



BUILDINGS 2022-011 BULLETIN ZONING

ISSUANCE DATE
June 24, 2022



ISSUER: Keith L. Wen, R.A. 
Assistant Commissioner, Code & Zoning Interpretation

PURPOSE: This Bulletin clarifies the zoning limitations and code occupancy classifications for grocery Micro-Fulfillment Centers.

SUBJECT(S): Micro-Fulfillment Centers; moving or storage offices; warehouses; retail establishments

RELATED CODE & ZONING SECTIONS: ZR 32-16(B), ZR 32-25(D), ZR 32-15, ZR 37-30

I. BACKGROUND

A grocery micro-fulfillment center (MFC) is a place dedicated to online grocery order fulfillment. It usually occupies a retail storefront where the interior is arranged for the storage of a variety of retail sales items, and for the employees to pick and pack the retail items that have been ordered through online apps for delivery. Currently, MFCs in general are not open to the public.

This Bulletin clarifies zoning limitations and code occupancy classifications when a building or portion thereof is used as an MFC and applies to all existing and new MFCs.

II. ZONING CLARIFICATIONS

All MFCs must comply with the following:

A. Use Group Classifications

Use Group 7B

An MFC that has not more than 1,500 square feet of floor area for storage of retail sales items per establishment may be classified as Use Group (UG) 7B under ZR 32-16(B) “moving or storage offices, with storage limited to items for retail sale and to 1,500 square feet of floor area per establishment” (See DCP letter dated June 22, 2022 to DOB attached to this bulletin). Part II.B of the bulletin describes the 1,500 square feet limitations in detail.

Use Group 16

An MFC that exceeds 1,500 square feet of floor area for the storage of retail sales items per establishment may be classified as UG 16D under ZR 32-25(D) “warehouses.”

Use Group 6

An MFC may be classified as UG 6 under ZR 32-15 if all the following conditions are met:

1. The general public is allowed access into the establishment through the main entrance of the establishment, and
2. It provides equivalent, on-site access, to the full range of retail sales items as that provided for customers who order online or through apps. Specifically, either the establishment allows full-access, in-person retail shopping, or an area is dedicated to

allowing the general public to order, in-person, the previously described full range of on-site retail sales items available in the establishment. Such in-person access must operate during the same business hours as the establishment.

B. Floor Area Limitation for Storage of Retail Sale Items under UG 7B

As stated in Section II.A of this bulletin, for an MFC to be classified as UG 7B, it must comply with the storage limitation applicable to storage offices as set forth in ZR 32-16(B), which states:

“Moving or storage offices, with storage limited to items for retail sale and to 1,500 square feet of floor area per establishment”

Storage area for retail sales items within the establishment is subject to the 1,500 square feet of zoning “floor area” (as defined pursuant to ZR 12-10) limitation. All floor spaces intended for storage of retail sales items, including retail sales items placed directly on the retail floor, spaces that are occupied by storage racks and shelving, refrigeration and other cold storage equipment, must be included. When a floor space is designated for the storage of retail sales items without storage fixtures, such as those that are placed directly on the retail floor, such space must be clearly marked by tape or paint on the floor. Areas not designated for storage of retail sales items (e.g., restrooms, access aisles, packaging area, offices, etc.) may be excluded from the 1,500 square feet limitation, provided there is no storage of retail sales items within such areas.

(See Figure 1 on the following page)

Legend:

 Storage area for retail sales items (limited to 1,500 square feet of zoning floor area per establishment)

