Penn-Branch Citizens/Civic Association

September 12, 2001

D.C. Board of Zoning Adjustment
441 4th Street, Northwest
Suite 210
Washington, DC 20001

Re: *BZA Case 16753: Application of Penn Branch LLC and SBA, Inc.— Proposed Monopole at Penn-Branch Shopping Center*

Ladies and Gentlemen:

The Penn-Branch Citizens/Civic Association (the "Association") opposes the above-captioned application for a special exception to build a 130-foot monopole and other structures in an R-1-B district. As set forth more fully hereafter, the height, bulk, siting, and overall intrusiveness of the project make it an inappropriate candidate for zoning relief.

Before proceeding to substantive grounds of opposition, the Association wishes to raise several procedural points:

PROCEDURAL ISSUES:

Request for party status. The Association made a timely request for party status and restates it now. A copy of the request filed on September 4, 2001 is submitted as Attachment A.

Failure to post sign. A letter dated August 9, 2001 from the Board of Zoning Adjustment ("BZA") to the applicant's attorney (*see* Attachment B) states: "A SIGN MUST BE OBTAINED FROM THE OFFICE OF THE BOARD OF ZONING ADJUSTMENT TO BE POSTED ON THE PROPERTY." The letter further advises that the sign must be posted at least 15 days prior to the hearing—in this case, not later than September 6, 2001. Members of the Association have monitored the site on a daily basis and observed no posting as of September 11, 2001, and are prepared to testify to that effect. Accordingly, the Association moves that the BZA reschedule the hearing to afford the affected neighborhood the benefits of proper posting.

Incomplete request for zoning relief. Some of the drawings submitted by the applicant show a footprint labeled "proposed compactor slab on concrete caissons." The "Description of Work" on the first page of Applicant's drawing state in relevant part, "construct area to place 34x8 trash compactor." There is a separate area marked "Dumpster Area." *See* Attachment C. The application states, "the Applicant proposes improvements to the Penn-Branch Plaza parking lot, including relocating the garbage

BZA
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Board of Zoning Adjustment
District of Columbia
CASE NO.16753
EXHIBIT NO.89

dumpsters and enclosing them behind a wooden fence out of public view." Statement of Applicant at 7. The Applicant is otherwise silent on the issue of dumpsters and the compactor. The engineering firm retained by the Applicant confirmed to the Association by telephone that it had been asked to prepare some drawings with a compactor, and some without.

The Association assumes that the Applicant intends to build a compactor and a dumpster enclosure as elements of its total project, of which the monopole is the principal aspect. If so, that compactor appears to require additional zoning relief beyond that requested for the monopole.

The shopping center is a C-1 use located on a lot split-zoned between C-1 and an R-1-B. The parking lot carries the residential designation. At present, trash generated by the shopping center is collected in dumpsters and hauled away. Such passive trash disposal is a necessary and normal incident of maintaining a neighborhood shopping center, -and an unavoidable non-conforming activity on this R-1-B site. The addition of a mechanical compactor, with its attendant noise, is a sufficiently different activity as to constitute an extension of a non-conforming use. At a minimum, a compactor would appear to require relief under 3108.2.

The application does not describe in detail the size, height, bulk, manner of operation or extent of use of the proposed compactor. During what hours will it be actively compacting, and how long will any machinery run at a time? It cannot be determined whether the compactor is intended to serve only Penn Branch tenants or whether the Applicant intends to offer compacting services to other users. The Applicant's drawings indicate that dumpsters will continue to be present on the site even though the compactor presumably would reduce the need for dumpsters.

If the Applicant intends to operate a quasi-commercial compacting service—or if the compactor is used only for the Applicant's convenience but is operated in a manner that constitutes an industrial activity—then, zoning relief beyond that available under 3108.2 should be requested.

The Association asks the BZA to ascertain the extent of the proposed compacting activity and to disallow any activity for which appropriate relief has not been sought.

SUBSTANTIVE ISSUES:

> The Zoning Commission has determined that certain antennas, because of their size, shape, design, construction or location, may affect the health, welfare or safety of the population and may detract from the streetscape, landscape, skyline, scenic beauty and aesthetic interests of Washington, D.C.

Rule 2520.1(a).

The proposed monopole has a negative impact on all of the above, particularly the streetscape, landscape, skyline, scenic beauty and aesthetic interests of the Penn-Branch community.

