BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
BZA Application No. 21360
M & Potomac Streets Associates

OPPOSITION TO SUPPLEMENTAL SUBMISSION AND MOTION TO STRIKE OR, IN THE ALTERNATIVE, DISMISS WITHOUT PREJUDICE

Submitted by: Joanna Perkowska
Opposing Party and Adjoining Property Owner

PRELIMINARY STATEMENT

Nothing about the lot has changed.
Nothing about the surrounding built environment has changed.
Nothing about the zoning regulations has changed.
Only the Applicant's legal theory has changed — repeatedly.
This is now the fourth material restructuring of the Application. Each time a legal deficiency is identified, the Applicant alters the classification, dimensional calculations, or hardship narrative while preserving the same essential massing and development program.
Variance relief under Subtitle X § 1002 is not a collaborative design exercise. It is an evidentiary proceeding governed by a fixed statutory standard. The burden remains entirely on the Applicant at all times; it never shifts to the Board, the Office of Planning, or opposing parties.
The February 5, 2026 supplemental filing confirms what the record now demonstrates: the asserted hardship is not inherent in the land; it arises from the scale and configuration of the structure the Applicant prefers to build.
The supplemental submission should be struck as an impermissible post-deliberation amendment. Alternatively, the amended application should be dismissed without prejudice.
All prior filings, testimony, objections, and appellate preservation statements (including Exhibits 20–22, 24–31, 34–37, 42, 43, 48-51Opposing Party's Post-Hearing Statement of Objection and Issue Preservation) are expressly incorporated by reference. Nothing herein waives any prior objection.

I. POST-DELIBERATION AMENDMENT IS PROCEDURALLY IMPROPER

The record was closed.
Deliberations began.
The Chair indicated that the record would not be reopened for redesign. The Board stated it could decide based on existing record. The record was nevertheless reopened, and the Applicant then eliminated a variance by shifting the building to the lot line and reclassifying it as "semi-detached."
That is not a clarification; it is a material reconfiguration.
An application must stand or fall on the record developed at hearing. Allowing iterative redesign after deliberation — particularly where the redesign responds to specific legal deficiencies identified by the Board — creates procedural asymmetry and undermines the integrity of adjudication.
Once the Applicant materially altered its proposal for a fourth time, due process required full adversarial testing of the revised theory. A limited, paper-only review deprives parties of the opportunity to examine new factual and legal assertions and compromises the completeness of the record.
The undersigned objects to any limitation on the scope of hearing regarding the amended theory. Any restriction on cross-examination or evidentiary response is expressly preserved for appeal.
If the theory materially changes, the application must restart.

II. GOVERNING STANDARD — SUBTITLE X § 1002

Under Subtitle X §§ 1002.1–1002.2, the Board may grant an area variance only if it finds, based on substantial evidence, that:
• An extraordinary or exceptional condition affects the property;

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• Strict application of the zoning regulations will result in peculiar and exceptional practical difficulties; and
• The relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan.
The hardship must be peculiar and exceptional, must arise from the property itself, and the requested relief must be necessary to alleviate that hardship. Assertions are not evidence. The burden never shifts.
Failure to satisfy any prong requires denial as a matter of law.

III. FAILURE OF EVIDENTIARY PROOF

Across four iterations, the Applicant repeats the same conclusory themes:
• The lot is small and irregular;
• Strict application would not allow a house;
• OGB/CFA approved the concept;
• Nearby lots are small;
• Shadow impacts are negligible.
These are narrative statements, not proof of "peculiar and exceptional practical difficulty."
Notably absent from the record are:
• Any by-right buildability study;
• Any zoning-compliant alternative massing analysis;
• Any engineering or structural demonstration that a smaller, conforming dwelling is infeasible;
• Any evidence that a reasonably sized, code-compliant residence cannot be constructed.
Nonconforming lot size alone does not establish impossibility of reasonable development. Hardship requires more than a showing that the preferred footprint does not fit; it requires a showing that compliance is unnecessarily burdensome in light of a truly exceptional property condition.
No such showing has been made.

IV. STRUCTURAL ZONING CONTRADICTION — IMPERMISSIBLE STACKING

The amended proposal combines:

• A "semi-detached" classification;
• Zero west side yard;
• 59.25% lot occupancy where 40% is permitted;
• An 11.82' rear yard where 20' is required;
• On a 1,437 sq. ft. substandard lot.

The R-3/Georgetown framework regulates development on small lots through coordinated dimensional controls that operate together: lot-occupancy limits constrain bulk; side yards preserve light, air, and separation; rear yards protect privacy, safety, and open space. These controls are not independent variables — they are structurally interdependent.

The Applicant seeks relief from all three core controls simultaneously, while preserving nearly the entire buildable envelope of the lot.

The "semi-detached" label is deployed to eliminate a side-yard requirement, while the proposed footprint maximizes lot coverage and compresses the rear yard to nearly half of what the regulations require. This is not incidental overlap; it is intentional regulatory stacking designed to extract the cumulative benefit of multiple zoning regimes without accepting their corresponding constraints.

Such stacking is impermissible. Variance authority allows limited, case-specific relief from individual requirements where necessary to address an inherent property condition. It does not permit an applicant to combine reclassification, bulk overage, and yard compression in order to achieve a preferred development envelope on a substandard parcel.

Approval of this configuration would functionally nullify the dimensional logic of the R-3/Georgetown zone for undersized lots and would externalize the resulting impacts — loss of light, air, privacy, safety, and access — onto adjoining properties. The Zoning Regulations do not authorize that result.

V. IMPROPER SEMI-DETACHED RECLASSIFICATION — PRESERVATION OF ERROR

Under the Zoning Regulations, a structure does not become "semi-detached" merely by touching a lot line; such classification requires lawful structural attachment to an adjoining principal building.

The record contains no:

- Party-wall agreement;
- Structural integration drawings;
- Shared load-transfer or foundation-tie documentation;
- Building-code approvals demonstrating structural interdependence.

In the absence of competent evidence establishing a structurally integrated wall system, the proposed building remains detached for zoning purposes and is subject to two required side yards. On the west, the side yard is zero.

Relief therefore remains required. Any Board finding that the structure qualifies as semi-detached, without substantial record evidence supporting that legal and factual conclusion, would lack the evidentiary foundation required under the District's substantial-evidence standard and would be arbitrary and capricious on review.

This objection is expressly preserved.

VI. SELF-CREATED HARDSHIP THROUGH DEVELOPMENT STRATEGY

The Applicant argues that the lot was created and "intended" for a single-family residence. That is development history, not hardship.
If a lot was created in nonconformity through voluntary subdivision, that condition does not constitute an exceptional circumstance for variance relief. Hardship must arise from inherent physical characteristics, not from prior subdivision decisions or the scale of the structure proposed.

Here, the Applicant (or its predecessor) created and retained a 1,437 sq. ft. substandard tax lot with full knowledge of applicable dimensional controls. The asserted hardship arises from the decision to pursue an approximately 851 sq. ft. footprint (about 59.25% occupancy), together with a compressed rear yard, a zero west side yard, and a reclassification designed to preserve that massing. The dimensional pressure is therefore a function of design scale, not the land.

If the massing were reduced, the need for relief would correspondingly diminish or disappear. A hardship that evaporates when the preferred design is scaled back is not an inherent property condition but a product of voluntary choice.

The zoning regulations do not guarantee maximization of buildable area on self-created undersized parcels. Granting relief on this basis would convert undersized lots into presumptive variance candidates, in tension with the limited nature of variance authority and with the Board's own prior denial in Order No. 14854 (1988) for this same parcel. The Board must either distinguish that prior order with reasoned, evidence-based findings or adhere to its prior determination.

VII. MEASUREMENT, ACCESS, AND RECORD INSTABILITY

The record reflects repeated dimensional inaccuracies, including prior lot-occupancy miscalculations exceeding ten percentage points.

The east side yard is claimed to be 6’-1”, yet the plans depict a raised planter within that yard. Required yards must remain open and unobstructed. If the planter reduces the required clear width, the yard is noncompliant and additional relief is required.

In addition, the application disregards the existing accessway that has served adjoining properties for more than forty years. That accessway measures approximately 9 feet 7 inches in width and functions as a long-standing means of emergency access, circulation, and protection. The Applicant proposes to reduce that access by nearly half, while asserting — without analysis — that no adverse impact will result.

No fire-safety analysis, emergency-access evaluation, or security assessment supports that assertion. Nor has any study evaluated the cumulative effect of reducing a long-standing separation condition in a dense historic context.

