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Via Hand Delivery

Board of Zoning Adjustment
District of Columbia Office of Zoning
One Judiciary Square, Suite 210 South
441 Fourth Street N.W.
Washington, D.C. 20001

RE: BZA Application No. 17282
Response to Office of Planning Report

Dear Members of the Board:

We reviewed the report submitted by the D.C. Office of Planning ("OP") in the above-listed case, and initiated a meeting with OP Development Review Specialist David J. McGettigan on Wednesday, February 2nd to discuss how we can best and most promptly respond to the OP requests and concerns. This letter and the attached exhibits respond to most of the matters raised in the OP report, and we are working to provide additional material at the time of the BZA hearing Tuesday, February 8th or earlier if possible.

The Applicant is DAG Real Estate Holding Company LLC, whose managing member is Mr. Eyob (Joe) Mamo. I have shared the OP report with Mr. Mamo and discussed it with him. He is willing to cooperate to the maximum extent possible to address the matters OP has raised.

I must note, however, that many of OP's requests relate to the operation of the gasoline service station – not the proposed retail-space addition which is the subject of this application. The re-establishment of the gasoline service station was approved by BZA Order No. 16439, dated April 22, 1999 ("1999 BZA Order"). I do not believe the Zoning Regulations, either in letter or spirit, allow the Board to re-open a previously-approved case in its entirety in the course of considering a proposed "extension or enlargement" to the previously-approved use, structure, design, and site plan. To interpret the regulations otherwise would deter property owners from ever proposing an extension or enlargement for fear that the Board would upset previously-settled matters.

In my view, several items raised by OP would upset previously-settled matters. Although we are making every effort to be responsive to OP's concerns, I wanted to call the Board members' attention to my reservations as to whether some of these concerns can be appropriately considered in the context of the application before you. With that preface, the following sections describe our responses to the OP report.

Case No. 17282
Exhibit No. 31
Board of Zoning Adjustment
District of Columbia
CASE NO. 17282
EXHIBIT NO. 31

1. Site and landscape plan.

A site and landscape plan is attached as Exhibit A, and was provided to OP on February 2nd. Upon reviewing this plan, Mr. McGettigan requested a more refined site plan, showing wheel stops at the parking spaces, the trash bin enclosure, a brick wall to be constructed along a portion of the rear lot line, the placement of pole lights on the premises and street lights along the perimeter of the lot, the placement of the Shell sign listing gasoline prices, and other details. Mr. Mamo has directed his architect to produce such a site plan by close of business Monday, February 7th.

2. The two entrances nearest to the Newton Street/Rhode Island Avenue intersection, and the easternmost entrance along Newton Street.

The OP report stated incorrectly that the Applicant proposes to close these curb-cut entrances, and upon taking measurements from the drawn-to-scale site and landscape plan (Exhibit A), Mr. McGettigan acknowledged that there is no requirement to close these entrances because they are not "closer than forty feet (40 ft) to a street intersection as measured from the intersection of the curb lines extended." 11 DCMR 2302.4. (The "curb lines extended" are drawn in on Exhibit A.) It is necessary to leave these entrances in place to facilitate fuel-truck ingress and egress without interfering with customer vehicular access to the gasoline pumps.

As requested by the Commissioner for ANC 5A-11, agreed to by Mr. Mamo, and directed by the 1999 BZA Order, the easternmost entrance along Newton Street will be closed and permanently removed, subject to the approval of Mr. Mamo's public space permit application to the District Department of Transportation ("D-DOT").

3. On-site traffic flow and space for delivery trucks and trash-collection vehicles.

The OP report requests a showing of "how the parking lot layout meets the requirements of § 733.10 to provide adequate space for deliveries and trash collection" and detailed information regarding the loading/unloading space provided for delivery trucks and trash-collection vehicles, and the intended traffic flow on the premises. Section 733.10, applying to fast-food restaurants, states: "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." We will address this issue in our presentation at the February 8th hearing.

4. The refuse dumpster enclosure, the brick wall along a small portion of the rear lot line, and the aesthetic treatment of the cinder block wall on the rear of the proposed addition.

The refuse dumpster enclosure has been constructed as shown in the attached photograph (Exhibit B). However, it is not brick with "an opaque gate", as required by § 733.4. When this was brought to Mr. Mamo's attention, he agreed immediately to bring the enclosure into compliance with the regulation

Regarding the other matters, as noted in our Supplemental Submission of January 25th, Mr. Mamo agreed during the course of a meeting with OP on January 18th to:

- Improve the attractiveness of the rear wall of the proposed addition by painting it in a color compatible with the brick exterior of the rear wall of the main gasoline service station building (because the rear wall is flush with the retaining wall on the alley below, it is not possible to apply a brick veneer); and
- Construct a brick wall "at least six feet (6 ft) high and twelve inches (12 in.) thick" (as stated in § 733.3) along the small north-south portion of the rear lot line, perpendicular to Newton Street, that is not covered by the east-west rear wall of the building.

5. Traffic study.

It is not possible to commission and receive the results of a professional traffic study before the February 8th hearing, and we believe we should not be required to do so. Nothing in the Zoning Regulations requires that such studies accompany BZA applications, and Mr. McGettigan and his colleague, Ward 5 Planner Deborah Crain, did not request this during our January 18th meeting with them. A traffic study was not requested or required during the proceedings leading to the 1999 BZA Order.

