

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT

PUBLIC HEARING

WEDNESDAY

NOVEMBER 19, 1997

The Public Hearing convened in Room 220, 441 Fourth Street, N.W., Washington, D.C. 20001, pursuant to notice.

This transcript was produced from tapes provided by the District of Columbia Office of Zoning.

I-N-D-E-X

CASE

PAGE

5. A. MASON AND J.M.M. CORPORATION - #16279

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P-R-O-C-E-E-D-I-N-G-S

BOARD MEMBER: The next case is application 16279 of A. Mason and J.M.M. Corporation, pursuant to 11 DCMR 3107.2, for a variance from the use provisions of Section 721.2 to allow a sexually-oriented business establishment, member-only, private video club rental, retail amusement arcade in a DD-C2C District (phonetic) at premises 919 5th Street, N.W., Lot 325, Square 516.

Would all persons wishing to testify in this application please rise to take the oath? Anybody wishing to testify needs to rise to take the oath. Gentlemen.

(Administration of oath.)

You may be seated.

MR. WRIGHT: Madam Chairman and members of the Board, my name is James T. Wright, private attorney. I represent the application of A. Mason and J.M.M. Corporation pursuant to 11 DCMR 3107.2 for a variance from the use provision subsection 721.2, to allow a sexually-oriented business establishment.

BOARD MEMBER: Could you speak up? I'm having trouble hearing you.

MR. WRIGHT: Members-only, private video club rental, retail amusement arcade in DD-C2C District at premises 919 5th Street, N.W., Lot 325, Square 516.

We are advised that all the necessary papers are on file with you. Today with me is Mr. Jose Montel

1 (phonetic), the president of J.M.M. Corporation, and Mr. Carl  
2 N. Lynch (phonetic), the resident agent for the corporation,  
3 both of whom will testify to various matters before us.

4 First of all, I'd like for Mr. Lynch to address,  
5 if you will, the question of parking and what unfavorable  
6 impact this business may have in the community.

7 MR. LYNCH: Good afternoon. My name is Carl  
8 Noray Lynch. I'm an investigator for J.M.M., Incorporated.  
9 When we put in the application I went to each and every  
10 business in the area and talked to each. The only places on  
11 there is a paint shop, liquor store, and a 360 Club and  
12 restaurant in that area on K Street in the 500 block.

13 The parking facilities that's there -- there's  
14 no other residence area there. There's four parking lots; two  
15 of them is open 24 hours a day. There's a D.C. Government  
16 parking lot on 5th Street -- 5th and K -- that's open from 6  
17 in the morning until 7 at night for the D.C. Superior Court  
18 and the D.C. Government employees to park there which is  
19 locked after 7 o'clock.

20 There's three other parking lots that's open 24  
21 hours a day and I inquired to each one of these lots, people,  
22 and they informed us that after 7 o'clock that the people that  
23 parks on there -- that we will be responsible for -- which we  
24 have people rotating the parking lots.

25 On the streets there's -- the liquor store is  
26 usually closed at ten so there's no one coming to park there.

1 The paint shop that's on that street is closed at five.  
2 There's a restaurant and club that's on 5th and K and they're  
3 closed at seven in the evening. So in that surrounding area  
4 the parking is variable for the public itself.

5 The reason why we are trying to want to become a  
6 club for members only is because that unfortunately,  
7 surrounding area is heavy crime-related in the four blocks.  
8 And unfortunately some of the unreasonable people dribbles up  
9 to where we're at. And we have had several incidents with  
10 people out there. I have a broken knuckle and people have had  
11 flat tires and stuff.

12 We have inquired with Metropolitan Police  
13 Department for assistance and they only give us assistance  
14 when they come around and ask for donations for the 1st  
15 District this and the 1st District that,  
16 which we have checks that they have accepted on several  
17 occasions.

18 And when we have problems inside the store we  
19 usually solve them. When the people, the who -- when they  
20 come we try to solve them inside the store. When they come  
21 outside the store we try to solve them, and unfortunately the  
22 Police Department says that we cannot come outside the store,  
23 because we're outside the store.

24 So they told us that we had to put "No  
25 Loitering" signs up, which in the photograph that's in the  
26 jacket you will see. And we have well-lit signs saying "No

1 Loitering" on both sides of the building.

2 BOARD MEMBER: It appears from the photos in the  
3 record that you're currently occupying this property?

4 MR. WRIGHT: Yes.

5 MR. LYNCH: Yes ma'am.

6 BOARD MEMBER: Do you have a Certificate of  
7 Occupancy for this business?

8 MR. LYNCH: Yes, we do, ma'am. We put every  
9 copy of everything we put in the jacket there.

10 BOARD MEMBER: Well now, this C of O says "video  
11 membership store not sexually-oriented".

12 MR. LYNCH: Okay, now that's the problem that we  
13 started out with. When Mr. --

14 BOARD MEMBER: What do you have currently?

15 MR. LYNCH: Okay. We have -- when we first  
16 bought this place --

17 BOARD MEMBER: What do you have currently?

18 MR. LYNCH: We have video movies and we have  
19 regular movies also. According to 614, Mr. Mooney (phonetic)  
20 and them told us that we had to have 30 percent of regular  
21 movies and the rest sexual-orientation, according to their  
22 rules and regulations.

23 From 614 8th Street; that what -- they came and  
24 gave us -- when Mr. Montel bought this from D.C. Transit they  
25 had -- D.C. Trading (phonetic) -- they had filled out an  
26 application with them and it was wrong, completely wrong.

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1                   The gentleman who filled out the application  
2                   falsely gave documents to the people and when they came down  
3                   J.M.M. Corporation had bought it from D.C. Trading and then we  
4                   were going on the assumption that everything was in order.

