GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14482 as amended, of David N. Dunn et al., pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances for the prohibition against allowing an addition to a nonconforming structure which now exceeds the lot occupancy requirements (Paragraph 7105.12), the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7105.12), the open court width requirements (Sub-section 3306.1) and the rear yard requirements (Sub-section 3304.1) to construct an addition to a nonconforming structure in an R-4 District at premises 3166 - 17th Street, N.W. (Square 2602, Lot 69).

HEARING DATE: September 24, 1986

DECISION DATE: November 5, 1986

FINDINGS OF FACT:

1. Since the application was filed title to the subject property passed to David N. Dunn, William B. Briggs and Peter F. McGee by deed dated September 25, 1986 and recorded thereafter in the land records of the District of Columbia.

2. The site, known as premises 3166 17th Street, N.W., is located on the west side of 17th Street, south of the intersection of 17th and Lamont.

3. The property is a row type dwelling located in the R-4 district, with R-4 zoning on both sides and to the rear. Across 17th Street from the subject property to the east, the zoning is C-2-A.

4. The site is rectangular in shape with a frontage of 20 feet along 17th Street, and a depth of 100 feet. A 15 foot wide alley is located to the rear of the site.

5. The site slopes slightly to the rear. Three stories of the property are visible from the street on 17th Street, four stories are visible when viewed from the public alley behind the property.

6. The site is improved with a four story brick single family row-type dwelling and small garage. The row dwelling was constructed circa 1906; the garage was constructed sometime thereafter prior to May 12, 1958. The

site became non-conforming on May 12, 1958, the effective date of the current zoning regulations.

7. Pursuant to Sub-section 8207.11 of the Zoning Regulations of the District of Columbia, the applicants are seeking a variance from the provisions of Paragraph 7105.12 to allow an addition to a non-conforming structure (i.e., the garage now located on the property) which exceeds the allowable percentage of lot occupancy in the R-4 zone; a variance in the allowable percentage of lot occupancy in the R-4 zone (Sub-section 3303.1 and Paragraph 7105.12); a variance from the minimum open court width in the R-4 zone (Sub-section 3306.1); and a variance from the rear yard requirements in the R-4 zone (Sub-section 3304.1).

8. In November 1983, the garage on the site was in very poor and unsafe condition constituting a safety and fire hazard with old, rotting wood and a rusting metal roof and siding.

9. In December, 1983, the applicants retained a contractor, Jenkins Hill Associates, Inc., ("Jenkins Hill") to do extensive repair work on the garage. At the time Jenkins Hill was retained, the company represented to the previous owner applicant, Mrs. Blakely, that Jenkins Hill was licensed as a home improvement contractor in the District of Columbia. The applicants later learned that Jenkins Hill did not have a home improvement contractor license from the District of Columbia government at the time the contract was entered into in December 1983. The applicants also learned later that Jenkins Hill did not obtain such a license from the District of Columbia Department of Consumer Regulatory Affairs until February 9, 1984 at which time most of the work on the garage had been completed.

10. On behalf of the applicants, Jenkins Hill obtained a building permit (No. B299178) on December 7, 1983 from the District of Columbia government authorizating the repair work on the applicants' existing garage.

11. Pursuant to the contract and as authorized by the original building permit, work proceeded on the garage and the extensive repair work on the garage was completed in early 1984. The former applicant, Mrs. Blakely, instructed Jenkins Hill, and they agreed, to repair the garage one wall at a time without dismantling the entire structure. In December, 1983 the contractor removed all the walls of the existing garage, leaving the concrete block lower foundation walls in place, rather than repairing the garage one wall at a time as agreed.

12. The garage now on the site is virtually identical to the garage which was in place on this site prior to May

12, 1958 and until December, 1983. There has been no increase in lot coverage as a result of the reconstruction.

13. The complete original foundation of the original garage was utilized for the current garage. The size of the open court or rear yard provided on the site has not changed.

14. The new garage differs from the original garage in that the new garage roof on the alley side is a few inches higher. Also the original garage had a deck on top which the new garage does not have.

15. The garage provides shelter, security and safety for the applicants and their property in this neighborhood, especially at night.

16. Many other row dwellings in this neighborhood have detached garages opening to the alleys behind the houses similar to the garage that is the subject of this application.

17. There is a large tree near the rear of the site which acts as a screen for neighboring homes.

18. The applicants expended in excess of $14,000 performing the repairs to the garage. The work was of first-class quality and fully passed all inspections by the District of Columbia government.

19. The garage now appears to be one of the most attractive garages in the neighborhood and is a substantial improvement.

20. The contract purchaser now owner and applicant herein of the property testified that upon purchasing the property he would not allow the roof of the garage to be used as a deck.

21. Advisory Neighborhood Commission 1E submitted no report to the record on the application.

22. The applicants submitted a petition with signatures of 37 area residents all supporting the applicants' request for the instant variances and asking that the current garage be allowed to remain.

23. The applicant's former next door neighbor to the north at 3168 17th Street, N.W., Mr. Curtis Lewis, also appeared before the BZA and testified in favor or the applicants' request for variances. Mr. Lewis moved from 3168 17th Street, N.W. recently, but still resides in the District of Columbia. Mr. Lewis testified that the garage is a substantial improvement to the neighborhood. In addition, the north wall of the applicants' garage provides support for and in fact acts as the south wall of the garage located next door at 3168 17th Street, N.W..

24. At the hearing, Mr Friedrick and Mrs. Nellie Kratochwil testified in opposition to the applicatin. The Kratochwils reside at 3164 17th Street, N.W., adjoining the subject property to the south.

25. The Kratachwils' opposition was based on their concerns for protecting their privacy. They testified that the new garage (and former deck), which are accessed from a second-story door, enabled anyone standing thereon to look into the Kratochwils living rooms, dining room, and kitchen. They testified that they are currently faced with the choice of either foregoing natural light or exposing their private lives to their neighbors. They testified that this was not the case with the former garage, as the old one was not sturdy enough for people to stand on. The Kratochwil's main objection is that whether a formal deck was constructed or not, the top of the newly constructed garage constitutes a defacto deck, one which could be used for parties, sun bathing, barbecues, etc. The Kratochwil's further testified that the present garage was taller than the former one and therefore impeds their view more, as well as creating an obstruction for turning traffic at the junction in the alley way.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicants are seeking area variances, the granting of which requires a showing through substantial evidence of peculiar and exceptional practical difficulties or exceptional condition of the property, such as exceptional narrowness, shallowness, shape, or topographic conditions. The Board further must find that the application can be granted without substantial detriment to the public good and without impairing the intent, purpose and integrity of the zone plan as embodied in the zoning regulations and map. Sub-section 7105.12 requires that a variance be obtained to allow an addition to a non-conforming structure which exceeds the allowable percentage of lot occupancy in an R-4 zone. Section 3303.1 and 7105.12 provide that lot occupancy in an R-4 district should not exceed 60 percent. The subject property has a lot area of 2,000 square feet (20 feet wide x 100 feet deep). The existing residence on the lot occupies 1,241.7 square feet. The garage for which the variance is requested occupies 450.64 square feet, for a total combined square footage of 1,691.81 square feet, more or less, representing the excess square footage above the 1,200 square feet lot coverage permitted as a matter of right in an R-4 district.

Section 3304.1 requires a rear yard of 20 feet. The subject property provides a rear yard of 2 feet, thus a variance of 18 feet is requested. Section 3306.1 requires a minimum open court width of six feet. The subject has an

open court width of 3.65 feet at its narrowest point, thus a variance of 2.35 feet is requested. The Board concludes that the applicants have met their burden of proof. The practical difficulty is inherent in the land because the site is not large enough and cannot be made large enough to accommodate the garage currently existing on the site. In addition, the shape of the lot is an elongated rectangle with a frontage and rear yard width of only 20 feet, and a depth of 100 feet. The Board notes that a garage had previously existed on this site. It became non-conforming on May 12, 1958. The applicants never intended to discontinue use of the garage, and the repaired garage currently on the site is, for all practical purposes, virtually identical to the garage in a state of disrepair which existed on the site until December, 1983. As conditioned below with the grant of this application, the structure will not include a deck and will not infringe unduly upon the privacy of the neighbor. Accordingly, the Board concludes that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan.

Accordingly the application is GRANTED SUBJECT to the CONDITION that no deck shall be constructed on top of the garage.

VOTE: 4-0 (Charles R. Norris, Paula L. Jewell, William F. McIntosh to grant; John G. Parsons to grant by proxy; Carrie L. Thornhill not voting not having heard the case).

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

ATTESTED BY: _____
EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: DEC 19 1986

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."