

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 / 3535-3537 Chestnut Avenue		

TO

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

DATE:

May 9, 2013

REQUEST

The Department of Planning has received William Bauer's Board of Municipal and Zoning Appeals (BMZA) conditional use application to use the premises as a restaurant with live entertainment, accessory outdoor table service, catering, and carry-out food. The Zoning Administrator has determined that this is a conditional use in a B-1 District, and that a variance of off-street parking requirements of the Zoning Code would be required for approval of this application. We understand that this appeal is scheduled for hearing on May 14, 2013.

SITE

3535-3537 Chestnut Avenue is located on the east side of the street, approximately 129' south of the intersection with 36th Street. This property measures approximately 40' by 150' and is currently improved with a one-story building covering the entire lot. This site is zoned B-1-2 and is located within the Hampden Business Area Urban Renewal Plan area and the Hampden National Register Historic District.

ANALYSIS

Conditional Use: In this zoning district, restaurants – including live entertainment and dancing, and including accessory outdoor table service, are a conditional use, requiring approval by the Board (§6-208). In this case, the property was last authorized for use as a non-profit club, which is also a conditional use in this B-1 Neighborhood Commercial District. The applicant is requesting approval of a change of conditional use.

Change in Conditional Use: Any change to that use, including any expansion, relocation, or structural alteration, is subject to the procedures and requirements imposed by this article on conditional uses (§3-306.b.2).

Urban Renewal Plan: This property is located in the Hampden Business Area Urban Renewal Area, where the Urban Renewal Plan does not prohibit or further restrict the proposed use in this district, designated as Neighborhood Business in its Land Use Plan Map, Exhibit 1.

Definitions: "Carry-out food shop" means a business establishment whose principal business is the sale of ready-to-consume food and beverages for off-premises consumption (§1-123.1). "Catering establishment" means a business establishment whose principal business is the preparation of food and beverages for off-premises consumption only (§1-123.2). These uses are not permitted or conditional uses in a B-1 District, but are permitted uses in a B-2 District. Use of this premises for either of these purposes thus must be accessory to the principal use as a restaurant, in order not to create new nonconforming uses.

Required Findings - Live Entertainment or Dancing: For a restaurant or tavern operating with live entertainment or dancing as an accessory use, the Board must consider imposing conditions, as appropriate, concerning:

- (1) days and hours of operation;
- (2) use of amplification, noise levels, and need for noise proofing;
- (3) limits on the size of the establishment or on the size, location, or configuration of the entertainment or dancing venue within the establishment;
- (4) number of live entertainers;
- (5) number of seats proposed for outdoor table service;
- (6) exterior lighting;
- (7) whether to limit the accessory use to live entertainment only or dancing only;
and
- (8) the establishment and maintenance of:
 - (i) a traffic and parking management plan; and
 - (ii) an indoor and outdoor security plan. (§14-309)

The application indicates that the live entertainment would be limited to “music to accompany a pizzeria” and limited to 80 decibels sound level, to occur on Thursday, Friday, and Saturday nights only. There would be a stage, but no dance floor. The applicant should provide off-street parking to serve the anticipated additional patronage that would be associated with live entertainment.

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 sidewalk in front of this building could accommodate an outdoor seating area; the applicant should provide a dimensioned sidewalk site plan showing placement of tables and seats next to the building that would leave an unobstructed 6’ wide pathway for pedestrians in front of the property.

Off-Street Parking: ... whenever the existing use of a structure is changed to a new use, off-street parking facilities must be provided, as required by this title, for that new use (§10-203.a). If the structure was lawfully erected before April 20, 1971, additional off-street parking facilities are mandatory only in the amount by which the requirements for the new use exceed those for the existing use (§10-203.b). In this zoning district, restaurants require one off-street parking space per 400 square feet of floor area (§10-405.21.i); the previous use required one parking space per 4 persons of rated capacity (§10-405.7).

TransForm Baltimore: This property would become part of a C-1 Neighborhood Business District (Proposed Zoning Map Area 2-D) in which restaurants would remain a permitted use and live entertainment secondary to a restaurant would remain a conditional use (Table 10-301). A carry-out would become a conditional use (Table 10-301), and food processing: light which would include catering would also become a conditional use (Table 10-301). The proposed combination of uses of this property would thus be consistent with the proposed new zoning code.

RECOMMENDATION

The Department of Planning recommends approval of this appeal, subject to these conditions in addition to any which the Board may establish:

FOR LIVE ENTERTAINMENT – CONDITIONS:

- A copy of the use and occupancy permit for the premises must be kept on the premises and available for inspection by representatives of Baltimore City at all times;
- A copy of the written approval by the Board of Municipal and Zoning Appeals of the live entertainment provided on the premises, including details of any restrictions or limitations on the live entertainment provided, must be kept on the premises and available for inspection by representatives of Baltimore City at all times;
- A copy of all other permits and licenses required pursuant to the written approval of the Board of Municipal and Zoning Appeals must be kept on the premises and available for inspection by representatives of Baltimore City at all times.

FOR OUTDOOR TABLE SERVICE – CONDITIONS:

- 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 4 tables and 16 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: William Bauer, Appellant

