



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

STEPHEN S. PORTER, Chairman
JOHN A. DONOVAN, JR.
ROBERT R. CUNNINGHAM

MARY ANN McDOUGALL
Executive Secretary
Telephone
235-1664
XXXXXX
431-1019

WILLIAM E. POLLETTA
FRANKLIN R. PARKER
SUMNER H. BABCOCK

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TOWN OF WELLESLEY, MASS.
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85-53

Petition of Exxon Company USA
46 Washington Street

Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing on Thursday, August 15, 1985 at 8 p.m. in Room 17 of the Town Offices at the Phillips Building, 12 Seaward Road, Wellesley Hills on the petition of EXXON COMPANY USE requesting permission pursuant to the provisions of Section XXIIA Section XXV and Section XXIV-D of the Zoning Bylaws for a standing, internally illuminated sign approximately 47.42 square feet in size at 46 WASHINGTON STREET, at the corner of WASHINGTON COURT, in a Business District.

On July 25, 1985, the petitioner filed a request for a hearing before this Authority and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case was Edward Gallagher, Consulting Engineer for Exxon, who presented plans for the sign which would be in the same location as the existing sign. The height would be 17 feet, the same as the existing sign and three colors would be in the illuminated sign.

Other than Mr. Gallagher, no one was present favoring or opposing the request.

Statement of Facts

The property in question is located at 46 Washington Street at the corner of Washington Court, in a Business District. The property is owned by Exxon Co. USA and used as a gasoline service station.

The petitioner proposes to replace an existing standing sign which was permitted by the Board of Appeals in 1972 (ZBA 72-72). The new sign would be in the same location, would be 47.42 square feet in size, 17 feet high, an internally illuminated sign with three colors, red, white, and blue. A variance and/or a Special Permit is requested to allow the height, 17 feet, the requirement being 10 feet, and to allow three colors instead of the required two colors. The sign would contain price letters.

A location plan was submitted (85-188) by Edward Gallagher Assoc. Inc., dated 6/4/85, as were drawings of the sign (85-197-1) dated 6/24/85.

The Design Review Board held a preliminary review of the sign on July 18, 1985 and a final review on August 1, 1985, after which the proposed sign was accepted with minor changes suggested.

Petition of Exxon Company USA

The Planning Board, at its regular meeting of August 6, 1985, voted to recommend denial of the special permit and variance request.

Decision

This Authority has made a careful study of the evidence presented.

It is the opinion of this Authority that the proposed sign is in harmony with the general purpose and intent of Section XXIIA of the Zoning Bylaws, except for the height (17 feet) which exceeds the requirements (10 feet), and the existence of three colors in the illuminated sign (2 colors being allowed).

It is the opinion of this Authority that a literal enforcement of the provisions of Section XXIIA would involve a substantial hardship to the petitioner. It is the further opinion of this Authority that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, a variance is granted from Section XXIIA and pursuant to Section XXIV-D and a Special Permit is granted pursuant to Section XXV to allow a standing sign at 46 Washington Street, 47.72 square feet in area, 17 feet high, internally illuminated and containing three colors, as shown on drawings presented by Edward J. Gallagher Associates, dated 6/4/85 and 6/24/85. Said sign shall not be illuminated except when the gas station is open to the public.

The Building Inspector is hereby authorized to issue a permit for the sign upon his receipt and approval of an application.

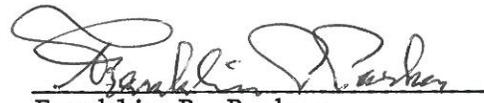
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN
THE OFFICE OF THE TOWN CLERK.

cc: Planning Board
Building Inspector

mam



Stephen S. Porter, Chairman



Franklin P. Parker



William E. Polletta

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TOWN OF WELLESLEY



MASSACHUSETTS

JOAN M. REGAN, CMC, TOWN CLERK

October 2, 1985

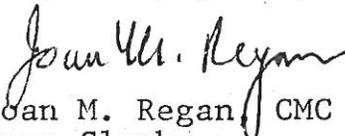
Mr. Edward J. Gallagher
Consulting Engineer
Exxon Co. USA
~~9 Central Street~~ 30 Bayberry Rd.
~~Wellesley, Massachusetts 02181~~ Quincy, Ma. 02171

Re: Planning Board of Wellesley v. Exxon Company USA
and Board of Appeals of Wellesley

Dear Mr. Gallagher:

Enclosed please find a copy of a Complaint made
by the Planning Board of Wellesley filed in Norfolk Superior
Court, Civil Action No. 85-2728.

