

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

Appeal of Valor 1350 Maryland LLC

BZA Appeal No. 18439

**GROUND LESSEE'S OPPOSITION
TO APPELLANT'S MOTION TO AMEND THE APPEAL
AND FOR A CONTINUANCE**

DAG Realty LLC, the Ground Lessee of the subject property and a party to the subject appeal pursuant to §3199.9 of the Zoning Regulations (11 DCMR), hereby opposes the Appellant's Motion to Amend the Appeal and for a Continuance. The Appellant is attempting to add new issues to this Appeal which it did not raise in any prior pleading nor in any of its communications to the Board of Zoning Adjustment (the "BZA" or "Board") regarding this case. As such, these arguments are outside the scope of the appeal as filed. Further, it is untimely for the Appellant to raise new issues on November 13, 2012, concerning a building permit which was issued on May 4, 2012, more than 190 days previously.

**Ground Lessee's Arguments
Against Amending the Appeal and Against a Continuance**

The appellant originally filed this appeal on July 3, 2012, arguing that the Zoning Administrator of the D.C. Department of Consumer and Regulatory Affairs incorrectly issued Building Permit No. B1107494 on May 4, 2012. The Regulations specifically provide that, to be timely, "An appeal shall be filed within sixty days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier." This appeal was filed on July 3, 2012, just at the end of the 60 day period.

In its statement filed as part of the Appeal, the Appellant advanced the following arguments as to why the issued permit was in violation of the applicable Zoning Regulations and BZA Order No. 17825:

- The property was not in a separate record lot, in violation of §3202.3;
- The permit application and the plans submitted were incomplete, inaccurate and misleading;
- The plans did not provide for the installation of an unbroken raised median strip in the center of Maryland Avenue;
- The convenience store was not part of the Building Permit issued and the separate permit for the convenience store was filed after the BZA order became invalid; and
- The now applicable HS-A/C-2-A District does not allow the convenience store as presented in the BZA application.

Nowhere in any of those arguments did the Appellants make any reference to the design of the building and to any purported noncompliance with the requirements of the H Street Overlay District (reference to §§1324.2 and 1324.10 and other sections not relevant).

Moreover, the Appeal Form 125 submitted by the Appellants on July 3, 2012, cites that the permit was "in violation of the Zoning Regulations, 11 DCMR , §§ 3130, 3202.2, 3203.3 and 3205.1 and BZA Order No. 17825." Again, there is no reference to either of the sections from which it is now alleged that the building does not comply. Accordingly, it is the Ground Lessee's position that raising any new bases for the appeal at this time is untimely as it relates to issues which were determined in the building permit issued on May 4, 2012.

The Ground Lessee further states that the plans which were approved as part of the May 4, 2012, permit, clearly showed the building about which the Appellant now complains.

Attached to this response are reduced sized sheets from the approved Permit Set, including the Cover Sheet (CS), the Site Plan (C10) and the Architectural Plan (A1). Each of those sheets contains the signature of the zoning technician, attesting that the plans complied with the requirements of the Zoning Regulations (see Exhibit A). The plans clearly show the building located at the north side of the site, behind the pump islands and canopy, and indicate that the building was to be used to house the cashier for the gas station and for storage.

The drawings associated with the November 1, 2012, permit clearly show that the focus of that permit was on the alterations proposed to make the building suitable for the grocery store use. Attached to this response are reduced sized sheets from the approved Permit Set, including the Cover Sheet (A1) and the Floor Plan (A2). Both of those sheets contain the initials of the Zoning Administrator, attesting that the plans complied with the requirements of the Zoning Regulations (see Exhibit B).

The size and location of the building did not change since the first permit was issued on May 4, 2012. Any potential argument as to noncompliance with §§1324.2 and 1324.10 could have been discerned from a review of the plans on file. It is clear that representatives of the Appellants reviewed those plans prior to the filing of the appeal on July 3, 2012, and knew what was in them, because the appeal argues that the plans were incomplete and did not provide for a median strip.

Accordingly, the Ground Lessee argues that the Appellant is out of time to raise issues which were decided in the permit issued on May 4, 2012, and which were not raised in the appeal when it was filed on the 60th day after the permit was issued. If the Appellant is barred on the basis of timeliness from being able to amend the original appeal to raise new issues, then it follows that there is no basis for a continuance to allow the Board to consider an issue which it is

jurisdictionally unable to consider. The Board should therefore deny the Appellant's Motion to Amend the Appeal and for a Continuance as to both requests.

In addition to the amendment to the appeal being untimely, the Ground Lessee argues that the amendment to the appeal makes an argument which is invalid on its face. The construction undertaken pursuant to the May 4, 2012, permit, including the construction of the building on the site, is authorized by the approval of the Board in Application No. 17825, Order dated January 26, 2010. Pursuant to §3202.6 of the Regulations:

All applications for building permits authorized by orders of the Board of Zoning Adjustment may be processed in accordance with the Zoning Regulations in effect on the date those orders are promulgated; Provided, that all applications for building permits shall be accompanied by the plans and other information required by § 3202.2, which shall be sufficiently complete to permit processing without substantial change or deviation.

On January 26, 2010, the property was zoned C-3-A and was not included in the H Street Overlay District. The rezoning did not take effect until December 9, 2011. Accordingly, the construction of the gas station and the building were appropriately authorized and vested under the C-3-A District and the provisions referenced by the Appellant in its latest motion are not applicable to the building.

Ground Lessee's Arguments for Summary Denial of the Appeal

As noted above, the Appellant cited five points as to why the Zoning Administrator should not have approved the May 4, 2012, permit. The Ground Lessee's responses in brief to each of those points is as follows:

- A subdivision application has been filed with the D.C. Surveyor to combine lots 803 and 21 into a single record lot. Given the time that it takes to complete the subdivision process, the District has routinely issued permits pending subdivision, particularly where,

as in this case, there is no regulatory impediment to recording the plat, only the passage of time and the completion of routine ministerial actions.

- The plans for the permit are complete on their face. The Appellants allege vague and unsubstantiated claims for which there is no basis.
- The median has been constructed in the center of the right-of-way of Maryland Avenue.
- The original plans for building permit included a convenience store in the building on the site. Those plans were revised and the approved permit set shows the building but no convenience store use in the building. BZA Order No. 17825, dated January 26, 2010, was styled as a request "to establish a gasoline service station with convenience store under §§ 743, 706 and 2302." In the very first paragraph of the Decision and Order, the Board states: "Since a convenience store is a matter of right use in the C-3 District, the subject of this application and the sole focus of the Board's decision is the gasoline service station use." Notwithstanding that statement, the plans that are in the record and which are cited in the Board's Order (Exhibits 60 and 66A) clearly show the convenience store use even though Board approval was not necessary. The building which has been constructed on the site and which is being fit out in accordance with the November 1, 2012, permit is in the same location shown on the referenced Exhibits. The expiration of the validity of the BZA order has no bearing on the issuance of the permit for the grocery store, since no BZA approval is required for the grocery store.
- The property was rezoned from C-3-A to HS-A/C-2-A by Zoning Commission Order No. 10-19, effective on December 9, 2011. In Appeal No. 18146, by order dated May 24, 2011, the Board concluded that:

The Board credits the testimony of the ZA that Certificate of Occupancy No. CO1002994 was properly issued to authorize use of the subject property as a "grocery," regardless of whether that use was occasionally called a "convenience store" or "market" in the application or on the certificate itself. "Grocery" is a use classification established by the Zoning Regulations and therefore may properly be used to designate the authorized use of a given property."

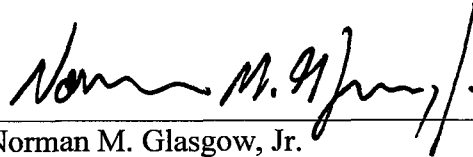
A grocery store is a use permitted as a matter-of-right in a C-1 District pursuant to §701.4(l). That use is permitted as a matter-of-right in a C-2 District by incorporation through §§721.1 and 721.3. Notwithstanding the appellant's assertion, there is nothing in the Neighborhood Commercial Overlay District regulations (§1302) nor in the H Street Overlay District regulations (§§1320 - 1323) which disallows a grocery store as permitted by the underlying zone. To the contrary, §1302.2 expressly permits as a "designated use" any use permitted as a matter-of-right in a C-1 District pursuant to §701.4, which includes a grocery store.

Conclusion

For all the reasons set forth above, the Appellant's Motion to Amend the Appeal and for a Continuance should be denied and the Appeal itself, incorporating the arguments set forth when the Appeal was filed, should also be denied.

Respectfully submitted,

Holland & Knight LLP

A handwritten signature in black ink, appearing to read "Norman M. Glasgow, Jr.", followed by a large, stylized flourish or checkmark.

Norman M. Glasgow, Jr.
Christy M. Shiker
Suite 1100
800 17th Street, N.W.
Washington D.C. 20006
202-955-3000

CERTIFICATE OF SERVICE

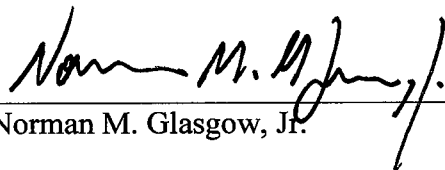
I hereby certify that a true copy of the foregoing GROUND LESSEE'S OPPOSITION TO APPELLANT'S MOTION TO AMEND THE APPEAL AND FOR A CONTINUANCE was served by first-class mail and electronic mail as indicated, this 20th day of November, 2012, upon the following:

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Washington DC 20036
jpb@gdllaw.com

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Matthew Le Grant
Zoning Administrator
Dept of Consumer and Regulatory Affairs
Government of the District of Columbia
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Washington, DC 20024
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David Holmes
Chair
Advisory Neighborhood Commission 6A
P.O. Box 75115
Washington DC 20013
holmes6a3@gmail.com



Norman M. Glasgow, Jr.

Project Name:
**ALTERATIONS AND REPAIRS
 for EXISTING VEHICLE FUEL SERVICE STATION
 MARYLAND AVENUE SHELL
 1400 MARYLAND AVENUE, NE
 WASHINGTON, D.C. 20002**

**THIS BUILDING IS DESIGNED
 IN ACCORDANCE WITH THE
 FOLLOWING CODES:**

BUILDING: ICC/INTERNATIONAL BUILDING CODE (IBC)
 2006 & DCMR12A-2008 SUPPLEMENT
 ICC/INTERNATIONAL EXISTING BUILDING CODE (IEBC)
 2006 & DCMR12A-2008 EXISTING BUILDING CODE
 SUPPLEMENT
 MECHANICAL: ICC/INTERNATIONAL MECHANICAL CODE (IMC)
 2006 & DCMR12E-2008
 MECHANICAL CODE SUPPLEMENT
 PLUMBING: ICC/INTERNATIONAL PLUMBING CODE (IPC)
 2006 & DCMR12F-2008 PLUMBING CODE SUPPLEMENT
 ELECTRICAL: NFPA/NEC 2005 & DCMR12C-2008 SUPPLEMENT
 FIRE: ICC/INTERNATIONAL FIRE CODE (IFC2006) & DCMR12H-2008
 FIRE PREVENTION CODE SUPPLEMENT
 ENERGY: ICC/INTERNATIONAL ENERGY CONSERVATION CODE (IECC)
 2006 & DCMR12I-2008 ENERGY CONSERVATION CODE SUPPLEMENT
 FUEL GAS: ICC/IFGC2006 & DCMR12D-2008 SUPPLEMENT
 ACCESSIBILITY: ICC/ANSI A117.1 2003 & DCMR12A-2008 SUPPLEMENT
 /CHAPTER 11

Owner's Name:
**DAG PETROLEUM
 MONTEY BERNANE
 6820-B COMMERCIAL DRIVE
 SPRINGFIELD, VA 22151
 (703) 750-6810**

Lot(s): 803 & 21
Square: 1049
Lot Area: 7,262 SF
Ward: 6
Zoning Designation: C3-A
Applicable Code: IBC2006
 2008 DCMR SUPP.
Use Group: H2
Construction Type: 2A

MAIDEN AND ASSOCIATES
 Architects/Engineers/Planners
 1000 COMMONWEALTH AVE., N.W.
 WASHINGTON, D.C. 20007
 (202) 344-7000 OFFICE
 (202) 344-7002 FAX
 E-MAIL: WMAIDEN@AOL.COM
 WWW: WWW.MAIDENCONTACTS.COM

DAK PETROLEUM
 1400 MARYLAND AVENUE, NE
 WASHINGTON, D.C. 20002
 (703) 750-6810

Project Name:
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 /CHAPTER 11

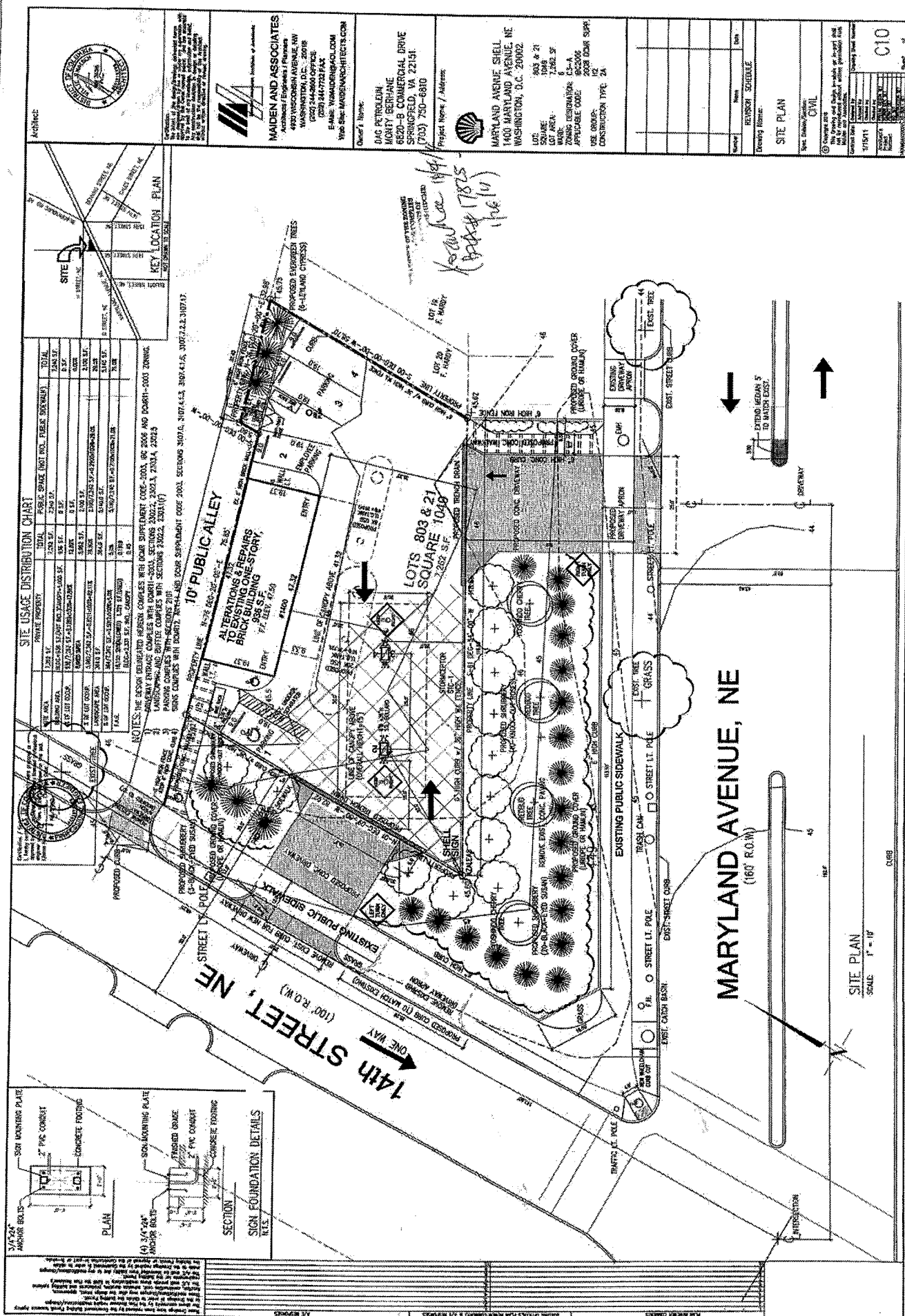
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DAK PETROLEUM
 1400 MARYLAND AVENUE, NE
 WASHINGTON, D.C. 20002
 (703) 750-6810

Exhibit A





Professional Engineer Seal for the State of Virginia, No. 10000, dated 10/1/2004.



