

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

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In the Matter of :

**Eimaj, Inc., and Nicholas T. Filloramo
7445 Georgia Avenue, N.W.
Washington, D.C.**

Appellants,

v.

BZA Appeal No. 17670

**District of Columbia, Department of
Consumer and Regulatory Affairs**

Appellee.

**DISTRICT OF COLUMBIA'S REPLY TO THE APPELLANT'S
APPEAL OF THE OFFICE OF THE ADMINISTRATIVE HEARINGS' FINAL
ORDER**

The Appellee District of Columbia ("District"/ "DCRA"), by and through undersigned counsel, respectfully submits its reply Brief to the Appellants' Eimaj, Inc. and Nicholas T. Filloramo ("Royce") Brief filed with the Board of Zoning Adjustment ("Board") on January 10, 2008. The Board ordered the Appellant to file its brief on January 10, 2008 and the District to file its Reply Brief by January 24, 2008.

STANDARD OF REVIEW

Appeals from the Office of Administrative Hearings regarding Notice of Infractions for zoning violations may be appealed to the Board of Zoning Adjustment. Pursuant to 11 DCMR § 3200.2, appeals to the Board of Zoning Adjustment may be taken by any person aggrieved, or organization authorized to represent that person, or by any officer or department of the District or federal government, affected by any decision

**BOARD OF ZONING ADJUSTMENT
District of Columbia**

CASE NO. 17670

EXHIBIT NO. 23

of an administrative officer granting or refusing a building permit or granting to withholding a Certificate of Occupancy ("C of O") or any other administrative decision based in whole or part upon any Zoning Regulations or Zoning Maps adopted pursuant to the Zoning Act. In deciding if the lower administrative body was correct in its decision, the Board reviews the record below to determine if the Court erred.

STATEMENT OF FACTS

On May 13, 1991, Royce filed an application with DCRA to obtain a C of O to use the premises at 7445 Georgia Avenue, N.W., which is located in a C-2-A District, for the rental of videos, cassettes, and electronic equipment. Royce stated in its application that the business would not be sexually oriented. See, Exhibit 108. On May 13, 1991, DCRA approved C of O Number B160889 for Royce to operate a business for the "rental of videos, cassettes, and electronic equipment, not Sexually Oriented." See, Exhibit 107. A C-2-A District does not allow a SOBE without a special exception issued by the BZA. Unless a business has grandfathering rights, a SOBE may be located only in C-3-B, C-3-C, C-4, C-M and M zoning districts.

On June 3, 2004, due to a complaint that DCRA received, a DCRA Inspector conducted an inspection of Royce Video. The DCRA Inspector determined Royce was in violation of 11 DCMR § 3204.4 because Royce's operation consisted of 50% adult video rentals and sales including sex toys. See, Exhibit 106. During the inspection, the inspector observed a display of adult magazines featuring unclothed bodies; dildos; vibrators; chains with hand cuffs; sex lubricants, sex creams, and sex lotions; body-sized female toys with breasts and vaginal areas; adult movies with ratings of both 2-X and 3-X; and more. See, P Exhibits 100-104, 111-119. Based on the presence of sexual

oriented items, the inspector determined that Royce was operating beyond the scope of its "not sexually oriented" C of O. The DCRA Inspector issued a Notice of Violation and Order to Abate informing Royce that the required corrective action would be to remove 40% of the adult videos. Royce Video continued to operate in violation of 11 DCMR § 3204.4 and the DCRA Notice.

On April 29, 2005, as a result of another complaint that a sexually oriented business was being operated at the subject premises, a DCRA Inspector again inspected Royce's Video. During the inspection, the inspector observed a display case that contains approximately ten items of merchandise that are commonly known as sex toys and adult videos in an open area of the business, and advertising displays covering a significant portion of the front of the building, of which there is a reference to adult toys in prominent lettering. See, Exhibit 112. On May 9, 2005, DCRA issued Royce a Notice of Infraction # N100089 for operating outside the scope of its C of O in violation of D.C. Official Code § 6-641.09.¹ See, Exhibit 105.

During the evidentiary hearing, Royce submitted its 2005 inventory to the Court showing a total of 39,036 items, of which 435 were adult sex toys. See, Exhibit 1. DCRA in support of its Notice of Infraction submitted the Notice of Infraction, Royce's C of O for a non-sexually oriented business, the C of O application, a letter dated April 29, 2005, and photographs depicting sexually oriented items.

¹ Building permits; certificates of occupancy

(a)... In the event that ...[regulations adopted under provisions of this subchapter] provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections...

At the hearing, DCRA relied upon the 1998 Zoning Administrator's Opinion ("1998 Opinion"/"Opinion") defining what was a SOBE, including what factors may be used to determine whether the business is in fact a SOBE. DCRA also argued that it did not rescind or modify the Opinion exempting businesses that were operating at the time the Zoning Administrator's Opinion was issued. The District argued that the Zoning Administrator's Opinion was the agency's interpretation of the zoning regulations. Furthermore, Royce did not dispute this.

On March 12, 2007, the Court issued a Final Order finding Royce liable for operating a sexual oriented business without a C of O and assessed a fine of \$500.00 for violation of D.C. Official Code § 6-641.09. See, Exhibit 202A. The Court adopted the 1998 Acting Zoning Administrator titled "Determining Whether a Retail or Wholesale Video Store Selling or Renting Sexually Oriented Materials is a Sexually Oriented Business" interpretation which sets out several criteria for determining whether a business is a "sexually oriented business", as that term is used in 11 DCMR § 199.1.²

The 1998 opinion gives notice to businesses and the public about how a mixed use video store in C-2-A District may not offer for sale and/or rental of sexually oriented materials without proper C of O. The Zoning Opinion also informed the business community that prior to opening a business selling or renting sexually oriented materials must first obtain a C of O as a SOBE which is restricted to operating only in the limited zoning districts where sexually oriented businesses are permitted. The Court adopted the 1998 opinion and used it as basis to uphold the NOI. The Acting Zoning Administrator

² An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals, films, materials, and articles, or an establishment that presents as a substantial or significant portion of its activity, live performances, films, or other materials, that are distinguished or characterized by their emphasis on matters depicting, describing, or related to specified sexual activities and specified anatomical areas.

also determined that mixed-use video stores are to be defined as sexually oriented if sex toys are for sale, as the Court found in this case. One of the criteria that the Court used for determining whether a mixed-use video store is defined as sexually oriented is whether it sells sex toys as stated in the 1998 Opinion.

In its Final Order the Court accepted the 1998 Opinion, along with the survey report conducted in 1997 of the twenty-five mixed-use video stores in the District of Columbia. The Court found that based on the 1998 Opinion survey, that fifteen of the twenty seven stores, including Royce Video, had more than 28% material that was sexually oriented.

Based on the Court's finding, Royce filed this appeal on May 11, 2007.

ARGUMENTS

A. The Court Was Correct in Its Ruling that the Appellant Is A Sexually-Oriented Business Establishment And Must Obtain A C Of O To Operate A Sexually-Oriented Business In A C-2-A District

This Board must deny Royce's appeal because the Court did not err in its ruling that Royce's Video requires a sexually oriented Business Establishment Certificate of Occupancy for lawful operation.³

Based on the evidence before the Office of Administrative Hearings, the Court had sufficient evidence to find that Royce is a sexually oriented business because it found, that the sale of sex toys made an establishment sexually-oriented, in agreement with the 1998 Memo. The Court accepted the Zoning Opinion that sex toys are sexually oriented items and require a C of O for sexually oriented business because the Zoning

³ In its appeal before the Office of Administrative Hearings, Royce did not (1) challenge the constitutionality of the SOBE regulations, (2) discuss negative or secondary effect of such businesses; (3) argue insufficient notice to comply with the 1998 Hicks Memo; (4) Estoppel; (5) Laches; and (6) arbitrary and capricious enforcement of SOBE. Therefore, Royce is precluded from arguing it before this Board.

Administrator is the District official who interprets the zoning regulations, and the Board is determines if the zoning regulations were interpreted properly. The Court determined that Royce was operating outside the scope of their C of O which specifically stated no sexually oriented business.⁴

As the Court held, the Zoning Administrator has authority to interpret and enforce D.C. Zoning Regulations. The Board is the only tribunal that has jurisdiction to review zoning related matters Court held that "[t]his legally recognized authority was conferred by the provision that makes the Zoning Administrator responsible for administratively interpreting and enforcing the zoning regulations". See Exhibit 1. The Court analyzed that the Zoning Administrators are relied upon for enforcement of zoning regulations as in this case. The Court accepted the District of Columbia Court of Appeals ruling that an agency's interpretation of its regulations is to be accorded great deference and not reversed unless clearly erroneous or inconsistent with the Zoning Regulations. *Kalorama Citizens Associations v. District of Columbia Board of Zoning Adjustment*, 486 A.2d 1183, 1184 (1985); *Wallick v. District of Columbia Board of Zoning Adjustment*, 486 A.2d 1183, 1184 (1985).

⁴ In the Appellants appeal, the Appellant challenges the constitutionality of the zoning regulations and the District's ability to regulate SOBEs. The Board lacks jurisdiction to consider questions of constitutionality. Moreover, it is the BZA's responsibility to interpret the local zoning regulations, and its interpretation of those regulations is controlling unless plainly erroneous or inconsistent with the clear language of such regulations. See *Citizens Coalition v. District of Columbia Board of Zoning Adjustment*, 619 A.2d 940, 947 (D.C. 1993). Its authority is limited to hearing appeals alleging error in the administration and enforcement of the Zoning Regulations. The sole issue before the BZA was whether Appellant was operating a sexually-oriented business establishment outside the scope of its C/O. The District will not address arguments pertaining to variances or special exceptions for sexually oriented business because it is beyond the scope of the proceedings below and jurisdiction of OAH. See Royce Motion, pg. 9-10. The only issue before this Board is whether the court below erred in finding Royce was operating sexually oriented business beyond the scope of Certificate of Occupancy.

The Court ruled that there is no basis for finding the Zoning Administrator's interpretation erroneous because the evidence clearly shows that Royce was offering sex toys for sale as shown in the photographs and during the inspection. See, Exhibits 100-104, 111-119. The Court was also able to conclude that evidence observed by the Inspector, specifically the sale of adult magazines featuring unclothed bodies; dildos; vibrators; chains with hand cuffs; sex lubricants, sex creams, and sex lotions; body-sized female toys with breasts and vaginal areas; adult movies with ratings of both 2-X and 3-X; and more, were sufficient to be considered sex toys, thus requiring a C of O for sexual oriented business.

Based on that evidence, the Court determined that Royce was operating outside the scope of their C of O because it found (1) sex toys alone was sufficient under the Zoning Administrator's interpretation that it was a SOBE and therefore requires a C of O for SOBE and (2) that the C of O issued in 1991 non-sexually oriented business was not the appropriate C of O.

The Court adopted the 1998 Opinion that:

A business establishment is sexually-oriented as set forth in the paragraph below:

The Zoning Administrator makes the determination that the sale of merchandise such as three dimensional reproductions of human genitalia, and other items which are commonly known as "sex toys," are sexually-oriented because such merchandise either "depicts" human genitals and other specified sexual activities, and that the sale or display of such items is not a customary accessory use to a mixed use video store in the District of Columbia. A business that sells or displays such merchandise is a sexually-oriented business. (See Exhibit 1, pg 12)

Therefore, the Court was correct in ruling that the NOI was properly issued.

Furthermore, the Court's analysis and interpretation of the District's 10 year use of the 1998 Zoning provided great weight and guidelines for determining SOBE's and whether a C of O must be required for certain business. The Acting Zoning Administrator in 1998 issued an Opinion for the purpose of providing notice to District of Columbia businesses and the public about the number of or allowable types of sexually-oriented materials in mixed-use video stores before the stores would be required to obtain a C of O as a sexually-oriented business establishment.

