


FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 <sup>TH</sup> FLOOR		
	SUBJECT	BMZA / 5201 Eastern Avenue (and 5203 Eastern Avenue)		

TO

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

DATE: May 18, 2012

### REQUEST

The Department of Planning has received Michael Souranis' Board of Municipal and Zoning Appeals (BMZA) application to consolidate lots known as 5201 Eastern Avenue and 5203 Eastern Avenue, and use the combined first floor as a pharmacy and the second floor as two dwelling units. We understand that this appeal is scheduled for hearing on May 29, 2012.

### SITE

5201 Eastern Avenue is located on the southeast corner of the intersection with Savage Street. This property measures approximately 20'6" by 85' and is currently improved with a two-story end-of-row residential mixed use building measuring approximately 17' by 50'. 5203 Eastern Avenue is located on the south side of the street, approximately 20'6" east of the intersection with Savage Street, and adjoins 5201 Eastern Avenue. This property measures approximately 16' by 85' and is currently improved with a two-story attached residential building measuring approximately 16' by 50'. This site is zoned R-8 and is located within the Southeast Neighborhoods Development (SEND) Strategic Neighborhood Action Plan area.

### ANALYSIS

Use: In this zoning district, pharmacies are not listed as a permitted or conditional use, and so are not allowed (§4-1101 to §4-1104). In this case, the property at 5201 Eastern Avenue was last authorized for use as a radio and television store, which is a nonconforming use in this R-8 General Residence District, and a dwelling. The property at 5203 Eastern Avenue was last authorized for use as a dwelling.

Conversion of Dwellings: In all districts except the R-2, R-4, R-5, R-6, and R-8 Districts, the Board may authorize, as a conditional use, the conversion of a building for use by more than one family, as long as the number of families permitted conforms with the applicable bulk regulations for the district in which the building is located (§3-305.b.1). If these properties would be consolidated the second floor would need to be converted into a single dwelling unit above both 5201 and 5203 Eastern Avenue, or use of the combined building as two dwellings would be approvable by ordinance only.

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). Drug stores and pharmacies are listed as a permitted use in the B-1 District, and so the proposed pharmacy is eligible for a change in nonconforming use (§6-206).

Extension or moving of Class I, II, or III Nonconforming Use: The Board may authorize an extension of a Class I, Class II, or Class III nonconforming use, as limited and stated in §§ 13-206, 13-306, and 13-406 {"Expansions of use"} and §§ 13-208, 13-308, and 13-408 {"Relocations"} of this title, if the Board finds that: (1) the extension or moving will not cause a greater volume of traffic than that generated before the extension or move; (2) the extension or moving will not violate in any manner the bulk regulations of the district in which the property is located; (3) the effect of the extended or moved use on the health, safety, or general welfare of the community will be no worse than the existing or last use; (4) for the extension of a Class II or Class III nonconforming use, the extension will not result in an increase of the floor area of more than 25% beyond that which had been occupied or used when it became nonconforming; and (5) for an extension in the Critical Area: (i) there is no environmentally acceptable alternative outside the Critical Area; and (ii) the use is needed to correct an existing water quality or wastewater management problem (§13-714). While the applicant did not provide a floor plan showing the area to be used by the proposed pharmacy, if the entire floor area of the first floor of 5203 Eastern Avenue would be used, the increase of the nonconforming use would far exceed the 25% limit, as cited above, and would not be approvable by the Board.

#### **RECOMMENDATION**

The Department of Planning recommends disapproval of this appeal, because the requested increase in floor area of the nonconforming use would exceed the Board's discretionary authority under the Zoning Code. The Department would have no objection to approval of conversion of the existing nonconforming use of 5201 Eastern Avenue only to a pharmacy, provided that nonconforming use has not been discontinued or abandoned. The Board would be unable to consider approving use of any part of 5203 Eastern Avenue as a nonconforming use as long as the two properties have not been consolidated first, because approval of pharmacy use of 5203 Eastern Avenue would constitute approval of a new nonconforming use of that property, which the Board is not authorized to approve by the Zoning Code.

TJS/wya/mf

cc: Michael Souranis, Appellant