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

June 23, 2016

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

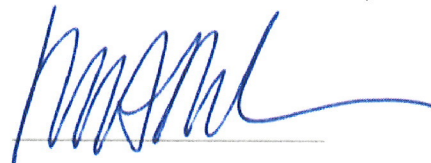
Chairperson Heath and Honorable Members of the Board:

On behalf of David G. Helfrich, please find the enclosed Second Supplemental Statement for the above-referenced application. The application is scheduled for decision before the Board of Zoning Adjustment on June 28, 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. 46
WWW.WASHLAW.COM

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

**APPLICATION OF
DAVID G. HELFRICH**

**APPLICATION NO. 19255
DECISION: JUNE 28, 2016**

SECOND SUPPLEMENTAL STATEMENT OF THE APPLICANT

This Second 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) to allow a 207-square-foot addition to a single-family dwelling (the “Project”) that exceeds allowable lot occupancy, height, and floor-area-ratio (“FAR”) in the DC/R-5-B Zone District.

As addressed in prior submissions and at the continued hearing on June 14, 2016, because of the challenges associated with the layout of the building and the extremely steep stairs in the house, an elevator is necessary to provide a safer means of access to all three floors. At the continued hearing, the Board indicated that it agreed that an elevator was necessary for the house,¹ but the Board requested additional information and diagrams demonstrating why an elevator could not be located within the building’s existing envelope without the need for additional FAR. Specifically, the two alternatives that were raised at the hearing were: (1) to create two separate elevators, one conventional elevator in the proposed location providing service between the ground and second floors (“Lower Elevator”) and a second pneumatic elevator just north of that location

¹ The Office of Planning also acknowledged at the hearing that an elevator was a reasonable request due to the “dangerous” and “perilous” nature of the existing stairs. See June 14, 2016 Public Hearing Recording at 1:21:10–24.

providing service between the second and third floors (“Upper Elevator”); and (2) to locate the elevator in the existing stairway adjacent to the Applicant’s proposed location.²

As a preliminary matter, it is worth reiterating that the relief requested for the proposed elevator — 37 sq. ft. or 0.01 FAR — is *de minimus* and thus a “correspondingly lesser burden of proof” applies. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 & n.6 (D.C. 1990) (also stating that “infinitesimal deviation . . . from complete compliance is clearly within the *de minimus* exception for granting dimensional variance”) (quoting *Stewart v. Zoning Hearing Bd. of Radnor Township*, 531 A.2d 1180, 1182 (Pa. 1987)). Here, the requested 0.01 FAR constitutes approximately 0.5% of the matter-of-right standard of 1.8 FAR. This is clearly *de minimus* and, accordingly, there is a lesser burden of proof.

I. ATTACHMENTS

Tab A:	Diagrams of Elevator Schemes
Tab B:	Photographs of Pneumatic Elevators
Tab C:	Second Letter from Alex Venditti
Tab D:	Email from L’Enfant Trust
Tab E:	Photographs of Traffic in the Alley
Tab F:	Diagram of Typical Traffic in the Alley

II. A TWO-ELEVATOR SCHEME CREATES AN UNWORKABLE LAYOUT, IS IMPRACTICAL, AND IMPOSES ADDITIONAL BURDENS ON THE PROPERTY

As the diagrams attached at **Tab A** show, creating two separate elevators is unworkable because it creates a layout that is congested, inefficient, and functionally impractical. Before discussing the two possible schemes for a two-elevator plan, it is necessary to address the Office of Planning’s (“OP”) proposal that the Upper Elevator be a pneumatic elevator.

² The Applicant notes that the two-elevator alternative was suggested by the Office of Planning, and the Board also inquired as to installing the elevator in the area of the existing stairway adjacent to the Applicant’s proposed location.

