

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

Appeal of Valor 1350 Maryland, LLC

BZA Appeal No. ____
ANC 6A

STATEMENT OF APPEAL

The Appellant, Valor 1350 Maryland, LLC, by and through undersigned counsel, respectfully submits this Board of Zoning Adjustment ("Board") Appeal of the May 4, 2012 determination by the Zoning Administrator, Department of Consumer and Regulatory Affairs ("DCRA"), to issue Building Permit No. B1107494 for "Renovation Alteration and Repair For Existing Vehicle Fuel Service Station" ("Building Permit") (Exhibit A) in violation of the Zoning Regulations, 11 DCMR §§ 3130, 3202.2, 3203.3 and 3205.1 and BZA Order No. 17825 (Exhibit B) in the HS-A/C-2-A zone at 1400 Maryland Avenue, N.E. (Square 1049, Lots 21 and 803) ("Property").

I. JURISDICTION

The Board has jurisdiction in the Appeal pursuant to 11 DCMR §§ 3100.2 and 3200.2. The Appeal is timely pursuant to 11 DCMR § 3112 having been filed within sixty (60) days of the May 4, 2012 issuance of the Building Permit.

II. BACKGROUND

A. Appellant:

The Appellant, Valor 1350 Maryland, LLC, is the owner and developer of a matter-of-right eighty-four (84) unit condominium building at 1348-1350 Maryland Avenue, N.E. (Square 1027, Lot 849) immediately across 14th Street, N.E. from the Property.

B. History of the Property:

Use of the Property as a gasoline service station was abandoned no later than 1995. The last Certificate of Occupancy as a gasoline service station was issued in 1978 (No. B110943). Since then, Certificate of Occupancy records show that the Property has been used for a variety of other uses, including:

- 1) Auto repair, used auto sales, towing auto storage and service (1995);
- 2) Towing & Storage of Automobiles & Repairs and Auto Sales (2001, 2002);
- 3) Automobile/Truck Sales (2003); and
- 4) Used Car Sales (2003).

In 2008, the BZA application filed stated repeatedly that the Property was "Vacant." More recently, the one-story vacant structure on the Property was razed except for a portion of the rear wall.

C. BZA Order No. 17825:

By Final Order dated January 26, 2010, the Board granted special exception approval to establish a gasoline service station and convenience store in the C-3-A zone at the Property. BZA Order No. 17825 established twelve (12) Conditions, including specifically Condition No. 11:

11. The Applicant shall install, upon DDOT's request and pursuant to its standard, an unbroken, raised median in the center of Maryland Avenue for the length of the property's Maryland Avenue frontage.

Ten (10) days after the final date of the Order, it became effective on February 5, 2010. Under 11 DCMR § 3130, the BZA Order remained valid only for two (2) years or until February 5, 2012, during which time the Applicant was required to file a building permit application for the approved gasoline service station and convenience store.

D. Rezoning of the Property:

In Zoning Commission Order No. 10-19, effective on December 9, 2011, the Property was rezoned from the C-3-A to HS-A/C-2-A.

E. Building Permit No. B1107494:

The Building Permit issued only authorizes renovation, alteration and repairs for an existing vehicle fuel service station. The Building Permit does NOT authorize construction of a new gasoline station and convenience store. A separate building permit application (B1209455) for the convenience store was filed on May 29, 2012, three and half months after BZA Order No. 18725 became invalid. The convenience store is now subject to the applicable HS-A/C-2-A zoning for the Property.

III. ZONING VIOLATIONS

The Building Permit issued is in violation of the applicable Zoning Regulations and BZA Order No. 17825, including:

A. No Record Lot:

Under 11 DCMR § 3202.3,

[A] building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, or for any addition to any principal structure, unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record;

The Property is NOT a separate Record Lot, but is comprised of two lots (Lots 21 and 803). The Building Permit was issued in direct violation of § 3202.3.

B. Incomplete, Inaccurate and Misleading Plans and Application Approved:

The building permit submission requirements set forth in 11 DCMR § 3202.2 are necessary for accurately determining compliance with the Zoning Regulations.

The building permit application and plans submitted requested approval only for renovation alteration and repair for an existing vehicle fuel service station. As a result of the wide discrepancy between the information submitted, the actual Property history and current conditions, and the work approved by Board, the Building Permit was issued for work of a much lesser scope than required and/or approved by the Board.

