

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13648, of Hoffman Realty, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 5102) to use part of the first floor of the subject premises as an amusement arcade in a C-2-A District at the premises 900-902 H Street, N.E., (Square 933, Lots 12 and 13).

HEARING DATE: January 20, 1982
DECISION DATE: March 3, 1982

FINDINGS OF FACT:

1. The site is located at the northeast corner of the intersection of H and 9th Streets and is known as premises 900-902 H Street, N.E. It is in a C-2-A District.
2. The site consists of two lots with a land area of 3,010 square feet. Approximately ninety percent of the site is developed with a single commercial structure of one floor which is now used as a clothing store.
3. The site is in the midst of the H Street commercial corridor, which extends east and west for several blocks. North of the site, beyond a ten foot wide public alley, are row dwellings. Across H Street south of the site is a large vacant lot, following by a recently-constructed eight-story apartment house for the elderly and handicapped. The site is in a C-2-A District. North of the site is R-4 zoning. The vacant lot and apartments south of the site are zoned C-2-B.
4. The applicant's lessee proposes to use about one-quarter or 587.88 square feet of the floor area of the building as an amusement arcade consisting of about twenty-five mechanical amusement machines and a manned money exchange booth. A separate entrance from H Street would be provided to enter the arcade. The arcade would be partitioned from the clothing store.
5. The lessee testified that because of the existing economic conditions, business is bad and he needs extra cash flow to keep the clothing store business viable.
6. Amusement arcades are first permitted in C-3 Districts. They are not permitted in C-2 Districts, which under the Zoning Regulations are envisioned primarily as

convenience shopping areas and are usually mapped contiguous to residential districts. The subject site is separated from a row dwelling area by a ten foot wide alley.

7. The lessee did not introduce other C-2 uses into the site because they already exist in the neighborhood and he could not compete.

8. The owner of the site testified that if the subject lessee should go out of business he might find a more profitable use of the site than the present use. The owner submitted no evidence into the record that the site could not be used for a purpose for which it was zoned. The applicant presented no testimony or evidence that the site was affected by an extraordinary or exceptional situation or condition. The applicant presented no testimony or evidence that the owner would suffer an undue hardship if the Zoning Regulations were strictly applied.

9. The Office of Planning and Development by report dated January 7, 1982, recommended that the application be denied. The OPD found no hardship inherent in the property itself which precludes it being used for C-2 purposes. The OPD further reported that the proposed use as an amusement arcade would be contrary to the planning objectives as embodied in the zoning, for the H Street commercial corridor. The Board concurs in the findings and recommendation of the OPD.

10. Advisory Neighborhood Commission 6A made no recommendation on the application.

11. The record was left open at the end of the public hearing for the applicant to submit a memorandum evidencing how his hardship qualifies him for relief under a use variance. Nothing was submitted.

CONCLUSIONS OF LAW AND OPINION:

Based on the record, the Board concludes that the applicant is seeking a use variance, the granting of which requires a showing through substantial evidence of a hardship upon the owner arising out of some unique or exceptional condition in the property so that the property cannot be used for purposes for which it is zoned. The Board further must find that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The Board concludes that there is no hardship in the subject property. The applicant's hardship is a personal one based on finances. A personal financial hardship is not a basis to support a use variance. The applicant has not met the burden of proof. The Board need not consider what, if any, adverse impact there might

be if the relief were granted. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 5-0 (Connie Fortune, William F. McIntosh, Douglas J. Patton and Charles R. Norris to DENY; John G. Parsons to DENY by PROXY).

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

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

FINAL DATE OF ORDER: JUN 21 1982

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."