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**GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADVISORY NEIGHBORHOOD COMMISSION 1B**

**RESOLUTION IN OPPOSITION TO EXTENSION OF APPLICATION 18723
MORNING BRIGHT LLC AT SQUARE 358; LOTS 5, 6, AND 802**

WHEREAS: On May 23, 2014, the Board of Zoning Adjustment (“BZA”) approved application No. 18723 of 2101 Morning Bright LLC (the “Applicant”), 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 38-unit mixed-use residential building, consisting primarily of studio apartments, plus a few one- and two-bedroom units, including a penthouse unit with a terrace and balcony spanning an entire side of the top floor, and with ground floor retail in the Arts/C-2-B District (the “Project”) at 2105 10th Street, N.W. (Square 358, Lots 5, 6 and 802) (the “Property”);

WHEREAS: On April 29, 2016, the Applicant applied for a two-year extension citing the inability to secure financing due to economic and market conditions, the inability to secure governmental agency approval within the two-year period, and special circumstances of compliance with Green Area Ration (GAR) (BZA Case No. 18723A);

WHEREAS: IN 2003, the Applicant purchased lot 802 (original lots 7 and 8) comprising the landmarked First African New Church and an unbuilt portion on the SW corner of 10th and V Streets NW. Built in 1896, the First African New Church is an historic African American church, designed by Paul J. Pelz (who also designed Healy Hall and contributed to the Library of Congress), has been called many names, including Seventh Day, Trinity Methodist, Zion Church, True Deliverance Church of God, and Morning Bright Baptist Church. The church was abandoned in 1992;

WHEREAS: In 2006, the Applicant purchased lots 5 and 6 comprising the Koons Roofing Building. In 2014, the Applicant razed the Koons Roofing Company Building. Possibly acting contrary to the intent and purpose of the Arts Overlay: “1900.2 The purposes of the ARTS Overlay District are to: (g) Encourage adaptive reuse of older buildings in the area and an attractive combination of new and old buildings.” Prior to the razing of the Koons Roofing Company Building, numerous attempts to purchase or lease the Koons Roofing Company Building were rebuffed by the Applicant;

WHEREAS: SINCE the 2006 acquisition of the Property, the Applicant has made little or no visible effort to develop the Property or begin the Project, rather choosing to keep it vacant while many other developments are finished and occupied in the neighborhood;

WHEREAS: In 2014, the Applicant put the fully entitled property up for sale;

WHEREAS: SINCE 2006, the year the Applicant purchased the property, numerous condominium and apartment projects were developed. For example, the Lima Condominiums at 2101 11th Street, the Murano at 2117 10th Street, Atlantic Plumbing Condominiums at 2030 8th Street, Atlantic Plumbing Apartments at 2112 8th Street, the Shay at 1924 8th Street, and the Floridian at 919 & 929 Florida Ave. Moreover, three new developments will break ground soon at 945 Florida Ave, 965 Florida Ave, and the corner of Barry Place and Sherman Ave. These projects span the spectrum of complexity, from Planned Unit Developments (“PUDs”) of property purchased from the District government, to simple acquisitions of land with by-right construction similar to the plans for the Project. All these established and planned developments are in the same neighborhood as the Applicant’s Property, and were completed in less time than the Applicant by purchasing land, securing project financing, and attaining the required governmental agency approvals in less time than the applicant cites was burdensome to complete in the two years allowed for the variances;

WHEREAS: Applicant’s Extension Request must meet all of the following requirements of 11 DCMR § 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;

(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”;

(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.”

WHEREAS; Applicant submitted a signed “Affidavit of Application in Support of Two-Year Extension of Time” (Exhibit_1B) containing the following in response to the requirement set forth in 11 DCMR § 3130.6 (b): “We are not proposing to change the exterior of the approved building. In addition, no new areas of relief are requested and the plans are consistent with the relief approved by the previous BZA Order.”

WHEREAS; This Extension Request, if granted, would extend the development period for the Project consistent with the Applicant’s submission for which:

- a. 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;
- b. no changes are made to the exterior of the building;
- c. no additional relief is requested; and,
- d. the plans are consistent with the relief granted in the final order to BZA Case No. 18723.

