


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 / 3326-3328 Foster Avenue		

TO

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

DATE: March 7, 2014

### REQUEST

The Department of Planning has received David Tobash's Board of Municipal and Zoning Appeals (BMZA) application to add outdoor table service to a tavern and restaurant. The Zoning Administrator has determined that this is a nonconforming use in a R-8 District. We understand that this appeal is scheduled for hearing on March 11, 2014.

### SITE

3326-3328 Foster Avenue is located on the northwest corner of the intersection with Highland Avenue. This property measures approximately 29'6" by 80' and is currently improved with a two-story end-of-row 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, taverns and 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.

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 property is presently used for a tavern, and thus the proposed accessory outdoor table service would not be approvable unless the use was first changed to a restaurant.

Land Use and Urban Design: The application included a sketch of the sidewalks around the premises, but did not show the dimensions of the areas proposed to be used for tables and seating. If the applicant can demonstrate to the Board that the use of the premises has been changed to a restaurant, a sidewalk site plan showing dimensions of the areas to be used for placement of tables and seating should be provided for consideration by the Board, and for review by this Department.

TransForm Baltimore: This property would remain part of a R-8 District (Proposed Zoning Map Area 8-C) in which Neighborhood Commercial Establishments would be conditional uses (Table 9-301). "Neighborhood commercial establishment" includes restaurants without live entertainment and dancing (§14-328). Outdoor dining would be a separate use, and would not be permitted in Residential Districts.

**RECOMMENDATION**

The Department of Planning recommends disapproval of this appeal, because the Board is not authorized to approve accessory outdoor table service for taverns. If the applicant demonstrates to the Board that the present use of the premises is a restaurant and not a tavern, then the Department recommends that complete hearing of this appeal be deferred to allow the applicant time to prepare an approvable sidewalk site plan for the outdoor seating areas proposed.

TJS/wya/mf

cc: David Tobash, Appellant