APPELLANT'S STATEMENT
BOARD OF ZONING ADJUSTMENT

Appeal of Zoning Administrator Determination
Denying the Request for Estoppel related to
Building Permit # B2504679,
Appellants/Property Owners: Paul and Kathy Rosenbaum
Property: 6117 32nd Place, NW

I. Introduction

This appeal (the "**Appeal**") is submitted by Paul and Katherine Rosenbaum (the "**Owners**"), owners of 6117 32nd Place, NW (Square 2019, Lot 8) (the "**Property**"). The central issue in the appeal is whether D-208.3 should apply to the project. The Appellant argues that it should not under two grounds.

First, the Appellant challenges the March 6, 2026, determination of the Zoning Administrator denying the Owners' request for equitable estoppel (the "**Denial Letter**" attached as Exhibit A). As set forth below, the Denial Letter is legally and factually flawed. The record demonstrates that DOB issued a building permit after full review, the Owners relied on that permit in good faith, substantial and irreversible construction occurred, and the equities overwhelmingly favor the Owners. Under controlling law, including *Saah v. D.C. Bd. of Zoning Adjustment* (attached as Exhibit B), estoppel is required. Accordingly, D-208.3 should not apply and the Stop Work Order should be lifted.

Second, 11-D DCMR § 208.3 does not apply to this project because, by its terms, that provision governs new construction—and the Owners' project is not new construction. It is an addition to an existing single-family dwelling, as depicted in the Plans and Plat and as approved by DOB in the Permit. The Zoning Administrator's contrary conclusion rests entirely on Zoning Administrator Interpretation 10 ("**ZAI-10**"), a document that has no anchor in the text of the Zoning Regulations, has never been adopted by the Zoning Commission through rulemaking, and—as the comparative analysis in Section VI and Exhibit C demonstrates—is the only one of the thirty-two Zoning Administrator Interpretations ever published that cites no specific regulation, identifies no ambiguous term, and announces a substantive numerical threshold with cascading legal consequences. The Zoning Administrator cannot, by bulletin, establish a substantive rule that the Zoning Commission has not adopted. Nor can she invoke ZAI-10's own "case-by-case" framework to undo the determination her office already made when it approved the Permit. On this case, the Office of Zoning Administration reviewed the Plans and the Plat, applied the "case-by-case" review ZAI-10 contemplates, and approved the project as an addition. That approval cannot be revisited months later, after substantial construction, to reach the opposite result. As set forth below, even apart from equitable estoppel, the Department's application of Zoning

Administrator Interpretation 10 is legally flawed and cannot support enforcement of 11-D DCMR § 208.3 under these circumstances.

II. Timely Filing

This Appeal meets the jurisdictional requirement of timeliness, as specified in Subtitle Y Section 302.2. The Appellants first had notice and knowledge of the decision being appealed on March 6, 2026, 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 Owners have 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, and financing costs. Mr. and Mrs. Rosenbaum are clearly aggrieved by the decision being appealed and therefore have standing to file this Appeal.

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

IV. Background

The Property is located in the R-1B zone and is improved with a detached single-family dwelling constructed in the 1920s. The existing home includes a lawful, pre-existing nonconforming side yard on the north side measuring approximately 4.9 feet. Under Subtitle D § 208.7, that side yard may be maintained and extended in connection with an addition, provided it is at least five feet. The proposed addition meets that requirement.

In 2025, the Owners sought to renovate and expand the existing home through an addition that generally maintained the location and footprint of the structure. The project was designed and submitted as an addition, which is the correct categorization under the Building Code, which governs the scope of work reviewed across all disciplines, including zoning. The plans (the "**Plans**" attached as Exhibit E) and plat (the "**Plat**" attached as Exhibit F) clearly depicted the scope of demolition, including removal of portions of the front, rear, and south walls, while retaining the north wall, which is approximately 4.9 feet from the northern property line.

Those plans were submitted to DOB and reviewed through the standard permitting process, including zoning review. On September 23, 2025, DOB issued Building Permit No. B2504679, attached as Exhibit G, approving the project as an addition to an existing single-family dwelling.

Relying on that permit, the Owners commenced construction and performed demolition and reconstruction in strict accordance with the approved plans.

Approximately three months later, in December 2025, after submission of a wall check confirming that construction matched the approved plans, DOB revisited the project and determined—based on Zoning Administrator Interpretation 10 (Exhibit H)—that the extent of demolition required the project to be treated as a "raze" for zoning purposes only. The Zoning Reviewer even admitted that DOB erred in issuing the permit, as further supported by the Affidavit of the Architect detailing the events, attached as Exhibit I. As a result, DOB reclassified the project as new construction.

