GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17388
EXHIBIT NO. 28

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D.C. OFFICE OF ZONING

RECEIVED

SUPPLEMENTAL REPORT

TO: Board of Zoning Adjustment

FROM: JLS for Ellen McCarthy, Director, OP

DATE: November 23, 2005

SUBJECT: BZA Case #17388, 1360 Kenyon Street NW

I. OFFICE OF PLANNING RECOMMENDATION-IN-BRIEF

The Office of Planning continues to recommends **denial** of this application.

II. APPLICATION-IN-BRIEF

Location 1360 Kenyon Street NW, Square 2848, Lot 44; ANC 1A

Applicant: Taylor Property Development LLC, owner

Zoning: R-4

Proposal: Addition to an existing non-conforming building within the R-4 District.

Relief Sought: Variance to permit enlargement of an existing nonconforming structure (§2001.3), pursuant to §3103.

III. BACKGROUND – Refer to Location Plan & Site Plan Attachments I & II

On November 15, 2005, the Board of Zoning Adjustment (BZA) held a public hearing to consider Application No. 17388, which would permit an addition to an existing structure at 1360 Kenyon Street NW. The existing structure is a rowhouse in the R-4 District, which has been utilized as a 9 unit apartment building. The owner wishes to renovate the structure, and to construct additional square footage. The BZA heard testimony and received additional information from the applicant and from the Office of Planning (OP.

The BZA closed the hearing, but left the record open for receipt of a supplemental report from OP, with analysis of and response to the additional information from the applicant, as well as for applicant response to the OP supplemental report.

A more detailed summary of the proposal and OP analysis of the proposal against the Zoning Regulation variance tests can be found in the OP report dated November 8, 2005.

IV. APPLICANT'S ECONOMIC FEASABILITY ANALYSIS

In the time available, OP undertook a cursory analysis of the applicant's economic feasibility study.

The applicant provided an analysis of the anticipated costs and revenues for the project, under a number of scenarios labeled Pessimistic, Realistic, and Optimistic, each for an "As Is" situation – renovations to the existing structure with no additions, and a "W/Additions" scenario. The applicant's analysis indicates that under all three scenarios, the "As is" situation would result in a financial loss, while the "w/ additions" situation would result in a profit. The following table includes only the "realistic" or median scenario; OP comments would be the same for all scenarios:

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	As is	W/Additions	OP Notes
Assumptions:			
GSF	5,118	6,510	1
Construction cost / sq.ft.	$140	$140	2
salable sq.ft.	3,590	4,739	3
sales price / sq.ft.	$525	$525	4
Revenue: Sales	**$1,884,750**	**$2,487,975**	5
Expenses:			
Site Purchase	$1,050,000	$1,050,000	6
Construction	$716,520	$911,400	
Arch / Eng	$76,000	$76,000	7
Zoning Variance	$27,000	$27,000	8
Finance / Carrying	$78,000	$78,000	9
Insurance	$9,000	$9,000	10
Sales Commission / Closings	$122,509	$161,718	
TOTAL Expenses	**$2,079,029**	**$2,313,118**	11
Profit / Loss	**-$194,279**	**$174,857**	

1. The GSF does not correspond to the square footages submitted with the application, but OP suspects that this is the result of basement space which does not count in square footage for the purposes of calculating FAR.

2. Renovation is usually less expensive than addition, so it is unusual that construction costs per square foot are the same for both options. However, renovation costs increase if major structural upgrading of the building is required, which may be the case in this instance. For example, OP notes that the application includes "digging out" the basement to provide greater head height for an acceptable unit.

3. The salable square footage is about 70% of the GSF. The floor plans do not seem to indicate that this much of the structure is taken up in unsalable common space. A higher percentage of salable square footage would make either option more profitable.

4. The sales price per square foot – between $500 and $525 / sq.ft. - appears to be in line with current expectations. Housing market fluctuations may increase or lower this figure prior to actual unit sale.

