


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	BMZA / 4236 and 4238 Frederick Avenue		

TO

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

DATE: February 21, 2014

REQUEST

The Department of Planning has received Bernard Truesdale's Board of Municipal and Zoning Appeals (BMZA) application to consolidate lots, use the basement as a tavern with live entertainment and dancing and accessory outdoor table service, and install a free-standing business sign and a 12' by 7' wall-mounted business sign. The Zoning Administrator has determined that this is a nonconforming use in a R-7 District, and that a variance of Zoning Code signage requirements is needed for approval of this application. We understand that this appeal is scheduled for hearing on February 25, 2014.

SITE

4236 Frederick Avenue is located on the north side of the street, approximately 22'9" east of the intersection with Woodington Road. This property measures approximately 20' by 120' and is currently improved with a two-story semi-detached residential building measuring approximately 15' by 60'. 4238 Frederick Avenue (the adjoining property) is located on the northeast corner of the intersection with Woodington Road. This property measures approximately 22'9" by 120' and is currently improved with a two-story semi-detached residential mixed-use building measuring approximately 16' by 60'. This site is zoned R-7.

ANALYSIS

Use: In this zoning district, taverns are not listed as a permitted or conditional use, and so are not allowed (§4-1001 to §4-1004). In this case, the basement of both properties was last authorized for use in common as a tavern by the Board in 1943, which allowed a nonconforming use in this R-7 General Residence District. Although use of both basements of 4236 and 4238 Frederick Avenue was allowed, the two lots have remained unconsolidated. 4236 Frederick Avenue was authorized for two dwelling units (a multiple-family semi-detached dwelling which is a permitted use in a R-7 District), while 4238 Frederick Avenue was authorized for one dwelling unit with a bar or tavern in its basement.

Live entertainment: Restaurants including live entertainment and dancing are conditional uses in all Business Districts (§6-208, §6-308, §6-408, etc.) and taverns including live entertainment and dancing are conditional uses in B-2 and higher Business Districts (§6-308, §6-408, etc.). Live entertainment and dancing is not authorized for nonconforming use taverns, as restaurants, but not taverns, appear on the list of uses permitted in a B-1 District, in Residential Districts. This portion of the application thus would not be approvable.

Signs: In Residence and Office-Residence Districts, business signs for nonconforming uses must comply with these requirements: The sign must be mounted "flat against the wall of the building and may not project more than 1 foot from that wall" (§11-509.b.). The sign's size is limited to the least of: an area equal to the lineal feet of frontage of the building (for this

property there must first be an interpretation as to whether use of a basement with no frontage on Frederick Avenue provides any lineal feet of frontage); 30 square feet; or the total area of all signs that now lawfully exist (§11-509.c.). Aerial photographs of this site show no signs, wall-mounted or free-standing, and thus the amount of business signs to be allowed would be none, that being the least of the three alternatives provided in the Zoning Code. Free-standing signs are not authorized by the Zoning Code for nonconforming businesses in Residential or Office-Residence Districts (§11-509.a. through 11.509.f.).

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). As this application is for outdoor table service accessory to a tavern, there is no provision in the Zoning Code that would authorize the Board to approve this part of this application.

TransForm Baltimore: This property would become part of a R-6 District (Proposed Zoning Map Area 5-D) 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)). The structure on the portion of this site known as 4238 Frederick Avenue has a side entrance to the tavern from Woodington Road, suggesting that it was used for both commercial and residential purposes in the past.

RECOMMENDATION

The Department of Planning recommends disapproval of this appeal, because (1) taverns with live entertainment and dancing are not authorized in the Zoning Code; (2) business signs for nonconforming uses in Residence Districts must be wall-mounted and are limited to the least amount, which for this property is none, as there are no lawfully erected signs on the structure and the nonconforming use may not have any frontage on Frederick Avenue; and (3) accessory outdoor table service is not authorized for taverns in the Zoning Code.

TJS/wya/mf

cc: Bernard Truesdale, Appellant