

2109 10th Street, NW
Unit: PH2
Washington, DC 20001

May 27, 2016

Board of Zoning Adjustment
441 4th Street,
NW Suite 200S
Washington, DC 20001

Re: Request for Extension of Order No. 18723
2105-0710th Street, NW (Square 358, Lots 5, 6, and 802; aka lot 831)

Dear Members of the Board:

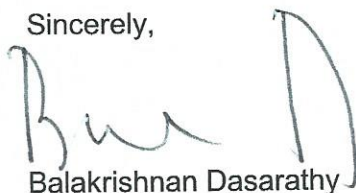
I am in complete agreement with my neighbor, Mr. David Stirpe, in opposing an extension of Order No. 18723 on behalf of 2101 Morning Bright, LLC (the "Applicant"). I am opposing this request on two grounds:

- The Applicant has not shown good cause for the extension.
- There has been a substantial change to the material facts upon which the Board based its original approval.

I am attaching here Mr. Stirpe's letter to you, dated May 25, 2016, where these points are amply substantiated.

Thank you.

Sincerely,



Balakrishnan Dasarathy

2109 10th Street, NW
PH1
Washington, DC 20001

May 25, 2015

Board of Zoning Adjustment
441 4th Street, NW
Suite 200S
Washington, DC 20001

Re: Request for Extension of Order No. 18723
2105-0710th Street, NW (Square 358, Lots 5, 6, and 802; aka lot 831)

Dear Members of the Board:

This is in opposition to the April 29, 2016 letter from Holland and Knight, requesting an extension of Order No. 18723 on behalf of 2101 Morning Bright, LLC (the "Applicant"). The Applicant has not shown good cause for the extension, and there has been a substantial change to the material facts upon which the Board based its original approval, as discussed in more detail below.

Background

The Applicant is 2101 Morning Bright, LLC, whose managing member is Suman Sorg. Ms. Sorg is an architect, and is (or was) the CEO of Sorg and Associates, PC, an architectural firm, which merged with the DLR Group, also an architectural firm. The Applicant purchased the subject property on around March 3, 2006, over a decade ago. The property consists of a former church, designated as a historic landmark, surrounded by vacant land. During all or most of the ten-year period of the Applicant's ownership, the property has remained vacant and derelict, and the Applicant has made little or no effort to actually develop the property. In contrast, during the same time period, numerous condominium and apartment projects have been completed within a radius of just a few blocks from the subject property, such as the Murano (2117 10th Street), Atlantic Plumbing (2030 8th Street), and the Shay (1924 8th Street).

In 2013, as the Board is aware, the Applicant applied for and received variance relief from the Board for lot occupancy, rear yard, and other requirements. The proposed project before the Board was a six-story condominium building, consisting of 38 units, of which 30 were studio apartments, 4 were one-bedroom units, and 4 were two-bedroom units. Many of the units had balconies. One of the two-bedroom units was a penthouse apartment, with a terrace/balcony spanning the entire side of the top floor of the building. The project also included 19 parking spaces in the basement level. One of the primary bases for the variances, especially the lot occupancy restriction, was that without the variances, the proposed units would be "wider and shorter than would be optimal"

The final date of the Board's order was May 23, 2014, with an effective date of June 2, 2014, and the order provided that it shall not be valid for more than two years after it became effective unless, within the two year period, the Applicant filed plans for the proposed structure. The Applicant has not yet filed such plans.

Meanwhile, on February 4, 2016, the District's Department of General Services ("DGS") entered into a Letter of Intent ("LOI") with the Applicant, under which DGS would enter into a 30-year ground lease with the Applicant for the property. The LOI also states that the District (not the Applicant) would develop a 29-unit building to provide housing and on-site supportive services for District residents. The LOI also provided that the DLR Group/Sorg would be the architect for the project, but did not provide that the Applicant would be the developer/builder for the project.

According to the Mayor's fact sheet for the site, the project will be a "short-term family housing facility" to accommodate up to 30 homeless families at a time. It also stated that the building will include a playground and recreation space, a computer lab for residents, and a common dining area. The Mayor's office held a community meeting on [date] to discuss the proposed design and seek feedback. The proposed design was prepared by Cunningham Quill Architects (see attached), not the DLR Group/Sorg. No final design has been presented to the public.

