
IN THE MATTER OF THE PETITION
OF: BRYAN PARKER, JR.

Baltimore City Board of Municipal
& Zoning Appeals

**2230 AIKEN STREET
(BLOCK 4010E, LOT 027)**



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Appeal No. 2021-232
Hearing Date: January 11, 2022

RESOLUTION

This matter comes before the Baltimore City Board of Municipal & Zoning Appeals (“Board”) on appeal from the Zoning Administrator denying the application of Bryan Parker Jr. (“Appellant”) to use the ground floor of premises as a neighborhood commercial establishment (retail goods establishment – no alcoholic beverage sales) at 2230 Aiken Street (“Property”).

OVERVIEW

Appellant filed this appeal on September 15, 2021, and appeared for a public hearing on January 11, 2022. Members of the public appeared in opposition and file contains 207 signed petitions in support of the proposed store. Board staff and the Planning Department prepared a memorandum evaluating the appeal. Following deliberations, the Board voted to approve this appeal by unanimous vote.

FACTS

The Property is located on the northwest corner of the intersection with Darley Avenue. The Property measures approximately 14’ 7” by 80’ and is currently improved with a two-story semi-detached residential mixed-use building measuring approximately 14’ 7” by 54’ and an attached one-story commercial addition measuring approximately 14’7” by 20’. This site is zoned R-7 and is located within the East Baltimore Midway community.

DISCUSSION

Appellant proposes to use the Property as a convenience store, or what would be classified by the Code as a “Neighborhood Commercial Establishment (retail goods establishment – no alcoholic beverage sales).” Under ZC §1-310(j), “Neighborhood Commercial Establishment” means a non-residential use that is within a residential or office-residential zoning district, but in a structure that: 1) is non-residential in its construction and original use; or 2) has received prior zoning approval for a non-residential use, as evidenced by permits, construction, or historical evidence of lawful non-residential use. Under Table 9-301, “Neighborhood Commercial Establishment” is listed as a conditional use in this zoning district. The Board may approve conditional uses under the standards set forth by ZC §§5-405 and 5-406.

Conditional Use: Neighborhood Commercial Establishment

Under ZC §5-406, the Board of Municipal and Zoning Appeals may not approve a conditional use unless, after public notice and hearing and on consideration of the standards required by this subtitle, it finds that: (1) the establishment, location, construction, maintenance, or operation of the conditional use would not be detrimental to or endanger the public health, safety, or welfare; (2) the use would not be precluded by any other law, including an applicable Urban Renewal Plan; (3) the authorization would not be contrary to the public interest; and (4) the authorization would be in harmony with the purpose and intent of this Code. Further, under state law, conditional uses are “presumed valid uses” of land but are subject to that presumption being rebutted by credible evidence indicating that “the proposed use has adverse effects above and beyond those inherently associated with such a [conditional use] irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981). *See also Attar v. DMS Tollgate, LLC*, 451 Md. 272, 286-287 (2017).

Opponents objected to the idea of the property as a corner store, citing concern of blight in the area and the crime that is often associated with corner stores. However, during the testimony, the Board did not here any evidence that would rebut the presumed valid use of the Property as a convenience store. Further, the Board did not hear any credible evidence that the proposed use would have adverse effects above and beyond those inherently associated with such a use.

Appellant testified that the community outreach it conducted showed a large interest in a store that would provide fresh fruit and vegetables. Furthermore, in response to concerns about crime associated with corner stores, the Appellant testified that the Appellant has a plan for providing security. Finally, the Appellant testified that the neighborhood around the store has a lot of vacant homes and blight and that this store will act as an anchor towards alleviating that blight. The Planning Department recommended approval the neighborhood commercial establishment, on the condition that no carry-out food is provided, and alcohol and tobacco are not sold on the premises.

The Board reviewed the file and evidence submitted in support of this application as well as any testimony or evidence offered in opposition and evaluated the request for Neighborhood Commercial Establishment (retail goods establishment – no alcoholic beverage sales) at this location with the conditional use standards provided under Article 32 and Maryland law. After a complete and comprehensive review of all the evidence, the Board finds by competent evidence that the establishment, location, construction, maintenance, and operation of the proposed Neighborhood Commercial Establishment (retail goods establishment – no alcoholic beverage sales) would not be detrimental to or endanger the public health, safety, or welfare; the proposed use is not precluded by any other law, including any applicable Urban Renewal Plan; this authorization is not contrary to the public interest; and this authorization and proposed use is in harmony with the purpose and intent of this Code. In consideration of these standards including those imposed by ZC §5-406(b), and on review of the file, testimony, and evidence submitted in support of this conditional use application, the Board finds by competent evidence that Appellant’s request meets the requirements of Article 32, the Zoning Code of the City of Baltimore.

Under ZC §5-405(a)(1), before approving any conditional use, the Board of Municipal and Zoning Appeals may impose on the establishment, location, construction, maintenance, or

operation of the conditional use any condition, restriction, or limitation that it considers necessary for the protection of the public interest. Under ZC §5-405(a)(2), any condition imposed must be reasonably related and roughly proportional to the expected impact of the conditional use. Under ZC §5-405(b), failure to comply with any condition, restriction, or limitation imposed: (1) constitutes a violation of the Code; and (2) in addition to any other civil or criminal remedy or enforcement procedure, is grounds for modification, suspension, or revocation of the conditional use.

For the reasons set forth above, and after giving public notice, reviewing the zoning records, holding a public hearing, considering all data submitted, and by authority of Ords. 16-581 and 17-015, enacted and corrected effective June 5, 2017, known as Article 32 Zoning,

IT IS this 7th day of February, 2022, by the Baltimore City Board of Municipal and Zoning Appeals, hereby

RESOLVED, that Petitioner’s request to use the ground floor of premises as a neighborhood commercial establishment (retail goods establishment – no alcoholic beverage sales) is **GRANTED**, on the **CONDITION(S)** that:

- (1) The sale of alcohol and tobacco products at the property is prohibited.

DO NOT START WORK OR USE THE PROPERTY UNTIL YOU OBTAIN A BUILDING OR A USE & OCCUPANCY PERMIT FROM THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT. YOU HAVE ONE YEAR FROM THE DATE OF THIS RESOLUTION TO OBTAIN A BUILDING PERMIT OR A USE & OCCUPANCY PERMIT.


 Kathleen Byrne
 Acting Executive Director

