**BEFORE THE BOARD
OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

APPLICATION OF BANK OF AMERICA, N.A. 3 DUPONT CIRCLE, N.W.	**BZA APPLICATION NO. 18828 HEARING DATE: OCTOBER 7, 2014 ANC 2B**

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

Bank of America, N.A. ("Applicant"), through undersigned counsel, submits this statement in support of its application to the Board of Zoning Adjustment for a variance pursuant to 11 DCMR § 3103.2 from the floor area ratio ("FAR") requirements of subsection 771.2. The variance will allow the Applicant to construct a small, 240 square-foot addition to the existing ground-floor banking center in order to relocate and enclose the existing automatic teller machines ("ATMs") into a secure 24-hour vestibule. The property is located in the DC/C-3-C District at 3 Dupont Circle, N.W. (Square 114, Lot 816) (the "Site").

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment (the "Board") has jurisdiction to grant the variance requested herein pursuant to D.C. Code § 6-641.07(g) and 11 DCMR § 3103.

III.
BACKGROUND

A. Description of the Site

The Site is located on Dupont Circle between New Hampshire Avenue, 20th Street, O Street, and P Street, N.W. The Site is one of two lots located in Square 114 and encompasses approximately 28,054 square feet of land area. The Site is improved with an existing building constructed circa 1969 pursuant to Board of Zoning Adjustment ("Board" or "BZA") approval in Order No. 9431, issued November 22, 1967. The building is eight stories in height with a small one-story portion to the north that houses the bank. According to BZA Order No. 9431, the building was constructed to its maximum permitted FAR of 6.5, which equates to 182,541.58 square feet of gross floor area ("GFA"). The building is owned by the American Council on Education and the Applicant is the lessee in the ground floor. The existing ground floor bank includes three outdoor ATMs that the Applicant proposes to relocate and enclose as part of this application. The existing building is a non-contributing structure within the Dupont Circle Historic District.

B. Project Description

As shown on the architectural plans and elevations, attached hereto as Exhibit A (the "Plans"), the Applicant proposes to construct an addition to the existing building consisting of approximately 240 square feet of space at the Dupont Circle property line in order to provide a secure, 24-hour ATM vestibule and reconfigured entrance lobby. Upon completion of the addition, the FAR of the overall building will increase from 6.5 to 6.51. This requested relief is *de minimus* in nature, resulting in an increase in FAR of approximately 0.13 percent, which is less than one-half of one percent.

The addition's metal panel and glass storefront will replace the exterior ATM alcove that currently exists. The ATMs will be relocated to the left of the new entrance and a seating area will be created to the right of the entrance where the ATMs are currently located. The new ATMs and seating area will be visible from the street through the glass storefront, creating a sense of openness and visibility. As shown on the Plans, the new door entry will be recessed so that door swings do not encroach upon the pedestrian sidewalk in front of the bank. The massing, scale, proportion, and materials of the proposed addition will complement the existing building and create a continuous, curving street wall along this portion of Dupont Circle.

Given that the Site is located within the Dupont Circle Historic District, the Applicant provided designs of the proposed addition to the Historic Preservation Office ("HPO"). The HPO Staff Report and Recommendation approving the project is attached as Exhibit C. The Historic Preservation Review Board ("HPRB") placed the project on its Consent Calendar for the May 22, 2014, public meeting, which was adopted without change. See HPRB Actions, May 22, 2014, attached as part of Exhibit C.

Overall, the design of the proposed addition responds to community concerns, respects the commercial character of the neighborhood, and will provide a safe and attractive ATM vestibule for the existing Bank of America at the Site.

IV.
THE APPLICANT MEETS THE BURDEN OF PROOF FOR VARIANCE RELIEF

Variance relief in this case is required from the FAR requirements (§ 771.2) of the Zoning Regulations. Under D.C. Code § 6-641.07(g)(3) and 11 DCMR § 3103.2, the Board is authorized to grant an area variance where it finds that three conditions exist:

> (1) the property is unusual because of its size, shape or topography or other extraordinary or exceptional situation or condition;
>
> (2) the owner would encounter practical difficulties if the zoning regulations were strictly applied; and
>
> (3) the variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (*quoting Roumel v. District of Columbia Bd. of Zoning Adjustment*, 417 A.2d 405, 408 (D.C.

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1980)); *see also, Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939 (D.C. 1987). The Board may also consider the *de minimus* nature of the relief requested and evaluate an application under a lesser burden of proof than might otherwise apply to a variance request. *See, e.g., Gilmartin v. District of Columbia Bd. of Zoning Adjustment,* 579 A.2d 1164, 1171 (D.C. 1990) ("BZA may consider whether the variance sought is *de minimus* in nature and whether for that reason a correspondingly lesser burden of proof rests on the intervenor"); *see also Oakland Condominium v. District of Columbia Bd. of Zoning Adjustment,* 22 A.3d 748 (D.C. 2011) (BZA properly considered minor nature of relief requested to the vibrant and active community in which the property is situated); *see also* Zoning Commission Order No. 02-37, issued May 23, 2003. The *de minimus* doctrine is an exception to the strict burden of proof an applicant must show when requesting only minor deviations from the zoning requirements. It is applied "only when rigid compliance is not necessary for the protection of the public policy concerns of the ordinance." *Stewart v. Zoning Hearing Bd. of Radnor*, 110 Pa.Cmwlth. 111, 115, 531 A.2d 1180, 1182 (Pa. 1987); *see also Marlow v. Zoning Hearing Bd. of Haverford*, 52 Pa.Cmwlth. 224, 415 A.2d 946 (Pa. 1980). As discussed below, and as will be further explained at the public hearing, all three prongs of the variance test are met in this application.

A. <u>The Property is Unusual Because of its Size, Shape, or Topography and is Affected by an Exceptional Situation or Condition</u>

The phrase "exceptional situation or condition" in the above-quoted variance test may arise from a confluence of factors which affect a single property. *Gilmartin*, 579 A.2d at 1168. In this case, the conditions of the Site, its location, and its irregular shape and size, as well as the existing building on the Site, create an exceptional situation and condition. The Site is an exceptionally large lot and an irregularly-shaped trapezoid. The existing building on the Site follows most of the lot line except where it confronts Dupont Circle to follow its circular shape. This results in a recessed area at the street frontage where the eight-story portion of the building meets the one-story portion. The exterior ATMs are located in this recessed area, which expose bank customers to inclement weather and increased security risks. The full-service bank is operating at capacity and cannot reduce the number of teller stations, customer representatives offices, secure areas, or vault space. Given the existing improvements on the Site that take up the maximum permitted FAR, any new development or construction on the Site is restrained by the existing structure.

B. Strict Application Would Result in a Practical Difficulty to the Owner

Strict interpretation of FAR requirements will result in a practical difficulty to the Applicant. Pursuant to section 771.2 of the Zoning Regulations, the maximum density permitted in the C-3-C District for buildings with non-residential uses is 6.5 FAR. The existing building on the Site contains approximately 182,541.58 square feet of gross floor area, which results in an FAR of 6.5. Thus, any new development on the Site would result in non-compliance with the FAR requirements.

Due to the exceptional conditions and situations inherent in the Site, the Applicant can create a secure, 24-hour access to its ATMs only by enclosing a portion of the exterior area already used for that purpose. The bank cannot relocate the ATMs into the existing space without compromising bank operations and the services it provides to its customers. Upon completion, the FAR will increase from 6.5 to 6.51. The requested relief is *de minimus* in nature, resulting in an increased FAR of approximately 0.13 percent—less than one-half of one percent.

C. <u>No Substantial Detriment to the Public Good Nor Substantial Impairment to the Intent, Purpose and Integrity of the Zone Plan</u>

The requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. With respect to the public good, the enclosure of 240 square feet at the front of the banking center will greatly enhance the public good by providing a secure area for bank customers to withdraw cash at a reduced risk of robberies. The enclosure also provides protection against inclement weather and maximizes storefront glazing, providing a more open, inviting retail presence and improving visibility from Dupont Circle. The project design was endorsed by HPO and HPRB. Therefore, constructing the addition will not result in harm to the public good or threat to the zone plan. Instead, the addition will maximize space, enhance the pedestrian experience on Dupont Circle, and contribute to the vibrancy of the neighborhood.

V.
<u>COMMUNITY SUPPORT</u>

The project was on Advisory Neighborhood Commission ("ANC") 2B's May agenda, to be reviewed for both HPRB and BZA approval. However, due to the ANC's lengthy agenda and because HPO staff placed the project on HPRB's May 22, 2014 Consent Calendar, ANC 2B chose not to take a vote on the project. The Applicant has re-engaged with the ANC, but the ANC elected not to include the Applicant's project on its special meeting agenda scheduled for September 9, 2014, most likely due to the *de minimus* nature of the relief requested.

VI.
EXHIBITS SUBMITTED IN SUPPORT OF THE APPLICATION

Exhibit A:	Architectural Plans and Elevations for the Project
Exhibit B:	A portion of the Zoning Map showing the Site
Exhibit C:	Historic Preservation Review Board Staff Report and Recommendation and HPRB Actions for May 22 and May 29, 2014
Exhibit D:	Outlines of Testimony and Resumes of Expert Witnesses

VII.
WITNESSES

A. Representative, Bank of America, N.A.

B. John Padussis, Gensler, project architect.

VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards for a variance under the Zoning Regulations. Accordingly, the Applicant respectfully requests the Board to grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By: Mary Carolyn Brown

Mary Carolyn Brown
800 17th Street, N.W. Suite 1100
Washington, D.C. 20006
(202) 955-3000