Specifically, as a result of the incomplete, inaccurate and misleading application and plans submitted, the Building Permit does not approve the establishment of a new gasoline service station or the convenience store which was an integral part of the BZA approval.

C. Violates Conditions BZA Approval:

The BZA Order requires in Condition No. 11, the installation of an unbroken raised median strip in the center of Maryland Avenue for the length of the Property on that street frontage. Under 11 DCMR § 3205.1, the issuance of the Building Permit was specifically subject to compliance with this Condition. The record is clear that DDOT has requested the median strip and that the plans submitted show the existing broken median strip on Maryland Avenue without any documentation to prove current or future compliance with the Condition.

D. Convenience Store Approval Expired:

The convenience store was specifically not made a part of the Building Permit issued. The separate building permit for the convenience store was filed after the BZA Order became invalid after two (2) years. As a result, the Building Permit does not comply with the full scope of the BZA approval, but more importantly that approval is now INVALID as it relates to the convenience store.

E. Convenience Store Not Permitted in HS-A/C-2-A:

Upon expiration of the BZA Order, the convenience store lost any vesting rights and became subject to the current zoning restrictions. The now applicable HS-A/C-2-A zone restriction, does not allow the convenience store as presented in the BZA application and being pursued in the separate pending building permit application.

IV. CONCLUSION

For the foregoing reasons, Building Permit No. B1107494 was issued in violation of the Zoning Regulations and BZA Order No. 18725 and this Appeal must be GRANTED and the Building Permit REVOKED by DCRA.

Date: July 3, 2012

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal and Statement in Support of Appeal was served by first-class mail and electronic mail as indicated, this 3rd day of July, 2012, upon the following:

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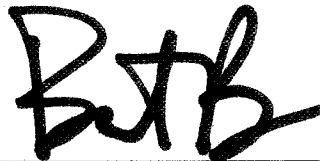
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EXHIBIT A

B12-000-245
Department of Consumer and Regulatory Affairs

Permit Operations Division

1100 4th Street SW

Washington DC 20024

Tel. (202) 442 - 4589

Fax (202) 442 - 4862

TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442 9557

BUILDING PERMITTHIS PERMIT MUST ALWAYS BE CONSPICUOUSLY DISPLAYED AT THE ADDRESS OF WORK
UNTIL WORK IS COMPLETED AND APPROVED

PERMIT NO. B1107494

Issue Date: 05/04/2012

Expiration Date: 05/04/2013

Address of Project: 1400 MARYLAND AVE NE		Zone: C-3-A	Ward: 6	Square: 1049	Suffix:	Lot: 0803
Description Of Work: RENOVATION ALTERATION AND REPAIR FOR EXISTING VEHICLE FUEL SERVICE STATION WITH BZA ORDER #17825 SPECIAL EXCEPTION GRANTED ON 1/26/2010 PURSUANT TO 2 EXHIBITS No 60 & No. 66A WITH 12 CONDITIONS.						
Permission Is Hereby Granted To: 1400 Maryland Avenue Ltd		Owner Address: EMPIRE LEASING INC 1705 DESALES ST NW			PERMIT FEE: \$4,513.65	
Permit Type: Alteration and Repair	Existing Use: Motor Fuel-Dispensing Facilities - M		Proposed Use: Motor Fuel-Dispensing Facilities - M			Plans: Yes
Agent Name: Michelle Miller	Agent Address: 2529 HERRELL CT. FALLS CHURCH, VA 22043	Existing Dwell Units: 0	Proposed Dwell Units: 0	No. of Stories: 1	Floor(s) Involved: all floors.	
Conditions/ Restrictions: Compliance with BZA Order 17825 condition #11 which states "The Applicant shall install, upon DDOT's request and pursuant to its standards, an unbroken, raised median in the center of Maryland Avenue for the length of the property's Maryland Avenue frontage" is required. This Permit Expires if no Construction is Started Within 1 Year or if the Inspection is Over 1 Year. All Construction Done According To The Current Building Codes And Zoning Regulations; As a condition precedent to the issuance of this permit, the owner agrees to conform with all conditions set forth herein, and to perform the work authorized hereby in accordance with the approved application and plans on file with the District Government and in accordance with all applicable laws and regulations of the District of Columbia. The District of Columbia has the right to enter upon the property and to inspect all work authorized by this permit and to require any change in construction which may be necessary to ensure compliance with the permit and with all the applicable regulations of the District of Columbia. Work authorized under this Permit must start within one(1) year of the date appearing on this permit or the permit is automatically void. If work is started, any application for partial refund must be made within six months of the date appearing on this permit. Lead Paint Abatement Whenever any such work related to this Permit could result in the disturbance of lead based paint, the permit holder shall abide by all applicable paint activities provisions of the 'Lead Hazard Prevention and Elimination Act of 2008' and the EPA 'Lead Renovation, Repair and Painting rule' regarding lead-based include adherence to lead-safe work practices. For more information, go to http://ddoe.dc.gov , Lead and Healthy Housing.						
Director: Nicholas A. Majett		Permit Clerk: Erika King				
TO REPORT WASTE, FRAUD OR ABUSE BY ANY DC GOVERNMENT OFFICIAL, CALL THE DC INSPECTOR GENERAL AT 1-800-521-1639 FOR CONSTRUCTION INSPECTION INQUIRIES CALL (202) 442-9557 TO SCHEDULE INSPECTIONS PLEASE CALL (202) 442-9557.						

