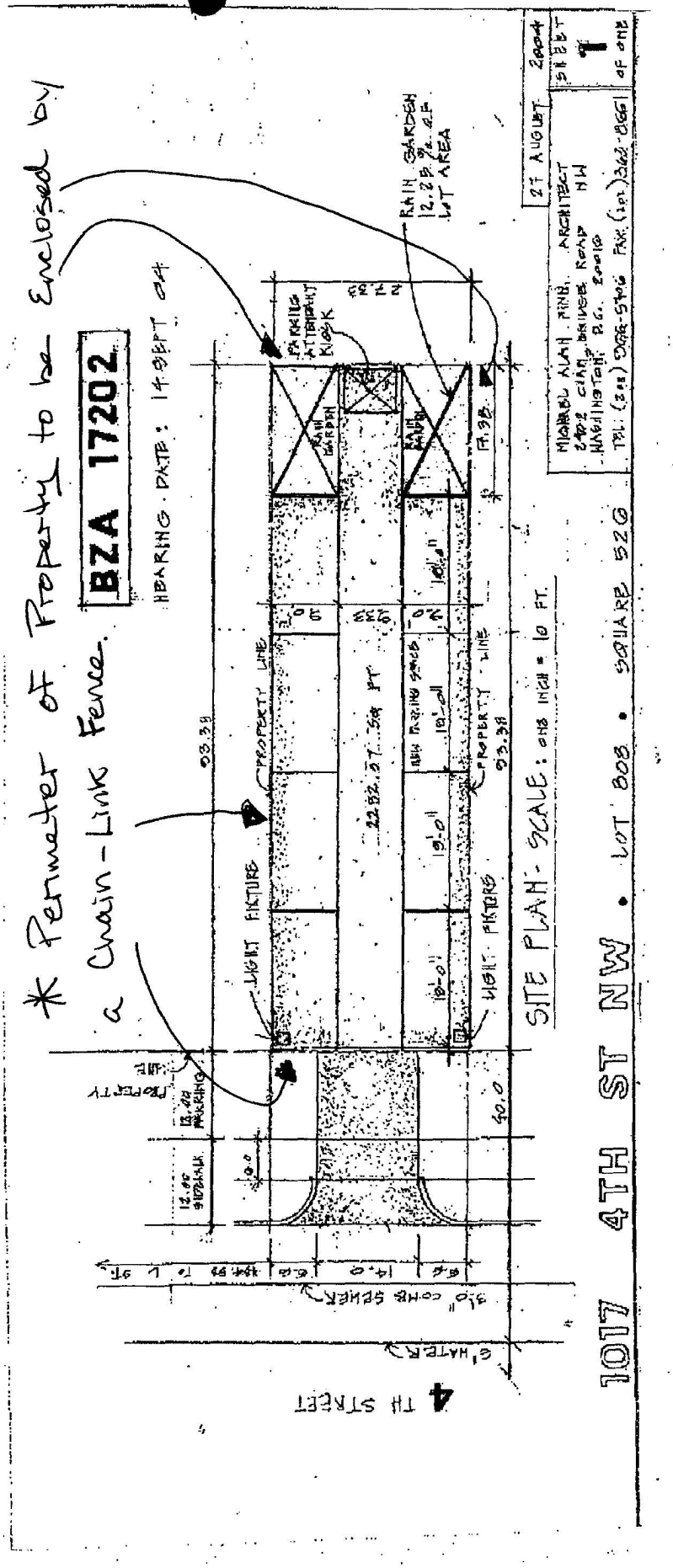


Table: Parking Lots in the Mount Vernon Triangle **ATTACHMENT 4**

SQUARE	LOT	ADDRESS (NW)	USE CODE	LAND AREA (SF)	OWNER
451	22	1010 6th Street	63	2,000.00	Bruno Chumpitazee Trust
	801	625 K St	64	1,245.00	Jemal's 50 Wysocki LLC
	807	630 NY Ave	64	1,136.00	"
	825	640 NY Ave	64	6,981.00	"
483	8	500 NY Ave	64	37,664.00	Steuart Investment Company
	803	501-517 K St	64	6,639.00	"
	804	513 K St	64	12,036.00	"
484	826	900 blk 6th St	64	638.00	Wash. Mtg. & Investment
	834	500 blk Mass Ave (odd #)	64	22,222.00	484 OPCO LLC
484W	815	600 K St	64	1,063.00	Paramount Investments
	819	600 blk K St NW (even #)	64	549.00	American Security Corp.
	821	"	64	183.00	"
	823	600 blk K St NW (even #)	64	1,631.00	Kerry Investments, Inc.
	24	601 Mass Ave	64	10,531.00	National Public Radio
515	158	500 blk L St (even #)	64	138,318.00	DC Govt (Wax Museum site)
515N	33	400 blk NY Ave (even #)	64	1,393.00	Howard Richmond
	34	"	64	1,362.00	"
	35	416 NY Ave	64	1,274.00	Steuart Investment Company
	36	414 NY Ave	64	1,220.00	"
	805	415 L St	64	1,388.00	"
	846	400 blk NY Ave (even #)	64	1,568.00	"
	848	"	64	1,153.00	"
	859	"	64	3,441.00	"
	856	"	64	8,392.00	"
	857	"	64	6,542.00	"
	854	"	64	9,325.00	"
	842	"	64	1,614.00	"
516	29	?	64	887.00	Sq 516 LLC
	30	?	64	1,605.00	Sq 516 LLC
	61	500 blk K St (even #)	64	20,875.00	Jemal's K St Lot LLC
	62	936 4th St	64	51,898.00	Square 516 LLC
516S	817	451 Mass Ave	64	1,475.00	Frank A Guarangna
	820	446 I St	64	609.00	"
	821	444 I St	64	651.00	"
	840	900 blk 4th St (even #)	64	1,995.00	Mazza Family DC LLC
	840	"	64	2,571.00	"
	850	450 I St	64	713.00	Frank A Guarangna
	851	453 Mass Ave NW	64	690.00	"
	858	400 blk Mass Ave (odd #)	64	7,798.00	JW Ridenour
525	none				
526	none				
527	10	308 K St NW	64	748.00	Mt. Vernon Development Grp.
	812	4th Street (odd #)	64	1,663.00	"
	813		64	1,218.00	"
	814		64	1,634.00	"
	815	322 K St	64	1,419.00	322 K St LP
	816	322 K St	64	1,419.00	"
	941	4th Street (odd #)	64	15,523.00	Mt Vernon Development Grp.
528	819	I St NW	64	16,567.00	"

	820	4th St NW	64	9,800.00	"
	821	I St NW	64	435.00	"
	822	4th St NW	64	441.00	"
556	none				
558	none				
560	831	3rd St NW	64	45,326.00	DC Govt (Housing Authority)
561	none				
562 S	none				
563	none				
563N	none				
TOTAL				**469,468.00**	39% is DC land

(source: District of Columbia Office of Tax and Revenue, April 20, 2004)



