GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14173 of Albert A. Hinton, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the rear yard requirements (Sub-section 3304.1) and the side yard requirements (Sub-section 3305.1) to construct a two story private garage on an alley lot in an R-1-B District at premises rear 4427 - 35th Street, N.W., (Square 1971, Lot 823).

HEARING DATES: September 19, October 3 and October 10, 1984
DECISION DATES: September 19 and November 7, 1984

FINDINGS OF FACT:

1. The subject application was originally heard by the Board at the public hearing of September 19, 1984. The Board granted the application by a vote of 5-0 in a bench decision. There was no opposition present at the public hearing and the Board was unaware of any written opposition to the granting of the application at the time of its decision on the case.

2. Subsequent to the Board's action on the application, the staff became aware that a letter from a neighboring property owner in opposition to the application had been filed with the office of the Zoning Secretariat in a timely manner on September 18, 1984. The contents of that letter were not considered by the Board in reaching its decision on the subject application.

3. Section 501.1 of the Supplemental Rules of Practice and Procedure before the BZA provides as follows:

> Prior to the filing of a final decision, the Board may on its own motion, reopen the record and require further hearing on designated issues before the Board. Notice of a further hearing along with a designation of issues shall be forwarded to any party who participated in the earlier proceedings, or representative parties pursuant to designations made under Sub-section 406.4, at least ten days prior to the date set for further hearing.

4. During the afternoon session of the September 19, 1984 public hearing, the Board, on its own motion, reconsidered its decision in the subject application. The Board vacated its decision to grant and reopened the record for

further hearing. The further hearing was limited to testimony directly relative to the issues addressed in the letter of opposition and cross-examination by the parties. The further hearing was scheduled for October 3, 1984.

5. At the October 3, 1984, public hearing, the applicant was unable to be present due to a death in the family. The Board continued the hearing to October 10, 1984. At the October 10, 1984 public hearing, the opponent was unable to be present but was represented by counsel.

6. Counsel for the opposition requested a continuance on the basis of the absence of his client. The Board denied the request. The Board noted that neither the property owner nor her counsel were present at the September 19, 1984, public hearing. The Board reasoned that the further hearing was based on very limited issues, intended to allow the Board to obtain information from the applicant in response to the written objections from the neighboring owner. The Board was of the opinion that counsel could elicit sufficient information though the cross-examination of the applicant. The Board reasoned further that if in its opinion, counsel was unduly restrained in presenting its case, the Board would continue the further hearing.

7. The Board decided to go forward with the hearing based on the opposition's letter of record and the concerns addressed therein. The testimony and cross-examination were limited to the issues raised in the letter.

8. The subject site is an alley lot located at the rear of 4427 35th Street, N.W., between Albemarle Street on the north and Yuma Street on the south. The alley lot is on the west side of a north-south public alley that runs parallel to Connecticut Avenue on the east. The site is in an R-1-B District.

9. The subject lot is a trapezoid with the southeast corner formed at an acute angle. This irregular shape is caused by the angle at which the public alley abuts the lot. The lot dimensions are 70.61 feet on the south side, 59.20 feet on the north side, 25.08 feet on the west side and 27.55 feet on the east side. The lot area is 1,628 square feet.

10. The site has not been improved and is overgrown with weeds. It has become a site for the dumping of local trash and requires frequent maintenance.

11. There is access to and from the subject site through the public alley on the east. There is no access to the site through 35th Street on the west.

12. The area surrounding the subject site is developed with single-family detached dwellings on the west of the site. These residential areas are zoned R-1-B. East of the site is a C-3-A commercial strip that extends along Connecticut Avenue. North and south of the site on the west side of the alley, the property is zoned R-1-B but is devoted to parking uses which serve the commercial uses located on the east side of the alley fronting on Connecticut Avenue.

13. The subject site was purchased by the applicant in 1974 as part of a commercial car wash site. The main parcel of the car wash premises is located on the east side of the public alley, fronting on Connecticut Avenue. The car wash business is managed by the applicant's son, Mr. Donald Hinton, who is joint owner of both parcels. The younger Mr. Hinton has done extensive renovations at the car wash site, which was extremely dilapidated in 1982 when he took over the business from a tenant.

