

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 19679 of MYS Land Investment, LLC, as amended,¹ pursuant to 11 DCMR Subtitle X, Chapter 10, for area variances from the lot width and lot area requirements of Subtitle E § 201.1 and from the side yard requirements of Subtitle E § 307.3 to construct a new semi-detached building with a principal dwelling unit in the RF-1 Zone at premises 4932 Nannie Helen Burroughs Avenue, N.E. (Square 5179, Lot 92).

HEARING DATES: February 7 and February 14, 2018²

DECISION DATE: February 14, 2018

DECISION AND ORDER

This self-certified application was submitted on November 27, 2017 by MYS Land Investment, LLC, the owner of the property that is the subject of the application (the “Applicant”). The application, as subsequently amended, requested variances from the lot width and lot area requirements of Subtitle E § 201.1, and from the side yard requirements of Subtitle E § 307.3 to construct a new semi-detached building with a principal dwelling unit in the RF-1 Zone at premises 4932 Nannie Helen Burroughs Avenue, N.E. (Square 5179, Lot 92). Following a public hearing, the Board of Zoning Adjustment (the “Board”) voted to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated December 21, 2017, the Office of Zoning provided notice of the application to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 7, as well as the Chairman and the four at-large members of the D.C. Council; Advisory Neighborhood Commission (“ANC”) 7C, the ANC in which the subject property is located; and Single Member District ANC 7C01.

¹ The caption has been modified to reflect a change in the relief initially requested. Side yard relief was originally cited as Subtitle E § 307.1 (Self-certification, Exhibit 3), but was corrected to cite Subtitle E § 307.3. (Revised self-certification, Exhibit 32.) Also, the phrase “one-family dwelling” was changed to “attached building with a dwelling unit” to reflect the terminology used in the Zoning Regulations of 2016.

² The public hearing for this application was originally scheduled for February 7, 2018, but was postponed to February 14, 2018 at the request of Advisory Neighborhood Commission (“ANC”) 7C.

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Pursuant to 11 DCMR Subtitle Y § 402.1, on December 21, 2017, the Office of Zoning mailed letters providing notice of the hearing to the Applicant, the Councilmember for Ward 7, ANC 7C, and the owners of all property within 200 feet of the Subject Property. Notice was published in the *District of Columbia Register* on December 22, 2017. (64 DCR 12937.)

Party Status. The Applicant and ANC 7C were automatically parties in this proceeding. No other requests for party status were submitted for this application.

OP Report. By memorandum dated January 26, 2018, the Office of Planning recommended approval of the zoning relief requested by the Applicant. (Exhibit 36.)

DDOT Report. By memorandum dated January 24, 2018, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 34.)

ANC Report. By resolution dated February 13, 2018, ANC 7C indicated that, at a properly noticed public meeting on February 8, 2018 with a quorum present, the ANC voted 3-0-1 to oppose the variance request. (Exhibit 39.) In its resolution, ANC 7C recommended “that the applicant work with the District (DMPED & Office of Planning) to redevelop the area for best and highest use of the land (higher density/commercial) considering that Deanwood Hills, The Strand and Deanwood Town Center and Providence Place are all higher density mixed use commercial/residential site in close proximity.” (Exhibit 39.) For that reason, the ANC indicated that it opposed the request for variance relief in order to construct a single dwelling unit on the site.

FINDINGS OF FACT

1. The property is located at 4932 Nannie Helen Burroughs Avenue, N.E. (Square 5179, Lot 92) (Square 1818, Lot 849) (the “Subject Property”) and is zoned RF-1.
2. The Subject Property is one of six consecutive lots on the row that were subdivided in 2017. It is the westernmost lot of the six. Unlike the Subject Property, the other lots that were part of the subdivision (the “East lots”) are rectangular in shape, each measuring 19.4 feet wide and 100 feet deep. (Exhibit 6.)
3. The Subject Property is designated as being Moderate Density Residential on the Comprehensive Plan Future Land Use Map (“FLUM”). This designation is used to define the District’s row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single family homes, 2-4-unit buildings, row houses, and low-rise apartment buildings. (*See Framework Element* page 2-33.)
4. The Subject Property is a hexagonal lot, shaped like a panhandle. It is narrowest at street frontage, widens at a sharp angle in the middle of the lot, then narrows slightly as the lot

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extends further back. (Exhibit 6.) There are no other similarly shaped lots in Square 5179, and a majority of the square is comprised of standard rectangular lots.

