GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORANDUM

DATE: January 31, 2005

TO: District of Columbia
Board of Zoning Adjustment

THROUGH: Ellen McCarthy, Interim Director OP
Jennifer Steingasser, AICP, Zoning Manager

FROM: David J. McGettigan, AICP

SUBJECT: BZA Case No. 17282
DAG Real Estate Holding Company LLC – 3101-3103 Rhode Island Ave, NE
Square 4308 Lot 45

Summary

The applicant, DAG Real Estate Holding Company LLC, the owner of 3101-3103 Rhode Island Avenue, NE, seeks approval of a special exception under §726.1 and 733.1 to add a 2,320 square foot addition to an existing service station for use as a fast-food restaurant. The subject property is currently under renovation to be used as a convenience store with four fueling islands and canopy. The gasoline service station received approval in BZA Application No. 16439. Expansion of the gasoline service station and establishment of a new fast food use is permitted as in the C-2-A Zone District subject to the provisions of §726.1 and 733.1.

Recommended Action:
The Office of Planning does not have sufficient information to make a recommendation at this time. At the request of the Office of Planning the applicant is preparing a site plan and landscape plan to address the following concerns:

- There are two entrances, one on Newton Street and one on Rhode Island Avenue that are very close to the intersection that the applicant proposes closing. The applicant needs to remove the aprons and reconstruct the curb so the entrances are permanently removed.
- The applicant agreed, as part of the previous special exception, to close the easternmost entrance along Newton Street. The applicant needs to remove the apron and reconstruct the curb so this entrance is permanently removed.

BZA
Case No. 17282
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO. 17282
EXHIBIT NO. 28

- The applicant must provide a continuous brick wall at least six feet high as required by §733.3 and an enclosure for the refuse dumpster as required by 733.4.
- The cinder block wall on the rear of the structure should be treated with a brick veneer or other suitable treatment.
- The applicant should show how the parking lot layout meets the requirements of §733.10 to provide adequate space for deliveries and trash collection.
- Areas of the site that are not required for vehicular movements should be converted to planting areas and properly landscaped.

In addition the applicant should provide a traffic study to the District Department of Transportation for review.

Background

The subject property is located at 3101-3103 Rhode Island Ave, NE (Square 4308, Lot 45) at the northeast intersection of Rhode Island Avenue and Newton Street (see Attachment 1). The site is part of the small C-2-A Community Business Center District fronting Rhode Island Avenue, NE from Monroe Street to Eastern Avenue. Across Rhode Island Avenue is a automobile dealership, to the northeast along Rhode Island Avenue is a fast food restaurant, and at the rear of the property across a 15' alley is a single family detached residential neighborhood.

The lot is occupied by an approximately 4,118 square foot, one-story commercial structure and a 4-island fueling area under a canopy. The applicant obtained Board of Zoning Adjustment approval of a special exception to establish a gasoline service station on April 7, 1999 in BZA Application No. 16439 (see Attachment 5). The application was approved with the following conditions:

1. The applicant shall comply with the agreement dated March 26, 1999, between Eyob (Joe) Mamo (applicant's lessee) and Karen Lancaster, Commissioner. ANC 5A-11.
2. In consultation with the Metropolitan Police Department, 5th District, suitable space shall be made available within the gasoline service station and food store establishment for use by the Metropolitan Police Department as a satellite police station.
3. The gasoline service station and food store shall be protected by an electronic surveillance system composed of from 12 to 16 television cameras mounted at strategic locations to assure full and continuous visual monitoring of the interior and exterior premises.
4. The exterior premises shall be fully lighted at a sufficient foot-candle level to assure proper operation of the electronic surveillance system. Six lights shall be mounted on the exterior surfaces of the building, and additional lights shall be mounted on seven poles, each approximately 13 feet in height, along the perimeter of the property.
5. The electronic surveillance system and lighting shall be in place and operational at the time the establishment opens for business, and shall be maintained in good working order throughout the life of the establishment.
6. The existing trees and shrubbery at the rear of the property shall be trimmed or removed in order to enhance the security of the premises and prevent obscuring the

view of the electronic surveillance cameras.

