

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17963 of Euclid of Virginia, LLC, for a special exception pursuant to §§ 3104, 706 and 2302, to construct a new convenience store and self-service gasoline station at the premises located at 4975 South Dakota Avenue, N.E., in the C-1 Zone District (Square 3899, Lot 76).

HEARING DATE: September 22, 2009
DECISION DATES: November 11, 2009 and December 15, 2009

DECISION AND ORDER

On April 22, 2009, Euclid of Virginia, LLC, filed an application with the Board of Zoning Adjustment (the “Board”) for special exception relief to raze the existing convenience store, and build a new convenience store and self-service gasoline station at the property. Following a public hearing and decision meeting, the Board voted to approve the application.

PRELIMINARY MATTERS

Application

This application was filed by Euclid of Virginia, LLC, (“Euclid” or the “Applicant”), the developer, on behalf of the property owner, Koo Yuen Park. The original application sought relief under § 3104 (general special exception relief) and § 706 (special exception relief to establish a gasoline service station). (See, Application at Exhibit 1, and Narrative Statement at Exhibit 3). Pursuant to § 706.1, and at the suggestion of the Office of Planning (“OP”), the Applicant also demonstrated compliance with the standards set forth in § 2302 (additional criteria for gasoline service stations) (See, Supplemental Narrative Statement at Exhibit 22).

Authorization

The property owner authorized Michael Goss to appear before the Board as his agent during the proceedings. (Exhibit 5).

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Self-Certification

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

Notice of Application and Notice of Hearing

The application was filed on April 22, 2009. By memoranda dated June 24, 2009, the Office of Zoning notified the following agencies that the application had been filed: the D.C. Office of Planning (“OP”), Advisory Neighborhood Commission (“ANC”) 5A, the ANC for the area within which the subject property is located, and the D.C. Department of Transportation (DDOT). Pursuant to 11 DCMR 3113.3, notice of the hearing was sent to the Applicant, all entities owning property within 200 feet of the Applicant’s site, the ANC, OP and DDOT. The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibit 25).

ANC 5A

The subject site is located within the area served by ANC 5A, which is automatically a party to this application. The ANC filed three written reports with the Board.

(1) In its report dated September 17, 2009, ANC 5A indicated that at a regularly scheduled and legally noticed meeting on July 22, 2009, with a quorum present, the ANC voted to oppose the application. (Exhibit 26). The ANC indicated that it had several issues and concerns with the proposed project: (1) The community does not “need” another gasoline station and an existing station is three blocks away from the proposed site; (2) The site is too small for the proposed project and will result in temporary parking and idling on the street, causing traffic congestion and road hazards; (3) The gasoline station may cause environmental problems to the community; (4) The owners do not maintain their property and there are problems with loitering and trash at the site; (5) The proposed location is already congested due to the McDonald’s across the street and the existing gasoline station; (6) The community does not support a 24 hour convenience store; (7) The owners have not posted visible signs or notice for the proposed use of the property; and (8) The owners are not part of the community, do not live in the neighborhood, and are not participants in the ANC.

(2) In its report dated November 4, 2009¹ (following the public hearing), the ANC reiterated some of its previous concerns, with an emphasis on its concerns about traffic, safety, and congestion. The ANC also commented that it was waiting to receive a traffic study from the Applicant.

¹ The report indicates that after the Board’s public hearing, the ANC held additional meetings on September 23, October 5, and October 21. However, there is no indication whether these meetings were noticed in accordance with the law, or whether there was a quorum.

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(3) In a report dated December 11, 2009², the ANC indicated that an emergency meeting held on December 7, 2009, with a quorum present, the ANC voted again to oppose the special exception. The ANC again noted its concerns regarding traffic and maintained that the traffic study submitted by the Applicant was flawed.

Requests for Party Status

There were no requests for party status.

Other Persons/Entities in Opposition/Support

No persons appeared in opposition or in support at the public hearing. However, the Board received letters in opposition from the North Michigan Park Civic Association (Exhibit 24) and nearby property owners residing at 5015 10th Street, N.E. (Exhibit 30), and 4936 11th Street, N.E. (Exhibit 27). Among other things, the persons in opposition stated that there was no “need” for a gasoline station at the site, noting the existence of another gasoline station in close proximity to the one which was proposed.

