

Docket Item # 1  
BZA CASE # 2008-0034

Board of Zoning Appeals  
December 11, 2008

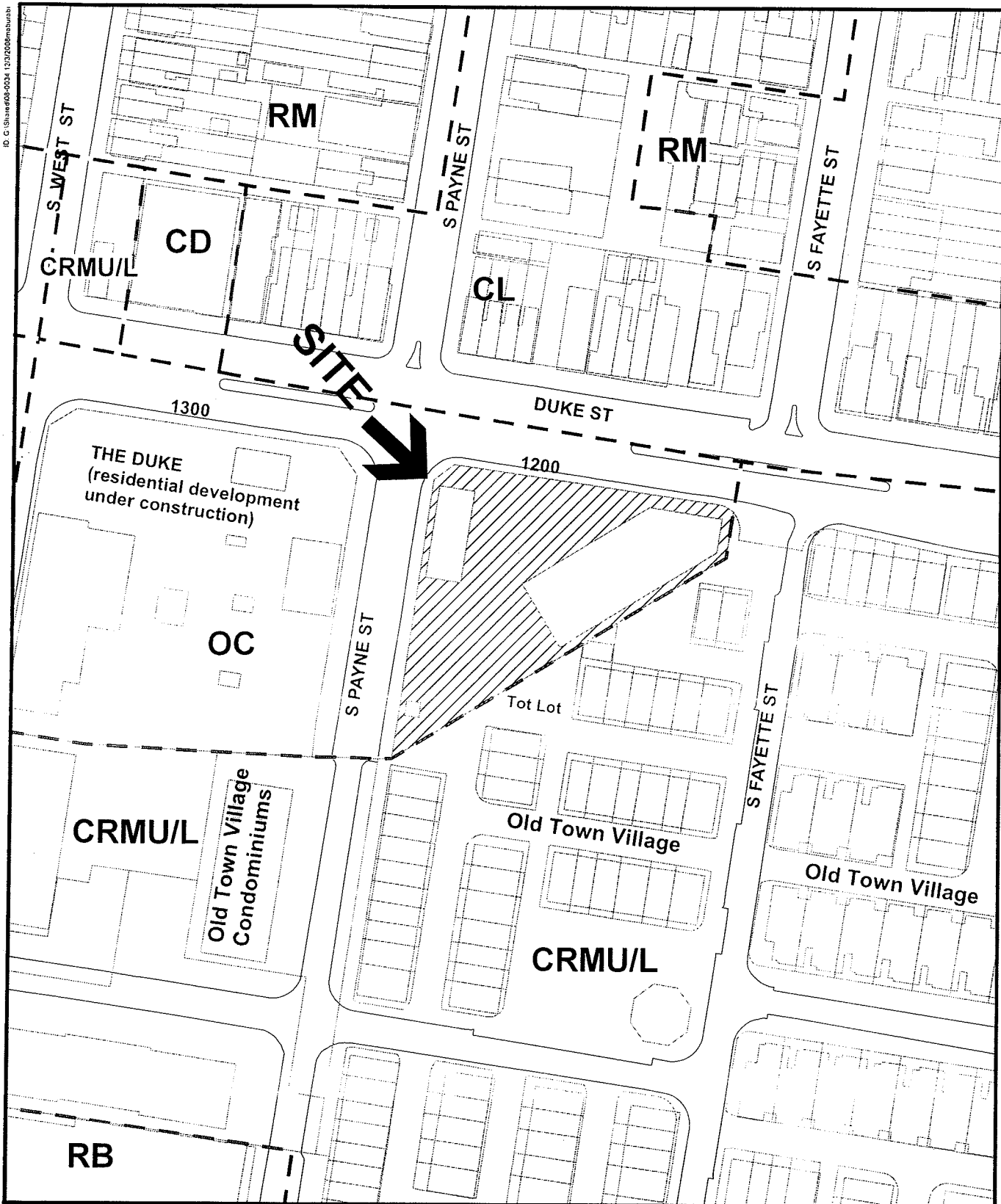
**ADDRESS:** 1200 DUKE STREET  
**ZONE:** OC/OFFICE COMMERCIAL  
**APPLICANT:** THOMAS J. FANNON

**ISSUE:** Appeal from the determinations of the Director of Planning and Zoning that (1) applicant has materially failed to comply with a required condition of a November 3, 2003 determination letter allowing certain business activities at 1200 Duke Street, and (2) as a result, the November 3, 2003 zoning determination letter allowing certain business activities is revoked.

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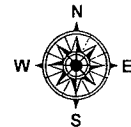
#### SUMMARY OF CASE ON APPEAL

This case concerns the authority of the Director of Planning and Zoning ("Director") under Section 11-205 of the Zoning Ordinance to revoke certain development rights when a property owner materially fails to comply with one or more conditions on which the approval of the development rights was based. In this case, the Director issued a letter determination on November 3, 2003 allowing Thomas J. Fannon & Sons, Inc. ("Fannon & Sons") to transfer heating fuel storage and vehicle repair uses from 1300 Duke Street, where a separate family corporation, Fannon Petroleum Services, Inc., conducted a fuel distribution business, to 1200 Duke Street, where Fannon & Sons operates an air conditioning, heating systems, and heating fuel retail distribution business. The Director determined that the transfer of uses would be consistent with the uses in existence at 1200 Duke Street in 1981, when a zoning amendment was passed and Fannon & Sons' operations were allowed to continue as a grandfathered use. The Director's determination was predicated on the expectation that the transfer of uses would not intensify zoning impacts and on the condition that Fannon & Sons submit and obtain approval of a landscaping plan to screen the activities at the site. Nearly five years after the Director's conditional development approval, Fannon & Sons failed to submit a reasonable plan despite lengthy discussions with the City and neighboring property owners. Due to Fannon & Sons' material failure to comply with an express condition of the November 3, 2003 determination letter, on August 8, 2008 the Director revoked the previously approved development authorization. On appeal, Fannon & Sons challenges the Director's authority to revoke the November 3, 2003 determination letter and the reasonableness of that decision. See Exhibit #1. The Staff recommends that the appeal be denied.



**BZA CASE #2008-0034**

**12/11/2008**



## FACTUAL BACKGROUND

Thomas J. Fannon & Sons, Inc. ("Fannon & Sons") has operated an air conditioning, heating systems, and heating fuel distribution business at 1200 Duke Street since the 1940s. The property consists of an office building, a garage, and a parking lot, on a triangle-shaped lot which is bordered by Duke and South Payne streets on two sides and upscale townhomes on the third. Fannon & Sons stored heating oil at 1200 Duke Street in seven above-ground storage tanks beginning in 1940. In 1962, Fannon Petroleum Services, Inc. ("Fannon Petroleum") was incorporated and obtained a special use permit to construct and operate a fuel distribution facility at 1300 Duke Street, on the other side of South Payne Street across from Fannon & Sons' operations. Fannon Petroleum maintained twenty-six underground fuel storage tanks and also housed a vehicle repair facility both for its trucks and Fannon & Sons' distribution vehicles.

In 1981, the City passed zoning amendments that eliminated petroleum storage as a permitted or special-permit use, but the 1981 amendments grandfathered all lawfully existing uses, allowing Fannon & Sons to maintain its operations at 1200 Duke Street as they existed at that time. In 1992, the seven above-ground storage tanks were removed from 1200 Duke Street as part of an environmental remediation at the site. Fannon & Sons maintained its heating fuel operations, however, by receiving heating fuel directly from Fannon Petroleum at 1300 Duke Street. Also in 1992, the property at 1200 Duke Street was zoned from I-2 Industrial to Office Commercial (OC), but Fannon & Sons' operations continued to be permitted under the grandfather provisions passed in 1981.

In or before 2001, Fannon Petroleum decided to realign its business and relocate its primary operations to Gainesville, Virginia. The 1300 Duke Street property was sold to Van Metre Companies for a new residential development. Because Fannon & Sons desired to maintain a limited fuel oil retail operation after the sale of the 1300 Duke Street site, it requested to add two 20,000-gallon underground storage tanks for petroleum heating fuel at the 1200 Duke Street site. Additionally, Fannon & Sons requested to renovate a storage garage at 1200 Duke Street to serve its vehicle repair needs, which had been handled at the 1300 Duke Street site for a number of years. In 2005, the Board of Architectural Review (BAR) granted a certificate of appropriateness (COA) to construct a one-story garage addition at 1200 Duke Street.

In a five-page letter dated November 3, 2003, the Director of Planning & Zoning determined that the uses transferred to 1200 Duke Street would not constitute an intensification of the uses that existed at the site in 1981 and would therefore continue to be grandfathered, provided that Fannon & Sons adhered to the changes as proposed and several other conditions. *See Exhibit #2.* In particular, the Director required Fannon & Sons to operate under the same hours and have no more than the number of employees and trucks it had before the 1981 grandfathering amendment. In addition, the Director required Fannon & Sons to install landscaping along Duke Street in order to screen its business activities and to submit a landscaping plan for City approval prior to installation. *See id.*

In December 2006, Thomas J. Fannon, owner of Fannon & Sons, applied for a permit to install three underground storage tanks at 1200 Duke Street: the originally requested two 20,000-gallon tanks and a third 8,000-gallon tank. *See Exhibit #3.* On December 28, 2006, the Acting Director approved the permit request, finding that it was consistent with the intent of the

original November 3, 2003 zoning determination. *See Exhibits #4 and #5.* By letter dated February 26, 2007, the Acting Director informed Mr. Fannon that the permit approved on December 28, 2006 covered only the storage tanks, and did not cover a requested fuel dispenser structure, for which a separate permit was needed. *See Exhibit #6.* The Acting Director also reiterated the requirement for a landscaping plan and reconstruction of a brick screening wall facing South Payne Street that was removed by Fannon to install the three underground storage tanks.

On March 2, 2007, after receiving complaints from neighbors and finding that a number of zoning and building code determination compliance issues needed to be resolved, particularly regarding the storage tanks and fuel dispenser and the lack of landscaping plans, the City issued a Stop Work Order to Fannon & Sons at 1200 Duke Street. At this time, the City became aware that Fannon & Sons intended to use the 8,000-gallon storage tank for gasoline fuel for its service trucks. In a letter dated April 30, 2007, the City Manager informed Mr. Fannon that Fannon & Sons' apparent intention to use the 8,000-gallon tank for gasoline fuel for his trucks rather than for fuel oil for delivery exceeded the 2003 zoning determination of approved uses. As a result, the City informed Mr. Fannon that the 8,000 gallon tank could not be permitted without further investigation into whether the use of the tank for gasoline storage constituted intensification of the grandfathered uses on the site. *See Exhibit #7.*

Planning and Zoning staff met with Mr. Fannon several times and requested that Mr. Fannon submit a complete plan for 1200 Duke Street. At the same time, despite the Stop Work Order, the City continued to receive complaints from neighbors of the property regarding the unsightly appearance of the property, outdoor storage of materials, and other problems. Fannon & Sons eventually submitted a site plan at the end of October, 2007. Upon review, however, the Department of Planning and Zoning along with other City Departments determined that the plan was inadequate due to major omissions and that additional information would be needed to bring the plan into compliance. The staff made more than fifty substantive recommendations. *See Exhibit #8.* Although Planning and Zoning staff continued to try to work with Mr. Fannon into 2008, Mr. Fannon did not submit a timely revised, complete site plan addressing the landscaping and other issues.

By letter dated August 8, 2008, the Director of Planning and Zoning revoked the November 3, 2003, zoning determination letter. *See Exhibit #9.* The Director stated that Fannon & Sons' installation of fuel storage tanks at the site exceeded the scope of the uses authorized in the 2003 letter in that the installation was not limited to heating oil, but instead included gasoline and related dispensing facilities for use by the retail delivery and service vehicle fleet. In addition, the Director stated that the previous conclusion that the transfer of uses to 1200 Duke Street would not intensify zoning impacts relied on the commitment of Fannon & Sons to install screening landscaping.

Because Fannon & Sons failed to submit a viable landscaping plan for nearly five years following the 2003 determination, despite the City's efforts to work with Mr. Fannon during that time, the Director revoked the November 3, 2003 zoning determination, and prohibited any fuel storage or delivery to 1200 Duke Street or any other changes. Mr. Fannon filed a timely appeal of the Director's August 8, 2008 determination to the Board of Zoning Appeals. *See Exhibit #1.*

## DISCUSSION

### A. The Zoning Ordinances at Issue

The Director's authority to revoke the November 3, 2003 determination letter derives from Section 11-102 of the Zoning Ordinance, which gives the Director the duty and authority to interpret and enforce the Zoning Ordinance. In addition, Section 11-205(a) grants the Director authority to revoke development approvals under certain circumstances, stating:

In addition to any other remedy . . . , development approval may be suspended or revoked as follows: In the event any person . . . materially fails to comply with any statute, code, ordinance or regulation pertaining to the use or development of any land for which an approval has been granted under the provisions of this ordinance, or *materially fails to comply with any condition* proffered or required by the approving agency as part of such approval, the director may suspend or revoke such approval in whole or in part and on such terms and conditions as he deems necessary to effect the cure of such failure to comply.

*See* Zoning Ordinance § 11-205(a) (2008) (emphasis added).

### B. Standard of Review: Deference to the Director

The Board of Zoning Appeals ("BZA") is authorized to hear appeals where it is alleged there is error from any order, requirement, decision or determination made by the Director in the administration or enforcement of the Zoning Ordinance. *See, e.g.*, Zoning Ordinance § 11-1201. The BZA's decision on an appeal must be based on its judgment of whether the Director's decision was correct. In making its decision, the BZA shall consider the purpose and intent of any applicable ordinances, laws, and regulations. The BZA may, in conformity with the provisions of the Zoning Ordinance, reverse or affirm wholly or partly or may modify the order, requirement, decision, or determination appealed from.

In deciding an appeal from a decision of the Director, the BZA should apply a deferential standard of review. Under the Zoning Ordinance, "[t]he [D]irector is charged with the responsibility for the administration" of the Ordinance. *See* Zoning Ordinance § 11-101. The Supreme Court of Virginia has ruled that regarding interpretation and application of zoning ordinances, "[t]hat decision, or judgment call, is 'best accomplished by those charged with enforcing' the [local] Zoning Ordinance, *i.e.*, the zoning administrator . . . ." *Trustees for Christ & St. Luke's Episcopal Church v. Board of Zoning Appeals for the City of Norfolk*, 273 Va. 375, 382 (2004) (quoting *Lamar, Co. v. Board of Zoning Appeals*, 270 Va. 540, 547 (2005)). *See also* *Adams Outdoor Advertising, L.P. v. Board of Zoning Appeals of the City of Virginia Beach*, 274 Va. 189, 196 (2007) ("We . . . afford great weight to the interpretation given a zoning ordinance by the officials charged with its administration." (citation omitted.)). The BZA acts in a quasi-judicial capacity in hearing appeals from decisions of the Director. *See* City Attorney; Opinion to the Chairman and Members of the Board of Zoning Appeals, at 2-3 (April 12, 1989) (available for review). Therefore, like the courts, the BZA should not substitute its judgment for that of the Director but should determine whether the Director acted reasonably.

C. The Director Had the Authority to Revoke the November 3, 2003 Determination Letter and Acted Reasonably in Revoking the Letter

In filing his appeal on behalf of Fannon & Sons, the applicant has challenged the Director's authority to revoke the November 3, 2003 zoning determination letter that allowed Fannon & Sons to transfer certain uses from 1300 Duke Street to 1200 Duke Street. The applicant also challenges the reasonableness of the Director's revocation decision. *See* Exhibit #1. The law is clear that the Director has the authority to interpret and enforce the Zoning Ordinance under Section 11-102 of the Ordinance, and to revoke a previously granted development approval under Section 11-205(a) of the Ordinance in the event of material noncompliance with any condition of the approval. In this instance, the Director acted reasonably in exercising the authority granted by these provisions to revoke the November 3, 2003 zoning determination letter, and her decision should be upheld.

1. The Director Reasonably Revoked the 2003 Determination Letter Due To Fannon & Sons' Failure to Submit an Adequate Landscaping Plan

In the November 3, 2003 zoning determination letter, the Director stated that the Department of Planning and Zoning had received "a commitment from [Fannon & Sons] to install landscaping along Duke Street at 1200 in order to screen the parking and activities that are proposed to occur there." The Director required "a plan of the proposed landscaping" to be submitted prior to installation. This landscaping was to act as a "buffer" in order to "ameliorate any impacts from the use." *See* Exhibit #2. As the Director stated in the August 8, 2008 letter revoking the 2003 determination letter, the Director's earlier reliance on this commitment was an essential predicate for the 2003 finding that Fannon & Sons' proposed changes would not constitute an intensification of the grandfathered use and would not have an adverse impact on zoning.

Fannon & Sons failed to meet this express condition of the 2003 approval nearly five years after the approval was granted. In her August 8, 2008 revocation decision, the Director reasonably noted "the paucity of effort to comply that has been demonstrated" by Fannon & Sons "notwithstanding numerous requests . . . and ample opportunity . . ." *See* Exhibit #9. Fannon & Sons did not submit landscaping plans when it obtained architectural approval for a garage addition in June 2005, nor when it applied for a permit for three fuel tanks in December 2006. On February 26, 2007, the Acting Director wrote a letter to Fannon & Sons reiterating the requirement of the November 3, 2003 letter for a landscaping plan. This letter also noted that a screening wall that was torn down had to be reinstalled. The March 2, 2007 Stop Work Order was at least in part based on the failure of Fannon & Sons to provide a landscaping plan. *See* Exhibit #10. The lack of screening landscaping, or a plan for such landscaping, exacerbated concerns of Fannon & Sons' neighbors, who complained of the intensifying "dust, noise, odor, refuse matter, etc." at 1200 Duke Street. *See, e.g.,* Exhibit #11.

The Director continued to try to work with Fannon & Sons to no avail. Fannon & Sons submitted a simple "screening concept" plan on April 27, 2007, but the Director found it inadequate and incomplete. Correspondence from the Director to Fannon & Sons' neighbors on July 13, 2007 noted that "the current state of the site leaves a lot to be desired, and . . . it's taking too long to get it fixed," and furthermore that the Director was continuing to talk to Thomas J.

Fannon to request high quality plans and to get reasons why they were taking so long to complete. *See* Exhibit #12. Even the Mayor of Alexandria wrote to Mr. Fannon on September 28, 2007, “strongly urg[ing him] to submit and complete the plan, per City requirements, as quickly as possible.” *See* Exhibit #13. Fannon & Sons finally submitted some plans on October 26, 2007, but review by City staff “found major omissions and additional information needed to bring the plan into compliance with the Department of Planning’s requirements as well as verbal commitments made between [Fannon & Sons] and the City and in discussions with the community.” *See* Exhibit #8. The City made more than fifty substantive comments and recommendations, including requesting that landscaping appear on the site plan, which in the submission it did not.<sup>1</sup> Nevertheless, no improved and adequate plan was submitted to the Director over the next 10 months, despite continuing complaints well into 2008 about 1200 Duke Street’s increasingly unsightly appearance and other problems that could have been largely addressed with adequate screening landscaping.

This five-year history of material failure to comply with the landscaping plan condition required by the Director as part of the 2003 determination letter approval justifies the Director’s 2008 decision to revoke the approval under Zoning Ordinance Section 11-205(a). In the 2008 revocation, the Director found that “[n]o reasonable plan, indeed no minimally adequate or complete plan, has ever been presented for approval . . . .” Given the extent of the additions that would have been needed to make the October, 2007 plan adequate and the fact that none of these additions were submitted, this determination was reasonable.

2. Fannon & Sons’ Installation of a Third Fuel Storage Tank to Hold Gasoline, Rather Than Heating Oil, Exceeded the Scope of the 2003 Approval And Further Justified the Director’s Decision to Revoke

The Director’s August 8, 2008 Letter also notes that while the November 3, 2003 letter authorized the transfer of fuel storage for retail distribution to 1200 Duke Street, the installation of fuel storage tanks which actually occurred

exceeded the scope of the authorization . . . in that the installation was not limited to heating oil, as requested and discussed in the letter, but included gasoline and related dispensing facilities, for use by the retail delivery and service vehicle fleet.

*See* Exhibit #9. The Director reasonably concluded that adhering to the actual fuel-storage-related changes which had been proposed and approved in 2003 constituted a “condition,”

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<sup>1</sup> In his application for appeal, Thomas J. Fannon appears to misstate some dates. No site plan, let alone a “complete site plan,” was submitted “in the spring of 2008.” This summary therefore addresses the plan submitted in the fall of 2007. Mr. Fannon also appears to mischaracterize City staff’s recommendations as “proffers.” Proffers are a component of conditional zoning; when accepted, they become part of the zoning ordinance. *See Jefferson Green Unit Owners Ass’n v. Gwinn*, 262 Va. 449, 455-56 (2001). The recommendations and requirements were needed to bring Fannon & Sons’ plan into compliance with Department of Planning & Zoning and City grading plan requirements and were not proffers.

violation of which was grounds for revoking the previously granted development approval under Zoning Ordinance Section 11-205(a). In the November 3, 2003 letter, the Director had emphasized that the grandfathered use of 1200 Duke Street was specifically “as a heating fuel distribution business.” Any change in or intensification of this use would not be grandfathered and would be a zoning violation, so the approval depended on Fannon & Sons continuing only this grandfathered use. Dispensing of on-road fuel is a distinct and different core use of the property and was not a use that was grandfathered by the 1981 zoning amendments.<sup>2</sup> By exceeding the scope of the grandfathering determination, Fannon & Sons has materially failed to comply with an express condition required by the Director as part of the 2003 approval. The Director was therefore reasonable to revoke that development approval on this ground as well.

D. Fannon & Sons Has No Vested Rights From the November 3, 2003 Zoning Determination Letter And Has No Rights Based on Detrimental Reliance

1. Fannon & Sons Had No Vested Rights At 1200 Duke Street

In his appeal to the BZA, Thomas J. Fannon, on behalf of Fannon & Sons, implies that he obtained a vested right to develop the property at 1200 Duke Street through the November 3, 2003 zoning determination letter and that the Director improperly revoked that right. *See* Exhibit #1. This argument is misplaced.

The determination and protection of vested rights is governed by Virginia Code Section 15.2-2307, which provides:

Without limiting the time when rights might otherwise vest, a landowner’s rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

Va. Code § 15.2-2307. This provision is inapplicable in this case for two reasons. First, Fannon & Sons never acquired a vested right under the November 3, 2003 determination letter because the development approval granted by that letter was conditioned on Fannon & Sons meeting certain terms, including submitting an adequate landscaping plan, which Fannon & Sons failed to meet. Any development rights Fannon & Sons may claim based on the November 3, 2003 determination letter cannot be considered to have vested when Fannon & Sons failed to meet the conditions on which the development approval was based.

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<sup>2</sup> In his appeal application, Exhibit #1, Thomas J. Fannon states that “most” of the information that the City requested after its March 2, 2007 Stop Work Order was “contained in the 2003 letter,” but that letter did not address any information that the tanks were to be used for an on-road diesel and gasoline fueling station. This information was not provided to the Department of Planning & Zoning until several years after the 2003 letter.



Moreover, to the extent the November 3, 2003 determination letter is considered a “significant affirmative governmental act”, the vesting provisions of Virginia Code Section 15.2-2307 still do not apply. Under subpart (i), the Director properly revoked the 2003 development approval under the authority granted her under Section 11-205(A) of the Zoning Ordinance; thus, the determination letter did not “remain[] in effect” as required for a development right to be deemed to have vested. Under subpart (ii), Fannon & Sons failed to rely in good faith on the November 3, 2003 determination letter because it failed to comply with the terms of that letter. Fannon & Sons sought to use one underground storage tank for gasoline, rather than heating fuel, which exceeded the scope of the determination letter, and it failed to submit an adequate landscaping plan as expressly required. Finally, under subpart (iii), Fannon & Sons did not engage in “diligent pursuit” of the project approved under the November 3, 2003 determination letter. As the Director noted in the August 8, 2008 revocation letter, and the record supports, Fannon & Sons displayed a “paucity of effort to comply” with the terms of the determination letter over nearly five years. Under these circumstances, no development rights vested through the application of Virginia Code Section 15.2-2307.

Furthermore, Virginia Code Section 15.2-2307 also does not apply in this case because that statutory provision is triggered only when previously approved development rights are revoked through an amendment to the Zoning Ordinance. *See Goyonaga v. Board of Zoning Appeals for the City of Falls Church*, 275 Va. 232, 243-44 (2008) (finding that zoning administrator’s decision that complete demolition of house voided its non-conforming status did not amount to a “subsequent amendment to a zoning ordinance” implicating the vested rights provisions under Section 15.2-2307). No such zoning ordinance amendment is at issue here. Rather, the Director revoked the November 3, 2003 determination letter under authority granted through Section 11-205(A) of the Zoning Ordinance. For these reasons, the vested rights provisions of Virginia Code Section 15.2-2307 do not apply.

## 2. The 60-Day Rule Does Not Apply

The facts of this case also potentially implicate Virginia Code Section 15.2-2311(c), which states:

In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed . . . where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer unless it is proven that such written order, requirement, decision or determination was obtained through malfeasance of the zoning administrator or other administrative officer or through fraud.

This sixty-day rule does not apply, however, because Fannon & Sons has *not* relied in good faith on the November 3, 2003 determination letter. The determination letter required Fannon & Sons to comply with certain conditions, including adherence to the development rights granted in the letter and submission and approval of a landscaping plan. Fannon & Sons failed to meet these conditions by seeking to use one storage tank for gasoline, rather than heating fuel, and by failing to submit a complete and adequate landscaping plan. By failing to comply with the conditions of

the November 3, 2003 determination letter, Fannon & Sons forfeited any right to rely on Virginia Code Section 15.2-2311(c).

### CONCLUSION

The Director of Planning & Zoning properly exercised her authority under Zoning Ordinance Section 11-205(a) to revoke the development approval granted on November 3, 2003, based on Fannon & Sons' material failure to comply with several conditions required by the Director as part of that approval. The Director reasonably found that Fannon & Sons had failed to submit a landscaping plan, which was required for the Director's 2003 finding that moving heating fuel storage and vehicle repair functions to Fannon & Sons' property at 1200 Duke Street would not constitute a change in or intensification of the grandfathered uses at the site. The Director also reasonably found that Fannon & Sons had failed to adhere to the conditions of the approval by changing the scope and the nature of the fuel that would be stored to include gasoline for on-road use. The Director's authority to revoke the 2003 determination letter is not affected by any vested rights based on the determination letter. For all of the above reasons, the appeal should be denied.

