


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 / 400 West 23 <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:

May 4, 2012

**REQUEST**

The Department of Planning has received Melvin Kodenski's Board of Municipal and Zoning Appeals (BMZA) application, on behalf of John Miley, trustee, to continue to use the property as a tavern and a dwelling unit, with the tavern on the first floor and the basement used for storage, and the dwelling on the second floor. We understand that this appeal is scheduled for hearing on May 15, 2012.

**SITE**

400 West 23<sup>rd</sup> Street is located on the northwest corner of the intersection with Hampden Avenue. This property measures approximately 14' by 70' and is currently improved with a two-story end-of-row residential mixed-use building covering the entire lot. This site is zoned R-8.

**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, which is a nonconforming use in this R-8 General Residence District, and a dwelling, which is a permitted use.

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 applicant has indicated that the previous tavern owner was foreclosed on, but has not indicated whether the tavern use has been discontinued.

**RECOMMENDATION**

The Department of Planning recommends disapproval of this appeal, because the Board is not authorized by the Zoning Code to approve new nonconforming uses, unless the applicant demonstrates to the Board that the nonconforming use of the property has not been discontinued or abandoned.

TJS/wya/mf

cc: Melvin Kodenski, Appellant