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
Public Hearing: December 2, 2026, 9:30 a.m.

POINTS AND AUTHORITIES IN SUPPORT OF APPLICANT'S MOTION (FORM 150) TO ACCEPT UNTIMELY FILINGS AND TO PERMIT MODIFICATION OF THE APPLICATION PURSUANT TO 11 DCMR SUBTITLE Y §§ 300.16 AND 300.17

I. RELIEF REQUESTED

Keyline Homes LLC (the "Applicant") respectfully moves the Board of Zoning Adjustment (the "Board") to:

1. accept into the record the Applicant's filings at Exhibits 34A, 34B and 34C and its affidavit of posting; and
2. waive, for good cause shown, Subtitle Y §§ 300.15 and 300.16 pursuant to Subtitle Y § 300.17 (and, to the extent necessary, Subtitle Y § 101.9), and permit the modification of the application reflected in those exhibits — namely, the request that the front setback, rear yard, side yard and lot occupancy relief, previously requested as special exceptions under Subtitle D § 5201, now be considered as area variances under Subtitle X § 1002, together with the area variances from Subtitle D §§ 202.1 and 200.4 — as recommended by the Office of Planning ("OP").

II. STATEMENT OF MATERIAL FACTS

1. The Board scheduled the public hearing on this application for December 2, 2026, at 9:30 a.m.
2. As originally filed, the application requested special exception relief under Subtitle D § 5201 and Subtitle X § 901.2 from the front setback (D § 206.2), rear yard (D § 207.1), side yard (D § 208.3) and lot occupancy (D § 210.1) requirements, and area variance relief under Subtitle X § 1002 from the minimum lot dimension requirements of Subtitle D § 202.1. At OP's earlier recommendation, the Applicant added a variance from Subtitle D § 200.4 in its Amended Prehearing Statement dated November 16, 2026.
3. **On November 17, 2026, OP recommended by email** that the Applicant amend the application to request all of the relief as area variances. That email was received fifteen (15) days before the public hearing.

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4. By then, the thirty-day deadline of Subtitle Y § 300.16 for modifying an application (November 2, 2026) and the prehearing-statement deadline of Subtitle Y § 300.15 had already passed. The Applicant could not have made the modification OP recommended within those deadlines.

5. The Applicant acted promptly on OP's recommendation. It prepared and filed the amended materials now at Exhibits 34A, 34B and 34C, and signed and served this motion on November 20, 2026, three (3) days after receiving OP's email.

6. On November 19, 2026, two days after receiving OP's email, the Applicant presented the application to Advisory Neighborhood Commission 8D on the basis of the amended relief, consistent with the updated submissions.

7. The modification changes the legal standard under which four of the six items of relief are reviewed. It does not change the proposed building, its use as a single one-family dwelling, or the zoning provisions from which relief is sought. The amended filings also conform the stated front setback (26.5 feet) and building depth (35.5 feet) to the Builder's Plat already in the record at Exhibit 10.

8. The notice of public hearing posted on the Property identifies the case type as "Area Variance" and cites Subtitle X § 1002 among the authorities for the relief. The public was therefore on notice that the application includes area variance relief.

III. APPLICABLE AUTHORITY

Subtitle Y § 300.15 requires an applicant to file its prehearing statement no later than thirty (30) days before the public hearing. Subtitle Y § 300.16 provides:

> "No application shall be modified less than thirty (30) days prior to the public hearing."

Subtitle Y § 300.17 then authorizes the Board, upon motion by the applicant and for good cause shown, to "waive Subtitle Y §§ 300.15 and 300.16 and permit modification of the application at the public hearing." Sections 300.16 and 300.17 were added by Z.C. Order No. 22-25 (Text Amendments to Subtitles C, I, X, Y and Z), which renumbered former § 300.16 as § 300.18. In adopting them, the Zoning Commission considered the concern that permitting modification of an application at the hearing could be unfair to non-applicant parties, and retained the Board's authority to permit such modifications for good cause shown.