## EXHIBITS

- EXHIBIT #1: September 5, 2008 Application for Appeal by Thomas J. Fannon to Board of Zoning Appeals.
- EXHIBIT #2: November 3, 2003 Letter from Director of P&Z to Mr. Duncan Blair, Attorney for Fannon & Sons
- EXHIBIT #3: December 15, 2006 Mechanical Application MEC2006-04202 by Thomas J. Fannon to Alexandria Code Enforcement Bureau to “Install 3 Oil Tanks in Ground”
- EXHIBIT #4: December 28, 2006 Memorandum from Acting Director of P&Z re: Grandfathered use at Fannon property (1200 Duke Street) – MEC2006-04202
- EXHIBIT #5: January 9, 2007 Mechanical Permit Issued by Alexandria Code Enforcement Bureau to “Install Three Oil Tanks in Ground”
- EXHIBIT #6: February 26, 2007 Letter from Acting Director of P&Z to Thomas J. Fannon
- EXHIBIT #7: April 30, 2007 Letter from City Manager to Thomas J. Fannon
- EXHIBIT #8: Staff Recommendations
- EXHIBIT #9: August 8, 2008 Memorandum from Director of P&Z to Thomas J. Fannon Revoking November 3, 2003 Letter
- EXHIBIT #10: March 12, 2007 Email from Acting Director to Mayor and Council
- EXHIBIT #11: March 28, 2007 Letter from Old Town Village Owners Association to Councilman Krupicka
- EXHIBIT #12: July 13, 2007 Email from Director of P&Z to Fannon & Sons’ Neighbors
- EXHIBIT #13: September 27, 2007 Letter from Mayor Euille to Thomas J. Fannon

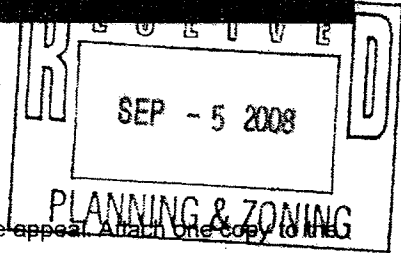
# Exhibit 1



**APPLICATION  
BOARD OF ZONING APPEALS**

**APPEAL**

BZA CASE # 2008-0034



Identify the order, requirement, decision or determination that is the subject of the appeal. Attach one copy to the application.

LETTER AUG 8, 2008 FROM DEPT OF PLANNING + ZONING  
TO THOMAS J FANNON

What is the **date** that the order, requirement, decision or determination was made? 8/8/08  
The appeal must be filed within 30 days from the date that the order, requirement, decision or determination was made.

**PART A**

1. **Applicant:**  Owner  Contract Purchaser  
Name THOMAS J FANNON (Tom or TJ)  
Address 1200 DUKE ST  
Daytime Phone 703.549.5700
2. **Property Location** 1200 DUKE ST
3. **Assessment Map** 74.01 Block 13 Lot 05 Zone OC
4. **Legal Property Owner:**  
Name THOMAS JULIAN FANNON  
Address 1200 DUKE ST  
ALEXANDRIA VA 22314

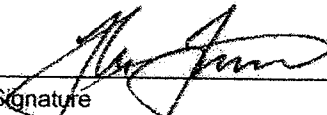
5. If property owner or applicant is being represented by an authorized agent, such as an attorney, realtor or other person for which there is a form of compensation, does this agent or the business in which they are employed have a business license to operate in the City of Alexandria, Virginia?

- Yes — Provide proof of current City business license.
- No — Said agent shall be required to obtain a business prior to filing application.

**THE UNDERSIGNED HEREBY ATTESTS** that all of the information herein provided including the site plan, building elevations, prospective drawings of the projects, etc., are true, correct and accurate. The undersigned further understands that, should such information be found incorrect, any action taken by the Board based on such information may be invalidated. The undersigned also hereby grants the City of Alexandria permission to post placard notice as required by Article XI, Division A, Section 11-301(B) of the 1992 Alexandria City Zoning Ordinance, on the property which is the subject of this application. The applicant, if other than the property owner, also attests that he/she has obtained permission from the property owner to make this application.

**APPLICANT OR AUTHORIZED AGENT:**

THOMAS FANNAN  
Print Name

  
Signature

703-549-5700  
Telephone

9-7-08  
Date

Pursuant to Section 13-3-2 of the City Code, the use of a document containing false information may constitute a Class 1 misdemeanor and may result in a punishment of a year in jail or \$2,500 or both. It may also constitute grounds to revoke the permit applied for with such information.

**PART B**

1. Why do you believe the order, requirement, decision or determination is incorrect? Explain each basis for the appeal, beginning in the following space and using additional pages, if necessary:

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Based on the November 2003 letter from the City extensive planning and purchasing was made by this firm, directed to the drastic reduction of our fueling facility on Duke St. Storage was to be reduced from nearly a half million gallons to 46,000 gallons. Our plans were submitted and approved, permits issued in January of 2007, materials were purchased and shipped to site, and installation begun.

On March 2, 2007 a Stop Work order was issued and the City requested information regarding storage and dispensing of fuel (most of which was contained in the 2003 letter), as well as screening and landscaping of the finished facility. A new and complete site plan was developed and submitted in the spring of 2008. The response of the City was a request for over \$300,000 in proffers, far beyond the scope of the 2003 letter upon which we had relied in our planning.

At a May meeting with City staff I proposed a withdrawal of the home heating oil storage tanks, in return for approval of only the 8000 gal on-road fuel tank and dispensers. Based on the positive reaction of those in attendance I spent the following months negotiating fueling agreements, as we would no longer have our own plant, finding buyers for the (now used and depreciated) fueling equipment in our lot, and developing a new site plan. This work is now complete.

At this point I expect that the City will honor what remains of its commitment made in 2003 to the continuation of a century's service by this firm, and approve the site plan.

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**If property is involved, attach 12 copies of pertinent drawings or other documents.**

BZA 2008-0034  
File Copy



DEPARTMENT OF PLANNING AND ZONING

301 King Street, Room 2100

P.O. Box 178

Alexandria, VA 22313

Phone (703) 838-4666

Fax (703) 838-6393

[www.alexandriava.gov](http://www.alexandriava.gov)

August 8, 2008

Mr. Thomas J. Fannon  
Thomas J. Fannon & Sons  
1200 Duke Street  
Alexandria, Virginia 22314

Re: 1200 Duke Street, Thomas J. Fannon & Sons, Inc.  
Revocation of November 3, 2003, Zoning Determination Letter

Dear Mr. Fannon:

As you are aware, on November 3, 2003, the then Director of Planning and Zoning, Eileen Fogarty, issued a zoning determination letter which allowed certain business activities, formerly conducted at 1300 Duke Street, to be transferred to 1200 Duke Street. The 1200 Duke Street site is occupied by Thomas J. Fannon & Sons, Inc., aka T.J. Fannon & Sons, which is a retail fuel oil dealer, and provider of HVAC equipment sales and service. The 1300 Duke Street site was formerly occupied by Fannon Petroleum Services, Inc., a wholesale distributor of petroleum products. In particular, the November 3 letter authorized the transfer of fuel storage for retail distribution, and retail fuel delivery and service vehicle fleet repair, from 1300 to 1200 Duke Street.

Although fuel storage tanks were installed at 1200 Duke Street, the installation exceeded the scope of the authorization granted by the determination letter in that the installation was not limited to heating oil, as requested and discussed in the letter, but included gasoline and related dispensing facilities, for use by the retail delivery and service vehicle fleet. Indeed, I understand that the planned use of the tanks for heating oil storage has been abandoned.

In addition, the November 3 determination was predicated on the conclusion that the transfer of activities would not constitute an intensification of the then existing use of the 1200 Duke site. Under the City's precedent, that conclusion required a finding by the Director that no significant adverse zoning impacts would result from the transfer.



Mr. Thomas J. Fannon  
Thomas J. Fannon & Sons  
August 8, 2008  
Page 2

In order to make that finding, and support the no adverse impact conclusion, the Director relied on "a commitment from T.J. Fannon and Sons to install landscaping along Duke Street at 1200 in order to screen the parking and activities that are proposed to occur there." The letter required as a condition of the approval that "A plan of the proposed landscaping will be submitted for [the Director's] approval prior to installation."

Almost five years have elapsed since the determination letter was issued. No reasonable plan, indeed no minimally adequate or complete plan, has ever been presented for approval by the Director, notwithstanding numerous requests from this Department, and ample opportunity for Thomas J. Fannon & Sons, Inc., to have complied.

Section 11-205(A) of the Zoning Ordinance authorizes the Director of Planning and Zoning to suspend or revoke any approval granted by the Director under the ordinance, in the event the responsible party materially fails to comply with any condition proffered or required by the Director as part of such approval.

Based upon the facts of this case, I find that Thomas J. Fannon and Sons, Inc. has materially failed to comply with the above-stated condition to submit a plan and provide mitigation. Given the length of time which has passed and the paucity of effort to comply that has been demonstrated, I further find that no suspension on reasonable terms and conditions can be imposed which will adequately secure compliance. Accordingly, I hereby revoke the November 3, 2003 determination letter in its entirety, subject to the following conditions required to secure compliance with the City of Alexandria Zoning Ordinance.

First, all use of the 1200 Duke Street site authorized by the determination letter must cease immediately, and I so order. In particular, any and all fuel storage and/or delivery to the site are prohibited. Any and all repair and/or service of the retail fuel delivery and service vehicle fleet are prohibited. More generally, any changes to the business to permit Thomas J. Fannon and Sons, Inc., to operate independently of the 1300 Duke Street property are prohibited.

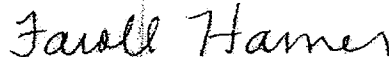
Second, in the event Thomas J. Fannon and Sons, Inc., so elects, the company has the right, and may submit to me within 30 days of the date of this letter, a new request for determination, together with full and complete supporting documentation, of the additional zoning rights, if any, attributable to the prior use of the 1200 Duke Street site. Any such request will receive full and fair consideration, including public notice and opportunity to comment.

Mr. Thomas J. Fannon  
Thomas J. Fannon & Sons  
August 8, 2008  
Page 3

Thomas J. Fannon and Sons, Inc., has the right to appeal my decision to revoke the November 3, 2003 determination letter, and the conditions stated in this letter, to the Alexandria Board of Zoning Appeals, as provided in Section 11-206 of the Zoning Ordinance, but any such appeal will not stay the effect of this letter. In accordance with Section 15.2-2311 of the Code of Virginia, this decision shall be final and unappealable if not so appealed in 30 days.

In addition, you are continuing to violate Section 4-807(A) of the Zoning Ordinance, which prohibits outdoors storage and outdoor operations on your site. You are directed to stop such activities and storage immediately, as part of this revocation action.

Very truly yours,



Faroll Hamer, Director  
Department of Planning and Zoning

cc: The Honorable Mayor and Members of City Council  
James K. Hartmann, City Manager  
Mark Jinks, Deputy City Manager  
Ignacio Pessoa, City Attorney  
Richard Baier, Director, Transportation and Environmental Services  
John Catlett, Director, Code Enforcement

## Exhibit 2



*City of Alexandria, Virginia*

DEPARTMENT OF PLANNING AND ZONING

301 King Street, Room 2100

P. O. Box 178

Alexandria, Virginia 22313

(703) 838-4666

FAX (703) 838-6393



November 3, 2003

Duncan Blair, Esquire  
Land, Clark, Carroll, Mendelson and Blair  
112 South Alfred Street  
P.O. Box 19888  
Alexandria, Virginia 22314

Re: Fannon and Sons/1200 Duke Street

Dear Mr. Blair,

This is in response to your letter dated July 21, 2003, which you inquired about the grandfathered status of Fannon and Sons at 1200 Duke Street. You informed staff that Fannon Petroleum, a fuel distribution facility at 1300 Duke Street, may relocate out of the city, and that Fannon and Sons at 1200 Duke Street would like to continue to operate independently as a heating fuel-distributor to consumers, with air conditioning and heating retail sales and repairs, and accessory uses as it has for over 50 years.

Background

You described the numerous ways that the two Fannon businesses have become interrelated over the years, and we have discussed the complexity that relationship creates for establishing the grandfathered status of 1200 Duke Street after Fannon Petroleum leaves. In addition, you discussed some changes that will have to be made on the 1200 Duke Street site in order for it to operate independently, and you state that the changes are not an intensification of the property or use, but constitute an overall deintensification of both properties.

The only changes you identify as part of the proposal for 1200 Duke Street are the following:

- Fuel Storage/Deliveries: Two underground storage tanks for petroleum are proposed to be installed, each with a capacity of 20,000 gallons. The proposed tanks will not be visible from the public right of way. There are currently no fuel deliveries to 1200 Duke Street because there is no storage facility. It is anticipated that with the installation of the tanks, on average, two to three daily deliveries of fuel oil will be made to Fannon and Sons during the highest heating season, December, January, and February, approximately six or seven less each day than what is currently received at the Fannon Petroleum operation.

- Repair Facility: The vehicle repair function will be relocated from the 1300 Duke Street property to the western half of the existing 85' by 28.5' building currently used for storage at the Fannon and Sons property. To accommodate the repair function, the building will have to be retrofitted, which will include an increase in height of the building to accommodate the installation of a vehicle lift. The repair building will be used to maintain the Fannon and Sons fleet of delivery vehicles. Repair will consist of light repair, including truck maintenance, but will not include major truck overhauls. All work will be performed by one mechanic. It is not anticipated that more than one vehicle will be served each day.

