

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12456, of the BP Oil Company, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 5101.41 to permit construction of a gas station to replace an existing gas station in the C-1 District at the premises 4525 East Capitol Street, S.E., (Square 5346, Lot 10).

HEARING DATE: July 20, 1977  
DECISION DATES: August 3, 1977 and March 1, 1978

FINDINGS OF FACT:

1. The subject property is located in a C-1 District on the southeast corner of the intersection of East Capitol Street, S.E., and Benning Road, S.E. It is presently improved with a gasoline service station previously approved by the Board in BZA Case No. 4811. The applicant proposes to completely raze the existing station and construct a completely new gasoline station.
2. The property has a frontage of 136 feet on East Capitol Street and has a depth of 100 feet, which fronts on Benning Road, S.E. The entrance and exit points are located on East Capitol Street.
3. Immediately adjacent to the service station on the south is a small neighborhood shopping center with approximately six stores. To the rear of the site is a public alley which separates the service station from a group of three story garden apartment buildings. Across East Capitol Street from the site is a restaurant and a group of semi-detached dwellings which front on Central Avenue, N.E. Diagonally across from the site (at the northwest corner of Benning Road and East Capitol Street), a gasoline service station is under construction. A gasoline service station also occupies the southwest corner of Benning Road and East Capitol Street, directly across Benning Road from the subject property.

4. The applicant proposes to replace the existing station with a new "Gas and Go" gasoline station. Gas and Go is the applicant's trade name for its fast service gasoline stations. The applicant's fast service station will be attendant operated and limited to the dispensing of gasoline and add-on motor oil. There will be no provision for lubrication, washing, tire repair, or motor tuneups. The attendant will be on duty at all times.

5. The site presently contains a one-story service building with three service bays and two pump islands.

6. In constructing the new gasoline service station, the applicant will retain the existing curb cuts. The existing pump islands will be removed and replaced with new pump islands, which will set back slightly farther from East Capitol Street than the existing pump islands. The new pump islands will be provided with canopies and placed on a reinforced concrete slab. The existing service building will be demolished and replaced with a new building of brick construction, which will include an attendant's kiosk a storage facility, and rest rooms. This new building will be located adjacent to the pump islands.

7. The subject property is separated from an R-5-A District immediately to the east by a 22 foot alley.

8. No vehicular entrance or exit is connected with a street at a point closer than 25 feet to any residential district. Applicant proposes to use the existing curb cuts without modification.

9. No driveway of any entrance or exit is located closer than 25 feet to a street intersection measured from the intersection of the curb lines extended.

10. The station is at the intersection of East Capitol Street and Benning Road, S.E., and will primarily draw from the existing traffic and not generate additional traffic. The site layout, as shown on the plans presented at public hearing, provides the most efficient traffic circulation pattern.

11. The proposed lighting of the site is designed to avoid any undesirable illumination of neighboring properties.

12. The applicant presented landscaping plans at the public hearing to improve the appearance of the property. A chain link fence to the rear of the existing service building and abutting the 22 foot alley is to be replaced by a new guard rail fence. An existing wooden shed adjacent to the Benco Shopping Center is to be removed and the area planted over with shrubbery. A new concrete curb is also to be installed on that portion of the property adjacent to the Benco Shopping Center. A sign on the existing grass area fronting on East Capitol Street will be removed and replaced by a new BP sign, which is to be located on the paved area. An existing hedge row is to remain. A dirt area in front of the side walk on East Capitol Street, between the two curb cuts, is to be planted with grass.

13. There are no grease pits or hoists connected with the proposed operation.

14. The Board received a memorandum from the Honorable Jerry A. Moore, Jr. of the City Council, which had attached thereto a copy of D.C. Law 1-123. Councilman Moore directed the Board's attention to the provisions of that act, which establishes a moratorium on the conversion of full service gasoline stations, as defined in that act, into non-full service gasoline stations.

15. The D.C. Department of Transportation, by memorandum dated August 1, 1977, reported that the application had been reviewed and no adverse impacts had been identified.

16. The Municipal Planning Office filed a report with the Board dated July 15, 1977. At the public hearing the Municipal Planning Office withdrew its report because it had not evaluated the effect of the moratorium provisions of D.C. Law 1-123.

