DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of 505 L ST NE, LLC
509 and 507 L Street, NE (Square 830, Lots 73 and 74)

I. INTRODUCTION.

This statement is submitted on behalf of 505 L ST NE, LLC (the "**Applicant**"), owner of 507 L Street, NE (Square 830, Lot 73) and 509 L Street, NE (Square 830, Lot 74) (collectively, the "**Properties**"), which are located in the RF-1 zone.

The Applicant has constructed two flats (two-unit dwellings), one on each of the Properties, and both are pending Certificates of Occupancy. Each flat is set back eight feet (8 ft.) from the front property line. On June 4, 2025, the Applicant was informed by its contractor that the zoning reviewer assigned to 509 L Street, NE had denied the Certificate of Occupancy ("**C of O**") application, despite all inspections being completed and approved. The Zoning Administrator then placed the C of O application for 507 L Street, NE on hold as well.

At a meeting on June 11, 2025, the Zoning Administrator directed the Applicant to seek front yard setback relief, asserting that the permits should not have been issued because the constructed flats allegedly do not comply with Subtitle E § 206.2: "For all residential buildings, a front setback shall be provided within the range of existing front setbacks of all residential buildings on the same side of the street in the block where the building is proposed."

As demonstrated herein, the Applicant seeks area variance relief from Subtitle E § 206.2 in order to maintain the constructed setback. In addition to the equitable principle of estoppel—given the Applicant's substantial and good-faith reliance on DOB's issuance of valid permits—there is a heritage tree located in public space immediately in front of the Properties that makes it impossible to meet the existing range of front setbacks (0 ft.) without unlawful removal of that tree.

Out of an abundance of caution, the Applicant also requests variance relief from B § 315.1(c).

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the area variances from E § 206.2 and B § 513.1(c) pursuant to X § 1002.1(a).

III. BACKGROUND.

The Properties are located within the RF-1 zone. Both are interior lots situated adjacent to one another, with 507 L Street, NE to the west and 509 L Street, NE to the east. The Applicant was issued Building Permit No. B2301079 on July 19, 2023, for 509 L Street, NE, and Building Permit No. B2301078 on August 10, 2023, for 507 L Street, NE. Each permit authorized the construction of a new two-unit flat.

Construction commenced in August 2023 in full reliance on the validly issued permits. The Applicant constructed both buildings precisely in accordance with the approved plans, including the eight-foot (8 ft.) front setback—within the range confirmed by the Office of the Zoning Administrator during plan review. Approved Wall Test Reports for each property were subsequently recorded in Book 220 of the Office of the Surveyor, page 100, confirming the as-built conditions.

On June 4, 2025, after all inspections had been approved and the Applicant had submitted the Certificate of Occupancy application for 509 L Street, NE, the Applicant was informed that the zoning reviewer had denied the application. Shortly thereafter, the Office of the Zoning Administrator placed the C of O application for 507 L Street, NE on hold as well, despite no prior indication of any zoning-related issue. At a meeting on June 11, 2025, DOB directed the Applicant to seek BZA relief from Subtitle E § 206.2.

IV. THE APPLICANT MEETS THE REQUIREMENTS FOR AREA VARIANCE RELIEF

The Applicant seeks area variance relief from 11-E DCMR § 206.2 and 11-E DCMR B § 315.1(c) under a traditional de novo variance analysis. In addition to the de novo request, the Applicant submits that the doctrine of equitable estoppel further compels approval of the relief due to the District's affirmative issuance of permits and the Applicant's substantial good faith reliance.

A. De Novo – Variance Test is Met

The burden of proof for an area variance is well established. The Board of Zoning Adjustment may grant an area variance if it finds that "(1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan."

Dupont Circle Citizens Ass'n v. D.C. Bd. of Zoning Adjustment, No. 16-AA-932, 2018 WL 1748313, at *2 (D.C. Apr. 12, 2018); *Ait–Ghezala v. District of Columbia Bd. of Zoning Adjustment*, 148 A.3d 1211, 1216 (D.C. 2016) (quoting W*ashington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005)) (internal quotation marks omitted).

