

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13886, of Sylvia Kotz, pursuant to BZA Order No. 13008, dated March 17, 1980, for a review of condition "b" of said Order, namely a re-evaluation of the effectiveness of the truck loading procedures at the Safeway store in a C-2-B District at the premises 1701 Corcoran Street, N.W., (Square 155, Lot 23).

HEARING DATE: January 12, 1983  
DECISION DATE: February 2, 1983  
DISPOSITION: The Board GRANTED the application WITH CONDITIONS by a vote of 5-0 (John G. Parsons, Carrie L. Thornhill, William F. McIntosh, Douglas J. Patton and Charles R. Norris to GRANT).

FINAL DATE OF ORDER: April 11, 1983

ORDER

By Order Dated April 11, 1983, the Board granted the subject application with three conditions. Condition "a" of that Order reads as follows:

"A. No more than four Safeway trucks per day shall make deliveries to the store. No more than one such truck shall be present at the store at any one time. Deliveries to the store shall take place between the hours of 6:00 A.M. and 10:00 A.M., and 4:00 P.M. and 6:00 P.M. No more than three trucks may deliver in the morning hours and no more than one truck may deliver in the afternoon."

On April 25, 1983, counsel for the applicant filed a Motion for Reconsideration by the Board of Condition "a." The basis for this motion was that:

- a. There is no evidence in the record to support the need for the limitation on the number of Safeway trucks and hours of delivery; and
- b. The Board is without authority to impose conditions which regulate the day-to-day activities of a business.

The Motion further contends that the Board's objectives may be achieved by a less-restrictive condition, as follows:

- "a. Safeway shall schedule Safeway trucks so that only one truck shall be present at the store at a time. Trucks taking the longest times to unload shall be assigned delivery times to avoid overlap."

Upon consideration of the Motion, the record in the case, and the Board's Order, the Board concludes that it was within its authority in imposing the condition at issue. Section 2 of the Zoning Act (D.C. Code, Section 5-414, 1981 Ed.) states, in part, that the Zoning Regulations are:

"designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services."

It is also well established that the Board can impose reasonable conditions on the approval of an application to insure the protection of surrounding property. The Board therefore concludes that it is proper and within the context of its authority to condition its approval of special exception relief, where appropriate and necessary, to carry out the purposes of the Zoning Regulations as stated in the Zoning Act and to protect and balance the interests of the applicant and the opposition.

The Board further concludes that the conditions imposed by its Order dated April 11, 1983, are based on the record and testimony presented at the public hearing and that condition "a" accurately reflects the delivery patterns at the subject facility as described by the applicant. The Board is of the opinion that Condition "a" of its Order is not unduly restrictive. The applicant's proposed alternative language is vague and does not suggest sufficient restrictions the applicant would apply in order to protect the adjacent residential areas from traffic or noise. The Board notes that the applicant may file a new application if, over a period of time, the operation of the subject facility in accordance with the conditions of the Board's Order proves to be unduly cumbersome or restrictive to the applicant.

Upon consideration of the foregoing, the Board concludes that the motion provides no new material evidence which had not previously been considered and that the Board has committed no error of fact or law in deciding the

application. Accordingly, it is ORDERED that the Motion for Reconsideration of Condition "a" of the Board's Order is DENIED.

DECISION DATE: June 1, 1983

VOTE: 5-0 (Douglas J. Patton, Carrie L. Thornhill, William F. McIntosh 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 28 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."

13886order/DONNIE