Government Reports

OP OP filed a report indicating that it recommended approval of the special exception, subject to certain specified conditions regarding the hours of operation, the lighting at the premises, and a proposed condition prohibiting an amplified exterior sound system. (Exhibit 23). In addition, OP’s representative, Arthur Jackson, participated in the public hearing, affirming the substance of the OP written report.

DDOT Report DDOT had not prepared a report at the time of the public hearing. However, Jeff Jennings (a DDOT representative) testified at the hearing and asserted that the proposed project would not result in congestion or in other objectionable traffic impacts. Specifically, Mr. Jennings opined that he did not believe there would be “cut through” trips through the neighborhood as a result of the proposed gasoline station. (T. p. 144 – 145). Mr. Jennings stated that his testimony was based upon communications with the Applicant and extrapolations from a traffic study at another location. This traffic study, the “Minnesota Avenue study”, had been submitted by the Applicant for the Minnesota Avenue corridor, a location with characteristics which are “very similar” to the South Dakota Avenue location of the subject property. (Transcript, BZA Hearing of September 22, 2009, (“T.”) p. 139). After the public hearing, and at the Board’s request, DDOT submitted a formal report. (Exhibit 31). In this report, DDOT recommended approval of the application, subject to certain specified conditions. The proposed

² The Board waived its rules to allow part of this report into the record. (The Board allowed only the first page and part of the second page of this report into the record. The remaining pages related to federal environmental standards and are beyond the Board’s jurisdiction.) The Board found that the ANC had good cause to submit a late filing, and that the Applicant was not prejudiced by the late filing because it had sufficient time to review the report and respond to it.

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conditions related to the hours for fuel delivery, the size of the delivery trucks, and a specific plan for ingress and egress to and from the site, including a condition which restricted the South Dakota Avenue curb cut to a right turn into the site.

FINDINGS OF FACT

The Site and Surrounding Area

1. The site is located at 4975 South Dakota Avenue, N.E. in the C-1 Zone District. It is an irregularly shaped lot with frontage on Emerson Street, South Dakota Avenue, and Delafield Street, N.E.
2. There are currently three existing curb cuts at the site, two at South Dakota Avenue and one at Emerson Street.
3. The site abuts a self-service gasoline station owned by BP Oil. Across the street from the site are a Chinese food restaurant, a McDonald's restaurant, a dry cleaning establishment, and a beauty parlor.
4. There is an existing convenience store at the site.
5. The site is separated from the neighboring residential district (R-2) by Delafield and Emerson Streets. There are semi-detached one-family dwellings to the north and west across Emerson Street and Delafield Street.

Proposed Project

6. The Applicant proposes to raze the existing convenience store and construct a new 1,800 square-foot building for a new convenience store and gasoline station. The gasoline station will have three pumps and a canopy over the pumps.
7. The Applicant made several refinements to the plans in response to comments from OP and DDOT. Both OP and DDOT suggested that Board approval be subject to specific conditions.
8. The Applicant provided traffic, queuing and truck maneuvering diagrams on revised plans submitted to the Board and reviewed by DDOT. The large area of the site provides for ample on-site vehicular circulation and safe pedestrian movement. The orientation of the three pump islands, all of which are parallel to South Dakota Avenue, will direct traffic away from the convenience store.
9. Subject to DDOT approval, the Applicant plans to eliminate one of the three existing curb cuts – the one at South Dakota Avenue closest to the intersection. The two remaining curb

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cuts will be located at least 40 feet from the intersection of South Dakota Avenue and Delafield Street. One of the two remaining curb cuts -- the curb cut retained along South Dakota Avenue -- will allow only a right-turn onto the site.

10. Eight parking spaces will be provided on-site, two of which will be accessible to vehicles displaying the universal symbol of accessibility. There will also be bicycle parking.
11. The hours of operation will be limited to 6:00 a.m. to 10:00 p.m.
12. The lighting at the premises will be recessed and focused downward, so as not to cause any objectionable glares onto the surrounding residential properties.
13. The existing trash enclosure at the site will be enlarged, the premises will be kept clean and free of debris, and there will be no loitering at the premises.

