

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14139, of Klinging Klien Limited Partnership, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from offices, first floors, to a unisex barber shop, first floor, in the R-3 District at premises 1231 34th Street, N.W., (Square 1220, Lot 30).

HEARING DATE: June 13, 1984

DECISION DATE: July 11, 1984

DISPOSITION: The Board GRANTED the application with CONDITIONS by a vote of 3-0 (Carrie L. Thornhill, Walter B. Lewis and William F. McIntosh to grant; Charles R. Norris and Douglas J. Patton not voting, not having heard the case).

FINAL DATE OF ORDER: September 14, 1984

ORDER

By order dated September 14, 1984, the Board granted the application subject to seven conditions. Condition No. 6 provided that "No air conditioning or mechanical equipment shall be located on the roof of the structure." Counsel for the applicant, by motion received on September 26, 1984, requested the Board to reconsider Condition No. 6 of the Order, and to modify that condition to permit air conditioning and mechanical equipment to be placed on the front half of the roof of the subject premises.

In support of the motion, counsel for the applicant contended that:

1. The D.C. Health Regulations require that the proposed use provide proper ventilation.
2. There is no testimony or evidence of record opposing the location of the equipment on the roof.
3. Other agencies of the government will ensure that the equipment on the roof is not objectionable.

By response filed on October 3, 1984, nearby residents opposed the motion for reconsideration of Condition No. 6 for the following reasons:

1. The motion states no respects in which the decision of the Board is in error, nor does it proffer any evidence which could not reasonably have been presented at the public hearing.
2. The applicant violated the provisions of the Board's order by installing equipment on the roof, even though such equipment was later removed.
3. Modification of Condition No. 6 would subject adjacent residents to deleterious external effects from the proposed equipment, such as fumes and noise.

Based on review of the motion, the opposition's response thereto, and its final order, the Board concludes that the motion provides no evidence of any error committed by the Board in deciding the application nor any evidence of a substantive nature that the Board has not previously considered. The Board's decision was based on its consideration of all the evidence presented by both the applicant and the opposition. The Board is not required to state why it favored the testimony of one witness over another. The fact that the Board and the applicant arrived at different conclusions as to the deleterious external effects which would result from the location of mechanical equipment on the roof of the subject premises does not make the judgment of the Board capricious or unlawful.

Accordingly, it is ORDERED that the motion for reconsider of Condition No. 6 of the Board's final Order is hereby DENIED.

Decision Date: November 7, 1984

VOTE: 3-0 (Douglas J. Patton, William F. McIntosh and Carrie L. Thornhill to deny reconsideration; Charles R. Norris not voting, not having heard the case; Walter B. Lewis not voting).

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

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

3 DEC 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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