GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14090, of William Gorham, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the rear yard requirements (Sub-section 3304.1), the closed court area and width requirements (Sub-section 3306.1), from the prohibition against allowing an addition to a nonconforming structure which now exceeds the lot occupancy requirements (Paragraph 7105.12) and the lot occupancy requirements (Sub-section 3303.1) to construct a two car garage addition to a row dwelling, a nonconforming structure, in an R-3 District at premise 1561 - 35th Street, N.W., (Square 1274, Lot 811).

HEARING DATE: January 25, 1984
DECISION DATE: February 2, 1984

FINDINGS OF FACT:

1. The application appeared on the preliminary calendar for the Public Hearing of January 25, 1984. The affidavit of posting was filed two days prior to the Public Hearing instead of five days as required by the Rules. The opposition requested that the case go forward on its merits since the property had been posted. The Chairperson determined that proper notice had been given and waived the Rules as to the filing of the affidavit.

2. The subject premises is located at the southeast corner of the intersection of 35th and Q Street, N.W. The site is in an R-3 District and is known as premises 1561 - 35th Street, N.W.

3. The subject site is rectangular in shape. Its dimensions are fifty feet on the east and west sides and 39.72 feet on the north and south sides. The lot has an area of 2,224.35 square feet.

4. The site is improved with a row dwelling. The subject dwelling is a three-story brick structure with basement. The structure is located at the western end of a row of dwellings that face north on Q Street. The subject structure has its entrance facing 35th Street on the west. For zoning purposes, Q Street has been determined to be the front of the structure.

5. There is access to and from the subject site through 35th Street on the west and through Q Street on the north. There is no alley access.

6. The subject square is developed with rowhouses, apartment houses and single-family dwellings. At the southwest corner of the square is the Volta Bureau for the Teaching of Speech to the Deaf.

7. The neighborhood surrounding the subject site is zoned R-3 on all sides of the square. The area is developed with rowhouses, apartment houses and a few single-family dwellings. The Convent of the Visitation and Georgetown University are located immediately west of the subject site across 35th Street. There is a C-2-A strip located three blocks east of the site on Wisconsin Avenue. The subject area is part of the Georgetown Historic District.

8. The subject property is owned by the applicant who uses it as a rental property of three units. There are two apartments in the basement of the structure. The upper floors are rented as a residence for a group of college students. The applicant and his family occupied the dwelling from 1962 to 1979 before moving to Maryland in 1979. The dwelling was left in trust for the applicant's children during its use as a rental property. The trust has expired and the applicant now seeks to sell the subject property as a single family residence.

9. The property has been advertised for sale since February, 1983. Numerous prospective buyers have been shown the subject property but all have objected to the lack of on-site parking. The property has been listed with three real estate agents and all of them have advised the applicant that the lack of on-site parking is a hindrance to the sale. Prospective buyers are seeking on-site parking because the Georgetown area has a long-standing scarcity of on-street parking.

10. The first firm offer that the applicant received for the purchase of the subject property was from Mr. and Mrs. Stephen F. Bollenbach. The Bollenbachs propose to purchase the subject property for use as a single-family residence for themselves and their two children. There would be no rental units in the property if the Bollenbachs purchase it. The contract of purchase is contingent on BZA approval of a two-car garage which the Bollenbachs propose to construct on the south side of the subject site.

11. The proposed two-car garage would have its roof located three feet above grade and would occupy approximately two-thirds of the existing rear yard on the south of the subject dwelling structure. This rear yard is the only open-space on the site because the structure abuts the lot

lines on the north, west and east. The existing structure occupies the entire east-west dimension of the lot and adjoins a row dwelling on the east. The existing dwelling has a north-south width of 34.17 feet, whereas the lot width is fifty-six feet. The existing open-space has a north-south dimension of 21.83 feet and an east-west dimension of 39.72 feet, which is the full depth of the lot.

12. The proposed garage would have dimensions of 21.83 feet on its east and west sides and twenty eight-feet on its north and south sides. It would have its west wall located at the west lot line and its south wall located at the south lot line. On the north, the garage would adjoin the existing dwelling. The east wall would be located 11.72 feet west of the east lot line, leaving a closed court at the southeast corner of the property. This closed court would measure 21.83 feet from north to south and 11.72 feet from east to west. The roof of the proposed garage would be landscaped and used as a deck. The deck and the closed court would form a continuous open space with a three-foot change in grade from the upper terrace to the lower terrace. A three foot high planter is proposed to enclose all sides of the upper terrace on the garage roof.

