

BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Application of 2101 Morning Bright LLC (Area Variance)
Pursuant to 11 DCMR §§ 3101 to allow a mixed use building) BZA No 18723
to exceed the maximum lot occupancy (section 772 1),)
and rear yard (section 774 1) requirements in the Arts/C-2-B)
District at premises at 901 U Street, N W)
(Square 358, Lots 5, 6, and 802))
()

RECEIVED
U.S. OFFICE OF ZONING
2014 FEB 25 AM 8:10

REQUEST FOR PARTY STATUS

Pursuant to 11 DCMR § 3106, Dave Stirpe hereby files this motion to appear as a party in opposition to the above-captioned application filed by 2101 Morning Bright LLC (the “Applicant”) seeking variances to allow the construction of a mixed-used residential building at 10th and V Streets NW (the “Property”) not meeting the lot occupancy and rear yard requirements applicable to the Arts/C-2B zone district. Mr Stirpe resides at and owns property at 2109 10th Street NW, which is a seven-unit condominium building immediately adjacent to the subject property, separated only by a ten-foot alley Mr Stirpe will be represented in this proceeding by Andrea C Ferster, 2121 Ward Court, N W 5th Fl , Washington, D C 20037 A letter authorizing the undersigned counsel to represent Mr Stirpe in this proceeding is attached hereto as Exhibit 1

Mr Stirpe purchased his unit eight years ago, which is on the top floor of a four -story building at 2109 10th Street NW. His unit has a rooftop deck that looks directly over the subject open property Mr Stirpe’s roof deck is not typical of a “roof” deck since it is situated right next to his bedroom, is formed as a cutout, and acts as another room of the condo unit When he purchased his home, he was aware that any new construction on the partially vacant lot on the

BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18723
EXHIBIT NO. 29

corner of 10th and V Streets would be required to have an additional 15ft rear setback as required by the zoning regulations, 11 DCMR § 774 1, and would also be subject to a maximum lot occupancy of 80 % under Section 772 1 of the zoning regulations, which, in addition to the 10-foot alley, would buffer his property from any new construction. The area restrictions in the zoning regulations are critical in protecting his privacy.

The Applicant is seeking to construct a six-story, 45-unit apartment building with ground floor retail space on the vacant portion of the lot, covering 90 % of the lot. The requested variances from the applicable rear set back and lot occupancy requirements will result in the construction of a new building whose floors two through six will only be set back 12 feet from the alley for virtually the full length of rear lot line. The close proximity of the six story building to Mr. Stirpe's property will therefore block the view from Mr. Stirpe's fourth floor unit, block light and air flow, shade his roof deck, and reduce privacy by causing residents of the new structure to look directly into his bedroom windows and onto his outdoor deck. The additional density on the subject site will lead to more noise, more alley congestion, more trash congestion (since trash will be collected in the alley), and reduce the value of Mr. Stirpe's property. Accordingly, the variances requested by the Applicant would adversely affect Mr. Stirpe's value, use and enjoyment of his property and roof deck.

The Applicant has also failed to demonstrate that it satisfies the requirements for a variance from the rear yard and maximum lot occupancy requirements of the zoning regulations. The sole "practical difficulty" cited in the application is the fact that the location of the historic church on the site creates an "inefficient building layout for new construction." Application, at 6. However, this factor simply does not create any "peculiar and exceptional practical difficulties to

or exceptional and undue hardship upon the owner ” D C Code § 6-641 07(g)(3) The Applicant has not identified any “exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical condition ” *Id*

The fact that “as a designed historic landmark, the Church cannot be demolished and therefore, there is no practical way to comply with the rear yard setback requirement” is not a “practical difficulty” justifying the variances, as the Applicant asserts Application, at 7 This existing practical difficulty only pertains to the building line occupied by the historic church. It does not justify expanding and enlarging the current non-conforming rear yard by constructing the new building’s five upper stories with only a 12-foot rear yard Applicant makes no attempt to demonstrate any “undue hardship” that would prevent the Applicant from developing the new building in conformity of the lot occupancy requirements and without enlarging and extending the non-conforming rear yard setback The Applicant’s preference for a larger building simply does not constitute a “practical difficulty ”

The variance requested by the Applicants would also cause substantial detriment to the public good and impair the zone plan by justifying non-conformity with the zoning regulations any time a building is occupied by a historic building The Applicant’s view that the new construction “will have a positive effect on the neighborhood” and will include “sufficient parking” in no way mitigates this substantial impairment, as the Applicant asserts Application, at 8 These arguments, if accepted, would create open-ended exemptions that could apply to virtually every property in the District of Columbia, and would therefore undermine and substantially impair the zone plan

Accordingly, Mr Stirpe will be adversely affected and aggrieved if the subject application is granted. As an immediately adjacent property owner, Mr Stirpe will be more significantly, distinctively, and uniquely affected in character and kind by the proposed application than other persons in the general public. For the foregoing reasons, his request for party status should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Ferster', with a large, stylized flourish at the end.

Andrea C. Ferster
Attorney at Law
2121 Ward Court, N W , 5th Fl
Washington, D C 20037
(202) 974-5142
(202) 223-9257 (fax)
aferster@railstotrails.org