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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 / 2400 McElderry Street		

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

DATE: October 21, 2010

REQUEST

The Department of Planning has received Nathaniel Greene's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the property as a carry-out food store. We understand that this appeal is scheduled for hearing on October 26, 2010.

SITE

2400 McElderry Street is located on the northeast corner of the intersection with Montford Avenue. This property measures approximately 17' by 67' and is currently improved with a two-story end-of-row building measuring approximately 17' by 55'. This site is zoned R-8 and is located within the McElderry-Monument-Fayette Master Plan area.

ANALYSIS

Use: In this zoning district, carry-out food stores 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 single-family attached dwelling, which is a permitted use in this R-8 General Residence District.

Definition: "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).

Nonconformity: 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).

Changes in use. Reversion prohibited: If a Class III nonconforming use has been changed to a conforming use, it may not later be changed back to a nonconforming use (§13-405.e).

RECOMMENDATION

The Department of Planning recommends disapproval of the appeal, because the Zoning Code does not authorize the Board to approve creation of new nonconforming uses.

TJS/wya/mf

cc: Nathaniel Greene, Appellant