GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director

DATE: January 4, 2005

SUBJECT: BZA Application No. 17266
400 Massachusetts Avenue, NW
Square 517, Lot 51

I. SUMMARY

The applicants are seeking approval of a variance from 11DCMR Section 2101.1's regulations governing the number of required parking spaces for a retail establishment. The Office of Planning (OP) **cannot recommend approval** for the requested variance based on the analysis of variance tests below. OP would, however, be favorably inclined towards recommending approval of a special exception from parking requirements as permitted in Section 2108, should the applicants request such a special exception.

II. SITE AND AREA DESCRIPTION

The subject property is located at 400 Massachusetts Avenue, N.W., Square 517, Lot 45 (*Attachments 1 and 3*). The lot is 27,150 square feet (sf), and generally triangular. The site is interrupted on Massachusetts Avenue by the 2, 085 square foot site of an historic firehouse. The applicants' nearly completed building contains 13 above-ground stories and four levels of underground parking. There are 256 condominium apartments on the upper 12 floors, one 17,308 square foot condominium commercial space on the ground level, and 200 parking spaces on four below-grade levels.

The subject property is zoned DD/C-2-C, as are surrounding properties on 2 ½ sides of the site. The remaining ½ of the western property line is contiguous with a DD/R-5-E zone district that consists of a single high-rise apartment building for the elderly. The site is within the central employment area, is governed by the Downtown Development District Overlay, and is adjacent to Chinatown. The building is surrounded by a mix of uses: primarily offices to the south; small-scale retail to the southwest; and recently completed-or-planned residential high-rises to the north, northwest and east. The area is well served by two Metrorail stations and numerous bus lines.

BZA
Case No. 17266
Exhibit No. 25

Board of Zoning Adjustment
District of Columbia
CASE NO.17266
EXHIBIT NO. 25

III. DESCRIPTION OF PROJECT, ZONING REQUIREMENTS, AND REQUESTED RELIEF

The joint applicants are 400 Massachusetts Avenue, LLC and Jemal's Mass 12933 LLC. The former LLC owns the condominium commercial space on the ground floor that is under a purchase contract to the latter LLC. The 17,308 sf of retail use, which Jemal's Mass LLC intends to lease to a CVS drug store, must have at least 19 parking spaces according to the Zoning Regulations. The applicants have applied for a variance to reduce the retail parking to 10 spaces[1].

The total building contains 200 parking spaces. Section 2101.1 of the Zoning Regulations requires that of these 200 spaces, no fewer than 83 spaces must be allocated to the residential component and no fewer than 19 spaces must be allocated to the retail component. This leaves a total of 181 spaces that could be allocated to the residential component. However, the applicants wish to be able to sell or lease 190 parking spaces to the residential portion of the building. To do this would require allocating 9 of the required 19 commercial spaces to the residential component. The applicants are, therefore, requesting a 48% area variance to enable the re-allocation of existing parking spaces.

The project has been reviewed previously by the BZA in Application No. 16881. That application requested and received relief for lot occupancy and roof structures. The project's zoning history is described in more detail in the next section of this report.

The present application is summarized in the following table. The year "2002" refers to the project as described by the applicant in 2002 in Case No. 16881. "2004" refers to the project as it is described by the applicant in the current application.

	Residential (1 pkg.space per 4 du's in DD/C-2-C)		**Retail or Service Commercial** (1pkg. space for each 750sf over 3,000 sf)	
	2002	**2004**	**2002**	**2004**
• **# units or sf**	• 262 units	• 256 u snits	• 12,966 sf	• 17,308 sf
• **parking required for type of use**	• 66 spaces res.	• 64 spaces res.	• 13 spaces retail	• 19 sps. retail
• **total parking required**	---	---	• 79 spaces total	• 83 spaces total
• **parking proposed**	• 218-221 spaces for res. & retail.	• 190 spaces for res. only	• 218-220 spaces for res. & retail.	• 10 spaces for retail only
• **relief requested**	• None: spaces not yet allocated	• None: 122 sp. > req	• None: spaces not yet allocated	• 9 spaces, i.e. 48%

[1] The originally October 29, 2004 filing was for a complete reduction from 19 to 0 retail parking spaces. This has since been amended.

