Applic# 16784 Comcast

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 Affairs

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,

Board of Zoning Adjustment
District of Columbia
CASE NO.16784
EXHIBIT NO.23

#23

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. OFFICE OF ZONING
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.

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 Belle, 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

OFFICE OF THE SURVEYOR

Washin[redacted] D.C., 4/3/, 2001

for Building Permit of SQR 2744 LOTS 12 13 14

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

eipt No. 2888

iished to: BRM PROPERTIES

Surveyor, D.C.

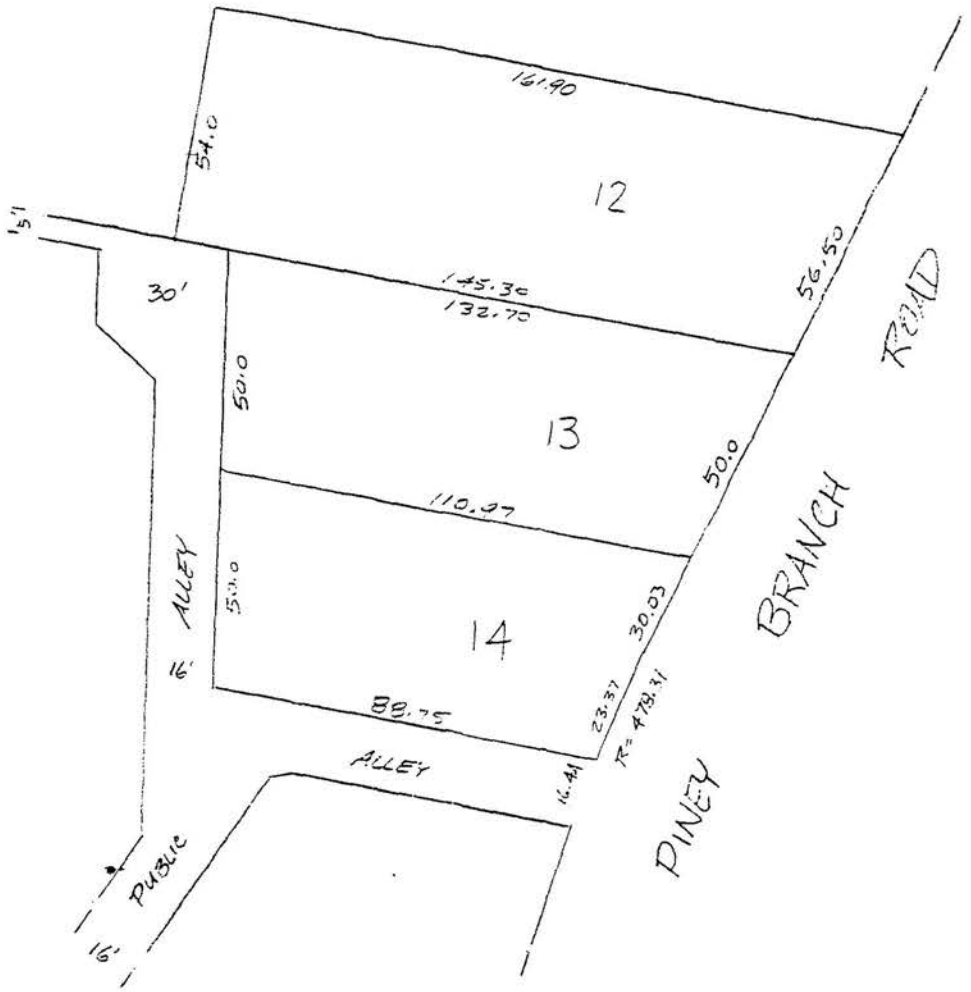
By: TRD JM

I hereby certify that all existing impr[redacted]nts shown hereon, are completely dimensioned and are correctly platted; that all propos[redacted]ildings 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.

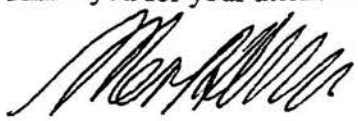
The certificate of occupancy I was shown contained the following information:

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.

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

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

Attachment 3

ADVISORY NEIGHBORHOOD COMMISSION 4A
7600 Georgia Avenue, N.W.
Washington, D.C. 20012

August 16, 2001

John J. Chagnon
ANC 4A07
202-347-4400 (O)

VIA FACSIMILE
Council Member Fenty
One Judiciary Square
441 - 4th Street, NW
Washington, D.C. 20001

Re: Department of Consumer and Regulatory Affairs
Office of the Zoning Administrator
Change In Use - 5507, 5509 & 5511 - 14th Street, NW

Dear Council Member Fenty:

I wanted to express my appreciation for your assistance in bringing my concerns to City Officials. Unfortunately, I have no news to provide as City Officials have yet to communicate with me any intentions of insuring the uniform application and enforcement of the Zoning Regulations.

As you may know I filed a formal appeal with the Board of Zoning Adjustment relative to the Zoning Administrator's decision to issue a certificate of occupancy when the BZA had already ruled that former certificate had been issued in error. To my knowledge, no action has been taken by the City to correct the situation.

