GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

MEMORANDUM

DATE: March 8, 2005

TO: District of Columbia Board of Zoning Adjustment

THROUGH: Ellen McCarthy, Interim Director OP
Jennifer Steingasser, AICP, Deputy Director OP

FROM: David J. McGettigan, AICP 17264 BAB

SUBJECT: Board of Zoning Adjustment Case No. ~~17246~~
Murphy Property
407 E Street, N.E.
Square 812 Lot 42

Summary

The applicant seeks area variances from the lot occupancy provisions of §403.2 to allow lot occupancy of 80% where 60% is permitted and from the provisions of §404.1 to allow a rear yard of 5' where 20' is required. The applicant seeks to permit a deck constructed under a permit issued in error to remain. The Office of Planning also believes that a variance is required from §2001.3, which controls additions and expansions of non-conforming structures.

Recommendation:
The Office of Planning recommends **approval** of the variances based on the following findings:

- The applicant has shown an exceptional situation of the property that creates the need for the relief sought. The applicant was issued a building permit to construct the deck and preceded with construction to completion of the deck. A stop work order was issued before final inspections of associated interior renovations.
- Compliance with the regulations creates a practical difficulty in requiring the existing deck be dismantled. Additionally, the removal of

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Exhibit No. 44

Board of Zoning Adjustment
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EXHIBIT NO. 44

the deck will impact the functionality of the interior space and the use of the structure as a flat.

- The applicant has provided photographs showing the original deck, which was a two-story structure that was replaced by the new deck. The replacement deck is smaller and has less impact than the original structure. The Office of Planning does not believe approval of the variance will be a substantial detriment to the public good and will not impair the intent, purpose, and integrity of the zone plan.

Background

The subject property is located mid-block on the south side of E Street, NE between 4th and 5th Streets, NE. The lot contains approximately 753 square feet of lot area and is occupied by a three-story row structure currently used as a flat. The property is located in the Capitol Hill Historic District and is a contributing structure to the District. The lot is rectangular with a width of 15.05 feet and a depth of 50.0 feet. The existing lot occupancy without the deck is approximately 60% and the existing rear yard excluding the deck is approximately 20 feet. The rear of the lot abuts the rear yard of Lot 38 at 445 4th Street, NE.

The subject property is one of a set of nine rowhouses along the southern portion of E Street from 4th to a mid-block alley. The six western-most structures in the set are on similarly sized lots. Many of these structures have been converted to flats. Across E Street can be found Stuart-Hobson Middle School (see Attachment 1).

Project Description

The applicant proposed replacement of the existing two-story deck with a lower platform at 14' x 14' with a new single-story deck at 10' x 14'. The applicant received building permit number B465450 for construction of the deck. The Historic Preservation Office reviewed and approved the building permit.

Comprehensive Plan

The property is identified as moderate density residential on the General Land Use map (See Attachment 2). The moderate density designation includes row houses and garden apartments as the predominant uses and may also include, as appropriate uses, low density housing (§1103.2).

A major theme of the Comprehensive Plan is to stabilize and improve District neighborhoods (§101.1(a)). Infill development of a reasonable scale is not inconsistent with this theme. The granting of the requested variances from §§403.2, 404.1, and 2001.3 in the R-4 zone would permit a replacement deck to remain that is of lesser impact to the neighborhood than the previous deck. Therefore, granting these variances would not be inconsistent with the objectives and policies of the Comprehensive Plan.

Zoning

The R-4 Zone District permits a maximum lot occupancy of 60% for structures that are row dwellings, flats, churches or public schools and the applicant is seeking relief under 11 DCMR §3103 for an area variance from the provisions of §403.2 to permit a lot occupancy of 80%. In addition, §404.1 requires that structures in the R-4 zone provide a 20' rear yard.

The existing use as a flat is a permitted use in the zone.

