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Steven E. Sher
Director of Zoning and Land Use Services
202 663 7278
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November 16, 2004

VIA HAND DELIVERY

D.C. Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, D.C. 20001

Re: **BZA Order No. 17122**
Application of the Freedom Forum, Inc.
Request for Modification of Approved Plans

Dear Members of the Board:

The Freedom Forum, Inc., the owner of the property which is the subject of BZA Application No. 17122, hereby submits this request for the Board to modify the approved plans in the subject application. The Applicant requests that the Board approve the reconfiguration of the roof structures on the residential portion of the building to reduce the number from three to two and to reduce the setback on the south or interior side of the roof.

A. Background

The subject property is located at the intersection of Pennsylvania Avenue and 6th and C Streets and is known as 555 Pennsylvania Avenue, N.W. The property was comprised of lots 826 and 831 in Square 491 at the time of the original application but has since been subdivided into a single record lot 34. The proposed development of the site is for a mixed use project including the Newseum, retail, an apartment house and offices.

BZA Application No. 17122 was heard by the Board on March 9, 2004, and was approved by unanimous Bench Decision on the same day. The Board granted a variance from the width of court requirements (§7761.), a variance from the arcade requirements (§1701.2), a variance from the street wall requirements (§1701.3) and a special exception for roof structure requirements under §411. The written Summary Order approving the Application was issued on March 16, 2004.

BZA
Case No. 17122
Exhibit No. 33

Board of Zoning Adjustment
District of Columbia
CASE NO. 17122
EXHIBIT NO. 33

B. Modification of Plans

Pursuant to §3129 of the Zoning Regulations, the Applicant in the above-referenced case hereby requests the Board of Zoning Adjustment's approval to modify the plans that were approved as part of the original Application. A copy of the BZA Order is attached as Exhibit A. There, the Board granted special exception relief pursuant to §411.11 for roof structure setbacks and for multiple roof structures. The building is designed as a complex and integrated series of "bars." The apartment house is in the northernmost bar adjacent and parallel to C Street. There were three separate roof structures proposed for the residential bar, which did not meet the setback requirements on the south side, adjacent to an interior wall of the building. A copy of the relevant pages of the Plans originally submitted to and approved by the Board is attached as Exhibit B. The applicant notes that the North Elevation, Sheet Z2.03 of the plans, appears to show four roof structures on the top of the residential bar. There were only three proposed, as shown on the roof plan shown on Sheet Z1.10.

The proposed modification would make two changes to the roof structure on the residential bar. The three roof structures would be consolidated into two, by filling in the eleven foot, six inch gap between the middle and east roof structures. The roof structures would be extended to the south, so that there would be no setback adjacent to the southern interior wall, rather than the five foot, eight inch setback which was provided on the original plan.

The requested modifications are minor and are within the requirements of §3129, as follows:

- The setbacks of the roof structures from the north, east and west edges of the roof remain as proposed on the original plans. At twenty-five feet, nine inches, forty feet, four inches and thirty feet, three inches, respectively, the setbacks far exceed the minimum of 1:1.

- The height of the roof structures has not changed. The third bar of the Newseum is higher than the top of the roof structures on the residential bar. The third bar blocks the view of the residential roof structures from the south and provides a backdrop for any potential view from the north, so that there would be no change in the appearance of the mass of the roof structures or of the outline of the roof structures against the sky.

- The design of the north facing side of the third bar is such that, even with the roof structures moved to the interior edge of the roof on the south, there would be no view of the residential roof structures from inside the building. The lower floors of the Newseum have no windows facing north and the only windows in the upper floors of the office space in the third bar are located above eye level such that the angle of sight would be over the roof structures.

- The east and west ends of the roof structures are fixed by the location of stair towers which service the residential bar from the roof down through the building. As the final mechanical and structural design of the building evolved, in order to provide the space needed for rooftop equipment and building service needs, the most appropriate area for

expansion of the roof structures was determined to be between the separate penthouses and to the south, away from the visible exterior walls.

- The overall FAR of the roof structures increases by a very minimal amount, from 0.070 FAR to 0.086 FAR. That increase is almost imperceptible.

- The decrease in the number of roof structures from three to two goes more in the direction of conformity with the Regulations, even though the overall mass on the roof is slightly increased.

A copy of the relevant revised sheets of the plans which show the proposed roof structure on the residential bar is attached as Exhibit C. All other sheets from the original plans remain unchanged.

C. Waiver of Six Month Time Limit

As part of this filing, the Applicant requests a waiver from the six month limitation for filing requests for modification of plans with the Board, set forth at §3129.3 of the Zoning Regulations, in order to allow this modification request to be considered. The Board granted the application in March of 2004, less than eight months ago. The full evolution of permit drawings brought to light only within the last few weeks the need to revise the size and layout of the roof structures. The six month period for seeking a modification is out of consonance with the two year period provided in §3130 for filing an application for a building permit. The Applicant therefore seeks a waiver from §3129.3 for the Board to consider the requested modifications.

D. Conclusion

For the reasons set forth above, it is respectfully requested that the Board grant a waiver of the six-month time frame of §3129.3 and that the Board grant the Request for Modification of Plans as set forth herein.

Respectfully submitted,

Holland & Knight LLP

Whayne S. Quin

Steven E. Sher
Director of Zoning and Land Use Services

Attachments
cc: Office of Planning
ANC 6C

2385781_v1

A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 17122 of Freedom Forum, Inc., pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under section 411, and pursuant to 11 DCMR § 3103.2, for a variance from the width of court requirements under subsection 776.1, a variance from the arcade requirements under subsection 1701.2, a variance from the street wall requirements under subsection 1701.3, to permit the development of a mixed-use building including the Newseum, retail, an apartment house and offices in the DD/C-4 District at premises 555 Pennsylvania Avenue, N.W. (Square 491, Lots 826 and 831).

HEARING DATE: March 9, 2004
DECISION DATE: March 9, 2004 (Bench Decision)

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 6C, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP). The OP submitted a report in support of the application. The subject property is located within the jurisdiction of ANC 6C. ANC 6C submitted a letter in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for special exceptions pursuant to 11 DCMR §§ 3104.1 and 441, and variances under 11 DCMR § 3103.2 from the strict application of the requirements of §§ 776.1, 1701.2, and 1701.3. No party appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the Office of Planning and ANC reports filed in this case, the Board concludes that the applicant has met

the burden of proof pursuant to 11 DCMR §§ 3104.1, for a special exception under section 411, that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board also concludes that the applicant has met its burden of proof under 11 DCMR §§ 3103.2, 776.1, 1701.2, and 1701.3, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that the application is **GRANTED**.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 5-0-0 (Geoffrey H. Griffis, David A. Zaidain, Curtis L. Etherly, Jr., Ruthanne G. Miller and John G. Parsons to approve).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 16 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

B

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., September 24, 2003

Plat for Building Permit of SQUARE 491 LOTS 831 AND 826

Scale: 1 inch = 40 feet

Recorded in A & T Book Page 3473-C (LOT 831); A & T Book Page 3646-T (LOT 826)

