GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 14058, of Nelson A. Pryor, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Sub-section 3104.3) to use the subject premises as a video arcade in an R-4 District at premises 401 O Street, N.W., (Square 511, Lot 800).

HEARING DATE: October 26, 1983
DECISION DATE: October 26, 1983 (Bench Decision)

FINDINGS OF FACT:

1. The subject premises is located on the northwest corner of the intersection of 4th and O Streets, N.W. The site is in an R-4 District and is known as premises 401 O Street, N.W.

2. The subject site is approximately rectangular in shape, except for its northeast corner which is cut at an angle by New Jersey Avenue which intersects 4th Street on the eastern side of the subject square. The two segments of the eastern lot line measure 66.51 feet in length for the southern segment and thirty feet in length for the northern segment. The width of the lot is twenty-two feet. The lot area is approximately 1,980 square feet. The site is flat.

3. The site is improved with a two story brick row house located at the end of a row of other such houses. The dwelling is vacant and the front windows are boarded-up. The subject structure is in a dilapidated condition. The subject lot is overgrown with weeds and grass.

4. There is access to and from the subject site from O Street on the south and from 4th Street on the east. There is no alley access. New Jersey Avenue crosses the subject intersection on a northwest to southeast diagonal. It is a major arterial while, O Street is a collector street and 4th Street is a local traffic street.

5. The subject square and the surrounding neighborhood are developed primarily with medium density residential uses. The eastern edge of the subject square is developed with rowhouses including the subject site. The remainder of the subject square is occupied by the Bundy Public Elementary School and a large public playground. The Montgomery Elementary School is located one block to the north. The Armstrong Technical High School is located two blocks to the

east and the Dunbar High School and Community Center is one block to the southeast. The neighborhood area is developed with rowhouses.

6. The subject square is surrounded on the east, north, and west by an R-4 District which continues for approximately three blocks. To the south of the subject square the neighborhood is zoned R-5-B, R-4, R-5-D and R-5-C.

7. The subject structure was constructed in 1900 as a residence. The structure was used as a residence until 1946 when it was converted into a restaurant. A valid certificate of occupancy was obtained at that time authorizing the owner to operate a restaurant and bar or a restaurant and grill in the premises. The subject property has been vacant since April, 1978.

8. The applicant purchased the property at a foreclosure sale. He had intended to convert the structure to an apartment building. Upon investigation, he found the structure to be so dilapidated that the renovation costs would be beyond his financial means. In order to raise money for the renovations, the applicant attempted to rent the structure to a commercial tenant. Although he advertised the property in the Washington Post with favorable terms for rent or lease, short term or long term, there were no responses.

9. The applicant does not desire to serve liquor on the premises in this residential area. He has found, however, that no potential users wanted to operate the restaurant without a bar. For purposes of a restaurant-grill use, there is not enough foot traffic, not enough car traffic and no safe place to park. In the same block as the subject site, there is an existing liquor store and a delicatessen, which are typical of commercial uses in the area.

10. The applicant has never offered the subject property for sale. The crime and physical deterioration of the subject neighborhood have been a deterrent to most potential users. At the foreclosure auction, the applicant was the only bidder for the subject property.

11. The only prospective lessee who has approached the applicant has been a businessman who proposes to operate a video arcade. No prospective renters or buyers have shown an interest in utilizing the subject property for a permitted use either residential, other R-4 uses, or any C-1 use. The continuing ownership and responsibility for this vacant property has become a burden on the applicant in terms of time and money.

12. The prospective lessee, Mr. Westfield, would operate the video arcade during hours that do not coincide with the hours of the public schools. There would be six employees and fifty video game machines. The video arcade would not serve food and beverages. The applicant intended that the operation would be designed to provide recreation for the neighborhood youth.

13. A video arcade is first permitted as a matter-of-right use in the C-3 District. In order to use the subject premises as a video arcade in an R-4 District, the owner has applied for a variance from the use provisions of Sub-section 3104.3 of the D.C. Zoning Regulations.

14. The Board of Zoning Adjustment has the power to grant a use variance pursuant to Paragraph 8207.11 of the Zoning Regulations. The granting of a use variance requires that there be an undue hardship upon the owner arising from a unique or exceptional condition of the property which precludes the property from being used for the purpose for which it is zoned. The granting of the use variance must not cause a substantial detriment to the public good nor impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

15. The applicant argued that the dilapidated condition of the subject structure, the deterioration of the subject neighborhood and the crime endemic to the area have rendered the property unfit for all permitted uses. The applicant contended that the site has no viability as a potential C-1 business because of its location, and it cannot be rehabilitated for use as a residence without exhorbitant cost. The applicant is attempting to convert the property into a neighborhood recreation facility as his only available alternative. If this application is not granted, the property will continue to stand vacant.

