GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14141, of John B. Howerton, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against locating an open parking space in front of a dwelling (Paragraph 7205.12) and within ten feet of a dwelling (Paragraph 7205.21) to permit an open parking space in front of the dwelling in the R-3 District at the premises 3306 Prospect Street, N.W., (Square 1205, Lot 61).

HEARING DATE: June 13, 1984
DECISION DATE: July 11, 1984

FINDINGS OF FACT:

1. The subject site is located on the south side of Prospect Street, N.W. between 33rd Street on the east and 34th Street on the west. The site is in an R-3 District and is known as premises 3306 Prospect Street, N.W.

2. The subject lot is rectangular in shape. The lot's dimensions are 17.375 feet on the north and south sides and seventy-five feet on the east and west sides. The lot area is 1,303.13 square feet.

3. The site is improved with a single family row dwelling. The subject dwelling is a three-story brick structure. The dwelling has a well-preserved historic facade and is located in the Georgetown Historic District.

4. There is access to and from the site through Prospect Street on the north. There is no alley access.

5. The subject square is split-zoned with the northern half zoned R-3 and the southern half zoned C-2-A. This split zoning continues for some distance to the east and west with the C-2-A strip extending along M Street at the south side of the square and adjoining squares. The R-3 District continues to the north, east and west of the subject square. The neighborhood is developed primarily with medium density residential uses. The commercial strip is developed with restaurants, bars and shops.

6. The front of the subject dwelling is set back approximately twelve feet from the front lot line, whereas the fronts of the dwellings adjoining it on the east are located on their lot lines. The structures that adjoin the

subject structure on its west have their front walls set back approximately the same distance as the subject structure. The front yard of the subject structure is paved with brick.

7. The subject dwelling is owned by the applicant who occupies it as his residence. The applicant has experienced chronic difficulties in finding a parking space near the front of his dwelling. There is no on-site parking at the rear of the dwelling because there is no alley access to the rear yard.

8. The applicant proposes to provide on-site parking for his dwelling by converting his brick-paved front yard into a parking space. This would require a curb cut in front of the dwelling and would remove one on-street public parking space from the neighborhood. The proposed parking space would be so located as to require variances from Paragraph 7205.12 and Paragraph 7205.21 of the D.C. Zoning Regulations, which prohibit am open space to be located in front of a dwelling and within ten feet of a dwelling.

9. The Board of Zoning Adjustment has the authority 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, provided such relief can be granted without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and map.

10. The Board previously denied the same relief for the same property and the same applicant in BZA Order No. 12578, which was dated March 30, 1978.

11. The applicant argued that when the subject property was purchased in 1963 parking difficulties now being experienced did not exist. The applicant was of the opinion that the area of Georgetown in which the property is located could probably have accommodated increased parking in the normal course without great disruption. However, the inordinate number of new liquor licenses in the area has not only resulted in difficulties in parking but in parking by clientele of drinking establishments in such an unsafe manner as to block crosswalks and actually intrude into intersections. Enforcement of parking regulations by the

police and towing crews is so minimal as to be ineffective. The applicant was further of the opinion that since the Alcoholic Beverage Control Board, an agency of the District of Columbia Government, is largely responsible for the problem, it is proper to seek relief through one of the District's other agencies, the Board of Zoning Adjustment.

12. The applicant submitted photographs to the record in support of his arguments. Photograph "A" shows the subject property with bricked front space that is proposed for a parking pad. Photograph "B" shows an automobile actually parked in the space and photograph "C", an automobile parked in the space in relationship to the adjoining property. The applicant calculated that an automobile parked in the proposed space would be twelve feet from the nearest doorway of adjoining property and eighteen feet from the nearest window of adjoining property, a distance greater than that from those openings to the public curb at which cars are parked, ten feet and thirteen feet, respectively.

13. The applicant also argued that there are precedents for the variance, He reported that the vast majority of the residences in the five-block length of Prospect Street are built to the sidewalk line. Six of the fourteen that are set back at least six feet have parking within ten feet of the entrance to the dwelling. The addresses of the six are 3232, 3410, 3412, 3416, 3600 and 3602 Prospect Street. Three of these houses, 3410, 1412 and 3416, are identical to the subject property and others in its enclave and were constructed at the same time. It was difficult for the applicant to see how the Board could deny approval in the instant case after having approved variances in the earlier cases. The applicant noted that it has been maintained in the Board's prior order that an automobile utilizing the proposed space would overhang the property line and encroach upon public space in violation of Section 79(c) of the D.C. Traffic Regulations. The applicant was of the opinion that this should not be a concern of BZA but rather of an enforcement agency. Nevertheless, the applicant noted, as can be seen in photograph "D," an automobile of normal size can get into the space with room to spare.

14. The applicant further argued that the opponents' argument that a parking space would of necessity require a curb cut which would eliminate one on-street parking space is specious. Taken to its logical extreme, the applicant reasoned that this contention could be used for eliminating all off-street parking in the District.

15. Three neighbors appeared in opposition to the application and submitted statements to the record giving the reasons for their opposition. The three neighbors are the joint owners of the dwelling that adjoins the subject dwelling on the west. Their property would be the most

directly affected by the relief requested in the application. The opponents gave a history of the case and testified to the Board that there had been no change of facts since the prior case No. 12578 which the Board denied on March 30, 1978. In that case the same opposition argued that the proposed location of the parking space would be a health and safety hazard to them being located under an existing window of their property.

16. The opponents further reported to the Board that on the south side of Prospect Street from 33rd to Bank Street and from Bank Street to 34th Street there is not one open parking space in front of a dwelling. On the north side of Prospect Street from 33rd to Bank Street and from Bank Street to 34th Street, there is not one open parking space in front of a dwelling. There is an enclosed garage a great distance from a dwelling, with the proper set back requirement and not comparable to the proposed space.

17. The opponents were of the opinion that the applicant's argument that when the subject property was purchased in 1963 parking difficulties did not exist is untrue. The D.C. Department of Public Works had informed them that some form of parking restrictions have been installed on the north side of Prospect Street since as early as 1939. When the subject property was purchased there was no rear access for parking. Some owners of automobiles on Prospect Street obtained paid parking in Duvall's Garage on Bank Street. Also, M Street, one block from Prospect Street has always been entirely commercial, with stores selling alcoholic beverages, and stores for shopping, resulting in shoppers parking on Prospect Street, long before 1963. Therefore, parking difficulties did exist in 1963 when the subject property was purchased.

18. Advisory Neighborhood Commission 2E, by report dated May 25, 1984, recommended that the application be denied. The ANC reported that a similar application was filed with the D.C. Board of Zoning Adjustment in 1978, BZA Application No. 12578, by the same applicant. By order of the Board, dated March 30, 1978, the application was denied. The Board stated in its opinion, that there was nothing on the record to suggest that there is anything unusual about the property to distinguish it from the adjoining property. The Board concluded that there was no practical difficulty in the sense that that term is used in the Zoning Regulations. The ANC noted that the applicant's brief filed with the Board confirmed that none of the basic facts as they presently pertain to establishing grounds for the requested relief have changed since application No. 12578 was denied. The applicant is not filing an appeal from the earlier decision of the Board. Therefore, unless the applicant can demonstrate a change in the property that affects this property uniquely, the Board should be estopped

from granting this application. For the same reasons that application No. 12578 was denied, the ANC urged the Board to deny application No. 14141. The ANC further reported that the problem that the applicant is experiencing is not uniquely his. It is a problem that all residents of Georgetown are experiencing. The ANC was of the opinion that the excessive licensing of bars and restaurants in Georgetown has resulted in a concentration that seriously and negatively affected the present character and future development of Georgetown. The Board concurs with the reasoning and recommendations of the ANC as to the subject application. The Board finds that a restaurant is a use permitted as a matter-of-right in a commercial district. The Board further has no jurisdiction over licensing of bars and restaurants.

20. The Citizens Association of Georgetown, by report dated June 11, 1983, recommended that the application be denied. The issues and concerns of the Association were identical to those of ANC 2E.

21. In a post-hearing submission, requested by the Board, the applicant further argued that there is evidence that the premises 3410, 3412, 3416, 3600 and 3602 Prospect Street have curb cuts and parking within ten feet of the dwelling. The applicant reported that the Baist Atlas showed that the distances from dwellings to property lines of all these properties other than 3600 are so short that the parking of an automobile would place that automobile within ten feet of the dwelling. The applicant further reported that he owns a 1980 Citation that is approximately 14.5 feet in length. Such a car parked in these places would be within ten feet of the dwelling. The front door and parking pad at 3600 are on the side of the house. The parking pad is 6.4 feet from the front door. In further response to the Board's request for information, the applicant attached photographs of the parking pads at 3234, 3412, 3416 and 3602. Of the residences relative to which he supplied supplemental information, No. 3412 (Square 1204, Lot 42) and No. 3416 (Square 1204, Lot 40) were granted variances from the Zoning Regulations by the Board of Zoning Adjustment in cases 11408 and 6413, respectively. The applicant presumed the other dwellings mentioned were "grandfathered."

22. The applicant was also requested by the Board to provide justification as to why the subject application should be granted based upon the petition in BZA No. 11408, 3412 Prospect Street. The applicant stated that there were some differences in the size of lots but that it appeared that these differences were not great for the purpose of comparing the two applications. The 14.5 foot long automobile would still be within ten feet of the dwelling at 3412. The applicant argued that the physical characteristics

of the improvements are identical and that the physical characteristics of all dwellings in the two enclaves are identical.

23. The opposition responded to the applicant's further argument by submitting a statement describing neighborhood conditions and the situation at nearby sites alleged by the applicant to be similar to his. The opponents reported that there are no curb cuts for off-street parking on Prospect Street, N.W. from 33rd Street to Bank Street, and from Bank Street to 34th Street. The applicant cited five dwellings in the 3400 and 3600 block of Prospect Street. In each instance, the opposition reported, there are very significant differences when compared to the applicant's property at 3306 Prospect Street. The two off-street parking pads in the 3600 block are much deeper and wider and allow for the parking of two cars from a single curb cut. While the one at 3602 will park a car close to the abutting wall of the next dwelling said car would be more than fifteen feet from the entrance to that dwelling and about the same distance from the nearest window, one flight up. The three dwellings in the 3400 block of Prospect Street also have very significant differences. Each is set back from the property line 20.5 feet, while the dwelling at 3306 Prospect Street is set back only sixteen feet, a significant difference of more than three feet when trying to park a car without encroaching on the public sidewalk. In addition, at 3416 Prospect Street, there is a solid brick wall about eight feet high separating it from the property to the east. Any car parked on the pad would be more than ten feet from the nearest opening window of the dwelling to the west. At 3412 Prospect Street there is a solid brick wall about eight feet high separating it from the property to the east. The main entrance of the dwelling to the west is more than fifteen feet from any car parked on the pad and the nearest window about the same distance. At 3410 Prospect Street there is a solid brick wall about eight feet high separating it from the property to the west and another solid brick wall about the same height separating it from the property to the east. All these walls extend to the property line at the sidewalk.

24. The opposition further noted that if the applicant is granted a variance, his car could be parked within four feet of the main entrance of their dwelling and within nine feet of its downstairs window and not twelve feet and eighteen feet as stated by the applicant. The noxious fumes and exhaust emitted by a car so close to the entrance of their dwelling would be bothersome, unhealthy and hazardous when windows and door are open. In its finding of fact in the March 30, 1978, decision the Board determined that the dimensions of the applicant's proposed parking pad was to be twelve feet by nine feet, considerably less than the nineteen feet by nine feet required by the Zoning Regulations. A

middle sized car could potentially encroach even more on to the public sidewalk than the applicant's car.

25. The opponents finally noted that the problems expressed by the applicant with respect to parking on the street, are not uniquely his. They are experienced by most residents of the Georgetown area. The applicant noted that the cutting of the curb would eliminate one on-street parking space and this would be regained by his parking his car on his pad. This is not quite the case. The traffic regulations require that there be no parking for five feet on either side of the curb cut, driveway. The cutting of the curb would then effectively eliminate one to two parking spaces on the street and deny residents of 3304 Prospect Street the opportunity to park in front of their dwelling.

26. The Board finds that the material facts in the subject application are not significantly different from those set forth by the Board in the previous application.

27. The Board finds that the other properties which the applicant cites as precedents for granting the requested relief are sufficiently different, as set forth in the reasoning of the opposition, so as not to compel the granting of the subject application.

28. The Board finds that the applicant's reliance upon the length of his present automobile is inappropriate. The relief if granted could not be predicated upon the applicant owning the same car forever. Further, the variance would run with the land, and there is no way to determine what kind of car future owners of the property might have.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking 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 conditions 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 this burden of proof in showing a practical difficulty inherent in the property. There is nothing in the size, shape, topography it existing structures at the site that creates unique or exceptional conditions. Parking problems are endemic to Georgetown and are not unique to the subject site. The applicant's practical difficulty is personal.