7. Employees shall be well-trained to observe potential criminal conduct on the premises and in the vicinity and to call immediately for police assistance.
8. The owner/operator of the establishment shall give first preference in hiring for the approximately 10 positions at the proposed establishment to applicants residing within SMD 5A-11, and the next preference to other residents of the District of Columbia.
9. The establishment shall comply with all environmental-protection requirements of the Federal and District of Columbia Governments, including but not limited to the requirements of the D.C. Underground Storage Tank Management Act of 1990 (D.C. Code, Sec. 6-995.1 *et seq.)* and the implementing regulations (20 DCMR, Subtitle F). The owner/operator shall consult with the commissioner of ANC 5A-11 on a regular basis regarding excavations, soil testing for contaminants and test results, development of remediation plans if contaminants are detected, and the installation of new tanks and safeguards incorporated in the new tank system to prevent leakage and to detect and halt any leakage that occurs.
10. The exterior premises shall be cleaned daily, and trash shall be hauled away for proper disposal. Trash that accumulates in the intervals between the daily clean-up shall be deposited by the on-site staff in trash bins located in an unobtrusive enclosed location on the premises, away from public view.
11. The owner/operator of the establishment shall provide financial contributions in support of from four to six community activities recommended by the ANC commissioner for ANC 5A-11 on an annual basis for the life of the establishment and shall meet with the 5A-11 Commissioner and ANC 5A as a whole. Whenever necessary to address community concerns and respond to community needs.

After receiving approval of this plan the applicant proceeded with construction, but later applied for an additional building permit, which was issued in error in February of 2004 to construct the additional square footage for the fast food restaurant. The applicant received a stop work order on August 19, 2004 and was referred to the BZA for the subject application.

Project Description

Application No. 17282 requests a special exception pursuant to §§726.1 and 733.1 to permit an expansion of the gasoline service station approved by Application No. 16439 and construction of a fast food restaurant in the C-2-A zone district. The special exception request includes a 2,320 square foot addition that may be used as a fast food restaurant. The applicant has not indicated if all or some of the additional retail space will be for a fast food restaurant.

Comprehensive Plan

The property is identified as Low Density Commercial on the General Land Use map (See Attachment 2). The Low Density Commercial land use category includes shopping and service areas that are generally low in scale, character, and activity, and that provide a limited or

specialized range of retail goods and services as the predominant uses. The proposed use is not inconsistent with this designation.

Zoning Analysis

The subject property is located in a C-2-A zone. The.

Special Exception Analysis

The provisions of §3104.1 require that the Board find that the special exception 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. In addition, the special conditions of §§726 and 733 must be met.

726 GASOLINE SERVICE STATIONS (C-2)

726.1 A gasoline service station established or enlarged after May 12, 1958, or a repair garage not including body and fender work, shall be permitted as a special exception in a C-2 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of § 706 and Chapter 23 of this title.
The provisions of §706 and Chapter 23 are discussed below.

706 GASOLINE SERVICE STATION C-1

706.1 A gasoline service station established or enlarged after May 12, 1958, shall be permitted as a special exception in a C1 District 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.
The applicable provisions of Chapter 23 are found in §2302 and are discussed below.

706.3 The station shall not be located within twenty-five (25 ft.) of a Residence District unless separated from the Residence District by a street or alley.

The existing gasoline service station is separated from the nearest Residence District by a 15' alley.

706.4 The operation of the use shall not create dangerous or objectionable traffic conditions.

The applicant has not submitted a revised traffic study reflecting the addition of the fast food use. OP has requested a traffic study be submitted to DDOT.

706.5 The Board may impose requirements pertaining to design, appearance, screening or lighting, or other requirements it deem necessary to protect adjacent or nearby property.

OP has requested site and landscape plans. The requested materials have not been received as of January 31, 2005.