The core issue is that when there is a change in use of a commercial site from one matter of right use to a more intense matter of right use that the applicant must provide adequate on site parking for the intensified use. The position taken by the Zoning Administrator's staff, Tori Bello, is that a permitted matter of right use under the C2A zone for an existing structure is grand fathered for the parking requirements irrespective of a change in use or increase in the intensity of use. I have expressed my fundamental disagreement with Mr. Bello's interpretation with Mr Bello and Michael Johnson the Zoning Administrator. It has been the long standing practice that any change in permitted use requires the operator of the new use to provide on site parking for the new use in accordance with the chart of required parking spaces for the specific zoning with a credit for the parking spaces attributable to the grand fathered use. Under Mr. Bello's interpretation, churches, schools, private clubs, foundations, day care centers, CRFs, night clubs and other uses that are

permissible in a defined zone would *not* require a variance for failure to have sufficient on site parking spaces if the use was permissible in that specific zone. Mr. Bello is wrong, yet the City seems to be perfectly comfortable in forcing the community to a BZA appeal. The City has yet to make any representations as to what authority Mr. Bello's decision is based upon other than Mr Bello has made the decision. This is not the way the City should be run.

The BZA is scheduled to hear the appeal on September 4, 2001. I would appreciate any assistance, guidance or suggestions you or your office may provide.

While the zoning concerns I raise are localized, the overall issues, in my view, take on a much more sinister image City wide. The existing system of permit processing is designed for abuse and manipulation. The Executive Branch wants to see that requested permits are accepted and processed with dispatch. However, 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, at least in Ward 4. I suspect that Wards, 5, 6, 7 & 8 experience some of the same problems. In short, permits with significant filing flaws have and will be issued in Ward 4 with the assistance of City Officials who are either grossly incompetent, chose to ignore their responsibilities or willfully assist applicants to circumvent the regulations they are charged to uphold. The issuance of these flawed permits is a byproduct of the one-stop process where files are lost, unavailable or not even reviewed for the sake of expediency or improved public relations. As you know, Ward 3 residents are dissatisfied with the institutional use of residential property with very small facilities. Ward 4 has faced the ongoing assault of institutional uses of residential property for years with far denser concentrations with a significantly higher number of total facilities before the City stopped counting the facilities of six or less. Ward 4 has been referred to the City's dumping ground for institutional uses, perhaps there is a good systemic reason for such references based on Mr. Bello's judgement in this matter.

I would also point out that complainants that originate in Ward 4, do not seem to get the Executive Branch's attention other than the satisfaction of leaving outright errors left as is. In the appeal I filed, City Officials readily admit that the Certificate of Occupancy issued must be changed; however, they do not indicate to what and under what authority. In fact, the only concern as yet expressed by the Executive Branch was an inquiry from the Office of the Corporation Counsel, Asst. Corp. Counsel Art Parker, who was only interested in whether the current operator had any ties to the former operator at the site who is doing jail time for her conduct in operating a day treatment facility. It is truly sad that the only motivation the Executive Branch feels is to look into the facts surrounding

the wrongful issuance of a certificate of occupancy that has the potential political embarrassment factor that the former convicted operator might have something to do with the current operation. While I understand the City needs to be business friendly in the processing of permits, a rubber stamp that says anything goes in goes in Ward 4 is ill advised.

Many people in the Ward 4 Community have worked very hard to improve the conditions of the 14th Street, Kennedy Street and Colorado Avenue commercial corridors to attract businesses that the community can support eg Colorado Kitchen, Mocha Hut and Delicias Market with little, if any, help from City. We can and do support businesses in our community that provide the needed services keeping our spending dollars within our community. We have likewise worked hard to close down unauthorized store front churches and institutional uses of property in violation of the Zoning Regulations that provide no benefit to our community. These functions clearly belong within the domain of the executive branch that either has no desire or ability to enforce the zoning regulations.

Attached you will find copies of the filings made with the BZA along with letters to DCRA all of which remain unanswered.

I would appreciate your investigation into the operation of DCRA and the failures of David Clark and Michael Johnson to respond to my inquires and the inquiry your office advanced a few months ago.

Thank you for your time and assistance.

Yours truly,

John J. Chagnon

FAX TRANSMISSION

JOHN J. CHAGNON
ANC 4A07
5603 - 14TH STREET, N.W.
WASHINGTON, D.C. 20011
202-722-1922 (OFFICE NO. 202 347-4400)
FAX: 202-347-4401

To:	Michael Johnson Zoning Administrator Attn: Ms. Epps & Mr. Reeve	**Date:**	7/23/01 ~~August 16, 2001~~
Fax #:	202-442-4871	**Pages:**	1, including this cover sheet.
From:	John J. Chagnon, ANC 4A07		
Subject:	Status of investigation 5507, 5509 & 5511 - 14th Street, NW		

Please let me know the status of the above investigation. It was my understanding from our last meeting that your office was going to take enforcement action as a result of the inaccuracies in the C of O application.

Thank you for your time.

ADVISORY NEIGHBORHOOD COMMISSION 4A
7600 Georgia Avenue, N.W.
Washington, D.C. 20012

May 21, 2001

John J. Chagnon
ANC 4A07

Michael Johnson
Zoning Administrator
Department of Consumer
and Regulatory Affairs
941 North Capitol Street, NE
Washington, D.C.

