COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001
Office: (202) 724-8052
Fax: (202) 724-8120

ADRIAN M. FENTY
Councilmember - Ward 4

September 4, 2001

Committee Member
Economic Development
Education, Library and Recreation
Public Services
Subcommitte on Human Rights
Property Management, and Latino Affair

Carol Mitten
Chair
Board of Zoning Adjustment
441 - 4th Street, NW
Washington, D.C. 20001

Dear Ms. Mitten:

As you are aware, today you are scheduled to hear the following case: *Appeal of Advisory Neighborhood Commission 4A,* #16752. As you may be aware from reading the file, this case has been one of complete frustration for the residents of ANC 4A07, and the greater 16th Street Heights Community in Ward 4.

To recap, after ANC Commissioner John J. Chagnon had successfully argued this case and gotten the BZA to overrule the zoning administrator, Michael Johnson, the successor Zoning Administrator, improperly overruled the BZA, allowing PDA-Better Treatment Centers to work with a certificate of occupancy that does not have the required number of parking spaces. Today, the BZA will hear arguments concerning whether the Zoning Administrator acted improperly. It is my strong belief that the Zoning Administrator acted improperly in this case, as he has in many others affecting Ward 4, to the detriment of my constituents (see attached letter to Dave Clark dated August 28, 2001). As you likely know, there has been little to no enforcement of the parking requirements for business in the District of Columbia.

As you also likely know, PDA-Better Treatment Centers has never operated within their certificate of occupancy which allows for the use of 2800 square feet only and no more than 7 residents/students. Contrary to that issuance, they have been using more than 7000 square feet with anywhere from 40 - 60 residents/students.

The negligence of the OZA has resulted in an overuse of this small building. On any given day, the residents of this area are forced to put up with the parking of vans and crowding of sidewalks in an already congested area that, if the certificate of occupancy were being enforced correctly, would not occur.

It is the hope of the residents of this area that you will give this matter the heightened review that you give to all of the cases that come through the BZA and end this nightmare that has been perpetuated by the OZA.

BZA
Case No. 16752
Exhibit No. 21

Board of Zoning Adjustment
District of Columbia
CASE NO.16752
EXHIBIT NO.21

Sincerely,

Adrian Fenty
Councilmember, Ward 4
www.dccouncil.washington.dc.us

cc: David Clark
Members of the Board of Zoning Adjustment
Jerrily Kress

AMF/jtw

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20001
Office: (202) 724-8052
Fax: (202) 724-8120

ADRIAN M. FENTY
Councilmember - Ward 4

August 28, 2001

Committee Member
Economic Development
Education, Library and Recreation
Public Services
Subcommitte on Human Rights
Property Management, and Latino Affair

David Clark
Director
Department of Consumer & Regulatory Affairs
941 North Capitol Street NE
Washington, DC 20002

Dear Mr. Clark:

It is with complete exasperation that I write to you concerning the conduct and behavior of the representatives of the Office of the Zoning Administrator (OZA), which falls under the purview of the Department of Consumer & Regulatory Affairs (DCRA).

At the time of this writing, I have recently read the application of Comcast Cablevision for a special exception to the Zoning Regulations to build an Optical Transmission Node ("OTN") (see Attachment 1). The right of Comcast to file this application is not disputed, however, an accompanying letter from Michael Johnson, Zoning Administrator, is seriously troubling (see attached). As you can see from the letter from Mr. Johnson to Comcast, he correctly explains that his employee's (Toye Bello) decision to grant Comcast a building permit was inconsistent with the District of Columbia Municipal Regulations (DCMR). However, the last three paragraphs of Mr. Johnson's letter unbelievably state that he is going to do everything in his power to "expedite" their hearing before the Board of Zoning Administration (BZA). In fact, that is exactly what he did because a date of October 9, 2001 has already been set for the BZA hearing, just more than one month away.

As I advised via a voicemail message on your machine, this action by the Office of the Zoning Administrator is the latest in a series of poor decisions made by this office, all to the detriment of the residents of Ward 4:

1. Felicities Nightclub. In December of this year, after the community spent years of fighting to revoke both the ABC license and public hall license of Felicities Nightclub at 6210 Chillum Road, NW, my office was advised that affiliates of the owner of Felicities had been granted a Certificate of Occupancy (C of O) for a church. At a community meeting sponsored by my office, Mr. Johnson proceeded to explain that churches were a matter of right. As you know, however, churches must have 1 parking space for every 10 parishioners. Mr. Johnson's office neglected to look at this factor prior to issuing the C of O (Trinity has minimal parking) and it was left to my office to observe it and explain it to him at the community meeting. As you know, —

there are countless other churches in Ward 4 without the requisite parking space, or which have no C of O at all.

