16989

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April 11, 2003

D.C. BOARD OF ZONING ADJUSTMENT
2003 APR 11 PM 4:04

HAND DELIVERED

Ms. Sherri M. Pruitt
Secretary
D.C. Board of Zoning Adjustment
441 Fourth Street, N.W., Suite 210
Washington, D.C. 20001

Re: Application of William T. & Norma G. Byrd
Square 912, Lot 72
714 10th Street, NE
Date For Proposed Findings of Fact: April 8, 2003

Dear Ms. Pruitt.

Enclosed please find Applicant's Brief on Estoppel. Permission to file this was requested and granted on April 8, 2003.

Sincerely,

Richard P. Schmitt

Enclosure:
cc: Office of Planning
ANC 6A
Marie-Claire Brown

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BZA
Case No. 16989
Exhibit No. 34

Board of Zoning Adjustment
District of Columbia
CASE NO. 16989
EXHIBIT NO. 34

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Re: Application of
William T. Byrd &
Norma G. Byrd
714 10th Street, N.E.

BZA Appeal No.16989

Hearing: April 8, 2003
ANC 6A

APPLICANTS' BRIEF ON ESTOPPEL

I.

The applicants, the Byrds, are relying, in part, on the legal doctrine of estoppel. The courts of the District of Columbia have long held that the doctrine of equitable estoppel could be applied against the District of Columbia Government in matters of zoning.

Our court of appeals held that the doctrine of estoppel could be used in a zoning context in the case, Saah v. District of Columbia Board of Zoning Adjustment, 433 A.2d 1114 (D.C. App. 1981). The Saah court in so holding cited to a case decided in 1931, District of Columbia v. Cahill, 60 U.S.App.D.C. 342, 54 F.2d 453 (1931); and a 1978 case, Wieck v. District of Columbia Board of Zoning Adjustment, 383 A.2d 7, 11 (1978).

A legal cyclopedia, at 28 Am Jur 2d §27, defines equitable estoppel as;

> ... the principal by which a party who knows or should know the truth is absolutely precluded, both at law and in equity, from denying, or asserting the contrary of, any material fact which, by his words or conduct, affirmative or negative, intentionally or culpable negligence, he has induced another, who was excusably ignorant of the true facts and who had a right to rely upon such words or conduct to believe and act upon them thereby, as a consequence reasonably to be anticipated, changing his position in such a way that he would suffer injury if such denial or contrary assertion was allowed.

The factual elements justifying the raising of an estoppel against the District of Columbia Government exist in this case. The District of Columbia disseminated incorrect information as to the zoning to the Byrds and the Byrds' agents. The incorrect information as to the property's zoning was always the same; C-2-B. The Byrds relied upon the information in good faith; including, the information received from the District of Columbia office at 941 North Capitol Street which issues certificates of occupancy. The Byrds purchased the property in reliance on the information and will suffer losses if the zoning is not changed.

II.

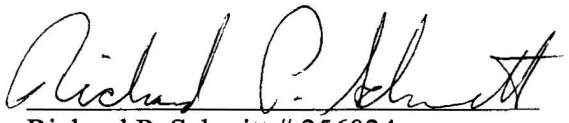
The applicants ask that the Board consider the arguments in support of estoppel first and, then if necessary consider the arguments for a use variance.

This request is based upon the Court of Appeals' statement in, Smith v. District of Columbia Board of Zoning Adjustment, 342 A.2d 356, 359, Fn. 8 (D.C. App. 1975), that;

> [e]ven if petitioners could seek a variance to preserve the deck if it is declared unlawful, as the Board suggests, a proposition about which we express no opinion, we think it in the interest of judicial economy that this court not be compelled to reach the merits of this case if petitioners will prevail in their defense of laches and estoppel.

The Byrds ask that the Board follow the suggested course of analysis for the above stated reason and also because separating the estoppel argument from the grounds for a variance avoids confusing the standards to be applied under each standard.

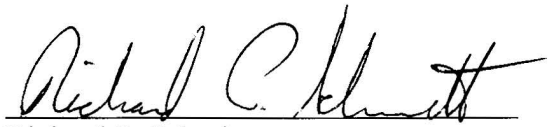
Respectfully submitted,



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Attorney for Applicants

Certificate of Service

I hereby certify that the Applicants' Brief on Estoppel was sent postage prepaid on the 11th day of April, 2003 to David McGettigan, Office of Planning, 801 North Capitol Street, N.E. , Suite 4000, Washington, D.C. 20002, the Chairperson of ANC 6A, and to member Cody Rice, 310 9th Street, NE, Washington, DC 20002, and to Robert Kelly, Zoning Administrator, Department of Consumer and Regulatory Affairs, 941 North Capital Street, NE, Suite 2000, Washington, DC 20002.



Richard P. Schmitt