Very truly yours,


Joan M. Regan, CMC
Town Clerk

JMR/fr

Encls.

cc: Stephen S. Porter
John A. Donovan, Jr.
Robert R. Cunningham
William E. Polletta
Franklin P. Parker
Sumner H. Babcock
Mary Ann McDougall ✓
Albert S. Robinson

PEABODY & ARNOLD

COUNSELLORS AT LAW

JOHN G. BROOKS	JOSEPH D. S. HINKLEY
ROBERT D. POWER	PETER G. HERMES
PETER B. SEAMANS	ALEXANDER H. PRATT, JR.
JAMES A. P. HOMANS	EDWARD E. WATTS III
SAMUEL S. ROBINSON	DEBORAH S. GRIFFIN
MICHAEL J. GLAZERMAN	ROBERT W. MONAGHAN
PAUL R. DEVIN	THOMAS H. BRANTLEY
JONATHAN BANGS	PHILIP H. CAHALIN
HARVEY WEINER	THOMAS A. WOOTERS
<hr/>	
KIMBALL E. C. HULL	CHARLES W. KIM, JR.
ALLEN N. DAVID	KURT B. GERSTNER
DONNA L. TESLERO	DONALD E. VAUGHAN
ROBERT J. COUGHLIN	ELLEN A. LOEB
RIPLEY E. HASTINGS	GEORGE C. ROCKAS
LISA M. McNAMARA	CAROL M. HARRINGTON
R. ALAN FRYER	JONATHAN G. BROUGHAM

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108-3188

TELEPHONE (617) 523-2100
TELEX 855127

OF COUNSEL
ROBERT W. BLAKENEY
BERT J. CAPONE
WALTER R. MAY, JR.
MITCHELL S. M. KROCK

COUNSEL
G. STANLEY LOWDEN

October 2, 1985

BY HAND

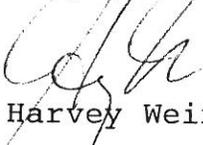
Town Clerk Joan Regan
Wellesley Town Offices
Seaward Road
Wellesley Hills, MA 02181

Re: Planning Board of Wellesley v. Exxon Company USA, et al

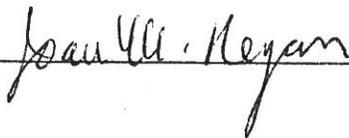
Dear Ms. Regan:

Please be advised that on this day the above-action was entered in Norfolk Superior Court. A copy of the complaint is enclosed herein.

Very truly yours,


Harvey Weiner

Received this 2nd day of
October, 1985


Joan Uli Regan

HW/pt
Enclosure

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT
CIVIL ACTION
NO. 85-2728

PLANNING BOARD OF WELLESLEY,)
)
Plaintiff)
)
v.)
)
EXXON COMPANY USA and)
BOARD OF APPEALS OF WELLESLEY,)
)
Defendants)
)

COMPLAINT

1. Plaintiffs Gail M. Oliva, Robert H. Murphy, Durant H. Hunter, Samuel A. Balkan and Michael P. Last are residents of Wellesley, Massachusetts and comprise the Planning Board for the Town of Wellesley, Massachusetts.
2. Defendant Exxon Company USA is a foreign corporation with a usual place of business in Everett, Massachusetts
3. Defendants Stephen S. Porter, John A. Donovan, Jr., Robert R. Cunningham, Sumner H. Babcock, William E. Polletta, and Franklin P. Parker comprise the Board of Appeals of the Town of Wellesley, Massachusetts. Stephen S. Porter is a regular member of the Wellesley Board of Appeals and resides at 44 Swarthmore Road, Wellesley, Mass. John A. Donovan, Jr. is a regular member of the Wellesley Board of

