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STATEMENT OF THE APPLICANT TO THE DISTRICT OF COLUMBIA ZONING COMMISSION FOR APPROVAL OF SPECIAL EXCEPTIONS REGARDING AN EXISTING NONCONFORMING USE

This statement is submitted by Edward B. Rooths and Nancy N. Dao (together the "Applicants"), by and through their undersigned counsel, and in support of their application for special exceptions. The Applicants are the owners, as tenants-in-common, of certain real property located at 1312 13th Street, N.W., Washington, D.C. 20005, and known as Lot 0012 in Square 0243 (the "Property").

The Property is located on the west side of 13th Street, N.W. between N Street, N.W and O Street, N.W. and is zoned R-5-C (see Exhibit "A"). A copy of a location survey prepared by Landtech Associates, Inc. showing boundaries and dimensions of the buildings on the Property is attached (see Exhibit "B"). This application is exclusively related to the use of the Property, and does not involve any proposed buildings to be erected or altered, any changes in landscaping, or any other changes to the external appearance of the Property.

The names and address of the owners of all property located within 200 feet in all directions from all boundaries of the Property is attached (see Exhibit "C").

The Property is improved by a 3-story, 4-unit multi-family dwelling. There is also a basement level. The basement and first floor have been used for laundry services within the past three (3) years, initially under a Certificate of Occupancy issued by the District of Columbia dated December 19, 2001 (see copy attached hereto as Exhibit "D"), then under the current Certificate of Occupancy issued on July 12, 2002 (see copy

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attached hereto as Exhibit "E"). The second and third floors have been used as apartments for many years (see copy of the most recent Certificate of Occupancy for the second and third floors attached hereto as Exhibit "F").

Relief Sought

At some point within the past three (3) years, Applicants began using the basement and first floor of the Property to conduct an accounting, consulting and tax service business. With the intent of properly validating this use with the District of Columbia, Applicants applied for a new Certificate of Occupancy, which was issued on July 12, 2002 (see Exhibit "E"). The "approved use" under this Certificate of Occupancy, however, is shown as "Laundry", while the "description of use" is shown as "Laundry Service (Laundry & Consulting)".

The permitted uses in an R-5-C zone, as set forth in the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations) (the "Regulations"), do not include Applicants' current basement and first-floor commercial use as a matter of right. Because the most recent Certificate of Occupancy, described above, is somewhat unclear, the present use of the basement and first floor is either a permitted nonconforming use or a non-permitted use. Applicants were previously unaware that the current office use is not a clearly-permitted nonconforming use, and they now seek to have the basement and first-floor use conclusively approved as a permitted nonconforming use under the applicable Regulations.

Legal Standards

A. Special exceptions are available for a change in nonconforming use.

Section 3104.1 of the Regulations provides that the Board of Zoning Adjustment may grant special exceptions where "the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map subject in each case to the special conditions in this title, as follows...". Within the chart that follows, for a "Nonconforming use – change" located in "Any District", § 2003 is identified as the pertinent section setting forth the special conditions. Therefore, special exceptions for a change of a nonconforming use are expressly provided for under the Regulations.

B. Applicants' proposed use passes the initial threshold for approval under the Regulations.

Section 2003.1 of the Regulations provides that, if approved in accordance with the procedures for obtaining special exceptions, "a nonconforming use may be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right, subject to the conditions set forth in this section".

The existing nonconforming use for the first floor of the Property is either "laundry" or "laundry and consulting" (see Exhibit "E"). In either event, Applicants seek to change the approved use to consulting-type activities only, or more appropriately, "office" use. Applying § 2003.1, the most restrictive district in which a laundry service (the existing approved nonconforming use) is permitted as a matter of right is the C-1

District (§ 701.1(j) and (k)). In a C-1 District, "office" use is also permitted as a matter of right (§ 701.6(c)). Therefore, under § 2003.1, the nonconforming laundry use may be changed to nonconforming office use subject to the conditions set forth in that section.

