Exhibit 1GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

TO: Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: January 7, 2003

SUBJECT: BZA Application 16966

APPLICATION
NEST and Totah Venture, LLC submitted this application requesting approval of variances from the maximum allowable floor area ratio (FAR) under Section 771.5, and from the rear yard requirement under Section 774.1, and a Special Exception to reduce the set back requirement for a mechanical penthouse under Section 411.11 pursuant to Sections 3103.2 and 3104.1, respectively, under Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning. These requests are being made to allow development of an office building with first floor retail on properties located at 1426-1430 K Street, N.W. (Square 218 Lots 808 & 823).

SUMMARY RECOMMENDATION
The Office of Planning recommends approval of:

- A variance to reduce the required rear yard for the upper floors from 27 to 16 feet; and
- A Special Exception to reduce the required set back from the mechanical penthouse enclosure to the rear (southern) building wall from 18.5 to 6 feet.

OP also recommends denial of the requested FAR variance.

SITE AND AREA DESCRIPTION
The subject two interior lots located east of the intersection of 15th Avenue and K Street, N.W. total 0.16-acre (7,197 square feet). Each property is currently developed with a vacant masonry and concrete buildings: the one at 1426 K Street, N.W. was built in 1951 and is 16 stories tall; and the building at 1430 K Street, N.W. was renovated in 1963 and is 12 stories tall. The rear property lines abut adjacent properties and a 20-foot wide extension of Presbyterian alley.

Surrounding development is predominantly high-rise office buildings with first floor retail. The seven-story Champlain Apartment Building, immediately east at 1424 K Street, N.W., is listed on the National Register of Historic Properties. The Carry office building immediately west of the subject properties, at intersection with 15th Avenue, N.W., was constructed in 1917. Zoning of this square and surrounding properties (excluding Federal lands) is C-4 (please refer to Exhibit 1).

BZA
Case No. 16966
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO.16966
EXHIBIT NO.28

APPLICANT'S PROPOSAL

NEST proposes to demolish the existing buildings to construct a new 12-story office building to a height of 130 feet with a total gross floor area of 74,849 square feet (equaling a 10.4 FAR). Architectural plans show an entrance lobby and first-floor retail along the M Street frontage, and a two-level underground garage for 36 vehicles accessed from Presbyterian alley. The garage ramp from the alley would pass under a ground-level terrace that would extend from the new building to the rear property line. Underground parking vaults would extend ten feet beyond the property line and into public space along M Street, N.W.

Along with the referenced vaults, the applicant is requesting the Department of Public Work to approve extending the upper floor plats into bays that would project four feet into public space. Note that this additional floor area would not be counted in the allowable 10.0 FAR.

EXISTING ZONING AND RELIEF REQUESTED

The property is zoned C-4. Mixed-use residential developments with retail uses are permitted in C-4 as a matter-of-right. This project is also subject to the following requirements:

Standard	C-4 Requirement	Existing	Proposed	Required Relief
Total Lot Area	—	7,197 s.f.	Same	N/A
Total Lot Width	—	90.0 feet	Same	N/A
Floor Area	—	75,781 s.f. [1]	74,849 (office & retail) [2]	N/A
Floor Area Ratio (max.)	8.5/10.0 [3] (residential and other permitted uses)	10.53	10.40 (office & retail)	Variance (+0.4)
Lot Occupancy (max.)	100%	Less than 100% [4]	100 %	N/A
Front Yard	0 feet	0 feet	Same	N/A
Rear Yard (at grade)	0 feet	0 feet	Same	N/A
Rear Yard (20 feet+ above grade)	27.08 feet (2.5 inches/vertical foot or at least 12 feet)	26 feet	16 feet	Variance (-10 feet)
Side Yard	0 feet	0 feet	Same	N/A
Height/stories	130 feet/unlimited [5]	125 feet	130 feet	N/A

[1] According to D.C. Office of Tax and Revenue records
[2] Based on zoning analysis on plans entitled "1430 K Street NW Project" prepared by Donnally Vujcic Associates, LLC
[3] Under Section 771.5, *buildings in excess of 110 feet tall have an allowable FAR of 10.0*
[4] The existing buildings do not occupy the underlying lots in their entirety
[5] Under the Height Act of June 1, 1910, the maximum building height in non-residential zoning district = width of the adjacent right-of-way + 20 feet, but not greater than 130 feet (except in certain locations). The adjacent M Street, N.W. right-of-way is 148 feet wide.