2. Flood Plumbing. In April of this year, it became known to some more Ward 4 residents that a neighborhood nuisance, Flood Plumbing, had been given a permit to build a fence on public space, without getting the proper public use permit. Only when my office and members of the community pointed this out, did Mr. Johnson's office begin to follow the DCMR and put a stop work order in place.
3. Foxy Playground. Although this business is in an area that is zoned C-2, and these businesses are only permitted in an area that is zoned C-3 and C-4, the Office of the Zoning Administrator has taken no action to enforce the zoning requirements, despite numerous requests to do so by my office and the Ward 4 Neighborhood Service Coordinator (see attached memorandum from Merrit Drucker to Michael Johnson, Attachment 2).
4. The long-awaited decision on "Zeke's House" promised to be ready yesterday, Monday August 27, 2001, still has not been released.
5. I have recently received the attached letter from ANC Commissioner, John J. Chagnon (see Attachment 3). As you can see from Commissioner Chagnon's letter, he is equally as frustrated with the OZA when he states, "little or no resources are devoted to verification of the representations of the applicants. Consequently, permits are issued based purely on the representations of an applicant."
6. Comcast. About a month ago, members of my staff and residents of Brightwood, upon physically visiting the address of 6336 Piney Branch Road NW found out that Comcast had been approved to build the OTN in an R-1 zoned district. After speaking with Mr. Toye Bello of the OZA, I was advised that the building was a matter of right according to §201.2(d) of the DCMR. A quick review of the relevant code showed that Mr. Bello was completely inaccurate. As you know, the 16 matter of right uses in DCMR§ 201.1 do not mention anything resembling an OTN. After reviewing Comcast's petition, I realized that they had instructed the OZA that they should be approved based on 201.2(d), a narrow provision allowing some antennas completely unrelated to Comcast's petition. It quickly became obvious that Mr. Bello had done no research or investigation but had approved Comcast's application based solely on their representations. Whether Mr. Bello is on the payroll of Comcast, or whether he is miserably incompetent, his interpretation was made worse when Mr. Johnson called me to support Mr. Bello's determination. Only after I painstakingly went through the DCMR with you and Mr. Johnson was this matter properly reversed and the "stop work" order issued.

Concerning the OTN, the attached documents (Attachment 1) show that the OZA is again making it easier for Comcast by "expediting" their BZA case, and harder on the people who pay their salaries, the taxpayers. Is it really Mr. Johnson's belief that my constituents are supposed to have two ANC meetings, research this matter, prepare an argument and contend against Comcast's high-powered lawyers in the 42 days between today and this hearing, as well as get an opinion to the BZA seven (7) days before the October 9, 2001 hearing?

Mr. Johnson seems so eager to please the business community that he continues to do harm to the District's residents. As I said before, I have lost all patience with the OZA. At one point during this ordeal, in trying to secure a copy of the notification letter to Comcast, Mr. Johnson hung up on me. You will recall that I left the previously mentioned voicemail following the "hang-up". (Mr. Johnson, by the way, never forwarded the letter to me as you can tell from the "cc" list on the letter from Johnson to Pendleton in the BZA file, Attachment 1).

Mr. Clark, you and Theresa Lewis continue to impress me with your diligence and follow-through. However, I find myself in need of serious answers as to how we are going to reverse course in this case, and others damaged by the OZA and how I am going to avoid having to watchdog the Office of the Zoning Administrator over the next three years of my tenure on the Council.

Lastly, by copy of this letter, and with the verbal support of Gerri Adams-Simmons, President, Brightwood Civic Association; Riddick Vann, Commissioner 4A04; and James Jones, Chair, ANC 4A, I am requesting from the Board of Zoning Adjustment that, due to hardship to the community, this matter be moved off the "expedited" track and an extension granted.

