


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 / 3321 East Monument Street		

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

DATE: November 29, 2011

REQUEST

The Department of Planning has received Bryan Kim's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the premises for a grocery and variety store and a carry-out food shop. We understand that this appeal is scheduled for hearing on December 6, 2011.

SITE

3321 East Monument Street is located on the southwest corner of the intersection with Clinton Street. This property measures approximately 15' by 70' and is currently improved with a two-story end-of-row building covering the entire lot. This site is zoned R-8 and is located within the East Monument National Register Historic District.

ANALYSIS

Use: In this zoning district, grocery stores, variety stores, and carry-out food shops are not listed as permitted or conditional uses, and so are not allowed (§4-1101 to §4-1104). In this case, the property was last authorized for use as a single-family attached dwelling, which is a permitted use in this R-8 General Residence District.

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). Grocery stores and variety stores are listed as permitted uses in the B-1 District, and so are eligible for a change in nonconforming use (§6-206). A carry-out food shop, which is a permitted use in a B-2 District, is not eligible for a change in nonconforming use.

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). The applicant would need to demonstrate to the Board that there has not been discontinuance or abandonment of the carry-out food shop use in order for the Board to be able to consider approving this appeal.

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).

RECOMMENDATION

The Department of Planning has no objection to approval of a grocery store and variety store on this property, provided that the combined floor area of the nonconforming uses does not exceed 125% of the floor area of the previously established nonconforming use. The Department has no objection to continuation of the carry-out food shop, provided that the applicant demonstrates that nonconforming use of the property as a carry-out food shop has not been abandoned or discontinued.

TJS/wya/mf

cc: Bryan Kim, Appellant