

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13659, of Henry B. and Lucille J. McCall, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 5102) to use the first and second floors of the subject premises as an amusement arcade in a C-2-A District at the premises 5123 Georgia Avenue, N. W., (Square 3002, Lot 48).

HEARING DATE: January 27, 1982
DECISION DATE: February 3, 1982

FINDINGS OF FACT:

1. The subject property is located on the east side of Georgia Avenue between Gallatin and Hamilton Streets, N. W. and is known as premises 5123 Georgia Avenue, N. W. It is zoned C-2-A.

2. The subject property is developed with a two story structure with basement which is currently vacant. The previous use of the structure was as a physical culture center.

3. The applicant proposes to use part of the basement and first floor as an amusement arcade containing between twenty and thirty electronic and mechanical amusement machines. The proposed use would be open from 10:00 A.M. until 3:00 A.M. and would employ three to five people. An amusement arcade is a use first permitted in a C-3 District.

4. The applicants stated that the requested relief was sought in order to better support their family and to provide employment for others.

5. The applicants presented no testimony or evidence that the property was affected by any exceptional or extraordinary condition. There is nothing to distinguish this property from other similar commercial establishments along Georgia Avenue. The applicants further did not demonstrate that the strict application of the Zoning Regulations would cause them a hardship.

6. The property can be used for a commercial purpose permitted in a C-2 District. The last use of the premises as a physical culture center is a C-2 use.

7. There was opposition to the application present at the public hearing. It was the opposition's opinion that

the arcade would have an adverse effect on the neighborhood. It was alleged that the arcade would provide a meeting place for undesirables, that children in the area can not afford to play the machines, that parking in the area is limited, that the use will promote loitering in the area and that the arcade would be too close to Truesdale Elementary School and a neighborhood liquor store.

8. Lorenzo Allen, Chairman of Advisory Neighborhood Commission 4D, by letter dated January 25, 1982, stated the ANC's opposition to this application based on the opposition of local merchants, residents and Truesdale Elementary School.

9. The Office of Planning and Development by memorandum dated January 22, 1982 and testimony at the hearing recommended that the application be denied. The OPD found that there is no unique hardship inherent in the property that would preclude the premises from being used as prescribed by the Zoning Regulations and further, that the introduction of an amusement arcade would be contrary to the objectives of the Zoning Regulations for the Georgia Avenue commercial corridor. The Board concurs with OPD's findings.

CONCLUSIONS OF LAW AND OPINION:

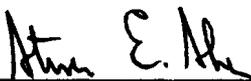
Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a use variance, the granting of which requires proof of a hardship that is inherent in the property itself. The Board concludes that no such hardship exists as evidenced by the previous use of the property. Further, the Board concludes that applicants request is based on personal reasons and that they have not met the burden of proof. No probative evidence was offered that the property could not be put to a use permitted in the C-2-A District.

The Board further concludes that the relief cannot 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 be DENIED.

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

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: MAY 24 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."