Again, the Court relied up the survey and found that:

Included in this Opinion was a survey conducted in 1997 of the twenty-five mixed-use video stores in the District of Columbia. It is undisputed that the survey found that Royce video was one of fifteen of the businesses that had more than 28% material that is sexually oriented. The Opinion explicitly states: "the fifteen businesses would meet any reasonable interpretation of 'sexually-oriented business establishment' as sexually oriented materials are significant and substantial portions of their stock in trade. (See Exhibit 1, pg 6)

The Court accepted the 1998 standards in which to make a determination of what is considered factors in determining an SOBE. The Opinion specifically states that the following factors: the percent of sexually-oriented inventory on display; the amount of a store's print, radio and television advertising that is sexually-oriented; whether promotional materials place a disproportionate emphasis on sexually-oriented materials; whether the business sells sex toys; whether there are booths or other apparatus for viewing sexually-oriented material; and, the percentage of revenues generated by sexually-oriented merchandise. See Exhibit 1. Here the Court found that sex toys are sexually

oriented items and require a C of O a sexually oriented business, and based on the Court's findings this Board must come to only one conclusion, the Court was correct in finding that the NOI was properly issued for operating the scope of the approved C of O of a non-sexually oriented business.

B. The Court Was Correct In Its Ruling That It Was Not Grandfathered Because The Zoning Administrator's Opinion Was Issued After The Issuance Of The Certificate Of Occupancy.

The Court was correct in rejecting Royce's argument that its business was grandfathered in because Royce misinterpreted the Acting Zoning Administrator's Opinion. Pursuant to 11 DCMR 100.2, any use in effect prior to the adoption of the zoning regulations in May 12, 1958 will be grandfathered in. It was clear from Royce's testimony at the hearing, that he commenced operating a sexually oriented business in the late 1980's at the subject premises. Therefore, Royce Video is not applicable to grandfathering after the adoption of the zoning regulations in 1958.

Since this is not applicable to the grandfathering clause, the Court was correct in determining that Royce was a sexually oriented business operating without a C of O. Additionally, the Zoning Administrator's Opinion has not been revoked or revised; it is the agency's interpretation of its own regulation. The District agrees with Court's finding that the DCRA interpretation of the Zoning Regulation should be given deference.

The Court adopted the 1998 Hicks Opinion. The Opinion explicitly states that fifteen of the twenty-five businesses surveyed "would meet any reasonable interpretation of a 'sexually-oriented business establishment' as sexually oriented materials are a significant and substantial portion of their stock in trade. And of those fifteen was Royce and based on the Opinion the Court ruled that the NOI was properly issued.

Grandfathering in has not relevance here because the issue is whether they had a SOBE C of O based on the clearly identified factors by the ZA in its opinion.

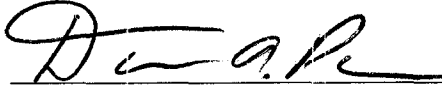
CONCLUSION

In conclusion, based on the foregoing the Court was correct in ruling that the NOI for operating beyond the scope of the C of O in violation of the D.C. Official Code § 6-641.09 was properly issued because Royce was operating an SOBE without a C of O. Based on the testimony by the inspector, photographs, the C of O for a non-sexual oriented business and the application for the C of O, there was sufficient evidence to support the finding.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

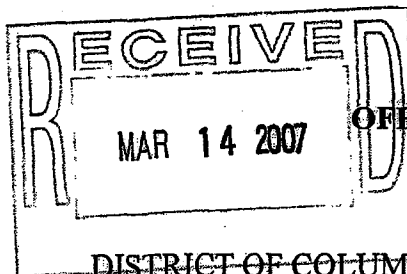
I hereby certify that a copy of the foregoing District of Columbia's Reply Brief was mailed, and personally and electronically served this 24th day of January 2008, to the following:

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DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND
REGULATORY AFFAIRS
Petitioner

Case No: CR-I-05-N100089

v.

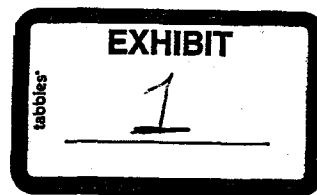
EIMAJ, INC. AND N.T. FILLORAMO
Respondents

FINAL ORDER

I. Introduction

This case involves a Notice of Infraction served by the Government on Respondents Eimaj, Inc. and N.T. Filloramo alleging a violation of D.C. Official Code §6-641.09 for operating beyond the scope of a certificate of occupancy. In the Notice, the Government alleged that the violation occurred on April 29, 2005 at Royce Video located at 7445 Georgia Ave, N.W., and sought a fine of \$500.

Respondents denied the violation, and a hearing was held on July 13, 2005. At the hearing, J. Sinclair Long, Esq., appeared for the Government, and Allen James, the charging inspector, testified for the Government. Andrea Bagwell, Esq., appeared for Respondents. Respondents' witnesses were Nicholas Filloramo, the named Respondent and owner of Royce Video, and Mr. Gilliam, who operates another business in the neighborhood.



The Government contends that Respondents were operating beyond the scope of the certificate of occupancy because they were operating a sexually oriented business with a certificate of occupancy for a business that is not sexually oriented.¹

The principal issue in this case is whether the nature and amount of sexually oriented materials that Respondents' video store displays for sale exceeds the amount that a video store with both general interest and sexually oriented merchandise (called a "mixed use" video store) may display without a certificate of occupancy for a sexually oriented business.

Based on the entire record in this matter, I hereby make the following findings of fact and conclusions of law:

II. Findings of Fact

Nicholas Filloramo has operated Royce Video at 7445 Georgia Ave, N.W. since 1991. On May 13, 1991, Eimaj., Inc, a company that Mr. Filloramo owns, obtained a certificate of occupancy to use the premises for the purpose of renting videos, cassettes, and electronic equipment "Not Sexually Oriented." Respondent's Exhibit "RX" 6. The

¹ D.C. Official Code § 6-641.09, the statute Respondent is charged with violating, provides in pertinent part:

Building permits; certificates of occupancy

(a) ... In the event that ...[regulations adopted under provisions of this subchapter] provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections...

application for the certificate of occupancy states that the proposed use of the premises is for the rental of video cassettes and electronic equipment. There is no place on the application form where an applicant is asked to state whether the business is sexually oriented. RX 6.

On April 29, 2005, Inspector Allen James inspected Royce's Video as a result of a complaint that a sexually oriented business was being operated on the premises.² The inspector measured the interior space in the store with a tape measure to determine its total square footage. His measurements indicated that the total square footage of the store open to the public was 1494 square feet. Then, based on his visual observations of the areas in the store with sexually oriented merchandise, he estimated that approximately 50% of the floor area of the store was used for the sexually oriented materials. The balance of the store contained videos for a general audience and other general merchandise. The inspector did not count items on display in the store.

A drawing of the floor plan of the store provided by Respondents shows that the portion of Respondent's store where inventory is on display in areas open to the public used for retail sales totals 1489 square feet.³ RX 26. This space is comprised of 825 square feet that contains general entertainment videos and other general merchandise, and 637 square feet that contains adult entertainment videos and other sexually oriented merchandise. Based on Respondent's floor plan drawing, 42.7% of the store area where

² The inspector does not know the identity of the complainant. Mr Filloramo believes that an organization that wishes to occupy the building where his store is located made the complaint. However, I find that the evidence is inadequate to establish the identity of the complainant and it is not relevant to this case.

³ This figure does not include the portions of the establishment that are used as office, restroom, or storage.

inventory is on display and open to the public contains adult entertainment and sexually oriented material. Since the Inspector's determination that 50% of the store contained sexually oriented material was based on visual observations and not actual measurements, I will credit the measurements on the drawing submitted by Respondents and find that the floor area containing sexually oriented material was 42.7%.

The portion of the store containing sexually oriented material is in the rear of the store and is separated from the rest of the store by a wall with a door. A sign on the door says "Adult Movie Room – No One Under 18." RX 25 and 26. Although most of the adult entertainment room contains videos, there is also a display case that contains approximately ten items of merchandise that are commonly known as sex toys.

A report on Royce Video's 2005 inventory submitted by Respondent shows a total of 39,036 items. RX 27. The total number of items in the adult category shown on the inventory report is 9,418, consisting of 8,034 adult movies, 435 adult toys, 216 adult magazines, and 733 adult miscellaneous items. The total number of items shown on the general inventory category in the inventory report is 29,618.⁴ Thus, based on this report, 24% of the total inventory in the store is "adult inventory." It is undisputed that all the items categorized as adult inventory are all sexually oriented.

Respondent's store is located in a free-standing building. There is an advertising display covering a significant portion of the front of the building. The advertising

⁴ The Government did not question the categorization of any of the entries on the inventory report or the accuracy of the inventory report. The general inventory total includes over 10,000 diamond cases for DVD's and over 3,000 cases for video tapes as general merchandise items. There was no evidence about whether these cases were display items or carried as inventory for routine sale.

includes the names and posters for some general audience movies, but does not include the names and posters for adult movies. Although almost all of the display advertising on the front of the store relates to general interest materials, there is a reference to adult toys in prominent lettering. RX 23, RX 29.

In addition to the complaint that led to the Notice of Infraction in this case, there was a previous complaint in 2004. That complaint led to an inspection and the issuance of a Notice of Violation and Notice to Abate on June 3, 2004. That Notice required the removal of 40% of the adult videos as corrective action. Mr. Gilliam, who operates a business in the same neighborhood, is not aware of any neighborhood complaints about Royce Video.

On January 28, 1998, the Acting Zoning Administrator, Gladys Hicks issued a signed opinion entitled "Determining Whether a Retail or Wholesale Video Store Selling or Renting Sexually Oriented Materials is a Sexually Oriented Business." The Administrator stated that she was issuing the opinion to give notice to businesses and the public about how many sexually oriented materials a mixed use video store may offer for sale and/or rental before it must obtain a certificate of occupancy as a sexually oriented business establishment restricted to operating only in the limited zoning districts where sexually oriented businesses are permitted.⁵

⁵ The Administrator's Opinion indicates that a sexually oriented business establishment, with the approval of the Board of Zoning Adjustments, could be located only in C-3-B, C-3-C, C-4, C-M and M zoning districts unless a business has grandfathering rights.

The Zoning Administrator's Opinion (the "Opinion") contains a report of a survey conducted in 1997 of the twenty-five mixed use video stores in the District of Columbia. The survey did not include establishments that carried no sexually oriented material or that have authority to operate sexually oriented businesses. The survey found that fifteen of the stores, including Royce Video, had more than 28% material that is sexually oriented. The Opinion states:

All of the fifteen businesses would meet any reasonable interpretation of a 'sexually oriented business establishment' as sexually oriented materials are a significant and substantial portion of their stock in trade.

The Zoning Administrator then adopted an interpretation which sets out several criteria for determining whether a business is a "sexually oriented business," as that term is used in 11 DCMR 199.1. One of the criteria for determining whether a mixed use video store is sexually oriented is whether more than 15% of inventory on display is sexually oriented.⁶ Twenty of the twenty-five mixed use video stores surveyed had more than 15% of sexually oriented materials.

On February 3, 1998, the Chairman of the Council of the District of Columbia, Linda Cropp, and the Chairman of the Committee on Consumer and Regulatory Affairs, Harold Brazil, wrote a joint letter to David Watts, the Director of the Department of Consumer and Regulatory Affairs stating that they were "concerned that these new standards may have an adverse impact on many existing businesses which have not been the subject of complaints from residents." RX 3. They requested that DCRA "delay implementation of these regulations on existing businesses that have been operating

⁶ The Zoning Administrator's Opinion contains several other standards for determining whether a business is sexually oriented, which are discussed below.

without complaints, until there has been an opportunity for the affected businesses and communities to comment on these newly established standards.” RX 3.

Mr. Filloramo and other video store owners who were concerned about the impact of that opinion on their businesses then met Mr. Watts. Mr. Filloramo testified that Mr. Watts told them that the criteria set out in the Opinion would not be applied to existing businesses, and that they could continue operations as long as they kept their sexually oriented inventory under 50%. I am crediting that testimony for the following reasons: 1) there was no conflicting testimony; and 2) Members of the Council had urged DCRA to reconsider the criteria in the Opinion as applied to existing business, making it plausible that Mr. Watts gave assurances to the owners of existing businesses that the criteria in the Opinion would not be applied to them.

III. Conclusions of Law

The zoning regulations at 11 DCMR 199.1 define a sexually oriented business establishment as follows:

[A]n establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals, films, materials, and articles, or an establishment that presents as a substantial or significant portion of its activity, live performances, films, or other materials, that are distinguished or characterized by their emphasis on matters depicting, describing, or related to specified sexual activities and specified anatomical areas.

