Government of the District of Columbia

OFFICE OF ZONING

441 4TH STREET, N.W.
SUITE 210
WASHINGTON, D.C. 20001
(202) 727-6311

April 20, 2004

Ann Goodman
3254 O Street, N.W.
Washington, D.C. 20007

Re: BZA Application No. 16696 - 3254 O Street, N.W.

Dear Ms. Goodman:

The Office of Zoning (OZ) received your letters dated April 5, 2004, and April 13, 2004 (the April 13th letter having been addressed to Advisory Neighborhood Commission 2E), concerning the above-cited application. As you know, the record in your application has been closed for some time. Please be advised that any material correspondence received by the Board of Zoning Adjustment (Board) after the close of the record that bears upon the substance of an application must be returned and not received into the files of the Board pursuant to subsection 3121.9, of the Zoning Regulations. As such, I am returning your letter to you.

If you have any questions relevant to the foregoing, please call Richard S. Nero, Jr., Chief, Support Services, on (202) 727-6311.

SINCERELY,

JERRILY R. KRESS, FAIA
Director

rsn
Attachment

BZA
Case No. 16696
Exhibit No. 104

Board of Zoning Adjustment
District of Columbia
CASE NO.16696
EXHIBIT NO.104

Ann Goodman
Interior Architecture and Design
3254 O Street, NW
Washington, DC 20007
T: (202) 333-3288 F. (202) 333-3266

RECEIVED
D.C. OFFICE OF ZONING
2004 APR -6 PM 3:32

Monday, April 05, 2004

Ms. Jerrily R. Kress
Board of Zoning Administrator
441 4th Street, NW
Suite 210
Washington, DC 20001

Dear Ms. Kress,

BZA Case # 16696

Thank you for your letter regarding my case and recommending I reapply; however, as we continue to agree with the Office of Planning (OP) which *disagreed* Zoning Administrator Michael Johnson who mistakenly sent *a grandfathered R-1B[1] property within a much less restrictive, R-3 district,* for an aria variance, which, *until my case*[2], had always been permitted the 2nd story habitable domestic quarters over a garage. Mr. Johnson subsequently lost his job for misinterpreting the Zoning Regulations.

Variance # 1, Five-Foot Height Variance: Originally, the only variance I was sent for was a five-foot height variance to exceed the fifteen-foot height limitation from code Section 2500.4[3] However, I believe that the Zoning Codes anticipated such a situation as Section 2500.6, which states, "A two (2) story accessory building allowed under Section 2500.5 shall not exceed twenty feet (20 ft.) in height and shall not be located within the required rear yard," *also states*, "It shall also be set back form all side lot lines for a distance equal to the minimum width of a required side yard **in the district in which it is located**."

The *only way* an issue of side yards could *ever* arise or could *ever* be anything other than the 8-foot R-1 A or B dimension, would be if an R-1A or B property were to be found within a district *other than an R-1 A or B district*. As this "other" district would necessarily be *less* restrictive, then, *and only then*, could the question arise as to whether the eight-foot (8 ft.) side yard of both or the *more* restrictive R-1A and B districts should be respected, or the *lesser* restrictive side yard regulations of "the district in which it (the R-1A or B property) is located." Otherwise, that whole statement has no purpose or meaning at all.

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[1] **Section 2500.5** "In an R-1-A or R-1-B District, an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building."

[2] **Decision Day Transcript**, Commissioner Griffis, page 89, line 20, "I believe that it has been *up until now* the fact that it is allowing this use and by basis of extrapolation, a use that would be permitted in a higher zone allowing this in a lower zone...."

[3] **Section 2500.4**, "An Accessory building in any zone district shall not exceed one (1) story or fifteen feet (15 ft.) in height, except as provided in Section 2500.5. **Section 25oo.6,** "A two (2) story accessory building allowed under Section 2500.5 shall not exceed twenty feet (20 ft.) in height and shall not be located within the required rear yard. It shall also be set back from all side lot lines for a distance equal to the minimum width of a required side yard in the district in which it is located."

OP's report stated that my 2nd story garage addition would not exacerbate *any* of the issues the codes were enacted to protect (i.e. light & air, population & building density control, and transportation, parking & public services). This would logically follow as well as be true of any other R-1A or B property in *any* district- that is the very reason the code permits them *without* the need for a variance!

If my case is left standing, R-1A or B properties located in ***less*** *restrictive districts, will become the* ***most highly restricted properties in the Zoning Codes.*** This is surely not the intent and direction of the Zoning Codes.

Because of my case, the BZA, without the knowledge of city officials, completely changed the meaning of Section 2500.5 by adding the word "only" so this code now reads: "In an R-1-A or R-1-B District *only*" This change eliminates the homes and jobs for domestics on R-1A or B properties found on all other *less restrictive* districts. In so doing, the statement in Section 2500.6, "It shall also be set back form all side lot lines for a distance equal to the minimum width of a required side yard **in the district in which it is located**," is rendered totally meaningless.[4] **Now, and for the first time in the history of the Zoning Codes, I have to apply for not only a height variance but also a use variance *because of my own case*!**

Variance # 2, USE: As this case now stands, we have to apply for a "use" variance Mitten[5] and Levy kept insisting we needed as they believed there was a code restriction against habitable accessory buildings, no one, including corporation council and myself, has ever been able to find it. Additionally, the BZA itself ruled in case # 13550,[6] which is actually in *my exact same alley*, and for a 2nd story over their garage for a maid's quarters that this use was a "matter of right use." (This case is included in my file.) Can the BZA reverse existing Code interpretations on a case-by-case basis?[7] **This new interpretation eliminates domestic habitation in all other one-story accessory structures.**[8]

Variance # 3, Alley Setback: Do I have to apply for a variance from the twelve-foot (12 ft.) from the alley? All dimensions before the BZA showed that we were at least seventeen feet (17 ft.) from the alley centerline.[9] I do not understand why they would make this an issue as we are not even trying to build a *garage* and there is no such restriction for any other type of accessory structure on an alley[10]. Please advise me what to do in this case. Does the alley have to be surveyed? Photos are already in the file.

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[4] "Further, a basic rule in interpreting regulations is that each provision should be construed so as to give effect to all and the regulation's provision, not rendering any provision meaningless." School Street Associates Limited Partnership v. District of Columbia, 764 A.2d 798, 807 (2001)

[5] Mitten may have been thinking of the numerous 2nd story garage rental units in Georgetown that are illegal. It is not the building that is illegal; it is the use as a rental unit as R-3 is zoned single family. We have an affidavit on file stating that we do not intend to use it illegally. We should not have to have such a document on file, but we were still ignored

[6] **Case # 13550**, page 2, #9, "Living area for a domestic employee in an accessory structure is a permitted accessory use under Paragraphs 3101.56 and 3101.63 of the Zoning Regulations."

[7] Removing the use of accessory structures as homes for domestics eliminates both the job and the home. This law should not be changed without the full attention of the entire Council.

[8] Accessory structures originated as servant's quarters!

[9] **Section 2300.2 A** Private garage that is an accessory building in a Residence District: (b) Where abutting an alley, it shall be set back at least twelve feet (12 ft.) from the center line of the alley upon which it opens.

[10] This 12-foot requirement for GARAGES only was probably to insure a 22-foot turning radius for cars.

Variance #4, Second Floor: As this case stands, I now have to reapply for variance for a 2nd floor. As any other R-3 District property owner, we are permitted a **one-story, fully habitable accessory structure**. According to OP's report, "The additional (5 ft.) building height requested *is just enough to support the roof over the garage and the room height as specified by the Building Code*." **Our accessory structure is on *sloping land* which puts the point of measure[11] *above* the existing concrete slab by at least two feet**, according to OP, **it is impossible for us to have one-story[12] *without* exceeding the 15-foot building height limitation.** That is the reason code section 2500.4 says, "An accessory building in any zone district shall not exceed **one (1) story or fifteen feet (15 ft.) in height…"** Again, we should not a variance here either, *nor* for a height variance, but the BZA just ruled we did. In Georgetown, there are many "one-story" accessory structures *well* over 15 feet.

Variance #5 Extending a Non-Conforming Structure: Another variance the BZA Order ruled we need is for vertically extending a nonconforming structure as we had purchased the four-foot strip of property just west of our garage. BZA Order said that as we had added a four-foot (4 ft.) side yard instead of the proper eight-foot (8 ft.) side yard, our formerly complying, *zero*-side yard structure was therefore no longer in compliance and we could not extend a nonconforming structure without another variance.

We pointed out that *the small four-foot strip-lot property was never joined to our first lot* so we did not need this variance either but we have not heard anything from the BZA to the contrary. Shouldn't this ruling have been corrected when presenting to the Court of Appeals or be corrected now as we are still before the Court? How do I handle this if I have to reapply?

As pointed out somewhere in the case, if we combined the two lots, and extended the garage structure to *include* the new four-foot strip lot, we would fully comply with the zero lot line requirement of the R-3 District and would not need a variance here either. However, as we have planted a row of Hornbeam trees to mitigate the impact on neighboring views, shouldn't we be applauded for this action instead of penalized? What is the best way to proceed here so as not to require another variance?

Urban Forest Act: When we applied, we stated that one of reasons we should be permitted the garage extension was to preserve the six-foot diameter tree in our rear yard. The Order stated that such trees were not protected so we should cut it down. Subsequent to our application, the Urban Forest Protection Act has been created for trees measuring 55 inches or greater, in diameter (my tree is 75 inches). This law may still be waiting for final approval; should I wait for this final approval before reapplying?

Returning to the ANC: In reapplying, most importantly, I find it humiliating to have to *beg my neighbors for property rights that are already guaranteed by the Zoning Codes*. As my project has already been through the ANC, and as *no one had any objections on any issue which either legally applied to my property or which are properly before an ANC.* Would I have to return to

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[11] **Section 2516.7** "The height of a building governed by the provisions of this section, in all zone districts, shall be measured (up) from the finished grade at the middle of the front of the building."

[12] **Section 199.1**, a "Story" is "the space between the surface of two (2) successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at the point from which the height of the building is measured" **Section 2500.7** "The height of an accessory building permitted by Sections 2500.4 or 2500.5 shall be measured from the finished grade at the middle of the side of the accessory building that faces the main building to which it is accessory."

the ANC for this request? **Every legitimate point of concern in this application has already been fully addressed by the ANC and it is in writing that we are in full compliance.**[13]

While I have had a registered architect practicing in DC to write a letter, BZA and Connelly keep insisting that I have presented no evidence that my light & air would be blocked from my Family Room[14] of the house were extended for domestic accommodations. What is the proper way to prove this before the BZA, which refused to accept a registered architect's testimony over Opposition *non-architect* Gross's testimony?

To date, no one has properly reviewed my case and Assistant Corporation Council, Connelly is not representing the facts properly. See the attached letter. If it is left standing, my case sets many presidencies that are not accurate or even legal. While this is a no way to treat an applicant, it is also a terrible way to formulate and adjudicate the Zoning Codes for the District of Columbia! ***What is the proper way to have the BZA rulings on this case eradicated in order to support Councilman Evans' efforts to increase the DC tax base by encouraging new housing (as well as jobs) for people of all income levels and of diverse origins as my case now creates new law which eliminates domestic quarters in all accessory structures, particularly on my 5,533[15] sq. ft. oversized R-1B property in R-3 Georgetown?***

Please feel free to contact Councilman Evans and all other council members for their opinion and support in this effort.

Instead of suggesting I reapply, as it has been over a year since the BZA Order was rendered, I would appreciate it if you would request Assistant Corporation Counsel, Mary Connelly, to correct her errors and misrepresentations so that the Court of Appeals, En Banc will have accurate information before them in order to *overturn this case*:

Very truly yours,

Ann Goodman

cc: Mayer Williams, Councilman Evans, Councilman David Catania, ANC, ANC Board Members William Skelsey and William Starrels, Ray Kulkulski, Toye Bello, all Council Members and Court of Appeals.

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[13] Neighbors opposed based on some 50+ issues. Between the ANC, OP, and BZA, not even ONE of the issues brought forward proved to be valid! This process has caused us enormous stress as well as expense and wasted time. There is no excuse for such a process!

[14] Registered Architect Almy, page 3, line 29, "Such an addition would force the Family Room and one recently renovated Bedroom which currently enjoys light filtered through a large cherry tree from a Southern exposure, to be entirely dependant on the modern windows to the East which are located 5 to 7 feet from the residence to the East."

[15] With the small second lot to the west (4' x 33.3'= 133 sq. ft.)= 5,532 sq. ft.

P.S. While I *fully appreciat*[redacted]our recommendation to reapply as a[redacted]st effort to facilitate my own needs, I have a greater concern for the District of Columbia. Aside from a sorely lacking permitting process, I believe DC would be highly benefited by supporting Councilman Evans' desire to "do everything we can to help expand the tax base by attracting new residents, we also need to be active in ensuring our city remains economically diverse as well." "We must play a part in creating housing for people of all income levels." **Reversing my case would represent a significant start in achieving his goal**. Thank you.

Wednesday, March 24, 2004 Serving Foggy Bottom, West End, Burleith, Foxhall, Georgetown, Georgetown Reservoir & Glover Park Vol. XIII, No. 33

THE GEORGETOWN CURRENT

NORTHWEST REAL ESTATE

ZONING

From Page 1

The powerful position within the Department of Consumer and Regulatory Affairs has been vacant for nearly a year. Two recent applicants, sources say, withdrew from consideration just before they were hired.

Now rumor has it that the post may become victim of a citywide budget edict forbidding most agencies from filling vacant positions. Mayoral aides would not confirm that rumor, but other officials say the chief financial officer has directed that all vacant positions be eliminated for the coming fiscal year.

The zoning administrator, ultimate arbiter of zoning rules within the department, heads the office that reviews building plans to decide whether the height, density, other dimensions and, in some cases, uses, comply with the zoning code.

The job is important not only because it oversees much of the flow of development, but because errors can lead to expensive appeals, possible orders to alter or tear down buildings, and some pretty costly lawsuits against the city.

Examples of errors abound.

"There needs to be a competent and dynamic zoning administrator, somebody who understands the zoning regulations and has some institutional memory of how they should be applied," Mendelson said.

Turnover in the office "is never good, because you want consistency and somebody with a body of knowledge" of the city's sometimes arcane zoning law, said Barbara Zartman, a Georgetown activist. "And lord knows," she added, "we've had nothing but turnover."

Recent zoning administrators have not lasted long.

Michael Johnson, recruited from a similar post in Denver by Mayor Anthony Williams, was forced out in November 2001 after two years on the job. Johnson branded himself a reformer, but several citizen groups complained he was unresponsive and often misconstrued the zoning code.

His successor, Robert Kelly, a building-code expert recruited after a nationwide search, didn't last a year. Sources said Kelly got fed up with the constant and competing pressures from developers and citizens and resigned to join a private trade association in March 2003.

The position has been vacant ever since.

matters for the Board of Zoning Adjustment and the Zoning Commission, the board heard 10 appeals of zoning administrator decisions in fiscal 2002 and 17 in fiscal 2003.

This fiscal year, according to testimony from director Jerrily Kress, the board has a time-consuming appeal case nearly every week. It also appears that more appeals are being granted, she and others said.

Chris Bender, spokesperson for the city's Office of Economic Development, said last week that the Department of Consumer and Regulatory Affairs is still searching for a new zoning administrator.

But Bender said he "disagrees with the assertion" that the lack of a warm body in the job is the source of problems or even that the number of errors is increasing.

"There's a ton of development, and not as much space, so zoning decisions hit closer to home. I don't agree there've been more errors. There's less and less land, so there's more and more tough choices," Bender said.

Bender also said the department has a "management structure set up" to handle zoning review even if the position of zoning administrator remains vacant.

But others say the small zoning

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JOSEPH HIMALI

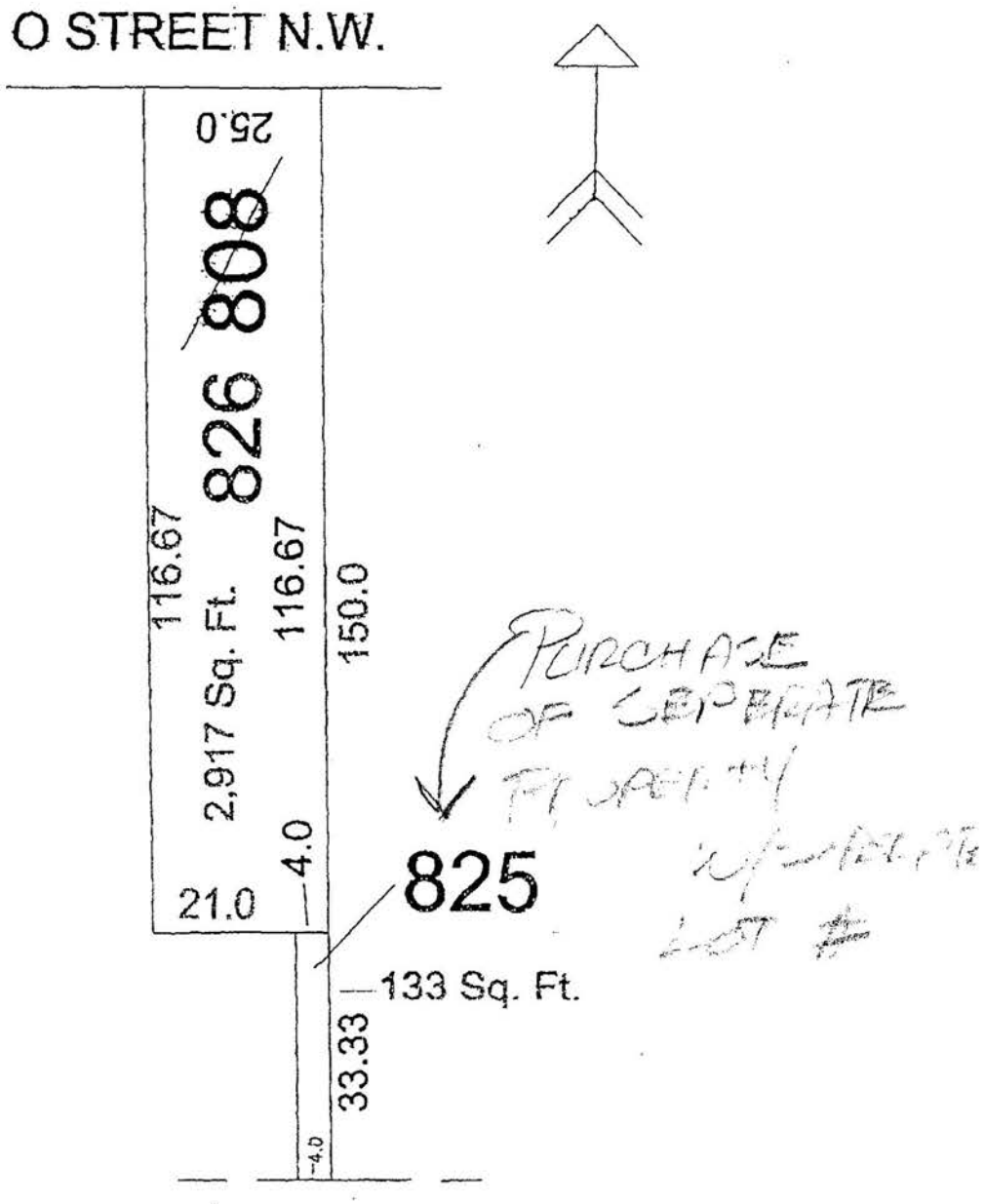
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OFFICE OF TAX AND REVENUE
ASSESSMENT DIVISION

ASSESSMENT AND TAXATION PLAT
SQUARE 1230



LE Brown #44514 4/30/01 Scale, 1 inch 50 ft.
Draftsman Reference Date

The Office of Surveyor of the District of Columbia shall admit this plat to record under the provisions of Chapter 7 of Title 47, District of Columbia Code, Designation of Real Property for Assessment and Taxation, and for other purposes.

Chief Assessor, Office of Tax and Revenue

FP-120 (Rev. 5/98)
3-93451

CONSUMER INFORMATION NOTES.

