GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 17122-A of the Freedom Forum, Inc., pursuant to 11 DCMR § 3104.1, for a special exception from the roof structure requirements under §411, and pursuant to 11 DCMR § 3103.2, for a variance from the width of court requirements under §776.1, a variance from the arcade requirements under §1701.2 and a variance from the street wall requirements under §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, lot 34)

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

DISPOSITION: By Order No. 17122, dated March 16, 2004, the Board granted Application No. 17122 by a vote of 5-0-0 (Geoffrey H. Griffis, David A. Zaidain, Curtis L. Etherly, Jr., Ruthanne G. Miller and John G. Parsons to approve)

MODIFICATION ORDER

By letter dated November 16, 2004, the Applicant submitted a request that the Board modify the approved plans in the subject application. The Applicant requested 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.

THE WAIVER REQUEST

As part of its filing, the Applicant requested a waiver from the six month limitation for filing requests for modification of plans with the Board, as set forth in §3129.3 of the Zoning Regulations. The Board granted the application in March of 2004, less than eight months prior to the filing of the requested modification. 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 Board granted the waiver of the six month filing requirement to consider the requested modification, finding good cause and no prejudice to any party.

THE MODIFICATION

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17122
EXHIBIT NO. 34

Board of Zoning Adjustment
District of Columbia
CASE NO. 17122
EXHIBIT NO. 34

In the application, the Board granted three variances and 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.

The proposed modification would make two changes to the roof structure on the residential bar. None of the variance relief granted is affected by the proposed modification. 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 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, blocking the view of the residential roof structures from the south and providing 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 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.

DECISION

The Board concludes that the requested modifications are minor and are within the requirements of §3129, as "minor modification[s] that do not change the material facts the Board relied upon in approving the application." After reviewing the request for modification and the supporting materials, the Board determined that the request should be granted.

Accordingly, it is therefore hereby **ORDERED** that the motion for waiver of the rules to consider the request is granted and that the motion for modification of plans, as shown on Exhibit No.33 of the record is **GRANTED**.

DATE OF DECISION: December 7, 2004

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller and John G. Parsons to approve, David A. Zaidain, not present, not voting)

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

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

FINAL DATE OF ORDER: DEC 15 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

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA APPLICATION NO. 17122-A

As Director of the Office of Zoning, I hereby certify and attest that on DEC 15 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

Whayne S. Quin, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Chairperson
Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, D.C. 20013

Commissioner 6C09
Advisory Neighborhood Commission 6C
P.O. Box 77876
Washington, D.C. 200013

Sharon Ambrose, City Councilmember
Ward Six
1350 Pennsylvania Avenue, N.W., Suite 102
Washington, D.C. 20004

Toye Bello, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning