

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13515, of John Dashtara, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to modify condition No. 4 of BZA Order No. 13055, issued February 4, 1980, to extend the hours of operation of a family amusement center to midnight each night in a C-2-A District at the premises 3255 M Street, NW., (Square 1207, Lot 839).

HEARING DATE: July 15, 1981
DECISION DATE: September 2, 1981

FINDINGS 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. The property is in Georgetown and is in a D/C-2-A District.
2. The site is 3,190 square feet in area and is improved with a single-story building. A public alley adjoins the building at the rear of the subject site, but is accessible only by emergency egress from the structure.
3. On February 4, 1980, the Board of Zoning Adjustment issued an Order in Application No. 13055 granting the applicant herein a special exception under Sub-section 7104.2 of the Zoning Regulations to change a non-conforming use from a sexually oriented business establishment to a family amusement center. One of the conditions in the Board's Order was that the hours of operation of the center not exceed 10 a.m. to 10 p.m. from Monday through Saturday, and 1 p.m. to 9 p.m. on Sunday. The applicant is now seeking a modification of that condition in order to operate the center until 12 midnight on all nights. No other changes to the subject site or its manner of operation approved by the Board in Application No. 13055 are sought by this application.
4. The restriction of hours of operation and limitation on ages of persons using the facility were imposed by the Board in the prior Order based on the applicant's proffered description of the facility as a "family" amusement center designed to attract clientele of all ages.
5. Section 7109 of the Zoning Regulations requires adherence by the Board to certain provisions when considering cases involving changes or extensions of non-conforming uses.

The Board specifically concluded in its Order in Application No. 13055 that the applicant had substantially complied with Section 7109. Specifically, the Board concluded that the proposed use is a neighborhood facility, that it will not be objectionable, that it will not adversely affect the present character or future development of the neighborhood, and that the architecture, signs and soundproofing of the use are adequate and no parking need be required. There was no evidence adduced in this application No. 13515 to indicate a change in conditions warranting reversal of the Board's previous findings and conclusions in that regard. Testimony was given complaining of the adverse effect of drunken or rowdy behavior and noise generated by the M Street commercial corridor on neighboring residential areas. However, the witness could not attribute any of the noise to this facility. There is virtually no sound transmitted from the games to the outside by virtue of the double entry door design of this facility. A letter from the owner of a residential property located in a commercial district similarly complained of general noise and rowdy behavior and littering of the alley to the rear of the site with broken beer bottles emanating from M Street. No alcoholic beverages and no eating or drinking of any kind are allowed at this facility. No convenient access may be had to the rear alley from the vicinity of this facility since the alley entrance lies several hundred feet away around the corner on Potomac Street. The Board finds no probative evidence that the subject facility has caused any problems since it has been in operation.

6. The subject site is in an area of Georgetown where there is substantial pedestrian traffic. Surrounding uses include parking lots, restaurants and bars, cafes, a sandwich shop and deli, record stores, hardware stores, dry cleaners, discount and designer clothing and shoe stores, hardware stores, stationers, carpet store, and other uses. The family amusement center provides entertainment to pedestrians drawn to this area by neighboring uses. Mechanical rides and electronic games are provided for all age groups, but the primary patrons are older teenagers and adults. Uniformed personnel, providing enforcement of strict house rules prohibiting eating, drinking, smoking and disruptive behavior or abusive language, are on duty during all hours of operation. There is no evidence in the record to indicate that any of the conditions of the Board's previous order have not been adhered to by the applicant since operation commenced in May of 1980.

7. Numerous letters of support from surrounding merchants and others indicating the compatibility of the use with the present character and future development potential of the neighborhood were submitted in Application No. 13055 as well as in the subject application. In the current application, the owners of both properties abutting this facility supported the request to extend the hours of operations.

8. The applicant testified that it knew of no previous complaints as to the nature of its operation, nor of any criminal activity inside the facility amongst or against patrons.

9. Persons previously opposed to the initial request for special exception relief, including one of the abutting owners and the Business and Professional Association of Georgetown, now have no objection to continued use of the facility at extended hours of operation because the well-managed nature of the operation of the facility has now been proven.

10. Many of the uses surrounding the subject site have late hours of operation. Many of the bars and lounges in the immediate area stay open until midnight or 2 a.m. or 3 a.m. Many retail shops and most restaurants in the immediate area of the subject site are open until midnight. Bars and lounges containing electronic games are not limited in their hours of operation.

11. The surrounding businesses do not primarily attract "families" with children. The hours of operation of the subject facility must be designed with the average clientele proposed by the applicant in mind.

12. The Office of Planning and Development recommended that the requested relief be granted. The OPD found no indication that extending the hours of operation would have any deleterious effect on neighboring uses. The OPD noted on the basis of reports from the Metropolitan Police that this facility had the least number of reported disturbances occurring in its environs of any in this block of M Street in 1980. The Board concurs in the findings and recommendation of the OPD except as qualified below as to the hours of operation for Sundays.

13. Advisory Neighborhood Commission - 3A, by letter of July 9, 1981, voted not to oppose this application although it was concerned about the intensification of a continuing non-conforming use.

14. A petition signed by eighty residential property owners was submitted in opposition to the requested relief on the basis that extension of the hours would tend to increase the adverse impact on the area residents of noise and disruptive behavior of persons patronizing commercial uses along M Street. As noted in Finding of Fact No. 4, there was no direct evidence that such adverse effects are attributable to the operation of this facility which does not allow drinking on the premises.

CONCLUSIONS OF LAW AND OPINION:

This Board has jurisdiction to grant the requested relief as a special exception pursuant to Sub-sections 8207.2 and 7104.2 of the Zoning Regulations. No variances of any type are required.

In exercising the authority under Sub-section 7104.2, the Board is controlled by the provisions of Section 7109. As more specifically set forth in the Board's Order in Application No. 13055, the Board concludes that the applicant has substantially complied with the requirements of Section 7109. The use is a neighborhood facility pursuant to Sub-paragraph 7109.1111. Extension of the hours of operation of a previously approved use, as hereinafter qualified, will not be objectionable pursuant to Sub-paragraph 7109.1112, based on the weight of the evidence. The proposed extension of hours of operation of the use will not affect adversely the present character or future development of the neighborhood pursuant to Sub-paragraph 7109.112. There is no evidence to require modification of the Board's previous conclusions that the architecture, signs and sound-proofing of the use are adequate, and that no parking need be provided pursuant to Sub-section 7109.12. 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.

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 neighboring property. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the CONDITION that the hours of operation from Monday through Saturday be extended to midnight. The request to extend the hours of operation on Sunday is DENIED. In all other respects, the conditions contained in the previous BZA Order No. 13055, dated February 4, 1980, are to remain in full force and effect.

VOTE: 4-1 (Lindsley Williams, William F. McIntosh, Charles R. Norris and Connie Fortune in FAVOR; Douglas J. Patton OPPOSED).

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

FINAL DATE OF ORDER: 19 NOV 1981

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.