Height. Nothing in the area or the immediately surrounding neighborhood is anywhere close to 130 feet in height. The Penn-Branch Shopping Center is two-to-three stories high (maximum height 53 feet); the immediately abutting O Street houses are one- and two-stories stories high. These heights are characteristic of this entire part of Southeast. As the Applicant itself notes, alternative sites have been difficult to identify because of the "[l]ack of any high structures such as high buildings, water tanks or existing towers." *See* Testimony of Mahmoud Ellini, Applicant's submission, Exhibit G.

In granting special exceptions, the BZA considers the extent to which the application departs from matter of right use. The proposed 130-foot monopole so far exceeds the dimensions of matter of right antennas as to suggest that allowing it would not be an "exception," but a wholesale abrogation of applicable regulations.

A ground-mounted antenna is permitted in an R-1 district, after BZA review, provided it is not more than 12 feet high, and is removed from all lot lines by at least 10 feet. Rule 201.4(c). The proposed monopole immediately abuts the rear yards of O Street residences and is more than ten times as high as a matter-of-right ground-mounted antenna. The matter-of-right height for such antennas in C-1 districts is 20 feet. Rule 701.7(a).[1]

Rule 201.4(b) requires antennas to be screened sufficiently to be "not visible from . . . any street which the lot [containing the antenna] abuts." The height of the proposed monopole prevents screening. The antenna will be highly visible from Branch Avenue on the west, Carpenter Street on the east, O Street on the north, and will loom over Pennsylvania Avenue on the south. Note that in the Applicant's photograph at Exhibit F, a photo-simulation of the monopole tops the tree-line, although the simulation presumes a vantage point 900 feet from the site.

The maximum visual impact of the monopole remain uncertain. While the application states in several places that the monopole will serve "*at least* three wireless carriers," *see, e.g,* Statement of Applicant at 7, the Applicant has not indicated the full carrying capacity of the monopole.

The beacon light surmounting the pole will be an additional intrusion, depriving surrounding homeowners of privacy and peace.

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[1] Additional antennas allowed as a matter of right in an R-1 district include rooftop "whip antennas not exceeding two and a half inches in diameter," Rule 201.2(a); antennas "entirely enclosed on all sides within a building or ... penthouse," Rule 201.2(d); antennas located entirely behind parapet walls; Rule 201.2(3); and rooftop satellite antennas no more than eight feet high, located on a building not less than 50 feet high, Rule 201.2(f). These provisions demonstrate the Regulations' overall sensitivity toward locating intrusive antennas in residential neighborhood and underscore the unsuitability of the proposed monopole.

The proposed monopole will dominate the low-lying landscape, disrupting the skyline, streetscapes and aesthetics of the Penn-Branch community. Its height alone is sufficient reason to deny the special exception.

Proximity to nearby houses. The parking lot of the Penn-Branch Shopping Center shares a common boundary with the back yards of O Street homeowners. At present the yards are separated by a wall which screens the lot and the cars thereon. There is no way to effectively screen a 130-foot monopole. The application proposes screening for the equipment sheds, consisting of an 8-foot fence and five-foot Leland cypresses.

The Association asks the BZA to give full weight to the June 21, 2001 letter submitted by the attorney for AT&T Wireless Services (Attachment D), advising the BZA that AT&T Wireless "made it very clear to SBA that they did not want to be listed as a carrier on this proposed monopole and they are very upset at the repercussions this may have caused them." The degree of dissociation is highly unusual and emphasizes how much the siting of this monopole departs from industry norms.

Equipment shelters. The bulky shelters needed to house equipment associated with the monopole present a separate problem. The Applicant's drawings show two 12 x 20 equipment shelters, and an unidentified structure of roughly the same size, grouped in an irregularly–shaped fenced area. The "Description of Work" states in part, "construct concrete slabs to support up to three future shelters." *See* Attachment E. The negative visual impact of this industrial-type compound in the middle of our R-1 district will be substantial, especially since the plans indicate that trees will be planted only on one side of the fenced area. We reiterate that the trees will not be as high as the fence.

The drawings also show several industrial-type gates, including a 30-foot movable sliding gate, and 16-foot double wide swing gate. Such gates imply the potential presence of truck traffic. We ask the BZA to ascertain the need and impact of such gates. Will the wide-swinging gates impede normal traffic in and out of the parking lot? Are the gates needed to accommodate truck traffic? What is the nature and frequency of such traffic? The total impact of the monopole project cannot be ascertained until these questions are answered.

