

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16279 of **Abe Mason and J.M.M. Corporation**, pursuant to 11 DCMR 3107.2 for a variance from the use provisions (Subsection 721.2) to allow a Sexually Oriented Business Establishment, "Member Only Private Video Club-Rental-Retail Amusement Arcade" in a DD/C-2-C District at premises 919 5th Street, N.W. (Lot 325, Square 516).

HEARING DATE: November 19, 1997
DECISION DATE: November 19, 1997 (Bench Decision)

DISPOSITION: The Board **DENIED** the application by a vote of 3-0 (Betty King, Susan Morgan Hinton and Sheila Cross Reid to deny; Laura M. Richards not present, not voting).

FINAL DATE OF ORDER: February 18, 1998

RECONSIDERATION ORDER

The Board denied the application by its order dated February 18, 1998. On March 3, 1998, the applicants (movants herein), through counsel, filed a motion for reconsideration of the Board's decision.

Motions for reconsideration are governed by the Board's Rules of Practice and Procedure found at 11 DCMR Subsection 3332.4 which provides that a motion for reconsideration "shall state specifically the respects in which the final decision is claimed to be erroneous, the grounds of the motion and the relief sought."

In their motion, the movants pointed out that while they may use the property for a limited purpose as a non-sexually oriented establishment, they seek to expand this business and that such expansion is not permissible in this zone. The movants reminded the Board that the "Advisory Committee" (presumably the Advisory Neighborhood Commission) did not file an adverse report in the application and this fact should be looked upon favorably for the applicants and given great weight. The movants also noted that no residents appeared at the hearing to oppose the application and that this fact should also be considered favorable to the applicants.

The movants argued that after Sergeant Herbert Barnes testified in opposition to the application, they were unduly restricted in cross-examining him. They also pointed out that they were not informed in advance of the hearing that he planned to appear to testify. They maintain that if they had been informed, they would have had an opportunity to meet his allegations. They would have been able to inform the Board that the Lieutenant at the New York Avenue

precinct had no objection to the establishment nor did he receive any adverse reports or complaints. The movants stated that they do not have any gaudy displays of electric signs attracting clientele that may attract disorderly persons. They pointed out that Sergeant Barnes did not submit into the record any written complaints or adverse reports.

For the above-stated reasons, the movants requested that the Board reconsider its order and grant a further hearing in the case. Alternatively, they requested that the Board grant the application for variance relief or other appropriate relief.

The Board is of the view that the movants have failed to meet the requirements for reconsideration of the Board's decision in this application. The movants have not adduced any arguments demonstrating that the Board erred in denying the application. The Board notes that the hearing proceeded in a proper manner and that cross-examination was allowed as appropriate. The Board concludes that while the ANC and others may have been in support of the application, the Zoning Regulations and court law do not allow for use variances to be granted where the property can be put to a permitted use without undue hardship. Such was the case in this application.

Accordingly, the Board concludes that it did not err in denying the application. Therefore, the Board hereby **ORDERS** that the **MOTION FOR RECONSIDERATION** be **DENIED**.

VOTE: 3 - 0 (Betty King, Susan Morgan Hinton and Sheila Cross Reid to deny)

DECISION DATE: April 1, 1998

EXCEPTIONS PROCESS:

This order was issued as a proposed order pursuant to the provisions of D.C. Code Section 1-1509(d). The proposed order was sent to all parties on April 24, 1998. The filing deadline for exceptions and arguments was May 1, 1998. The deadline for responses was May 22, 1998. No party to this application filed exceptions or arguments relating to the proposed order, therefore, the Board of Zoning Adjustment adopts and issues this order as its final order in this case.

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT -- SHEILA CROSS REID, BETTY KING AND MAURICE FOUSHEE.

ATTESTED BY: 
SHERI M. PRUITT-WILLIAMS
Interim Director

Final Date of Order: JUL - 1 1998

UNDER 11 DCMR § 3103.1, "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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16279

As Interim Director of the Office of Zoning, I hereby certify and attest that on JUL - 1 1998 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

James T. Wright
805 Florida Avenue, N.W.
Washington, D.C. 20001

Mr. Carl N. Lynch
Mr. Jose Montiel
919 5th Street, N.W.
Washington, D.C. 20001

Sergeant Herbert Barnes
Metropolitan Police Department
415 4th Street, S.W.
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Attested By: *Sheri M. Pruitt-Williams*
SHERI M. PRUITT-WILLIAMS
Interim Director

DATE: JUL - 1 1998

Att./twr