

**BOARD OF ADJUSTMENT
CITY AND COUNTY OF DENVER
201 West Colfax Avenue, Department 201
Denver CO, 80202**

PREMISES AFFECTED: 1857 West 34th Avenue

LEGAL DESCRIPTION: Lengthy Legal

APPLICANT(S) Dwayne Kratzer & Ellen Quinn, 1857 West 34th Avenue, Denver, CO 80211

Filed By: Jeff Chacon, 3350 Osceola Street, Denver, CO 80212

APPEARANCES:

APPLICANT: Dwayne Kratzer, 1857 West 34th Avenue, Denver, CO 80211

Jeff Chacon, 3350 Osceola Street, Denver, CO 80212

Letter of Non-Objection (Highland United Neighbors, Inc., February 12, 2026)

FOR THE CITY: Nicholas Hufford, Zoning Representative

SUBJECT:

Request for a Variance for an Accessory Dwelling Unit (ADU) encroaching 3 feet into the 18-foot separation between garage door opening facing an alley and the farthest alley right-of-way boundary line, encroaching 2 feet into the 5-foot west side interior setback, and encroaching 2 feet into the 5-foot east side interior setback, in a U-TU-B, DO-4 zone (AS AMENDED 2/26)

ACTION OF THE BOARD:

THE VARIANCE IS GRANTED for the 2-foot encroachment into the 5-foot west side interior setback and the 2-foot encroachment into the 5-foot east side interior setback under the Unusual Physical Conditions or Circumstances variance criteria, according to the plans submitted to the Board (Exhibit 6) and the testimony at the hearing.

THE VARIANCE IS GRANTED for the 3-foot encroachment into the 18-foot separation between garage door opening facing an alley and the farthest alley right-of-way boundary line under the Neighborhood Compatibility variance criteria, according to the plans submitted to the Board (Exhibit 6) and the testimony at the hearing.

NOTE: A digital copy of the Board-approved plans may be obtained by contacting the Board’s staff. These approved plans MUST be submitted to the Development Services Log-In counter when applying for final construction permits for this project.

BOARD OF ADJUSTMENT

Ignacio Correa-Ortiz, Chair

Austin Keithler

Austin E Keithler, Director

THIS ACTION BY THE BOARD OF ADJUSTMENT IS NOT AN APPROVAL TO PROCEED WITH DEVELOPMENT. PLEASE CONTACT YOUR ASSIGNED REVIEWER WITH CPD TO COMPLETE AND FINALIZE YOUR ZONING PERMIT OR ZONE LOT AMENDMENT APPLICATION. CONSTRUCTION OR ANY OTHER DEVELOPMENT ACTIVITY IS PROHIBITED ON THE SUBJECT REAL PROPERTY UNTIL YOU COMPLETE ALL ZONING AND PERMIT APPROVAL PROCESSES.

NOTE!! VARIANCES AUTHORIZING CONSTRUCTION WILL EXPIRE UNLESS START OF CONSTRUCTION HAS OCCURRED WITHIN 3 YEARS AND IS COMPLETED WITHIN 5 YEARS FROM THE DATE THE VARIANCE WAS GRANTED. (FOR EXTENSIONS, SEE DENVER ZONING CODE, SECTION 12.4.7.7.A.2.)

IN THE BOARD OF ADJUSTMENT
THE CITY AND COUNTY OF DENVER
FINDINGS OF FACT AND CONCLUSIONS OF LAW

MARCH 10, 2026

CASE NO. 4-2026

PREMISES: 1857 WEST 34TH AVENUE. (Lengthy Legal.)

APPLICANT(S): DWAYNE KRATZER & ELLEN QUINN, 1857 West 34th Avenue, Denver, CO 80211, by Jeff Chacon, 3550 Osceola Street, Denver, CO 80212.

SUBJECT: Request for a Variance for an Accessory Dwelling Unit (ADU) encroaching 3 feet into the 18-foot separation between garage door opening facing an alley and the farthest alley right-of-way boundary line, encroaching 2 feet into the 5-foot west side interior setback, and encroaching 2 feet into the 5-foot east side interior setback, in a U-TU-B, DO-4 zone (AS AMENDED 2/2/26)

NOTICE OF HEARING: Premises posted. Public notice given in accordance with Section 2-35(2) and 12-96 of the Revised Municipal Code.

