


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 / 1636 McHenry Street		

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

DATE: September 17, 2015

### REQUEST

The Department of Planning has received Reginald Weston's Board of Municipal and Zoning Appeals (BMZA) application to add a variety store to the rear of an existing carry-out food shop. The Zoning Administrator has determined that this is a modification or expansion of a nonconforming use for which a Use and Occupancy permit may not currently exist. We understand that this appeal is scheduled for hearing on September 22, 2015.

### SITE

1636 McHenry Street is located on the northeast corner of the intersection with Mount Street. This property measures approximately 16' by 60' and is currently improved with a three-story end-of-row building with a two-story rear addition together covering the entire lot. This site is zoned R-8 and is located within the Operation Reach Out Southwest (OROSW) Strategic Neighborhood Action Plan area.

### ANALYSIS

Use: In this zoning district, carry-out food shops and variety 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 may have been authorized for use as a carry-out food shop, which is a nonconforming use in this R-8 General Residence District, but records available to the Planning Department do not show this.

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 applicant should provide the Board documentation of the lawful existence of nonconforming use.

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 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), or in this case, may be approved as an addition to the existing nonconforming use if that use has been lawfully established.

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).

This application included a hand-drawn floor plan for the proposed combined uses showing that the carry-out food shop would occupy the first 33' of the building's length (starting from its front door) and the variety store would occupy the second 19' of the building's length, and that the width of the front portion would be 14' while the width of the rear portion would be 16' – and on a lot that is 16' wide, this indicates what is shown in an aerial photograph of the property is correct, that the rear portion of the structure is wider than the front portion. The area of the existing carry-out food shop is not shown on a separate drawing. If the rear portion of this building is not currently in use as part of the carry-out food shop, the floor area of the variety store must be limited to 25% of 14' by 33' or 115 square feet of gross floor area. The proposed 304 square feet variety store would thus be unapprovable.

TransForm Baltimore: This property would remain part of the R-8 District (Proposed Zoning Map Area 6-D) 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 nonconforming use of the premises described in the application has not been properly authorized. Should the Board determine that this application is approvable, the Department recommends that approval be subject to these conditions:

1. The floor area of the variety store not exceed 25% of the floor area of the carry-out food shop, unless its floor area is being created out of the existing floor area of the carry-out food shop; and,
2. The applicant immediately obtains a Use and Occupancy permit for both uses of the property.

TJS/wya/mf

cc: Reginald Weston, Appellant