#### Description of Use at the Two Fannon Sites

We have asked and you have provided extensive information about the two Fannon sites and their history. You provided the following information about the use at 1200 Duke Street:

- Fannon and Sons has occupied the property since 1940 when the Fannons acquired the parcel at 1200 Duke Street and constructed a warehouse and oil plant that stored 168,000 gallons of heating oil for distribution (*Alexandria Gazette*). Since that time, Fannon and Sons has continuously been conducting its core businesses, heating fuel distribution to consumers and air conditioning and heating retail sales and repairs, and accessory uses.
- The 1941 Sanborn map updated through 1955 shows the Fannon and Sons facility having two buildings, seven above ground storage tanks and containment walls. You stated that each storage tank stored 18,000 gallons of petroleum.
- Fuel storage was a component of the business at 1200 Duke since 1940 when the Fannons purchased the property and constructed a warehouse and oil plant.
- At the time of the construction of the Fannon Petroleum Facility at 1300 Duke Street in 1962, underground pipes were installed in the South Payne Street public right-of-way to permit the transfer of petroleum products between the Fannon Petroleum facility and the Fannon and Sons facility's above ground storage tanks. This arrangement allowed the distributor, Fannon Petroleum, to provide product directly to the consumer retail distributor, Fannon and Sons.
- The seven above ground tanks were removed in 1992 as part of the ongoing environmental remediation of the property. You stated that it was determined that rather than retrofitting the above ground storage tanks that the tanks would be removed and Fannon and Sons vehicles would receive product directly from its distributor, Fannon Petroleum.
- There are currently no deliveries to Fannon and Sons because there is no storage facility.

- Historically, a portion of the outbuilding (proposed for vehicle repair if Fannon Petroleum relocates) was for vehicular repair until the requirements for truck maintenance of the Fannon family business required a larger facility. The outbuilding is currently used for storage related to the business.
- The main building is used as an office-warehouse showroom for both Fannon and Sons and Fannon Petroleum.
- All existing parking is proposed to remain. No additional parking is proposed.
- There is no increase in the number of employees or the hours of operation proposed at 1200 Duke Street.

You provided the following information about Fannon Petroleum at 1300 Duke Street:

- Fannon Petroleum was approved with a special use permit in 1962 as a fuel distribution facility. It has operated as a fuel distribution facility continuously since that time. The facility currently has 20 employees, 17 trucks, and 26 underground storage containers, containing approximately 466,000 gallons of petroleum product for predominately non-consumers. The site is occupied by the Fannon Petroleum office building, a parking facility, a fuel loading rack,

#### Zoning

The Fannon and Sons facility is currently zoned OC-Office Commercial Zone. The facility was rezoned OC in 1992 as part of the City's comprehensive rezoning from the I-2 Industrial zone, the city's highest and heaviest industrial zoning at that time. The Fannon and Sons' facility was zoned I-2 under the 1951 zoning ordinance and zoned for industrial use under all the City's prior zoning ordinances and zoning maps. Pursuant to Section 14 of the I-2 industrial zone of the 1951 Zoning Amendments in effect until 1962, the use of I-2 property for petroleum refining or storage in more than tankcar lots was a permitted use. In 1962, Section 42-22(A)(1)(5) was amended to require that petroleum refining or storage in more than tankcar lots required a special use permit. By an amendment adopted on July 15, 1981, the I-2 zone regulations were further amended and the use was eliminated as a permitted or special-use permit use. The 1981 amendments, however, grandfathered all lawfully existing uses, allowing them to continue in perpetuity.

The use of 1200 Duke Street for heating fuel distribution to consumers with air conditioning and heating retail sales and repairs, was therefore protected from the July 17, 1981, change in zoning and continues today as a grandfathered use.

#### Analysis

In order to determine whether the proposed changes at the site are within the grandfathered rights at 1200 Duke Street, we first assessed whether the use as it will exist after the changes is essentially the same one that existed before the changes and has existed at the site for the last 20

years. The 1981 grandfathering legislation allows “existing uses” to continue as lawful uses despite the change in the zoning. Therefore, the use that continues must be essentially the same one that existed in 1981. Secondly, assuming that the principal use is the same, then it is reasonable to also ask whether there are any changes proposed which create additional zoning impacts; such impacts – often characterized as intensification – would amount to an expansion of the use in a zoning sense, and go beyond the use limitations that have been grandfathered.

We answer this complex zoning question as follows:

1. Will the business continue to operate as a heating and fuel distributor to consumers offering air conditioning and heating retail sales and repairs? Staff finds that the basic use of the site, as a heating fuel distribution business, with air conditioning and heating retail sales and repairs, is essentially the same as the use that has existed at 1200 Duke Street for over 50 years. There is no new core business that you propose to include. according to your submissions, on July 17, 1981, the T.J. Fannon and Sons business operated as follows:

- 30 employees
- 12 fuel trucks for distributing heating oil
- 7 above ground tanks, of 18,000 gallons each (removed in 1992)
- hours of operation: 7:00 a.m. to 5:00 p.m.

Significantly, none of the above will change with the proposals that you anticipate. Therefore, we find that the basic use of the site will remain the same after the 1300 Duke Street site is eliminated.

2. Does reintroducing on-site fuel storage and vehicle repair intensify the operation that is grandfathered at the site? In order to answer this question, staff reviewed the proposed changes very carefully.

A. Fuel Storage/Deliveries: Although fuel storage was technically relocated on the adjacent property, on-site fuel storage continued to be part of the fuel delivery operation at 1200 Duke Street. The proposed tanks will be underground and not visible from the public right of way, negating any potential visual impact from the proposed tanks. The size and number of the tanks is significantly smaller than what has historically been at either 1200 or 1300 Duke Street. Although no deliveries are currently made to 1200 Duke Street because there is no storage facility, it is anticipated that during the highest heating season, December, January, and February, on average two to three daily deliveries of fuel oil will be made to Fannon and Sons, approximately six or seven less each day than what is currently received at the Fannon Petroleum operation.

B. Repair Facility. The operation at 1200 Duke Street has always included a fleet of vehicles that at times requires mechanical attention, and for years repair of these vehicles has occurred at 1300 Duke Street. It is not uncommon for a commercial or industrial business with a fleet of vehicles to have an ancillary on-site maintenance facility. Additionally, allowing this activity to relocate to 1200 Duke Street does not change the

primary use of the property which is fuel delivery. Adding the repair function to 1200 will require improving the existing storage building to add equipment and increase the height of the building to no taller than the highest point of the existing facade.

Even after the added features are reintroduced the business will operate under the same hours and have the same number of employees and trucks as what has been grandfathered. Additionally, the number of deliveries of fuel will be significantly less than what exists now at 1300 Duke Street where Fannon and Sons currently receives fuel product. Fuel deliveries to Fannon and Sons does not change the intensity of the fuel delivery operation beyond what has existed on the property for the past 50 years. Further, the number of employees is not proposed to increase, and the number of delivery vehicles currently consisting of six 3,000 gallon trucks is not proposed to increase as a result of locating this feature on the property. There is ample parking already located on the 1200 Duke street property to accommodate employees.

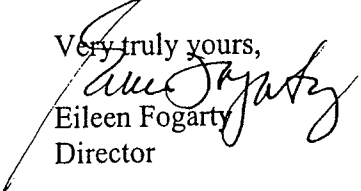
Although the storage building will be changed to one for repair of vehicles, that use is accessory to the main fuel distribution business. The minor changes to the building will add equipment and increase its height; however, that addition adds no floor area to the building and does not require site plan or other land use approval from the City. Staff considers it an improvement to an existing building for a customary and subservient, accessory use.

Finally, we have received a commitment from T.J. Fannon and Sons to install landscaping along Duke Street at 1200 in order to screen the parking and activities that are proposed to occur there. A plan of the proposed landscaping will be submitted for my approval prior to installation. That buffering will further ameliorate any impacts from the use.

Therefore, staff finds that the additional features do not change or intensify the grandfathered use, but are aspects of the same business that has operated on the site for over 50 years.

If you have any questions or need additional information on this matter, please do not hesitate to contact us.

Very truly yours,

  
Eileen Fogarty  
Director

cc: Valerie Peterson  
Robin Szumyk  
Joy Finlay

*Notice required by Virginia Code:*

*You may have the right to appeal this decision within thirty days in accordance with 15.2-2311 of the Code of Virginia. The decision shall be final and unappealable if not appealed within thirty days.*



## Exhibit 3



**CITY OF ALEXANDRIA**  
**CODE ENFORCEMENT BUREAU**  
 301 KING STREET, SUITE 4200  
 ALEXANDRIA, VIRGINIA 22314  
 (703) 838-4360 FAX (703) 838-3880

**MECHANICAL APPLICATION**

IMPORTANT - Applicant to complete ALL applicable items.

MASTER MUST SIGN APPLICATION


Shaded boxes are FOR OFFICIAL USE ONLY.

Permit Number <i>ME-20-00000</i>		1. Project Name		Master Permit		
2. Project Address <i>100 E. King St</i>			Floor/Suite Number		3. Date Applied <i>12-15-06</i>	
4. Owner <i>Thomas Fannon</i>			5. Phone: Home - Work -			
6. Owners Mailing Address (if different from project address)						
7. Work Done By (check one) <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Contractor (for Contractors, MASTER's signature is mandatory in box #13 below)						
8. Contractor Name <i>T.J. Fannon &amp; Sons, Inc.</i>		9. Phone <i>703-660-1234</i>		10. Business Address <i>1600 9th St</i>		
11. Master's Name <i>Thomas Fannon</i>		12. Master's Card Number <i>2710 013031</i>		13. Master's Signature <i>[Signature]</i>		
14. State Contractor License Number Class: <input checked="" type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <i>2701 00 6070</i>		15. Business License Number Reciprocity? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>16472</i>				
16. Project Description <i>Installation of 1000 BTU woodstoves in 2 units</i>						
17. Code Edition <i>2003</i>		18. Use Group <i>Res</i>		19. Construction Type <i>100</i>		
20. <input type="checkbox"/> Residential <input type="checkbox"/> Commercial		21. Type of Work: <input checked="" type="checkbox"/> New <input type="checkbox"/> Alteration <input type="checkbox"/> Repair <input type="checkbox"/> Replacement <input type="checkbox"/> Other				
Location: <input type="checkbox"/> Interior <input type="checkbox"/> Exterior		22. Estimated Cost \$ <i>60000</i>				
23. <input type="checkbox"/> Existing Building <input type="checkbox"/> New Building		24. Number of: Diffusers <i>N/A</i> Registers <i>N/A</i> Grilles <i>N/A</i>		25. Number of: <i>N/A</i> Woodstoves <i>N/A</i> Prefab Fireplaces		
26. Equipment Data:						
	TYPE	MANUFACTURER	MODEL	K-BTU'S	WEIGHT	LOCATION
1	<i>N/A</i>					
2						
3						
4						

<p style="text-align: center;"><b>AFFIDAVIT</b></p> <p>I hereby certify that I have the authority to make the foregoing application and that the application, to the best of my knowledge, is complete and correct and that the permitted construction will conform to the regulations in the Uniform Statewide Building Code and all applicable ordinances.</p> <p>_____ Signature of Owner or Authorized Agent</p> <p><i>Thomas Fannon</i> Printed Name of Person Applying for Permit</p> <p><i>7003 Heritage Dr. Alexandria VA 22304</i> Address Phone/Pager <i>703-660-1234</i></p>	<b>APPROVALS</b>		<b>PERMIT FEES</b>	
	Engineer		TOTAL \$ <i>91575</i>	
	Date Approved		Deposit Rec'd \$	
	Date Issued		Deposit Date <i>01/15/07</i>	
	Engineer Aide	Rec'd By: <i>SD</i>	Notes: <i>CL 1356</i>	
	Issued By:			
Drawings Attached? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				

## Exhibit 4

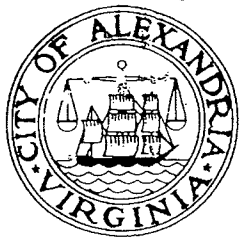
## Memorandum

From: Rich Josephson, Acting Director of Planning and Zoning   
Date: December 28, 2006  
Subject: Grandfathered use at Fannon property (1200 Duke Street) – MEC2006-04202

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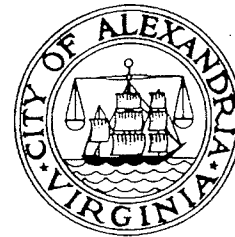
On November 3, 2003, a letter was issued to Duncan Blair regarding the installation of two underground storage tanks at 1200 Duke Street. In the letter, Planning and Zoning staff agreed that the fuel storage was a grandfathered use and two 20,000 gallon tanks could be permitted for underground storage at the 1200 Duke Street property. On December 15, 2006, the owner, T.J. Fannon, applied for a mechanical permit (MEC2006-04202) to install three underground tanks (two 20,000 gallon tanks and one 8,000 gallon tank) and a fuel dispensing machine. By this memo, Planning and Zoning staff acknowledges the additional tank and the fuel dispensing machine and concludes that the original intent of the November 3, 2003 letter is still met.