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Appeals and resides at 14 Upland Road, Wellesley, Mass. Robert R. Cunningham is a regular member of the Wellesley Board of Appeals and resides at 17 Cushing Road, Wellesley, Mass. Sumner H. Babcock is an associate member of the Wellesley Board of Appeals and resides at 113 Abbott Road, Wellesley, Mass. William E. Polletta is an associate member of the Wellesley Board of Appeals and resides at 109 Elmwood Road, Wellesley, Mass. Franklin P. Parker is an associate member of the Wellesley Board of Appeals and resides at 6 Springdale Avenue, Wellesley, Mass. Stephen S. Porter, Franklin P. Parker, and William E. Polletta were the Board of Appeals members who made the decisions at issue.

4. On or about September 13, 1985, two decisions by said Board of Appeals were filed in the Office of the Town Clerk, Wellesley, Massachusetts, certified copies of which are attached hereto and incorporated herein as Exhibits "A" and "B".
5. Said Board of Appeals granted zoning variances to defendant Exxon Company USA allowing a 15.4 foot high standing internally illuminated sign in three colors at 9 Central Street and a 17 foot high standing internally illuminated sign in three colors at 46 Washington Street, both commercially-zoned areas in Wellesley. Section XXIIA of the Wellesley Zoning Bylaw permits standing signs to be no

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- more than ten feet high in said commercial areas and internally illuminated signs to use no more than two colors, black and white considered to be colors.
6. Said Board of Appeals also granted a special permit to defendant Exxon Company USA allowing standing signs of internal illumination at both locations. Section XXIIA of the Wellesley Zoning Bylaw allows standing signs in excess of six feet high to be internally illuminated only by special permit.
 7. Plaintiff Planning Board of Wellesley pursuant to the Wellesley Zoning Bylaw recommended denial of the variances and special permits on August 6, 1985.
 8. Plaintiff alleges that the Defendant Board of Appeals and the individual members thereof, exceeded the scope of their authority as empowered under Massachusetts General Laws in granting the subject variances and special permits described in Exhibits "A" and "B" herewith to the detriment of plaintiff and the community of Wellesley.
 9. Defendant Board of Appeals did not adequately and properly consider and make their decision based upon the appropriate criteria for the granting of special permits and variances in the Town of Wellesley and further did not state adequate reasons in its decisions for the granting of the special permits and variances at issue.
 10. The special permits granted to Exxon Company USA are not in harmony with the general purpose and intent of the Wellesley Zoning Bylaw.

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11. The defendant Exxon Company USA has not shown that literal enforcement of the Zoning Bylaw would involve substantial hardship, financial or otherwise, owing to circumstances relating to: i) soil conditions, ii) shape, or iii) topography of the land or structures, and that desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of the Wellesley Zoning Bylaw.

WHEREFORE, Plaintiff prays that the decisions of the Wellesley Board of Appeals as described in Exhibits "A" and "B" hereto be annulled.

Plaintiffs,
Gail M. Oliva, Robert H. Murphy,
Durant H. Hunter, Samuel A. Balkan
and Michael P. Last as they
comprise the Planning Board for
the Town of Wellesley,
Massachusetts.

By their attorney,

Harvey Weiner
PEABODY & ARNOLD
One Beacon Street
Boston, MA 02108
(617) 523-2100

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TOWN OF WELLESLEY



MASSACHUSETTS

ALBERT S. ROBINSON, TOWN COUNSEL

P. O. BOX 375
47 CHURCH STREET
WELLESLEY, MASS. 02181
(617) 235-1020

February 6, 1987

Mary Ann McDougall, Executive Secretary
Zoning Board of Appeals
Town Hall
Wellesley, MA 02181

Re: Wellesley Planning Board v. Exxon Company USA and
Wellesley Board of Appeals
Norfolk Superior Court
C.A. No. 85-2728

Dear Mary Ann:

Enclosed is a copy of the joint Stipulation of Dismissal now
filed in the Norfolk Superior Court to complete the referenced
matter, as previously discussed. I am closing my file.

