

February 10, 2021

VIA IZIS

Chairperson Frederick L. Hill
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

RE: BZA Case No. 20382

Party Status Application in Opposition from Randi Spivak and Andy Kerr, the owners of the 313 10th Street directly behind 308 11th Street

Chairperson Hill and Honorable Members of the Board:

Randi Spivak and Andy Kerr, the owners and residents of 313 11th Street, N.E. (the “Spivak/Kerr Residence”), respectfully request party status in opposition to the above-referenced case, originally scheduled for a hearing on February 24, 2021.

As part of a much larger building project, the Applicants Haider Haimus and Jessica Bachay (the “Applicant”) seek special exception relief for the property located at 308 11th Street, N.E. (the “Applicant’s Property”) to allow: a 4th-level addition and roof deck to an existing 3-level rowhouse (the “Applicant’s Structure”) located in the Capitol Hill Historic District; and a second-story addition to an existing accessory structure, in RF-1 Zone.

Request for Advanced Party Status Meeting

Pursuant to Subtitle Y § 404.4 Randi Spivak and Andy Kerr submit a request for advanced party status in opposition consideration at the public meeting scheduled for February 24, 2021.

Randi Spivak and Andy Kerr will be significantly, distinctively, and uniquely affected by the Applicant’s requested relief from lot occupancy and alley centerline setback, and 2nd story garage addition, if granted, because the Spivak/Kerr Residence is directly behind 308 11th Street and would be harmed by diminished natural light, degraded privacy and impaired enjoyment their property. The historic district’s character and density allows for adequate space in an urban setting. If granted, the requested special exceptions will permanently and irreparably block the privacy, openness, light, and quiet available to the Spivak/Kerr Residence.

Form 140 Party Witness Information

1. A list of witnesses who will testify on the party’s behalf;

Randi Spivak and Andy Kerr will testify individually, and they reserve the right to add witnesses at the time of the public hearing.

2. A summary of the testimony of each witness;

All witness(es) will testify, collectively or individually, that the Applicant's proposed additions will substantially and adversely impact the privacy, openness, noise levels, and light available to the Spivak/Kerr Residence, that the use and enjoyment of the Spivak/Kerr Residence, including the rear yard, will be unduly compromised, and that the proposed additions are out of character with the neighborhood, and in particular with the seven adjacent rowhouses and alley way open-space. Further, the witnesses will detail that the Applicant's Structure would not be in harmony with the intent of the Zoning Regulations.

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; and

Randi Spivak and Andy Kerr reserve the right to supplement the record and provide information pertaining to witnesses or expert witnesses at a future date before the hearing.

4. The total amount of time being requested to present your case.

Randi Spivak and Andy Kerr anticipate presenting their case-in-chief in approximately 30 minutes.

Form 140 Party Status Criteria

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?

As will be addressed more fully at the hearing, the requested special exceptions will unduly impact the light, privacy, current historic character and quiet enjoyment available to the Spivak/Kerr Residence. The Spivak/Kerr Residence will be significantly and uniquely impacted because the Spivak/Kerr Residence is across the alleyway from 308 11th Street. Building the additions, including to the garage, would diminish eastern morning light to the rear of our house including light coming into our eat-in kitchen, where we spend the majority of our time, as well as our bedroom on the 2nd floor. Further, the privacy and quiet we now enjoy in our back yard will be compromised by the addition of roof decks at heights currently not allowed by zoning regulations. The proposed 4th level addition will have a wet bar and roof deck that will unduly increase noise disturbances for the Spivak/Kerr Residence. The users of that deck will have an excellent overlook right into our back yard, which is privacy-fenced with a height of 6 feet. Furthermore, we purchased our property in the Capital Hill historic district because we love the character, spatial context and layout of the neighborhood.

The requested exceptions by the developer would significantly change the character of 11th Street and the alleyway. The alleyway is our main point of ingress and egress and we walk our dog on a daily basis through the alley. The proposed redevelopment of 308 would significantly change the character of the alley. It is important to note that the developers purchased 308 11th Street

knowing full well the restrictions that come with a historic district and Capitol Hill zoning codes. That they knowingly bought the property with the intent to request waivers of these codes is very troubling. The fact is, granting this waiver will pave the way for the next waiver and the next. Before you know it, the zoning codes and historic character of the neighborhood will be lost. With each developer or new resident arguing that the character and zoning codes have already been waived, so why not for me? This is the slippery slope that much be avoided.

Notably, the Applicant's proposed upper level addition is an impermissible 4th story under the Zoning Regulations. The lowest level at the Applicant's Property does not qualify as a cellar because the ground floor is more than 5' above grade. Accordingly, the Spivak/Kerr residence will be further impacted by an otherwise impermissible 4th level addition.

2. What legal interest does the person have in the property? (i.e., owner, tenant, trustee, or mortgagee)

Randi Spivak is the owner and resident of record of the property behind 308, at 313 11th Street, N.E. with Andy Kerr.

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.)

The Spivak/Kerr Residence is directly behind the Applicant's Structure (the subject of the BZA application) across the alley, perhaps 20 feet in distance.

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 the requested exceptions are approved, the Spivak/Kerr Residence will be subject to numerous environmental, economic and/or social impacts, including but not limited to, unduly adverse impacts on privacy, openness, sunlight, and quiet and neighborhood character. Additionally, the Applicant's proposal of a fourth level addition and second story accessory structure will irreversibly damage the unique consistency, character, scale, and pattern of the neighborhood.

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.

The proposed additions will have significant and distinct adverse impacts on the use and enjoyment of the Spivak Residence. Randi Spivak and Andy Kerr reserve the right to supplement the record to include additional evidence on this matter.

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.

Because the Spivak/Kerr Residence is directly behind to the Applicant's Structure, Randi Spivak and Andy Kerr's interest will be more significantly, distinctly, and uniquely affected than others in the general public. The proposed additions will result in significant and irreparable reductions of openness, privacy, sunlight, and quiet to the Spivak/Kerr Residence. In conclusion, Randi and Andy respectfully request that the Board grant their request for party status in opposition. Thank you for your attention to this matter.

Handwritten signature of Randi Spivak and Andy Kerr in purple ink.

By: Randi Spivak and Andy Kerr

Certificate of Service

I hereby certify that on February 10, 2021, I served a copy of this Party Status request in opposition via e-mail to the following:

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