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VIA IZIS
Marnique Heath, Chairperson
Board of Zoning Adjustment
441 4th Street, NW
Suite 210S
Washington, DC 20001

June 7, 2016

**Re: Application No. 19255 — 1735 Fraser Court NW (Square 110, Lot 819)
Applicant's Supplemental Statement**

Chairperson Heath and Honorable Members of the Board:

On behalf of David G. Helfrich, please find the enclosed Supplemental Statement for the above-referenced application. The application is scheduled for a continued hearing before the Board of Zoning Adjustment on June 14, 2016.

Thank you for your attention to this matter.

Sincerely,

GRIFFIN, MURPHY,
MOLDENHAUER & WIGGINS, LLP



By: Meredith H. Moldenhauer

CC (via email): Michael Feldstein, SMD 2B01
Steve Cochran, Office of Planning

Board of Zoning Adjustment
District of Columbia
CASE NO. 19255
EXHIBIT NO. 43
WWW.WASHLAW.COM

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

**APPLICATION OF
DAVID G. HELFRICH**

**APPLICATION NO. 19255
HEARING: JUNE 14, 2016**

SUPPLEMENTAL STATEMENT OF THE APPLICANT

I. NATURE OF RELIEF SOUGHT

This Supplemental Statement is submitted on behalf of David G. Helfrich (the “Applicant”), the owner of the property known as 1735 Fraser Court NW (Square 110, Lot 819) (the “Property”), in support of his application for variance relief pursuant to 11 DCMR § 3103.2, from the requirements regarding additions to nonconforming structures (§ 2001.3)¹ to allow a 207-square-foot addition to a single-family dwelling that exceeds allowable lot occupancy, height, and floor-area-ratio (“FAR”) in the DC/R-5-B Zone District.²

II. ATTACHMENTS

Tab A:	Updated Architectural Plans
Tab B:	Average Lot Size Data for Square 110
Tab C:	L’Enfant Trust Conservation Easement
Tab D:	Email from L’Enfant Trust
Tab E:	Resume of Alex Venditti
Tab F:	Letter from Alex Venditti

¹ Prior counsel submitted correspondence from the Zoning Administrator, Matt LeGrant, indicating that the only relief needed is a variance from § 2001.3. However, based on discussions with the Office of Planning, we are willing to verbally amend the application to include a request for relief from floor-area-ratio (“FAR”) requirements (§ 402.4) if the Board determines it is necessary.

² As discussed in more detail below, the Board may, in the alternative, consider the proposed 37-square-foot elevator enclosure as a penthouse which does not contribute to the building’s FAR but instead merely requires special exception relief under § 411.11 for the side setback requirements of § 411.18(c)(1). This would reduce the amount of variance relief requested to 170 square feet, or 0.07 FAR.

III. JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the “Board”) has jurisdiction to grant the variance relief requested pursuant to D.C. Code § 6-641.07(g)(3).

IV. BACKGROUND

A. The Property and Surrounding Area

The Property has approximately 2,443 square feet of land area and is an alley lot. Square 110 is bounded by S Street NW to the north, 19th Street NW to the east, R Street NW to the south, and 20th Street NW to the west. The Property is located within the Dupont Circle Historic District and the building on the Property is considered a contributing building. The Property is also subject to a conservation easement the prior owner granted to the L’Enfant Trust, which prohibits alteration of the building’s façade without the L’Enfant Trust’s consent. Most of Square 110 is zoned DC/R-5-B, with the southwest corner being zoned DC/R-5-D. The surrounding area consists mostly of large apartment buildings and three-story rowhomes. The Fraser Mansion, at the southwest corner of the square, serves as offices for the Church of Scientology.

The building on the Property was constructed in 1892 as two carriage houses for the Fraser Mansion. While the Board is already aware of some of the background regarding the Property, the Applicant also offers additional context regarding the Property and the Project. The prior owner of the Property was Anthony P. Browne, a renowned interior designer who was known for his authentic English country arrangements and was featured, along with his home on the Property, in Architectural Digest. The Applicant was a close friend of Mr. Browne, who served as an interior designer for many prominent D.C. families, as well as Oprah Winfrey. Mr. Browne purchased the Property in 1999 and lived there until his untimely passing in 2011, which occurred when Mr. Browne tripped and fell and broke his hip. Due to the layout of the house, it was difficult for him

to get around and his health declined rapidly. The cause of his passing could have been addressed had he been able to make the home more accessible with an elevator for ease in access.

