


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 / 1746 East Chase Street		

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

DATE: August 27, 2010

REQUEST

The Department of Planning has received Stephen Campbell's Board of Municipal and Zoning Appeals (BMZA) application, on behalf of East Baltimore Development, Inc. (EBDI), to raze the existing vacant building and erect a new three-story office building. We understand that this appeal is scheduled for hearing on August 31, 2010.

SITE

1746 East Chase Street is located on the northwest corner of the intersection with Rutland Avenue. This property measures approximately 14'6" by 71'8" and is currently improved with a three-story end-of-row building covering the entire lot. This site is zoned R-8 and is located within the Middle East Urban Renewal Plan area.

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 multiple-family dwelling and a carry-out food shop and grocery store, 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). An office – business, governmental, and professional, is listed as a permitted use in the B-1 District, and so is eligible for a change in nonconforming use (§6-206).

Expansion of Nonconforming Use: Except as authorized by the Board under Subtitle 7 {"Modifications and Continuances by Board"} of this title, a Class III nonconforming use may not be expanded in any manner, nor may any structure be erected or expanded on any nonconforming use of land, unless the use of the land and structure is made to conform to the regulations of the district in which the structure is located (§13-406). See also §13-702 to §13-714.

Discontinuance or abandonment: If, at any time, actual abandonment in fact is evidenced by removal of structures, machinery, or equipment, or by alterations that indicate a change in the use of any part of the land or structure: (1) that action constitutes an abandonment of the nonconforming use, or affected part of that use; and (2) all rights to continue or reestablish the nonconforming use, or part of that use, immediately terminate (§13-207.b). If acted upon, the applicant's proposal would immediately discontinue the nonconforming use of the property when the existing building would be razed.

Extension or moving of Class I, II, or III Nonconforming Use: The Board may authorize an extension of a Class I, Class II, or Class III nonconforming use, as limited and stated in §§ 13-206, 13-306, and 13-406 {“Expansions of use”} and §§ 13-208, 13-308, and 13-408 {“Relocations”} of this title, if the Board finds that: (1) the extension or moving will not cause a greater volume of traffic than that generated before the extension or move; (2) the extension or moving will not violate in any manner the bulk regulations of the district in which the property is located; (3) the effect of the extended or moved use on the health, safety, or general welfare of the community will be no worse than the existing or last use; (4) for the extension of a Class II or Class III nonconforming use, the extension will not result in an increase of the floor area of more than 25% beyond that which had been occupied or used when it became nonconforming; and (5) for an extension in the Critical Area: (i) there is no environmentally acceptable alternative outside the Critical Area; and (ii) the use is needed to correct an existing water quality or wastewater management problem (§13-714).

The existing structure, although currently vacant for at least seven years (refer to the condemnation notice dated 2003), had a nonconforming use confined to its ground floor (first floor). The upper two floors were used as residential dwelling units, as evidenced by the multiple-family dwelling principal classification of the building. Therefore, the proposed complete use of the property as offices would constitute an expansion closer to 250% of the earlier nonconforming use, if approval would be given to change the nonconforming use. This amount exceeds the discretionary authority granted to the Board by §13-714 (4).

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 Middle East Urban Renewal Plan, which does not allow this use in this district. The Middle East Urban Renewal Plan’s Exhibit 1, Land Use Plan, designates this entire block, except its northwest corner at McDonogh and East Biddle Streets, as residential, and states that residential uses shall be those permitted by the Zoning Code of Baltimore City (Land Use Plan, (1) Permitted Land Uses, a. Residential).

Off-Street Parking: The amount of off-street parking required for business, governmental or professional offices is one parking space per 400 square feet of office area in excess of 1,000 square feet (§10-405.17). A 14.5’ by 71.5’ building would have an approximate building footprint of 1,037 square feet; a three-story office building would therefore contain approximately 3,111 square feet, requiring five off-street parking spaces to be provided by the applicant. The application proposes a new building covering the entire lot, and does not propose any off-street parking to support the proposed use.

Off-Street Parking Variance: ... the Board may grant a variance to reduce by no more than 75% the number of off-street parking spaces otherwise required by the applicable regulation

(§15-208.b). In this case the reduction proposed is 100%, which is greater than the variable amount the Board may authorize. The dimensions of this property would only allow one off-street parking space to be created if the existing building was partially or completely demolished.

RECOMMENDATION

The Department of Planning recommends disapproval of the appeal, because approval of the proposed new office building would constitute creation of a new nonconforming use, which the Zoning Code does not authorize in Residential zoning districts; because the proposed use at this location is inconsistent with existing residential zoning and the Middle East Urban Renewal Plan; and because the applicant has not proposed to provide off-street parking adequate to meet the standards of the Zoning Code. This Department would have no objection to retention of the existing building having as its uses a first-floor office (by way of authorization of a change of nonconforming use only) and one or two dwelling units above that office.

TJS/wya/mf

cc: Stephen Campbell, Appellant