DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

BZA Application No. 21360

M & Potomac Streets Associates LLP

Square 1206, Lot 0832

OPPOSING PARTY'S RECORD-PRESERVATION FILING

Statement of Facts, Conclusions of Law, and Preservation of Appellate Issues

Rebuttal to Applicant's Statement (Exhibit 41) and

Supplemental Office of Planning Report (Exhibit 46)

Submitted by: Joanna Perkowska

Opposing Party, Adjoining Property Owner

1220 Potomac Street NW

I. PURPOSE AND SCOPE OF THIS FILING

This filing is submitted in advance of the continued hearing for the limited and necessary purpose of assisting the Board in satisfying its statutory obligation to make specific, reasoned findings supported by substantial evidence under D.C. Code § 6-641.07(g)(3) and Subtitle X § 1002.

As set forth below, the existing record does not contain substantial evidence sufficient to support affirmative findings on any prong of the area-variance test. Failure to satisfy any single prong requires denial as a matter of law.

This filing also serves to preserve all substantive, procedural, evidentiary, and legal issues raised in the record for purposes of judicial review, should review become necessary.

Nothing in this submission waives or narrows any prior objection. The Opposing Party expressly preserves all prior filings, testimony, and arguments.

This filing incorporates by reference the full opposition record, including Exhibits 20–22, 24–27, 28–31, 34–37, and 43, and the October 29, 2025 and November 19, 2025 hearing transcripts.

II. GOVERNING LEGAL STANDARD — AREA VARIANCE

Under D.C. Code § 6-641.07(g)(3) and Subtitle X § 1002, the Board may grant an area variance only if it makes independent, explicit findings, supported by substantial evidence, that:

1. An extraordinary or exceptional condition affects the property;
2. Peculiar and exceptional practical difficulties will result from strict application of the zoning regulations; and
3. The requested relief may be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.

Each prong is mandatory and independent.

The Applicant bears the burden on each prong.

The prongs may not be merged, diluted, offset, or satisfied by conclusory assertions.

III. PRONG ONE — NO EXTRAORDINARY OR EXCEPTIONAL CONDITION

A. No Condition Unique to the Subject Property

The Applicant and the Office of Planning identify as the basis for Prong One the parcel's small size and its creation through the Eton Court condominium subdivision (Exhibits 41; 46 at 3).

Neither condition constitutes an extraordinary or exceptional condition.

Small and irregular parcels are common throughout Georgetown, including within the R-3/GT zone. Conditions shared by multiple properties cannot, as a matter of law, satisfy Prong One.

B. Subdivision-Created Conditions Are Self-Created

OP expressly acknowledges that the subject parcel is a tax lot created during a voluntary condominium subdivision in the 1980s and later withdrawn (Exhibit 46 at 3).

Conditions arising from subdivision are self-created, run with the land, and cannot support variance relief.

The Board previously denied variance relief for this same parcel (BZA Order No. 14854 (1988)), a material fact that neither the Applicant nor OP meaningfully addresses.

C. Design Goals Are Not Zoning Conditions

OP's assertion that the parcel is "exceptional" because, absent variances, it would be "practically undevelopable" (Exhibit 46 at 3–4) does not identify a zoning condition. It is a conclusion derived from a preferred development outcome.

Architectural ambition, aesthetic preference, and economic optimization do not constitute extraordinary or exceptional conditions under Subtitle X.

Prong One is not satisfied.

IV. PRONG TWO — NO PECULIAR AND EXCEPTIONAL PRACTICAL DIFFICULTIES

A. Non-Record Lot Status Does Not Establish Practical Difficulty

The subject parcel is a tax lot, not a lot of record, and therefore lacks any as-of-right entitlements to new residential construction.

That circumstance does not establish peculiar and exceptional practical difficulties within the meaning of Subtitle X § 1002.

Any asserted difficulty arises from the Applicant's decision to pursue a specific development program on a parcel that does not satisfy baseline zoning requirements, rather than from the zoning regulations themselves.

B. Four Stacked Variances Demonstrate Proposal Incompatibility

Rather than pursue alternatives consistent with the zoning framework, the Applicant seeks approval through four substantial, simultaneous variances, including:

- a 64% deviation from minimum lot area;
- a 30% deviation from maximum lot occupancy (70% proposed);
- a significant rear-yard reduction; and
- an extreme side-yard reduction to 0.75 feet

(Exhibits 41; 46).

This request reflects design preference and economic optimization, not zoning-imposed necessity.

District law does not guarantee the right to develop a non-record lot to a preferred size, configuration, or yield. The need to seek extraordinary relief does not itself constitute a practical difficulty.

C. “Practically Undevelopable” Is Not Substantial Evidence

OP’s assertion that the parcel would be “practically undevelopable” absent variances (Exhibit 46 at 3–4) is unsupported by analysis demonstrating that:

• residential use is prohibited,

• compliant development is infeasible, or

• strict compliance would impose an unreasonable burden.

Reduced size, reduced convenience, or reduced profitability do not satisfy Prong Two.

Accordingly, Prong Two is not met.