EXHIBIT B

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17825 of 1400 Maryland Avenue, Ltd. Empire Leasing, pursuant to 11 DCMR § 3104.1, for a special exception to establish a gasoline service station with convenience store under §§ 743, 706, and 2302, in the C-3-A District, at premises 1400 Maryland Avenue, N.E. (Square 1049, Lots 803 and 21).

HEARING DATES: October 14, 2008, January 13, 2009, June 16, 2009, and July 21, 2009

DECISION DATE: September 15, 2009

DECISION AND ORDER

This application was submitted on May 7, 2008, and amended and re-submitted on September 30, 2008, by 1400 Maryland Avenue Limited Empire Leasing, Inc. ("Applicant"), the owner of the property that is the subject of the application ("subject property"). The application requests a special exception to establish a gasoline service station and convenience store at the corner of Maryland Avenue, N.E. and 14th Street, N.E. 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.

The Board of Zoning Adjustment ("BZA" or "Board") scheduled a public hearing on the application for October 14, 2008. Due to issues involving the use of public space which could have had, and did eventually have, an effect on the plans for the service station and on the Applicant's ability to meet the special exception tests, the hearing was continued to January 13, 2009, and then to June 16, 2009 and July 21, 2009, when it was completed. The decision was scheduled for, and took place on, September 15, 2009, when the Board voted 3-0-2 to approve the application, with conditions.

Notice of Application and Notice of Hearing. By memoranda dated May 13, 2008, the Office of Zoning ("OZ") gave notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Department of Transportation ("DDOT"), Advisory Neighborhood Commission 6A ("ANC"), the ANC within which the subject property is located, Single Member District 6A06, and the Councilmember for Ward 6. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register*, and on July 9, 2008, sent such notice to the Applicant, ANC 6A, and all owners of property within 200 feet of the subject property.

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Request for Party Status. ANC 6A was automatically a party to the application, and appeared in opposition. There were no requests for party status.

Applicant's Case. The Applicant's representative testified briefly as to the operation of the service station, but the bulk of the Applicant's case was encompassed in the testimony of its traffic expert.

Government Reports. *The Office of Planning.* OP filed several reports concerning this application with the Board. In its first report, dated October 7, 2008, OP did not make a recommendation for or against the application, citing a lack of information necessary to determine whether the proposed use, as designed, would create dangerous or other objectionable traffic and circulation conditions. At that time, public space issues remained to be resolved, the proposed landscaping was not yet determined, DDOT had not provided any critique of the Applicant's traffic and circulation plans, and those plans themselves did not address certain key information, such as drive aisle space and turning radii for vehicles. Exhibit No. 33.

OP's second report, dated January 6, 2009, recommended denial of the application, based to some extent on the December 18, 2008 action of the Public Space Committee, which denied the Applicant's public space permit for use of the public space surrounding the subject property. OP's second report states that the denial of the public space permit reflects a determination that the use, as then proposed to be designed, would inappropriately impact the adjacent public space. The second OP report also states that the traffic and circulation plans submitted by the Applicant, because they depended on the denied use of the public space, were no longer accurate, preventing OP from performing an effective evaluation of the impacts of traffic and vehicle circulation in and around the subject property. Exhibit No. 39.

OP's third report, dated June 9, 2009, stated that OP could not make a recommendation because it lacked a DDOT evaluation of on- and off-site circulation impacts, thereby preventing OP from determining whether the special exception criteria were met. In this third submission, OP opined that the Applicant might need relief for the height of the gasoline pump island canopy. OP also provided a list of nine proposed conditions which it recommended be included if the Board decided to approve the application. Exhibit No. 48.

OP submitted a fourth report, dated July 14, 2009, noting that the Applicant had significantly improved the proposal, including eliminating almost all use of the adjacent public space, and that the Public Space Committee had granted conditional approval of the proposal on June 25, 2009. OP expressed general support for the design of the proposed buildings and landscaping, and recommended nine conditions to be included in an approval by the Board. OP, however, again declined to make an official recommendation with regard to the application because it had not yet received an analysis of on- and off-site circulation impacts from DDOT, without which it could not make a recommendation with regard to whether the special exception criteria were met. Exhibit No. 54.

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At the public hearing on July 21, 2009, the OP representative stated that "the chief outstanding issues concerning circulation have been resolved to DDOT's satisfaction," and that, therefore, the Office of Planning was now recommending approval of the special exception relief. Transcript of July 21, 2009 hearing ("Trans."), at 354-355.

The Department of Transportation. DDOT filed four reports with the Board. The first, dated October 10, 2008, was filed with the Board before the Public Space Committee had held a hearing on the proposed use of public space by the Applicant. This first report stated that DDOT could not determine with certainty that the proposed service station would not create objectionable impacts. Exhibit No. 38. At that time, there were still many unanswered questions as to the use of public space, and the safety of both internal circulation and access points.

DDOT's second report, dated June 11, 2009, was generally positive about the application and the many modifications made to it since its filing a year earlier, but still could not recommend approval. At that time DDOT stated that "remaining circulation problems on the site as well as spillover effects onto public space ha[d] the potential to create unsafe traffic conditions." Exhibit No. 50. DDOT then listed three further pieces of information it would need for a final evaluation of the project – fuel truck turning templates, vehicle movement diagrams, and an expanded scale site plan.

The third DDOT report, dated July 21, 2009, indicated that DDOT personnel had met with the Applicant's representatives, who supplied the information listed above. Earlier concerns about the safe and fluid movement of vehicles on the site had been mitigated by changes in the proposed design, permitting DDOT to "no longer oppose[] this project." Exhibit No. 63. The report, however, requested that the Applicant include signs directing vehicles entering the site to use fueling positions to the right and noted that DDOT was still in the process of evaluating the need for a change in the median design along Maryland Avenue adjacent to the site.

DDOT's fourth report, dated August 20, 2009, goes into significant detail concerning several aspects of the application which had been troublesome earlier, including the impact on on-street parking, fuel truck delivery hours, and the Maryland Avenue median. As to the project's impact on on-street parking, the report concludes that no existing legal spaces will be affected, and that truck-turning requirements will likely preclude adding any new legal on-street spaces. Concerning hours of fuel delivery, DDOT recommended that it be prohibited during the peak travel periods of 7:00 to 9:30 a.m. and 4:00 to 7:30 p.m. With regard to the Maryland Avenue median, DDOT is requiring the Applicant to install an unbroken, raised median in the middle of Maryland Avenue, along the length of the property. Finally, the fourth report reiterated that DDOT "no longer has objections" to the application. Exhibit No. 64.

ANC Reports. ANC 6A filed seven letters/reports/memos/motions with the Board regarding this application. The ANC's first filing, dated July 28, 2008, requested postponement of the hearing scheduled for October 14, 2008, citing "extensive concerns" with the application. Exhibit No. 27. The hearing was continued, but on October 13, 2008, the ANC submitted a second filing,

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stating its opposition to the application. Exhibit No. 31. At that time, the ANC had problems with the Applicant's proposed use of public space and its use of a "suburban" design model. The ANC next filed a motion, on October 7, 2008, to dismiss or defer the hearing on the application until the Applicant obtained any necessary public space permits. Exhibit No. 32. On January 6, 2009, the ANC submitted a fourth filing reiterating its opposition and including a memorandum of law explaining why the ANC believed that the application did not satisfy the special exception standards and would be inconsistent with the Comprehensive Plan. Exhibit No. 40.

On June 10, 2009, ANC 6A filed a short letter with the Board, requesting another continuance of the hearing until after a decision from the Public Space Committee, which was going to hear, on June 25, 2009, the Applicant's second request to use public space. Exhibit No. 49. The ANC's letter briefly cited as problems the possible elimination of on-street parking, and possible hazardous on-site and off-site conditions due to the then-proposed plan for on-site circulation.

On June 15, 2009, the ANC filed a document explaining the concerns it still had with the Applicant's proposal. The document sums up the ANC's concerns thus: "the existing application is deficient, overly relies upon the use of public space ... and fails to demonstrate compliance with S[ub]section 706.4 of the zoning regulations." Exhibit No. 51.

Between the ANC's June 15, 2009 filing and its last filing, dated July 20, 2009, the Applicant made significant changes to the application, improving the design, including the safety of on-site circulation, and reducing the use of public space to only what was necessary – the need to drive over public space to enter the property. Due to these important changes, the Applicant secured conditional approval for a public space permit, but the ANC continued to oppose the application in its entirety. Realizing, however, that the Board could approve the application notwithstanding its opposition, the ANC recommended six conditions should the application be approved. Exhibit No. 56.

FINDINGS OF FACT

The property and the surrounding area

1. The subject property is zoned C-3-A and is located at address 1400 Maryland Avenue, N.E., at the corner of Maryland Avenue, N.E. and 14th Street, N.E., on Square 1049, Lots 803 and 21.
2. The property measures approximately 119 feet parallel to Maryland Avenue to its south, and 83 feet parallel to 14th Street to its west, with an area of approximately 7,262 square feet.
3. Between the property's southern property line and Maryland Avenue, is an approximately 50-foot wide swath of public space.

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4. Between the property's western property line and 14th Street, is an approximately 35-foot wide swath of public space.
5. The total area of public space bordering the property is approximately 7,240 square feet, not including the sidewalks, which are also in public space.
6. To the south of Maryland Avenue, i.e., across the street from the property is a fast food restaurant, row dwellings, and some small-scale commercial uses. Across 14th Street are two automobile repair/sales businesses and a church.
7. To the immediate north of the property are the backs of low-rise commercial buildings, which front on H Street, N.E. and are within the H Street Northeast Neighborhood Commercial Overlay District ("HS").
8. To the immediate east of the property are residential uses that appear to be vacant.
9. On the property is a vacant 1,321 square-foot one-story building that abuts a 10-foot wide dead-end public alley, running along the rear of the property.
10. There are currently no curb cuts allowing access to the property from Maryland Avenue, though photographic evidence shows that there were two such curb cuts in the past. *See*, Exhibits Nos. 3 & 48.
11. There are currently two active curb cuts along 14th Street, one of which allows direct access (over public space) to the property, and one of which allows access into the public alley abutting the rear of the property.
12. The entire property, and most of the adjoining public space, is paved over, with no significant area of greenery.
13. Although vacant now, the property has, in the past, been used for various gasoline and automotive uses, such as a gasoline service station, auto repair, and used auto sales, as evidenced by past Certificates of Occupancy. Exhibit No. 10.
14. There are no other gasoline service stations within the boundaries of ANC 6A.

The Applicant's proposal

15. The application proposes to establish a gasoline service station and associated convenience store, with a sandwich preparation area, on the subject property.
16. There will be two pump islands and four fueling pumps.
17. There will be no entrance to the property from the alley at its rear.

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18. The service station will be open 24 hours a day, seven days a week, with at least one employee present at all times.
19. The proposal meets all the necessary dimensional zoning requirements, such as lot occupancy and floor area ratio.

The zoning relief

20. Subsection 743.1 of the Zoning Regulations authorizes the establishment of a gasoline service station in any C-3 District as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of § 706 and Chapter 23 of Title 11 of the DCMR.
21. Subsection 706.3 requires that the station shall not be located within twenty-five feet (25 ft.) of a Residence District unless separated from the Residence District by a street or alley. Subsection 2302.1 contains the same requirement, while § 2302.3 prohibits a vehicular entrance or exit connected with a street at a point closer than twenty-five feet (25 ft.) from any Residence District.
22. The property and proposed facility meet these requirements. The property is surrounded on three sides, for a distance much greater than 25 feet, with C-3-A zoning. On its fourth side, to the north, is an HS/C-3-A zone district.
23. Both vehicular access points to the property are more than 100 feet from a street intersection as required by § 2302.4 and the proposed service station will not have the grease pits or hoists disallowed by § 2302.5.
24. Although § 706.6 does not require that required parking spaces be arranged so that all spaces are accessible at all times, it does require that all parking spaces must "be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicles without moving any other vehicle onto public space." The station will provide four zoning-compliant parking spaces, one of which will be located to the west of the building on the property, and the other three spaces will be located to the east of the building.
25. The siting and arrangement of these parking spaces permits the facility to exceed the above standard because each space will be fully accessible at all times. In addition, the spaces will be useable without causing the movement of other vehicles onto public space. (See, "Proposed Site Plan" attached as Exhibit B to Exhibit No. 55.)
26. In general, the operation of the proposed use will not create dangerous or other objectionable traffic conditions as disallowed by § 706.4 because:
27. It will be accessed by one curb cut and driveway on each adjacent street, i.e., one on Maryland Avenue and one on 14th Street;

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28. The proposed site design allows for fuel truck access and turning without impinging on any legal street parking spaces on 14th Street or Maryland Avenue. (See, DDOT Report, Exhibit No. 64 and internal/external circulation plans, attached as Exhibit A to Exhibit No. 55.);
29. No truck with a length greater than 35 feet will be permitted to deliver fuel to the facility;
30. The Applicant will imprint directional arrows on the pavement and post signage directing vehicles entering the site to utilize fuel pumps to the right, which will facilitate safe internal site circulation;
31. Only right turns will be permitted from the property onto Maryland Avenue. To ensure this, the Applicant will install, in accordance with DDOT's request and pursuant to its standards, an unbroken, raised median in the center of Maryland Avenue for the length of the property's Maryland Avenue frontage; and
32. Each of the drive aisles on the property, leading from the vehicular access points, will be two-way and 25 feet in width.
33. All of the above findings in this section also demonstrate compliance with the general standard for granting a special exception as stated in § 3104.1, as do the following additional findings.
34. The only use of public space by the proposed service station and convenience store arises, as with most commercial uses, from the fact that vehicles must drive over an area of public space between the adjoining street and the property.
35. The existing concrete paving between the property line and the sidewalk, along both Maryland Avenue and 14th Street, will be removed and replaced with soil, ground-covering plants, and low, ornamental shrubs.
36. The installation of the unbroken median referred to in Finding of Fact 31 will have no effect on on-street parking on Maryland Avenue.
37. Running along the northern and eastern property lines -- the two property lines not abutting a street -- a 6-inch-high concrete curb and a 3-foot-high iron fence will be installed.
38. To facilitate pedestrian access to the convenience store, concrete walkways will be installed alongside the drive aisle leading to Maryland Avenue and alongside the public alley, linking 14th Street and the western side of the building.
39. The fuel cost sign will be positioned on the subject property, set back from the corner. It will be illuminated and have overhead lights that shine downward, but not outward.

40. The sign will be six feet high, side mounted on an eight-foot pole, and will be subject to the applicable provisions of the Construction Codes, 12A DCMR § 3107, SIGNS.

CONCLUSIONS OF LAW

Special Exception Relief

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property. Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of § 3104, the Applicant also had to meet the requirements of § 706 and § 2302, pursuant to the mandate of § 743.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, “[t]he Board’s discretion ... is limited to determining whether the proposed exception satisfies the ... requirements” of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

Some of the requirements of §§ 706 and 2302, and, to a certain extent, § 3104, overlap. Sections 706.1 and 2302.1 both require that no portion of the service station be located within 25 feet of a residential zone district. In addition, § 2302.2 requires that no street ingress or egress to the station be within 25 feet of a residential district. The application satisfies these requirements. Findings of Fact No. 22 and 23. Furthermore, the application satisfies the requirement of § 2302.4 that no entrance or exit to the station may be closer than 40 feet from a street intersection as measured from the intersection of the curb lines extended. Finding of Fact No. 23. Finally, pursuant to § 2302.5, gasoline service stations located outside of the C-M or M District must locate all grease pits or hoists within the building. The gasoline service station that is the subject of this application does not proposed any such facilities.

Subsection 706.4 states that “[t]he operation of the use shall not create dangerous or other objectionable traffic conditions,” and § 3104 requires that the use “not tend to affect adversely the use of neighboring property.” Sections 706.4 and 3104 highlight the most contentious issues in this application. The extensive use of the surrounding public space initially proposed by the Applicant raised concerns over possible dangerous or objectionable on-site circulation and off-site traffic conditions. In response to these concerns, the design of the service station was revised several times, with input from the ANC, OP and DDOT, to improve both the on-site circulation and off-site traffic impacts.

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A number of modifications were made to improve on-site circulation, including: reducing the number of fuel pump islands and fuel pumps, reducing the maximum length of trucks allowed to deliver fuel to the facility from 57 to 35 feet, and reducing the size of the building by 385 square feet. In addition, the on-site parking spaces were re-located, signs and directional arrows were added, as well as a perimeter fence to keep vehicles off the adjoining public space. These changes, along with two 25-foot wide ingress/egress drives and a reasonable amount of maneuvering space left on the site, make on-site circulation sufficiently safe, meriting DDOT's conclusion, in its August 20, 2009 report, that "internal site design allows for adequate vehicle movement." Exhibit No. 64.

Pursuant to § 706.5, the Board may impose requirements pertaining to design, appearance, screening, or lighting, or other requirements it deems necessary to protect adjacent or nearby property. In this regard, the Board notes that the Applicant has committed to landscaping and beautifying the adjacent public space. Lighting on the site will be appropriate and focused on the property to minimize spillover into the surrounding neighborhood.

According to § 706.6, all required parking spaces need not be located in a manner in which they are accessible at all times. However, § 706.6 further states that "all parking spaces provided shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of vehicles without moving any other vehicle onto public space." The gasoline service station will meet the parking requirement for the use of four spaces entirely on the subject property. These spaces are located on either side of the convenience store building, allowing for safe pedestrian access to the store without the necessity of having to walk near the gas pump islands. The spaces have been so located to enable their access without the need to move a vehicle onto public space, and maneuvers necessary to enter or exit the spaces can all take place on the property.

The station is providing the required number of on-site parking spaces and neither its design, nor maneuvers of fuel trucks, will cause impingement on any existing legal parking spaces on the adjacent streets. The subject property is located at the intersection of two large streets, which will be able to safely support any increase in traffic brought about by the service station use. In addition, based on the evidence in the record and the testimony provided during the hearing, the design of the gasoline service station will be able to accommodate the necessary fuel delivery truck maneuvers entirely onsite, and without impinging upon on any existing legal parking spaces on the adjacent streets. Furthermore, the subject property is located at the intersection of two large streets, which will be able to safely support any increase in traffic brought about by the proposed use.

To facilitate traffic movement on the adjacent streets, the Applicant will install an unbroken, raised median on Maryland Avenue along the length of the subject property, which will restrict turns into, and out of, the property, onto Maryland Avenue, to right turns only. Preventing left turns into, or out of, the property will prevent traffic congestion and queuing in the eastbound

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lanes of Maryland Avenue. As DDOT stated in its August 20, 2009 report, "[i]mpacts to public space and traffic congestion are both minimal."

Concerning harmony with the zone plan, as a special exception use, a gasoline service station at this site is pre-deemed compatible with the surrounding C-3-A zone district. The subject property has historically been used for similar automotive uses, and the applicant has reduced the size of the building and the fuel cost sign to improve the look and operation of the station. The Board concludes that the use is compatible with the neighborhood and in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. § 3104.1.

As noted at the outset of this Order, the proposed convenience store is a matter of right use in the C-3 zone district. Therefore, the Board did not make any particularized findings with respect to its impact, since the use would be permitted on the site and does not lose that status because it will be established in conjunction with a use approved by special exception.

Great weight

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning filed four reports with the Board, three of which did not make any recommendation, and one of which, the second of the four, recommended denial. This recommendation was based almost completely on the Public Space Committee's denial of a request by the applicant to use a large amount of public space. By the time of the hearing, however, more than seven months after OP's second report, the use of public space was no longer an issue and DDOT was no longer opposed to the application. Therefore, OP's earlier recommendation of denial has been replaced by its subsequent recommendation of approval, which the Board accepts.

The ANC filed several reports with the Board, all in opposition to the application. Initially, the ANC most strenuously opposed the proposed use of a significant amount of public space by the service station, and the "suburban" design model it claimed the station was based on. Both of these issues were addressed by the Applicant throughout these proceedings, resulting in a reduction of public space usage to the smallest possible, and changes in the design of the station, such as the installation of a smaller fuel cost sign.

