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Admitted to Practice:
★ Maryland
◆ Maryland Federal Court Only
△ District of Columbia

November 13, 2006

Office of Administrative Hearings
P.O. Box 77718
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Office of Administrative Hearings
941 North Capitol Street, Suite 9100
N.E. Washington, D.C. 20002

Office of Administrative Hearings
441 4th Street, N.W., Suite 540
Washington D.C. 20001

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Re: Appeal of Revocation of Certificate of Occupancy No. 109753

Dear Clerk:

This is formal notice of appeal of the Notice of Revocation of Certificate of Occupancy No. 109753 dated September 12, 2006. (see attached) This letter requests validation of the Certificate of Occupancy No. 109753 issued for the basement of 1312 13th Street, N.W. Washington, D.C. This appeal is based on erroneous conclusions relied upon in the September 12, 2006 Notice of Revocation. Appellant's exceptions and allegations of error are expounded upon below. In addition, Appellants request a hearing through testimony and documentation.

~~BOARD OF ZONING ADJUSTMENT~~
District of Columbia

CASE NO. 17581

EXHIBIT NO. 3

8701 Georgia Avenue, Suite 403, Silver Spring, Maryland 20910
Phone No.: (301) 562-1344 • Fax No.: (301) 562-1344

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Exception I. The Office or Zoning Administrator Is Estopped from Revoking the Rooths' Certificate of Occupancy No. 109753

For estoppel to apply the party has to show that he: 1) acted in good faith; 2) on affirmative acts of a municipal corporation; 3) made expensive and permanent improvements in reliance thereupon; and 4) the equities strongly favor the party invoking the doctrine. *Paul Weick v. District of Columbia Board of Zoning Adjustment*, 383 A.2d 7 (1978)

While the Office of Zoning Administration ("OZA") claims that the use of the premises at 1312 13th St., N.W. (basement) reverted back to a conforming use as an apartment dwelling in 1970, and that no special exception has been granted since then, the Building and Land Regulation Administration ("BLRA") has proceeded to issue 7 certificates of occupancy over a period of 16 years for nonconforming use of the property. BLRA issued: CO No. 1890948 on June 23, 1989 for use as an industrial laundry service; CO No. 25923 on December 19, 2001 for use as a laundry service; CO No. 36543 in June 28, 2002 for use as a laundry and consulting service; CO No. 37193 on July 12, 2002 for use as a laundry and consulting service; CO No. 56426 on June 13, 2003 for use as a laundry service and office space; CO No. 64701 on November 7, 2003 for use as a Dry clean pick up only; and CO No. 109753 on December 22, 2005 for use as a dry clean pick up only.

Each time BLRA issued a certificate of occupancy to the Rooths, its employees provided guidance to the Rooths on how to fill out the applications for the certificates of occupancy. BLRA employees instructed them to indicate that the structure was previously used and would continue to be used as a "dry clean pick up" and to indicate previous use as "laundry" so the Rooths could maintain the right to operate as a laundry

whether they chose to do so or not. The BLRA representatives explained to the Rooths that not to do so would result in great difficulty in the review process if they ever wanted to revert back to a laundry. In addition, with regard to the certificate of occupancy at issue, DCRA representatives, including but not limited to, Juan Scott and Ed Ball inspected the premises numerous times and concluded that operating the pickup laundry on the premises was not in violation of any ordinances. Despite having ample time and opportunity to do so, at no time from 1989 to December 22, 2005 did any one at DCRA question the validity of any of the certificates of occupancy for the premises. Given the guidance the Rooths received from BLRA's agents and BLRA's continued issuance of certificates of occupancy for over a decade, the Rooths certainly acted in good faith when they submitted their applications.

In reliance on BLRA's certifications, representation, and guidance, the Rooths spent well over twenty thousand dollars (\$20,000.00) on permanent improvements including but not limited to repairing steps, replacing floor tiles, installing security systems, and paint inside and out. If this revocation is enforced, the Rooths will be detrimentally harmed. They will lose an income producing property that they no doubt purchased with income production in mind, and they will lose their investment money and time in the property. The equity of continuing to allow the validity of certificate of occupancy strongly outweighs any perceived harm to the community. Based on these circumstances, OZA should be estopped from revoking the CO No. 109753.