The Opinion interpreting the regulation as applied to mixed use video stores was issued pursuant to the Zoning Administrator’s authority to interpret and enforce the zoning regulations. This authority was conferred by a provision that makes the Zoning

Administrator “responsible for administratively interpreting and enforcing the zoning regulations.”⁷ The District of Columbia Court of Appeals has held that an agency’s interpretation of its regulation is to be accorded great deference and not reversed unless clearly erroneous or inconsistent with the regulation. *Kalorama Citizens Association v. District of Columbia Board of Zoning Adjustment*, 640 A.2d 179, 180 (D.C. 1994); *Wallick v District of Columbia Board of Zoning Adjustments*, 486 A.2d 1183, 1184 (1985).⁸ Since there is no basis for finding the interpretation clearly erroneous, this tribunal is required to defer to the interpretation unless it has been withdrawn or modified.

Current Status of the Administrator’s Opinion

Since the Opinion of the Zoning Administrator was issued in 1998, there have not been any reported decisions by the Board of Zoning Adjustment, District of Columbia Court of Appeals, or District of Columbia Superior Court that address the zoning of mixed use video stores or discuss the Opinion of the Zoning Administrator. In addition, no revisions of the Zoning Administrator’s opinion could be located. Because of this, and Mr. Filloramo’s credible testimony that the Director of DCRA told owners of existing

⁷ Reorganization Order No. 55, II F (D.C. Code Ann. Title 1- Administration, Appendix at 182, 185 (1973))

⁸ In these cases, the court deferred to interpretations of the Board of Zoning Adjustments. Cases decided by this administrative court involving infractions of zoning laws and regulations may be appealed to the Board of Zoning Adjustments D.C. Official Code § 2-1831.16(b). It is nevertheless appropriate for this tribunal to defer to interpretations of the Zoning Administrator because deference is paid to an agency’s interpretations of its regulations primarily because of the special expertise of each agency in its field. *Diebold, Inc. v. Marshall*, 585 F.2d 1327, 1334 n. 10 (6th Cir. 1978). If the interpretations of a regulation by the Zoning Administrator and the Board differ, it is within the province of the court that reviews the decision of the Board of Zoning Adjustment to determine which interpretation merits deference. *Martin v OSHRC*, 111 S.Ct. 1171 (1991)

video stores in 1998 that they were not subject to the Opinion, it was unclear whether the Opinion had been rescinded or modified.

Consequently, this administrative court issued an Order on August 31, 2006 directing DCRA to file a statement about whether the 1998 Opinion is DCRA's current interpretation for determining whether a mixed use video store is sexually oriented and whether there was any opinion or other authority that exempts mixed use video stores in existence at the time the Opinion was issued. In response, counsel for DCRA submitted a statement indicating that the Opinion has not been rescinded or modified and that there is no ruling or modification exempting businesses that were operating at the time the Opinion was issued. Respondents were afforded the opportunity to reply, but have not done so.⁹ As the Opinion has not been revoked or revised, it is the agency's interpretation of its own regulation that we must defer to in resolving this case.

The Zoning Administrator's Opinion

The Opinion first notes that zoning laws may be used to restrict the location of sexually oriented businesses. The Supreme Court has sanctioned the use of zoning restrictions to combat the undesirable secondary effects, such as increased crime and reduced property values, which sexually oriented businesses can have on surrounding neighborhoods. The Court has said, however, that such restrictions must do so "without violating the government's paramount obligation of neutrality in its regulation of

⁹ Counsel for DCRA inexplicably treated our request for legal argument on these issues as interrogatories, and provided extremely terse responses. However, as he is acting as counsel for DCRA, we must assume that he is accurately representing the status of the Administrator's Opinion.

protected communication.” *City of Renton v. Playtime Theatres, Inc.*, 106 S.Ct. 925 (1986) (quoting *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 70 (1975)).

The Administrator then surveyed relevant case law, the regulations of mixed use video stores in other jurisdictions, and the results of DCRA’s survey of twenty-five mixed use video stores in the District. Based on this review, the Administrator formulated several standards for determining when a mixed use video store is sexually oriented. The standards enunciated in the Opinion are based upon the following factors: the percent of sexually oriented inventory on display; the amount of a store’s print, radio and TV advertising that is sexually oriented; whether promotional materials place a disproportionate emphasis on sexually oriented materials; whether the business sells sex toys; whether there are booths or other apparatus for viewing sexually oriented material; and, the percentage of revenues generated by sexually oriented merchandise.

In this case, there is evidence relating only to two of the standards: the percentage of sexually oriented inventory, and the sale of sex toys. We will address each of these standards in turn.

Inventory on Display

Under the Administrator’s interpretation, a business is a sexually oriented business if more than 15% of its inventory on display in areas open to the public, counted piece-by-piece, is sexually oriented. Specifically, the Opinion states:

.... the Zoning Administrator interprets the District of Columbia Zoning Regulations, 11 DCMR 199.1, as is set forth below.

A. A retail or wholesale business has a substantial and significant portion of its stock in trade in sexually oriented materials, and is therefore a

sexually oriented business, when any of the factors set forth below in paragraphs 1,2,3,or 4 applies:

1. More than 15% of its inventory on display, in areas open to the public, counted piece-by-piece, are sexually oriented.¹⁰

As noted above, Respondents' floor plan shows that the floor area containing sexually oriented material was 42.7%. However, the Administrator's interpretation contains no standard based on the percentage of floor area that contains sexually oriented material. Rather, inventory is to be counted "piece-by-piece."

The only evidence showing inventory counted piece-by-piece is Respondents' inventory listing. In that listing, Respondents categorize 24% of their inventory as adult.¹¹ While this list shows total inventory, it does not show the percent of "inventory on display, in areas open to the public, counted piece-by-piece" that is sexually oriented. It is possible, for example, that only a small number of the sexually oriented items in Respondents' inventory were on display in public areas.

Since the Government presented no evidence on what items in Respondents' inventory list were on display, I cannot conclude that more than 15% of the inventory on display in areas open to the public was sexually oriented.

¹⁰ The Administrator's opinion indicates that for the purpose of this calculation, materials in storerooms or other areas that cannot be seen by customers are not counted, but areas restricted to minors are considered "open to the public" and are counted.

¹¹ The total inventory listed for the store is 39,036 items. Respondents have categorized 29,618 items as "general inventory." Nearly half of the general inventory items are cases for DVD's and videotapes (DVD cases 10,157; Videotape cases 3,534). The Administrator's Opinion does not indicate whether items such as DVD cases, which do not have either sexually oriented or general interest content, should be counted for the purpose of determining the percent of inventory that is sexually oriented. If the cases are not counted, the percent of Respondents total inventory that is sexually oriented would be much higher than 15%.

Sale of Sex Toys

Even if the percentage of sexually oriented inventory is less than 15%, a mixed use video store may also be found to be a sexually oriented business under the Opinion if it sells merchandise commonly known as sex toys. The Opinion states:

B. Irrespective of the applicability of the factors set forth above, a business establishment is sexually oriented as set forth in either paragraphs 1 or 2 below:

1. The Zoning Administrator makes the determination that the sale of merchandise such as three dimensional reproductions of human genitalia, and other items which are commonly known as "sex toys," are sexually oriented because such merchandise either "depicts" human genitals and other specified anatomical areas, or are related to specified sexual activities, and that the sale or display of such items is not a customary accessory use to a mixed use video store in the District of Columbia. A business that sells or displays such merchandise is a sexually oriented business.

It is undisputed that Royce Video was offering sex toys for sale at the time of the inspection. Consequently, Royce Video was a sexually oriented business by virtue of its sale of sex toys.

Respondents maintained that even if Royce Video is a sexually oriented business as defined in the Opinion, it should not be found in violation because businesses in existence at the time the Opinion was issued were grandfathered. Respondents point to the following statement in the Opinion in support of this position.

Unless a business has grandfathering rights, sexually oriented business establishment may, with approval of Zoning Adjustment, be located only in C-3-B, C-3-C, C-4, C-M and M zoning districts.

This statement does not support Respondents' position. It states only that sexually oriented businesses may be located in certain restricted districts unless grandfathered. It

does not indicate that the twenty-five mixed use video stores surveyed (none of which had authority to operate as sexually oriented businesses) are grandfathered. Indeed, as noted above, the Opinion explicitly states that fifteen of the twenty-five businesses surveyed “would meet any reasonable interpretation of a ‘sexually oriented business establishment’ as sexually oriented materials are a significant and substantial portion of their stock in trade.”

Respondent also argues that it was grandfathered because the Director of DCRA told the owners of mixed use video stores in 1998 that the Opinion did not apply to them. While the Director of DCRA may have told the owners of existing businesses that they would be exempt, DCRA took no action to revise the Opinion or exempt existing businesses. When an agency changes its course, it must supply a reasoned analysis demonstrating that its prior standard is being deliberately changed, and not simply ignored. *Brentwood Liquors v. District of Columbia Alcoholic Beverage Control Board* 661 A.2d 652, 656 (D.C. 1995); *Greater Boston Television Corp. v. FCC* 444 F. 2d 841, 852 (D.C. Cir. 1970). The only reasoned analysis enunciating DCRA’s standards for determining when a mixed use video store is a sexually oriented business is the 1998 Opinion, which clearly does not exempt existing businesses. While DCRA could modify the Opinion and provide a reasoned analysis exempting existing businesses, it has not done so.

Finally, Respondents maintain that they should not be found in violation because there have been few complaints about their operation. While the number of neighborhood complaints is a factor that elected officials and zoning officials can and should take into account in developing zoning regulations, it is not a factor that this tribunal can take into account in deciding whether a regulation that has been adopted has been violated.

The Government has established that Respondents were operating beyond the scope of the certificate of occupancy in violation of D.C. Official Code §6-641.09 because they were operating a sexually oriented business without a certificate of occupancy for a sexually oriented business. At the time of the violation, the authorized fine for a violation of D.C. Official Code § 6-641.09 was \$500. *See* 16 DCMR 3231.1; 16 DCMR 3201.1(b). As the violation has been established, a fine of \$500 will be imposed.

IV. Order

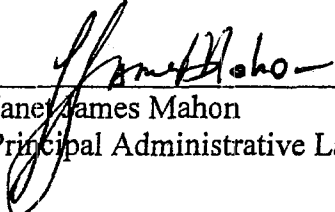
Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this 9th day of March, 2007:

ORDERED, that Respondents shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within 20 calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting 20 days from the date of mailing of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that appeal rights of any person aggrieved by this Order are set forth below.



Janet James Mahon
Principal Administrative Law Judge

PAYMENTS

If a payment is required by this Order, to be properly credited to your case(s) the payment must be sent to the attention of the Clerk of the Office of Administrative Hearings. Payments are only accepted by check or money order and must be made payable to "D.C. TREASURER." More detailed information on how and where to make payments are included on the enclosed payment instruction sheet.

IMPORTANT: Please do not call the D.C. Court of Appeals with questions about how to make any payments required under this Order. If you have questions, please call the Clerk's Office at the Office of Administrative Hearings on 202-442-9094.

APPEALS OF VIOLATIONS OF THE DISTRICT OF COLUMBIA ZONING LAWS OR REGULATIONS

Any party suffering a legal wrong or adversely affected or aggrieved by a determination involving infractions of the District of Columbia Zoning Laws or Regulations, including Title 11, Chapter 32 of the D.C. Municipal Regulations, may appeal such determination to the District of Columbia Board of Zoning Adjustment (the "Board") pursuant to D.C. Official Code § 2-1831.16(b) by filing a Notice of Appeal to the Board at the following address:

District of Columbia Board of Zoning Adjustment
441 4th Street, N.W., Suite 210 South
Washington, DC 20001
202-879-2700

IMPORTANT NOTICES:

1. By law, the amount of a lawfully imposed fine cannot be modified or reduced on appeal. D.C. Official Code § 2-1831.16(g).
2. In accordance with D.C. Official Code § 2-1802.04(a), this Order shall become final 15 calendar days after the date of service. Filing of an appeal does not stay (stop) the requirement to comply with a Final Order, including any requirement to pay a fine, penalty or other monetary sanction imposed by a Final Order. If you wish to request a stay, you must first file a written motion for a stay with the Office of Administrative Hearings. If the presiding Administrative Law Judge denies a stay, you then may seek a stay from the Board.

