


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 / 35 North Potomac Street		

TO

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

DATE: October 16, 2014

REQUEST

The Department of Planning has received Luis Vazquez's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the premises as a restaurant and carry-out food shop. The Zoning Administrator has determined that this is a nonconforming use in a R-8 Zoning District. We understand that this appeal is scheduled for hearing on October 21, 2014.

SITE

35 North Potomac Street is located on the southeast corner of the intersection with Fairmount Avenue. This property measures approximately 15' by 71' 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 and is located within the Patterson Park – Highlandtown National Register Historic District.

ANALYSIS

Use: In this zoning district, restaurants and carry-out food shops are not listed as permitted or conditional uses, 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.

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 Zoning Administration office has noted that nonconforming use of this property may have been discontinued for 12 months or more.

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). A restaurant is listed as a permitted use in the B-1 District, and so is eligible for a change in nonconforming use; a carry-out food shop is not listed as a permitted or conditional use in a B-1 District and so is not eligible for a change in nonconforming use (§6-206).

TransForm Baltimore: This property would remain part of a R-8 District (Proposed Zoning Map Area 8-C) in which Neighborhood Commercial Establishments would be conditional uses (Table 9-301). "Neighborhood commercial establishment" means "a commercial use that is within a residential neighborhood, but in a structure that is non-residential in its construction and original use" (§1-310 (I)).

RECOMMENDATION

The Department of Planning recommends disapproval of the portion of this appeal relating to a carry-out food shop, because that use is not a use to which a nonconforming use in a Residential Zoning District may be changed. The Department has no objection to approval of changing the nonconforming use to a restaurant if the applicant demonstrates that nonconforming use of the property has not been discontinued or abandoned.

TJS/wya/mf

cc: Luis Vazquez, Appellant