Very truly yours,

Albert S. Robinson

ASR/bb

File: WJ-224

Enclosure

cc: Richard Brown, Director
Wellesley Planning Board

cc: Thomas E. Lee, Executive Secretary
Board of Selectmen

(00661-6)

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT
C.A. NO. 85-2728

PLANNING BOARD OF WELLESLEY,)
)
Plaintiff,)
)
v.)
)
EXXON COMPANY, U.S.A.)
and BOARD OF APPEALS OF)
WELLESLEY,)
)
Defendants.)

JOINT STIPULATION OF
DISMISSAL

Pursuant to Mass. R. Civ. P. 41(a)(1)(ii), plaintiff and defendants hereby jointly stipulate to the dismissal of the above-referenced action without prejudice.

PLANNING BOARD OF
WELLESLEY

EXXON COMPANY, U.S.A.

By its attorney,

By its attorney,

hw/cam

Harvey Weiner, Esq.
Peabody & Arnold
One Beacon Street
Boston, MA 02108
(617) 723-6700

Craig A. MacDonnell

Craig A. MacDonnell
Nutter, McClennen
& Fish
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210
(617) 973-9700

BOARD OF APPEALS OF
WELLESLEY

By its attorney,

asr/cam

Albert S. Robinson
Wellesley Town Counsel
47 Church Street
Wellesley, MA 02108
(617) 235-1020

DATE: January 28, 1987

TOWN OF WELLESLEY



MASSACHUSETTS

ALBERT S. ROBINSON, TOWN COUNSEL

P. O. BOX 375
47 CHURCH STREET
WELLESLEY, MASS. 02181
(617) 235-1020

January 13, 1987

John L. Sullivan, Esquire
NUTTER, MCCLENNEN & FISH
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210

Re: Wellesley Planning Board v. Exxon Company USA and
Wellesley Board of Appeals
Norfolk Superior Court
C.A. No. 85-2728

Dear John:

The Board of Appeals has voted to approve Exxon's withdrawal in the two sign cases. Accordingly, the forms accepting the withdrawal which you prepared have been signed and are enclosed herewith.

Could you please send me a copy of the Stipulation of Discontinuance in the Superior Court matter as filed.

Very truly yours,

Albert S. Robinson

ASR/bb

File: WJ-224

Enclosures

cc: Mary Ann MacDougall, Executive Secretary
Zoning Board of Appeals

cc: Richard Brown, Director
Wellesley Planning Board

(00351-5)

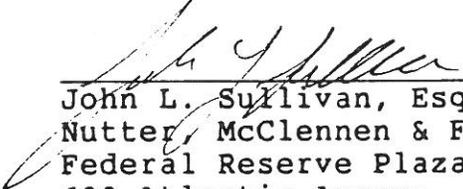
WITHDRAWAL OF APPLICATION FOR VARIANCES
AND SPECIAL PERMITS

Reference is made to: (1) the decision of the Zoning Board of Appeals of the Town of Wellesley in Case No. 85-52 relating to property located at 9 Central Street, Wellesley, Massachusetts (hereinafter "Case No. 85-52") and (2) the decision of the Zoning Board of Appeals of the Town of Wellesley in Case No. 85-53 relating to property at 46 Washington Street, Wellesley, Massachusetts (hereinafter "Case No. 85-53").

Exxon Company U.S.A. hereby withdraws its petitions in Case No. 85-52 and Case No. 85-53 and agrees that the decisions rendered by the Zoning Board of Appeals of the Town of Wellesley in those cases shall be of no force and effect.

Executed on the 18th day of December, 1986.

EXXON COMPANY, U.S.A.
by its attorney

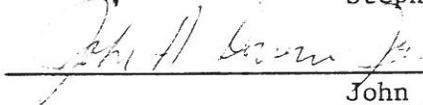


John L. Sullivan, Esq.
Nutter, McClennen & Fish
Federal Reserve Plaza
600 Atlantic Avenue
Boston, MA 02210
973-9700

Withdrawal Accepted:
Zoning Board of Appeals of
the Town of Wellesley



Stephen S. Porter, Chairman



John A. Donovan, Jr.



Robert R. Cunningham