


FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR <i>Shale / for T. Stosur</i>	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 TH FLOOR		
	SUBJECT	BMZA / 2300 Essex Street		

TO

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

DATE: April 12, 2012

REQUEST

The Department of Planning has received Billy Malkin's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the premises for a construction business office and storage of construction equipment and supplies, and to use the second floor for one dwelling unit. We understand that this appeal is scheduled for hearing on April 17, 2012.

SITE

2300 Essex Street is located on the southeast corner of the intersection with Foster Avenue. This triangular property measures approximately 82'4" along Essex Street by 109'8" along Foster Avenue and contains approximately 0.069 acre, and is currently improved with a two- and three-story combination building covering the entire lot. This site is zoned R-8 and is located within the Canton Waterfront Urban Renewal Plan area and the Canton National Register Historic District.

ANALYSIS

Use: In this zoning district, offices, and warehousing and storage, are not listed as permitted or conditional uses, and so are not allowed (§4-1101 to §4-1104). In this case, the property was last authorized for use as a warehouse, which is a nonconforming use in this R-8 General Residence District. Although dwellings are a permitted use in this zone, the applicant has informally advised the Department of Planning that housing code considerations may prevent use of the upper floors of the building for a dwelling, and thus that space would instead continue to be used for storage.

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). Offices: business, governmental, and professional – but not including sales and bulk storage of merchandise on the premises, are listed as a permitted use in the B-1 District, and so the proposed use may be eligible for a change in nonconforming use (§6-206). The applicant should clarify whether there would be any sales of construction equipment or supplies in connection with the proposed office use.

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 Canton Waterfront Urban Renewal Plan, which does not allow this use in this district by stating: “In the areas designated as Residential on the Land Use Map, uses shall be limited to those permitted in the R-8 District by the Zoning Ordinance [*now Zoning Code*] of Baltimore City.” Accordingly, the proposed use can only be approved if it is and remains accessory to the established nonconforming use of the property as a warehouse.

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 unless it is for an accessory office, as the provision of the Canton Waterfront Urban Renewal Plan is the more restrictive.

RECOMMENDATION

The Department of Planning has no objection to this appeal, provided that the proposed office is accessory to the existing nonconforming use and provided that no sales of construction equipment or supplies occur on the premises.

TJS/wya/mf

cc: Billy Malkin, Appellant