C. Applicants' proposed use is consistent with the various standards and conditions to be considered for his application.

Applicants must satisfy both the general standards for special exceptions under § 3104.1 as well as the specific conditions for this particular type of special exceptions as set forth in § 2003. As for § 3104.1, the proposed office use will be consistent with the general intent and purpose of the Regulations and Zoning Map. An R-5 District is designed to "permit flexibility of design by permitting... all types of urban residential development if they conform to the height, density, and area requirements established for these districts..." (§ 350.1). Applicants' Property conforms with the height, density and area requirements for an R-5 District. The external appearance of the Property is entirely residential, with no signs or other indication of a commercial office use being conducted inside the building on the basement and first floors (see copies of three (3) photographs of Property exterior, attached hereto as Exhibit "G"). In all respects other than Applicants' offices on the basement and first floors, the Property is consistent with a residential use in both appearance and function.

The conditions which must be satisfied under § 2003 are addressed as follows, in the order presented under the statute:

1. § 2003.2 – "The proposed use shall not adversely affect the present character or future development of the surrounding area in accordance with this title. The surrounding area shall be deemed to encompass the existing uses and structures within at least three hundred feet (300 ft.) in all directions from the nonconforming use."

The surrounding area around the Property consists mainly of residential dwellings, with retail and service business mixed in throughout. The proposed office use of a consulting and tax service firm will not affect the character or future development of the surrounding area. The use is not visible from the exterior of the building and thus does not impact the character or appearance of the area in any way (see Exhibit "F"). The use also poses no obstacle to, and has no impact upon, future development.

2. § 2003.3 – "The proposed use shall not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects."

Because the proposed commercial office use will be conducted entirely inside of an otherwise completely residential structure, it creates no external effects whatsoever. Applicants' business is non-industrial and creates no additional outside noise, illumination, vibration, odor or design and siting effects which could be considered atypical of, or inconsistent with, any other residential uses in the neighborhood. Applicants generally consult with one client at a time when conducting their business, so no increased traffic or parking concerns exist beyond what would normally occur when any other resident of the neighborhood is visited by a guest. Applicants' business does not involve any loading or unloading on or about the street. Applicants' proposed use does not therefore create any deleterious external effects.

3. § 2003.4 – "When an existing nonconforming use has been changed to a conforming or more restrictive use, it shall not be changed back to a nonconforming use of less restrictive use."

If the proposed use is approved, the Applicants will not change it back to a nonconforming use or less restrictive use.

4. § 2003.5 – "In Residence Districts, the proposed use shall be either a dwelling, flat, apartment house, or a neighborhood facility."

Applicants' first-floor use within the dwelling structure of a consulting and tax service firm should qualify as a "neighborhood facility" under the Regulations. Applicants' counsel has sought the advice of the Office of Zoning with respect to this requirement. Counsel was advised that typical examples of a "neighborhood facility" are listed under § 701.4, and that, in general, the term refers to a facility which serves the needs of the residents of the immediate neighborhood. While some of Applicants' clients may come from outside of the immediate community, many are neighbors who seek assistance with tax and accounting issues. Applicants also provides a variety of other professional services geared toward the needs of small businesses of the various type listed in § 701.4 and which are located within Applicants' immediate community. Applicants' business thus has an important function within the neighborhood and provides a welcome and necessary service for its residents.

Conclusion

For the foregoing reasons, Applicants submit that this application for special exceptions meets the applicable standards of the Zoning Regulations (most relevantly Chapter 11, Section 2003); is consistent with the purposes and intent of the Zoning Regulations and Zoning Map; will enhance the convenience of the residents of the community and their opportunities for a desirable and valuable service; satisfies the legal requirements and conditions for a permissible change in nonconforming uses; and will have no adverse impact on the surrounding neighborhood.

Respectfully submitted,

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