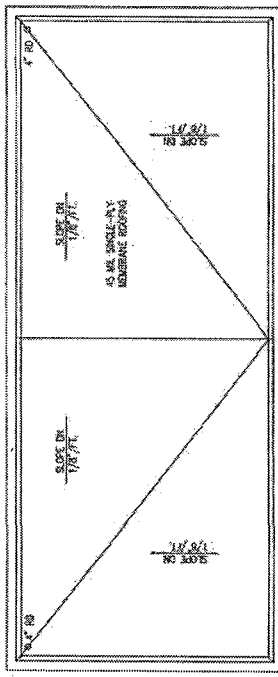
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WEB SITE: MAIDENARCHITECTS.COM

Client's Name / Address
DAS PETROLEUM
MONTY BERRANE
6820-8 COMMERCIAL DRIVE
SPRINGFIELD, VA 22151
(703) 750-6810

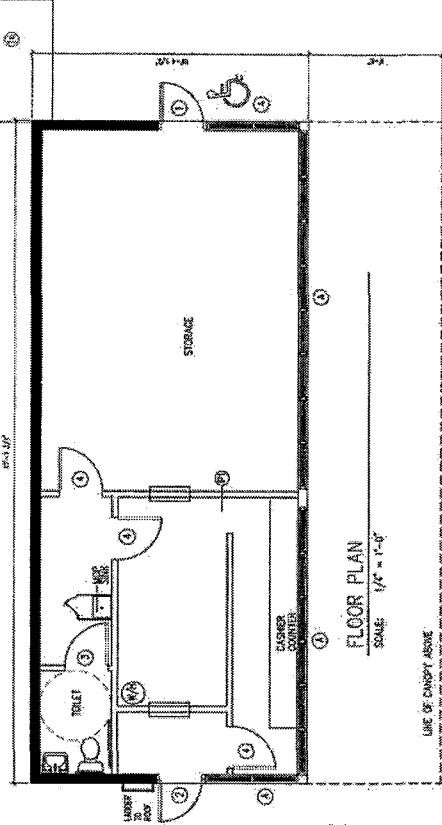
Project Name / Address
MARYLAND AVENUE SHELL
1400 MARYLAND AVENUE, NE
WASHINGTON, D.C. 20002

LOT: 101
SQUARE: 1049
LOT AREA: 6,720 SF
ZONING DESIGNATION: C3-A
APPLICABLE CODE: REC2006
USE GROUP: 2000 BLDG SUPP.
CONSTRUCTION TYPE: 2A

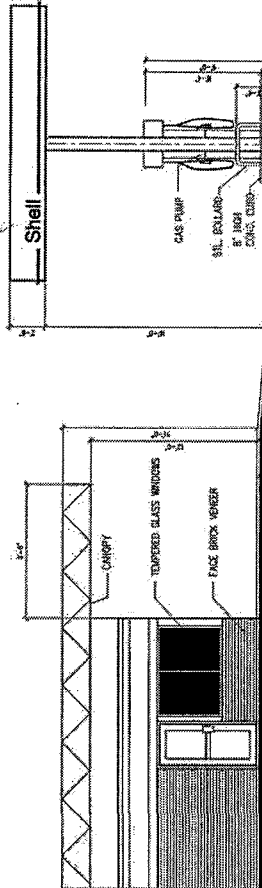
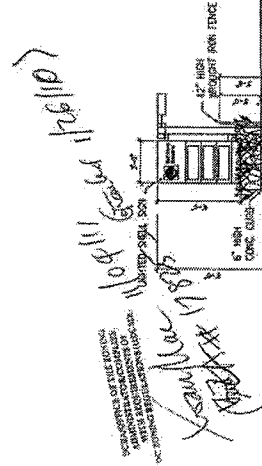
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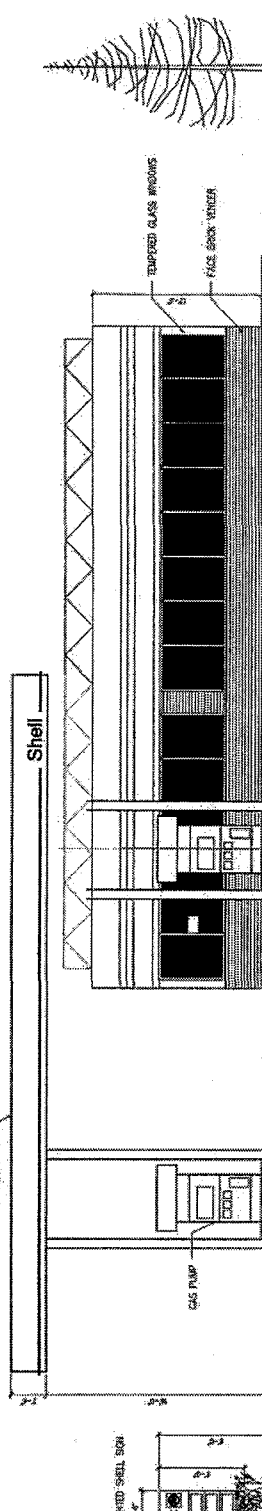
ROOF PLAN
SCALE: 1/4" = 1'-0"



