

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of the Estate of Marilyn Melkonian
2915-2917 Dumbarton Street, NW (Square 1241, Lot 139)

I. INTRODUCTION.

This Statement is submitted on behalf of the Estate of Marilyn Melkonian, owner of the property located at 2915-2917 Dumbarton Street, NW (Square 1241, Lot 139) (the “**Property**”) and also on behalf of 2915 Dumbarton St NW, LLC, the contract purchaser (collectively known as the “**Applicant**”). The Property is located in the R-3/GT zone and currently consists of two single-family dwellings. From their original construction in 1881 until July 20, 2023, each of the two separate single-family dwellings was on their own separate lot. On July 20, 2023, the then-property owner, Marilyn Melkonian, combined the two lots into a single record lot, Record Lot 139. Ms. Melkonian's apparent intention was to combine the two separate buildings into one building, converting the two separate dwelling units into one single dwelling unit. Unfortunately, Ms. Melkonian passed away on February 14, 2024, before beginning the work necessary to combine the two buildings.

Recording the record lot consolidation into Lot 139 on July 20, 2023, created a nonconforming condition, as at that point there was more than one building on Record Lot 139.¹ To resolve this nonconformity, one of two events must happen: either (i) the buildings must be combined; or (ii) Lot 139 must be subdivided back to its historical condition.

The problem with combining the buildings is that it was just Ms. Melkonian's personal preference. Any subsequent owner will likely not share that preference, and the current contract purchaser does not share that preference. Additionally, combining the two buildings is costly and time-consuming, and it also eliminates a housing unit that has been in place for over 130 years.

¹ While this subdivision created a nonconforming condition (normally not allowed under zoning), it was approved by OZA effectively on a conditional basis; the condition being that the two buildings must be subsequently combined into a single building. This is not an unprecedented approval from the Zoning Administrator. The building combination and the record lot consolidation clearly cannot take place at the same moment in time, so a temporary nonconforming condition is unavoidable, in either direction. In this situation the Zoning Administrator found that it was appropriate to do the record lot consolidation first. The D.C. Surveyor is not able to “undo” the subdivision, despite the condition of combining the two buildings not being satisfied.

The problem with subdividing Lot 139 back to its historical condition is that the previously existing lots were nonconforming in terms of lot dimensions, and therefore, variance relief is required to restore the lots to that historical condition.² Accordingly, the Applicant seeks variance relief from the minimum lot dimension requirements of Section D-202.1 of the Zoning Regulations.

II. JURISDICTION OF THE BOARD.

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

III. BACKGROUND.

A. History of the Property and Proposed Project.

The Property is located in the Georgetown Historic District and falls under the jurisdiction of the Commission of Fine Arts. The Property is in the R-3/GT zone and is an interior lot measuring 3,600 square feet in land area with a lot width of 30 feet. Abutting the Property to the north is 1337 30th Street, NW, which is improved with a single-family row dwelling. Abutting the Property to the south is Dumbarton Street. Abutting the Property to the west is 2919 Dumbarton Street, NW, which is improved with a semi-detached single-family dwelling. Abutting the Property to the east is 2913 Dumbarton Street, NW, which is improved with a single-family row dwelling.

The previous owner, Ms. Marilyn Melkonian, had intended to consolidate the two existing buildings into a single-family residence. The initial step in this process was the creation of a new record lot, which combined the tax lots in July 2023. Unfortunately, Ms. Melkonian passed away in February 2024 before the work could commence. As discussed in detail above, the creation of the new record lot in 2023 resulted in a nonconforming condition, as it left two separate buildings

² The contract purchaser has a request pending with the Office of Zoning Administration (OZA) seeking an administrative approval of the re-subdivision. In our opinion, this is permitted by right because the re-subdivision, while re-creating the previous existing legal nonconformity regarding lot dimensions, also cures a more recently created noncompliant situation. Where the lot dimension condition was a legally nonconforming condition for many years, the condition of having two separate buildings on a single record lot is a non-compliant condition and not a legally nonconforming condition. Therefore, solving the noncompliant condition while going back to a previous legally nonconforming condition is an improvement in the Property's compliance situation. Furthermore, the only other way to solve the noncompliance would be to force the current owner to undertake the substantial work necessary to combine the two buildings into one. For these reasons, we believe that OZA should approve the re-subdivision, without the need for lot dimension relief. Due to timing concerns, the contract purchaser is proceeding on both fronts (BZA and ZA).

on a single record lot. Typically, the Zoning Administrator would not approve a plat that creates a nonconforming condition, but in this instance, the subdivision and the intended combination of the buildings could not occur simultaneously. Consequently, the approval of the subdivision by the OZA was contingent upon the subsequent unification of the two buildings into one structure, thereby rectifying the nonconformity. However, due to Ms. Melkonian's passing, this contingency was not fulfilled.