Certificate of Service

By U.S. Mail (Postage Paid):

Eimaj, Inc
N.T. Filloramo
5225 Pooks Hill Road
Bethesda, MD 20814

Andrea Bagwell, Esq.
Harmon, Wilmot, & Brown, LLP
1010 Vermont Ave, N.W.
Suite 810
Washington, D.C. 20005

By Inter-Agency Mail:

Sinclair Long, Esq.
Department of Consumer and
Regulatory Affairs
941 North Capitol Street NE
Washington, DC 20002

Jill Stern, Esq.
Acting General Counsel
Department of Consumer and
Regulatory Affairs
941 North Capitol Street NE, Suite 9400
Washington, DC 20002

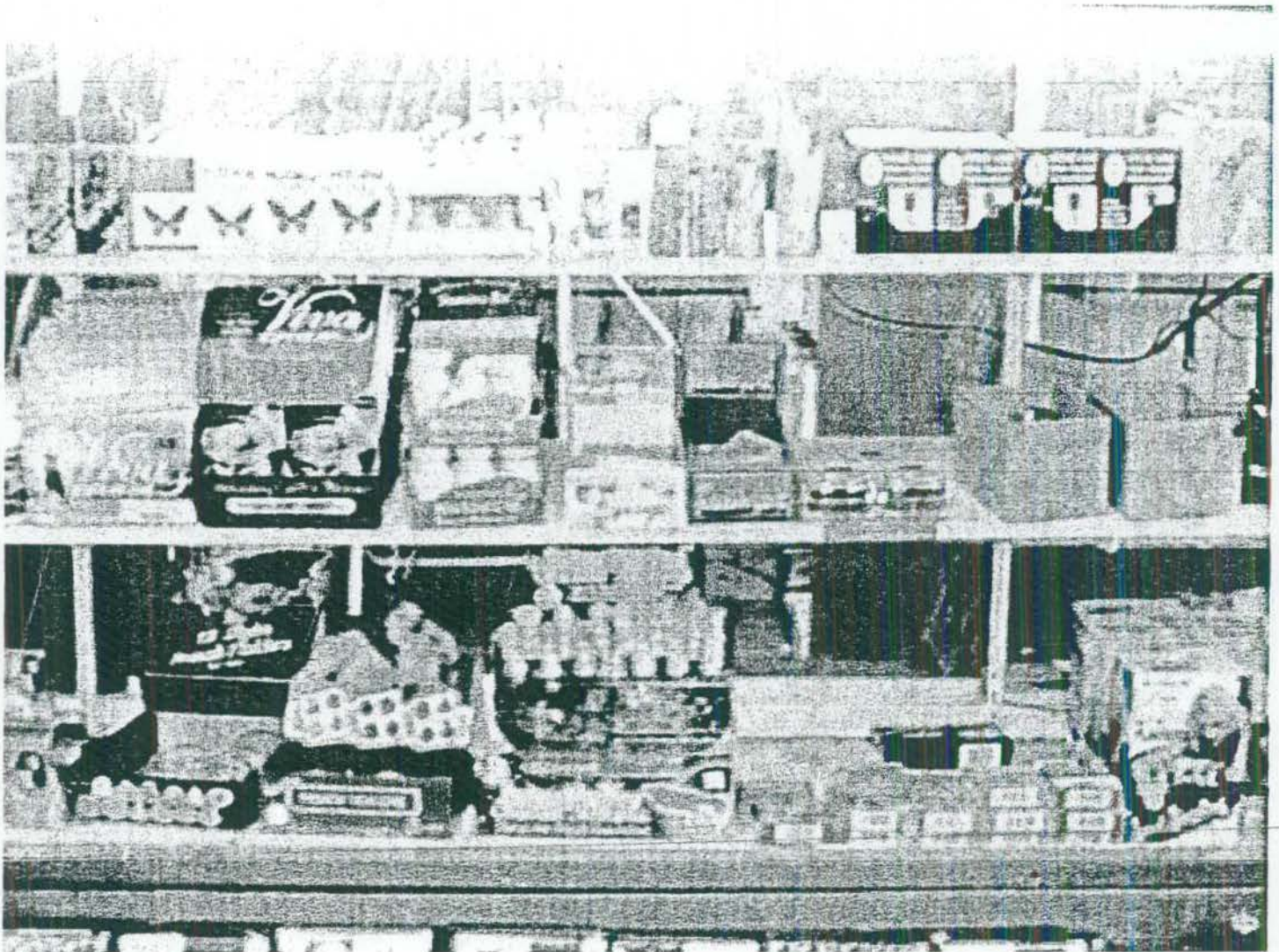
I hereby certify that on March 12,
2007 this document was caused to be
served upon the parties listed on this
page at the addresses listed
and by the means stated



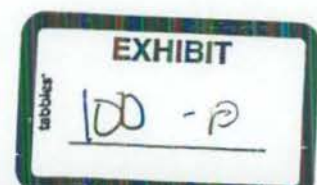
Clerk / Deputy Clerk

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

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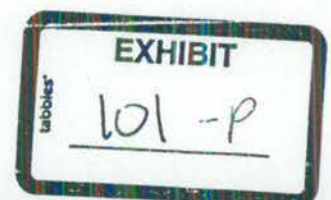


DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

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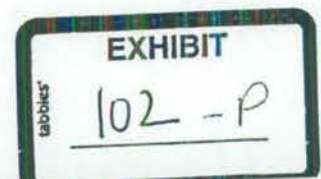


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DISTRICT OF COLUMBIA
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ADMINISTRATIVE HEARINGS

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EXHIBIT

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103 - P

DISTRICT OF COLUMBIA
OFFICE OF
ADMINISTRATIVE HEARINGS

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EXHIBIT

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104 -P

NOTICE OF INFRACTION

Notice No. N 100089

Issuing Agency: ☐ DOH ☐ DMH ☒ DCRA ☒ 1st NOI ☐ CFSA ☐ FEMS ☐ Other _____ ☐ 2nd NOI (1st NOI No. _____)

Date of Service

7445 GEORGIA AVE. N.W.
 Location of Infraction: Type of Location: ☐ Vacant Lot ☐ Construction Site ☐ Occupied ☐ Other _____
 Business/Company Name: EIMAJ INC Charge as Respondent (circle): YES NO Telephone Number: (202) 723-5600
 Individual Name (Last, First, Middle): N.T. FILLORAMO Charge as Respondent (circle): YES NO Telephone Number: (202) 723-5600
 Mailing Address: 5225 ROCKS HILL RD
 City: Bethesda State: MD Zip Code: 20814

Business License/Permit Type _____ Business License/Permit No. _____

You are charged with violating the District of Columbia laws or regulations stated below. You MUST SIGN and RETURN this form WITHIN 15 DAYS of the date of service. You must also indicate below each infraction whether you ADMIT, ADMIT WITH EXPLANATION or DENY. Instructions on back.

If you DENY one or more of the infractions, you must timely sign and return this form as your answer. If you do so, a hearing in your case is pre-scheduled on the _____ day of _____ at _____ AM / PM at the following location:

Office of Administrative Hearings, _____, Suite _____, Washington, D.C.

D.C. Official Code AND/OR D.C. Municipal Regulation Citation DC CODE 6-641.09	Fine for Infraction \$ 500-	Statutory Penalty (if applicable) \$
--	--------------------------------	---

Nature of Infraction: OPERATING OUTSIDE THE SCOPE OF CERTIFICATE OF OCCUPANCY/
 Date of Infraction: 4/29/05 Time of Infraction: 12:30pm Previous Infractions Committed: 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

D.C. Official Code AND/OR D.C. Municipal Regulation Citation	Fine for Infraction \$	Statutory Penalty (if applicable) \$
--	---------------------------	---

Nature of Infraction _____
 Date of Infraction _____ Time of Infraction _____ Previous Infractions Committed: 1 2 3 4

ANSWER: ☐ ADMIT (Pay Fine) ☐ DENY (Appear for a Hearing) ☐ ADMIT WITH EXPLANATION (Hearing by Mail)

Signature _____

Total fine amount due for all infraction(s) \$ _____

WARNING: Failure to answer (see reverse) each infraction on this Notice within 15 days of the date of service by signing and returning this form will result in assessment of a penalty equal to and in addition to the specified amount of the fine. You also may be subject to other penalties and actions allowed by law including suspension and non-renewal of your license or permit, the sealing of your business, a lien being placed on your property, and attachment of your equipment. If this is your second Notice for the charges, your failure to respond within 15 days of the date of service will result in the assessment of a penalty equal to twice the amount of the fine. For Medicaid-funded facilities: This Notice and information obtained through this proceeding may be used for evaluation under applicable law, including 42 CFR Chs. 442 and 483 and for any proceeding under 42 CFR Ch. 431. For information call (202) 442-9091.

I personally declare under penalty of perjury that I observed and/or determined that the infraction(s) charged have been committed.
 Inspector's/Investigator's Signature: [Signature] Print Name: ALAN T. JAMES Date: 5/6/05 Badge/Identification Number: 790

I sign my name below to acknowledge receipt of this Notice of Infraction and not as an admission of guilt or liability to the charge(s) listed.

Respondent's Signature _____ Print Name _____ Date _____
 OAH (WHITE) RESPONDENT (YELLOW) INSPECTOR (PINK) EN

EXHIBIT

105-9

April 29, 2005

MEMORANDUM

To: Toye
From: Allen James
Re: Royce Video
(EIMAJ, Inc.)

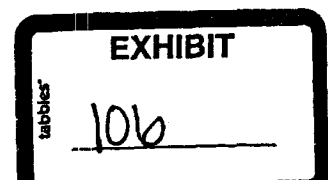
On Thursday, April 28, 2005, a zoning inspection at the above captioned property (7445 Georgia Avenue, N.W.) revealed that the business does have a certificate of occupancy to operate as a "Rental of video cassettes and electronic equipment."

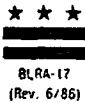
An inspection was necessitated because of allegations from the community that the facility was a "sexually oriented business." One of the mechanisms employed to determine if a business is a sexually oriented business is to determine the percentage of merchandise sold depicting sexual activity.

Our inspection determined that the business is approximately 45'X42' (1,494 Square Feet). The standard used to determine whether a business is a sexually oriented business is to determine how much of the facility used exclusively for the sale of sexually oriented items.

My determination after the inspection concluded that approximately 50% is sexually oriented business.

Accordingly, a citation was issued for five hundred (\$500.00) for operating outside the scope of the certificate of occupancy and forwarded the Office of Administrative Hearing.





District of Columbia Government
Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration Zoning Division
P.O. BOX 37200 — Washington, D.C. 20013-7200

No.B 160889

CERTIFICATE OF OCCUPANCY

5/13/91

(date)

Permission is hereby granted to Eimaj, Inc.
to use suite(s) _____ on the 1st floor(s) _____
of the building located on lot(s) 22 square 2962
known as premises 7445 Georgia Ave., N.W. for the following
purpose(s) Rental Of Video Cassets, & Electronic Equipment
Not Sexually Oriented. [su]

BZA #: _____ EXPIRATION DATE: _____

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES
AT ALL TIMES. IT IS VALID INDEFINITELY, unless an expiration date is stated, ONLY
for the premises, or part thereof, and for the purpose(s), indicated above, and IS NOT
TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE
in the type of business, ownership of business, or part of premises used therefor, will
render this Certificate VOID and a NEW Certificate must be obtained.

ZONE C/2/A FEE \$ 27.00

Donald G. Murray, Director

By Deborah A. Gotsis
Designer

OFFICE COPY

88-P-3601 wd112

EXHIBIT

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107-P



(PRINT OR TYPE WITH BLACK INK ONLY — DO NOT WRITE IN SHADED AREAS)

INTAKE

9:00 - 3:00

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

APPLICATION FOR CERTIFICATE OF OCCUPANCY

Date 5.13.91

CRA-5
Rev. 8/20/83

MARK OUTS & WHITE OUTS NOT ACCEPTED

APPLICATION FEE OF \$20.00 IS NON-REFUNDABLE

(22) Receipt # 39735
(23) Trans. # 28184012

INFORMATION
ON PROPOSED
BUSINESS

(1) Address of Business 7445 Georgia Avenue N.W. Suite/Room # N/A
(2) Telephone No. of Business 202-723-5600 Lot 22 Square 2962
(3) Trade Name of Business Royces Rentals
(4) Is Business Incorporated? ☐ No ☒ Yes (Attach Letter of Good Standing and complete Line 5)
(5) President N.T. Filloramo Vice President Jamie Johns Secretary/Treasurer Roslyn A. Gordon
(6) Is Business a Partnership? ☒ No ☐ Yes
(7) Business Owner Nicholas T. Filloramo (See Instructions) Tel. No. (days) 202-723-5600
(8) Business Owner's Home Address 5225 Brooks Hill Rd Bethesda Md Zip Code 20814
(9) ☐ Ownership Change ☐ Partial Occupancy ☐ New Bldg. ☒ Use Change ☐ Load Change BZA No. ☐
(10) Proposed Use of Business Rental of Video Cassettes, Electronic Equipment

INFORMATION
ON
OCCUPANCY

(11) Is Business Sexually Oriented/According to D.C. Zoning Regulations? ☒ No ☐ Yes
(12) Proposed Occupancy Load (25) N/A Square Feet Occupied 2,520
(13) Which Floors to be Occupied 1st Basement? NO
(14) Prior Use Convenience Store (7-Eleven)

INFORMATION
ON ENTIRE
BUILDING

(15) Building Owner Capital Building Tel. No. (day) 951-9115
(16) Building Owner's Address 4400 East West Hwy Bethesda Md Zip Code 20814
(17) Materials of Building Cinder Block/Brick
(18) Square Feet Occupied 2,520 No. of Floors 1 Basement? NO

ATTESTATION
AND
SIGNATURE

I certify that all of the statements on this application are true to the best of my knowledge and belief. I agree to comply with all applicable laws and regulations of the District of Columbia.
(19) IF OWNER OF BUSINESS [Signature] Signature Date 5.10.91
IF AUTHORIZED AGENT FOR OWNER OF BUSINESS (Attach Authorization)
(20) Name of Agent Roslyn A. Gordon Signature RAGordon Date 5.10.91
PRINT CLEARLY
(21) Address of Agent 1223 Harvard St. N.W. Washington D.C. Zip Code 20009

INFORMATION
DESK

(24) Premises Condemned ☐ No ☐ Yes Cleared By [Signature] Date 5/10/91
(25) Building in RLA Zone ☐ No ☐ Yes Cleared By [Signature] Date 5-13-91
(26) Residential ☐ No ☐ Yes Smoke Det. Info. Given By [Signature] Date 5-13-91

LICENSE
BRANCH

(27) Licenses Required NO license required
(28) Reviewed By [Signature] Date 5.13.91

ZONING
OFFICE

(29) Zone C-2-A BZA No. 8
(30) Prior Use 7-Eleven Food Store Retail - 1st fl.
(31) Certificate # B153850 Date Issued 5/25/88 BZA No. 8 ☒ Approved ☐ Disapproved
(32) Accepted for Filing by [Signature] Date 5/13/91

EXAMINER'S
USE

(33) Prior Use Code 8 Proposed Use Code 8
(34) Use Change ☐ No ☒ Yes Inspect. Required ☒ No ☐ Yes By [Signature] Date 5/13/91
(35) Inspection Fee \$ 27.00 Issuance Fee \$ 27.00
(36) Approved for Issuance by [Signature] Date 5/13/91

INSPECTION
BRANCH

(37) Date of Scheduled C/O Inspections 5/13/91 AM/PM
(38) Inspection Status Approved ☐ Disapproved ☐ By [Signature] Branch 8 Date 5/13/91
(39) Inspector's Signature [Signature] Printed Name 8
(40) Reason for Disapproval [Signature]

OCCUPANCY
PERSONNEL

(41) ☐ Approved ☐ Denied ☐ Cancelled
By [Signature]
(42) Reason for Cancellation/Denial B160889
(43) Certificate of Occupancy No. B160889 Date of Issuance 5-13-91
(44) Bldg. 8 Elec. 8 Plumb. 8 Fire 8 Zoning 8

EXHIBIT

108-P

EXHIBIT
111-10
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EXHIBIT

8-211

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ROYCES VIDEO RENTALS



ALL RATINGS

MOVIES - MOVIES

ADULT TOYS - VIDEO GAMES

MOVIES - MOVIES

OPEN 7 DAYS
FRIDAY & SATURDAY
LATE
2:00 a.m.

Free MEMBERSHIP

*With Approved Credit Card

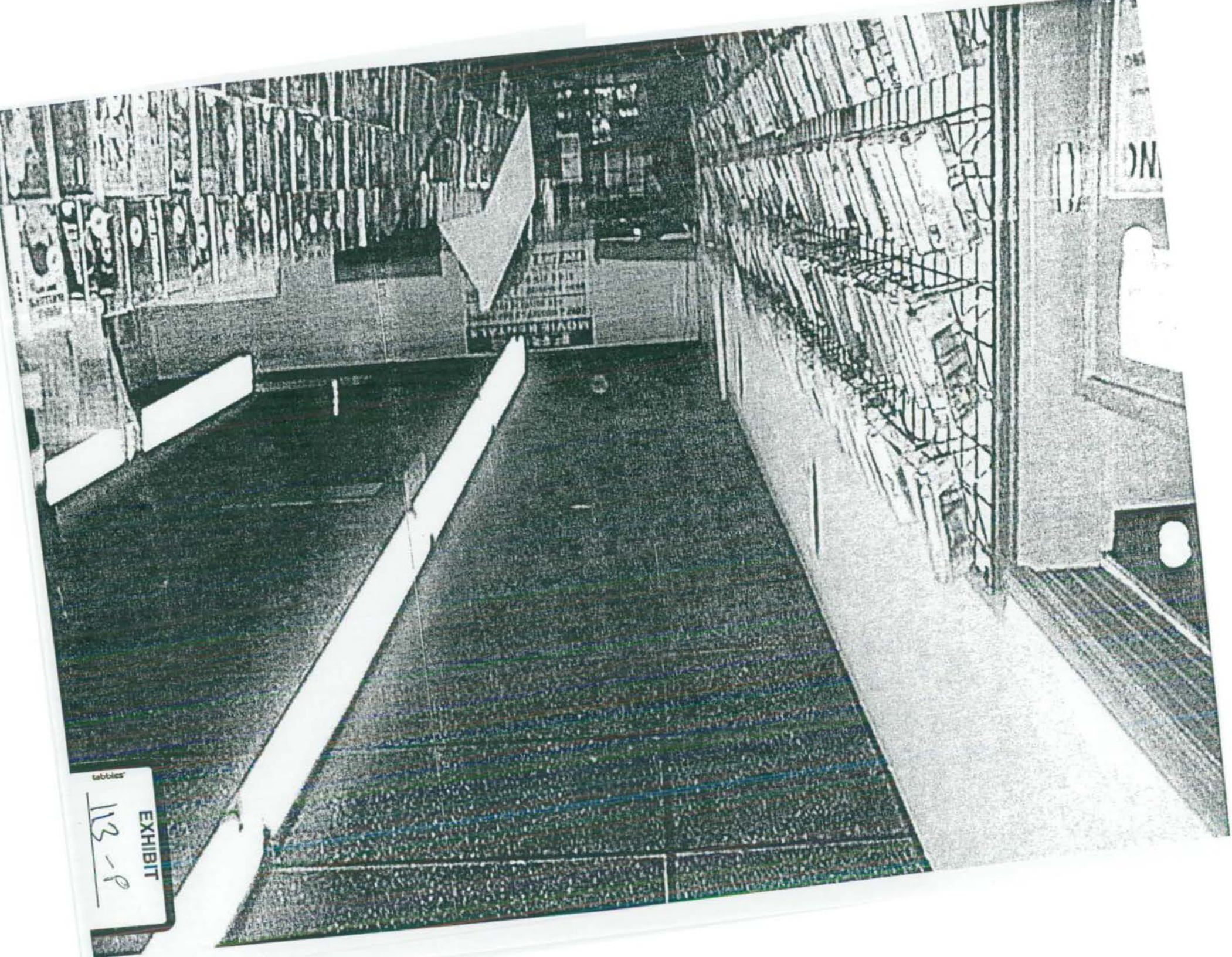
Emergency
NOW!

