

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12804, as amended, of William S. Chewning, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3104.43 to use a portion of the first floor of the premises for storage and pursuant to Paragraph 8207.11 for a variance from the prohibition that no storage use shall be located in a building containing more than 2,500 square feet of gross floor area (Paragraph 3104.431) in an R-5-B District at the rear of premises 1728 - 19th Street, N.W. (Square 110, Lots 58 and 805).

HEARING DATE: January 24, 1979
DECISION DATE: February 28, 1979

FINDINGS OF FACT:

1. This application was originally scheduled to be heard on December 13, 1978. The applicant then requested permission from the Board to amend the application to include a variance from Paragraph 3104.431 of the Zoning Regulations. The Board granted the request and the application was readvertised for the January 24, 1979 public hearing.
2. At the public hearing of January 24, 1979 the application was further amended to reflect that only a portion of the first floor would be used for storage. The remainder of the first floor would be used as a garage. The second floor would be used as a residence. The variance from Paragraph 3104.431 was still requested. The first and second floors, as originally advertised, would not be used as a floral workshop and floral warehouse.
3. The subject site is located to the northeast of the center of Square 110, to the rear of 1728 - 19th Street, N.W. in an R-5-B District.
4. The site has no street frontage, and is bounded on three sides by alleys.

5. The topographically flat property consists of 2,443 square feet of land area, and is developed with a red brick two story carriage house. The improvements occupy 100 percent of the lot.

6. The subject improvement has a gross floor area of approximately 4,885 square feet.

7. The subject property is now known as Frazer's Stable. Certificate of Occupancy No. B-98954, was issued October 14, 1976 for a museum and art gallery, first and second floors.

8. To the north of the property is a thirteen foot wide alley, followed by garages and row dwellings in the R-5-B District. To the east of the property is a thirty foot wide alley followed by an apartment building in the R-5-B District. To the south is a twenty-seven foot wide alley, followed by the Sedwick apartment building in the R-5-B District. To the west of the site is an apartment building in the R-5-B District.

9. The applicant-owner is a florist. He will maintain a retail flower shop in the District of Columbia. He proposes to use the second floor of the subject premises as a residence. Part of the first floor will be used for the storage of his flower props and a refrigerator. The storage part will be in a small room to the rear of the first floor, which also houses the furnace and closet space. The remaining portion of the first floor will be used as a garage for the applicant's van and personal car. The previous occupant used the garage floor area in connection with his museum and art gallery operation.

10. The applicant will have no employees on the subject property. There are no fixed hours of operation. The owner's van will be used basically twice a day, to get to his flower shop and return home to the subject property.

11. The applicant's van and private car will be housed on the first floor garage of the subject property, not in any alleys.

12. The applicant testified that he will use approximately 350 square feet for storage space, on the first floor only, in connection with any floral operation and that any debris will be placed only where the authorities direct.

13. The garage doors of the subject property abut the thirty foot alley. The applicant testified that he will not use the thirteen foot alley to the north of the property for any purposes.

14. The front of the subject building and the entire second floor will be restored. The present sign outside the building will be removed.

15. The subject improvement is an old and large carriage house on two alley lots. There are two entrances, one on the side abutting the thirty foot public alley, the other on the side abutting the thirteen foot public alley. The second floor is partitioned into two living rooms, several bedrooms, a kitchen and two hallways. It appears to have been a two family residence or servant's quarters.

The applicant testified that from the structural design of the first floor, it was apparently used to store carriages and to stable horses. An estimate of \$46,000 was stated as the amount needed to convert the first floor into a living area. The conversion would include a kitchen and bath with wiring and plumbing, carpentry work, walls, flooring, heating, air conditioning and closet space.

16. The Office of Planning and Development, by report dated December 7, 1978, based on the unamended application, recommended that the application be denied on the grounds that the proposed impact of the use on surrounding properties and the proposal's non-compliance with Paragraph 3104.431 of the Zoning Regulations would adversely affect the use of neighboring properties and would not be in harmony with the general purpose and intent of the Zoning Regulations. As to the amended application, the OPD stated it would have to be reconsidered before a formal recommendation could be made.