WHEREAS; This Extension Request, if granted, would not apply to any proposed development program that differs from the previously approved Project insofar as it:

- a. has substantial changes in many 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;
- b. has many changes to the exterior of the building;
- c. has a need for additional relief other than that previous approved; and,
- d. has plans that are inconsistent with the relief granted in the final order to BZA Case No. 18723.

WHEREAS; The development program for this parcel as proposed by the Mayor for the Ward 1 Homeless Shelter differs considerably from the Project previously approved and would not be subject to this Extension if granted as that proposal insofar as the Mayor’s development program:

- a. has substantial changes in many 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;

- b. has many changes to the exterior of the building;
- c. has a need for additional relief other than that previous approved; and,
- d. has plans that are inconsistent with the relief granted in the final order to BZA Case No. 18723.

WHEREAS; The Office of Planning (OP) states in their report dated May 16, 2016 (Exhibit_3) “Proposed Development: The application indicates that no changes to the approved development are proposed as part of this extension request”;

WHEREAS; OP’s letter of support for the Extension Request (Exhibit_3) is contingent on a development program that consistent with Applicant’s Extension Request;

WHEREAS; the Mayor, through development team members assigned to gain approval of the Homeward DC Plan, has proposed a development for Square 358, Lots 5, 6, and 802 comprising a short-term homeless shelter that:

- a. is not a mixed-use residential development, but is one of a residential only development, a housing services development, or an institutional development;
- b. has no inclusionary zoning bonus and thus a floor area ratio (FAR) of 4.5;
- c. has an exterior with no balconies; and,
- d. has no penthouse unit with a private rooftop terrace;

WHEREAS; On May 31, 2016, the DC Council passed Bill 21-620 “Homeless Shelter Replacement Act of 2016” (the “HSRA”) that authorizes the Mayor to acquire parcels of land located at 2105 and 2107 10 St, NW, and 933 V St, NW, Square 358, Lots 5, 6, and 802, including, if necessary, through the exercise of eminent domain in accordance with the procedures set forth in subchapter II of Chapter 13 of Title 16 of the District of Columbia Official Code to construct a facility to provide temporary shelter for families experiencing homelessness containing 29 2- and 3-bedroom apartment-style units on land and that contrary to the Procurement Practices Reform Act of 2010, the District may contract with the Applicant for the construction of the facility as part of an agreement to acquire the land, and if no agreement can be reached with the Applicant the contract for construction of the facility shall be awarded pursuant to a request for proposals to be issued by the Department of General Services.

THEREFORE, BE IT RESOLVED THAT: Advisory Neighborhood Commission 1B OPPOSES the request for an extension and encourages BZA to reject the Applicant’s request for failing to meet the requirements of 11 DCMR § 3130.6 (b) and (c):

- (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 material facts upon which the Board based its original approval of the application have changed as evidenced by countless documents published by DC Agencies, the Mayor’s Office, the DC Council, and articles written on the proposed plan to close DC General as the city’s main homeless shelter. The Board must now consider the details for a new project proposed on this Property outlined in the Mayor’s plan to provide short-term housing in all eight wards (“Mayor’s Plan”), and those included in the HSRA. It has been publicly revealed that these plans substantially alter the original proposal submitted by the Applicant for this Property and Project by:

- 1. changing the proposed use of the Property from mixed use residential and commercial to a residential only development, a housing services development, or an institutional development;
- 2. altering the development exterior to omit the rooftop terrace and balconies as originally approved;

3. planning to include a playground and recreation space; and,
4. removing the inclusionary units resulting in an FAR of 4.5, not the previously approved 5.0.

While this is not an exhaustive list of how the material facts have substantially changed, these few examples should give BZA cause to find that the Applicant has not met the requirement of 11 DCMR § 3130.6(b).

(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.”

The Applicant has not provided any evidence of “economic and market conditions beyond the applicant’s reasonable control” as required by (c)(1) that prevented it from obtaining sufficient project financing, aside from its sworn statement asserting that the Applicant “worked diligently to obtain financing for the project.”