Standard	C-4 Requirement	Existing	Proposed	Required Relief
Loading berths	1 @ 30 ft. & 1 @ 20 ft. deep, 1-100 s.f. service dock	None	1 @ 30 ft. & 1 @ 20 ft. deep 1- 100 s.f. service dock	N/A
Parking	None (site area <10,000 sq. ft.)	8 parking spaces	36 parking spaces	N/A
Penthouse Height	18.5 feet tall	18.5 feet	Same	N/A
Penthouse set back	18.5 feet from all exterior walls	Unknown	18.5+ ft. from north/east/west walls, 6.0 ft. from south wall	Variance (-12.5 ft.)

Based on this information, the proposed development would meet most requirements of the Zoning Regulations. However, zoning relief is required to increase the allowable FAR above 10.0, and decrease the required rear yard and penthouse set back from the rear exterior building wall. This same relief is listed in a Zoning Administrator memorandum to the BZA dated October 28, 2002 (refer to Exhibit 2).

The overall justification for this relief, as stated in the undated Statement of Reasons in Support of (the) Application, is the size and shape of the development site. Specifically:

- The building design employs a central elevator/stair/service core;
- Consolidating the two lots will produce a parcel 80 feet wide and 93 feet deep;
- Providing the required rear yard of approximately 27 feet would reduce the building depth to 65 feet; so
- An 80 ft. x 65 ft. building floor plate with the proposed core "would produce an inefficient floor layout with a large percentage of unproductive office space."

"(A)djacent office buildings will not be adversely affected in terms of reduced light and air" by the reduced rear yard. It statement explains that "the proposed penthouse is set back from K Street (north) frontage and 20 feet on each side." and "... the roof structure has been placed with sufficient setbacks to minimize adverse impacts." It also indicates that the additional FAR (2,885 square feet) is needed "to accommodate the service core necessary to yield marketable office space."

The following pertinent cases were also listed:

- On May 17, 1991, the BZA adopted the Summary Order for Application No. 15167 granting a variance from the minimum rear yard requirement, and a Special Exception to allow a mechanical penthouse at that would not meet the required set back from the rear (southern) building wall, for construction of a retail/office building with an accessory parking garage on the subject property (note that the proposed redevelopment project was never constructed).
- On October 5, 1961, the BZA denied a request for a variance to extend the chimney structure into the required rear yard at 1430 K Street, N.W., however the Board did approve a request to

allow the mechanical penthouse to extend into the required side yard.

The applicant provided architectural floor plans, elevations, photographs and a plat of both properties with their application.

ANALYSIS

Section 3103.2 grants the Board of Zoning Appeals (BZA) the power to grant variances from regulations set forth under the Zoning Act:

> "[w]here by reason of exceptional narrowness, shallowness or shape of a piece of property at the time of the original adoption of the regulations, or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code Ann. §§5-413 to 5-432 (1981) would result in peculiar and extraordinary practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided the relief can be granted without substantially impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Map."

The zoning relief requested two "area" variances: one to reduce the rear yard requirement for the upper floors and the other to exceed the FAR limit. Circumstances surrounding each request must be "unique" and the usual application of the referenced zoning regulations must result in "peculiar and extraordinary practical difficulties."

Section 3104.1 also grants the Board of Zoning Appeals (BZA) authority "to grant special exceptions where in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps."

The requested Special Exception for the penthouse enclosure is also subject to the following:

> "411.11 Where impracticable 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, the Board of Zoning Adjustment shall be empowered to approve the *location*, design, number, and all other aspects of such structure regulated under §§ 411.3 through 411.6, even if such structures do not meet the normal setback requirements of §§ 400.7, 530.4, 630.4, 770.6, 840.3, or 930.3, when applicable, and to approve the material of enclosing, construction used if not in accordance with §§ 411.3 and 411.5; *Provided, that the intent and purpose of this chapter and this title shall not be materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely.*"

Compliance with Section 3103.2:
There are several characteristics that make this case unique. The section of K Street right-of-way fronting the square has an unusually wide cross section of nearly 148 feet (although the potential allowable building height of 168 feet is limited to 130 feet by the Height Act). The required lot subdivision (consolidate) would create an irregularly shaped parcel because, unlike all other interior lots on this square (and most surrounding squares), Presbyterian alley would extend 12 feet into the southeast corner of the new lot rather than along entire rear property line. As a result, measurement of the required rear yard on the new lot would be from the rear property line instead of alley centerline that would add 10–15 feet.

The current rear yard requirement would limit the building depth to 65 feet. Centering the planned service core in a building of that depth would leave 15 feet of floor area from the core to the north and south building walls. A five-foot hallway north and south of the core would further reduce the depth of potential office space to 10 feet. Based on this information, the current rear yard requirement does present a practical difficulty to the provision of useable office space north and south of the proposed elevator/service core.

Therefore, staff determined that a variance to reduce the required rear yard could be granted without substantially impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Map.

However, insufficient justification has been provided for the requested additional 0.4 FAR of building floor area. The applicant's statement only refers to the need to accommodate the service core. Staff thinks that granting the rear yard variance is the appropriate relief to address this problem. The applicant also indicated in conversation that the proposed building design would continue the general massing of the two existing buildings on-site, even to the point of setting back the upper two floors next to the Carry Building. No evidence has been provided by the applicant to indicate what exceptional circumstances combine with the zoning regulations that create a practical difficulty that must be relieved by additional FAR in excess of the permitted 10.0 FAR. OP cannot conclude that the variance test have been met and recommend approval of the FAR variance.

Compliance with Section 411.11:
Although proposed penthouse structures would only be six feet from the rear wall, it would be over 22 feet from the rear property line. It also appears that this request would not adversely impact the level at which air and light is currently provided to adjacent buildings.

Compliance with Section 3104.1:
Based on the results under Section 411.11, this proposal will be in harmony with the general purpose and intent of the Zoning Regulations, and Zoning Map, and will not tend to affect adversely the use of the neighboring properties.

COMPREHENSIVE PLAN
The Generalized Land Use Map generally designates the subject property and square as High Density Commercial, characterized as "the business and retail heart of the District and metropolitan area (that) includes a mix of employment, retail, office, cultural and entertainment centers."

COMMUNITY COMMENTS
The applicant will be presenting this request to the Advisory Neighborhood Commission (ANC) 2F on January 8, 2003. Staff also notified one of the tenants in that adjacent building to the south (925 15th Street, N.W.) with offices that faced the rear of site.

In a letter to property manager dated December 30, 2002, that was copied to OP, four tenants objected to the zoning relief requested in this application because of the potential impact on "the light afforded to (their) spaces via the 'light shaft' located among and between the buildings ..." along the alley. Concern was expressed that the proposed building footprint and 130-foot height "would materially affect the light coming into (their) space" (refer to Exhibit 3).

After careful consideration, staff made the following observations:

- The 130-foot building height is permitted on this site as a matter of right in C-4 because the adjacent right-of-way is over 110 feet wide.
- The tenant's building is located south of the subject property.
- The existing loading dock and canopy along the southern boundary of the subject property eliminates light and air from reaching most of the abutting first floor.
- Most natural light enters the "light shaft" from the sun traveling overhead from east and west.

Replacing the loading dock with the proposed ground-level terrace would actually *increase* the amount of light reaching the lower levels of tenant's building. It does not appear that constructing a taller building to the north with a rear yard decreased by 11 feet would have a significant impact because existing building walls to the east and west (that are not part of this application) would not change.

It also does not appear that the proposed penthouse enclosure would not have any impact because it would still be over 22 feet from the rear property line.

AGENCY COMMENTS
This proposal was forwarded to the District of Columbia Metropolitan Police Department, Fire Department, and the Department of Public Works for comment. The Fire Department expressed no objection provided certain conditions are adhered to (refer to Exhibit 4). To date no agency comments have been received.

RECOMMENDATION
Based on the above findings, OP only recommends approval of:

- A variance to reduce the required rear yard for the upper floors to 27 to 16 feet; and
- A Special Exception to reduce the required set back from the mechanical penthouse enclosure to

the rear (southern) building wall from 18.5 to 6 feet.

Attachments:

Exhibit 1 Property Aerial Showing Zoning
Exhibit 2 Memorandum to the Board of Zoning Adjustment from Robert Kelly, Zoning Administrator dated October 28, 2002
Exhibit 3 Letter from Robert S. Royer, Royer & Babyak Attorneys at Law, et al to Richard Kizer, Chevy Chase Bank, dated December 30, 2002
Exhibit 4 Letter from Kenneth B. Ellerbe, Fire Marshall, to Andrew Altman, Director, Office of Planning dated January 3, 2002

Exhibit 1

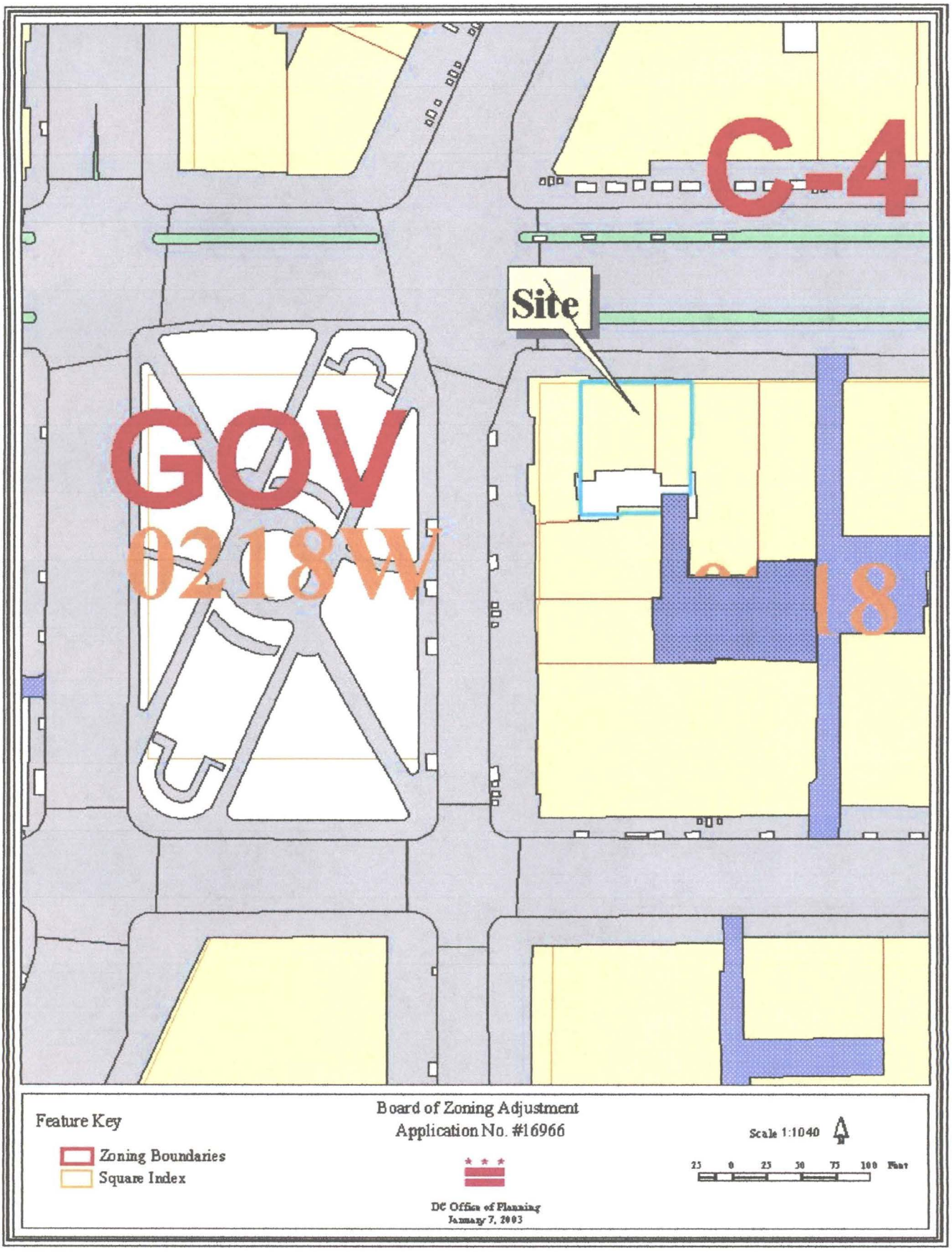

C-4
Site
GOV
0218W
18
Feature Key
Zoning Boundaries
Square Index
Board of Zoning Adjustment
Application No. #16966
DC Office of Planning
January 7, 2003
Scale 1:1040
25 0 25 50 75 100 Feet

Exhibit 2

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

October 28, 2002

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Robert W. Kelly
Zoning Administrator

SUBJECT: Proposed Construction of an Office/Retail Building with an Accessory Parking Garage located at premises 1430 K Street, N.W., *Lot(s)* 808 and 823, in Square 218, Zoned C-4

