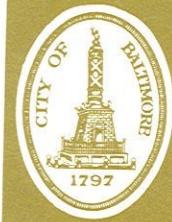


FROM	THOMAS J. STOSUR, DIRECTOR
AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 E. FAYETTE STREET, 8 <sup>th</sup> FLOOR
SUBJECT	CITY COUNCIL BILL #09-0395- ZONING-NONCONFORMING USE- DISCONTINUANCE OR ABANDONMENT

CITY OF  
BALTIMORE

**MEMO**



TO

DATE:

December 4, 2009

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

At its regular meeting of December 3, 2009 the Planning Commission considered City Council Bill #09-0395, which is for the purpose of repealing certain exceptions to the general rules applicable to the discontinuance or abandonment of Class III nonconforming uses; extending the periods for reestablishing a Class III nonconforming use in certain Residential Districts; and generally relating to reestablishment of Class III nonconforming uses.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended approval of City Council Bill #09-0395 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 #09-0395 be passed by the City Council.

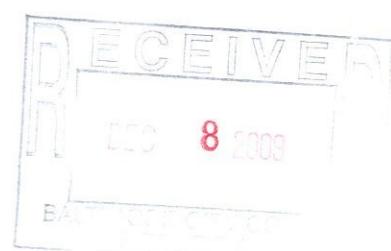
If you have questions, please contact Mr. Wolde Ararsa, Division Chief of Land Use and Urban Design Division, at 410-396-4488.

TJS/WYA/ttl

Attachments

cc:

Mr. Andrew Frank, Deputy Mayor  
Mr. Demuane Millard, Chief of Staff  
Ms. Angela Gibson, Mayor's Office  
The Honorable Rochelle "Rikki" Spector, Council Rep. for Planning Commission  
Mr. David Tanner, BMZA  
Mr. Geoffrey Veal, Zoning Administration  
Ms. Nikol Nabors-Jackson, DHCD  
Mr. Larry Greene, Councilmanic Services





Sheila Dixon  
Mayor

## PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman

## STAFF REPORT



Thomas J. Stosur  
Director

December 3, 2009

**REQUEST:** CCB #09-0395/Zoning – Nonconforming Use – Discontinuance or Abandonment

For the purpose of repealing certain exceptions to the general rules applicable to the discontinuance or abandonment of Class III nonconforming uses; extending the periods for reestablishing a Class III nonconforming use in certain Residential Districts; and generally relating to reestablishment of Class III nonconforming uses.

**RECOMMENDATION:** Approval

**STAFF:** Eric Tiso

**INTRODUCED BY:** Councilmembers Clarke, Kraft, D'Adamo, Branch, Cole, Curran, Middleton, President Rawlings-Blake, Councilmembers Reisinger, Henry, Conaway, Welch, Spector

**CONFORMITY TO PLANS:**

This bill supports the concepts of the Comprehensive Plan's LIVE section, Goal 2: Elevate the Design and Quality of the City's Built Environment, Objective 2: Streamline and Strengthen the Development Process, by modernizing the zoning code to meet current needs.

**ANALYSIS:**

**Purpose:** This bill proposes to modify how Class III nonconforming uses are treated, by altering the discontinuance/abandonment provision, by removing an exception for R-6 through R-10 Districts, and by altering the timeline for continuances. These Class III nonconforming uses are generally properties with buildings of a type that match the allowable uses in the district, but the uses within those buildings are no longer permitted in the district. As one example, this could be a corner store in a rowhouse neighborhood – a non-permitted commercial use in a residential structure. These nonconforming uses are normally created when a property had a lawful use established under previous zoning laws, but the underlying zoning district or rules were changed. Out of fairness, the nonconforming use may continue as it was lawfully approved before the change, but must operate under a special set of rules.

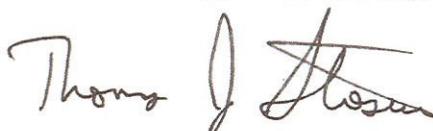
Current Requirements: Under today's rules, when a nonconforming use is abandoned (or discontinued for more than twelve months), that nonconforming use is deemed to be terminated. Any further use of the property must follow the current use rules for that zoning district. There is one exception under §13-407.c of the Zoning Code, where in the R-6 through R-10 Residential Districts, where that abandonment and discontinuance provision does not apply. That means that the nonconforming use can be inactive for more than twelve months, and can be re-approved and continue to operate as it was last lawfully established. This exception can be positive in some cases where getting a building converted to a residential use may not be very feasible or likely. In that case, it may be better to have an active use in a building rather than a vacant building. The exception can be negative however, in that these nonconforming uses are not terminated as the zoning code generally intends. The nonconforming uses can then be perpetuated for decades, and will continue to not conform to the uses permitted in that particular Zoning District.

A property owner with a stopped nonconforming use may also request that the Board of Municipal and Zoning Appeals (BMZA) grant an extension before the nonconforming use is terminated. The owner will have to demonstrate that there is a good and just reason to merit this extension (§13-718). If the owner is not able to get the nonconforming use operational again, they lose the nonconforming use permanently under the discontinuance and abandonment rules.

Proposed Requirements: This bill proposes to remove the discontinuance/abandonment exception for R-6 through R-10 Residential Districts. That means that once the nonconforming use is gone, it's gone – the same as any other zoning district. At the same time, the bill proposes to extend the time period for determining that a nonconforming use has been abandoned from twelve months to eighteen months.

Under this bill, in the R-6 through R-10 Districts, nonconforming uses would have a "grace period" as under the current process of requesting a continuance from the BMZA. That "grace period" is proposed to be extended from six months to twelve months.

Notification: Staff notified 223 City-wide community organizations of this hearing, and enclosed a copy of the bill with the notice.



Thomas J. Stosur  
Director