Regrettably,

Adrian Fenty
Councilmember Ward 4
www.dccouncil.washington.dc.us

AMF/jtw

Cc: Sharon Ambrose, Chair, Committee on Consumer & Regulatory Affairs
John Koskinen, City Administrator
Michael Johnson, Zoning Administrator
John J. Chagnon, Commissioner, ANC 4A07
James Jones, Chair, ANC 4A
Riddick Vann, Commissioner, ANC 4A04
Barrington Scott, Chair, ANC 4B
Anne Renshaw, Chair, ANC 3G
Gerri Adams-Simmons, President, Brightwood Civic Association
Jerrily Kress, Director, Board of Zoning Adjustment
The Moss Family
Terry Goings
Judi Jones

ATTACHMENT 1

D.C.-44
APRIL 1980

Memorandum ● Government of the District of Columbia

TO: City Council Member For Ward FOUR

Department, Agency, Office: BZA Office of Zoning

FROM: Jerrily R. Kress, FAIA
Director

Date: AUG 2 1 2001

SUBJECT:

Notice of Filing Date: Aug. 20, 01 Case No. 16784

This is to inform you that the above-numbered case has been filed before the Board of Zoning Adjustment for zoning relief. The property that is the subject of this case is within your Ward. Therefore, I am attaching a copy of the case, as this will affect your Ward. For additional information, please contact the Office of Zoning at (202) 727-6311.

APPROXIMATE HEARING DATE: Oct. 9, 2001

councilrefer/LJP

BZA Form 2
(Revised 7/17/95)

Docket No. 16784

D.C. RECEIVED
2001 AUG 20 PM 3:15

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION

NOTE: See reverse side of this form for filing instructions, filing fees and information required by the Board

DO NOT MAIL **DO NOT MAIL**

TO THE BOARD OF ZONING ADJUSTMENT

Pursuant to Sections 3104 of the Zoning Regulations of the District of Columbia, an application is hereby made for the following action: a special exception to allow for the construction of an Optical Transmission Node ("OTN") with equipment shelter, which is provided for by Section(s) 211.1 of the Zoning Regulations.

Premises affected are located at 6336 Piney Branch Road, NW
(street address)

Lot(s) 12, Square(s) 2944

in the District of Columbia, in Zoning District R-1-B.

Present use of Property: Vacant lot.

Proposed use of Property: Optical Transmission Node equipment shelter.

Owner of Property: Comcast Cablevision of the District, LLC.

Address of Owner: 900 Michigan Ave., NE, Washington, DC 20017.

State briefly the bases for action sought:

BZA approval is required for the erection or use of buildings for transmission or reception equipment relating to commercial broadcast antenna in the R-1-B zone.

Date: Aug. 20, 2001 Signature: _____
(Applicant)*

*The owner of the property for which application is made or his/her authorized agent may file an application. In the event an authorized agent files an application on behalf of the owner, the notice of application shall be accompanied by a letter signed by the owner authorizing the agent to act on his behalf in this appeal.

TO BE NOTIFIED OF HEARING AND DECISION:

Name: Edward L. Donohue/Terence S. Cooke, of Cole, Raywid & Braverman, LLP

Address: 1919 Pennsylvania Ave., NW, Suite 200, Washington, DC

Zip Code 20006 Phone No. 202-659-9750

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

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

Building and Land Regulation Administration
Office of the Zoning Administrator

August 17, 2001

Mr. Curt Pendelton, Comcast Area Vice President
C/o Mr. Maurice Smith, Comcast Director of Regulatory Affairs
Comcast Cablevision of the District of Columbia
900 Michigan Avenue, N.E.
Washington, D.C. 20017

Fax # (202) 832-2183

Re: 6300/6310 Piney Branch Road, NW

Dear Mr. Pendelton:

I am writing to inform you about the basis for the Stop Work Order, issued on August 10, 2001, by the Building and Land Regulation Administration, at the above referenced property.

Although the initial zoning review approved the project and permits were subsequently issued, upon reexamination, I have determined to reverse the decision of this Office. I base my decision on the following:

The use provisions of DCMR Title 11, Section 201.2 (d), allows one or more antennas enclosed entirely on all sides within a building as a matter of right. Such antennas, however, may not be designed for commercial broadcasts and or transmission, which is the case in this instance. Accordingly, I have made the determination that the more applicable section of the Regulations, in this case, is Section 211.1 of Title 11. Section 211.1 allows the use of an antenna for commercial television and frequency modulation or use of buildings for transmission or reception equipment on the same lot or elsewhere, provided the Board of Zoning Adjustment (BZA) grants Special Exception Relief in accordance with the conditions specified in Section 3104 of Title 11.

