


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 / 2251 East Preston Street		

TO

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

DATE: May 10, 2013

**REQUEST**

The Department of Planning has received Syed Zakir Shah's Board of Municipal and Zoning Appeals (BMZA) application to use a portion of the first floor of the premises for sales of cellular phones and accessories. The Zoning Administrator has determined that this is a nonconforming use in a R-7 District. We understand that this appeal is scheduled for hearing on May 14, 2013.

**SITE**

2251 East Preston Street is located on the southwest corner of the intersection with Patterson Park Avenue. This property measures approximately 14' by 71'9" and is currently improved with a two-story end-of-row residential mixed-use building measuring approximately 14' by 60'. This site is zoned R-7 and is located within the Broadway East Urban Renewal Plan area and the Baltimore East/ South Clifton Park National Register Historic District.

**ANALYSIS**

Use: In this zoning district, cellular telephone sales and cellular phone accessory sales are not listed as a permitted or conditional use, and so are not allowed (§4-1001 to §4-1004). In this case, the property was last authorized for use as a barber shop, which is a nonconforming use in this R-7 General Residence District.

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). Communication systems: sales and services, although listed as a permitted use in a B-2 District (§6-306), is not listed as a permitted use in the B-1 District, and so is not eligible for a change in nonconforming use (§6-206). Cellular telephones may be considered the end-users' portion of their communication system.

Urban Renewal Plan: This property is located in the Broadway East Urban Renewal Area, where the Urban Renewal Plan prohibits variety stores (such as a store selling accessory equipment for cellular telephones) as a change of nonconforming use in R-1 through R-10 Districts (Land Use Plan, Permitted Land Uses, B.1.f. Nonconforming Use). The portion of this application relating to sale of cellular phone accessories thus is not approvable.

TransForm Baltimore: This property would remain part of a R-8 District (Proposed Zoning Map Area 7-B) in which Neighborhood Commercial Establishments would be conditional uses (Table 9-301). A Neighborhood Commercial Establishment would need to be located in a structure that is non-residential in its construction and original use (§1-310.I). This structure was originally constructed as an end-of-row house, and would not qualify under this definition.

**RECOMMENDATION**

The Department of Planning recommends disapproval of this appeal, because the Zoning Code does not authorize the Board to approve creation of new nonconforming uses, which a cellular telephone and accessories store would be in a R-8 District, since it is not a use provided in B-1 Districts and thus is not eligible for consideration as a change of nonconforming use. The Broadway East Urban Renewal Plan also prevents consideration of a variety store at this location.

TJS/wya/mf

cc: Syed Zakir Shah, Appellant