## Exhibit 5



# CITY OF ALEXANDRIA

Code Enforcement Bureau  
301 King Street, Suite 4200  
Alexandria, Virginia 22314  
(703) 838-4360



## MECHANICAL PERMIT

CASE NUMBER: MEC2006-04202

ISSUED: 1/9/2007

EXPIRES: 7/9/2007

SITE ADDRESS: 1200 DUKE ST		PROJECT NAME: FANNON	
PARCEL NO: 10584000			
MAP 074.01	BLOCK: 13	LOT: 05	ZONING: OC
			TRACT: 2007.00

PROJECT DESCRIPTION :  
INSTALL THREE OIL TANKS IN GROUND

**OWNER INFORMATION:**

Owner  
DAVID L FA  
1200 DUKE ST  
ALEXANDRIA, VA 223143516

*Phone Information:*  
704-5495700

**CONTRACTOR INFORMATION:**

Contractor  
FANNON, THOMAS J & SONS I  
1200 DUKE ST  
ALEXANDRIA VA 22314

*Phone Contacts:* Primary Phone - - 703-549-5700

**License Information:**

Lic Type BUS	Lic #: 16472-01	Exp. Date:03/01/2007
Lic Type CONA	Lic #: 2701 006070A	Exp. Date:05/31/2008
Lic Type MTR	Lic #: 2710 013031 / 5.	Exp. Date:11/30/2008 6/03/05

USE GROUP: U	RES/COMM'L: C	WOODSTOVES:	PREFAB F/P:
TYPE OF CONSTR:	NEW/EXIST BLDG: EXIST	CODE ED: 2003	
EST. COST.: \$60,000.00	TYPE OF WORK: ALT	DIFFUSERS/REGISTERS/GRILLES:	

### EQUIPMENT

TYPE	MANUFACTURER	MODEL	K-BTUB	WT#	LOCATION
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### FEES:

Type.....	Amount
Mechanical Permit Fee...*	\$900.00
1.75% State -Surcharge	\$15.75
<b>Total:</b>	<b>\$915.75</b>

FOR AND IN CONSIDERATION OF THE GRANTING OF THIS PERMIT TO THE STATED PERMITTEE, THE SAID PERMITTEE EXPRESSLY PROMISES AND AGREES TO SAVE THE CITY OF ALEXANDRIA FREE AND HARMLESS FROM ANY LIABILITY WHATSOEVER RESULTING FROM ANY WORK OR OPERATION OF ANY DESCRIPTION CONDUCTED UNDER AUTHORITY OF THIS PERMIT.

RIGHT IS RESERVED TO INSPECT WORK AUTHORIZED BY THIS PERMIT AS OFTEN AS NECESSARY TO DETERMINE COMPLIANCE WITH THE VIRGINIA UNIFORM STATEWIDE BUILDING CODE.

AUTHORIZATION TO ALTER, USE OR CROSS PUBLIC SIDEWALKS, CURBS, OR OTHER PUBLIC SPACES MUST BE OBTAINED FROM THE DEPARTMENT OF TRANSPORTATION AND ENVIRONMENTAL SERVICES.

THIS PERMIT EXPIRES IF WORK IS NOT STARTED OR IF WORK IS ABANDONED FOR SIX MONTHS. IF WORK WILL BE PERFORMED WITHIN 15 FEET OF OVERHEAD ELECTRICAL WIRE, PERMITTEE MUST OBTAIN ASSISTANCE FROM THE VIRGINIA POWER OFFICE.

CALL (703) 934-9660.

TO SPEAK WITH AN INSPECTOR ABOUT YOUR INSPECTION, PLEASE CALL (703) 838-4360 OR 4650 BETWEEN 7:30 A.M. - 8:00 A.M. MONDAY - FRIDAY.

BUILDING OFFICIAL \_\_\_\_\_

## Exhibit 6



DEPARTMENT OF PLANNING AND ZONING

301 King Street, Room 2100  
P. O. Box 178  
Alexandria, Virginia 22313

alexandriava.gov

Phone (703) 838-4666  
Fax (703) 838-6393

February 26, 2007

T. J. Fannon  
1200 Duke Street  
Alexandria, VA 22314

RE: Underground storage tanks and site improvements

Dear Mr. Fannon,

With the issuance of the mechanical permit (MEC2006-04202) for the installation of three underground storage tanks at your property at 1200 Duke Street, staff felt it necessary to bring several additional issues related to this permit to your attention.

First, please keep in mind the above permit only allows the installation of the three underground storage tanks. A separate permit must be obtained for the fuel dispenser structure. We received copies of what you propose to construct to dispense the fuel and staff has concerns about the size and appearance of this structure in addition to whether or not this structure falls under the scope of the uses outlined in the November 3, 2003 letter. We recommend meeting with you to discuss alternate options for this structure.

Second, in the November 3, 2003 letter, you were required to provide additional landscaping for this site. To our knowledge a plan for this landscaping has not been provided to the City, nor has the landscaping been installed. Please provide staff with a landscape plan showing the additional landscaping you propose and include a timeframe for when this will be completed.

Third, as recently as November 2005, a wall existed along the property line facing Payne Street to screen the uses on the site from the public right-of-way. Especially considering the future residential use to the west, this wall must be reinstalled along this property line. Please provide staff with a detail of what you provide to install.

Fourth, the site plan provided with the mechanical permit depicted a new curb cut onto Payne Street. As stated above, the permit only authorized the installation of the three underground tanks. Any new curb cuts must be approved by the City separately.

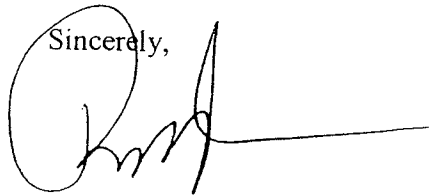


T. J. Fannon  
February 26, 2007  
Page 2

Finally, the installation of these tanks has generated great concern among your neighbors at Old Town Village. Staff recommends having a meeting with a representative from this community, city staff, and yourself or a representative to discuss what is occurring at the site and what you foresee for this site in the future.

We would like to set up these meetings as soon as possible. Please contact Katy Parker at 703-838-4666, ext. 372 or [katye.parker@alexandriava.gov](mailto:katye.parker@alexandriava.gov).

Thank you for your consideration of this matter.

Sincerely,  


Rich Josephson  
Acting Director, Planning and Zoning

CC: Jannine Pennell, Code Enforcement  
Bill Skrabak, T&ES-DEQ  
Steve Milone, P&Z  
Peter Leiberg, P&Z

# Exhibit 7

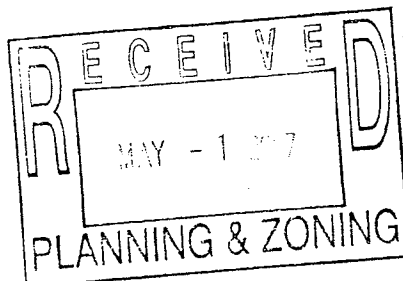


OFFICE OF THE CITY MANAGER

301 King Street, Suite 3500  
Alexandria, Virginia 22314-3211

JAMES K. HARTMANN  
City Manager

(703) 838-4300  
Fax: (703) 838-6343



April 30, 2007

Old Town Village Owners Association  
Community Manager  
Legum and Norman  
4401 Ford Avenue  
Suite 1200  
Alexandria, Virginia 22302

Attention: Casondra Johnson, Community Manager

Dear Ms. Johnson:

I am writing in response to the letter from Robert Hardiman, Kris Kolesnik and Timothy Cox of the Old Town Village Owners Association (OTVOA) concerning the T.J. Fannon property located at the corner of Duke Street and South Payne Street, adjacent to the Old Town Village community. The letter raised a number of issues regarding activity at the property, including the excavation and installation of underground fuel tanks, possible creation of a "gas station", as well as other land use concerns.

By way of background, the City approved a permit in January 2007 for the installation of underground fuel storage tanks in the 1200 block of Duke Street, based on a determination contained in a November 3, 2003 letter from the Department of Planning and Zoning (a copy of this letter was previously provided to members of the OTVOA). The permit request did not include plans for a fuel dispensing station. Staff has determined that an 8,000 gallon tank installed on the property pursuant to the permit is not permitted since it was not part of the approval in the November 3, 2003 letter. That letter referred only to two 20,000 gallon fuel storage tanks. In order for the City to consider allowing diesel fuel and gasoline to be stored and dispensed from underground storage tanks in the 1200 block of Duke Street, Fannon will have to provide additional documentation that this type of operation existed on that block previously.

In late February, as excavation work began for the installation of these underground tanks, staff received several calls and emails from concerned neighbors about this work. Staff responded quickly by meeting on site with several residents of Old Town Village to

discuss the installation of the tanks and potential impact on the community. This meeting occurred on February 22.

Subsequent to the meeting with the Old Town Village residents, staff from Planning and Zoning, Code Enforcement and Transportation and Environmental Services met to review the requirements for the location of underground storage tanks near residential uses. It was determined that the location of the tanks (approximately 60 feet from the nearest residential property line) was in compliance with Fire Code requirements. However, staff noted that additional measures would need to be taken to address the transfer of fuel to and from the underground storage tanks to vehicles and any fuel dispensing apparatus.

On March 2 the City issued a Stop Work Order to Fannon for work under the aforementioned permit. Staff met with Fannon on March 5 and advised them that no additional work and no dispensing of fuel (either fuel oil or gasoline) would be permitted until all issues related to storage and dispensing of fuel were adequately addressed, including the submission of plans to rebuild an existing brick wall that previously screened the surface parking lot at the 1200 Duke Street site which faces South Payne Street, submission of plans to screen any dispensing equipment when viewed from the neighboring residences, and the provision of additional landscaping/screening along Duke Street and along the south property line between Old Town Village and the 1200 Duke Street lot.

In response to the specific issues and questions contained in your March 28 letter the following information is provided.

- In reference to the issue of the number of underground storage tanks allowed and the type of fuel to be stored and dispensed on the 1200 block of Duke Street, the November 3, 2003 letter references two underground storage tanks, each with a capacity of 20,000 gallons and anticipated deliveries during the highest season of two to three daily which would be substantially less than the historical number of deliveries of six to seven per day. With regard to the 8,000 gallon tank that was installed by Fannon, this tank was not included in the November 3, 2003 letter. In order for the City to consider allowing diesel fuel and gasoline to be stored and dispensed from underground storage tanks in the 1200 block of Duke Street, Fannon will have to provide additional documentation that this type of operation existed on that block previously.
- In regard to the question about sheeting and shoring permits, Fannon applied for and received approval of a sheeting and shoring permit after work started on the site. As stated previously, a stop work order was issued to Fannon on March 2, and no additional work will be allowed on site until such time as the City is satisfied that all concerns of the City and neighbors have been addressed.
- With respect to the question of whether permits were posted on the property as required, Mr. Fannon advised staff that the approved permits were available

onsite. We have advised Mr. Fannon that, although the permit was available for review onsite, in the future all permits are required to be posted and visible from the exterior of the property.

- Regarding the question concerning times by which fueling operations will take place on the Fannon property, Fannon has informed City staff that fuel oil will be delivered Monday through Friday, 7:00 am to 5:00 pm. All operations are to take place during normal business hours. Fannon has advised City staff that there will be no 24-hour, 7-day a week operation at 1200 Duke Street.

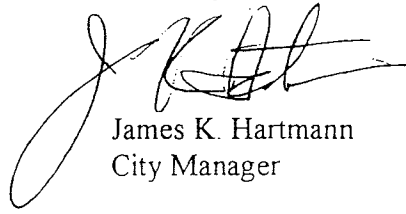
In reference to compliance with zoning regulations, in addition to the restrictions placed on the property by the November 3, 2003 letter, the operations at 1200 Duke Street will have to comply with current zoning rules governing the site relative to use limitations which restrict outdoor storage and the requirement that no use shall be conducted in any manner which would render it noxious or offensive by reason of dust, refuse matter, odor, smoke, gas, fumes, noise, vibration or glare. Fannon will have to demonstrate to the City that it will be able to comply with these requirements.

Regarding the OTVOA's concern about environmental testing of the property, Fannon has indicated that soil tests were completed prior to installation of the underground storage tanks in the 1200 block of Duke Street. In addition, monitoring wells have been installed on the 1300 block of Duke Street as well as on South Payne Street. Furthermore, the City's Division of Environmental Quality has requested that Stage I and Stage II vapor recovery systems in ground and above ground be provided to prevent spills during the fueling/refueling of the tanks as part of any proposed fuel dispensing equipment. Additional environmental testing may be required.

Finally, with respect to the OTVOA's concerns about other issues, the City has requested that Fannon provide information prior to resumption of work on the property. This information includes: a traffic circulation plan for all trucks that will enter and exit from South Payne Street to the 1200 Duke Street site; proposed landscaping on Duke Street along the property line facing OTVOA, including any plans for rebuilding the brick wall that previously screened the 1200 Duke Street site from South Payne Street; and plans for the installation and use of vapor recovery equipment in conjunction with any proposed fuel dispensing apparatus. When this information is received it will be shared with OTVOA. Staff intends to schedule a meeting with neighboring residents and Fannon to discuss the above issues in further detail.

Should you have any further questions concerning this matter, please contact Rich Josephson, Deputy Director, Department of Planning and Zoning at 703-838-4666.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. K. Hartmann', with a large, sweeping flourish extending to the left.

