

**Before the District of Columbia
Board of Zoning Adjustment**

Application of 2101 Morning Bright LLC
2105 10th Street, NW
(Square 358, Lots 5, 6, 802)

Preliminary Statement of Compliance with Burden of Proof

I. Nature of Relief Sought

This is an application by 2101 Morning Bright LLC (the “Applicant”) for variance relief pursuant to Section 3101 of the Zoning Regulations to allow the construction of a mixed-use residential project at 10th and V Streets, NW (Square 358, Lots 5, 6, and 802) (the “Property”). The project will consist of one level of underground parking, with 6 floors of residential units above, including a retail space on the ground floor. The specific requests are for a variance from the lot occupancy requirements and for a variance from the rear yard requirements set forth in the Zoning Regulations at 11 DCMR §772.1 and §774.1 respectively. The property is zoned Arts/C-2-B and has 9,553 square feet of land area.

1. Lot Occupancy (772.1) – The residential portion of the property may not occupy more than 80% of the lot. Here, the Applicant proposes a residential project that occupies 90% of the lot.

2. Rear Yard (774.1) – Structures must include a rear yard of not less than 15 feet. Here, given the existing conditions of zero rear yard, due to the location of an existing building that must be retained, the Applicant proposes a residential project that maintains the nonconformity and provides zero feet in the rear yard.

II. Jurisdiction of the Board of Zoning Adjustment

The Board of Zoning Adjustment has jurisdiction to grant the relief requested pursuant to §3103 of the Zoning Regulations.

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 18722
EXHIBIT NO. 5

Board of Zoning Adjustment
District of Columbia
CASE NO.18723
EXHIBIT NO.5

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III. Site, Surrounding Area and Existing Conditions

The site is a nearly square property located at the northeast corner of the intersection of 10th Street and V Street NW, in the U Street Corridor. Lot 802 is occupied by the First African New Church (“Church”), an individually listed historic landmark structure with the address 2105 10th Street, NW. The remainder of the property is partly vacant and partly occupied by a disused, two-story brick building for which a raze permit was issued on 12/4/2013.

The property is towards the eastern end of the U Street corridor, which has experienced significant new development and renovation of both commercial and residential buildings in the past 10 years. The immediate neighborhood is characterized by a mix of uses, including individual townhomes and flats, larger new condominium and rental apartment buildings, small-scale office uses, booming retail and restaurant uses, and public facilities, across a mix of zone districts. The Arts/C-2-B zone district runs generally along U Street and includes blocks to the north and south of the main thoroughfare, in some areas.

Within the immediate context of the project, the southern and eastern portions of the subject square are within the Arts/C-2-B zone classification. Within the square and to the east of the proposed project on V Street are an office use, a popular neighborhood restaurant and bar, an automobile repair shop, and row dwellings. The recently closed Garnett Patterson Middle School structure is located directly across V Street to the south of the property and occupies its entire city block. To the north of the project site on 10th street are a 16 unit condominium completed in 2007 and various row dwellings and flats. Across the alley that bisects the subject square are large apartment and condominium buildings that front on Florida Avenue.

The project is located in close proximity to multiple means of transportation. The U-Street/African American Civil War Memorial/Cardozo Metro station is located one block to the south,

multiple bus lines run along U Street and Florida Avenue, car sharing spaces are abundant, and bike share stations are located within one block of the proposed property.

The property is zoned Arts/C-2B. C-2-B is a medium-density, mixed-use zone that allows residential and mixed uses to a maximum height of 70 feet and has a base density of 3.5 FAR, of which commercial uses are limited to 1.5 FAR. The “Arts” designation, found in 11 DCMR Ch. 19, refers to the Mixed Use Uptown Arts overlay district, which modifies the base zoning to provide incentives for retail, arts, entertainment and residential uses along and in proximity to 14th Street, U Street and 7th Street NW. With the addition of density incentives adopted under the Inclusionary Zoning requirements, the maximum FAR allowable on the subject property is 5.0.

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Since purchase of the property, the current owners have undertaken the stabilization and restoration of the historic Church. At the time of purchase, the building was in severe disrepair, with all windows broken or missing, crumbling brick and mortar, unsound interior structure, contamination from pigeons, complete roof deterioration, among other significant issues. Since their purchase of the property in 2006, the current owner, an expert in historic preservation herself, has undertaken stabilization and restoration projects totaling nearly \$500,000 in construction costs, to include: restoration and repair of all exterior facades, structural repairs, new slate roof, restoration of copper cornice, gutter and downspouts, entirely rebuilt interior structure, remediation of contamination, preservation of sanctuary stained glass window, and new windows throughout.