1. This plan is a benefit to a consumer insofar as it is required by a lender or title insurance company or its agent in connection with contemplated transfer, financing or re-financing.
2. This plan is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements.
3. This plan does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or securing financing or re-financing.
4. Building line and/or Flood Zone information is taken from available sources and is subject to interpretation of orginator

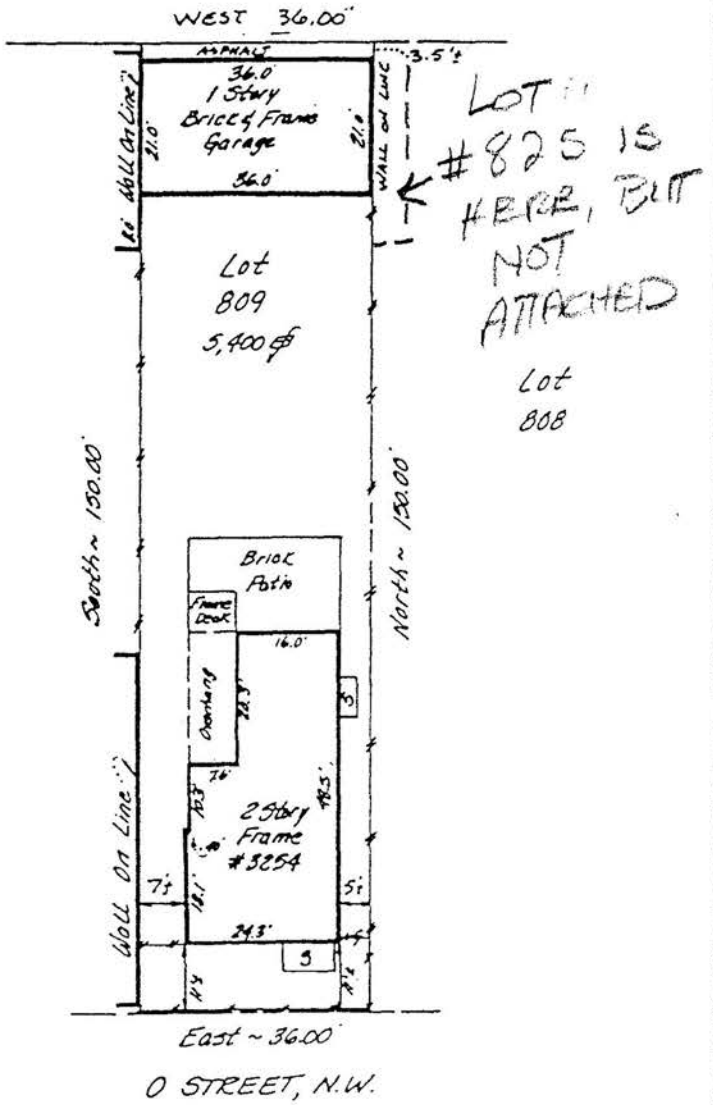
STATE OF MARYLAND
JEFFREY A FOSTER
REG. NO. 587
PROPERTY LINE SURVEYOR

Notes:

1) Flood zone "C" per H.U.D., panel No. 0015B

2) No property corners found. Lines shown evidenced by drawing of record and field measurement.





24.3 × 4.5
= 117.5

2.1 + 1.5

Location Drawing
LOT 809 SQUARE 1230

WASHINGTON
District of Columbia

SURVEYOR'S CERTIFICATE

"THE INFORMATION SHOWN HEREON HAS BEEN BASED UPON THE RESULTS OF A FIELD INSPECTION PURSUANT TO DOCUMENTS OF RECORD AT THE OFFICE OF THE DISTRICT OF COLUMBIA SURVEYOR. LOCATION OF IMPROVEMENTS SHOWN HAS BEEN BASED UPON FIELD MEASUREMENTS FROM EXISTING LINES OF APPARENT OCCUPAITON WHENEVER POSSIBLE. PRIOR SURVEYS OF PUBLIC RECORD HAVE BEEN USED TO CONFIRM INFORMATION SHOWN."

Jeffrey A. Foster

MARYLAND PROPERTY LINE SURVEYOR REG. NO 587

REFERENCES
D.C. SURVEYOR RECORDS
BOOK A&T Tracings
PAGE
LIBER
FOLIO

SNIDER & ASSOCIATES
SURVEYORS – ENGINEERS
LAND PLANNING CONSULTANTS
2 Professional Drive, Suite 216
Gaithersburg, Maryland 20879
301/948-5100. Fax 301/948-1286

DATE OF LOCATIONS	SCALE: 1"=30'
WALL CHECK:	DRAWN BY: ROB
HSE. LOC.: 6-10-96	JOB NO.: 96-1735

Ann Goodman
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April 5, 2004

Ms. Mary T. Connelly
Appellate Division
441 4th Street, NW
6th Floor, South
Washington, DC 20001

BZA Case # 16696 Court of Appeals, En Banc Case # 02-AA-149

Dear Mary,

Issue # 1, USE: In your reply brief before the Court of Appeals, En Banc you stated, page 5, line 8, "The Goodmans continue to insist, wrongly, that the use in question is a matter of right use in their district." Did you see this statement by the BZA in the Case # 13550, page 2, #9, "Living area for a domestic employee in an accessory structure is a permitted accessory use under Paragraphs 3101.56 and 3101.63 of the Zoning Regulations." This is the case we have been constantly referring to which was directly across the alley from us, and eastward by one house. If it was a "matter-of-right use for them when they wanted to construct a 2nd story maid's quarters over their garage, wouldn't this also apply to our garage addition equally?

Issue # 2, "Apartment" verses "Habitable Accessory Structure": You are getting your terms mixed-up when you made the statement in your Response to my Request for an Appeal En Banc, page 5, line 12, "First, the use of a second story accessory garage apartment for maid's quarters is not a general matter of right use in any district. The use is an expressed exception to the regulations' blanket prohibition on second story accessory garage apartments in all districts."

You are correct in stating that a garage "apartment" (for rental use, one or two-story) is an illegal use of an accessory structure, as it constitutes a second-family dwelling in a single-family district. However, if the *exact same* structure (complete with kitchen, bath and laundry) is used to house *domestics caring for the owner of the main structure,* there is nothing illegal about this use as it is *accessory to the main building and is considered an "accessory structure," not an "apartment."*

The term "apartment" has been inappropriately applied to our project from the beginning by opposition as an "apartment"[1] is used "exclusively for the use of and under the control of the occupants of those rooms." "Domestic quarters" are *exclusively for the use of and under the control of the owner of the main structure for housing his domestics.* This use is *accessory to* the single-family and therefore, not in violation of the single-family district zoning regulations.

[1] **Apartment** – one (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms.

The terms "accessory ....apartment," (garage or otherwise) are mutually exclusive as, according to the Zoning Code definition of an "apartment"- having an "exclusive use," and the Zoning Code use of the term "accessory"- having a "dependant use."

Throughout the case, Opposition has insisted we were building a rental unit/illegal apartment. We even put an aft davit on file stating that it was not to be used for rental purposes. While the structure is identical, it is the *illegal use as a second-family dwelling* and not the structure itself that is prohibited. I don't think it is ethical for you, as an attorney, to oppose our proposed addition by insisting we are planning to abuse its use in the future. There are many live-in domestics in Georgetown and there is absolutely no evidence anywhere to support Opposition's insistence that we plan to use this structure as an illegal, second-family apartment.

Issue # 3: Habitable Basement Space and Inhabitable Cellar Space: As I mentioned to you over the phone, my house has never been a three-story, four-bedroom house in the 150+ years it has been in existence. Below grade cellar spaces you insist are "habitable" are as low as 6'-6" in height. Unfortunately, it is not my beautiful decorating that makes a space "habitable," but the ceiling height regulation to not less than seven feet, six inches (7 ft., 6 in.).

Issue # 4, "Unique" and "Other Similarly Large Properties:" With respect to the term "unique," while ANC, CAG, OP all agreed that our property was "unique," Opposition Expert Gross testified that we were not "unique" as there were other similar properties in block immediately to the west. Gross failed to observe that what appears to be side yards between the houses making them all appear to be "detached," are actually only one side yard per house making them all "*semi*-detached." Only two are "detached" and both of these already have 2nd story garages. (Recently one of these was renovated and made habitable.)

We cannot be compared to either of these two properties as neither one qualifies as *grandfathered R-1B lot (5,000+ sq. ft.).* They are *not* "similarly large[2]" as Opposition testifies, but typical R-3 detached homes at 4,000 sq. ft. or less which means they are *not* entitled to 2nd story garage quarters for domestics under Section 2500.5, despite the fact that they already have them. You have repeatedly testified,[3] "It was undisputed that their R-3 district had other similarly large lots, and other single family detached homes." To date, you have not been able to give even one specific address, but continue to hide behind false generalities. Kindly either find a specific address that qualifies under the *same set of facts* as ours or to withdraw your claim that we are not "unique."[4]

Issue # 5, "Arm's Distance": You testified that we "presented no evidence" that we would lose light & air to our Family Room if the maid's quarters were added by extending the house to the rear. This is because you have consistently refused to acknowledge the architect's written statement to this fact,[5] as well as the pictures on file. This is not rocket science.

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[2] R-1B detached properties are at a minimum of 5,000 sq. ft. and as such, qualify for 2nd story domestic quarters over a garage according to Section 2500.5, while typical R-3 detached properties, at 4,000 sq. ft. do not.

[3] Respondent's Opposition to the Petition for Rehearing En Banc, page 3, line 5.

[4] In order to qualify for a variance, one must have a "unique" situation.

[5] Registered Architect Almy, page 3, line 29, "Such an addition would force the Family Room and one recently renovated Bedroom which currently enjoys light filtered through a large cherry tree from a Southern exposure, to be entirely dependant on the modern windows to the East which are located 5 to 7 feet from the residence to the East." While you tried to have this letter dismissed from the record as having been improperly filed, the Court of Appeals upheld it as *properly submitted into the record. And you are still choosing to ignore it!*

In order to show you how e[redacted]emely arbitrary your assessment of th[redacted]ituation is, I would also like to mention your statement in support of the Opposition's light & air. While OP determined that Opposition had *no light & air issue at all*, as the house is *twenty-eight feet* (28 ft:)[6] West of my proposed structure, with the southern border of her rear yard on a *twenty-foot wide (20 ft.) alley*, Gross and you testified that Opposition's rear deck, at fourteen feet (14 ft.) was **"arm's distance"**[7] from my proposed structure. Not only are rear decks not to be considered, but this particular rear deck is illegally elevated.[8] Additionally, Opposition forgot to add the four-foot (4 ft.) width of my strip lot to her calculation, which puts her illegal deck at eighteen feet (18 ft.[9]) from my proposed structure. Your recommended solution is for me to extend my house to the rear, which would make my Family Room (not a bathroom or even a legal deck) *literally* **arm's distance** at five-feet, five inches (5 ft.-5 in.) from a thirty to forty-foot sheer wall to my east! Apparently, Gross' arms are *much* longer than mine.

Please check with Mr. Bello and correct your filing with the Court of Appeals, En Banc so that the **Zoning Codes and Regulations may continue to be represented and adjudicated properly and fairly.**

Your honest review and correction of these errors and misunderstandings would be greatly appreciated. Thank you.