Review of plans for the proposed construction of a retail/office structure with accessory parking at the above subject premises indicates that the Board of Zoning Adjustment approval is required as follows:

1. Variance from Section 774.1 the minimum rear yard setback requirements for a structure in the C-4 Zone. (Section 3103.2)

2. Variance from Section 774.1 the minimum allowable Floor area *ratio for a structure in the C-4 Zone facing or abutting a street not* less than 110 square feet in width. (Section 3103.2)

3. Special exception pursuant to Section 411.11 and 770.6(b) the minimum setback requirements for a roof structure to setback an equal distance from all sides of a structure as its height in the C-4 Zone. (Section 4104.1)

RWK/FO/ee

Exhibit 3

ROYER & BABYAK
ATTORNEYS AT LAW

925 15TH STREET, NORTHWEST
FIFTH FLOOR
McPHERSON SQUARE
WASHINGTON, DISTRICT OF COLUMBIA 20005

TELEPHONE
202.296.0784

AUTOMATIC
TELECOPIER
202.293.2768

December 30, 2002

Richard Kizer
Chevy Chase Bank
7501 Wisconsin Ave
9th Floor - Corporate Facilities
Bethesda, MD 20814
United States of America

Via Federal Express

Re: Board of Zoning Adjustment (BZA) Application No. 16966

Dear Richard:

We the undersigned are writing to express our collective objections to the proposed variances embodied in Board of Zoning Adjustment (BZA) Application No. 16966.

As you know, we, the undersigned tenants of 925 15th Street, all have long-term leases which extend past the next eight years and, in some cases, with lengthy extensions beyond that time. All of us negotiated our current leases with Chevy Chase Bank with a number of important factors and considerations. Not the least of these was, and continues to be, the light afforded to our spaces *via* the "light shaft" located among and between the buildings in what is known as "Presbyterian Alley."

The design increase in not only the "footprint" but also the height of the proposed new structure contemplated for 1426-1430 K Street, NW, would materially affect the light coming into our space. This is especially true of the lower floors, which already are affected by the current "footprint" and height of the existing buildings. While all of us knew that, at some point, these two structures would be replaced during our tenancy, none of us had reason to believe the existing "footprint" or height of any "new" building would be changed in the slightest. Should this change take place, it would have a dramatic impact on our space and ergo our leases -- the value of our space will have been significantly and materially altered so as to reduce the value of our collective space and, hence, our leases.

ROYER & BABYAK

Again, we wish to emphasize our strenuous objections to all the proposed variances being sought by NEST and Totah Venture, LLC in Board of Zoning Adjustment (BZA) Application No. 16966. Further, we hope Chevy Chase Bank is successful in thwarting this encroachment into the enjoyment of our space.

Please keep us advised of any changes, meetings, alternatives, negotiations and/or discussions that might occur or be held in the future relating to Application No. 16966. We are aware negotiations might occur between the parties and request that either all lease-holding tenants of 925 15th Street, or a representative group thereof, be allowed a seat at the table. If you have any questions, please feel free to contact any of the signatories listed below. Thank you for your efforts on our behalf with regard to this matter.

Respectfully submitted,

BY: Robert S. Royer
FOR: Royer & Babyak

BY:
FOR: Kotler Marketing Group

BY:
FOR: Travel Documents Systems, Inc.

BY: William D. Mc Coll
FOR: Drug Policy Alliance

cc: Arthur F. Jackson
Office of the Director
Office of Planning
Government of the District of Columbia
801 North Capitol Street, Northeast
Suite 4000
City of Washington, District of Columbia 20002

Exhibit 4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT
WASHINGTON, D.C. 20001



MEMORANDUM

TO: Andrew Altman
Director
Office of Planning

FROM: Kenneth B. Ellerbe RF for KE
Fire Marshal

DATE: January 3, 2003

SUBJECT: BZA Application No. 16966

The D.C. Fire and EMS Department has reviewed the above application.

We have no objection to this request, provided the following items are adhered to, during and after the construction phase:

1. The alley remain accessible to Fire Department vehicles at all times.
2. The width of the alley is not diminished in any way.
3. The rear standpipe/sprinkler connections for the buildings on the west side of the 900 block of 15th Street, N.W., are accessible at all times and are not blocked in any manner.

If you have any questions concerning this review, please coutact my office at 727-3659.