BZA Case # 17202
Location Map

N

Feet

0 100 200

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Anthony A. Williams, Mayor

Office of Planning ~ August 11, 2004

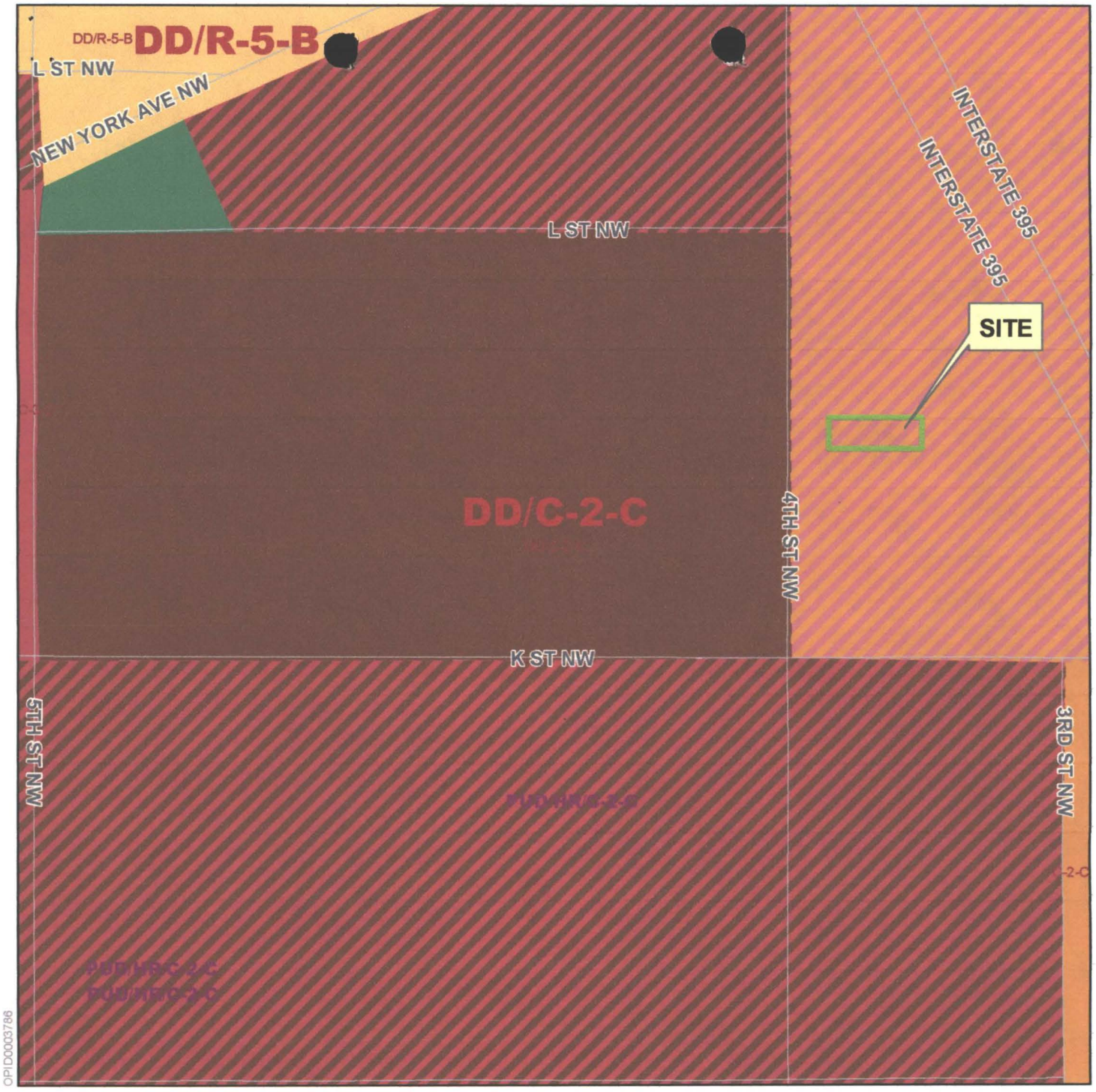
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Zoning Districts

National Parks

DC Parks

Attachment 1



BZA Case # 17202
Comprehensive Plan Land Use Map

N

Feet

0 100 200

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

Office of Planning ~ August 11, 2004

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- Residential-Low Density
- Residential-Moderate Density
- Residential-Medium Density
- Residential-High Density
- Commercial-Moderate Density
- Commercial-Medium Density
- Commercial-Medium-High Density
- Commercial-High Density
- Parks, Recreation, and Open Space
- Mixed Use

Attachment 2