


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 / 1247 West Lombard Street		

TO

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

DATE: December 8, 2014

### REQUEST

The Department of Planning has received Yeshitla Friew's Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the premises as a café and lounge. The Zoning Administrator has determined that this is a nonconforming use in a R-8 Zoning District. We understand that this appeal is scheduled for hearing on December 16, 2014.

### SITE

1247 West Lombard Street is located on the southeast corner of the intersection with Carey Street. This property measures approximately 16' by 70' and is currently improved with a three-story semi-detached building covering the entire lot. This site is zoned R-8 and is located within the Poppleton Urban Renewal Plan area and the Hollins Roundhouse National Register Historic District.

### ANALYSIS

Use: In this zoning district, cafés, restaurants, and lounges 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.

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 application indicates that this property is currently vacant, and Zoning Administration notes suggest that the tavern was closed in 2006. Use of the property as two dwelling units was recorded as continuing.

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 must provide the Board with information showing that nonconforming use has not been discontinued or abandoned in order for this application to receive consideration by the Board.

Urban Renewal Plan: This property is located in the Poppleton Urban Renewal Area, where the Urban Renewal Plan prohibits this use unless it is a continuing nonconforming use.

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 Poppleton Urban Renewal Plan (approved March 31, 1975), which does not allow a change of nonconforming use in this district.

The Plan designates this property as part of a Residential area mapped on its Land Use Plan, Exhibit 1, and states that any property not complying with the land use regulations of the Plan is deemed a “non-complying use” under the Plan. The Plan then states:

“... non-complying uses shall be permitted to continue for an indefinite period of time, except that:

- (1) any non-complying land use which is discontinued a period exceeding 12 months shall not be re-established.
- (2) ...
- (3) no non-complying land use shall be changed to any other non-complying land use.”  
( -- *Land Use Plan, B.1.h., Permitted Uses* )

For this reason, unless there is continuing nonconforming use of this property as a tavern, this application must be denied.

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 the Board is not authorized to create new nonconforming uses by the Zoning Code, and the applicable Urban Renewal Plan prohibits changing any existing nonconforming (non-complying land) use to another nonconforming (non-complying land) use.

TJS/wya/mf

cc: Yeshitila Friew, Appellant