GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

RECEIVED
D.C. OFFICE OF ZONING
2002 MAR -5 AM 10: 11

MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman, Director
Office of Planning

DATE: March 5, 2002

SUBJECT: Waiver of Rules for Late Submittal of a Supplemental Report concerning BZA Application 16785 requesting a variance from the parking requirement for a property located at 39 New York Avenue, N.E.

The attached report concerning an application from Francis J. Bundu, President of the African Community Center, Inc., requested a variance from a parking requirement under Section 2101, pursuant to Section 3104.1 under Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning, is being submitted after the deadline of February 21, 2002. The Office of Planning respectfully requests that the Board waive its rule and accept the report into the record.

BZA
Case No. 16785
Exhibit No. 40

Board of Zoning Adjustment
District of Columbia
CASE NO.16785
EXHIBIT NO.40

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

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Office of the Director

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MEMORANDUM

TO: Board of Zoning Adjustment

FROM: Andrew Altman
Director

DATE: March 5, 2002

SUBJECT: BZA Application 16785 – Supplement III

APPLICATION
Francis J. Bundu, President of the African Community Center, Inc., originally requested a 100% variance from a parking requirement under Section 2101, pursuant to Section 3104.1 under Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning, to allow the establishment of a "public hall" use in an existing second floor meeting room on property located at 39 New York Avenue, N.E. (Lot 18 on Square 671).

SUMMARY RECOMMENDATION
The Office of Planning recommends approval of the requested variance to reduce the parking requirement to seven spaces subject to the following conditions:

- The African Community Center (public hall) use on the subject property shall only operate between 4:00 P.M. of Friday to midnight Sunday.
- Attendance to activities at this public hall use shall be limited to 45 persons.
- The applicant shall sign a lease for use of the seven spaces of parking lot at 33 New York Avenue, N.E., from 4:00 P.M. of Friday to midnight Sunday, or an equal number of parking spaces at a similar facility within 300 feet of the main entrance to the public hall use, for the duration of this variance.
- The applicant shall retain keys to the parking lot gates at 33 New York Avenue, N.E., to allow attendees to pass from N Street, N.E. through said lot to the public hall use during its hours of operation.
- One parking space in the parking lot at 33 New York Avenue, N.E. shall be signed for use by the handicapped during the public hall hours of operation; and
- This variance shall be subject to renewal two years from the date of Final Order approval.

Staff also recommends approval of a Special Exception to relocate the parking required for the referenced public hall use the parking lot located at 33 New York Avenue, N.E., subject to the following conditions:

- The applicant shall sign a lease for use of the seven spaces of parking lot at 33 New York Avenue, N.E., from 4:00 P.M. of Friday to midnight Sunday for the duration of this Special Exception.
- The applicant shall retain keys to the parking lot gates at 33 New York Avenue, N.E., to allow attendees to pass from N Street, N.E. through said lot to the public hall use during its hours of operation.
- One parking space in the parking lot at 33 New York Avenue, N.E. shall be signed for use by the handicapped during the public hall hours of operation; and
- This Special Exception shall be subject to renewal two years from the date of Final Order approval.

ADDITIONAL INFORMATION
Since the BZA meeting on January 15, 2002, the applicant has accomplished the following:

- **Secured more direct access to on-street parking along N Street, N.E.:** The applicant now has keys to the gates on both sides of the nearby Skylark Lounge parking lot to allow visitors to travel between the public hall (community center) entrance on New York Avenue, N.E., and parking along N Street, N.E. (please refer to Attachment 1);
- **Received approval from Advisory Neighborhood Commission (ANC) 6A:** the ANC accepted the report of its Zoning & Licensing subcommittee recommending approval of this application during its regular meeting on January 17, 2002 (refer to Attachment 2);
- **Leased a nearby parking facility:** The applicant signed a five-year lease (beginning on February 15, 2002) for the seven spaces in the Lounge parking lot, thereby gaining control of this lot from Friday at 4:00 p.m. to midnight Sunday (refer to Attachment 3).
- **Received a revised recommendation from a reviewing agency:** After meeting with OP, Department of Public Works (DPW), and Metropolitan Police Department (MPD) representatives on-site to explain discuss their revised proposal, the DPW District Division of Transportation changed their recommendation to conditional approval (refer to Attachment 4). MPD First District also provided addition preliminary comments (subject to approval by the District .