The enclosed equipment shelters will be highly visible to the churches on Branch Avenue between Pennsylvania Avenue and O Street; to pedestrians on Branch Avenue; and most especially to the homeowners on the residential streets that open onto Branch Avenue between Pennsylvania Avenue and O Street. The benign, accustomed view across a parking lot will give way to the sight of a fenced-in industrial facility with big, industrial gates. The very visible presence of these large equipment sheds will adversely impact the open, suburban feel of the neighborhood.

The Association stresses that concern for the view across the parking lot is not of recent vintage. Within the past year, the D.C. Department of Motor Vehicles erected a double-wide office trailer on the parking lot along Branch Avenue. The neighborhood

had been aware that the Department intended to lease office space in the shopping center complex, but had not been informed that the Department contemplated a permanent office trailer as part of its occupancy. The neighbors protested vigorously and in consequence, the trailer has remained unoccupied and the neighbors have been advised that it would be moved to a less visible position.

This issue is discussed in the original ANC submission to the BZA in this matter. The minutes for ANC 7B's May 19, 2001 meeting, which are part of the record in this case, state in pertinent part that DMV sent a letter to Councilman Kevin Chavous "pertaining to the trailer on the Penn Branch parking lot. The options were to move the trailer back against the wall, in the middle of the lot, that would take up from 18 to 25 parking spaces, or leave it where it is."

The relevance of this passage to the instance case has several aspects. First, it demonstrates the community's ongoing efforts to maintain an open streetscape and vista along Branch Avenue. Second, the site to which the trailer is proposed to be moved may in overlap in whole or in part with the site of the monopole project. If the monopole prevents removal of the trailer, the residents will have been thwarted in their attempts to remove an eyesore from the streetscape, and will confront the additional intrusion of the monopole equipment shed. The Penn-Branch parking lot will come to resemble a small industrial park. The complete impact of the monopole project cannot be ascertained without consideration of the issue of removing the DMV trailer.

Loss of Parking Spaces. At present, there are approximately 100 parking spaces on the top level of the Shopping Center, fronting Pennsylvania Avenue, and 150 spaces on the rear lot, where applicant proposed to locate the monopole, equipment shelter, dumpster enclosure and compactor. More than half the rear lot spaces are reserved for, or occupied on an ongoing basis by, D.C. government units that recently leased space with the center. There is a police substation, a Department of Motor Vehicles office, and most significantly in terms of parking, a unit of the Department of Public Works. At least 40 DPW vehicles are garaged there—stored when not in use. During business hours DPW vehicles appear to move in and out, with large numbers being parked there at any given time. The reservation of spaces for city use has put additional pressure on the front parking lot, which is typically full during business hours. On-street parking on perimeter streets is not generally available.

The Association believes that the monopole and the ancillary buildings (the equipment sheds and the compactor site) will result in the loss of additional parking spaces and further stress a difficult parking situation.[2]

Need. The Applicant's showing of need is weak and the Association urges the BZA to give it no weight. The Applicant urges that the monopole is "necessary to provide dependable cellular coverage to an area that currently has significant gaps in

[2] The Association is aware that the Applicant has represented to ANC 7B that the project will not result in the loss of parking spaces. However, the Association does not see how a loss can be avoided and considers the parking a disputed issue.

coverage." Statement at 1. The Applicant asserts that its engineering studies shows that the number of dropped calls in the area to be served by the monopole is seven times higher than that of the District at large. The Applicant argues that "[w]ith a highly educated residential population, a major commuter corridor (Pennsylvania Avenue) and extensive outdoor recreation facilities, ANC 7B residents deserve dependable cellular telephone coverage."

As an aside, the Association is of the opinion that the reference to "extensive outdoor recreation facilities" is a sufficient misstatement of reality as to render the credibility of the entire submission fatally flawed.

As the Applicant states, coverage problems arise because of the hilly terrain, which is part of the charm of Southeast. The proposed monopole will ruin the vista for all of us while enhancing coverage only for those persons whose cell phones use one of the carriers that leases space on the monopole. While the Applicant has said that it intends to carry antennas for at least three companies, it has identified only one major carrier, Sprint, and, as noted above, another major carrier has declined to participate in the venture. Residents face the prospect of suffering the negative impacts of an ill-sited tower for the benefit of a relative handful of cell phone users.

