BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

BZA Application No. 21442
Application of Keyline Homes LLC
138 Wilmington Place SE (Square 6093, Lot 0815) — R-2 Zone — ANC 8D08

APPLICANT'S AMENDED PREHEARING STATEMENT AND STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF

Keyline Homes LLC (the "Applicant") submits this Amended Prehearing Statement ("Statement") in support of its application (the "Application") to construct a new one-family dwelling on the existing vacant Assessment and Taxation ("A&T") lot at 138 Wilmington Place SE (the "Property"). This Statement supersedes the Applicant's prehearing statement at Exhibit 6 and is reconciled with the Applicant's amended Form 135 Zoning Self-Certification filed with it.

I. SUMMARY OF AMENDMENTS

This Statement amends the Application in four respects:

1. **Front setback (Subtitle D § 206.2).** Relief from the front setback requirement is now requested as a special exception pursuant to Subtitle D § 5201.1(b), rather than as an area variance, and is evaluated under the special exception standards of Subtitle X § 901.2 and Subtitle D §§ 5201.4 through 5201.6.

2. **Principal building type (Subtitle D § 200.4).** An area variance from the building-type requirement of Subtitle D § 200.4 is added at the recommendation of the Office of Planning ("OP"), out of an abundance of caution.

3. **Practical difficulty.** The area variance argument is amended to explain that the practical difficulty to the owner arises from the collapse of the Applicant's agreement to purchase the adjoining property, 140 Wilmington Place SE, which was to make possible a separate matter-of-right project.

4. **Exterior materials.** The front façade will be clad in red brick veneer. The side and rear elevations will be finished in vinyl or fiber-cement (Hardiplank) siding. The rendering in the architectural plans has been revised to match.

II. NATURE OF RELIEF SOUGHT

The Applicant requests the following relief pursuant to 11 DCMR:

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District of Columbia
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Requirement	Section	Required	Proposed	Relief type / authority
Front setback	D § 206.2	30 ft.	27 ft.	Special exception — D § 5201.1(b); X § 901.2
Rear yard	D § 207.1	20 ft. min.	9 ft.	Special exception — D § 5201.1(b); X § 901.2
Side yard	D § 208.3	8 ft. min.	0 ft.	Special exception — D § 5201.1(b); X § 901.2
Lot occupancy	D § 210.1	40% max.	50%	Special exception — D § 5201.1(a); X § 901.2
Minimum lot dimensions	D § 202.1	30 ft. / 3,000 sq. ft.	16 ft. / 1,136 sq. ft. (existing)	Area variance — X § 1002.1(a)
Principal building type	D § 200.4	Detached or semi-detached	Detached; no side yards	Area variance — X § 1002.1(a) (OP recommendation)

III. JURISDICTION OF THE BOARD

The Board is authorized to grant special exceptions and variances under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), as further set forth in 11 DCMR Subtitle X §§ 900.2 and 901.2 (special exceptions) and Subtitle X §§ 1000.1 and 1002.1(a) (area variances).

IV. PROPERTY LOCATION AND DESCRIPTION

The Property is in the Congress Heights neighborhood in the Southeast quadrant, in Square 6093, and is legally described as Lot 0815, an A&T lot. It is vacant and unimproved. It measures 16 feet wide by 71 feet deep, for a total lot area of 1,136 square feet. It is the narrowest and smallest lot in the Square.

Wilmington Place is a dead-end street with nine improved properties. The surrounding neighborhood is developed with low- to moderate-density housing: one-family detached and semi-detached dwellings, with apartment buildings in the nearby RA-1 zone, within a block or two of the Property.

The Property is bounded:

- to the **west** by 136 Wilmington Place SE (Lot 57), a corner lot fronting on both Horner Place and Wilmington Place, improved with a detached dwelling set back at least 20 feet from the proposed side wall;
- to the **east** by 140 Wilmington Place SE (Lot 808), improved with a detached dwelling set back about 29 feet from the shared side lot line; and
- to the **north** by 3740 Horner Place SE, whose existing building is more than 20 feet from the shared lot line.

