

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF
FESSHA MOLLALIGN**

ANC 5D06

STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This statement is submitted on behalf of the Applicant, Fessha Mollalign (the “**Applicant**”), the owner of the property located at 1538 Levis Street NE (Square 4076, Lot 803) (the “**Property**”), in support of its application for area variance relief from the requirements of minimum lot area (Subtitle E § 202.1), lot width (Subtitle E § 202.1), and lot frontage (Subtitle C §§ 303.2-303.3) in order to construct a single-family rowhome in the RF-1 zone.

II. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “**Board**”) has jurisdiction to grant the area variance relief requested herein pursuant to 11 DCMR Subtitle § 1000.1.

III. BACKGROUND

A. The Property and the Surrounding Neighborhood

The Property is a tax lot located in the RF-1 Zone District and has a land area of approximately 780 sq. ft. A copy of the Zoning Map is attached at **Tab A**. The Property is a vacant, unimproved gap lot with frontage on Levis Street NE and abuts residential structures on either side. The Property is not located in a historic district.

The Property is located in the Trinidad neighborhood just west of Bladensburg Road NE. The surrounding area is primarily residential as is typical of the RF-1 zone, however, the Property abuts a MU-4 zone, which runs along the length of Bladensburg Road NE. As such, there are a variety of uses along this corridor including retail, education, restaurant, and healthcare uses. On

the Property's block are primarily two-story attached rowhomes with one three-story rowhome abutting the property at the corner of Levis Street NE and 16th Street NE. The Trinidad Recreation Center is located two blocks from the Property and the U.S. National Arboretum is located 0.2 miles from the Property off of Bladensburg Road NE.

B. Traffic Conditions and Mass Transit

The Property has good access to public transportation. The NoMa-Gallaudet U Metrorail Station is just over a mile from the Property. There are several Metrobus stops within two blocks of the Property, including Metrobus lines B2, D4, and D8. The Bladensburg Road & Benning Road NE Capital Bikeshare station is located approximately 0.3 miles from the Property. Walkscore.com designates the Property as "Bikeable" and "Very Walkable."

C. The Building Permit History

On May 19, 2023, the D.C. Department of Buildings ("**DOB**") issued building permit B2104843 (the "**Building Permit**") for the construction of a new single-family townhouse at the Property. *See **Tab B***. In accordance with the Building Permit, the Applicant commenced construction at the Property. The Applicant started construction and continued for eight (8) months making substantial progress and building all exterior walls, foundation, and interior framing. During the standard wall check inspection, DOB discovered that the building permit was issued in error and thus issued a stop work order on January 18, 2024. *See **Tab C***. As construction was halted, the Applicant sought review by the Zoning Administrator (the "**ZA**").

On April 4, 2024, the ZA submitted a referral memorandum to the Board outlining that the proposed construction at the Property requires area variance relief under Subtitle X § 1000.1 from the requirements of minimum lot area (Subtitle E § 202.1), lot width (Subtitle E § 202.1), and lot frontage (Subtitle C §§ 303.2-303.3). *See **Tab D***. Based on the ZA's referral memorandum, the

Applicant now submits this BZA application for area variance relief from the stated provisions of the Zoning Regulations.

D. The Project

The Applicant proposes to develop the existing, unimproved gap lot into a three-story, single-family rowhome (the “**Project**”). As the Property is a tax lot, the Applicant is concurrently pursuing a subdivision to create a new record lot. As shown on Sheet A-04 of the architectural plans (the “**Plans**”), the rowhome will be 32 ft. in height. *See* **Tab E**. As such, the rowhome will blend in with the abutting properties at 1536 Levis Street NE and 1540 Levis Street NE, which have building heights of 20 ft. and 32.5 ft., respectively. The Project will have a compliant lot occupancy of 60%, rear yard of 26 ft., and front façade in line with the abutting property to the west. Although GAR is not required in the RF zones, the Applicant will provide 20% GAR. *See* Subtitle C § 601.2.

The Property has a lot area of 780 sq. ft. and a lot width of 12 ft. In the RF-1 zone, a rowhome must have a minimum lot area of 1,800 sq. ft. and a minimum lot width of 18 ft. *See* Subtitle E § 202.1. Therefore, the Applicant requests area variance relief from this section. The subdivision lot frontage requirements of Subtitle C § 303.2 require that new record lots have a street lot line of at least 75% of the required lot width. Here, this would require a minimum street lot line of 13.5 ft. As the Project will provide a lot width of 12 ft., the Applicant seeks relief from Subtitle C § 303.2. Further, Subtitle C § 303.3 requires that a new record lot used for a single-family dwelling have a minimum street lot line of 14 ft. Therefore, the Applicant is seeking relief from the lot frontage requirements of Subtitle C § 303.3 as well.