Since the BZA approved the project in Order No. 1688, the applicants have:

- Eliminated six ground floor residential units and designated that space for retail usage;
- Reduced the residential floor area from 316,278 sf to 311,936 sf and reduced the overall number of residential units from a projected 262 to an actual 256;
- Increased the ground floor retail space by approximately 4342 sf, from 12,966 sf to 17,308 sf.

This has resulted in changing the required allocation of parking spaces as follows:

- Reduced the residential parking requirement by 2, from 66 to 64 spaces;
- Increased the retail parking requirement by 6, from 13 to 19 spaces.
- Increased the overall parking requirement from 79 spaces to 83 spaces.

The applicant has constructed 200 parking spaces for the building.

IV. THE PROJECT'S ZONING HISTORY

The project is an amenity site for a PUD at a different location, and has been granted both special exception and variance relief.

1. *Zoning Commission Order No. 940* required that, as part of a PUD approval for the former Woodward and Lothrop building, the subject property and one other site be developed as primarily residential buildings.

    - Decision in Z.C. Order No. 940, Case No. 00-33C

    9. With regard to the associated development on Square 517:
    a) No office uses shall be permitted, except for accessory offices to other permitted residential, retail, and service uses.
    b) Development shall be limited to residential uses with retail and service uses allowed on the ground floor and cellar level.
    c) Within thirty (30) days of the effective date of the Order, the Applicant shall enter into a covenant for the duration of the PUD on Square 346 restricting development on the Square 517 property to:
        i) at least 200,000 square feet of residential use;
        ii) commercial development provided on the ground floor and cellar level only; and
        iii) no principal office uses.

    The applicant has entered into the required covenant and, in OP's opinion, the building nearing completion (with CVS as the intended lessee) will comply with the PUD Order's and covenant's requirements.

2. *Board of Zoning Adjustment Order No. 16881*:
    - Granted the applicant a variance to increase lot occupancy from 80% to 97% of the site, and;

- Granted the applicant a special exception to permit more than one roof structure, and to have them be differing heights.

During the BZA process the total number of parking spaces serving both the residential and retail uses was described as between 197 and 221. The applicant initially wrote that there would be 197 parking spaces. During testimony the applicant noted there would be 221 parking spaces. The OP report on the application stated the building would have 218 parking spaces (including 10 handicapped spaces).

The applicant and OP were consistent is stating that the parking spaces were intended to serve 260-264 residential units in 316,278 square feet of gross floor area on part of the ground floor and all of the upper 12 stories, as well as 12,966 square feet of ground floor retail space. Neither the BZA application nor the OP report refers to specific allocations of parking spaces between the residential and the non-residential uses.

It is OP's opinion that the current project complies Order No. 16881.

V. ANALYSIS

A. Relationship of the Application to the Comprehensive Plan

The Comprehensive Plan's Generalized Land Use Map *(Attachment 2)* designates the site as suitable for high-density residential/commercial uses. The applicant's property is not inconsistent with this designation.

The Downtown Element's parking section (11DCMR§917) established the following relevant policies in support of Downtown parking objectives:

- §917.2(a) Encourage development of adequate parking spaces to meet requirements for a seventy to thirty (70/30) public transit modal split;
- §917.2(b) Encourage adequate short-term, off-street parking to meet needs for increased retail development and Convention Center-related requirements.

The applicants suggest that, if the commercial space is leased to CVS, the majority of users will be arriving at the store by foot and will either work or live in the nearby area. According to the applicants, because of the relatively widespread distribution of CVS stores throughout the District, this intended store will not be destination retail to which many people would drive.

B. Variance Tests

The provisions of 11DCMR §3103.2 require the applicant to demonstrate: 1) a unique physical aspect or other extraordinary or exception situation or condition of a specific piece of property, where; 2) the strict application of the zoning regulations would result in an undue hardship or practical difficulty, and where; 3) granting the requested relief would not result in substantial harm to the public or to the zone plan.