APPEARANCES:

Applicant: Dwayne Kratzer, 1857 West 34th Avenue, Denver, CO 80211
Jeff Chacon, 3350 Osceola Street, Denver, CO 80212
Letter of Non-Objection (Highland United Neighbors, Inc., February 12, 2026)

For The City: Nicholas Hufford, Zoning Representative

FINDINGS OF FACT:

- I. The application was timely filed January 26, 2026, from a Zoning Relief Pre-Application Meeting Summary dated January 8, 2026. The same Applicants were in front of the Board previously in BOA Case # 68-2024. BOA Previous Case # 68-2024 was for a similar ADU encroaching into the side setbacks, but located 12 feet from the alley as opposed to the 5 feet from the alley now proposed. (See Exhibit 9 – BOA Previous Case # 68-2024.) Findings of Fact and Conclusions of Law for BOA Previous Case # 68-2024 are hereby incorporated. The case was heard on March 3, 2026, at which time a variance was granted. Final Findings of Fact and Conclusions of Law were adopted by the Board on February 10, 2026.
- II. The Applicants request a variance under Sections 12.4.7.5 and 12.4.7.6 of the Denver Zoning Code (DZC) and believe the required conditions are met, specifically alleging:
- A. The subject property is a 1912, two story residence, located in the Highland neighborhood. The property is located on a square block which is bound by West 35th Avenue to the north, West 34th Avenue to the south, North Shoshone Street to the west, and North Quivas Street to the east. The block is subdivided by an east-to-west running alley, and two north-to-south running alleys which enter the block from West 35th Avenue and terminate at the east-to-west running alley. The Applicants’ lot is on the southern end of the block. Their property is located along West 34th Avenue and backs to the east-to-west running alley. The property is unusually shaped. It is 52 feet 6 inches wide along the street frontage for the first 124 feet of lot depth. At the rear 43 feet 7 inches of depth, the lot narrows to 25 feet wide along the alley. The Applicants are in the process of building a new Accessory Dwelling Unit (ADU) on the property at the rear of the lot. They had initially been in front of the Board to seek two variances for the new ADU to encroach 2 feet into both the 5-foot east and 5-foot west side

interior setbacks, due to the unusual narrowing of the lot at the back of the property. This request was heard by the Board in December of 2024 and was approved as requested. The approved ADU was approximately 36 feet long by 19 feet wide and was located 12 feet from the alley. The Applicants had initially been working with a General Contractor (GC) but the contractor left the project before construction began. The homeowner, Mr. Kratzer, decided to step in and serve as the GC for the project instead. He pulled permits for the ADU in June of 2025, and construction started in September of 2025. The Applicants had originally planned to re-use an existing structure on the property and convert it into an ADU. The original structure had been located 12 feet from the alley, so that was where the Applicants had planned for the new ADU to go. However, they determined that re-using the structure was not feasible and decided to tear it down and build the new ADU from the ground up instead. Although they decided not to re-use the existing structure, they intended to keep the new ADU located 12 feet from the property line. At some point after pulling their permits in June of 2025 and starting construction in September of 2025, the Applicants realized it was no longer necessary to place the structure 12 feet from the rear property line no longer existed since they were building from scratch. They believed that a 5-foot rear setback would be required for the ADU, so they moved the structure 7 feet closer to the alley. They believed that this would comply with Code, and it would provide them with additional backyard space, so it seemed like a good idea. The Applicants are not experienced builders or developers, so they had not realized that it would be necessary to revise and resubmit plans showing the new location of the structure. They began construction on the ADU at the new location. After the structure was largely in place, a city inspector noted the discrepancy between the approved plans and the built location and instructed the Applicants to resubmit plans for review. When Community Planning and Development (CPD) staff reviewed the new plans, they determined that the structure would not be allowed in the built location. While the ADU building form does call for a 5-foot rear setback, as the Applicants believed, there is an additional superseding limitation in Article 10 of the DZC. This section states that for structures with vehicle access doors facing an alley which is 13-foot-wide or less, the vehicle access doors must be separated from the farthest alley right-of-way boundary line by a minimum of 18 feet. The alley to the north of the Applicants' lot is only 10 feet wide, so this section of the Code requires the rear face of the ADU to be placed 8 feet from their rear property line, not 5 feet as the building form table for the ADU would require. The Applicants did not intend to create a new violation; they believed that the revised location would comply with Code. They ask the Board to grant a variance to allow the structure to remain as built in its' new location. (Testimony of Jeff Chacon. Testimony of Dwayne Kratzer. See also Exhibit 2 – Board's Sketch, Exhibit 3 – Board's Posting Photos, Exhibit 5 – Variance Application, Exhibit 7 – Applicants' Packet, and Exhibit 9 – BOA Previous Case # 68-2024.)

