GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

**MEMORANDUM**

**TO:** Board of Zoning Adjustment

**FROM:** Ellen McCarthy, Director, OP

**DATE:** November 15, 2005

**SUBJECT:** BZA Case #17392, 1700 Q Street NW

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## 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

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17392
EXHIBIT NO. 31

**Location** 1700 Q Street NW
Square 156, Lot 264; ANC 2B

**Applicant:** Babak Movahedi, owner

**Zoning:** DC/R-5-B

**Proposal:** Conversion of a dwelling unit to office.

**Relief Sought:** Use Variance to allow a continuation of a home occupations with 5 employees, pursuant to §3103; Special Exception to permit the home occupation to occupy greater than 25% of the above grade space, pursuant to §3104.

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

The subject property is within Square 156, which is bound by Q Street NW to the north; 17th Street NW to the east; Church Street NW to the south, and 18th Street NW to the west. The square is mainly developed with rowhouses, although there are some apartment buildings. There is an internal alley system with access from 18th Street and Q Street NW. The entire square is located at the heart of the Dupont Circle Historic District, and is within the Dupont Circle Overlay District. Although there is no commercial development on this side of 17th Street NW on this block, 17th Street is lined with commercial establishments – restaurants, nightclubs, and small retail businesses on the east (opposite) side of the street, and further up the street from the site.




Board of Zoning Adjustment
District of Columbia
CASE NO. 17392
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The subject property is at the corner of Q and 17th Streets NW. It is developed with a large rowhouse, which was constructed in the 1890's and used as a single family dwelling since that time. The current owner purchased the property in 2001, and has been residing and operating a home based business out of the building. At 4,000 square feet in area, the building is large, although Q Street NW is noted for large rowhouses.

## IV. PROJECT DESCRIPTION

The applicant currently resides in the building and operates a real estate settlement home occupation. No alterations, interior or exterior, are proposed as part of this application. The applicant originally requested a use variance to allow the building to be utilized entirely as an office. However, due to neighborhood opposition, the application was amended to request relief from specific aspects of the home based occupation requirements, to allow the structure to remain a dwelling with a larger than normal home based business, as the owner wishes to devote 33% (rather than the permitted 25%) of the above basement area to the business, and to have 5 employees (rather than the maximum of 1 non-resident employee). The Office of the Attorney General has advised that the latter relief is considered a "use" variance.

## V. RELATIONSHIP OF THE APPLICATION TO THE COMPREHENSIVE PLAN

As shown on Map attachment III, the property is designated mixed medium density residential (multiple unit housing) / low density commercial (low scale shopping and service) on the Comprehensive Plan Generalized Land Use Map. In this respect the Map is not consistent with the R-5-B zoning, which is paramount and does not permit commercial use of the site. The map designation is intended to be interpreted more broadly than the zoning regulations, and to provide guidance for the more specific mapping that occurs through zoning. Mixed use designation also does not indicate that each property is intended to contain each of the land use types, but that residential and commercial uses may exist within the boundaries of the land use designation.

Most of the other properties along this section of 17th Street NW, to the north (across Q Street) and east (across 17th Street) with this mixed use Map designation are zoned D/DC/C-2-B, a zone which permits commercial, residential, or mixed use development. Properties to the south and west of the subject site have a designation of moderate density residential, in accordance with the DC/R-5-B zoning.

The proposal, to permit a larger than anticipated home occupation on this site, would have relatively little impact on the Comprehensive Plan major themes, but would be considered inconsistent with Ward 2 goals and objectives related to the residential neighborhood stability and character preservation. Elements related to economic development could be seen to support the proposal, although a home occupation is a permitted use and the application is not to permit a home occupation, but rather to permit a larger than otherwise allowed home occupation.

