

## EXHIBIT 5 – Burden of Proof

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment**

**WASHINGTON, D. C. 20001**

**Application to Board of Zoning Adjustment)  
for Special Exception in RF-1 District at     )  
Premises 515 21<sup>st</sup> Street, N.E.                     )     Case No. \_\_\_\_\_  
(Square 4516, Lot 0203)                                 )**

**STATEMENT IN SUPPORT OF APPLICATION OF SATURDAY  
NNAM FOR SPECIAL EXCEPTION**

**I.     Introduction**

Applicant Saturday Nnam, (“Applicant”), by and through counsel, respectively submits this statement in support of his filed request for a special exception under such terms and conditions, if any, as may be deemed appropriate by the District of Columbia Board of Zoning Adjustment (“BZA”). Enclosed with this initial filing memorandum, please find supporting Exhibits 1 thru 15, including plans, pictures, and letters.<sup>1</sup>

**II.    Overview of Present Application.**

On December 30, 2024, the Office of Zoning (“OZ”) of the BZA, pursuant to its review, deemed a preliminary Application, BZATmp4784, as deficient in several areas, as submitted by the Applicant, Pro Se, on December 22, 2024. This

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<sup>1</sup> See Form 120 at Exhibit 1 and Form 135 at Exhibit 2&2A

resubmission addresses those matters for grant of the requested special exception for the above referenced premises permitting the Applicant to expand a two-story rear addition beyond the 10-foot requirement in the RF-1 District at 515 21<sup>st</sup> Street, N.E. in Square 4516, part of Lot 0203. See revised Plat at Exhibit 11.

Under this Application, the Applicant does not seek any change or substantial modification of his current use, but rather seeks the continuation of the existing use of the property albeit extended upon approved special exception. Thus, with this application for the expansion of living quarters at the premises, the property will remain in harmony with the prior use. The Applicant will continue to fully comply and abide by the terms and conditions as may be required and as may be set forth in any BZA order. The zoning relief requested by this self-certified Application is therefore consistent with review by both the District of Columbia Department of Buildings (“DOB”) and the OZ’s initial review of the previously filed application BZATmp4784. This extension will continue to advance the public interests by serving as an adaptive improvement to enhance the property, his family’s livability, and functionality. This request addresses the servicing of the Applicant’s family’s elder care needs as well as avoids the undue hardship caused by unstable soil conditions encountered at the site for construction. This adjustment in the building will be two (2’) feet. This expansion enhances the city’s

housing infrastructure by modernizing Applicant's 1940 built home.<sup>2</sup> This renovation of his resident's size for additional rooms better serves both the family's and the community-at-large's growth and need for more livable housing accommodations.

During the process of this property's renovation, the Applicant received a building permit, No. B2407625, for expansion into the rear yard. Approved plans were issued by the District of Columbia Government through the Mayor's Office of Department of Buildings ("DOB") to allow for the continued use of the premises as an established residential row dwelling unit. Over several months, the Applicant expended substantial funds to comply with all conditions of the zoning regulations and invested capital to substantially improve the property's physical condition for new constructive uses of the property. See Statement of Owners Intended Use at Exhibit 9. In this ensuing period, the Applicant attempted to make improvements to his owned land, but unstable soil conditions required that the foundation be extended in order to obtain a more solid base for the establishment of a safe and secure new rear wall structure. This unforeseen subsoil condition required the limited extension beyond the 10-foot limitation. As a result of his investment in both the property and this modification to its plans, the

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<sup>2</sup> See Source – Redfin Built 1940 at Exhibit 13.

Applicant has been able to stabilize building construction in a manner consistent with its intended use as planned.

There is no parking or garage space provided at the property's rear yard. This current lack of dedicated parking will continue without any contemplated parking use in the future. Thus, the remaining rear yard area will continue as open and clear space. Applicant's rear yard abuts a sixteen foot (16') wide public alley of added open space. This will ensure free circulation of air and unobstructed light for the adjacent residential lots.