IV. The Project

The restored Church is planned to be converted into four condominium apartments, and six stories of new construction will be an addition to the landmark church. The Church has a building footprint of 1,740 SF and, with three floors and a mezzanine level, the structure contains a total of 4,655 sf of space.

The attached new apartment building will have a height of 70 feet and will accommodate 42,752 gsf of residential space for a total project of 47,407 gsf. This constitutes a 5.0 FAR on the site of 9,553 sf. The C-2-B district permits a maximum of 3.5 FAR, pursuant to §771.2, as base density. The inclusionary zoning regulations (§2604.1), which are applicable to this project, authorize an increase in density of twenty percent, which makes the allowable FAR 4.2. The ARTS Overlay District (11 DCMR 19) also authorizes bonus density for the provision of preferred uses. An additional 0.3 FAR of bonus density is allowed under §1904.2, where specified uses listed under §1907 and §1908 are included at a specified ratio. As a project that includes at least 3.0 FAR devoted to residential use, this property is entitled to a further bonus FAR of 0.5 (§1904.3). Thus, the total allowable FAR for this site is 5.0. A total of approximately 45 apartments are proposed for this project.

A total of 19 compact parking spaces are provided in the basement level of the project and at grade. Within the C-2-B zone district requirement of one space for every three apartments, the minimum requirement would be 15 spaces. This project does not require relief from parking requirements. As noted in describing the surrounding context of the property, the site is within 2 blocks of the U Street/African American Civil War Memorial Metro station and numerous other modes of public and shared transportation.

The Historic Preservation Review Board (“HPRB”) has granted concept design approval of a similar previous scheme of this restoration and new construction project. After these concept approvals were achieved, the country was plunged into the most serious recession in nearly a century, so the project was put on hold. BZA approvals, which were gained in 2005, and which contemplated a very similar project in terms of bulk and density, and the HPRB concept approvals that were obtained at the same time, have since lapsed and the market in this neighborhood has changed and strengthened. Thus the project has been reimagined for the current state of the Washington DC residential market and the years of ensuing development that has occurred in this vibrant neighborhood and is currently undergoing additional HPRB review.

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The proposed building complies with the majority of applicable zoning requirements, including:

- Building height – 70 ft. with IZ modifications;
- Floor Area Ratio – 5.0 with base zoning plus applicable incentives/requirements/bonuses;
- Side yards – none required or provided;
- Penthouse and roof structures;
- Parking – with waiver for historic building;
- Loading – none provided or required for building of less than 50 units;
- Open courts – complies with requirements.

The areas of requested variance relief are for the lot occupancy and from the rear yard setback.

The rationale for the requested relief is set forth in the following sections.

V. Burden of Proof

The provisions of §3103.2 require the Applicant to show a unique physical aspect or other extraordinary or exceptional condition of a specific piece of property that creates a practical difficulty. In addition, the provisions require that the relief requested can be granted without substantial detriment to the public good or impairment of the zone plan.

A. Exceptional Condition or Situation / Practical Difficulty. In this case, the property is unique because it contains a large existing building that has been determined to be an historic landmark and therefore may not be removed or altered, but must be incorporated into the development. The existing Church must be retained in its entirety and the proposed development will include the Church building in the overall design of the lot. Moreover, the property is a corner lot with two street frontages. The presence of the Church and the location of the lot on a corner does not lead to any difficulty with height requirements, but does lead to a practical difficulty in two areas: the rear yard and meeting the lot occupancy requirements.

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1. Lot Occupancy

The presence of the Church on the site and the applicant's requirement to incorporate it into the overall development and not demolish it directly affects the project's ability to comply with the lot occupancy requirements under §772.1. The location and configuration of the Church building creates a practical difficulty in that its structure takes up a large amount of space and volume on the site, taking a large bite out of the available land area upon which the applicant can build. If the Church were not present, the applicant would have no problem accommodating the allowable density on the site as a matter of right. However, because of the location of the Church on the corner of the site, the open portion of the property is an odd L shape, creating an inefficient building layout for the new construction by squeezing the building and making units wider and shorter than would be optimal or possible if the site were entirely vacant.