*1325 Ward 2 Residential Land Use*

*1325.2 The overriding issues for Ward 2 neighborhoods are the threat of commercial encroachment (including hotels and medical clinics/doctors' offices), the impact from uses such as community based residential facilities, university expansions, chanceries, and numerous parking and traffic problems.*

*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 ... Dupont Circle;*

*(2) Maintain as a residential area to promote the retention and expansion of current residential uses, and discourage the expansion of commercial uses, the Dupont Circle area north of Massachusetts Avenue N.W. and east of Connecticut Avenue, between 15th Street on the east and Florida Avenue on the north; and south of Massachusetts Avenue, west of Connecticut Avenue N.W. to 23rd Street (Rock Creek Park) and north of N Street N.W.;*

*1363 Ward 2 The Neighborhood Ring: Dupont Circle*

*1363.1 The general pattern of development in Dupont Circle is established. Commercial and residential renovation and infill development will continue, guided by the constraints of the Dupont Circle Historic District and the Dupont Circle Overlay District. The area is becoming increasingly attractive for in-town living as a result of the growth of Connecticut Avenue and Downtown as employment centers, and by commercial revitalization along Connecticut Avenue, 17th Street, and U Street to the north. The major pressure is the continuing erosion of residential use by office use and the displacement of local services by retail uses that attract a broader market. Restaurant and entertainment uses in the Connecticut Avenue areas are having an increasing impact on residential areas in terms of evening parking. The opportunity remains to retain and improve this unique in-town neighborhood.*

## VI. SITE AND AREA ZONING

The site, and most of the square, is zoned DC/R-5-B. R-5-B is a residential district, with moderate density apartment houses being the predominant use. R-5-B, like all zones, permits a variety of residential type uses, as well as private clubs, museums, clinics, and elderly / child development centers. Other uses are permitted by special exception. Home occupations are permitted by right, provided the home occupation satisfies a number of specific criteria outlined in §203 on the zoning regulations, to ensure that they are "*compatible with the residential neighborhood in which they are located ... to protect residential areas from adverse effects of activities associated with home occupations*" (§203.1). Permitted home occupations include tutoring, dressmaking / tailoring; artist or craftsperson; telephone answering service or sales; computer programming, typing / word processing; mail order business; hair stylist / barber; home office for professionals or businesspersons; and small bed and breakfast. The applicant's type of business – real estate settlement – is considered a permitted type of home occupation.

The Dupont Circle (DC) Overlay is intended to "*retain its low scale, predominantly residential character, independent small retail businesses, human scale streetscapes, and historic character...*" (§1501.1). The DC Overly does not amend specific regulations for the underlying zones, but effectively eliminates additional height and density that might otherwise be possible through a Planned Unit Development (§1503.1). As such, CG Overlay provisions have no impact on the proposal, although the proposal could be considered to be inconsistent with its intent or purpose statement, to retain the overall residential character of the area.

Properties directly opposite the subject site, properties facing 17th Street both north and east of the site, are zoned D/DC/C-2-B, medium density mixed use commercial / residential, also within the DC

Overlay and the Mixed Use Diplomatic (D) Overlay. A portion of the square along 18th Street NW is zoned DC/SP-1, medium density residential / limited office.

## VII. REQUESTED ZONING RELIEF - refer to Project Profile, Attachment IV

As noted above, the owner has requested the following relief for the home occupation:

| Regulation | Permitted | Proposed | Relief |
|---|---|---|---|
| 1. §203.4 (b) | Limits area of home based business to a maximum of 25% of above basement level area | 33% of above basement area | **Special Exception,** pursuant to §203.10 |
| 2. §203.4 (d) | Limits number of non-resident workers to 1 maximum without special exception approval | | |
| §203.10 (c) | Further limits number of non-resident workers to 2 without variance approval | 5 total workers | **Use variance requested** |

The zoning regulations include a long list of criteria related to the operation of a home occupation within a dwelling. Prior to analysis of the proposal against the relevant variance and special exception tests, following is an analysis of the proposal against these criteria:

| Regulation | OP Analysis |
|---|---|
| *203.1 The purpose of the home occupation provisions shall be to allow home occupations as accessory uses to residential uses; provided, that they are compatible with the residential neighborhood in which they are located. The intent is to protect residential areas from adverse effects of activities associated with home occupations, while permitting residents of the community the opportunity to use the home as a workplace and source of livelihood under specific regulatory conditions.* | While a home occupation is a permitted use, the OAG has advised that the requested variance is a "use" variance, in that it would permit a non-conforming scale of office use within the residential zone. |
| *203.4 A practitioner of a home occupation, and any owner of a dwelling unit in which a home occupation is practiced, shall comply with the requirements of §§ 203.5 and 203.6, and with the following conditions and requirements:* | |
| *(a) A home occupation shall be clearly secondary to the use of a dwelling unit for residential purposes;* | A greater percentage of the building to be devoted to the home occupation than anticipated by regulations is proposed. However, the structure would continue to be used as a residence. |
| *(b) Except as provided in §§ 203.7(c) and 203.8(d), no more than the larger of two hundred fifty square feet (250 ft.2) or twenty-five percent (25%) of the floor area of the dwelling, excluding basement or any accessory structure, shall be utilized in the home occupation;* | Special Exception requested for an area of about 1,000 sq.ft., 33% of building area. |

