GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 13055, of John Dashtara, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from retail sales of books, magazines, novelties, records and other related items (sexually oriented business establishment) to a family amusement center in a C-2-A District at the premises 3255 M Street, N.W., (Square 1207, Lot 893).

HEARING DATE: October 17, 1979
DECISION DATE: November 7, 1979

FINDING OF FACT:

1. The subject property is located on the north side of M Street between Potomac Street and Wisconsin Avenue, N.W. and is known as 3255 M Street, N.W. It is in Georgetown and is in a C-2-A District.

2. The subject site is 3,190 square feet in area and is improved with a one story building which is in a dilapidated condition.

3. A Certificate of Occupancy No. B-101131 was issued February 7, 1977, authorizing the use of the subject premises for "retail sales of books, magazines, novelties, records and other related items".

4. The existing use is a sexually-oriented business establishment which was originally established as a matter of right. This use became non-conforming on September 8, 1977, when the Zoning Commission by its Order No. 180 promulgated emergency regulations which prohibited sexually-oriented businesses in the C-2-A District and permitted such uses only by special exception in C-3 or less restrictive Districts. Zoning Commission Order No. 188, by which the Commission subsequently promulgated corresponding permanent regulations, had specific reference to the C-2-A District on M Street in Georgetown and this particular use.

5. The lessee of the subject premises, Time-Out Family Amusement Center, Inc.,, hereinafter referred to as "Time-Out" proposes to use the premises as a family amusement center. The proposed use will be owned and operated by "Time-Out", a company having a chain of twenty-four family amusement centers with its headquarters located in Manassas, Virginia. The "Time-Out" located closest to Georgetown was opened in 1973 in Springfield Mall, Springfield, Virginia. "Time-Out" also operates a family amusement center at One Penn Plaza, New York, New York. Other stores are located at Wheaton Plaza, Laurel and Frederick Towne Mall. "Time-Out" owns and operates all of its family amusement centers and does not franchise.

6. "Time-Out" testified that it offers its patrons a variety of the latest "state of the art" electronic and mechanical amusement machines. Eighty percent of each store's games are rotated throughout the year to maintain a fresh, challenging product. To facilitate maintenance and to insure a clean environment, "Time-out" enforces a policy of no smoking, food, beverages, gambling or loitering. These rules are enforced through "Time-Out's" uniform security attendants who are visible on duty during every operating hour. In addition to security and crowd control, the attendants provide change and helpful instruction to patrons of the facilities. All store employees are governed by a 160 page policy and procedure manual compiled over a seven year period to guide them in dealing with every possible situation. "Time-Out" supports its store operations with a regional manager network to provide close supervision of all stores. In addition to the regional manager, each store receives a detailed physical inspection by company headquarters regularly to insure compliance with established policies and procedures.

7. The subject property is located within the C-2 District on M Street in Georgetown. M Street, together with Wisconsin Avenue, in Georgetown is a major commercial center in Washington which enjoys a continual flow of pedestrian traffic made up of shoppers, sightseers. diners and others. On evenings and weekends when the weather is good, the sidewalks along M Street and Wisconsin Avenue in Georgetown are generally densely packed with pedestrian traffic. M Street contains a variety of commercial establishments ranging from French style restaurants and designer clothing stores to Woolworth's,discount record and clothing stores, fast food restaurants and trinket shops.

8. The lessee proposed to operate the subject premises seven days a week, between the hours of 10:00 a.m., and 12:00 midnight.

9. A family amusement center is first permitted in a C-3 District. The existing use is only permitted by special exception and then is first permitted in a C-3 District.

10. The lessee testified that the nature of "Time-Out's" business is that of a neighborhood facility in several respects. The entertainment provided, which consists of a variety of electronic and mechanical amusement games, is suitable for all age groups. The clientele is expected to consist of people who reside, shop or visit in Georgetown.

11. There was testimony that the patrons will be well-supervised by a trained staff according to an established, written procedures manual, and the store itself will be well-maintained, pursuant to the written standards for cleanliness contained in the procedures manual. In addition, "Time-Out" has in the past and expects to continue to engage in a variety of civic minded activities which have included activities for school age children, including children with learning disabilities.

