


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 / 351 South Woodyear Street		

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

DATE: August 12, 2013

REQUEST

The Department of Planning has received Thomas Nevin's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the premises as a grocery store. The Zoning Administrator has determined that this is a nonconforming use in a R-8 District. We understand that this appeal is scheduled for hearing on August 20, 2013.

SITE

351 South Woodyear Street is located on the northeast corner of the intersection with Ramsay Street. This property measures approximately 37' by 124' and is currently improved with a two-story semi-detached residential mixed-use building measuring approximately 37' by 75'. This site is zoned R-8 and is located within the Mount Clare 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 tavern, which is a nonconforming use in this R-8 General Residence District, and a single-family dwelling.

Discontinuance of Use: Whenever the active and continuous operation of any Class III nonconforming use, or any part of that use, has been discontinued for 12 consecutive months: (i) the discontinuance constitutes an abandonment of the discontinued nonconforming use, or discontinued part of that use... (§13-407.a.1). Use and Occupancy permit 2012-02492 which authorized a nonconforming tavern and lounge was revoked on November 13, 2012 due to discontinuance of that use. The applicant thus must demonstrate that nonconforming use of this property has not been discontinued or abandoned for more than 12 consecutive months in order for this application to be approvable by the Board.

Urban Renewal Plan: This property is located in the Mount Clare Urban Renewal Area, where the Urban Renewal Plan does restrict continuing nonconforming uses. The Plan designates this property as part of an industrial land use area (Plan, Exhibit 2, Land Use Plan map); this map was adopted in 1986 while the property was still part of a M-2-1 District, and taverns have remained permitted uses in M-2 Districts (§7-306). The property later became nonconforming as a result of rezoning from M-2-1 to R-8 (its current District) but no corresponding amendment was made to the Urban Renewal Plan. As a result, while the most recently authorized use of the property is not inconsistent with the Plan, the proposed use would create a new "non-complying use" as that term is used in the Plan. However, this Plan is scheduled to expire on May 30, 2014 (40 years after its original date of adoption by Ordinance of the Mayor and City Council) in accordance with its section D. While the Department of Planning has no objection to approval of this application on account of the

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Plan, the applicant should be cautioned that if the Plan is extended its provision relating to "non-complying uses" may prevent the Department from approving a Use and Occupancy permit for a grocery store unless the "non-complying use" provision is removed from the Plan.

TransForm Baltimore: This property would be part of a 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 has no objection to this appeal if nonconforming use of the property has not been discontinued or abandoned. If this application is approved by the Board, the applicant should remain aware that a Use & Occupancy permit for a grocery store at this location may not be approvable by the Department of Planning until May 30, 2014.

TJS/wya/mf

cc: Thomas Nevin, Appellant