The ANC also objected to several other aspects of the application, stating that the service station use at the proposed corner location would lead to an over-concentration of gas stations and convenience stores in the vicinity. The ANC claimed the use would have a negative effect on pedestrian and vehicular traffic along the adjacent sidewalks and streets, resulting in adverse impacts on local businesses and pedestrian flow. The ANC's filings elaborated that the claimed

inadequacy of the proposed on-site circulation would lead to objectionable impacts both on- and off-site. The ANC further alleged that the movements of trucks delivering fuel would eliminate parking spaces along public streets, and that left turns into the property from Maryland Avenue would "further degrade the traffic environment." Exhibit No. 56.

The ANC's concerns as to traffic and pedestrian safety, as well as to the possible loss of on-street parking, were considered by the Board. There was conflicting evidence presented with respect to whether there were other service stations in the immediate area, but the Board notes that there is no "distance apart" requirement in any of the sections of the Zoning Regulations relevant to this application. Furthermore, the ANC representative himself stated that there are no other service stations within the boundaries of ANC 6A. Hearing Transcript ("Trans.") at 416, lines 5-8.

The proceedings in this application, from filing date to decision date, transpired over a period of 16 months, and the application underwent many significant changes along the way. The changes improved the design and on-site circulation, and reduced the off-site impacts of the proposed use. No legal on-street parking spaces will be lost as a result of this application, and once the Applicant constructs the raised median, left turns into or out of the property along Maryland Avenue will not be permitted. The ANC representative stated that the ANC would withdraw its statements that left turns from Maryland Avenue would be objectionable if the median were closed. Trans. at 413, lines 14-17. All of these changes have reduced the potential for traffic congestion and pedestrian conflicts to a minimum, and along with the conditions imposed by this Order, will enable the service station to operate safely. The Board, therefore, disagrees with the ANC's recommendation of denial.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to a special exception pursuant to §§ 743, 706, and 3104, to establish a gasoline service station and convenience store at the subject property. Accordingly, this application, pursuant to Exhibit No. 60, Revised Site Plan, and Exhibit No. 66A, Floor Plan with Elevation & Reduced Sign Size, is hereby **GRANTED, SUBJECT to the following CONDITIONS:**

1. No external sound amplification system shall be used.
2. Deliveries of gasoline shall not be made to the subject property between the hours of 7:00 a.m. and 9:30 a.m. and between 4:00 p.m. and 7:30 p.m.
3. Deliveries of gasoline shall be made by trucks no longer than 35 feet in length, bumper to bumper.
4. Pump island canopy lighting shall be recessed into the canopy, shall not protrude below the canopy, and shall face downward.
5. Flood lights, if used, shall be angled downwards and shielded in order to avoid light spillage on neighboring properties.

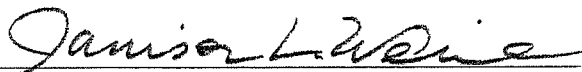
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6. Trash enclosure(s) shall be of board-on-board construction consisting of pressure-treated lumber. Trash enclosure(s) are to remain closed and locked except for when throwing out and picking up garbage.
7. The façade material of the convenience store building shall be brick.
8. The height of the pump island canopy shall be no taller than 15 feet, in conformance with 11 DCMR § 2500.4.
9. The height of the fuel cost sign shall be no taller than eight feet.
10. The Applicant shall imprint directional arrows on the pavement and post signage directing vehicles entering the site to utilize fuel pumps to the right, which will facilitate safe internal site circulation.
11. The Applicant shall install, upon DDOT's request and pursuant to its standards, an unbroken, raised median in the center of Maryland Avenue for the length of the property's Maryland Avenue frontage.
12. The landscaping/plantings shall be maintained in a neat and healthy manner.

VOTE: **3-0-2** (Marc D. Loud, Shane L. Dettman, and Michael G. Turnbull,
to Approve; two Board members (vacant seats) not participating)

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

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

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: JAN 26 2010

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.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE

WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

LM

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17825

As Director of the Office of Zoning, I hereby certify and attest that on JAN 26 2010, 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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Washington, D.C. 20013

Single Member District Commissioner 6A06
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Melinda Bolling, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:

A handwritten signature in dark ink, appearing to read "Jamison L. Weinbaum", is written over a horizontal line.

JAMISON L. WEINBAUM
Director, Office of Zoning