


FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE  <b>MEMO</b>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 <sup>TH</sup> FLOOR		
	SUBJECT	BMZA / 1927 Benhill Avenue / 5101 Andard Avenue		

TO Mr. David Tanner, Executive Director  
Board of Municipal and Zoning Appeals  
417 East Fayette Street, 14<sup>th</sup> Floor

DATE: February 2, 2015

### REQUEST

The Department of Planning has received Sumrit Ded Dechanukul's Board of Municipal and Zoning Appeals (BMZA) application to use the portion of 5101 Andard Avenue known as 1927 Benhill Avenue as a recycling center with compact bailing (*sic!*) of paper, plastic, aluminum, etc., that would be trucked off-premises. The Zoning Administrator has determined that this is a conditional use in a M-3 Zoning District. We understand that this appeal is scheduled for hearing on February 10, 2015.

### SITE

5101 Andard Avenue is located on the southeast corner of the intersection with Benhill Avenue. This property contains approximately 8.776 acres and is currently improved with a grouping of one and two-story industrial buildings. This site is zoned M-3 and the eastern portion is located within the Chesapeake Bay Critical Area. The area and building known as 1927 Benhill Avenue, located in the southern portion of the property described as 5101 Andard Avenue, is entirely within the Chesapeake Bay Critical Area which is demarcated by a red line drawn on the aerial photograph attached to this memorandum, and was the subject of the Board's decision in appeal no. 2010-538 heard on April 26, 2011. The entire property known as 5101 Andard Avenue is also within the Maritime Industrial Zoning Overlay District (MIZOD) created in 2004.

### ANALYSIS

Conditional Use: In this zoning district, recyclable materials recovery facilities are a conditional use, requiring approval by the Board (§7-407). In this case, the property was last authorized for use as a recycling collection station and a recyclable materials recovery facility – all storage indoors, which are conditional uses in this M-3 Industrial District. The applicant is seeking approval to amend the approved conditional uses to include baling of certain recyclable materials.

Conditional Use – Required findings: The Board may not approve a conditional use unless, after public notice and hearing and on consideration of the standards prescribed in this title, it finds that:

1. the establishment, location, construction, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, security, general welfare, or morals;
2. the use is not in any way precluded by any other law, including an applicable Urban Renewal Plan;
3. the authorization is not otherwise in any way contrary to the public interest; and
4. the authorization is in harmony with the purpose and intent of this article (§14-204).

The Board, in its decision in appeal no. 63-96X issued on February 29, 1996, approved the conditional use of the property as a recycling center. That decision also refers to a "recycling collection station" which is defined in part as a facility at which: "(i) no mechanical processing or shredding is done on site; (ii) no ferrous metals are accepted; and (iii) if the station has an attendant present to purchase recyclable materials, no copper, brass, tin, zinc, or lead is accepted" (§1-182). The current application includes the statement "use premises for compact bailing [baling] ...." and baling is a mechanical process. That portion of this proposed use would thus contravene the restrictions associated with the currently-approved conditional use of this property. The Board reaffirmed its prohibition on use of the parts of the entire property known as 5101 Andard Avenue lying in the Chesapeake Bay Critical Area for scrap storage by approving and mandating a physical separation of a scrap storage operation at 1951 Benhill Avenue from the parts of the entire property that are in the Critical Area (see appeal no. 2012-319, decision dated January 24, 2013).

Critical Area: Junk or scrap storage and yards are a prohibited use in the Chesapeake Bay Critical Area (see § 8-310.a). The site cannot be used as, or cannot become, a junk yard as regulated by COMAR 11.12.03 (Transportation) and Maryland Code Title 17 (Business Licenses), subtitle 10, Junk Dealers and Scrap Processors. The proposed use is prohibited since it would include temporary commercial or industrial storage of unprocessed metal, wastepaper, rags, or other junk, and/or sorting and baling of these materials, which form part of the Zoning Code definition of "Junk or scrap storage and yards" (§1-153.1 (b)).

The Zoning Code allows exceptions or expansions of prohibited uses in the Critical Area only when certain conditions are met, as follow:

"§ 8-310. Prohibited uses.

(c) *Exceptions.*

The prohibitions in subsections (a) and (b) of this section do not apply if:

- (1) on recommendation of the Department of Planning, the Board finds that:
  - (i) there is no environmentally acceptable alternative outside the Critical Area;  
and
  - (ii) the use is needed to correct an existing water quality or wastewater management problem; and
- (2) for any new use that constitutes a significant development or for any expansion of a nonconforming use, a best management practices plan that will achieve a net improvement in water quality is submitted and implemented as a requirement of the Critical Area review process."

Through careful review and evaluation of this application, Department of Planning staff have determined that the proposed use of the portion of the entire premises known as 1927 Benhill Avenue for baling of paper, plastic, aluminum, etc., cannot meet the requirements to be eligible for an exception as provided in § 8-310 of the Zoning Code. First, the proposed use would be more appropriate outside of the Critical Area, and there is an ample supply of appropriately-zoned land available for the proposed use outside of the Critical Area. Second, the use is not needed to correct an existing water quality or wastewater management problem; in fact, it may be considered to have potential to create additional water quality problems. For

these reasons, the application is not eligible for an exception as provided in the Zoning Code, and is currently a prohibited use in the Critical Area.

Application copies to Planning and Critical Area Commission: All applications for a conditional use or variance must be made in writing to the Board, and the Board must furnish copies of all applications to the Planning Department and the Chesapeake Bay Critical Area Commission (§8-322.d). If this procedural requirement has not been met, the Board should delay full hearing of this application in order to provide the Critical Area Commission opportunity to review and comment on this application.

TransForm Baltimore: This property would become part of the MI (Maritime Industrial) District (Proposed Zoning Map Area 13-A) in which recyclable materials recovery facilities, materials recovery facilities, and resource recovery facilities would be prohibited uses (Table 11-301).

#### **RECOMMENDATION**

The Department of Planning recommends disapproval of this application, because the proposed use is not allowed by the Zoning Code on this portion of the property, where it also is a use that may not be authorized under the Chesapeake Bay Critical Area law.

TJS/wya/mf

cc: Sumrit Ded Dechanukul, Appellant