IV. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

The Applicant seeks area variance from the requirements of minimum lot area (Subtitle E § 202.1), lot width (Subtitle E § 202.1), and lot frontage (Subtitle C §§ 303.2-303.3) in order to construct a single-family rowhome in the RF-1 zone.

Under D.C. Code § 6-641.07(g)(3) and 11 DCMR Subtitle X § 1000.1, the Board is authorized to grant variance relief where it finds that three conditions exist:

- (1) The Property is affected by exceptional size, shape or topography or other extraordinary or exceptional situation or condition;
- (2) The owner would encounter practical difficulties or undue hardship if the zoning regulations were strictly applied; and
- (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. 11 DCMR Subtitle X § 1001.1; *see also French v. Board of Zoning Adjustment*, 658 A.2d 1023, 1035 (1995); *see also Capitol Hill Restoration Society, Inc. v. Board of Zoning Adjustment*, 534 A.2d 939 (1987).

The Court of Appeals has held that the purpose of variance procedure is to “prevent usable land from remaining idle.” *See Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 541 (1972).

V. THE APPLICANT MEETS THE STANDARD FOR VARIANCE RELIEF

A. The Property is Affected by an Exceptional Situation or Condition

The unique or exceptional situation may arise from a confluence of factors affecting a single property. *See Gilmartin v. D.C. Bd. Of Zoning Adjustment*, 579 A.2d 1165, 1168 (D.C. 1990). Here, a confluence of factors creates an exceptional condition for the Property.

First, the Building Permit history is a unique and exceptional condition. The Court of Appeals has found an exceptional condition exists where a property owner has “demonstrated a good faith and detrimental reliance” on a history of government approvals, including certificates of occupancy, building permits, or building inspections. *See Oakland Condo. v. D.C. Bd. Of Zoning Adjustment*, 22 A.3d 748, 754 (2011). As a result, the court upheld the Board’s conclusion

that an “unfortunate and unusual chain of events presents an exceptional situation unique to [the] property.” *Id.* at 753. Here, the chain of events surrounding the Building Permit, including the stop work order, presents an exceptional condition unique to the Property. The Applicant relied on the Building Permit and constructed the Project for eight (8) months before DOB realized the permitting error.

Another factor that creates an exceptional condition is the nature of the Property in context of the square. The Property is the only vacant, unimproved lot in Square 4076 that directly abuts residential buildings on both sides. This is a condition unique to the Property.

B. The Applicant Will Face Practical Difficulty with Strict Zoning Compliance

The Applicant faces practical difficulty in complying with zoning standards for minimum lot area, lot width, and lot frontage. The Applicant filed the required permit plans and documentation, which led to the issuance of the Building Permit by DOB. In reliance on this Building Permit, the Applicant proceeded with construction on the Property. During DOB’s inspections of the Property during the wall check, it was discovered that DOB issued the Building Permit in error and thus issued a stop work order. It was not until review of the ZA’s referral memorandum almost a year after the Building Permit was issued that it was clear to the Applicant that area variance relief would be needed to continue with the Project. Had the Applicant been made aware that a building permit could not be issued until the applicable variance relief was approved by the BZA, the Applicant would not have pursued the development of the Project at the Property.

Further, as the development scheme of Square 4076 exclusively features contiguous row homes along Levis Street NE and Queen Street NE, the Applicant thought the development of the Project would be appropriate and feasible at the Property as evidenced by the issuance of the

Building Permit. Since the Property is bounded on both sides by residential structures, it cannot be widened to comply with the minimum requirements for lot area, lot width, or lot frontage.

Therefore, but for the exceptional and unique conditions of the Building Permit history and development scheme of Square 4076, the Applicant would not have undertaken the development of the Project at the Property. As such, strict zoning compliance at this stage would cause the Applicant practical difficulty.

C. The Variance Relief Will Not Cause Substantial Detriment to the Public Good or the Zoning Regulations and Maps

Overall, the Project contributes positively to the public good by providing much needed housing in the District and infilling a vacant parcel.

The requested variance relief will not cause substantial detriment to the public good because it requests relief from the minimum requirements for lot area, lot width, and lot frontage. As such, the Project is not a large development and thus will not greatly impact the surrounding neighborhood. Furthermore, the proposed relief will not cause substantial detriment to the Zoning Regulations or Maps because the intent of the RF zones are to “recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city.” The Project is consistent with this intent.

VI. COMMUNITY OUTREACH

The Applicant met with Single Member District Commissioner Kathy Henderson on May 17, 2024 to discuss the Project. In accordance with ANC 5D’s procedures and guidelines, the Applicant will formally present the application to ANC 5D at its next available public meeting.

VII. CONCLUSION

For the reasons stated above, the Project meets the applicable standards for special exception relief and variance relief under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board grant the application.

Respectfully Submitted,
COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read 'MM', is written over a horizontal line.

Meridith Moldenhauer

A handwritten signature in blue ink, appearing to read 'MSW', is written over a horizontal line.

Madeline Shay Williams