1. Exceptional Situation

The applicant states that the Board has, in its decision for Application No. 16881, already held that the subject property is impacted by:

- *An exceptional site configuration and street frontage.* The property is a narrow acute triangle, with the site plan and excavation requirements being made more exceptional by the Old Engine Company No. 6 building being surrounded on 3 sides by the applicant's property.
- *An exceptional zoning history.* At the time of the PUD decision on the Woodrow and Lothrop building (Woodies), that building and the 400 Massachusetts Avenue site were in overlapping ownership. As part of the PUD agreement, the Woodies applicant agreed to enter into a covenant requiring that 400 Massachusetts contain at least 200,000 square feet of residential space, and that the commercial component be limited to retail and service uses on the ground floor and cellar. The use requirements placed on 400 Massachusetts are more restrictive than for a typical DD/C-2-C site. Further, the parking requirements for the retail are approximately 2 ½ times greater than those for general office.

OP has reviewed the record for Application No. 16881. In OP's opinion the record establishes that the Board found the applicant had demonstrated that the site was exceptionally configured and posed several practical difficulties with respect to excavation, underpinnings of historic Engine Co. No. 6, and residential layout – enough to warrant increasing the permitted lot coverage from 80% to 97%.

OP does not believe the record establishes that the Board found that the retail restriction placed on the ground floor retail was an exceptional condition. The applicant states that the Board "has previously held [in Application No. 16881] the Subject Property is also exceptional as a result of its zoning history" (page 7 of Applicant Statement Applicant in Case No. 17266). While the applicant briefly refers to this retail restriction on pages 4 and 9 of its written hearing statement, there was no reference to it in any of the oral testimony, questions from the Board, or the application Decision Order. Neither the written nor the oral OP report referred to the retail restrictions as a unique condition. When the PUD restrictions were referred to, the applicant always cited the requirement that the building be substantially residential as the constraining exceptional condition. Nevertheless, in the present case the applicant refers to the retail restriction as having been previously determined by the Board to be an exceptional condition.

Working from the assumption that the Board has found the retail restriction to be an exceptional condition in the previous case, the applicant then notes that this exceptional condition carries with it the exceptional condition of having higher parking requirement for retail as compared to general office use (pages 7 and 8, Statement of the Applicant in Case 17266).

Non-Residential Space	Required Parking, 2002 Configuration	Required Parking, 2004 Configuration
Square Feet	12,966 sf	17,308 sf
For General Office	6 spaces	9 spaces
For Retail	13 spaces	19 spaces

The difference between the retail and general office parking requirements was 7 spaces as the building was configured when previously reviewed by the BZA, and is 10 spaces now that the applicant has substituted additional commercial space for the residential space that was previously on the ground floor.

OP believes there is a substantial difference between demonstrating exceptional conditions for: 1) an unbuilt property constrained by an exceptional site and exceptional use requirements, and that needs an area variance as in Application No. 16881, and; 2) a constructed building where the question concerns the allocation of 200 already-built parking spaces – a number that is already 117 spaces more than the 83 parking spaces required by the zoning regulations.

In OP's opinion, the applicants **have not demonstrated that there is an exceptional condition** that would restrict the ability of the applicants to provide the required amount of parking. On the contrary, the parking has been built. The applicants' argument is based on preference, not on exceptional conditions.

2. Practical Difficulty

The applicants state that a strict interpretation of the Zoning Regulations would cause a practical difficulty deserving of relief from the Board. The crux of the applicants' argument is on page 10 of the applicants' pre-hearing statement: "The parking provided well exceeds the number of spaces required based upon the mixed uses proposed for the building. Nonetheless, given the extremely competitive nature of the current downtown residential market, the parking spaces created in the Project all are needed to be provided to residents of the building in order to approximate as closely as possible the 1:1 ratio benchmark of parking to residential units."

The applicants further note that the intended retail lessee, a CVS drug store, will not need more than 10 of the required 19 parking spaces because the store is not destination retail, will likely be patronized by those living or working within walking distance, and is close to two Metrorail stations. In the original filing for this case, the applicants had applied to have all parking requirements eliminated for the retail space.

