OPENING STATEMENT

BZA HEARING ON APPLICATION NO. 17282

DAG REAL ESTATE HOLDING COMPANY LLC

Tuesday, February 8, 2005

Good afternoon, Mr. Chairman and Members:

I am John Ray, an attorney with the firm of Manatt Phelps & Phillips. I am appearing before you as legal counsel to the Applicant.

1. INTRODUCTION.

The Applicant is DAG Real Estate Holding Company LLC, whose managing member is Joe Mamo. Mr. Mamo and his architect, Jeff Way, are here today. Mr. Way is prepared to walk you through the details of the revised and expanded site and landscaping plan and other design matters.

Mr. Mamo is a resident of the District of Columbia and has been in business in the District for more than 20 years. He presently owns all 16 of the Shell-branded service stations in the District and several in Maryland.

As noted earlier, Mr. Mamo's station at 3355 Benning Road NE was selected by Shell Oil last November for its first-in-the-nation demonstration of hydrogen fueling for motor vehicles. Shell and General Motors cooperated in installing a hydrogen fuel pump and a visitors center at the Benning Road site to help educate the public about safe, clean hydrogen fuel as an alternative to foreign oil.

2. THE APPLICATION.

We request approval of two special exceptions – one to permit enlargement of Mr. Mamo's Shell station at 3101-3103 Rhode Island Avenue NE, and the other to permit use of the proposed addition as a fast-food restaurant. The property is in ANC 5A-11, in Ward 5, and is zoned C-2-A.

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The proposed addition is 2,325 square feet in size, and is connected to the service station structure by a common party wall. It is designed to accommodate one or two retail establishments.

Mr. Mamo has made no final decision about the type of retail establishments to be located in the proposed addition. He has invited ANC 5A, and especially the Commissioner who represents Single-Member-District 5A-11, to make recommendations about the types of retail businesses community residents would like to see brought into that space. He has pledged to do everything possible to secure the type of retail tenants the community prefers.

The 3100 block of Rhode Island Avenue NE, and the nearby area, provide very little in the way of retail services for neighborhood residents and visitors. We are confident we will be able to bring in new retail services that will benefit the neighborhood.

One option Mr. Mamo is considering and has discussed with the ANC and other community leaders is a sandwich and salad shop such as a Blimpie's or Subway. This type of shop most likely would use both of the potential retail spaces in the proposed addition, and would include significant space for sit-down service, as well as carry-out service.

Upon reviewing the Board's discussion of the fast-food restaurant definition in its decision November 2nd, 2004, in a case involving a Blimpie's shop, we determined that even with substantial space for sit-down service, we would need a fast-food restaurant special exception to locate this type of establishment in the proposed addition. We included this in our application so Mr. Mamo could proceed with this type of establishment, if that is his ultimate decision in collaboration with the community.

If some other type of retail service is selected for this space, it would come under the matter-of-right provisions of the Zoning Regulations applicable to C-2-A zone districts.

3. HISTORY AND BACKGROUND.

In April 1999, this Board approved Mr. Mamo's application to re-establish gasoline service station use at the 3101-3103 Rhode Island Avenue NE location. The Board's Order in Application No. 16439 is in your case file for today's hearing. The Board's 1999 Order incorporated the Voluntary Agreement entered into at that time by Mr. Mamo and by the ANC Commissioner who then represented SMD 5A-11.

As Mr. Mamo proceeded to develop the gas station and food mini-mart authorized by the 1999 BZA Order, he realized the site was sufficiently large to accommodate additional retail uses. In December 2003, he submitted an application to the Department of Consumer and Regulatory Affairs for a building permit to construct the proposed addition. The building permit was approved and issued on February 4, 2004, and Mr. Mamo proceeded with the authorized construction.

Six months later, by letter dated August 20, 2004, DCRA issued a Stop Work Order blocking all further work on the proposed addition. The letter from DCRA's Building Inspections Division said the building permit was issued in error, and Mr. Mamo should seek BZA approval of the proposed addition as an "enlargement" of the previously-approved gasoline service station.

Mr. Mamo immediately stopped work on the proposed addition. As you see in the photographs attached to our application documents, the proposed addition remains substantially unfinished.

4. COMPLIANCE WITH APPLICABLE ZONING REGULATIONS.

Our application is subject to the:

- C-2 zone special-exception provisions applicable to enlargements of gasoline service stations and the location of fast-food restaurant establishments, at Sections 726.1 and 733.1 of the Zoning Regulations;
- The gasoline service station enlargement provisions, at 2302, and
- Other overall C-2 zone rules regarding height, density, floor area ratio, lot occupancy, and parking.

Our application documents – and also the Office of Planning report – describe our compliance with each of the applicable regulations, so I will not take time to elaborate on the details that have been presented to you in writing.

5. THE OFFICE OF PLANNING REPORT.

Throughout the application process, we have worked closely with Office of Planning staff members, and I believe they will attest to our efforts to cooperate and provide timely responses to their questions and concerns.

We reviewed the OP report dated January 31st, initiated a meeting with OP staff to discuss matters addressed in the report, then filed our response document with the Office of Zoning on Friday, February 4th, and delivered copies to the Office of Planning and also to Mr. Kenneth Laden of the District Department of Transportation.

In our February 4th written response to the OP report, I believe we have specifically and successfully addressed and remedied most of OP's concerns. My colleagues and I are prepared to further elaborate on any of these matters in response to your questions.

6. COMMUNITY OUTREACH AND COOPERATION.

In preparation for this hearing, I reviewed the transcript of the Board meeting discussion on April 7, 1999, leading to the Board vote to approve Mr. Mamo's 1999 application. Then-Chairperson Sheila Cross Reid commented that "the Applicant seemed to be extremely cooperative in meeting all of the requests that they (the ANC) made. . . ."

Mr. Mamo continues to be extremely cooperative with the residents and ANC and civic leaders of the neighborhoods where he does business. This spirit of cooperation is underscored by the fact that ANC 5A has voted unanimously in support of the proposed addition.

As you will hear later, Mr. Mamo has worked closely and cooperatively with ANC 5A – particularly 5A-11 Commissioner Franklyn Malone – to revise and update the 1999 Voluntary Agreement addressing community concerns

regarding the Rhode Island Avenue gas station and the proposed addition. At the appropriate time during today's hearing, the ANC 5A representative is prepared to provide the Board with the Amended Voluntary Agreement that Mr. Mamo and the ANC 5A representative have signed.

Mr. Mamo looks forward to forging a continuous, cooperative, and mutual working relationship with ANC 5A, the SMD 5A-11 Commissioner, and other civic leaders in the neighborhood.

This concludes my opening remarks. With the Board's permission, I would like to ask Mr. Way to present and describe the revised and expanded site plan, including landscaping features.

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