James K. Hartmann  
City Manager

cc: The Honorable Mayor and Members of City Council  
Farrell Hamer, Director, Planning and Zoning  
Rich Josephson, Deputy Director, Planning and Zoning  
Bill Skrabak, Division Chief, Environmental Quality/Transportation and  
Environmental Services  
John Catlett, Director, Code Enforcement  
Jannine Pennell, Deputy Director, Code Enforcement  
Richard Baier, Director, Transportation and Environmental Services  
Russell Middleton, Interim Fire Chief  
Ignacio Pessoa, City Attorney  
Thomas J. Fannon and Sons

## Exhibit 8

TRANSPORTATION AND ENVIRONMENTAL SERVICES

PLOT PLAN

AS-BUILT \_\_\_ PRELIM \_\_\_ FINAL #1 \_\_\_ REVISION

DATE OF MEETING \_\_\_\_\_  
DEPARTMENT \_\_\_\_\_

PLAN NUMBER: PLT#2007-0027  
TITLE: Fannon Oil Company  
ADDRESS: 1200 Duke Street

Please return this form to Shanna Sizemore, T&ES, Room 4130 (Box #66), 838-4318/FAX - 838-6438

Preface each comment with the following codes:

F= Finding C= Code Requirement R= Recommendation S= Suggestion

RETURN DATE: 11/13/07 DOC: PLT #2007-0027 DESC: Changes in the parking lot

DISTRIBUTION:

Engineering  DEQ  C&I  Transportation  Solid Waste/Maintenance

Transit  P&Z  Code Enforcement  RP&CA  Archaeology

-----  
Fannon Oil Company  
1200 Duke Street  
PLT2007-0027  
Final #1  
November 18, 2007

**Findings:**

1. Civil War maps indicate that buildings of the Commissary Department (including the kitchen, bakery, mess houses, and stables) were present on this block within the stockaded area of the U.S. Military Railroad yard. The lot therefore has the potential to yield archaeological resources that could provide insight into military activities of the Union Army during the war. (Archaeology)
2. The subject property, zoned OC, office commercial, is a corner lot fronting Duke Street and South Payne Street and occupied by Fannon Oil, Air Conditioning and Heating Company since 1938. Two industrial buildings are located on the property, one building used for offices and storage of materials and the second building used for repair of fleet vehicles. Two dumpsters are located on the west side of one building. Ingress and egress to the site is provided from one curb cut from South Payne Street. A second curb cut on Duke is no longer in use and has been blocked by fencing for a number of years.

The zoning regulations classifies Fannon Oil's home oil heating operation and vehicle repair as a grandfathered use and the air conditioning repair and sales operations as a retail use. Fannon obtained a

DATE: December 3, 2007  
Page 1 of 6

SIGNATURE: Shanna M. Sizemore



building permit in early 2007 to install two industrial oil tanks (home oil heating) and one gasoline tank to service Fannon's fleet vehicles.

Staff has reviewed the submitted plot plan and found major omissions and additional information needed to bring the plan into compliance with the Department of Planning's requirements as well as verbal commitments made between Fannon Oil and the City and in discussions with the community. (P&Z)

**Recommendations:**

1. Submit 6 paper copies and a comment response letter at next submission. (Site Plans)
2. The project north arrow is pointing downward on the plot plan. Change the direction of north arrow to point upwards. North arrow pointing east or west may be shown. (Engineering/Transportation)
3. Include all City Standard General Notes that are applicable to the project. A copy of city standard notes may be obtained from Shana Sizemore, Site Plan Coordinator. (Engineering)
4. Per the plot plan check list, show the elevations of sidewalks and streets on the plan. (Engineering)
5. Per the plot plan check list, show existing sanitary sewer and water lines on the plan. (Engineering)
6. Provide details and specifications of storm sewer structure #1 with all invert elevations indicated. (Engineering)
7. Include the approved/revised erosion and sediment control plan for review. (Engineering)
8. Per the plot plan check list, include fence and wall details. (Engineering)
9. Connect the curb at the abandoned apron on Duke Street and South Payne curb cut that is located immediately north of the existing entrance and install new curb, gutter and brick sidewalk to City standards. See Notes A, B, E, and F in Recommendation 15. (Engineering/P&Z)
10. Per the City of Alexandria standards, all storm sewers must have a minimum diameter of 18" in the public right-of-way and 15" for catch basin leads. The acceptable type of reinforced concrete pipe in the public right-of-way is C-76 Class IV; however, Class III may be acceptable on private property. (Engineering)
11. The storm sewer stationing shown on the plan does not match that shown on the profile; therefore, match the stationing. Provide reference to the plan and profile sheets as they are not shown on the same sheet. (Engineering)
12. Include the details of the proposed Oil Water Separator (OWS) and the connection pipe on the plan. Provide reference to the Supplemental Site Detail Package for specifications. (Engineering)
13. Show the photometric lighting plan with along with the numeric summary. (Engineering)
14. The plan shows the location of trash trucks; therefore, show the trash truck movements also. (Engineering)

15. There are four curb cuts serving this property: two on Duke Street and two on South Payne Street. One curb cut on Duke Street out of these four cuts is not shown on the plan. The construction of the proposed brick wall will force the closure of one curb cut on S Payne Street; however, there is one additional Gate proposed on S Payne Street; however, no curb cut is shown for this proposed gate or abandonment of the existing curb cut and apron. Provide as much clarification as possible on the plan as to the intent of the proposed development so that the correct information can be reviewed to assess the impacts of the development. (Engineering)
16. Include the following notes to the City Standard General Notes, if not included previously:  
(Engineering)
  - A. THE APPLICANT SHALL BE RESPONSIBLE FOR REPAIRS TO THE ADJACENT CURB, GUTTER, AND RIGHT-OF-WAY, IF DAMAGED DURING CONSTRUCTION ACTIVITY AS DETERMINED BY THE DIRECTOR, TRANSPORTATION AND ENVIRONMENTAL SERVICES (T&ES).
  - B. IF THE CURB, GUTTER, AND SIDE WALK ARE IN A STATE OF DISREPAIR ADJACENT TO THE PROPOSED DEVELOPMENT THEN THE APPLICANT SHALL REPAIR THE SAME TO THE SATISFACTION OF DIRECTOR, TRANSPORTATION AND ENVIRONMENTAL SERVICES (T&ES).
  - C. IN THE EVENT, THE PROPOSED ROOF DRAINAGE SYSTEM AND/OR SUMP PUMP DISCHARGE ADVERSELY IMPACTS AND/OR CREATES A NUISANCE ON PUBLIC OR PRIVATE PROPERTIES THEN THE APPLICANT SHALL BE RESPONSIBLE TO PROVIDE ADDITIONAL IMPROVEMENTS TO THE ROOF DRAINAGE SYSTEM AND/OR SUMP PUMP DISCHARGE TO THE SATISFACTION OF DIRECTOR, TRANSPORTATION AND ENVIRONMENTAL SERVICES (T&ES).
  - D. THE CONTRACTOR MUST ENSURE THAT POSITIVE DRAINAGE OCCURS ON SITE TO PREVENT PONDING OR DRAINAGE PROBLEMS ON ADJACENT PROPERTIES.
  - E. ALL IMPROVEMENTS TO THE CITY RIGHT-OF-WAY SUCH AS CURB, GUTTER, SIDEWALK, AND DRIVEWAY APRONS, ETC., MUST BE DESIGNED AND CONSTRUCTED AS PER THE CITY OF ALEXANDRIA STANDARDS AND SPECIFICATIONS.
  - F. ALL STREET CUT AND PATCH WORK LOCATED IN PUBLIC RIGHT-OF-WAYS, REQUIRED FOR ANY UTILITY INSTALLATION SHALL BE PERFORMED IN STRICT ACCORDANCE WITH THE CITY OF ALEXANDRIA STANDARDS AND SPECIFICATIONS.
17. Existing storm sewer drop inlet in the gravel parking lot south of the existing brick apron adjacent to Duke Street with outfall of PVC pipe to brick apron and brick sidewalk is not shown on plan. This outfall is not acceptable as it exists and must be connected to the storm sewer if available withing 500 feet or installed to outfall in curb and gutter. Show structure and outfall on plan. (C&I)
18. Proposed storm sewer RCP to be class IV where load bearing exists. (C&I)
19. Provide construction entrance and additional siltation control fence on site perimeter. (C&I)
20. Sheet 1 of 5: Provide ADA ramp in southeast corner of Duke Street and South Payne Street. All ADA ramps shall be concrete with truncated domes on the end of the ramp with contrasting color from the rest of the ramp. Provide VDOT standard for ADA ramp. Include note – “Contractor shall conform to the latest VDOT standard during the construction of ADA ramps”. Also, tighten radius in the southeast corner of the intersection. (Transportation)

21. The existing gravel parking lot is not an acceptable construction entrance design. Provide a standard construction entrance detail (Standard 3.02 Temporary Stone Construction Entrance Virginia Erosion and Sediment Control Handbook (VESCH), 1992) on the Erosion and Sediment Control Plan (Sheet 2 of 5). Show the location of the VESCH approved construction entrance and washrack on Sheet 1 of 5. (DEQ)
22. Add a silt trap, a 3' X 3' X 1' small sediment trap on the downstream side of the construction entrance on Sheet 1 of 5. Provide positive drainage from the washrack to the silt trap. (DEQ)
23. Revise the grass swale design and sections to provide at least 6" of freeboard above the 10 year water surface elevation. (DEQ/Engineering)
24. Provide pipe sizes for the drainage connections from the two existing trench drains to the proposed oil and grit separator. (DEQ)
25. The applicant shall submit a storm water quality BMP Maintenance Agreement with the City of Alexandria. It must be executed and recorded with the Land Records Division of Alexandria Circuit Court prior to approval of the final site plan. This can be obtained at <http://alexandriava.gov/tes/DEQ/deqpublications.html> (DEQ)
26. The Archaeology Notes on Sheet 1 of the plan shall appear in the General Notes of all site plans and on all site plan sheets that involve demolition or ground disturbance (including Erosion and Sediment Control, Grading, and Sheet piling and Shoring) so that on-site contractors are aware of the requirements. Additional statements to be included on the Final Site Plan will be determined in consultation with Alexandria Archaeology. (Archaeology)
27. If this project is a federal undertaking or involves the use of any federal funding, the applicant shall comply with federal preservation laws, in particular Section 106 of the National Historic Preservation Act of 1966. The applicant will coordinate with the Virginia Department of Historic Resources and the federal agency involved in the project, as well as with Alexandria Archaeology. (Archaeology)
28. Landscape plan submitted is not adequate. Provide a separate landscape plan to scale that shows all existing and proposed conditions including structures, infrastructure, etcetera that must be considered in placement and selection of proposed plantings. (P&Z)
29. Submit information in one complete plan set package that includes all landscape plan sheets, with all landscape plan details in accordance with the City's Landscape Guidelines (April 2007). (P&Z)
30. Show existing conditions on plan including location, size and type of trees to be removed, existing trees along Duke Street frontage and existing and proposed locations of transformers proposed to be relocated. Show existing curb and gutter, street parking spaces, sidewalk, transformers, etc. that may obstruct the maneuvering of tanker trucks arriving at the 1200 Duke Street Property. (P&Z)
31. Indicate proposed location of new second curb cut /driveway apron on South Payne Street. (P&Z)
32. Depict on the plan the physical improvements on the public r-o-w (approved per DSP#2005-0016) on the west side of the 100 block of South Payne Street. (P&Z)

33. Revise location of the proposed grass swale to preserve existing trees located behind the Duke Street fence line or pursue alternative methods of storm water management that allows preservation and augmentation of the landscaping between the Duke Street fence and the parking area. (P&Z)
34. Show preservation of existing trees and installation of new bushes, trees and landscaping along the Duke Street frontage. Indicate type of specimens selected, size and number of each specimen, and total crown coverage proposed and in accord with the City's Landscape Design Guidelines. (P&Z)
35. Show tanker truck maneuvering pattern from South Payne Street onto 1200 Duke Street when entering, refueling the two underground oil tanks and exiting the lot onto South Payne Street. (P&Z)
36. Indicate proposed oil dispensing equipment/structure on plan, label dimensions and height of equipment. (P&Z)
37. Show accurate dimensions and size of the two existing dumpsters located near the loading docket at the west wall of the building. (P&Z)
38. Label parking spaces on lot including drive aisles and location to park fleet trucks in the evening. Dimension parking spaces including customer parking spaces. A standard space is 9.00 feet by 18.50 feet and a compact space is 8.00 feet by 16.00 feet. Drive aisles are a minimum of 22.00 feet and one-way movement 16.00 feet. Although parking is not required, staff needs to confirm proper function of the lot with striped parking spaces and that proposed improvements, including grass swale, are coordinated with vehicular movements. (P&Z)
39. Label under general notes that the business operates from 7:00 AM to 5:00 PM, Monday through Friday with occasional emergency weekend service. (P&Z)

The following are **required** by Fannon Oil to operate pursuant to the City's 2003 letter of determination and to enable the use to be more compatible with nearby residential properties.

40. All employee vehicles now parked on South Payne Street in front of 1200 Duke Street must park at the Fannon "Coal Yard" site located at South Henry Street near Duke Street. Limited public and guest parking is available on the 100 block of South Payne Street and cannot be monopolized by personal vehicles of Fannon Oil employees. (P&Z)
41. All plantings, including landscaping installed on the public right-of-way adjacent to the property, shall be consistently maintained in a flourishing and vigorous growing condition by the applicant, owner, or successor(s) of the property. (P&Z)
42. The south portion of the lot that is shown to be surfaced with gravel must be paved with hard surface such as asphalt or cement to adequately serve the use, to prevent potential of generating dust that would blow onto neighboring residential properties and the tot lot, and to prevent the possibility of gravel from migrating onto the public street. (P&Z)
43. Replace existing 6.00 feet wood fence along a portion of the south side property line and screening the Old Town Village's tot lot with a new 8.00 feet tall wood fence including replacement trees to the satisfaction of the Director of Planning and in consultation with OTV and Fannon Oil. (P&Z)
44. Replace the two existing large dumpsters with two smaller dumpsters. Remove accumulated debris at least twice a week or more during peak periods. (P&Z)

45. Lock South Payne Street gates at 5:00 pm, Monday through Friday and reflect this as an operating note on the plan set. (P&Z)
46. Roof of dispensing equipment structure shall be a historically appropriate metal roof both in color and style to be compatible with the existing brick buildings. (P&Z)
47. Install 8.00 feet masonry wall parallel to the third underground tank and perpendicular to the new 8.00 feet masonry wall facing South Payne Street to screen the dispensing equipment structure and trucks when arriving for oil to reduce the visual impact of the trucks when viewed from OTV property. (P&Z)
48. Install new sidewalk and street trees along the east side of South Payne Street connecting the existing sidewalks along Duke Street and the existing sidewalk in front of the Old Town Village condominium building south of the Fannon site. Relocate existing transformers away from the curb and toward the Fannon site as necessary to provide adequate sidewalk width. (P&Z)
49. All Fannon fleet vehicles must be parked on the lot in an orderly fashion at all times. (P&Z)
50. The property shall be reviewed every two years to confirm compliance with the City's 2003 letter, City codes and regulations and the above requirements. (P&Z)
51. Submit 8 paper copies and a comment response letter at next submission. (Site Plans)

**Code Requirements:**

1. Handicap accessible parking shall be provided in compliance with Section 1106.8 of the Virginia Uniform Statewide Building Code. (CE)

## Exhibit 9



## DEPARTMENT OF PLANNING AND ZONING

301 King Street, Room 2100

P.O. Box 178

Alexandria, VA 22313

Phone (703) 838-4666

Fax (703) 838-6393

[www.alexandriava.gov](http://www.alexandriava.gov)

August 8, 2008

Mr. Thomas J. Fannon  
Thomas J. Fannon & Sons  
1200 Duke Street  
Alexandria, Virginia 22314

Re: 1200 Duke Street, Thomas J. Fannon & Sons, Inc.,  
Revocation of November 3, 2003, Zoning Determination Letter

Dear Mr. Fannon:

As you are aware, on November 3, 2003, the then Director of Planning and Zoning, Eileen Fogarty, issued a zoning determination letter which allowed certain business activities, formerly conducted at 1300 Duke Street, to be transferred to 1200 Duke Street. The 1200 Duke Street site is occupied by Thomas J. Fannon & Sons, Inc., aka T.J. Fannon & Sons, which is a retail fuel oil dealer, and provider of HVAC equipment sales and service. The 1300 Duke Street site was formerly occupied by Fannon Petroleum Services, Inc., a wholesale distributor of petroleum products. In particular, the November 3 letter authorized the transfer of fuel storage for retail distribution, and retail fuel delivery and service vehicle fleet repair, from 1300 to 1200 Duke Street.

Although fuel storage tanks were installed at 1200 Duke Street, the installation exceeded the scope of the authorization granted by the determination letter in that the installation was not limited to heating oil, as requested and discussed in the letter, but included gasoline and related dispensing facilities, for use by the retail delivery and service vehicle fleet. Indeed, I understand that the planned use of the tanks for heating oil storage has been abandoned.

In addition, the November 3 determination was predicated on the conclusion that the transfer of activities would not constitute an intensification of the then existing use of the 1200 Duke site. Under the City's precedent, that conclusion required a finding by the Director that no significant adverse zoning impacts would result from the transfer.

Mr. Thomas J. Fannon  
Thomas J. Fannon & Sons  
August 8, 2008  
Page 2

In order to make that finding, and support the no adverse impact conclusion, the Director relied on "a commitment from T.J. Fannon and Sons to install landscaping along Duke Street at 1200 in order to screen the parking and activities that are proposed to occur there." The letter required as a condition of the approval that "A plan of the proposed landscaping will be submitted for [the Director's] approval prior to installation."

Almost five years have elapsed since the determination letter was issued. No reasonable plan, indeed no minimally adequate or complete plan, has ever been presented for approval by the Director, notwithstanding numerous requests from this Department, and ample opportunity for Thomas J. Fannon & Sons, Inc., to have complied.

Section 11-205(A) of the Zoning Ordinance authorizes the Director of Planning and Zoning to suspend or revoke any approval granted by the Director under the ordinance, in the event the responsible party materially fails to comply with any condition proffered or required by the Director as part of such approval.

Based upon the facts of this case, I find that Thomas J. Fannon and Sons, Inc. has materially failed to comply with the above-stated condition to submit a plan and provide mitigation. Given the length of time which has passed and the paucity of effort to comply that has been demonstrated, I further find that no suspension on reasonable terms and conditions can be imposed which will adequately secure compliance. Accordingly, I hereby revoke the November 3, 2003 determination letter in its entirety, subject to the following conditions required to secure compliance with the City of Alexandria Zoning Ordinance.

First, all use of the 1200 Duke Street site authorized by the determination letter must cease immediately, and I so order. In particular, any and all fuel storage and/or delivery to the site are prohibited. Any and all repair and/or service of the retail fuel delivery and service vehicle fleet are prohibited. More generally, any changes to the business to permit Thomas J. Fannon and Sons, Inc., to operate independently of the 1300 Duke Street property are prohibited.

Second, in the event Thomas J. Fannon and Sons, Inc., so elects, the company has the right, and may submit to me within 30 days of the date of this letter, a new request for determination, together with full and complete supporting documentation, of the additional zoning rights, if any, attributable to the prior use of the 1200 Duke Street site. Any such request will receive full and fair consideration, including public notice and opportunity to comment.



Mr. Thomas J. Fannon  
Thomas J. Fannon & Sons  
August 8, 2008  
Page 3

Thomas J. Fannon and Sons, Inc., has the right to appeal my decision to revoke the November 3, 2003 determination letter, and the conditions stated in this letter, to the Alexandria Board of Zoning Appeals, as provided in Section 11-206 of the Zoning Ordinance, but any such appeal will not stay the effect of this letter. In accordance with Section 15.2-2311 of the Code of Virginia, this decision shall be final and unappealable if not so appealed in 30 days.

In addition, you are continuing to violate Section 4-807(A) of the Zoning Ordinance, which prohibits outdoors storage and outdoor operations on your site. You are directed to stop such activities and storage immediately, as part of this revocation action.

Very truly yours,

Faroll Hamer, Director  
Department of Planning and Zoning

cc: The Honorable Mayor and Members of City Council  
James K. Hartmann, City Manager  
Mark Jinks, Deputy City Manager  
John Catlett, Director, Code Enforcement  
Rich Baier, Director, Transportation and Environmental Services  
Ignacio Pessoa, City Attorney



Faroll Hamer/Alex  
08/08/2008 03:34 PM

To alexvamayor@aol.com, timothylovain@aol.com,  
council@krupicka.com, councilmangaines@aol.com,  
delpepper@aol.com, paulcsmedberg@aol.com, Justin  
cc Mark Jinks/Alex@Alex, Jim Hartmann/Alex@Alex, Ignacio  
Pessoa/Alex@Alex, Dorsey.Delavignejr@opm.gov, "Oerth  
Kolesnik, Pamela" <poerth@oerthassociates.com>, Alan  
bcc

Subject fyi: zoning revocation letter to Fannon

Dear Mayor and Councilmembers:

Attached is a letter that was emailed to Tom Fannon and Duncan Blair this morning. It revokes the zoning permission previously granted to Fannon at 1200 Duke St. that allowed some of the activities, such as truck repair and home heating oil storage and fueling operations, to be transferred from the 1300 Duke St. site to the 1200 Duke St. site. There is a process for the appeal of this decision. In the meantime, we will continue to cite the owner for violations for any activities, including outdoor storage, that are not permitted on the site. If the owner does not comply, our next recourse is to file an injunction.

Yours,  
Faroll



fannon letter of revocation.1.doc

# Exhibit 10



Richard Josephson/Alex  
03/12/2007 05:19 PM

To lexvamayor@aol.com, macdonaldcouncil@msn.com,  
timothylovain@aol.com, councilmangaines@aol.com,  
council@krupicka.com, delpepper@aol.com,  
cc lsabellepris@aol.com, asposner@gmail.com,  
l.l@comcast.net, rwlarrimore@yahoo.com,  
hanrattymc@comcast.net, evansjeffr@saic.com,  
bcc Peter Leiberg/Alex

Subject Fannon Update

In 2002, in anticipation of the redevelopment of the 1300 Duke Street site, Fannon Oil approached the City to establish the grandfathered status of their uses at the 1200 Duke Street property and to determine what would be necessary in order to continue operating as a heating fuel distributor once Fannon Petroleum moved from the 1300 block. The Fannon Oil operations have been long-standing uses on the 1200 and 1300 blocks of Duke Street for several decades.

As a result, a letter was issued on November 3, 2003 by the Department of Planning and Zoning that outlined the uses that were considered grandfathered at the 1200 Duke Street site (see attached letter, a copy of which was also provided to the Old Town Village Association president, Joy Finlay, at that time). Two uses were considered to be grandfathered. The first use was fuel storage and delivery which required underground storage tanks. The second use was a vehicle repair facility.

Subsequent to the issuance of the November 3, 2003 letter, the 1300 Duke Street site received site plan approval for redevelopment to a residential use consisting of 58 units (DSP 2005-0016).

Since the proposed development required only site plan approval and not a special use permit, Council approval was not required. The site plan was approved by the Planning Commission in January 2005 and the applicant is nearing completion of the final site plan.

Construction of the new residential units is imminent and the site needs to be prepared. This includes demolition and removal of the existing structures on the 1300 block of Duke Street, including the fuel storage tanks. In order to continue operations, Fannon Oil applied for a permit to install the underground storage tanks. Additionally, in June 2005, Fannon Oil obtained Board of Architectural Review (BAR) approval and a building permit for an addition to the garage containing the vehicle repair operations.

In January 2007, Fannon Oil obtained a mechanical permit for the installation of underground storage tanks at 1200 Duke Street and, in late February, began construction to install these tanks.

When construction began to install the underground tanks, staff received several calls and emails from concerned neighbors. Staff met with several residents of Old Town Village on February 22, 2007 to discuss the installation of the tanks and the potential impact on their community. Staff informed the residents that a building permit for installation of underground tanks does not require public notice to surrounding property owners. Furthermore, since the underground storage tanks were considered a grandfathered use at this site, the applicant was not required to obtain approval of a site plan or special use permit. Staff also noted that a copy of the November 3, 2003 letter was sent to the president of the Old Town Village HOA at that time.

Subsequent to the meeting with the Old Town Village residents, staff from Planning and Zoning, Code Enforcement and Transportation and Environmental Services met to review the requirements for the location of underground storage tanks near residential uses. It was determined that the location of the tanks was in accordance with building code requirements. However, under current zoning rules governing the site, there are use limitations which restrict outdoor storage and require that no use shall be conducted in any manner which would render it noxious or offensive by reason of dust, refuse matter, odor, smoke, gas, fumes, noise, vibration or glare. Since the City had not received plans for dispensing fuel from the tanks, nor for landscaping and access to the site, staff requested that no additional work be done until such plans are received and the City finds that the use is to be conducted in accordance with all requirements.

On March 2, 2007, the City issued a Stop Work Order to Fannon for work under Mechanical Permit 2006-04202. Staff met with the Fannons on March 5 and advised them that no additional work will be permitted until all issues related to the storage and dispensing of fuel on the 1200 block have been addressed. Staff also asked that the Fannons meet with neighbors to discuss the situation.

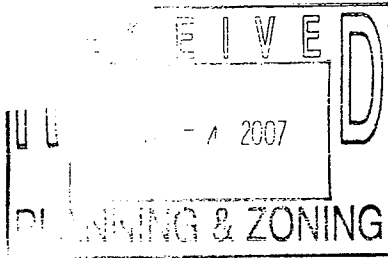
To date, no additional work has been performed, other than the removal of equipment from the site. The stop work order remains in effect. Staff will continue to keep the Council and the neighbors informed.

Rich Josephson  
Acting Director  
Department of Planning and Zoning  
City of Alexandria  
301 King Street  
Alexandria, VA 22314



Phone: 703-838-4666, x 302 Fannon Letter Nov 2003.pdf

# Exhibit 11



**CITY COUNCIL REQUEST**

Request No. 07-28K

Date Due 4/12/07

DATE: April 3, 2007

TO: Rich Josephson, Acting Director, P & Z

FROM: ROSE WILLIAMS BOYD, DIRECTOR OF CITIZEN ASSISTANCE

SUBJECT: Letter From Old Town Village Owners Association Regarding Construction at 1-J. Lane

Please review the attached City Council request and prepare a response by the date listed above. Unless otherwise noted the response should be addressed to the Council member through me (Rose Williams Boyd, Director of Citizen Assistance), from you (the Department Head).

If you have any questions, please call me. Thank you for your assistance.

*Rich,*

*Please coordinate your response as needed with Code and T&ES staff as needed.*

cc: *John Cullitt, Code Enforcement*  
*Rich Baier, T&ES*

*Thanks,  
Rt*

**NOTE:**

1. Please return original request with your response.
2. If your response is returned for revision, please submit all previous versions of the memorandum with your final response.
3. Unless otherwise specified, please copy The Honorable Mayor and Members of City Council or The Honorable Members of City Council, as appropriate on your responses. Also copy the City Manager on your response.
4. The Council members should be addressed as follows:

Mayor William D. Euille

Vice Mayor Andrew H. Macdonald  
Councilman Ludwig P. Gaines  
Councilman Rob Krupicka

Council Member Timothy B. Lovain  
Councilwoman Redella S. Pepper  
Councilman Paul C. Smedberg

*Old Town Village Owners Association  
Alexandria, Virginia 22314*

March 28, 2007

RECEIVED

APR 03 2007

CERTIFIED MAIL/  
RETURN RECEIPT REQUESTED

CITIZEN ASSISTANCE  
OFFICE

K. Rob Krupicka, Councilman  
City of Alexandria  
301 King St, Room 2300  
Alexandria, VA 22314

Dear Mr. Krupicka:

The Old Town Village Owners Association (OTVOA) is writing to express concerns about ongoing construction on the property of T.J. Fannon and Sons at the corner of Duke and S. Payne Streets, immediately adjacent to the Old Town Village (OTV) community. OTV residents ask the City to address these concerns in a fair, reasonable and timely manner.

On February 19, 2007 many homes in OTV shook, cracks developed in the walls and woodwork of homes, furniture rocked, and items fell from walls. Upon investigating the cause of the disturbance, residents were told that the ground on Fannon property was being excavated and piles driven, despite the absence of an engineering survey of residents' homes prior to the construction and despite the absence of any prior notice to residents of the construction. Residents also were told that three 25,000-gallon underground fuel storage tanks were being installed, and plans were underway for intensification of the use of that land. It appeared that Fannon was creating a gas station with potentially hazardous fuels next to homes, and immediately next to the community's Tot Lot. Unfortunately, the community was given no opportunity to review the proposal and make its views known to the City. Upon extensive discussions with city officials, OTV residents learned that other infractions by Fannon had occurred. As a result, the City issued a "Stop Work Order" to Fannon on March 2. Since February 19 and as a result of subsequent discussions with numerous city officials, OTV residents have learned the following:

1. The City never approved three storage tanks.
2. The City never approved storage for 75,000 gallons of fuel, the amount of fuel that Fannon employees reported to residents when inquiries were made on President's Day.
3. The City never approved the types of fuel that Fannon intends to store in those tanks, namely diesel fuel and gasoline.
4. Fannon did not have sheeting and shoring permits to excavate the land.
5. Whatever permits Fannon did have were not posted at the site, as required by law.



6. The City never approved Fannon's intended use of the land as an emergency facility in operation 24 hours a day, seven days a week.

In addition to the above-mentioned infractions, Fannon is not in compliance with zone use ordinance Section 4-800 (OC/Office Commercial Zone). Fannon has conducted and continues to conduct its business in a manner that is not conducive to residential use as demonstrated by the dust, noise, odor, refuse matter, etc., that continues to plague the area. If Fannon were to proceed with this project, there would be a further violation of this ordinance because its operations could not take place within a completely enclosed structure.

OTVOA does not concede any possible defense by the City and has not waived any of its rights against the City. This includes its opposition to assertions by the City that prior notice was not required, and that it cannot contest a decision by the City to "grandfather" the 1200 block of Duke Street for fuel operations. The City makes reference to a November 3, 2003 letter from then-Director Eileen Fogarty to the OTV community, which appears not to have been sent by certified mail. This letter purports to "approve" of the grandfathering of the 1200 block. Assuming for the moment but not conceding the City's assertion that the November 2003 "approval" is valid, if the 1200 block contains three tanks at 25,000 gallons each rather than two tanks at 20,000 gallons each, then the installation is in contravention of the "approval."

The November 2003 letter also overlooks the fact that the 1200 block is currently zoned OC (Office Commercial), which does not allow "fuel yards." In 1992, the above ground storage tanks were voluntarily removed from the 1200 block and that area was re-zoned from industrial zoning. In order for then-Director Fogarty to have authorized a grandfathering of the fueling operation back to the 1200 block, it would have to first be re-zoned back to industrial zoning. This was not done.

Furthermore, Old Town Village was led to believe that the entirety of Fannon's fueling operations would be relocated to Gainesville, VA and that all that would remain would be the HVAC business. It is important to note that these are two separate companies – the petroleum company and the HVAC company. Two different individuals own these companies. To suggest, then, that installing these new tanks at Fannon HVAC is not an intensification of the land's use because Fannon is simply transferring the operation from one side of S. Payne Street to the other is incorrect and misleading. More importantly, the misrepresentation of two companies versus one suggests that no oil fueling operations would be left behind at either the 1200 or the 1300 blocks of Duke Street.

City staffers recently told Fannon that OTV residents requested landscape screening on Fannon property as a buffer. Fannon responded that it was not possible because the soil is too contaminated for anything to grow there. OTVOA therefore requests that all appropriate environmental testing of the property be promptly conducted.

The City should ensure, at the very least, that its own rules are followed. In moving forward, OTV has additional, specific concerns about this land use that it would like to address with the city in the near future, such as fire suppression, screening, traffic flow, soil contamination, landscaping, to name a few.

Attached for your information is a letter dated March 20, 2007 by TJ Fannon and Sons that was distributed to each home in OTV. Several points demonstrate contradictory information previously given to OTV. We seek and greatly appreciate clarification.

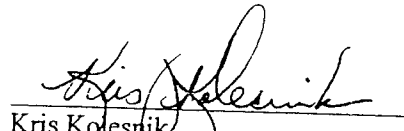
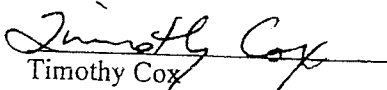
OTVOA asks your timely response to the points in this letter. OTVOA asks that environmental testing be conducted of the Fannon property. OTVOA asks that the City immediately enforce all appropriate codes. Additionally, the community requests that city officials indicate where in the City Code it says that there is no requirement to notify those neighbors in immediate proximity of a site when significant land-use changes occur, such as those Fannon is trying to implement at the 1200 block of Duke Street.

Your response can be addressed to the OTVOA Community Manager, Legum & Norman, 4401 Ford Avenue, Suite 1200, Alexandria, VA 22302, Attn: Casandra Johnson, community manager.

Sincerely,



Robert Hardiman  
OTVOA President

  
Kris Kolesnik  
OTVOA Vice President  
Timothy Cox  
OTVOA Secretary-Treasurer

Additional addressees:

James Hartman, City Manager  
Ignacio Pessoa, City Attorney  
Richard Josephson, Deputy Director, Dept of Planning & Zoning  
Richard Baier, Director, Dept of T&ES  
Bill Skrabak, Chief for Environmental Quality  
Russ Middleton, Fire Chief  
Jannine Pennell, Deputy Director for Code Enforcement  
Robert Rodriguez, Fire Marshall  
William D. Euille, Mayor  
Andrew H. McDonald, Vice Mayor  
Redella D. Pepper, Councilwoman  
Timothy Lovain, Councilmember  
Ludwig P. Gaines, Councilman  
Paul C. Smedberg, Councilman

cc: Thomas J. Fannon & Sons

## Exhibit 12



Faroll Hamer/Alex  
07/13/2007 07:21 PM

To sastillman@comcast.net  
cc halan.young@verizon.net, Stephen Milone/Alex@ALEX,  
Peter Leiber/Alex@Alex, Richard Josephson/Alex@ALEX,  
POErth@oerthassociates.comFlyronnie@comcast.net,  
bcc

Subject parking requirements at 1200 Duke Street

Hello Shayna and Dorsey:

This is in response to your questions about the parking requirements for 1200 Duke Street.

The property is zoned CO or Commercial Office (not residential, as I mistakenly stated before). The Fannon's business has occupied the property since 1940, at which time it was zoned E (industrial). Because the use has been in continuous operation, it is permitted to continue indefinitely, even though industrial uses are generally not permitted in the CO zone. We have instances all over the city where properties have been rezoned and previously permitted uses are allowed to continue, so this is not unusual. It's often referred to as "grandfathered."

At the time the business commenced, in 1940, there were no parking requirements, thus it is also grandfathered from the current parking requirements. The parking requirements were not in place until 1963. The only circumstance under which current parking requirements might be triggered is if improvements were made to the existing buildings that exceeded 33.3 percent of the market value of the structure over a two-year period. We wouldn't know without further investigation -- probably in the form of an independent appraisal -- whether the improvements made to the garage in 2006/07 exceeded 33.3 percent of the market value of the building.

However, we did a quick study to determine whether or not they could meet today's standard if necessary. According to our best information, they have 30 employees at the site (7 spaces req.), 1992 square feet of office (5 spaces req.), 3985 square feet of storage (10 spaces req), and 2713 square foot garage (7 spaces req), for a total of 29 spaces required. There are 25 spaces on site, and 20 additional spaces on their satellite lot at South Henry and Duke St. (The zoning ordinance permits industrial uses to provide required parking within 500 feet of the subject property.)

I believe you have also received information about the dumpsters and misquitoes, but just in case, here it is again.

The Health Department inspected the open dumpsters on Monday and did not find any standing water or any evidence of adult mosquitoes. They will inspect again after it rains.

The trash dumpster is required to be closed, but the large flat bed dumpster for metal waste is to be left open so it can be inspected before it is emptied.

I realize this is all very frustrating to the neighbors. We agree that the current state of the site leaves a lot to be desired, and that it's taking too long to get it fixed. Our code enforcement and health officers are inspecting the site frequently. We are reposting the stop work order. We would like the issues to be resolved, too.

One of the problems is the length of time it is taking to complete the plan, particularly since nothing visible has happened since our community meeting in May. I spoke to Tom Fannon today, to try to get an idea of what is taking so long, and when the plans will be ready. He indicated that he has changed engineers -- hopefully for the better -- and that plans had to be revised to provide stormwater management for off-site runoff for both quantity and quality. Infiltration and cleaning of stormwater will be provided by a bioretention swale and additional planting along Duke Street. He expects the plans to be complete in the next few weeks. I believe he understands that he needs to allow enough time for the community to review and comment on the plans before we can approve them, and that the community will be looking for a high quality of design and landscaping to screen the view of the parking lot and improve the buildings.

Please let me know if you have any further questions, or if we can help in any way.

Yours,

Faroll

Faroll Hamer  
Director, Planning and Zoning  
301 King Street  
City of Alexandria, VA 22314  
703-838-4666  
Faroll.Hamer@alexandriava.gov

## Exhibit 13



*William D. Euille*  
*Mayor*

*City of Alexandria, Virginia*

*301 King Street, Suite 2300*  
*Alexandria, Virginia 22314*



*City Hall (703) 838-4500*  
*Home (703) 836-2680*  
*Fax (703) 838-6433*  
*alexvamayor@aol.com*

September 27, 2007

Mr. Tom Fannon  
Thomas J. Fannon and Sons, Inc.  
1200 Duke Street  
Alexandria, VA 22314

Subject: 1200 Duke Street

Dear Tom:

Last Friday, September 21, I visited your site at 1200 Duke Street with Faroll Hamer, Director of Planning and Zoning. I am sorry to say that the site does not look well maintained, either from the street or internally. As you are a long-time resident, business owner, and supporter of Alexandria, I expect more from you in the way of being a good neighbor.

Some of the problems we noticed include:

- gravel parking lot that has not been maintained, is hard-packed with very little gravel on it, dusty and uneven surface with potholes that don't drain
- windows near the front door of your office with rusted and peeling paint
- outdoor storage (clearly not a permitted use)
- retaining wall next to the residential property that is peeling and chipped
- an open roll-off dumpster (cover visible but not covering the dumpster)
- generally low level of maintenance of the landscaping, building, awnings, fences and walls
- a pickup truck in disrepair, full of scrap metal, with large hand-painted signs that say "junk truck" visible to passers-by and the residential community

Other problems that have been noted by staff or neighbors include hours of operation beginning before 7 a.m., transferring heating oil from tanker trucks into smaller trucks, and outdoor industrial activity that creates noise and nuisance, such as sawing heating oil tanks into smaller pieces.

*"Home Town of George Washington and Robert E. Lee"*


Mr. Tom Fannon  
September 28, 2007  
Page Two

The City staff has been hesitant to issue citations because they believed that you were working diligently to submit a plan that would demonstrate how the home heating oil operation would work and how you intend to make improvements to the rest of the site. The staff is now concerned that there will not be time to approve a plan that includes community outreach before the winter sets in.

The City has consistently defended your right to re-establish the home heating oil business from 1300 to 1200 Duke Street, based on the Planning and Zoning Director's grandfathering interpretation letter of November 3, 2003. Complaints by the neighbors during the summer have been focused more on the current impermissible uses, disrepair and operational issues than on the proposed home heating oil use. These complaints have required considerable expenditure of City staff time, and staff believes that most if not all of these complaints could have been forestalled by timely plan submittal and construction.

I strongly urge you to submit and complete the plan, per City requirements, as quickly as possible. I also believe you would be well served by securing the services of a skilled community outreach professional to assist you in taking the plan to the community, negotiating appropriate trade-offs, and submitting documentation of those efforts to the staff along with your final permit plans. It's critical that your plan include improvements that will make your business a good neighbor to the residential community, that you deal quickly with all violations, and that you abide by the regulations that apply to your business. Please work closely with staff in this process to assure compliance with all codes and regulations. I hope we can bring this matter to a successful resolution.

Yours Truly,

  
Mayor William D. Euille

Cc: The Honorable Members of City Council  
James K. Hartmann, City Manager  
Faroll Hamer, Director, Planning & Zoning  
John Catlett, Director, Code Enforcement  
Robert Hardiman, Old Town Village Civic Association President  
H. Alan Young  
Pam Oerth Kolesnik  
Dorsey Delavigne, Jr.