


FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR <i>Shole/for T.J.S.</i>	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 TH FLOOR		
	SUBJECT	BMZA / 1101 North Carrollton Avenue		

TO

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

DATE: March 24, 2012

REQUEST

The Department of Planning has received Mohamed Sayed's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor as a grocery store, with one dwelling unit above. We understand that this appeal is scheduled for hearing on April 3, 2012.

SITE

1101 North Carrollton Avenue is located on the northeast corner of the intersection with Riggs Avenue. This property measures approximately 16' by 75' and is currently improved with a two-story end-of-row building measuring approximately 16' by 54' and a separate garage in the rear of the lot. This site is zoned R-8 and is located within the Sandtown-Winchester Urban Renewal Plan area.

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 multiple-family dwelling, which is a permitted 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).

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 grocery store is listed as a permitted use in the B-1 District, and so is 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 Sandtown-Winchester Urban Renewal Plan, which does not allow this use in this district. The Plan designates this property as part of a Residential area mapped on its Land Use Plan, Exhibit 1, and states that any property not complying with the land use regulations of the Plan is deemed a “non-complying use” under the Plan. The Plan then states:

“... non-complying uses which exist or may be legally established between the date of the survey on which the list [of non-conforming uses] in Appendix A 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 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. Permitted Land Uses)

For this reason, unless there is an existing nonconforming use of this property that is also a grocery store, this application must be denied.

RECOMMENDATION

The Department of Planning recommends disapproval of this appeal, because the Board is not authorized to create new nonconforming uses by the Zoning Code and the applicable Urban Renewal Plan prohibits changing any existing nonconforming (non-complying land) use to another nonconforming (non-complying land) use, unless the applicant demonstrates that there is a nonconforming grocery store use of the property that has not been discontinued or abandoned.

TJS/wya/mf

cc: Mohamed Sayed, Appellant