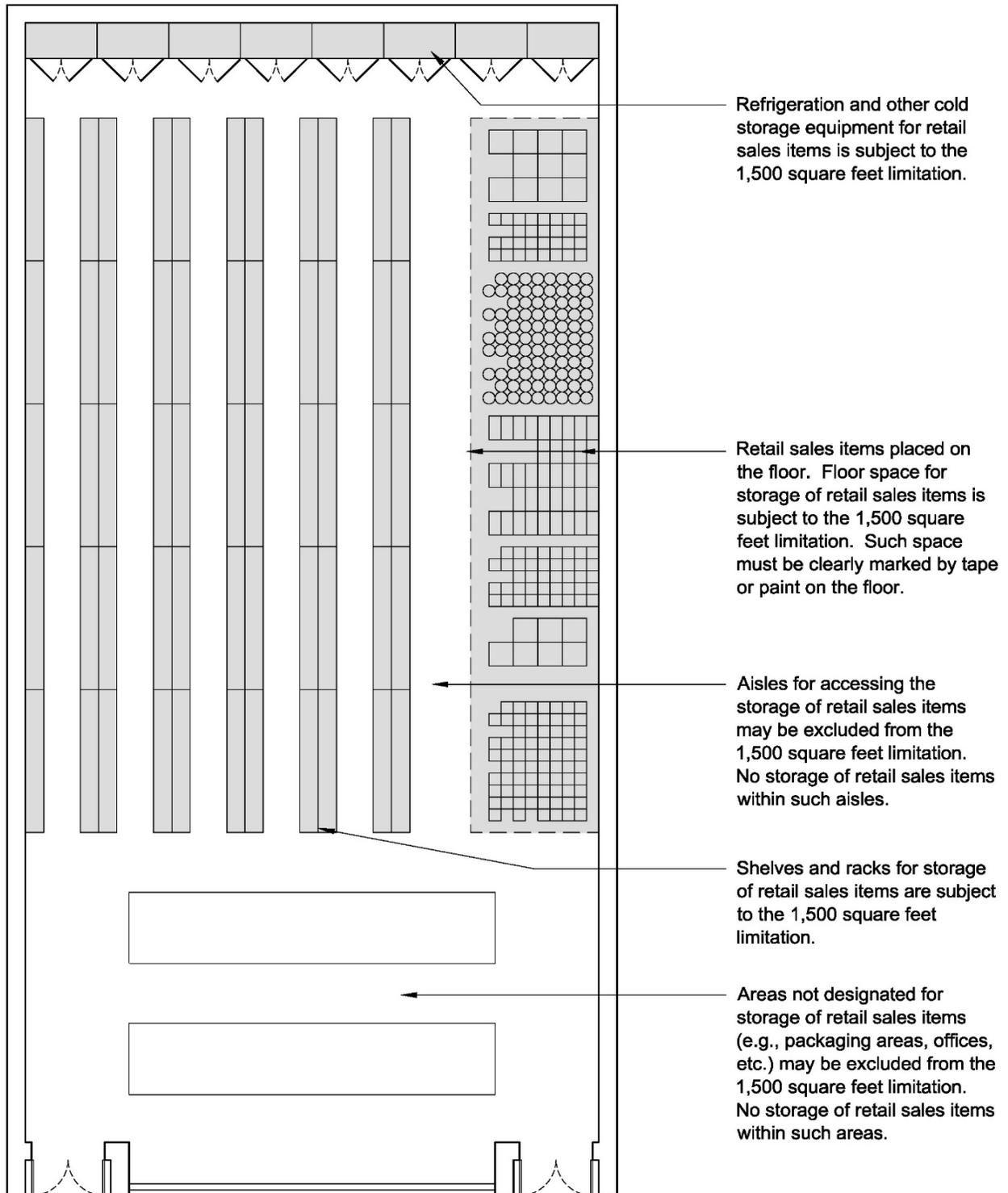


Figure 1

C. Transparency Requirements

An MFC that obscures storefront windows by more than 50% with posters, paper, vinyl tint, and other opaque materials may result in DOB violations if the location of the store is subject to the minimum transparency requirements in the Zoning Resolution.

III. BUILDING CODE OCCUPANCY CLASSIFICATION

Occupancy Groups S-1 and S-2

An MFC that does not provide access to the general public or does not provide equivalent, on-site access, to the full range of retail sales items as that provided for customers who order online or through apps is classified as S-1 (moderate-hazard storage) or S-2 (low-hazard storage) depending on the combustibility of the storage content.

Occupancy Group M

Where access is provided to the general public for in-person retail shopping, or an area is dedicated to allowing the general public to order, in-person, full range of retail sales items that are available in the establishment, such an MFC is classified as Group M (Mercantile).

High-piled Combustible Storage and Rack Storage

Where high-piled combustible storage and/or rack storage is used, the building and/or area is subject to specific fire protection and safety requirements in the New York City Fire Code. Refer to the New York City Fire Code (<https://www1.nyc.gov/site/fdny/codes/fire-code/fire-code.page>) for the definitions of “high-piled combustible storage” and “rack storage” and their relevant fire code requirements.

IV. ALTERATIONS TO OBTAIN A NEW CERTIFICATE OF OCCUPANCY (CO)

When a conversion from an existing use to an MFC that would result in inconsistency with zoning use group or building occupancy group described on the last issued CO, the applicant must file a DOB application to obtain a new or amended CO for such conversion.



DEPARTMENT OF CITY PLANNING
CITY OF NEW YORK

ZONING DIVISION

Daniel Garodnick, *Director*
Department of City Planning

June 22, 2022

Assistant Commissioner Keith Wen
New York City Department of Buildings
280 Broadway, 7th Floor
New York, NY 10007

Re: Use classification of grocery micro-fulfillment centers

Dear Assistant Commissioner Wen:

The Department of City Planning is writing to support the Department of Buildings' proposed classification of grocery micro-fulfillment centers as uses within Use Groups 6, 7, or 16 of the Zoning Resolution (ZR), depending on their characteristics as described further below.

These establishments serve primarily as micro-fulfillment centers for workers to assemble grocery orders placed online and as a launch-point for their delivery, principally by bicycle. The Department believes that the proper use categorization for these facilities depends upon the characteristics of the establishment: specifically, whether the establishment allows customers into the facility for direct purchases, and the size of the establishment. Depending upon the mix of attributes, the Department concurs with the Department of Buildings' proposed classifications as follows:

- If the establishment is open to the public for direct retail purchasing of its full product range, its land use characteristics are most similar to "food stores" or "delicatessen stores" as listed in Use Group 6 (as well as cross-listed in Use Group 12);
- If the establishment is closed to the public, but is limited in size, the use is most similar to "moving or storage offices, with storage limited to items for retail sale and to 1,500 square feet of floor area per establishment" as listed in Use Group 7; and
- If the establishment is closed to the public, and is larger in size, the use is most similar to "warehouse" as listed in Use Group 16.

The Department notes that most of the micro-fulfillment centers currently operating in New York City (1) do not presently allow access to the public to facilitate retail sales, and (2) are generally located in small retail spaces that generally contain less than 1,500 square feet of storage of items for retail sale.

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The consideration of an appropriate Use Group for micro-fulfillment establishments needs to consider first and foremost the zoning districts where the Use Group is permitted, including the stated legislative intent and purpose of the zoning district. The remainder of this memo describes the textual and historical record that supports the Department of Building's classification.

Use Group 6

Use Group 6 contains the most ubiquitous set of commercial uses in the ZR, including staples of neighborhood retail corridors throughout the city, such as grocery stores and delis ("food stores"), restaurants ("eating and drinking establishments"), barber shops and beauty parlors, and drug stores, amongst dozens of other uses that "provide for a wide variety of local consumer needs"¹. By being listed in Use Group 6, these uses are permitted in most commercial districts (C1, C2, C4, C5, C6, and C8) and a subset are cross-listed in Use Group 12 to extend applicability to C7 zoning districts. Use Group 6 is also permitted in Manufacturing Districts.

Several of these commercial zoning districts were crafted with particular emphasis on the character of the streetscape, and the vitality that emerges when customers patronize multiple establishments. The excerpt below, from the 1958 *Zoning New York City* report that laid out the zoning framework adopted by the City in 1961, speaks about the retail character of a C1 District:

In catering to similar shopping habits, such uses contribute to a mutual interchange of customers. Experience with shopping centers has demonstrated that stores which attract customers who are in turn prospects for adjacent retail establishments are highly beneficial to the entire commercial concentration or center.²

This principle facilitating a continuous corridor for customers to frequently patronize establishments is further in the 'statement of legislative intent' provisions of ZR Section 32-11:

The district regulations are designed to promote convenient shopping and the stability of retail development by encouraging continuous retail frontage and by prohibiting local service and manufacturing establishments which tend to break such continuity.

Combined, it is clear the intent is to promote the retail vitality of commercial corridors by permitting those uses where customers would routinely ingress and egress and prohibiting uses that would have a deadening effect on the retail corridor by virtue of limiting customers. Beyond C1, the same notions of protecting retail continuity are expressed for C4 districts in ZR Section 32-14, and for C5 districts in ZR 32-15. For this reason, the Department believes it is appropriate to only classify, as a Use Group 6 use, micro-fulfillment centers that allow customers into their facility for direct purchases of their full product range since they can contribute to an active retail street. In so doing, facilities that do not allow in customers

¹ ZR Section 32-16

² Zoning New York City, Vorhees Walker Smith & Smith

would be restricted in Commercial Districts with a focus on the retail experience (C1, C4, C5 districts). Establishments without public access would be classified into other use groups based on their size, as described below.

Use Group 7

The drafters of the ZR acknowledged that commercial service uses that have limited (if any) customers still are necessary near many residential areas, as they provide needed services; but the drafters established appropriate districts for these uses. The description of a C2 District for instance, in the Zoning New York City report, is as follows:

Like the C1 Districts, they are primarily designed to serve local residential areas. However, the additional uses permitted in this district, such as upholstery and contractors' shops, are not the type which are compatible with good local retail shopping development. Since such service uses draw customers infrequently and only for special purposes, they produce "dead spots" in retail shopping frontages. They do provide essential services, however, and are not particularly obnoxious to adjacent residential areas.