While Mr. Browne was alive, the Applicant and his partner discussed the possibility of buying the Property from Mr. Browne in order to raise their family in the house, and nothing made him happier. After his death, his estate lacked the funds to maintain the house and pay the mortgage, and so, despite being the beneficiary of the house in Mr. Browne's will, the Applicant was required to purchase the Property from the bank, a process that lasted over three years. Since buying the Property, the Applicant has been working to make it a home for his growing family.

A. The Project

In 2014, the Applicant and his partner started a family, having twins — a boy and a girl — using surrogacy. They love their twins and would like to have more children. To that end, they have embryos waiting and have been consulting with their clinic, ready to move forward. However, they need to resolve their living situation before doing so. Regardless of their increasing family size, the Property offers some challenges to their existing family that can be alleviated through the approval of the requested variance. Having an additional legal bedroom would create enough rooms for the Applicant's children to share with siblings of the same sex. The Applicant has lived in the District for 20 years, he and his family intend to stay at the Property long-term and would like, not only to raise their children there, but to age in place in the future.

Accordingly, as shown in the updated architectural plans at **Tab A**, the Applicant proposes to add a third bedroom to the dwelling by extending the second floor 7.6 feet over the existing ground floor, increasing the floor area by 170 square feet. The Applicant also proposes to construct a 37-square-foot addition on top of the second floor roof to provide an enclosure for an elevator.

Together, the additions would result in a *de minimus* increase of 0.08 FAR to the existing FAR of 2.38. This constitutes a 4.4% deviation from the maximum 1.8 FAR permitted in the zone.³

V. NATURE OF VARIANCE RELIEF SOUGHT AND STANDARD OF REVIEW

Variance relief is needed for the requirements regarding additions to nonconforming structures (§ 2001.3) because the Property is currently nonconforming with respect to height, lot occupancy, and FAR. Under D.C. Code § 6-641.07(g)(3) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

- (1) The property is affected by exceptional size, shape, or topography or other extraordinary or exceptional situation or condition;
- (2) The owner will encounter practical difficulties if the Zoning Regulations are strictly applied; and
- (3) The variance will not cause substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (internal citation omitted).

Applicants for an area variance must demonstrate that they will encounter “practical difficulties” in the development of the property if the variance is not granted. *See Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540–41 (D.C. 1972) (“[A]rea variances have been allowed on proof of practical difficulties only while use variances require proof of hardship, a somewhat greater burden.”). An applicant experiences practical difficulties when compliance with the Zoning Regulations would be “unnecessarily burdensome.” *See*

³ Moreover, as the Property currently has an FAR of 2.38, the proposed increase of 0.08 FAR would only constitute an increase of 3.3% of the existing FAR.

Gilmartin v. District of Columbia Bd. of Zoning Adjustment, 579 A.2d 1164, 1170 (D.C. 1990). Where, as here, the variance requested is *de minimus* in nature, there is a lesser burden of proof. *See id.* at 1171 & n.6.

VI. APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

A. The Property Is Affected by an Exceptional Situation or Condition

The phrase “exceptional situation or condition” in the above-quoted variance test applies not only to the land, but also to the existence and configuration of a building on the land. *See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974). Moreover, the unique or exceptional situation may arise from a confluence of factors which affect a single property. *Gilmartin*, 579 A.2d at 1168. The Property is characterized by an exceptional situation and condition as a result of (1) the existing nonconformities; (2) the fact that the Property is an oddly-shaped alley lot that is smaller than the typical lot in the square; (3) the historic character of the building and the existing preservation easement on the Property; (4) the lack of code-compliant emergency escape openings in the ground-floor media room and storage spaces and on the north façade of the third floor; and (5) the building’s unusual layout and configuration and the lack of a third bedroom in a house of this size.

