



Issuance #566

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TECHNICAL
POLICY AND PROCEDURE NOTICE #10/99

TO: Distribution

FROM: Richard C. Visconti, R.A. *M*

DATE: April 16, 1999

SUBJECT: RETAIL CONVENIENCE STORES ACCESSORY TO
AUTOMOTIVE SERVICE STATIONS USE GROUP 16

EFFECTIVE: Immediately

PURPOSE: To update the guidelines to be applied in determining whether a proposed retail convenience store qualifies as an accessory use to an automotive service station.

SUPERSEDED : Technical Policy and Procedure Notice #8/94.

SPECIFICS :

In Exxon v. BSA, 151 A.D.2d 348 (1989), the Appellate Division, First Department held that the Zoning Resolution (ZR) definition of "automotive service station" (ZR §12-10) does not provide an exclusive list of uses permitted on the same zoning lot as an automotive service station but, rather, permits "uses accessory" thereto. Therefore, the ZR §12-10 definition of "automotive service station" does not prohibit a retail convenience store on the same zoning lot as the automotive service station, if it is determined that the convenience store qualifies as an accessory use.

Following that decision, Technical Policy and Procedure Notice ("TPPN") #8/94 (superseding TPPN #3/94) was issued to provide guidelines for determining whether a retail convenience store qualified as an accessory use to an automotive service station. Since the issuance of that TPPN, the automotive service station industry has changed such that the typical retail convenience store accessory to a service station has substantially more than 600 square feet of selling area. Accordingly, the Department is now amending its interpretation of "uses accessory" to "automotive service stations" and TPPN #8/94 is superseded. Examiners should be guided by the considerations set forth below to determine whether the proposed retail convenience store qualifies as an accessory use and whether the application may be approved.

1. A proposed retail convenience store will be deemed accessory to the automotive service station located on the same zoning lot if the following guidelines are met:

- a. The accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building.
- b. The accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less. Selling area is all floor area of the accessory retail convenience store that is accessible to the public. If an applicant contends that a proposed retail use with selling area in excess of twenty-five percent (25%) of the zoning lot area or 2500 square feet (whichever is less) should be classified as a permitted accessory use, the application in question shall be referred to the Borough Commissioner for reconsideration.

Failure to comply with the above criteria requires that an objection be issued that the proposed use and plans do not comply with the ZR §12-10 definition of "accessory use."

If the proposed retail convenience store is deemed an accessory use, then it shall be designated in the same use group (Use Group 16) as the automotive service station and should not be designated as a Use Group 6 store.

2. In addition to the considerations of (1) above, the examiner must consider the specific zoning requirements of the underlying zoning district, including the following:

- a. In C8, M1, M2 and M3 zoning districts, automotive service stations are permitted as-of-right. Therefore, accessory retail convenience stores may be approved as-of-right as an accessory use, provided the considerations of (1) above are met.

- b. In C2, C4, C6 and C7 zoning districts, plans submitted seeking approval of a new retail convenience store accessory to an automotive service station should receive an objection indicating that a special permit must be obtained from the Board of Standards and Appeals ("BSA") , pursuant to ZR §73-211.
- c. In C1, C3, C5 and R1-R10 zoning districts, plans submitted seeking approval of a new retail convenience store accessory to an automotive service station should receive an objection indicating that a variance from the BSA must be obtained.

3. Applications to establish a new retail convenience store which is accessory to an existing automotive service station that was established under a BSA resolution on or after December 15, 1961 should be referred to the BSA.

If the existing automotive service station was established under a BSA variance, exception or permit prior to December 15, 1961, the application shall be reviewed to determine if the plans comply with the ZR §12-10 definition of incidental alteration and whether such incidental alteration is permitted pursuant to ZR §11-412. If it is determined that the proposed alteration is not permitted pursuant to ZR §11-412, the application shall be referred back to the BSA or other authorizing agency. If the alteration is permitted, the application may be approved provided the considerations of (1) above are met.

4. In any zoning district where a legal non-conforming automotive service station exists, a new retail convenience store which is accessory to the existing automotive service station may be established within an existing legally non-conforming automotive service station building, subject to Article 5 of the Zoning Resolution and subject to the considerations of (1) above.

RCV:KH:sr