A. Pneumatic Elevators Impose Substantial Additional Costs and Challenges

Requiring the Applicant to install a second pneumatic Upper Elevator poses additional, unnecessary burdens for the Applicant and any future owner. First, it is worth noting that requiring two separate elevators would effectively double the maintenance and repair costs associated with the elevator. Moreover, Tim Clites, the architect for the Project, has consulted Ashley Elevator & Lifts, LLC, a firm that specializes in residential elevator manufacture and installation, which provided the following information. Compared with conventional elevators, pneumatic elevators are approximate 150–200% more expensive and, to be wheelchair-accessible, must be purchased in the largest available size with a 52-inch diameter. As shown in the photographs attached at **Tab B**, pneumatic elevators are prefabricated and assembled as a single continuous tube, which for two stories would be 18–20 ft. in length. To install the tube, which cannot be deconstructed, requires either a clear path of travel through the house that is large enough to accommodate the tube — which is not likely available here — or installation via a crane that would lower the tube through the roof and into place. In order to operate, a remote suction motor that would power the elevator would need to occupy additional space within five feet of the shaft and would require extensive sound proofing because of how loud the motor is, equivalent to five vacuum cleaners running simultaneously. Due to this required motor, pneumatic elevators typically utilize at least twice the amount of floor area as a conventional elevator.

B. A Two-Elevator Alternative Creates Practical Difficulties Related to Layout

In addition to the above issues, creating two separate elevators also results in substantial challenges related to the layout of the house. Constructing two separate elevators in the home is not simply inconvenient, but is problematic for the internal configuration of this area of the home and is practically difficult. Under Court of Appeals and Board precedent, challenges associated

with the home's existing layout may properly be considered as factors resulting in a practical difficulty supporting an area variance.

The Board has repeatedly stated that an exceptional situation or condition can arise from the structures existing on the property at issue. *BZA Application No. 18679 of Richard and Janet Barnes* (2014) (citing *Clerics of St. Viator v. Bd. of Zoning Adjustment*, 320 A.2d 291, 293–94 (D.C. 1974)); *see also BZA Application No. 17521 of 601–645 H Street Ventures LLC* (2007) (“Both the Board and the D.C. Court of Appeals have consistently held that existing buildings on a site can be considered an exceptional condition for variance purposes.”). As the Court of Appeals has held, “it makes no practical difference whether the inability to use property in accordance with the Zoning Regulations stems from the topographical conditions of the land itself or from the existence of a structure on the land.”³ *Clerics of St. Viator*, 320 A.2d at 294. Accordingly, the Board has held that “internal configuration” of a structure on property can constitute a factor contributing to the property’s uniqueness and resulting practical difficulty. *See BZA Application No. 18725 of Rafael Romeu* (2014) (finding confluence of factors based on zoning history, internal configuration of the building on the property, and small size of the property, justifying area variances).

Here, aside from the additional burdens discussed in detail above that result from having two separate elevators, one of which is pneumatic, the existing layout of the home in this case makes it practically difficult to provide two elevators. As discussed in prior submissions and the continued hearing, the Property is uniquely affected by a confluence of factors, including: the difficult layout of the existing home; the Property’s large size; its location in an alley; its lack of

³ While the Court made this statement in the context of discussing a use variance, the Board has consistently applied the same principle in considering requests for area variances. *See, e.g., BZA Application No. 18679 of Richard and Janet Barnes; BZA Application No. 17521 of 601–645 H Street Ventures LLC.*

any outdoor space without accessing the third floor; and the preservation obligations imposed by both historic preservation laws and the conservation easement held by the L'Enfant Trust.

1. Two-Elevator Alternative No. 1

As illustrated at page ALT-1 of **Tab A**, locating the Upper Elevator just north of the Lower Elevator creates layout issues on both the second and third floor.

On the second floor, this alternative would place the Upper Elevator in the very center of the transitional area between the kitchen and the den, creating a bizarre centerpiece for this area. See **Tab B**, Photographs of Pneumatic Elevators. More importantly, this alternative would physically obstruct the flow of circulation between the two spaces, creating a den-kitchen area that is functionally impractical. It would also crowd the existing fireplace in the den, rendering it not functional, and leave the kitchen with inadequate space for a small four-person table.