1. Extraordinary Condition Impacting the Property

The Properties are uniquely impacted by the presence of a protected heritage tree located directly in front of the lots. No other home on this block is subject to this condition. Because removal of a heritage tree is prohibited by law, constructing within a zero-foot setback—as several neighboring rowhomes do—would be impossible without violating District law. This physical constraint satisfies the first prong of the variance test.

2. Strict Application Would Result in a Practical Difficulty

Strict application of Subtitle E § 206.2 and B § 315.1(c). would render the Properties unbuildable as a matter of law. The only way to achieve a zero-foot (0 ft.) front setback—consistent with certain adjoining rowhouses—would be to remove the heritage tree located directly within the required buildable area. However, removal of a heritage tree is prohibited by District law. Accordingly, compliance with the setback regulation is legally impossible, not merely burdensome. This impossibility satisfies the practical difficulty standard.

3. No adverse impact on public good, nor integrity of the zone.

Relief can be granted without any adverse impact on the public good or the integrity of the RF-1 zone. The constructed eight-foot (8 ft.) setback is fully compatible with the varied streetscape character of this block, where front setbacks are not uniform. The relief preserves—not disrupts—the established rhythm of the street.

Moreover, maintaining the existing setback directly advances District policy objectives by preserving a protected heritage tree located in public space. This outcome not only avoids environmental harm but furthers the public interest in urban canopy conservation expressly protected under District law.

The Project otherwise meets all RF-1 development standards. There are no impacts on light, air, privacy, traffic, or density. The relief sought is limited in scope and strictly necessary to reconcile zoning requirements with separate District tree protection laws. Accordingly, the

requested variance can be granted without substantial detriment to the public good and without impairing the intent, purpose, or integrity of the zone plan.

B. Estoppel

In the alternative, the Applicant notes that the elements of equitable estoppel are clearly satisfied due to DOB's affirmative issuance of permits and the Applicant's substantial good-faith reliance. (This section to follow.)

1. Extraordinary or Exceptional Condition Affecting the Property.

The "exceptional situation or condition" of a property can arise out of "events extraneous to the land," including the zoning history of the property. See, e.g., *De Azcarate v. Board of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978), *Monaco v. Board of Zoning Adjustment*, 407 A.2d 1091, 1097, and 1098 (D.C. 1979) (In *Monaco*, a zoning history which implicitly approved a use and thereby gave rise to a good-faith, detrimental reliance by the property Applicant, helped to establish the necessary exceptional condition). See also *Application No. 17264 of Michael and Jill Murphy* (2005); *Application No. 18570 of North Cap. St. NE LLC (*2013) *Application No. 18725 of Rafael Romeu* (2014); and *Application No. 19366 of Residence Panache Condo Unit Applicants Ass'n* (2016).

Specifically, an applicant's reliance in good faith on actions of DCRA officials can be considered an exceptional situation. In *Monaco v. DC Board of Zoning Adjustment,* the Court of Appeals held that the zoning history of a property could be considered in making a determination of uniqueness. BZA Case No. 17264 followed the *Monaco* ruling and was supported by the Office of Planning and approved by the BZA. In that case, the applicant constructed a deck without a permit and then subsequently received a permit (which claimed interior renovations only) which was later revoked.

Eight (8) years later, in BZA Case No. 18570 the Board affirmed that reliance on permit issuance can be considered as part of the variance argument. In that case, DCRA issued a building permit to renovate a building into three (3) units and later rescinded that approval when the Applicant applied for the certificate of occupancy, after completing the work under the approved building permit. The Board granted relief under an estoppel argument with a similar rationale as put forth by the Applicant in this case.

In Case No. 18725, the Board once again determined that zoning history for a property, specifically an Applicant's reliance in good faith on actions of DCRA officials, can be considered an exceptional situation. (See BZA Order No. 18725, p. 7). This argument has been accepted by the Board as recently as 2016 in BZA Case No. 19366, where the Board determined that reliance on permit issuance can be a "compelling" part of the variance argument.[1]

In the present case, the exceptional situation arises out of the Property's permitting history, as described above, and the Applicant's good faith reliance on the actions of DOB officials. The Applicant's case is similar to the above-referenced cases, as it would not be in this position— requesting variance relief for the front setback— had it not received DOB's preliminary approvals and the Building Permit to do so. The Applicant had every reason to proceed with the permitted construction in good faith without fear of interruption or modification.