FURTHER ANALYSIS
All the property on Square 671 is zoned C-3-C (according to Office of Zoning maps). In their presentation to the ANC 6A Zoning & Licensing subcommittee, the applicant presented evidence of a parking agreement with the Skylark Lounge to utilize its parking lot for public hall. The applicant stated that the maximum anticipated activity attendance was 45 persons, and the number of parking spaces available in the Lounge lot was fifteen. Based on this information, the subcommittee recommended approval of the application and the ANC concurred on January 17, 2002.

OP staff noted during the BZA public hearing on January 15, 2002, that the Lounge parking lot is only stripped for seven spaces. During the subsequent site visit referenced above, the applicant identified the following parking resources as being available weekly from 4:00 p.m. Friday to Sunday midnight for persons going to the proposed public hall use: seven parking spaces located in the Skylark Lounge

parking lot located at 33 New York Avenue, N.E. (currently under lease to the applicant); eleven parking spaces perpendicular to the Lounge site in public space along N Street, N.E.; and four parking spaces in public space in front of 39 New York Avenue, N.E. (the subject property). This represents a total of 21 parking spaces.

DPW also acknowledged the potential to use other on-street parking along N Street, N.E., and eight additional parking spaces in public space fronting the New York Avenue Car Wash, the adjacent property to the east, because this establishment is closed evenings and Sundays. This would increase available parking in the vicinity to approximately 80 spaces.

Public halls in C-3-C are permitted as a matter of right under Sections 751.2 (a) of the Zoning Regulations. Section 1201.1 also provides that such uses, wherein the seating is not fixed, require one parking space for each seven square feet (7 ft.^{2}) usable floor area. The applicant stated that the public hall would occupy a floor area of 5,000 square feet, requiring approximately 715 parking spaces (staff erroneously referred to a 72-space requirement in an earlier report). Note that is fixed seating for 45 persons were to be provided, the requirement would be five parking spaces (one space for each ten seats).

Section 116.1 of the Zoning Regulations requires that "all parking spaces should be located on the same lot as the buildings or structures they are intended to serve." However, Section 2116.6 - .10 allows the location of required parking. Based this information, this applicant's request now consists of: a variance request is to reduce the parking requirement to seven parking spaces; and a request for a Special Exception to relocate the required parking to the existing lot at 33 New York Avenue, N.E.

Section 3103.2 grants the Board of Zoning Adjustment (BZA) the power to grant variances from regulations set forth under the Zoning Act "[w]here by reason of exceptional narrowness, shallowness or shape of a piece of property at the time of the original adoption of the regulations, or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code Ann. §§5-413 to 5-432 (1981) would result in peculiar and extraordinary practical difficulties to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided the relief can be granted without substantially impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Map."

The type of zoning relief needed is an "area" variance, requiring that the circumstances surrounding this request are "unique" and that the usual application of the referenced regulations would result in "peculiar and extraordinary practical difficulties."

Section 3104.1 grants the Board of Zoning Appeals (BZA) the authority "to grant special exceptions where in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps."

The requested special exception is also subject to the requirements under Section 2116.6-.10

Compliance with Section 3103.2:
Lots 4 (The Covenant House of Washington, D.C.), 17 (the subject property) and 18/801 (New York Avenue Car Wash) are unique in this area because they are irregularly shaped lots, and completely developed with no on-site parking. This makes the subject property somewhat unique. Since it is fully developed, it is not possible to locate required parking spaces on-site. Therefore, meeting the referenced parking requirement does present a "peculiar and extraordinary practical difficulty".

OP staff feels that the applicant has attempted to address all the outstanding issues by:

- Getting approval from the ANC;
- Signing a lease to secure weekend off-street parking at 33 New York Avenue; and
- Meeting with the DPW, MPD and OP representatives.

Based on these responses, DPW modified their original recommendation. The MPD First District recommended that any approval be limited to two years to allow the site to be monitored to make sure the public hall does not become a more active use similar to a nightclub. MPD staff will submit comments in writing to the BZA.

The applicant has repeatedly indicated that the anticipated attendance would not exceed 45 persons. Staff is concerned that over time the actual number may exceed that available parking resources, and the parking lease remain in effect. Based on these concerns, the following any approval should be subject to the following conditions:

- Attendance to activities at the African Community Center (public hall) use shall be limited to 45 persons.
- The applicant shall sign a lease for use the seven spaces of parking lot at 33 New York Avenue, N.E., from 4:00 P.M. of Friday to midnight Sunday, or an equal number of parking spaces at a similar facility within 300 feet of the main entrance to the African Community Center, for the duration of this variance.
- The applicant shall retain keys to the parking lot gates at 33 New York Avenue, N.E., to allow attendees to pass from N Street, N.E. through said lot
- One parking space in the parking lot at 33 New York Avenue, N.E. shall be signed for use by the handicapped during the period this lot is under the control of the African Community Center; and
- The variance shall be subject to renewal two years from the date of the Final Order approval.

With these conditions, staff thinks the requested variance could be granted without substantially impairing the intent, purpose and integrity of the zone map as embodied in the Zoning Regulations and Map.

Compliance with Section 3103.2:
As stated in the Zoning Regulations:

"2116.6 *Except as provided in §2117.9, if approved by the Board of Zoning Adjustment, open parking spaces accessory to any building or structure may be located anywhere on the lot upon which the building or structure is located, or elsewhere, except in the case of a one (1) family dwelling, in accordance with §§2116.6 through 2116.9.* Section 2117.9 are not applicable this application does not involve a single-family dwelling.

2116.7 The Board shall determine that it is not practical to locate the spaces in accordance with §2116.2 for the following reasons:
(a) Unusual topography, grades, shape, size, or dimensions of the lot;
(b) The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets;
(c) Traffic hazards caused by unusual street grades; or
(d) The location of required parking spaces elsewhere on the same lot or on another lot would result in more efficient use of land, better design or landscaping, safer ingress or egress, and less adverse impact on neighboring properties. The property is completely developed with no room for the addition of parking spaces.

2116.8 When the accessory parking spaces are to be located elsewhere than on the lot upon which the building or structure they are intended to serve is located, the parking on adjacent lots or lots separated only by an alley from the lot upon which the building or structure is located, shall be preferred. Lounge lot parking spaces within 110 feet, approximately, of the entrance to the proposed public hall use along New York Avenue, N.W. sidewalk. Parking spaces along N Street, N.E. are approximately 100 feet further away, accessible through the gates at the rear of the parking lot. These gates will be under the control of the applicant during the hours of operation. Parking spaces in front of the subject property and the New York Avenue Car Wash are much closer.

2116.9 The accessory parking spaces shall be located so as to furnish ***reasonable and convenient parking facilities*** *for the occupants or guests of the building or structures which they are designed to serve.* Under the existing circumstances, the proposed parking spaces are a reasonable.

The Board may impose conditions on any accessory or non-accessory parking spaces as to screening, coping, setbacks, fences, the location of entrances and exits, or any other requirement it shall deem necessary to protect adjacent or nearby property. It may also impose the other conditions as it shall deem necessary to assure the continued provision and maintenance of the spaces." The Special Exception should be subject to the same conditions as the variance request above.

Compliance with Section 3104.1
The stated purpose of the organization is to provide a place for limited "community" activities for local residents for Africa. It has been stated that participation will not exceed 45 persons, limiting the impacts

on the surrounding streets. The hours of operation coincide with times when existing government, office, industrial, and commercial uses would not need to use existing on-street parking resources. The initial approval should be conditional, including time limits to allow monitoring of the public hall use to make sure it operates as proposed, and to allow additional planned parking resources to be developed in the area (including a proposed office building and garage planned across New York Avenue). As conditioned, it also meets the requirements under Section 334 of the Zoning Regulations.

Based on this information, OP staff determined the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps, and will not tend to adversely affect the use of neighboring properties.

COMPREHENSIVE PLAN
The Generalized Land Use Map designates the general area as "Medium-High Density" commercial, characterized by "shopping and service areas that generally offers the largest concentration and variety of goods and services outside the Central Employment Area".

Section 101, Major Themes of the Comprehensive Plan, include:

> "(f) Preserving and ensuring community input;
> ...
> (i) Promoting public safety; ..."

RECOMMENDATION
The Office of Planning recommends approval of the requested variance to reduce the parking requirement to seven spaces subject to the following conditions:

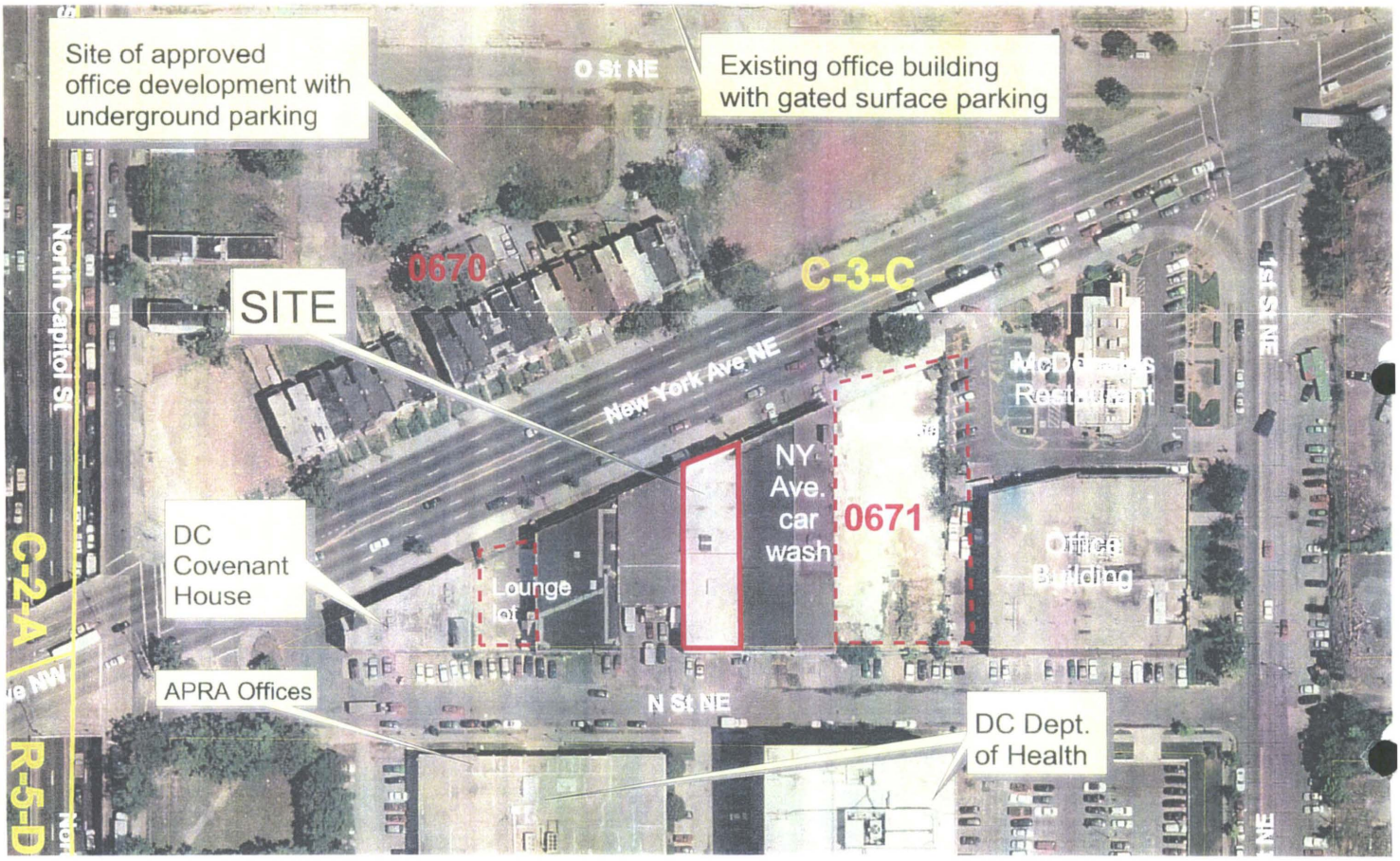
- The African Community Center (public hall) use on the subject property shall only operate between 4:00 P.M. of Friday to midnight Sunday.
- Attendance to activities at this public hall use shall be limited to 45 persons.
- The applicant shall sign a lease for use of the seven spaces of parking lot at 33 New York Avenue, N.E., from 4:00 P.M. of Friday to midnight Sunday, or an equal number of parking spaces at a similar facility within 300 feet of the main entrance to the public hall use, for the duration of this variance.
- The applicant shall retain keys to the parking lot gates at 33 New York Avenue, N.E., to allow attendees to pass from N Street, N.E. through said lot to the public hall use during its hours of operation.
- One parking space in the parking lot at 33 New York Avenue, N.E. shall be signed for use by the handicapped during the public hall hours of operation; and
- This variance shall be subject to renewal two years from the date of Final Order approval.

