GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17385
EXHIBIT NO. 27

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MEMORANDUM

TO: Board of Zoning Adjustment
FROM: Ellen McCarthy, Director, OP
DATE: November 1, 2005
SUBJECT: BZA Case #17385, 936 N Street NW

I. OFFICE OF PLANNING RECOMMENDATION-IN-BRIEF

The Office of Planning recommends **denial** of this application, having not met the relevant tests as outlined in the Zoning Regulations.

II. APPLICATION-IN-BRIEF

Location 936 N Street NW
Square 368, Lot 832; ANC 2F

Applicant: 936 N Street LLC

Zoning: R-4

Proposal: Permission to retain a partially constructed 4th floor addition.

Relief Sought: Variances to number of stories (§400) and to permit enlargement of an existing nonconforming structure (§2001.3), pursuant to §3103.

III. AREA AND SITE DESCRIPTION – Refer to Location Plan & Site Plan Attachments I & II

The property is located in Square 368, which is bound by N Street NW to the north, 10th Street NW to the west; M Street NW to the south, and 9th Street NW to the east. The east half of the square is predominantly zoned C-2-A (low to moderate density commercial), while the west half (within which the site sits) is zoned R-4. There is a comprehensive internal alley system. The square contains a mixture of generally low density residential and warehouse / commercial development. There are also a number of alley structures internal to the square. Directly to the east of the square is the north end of the new convention center. The entire



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square is within the Blagden Alley Historic District and the Shaw Historic District.

The subject property is just under 4,000 square feet in area. Directly to the east is a narrow alley. The site is developed with a 3 story building which appears vacant, but which the applicant advises has been, in the past, used as an apartment building with as many as 13 units.

IV. PROJECT DESCRIPTION

The applicant wishes to completely renovate the existing apartment building, to provide 7 residential units. The existing building is within the height limits for the zone, and is about 9,075 sq.ft. in total. The applicant wishes to construct a partial 4th floor addition, within the 40 foot height limit. A Building Permit for this work was issued by the Buildings and Land Regulation Administration (BLRA) for the "*Renovation of existing apartment building, reducing 13-units to 7-units, per submitted plans...*" The owner of the property commenced construction, but a stop work order was subsequently issued by BLRA, noting that what was described as a "mezzanine level" is considered a non-conforming 4th floor, requiring relief from zoning regulations.

V. RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN

The Comprehensive Plan Generalized Land Use Map designates the property as *moderate density residential*, for which row houses and garden apartments are the predominant use. The existing apartment use predates the current zoning and Comprehensive Plan language. While provision of housing and the rehabilitation of vacant housing stock for residential purposes are strongly supported in many sections of the Comprehensive Plan, enlargement of the existing non-conforming building, as proposed, would conflict with Comprehensive Plan provisions outlined in Chapter 1 - Major Themes and Chapter 13 - Ward 2:

§102 Stabilizing And Improving The District's Neighborhoods

§102.2 The District elements of the Plan propose that the residential character of neighborhoods be maintained and improved. Many city neighborhoods are historic or possess social, economic, and physical qualities that make them unique and desirable places in which to live. These qualities can also lead to development and redevelopment pressures that threaten the very qualities that make the neighborhoods desirable. These pressures and potential adverse impacts must be controlled to ensure that the character of our neighborhoods is preserved and enhanced.

§1326 Ward 2 Objectives For Residential Land Use

§1326.1 (a) To conserve and enhance existing residential neighborhoods in Ward 2;

§1327 Ward 2 Actions In Support Of Residential Land Use Objectives

§1327.1 (a) The District government should do the following:

(1) Maintain and enhance older established residential neighborhoods and areas, including ... Shaw;

(f) To carry out the policy in the Comprehensive Plan of "conserving and maintaining the District's sound, established neighborhoods through the strict application and enforcement of housing, building and zoning codes and maintenance of the general level of existing residential uses, densities, and heights," the city should continue to enforce the zoning regulations and recommendations of the Comprehensive Plan with respect to negative neighborhood impacts, especially of commercial expansion and the over-concentration of CBRFs;

VI. HISTORIC DISTRICTS

The subject site is within the Blagden Alley/Naylor Court and Shaw Historic Districts. As the additions are at the rear of the building, the design received no objections from the Historic Preservation Department staff.

VII. ZONING

The site is zoned R-4 - row dwellings, conversions and apartment residential use. Although the Zoning regulations acknowledges that the R-4 District includes a "*substantial number of conversions of the dwellings into dwellings for two (2) or more families*" (§330.1), the zone also specifically states that "*the R-4 District shall not be an apartment house district as contemplated under General Residence (R-5) Districts, since the conversion of existing structures shall be controlled by a minimum lot area per family requirement*" (§330.3), and "*... its primary purpose shall be the stabilization of remaining one-family dwellings*" (§330.2). An apartment building on this site conforming to the lot area restrictions would be limited to 4 units, as opposed to the 7 units proposed.

