


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 / 901 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: April 15, 2014

### REQUEST

The Department of Planning has received Larry Rohleder, Jr.'s Board of Municipal and Zoning Appeals (BMZA) application to expand an existing first-floor tavern and restaurant into the entire second floor, including into a second floor rear addition, and to add accessory outdoor table service. The Zoning Administrator has determined that this is a nonconforming use in a R-8 District, and that a variance of Zoning Code nonconforming use expansion requirements is needed for approval of this application. We understand that this appeal is scheduled for hearing on April 22, 2014.

### SITE

901 South Clinton Street is located on the southeast corner of the intersection with Hudson Street. This property measures approximately 14' by 68' 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. Plans for the proposed use name it as the "Cardinal Tavern".

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 is listed as a permitted use in the B-1 District, and so is eligible for a change in nonconforming use (§6-206 and 208).

Extension or moving of Class I, II, or III Nonconforming Use: The Board may authorize an extension of a Class I, Class II, or Class III nonconforming use, as limited and stated in §§ 13-206, 13-306, and 13-406 {"Expansions of use"} and §§ 13-208, 13-308, and 13-408 {"Relocations"} of this title, if the Board finds that: (1) the extension or moving will not cause a greater volume of traffic than that generated before the extension or move; (2) the extension or moving will not violate in any manner the bulk regulations of the district in which the property is located; (3) the effect of the extended or moved use on the health, safety, or general welfare of the community will be no worse than the existing or last use; (4) for the extension of a Class II or Class III nonconforming use, the extension will not result in an increase of the floor area of more than 25% beyond that which had been occupied or used when it became nonconforming; and (5) for an extension in the Critical Area: (i) there is no environmentally acceptable alternative outside the Critical Area; and (ii) the use is needed to correct an existing water quality or wastewater management problem (§13-714).

The application proposes a 100% increase in the floor area of the nonconforming use of this property, and thus is unapprovable because the amount of increase would exceed the 25% limitation cited above.

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 applicant must demonstrate that the tavern use has been changed to a restaurant use for this portion of the application to be approvable.

The sidewalks along Clinton Street and Hudson Street are wide enough to accommodate some tables and seats, and the application included a sidewalk site plan to demonstrate this along the Hudson Street side of the building. However, the plan shows five 4-top tables within a distance of 32', which would overcrowd them; it is recommended that the number of 4-top tables be reduced to four and the seating to 16 seats.

Historic District: The property is located in a designated historic district, and so may be eligible for historic tax credits for restoration and renovation. The appellant is encouraged to contact the Baltimore Commission for Historical and Architectural Preservation before proceeding with any improvements which may be authorized as a result of this appeal.

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 and outdoor dining would not be authorized (Table 9-301).

## **RECOMMENDATION**

The Department of Planning recommends disapproval of the portion of this appeal pertaining to expansion of the nonconforming use, whether tavern or restaurant, to the second floor of the premises, because the amount of expansion proposed would exceed the discretionary authority provided to the Board in the Zoning Code; and modification of the portion of this appeal pertaining to accessory outdoor table service, to reduce slightly the amount of outdoor seating. The Department has no objection to conversion of the existing nonconforming use from a tavern to a restaurant. These conditions are recommended for outdoor table service:

- 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 four tables and 16 patrons;
- The tables will be limited to those that can seat four 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: Larry Rohleder, Jr., Appellant