
IN THE MATTER OF THE
PETITION OF: MIRYAN QUEZADA

Baltimore City Board of Municipal
& Zoning Appeals

466 Hornel Street
(BLOCK 6345, LOT 023)



Kathleen Byrne
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Appeal No. 2021-349
Hearing Date: March 8, 2022

RESOLUTION

Background

This matter comes before the Baltimore City Board of Municipal & Zoning Appeals (“Board”) on appeal from the Zoning Administrator for Baltimore City denying the application of Miryan Quezada (“Appellant”) to use the premises located at 466 Hornel Street (“Property”) as a multi-family dwelling (“MFD”) with two (2) dwelling units, with a barber shop (neighborhood commercial: personal services) on the ground floor.

Appellants filed this appeal to the Board on January 3, 2022 and appeared for a public hearing on March 8, 2022. Board and Department of Planning staff prepared memoranda evaluating the appeal. Following deliberations and for the reasons set forth below, the Board voted to approve the application for the neighborhood commercial: personal services use and to deny the application for a MFD use with two (2) dwelling units by unanimous 5-0 vote.

Facts

The Property is located in an R-7 Zoning District and is a rectangular corner lot, improved with a 1942 two-story attached brick dwelling. The last authorized use of the premises is for a single-family dwelling (“SFD”), plus an office and delicatessen on the basement/lower level. The building is located on the corner of Hornel Street and Eastern Avenue, with an exposed basement/lower level facing Eastern Avenue. The land use records kept by the city show that this lower level was “known as” 6310 Eastern Avenue and has been used for commercial purposes over many years. Specifically, the building was used as a 3-unit MFD from 1942-1972, when a new certificate of occupancy reduced it to a 2-unit MFD. In 1973, the Property was further reduced to one (1) dwelling unit, as a SFD, and two offices were added: one in the basement/lower level and one on the second floor. In 1980, a certificate of occupancy was issued for an arts and crafts studio in the basement/lower level, and in 1992, a certificate of occupancy was issued for a delicatessen on the lower level, the “remainder” for an office, and one (1) dwelling unit.

The Department of Planning recommended disapproval of the portion of Appellant’s application relating to the MFD use, because the Code does not allow the Board to convert a SFD to a MFD in the R-7 zoning district. However, the Department had no objection to the neighborhood commercial: personal services use, if Appellant could provide evidence that the building had previously been used for a non-residential purpose.

Appellant appeared in support of her application, and there was no opposition in writing or at the virtual hearing.

Standard of Review

Neighborhood Commercial Establishment: Neighborhood commercial establishment uses, such as personal services establishments, are allowed by conditional use granted by the Board in the R-7 Zoning District under City Code, Article 32, Table 9-301. City Code Art. 32, § 1-310(j) defines a neighborhood commercial establishment as 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. The proposed use must be pedestrian-oriented and not oriented to the automobile and its principal entrance must be a direct entry from the primary adjoining street.

Conditional Use: Under Article 32, § 5-406, the Board 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.

As a further guide to its decision on the facts of each case, under § 5-406(b), the Board must consider the following where appropriate: (1) the nature of the proposed site, including its size and shape and the proposed size, shape, and arrangement of structures; (2) the resulting traffic patterns and adequacy of proposed off-street parking and loading; (3) the nature of the surrounding area and the extent to which the proposed use might impair its present and future development; (4) the proximity of dwellings, churches, schools, public structures, and other places of public gathering; (5) accessibility of the premises for emergency vehicles; (6) accessibility of light and air to the premises and to the property in the vicinity; (7) the type and location of adequate utilities, access roads, drainage, and other necessary facilities that have been or will be provided; (8) the preservation of cultural and historic landmarks and structures; (9) the character of the neighborhood; (10) the provisions of the City's Comprehensive Master Plan; (11) the provisions of any applicable Urban Renewal Plan; (12) all applicable standards and requirements of this Code; (13) the intent and purpose of this Code; and (14) any other matters considered to be in the interest of the general welfare.

Residential conversions: City Code Art. 32 § 9-701 states that the conversion of an SFD to an MFD is allowed only in the R-7, R-8, R-9, and R-10 Districts, subject to, in the R-7 and R-8 Districts, conditional-use approval by Ordinance of the Mayor and City Council. The Property is located in an R-7 residential zoning district, so a conversion from an SFD to an MFD can only be done by ordinance, not by action of the Board.

Discussion

Neighborhood Commercial: Personal Services: After a review of the file, evidence and testimony submitted in support of this application, the Board evaluated this application under the neighborhood commercial and conditional use standards found in City Code Article 32 and Maryland law. After a comprehensive review of all the evidence, the Board finds that the Property has received prior zoning approval for a non-residential use, as evidenced by the land use cards available in the city's records, which show that the basement/lower level of the Property has been legally used as an office, arts and crafts studio, and a delicatessen. The personal services use proposed would be oriented to pedestrians and not automobiles, and the primary entrance to the lower level would be on Eastern Avenue, which is the primary adjoining street.

Conditional Use: Applying the conditional use standards listed in the Code, the Board found by competent evidence that the proposed personal services establishment use would not be detrimental to or endanger the public health, safety, or welfare, be precluded by any other law or Urban Renewal Plan, or be contrary to the public interest, and that it would be in harmony with the purpose and intent of this Code. The property has a long history of commercial uses on the lower level/basement, which faces Eastern Avenue, a commercial corridor. There was no opposition on the record to the request and no evidence in the record that the personal services establishment use at this location would be detrimental in any way to the health, safety, and welfare of the community. In consideration of the standards, including those listed in § 5-406, 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 the Code and that the proposed use will not have an adverse effect above and beyond that ordinarily associated with personal services establishments, irrespective of its location within the zone.

MFD conversion: The Property's current use and occupancy permit is for an SFD. The Board does not have the jurisdiction to approve a conversion from an SFD to an MFD. Therefore, the Board must deny Appellant's request to convert her property from one to two dwelling units.

Conclusion

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 City Code Article 32, it is this 19th day of April, 2022, by the Baltimore City Board of Municipal and Zoning Appeals, hereby:

RESOLVED, that the Board finds sufficient evidence in the record to support the application of the Appellants to use the Property for a barber shop (neighborhood commercial: personal services) on the ground floor; and it is further,

RESOLVED, that the Board has not found sufficient evidence in the record to support Appellant's application to use the Property as a multi-family dwelling with two (2) dwelling units; and it is further,

RESOLVED, that Appeal No. 2021-245 is **GRANTED IN PART** as to the neighborhood commercial: personal services use and **DENIED IN PART** as to the multi-family dwelling use, both by unanimous 5-0 vote of the Board of Municipal and Zoning Appeals.

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



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