17. There were several letters from neighborhood residents on file and there was testimony at the public hearing in opposition to the application on the grounds that the subject square should be used for residential use. The proposed use would be objectionable because of noise, dirt and traffic and the storage use was completely contrary to the 2500 square feet provision limitation set in the Zoning Regulations.

18. The Dupont Circle Citizens Association opposed the granting of the relief on the grounds that the applicant had not met the burden of proof in establishing that the subject property could not be used for the residential purpose for which it was zoned.

19. Advisory Neighborhood Commission 2B opposed the application on the grounds that (1) The subject square has recently been built up with residential uses such as row houses, apartment buildings, and conversions to condominiums; (2) to grant the relief would leave the door open for other commercial uses by owners who wished to convert carriage houses or stables, of which there were many in the District of Columbia area and (3) precedent would be set if the application was granted.

20. The Board of Zoning Adjustment, by statute, must give great weight to the issues and concerns expressed by the ANC. In responding to these concerns, as well as those of the neighborhood residents and neighboring associations, the Board notes that, from the record, it appears that many of the objections raised to the subject application were addressed to this application as advertised and not as amended at the public hearings. It is clear from the facts that the subject property will be used basically as a residence. The property will be restored and will conform to the area where residential living abounds. The point of objection is the some 350 square feet of space in the dwelling that the applicant proposes to use for storage space.

As originally advertised, it appeared that the subject property would be put entirely to a commercial use and there would flow from that use the issues of noise, dirt and traffic. As amended, and as hereinafter conditioned, it is anticipated that the floral operation, an insignificant percentage of the entire use of the property, will not create the adverse affects the opposition raised.

Commerce connotes a buying, selling or exchange of property. This type of activity is clearly not envisioned for the subject property. The applicant has likened the floral operation in his home to a person bringing home work from the office to be completed in his den. The Board concurs in that analogy.

As to the objections that a precedent will be set and that similar carriage houses in the neighborhood will become the subject of future BZA applications for special exceptions or variances, the Board has consistently stated that each application is determined on its own merits, and that the individual applicant has the burden of proof in each instance of demonstrating compliance with the Zoning Regulations.

CONCLUSIONS OF LAW:

Based on the record the applicant is seeking a special exception under Paragraph 3104.43. In meeting the requirements of Paragraph 3104.43, the applicant also seeks a variance from Sub-paragraph 3104.431. The Board concludes based on the record, that the applicant has met the requirements of Sub-paragraphs 3104.432, 3104.433 and 3104.434 in that he will be the sole person concerned with the floral occupation he intends on the subject property; there will be no employees; one van will be connected with the operation and it will be parked in the garage not in an alley; there are no business hours of operation involving deliveries and, there will be no noise or traffic flowing from the operation. The alley in front of the garage is thirty feet in width and maneuverable. The applicant intends but two trips a day, to work and the return trip to the subject residence.

The premises will be basically used as a residence. It will be restored and rehabilitated. In so doing the subject property will conform to a neighborhood of residences. The proposed use is less intense than the former museum use which produced more noise and traffic.

As to the variance for the storage use this is an area variance, the granting of which requires a showing of a practical difficulty arising from the property itself. The Board concludes that the structural design of the building as found in Finding of Fact No. 15 evidencies the practical difficulty in converting the first floor to a complete residential use. Again, the Board notes that approximately 350 square feet of the bottom floor will be used for storage purposes. This is approximately seven per cent of the gross floor area of the building whereas ninety-three per cent of the building will be used for a residential purpose. The required variance is minimal.

The Board in Finding of Fact No. 20 has addressed itself to the issues and concerns of the ANC.

The Board further concludes that the applicant has substantially complied with Paragraph 3104.43 of the Zoning Regulations and that the application can be granted as in harmony with the general purpose and intent of the Zoning Regulations and that it will not tend to affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

- a. There shall be no articles for sale on the premises.
- b. There shall be no commercial truck deliveries to the premises.
- c. There shall be no employees on the premises other than the owner of the business.
- d. Approval shall be for a period of TWO YEARS from the final date of this Order.

VOTE: 4-0 (Ruby B. McZier, William F. McIntosh, Chloethiel Woodard Smith and Charles R. Norris to GRANT, Leonard L. McCants not voting, not having heard the case).

