BEFORE THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT
APPLICATION OF BANK OF AMERICA, N.A.
3 Dupont Circle, N.W. (Square 114, Lot 816)

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. BACKGROUND

Bank of America, N.A. ("Applicant") proposes to construct a small addition to the ground-floor banking center in order to relocate and enclose the existing automatic teller machines (ATMs) into a secure, 24-hour vestibule at the building located at 3 Dupont Circle, N.W., Washington, D.C. (Square 114, Lot 816). The property is owned by the American Council on Education and the Applicant is the lessee in the ground floor. The building is located in the DC/C-3-C District.

The existing building on the site is eight stories in height, with a small one-story portion to the north that houses the bank. The building was constructed circa 1968 pursuant to Board of Zoning Adjustment ("Board" or "BZA") approval in Order No. 9431 issued November 22, 1967. According to that order, the building was constructed to its maximum permitted floor area ratio ("FAR") of 6.5, which equates to 182,541.58 square feet of gross floor area ("GFA"). The Applicant proposes to construct an addition consisting of approximately 193 square feet of space at the Dupont Circle property line in order to provide a secure, 24-hour ATM vestibule and reconfigured entrance lobby. The ATMs will be visible from the street through the glass storefront.

II. RELIEF REQUESTED AND STANDARD OF REVIEW

The Applicant seeks an area variance from section 771.2 to increase the GFA of the building by 193 square feet, which is an increase of less than 0.11%. The resulting density will be 6.506 FAR.

A. Burden of Proof

The test for variance relief is three-part: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan. 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 relative 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 Marlowe v. Zoning Hearing Bd. of Haverford*, 52 Pa.Cmwlth. 224, 415 A.2d 946 (Pa. 1980).

B. Exceptional Condition or Situation

The lot is an exceptionally large and 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 is a recessed area at the street frontage where the 8-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 representative offices, secure areas or vault space.

C. Resulting Practical Difficulty

Because of the exceptional conditions and situations inherent in the property, the Applicant can only create a secure, 24-hour access to its ATMs 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 6.505. The requested relief is *de minimus* in nature, resulting in an increase in FAR of less than 0.11%.

D. No Harm to Public Good or Zone Plan

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 193 square feet at the front of the building will greatly enhance the public good by providing a secure area for bank customers to withdraw cash that reduces risk of robberies. The enclosure also provides protection against inclement weather. The Applicant met with Advisory Neighborhood Commission 2B, which supported the enclosure. The design was reviewed by the Historic Preservation Review Board, which also endorsed the proposal.

III. CONCLUSION

Pursuant to section 3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. Through the Applicant's written statement, and through testimony and evidence presented at the public hearing, the Applicant will demonstrate how it meets its burden of proof to obtain the Board's approval of the requested relief.