We also note our responses to the following specific points in the Applicant's need analysis.

Applicant: Last year , there were nearly 1500 police emergencies within a one-mile radius of the proposed site for the Monopole."

Response: Most of the sites within a one-mile radius are single-family homes, most of which are equipped with telephones.

Applicant: Fort Dupont Park's proximity to the site increases the need for dependable cellular service. Currently, there are no working pay phones within Fort Dupont Park; however, each year, over 260,000 people drive through and 49,000 people recreate in the park.

Response: Let us put the park in perspective. The park is a small greensward bisected by Fort Davis Drive. Fort Davis Drive runs through the park for approximately 1.2 miles and takes less than three minutes to traverse from Pennsylvania Avenue to Ridge Road. For half the time one drives on Fort Davis drive, one is in sight of, and a two minute walk from, Alabama Avenue, a major residential street. Most of the 49,000 people who recreate in the park are attending outdoor summer concerts, with adequate staff and security to resort to in emergencies, many others are using the picnic areas, which front on Minnesota Avenue, a major thoroughfare. Any suggestion that increased cell coverage is needed to for lonely joggers pursued

by muggers, or for tennis players felled by heart attacks or heat exertion, misapprehends the nature and use of the park.

CONCLUSION

For all of the foregoing reasons, and others presented at the hearing, the Penn-Branch Citizens/Civic Association asks the BZA to deny the Application 16753.

Respectfully submitted,

Penn-Branch Citizens/Civic Association [3]

by an Officer of the Association

[3] Service upon the Association may be made upon Albert Paul, Chair, Public Works Committee, 3721 Carpenter St. SE, Washington, DC 20020.

ATTACHMENTS

A. Association's Request for Party Status

B. Letter dated August 9, 2001 from the Board of Zoning Adjustment to the Applicant

C. Detail from Applicant's Drawings showing "Dumpster Area" and "Compactor Slab"

D. Letter to the BZA on behalf of AT&T Wireless

E. Detail from Applicant's Drawings showing Equipment Shelters

Penn-Branch Citizens/Civic Association

"Serving Families for More than Half a Century"

August 20, 2001

DC Board of Zoning Adjustment
441 Fourth Street, NW
Suite 210
Washington, DC 20001

*Re: Case No. 16753 (Proposed Antenna at Branch and Pennsylvania Avenues)*_

Ladies and Gentlemen:

The Penn-Branch Citizens/Civic Association seeks recognition as a party in opposition to the above-captioned case. The Association represents approximately 550 households in the area north of Pennsylvania Avenue and east of Branch Avenue. The site of the proposed monopole/compacter/equipment storage facility lies on the northern boundary of the Association's coverage area and is located within a block of the "gateway" entrance to Penn-Branch, where the Association has planted cherry trees and flowers. In addition, the project immediately abuts the rear yards of single-story, single-family residences on O Street.

The Association is prepared to establish that the proposed project is in every way inconsistent with applicable zoning requirements. We also intend show that all aspects of the project are unnecessary, as well as intrusive, and that the project conflicts with existing and proposed economic development activity adjacent to the monopole/compacter site.

Please address all correspondence to me at 3721 Carpenter St., SE, Washington, DC 20020. I may be reached by telephone at 202-575-2920.

Respectfully,

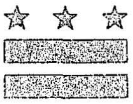
Alberta Paul

Alberta Paul, Co-Chair
Public Works Committee

Cc: Rhoma Battle, Pres., Penn-Branch C/C Ass'n
Barbara Morgan, Pres., Dupont Part Civ. Ass'n
Thetus Boyd, ANC 7B07

A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



August 9, 2001

Whayne S. Quin, Esquire
Holland and Knight, LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, DC 20006-6801

Re: BZA Application No. 16753

Dear Mr. Quin:

You are hereby notified to appear before the Board of Zoning Adjustment on Thursday, September 20, 2001, at 441 4th Street, N.W., Suite 220, Washington, D.C., 20001 for a public hearing concerning the following application:

> **Application of Penn-Branch, LLC**, pursuant to 11 DCMR § 3104.1 for a special exception to permit an antenna (monopole), other than a commercial broadcast antenna under section 212 in an R-1-B District at premises Pennsylvania and Branch Avenues, S.E. (Square 5539, Lot 840).