Receipt No. 07072

Furnished to: HOLLAND & KNIGHT

I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

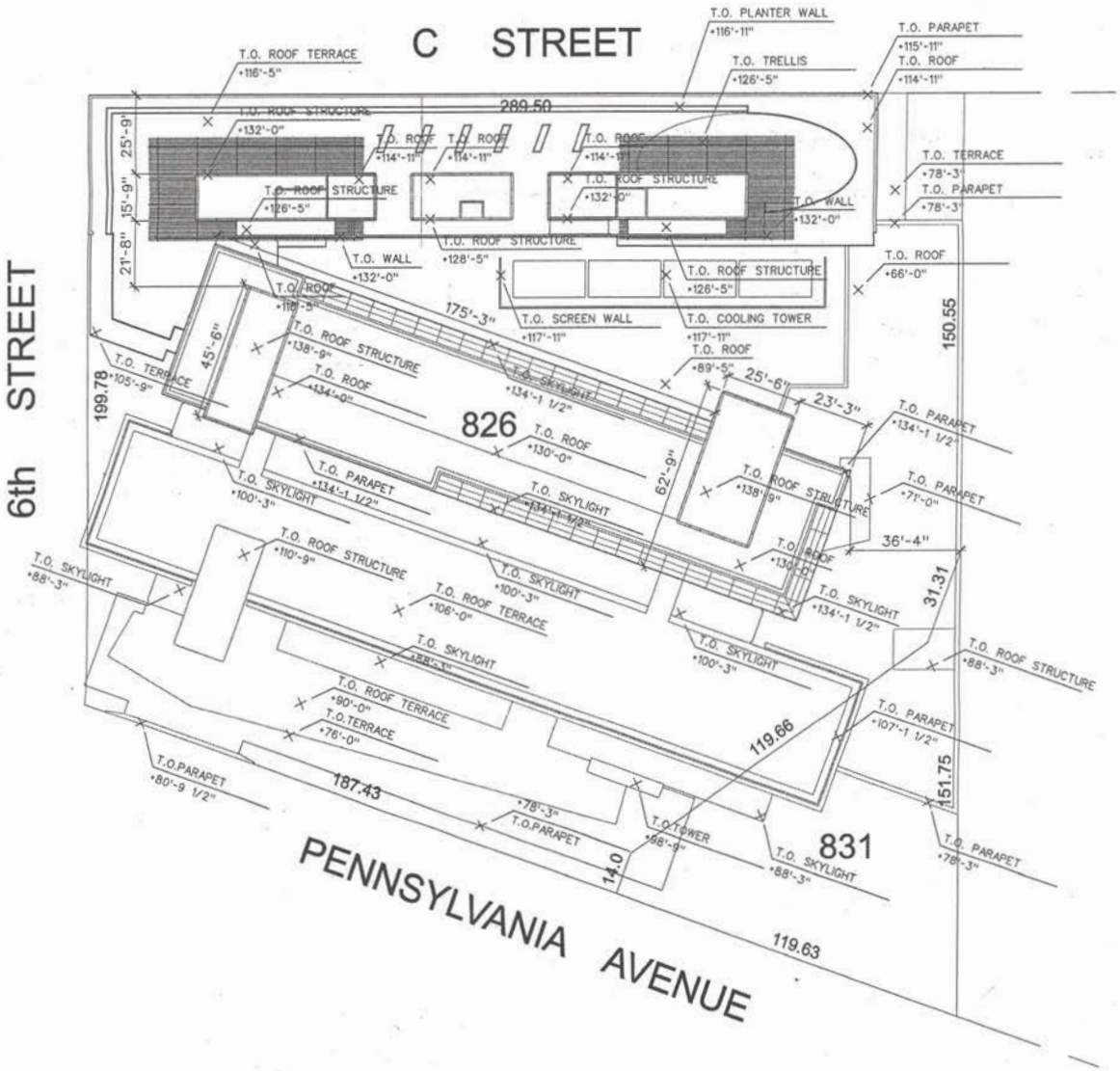
Surveyor, D.C.

Date: _____

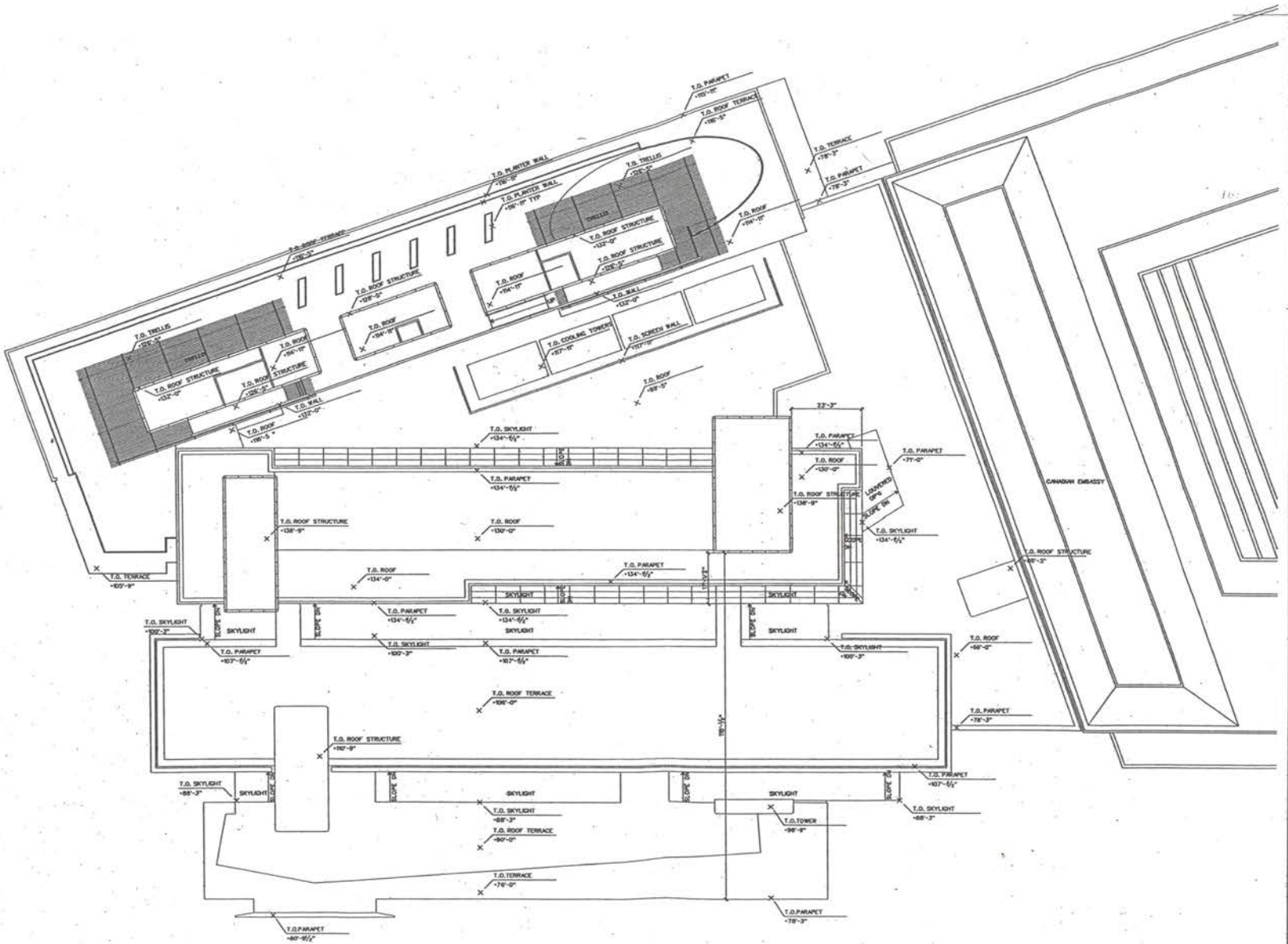
By: L.E.S.

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



SO-07072(2003)



Newseum

555 Pennsylvania Avenue
Washington, DC

Owner

The Freedom Forum World Center
1101 Wilson Boulevard
Arlington, VA
703.284.2810

Architect

Pelsbak Partnership Architects LLP
320 West 13th Street
New York, New York 10014
212.807.7171

Seal

Record

Issue	Date

Key Plan

Job No. 0025

Scale 1/32" = 1'-0"

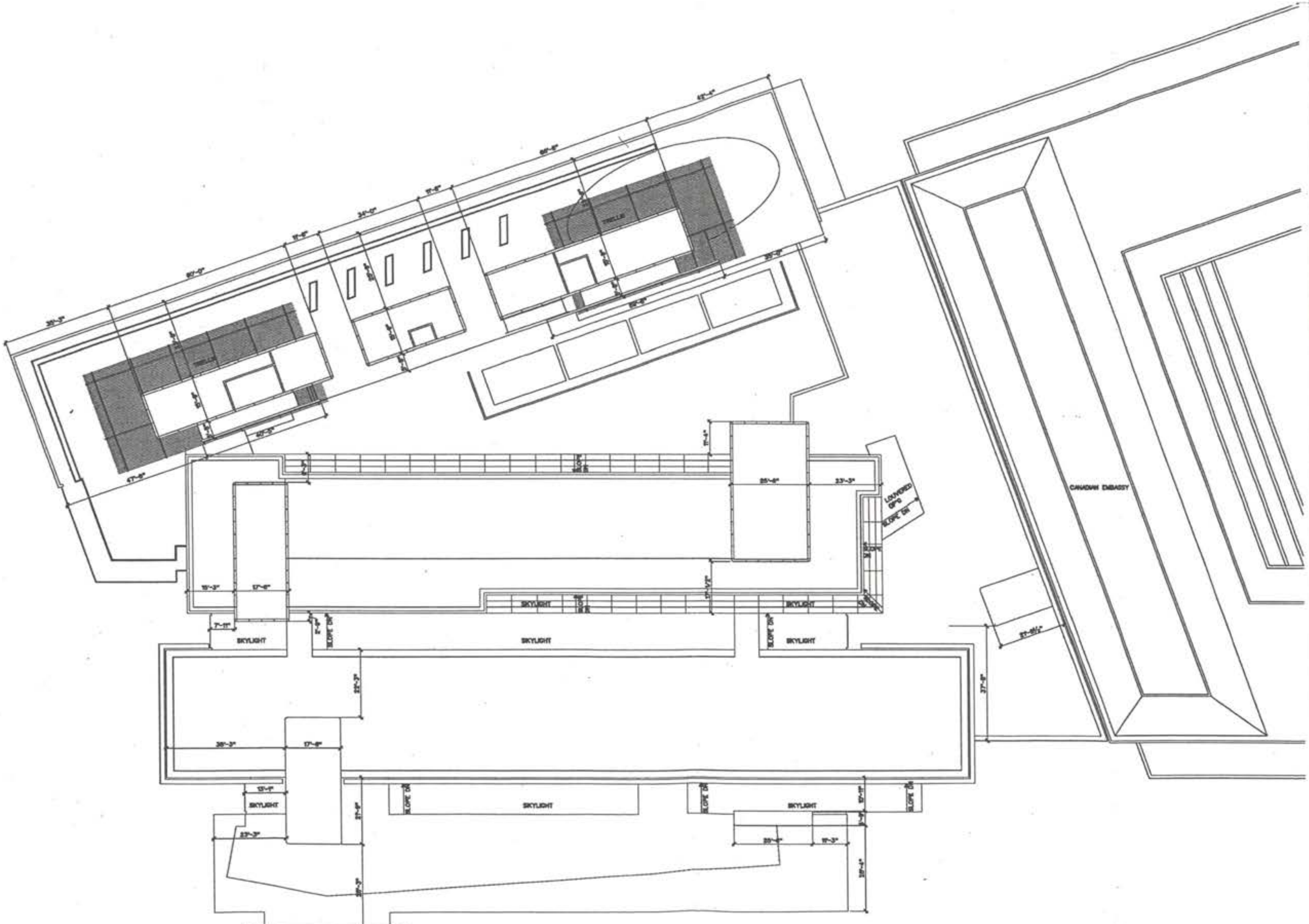
Date 12 NOVEMBER 2003

Sheet Title

ROOF PLAN

Sheet No.

Z-1.09



Newseum

555 Pennsylvania Avenue
Wahington, DC

Owner

The Freedom Forum World Center
1101 Wilson Boulevard
Arlington, VA
703.284.2810

Architect

Polshek Partnership Architects LLP
320 West 13th Street
New York, New York 10014
212.807.7171

Seal

Record

Issue	Date

Key Plan

Job No. 0025

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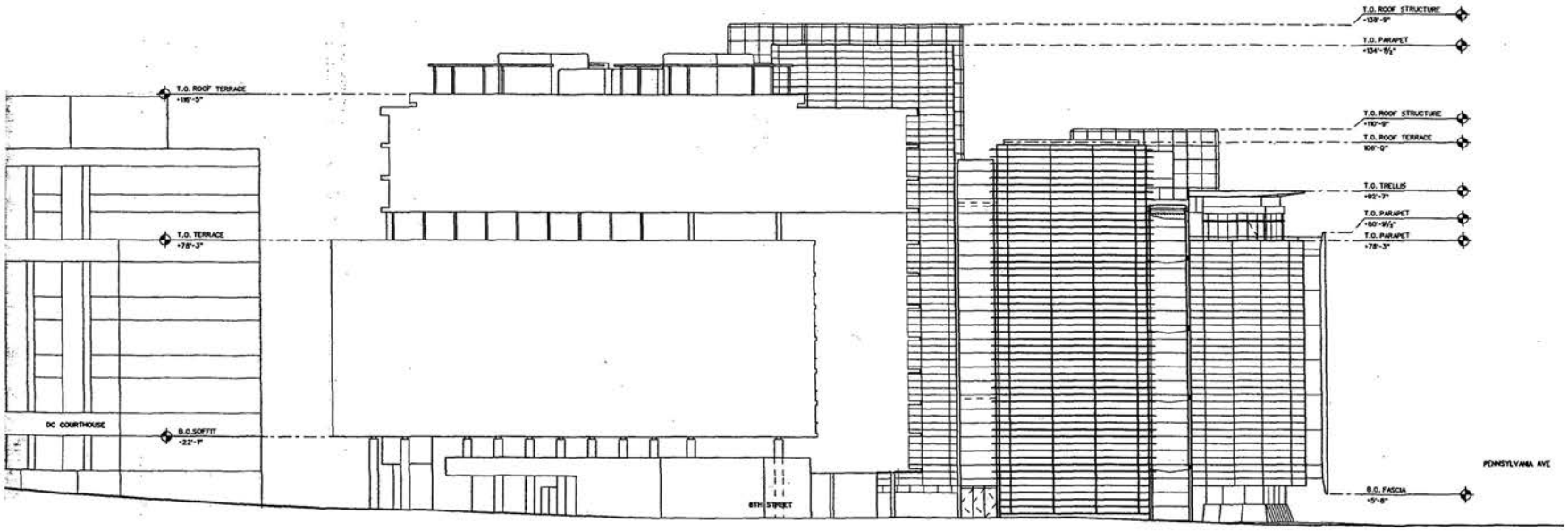
Date 12 NOVEMBER 2003

Sheet Title

ROOF STRUCTURES SETBACK PLAN

Sheet No.