In the past twenty-two years, the Applicant has incurred increased real property and income taxes as a local resident. In short, by special exception authorization from the BZA, the Applicant shall be able to maintain its positive contribution to the health and financial welfare of the District of Columbia. This action will support the city's demand for enhanced housing stock that offers more bedrooms, of 2 to 3, rather than his older unit with fewer bedrooms, of 1 to 2. This modernization of an older home offers added accommodations which reduces the city's housing deficit and its growing demands for affordable housing. Due to economic factors following the recent Pandemic, intergenerational living is becoming a more common occurrence. More families have grown children returning home after graduation, and the children are now preparing to provide for their aging parents assisted-living needs, as well as other relatives sharing the

living arrangements. In addition, this request will foster the public policy of protecting the “missing middle” income families and not drive them out of the city.

Moreover, upon filing and posting notice to the community, the Applicant has actively sought to have discussions with representatives of the Advisory Neighbor Commission (“ANC) 7DO5. Applicant attended and participated in the ANC Meeting of March 18, 2025. Discussions have been had with Applicant’s abutting neighbors and individuals in the local community. Favorable support was indicated by the adjacent property owner at 513 21<sup>st</sup> Street with no objections being raised during these outreach efforts. See Letter of Support at Exhibit 10. During the initial BZA approval process, registered mailings were made to announce an intention to seek special exception relief. See Owner’s Letter of Authorization at Exhibit 8.

This revised Application submission, and as discussed below, and as will be further explained in the prehearing statement at the public hearing, all prongs of the tests for special exception and all the required conditions for such grant are met now in this Application. The Applicant kindly urges BZA’s timely consideration of this special exception request. Should any concerns be raised by the community for a granted special exception, the Applicant is prepared to work toward addressing such matters in order to protect the community from any adverse impacts. Again, by virtue of the minor deviation for the improvements made with

the property's limited addition, the expansion permitted by this request will be in harmony without adverse effects on air and light to adjoining properties. The granted relief will allow the Applicant to recover his costs in these property improvements and avoid financial hardship that would be created by soil foundation issues outside his control. This problem is rectified by BZA relief without any negative impacts to his neighbors or without contribution from, or reduction in taxes to, the District of Columbia. Furthermore, additional benefits will inure to the city since it will realize both higher property assessments and real estate taxes for these housing upgrades. The modernized renovation ensures productive residential use and enjoyment by the current owner as well as future owners. On a balancing of the public and private interests after requested relief for the special exception, the property will remain and continue in compliance with all prior or proposed conditions, if any, in order to allow for fulfillment of the new use by the owner for the public good. This continuation is consistent with the zoning regulations for the RF-1 district.

Favorable consideration of the waiver by special exception with approval by the BZA will allow Applicant to a limited extension beyond the current existing rear wall permitted use. In compliance with D.C. BZA requirements, this proposed extension will permit an additional bedroom enlarging the current certificate of occupancy ("C of O") on file to be renewed for his project. The Applicant will

maintain the previously, and those proposed, if any, site terms and conditions imposed by the Board, if any. This approval action will provide needed housing infrastructure increases that aids the city's housing stock by providing for more bedroom living space. This revised proposal demonstrates that the Applicant has, and will in the future, reduce the housing deficit threat. This request supports more sustainable family growth that completely fulfills the spirit and intent of all other RF-1 District requirements. BZA approval will authorize the Applicant with renewed permission to both improve and enhance his property's purposes in the public interest as fewer three-bedroom units are available in the city's housing market. Moreover, increased real estate taxes, and higher future transfer taxes on higher property values, at time of resale, if any, will produce positive financial benefits for the District of Columbia limited residential taxbase.

Thus, this relief proposal is consistent and in harmony with the Comprehensive Plan, similar BZA orders for RF-1, and enlightens public policy with no adverse community impacts under this project's continued use after renovation. Because there is no adverse effect upon the air, light and solar for neighboring residential properties under this proposed extension as requested. Consequently, there is no harm or adverse impact to be realized by the neighborhood as compared to what could be granted as a matter of right at the sight.