14. The owners have been unable to utilize the alley lot for any purpose other than parking their private automobiles. On several occasions, the family's automobiles have suffered vandalism while parked on the subject open lot. The maintenance of the lot has become costly in time and money because persons habitually dump trash on the site.

15. The applicant proposes to develop the site with a private garage, to be used by the family for parking one private automobile. The proposed garage would be used primarily by Mrs. Donald Hinton for safe and secure storage of her automobile, which is seldom used. A second story would be used for storage of furniture and other personal effects.

16. The proposed garage would have the dimensions of 15.83 feet on the east and west sides and twenty-five feet on the north and south sides. The structure would be located 1.79 feet from the west lot line and would be face on line at the north lot line. In this location it would require a 23.21 foot or 92.84 percent variance from the rear yard requirements of Sub-section 3304.1 and an eight foot or 100 percent variance from the side yard requirements of Sub-section 3305.1

17. 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, 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.

18. A private garage is a permitted use on an alley lot in an R-1-B District provided that the special provisions of Article 74 are met. The provisions of Article 74 require that a private garage constructed on an alley lot shall be set back at least twelve feet from the center line of the alley onto which such lot abuts and shall be exempt from the requirements for minimum lot dimensions but shall be subject to the limitation on percentage of lot occupancy for the district in which located.

19. The public alley that adjoins the subject site on its east is twenty feet wide. The garage in its proposed location would be 34.20 feet from its east lot line and would exceed the minimum required twelve foot distance from the centerline of the alley. The proposed structure would also be smaller in footprint than the maximum lot occupancy requirement. The lot occupancy of the proposed structure would be 443.24 square feet, whereas the permitted maximum lot occupancy is 651.20 square feet.

20. The denial of the requested zoning relief would cause practical difficulties to the owner in utilizing the subject property as provided for in the Zoning Regulations. The subject lot does not have the appropriate dimensions or location for a dwelling unit. There is access only through the public alley on the east. The residential lots that front on 35th Street are in separate ownership from the alley lots located on the subject alley. The other alley lots that occupy the west side of the subject alley are used for garages, parking lots or trash dumpsters.

21. The proposed location of the garage at the northwest corner of the site would cause the proposed structure to serve as a buffer against erosion which occurs at the west or rear of the site and as a buffer against a large industrial dumpster at the north of the site. The lot which adjoins the subject lot at its rear creates an erosion problem because it is four or five feet higher in elevation than the subject lot and there is no retaining wall to prevent runoff onto the subject property when it rains. The applicant intends to construct the rear wall of the garage in such a location that it would serve as a retaining wall for the slope at the west.

22. The north side of the proposed garage would be located at the line abutting an industrial dumpster which the plumbing business to the north has located at the southern lot line of its lot. Although the dumpster is extremely large, debris frequently overflows onto the subject lot. Neighbors dump trash on the subject lot because it appears to be part of an existing trash dump. The small size of the vacant lot makes it appear to be a part of the adjoining lot with the dumpster. Locating the proposed garage on the north lot line would create a demarcation between the dumpster site and the subject site.

23. The granting of the requested variances would allow the applicant to make reasonable use of a property that is now undeveloped. The applicant was of the opinion that the development of the site as proposed would remove an eyesore from the square and would be consistent in design with other garages on the alley.

24. Advisory Neighborhood Commission 3F made no recommendation on the application.

25. No opposition or support was present at the original public hearing of September 19, 1984.

26. Four letters of support were submitted to the record by neighbors in he subject square. The support was based on the opinion that the proposed garage would be an improvement over what currently exists.

27. The letter of opposition as aforementioned, was submitted by the neighborhood resident whose property adjoins the west or rear of the subject site. The letter noted that:

A. The opponent's first awareness of the applicant's construction plans occurred when noisy construction equipment began removing bamboo from the grove that buffers the rear of the opponent's yard from the subject site. The grove also buffers a view of the rear of the applicant's commercial car wash on Connecticut Avenue.

