GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 16966 of NEST and Totah Venture, LLC, pursuant to 11 DCMR § 3104.1, for a special exception to allow a mechanical penthouse not meeting the set-back requirements under section 411 (770.6(b)), and pursuant to 11 DCMR § 3103.2, a variance from the rear yard requirements under section 774, to allow the construction of a retail/office building with an accessory parking garage in the C-4 District at premises 1426-1430 K Street, N.W. (Square 218, Lots 808 and 823).

HEARING DATE: **January 14, 2003**
DECISION DATE: **February 11, 2003**

DECISION AND ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application is accompanied by a memorandum from the Zoning Administrator certifying the required relief.

PRELIMINARY MATTERS

1. The Board of Zoning Adjustment (the "Board"), pursuant to its rules, provided proper and timely notice of the public hearing on this Application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission ("ANC") 2F, and to the owners of property within 200 feet of the site.

2. Consistent with the Zoning Administrator's Referral Memorandum dated October 28, 2002, the Application as filed with the Board also requested approval of a variance from the maximum allowable floor area permitted pursuant to Section 771. However, upon further review, the Zoning Administrator determined that, because the proposed additional building area would be contained within a projection into public space, it does not count as FAR, and the Applicant withdrew its request for such a variance. The Zoning Administrator issued a revised Referral Memorandum to that effect dated February 3, 2003 (Exhibit 36).

3. The subject site is located within the jurisdiction of ANC 2F, which is automatically a party to this Application. ANC 2F submitted a letter in support of the Application on January 13, 2003. The Board accepted ANC 2F's report into the record

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by waiving its seven-day advance filing rule for such reports set forth in 11 DCMR § 3115.1.

4. The Office of Planning (OP) submitted a timely report recommending approval of the Application, as revised, on January 7, 2003.

5. On January 7, 2003, the Board received a request for party status from Chevy Chase Bank FSB ("Chevy Chase"), owner of the property at 925-15th Street, N.W. The Board waived its 14-day advance filing requirement set forth in 11 DCMR § 3106.2, determined that Chevy Chase satisfied the criteria for party status, and granted Chevy Chase permission to participate as a party in opposition.

6. On December 4, 2002, the Board received a request for party status from Vally Spencer on behalf of the owner of the property at 901-15th Street, N.W. The Board determined that the interests of that property owner would not be more significantly, distinctively or uniquely affected by the Application than other persons in the general public and denied the request for party status.

FINDINGS OF FACT

1. The subject site is known as 1426 and 1430 K Street, N.W., Lots 808 and 823 in Square 218 (the "Site"). The lots are adjacent parcels owned by the Applicant. The Site is located on the south side of K Street, N.W., between 14th and 15th Streets. The Site is zoned C-4.

2. The Site contains 7,196 square feet of land. It is irregularly shaped, with a frontage along K Street of 80 feet and a depth of varying dimensions ranging from 93 feet on the west to 80.5 feet on the east. Unlike all other interior lots in the square, the existing 20- foot wide alley in the rear extends 12 feet into the southeast corner of the Site.

3. The Site is currently improved with two structures: (a) a 13-story office building at 1430 K Street, and (b) a 15-story concrete structure originally built as a parking garage which was later converted into a record storage facility at 1426 K Street. Both structures have been vacant for at least 10 years. The developed FAR is 10.7.

4. The Site is located between McPherson and Franklin Squares in an area characterized by high-rise office development with ground floor retail. To the east of the Site is a 6-story office/retail structure known as the Orme Building. On the west is a 12-story office structure known as the Carry Building. The 6-story Chevy Chase building abuts a portion of the rear of the Site. The remaining frontages of the subject square are generally developed with 10 to 12-story office/retail structures consistent with the C-4 Zone District.

5. The Applicant proposes to raze the two existing structures and construct a 12-story office building with ground floor retail. The proposed office building will be 130 feet in height and have a floor area ratio of 10.0. The project will include 36 parking spaces, one loading berth, one service delivery space, and one loading platform. Access to the parking garage and loading facilities will be via the public alley which dead ends at the rear of the site (the "Project").

6. The proposed building has been designed to relate with sensitivity to the scale and rhythm of the surrounding buildings.

7. In Case No. 15169, the Board approved a rear yard variance and roof structure special exception for the Site by Order dated May 17, 1991. The rear yard variance and roof structure setback were virtually the same as the relief requested by the Applicant in this case. That project was never built.