Z-1.10



Newseum

555 Pennsylvania Avenue
Wahington, DC

Owner

The Freedom Forum World Center
1101 Wilson Boulevard
Arlington, VA
703.284.2810

Architect

Polshek Partnership Architects LLP
320 West 13th Street
New York, New York 10014
212.807.7171

Seal

Record

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Key Plan

Job No. 0025

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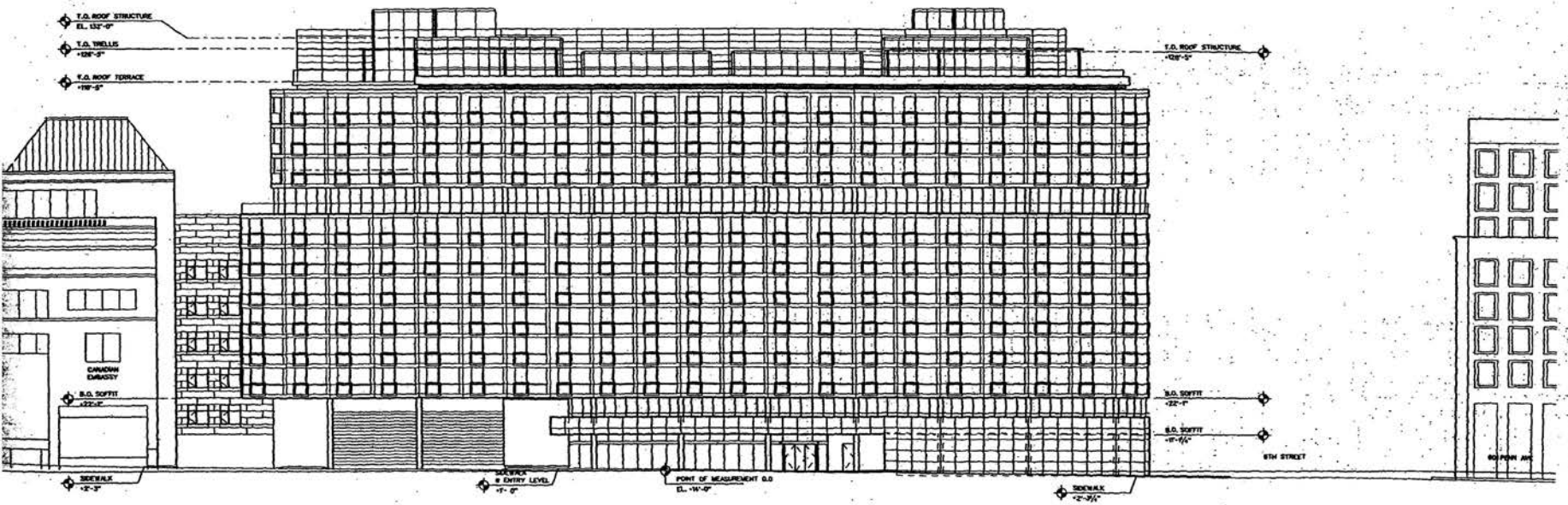
Date 12 NOVEMBER 2003

Sheet Title

WEST ELEVATION

Sheet No.

Z-2.02



Newseum

555 Pennsylvania Avenue
Washington, DC

Owner

The Freedom Forum World Center
1101 Wilson Boulevard
Arlington, VA
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Architect

Polshek Partnership Architects LLP
320 West 13th Street
New York, New York 10014
212.807.7171

Seal

Record

Issue	Date

Key Plan

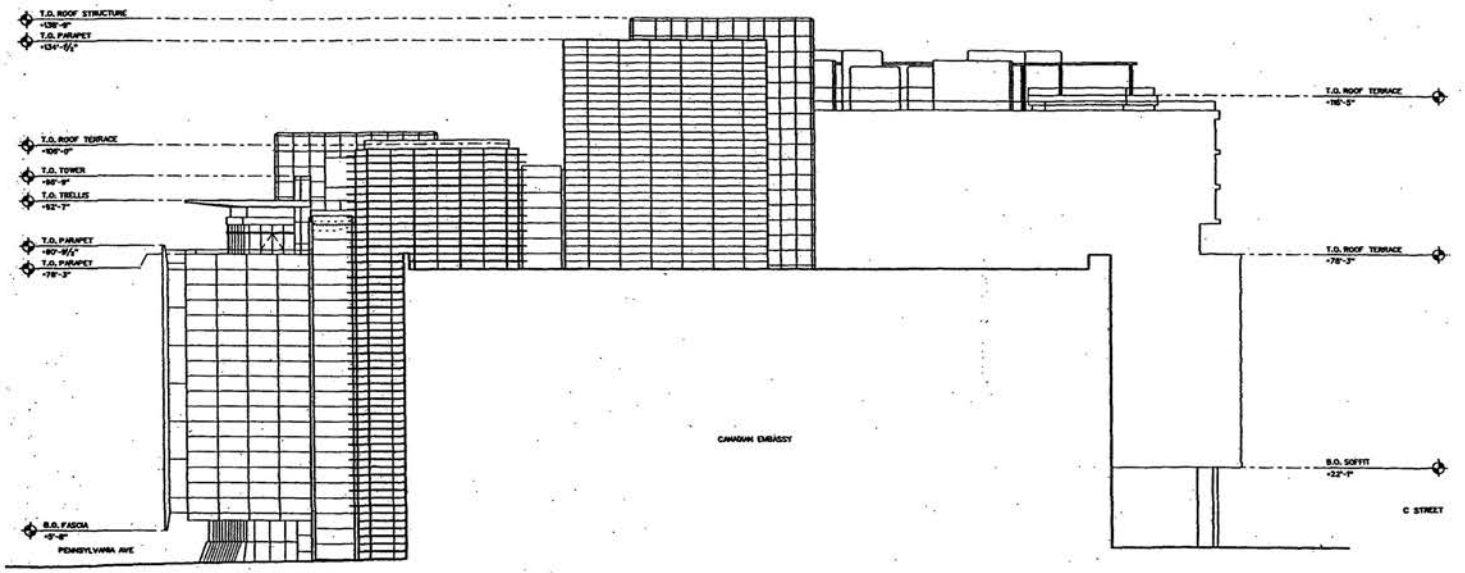
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Scale
1/32" = 1'-0"

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12 NOVEMBER 2003

Sheet Title
NORTH ELEVATION

Sheet No.
Z-2.03



Newseum

555 Pennsylvania Avenue
Washington, DC

Owner

The Freedom Forum World Center
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Arlington, VA
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Architect