VIII. REQUESTED ZONING RELIEF - refer to Project Profile, Attachment III

The applicant has requested variance relief from:

1. **Number of Stories** – the zoning regulations permit 3 stories maximum within this zone, and the addition would result in a new, 4th story.

2. **To Permit an Addition to an Existing Non-Conforming Structure** - Section 2001.3 of the Zoning Regulation states that *"Enlargements or additions may be made to the* (existing non-conforming) *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."

   In this case, the existing structure does not conform to lot occupancy (although the addition does not increase the amount), and leads to the creation of a new non-conformity in terms of number of stories.

Does the property exhibit specific uniqueness with respect to exceptional shape, narrowness, shallowness, topography or other extraordinary or other exceptional situations or conditions?

No. At almost 4,000 square feet, the property is relatively large by R-4 standards. It is rectangular in shape and does not have a significant slope or other unique natural characteristic. The presence of an existing non-conformity can not be used as an exceptional circumstance to permit increased and additional non-conformities.

Rather, the language of the zoning regulation is specifically intended to discourage additions which would create new or expanded non-conformities which would be, in this case, for a non-conforming use. The location of the property within the historic district also does not constitute a unique circumstance.

Does the extraordinary or exceptional situation impose a practical difficulty that is unnecessarily burdensome to the applicant?

No. The application of the Zoning regulations does not result in a practical difficulty, and additional relief to further increase the non-conformity of the existing structure is not warranted. Section 2001.3, rather than constituting an unnecessary burden, is intended to ensure preservation of the character of lower density residential areas by limiting the ability to exacerbate non-conforming uses. Although the applicant states that "*The strict application of the 3-story limit would prohibit the provision of additional space...*", this does not pose a practical difficulty since the intent of the provision is to limit the provision of additional space, as the regulation is intended to preserve a low intensity form of development.

Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?

No. The relief requested would impair the intent, purpose, and integrity of the Zoning Regulations and Map, as the variances are contrary to the intent of the R-4 District. The applicant sites the regulations themselves as creating the exceptional condition leading to practical difficulty. As noted above, OP does not accept this argument, as §2001.3 is specifically intended to prevent increasing the size and density of buildings that are already non-conforming to post 1958 Zoning. The variance also expands an existing non-conforming use, which is considered contrary to the Map.

IX. ADVISORY NEIGHBORHOOD COMMISSION (ANC) COMMENTS

According to information contained on the ANC 2F website, at its September 28, 2005 meeting, the ANC2F Community Development Committee voted to recommend approval of this project following a presentation from the applicant and discussion of opposition of some area residents. At its October 5, 2005 meeting, the full ANC voted to accept this recommendation of approval. The ANC had, prior to the current variance application, voted to approve the proposal for this site, at its October 1, 2003 meeting.

