GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17281 of Power Fuel & Transport, LLC, pursuant to 11 DCMR § 3104.1 for a special exception to establish a gasoline service station under § 743.1 of the Zoning Regulations in the C-3-A District at premises 4665[1] South Capitol Street, SW (Square 6274, Lots 1 & 4)

HEARING DATE: February 7, 2005
DECISION DATE: June 7, 2005

DECISION AND ORDER

This application was submitted on December 3, 2004 by the owner of the property that is the subject of the application, Power Fuel & Transport, LLC (Power Fuel or the applicant). Following a hearing on February 7, 2005 and a public meeting on June 7, 2005, the Board of Zoning Adjustment (the Board) voted to approve the special exception subject to certain conditions.

PRELIMINARY MATTERS

The application The application was for a special exception to establish a gasoline service station.

Self-certification The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 4).

Notice of Public Hearing The Director of the Office of Zoning provided notice of the hearing in accordance with 11 DCMR 3113.13. Pursuant to § 3113.14 and 3113.15, the applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect.

ANC 8D The subject site is located within the jurisdiction of ANC 8D, which is automatically a party to this application. In its report dated February 3, 2005, ANC 8D indicated that at a meeting with a quorum present, it voted to oppose the application. Among other things, the ANC contends that the application should be denied because: (1) the applicant cannot establish that the gasoline station will not create dangerous or objectionable traffic conditions; and (2) the application and other documents incorrectly

[1] As noted in finding of fact number 3, the Applicant erroneously listed the property location as 4675 South Capitol Street, rather than its actual address of 4665 South Capitol Street. The caption has been changed to reflect the correct address.

list 4675 South Capitol Street, SW (the adjacent lot) as the address for the property, and 6274 as the Lot for the property. The ANC also disputes Power Fuel's contention that zoning relief it requested is not needed.

Requests for Party Status The Board received one request for party status from Fred Rashidi & Associates, the operator of a nearby gasoline station (Exhibit 24). However, this request was withdrawn and Mr. Rashidi provided testimony in opposition to the application.

Persons in Opposition John Ray, counsel for DAG Petroleum Company, testified in opposition to Power Fuel's characterization of this application as a request to "re-establish" a gasoline station at the property.

Persons in Support The Board received a letter in support from Councilmember Marion Barry (Exhibit 29), and heard testimony in support of the gasoline station from eight citizens.

Office of Planning (OP) Report OP's report indicated that it could not make a recommendation because it had not received a site plan from the applicant, or information regarding parking, circulation, landscaping, signage, or lighting (Exhibit 27).

Department of Transportation (DDOT) Report DDOT's initial report also concluded that it lacked sufficient information to analyze the transportation impact of the gasoline station (Exhibit 26). In particular, DDOT stated that it needed a site plan showing the location of the gas pump islands, access points, parking spaces, lighting, landscaping, and screening materials. However, after receiving supplemental filings from the applicant, DDOT filed an updated report noting that it had no objections to the revised proposal (Exhibit 40).

Closing of the Record After the public hearing, the Board accepted supplemental filings from the applicant, the ANC, and DDOT (Exhibits 38, 41, 43, and 40).

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located in the southwestern quadrant of the District, near the intersection of South Capitol Street and Southern Avenue. It has a land area of approximately 23, 429 square feet.

2. The property is zoned C-3-A and is depicted in the Comprehensive Plan Generalized Land Use Map as "moderate density commercial". Although there is parkland to the north, south and west of the site, the area to the east is commercial in character.

3. The address listed on the application is 4675 South Capitol Street; however, the proposed gasoline station is to be located at 4665 South Capitol Street where there is an existing one-story building that serves as a retail store. (See, Plat for Building Permit, Exhibit 2, and applicant's traffic report, Exhibit 38). There is a branch of Bank of America on the adjacent property located at 4675 South Capitol Street.

The Proposed Project

4. The proposed gasoline service station will consist of six pumps on four by ten feet fueling islands. The fueling area will be under a fifty by eighty feet canopy. No other vehicular services will be provided at the site.