Staff also recommends approval of a Special Exception to relocate the parking required for the referenced public hall use the parking lot located at 33 New York Avenue, N.E., subject to the following conditions:

- The applicant shall sign a lease for use of the seven spaces of parking lot at 33 New York Avenue, N.E., from 4:00 P.M. of Friday to midnight Sunday for the duration of this Special Exception.
- The applicant shall retain keys to the parking lot gates at 33 New York Avenue, N.E., to allow attendees to pass from N Street, N.E. through said lot to the public hall use during its hours of operation.
- One parking space in the parking lot at 33 New York Avenue, N.E. shall be signed for use by the handicapped during the public hall hours of operation; and
- This Special Exception shall be subject to renewal two years from the date of Final Order approval.

Attachment: Exhibit 1 Property Aerial Showing Zoning
Exhibit 2 Advisory Neighborhood Commission (ANC) 6A recommendation of approval of BZA Application 16785
Exhibit 3 Skylark Lounge sub-lease agreement dated February 12, 2002
Exhibit 4 Department of Public Works Recommendation dated February 27, 2002

AA/afj



Property Maps and data maintained by:
Government of the District of Columbia
Office of Tax and Revenue
941 North Capitol Street, NE
Washington, D.C. 20002

BZA Application No. 16785
93 New York Avenue, N.E.

100 0 100 Feet

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Prepared on: October 31, 2001

District Columbia Government
ADVISORY NEIGHBORHOOD COMMISSION 6A
Vice Chairman, *Daniel M. Pernell, III (SMD 6A02)*
1132 4Th., Street, NE Washington, D. C. 20002
Office 202 547-5175 * Fax 202 544-4874

Exhibit 2

January 17, 2002

District of Columbia Government
Board of Zoning and Adjustment
Attention Jerrily R. Kress, FAI
441 Fourth Street, N.W. Suite 200
Washington, D.C. 20001

In Reference to BZA Application # 16785. For Francis Bundu / Requesting a variance at premises at 39 New York, Avenue N. E. on the second floor. At lot 18, in Square 671, Zoned C-M-1. Pursuant to Section DC MR. Title 11 Section 3103.2 zoning regulation of the District of Columbia in a C-3-C zoning.