B. The present location of the garage on the site did not conform to the location shown on the plat that was filed to obtain the building permit.

C. The plans on file did not approve the construction of a two-story garage, but rather a one-story shed.

D. Upon bringing this matter to the attention of the Construction Inspection Branch of the Department of Consumer and Regulatory Affairs, Mr. Hinton was

advised to halt construction. This application for variances followed.

28. Initially, the opponent's concern regarding the proposed construction of the garage was not very great. She assumed that Mr. Hinton's "zoning problem" was the result of an innocent mistake by an unsophisticated property owner. While concerned about the loss of the bamboo grove, she was assured by Mr. Hinton's son, Donald Hinton, that a retaining wall would be constructed to prevent the erosion of her backyard, and that compensation would be paid for any damages. As time went on however, a number of factors emerged which substantially increased her measure of concern:

A. The garage foundation appeared to be located right on her property line.

B. The garage was not to be a single story shed, but rather a substantial two story building.

C. It came to the opponent's attention that Albert Hinton was a most sophisticated property owner with regard to the Zoning Regulations of the District of Columbia having encountered and overcome vigorous community opposition to his construction of a Burger King franchise on a neighboring lot several years ago. The innocent nature of Donald Hinton's "zoning problem" therefore became suspect in her mind.

The opponent concluded that the granting of the proposed variances permitting the construction of a two story garage on her property line would not be in her best interest. The structure would overlook her backyard, fundamentally altering the tranquil nature of the site. The opponent questioned the use to which the structure would be put since it would not service any residence in the area. Its presence might also detrimentally affect the financial value of her home.

29. Mr. Donald Hinton responded to the opposition by letter and by testimony at the public hearing of October 10, 1984. The applicant's letter and testimony provided a history of the site, its acquisition by the Hinton family, and the circumstances under which the younger Mr. Hinton became manager of the car wash business and of the subject site. The applicant described his efforts to renovate the car wash and find a use for the subject site. The applicant described his discussions with the opponent in which he initially obtained what he interpreted to be her verbal approval of his plans.

30. The applicant responded to the opponent's written concerns as follows:

A. The proposed garage would not be located on the rear lot his line, but would be 1.79 feet from the opponent's property. The applicant reported that the opponent's concerns as to the location of the garage were based on a misconception.

B. The proposed garage with a storage area above will be lower in height than other garages on the alley, and will also be lower than a garage on the opponent's property. Further, the bamboo grove that separates the two properties is taller than either garage. The grove provides complete visual buffering and neither property can be seen from the other.

C. The opponent's impression that the applicant is a sophisticated property owner is an erroneous idea. Mr. Donald Hinton is operating his first business and his been in business just over a year. The applicant objected to any implication that he lacked integrity in dealing with the opponent.

D. The applicant further noted that due to the difference in grade and the greater height of the opponent's garage, the applicant's property cannot overlook the opponent's property.

E. The applicant reported that the "tranquil site" that the opponent does not want disturbed is actually a rear yard over grown with weeds and surrounded by a dilapidated fence. The applicant was of the opinion that the development of the subject site with a brick garage would improve the appearance of the area. The applicant noted that the proposed garage would be similar in design to existing garages on the subject alley.

31. The Board finds that the applicant has adequately responded to the concerns of the opposition.

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 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 met this burden of proof in showing a practical difficulty inherent in the property. The narrowness, shallowness, small size and unusual shape of the subject alley lot create practical difficulties in utilizing it for a private garage as is permitted in the Zoning Regulations.

The Board further concludes that granting the proposed relief will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. The granting of this area variance will permit a reasonable use of private property that will be consistent with existing uses on the subject alley.

Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Use of the garage shall be limited to parking for one passenger vehicle with storage on the second floor.

2. The garage shall be located as shown on the plat marked as Exhibit No. 2 of the record.

VOTE: 5-0 (Maybelle T. Bennett, Charles R. Norris, William F. McIntosh, Douglas J. Patton and Carrie L. Thornhill to grant)

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

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

FINAL DATE OF ORDER: 14 JAN 1985

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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14173order/DON9