- B. The Applicants had initially been approved for the two side setback encroachments based on the unusual physical conditions present on the property, namely that the lot narrows considerably as it approaches the alley. CPD staff have determined that the two side setback encroachments will need to be reapproved by the Board in the new location. The Applicants believe that the unusual conditions from the initial request still apply, and they ask the Board for their approval again. (Testimony of Jeff Chacon. Testimony of Dwayne Kratzer. See also Exhibit 2 – Board's Sketch, and Exhibit 9 – BOA Previous Case # 68-2024.)
- C. The Applicants believe that their request is justified based on the Limited Tolerance for Construction Errors criteria. They had received approval for an ADU, and they built the same structure that had been approved. They shifted the location of the ADU from what was approved, but they believed that it had been moved to a different location which would comply with the rear setback. Because the Applicants are not experienced builders, they had not realized they would need to revise and resubmit plans to the city for review. Unfortunately, this led to the discrepancy in location and the additional violation for the

separation from the farthest alley right-of-way not being realized until the structure was largely framed up and in place. At this time the building envelope of the structure is largely completed. Initially CPD staff had identified that the structure was built 1 foot out of compliance, thinking that there was a 12-foot-wide alley. When the Applicants filed the case, they responded to this 1-foot violation. However, after the case was filed, CPD realized the alley was only 10 feet wide, which increased the violation from 1 foot up to 3 feet. The Applicants had estimated a total cost of \$75,000 - \$100,000 to modify the structure to comply with the 1-foot violation. Whether they need to comply with a 1-foot or a 3-foot violation, they believe that the cost to comply with Code will be disproportionate to the degree of the violation. They ask the Board to approve the request based on the Limited Tolerance for Construction Errors variance criteria. (Testimony of Jeff Chacon. Testimony of Dwayne Kratzer. See also Exhibit 1 – Zoning Relief Pre-Application Meeting Summary, Exhibit 5 – Variance Application, and Exhibit 7 – Applicants’ Packet.)

- D. The Applicants also believe that the encroachment into the rear setback area is justified based on the unusual conditions present on the zone lot. The Applicants believe that the intent of the additional setback distance is to ensure that there is safe vehicle access along the alley. The Applicants note that the structure is currently in place, and they have been able to safely maneuver their vehicles with the current location of the structure. They also note that there is a utility pole located on the northwest corner of their lot, along the alley. This utility pole will limit the turning radius of any vehicles using the alley more than the location of the ADU will. The Applicants also note that the garage opposite them across the alley is separated by 20 feet 6 inches, which is more than the 18-foot separation requirement. Although the Code measures to the farthest alley right-of-way line, the real-world condition will exceed the separation requirement. (Testimony of Jeff Chacon. Testimony of Dwayne Kratzer. See also Exhibit 1 – Zoning Relief Pre-Application Meeting Summary, Exhibit 5 – Variance Application, and Exhibit 7 – Applicants’ Packet.)
- E. The Applicants also believe that the encroachment into the rear setback area is justified based on the Neighborhood Compatibility criteria in the Code. The surrounding neighborhood includes a number of garages which are accessed from the alleys on the block. Both the east-to-west and north-to-south alleys on the block are 10 feet wide, so any alley-facing garage on the block would be subject to the same restriction. However, the Applicants have found that the majority of alley-served garages on the block are located 5 feet or less from the alley. Looking at the properties on the north side of West 34th Avenue between North Shoshone Street and North Quivas Street, as well as the properties on the east side of North Shoshone Street between West 34th Avenue and West 35th Avenue, the Applicants find that a 5-foot rear setback or less is a common condition in the neighborhood. Directly across the alley at 3430 North Shoshone Street, their garage is located approximately 5 feet from the alley. The primary structure to the west at 3424 North Shoshone Street does not have a garage but the house is located directly along the alley. To the east of the Applicants’ lot, the property has an alley house which is located closer than 5 feet to the alley. The three houses further to the east each have garages located 5 feet or closer to the alley. The Applicants thus find that although their ADU will encroach into the 8-foot rear setback distance, that it will follow a common development pattern in the neighborhood. (Testimony of Jeff Chacon. Testimony of Dwayne Kratzer. See also Exhibit 2 – Board’s Sketch, Exhibit 7 – Applicants’ Packet, Exhibit 11 – CPD Packet, and Exhibit 12 – Applicants’ Rebuttal.)

