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| FROM | NAME & TITLE | THOMAS J. STOSUR, DIRECTOR <i>Stole / per T.J.S.</i> | CITY of BALTIMORE MEMO |  |
| | AGENCY NAME & ADDRESS | DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 TH FLOOR | | |
| | SUBJECT | BMZA / 1155 North Carey Street | | |

TO

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

DATE: May 7, 2011

REQUEST

The Department of Planning has received Edeogochineme Agbugba's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the premises as a grocery store. We understand that this appeal is scheduled for hearing on May 15, 2012.

SITE

1155 North Carey Street is located on the southeast corner of the intersection with Winchester Street. This property measures approximately 17'6" by 80' and is currently improved with a three-story end-of-row residential mixed-use building covering the entire lot. This site is zoned R-8 and is located within the Sandtown-Winchester Urban Renewal Plan area and the Old West Baltimore National Register Historic District.

ANALYSIS

Use: In this zoning district, grocery stores 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 beauty shop, which is a nonconforming use in this R-8 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). 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).

Renewal Plans: Ordinance #01-0165 was approved May 14, 2001 for the purpose of, among other things, clarifying the relationship between conditions or requirements imposed by an Urban Renewal Plan or Conservation Plan, such that the condition or requirement that is more restrictive will govern. Additionally, the ordinance prohibits the approval of a conditional use or a variance if that conditional use or variance is precluded by an applicable renewal plan or master plan.

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: ... (2) the use is not in any way precluded by any other law, including an applicable urban renewal plan; (§14-204). For this reason, the Board must consider the requirements of the Sandtown – Winchester Urban Renewal Plan ("Plan"), originally approved by Ordinance 701 on April 17, 1978, and its section B, "Land Use Plan, Permitted Land Uses, Residential" and its Land Use Plan map dated as revised May 23, 1990.

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The Plan further specifies “Non-complying” uses, which are allowed to continue for an indefinite period of time, to include “any lawfully existing use of a building or other structure, or of land, which does not comply with the land use regulations of this Plan.” (Sandtown – Winchester URP, B.1.h.) The Plan then states:

“No non-complying land use shall be changed to any other non-complying land use.”
(Sandtown – Winchester Urban Renewal Plan, B.1.h.(3))

For this reason, the Board is constrained from approving the change of use of the property at 1155 North Carey Street from a beauty shop to a grocery store.

Conflicting Provisions: *Most restrictive provision governs*. If any condition or requirement imposed by a provision of this article is either more or less restrictive than a comparable condition or requirement imposed by any other provision of this article or of any other law, rule, or regulation of any kind, including an applicable urban renewal plan, the condition or requirement that is the more restrictive governs (§1-206.b). As stated above, the Board must disapprove this request, as the provision of the Sandtown – Winchester Urban Renewal Plan is the more restrictive.

RECOMMENDATION

The Department of Planning recommends disapproval of the appeal, because the change of use proposed by the applicant cannot be authorized according to the terms of the Sandtown – Winchester Urban Renewal Plan.

TJS/wya/mf

cc: Edeogochineme Agbugba, Appellant