Nor has the Applicant satisfied the requirements of (c)(2) above. The Applicant cites the Foundation Permit issued October 28, 2014, approximately 6 months prior to the expiration of the Board’s approval. It is noted that the Foundation Permit was filed before the project was put up for sale in 2014. The Extension Request cites many normal circumstances and delays that all developers in the District must maneuver. The only inability described is that of the Applicant’s in not working diligently to “secure all required governmental agency approvals by the expiration date of the Board’s order.” There were no delays or considerations that were beyond the applicant’s reasonable control as evidenced by the numerous developments that have been completed in the neighborhood (noted above) in the same timeframe required by BZA as the Applicant considers burdensome.

Finally, the Applicant cites its response to a District of Columbia Request for Proposals (“RFP”) for properties as what is assumed evidence of (3) above. However appropriate at the time of the Applicant’s filing of its request for extension it was to cite the Mayor’s Plan, the Property’s selection as the Ward 1 site, its negotiations with the District Department of General Services (“DGS”) over a letter of intent (“LOI”), the timelines of such, and etc. (see Applicant’s Exhibit_1) the facts have changed. The DC Council Bill 21-620 allocates funds to acquire the Property, including, if necessary, through the exercise of eminent domain:

“(1) The Mayor is authorized to use funds appropriated for capital project “HSW01C - Ward 1 Shelter,” to:

(A) Acquire parcels of land located at 2105 and 2107 10th Street, N.W., and 933 V Street, N.W., Square 358, Lots 5, 6, and 802, including, if necessary, through the exercise of eminent domain in accordance with the procedures set forth in subchapter II of Chapter 13 of Title 16 of the District of Columbia Official Code; and

(B) Construct a facility to provide temporary shelter for families experiencing homelessness containing 29 2- and 3-bedroom apartment-style units on land to be acquired by the District pursuant to subparagraph (A) of this paragraph; provided, that, notwithstanding the requirements of the Procurement Practices Reform Act of 2010,

effective April 8, 2011 (D.C. Law 18-371, D.C. Official Code § 2-351.01 et seq.), the District may contract with the current property owner for the construction of the facility specified in this subparagraph as part of an agreement to acquire the land; further provided, that if no agreement can be reached with the current property owner for the construction of the facility specified in this paragraph, the contract for the construction of the facility shall be awarded pursuant to a request for proposals to be issued by the Department of General Services;”

The Applicant’s creative use of the Mayor’s Plan as a justification for (c)(3) is no longer applicable in light of recent DC Council actions. In fact, it only serves to show that the material facts considered by BZA in the original approval of the application have substantially changed.

BE IT FURTHER RESOLVED THAT: ANC 1B is committed to organizing and facilitating the public discussions that are necessary and will help ensure that the Homeless Shelter proposed for this Property is a success. Additionally, our committees will be reviewing the building’s design as it relates to zoning and planning and of the social services for residents. These meetings are open to the community and provide additional opportunities to be part of the process. The public discussions and committee recommendations will ensure that the ANC is well informed on all aspects of the project when voting on issues related to the project.

ANC 1B will conduct a public process for the community and administration to discuss this project on three fronts:

1. The building and all other considerations will be reviewed like any other construction project.
2. We see a great opportunity to increase the Social services provided to residents at the site and in the greater community – before, during, and after being resident.
3. Negotiating and being a party to neighborhood agreements – much as we do with Settlement Agreements and PUDs.

AND BE IT FINALLY RESOLVED THAT: The Chair or any Commissioner as delegate of the Chair, shall be authorized to communicate this resolution to and testify before any agency of the Government of the District of Columbia or the members of the Council of the District of Columbia.

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Certification:

After providing sufficient notice for and with a quorum of X Commissioners present at its June 2, 2016, meeting, Advisory Neighborhood Commission 1B voted, with X Yeas, X Nays, and X Abstentions, to adopt the above resolution.

James A. Turner
Chair ANC 1B, Commissioner SMD 1B09

LaKisha Brown
Secretary ANC 1B, Commissioner SMD 1B04