


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 / 1821-1831 West Lafayette Avenue		

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

DATE: July 23, 2015

### REQUEST

The Department of Planning has received Mohammad Shafiq's Board of Municipal and Zoning Appeals (BMZA) application to use the entire premises as a convenience store and delicatessen. The Zoning Administrator has determined that this is a prohibited use in a R-8 zoning district. We understand that this appeal is scheduled for hearing on July 28, 2015.

### SITE

1821-1831 West Lafayette Avenue is located on the southeast corner of the intersection with Monroe Street. This property measures approximately 85' by 83' and is currently improved with a one-story detached commercial building. This site is zoned R-8 and is located within the Harlem Park II Urban Renewal Plan area and the Old West Baltimore National Register Historic District (to which it is non-contributing).

### ANALYSIS

Use: In this zoning district, convenience stores and delicatessens 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 laundrette, which is a nonconforming 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). The application indicates that this property was last used as a "salon" which is consistent with the Board's approval of a beauty shop in 2006. The appearance of the structure on this property suggests that this use may have been discontinued or abandoned.

Changes in Nonconforming Use: *In Residence and Office-Residence Districts.* In accordance with subtitle 7 {"Modifications and Continuances by Board"} of this title, the Board may authorize a Class II nonconforming use in a Residence or Office-Residence District to be changed as follows: (1) to a use permitted in an M-1 District, if the nonconforming use is located in a structure all or substantially all of which is designed and erected for an industrial use; or (2) to a use permitted in a B-1 District, if the nonconforming use is located in a structure all or substantially all of which is designed and erected for a business or other nonconforming use (§13-305.b). A delicatessen and a variety store are both permitted uses in a B-1 district, and so could be approved.

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**Renewal Plans:** Ordinance #01-165 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. The Harlem Park II Urban Renewal Plan specifies, in its Land Use Plan, Land Use Provisions and Building Requirements (C.2.(3)), "Current uses classified as non-conforming by Zoning Enforcement shall abide by the existing regulations listed under this section. (a) The non-conforming use shall not be changed to any use except those permitted within the R-8 Zoning District of the project area as specified above.

**TransForm Baltimore:** This property would remain part of the R-8 District (Proposed Zoning Map Area 6-C) in which Neighborhood Commercial Establishments would be conditional uses (Table 9-301). "Neighborhood commercial establishment" means "a commercial use that is within a residential neighborhood, but in a structure that is non-residential in its construction and original use" (§1-310 (I)).

#### **RECOMMENDATION**

The Department of Planning recommends disapproval of this appeal given that the Urban Renewal Plan does not allow this non-conforming use to be changed to the proposed use in an R-8 Zoning District.

TJS/wya/mf

cc: Mohammad Shafiq, Appellant