5. The existing retail store will serve as a convenience store that is an accessory use to the gasoline station. The cash registers for both uses will share the same physical space in the existing building.

6. The gasoline service station will not be located within twenty-five feet of a residence district. Nor will any vehicular entrance to the station be located with twenty-five feet of a residence district. The nearest residence district to the proposed station is on the south side of Livingston Road, approximately three blocks beyond the commercial district at South Capitol Street and Southern Avenue, SE. There is another residential area near the site of the proposed station at 800 Southern Avenue, which is approximately five blocks to the east of the site.

7. The gasoline service station will not be within 40 feet from a street intersection. The closest intersection is at South Capitol Street and Southern Avenue, which is over 100 feet away.

8. There will be twelve regulation parking spaces for customer use at the property.

The Impact of the Proposed Gasoline Service Station

9. The Board concurs with OP's finding that the subject property is large enough to accommodate the level of anticipated vehicular traffic at the site, without affecting the traffic flow on adjacent South Capitol Street.

10. The Board credits the report presented by the applicant's traffic consultant, with which DDOT concurs, in particular the finding that the adjacent street network can

accommodate the gasoline service station (See, Report by Street Traffic Studies, Ltd., Exhibit 38 and DDOT Report, Exhibit 40).

11. Provided the traffic circulation system is reconfigured as proposed by the traffic consultant, the gasoline service station will not adversely affect traffic safety. The applicant has proffered these changes as a condition of approval (Exhibit 38, p. 3).

CONCLUSIONS OF LAW

Generally, the Board is authorized to grant a special exception where, in its judgment, 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." 11 DCMR § 3104.1, D.C. Official Code § 6-641.07(g)(2)(2001). The Board concludes that the proposed use of the property as a gasoline service station will be compatible with the surrounding area and will not adversely affect neighboring properties, so long as the conditions within this Order are complied with.

Each special exception permitted, however, must also meet all the conditions enumerated in the particular section pertaining to it. In this case, therefore, the applicant also has to meet the conditions listed in §§ 743.2, 706 and 2302 of the Zoning Regulations. Section 743.1 permits Board approval of a gasoline service station in a C-3 District that is established or enlarged after December 20, 1985, subject to the provisions of § 706 of the Regulations. Section 706 authorizes gasoline stations as special exceptions in the C-1 Zone District, subject to the provisions of §§ 706.3 through 706.6 and Chapter 23 (PRIVATE GARAGES AND CARPORTS). As discussed below, the proposed gasoline station satisfies all of the applicable criteria.

706.3 *The station shall not be located within twenty-five feet (25 ft.) of a Residence District unless separated from the Residence District by a street or alley*. The station is not located within twenty-five (25) feet of a Residence District. The nearest residence district to the proposed station is on the south side of Livingston Road, approximately three blocks beyond the commercial district at South Capitol Street and Southern Avenue, SE. There is another residential area near the site of the proposed station at 800 Southern Avenue, which is approximately five blocks to the east of the site. (Finding of Fact 6.)

706.4 *The operation of the use shall not create dangerous or other objectionable traffic conditions.* Provided the applicant complies with the revised site plan and circulation plan, the Board concludes that the gasoline service station will not create any dangerous or other objectionable traffic conditions. The Board agrees with the applicant's traffic consultant, with whom DDOT concurs, that the site itself is large enough to handle the

anticipated vehicular traffic and the adjacent street network can accommodate the gasoline service station.

706.5 *The Board may impose requirements pertaining to design, appearance, screening, lighting, or other requirements it deems necessary to protect adjacent or nearby property.* Compliance with the revised site plan, landscaping plan and circulation plan are conditions of approval of this special exception.