5                   When we found out -- here which I got from them  
6                   will verify that -- that the people that we bought it from had  
7                   lied to them and they had various standards with them,  
8                   inquiring why did they did the occupant license, occupant  
9                   certificate and occupancy license when they filled out the  
10                  wrong information.

11                  So we went and start all over again, and here's  
12                  the --

13                  BOARD MEMBER: You're saying that you do have a  
14                  revised Certificate of Occupancy that allows you to have --

15                  MR. LYNCH: Yes ma'am --

16                  BOARD MEMBER: -- sexually-oriented --

17                  MR. LYNCH: Yes ma'am.

18                  BOARD MEMBER: Hand it to the secretary, please.  
19                  Notwithstanding that --

20                  BOARD MEMBER: When did you all acquire this  
21                  property?

22                  MR. LYNCH: Ma'am?

23                  BOARD MEMBER: When did you acquire this  
24                  property?

25                  MR. LYNCH: We acquired the property in March --  
26                  March 12th, 1997.

1 BOARD MEMBER: Okay. Oh, so you don't have your  
2 own Certificate of Occupancy?

3 MR. LYNCH: Yes, we do. We have --

4 BOARD MEMBER: But we don't have a copy? Are we  
5 getting a copy of it?

6 MR. LYNCH: You're getting a copy of it now. We  
7 put all this in the jacket -- I put it in myself.

8 BOARD MEMBER: Well, the one in the jacket is  
9 dated 1996, which was prior to your acquiring the property.

10 MR. LYNCH: Right, this was prior. That's from  
11 D.C. Trading Post.

12 BOARD MEMBER: The Department of Consumer and  
13 Regulatory Affairs --

14 MR. LYNCH: Right, on --

15 BOARD MEMBER: -- gave a Certificate of  
16 Occupancy in 1996?

17 MR. LYNCH: Yes ma'am.

18 BOARD MEMBER: But you don't have one of your  
19 own --

20 MR. LYNCH: Yes, we do --

21 BOARD MEMBER: -- since you acquired this?

22 MR. LYNCH: We have one now for J.M.M.,  
23 Incorporated.

24 BOARD MEMBER: What did you need a 90-day  
25 moratorium for?

26 MR. LYNCH: Because -- because the tickets that

1 we had got, we -- they were -- the tickets was given for D.C.  
2 Trading Post when they were there. When we found -- when they  
3 -- when we --

4 BOARD MEMBER: What was the nature of the  
5 tickets?

6 MR. LYNCH: The tickets was -- they was because  
7 of the violation of the application that the gentleman had  
8 filled out. And he -- he didn't put down the right statements  
9 to the people. And when they came to investigate they found  
10 out that the application was -- he had told -- he had  
11 completely lied to them about it.

12 So when we found out they gave us 90 days to  
13 straighten up the -- put in the application and everything to  
14 get the business in order the way the rules and regulations  
15 went by that they gave us.

16 BOARD MEMBER: Okay. There's no C of O here in  
17 what you've given me. Now, on the permit that was filed in  
18 February of '97 it specifically says, "Not sexually-oriented".

19 BOARD MEMBER: That's the J.M.M. Corporation?

20 BOARD MEMBER: That's these guys.

21 MR. LYNCH: That was not -- that was -- they  
22 said they gave us a month.

23 BOARD MEMBER: What we're looking for --

24 MR. LYNCH: Okay. Okay, here's the Certificate  
25 that was given to us in November the 13th, 1996. And we  
26 changed --

1 BOARD MEMBER: You said you didn't own the  
2 property until '97.

3 MR. LYNCH: We got the property -- we got  
4 control of the property in '97.

5 BOARD MEMBER: Were you leasing it before and  
6 then you purchased it?

7 MR. LYNCH: Yes, ma'am. We leased it from the  
8 D.C. Trading Post.

9 BOARD MEMBER: What day is this one?

10 MR. LYNCH: This is November the 13th, '96. Mr.  
11 Jose Montel was leasing it from D.C. Trading Post.

12 BOARD MEMBER: Well now, who is Mr. Montel and  
13 who -- is he J.M.M.?

14 MR. LYNCH: Yes, ma'am. He's the president now  
15 of J.M.M., Incorporated.

16 BOARD MEMBER: And he was leasing it from the  
17 prior owner?

18 MR. LYNCH: Yes, ma'am.

19 BOARD MEMBER: And you bought it from the  
20 Trading Post?

21 MR. LYNCH: Yes, ma'am.

22 BOARD MEMBER: In March of this year?

23 MR. LYNCH: Yes --

24 BOARD MEMBER: In 1960?

25 MR. WRIGHT: In 1996.

26 BOARD MEMBER: In 1990?

1 MR. WRIGHT: Six; 1996.

2 BOARD MEMBER: In 1996. And you have a  
3 Certificate of Occupancy --

4 MR. LYNCH: No.

5 BOARD MEMBER: You don't have a Certificate of  
6 Occupancy?

7 BOARD MEMBER: Gentlemen, here's the problem.  
8 This Certificate of Occupancy says, "not sexually-oriented",  
9 okay? It's November 13, '96. The one you put in the record,  
10 November 1996, six days later, also says, "not sexually-  
11 oriented", okay? Your permit -- your application that you've  
12 given us describes the use as not sexually-oriented, okay?

13 MR. LYNCH: We were following the rules and  
14 regulations what 614 said. They told us that we would have to  
15 have 30 percent of regular movies and the rest sexual  
16 orientation; where we would have to have the regular movies --  
17 30 percent of the movies on the outside and then the rest  
18 behind the wall of sexual orientation.

19 BOARD MEMBER: And that's what you have now?

20 MR. LYNCH: Yes, ma'am.

21 BOARD MEMBER: So why are you applying now to  
22 use it as a sexually-oriented business?

23 MR. LYNCH: Well, we use it -- we're asking for  
24 membership-only, ma'am. So where the public will not come in  
25 and we can rent the movies out to people, you know,  
26 individuals. There will be no congregation of people coming

1 in front of the store, drop in the neighborhood or anything  
2 else. So we wanted to become a membership.

3 BOARD MEMBER: I'm going to ask our staff to  
4 make a copy of this for our record. I think we need to give  
5 it back. It appears to be their original.

6 BOARD MEMBER: And this is their original also.

7 BOARD MEMBER: Do you need these back, sir?

8 MR. LYNCH: Ma'am?

9 BOARD MEMBER: Do you need these back?

10 MR. LYNCH: Yes, ma'am.

11 BOARD MEMBER: Would you make a copies of these  
12 two for the record?

13 BOARD MEMBER: What are the exceptional  
14 circumstances that would justify a variance?

15 MR. WRIGHT: Let me see if I can clarify --

16 BOARD MEMBER: I mean, you have the letter from  
17 the Department of Consumer and Regulatory Affairs about what  
18 you need to -- the burden of proof is on you to establish the  
19 extraordinary circumstances that require that you have a  
20 variance. What are those?

21 MR. WRIGHT: Let me see if I can address that.  
22 When J.M.M. purchased this business, the application then had  
23 been made by the prior owners as non-sexually-oriented. This  
24 was the basis on which J.M.M. was operating and therefore was  
25 filing their papers in that vein.

26 When they were checked by the investigators from

1 the Department, it was discovered then that it was sexually-  
2 oriented and not non-sexually-oriented, as was in that  
3 statement.

4 BOARD MEMBER: So you're operating in violation?

5 MR. WRIGHT: That's exactly right. So that the  
6 purpose of J.M.M. going down to the Zoning Department at 614  
7 was to get the matter straight. Mr. Montel did not understand  
8 at the time of the purchase that he was in violation. And so  
9 that when this new application was filed -- and I wasn't at  
10 all privy to that -- in stating that it was non-sexually-  
11 oriented, was not correct or accurate. It should have been,  
12 he was operating a business --

13 (End of Tape 3A, Side B.)

14 (Beginning of Tape 4, Side A.)

15 MR. WRIGHT: When he had that matter considered  
16 down there he was told then that they would hold the matter in  
17 abeyance pending his filing an application before this Board  
18 to give him an opportunity now to make this a sexually-  
19 oriented business establishment. That's the purpose for which  
20 we're here.

21 BOARD MEMBER: Okay. So there are three things  
22 you need to prove. A use variance is the toughest variance to  
23 get. Okay? You have to show that there's some unique  
24 condition in your property that causes an undue hardship in  
25 using the property in any way that's a matter of right use.  
26 That's the first one.

1 MR. WRIGHT: I didn't understand the --

2 BOARD MEMBER: You have to show that there's  
3 some condition in the property that makes it an undue hardship  
4 on the owner to use the property in any way that's consistent  
5 with the Zoning Regulations that is allowed under -- as a  
6 matter of right use or as a special exception.

7 Once you do that you have to show that the  
8 relief can be granted without substantial detriment to the  
9 public good and without impairing the intent, purpose and  
10 integrity of the zone plan. You've got to show all three of  
11 those.

12 So that's what Mrs. King's (phonetic) question  
13 was.

14 MR. WRIGHT: Well, I think --

15 BOARD MEMBER: What's the unique condition in  
16 your property that makes it a hardship for you to use it  
17 according to the Zoning Regulations?

18 MR. WRIGHT: Well, he cannot use it for the  
19 purposes for which he's applying before this Board because  
20 it's not permitted under the present zoning. In other words,  
21 he's out of business if he's not permitted to have this  
22 variance.

23 BOARD MEMBER: Right, that's why you're here.  
24 That's not a reason for getting it approved. That's why  
25 you're here.

26 MR. WRIGHT: In addition, his contention is that

1 there is no adverse effect on the community in any respect.

2 No opposition has been filed --

3 BOARD MEMBER: Well, you've already told us that  
4 loitering outside the property is a problem.

5 MR. WRIGHT: Well, it's no longer a problem.  
6 That's been cured by the kind of security measures that is now  
7 in place at the business. They don't have any problems that  
8 I've been made aware of.

9 BOARD MEMBER: Well, these gentlemen just told  
10 us that there was a problem outside the establishment --

11 MR. WRIGHT: That was previously until they took  
12 effective security measures to secure it.

13 BOARD MEMBER: But he just explained to us that  
14 the police have made it clear that he was not -- he was not  
15 eligible to take security measures on the street; only inside  
16 the premises. Did you not say that? That the police --

17 MR. LYNCH: Yes, I did.

18 BOARD MEMBER: -- had told you that you could  
19 not personally police the exterior of the building, is that  
20 correct?

21 MR. WRIGHT: Yes, ma'am. And --

22 BOARD MEMBER: Okay. So that does continue to  
23 be a problem -- loitering and disorderly conduct outside the  
24 premises, right?

25 MR. LYNCH: No, no, that's -- when we first --  
26 when we came there the problem was that we were trying to find

1 out how -- what we're supposed to do to avoid this. Because  
2 we -- if the -- one of the people --

3 BOARD MEMBER: I understand what you're saying.  
4 I misunderstood before. You told us before, I thought, that  
5 the police said that you could not take steps on the exterior  
6 of the building to control loitering and inappropriate  
7 conduct. But now the police have given you permission to take  
8 care of security outside the building?