This idea is also captured in the legislative intent of ZR Section 32-12:

These districts are designed to provide for a wide range of essential local services not involving regular local shopping. Since these establishments are less frequently visited by customers, they tend to break the continuity of prime retail frontage and, therefore, hamper the development of convenient shopping. The permitted services create relatively few objectionable influences for nearby residential areas.

To accommodate this fuller range of uses, C2 districts permit more Use Groups beyond Use Group 6, including those in Use Groups 7, 8, 9, and 14 which include many service-related businesses. For example, the description of Use Group 7 in the Zoning Resolution states it is intended to accommodate uses that are “incompatible in primary retail districts since they break the continuity of retail frontage.”³

Figure 1: Permitted Use Groups in Commercial Districts.

	Residential		Community Facility		Retail and Commercial										General Service	Manufacturing		
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
	Commercial Districts																	
C1	•	•	•	•	•	•												
C2	•	•	•	•	•	•	•	•	•									
C3	•	•	•	•	•	•								•				
C4	•	•	•	•	•	•		•	•	•		•						
C5	•	•	•	•	•	•		•	•	•		•						
C6	•	•	•	•	•	•	•	•	•	•	•	•						
C7												•	•	•	•			
C8				•	•	•	•	•	•	•	•	•	•	•	•	•		

³ ZR 32-16

Use Group 7 also includes limits on the maximum size of some establishments to be considered in this Use Group. Two of the uses dealing with the storage of goods have limitations on the amount of storage that can occur on site (for example, “moving or storage offices, with storage limited to items for retail sale and to 1,500 square feet of floor area per establishment”). The Department believes it is appropriate to classify micro-fulfillment centers that do not allow public access, but which meet the listed square footage limitation, as Use Group 7 uses. Other storage to support the operation of the business would not be subject to the size limitation.

Therefore, with a Use Group 7 classification, small micro-fulfillment centers that do not allow the public into the establishment would be permitted in C2, C6 and C8 districts. They would also be permitted in Manufacturing Districts.

Use Group 16

Uses listed in Use Group 16 are only permitted in C8 Commercial Districts and in Manufacturing Districts. When devising the system of use groups and zoning districts, the drafters of the ZR intended that typical commercial districts would “exclude non-retail uses which generate a large volume of trucking”⁴ while C8 Districts and manufacturing districts would allow “necessary services for a wider area than [typical commercial districts]. Since these service establishments often involve objectionable influences, such as noise from heavy service operations and large volumes of truck traffic, they are incompatible with both residential and retail uses.”⁵ C8 Commercial Districts are specifically cited in the *Zoning New York* report as:

*[...] designed primarily to accommodate automotive and other service establishments which by the nature of their operations tend to be objectionable to adjacent residential areas. However, such uses provide essential services to residents and business establishments and are needed in proximity to the areas they serve. Their service areas on the average are roughly comparable to those of small secondary centers.*⁶

Grocery micro-fulfillment centers, which seek – to establish numerous small facilities within proximity to customers to fulfill online orders within a matter of minutes – differ from larger fulfillment centers which, owing to their size, would store merchandise and provide other logistical support for far larger service areas more than a locally-oriented micro-fulfillment facility. Given the greater volume of goods moving through these facilities, large fulfillment centers can generate frequent heavy freight truck trips, as well as traffic impacts from a large number of on-site workers and delivery persons. A classification of a large fulfillment center possessing such objectionable characteristics within Use Group 6 or 7 would conflict with the ZR’s stated intent behind these use groups, and thus would be inappropriate.

⁴ ZR 32-16

⁵ ZR 32-18

⁶ *Zoning New York City*, Voorhees, Walker, Smith & Smith (1958, pp. 108-109)

Therefore, the department believes it is appropriate that larger micro-fulfillment establishments that do not allow public access would be considered Use Group 16. As such, these establishments would only be permitted in C8 districts and Manufacturing districts.

Conclusion

The Department believes this approach of designating a fulfillment center's use group based upon both its accessibility to the public and its size most carefully considers the land use impacts of these new facilities. It is also supported by the legislative intent and history of the Zoning Resolution. It provides flexibility to classify these uses according to their specific land use attributes, allowing operators to make informed decisions about where to site their facilities and what services to offer at each one. By taking this approach, the Department of Buildings is allowing for appropriate siting without undue hardship, while also providing for the protection of the character of residential districts.

Sincerely,

A handwritten signature in black ink, appearing to read 'FRANK RUCHALA, JR.', is centered on a light gray rectangular background.

Frank Ruchala, Jr.

Cc: Mona Sehgal, Esq., General Counsel, DOB
Felicia Miller, Esq., Deputy General Counsel, DOB
Susan Amron, Esq., General Counsel, DCP