(a) <u>The Elements of Estoppel are Satisfied.</u>

"Although the doctrine of equitable estoppel has traditionally not been favored when sought to be applied against a government entity … it is accepted that in certain circumstances an estoppel may be raised to prevent enforcement of municipal zoning ordinances." *Saah v. D.C. Board of Zoning Adjustment*, 433 A.2d 1114, 1116 (D.C. 1981) (citations omitted), s*ee also District of Columbia v. Cahill*, 60 App. D.C. 342, 54 F.2d 453 (D.C. 1931) ("Where a party acting in good faith under affirmative acts of a city has made such expensive and permanent improvement that it would be highly inequitable and unjust to destroy the rights acquired, the doctrine of equitable estoppel will be applied."). *Saah* is the most often-cited case on estoppel in the District.

The elements that must be shown in order to raise an estoppel claim against enforcement of a zoning regulation are: (1) that a party, acting in good faith, (2) on affirmative acts of a municipal corporation, (3) makes expensive and permanent improvements in justifiable reliance thereon, and (4) the equities strongly favor the party seeking to invoke the doctrine. *Saah*, 433 A.2d at 1114. In the present case, the elements of estoppel are all clearly satisfied to a considerable degree, as provided below:

2. <u>Applicant Acted in Good Faith</u>.

[1] "And I would just note, the aspect that I found compelling in the argument here was the zoning history, that that contributed to the practical difficulty, just for the record." BZA Case No. 19366, Transcript, p. 297 (November 30, 2016).

In *Saah*, there was no allegation that the approved permit plans were submitted in bad faith. *Id.* at 1116. Thus, the Court of Appeals found that Saah had acted in good faith. *Id.* In contrast, in *Nathanson v. D.C. Bd. of Zoning Adjustment*, 289 A.2d 881 (D.C. 1972), "petitioners received actual notice of the condition more than five weeks before issuance of the building permit," and thus the Court of Appeals held "estoppel was not available" because petitioners were "in no position to claim that they placed unknowing reliance upon the building permit." *Id.* at 884.

Like *Saah*, the present case had no mistakes on the Building Permit application; no misrepresentations; no ambiguities even. Prior to the issuance of the Building Permit, the Owner in good faith acted with complete transparency. There was no additional information needed, or requested, prior to permit issuance.

Thus, the present case is nothing like *Nathanson*. Unlike *Nathanson*, here the Owner was completely "without notice that the improvements might violate the Zoning Regulations." *Interdonato v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1000, 1003 (D.C. 1981). DOB had all the information it needed when it reviewed and approved the Building Permit application(s). Subsequently, there was a zoning sign-off and the Building Permit(s) were issued on July 19, 2023, and August 10, 2023.

The Owner had every reason to proceed with the permitted construction in good faith without fear of interruption or modification. The Owner has been forthcoming, transparent, and responsive throughout this process, both prior to permit issuance through today.

3. Affirmative Acts of DCRA.

In Saah, "[t]he affirmative act of the District of Columbia, upon which petitioner relied in constructing the building, was the issuance of the permits." *Saah*, 433 A.2d at 1116. DCRA revoked the building permit two (2) months after it was issued. *Id.*

Here, DOB reviewed and issued the Building Permit(s) and is now taking enforcement action against the Owner more than twenty-one (21) months after the issuance of the Building Permit, ten times the amount of time in *Saah*. In addition, DOB also approved a wall-check for this project.