That reclassification created a zoning issue, as new construction in the R-1B zone requires an eight-foot side yard and the retained north wall is approximately 4.9 feet from the northern property line, and the addition maintains a compliant five-foot side yard. DOB directed the Owners to seek variance relief. The Owners also requested equitable estoppel based on DOB's permit issuance, their good-faith reliance, and DOB's subsequent reversal. The Zoning Administrator denied that request in the Denial Letter.

V. ZA Interpretation 10 Has No Basis in the Zoning Regulations and Cannot Lawfully Support the Enforcement Action Against the Property

Even apart from the estoppel analysis above, the Board should reverse the Denial Letter because the Zoning Administrator's entire enforcement theory depends on ZAI-10, a document that does not have, and has never had, the force of law. The sole basis for the December 2025 reclassification—and for the Stop Work Order, the loss of vesting of the nonconforming side yard, and the invocation of 11-D DCMR § 208.3—is an administrative "interpretation" that is not contained in Title 11, was not promulgated by the Zoning Commission, and purports to establish substantive thresholds found nowhere in the Zoning Regulations.

A. ZAI-10 Is Not Codified in the Zoning Regulations

ZAI-10 was published by the Department of Buildings on October 1, 2019. It has never been incorporated into the text of Title 11 of the DCMR. Neither "zoning raze," nor the 40–50% enclosing-exterior-wall-area threshold, nor any "case-by-case" review of demolition percentages for vesting purposes, appears anywhere in the Zoning Regulations. The text of 11-D DCMR § 208 says nothing about these concepts. Instead, ZAI-10 was posted on the DOB website and treated, internally, as binding law.

That omission is not an oversight. In the more than six years since ZAI-10 was issued, the Zoning Commission has adopted a number of text amendments to Title 11. In those text amendments, the Commission has, where appropriate, codified the substance of specific Zoning Administrator interpretations — bringing them into the text of the Zoning Regulations through formal rulemaking. A detailed comparison of ZAI-10 to the other Zoning Administrator Interpretations, including the codification status of each, is set forth in Section VI below and in the

chart attached as Exhibit C. Nor is there anything in the Building Code that backfills the purported ZAI-10 threshold for zoning purposes. To the contrary, the Building Code defines "addition," "demolition," and "raze" at 12-A DCMR § 202, and those definitions are codified. Under those codified definitions, the Owners' project is an addition, not a raze. The Zoning Administrator's reclassification depends on a percentage threshold (40–50% of enclosing exterior wall area) that appears in neither the Zoning Regulations nor the Building Code. It exists only in ZAI-10.

B. ZAI-10 Purports to "Establish" a New Substantive Regulation, Which the Zoning Administrator Lacks Authority to Do

On its face, ZAI-10 does not interpret any particular text of the Zoning Regulations. It states that it "establishes the minimum threshold at which the demolition of a building is not considered a raze." (Exhibit H) (emphasis added). That word is telling. A true interpretation applies existing text to particular facts. ZAI-10 does neither. It sets a new rule—a 40-to-50% retention threshold—that does not appear in any provision of the Zoning Regulations, and it attaches legal consequences (loss of vesting, loss of parking credit, triggering of setbacks applicable to new construction) to that new threshold.

That is rulemaking; not interpretation. Under the Home Rule Act and the Zoning Act of 1938, authority to adopt substantive zoning regulations in the District of Columbia rests with the Zoning Commission, and substantive zoning rules must be adopted through notice-and-comment rulemaking. The Zoning Administrator's role is to administer and enforce regulations that have been adopted; it is not to create new regulations by bulletin. To the extent ZAI-10 sets a binding substantive threshold that triggers loss of nonconforming-use and related rights, it exceeds the Zoning Administrator's authority and cannot lawfully be enforced against the Owners.

C. On the Owners' Case, ZAI-10 Was Applied and the Project Was Approved

Even accepting ZAI-10 on its own terms, the Zoning Administrator's application of it to the Property is internally inconsistent with the document itself. ZAI-10 expressly provides that where the footprint of a building is being expanded and some enclosing perimeter walls are being completely removed, "the Office of Zoning Administration will, on a *case-by-case basis*, review the percentage of the removal of the building's enclosing exterior wall area and determine a minimum percentage of wall area that has to be retained." (Exhibit H) (emphasis added). It is the Office of Zoning Administration's own case-by-case review—not a mechanical 40-to-50% rule—that determines the outcome in any individual case.

Here, that review took place. The permit application, the Plans, and the Plat disclosed the proposed expansion of the footprint and the proposed removal of portions of the front, rear, and south walls, while the north wall—the wall associated with the pre-existing nonconforming side yard—was to be retained. Zoning staff reviewed the application and, in the first review cycle on May 29, 2025, approved it as an "[a]ddition, alteration and repair of existing single dwelling unit in the R-1B." (Denial Letter at 3, Exhibit A) Permit B2504679 issued on September 23, 2025 on that basis. Under ZAI-10's own "case-by-case" framework, the Office of Zoning Administration

made the determination entrusted to it, and that determination was that the project was not a zoning raze and that the nonconforming side yard remained vested.

