

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING -- September 14, 1966

Appeal No. 8894 Jack Kogok, appellant.

The Zoning Administrator of the District of Columbia, appellee.

On motion duly made, seconded and unanimously carried, the following Order was entered at the meeting of the Board on September 20, 1966.

ORDERED:

That the appeal for a variance from the use provisions of the SP District to permit the storage and sales of ice cream, soft drinks and food products relative to a vendor's business at 228 G Street, NW., lot 35, square 566, be denied without prejudice to refileing at any time.

FINDINGS OF FACT:

- (1) The property is located in an SP District.
- (2) Appellants applied for a variance from the use provisions of the SP District to permit the storage of ice cream, soft drinks and food products as part of a vendor's business. At the hearing it became apparent that the appeal should have been for a change of nonconforming use and with the permission of the Board, appellant changed the appeal to request a change of nonconforming use from a restaurant to a ice cream vendor's warehouse.
- (3) A lawful nonconforming restaurant use (C-1 District use) existed at the time the appellant purchased the property.
- (4) The present vendor's warehouse use was established by the owner about two years ago without a permit and he wishes to continue using the premises for the storage of ice cream, soft drinks and food products incident to a vendor's business.
- (5) Appellant presented for the record a certificate of occupancy issued April 28, 1964 permitting use of the first floor of the subject property as a restaurant seating less than 75 persons. The record is not clear why the certificate of occupancy for a restaurant was obtained and not used for the stated purpose or why no certificate of occupancy was requested for the vendor's business, which he was operating.

(6) There was no opposition or support for this case.

OPINION:

It is the opinion of the Board that there was a valid non-conforming use of a restaurant, which was permitted in a C-1 District at the time the present owner purchased the property. Any change in the nonconforming use must be made to another use permitted in the same district or in a more restricted district. The proposed use for the storage of ice cream, soft drink, food products incident to vendor's business is in the nature of a catering establishment which is first permitted in the C-2 District and is a less restrictive use. Accordingly, the Regulations do not permit the requested nonconforming use change and the appeal on that ground must be denied.

Appellant has failed to establish in any way that the property cannot be used for its zoned purpose, and the appeal for a variance must therefore be denied.