In order to expedite your review before the BZA, I am recommending you file directly with the BZA through the "direct filing process", by contacting Ms. Jerrily Kress, Director, Office of Zoning at (202) 727-6311. Their address is 441 4th Street, NW, Suite #210 South.

941 North Capitol Street, N.E., Suite 2700 Washington, DC 20002 Phone: (202) 442-4560 Fax: (202) 442-4871

In order to assist your effort, I have contacted OZ and requested an expedited review. I have received assurance that OZ staff will do everything possible, to see that my request is adhered too.

In closing, I realize our codes have not kept step with recent technological advancements. To this end, the Office of the Zoning Administrator is willing work to with the industry, sister agencies and others in the community to update and improve our regulations. Should you have any questions, please call me at 442-4576.

Respectfully,

Michael D. Johnson
Zoning Administrator
District of Columbia

cc:

David A. Clark, DCRA Director
Theresa Lewis, DCRA Deputy Director
Gregg Love, BLRA Administrator
Denzil Noble, Deputy BLRA Administrator
Karen Edwards, DCRA General Counsel
Toye Bello, Chief, Zoning Review Branch
Jerrily Kress, OZ Director
Andy Altman, Director, Office of Planning
Darryl Anderson, Executive Director, OCT&T
Donna Rattley, Comcast Attorney

MDJ/mdj
Comcast SWO Letter080901/ZAInter

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

In the matter of the Application by
Comcast Cablevision of the District, LLC
for a Special Exception No._____

STATEMENT OF EXISTING AND INTENDED USES
AND STATEMENT OF JUSTIFICATION

IN SUPPORT OF THE APPLICATION FOR A
SPECIAL EXCEPTION TO PERMIT COMCAST CABLEVISION OF THE DISTRICT, LLC
TO INSTALL AN OPTICAL TRANSMISSION NODE ("OTN")

In accordance with the requirements of the District of Columbia Municipal Regulations (DCMR, Title 11, Zoning) (hereinafter the "Zoning Regulations"), Comcast Cablevision of the District, LLC hereby submits the following written statement in support of the requested special exception to allow installation of an OTN in the R-1-B zoning district.

APPLICANT

Comcast Cablevision of the District, LLC (hereinafter "Comcast" or the "Applicant") is a franchised provider of cable television services to subscribers in the District of Columbia. In January 2001, the District of Columbia approved Comcast's acquisition of the cable television system previously operated by AT&T. One condition of that approval was the requirement that Comcast upgrade the cable television plant within the District. Optical Transmission Nodes, or "OTNs" are an integral part of the new system architecture that Comcast is building in the District and an important element in its upgrade of the District's cable plant. OTNs will help lead to improved service quality and reliability as well as new services such as high-speed internet access.

EXISTING USE

The subject property is located in the District of Columbia at Lot 12, Square 2944. While the property was a vacant lot, it is expected that it will assigned the address of 6336 Piney Branch Road.

INTENDED USE AND NATURE OF REQUEST

Comcast requests a Special Exception to allow it to locate an OTN on property in the R-1-B zoning district. The OTN is a necessary component of Comcast's video and data transmission system. Comcast owns the property where the OTN will be located.

An OTN acts as a distribution and collection hub for forward signals originating at the cable system's main signal processing site known as a "headend", and reverse signals originating from the cable service subscriber's terminal equipment. OTNs are connected to the main headend by fiber optic lines. These fiber cables carry low intensity light waves in a closed, shielded communication path. They emit no harmful signals and there are no radio frequency (RF) emissions from the OTN.

OTNs are located in areas where the distance from an optical node to the headend is too great to allow for the efficient transmission of reverse signals back to the headend. Because OTNs must be located near the cable television customers that they serve, they are, as in this case, typically located within residential communities. OTNs are also strategically located to limit the potential for large outages due to fiber cuts

The OTN itself is housed within a stand-alone, pre-cast concrete building, approximately 1500 square feet in size and 1 story in height. The specific dimensions of this OTN are as described in the Modular Building Design Specifications included with the application and on the Suryeor's plat filed with the building inspection division, which also accompanies the application. This facility meets all required setbacks and FAR limits.

The OTN will have a diesel generator for emergency backup power. The generator will have a sound abatement package designed to muffle its sound within the range of ambient noise levels and it will operate only in the event of a power outage and for brief test periods of just a few minutes once per week. Specifications on sound data for the generator are included in the materials submitted with this application. The OTN will be unmanned and will not require water or sewer connections.

There will be no traffic impact on the community as routine maintenance at the facility will require only brief service calls on an infrequent basis by a technician who will arrive via standard sized van or pick-up truck. The building will have no exterior lighting or other illumination. It will be equipped with a dry fire suppression system and the building's exterior will be painted and otherwise finished so as to blend with other structures in the vicinity.

Further, it will be attractively landscaped and maintained so as fit within its surroundings. This particular OTN will be installed on what was a vacant lot that had essentially been a dumping ground for trash and debris that was both an eyesore and a hazard to the surrounding community

The OTN building will house a variety of equipment such as laser transmitters and receivers for transmitting and receiving optical signals, as well as additional passive equipment

for combining return signals from subscriber terminals and for routing purposes. Neither the equipment nor the cables within the OTN emit harmful emissions or blanketing interference.

Copies of specification sheets and architectural diagrams depicting the OTN are provided here and made a part of this application. It should be noted that the depictions of the equipment building presented here show it as a flat-roofed structure. This is the way the building is pre-fabricated by its manufacturer and shipped to the site. When completed by Comcast, however, the building will have an "A-frame" shingled roof that will extend the building's height at the peak of the roof to approximately 16 ½ feet and make it appear more residential in character.

JUSTIFICATION FOR SPECIAL EXCEPTION

Assuring reliable, quality cable television service and high-speed data transmission is the goal of Comcast's system design. That goal is consistent with the District government's charge to Comcast as a condition to the City's approval earlier this year of Comcast's acquisition of AT&T's cable franchise in the District. The proposed OTN will be an important part of the improved cable plant that Comcast is bringing to the District. It will enhance Comcast's service to its D.C. subscribers while not adversely affecting the use of neighboring property. As noted above, the functions performed by an OTN requires its location in proximity to residential service subscribers. For that reason, residentially zoned properties are typically required for such facilities. All reasonable efforts are made in the design of OTNs to assure that their appearance is not out of character with their surroundings. In this case, the Applicant's facility will fully conform to the conditions for a special exception as set out in 11 DCMR Sec. 211 (1995).

The special exception requested here may be granted without detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Indeed, the requested special exception will make it possible for the Applicant to continue and improve upon the quality of service it offers to the citizens of the District of Columbia.

NEIGHBORHOOD DESCRIPTION

The properties bordering the proposed OTN site are a mix of residential, institutional and commercial uses. A summary of surrounding uses follows:

To the east: Directly across Piney Branch Road are two gasoline service stations.

To the south: Property abutting directly to the south is a vacant and apparently abandoned residential structure. Other residential structures extend to the south along Piney Branch Road. The OTN, however, will not be visible from those residential properties.

To the west: Directly to the west of the proposed OTN site is a church building that backs to the proposed side. Residential properties extend to the south from the church property.

To the north: Abutting property to the north is an undeveloped parcel extending to Tuckerman Street.

CONCLUSION

Comcast Cablevision of the District, LLC seeks a special exception to construct and operate an OTN in the R-1-B zoning district. As demonstrated by the information provided herein, the Applicant's request is justified and its OTN will be consistent with the criteria established for such a special exception. Therefore, the Applicant respectfully requests that the Board of Zoning Adjustment give expeditious and favorable consideration to its application and grant this special exception.

Respectfully submitted,

Comcast Cablevision of the District, LLC

By: _____
Terence S. Cooke
Cole, Raywid & Braverman, LLP

Date: Aug. 20, 2001

THE SURVEYOR

Washing[ton] D.C., 4/3/, 2001

for Building Permit of SQR 2444 LOTS 12, 13 & 14

le: 1 inch = 30 feet Recorded in Book 191 Page 45

eipt No. 2885

ished to: GRM PROPERTIES

Surveyor, D.C.