This case is in Advisory Neighborhood Commission 7B. Cases in this area will be heard between 1:00 p.m. and 6:00 p.m. All cases will be heard in the order listed on the public hearing agenda.

PLEASE NOTE THAT A SIGN MUST BE OBTAINED FROM THE OFFICE OF THE BOARD OF ZONING ADJUSTMENT TO BE POSTED ON THE PROPERTY. The Rules of Practice and Procedure provide that such a sign must be posted at least 15 days prior to the hearing. The posted notice must also be checked at least once every five days, and replaced when necessary. An affidavit concerning the original posting of the sign must be filed with the Board at least 5 days prior to the hearing. The sign and the affidavit can be picked up from the Office of Zoning, Suite 210, 441 4th Street, N.W.

You should be aware that items may be submitted to the Board by other individuals, organizations and government agencies both in support of and in opposition to your application. Approximately one week prior to the public hearing, you should review the file in your application so that you are prepared to respond to any issues that may be raised regarding your application. Further, if you are not clear about what information you must present to the Board in support of your application, please contact the Office of Zoning as soon as possible.

B

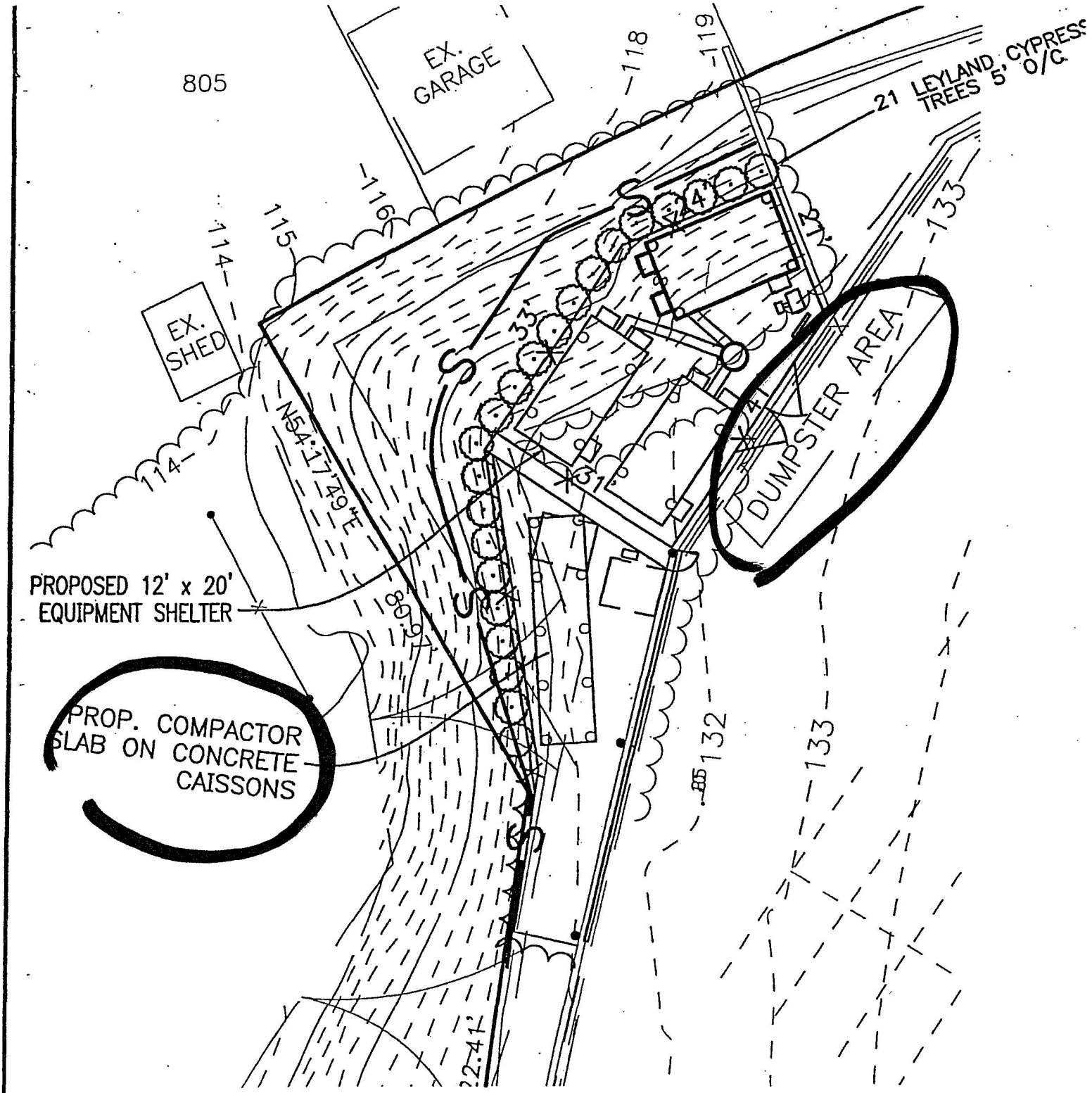
BZA
Case No. 16753
Exhibit No. 37

If you have any questions or require any additional information, feel free to call the Office of Zoning at (202) 727-6311.

Sincerely,

JERRILY R. KRESS, FAIA
Director

cc: Applicants



1 / C2 GRADING, EROSION & SEDIMENT CONTROL AND LANDSCAPE PLANS

SCALE: 1"=50'

C

OWNER INITIALS_____

C. D. MEEKINS & ASSOCIATES, INC.
CONSULTING ENGINEERS & SURVEYORS

NO.	REVISIONS	BY	DATE
1.	AS REQUESTED	A.V.B.	6/18
2.	AS REQUESTED	A.V.B.	8/22

SBA

DESCRIPTION OF WORK:

CONSTRUCT A 130' LIGHT/MONOPOLE TOWER IN A 1,403 SQ. FT.± FENCED ENCLOSURE. CONSTRUCT CONCRETE SLABS TO SUPPORT UP TO THREE FUTURE SHELTERS. CONSTRUCT AREA TO PLACE 34'x8' TRASH COMPACTOR.

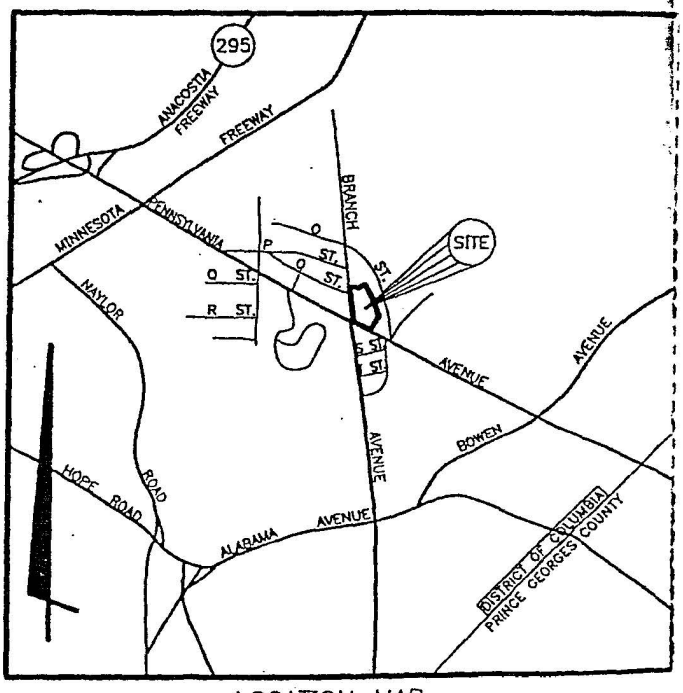
SBA

SBA PROPERTIES, INC.