Re: Complaint - Zoning Inspection

Dear Mr. Johnson:

Please be advised that a commercial tenant(s) have today occupied space at 5507, 5509 and 5511 - 14th Street, NW which are located in my Single Member District ANC 4A07 which is part of ANC 4A as whole. According to Ms. Pope in the Certificate of Occupancy office as of May 18, 2001 no certificate of occupancy had been issued for the above space. I personally witnessed today a series of vans dropping off individuals who then went into the space identified above.

Please be advised that the above properties have been vacant for over three years and no longer have a grand fathered prior use. Accordingly any present use is a change in use which necessarily requires compliance with current parking requirements for the new use. Further, the property at 5509 has never had a certificate of occupancy issued and was constructed in the 1980s. Accordingly, no grand fathering of any kind applies to the new construction. 5507 - 14th Street has been vacant for at least five years and no certificate of occupancy for this site has been in place for many years prior thereto.

DCRA records will reflect that 5511 - 14th Street, NW was the subject of a BZA

Appeal that concluded June 5, 1996 with the rescinding of the certificate of occupancy for a variety of reasons. The BZA issued a written Order November 27, 1997 which was appealed to the Court of Appeals and resulted in the dismissal as the case being moot with the Order of the BZA revoking the certificate of occupancy unchanged. The use of 5511 - 14th Street for any use is a new use as it has been vacant for over three years. Again the parking provisions for the new use must be adhered to and no parking of any kind is provided on the site.

I would appreciate a telephone call providing me with the name of the inspector assigned to the investigation, complaint number and the number of the NOI issued.

If you have any questions, please call me at 202-347-4400.

Yours truly

John J. Chagnon
ANC 4A07

ADVISORY NEIGHBORHOOD COMMISSION 4A
7600 Georgia Avenue, N.W
Washington, D.C. 20012

May 24, 2001

John J. Chagnon
ANC 4A07

Michael Johnson
Zoning Administrator
Department of Consumer
and Regulatory Affairs
941 North Capitol Street, NE
Washington, D.C.

Re: Appeal and/or Request for Reconsideration of Issuance of Certificate of Occupancy at 5511 - 14th St. NW

Dear Mr. Johnson:

I hereby request an investigation into the process of the issuance of a certificate of occupancy at the above address. If it is necessary to appeal the decision to issue a certificate of occupancy, please consider this letter such an appeal. If a request for reconsideration stays the period to file an appeal of the decision to issue a certificate of occupancy, please consider this letter a request for reconsideration. If the request for reconsideration must be made to the Director of DCRA, please consider this letter as such. After reviewing the decision of the BZA, I trust you will conclude that the certificate of occupancy was issued in error and there were material errors or omissions in the application process.

I am informed by Ms. Rocket of your staff that a certificate of occupancy has been issued as of May 7, 2001 for the use as a day treatment center at 5511 - 14th

Street, N.W. Please be advised that the Board of Zoning Adjustment ruled June 5, 1996 that a Day Treatment Program was a change in use of the subject site 5511 - 14th Street, NW and reversed the decision of the Acting Zoning Administrator to issue a certificate of occupancy. You will also find that no parking spaces of any kind are on the subject site. Accordingly, since the property has been vacant for over three years there is no grand fathered provisions for parking as to 5511. Further, the parking allowance for grand fathering purposes must be aggregated among the combined commercial uses and the first 3000 Sq. Ft. must be pro-rated among the commercial uses in the calculation of required parking in any event. In addition the undisclosed occupancy 5509 - 14th Street which was built after 1958 and has no parking spaces of any kind on the site. The construction occupies 100% of the lot and is non-conforming by definition. Zoning regulations mandate that on-site parking be provided for post 1958 construction. No such parking is provided and no prior use is grand fathered nor is the site eligible for a parking exemption.

When I spoke to Ms. Pope on your staff last week she indicated that no certificate of occupancy had been issued. I have now reviewed the certificate of occupancy application for 5511 - 14th Street, NW and find that there are representations that are not accurate and factual omissions that have a significant impact on the application process:

- Occupancy is not limited to Square 2800 Lot 9. Lot 10 is occupied as well
- Prior Use is inaccurate as the prior certificate of occupancy was revoked in 1996 (The last authorized use was that of a general office according to the BZA Order)
- Proposed occupancy load and square footage substantially exceeds any prior use

- No prior commercial use occupied any portion of the second floor which had been residential rental
- Site information is inaccurate as the property occupied is a variety of property including a portion of a three story apartment building with basement and commercial use of the first floor (5511), a one story structure with no basement (5509) and a two story structure (5507). The gross square feet of space for sites occupied exceeds 24,000 Sq. ft. without including the basement.

The subject site is an inappropriate site for a facility with such a heavy occupancy load, there is no parking for staff or visitors. Further the heavy traffic to an from the facility in addition to the ordinary heavy traffic is not safe for residents or visitors. The applicant has not represented fairly the prior use of the property and the certificate of occupancy issued was done based upon the erroneous information and with critical information omitted. As you see from the BZA decision the issue of a change in use is clear and the principles of res judicata apply. Further, even if there were no change in use, the parking requirements for the stated square footage and occupancy load would require a substantial number of parking spaces well in excess of any number of spaces that can be administratively waived.

I hereby request that the certificate of occupancy issued be revoked for just cause and the appropriate notice of infractions issued. I also request that the City instruct the operator to vacate 5507 and 5509 - 14th Street as no valid certificate of occupancy has been or is in place for the use thereof.

