Preliminarily Statement Outlining How The Application Meets The Required Burden of Proof

The Applicant is seeking the following relief from the Board of Zoning Adjustment:

- A special exception from the roof structure requirements (§411);
- A variance from the width of court requirements (§776.1);
- A variance from the arcade requirements of the Downtown Development District (§1701.2); and
- A variance from the streetwall requirements of the Downtown Development District (§1701.3).

The Applicant will establish through its Statement of the Applicant to be filed no fewer than fourteen days prior to the hearing on the subject application, as well as at the public hearing, that the subject application meets the burden of proof for the granting of the requested special exception. A preliminary summary of how the application meets the required burden of proof follows.

I.

Background

The subject property is located at 555 Pennsylvania Avenue, N.W., the former site of the District's Department of Employment Services building. The property also has frontage on 6th and C Streets, so it constitutes a corner lot fronting on three streets. The east side of the property abuts the existing Canadian Embassy. The property is currently used as a surface parking lot on an interim basis pending the commencement of construction.

The proposed development will be a mixed-use project consisting of the Newseum, including accessory retail, assembly and office uses; additional independent retail uses on the ground floor; an apartment house with 126 units and office space for the Freedom Forum. The building will include 260 parking spaces on two below-grade levels and five loading berths and service spaces. All parking and loading will be accessed from C Street.

The building is designed as a series of "bars" parallel to Pennsylvania Avenue. The first three bars step up in height to the center of the site and include the Newseum and office space. The northern bar is parallel to C Street and includes the apartment house.

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II.
Special Exception for Roof Structures

In order to meet the criteria for approval of the requested special exceptions, the Applicant will be required to show the following: (1) compliance is impractical because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable and (2) the intent and purpose of Chapter 400 and the Zoning Regulations are not materially impaired by the structure and the light and air of adjacent buildings are not adversely affected.

Special exception approval is required because there will be multiple roof structures on the various roof levels of the building, some of the roof structures are not setback from all exterior walls a distance equal to their height above the roofs on which they are located and the roof structures are not all of the same height (although each roof structure has walls of equal height). There is one roof structure on top of the second bar, two on top of the third bar and three on top of the residential bar. All of the roof structures are within the maximum permitted height of eighteen feet, six inches above the roofs upon which they are located. All are setback well in excess of 1:1 from all street walls of the building.

The proposed building is a multi-purpose building specially designed to accommodate the uses to which it is to be devoted. The roof structures are integral parts of the design of the building and their locations result from the placement of interior components in the building below. These roof structures are mostly to accommodate elevator overrides and stair towers. Their location is dictated by the circulation patterns for the space within the building.

The mechanical equipment for the museum and office portions of the building is located on a lower roof adjacent to the solid wall of the Canadian Embassy and below the level of the parapet. The mechanical equipment for the residential building is on the roof of the C Street bar, divided into three separate structures also including two elevator overrides, not place in one enclosure in order to lessen the mass on the roof and to create an overall harmonious architectural design.

III.
Variances

In order to obtain approval of the requested variances, the Applicant must show that: 1) the subject property suffers from an extraordinary or exceptional condition; 2) strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulty to the Applicant; and 3) 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.

A.
Court Width

The design of the building is a reflection of its context, particularly its relationship to the street pattern and to the Canadian Embassy building next door. Those influences, when also taking into account the architect's design philosophy and the interior needs of the specific uses included, result in a building which is not like a usual or typical office building or residential building. There are significant variations in the exterior façade and in the plan of the various levels inside, which create a series of open and closed courts both at the ground and at higher levels of the building.

