


<b>FROM</b>	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 / 1131 Greenmount Avenue		

**TO**

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

DATE: December 7, 2009

**REQUEST**

The Department of Planning has received Kimman Chu's Board of Municipal and Zoning Appeals (BMZA) application to continue to use the premises for a grocery store and to include accessory sale of hot foods. We understand that this appeal is scheduled for hearing on December 8, 2009.

**SITE**

1131 Greenmount Avenue is located on the east side of the street, approximately 40' south of the intersection with East Biddle Street. This property measures approximately 15' by 70' and is currently improved with a three-story building covering the entire lot. This site is zoned B-1-3 and is located within the Johnston Square Urban Renewal Plan area.

**ANALYSIS**

Use: In this zoning district, grocery stores are listed as a permitted use, and so are allowed (§6-206). In this case, the property was last authorized for use as a grocery store, which is a permitted use in this B-1 Neighborhood Business District. Contrarily, in this zoning district, carry-out food shops are not listed as a permitted or conditional use, and so are not allowed (§6-206 to §6-209). This appeal requires a clarification from the applicant that the hot food proposed to be provided on premises as a service to customers will not be the equivalent of providing carry-out food service.

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 Johnston Square Urban Renewal Plan, which does not allow this use at this location. The Urban Renewal Plan Exhibit 4, "Zoning", confirms that this premises is located in a B-1-3 zoning district. However, the same Urban Renewal Plan's Exhibit 1, "Land Use", designates this block of Greenmount Avenue as "Residential". Within the Land Use Plan section of the Urban Renewal Plan, section B.1.a. defines Permitted Land Uses within the Residential area to exclude grocery stores and/or carry-out food shops. Thus, within the context of the Johnston Square Urban Renewal Plan, the existing grocery store is a nonconforming use.

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Change in Nonconforming Use: A Class III nonconforming use in a B-1 or M-1 District may only be changed to a use that is permitted in the district in which the nonconforming use is located (§13-405.c). The Johnston Square Urban Renewal Plan constitutes an overlay on the B-1-3 zoning district which acts to prevent any conversion of the existing grocery store to any use other than the uses listed in its § B.1.a.

**RECOMMENDATION**

The Department of Planning has no objection to this appeal, if the applicant can demonstrate that service of hot food will not be tantamount to establishing a carry-out food shop on the premises.

TJS/ewt/mf

cc: Kimman Chu, Appellant