On the third floor, this alternative would obstruct circulation both around the bed and through the existing doors opening onto the roof deck, which is also functionally impractical. Also, the pneumatic elevator that OP proposes would allow light to circulate between the second floor den/kitchen and the master bedroom, allowing activity in these more public areas of the house to spill over into the bedroom. Moreover, because a pneumatic elevator is a transparent tube, it would compromise the privacy of the bedroom. Whereas a person seeking to enter the bedroom via a door or conventional elevator would need to wait for the door to open to see inside, someone riding a pneumatic elevator would see everything happening in the bedroom as soon as they began their ascent.

2. Two-Elevator Alternative No. 2

Page ALT-2 of **Tab A** further shows that locating the Upper Elevator further north of Alternative No. 1 would also result in an unworkable layout. Alternative No. 2 creates somewhat

fewer challenges on the second floor, although it still prevents full circulation around the kitchen. Moreover, this location still presents challenges on the third floor. First, this scheme would not permit sufficient space for a closet to house the required remote suction motor discussed above. Further, the elevator would block the existing bedroom doors opening onto the roof deck. Accordingly, forcing an elevator into this location imposes a layout on both the kitchen and bedroom that is functionally impractical. Lastly, as with Alternative No. 1, the elevator would allow light from the public spaces in the house to spill into the master bedroom and would eliminate privacy in that room due to the fact that a pneumatic elevator is a transparent tube.

C. A Two-Elevator Scheme Makes the Property More Difficult to Market for Resale in the Future

The challenges discussed above associated with the home's layout, as well as installation and maintenance costs, in turn create additional challenges related to marketability and any resale of the Property in the future. The Board has consistently held, based on Court of Appeals precedent, that marketability of a property is relevant to its consideration of a variance request. *See BZA Application No. 18201 of Ingomar Associates Inc.* (2011) (granting variance because "strict compliance with the Zoning Regulations would limit the size of the [proposed] rear addition such that the resulting space would be too small to house marketable residential units"); *see also BZA Application No. 18734 of 1815 Riggs LLC* (2015) ("The Court has made clear that the Board may consider economic factors such as increased cost and marketability in determining what constitutes a practical difficulty.") (citing *Gilmartin*, 579 A.2d at 1171). For example, in *Wolf v. District of Columbia Bd. of Zoning Adjustment*, the Court of Appeals affirmed the Board's grant of a variance based on the conclusion that the large size and unique layout of the dwelling at

issue made the property difficult to market.⁴ 397 A.2d 936, 943 (D.C. 1979). Reviewing the Board’s decision, the Court affirmed the finding of practical difficulties based on challenges related to marketability. *See also BZA Application No. 16966 of NEST and Totah Venture, LLC* (2003) (granting area variance for an office building because “[t]he internal configuration of office space which could be provided in a [by-right structure] would be functionally impractical and not commercially marketable . . .”).

Here, as explained in a letter, attached at **Tab C**, from the Applicant’s real estate expert, Alex Venditti, having two separate elevators makes this home even more challenging to market to any future purchaser looking to continue to preserve the house. The house already faces significant challenges in this respect for the reasons discussed at the Board’s June 14 hearing — namely, its size, difficult layout, and location in an alley, as well as the preservation obligations imposed on any owner under both historic preservation laws and the L’Enfant Trust’s conservation easement. Requiring two separate elevators would only add to these challenges by imposing a layout that is functionally impractical and by doubling the cost of maintenance for the elevator, as discussed above. The Applicant respectfully requests that the Board not impose these additional burdens on the Property, and instead grant the 0.01 FAR needed to provide a single elevator to service all three floors continuously.