OP notes that CVS is a lessee, not a condominium owner. A future user of the space may well prefer to have access to the 19 required spaces, rather than the proposed 10 spaces.

OP further notes that many of the new, nearby residential condominiums do not have close to a 1:1 parking ratio.

Address	BZA Case #	No. Pkg Spaces	No. Units	Pkg. Sp to DU ratio
14th @ Church Sts., NW	16999	65	95	0.68
1528 14th St., NW	17183	14	40	0.35
609 6th St, NW	17017	12	30	0.4
717 6th St NW	16897	12	46	0.26
770 5th Street	16596	150	209	0.7
400 Mass Ave., NW	**16991/17266**	**181**	**256**	**0.7**

All of these are luxury condominiums in downtown or the Logan Circle area. They share the same market profile. Some are less convenient to Metro than 400 Massachusetts Avenue. Of these, the applicant's property is at the upper end of the parking to unit ratio. As of the pre-hearing statement, the applicant had not demonstrated that it is having difficulty selling the condominium units at 400 Massachusetts Avenue, or that any such difficulty is due to a market-deficiency in parking.

In OP's opinion **the applicant has not demonstrated the practical difficulty** that would result from the strict application of the zoning regulations; i.e., from allocating 19 of the existing parking spaces to the retail user, and 181 spaces to the 256 residential units.

3. Substantial Detriment

OP concludes that **there would be a negative impact on the intent and integrity of the Zoning Regulations.**

- For the reasons stated above, accepting the applicant's argument for uniqueness or exceptional conditions would significantly dilute the standards of variance approval and impair the integrity of the regulations by allowing broader license for variances from zoning standards.
- Further, as the applicant noted on page 12 of its pre-hearing statement, "Section 2108 of the Zoning Regulations provides a mechanism by which the Board may grant up to a twenty-five percent reduction from the parking schedule through the special exception process of §3104.1 of the Zoning Regulations." This section could provide for a reduction from 19 spaces to 14 spaces, based on the expanded retail space in the 2004 application[2]. OP believes the present application would likely comport with the five special exception criteria in §2108.3. With a mechanism in place for special exception relief, and absent demonstrations of exceptional conditions or practical difficulty, it is OP's opinion that granting the requested area variance would have a negative impact on the intent of the Zoning Regulations.

VI. ANC AND COMMUNITY COMMENTS

ANC 6C was scheduled to vote on the application on January 5, 2004.

VII. OTHER AGENCY COMMENTS

There were no other agency comments on file as of December 28, 2004. In a conversation with OP about the application, the District Department of Transportation (DDOT) expressed no objection to the application.

[2] The applicant states the reduction would be from 19 to 15 spaces. OP calculates 0.75 of 19 as 14.25 spaces, which, according to §2118.6, rounds down to 14 spaces.