706.6 Required parking spaces may be arranged so that all spaces may not be accessible at all times. All parking spaces provided under this subsection shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicle without moving any other vehicle onto public space.

The applicant has provided 18 parking spaces on the subject site, which exceeds the 14 parking spaces required. The applicant has not indicated how deliveries for the additional fast food space will be accommodated without impacting necessary maneuvering space for the required parking spaces.

2302 PUBLIC STORAGE GARAGES, REPAIR GARAGES, MECHANICAL PARKING GARAGES, AND GASOLINE SERVICE STATIONS

2302.1 A public storage garage, repair garage, mechanical parking garage, and gasoline service station established or enlarged in any district except in the C-M or M Districts shall be subject to the provisions of this section.

The gasoline service station is subject to the provisions of §2302.

2302.2 No portion of the structure or premises to be used for any of the uses listed in § 2302.1 shall be located within twenty-five feet (25 ft.) of a residence District unless separated from that Residence District by a street or alley.

The gasoline service station is separated from the adjoining R-1-B residential district by an alley.

2302.3 No use listed in § 2301.1 shall have vehicular entrance or exit connected with a street at a point closer than twenty-five feet (25 ft.) of a Residence District existing at the time the use is established, unless separated from the Residence District by a street or alley.

The applicant will remove the entrance closest to the Residence District along Newton Street.

2302.4 No driveway of any entrance or exit to any use listed in § 2302.1 shall be closer than forty feet (40 ft.) to a street intersection as measured from the intersection of the curb lines extended.

Two entrances in close proximity to the intersection of Rhode Island Avenue, NE and Newton Street, NE will be removed. The remaining entrances will be more the 40 feet (approximately 80') from the street intersection.

2302.5 Except in C-M or M Districts, all grease pits or hoists constructed or established as part of a use listed in § 2301.1 shall be within a building.

The gasoline service station will not offer vehicle repair or servicing and will not require any grease

pits or hoists.

733 FAST FOOD RESTAURANTS IN C-2-A DISTRICTS

733.1 Fast food restaurants shall be permitted as a special exception in a C-2-A District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.

733.2 No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a Residence District unless separated therefrom by a street or alley.
The subject lot is separated from the adjoining Residence District by an alley.

733.3 If any lot line of the lot abuts an alley containing a zone district boundary line for a Residence District, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of its lot.
The applicant has not provided a plan showing the location or extent of the required brick wall. OP has requested information and site plan showing how this section will be met.

733.4 Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a Residence District.
Although supplemental photographs provided by the applicant show an enclosure that may meet this requirement, it has not been located on any plans and there have been no details of its materials submitted. OP has asked for further details.

733.5 The use shall not include a drive-through.
The applicant does not propose a drive-through.

733.6 There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a zone district boundary line for a Residence District.
There are no customer entrances proposed on the side or rear of the building.

733.7 The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions.
The original conditions of the special exception provide for sufficient safeguards to ensure that the use will not be operated in a way that may become objectionable to neighboring properties. If the applicant has revised the lighting from the original special exception application a revised lighting plan should be submitted.

733.8 The use shall provide sufficient off-street parking, but not less than that required by § 2101.1, to accommodate the needs of patrons and employees.
The applicant is providing 18 parking spaces where 14 space are required.

733.9 The use shall be located and designed so as to create no dangerous or other objectionable traffic conditions.
The applicant has not submitted a revised traffic study reflecting the addition of the fast food use. OP has requested additional information.

733.10 There shall be adequate facilities to allow deliveries to be made and trash to be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles, or driveways on the site.
The applicant's site plan does not reflect where deliveries or trash collection will be accommodated. OP has requested information on how deliveries and trash collection will be handled on the site.

733.11 The Board may impose conditions pertaining to design, screening, lighting, soundproofing, off-street parking spaces, signs, method and hours of trash collection, or any other matter necessary to protect adjacent or nearby property.
Additional information is necessary from the applicant on the design, screening, lighting, signs, method and hours of trash collection, and landscaping to properly evaluate any additional conditions that should be imposed on the applicant to protect nearby property.

