


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 / 2101-2103 Maryland Avenue		

TO

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

DATE: November 8, 2013

### REQUEST

The Department of Planning has received Kenneth Kirby's Board of Municipal and Zoning Appeals (BMZA) conditional use application, on behalf of Pho Main Inc., to use the first floor of the premises as a restaurant and tavern with live entertainment and dancing. The Zoning Administrator has determined that this is a conditional use in a B-2 District, and that a variance of Zoning Code off-street parking requirements is needed for approval of this application. We understand that this appeal is scheduled for hearing on November 12, 2013, having been amended to include use of the property as a multiple-family dwelling.

### SITE

2101-2103 Maryland Avenue is located on the northeast corner of the intersection with 21<sup>st</sup> Street. This property measures approximately 31'8" by 92' and is currently improved with a three-story semi-detached building with a one-story rear addition together covering the entire lot. The building is used as a commercial space on its street level and a multiple-family attached dwelling on its upper two levels. This site is zoned B-2-3 and is located within the Charles North Urban Renewal Plan area and the Old Goucher College National Register Historic District.

### ANALYSIS

Conditional Use: In this zoning district, restaurants – including live entertainment and dancing, are a conditional use, requiring approval by the Board (§6-308). In this case, the property was last authorized for use as a carry-out food shop, which is a permitted use in this B-2 Community Business District. This property would continue to be used for up to nine dwelling units on its second and third floors.

Urban Renewal Plan: This property is located in the Charles North Urban Renewal Area, where the Urban Renewal Plan does not prohibit or further restrict the proposed use in this district. The Urban Renewal Plan designates this property as a Contributing Structure in its Exhibit 5, "Contributing Structures" and the Plan's Appendix A, "Design Guidelines and Standards for Renovation of Existing Contributing Structures" lists this property and establishes specific standards for renovations to walls, storefronts, windows and doors, and other elements of the exterior of the structure on this property. The applicant is advised to consult the Plan's Appendix A in formulating any changes to the exterior of the property that may be authorized as a result of this appeal.

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 live entertainment would occur until 11:00 p.m. Sundays through Thursdays and until midnight on Fridays and Saturdays, five nights weekly, without specifying the two days when live entertainment would not occur. The applicant should state what nights would not be used for live entertainment, or revise the application to provide for live entertainment every day of the week. Sound levels would be limited to 80 decibels at 10' of distance from the property. The security plan included in the application is vague as to the number of personnel who would be present during what it calls "larger events" and should be refined.

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); and multiple-family dwellings require 1 space per 2 dwelling units (§10-405.1.iv.). There is no parking available for patrons (or residents) on this property, and thus any parking provided must be off-site. The application refers to "a private lot two blocks down the street" without specifying the actual location of this resource, nor the distance from it to the premises proposed for use as a restaurant and tavern with live entertainment and dancing, for which 110 persons is stated to be the rated capacity of the establishment.

Off-Street Parking: *Location of facilities – nearby facilities under common control.* Off-street parking facilities may be located off-site of the lot on which the structure or use being served is located if: (1) the facilities are located in a district where this parking is permitted or has been granted as a conditional use; (2) the land on which the off-site parking facilities are located is within 300 feet of the lot line of the use or structure served; ... (§10-304.a). If this resource is further than 300' away from the premises, the applicant should provide justification of a variance of the distance limitation.

Off-Street Parking: *Required control of off-site facilities.* ... (i) The off-site parking facilities must be on a lot possessed by the record title holder of the lot occupied by the structure or use to be served by the parking facilities. (ii) Possession of the facilities for purposes of this section may be: (A) by deed; or (B) by long-term lease, the term of which must be equal to or greater than the useful economic and physical life of the structure served (§10-304.b). The applicant should provide the Board a copy of any written agreement providing off-street parking spaces for patrons of the proposed use.

**TransForm Baltimore:** This property would become part of a C-1 District (Proposed Zoning Map Area 7-A) in which taverns and live entertainment secondary to a tavern or restaurant would be conditional uses (Table 10-301). "Live entertainment" includes the same types of entertainment as are now described in the current Zoning Code (§1-306 (C)). Taverns and restaurants would be required to have 1 parking space per 100 square feet of indoor public seating area (Table 16-406A). The sketch of a first floor plan included with this application would thus appear to require 21 parking spaces to serve the proposed use. The applicant should provide a more detailed floor plan if this amount of parking would not be appropriate.

### **RECOMMENDATION**

The Department of Planning recommends deferral of this appeal to allow the applicant to provide documentation of off-street parking that would support the proposed uses, and to provide additional information concerning security plans. If or when this application is approved by the Board, the Department recommends approval be subject to these conditions in addition to any conditions which the Board may establish:

- There will be adequate security personnel present in and around the premises for the duration of live entertainment events;
- 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.

TJS/wya/mf

cc: Kenneth Kirby, Appellant

