

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17870 of Koo Yuen, pursuant to 11 DCMR § 3104.1, for a special exception to establish a gasoline service station under sections 726 and 706, in the C-2-A District at premises 3710 Minnesota Avenue, N.E. (Square 5046, Lot 810).

HEARING DATES: December 9, 2008, March 24, 2009, April 27, 2009, May 19, 2009

DECISION DATE: May 19, 2009

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator certifying the required relief. (Exhibit 3).

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 7A, and to all owners of property within 200 feet of the property that is the subject of this application. The subject property is located within the jurisdiction of ANC 7A, which is automatically a party to this application. ANC 7A did not file a report regarding the application. The Office of Planning (OP) submitted three reports either recommending denial of the application or indicating that they could not recommend approval of the application, primarily because of the District Department of Transportation's (DDOT) concerns that DDOT initially raised. (Exhibits 20, 32, 34). However, in its testimony at the final hearing on May 19, 2009, OP testified that it rescinded its previous reports and recommended approval of the application with conditions, based on the last set of revised plans submitted and DDOT's supplemental report in which it recommended conditional support. Likewise, DDOT initially had expressed reservations about the application and recommended denial of it (Exhibit 33), but ultimately recommended conditional support in its supplemental report, dated May 19, 2009, and in its testimony before the Board on May 19, 2009. (Exhibit 38). A

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witness in support gave testimony on May 19, 2009. Several petitions in opposition were received.¹ (Exhibits 19, 22, 23, 29).

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1 706, and 726. No parties appeared at the public hearing in opposition to the application.² Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the OP report filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3104.1 for a special exception under §§ 706 and 726, and that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements 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 appropriate in this case. It is therefore **ORDERED** that the application (pursuant to Exhibit 37 – REVISED PLANS) be **GRANTED AS CONDITIONED**:

1. Deliveries of gasoline shall not be made to the site between the hours of 7:00 a.m. and 7:00 p.m.
2. Deliveries to the site shall be restricted to delivery trucks that are no longer than 30 feet and with a capacity of no more than 5,000 gallons.

VOTE: **3-0-2** (Shane L. Dettman, Marc D. Loud, and Michael G. Turnbull to approve; no other members present or voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of Board members approved issuance of this order.

¹ The Board noted that although petitions in opposition were received, the petitions did not indicate any reason for the opposition or describe an adverse impact that would arise if the application was granted.

² As indicated, although initially both DDOT and OP recommended denial of the application, ultimately both agencies filed reports and testified in support of the application with conditions.

ATTESTED BY:


RICHARD S. NERO, JR.
Acting Director, Office of Zoning

FINAL DATE OF ORDER: MAY 26 2009

UNDER 11 DCMR § 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL BECOME EFFECTIVE 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.

IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON

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ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT.
DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED.
VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Acting Director of the Office of Zoning, I hereby certify and attest that on May 26, 2009, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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