


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 / 4900 Litchfield Avenue		

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

DATE: December 15, 2010

REQUEST

The Department of Planning has received Flower & Blackbean, LLC's Board of Municipal and Zoning Appeals (BMZA) application to use the entire first floor of the premises for a grocery store and carry-out food shop. We understand that this appeal is scheduled for hearing on December 21, 2010.

SITE

4900 Litchfield Avenue is located on the southwest corner of the intersection with Oakmont Avenue. This property measures approximately 47'8" along Litchfield Avenue by 85' deep and is currently improved with a two-story end-of-row building measuring approximately 34' by 33'. This site is zoned R-6 and is located within the Park Heights Urban Renewal Plan area.

ANALYSIS

Use: In this zoning district, grocery stores and carry-out food shops are not listed as a permitted or conditional use, and so are not allowed (§4-801 to §4-804). In this case, the property was last authorized for use as a grocery store, which is a nonconforming use in this R-5 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). A grocery store is listed as a permitted use in the B-1 District, and so is eligible for a change in nonconforming use (§6-206). A carry-out food shop is not listed as a permitted or conditional use in a B-1 District.

Discontinuance of Use:

(1) Except as specified in paragraph (2) of this subsection, whenever the active and continuous operation of any Class II nonconforming use, or any part of that use, has been discontinued for 18 consecutive months:

- (i) the discontinuance constitutes an abandonment of the discontinued nonconforming use, or discontinued part of that use, regardless of any reservation of an intent to resume active operations or otherwise not abandon the use; and
- (ii) the discontinued part of that use:
 - (A) may not be reestablished; and
 - (B) any subsequent use of any part of the land or structure previously used for the discontinued use, or discontinued part of that use, must conform to the regulations of the district in which the land or structure is located.

(2) In accordance with Subtitle 7 {"Modifications and Continuances by Board"} of this title, the Board may extend the time limit for discontinuance for 1 or more additional periods. In no case, however, may the total of the additional time exceed 18 months (§13-307).

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 record for this property includes an inspection report from 2006 indicating that the [grocery] store was closed at that time. The applicant needs to present information indicating that the nonconforming use was re-opened by 2008 and has only recently become vacant in order for the grocery store use proposed to be approvable.

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 Park Heights Urban Renewal Plan, which does allow this use in this district.

RECOMMENDATION

The Department of Planning has no objection to approval of re-opening the former grocery store if the applicant demonstrates that the nonconforming use has not in fact been abandoned. The Department recommends disapproval of the appeal for a carry-out food shop, because the Zoning Code does not authorize the Board to approve this use in a Residence District.

TJS/wya/mf

cc: Flower & Blackbean, LLC, Appellant