GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 12758, of Josephine Gatti, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3105) to permit a repair garage in the R-5-B District at the rear of premises 1130-23rd Street, N. W., (Square 37, Lot 828).

HEARING DATE: October 18, 1978

DECISION DATE: November 1, 1978

FINDINGS OF FACT:

1. The subject property is located on the west side of 23rd Street, N. W., between "L" and "M" Streets, It is in an R-5-B District.

2. The subject lot, which is rectangular in shape and flat, is approximately 2738 square feet in area and is improved with a row dwelling and a two story garage. The garage structure is located at the rear of the lot.

3. A fifteen foot wide public alley adjoins the lot on the north and a thirty feet wide alley adjoins the lot at the rear. Next to the alley on the north is the parking lot of a tire sales and auto repair establishment which is located on "M" Street, N. W. Adjacent to the south are two row dwellings. A four story apartment building which fronts on 24th Street is directly behind this property.

4. The applicant has been using the existing garage for an automobile repair shop for the last six months. He is operating without a Certificate of Occupancy.

5. The applicant rents the garage for $100 a month. He stated that he repairs the cars of his family for slight fees. The owners of the cars supply the parts. Most of the repair work is done in the interior of the garage.

6. An automobile repair garage is permitted as a special exception in the C-2-A district if no body or fender work is done. An automobile repair garage is first permitted as a matter of right in the C-M-1 district.

7. A review of zoning records on this property discloses no Certificate of Occupancy. The property appears to have been used for residential purposes since 1958. The row dwelling on this property is occupied at the present time.

8. The Municipal Planning Office, by report dated September 21, 1978, recommended that the application be denied on the grounds that the use variance sought could be granted only as a result of exceptional narrowness, shallowness or shape of a specific piece of property or exceptional topographical conditions or otner extraordinary or exceptional situations or conditions. The MPO did not find any support for the granting of a variance in this case. In addition, the dwelling at the front of the property is occupied residentially as are adjacent dwellings and the apartment building at the rear of Lot 828. It was the MPO opinion that an automobile repair garage at this location would be most inappropriate. The Board so finds.

9. Advisory Neighborhood Commission 2-A, by letter dated September 22, 1978 recommended that the application be denied on the grounds that the garage is presently being used without a proper Certificate of Occupancy and, as in other cases, the ANC cannot condone the illegal use of land within its boundaries nor should the Board legalize it, and that the District in which this application falls, is zoned R-5-B and the use, a repair garage, is not consistent with the Zoning Regulations nor with the character of the neighborhood.

10. In addressing the issues and concerns of the ANC, to which by statute the Board is required to give great weight, the Board finds the use is an illegal use and a use that is not permitted as a matter of right in an R-5-B. The Board notes, however, that the records discloses no Certificate of Occupancy for the subject property was ever issued, that the garage was vacant and that the applicant leased the subject property from the owner. Although it is no excuse it did not appear to the Board that the applicant had acted maliciously. The Board is in agreement with the second concern of the ANC, that the use is not consistent with the residential district and area in which it is located.

CONCLUSIONS OF LAW:

The applicant is seeking a use variance the granting of which requires a showing of a hardship stemming from the property itself. The Board concludes that such conditions do not exist in this case. The site is rectangular in shape and flat. As the MPO report stated there is on the property no exceptional narrowness, shallowness, exceptional topographical or extraordinary

or exceptional condition that would warrant the relief requested. Furthermore, the Board notes that the owner is making reasonable use of the property as a whole as a single family dwelling. In addition, considering that the subject property is surrounded by residential dwellings, the relief could not be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-1 (John G. Parsons, William F. McIntosh and Charles R. Norris to deny; Chloethiel Woodard Smith to grant, Leonard L. McCants not present, not voting).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 8 DEC 1978