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FILE NO: 56149.000003

October 6, 2008

**By Hand**

Board of Zoning Adjustment  
441 4th Street, N.W.  
2nd Floor  
Washington, D.C. 20002

Re: Opposition to ANC 6A's Request for Continuance and Response to ANC 6A's  
Opposition to Amended Application No. 17825 of 1400 Maryland Avenue Ltd Empire  
Leasing Inc. for a special exception to establish a gasoline service station with  
convenience store in a C-3-A zone (SQ 1049, Lots 803 and 21)

Dear Chairwoman Miller and Board Members:

On September 30, 2008, the applicant filed its amended application in this case. At that time, applicant's counsel's staff found a letter in the case file dated July 28, 2008, from ANC 6A asking the Board to continue the hearing in this case, set for October 14, 2009. However, neither the applicant nor applicant's counsel was copied on that letter. See Exhibit A (ANC letter dated July 28, 2008), Exhibit No. 27 in the BZA case file. Accordingly, this was our first notice of such a request.

**Applicant's Opposition to the ANC's Request for a Continuance**

The applicant strenuously opposes any continuance of this case for the following three (3) reasons:

1. Applicant and its counsel met with the ANC's Economic Development and Zoning Committee and Transportation and Public Space Committee ("Joint Committee") on June 18, 2008. At that meeting, where the ANC indicated strong opposition to a gas service station at this location, the ANC indicated that the applicant should first seek a hearing before the Public Space Committee (PSC), which is also the reason set forth in

its July 28, 2008 letter to the Board for a continuance. Customers who will use the proposed station/mart will need to drive over public space to reach the fuel pumps and mart, both of which are located on private property. The applicant, in fact, followed the ANC's advice and filed an application for public space approval with a hearing to be held on September 24, 2008 before the PSC. However, the ANC requested a postponement of that hearing again without notice to the applicant or its counsel. The staff to the PSC postponed the hearing without notice to us and an opportunity to object. See Exhibit B attached which reads in pertinent part as follows:

“ANC - 6A - 1400 Maryland Avenue, N.E.

\* \* \*

Postponed at the ANC's request on September 15, 2008.”

The PSC staff has indicated that the earliest hearing date for our project is now November 20, 2008.

It appears that ANC 6A desires to keep the applicant's project in a state of suspension so as to delay it out of existence. The Board should not tolerate such actions and lack of due process notice to the applicant or its counsel.

2. The applicant's principal lot (lot 803) is classified as Class 3 for real estate tax purposes because it is vacant. See Exhibit C. Accordingly, its tax rate for TY 2008 (10/1/07 - 9/30/08) was \$5.00 per hundred rather than \$1.85 per hundred. For TY 2009 (10/1/08 - 9/30/08), its tax rate will be \$10.00 per hundred if still vacant and no building permit has been issued by March 1, 2009, rather than \$1.65 per hundred. Thus, any further delay in the hearing process will result in exorbitant taxes imposed on the subject property as a penalty for being vacant as follows:

TY 2009

$\$842,890 \times \$10 \text{ ph} = \$84,289$

Compared to

$\$842,890 \times \$1.65 \text{ ph} = \$13,987.69$

3. Because the subject building is partially fire damaged and vacant, the D.C. Board of Insanitary Condemnation has indicated to the applicant that it will condemn the building if not improved in a reasonable period of time. Accordingly, the subject property has been fenced off and secured from incoming traffic with jersey walls. See Exhibit D pictures. The Board of Insanitary Condemnation originally set September 10, 2008 as its hearing date to consider condemning the subject property, but postponed that hearing until October 22, 2008 at the applicant's request pending a progress report on the BZA hearing to be held on October 14, 2008. Board Case No. 08-20. See Exhibit E.

**Conclusion**

The applicant has demonstrated three very good reasons why the BZA should not continue this case hearing beyond October 14, 2008.

**Response to ANC's Opposition to  
Applicant's Request for Special Exception Relief**

On October 3, 2008, the ANC filed its objection to our requested relief for a gas station with convenience mart at this location. The objection was based on a previous proposal submitted by the applicant to the ANC on June 18, 2008, which incorrectly showed parking for the convenience mart on public space. That site plan was revised and hand delivered to the ANC on September 30, 2008, the same day it was filed with the BZA. The applicant will not use any public space for the station, convenience mart, or parking thereon. Customers who will drive onto the station will drive across public space and that permission is for the jurisdiction of the PSC and not the BZA.

ANC 6A also indicates in that opposition letter filed on October 3, 2008 (however, it is not dated), that if the applicant alters the parking site plan - as is the case - that the design be more compatible with the surrounding community. That, in fact, is the case as the applicant has provided more landscaping, brick paved sidewalks, a green roof over the fuel pump canopy in addition to one over the mart, and a stucco veneer design on the building to blend in with the surrounding neighborhood.

# HUNTON & WILLIAMS

Board of Zoning Adjustment

October 6, 2008

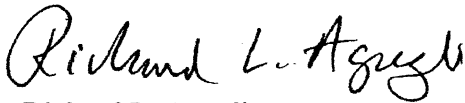
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The subject property is NOT in the insinuation that it is). Nevertheless complementary building to its surrc

## Conclusion

The ANC's objection is based upon SMD on September 30, 2008 when proposed design fits in with the nor use of the subject property for gas s

Sincerely yours,



Richard L. Aguglia

cc: By Mail and By PDF  
Joe Mamo  
Monty Berhane  
DAG Petroleum

By Mail and By PDF  
ANC 6A  
Attention Joseph Fengler

By Mail and By PDF  
Paul Goldstein, OP

By Mail and By PDF  
Juan Amaya  
Christopher Delfs, DC DOT