

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13781 of Exxon Co., USA, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 5101.41 for a proposed modification and enlargement to a gasoline service station in a C-1 District at the premises 5030 Connecticut Avenue, N.W., (Square 1985, Lots 5, 9, 10 and 11).

HEARING DATES: July 21 and September 22, 1982

DECISION DATES: September 22, 1982

DISPOSITION: The Board DISMISSED the application by a vote of 4-0 (Lindsley Williams, Connie Fortune, William F. McIntosh and Charles R. Norris to dismiss; Douglas J. Patton not voting, having recused himself).

FINAL DATE OF ORDER: October 12, 1982

O R D E R

The counsel for the applicant filed a timely Motion on October 19, 1982 for Reconsideration of the Board's order dismissing the subject application. In the alternative, the motion requested a rehearing of the subject application.

In support of the motion for reconsideration, counsel for the applicant alleges that the Board erred in its decision as follows:

- a. The Board violated Section 1.22 of the Supplemental Rules of Practice and Procedure in dismissing the application.
- b. Other interested parties in the case did not require further notice of the requested variance in view of their prior knowledge as reflected in the July 6, 1982 motion for continuance which recognized the possible need for a variance to allow construction of a proposed service building with garage bays, as shown on the applicant's revised plans submitted on July 16, 1982 and marked as Exhibit No. 24A of the record.

In support of the alternative motion for rehearing, counsel for the applicant proffered a revised site plan,

filed on November 2, 1982 and marked as Exhibit No. 49A of the record which shows proposed modifications to the existing gasoline service station including a new two-bay service building and which eliminates the need for any variance relief. Counsel for the applicant contended that the revised site plan represents new evidence which was not available at the time of the public hearing as required by Section 5.43 of the Rules.

Upon consideration of the motion and the final order, the Board concludes that it made no error in deciding the application. The Board concludes that its final order, dated October 12, 1982 cites the history of this application before the Board. The Board concludes that the July 6, 1982 correspondence, cited by counsel for the applicant as proof that the opposition required no further notice of the variance relief requested, should have served as notice to the applicant of a possible deficiency in his application. The Board further concludes that the nine-week time period between public hearings provided the applicant with sufficient time to correct any deficiencies in the application and to make the Board and other parties to the case aware of any need for additional variance relief prior to the September 22, 1982 public hearing. The Board notes that the applicant, not the opposition, carries the responsibility of meeting the necessary burden of proof for its application.

As to the motion for rehearing, the Board concludes that the proffered revised site plan, while not previously considered as evidence by the Board in its consideration of the subject application, could reasonably have been submitted prior to the September 22, 1982, public hearing in view of the time period which elapsed between the two public hearings. The Board further notes again that the indication in the aforementioned motion for continuance dated July 6, 1982 that applicant's revised plans may require variance relief should have alerted the applicant of the need to revise those plans or amend his application. The Board notes further that the applicant is not precluded from filing a new application based on the revised plans. Accordingly, it is ORDERED that the motion for Reconsideration or Rehearing is hereby DENIED.

VOTE: 4-0 (Connie Fortune, William F. McIntosh and Charles R. Norris to deny; Lindsley Williams to deny by proxy; Douglas J. Patton not voting, having recused himself).

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

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

FINAL DATE OF ORDER: DEC - 3 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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