The Property is the panhandle portion of former Lot 0058. The balance of former Lot 0058 was developed by the Applicant and has since been sold to a third party.

V. THE PROPOSED PROJECT

The Applicant proposes a three-story, one-family detached dwelling with a gross floor area of about 1,577 square feet. The building will be 33 feet tall, below the 40-foot and three-story limits of the R-2 zone. It will provide a 27-foot front setback, a 9-foot rear yard, 50% lot occupancy, and 40% pervious surface (30% required). No parking or loading is required, and the District Department of Transportation has no objection (Ex. 21).

The front façade will be **red brick veneer**. The side and rear elevations will be finished in **vinyl or fiber-cement (Hardiplank) siding**. The side walls along the side lot lines will have no windows or other openings. The third floor is recessed at the front and the rear to reduce its visual impact from the street and from the abutting property to the north.

VI. STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF — SPECIAL EXCEPTIONS

A. The front setback is properly reviewed as a special exception under Subtitle D § 5201.1(b)

Subtitle D § 5201.1 authorizes the Board to grant, as a special exception in the R zones, relief from the yard requirements of Subtitle D (paragraph (b)) and from lot occupancy (paragraph (a)), subject to §§ 5201.4 through 5201.6 and the general special exception criteria of Subtitle X, Chapter 9. A front setback governs the open area between a building and its front lot line and is treated as a yard requirement for this purpose. The Board has accepted front setback relief under § 5201 before: in BZA Case No. 19633A, OP reported that the Zoning Administrator and the Office of the Attorney General both agreed that special exception relief was appropriate for a front setback requirement, and OP recommended approval on that basis.

The Applicant therefore requests special exception relief from D § 206.2, together with relief from the rear yard (D § 207.1) and side yard (D § 208.3) requirements under § 5201.1(b), and from lot occupancy (D § 210.1) under § 5201.1(a). The requested front setback of 27 feet is a 3-foot (10%) reduction.

B. General special exception standards — Subtitle X § 901.2

(a) The relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.

A one-family dwelling is permitted as a matter of right in the R-2 zone. The R-2 zone provides for areas developed with semi-detached houses on moderately sized lots that also contain some detached dwellings, and protects them from denser types of residential development (Subtitle D §§ 101.7, 106.1). The project is a single dwelling unit, not a denser form of development. It complies with every other applicable development standard, including height and number of stories. The 3-foot front setback reduction keeps the building in line with the streetscape of a short, dead-end residential street.

(b) The relief will not tend to affect adversely the use of neighboring property.

The adjoining dwellings sit on large lots and are set well back from the shared lot lines: at least 20 feet on the west (136 Wilmington Place) and about 29 feet on the east (140 Wilmington Place). The building to the north (3740 Horner Place) is more than 20 feet from the shared lot line. As set out in Part C below, the light, air and privacy of these properties will not be affected in any meaningful way.

(c) The relief will meet the special conditions specified in this title.

The special conditions are those of Subtitle D §§ 5201.4 through 5201.6, which the Application meets as shown below.

C. Specific conditions — Subtitle D §§ 5201.4 through 5201.6

§ 5201.4(a) — The light and air available to neighboring properties shall not be unduly affected.

The requested relief has no more than a **de minimis** effect on the light and air available to neighboring properties. The Property is 16 feet wide and lies between two detached dwellings, each set well back from the shared side lot line:

Adjoining property	Location	Separation from the subject	Effect on light and air
136 Wilmington Place SE (Lot 57, corner lot)	West	At least 20 ft. (to the proposed side wall)	De minimis
140 Wilmington Place SE (Lot 808)	East	About 29 ft. (to the shared side lot line)	De minimis
3740 Horner Place SE	North (rear)	More than 20 ft. (to the shared lot line)	De minimis

Because these separations lie on the neighboring lots, they create a permanent open band of at least 20 feet to the west and about 29 feet to the east — roughly 49 feet of open area flanking a 16-foot-wide building. Those separations are 2.5 and more than 3.5 times the 8-foot side yard the R-2 zone would otherwise require. Sunlight, sky exposure and air circulation reaching the side walls and windows of both neighboring dwellings are preserved substantially as they would be under a fully conforming design.

