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 SECOND AMENDED PREHEARING STATEMENT AND STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF

Keyline Homes LLC (the "Applicant") submits this Second 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 its Amended Prehearing Statement dated November 16, 2026, and is reconciled with the Applicant's further amended Form 135 Zoning Self-Certification filed with it.

I. SUMMARY OF AMENDMENTS

This Statement amends the Application in four respects:

1. **All relief is requested as area variances.** At the recommendation of the Office of Planning ("OP"), the Applicant now requests every item of relief — front setback (Subtitle D § 206.2), rear yard (D § 207.1), side yard (D § 208.3), lot occupancy (D § 210.1), minimum lot dimensions (D § 202.1) and principal building type (D § 200.4) — as an area variance under Subtitle X §§ 1000.1 and 1002.1(a). The Applicant withdraws its earlier requests for special exception relief under Subtitle D § 5201.
2. **Practical difficulty.** The practical difficulty argument is restated to show that it arises from circumstances extraneous to the Property itself: the collapse of the Applicant's agreement to purchase the adjoining property at 140 Wilmington Place SE, which was to make possible a matter-of-right re-subdivision, and the later sale of the balance of former Lot 0058. The argument is supported by the controlling decisions of the District of Columbia Court of Appeals (Part VI).
3. **Shadow study.** The Applicant has prepared a shadow study, summarized in Part VII.C and presented in its hearing presentation, showing that the requested relief — and in particular the 3.5-foot front setback relief — has no more than a de minimis effect on neighboring properties.
4. **Exterior materials.** As previously amended, the front façade will be clad in red brick veneer, and the side and rear elevations will be finished in vinyl or fiber-cement (Hardiplank) siding.

Board of Zoning Adjustment
District of Columbia
CASE NO. 21442
EXHIBIT NO. 34A

II. NATURE OF RELIEF SOUGHT

The Applicant requests the following area variances pursuant to 11 DCMR Subtitle X §§ 1000.1 and 1002.1(a):

Requirement	Section	Required	Proposed	Relief type / authority
Front setback	D § 206.2	30 ft.	26.5 ft.	Area variance — X § 1002.1(a)
Rear yard	D § 207.1	20 ft. min.	9 ft.	Area variance — X § 1002.1(a)
Side yard	D § 208.3	8 ft. min.	0 ft.	Area variance — X § 1002.1(a)
Lot occupancy	D § 210.1	40% max.	50%	Area variance — X § 1002.1(a)
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 variances under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3), as further set forth in 11 DCMR Subtitle X §§ 1000.1 and 1002.1(a).

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 be 16 feet wide and 35.5 feet deep, and will provide a 26.5-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. THE AREA VARIANCE STANDARD

The Board may grant a variance where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property . . . or other extraordinary or exceptional situation or condition of a specific piece of property," strict application of the Zoning Regulations would result in "peculiar and exceptional practical difficulties" to the owner. Subtitle X § 1000.1; D.C. Official Code § 6-641.07(g)(3). An applicant for an area variance must prove that, "as a result of the attributes of a specific piece of property described in Subtitle X § 1000.1, the strict application of a zoning regulation would result in peculiar and exceptional practical difficulties to the owner of property." Subtitle X § 1002.1(a).

The Court of Appeals applies a three-part test: (1) an extraordinary or exceptional condition affecting the property; (2) practical difficulties if the regulations are strictly enforced; and (3) relief that 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); *Washington Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 1000 (D.C. 2005); *Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 560 (D.C. 2011).

A. The practical difficulty standard

An area variance requires a showing of practical difficulty, not undue hardship; the burden is lighter than for a use variance. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 541–42 (D.C. 1972). To show practical difficulty, the applicant must demonstrate that compliance with the area restriction would be "unnecessarily burdensome" and that the practical difficulties are "unique to the particular property." *Gilmartin*, 579 A.2d at 1170. In making that judgment the Board has the flexibility to consider "the weight of the burden of strict compliance," "the severity of the variance(s) requested," and "the effect the proposed variance(s) would have on the overall zone plan." *Id.* at 1171. "Increased expense and inconvenience to applicants for a variance are among the proper factors for BZA's consideration." *Id.*

B. The exceptional condition may arise from events extraneous to the land

The exceptional condition need not inhere in the land. The Court of Appeals has rejected the contention that only a hardship inherent in the land can support a variance. *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 293–94 (D.C. 1974); *Capitol Hill Restoration Soc'y, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). The extraordinary or exceptional condition "can be caused by subsequent events extraneous to the land itself." *De Azcarate v. District of Columbia Bd. of Zoning Adjustment*, 388 A.2d 1233, 1237 (D.C. 1978). And the statute "does not preclude the approval of a variance where the uniqueness arises from a confluence of factors," so long as those factors affect a single property. *Gilmartin*, 579 A.2d at 1168.