The Zoning Administrator's current position treats the December 2025 wall-check review as if it were the first "case-by-case" review under ZAI-10. It was not. The case-by-case review required by ZAI-10 occurs during plan review, when the footprint expansion and the scope of wall removal can be evaluated against the application as a whole—exactly as they were here. ZAI-10 does not authorize the Office of Zoning Administration to re-perform its own discretionary review months later, after the permit has issued and construction is substantially complete, and to reach the opposite conclusion. If it did, no approval under ZAI-10 would ever be final, and applicants would have no way to know, at the time of permit issuance, whether their project is a zoning raze or not. That is neither what ZAI-10 says nor what the Zoning Regulations permit.

D. 11-D DCMR § 208.3 Does Not Apply, and the Project Is Governed by the Codified Side-Yard Regulations

Because ZAI-10 does not furnish a lawful basis to treat the project as a raze, there is no "new construction" on the Property for purposes of the side-yard regulations. The project remains what the Plans and Plat depict and what Permit B2504679 approved—an addition, alteration, and repair of an existing single-family dwelling in which the pre-existing nonconforming north wall, and the associated 4.9-foot side yard, are retained. The governing provision is therefore 11-D DCMR § 208.7, under which the pre-existing nonconforming side yard may be maintained and extended in connection with an addition, provided the extension is at least five feet. The addition as designed satisfies that standard. 11-D DCMR § 208.3 has no work to do in this case because the predicate the Zoning Administrator invokes—the existence of a "zoning raze"—is the product of ZAI-10 and ZAI-10 alone.

For these reasons, the Board should reverse the Denial Letter not only on estoppel grounds but also on the independent ground that the enforcement action rests on an uncodified administrative directive that has no force of law, that exceeds the Zoning Administrator's authority insofar as it purports to establish a substantive rule, and that, even on its own terms, was applied and resolved in the Owners' favor at the time the permit was issued.

VI. Comparative Analysis of ZAI-10 Against the Full Corpus of Zoning Administrator Interpretations

The preceding section explains why ZAI-10 cannot lawfully support the enforcement action as a matter of legal theory. This section demonstrates the same conclusion empirically, by comparing ZAI-10 against every other Zoning Administrator Interpretation the Department of Buildings has ever published. The Department has issued thirty-two Zoning Administrator Interpretations. A summary comparison of all thirty-two is set forth in the chart attached as Exhibit C. The analysis that follows walks through that chart in detail. When the full corpus is examined,

ZAI-10 stands alone. It is the only Zoning Administrator Interpretation that simultaneously: (i) cites no specific regulation of Title 11; (ii) identifies no ambiguous or undefined term being clarified; (iii) invokes no Commission-supplied interpretive methodology; (iv) announces a substantive numerical threshold with cascading legal consequences; and (v) has never been codified through rulemaking despite the Zoning Commission's adoption of multiple omnibus text amendments since ZAI-10 was issued. Every other Zoning Administrator Interpretation does at least one—and usually several—of the things ZAI-10 does not do.

A. Every Other Zoning Administrator Interpretation Is Anchored to Specific Regulatory Text

A legitimate interpretation of the Zoning Regulations identifies the specific regulation it is construing, identifies the term or phrase in that regulation requiring clarification, and resolves the interpretive question by reference to the regulation's text. Thirty-one of the thirty-two published Zoning Administrator Interpretations do exactly that. A representative sample illustrates the pattern:

ZAI-002 (Balconies and Gross Floor Area) quotes Subtitle B § 304.8 in full, identifies the ambiguous term ("exterior balcony"), and resolves the ambiguity with a rule derived from the regulation's structure (a balcony with three or more walls is an inset balcony). ZAI-004 (Meaning of "Abut") begins by citing Subtitle B § 100.1(g), which directs the Zoning Administrator to use Webster's Unabridged Dictionary for undefined terms, applies that Commission-prescribed methodology, and delivers the resulting definition. ZAI-008 (Driveway Widths) quotes Subtitle C § 711.6 and, where the regulation is silent on when two-way traffic is required, defers to case-by-case expert evaluation rather than inventing a threshold. ZAI-009 (Rooftop Dining Areas) quotes Subtitle C § 1501.1(d) and applies its text to a specific fact pattern. ZAI-020 (Accessory Apartment Minimum GFA) identifies a drafting omission in Table U § 253.7(a) and fills the gap using the existing table's own bottom-tier minimum. ZAI-032 (Co-living) works through each applicable Subtitle C, Chapter 10 provision—§§ 1005.1, 1005.3, 1005.5, 1006.10—and explains how each existing regulation applies to a novel living arrangement.