III. DEMOLISHING THE ADJACENT STAIRWAY TO LOCATE AN ELEVATOR IN THAT LOCATION PRESENTS PRACTICAL DIFFICULTIES.

Locating the elevator in the area of the adjacent stairway is not a workable option for several reasons. First and foremost, as shown in the diagram at page ALT-3 of **Tab A**, any elevator located here would project above the existing roof line. The L’Enfant Trust has indicated that it

⁴ The property in the *Wolf* case had approximately 3,000 sq. ft. of floor area, far smaller than the dwelling at issue here, which is over 5,800 sq. ft.

would not allow any modification of the existing roof line, *see* Email from L'Enfant Trust attached at **Tab D**, and thus such a plan could not be implemented.

Additionally, installing the elevator in this location would require demolishing the existing stairway between the second and third floor, which would be wasteful, especially given that these stairs are the safest and closest to being code compliant of all the stairs in the house. Moreover, as shown in the diagram in **Tab A** and as was discussed at the June 14 hearing, this alternative would create a very cramped entry way on the ground floor. While this would not be preferable in any situation, here this problem rises to the level of practical difficulty because of the Property's unique position in an alley without any space, either private or public, providing separation between the west door of the home and the highly-trafficked alley.

As the Applicant indicated at the June 14 hearing and as is shown in the pictures attached at **Tab E**, the 30-ft. alley abutting the Property is very active and sees a great deal of traffic, with residents and service trucks parking in and driving through the alley throughout the day. The traffic diagram attached at **Tab F** illustrates a typical configuration of the traffic in the alley, with a car parked along one piece of property and two-way traffic occupying the remaining space in the alley. On an ordinary street, this amount of traffic poses no problem to pedestrians and residents because there is plenty of room to walk and idle on the sidewalk and a resident or guest of the home may step out of foot traffic onto the stoop or front yard area that a typical home has. But here, because the Property was designed as two carriage houses, not as a dwelling, and is located on an alley with no public sidewalk, there is no safe space for a resident or guest to stand and wait before entering the home while others make their way up to the main level of the house. Given the heavily-trafficked nature of the alley, it is not practical or safe to require the entry way in this case to be so cramped as to leave someone stranded in the alley.

IV. NO DETRIMENT TO THE PUBLIC GOOD OR ZONE PLAN

As discussed in the Applicant's prior submissions and at the Board's hearings on the application, granting relief for 0.01 FAR in this case will not result in any detriment to the public good or impairment of the zone plan. To the contrary, allowing the proposed elevator will modernize the house for life-long residents and make the home more likely to be repurchased and preserved in the future. Accordingly, the Project furthers the historic preservation goals of the Comprehensive Plan, which recognizes "that historic environments need to grow and evolve as cities constantly change." Comprehensive Plan Historic Preservation Element, HP-2.4, 10A DCMR § 1011.1.

The Comprehensive Plan further encourages "[m]aintain[ing] historic properties in their original use to the greatest extent possible. If this is no longer feasible, encourage appropriate adaptive uses" *Id.* HP-2.4.2, 10A DCMR § 1011.7. The Project accomplishes this goal by improving upon the adaptive reuse conceived and achieved by the prior owner, Anthony Browne, who converted the original separate carriage houses into a single dwelling. The proposed improvements, including the elevator, will ensure that the Property continues to be protected and carefully maintained by a life-long resident, as well as future owners. As the Comprehensive Plan states, "[h]istoric properties are living assets that were built for use. The goal is to encourage vitality by continuing to use and adapt historic properties for modern needs and attract the necessary financial investment to support these goals." 10A DCMR § 1000.12. The Project will further this policy and will benefit Fraser Court, the Dupont Circle neighborhood in general, and the District as a whole.

V. CONCLUSION

For the reasons stated above, the Applicant hereby submits that this application meets the requirements for the relief requested and requests that the Board grant approval at its public meeting on June 28, 2016.

Respectfully submitted,

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