Polshek Partnership Architects LLP
320 West 13th Street
New York, New York 10014
212.807.7171

Seal

Record

Issue	Date

Key Plan

Job No. 0025

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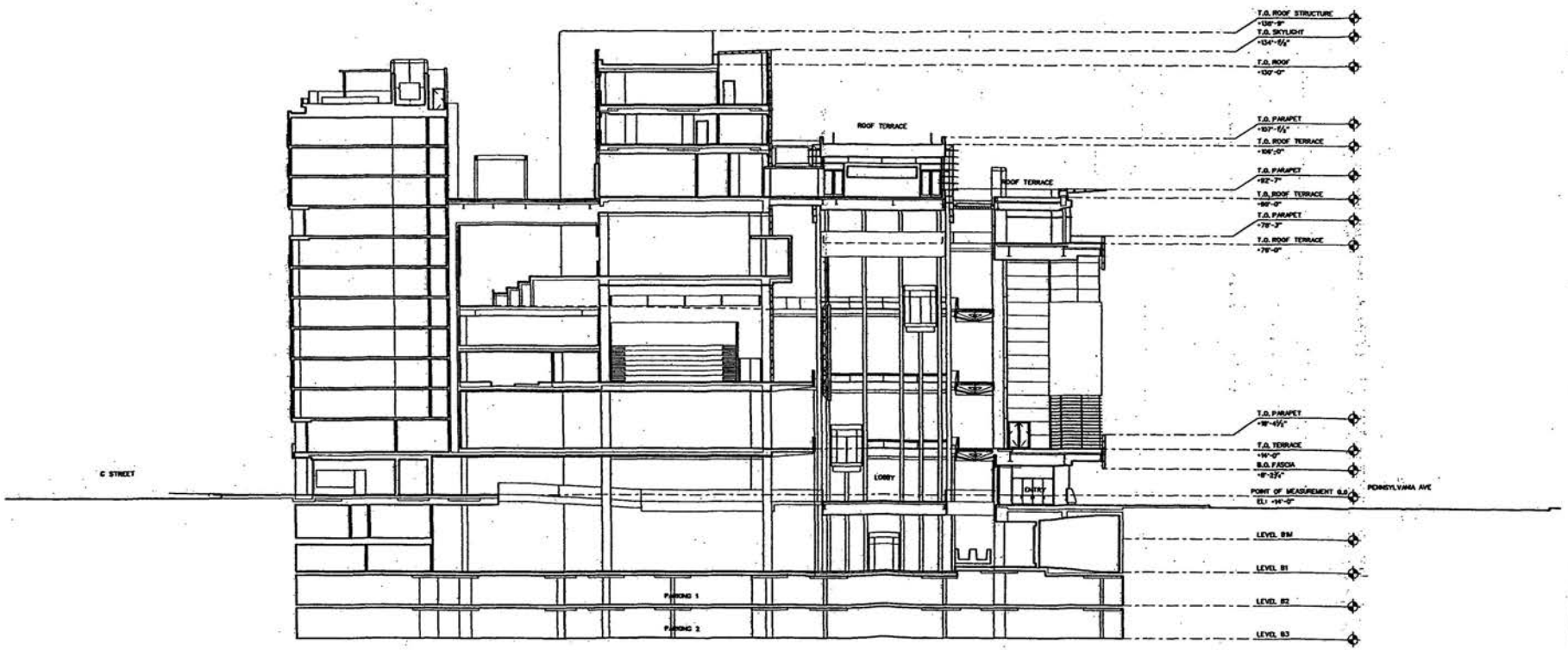
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Sheet Title

EAST ELEVATION

Sheet No.

Z-2.04



Newseum

555 Pennsylvania Avenue
Wahington, DC

Owner

The Freedom Forum World Center
1101 Wilson Boulevard
Arlington, VA
703.284.2810

Architect

Polshek Partnership Architects LLP
320 West 13th Street
New York, New York 10014
212.807.7171

Seal

Record

Issue	Date

Key Plan

Job No. 0025

Scale 1/32" = 1'-0"

Date 12 NOVEMBER 2003

Sheet Title
SECTION LOOKING EAST

Sheet No.
Z-2.51

C

DISTRICT OF COLUMBIA GOVERNMENT
OFFICE OF THE SURVEYOR

Washington, D.C., September 24, 2003

Plat for Building Permit of SQUARE 491 LOTS 831 AND 826

Scale: 1 inch = 40 feet Recorded in A & T Book Page 3473-C (LOT 831); A & T Book Page 3648-T (LOT 826)

Receipt No. 07072

Furnished to: HOLLAND & KNIGHT

Surveyor, D.C.

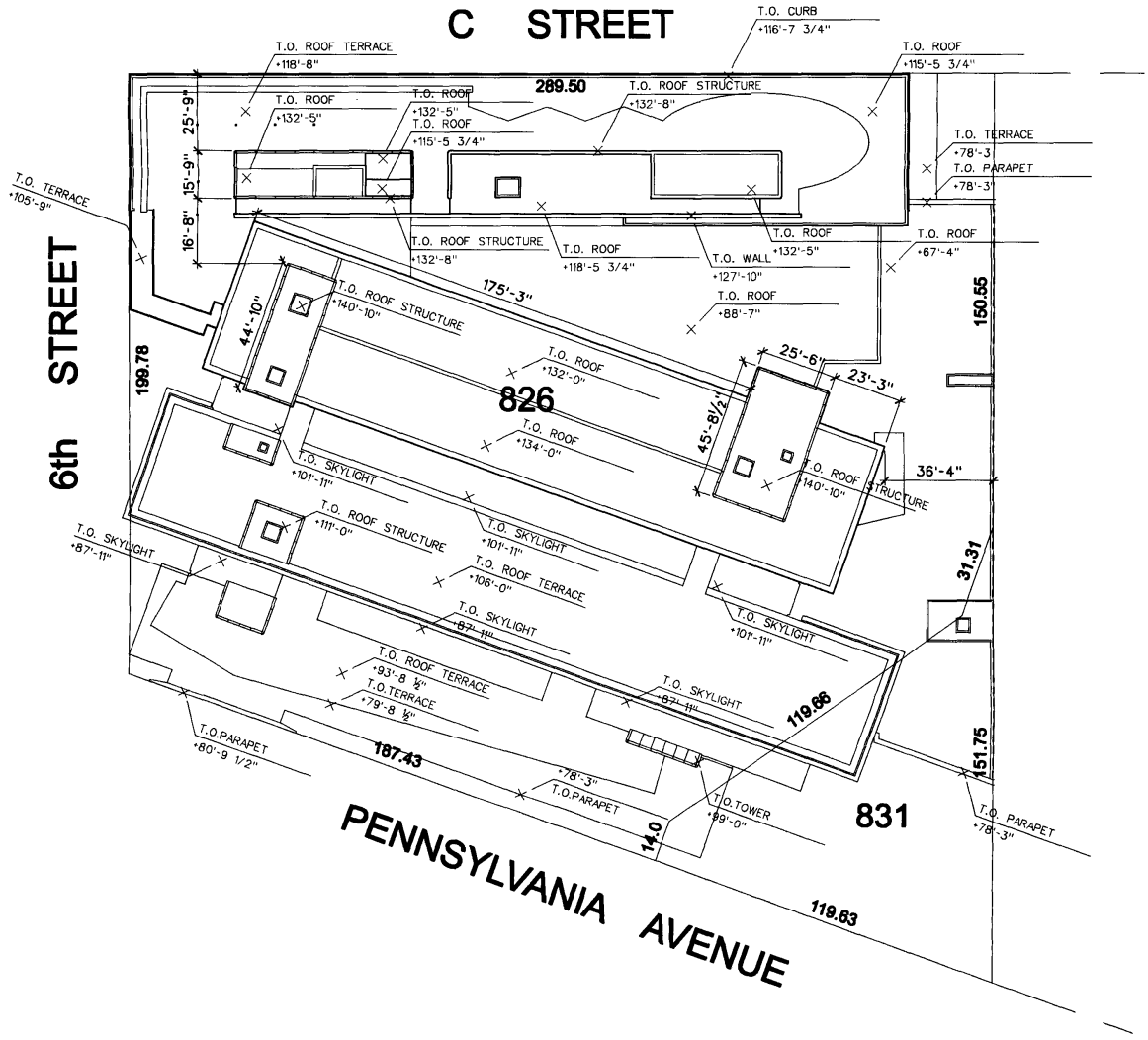
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I hereby certify that all existing improvements shown hereon, are completely dimensioned, and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats, or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