IX. OP RECOMMENDATION

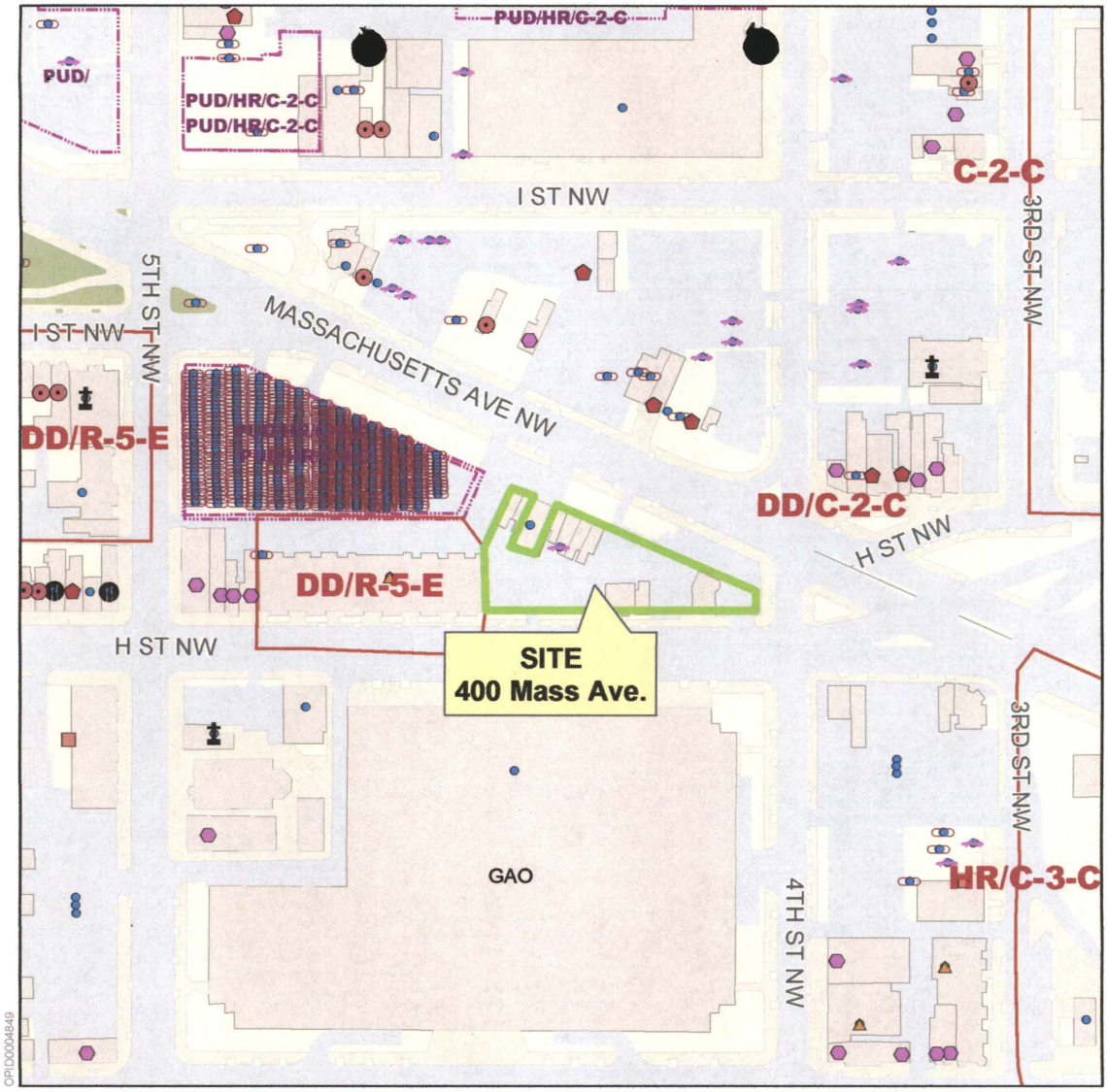
The Office of Planning concludes that the applicant has not met the burden of proof pursuant to 11 DCMR§3103.2of the Zoning Regulations, for the granting of the requested variance to permit a reduction in the required parking for the residential portion of the building at 400 Massachusetts Avenue, N.W. The request does not meet the test for uniqueness and practical difficulty. Further, the approval of the application would have the potential to impair the intent, purpose and integrity of the Zoning Regulations.

OP **cannot recommend approval** of the requested variance for a reduction to the parking requirements.

OP encourages the applicant to consider parking relief under the Special Exception provisions of §2108.3.

AA/slc

Attachments



Location, Zoning & Land Use Map
BZA Application No. 17266
400 Massachusetts Ave., N.W.

N

Feet
0 100 200

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Anthony A. Williams, Mayor

Office of Planning ~ September 2, 2004

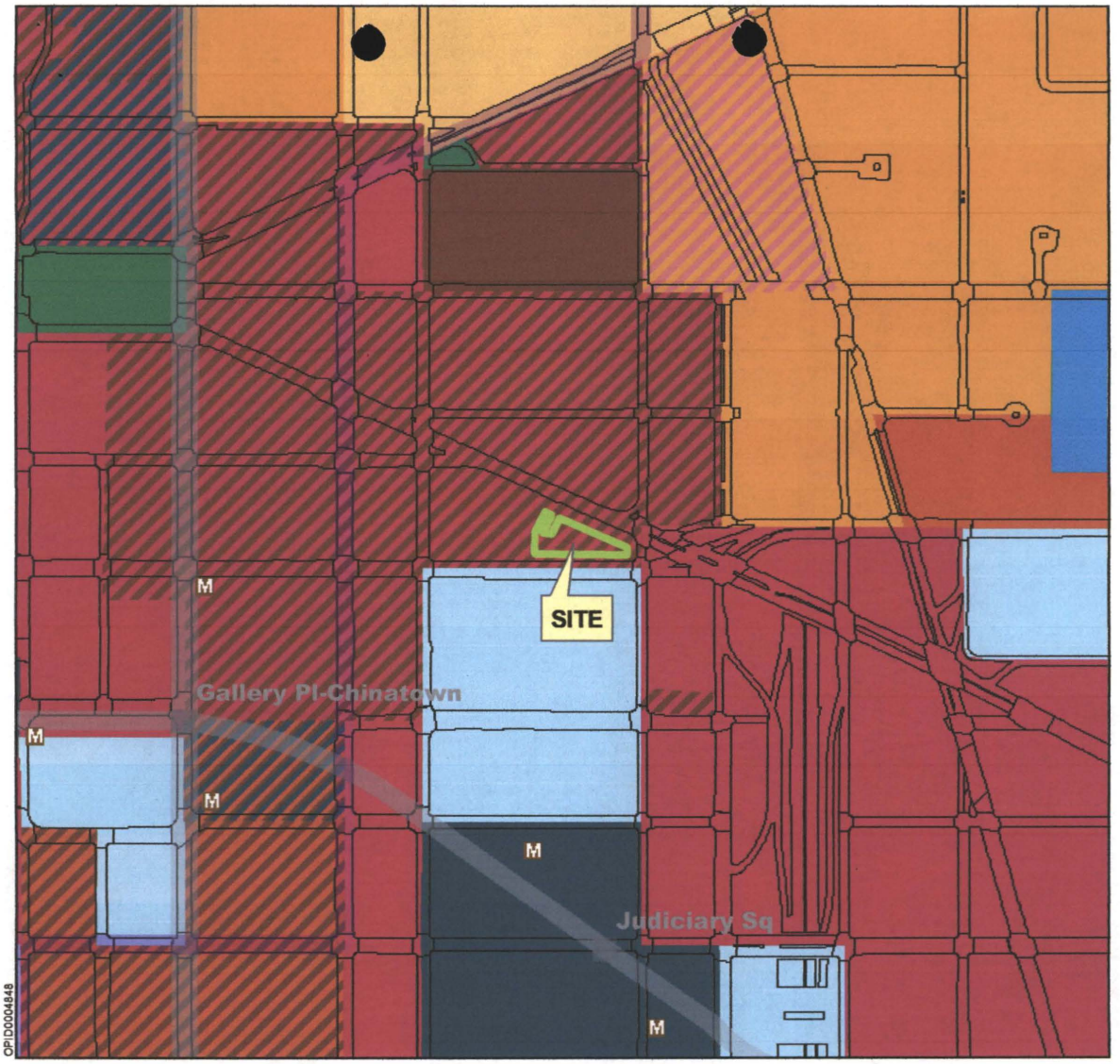
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Land Use Legend

- Non-conforming SF Use
- Rowhouse
- Single-Family Detached
- Single-Family Semi-Detached
- Resid. Garage
- Multi-family
- Small Hotel
- Large Hotel
- Fraternity/Sorority House
- Store
- Restaurant
- Office
- Parking - Special Purpose
- Religious
- Educational
- Embassy/Chancery
- Special Purpose
- Vacant



Attachment 1



Comprehensive Plan Map
BZA Application #17266
400 Massachusetts Ave. N.W.

N

Feet

0 250 500 750

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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 #17266
400 Massachusetts Avenue, N.W.

N

Feet

0 100 200

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

Office of Planning ~ September 7, 2004

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Attachment 3