

May 23, 2016

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Board of Zoning Adjustment
For the District of Columbia

BZA No. 18723 extension on behalf of:

2101 Morning Bright LLC (Area Variance pursuant to 11 DCMR Section 3101 to allow a mixed use building to exceed the maximum lot occupancy (Section 772.1), and rear yard (Section 774.1) requirements in the Arts/C-2-B District

Request for Reinstatement of Party Status

David Stirpe hereby requests reinstatement of his party status in opposition to the above captioned application filed by Morning bright LLC (the Applicant) seeking variances to allow the construction of mixed-used residential building at 10th and V Streets NW. Mr. Stirpe was previously granted party status in opposition and worked closely with the ANC and the property owner on some issues related to the application.

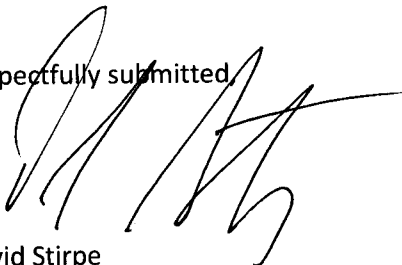
Mr. Stirpe recently became aware that his party status was “implicitly” removed at the BZA hearing to address this application. There was no “explicit” intent for Mr. Stirpe to withdraw his party status. He neither intended to withdraw his party status, nor did he receive notice that such party status was withdrawn.

Mr. Stirpe resides at 2109 10th St., NW PH-1 which is within ten feet of the property. He has an interest in the application to extend the variances since he will adversely affected if the subject application is granted.

It is unclear whether the extension request is for additional time to build the condominiums that the application mentioned, or whether there is another motive to extend the variances for construction of a building for other uses. Therefore, it is in Mr. Stirpe’s interest to remain a party.

Attached is the original 2013 request for party status sent to BZA and received, and another application form if needed.

Respectfully submitted,



David Stirpe
2109 10th St. NW PH-1
Washington, DC 20001



BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA



FORM 140 - PARTY STATUS REQUEST

Before completing this form, please review the instructions on the reverse side.
Print or type all information unless otherwise indicated. All information must be completely filled out.

PLEASE NOTE: YOU ARE NOT REQUIRED TO COMPLETE THIS FORM IF YOU SIMPLY WISH TO TESTIFY AT THE
HEARING. COMPLETE THIS FORM ONLY IF YOU WISH TO BE A PARTY IN THIS CASE.
(Please see reverse side for more information about this distinction.)

Pursuant to 11 DCMR §§ 3022.3 or 3106.2, a request is hereby made, the details of which are as follows:

Name:	David Stirpe		
Address:	2109 10 th St. NW PH-1		
Phone No(s):	202-246-8911	E Mail:	davestirpe@aol.com
I hereby request to appear and participate as a party in Case No.:		18723	
Signature:	[Signature]		Date: 5/24/16
Will you appear as a(n)	☐ Proponent ☒ Opponent	Will you appear through legal counsel?	☐ Yes ☒ No

If yes, please enter the name and address of such legal counsel.

Name:			
Address:			
Phone No(s):		E Mail:	

PARTY WITNESS INFORMATION:

On a separate piece of paper, please provide the following witness information:

1. A list of witnesses who will testify on the party's behalf;
2. A summary of the testimony of each witness (Zoning Commission only);
3. An indication of which witnesses will be offered as expert witnesses, the areas of expertise in which any experts will be offered, and the resumes or qualifications of the proposed experts (Zoning Commission only); and
4. The total amount of time being requested to present your case (Zoning Commission only).

PARTY STATUS CRITERIA:

Please answer all of the following questions referencing why the above entity should be granted party status:

1. How will the property owned or occupied by such person, or in which the person has an interest be affected by the action requested of the Commission/Board?
Action impacts Stirpe due to his immediate proximity to the property requesting to be built beyond its capacity for the lot size.
2. What legal interest does the person have in the property? (i.e. owner, tenant, trustee, or mortgagee)
Owner for ten years
3. What is the distance between the person's property and the property that is the subject of the application before the Commission/Board? (Preferably no farther than 200 ft.)
Ten feet
4. What are the environmental, economic, or social impacts that are likely to affect the person and/or the person's property if the action requested of the Commission/Board is approved or denied?
If approved, property value would decline, view and sunlight blocked, noise increased
5. Describe any other relevant matters that demonstrate how the person will likely be affected or aggrieved if the action requested of the Commission/Board is approved or denied.
no consideration of green space for play area for 29 families proposed for site
6. Explain how the person's interest will be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than that of other persons in the general public.
Stirpe owns and resides 10 feet from property.

Except for the applicant, appellant or the ANC, to participate as a party in a proceeding before the Commission/Board, any affected person shall file with the Zoning Commission or Board of Zoning Adjustment, this Form 140 not less than fourteen (14) days prior to the date set for the hearing.

2013

BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

Application of 2101 Morning Bright LLC (Area Variance)
Pursuant to 11 DCMR §§ 3101 to allow a mixed use building) BZA No. 18723
to exceed the maximum lot occupancy (section 772.1),)
and rear yard (section 774.1) requirements in the Arts/C-2-B)
District at premises at 901 U Street, N.W.)
(Square 358, Lots 5, 6, and 802))
_____)

REQUEST FOR PARTY STATUS

Pursuant to 11 DCMR § 3106, Dave Stirpe hereby files this motion to appear as a party in opposition to the above-captioned application filed by 2101 Morning Bright LLC (the “Applicant”) seeking variances to allow the construction of a mixed-used residential building at 10th and V Streets NW (the “Property”) not meeting the lot occupancy and rear yard requirements applicable to the Arts/C-2B zone district. Mr. Stirpe resides at and owns property at 2109 10th Street NW, which is a seven-unit condominium building immediately adjacent to the subject property, separated only by a ten-foot alley. Mr. Stirpe will be represented in this proceeding by Andrea C. Ferster, 2121 Ward Court, N.W. 5th Fl., Washington, D.C. 20037. A letter authorizing the undersigned counsel to represent Mr. Stirpe in this proceeding is attached hereto as Exhibit 1.

Mr. Stirpe purchased his unit eight years ago, which is on the top floor of a four -story building at 2109 10th Street NW. His unit has a rooftop deck that looks directly over the subject open property. Mr. Stirpe’s roof deck is not typical of a “roof” deck since it is situated right next to his bedroom, is formed as a cutout, and acts as another room of the condo unit. When he purchased his home, he was aware that any new construction on the partially vacant lot on the

corner of 10th and V Streets would be required to have an additional 15ft rear setback as required by the zoning regulations, 11 DCMR § 774.1, and would also be subject to a maximum lot occupancy of 80 % under Section 772.1 of the zoning regulations, which, in addition to the 10-foot alley, would buffer his property from any new construction. The area restrictions in the zoning regulations are critical in protecting his privacy

The Applicant is seeking to construct a six-story, 45-unit apartment building with ground floor retail space on the vacant portion of the lot, covering 90 % of the lot. The requested variances from the applicable rear set back and lot occupancy requirements will result in the construction of a new building whose floors two through six will only be set back 12 feet from the alley for virtually the full length of rear lot line. The close proximity of the six story building to Mr. Stirpe's property will therefore block the view from Mr. Stirpe's fourth floor unit, block light and air flow, shade his roof deck, and reduce privacy by causing residents of the new structure to look directly into his bedroom windows and onto his outdoor deck. The additional density on the subject site will lead to more noise, more alley congestion, more trash congestion (since trash will be collected in the alley), and reduce the value of Mr. Stirpe's property. Accordingly, the variances requested by the Applicant would adversely affect Mr. Stirpe's value, use and enjoyment of his property and roof deck.

The Applicant has also failed to demonstrate that it satisfies the requirements for a variance from the rear yard and maximum lot occupancy requirements of the zoning regulations. The sole "practical difficulty" cited in the application is the fact that the location of the historic church on the site creates an "inefficient building layout for new construction." Application, at 6. However, this factor simply does not create any "peculiar and exceptional practical difficulties to

or exceptional and undue hardship upon the owner.” D.C. Code § 6-641.07(g)(3). The Applicant has not identified any “exceptional narrowness, shallowness, or shape of a specific piece of property or by reason of exceptional topographical condition.” *Id.*

The fact that “as a designed historic landmark, the Church cannot be demolished and therefore, there is no practical way to comply with the rear yard setback requirement” is not a “practical difficulty” justifying the variances, as the Applicant asserts. Application, at 7. This existing practical difficulty only pertains to the building line occupied by the historic church. It does not justify expanding and enlarging the current non-conforming rear yard by constructing the new building’s five upper stories with only a 12-foot rear yard. Applicant makes no attempt to demonstrate any “undue hardship” that would prevent the Applicant from developing the new building in conformity of the lot occupancy requirements and without enlarging and extending the non-conforming rear yard setback. The Applicant’s preference for a larger building simply does not constitute a “practical difficulty.”

The variance requested by the Applicants would also cause substantial detriment to the public good and impair the zone plan by justifying non-conformity with the zoning regulations any time a building is occupied by a historic building. The Applicant’s view that the new construction “will have a positive effect on the neighborhood” and will include “sufficient parking” in no way mitigates this substantial impairment, as the Applicant asserts. Application, at 8. These arguments, if accepted, would create open-ended exemptions that could apply to virtually every property in the District of Columbia, and would therefore undermine and substantially impair the zone plan.

Accordingly, Mr. Stirpe will be adversely affected and aggrieved if the subject application is granted. As an immediately adjacent property owner, Mr. Stirpe will be more significantly, distinctively, and uniquely affected in character and kind by the proposed application than other persons in the general public. For the foregoing reasons, his request for party status should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'A. Ferster', written over a horizontal line.

Andrea C. Ferster
Attorney at Law
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Washington, D.C. 20037
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(202) 223-9257 (fax)
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