9 MR. LYNCH: The Police Department has informed  
10 us -- they gave us an application and there's this Sergeant  
11 Kind (phonetic) that gave us a map of 102. And he informed us  
12 how to go about if the people that's out -- that come up there  
13 and loiter in front of the store and we ask them verbally to  
14 leave, they do not leave, they informed us who to call. They  
15 gave us the unit that patrols the area. There's four units --

16 BOARD MEMBER: Okay, fine. I understand.

17 MR. LYNCH: -- that's assigned to the area.

18 BOARD MEMBER: So it is not -- what you are  
19 doing is what any citizen is doing. If you have problems  
20 outside your establishment you call the police?

21 MR. LYNCH: Yes, ma'am.

22 BOARD MEMBER: Okay. You are not providing  
23 security on the street?

24 MR. WRIGHT: We're not providing security on the  
25 street?

26 BOARD MEMBER: I mean, you are not policing the

1 streets? You are telephoning the Metropolitan Police  
2 Department in order to carry out their responsibilities in  
3 this regard.

4 MR. LYNCH: I patrol the streets. I've been  
5 patrolling the streets --

6 BOARD MEMBER: All right, fine. Thank --

7 MR. LYNCH: -- for the last couple of months.

8 BOARD MEMBER: -- you very much. No further  
9 questions.

10 BOARD MEMBER: Ms. Rose (phonetic) went to make  
11 a copy of the Zoning Regulations that show the uses that are  
12 permitted in this zone. So you can take a look at those. You  
13 have to explain to us why none of those uses are possible.

14 MR. LYNCH: Excuse me, madam. Chair Board?

15 BOARD MEMBER: Yes?

16 MR. LYNCH: Okay. Here's a -- I'd like for you  
17 to please look at this certificate and license.

18 BOARD MEMBER: Give it to the secretary, please.

19 MR. LYNCH: Not being disrespectful or anything,  
20 we were following the rules and regulations that --

21 BOARD MEMBER: We've just given you a copy of  
22 the rules and regulations that apply in this forum.

23 MR. LYNCH: To this part -- zone?

24 BOARD MEMBER: To what you've asked us for.

25 MR. LYNCH: Yes, ma'am.

26 BOARD MEMBER: You've asked us for a use

1 variance --

2 BOARD MEMBER: Mr. Lynch?

3 MR. LYNCH: Yes?

4 BOARD MEMBER: This letter from the Zoning  
5 Administrator tells you what it is you need to prove when you  
6 get here. And this letter was sent to you in June; June 28th.

7 BOARD MEMBER: And you filed it with us on July  
8 2nd.

9 BOARD MEMBER: Right.

10 MR. WRIGHT: As I see it, Madam Chairman, on the  
11 basis of the various businesses that can be operated in that  
12 area, the fact of the matter is that that's not a business in  
13 which this applicant is engaged. He knows nothing about any  
14 of those businesses, therefore I don't think he can make a  
15 showing that he can use it -- that is, personally use it --  
16 within the framework of references that's set out.

17 His business is what has been stated; sexually-  
18 oriented business establishment. He was asking for that to be  
19 permitted in this area, as apparently had been the case when  
20 the prior owners were operating until it was discovered that  
21 they were in violation.

22 BOARD MEMBER: How long has it been that you  
23 have been operating as a non-sexually-oriented business?

24 MR. WRIGHT: He never did; never did.

25 BOARD MEMBER: Well, you just told me that you  
26 did. You told me that you were advised that as long as there

1 were 30 percent non-sexual videos --

2 MR. WRIGHT: In the front of the -- in the front  
3 of the store.

4 BOARD MEMBER: And you told me that's how it is  
5 now.

6 MR. WRIGHT: Yes, ma'am.

7 BOARD MEMBER: And how long has it been that  
8 way?

9 MR. WRIGHT: That's been since March the 15th of  
10 '97.

11 BOARD MEMBER: And how is the business going?

12 MR. WRIGHT: Ma'am?

13 BOARD MEMBER: How's the business going?

14 MR. WRIGHT: It's going -- it's doing well. We  
15 have --

16 BOARD MEMBER: Well, you've just proved there is  
17 a use that's allowed as a matter of right, that you're  
18 operating.

19 BOARD MEMBER: Well, wait a minute. So 30  
20 percent is non-sexual --

21 MR. WRIGHT: Non -- is non --

22 BOARD MEMBER: What about the other 70 percent?

23 BOARD MEMBER: Well, that's permitted; that's  
24 permitted use.

25 BOARD MEMBER: It is permitted. It's permitted.  
26 They have a C of O for that.

1 BOARD MEMBER: Is under the definition of a non-  
2 sexually-oriented business -- this is what I'm hearing. With  
3 a Certificate of Occupancy for a non-sexually-oriented  
4 business these gentlemen are telling us that if at the front  
5 of the store they have -- 30 percent of their inventory is  
6 films of a non-sexual orientation, that they can have behind a  
7 screening wall, 70 percent of their inventory being sexual in  
8 nature. That is a permitted use and that is how they are  
9 operating at the present time.

10 BOARD MEMBER: Since March.

11 BOARD MEMBER: Where does that come from?

12 BOARD MEMBER: That's what they --

13 BOARD MEMBER: That's what they've just told us.

14 BOARD MEMBER: Where does that ruling come from?

15 BOARD MEMBER: They say that they were told this

16 --

17 BOARD MEMBER: From the Zoning Office.

18 BOARD MEMBER: -- by the Department of Consumer  
19 and Regulatory Affairs.

20 BOARD MEMBER: But didn't they get a citation?  
21 I thought they were cited because that's what they were doing.

22 BOARD MEMBER: But I mean, this isn't a judgment  
23 that we have to make.

24 BOARD MEMBER: I know. I mean --

25 BOARD MEMBER: I mean, they have just --

26 BOARD MEMBER: Okay, but let's ask that

1 question. Was the citation because you did not have 30  
2 percent --

3 MR. LYNCH: Yes, ma'am.

4 BOARD MEMBER: -- and you did not have the  
5 sexual videos behind --

6 MR. LYNCH: The wall.

7 BOARD MEMBER: Okay, so now you've corrected  
8 that?

9 MR. LYNCH: Now we corrected that.

10 BOARD MEMBER: So now you can operate your  
11 business the way you're currently operating it under matter-  
12 of-right use?

13 MR. LYNCH: Yes, ma'am. That's what they told  
14 us to do. That's what --

15 BOARD MEMBER: Well, wouldn't we have to see the  
16 citation? How do we know that that's actually what took  
17 place?

18 MR. WRIGHT: The citation was prior to this  
19 change that he's mentioned.

20 BOARD MEMBER: I'm not sure that we have to deal  
21 with that. It seems to me that these gentlemen have  
22 effectively argued that there is a use -- currently their use  
23 of these premises -- which makes it unnecessary for them -- I  
24 mean, there is no compelling, exceptional circumstance that  
25 makes it impossible for them to run any business except a  
26 sexually-oriented video club.

1 BOARD MEMBER: Right.

2 BOARD MEMBER: And they have effectively argued  
3 the opposite of what they wanted and have proved to us that  
4 they --

5 BOARD MEMBER: We can't approve it.

6 BOARD MEMBER: -- that we cannot give them a use  
7 variance. And I would move that we rule on that -- that we  
8 deny the application.

9 BOARD MEMBER: Well, let's -- we need to sort of  
10 conclude -- go through all the, you know, little phases.

11 BOARD MEMBER: You do it.

12 BOARD MEMBER: Okay, I will. I'm going to  
13 assume that that concludes the applicant's presentation. Do  
14 you have anything else you want to tell us?

15 Well, I'm going to let you think about it for a  
16 minute. I'm just going to go through a couple of other  
17 things. You have an opportunity for closing remarks so if  
18 there's anything else you have to say you can still do that.

19 MR. WRIGHT: Thank you.

20 BOARD MEMBER: We have no report from the Office  
21 of Planning or Office of Zoning. We have no report from the  
22 ANC. Is there anyone here in support of the application?  
23 Anyone in opposition to the application?

24 Yes? Sir, could you come forward? Could you  
25 vacate the table and let this gentleman have a seat?

26 MR. WRIGHT: Sure.

1 BOARD MEMBER: And while you're coming up I'll  
2 mention that there's no support or opposition in writing  
3 listed in the record so far.

4 BOARD MEMBER: Excuse me. Do you have -- thank  
5 you. Thank you very much. We'll need your name and your home  
6 address for the record, and then you can give your statement.

7 MR. BARNES: You said my home address?

8 BOARD MEMBER: Pardon?

9 BOARD MEMBER: Name, first.

10 BOARD MEMBER: Name first, then home address.

11 MR. BARNES: I'm Herbert Barnes (phonetic). I'm  
12 a Patrol Sergeant, Metropolitan Police Department, Washington,  
13 D.C. My phone number is 727-4611.

14 BOARD MEMBER: I'm not sure that we need to ask  
15 an officer of the Metropolitan Police --

16 BOARD MEMBER: His home address.

17 BOARD MEMBER: -- Department for his home  
18 address, as long as he will provide us with his business  
19 address.

20 BOARD MEMBER: Really? Oh, okay.

21 MR. BARNES: My business address is the 1st  
22 District which is located at 415 4th Street, S.W.

23 BOARD MEMBER: Thank you.

24 MR. BARNES: I guess to start off this  
25 afternoon, I think first let me say, it's a pleasure to be  
26 able to speak before the Zoning Board this afternoon.

1                   After hearing the testimony of the applicant --  
2           I don't know if it's really wise for me to go further on  
3           because at this point I don't believe that he would, but I  
4           think I'll go ahead anyway.

5                   I am a Sergeant in the 1st District and I'm  
6           responsible for the patrol service area 102, which encompasses  
7           the area of 919 5th Street, the premises of the applicant and  
8           the surrounding community which falls within the boundaries of  
9           patrol service area 102.

10                   Retail business currently at 919 5th Street,  
11           N.W., a retail video exchange arcade, draws the attention of  
12           public safety on a daily basis. Their products, items for  
13           sale and rent, behavior and conducts of patrons who will cater  
14           to the business are not conducive to the community.

15                   The area has been an attraction spot for  
16           transvestites in the past and is still a spot for them who  
17           stop on their way going to downtown area -- whether they're  
18           walking on foot, whether they're driving in vehicles --  
19           drawing the attention of community, bypassers; just overall a  
20           source of disharmony in the community.

21                   K Street and Mass. Avenue, the 400 and 500  
22           block, is a major thoroughfare which borders this property, or  
23           borders the premises of 919 5th Street. Giving it being a  
24           major thoroughfare for pedestrians and vehicular traffic,  
25           tourists, residents, and those who are visiting our city,  
26           that's one of the main things that they first see once they

1 first come down to about 5th or 6th Street and continue south  
2 into the heart of the city.

3 The premises of 919 5th Street -- it is a 24-  
4 hour business that's operating at this time. It does have  
5 bright lights, and after regular business hours of the normal  
6 businesses -- which I would say, 5 or 6 o'clock in the evening  
7 -- this business is still going on. And again 24 hours.

8 So that means that anytime after midnight that  
9 is the only business that is operating in that area. It's a  
10 drawing magnet. The business which again, Mr. A. Mason and  
11 J.M.M. Corporation wish to establish would have a dramatic  
12 impact on the area as it relates to public safety.

13 The mere title of the business -- A sexually-  
14 oriented business established amusement arcade -- definitely  
15 sends the wrong message to the community and tourists visiting  
16 our city.