If you have any questions, please call me at 202-347-4400.

Yours truly

John J. Chagnon
ANC 4A07

ADVISORY NEIGHBORHOOD COMMISSION 4A
7600 Georgia Avenue, N.W.
Washington, D.C. 20012

May 29, 2001

John J. Chagnon
ANC 4A07

VIA FACSIMILE
Michael Johnson
Zoning Administrator
Department of Consumer
and Regulatory Affairs
941 North Capitol Street, NE
Washington, D.C.

Re: Appeal and/or Request for Reconsideration of Issuance of Certificate of Occupancy at 5511 - 14th St. NW

Dear Mr. Johnson:

I have contacted your office several times by telephone and sent correspondence regarding the certificate of occupancy issued for the address above. I left a message for you this morning as I would like to schedule an appointment to see you as soon as possible.

I spoke to Mr. Bellow of your office on May 25, 2001 and have deep reservations as to his understanding of the Zoning issues presented. As you may be aware, the site referenced above was the subject of a BZA order identifying that a change in use had occurred when an applicant sought to style their activities as a general office use while operating a day treatment program. The BZA Order stated that the issuance of the certificate of occupancy was in error. It seems to escape Mr. Bellow, that a team of lawyers for the former owner and former operator along with the former Acting Zoning Administrator vigorously argued in the BZA proceeding and the before the Court of Appeals that no change in use occurred at the site from a general office use to a Day Treatment Program. The reason for the entire contested case before the BZA is clear and really quite elementary that the change in use at the site requires additional parking spaces to be granted a certificate of occupancy. I suggest to you that it is not the lawyers for the former operator, former owner and the entire BZA panel along with the Court of Appeals that

are mistaken as to the interpretation of the zoning issues at hand. It is clear that members of your staff were mislead by the original application which falsely identifies the prior use as a day treatment program. I do not understand Mr. Bellow's position as he has had the opportunity to review the BZA Order and apparently still can't see the issues. There has clearly been a change in use and that the applicant did not complete their application for a certificate of occupancy correctly. The certificate of occupancy issued was issued based on the misrepresentation of the prior use. Accordingly the certificate issued was issued in error and should be revoked. The applicant should be required cease occupancy until such time that a valid certificate of occupancy is obtained. Since that parking requirements for the use as an adult day treatment program requires at minimum one on site parking space for each 300 sq ft. occupied the result is clear that required parking spaces will exceed 24 and none are provided.

In any event, the operator does not have a certificate of occupancy for the use of 5507 or 5509 14th Street. I hereby request that your office take immediate enforcement action to clear occupancy of the sites. Mr. Bellow has indicated that there is no reason to initiate enforcement activity since it is his belief that the lots can be consolidated. Once again, Mr. Bellow does not seem to have a grasp of the zoning issues and has drawn conclusions without any basis in the facts as they exist. I draw your attention to the fact that Mr. Bellow does not know how many parking spaces are at the site, he does not know the number of spaces to be credited for grand fathering calculations, he does not know the number of full time or part time employees nor does have the plat for the site and he does not know how many parking spaces are required to occupy the site. Yet inexplicably Mr. Bellow reiterates that he is very comfortable with his decision to allow the continued occupancy at the site.

Please call me at 202-347-4400 at your earliest opportunity to schedule an appointment to address these issues personally.

Yours truly

John J. Chagnon
ANC 4A07

ADVISORY NEIGHBORHOOD COMMISSION

4A

7600 Georgia Avenue, N.W.
Washington, D.C. 20012

Telephone:
202-3-17-4400

June 6, 2001

Board of Zoning Adjustment
441 4th Street, N.W., *Second floor*
Washington, D.C. 20001

Re: Appeal to BZA
Decision of Michael Johnsun, Zoning Administrator

Dear Ladies and Gentlemen:

Please be advised that ANC 4A supported an Appeal to the BZA relative to the issuance of a certificate of occupancy six years ago at 5511 - 14th Street NW for the operation of a day treatment program. The ANC submitted a formal letter dated March 6, 1996 to the BZA in support of the appeal and in opposition to the issuance of a certificate of occupancy for a day treatment program. The BZA issued an order on November 27, 1997 that the certificate of occupancy for a day treatment program was issued in error.

Upon proper motion, with a quorum present, at the Commission's June 5th 2001 regularly scheduled meeting (first Tuesday of the month) with notice of the meeting to the public, voted unanimously to appeal the decision of the Zoning Administrator.

ANC 4A authorized John J. Chagnon to file and pursue the appeal as the ANC's designated representative before the BZA.

Yours truly

Douglass Sloan
Chairman Pro Temp, ANC 4A

BZA Form 1
(Revised 7/17/95)

Docket No. 16052
EB

DEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPEAL

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 3105 and 3106 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the administrative decision of Michael Johnson, Zoning Administrator
(Name of administrative officer and title)

made on May 7, 2001, to the effect that a certificate
(Date of decision)

of occupancy was issued for a day program in direct violation of the Rule of the case set by BZA Order November 25, 1997.
The new use is a change in use that requires on site parking.
Premises affected are located at 5511 - 14th Street, NW (see attachment)
(Street Address)

Lot(s) 9(stated as), Square(s) 2800

In the District of Columbia, in Zoning District C-2-A.

Present Use of Property: General Office prior to issuance of 5/7/01 certificate of occupancy

Proposed Use of Property: Day Treatment Program.

Owner of Property: Pamela Coleman.

Address of Owner: 4200 Wisconsin Ave., NW.

Name and address of appellant, if other than owner:
ANC 4A, 7600 Georgia Avenue, NW
John J. Chagnon, ANC 4A07 authorized representative.

State manner in which appellant is aggrieved by administrative decision: Apellant's members live in close proximity to the site. Property values, congestion, parking, traffic patterns, security and quality of life will be and has been adversely affected.

State briefly the allegations of error in administrative decision:

Statement attached.

Relevant Sections of the Zoning Regulations:
Statement Attached.

Date: June 6, 2001 Signature: [signature]
(Appellant)*
ANC 4A Chairman Pro Temp

*If appeal is filed by agent of the appellant, Form 1 (notice of appeal) shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.

TO BE NOTIFIED OF HEARING AND DECISION:

Name: John J. Chagnon, ANC 4A07

Address: 5603 - 14th Street, NW

Zip Code 20011 Phone No. 202-722-1922

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

ADVISORY NEIGHBORHOOD COMMISSION 4A

7600 Georgia Avenue, N.W.
Washington, D.C. 20012

June 6, 2001

VIA FACSIMILE : Pages
202-727-6072

Board of Zoning Adjustment
441 4th Street, N.W , Second floor
Washington, D.C. 20001

Re: BZA Appeal - 16752
Issuance of Certificate of Occupancy
5511 - 14th Street, N.W.

Dear Ladies and Gentlemen:

As your records will show, Appeal #16752 was filed earlier today, June 6, 2001. Transmitted herewith is an attachment that was inadvertently separated form the entire filing. Please insert the attachment pages behind form BZA-1.

I request expedited scheduling of the BZA hearing as the issues involved are the regulatory and historical requirement to provide on site parking spaces when there has been a change in use from one permitted use to another permitted use that has a higher requirement for on site parking spaces such as moving from a general office use to a church. The instant matter is from a general office use of 2,800 sq. ft. on one floor to undefined Other use (Day Treatment Program) on two floors, on two separate lots in three buildings, with over 7650 sq. ft. occupied, partially in new construction built in 1987, with as many as 76 clients, sufficient full time and part-time teachers and employees to serve 76 clients and not one parking space on site. It is well established that when there is an enlargement in space occupied, change in use, increase in the intensity of the use or an increase in the occupancy load additional on site parking spaces are required to satisfy the zoning requirements to obtain a certificate of occupancy. The Zoning Administrator has failed to make the necessary inquiries and was mislead by an incomplete and incorrect application for a certificate of occupancy. Upon learning of the errors and omissions the Zoning Administrator concluded that no action would be taken as of June 5, 2001.

Appellant ANC 4A files this appeal as the Zoning Administrator did not take action to remedy the errors and omissions in a timely manner and it is unknown if he will ever take such remedial action upon further investigation

Please advertise the scheduled hearing date for the first available date where the above case would be the first case to be heard on the scheduled date. The entire contested case can likely be decided on the submissions if there are no set of circumstances that would allow the Zoning Administrator's decision to stand.

If you have any questions, please to do not hesitate to call me at 202-722-1922.

Yours truly,

John J. Chagnon
ANC 4A BZA Representative

ATTACHMENT

Error in Administrative Decision:

Attached hereto is a copy of the original BZA Appeal filed six years ago for substantially similar terms relative the errors of the Zoning Administrator. Also attached is a complete copy of the BZA decision that established that a day treatment program was not a general office use.

The Zoning Administrator has clearly chosen to ignore the mandatory requirements to provide on site parking when a use is changed, expanded or intensified, all of which have occurred at the subject site, prior to the issuance of a certificate of occupancy. The prior appeal of the issuance of a certificate of occupancy resulted in a full contested case before the BZA and an appeal to the D.C. Court of Appeals which left the BZA decision undisturbed. The Zoning Administrator has now read the BZA decision post issuance of a certificate of occupancy and has failed to see the relevance of a change in use at the site which was the core claim in the contested case by the former applicant, Better Treatment Centers, former owner Marvin Stein, attorney Leonard McCants (McCants, Dunbar), attorney Allison Prince (Wilkes Artis Hendricks & Lane), attorney Eric Jaffe (Law Office of Eric Jaffe). The sole and only purpose for the applicant's unwillingness to accept the change in use from one permitted use to another is specifically that the new use would require on site parking in order to be issued a certificate of occupancy. The Zoning Administrator has erred in ignoring the obvious requirement for on site parking as mandated by 11 DCMR §2101. I bring to the BZA's attention that many store front churches in my jurisdiction have failed to obtain certificates of occupancy or sought variances from the parking requirements when a change in use occurs at the subject site for the elementary reason that an intensified permitted use requires additional parking spaces to accommodate the intensified use. The Zoning Administrator seems to maintain that one permitted use in a C-2-A zone automatically allows any permitted matter of right use and that a change in use has no relationship to required parking spaces. The Zoning Administrator is mistaken and wrong.