Based on the applicant's self-certification the following table summarizes the area requirements:

Area Req.	Existing	Required/Allowed	Proposed	Variance	Code Ref.
Height	30'/3 Stories	40'/3 Stories	30'/3 Stories	None	§400.1
Min. Lot Area	753 SF	1800 SF	753 SF	None[1]	§401.3
Min. Lot Width	15.06'	18'	15.06'	None	§401.3
Lot Occupancy	80%[2]	60%	80%[2]	20%[2]	§403.2
Rear yard	14.33'	20'	11.83'	8.17'(41%)	§404.1
Side yard	None	None	None	None	§405.9
Open Court	5.8'	10'	4.625'	5.375'(54%)	§406.1
Parking	0	None	0	None	§2100

[1] See discussion below regarding possible additional relief from §§401.1 and 2001.3.
[2] The self-certification shows a proposed lot occupancy of 78%; however, OP estimates the existing house plus the deck occupies 80% of the lot.

Possible Additional Relief

In the R-4 zone, the minimum lot area requirement of 1800 square feet applies to flats. Section 401.1 states:

> Except as provided in chapters 20 through 25 of this title, in the case of a building located, on May 12, 1958, on a lot with a lot area or width of lot, or both, less than that prescribed in § 401.3 for the district in which it is located, the building may not be enlarged or replaced by a new building unless it complies with all other provisions of this title.

The proposed enlargement of the existing occupancy does not comply with all other provisions of this title (namely lot occupancy and rear yard). Chapter 20 does allow for the enlargement of non-conforming structures subject to the specific conditions of §2001.3, which state:

> 2001.3 Enlargements or additions may be made to the structure; provided:

(a) The structure shall conform to percentage of lot occupancy requirements;
(b) The addition or enlargement itself shall:
(1) Conform to use and structure requirements; and
(2) Neither increase or extend any existing, nonconforming aspect of the structure; nor
(3) Nor create any new nonconformity of structure and addition combined.

The proposed development would not meet any of these conditions. The Office of Planning believes that additional variance relief is required from this provision to permit the proposed development.

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 a practical difficulty. In addition, there should be no harm to the public or to the zone plan.

Extraordinary or Exceptional Situation

The applicant has shown an exceptional situation that creates the need for the lot occupancy and rear yard relief sought in that building permits were issued for construction of the deck. Additionally, the lot is exceptionally small at less than half the minimum lot area for this zone district.

Practical Difficulty

The practical difficulties identified by the applicant that result from the strict application of the lot occupancy requirements of §403.2 and rear yard requirements of §404.1 are that the strict application of the zoning regulations would require removal of the new replacement deck and reconfiguration the kitchen and removal of a door. Additionally, as an existing flat, removal of the deck would essentially preclude use and enjoyment of the rear yard by the occupant of the upper unit.

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 deck will not have substantial impact on light and air to adjoining properties. In addition, the new deck has less impact than the previous two-level deck.