Although the LOI does not designate the Applicant as the developer/builder for the project, Holland and Knight's letter and the Applicant's affidavit suggest that Applicant is seeking an extension of the Board's order for purposes of building the homeless shelter as proposed by the Mayor.

However, the LOI as proposed by the Mayor has not been approved by the City Council. Instead, the Council passed (on first reading) alternate legislation drafted by Chairman Mendelson, providing that the Mayor shall acquire the property at issue, if necessary by eminent domain, and that the shelter shall be constructed through an award by the Department of General Services pursuant to a request for proposals (see attached).

Substantial Change

As required by the regulations, the Applicant must show that there is no substantial change in any of the material facts upon which the Board based its original approval. In this case, there has been substantial change, as follows

Interior layout:

As noted above, the original proposal approved by the Board in 2014 was for a 38-unit building, consisting primarily of studio apartments, plus a few one- and two-bedroom units, including a penthouse unit with a terrace/balcony spanning an entire side of the top floor. As now proposed, the building would be used for temporary housing for homeless families. As the proposal for the Ward 1 site is to house families, the Mayor's office has proposed that there would be only 30 units, and that all or most of the units would be two- and three-bedroom units. The legislation passed by the Council is for 29 units. As noted above, the original approval was primarily based on the assertion that the proposed layout of the 38 mostly studio apartments would not be optimal without the relief. No evidence has been provided that 29 units of 2 and 3

bedrooms could not be optimally laid out without the relief. Thus, there has been a substantial change in the material facts on which the Board based its original approval.

Exterior:

The Applicant states in her affidavit that "We are not proposing to change the exterior of the approved building." However, a homeless shelter will not likely include a penthouse apartment with a terrace/balcony spanning an entire side of the top floor, and would likely not include the other balconies as had been included in the original plans approved by the Board. In addition, as noted above, the new building proposed by the Mayor is to include playground and recreation space. Certainly, the exterior of the building must be changed to accommodate playground and recreation space. Thus, there has been a substantial change in the material facts on which the Board based its original approval.

Use:

As originally proposed, the building was to be a mixed-use condominium project. As now proposed, the building will be a transitional homeless shelter. The Applicant has failed to explain how this use is permitted in the Arts/C-2-B District.

Good Cause

The regulations require that the Applicant show good cause for the extension, such as evidence of an inability to obtain financing, or an inability to secure governmental agency approvals. The Applicant has failed to make these showings.

Financing:

The applicant states that it cannot secure financing until a lease for the property has been negotiated upon approval from the DC Council. However, this statement does not appear to make any sense. As noted above, the LOI did not provide that the Applicant would be the developer/builder for the project, such that the Applicant would need financing for anything. Rather, the LOI provided that the government would simply be leasing the land from the Applicant, and that DLR Group/Sorg would be the architect of record. In any event, as noted above, the LOI has not been approved by the Council, and it is unlikely that it will be approved, as the Council has instead approved alternate legislation to require purchase, not leasing of the property, upon which the District itself, not Applicant, would be constructing the property.

Government approvals:

The Applicant states that it filed its initial application for a foundation permit on December 5, 2013. However, it's unclear how or why applicant intended to be approved for a foundation before obtaining approval from the Board for the setback and lot occupancy restrictions. In any event, what applicant did before receiving the Board's approval on May 23, 2014 is not relevant. What is relevant is what actions the Applicant took after that date to merit an extension. In that respect, Applicant states only that it filed an exemption from the Green Area Ratio (GAR) requirements on March 20, 2015, nearly a year after it has received Board approval for the variances. Such a delay in filing for the exemption was within the Applicant's control. The Applicant then states that the foundation permit was finally approved on October

28, 2015, but provides no details as to how diligently the Applicant had acted in pursuing that permit. More importantly, the Applicant makes no mention of having applied for a permit for the building itself, but rather mentions only the foundation. As the Applicant's managing member is an architect, she should have been well aware of the requirements and timing needed to obtain the relevant permits. In short, the Applicant has not provided sufficient details as to how it diligently pursued the obtaining of governmental approval for the project.

Conclusion

There has been a substantial change in the material facts on which the Board based its original approval. In addition, the Applicant has failed to show that there was an inability to secure all required governmental agency approvals by the expiration date because of delays that were beyond the applicant's reasonable control. Therefore, the extension request should be denied.

Sincerely,

David Stirpe