

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18723 of 2101 Morning Bright LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for variances from the lot occupancy (§ 772) rear yard (§ 774) and off-street parking location (§ 2116.12) requirements, and a special exception from the rooftop structure requirements under § 770.6(b), to allow the construction 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).¹

HEARING DATES: March 11, 2014² and May 20, 2014

DECISION DATE: May 20, 2014

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 6.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1B, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 1B, which is automatically a party to this application. ANC 1B submitted a timely report dated May 9, 2014, indicating that at a regularly scheduled, properly noticed meeting of the ANC on May 1, 2014, with a quorum present, the ANC voted 8:0:2 to support the application. (Exhibit 46.) The ANC also submitted a report dated May 2, 2014, indicating its support of the application for variance and special exception relief. (Exhibit 41.) The Office of Planning ("OP") submitted a timely supplemental report in support of the application. (Exhibit 45.) In its original report, OP had stated that it could not recommend approval. (Exhibit 33.) OP noted in its report of May 13, 2014, that subsequent to OP's original report, the Applicant had received a postponement of the BZA hearing and worked with Historic Preservation staff and the Public Space Committee staff to revise the submission and that OP

¹ The Applicant amended the application by adding the requests for a variance under § 2116.12 (Exhibit 28) and for special exception under § 770.6(b). (Exhibit 32.) The caption has been revised accordingly.

² This application was postponed from the March 11, 2014 public hearing. (Exhibit 37.)

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supported the application as revised. (Exhibit 45.) The District Department of Transportation ("DDOT") submitted a report raising no objection to the approval of the application. (Exhibit 34.)

Letters of support for the application were submitted by ANC 1B Design Review Committee (Exhibits 40, 31), Councilmember Jim Graham (Exhibit 40), four letters from area neighbors and businesses (Exhibit 40), and from neighbors Matt Sloan and William Lange (Exhibit 38). A witness Jerry Johnson testified in support of the application at the hearing.

There were two party status applications in opposition. The application for party status in opposition from Urbaniak LLC was affirmatively withdrawn. (Exhibit 47.) The application for party status in opposition from Dave Stirpe (Exhibit 29) was implicitly withdrawn as Mr. Stirpe was not present at the hearing.

Variance Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for variances under § 3103.2 from the strict application of the lot occupancy (§ 772) rear yard (§ 774) and off-street parking location (§ 2116.12) requirements under those provisions of the Zoning Regulations. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking the variance relief that the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates an undue hardship for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

The Applicant satisfied the burden of § 3119.2 in its request for special exception relief from the rooftop structure requirements under § 770.6(b), to allow the construction of a mixed-use residential building with ground floor retail in the Arts/C-2-B District pursuant to § 3104.1. No

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parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 770.6(b) that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 40 AND THE FOLLOWING CONDITION:**

1. The Applicant shall have the design flexibility to change approved plans after a review by the historic preservation office, provided there is no new zoning relief required or any increase in the approved relief.

VOTE: **4-0-1** (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Peter G. May to APPROVE; S. Kathryn Allen, not present or voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____ *for*
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: May 23, 2014

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE

EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.