1. Existing Nonconformities

As stated above, the Property is currently nonconforming with respect to height, lot occupancy, and FAR. The existing building has a height of 32.2 feet, whereas a maximum height of only 30 feet is permitted under § 2507.4.⁴ The Property has a lot occupancy of 97.1% where a maximum of 60% is permitted. 11 DCMR § 403.2. Lastly, the Property has an FAR of 2.38 where a maximum FAR of 1.8 is permitted. 11 DCMR § 402.4.

⁴ Under § 2507.4, the height of a structure on an alley lot may not exceed the distance from structure to the opposite side of the alley.

2. *Alley Lot Smaller than Typical Lot in the Square*

As stated above, the Property originally consisted of two separate carriage houses which have since been combined to create a single dwelling. Accordingly, the Property is an oddly-shaped alley lot that is substantially smaller than the typical lot in Square 110. As shown in the table attached at **Tab B**, the average lot size in the square is 3,889.78 sq. ft., whereas the Property has only 2,443 sq. ft. of land area. The result is that the Property has a nonconforming FAR of 2.38. Were the building on an average-size lot in the square, it would have an FAR of only 1.49, which is well within the maximum 1.8 FAR permitted in the R-5-B Zone.⁵ However, because the Property is uniquely shaped and is smaller than the typical lot in the square, it exceeds the maximum FAR and requires the relief requested for any addition.

3. *Historic Character of the Building and Existing Preservation Easement*

The existing building on the Property is a contributing structure in the Dupont Circle Historic District and is subject to a conservation easement held by the L'Enfant Trust which prohibits the Applicant from modifying the façade, including enlarging any windows. The conservation easement states, “[i]t is the intent of the parties that the Façade, Building and Property (except for minor changes in landscaping) remain essentially unchanged” L'Enfant Trust Conservation Easement, attached at **Tab C**, § I.F. The easement defines “Façade” as “all exterior surfaces of the improvements on the Property, including walls, roofs, and chimneys.” *Id.* The easement further provides that no alterations may be made to the building or façade “[w]ithout the express written consent of the [L'Enfant Trust], which consent may be withheld, conditioned or delayed in the sole and absolute discretion of the [L'Enfant Trust]” *Id.* § II.A. While the

⁵ As indicated in Note 1 **Tab B**, the average lot calculation does not take into consideration 9 lots in the square for which Office of Tax & Revenue online records do not provide lot area data. Moreover, as the map on page 2 of **Tab B** shows, of the 9 lots excluded, several of them are among the largest lots in the square, suggesting that the actual average lot size is higher than the estimate provided here.

L'Enfant Trust has approved the proposed addition, it has confirmed with the Applicant that alteration of any of the windows on the east, north, and west façades would not be permitted. See Email from L'Enfant Trust at **Tab D**.

4. *Non-Code Compliant Windows*

Several rooms in the house that might otherwise be converted into bedrooms may not be so converted because they do not provide the emergency escape opening required by Code. Under § R310.1 of the 2012 ICC Residential Code, each sleeping room must provide an emergency escape opening of no less than 5.7 square feet, and the maximum sill height permitted for such openings is 3 feet, 8 inches.

The media room and storage room on the ground floor have 6-foot high sills and, thus, exceed the maximum sill height permitted. Likewise, the windows along the façade of the third floor provide an opening of only 2.5 square feet, which does not meet the minimum required by the Code. The L'Enfant Trust has confirmed that it would not permit the height of these windows to be modified. Accordingly, neither the living room, the study, nor the master closet along the north side of the façade can be used as a bedroom.

5. *Unusual Layout and Configuration and Lack of a Third Bedroom*

The existing building has an unusual configuration in several respects. First, the Property lacks a third bedroom, which is extremely unusual for a home of this size and substantially limits the size of the family that may reside at the Property, as will be attested to at the hearing by Alex Venditti, an expert in real estate. See Letter from Alex Venditti at **Tab F**.

Additionally, the ground floor has two separate garage entrances, with garage doors that may not be modified pursuant to the preservation easement on the Property. Lastly, on the second floor, the house has a very unique dining room that has mirrored paneling, which opens to the

kitchen via double doors onto a bar counter. The dining room was created by the prior owner, interior designer Anthony P. Browne, to create a mock greenhouse with the mirrors illuminated by a skylight.