5. The Subject Property's western lot line abuts two small, nonconforming tax lots (the "West lots"), as well as a portion of an alley that runs parallel to 49th Place N.E. and 50th Street N.E. (Exhibit 6.)
6. The West lots are unusually small compared to the other lots in Square 5179. One of the West lots, Lot 807, is improved with a one-story detached commercial structure. (Exhibit 33 and 36.) The existing structure is square-shaped, and its front façade is situated at an angle from the lot line at street frontage. (Exhibits 6-8.) The structure appears to be constructed on the west lot line, but does not extend to the east lot line, which it shares with the Subject Property. (Exhibit 6.)
7. The Applicant offered to purchase the West lots, but was ultimately unable to gain ownership of those properties. (Exhibit 33.)
8. The Applicant proposes to construct six attached buildings, each with a principal dwelling unit, of the same design and dimensions on the Subject Property and the East lots. The five buildings on the East lots can be constructed as a matter of right. (BZA Hearing Transcript ("Tr.") for February 14, 2018 at 173.)
9. Pursuant to 11-U DCMR § 301.1, any use permitted in the R Zones under Subtitle U §§ 201 and 202 is permitted as a matter of right in an RF Zone. Subtitle U § 201.1(a)(3) permits a principal dwelling unit as a matter of right, which "may be in either a detached, semi-detached, or an attached building."
10. Under Subtitle B § 100.2 of the Zoning Regulations, an attached building is defined as a "building that abuts or shares walls on both side lot lines with other buildings on adjoining lots." A semi-detached building is defined as a "building that abuts or shares one (1) wall, on a side lot line, with another building on an adjoining lot and where the remaining sides of the building are surrounded by open areas or street lot lines." (Subtitle B § 100.2.)
11. The proposed building on the Subject Property will attach to the building on the east, but because the proposed structure will not attach to a common division wall on the west, it is a semi-detached building as defined by the Zoning Regulations.
12. Although Subtitle B identifies a principal dwelling unit as a use and allows for such a use to be either detached, semi-detached, or an attached *building*, the development standards applicable to the RF Zone conflates the terms and refers to detached, semi-detached, or an attached *dwelling*. To be consistent with this nomenclature, this Order will hereinafter refer to the proposed structure as a "semi-detached dwelling."

13. For an attached dwelling in the RF-1 Zone, the required lot area is 1,800 square feet and the minimum lot width is 18 feet, pursuant to Subtitle E § 201.1. For a semi-detached dwelling in the RF-1 Zone, the minimum required lot area increases to 3,000 square feet and the minimum lot width increases to 30 feet, under Subtitle E § 201.1.
14. The Subject Property has an area of 2,731 square feet. The lot is 19.4 feet wide at street frontage and is 32.05 feet wide at the rear lot line. (Exhibit 6.) Because the Subject Property does not meet the requirements for lot area and width for a semi-detached dwelling, it requires area variance relief from Subtitle E § 201.1.
15. Because the Applicant is unable to gain ownership of the West lots, the Subject Property cannot be combined with those adjacent lots in order to create a lot that would meet the area and width requirements. (Exhibit 33.)
16. Based on the existing dimensions of the Subject Property, the Applicant is unable to construct any residential structure on the lot that would conform to the requirements of Subtitle E § 201.1. The Applicant's inability to construct any residential development on this property amounts to a practical difficulty in this case.
17. Pursuant to Subtitle E § 307.3, a semi-detached dwelling in the RF-1 Zone is required to provide a five-foot side yard on the side of the structure that is not attached. The proposed structure on the Subject Property will be constructed from lot line to lot line, providing no side yard. Therefore, an area variance is required from Subtitle E § 307.3.
18. As the Applicant was unable to obtain ownership of the West lots, there are two alternative designs for the proposed dwelling that would allow for a side yard to be provided, but both options are unnecessarily burdensome on the Applicant.
19. The Applicant's first option is to reduce the width of the proposed dwelling to 14.4 feet. This would create a practical difficulty for the Applicant, in that the dwelling on the Subject Property would be narrower than the otherwise identical five dwellings on the row, disrupting the pattern of row dwellings from the street frontage.
20. The Applicant's second option to meet the side yard requirement is to shift the dwelling toward the rear of the lot. OP found that this alternative design also creates an unnecessary burden on the Applicant, as it would result in a front yard that is out of character with the block and would "interfere with the design of the remainder of the row of houses, including the provision of a common division wall with the row house to be constructed on the adjoining lot to the east." (Exhibit 36.)
21. The proposal to construct a one-family, semi-detached dwelling is consistent with the purpose and intent of the RF-1 Zone. As provided in Subtitle E § 300.1, the "purpose of

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the RF-1 Zone is to provide for areas predominantly developed with attached row houses on small lots within which no more than two (2) dwelling units are permitted.”

