GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

TO: Board of Zoning Adjustment of the District of Columbia

FROM: Ellen McCarthy, Director

DATE: June 7, 2005

SUBJECT: BZA Application No. 17315 - **Supplemental**
1220-1234 4th St. NW

This supplemental report is in response to the applicant's amended application dated May 9, 2005.

The applicant's amended submission requests **special exception relief** pursuant to Section 410.12 to permit 3-unit apartments on Lots 888, 903, 904 and 868. **Variance relief** is also requested to develop Lots 869 and 866 as 2-unit row dwellings.

Lot 867 is already developed as a flat. Lot 865 does not require relief, since the lot size exceeds the minimum permitted lot size for matter-of-right development for a row dwelling or flat in the R-4 zone district.

RECOMMENDATION

The Office of Planning recommends:

- **Denial of special exception relief to develop 3-unit apartment buildings on Lots 904, and 868.**

- **Approval of variance relief from the lot area requirements to permit construction of 2-unit condominium dwellings for lots - Lots 904, 868.**

Lot 867 is already developed as a flat.

Due to the applicant's non-compliance with Section 3113.4, and for reasons stated in this report, the applicant does not possess development rights to lots 888, 903, 869 and 866 as submitted in the amended submission. Therefore, OP cannot recommend relief for these lots.

BZA
Case No. 17315
Exhibit No. 48

Board of Zoning Adjustment
District of Columbia
CASE NO. 17315
EXHIBIT NO. 48

BACKGROUND

On the scheduled hearing date on May 10, 2005, the Board stated that authorization letters are required for lots not owned by the applicant. The applicant assured the Board that these letters would be provided on or before the rescheduled hearing date of June 14, 2005.

On May 25 2005, the Office of Planning met with the Department of Housing and Community Development (DHCD), Home Again Initiative and the National Capital Revitalization Capital (NCRC) and was informed that Lots 888 and 903 are currently owned by NCRC and DHCD respectively and would not be released for development until September 2005. In the interim, no authority was granted to the proposed applicant to act on their behalf.

OP was also informed that the sale of Lots 869 and 866 by DHCD to North Capitol Neighborhood Development Corporation (NCND) was rescinded in a letter to the applicant on October 25, 2004. DHCD informed OP that the development effort was not supported, since the required development timeline had lapsed in 2002. OP also understands that the deal would have been for the development of 2 units on both lots with a homestead affordability requirement from DHCD and that NCND had no authority to transfer development rights to another party.

The summary table details the ownership status of the lots based on OP's findings through conversations with DHCD, NCRC and the Home Again Initiative.

OWNERSHIP STATUS

Lot	Lot Size (Sq. Ft.)	Current Status	Previous BZA Application	Amended BZA Application	Ownership Status
888	1900	Vacant Lot	3 unit Condo	3-unit Condo	**NCRC**[1] Owned (Not released for development- NRD)
903	1569.4	Vacant Lot	2-unit Condo	3-unit Condo	**Home Again** (Under condemnation proceedings NRD)
904	1581.75	Vacant Lot	2-unit Condo	3-unit Condo	**Allenbee Gardens/Collins LLC**[2]
869	1520	Vacant Lot	2-unit Condo	2-unit Condo	**DHCD**[3] **Homestead**
868	1520	Vacant Lot	2-unit Condo	3-unit Condo	**Allenbee Gardens/Collins LLC**
867	1235	2-story r/house	2-unit Condo	2-unit Condo	**Allenbee Gardens/Collins LLC**
866	1900	Vacant Lot	3 unit Condo	2-unit Condo	**DHCD Homestead**
865	1924.5	Vacant Lot	3 unit Condo	2-unit Condo	**Allenbee Gardens/Collins LLC**

Based on the above, OP believes development rights apply to lots currently owned by the applicant: **Lots 904, 868, and 865**. Lot 867 is already developed and will be maintained as a flat.

[1] NCRC - National Capital Revitalization Corporation
[2] The Applicant, dba – Allenbee Gardens LLC.
[3] DHCD - Department of Housing and Community Development

Matter-of-right development of a row dwelling or flat on Lot 865 is permitted since it meets/exceeds the required lot size and the proposed development would not exceed the permitted lot occupancy for the R-4 zone district.

Lot 888, 903, 869 and 866 should not be considered as submitted in the applicant's amended application since the applicant does not own the properties nor was authority granted to develop the properties as required by Section 3113.4.

Based on the above discussion regarding the ownership status of the lots, consideration of zoning relief can only be applied to lots owned by the applicant.

ANALYSIS

The following table results from the applicant's amended application and OP's findings:

Lot No.	Lot Area (Sq. Feet)		Proposed # of Units	Lot Occupancy		Rear Yard (Feet)	Height (Feet)	Lot Width (Feet)	Parking
	Exist.	Req'd		Exist.	Proposed				
904	1581.75	1800	3	-	58%	40	40	16.65	1 space
868	1520	1800	3	-	58%	40	40	16.0	1 space

Variance Relief

The applicant would require variance relief from the minimum lot area provision to develop Lots 904 and 868.

The R-4 Zone District permits matter-of-right development of single-family residential uses (including detached, semi-detached and row dwellings and flats), with a minimum lot width of 18 feet, a minimum lot area of 1,800 square feet, a maximum lot occupancy of 60% and a maximum height of three (3) stories/40 feet. Conversions of existing buildings to apartments are permitted for lots with a minimum lot area of 900 square feet per dwelling unit. 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)

Pursuant to §3103, the applicant must demonstrate that:

1) The subject properties are subject to an extraordinary or special condition;
2) That a strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulty for the applicant; and
3) 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.