4. The Applicant Has Made Permanent and Expensive Improvements in Justifiable Reliance.

As previously mentioned, in the *Saah* case DCRA revoked the subject building permit two (2) months after it was issued. The Court deemed that this was a considerable amount of time and critical in establishing estoppel. Moreover, Saah's project was 60% completed when enforcement action was taken - "a substantial portion of the total project, even without documentary evidence indicating the precise amount of money expended up to that point." *Id.* Saah claimed to have spent over $225,000 in reliance on the building permit. *Id.*

The *Saah* violation was for a straight-forward expansion of lot occupancy beyond the permitted 60% (to 65%)—a violation that most architects and developers should understand. *Id.* at 1117. Nonetheless, the *Saah* Court stated that, although the petitioner or his architect should have known that the project exceeded lot occupancy, "the same can be said for the [District] official who approved the plans." *Id.* Accordingly, Saah's reliance upon issuance of the permit was still justified. *Id.*

In the present case, the work has been completed, two of the units have closed, two are on the market with buyer interest, and it has been more than twenty-one (21) months since the Building Permit(s) were issued, ten times the length in *Saah*. The Owner had no idea that his project could be placed in jeopardy nearly two years after the commencement of work and so, in reliance on the approvals from DOB, spent $1.5 million on hard construction costs.[2]

If the Owner is forced to now comply with the front setback requirement, it will lead to catastrophic construction and displacement costs.

5. The Equities Strongly Favor the Applicant.

Although estoppel is disfavored in the zoning context, it is certainly not eliminated as a defense when enforcement of the zoning regulation would cause more damage to an innocent owner than would be beneficial to the public. "In zoning as in other areas of the law, the government *can* be wrong. In zoning, the equities *can* be so compelling as to favor the individual property owner." *Wieck v. D.C. Board of Zoning Adjustment*, 383 A.2d 7, 13 (D.C. 1978).

[2] The provision of a conditional certificates of occupancy does not mitigate the legal issue in the estoppel determination; it merely delays a portion of the potential catastrophic damage for six months. The damages remain in the present, as well as two of the four units have not been sold, and it is likely that the zoning status has played a part in that.

"For the equities to favor the party claiming an estoppel, any injury to the public that would flow from the non-enforcement of the zoning law must be minimal and outweighed by the injury estoppel would avoid." *W. End Citizens Ass'n v. D.C. Bd. of Zoning Adjustment*, 112 A.3d 900, 904 (D.C. 2015). Moreover, the injury must be "actual," and not "speculative and unsubstantiated." *See id.* at 905 (Citizens association's "expressed concerns about possible adverse effects on the area's tranquility, traffic, and property values were speculative and unsubstantiated."). In particular, equities strongly favor the party claiming estoppel when that party acted in good faith and objectively reasonably relied on the issuance of a permit. *See id.* at 904.

Additionally, equity "will not require a wasteful act," and "will not permit such a result where the public's interest is only minimal." *Saah*, 433 A.2d at 1117. In *Saah*, the Court ruled that it was "certain" that the equities strongly favored the petitioner, stating that enforcement would cause "substantial reconstruction" for Saah, but that the public's interest in enforcement of lot occupancy "is only minimal." *Id.* For example, it was a sufficient detriment in *Saah* that "the cost of complying with the regulations would [have been] about $110,000." *Id.* at 1116.

In the present case, the Owner would need to spend thousands of dollars to comply with the zoning regulation—drastically more than what was held detrimental in *Saah*. Moreover, as mentioned above, moving front walls would also require months more of construction and full building redesign, leaving vacant buildings while getting resolved. This would create a nuisance for neighbors in both the vacancy and additional construction.

Like *Saah*, there are also no safety or health issues presented. The Building meets all other development standards of the RF-1 Zone and the front setback requirements were not in place until the 2010s, meaning that it would not be unusual to find a block of buildings in the district with varying setbacks.

As in *Interdonato v. D.C. BZA*, 429 A.2d 1000 (D.C. 1981), the equities here weigh heavily in favor of the Owner where the permittee has acted reasonably and in good faith, and where revocation would impose substantial hardship. Similarly, in *Schultz v. D.C. Bd. of Zoning Adjustment*, 31 A.3d 1215 (D.C. 2011), the Court acknowledged that zoning enforcement should not be pursued where it would result in substantial inequity despite compliance with approved plans. That principle applies here: the Owner relied on DOB's approvals in good faith and constructed the project in accordance with the approved plans and established standards.

