

TOWN OF WELLESLEY



MASSACHUSETTS
TOWN CLERK'S OFFICE
WELLESLEY, MASS.

JOHN L. HAYDEN
GARRETT S. HOAG
DANA T. LOWELL

BOARD OF APPEAL

KATHARINE E. TOY, CLERK
TELEPHONE
CE. 5-1664

1961 JUL 5 PM 12:52

Petition of Gulf Oil Corporation

Pursuant to due notice the Board of Appeal held a public hearing in the hearing room on the first floor of the Intermediate Building at 324 Washington Street at 8:35 p.m. on May 25, 1961, on the petition of Gulf Oil Corporation requesting an exception from the terms of Section 9-C of the Zoning By-law which will permit the construction of a gasoline pump island on the property owned by it at 461 Worcester Street with a front yard less than the required thirty feet. Said request is being made under the provisions of Chapter 40A, Section 15, of the General Laws of Massachusetts.

The petitioner was represented at that hearing by Albert L. Hyland.

The Planning Board opposed the request in its report.

Statement of Facts

The premises involved are located on the northerly side of Worcester Street, near Wellesley Hills Square, and are within a Business Zone.

The Gulf Oil Corporation has operated a gasoline service station on the premises involved for many years but the building is badly placed and business has suffered as a result. The petitioner now desires to demolish the present service station building and erect a new building and gasoline pump islands in a position where they will be facing the on-coming traffic traveling toward Worcester. If this is done it would be impractical because of the depth and shape of the lot to put both the pump islands thirty feet from the street line. Therefore, it is the desire of the petitioner to construct one of the new pump islands twelve feet from the street line rather than the required thirty feet.

There is some question as to whether a gasoline pump island is a structure within the meaning of Section 9-C of the Zoning By-law.

Decision

For the purposes of this decision we have assumed a pump island and pumps to be a "structure" within the meaning of Section 9-C of the Zoning By-law and find they are not a "building" within the meaning of the Building Code.

The Board may grant a variance under Section 15, Chapter 40A of the General Laws when due to conditions affecting the land or building involved but not affecting the zoning district generally a literal enforcement of the provisions of the by-law would involve substantial hardship to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without substantially derogating from the intent and purpose of such ordinance or by-law but not otherwise.

The Board believes that because of the peculiar shape of the lot which is bounded by Worcester Street, the fire station and the railroad, a literal

enforcement of Section 9-C of the Zoning By-law would involve a substantial hardship to the appellant in that it would not be practical to place the pump island involved the required distance back from the street. As proposed the island will not obstruct the view of motorists or prove detrimental in any way, therefore a variance may be granted without detriment to the public good and without nullifying or derogating from the intent or purpose of the by-law.

Accordingly, the requested variance is hereby granted and the issuance of a permit for the proposed gasoline pump island as shown on the plan submitted and on file with this Board is hereby directed.

Garrett S. Hoag

 Garrett S. Hoag

John L. Hayden

 John L. Hayden

Dana T. Lowell

 Dana T. Lowell

Filed with Town Clerk _____

RECEIVED TO DEACB
 TOWN CLERK'S OFFICE
 WELLESLEY MASS. 01980
 10/25/82 9:03 AM
 1981 JUL 15 01 PM 02:52 BELT

July 5, 1961.

Mr.L.Thomas Shine,
Register of Deeds,
Norfolk County,
Dedham, Mass.

Dear Mr.Shine:

I am enclosing herewith notice of variance
or special permit.

The petitioner is

Gulf Oil Corporation, Park Square Bldg.,
Boston 17, Mass.

Very truly yours,

Town Clerk

MCD/g

Enc.

