2011-529

FROM		
NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE **MEMO**
AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8TH FLOOR	
SUBJECT	BMZA / 1300 West Lafayette Avenue	

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

DATE: December 5, 2011

REQUEST
The Department of Planning has received Angelina Hernandez's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the premises as a grocery store and delicatessen. We understand that this appeal is scheduled for hearing on December 20, 2011.

SITE
1300 West Lafayette Avenue is located on the northwest corner of the intersection with Carey Street. This property measures approximately 16' by 80' and is currently improved with a three-story building and attached rear additions covering the entire lot. This site is zoned R-8 and is located within the Sandtown – Winchester Urban Renewal Plan area and the Old West Baltimore National Register Historic District.

ANALYSIS
Use: In this zoning district, grocery stores and delicatessens 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 wearing apparel shop, which is a nonconforming use in this R-9 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).

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). Grocery stores and delicatessens are listed as permitted uses in the B-1 District, and so are eligible for a change in nonconforming use under the Zoning Code (§6-206).

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. The Sandtown – Winchester Urban Renewal Plan, originally approved April 17, 1978 by the Mayor and City Council and last amended July 2, 1993, states in part:

"A non-complying use is any lawfully existing use of a building or other structure, or of land, which does not comply with the land use regulations of this Plan. The non-complying uses listed in Appendix B of this Plan, or other non-complying uses which exist or may be legally established between the date of the survey on which the list in Appendix B is based and the date of approval of this Plan by the Mayor and City Council of Baltimore, shall be permitted to continue for an indefinite period of time, except that:

(1) Any non-complying land use which is discontinued [for] a period exceeding 12 months shall not be re-established.
(2) ….
(3) No non-complying land use shall be changed to any other non-complying land use." (*Land Use Plan, B.1.h.*)

This property is listed in Appendix B of the Sandtown – Winchester Urban Renewal Plan as having a barber shop as a non-complying use, by reference to Appendix A ("Non-conforming Uses") of the same Plan. As a result, this appeal is not approvable.

RECOMMENDATION

The Department of Planning recommends disapproval of this appeal, because the proposed change of nonconforming use is prohibited by the terms of the Sandtown – Winchester Urban Renewal Plan for the area in which this property is located.

Conflicting Provisions: *Most restrictive provision governs*. If any condition or requirement imposed by a provision of this article is either more or less restrictive than a comparable condition or requirement imposed by any other provision of this article or of any other law, rule, or regulation of any kind, including an applicable urban renewal plan, the condition or requirement that is the more restrictive governs (§1-206.b). As stated above, the Board must disapprove this request, as the provision of the Sandtown – Winchester Urban Renewal Plan is the more restrictive.

TJS/wya/mf

cc: Angelina Hernandez, Appellant