

Before the Board of Zoning Adjustment, D. C.

Application No. 11756, reconsideration of application of Sidney and Miriam Freedman, pursuant to Section 8207.2 of the Zoning Regulations for a special exception to permit a change of nonconforming use (servicing of copy machines to retail sales and stock room for fruits and flowers) as provided by sections 7104.2 and 7109 of the regulations at 613 K Street, N. W., in the R-5-D Zone, Lot 3, Square 451.

HEARING DATE: October 16, 1974

EXECUTIVE SESSION: October 25, 1974, January 21, 1975

ORDERED: That the motion for reconsideration of applicant be and is hereby DENIED for lack of 4 affirmative votes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

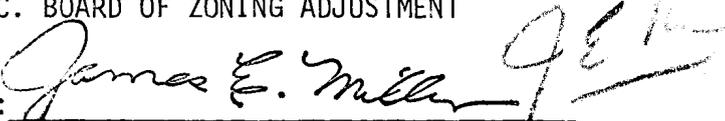
The subject application was DENIED on the basis that storage of fruits and flowers at the premises 613 K Street, transported for sale by vendors on public space, is a wholesale use not permitted in the most restrictive District in which the existing nonconforming use is permitted as required by the Regulations for a change of nonconforming use.

The facts of this application indicate that certain goods not for sale at the subject property are stored thereon for sale elsewhere, creating a partial wholesale operation at the subject property which is a use first permitted in the C-M zone.

While the retail sales of fruits and flowers and storage incidental thereto would conform to the limitation for change of nonconforming use, the additional storage of goods not incidental to retail sales conducted on the subject property, does not comply with the prescriptions of Section 7104.2 of the regulations and cannot be approved upon strict application of the Zoning Regulations. It appears that the Board may have a certain amount of discretion in reviewing applications for change of nonconforming use as provided by Section 7109 of the Regulations (Exercise of Authority by the Board), however, Section 7104.2 places a specific limitation on the Board's authority to grant such changes of use as a special exception to the Zoning Regulations.

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

ATTESTED BY:

  
JAMES E. MILLER,  
Secretary to the Board

FINAL DATE OF ORDER: JAN 24 1975

Before the Board of Zoning Adjustment, D. C.

Application No. 11756, of Sidney and Miriam Freedman, pursuant to Section 8207.2 of the Zoning Regulations for a special exception to permit a change of non-conforming use (servicing of copy machines to retain sales and stock room for fruits and flowers) as provided by Sections 7104.2 and 7109 of the regulations at 613 K Street, N. W., in the R-5-D Zone, Lot 3, Square 451.

HEARING DATE: October 16, 1974

EXECUTIVE SESSION: October 25, 1974, January 21, 1975  
February 25, 1975

ORDER ON RECONSIDERATION

Upon consideration of applicant's motion for rehearing, the Board hereby reconsiders their decision dated December 16, 1974 in this matter and it is hereby ordered: That the Board's Order on reconsideration dated January 24, 1975, be and is hereby vacated and that the above application be GRANTED for the retail sales and incidental storage on the premises only.

FINDINGS OF FACT:

1. The Board finds that proposed change of non-conforming use as it relates to the storage and retail sale of fruits and flowers on the subject property is a proper change within the meaning of Section 7104.2 of the regulations.

2. The storage of goods (fruits and flowers) on the premises for retail sale by vendors on the street corners of Washington, D. C. is a wholesale use permitted in the C-M Zone, thus not a use which would be permitted in the most restrictive district when the existing non-conforming use is permitted.

3. No opposition was registered at the public hearing of this application.

4. The proposed change of this non-conforming use would have no adverse affect upon the neighborhood in which it is located.

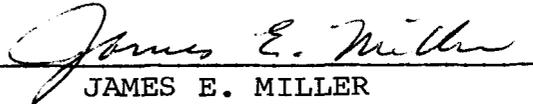
CONSIDERATION OF LAW:

Based upon the above Findings of Fact and record, the Board concludes that the applicant complies with the requirements of Section 7104.2 of the Zoning Regulations for a change of non-conforming use of the subject property to retail sales and incidental storage on the premises. No opposition having been raised, the Board further concludes that the proposed change of use would not adversely affect the use of nearby or adjoining property or impair the meaning and intent of the regulations.

VOTE: 4-1 (Lilla Burt Cummings, Esq. Dissenting)

BY ORDER OF THE BOARD OF ZONING ADJUSTMENT

ATTESTED By:



JAMES E. MILLER  
Secretary to the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

FINAL DATE OF ORDER: MAR 18 1975

Before the Board of Zoning Adjustment, D. C.