ANC Recommendation

Advisory Neighborhood Commission 5A has not met to review the application at the time of this report.

Recommendation

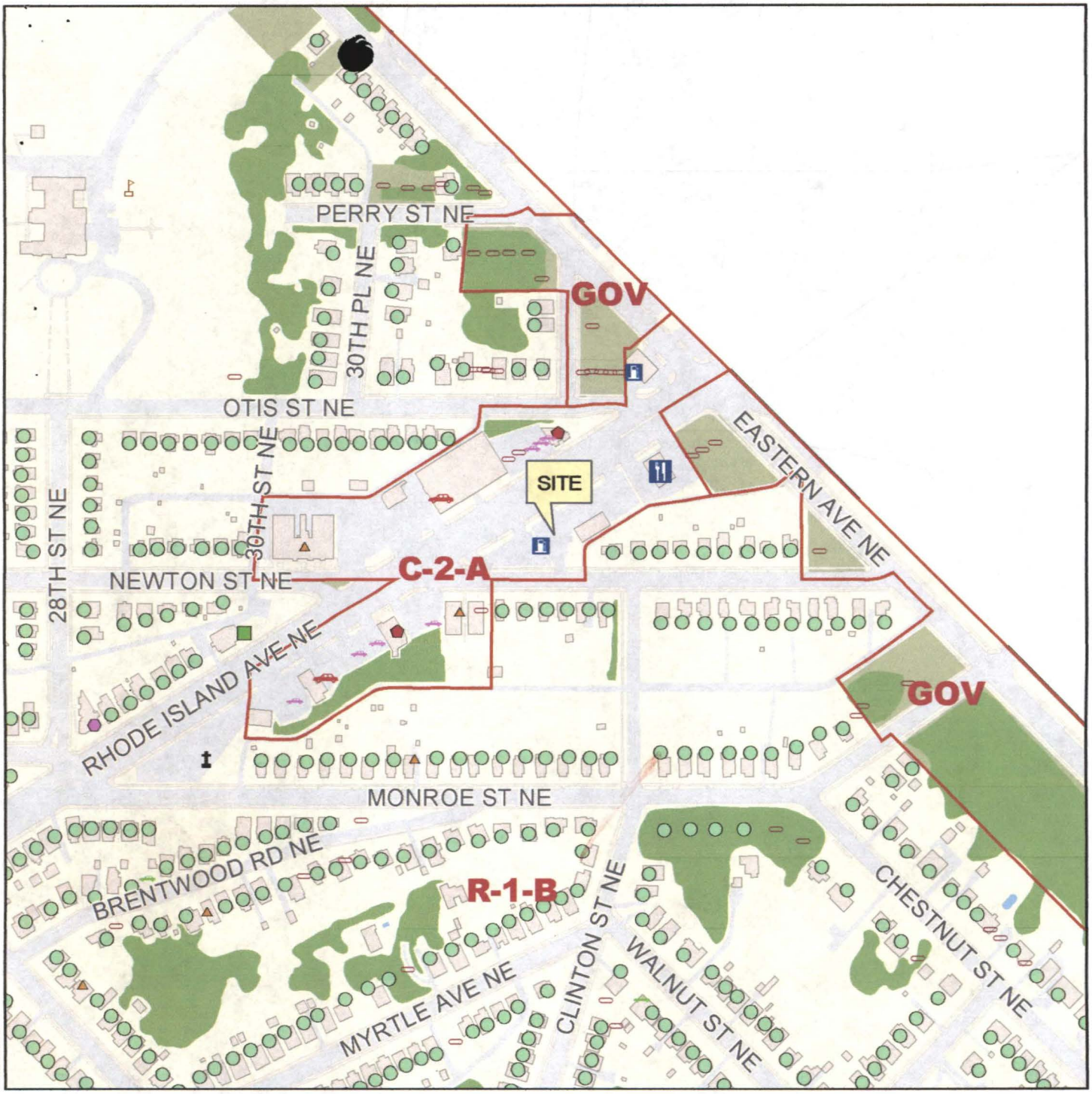
The Office of Planning does not have sufficient information to make a recommendation at this time. At the request of the Office of Planning the applicant is preparing a site plan and landscape plan to address the following concerns:

- There are two entrances, one on Newton Street and one on Rhode Island Avenue that are very close to the intersection that the applicant proposes closing. The applicant needs to remove the aprons and reconstruct the curb so the entrances are permanently removed.
- The applicant agreed, as part of the previous special exception, to close the easternmost entrance along Newton Street. The applicant needs to remove the apron and reconstruct the curb so this entrance is permanently removed.
- The applicant must provide a continuous brick wall at least six feet high as required by §733.3 and an enclosure for the refuse dumpster as required by 733.4.
- The cinder block wall on the rear of the structure should be treated with a brick veneer or other suitable treatment.
- The applicant should show how the parking lot layout meets the requirements of §733.10 to provide adequate space for deliveries and trash collection.
- Areas of the site that are not required for vehicular movements should be converted to planting areas and properly landscaped.

In addition the applicant should provide a traffic study to the District Department of Transportation.

Attachments:

1. Zoning and Land Use Map
2. Comprehensive Plan Map
3. Aerial Photo
4. Aerial Oblique Photos
5. BZA Order 16439



Zoning and Land Use Map
BZA Application #17282
3101 Rhode Island Ave., NE



N

Feet

0 200 400

★ ★ ★ **Government of the District of Columbia**
Anthony A. Williams, Mayor

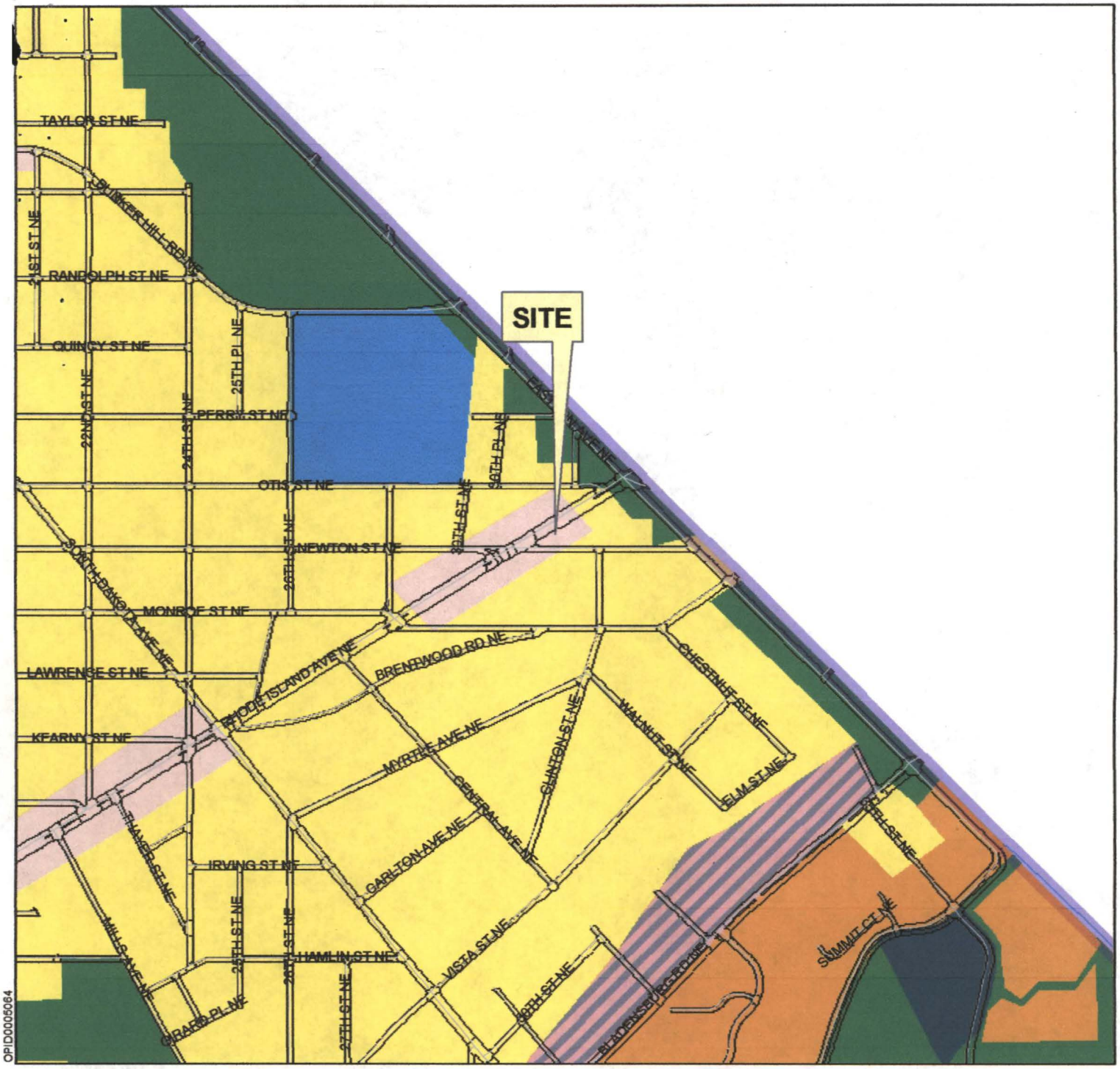
Office of Planning ~ January 31, 2005

This map was created for planning purposes from a variety of sources. It is neither a survey nor a legal document. Information provided by other agencies should be verified with them where appropriate.

Land Use Legend

- Single-Family Detached
- Resid. Garage
- Multi-family
- Tourist Home
- Store
- Office
- Vehicle Service Station
- Vehicle Sales