ADULT DVD
SALE
MOVIES

7415

SALE

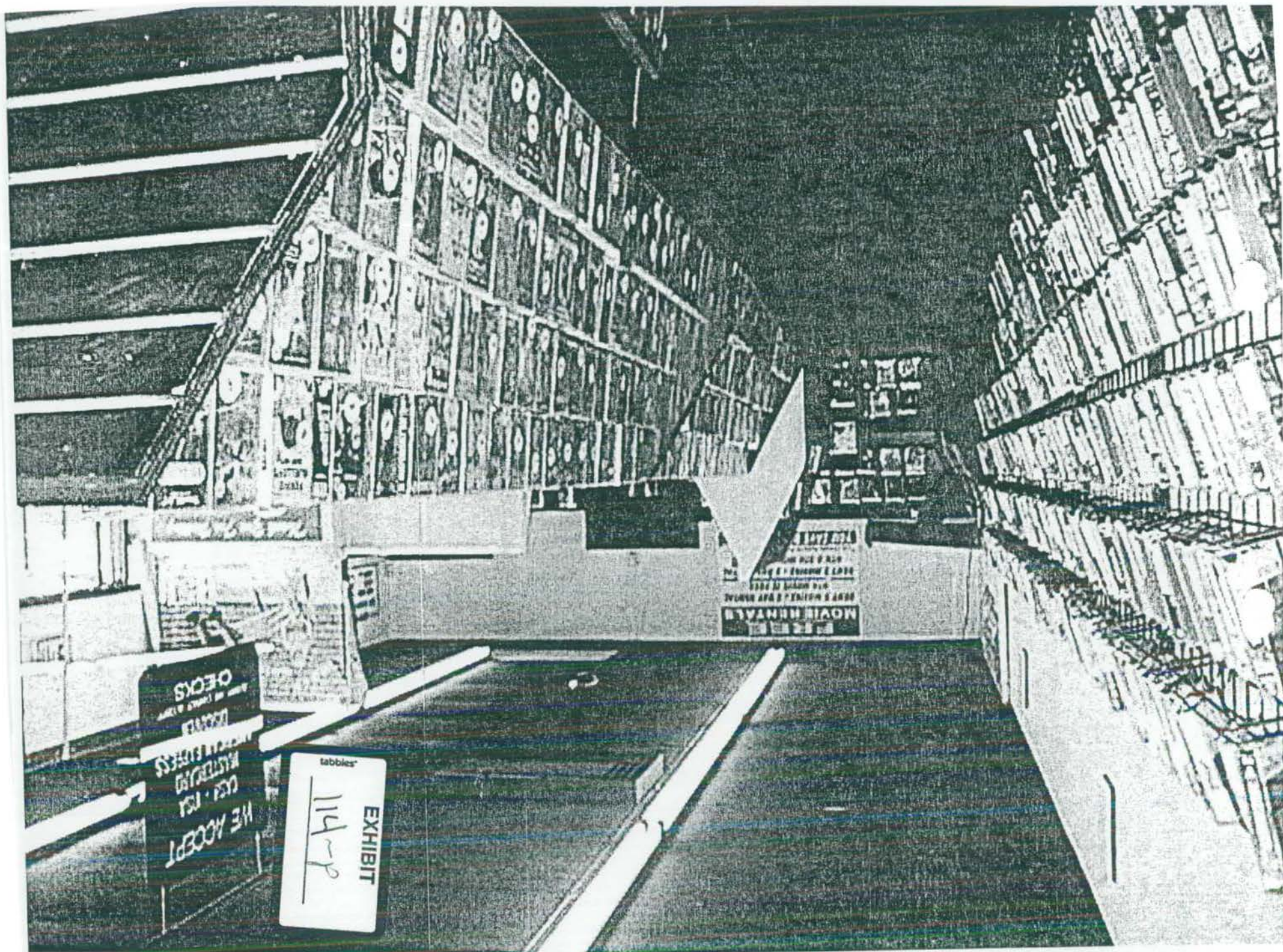


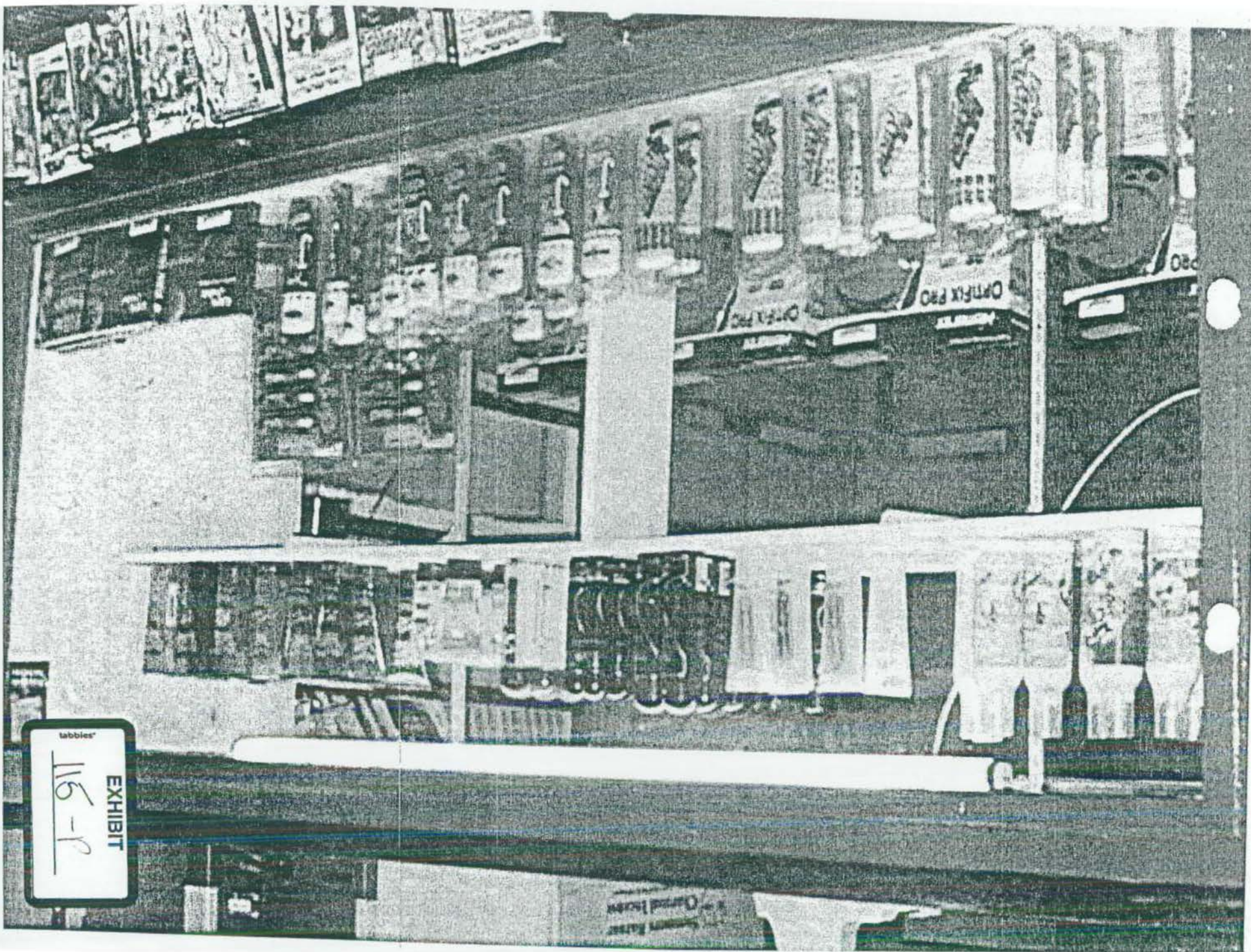


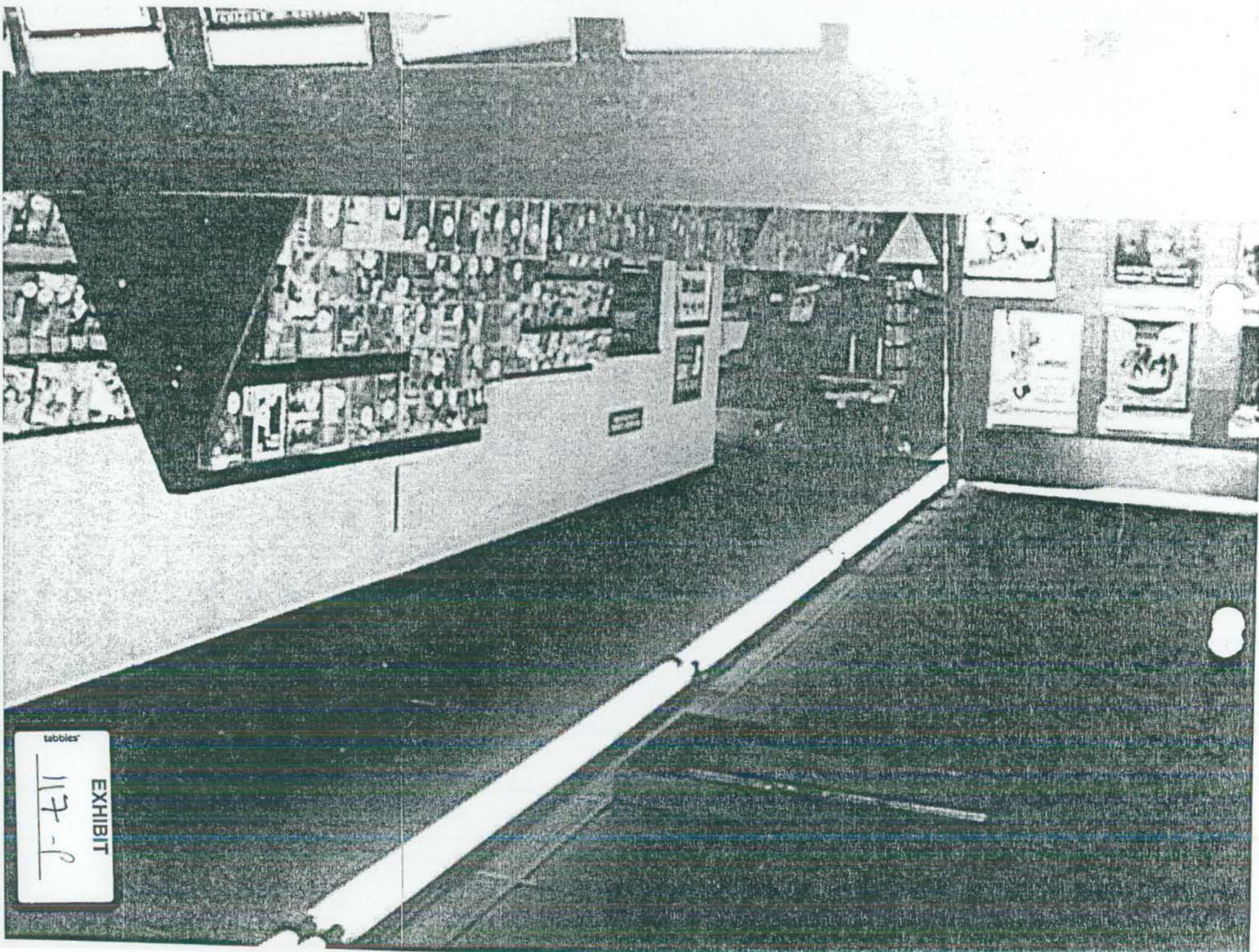
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EXHIBIT

113-8



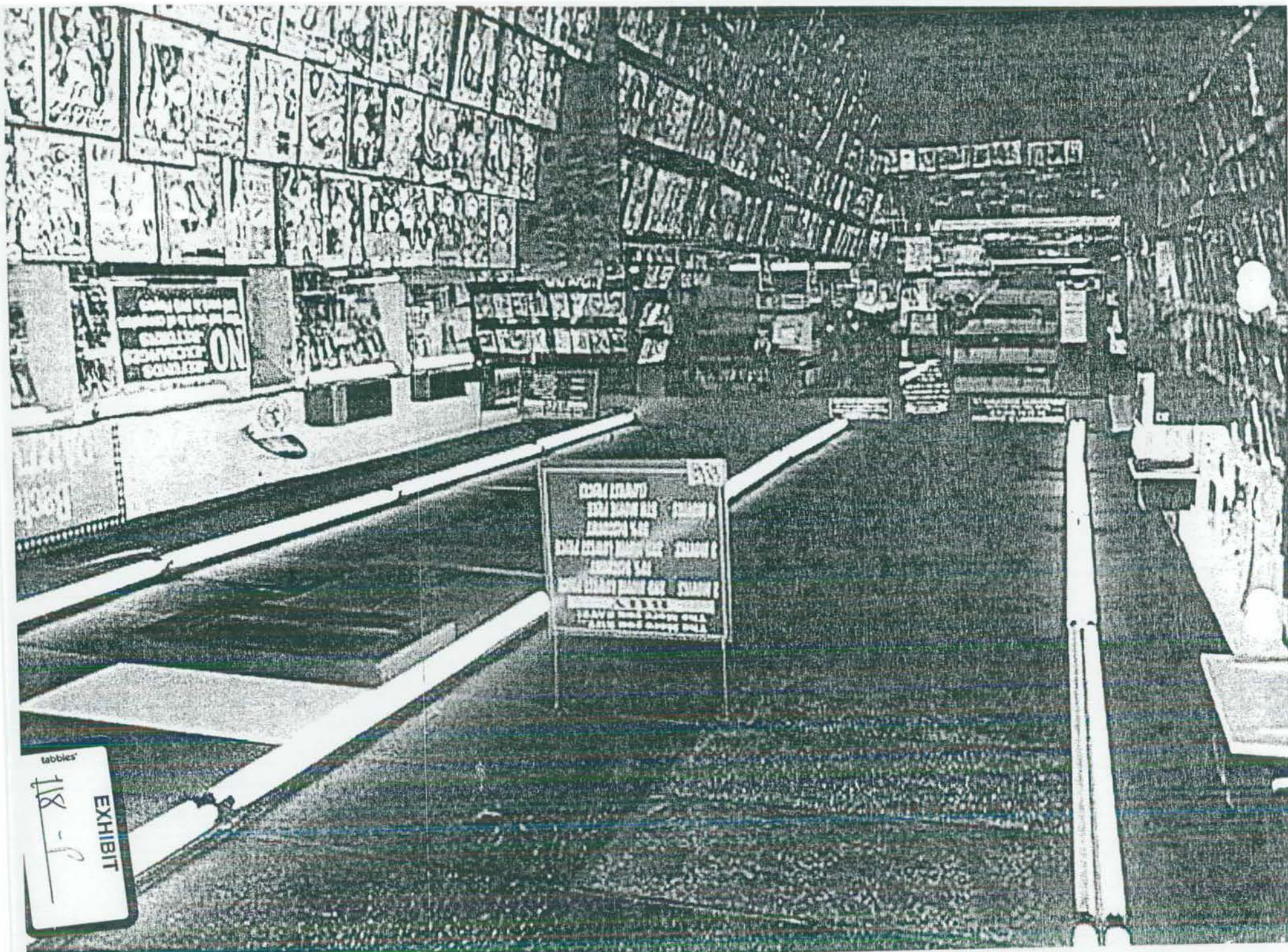




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EXHIBIT

117-1



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118-f

EXHIBIT

Bachelor & Bachelorette PARTY HEADQUARTERS

EXHIBIT

19-f

labiles

BEST QUALITY TOYS
MEMBERS GET AN
ADDITIONAL 20%
OFF ALL TOYS
IN THE SHOP

BLACK
CRAVINGS

MORE
SERIES

CLASSIC
FILMS

BOOTY
TALK

BLACK
CHEER-
LEADERS

SUGAR
WALLS

FREAKS
HOS &
FLOWS

BLACK
STREET
HOOKERS

ASIAN
HEAD

SOFT

ASIAN
HEADS

FILMS
FOR
WOMEN

WOMEN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
 DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
 BUILDING AND LAND REGULATION ADMINISTRATION



Opinion of the Zoning Administrator

Determining Whether a Retail or Wholesale Video Store Selling or Renting Sexually Oriented Materials is a Sexually Oriented Business

Background

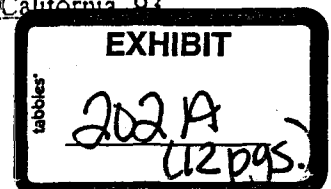
In response to letters and complaints received by the Department of Consumer and Regulatory Affairs alleging that certain retail video stores are, or are intended to be operated as, sexually oriented business establishments as that term is defined in the zoning regulations (Title 11 of the District of Columbia Municipal Regulations, Section 199.1), the Zoning Administrator finds it necessary to interpret the zoning regulations in regards to video stores which sell or rent both general interest¹ and sexually oriented materials.²

Unless a business has grandfathering rights, sexually oriented business establishments may, with approval by the Board of Zoning Adjustment, be located only in C-3-B, C-3-C, C-4, C-M and M zoning districts. These districts provide ample locations for sexually oriented business establishments, and, accordingly, there is no constitutional requirement that sexually oriented business establishments be allowed in any other zoning district. Businesses and the public, however, have a right to know, in more concrete terms, how many sexually oriented materials, if any, may a mixed use video store offer for sale and/or rental before it must obtain a certificate of occupancy as a sexually oriented business establishment and therefore be prohibited from operating in districts other than those listed above.³ It is within the Zoning Administrator's

¹General interest videos are videos which are not sexually oriented. Stores which carry only general interest videos are "general interest" stores, while stores that carry both general interest and sexually oriented videos are referred to as "mixed use" stores.

