

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15186 of the Exxon Company, U.S.A., pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Sections 726.1, 706 and 2302 to establish a gasoline service station, a variance to allow a gasoline station within 25 feet of a residence district (Sub-section 706.3), and a variance to allow a gasoline service station driveway to be within 40 feet of a street intersection (Sub-section 2302.4) for the construction of a gasoline service station in conjunction with a convenience store in a C-2-A District at premises 3607 Canal Road, N.W., (Square 1202, Lot 849).

HEARING DATE: November 29, 1989
DECISION DATE: January 3, 1990

FINDINGS OF FACT:

1. The property is located at the northwest corner of the intersection of Canal Road and 36th Street and is known as premises 3607 Canal Road, N.W. It is zoned C-2-A.

2. The lot is irregularly shaped with a frontage of approximately 180 feet along Canal Road, a depth of sixty feet for a distance of approximately thirty feet from the eastern property line, and a depth of approximately 115.1 feet for the remaining width of the lot. The total area of the lot is approximately 19,391 square feet.

3. The area surrounding the site is developed with an apartment building to the west, single-family row dwellings to the north, the Car Barn across 36th Street to the east, and the C & O Canal and Trail across Canal Road to the south. The site is located within the boundaries of the Georgetown Historic District.

4. The site is located in a C-2-A District which extends east on the north side of Canal Road towards M Street in the Georgetown commercial strip and west for several hundred feet. Abutting the site to the north is an R-3 District. South of the site across Canal Road is a W-1 District.

5. The site is currently improved with a one-story masonry structure which was built in 1928 as a gasoline service station and is currently used for storage and a second one-story masonry structure which was built in 1958 and which contains the existing Exxon service station office, two service bays, and one storage bay. The existing service station has one pump island containing six pumps located parallel to Canal Road.

6. The applicant proposes to raze the existing improvements

and is seeking special exception relief pursuant to 11 DCMR 726 in order to construct a new gasoline service station and accessory convenience store on the site. The convenience store is permitted as a matter-of-right in the C-2-A District. The applicant is also seeking a variance to allow the location of a gasoline service station within 25 feet of a residence district and to allow the location of a driveway within 40 feet of a street intersection.

7. The applicant proposes to construct a self-service gasoline service station on the site. A 46.5 foot by 24.1 foot structure containing a cashier's booth, storage areas, restrooms and a small convenience store will be located on the western portion of the site. There will be no food preparation on the site.

8. The applicant proposes to remove the existing underground storage tanks and replace them with new, higher quality tanks.

9. The applicant proposes to provide three pump island areas, each containing two multi-product dispensers, parallel to Canal Road. The pump islands will be covered by a canopy to protect customers from the elements.

10. The applicant proposes to replace the existing paving, curbs and sidewalks, as well as undertake major landscaping on the site. The plans call for grass and shrubbery to be planted on the eastern portion of the site, vines on top of the retaining wall on the northern edge of the site, and shrubs and trees at the southwestern corner near the adjacent apartment building.

11. The existing curb cuts will be removed and replaced with two thirty-foot wide curb cuts on Canal Road situated to provide optimal vehicular ingress and egress to the site. The applicant also proposes to add a thirty-five foot curb cut off of 36th Street to provide safe access to the site by gasoline tank trucks.

12. By Order No. 3261-3262-3263, dated June 18, 1952, the Board approved the establishment of a gasoline service station on lots 806 through 814 in the subject square, SUBJECT to the following CONDITIONS:

- a. Locate all portions of the station, including lights, paving, appurtenances, etc. north of the line of the proposed widening of Canal Road and twenty-five feet south of the rear property line. Furnish plans for same.
- b. Provide planting treatment of the rear twenty-five feet which shall not be paved or surfaced.
- c. Neon or gastube displays shall be prohibited except for the sign advertising "Esso."

- d. Submit plans to the Director of Planning prior to submission to the Fine Arts Commission. Approval by the full Board following these steps will be required.

13. Due to the current manner of operation of the site and its location in the Georgetown Historic District, the proposal has been subject to review by the Gas Station Advisory Board (GSAB), the Old Georgetown Board (OGB), the Commission of Fine Arts (CFA), and the Historic Preservation Review Board. Recent actions by those reviewing bodies are summarized as follows:

- a. The Gas Station Advisory Board approved the self-service operation of the site in 1987 after public hearing by Mayor's Order No. 87-128, dated June 19, 1987.
- b. The Old Georgetown Board reviewed the project in four public proceedings. The Old Georgetown Board considered the proposed demolition of structures, the design of the proposed building, the landscaping, the canopy, and the configuration of improvements on the site and recommended several modifications which were adopted by the applicant.
- c. On June 13, 1989, the Commission of Fine Arts reviewed and approved the design of the modified proposal after review by the Old Georgetown Board.
- d. On June 29, 1989, the Historic Preservation Review Board granted conceptual approval for demolition and the design of the proposed new station after public review.

14. The applicant's traffic expert by report and testimony at the public hearing indicated that the proposed project will not result in any dangerous or objectionable traffic conditions. The site has been used as a gasoline service station for many years. The new layout of improvements on the site enhances the safety and efficiency of vehicular circulation on the site. Because the proposed facility will no longer provide for a full-service operation, there will be no repairs to vehicles at the site thereby eliminating the need for on-site vehicular storage. The proposed curb cuts provide optimal ingress and egress to the site with very little disruption to traffic flow along Canal Road and the 35 foot curb cut accessed from 36th Street provides safe access to the site for deliveries by gasoline tank trucks. All of the curb cuts are located more than 25 feet away from a residence district. The use will attract users from the existing traffic flow in the area and is not expected to attract additional traffic to the area.

15. The Zoning Regulations require the provision of four on-site parking spaces. The applicant proposes to provide four on-site parking spaces adjacent to the proposed service building. The

parking spaces will be accessible at all times.

16. The design of the proposed gasoline service station, as reviewed by the appropriate Historic Preservation agencies is a simple, unobtrusive, architectural style appropriate to the Georgetown Historic District. All lighting on the site will be confined to the surface of the site. The applicant testified that the proposed new design and landscaping will improve the appearance of the site and will not adversely affect neighboring property owners.

17. The applicant testified that the site is affected by an exceptional situation or condition due to the irregular configuration and the general dimensions of the site which limits the flexibility of siting improvements on the lot; there is a steep grade change at the rear 25 feet of the site; and the location of the site within the Georgetown Historic District subjects it to design review and approval by appropriate agencies.

18. Section 706.3 of the Zoning Regulations requires that the station shall not be located within 25 feet of a residence district. The improvements have been situated on the site to promote maximum safety and efficiency of circulation. The proposed canopy is located 18 feet from the rear property line, which is the zoning boundary line, instead of the required 25 feet. The applicant testified that as part of the design review and approval by the historic preservation agencies, OGB and CFA required that the canopy be placed as far to the north on the site as possible in order to minimize the visual appearance of the canopy from Canal Road and Key Bridge. The applicant testified that to move the canopy seven feet south would violate the historic preservation approvals of OGB and CFA, therefore, the applicant is unable to locate and configure the improvements on the site so as to comply with the historic preservation approvals and the strict application of the provision of the Zoning Regulations requiring a 25 foot separation from a residence district.

19. The applicant testified that the location of the canopy will help to reduce any visual impacts on the adjacent property owners to the north due to the proximity of the canopy to the proposed fence on the property line and the steep angle of the hillside. In addition the applicant testified that the provision of the proposed canopy will help to shield adjacent property owners from any light and noise which may be generated by the use.

20. The applicant also requires a variance from Section 2302.4 in order to construct the entrances to the station less than 40 feet from the intersection of Canal Road and 36th Street. The eastern entrance to the station on Canal Road is located 35 feet west of the intersection, and the 36th Street entrance is located 25 feet north of this intersection. The public right-of-way known

as 36th Street in the location of the site is only 60 feet long and 60 feet wide. This section of street functions only as a driveway for two properties, the Exxon station and the Car Barn, and therefore has an extremely low traffic volume. The proposed curb cut on 36th Street is specifically designed to provide optimal access to the site by gasoline tank trucks with minimal impact on the traffic flow along Canal Road. If the 36th Street curb cut were moved 15 foot to the north to comply with the Zoning Regulations, the required turning radius necessary to accommodate the gasoline tank truck could not be provided. In addition, use of the Canal Road curb cuts by the tank trucks would create traffic problems and unsafe conditions along Canal Road.

21. In addition, because of the irregular configuration and dimensions of the site which limit the location of improvements on the site and its proximity to 36th Street and its limited functional use, the applicant testified that the pumps and curb cuts have been located so as to provide optimal site circulation and access onto and off of the site, help reduce any possible congestion on Canal Road as cars enter and leave the site, and to provide an appropriate amount of space separating the building and the apartment house immediately to the west of the site. In order for the maximum feasible amount of space between these two buildings, as well as create optimal traffic flow around the site, the curb cut on Canal Road must be located 35 feet from the corner of 36th Street and Canal Road.

22. The applicant testified there had been a series of meetings with adjacent property owners in an attempt to ameliorate the concerns expressed by the property owners prior to the public hearing. The applicant submitted correspondence indicating the issues raised and the applicant's proposals to address those issues. The Board waived its Rules to allow the applicant to submit a revised Site Plan indicating physical changes to the site proposed to address the concerns of the neighbors. The applicant indicated its attempts to address the concerns of the neighbors and to comply with the neighbors' recommendations, however, the applicant did not agree with the neighbors' request that the agreements reached between the applicant and the neighboring property owners be incorporated into a document which could be recorded on the land records of the District of Columbia for the purpose of enhancing the enforceability of the agreements. The applicant noted that the proposed development would be subject to the written order of the Board and that the applicant would be bound to development in accordance with the plans on record, as approved, and, further by any conditions imposed by the Board. Compliance with the order of the Board can be ensured through the existing processes, including the enforcement powers provided by the Zoning Regulations and the Civil Infractions Act.

23. The Office of Planning (OP), by memorandum dated November

22, 1989, and by representative at the public hearing, stated that the variance regarding the location of the canopy is minor and is not likely to adversely affect the neighbors to the north of the site. With regard to the variance related to the location of the driveway within 40 feet of a street intersection, the Office of Planning indicated that its position would be contingent upon the recommendation of the District of Columbia Department of Public Works (DPW) and any further resolution of community concerns by the applicant. The Board left the record open at the close of the public hearing to receive the signed report of the DPW and any responses thereto.

24. Advisory Neighborhood Commission (ANC) 2E, by letter dated November 28, 1989 and by representative at the public hearing, recommended that the application be denied. The ANC was of the opinion that the applicant failed to satisfy the requisite burden of proof to justify the granting of a special exception or variance relief. The ANC noted that some nearby residential property owners testified that the proposed facility would adversely affect the use and enjoyment of their properties. The ANC representative indicated that the specific neighborhood concerns would be addressed by the property owners present at the public hearing. The ANC was also of the opinion that the applicant would not suffer a practical difficulty if the Zoning Regulations were strictly enforced, noting the existing facility on the site.

25. The owner and resident of the apartment building at 3633 M Street testified at the public hearing in support of the application. The support was generally based on the following:

- a). The property has been used as a gas station for many years. The current facility is old, decrepit and a visual eyesore.
- b). The proposed facility will be well landscaped, well lighted, and would beautify the area.
- c). The 24-hour operation of the proposed facility will improve safety and security in the area and will prevent the continuation of existing loitering and traffic which occurs on the site after 10 or 11 o'clock P.M. when the existing facility is closed.
- d). The project has been before the public in several different forums prior to this application. The applicant has attempted to address all of the issues raised by neighbors with the exception of a covenant.

