DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Applicant's Statement of Paul and Katherine Rosenbaum
6117 32nd Place, NW (Square 2019, Lot 8)

I. INTRODUCTION.

This statement is submitted on behalf of Paul and Katherine Rosenbaum (collectively known as the "**Applicant**"), owners of 6117 32nd Place, NW (Square 2019, Lot 8) (the "**Property**"), which is located in the R-1B zone.

On September 15, 2025, the Applicant was issued a building permit for an addition to an existing detached single-family home. The Applicant proceeded with construction and demolition in accordance with the stamped and approved plans. However, approximately three months later, following submission of a wall check, the Department of Buildings ("**DOB**") determined that the extent of exterior wall demolition approved by the permit rendered the project a "raze" for zoning purposes. As a result, DOB is now treating the project as new construction.

This reclassification as new construction would not automatically create an issue, as the proposed footprint and additions are entirely within the by-right envelope for the R-1B zone. However, the existing structure includes a five-foot side yard on the north side, which is less than the eight-foot side yard required for new construction in this zone. As shown in detail on the plat, this five-foot side yard is being maintained. If the project were not being treated as a zoning raze and new building, it would comply with Subtitle D § 208.7, which permits extensions of nonconforming side yards, and the project would be permitted as a matter of right.

Because DOB is now treating the project as new construction, it is no longer honoring the permit and construction it previously approved and is requiring the Applicant to seek variance relief to maintain the existing five-foot side yard where an eight-foot side yard is required for a "new" detached single-family dwelling pursuant to D § 208.2.

As demonstrated herein, the Applicant seeks area variance relief under the equitable doctrine of estoppel, based on the Applicant's substantial and good-faith reliance on DOB's issuance of valid permits.

II. JURISDICTION OF THE BOARD.

The Board has jurisdiction to grant the area variances from D-208.2 pursuant to X § 1002.1(a).

III. BACKGROUND.

The Property is located in the R-1B zone and is an interior record lot containing approximately 6,850 square feet of land area, improved with a detached single-family home. The existing home has two side yards: a five-foot (5 ft.) side yard to the north and a side yard to the south that exceeds eight feet (8 ft.).

The Applicant sought to update and expand the existing home through an addition that generally maintained the location of the structure. To accomplish this, the Applicant proposed demolition of the front (west) wall, the side (south) wall, and the rear (east) wall, while retaining the northern wall. The plans (the "**Plans**"), included as Exhibit A, and the plat (the "**Plat**"), included as Exhibit B, which were submitted for permit approval, clearly depict that all walls except the northern wall were proposed to be demolished.

On September 15, 2025, the Applicant was issued Building Permit No. B2301079 (Exhibit C) for a single-family home with an accessory dwelling unit. The permit described the scope of work as follows: "Complete interior remodel and addition to existing single-family home. All new building systems and finishes. Home will be unoccupied during construction." There was no indication in the permit review or issuance process that DOB considered the project to constitute a zoning raze or otherwise treated it as new construction under the Zoning Regulations.

Construction commenced immediately in September 2025 in full reliance on the validly issued permit. The Applicant proceeded with demolition and construction strictly in accordance with the approved Plans. Photographs included as Exhibit D show the retained northern wall. On December 9, 2025, after submission of a wall check (Exhibit E) demonstrating that demolition and new construction were completed in accordance with the permit drawings, DOB zoning reviewer Ernesto Warren emailed the project architect. In that email, included as Exhibit F, Mr. Warren stated:

> *"I talked to the supervisory team and they have determined that unless a minimum of 40% of the original envelope walls were kept on site, a new building must provide two 8ft. side yard setbacks; therefore, relief from the Board of Zoning adjustment will be required.*

Attached is the Zoning Administrator's interpretation 10: Demolition versus raze for Zoning purposes."

IV. THE APPLICANT MEETS THE REQUIREMENTS FOR AREA VARIANCE RELIEF

The Applicant seeks area variance relief from Subtitle D § 208.2 under the doctrine of equitable estoppel, which compels approval where the District has affirmatively issued permits and the Applicant has substantially and in good faith relied upon those approvals.

A. Estoppel

The elements of equitable estoppel are clearly satisfied based on DOB's affirmative issuance of the building permit and the Applicant's substantial, good-faith reliance thereon.

