GOVERNMENT OF THE DISTRICT OF COLUMBIA
ADVISORY NEIGHBORHOOD COMISSION 8D

4601 Martin Luther King Jr. Avenue, S.E.
Washington, DC 20032

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D.C. OFFICE OF ZONING
2005 MAY 16 PM 3:51

May 16, 2005

Board of Zoning Adjustment
District of Columbia Office of Zoning
One Judiciary Square, Suite 210 South
441 4th Street, N.W.
Washington, DC 20001

RE: BZA Application No. 17281
by Power Fuel & Transport LLC

Dear Members of the Board:

Enclosed you will find a copy of the Advisory Neighborhood Commission 8D's response to the submission of May 2, 2005 of the Power Fuel & Transport LLC in Application No. 17281.

We want to note for the record that the applicant in this case failed to provide the Commission with a copy of the May 2, 2005 submission to the Board as required by BZA rules.

Sincerely,

Absalom Jordan
ANC 8D03

BZA
Case No. 17281
Exhibit No. 39

Board of Zoning Adjustment
District of Columbia
CASE NO. 17281
EXHIBIT NO. 39

Advisory Neighborhood Commission 8D

Response to

Power Fuel & Transport LLC Submission of May 2, 2005.

Failure to Notify Commission of Filing. On May 2, 2005, the applicant filed with the Board a memorandum and additional documents, as directed by the BZA. However, there applicant refused to provide the Commission with a copy of its filing. The Commission has right to notice of the filing and copies of any documents submitted to the BZA for its review and consideration. We are also aware that the Office of Planning was not provided with a copy of the applicants filing.

We are requesting that the Board reject the submission of May 2, 2005 from the applicant because the applicant did not give proper notice of the filing to ANC 8D. It should be noted that the applicant proffers that the memorandum submitted in this case "is informational only." We are of the opinion that the applicant has not complied with the directive of the Board to address questions raised during the hearing. The applicant still contends that the Board has no jurisdiction in this matter and demonstrates this by refusing to comply with the Board's rules governing notice to all parties in the case of filings in the case.

Issue of the Issuance of Building Permit #B463152. The applicant makes repeated reference to the fact that a building permit was issued which permitted the construction of the gas station at 4675 South Capitol Street, S.W. The applicant states that all permits were issued through the DCRA process. In fact the DCRA process was defective as it relates to the issuance of building permit #B463152.

The Official D.C. Code § 1-309.10 (c) (3) provides:

> The Department of Consumer and Regulatory Affairs ***shall*** ensure that Advisory Neighborhood Commission is provided at least twice a month by first-class mail with a current list of applications for construction and demolition permits within the boundaries of that Advisory Neighborhood Commission.

Further in § 1-309.10 (D) (2) provides:

> At the close of business of the day after which the notice period concludes, as provided in subsection (b) or (c) of this section, the affected District government entity may proceed to make its decision.

The D.C. Code requires that before DCRA could "proceed to make its decision" a 30 day period for ANC review and comments was to be observed. The application for the permit was to be held in abeyance pending the ANC review.

By letter to the Commission dated January 14, 2005, Mr. Lennox Douglas stated that the application was issued on the same day it was applied for. There was no 30 day ANC review period as required by law. (See the attached letter from Douglas of 1/14/05) It has been a long standing practice of DCRA that ANCs "...are not entitled to notice of permit filings..." (See attached Clarke letter of 7/23/04)

We would request that the Board take Administrative Notice of an opinion of the Corporation Counsel of May 31, 2001, in which he states "After review of the arguments and the law, I conclude that notice to ANCs of construction (building) and demolition (raze) permits under paragraph (c) (3) is treated identically to notices under paragraph (c) (1), and that such notice includes a 30-day notice period and entitlement to great weight for recommendations made by ANCs."

While the applicant cites the processing of the Shell application by DCRA as evidence that there application should be processed in a similar manner. Changes in the law and zoning regulation have occurred since the processing of the Shell permits or application which warrants a different standard in their case.