III. CPD staff note that the application for a variance was initially submitted using the Limited Tolerance for Construction Errors justifying circumstance. CPD staff note that while the application does check some of the boxes for construction errors, that the variance cannot be granted based on this criterion. Section 12.4.7.5.F.3 states, “(d)uring construction, a violation of one or more Building Form Standards found in Articles 3 though 9 of this Code, except maximum height in stories, occurred;”. Although the two

encroachments into the side interior setbacks are a violation of Article 5, the violation for the structure encroaching into the 18-foot separation from the farthest alley right-of-way is a violation of Article 10. Because Section 12.4.7.5.F.3 specifically states that the Limited Tolerance for Construction Errors criterion can only apply to the Building Form Standards in Articles 3 through 9, the Article 10 violation is not eligible for consideration under this Justifying Circumstance. (Testimony of Nicholas Hufford. See also Exhibit 1 – Zoning Relief Pre-Application Meeting Summary, Exhibit 5 – Variance Application, and Exhibit 11 – CPD Packet.) The Applicants acknowledge CPD’s position on this matter but nonetheless believe their request is justified by both the Unusual Physical Conditions or Circumstances and Neighborhood Compatibility criteria in the Code. (Testimony of Jeff Chacon.)

IV. The Applicants request a variance under Sections 12.4.7.5 and 12.4.7.6 of the Denver Zoning Code (DZC). The Board finds that the Applicants meet the following conditions for a variance as to the two side interior setback encroachments under Section 12.4.7.5.A, “Unusual Physical Conditions or Circumstances,” and as to the encroachment into the farthest alley right-of-way separation distance requirement under Section 12.4.7.5.B, “Neighborhood Compatibility:”

A. Unusual Physical Conditions or Circumstances:

1. There are unusual physical circumstances or conditions peculiar to the affected property.
 - a. The subject property is unusually shaped and uncommonly narrow along the alley compared to other zone lots in the surrounding neighborhood. See above at Findings II.A, and II.B. (See Exhibit 9 – BOA Previous Case # 68-2024.)
2. The circumstances or conditions do not exist throughout the neighborhood or zone district in which the property is located except for those adjustments based on any of the conditions listed in Section 12.4.7.5.A.2. The zone lot is unusually shaped compared to other zone lots on the block. (See Exhibit 9 – BOA Previous Case # 68-2024.)
3. The unusual physical circumstances or conditions have not been created by the applicants. The zone lot was in this configuration prior to the Applicants ownership of the property. (See Exhibit 9 – BOA Previous Case # 68-2024.)
4. The unusual physical condition or circumstance causes the need for the variance. The narrowness of the lot in the rear 35% of the zone lot creates the need for the two side setback encroachments. (See Exhibit 9 – BOA Previous Case # 68-2024.)

B. Neighborhood Compatibility:

1. The property could be reasonably developed in conformity with the provisions of this Code, but the proposed variance will result in a building form that is more compatible, in terms of building height, siting, and design elements, with the existing neighborhood in which the subject property is located.
 - a. The ADU with vehicle access doors located 5 feet from the alley will match the established pattern of alley-accessed garages on the block. See also Findings II.E. (Testimony of Jeff Chacon. See also Exhibit 7 - Applicants’ Packet, and Exhibit 11 – CPD Packet.)

C. If granted, the variance would meet the following requirements for all variance approvals under 12.4.7.6. DZC:

1. It would not relate to either the persons, or the number of persons, who do, will, or may reside in a residential structure. Any property owner would experience the same issues due to narrowness of the rear portion of the zone lot and the conditions in the surrounding neighborhood.
2. Except as allowed in Section 12.4.7.5, it would not be justified solely on grounds of loss of a financial advantage, hardship that is solely financial, or a more profitable use of the property might be had if a variance is granted. CPD staff noted that because the variance is ineligible under the Limited Tolerance for Construction Errors criterion, the cost to bring the structure into compliance cannot be considered as grounds for the variance. (Testimony of Nicholas Hufford. See also Exhibit 11 – CPD Presentation.) The Board concurs, but finds that the