FLOOR PLAN
SCALE: 1/4" = 1'-0"



LEFT SIDE ELEVATION
SCALE: 1/4" = 1'-0"



FRONT ELEVATION
SCALE: 1/4" = 1'-0"

NOTES:
1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
2. THE ROOF SHALL BE 12' HIGH AT THE GABLE ENDS.
3. THE ROOF SHALL BE 1/8\"/>

DAG PETROLEUM

DISTRICT OF COLUMBIA

[illegible]

CONSTRUCTION TYPE	V-2	NOT SPREADER
AREA CALCULATIONS	NAME, SS	
USE GROUP	TYPE	
OCCUPANT LOAD	IN	
FIRE PROTECTION SYSTEM		
ROOF	FIRST FLOOR	
MULTIPLY RESULTS	PER FLOOR	

CODE ANALYSIS

GENERAL NOTES:

DATE: 08/13/2007 10:56 AM
PAGE: 1

2. RESEARCH INTERVIEW
 DATE: 10/27/1964
 TIME: 10:00 AM
 INTERVIEWER: J. J. WILSON
 INTERVIEWEE: J. J. WILSON
 INTERVIEWER: J. J. WILSON
 INTERVIEWEE: J. J. WILSON

GENERAL INFORMATION

[illegible]

GENERAL NOTES:

UTURIO & ASSOCIATES, LLC
CONTRACTORS
P.O. BOX 808, ROCKSVILLE, VA 22091

RECEIVED
JAN 25 1963
U.S. DEPT. OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
DENVER, COLORADO



beese quast design, inc.

DENNIS D. BEESE, AIA

205 W. MAIN STREET, A-200, MOBILE, AL 36682
205-942-2020 • FAX 205-942-2352

AL	COVER SHEET
AL	CONCRETE REINFORCED CURB AND DOOR PLANK
AL	CONCRETE CURB AND DOOR DETAIL
AL	DETAILS
AL	DETAILS AND DIMENSIONS
AL	DETAILS
AL	COVER SHEET
AL	CONCRETE PLANK VIBRATIONS
AL	FOUNDATION AND DOOR PAVING PLAN / DETAILS
AL	STRUCTURAL NOTES
AL	MECHANICAL / ELECTRICAL / PLUMBING COVER SHEET
AL	MECHANICAL DIMENSIONS AND NOTES
AL	ELECTRICAL PANEL SCHEDULES / WIRE DIAGRAM
AL	ELECTRICAL PANEL SCHEDULES / WIRE DIAGRAM
AL	ELECTRICAL PANEL SCHEDULES AND WIRING PLANS
AL	PLUMBING SCHEDULES AND NOTES
AL	PLUMBING PLAN AND WIRE DIAGRAM

DRAWING INDEX.

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	FACE BRICK
	CONCRETE BLOCK
	PAINT PARTITION BOARD TYPICAL
	CONCRETE
	FLUTED
	ACCO FLEADING CONTIGUOUS REINFORCED
	WOOD BLOCKING DISCONTIGUOUS REINFORCED
	FINISH WOOD
	STEEL
	BATT INSULATION
	GYPHUM BOARD
	EARTH FILL
	GRAVEL