13. The proposed garage would have its entrance on the west adjacent to the main entrance of the dwelling. This garage would require a ten foot wide curb-cut and a driveway across the sidewalk. The driveway would slope downward to accommodate a change in grade from the sidewalk to the garage entrance. The ten foot width of the curb-cut and driveway is designed to allow cars to maneuver to the left or right and enter either of the spaces in the two-car garage.

14. The proposed garage would be five to six feet below grade and would have its floor and roof level even with the existing basement level. The garage would appear as a continuation of the stone facing that is around the basement level of the house at present. This design would be in keeping with the architecture of the existing dwelling.

15. The construction of the garage and its driveway could potentially injure an existing row of cedar trees located at the northern edge of the adjacent property immediately south of the site. Should this occur, the applicant proposed to replace the trees. However, all efforts would be made by the applicant to avoid injury to the cedar trees or any other mature trees near the borders of the subject site.

16. If the subject garage is constructed as proposed, it would require variances from the provisions of four sections of the Zoning Regulations. A variance from the rear yard requirements of Sub-section 3304.1 would be

required because there would be no rear yard left on the site where the construction would occur. A variance from the closed court area and width requirements of Sub-section 3306.1 would be required because the court created by the construction would be less than the required width and area. A variance from the prohibition against allowing an addition to a nonconforming structure which now exceeds lot occupancy requirements would be required pursuant to Paragraph 7105.12. A variance from the lot occupancy requirements of Sub-section 3303.1 would be required because the proposed garage addition would increase the nonconformity of the subject structure as to lot occupancy.

17. The Zoning Regulations for the subject R-3 District require a minimum rear yard of twenty feet. The applicant would provide none. A variance of twenty feet or 100 percent is required. A maximum lot occupancy of sixty percent is allowed. The existing structure exceeds this by 54.46 square feet. The proposed addition will add another 579.42 square feet. The applicant seeks a variance of 633.88 square feet or forty-eight percent. The minimum closed court width required is fifteen feet. The applicant is providing 11.72 feet. A variance of 3.28 feet or twenty-two percent is required. The closed court minimum area required is 350 square feet. The applicant is providing 255.85 square feet. A variance of 94.15 square feet or 26.9 percent is requested.

18. The Board of Zoning Adjustment has the power to grant variances under Paragraph 8207.11 of the D.C. Zoning Regulations which provides that where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the owner of such property, the Board may authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

19. The applicant argued that the lack of on-site parking at the subject site creates two sets of problems or operational hardships, one to the owner and one to the contract purchaser. The problem to the owner is that he has been unable to sell the property without on-site parking, even after a substantial period of time. The owner finds the continued ownership of the property to be a burden.

20. The problem to the contract purchaser is that is that if he should purchase and occupy the subject dwelling without on-site parking he would experience daily difficulty finding two on-street parking spaces near the subject dwelling. The contract purchaser argued that the parking scarcity in Georgetown is common knowledge. Further, the contract purchaser is apprehensive about putting his valuable cars at risk by parking on the public streets.

21. The applicant considered and rejected alternative methods of providing on-site parking spaces. The first possible alternative was to constrict a garage in the existing basement of the subject dwelling. The applicant argued that constructing a parking garage underneath the house is not a viable alternative. It would require the destruction of a mature tree that is located directly in front of the basement entrance in a tree box in the sidewalk. A basement garage would also eliminate living space needed by the applicant's family of four.

22. The second alternative was to sink the proposed garage three or four feet lower in the ground so that it would be below grade in the side yard. This alternative would eliminate the necessity of having a closed court at the rear of the open space. The applicant argued that the driveway would then be too steep for safety. Also, the aesthetic continuity with the basement of the house would be lost.

23. The third alternative was to construct a garage for one car only, thus narrowing the structure by approximately ten feet. This would leave a ten-foot wide yard that could be landscaped with hedges. The applicant argued that this alternative would eliminate the use of the deck on the garage roof as open space because the garage would be too narrow. The resulting yard would be too narrow for use as an outdoor sitting area. Also, there would be no net gain in parking spaces if only one space were provided on-site.

24. The applicant argued that the proposed ten foot wide curb cut would eliminate only one parking spaces, whereas the proposed garage would provide two parking spaces. This would result in a net gain of one parking space for the neighborhood.

25. The proposed garage would permit a single family to replace three rental units in the subject dwelling. The applicant argued that any prospective buyer would require a garage for single family occupancy in Georgetown. This change in occupancy would be more in keeping with the character of a residential district and is desired by the neighbors.

26. The existing rear yard has a sloping grade and receives little sun. This makes it difficult to maintain, and causes trees in the yard to be sickly. The applicant argued that the proposed garage design would enhance the area by creating an upgraded outdoor space. There is some controversy in the neighborhood over the attractiveness of the design. The applicant argued that this is a matter of taste with some neighbors in favor of the design and some opposed.

