within ten (10) days. It shall be served upon all other parties or representative parties pursuant to designations made under 5.212.

5.42 A motion for reconsideration, rehearing, or reargument shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion, and the relief sought. Within seven (7) days after a motion has been filed and served, any other party may file an answer in opposition to or in support of the motion.

On October 31, 1983, the Sheraton filed a Motion for Reconsideration, Rehearing or Reargument, alleging that:

1. The Board erred in finding that the Wardman Tower structure contained only sixty residential units as of May 12, 1958. The preponderance of the evidence shows that the Wardman Tower had 209 units at that time.

2. As a result of the error set out in paragraph 1 above, the Board erroneously concluded that the Sheraton is required to have 649 spaces for the existing Sheraton facility and that the Sheraton did not have on file a valid parking plan.

3. The Board erroneously denied Sheraton's Motion to Dismiss on the grounds of lack of timeliness, laches and estoppel.

Copies of the Motion were served on representatives of the appellant.

On November 29, 1983, William H. Carroll filed an "Answer in Opposition to Intervener's Motion for Reconsiderations, Rehearing and Reargument." Also included in that document was a Motion for Reconsideration, Rehearing or Reargument on behalf of the appellant. Mr. Carroll was President of the appellant at the time of hearings on the appeal, and appeared as a witness at the hearings. He signed the Motion as "Counsel for Appellant." The appellant's Answer argued that the Sheraton's Motion was devoid of new evidence and that the Motion merely stated that the Sheraton disagreed with certain aspects of the Board's decision.

In its own Motion, the appellant alleged that the Board erred in:

1. Not considering all evidence of the building's violation of height restrictions.

2. Not considering the appellant's evidence showing that the doctrine of res judicata did not preclude the Board from deciding the appellant's argument that the roof structures are in violation of the Zoning Regulations and the Act of 1910.

3. Determining that the public assembly use of the property was not a primary use by relying on prior orders of the Board, by not considering all relevant square footage ratios and by not allowing testimony on the impact on the neighborhood.

4. Not considering evidence as to business generated by the convention use.

5. Determining that prior orders of the Board did not require 898 parking spaces to be provided.

Copies of the Answer and Motion were served on counsel for the Sheraton.

On December 2, 1983, the Sheraton filed a motion to strike the appellant's Answer and Motion because:

1. The Answer and Motion were not timely filed.

2. Mr. Carroll may not appear as both witness and counsel for the appellant in the same proceeding.

In consideration of the various Motions and responses, the Final Order, the applicable Rules and the record itself in this matter, the Board finds as follows:

1. The Sheraton's Motion was timely filed.

2. The appellant's response to the Sheraton's Motion was not timely filed. Under Section 1.62 of the Rules, when service is made by mail, two days shall be added to the time provided. The deadline for response to the Motion was thus November 9, 1983. The response was filed on November 29, 1983, twenty days late.

3. The appellant's Motion was untimely filed. Even assuming that the time for filing a motion for reconsideration should be calculated on the basis of the delayed receipt of the original order by representatives of the appellant, the appellant had only until November 8, 1983, to file such a motion. The Motion was filed on November 29, 1983, twenty-one days late.

4. Mr. Carroll's filing of the Motion is inconsistent with the provisions of the American Bar Association Code of Professional Responsibility.

5. There is no basis to grant either of the Motions to reconsider or rehear. Neither motion presents or proffers new evidence which could not reasonably have been presented at the original hearings. Neither motion raises any new issues which were not completely and comprehensively raised in the record and which were disposed of in the original order. Both Motions merely restate issues and positions already considered and decided. As to the appellant's allegation that it was denied due process in consideration of the effect of prior orders of the Board, that subject was extensively discussed at the hearing and in the briefs of the parties. The basis of the Board's decision is explicitly addressed in the order. It is clear in the record that the appellant disagrees with the Board's decision on this issue, but it presents no different evidence or argument to compel the Board to change its decision.

The Board concludes that it has committed no error of fact or law in deciding this Appeal. Accordingly, it is therefore ORDERED that the Motions for Reconsideration, Rehearing or Reargument filed by the Sheraton and the appellant are denied. The appellant's request that the Board direct revocation of the occupancy permit is therefore moot.

DATE OF DECISION: December 7, 1983

VOTE: 4-0 (Walter B. Lewis, William F. McIntosh and Carrie L. Thornhill to deny, Charles R. Norris to deny by proxy, Douglas J. Patton abstaining).

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

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

FINAL DATE OF ORDER: DEC 23 1983

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."

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