GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17282 of DAG Real Estate Holding Company, LLC, pursuant to 11 § 3104.1 for a special exception to enlarge a gasoline service station/mini-mart store under sections 726.1 and 2302, and a special exception to establish a fast-food restaurant in an adjoining structure under subsection 733.1, in the C-2-A District at premises 3101-3103 Rhode Island Avenue, N.E., (Square 4308, Lot 45).

HEARING DATE: February 8, 2005
DECISION DATE: March 1, 2005

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, the Office of Planning (OP) and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 5A. ANC 5A, which is automatically a party to this application, provided testimony by its Chairperson, Joseph Bowser, and a written report in support of the application. ANC 5A additionally provided a copy of the Amended Voluntary Agreement entered into between ANC 5A and Eyob (Joe) Mamo, managing member of the applicant entity. The Amended Voluntary Agreement, dated February 3, 2005, supersedes the Voluntary Agreement of March 26, 1999, between Mr. Mamo and the 5A-11 Commissioner at that time. The Board recognizes the Amended Voluntary Agreement as a binding and enforceable commitment by the applicant to take specified actions to address ANC 5A concerns. The Board gives great weight to the ANC 5A testimony and written report.

The OP submitted a written report making no recommendation on the application, pending receipt of a revised and expanded site and landscaping plan from the applicant. After receiving and reviewing the revised and expanded plan, the OP recommended approval of the application through testimony at the hearing.

As directed by 11 DCMR § 3119.2, the Board required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for special exceptions pursuant to 11 DCMR §§ 726, 733, and 2302. Three witnesses appeared at the public hearing in opposition to the application. Raymond W. Poles, Arthur Jones, and Raymond Blake testified that they reside in the 3100 block of Newton Street N.E., adjacent to the applicant's site, and they are concerned that the applicant's establishment may have an adverse effect on their neighborhood. In accordance with the Board's instructions, the opponents timely filed a memorandum proposing conditions for inclusion in the Board order. The applicant timely filed a response and an alternative proposal of conditions. The Board has considered both proposals.

ADJUSTMENT
District of Columbia
CASE NO. 17282
EXHIBIT NO. 40

Board of Zoning Adjustment
District of Columbia
CASE NO. 17282
EXHIBIT NO. 40

Based upon the record before the Board, and having given great weight to the OP and ANC 5A reports and testimony in this case, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1, 726, 733, and 2302, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS:**

1. The gasoline service station, mini-mart store, and fast-food restaurant and/or other retail businesses located in the adjoining structure 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, including the portion of the public alley that lies to the rear of the property. Television monitors will be placed inside the establishment for monitoring by employees. Videotapes or digital or other electronic images recorded by the surveillance system will be maintained for 30 days, or for any longer period that may be requested or required by law enforcement authorities or other government officials.

2. The exterior premises shall be fully lighted at a sufficient foot candle level to assure proper operation of the electronic surveillance system and covered in such a way that rocks and other similar missiles cannot extinguish them. Six lights will be mounted on the exterior surfaces of the building, and additional lights will be mounted on seven poles, each approximately 13 feet in height, along the perimeter of the property.

3. The electronic surveillance system and lighting shall be in operation and maintained in good working order from the outset of operations and throughout the life of the establishment. Lighting will be reviewed at least weekly for repairs as needed.

4. Trees, shrubbery, and flowers shall be planted and maintained on the premises in accordance with the applicant's site and landscaping plan provided to the Board on February 8, 2005, and in consultation with the 5A-11 Commissioner and residential neighbors. Plantings at the rear of the property will be low-growing to avoid providing cover for disorderly or criminal activities. Plantings will be chosen and properly maintained to enhance the attractiveness of the premises, but without obscuring the view of the electronic surveillance cameras.

5. Employee training shall be provided to instruct on site personnel in proper and appropriate responses to criminal activities on the premises and in the vicinity including, but not limited to calling for police assistance upon observing any such activity.

6. The property shall be cleaned daily with trash hauled away on a regular basis. Trash that accumulates daily shall be deposited in trash bins that are located in unobtrusive enclosed locations on the premises and away from public view.

7. The refuse dumpster enclosure on the premises shall be reconstructed in accordance with the requirements of 11 DCMR § 733.4.

8. A brick wall shall be constructed in accordance with specifications set forth at 11 DCMR § 733.3 along the 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.

9. The rear wall of the adjoining structure shall be painted in a color compatible with the brick exterior of the rear wall of the gasoline service station building.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 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 not prohibited by law. It is therefore **ORDERED** that this application be **GRANTED.**

VOTE: **4-0-1** (Ruthanne G. Miller, Geoffrey H. Griffis, John A. Mann II and Curtis L. Etherly, Jr. to approve, the Zoning Commission member not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member has approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 0 8 2005

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION

FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA APPLICATION NO. 17282

As Director of the Office of Zoning, I hereby certify and attest that on MAR 0 8 2005 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

John Ray, Esq.
Manatt, Phelps & Phillips LLP
Counsel to DAG Real Estate
Holding Company LLC
1501 M Street, N.W., Suite 700
Washington, D.C. 20005-1702

Chairperson
Advisory Neighborhood Commission 5A
Slowe School Demountable
14th & Irving Street, N.E.
Washington, D.C. 20017

Single Member District Commissioner 5A11
Advisory Neighborhood Commission 5A
Slowe School Demountable
14th & Irving Street, N.E.
Washington, D.C. 20017

Vincent B. Orange, Sr., City Councilmember
Ward Five
1350 Pennsylvania Avenue, N.W.
Suite 108
Washington, D.C. 20004

Toye Bello, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Interim Director
Office of Planning
801 North Capitol Street, N.E.
4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of the Attorney General
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning