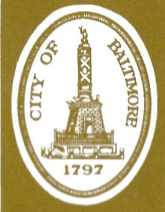


FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 TH FLOOR		
	SUBJECT	BMZA / 1201 West Lombard Street		

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

DATE: August 11, 2010

REQUEST

The Department of Planning has received Fabian Boyd's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the premises as a grocery store and the second and third floors as one dwelling unit each. We understand that this appeal is scheduled for hearing on August 17, 2010.

SITE

1201 West Lombard Street is located on the southwest corner of the intersection with Carrollton Street. This property measures approximately 15' by 65' and is currently improved with a three-story end-of-row building covering the entire lot. This site is zoned R-8 and is located within the Poppleton Urban Renewal Plan area.

ANALYSIS

Use: In this zoning district, grocery 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 candy store (confectionary), which is a nonconforming use in this R-8 General Residence District.

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

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 Poppleton Urban Renewal Plan, originally approved by Ordinance no. 837 on March 31, 1975, and its section B, "Land Use Plan, Permitted Uses, Residential", and its Land Use Plan Map dated May 27, 2004.

The Poppleton Urban Renewal Plan states, in part:

“A non-conforming use is any lawfully existing use of a building or other structure, or of land, which does not conform to the applicable use regulations of the district in which it is located according to Article 30 of the Baltimore City Code (1976 Edition, as amended), titled “Zoning”. Non-conforming uses shall be permitted to continue, subject to the provisions of Chapter 8 of said Article 30, titled “Non-Conformance.”

Poppleton URP (B.1.h)

The Poppleton Urban Renewal Plan further specifies “Non-complying” uses, which are allowed to continue for an indefinite period of time, to include “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.” (Poppleton URP, B.1.i.) The Poppleton Urban Renewal Plan then states:

“no non-complying land use shall be changed to any other non-complying use.”

Poppleton URP (B.1.i.(3))

The Land Use Plan Map contained in the Poppleton Urban Renewal Plan designates the subject property and its adjoining properties as Residential. The Plan’s text states:

“In the area designated as Residential on the Land Use Plan Map, the following uses shall be permitted: single-family detached dwellings, semi-detached dwellings, single-family attached dwellings, and multiple-family detached and/or attached dwellings.”

Poppleton URP (B.1.a)

The existing two dwelling units contained in the premises are thus conforming to the Plan’s requirements, as well as to the terms of the Zoning Code. The use of the ground floor area formerly used as a candy store is subject to the terms of the Plan’s sub-sections B.1.h and B.1.i.(3), operation of which is in turn dependent upon reference to Chapter 8 of Article 30 of the 1976 Edition of the Baltimore City Code, as amended.

RECOMMENDATION

The Department of Planning recommends disapproval of the appeal for the conversion of the nonconforming use from a candy store to a grocery, because the Poppleton Urban Renewal Plan does not permit conversion of what it terms a “non-complying land use” from one type to another.

TJS/wya/mf

cc: Fabian Boyd, Appellant