22. Granting the requested variances would allow for a vacant lot to be put to productive use and would allow for the development of a family-sized dwelling with four bedrooms. (Exhibit 33.)
23. The proposed dwelling would be consistent with the row of dwellings being constructed on the East lots and would provide a rear yard that would allow for light and air between the adjacent properties. (Exhibit 36.)
24. Granting the requested variances allows for the proposed dwelling to be constructed from lot line to lot line, which would allow for the future development of a row dwelling on the West lots, which would complete a row of attached dwellings between 50th Street and the public alley. (Exhibit 36.) Potential future development of this kind would be consistent with the intent of the RF-1 Zone. (See 11-E DCMR § 300.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks area variances from the lot width and lot area requirements of Subtitle E § 201.1 and from the side yard requirements of Subtitle E § 307.3. The Board is authorized to grant variances from the strict application of the Zoning Regulations where “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property . . . or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of any zoning regulation “would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property. . . .” D.C. Official Code 6-641.07(g)(3) (2008 Supp.); (11-X DCMR § 1002.)

A showing of “practical difficulties” must be made for an area variance, while the more difficult showing of “undue hardship” must be made for a use variance. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535 (D.C. 1972). The Applicant in this case is requesting area variances and therefore is required to show that the strict application of the zoning regulations would result in “practical difficulties.” *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995), quoting *Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C. 1980). A showing of practical difficulty requires “[t]he applicant [to] demonstrate that ... compliance with the area restriction would be unnecessarily burdensome.” *Metropole Condominium Ass’n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016), quoting *Fleishman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011).

Lastly, the Applicant must demonstrate 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 as embodied in the Zoning Regulations and Map. (11-X DCMR § 1002.)

Based on the above findings of fact, the Board concludes that the Applicant has satisfied the burden of proof and that the application should be granted.

Exceptional Condition

The Board finds that the unique shape of the lot – coupled with the abutting, nonconforming tax lots and the adjacent nonconforming, commercial structure – creates an exceptional condition on the Subject Property. The Subject Property is a hexagonal lot. From its street frontage on Nannie Helen Burroughs Avenue, N.E., it appears to have the same dimensions as the five standard lots to the east, but the middle of the property widens such that a portion of the Subject Property's west lot line abuts the public alley between 49th Place, N.E. and 50th Street, N.E. There are no other similarly shaped lots in Square 5179, and a majority of the square is comprised of standard rectangular lots.

To the east of the Subject Property are five standard rectangular lots (the "East lots") that were subdivided, along with the Subject Property, in 2017. To the west are two nonconforming tax lots (the "West lots"). The Applicant proposes to develop the East lots with matter-of-right row dwellings, but was unable to obtain ownership of the West lots that were not a part of the subdivision.

The abutting West lots and the adjacent commercial structure contribute to the exceptional condition of the Subject Property as well. The West lots are unusually small compared to the other lots in Square 5179 and are developed with a one-story, detached commercial structure. The existing, nonconforming structure on the West lots is situated at an angle from the lot line at street frontage. The structure appears to be constructed on the west lot line, but does not extend to the east lot line, which it shares with the Subject Property. The Board concludes that the unusual shape of the Subject Property, in conjunction with the West lots and the existing nonconforming structure on those lots, creates an exceptional circumstance for the Applicant in this case.

Practical Difficulties

Based on the exceptional condition of the Subject Property described above, the Board determined that complying with the Zoning Regulations would create a practical difficulty for the Applicant in developing the lot. On the Subject Property, the Applicant proposes to construct a row dwelling of the same design and dimensions as the five dwellings to be constructed on the East lots as a matter of right. Although the Applicant proposes to construct the dwelling from lot line to lot line of the Subject Property, as a result of the orientation of the structure on the West lots, the proposed row dwelling would not attach to a common division wall on the west. Thus, the proposed row dwelling is attached on only the east side, which results in a semi-detached building as defined by Subtitle B § 100.2 of the Zoning Regulations.

For a semi-detached dwelling, compared to an attached dwelling, the minimum required lot area

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increases from 1,800 square feet to 3,000 square feet, and the minimum lot width increases from 18 feet to 30 feet, pursuant to Subtitle E § 201. The Subject Property does not comply with those requirements, as it has an area of 2,731 square feet and a width of 19.4 feet. Though the Subject Property would comply with the lot area and width requirements for an attached dwelling, the Applicant is unable to acquire ownership of the West lots in order to subdivide those properties in a way that would allow for a zoning-compliant row dwelling on the Subject Property. Given the existing dimensions of the Subject Property, the Applicant would be unable to construct any residential structure on the lot that would conform to the requirements of Subtitle E § 201.1. The Board concludes that this amounts to a practical difficulty with regard to lot area and lot width.

