BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In Re: Application of :

NEST and TOTAH VENTURE, LLC : Application No. _____

STATEMENT OF REASONS IN SUPPORT OF APPLICATION FOR VARIANCES/SPECIAL EXCEPTION FOR 1426-1430 K STREET, N.W.

Introduction

This application is filed pursuant to Sections 3103.2 and 3104.1 of the District of Columbia Zoning Regulations, 11 DCMR (Zoning) (July 1995) as amended (the "Zoning Regulations"). The Applicant requests variances from Sections 771.5 and 774.1 of the Zoning Regulations, and a special exception pursuant to Sections 411.11 and 770.6(b). The Applicant, NEST and Totah Venture, LLC, proposes to demolish the existing structures on the subject property and to redevelop the site with a 130 foot 12-story commercial office building with ground floor retail space and parking in an underground garage.

Property Description and Neighborhood Setting

The subject site (the "Site") consists of two parcels in Square 218 that will be combined to form a single lot: Lot 823 (1430 K Street, N.W.) and Lot 808 (1426 K Street, N.W.). Lot 823 contains approximately 5,181 square feet of land; Lot 808 measures 2,015 square feet. The combined land area totals 7,196 square feet.

The Site is located in the Downtown on the south side of K Street, N.W., in Square 218, one lot removed to the east from the intersection of 15th and K Streets, N.W. Square 218 is located between McPherson Square (across 15th Street to the west) and Franklin Square (across 14th Street to the east). The Site abuts the Orme Building, a 6-story structure at 1424 K Street, N.W. Adjacent

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to the Site on the west is a 12-story office building known as The Carry Building at 927-931 - 15th Street, N.W.

The Site is improved with two distressed structures. Lot 823 (1430 K Street) is improved with a vacant 13-story brick structure formerly used as an office building with ground floor retail space. Lot 808 (1426 K Street, N.W.) is developed with a vacant 15-story cement structure built as a parking garage in 1951 and converted to a record storage facility in 1979. Both structures have been vacant for the last 10 years.

Site Zoning

The Site is zoned C-4. The C-4 District encompasses the Downtown core of the City and comprises the retail and office center for the District of Columbia and the surrounding metropolitan area. The C-4 District generally permits high-density office, retail, service or residential uses or a combination thereof, to a maximum floor area ratio ("FAR") of 10.0 and a maximum height of 130 feet for this K Street site. 11 DCMR §§ 770.4, 771.5.

A building erected in the C-4 Zone District may occupy 100 percent of its site, except that a rear yard of 2-1/2 inches per foot of height, but not less than 12 feet, is required commencing 20 feet above the mean finished grade. 11 DCMR § 774.1. Roof structures in the C-4 District may rise to 18.5 feet above the roof and must be setback from each exterior wall of the building a distance at least equal to the height of the roof structure. 11 DCMR § 770.6(b), (d).

Zoning in the Vicinity of the Site

The C-4 District is mapped over the surrounding two area to the north, the two blocks to the west, and a three-block area to the south. East of the site, the C-4 District is mapped over approximately 1-1/2 blocks before yielding to a DD/C-3-C District.

Surrounding Land Uses

The Site is located in an area characterized by high-rise office development with ground floor retail uses. There are a number of 12-story office buildings in the immediate vicinity.

The south side of K Street between 14th and 15th Streets, N.W., is developed with office buildings varying in height from 6 to 15 stories. The Orme Building on the east is a 6-story structure devoted to office/retail uses. Further east, at the southwest corner of 14th and K Streets, N.W., is the American Psychiatric Association Building, a 12-story office structure with ground floor retail space. The Carry Building to the west of the Site is a 12-story office building with ground floor retail space. The North side of this block of K Street is developed with 12- to 14-story office buildings with ground floor retail.

The 15th, 14th and Eye Street frontages of Square 218 principally consist of 10- to 12-story office buildings with ground floor retail uses. Along 15th Street, there are two 6-story structures utilized for professional and trade association offices.

McPherson Square to the west and Franklin Square to the east are undeveloped open space. The squares fronting on McPherson Square are developed with 12-story office buildings with ground floor retail. The squares fronting on Franklin Square are principally developed with newer 12-story office buildings and the 13-story Crowne Plaza hotel, together with several smaller historic buildings.

Zoning History of the Site and Surrounding Area

Square 218 was zoned C-4 in 1958. The Site appears to have been zoned for commercial purposes prior to 1958.

Both Lot 823 (1430 K Street) and Lot 808 (1426 K Street) have been the subject of prior

Board of Zoning Adjustment ("BZA") review.

By order dated May 17, 1991 entered in Application No. 15169, the Board granted a variance from the minimum rear yard requirements and a special exception to allow a mechanical penthouse which did not meet the applicable setback requirements to permit redevelopment of the Site with a 12-story commercial office building with ground floor retail and underground parking. A copy of the Order is attached hereto as Attachment A.

On September 5, 1979, the Board granted a use variance allowing all floors of the structure on Lot 808 (1426 K Street) to be used as a record storage facility. Application No. 12954.

On October 5, 1961, the Board denied a request for a variance to extend the chimney of the structure on Lot 823 (1430 K Street) into the required rear yard. However, the Board did approve a request to allow the building's mechanical penthouse to extend into the side yard setback area. Application No. 6529.

Elsewhere within Square 218, the building on the northwestern corner of 14th and Eye Streets, N.W. was reviewed by the BZA. In March 1967 the Board approved the location of the roof structure and granted a variance from the C-4 closed court requirements. Application Nos. 8979 and 8980.

Proposed Redevelopment and Use

NEST proposes to demolish the existing structures on the Site and construct a 12-story commercial office building with ground floor retail. The proposed structure will rise to a height of 130 feet and have a floor area ratio of 10.4.

The additional 2,885 square feet of FAR is needed to accommodate the service core necessary to yield marketable office space.

Because of the Site's small size, NEST is unable to provide the requisite 27.29 foot rear yard setback. Instead, responding to site constraints, the proposed structure is designed to provide a rear yard of 16.23 feet.

Site constraints also limit NEST's ability to set back the proposed 18.5-foot roof structure the requisite minimum distance from each of the building's exterior walls. In order to provide an effective and efficient service core, the mechanical penthouse is designed to set back 6.0 feet from the rear (south) exterior wall. The proposed penthouse is set back 30 feet from the K Street (north) frontage and 20 feet on each side.

Relief Requested

The Zoning Administrator's memorandum indicates a need for two variances: (1) a variance from the C-4 rear yard setback requirements (Section 774.1), and (2) a variance from the C-4 maximum allowable FAR (Section 771.5). The Zoning Administrator also indicates the need for a special exception for relief from the roof structure setback provisions (Section 770.6(b)) in order to permit construction of the proposed office structure in accordance with this application.

The requested variances are properly characterized as area variances. An area variance relates to deviations from dimensional requirements such as rear yard setbacks, floor area ratio (FAR) or minimum lot requirements. Palmer v. BZA, 287 A.2d 535, 541 (D.C. 1972).

The standard by which the BZA may approve an area variance is set forth in D.C. Official Code § 6-641.07(g) (3) (2001 ed.) and Section 3103.2 of the Zoning Regulations. The burden of proof for an area variance is met when the following conditions are shown to exist:

(a) the property is unique because of its size, shape, topography or other extraordinary or exceptional situation or condition;

(b) by reason of such unique or exceptional condition of the property, strict application of the Zoning Regulations will result in "exceptional practical difficulties"; and

(c) approval of the variance will not cause "substantial detriment to the public good" and will not "substantially impair the intent, purpose, and integrity of the zone plan" as embodied in the Zoning Regulations and Map.

See Gilmartin v. BZA, 579 A.2d 1164, 1167 (D.C. 1990).

NEST submits that its proposal satisfies these criteria. The application contemplates construction of an office building on a small, infill Downtown site. Given a lot width of only 93 feet, provision of the requisite 27.083-foot rear yard setback would result in a shallow office building with a length of only approximately 65 feet. In a building with such shallow depth, a centrally located elevator core would produce an inefficient floor layout with a large percentage of unproductive office space.

Given the small infill site, strict application of the Zoning Regulations would render it impractical for NEST to redevelop the site. The design responds effectively to the challenge to provide a meaningful amount of marketable office space while meeting modern ADA and building code safety requirements. Absent redevelopment, the vacant office building and nonconforming storage facility, both of which are of questionable architectural merit, would continue indefinitely in their extremely dilapidated condition.

Because NEST intends to provide a rear yard setback, albeit at a slightly reduced dimension over that required by the Regulations, adjacent office buildings will not be adversely affected in terms of reduced light and air. Likewise, the roof structure has been placed with sufficient setbacks to minimize adverse impacts. The penthouse is setback from the north (K Street) exterior wall 30

feet to ensure no visual impact from K Street. Further, redevelopment of the Site in the manner proposed will help improve the overall character and urban design of the 1400 block of K Street as well as the surrounding area.

Conclusion

For the foregoing reasons, NEST submits that approval of the relief requested in this application would not be substantially detrimental to the public good, and would not impair the intent, purpose or integrity of the Zoning Regulations and Map nor adversely affect the use of neighboring properties. The unique and exceptional conditions which affect the subject property create practical difficulties which would not allow NEST to achieve economically feasible redevelopment of the Site as a matter of right.

Granting the requested variances and special exception would permit economically feasible redevelopment of the Site and, hence, a productive use and aesthetically pleasing structure at this important Downtown location. Moreover, the proposed project is consistent with the Comprehensive Plan, which generally seeks to encourage new office development in the Downtown, and specifically depicts the Franklin Square area as a priority office area. See 10 DCMR (Planning & Development)(Part 1) §§900.30, 905.2(a), 931 (Feb. 1999). The ground floor retail component is entirely consistent with adjacent and other neighboring structures.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 15163 of the Copper Beach Valley Company, N.V., pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Sub-section 411.11 to allow a mechanical penthouse which does not meet the setback requirements, and a variance from the rear yard requirements (Sub-section 774.1) for construction of a retail/office building with an accessory parking garage in a C-4 District at premises 1430 K Street, N.W., (Square 218, Lots 808 and 823).

HEARING DATE: **November 8, 1989**
DECISION DATE: **November 8, 1989 (Bench Decision)**

FINDINGS OF FACT:

1. The property is located on the south side of K Street between 14th and 15th Streets and is known as premises 1430 K Street, N.W. It is zoned C-4.

2. The site consists of two lots and is irregularly shaped with a frontage of 80 feet along K Street and a depth of varying dimensions ranging from 80 feet, 7 inches to 93 feet, one inch. The site has a total lot area of 7,196.4 square feet.

3. The site is located between McPherson and Franklin Squares in an area characterized by office development with ground floor retail. To the east of the site is a six-story office/retail structure known as the Orme Building. To the west of the site is a twelve-story office structure known as the Carry Building. The remaining frontages of the subject square are generally developed with 10 to 12-story office/retail structures consistent with the C-3 zone district.

4. The site is currently improved with two structures: (a) a 13-story office building with ground floor retail 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.

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 35 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 deadends at the rear of the site.

6. The facade treatment and massing of the proposed building has been designed to relate to the neo-classical style of the surrounding buildings.

7. 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 required rear yard may be measured from the middle of an alley abutting the rear property line. The proposed structure requires a rear yard of 27.08 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.

8. 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 roof structure's height. The applicant is seeking special exception approval pursuant to Sub-section 411.11 in order to deviate from the 18.5 feet setback requirements at the sides and rear of the proposed structure.

9. As to the rear yard variance, the applicant testified that the property is affected by an exceptional condition based on the following:

a. The shallowness and irregular depth of the site limit the amount and configuration of useable office space on the site. The provision of a 27.08 feet rear yard would result in an office building with a depth ranging from 53 to 65 feet. The internal configuration of space which could be provided in a structure of those dimensions would be functionally impractical and would force the applicant to abandon plans to redevelop the site.

b. The subject site is the only non-corner lot in the subject square and within the 13 surrounding squares which lacks public alley access running the length of its rear property line, therefore, the rear yard must be measured from the rear property line instead of from the middle of the adjacent alley.

10. The applicant further testified that 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 building diretly east and west of the site occupy 100 percent of their lots. The proposed reduced rear yard will, therefore, not adversely impact immediate adjacent buildings in terms of reduced light and air.

11. As to the special exception, the applicant testified that the small in-fill nature of the site renders full compliance with the roof structure setbacks impractical. Efforts to locate the

roof structure the requisite 18.5 feet from all exterior walls produced an inefficient internal layout of office space and the proximity of the roof structure to the front of the site would result in increased visibility from K Street. The proposed roof structure would be setback 32 feet from K Street to the north, 16.33 feet on the east and west, and 4.5 feet to the south. In order to minimize the impacts of the penthouse on adjacent properties, the applicant reduced the floor area ratio of the roof structure from .37, which is permitted as a matter-of-right, to .25. In addition, the proposed location of the penthouse would preserve the sightlines from K Street, the only public street on which the site has frontage.

12. The Office of Planning (OP), by memorandum dated November 1, 1989, recommended approval of the application. The OP was of the opinion that the size and shape of the site produced a practical difficulty for the owner. The OP was further of the opinion that the proposed project would improve the urban fabric of the Franklin Square subarea and contribute towards meeting the goals and objectives of the Comprehensive Plan.

13. Advisory Neighborhood Commission (ANC) 2C, by letter dated November 6, 1989, supported the granting of the application. The ANC was of the opinion that the small size of the lot resulted in the need for the requested relief in order to provide a viable floor plan and to minimize the visibility of the roof structure from K Street.

14. One person appeared in opposition to the application at the public hearing. The opposition consisted solely of concerns related to treatment of and notification to the tenants of the existing building based on the proposed demolition and redevelopment. The Board notes that such concerns are beyond its jurisdiction.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing facts and the evidence of record, the Board concludes that the applicant is seeking an area variance and a special exception.

The granting of the requested rear yard variance requires the showing of an exceptional or extraordinary condition inherent in the property which creates a practical difficulty upon the owner. The Board concludes that the property is affected by an extraordinary condition by virtue of its irregular shape, shallow depth, and the lack of a public alley along the length of the rear property line. The Board further concludes that the strict application of the Zoning Regulations would create a practical difficulty upon the owner in that the design constraints imposed by the size and shape of the lot would result in a shallow,

As to the special exception, the applicant must demonstrate that it has complied with the criteria set forth in Sub-section 411.11 and 3108.1. The Board concludes that the applicant has so complied. The shallow and irregular depth of the lot renders full compliance with the roof structure setback requirements unduly restrictive. The setbacks, as proposed by the applicant, allow for a fairly reasonable and effective internal configuration of office space, minimizes any visual impacts on K Street and does not adversely impact on the light and air of the adjacent buildings.

The Board therefore concludes that the application can be granted without substantial detriment to the public good and as in harmony with the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Maps. It is therefore **ORDERED** that the application is **GRANTED.**

VOTE: 4-0 (Paula L. Jewell, Lloyd D. Smith, William F. McIntosh and Carrie L. Thornhill to grant; Charles R. Norris not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Edward L. Curry by
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: MAY 17 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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