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| 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 / 3402 Gough Street | | |

TO

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

DATE: October 10, 2013

REQUEST

The Department of Planning has received Julie and Tom Yensho's Board of Municipal and Zoning Appeals (BMZA) application to use the second floor as two dwelling units, and the first floor as an art gallery and artists' studios. The Zoning Administrator has determined that this first floor use is a nonconforming use in a R-8 District, and that authorization of conversion of a single-family dwelling to a multiple-family dwelling is needed for approval of this application. We understand that this appeal is scheduled for hearing on October 15, 2013.

SITE

3402 Gough Street is located on the north side of the street, approximately 80' east of the intersection with Highland Avenue. This property measures approximately 30' by 163'3" and is currently improved with a two-story residential mixed-use building covering the entire lot. This site is zoned R-8 and is located within the Patterson Park – Highlandtown National Register Historic District.

ANALYSIS

Use: In this zoning district, art galleries and artists' studios 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 club or lodge, which is a permitted use in this R-8 General Residence District, and a single-family attached dwelling.

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 club or lodge previously using this property was a permitted use, as is the residential use. Approval of the art gallery and artists' studios would require creation of a new nonconforming use in this R-8 District, which the Zoning Code does not provide the Board authority to approve.

Conversion of Dwellings: In all districts except the R-2, R-4, R-5, and R-6 Districts, the Board may authorize, as a conditional use, the conversion of a building for use by more than one family, as long as the number of families permitted conforms with the applicable bulk regulations for the district in which the building is located (§3-305.b.1). In this R-8 zoning district, multiple-family dwellings require 750 square feet of lot area per dwelling unit (§4-1106.a). In this case, for two dwelling units, 1,500 square feet of lot area is required. The lot encloses approximately 5,000 square feet, and so does meet this requirement. In the R-7 and R-8 Districts, the conversion of a 1- or 2-family dwelling to additional dwelling units may be authorized, but only by a conditional-use ordinance. With respect to the statement in the application that there are two apartments in the second floor of the premises, unless these

apartments are lawfully established, the Board does not have discretionary authority to approve this portion of the application.

TransForm Baltimore: This property would remain part of a R-8 District (Proposed Zoning Map Area 8-C) in which Neighborhood Commercial Establishments would be conditional uses and multi-family dwellings would be permitted 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)). Conversion of a single-family dwelling to a multi-family dwelling would require 750 square feet of gross floor area per 1-bedroom unit and 1,000 square feet of gross floor area per 2-bedroom unit (§9-703) and lot area of 750 square feet per dwelling unit (Table 9-401). This property would satisfy these criteria for purposes of this application.

RECOMMENDATION

The Department of Planning recommends disapproval of this appeal, for two reasons:

1. The Zoning Code does not authorize approval of new nonconforming uses, which the proposed art gallery and artists' studios would be in this R-8 Zoning District; and,
2. The Zoning Code requires that in the R-8 Zoning Districts, conversion of a 1- or 2-family dwelling unit to additional dwelling units may be authorized, but only by a conditional-use ordinance.

TJS/wya/mf

cc: Julie and Tom Yensho, Appellants