In addition, because the proposed structure is a semi-detached dwelling, a five-foot wide side yard on the west side is required under Subtitle E § 307.3. In order for the proposed project to comply with the side yard requirement, the Applicant would have to reduce the maximum width of the proposed dwelling to 14.4 feet. This would create a practical difficulty for the Applicant, in that the dwelling on the Subject Property would be narrower than the otherwise identical five dwellings on the row, disrupting the pattern of row dwellings from the street frontage. In the alternative, in order to meet the side yard requirement, the Applicant could shift the dwelling toward the rear of the lot. The Board credits OP's finding that this alternative design also creates an unnecessary burden on the Applicant, as it would result in a front yard that is out of character with the block and would "interfere with the design of the remainder of the row of houses, including the provision of a common division wall with the row house to be constructed on the adjoining lot to the east." (Exhibit 36.) For these reasons, the Board finds that the exceptional condition of the Subject Property creates a practical difficulty with regard to meeting the side yard requirement of the Zoning Regulations.

No Substantial Detriment or Impairment

The Board finds that approval of the requested variance relief would not result in a substantial detriment to the public good or cause any impairment of the zone plan. The Board concurs with OP, which found that the "granting of the requested variance would allow for the construction of a larger sized dwelling, a use permitted as a matter-of-right within the RF-1 on the subject property and otherwise consistent with the dwellings expected to be built on the lots to the east." (Exhibit 36.) The Board determined that granting the requested variance would not result in a substantial detriment to the public good, as the relief would allow for a vacant lot to be improved with a family-sized dwelling with four bedrooms. The proposed dwelling would be consistent with the row of dwellings being constructed and would provide a rear yard that would allow for light and air between the adjacent properties.

The Applicant's proposal to construct a semi-detached dwelling with one dwelling unit is consistent with the purpose and intent of the RF-1 Zone. As provided in Subtitle E § 300.1, the "purpose of the RF-1 zone is to provide for areas predominantly developed with attached row houses on small lots within which no more than two (2) dwelling units are permitted." Further, constructing the dwelling from lot line to lot line allows for the future development of a row

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dwelling on the West lots, which would complete a row of attached residences between 50th Street, N.E. and the public alley. Based on these factors, the Board concludes that the proposed development would not result in substantial detriment to the public good or cause any impairment of the zone plan.

Great Weight

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board concurs with OP’s recommendation that the application be approved in this case. (Exhibit 36.)

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)) The “great weight” requirement, however, extends only to “issues and concerns that are ‘legally relevant.’” *Concerned Citizens of Brentwood v. D.C. Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993) *quoting Bakers Local 118 v. D.C. Bd. of Zoning Adjustment*, 437 A.2d 176, 179 (D.C. 1981). In other words, the expressed concern must be relevant to the legal question that is before the Board. The question before the Board here is whether the Applicant has met the three-prong test to be granted variance relief to allow the construction of the proposed semi-detached dwelling.

In this case, ANC 7C recommended denial of the application, indicating that it would instead prefer that the Applicant work with District agencies to redevelop the area for a higher density or commercial use of the land, based on nearby higher-density, mixed-use commercial/residential sites. (Exhibit 39.) Though the ANC expressed a preference for a different kind of development, the ANC’s written report did not discuss whether or how it believed the proposed one-family dwelling on the Subject Property would detrimentally affect the surrounding neighborhood or the existing zone plan. The Board considered the issue raised by the ANC, but concluded it was not legally relevant to the Board’s evaluation of the variance standard in this case. *See Concerned Citizens of Brentwood*, 634 A.2d at 1241 (D.C. 1993) (Affirming the Board’s decision that an ANC’s concern as to whether a variance was required was not “legally relevant” to the criteria for variance relief before the Board and, thus, not entitled to “great weight”). As the issue raised by the ANC is not legally relevant to the question before the Board, it is not entitled to “great weight.”

Nonetheless, as required by the third prong of the variance test, the Board considered whether granting the proposed area variances would have a negative impact on the public good or impair the zone plan, as represented in the Zoning Map and Regulations. The Board found that the proposed semi-detached dwelling was compatible with the intent and purpose of the RF-1 Zone and that the proposed dwelling was in keeping with the matter of right attached residential buildings being constructed on the East lots. Though the ANC notes that it would prefer higher density or commercial use, those uses are not consistent with the FLUM’s Moderate Density Residential designation for the Subject Property.

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Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for area variances from the lot width and lot area requirements of Subtitle E § 201.1 and from the side yard requirements of Subtitle E § 307.3 to construct a new one-family dwelling in the RF-1 Zone at premises 4932 Nannie Helen Burroughs Avenue, N.E. (Square 5179, Lot 92). Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBITS 10 – 14 – ARCHITECTURAL PLAN 1st FLOOR, 2nd FLOOR, 3rd FLOOR, ARCHITECTURAL ELEVATION, AND SITE PLAN – 4932 N.H.B. AVE. NE.**

VOTE: 5-0-0 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Anthony J. Hood voting to APPROVE.)

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

A majority of Board members approved the issuance of this order.

ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 12, 2018

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.