DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal of Zoning Administrator Determination
Regarding Owner's Request for an Estoppel Decision
Building Permit #B2401148
Appellant/Property Owner: Carbajal Properties LLC
Property: 3719 S Street, NW (Square 1308, Lot 63)

I. Introduction

This appeal (the "**Appeal**") is submitted on behalf of Carbajal Properties LLC (the "**Appellant**" or "**Owner**"), the owner of the property located at 3719 S Street, NW (Square 1308, Lot 63)(the "**Property**"). The Appeal is of a decision by the D.C. Zoning Administrator (the "**ZA**"), communicated via letter dated September 13, 2024 (the "**Denial Letter**"), in which the D.C. Zoning Administrator ruled that estoppel relief would be "inappropriate" because "there is no approved final inspection yet and construction can be modified." The Zoning Administrator should be estopped from issuing the Stop Work Order, as the elements of estoppel have been met in this case. Final inspection is not a required element of estoppel, pursuant to the applicable case law and this Zoning Administrator's recent decisions.[1]

The Appellant made the estoppel request in response to a Stop Work Order and Notice of Infraction, both of which were issued on August 29.[2] The Appellant was issued Building Permit No. B2401148 on March 7, 2024, for "Addition Alteration Repair" of a One Family Dwelling (the "**Building Permit**"). Construction of the substantial addition (the "**Addition**"), pursuant to the Building Permit, was 100% completed on July 27, 2024, a full month before the issuance of the Stop Work Order and NOI.

Appellant's counsel made numerous requests to DOB officials to clarify why the ZA claimed in the Denial Letter that 100% completion and final inspection were now a required element of estoppel in this case. No responses were provided. So, all Appellant must go on is the

[1] Including a decision made this year in an analogous case, where construction was substantially less than 100% completed, with no final inspection. (See Exhibit A - ZA Denial Letter and Exhibit B – Photo Comparison of 1518 6th St, NW.) The leading Court of Appeals case, *Saah v. BZA*, involved construction at sixty percent (60%) completion.
[2] DOB has since withdrawn the NOI.

Denial Letter language requiring a final inspection. Therefore, this Appeal challenges the ZA's decision that estoppel is not appropriate in this case, on that basis.

II. Timely Filing

This Appeal meets the jurisdictional requirement of timeliness, as specified in Subtitle Y Section 302.2. The Appellant first had notice and knowledge of the decision being appealed on September 13, 2024, upon receiving the Denial Letter.

III. Standing

Pursuant to Y-302.1 of the D.C. Zoning Regulations provides that "any person aggrieved or any officer or department of the government of the District of Columbia or the federal government affected by an order, requirement, decision, determination, or refusal made by an administrative officer or body, including the Mayor of the District of Columbia, in the administration or enforcement of the Zoning Regulations may file a timely zoning appeal with the Board". The Owner, as owner and developer of the Property, has suffered and will continue to suffer catastrophic financial harm from the decision made in the Denial Letter, including legal and other consulting costs, loss of value, construction costs, spent and to be spent, financing costs, and the potential loss of the Property in foreclosure.

This Board has previously decided estoppel appeals when the Zoning Administrator has denied such action. See BZA Order No. 18181 attached.

IV. Summary of the Appeal Argument

"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 have all been satisfied to a considerable degree. In fact, the district has never claimed that any of these elements are not met, other than that claim that 100% completion and final inspection is now an absolute requirement for estoppel.

Respectfully submitted,

Martin P Sullivan

Martin Sullivan
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