17 The business, again, is located right off New  
18 York Avenue. This is our major thoroughfare from the  
19 Northeastern and Eastern States of the United States into the  
20 heart of Washington, D.C. Those tourists who are visiting,  
21 they're coming in late at night, going to hotels, what have  
22 you. This is the first thing they're going to see. Is this  
23 the type of message we want to send to our tourists and to our  
24 visitors?

25 We oppose -- when I say "we" I speak on behalf  
26 on public safety and the Officers that I have the

1 responsibility of supervising who works that area. The  
2 business currently does have a retail exchange of films. It  
3 also has an exchange of other products and items. And we  
4 believe that these sexual items are not conducive again, to  
5 the community needs and wants.

6 No, we do not have the representatives from the  
7 community who can speak here, but I do believe that I speak  
8 well on their behalf.

9 Just to bring -- just to share some information  
10 with you as far as the type of service that we do provide to  
11 the area, during the past three months the Metropolitan Police  
12 Department has recorded 26 calls for service for the 900 block  
13 of 5th Street.

14 Now, the 900 block of 5th Street is a very short  
15 block; very minute in comparison to other city blocks in this  
16 city. We're talking about no more than four businesses on  
17 either side of the street. That's between I and K Streets,  
18 N.W. So 26 calls for services in the past three months.

19 Fourteen of those 26 calls were directly for 919  
20 5th Street; more than 50 percent of the calls for service.  
21 And again, it represents a very large magnitude for just one  
22 location for a very small area. Of those types of calls we  
23 had two calls for man with a type of weapon, three for  
24 disorderly conduct, three for assault, one for robbery, and  
25 five for investigate trouble.

26 Now, for the same time period -- and I say the

1 past three months -- we're talking about November 18th going  
2 all the way back to about August 18th. So again, that's a 3-  
3 month period for the reporting of crime in this particular  
4 area.

5 From the beginning of this year, January 1, 1997  
6 to November 18th, there was 103 reported crimes for that  
7 immediate reporting area; 103. Of those 103, 14 again, were  
8 in the 900 block of 5th Street itself. The 900 block of 5th  
9 is between again, I and K Streets.

10 Of those 103 reported offenses, there was one  
11 homicide, 17 robberies, nine assaults, 17 burglaries, eight  
12 deaths, 36 thefts from autos, 15 stolen autos. And again, for  
13 those 103, 14 were reported in that one block of the 900 block  
14 of 5th.

15 For the same time period, January 1, 1997 to  
16 yesterday's date, November the 18th, there were 183 arrests  
17 made for offenses recurring in the same area. Of those 183  
18 arrests 64 arrests were made, again, in this immediate area.

19 And of those 64 arrests -- if you'll give me a  
20 second. Of those 64 arrests, 12 were for aggravated assaults,  
21 seven -- correction, those were -- seven aggravated assaults,  
22 seven sex offenses, 11 for drug offenses, and 34 disorderly  
23 conduct. Again, which came up to a total of 64 different  
24 arrests for that immediate area.

25 Additionally, we did a survey and as recent as  
26 last night -- beginning at midnight today, ending at 8 o'clock

1 this morning -- had Officers do a brief survey. And catering  
2 that business at 919 5th Street what we realized was, we get a  
3 large influx of patrons who are visiting that premises and  
4 business.

5 And again, it's not conducive to the community  
6 itself because what we realized from our survey, we had  
7 vehicles who were bringing patrons to the store. Of those who  
8 were visiting there were four D.C. registrants, nine Maryland  
9 registrants, two Virginia registrants, and one New York.

10 So again, the community in itself is not  
11 patronizing the store. It's moreso conducive for those  
12 outside of the District of Columbia. And again, this is not  
13 the type of businesses we believe is conducive to the quality  
14 of life of that particular area.

15 At this time I would conclude my presentation of  
16 it on behalf of the Police Department, and I'd be more than  
17 welcome to hear any comments or answer any questions for you.

18 BOARD MEMBER: Thank you. Is it Sergeant  
19 Barnes?

20 MR. BARNES: It is.

21 BOARD MEMBER: First of all let me tell you,  
22 I've been on this Board for more than three years and you are  
23 the first representative of the Police Department that has  
24 come to a hearing to speak on a case. And I appreciate the  
25 time that you have taken to come here and the views that  
26 you've expressed on behalf of the community that you serve.

1                   I don't really have any questions about what you  
2                   said. I think that you did a really good job in expressing  
3                   the problems that this business already seems to be creating  
4                   in the community, and your concerns that if the nature of the  
5                   business is changed and a sexually-oriented business is  
6                   actually allowed that those problems are likely to increase.

7                   MR. BARNES: No question. And it is our belief  
8                   that there is more to the desire of the owners partnership of  
9                   the establishment, in their attempt to go members-only. We  
10                  have, again in our investigation of the business itself, we  
11                  can see where their changing of statute from a public video  
12                  exchange to a private members-only would attempt to further  
13                  some illicit activity occurring on the premises.

14                 There are things that we are continuously  
15                 looking at as enforcement of the premises itself. It has been  
16                 a focus of our attention for the Police Department for illicit  
17                 activity. And again, some of the things that was brought out  
18                 earlier, in the earlier presentation, I'll be looking at as  
19                 soon as I leave here as well.

20                 So again, I want to express my appreciation for  
21                 being allowed to speak before you. I would say that I think  
22                 in the future there will be more of my fellow comrades  
23                 appearing before you for matters occurring within their areas  
24                 as well because this is again, one of the first steps that --  
25                 the Police Department taking command and charge of areas that  
26                 we are held responsible for; to give our reports and notice on

1 as well.