706.6 *Required parking spaces may be arranged so that all spaces are not 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 vehicles without moving any other vehicle onto public space.* The applicant is providing 12 parking spaces, more than the number required. Under the Schedule of Requirements for Parking Spaces in the Zoning Regulations, the applicant is required to provide one parking space for each 300 feet of gross floor area, 11 DCMR 2101.1. At this site of approximately 23, 427 square feet, the applicant would be required to provide only seven parking spaces. In addition, DDOT has endorsed the arrangement of parking spaces, as depicted on the revised site plan.

The applicant must also satisfy the criteria in § 2302 of the Zoning Regulations.

2302.1 *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.* No portion of the gasoline service station will be within 25 feet of a residence district (See, Finding of Fact 6).

2302.2 *No use listed in §2302.1 shall have a vehicular entrance or exit connected with a street at a point closer than twenty-five feet (25 ft.) to any Residence District existing at the time the use is established, unless separated from the Residence District by a street or alley.* The gasoline station will not have a vehicular entrance or exit connected with a street at a point closer than twenty-five (25) feet to any Residence District. (See, Finding of Fact 6).

2302.3 *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. The gasoline service station will not be within 40 feet from a street intersection. The closest intersection is at South Capitol Street and Southern Avenue, which is over 100 feet away.* (See, Finding of Fact 7).

2302.4 *Except in a C-M or M District, all grease pits or hoists constructed or established as part of a use listed in §§2302.1 shall be within a building.* The use is limited to the gasoline service station and convenience store. No other vehicular services will be provided at the site.

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21, as amended; D.C. Official Code § 1-309.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. To give "great weight" the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC's issues and concerns.

In this case the ANC opposed the applicant's request for relief, claiming: (1) the applicant cannot establish that the gasoline station will not create dangerous or objectionable traffic conditions; (2) the application and other documents incorrectly lists 4675 South Capitol Street, SW (the adjacent lot) as the address for the property; and (3) the gasoline station has not been operating continuously at the site as Power Fuel asserts.

For reasons explained in this Decision and Order, the Board finds that the proposed gasoline station will not create dangerous or objectionable traffic conditions. The applicant's traffic report and the DDOT report (including input from OP) provide a well-reasoned basis for determining that the gasoline station will not create dangerous or objectionable traffic conditions.

As to the incorrect address references, the Board is satisfied that the gasoline station is located at 4665 South Capitol Street, S.W. and has indicated the corrected address in the caption of this order. The initial error is not grounds for denying special exception relief.

Finally, the evidence in this case, particularly certificates of occupancy that were submitted in the record, support the ANC's contention that a gasoline station has not been operating continuously at the site. That fact, however, goes only to whether the gas station could operate as a matter of right at the site. It is not grounds for denying the special exception relief.

The Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. However, OP did not make any recommendation in either its written report or oral testimony. As a result, there is no recommendation from OP to which the Board can give "great weight".

In light of the foregoing, the Board **ORDERS** that the application is hereby **GRANTED** to allow the establishment of a gasoline service station and convenience store at 4665 South Capitol Street, SW (Square 6274, Lots 1 & 4)

VOTE: 4-0-1 (Geoffrey H. Griffis, Ruthanne G. Miller, John Mann, II and Curtis L. Etherly, Jr. to approve; no Zoning Commission member participating)

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

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

FINAL DATE OF ORDER: DEC 1 5 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 § 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17281

As Director of the Office of Zoning, I hereby certify and attest that on DEC 15 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:

Power Fuel & Transport, LLC
6406 Whittier Court
Bethesda, Maryland 20852
Washington, D.C. 20008

Chairperson
Advisory Neighborhood Commission 8D
632 Elmira Street, S.E.
Washington, D.C. 20032

Single Member District Commissioner 8D03
Advisory Neighborhood Commission 8D
632 Elmira Street, S.E.
Washington, DC 20032

Bill Crews, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

Councilmember Marion Barry
Ward 8
1350 Pennsylvania Avenue, N.W.
Suite 400
Washington, DC 20004

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

Alan Bergstein
Office of the Attorney General
441 4th Street, N.W., 7th Floor
Washington, DC 20001

Julie Lee
General Counsel
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR