

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15116 of Timothy C. Sawyer, pursuant to 11 DCMR 3108.1, for a special exception under Section 726 for a proposed addition to an existing gasoline service station in a C-2-A District at premises 6201 New Hampshire Avenue, N.W. (Square 3730, Lot 1).

HEARING DATE: September 22, 1989
DECISION DATE: November 1, 1989

FINDINGS OF FACT:

1. As a preliminary matter at the public hearing of September 22, 1989, a representative of the opposition requested the Board to continue the hearing of the case in order to allow constituents, residents of the affected community and the Advisory Neighborhood Commission an opportunity to review the proposed plans prior to making a recommendation on the disposition of the application due to confusion on the part of the community as to the exact nature of the proposed project. The Board notes that the plans have been part of the public record and available for review by any interested party since the filing of the application on May 10, 1989. The Chairperson denied the request for continuance and ruled that the case be heard as scheduled.

2. The property is located at the southern corner of the intersection of Eastern and New Hampshire Avenues at the boundary line between the District and Maryland and is known as premises 6201 New Hampshire Avenue, N.W. It is zoned C-2-A.

3. The property is irregularly shaped with a frontage of 176.53 feet along Eastern Avenue, 113.63 feet along New Hampshire Avenue, and 50.96 feet along 3rd Street. The property has frontage along Rittenhouse Street of 53.58 feet. The only other lot in the block is developed with a liquor store.

4. The applicant is seeking special exception relief to permit the extension of the existing canopy measuring approximately thirty feet, the construction of a new pump island, and the refacing of the existing kiosk building. The enlargement of an existing gasoline service station is permitted subject to Board of Zoning Adjustment approval pursuant to the criteria set forth in 11 DCMR 726.

5. The subject site contains approximately 14,981 square feet of lot area and is currently improved with a gasoline service station containing a small masonry kiosk, two pump islands and a canopy.

6. The lot occupancy of the existing facility is approximately 1,680 square feet. The proposed addition would increase the lot occupancy by 840 square feet for a total lot occupancy of 2,520 square feet or 16.82 percent. The C-2-A District permits a maximum lot occupancy of sixty percent for residential use. The Zoning Regulations do not restrict the maximum lot occupancy for commercial structures in the C-2-A District.

7. The applicant proposes to provide four on-site parking spaces at the southeast corner of the site. Access to the site via the existing curb cuts, two on New Hampshire Avenue and two on Eastern Avenue, will remain unchanged.

8. By its Order Nos. 5207 and 5706, dated November 24, 1958, the Board approved the establishment of a gasoline service station on the subject site. The Board found in its Order that the zoning of the subject site was changed from residential to commercial by the Zoning Commission on July 22, 1958 specifically for the purpose of establishing thereon a gasoline service station. The Board therefore concluded that "it is without authority to promulgate an order in violation of or contrary to the intent of the legislative body from which it derives its discretionary power."

9. The existing facility is operated on a 24-hour a day basis and has five employees. The applicant does not propose to change the existing hours of operation nor to increase the number of employees.

10. The area surrounding the subject site is predominantly developed with single-family detached and semi-detached dwellings. There are commercial uses along New Hampshire Avenue and across Eastern Avenue in Prince Georges County, Maryland. The lot immediately adjacent the site to the south is developed with a liquor store.

11. All portions of the subject site are in excess of twenty-five feet from and separated from surrounding residential areas by public streets.

12. All driveways and entrances are located in excess of forty feet of the nearest street intersections as measured from the intersection of the curb lines extended.

13. There are no grease pits or hoists provided on the subject premises.

14. The design of the proposed additional pump island and canopy extension are in harmony with the existing improvements. The proposed expansion of the existing facility will result in better vehicular circulation patterns on the site based on the location of the existing curb cuts and pump islands.

15. The proposed expansion of the facility will not result in an increase in the number of vehicles attracted to the site but will enhance the service capability currently provided on site by providing more convenient and accessible gas service. There will be no additional fuel storage tanks provided on the site.

16. The Office of Planning (OP), by memorandum dated September 15, 1989, recommended that the application be approved. The OP was of the opinion that the project is in compliance with the criteria set forth in 11 DCMR 706, 726 and Chapter 23. The OP was further of the opinion that the project would not have an adverse impact on the surrounding neighborhood.

17. The Office of Planning referred the application to appropriate government agencies for review and report. At the time of the public hearing, the DC Fire Department, the Office of Business and Economic Development, the Metropolitan Police Department and the Department of Finance and Revenue had reviewed the application and offered no opposition to the granting of the application.

18. Advisory Neighborhood Commission (ANC) 4B did not submit written issues and concerns relative to the application as required by 11 DCMR 3307.

19. The Single Member District Commissioner of ANC 4B10, representatives of several neighborhood organizations, and several area residents appeared at the public hearing and submitted written comments in opposition to the application. The opposition was generally based on the following:

- a. The project will result in increased commercialization of a residential area.
- b. There will be an increase in vehicular traffic flow due to increased product availability and the provision of additional services.
- c. There is no need for the proposed commercial services in the immediate area due to existing gas and food services in the vicinity of the site.

d. The proposed mini-mart will encourage loitering in an area already experiencing problems with illegal activities.

e. The proposed expansion may represent enlargement of a nonconforming use.

f. The public hearing notice to property owners within 200 feet and the ANC was insufficient due to the lack of reference to a proposed convenience store.

20. In response to the concerns expressed by the opposition, the applicant's representative argued that the major emphasis of the opposition involves expansion of the existing kiosk building for the establishment of a convenience store on the site. The applicant's representative advised that the plans of record do not include the enlargement of the kiosk building for a proposed convenience store at this time although there is reference to an alternative related to the kiosk. The plans on file indicate in Note 2 and inset that construction is limited to an additional gas island and canopy extension and the refacing of the existing building.

21. At the time of the public hearing in the subject application, the record did not contain a report from the D.C. Department of Public Works (DPW). The Board left the record open to receive a report from the DPW and responses thereto from parties to the application.

22. By memorandum dated September 25, 1989, the Department of Public Works indicated that it had no objection to the proposal. The DPW was of the opinion that the construction of one new pump island and a canopy would not generate additional traffic nor have an adverse impact on the local transportation system.

23. By memorandum dated October 11, 1989, the DPW reiterated its position of September 26, 1989 relative to the proposed addition of a pump island and canopy to the existing gas station. The DPW further was of the opinion that expansion of the existing kiosk building for operation as a convenience store would not result in a dramatic increase in traffic generated by the facility.

24. The opposition's response to the Department of Public Works reports is generally summarized as follows:

a. The DPW conclusion is in error in that the report offers only cursory consideration of the applicant's request and fails to adequately consider existing vehicular and pedestrian patterns in the area, as well as existing gas and food services currently existing in the vicinity of the site.

b. The DPW erred in concluding that the addition of a new pump island and convenience store which would generate additional business would not generate additional vehicular and pedestrian traffic.

25. In consideration of the foregoing findings, the Board finds as follows:

a. The subject property is zoned C-2-A. The establishment or enlargement of a gasoline service station use as a special exception has been predetermined to be compatible with other uses in the C-2-A District provided that the criteria set forth in the Zoning Regulations are met.

b. The application before the Board does not formally include the establishment of a convenience store on the subject site. The Board notes, however, that a convenience store is permitted as a matter of right in the C-2-A District and, therefore, does not require Board review and approval.

c. The report of the Department of Public Works dated October 11, 1989 erroneously addressed the impact on the area which would be created by the establishment of a convenience store on the site. However, the Board is cognizant of that portion of the report's relevance to the proposed canopy extension and new pump island. The DPW found in both of its reports that the proposed expansion would not generate significant additional traffic nor have an adverse impact on the local transportation system.

d. The site has been operated as a gasoline service station for approximately thirty years. The Board is of the opinion that the proposed canopy extension and new gas pump island are not inconsistent with the existing use of the property.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted special exception relief, the applicant must demonstrate substantial compliance with the requirements of Section 726 and 3108 of the Zoning Regulations. The Board concludes that the applicant has so complied. The facility is separated from the closest residential district by public streets at least twenty-five feet in width. All vehicular entrances and exits are in excess of twenty-five feet from the nearest residential district or separated from that district by a public street. All driveways are located in excess of forty feet from the closest street intersections

as measured from the curb lines extended. There are no grease pits or hoist on the subject site. The use will not create dangerous or objectionable traffic conditions. The design and appearance of the facility will not adversely affect neighboring property owners. Four on-site parking spaces are provided as required by the Zoning Regulations.

The Board further concludes that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and map and that the use will not tend to affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 4-0 (William F. McIntosh, Paula L. Jewell and Charles R. Norris to grant; Carrie L. Thornhill to grant by proxy; William L. Ensign not present, not voting).

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

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: APR 17 1990

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 FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), 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.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15116

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mailed to all parties, dated APR 17 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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

EDWARD L. CURRY
Executive Director

DATE: APR 17 1990