

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13752, of G.R. Middleton, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 5101) to use the first floor of the subject premises as an amusement arcade (video and pin ball games, not sexually oriented) in a C-1 District at the premises 4405 Bowen Road, S.E., (Square 5365, Lot 158).

HEARING DATE: May 26, 1982
DECISION DATE: May 26, 1982 (Bench Decision)

FINDINGS OF FACT:

1. The subject property is located on the south side of Bowen Road between Ridge Road and Southern Avenue, S.E. and is known as premises 4405 Bowen Road, S.E. It is zoned C-1.

2. The subject property is generally rectangular in shape and is improved with a vacant one-story row structure. The previous Certificate of Occupancy was issued in 1957 for retail T.V. and radio service and parts.

3. Uses surrounding the subject site include a crab house to the west, a storefront church, barber shop, hardware store, coin laundry, cleaners and gas station to the east; and residential uses in an R-2 District to the north and south.

4. The applicant proposes to establish a video amusement arcade with fifteen machines.

5. The applicant testified that the property has been posted with a "For Lease" sign for two months and that eighty percent of the responses to that advertisement have indicated a desire to use the premises as an amusement arcade. The remaining twenty percent of the responses expressed interest in a variety of uses including a carry-out, TV repair shop and a dry cleaners. The applicant testified that the premises are suitable for all the uses mentioned.

6. The applicant testified that trained security personnel will be used at the premises and that the hours of operation will be arranged to prevent school-age children from using the arcade during school hours.

7. The structure is presently undergoing renovation. The applicant desires to use the premises as an amusement arcade in order to offset the expense of the renovation.

8. Advisory Neighborhood Commission 7E, by letter dated May 14, 1982, opposed the application based on the following comments of area residents:

- a. There are too many businesses of this type in the area.
- b. This activity contributes to juvenile delinquency - The police reported that there should be close monitoring for drugs.
- c. Church officials next door to 4405 Bowen Road, S.E. stated that this would create a disturbance to the church.

The Board appreciates the concerns of the ANC, but is compelled to decide an application based on the criteria established by the Zoning Regulations. This application will be decided on the grounds set forth herein, not on the reasons set forth by the ANC which do not relate to the standards of the Zoning Regulations.

9. The Office of Planning and Development recommended that the application be denied. The OPD found that the applicant did not demonstrate that an undue hardship upon the owner of the property would result if the application were denied. Further, OPD did not identify any exceptional or extraordinary condition of the property which would lend support for a finding of hardship. The Board concurs with the findings and recommendations of the OPD.

10. Several letters and a petition in opposition in the record are part of the record.

CONCLUSIONS OF LAW AND OPINION:

Based in 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 the applicant's request is based on personal economic reasons and that he has 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: 3-0 (Walter B. Lewis, Connie Fortune and Charles R. Norris to DENY; William F. McIntosh and Douglas J. Patton not present, not voting).

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

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

FINAL DATE OF ORDER: AUG 31 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."