8. The C-4 District requires a rear yard of 2.5 inches per foot of vertical height but not less than twelve feet commencing twenty feet above the mean finished grade. The proposed structure requires a rear yard of 27.29 feet. The Applicant proposes to provide a rear yard of 16.23 feet measured from the rear property line. A variance from the rear yard provisions is therefore required.

9. The property is affected by an extraordinary or exceptional situation or condition in that the shape, shallowness and irregular depth of the Site limit the amount and configuration of useable office space that can be built on it. Moreover, the Site is the only non-corner lot in the subject square and within at least the 6 surrounding squares which lacks public alley access running the length of its rear property line. The rear yard must therefore be measured from the rear property line instead of from the middle of the adjacent alley.

10. Strict application of the minimum rear yard requirement to the Site would result in peculiar and extraordinary practical difficulties to the Applicant owner. The

provision of a 27.29 foot rear yard would produce an office building with a depth of only 65 feet. Centering the necessary elevator/service core in a building of that depth would leave only 20 feet of floor area between the north and south building walls. In a multi-tenant layout, that area would be reduced by corridors in the public areas and inside the tenant space, leaving a depth of usable office space in the front and rear of only 10 feet. The internal configuration of office space which could be provided in a structure of those dimensions would be functionally impractical and not commercially marketable, and would force the Applicant to abandon plans to redevelop the Site because such a structure would not be economically viable, particularly in view of the atypical costs for demolition and site clearance.

11. The proposed 16.23 foot rear yard is consistent with the 12- to 19-foot rear yards provided by other structures in the square. The adjacent buildings to the east and west of the Site occupy 100 percent of their lots, and the proposed rear yard would not block sunlight for neighboring properties to the south because it would not affect sunlight penetration to the alley or the area abutting the southern property line. The proposed reduced rear yard will, therefore, not adversely impact immediate adjacent buildings in terms of reduced light and air.

12. The C-4 District provides for a maximum height of roof structures of 18.5 feet, set back from the exterior walls of the structure a distance at least equal to the height of the roof structure. The Applicant is seeking special exception approval pursuant to Subsection 411.11 to deviate from the 18.5-foot setback requirement at the rear (south) of the proposed structure.

13. The irregular shape and small in-fill nature of the Site renders full compliance with the roof structure setbacks impracticable. The proposed mechanical penthouse is 18.5 feet in height. Locating the roof structure 18.5 feet from all exterior walls in a building with such a small footprint would produce an inefficient internal layout of office space due to the need for an appropriately located service core. The proximity of the roof structure to the front of the Site would result in increased visibility from K Street. The Applicant proposes to set the roof structure back 30 feet from K Street to the north, 18.5 feet on the east and west, and 6.0 feet to the south. The Applicant has minimized the impacts of the penthouse on adjacent properties by reducing the floor area ratio of the roof structure from .37 (permitted as a matter-of-right) to .25. The location of the penthouse would preserve the sightlines from K Street, the only public street on which the site has frontage, without affecting available sunlight for adjoining properties.

14. The OP recommended approval of the rear yard variance and the special exception for the proposed roof structure setback. The OP was of the opinion that the size and shape of the site creates practical difficulties for the Applicant owner. The OP concluded that the proposed rear yard would not have a significant impact on the light and air available to the Chevy Chase building, and that the proposed penthouse enclosure would not have any impact. The OP was further of the opinion that the proposed project is consistent with the goals and objectives of the Comprehensive Plan for this subarea of the Downtown.

15. By memorandum dated January 3, 2003, the Fire Marshal reported to the OP that the D.C. Fire and EMS Department had no objection to the Application, provided certain actions are taken to preserve emergency access in the alley (Exhibit 28).

16. By memorandum dated January 10, 2003, the Metropolitan Police Department recommended that the Application be approved (Exhibit 34).

17. ANC 2F, by letter dated January 13, 2003, unanimously supported approval of the Application in all respects. The Commission added that it "welcomes the proposed replacement of two long-derelict vacant buildings with a new building having architectural merit" (Exhibit 32).

18. Chevy Chase opposed the Application, contending that approval of the proposed rear yard variance and roof structure special exception might reduce the light and air available to a certain portion of the space in the rear of its building, thereby potentially reducing the value of its property. However, Chevy Chase offered no evidence to quantify any reduction in the value of its property. Moreover, its witness was not able to describe the particular uses conducted within the affected interior spaces, nor could he contradict the Applicant's evidence that at least one of the windows in the building is blocked from the inside.

19. Approval of the Application will not reduce the light and air available to the Chevy Chase building. Two-thirds of the windows on the side of that 6-story building facing the Site are set back 8 feet from the property line. Most of the natural light enters the area between the Site and the Chevy Chase property from the sun traveling overhead from east to west; the Site is to the north. A building height of 130 feet is permitted as a matter of right on the Site because the width of the adjacent K Street right-of-way is greater than 110 feet. Reducing the height of the proposed building would still have the effect of moving the rear wall closer to the Chevy Chase building.

The proposed penthouse would be more than 22 feet from the property line. The Applicant proposes to replace the existing garage entrance with a structure only 13 feet tall, which would be approximately 7 feet lower than the existing structure, thereby increasing the amount of light available to the lower levels of the Chevy Chase building. The existing situation would be further improved by the construction of a building on the Site with windows on the full south facade; there are no windows in the south wall of the existing storage building. Accordingly, the Board finds that the project proposed by the Applicant will have no adverse impact on the Chevy Chase property.

CONCLUSIONS OF LAW AND OPINION

Based upon the foregoing Findings of Fact, the Board concludes that the Applicant is seeking an area variance from Section 774 of the Zoning Regulations and a special exception under Section 411 of the Zoning Regulations.

To be entitled to an area variance under 11 DCMR § 3103.2, the Applicant must demonstrate: (a) an exceptional or extraordinary situation or condition inherent in the property which creates a practical difficulty upon the owner, and (b) that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose or integrity of the zone plan.

Therefore, based upon the record before the Board, and having given great weight to ANC 2F and to the OP, the Board concludes that the Applicant has met the burden of proof for an area variance under 11 DCMR § 3103.2. The Board further concludes that the Site is subject to extraordinary or exceptional conditions by virtue of its small size, shallowness, irregular shape, and the fact that the Site is the only non-corner lot in the subject square and within at least the 6 surrounding squares which does not have a public alley running the length of its rear property line, necessitating measurement for rear yard purposes from the rear property line instead of from the middle of the alley. This confluence of factors results in an exceptional condition or situation impacting the Site.

The Board also concludes that, by reason of the extraordinary or exceptional condition impacting the Site, strict compliance with the rear yard requirement of Section 774.1 results in a practical difficulty upon the Applicant. Compliance with the minimum rear yard requirement in this instance would yield a building depth of only 65 feet. Centering the necessary elevator/service core in such a shallow building would not leave a commercially reasonable usable amount of office space area between the core and the north or south building walls. It would not be

financially feasible or prudent to build a building with such a commercially unmarketable internal configuration.

The Board further concludes that the requested variance can be granted without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. The Project is supported by ANC 2F. The proposed use, height and bulk are consistent with the C-4 District and the development of this area of the Downtown in general and of this area of K Street in particular. The Project will benefit the immediate neighborhood by replacing two distressed, long-vacant high-rise structures with a modern Class A office building that is consistent with the prevailing character of the neighborhood. The 11-foot rear yard variance will enable appropriate and economically feasible development of the Site without impairing, and even improving, the light and air available at the rear.

Based upon the record before the Board, and having given great weight to ANC 2F and to the OP, the Board concludes that the Applicant has also met the burden of proof established by 11 DCMR § 3104.1 for a special exception under subsections 411.11 and 770.6(b). The Board concludes that compliance with the requirements of subsection 770.6(b) would be impracticable because of the location, size and shape of the Site and the practical difficulties that would result from attempting to locate the mechanical penthouse further than 6 feet from the rear (south) exterior wall and that, therefore, compliance with this requirement would be unduly restrictive, prohibitively costly, and unreasonable. The roof structure has been removed from the rear building wall as much as possible consistent with the need to provide functional, commercially usable office space.

The Board also concludes that the proposed roof structure will not materially impair the intent and purpose of Chapter 400 and the Zoning Regulations, and that the light and air of adjacent buildings will not be affected adversely by it. The roof structure will have no impact on the amount of light available to the north side of the Chevy Chase building, while the Project as a whole will increase the amount of light in the alley area behind the Site. Accordingly, the Board concludes that the location of the proposed roof structure will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Maps. The Applicant is therefore entitled to relief from the requirements of subsection 770.6(b).

For the reasons stated above, the Board concludes that the Applicant has met the burden, and it is hereby **ORDERED** that this application, as revised, be **GRANTED**.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Anne Mohnkern Renshaw to approve; John G. Parsons to approve by proxy; and David A. Zaidain, not hearing the case, not voting.)

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

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

FINAL DATE OF ORDER: APR - 2 2003

UNDER 11 DCMR § 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

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.

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 RESPONSIILITIES, 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 PERNMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. cm

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16966

As Director of the Office of Zoning, I hereby certify and attest that on APR - 2 2003 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:

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rsn

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