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May 27, 2005

Board of Zoning Adjustments
District of Columbia Office of Zoning
Suite 210
441 - 4th St. NW
Washington, DC 20001

Advisory Neighborhood Commission 8D
4601 Martin Luther King Ave. SE
Washington, DC 20032
Via UPS Overnight # A346 316 528 7

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D.C. OFFICE OF ZONING
2005 MAY 31 AM 10: 58

Re: Application of Power Fuel & Transport LLC
Case No. 17281

To The Board:

This letter is intended to clarify the position of Power Fuel & Transport LLC regarding the project at 4675, South Capitol St. SW.

Related to the issue of whether the site is a conforming or a nonconforming use, the history of the site is very relevant. Exhibit A to our Memorandum of May 2, 2005 is a set of plans for the site submitted to the District of Columbia government. This set of plans clearly shows a gasoline service station on the site on September 23, 1953.

The zoning regulations state that the gasoline station at the location is a conforming use. It was never a nonconforming use:

> §706.1 A gasoline service station established or enlarged after May 12, 1958, shall be permitted in a C-1 District as a special exception if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of chapter 23 of this title and the provisions of this section.

#43

Board of Zoning Adjustment
District of Columbia
CASE NO. 17281
EXHIBIT NO. 43

The service station use at the parcel was established prior to September of 1953. Under §706.1, an enlargement of this station after May 12, 1958 requires a special exception, but the use of the parcel itself is a conforming use. Uses permissible in a C-1 zone are permissible in a C-2 zone, and those uses permissible in a C-2 zone are permissible in a C-3 zone, as of right. The gasoline service station under consideration was and continues to occupy the parcel which comprises addresses 4635, 4665 and 4675 South Capitol St. SW, Square 6275 (sometimes referenced in the record as Square 6274) Lots #1, 4 and 5.

The parcel is located in a C-3-A zone. The provisions related to a special exception for that zone are as follows:

743. Special Exceptions (C-3): 743.1 A gasoline service station established or enlarged after December 20, 1985, a repair garage in any C-3 District, or a mechanical parking garage in C-3-A and C-3-B Districts, shall be permitted in a 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 this title.

Since the gasoline station was not established after December 20, 1985, it is not subject to special exception treatment except to the extent that it is enlarged.

There is nothing in the zoning regulations which prohibits a gasoline service station use at the site in question, or subjects it to a mandatory special exception. Since a gasoline service station was established on the site prior to September, 1953, the Power Fuel project is a conforming use. The only need for a special exception would be if the project was to enlarge the service station.

As to whether or not the project is an "enlargement," as cited in the Power Fuel Memorandum, the project is not an enlargement. §2500.2(b) defines an accessory use as an installation of a canopy which does not come within twenty-five feet of a residential district. In any event, the project does not include a canopy and the applicant does not seek approval of a canopy at this time.

The regulations regarding a nonconforming use do not apply to this case because the service station is a conforming use. A gasoline service station is a permitted use for a site if there was a gasoline service station on the site before May 12, 1958, as was the case here. While zoning regulations discuss situations in which an approved nonconforming use may lose its status as a permissible use due to lapse of time, those regulations do not apply to the project under consideration.

Whether or not Power Fuel is required to obtain approval of the BZA, we would request at this point that the BZA issue an approval, or at the minimum, a conditional approval.

I trust this clarifies the Power Fuel position on the substantive issues under consideration. If it would be helpful to the Board, perhaps another hearing may be appropriate.

Sincerely,
DeCaro & Howell PC

By:
Thomas F. DeCaro, Jr.

cc: Toye Bellow

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June 1, 2005

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District of Columbia Office of Zoning
Suite 210
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Washington, DC 20001

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4601 Martin Luther King Ave. SE
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2005 JUN -2 PM 12:57

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BZA
Case No. 17281
Exhibit No. 43

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