Sincerely,

Ann Goodman

cc: Mayer Williams, ANC2e Councilman Evans, and all other Council members, ANC Board Members William Skelsey and William Starrels and ANC, CAG's Ray Kulkulski, Ms. Kress, Zoning and OP's Mr. Toye Bello

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[6] In this R-3 district, the code requirement is a twenty-foot (20 ft.) rear yard and I could have a zero (0) side yard. The extra eight-feet (8 ft.) would even comply with the requirements of the *most* restrict R-1 Districts.

[7] XXXXXXXX arm's distance

[8] **Section 2503.2** A structure, not including a building no part of which is more than four feet (4 ft.) above the grade at any point, may occupy any yard required under the provisions of this title. Any railing required by the D.C. Building Code, Title 12 CMR, shall not be calculated in the measurement of this height.

[9] I measure 19 feet, which even puts her illegal deck at one foot short of the required rear yard's distance from my garage! Where's the justice?

Attachment #1

ALMY ARCHITECTS, P.C.
11006 Kenilworth Avenue
Garrett Park, MD 20896-0123
(301) 949-7813 • Fax (301) 949-6574

July 30, 2001

Board of Zoning Administrator
C/O Mr and Mrs. Craig G. Goodman
3254 O Street, NW
Washington, DC 20007

Re: BZA Application No. 16696

Dear Members of the Board,

I have been asked by Mr. and Mrs. Craig G. Goodman to review their property at 3254 O Street, NW, because they have requested a 5 foot height variance to the outbuilding at the rear of their property, and the Board has requested the Goodman's to submit a professional opinion on the impact, feasibility and practical difficulties of this proposal.

I have reviewed the proposed addition to the outbuilding as well as the possibility of expanding the main house to accommodate the same use. It is my professional opinion, that adding the second story to the outbuilding will cause little or no damage to the historical house, to the historical garden or to the subsurface archeological remnants that are present on the property. Additionally, it is my opinion that the 2nd story addition will not impair the light, air or privacy of surrounding neighbors and have no adverse affects on the aesthetics of the alleyway and the neighboring properties. However, in my opinion, extending the house into the rear yard will cause significant damage to the historical fabric and architectural integrity of the building, and the construction will likely damage, possibly irreparably, the historical garden, the subsurface archeological remnants and invade the privacy and light of both neighbors that are closer to a possible expansion than there are neighbors to the outbuilding.

Description of Property

3254 O Street is an historic house with an historic garden, an elongated circular brick walkway, and brick garage. The house is fully detached with 2 side yards and occupies approximately 20 percent of the total land area of the lot with approximately 2,300 square feet of interior space above grade and one bedroom, a utility area, storage space/drafting area and a small home-office below grade. The Goodman's currently occupy all three bedrooms above grade full time and family or guests occupy the bedroom below grade most of the time. There is currently no room in the main house for another adult to live full time. The proposed second story addition will provide living quarters for a domestic employee.

The rear yard is approximately 3391 sq. ft. in total land area. The outbuilding occupies approximately 13 percent of the total lot size of 5533 sq. ft. and approximately 22 percent of the total rear yard area. There currently is no structure in the 20 feet of required rear yard as the garage is located approximately 67 feet from the rear of the house and the house is located approximately 90 feet from the rear of the property.

In the rear yard, there are a number of historic boxwoods, large, old ornamental trees, numerous bushes and flowering plants. The largest ornamental tree is a double cherry tree with a 6-foot circumference whose root system is visible 4 feet from the rear of the house. Any expansion of the house into the rear yard would destroy this tree and significantly damage the fabric of this historic garden.

Additionally, there are several historic underground structures that have not been fully or properly uncovered as of this time, but appear to date to around the civil war. These structures consist of two brick structures which may be of historical significance, with earth encroaching in on them, located approximately 10 feet or less behind the main house. There is also a fully submerged granite wall of unknown length and direction that I was not able to personally inspect. The underground structures that are visible appear historic but it will be impossible to determine if they tie directly into the main house until they are fully excavated. Any expansion of the main house

will likely damage these structures. I recommend that these structures not be disturbed and that the proper authorities investigate them for historical significance when practical.

Analysis of Proposed Addition Versus Expansion of Existing House into Rear Yard

I was asked to determine the impacts and difficulties of expanding the existing house versus adding a second story to the garage to accomplish the same intended use, namely to provide sleeping quarters for a domestic employee. I will address each option separately:

1. Expanding 3254 O Street into the Rear Yard

The architectural integrity of this historic home would be damaged if the house were expanded into the rear yard. The main house was designed as a detached structure. The house is a small scale dwelling with a simple layout. When standing in the front Living Room, one can easily observe the entire first floor and the rear yard with light and proper ventilation throughout. The existing floor plan was not designed to ensure adequate light and ventilation to the living areas at the rear of the house, in the event of a rear extension. To rearrange this floor plan to accommodate a bedroom for a domestic employee would require a great deal more than simply putting a room extension on the back of the house, with a door to the existing structure. I do not believe it is possible to achieve without depriving the house of a substantial degree of its existing architectural integrity.

Such an addition would force the Family Room and one recently renovated Bedroom which currently enjoys light filtered through a large cherry tree from a Southern exposure, to be entirely dependant on the modern windows to the East which are located 5 to 7 feet from the residence to the East. Currently, the windows at the rear of the house are original to the house, and greatly add to the historical character of the Family Room and Kitchen area, as well as to the entire house. To remove these windows would significantly damage the historical fabric and integrity of the house. The second story bathroom also shares the rear exposure and if an extension were added it would lose direct sunlight.

An extension would impair the Western sunlight to the rear of the neighboring house to the East, and to a portion of their garden. The extension would also deprive the neighbors of their privacy as the extension would look directly into the Bedroom and Kitchen/Breakfast rooms of 3252 O Street. The neighboring house to the West of the Goodman's has a modern extension with windows at the second floor. These windows would have the Eastern sunlight blocked.

The Eastern side yard has a maximum width of 7 feet. However, there are a number of obstacles which limit accessibility of equipment through this side yard. There are bay windows and significant numbers of trees, shrubbery, gates and trellises that would block large equipment. In my opinion, it may not be possible to get earthmoving equipment into the rear year even if a mature weeping cherry tree, a young pink dogwood tree, several large and small boxwoods, a large evergreen and the existing side yard gates and trellises were removed. Lastly, the proximity of the ornamental trees and the underground archeological remnants to the main house make it probable if not likely that earth moving equipment will significantly damage the ornamental trees, historical garden and remnants.

Currently, 3254 O Street preserves all original elevations as well as the original garden grounds with the traditionally elongated circular brick sidewalk, and is well known in the neighborhood as an exceptionally unique and beautiful home. To require the Goodman's to add new construction to this well preserved, historic house would negatively affect the historic nature of both house and the garden and damage considerably the grounds and architectural integrity of the structure. Additionally, in my opinion, the light, ventilation and privacy of the Goodman's and each of the neighboring properties to the East and West would be negatively affected by such an addition to the main house.

2. The Addition of a Second Story to the Outbuilding.

I have reviewed the modified plans submitted to the BZA for approval of a 5 foot variance to construct

a second story addition to the existing garage to a maximum height of 20 feet at the rear of 3254 O Street. In my opinion, the addition of a second story to the outbuilding can be accomplished with little or no impact or damage to the historical house, the historical garden or to the archeological remnants. Given the East-West orientation of the outbuilding, the addition will not impair light or air of any surrounding property.

The existing foliage and proposed new foliage that will be planted after the completion of the addition, plus the lack of windows on the Western side of the addition, will ensure that there is no impact on the privacy of any of the neighboring properties. Additionally, given the setback of the garage from the rear property line and the 5 off-street parking spaces, there would be no impact on public parking or ingress and egress to the alleyway.

Adding a second story to the existing outbuilding will be consistent with the zoning code and map as there are a number of other outbuildings on this alley of similar height. In my opinion, this property with the second story addition will continue to place significantly less density demands on the neighborhood than any of the surrounding properties.

I am also of the opinion that the second story as proposed would operate as a gentle buffer to the great disparity in heights between the current 8 foot high garage and the row of historic 5 story townhouses abutting the alley facing N Street. Currently, these five story structures have a virtually unimpeded view into the Goodman's living area, sleeping area and bathrooms during the late fall and winter months.

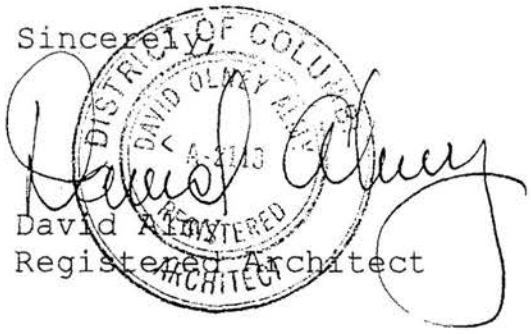
Additionally, given the current condition of the top of this 8-foot outbuilding, any neighbor with a current view of the top of this structure should have their view substantially improved with the addition of the second story. In my opinion, the addition of a second story, as proposed, would be consistent with the fabric of the other structures on the alley and would greatly improve the current aesthetics of the alleyway.