The Zoning Relief Sought

14. A convenience store is allowed in the C-1 district as a matter of right. However, a gasoline service station is subject to approval by the Board pursuant to § 706 of the Zoning Regulations.
15. Pursuant to § 706.1, a gasoline service station approved as a special exception is also subject to the provisions of Chapter 23 of the Zoning Regulations.

Impact of the Proposed Project

16. The proposed project will not add to traffic and congestion in the area, as patrons of the station will largely be drawn from vehicles already in the stream of traffic. The Board concludes that many of the vehicles entering the site will consist of “pass-by trips” -- they are on the road already -- and those vehicles will not contribute to additional traffic and congestion.
17. The exterior lighting at the site will be adequate for security and safety, yet will not be too intrusive to the residential properties around the site.

Compliance with Chapter 23 Requirements

18. The proposed project complies with all relevant provisions in Chapter 23 pertaining to gasoline stations.
 - The subject property is separated from the neighboring residential district by two streets, Delafield Street and Emerson Street. (§ 2302.2)

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- The vehicular entrance to the property on Delafield Street is separated from the residential district by Delafield Street. (§ 2302.3)
- Neither of the two curb cuts is within 40 feet from the intersection of South Dakota Avenue and Delafield Street. (§ 2302.4).
- No grease pits or hoists are associated with the proposed project. (§ 2302.5) (OP Report, p. 4 - 5).

CONCLUSIONS OF LAW

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(2) (2001), to grant special exceptions as provided in the Zoning Regulations. The Applicant applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 706 to establish a gasoline service station use.

The Board can grant a special exception where, in its judgment, two general tests are met and the special conditions for the particular exception are met. First, the requested special exception must “be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.” 11 DCMR § 3104.1. Second, it must “not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map.” 11 DCMR § 3104.1.

The Board concludes that the gasoline station and convenience store will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. A gasoline service use is permitted by special exception and there is nothing about this area or this proposed use that would result in disharmony.

Further, the Board finds that the proposed project, as conditioned, will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps. The Board agrees with DDOT and the Applicant’s traffic expert that no significant additional traffic will result from the use. As noted in Finding of Fact 16, the vast majority of customers will be in vehicles already on the road. Such traffic as does exist will easily access and egress the facility as a result of the conditions of this order mandating a 20-foot curb cut, specifying the direction of vehicles, limiting fuel delivery times, and regulation the size of delivery vehicles. The lighting will be pointed downward and the canopy lighting recessed. This will effectively avoid light spillage into adjacent areas. As to noise, the Board has included a condition prohibiting any external sound amplification system.

A gasoline station established after May 12, 1958, is permitted by special exception in the C-1 Zone District, provided certain specified conditions are met. Under § 706.1 of the Zoning Regulations, the Board may allow a gasoline station in the C-1 Zone, subject to the following provisions:

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 subject property is separated from the neighboring R-2 district by Delafield and Emerson Streets.

706.4 The operation of the use shall not create dangerous or other objectionable traffic conditions. The subject property is in a heavily trafficked area. But as DDOT found and as detailed in the Findings of Fact, the proposed project, as conditioned, will not generate significant additional traffic. Nor will it result in any objectionable traffic conditions. (Finding of Fact 16). Moreover, the Applicant has made design changes which should improve the circulation and traffic flow in and out of the site. The revisions include, for example, the elimination of one curb cut, the restriction of one curb cut to a right turn entrance only, and limitations on the hours for fuel delivery and the size of fuel delivery trucks.

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 building on the site will contain approximately 1,800 square feet of gross floor area. Therefore, it will require six parking spaces. Eight parking spaces will be provided and are designed to be accessible at all times.

Compliance with Chapter 23 provisions

Subsection 706.1 of the Regulations provides that a gasoline service station established after May 12, 1958 is also subject to the provisions of Chapter 23. As explained in the Findings of Fact, the proposed project complies with all relevant provisions in Chapter 23. Therefore, this condition has been met.

The ANC Issues and Concerns

The Board is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(A), to give “great weight” to the issues and concerns raised by the affected ANC. 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. As will be explained below, the Board does not find the ANC’s advice to be persuasive.

The ANC's primary concerns were potential problems with traffic and congestion. The Board had concerns regarding these issues as well. Ultimately, however, the Board agreed with the Applicant and found that the project would not result in adverse traffic conditions or additional congestion. Following the public hearing, the Board held the record open to receive additional information regarding traffic impacts. Thus, post-hearing submissions included a formal DDOT report and a traffic study performed by an expert traffic engineering firm.

While the ANC claimed that the traffic study was flawed, the ANC provided no evidence to that effect, and the Board found the traffic study to be persuasive. The Board does not believe that the study was flawed, as claimed by the ANC. While the Board does not agree with each and every assumption in the study, the Board finds that the study was thorough and was performed by an expert in the traffic engineering field. (T., December 15, 2009, p. 32 – 33)

Similarly, before the Board relied on Mr. Jennings' opinion (the DDOT representative who testified in support of the application), the Board closely questioned him regarding his testimony and carefully scrutinized the DDOT report. The Board agrees with DDOT that this approval needs to be conditioned in order to mitigate potential traffic impacts and congestion. Therefore, this approval is conditioned upon the elimination of one curb cut, a right turn in and maximum size restriction at one of the curb cuts, a limitation on the truck size for trucks making fuel deliveries, and a limitation on the hours for fuel deliveries.

The other ANC concerns raised were as follows. The ANC claimed that the Applicant had not posted visible signs or public notices regarding the planned development. However, as detailed at the beginning of this Decision, the Applicant complied with the notice requirements under the Zoning Regulations. The ANC asserts that the site does not have "adequate square footage" for the proposed use. However, there are no minimum area requirements for this use in the C-1 Zone District, and the relevant special exception requirements have been met. The ANC raised concerns of possible environmental problems and problems with cleanliness and loitering at the site. Again, these claims were entirely speculative and unsupported by the evidence. Moreover, even if true, loitering and failure to maintain the site are enforcement issues which are beyond the purview of the Board. Finally, the ANC claimed that there is no "need" for another gasoline station since there is a station across the street; and, the property owners do not live in the neighborhood and are not participants in community events or the ANC. Neither of these concerns is relevant to the zoning criteria and will, therefore, not be given great weight. *Bakers Local Union No. 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176 (D.C. 1981).

The OP Recommendations

The Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. For reasons explained in this Decision, the Board agrees with the recommendations contained in the OP report.

The Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception under § 706 to allow the construction of a gasoline service station and convenience store. The Board further concludes that, as hereinafter conditioned, the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting of the requested relief will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

It is therefore **ORDERED** that the application, pursuant to Exhibit No. 9 (plans), is hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. The hours of operation shall be limited to 6:00 a.m. to 10:00 p.m.
2. Flood lights at the property shall be angled downward and shuttered in order to avoid light spillage onto nearby residential properties.
3. Canopy lighting at the property shall be recessed.
4. There shall be no exterior amplified sound system at the property.
5. Hours for fuel delivery shall be limited to 7:00 p.m. to 7:00 p.m.
6. Fuel deliveries shall be made with trucks that are no larger than 30 feet in length.
7. The South Dakota Avenue curb cut will be 20 feet wide and will be restricted to a right turn onto the property. All vehicles exiting the property will use the curb cut along Emerson Street. The Emerson Street curb cut will serve as a two directional vehicle access point.

VOTE: **4-0-1** (Marc D. Loud, Shane L. Dettman, Meridith H. Moldenhauer, and Peter G. May to Approve; No other Board member (vacant) participating)

Vote taken on December 15, 2009

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

A majority of the Board members approved the issuance of this Decision and Order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: **JUN 29 2010**

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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.

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.

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., 9 (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.

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As Director of the Office of Zoning, I hereby certify and attest that on JUN 29 2010, 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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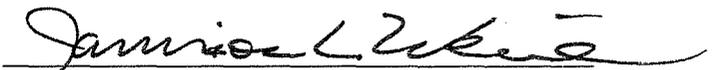
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