V. PRONG THREE — SUBSTANTIAL DETRIMENT AND ZONE-PLAN IMPAIRMENT

A. Unrebutted, Parcel-Specific Evidence of Harm

The record contains extensive, unrebutted evidence, including:

• eleven written opposition submissions documenting impacts to light, air, privacy, access, and safety

(Exhibits 21, 24–26, 28–31, 34–35, 37);

• party-status filings and legal objections

(Exhibits 22, 36, 43);

• ANC 2E’s unanimous 6-0-0 resolution opposing the application

(Exhibit 27); and

• the Eton Condominium Board’s express disavowal of support

(Exhibit 20).

No adjoining property owner supports the application.

B. Applicant's Shadow Diagrams Do Not Constitute Substantial Evidence

The Applicant's shadow materials (Exhibit 19) do not constitute substantial evidence, particularly where they were fully and specifically controverted by detailed, parcel-specific opposition evidence. Opposition submissions (including Exhibits 21–22, 24–26, 27, 28–31, 34–35, 36, and 37) document actual and foreseeable impacts to light, air, privacy, safety, and access based on the precise siting and massing of the proposal. None of these impacts are meaningfully rebutted by comparable analysis from the Applicant. By contrast, Exhibit 19 consists of two-dimensional diagrams that are not volumetric, provide no stated methodology or assumptions, analyze no duration, seasonal variation, or cumulative effects, and misidentify the immediately adjoining property at 1220 Potomac Street NW. Unsupported diagrams cannot outweigh sworn, site-specific evidence, and reliance on them would be inconsistent with the requirement that Board findings rest on reliable, probative, and substantial evidence.

C. Zone-Plan Impairment

Granting four substantial variances on a non-record lot would:

• nullify minimum lot standards;

• circumvent subdivision controls; and

• convert variances into a substitute for legislative zoning action.

Such relief would substantially impair the intent, purpose, and integrity of the zoning regulations.

D. OP Exhibit 46 Does Not Supply Substantial Evidence

The Office of Planning's Supplemental Report (Exhibit 46):

• substitutes generalized compatibility statements for zone-plan analysis;

• relies on special-exception analogies that the Board has already determined are inapplicable;

• endorses subdivision-created conditions without legal analysis; and

• fails to assess the cumulative impact of four major variances.

For these reasons, Exhibit 46 cannot substitute for the Board's obligation to make independent, reasoned findings supported by substantial evidence.

VI. MATERIAL MISREPRESENTATIONS AND PROCEDURAL CONCERNS

A. Applicant's Admitted Material Misrepresentation and Procedural Integrity of the Record

In sworn testimony, the Applicant's agent attributed the legal theory governing the application—including the availability of special-exception relief—to advice purportedly provided by counsel. In Exhibit 42, the agent later expressly disavowed his sworn testimony, admitting that counsel did not provide such advice. The admission itself confirms that the Board's prior consideration of the application proceeded under a materially inaccurate understanding of the legal basis for relief. This misstatement goes to the legal posture, credibility, and procedural integrity of the record, not merely form, and requires the Board to make explicit findings identifying what testimony and representations it credits and what it rejects. Absent such findings, the Board may not lawfully rely on testimony or submissions that were later admitted to be legally incorrect as substantial evidence supporting variance relief.

B. OGB / CFA Concept Approval Is Not Zoning Evidence

OGB and CFA do not apply zoning law or variance standards.

Opposition evidence demonstrates that the Applicant's OGB submissions omitted material zoning facts and opposition and included inaccurate statements

(Exhibits 20, 28, 34–36).

Such approvals carry no evidentiary weight in a variance proceeding.

VII. FAILURE TO ADDRESS OPPOSITION EVIDENCE WOULD CONSTITUTE LEGAL ERROR

The Board is required to address all contested material issues raised in the record and to explain its reasoning with sufficient specificity to permit judicial review, including the full body of opposition filings, ANC 2E's unanimous resolution, the uniform opposition of all immediately adjoining property owners based on documented site-specific harms, the evidence of material misrepresentation, and the Board's prior denial of variance relief for this same parcel. The opposition evidence here is not generalized or policy-based; it is parcel-specific, harm-based, and unrebutted, and no adjoining owner supports the application. Failure to meaningfully address this evidence would violate Subtitle Y § 604.3 and D.C. Code § 2-509, and would constitute reversible legal error.

VIII. PRESERVATION OF APPELLATE ISSUES

The Opposing Party expressly preserves all issues for review by the District of Columbia Court of Appeals, including:

• failure to satisfy any prong of the area-variance test;

• reliance on self-created hardship;

• absence of peculiar and exceptional practical difficulties;

• substantial detriment to the public good and zone plan;

• reliance on non-substantial evidence;

• failure to address opposition evidence;

• legal error and lack of substantial evidence in OP's January 6, 2026 Supplemental Report (Exhibit 46); and

• any approval that is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law under D.C. Code § 2-510.

All prior objections are preserved.

IX. CONCLUSION

On the present record, the Applicant has not satisfied any prong of the mandatory three-part variance test.

Denial is the only outcome supported by the governing law and the evidence before the Board.

Respectfully submitted,

Joanna Perkowska

Opposing Party

January 19, 2026