

7A06

Form 125 — Exhibit 1  
(Revised 03/15/02)

Case No.

17725

BEFORE THE BOARD OF ZONING ADJUSTMENT  
OF THE DISTRICT OF COLUMBIA

## APPEAL

Notice: [Click Here for Appeal Form Instructions](#)

Pursuant to Section (s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken

from the administrative decision of:\*

District of Columbia Dept of Consumer Regulatory Affairs

made on\*

07/06/2007

, to the effect that\*

a special exception is required

(1) it is necessary to obtain a special exception to construct a gas station in a zone where the gas station is a conforming use; (2) that the construction of a gas station on a lot where a gas station existed prior to May 12, 1958 is a nonconforming use

| Address(es)* of Affected Premises | Square(s)* | Lot(s)* | Zoning Districts* |
|-----------------------------------|------------|---------|-------------------|
| 3710 Minnesota Ave NE             | 5048       | 810     | CA2               |
|                                   |            |         |                   |
|                                   |            |         |                   |

Present Use of Property:\*

restaurant/nail salon

Proposed Use of Property:\*

gasoline service station (resumption of prior gas station qualifying use)

Owner of Property:\*

Koo L. Yuen (agent)

Telephone No.:\*

(202)437-5293

Name, address and telephone number of lessee:

Name, address and telephone number of appellant, if other than owner:

Attorney for Appellant, Thomas DeCaro, DeCaro &amp; Howell PC, Suite 201, 14406 Old Mill Rd., Upper Marlboro, MD 20772 301-464-1400/4776 phone/fax e-mail, tfd@erols.com

State specifically manner in which appellant is aggrieved by the administrative decision, the allegations of error in the

administrative decision, and the relevant sections of the Zoning Regulations (see reverse for more detailed explanation).

Please use a separate piece of 8 1/2" x 11" to respond and attach it to the Form 125 Appeal.

Date:\*

07/11/2007

Signature:

Thomas DeCaro DC Bar #250290

\* If appeal is filed by agent of the Appellant, Form 125 Appeal shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.

To be notified of hearing and decision:  
(Appellant or Authorized Agent)\*

|             |                         |          |               |                |               |       |
|-------------|-------------------------|----------|---------------|----------------|---------------|-------|
| Name:*      | Thomas DeCaro           |          |               |                |               |       |
| Address:*   | 14406 Old Mill Rd. #201 |          | City:*        | Upper Marlboro | State:*       | MD    |
|             |                         |          |               |                | Zip:*         | 20772 |
| Phone No.:* | (301)464-1400           | Fax No.: | (301)464-4776 | E-Mail:        | tfd@erols.com |       |

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

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 17725

EXHIBIT NO. 1

3-4-08  
PM

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Board of Zoning Adjustment  
District of Columbia  
CASE NO. 17725  
EXHIBIT NO. 11

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
OFFICE OF THE ZONING ADMINISTRATOR**



**VIA PERSONAL SERVICE and  
U.S. FIRST CLASS MAIL**

Euclid of Virginia  
c/o Tom DeCaro, Esq.  
Law Office of DeCaro and Howell  
14406 Old Mill Road  
Upper Marlboro, MD 20722

Vee Yeung  
4333 West Rotamer Road  
Janesville, WI 53546

Koo Yuen  
4225 Connecticut Avenue, N.W.  
Washington, D.C. 20008

Anthony Crowley, Registered Agent  
4522 Albemarle St., N.W.  
Washington, D.C. 20016

Anthony Crowley, Registered Agent  
4522 Albermarle St., N.W.  
Washington, D.C. 20016

**ZONING DETERMINATION LETTER**

This letter is to inform you of the Zoning Administrator's determination that use of the property at 3710 Minnesota Avenue, N.E., as a gasoline service station, is in violation of the Zoning Regulations of the District of Columbia. On October 5, 2006, the District issued Building Permit Number 78803 to you, to install underground storage tanks and pumps at 3710 Minnesota Avenue, Northeast, Washington, D.C. (the "Property"). The District has since learned of your intent to operate a gasoline service station at the Property. The Property is located in a C-2-A District. Gasoline service stations are only allowed in C-2-A Districts as special exceptions. "A gasoline service station established or enlarged after May 12, 1958 . . . shall be permitted in a C-2 District as a special exception if approved by the Board of Zoning Adjustment (BZA) . . ." Title 11, § 726.1 of the District of Columbia Municipal Regulations (DCMR). You have not obtained a

special exception from the BZA, so your intended use of the Property as a gasoline service station is not permitted under the Zoning Regulations.

You have argued that your construction of a new gasoline service station should be permitted as a preexisting nonconforming use, but the District has determined that the prior use of the Property as a gasoline service station has been abandoned and cannot be resumed without a special exception. On June 28, 1985 Certificate of Occupancy #B142549 was issued to Mr. James M. Godfrey for the Retail Sale of Used Cars at the Property. The Property has not been used as a gas station since 1985, a period of more than twenty years. 11 DCMR § 2005.1 specifically provides that discontinuance of a nonconforming use for a period of three years constitutes prima facie evidence of the intent to abandon. Any subsequent use must conform to the regulations of the district in which the use is located. 11 DCMR § 2005.1. Because there is no gasoline service station currently established on the Property, and the operation of a new gasoline service station on the Property has not been approved pursuant to a special exception by the BZA, the Zoning Administrator has determined that use of the Property as a gasoline service station violates the Zoning Regulations.

### **RIGHT TO APPEAL**

You have a right to appeal this decision made by the Zoning Administrator within sixty (60) days to the BZA pursuant to 11 DCMR § 3112.2(a). The BZA is located at 441 4th Street, N.W., Suite 210S, Washington, D.C. 20001.

If you have any questions, you may contact the Zoning Administrator at (202) 442-4652.

July 6, 2007  
Date

  
Matthew LeGrant  
Acting Zoning Administrator

**ATTACHMENT TO BZA APPEAL  
3710 MINNESOTA AVE. NE**

This is an appeal from a determination letter dated July 6, 2007, copy attached, to the effect that the zoning for 3710 Minnesota Ave NE as a gasoline service station violates the applicable zoning regulations of the District of Colombia.

This appeal arises in connection with an appeal of a Stop Work Order related to the same Premises.

**EXCEPTIONS**

**1. The Premises is properly “grandfathered” as a gasoline service station; therefore, no further zoning approval is required.**

With respect to the Premises, there was a gasoline service station on the site from 1949 until June 28, 1985, and for this reason, re-building a gasoline service station does not constitute a nonconforming use.

11 DCMR § 3104 of the Zoning Regulations state that "no use lawfully in existence at the time of adoption or amendment of this title that would thereafter require special exception approval from the Board of Zoning Adjustment shall not be deemed a nonconforming use." Since our facility meets this definition, it is considered a conforming use for all purposes. As a conforming use, the gasoline service station may be established and maintained at any time without [Unless otherwise referenced, all DCMR citations are to 11 DCMR].

§701.1(h) provides, with respect to a C-1 zone, that, “The following service establishment shall be permitted in a C-1 District as a matter of right: \* \* \* (h) Gasoline service station existing on May 12, 1958.

§721.2 provides that, in addition to the uses permitted in C-1 Districts by § 701.1, the following service establishments shall be permitted in a C-2 District as a matter of right (listing a number of various uses). Since a gasoline service station existing on May 12, 1958 is a permitted use under §701.1(h), it is a permitted use in a C-2 zone and so a special exception is not required, and the zoning for the 3710 Minnesota Avenue Northeast gasoline service station project is correct.

§3104 also provides that in the case of a use that was originally permitted and lawfully established as a matter of right and for which the Zoning Regulations now require special exception approval from the Board of Zoning Adjustment, only any extension or enlargement of that use shall require special exception approval from the Board.