Separately, Subtitle Y § 101.9 permits the Board, for good cause shown, to waive provisions of Subtitle Y (other than certain enumerated sections not at issue here) where the waiver will not prejudice the rights of any party and is not otherwise prohibited by law.

Finally, the Board must give "great weight" to the recommendations of the Office of Planning. D.C. Official Code § 6-623.04.

IV. ARGUMENT

A. Good cause exists because the modification responds to OP's recommendation, which arrived after the deadline had passed

The thirty-day bar of § 300.16 presumes that an applicant controls the content of its application. Here, the modification did not originate with the Applicant. It was recommended by OP, the agency whose recommendations the Board must give great weight, in an email received on November 17, 2026 — fifteen days after the § 300.16 deadline had already run on November 2, 2026. No diligence on the Applicant's part could have produced the modification within the deadline, because the recommendation that prompted it did not yet exist.

The Applicant also acted without delay. Within two days it presented the amended relief to ANC 8D, and within three days it had filed the amended materials and served this motion. A party that responds this promptly to an agency recommendation received after a filing deadline has shown good cause for relief from that deadline.

Granting the motion also serves the purpose of the hearing. Considering the application as OP recommends will allow the Board to evaluate the relief under the standard OP has identified as appropriate, with the benefit of OP's analysis, rather than under a framework OP no longer supports.

B. No party or member of the public will be prejudiced

The concern that led to § 300.16 — that a late modification may surprise non-applicant parties — is not present here, for five reasons:

- **The project is unchanged.** The proposed building, its use and the zoning provisions from which relief is sought remain the same. Only the standard of review changes.
- **The modification makes the Applicant's burden heavier, not lighter.** Area variance relief requires the Applicant to prove an exceptional condition, practical difficulty and no substantial detriment under Subtitle X § 1002.1(a), a more demanding showing than the special exception standards of Subtitle X § 901.2. No opponent's position is weakened by holding the Applicant to the higher standard.
- **The public was on notice.** The posted notice of hearing already identifies the case as an area variance case and cites Subtitle X § 1002.
- **The ANC has been informed.** The Applicant presented the amended relief to ANC 8D on November 19, 2026.
- **The materials are in the record before the hearing.** Exhibits 34A through 34C have been available to OP, the ANC and any party in advance of the December 2, 2026 hearing. The Applicant does not object to the Board holding the record open after the hearing, for a period the Board considers appropriate, so that any party may respond in writing.

C. The waiver is not otherwise prohibited by law

Subtitle Y § 300.17 expressly authorizes the waiver requested, and the Board has jurisdiction to grant area variances under D.C. Official Code § 6-641.07(g)(3) and Subtitle X § 1000.1. No statute or regulation bars the Board from hearing the application as modified.

D. The affidavit of posting should be accepted

The Applicant posted the Property with the notice of public hearing furnished by the Office of Zoning, as required by Subtitle Y § 402.3, and the affidavit of posting attaches photographs of the posted notices at the front and rear of the Property. Accepting the affidavit into the record will allow the Board to confirm compliance with the posting requirement and will prejudice no one.

V. CONCLUSION

For these reasons, the Applicant respectfully requests that the Board find good cause and (1) accept Exhibits 34A, 34B and 34C and the affidavit of posting into the record; and (2) waive Subtitle Y §§ 300.15 and 300.16 pursuant to Subtitle Y § 300.17 and permit the modification of the application to request all relief as area variances under Subtitle X § 1002, as recommended by the Office of Planning.

Respectfully submitted,



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For the Applicant, Keyline Homes LLC
Date: 11/24//2026

CERTIFICATE OF SERVICE

I hereby certify that on the date written below, I served a copy of these Points and Authorities, with the accompanying Form 150 motion, by e-mail on the Office of Planning, on Advisory Neighborhood Commission 8D, and on every other party in BZA Application No. 21442.



Date: 11/24/2026

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Toye Bello