17. At the public hearing there was considerable discussion as to whether the proposed station and its operation would meet the definition of a gasoline service station as cited in Section 1202. That definition reads as follows:

Gasoline Service Station: an area of land, including any structures thereon, used for the retail sale of motor fuel and lubricants and incidental services such as lubrication, hand-washing, and the sale, installation or minor repair of tires, batteries, or other automobile accessories. The term gasoline service station shall not include an automobile laundry or a repair garage.

The Board found that the language of the definition required that an establishment must provide incidental services as well as sell gasoline to be considered a gasoline service station.

18. At the public hearing there was also considerable discussion as to whether the provisions of Title III of D.C. Law 1-123 are applicable to this application, and whether the Board of Zoning Adjustment can consider the applicability of that law to an application before the Board. Title III establishes a prohibition on the conversion of a full-service station to a non-full service station between the effective date of the Act, April 19, 1977, and January 1, 1979.

19. There was opposition to the application at the public hearing from the Greater Washington-Maryland Service Station Association, primarily on the grounds that approval of the application would be in contradiction to the provisions of Title III of Law 1-123.

20. There was no report from Advisory Neighborhood Commission 7E.

21. At its executive session, held on August 3, 1977, the Board denied this application by a vote of 5-0 (Walter B. Lewis, Charles R. Norris, Leonard L. McCants, William F. McIntosh and Chloethiel Woodard Smith to DENY), on the grounds that the proposed use was not a gasoline service station and that in addition, the proposal to rebuild the station as a non-full service facility was inconsistent with the intent of Law 1-123.

22. On October 20, 1977, the Executive Director of the Zoning Secretariat, on behalf of the Board, requested the advice of the office of the Corporation Council on the two issues cited above; that is, the applicability of Law 1-123 and the definition of a gasoline service station. By memorandum dated November 22, 1977, the office of the Corporation Council advised the Board that it believed that the standards set forth in the Zoning Regulations for the Board to use in hearing this special exception were not sufficiently broad to enable the BZA to reach issues embraced in Title III of Law 1-123. The responsibility for enforcement of D.C. Law 1-123 is vested in the Mayor, and has been delegated to the Director, Department of Economic Development. Pursuant to that delegation, the applicability of Law 1-123 will be determined at the time of review of building permit. The Office of Corporation Council also advised the Board that it believed that a facility constitutes a gasoline service station within the meaning of the Zoning Regulations if it sells motor fuel, and it may also, but is not required to, sell motor oil and provide any of the incidental services listed in the definition.

23. The Board takes note of the fact that in two other applications decided after the original vote on this application (Case No. 12474, decided November 2, 1977 and Case No. 12500, decided December 6, 1977), the Board approved requests to rebuild gasoline stations which were proposed to be operated in a similar fashion to the subject operation.

24. Because of the circumstances described above and based on the advice of the Corporation Council, at its public meeting held on March 1, 1978, the Board reconsidered its prior vote to deny the application by a vote of 4-1 (Walter B. Lewis, William F. McIntosh, Charles R. Norris and Chloethiel Woodard Smith to reconsider, Leonard L. McCants opposed).

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the proposed station meets the definition of a gasoline service station, as contained in Section 7202, and can be approved. The Board concludes based upon the above Findings of Fact that the applicant has met the requirements set forth in Paragraph 5101.41 and the relevant portions of Article 74 of the Zoning Regulations and that the grant of this application will be in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property in accordance with the Regulations and Maps. The Board further concludes that the physical changes proposed in the application will not change the present operational characteristics of the station.

In special exception cases, the Board's discretion is limited to a determination of whether the exception sought meets the requirements of the regulation. Stewart v. D.C. Board of Zoning Adjustment, 305 A.2d 516, 518 (D. C. App. 1973. The Board is aware of the requirements of D. C. Law 1-123, but concludes that it is not the body charged with enforcement of that law. The Board notes that favorable consideration in this case should not be construed as binding on the authorities responsible for reviewing applications for other clearances.

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Based on the preceding findings of fact and conclusions of law, it is therefore hereby Ordered that the application is GRANTED.

VOTE: 4-1 (Walter B. Lewis, William F. McIntosh and Charles R. Norris to GRANT, Leonard L. McCants to DENY).

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

ATTESTED BY: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 14 APR 1978

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.