B. Lesser Burden Applies When Degree of Relief is *De Minimus*

At the outset, it is worth reiterating that, under Court of Appeals precedent, when a variance request is *de minimus* in nature, there is a “correspondingly lesser burden of proof” on the Applicant. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 & n.6 (also stating that “infinitesimal deviation . . . from complete compliance is clearly within the *de minimus* exception for granting dimensional variances”) (quoting *Stewart v. Zoning hearing Bd. of Radnor Township*, 531 A.2d 1180, 1182 (Pa. 1987)). In this case, the Applicant seeks to add an additional 207 square feet of space within the existing footprint of the building, which would increase the building’s FAR by 0.08 — a deviation of approximately 4.4% from the maximum 1.8 FAR. Because the degree of relief requested here is *de minimus*, a **lesser burden of proof applies**.⁶

The relief requested is directly connected to the Property’s confluence of unique factors. For instance, if the Property were a typical-size lot in the square, the existing building would have an FAR of only 1.49, which is well within the 1.8 FAR permitted in the zone, and no zoning relief would be needed for the proposed addition. However, because the Property is an atypical alley

⁶ Importantly, whether a variance request is *de minimus* is based upon the degree of increase in the nonconforming aspect of the Property and does not factor in the degree to which the Property is already nonconforming. For example, in *Application No. 17446 of Pauline S. Ney* (2007), the Board reviewed a request for a variance from, e.g., lot occupancy requirements. In that case, the property at issue was improved with a single-story building that provided a lot occupancy of 71% where only 60% was permitted. The applicant proposed to add a second story with a lot occupancy of 62.7%. Accordingly, the addition deviated from the standard by only 2.7%, and the Board stated that the relief was *de minimus*. The Board did not consider the fact that the existing structure already deviated from the maximum permitted by 11%. Likewise, here, the Applicant proposes an increase in FAR of only 0.08 where the maximum FAR permitted is 1.8. This constitutes an increase of only approximately 3.3% of the existing 2.38 FAR, which is clearly *de minimus*.

lot, variance relief is required. As outlined below, the unique features of the home make it practically difficult to add a minimal 170-square-foot of space without relief.

C. Strict Application of Zoning Regulations Would Result in Practical Difficulty

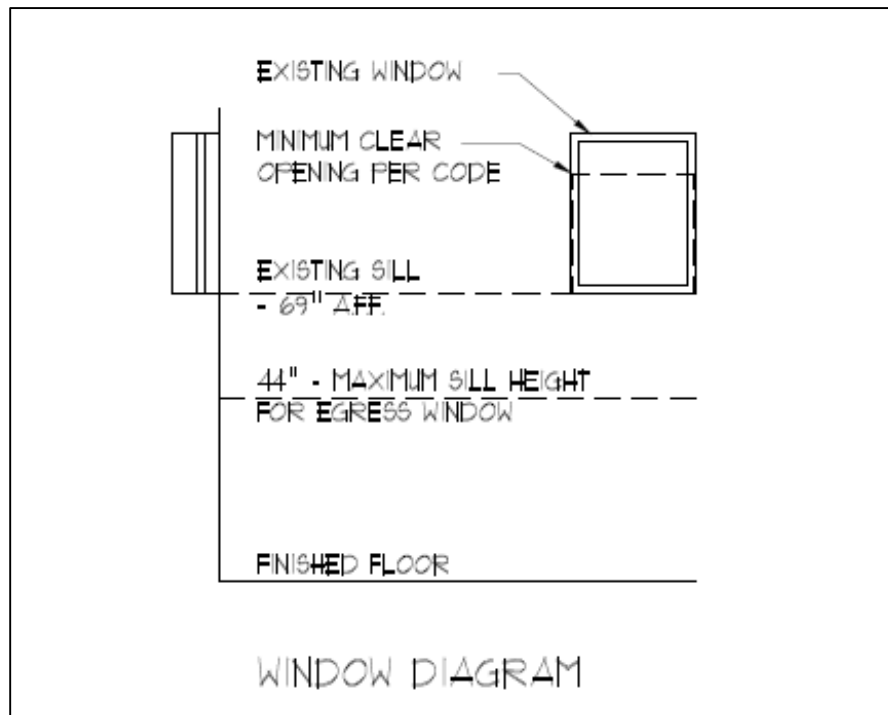
Strict application of the Zoning Regulations with respect to additions to nonconforming structures (§ 2001.3) would result in a practical difficulty in this case. The Applicant has extensively studied all options for adding a third bedroom within the existing envelope of the building, but, as discussed below, any other option presents a practical difficulty. Importantly, the standard for an area variance does not require that other options be absolutely impossible, but rather that they pose a practical difficulty in complying with the Zoning Regulations.

