2010-279

FROM		
NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE **MEMO**
AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8TH FLOOR	
SUBJECT	BMZA / 1028 South Conkling Street	

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

DATE: July 27, 2010

REQUEST
The Department of Planning has received Darren Petty's Board of Municipal and Zoning Appeals (BMZA) application to use the premises as a restaurant with live entertainment and dancing and with accessory outdoor table service. We understand that this appeal is scheduled for hearing on August 3, 2010.

SITE
1028 South Conkling Street is located on the northwest corner of the intersection with O'Donnell Street. This property measures approximately 20'6" by 100'3" and is currently improved with a three-story building measuring approximately 20'6" by 70' and a one-story rear addition covering the remainder of the lot. This site is zoned B-2-2 and is located within the Canton 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 (§6-308). This property is currently used for a restaurant – not including live entertainment and dancing, and not including accessory outdoor table service, and a carry-out food shop.

Live Entertainment:
(a) *In general.* "Live entertainment" means and one or more of any of the following, performed live by one or more persons, whether or not done for compensation and whether or not admission is charged:

(1) musical act (including karaoke);
(2) theatrical act (including stand-up comedy);
(3) play;
(4) revue;
(5) dance;
(6) magic act;
(7) disc jockey; or
(8) similar activity.

(b) *Exclusions.* "Live entertainment" does not include adult entertainment, as defined in § 1-106 of this subtitle (§1-153.1)

The application states that all forms of live entertainment other than plays or revues would be provided at this location, from 11 a.m. to 2 a.m. daily.

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 does not specify the maximum noise level, in decibels, which would be associated with live entertainment using amplification, only that windows would be closed when live entertainment begins. As there are many residences in the immediate vicinity of this property, noise levels must be limited. The application also does not provide any indoor or outdoor security plan. As the parking lot proposed to service the patrons of the establishment is across O'Donnell Street, an important thoroughfare in the area, and to the east of the establishment, a security plan covering this aspect of the proposed operation would be needed.

Off-Street Parking: … if the intensity in use of a structure or premises is increased through the addition of dwelling, efficiency, or rooming units, floor area, seating capacity, or other units of measurement, off-street parking facilities must be provided for that increased intensity, as required by this title (§10-202.a). The application includes a draft (unsigned) Temporary License to Park which does not state either: the number of parking spaces being made available for patrons of the applicant's restaurant after approval of live entertainment and dancing; the effective date of the document; the duration of the temporary license to park; and any renewal conditions and terms for the license to park. This document does not adequately address the Zoning Code requirement that the applicant provide a description of the volume and type of pedestrian and vehicular traffic in the area of the establishment, and a traffic management and a parking management plan (§14-309).

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 along the longer, Conkling Street east side of the building is approximately 10' wide from the building wall to the tree pits; the sidewalk along the O'Donnell Street side of the building is approximately 6' wide from the building wall to the tree pits. As a result, only the Conkling Street sidewalk may be considered available for placement of accessory tables and seating.

RECOMMENDATION

The Department of Planning recommends that approval of the appeal, if granted, be conditional upon the applicant providing an approvable traffic, parking, and security management plan; upon the applicant providing detailed description of the maximum noise levels, measured at the property line, which would be associated with amplified music or other live entertainment; and upon these conditions for accessory outdoor table service:

- Outdoor tables and seating will be located on the east or Conkling Street side of the premises only;
- A minimum of six feet of the Conkling Street sidewalk must remain clear and unobstructed for pedestrian use;
- The capacity of the outdoor seating area will not be more than 5 tables and 10 patrons;
- The tables will be limited to those that can seat 2 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: Darren Petty, Appellant