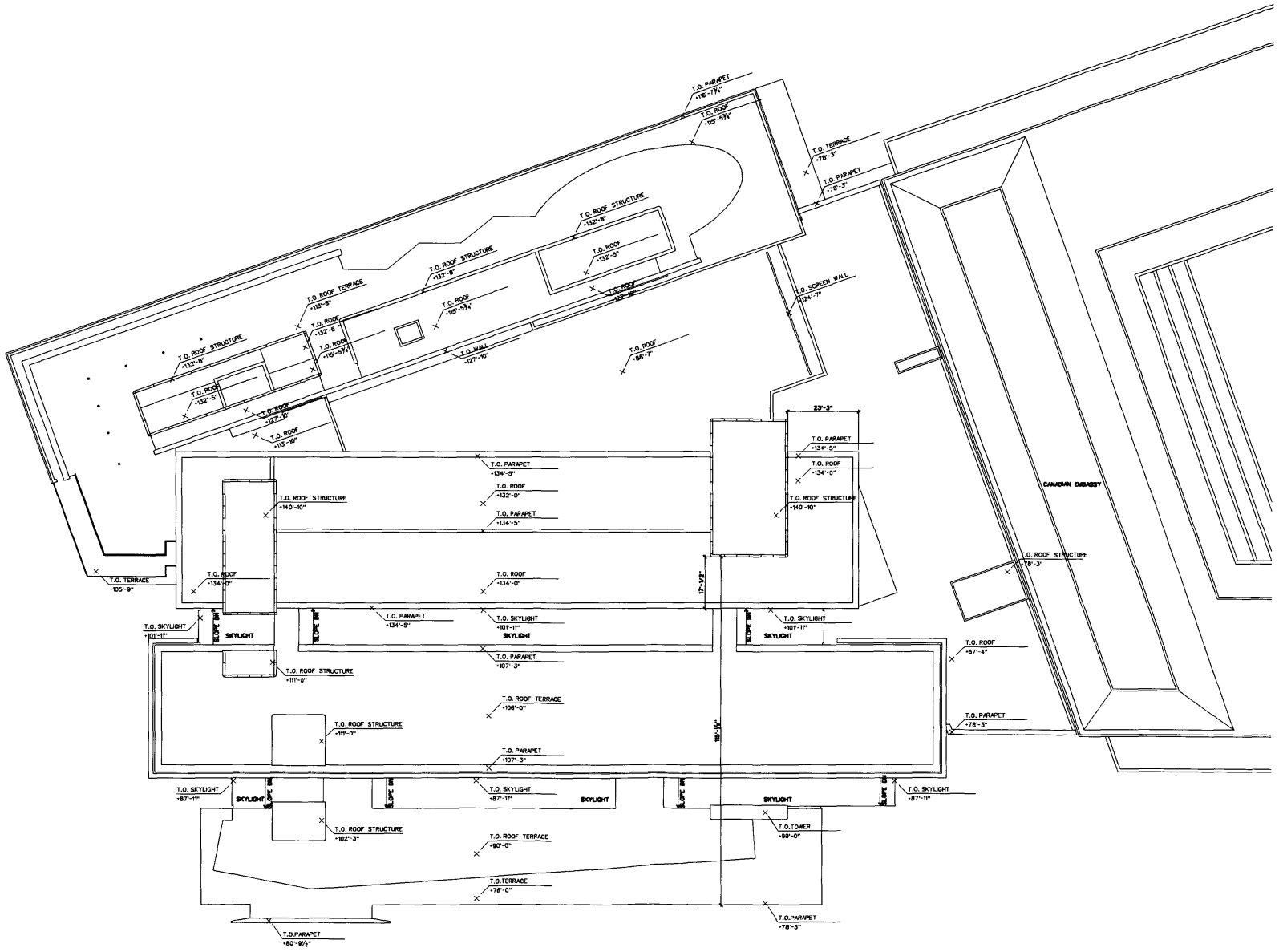
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SO-07072(2003)