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| *(c) The practitioner shall store all materials or finished products within the floor area that is designated in paragraph (b) of this subsection, or in a basement or accessory structure;* | Given the form of business, there would appear to be limited need for storage of materials and ample room within the home occupation or basement area to do so. |
| *(d) No more than one (1) person who is not a resident of the dwelling unit shall be engaged or employed in the home occupation;* | A variance has been requested for 5 employees |
| *(e) The dwelling unit owner and the practitioner shall maintain the residential character and appearance of the dwelling unit and lot;* | The applicant indicates that the impressive character of the historic building will be maintained, and no external alterations are proposed. Any significant external alteration would require Historic Preservation review and approval. |
| *(f) No interior structural alteration shall be permitted if it would make it difficult to return the premises to use that is exclusively residential;* | The applicant indicates that there will be no interior alterations as part of this application. |
| *(g) Neither the practitioner nor any other person shall conduct or allow any operations outside a structure, nor maintain or allow any storage or other unsightly condition outside a structure;* | Applicant indicates that they will conform to this regulation. There is little private outdoor space available. |
| *(h) Neither the practitioner nor any other person shall use any equipment or process that creates visual or audible electrical interference in television or radio receivers outside the subject home, or that causes fluctuations in line voltage outside the subject home;* | Applicant indicates that they will conform to this regulation. |
| *(i) The use shall produce no noxious odors, vibrations, glare, or fumes that are detectable to normal sensory perception outside the subject home;* | Applicant indicates that they will conform to this regulation. |
| *(j) The use shall not produce a level of noise that exceeds the level normally associated with the category of dwelling or the immediate neighborhood;* | Applicant indicates that they will conform to this regulation. |
| *(k) No more than two (2) vehicles may be used in the practice of the home occupation;* | Applicant indicates that they will conform to this regulation, as there will be no more than 2 vehicles used in the home occupation practice. |
| *(l) Vehicular trips to the premises by visitors, customers, and delivery persons shall not exceed eight (8) trips daily on a regular and continuing basis;* | Applicant indicates that they will conform to this regulation – although parking is not required, off-site parking for customers has been arranged. |
| *(m) The practitioner shall have no more than eight (8) clients or customers on the premises in any one (1) hour period; and* | The applicant indicates that they will conform to this regulation. |

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|---|---|
| *(n) If more than one (1) home occupation is practiced in a dwelling unit, the cumulative impact of all such home occupations, considered as a whole, shall not exceed any of the standards set forth in paragraphs (a) through (m) of this subsection.* | Not applicable – only one home occupation is proposed. |
| *203.5 A sign on a dwelling or building in which a home occupation is practiced shall be permitted, subject to the following conditions:* | Applicant indicates that they will conform to all signage regulations. |
| *203.6 Sales shall be permitted, subject to the following conditions:* | Applicant indicates that they will conform to this regulation as there would be no goods sold. |
| *203.7 The following uses shall be allowed as home occupations; provided, that the conditions specified in §§ 203.4 through 203.6 are met at the time of the establishment of the home occupation, and maintained on a continuing basis. The uses listed under this subsection shall include similar uses in each category:* | |
| *(l) Home office of a businessperson, sales person, or manufacturer's representative; provided, that the dwelling is not used as a gathering point for workers who are on the way to another work site.* | Applicant's business would appear to fall under this category, so conforms. |
| *203.8 An owner of a dwelling may operate a Bed and Breakfast facility, offering rooms and breakfast to guests on a daily basis; provided:* | Not applicable |
| *203.10 A home occupation that is not permitted or prohibited in this section may be permitted as a special exception by the Board of Zoning Adjustment under § 3104; provided:* | |
| *(a) The proposed use and related conditions shall be consistent with the purposes set forth in § 203.1 and shall generally comply with the requirements of §§ 203.4 through 203.8, subject to specific findings and conditions of the Board in each case;* | The proposal is not consistent with § 203.1 and requires relief from aspects of § 203.4 relative to number of employees and percentage of structure utilized for the home occupation.. |
| *(b) An applicant for a home occupation that is permitted by §§ 203.6 through 203.8 may request the Board to modify no more than two (2) of the conditions enumerated in §§ 203.4 through 203.8; provided that the general purposes and intent of this section are complied with;* | The applicant is requesting special exception relief for only one aspect – total area of the home devoted to home occupation. |
| *(c) In no case shall more than two (2) persons who are not residents of the subject home be permitted as employees of the home occupation, and those persons shall not be co-practitioners of the profession;* | Variance requested to allow 5 employees, 4 more than permitted. |
| *(d) Any request to modify more than two (2) of the requirements found in §§ 203.4 through 203.8 shall be deemed a request for a variance. However, a person with a demonstrated physical handicap may be permitted special consideration by the Board, and a request for more than two (2) modifications of the Home Occupation requirements shall be considered in this instance as a special exception governed by this subsection; and* | Not applicable. |