After consultation with the District Surveyor, Mr. Joseph Snider, it was determined that the subdivision could not be reversed for various technical reasons. The Applicant now seeks to maintain the two separate dwellings, and they may eventually complete small additions to each building. To accomplish this, the Applicant proposes to subdivide the current record lot in alignment with its previous historic dimensions. The historical lot dimensions for each of the two proposed lots are 15 feet in width and 1,800 square feet in area (see Baist Map attached as Exhibit A). These dimensions do not meet the current minimum lot dimension requirements for new subdivisions.

The rationale for this request is that the unmet contingency created a noncompliant condition, and approving the new subdivision would rectify this issue by returning the Property to its original, legally nonconforming state. The restoration of the historic lot dimensions, while technically non-compliant by current standards, resolves the more recent non-compliance of having two buildings on a single record lot. The existing minimum lot dimension nonconformity is a legitimate, historically recognized condition, and is consistent with the original construction of the homes in 1881. Title 11, Subtitle A-303.1 of the DC Zoning Regulations underscores the principle that nonconforming structures when modified, should ideally be brought into greater conformity with current zoning standards or, at the very least, should not exacerbate the non-conformance. This provision supports the merit of approving the subdivision, as it would restore the original, historically nonconforming condition, thereby preventing further nonconformity and aligning with the intent of the regulation. The proposed subdivision does not introduce new noncompliance but rather corrects the more recent nonconforming situation introduced in 2023, while honoring the historic lot dimensions and use. By doing so, it aligns with the regulatory objective of managing nonconforming conditions in a way that respects historical context and the integrity of original development patterns. It also keeps a housing unit that would otherwise be eliminated.

The only alternative to the proposed subdivision would be for the District to force the owner to undertake the work necessary to combine the two buildings into one, which would present substantial practical difficulty to the property owner, as discussed below.

IV. 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 lot dimension requirements.

A. Extraordinary or Exceptional Condition affecting the Subject Property

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.2d 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).

As described above, the Property is unique due to its history regarding the subdivision that took place in 2023 and the subsequent passing of the property owner before she could satisfy a condition subsequent to the approved record lot subdivision recorded in 2023.

B. Practical Difficulty if the Zoning Regulations were Strictly Enforced.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty to the owner. 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.

Given the current configuration of the Property as two separate single-family dwellings, enforcing strict compliance with the zoning regulations would result in significant practical difficulties, including forcing the property owner to undertake the monumental amount of construction activity required to open up the adjoining exterior walls of two buildings built in 1881, and re-configure interiors to remove one kitchen and re-allocated bedrooms and bathrooms. One can see how such a renovation would cost hundreds of thousands of dollars. This would also eliminate one of the two dwelling units, resulting in an excessively large home that is out of character with the surrounding homes. Ms. Melkonian's choice to undertake such a consolidation was for the purpose of satisfying a personal preference to enlarge her home. As the work was not started, let alone completed, prior to her passing, this personal preference should not bound her estate and severely hamper its efforts to dispose of the Property for the benefit of Ms. Melkonian's heirs.

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

The Applicant requests relief from the lot width and lot area requirements to restore the Property to its 2023 status as two legal homes on two legal lots, which was the condition from 1881 until 2023. The homes have not been combined, so approval changes nothing about the current situation with these two dwellings, other than changing the paperwork underlying their existence. Therefore, granting relief has no effect at all on the Public Good.

Regarding the Integrity of the Zone Plan, granting relief actually improves the compliance situation with the Property, as approval just keeps the Property status quo, and restores the long-existing legally nonconforming lot dimension condition, while immediately eliminating the current violation of Section A-301.3 of the Zoning Regulations – having two buildings on a single record lot. Finally, the overall situation is so unique as to preclude the possibility of an approval granting any detriment to the integrity of the Regulations; *i.e.* there is no chance of an unfavorable precedent being set by an approval.

V. 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,

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Date: August 7, 2024