If it is found that OZA should not be estopped from revoking the certificate of occupancy, then laches is applicable. Where a party can prove inexcusable delay which has resulted in substantial prejudice, laches may be found. Weick, at 11. As stated, for

over 16 years OZA has not revoked a certificate of occupancy for the premises at issue, even after the nonconforming use went to conforming and back to nonconforming. Five of those years OZA provided guidance to and issued certificates of occupancy to the Rooths. OZA did not notify the previous owner in 1989, (who operated an actual industrial laundry service on the premises from 1980 - 2001) that the nonconforming use was discontinued in 1970 and it did not revoke his certificate of occupancy. Each of the 6 times the Rooths renewed their Certificate of Occupancy OZA did not notify them of the discontinuance of the nonconforming use of the property but instead permitted the use. While courts are reluctant to impose the sanction of laches on governmental divisions, equity cannot close its eyes to the sloth, indifference or official neglect of municipal body any more that it can to the neglect of an individual where such neglect harms an innocent person. *Weick*, at 12, citing *In Re Heidorn's Appeal*, 412 Pa. 570, 195 A.2d 349 (1963), (where the Pennsylvania Supreme Court affirmed the lower courts holding that since the Township had allowed approximately 10 years to pass without objecting to the ordinance violation, it was guilty of laches and could not now sustain a violation on the basis of the original ordinance in 1942) Any conceivable harm to the general public in this case from not enforcing the zoning regulation is not sufficient to outweigh the inequity of substantial loss of an income producing property and investment made by the Rooths. Therefore, the revocation of the certificate of occupancy at issue should be reversed.

Exception II. There Is No Material Misrepresentation In The Rooths' Application For Certificate Of Occupancy No. 109753

The Rooths did not misrepresent the facts on the application for the Certificate of Occupancy No. 109753 when they indicated that the previous use of the property was a dry clean pick up and the change in ownership served as the reason for the new certificate

to be issued. OZA asserts that DCRA records show no business license issued to use the location for any purpose, and that neighbors attest to the fact that no dry cleaners operated on the premises within the previous 3 years. The Rooths have repeatedly explained to OZA that this is not a dry cleaning or laundry business. It is a pick up and delivery service for clothing. Therefore, it does not require a license and no license has been issued for that purpose. Moreover, this type of service is not listed as a business that requires a license with DCRA, and BLRA's representatives confirmed with the Rooths that this business does not require a license.

BLRA representatives also instructed Mr. Rooths to indicate on the certificate of occupancy application that a "change in ownership" was the only reason for a new certificate of occupancy to be issued because "Dry clean collect and pick-up" was the previously approved use for the site. In reliance upon the guidance BLRA employees, Mr. Rooths did just that. After BLRA provided guidance to Mr. Rooths on how to fill out the application for the Certificate of Occupancy, and Mr. Rooths' reliance upon that guidance, it would be unjust for BLRA to now revoke the certificate of occupancy.

**Exception III. BZA Prevented The Business From Being Put To Use Within
A Six Month Period After The Issuance Of The Certificate Of
Occupancy No. 109753**

BLRA issued Certificate of Occupancy Number 109753 to Mr. Rooths on December 22, 2005 and then, along with OZA, hindered Mr. Rooths from opening within the required 6-month time frame. BLRA and OZA issued 6 Stop Work Orders on Mr. Rooths from March 2006 to July 2006. Based upon the false information provided by Mr. Rooths' neighbors, that the Rooths were operating a laundry and/or dry cleaners, OZA issued a Stop Work Order on or about March 23, 2006. Mr. Rooths called Juan

Scott, (whose name was on the Stop Work Order), at DCRA on or about April 5, 2006.

Mr. Scott did not come to inspect the property until on or about May 2, 2006. When he saw that there were no violations, including a laundry and/or dry cleaning business being operated on the premises, he lifted the Stop Work Order. The neighbors proceeded to call again falsely proclaiming the operations of a laundry and/or dry cleaner, and on or about May 9th another Stop Work Order was issued by Jaun Scott's office. Mr. Rooths called on or about May 17th and Mr. Scott came to inspect the premises again around or about the first week in June. He found no violations or evidence of a laundry or dry cleaning business operating on the premises, and the Stop Work Order was lifted.

Remarkably the neighbors continued to call providing false information to Mr. Scott's office and despite the previous findings, without warning to the Rooths, another Stop Work Order was issued on or about June 12, 2006. Mr. Rooths called Mr. Scott's office on or about June 14th and no one came until August 16th. This time Mr. Scott came with another lady from DCRA to inspect the premises and again they found no violations or evidence that a laundry or dry cleaning business was operating on the premises. The Stop Work Order was lifted again.

Apparently frustrated at not succeeding at getting DCRA to permanently shut down the Rooths' business, some mean spirited neighbors then turned to the BLRA and complained. The BLRA issued 2 Violation Notices, one in June and one in July 2006. Both were rescinded after inspection of the premises and no violations were found.

Given the time that it took to get the Stop Work Orders lifted and the frequency of their issuance, it was impossible for the Rooths to open their business within the 6 month period. BZA and BLRA continued to issue Stop Work Orders despite the fact that the

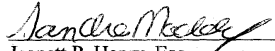
complaints they received were unmerited. To further exacerbate the situation, the Inspectors took about a month to inspect the premises and then to lift each Stop Work Order after they were issued. For DCRA to allow this to happen 6 times, (based on the same false information), was the sole reason that prevented the Rooths from meeting their 6 month time limit for opening, thereby causing them to loose their Certificate Of Occupancy.

Based on the foregoing the Certificate of Occupancy should not be revoked and a hearing is requested.

Respectfully submitted,

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