16784

STATEMENT OF

COUNCILMEMBER ADRIAN FENTY

CONCERNING

COMCAST FACILITY IN BRIGHTWOOD

BEFORE

THE BOARD OF ZONING ADJUSTMENT

OCTOBER 9, 2001

BZA
Case No. 16784
Exhibit No. 31

Board of Zoning Adjustment
District of Columbia
CASE NO.16784
EXHIBIT NO.31

STATEMENT OF ADRIAN FENTY, COUNCILMEMBER,

WARD 4

OCTOBER 2, 2001

Ladies and gentlemen, thank you for allowing me to meet with you to discuss the proposed Comcast transmission facility [Optical Transmission Node ("OTN")] in Brightwood.

BACKGROUND

This past July when it was discovered that Comcast was building a transmission facility at 6336 Piney Branch Road NW, I visited the site with residents of the Brightwood community. We learned that Comcast had been granted a permit to build this commercial building in a district zoned for residential use. Within days, Comcast had transported a pre-fabricated building to the site. The community quickly realized that the site (which was originally intended for a detached Colonial house) had been chosen because Comcast could use a suburban model. A proper retrofitting of an existing commercial structure would have been more costly and time-consuming for the company. My office quickly determined that the permit had been incorrectly granted. To date, three community meetings have been held on this issue, and the Brightwood Community Association has filed a petition containing the signatures of 364 local residents in opposition to the building.

When the Board of Zoning Adjustment hears this case next week, it is required under D.C. Code to give "great weight" to an affected ANC's recommendations.[1]

The zoning approval for a building permit was granted to Comcast under Sec. 201.2(d) of the D.C. Municipal Regulations (DCMR). Office of the Z oning Administrator (OZA) employee Toye Bello's conversation with Council Member Adrian Fenty August, 2001. This section permits "one or more antennas entirely enclosed on all sides within a building..." However, the uses envisioned in this section do not include the type of facility Comcast wants to place on Piney Branch Road. The section does not cover antennas for commercial broadcasts or transmission. OZA should never have granted the permit without proper hearings and community involvement. A review of Comcast's application shows the reference to Sec. 201.2(d). See Comcast application, Exhibit A. In other words, Mr. Bello and the OZA apparently "rubber stamped" the application.

The Zoning Administrator reversed his decision based on the correct provisions of the DCMR and a Stop Work Order was issued on August 10th of this year. Even though the Comcast facility was 70 percent completed at that time, construction work is now stopped and Comcast is

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[1] The Board must "articulate why the particular ANC itself, given its vantage point, does – or does not – offer persuasive advice under the circumstances." *Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 381 A. 2d 1372, 1384 (D.C. 1977).

now complying with zoning regulations by filing for a special exception use permit.

To be granted a special exception, under Title 11 DCMR Section 3104.1, Comcast, to meet its burden of proof, must show three things:

first, that the building will be in harmony with the general purpose and intent of the Zoning Regulations and Maps;

second, that it will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps;

and third, that it meets the special conditions for antenna listed in Sec.211 of Title 11 DCMR.

ARGUMENTS

1. OUT OF CHARACTER

The Brightwood community has communicated to me that they perceive Comcast's attempt to put a purely commercial building in their residential neighborhood as "a slap in the face." The Comcast facility, intruding in a residential community, is a concrete, windowless bunker, entirely not in keeping with the Brightwood community's residential zoning, nor the plethora of detached victorian homes. Comcast's callous disregard for the community's quality of life is a bad move not only for the residents of the community, but also for a company negotiating a multiyear franchise with the D.C. Office of Cable Television, based in large part, on community participation. The Board of Zoning Adjustment has often decided that a

building that is inconsistent, out-of-character, or unsightly can not be granted a special exception. See for example, Decision in Application No. 16682, of W.F Equipment Corporation (June 5, 2001), p. 5, wherein the BZA found in a "drainage and collection" case, that an "unsightly condition will adversely affect not only the occupants themselves but also the surrounding neighborhood as a whole." The ANC and BZA should find similarly here, in the case of this building which is out-of-character with the entire Brightwood Community.

2. NON-COMPLIANCE WITH COMPREHENSIVE PLAN

This application should also be denied because the proposed use of the site is non-compliant with the Comprehensive Plan for Ward 4. In general, zoning decisions shall not be inconsistent with the Comprehensive Plan. The Board of Zoning Adjustment has rejected special exception applications because they are inconsistent with the Comprehensive Plan for the District of Columbia[2] when considering a special exception application.[3]

Piney Branch Road runs, off-and-on, from the 4600 block to the 7200 block, and is entirely residential. There is, at present, no commercial property fronting on Piney Branch Road. One of the stated goals of the

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[2] The Comprehensive Plan for the National Capital (10 DCMR § 305; 46 DCR 1441), adopted pursuant to the District of Columbia Comprehensive Plan Act of 1984, effective April 10, 1984 (D.C. Law 5-76; D.C. Code § 1-245); Comprehensive Plan of the National Capital, adopted in section 2 of the Comprehensive Plan Amendment Act of 1998, effective April 27, 1999 (D.C. Law 12-275; 10 DCMR § 411.1 and 1403.13.)

[3] BZA Application No 16457 for special exceptions, hearing date May 5, 1999 before the Board of Zoning Adjustment. Decision date June 2, 1999, wherein the Board took note of testimony that the application for construction of 37 townhouses moves the community away from the objectives of the comprehensive plan for the Fairlawn neighborhood.

Comprehensive Plan for Ward 4 is that "land use planning for the ward must protect and enhance the low density character, open spaces and stable neighborhoods for which the ward is known."[4] Controlling the "encroachment of commercial and other nonresidential uses into residential areas" is also a key concern of the Ward 4 Comprehensive Plan.[5] At present, most commercial activity is located along Georgia Avenue and Kennedy Street. One of the priorities of the Comprehensive Plan is to "provide for the stability and maintenance of residential neighborhoods like...Brightwood." The intrusion of Comcast's cement bunker flies in the face of these long-stated goals of good planning and neighborhood preservation.

3. UNNECESSARY

Section 211.6 of the DCMR bars transmission equipment in a residential district, unless necessary, for technically satisfactory and reasonably economical transmission. Comcast has made no such showing of necessity. The facility can be re-located to a non-residential area (Georgia Avenue is in close proximity) and provide Comcast's subscribers with satisfactory and reasonably economical transmission, without having an adverse impact on a residential community. It should be noted, for the record, that Comcast's direct competitor, Starpower, has an OTN in the

[4] 10 DCMR Chapter 15: Comprehensive Plan for Ward 4, Sec. 1528.10.
[5] Id., Sec. 1528.11.

5700 block of Georgia Avenue (only 6 blocks away), which serves the Ward 4 community quite adequately.

CONCLUSION

Comcast should clearly back away, given the level of opposition by the community. This building is out of character and incompatible with its surroundings. It is in violation of the zoning code of the District of Columbia. It completely disregards the City's Comprehensive Plan. It will negatively impact on the quality of life in Brightwood, and on local property values. It is an inappropriate use of land in the Brightwood community. In the long run, it will be best not to have that eyesore there. Comcast needs to swallow the mistake, remove the building, and move on to another more appropriate, and legal, site. Given Comcast's unwillingness to so work with residents of the District of Columbia, ANC 4A and the BZA must deny this application.

I appreciate the opportunity to work with you on this issue.