27. The applicant has discussed the proposed construction with the neighbors in the surrounding area. The neighbors commented on the design controversy and suggested alternatives to the applicant. He rejected the suggested changes. The two adjoining property owners who would be the most affected by the construction had no objection to the construction after the applicant met their concerns by explaining the plans in more detail. The applicant was of the opinion that the opposition from the Advisory Neighborhood Commission was based on incorrect information about what was actually proposed.

28. Two neighbors in support testified at the public hearing. One was a real estate agent with long experience in the area. She has lived in Georgetown since 1957 and had first hand experience of the parking problem. She interested the Bollenbachs in the subject property and was of the opinion that they are people who would improve it and enjoy their home.

29. The other neighbor lived near the subject property on Q Street. The neighbor expressed the opinion that the proposed construction would enhance the appearance of the neighborhood. During twenty years of living in Georgetown, the neighbor has experienced a parking shortage and has a two-car garage at her own property. The neighbors in support were of the opinion that the Bollenbachs would be a great addition to the neighborhood as a single family. The supporters do not share the concerns expressed by the opposition, but rather see the proposed construction as an enhancement to the neighborhood.

30. One neighbor testified in opposition to the application. The concerns of the opposition included potential damage to plants growing near the site that add green space to the neighborhood. The plants in question were located on the lot immediately south of the subject property and on the public space to the west. There is a row of cedar trees adjacent to the property line on the northern border of the lot south of the subject dwelling and a boxwood gardens located south of the driveway on the same property to the south. The opposition was concerned about damage to these trees. Other concerns of the opposition included damage to the openness of the neighborhood and

damage to the design integrity and visual quality of the neighborhood. The opposition maintained that the only thing visible at eye-level would be masonry. The opposition was of the opinion that the proposed construction would create a denser environment by eliminating garden-type open space and replacing it with an increase in pavement, brick and mortar.

31. The opposition further argued that the proposed garage structure is too massive and the parking could be accommodated in the existing basement of the dwelling. The opposition noted that the tree in front of the basement entrance which the applicant is concerned about saving is sickly and could be replaced with two healthy trees on either side of a driveway leading to the existing basement. The opposition noted that the cedar trees that the applicant referred to as scrub trees are approximately thirty feet tall. The cedar trees are located one to three feet south of the property line inside an iron fence that encloses the neighboring property and could be damaged by construction nearby.

32. The opposition further maintained that there would be no net gain in parking spaces by permitting the proposed garage. Most people in the neighbor have small cars. Thus, two cars rather than one car can park in the space in front of the applicants house. This means that, instead of a net gain, two public spaces would be eliminated to provide a curb cut for the garage and two private spaces that would be created in the proposed garage. There is a no parking zone that occupies part of the street frontage near the corner, thus eliminating another potential space on that side of the street. However, the west side of 35th street has no private residences and this creates available on-street parking if the Bollenbachs are willing to cross the street. Parking is more available in the subject block than in Georgetown generally.

33. The opposition observed that most support is directed toward the idea that the Bollenbachs are fine people who would be a credit to the neighborhood rather than strong support for the proposed approach to on-site parking. One of the reason that people would be happy to see the change occur is that the present owner has managed and maintained the property poorly. A single family who owns and occupies the premises is expected to provide better maintenance than occupants in a rental situation.

34. There were four letters from neighbors in support in the record. The support was based on the opinion that the proposed construction would improve the appearance of the property, increase available parking and increase neighboring property values. The supporters expressed a desire to have a single family replace the existing rental units.

35. There were four letters from neighbors expressing no objection to the application. Two of these were from the neighbors adjacent to the subject property on the east and south. The letters stated that the neighbors had discussed the plans with the applicant and had no objection to the plans.

36. A petition of opposition with twelve signatures was submitted to the record on the grounds that it was important that the character of the Georgetown Historic District be preserved. The proposed over-development of the lot would reduce open space and require the elimination of mature trees and the endangerment of others. Also, the proposed curb cut would reduce available parking, removing on-street parking sufficient to accommodate two cars and replacing these with two private parking spaces that would not be available to others while not being used by the residents or guests of 1561 35th Street.

37. The applicant responded to concerns of the opposition by arguing that the mature maple tree on the sidewalk in front of the basement entrance has approximately seventy feet of height. It would be destroyed if the garage were located in the basement and its entrance driveway were cut across the sidewalk at the tree box location. The applicant argued that saving the existing seventy foot tree makes more sense than replacing it with two young trees. The applicant further argued that the green space created by the terrace and its planters would be healthier and better maintained than the existing sickly green space. The cedar, trees have grown well in terms of height, but most of their foliage is at the top leaving dead branches at eye level.

38. As to the opposition's contention that the parking could be accommodated in the subject basement, the contract purchasers argued that they have a definite intention to use all of the existing dwelling as living space. Although the subject dwelling is large for Georgetown, containing 4,700 square feet of gross floor area, providing five bedrooms and accommodating five occupants in three separate units, the contract purchaser's family of four members would occupy the entire dwelling as one unit.

39. The Office of Planning, by report dated January 18, 1984 recommended that the subject application be approved with conditions. The Office of Planning based its recommendation on the fact that there is a severe shortage of parking in Georgetown. The typical housing type in the area is a row dwelling, with access to off-street parking rarely available from the street. The alley system with access to parking in the rear is incomplete at best and not available to the subject site. Given the existing pre-1958 structure on the site, the only way the applicant can provide off-street parking is to locate it in the yard. To provide

parking on-grade would require one or more variances. To provide parking in an attached garage would also require variances. However, a number of additional benefits accrue from the garage alternative.

40. The Office of Planning was of the opinion that the provision of two off-street parking spaces would be a small but worthwhile achievement. The proposed two-car garage would only increase the existing terrace height by three feet. It is that three feet that creates all of the required variances. The rear yard nonconformity would not be affected by the subject application, and the lot occupancy and closed court nonconformities, while increased or created by the application, do not appear to violate the intent of the Regulations. In a practical sense, the existing yard is returned, only a portion of it is three feet higher. The existing open space would essentially remain open, particularly if all of the proposed planters were not constructed. Also, the density would actually decrease. Furthermore, the proposed garage would not reduce light and air in the court/garden or materially affect its access.

41. The Office of Planning was further of the opinion that approval should be conditioned to insure the amelioration of potential adverse impacts. First,a balance must be found between the needs of neighbors who might want to be screened from activities on the raised terrace and the objective of maximizing the sense of open space by eliminating some of the planters. In any case, the planter should remain along 35th Street to strengthen the relationship of the garage to the main structure. Second, the applicant must demonstrate that every precaution has been taken to insure that the line of cedar trees along the south property line will not be endangered. Finally, the garage should remain a garage and the terrace above remain an open terrace, uncovered and unenclosed in the future.

42. The Board concurs with the reasoning but not the recommendation of the Office of Planning. The Board finds that the proposed construction would provide limited amelioration of neighborhood parking problems, negative impacts on existing mature trees and on the open environment of the subject area. Alternatives exist by which the applicant could provide on-site parking with less impact on the neighborhood.

43. Advisory Neighborhood Commission 2E, by report dated January 12, 1984, recommended that the application be denied. The basis of the opposition was that the proposed construction would endanger a number of mature trees, crowd the property line, and would negatively impact the adjoining historic structure and its boxwood gardens. The ANC noted that the premises has been continuously occupied for over

seventy five years without on-site parking. Reportedly, the former carriage house was sold away. Potential lower floor areas that could be converted to garage space, have instead been converted to unauthorized apartments and the existing structure already exceeds the allowable lot occupancy. The ANC further noted that the proposed curb-cut would remove on-street parking to the detriment of general parking in the neighborhood. There is room to park one car on-site in a manner that would preserve the trees, not negatively impact the historic residence and gardens to the south, and would limit the size of the curb-cut. In summary there are no practical difficulties inherent in this particular piece of property that would justify the granting of the application. The Board concurs with the reasons and the recommendations of ANC 2E.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking four area variances, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has not met his burden of proof in evidencing a practical difficulty inherent in the property. The subject lot is rectangular in shape with a slight change of grade and is of adequate size for an R-3 dwelling. The existing dwelling has been used for residential purposes for many years. There is no exceptional condition of the property, resulting in a practical difficulty.

The Board further concludes that alternatives exist for providing the on-site parking that the applicant desires. These alternatives would have less negative impact on the surrounding neighborhood than the proposed construction. The Board notes that a scarcity of parking exists throughout the Georgetown area and is not unique to the subject site.

The Board concludes that permitting the construction of a semi-subterranian two car garage at the subject site, and granting four extensive variances to permit such construction would cause substantial detriment to the public good and would substantially impair the intent and purpose of the zone plan.

The Board concludes that it has accorded to the Advisory Neighborhood Commission the great weight to which it is

entitled. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 3-0 (Douglas J. Patton, Maybelle T. Bennett and Carrie L. Thornhill to deny, William F. McIntosh and Charles R. Norris not voting, not having heard the case).

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

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

FINAL DATE OF ORDER: JUN 14 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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