Three of those open courts do not meet the minimum width requirements. Court A is formed by the intersection of the first and second bars, which are parallel to Pennsylvania Avenue, and the right-of-way of 6th Street, to which Pennsylvania Avenue is skewed. The resulting more-or-less triangular space is a non-rectangular court, the width of which is determined by the diameter of the largest circle which can be inscribed in the court. That dimension is twelve feet. Based on the height of the court, the minimum required width is 18.89 feet and a variance of 6.89 feet is required. The open side of court A facing 6th Street is more than forty feet along the property line

Court B likewise is formed by the intersection of the second and third bars and the residential bar with the right-of-way of 6th Street. The diameter of the largest circle which can be inscribed in this non-rectangular court is twenty-two feet, four inches. Based on the height of the court and using the standard for a residential court because the north side of this court abuts a wall of the apartment house, the minimum required width is 35.9. A variance of 13.57 feet is required. The open side of court B facing 6th street is more than sixty feet along the property line.

Court C is an open space formed over the entrance to the parking garage to create a step-back from the front wall of the apartment house, which is on the property line, to the north wall of the Canadian Embassy, which is setback from the property line. Again, one side of this court abuts the apartment house. Using the higher standard for residential use, the minimum width of court is 25.94 feet. A width of nineteen feet, six inches is provided, requiring a variance of 6.44 feet. Court C adjoins the open sidewalk to the east for much of its depth.

No courts are required under the Zoning Regulations. The courts which are provided result from the combination of the shape of the site and the prominence of

the Pennsylvania Avenue diagonal, both of which force the creation of open spaces which would otherwise not be provided. Strict application of the Regulations would either require the elimination of the courts in their entirety, which would compromise the exterior design, or expanding the size of the courts, which would adversely effect the interior building program.

B.
Arcade

Arcades are normally permitted and the subject building is so far below the permitted floor area ratio (maximum of 10.0 FAR permitted, 5.66 FAR proposed) that the floor area ratio credit for arcades would not be applicable. The area-wide design requirements of the Downtown Development District (§1701.2) require an arcade, if provided to extend the length of an entire block frontage or to connect to an open arcade in an abutting building.

The subject property includes a seven foot, four inch recess on the first floor which is adjacent to and an extension of the group lobby on C Street for the Newseum. This area may or may not be considered an arcade, which is not a term defined in the Zoning Regulations. The Interim Zoning Administrator initially concluded that it was not an arcade. If it is later determined to be an arcade, then it does not meet the requirements of §1701.2 and a variance would be required.

Any arcade on the C Street side of the building could not meet the requirements of §1701.2. The subject property does not extend for the full length of the block frontage and the Canadian Embassy does not have an arcade to which the subject building could connect. The additional building setback on the ground floor adjacent to the entrance is designed to facilitate pedestrian flow into the Newseum for visitors arriving in large numbers by bus. Precluding that design would cause more congestion on the sidewalk and would be counterproductive.

C.
Streetwall

Under the Downtown Development District area-wide design requirements (§1701.3), not less than seventy-five percent of the streetwall to a height if fifteen feet must be constructed to or within four feet of the property line. The proposed building does not meet that standard on any of the three streets. On Pennsylvania Avenue, none of the streetwall at the ground level is on the street line. On 6th Street, thirty-five percent of the streetwall is on the street line. On C Street, sixty-nine percent of the streetwall is on the street line.

The requirements of the Pennsylvania Avenue Plan, the geometrics of the site and the program requirements for the specific uses proposed drive the design in

a way that the building cannot comply with the streetwall requirement. The Pennsylvania Avenue Plan as amended requires the building to step back on the Pennsylvania Avenue frontage to transition to the setback provided for Canadian Embassy. The requirement to orient the major façade parallel to Pennsylvania Avenue and have the interior elements consistent with that design means that the west walls of the bars of the building meet the 6th Street street line at an angle that is not perpendicular. The bars all touch the lot line at one corner, but the remainder angle back to the point that most portions are not within four feet of the lot line. On the C Street side, the main façade of the building comes to the street line. However, at the first floor, portions are set back to provide for the expanded group entry and for the transition to the Canadian Embassy, which is also set back from the C Street street line.