The scope of work in this case does not involve any enlargement or extension to the site.

No canopy is to be installed at no other construction is planned for the site other than installation of tanks and pumps. §2500 defines an accessory use for a gasoline service station as any accessory use located on the same lot. Clearly, the tank and pump islands, which are the sole installations involved at 3710 Minnesota Ave NE, are accessory uses to a gasoline service station.

§2500.2(b) states that a canopy and kiosk for the service station attendant may be considered an accessory uses not requiring special exception if they meet the requirements of that provision. Since neither a canopy or kiosk are being installed in this case, it is clear that the installation consisting solely of underground gasoline storage tanks and above ground pumps is a conforming use.

The Premises is located in a C-2-A zone.

The Acting Zoning Administrator argues that the fact that the gasoline service station at this site was discontinued on June 28, 1985 constitutes an abandonment. The Acting Zoning Administrator argues that the “grandfather” provisions above do not apply in the case of an “abandonment.” The Acting Zoning Administrator takes the position that §2005.1 defines “abandonment” as discontinuance of use for a period of three years.

§2005.1 reads as follows: Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located. [Emphasis added].

In the case of 3710 Minnesota Ave NE, we do not have a discontinuance of a nonconforming use. Because of the fact that a gasoline service station is a permitted use on the site under the circumstances, where there was a gasoline service station on the premises prior to May 12, 1958, a gasoline service station is permitted at that Premises as a matter of right not requiring special exception or any other zoning activity.

## **2. Issuance of a Zoning Determination Letter Is Inappropriate in This Instance.**

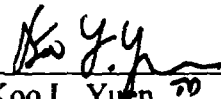
In this instance, the District of Columbia issued a Stop Work Order. A Stop Work Order is only appropriate where there is an immediate threat to health and safety. No such threat exists by virtue of an alleged violation of the zoning laws, and so issuance of the Zoning Determination Letter is inappropriate.

## **DETAILED DESCRIPTION OF HOW APPELLANT INTENDS PROVING CASE**

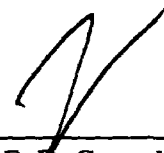
The Appellant will prove its case by demonstrating that there was a gasoline service station on the Premises owner before May 12, 1958. Proof of this will consist of the records of

the District of Columbia which showed that a gasoline service station was built on the site in 1949 and that the gasoline service station was discontinued in 1985. The Appellant will also show that the scope of work in the instant case consists solely of installing underground gasoline storage tanks and fuel dispensers.

I hereby certify that I am the authorized agent of Power Fuel & Transport, LLC, lessee and am thereby authorized as the Agent for said LLC. Koo L. Yuen is the authorized agent for the owner, Anna Chang.

  
\_\_\_\_\_  
Koo L. Yuen

Respectfully submitted,

  
\_\_\_\_\_  
Thomas F. DeCaro, Jr.  
Attorney for Appellant  
14406 Old Mill Rd. #201  
Upper Marlboro, MD 20772

301-464-1400

## **CERTIFICATE OF SERVICE**

I, Thomas F. DeCaro, Jr. do hereby certify that on August 31, 2007, I did mail, postage prepaid, a copy of the foregoing Appeal to the Board of Zoning Adjustments to:

Doris Parker Woolridge  
District of Columbia Attorney General  
Suite 9400  
941 North Capitol St. NE  
Washington, DC 20002

Matthew LeGrant  
Acting Zoning Administrator  
DC Department of Consumer & Regulatory Affairs  
Suite 9400  
941 North Capitol St. NE  
Washington, DC 20002

Advisory Neighborhood Commission  
Room 8 of the Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC, 20004

Jamal Turner  
Advisory Neighborhood Commisison  
4040 E Capitol St. NE  
Washington, DC 20019

Anna Chang  
4926 Sumpter Dr.  
Milton, WI 53563-8481

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Thomas F. DeCaro, Jr.