

BOARD OF APPEALS CASE NO. 4816

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BEFORE THE

APPLICANT: Exxon Corporation

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ZONING HEARING EXAMINER

REQUEST: Variance to construct a building within the required setbacks; 1400 Baltimore Pike, Benson

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 5/13/98 & 5/20/98

HEARING DATE: June 24, 1998

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Record: 5/15/98 & 5/22/98

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ZONING HEARING EXAMINER'S DECISION

The Exxon Corporation is requesting a variance from Section 267-39(B), Table XII, of the Harford County Code, to construct a building within the required 30 foot front yard and 40 foot rear yard setbacks in a B3 District.

The subject parcel is located at 1400 Baltimore Pike in the Third Election District. The parcel is identified as Parcel No. 122, in Grid 1-E, on Tax Map 55. The parcel contains .704 acres, more or less, all of which is zoned B3.

Mr. Tim Whittie qualified as an expert in the field of civil engineering and testified that he prepared the site plans, labeled as Applicant's Exhibit Nos. 12-A and 12-B. He testified that the subject property is unusually shaped and in order to arrange the pump islands and buildings so that adequate parking and vehicular circulation could be achieved, the requested variances are necessary. Mr. Whittie also testified that the proposed building would not interfere with the view of motorists on U. S. Route 1 or Harford Road.

Mr. Robert Caserta testified that he is a representative of Exxon Corporation and he said that a gasoline station has been in operation on the subject property since 1973. Mr. Caserta testified that the site plans marked as Applicant's Exhibit Nos. 12-A and 12-B were typical of the convenience store/gas station arrangement for other Exxon sites. Mr. Caserta testified that Exxon Corporation would suffer practical difficulty if the proposed variances were not allowed because Exxon would be unable to locate a reasonably sized convenience store on the property. He also said that he did not believe that the requested variances would have an adverse impact on surrounding properties.

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Mr. Kevin McFalls testified that his father, Tom McFalls, is an independent dealer and operator of the Exxon station on the subject property. He testified that the subject property is unique based on its shape and proximity to Harford and Belair Roads and that his father would suffer practical difficulty if the relief requested is denied, as the trend in gasoline stations is to have convenience stores located on site to allow customer one-stop shopping. Mr. McFalls also said that he did not believe that the requested variance would adversely affect the surrounding properties.

Mr. Denis Canavan appeared and qualified as an expert in the land use, planning and zoning. Mr. Canavan testified that the proposed use complies with the requirements of the Zoning Code with the exception of the two requested variances. He also testified the proposed use is consistent with the Harford County Master Land Use Plan and that he did not believe the proposed convenience store would be too close to the Harford Road right-of-way if the variances are approved. He noted that there is already a substantial area of right-of-way reserved to the State Highway Administration on both Harford Road and Belair Road boundaries of the property.

Mr. Canavan testified that the subject property is unique by virtue of its size, shape and the fact that it is a corner lot bordering on both Harford Road and Belair Road and due to the generous amount of right-of-way. Mr. Canavan said that Exxon would suffer practical difficulty if the requested variance is denied because it would be unable to locate a convenience store on the site. Mr. Canavan went on to testify he did not believe the requested variances would be substantially detrimental to any adjoining property owners.

Mr. Anthony McClune, Chief of Current Planning for the Department of Planning and Zoning, testified that the Department of Planning and Zoning was of the opinion that the requested variances were excessive. Mr. McClune did say that the Department would support a variance which provides a 20 foot setback from the Harford Road right-of-way and a 5 foot rear yard setback.

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After Mr. McClune testified that the Department would support a 20 foot setback from Harford Road and a 5 foot rear yard setback, Mr. Tim Whittie testified that Exxon could construct the convenience store on the site with a setback of at least 20 feet from the Harford Road right-of-way. Mr. Robert Caserta testified that he would agree to that modification of the site plan, and Mr. Denis Canavan testified that the proposed modifications to a 20 foot setback from the Harford Road right-of-way did not change any of his opinions and would be consistent with good planning and zoning principles and practices.

No witnesses testified in opposition to the Applicant's request.

CONCLUSION:

The Applicant is requesting a variance to Section 267-39(B), Table XII, of the Harford County Code, to reduce the setback from the Harford Road right-of-way to 20 feet and the rear yard setback to 5 feet.

The uncontradicted testimony of the Applicant's witnesses is that the subject property is unique by virtue of its size, irregular shape and proximity to both U. S. Route 1 and Maryland Route 147. Mr. Denis Canavan also testified that the property is unique because of the large area of road right-of-way that borders two sides of the three-sided parcel.

The Applicant also offered uncontradicted testimony that it would suffer practical difficulty if the requested variances are denied and that the requested relief would not adversely affect surrounding properties.

It is the finding of the Hearing Examiner that the subject parcel is unique for the reasons stated by the Applicant's witnesses and, further, that approval of the variances will not be substantially detrimental to adjacent properties or materially impair the purpose of the Code.

Therefore, it is the recommendation of the Hearing Examiner that the Applicant's request to construct a convenience store on the subject property with a side yard setback of at least 20 feet and a rear yard setback of at least 5 feet be granted.

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The variances shall be subject to the following conditions:

1. The Applicant obtain all necessary permits and inspections.
2. The Applicant maintain a 20 foot setback from Harford Road and a 5 foot setback from the rear property line.

Date AUGUST 6, 1998

**L. A. Hinderhofer
Zoning Hearing Examiner**