


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 / 1232 North Gilmor Street		

TO

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

DATE: June 19, 2012

### REQUEST

The Department of Planning has received Keith Coco's Board of Municipal and Zoning Appeals (BMZA) application, on behalf of Sandtown Habitat for Humanity, Inc., to use the property as an office. We understand that this appeal is scheduled for hearing on June 26, 2012.

### SITE

1232 North Gilmor Street is located on the southwest corner of the intersection with Laurens Street. This property measures approximately 16' by 75' and is currently improved with a three-story building and a one-story rear addition 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, offices 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 candy store, which is a Class III nonconforming use in this R-8 General Residence District, and a dwelling. The building is currently vacant and appears to have been abandoned for several years.

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).

Discontinuance of Use: Whenever the active and continuous operation of any Class III nonconforming use, or any part of that use, has been discontinued for 12 consecutive months: (i) the discontinuance constitutes an abandonment of the discontinued nonconforming use, or discontinued part of that use... (§13-407.a.1). The condition of the building suggests that abandonment of the nonconforming use has occurred.

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.

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 1232 North Gilmore Street from a candy store to an office.

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. However, the Department of Planning is supportive of the mission and accomplishments of the applicant, and is prepared to work with the applicant to develop an amended application that would be approvable under the terms and conditions of the Plan.

#### **RECOMMENDATION**

The Department of Planning recommends deferral of a complete hearing of this application in order to allow the applicant to develop the proposal for re-use of the structure on the property more fully.

TJS/wya/mf

cc: Keith Coco, Appellant