²"Sexually oriented materials" are those materials which can be characterized by their emphasis on matters depicting, describing, or related to specified sexual activities and specified anatomical areas, as defined at 11 DCMR § 199.1.

³ The zoning regulations do not apply an obscenity standard in defining sexually oriented businesses. The Zoning Administrator, therefore, does not believe that in a zoning context it is appropriate to apply a "community standards" test as described in Miller v. California, 93 S.Ct. 2607 (1973.)



Respondent's J

interpretive authority to provide such clarification. Pursuant to Reorganization Order No. 555, III. F (D.C. Code Ann. Title 1.-Administration, Appendix at 182, 185 (1973)), the Zoning Administrator "shall be responsible for administratively interpreting and enforcing the zoning regulations." The District of Columbia Court of Appeals has repeatedly recognized this authority, often stating, as it did in Kalorama Citizen's Association v. District of Columbia Board of Zoning Adjustment, 640 A.2d 179 (D.C. App. 1994), that:

we give "great deference" to the agency's interpretation of its regulations, which we may not reverse unless it is clearly erroneous or inconsistent with the regulations.

It is the purpose of this Opinion to interpret the zoning regulations of the District of Columbia so as to provide standards by which proprietors of mixed use video stores and the public may determine whether a video store is a sexually oriented business establishment.

Discussion

1. Sexually Oriented Business Establishments: Definitions

The zoning regulations at 11 DCMR § 199.1 define a sexually oriented business establishment as follows:

[A]n establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals, films, materials and articles or an establishment that presents as a substantial or significant portion of its activity, live performances, films or other material which are distinguished or characterized by their emphasis on matters depicting, describing, or related to specified sexual activities and specified anatomical areas.

The terms "substantial," "significant," and "stock in trade" are not defined in the zoning regulations. When a specific word is not defined in the zoning regulations, the Zoning Administrator relies on Webster's Unabridged Dictionary (3rd Edition), to provide clarity.⁴ In considering these definitions, the Zoning Administrator concludes that "substantial" means "to a large degree" but not necessarily a majority of a business's stock in trade. This is especially so because "substantial" is used in conjunction with the word "significant." "Significant" is not synonymous with "predominant" or other majoritarian terms, and therefore it is clear to the Zoning Administrator that the Zoning Commission set a standard of less than 50%. In examining a business's stock in trade, the Zoning Administrator will assess "the aggregate of things necessary to carry on the business,"⁵ which, in addition to inventory items, includes advertising and promotion activities and signage.

⁴See the Appendix to this opinion which carries the full definition of each term, with the relevant portions highlighted in bold italic.

⁵ Webster's, *supra*.

2. Secondary Effects

The United States Supreme Court has made it clear that the application of zoning restrictions to sexually oriented businesses may be "designed to combat the undesirable secondary effects of such businesses." However, such restrictions must do so "without violating the government's paramount obligation of neutrality in its regulation of protected communication," City of Renton v. Playtime Theatres, Inc., 106 S.Ct. 925 (1986). Undesirable secondary effects "contribute to neighborhood blight," *id.*, and include "increased crime rates, depreciation of property values, deterioration of community character and the quality of urban life".⁶ In addition, in Baltimore Boulevard, Inc. v. Prince George's County of Maryland, 684 F.Supp 884 (1988), while some sections of the county's zoning regulations for adult bookstores⁷ were found to be unconstitutional, the section of the regulations that defined adult book stores as having more than 25%⁸ of their stock in trade in sexually oriented materials passed constitutional muster.

In sum, it is clear that through zoning, the District may restrict the placement of sexually oriented businesses to protect its citizens from the undesirable secondary effects of such establishments. Furthermore, it appears that in addition to clearly described standards regarding how a business promotes itself, combined with percentage-based formulae will give all the parties concerned clear guidelines. Moreover, the use of numerical standards will serve as a protection against unfair or arbitrary enforcement. Understanding the foregoing, the question then becomes what percentage of sexually oriented materials may a mixed use video store carry or display and what other activities may it engage in without creating undesirable secondary effects. In that regard, to learn what other governments have determined in this respect, and to assess video retailing industry norms, the Zoning Administrator considered the zoning regulations for adult businesses

⁶From the 1995 resolution of the City Planning Commission of the City of New York. In addition to conducting its own study, New York based its findings on research done by the Town of Islip, New York, Los Angeles, California, Indianapolis, Indiana, Whittier, California, Austin, Texas, Phoenix, Arizona, Manatee County, Florida, New Hanover, North Carolina, and the State of Minnesota, all of which concluded that adult uses tended to produce adverse secondary effects.

⁷At the time the suit in Baltimore Boulevard began, an "adult book store" in Prince George's County was defined as:

Any commercial establishment that has twenty-five percent (25%) of its stock in books, periodicals, photographs, drawings, sculpture, motion pictures, films or other visual representations which depict sadomasochistic abuse, sexual conduct or sexual excitement as defined by Article 27 Section 416A of the Annotated Code of Maryland and does not otherwise qualify as a theatre or nonprofit free lending library.

⁸While Baltimore Boulevard was pending, the county lowered the threshold to 5%, and in 1997, it raised the threshold to 10% of a store's inventory. This change went into effect in January of 1998.

promulgated by the City of New York and Prince George's County, Maryland, as well as a recent national survey conducted of approximately 4,000 video stores by the publication Adult Video News.⁹

3. Regulations in Other Jurisdictions and Industry Practices

A. New York City Regulations:

In 1995, in case # N 950384 ZRY, the Planning Commission of the City of New York amended the City's zoning regulations concerning "Adult Establishments." In the amendments, New York defined an adult establishment as follows:

[A] book store which has a "substantial portion" of its stock in trade in any one or more of the following...video cassettes,¹⁰ or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

In the resolution enacting the zoning amendments, the New York City Planning Commission advised that if more than 40% of a store's stock in trade or retail space was devoted to sexually oriented material, the business would be considered an adult establishment. In addition, New York established a cap of 10,000 square feet of retail space for the display of sexually oriented materials regardless of how much total retail space a store occupies.

B. Prince George's County Regulations:

The County Council has revised inventory percentages twice since Baltimore Boulevard was filed. First, the county lowered its inventory threshold to 5% (from 25%) and then raised the threshold to 10% in late 1997. Regardless of the percentage amount, however, Prince George's County has used inventory percentages to define sexually oriented businesses for at least 10 years.

C. Video Industry Survey:

From 1996 through 1997, Adult Video News conducted a survey of more than 4,000 video

⁹ "The First Amendment does not require a city, before enacting such an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence is relied upon is reasonably believed to be relevant to the problem that the city addresses." In addition, "the city must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." Renton, supra. See also FW/PBS, Inc. v. City of Dallas, 110 S.Ct. 596 (1990). It is the Zoning Administrator's opinion that this reasoning also applies to the administrative interpretation of regulations.

¹⁰ Because the New York City Regulations were updated, video tapes were included in its definition of materials. While video tapes are not specifically mentioned in the District's zoning regulations, they certainly fall within the category of "other material."

stores. In its annual publication, "AVN's 1998 Adult Entertainment Guide," the magazine revealed that in stores which carry both adult and general release titles, the adult titles comprise, on average, 18.5% of a store's inventory. In addition, in the Northeast region of the country, the "adult percentage of the video market" is 36%, while the in the Southeast and Mid-South regions the percentages are 11.7% and 9.9%, respectively. The survey also discovered that in the Northeast the average number of adult videos in stores which carried both adult and general interest videos was 700. In the Southeast and Midsouth, the average inventory of sexually oriented video tapes in mixed use video stores was 267 and 279 items, respectively.

4. Survey of Video Stores in the District Which Carry Sexually Oriented Materials

Beginning in November of 1997, the Department of Consumer and Regulatory Affairs conducted a survey (see Appendix II), of all of the 25 mixed use video stores in the District.¹¹ The purpose of the survey was to determine the percentage and actual number of sexually oriented materials in the respective businesses, as well as the percentage and actual square footage of floor space used in each store for the sale and display of sexually oriented materials. The Department did not include video stores which carried no sexually oriented materials, nor did it survey establishments which have the authority under the zoning regulations to operate as sexually oriented businesses.

As regards the percentage of the inventory represented by sexually oriented materials, the survey showed a broad division into two segments: a high end, beginning at 28%, and a low end, beginning at 6% and reaching no higher than 19%. There were no stores in a middle segment ranging from 20% to 27%. Of the fifteen stores in the high end, nine would exceed New York's 40% standard. Of those, five went beyond 50%, and four of the latter five also offered "sex toys" for sale.¹² All of the fifteen businesses would meet any reasonable interpretation of a "sexually oriented business establishment," as sexually oriented materials are a significant and substantial portion of their stock in trade. In contrast, ten stores at the lower end, which run the gamut from single-store operations to a local chain and a national chain, carried sexually oriented materials in an average of 13% of their total stock.

5. Other Factors

In determining whether sexually oriented materials are a significant or substantial part of a business's stock in trade, the Zoning Administrator thinks it is also appropriate to look at how extensively a video store promotes and/or advertises the sexually oriented materials it has for sale or rental, because advertising and/or promotion are among "the aggregate of things necessary to carry on a business." If a video store expends a substantial effort in advertising or promoting sexually oriented materials, it will likely be perceived as a sexually oriented business, and attract or cause the undesirable secondary effects, such as diminution of property values, and altering

¹¹ The Department used the telephone directory, advertisements, and site visits to identify the video stores.

¹² "Sex toys" are further discussed in this opinion under Standards For Determining Whether a Business is Sexually Oriented, Subsection B(1).

neighborhood character, which the zoning regulations are designed to prevent. Furthermore, in addition to using percentages of retail space and inventory as guidelines, it is appropriate to establish numerical standards. Numerical standards are required, because at some point, even following the percentage guidelines, a business could have such a large number of sexually oriented materials that the store would generate undesirable secondary effects.

In addition, if a video store also sells sexually oriented magazines or books, the Zoning Administrator will determine whether said books or magazines are a substantial or significant portion of all of the magazines and books offered for sale by the business. Similarly, if the sexually oriented materials for sale are new, then the general interest items of the same category which are offered for sale should also be new. This comparison will be made so that video stores will not be able to feign compliance with the Zoning Regulations by carrying used or undesirable general interest items while stocking new, more merchantable, sexually oriented materials.

Conclusions

In assessing the facts, it is clear that there is a significant range between the inventory percentages set by Prince George's County and the City of New York. In addition, the volume of business done in adult videos in mixed use video stores varies dramatically region by region. The Zoning Administrator, however, cannot agree with Prince George's County that if a video store has as little as 10% of its stock in trade in sexually oriented materials it will cause undesirable secondary effects. Nor, on the other hand, can the Zoning Administrator agree that the 40% figure promulgated by New York City will provide an adequate bulwark against undesirable secondary effects.