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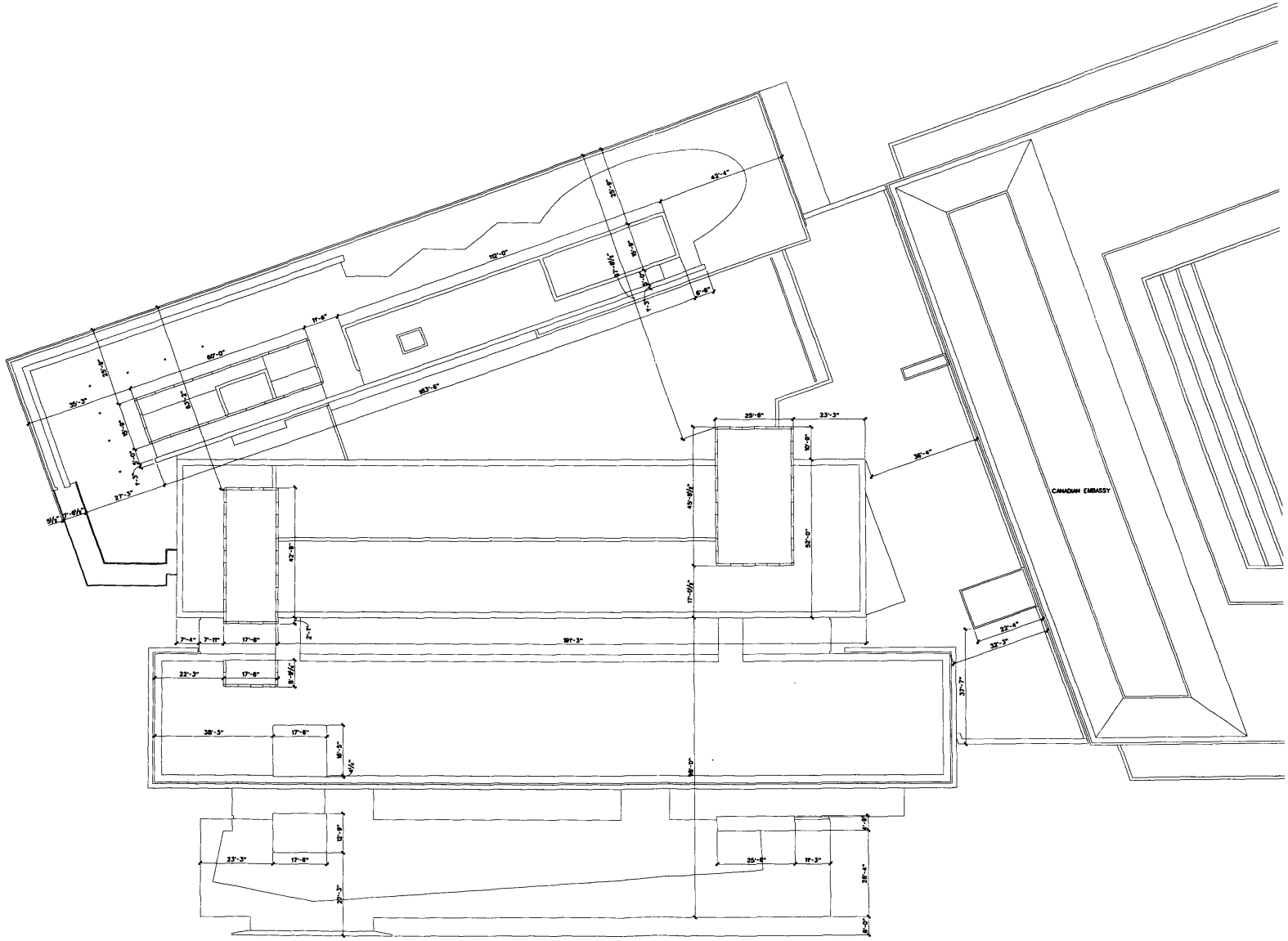
Date 05 NOVEMBER 2004

Sheet Title

ROOF PLAN

Sheet No.

Z-1.09



Newseum

555 Pennsylvania Avenue
Washington, DC

Owner

The Freedom Forum World Center
1101 Wilson Boulevard
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Architect

Polshek Partnership Architects LLP
320 West 13th Street
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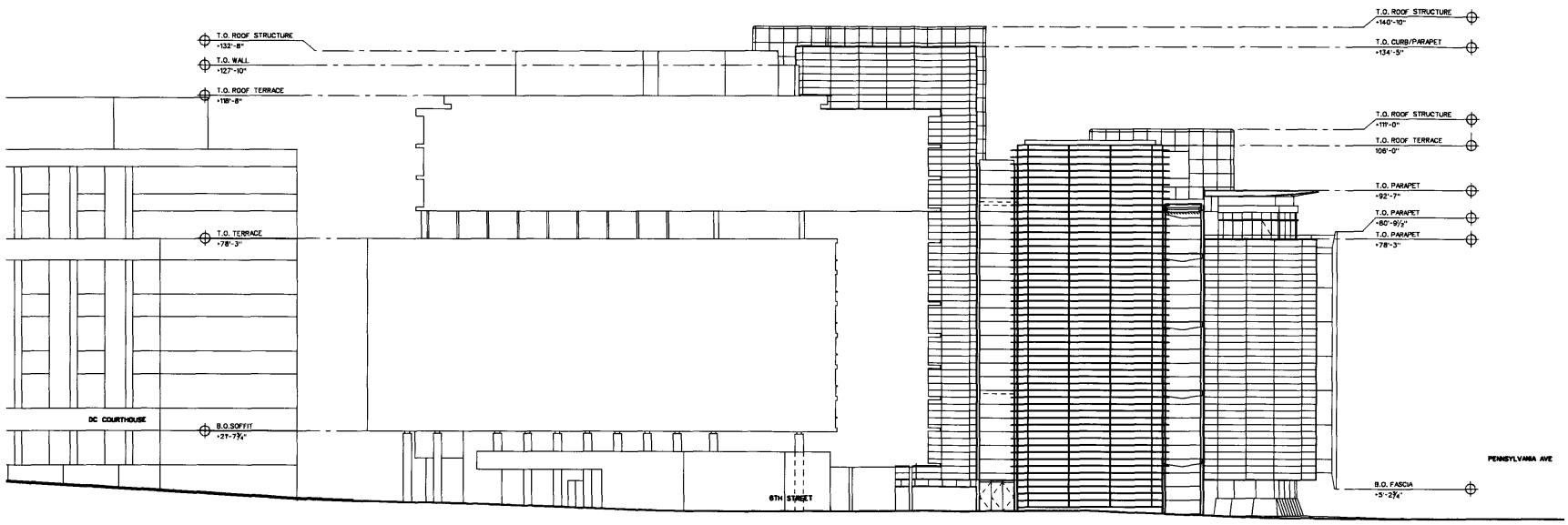
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Sheet Title
ROOF STRUCTURES
SETBACK PLAN

Sheet No.

Z-1.10



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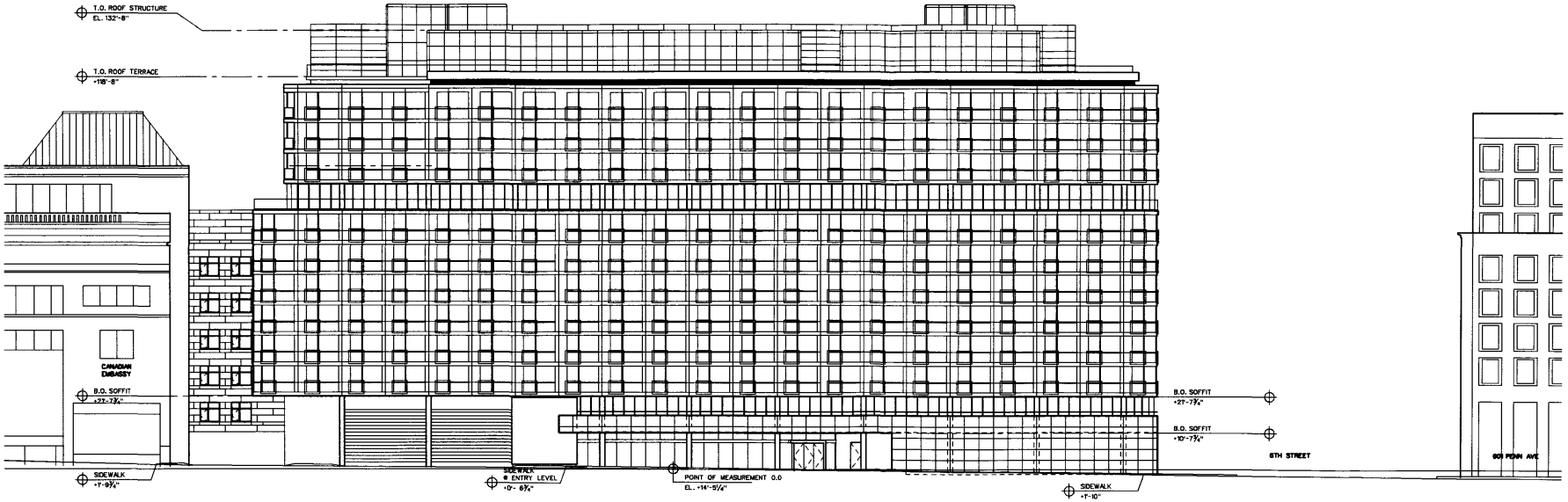
Date 05 NOVEMBER 2004

Sheet Title

WEST ELEVATION

Sheet No.

