


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 / 203 East North Avenue		

TO

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

DATE: January 28, 2015

REQUEST

The Department of Planning has received Jose' Tavares' Board of Municipal and Zoning Appeals (BMZA) application to use a portion of the premises as a carry-out food shop and grocery store. We understand that this appeal is scheduled for hearing on February 10, 2015.

SITE

203 East North Avenue is located on the south side of the street, approximately 17' east of the intersection with Calvert Street. This property measures approximately 15'10" by 80' and is currently improved with an attached three-story building measuring approximately 15'10" by 56'. This site is zoned O-R-2 and is located within the Greenmount West Urban Renewal Plan area.

ANALYSIS

Use: In this zoning district, carry-out food shops are not listed as a permitted or conditional use, and so are not allowed (§5-201 to §5-204). In this case, the basement of the property was last authorized for use as a restaurant/ coffee shop, which is a nonconforming use in this O-R-2 Office-Residence District. However, the application states that existing use is a "closed carry-out" but does not disclose when the closure occurred. A previous application to add a carry-out food shop at this address was never heard or approved by the Board (appeal no. 2010-516) and thus there is no legitimately authorized use as a carry-out food shop.

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).

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 Greenmount West Urban Renewal Plan, which does not allow this use in this district. The Urban Renewal Plan states, in its part B, Land Use Plan, 1. Permitted Uses, i. Non-Complying Uses:

“In addition, a non-complying use – when such term is used herein – 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. These non-complying uses 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.

....

(3) No non-complying land use shall be changed to any other non-complying land use.”

The Urban Renewal Plan, in its subsections B.1.i (1) and (3) cited above, prohibits changing of any remaining nonconforming use of this property to any use other than one which conforms to the requirements of the Office-Residence zoning district in which the property is located.

TransForm Baltimore: This property would become part of the O-R-1 with Rowhouse Mixed-Use overlay District (Proposed Zoning Map Area 7-A) in which Neighborhood Commercial Establishments would be conditional uses (Table 12-301). “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 this appeal, because the Greenmount West Urban Renewal Plan which prescribes permitted land uses in the Greenmount West Urban Renewal Area, of which this property is a part, does not allow changing of the former nonconforming use (restaurant/ coffee shop) to the proposed nonconforming use (carry-out food shop). Given the four years which have elapsed since the non-hearing of appeal no. 2010-516 and the applicant’s statement that the carry-out food shop is closed, there may no longer be a nonconforming use of this property.

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 Greenmount West Urban Renewal Plan is the more restrictive.

TJS/wya/mf

cc: Jose’ Tavares, Appellant