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TECHNICAL
POLICY & PROCEDURE NOTICE #8/94

TO: Distribution

FROM: Richard C. Visconti, R.A.
First Deputy Commissioner *Richard C. Visconti*

DATE: July 28, 1994

SUBJECT: Retail Convenience Stores Accessory to
Automotive Service Stations Use Group 16

SUPERCEDED: Technical Policy & Procedure Notice #3/94 (new items in bold)

REFERENCE: BSTM No. 135, Item No. 5

SPECIFICS:

The Appellate Division, First Department in Exxon v. Board of Standards and Appeals (July 11, 1989) held that the Zoning Resolution ("ZR") §12-10 definition of "automotive service station" does not provide an exclusive list of uses permitted on the same tract of land 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 if it is determined that the convenience store qualifies as an accessory use. Examiners should follow procedures **set forth below** to determine whether the proposed convenience store qualifies as an accessory use.

In reviewing an application to locate an accessory retail convenience store on the same zoning lot as an automotive service station, an initial determination should be made based upon the underlying zoning district.

In C8, M1 M2 and M3 zoning districts

An automotive service station is permitted as-of-right in these districts and the retail convenience store should be deemed accessory if it meets the following guidelines:

1. The accessory retail use shall be located on the same zoning lot as the service station and within a completely enclosed building.
2. The accessory retail use shall not occupy more than 600 sq. ft. of selling space.
3. There shall be a note on the plan that there will be compliance with all Fire Department rules and regulations.
4. In case of self-service stations, the certified attendant to man the pumps cannot be the same person who attends the store. This shall be noted on the Certificate of Occupancy.

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 convenience store is deemed an accessory use, then it is in the same Use Group 16 category as the automotive service station and should not be designated as Use Group 6 store.

In C2, C4, C6 and C7 districts

An automotive service station located in these districts requires a BSA special permit pursuant to ZR §73-211.

Zoning lots subject to prior BSA resolution

If the automotive service station was established under a prior BSA resolution, the application shall be reviewed to determine if the plans comply with the ZR §12-10 definition of incidental alterations. If it is determined that the plans do not constitute an incidental alteration, the application should be referred to BSA.

Legally existing non-conforming automotive service station:

An accessory retail convenience store may be established within the existing automotive service station building, subject to ZR §52-20.