### **III. Legal Points and Authorities in Support of Special Exception Grant.**

The D.C. Zoning Regulations operates and regulates the use of property under various classifications. The proposed request is consistent and in harmony with such regulations and business programs for compliance with all city guidelines and requirements. Pursuant to Title 11 Subtitle X§901.2, the Board can grant relief from Title 11 Subtitle E Section§§ 207.4, 207.5, and 5201.1(b) (the BZA can grant special exceptions to the Zoning Regulations under specific circumstances and on a case-by-case, site-by-site basis).<sup>3</sup> In granting a special exception for the addition that exceeds 10ft of the adjoining property’s rear exterior wall, the Board must review the case based on the following criteria:

- Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;
- Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps; and
- Subject in specific cases to the special conditions specified in this title.

The Applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record.

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<sup>3</sup> “The Board of Zoning Adjustment is authorized to grant special exceptions, as provided in this title, where, in the judgment of the Board of Zoning Adjustment, the requested special exception meets the standards of Subtitle X § 901.2 and any specific conditions specified in this subtitle.”

If no evidence is presented in opposition to the case, the Applicant shall not be relieved of this responsibility.

1. **The Grant is in harmony with the Zoning Plan and there is No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan.**

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. This is the only house that was affected by the soil conditions presented at this property's rear yard. Also, many lots in the square have the same lot size, but because the rear of these homes/structures are not visible from the public right of way, the ability of them to legally expand creates no adverse impacts on these homeowners in future compliance with the Historic Preservation Act as well. The soil issue for which limited relief is requested is not apparent now, or likely in the future, as it is for the subject property. Therefore, few situations will arise to require zoning relief to achieve similar goals. Thusly, there will be no substantial impairment to the intent, purpose and integrity of the zone plan.

2. **Specifically addressing Subtitle E § 5201.1(b), the Special Exception Granted under this Section Demonstrate that the Addition or Accessory structure Does Not Have a Substantially Adverse Effect on the Use or Enjoyment of Any Abutting or Adjacent Dwelling or Property.**

In particular, this Applicant shows there are no adverse impacts as to the following:

a) **Light and Air:** The proposed two-story addition is seeking to extend an enclosed two-story sleeping porch that is historically common and can be found on other similar properties in this particular square. This existing house was built in 1940. It was purchased in 2002 and now needed to be expanded due to family care concerns. The addition will not affect the light and air of any neighboring properties any more so than it did prior to the start of construction. The addition is only four feet beyond the approved plans as submitted and what is legally permissible as a Matter of Right. The property at 517 is a semidetached flat that abuts an open brassy way on

one side. It has an extension beyond the subject property's rear wall prior to the subject renovation that effectively reduces these potential impacts. The property at 513 has given a letter indicting no opposition to the structure as planned. The rear yards of both adjoining dwelling are open to a 15-foot-wide public alley at their rear which allows for free-flowing air and unobstructed light.

**b) Privacy and Use:** The proposed two-story addition will provide for additional sleeping space that historically had few bedrooms. This renovation improves functionality, enhances the value of this property, and improves the quality of the neighborhood for the benefit of other similar properties in the square. The addition will not affect the privacy of any neighboring properties any more so than it does under a legally permissible extension. The views onto the neighboring property are not substantially different than previously available. These views do not provide any additional views out of the new windows to the neighboring properties or the rear yards than available from similar openings as the same yard spaces are still viewable as before. There will be no deck build off the rear of the addition. There is only an entrance landing for opening steps to the second-floor rear door. This open stairway will permit the free flow of air and light. Other similar homes in the square also have stair from the second-floor level down to the rear yards. As the proposed stairs run well below the roof line of the addition, they are lower and will virtually not affect the adjoining properties. Thus, the privacy of use and enjoyment of any neighbors will not be unduly compromised by the addition.