ANC Recommendation

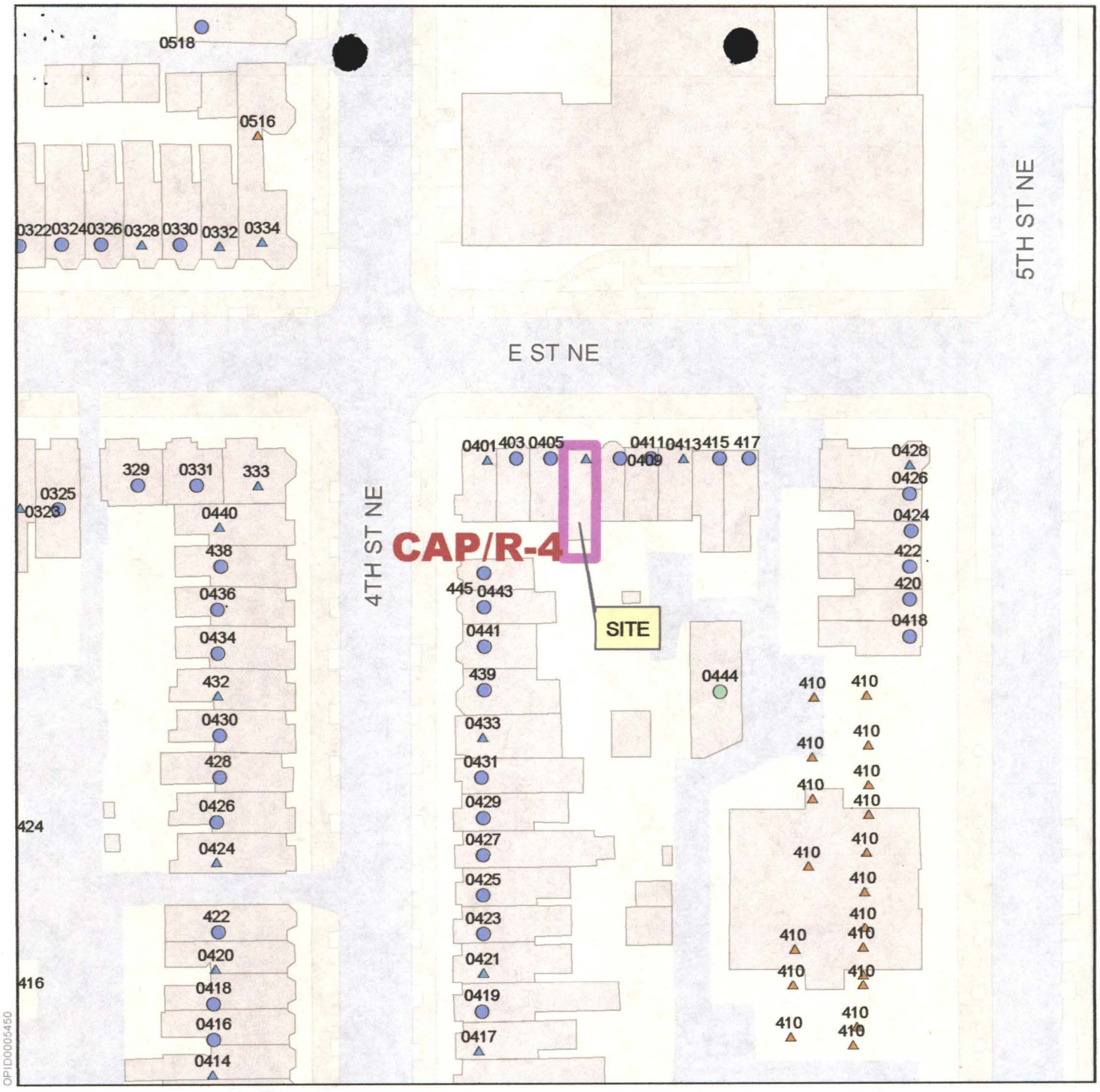
ANC 6C has reviewed the application and recommends approval of the application.

Recommendation

In summary, the Office of Planning recommends that the project, as proposed by the applicant **be approved**, as the applicant has met the burden of proof for a variance and the application is not a substantial detriment to the intent and purpose of the zoning regulations.

Attachments:

1. Zoning and Use Map
2. Comp Plan Map
3. Aerial Photo
4. Aerial Oblique Photo



Zoning and Land Use Map
BZA Application #17264
407 E Street, NE



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Feet

0 50 100

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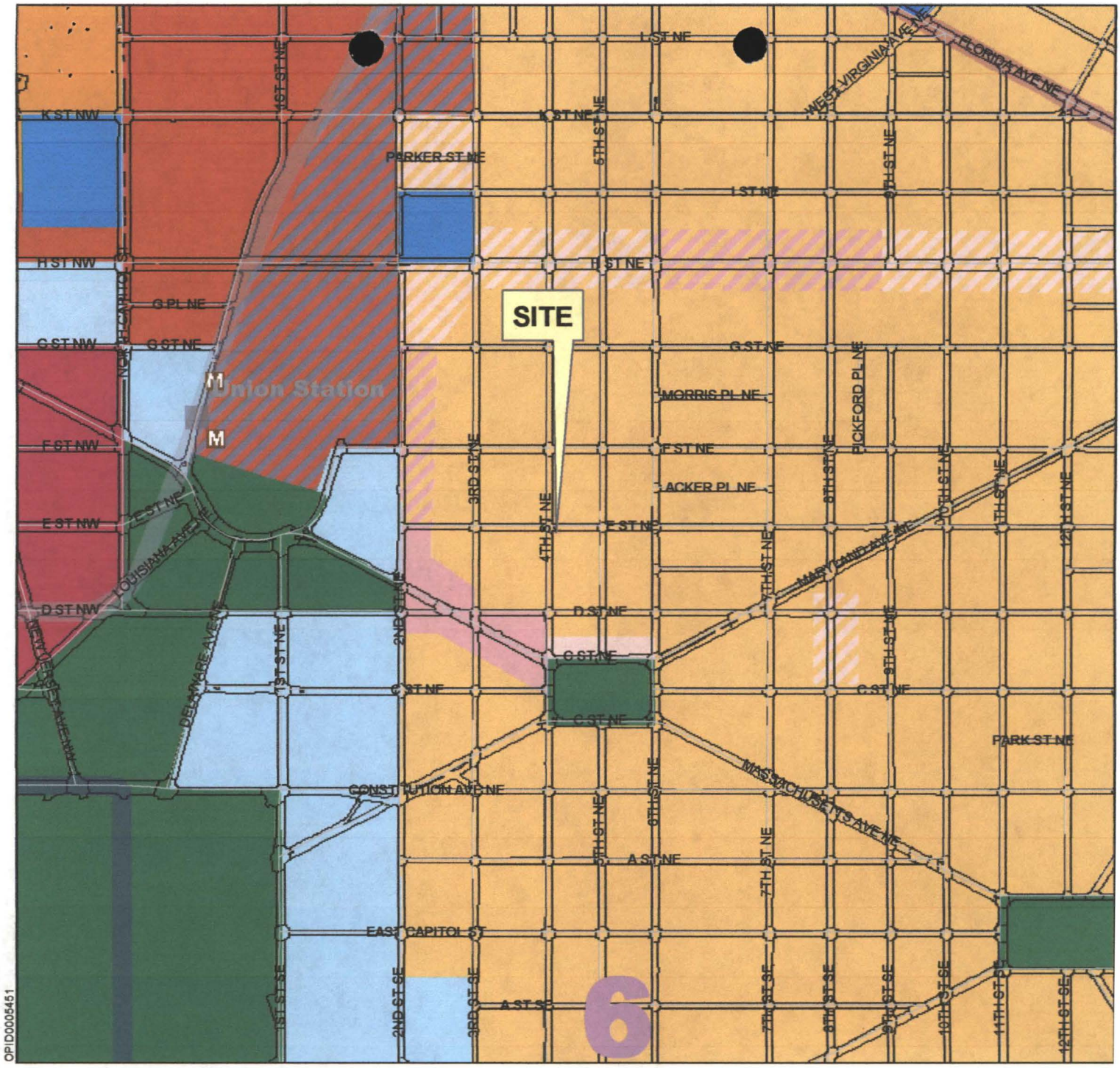
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This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

Land Use Legend

- Row Dwelling
- Single-Family Detached
- Residential Flats
- Residential Conversions <5
- Resid. Garage
- Multi-family
- Religious
- Educational
- Vacant

Attachment 1



OPID0005451

Comprehensive Plan Map
BZA Application #17264
407 E Street, NE

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Feet

0 500 1,000

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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