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| *(e) In considering any request for approval under this subsection, the Board may impose conditions relating to operating conditions of the home occupation, parking, screening, or other requirements as it deems necessary to protect adjacent and nearby properties consistent with the general purpose and intent of this section.* | OP has no recommendations for specific requirements. The continued provision of off-site dedicated parking is supported to minimize traffic and parking issues in this neighborhood where parking is in high demand. |

**1. Use Variance:**

The applicant has requested a use variance to permit the continuation of 5 employees for the home occupation.

**Does the property exhibit specific uniqueness with respect to exceptional shape, narrowness, shallowness, topography or other extraordinary or other exceptional situations or conditions that impose an exceptional hardship to the applicant?**

The subject property was developed with a use conforming to the Zoning Regulations – a single family residence, so there are no conditions associated with the lot itself that preclude the use of the property for a use permitted as a matter of right or as a special exception. Rather, the dwelling was used as a residence for over 100 years, and continues to be utilized as a residence, albeit with a home occupation. That the property has no rear yard is also not exceptional, particularly for corner lots such as this, nor would this prevent the dwelling from being put to a conforming use. The presence of an existing (historic) nonconformity cannot normally be used to justify making the site more non-conforming through a use variance. The house is not considered exceptionally large for this street, and not so large as to prevent its use in a conforming manner.

With regards noise, 14th Street is a vibrant commercial corridor. This character has been in place for many years and there are many other residential units facing this street and facing other vibrant commercial corridors. In fact, many zoning and planning initiatives encourage the provision of housing in locations such as this and such housing tends to be in high demand.

Finally, the applicant contends that the cost of purchase, upkeep, and taxes cannot be justified without some alternate or additional use being made of the property. The applicant has provided no documentation to support this claim, but even if this were so, the applicant has also not indicated why alternate or additional uses which conform to zoning regulations are not possible.

As such, the Office of Planning does not find the subject property to be exceptional, or to possess conditions which result in an exceptional hardship to the owner.

**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?**

The regulations are intended to preserve the residential character of the residential zones, and to limit the size of home occupations, to ensure that they do not adversely impact the prevailing residential character. The applicant's contention is that the home occupation requires the participation of five employees who do not live on the premises to be successful indicates that the scale of the business is not an appropriate one for a home occupation, not that the regulations require relaxation to permit the specific use. The proposal is also contrary to the intent of the Dupont Circle Overlay, intended to, among other things, preserve the predominantly residential character of the area.

### 1. Special Exception Relief:

The applicant has also requested special exception relief to permit greater than 25% of area of the dwelling to be utilized for the home based business. To some extent, the need for this special exception may flow directly from the requested use variance for number of employees, described above. However, OP analysis is against the less stringent special exception test of Section 3104.

