


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 / 501-07 North Carey Street		

TO

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

DATE: September 22, 2009

REQUEST

The Department of Planning has received Shon Cummins' Board of Municipal and Zoning Appeals (BMZA) application to use the exterior front for outdoor seating accessory to a mini-mart/ carryout. We understand that this appeal is scheduled for hearing on September 29, 2009.

SITE

501-07 North Carey Street is located on the northeast corner of the intersection with Franklin Street. This property measures approximately 66' by 100' and is currently improved at its northeastern corner with a one-story commercial building measuring approximately 46' by 30'. This site is zoned R-8 and is located within the Harlem Park II Urban Renewal Plan area.

ANALYSIS

Use: Any use that is not expressly allowed in a district is prohibited (§3-106). In this zoning district, a mini-mart and carryout (or any other form of retail food service establishment) is not listed as a permitted or conditional use, and so is not allowed (§4-203 to §4-1103).

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). Food stores and grocery stores are listed as permitted uses in the B-1 District, and so would be eligible for a change in nonconforming use (§6-206). Restaurants, either eat-in or carryout, are not listed as permitted uses in a B-1 District, and so may not be approved.

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 Harlem Park II Urban Renewal Plan, which does not allow this use in this district. The Plan states: "The non-conforming use shall not be changed to any use except those permitted within the R-8 Zoning District of the project area as specified above or to any of the following uses: ... food store;" (Food stores are allowed by the Plan in designated Commercial use areas.)

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“Carry-out food shop” means a business establishment whose principal business is the sale of ready-to-consume food and beverages for off-premises consumption (§1-123.1). Creating an outdoor seating area in front of this property is inconsistent with the off-premises consumption requirement.

RECOMMENDATION

The Department of Planning recommends disapproval of the appeal for a mini-mart (a form of food store or grocery store) unless the applicant can demonstrate that a current nonconforming use has not been discontinued. The appeal for a carryout must be disapproved as prohibited by the terms of the Harlem Park II Urban Renewal Plan (in effect since 1960). Outdoor seating must likewise be disapproved, because it would be accessory to the prohibited restaurant use.

TJS/ewt/mf

cc: Shon Cummins, Appellant