2 BOARD MEMBER: Thank you.

3 BOARD MEMBER: Thank you, very much.

4 BOARD MEMBER: Do other Board members have  
5 questions?

6 BOARD MEMBER: No.

7 BOARD MEMBER: No, I just wanted to also show an  
8 appreciation for Sergeant Barnes coming in here because he's  
9 certainly shed some -- just tremendous amount of "light" on  
10 the whole situation that we would not have been aware of had  
11 you not come in here today.

12 BOARD MEMBER: Thank you, very much.

13 BOARD MEMBER: Thank you. Could you stay one  
14 minute? The applicant has an opportunity to cross examine.  
15 You may ask questions if anything that he testified to was  
16 unclear.

17 MR. LYNCH: Well number one, when have you,  
18 yourself, come to 919 5th Street, J.M.M. Corporation, and  
19 approached us on any basis? I have never heard of you, don't  
20 have any -- the gentleman that we spoke to was a Sergeant  
21 Copley (phonetic), a white gentleman, who has that area; a  
22 Lieutenant Washington (phonetic) who supposed to be the  
23 Commander. I have --

24 BOARD MEMBER: Excuse me. You're testifying.  
25 Why --

26 MR. LYNCH: Excuse me, I'm sorry.

1 BOARD MEMBER: -- don't you just let him answer  
2 the question?

3 MR. LYNCH: When did you come to J.M.M.  
4 Corporation at 919 5th Street and give us this problem about  
5 what you, yourself, as the Metropolitan Police, stating the  
6 problem that we have? Because --

7 BOARD MEMBER: The question is clear. Would you  
8 let the Sergeant answer?

9 MR. LYNCH: I never heard you.

10 MR. BARNES: First of all, I have been a member  
11 of the Metropolitan Police Department for 25 years. I have  
12 been assigned to this specific area for the past eight years.  
13 As recent as last week I was at the premises of 919 5th Street  
14 and I attempted to communicate with Mr. Montel, did I not,  
15 sir?

16 BOARD MEMBER: Do you have any other questions?

17 MR. BARNES: I've been vested --

18 MR. LYNCH: Yes, ma'am.

19 MR. BARNES: -- with the authority of the  
20 supervision of patrol service area 102 since the Police  
21 Department's conversion to the PSA concept back in July of  
22 this year, 1997. I have Officers who work on a daily basis  
23 there. I visit those properties and premises that I needed to  
24 see, per se, firsthand. I see your premises each and every  
25 day that I'm out there.

26 I had no need to visit your premises each and

1 every day because I get a daily report. But I was in your  
2 property as late as last week to speak to Mr. Montel, who  
3 claims that he cannot speak, or cannot communicate through  
4 English very effectively.

5 MR. LYNCH: Excuse me. Who is Sergeant Copley  
6 that came -- the Sergeant Copley who's supposed to be --

7 BOARD MEMBER: There was no testimony about  
8 that. You can only ask him questions on what he testified to.

9 MR. LYNCH: Oh, okay. Okay. What -- what --  
10 the 1st District in the last, past three months, have come to  
11 919 5th Street and asked for donations?

12 BOARD MEMBER: You can't ask that either. That  
13 was not part of his testimony.

14 MR. LYNCH: Oh, okay. What I'm trying to get --

15 BOARD MEMBER: You can't make statements.

16 MR. LYNCH: Your --

17 BOARD MEMBER: You will have an opportunity to  
18 make a closing statement at the end of the proceedings, but  
19 you can cross examine him on testimony that he gave in this  
20 forum.

21 MR. LYNCH: Okay. Was I there when you came?

22 MR. BARNES: To my knowledge, you was not.

23 MR. LYNCH: I was not. Did you and -- Mr.  
24 Montel ask you to speak to his attorney or speak to Mr. Nitz  
25 (phonetic) because he didn't understand what you was talking  
26 about, if you had came?

1 MR. BARNES: When I arrived on the premises I  
2 asked to speak to the manager of the property, and which I was  
3 directed to Mr. Montel.

4 MR. LYNCH: What time was this that you came?

5 MR. BARNES: It was during the late evening. I  
6 cannot give you the exact date. But it was the late evening,  
7 the last two weeks -- within the last 2-week period.

8 MR. LYNCH: The reason why I'm asking you this,  
9 'cause the --

10 BOARD MEMBER: Sir --

11 MR. LYNCH: Make a statement, okay.

12 BOARD MEMBER: No statement.

13 MR. LYNCH: We have cameras and videos of  
14 everyone that comes in there, sir. What --

15 BOARD MEMBER: Sir --

16 MR. LYNCH: -- they --

17 BOARD MEMBER: Sir, do you have any other  
18 questions?

19 MR. LYNCH: Yes, ma'am. Yes, I do have a lot of  
20 questions because this Officer --

21 BOARD MEMBER: Okay, well let's just get to the  
22 questions.

23 MR. LYNCH: -- is falsely statement to us,  
24 because we don't -- I never --

25 BOARD MEMBER: That is a statement. Ask your  
26 questions.

1 MR. LYNCH: Okay. I will make a statement after  
2 this. No further questions at this time --

3 BOARD MEMBER: Great. Thank you.

4 MR. LYNCH: -- at this time. But I would like  
5 him to be -- this is very funny. He was under oath when he  
6 made these statements.

7 BOARD MEMBER: His testimony stands as it is.

8 MR. LYNCH: Thank you, thank you.

9 BOARD MEMBER: Thank you. Thank you very much.

10 BOARD MEMBER: Thank you, sir.

11 BOARD MEMBER: Closing remarks by the  
12 applicants.

13 MR. LYNCH: Okay. Not to be disrespectful to  
14 the Chairman of the Board or the Metropolitan Police  
15 Department, ma'am, but this gentleman, this Officer had -- we  
16 had no contact with this Officer at any time. The paperwork  
17 that we have got from the 1st District has another Sergeant's  
18 name on it who constantly comes to our facility --

19 BOARD MEMBER: Have you submitted that as part  
20 of the record? You say you have documents with --

21 MR. LYNCH: I have documents --

22 BOARD MEMBER: -- another Officer's name on  
23 them?

24 MR. LYNCH: With another -- I don't -- I didn't  
25 bring that with us. Reason why, because they said that -- he  
26 said that there was no opposition because we was going by what

1 he wanted us to do.