12. There was testimony that the family amusement center is a type of use which will not be objectionable. The lessee testified that the nature of "Time-Out's" business is to provide spur-of-the-moment entertainment for passing shoppers, sightseers, diners and others. "Time-Out", being dependent on traffic generated by its neighbors, has a strong incentive to upgrade the area. The family amusement center will represent a substantial capital investment and will be well-designed. The storefront will be repaired and restored pursuant to a rendering presented to the Board (Ex. 29 of the record) and will be a vast improvement over the existing condition of the subject premises. As noted, the store will be well-maintained and the staff will not permit smoking, food, beverages, gambling or loitering on the premises.

13. There was testimony that the family amusement center will not affect adversely the present character or future development of the neighborhood. The lessee testified that with respect to the present character of the area, the uses located within 300 feet of the subject property include several parking lots, several restaurants and bars, a cafe, a sandwich shop and a deli, a dry cleaners, a variety of designer and discount clothing and shoe stores, two record stores, a hardware store, a stationer's, a carpet store, a mirror and glass store, and a frame shop. The subject property is, as noted, located within the C-2 District and the present character of the neighborhood is that of a major commercial center containing a wide variety of establishments which generate pedestrian traffic.

14. The applicant testified that although a family amusement center is classified as a C-3 use, the character of the lessee's use is less or no more intense than several of the types of uses permitted as of right in a C-2 or C-1 District. For example, in a C-1 District a bar or cocktail lounge, and off-premises alcoholic beverage sales, a drug store, a grocery store, a lunch counter, lunchroom, cafe or restaurant, a newsstand, a tobacco products store, and a variety store are permitted as of right, and in a C-2 District a billiard parlor, a pool hall, a bowling alley, a laundry or dry cleaners, an auction house, a drive-in restaurant, an assembly hall, auditorium or public hall, and a theater, including a motion picture theater, are permitted.

15. There was testimony that with respect to future developments, the family amusement center will not adversely affect the future development of the area on the grounds that it is not anticipated that the existing C-2-A zoning of the area or its character as a major commercial center will change. The area in Georgetown between M Street and the Potomac River is currently undergoing extensive redevelopment, including the construction of an enclosed shopping mall south of M Street which will include the premises 3222 and 3220 M Street, within 300 feet of the subject property. The proposed commercial use is not sought to be retained in a residential district. The proposed use is a commercial one, located in a major commercial area, and is similar in character to the commercial uses permitted there as a matter of right.

16. The applicant testified that the family amusement center will harmonize with the surrounding uses and structures. The character of the lessee's enterprise is such that it would generate no more traffic than some of the existing or permitted uses. With respect to the structure, it will be in harmony with the surrounding structures, since its external features will be repaired and restored by "Time-Out". "Time-Out" will utilize a window display, rather than a sign, and the display will be tasteful and will harmonize with the character of Georgetown. Noise and vibrations from the mechanical amusements will be screened by the masonary division wall and whatever additional soundproofing or other materials are required. "Time-Out" has been able to do this in its mall locations where the stores are separated only by plasterboard, and will be able to do so within the subject brick structure. With respect to traffic, there are, several commercial parking lots within 300 feet of the subject property. The subject property is located on M Street which is a major arterial. Any vehicular traffic generated by "Time-Out" would be a minimal addition to the existing traffic load. "Time-Out" expects to provide spur of the moment entertainment for the existing pedestrian traffic, however, and does not anticipate that it would generate any substantial vehicular traffic. No parking will be provided. The Board notes that parking could not be provided under any alternative use inasmuch as the structure occupies one hundred percent of its lot.

17. The application was supported by Georgetown merchants who operate establishments which have branches in both Georgetown and Springfield Mall in Springfield, Virginia, where, as noted, the nearest "Time-Out" is located. These merchants testified that in their opinion, the proposed use would not adversely affect the area, since it would provide entertainment suitable for all age groups in a well-maintained and well-supervised setting. They also indicated that they did not consider electronic or mechanical amusement machines out of keeping with the character of the Georgetown commercial center. The merchants presented a petition in favor of the grant of the requested relief and signed by the owner or manager of sixty-four Georgetown establishments. These establishments included several of those located within 300 feet of the subject premises. "Time-Out" also submitted letters of support from the vice-president and general manager of the Springfield Mall Merchants Association. The Merchants Association letter praised the cleanliness and orderliness of the "Time-Out" operation and stated that the Association was unaware of any complaints from fellow merchants regarding the "Time-Out" operation.