If the Goodman's are willing to restrict their construction to the outbuilding, thereby preserving the

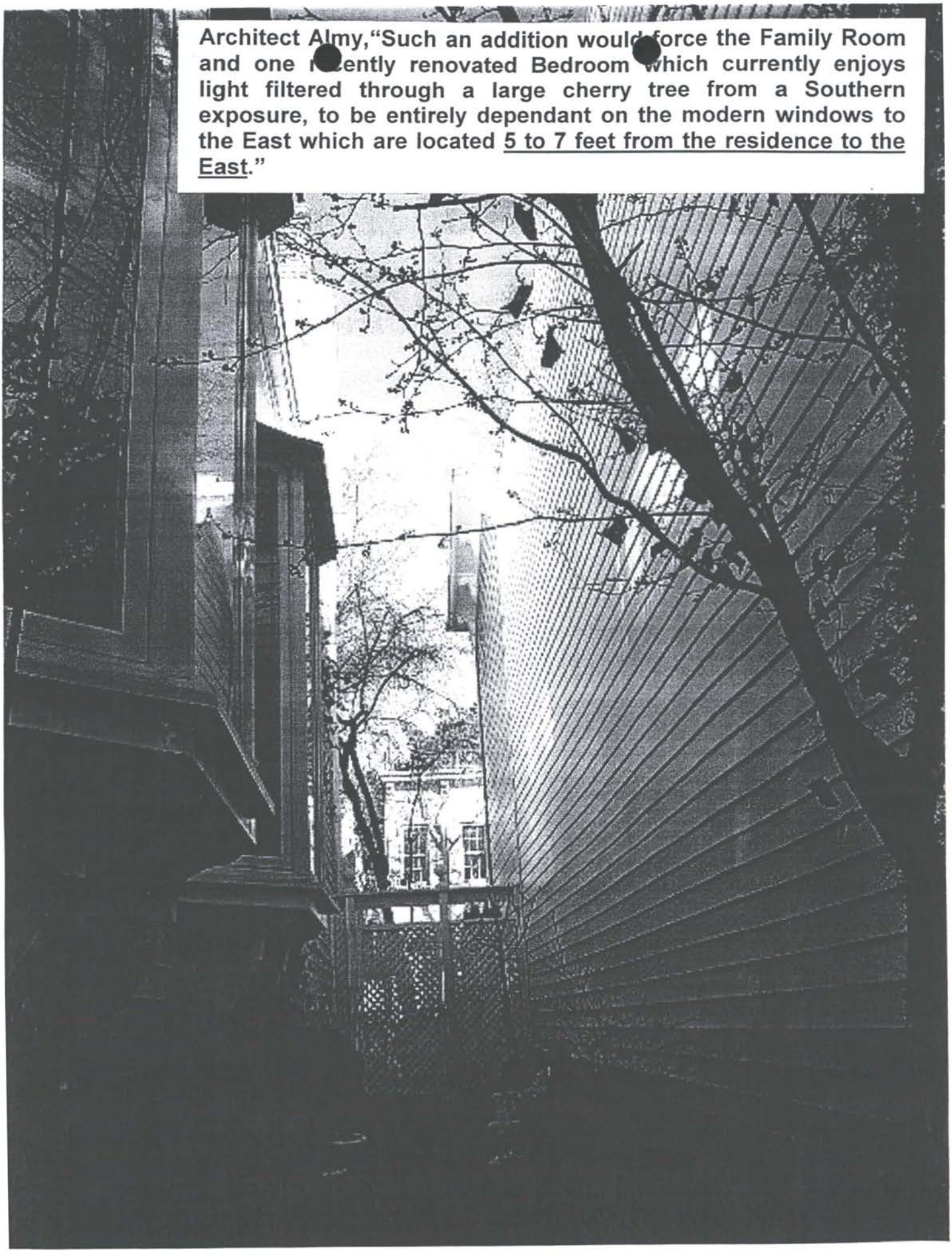
historic main structure, the historic garden, as well as the North Elevation of the Carriage House, I would highly recommend that they be permitted to do so, as well as be commended for their efforts to preserve the historical fabric of the property and the neighborhood consistent with the needs of modern living.

I hope this analysis address the issues of import to the Board.

Sincerely,



David Olivey
Registered Architect


Architect Almy,"Such an addition would force the Family Room and one recently renovated Bedroom which currently enjoys light filtered through a large cherry tree from a Southern exposure, to be entirely dependant on the modern windows to the East which are located 5 to 7 feet from the residence to the East."

 FORMER OWNER

3254 O Street, N. W.
Washington, D.D. 20007

December 15, 1983

Mr. Jeff Carson
U.S. Commission of Fine Arts
Jackson Place
Washington, D.C.

Dear Mr. Jackson:

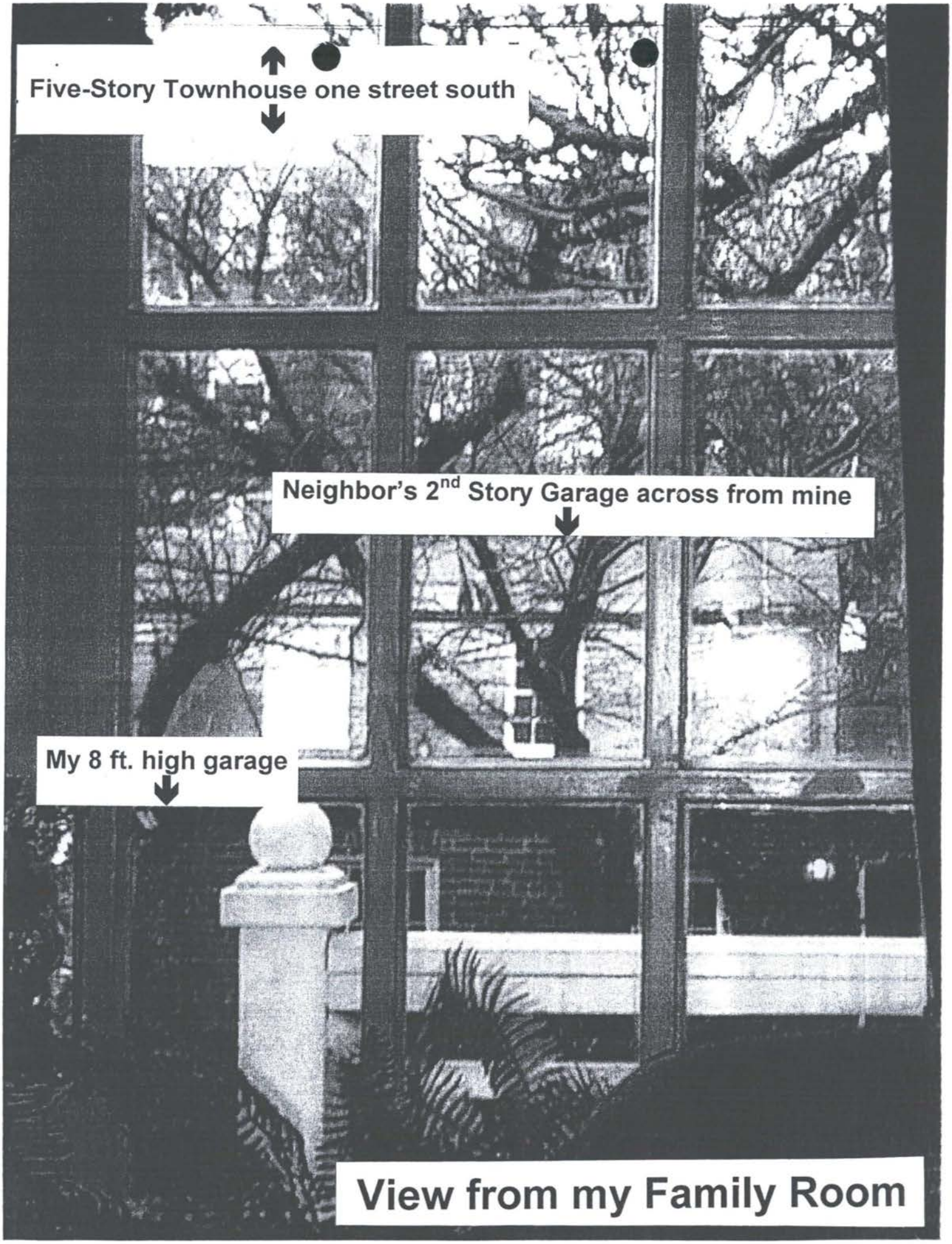
Thinking about the very constructive talk I had with you over the telephone last Friday, I am writing you a letter to clarify my needs for the proposed changes to my house in Georgetown at 3254 O St, NW, Washington, D.C.

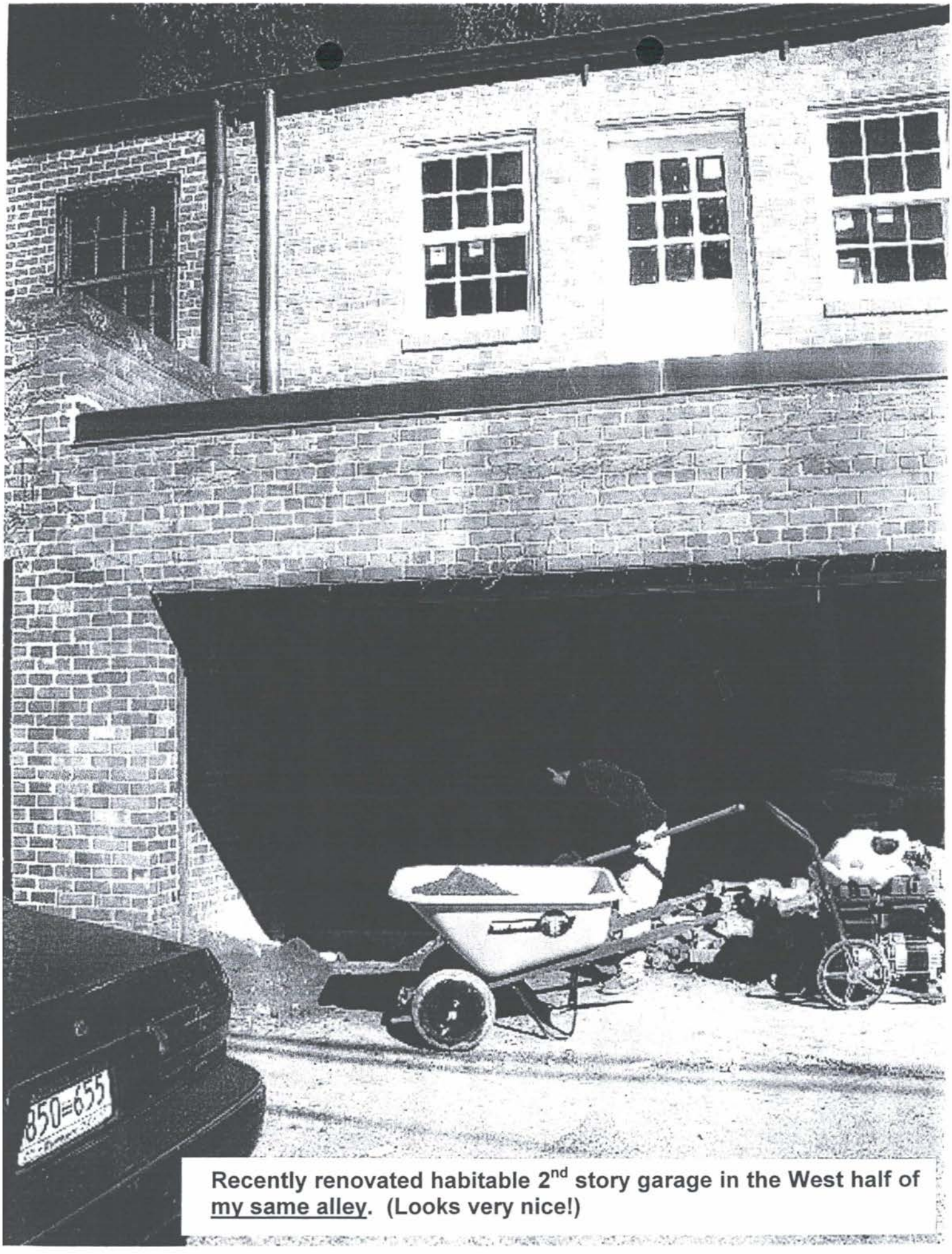
The front, upstairs room is the only one of the three upstairs bedrooms that is of a sufficient size to host guests who are married couples. It is the master bedroom, however, but if I were to be using it as my own bedroom, there would be no guest room in the house. Consequently, I use the back room on the garden in which the small single bed occupies one quarter of the room. I do not mind this because I have the rest of the house for myself as well.

My son, Myles, 11, occupies the middle room when he comes to stay with me, which is for the whole of certain vacations, like the coming Christmas school recess, and on half the weekends during the school year. This middle room is quite obviously too small for him and his toys, and games, especially when compared to the room he has over in his mother's house at 3333 P St., NW.

My ex-wife Roma and I were separated on the first day of this year (1983) when I moved into 3254 O St., NW from 3333 P ST., NW to start a new life. We were finally divorced on October 26 of this year. The point of buying a new house so close to his mother's house was so that later on Myles could move freely between the two houses. Obviously, he has to have a room in the O St. house that is comparable to his room in the P ST. house, where he has far more space and his own bathroom. My great old friend, Bishop Morse of Berkeley, California has convinced me of the necessity that Myles should have a bathroom of his own as a teenager; he needs his privacy. He is now one month from being twelve.

You suggested that I build a room over the garage on the alley for Myles, but when I asked him if he would like this, he looked very glum. He is far too young for a apartment apart from his mother or father. Maybe by the time he is 16 or 17 he would be ready for such quarters of his own. In the meanwhile we have at least four years to deal with.

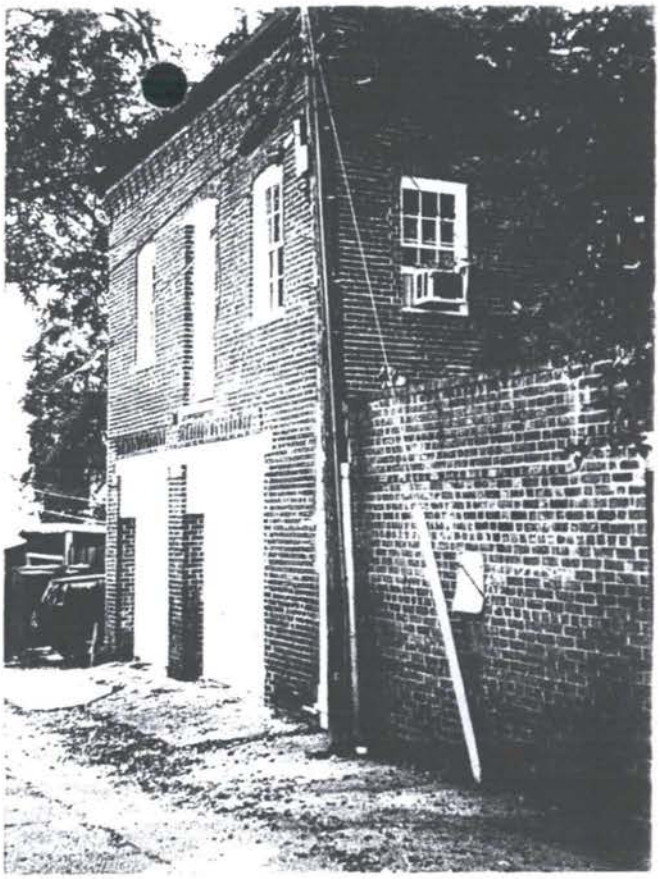

Five-Story Townhouse one street south
Neighbor's 2nd Story Garage across from mine
My 8 ft. high garage
View from my Family Room



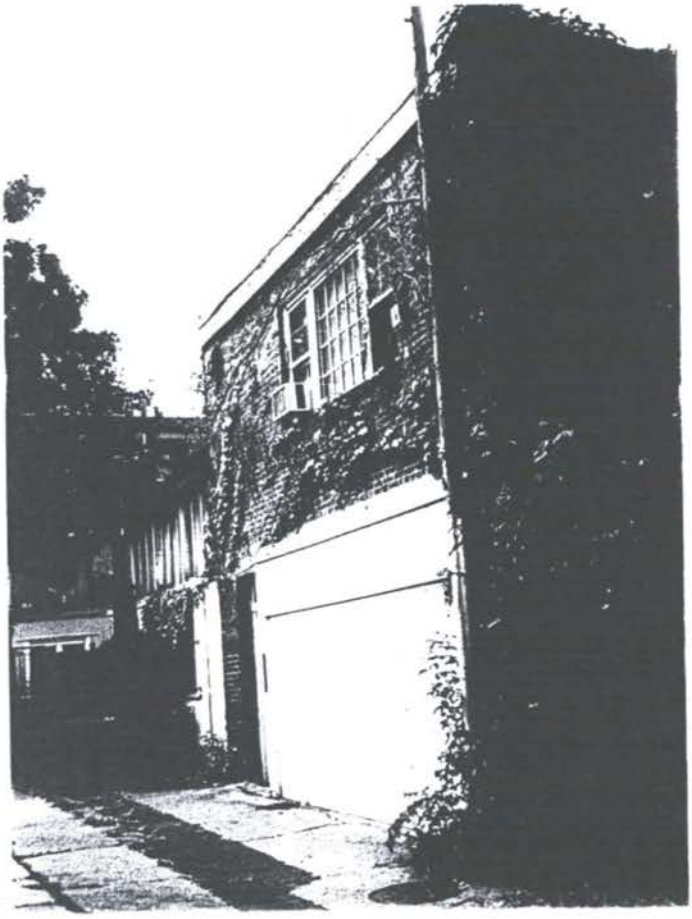
Recently renovated habitable 2nd story garage in the West half of my same alley. (Looks very nice!)

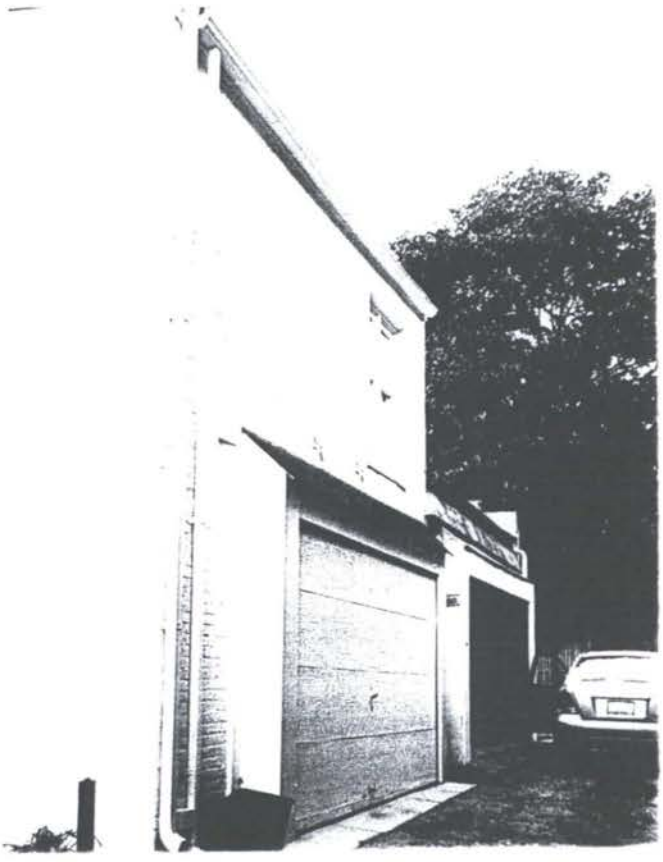


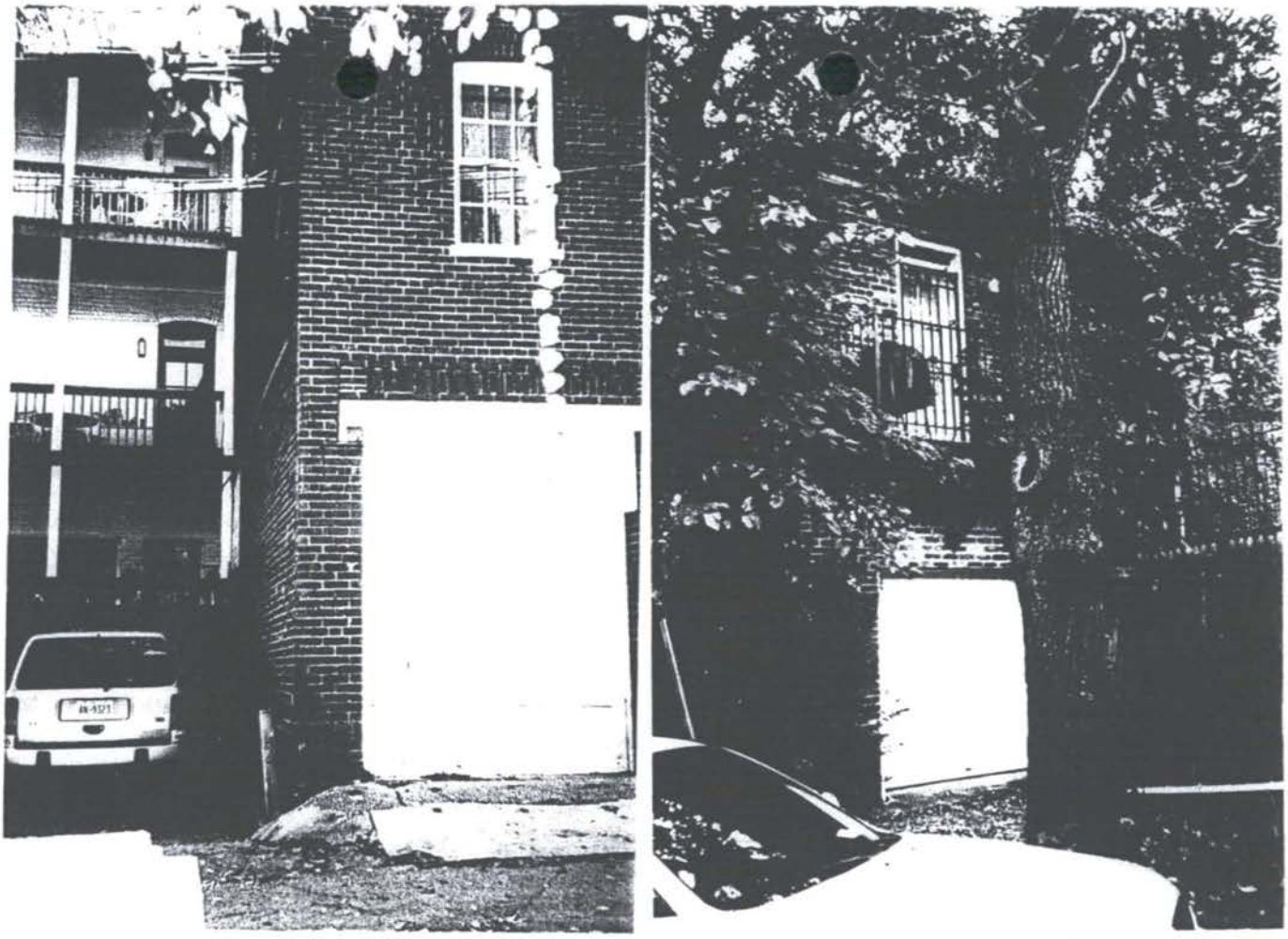
Two story garage apt. Possible living quarters.
No side yards. R-3 property.



