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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 / 2248-2250 East North Avenue		

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

DATE: September 9, 2010

## REQUEST

The Department of Planning has received Brian Knight's Board of Municipal and Zoning Appeals (BMZA) application to consolidate lots and use the premises of 2248 East North Avenue as a courtyard meeting place and cold storage in conjunction with an existing tavern located at 2250 East North Avenue. We understand that this appeal is scheduled for hearing on September 14, 2010.

## SITE

2250 East North Avenue is located on the northwest corner of the intersection with Patterson Park Avenue. This property measures approximately 14' by 80' and is currently improved with a two-story end-of-row building covering the entire lot. 2248 East North Avenue adjoins this premises on its west side and is currently improved with the brick shell of a former two-story row building measuring approximately 13' by 55'. This site is zoned R-7.

## ANALYSIS

Use: In this zoning district, taverns are not listed as a permitted or conditional use, and so are not allowed (§4-1001 to §4-1004). In this case, the property at 2250 East North Avenue was last authorized for use as a tavern, which is a nonconforming use in this R-7 General Residence District, while the property at 2248 East North Avenue was last authorized for use as an attached dwelling.

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. Warehousing and storage, a Zoning Code category which would encompass cold storage, is a permitted use in a M-1 Industrial District (§7-206) or a B-3 Community Commercial District (§6-406), but is not permitted in Residence or Neighborhood Business (B-1) or Community Business (B-2) Districts.

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 applicant has not provided dimensioned site plans indicating how the proposed consolidation of 2248 East North Avenue with 2250 East North Avenue will be accomplished without expanding the existing nonconforming use (the tavern at 2250 East North Avenue) more than 25%. Both the meeting area and cold storage are proposed as extensions of that nonconforming use. It is also noted that the Use and Occupancy Permit Application dated August 6, 2010 by the applicant proposes a “second phase” in which 2248 East North Avenue would be rebuilt and converted to office space and cold storage. This proposed second phase is inconsistent with the R-7 zoning of the properties.

### **RECOMMENDATION**

The Department of Planning recommends disapproval of the appeal, because the proposed expansion of the nonconforming use at 2250 East North Avenue would exceed the 25% statutory limitation on expansion of Class III Nonconforming Uses, and because cold storage (warehousing and storage) is not a use which can be permitted by the Board in a R-7 Zoning District under the terms of the Zoning Code. The Department would have no objection to consolidation of the properties by the applicant if the applicant provides dimensioned approvable plans for the residential and non-residential use of the consolidated premises.

TJS/wya/mf

cc: Brian Knight, Appellant