Ortho Photo
BZA Application #17264
407 E Street, NE

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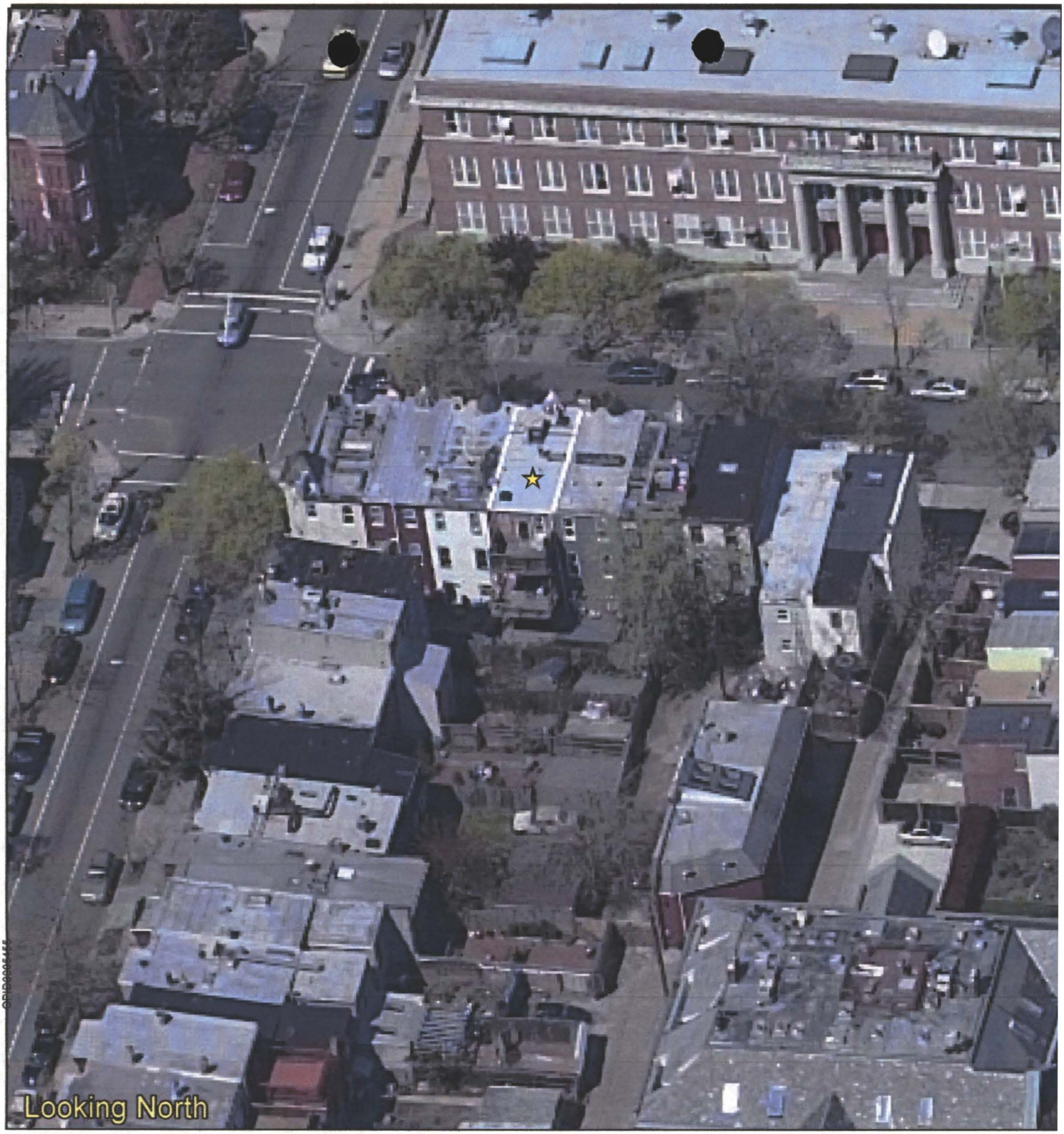
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purposes from a variety of sources.
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Attachment 3



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Aerial Oblique Photos
BZA Application #17264
407 E Street., NE

☆ Subject Site

Attachment 4