1. Third Bedroom

i. Ground Floor

Beginning on the ground floor, there are no workable locations for a bedroom there due to the two existing garage doors, the lack of Code-compliant emergency escape openings, and the requirement that the Applicant maintain the existing façade pursuant to the preservation easement imposed on the Property. Because the garage doors cannot be modified or replaced, the abutting space on the ground floor cannot function as a bedroom. Further, neither the media room nor storage space on this floor can be converted to a bedroom because the windows in those rooms have sills at a height of 6 feet, 1 inch, which exceeds the maximum 3 feet, 8 inches permitted by Code for emergency escape openings, which are required for any sleeping room. (See Window Diagram below.) Moreover, standard bedroom windows typically have a sill at 2 feet, 6 inches.

Because the L'Enfant Trust will not allow any of the existing openings to be modified, these deficiencies cannot be ameliorated.⁷



ii. Main Floor

Locating an additional bedroom within the existing second floor also proves extremely challenging. Converting the den is not workable, first, because it is accessed from an existing staircase and, second, because any conversion would require keeping the kitchen closed, which would not allow for a four-person dining table without blocking the normal circulation path. Additionally, locating a bedroom in the den is not practical because the nearest bathroom would be all the way across the house, and it would place a children's sleeping room directly next to one of the most active and public spaces in the home — the kitchen.

⁷ While there is an exterior door directly accessing the media room beneath the staircase leading to the second floor, the door opens onto the adjacent property and there is no legal right of egress via the property. Thus, it cannot serve as the required emergency escape opening.

Likewise, it is not practical to carve space out of the existing living room to create a bedroom. This would require creating a hallway as well because it is highly undesirable to have a bedroom accessed directly off of a living room. However, as shown in the architectural plans at **Tab A**, page A301, there are difficulties associated with either possible hallway. Putting a hallway along the front (north) façade would unnecessarily block all of the sunlight to the rest of the area, creating a dark space, while locating the hallway along the interior wall would require demolishing the existing fireplace, which would be wasteful.

Further, it is unreasonable to locate the bedroom in the existing dining room, which was paneled beautifully with mirrors by the prior owner in order to create a greenhouse-like environment. The Victorian Era paneling on the south wall of the room dates from the 1870s–‘80s and was preserved from an English conservatory. The rest of the paneling was custom-designed in England to replicate the original Victorian paneling and to fit the exact dimensions of Mr. Browne’s dining room. The room is a true treasure as a dining space; however, it would make for a very strange space for a child’s bedroom, not to mention that it includes double doors that open onto the kitchen countertop, functioning as a bar/service access. Moreover, the dining room cannot be converted because it lacks a window, which is, again, required by Code for a bedroom. No window can be added because the only exterior wall for the room is a party wall running along the Property boundary, which under the Code may not have a window.⁸ While at-risk windows are permissible, given the extent of renovation begin conducted, it is not reasonable to require the Applicant to create at-risk windows and a layout that would have to be reconfigured if the adjacent lot is developed.

⁸ Note that, in the plans initially submitted, the proposed bedroom adjacent to the dining room shows a window along this south wall. However, upon further review of the code requirements, it was determined that this is not permitted because the wall is face-on-line with the Property boundary. Accordingly, the updated plans at **Tab A** include reconfigured bedrooms, each with a window on the east wall.

Additionally, as shown in the plans at **Tab A**, page 2, the existing bedroom on the second floor cannot be reconfigured as two bedrooms without the proposed addition because the Building Code requires a bedroom to be at least 70 square feet in area and to have a width and length no less than 7 feet.

iii. Third Floor

Lastly, there is no place to locate an additional bedroom on the third floor. Specifically, the existing study and master closet cannot be converted to a bedroom because they lack the emergency access opening required by Code. A minimum opening of 5.7 square feet is required whereas the existing windows, which are prohibited from being modified by the preservation easement on the Property, are only 2.5 square feet.