The configuration of the Church in relation to the area of land that it occupies is also extremely inefficient, causing a larger proportion of the allowable FAR to be taken up by the church for a yield of a very few units. The Church building occupies 18% of the lot but accommodates only 8% of the planned units, due to the space and volume it takes up. Conversely, the new building, as designed, occupies 72% of the lot and accommodates 88% of the residential units. The applicant is requesting a 10% increase in the lot occupancy beyond the 80% restriction, to 90%.

Finally, the project addresses Historic Preservation issues by reducing the massing of the new building on upper floors in order that they not compete with the steeple and architecture of the church. Conforming to these requests by HPRB causes additional pressure on the ability to accommodate density on the property, where there would be none without the presence of the historic Church. It should also be noted that the Lot occupancy on higher floors is below the maximum of 80%.

The inefficiencies caused by the location of the church cause the land area available for the new building to be strangely shaped and therefore the building to have a more inefficient layout, requiring

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more space to accommodate the same number of units. In addition, the comparatively large volume and odd configuration of the church place downward pressure on the lot occupancy, requiring more units to be accommodated in the new structure. These two conditions, combined with the need to respect the historic structure by setting the new construction back from it, make accommodating density, while still meeting the lot occupancy requirements on the site, practically difficult.

2. Rear Yard

The presence of the Church on the site also directly affects the ability to provide the 15-foot rear yard setback, required under §774.1. The entrance of the new portion of the building is placed on V Street so as not to compete with the historic entrance of the Church or with smaller scale properties that extend to the north of the subject site. Additionally, it is less suitable for the entrance of the new portion of the project to be placed on 10th street because compliance with rear yard provisions in this instance would create a large, unsightly and potentially dangerous gap in the street wall on V Street at the eastern edge of the property, in an area that is characterized by densely constructed, predominantly attached structures.

The preferable preservation decision of placing the entrance on V Street creates the northern boundary of the site, bordering a 10-foot wide alley, as the rear yard. In that location, the Church faces 10th Street and its side wall is on the northern property line along the alley. Therefore, for the majority of this portion of the site, the existing Church occupies the entirety of the rear yard and, as stated above, cannot be moved. The new portion of the project will be set back 17 feet from the alley at the ground floor and 12 feet on the second floor and above, thus the project will encroach only 3 feet into the required rear yard on this portion of the property. The lack of a rear yard is, for the most part, a technicality created by V Street becoming the front of the larger project. The exceptional condition leading to a practical difficulty is that, as a designated historic landmark, the Church cannot be demolished and, therefore, there is no practical way to comply with the rear yard setback requirement.

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Relief from the rear yard requirements was granted in a previous application for this property in which the bulk and density of the proposed project was very similar.

B. No Harm to Public Good or Zone Plan. The requested relief can be granted without harm to the public good and without threat to the zone plan. The granting of these variances will not have a detrimental impact on the immediate neighbors or the neighborhood because the project restores and reuses an historic landmark as well as putting a vacant property into productive use and providing much-needed residential dwelling units for the city. With regard to the lot occupancy, allowing the project to occupy 90% of the lot, which represents a 10% increase from the maximum requirement of 80%, will allow the project to make use of available density but will not cause the project to impinge on neighboring properties based, in part, on the property's location on a corner lot. With regard to the rear yard variance, properties to the north are already distanced from the project by a 10-foot alley and the location of the church in the rear yard is an existing condition, while the proposed new construction will only encroach on the 15-foot requirement by 3 feet. Overall, the enlivening of this corner through the creation of this mixed-use, predominantly residential development will have a positive effect on the neighborhood and will be a contribution to the community.

The zone plan will not be compromised because the project will include sufficient parking and because the site is in close proximity to several modes of public transport. The project is in keeping with the spirit of applicable regulations, including the Arts/C-2-B zone, the provision of affordable housing through IZ, and the provisions of the Historic Preservation Act. The project restores a historic landmark in conjunction with creating a compatible new construction project.

VI. Conclusion

Pursuant to Board of Zoning Adjustment rules, the applicant will file any pre-hearing materials no fewer than 14 days prior to the public hearing for this application. The applicant, through its

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statements, testimony, and evidence presented, will demonstrate how it meets the burden of proof to obtain the Board's approval for its requested relief. We thank you very much for your consideration.

Sincerely,

2101 Morning Bright, LLC

A handwritten signature in black ink, appearing to read "Suman Sorg". The signature is fluid and cursive, with the first name "Suman" and last name "Sorg" clearly distinguishable.

Suman Sorg, owner

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