- variance is justified based on the unusual conditions and circumstances on the property and on the conditions in the surrounding neighborhood rather than on a financial hardship.
3. It would not substantially impair the intent and purpose of this Code. The variance is minor and technical under the circumstances. See also Findings II.A., II.B., and II.E.
 4. It would not substantially impair the intent and purpose of the applicable zone district. The variance is minor and technical under the circumstances. See also Findings II.A., II.B., and II.E.
 5. It would not substantially or permanently impair the reasonable use and enjoyment or development of the subject property or adjacent properties. The variance will not affect light, air, or emergency egress to any adjacent properties. The location of the garage will align with many other garages located along the alley. The Applicants submitted a letter of Non-Objection from the Highland United Neighbors, Inc. (HUNI), a local Registered Neighborhood Organization (RNO). The letter stated that while HUNI did not condone construction which does not follow approved plans, they did not object to the variance. (See Exhibit 10 – HUNI Letter of Non-Objection.) No one appeared in opposition to the request after fourteen days of posting.
 6. It would be the minimum change that would afford relief and would be the least modification of the applicable provisions of this Code. CPD staff found that because they were unable to consider the rear setback encroachment under the Limited Tolerance for Construction Errors justifying circumstance, and that they did not find a pattern to support the request based on Neighborhood Compatibility, that they were unable to find that the request was the minimum relief. (Testimony of Nicholas Hufford. See also Exhibit 11 – CPD Packet.) The Board noted that while they agreed with CPD's assessment related to the Limited Tolerance for Construction Errors criterion, that they disagreed with CPD's assessment related to Neighborhood Compatibility. The Board found sufficient evidence that the current location would align with the typical location of garages within the surrounding neighborhood and found this condition to be met. See also Findings II.A., II.E., and III.
 7. It would adequately address any concerns raised by the Zoning Administrator or other City agencies in their review of the application. CPD staff stated that they were in support of the variance as it pertained to the side setback encroachments. CPD had been in support of this variance under Case # 68-2024, and they found that the side setback encroachments would still be appropriate in the new location. However, CPD staff were opposed to the variance for the encroachment into the rear setback area. CPD noted that the Applicants' application had addressed the Limited Tolerance for Construction Errors variance criteria, and CPD had determined that this criterion could not apply to the separation distance between the garage doors and the farthest alley Right-of-Way. See above at Findings III. Further, CPD did not find that the request satisfied the Neighborhood Compatibility criteria. Absent a justifying circumstance from the Code, CPD did not find that the variance to the rear setback should be approved. (Testimony of Nicholas Hufford. See also Exhibit 11 – CPD Packet.) The Board noted that CPD's materials showed that there were 11 garages in the existing neighborhood, not counting the Applicants' structure. CPD found that 5 of these structures were located 5 feet from the alley property line. 3 of these structures were located less than 5 feet from the alley and 3 of these structures were located more than 5 feet from the alley. While CPD did not find that this demonstrated a pattern of similarly sited garages, the Board disagreed. The Board found that this evidence showed that a minimum of 8 of 11 garages were located a similar distance or closer to the alley, or that these structures also did not meet the current Code requirements. There was no evidence to show whether the remaining 3 garages met the current Code requirements or not, only that they were located more than 5 feet from the alley. The Board found that the evidence showed that the existing neighborhood was made up primarily of garages which were located a similar distance from the alley compared to the Applicants' proposal. The Board thus found this condition to be met.

CONCLUSION: The Board concludes that the conditions set forth in Sections 12.4.7.5 and 12.4.7.6 of the Zoning Code do exist, and a variance is in order.

MOTION #1: The motion by Mr. Correa-Ortiz to grant the variances for the east and west side interior setback encroachments was seconded by Mr. Haywood and was adopted.

VOTE: #1 FOR: 5 AGAINST: 0

MOTION #2: The motion by Mr. Rice to grant the variance for the encroachment into the separation from the garage door opening facing an alley and the farthest alley right-of-way boundary line was seconded by Ms. DeVuyst and was adopted.

VOTE #2: FOR: 3 (Rice, DeVuyst, Bergeron) AGAINST: 2 (Haywood, Correa-Ortiz)

ACTION OF THE BOARD: THE VARIANCE IS GRANTED for the 2-foot encroachment into the 5-foot west side interior setback and the 2-foot encroachment into the 5-foot east side interior setback under the Unusual Physical Conditions or Circumstances variance criteria, according to the plans submitted to the Board (Exhibit 6) and the testimony at the hearing.

THE VARIANCE IS GRANTED for the 3-foot encroachment into the 18-foot separation between garage door opening facing an alley and the farthest alley right-of-way boundary line under the Neighborhood Compatibility variance criteria, according to the plans submitted to the Board (Exhibit 6) and the testimony at the hearing.

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