


TJA

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 / 800 South Kenwood Avenue		

TO

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

DATE: June 8, 2012

REQUEST

The Department of Planning has received Pauline Guiragoss' Board of Municipal and Zoning Appeals (BMZA) application to use the first floor of the premises as a tavern and restaurant – not including live entertainment and dancing, but including accessory outdoor table service, and to place the kitchen for the restaurant on the second floor. We understand that this appeal is scheduled for hearing on June 12, 2012.

SITE

800 South Kenwood Avenue is located on the southwest corner of the intersection with Fait Avenue. This property measures approximately 16' by 70' and is currently improved with a two-story end-of-row 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, taverns and restaurants are not listed as permitted or conditional uses, 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, and a single-family dwelling, which is a permitted use.

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 conditional use in the B-1 District, and so is eligible for a change in nonconforming use (§6-208). The applicant must demonstrate that the tavern use has been converted to a restaurant use in order for accessory outdoor table service to be approvable, as indicated on the next page.

Expansion of Nonconforming Use: Except as authorized by the Board under Subtitle 7 {"Modifications and Continuances by Board"} of this title, a Class III nonconforming use may not be expanded in any manner, nor may any structure be erected or expanded on any nonconforming use of land, unless the use of the land and structure is made to conform to the regulations of the district in which the structure is located (§13-406). See also §13-702 to §13-714. The applicant is proposing to expand the nonconforming use of a restaurant (if such is authorized in the same floor area as is now used only for a tavern) by adding a commercial kitchen (for the restaurant) on the second floor of the structure. The applicant has provided no floor plans indicating how much floor area would be added to the nonconforming use of the structure; this is important to determine if this application complies with Zoning Code limits on extension or expansion of nonconforming uses.

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 proposed upstairs kitchen for the proposed first floor restaurant thus may not occupy more than 25%, in square feet, of the floor area now used for the tavern that is to be converted into a restaurant by the applicant.

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 converted to a restaurant use in order for the proposed outdoor table service to be approvable. The applicant is proposing to place 12 tables, each 2' by 2' in dimension, on the Fait Avenue side of the building, and 3 tables of similar dimension in front of the building along its Kenwood Avenue façade. The length of the building along Fait Avenue is 70' with openings; the façade of the building is 16' wide with a double front door. There is also a fire escape leading to the upstairs dwelling unit on the side of the building along Fait Avenue. The sidewalks on each side are approximately 12' wide, and with each two-top table in need of at least 8' of sidewalk length to accommodate seating there is no way to fit that large a number of tables onto the available sidewalk next to the building. The applicant should be required to submit a dimensioned site drawing for both sidewalks showing the exact dimensions of tables and seating, width and location of building entrances, etc., in order for the Board to determine the maximum amount of outdoor tables and seating that should be authorized.

RECOMMENDATION

The Department of Planning recommends deferral of a complete hearing of the appeal, in order to provide the applicant time to prepare a dimensioned plan for the proposed accessory outdoor table service area and a dimensioned floor plan for the proposed kitchen on the second floor. The sidewalk site plan should meet the criteria of providing adequate clearance for access to the entrances to the commercial use, access to the dwelling, and continued unimpeded pedestrian use of both sidewalks.

TJS/wya/mf

cc: Pauline Guiragoss, Appellant