**Will the special exception be in harmony with the general purpose and intent of the Zoning regulations and Maps?**

The zoning regulations pertaining to home occupations are drafted to limit the size of home occupations. Most residences (although certainly not all) have 1 to 3 levels above grade. The figure of 25% maximum limits the size of the home occupation to less than the equivalent of one complete level for the normal sized dwelling, to ensure that the structure remains a primarily residential building. More importantly, the zoning regulations are intended to encourage the preservation of the residential character of the residential zones, and the proposed level of use is considered contrary to this overriding objective.

**Will the special exception adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps?**

The request to utilize a greater than otherwise permitted amount of building area for the home occupation would not, in this case, appear to have an adverse impact on the enjoyment or use of neighboring properties. The space is entirely internal to the building; there is no external component to this business, and the applicant is not requesting additions to the structure. Rather, it is possible that the proposed use would have less of an impact on neighboring properties than some forms of conforming or special exception uses. However, the ANC and other neighborhood groups are concerned that permitting this scale of home occupation use could lead to similar or greater requests within the neighborhood, which cumulatively, could have a great impact on their long standing efforts to retain the character of Dupont Circle residential streets.

## VIII. ADVISORY NEIGHBORHOOD COMMISSION (ANC) COMMENTS

At its November 9, 2005 meeting, ANC 2B voted to take no position on the requested special exception request for home occupation area, and voted to oppose the requested variance to number of employees, noting that the applicant has not met the required zoning regulation tests.

## IX. OP SUMMARY RECOMMENDATION

The applicant has not adequately met the required use variance or special exception tests as outlined in the Zoning Regulations. The applicant has not demonstrated that the building cannot reasonably be used as a permitted use - a residence, a residence with a home occupation with a permitted number of employees, or some other use permitted by right or by special exception. As such, the Office of Planning recommends that this application be denied.

EM/jl

**ATTACHMENTS:**

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




## Legend

- Property Squares
- Zoning Districts
- Public School Buildings
- DC Parks
- Historic Districts

# BZA Case 17392
# 1700 Q Street NW - Context Plan

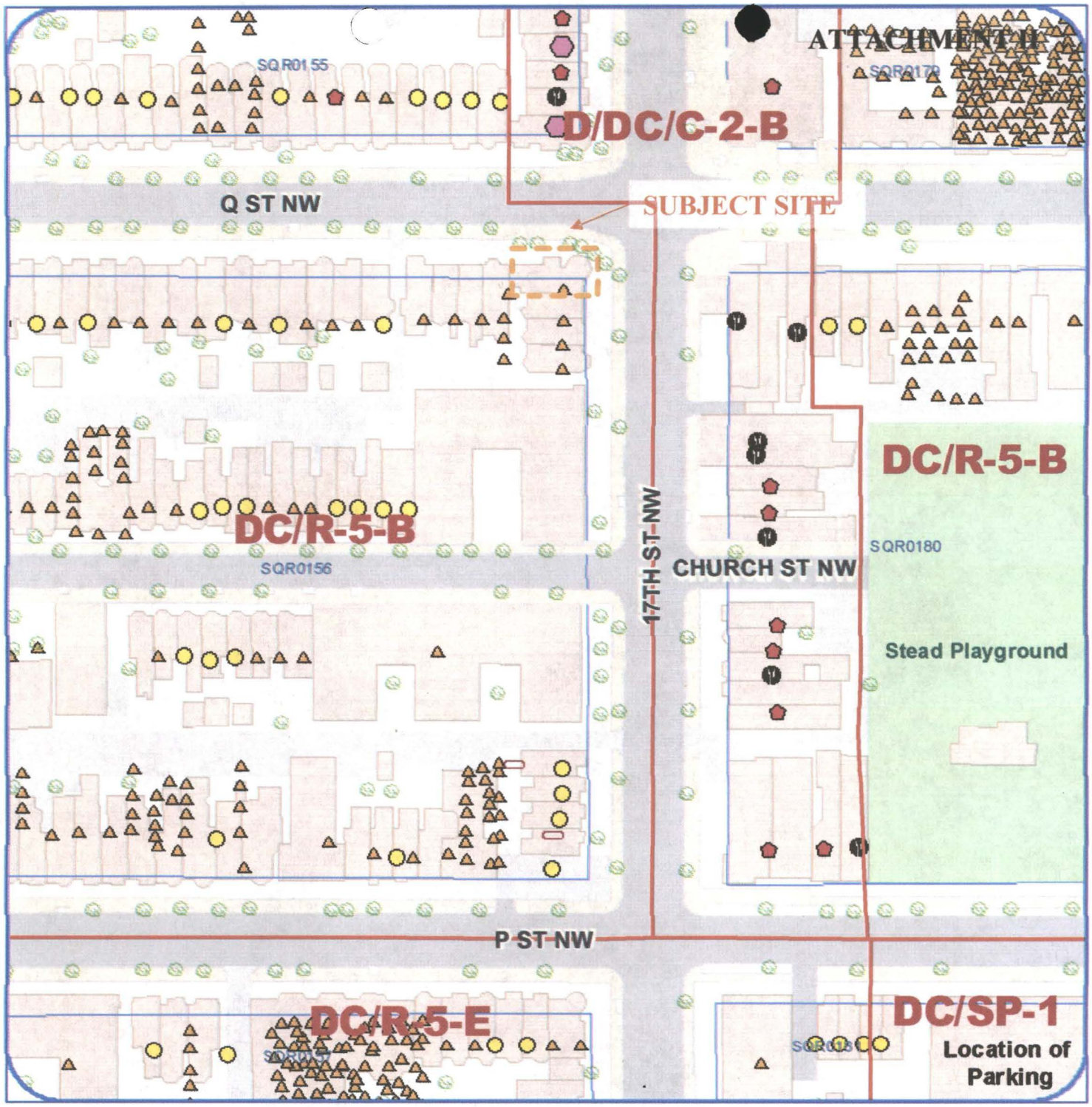
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Government of the District of Columbia
Anthony A. Williams, Mayor