Application No. 11756 of Sidney and Miriam Freedman, pursuant to Section 8207.2 of the Zoning Regulations for a special exception to permit a change of non-conforming use (from the servicing of copy machines to retail sales and stock room for fruits and flowers) as provided by Sections 7204.2 and 7209 of the regulations, at the premises located at 613 K Street, N. W., in the R-5-D Zone, Lot 3, Square 451.

HEARING DATE: October 16, 1974

EXECUTIVE SESSION: October 25, 1974

FINDINGS OF FACT:

1. The existing non-conforming use located on the subject property is classified as a C-2 use.

2. The subject property was located in the C-3-B zone in 1968 when Certificate of Occupancy No. B-64032 was issued for the existing non-conforming use, (servicing of copy machines). In 1973, the Zoning Commission amended the official Zoning Map changing the zone in which the subject property was located from C-3-B to R-5-D, Mount Vernon East Map Amendment, Z.C. Case No. 72-25, Order No. 77, December 7, 1973.

3. The Zoning Regulations at Section 7104.2, allows the Board (in exercise of its authority) to permit "a class II non-conforming use to be changed to a use which is permitted in the most restrictive district in which the existing non-conforming use is permitted".

4. The Board finds this issue in this case to be whether or not the proposed non-conforming use is a use which would be permitted in the most restrictive district in which the existing non-conforming use is permitted.

5. The applicant asserts that the proposed use of retail sales and accessory stock room for fruits and flowers is a retail use and an appropriate use change as provided by Section 7104.2 of the regulations.

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6. The Board notes that a retail sales use is classified as a C-1 Zone use and is a use which is permitted in the C-2 Zone district, the use classification of the existing non-conforming use of the subject property.

7. The applicant testified at the Public Hearing, and the Board finds, that the proposed use entails the accessory storage of fruits and flowers which are delivered to vendors who sell the goods in carts on the streets of Washington, D.C. during the day, the unsold goods are returned to the subject property each evening by trucks.

8. The applicant testified at the Public Hearing and the Board finds, that the people selling the goods in question are commissioned vendors who are paid every day. The applicant further testified that the goods are delivered to the vendors on a consignment basis.

9. The applicant testified and the Board finds, that the vendors who sell the goods in question are individually licensed by the District of Columbia and that the applicant, does not pay unemployment compensation or social security for the vendors.

10. The applicant testified and the Board finds, that the vendors are paid according to how much they have taken in during the day and guaranteed at least \$100.00 dollars per week.

No opposition was registered to this application at the Public Hearing.

12. The Board finds that the vendor receives the goods on consignment for the purpose of sale to make profit, not for his personal consumption, but to sell to the ultimate consumer for his consumption.

13. The Board finds, that because the vendors who sell the fruit and flowers are paid by the applicant based upon how much they sell, are licensed individually, that the applicant does not deduct social security or pay unemployment compensation for the vendors and delivers to the vendors

the goods by consignment for sale to the consumer, that the proposed use is a wholesale use rather than a retail use as alleged by applicant.

14. The Board takes notice that a wholesale use of property is classified as a C-M zone use which is less restrictive in nature than the most restrictive district in which the present non-conforming use of the subject property is permitted.

CONCLUSIONS OF LAW AND OPINION:

Based upon the above findings of fact and evidence of record, the Board is of the opinion, that because the proposed use is conducted on a consignment basis, the applicant pays the vendor based upon the volume of business they conduct, the vendors are individually licensed as vendors and the applicant neither deducts social security nor pays unemployment compensation, that the vendors are independent contractors, who retail the goods sold to ultimate consumers who use the goods for their personal benefit. Therefore, the Board concludes that the applicant's use of the subject property and his relationship to the vendor creates a wholesale business as opposed to a retail business. A wholesale business being a C-M use, the Board concludes as a matter of law that the proposed use is not permitted in the most restrictive district in which the existing non-conforming use is permitted; thus, the proposed change of non-conforming use cannot be granted consistent with the prescriptions of Section 7104.2 of the regulations. The Board is of the opinion that the granting of this application to permit the storage, transportation and consignment of goods to vendors who then sell to ultimate consumers on the street is inconsistent with the Zoning Regulations and if granted would not be in harmony with the general purpose and intent of the Zoning Regulations.

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Application No. 11756

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ORDERED:

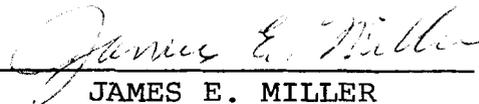
That the above application for the use of the subject property for storage and transportation of goods to vendors who sell the goods to street consumers be and is hereby DENIED.

VOTE:

4-1 (Martin Klauber dissenting)

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

ATTESTED By:



JAMES E. MILLER  
Secretary to the Board

FINAL DATE OF ORDER: DEC 16 1974