Even the Zoning Administrator Interpretations that announce numerical thresholds—and there are several—do so within the framework of a specific, quoted regulation. ZAI-006 (Pergolas and Trellises) sets a 24-inch on-center standard for when framing constitutes "building area" under Subtitle B § 312. ZAI-013 (Microbreweries in PDR Zones) adopts a 20% on-site consumption threshold to distinguish principal manufacturing use from accessory eating-and-drinking use, anchored throughout to Subtitle U § 801.1(v) and related use-category regulations. ZAI-019 (Attic Space) derives a 6-foot-6-inch threshold directly from the express text of Subtitle B § 304.7. In each case, the numerical threshold is a line-drawing tool operating within a specific regulatory provision the interpretation quotes and construes.

ZAI-10 does none of this. It does not quote any regulation. It does not identify any ambiguous or undefined term. It does not invoke any Commission-prescribed methodology. It does

not derive its 40-to-50% threshold from any provision of Title 11 or of the Building Code. It simply declares the threshold and attaches legal consequences to it. In the entire corpus of thirty-two Zoning Administrator Interpretations, ZAI-10 is the only one that operates this way.

B. ***The Zoning Administrator's Consistent Practice in the Face of Regulatory Silence Is Restraint—Except in ZAI-10***

The corpus also reveals a consistent institutional practice. When the Zoning Administrator encounters genuine regulatory silence on a substantive question, her documented response—across multiple Zoning Administrator Interpretations spanning more than five years—is restraint. She administers what the Zoning Commission has adopted; she declines to regulate what it has not.

ZAI-014 (Signs) acknowledges that the current Zoning Regulations do not address the regulation of signs and accordingly states that "the Office of Zoning Administration does not normally review applications for signs." ZAI-025 (Fences) identifies the limited scope of regulatory treatment of fences and concludes that "the Office of Zoning Administration does not generally review applications for fences," with narrow exceptions for fences that block required driveway or parking access. ZAI-008 (Driveway Widths), as discussed above, encounters regulatory silence on when two-way traffic is required and defers to traffic-engineer evaluation at the applicant's expense. ZAI-032 (Co-living) observes that "currently there is no provision in the Zoning Regulations that exempts dwelling units that contain co-living arrangements from the IZ requirements" and accordingly applies the existing Inclusionary Zoning framework as written, rather than crafting a new regime.

ZAI-10 inverts this settled posture. The Zoning Regulations are silent on "zoning raze"—they contain no definition of the term, no threshold for when demolition becomes raze, and no percentage formula for enclosing-exterior-wall-area retention. Confronted with that silence, ZAI-10 does not administer what the Commission has adopted; it announces a 40-to-50% substantive threshold and attaches loss of vesting, reclassification as new construction, and triggering of new setback regimes to that threshold. That is the opposite of the restraint the Zoning Administrator has exercised in every other interpretation involving regulatory silence.

C. ***ZAI-029, the Only Other Zoning Administrator Interpretation Addressing Raze and Loss of Nonconforming Rights, Does Not Reference ZAI-10***

The comparison becomes particularly telling when ZAI-10 is placed alongside the other Zoning Administrator Interpretation that addresses the same legal concept—the loss of nonconforming rights upon raze. ZAI-029 (Allow Replacement of Accessory Buildings with Non-Conformities), issued in February 2021, expressly addresses when a nonconforming building "once razed, 'lose[s]' [its] non-conforming rights." Unlike ZAI-10, ZAI-029 quotes its governing regulation (Subtitle C § 202.2), reasons from the text of that regulation, and describes the raze-triggering-loss-of-nonconformity rule in the ordinary language of the Zoning Regulations—"once razed," full stop. ZAI-029 does not mention ZAI-10. It does not invoke a 40-to-50% wall-area

threshold. It does not treat "raze" as a term of art requiring percentage-based measurement. When the Zoning Administrator's own more recent interpretation on precisely this subject was drafted, ZAI-10 was apparently not understood as the governing framework—and ZAI-029, which *is* anchored to codified regulatory text, is the more reliable guide to what "raze" means for nonconforming-rights purposes.

D. ***The Zoning Commission Codifies Zoning Administrator Interpretations When They Are Treated as Substantive—ZAI-10 Has Never Been Submitted for Codification***

When a Zoning Administrator Interpretation is doing substantive work that the Zoning Commission determines warrants the force of law, the Commission's consistent practice is to codify it. Three completed and two pending examples establish the pattern:

ZAI-001 (Roof Membrane and Building Height) was superseded by Subtitle C § 1504.2(b) and Subtitle B § 306.7 through Final Rulemaking and Order No. 14-13E, published at 68 DCR 13834 on December 24, 2021. The Department of Buildings' current website posting of ZAI-001 expressly states that the interpretation has been "superseded by" the codified regulations—documenting DOB's own institutional understanding that Zoning Administrator Interpretations are placeholders that yield to the Commission's adopted text once the Commission acts.

ZAI-005 (Parapet as Rooftop Deck Railings Without Setback) was similarly superseded by Subtitle C § 1504.2(a), and the DOB website again documents the supersession on the face of the interpretation.

ZAI-007 (Rooftop Architectural Element), issued May 3, 2024, has been partially codified into Subtitle E §§ 204.1 and 204.2, with the DOB website again marking the partial supersession on the face of the interpretation.

The codification process continues. Z.C. Case No. 25-12, the Office of Planning's pending omnibus text amendment case, codifies the substance of ZAI-002 (Balconies and Gross Floor Area) through amendments to Subtitle B § 304.8 and ZAI-028 (Accessory Building Summary—RF Zones) through amendments to Subtitle D §§ 5003, 5004, 5005 and Subtitle E § 5003. That case also codifies aspects of the Zoning Administrator's practice regarding penthouse habitable-space calculation—the Office of Planning stated on the record that the proposed amendment "reflects current practice by the Zoning Administrator." The Notice of Proposed Rulemaking for Z.C. Case No. 25-12 was issued following six public hearings, extensive stakeholder input, and formal proposed action by the Commission on December 18, 2025. Final action is imminent.

These examples establish that codification through formal rulemaking is the accepted mechanism for translating Zoning Administrator interpretive guidance into binding substantive law. The process is well-defined: the Office of Planning petitions the Commission; the Commission sets the matter down for a public hearing; notice is published in the District of Columbia Register; public testimony is received; the Commission deliberates and takes proposed action; and final rulemaking follows after additional public comment. That is how the substance

of ZAI-001, ZAI-005, ZAI-007, ZAI-002, and ZAI-028 entered the Zoning Regulations. It is also how the substance of ZAI-10 would need to enter the Zoning Regulations, if the Commission concluded that the 40-to-50% threshold should have the force of law.

That process has not been undertaken for ZAI-10. In the more than six years since ZAI-10 was issued on October 1, 2019, the Commission has considered and adopted multiple omnibus text amendments. None has codified ZAI-10 or its 40-to-50% threshold. The Office of Planning, which is the usual petitioner for codification of Zoning Administrator practice, has never proposed codification of ZAI-10. The Zoning Commission's sustained decision not to adopt ZAI-10—notwithstanding the many opportunities it has had—is itself meaningful. Where the Commission knows how to codify an interpretation and has repeatedly chosen not to, the Zoning Administrator cannot fill that gap unilaterally by treating the uncodified interpretation as if it had been codified.

E. The Zoning Administrator's Own Recent Interpretations Acknowledge That Zoning Administrator Interpretations Are Non-Binding

Finally, the Zoning Administrator herself—in her most recent interpretations—acknowledges the limited legal status of Zoning Administrator Interpretations. ZAI-031 (Medical Cannabis Business Locations), issued May 1, 2024, contains the following express caveat: "This interpretation reflects the Zoning Administrator's current interpretation of the Zoning Regulations in effect at the date of the posting of this document on dob.dc.gov and is subject to change due to revisions of the Zoning Regulations, decisions of the Board of Zoning Adjustment or Zoning Commission, experience in reviewing and enforcing the Zoning Regulations, or change in applicable law or rulemaking." ZAI-032 (Co-living) includes the same language. Both caveats expressly acknowledge that Zoning Administrator Interpretations yield to the Commission's adopted regulations, to Board of Zoning Adjustment decisions, and to subsequent rulemaking. They are not binding substantive law; they are the Zoning Administrator's current interpretive guidance, and no more.

That concession cuts directly against the Department's position here. The Zoning Administrator cannot in one set of interpretations acknowledge that a Zoning Administrator Interpretation is subject to change based on "experience in reviewing and enforcing the Zoning Regulations" or on "decisions of the Board of Zoning Adjustment" or the Zoning Commission, and in another case ask this Board to treat ZAI-10 as if it had the fixed and binding force of substantive law. A Zoning Administrator Interpretation that is acknowledged to yield to Board decisions cannot be used to bind the Board's hands in reviewing this appeal.

F. Synthesis

Of the thirty-two Zoning Administrator Interpretations the Department of Buildings has published, thirty-one share features that mark them as legitimate interpretive exercises: they cite the regulation being construed, they identify the term being clarified, they apply a methodology traceable to the Zoning Regulations, they exercise restraint when the regulations are silent, or they have themselves been codified by the Commission through rulemaking. Most of the thirty-one

share several of those features. ZAI-10 shares none. It is the only Zoning Administrator Interpretation in the corpus that invents a substantive numerical threshold with cascading legal consequences, without citing any regulation, without identifying any ambiguous term, without invoking any Commission-supplied methodology, and without ever being submitted to the Commission for codification. The appropriate consequence is that ZAI-10 cannot be treated as if it had the force of law. 11-D DCMR § 208.3 has no predicate in this case, and the enforcement action must be reversed.

VII. Overview of the Estoppel Argument

Saah is the most often-cited case on estoppel in the District. "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.").

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.

Each element is clearly satisfied—and satisfied in the same manner, and in several respects more strongly than in *Saah*.:

1. The Owner Acted in Good Faith

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 involves no mistakes in the Building Permit application, no misrepresentations, and no ambiguities. Prior to the issuance of the Building Permit, the Owners 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 Owners were 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 23, 2025. Unlike *Nathanson*, the Owners had no notice—actual or constructive—that the project would be treated as a zoning raze. The interpretation now relied upon by DOB is not codified in the Zoning Regulations and was not raised during plan review. The plans were complete, transparent, and approved. This is precisely the type of good-faith reliance recognized in *Saah*. This element is clearly satisfied.

2. **Affirmative Acts of DOB**

In *Saah*, the Court held that the issuance of a building permit constitutes the affirmative governmental act giving rise to estoppel. That is exactly what occurred here. DOB reviewed and approved the Plans and issued the permit. The Owners constructed the project exactly as approved.

Critically, DOB has acknowledged that the permit should not have been issued under the interpretation now being applied. This is therefore not a case of applicant error—it is an admitted agency error. Under *Saah*, reliance on such a permit is sufficient. This element is clearly satisfied.

3. **The Applicant 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. Per the administrative guidance, avoiding a zoning raze was impossible once the demolition reached 61%. 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. This is precisely the type of "expensive and permanent improvement" recognized in *Saah*. If anything, the reliance here is more severe. This element is clearly satisfied.

4. **The Equities Strongly Favor the Applicant**

In *Saah*, the Court held that the equities were "certain" to favor the applicant where enforcement would require substantial reconstruction and the public harm was minimal. *Saah*, 433 A.2d at 1117. The equities here are even stronger.

Here, compliance would require approximately hundreds of thousands of dollars in additional construction costs, based on the contractor's estimate (Exhibit J), far exceeding the amount deemed sufficient in *Saah*. That does not even include the work done up to the point. With that, the cost is likely over one million dollars ($1,000,000). Compliance would also require full demolition and redesign, months of delay, and extended displacement from the Applicant's primary residence. The human cost of enforcement further sharpens the equitable calculus. The Rosenbaums have lived at the Property for approximately forty years. This is their long-standing family home, and the renovation was undertaken so that they could continue to age in place safely. Compliance would require that they remain displaced from their home for an additional extended period on top of the displacement they have already endured since construction began—a displacement measured in months, not weeks, given the scope of demolition, redesign, and reconstruction that would be required. For homeowners, prolonged displacement of that kind is not a mere inconvenience; it carries serious and documented risks to physical and mental health, including the disruption of established medical care, loss of community and social support networks, and the well-recognized toll that housing instability takes. The equities do not require the Board to impose that outcome on the Rosenbaums to vindicate an uncodified interpretive threshold that the Zoning Commission has never adopted—particularly when, as discussed above, the project maintains the same pre-existing nonconforming side yard that has existed at the Property for approximately a century and creates no new burden on any neighboring property.

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 Owners 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 Owners 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 other 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.

As in *Saah*, requiring compliance here would be a "wasteful act" with no corresponding public benefit. This element is clearly satisfied.

VIII. <u>Zoning Administrator Denial is Flawed both Legally and Factually</u>

The Denial Letter is flawed both legally and factually. It attempts to shift responsibility to the Owners and their architect, suggest deficiencies that do not exist, and rely on an unwritten interpretation that was never raised during plan review—despite the fact that DOB approved the Plans and later acknowledged its own error.

The March 6 letter acknowledges that the Rosenbaum's acted in good faith by hiring a licensed architect and proceeding through the District's standard permitting process. However, the determination ultimately attributes the alleged error to the architect's failure to consider Zoning Administrator Interpretation 10 regarding demolition thresholds.

Respectfully, the legal concept of "good faith" does not require an applicant to anticipate or independently identify interpretive guidance that is not codified in the zoning regulations themselves and that was not raised during the permitting process. Good faith requires honesty and absence of intent to mislead. Nothing in the record suggests that the Rosenbaum's or their architect attempted to conceal the scope of the project or evade applicable regulations.

