

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12630, of Banks and Isen, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 3105) to permit an amusement arcade as an adjunct commercial use to a hotel in the R-5-D District on part of the first floor at the premises 1501 Rhode Island Avenue, N.W., (Square 195, Lot 145).

HEARING DATE: April 19, 1978
DECISION DATE: September 2, 1978

FINDINGS OF FACT:

1. The subject property is located at the northwest corner of the intersection of Rhode Island Avenue and 15th Street, N.W., and is known as 1501 Rhode Island Avenue, N.W. It is in an R-5-D District.
2. The subject property is improved with a Holiday Inn. The last Certificate of Occupancy was issued on January 30, 1978 and permitted the use of all floors and basement for a hotel of 214 units.
3. In February, 1977 the applicant converted the conference room of the hotel, located on the first floor, to a game room as a hotel adjunct for the use of hotel guests. In the game room are three video games and five pinball machines. Such conversion was accomplished without applying for a Certificate of Occupancy.
4. On November 11, 1977, the Zoning Administrator denied the application for a Certificate of Occupancy to use part of the first floor of the subject property as an amusement arcade, as a hotel adjunct, since the R-5-D District did not permit the proposed use unless approved by the Board.
5. The applicant presented no evidence that there was anything exceptional, extraordinary or unique about the subject premises, nor that there would be a practical difficulty or undue hardship upon the owner if the variance was not granted.

6. There is presently pending before the Zoning Commission proposed amendments to the Zoning Regulations concerning the regulation of mechanical amusement machines. The Board finds that the present regulations use unclear, especially as to the status of those machines which are not the primary use of the premises as in this case.

7. There is no direct entrance to the gameroom from the outside of the subject building.

8. No part of the game room or the entrance thereto is visible from a sidewalk.

9. No sign or display indicating the existence of the game room is visible from the outside of the building.

10. The hotel is of sufficient size and character so that the financial support of the proposed arcade is expected to be furnished entirely or substantially by the hotel guests.

11. Other commercial uses as accessory uses and appropriate adjuncts to a hotel presently exist in the subject hotel.

12. Advisory Neighborhood Commission 2B, the Dupont Circle Citizens Association, the North Dupont Community Association and the Kalorama Citizens Association opposed the granting of the application on several grounds. First, the opposition alledged that there was the potential for misuse of pinball machines in a residential district since the Zoning Regulations do not provide guidelines for the use. Second, if the subject machines are allowed others might be brought in which would be of a sexually oriented variety which would be deleterious to the neighborhood. Third, pinball machines are not a proper use for the subject residential area since the Zoning Regulations state that pinball machines and amusement arcades are first allowed in a C-3 District. Fourth, if the variance is granted, then many other enterprises in the residential districts would apply for similar relief. Fifth, arcades are readily available in a C-4 District within several blocks of the subject property. Sixth, the subject use is neither a viable nor an adjunct use to a hotel, in the same sense as other services such as flower shops, beauty parlors, and newsstand. Seventh, the Zoning Commission has before it the entire issue of what constitutes an amusement enterprise and where they are allowable and the Board should therefore await the text amendment to be issued by the Zoning Commission.

13. The Board is required to give great weight to the issues and concerns of the Advisory Neighborhood Commission. As to those issues and concerns, the Board finds that the proposed machines are proposed as an incidental use to the main hotel use of the property, that use of the machines would be for patrons of the hotel, and that there would be no outside evidence that the machines were even there. In this sense, the machines are no different from washers-and-dryers set up as a laundry room in an apartment house. The Board finds that the specific machines proposed would not display "specified sexual activities" or "specified anatomical areas", as those terms are defined in the Zoning Regulations. The Board therefore finds that such machines would not have an adverse effect on the occupants of the hotel or on the neighborhood. The Board finds that the machines as proposed are essentially accessory to the hotel use, and are not a principal use which would require C-3 or less restrictive zoning. The Board finds that each case must be judged on its own set of facts and circumstances, based on the record before the Board. The decision herein flows from the record here, and is not dispositive of any other cases. The Board finds that it must decide this case on the basis of the present Regulations, not as such regulations may be amended in the future.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the requested variance is a use variance, the granting of which normally requires the showing of some exceptional or extraordinary conditions of the property involved which could create an undue hardship for the owner. In this case, the issue presented directly turns on whether the use is incidental and subordinate to the main use, and as such could be considered as a commercial adjunct use to the hotel.

As previously enumerated in the Findings of Fact and as pointed out in its response to the issues and concerns of the ANC and the citizens associations, the Board is of the opinion that the said machines are a hotel service provided to guests and more particularly young guests. The machines are not sexually oriented. They are not advertised from outside the hotel. There is no direct entrance to the game room from the outside, nor can it be seen from the outside. The game room is supervised. The Board, as below listed, intends to create further safeguards.

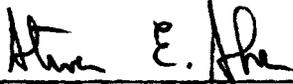
Based on the entire record, the Board concludes that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan.

Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of one year, which may be renewed at the discretion of the Board upon the filing of a proper application.
2. There shall be a maximum of eight mechanical amusement machines.
3. No machine shall be used to display specified sexual activities or specified anatomical areas.
4. There shall be no direct access to the amusement arcade from the exterior of the building, and no sign or other indication of its presence from the exterior of the building. Access shall be from the lobby of the hotel only.
5. Use of the arcade shall be limited to the patrons of the hotel.

VOTE: 4-0 (William F. McIntosh, Charles R. Norris, Chloethiel Woodard Smith and Leonard L. McCants to GRANT).

ATTESTED BY:



STEVEN E. SHER
Executive Director

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

FINAL DATE OF ORDER: _____

18 JAN 1979