

TJA

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 / 905 East 43 <sup>rd</sup> Street		

TO

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

DATE: February 20, 2015

### REQUEST

The Department of Planning has received Obin Robinson's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the premises as a grocery store. The Zoning Administrator has determined that this is a prohibited use in a R-5 Zoning District. We understand that this appeal is scheduled for hearing on February 24, 2015.

### SITE

905 East 43<sup>rd</sup> Street is located on the south side of the street, approximately 25' east of the intersection with Saint George's Avenue. This property measures approximately 30' by 141'3" and is currently improved with a two-story detached residential mixed-use building measuring approximately 18' by 52'. This site is zoned R-5 and is located within the York Road Community Strategic Neighborhood Action Plan area.

### ANALYSIS

Use: In this zoning district, grocery stores and convenience stores are not listed as permitted or conditional uses, and so are not allowed (§4-801 to §4-804). In this case, the property was last authorized for use as a grocery store, which is a nonconforming use in this R-5 General Residence District, and a single-family dwelling.

Determination of nonconformity or noncompliance: (a) Whether a nonconforming use, noncomplying density or other form of nonconformity exists is a question of fact that, except as specified in subsection (b) of this section, must be decided by the Board after public notice and hearing in accordance with the rules of the Board (§13-107). This property was approved for use as a delicatessen by the Board in 2007 (appeal no. 353-07).

Change in Nonconforming Use: In accordance with Subtitle 7 {"Modifications and Continuances by Board"} of this title, the Board may authorize a Class III nonconforming use in a Residence or Office-Residence District to be changed to a use permitted in a B-1 District (§13-405.b). Grocery stores are listed as a permitted use in the B-1 District, and so are eligible for a change in nonconforming use (§6-206). In his application the applicant requests approval to continue use as a "corner market". This should be amended to "grocery store".

TransForm Baltimore: This property would remain part of the R-5 District (Proposed Zoning Map Area 3-C) in which Neighborhood Commercial Establishments would be conditional uses (Table 9-301). "Neighborhood commercial establishment" means "a commercial use that is within a residential neighborhood, but in a structure that is non-residential in its construction and original use" (§1-310 (I)).

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**RECOMMENDATION**

The Department of Planning has no objection to this appeal if the applicant demonstrates to the Board that nonconforming use of the property has not been discontinued or abandoned.

TJS/wya/mf

cc: Obin Robinson, Appellant