GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

FILE COPY

Office of the Zoning Administrator

February 1, 2005

Mannatt, Phelps & Phillips LLP
700 – 12th Street, NW – Suite 1100
Washington, DC 20005
Attn: John Ray, Esquire

Dear Mr. Ray:

This letter responds to your January 11, 2005 letter noting your September 28, 2004 complaint regarding the construction of gasoline service stations at the premises of reference in your letter.

Please be advised that this office is still in the process of a comprehensive overview of all the gasoline stations referenced in your original complaint. A response will be forthcoming that will address all pertinent issues of concern relating to the Zoning Regulations.

As to the gasoline station at "4665 South Capitol Street, SW" our records reflect that a building permit (#B463152) was issued on June 24, 2004 for the installation of new pumps and tanks for a gasoline service station at premises 4675 South Capitol Street, SW (Square 6274; Lot 1). It is important to note that as of the writing of this letter, this office is yet able to establish a valid basis for the revocation of the permit of reference in this letter.

Contrary to your belief that your complaint precipitated the "proper zoning procedures" for the South Capitol Street gasoline station, in that it is now scheduled for a hearing before the Board of Zoning Adjustments (BZA), it is not a conclusive determination within the Zoning Division that a site within C-2 or C-3 zone districts, which may have been devoted to a gasoline service station use prior to May 12, 1958, and which does not propose to enlarge, is necessarily subject to special exception relief before the BZA. I intend to address this issue more expansively and definitively in my forthcoming response to your January 24, 2005 letter.

941 North Capitol Street, N.E., Suite 2000, Washington, D.C. 20002
Phone: (202) 442-4564 Fax: (202) 442-4863

BZA
Case No. 17281
Exhibit No. 33

Board of Zoning Adjustment
District of Columbia
CASE NO. 17281
EXHIBIT NO. 33

At the time that I inherited your complaint, specifically concerning the facility at 4675 South Capitol Street, SW, there, in fact, was a Stop Work Order (SWO) placed on the subject premises. It is my opinion that this SWO was only imposed as an interim tool to permit the office to determine (1) whether there was a valid basis to continue the SWO, and (2) whether there existed an air-tight basis for revocation of the standing building permit. It was my determination that there existed no valid basis for continuing the SWO, since no evidence existed that the scope of work permitted under the building permit was being exceeded. Further, I found no substantive basis upon which a case for revocation could have been moved.

In light of the above, in which a SWO could not be continued to be imposed, and even if there was a determination that there was a solid basis for moving revocation of the building permit, two processes that are independent of each other, this office faced the specter of the gasoline station being constructed to completion before the exhaustion of the administrative appeals process pertaining to revocations. This outcome would hardly have served public interest or good.

Please be advised that this office has a written commitment from the owner of subject property that construction would be limited to underground tank installation, backfilling and paving to grade only, pending the outcome of the application before the BZA. This office has committed to scheduled inspections to ensure compliance with this commitment and is poised to issue another SWO in the event of any activity contrary to this commitment. Please note that excavation had commenced at the premises prior to issuance of the SWO and this outcome is not unreasonable for purposes of securing the property and public safety.

In my forthcoming response to your letter of January 24, 2005, all other outstanding issues of concern will be specifically addressed. You will agree that rather than being mired in administrative appeals of SWOs and proposed revocations, the decision of this office in getting this application before the BZA in the manner described above affords the public input that the gasoline service station may otherwise have not been subject to.

Please expect my forthcoming response to your January 24, 2005 letter no later than ten days from the date of this letter.

