2011-501

TJS

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 / 2250 East North Avenue	

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

DATE: December 9, 2011

REQUEST
The Department of Planning has received Brian Knight's Board of Municipal and Zoning Appeals (BMZA) application to add live entertainment and dancing and accessory outdoor table service to an existing tavern located at 2250 East North Avenue. We understand that this appeal is scheduled for hearing on December 20, 2011.

SITE
2250 East North Avenue is located on the northwest corner of the intersection with Patterson Park Avenue. This property measures approximately 40' by 80' and is currently improved with a two-story end-of-row building covering the entire lot. This site is zoned R-7.

ANALYSIS
Use: In this zoning district, taverns are not listed as a permitted or conditional use, and so are not allowed (§4-1001 to §4-1004). In this case, the property at 2250 East North Avenue was last authorized for use as a tavern, which is a nonconforming use in this R-7 General Residence District, as part of a consolidation of lots with 2246 and 2248 East North Avenue, by the Board's decision in appeal no. 2010-331, heard January 18, 2011. The consolidated property is now known as 2250 East North Avenue.

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). Because this application is for outdoor table service for a tavern, it is not approvable according to the requirements of the Zoning Code.

Definition – 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. (§1-153.2).

The application submitted in October 2011 by the applicant does not describe the proposed live entertainment or provide information on parking or indoor and outdoor security.
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 Board's approval of appeal no. 2010-331 included a requirement that the nonconforming use (tavern use) of the consolidated lots not exceed 125% of the nonconforming use floor area previously established for the tavern at the original lot known then as 2250 East North Avenue. To the extent that any additional floor area would be required for live entertainment, this application is inconsistent with the R-7 zoning of the property and that previous decision of the Board.

RECOMMENDATION
The Department of Planning recommends disapproval of the appeal, because expansion of the nonconforming use at 2250 East North Avenue to accommodate proposed live entertainment would exceed the 25% statutory limitation on expansion of Class III Nonconforming Uses, and because accessory outdoor table service is not authorized for taverns under the terms of the Zoning Code.

TJS/wya/mf

cc: Brian Knight, Appellant