Z-2.02



Newseum

555 Pennsylvania Avenue
Wahington, DC

Owner

The Freedom Forum World Center
1101 Wilson Boulevard
Arlington, VA
703.284.2810

Architect

Polshek Partnership Architects LLP
320 West 13th Street
New York, New York 10014
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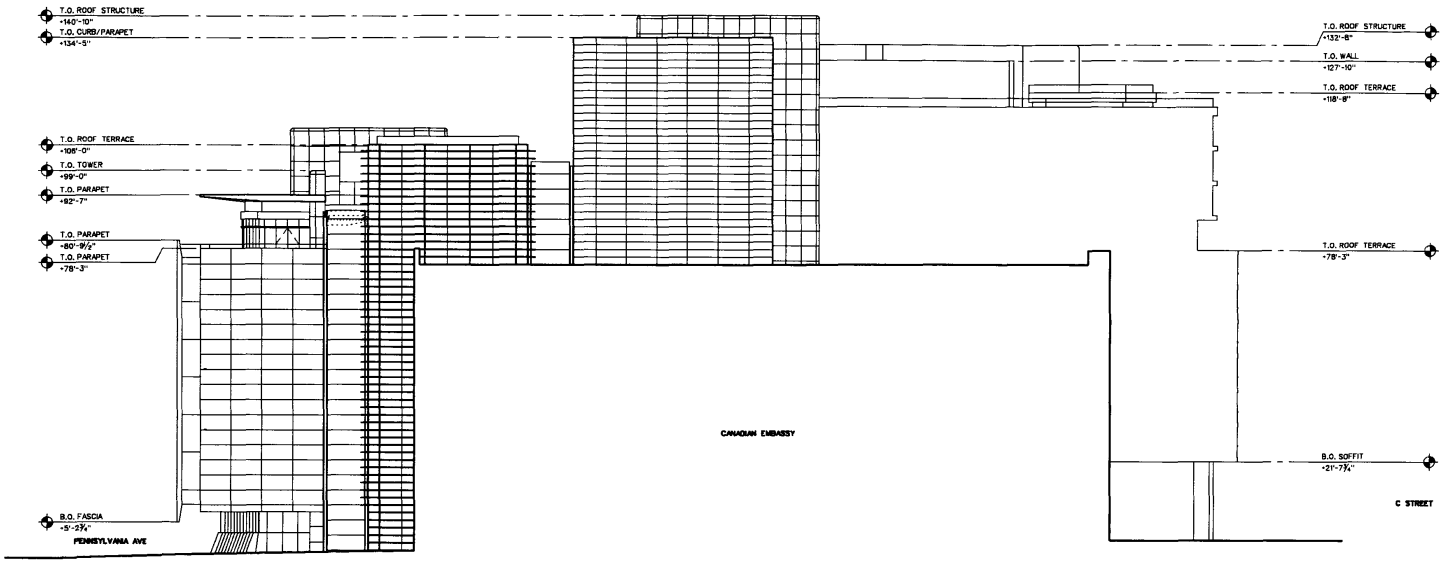
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Sheet Title

NORTH ELEVATION

Sheet No.

Z-2.03



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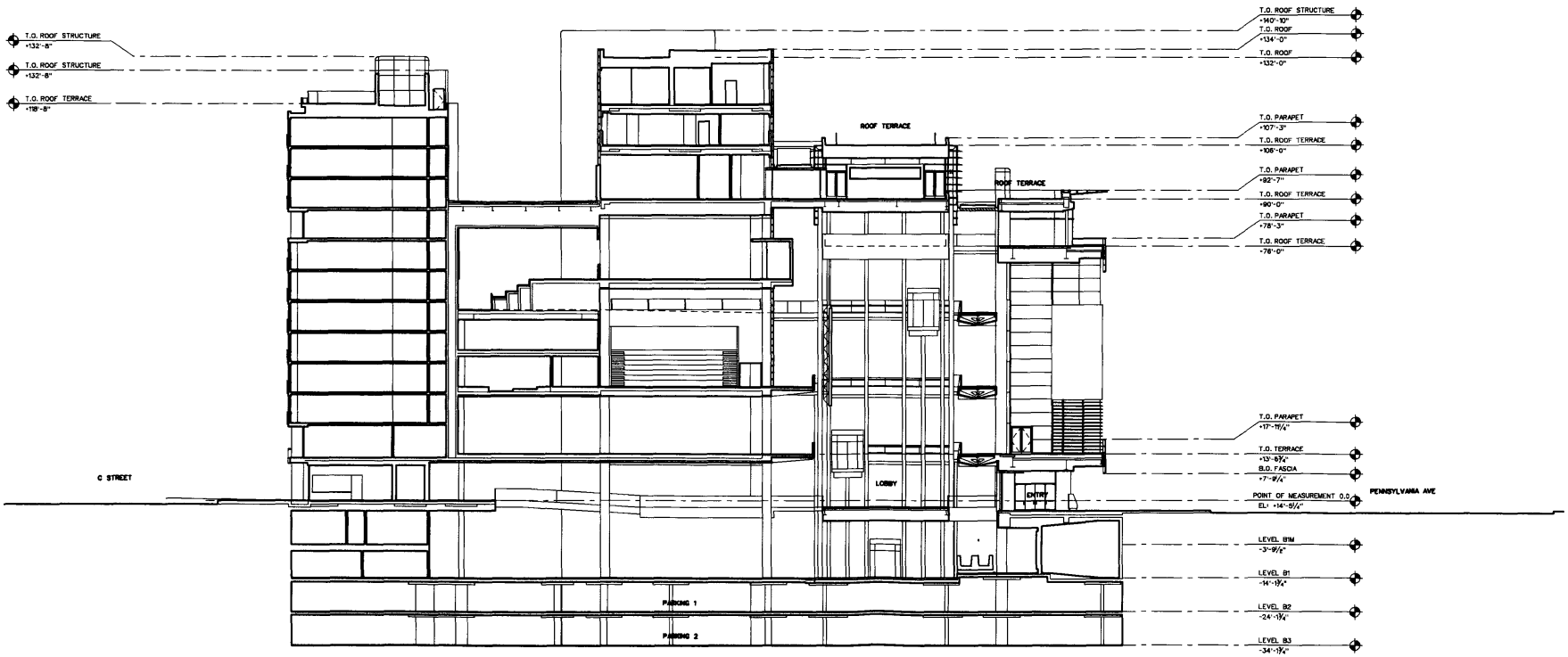
Date 05 NOVEMBER 2004

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EAST ELEVATION

Sheet No.

Z-2.04



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Issue	Date

Key Plan

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Date 05 NOVEMBER 2004

Sheet Title
SECTION LOOKING EAST

Sheet No.

Z-2.51