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.




## Legend

- Zoning Districts
- Property Squares
- DC Parks
- Rowhouse
- Multi-family
- Store
- Restaurant
- Office
- Vacant
- Trees

# BZA Case 17392
# 1700 Q Street NW - Site Plan

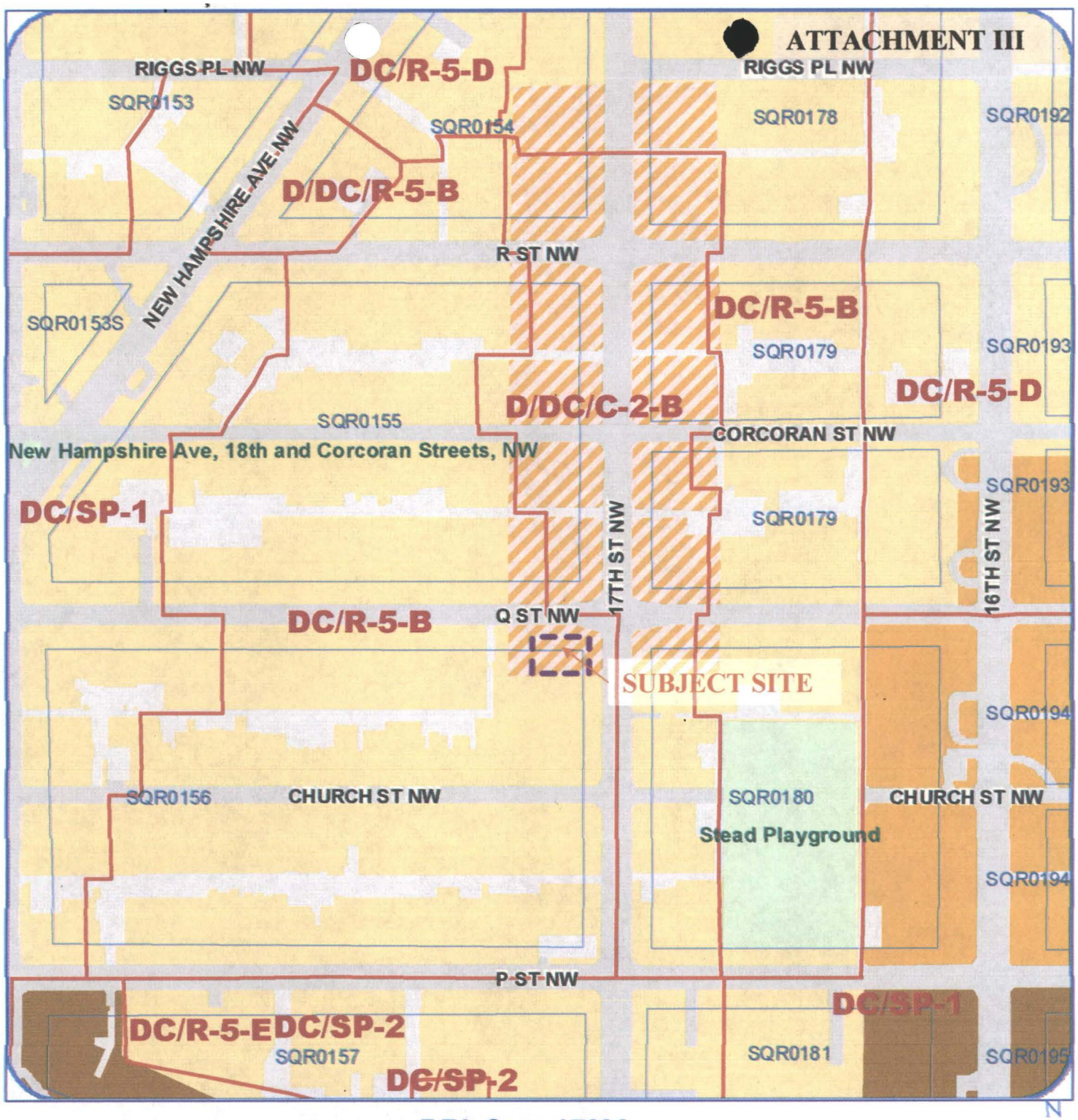
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Government of the District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ October, 2005

