GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 15695 of Jared Fuchs, pursuant to 11 DCMR 3107.2, for a variance to allow the addition of an accessory structure when the existing principal structure now exceeds the allowable percentage of lot occupancy requirements [Paragraph 2001.3(a) and (c)], a variance from the allowable percentage of lot occupancy requirements (Subsections 403.2), and a variance to allow an accessory garage to be located less than 12 feet from the centerline of an abutting alley [Paragraph 2300.2(b)] for construction of an accessory garage in an R-4 District at premises 320 E Street, N.E. (Square 779, Lot 152).

HEARING DATE: September 16, 1992
DECISION DATE: October 7, 1992

ORDER

SUMMARY OF EVIDENCE:

1. The subject property is located on the north side of E Street between 3rd and 4th Streets and is known as premises 320 E Street, N.E. It is zoned R-4.

2. The subject lot is rectangular in shape with a frontage of 18 feet along E Street and a depth of 90 feet, for a total lot area of 1,620 square feet.

3. The subject property is improved with a two-story brick row dwelling which currently exceeds the permitted 60 percent lot occupancy by 36 square feet or 3.7 percent.

4. The applicant proposes to construct a one-story masonry garage at the rear of the site measuring 18 feet in width and 24 feet in depth. The proposed garage would be located in the space currently occupied by a paved parking pad.

5. The proposed garage would increase the existing nonconforming lot occupancy of the subject site from 1,008 square feet or 63.7 percent to 1,466.66 square feet or approximately 90.5 percent. The applicant is therefore seeking a variance from the maximum lot occupancy requirements and a variance from the provision of Section 2001.3 to allow an addition to a property which currently exceeds the permitted lot occupancy requirements.

6. The site abuts a ten-foot wide public alley to the rear. The applicant proposes to construct the garage along the rear property line. Section 2300.2 requires that an accessory garage be

set back from the center line of an abutting alley at least 12 feet. The applicant is therefore seeking a variance from the set back requirement of seven feet or 58 percent.

7. The area surrounding the subject site is primarily developed with single-family row dwellings, including recently developed row houses located in the interior of the square. The site is within walking distance of the Union Station Metro station.

8. The applicant testified that the subject site is similar in size and improvements with the row of eighteen dwellings facing onto E Street, N.E. All but three of the existing row dwellings have existing garages or chain link fences at the rear.

9. The applicant testified that the garage is needed for security purposes. The applicant's vehicle has been vandalized in the existing parking pad and his property has been burglarized in the past. The proposed garage would provide a sheltered area for the applicant's vehicle and would provide a barrier between the public alley and the rear of the dwelling.

10. The applicant testified that the subject site is unique in that it is one of the few dwellings which does not have an existing garage. In addition, the topography at the rear of the subject site is level with the adjacent public alley while the two adjoining lots are approximately two to three feet above alley level.

11. The applicant testified that there are existing footings on the site which evidence that an accessory building existed on the site in the past.

12. The applicant testified that because the subject lot does not meet the minimum lot area requirements and the existing dwelling exceeds the permitted lot occupancy, there is no way to provide a secure parking area without variance relief.

13. The Office of Planning (OP), by memorandum dated September 8, 1992, recommended denial of the application. The OP was of the opinion that the proposed garage would result in an excessive increase in the lot occupancy of the site; would reduce open space, air, and light; and, would adversely impact the surrounding area. The OP was further of the opinion that the applicant had not met the burden of proof necessary to justify the requested variance relief.

14. By letter dated May 26, 1992, the Metropolitan Police Department (MPD) offered no opposition to the application. The MPD was of the opinion that the proposal would have no impact on the public safety in the immediately area or generate an increase in the level of police services currently provided.

15. By memorandum dated August 4, 1992, the D.C. Fire Chief offered no objection to the application. The Fire Chief noted that fire and life safety features would be considered during the plan review process as part of the building permit application review.

16. By letters dated June 18 and August 19, 1992, and by representative at the public hearing, Advisory Neighborhood Commission ANC 6A opposed the granting of the application. The ANC was of the opinion that the subject site and the immediate area were already too congested and the variance requested would add to the existing congestion. The ANC was further of the opinion that the applicant could provide security for his vehicle and property by erecting a sliding door or gate at the rear of the property.

17. By letter dated September 13, 1992, the Capitol Hill Restoration Society opposed the granting of the application. The CHRS was of the opinion that the applicant did not satisfy the legal requirements necessary to grant variance relief.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds the following:

1. The subject property is not unique, it is similar to other properties in the neighborhood.

2. The applicant is not foreclosed from making reasonable use of his property because of some unique or exceptional condition.

3. The applicant can park and secure his vehicles on the lot without variance relief.

4. To allow a garage at the site would create excessive density for the subject lot and nearby area.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing, the Board concludes that the applicant is seeking variance relief. In order to be granted such variance relief, the applicant is required to provide evidence showing that there is some unique or exceptional condition or situation inherent in the property itself which creates a practical difficulty upon the owner. The applicant must also demonstrate that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has not met the requisite burden of proof. The Board concludes that the subject site is similar to other lots in the same square in terms of size, shape and improvements. The Board further concludes that the applicant would not suffer a practical difficulty in that on-site parking is currently provided and the applicant has alternative means of providing security at the rear of the site.

The Board is of the opinion that the garage would create excessive density and allowing it would be of substantial detriment to the public good and would impair the intent, purpose and integrity of the zone plan.

The Board concludes that it has accorded the ANC the "great weight" to which it is entitled. The Board further concludes that granting the application would be of substantial detriment to the public good and would substantially impair the intent, purpose and integrity of the zone plan. In light of the foregoing, the Board hereby **ORDERS** that the application is **DENIED.**

VOTE: 4-0 (Angel F. Clarens, Sheri M. Pruitt, Paula L. Jewell and Carrie L. Thornhill to deny; Tersh Boasberg not present, not voting).

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

ATTESTED BY: Madeliene H. Robinson

MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: JUN 14 1995

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENMTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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

ord15695/SS/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 15695

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on JUN 14 1995 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Jared D. Fuchs
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Advisory Neighborhood Commission 6-A
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MADELIENE H. ROBINSON
Director

DATE: JUN 14 1995