2 And this gentleman here, when the situations  
3 come down with the Police Department, usually Mr. Montel or  
4 any other staff, has them come to me to talk to them, because  
5 I can -- because I used to be an Officer and I can relate to  
6 them better and understand them better than they could.

7 And the gentleman that I talked to who said that  
8 he was in charge, told -- gave us the rules and regulations on  
9 what to do, how to go about to assist them, the Police  
10 Department, on what to do in the event of any incident that  
11 occurs on the outside of our store.

12 And we, we -- I see him Mondays, Wednesdays, and  
13 Friday he comes with another Officer constantly. And we  
14 discuss the surrounding perimeters of the people coming back  
15 and forth, because we have knocked that down. He informed us  
16 that our -- our main objective was to keep that block empty,  
17 because we can't tell -- we cannot force someone, well, you  
18 can't come down this block, you can't do this.

19 But in front of the store he informed us that we  
20 had to keep that store -- in front of that store clear; which  
21 we do. He informed us that we will have to keep the block  
22 from people hanging in the block, coming down the block. We  
23 will have to keep that area completely clear of people hanging  
24 in the cars, talking and stuff --

25 BOARD MEMBER: Sir, could I suggest that the  
26 issue you should be addressing in your closing remarks -- the

1 principal issue here is a use variance and why the premises  
2 for which you are asking a use variance cannot be used for  
3 anything except a sexually-oriented, private club. That is  
4 what you principally have to prove to this forum.

5 Am I not correct?

6 BOARD MEMBER: You are indeed, correct.

7 MR. LYNCH: Okay, you're clear, but I'm just  
8 trying to get the understanding of what you -- okay.

9 BOARD MEMBER: Okay, does that conclude your  
10 closing remarks? You need to speak on a microphone, sir.

11 MR. WRIGHT: Might I just add this, Madam  
12 Chairman and Board? First, commenting on the statement of  
13 Sergeant Barnes.

14 BOARD MEMBER: You all have dealt with that.  
15 We're asking you -- you've dealt with that. You --

16 MR. WRIGHT: I just wanted to make one --

17 BOARD MEMBER: You have contested what he said.  
18 But that -- you know, the first --

19 MR. WRIGHT: I understand that.

20 BOARD MEMBER: -- principal issue is the use  
21 variance requires that you demonstrate to us -- and the burden  
22 of proof is on you -- that the premises for which you are  
23 asking a use variance cannot be used for any other permitted  
24 use.

25 MR. WRIGHT: I think, Mrs. King, in looking at  
26 the record -- and I'm reasonably assured that all the

1 documents from the other agencies of Zoning Board over at 614  
2 H Street has papers that were submitted to Mr. Lance  
3 (phonetic) whom I understand were filed in the record -- and  
4 one of the things that was indicated was about the present use  
5 of the building; the 30 percent and the 60 percent that's  
6 being done.

7 What is -- and there is no question it seems to  
8 me, about the feasibility or the practicality of that. What  
9 the point here is in this application, is to expand the use of  
10 the building by permitting private members only, which would  
11 make it a larger operations than it is from the present  
12 situation.

13 That was the reason why he was seeking this  
14 variance on the advice of the statement of -- the letter that  
15 was received from the Zoning Officer at 614. And that's what  
16 he's sought to present to the Board.

17 That concludes my statement.

18 BOARD MEMBER: Thank you. Ladies, motion?

19 BOARD MEMBER: I move that we deny the  
20 application on the basis of the fact that it is demonstrably  
21 true that this premises can be used for a use that does not  
22 require a variance; which has in fact, been proved by the  
23 applicant.

24 BOARD MEMBER: Well, I second the Motion and in  
25 addition, I would add that the applicant has not demonstrated  
26 any exceptional condition in the property that would cause an

1 undue hardship in the use of the property.

2 They have not demonstrated that the requested  
3 relief can be granted without substantial detriment to the  
4 public good. And they have not demonstrated that the relief  
5 can be granted without substantially impairing the intent,  
6 purpose, and integrity of the zone plan.

7 And for those reasons I think that we need to  
8 deny the application. All those in favor?

9 (Chorus of ayes.)

10 Opposed?

11 (None.)

12 Staff will record the vote as three to zero to  
13 deny the application with Ms. King, Ms. Hinton (phonetic), and  
14 Ms. Reed (phonetic) to deny.

15 BOARD MEMBER: Thank you. We'll need to do a  
16 full order?

17 BOARD MEMBER: Yes.

18 BOARD MEMBER: And we'll be very clear about the  
19 issues that were raised.

20 BOARD MEMBER: Yes.

21 BOARD MEMBER: Great.

22 MR. LYNCH: Excuse me. Can I ask a question?

23 BOARD MEMBER: Yes.

24 MR. LYNCH: How many days to we have to -- how  
25 do we go about to appeal?

26 BOARD MEMBER: When you have --

1 BOARD MEMBER: Ten days after --

2 BOARD MEMBER: Well, it depends. If you're  
3 asking for reconsideration before the Board you have ten days  
4 after the issuance of the Order. There will be a final date  
5 on the Order. You have ten days after that. If you're going  
6 to the Court of Appeals you would need to contact them to find  
7 out what their rules are.

8 MR. WRIGHT: Thank you.

9 BOARD MEMBER: We're going to take a 5-minute  
10 break before we get to Case Number 6.

11 (Whereupon, Case Number 16279 was concluded.)

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