

BOARD OF ZONING ADJUSTMENT

Case No. 20065

Statement in Support of Alternate Request for Variance Relief on Behalf of DILAN INVESTMENTS

1818 Rhode Island Avenue, NE (Square 4208, Lot 7).

I. BACKGROUND.

This Statement is submitted on behalf of Dilan Investments LLC (the “Applicant”), owner of the property located at 1818 Rhode Island Avenue, NE (Square 4208, Lot 7) (the “Subject Property”). The Subject Property is currently improved with a detached one-family dwelling. The Applicant is proposing to raze the existing building and construct a new building with eight (8) residential units (the “Project”). The Board of Zoning Adjustment voted to grant special exception relief from the vehicle parking requirements (C § 701.5) and the bicycle parking requirements (C § 802.1) on February 26, 2020. Since then, the Board has rescinded its vote, implying that it may no longer permit the Applicant to request relief pursuant to those sections. Despite the fact that the Application was self-certified, and Applicant’s counsel consulted the Zoning Administrator, who has the ultimate say in whether the Applicant requested the correct relief, the Applicant is submitting an alternative request for variance relief in the event that the Board disagrees with the Applicant’s primary position in this matter.¹

The Applicant is providing both vehicle parking and bicycle parking requesting the following variances regarding the access of such parking:

¹ See exhibit 62, pp. 2-5 for a more robust discussion on the purposes of self-certification; Exhibit 61 for OP’s analysis; and exhibit 62A for an email from Matt LeGrant regarding the “eligibility” for the originally requested relief. In addition, on May 26, 2021, the Board approved Application No. 20424 for identical parking relief with nearly identical facts. Finally, the Office of Planning, in its report (BZA Exhibit No. 61), also agrees with the Applicant, and noted specifically that that position was based on consultation with the Zoning Administrator.

A. Driveway Aisle Width (C § 711.5)

Pursuant to C § 711.5, if a driveway provides access to no more than two (2) parking spaces, it must be at least eight feet (8 ft.) wide. The existing driveway is shared and currently provides access to one (1) parking space at the rear of the adjacent property to the east, at 1816 Rhode Island. The driveway is approximately seven (7) feet wide.

B. Locational and Storage Requirements for Bike Parking (C § 805.3, 805.9)

The Applicant is required to provide three (3), long-term bicycle parking spaces. The Applicant is providing a total of six (6) bicycle parking spaces, three (3) inside and three (3) outside. The three spaces inside are located in a corridor on the cellar level. Subtitle C § 805.3 states that “required long-term bicycle parking shall be provided as racks or lockers. Bicycle racks for required long-term parking shall be provided in a parking garage or a bicycle storage room.” Subtitle C § 805.9, requires that a minimum of fifty percent (50%) of required long-term bicycle parking spaces must be horizontal. As described more fully below, the Applicant does not have room to provide two (2) horizontal spaces in a bike room or garage, so it must request variance relief from these provisions.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the variance relief pursuant to X § 1002.1.

III. THE APPLICATION SATISFIES THE REQUIREMENTS FOR AREA VARIANCE RELIEF.

The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area variance if it finds that “(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.”

Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment, No. 16-AA-932, 2018 WL

1748313, at *2 (D.C. Apr. 12, 2018); *Ait-Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (quoting *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted). As set forth below, the Applicant meets the three-part test for the requested variance for relief from the driveway aisle and bicycle storage requirements.

A. Extraordinary or Exceptional Condition affecting the Subject Property and a Practical Difficulty would occur if the Zoning Regulations were Strictly Enforced.

To prove an extraordinary or exceptional condition, or uniqueness, the Applicant must show that the property has a peculiar physical aspect or other extraordinary situation or condition. *Monaco v. D.C. Board of Zoning Adjustment*, 407 A.25 1091, 1096 (D.C. 1979). Moreover, the unique or exceptional situation or condition may arise from a confluence of factors which affect a single property. *Gilmartin v. D.C. Board of Zoning Adjustment*, 579A.2nd 1164, 1168 (D.C. 1990). The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. It is well settled that the BZA may consider “a wide range of factors in determining whether there is an ‘unnecessary burden’ or ‘practical difficulty’... Increased expense and inconvenience to an applicant for a variance are among the factors for the BZA’s consideration.” *Gilmartin*, 579 A.2d at 1711. Other factors to be considered by the BZA include: “the severity of the variance(s) requested”; “the weight of the burden of strict compliance”; and “the effect the proposed variance(s) would have on the overall zone plan.” Thus, to demonstrate practical difficulty, an applicant must show that strict compliance with the regulations is burdensome; not impossible.

Regarding driveway access, the Property is unique because of the existing driveway. The driveway is shared, partially on the Subject Property and partially on the adjacent property. Each

property has an easement for the other half of the driveway not located on its respective property. The driveway is also substandard and does not currently meet the 8-foot requirement—it is approximately seven feet (7 ft.) wide. Moreover, it is held up by a retaining wall in public space, and directly abuts an existing telephone pole. This makes it impossible to widen the driveway to 8 feet. Accordingly, if the Zoning Regulations were strictly enforced, the Applicant would be unable to legally use the existing driveway and provide a legal parking space, despite having an existing driveway.

Regarding the bicycle parking, On a previous set of plans, submitted just prior to the hearing on January 29, 2020 (Exhibit 44C), the Applicant satisfied C § 805.3, which required long-term bicycle racks to be located in a storage room or garage. The proposed spaces were previously located in a storage room at the front of the building on the lowest level. After the hearing on January 29th, the Applicant met with DDOT to discuss a solution for the lift in public space. DDOT and the Applicant worked together to come up with a solution for the accessibility and public space issues, but that solution included a re-design of the main level and lower level in order to make the accessible entrance at the lower level rather than at the main level. The plans were revised accordingly and were submitted as Exhibit 50A.

In order to make the building accessible via the lower level, the Applicant had to eliminate the bicycle storage room at the front of the building to accommodate the lower-level entrance door. As a result of that change, the bicycle spaces have been relocated to a corridor on the lower level and the proposed racks do not meet the requirements of C § 805.3.

Regarding C § 805.9, the physical constraints of the Property make it so the Applicant is unable to provide at least two (2) horizontal bicycle parking spaces and why it must instead provide three (3) vertical bicycle parking spaces. Two (2) horizontal spaces would require

approximately 100 square feet of space. If the Applicant were to provide two (2) horizontal spaces, it would have to reduce one (1) of the units by about 100 square feet and it would no longer be big enough to be considered a residential unit. Accordingly, the Applicant would lose one (1) dwelling unit, at which point bicycle parking would not even be required because the building would only have seven (7) units and bicycle parking starts at eight (8) units. Accordingly, if the regulations were strictly enforced, the Applicant would have to eliminate a unit, ultimately resulting in no bicycle parking.

B. Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan.

Relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan. The provision of an 8-unit apartment building is consistent with the purposes of the MU Zone. Even though the Applicant cannot technically meet the requirements for parking access and horizontal bike spaces, the Project does in fact provide parking and bike spaces.

IV. CONCLUSION.

For the reasons stated above, this application meets the requirements for variance relief by the Board, and the Applicant respectfully requests that the Board grant the requested relief.

Respectfully submitted,

Martin P Sullivan

Martin Sullivan
Sullivan & Barros, LLP
Date: August 3, 2021

Alexandra Wilson

Alternative Statement in Support
BZA Case No. 20065- 1818 Rhode Island Ave., NE

Alexandra Wilson
Sullivan & Barros, LLP
Date: August 3, 2021