26. Two persons who own and reside in adjacent property fronting on Prospect Street testified at the public hearing in opposition to the application. The record also contains several

letters in opposition to the application. The opposition is generally summarized as follows:

- a). The 25-foot unpaved area between the existing facility and the property line, as conditioned by BZA Order No. 3261-3262-3263, buffers the residences on Prospect Street from noise generated by the gas station use and should not be encroached upon as proposed by the applicant.
- b). The two existing structures act as a buffer and baffle to protect the Prospect Street residences from light and noise generated by the existing use.
- c). The proposed 24-hour operation of the site would add considerably to the noise currently generated by the existing operation. In addition, the hours of operation may deter crime on the site, but are likely to encourage crime within the neighborhood and should, therefore, be limited to 7:00 A.M. to 11:00 P.M. daily.
- d). The application is faulty in that the owner of the property, Exxon Company, USA, is not a legal entity capable of doing business within the District of Columbia.
- e). The trash enclosure is situated near the rear property line and would result in the creation of noise during trash pick-ups and could create a problem with smells.
- f). The applicant did not eliminate all areas of concern raised by the neighbors. The applicant indicated that it would not relocate the trash enclosure or roof top mechanical equipment nor enter into a covenant to run with the use of the site as a gasoline service station.
- g). The current proposal includes the property subject to BZA Order No. 3261-3262-3263, as well as adjacent property previously occupied by a Mobil gasoline service station and therefore, represents an expansion of the gas station use.

27. The Department of Public Works, by memorandum dated November 30, 1989, addressed the transportation elements of the proposal and made the following recommendations:

- a). The applicant should eliminate the east driveway on Canal Road and use the 36th Street entrance to serve both regular traffic and tank trucks.
- b). The four foot wide median strip on Canal Road should be extended 80 feet to the east and a twin-cobra street

light should be installed at the east end of the island at the applicant's expense.

28. In response to the DPW report, the applicant's traffic expert submitted a supplemental report which indicated that the recommended elimination of the eastern driveway on Canal Road would result in dangerous traffic conditions along Canal Road on the site. The traffic expert was of the opinion that the circulation plan proposed by applicant would result in optimal traffic circulation and safety at the subject site.

29. The applicant concurred with the DPW recommendation to extend the existing median strip at its own expense. However, the applicant did not agree to the installation of the street light proposed by DPW. The applicant was of the opinion that the need for a street light at this location is not a result of the demands created by the proposed use in that the proposed gasoline station is a "zero trip producer", attracting customers from the existing traffic flow, and as such, will not create an increase in traffic on Canal Road.

30. In response to the issues and concerns raised by the ANC and the opposition the Board finds as follows:

- a. There is no probative evidence that the application, as filed, is faulty. In any event, the conditions of any order of the Board are enforceable through the existing provisions of the Zoning Regulations and the Civil Infractions Act. In addition, the action of the Board is binding upon "any person who owns, controls, occupies, maintains, or uses" the building, structure or land in reliance upon the Board's approval.
- b. The applicant has properly sought variance relief relative to the location of a gasoline service station within 25 feet of a residential district and the location of the proposed driveways relative to street intersections. The Board notes that the opposition did not directly address the location of the driveways. The Board, therefore, will address the issues related to the driveways separately in response to the recommendations of the DPW and the applicant's response thereto.
- c. The proposal before the Board includes the property subject to BZA Order No. 3261-3262-3263 and adjacent property which was also previously operated as a gasoline service station prior to the adoption of the Zoning Regulations in 1958. The properties have subsequently been subdivided into one lot and are before the Board for approval as one gasoline service station located on one lot.

- d. The property has operated as a gasoline service station for many years at the subject site. The opposition contends that the existing 25 foot buffer area and the existing structures act as a buffer and baffle light and noise generated by the facility from the Prospect Street residences. The Board is persuaded that the proposed canopy, fencing and planting in concert with the existing steep change in grade would generate a greater buffering effect to protect the adjacent residences from noise and light than is currently provided by the existing open gas station.
- e. While the applicant's proposal to address the concerns raised by the neighbors did not eliminate all such areas of concern, the applicant has addressed such concerns and has made an attempt to minimize any adverse impacts by conditioning the hours of operation of the pump island nearest the residence district, by limiting the hours of trash pick-up, by relocating the mechanical equipment on the roof of the main building, and by relocating the air and water equipment at least to 25 feet from the zoning boundary line.
- f. The neighbors have not submitted any probative evidence that the 24 hour operation of the proposed facility would encourage crime in the area. The Board notes that there are no conditions relative to the existing facility which would restrict its hours of operation or prevent the operation of the facility on a 24-hour basis.

31. In response to the DPW report and the applicant's response thereto, the Board is persuaded by the applicant's testimony that the vehicular circulation and safety at the site would be best served by the layout proposed by the applicant. In addition, the Board concurs with the DPW recommendation that the median strip in Canal Road be extended by the applicant and approval of the application will be so conditioned.

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 and an area variance. The granting of the special exception requires a showing through substantial evidence that the proposed use is in compliance with the criteria set forth in Sections 726 and 3108 of the Zoning Regulations, and that the relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations. As to the requested variance relief, the applicant must demonstrate that the property is affected by an exceptional or extraordinary condition inherent in the property itself which would create a practical difficulty upon

the owner if the Zoning Regulations were strictly enforced.

As to the special exception relief, the Board concludes that the applicant has met the requisite burden of proof with the exception of the requirement that the facility be separated from the nearest residential district by a least 25 feet and the location of the driveways within 40 feet of the nearest street intersection. There are no vehicular entrances or exits located within 25 feet of a residential district. There are no grease pits or hoists located on the site. The required number of off-street parking spaces are provided on the site and are accessible at all times. The subject site has a long-standing history of use as a gasoline service station and the proposed facility will not create dangerous or objectionable traffic conditions. Conditions related to the design, use, appearance, and screening of the proposed facility shall be imposed as deemed necessary by the Board to protect adjacent and nearby properties.

As to the requested variance relief, the Board concludes that the irregular shape, size and topography of the property, its location in the Georgetown Historic District with the attendant need for Historic Preservation review and approvals, and the history of the use of the property which pre-dates the Zoning Regulations combine to constitute an exceptional condition of the property. The proposed location of improvements on the site, as hereinafter conditioned, will not adversely affect the use of adjacent and nearby properties. The proposed location of the driveways will provide greater efficiency of access and ingress to the facility and will provide for more efficient on-site circulation patterns.

The Board concludes that it has afforded the ANC the "great weight" to which it is entitled. 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, as hereinafter conditioned, will not adversely affect the use of neighboring property nor substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. It is therefore ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Development of the site shall be in accordance with the site plan marked as Exhibit No. 27 of the record as modified by the specific conditions of this Order.
2. The applicant shall install and maintain a wooden fence, seven feet in height, along the northern zoning boundary line of the site, subject to approval by appropriate historic preservation agencies.
3. The applicant shall relocate the air and water dispensing

equipment to the north side of the driveway entrance to the site from 36th Street.

4. The top of the canopy shall be painted a dark green color.
5. Trash pick up from the site shall be limited to the hours between 9:00 A.M. and 5:00 P.M.
6. The applicant shall extend the four foot wide median strip on Canal Road eighty feet east to the intersection of 36th Street to meet the existing stop bar.

VOTE: 4-0 (William F. McIntosh, Charles R. Norris, Paula L. Jewell and Carrie L. Thornhill to grant).

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

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: MAR 18 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT 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.

15186Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15186

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated MAR 18 1991 and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and to is listed below:

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Grace Bateman, Chairperson
Advisory Neighborhood Commission 2-E
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A handwritten signature in black ink, appearing to read "E. Curry".

Edward L. Curry
Executive Director

DATE: _____

MAR 18 1991

ATTES. 5/BHS