SBA JOB#DC 04116-
PENN-BRANCH
3200-3244 PENNSYLVA

GENERAL NOTES

1. IT IS THE CONTRACTOR'S RESPONSIBILITY TO EXAMINE ALL PLAN SHEETS AND SPECIFICATIONS AND COORDINATE HIS WORK WITH THE WORK OF ALL OTHER CONTRACTORS TO ENSURE THAT WORK PROGRESSION IS NOT INTERRUPTED.
2. THE CONTRACTOR IS RESPONSIBLE FOR MAINTAINING A NEAT AND ORDERLY SITE, YARD AND GROUNDS. REMOVE AND DISPOSE OFF SITE ALL RUBBISH, WASTE MATERIALS, LITTER, AND ALL FOREIGN SUBSTANCES. REMOVE PETRO-CHEMICAL SPILLS, STAINS AND OTHER FOREIGN DEPOSITS. RAKE GROUNDS TO A SMOOTH EVEN-TEXTURED SURFACE.
3. THE PLANS SHOW SOME KNOWN SUBSURFACE STRUCTURES, ABOVE- GROUND STRUCTURES AND/OR UTILITIES BELIEVED TO EXIST IN THE WORKING AREA, EXACT LOCATION OF WHICH MAY VARY FROM THE LOCATIONS INDICATED. IN PARTICULAR, THE CONTRACTOR IS WARNED THAT THE EXACT OR EVEN APPROXIMATE LOCATION OF SUCH PIPELINES, SUBSURFACE STRUCTURES AND/OR UTILITIES IN THE AREA MAY BE SHOWN OR MAY NOT BE SHOWN; AND IT SHALL BE HIS RESPONSIBILITY TO PROCEED WITH GREAT CARE IN EXECUTING ANY WORK. OWNER/CONTRACTOR TO CONTACT "MISS UTILITY" AT 1-800-257-7777 MINIMUM 72 HOURS PRIOR TO THE START OF CONSTRUCTION FOR LOCATION OF EXISTING UNDERGROUND UTILITIES.
4. THE OWNER OR OWNER'S REPRESENTATIVE SHALL BE NOTIFIED IN WRITING OF ANY CONDITIONS THAT VARY FROM THOSE SHOWN ON THE PLANS. THE CONTRACTOR'S WORK SHALL NOT VARY FROM THE PLANS WITHOUT THE EXPRESSED APPROVAL OF THE OWNER OR OWNER'S REPRESENTATIVE.
5. THE CONTRACTOR IS INSTRUCTED TO COOPERATE WITH ANY AND ALL OTHER CONTRACTORS PERFORMING WORK ON THIS JOB SITE DURING THE PERFORMANCE OF THIS CONTRACT.
6. THE CONTRACTOR SHALL RESTORE ALL PUBLIC OR PRIVATE PROPERTY DAMAGED OR REMOVED TO AT LEAST AS GOOD OF CONDITION AS BEFORE DISTURBED AS DETERMINED BY THE OWNER OR OWNER'S REPRESENTATIVE.



LOCATION MAP

(NO SCALE)

DIRECTIONS

FROM THE WHITE HOUSE: TRAVEL EAST ON PENNSYLVANIA AVE UNTIL YOU BRANCH AVENUE. SITE IS LOCATED BEHIND THE BUILDING ON THE NORTH OF PENNSYLVANIA AVENUE.

NOTE: "ALL PLANS ARE TO BE USED FOR PERMITTING PURPOSES ONLY. NOT TO BE USED FOR CONSTRUCTION"



COLE, RAYWID & BRAVERMAN, L.L.P.

ATTORNEYS AT LAW
1919 PENNSYLVANIA AVENUE, N.W., SUITE 200
WASHINGTON, D.C. 20006-3458
TELEPHONE (202) 659-9750
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LOS ANGELES OFFICE
2381 ROSECRANS AVENUE, SUITE 110
EL SEGUNDO, CALIFORNIA 90245-4290
TELEPHONE (310) 643-7999
FAX (310) 643-7997

June 21, 2001

VIA TELEFAX AND FIRST CLASS MAIL
Robert Sockwell,
Chairman, District of Columbia
Board of Zoning Adjustment
441 4th Street, NW, Suite 210
Washington, DC 20001

Re: Application for Special Exception by SBA
Penn Branch Shopping Center
BZA Case No.: 16753

Dear Chairman Sockwell:

This firm represents AT&T Wireless Services in connection with the development of its wireless telecommunications network in the District of Columbia. In that capacity, I wish to correct errors contained in the above-referenced application.

The applicant submitted plans that show antenna and related facilities for AT&T Wireless and Voicestream to be located on the proposed facility. This submission was not authorized by AT&T Wireless, and my client will not participate in the hearing or consideration of this matter. As a matter of fact, my client made it very clear to SBA that they did not want to be listed as a carrier on this proposed monopole and they are very upset at the repercussions this may caused them. I have communicated this information to counsel for the applicant.

I hope that this letter clears this up for the Board. If there are any questions in this regard, please do not hesitate to contact the undersigned.

