

ATTACHMENT TO BZA APPEAL
5010 Benning Rd. SE

This is an appeal from a determination letter dated April 30, 2009, copy attached, to the effect that the zoning for 5010 Benning Rd. SE as a gasoline service station violates the applicable zoning regulations of the District of Columbia.

This appeal arises in connection with an appeal of a permit revocation related to the same Premises.

EXCEPTIONS

1. The use of the Premises as a gasoline service station is proper; therefore, no further zoning approval is required.

With respect to the Premises, there was a gasoline service station on the site from prior to May 12, 1958 into the early 1990's 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."

§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. A canopy is to be installed and no other construction is planned for the site other than installation of the gas station tanks and pumps. §2500 defines an accessory use for a gasoline service station as any accessory use located on the same lot. Clearly, the canopy, and the tank and pump islands, which are the sole installations involved at 5010 Benning Rd. SE, 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 the canopy meets the requirements, it does not require a special exception.

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The Premises is located in a C-1 zone.

The Acting Zoning Administrator argues that the Applicant, Koo L. Yuen, obtained an occupancy permit for a laundry at the site in 1993. This is erroneous. Mr. Yuen never operated any businesses at the site, and his sole interest in the site is development of the gasoline service station as agent for the landowner since 2005. The current landowner did not have any interest in the property prior to 2005.

In any event, even if there was a laundry or other use of the site other than as a gas station after May 12, 1958, such other use is not an "abandonment" of the conforming gas station use.

§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 5010 Benning Rd. SE, 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, and continuing into the early 1990's, a gasoline service station is permitted at that Premises as a matter of right not requiring special exception or any other zoning activity.

The Zoning Administrator states that the application requests a "renovation of an existing gas station." However, the permit as issued allows, "Renovation of existing gas station bldg." The building on the site is an existing building and it was originally constructed as a gas station. The permitting process involves the review of the existing site uses and the history of occupancy of the site by the District of Columbia permitting officials. There was absolutely no indication that anyone was misled in connection with the issuance of the permit in this case.

2. The Zoning Determination Letter Was Never Served.

In this instance, the District of Columbia never served the April 30, 2009 letter which forms the basis for this Appeal. Submission of this Appeal under the circumstances is protective, and the Appellant does not waive any defects in service of process.

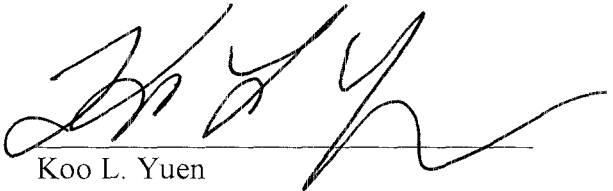
Despite the fact that this letter was never served and the Appellant was never notified of this letter, the District of Columbia repeatedly refused to issue permits to tradesmen, such as plumbing permits and the like, without any explanation. When investigating this refusal, the applicant eventually obtained a copy of the partially illegible letter, attached hereto, from officials

at the permitting office.

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, operating continuously into the 1990's. 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 prior to 1958 and that the gasoline service station was permitted through the 1990's. 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 and not an enlargement of the site. The Owner will show that in all respects the permit application was proper, and that in issuing the permit, the District of Columbia officials were fully aware of the status of the site and the proposed scope of the work.

I hereby certify that I am the authorized agent of Koo L. Yuen who, in turn, is the authorized agent for the owner.


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 June 29, 2009, 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

Ben Thomas
Advisory Neighborhood Commission 7E01
1135 Chaplin Street SE
Washington, DC 20019
(7E01@anc.dc.gov) (not served by email)

Advisory Neighborhood Commission 7E
5001 Hanna Place, SE
Washington, DC 20019
(7E@anc.dc.gov) (not served by email)



Thomas F. DeCaro, Jr.