


TJS

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	CITY COUNCIL BILL #11-0691 / URBAN RENEWAL - BROADWAY EAST – AMENDMENT		

DATE:

TO

The Honorable President and
 Members of the City Council
 City Hall, Room 400
 100 North Holliday Street

September 23, 2011

At its regular meeting of September 22, 2011, the Planning Commission considered City Council Bill #11-0691, for the purpose of amending the Urban Renewal Plan for Broadway East to amend and clarify certain land uses, to correct, clarify, and conform certain language and references, and to correct and clarify certain provisions concerning nonconforming uses and noncomplying structures; waiving certain content and procedural requirements; making the provisions of the Ordinance severable; providing for the application of this Ordinance in conjunction with certain other ordinances; and providing for a special effective date.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended amendment and approval of City Council Bill #11-0691 and adopted the following resolution; seven members being present (seven in favor).

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, and recommends that City Council Bill #11-0691 be amended and passed by the City Council.

If you have any questions, please contact Mr. Wolde Ararsa, Division Chief, Land Use and Urban Design Division at 410-396-4488.

TJS/WA

Attachment

- cc: Ms. Kaliopé Parthemos, Deputy Mayor
 Mr. Peter O'Malley, Chief of Staff
 Ms. Angela Gibson, Mayor's Office
 The Honorable Bill Henry, Council Rep. to Planning Commission
 Mr. David Tanner, BMZA
 Mr. Geoffrey Veale, Zoning Administration
 Ms. Nikol Nabors-Jackson, DHCD
 Mr. M. J. Brodie, BDC
 Ms. Elena DiPietro, Law Dept.
 Ms. Karen Randle, Council Services
 Hon. Warren Branch, City Council, 13th District



Stephanie Rawlings-Blake
Mayor

PLANNING COMMISSION
Wilbur E. "Bill" Cunningham, Chairman

STAFF REPORT



Thomas J. Stosur
Director

September 22, 2011

REQUEST: City Council Bill #11-0691 / Urban Renewal – Broadway East

FOR the purpose of amending the Urban Renewal Plan for Broadway East to amend and clarify certain land uses, to correct, clarify, and conform certain language and references, and to correct and clarify certain provisions concerning nonconforming uses and noncomplying structures; waiving certain content and procedural requirements; making the provisions of this Ordinance severable; providing for the application of this Ordinance in conjunction with certain other ordinances; and providing for a special effective date.

RECOMMENDATION: Amendment and Approval

Amendment:

- Amend Section (1)(f)(3) - Nonconforming Use - to provide for prohibition of certain uses as changes in non-conforming uses, as shown in the attachment to this report.

STAFF: Martin French and Tamara Woods

PETITIONER(S): City Councilman Warren Branch, 13th District

HISTORY

- The Broadway East Urban Renewal Plan (URP) was originally approved by the Mayor and City Council by Ordinance No. 156, dated July 6, 1988.
- Amendment No. 1, dated November 1, 1989, was approved by the Mayor and City Council of Baltimore by Ordinance No. 595, dated June 29, 1990.
- Amendment No. 2, dated April 15, 2002, was approved by the Mayor and City Council by Ordinance No. 02-457, dated December 19, 2002.
- Amendment No. 3, dated February 28, 2011, was approved by the Mayor and City Council of Baltimore by Ordinance No. 11-454, dated May 26, 2011.

CONFORMITY TO PLANS

This action is compatible with the City's Comprehensive Master Plan, LIVE section, Goal 2: Elevate the Design and Quality of the City's Built Environment, Objective 2: Streamline and Strengthen the Development Process.

ANALYSIS

The goal of this legislation is to remove a legislative barrier to creating walkable neighborhoods and to provide for the potential reuse of buildings. Over the past year the Department of Planning received several applications for use permits that according to the

Urban Renewal Plan would not be allowed for the subject properties. For these particular cases the two reasons for administrative disapproval have been:

- Some urban renewal plans essentially reclassify properties from commercial use to residential use by prohibiting all of the unique commercial uses of the underlying zoning and only allowing a few limited uses in addition to residential.
- Several urban renewal plans are very restrictive to “non-complying uses”. This term is confusing as it does not appear in the Zoning Code, which refers to what are called non-conforming uses and non-complying structures. In these URPs a “non-complying use” is defined as “any lawfully existing use of a building or other structure, or of land, which does not comply with the land use regulations of the Plan.” Some of the URPs include very strict criteria on maintaining or changing “non-complying uses”. The restrictive language most commonly used is:
 - (1) Any non-complying land use which is discontinued for a period exceeding 12 months shall not be reestablished;
 - (2) No change in the permanent physical members of a structure, such as bearing walls, columns, beams, or girders, or no substantial change in the roof or in the exterior walls shall be made in or to a building or structure except those required by law or except to make the building and use thereof conform to the regulations of this Plan; and
 - (3) No non-complying land use shall be changed to any other non-complying land use.

In a response to Baltimore Housing’s permits procedure relating to two use and occupancy permit applications, the City’s Law Department reviewed the first bullet above in a memo that addressed the issue of de facto rezoning through an Urban Renewal Plan. This bill, CCB#11-0691, deals with the second bullet point above.

In addition to but separately from the constraints within the Urban Renewal Plan, the Zoning Code was amended to include stricter language regarding discontinuance and abandonment of non-conforming uses. Before the amendment, there was a clause that allowed non-conforming uses to be reestablished in R-7 and R-8 zones with Board of Municipal and Zoning Appeals (BMZA) approval. The amended Zoning Code now provides that, if a non-conforming use has been discontinued for 12 consecutive months, then the nonconforming use status of the property will cease to exist.

Also, because receiving authorization for a change in non-conforming use from the BMZA does not automatically equate to compliance with the urban renewal plan, there are times when some BMZA applications are approved by the Zoning Board only to be denied at permitting because of the strict URP provisions.

The net effect of these existing regulations and processes is that some vacant corner stores cannot be reestablished or be approved for a change in non-conforming use. Most will either remain vacant or can be converted to residential.

Proposed Legislation

CCB#11-0691 proposes to amend the Broadway East Urban Renewal Plan by deleting certain language that imposes certain restrictions on these non-conforming uses, including deleting confusing language regarding “non-complying uses”. The proposed legislation replaces this language with definitions from the Zoning Code for non-conforming uses and non-complying structures, and deletes the 3 strict criteria listed above. In addition, Planning staff recommend that the residential land use category of the Urban Renewal Plan be amended to include language that restricts non-conforming uses that may be authorized by the BMZA to corner properties.

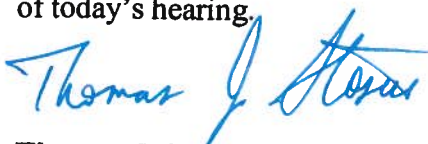
Planning staff also recommend an additional amendment to CCB#11-0691 to prohibit certain B-1 uses from being used for changes in non-conforming uses (see attachment). Some of the uses listed in the proposed amendment would be followed by “in R1 - R10 districts”. This delineates which changes in non-conforming use prohibitions only apply to residential zoning districts, not to other zoning district categories or other parts of the Land Use Section of the Urban Renewal Plan.

The effect of the proposed legislation is that the Urban Renewal Plan will allow for changes in non-conforming use (with the exception of the proposed prohibitions in the attached amendment). Absent the existing strict criteria, some of the existing corner store buildings may be able to become occupied with viable uses. We recognize that TransForm Baltimore will allow for a broader-based reform with provisions to make neighborhoods more walkable by providing for the occupancy of corner storefronts with limited commercial uses. This bill is intended as an interim measure to remove a current barrier to providing walkable neighborhoods.

Staff Notification: Copies of the original bill were sent out in May 2011. Planning staff also notified the following 10 organizations of today’s hearing:

- Collington Square Association
- Collington Square Non-Profit Corporation
- Broadway East Community Association
- Mooristown Federal Community Association
- Historic East Baltimore Community Action Coalition, Inc. (HEBCAC)
- East Baltimore Development Inc. (EBDI)
- Washington Wolfe Gateway Community Association
- C.A.R.E. Community Association, Inc.
- Monument Street Merchants Association
- The Community Housing and Relocation Workgroup

City Council President Young and Councilmen Branch, Stokes, and Welch were also notified of today’s hearing.



Thomas J. Stosur
Director

ATTACHMENT

Proposed Amendment to CCB #11-0691 / Urban Renewal - Broadway East September 22, 2011

Section (1)(2)(B)(1)(f) -- Nonconforming Use -- should be amended to provide for the prohibition of certain uses as changes in non-conforming uses, as follows:

1. Permitted Land Uses

f. [Non-Conforming] NONCONFORMING USE

[A non-conforming use is any lawfully existing use of a building or other structure, or of land which does not conform to the applicable use regulations of the district in which it is located according to Article 30 of the Baltimore City Code (1983 Replacement Volume, as amended), titled "Zoning." Non-conforming uses shall be permitted to continue subject to the provisions of Chapter 8 of said Article 30, titled "Non-Conformance."]

A NONCONFORMING USE IS ANY LAWFULLY EXISTING USE OF A BUILDING OR OTHER STRUCTURE OR OF LAND THAT DOES NOT CONFORM TO THE APPLICABLE USE REGULATIONS OF THE DISTRICT IN WHICH IT IS LOCATED, ACCORDING TO THE ZONING CODE OF BALTIMORE CITY.

NONCONFORMING USES SHALL BE PERMITTED TO CONTINUE SUBJECT TO THE PROVISIONS OF TITLE 13, TITLED "NONCONFORMANCE". HOWEVER, THE FOLLOWING USES WILL NOT BE ALLOWED AS A CHANGE IN A NON-CONFORMING USE:

DRUG STORES AND PHARMACIES (In R1-R10 districts)

MULTI-PURPOSE NEIGHBORHOOD CENTERS (In R1-R10 districts)

TOBACCO SHOPS (In R1-R10 districts)

VARIETY STORES (In R1-R10 districts)

BAIL BONDS OFFICES (In R1-R10 districts)

AMUSEMENT DEVICES (In R1-R10 districts)

CLUBS AND LODGES: PRIVATE NONPROFIT (In R1-R10 districts)

HELISTOPS.

MARINAS: ACCESSORY.

MARINAS: RECREATIONAL.

MARINAS: RECREATIONAL BOAT LAUNCH/TIE UP.

POULTRY- AND RABBIT-KILLING ESTABLISHMENTS.

RADIO AND TELEVISION ANTENNAS THAT ARE FREE-STANDING OR THAT EXTEND MORE THAN 25 FEET ABOVE THE BUILDING ON WHICH THEY ARE MOUNTED — BUT NOT INCLUDING MICROWAVE ANTENNAS (SATELLITE DISHES).

RECYCLING COLLECTION STATIONS.

RESTAURANTS — INCLUDING LIVE ENTERTAINMENT AND DANCING, AND INCLUDING ACCESSORY OUTDOOR TABLE SERVICE. (In R1-R10 districts)

TRAVEL TRAILERS, RECREATIONAL VEHICLES, AND SIMILAR CAMPING EQUIPMENT: PARKING OR STORAGE.

Note: The language above reflects the current bill language and a proposed Planning Commission amendment; proposed new text to be added to the bill is underlined.