


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 / 1801 West Lexington Street (112 North Fulton Avenue)		

TO

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

DATE: July 16, 2012

REQUEST

The Department of Planning has received Hyun Kweon Ryu's Board of Municipal and Zoning Appeals (BMZA) application to use the portion of the property known as 112 North Fulton Avenue as a beauty supply store. We understand that this appeal is scheduled for hearing on July 24, 2012.

SITE

1801 West Lexington Street is located on the southwest corner of the intersection with Fulton Avenue. This property measures approximately 17'8" by 138' and is currently improved with a three-story end-of-row building and its rear additions covering the entire lot. This site is zoned R-8 and is located within the Franklin Square Urban Renewal Plan area and the Franklin Square National Register Historic District.

ANALYSIS

Use: In this zoning district, beauty supply 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 liquor store, which is a nonconforming use in this R-8 General Residence District. The liquor store occupies the first floor of the original three-story building on this lot; the proposed use would occupy part or all of the one-story rear addition.

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 beauty shop or a variety store is listed as a permitted use in the B-1 District, and so is eligible for a change in nonconforming use (§6-206). The term "beauty supply store" does not appear in this portion of the Zoning Code; if the applicant can describe his proposed use of the property as a combination of these two, the application would be approvable according to the Zoning Code (but not the Urban Renewal Plan – see below).

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 Franklin Square Urban Renewal Plan, which contains provisions limiting “non-complying uses”. The Plan provides in part:

“... 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 twelve (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.h., Non-Complying land uses)

For this reason, if the previous barber shop use referred to by the applicant as existing at the portion of the premises known as 112 North Fulton Avenue has been discontinued for a period exceeding 12 months, this application would be unapprovable. If the applicant could demonstrate that the beauty supply store would be an accessory use to an existing and continuing use of that portion of the premises as a barber shop, or to a combined barber shop and beauty shop, the Department of Planning would have no objection to this application.

RECOMMENDATION

The Department of Planning recommends disapproval of this appeal if the applicant does not demonstrate that the nonconforming use of the portion of the property known as 112 North Fulton Avenue has not been discontinued for a period exceeding 12 months. The Department would have no objection to this appeal if the applicant demonstrates that the proposed use would be accessory to an existing nonconforming use of that part of the property known as 112 North Fulton Avenue as a barber shop or a combined barber shop and beauty shop.

TJS/wya/mf

cc: Hyun Kweon Ryu, Appellant