


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 / 1861 North Collington Avenue		

TO

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

DATE: May 22, 2012

REQUEST

The Department of Planning has received Larry Smith's Board of Municipal and Zoning Appeals (BMZA) application to continue to use the first floor of the premises as a variety store, and add a delicatessen and a carry-out food shop. We understand that this appeal is scheduled for hearing on May 29, 2012.

SITE

1861 North Collington Avenue is located on the east side of the street, approximately 85' south of the intersection with North Avenue. This property measures approximately 15' by 70'8" and is currently improved with a two-story end-of-row building measuring approximately 15' by 50'. This site is zoned R-8 and is located within the Broadway East Urban Renewal Plan area and the Broadway East/ South Clifton Park National Register Historic District.

ANALYSIS

Use: In this zoning district, delicatessens and carry-out food shops 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 variety store, which is a nonconforming use in this R-8 General Residence District, by the Board's approval of appeal no. 616-07.

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). The applicant should confirm that the nonconforming use has not been discontinued or abandoned.

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 delicatessen is listed as a permitted use in the B-1 District, and so is eligible for a change in nonconforming use (§6-206). A carry-out food shop is not listed as a permitted use in the B-1 District (although it is a permitted use in the B-2 District), and so is not eligible for a change in nonconforming use.

Urban Renewal Plan: This property is located in the Broadway East Urban Renewal Area, where the Urban Renewal Plan does not prohibit or further restrict the proposed uses as continuing nonconforming uses if allowed by the Residential District regulations. The Urban Renewal Plan does prohibit restaurants with live entertainment or dancing, hence any hot food preparation must be limited to either a delicatessen use or a restaurant without live entertainment and dancing.

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RECOMMENDATION

The Department of Planning recommends disapproval of the portion of this appeal related to carry-out food, because carry-out food shops are not permitted as a change of nonconforming use in a Residential District. The Department has no objection to the portion of this appeal related to use of a portion of the existing nonconforming use as a delicatessen.

TJS/wya/mf

cc: Larry Smith, Appellant