


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 / 4128-4136 Park Heights 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 Julius Harris' Board of Municipal and Zoning Appeals (BMZA) application to use the portion of the property known as 4128-4132 Park Heights Avenue as an automobile repair garage – including body repair, and to use the portion of the property known as 4134-4136 Park Heights Avenue as a convenience store. The Zoning Administrator has determined that these are prohibited uses in a R-6 zoning district. We understand that this appeal is scheduled for hearing on July 28, 2015.

### SITE

4128-4136 Park Heights Avenue is located on the southwest corner of the intersection with Quantico Avenue. This property measures approximately 100' by 88'8" and is currently improved with a one-story building. This site is zoned R-6 and is located within the Park Heights Urban Renewal Plan area and the Park Heights Area Master Plan area.

### ANALYSIS

Use: In this zoning district, garages, other than accessory, for storage, repair, and servicing of motor vehicles not over 1½ ton capacity – including body repair, painting, and engine rebuilding, and convenience stores, are not listed as permitted or conditional uses, and so are not allowed (§4-901 to §4-904). In this case, the property was previously used as a repair garage, which is not an authorized use in this R-6 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 the property is vacant, but does not indicate how long the vacancy has continued.

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). Neither a repair garage for automobiles nor a convenience store is listed as a permitted use in the B-1 District, and so neither is eligible for a change in nonconforming use (§6-206).

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 Plan's Land Use Plan map, Exhibit 1-D in the Plan, designates the block of Park Heights Avenue where this property is located as Residential, but designates this particular property for "Neighborhood Business" land use. For this reason, changing former non-residential use to any other non-residential use that is not a permitted or conditional use in the B-1 category of the Zoning Code is prohibited (Plan, B.4.).

TransForm Baltimore: This property would remain part of the R-6 District (Proposed Zoning Map Area 2-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, because the proposed uses are not among the uses to which the Board may authorize change of nonconforming use according to the Zoning Code, and because the Park Heights Urban Renewal Plan prohibits any use of this property for a land use that is not authorized in the B-1 category of land use by the Zoning Code. If the previous non-residential nonconforming use of this property has been discontinued or abandoned, the application is unapprovable because the Zoning Code does not authorize creation of new nonconforming uses in a R-6 zoning district, where this property is located.

Conflicting Provisions: *Most restrictive provision governs.* If any condition or requirement imposed by a provision of this article is either more or less restrictive than a comparable condition or requirement imposed by any other provision of this article or of any other law, rule, or regulation of any kind, including an applicable urban renewal plan, the condition or requirement that is the more restrictive governs (§1-206.b). As stated above, the Board must disapprove this request, as the provision of the Park Heights Urban Renewal Plan is the more restrictive.

TJS/wya/mf

cc: Julius Harris, Appellant