

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14937, of the Sun Oil Company, pursuant to 11 DCMR 3108.1 for a special exception under Section 726 to allow an addition to a gasoline station in a C-2-A District at premises 1248 Pennsylvania Avenue, S.E., (Square 1019, Lot 53).

HEARING DATE: February 15 and November 29, 1989
DECISION DATE: March 1, September 6, October 4 and December 6, 1989

ORDER

The Board granted the application by its Order dated August 10, 1989. By letter dated August 18, 1989, Advisory Neighborhood Commission (ANC) 6B filed a timely motion requesting the Board to reopen the record and reconsider its decision in the subject application. The Board deferred consideration of the ANC'S request at its public meeting of September 6, 1989 in order to afford Chairperson Thornhill an opportunity to read the record and participate in the decision on the application.

At its public meeting of October 4, 1989, the Board granted the request to reopen the record and set the case for further hearing limited to the issues related to hours of operation only.

At the further public hearing held on November 29, 1989, the representatives of the ANC requested that the Board restrict the proposed 24-hour operation of the subject facility from 6 A. M. to 10 P.M. so as not to create an adverse impact on adjoining and nearby residential property. In support of the request to limit the hours of operation, the ANC offered the following arguments:

1. The operation of a 24-hour, self-service, single attendant gasoline go and food mart operation would contribute to an unwarranted level of loitering and congregating at the premises with minimum social control.
2. The neighborhood is currently plagued with a high level of criminal activity which is exacerbated by the drug activities which are occurring in a nearby public housing project and a row of vacant buildings by vagrants and drug users. The subject facility will act as a "crime magnet" by offering a well lit area, public telephones, and convenient food service on a 24-hour basis.
3. There is no demonstrated need for the facility in the community due to the existence of several food stores, convenience stores and gas stations in the immediate vicinity of the site which currently operate on a 24-hour

basis.

4. The majority of the area residents, the ANC, the Capitol Hill Restoration Society and the Barney Circle Neighborhood Group are opposed to the project.
5. The facility is inconsistent with the draft Ward 6 Plan, the Capitol Hill Historic District and with the designation of Pennsylvania Avenue, S.E. as a National Landmark and special site contributing a ceremonial gateway to the U.S. Capitol.
6. The adjacent residential community will become an undesirable place to live because the availability of food service and public telephones will attract persons to the site who are involved in drug trafficking and other criminal activities in the immediate area.
7. The Board is empowered by 11 DCMR 3108.3 to apply the standards and criteria of the Zoning Regulations to the entire use, rather than to just the proposed extension or enlargement.
8. The Board should exercise its discretionary power as set forth in 11 DCMR 706.5 to condition the use of the site to daytime and reasonable evening hours as recommended by the Office of Planning in order to preserve the safety and integrity of the neighborhood.

The representatives of the applicant opposed the further hearing on the grounds that a limitation of the hours of operation of the subject facility would place the operators of the facility at a competitive disadvantage because similar operations in the area are not so limited and would not serve to deter criminal activity on the site. The applicant further argued that the problems in the area related to crime, drugs and loitering are pandemic with no direct correlation between such criminal activities and the operation of the subject facility on a 24-hour basis. The applicant noted the Board's Conclusion in its Order, dated August 10, 1989, that the retail sale of food is permitted as a matter-of-right and the issues related to the conversion to a food mart are not within the purview of the Board in the case, therefore, the issue relative to restricting the hours of operation sought by the ANC are limited to the hours for the sale of gasoline at the subject site.

The applicant indicated that a number of security measures have been implemented in order to maximize security on the site, including the elimination of public telephones, outside vending machines, and public restrooms on the site; the provision of

perimeter fencing in accordance with the approved site plan; adequate lighting of all open areas; state-of-the-art security devices for both the main building and cashier's area within the building; two video cameras on-site with 24-hour capability; and a burglar alarm system. The applicant argued that the operation of a secure, well-lit, well maintained business operation on a 24-hour basis would be more effective in deterring congregating and loitering on the site than shutting down the operation during nighttime hours.

Upon consideration of the presentation by the ANC, the applicant's response, the evidence of record, and its final order, the Board concludes that the issues raised by the ANC are basically a reiteration of the issues and concerns argued by the opposition during the course of the original public hearing on the application. The Board notes that the provisions of 11 DCMR 3108.3 cited by the ANC relative to the application of the standards and criteria of the Zoning Regulations to the entire use is limited to extensions or enlargements to uses originally permitted as a matter-of-right which now require special exception approval from the Board as set forth in 11 DCMR 3108.2. The Board therefore, concludes that it has committed no error in deciding the application as supported by its Order dated August 10, 1989. The Board further concludes that the issues raised at the further hearing merely seek to reargue the position of the opposition and were thoroughly presented at the original public hearing and were addressed in the Board's final order. The Board is not persuaded by the ANC's reargument of its case that it is necessary to impose a restriction on the hours of operation of the gasoline station nor that the hours of operation of the food mart are within the purview of the Board in the instant case. Accordingly, it is ORDERED that the Board's original decision granting the application is hereby REAFFIRMED and that the Order of the Board dated August 10, 1989 shall remain in full force and effect.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh, Paula L. Jewell and Carrie L. Thornhill to reaffirm; Elliott Carroll not present, not voting).

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

ATTESTE BY: _____


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

JAN 25 1991

BZA APPLICATION NO. 14937
PAGE 4

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1977), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

under 11 DCMR 3103.1, "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.

14937/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION/APPEAL NO. 14937

As Executive Director of the Board of Zoning Adjustment Adjustment, I hereby certify and attest to the fact that a copy of the Order in this application/appeal dated JAN 25 1991 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Richard Von Luehrte
1031 Squires Drive
West Chester, PA 19382

Wilbert R. Wilson
11820 Decesars Blvd.
Mitchellville, MD 20716

Evelyn Washington, Chairperson
Advisory Neighborhood Commission 6B
921 Penna. Ave., S.E. #108
Wash., D. C. 20003

Harry W. Carroll
820 Kentucky Ave., S.E.
Wash., D. C. 20003

Ernest Peele
2105 Watercalf Way
Mitchellville, MD 20716

A handwritten signature in black ink, appearing to read "E. L. Curry", written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: JAN 25 1991