This garage apt. is in the West extension of our alley. It is currently being used by the owners while they renovate their house.





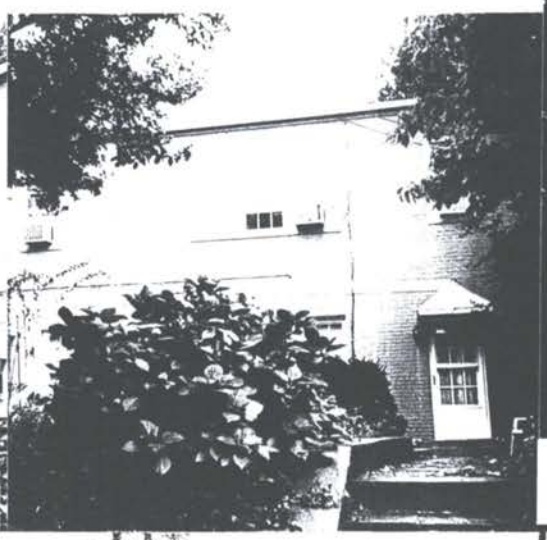


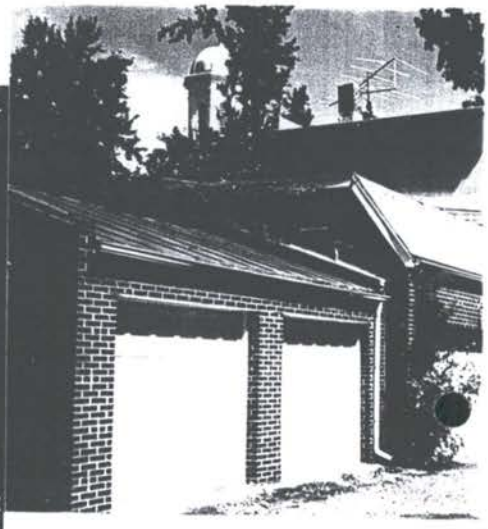
Two story garage with dwelling possibilities.
No side yards





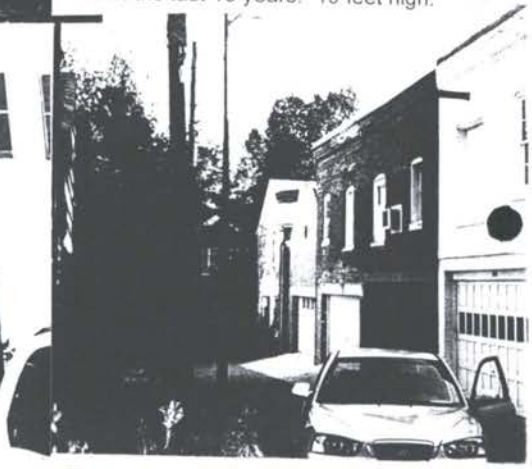
hree, two story alley dw
lo side yards.





Two story garage two lots east of us, built within the last 15 years. 19 feet high.





Three, two story garage apt. Possible living quarters. No side yards. R-3 property.



Ann Goodman
Interior Architecture and Design
3254 O Street, NW
Washington, DC 20007
T: (202) 333-3288 F. (202) 333-3266
agoodman25@hotmail.com

RECEIVED
D.C. OFFICE OF ZONING
2004 APR 15 PM 4:25

April 13, 2004

The Advisory Neighborhood Commission 2E
3265 S Street, NW
Washington, DC 20007

Dear ANC Commissioners, **BZA Case # 16696**

This is a request for the ANC to withdraw its recommendation to deny the above referenced application for a height variance of only five feet, based on two issues. Neither was applicable. One was not properly before an ANC.

1. Sight line and Air Circulation: ANC denial based on "significant harm to the *public* good, specifically to the (1) sight lines[1] and (2) air circulation[2] of the neighbors at 1317 and 1319 33rd Street." These are "private," issues not "public." Only following publication of ANC ruling was this recognized. The BZA confirmed that, absent a written legal "visual easement," sight lines are not considered in adjudicating property rights. The Office of Planning later determined that our proposed extension "will not impair the intent and purpose of the Zone Plan and Map" and that "The expansion will change the views from adjacent properties but will not block their light and air." See attached OP memorandum.

2. Precedent and Proper notice: In an attempt to again legitimize the ANC denial, and *without giving us an opportunity for discussion*, former ANC Commissioner and Chair Pulsifer, through clear postal manipulation,[3] submitted a second ANC ruling which added that granting us a permit to construct a habitable 2nd story accessory garage for housing domestics on a unique, grandfathered, oversized (5,533 sq. ft.) R-1B+ property would set a "precedent" all other typical R-3 property owners to do likewise. And that it was *they*, not us, who would cause problems! "Precedent" is not an issue before an ANC. The BZA subsequently determined that we could *not* be held as precedent.

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[1] I later discovered that I am permitted to extend my garage height to 15 ft., which would totally block the view anyway. The additional 5 ft. at only one point on the West elevation facing these neighbors is *not* what would block the view.

[2] 1317 is a corner property on a 20 ft. wide alley to the South, 28 ft. West of my proposed addition; with the third side of the rear yard also a full 28 ft. open to the North. 1319 also has both North and South sides of the garden fully open and is over 35+ feet from my proposed structure. In an R-3 District, rear yard density requirements are only 20 ft. A row of Hornbeam trees now grows between my garage and these two properties, which were the only properties given "party" status.

[3] Note the difference between the legal submission date of Sept. 8th on the letter and the illegal submission date of Sept. 13th on the postmark a week later. This deprived us of proper notice leaving us no time to prepare a response (due process).

Therefore, in consideration of these additional facts, including OP's subsequent report, facts that should be given to an ANC ***before*** their vote[4], please kindly withdraw your recommendation to deny my application so that I may proceed with this process without the tremendous encumbrance[5] of an ANC rejection. Your attention to this matter is greatly appreciated.

Sincerely,

Ann Goodman

Cc: Ms. Jerrily Kress, Mr. Toye Bello, Councilman Jack Evans, Ray Kulkuski and all Council members.

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[4] **This is a major flaw in the permit process that needs to be corrected!**

[5] OP advised us that if the ANC rendered a unanimous denial, the BZA would not approve our project. It would seem appropriate for the BZA to have noticed that the ANC denial was based on invalid issues.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Advisory Neighborhood Commission 2E

Representing the communities of Burleith, Foxhall-MacArthur, Georgetown and Hillandale
3265 S Street, NW • Washington, DC 20007
(202) 338-7427 • FAX (202) 338-0279 • anc2e@erols.com

D.C. ... 05 JUN 15 PM 12:05

June 13, 2001

Board of Zoning Adjustment
Suite 210
441 Fourth Street, NW
Washington, DC 20001

RE: Application #16696, 3254 O Street

Dear Members of the Board:

At its June 5, 2001 regular scheduled meeting, which was duly noticed and attended by seven of the eight commissioners, ANC 2E unanimously passed the following resolution:

Whereas, ANC 2E has thoroughly reviewed the above-referenced application; and
Whereas, ANC 2E greatly values the historic and aesthetic qualities of the alleyway located directly adjacent to proposed project; and
Whereas, ANC 2E is concerned about the potentially negative impact on the community of conversion of alley buildings to residential uses; and
Whereas, ANC 2E appreciates the cooperation of the applicant with the commission and the Office of Planning; but
Whereas, ANC 2E recognizes the concerns voiced by a number of the surrounding neighbors, by means of a petition and through written communications;

Therefore, after consideration of these concerns and for the specific reasons enumerated below, ANC 2E is **opposed** to the above-referenced application.

Specific reasons for opposition include:

(1) ANC 2E is principally concerned that a special variance would establish a precedent that would encourage other residents of Georgetown's historic alleyways to construct freestanding residential units. ANC 2E feels such a precedent would be detrimental toward the historic and residential nature of the Georgetown community.

(2) **Three Prong Test:** ANC 2E maintains that the application has not met the burden of proof in establishing the "Three Prong Test" under 11 DCMR 3103.2. This code provides that the applicant must prove: (A) the uniqueness of the property, (B) the practical difficulties that the current Zoning Regulations would impose, and (C) that the variance can be granted without substantial detriment to the public good and the zone plan.

BZA Case No. 16696
Exhibit No. 42

COMMISSIONERS:

Scott Polk, District 1 Len Levine, District 2 Peter Pulsifer, District 3 Justin Kopa, District 4
Justin Wagner, District 5 Bill Starrels, District 6 Tom Birch, District 7 Mark Ryan, District 8

In reference to provision (A) of the Three Prong Test, ANC 2E does recognize a certain degree of uniqueness of [redacted]6254 O St property, specifically the low [redacted] use percentage and its beautiful upkeep.

In reference to provision (B) of the Three Prong Test, ANC 2E objects to the application on the grounds that applicant failed to show that compliance with the Zoning Regulation would be unnecessarily burdensome and that the practical difficulties are unique to the property. While ANC 2E is sympathetic to the needs of the applicant to provide live-in maids quarters and a dwelling for the applicant's mother-in-law, such considerations do not outweigh the negative impact this application would impose upon the surrounding neighbors.