De Azcarate is closely analogous. There the Board granted a variance of about 16% from the 75-foot minimum lot width of the R-1-A zone for a lot carved from a larger parcel, finding that the lot's condition rendered it unusable, and the Court of Appeals affirmed, holding that the extraordinary situation concerning the lot created "peculiar and exceptional practical difficulties" for the owner. 388 A.2d at 1235–37.

C. Self-created difficulty is not a bar to an area variance

That a difficulty may be traced in part to the owner's own actions does not bar an area variance. The self-imposition rule "has been limited to requests for use variances," and prior knowledge or self-imposition of the difficulty "did not bar granting an area variance." *Gilmartin*, 579 A.2d at 1169, 1171 (discussing *A.L.W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428, 431–32 (D.C. 1975)); *Ass'n for Pres. of 1700 Block of N St., N.W. & Vicinity v. District of Columbia Bd. of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978).

VII. STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF

A. 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.

The Property's size and shape combine with a second, property-specific condition that arose from events outside the Property itself. 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 because the Applicant's agreement to purchase it collapsed. This confluence of factors affects this Property alone. *Gilmartin*, 579 A.2d at 1168; *De Azcarate*, 388 A.2d at 1237.

B. Peculiar and exceptional practical difficulties to the owner

1. The source of the difficulty: the collapse of the contract to purchase 140 Wilmington Place

The practical difficulty to the owner stems directly from circumstances extraneous to the Property: the collapse of the Applicant's agreement to purchase the opponent's property at 140 Wilmington Place SE (Lot 808). The history is as follows:

1. **The remnant.** The Property is the panhandle portion of former Lot 0058, the balance of which the Applicant developed.
2. **The purchase agreement.** To carry out a separate, matter-of-right project, the Applicant agreed to purchase 140 Wilmington Place SE. Capital Bank confirmed its commitment to finance the purchase at a price of $500,000 (letter of July 13, 2021).
3. **The survey.** The Applicant commissioned a topographic survey of Lot 808 (Kris Consultants, August 2021).
4. **The matter-of-right plan.** As shown on the Graphic Illustration submitted with the site plan, the panhandle — the subject Property — was to be excised and combined with about 20 feet of 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. No zoning relief would have been needed.
5. **The collapse.** The purchase agreement fell through. The matter-of-right path was lost, and the remainder of former Lot 0058 has since been sold and cannot be recombined with the Property.

These events are exactly the kind of "subsequent events extraneous to the land itself" that the Court of Appeals recognized in *De Azcarate*, 388 A.2d at 1237, as a source of an exceptional situation. The difficulty does not arise from the Applicant's preference for a particular design or from any general condition of the neighborhood. It arises because a specific, financed, surveyed plan to create a conforming lot depended on the acquisition of adjoining land, and that acquisition did not occur. The owner is left with a 16-foot-wide remnant that cannot be enlarged from any adjoining parcel.

To the extent the opponent may argue that the remnant condition is self-created because the Applicant developed and sold the balance of former Lot 0058, that argument does not bar relief. Self-imposition is not a bar to an area variance, and at most is one factor for the Board to weigh. *Gilmartin*, 579 A.2d at 1169, 1171; *A.L.W.*, 338 A.2d at 431–32; *Ass'n for Pres. of 1700 Block of N St.*, 384 A.2d at 678. Here the Applicant acted to cure the condition by contracting, with committed financing, to acquire the very land needed to make the lot conforming; it was the failure of that transaction, not any act of the Applicant on the Property, that left the condition permanent.