18. There were letters in the file and further testimony at the public hearing in favor of the application on behalf of neighborhood business men. The grounds for approval of the application were basically as follows:

a. The proposed use would terminate the present sexually oriented business which the merchants opposed.

b. The subject property, at present, is in a dilapidated condition. The new business would improve the appearance of the property.

c. The proposed use is not out of harmony with its physical location.

19. There was opposition to the granting of the application by individual residents, the Citizens Association of Georgetown and the Georgetown Businessmen's Association. The opposition was expressed in letters to the record and by testimony at the public hearing. The grounds of the opposition were basically as follows:
a. The subject M Street area is properly regarded as an area of retail establishments to serve the entire community. There are restaurants, retail stores and retail service establishments which conform to the C-2-A zoning. The proposed use is not a C-2-A use, is not a neighborhood facility and does not conform to the character of the neighborhood.

b. The proposed use would attract teenagers and younger children who would not otherwise be attracted to a street housing many restaurants and bars. There is a head shop in the immediate vicinity of the subject premises. The subject area is not a suitable area for children.

c. The proposed use would create more pedestrian traffic on a street that is already overcrowded. The proposed use would encourage loitering.

d. The proposed use will intensify the already tawdry nature of the subject M Street west of Wisconsin Avenue.

e. The fact that the proposed use is less offensive to the neighborhood than the existing use is no reason to grant the application.

The Board, for reasons stated below in its Conclusion of Law and in the conditions it will impose on the granting of the application will respond to the issues and concerns of the opposition.

20. Advisory Neighborhood Commission - 3A did not appear at the public hearing. The Board left the record open for ANC to submit a recommendation. By letter of October 19, 1979, ANC-3A reported that at its regular meeting of October 3, 1979, the Commissioners present voted unanimously to oppose the granting of the application. No grounds were stated for the recommendation.

The Board is required by statute to give great weight to the issues and concerns expressed by the ANC. In this instance, the Board cannot give great weight since there were no specific grounds stated for the recommendations which the Board could address.

CONCLUSIONS OF LAW:

This Board has jurisdiction to grant the requested relief as a special exception pursuant to Sub-section 8207.2 of the Zoning Regulations. Based on the record, no variances of any type are required.

This application involves a change of nonconforming use pursuant to Sub-section 7104.2 of the Zoning Regulations. As set forth in Finding No. 8 above, the existing use is nonconforming and the proposed use is permitted in the most restrictive District in which the existing use is, by special exception, permitted.

In exercising the authority under Sub-section 7104.2, the Board is controlled by the provisions of Section 7109. The Board concludes that the applicant has substantially complied with the requirements of Section 7109. The proposed use is a neighborhood facility pursuant to Sub-paragraph 7109.1111 for the reasons set forth in Finding No. 3 above. The proposed use will not be objectionable pursuant to Sub-paragraph 7109.1112 for the reasons set forth in Finding No. 12 above. The proposed use will not affect adversely the present character or future development of the neighborhood pursuant to Sub-paragraph 7109.112 for the reasons set forth in Finding No. 13. The architecture, signs and soundproofing of the proposed use are adequate and no parking need be provided pursuant to Sub-section 7109.12 for the reasons set forth in Finding Nos. 12 and 16 above. The Board further concludes that Sub-paragraph 7109.113 is not applicable to the instant application inasmuch as the proposed use is a commercial one in a commercial District as set forth in Finding No. 16 above.

The Board further concludes that with reference to Section 8207.2, based on the entire record, the relief sought is in harmony with the general intent and purposes of the Zoning Regulations and will not tend to affect adversely the use of the neighborhoring property.

Accordingly, it is ordered that this application for change of nonconforming use is GRANTED SUBJECT to the following CONDITIONS:

1. There shall be no exterior flashing or neon lights on the outside of the building.

2. Any illumination inside the premises shall be set back at least eighteen inches from the face of the windows.

3. Any person under twelve years of age shall be accompanied by an adult at all times while on the premises.

4. The hours of operation from Monday to Saturday shall not exceed 10:00 a.m. to 10:00 p.m. The hours of operation on Sunday shall not exceed from 1:00 p.m. to 9:00 p.m.

5. No child fourteen years of age or younger shall be admitted on days when school is in session between the hours of 10:00 a.m. and 3:00 p.m.

6. Approval of this application shall be for a period of THREE YEARS.

VOTE: 3-0 (Walter B. Lewis, Charles R. Norris, and William F. McIntosh to GRANT; Chloethiel Woodard Smith and Leonard L. McCants not voting, not having heard the case).

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 4 FEB 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.