

September 3rd, 2024

Board of Zoning Appeal  
441 4th ST, NW  
Washington, DC 20001

RE:  
Special Exception at  
3500 New Hampshire Ave NW  
Washington, DC 20010

STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

**I. Introduction and Nature of Relief Sought**

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This Statement is submitted on behalf of Benjamin J. Levy (known as the “Applicant”), owner of the property located at 3500 New Hampshire Ave NW (Square 2831, Lot 0800) (the “Subject Property”). The Subject Property is an existing two-story, two-family detached building (the “Building”) located in the RF-1 zone.

The Applicant proposes to build a third story and side yard addition to the existing Building (the “Project”). Accordingly, the following relief is required:

1. Special Exception Relief from E § 207.1

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Subtitle E § 207.1 requires a minimum rear yard of twenty feet (20 ft.) to be provided from the building to the property line. The current rear yard setback for the existing wall varies from six inches (6 in.) to three feet and six inches (3 ft. 6 in.). The addition will change the side yard setback from six inches (6 in.) to three feet and four inches (3 ft. 4 in.).

2. Special Exception Relief from E § 208.3

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Subtitle U § 208.3 requires any side yard provided shall be a minimum of five feet (5 ft.) from the building to the property line. The current side yard setback for the existing wall varies from three inches (3 in.) to seven feet and one inch (7 ft. 1 in.). The addition will change the side yard setback from eight inches (8 in.) to five feet and eight inches (5 ft. 8 in.).

3. Special Exception Relief from E § 210.1

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Subtitle E § 210.1 states the maximum permitted lot occupancy allowed for lots within the RF-zone is sixty-five and thirty-two percent (65.32%). This Project proposes a lot occupancy of sixty-nine and ninety-five percent (69.95%). This Project requests relief to exceed the maximum lot occupancy in the RF-1 zone.

## **II. Background**

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### **A. Description of the Subject Property and Surrounding Area.**

The Subject Property is located at 3500 New Hampshire Ave NW and is in the RF-1 zone district. It is an irregularly shaped lot measuring one thousand one hundred five square feet (1,105 sq. ft.) in land area. Abutting the Subject Property to the north is 3506 New Hampshire Ave, NW a residential flat. Abutting the Subject Property to the east is New Hampshire Ave NW. Abutting the Subject Property to the south is Monroe Street. Abutting the Subject Property to the west is 903 Monroe Street NW, a single-family dwelling.

### **B. Proposed Project**

The existing two-unit Building is two stories with a crawlspace. The first-floor dwelling unit is accessed through New Hampshire Ave NW and the second dwelling unit on the second floor is accessed through an exterior staircase on Monroe ST NW.

The Applicant proposes to build a three-story building over a cellar. There are proposed additions to add a third story and side yard additions. The existing crawlspace will be converted into habitable cellar floors. Unit A, the lower dwelling unit, is in the cellar and level 01. Unit B, the upper dwelling unit, is located on levels 01, level 02, level 03, and penthouse. The units enter through New Hampshire Ave NW at level 01.

## **III The Applicant Meets the Requirements for Special Exception Relief**

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### **A. Overview**

Pursuant to Subtitle X § 901.2 of the Zoning Regulations, the Board is authorized to grant special exception relief where, in the judgment of the Board, the special exception 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, subject also, in this case, to the specific requirements for relief under Subtitle D § 1206.2 of the Zoning Regulations.

In reviewing applications for a special exception under the Zoning Regulations, the Board's discretion is limited to determining whether the proposed exception satisfies the relevant zoning requirements. If the prerequisites are satisfied, the Board ordinarily must grant the application. See, e.g., Nat'l Cathedral Neighborhood Ass'n. v. D.C. Board of Zoning Adjustment, 753 A.2d 984, 986 (D.C. 2000).

### **B. General Special Exception Requirements of Subtitle X § 901.2.**

The granting of a special exception in this case "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 Maps ..." (11 DCMR Subtitle X § 901.2).

1. Special Exception Relief will be in Harmony with the General Purpose and Intent of the Zoning Regulations and Zoning Maps.

The Zoning Regulations specifically permit the requested special exception relief for additional dwelling units, lower land area per dwelling unit, and accessory structures over the allowed maximum. The Project meets all other development standards of the RF-1 zone. Accordingly, the proposed Project and use will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

2. Relief will not tend to affect adversely, the Use of Neighboring Property in accordance with the Zoning Regulations and Zoning Maps.

As described more fully below, the Addition will also not adversely affect the use of neighboring properties as the proposal meet all other development standards of the RF-1 zone and any potential impacts on light, air, and privacy do not rise to the level of undue.

**C. The Application Meets the Specific Requirements of E § 5201.**

The proposed addition will increase the lot occupancy to sixty-nine and nine percent (69.9%). This Project requests relief to exceed the maximum lot occupancy in the RF-1 zone. The addition will be within the rear and side yard setbacks. However, the new setbacks are at a greater distance than the existing conditions.

5201.4(a) The light and air available to neighboring properties shall not be unduly affected;

A shadow study is being submitted with this Application. The study shows the difference between the existing conditions and the proposed addition. As demonstrated by the shadow study, the addition casts shadows on the roof and the unused side yards of the two adjacent properties. The increase is minor and does not impede the use or enjoyment of the adjacent properties.

(b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;

The privacy and use of enjoyment shall not be unduly compromised by the Project. The side yard and rear yard setbacks are greater than the existing condition providing a greater distance between the two buildings. The windows on the north façade face the brick party wall of the adjacent building. Therefore, the privacy between a matter-of-right Addition and the proposed Addition does not rise to the level of undue.

(c) The proposed addition or accessory structure, together with the original building, or the new principal building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the street or alley frontage; and

The area is predominately characterized by two-story rowhouse dwellings. Some buildings have added third-floor additions. This lot is smaller than most, has no alley access, and has two front yards. The façade facing New Hampshire Ave NW contains a higher wall so that the height compliments the surrounding buildings. The façade on Monroe ST NW has a lower walls to compliment the height of the adjacent homes along the street.

Furthermore, the proposed Project will use similar design elements as other properties in the area that have been recently remodeled such as fiber cement siding and large windows. Accordingly, the proposed Project, together with the original Building, as viewed from New Hampshire Ave NW and Monroe ST NW shall not substantially visually intrude upon the character, scale, and pattern of buildings of the neighborhood.

(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition or accessory structure to adjacent buildings and views from public ways.

The Applicant has included materials sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways.

5201.5 The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent and nearby properties.

The Applicant will comply with any special treatment.

5201.6 This section shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception.

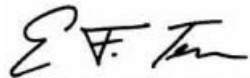
The Applicant is not proposing to introduce the expansion of a nonconforming use, lot occupancy beyond what is permitted in this section, height, or number of stories, as a special exception.

#### **IV Conclusion**

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For the reasons stated above, this Application meets the requirements for a special exception relief by the Board and the Applicant respectfully requests that the Board grant the requested relief.

Sincerely,



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Agent

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