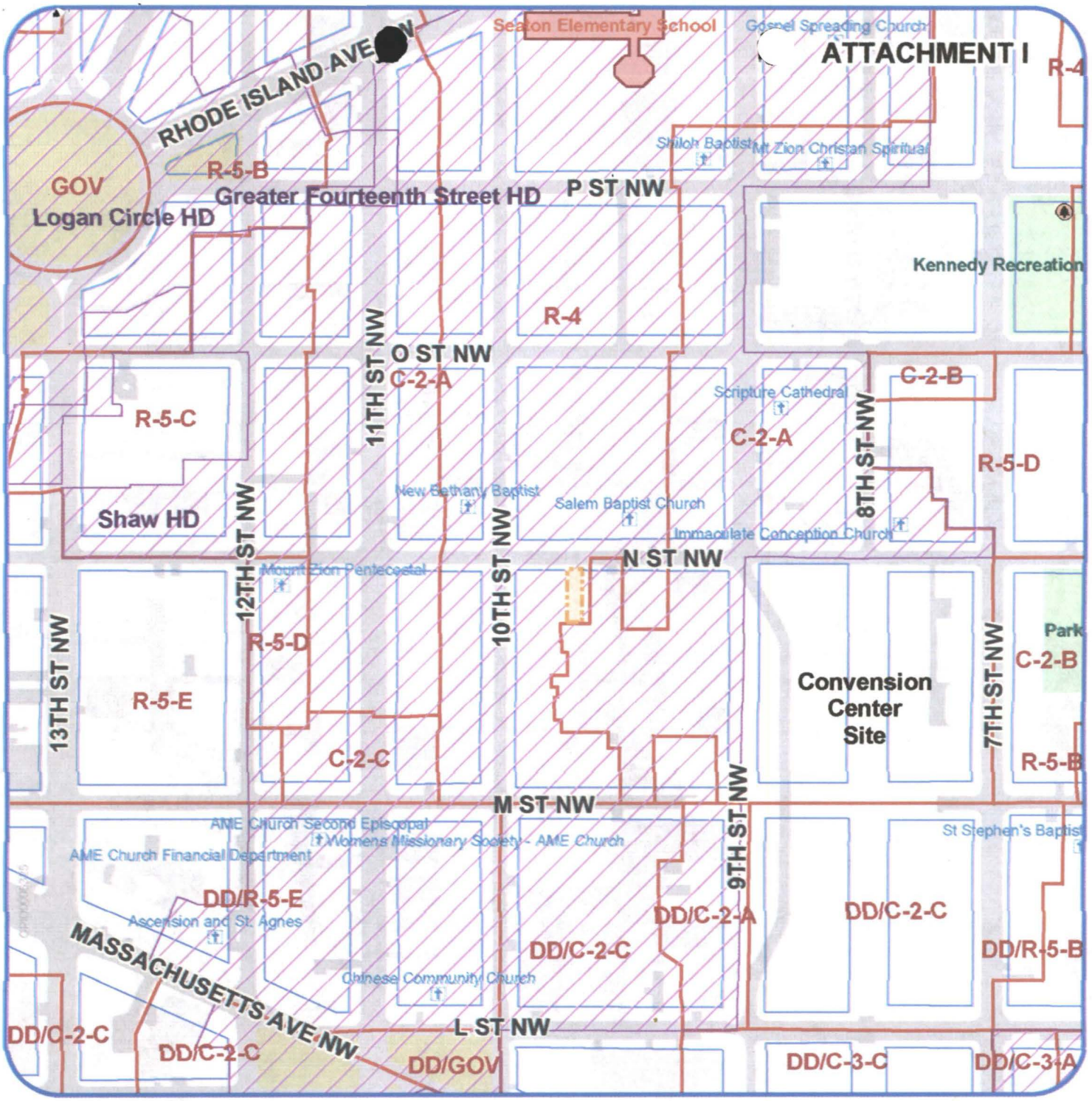
X. OP SUMMARY RECOMMENDATION

Although the Office of Planning strongly supports the rehabilitation of vacant or derelict properties for new housing, the applicant has not met the required variance tests as outlined in the Zoning Regulations. The applicant has not demonstrated that the additional space is required for the restoration of the building, or for the structure to function as the intended use. OP does not believe the test can be met for a proposal such as this - to permit the physical expansion of a building being put to a non-conforming apartment use in the R-4 (rowhouse) zone district. The proposal is not consistent with the Comprehensive Plan, and would undermine of the intent and integrity of the Zoning Regulations. As such, the Office of Planning recommends that this application be denied.

EM/jl

ATTACHMENTS:

I. Location Plan
II. Site Plan
III. Project Profile



BZA Case 17385 936 N Street NW - Context Plan

Legend

- Zoning Districts
- Historic Districts
- National Parks (NPS)
- DC Parks
- Public School Buildings

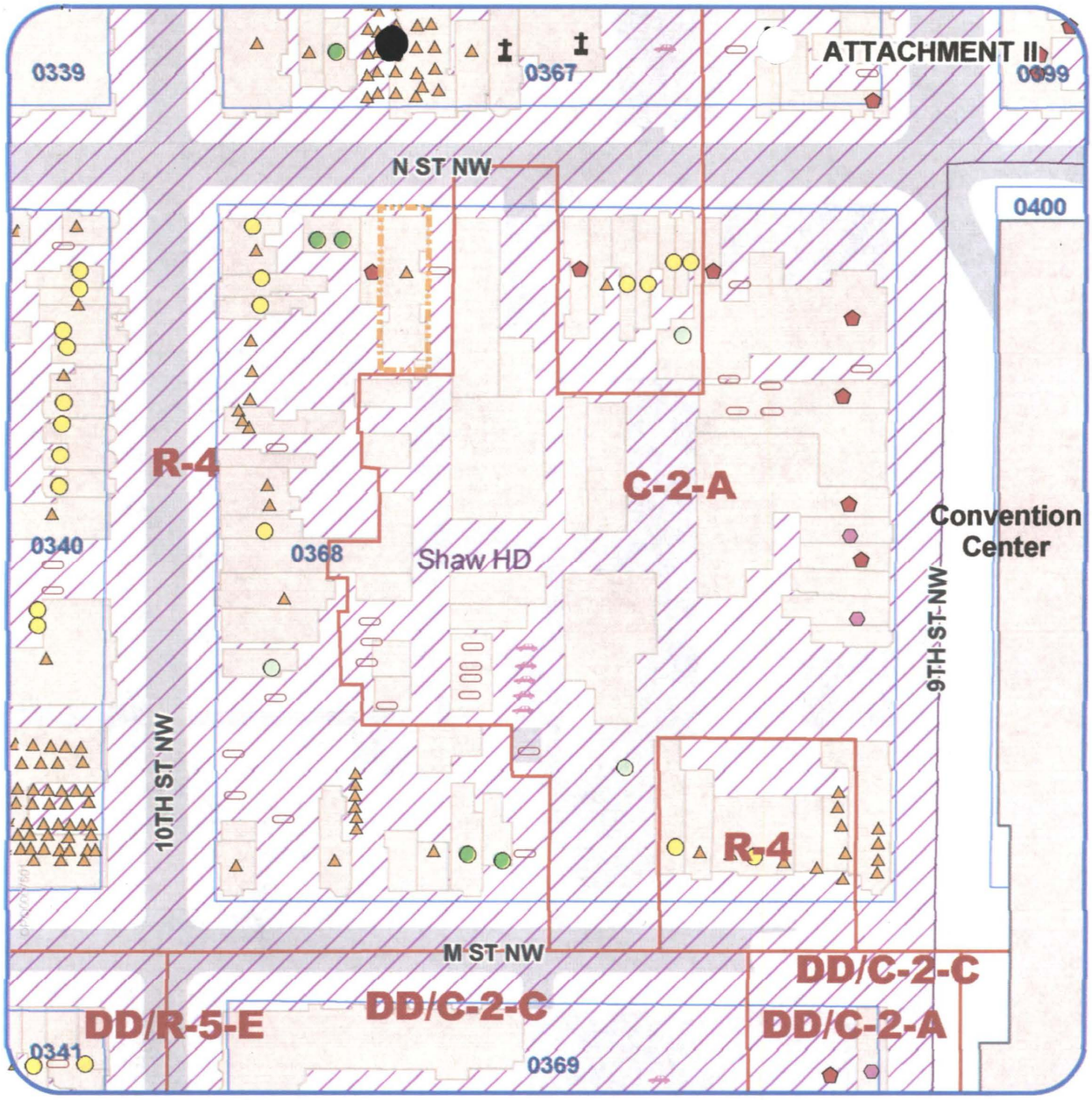
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★ ★ ★ **Government of the District of Columbia**
Anthony A. Williams, Mayor

Office of Planning ~ October, 2005

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.



Legend

- Rowhouse
- Detached Dwelling
- Semi-Detached Dwelling
- Multi-family
- Store
- Office
- Parking
- Religious
- Vacant
- Historic Districts

BZA Case 17385
936 N Street NW - Site Plan

N

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Standard	R-4 Zone Regulations	Existing	Proposed [1]	Variance
Use: (§330.5)	Row dwelling or flat, apartment conversion	Apartment building – up to 13 units [2]	Apartment building, 7 units	Existing non-conforming
Height	40 ft. max	32.7 ft.	39 ft.	Conforming
(§400)	3 stories	3 stories	4 [3]	**Variance requested**
Lot Area (§401)	4,000 sq.ft. min.	3,993.6 sq.ft.	Unchanged	Existing non-conforming
Lot Width (§401)	40 ft. min.	33.3 ft.	Unchanged	Existing non-conforming
Floor Area Ratio: (§402)	None prescribed	9,075 sq.ft. (FAR of 2.27)	9,945 sq.ft. total, (FAR of 2.49) includes 870 sq.ft. 4th floor	Conforming
Lot Occupancy: (§§403 & 2001.3)	40% max (1,597 sq.ft.)	78.3% (3,126.9 sq.ft.)	78.3% (3,126.9 sq.ft.)	Existing non-conforming
Rear Yard: (§404)	20 ft min.	15.2 ft.	20.2 ft. for new construction	New construction conforming
Side Yard: (§§405.3 / 405.9)	Not required	0 ft.	0 ft.	Conforming
Addition to non-conforming structure (§2101.3)	Not permitted if the building is non-conforming to lot occupancy, or if the addition would increase or create a non-conformity	Non-conforming for lot occupancy	Non-conforming for lot occupancy and number of stories	**Variance requested**
Parking: (§2101.1)	None required – within a historic district	1, accessory garage	1	Conforming

[1] Information provided by the applicant.
[2] Existing non-conforming use, predating the current zoning regulations.
[3] The Zoning Administrator has determined that the uppermost level is a story rather than a mezzanine.