- Parking - Special Purpose
- Fast Food Restaurant
- Religious
- Educational
- Vacant

Attachment 1



Comprehensive Plan Map
BZA Application #17282
3101 Rhode Island Avenue, NE

N

Feet

0 500 1,000

★ ★ ★ Government of the District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ January 31, 2005

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Generalized Land Use Key

- Residential Low Density
- Residential Moderate Density
- Residential Medium Density
- Residential High Density
- Water
- Commercial Low Density
- Commercial Moderate Density
- Commercial Medium Density
- Commercial Med.-high Density
- Commercial High Density
- Federal
- Institutional
- Local Public
- Parks, Recreation and Open Space
- Production and Technical Employment

Attachment 2



Ortho Photo
BZA Application #17282
3101 Rhode Island Avenue, NE

N



★ ★ ★ Government of the
District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ January 31, 2005

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Oblique imagery ©2003 Pictometry International

Attachment 3



Aerial Oblique Photos
BZA Application #17282
3101 Rhode Island Ave., NE

☆ Subject Site

Government of the
District of Columbia
Anthony A. Williams, Mayor

Office of Planning ~ January 31, 2005

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Oblique imagery ©2003 Pictometry International

Attachment 4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16439 of 3101 Rhode Island Avenue, LLC, pursuant to 11 DCMR 3108.1 for a special exception from Sections 726 and 2302 to establish a gasoline service station and to establish a food store in a C-2-A District at premises 3101-03 Rhode Island Avenue, N.E. (Square 4308, Lot 45).

HEARING DATE: **March 17, 1999**
DECISION DATE: **April 7, 1999**

SUMMARY ORDER

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 5A and to owners of property within 200 feet of the site.

The site of this application is located within the jurisdiction of ANC 5A. ANC 5A, which is automatically a party to this application, provided the Board with a letter signed by the chairman, stating that ANC Commissioner Karen Lancaster, who represents the Single Member District (SMD) in which the site is located, was designated to act on the Commission's behalf in this matter. At the hearing, Commissioner Lancaster testified in support of the application, but raised several concerns that she requested that the applicant address. On March 31, 1999, the Board received from the applicant a voluntary agreement which addresses these concerns and which was signed by Commissioner Lancaster and the applicant's lessee, who is the owner and operator of the gasoline service station and food store business.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a special exception pursuant to 11 DCMR Sections 726 and 2302. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party in this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3108, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. The applicant shall comply with the agreement dated March 26, 1999, between Eyob (Joe) Mamo (applicant's lessee) and Karen Lancaster, Commissioner, ANC 5A-11.

2. In consultation with the Metropolitan Police Department, 5th District, suitable space shall be made available within the gasoline service station and food store establishment for use by the Metropolitan Police Department as a satellite police station.

3. The gasoline service station and food store shall be protected by an electronic surveillance system composed of from 12 to 16 television cameras mounted at strategic locations to assure full and continuous visual monitoring of the interior and exterior premises.

4. The exterior premises shall be fully lighted at a sufficient foot candle level to assure proper operation of the electronic surveillance system. Six lights shall be mounted on the exterior surfaces of the building, and additional lights shall be mounted on seven poles, each approximately 13 feet in height, along the perimeter of the property.

5. The electronic surveillance system and lighting shall be in place and operational at the time the establishment opens for business, and shall be maintained in good working order throughout the life of the establishment.

6. The existing trees and shrubbery at the rear of the property shall be trimmed or removed in order to enhance the security of the premises and prevent obscuring the view of the electronic surveillance cameras.

7. Employees shall be well-trained to observe potential criminal conduct on the premises and in the vicinity and to call immediately for police assistance.

8. The owner/operator of the establishment shall give first preference in hiring for the approximately 10 positions at the proposed establishment to applicants residing within SMD 5A-11, and the next preference to other residents of the District of Columbia.

9. The establishment shall comply with all environmental-protection requirements of the Federal and District of Columbia Governments, including but not limited to the requirements of the D.C. Underground Storage Tank Management Act of 1990 (D.C. Code, Sec. 6-995.1 *et seq.*) and the implementing regulations (20 DCMR, Subtitle F). The owner/operator shall consult with the commissioner of ANC 5A-11 on a regular basis regarding excavations, soil testing for contaminants and test results, development of remediation plans if contaminants are detected, and the installation of new tanks and safeguards incorporated in the new tank system to prevent leakage and to detect and halt any leakage that occurs.

10. The exterior premises shall be cleaned daily, and trash shall be hauled away for proper disposal. Trash that accumulates in the intervals between the daily clean-up shall be deposited by the on-site staff in trash bins located in an unobtrusive, enclosed location on the premises, away from public view.

11. The owner/operator of the establishment shall provide financial contributions in support of from four to six community activities recommended by the ANC commissioner for ANC 5A-11 on an annual basis for the life of the establishment, and shall meet with the 5A-11 Commissioner and ANC 5A as a whole, whenever necessary, to address community concerns and respond to community needs.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 3-0 (Sheila Cross Reid and Jerry Gilreath to grant; Betty King to grant by absentee vote; Herbert Franklin, not voting not having heard the case).

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

ATTESTED BY: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

FINAL DATE OF ORDER: APR 28 1999

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

Ord16439/ria/JKN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16439

As Director of the Board of Zoning Adjustment, I certify and attest that on APR 28 1999 a copy of the decision entered on that date in this matter was mailed first class, postage prepaid to each party in this case, and who is listed below:

John Ray, Esq.
Manatt, Phelps & Phillips, LLP
1501 M Street, N.W., 7th Floor
Washington, D.C. 20005

Karen M. Lancaster
Commissioner, ANC 5A-11
2819 Myrtle Avenue, N.E.
Washington, D.C. 20018

The Chairperson
Advisory Neighborhood 5A
Slowe School Demountable
14th & Irving streets, N.W.
Washington, D.C. 20017

Attested By: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

Attest/JKN