


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 / 5504-5506 Harford Road		

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

DATE:

August 27, 2010

REQUEST

The Department of Planning has received Melvin Kodenski's Board of Municipal and Zoning Appeals (BMZA) application, on behalf of Feria, Inc., to continue to use the premises as a restaurant and to add live entertainment and dancing and accessory outdoor table service. We understand that this appeal is scheduled for hearing on August 31, 2010.

SITE

5504-5506 Harford Road is located on the west side of the street, approximately 70' north of the intersection with Hamilton Avenue. This property measures approximately 60' by 131'9" and is currently improved with a one-story commercial building covering nearly all of the lot except a 28' by 32' open area in the rear. This site is zoned B-2-2 and is located within the Hamilton Business Urban Renewal Plan area.

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).

Renewal Plans: Ordinance #01-0165 was approved May 14, 2001 for the purpose of, among other things, clarifying the relationship between conditions or requirements imposed by an Urban Renewal Plan or Conservation Plan, such that the condition or requirement that is more restrictive will govern. Additionally, the ordinance prohibits the approval of a conditional use or a variance if that conditional use or variance is precluded by an applicable renewal plan or master plan.

Required Findings: The Board may not approve a conditional use unless, after public notice and hearing and on consideration of the standards prescribed in this title, it finds that: ... (2) the use is not in any way precluded by any other law, including an applicable urban renewal plan; (§14-204). For this reason, the Board must consider the requirements of the Hamilton Business Urban Renewal Plan, which does allow this use in this district.

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)

This Department has reviewed the application and notes these items, referenced according to the preceding list contained in §14-309 of the Zoning Code, in need of clarification:

- (1) days and hours of live entertainment and dancing are inconsistent with days and hours of live entertainment and dancing described as “Wed – Sun evenings between 10:00 pm and 2:00 am” in item 6 under “Nature of Live Entertainment”;
- (2) noise levels are described as “not greater than 75 decibels at 30 feet from the premises” yet the maximum decibel level desired for BMZA approval is 40-80 dB measured at 10 feet from any point on the structure;
- (5) the number of seats proposed for outdoor table service, either in the rear area or in front of the restaurant, is not stated;
- (6) exterior lighting for the rear outdoor seating area is not described;
- (8) there is no parking plan provided, nor is there a security plan provided.

This Department recommends that item (1) be limited to the applicant’s stated request for approval of live entertainment and dancing between the hours of 10:00 pm and 2:00 am on Wednesdays through Sundays. This Department recommends that item (2) be limited to a maximum of 75 decibels at 10 feet distant from the premises. This is because, although the applicant did not complete item 24 under “Live Entertainment Impact” of the Conditional Use Application, there is a religious institution and school within 300 feet of the establishment, and it is the owner of the property which adjoins the applicant’s premises at the rear of the lot.

This Department also notes that the plan for the use of the rear open area as a location for accessory outdoor table service shows a “new garbage [storage] area” which would be accessible for purposes of refuse removal only if the garbage cans were taken either across an adjoining property which the applicant does not own, or across a portion of the proposed outdoor seating area. If the proposed outdoor seating area would block removal of garbage cans to Harford Road, the applicant must provide evidence of right to cross the adjoining property at 5500 and 5502 Harford Road, or the adjoining property at 2920-2922 Hamilton Avenue.

The applicant has stated that the rated capacity of the establishment would be 175 persons inside the building and 20 persons outside. This represents a substantial demand for off-street parking in view of the limited parking available on Harford Road in front of the property and on Hamilton Avenue near the property. The applicant should be required to provide written documentation of agreements with adjoining and/or nearby owners of off-street parking to allow patrons of the restaurant to use their parking lots, especially on the days when live entertainment and dancing would be occurring at the restaurant.

RECOMMENDATION

The Department of Planning recommends deferral of a decision on the appeal until the applicant has provided consistent information sufficient to address these concerns:

- days and hours of live entertainment and dancing
- maximum noise levels
- outdoor table service floor plans for front and rear areas *
- description of exterior lighting improvements
- traffic and parking management plans
- indoor and outdoor security plans
- garbage removal plans and supporting access agreements if needed.

* With regard to outdoor table service in front of the restaurant, it is noted that the sidewalk along Harford Road is only a little over 6' wide in this vicinity, but that the restaurant building is not built to the front lot line and thus a limited area exists currently where outdoor tables can be placed. If the applicant prefers to retain an accessory outdoor table service area in front of the building, these conditions are recommended:

- A minimum of six feet of the sidewalk must remain clear and unobstructed for pedestrian use;
- The capacity of the outdoor seating area along Harford Road 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.

Outdoor table service behind the building should have no outdoor bar, no outdoor music, jukebox, or other form of entertainment, and all patrons there must be seated for dining and served by wait staff.

TJS/wya/mf

cc: Melvin Kodenski for Feria, Inc., Appellant