

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14017 of 22nd and M Streets Associates, Ltd. Partnership, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 5101.41 for a proposed subdivision and the construction of a gasoline service station in a C-2-C District at premises 2150 M Street, N.W., (Square 71, Lots 15, 16, 17, 18, 31, 32, 33, 813, and 814)

HEARING DATE: September 14, 1983

DECISION DATE: October 5, 1983

FINDINGS OF FACT:

1. At the public hearing, as a preliminary matter, the Residential Action Coalition raised the issue of a possible conflict of interest on the part of the law firm representing the applicant. The Coalition requested that the case not go forward on the merits until the conflict issue was resolved. The Coalition asserted that Mr. J. Kirkwood White, a partner in the law firm of Linowes and Blocher, the firm representing the applicant, had been involved while employed in the District of Columbia Office of Planning in the preparation of the West End Plan. That plan called for rezoning of certain areas in the West End, the section of the District of Columbia in which the subject site is located. The Coalition argued that Linowes and Blocher should be disqualified from representing the applicant. The Board determined to hear the case on its merits and left the record open for the applicant's counsel to file an affidavit as to the conflict of interest issue, an affidavit from Mr. White as to his participation in the matter and excerpts from the law firm's policy outlining procedures followed to handle potential "conflict of interest" issues.

2. The subject property is located at the southeast corner of the intersection of 22nd and M Streets, N.W. and is known as premises 2150 M Street, N.W. The site is zoned C-2-C.

3. The subject site is irregular in shape. Its dimensions are 110.2 feet on the west, 110.37 feet on the north, 67.25 feet on the south, and 38.97 feet on the east. On the southeast, a strip of land extends to new Hampshire Avenue with dimensions of 51.50 feet on the south, 50.64 on the north, and 42.50 feet on the east. The area of the subject site is approximately 8,429 square feet.

4. The site is improved with a parking lot and is otherwise vacant.

5. There is access to and from the subject site from M Street on the north and 22nd street on the west. The traffic flow is one-way west on M Street and one-way north on 22nd street. New Hampshire Avenue completes the triangular-shaped square and forms its southeast side. New Hampshire Avenue presently has a one-way traffic flow, heading southwest.

6. There is an existing Exxon gas station adjacent to the subject site on the northeast corner of the subject square. The station has 3,125 square feet of area. It has operated at its present site since 1958 under one management. The only other structure in the square is a small building in the southeast corner that has been used as both an office and a residence. The remainder of the square is being used as parking lots.

7. The area surrounding the subject square is a mixture of commercial and medium-rise residential uses. Vacant C-2-C property is located due west of the subject site. A CR District is located to the north of the subject property and is developed with hotels, restaurants and office buildings. South of the subject site there are R-5-D and R-5-B Districts on the east and west respectively. These residential zones are not adjacent to the subject site.

8. The Exxon Corporation proposes to purchase the subject property and to relocate the existing gasoline service station onto the subject site. The management would be by the same station operator and the operation would undergo few changes. The circulation pattern would be improved as would the capacity of the station to accommodate more cars in a through traffic pattern. The increase in size from the existing 3,125 square foot station to the proposed 8,429 square foot station would enable Exxon to implement both full service and self-service gasoline sales, with an improved traffic pattern. The applicant proposes to landscape the property, utilizing portions of the public space.

9. The subject square would be resubdivided into two lots of record, one including the small building in the southwest corner and the other consisting of the remainder of the square. The portion of the subject property not included in the gasoline station would continue as a parking lot for the time being. The owner eventually plans to develop the remaining area as a mixed-use office, commercial and residential project.

10. The proposed station would have two bays for the purchase of fuel. One bay would be accessible from 22nd

street proceeding north and the other would be accessible from M Street proceeding west. Each bay would have a self-service pump island on its outer edge near the street and a full-service pump island on its inner edge near the kiosk. Two attendants would be on duty for two daily eight hour shifts at the full-service pumps. A cashier would be on duty twenty-four hours a day at a kiosk at the rear of the site. There would be two curb cuts on each street frontage. These curb cuts would be clearly marked "entrance" and "exit so that cars would enter and exit with the flow of traffic on 22nd Street and M Street. All curb cuts would be in excess of twenty-five feet from the intersection of 22nd and M Streets.

11. In response to the concerns expressed in the report of the Office Of Planning and by the Board as herein-after discussed, the applicant submitted detailed design drawings to the record. The design would include fifteen foot high canopies over the service islands. Existing street trees would be maintained or replaced and the site would be landscaped. The plantings would include augustine elms, pachysandra, and evergreen juniper that will maintain a green environment all year round. An Exxon identification sign would be installed in the landscaped area at the corner of 22nd and M Streets. The sign would be situated diagonally in order to be visible from both streets. The height proposed for the sign was twenty-five feet.

12. The automobile towing and repair services now located at the existing station would be relocated to other stations under the same management. Customers requiring auto parts or towing services would be serviced through radio communications. The station would sell oil but would not lubricate cars. No employee parking would be needed or provided. The manager would be provided with a parking space at a neighborhood garage.

13. The Exxon Company will provide the operator with a three-year lease. The lease will be automatically renewable for an indefinite period of time as long as the operator performed to Exxon standards.

14. The applicant circulated a questionnaire to 288 customers. The responses indicated that 152 of those responding were commuters from Maryland and Virginia. Of the remaining 136 who lived in the District of Columbia, fifty lived in the immediate neighborhood of the station. The applicant argued that his business comes largely from people who regularly travel by a route that passed his station. As such, the establishment of a larger station would create a modest increase in traffic and increased tax revenues for the District of Columbia. The primary result of the larger station would be better service to customers.

15. There would be an estimated 500 vehicles per day entering the site. Fifty of these vehicles would enter the site at the peak hour with one vehicle entering on each cycle of the traffic signal located at 22nd and M Streets. The applicant's traffic analyst noted that traffic that comes to a gasoline service station is normally not new traffic. People generally buy gasoline as part of another trip. If some of the traffic were to be generated by the new service station, one vehicle per traffic signal cycle would have an imperceptible affect on traffic operations in the area. The expert testified that the proposed station would interfere less with traffic than the existing station, would have one less curb cut than the existing station, and would accommodate nine times the number of cars anticipated at the peak hour, thus improving circulation. The traffic expert also argued that a highly visible Exxon sign would enable people to get into a position to enter the station soon enough to avoid traffic conflicts.

16. The establishment or enlargement of a gasoline service station in the C-2-C District requires special exception approval by the Board of Zoning Adjustment.

17. The granting of a special exception to establish a gasoline service station in a C-2-C district is governed by Paragraph 5101.41 and Sub-section 8207.2 of the Zoning Regulations. Sub-section 8207.2 provides that the Board is authorized to grant special exceptions where in the judgement of the Board such special exceptions will be in harmony with the general purpose and intent of the zoning regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said zoning regulations and maps, subject in each case to the special conditions specified in the Regulations.

18. Paragraph 5101.41 provides that a gasoline service station may be established, subject to the special provisions of Article 74 of the Regulations, provided that:

- A. The station shall not be located within twenty-five feet of a residence district unless separated therefrom by a street or alley;
- B. The operation of the use will not create dangerous or other objectionable traffic conditions; and
- C. The Board may impose requirements pertaining to design, appearance, screening, lighting, or such other requirement as it shall deem necessary to protect adjacent or nearby property.

19. Article 74, in pertinent part, requires that:

- A. No portion of the structure or premises to be so

used shall be located within twenty-five feet of a Residence District unless separated therefrom by a street or alley;

- B. No such use shall have a vehicular entrance or exit connected with a street at a point closer than twenty-five feet to any Residence District existing at the time such use is established, unless separated therefrom by a street or alley;
- C. No driveway of any entrance or exit to such use shall be closer than twenty-five to a street intersection as measured from the intersection of the curb lines extended; and,
- D. All grease pits or hoists constructed or established as part of such use shall be within a building.

20. The Board finds that the proposed gasoline service station meets the requirements of Article 74 as follows:

- A. The lot line of the subject premises is located more than ninety feet from the nearest Residence District on the west, diagonally across 22nd street. A public street separates the subject property from the nearest Residence District on each of the three sides.
- B. All entrances and exits to the subject premises are more than twenty-five feet from the nearest Residence District.
- C. All driveways that enter or exit the subject premises are more than twenty-five feet from the nearest street intersection as measured from the curb lines extended.
- D. No grease pits or hoists would be constructed or established as part of the proposed gasoline station.

21. The Board finds that the proposed use further meets the requirements of Paragraph 5101.41 as follows:

- A. The operation of the use will not create dangerous or other objectionable traffic conditions. The proposed traffic pattern will have clearly marked entrances and exits and will be compatible with the existing flow of street traffic. The volume of traffic entering the proposed station will have a negligible impact on street traffic.
- B. The Board has imposed requirements pertaining to

design, appearance, screening and lighting, as it deems necessary to protect adjacent and nearby property. Said requirements are enumerated below as conditions of the grant of this application.

22. As to Sub-section 8207.2, the Board finds that:

A. The proposed special exception will be in harmony with the general purpose and intent of the zoning regulations and maps. The C-2-C District in which the proposed gasoline service station is located is designed to serve a mix of commercial and high density residential uses. The proposed gasoline service station will provide a commercial use that is compatible with the mix of uses existing in the area.