Proposed 3-unit row dwellings

OP does not support the construction of three-unit apartment buildings proposed for Lots 904 and 866 for the following reasons.

Section 199 of the Zoning Regulations define an apartment and apartment house:

Apartment - one (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms.

Apartment house - any building or part of a building in which there are three (3) or more apartments, or three (3) or more apartments and one (1) or more bachelor apartments, providing accommodation on a monthly or longer basis.

Section 330 outlines the intent of the R-4 Zone District:

330 R-4 DISTRICTS: GENERAL PROVISIONS

330.1 The R-4 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 into dwellings for two (2) or more families.

330.2 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.

330.3 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. (emphasis added)

330.4 Except as provided in chapters 20 through 25 of this title, in an R-4 District, no building or premises shall be used and no building shall be erected or altered that is arranged, intended, or designed to be used except for one (1) or more of the uses listed in §§ 330 through 349.

Apartment buildings are not a permitted use in sections 330 through 349.

Section 403.2 summarizes the percentage of lot occupancy permitted for structures in the R-4 Zone District:

ZONE DISTRICT AND STRUCTURE	MAXIMUM PERCENTAGE OF LOT OCCUPANCY
R-4 Row dwelling, flat, church, or public school	60%
R-4 Conversion to multiple Dwelling	None Prescribed
R-4 All other structures	40%

The structure proposed for Lots 904 and 868 would qualify as "all other structures" within the R-4 Zone, since the zone district does not contemplate apartment buildings as a prescribed use.

Therefore, the lot occupancy proposed versus required for the lots is as follows:

Lot No.	Proposed # of Units	Lot Occupancy		
		Exist.	Proposed	Required
904	3	-	58%	40%
868	3	-	58%	40%

The applicant would have to show that meeting the 40% lot occupancy restriction would create a practical difficulty. In addition, in OP's opinion, the applicant would also need variance relief from §2002.6, which provides that a new structure shall not be erected to house a non-conforming use.

The applicant has asserted that the properties could not be developed economically due to the restrictions implied by NCRC's stipulation on the properties regarding the Area Medium Family Income and the Homestead Act, which would require the owner to set aside 8 of the 20 units for medium income families to benefit the community. However, no evidence of the alleged restrictions or economic details have been provided to document the "undue economic hardship" criteria.

Based on the above reasons, OP cannot recommend approval of the three-unit apartments. Granting the variance for these lots would impair the intent and purpose of the zone plan as embodied in the Zoning Regulations and Map, (including §§ 330.1 through 330.4, 2000.2 and 2006.2) since it would result in an intensified use beyond that intended by the R-4 Zone.

Special Exception : Section 410.12

The applicant amended the application to seek relief under the application of Section 410.12. Section 410.12 states that:

> **In the R-4 and R-5-A Districts, if approved by the Board of Zoning Adjustment as a special exception under § 3104, a group of one-family dwellings, flats, or apartment houses, or a combination of these buildings, with division walls from the ground up or from the lowest floor up, may be erected and be deemed a single building for the purpose of this title, when the group does not comply with the provisions of §§ 410.1 through 410.11, subject to the following conditions:**
>
> **(a) The provisions of §§ 410.4 and 410.5 shall be complied with; and**
> **(b) The erection of the group of buildings shall not affect adversely the present character or future development of the neighborhood.**

ZONING ADMINISTRATOR'S INTERPRETATION of SECTION 410.12

As previously stated in OP's May 3, 2005 report, the previous Zoning Administrator advised OP that the applicant could apply Section 410.12, to the extent that all the row dwellings would in fact be constructed as 2-units each, if all the construction were on one lot and not individual lots as proposed. It was further explained that Section 410 is not applicable to establish an apartment use in the R-4 Zone District and the applicant would need a use variance to supplement the application if Section 410.12 were applied.

OP does not support the application of this regulation to the present case, since the lots have not been re-subdivided into a single lot of record and the applicant would have to request relief through a use variance to permit the development of apartments in the R-4 Zone. The applicant has not supplied information as to how such relief could be granted.

RECOMMENDATION

OP has no objection to a proposal which would construct flats on all the lots owned by the applicant as analyzed in OP's May 3, 2005 report, since this is a matter of right use in the R-4 Zone District. **OP supports approval of area variances for Lots 904, and 868, if they are proposed for the development of flats.**

For the record, OP notes that Lot 867 is already developed as a two-unit flat and would not require relief from the Zone Regulations. The existing building could be renovated as part of the planned development of the surrounding lots. Lot 865 would not require relief if it is developed as a flat, since it exceeds the required minimum lot size for the R-4 zone district.

For reasons previously stated in this report, the applicant does not possess development rights to lots 888, 903, 869 and 866.

OP does not support the development of apartments proposed for Lots 904, and 868. Permitting the variance for apartments on these lots would be contrary to the intent of various sections of the Zone Regulations, including §§ 330.1, 330.2 2000.2 and 2006.2, and would result in an intensified use beyond that permitted in the R-4 zone.

Therefore, for the reasons discussed, OP recommends the following:

- **Denial of special exception relief to develop 3-unit apartment buildings on Lots 904, and 868.**

- **Variance relief from the lot area requirements to permit construction of 2-unit (flat) condominium dwellings for lots - Lots 904, 868** for reasons analyzed in OP's May 3, 2005 report.