The front setback relief faces Wilmington Place, a public street, not an adjoining dwelling. Moving the front wall 3 feet toward the street does not reduce the separation between the proposed building and 136 or 140 Wilmington Place, and does not move building mass closer to any neighbor's window, yard or outdoor living area. Its effect on neighboring light and air is negligible.

§ 5201.4(b) — The privacy of use and enjoyment of neighboring properties shall not be unduly compromised.

The side walls along the side lot lines have no windows or other openings, so there is no line of sight from the new dwelling into the neighboring homes or side yards. The building to the north is more than 20 feet from the shared lot line, and the third floor is recessed at the rear. These features protect the privacy of all adjoining properties.

§ 5201.4(c) — Graphical representations.

The Applicant has submitted the signed Office of the Surveyor plat (March 28, 2025), the proposed site plan, the architectural plans and elevations (including the revised rendering showing the red brick front façade), and photographs of the front, side and rear of the Property and its surroundings. The Applicant will provide any additional plans, sections or shadow studies the Board may require.

§ 5201.5 — Special treatment.

The Applicant accepts any special treatment the Board finds appropriate. The front façade will be red brick veneer, consistent with the brick dwellings shown in the neighborhood photographs. The sides and rear will be vinyl or fiber-cement (Hardiplank) siding. The third floor is recessed at the front and the rear.

§ 5201.6 — No introduction or expansion of a nonconforming use, or of height or stories.

The project is new construction of a permitted use. It does not introduce or expand a nonconforming use, and it complies with the height and story limits of the zone. The proposed 50% lot occupancy does not exceed the maximum the Board may approve by special exception under § 5201.

VII. STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF — AREA VARIANCES

The Applicant seeks area variances from the minimum lot dimensions of Subtitle D § 202.1 and the principal building type requirement of Subtitle D § 200.4. Under Subtitle X § 1000.1 and § 1002.1(a), an applicant for an area variance must show that (1) the property is affected by an exceptional size, shape or topography, or another extraordinary or exceptional situation or condition; (2) the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the owner; and (3) 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. *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). An area variance requires a showing of practical difficulty, not undue hardship. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 542 (D.C. 1972).

A. The variance from Subtitle D § 200.4 is included at OP's recommendation, out of an abundance of caution

Subtitle D § 200.4 requires that a principal building in the R-2 zone be a detached or a semi-detached building. The proposed dwelling shares no wall with any building and stands apart from the dwellings on both sides. It therefore remains a detached building in fact. The full (100%) relief from the side yard requirement requested under D § 208.3 already addresses the only respect in which the building departs from a conventional detached form — the absence of side yards on a 16-foot lot. To that extent, separate relief from § 200.4 appears redundant.

OP nonetheless recommended that the Applicant include a variance from § 200.4, and the Applicant has done so out of an abundance of caution, so that the record is complete and no question about building type remains for permitting. The same facts that support the variance from § 202.1 support the variance from § 200.4, as shown below.

B. Exceptional situation or condition

The Property is exceptionally narrow and small. It is 16 feet wide and 1,136 square feet in area, in a zone that requires at least 30 feet of lot width and 3,000 square feet of lot area for a semi-detached dwelling. It is the narrowest and smallest lot in its Square. An exceptional condition may arise from a confluence of factors affecting a single property, and it need not inhere in the land alone. *Gilmartin*, 579 A.2d at 1168; *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 294 (D.C. 1974).