Eliminating functional open space that has existed for over 40 years is not a neutral dimensional adjustment. It is a material alteration of the built environment affecting adjoining properties’ light, air, visibility, and emergency conditions. It is a long-standing open separation and access condition in the built environment whose reduction materially alters adjacency, safety, and light/air conditions, and for which no substantial evidence of non-detriment has been provided. These adverse impacts on adjoining properties have not been meaningfully addressed.

At minimum, the Applicant has failed to demonstrate dimensional compliance and impact avoidance through consistent, reliable evidence. Substantial evidence cannot rest on shifting measurements and unsupported assumptions.

The burden to demonstrate absence of substantial detriment rests entirely with the Applicant. That burden has not been met.

VIII. DEFECTIVE LIGHT, AIR, AND PRIVACY ANALYSIS

After the building was shifted to the west lot line, adjacency geometry and side-yard relationships changed. No updated, configuration-specific sun or shadow study has been submitted for the current scheme.
Without an analysis tied to the actual proposed configuration, the Board cannot make supported findings that there will be no substantial adverse impact on light, air, or privacy.
The burden remains with the Applicant.

Existing “studies” consist of two-dimensional diagrams without methodology, duration, seasonal, or cumulative impact analysis, and they contain errors regarding the identity and orientation of adjoining properties. They are specifically controverted by detailed, parcel-specific opposition and sworn testimony (Exhibits 21–22, 24–31, 34-37, 43, 48-49).
Reliance on incomplete materials, in the face of unrebutted, site-specific evidence to the contrary, would not meet the substantial-evidence requirement.

IX. ANC AND OGB PROCESS IMPLICATIONS

This property lies within the Georgetown Historic District. A material redesign — including side-yard elimination, rear-yard compression, and classification change — is a substantive change.

Design review by OGB/CFA does not substitute for compliance with Subtitle X § 1002. Nor does prior concept approval by those bodies cure zoning defects, especially were obtained on incomplete information about lot status and variance scope and without proper notice and based on misrepresentation in the records.

ANC 2E unanimously opposed the application after hearing from neighbors. The Board must afford that position great weight and respond point-by-point to the ANC's stated reasons. Treating this fourth redesign as "minor" to avoid re-engaging the ANC or meaningful public process would be inconsistent with that obligation.

X. THE FINDINGS PROBLEM

To grant this amended application, the Board would have to make written findings that:
1. Strict application of the zoning regulations prevents reasonable development of this lot;
2. The asserted hardship is inherent in the land, not the product of successive design decisions or voluntary subdivision;
3. The proposed structure lawfully qualifies as semi-detached based on substantial record evidence of structural attachment;
4. Dimensional compliance and deviations are accurately demonstrated through reliable measurements;
5. The combined effects of substantially elevated lot occupancy, side-yard elimination, rear-yard compression, and access reduction will not cause substantial adverse impacts on adjoining properties;
6. Each finding is supported by reliable, probative, and substantial evidence in the record; and
7. Any departure from BZA Order No. 14854 (1988) is explained by material factual and legal distinctions supported by that same substantial evidence.

On this record, those findings cannot be made without legal error:
• Treating shifting hardship narratives as proof;
• Accepting reclassification as a substitute for structural evidence;
• Overlooking the structural conflict between the proposal and the dimensional logic of the R-3/Georgetown zone;
• Relying on unstable and incomplete measurements;
• Disregarding detailed, unrebutted evidence from ANC 2E and adjoining owners; and
• Failing to reconcile a prior denial on the same parcel.
A decision that depends on those omissions would not be supported by substantial evidence and would be arbitrary and capricious under D.C. Code § 2-510.
The Board's obligation is not to reconcile evolving design strategies, but to determine whether the Applicant has carried its statutory burden on the record before it. Where repeated redesign is necessary to sustain a hardship claim, the hardship is not inherent but constructed; and where substantial evidence is absent, denial is not discretionary but required.
All procedural, substantive, evidentiary, and appellate objections are expressly preserved.

RELIEF REQUESTED

The Opposing Party respectfully requests that the Board:
1. Strike the February 5 supplemental submission (Exhibits 56A–D) as an impermissible post-deliberation amendment; or
2. Dismiss the amended application without prejudice; or, in the alternative,
3. Deny the application for failure to satisfy the requirements of Subtitle X § 1002.

Respectfully submitted,
Joanna Perkowska
Opposing Party and Adjoining Property Owner