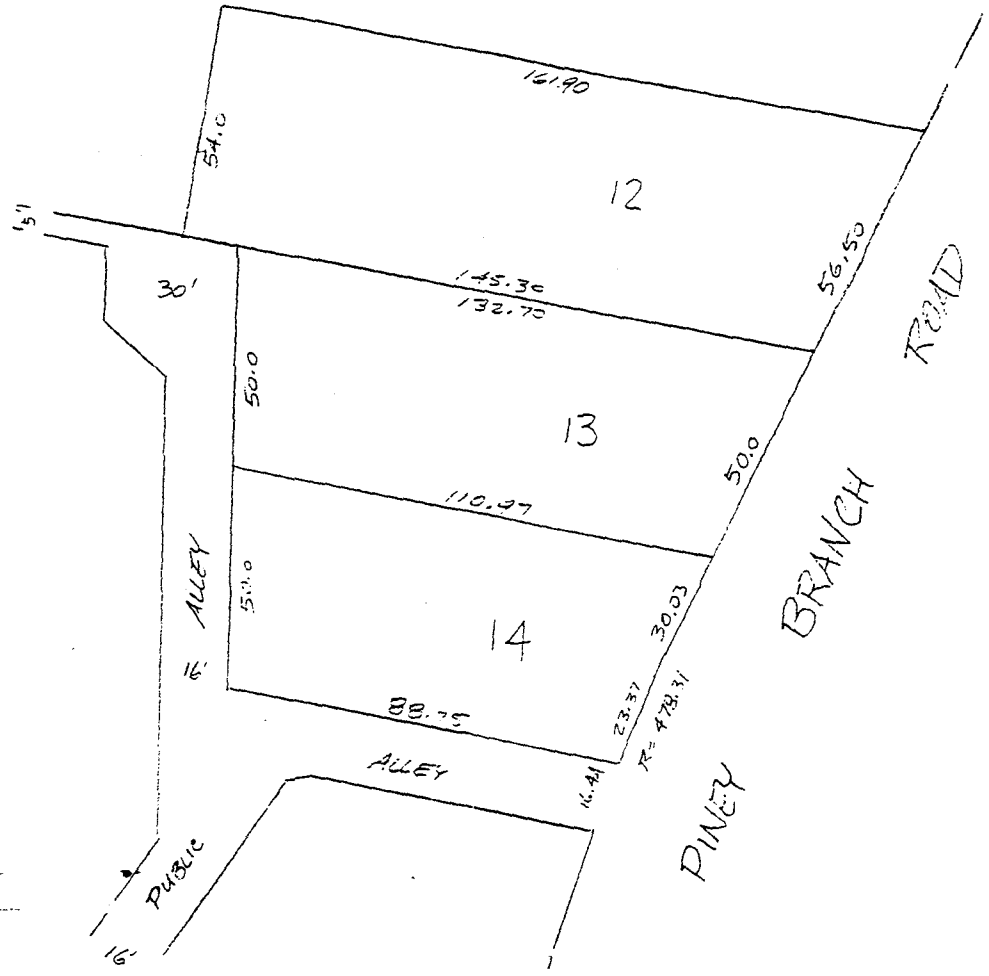
By: RFD JM

I hereby certify that all existing imp[rovements] shown hereon, are completely dimensioned and are correctly platted; that all proposed buildings or construction, or parts thereof, including covered porches, are correctly dimensioned and platted and agree with plans accompanying the application; that the foundation plans as shown hereon is drawn, and dimensioned accurately to the same scale as the property lines shown on this plat;and that by reason of the proposed improvements to be erected as shown hereon the size of any adjoining lot or premises is not decreased to an area less than is required by the Zoning Regulations for light and ventilation; and it is further certified and agreed that accessible parking area where required by the Zoning Regulations will be reserved in accordance with the Zoning Regulations, and that this area has been correctly drawn and dimensioned hereon. It is further agreed that the elevation of the accessible parking area with respect to the Highway Department approved curb and alley grade will not result in a rate of grade along centerline of driveway at any point on private property in excess of 20% for single-family dwellings or flats or in excess of 12% at any point for other buildings. (The policy of the Highway Department permits a maximum driveway grade of 12% across the public parking and the private restricted property.)

Date: APRIL 10, 2001

(Signature of owner or his authorized agent)

NOTE: Data shown for Assessment and Taxation Lots or Parcels are in accordance with the records of the Department of Finance and Revenue, Assessment Administration, and do not necessarily agree with deed description.



Attachment 2

MEMORANDUM

TO: Mr. Michael Johnson, Acting Administrator for Zoning
Mr. Robert Warren, Deputy Director for Compliance and Enforcement
CDR Cathy Lanier, Commander, 4th District, MPD

FROM: Merrit P. Drucker, Neighborhood Services Coordinator, Ward 4

DATE: July 10, 2001

SUBJECT: Request for revocation of Business License and Certificate of Occupancy for the establishment known as the Macumbo Lounge, 5335 Georgia Avenue, NW/Request for internal audit of DCRA licensing procedures/Request for closure of a sexually oriented business in a C-2 Zone

I would like to request that the Business License and Certificate of Occupancy for this business be revoked as soon as possible. I am requesting this for these reasons.