The Zoning Administrator has failed to perform his duty in revoking the certificate issued which on it's face states that "... ANY CHANGE in the type of business, or part of premises used interior, will render this certificate VOID and a NEW Certificate must be obtained." Zoning Inspector Rocket has concluded that the applicant did not disclose the use of 5507 or 5509 - 14th Street, NW and is in fact using the aforementioned space without a certificate of occupancy. Again, the Zoning Administrator has chosen to ignore his duty to Void the certificate issued.

Further the Zoning Administrator nor his staff sought or obtained an inspection of the premises for zoning purposes prior to the issuance of a certificate of occupancy. The most cursory review of the Zoning records would have alerted the Zoning Administrator that a change in use had occurred and the applicant had misrepresented the prior use. In addition, the applicant

appears to have misrepresented the information on occupancy as an ownership change. The former occupant was in bankruptcy with the former operator charged by the U.S. Attorney's Office (Asst. U.S. Atty. Mark Duebester prosecuted the case) with wrongdoing in the operation of PDA-Better Treatment Centers that resulted in a plea agreement or conviction. It is highly unlikely that three years after the Court Appeal decision, that a company in bankruptcy three years earlier, transferred ownership to Metro Day Treatment Center. The applicant did not disclose the BZA decision or BZA No. (16066) on the application which would have alerted the Zoning administrator of the change in use. The prior use is not adequately disclosed and even then misrepresented. The prior use was that of a general office on the first floor and limited to 2,800 sq. Ft. at 5511 - 14th Street NW. No portion of the second floor was in commercial service and the applicant appears to represent that the only change was that of ownership. Please note that there is no indication of partial occupancy, use change, load change or that the square footage occupied exceeds the prior use. As with the original application the buildings occupied in total have not been disclosed nor has the gross square footage of the entire site been disclosed under information on the entire building.

Even upon being made aware of misrepresentation of the use change, the Zoning Administrator has taken no action to void the certificate of occupancy issued. Further, the Zoning Administrator has yet to establish the occupancy load at the site, obtain a plat of the site, identify the number of full and part-time employees, identify the square footage occupied on each site and each floor, identify the space converted from residential rental property to commercial occupancy (no commercial occupancy has previously occurred above the first floor), identify the sites occupied that were constructed after 1958, the gross square footage of the entire sites occupied including the basement or calculate the required on site parking for the occupancy of the site.

The present Zoning Administrator, Michael Johnson, issued a certificate of occupancy for a day treatment program. Glady Hicks, the former Zoning Administrator issued a virtually identical certificate of occupancy for the same purpose and was found to be in error. The principles of *res judicata* are applicable and this matter has been heard and decided. By definition, as a result of the BZA Order there is a change in use at the subject site. The ANC hereby requests an immediate hearing to determine if the Zoning Administrator had the jurisdictional authority to disturb the conclusion of the BZA in case 16066

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 16066 of John J. Chagnon, on behalf of the FZC, pursuant to 11 DCMR 3105.1 and 3200.2, from the administrative decision of Gladys Hicks, Acting Zoning Administrator, made on or prior to May 5, 1995, to the effect that a certificate of occupancy was issued for a day treatment program in a C-2-A District at premise 5511 14th Street, N.W. (Square 2800, Lot 9).

Hearing Dates: **December 20, 1995 and April 24, 1996**
Decision Date: **June 5, 1996**

ORDER

SUMMARY OF EVIDENCE

The subject property is located at 5511 14th Street, N.W., Square 2800, Lots 9 and 10. The property fronts on 14th Street, Longfellow Street and Colorado Avenue, N.W. The site is zoned C-2-A.

The C-2-A District permits matter-of-right low density development, including office, retail and all kinds of residential uses, to a maximum floor area ratio (FAR) of 2.5 with nonresidential uses limited to 1.5 FAR, a maximum height of 50 feet, and a maximum lot occupancy of 60 percent for residential uses.

The subject property is improved with a building that encompasses most of Square 2800. The building is used for a day treatment program, apartments, and a storage warehouse facility. There is an entrance on the Longfellow Street side for the apartments and a separate entrance for the day treatment program. There is another entrance on the 14th Street side for the day treatment program. The entire building consists of 24,438 gross square feet of floor space. Of this total, the day treatment program will use 6,220 square feet, of which 3,217 square feet is located on Lot 9 and 2,995 square feet is on Lot 10.

Marvin Stein, the property owner of 5511 14th Street, N.W., leased the site to the Psychological Development Associates (PDA) in February of 1995. PDA operates a Better Treatment Center at its main office located at 2437 15th Street, N.W. Mr. Stein filed the application for the certificate of occupancy (C of O) for

PDA to operate its Better Treatment Program at the 14th Street site. The lease provides that PDA shall occupy the property in the square footage proportions indicated above.

On May 5, 1995, Gladys Hicks, Acting Zoning Administrator, issued Certificate of Occupancy No. B171610 to allow a "Day Treatment Program" at 5511 14th Street, N.W. On May 31, 1995, John C. Chagnon filed an appeal on behalf of FZC Corporation challenging the decision of the Acting Zoning Administrator to issue the C of O.

The appellant is a nonprofit corporation whose purpose is to, among other things, discourage the institutional or intensified commercial use of properties where such use would adversely or negatively impact an established community with regard to property values, public safety, traffic, noise and the general welfare of the community residents. FZC has three members, including Mr. Chagnon. The intervenors in this appeal are Mr. Stein and PDA.

Issues and Arguments:

By this appeal, the appellant maintains that the C of O was issued in error because there were material errors and omissions in the certificate of occupancy application of the PDA. These errors and omissions relate to the square footage of the structures, the square footage to be used, the intensity of the use, the change in use, and the buildings and lots to be occupied. The appellant also maintained that the Acting Zoning Administrator erred in issuing a C of O for a use that is not described in the Zoning Regulations.

1. Errors and Omissions

A. The actual address, buildings and lots: The appellant testified that a C of O was issued on or about May 5, 1995 to the PDA for a Day Treatment Program at 5511 14th Street, N.W. However, the subject site is actually located at 5509 – 5511 14th Street, N.W., as evidenced by the records of the Department of Finance and Revenue. Lot 9 is 5511 14th Street and Lot 10 is 5519 14th Street. The appellant testified that although the site was located on Lots 9 and 10 of Square 2800, occupancy of any portion of Lot 10 was not disclosed on the C of O application. The appellant testified that the gross square footage occupied at the site is inconsistent with the square footage reflected on the C of O application. The appellant submitted evidence as to the gross square footage being in excess of 6,000 square feet. A summary computation of square footage presented by PDA for 5507-5511 14th Street reflects that PDA occupies 3,217 square feet of Lot 9 (Clinic), and 3,602 square feet of Lot 10 (clinic and storage) both in Square 2800.

The total space occupied, by PDA's own calculation, is 6,819 square feet. The application for the C of O disclosed that only 2,800 square feet was to be occupied. PDA admits that occupancy is not restricted to Lot 9 and that substantially more than 2,800 square feet of space is occupied. The prior existing authorized use was for a home improvement contractor's office on a portion of Lot 9, occupying 2,800 square feet.

The appellant testified that PDA used more than one building for its operation. The appellant stated that PDA submitted a summary of building areas which lists the respective addresses as 5507-5511 14th Street, N.W., clearly indicating that the preparer of the summary was including the intervening address 5509 14th Street, N.W.

The appellant testified and submitted documentation to indicate that no C of O was ever issued for 5507-5509 14th Street, and that the former use of 5511 14th Street was the home improvement contractors business office. The appellant submitted documentation that the structure at 5509 14th Street was build in 1987 and is not eligible for any grandfathering provisions.

The appellant presented unrebutted testimony to the effect that the Acting Zoning Administrator was aware of the complaints filed regarding the use of 5511 14th Street and abutting structures prior to the issuance of a certificate of occupancy. The appellant presented testimony that was confirmed by the Acting Zoning Administrator that no zoning inspection was conducted despite the fact that complaints regarding the use had been filed.

The applicant stated that a visual inspection of the occupied property revealed that more than one building was occupied and that a portion of the occupancy was in new construction. The appellant introduced into evidence a photograph which reflected that 5509 14th Street was new construction. The appellant testified that before a C of O was issued, PDA was cited for operating at the subject site without an occupancy permit.

The property owner, Mr. Stein, testified about what information was to be placed on the C of O application and that he did not mean to mislead the Acting Zoning Administrator. In addition to providing information on the lots, the application for the C of O indicated that the proposed occupancy load was five to seven people and the space occupied was 2,800 square feet.

The Acting Zoning Administrator testified that there is no occupancy load for an office, and therefore the space for this information on the C of O application should have been left blank. Further, the application should have also stated that the total number of square feet occupied is 6,200 and not 2,800 square feet.

B. Parking: The appellant stated that 11 DCMR 2100 clearly establishes that " no certificate of occupancy shall be issued for the use of any structure built after May 12, 1958, that does not provide the required parking spaces for the structure and the use thereof." The appellant argued that the increased square footage on the site required off street parking to receive an occupancy permit. He argued that the Acting Zoning Administrator erred by failing to require PDA to provide the parking required under the Zoning Regulations.

The Acting Zoning Administrator testified that there is no parking requirement for the subject property because the use of the building is going from one office use to another office use.

PDA testified that no parking facilities of any kind, exist on or off the site for the use of the structures. The new structure, 5509 14th Street, had no prior or existing use and does not qualify for any grandfathering provisions.

2. The Actual Use of the Site

The appellant argued that the Acting Zoning Administrator issued a C of O for a use that is not defined in the Zoning Regulations, specifically, a "day treatment program." The appellant presented testimony and documentation showing that PDA and the zoning inspector indicated that there had been a change in use of the structure. The appellant testified that the day treatment program was the functional equivalent of a child development center. The appellant presented unrebutted testimony that a Department of Consumer and Regulatory Affairs (DCRA) official acknowledged that the only difference between a child development center and the day treatment program was the age of the students. The appellant testified that the use was designed for providing education and training to mentally challenged adult students.

The appellant argued that the general office use that the Acting Zoning Administrator has attributed to the day treatment program lacks any foundation in the Zoning Regulations or written guidelines and the use is inconsistent with the defined general office use and well removed from the actual use. The appellant argued that the use is more appropriately defined as a clinic, day care center, development center, or school.