LYNE, WOODWORTH & EVARTS

DANIEL J. LYNE (1912-1957)
S. C. WOODWORTH
RICHARD C. EVARTS
SAUL L. KAPLAN
J. W. MAHONEY
ALBERT L. HYLAND
JAMES J. WALSH
EUGENE LYNE
JOHN A. LONG
EDWARD J. DUGGAN
E. F. HARRIGAN
KERRY R. LYNE
JOHN M. CASEY, JR.
JOHN H. DOERMANN
JOHN E. SULLIVAN

SEVENTY-FIVE FEDERAL STREET

TELEPHONE
HUBBARD 2-6655

BOSTON 10

May 25, 1961

Board of Appeals
Town of Wellesley
Wellesley, Massachusetts

Re: Petition of Gulf Oil Corporation
461 Worcester St., Wellesley

Gentlemen:

Respectfully we request that your Board consider the following points in connection with the petition of Gulf Oil Corporation to rebuild and relocate its service station at the above address.

1. The meaning of "structure" is intertwined with the Yard Regulations contained in Sec. 9-C of your zoning by-law. In two comparatively recent cases our Supreme Judicial Court has indicated that the word "structure" does not comprehend every possible kind of human construction.

Williams v. Inspector of Buildings, 1960 Adv. Sh. 895 (this is the "tennis court" case from the Town of Belmont).

Town of Manchester v. Leahy, 336 Mass. 158.

This latter case perhaps loses some of its strength because the trial judge found that a temporary shed raised on piers and situated near a saw-mill was not a structure. This was affirmed by the Supreme Court and the Court indicated that insubstantial and temporary pieces of construction are not necessarily structures under the zoning law.

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TO BoA

FOLIO 2

We call to the Board's attention the foregoing cases because the question whether a gasoline pump is a structure does to some extent influence the interpretation of the Front Yard definition in connection with the phrase "unoccupied above ground level". We respectfully submit that things which are purely temporary in nature should not be considered as violative of the words "unoccupied above ground level", especially where such temporary installations are a necessary part of the standard use of the land on which a gasoline service station is erected.

2. Section 9-C of the zoning by-law contains a subsection referring to exceptions indicating that the Board may make a special exception or modification of front yard regulations where compliance is impracticable because of the width, depth or shape of the lot, and the lot was held of record on April 31, 1939 under a separate and distinct ownership from adjacent lots. The petitioner now respectfully asks this Board to consider that the location in question is triangular in shape and that compliance with the required front yard depth of 30 feet would be impracticable because of this shape and the resulting divergences in the width and depth of the lot.

The petitioner does recognize that on April 1, 1939 the location (which the petitioner now owns as a single lot) consisted of two separate lots of record owned by different persons. Nevertheless we do respectfully submit that the reservation in the by-law with regard to single ownership was intended to meet a situation which is demonstrated by the decision in

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TO BoA

FOLIO 3

Vetter v. Zoning Board of Appeals, 330 Mass. 628, and not to exclude from The Board's consideration a situation such as is present in this case. Here the condition is that each owner of the separate lots as they existed on April 1, 1939 would (we submit) have had a valid reason for requesting the exercise of the Board's judgment on the ground of impracticability of use; and it is also true that when we put both of those lots together to form one location, the owner of that one location still has a valid reason for requesting a modification of the Yard Regulations. The provision in the by-law with regard to the single ownership was intended to prevent an owner of a larger piece from submitting a request for special exception after a subdivision of his property and it was not intended to foreclose the situation where there has been a joinder of two pieces and after the joining the impracticability of use still exists.

3. The petitioner also has before this Board a request for a standard variance under G.L. (Ter. Ed.) Chap. 40A, Section 15 because, owing to conditions especially affecting the land at the above location, but not affecting generally the zoning district in which it is located, a literal enforcement of the Yard Regulations under Section 9-C would involve substantial hardship, both financial and otherwise, to the petitioner and where desirable relief may be granted without substantial detriment to the public good and without substantially derogating from the intent and purpose of the by-law. This point has been orally stated to the Board by the

LYNE, WOODWORTH & EVARTS

TO BOA

FOLIO 4

undersigned.

We respectfully request your consideration of the foregoing.

Very truly yours,

Albert L. Hyland.

Attorney for the Petitioner
Gulf Oil Corporation

ALH:cc