



FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE  <b>MEMO</b>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 <sup>TH</sup> FLOOR		
	SUBJECT	BMZA / 1226 South Clinton Street		

TO

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

DATE: February 2, 2015

### REQUEST

The Department of Planning has received Stephen Fogleman's Board of Municipal and Zoning Appeals (BMZA) application, on behalf of CRP Restaurant Investments, to use the premises as a restaurant with accessory outdoor table service. The Zoning Administrator has determined that this is a nonconforming use in a R-8 Zoning District. We understand that this appeal is scheduled for hearing on February 10, 2015.

### SITE

1226 South Clinton Street is located on the northwest corner of the intersection with Toone Street. This property measures approximately 30'6" by 60' and is currently improved with a two-story semi-detached residential mixed-use building covering the entire lot. This site is zoned R-8 and is located within the Canton National Register Historic District.

### ANALYSIS

Use: In this zoning district, restaurants are not listed as a permitted or conditional use, and so are not allowed (§4-1101 to §4-1104). In this case, the property was last authorized for use as a tavern, which is a nonconforming use in this R-8 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 restaurant – including live entertainment and dancing, and including accessory outdoor table service, is listed as a conditional use in the B-1 District, and so is eligible for a change in nonconforming use (§6-206 - 208).

Definition: "Outdoor table service", as an accessory to a restaurant, means an outdoor service area at which patrons are seated at tables for service of food and drinks (§1-168.1). The application included a sidewalk site plan showing placement of two tables in front of the premises, one on each side of the entrance, and four tables alongside the premises on its Toone Street side. As the sidewalks in this vicinity are approximately 14' wide, and each 4-top round table would require a minimum of 5' of sidewalk width, there is sufficient distance to allow a minimum of 6' of unimpeded pedestrian passage in front of and beside the premises. The proposed plan is thus acceptable.

TransForm Baltimore: This property would remain part of the R-8 District (Proposed Zoning Map Area 8-C) in which Neighborhood Commercial Establishments would be conditional uses (Table 9-301). "Neighborhood commercial establishment" means "a commercial use that is within a residential neighborhood, but in a structure that is non-residential in its construction and original use" (§1-310 (I)).

**RECOMMENDATION**

The Department of Planning recommends that approval of this appeal, if granted, be subject to these conditions in addition to other conditions which the Board may establish:

- A minimum of six feet of the sidewalk must remain clear and unobstructed for pedestrian use;
- The capacity of the outdoor seating area will not be more than 6 tables and 24 patrons;
- The tables will be limited to those that can seat 4 patrons, and are to be kept against the wall of the building;
- There will be no outdoor bar;
- There will be no outdoor music, a jukebox, or other form of entertainment; and
- All patrons must be seated for dining, and served by wait staff.

TJS/wya/mf

cc: Stephen Fogleman, Appellant