Here the Property's size and shape combine with a second, property-specific condition: it is a remnant parcel, the panhandle portion of former Lot 0058, and every practical means of enlarging it to a conforming lot has been foreclosed. The balance of former Lot 0058 has been developed and conveyed to a third party. The only other abutting parcel that could supply the needed land — the opponent's property at 140 Wilmington Place SE — is no longer available, as explained next.

C. Peculiar and exceptional practical difficulties to the owner

The practical difficulty to the owner stems directly from the collapse of the Applicant's agreement to purchase the opponent's property at 140 Wilmington Place SE (Lot 808). The Applicant entered into that agreement to carry out a separate, matter-of-right project. Capital Bank confirmed its commitment to finance the purchase at a price of $500,000 (letter of July 13, 2021), and the Applicant commissioned a topographic survey of Lot 808 (Kris Consultants, August 2021).

The purchase was to make possible a re-subdivision that would have removed the need for any zoning relief. As shown on the Graphic Illustration submitted with the site plan, the panhandle portion of former Lot 0058 — the subject Property — was to be excised and combined with the western portion of Lot 808 to form a new lot about 36 feet wide, which would meet the 30-foot

minimum lot width for a semi-detached dwelling in the R-2 zone. The balance of Lot 808 would have been re-subdivided as well, and the existing dwelling at 140 Wilmington Place renovated.

When the purchase agreement fell through, that matter-of-right path was lost. The remainder of former Lot 0058, which the Applicant developed, has been sold and cannot be recombined with the Property. The owner is left with a 16-foot-wide remnant that cannot be enlarged from any adjoining parcel. Strict application of the Regulations would impose practical difficulties that are peculiar and exceptional:

- Providing the 8-foot side yard the R-2 zone requires would leave a building only 8 feet wide, which is not a practical dwelling.
- The lot cannot be brought into compliance with the 30-foot width and 3,000-square-foot area minimums, because no adjoining land is available to acquire.
- Without relief, the Property could not be developed with any principal building and would remain a vacant, unusable parcel in an otherwise built-out residential block.

Requiring strict compliance would therefore be unnecessarily burdensome, and the burden is directly tied to the condition of this Property. *Palmer*, 287 A.2d at 542. The Board may also consider the severity of the variances requested, the weight of the burden of strict compliance, and the effect of the variances on the zone plan. *Gilmartin*, 579 A.2d at 1171. Each factor favors approval here: the dwelling is modest, it complies with the height and story limits, and its effect on neighbors is de minimis.

D. No substantial detriment to the public good or impairment of the zone plan

The project is a single-family dwelling, a matter-of-right use in the R-2 zone. It does not introduce a denser type of residential development. Its bulk is limited, its effect on neighboring light, air and privacy is de minimis (Part VI.C), and its red brick front façade is consistent with the character of the street. DDOT has no objection (Ex. 21). Granting the variances will put a vacant, substandard remnant to productive residential use, consistent with the intent, purpose and integrity of the zone plan.

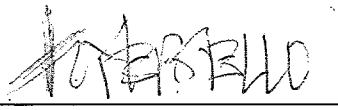
VIII. CONCLUSION

For these reasons, the Applicant submits that the Application meets the special exception standards of Subtitle X § 901.2 and Subtitle D §§ 5201.4 through 5201.6 for relief from D §§ 206.2, 207.1, 208.3 and 210.1, and the three-part test for area variances under Subtitle X § 1002.1(a) for relief from D §§ 202.1 and 200.4. The Applicant respectfully requests that the Board approve the Application.

WITNESSES

1. Olusegun Okegbenro, Owner / Keyline Homes LLC
2. Suleiman S. Umar, Architect (DC Reg. No. ARC5809), P.T.T. Studios

Respectfully submitted,



Olutoye Bello
Bello, Bello & Associates, LLC
1917 Benning Road NE, Washington, DC
Zoning Consultant for the Applicant
Date: 11/26/2026