**c) View from public way:** The proposed two-story addition does not change the view from the public alley right-of-way. This addition is not visible at all from the street frontage on 21<sup>st</sup> Street and is keeping with the character, size, height and general configuration of similar 2-story extensions, thereby ensuring a harmonious fit within its immediate surroundings. Because this

extension is only seen from the rear, there is no view from the public street right-of-way at all. The owner and his architects worked closely with the HPO staff to create an approved plan which represent this structure as not impacting the property as viewed from public space and pay homage to the original frontage and roof lines. Therefore, there is no detriment to the public good or any neighboring properties.

d) **Graphical Representation from public way:** Multiple copies of plans with photos have been circulated and submitted as part of the application submission package which includes this statement. The Applicant meet with the affected ANC Representatives to discuss the Application before its filing to reach discuss the relief now requested.

**3. Strict Application Would Result in a Practical Difficulty to the Property Owner.**

Strict interpretation of the extension requirements will result in a practical difficulty upon the Applicant given the soil conditions outside of his control. The existing property as constructed in 1907 has an existing lot coverage of 680 square feet (65.4%) exceeding strict application of the zoning requirements. When the construction began under an approved permit, there was no indication that soil conditions had eroded to create an unsafe structure at the location. Only a shift of 4-feet was required to overcome that issue. The rear-yard setback to ~20 feet from the fence line is still maintained. Attempting to complete the structure as permitted would yield an unusable addition and is not practical or safe for the present or future owners.

The BZA may impose requirements pertaining to design, appearance, size, signs, screening, landscaping, lighting, building materials, or other requirements it

deems necessary to protect adjacent or nearby property, or to ensure compliance with the intent of the Zoning Regulations.<sup>4</sup>

When evaluating a special exception application, the BZA is required to “judge, balance, and reconcile the relative value of the project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” 11 DCMR § 2403.8 (2013). See also, *Blagden Alley Ass’n v. District of Columbia Zoning Comm’n*, 590 A.2d 139.

This Application meets the burden by demonstrating that the requested special exception is in harmony with all standards and conditions, if any, imposed. The Applicant, as property owner, has protected property rights under the 14th Amendment of the Federal Constitution provides that no state shall “deprive any person of life, liberty, or property without due process of law and other similar due process”. Such guarantees are interpreted to prevent governments from “enacting legislation that is ‘arbitrary’ or ‘discriminatory’ or lacks ‘a reasonable relation to a proper legislative purpose.’” *Howell, supra*, 97 A.3d at 586; *Blagden Alley, supra*; *Kavanau v. Santa Monica Rent Control Bd.*, 16 Cal.4<sup>th</sup> 761, 771 (1997) (*citing* *Nebbia v. New York* (1934) 291 U.S. 502, 537). Under the circumstances of this

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<sup>4</sup> “201.4- The Board of Zoning Adjustment may impose requirements pertaining to design, appearance, size, signs, screening, landscaping, lighting, building materials, or other requirements it deems necessary to protect adjacent or nearby property, or to ensure compliance with the intent of the Zoning Regulations.”

case, the requested special exception is consistent with the government's authority and interests in granting relief for use of the property by the Applicant in a manner requested.

#### **IV. Conclusion**

For over two decades, the Applicant has remained in compliance with the requirements of Zoning regulations and now seeks to renovate his dated property with enhanced space to serve his current family assisted-living needs and uses at the property. In order to provide for expansion and elder housing, the Applicant fastidiously wishes to maintain accommodations to care for their family members' housing needs. This grant will assist with reducing pressures on city's services and its shortfall in residential units and, in particular, elder care facilities that serve the homeowner and future residents, as well as the public generally by expanding alternative living options at existing homes. This grant supports a vibrant family-oriented focus of care for our city's improved residential neighborhoods for a brighter future.

Accordingly, for the reasons stated herein, the Applicants respectfully requests that, pursuant to § 704 of the Zoning Regulations governing this case, the BZA grant the requested special exception, because the BZA may determine that 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 classification as embodied in the Zoning Regulations and Maps and is an approved waiver in harmony with the Comprehensive Plan pursuant to the Zoning Regulations. The request is consistent with the spirit and intent of the standards for approval of special exceptions; therefore, the BZA should concur with the

Applicant that approving his request is appropriate and not inconsistent with the intent of title 11 DCMR §§ 5201.1(b) and X 900.

Respectfully submitted,

*/s/Anthony M. Rachal III*

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