



FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 TH FLOOR		
	SUBJECT	BMZA / 1232 North Caroline Street		

TO

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

DATE: September 17, 2013

REQUEST

The Department of Planning has received Edward Smith, Jr.'s Board of Municipal and Zoning Appeals (BMZA) application, on behalf of No Soo Chun et al., to appeal Zoning Violation Notice #933565A which cited land use without proper occupancy certificate or use permit. The applicant has also requested approval of a tavern and package goods (liquor) store. The Zoning Administrator has determined that a change of Class III nonconforming use in a R-8 District is needed for approval of this application. We understand that this appeal is scheduled for hearing on September 17, 2013.

SITE

1232 North Caroline Street is located on the southwest corner of the intersection with Preston Street. This property measures approximately 19'1" by 90' and is currently improved with a three-story semi-detached street-corner building and additions covering the entire lot. This site is zoned R-8 and is located within the Oliver Neighborhood Development Program (NDP) Urban Renewal Plan area and the Old East Baltimore National Register Historic District.

ANALYSIS

Use: In this zoning district, taverns are not listed as a permitted or conditional use, and so are not allowed (§4-1101 to §4-1104). In this case, the property was last authorized for use as a tavern with accessory liquor sales, which is a nonconforming use in this R-8 General Residence District, and a dwelling (which is a permitted use).

Tavern: "Tavern" means a business establishment that: (1) is devoted primarily to serving alcoholic beverages to the public for on-premises consumption; (§1-194.1).

Accessory use: Accessory use ... means a use ... that: (1) serves and customarily is incidental and subordinate to the principal use ...; (2) is subordinate in area, extent, or purpose to the principal use ...; (3) contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal use ... served; and (4) except in a planned unit development, is located on the same lot as the principal use ... served (§1-102, *edited for purposes of this memorandum to remove references to "structure" which are not relevant to the use consideration in this appeal, as this property has no accessory structures*). For liquor sales (of the packaged goods variety, as opposed to by-the-glass sales of drinks to patrons of and inside the tavern) to be accessory to principal use of the premises as a tavern, those sales must be incidental and subordinate to operation of the tavern. This provision of the Zoning Code would require that off-premises liquor sales be less in value than on-premises (by-the-glass or in-tavern consumption) liquor sales in order to establish a subordinate relationship.

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). The Board may require that the applicant provide evidence of the relative value of on-premises (in-tavern) liquor sales and off-premises (package goods) liquor sales in order to determine if liquor sales at this location are in fact accessory, as specified in the Certificate of Occupancy for the property; or alternatively, to determine that a tavern, as defined in the Zoning Code, is the current nonconforming use of this property.

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). Liquor stores are not listed as a permitted use in the B-1 District, and so are not eligible for a change in nonconforming use (§6-206).

Urban Renewal Plan: This property is located in the Oliver NDP Urban Renewal Area, where the Urban Renewal Plan restricts this use (tavern with accessory liquor sales) as a continuing nonconforming use. The Plan designates this property and its surrounding area as Residential (Exhibit 1, Land Use Plan). The Land Use Plan section of the Plan lists permitted uses for areas designated as Residential (-- Oliver NDP UR Plan, B.1 and B.1.a.) which do not include commercial uses such as taverns or liquor stores. Uses not specified as Permitted in this section of the Plan are considered nonconforming or non-complying by the Plan. The Plan also contains this provision relating to land use:

“... a non-complying use – when such term is used herein – is any lawfully existing use of a building or other structure, or of land, which does not comply with the land use regulations of the Plan. These non-complying uses shall be permitted to continue for an indefinite period of time, except that: ... (3) No non-complying land use shall be changed to any other non-complying land use (-- Oliver NDP UR Plan, B.1.g.).

The Board is thus constrained from approving a change of land use for this property from a tavern with accessory liquor sales to a tavern with package goods (sales) where package goods sales is no longer accessory to the principal use as a tavern, as described in the “Application for Review” dated 7-25-13. (The Department of Planning is not making similar reference to the “Use and Occupancy Permit Application” that was included with this application, but notes that on that other document the existing use(s) of the property described as “tavern/ package goods” and the proposed use(s) described as “liquor store” could suggest an interest in changing the land use of the property from tavern to liquor store.)

RECOMMENDATION

The Department of Planning recommends disapproval of this appeal, because the proposed change in nonconforming use of the property to a package goods liquor store (liquor sales) would not be an allowable change of nonconforming use authorized by the Zoning Code or an allowable use in the Residential land use section or the Non-complying land use section of the Oliver NDP Urban Renewal Plan.

TJS/wya/mf

cc: Edward Smith, Jr., Appellant

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