The District's survey shows that a majority (fifteen) of the mixed use video stores in the District have close to 30% or more of their inventory in sexually oriented materials, with more than half of those stores exceeding even New York City's standards. All fifteen are clearly sexually oriented because sexually oriented materials are a substantial and significant portion of their stock in trade. All fifteen may be expected to cause the negative secondary effects that have been found in the studies and cases referred to above. That these stores already operate in the District in no way implies a contrary finding concerning secondary effects. Rather, the fact is that the District in recent years, due to budget constraints, loss of personnel, restructuring, and other factors, has lacked the resources to enforce all aspects of the zoning regulations, let alone conduct studies to document the effect of such businesses on the surrounding neighborhoods. In addition, neither the Constitution nor the applicable cases require the District to conduct such a study. The concerns raised by residents of at least two neighborhoods about alleged sexually oriented video stores beginning operations provide sufficient basis for the Zoning Administrator to act to interpret the zoning regulations and to devote still-scarce resources to enforce them, before additional businesses commence operations and before existing businesses expand sexually oriented operations without effective regulation.

After considering the measures taken in other jurisdictions, and examining mixed use video stores in the District, the Zoning Administrator believes that a standard approximating the national average of 18.5% of a store's inventory (as reported in Adult Video News), is appropriate.

Therefore, while taking other factors into account, the Zoning Administrator believes that if more than 15% of a store's inventory is comprised of sexually oriented materials, it is a sexually oriented business establishment. This standard accommodates the District's legitimate mixed use video stores which have an average of 13% of their stock in sexually oriented materials, and limits the sale and rental of such items to the kind of accessory or incidental use contemplated by the zoning regulations.

Standards For Determining Whether a Business is Sexually Oriented.

Based upon the foregoing, the Zoning Administrator interprets the District of Columbia Zoning Regulations, 11 DCMR §199.1, as is set forth below.

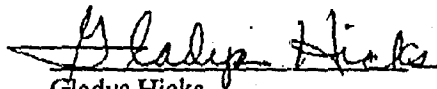
- A. A retail or wholesale business has a substantial or significant portion of its stock in trade in sexually oriented materials, and is therefore a sexually oriented business, when any of the factors set forth below in paragraphs 1, 2, 3, or 4 applies:
1. More than 15% of its inventory on display, in areas open to the public,¹³ counted piece-by-piece,¹⁴ are sexually oriented.
 2. It devotes more than 15% of any one of its advertisements (in column inches for print advertising and in air-time seconds for radio and television advertisements) to the sexually oriented materials it sells or rents. For print advertising, the words or pictures describing sexually oriented materials cannot be the only words or pictures in the advertising, and cannot be larger than the smallest pictures and/or typeface advertising non sexually oriented materials. In addition, the Zoning Administrator will consider the use of color, type size, layout or other graphic devices used in the store's advertising to determine whether a disproportionate emphasis has been placed on the store's sexually oriented materials.
 3. Looking at each individual promotional activity separately (which includes but is not limited to contests, guest appearances, discounts, coupons or web site information), the store gives disproportionate emphasis to the sexually oriented materials in its inventory. Factors such as the use of color, type size, layout and other graphic devices will also be considered.
- B. Irrespective of the applicability of the factors set forth above, a business establishment is sexually oriented as set forth in either of paragraphs 1 or 2 below:

¹³ "Open to the public" means those areas of the business establishment where customers are ordinarily allowed. Areas that are restricted to minors are considered "open to the public" for this calculation.

¹⁴ Materials in a storeroom or other areas that cannot be seen by customers, whether general interest, or sexually oriented, shall not be counted.

1. The Zoning Administrator makes the determination that the sale of merchandise such as three dimensional reproductions of human genitalia, and other items which are commonly known as "sex toys," are sexually oriented because such merchandise either "depicts" human genitals and other specified anatomical areas, or are related to specified sexual activities, and that the sale or display of such items is not a customary accessory use to a mixed use video store in the District of Columbia. A business that sells or displays such merchandise is a sexually oriented business.
 2. Furthermore, the presence or operation of booths or other apparatuses through which sexually oriented video tapes may be viewed on the premises of a video store, and for which consideration of any kind is charged, is not a customary accessory use to a mixed use video store. A business that provides or operates such apparatuses is a sexually oriented business.
- C. After obtaining a certificate of occupancy as a non-sexually oriented business, a business may still be determined to be operating as a sexually oriented business establishment based on the source of its revenues. In making an assessment after a business has opened, the Zoning Administrator may consider, in addition to the other factors discussed herein, the percentage of business, in dollar volume, generated by the establishment's sexually oriented materials, and apply the 15% standard.

In order to ensure that this interpretation of the zoning regulations meets with the approval of the Zoning Commission, a copy of this opinion shall be sent to the Commission for review.



Gladys Hicks,
Acting Zoning Administrator
January 29, 1998

APPENDIX

The terms "substantial", "significant" and "stock in trade" are defined below. The portions of the definitions which the Zoning Administrator believes are relevant to this issue have been highlighted in bold italics.

1. ¹ **substantial** \sebz'tanchel, -b'lt-, -taan-\ adj [ME *substancial*, fr. LL, fr. *substantial*, fr. L *substantia* substance + *alis* -al -- more at SUBSTANCE] 1 a : consisting of, relating to, sharing the nature of or constituting substance : existing as or in substance : MATERIAL (<~life> <the~ realities> <most ponderous and~ things -- Shak.>) b : not seeming or imaginary : not illusive : REAL, TRUE <the~ world> <a mere dream neither~ nor practical> c : being of moment : IMPORTANT, ESSENTIAL 2 a : adequately or generously nourishing : ABUNDANT, PLENTIFUL <set a ~ table> <after that too~ dinner> b : Possessed of goods or an estate : moderately wealthy : WELL-TO DO <a~ man>; *often* : having a good and well maintained income producing property <a~ farmer> <the more~ tradesman> c : considerable in amount, value, or worth <made a~ gain on the transaction> 3 a : having good substance : firmly or stoutly constructed : STURDY, SOLID, FIRM <a~ house> <~ cloth> b : having a solid or firm foundation : soundly based : carrying weight <a~ argument> <~ evidence> 4 a : being that specified to a large degree or in the main <a~ victory> <a~ lie> b : of or relating to the main part of something syn see MASSIVE
- ² **substantial** \n-s [ME *substancial*, fr. *substancial*, adj.] : something that is substantial as a : something having substance or actual existence b : something having good substance or actual value c : *something of moment : an important material matter, thing, or part*
2. ¹ **significant** \kent\ adj [L *significant-*, *significans*, pres. part. of *significare* to signify -- more at SIGNIFY] 1 : having meaning; esp : full of import : SUGGESTIVE, EXPRESSIVE <the painter's task to pick out the ~ details -- Herbert Read> <~ anecdote> 2 a : suggesting or containing some concealed, disguised, or special meaning : standing as a sign or token <perhaps her glance was~> b : INDICATIVE <his actions were more~ of his real purpose than were his words> 3 a : having or likely to have an influence or effect : deserving to be considered : **IMPORTANT, WEIGHTY, NOTABLE** *(even though the individual results may seem small, the total of them is ~ F. D. Roosevelt)* b : characterized by conveyance of an idea, thought, or feeling <transform what would otherwise be meaningless juxtapositions or sequences of sensations into~ entities -- Vernon Lee> c : probably caused by something other than mere chance <~ decrease in average yearly growth> <statistically~ correlation between vitamin deficiency and disease> d : characteristic and essential to the determination of some larger element of a language : DISTINCTIVE <a~ grammatical form> <every language . . . moves within a clearly definable range of ~ speech sounds -- R. A. Hall b. 1911> <the difference between the initial of keel and cool is not~ in English> syn see EXPRESSIVE
- ² **significant** \N-S : something that has or conveys significance : SIGN, TOKEN, SYMBOL

3. **stock-in-trade** \sɒk-ɪn-ˈtreɪd/ *n* 1: the equipment necessary to or used in the conduct of a trade or business: as **a** : the goods kept for sale by a shopkeeper **b** : the fittings and appliances of a workman **c** : *the aggregate of things necessary to carry on a business* 2 : something held to resemble standard equipment of a tradesman or business (the light and frivolous charm which was her *stock-in-trade* -- S. H. Adams) (its civic beauty, its *stock-in-trade*, is being ruined by parked cars -- Janet Flanner) (this motive had been a *stock-in-trade* of medieval art -- Verena Trudel)

Store Name	Address	Zoning District	C of O #	Total Square Feet of Retail Space	Square Feet of Retail Space for Sexually Oriented Materials	Percentage of Retail Space Used for Sexually Oriented Materials	Total Number General Interest Items	Total Number Sexually Oriented Materials	Percentage of Materials Which are Sexually Oriented	Sexual Accessories Sold
Tower Video	2000 Pennsylvania Avenue, N.W.	C-3-C	B-157551	1,656	192	12%	19,287	3,536	15%	NO
Video Corner	2311 Clavert Street, N.W.	C-2-B	B-156671	531	126	24%	3,058	3,889	56%	NO
Video Corner	3222 N Street, N.W.	C-2-A	B-163357	1,231	165	13%	3,403	2,184	39%	NO
Video Entertainment	905 H Street, N.E.	C-2-A	B-177591	520	72	14%	1,987	392	16%	NO
Video King	1845 Columbia Road, N.W.	C-2-B	B-162133	1,020	84	8%	5,748	1,175	17%	NO
Washington Video	1511 17th Street, N.W.	C-2-B	B-145356	1,387	1,152	83%	1,990	1,871	48%	NO
Washington Video	1653 Wisconsin Avenue, N.W.	C-2-A	B-158804	550	130	24%	2,325	1,151	33%	NO
Washington Video	2012 S Street, N.W.	C-3-B	B-140483	508	224	44%	3,104	2,228	42%	NO
Washington Video	401 M Street, S.W.	UR	B-159667	856	208	24%	1,763	1,152	40%	NO

Store Name	Address	Zoning District	C of O #	Total Square Feet of Retail Space	Square Feet of Retail Space for Sexually Oriented Materials	Percentage of Retail Space Used for Sexually Oriented Materials	Total Number General Interest Items	Total Number Sexually Oriented Materials	Percentage of Materials Which are Sexually Oriented	Sexual Activities
Capitol Video Sales	2028 P Street, N.W.	C-2-B	B-158531	987	406	41%	2,335	2,177	48%	NO
Capitol Video Sales	1729 Connecticut Avenue, N.W.	C-3-B	B-170134	1,563	875	56%	3,302	5,596	63%	YES
Capitol Video Sales	514 8th Street, S.E.	C-2-A	B-137377	3,920	480	25%	4,642	8,370	65%	YES
Capitol Video Sales	201 Massachusetts Avenue, N.E.	C-2-A	B-148182	1,012	312	31%	5,049	2,060	29%	NO
Discount Magazines & Video	750 6th Street, N.W.	C-4	B-1891525	338	130	38%	5,015	1,993	28%	YES
Fun Fair	919 5th Street, N.W.	C-2-C	B-176169	243	1,155	93%	898	2,924	77%	YES
Lamont Video	3171 Mt. Pleasant Street, N.W.	C-2-A	B-160478	1,116	216	19%	4,843	661	12%	NO
Penn Video	645 Pennsylvania Avenue, S.E.	C-2-A	B-167198	600	58	58%	2,476	2,176	47%	NO
Potomac Video	3408 Idaho Street, N.W.	C-2-B	B-167024	1,600	90	5%	10,790	686	6%	NO
Potomac Video	3418 Connecticut Avenue, N.W.	C-2-A	B-149814	1,216	209	17%	9,457	2,198	19%	NO
Potomac Video	4301 Connecticut Avenue, N.W.	C-3-A	B-167328	1,029	169	16%	6,876	762	10%	NO
Potomac Video	4828 Connecticut Avenue, N.W.	C-3-A	B-150747	1,918	163	9%	12,330	890	7%	NO
Potomac Video	5536 Wisconsin Avenue, N.W.		B-175850	5,322	760	14%	15,550	1,821	11%	NO
Royce's Video Outlet	7445 Georgia Avenue, N.W.	C-2-A	1920161	1,311	665	51%	1,823	6,081	61%	YES
Stage One Video	3748 10th Street, N.W.	C-2-A	B-177060	3,747	370	10%	5,256	1,171	18%	NO
Tape Headz Video	1709 17th Street, N.W.	C-2-B	B-172514	386	170	44%	1,719	1,052	38%	NO

Certificate of Service

By U.S. Mail (Postage Paid):

Eimaj, Inc
N.T. Filloramo
5225 Pooks Hill Road
Bethesda, MD 20814

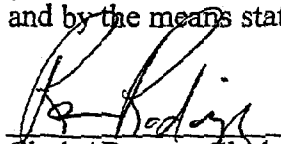
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