

# Holland & Knight

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June 3, 2016

*VIA IZIS & E-MAIL*

Board of Zoning Adjustment  
of the District of Columbia  
441 4<sup>th</sup> Street, N.W., Suite 200S  
Washington, DC 20001

Re: BZA Case No. 18723A  
2105 10<sup>th</sup> Street, N.W. (Square 358, Lots 5, 6, and 802) (the "Property")

Dear Members of the Board:

This letter is submitted on behalf of 2101 Morning Bright LLC (the "Applicant") in response to the party status applications and letters in opposition identified as Exhibits 4-8 in the record for the above referenced case. Three neighboring property owners have requested party status, none of which were parties to the original application. David Stirpe filed a request for party status during the original proceeding, but his party status was denied since he failed to show up at the public hearing held on May 20, 2014. *See* BZA Transcript of 5/20/2014, p. 144. Mr. Stirpe's statement that he was previously granted party status is therefore incorrect. Pursuant to 11 DCMR § 3113.21, the Board shall consider any requests for party status at the time of the public hearing. Since extension requests are not considered at a public hearing, there is no procedure for the Board to grant party status requests. Accordingly, the party status requests are untimely and should not be considered at the public meeting.

Since none of the party status applications and letters in opposition were filed by parties to the original application, the documents should not be accepted into the record. Pursuant to 11 DCMR § 3121.5, "the record shall be closed following the public hearing, except that the record may be kept open for a stated period for the receipt of specific exhibits, information or, legal briefs." In addition, only parties to a case have an opportunity to file written responses to any exhibits, information, or briefs submitted after the close of the hearing. *See* 11 DCMR § 3121.6. Furthermore, "[a]ny materials received by the Board after the close of the record except that permitted by 3121.5...shall be returned by the Director and not received into the files of the Board." 11 DCMR § 3121.9. Since the record was not left open at the conclusion of the May 20, 2014 public hearing, and none of the Exhibits were filed by parties to the original proceeding, none of the Exhibits should be accepted into the record or considered by the Board. The Applicant complied with its obligation to serve the extension request on the Office of Planning and Advisory Neighborhood Commission 1B.

Board of Zoning Adjustment  
District of Columbia  
CASE NO.18723A  
EXHIBIT NO.9



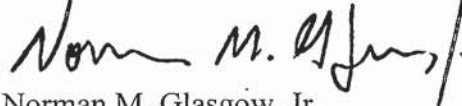
Notwithstanding the above assertions, the arguments against the extension have no merit. There has been no substantial change in the material facts upon which the original approval was granted. As detailed in the previously submitted affidavit signed by the Applicant, the Applicant has worked diligently over the past two years to secure all required funding and government agency approvals to move forward with development of the Property. The Foundation permit was finally approved on October 28, 2015, nearly two years after initial filing and the Applicant may now begin moving forward with construction of the project. As detailed in the party status application and letters in opposition, a major concern for the neighboring property owners is the current vacancy of the Property. Without approval of the extension, the Property will remain vacant and approval of the extension will allow for the Property to be developed.

The Applicant was granted approval for the construction of an apartment house and the Property is still proposed to be developed as such. The DC Council voted to approve the Mayor's initiative to construct short-term family housing in the District and the Property is identified as one of the potential sites. The legislation states that the Property would no longer be leased by the District, but would instead be acquired either by purchase or through eminent domain. At this time there has been no proposal to purchase the property and no notice of condemnation served upon the Applicant. In addition, contrary to the assertions that the building will be an emergency shelter, the adopted legislation does not change the fact that the Property would be developed with an apartment house. An apartment house is defined as "any building or part of a building in which there are three (3) or more apartments, or three (3) or more apartments and one (1) or more bachelor apartments, providing accommodation on a monthly or longer basis," and an apartment is defined as "one (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms." 11 DCMR § 199.1. The Mayor's proposal is consistent with both definitions. There is no proposed change to the building envelope and the ultimate configuration and number of the apartments does not affect any of the previously granted relief. Furthermore, to deny the extension request on the basis of who may occupy the apartment building in the future would be a clear violation of the Fair Housing Act.

We believe that the facts recited above and in our initial extension requests provide sufficient basis under 11 DCMR § 3130.6, et seq., for the Board to grant the requested extension and we respectfully request that the Board do so.

Very truly yours,

HOLLAND & KNIGHT LLP



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Joseph O. Gaon

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