Furthermore, the entire reason for moving the row houses back was to protect a heritage tree in public space near the front of the property.

Granting estoppel in the present case will also not create "bad precedent for the neighborhood and its ability to enforce the RF provisions, because the Board considers each [BZA] application before it on the basis of its individual circumstances so that prior decisions of the Board do not create precedent that the Board is required to follow; and will undertake a detailed review of future requests for relief in the RF-1 zone to determine whether the standards established under the Zoning Regulations are met." (BZA Order 19771). Thus, any concern regarding a detrimental effect on the Zoning Regulations would be "speculative and unsubstantiated." Accordingly, any injury to the public that would flow from the non-enforcement of 11-E DCMR § 206.1(a) would be minimal and outweighed by the injury estoppel would avoid.

C. Strict Application of the Zoning Regulations would Result in a Practical Difficulty.

The second prong of the variance test is whether a strict application of the Zoning Regulations would result in a practical difficulty. In reviewing the standard for practical difficulty, the Court of Appeals stated in *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. App. 1972), that "[g]enerally it must be shown that compliance with the area restriction would be unnecessarily burdensome. The nature and extent of the burden which will warrant an area variance is best left to the facts and circumstances of each particular case." In area variances, applicants are not required to show "undue hardship" but must satisfy only "the lower 'practical difficulty' standards." *Tyler v. D.C. Bd. of Zoning Adjustment*, 606 A.2w 1362, 1365 (D.C. 1992) (citing *Gilmartin v. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990).

As discussed above, it is not possible to comply with the strict application of the regulations without removal of the heritage tree. It is not possible to remove the heritage tree; therefore, the buildings would need to be demolished if relief is not granted.

D. Relief Can be Granted without Substantial Detriment to the Public Good and without Impairing the Intent, Purpose, and Integrity of the Zone Plan.

Relief can be granted without substantial detriment to the public good and can be granted without impairing the intent, purpose, and integrity of the Zone Plan. Aside from the front setback requirement, the Project meets all the development standards of the RF-1 Zone. Moreover, the permitting history is unique in that the Applicant is only requesting relief because it detrimentally

relied on assurances by DCRA and spent a significant amount of money as a result. The degree of relief is what is necessary to maintain a heritage tree, which the Applicant must, by law, maintain. And the Applicant would sustain a catastrophic financial loss if it is required to demolish two brand new buildings after relying on the validly issued Building Permit if relief was not granted. In addition to the elements of estoppel being satisfied in this case, this is a textbook variance request where the physical condition of the lot makes it difficult—and in this case, impossible—to meet the strict application of the regulations.

Accordingly, relief can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan.

V. ADDITIONAL SUPPORT

In BZA Case No. 20813, the applicant sought special exception approval for the removal of an existing cornice, and in the alternative, variance relief under the principles of equitable estoppel. In that case, the Department of Buildings (then DCRA) had issued a valid building permit, which it later revoked several months after construction was substantially complete, upon determining that the permit had been issued in error. By that time, the structure had already been built in full reliance on the issued permit, and strict enforcement of the zoning regulations would have required catastrophic reconstruction. Although the Board denied the special exception request relating to the alteration of architectural elements, it granted the requested variance relief under the doctrine of equitable estoppel, recognizing the applicant's good faith reliance on the government's affirmative actions and the substantial impacts that would result from revocation without BZA approval.

The present case presents even more compelling grounds for approval. Here, the Applicant not only satisfies the traditional *de novo* variance test—given that the by-right requirements cannot be met due to an extraordinary physical condition, namely the presence of a protected heritage tree—but also meets the equitable estoppel elements recognized in *Saah* and reaffirmed in BZA Case No. 20813. The Applicant's good faith reliance on DOB's issuance of valid building permits, coupled with the legal impossibility of constructing a compliant structure without violating District

tree protection laws, strongly supports the Board's approval of the requested relief under both a traditional variance analysis and equitable estoppel principles.

VI. CONCLUSION

For the reasons outlined in this statement, the Applicant respectfully requests the variance relief as detailed above.

Respectfully submitted,

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