B. The proposed special exception will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps. The surrounding property is zoned C-2-C on the west and CR on the north. The R-5-D and R-5-B Districts on the southwest and southeast are not immediately adjacent to the subject site. Commercial uses and high-density residential uses presently coexist on all three sides of the subject site. The existing Exxon station adjacent to the subject site in the same square has functioned compatibly within the neighborhood since 1958. The proposed station would provide self-service as well as the existing full service to customers. The larger site would allow a more efficient traffic pattern to be implemented. The two curb cuts each on M Street and 22nd Street will provide the safety of separate entry and exit points for traffic on each of the adjacent street in utilizing the station. The landscaping of the site and the design of the structures will ensure compatibility with a mixed use area.

23. The Office of Planning, by report dated September 12, 1983, recommended conditional approval of the application. The Office of Planning was of the opinion that the application complied with the requirements of Paragraph 5101.41 and Article 74. The Office of Planning was of the opinion that a substantial landscaping plan should be submitted by the applicant. The landscape plan should indicate the extent to which landscaping will be installed and maintained in both the public and private space, including such items as lighting, planting type and number. Since much of the property surrounding the subject site is vacant, the Office of Planning was of the opinion that the use be designed so as to not be objectionable to the future development of this triangular square and the area. The Office

of Planning was of the opinion that the subject site can be developed in accordance with the special exception criteria for gasoline station development provided that the following findings and conditions are met to the satisfaction of the Board:

- A. The Board receive a favorable report from the D.C. Department of Transportation.
- B. The applicant submit a landscape plan. The plan shall include a landscaping schedule specifying number and type of plantings and other materials, and their maintenance. The plan should include but not be limited to the planting of evergreen so as to insure the maintenance of a year round buffer for the protection of adjacent and nearby property.
- C. The twenty foot high free-standing Exxon logo sign proposed for the northwest corner of the site be lowered to ten feet.
- D. The premises comply with the provisions of Article 74 concerning the maintenance and appearance of a parking lot.
- E. The canopy facade not be illuminated.

The Board notes that subsequent to the writing of the Office of Planning report, the Department of Transportation filed its report in the record. Further a detailed landscaping plan is now part the record. The Board concurs with the reasoning and the recommendations of the Office of Planning.

24. The D.C. Department of Transportation, by memorandum dated September 7, 1983, found that the proposed gasoline service station would not generate a significant increase in traffic and would not create any dangerous or objectionable traffic conditions. The Department of Transportation advised that since the existing use of the property is that of a long-term parking lot which generates a substantial amount of traffic during peak hours, and since the existing station to be demolished is also a high traffic generator, the Department of Transportation did not anticipate a significant increase in traffic to result from the proposed gas station, especially since most of the traffic frequenting the station will probably be pass-through traffic already on the street system. Since the two streets providing access to the proposed gas station are one-way arterials, minimal traffic conflicts are expected between gas station traffic and on-street traffic. As an added safeguard, The Department of Transportation recommended that if the Board approves this application, the applicant should be required to locate the openings in such a way that westbound traffic

from M Street and northbound traffic from 22nd Street will enter the station from the first approachable driveway opening. Egress from the property should be via the second driveway opening. Pavement markings should indicate the proper channelization of traffic by stating "Entrance" and "Exit Only" at the appropriate driveway openings. Existing driveway openings which will not be used in the future, located on M Street and New Hampshire Avenue should be closed. As to the use of public space, the Department of Transportation reported that the developer must coordinate all construction and design elements within public space with the Department of Transportation and assume their cost. The Board concurs with the reasoning and the recommendations of the D.C. Department of Transportation.

25. Advisory Neighborhood Commission 2A, by report dated September 14, 1983, reported that its members opposed the application on the grounds that the new gas station proposed would not be full service and therefore represented a reduction in service. The ANC was further concerned that this new gas station would be detrimental to future development in the immediate area because gas stations are less desirable uses and may encourage the location of other commercial uses nearby and waste the viable residential floor area ratio. The Board does not concur with the reasoning of the ANC and its recommendation.

26. There was opposition to the application on the part of the Residential Action Coalition and an owner of property in the area. Their concerns included future plans of the applicant for development of the entire square, incompatibility of the proposed gasoline service station with other uses in the area and the possible preclusion of residential development in the area because of the existence of a large gasoline service station on the site. The opponents also argued that the proposed station is not needed by people in the neighborhood, and that service would be reduced from repair and service to gas and go. The neighborhood sentiment was describe as a desire to discourage any increase in commuter traffic. The opposition asserted that the existing traffic volume had undergone a major increase in the post ten years with a negative affect on existing nearby residential districts.

27. The Board is required by statute to give "great weight" to the issues and concerns of the ANC that are reduced to writing. The Board, in addressing these issues and concerns, in addition to the concerns of other opposition, finds that while it appears that the proposed station may constitute a decrease in service, the services available would actually be increased by providing separate islands for self-service and full-service. The parts and repair service would still be available from a radio truck that operates from other stations under the same management.

There would be less negative community impact from headquartering such service at another site than from the present arrangement. As to the issues that the proposed station would be detrimental to the future development in the immediate area and thus encourage the location of other commercial uses nearby and waste the viable residential floor area ratio, the Board finds such arguments specious in nature. The Zoning Regulations allow the proposed use in a C-2-C District if certain requirements are met. The C-2-C District is designed to serve commercial and residential functions similar to the C-2-A District but with higher density residential and mixed uses. In the C-2-C District, buildings may be entirely residential or commercial or may be a mixture of commercial and residential uses. Whatever structures are constructed on this basically undeveloped square would still have to meet the requirement of the Zoning Regulations as to residential or other permitted use as to the floor area ratio requirements. A developer is not required to provide a residential use if the building is limited to the 2.0 floor area ratio. A builder is not required to use the maximum floor area ratio permitted. Further, the opposition argument that there has been a major increase in traffic volume in the past ten years and that the proposed station would exacerbate this situation is without foundation. The opposition has submitted no traffic study in support of the contention. The opposition's assertions are contradicted by the testimony of the applicant's traffic expert and the report of the Department of Transportation

28. The applicant has submitted an affidavit from J. Kirkwood White, attesting that he has taken no part in, and had no responsibility for, the subject special exception application, nor will he in the future. Mr. White further attested in his affidavit that he has had no contact with anyone from Exxon Company, U.S.A. or the 22nd and M Street Limited Partnership in regard to the case before the Board of Zoning Adjustment. Mr. White also attested that while employed at the Office of Planning, he did not represent anyone in the West End Plan and was an administrative officer only. The applicant also submitted an affidavit from Phil Feola of Linowes and Blocher, the applicant's attorney, stating that Mr. White had no responsibility for BZA Application No. 14017, nor did he have any contact with anyone from Exxon Company, U.S.A. or 22nd and M Street Limited Partnership in regard to this application. Mr. Feola also submitted an excerpt from the Linowes and Blocher Conflict of Interest Policy and a legal memorandum refuting the charges of a conflict of interest and stating the Court of Appeal's test for a conflict of interest, as outlined in the case Brown v. Board of Zoning Adjustment, D.C. App. No. 13670, July 15, 1983. Based on these submissions, the Board finds that Mr. White had no responsibility for the subject application and that he had no involvement in the case at

all. The Board therefore finds that there was no conflict of interest on the part of counsel for the applicant in the subject application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception to establish a gasoline service station in a C-2-C District. The granting of such a special exception requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 5101.41 and Sub-section 8207.2 of the D.C. Zoning Regulations.

The Board concludes that the applicant has met its burden of proof. The proposed station will be located more than twenty-five feet from the nearest Residence District. All structures, vehicle entrances, and driveways of the proposed service station will be located more than twenty-five feet from the nearest Residence District. There will be no grease pits or hoists constructed as part of the station use. Further, the operation of the use will not create dangerous or other objectionable traffic conditions. The Board is imposing conditions on the granting of the application which pertain to design, appearance, screening and lighting as it has deemed necessary to protect adjacent and nearby property. The Board notes that the applicant had proposed a free-standing sign at the corner of 22nd and M Streets with a height of twenty-five feet. The Office of Planning recommended that the height of the sign be reduced to a height of ten feet. The Board is of the opinion that the lower height of the sign is more appropriate to protect the future development and character of the area.

The Board further concludes that the requested relief if granted will be in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property. The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. The site plan and landscaping shall be in accordance with the plans marked as Exhibit Nos. 21a and 21b of the record.
2. All driveways shall be appropriately marked with signs and pavement markings to indicate entrances and exits in accordance with the report of the Department of Transportation, marked as Exhibit No. 22 of the record.

3. Existing driveways on M Street and New Hampshire Avenue which are not to be used in the future shall be closed.
4. The free-standing Exxon logo sign located at the northwest corner of the site shall not exceed ten feet in height.
5. There shall be no lighting on the exterior face of the canopy.

VOTE: 5-0 (Carrie L. Thornhill, Douglas J. Patton, William F. McIntosh, Maybelle T. Bennett and Charles R. Norris to Grant).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: _____

FEB 28 1984

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."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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