On the contrary, the project was fully disclosed at every stage of review. The permit application identified the work as an addition and renovation; the approved plat and plans clearly depicted the proposed demolition of the west, east, and south exterior walls and the retention of the north wall; and the site plan expressly illustrated the proposed expansion of the building footprint. These documents were reviewed and approved by DOB prior to issuance of Permit B2504679.

If the interpretation now cited by DOB was relevant to the zoning review, the appropriate time for that issue to have been raised was during the plan review process. The Rosenbaum's paid the required permitting fees, submitted the plans and plat for review, and waited through the full review cycle before receiving an approved permit. It was therefore entirely reasonable for them to rely on that approval.

Moreover, even if the Department were to view the situation as involving an error in interpretation, that does not negate good faith. Equitable estoppel exists precisely because mistakes can occur within the permitting process. Where an issue involves an unwritten or evolving

interpretation, particularly one reflected in informal guidance and applied on a case-by-case basis, the responsibility for that error cannot reasonably be placed on the applicant alone. The relevant question is not whether an error occurred, but whether the applicant acted transparently and in reliance on the Department's approval. Here, the record clearly demonstrates that they did.

A. The Scope of Work Was Fully Disclosed and Consistent With the Approved Plans

The March 6 determination suggests that inconsistencies in the permit application and supporting documents obscured the intended demolition of the structure. The evidence and documents do not support that conclusion.

The permit application described the project as an interior renovation and addition to an existing single-family dwelling. The submission materials clearly identified the amount of new construction and the expansion of the building footprint. The approved plat and site plan likewise depicted the proposed additions and the setbacks from the north property line.

Indeed, the plans approved by DOB explicitly showed the demolition and reconstruction that ultimately occurred in the field. After the wall check review in December 2025, the zoning reviewer confirmed that the demolition in the field matched the demolition shown on the approved plans and acknowledged that the permit had been approved in error.

In other words, the issue did not arise because the Rosenbaum's or their architect concealed information or misrepresented the project. Rather, it arose because a zoning interpretation that had not been raised during plan review was applied only after construction had commenced.

B. Addition v. Raze

To the extent the Department suggests that the characterization of the project as an "addition" contributed to the permitting error, that argument only underscores the Applicant's good faith. The term used in the application was not misleading—it was the correct classification under the Building Code. If anything, it confirms that the Applicant and design team accurately described the scope of work, and that the error arose from the Department's subsequent and separate uncodified "interpretation" not from any mischaracterization in the application materials.

Critically, the project is properly characterized as an "addition" under the District's Building Code, attached as Exhibit K. The Building Code defines an "addition" as "[a]n extension or increase in the building area, aggregate floor area, number of stories, or height of a building or structure." 12-A DCMR § 202. By contrast, "demolition" refers to the removal of structural elements or exterior walls that is less than a raze, and a "raze" is defined as the "complete removal of any existing structure." See id.

The approved plans and constructed work do not reflect the complete removal of the structure. Rather, they reflect an expansion of the existing building—i.e., an addition—precisely as disclosed and approved through the permitting process. The use of the term "addition" in the

permit documents was therefore not only reasonable, but accurate under the governing Building Code definitions.

Accordingly, the Department's reclassification of the project as a "raze" for zoning purposes is not only inconsistent with the Building Code definition of an addition—which this project satisfies—but also is not codified in the Zoning Regulations. Instead, it reflects a separate, case-by-case interpretation applied retroactively to work that was previously reviewed and approved as an addition. Under these circumstances, it would be unreasonable to expect an applicant to have identified and applied an interpretation that is neither codified nor aligned with the governing code definitions.

C. <u>The Department's Approval Constitutes an Affirmative Governmental Act</u>

DOB correctly notes that Permit B2504679 was issued on September 23, 2025, after review of the submitted plans and plat. The issuance of that permit—following full plan and zoning review—constitutes the affirmative governmental act upon which the Rosenbaum's reasonably relied.

The permit approval explicitly and correctly characterized the project as an addition and renovation to an existing single-family dwelling. Construction commenced in reliance on that approval, and substantial demolition and reconstruction occurred in accordance with the approved plans before the zoning issue was first raised.

The condition now cited as the basis for treating the project as a zoning raze—the extent of exterior wall demolition—was plainly depicted in the plans reviewed and approved by DOB. Because the relevant facts were disclosed during the permit review process, the subsequent reinterpretation of those same plans cannot reasonably be attributed to any lack of diligence or good faith on the part of the applicant.

D. <u>Substantial and Irreversible Reliance Has Occurred</u>

Following issuance of the permit, the Rosenbaum's commenced demolition and construction in reliance on the approved plans. By the time the zoning issue was first raised during the wall check review in December 2025, significant demolition and structural work had already been completed.

Importantly, the Department's letter appears to suggest that reliance should be measured only after the date the wall check was flagged—either December 9 or the December 29 inspection. That framing is inconsistent with both the record and the legal standard. Reliance began upon issuance of the permit and continued as demolition and reconstruction proceeded in accordance with the approved plans. Even if the Department were to measure reliance only as of the earliest date it now claims notice occurred, substantial demolition and structural work had already been completed by that time. Compliance at that stage—whether measured as of December 9 or December 29—would still require demolition, redesign, and relocation of the structure in addition

to significant delay and temporary housing costs for the displaced homeowners. At that stage, there was no feasible pathway to compliance short of total demolition and reconstruction.

More fundamentally, the Department's framing of reliance is misplaced. The critical moment is not when the issue was identified, but when the irreversible work was completed. Once the level of demolition now characterized as a "zoning raze" occurred, the condition could not be undone without complete redevelopment of the Property—including removal of the foundation and reconstruction of the entire structure.

In other words, the harm is not a function of timing—it is a function of the irreversible nature of the work performed in reliance on the permit. At that point, the project could not be brought into compliance without effectively starting over. The resulting damages are therefore not limited to delay or incremental redesign, but instead exceed $1 million when accounting for demolition, reconstruction, redesign, and displacement costs.

Moreover, the wall check was submitted at the stage required by District procedure—when the foundation was approximately one foot above grade—and therefore did not reflect any deviation from the normal construction sequence. When the issue was subsequently raised, the zoning reviewer confirmed that the demolition in the field was consistent with the demolition shown on the approved plans and acknowledged that the permit should not have been approved under the interpretation now being applied. In other words, the issue arose not from any failure of disclosure by the applicant or design team, but from an error during the Department's permit review process.

E. <u>The Availability of Variance Relief Does Not Eliminate the Equitable Considerations</u>

The Denial Letter concludes that the equities do not favor estoppel because variance relief may be available through the Board of Zoning Adjustment.

However, the theoretical availability of discretionary variance relief does not negate the reliance interests created by a validly issued permit. The purpose of equitable estoppel is to prevent exactly this type of situation—where a property owner relies on a government approval, invests substantial resources in reliance on that approval, and is later subjected to enforcement based on a retroactive reinterpretation of the same approval.

Moreover, the suggestion that the availability of variance relief weighs against equitable estoppel is particularly problematic in this case. Variances are subject to a stringent statutory standard under Subtitle X § 1002 and are granted only in exceptional circumstances involving extraordinary or exceptional conditions affecting the property. The relief now required arises solely from the Department's retroactive application of an interpretation that was not raised during permit review, despite the fact that the demolition scope was fully disclosed in the approved plans.

In addition, recent statements by the Board of Zoning Adjustment suggest that the Board may not view equitable estoppel as within its jurisdiction, meaning that the very reliance interests

at issue here may not be fully addressed in that forum. Suggesting that the availability of variance relief resolves the equities effectively shifts the consequences of the Department's acknowledged error onto the Applicant. It requires the homeowners to seek extraordinary relief for a condition that would not exist but for the Department's approval of the permit, and to bear the uncertainty, delay, and expense of that process. That is precisely the type of outcome equitable estoppel is intended to prevent. It also introduces a wholly new layer of discretion and uncertainty into a project that had already received final administrative approval.

The equities also weigh strongly in favor of estoppel because there is no corresponding harm to the public or to neighboring properties. The project maintains the same lawful, pre-existing nonconforming side yard that has existed for approximately 100 years. This is not a case where relief would introduce a new nonconformity beyond what previously existed. Rather, the issue arises from a technical threshold related to demolition—not from any change in the resulting built condition. Had the project been processed differently at the outset, the same physical outcome could have been achieved through the appropriate procedural path.

In this sense, the Department's position elevates process over substance, while imposing substantial and irreversible harm on the homeowners.

IX. <u>Conclusion</u>

Under these circumstances, equity requires that the District stand by its approval. This is not a case involving concealment, ambiguity, or post-permit deviation. The plans were clear, the review was complete, and the permit was issued. The Owners did exactly what the District authorized them to do. Under these circumstances, equity requires that the District stand by that approval.

The Rosenbaum's acted in full compliance with the plans reviewed and approved by the District. They relied on that approval in good faith and have invested significant resources in reliance on it. Allowing the project to proceed as permitted would simply preserve the status quo that existed at the time the permit was issued and would avoid imposing an extraordinary hardship resulting from an acknowledged error in the permitting process—DOB's error.

Respectfully submitted,

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_____
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Date: May 1, 2026