Nevertheless, we are trying to develop as much additional traffic-related information as possible in advance of the hearing. We have placed telephone calls to Kenneth G. Laden, D-DOT's Associate Director for Transportation Planning, and to Mr. Bah of his staff, to request their advice and assistance, but as of this writing, we have not received responses to our telephone messages.

I trust this information will be helpful to the Board. We will be prepared to discuss these matters more fully at the February 8th hearing.

Sincerely,

John Ray
Manatt Phelps & Phillips
Counsel to DAG Real Estate
Holding Company LLC

Attachments:
Exhibit A – Site and Landscape Plan
Exhibit B – Photo, refuse dumpster enclosure

cc: D.C. Office of Planning
Ellen McCarthy, Interim Director
Jennifer Steingasser, AICP, Zoning Manager
David J. McGettigan, AICP

District Department of Transportation
Transportation Policy and Planning Administration
Kenneth G. Laden, Associate Director for Transportation Planning

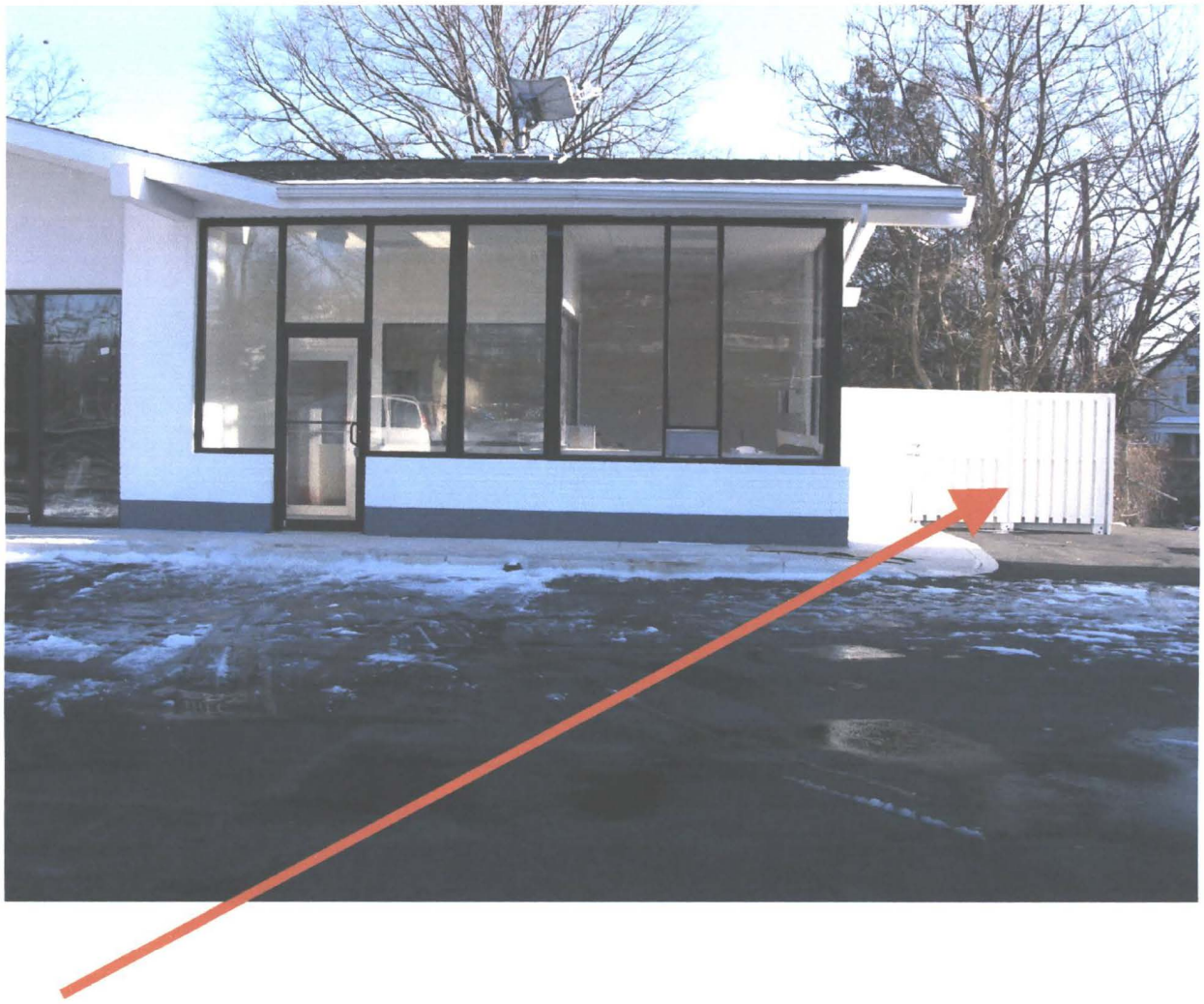
EXHIBIT 31A

CASE NO. 17282

IS AN OVERSIZED EXHIBIT

PLEASE SEE AT OFFICE

EXHIBIT B



This refuse dumpster enclosure will be reconstructed to conform to § 733.4 which applies to fast-food restaurants in C-2-A districts and states: "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 Residential District."