16. The applicant further argued that the conversion of the subject premises would provide a neighborhood facility with wholesome recreation for teenagers and children during non-school hours. There would be no food, beverages or liquor sold in the premises even though the existing certificate of occupancy permits a restaurant and bar. The applicant contended that a video arcade would have less negative impact on the neighborhood than a restaurant and bar.

17. The Office of Planning, by report dated October 9, 1983, recommended that this application be denied. The Office of Planning was of the opinion that the applicant has not carried his burden of proof under Paragraph 8207.11 regarding a use variance. The Office of Planning reported that this rectangular, flat piece of land is improved with a two-story row dwelling and does not have any unique characteristics which would preclude its use in accordance with R-4 District provisions. The applicant had not shown

any peculiar condition or situation of the property that would create a hardship if he were not able to use the subject site in accordance with the existing regulations. The intent of the R-4 District is the stabilization of remaining one-family dwellings. The granting of this application would impair the intent, purpose and integrity of the zone plan for the city. The Board concurs with the reasoning and recommendation of the Office of Planning.

18. Advisory Neighborhood Commission 2C, by letter dated October 18, 1983, opposed the application. It gave no reasons. The Board is required by statute to give "great weight" to the issues and concerns of the ANC when they are reduced to writing. In the subject application, the Board has nothing to address.

19. A petition opposing the application was submitted to the record. The petition contained the signatures of twenty-two neighbors who were concerned that a change in zoning to permit the operation of a video arcade would be wrong for the residential character of the neighborhood. There are three elementry schools within a two to three block radius of this site. The Armstrong School is two blocks away and Dunbar High School is across the street. City police, already busy fighting drug traffic, are hard pressed to return truant youngsters to classrooms. Permitting an arcade in the middle of this educational zone would be an enticement to truancy. The opponents expressed a belief that in other parts of the city video arcades generate trash and noise, encourage loitering and serve to cover illegal use of alcohol and drugs. The opponents also expressed a belief that the residents do not want a video arcade and the neighborhood does not need a video arcade.

20. Another concerned neighbor submitted letters of opposition. His opposition was based on the potential of a commercial establishment to attract large groups of people who might congregate on the streets and create a nuisance. He observed that the subject site, when formerly operated as a bar and grill, created such a nuisance that the neighbors were constantly harassed on the street by patrons, cars could not be safely parked nearby, children could not safely play in the adjacent park and the residents experienced many sleepless nights caused by noise and music from the bar. The opponent expressed his opinion that a video arcade would attract the same type of crowd but without the age restrictions of a bar. The opponent recommended that any commercial use permitted at the subject site be of an intensity that would be compatible with the surrounding residential neighborhood.

21. In addressing the concerns of the opposition,the Board notes that, whether the Board grants or denies the subject application, there will be no change in zoning.

The Board has no authority to rezone properties. Such is the jurisdiction of the Zoning Commission. The Board's authority is to determine whether the applicant has made his case to warrant a variance from the Zoning Regulations for the subject parcel of property. The Board for reasons discussed below, finds that the burden of proof has not been met. All the other concerns of the opposition go to the element of substantial detriment to the public good if the relief were granted. The Board need not decide whether the opposition has established its case by persuasive evidence since the issue of substantial detriment is not dispositive of this application. What is dispositive is whether the applicant has established that the property cannot be reasonably put to a use for which it is zoned.

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 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 reasonably be used for the purpose for which it is zoned. The Board must further 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 as embodied in the Zoning Regulations and Maps.

The Board concludes that the applicant has not met this burden of proof in showing an undue hardship inherent in the property. There is nothing in the size, shape or topography of the subject property that would preclude it from being used for an R-4 purpose. The Board concludes that the applicant has not exhausted the list of uses permitted to him for the subject property. The property could revert to an R-4 use including matter-of-right and special exception uses.

The Board further concludes that the applicant's economic problems in rehabilitating the property, the problems of crime and deterioration in the surrounding neighborhood, and the marketing problems involved in renting or selling the property for a permitted use are not hardship in the sense defined by the Zoning Regulations. Such reasons are personal and are not grounds to support a use variance. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 4-0 (Walter B. Lewis, Carrie L. Thornhill, William F. McIntosh and Douglas J. Patton to deny; Charles R. Norris 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: MAR 15 1984

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."

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