


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 / 600 North Highland Avenue		

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

DATE: February 4, 2015

REQUEST

The Department of Planning has received Felix Reyes' Board of Municipal and Zoning Appeals (BMZA) application to use a portion of an existing grocery store and delicatessen as a carry-out food shop (by adding a grill to prepare hot fried foods). 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 February 10, 2015.

SITE

600 North Highland Avenue is located on the northwest corner of the intersection with McElderry Street. This property measures approximately 18'2" by 74'11" and is currently improved with a two-story end-of-row building with rear additions that together cover the entire lot. This site is zoned R-8 and is located in the East Monument National Register Historic District.

ANALYSIS

Use: In this zoning district, grocery 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 delicatessen, which is a nonconforming use in this R-8 General Residence District. The Board disapproved an application to use a portion of the premises as a grocery store in 2008 (see appeal no. 228-08X) and conditionally approved use of the premises as offices in 2010 (see appeal no. 2010-29) but no Use and Occupancy permit for office use has been issued.

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

TransForm Baltimore: This property would become part of the 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)).

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RECOMMENDATION

The Department of Planning recommends disapproval of this appeal, because the Zoning Code does not authorize creation of a new nonconforming use, which a carry-out food shop would be in this R-8 Zoning District.

TJS/wya/mf

cc: Felix Reyes, Appellant