In reference to provision (C) of the Three Prong Test, ANC 2E objects to the application because there would be significant harm to the public good, specifically to the sight lines and air circulation of the neighbors at 1317 and 1319 33rd Street. The petition in opposition to the application, signed by a large number of the surrounding neighbors, is testimony to this impact.

Other factors:

ANC 2E feels that the application would have little impact on sunlight to the surrounding neighbors. ANC 2E recognizes the low land use percentage of the applicants' property. Also, ANC 2E does not believe that such a project would cause parking issues since the applicant maintains five parking spaces. Thus, ANC 2E does not object to the application on the aforementioned grounds.

Conclusion:

As previously noted, ANC 2E is primarily concerned that the granting of this variance would establish a precedent that threatens the current zone plan of the Georgetown area. ANC 2E finds that the applicant fails to meet the burden of the Three Prong Test. Therefore, ANC 2E requests the Board of Zoning and Adjustment to deny application 16696.

Sincerely,

Peter Pulsifer

Peter Pulsifer
Chair, ANC 2E

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Advisory Neighborhood Commission 2E

Representing the communities of Burleith, Foxhall-MacArthur, Georgetown and Hillandale

3265 S Street, NW • Washington, DC 20007

(202) 338-7427 • FAX (202) 338-0279 • anc2e@erols.com

September 8, 2001

Sheila Cross Reid, Chair
Board of Zoning Adjustment
441 4th Street, NW
Suite 210
Washington, DC 20001

Re: BZA Application No. 16696
Goodman Residence, 3254 O Street, NW

Dear Madame Chairman and Members of the Board:

This letter is in response to the applicant's filing of August 22, 2001 regarding the above-referenced application. That filing appears to misrepresent both the nature of the ANC position and its foundation in fact and law. As previously noted, ANC 2E voted unanimously at the Commission's regular public meeting of June 5, 2001 to oppose the application. The following points are intended to clarify the ANC position in the context of arguments contained in the applicant's recent filing.

1. While recognizing "a certain degree of uniqueness" in the property, ANC 2E does *not* agree that this uniqueness imposes a hardship that is sufficient to merit the granting of this application. This historic property has been occupied for over a century and has met the needs of its occupants during that time. The requested variances is not required in order to use the property according to its historic use or in a similar manner to neighboring properties.
2. The ANC 2E position is that granting this application would result in a substantial detriment to the public good:
   - Approval would establish a dangerous precedent that would encourage other residents of Georgetown's historic alleyways to construct freestanding residential units. In the vicinity of the applicant's property, there are several properties that might be converted in this way.
   - In a high-density historic neighborhood such as Georgetown, any request to increase scale and massing should be considered very carefully. The applicant asserts that the project would comply with certain zoning regulations; however, this in no way guarantees the lack of impact on the neighbors and on the community at large. ANC 2E contends that there would be significant harm to the sight lines and air circulation of the neighbors.
3. The applicant incorrectly stated that the ANC "...acknowledged that this variance would create no density-related impacts on parking, light, public services, etc."—in fact, the ANC position states only that parking and "sunlight to surrounding neighbors" are not grounds for

COMMISSIONERS:

Scott Polk, District 1 Len Levine, District 2 Peter Pulsifer, District 3 Justin Kopa, District 4
Justin Wagner, District 5 Bill Starrels, District 6 Tom Birch, District 7 Mark Ryan, District 8

objection. The applicant further misrepresents the ANC position by attributing to the ANC certain reasons for the lack of concern about parking and sunlight (that the property is "unique", "three times less dense", and "an anomalous R-1 sized lot")—the ANC position does not mention these reasons, which may or may not be accurate statements about the property.

4. Contrary to the applicant's assertion, ANC 2E has taken no position about whether the proposal is or is not consistent with the Zoning Plan and Map.
5. Contrary to the applicant's statements, the ANC's position was not based on any misrepresentation by project opponents. Prior to discussion at the June ANC 2E public meeting, the Commission made a site visit and Commissioners met more than once with the applicants and opponents. ANC 2E's position was made with full cognizance of the nature of the project and the opinions of affected neighbors.

I hope these remarks will be useful in clarifying the ANC 2E position, which remains unchanged from that transmitted to the Board in June. In brief, ANC 2E opposes this application. We ask the Board to accord our position the "great weight" to which it is entitled by law.

Thank you.

Sincerely,

Peter Pulsifer
Chair

cc: Craig Goodman
Dr. Mary Carter, 1317 33rd St, NW
Mrs. Mary Sella, 1319 33rd St, NW

ANC 2E
3265 S Street, NW
Washington, DC 20007

WASHINGTON, DC 200
PM
13 SEP
2001

Mr. Craig G. Goodman
3254 O Street, NW
Washington, DC 20007

20007-2847 36

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13550 of Marvin L. and Delores R. Kay, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the prohibition against a second story addition to an accessory building to be used for sleeping exceeding fifteen feet in height (Sub-section 7601.3) in an R-3 District at the premises 3263 N Street, N.W., (Square 1230, Lot 803).

HEARING DATES: August 5 and October 14, 1981
DECISION DATE: October 14, 1981 (Bench Decision)

FINDINGS OF FACT:

1. The application was first scheduled for the public hearing of August 5, 1981 but was continued to the public hearing of October 14, 1981 since the applicant had not complied with Section 3.3 of the Supplemental Rules of Practice and Procedure before the BZA in that the applicant failed to post the subject property ten days prior to the public hearing.

2. At the public hearing of October 14, 1981 the application appeared on the preliminary calendar since no affidavit of posting was on file. After listening to the applicant and the opposition, the Chair ruled that the property had been properly posted and the affidavit of posting had been filed but misplaced, and that the hearing should go forward.

3. The Chair denied the Motion of the Citizens Association of Georgetown to dismiss the application prior to the application being heard on its merits, as no facts had been adduced nor had any evidence been received into the record to support such a motion.

4. The subject site is located on the north side of N Street, between Potomac and 33rd Streets., N.W. It is known as premises 3263 N Street., N.W. The property is located in an R-3 District.

5. The immediate area is residential with row houses the predominant building type. Some detached homes and small apartment buildings are interspersed. The site is in an R-3 District that extends northward and westward for several blocks. M Street and Wisconsin Avenue, both of

which are zoned D/C-2-A, are each about 500 feet from the subject site.

6. The subject site is 28.62 feet in width and developed with a row house with an English basement. A two-car garage approximately fifteen feet in height occupies the entire width of the lot in the rear yard.

7. A private twenty-two foot wide alley is located between the garage and the rear property line and abuts the property to the north.

8. The applicant proposes to add a second story to the garage. The first story would continue to function as a garage. The second story would be used as living quarters for a domestic employee and would contain two rooms and a bath. No kitchen would be provided. Access to the second floor would be from the alley and from the rear yard of the subject lot. The height of the structure would be twenty feet.

9. Sub-section 7601.3 of the Zoning Regulations limits the height of accessory buildings in R-3 Districts to fifteen feet and one story. The requested relief is, therefore, an area variance of one story and five feet in height. Living area for a domestic employee in an accessory structure is a permitted accessory use under Paragraphs 3101.56 and 3101.63 of the Zoning Regulations.

10. The main building contains five floors with eight rooms, four of whch are bedrooms. The applicant proposes to convert two of the bedrooms into a study and a library. The architect for the applicant testified that it would be difficult, or not desirable, to separate living accommodations for a servant in the main building since there would be a lack of privacy for the applicant.

11. The applicant's architect testified that the proposed addition would enhance the appearance of the alley and create a harmonious relationship with the taller and smaller buildings now surrounding the site. The architect further testified that a servant being on the premises would alleviate the use of a car by the servant and thus decrease traffic congestion in the alley. The applicant perceived no substantial detriment to the public good or substantial impairment of the intent, purpose and integrity of the zone plan with the proposed addition.

12. The architect testified that there was no practical difficulty inherent in the land itself to support the request for the variance but that there was a practical difficulty inherent in the main building. The main building is a Federal house with magnificent proportions. The applicant did not intend to "chop it up" to provide

accommodations for domestic help. The architect also testified that he was aware that, if he kept the garage to a height of fifteen feet and one story, the garage could be used for domestic purposes as a matter-of-right.

13. The Office of Planning and Development, by report dated July 31, 1981, and by testimony, recommended that the application be approved. The OPD testifed that the subject lot and those surrounding it are unusually large for Georgetown. Several are only slightly less than the R-1-B minimum of 5,000 square feet. The overall density of dwelling units per land area is only slightly more than half of that permitted as a matter-of-right in an R-3 Zone District. Creating living quarters for a domestic employee in an accessory structure would not, therefore, conflict with the objective, as embodied in the Zoning Regulations, of limiting residential densities in areas largely developed in a particular style prior to the implementation of a Zoning Plan. The addition of a second floor to the accessory structure would only slightly increase the bulk of that structure, and most of this added bulk would not be visible from any street or nearby property. There would be no interference with access to light and air for the subject property, nor the adjoining properties. The Office of Planning and Development recmmended that this application be approved, subject to the condition that no kitchen facilities be provided in the proposed addition, and that occupancy of the proposed living quarters be limited to a domestic employee associated with the subject premises. The OPD further reported that there was approximately a fifty-five foot distance between the rear of the main building and the rear of the garage and that it was possible for the applicant to construct a three story addition to the main building or a single story addition to the garage. The Board, for reasons discussed below, does not concur in the recommendation of the OPD as to the subject addition.

14. The applicants did not demonstrate that the property is affected by any extraordinary or unusual situation or condition.

15. The applicants did not demonstrate that they would suffer any particular practical difficulties if the Zoning Regulations were strictly applied.

16. Advisory Neighborhood Commission 3A, by letter dated July 31, 1981, opposed the application. The ANC noted that the basis for the variance was the applicants' convenience, not a proper basis for the granting of a variance. The Board agrees.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking an area variance, the granting of which requires proof of a practical difficulty inherent in the land itself and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The Board concludes that the applicant has not met this burden of proof. The applicant testified that there was no practical difficulty inherent in the land itself but that the practical difficulty existed in the convenient use of the main building. Also, as set forth in Finding No. 18, the OPD reported that the applicant had other options to attain the desired result. The Board concludes that the requested variance is a matter of convenience on the part of the applicant and not based on an exceptional condition or a practical difficulty. Accordingly, it is ORDERED that the application is DENIED for failure to meet the burden of proof required for the granting of an area variance.

VOTE: 5-0 (Walter B. Lewis, William F. McIntosh, Douglas J. Patton, Charles R. Norris and Connie Fortune to deny).

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

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

FINAL DATE OF ORDER: JAN 28 1982

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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