Approval by Local Citizens. The applicant contends that local citizens "uniformly" approve of the project and that the only opposition to the project is from other gas station owners. ANC 8D is before this Board, through the appropriate procedures, as a party in the case in opposition to the application. By Law, the ANC is recognized as the "local citizenry". In fact before the Board, the ANC law requires that the Commission's recommendations or comments be afforded great weigh. There is no comparable status given to the positions of citizens, other than through their ANC. Aside from the Office of Planning, no other entity, or individual in the District has great weight in matters covered by the ANC law. Therefore, the applicant's contention that it has support for the gas station is without merit

Discontinuance of Service. Aside from the fact that the applicant holds that the site has continuously been used as a gas station, the evidence shows other wise. The record shows that in 1995 the tanks were removed in compliance with EPA requirements. At that time no new tanks were installed or was there any application for the installation of new tanks on the site. By removing the gas tanks from the ground in 1995, not only did the station cease to exist, but there was no possibility that the owner could resume operations as a gas station at the site. In addition to the use of the site for a bank, the site has been used as a day old bakery sales center, a record store and other businesses. For over 3 years the site was not used as a gas station and therefore Section 2005.1of the regulations is applicable.

Wrong Address. It is the position of the Commission that because the address on the application is incorrect, that the application should be rejected. The applicant filed an application for the construction of a gas station at 4675 South Capitol Street, S.W. The applicant states that the gas station will have no effect on the use of the site by the bank. However, the applicant has submitted a drawing which reflects revisions to the entrance

and egress to the property on which the bank is located. These changes will impact upon the traffic flow and possible operations at the bank.

On page 3 paragraph 5 the applicant states "PFT-LLC is in the process of having the address change added for the gasoline service station to comply with Lot 1, Square 6274. This presents and interesting situation. Changing the address is an acknowledgement of a fact that the applicant has avoided up until the point. It is the position of this Commission that changing the address is the recognition of something that was always a fact that the gas station was to be operated out of the building at 4665 South Capitol Street. All of the equipment for control of the gas pumps and operation of the station has already been installed at 4665 South Capitol Street, S.W. The reason why the address of 4675 South Capitol Street was used was because the previous station operated out of that address and the applicant felt that this attachment to the address of 4675 would establish basis for the issuance of the building permit and circumvent any zoning review. At present, a Certificate of Occupancy No. 81569 has been issued at the address for the operation of a convenience store and deli. By locating the gasoline service station operations in this facility the applicant acknowledges that there is an enlargement of the gas station as defined by rules of the Board. The Board must apply the appropriate provisions of its rules to this application. (See attached C of O)

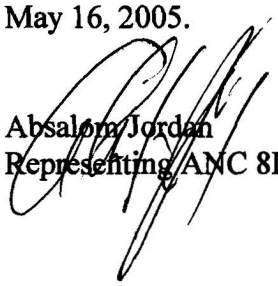
Traffic Study. The record in this case contains a letter from the Department of Transportation rejecting the application. The applicant submits a traffic study which based on the 4665 South Capitol Street Address not the address on the application of the case before the BZA.

The study does not prove that the proposed gasoline service station will not create dangerous or other objectionable traffic conditions as provided in § 706.4 of the rules. The consultant finds that not only are modifications necessary to the south driveway of the branch bank, but that modifications must be made to the timing of existing traffic signals. The proposed changes to the banks driveway are major adjustments and are predicated on improvements being made to the paved area at the rear of the bank. Never-the-less, without major improvements to the west leg of Southern Avenue, dangerous and or objectionable traffic conditions will exist.

The traffic consultant states that the applicant will pave the west leg portion of Southern Avenue, but this is a public street and not subject to any changes by a private citizen. The west leg of Southern Avenue is a segment of street in need of major improvement. It should be noted that the applicant does not submit with this filing any evidence of a proposal to improve the segment of street in question.

Relating to the methodology on the traffic study, the consultant chose to conduct the study on the 19th and 21st of April 2005. These days do not represent times when the traffic at the intersection of Southern Avenue and South Capitol Street are highest. Both pedestrian and vehicular traffic would have been greater at the beginning of the month, when welfare recipients and those on social security would have been using the bank and the shopping center adjacent to the intersection.