Mrs. Kress and Members of the BZA Board:

This applicant proposed use to have a Public Hall for weekend use (only) for engagements, meetings and birthdays events, etc. Came before this ANC 6A Zoning and Licensing Subcommittee on December 12, 2001 and Commissioner, Gregory J. Ferrell chaired the procedurals.

Mr. Francis Bundu came before the ANC 6A Commission of the whole on January 17, 2002, and we heard their concerns again. Chairman Ferrell, allowed me as the single member district ANC to introduce the applicant and ask questions and then the Chairman allowed other commissioners to do the same. ANC members present voted unanimously to support single member Commissioner, Daniel M. Pernell.

As I said in my January 3, 2002, letter. One of my main concerns as the single member commissioner was parking. The Public Hall proposed use in a C-M-1 zone District needed to provide proof of off-street parking. (1) For each 10 seats of occupancy capacity for first 10,000 seats, plus (1) for each 20 seats above the first 10,000. During the December 12, meeting Mr. Bundu did in his presentation provided proof of parking agreement with Mr. Bobby Bell of Skylark Lounge. The term of the parking agreement is for Fridays, Saturdays, and Sundays between the hours of 5:00 p.m. to 12:00 a.m. each day. After hearing all I made the motion to support the applicant and the motion was second by Commissioner Ferrell. Commissioner, Ferrell called the vote and the vote was unanimously and no opposition.

Therefore, I give my support, and I am satisfied with the proof of parking and its agreement between Skylark Lounge as long, as the Public Hall conducts its events only on Fridays, Saturdays, and sundays between the hours of 5:00 p.m. to 12:00 a.m. Constituents of my SMD have been informed.

Sincerely:

Daniel M. Pernell, III

Commissioner the District of Columbia
Vice Chairman, *Daniel M. Pernell, III*

CC: DC Office On Planning and DCRA
Chairman of the ANC 6A
Chairman of the Z & L
ANC 6A Members
Near Northeast Citizens Against Crime and Drugs
The Public Interest Civic Association

SKYLARK LOUNGE
1943 NEW YORK AVENUE, N.E. WASHINGTON D.C. 20002

SUB-LEASE AGREEMENT

This sublease agreement, made this 12th. day of February, 2002, by and between Skylark Lounge the lessee of 33 New York Avenue, N.E. with the parkings to said properties, hereinafter the sub-lessor, and Francis Bundu and the African Community Center, Inc., of 39 New York Avenue, NE 2nd floor, hereinafter the sub-lessee. The sub-lessor hereby leased to the sub-lessee the total of seven (7) parking spaces belonging to the sub-lessor for the purposes of parking for his guests from 4:00 p.m. Fridays to 12:00 p.m. (midnight) Sundays.

TERM: The term of said sub-lease shall be five (5) years commencing on the 15th day of February, 2002, to be fully and completely ended on the 30th day of January 2007

That the sub-lessee will at the end of said term, deliver up the parkings in like good order in which they are now, ordinary wear and tear and casualties by fire only excepted, to the sub-lessor, who shall and may there upon take possession of the parking spaces. Sub-lessee shall desire to continue in possession after the end of the term, the sub lessee shall give sixty (60) days notice in writing before the end of the term to the sub-lessor that sub-lessee desires to continue in possession In the event that no notice is given by the sub-lessee, by virtue of this agreement, becomes a sub-lessee on a month to month basis. Sub-lessee hereby expressly waived the thirty (30) days to quit after the expiration of the term of this sublease agreement

The sub-lessee shall use the parking spaces for the demised premises for executive and general meetings and for no other purposes whatsoever, and will not sublet nor assign the parkings or any part thereof, or transfer possession thereof to any person or persons nor carry on any business there in, except as herein before stated without the

written consent of the sub-lessor. The sub-lessee will do no act or make any changes in the parking lot to increase the rate of fire insurance beyond that of an ordinary risk or make any alterations without written consent of the sub-lessor

The sub-lessee agrees not to do or permit to be done any act that will obstruct and or interfere with the rights of other or in any way injure or annoy others.

The sub-lessee further agrees to conform to all rules and regulations made or hereafter to be made by the Landlord for the good order and management of the buildings and the parking lot.

It is further understood that this said sub-lease is executed with the understanding and belief that sub-lessor will give notice to the sub-lessee if he intends to vacate at the end of its lease term, but should sub-lessor intends to the sub-lessor will try all its best effort with the landlord for the sub-lessee to remain and become the lessee of the parking spaces. Should he fails in this effort the sub lessor shall not be liable for damages of any king.

All notices required or desired to be given hereunder by either party to the other shall be given in writing, and shall be addressed as follows

If to Sub-lessee:

Francis J. Bundu
African Community Center, Inc.
39 New York Avenue, N.E. 2nd floor
Washington DC. 20002

If to Sub-lessor

Skylark Lounge
1943 New York Avenue N E
Washington DC 20002.
Attn. Bobby Bell

IN TESTIMONY WHEREOF, on the day and year first herein above written, the sub-lessor and sub-lessee have duly executed this agreement as witness their hands and signature affixed hereto:

By:

Bobby Bell for Skylark Lounge
Sub-Lessor

By:

Francis Bundu, African Community Center, Inc
Sub-Lessee.

Exhibit 4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DISTRICT DIVISION OF TRANSPORTATION

Transportation Policy and Planning Administration

MEMORANDUM

TO: Jerrily R. Kress, FAIA
Director
Office of Zoning

FROM: Kenneth G. Laden
Associate Director for Transportation Planning
Transportation Policy and Planning Administration

Date: February 27, 2002

Subject: BZA Application No. 16785 – (Supplemental Review) Application for Variance from Parking Requirements for a Proposed Public Hall Located at 39 New York Avenue, NE; Lot 18, Square, 671

The Department of Public Works, District Division of Transportation (DDOT) has reviewed the supplemental information and material for the subject site. This memorandum addresses the transportation aspects of the proposal.

The initial application to the Board was denied because the applicant failed to provide required accessory parking for the site. The applicant stated that over 200 public parking spaces were available in the immediate area, however no arrangements were made with the owners of the parking lots.

The applicant has subsequently met with, and received approval from ANC-6A to allow the site to be used as a public meeting hall from 5:00 PM to Midnight. Accessory parking spaces are to be located in a parking lot owned by the Skylark Lounge. The applicant made a sub-lease agreement with the Skylark Lounge to use the parking facility on weekends between 4:00 PM Friday and Midnight Sunday. The lot has (7) seven parking spaces.

The parking facility is located less than 200' from the subject site on New York Avenue. It is protected by a fence and has locked access gates off New York Avenue and N Street, NE. The rear of the accessory parking lot fronts N Street, NE where an additional 11 off-street parking spaces are located abutting the lot. N Street has on street, non-metered parking that is available for patrons of the site.

The applicant met with ANC-6A Zoning and Licensing Subcommittee on December 12, 2001 to discuss the proposed use of the site and the parking agreements with the

Skylark Lounge. Parking was identified as the primary concern for the ANC and initial approval was granted. The proposal was presented again before the full ANC-6A Commission on January 17, 2002. It was approved unanimously.

The NY Avenue Car Wash, located on the first floor of the subject site, uses the parking area at the building entrance for vehicle parking during daytime business hours, Monday to Friday, and the condition may apply for the applicant's use of the site during weekend evening hours. The applicant can discuss the arrangement with the property owner and if necessary, coordinate with the Public Space Permits office. The arrangement would provide eight (8)-parking spaces directly in front of the site.

The applicant has taken necessary steps to address issues raised after the initial agency review. The community, through ANC 6A, has approved the proposed use of the site and is satisfied with the parking arrangements made by the applicant. If approved, the exception should be granted on a temporary basis, to be renewed every three years. Accordingly, DDOT has no objection to the proposal.