1. Extraordinary or Exceptional Condition Affecting the Property.

An "exceptional situation or condition" may arise from "events extraneous to the land," including a property's zoning or permitting history. See, e.g., De Azcarate v. Bd. of Zoning Adjustment, 388 A.2d 1233, 1237 (D.C. 1978); Monaco v. Bd. of Zoning Adjustment, 407 A.2d 1091, 1097–98 (D.C. 1979). In Monaco, the Court recognized that a zoning history that implicitly approved a use and gave rise to good-faith, detrimental reliance could establish the requisite exceptional condition. See also BZA 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 Condominium Unit Owners Association (2016).

Specifically, an applicant's good-faith reliance on actions of DOB (formerly DCRA) officials may constitute an exceptional condition. In Monaco, the Court of Appeals held that zoning history could be considered in determining uniqueness. BZA Case No. 17264 followed this reasoning, with the support of the Office of Planning, and was approved by the Board. In that case, the applicant constructed a deck without a permit and subsequently received a permit that was later revoked.

In BZA Case No. 18570, the Board reaffirmed that reliance on permit issuance can support a variance request. There, DCRA issued a permit to renovate a building into three units and later

rescinded that approval when the applicant sought a certificate of occupancy after completing the work. The Board granted relief under equitable estoppel based on the applicant's reliance.

Similarly, in Case No. 18725, the Board again recognized that zoning history, including good-faith reliance on agency actions, can constitute an exceptional condition. This rationale was most recently reaffirmed in Case No. 19366, where the Board described reliance on permit issuance as a "compelling" basis for variance relief.

Here, the exceptional situation arises directly from the Property's permitting history and the Applicant's good-faith reliance on DOB's actions. But for DOB's issuance of the building permit and zoning approval, the Applicant would not be seeking variance relief for the side yard. The Applicant had every reason to proceed with construction as permitted, without fear of interruption or retroactive reclassification.

(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>.

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 was issued on September 15, 2025.

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 DOB.

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 three (3) months after the issuance of the Building Permit, longer than the amount of time in *Saah*.

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

In *Saah*, 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.* The same is true here.

Critically, the condition triggering DOB's reclassification, the extent of wall demolition, has already occurred and cannot be undone. Avoiding a zoning raze is no longer possible. Compliance at this stage would require demolition of the remaining wall and relocation of the structure three feet to the south, resulting in the loss of existing building area and rendering much of the completed work wasteful. Had DOB raised this issue earlier, the Applicant could have modified the project at minimal cost. At this stage, the consequences are catastrophic.

5. <u>The Equities Strongly Favor the Applicant</u>.

"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.

Here, compliance would require approximately $311,000 in additional construction costs, based on the contractor's estimate (Exhibit G), far exceeding the amount deemed sufficient in *Saah*. Compliance would also require full demolition and redesign, months of delay, and extended displacement from the Applicant's primary residence.

There are no safety or health concerns. The project complies with all other R-1B development standards, and the existing five-foot side yard would be permitted under Subtitle D § 208.7 but for DOB's retroactive treatment of the project as a zoning raze.

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 proposal is to maintain the existing non-conforming side yard which would otherwise be permitted as a matter-of-right, but for the demolition of the <u>other</u> walls.

Granting estoppel in the present case will also not create "bad precedent for the neighborhood and its ability to enforce the R-1B 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-D DCMR § 208.2 would be minimal and outweighed by the injury estoppel would avoid.

B. <u>Strict Application of the Zoning Regulations would Result in a Practical Difficulty.</u>

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, without the relief, the Applicant would have to demolish the only remaining wall, and portions of the newly completed wall sections for the front and rear walls, tear up additional supporting materials, and relocate everything three feet to the south. This would cost approximately $311,000. Strict application of the regulations would require demolition, reconstruction, and relocation of the structure, at an estimated additional cost of approximately $311,000 and a delay of roughly six months. Because this project involves the renovation of the Applicant's primary residence, the Rosenbaums are not able to occupy their home during construction and would incur approximately $20,000 in additional, unanticipated temporary housing expenses. These are not abstract or speculative burdens borne by a developer, but concrete and personal hardships imposed on homeowners who relied in good faith on DOB's approvals. Taken together, these impacts plainly constitute a practical difficulty under District law.

C. 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 side setback requirement, the Project meets all the development standards of the R-1B Zone. Moreover, the permitting history is unique in that the Applicant requests relief because it detrimentally relied on assurances by DOB and spent a significant amount of money as a result. The relief is triggered by the demolition of other walls that have nothing to do with the existing non-conforming side yard that the Applicant is requesting to maintain. And the Applicant would sustain a significant financial loss and delay in redesigning and moving that wall after relying on the validly issued Building Permit if relief was not granted. 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.

Here, the Applicant 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 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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