

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17870-A of Koo Yuen, pursuant to 11DCMR § 3104.1, for a special exception to establish a gasoline service station under §§ 726 and 706, in the C-2-A District at premises 3710 Minnesota Avenue, N.E. (Square 5046, Lot 810).

HEARING DATES: December 9, 2008, March 24, 2009, April 27, 2009, May 19, 2009

DECISION DATE: May 19, 2009

DATE OF DECISION ON

RECONSIDERATION: June 23, 2009

ORDER DENYING RECONSIDERATION

On August 29, 2008, Koo Yuen, as agent for property owner Euclid of Virginia, (“Applicant”) filed the instant application, requesting special exception relief from the Board of Zoning Adjustment (“BZA” or “Board”) in order to establish a gasoline service station at 3710 Minnesota Avenue, N.E. (“subject property”). A hearing on the application was originally scheduled for December 9, 2008, and, after several continuances, was completed on May 19, 2009. At the conclusion of the hearing, the Board deliberated and decided to grant the application.

There were no parties in opposition to the application, including Advisory Neighborhood Commission (“ANC”) 7A, within which the subject property is located. ANC 7A did not file a report with the Board or participate in the hearing in any way, although it had been properly notified. Exhibits Nos. 11 & 16. The Board issued a Summary Order granting the application on May 26, 2009, which, like all Board orders, was effective 10 days after its issuance, on May 29, 2009. Exhibit No. 40 (“Order No. 17870”).

On June 4, 2009, Edward Rhodes, Single Member District Commissioner for ANC 7A06 (“SMD”) filed a timely request for reconsideration of Order No. 17870. Exhibit No. 41. The request states that it is made “on behalf of ANC 7A06” and is signed by Commissioner Rhodes as “ANC 7A06 Commissioner.” The letter is on the letterhead of ANC 7A06 and contains an e-mail address for “7A06.” Everything in the letter indicates that the reconsideration request is made by the SMD, and not by the full ANC 7A.

Only a party may request reconsideration of a Board order. 11 DCMR § 3126.2. A full ANC is automatically a party to every BZA application (11 DCMR § 3199.1, definition of “Party”), but

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EXHIBIT NO.2

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an SMD is not. In order to attain party status before the Board, an SMD would have to request it and have it granted by the Board. Neither of these things happened here, therefore, SMD 7A06 was/is not a party to this case. Nor has the SMD been authorized by ANC 7A to act as the representative of the full ANC.

Commissioner Rhodes claims in his letter requesting reconsideration that he did not receive notification about the application. Although there are two regulations mandating that notice be provided to the full ANC – 11 DCMR §§ 3113.7 & 3113.13(d) – there is no regulation mandating that each SMD within an ANC be separately notified. Further, it appears that Commissioner Rhodes was aware of the application and its substance, as his signature appears on a petition in opposition to the application filed with the Board on December 8, 2008. Exhibit No. 22.

Because the SMD Commissioner was/is not a party to this case, he cannot file for reconsideration. In any event, the concerns cited in his letter are not grounds for reconsideration, since they could have been raised prior to the closing of the record in this case.

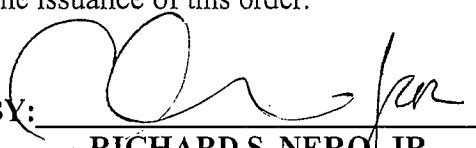
For the reasons above, the Board has determined that the SMD 7A06 Commissioner does not have standing to request reconsideration of Order No. 17870. Accordingly, it is hereby **ORDERED** that the reconsideration request is **DENIED**.

VOTE: **3-0-2** (Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull to deny;
Two Mayoral appointees (vacant) not participating, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board members has approved the issuance of this order.

ATTESTED BY: _____


RICHARD S. NERO, JR.

Acting Director, Office of Zoning

FINAL DATE OF ORDER: AUG 04 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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As Director of the Office of Zoning, I hereby certify and attest that on AUG 04 2009, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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ATTESTED BY:



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Acting Director, Office of Zoning

TWR