

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.

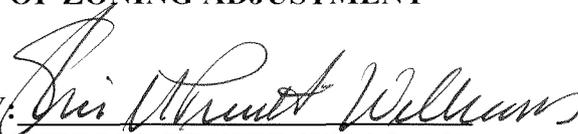
- 11. The owner/operator of the establishment shall provide financial contributions in support of from four to six community activities recommended by the ANC commissioner for ANC 5A-11 on an annual basis for the life of the establishment, and shall meet with the 5A-11 Commissioner and ANC 5A as a whole,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

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

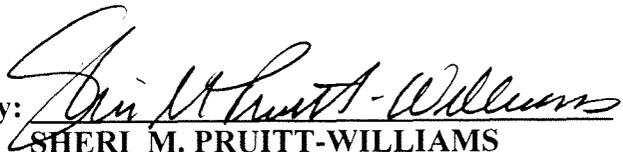
As Director of the Board of Zoning Adjustment, I certify and attest that on
APR 28 1999 a copy of the decision entered on that date in this matter was
mailed first class, postage prepaid to each party in this case, and who is listed below:

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

Interim Director

Attest/JKN