5. Average price per unit would be about $471,188 per unit for 4 units in the "as is" scenario; and $497,595 per unit for 5 units n the "w/ additions" scenario. In the time available, OP was not able to determine if this is a reasonable expectation for a 2 bedroom unit in this neighborhood.

6. OP's major concern is with the Site Purchase Amount. In testimony at the Hearing, the applicant clearly indicated that the economic feasibility analysis was completed **prior to** purchase of the property, and the purchase price is clearly too high for the kind of renovation that the applicant wishes to do – feasibility is dependant on obtaining variance relief for additional square footage. The OP report discusses this item in more detail below.

7. It appears unusual that the Architecture / Engineering costs would be identical for the first option which involves only an extensive renovation, and the second option which includes all of those renovations plus the design of an extensive addition.

8. There would be no zoning variance cost with the first (as is) option, so the $27,000 should not be applied. However, this amount may include Building Permit costs, which would apply to both options.

9. OP is unsure why Finance / Carrying costs would be the same in both options – greater construction costs (the "w/ additions" scenario) normally result in greater finance and carrying costs (i.e. more money borrowed over a longer construction period).

10. Likewise, insurance costs would normally be greater for a 25% larger building project.

11. Average cost per unit would be about $518,299 per unit for 4 units in the "as is" scenario; and $461,084 per unit for 5 units in the "w/ additions" scenario.

As noted above, of major concern to OP is the cost of the building and the applicant's testimony at the November 15 hearing that the economic feasibility study was completed prior to the owner placing an offer on the subject property. The owner, therefore, presumably went into the purchase with the presumption of obtaining variance relief to allow a 25% addition to the structure. Otherwise, the purchase price – however it was set – does not make economic sense, and a much lower price would be warranted. A lower price would also appear to be warranted by a cursory examination of about 65 dwelling units / buildings sold between the end of 2003 and mid 2005:

- The subject property appears to be the only sale of a rowhouse conversion to walk-up apartments, although exact information (such as number of units) of other properties is not available on the District GIS system. This property had a total value (land + improvements) of $276,540, and sold to the current owner (the applicant) in November of 2004 for $1,030,000 – almost 4 times (372%) the assessed value. This is by far the largest differential between assessed value and sale price in the area.

- 11 "residential conversions to 5 units or less" structures were sold, for an average of just over $582,000, about 135% of the assessed value on average.

- 39 row dwellings were sold, for an average price of about $414,000, slightly more than assessed value (115%).

- 3 residential flats were sold for an average price of $771,677, more than double (average of 234%) of the assessed value.

While each variance is considered on its own merits, OP is very concerned that approval of this variance would send a clear message to the development community to base pre-purchase economic feasibility assumptions on the assumption that additional square footage will be obtainable through the variance process, thus creating instability in the valuation of property throughout the District, reducing affordability, and undermining the intent and the integrity of the zoning regulations. OP is also concerned about "fair competition" in the property acquisition process, if some potential purchasers presume additional (albeit not by right) development potential and others assume current

zoning regulation limits, thus, over the long term, potentially hindering the ability of smaller developers to follow regulations and to invest in a predictable District market.

V. APPLICANT'S REBUTTAL TO THE REPORT OF OP

The applicant has provided to OP a copy of expert testimony in rebuttal to the OP report from the Land Use, Planning, and zoning Consultant to Holland & Knight LLP. This rebuttal provides a comprehensive and interesting history for zoning and development on this property and on this lot, and then provides a more cursory analysis of the requested variance against the standard Zoning Regulation test.

With regards to test 1 - *Does the property exhibit specific uniqueness with respect to exceptional shape, narrowness, shallowness, topography or other extraordinary or other exceptional situations or conditions?* – the document notes (Section VI) that there are no other walkup apartment buildings of close to 9 small units within a converted rowhouse in the area. This appears to be the case.

OP conducted a cursory analysis, using District GIS information. This data does not provide the level of detail which would be most helpful – for example, it does not indicate number of units in other multi-unit buildings, and the land use designation does not always fully address on-site conditions. A more accurate and up to date process would be an on-site survey and review of building permits for the area, but this was not possible, and would not have altered the OP recommendation. As such, this is not intended to be a "scientific" analysis, rather it is something of a snapshot of the area. The OP study area encompassed all or part of 15 blocks between 14th Street NW and Sherman Ave. NW, properties facing Kenyon, Irving, and Columbia Streets (see map attachment I). Most of this area is zoned R-4, although some of it is zoned R-5-D along Columbia Avenue, and C-3-A along 14th Street. Within these geographical boundaries:

- Almost all properties are put to some form of residential use, with only a few educational, religious, and commercial buildings. There are a number of properties listed as "vacant".

- There were 12 buildings listed as "residential apartment walk-up", but most of these are clearly apartment buildings, and all except one are on lots larger than the subject site.

- The majority of the buildings are listed as "row dwellings" (more than 56% of all dwelling units) or conversions with less than 5 units (about 18% of all dwelling units). However, District data bases did not indicate the number of units, the tenure, or any other potentially pertinent information.

However, neither the rebuttal, nor the applicant's submission or testimony, clarifies the nexus between this possibly unique aspect, and the resulting requirement for a variance to enlarge the existing non-conformity. The rectangular property is clearly not unique in any way; and the structure itself does not appear to be unique – only the use may be somewhat different. The applicant has not described how this existing use – a rowhouse utilized as a 9 unit apartment - results in a necessity for an enlargement.

With regards to test #2 - *Does the extraordinary or exceptional situation impose a practical difficulty that is unnecessarily burdensome to the applicant?* – the rebuttal does not provide additional analysis. The rebuttal does describes the renovation as constituting a reduction in density from 9 to 5 units. OP has no concerns with a reduction in number of units to create larger, more habitable units, but this

does not constitute a reduction in density, nor has the applicant shown how this is relevant to the relief requested for an increase in square footage of about 25%. OP does not accept the applicant's argument that the provisions of Section 2001.3 itself constitutes an unnecessary burden, as this section is specifically intended to ensure preservation of the character of lower density residential areas by limiting the ability to exacerbate apartment uses.

With regards to test #3 - *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* (Section VIII), the rebuttal correctly describes the R-4 District as contemplating that "existing structures will remain (read together with Chapter 20) as long as they do not expand". The document then states that "this building expands upward in its rear". OP agrees that the building is expanding. The regulations do not state that the expansion can only be vertical or horizontal or sideways. Rather, the intent is simply that existing grandfathered apartment uses shall be allowed to remain, but not to expand. Nor does the regulation make any reference to the number of units (other than to limit the number of units for new conversions), so the number of units is not relevant to this application. Finally, the applicant's apparent decision to purchase a property with the presumption of obtaining zoning relief impairs the integrity and intent of the zoning regulations.

The rebuttal is also correct in noting that the area is designated moderate density on the Comprehensive Plan Generalized Land Use Map, but, again, the application before the Board is not for more or less units, but for more building area than allowed or contemplated by the Zoning regulations, and OP has not contended that the additional density would push the building into a more intense designation. Finally, OP reiterates that there is no nexus between the relief requested and any uniqueness associated with the property.

VI. OP SUMMARY RECOMMENDATION

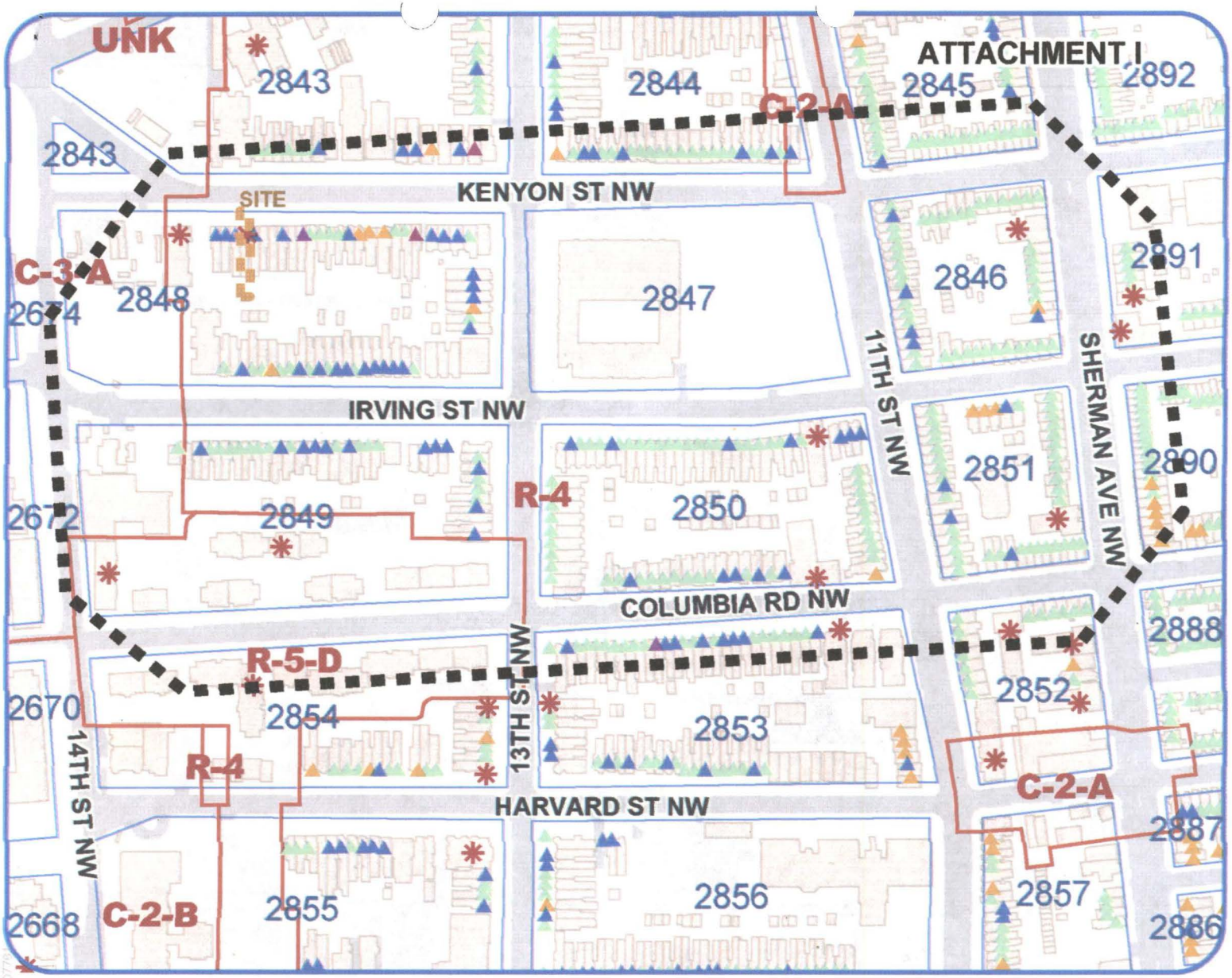
OP strongly encourages the rehabilitation of vacant or derelict properties for new housing. The District needs and supports small developers like the applicant who are willing and able to undertake small redevelopment projects like this to improve neighborhoods. However, there must also be an assumption in the development community that the zoning regulations have a purpose, and OP continues to assert that the applicant has not met the required variance tests. Nor has the applicant demonstrated that the additional space is required for the restoration of the building or for the structure to function as the intended use, particularly since the applicant was aware that the price he was willing to offer for the property required variances for a considerable amount of additional density to make the development economically viable. Any economic difficulty was self imposed.

While there are limited grounds for approval of a variance to this section of the zoning regulations – structural difficulties or need to upgrade an existing building for ADA or building code requirements are examples – no such conditions exist in this case. 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. Map of OP study area



BZA Case 17388
1360 Kenyon Street NW - Land Use

Legend

- Residential - Apartment Walkup
- Residential Conversion, more than 5 units
- Residential Conversion, 5 units
- Residential Conversion, less than 5 units
- Flat, less than 5 units
- Row Dwelling

N

1:3,200

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

Office of Planning ~ November, 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.