

June 6, 2016

Board of Zoning Adjustment
of the District of Columbia
441 4th Street, N.W., Suite 400S
Washington, DC 20001

RE: Request for Extension of Order No. 18723A
2105 10th Street, N.W. (Square 358, Lots 5, 6, and 802)

Dear Members of the Board,

This letter is in opposition to the request by 2101 Morning Bright LLC (the "Applicant") for a two-year extension of the effectiveness of Board of Zoning Adjustment ("BZA" or "Board") Order No. 18723. As indicated by the Applicant, the Order granted approval of a mixed-use residential building with ground floor retail in the Arts, C-2-B District at 2105 10th Street, N.W. (Square 358, Lots 5, 6, and 802).

We respectfully request that the Board *deny* the Applicant's request for a two-year extension of the Order because the Applicant fails to show good cause for the extensions or otherwise meet the requirements of 11 DCMR § 3130.6.

§ 3130.6(a): *"The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond"*

The Applicant's request merely states that "a copy of the extension request was served on the Office of Planning". There was no statement it was served to Advisory Neighborhood Commission 1B, the other only party to the application.

However, the Applicant fails to provide any evidence that the request for extension was properly served on the alleged parties. Therefore, the Applicant has not sufficiently shown that their request meets the requirement set forth by 11 DCMR § 3130.6(a). In accordance with DCMR 3111.4- Proof of service, the applicant must state the name and address of the person on whom the document was served and the manner and date of service, it shall be shown and may be made by either of the following methods:

- (a) Written acknowledgement of the party served or the party's representative;
- or
- (b) The written statement of the person making the service.

Neither of these is in the case file or record,

§ 3130.6(b): "There is no substantial change in any of the material facts upon which the Board based its original approval of the application that would undermine the Board's justification for approving the original application"

The Applicant's request states that "[t]he Applicant is not proposing to change the exterior of the building approved by the Board pursuant to Order No. 18723. In addition, no new areas of relief are requested and the plans are consistent with the relief approved by the previous BZA Order. There also have been no changes to the zone district classification applicable to the Site or to the Comprehensive Plan affecting the Site since the issuance of the Order."

As a preliminary matter, with respect to § 3130.6(c) the Applicant alleges that "detailed construction plans" have been developed apparently pursuant to a Request for Proposals (RFP) and Letter of Intent (LOI) for a new project apparently subject to approvals by the DC Council and/or Mayor. Accordingly, because the Applicant uses the newly proposed development plan as a basis for extension, this new project and "detailed construction plans" must be considered as to whether the requirements of § 3130.6(b) are met.

First, the matter of right FAR for this building given its C2B is 3.5. The applicant received additional FAR relief given the property would:

- (a) be a mixed use property which consisted of retail and residential
- (b) include inclusionary zoning for affordable housing
- (c) be residential property/apartment in accordance DCMR property designations. The revised homeless shelter apartment homes fails on all three points.

- the planned first floor will become program space, so there will no longer be a commercial component.
- The building will be a District owned facility for use as transitional housing so it will not expand affordable housing in the District as this property will be fully controlled by the District.
- This meets the standard of an institutional facility in accordance with I-1 of the building code given:
 - i. that the residents will not have control of their living spaces and may be moved at any time,
 - ii. the residents will be supervised by an onsite manager 24 hours per day,
 - iii. The residents can be relocated at the will and direction of DC Government
 - iv. This is a transient accommodation, DCMR make a clear distinction between residential and transient accommodation
 - v. Personal care and social rehabilitation services and other wrap-around services will be provided onsite

The Applicant fails to address *any* of the substantial changes proposed with the new development plan for the site. We believe these changes would undermine the Board's justification for approving the original application. Collectively these factor will nullify the FAR increase to 5.0. The FAR should be 3.5 for a non-residential use. In any event, the Applicant has not sufficiently shown that their request meets the requirement set forth by 11 DCMR § 3130.6(b).

§ 3130.6(c): *"The applicant demonstrates that there is good cause for such extension, with substantial evidence of one or more of the following criteria: (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control; (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control; or (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control."*

With regard to this item I concur with the facts raised by the ANC1B in their resolution.

Conclusion

In view of the foregoing I concur with all of the information submitted by neighbors and parties, I respectfully request that the Board *deny* the Applicant's request for a two-year extension of the Order. The Applicant's request is unsupported by evidence and is contrary to public information available. Therefore, we believe the Applicant fails to show good cause for the extensions or otherwise meet the requirements of 11 DCMR § 3130.6.

Sincerely,


Kevin Sampson

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Wash DC
20001