D. Detailed Statement as to How the Application Meets the Specific Tests Identified in the Zoning Regulations for Special Exception

The current wording of the Zoning Regulations provide that a surface parking lot requires the grant of a special exception. Section 1702.7 provides as follows:

> A parking lot, parking garage, or parking spaces at or above-grade in a building shall be permitted as follows:
>
> (a) The parking facility shall be permitted as a matter-of-right if it provides only short-term parking and all of the parking spaces are leased to merchants or a park-and-shop organization;
> (b) The parking facility shall be permitted as a matter-of-right if it provides parking only for residents; and
> (c) The parking facility shall require Board of Zoning Adjustment approval pursuant to Section 3107.2 of this title if it provides all day, commuter parking.

The wording of the Regulations indicate; however, that the application should be filed as a request for a variance and that the standards for granting a variance should be applied in this situation.

In granting a variance, the Board applies different tests depending on whether the request is for an area variance or a use variance. While the District of Columbia courts have never definitely defined the difference between the two, an area variance has been characterized by the courts as one that "does not alter the character of the zoned district" whereas a use variance seeks a use ordinarily prohibited. The subject application is a special exception for which the Board must apply the tests for variance in accordance with current Section 3103.2 of the Regulations. Under D.C. Code Section 6-641.07 (g) and 11 DCMR 3103.2, the Board is authorized to grant a variance where it finds that:

> (1) there exists an extraordinary or exceptional situation or condition of the Property;
> (2) the owner would encounter a practical difficulty or undue hardship 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,

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purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

As discussed below, the subject application meets all three prongs of this test.

1. There exists an Extraordinary or Exceptional Situation or Condition

Since the completion of the new Convention Center, the former D.C. Convention Center has become surplus property and the Government of the District of Columbia intends to redevelop that site as a mixed-use project. Given the size, complexity and importance of the project to the District and its economy, the approval process related to this endeavor is lengthy and complex. It is anticipated that the redevelopment activities will not be able to begin for approximately three (3) to four (4) years. As such, an interim use for the property is necessary; otherwise, the property will lie fallow for an extended period of time and will adversely impact the District and the newly revitalizing downtown areas. The property interim use of this site is intended to provide a badly needed supply of short-term parking, draw people to this part of the downtown by establishing this area as a unique destination for public events.

In support of this goal, the parking lot will be designed to establish a positive image for the downtown area and provide short-term parking necessary to support retail, restaurants and other downtown destinations. With the new convention center facility located two blocks away with no on-site attendee parking, the MCI Arena being located approximately 3 blocks away with minimum parking facilities and the numerous construction projects in the immediate area, there is an exceptional need for short-term parking.

The Applicant is also in the extraordinary situation of being unable to begin construction on the permanent redevelopment of the site for approximately three to four years out, due to the general length of the construction planning, development and approval processes. Given the public nature of the redevelopment activity, the approval process is likely to include reviews by the National Capital Planning Commission, the Commission of Fine Arts, the National Park Service and other regulatory agencies. Depending on the final design of the new construction, zoning relief may also be necessary from either the Board of Zoning Adjustment or the Zoning Commission. The

Applicant obviously could not put the property to any use other than as an interim surface parking lot within the interim period of time pending completion of all necessary reviews and construction planning.

2. The Owner Would Encounter a Practical Difficulty if the Zoning Regulations Were Strictly Applied.

Strict compliance with the regulations would be unnecessarily burdensome to the Applicant because the Applicant would not be able to make reasonable use of the property in the interim period between now and the permanent redevelopment of the site.

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.

The proposed relief will foster the public interest. In the absence of the relief being sought, the site would necessarily lie fallow for an extended period of time. The site lies in the heart of downtown and occupies 10.2 acres. It would not be in the public interest for this vital parcel of property to lie fallow. Further, the intended use will not harm the integrity of the zone plan. In the first place, the parking lot will only exist on the property until such time as the redevelopment of the site commences in three to four years. Secondly, allowing temporary parking for downtown visitors and all-day commuter parking on the site would not have any appreciable negative impact on traffic patterns and circulation. In fact, by providing adequate parking for downtown visitors, traffic flows and circulation will be improved. Finally, allowing all-day commuter parking will temporarily help meet the demand for such parking and special events on the site will draw visitors into the downtown corridor.

Respectfully Submitted,

WASHINGTON CONVENTION CENTER AUTHORITY

Claude E. Bailey
General Counsel
Dated: February 11, 2004