Sincerely,

Toye Bello
Zoning Administrator

IQ#190006

1/11/05

manatt
manatt | phelps | phillips

John Ray
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January 11, 2005

Mr. Toye Bello
Zoning Administrator
Department of Consumer & Regulatory Affairs
941 N. Capitol Street, NE, Suite 9400
Washington, DC 20002

Dear Mr. Bello:

On September 28th, 2004, I filed a complaint (Attachment A) with Ms. Julie Lee of the DCRA Office of General Counsel regarding a list of gas stations that have been constructed in apparent violation of certain provisions of the D.C. zoning law and regulations governing the establishment and operations of gasoline stations in the District of Columbia. One of the five subject gas stations was the proposed gas station at 4665 South Capitol Street, S.W.

If we had not raised an issue about this station, we believe it would have been built without going through proper zoning procedures. For the purposes of this letter, I would like to note that based upon the information we have, the other four gas stations listed have been constructed and are in full operation without zoning review and approval. Because of our September 28th complaint, the owner of the proposed South Capitol Street station, Power Fuel & Transport, LLC ("Power Fuel") filed an application with the Board of Zoning Adjustment ("BZA") and a hearing is scheduled for February 8th.

We also thought a Stop Work Order ("SWO") had been issued by DCRA against Power Fuel to stop construction until BZA approval was obtained. However, it is clear that construction on this site is continuing. Since January 7th, major construction activity has been observed at the location. On January 10th, workers installed two large underground storage tanks (Attachment B). This morning, they started backfilling the site and concreting the tank mat (Attachment C). If you did not issue a SWO, you should do so immediately today because failure to do so will allow the owner to continue construction and the gas station will be in full operation before the BZA's February 8th hearing, which would make the hearing a **sham.**

I am also concerned that on January 7th, Mr. Shahid Mahmood (Sean) brought the South Capitol construction activity to your attention; Mr. Mahmood has reported your response to me (Attachment D). He reported that you said the owner was "allowed to do the construction work" and, moreover, "there are very slim chance of denial in public hearing". I was concerned as to how this construction could proceed when the building permit is pending (Attachment E) and the

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BZA hearing is not until February 8th. It appears from a letter dated November 8th from Power Fuel to you, that this is happening because Power Fuel representatives have an understanding, based on some communication between you and them, they could proceed with the construction of this facility, notwithstanding that the building permit is pending and the BZA hearing will not take place until February 8th. For example, Power Fuel wrote to you that "[w]e understand that our work and re-installations activities as set forth in the above referenced permit shall be allowed to proceed by DC-DCRA/BLRA, and that concurrently an application to restore this prior valid use shall be filed/submitted to the District of Columbia Board of Zoning Adjustment (BZA)." (Attachment F).

During all my years in government, I was never aware that applicants who have a pending building permit and BZA application could go forward to construct a facility when they are requesting permission from the regulatory agency to build. These facts and other facts have led me to believe that there are things taking place here which are not proper. I am going to bring the matters surrounding this location and the other sites (building without going through the proper zoning process) to the attention of the City Council and request that the Council have the Inspector General look into all of the activities of Power Fuel and DCRA.

I am also very curious as to how Power Fuel could propose to build a gas station at 4665 South Capitol but state on its BZA application that the gas station will be located at 4675 South Capitol which is occupied by Bank of America (Attachment G). The bank occupies the site where the previous gas station existed and, based upon the proposed new gas station plans and the attached photos, will remain in full operation at that site. Note that the Certificate of Occupancy issued to Mr. Koo Yuen on September 29, 2003 provides for a gasoline service station at 4675 South Capitol and states "this permit is valid only for the premises of the project address."

Finally, it is my understanding that zoning laws and regulations state that when a gasoline station is proposed to be "established or enlarged after December 20, 1985" in a C-3 zone district, it shall be permitted in this situation only after approval by the BZA. Putting aside that this gas station is not being re-established at its old location, the Power Fuel application lists six pumps and twelve fueling positions, which is far more than most gas stations had in 1976 when the 4665 South Capitol facility first received a Certificate of Occupancy for gas station use. This is one of the many issues I plan to raise at the February 8th hearing. I thank you in advance and I look forward to hearing from you today. I can be reached at (202) 585-6565.