2. Strict compliance would be unnecessarily burdensome for each requirement

Each requested variance flows from the same 16-foot remnant. Strict application of each requirement would impose the following difficulties:

Requirement	Strict compliance would mean	Relief requested
Lot dimensions (D § 202.1)	The lot cannot be brought to 30 feet and 3,000 square feet; no adjoining land is available to acquire, so the lot could not be built on at all.	16 ft. / 1,136 sq. ft. (existing)
Side yard (D § 208.3)	An 8-foot side yard would leave a building only 8 feet wide, which is not a practical dwelling.	0 ft.
Building type (D § 200.4)	No detached or semi-detached building with side yards can be placed on a 16-foot lot.	Detached; no side yards

Requirement	Strict compliance would mean	Relief requested
Rear yard (D § 207.1)	With a 30-foot front setback and a 20-foot rear yard, the 71-foot-deep lot would leave a house only 21 feet deep (a 336-square-foot footprint).	9 ft.
Lot occupancy (D § 210.1)	40% of 1,136 square feet is a footprint of about 454 square feet, well under half of the 1,200 square feet that 40% of a minimum 3,000-square-foot R-2 lot would allow.	50% (about 568 sq. ft.)
Front setback (D § 206.2)	Another 3.5 feet would be taken from a lot already too shallow, after the rear yard, for a house of practical depth.	26.5 ft. (3.5 ft., or about 12%)

3. The Gilmartin factors favor approval

The Board may weigh the burden of strict compliance, the severity of the variances and their effect on the zone plan. *Gilmartin*, 579 A.2d at 1171. Each favors approval:

- **Burden of strict compliance.** 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.
- **Severity.** The relief is the minimum needed for one modest dwelling of about 1,577 square feet. The building complies with the height and story limits and the pervious surface requirement, and the front setback reduction is only 3.5 feet (about 12%).
- **Effect on the zone plan.** The project is a single dwelling unit, a matter-of-right use in R-2, and its effect on neighbors is de minimis, as the shadow study confirms (Part VII.C).

Strict compliance would therefore be unnecessarily burdensome, and the burden is unique to this Property. *Palmer*, 287 A.2d at 542; *Gilmartin*, 579 A.2d at 1170.

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

1. Light and air

The 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.

The front setback relief faces Wilmington Place, a public street, not an adjoining dwelling. Moving the front wall 3.5 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.

2. Shadow study

To confirm the de minimis nature of the relief, and of the front setback relief in particular, the Applicant prepared a shadow study. Sun positions were computed for Washington, DC (38.84° N) on the spring equinox (March 20), the summer solstice (June 21) and the winter solstice (December 21) at 9 AM, 12 PM and 3 PM local time. The building was modeled conservatively as a full 33-foot-tall box, 16 by 35.5 feet as shown on the Builder's Plat (Ex. 10), ignoring the third-floor recesses, with the front lot line facing south. The study compares the proposed building with the same building held to a conforming 30-foot front setback, so that the difference isolates the effect of the 3.5-foot front setback relief. Neighboring dwellings are represented by the areas beyond their stated separations (20 feet west, 29 feet east and 20 feet north).

Added shadow from the front setback relief reaching the areas beyond the neighbors' separations (square feet):

Date	**9 AM**	**12 PM**	**3 PM**
March 20	233	None	None
June 21	92	None	None
December 21	245	None	168

The results confirm that the relief is de minimis:

- At midday in every season, the front setback relief adds only 6 to 51 square feet of shadow, all of it on open ground within the separations or the Property's own front yard, and none reaching any neighboring dwelling area.
- At 3 PM in spring and summer, the added shadow (56 to 73 square feet) likewise stays within the open separations.
- Only at low sun — 9 AM in each season and 3 PM in winter — when the building's shadow extends beyond the separations whether or not relief is granted, does the relief add a strip about 3.5 feet wide, increasing the shadow in those areas by 7% to 11%.

Because the relief moves mass toward the street, it does not lengthen the building's shadow, raise its height or move any wall closer to a neighbor. The other relief — the side and rear yard, lot occupancy, lot dimension and building type variances — is likewise mitigated by the 20- to 29-foot separations that lie on the neighboring lots and will remain open.

3. Privacy

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.

4. Character and the zone plan

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-family dwelling, a matter-of-right use, and does not introduce a denser form of development. Its red brick front façade is consistent with the brick dwellings on both sides of Wilmington Place, and 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.

D. The variance from Subtitle D § 200.4 is included at OP's recommendation

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, so it remains a detached building in fact. The full (100%) side yard variance requested from D § 208.3 already addresses the only respect in which the building departs from a conventional detached form. OP nonetheless recommended that the Applicant include a variance from § 200.4, and the Applicant has done so so that the record is complete and no question about building type remains for permitting. The same facts that support the variances from §§ 202.1 and 208.3 support the variance from § 200.4.

VIII. CONCLUSION

For these reasons, the Applicant submits that the Application meets the three-part test for area variances under Subtitle X §§ 1000.1 and 1002.1(a) for relief from Subtitle D §§ 206.2, 207.1, 208.3, 210.1, 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: _____