The Acting Zoning Administrator admitted that there is no definition of any kind, describing what constitutes a day treatment program. The Acting Zoning Administrator testified that a day treatment program for adults, while not defined in the Zoning Regulations, closely resembles the activities of an office use. She stated that the proposed use is compatible with a general office that has been

approved by the Zoning Administrator in the C-2-A zone in the past. However, she could not identify such a facility.

PDA's testimony supported the appellant's description of PDA's primary objective at the site, as does the Medicaid definition of a day treatment program, developmental disability, habilitation services and therapy services. PDA presented testimony about the programs and services performed at the site. PDA's testimony also indicated that operations conducted at the site were not that of an office.

3. The Intensity of the Use:

The appellant provided testimony on the increased intensity of the use at the site. He testified that that the intervenor's claim of the occupancy load of five to seven people was grossly inconsistent with his observation of employees and students at the site. He testified that he estimated up to 60 students with one staff member for each three students.

PDA testified that the intensity of the use reported as five to seven persons was incorrect. PDA further admitted that 17 full time employees are present daily with additional part-time employees providing specific services. PDA also testified that as many as 40 students are authorized, although the present enrollment is at 35.

The Acting Zoning Administrator testified that there is no occupancy load for an office use. stated that if a use is a day care center, a child development center, a church or a public hall, then an applicant is required to indicate a standing or seating capacity. She stated further that line 12 on the application requesting occupancy load should have been left blank.

Advisory Neighborhood Commission (ANC) 4A submitted a letter dated March 11, 1996, in support of the appeal. The ANC stated that a day treatment program was not a general office use, that the PDA is serving the entire City and that the present use of 5511 14th Street, exacerbated noise, litter and traffic congestion in the community. ANC 4A passed a resolution requesting that the Board rescind the C of O issued to PDA for use of the site as a day treatment program.

FACTUAL ISSUES

The appeal raises the following factual issues:

1. Whether there were errors and omissions in the certificate of occupancy application affecting the decision to issue the permit?

2. Whether there was a proper determination of the lots and square footage involved in the use before the certificate of occupancy was issued?

3. What were the Acting Zoning Administrator's views in deciding to issue the certificate of occupancy?

4. Whether the activities of PDA are consistent with what is normally considered an office use?

FINDINGS OF FACT

Based on the evidence of record, the Board makes the following findings of fact:

1. There were a number of errors and omissions in the certificate of occupancy application related to the actual property affected, the square footage to be used, etc.

2. The Acting Zoning Administrator failed to clarify these erroneous matters prior to deciding to issue the occupancy permit.

3. While the Acting Zoning Administrator issued an occupancy permit for a day treatment program, a use that is not defined in the Zoning Regulations, she considered the use to be that of a general office.

4. The activities that take place at PDA's day treatment program include educating and training mentally challenged students. These activities are not considered normal for a general office use.

CONCLUSIONS OF LAW AND OPINION

Based on the evidence of record, the appellant is appealing the decision of the Acting Zoning Administrator to issue a certificate of occupancy for a day treatment program as a general office use in a C-2-A District.

The Board is of the opinion that the appellant has demonstrated that this decision was made in error. The Board concludes that there were substantial errors and omissions in the certificate of occupancy application that should have been examined more closely by the Acting Zoning Administrator. The Board

concludes that the Acting Zoning Administrator could have clarified these matters by inspecting the property or by requiring proper documentation. She did neither of these.

The Board concludes that the certificate of occupancy was issued on the basis of the use being for general office. However, the Board concludes that a change of use occurred at the site. Finally, the Board concludes that the day treatment program activities that are engaged in by the Psychological Development Association do not comport with what normally occurs in a general office. Therefore, the Board concludes that the Acting Zoning Administrator erred in deciding to issue the certificate of occupancy.

In light of the foregoing analysis, the Board hereby ORDERS that the appeal be GRANTED and the decision of the Acting Zoning Administrator be REVERSED.

VOTE: 3 – 0 (Laura M. Richards, Susan Morgan Hinton and Sheila Cross Reid to grant and reverse; Angel F. Clarens not voting, not having heard the case)

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

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
DIRECTOR

FINAL DATE OF ORDER: NOV 25 1997

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 BEFORE THE BOARD OF ZONING ADJUSTMENT."

Ord16066/JN/TWR

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPEAL NO. 16066

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 25 1997 a copy of the order entered on that date in this matter was mailed postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed blow:

John J. Chagnon
FZC
5603 14th Street, N.W..
Washington, D.C. 20011

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McCants, Dunbar and Associates
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Silver Spring, Maryland 20910

Chairperson
Advisory Neighborhood Commission 4A
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Gladys Hicks
Acting Zoning Administrator
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Attested By: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

Date: NOV 25 1997

FAX TRANSMISSION

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To:	Council Member Fenty Attn: Jason	**Date:**	August 16, 2001
Fax #:	202-724-8120	**Pages:**	27, including this cover sheet.
From:	John J. Chagnon, ANC 4A07		
Subject:	Land Use - DCRA's failure to follow Rule of Case		

Council Member Fenty:

Transmitted herewith are documents relative the ongoing use of 5507, 5509 and 5511 14th Street, NW.

I have spoken to Ms. Rocket, Zoning Inspector who indicates that a NOI was to be issued for the use of 5507 and 5509 - 14th Street. I have not received any other communications from DCRA as to their intention to enforce the Zoning Regulations.

I would appreciate any assistance your office can offer.