Sincerely,

Edward L. Donohue

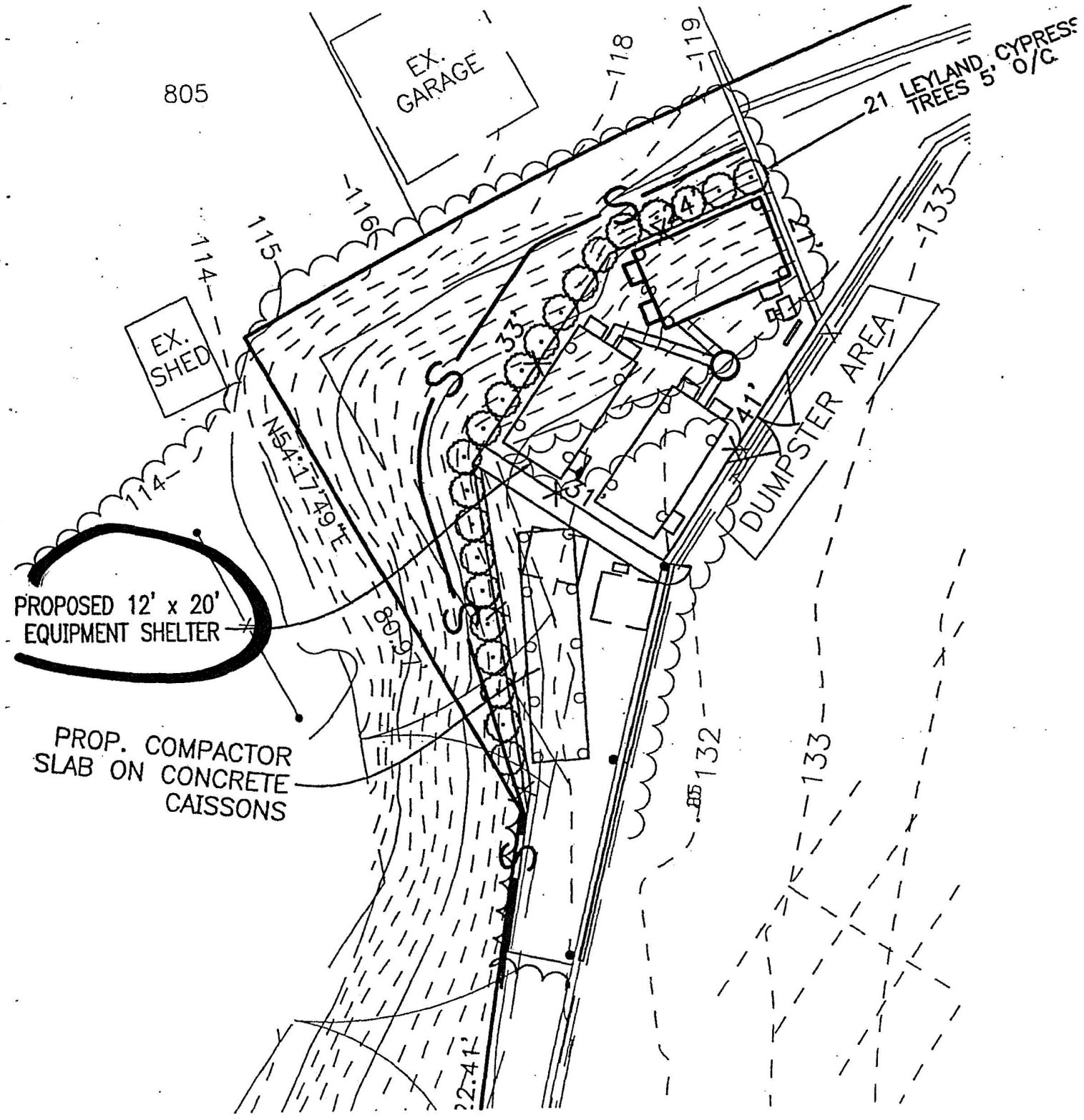
Edward L. Donohue

cc: Whayne S. Quin, Esq.
Christine Mosely Shiker, Esq.

BZA
Case No. 16753
Exhibit No. 20

D

:143324-1



1 / C2 GRADING, EROSION & SEDIMENT CONTROL AND LANDSCAPE PLANS

SCALE: 1"=50'

E

OWNER INITIALS_____

C. D. MEEKINS & ASSOCIATES, INC.

NO.	REVISIONS	BY	DATE
1.	AS REQUESTED	A.V.B.	6/18

CDA