This is the certify that a copy of this filing was mailed to the applicant's attorney DeCaro & Howell PC, Suite 201, 14406 Old Mill Rd., Upper Marlboro, MD 20772 on May 16, 2005.



Absalom Jordan
Representing ANC 8D

Attachments

David Clarke Letter

Lennox Douglas Letter

C of O for Convenience Store & Deli

Pictures of west leg of Southern Avenue

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the Director

July 23, 2004

Commissioner Absalom Jordan
Advisory Neighborhood Commission, 8D
4601 Martin Luther King Jr. Avenue, S.W.
Washington, D.C. 20032

Dear Commissioner Jordan:

This letter is in response to your recent inquiry regarding the Department of Consumer and Regulatory Affairs'("DCRA") practice of not providing notice to Advisory Neighborhood Commissions ("ANC") when postcard and walk-though permits are filed with DCRA.

Please be advised that DCRA's position is that ANCs are not entitled to notice of permit filings which have no significant impact on neighborhood planning and development. As such, postcard and walk-through permits, which typically involve small-scale, residential construction, are not among those of which DCRA provides notice. DCRA's position is not intended to deny the ANCs, or any person or entity, access to permit records to which they may be entitled pursuant to a Freedom of Information Act, D.C. Official Code § 2-531, et seq. (2001).

Finally, DCRA is in the process of developing written policies regarding ANC access to permit information. We anticipate having that process completed by the end of the fiscal year. At that time, DCRA will be happy to provide you with a copy of those polices.

Sincerely,

David A. Clark
Director

941 North Capitol Street, N.E., Suite 9500, Washington, D.C. 20002
Phone: (202) 442-8947 Fax: (202) 442-9445

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

Building and Land Regulation Administration
Permit Service Center

January 14, 2005

Absalom Jordan
c/o ANC 8D
4601 Martin Luther King Jr. Ave S.W
Washington D.C 20002

Re: 4675 South Capitol Street S.W

Dear Mr. Jordan:

The enclosed is a list of building permits processed between July 15 and 30th 2004. Per your request, please see page 29 of the submitted list clearly identifying notification to the ANC of the issued permit for 4675 South Capitol Street, S.W. This permit was classified as a walk thru and issued on the same day.

Any questions or concerns regarding the notification of the subject address identified on the enclosure to the ANC, please contact the Permit Service Center at (202) 442-4589.

Sincerely,

Lennox Douglas, manager
Permit Service Center

C of O

CERTIFICATE OF OCCUPANCY

PERMIT NO.
CO 81569

THIS PERMIT IS VALID ONLY FOR THE PREMISES OF THE PROJECT ADDRESS

DATE : 8/12/2004

ADDRESS:	FLOOR:	PROJECT:	WARD:	ZONE:
4806 SOUTH CAPITOL ST SW	1ST FL.	[illegible]	8	C2A

PERMISSION IS HEREBY GRANTED TO:
CORPORATION : HYALA INC.
ID No.: 241010

TRADING AS:
L.P MART

APPROVED USE :
OTHER - SEE DESCRIPTION

PREVIOUS USE :
RETAIL

TYPE :	SQ.FT.NO. :	OCCUPIED SQ. FOOTAGE:	OCCUP. LOAD:	EXPIRATION DATE:
USE CHANGE		[illegible]		[illegible]

DESCRIPTION OF USE:
CONVENIENCE STORE AND DELI (NO SEATS)

FEE : $75.00

THIS CERTIFICATE SHALL BE POSTED CONSPICUOUSLY ON THE ABOVE PREMISES AT ALL TIMES. IT IS VALID IRREVOCABLY, subject to expiration date as stated. Valid ONLY for the purposes of the above address at said floor(s), and for the occupancy, hereinafter shown, and IS NOT TRANSFERABLE to another person or premises under ANY circumstances. ANY change in the type of business, ownership of business, or part of premises used therefor, will render this Certificate VOID and a NEW Certificate must be obtained.

David A. Clark
DIRECTOR

PERMIT CLERK: [illegible]


02/07/2005


02/07/2005


02/07/2005


02/07/2005