Form 120 – Exhibit 1
(Revised 04/29/02)

Case No. 16966

BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

APPLICATION

Notice: See other side of application form for instructions

Pursuant to Sections §3103.2 - Use Variance, §3103.2 - Area Variance and/or §3104.1 - Special Exception of Title 11 DCMR- Zoning Regulations an application is hereby made, the details of which are as follows:

Address(es)	Square	Lot No(s).	Zoning Districts	Relief Being Sought Area Variance • Use Variance Special Exception	Section No(s).
1426 K Street, NW	218	808	C-4	Area Variance	771.5
1430 K Street, NW	218	823	C-4	Area Variance	774.1
				Special Exception	411.11, 770.6(b)

Present use(s) of Property:	Lot 808: record storage (vacant)// Lot 823: office building (vacant)
Proposed use(s) of Property:	Retail/office building with accessory parking garage
Owner of Property:	NEST and Totah Venture, LLC — **Telephone No:** 301-294-4150
Address of Owner:	c/o The Oxbridge Group 600 Jefferson Plaza, Suite 406, Rockville, MD 20852

Written paragraph specifically stating the "who, what, and where of the proposed action(s)". This will serve as the Public Hearing Notice:

Application of NEST and Totah Venture, LLC, pursuant to 11 DCMR (Zoning) §3103.2 and §3104.1 for special exception under Section 411.11 to allow a mechanical penthouse which does not meet setback requirements, for a variance from the rear yard requirements under Section 774.1 and for a variance from the maximum allowable floor area ratio under Section 771.5, to allow construction of a retail/office building with an accessory parking garage in a C-4 District at premises 1426-1430 K St., NW, (Sq. 218, Lots 808 and 823).

Estimated construction cost	$ 12,500,000	**Advisory Neighborhood Commission Single-Member District(s)**	ANC 2F-02
Date:	October 29, 2002	**Signature:**	Applicant * Michael A. Cain, Agent

* *The Owner of the Property for which the application is made or his/her authorized agent. In the event an authorized agent files an application on the behalf of the Owner, a letter signed by the Owner authorizing the agent to act on his/her behalf shall accompany the notice of application.*

To be notified of hearing and decision:
(Owner or Authorized Agent*)

Name:	Michael A. Cain, Esq.
Address:	Hamilton and Hamilton, LLP, 1775 Pennsylvania Ave., NW, #1100, Washington, DC 20006
Phone No.:	202-463-8282
Fax No.:	202-463-7282
E-Mail:	mac@hamiltonlaw.com

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

BZA Case No. 16966 Exhibit No. 2

Board of Zoning Adjustment
District of Columbia
CASE NO. 16966
EXHIBIT NO. 2

Form 121 – Side 1
(Revised 03/15/02)

Case No._____

APPLICANT'S BURDEN OF PROOF FOR VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

The Board of Zoning Adjustment has jurisdiction over a number of matters including applications for variances from the strict application of the Zoning Regulations, applications for special exceptions to allow certain uses, and appeals from the decisions of government officials involving zoning matters.

Generally, there are two types of variances: **area variances** and **use variances**. An area variance is needed when the owner wishes to make some change to the physical structure or lot itself and the property does not or will not comply with the Zoning Regulations in some respect. A use variance is needed when the owner wishes to use the property in a way that is not permitted in that zone district under the Zoning Regulations. The granting of a variance relates only to the specific piece of property; which is the subject of the application. It will not change the zoning classification of the lot or square. In granting a variance, the Board simply allows the owner to do something with the property without requiring strict compliance with the Zoning Regulations.

A **special exception** is applied for where the owner wishes to institute a use that is pre-deemed compatible with the Zoning Regulations for that particular district, but which needs to be reviewed by the Board to ensure that certain negative impacts will not occur.

Variances and special exceptions are not automatically granted upon application and hearing before the Board. The applicant is responsible for meeting the burden of proof associated with the particular relief requested. It is required that one review the following provisions of the Zoning Regulations as they relate to their request and submit a detailed statement explaining how the application meets the specific tests identified in the Zoning Regulations for a variance (area and/or use), special exception, or other specific relief being sought with their application.

Subsection 3103.2:

As set forth in D.C. Code Ann §5-424(g)(3) (1981), "[w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions 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 exceptional 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, that the 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."

This provision has three main tests that must be proved by the applicant.

☑ 1). The physical characteristics of the property:
   a. makes it difficult for the owner to use the property in compliance with the Zoning Regulations (area variance) – ie. shape and size of the property, unusual topography or slope, soil problems, etc.
   b. creates financial hardship for the owner in using the property consistent with the Zoning Regulations (use variance)

☒ 2). Granting the application will not be of substantial detriment to the public good – ie. traffic, noise, lighting, etc.

☒ 3). Granting the application will not be inconsistent with the general intent and purpose of the Zoning Regulations and Map.

Form 130
(Revised 03/15/02)

Case No._____

REQUIRED SPECIFICATIONS FOR PLATS, PLANS AND ELEVATIONS

PLAT

The Applicant shall provide ***one (1) original and twenty (20) copies of a plat*** *(not exceed 11" x 17" in size) drawn to scale and certified by a DC licensed survey engineer or by the DC Office of the Surveyor. The plat shall show completely dimensioned and drawn in ink to the same scale as the plat, the outline of all buildings, additions, or other structures existing and to be constructed. The accuracy of the representation of the location of the structures on the plat shall be self-certified by the owner or authorized agent for the owner of the lot of record or parcel of land. The plat must include the following as applicable to the scope of work:*

☒ 1). **All existing structures**

☒ 2). All new buildings or structures

☐ 3). Permanent construction higher than 4 feet (1.22 m) above grade, outside the footprint of existing buildings

☒ 4). Construction or alteration of projections into public space

☐ 5). Construction of retaining walls higher than 36 inches (0.914m)

☐ 6). Establishment of a new parking lot, regardless of the amount of work involved

☐ 7). The number, size, shape and location of all open parking spaces, open loading berths, and approaches to all parking and loading facilities

PLANS AND ELEVATIONS

The Applicant shall provide to the Office of Zoning ***one (1) original and twenty (20) copies of plans and elevations*** *(not exceed 11" x 17" in size) drawn to scale indicted numerically as well as depicted graphically, showing orientation of the property as to true North, and the following:*

☒ 1). The shape, dimensions and topography of the lot to be built upon, in sufficient detail to allow determination of heights above existing and proposed finished grade of all proposed structures, so as to allow determination of compliance with pertinent height limitations of Title 11 DCMR, Zoning Regulations.

☒ 2). The width of all public streets and public rights-of-way contiguous to the lot, with elevations at measuring points along them sufficient to determine compliance with the Height Act of 1910, as amended.

☒ 3). The shape and location in plan of all existing and proposed structures, fully dimensioned, including orientation and distances to lot lines so as to define without ambiguity the dimensions and location of said structures.

☒ 4). The floor plans and elevations of all existing and proposed structures, fully dimensioned, so as to define without ambiguity the dimensions of said structures.

☒ 5). The parking and loading plans and the basis for computation of the facilities shown on those plans.

Please Note: In the case of an Appeal, only items that address the specifics of the Appeal are required.

Jerrily R. Kress, FAIA – Director
District of Columbia Office of Zoning

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