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## BZA Case 17392

## 1700 Q Street NW - Comprehensive Plan Generalized Land Use Map

1:2,500

**Legend**

- Zoning Districts
- **Landuse Types (with mixed uses)**
- Comm'l Low / Res'l Med
- Residential-Moderate Density
- Residential-Medium Density
- RHD
- Commercial-LowDensity
- Commercial-Moderate Density
- DC Parks

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Office of Planning ~ November, 2005

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| Standard | R-5-B Zone Regulations | Existing [1] | Proposed [1] | Relief |
|---|---|---|---|---|
| **Home Occupation: (§203)** | Permitted with limitations | | | |
| Area limitation (§203.4(d)) | 25% maximum = 750 sq.ft.; | unknown | 33% of above basement area = 1,000 sq.ft. | **Special Exception requested** |
| Number of Worker limitation (§203.4(d) and §203.10(c)) | 1 maximum without a special exception; 2 maximum without a variance | unknown | 5 total workers | **Variance requested** |
| Signage (§203.5) | Signage regulations | n/a | Applicant advises will conform | Presumed conforming |
| Sales (§203.6) | Sale of goods regulations | n/a | Applicant advises will conform | Presumed conforming |
| Uses (§203.7 (l)) | Includes "home office of a businessman" | | Real estate settlement business | Conforming |
| Bed and Breakfast (§203.8) | Permitted with limits | | Not applicable | Not applicable |
| **Use: (§350.4)** | Detached, semi-detached, flat, row dwelling, flat, apartment permitted | Semi-detached dwelling, used as office | Detached with a home based business | Use Variance requested |
| **Height: (§400.1)** | 50 ft., 4 stories | Unknown height, 4 stories | Unchanged | Presumed conforming |
| **Lot Area & width: (§401.3)** | Not prescribed | 1,075 sq.ft., 51.6 ft wide | Unchanged | conforming |
| **FAR: (§402.4)** | 1.8 max. | approx 3.7 [2] | Unchanged | "existing non-conforming" |
| **Sq.Ft.:** | 1,935 sq.ft. max. | approx. 4,000 sq.ft. [2] | Unchanged | |
| **Lot Occupancy: (§403.2)** | 60% max. = 645 sq.ft. max. | approx. 93% [2] | Unchanged | Presumed "existing non-conforming" |
| **Rear Yard: (§404.1)** | 15' min. | Unknown | Unchanged | Presumed "existing non-conforming" |
| **Parking: (§2101.1)** | historic district – none required | Presumed none on-site | Unchanged | conforming |

[1] Information provided by the applicant.

[2] Based on applicant's submission that the building contains about 1,000 sq.ft. per floor. The building appears to cover most of the available lot.