First, the business is operating without the proper Certificate of Occupancy. On July 3, 2001, I accompanied Lt McGuffey and Inspector Elam of the DC Fire Department on a fire code compliance inspection of this business. I inspected the Certificate of Occupancy and determined that the Macumbo Lounge has no Certificate of Occupancy for their business, which is the sale of alcoholic beverages and the provision of live, nude, sexually explicit entertainment. No food of any type was available for sale during the time of our visit, nor was there any capability for the preparation and serving of food, or for the preparation of food for consumption off premises.

The certificate of occupancy I was shown contained the following information:

B53188
September 1, 1965
Jefferson Grill, Inc.
Use: 1st and 2nd Floor
Lot 131, Square 2997
Zone C-2
Purpose: Restaurant

It appears that at one time, many years ago, the premises were used as restaurant. Apparently, the restaurant ceased operating, and the Macumbo Lounge began to operate a sexually oriented business, without obtaining a certificate of occupancy, without obtaining a business license, and in a zone (C 2) where sexually oriented businesses are prohibited. Because the business does not have a certificate of occupancy, I am requesting that it be closed immediately.

Second, the business does not have a business license. Again, the primary business activity at this location is the sale of alcoholic beverages and the provision of live, nude, sexually explicit entertainment. There is no capability for the preparation and serving of food. The business license I was shown contained the following information:

Business License: Restaurant
31002046
Jefferson Grill, Inc.
Issued 2001/03/06

Since there is no restaurant at this location, it is clear that the Macumbo Lounge is operating a sexually oriented business (in an area not zoned for such a business) without a business license.

Third, there is a serious discrepancy, between the C of O and the Business License, regarding the number of people authorized to occupy the building. The (invalid) C of O permits occupancy by 85 people in the 1st floor and 60 people on the 2nd floor. The (invalid) business license allows for occupancy by 135 people. This discrepancy appears to be evidence of a lack of coordination between the granting of Certificates of Occupancy and Business Licenses. It appears that no check was made of the Certificate of Occupancy when the Business License was issued, nor was any check made to see if the business could actually provide the services that they represented they could provide.

Further, the sexually oriented business was being conducted in the basement, where there was a large room used by the female entertainers as a changing room. It is difficult to assess the legality of this use, given that the only Certificate of Occupancy available was for a restaurant. What this apparent contradiction does indicate is that the Certificate of Occupancy posted in the business was never intended to certify the current business. The business for which the original Certificate of Ocupancy was issued no longer exists, having been supplanted by the current, unlicensed sexually oriented business.

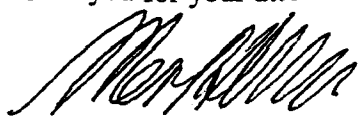
Because the Business License and Certificate of Occupancy are in obvious contradiction as to the number of occupants and their permitted location, I am requesting that both be revoked and that the business be required to reapply for both.

Fourth, the business is being operated in violation of the zoning regulations, which do not allow sexually oriented businesses in C 2 zones, and do not allow sexually oriented business within 600 feet of residential areas. Please note that the Macumbo Lounge shares a common wall with the adjacent residential property at 1136 Jefferson Street, NW. This is as close as possible to a residential area that a business can be. Because the business is operating in violation of the zoning regulations, I am requesting that the business not be granted a Certificate of Occupancy for a sexually oriented business.

Finally, I am requesting that DCRA conduct an internal audit of the Certificates of Occupancy and Business Licenses issued to the businesses within Ward 4. The obvious problems with the Certificates of Occupancy and the Business Licenses at the Foxy

Playground and at the Macumbo Lounge are indicative of a larger pattern of business regulation irregularity within Ward 4. These problems could be the subject of a larger investigation. The problems include wide spread violation of restrictions on where the businesses can be conducted, what activities can be conducted, and the appropriatness of the location for the type and volume of activity. DCRA procedures contribute to public space violations, which are rampant in Ward 4.

Thank you for your attention to this matter.



Merrit Drucker
Neighborhood Services Coordinator, Ward 4

CF: Council Member Adrian Fenty