For all of these reasons, the Applicant faces a practical difficulty in creating a third bedroom without the proposed addition.

2. *Elevator*

Applicant proposes to construct a small, 37-square-foot elevator enclosure along the south wall of the building. As shown in the architectural plans at **Tab A**, page G and 3, the only workable location for an elevator is the proposed location along the south wall of the building. Any other location would either block the existing hallway on the third floor or would require an alteration to the building's façade, which would not be permitted by the L'Enfant Trust. Accordingly, it is unnecessarily burdensome to require that the proposed elevator enclosure be located within the building's existing envelope, as doing so would block the major means of access through the third floor. Thus, the Applicant faces a practical difficulty in complying with the § 2001.3.

Importantly, under the new penthouse regulations adopted in Zoning Commission Case No. 14-13, which permit habitable penthouses, the proposed elevator enclosure could be

considered a penthouse addition. Under the new regulations, a penthouse is defined as a “structure on or above a roof of any part of a building.” 11 DCMR § 199. Accordingly, the elevator enclosure would constitute a penthouse addition onto the existing second-story roof. As such, the enclosure would not contribute to the building’s FAR calculation and would instead merely require special exception relief under § 411.11 for the side setback requirements of § 411.18(c)(1). While the Applicant maintains that, in any event, the proposed elevator addition meets the standard for a variance in this case, the Board also may, alternatively, evaluate the addition under the special exception standard.⁹

D. No Substantial Detriment to the Public Good or Impairment the Zone Plan

There will be neither substantial detriment to the public good nor substantial impairment of the intent, purpose, and integrity of the zone plan by approving the requested relief. Importantly, the relief requested is *de minimus*, with an increase in FAR of only 0.08 — a deviation of only 4.4% from the maximum FAR of 1.8. Further, the Project will maintain the beauty of the building’s unique features — both exterior and interior — which enrich the Dupont Circle area and the District as a whole. The Project will enhance and preserve the historic structure on the Property, making the house viable as a long-term home for a growing family. This furthers the goals of the Comprehensive Plan, which recognizes that “[o]ne of the critical issues facing the city is how to retain and create more housing units that are large enough for families with children” and that family households need more bedrooms — specifically three or more bedrooms. 10A

⁹ That standard is clearly met. Section 411.11 permits relief from setback requirements where, e.g., conditions relating to the building make compliance unduly restrictive or unreasonable. As indicated above, imposing a side setback here would be unduly restrictive and unreasonable because it would require that the elevator block the third floor’s hallway. Moreover, as required by § 411.11, the addition would not result in material impairment of the intent and purpose of the Zoning Regulations, nor would it adversely affect the light and air of neighboring properties. Viewed from the side, the addition will appear to coincide with the existing third floor roof and will blend with the existing structure. Further, it will not extend above the existing third floor roofline and, thus, will not reduce the light and air currently available to the surrounding properties.

DCMR §§ 500.18 and 500.19. Accordingly, Policy H-1.3.1 calls for the “[p]rovid[ing] a larger number of housing units for families with children by encouraging new and retaining existing single family homes, duplexes, row houses, and three- and four-bedroom apartments.” *Id.* § 505.6. For all of these reasons, the relief requested will not detriment the public good or zone plan, but rather will further the District’s planning priority of providing family-size housing with three or more bedrooms.

VII. COMMUNITY OUTREACH

The Applicant has worked with the community and has the support of ANC 2B, which, on April 13, 2016, voted 7-0-0 to support the Project at a regularly scheduled, properly noticed meeting, with a quorum present.

VIII. WITNESSES

The following witnesses will appear on behalf of the Applicant:

1. Timothy Clites of Clites Architects, PC; and
2. Alex Venditti, Compass, who will testify as an expert in real estate (*see* resume attached at **Tab E** and letter at **Tab F**)

IX. CONCLUSION

For the reasons stated above, the Applicant hereby submits that this application meets the requirements for the relief requested.

We look forward to presenting our case to the Board on June 14, 2016.

Respectfully submitted,

GRIFFIN, MURPHY,
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