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| FROM | NAME & TITLE | THOMAS J. STOSUR, DIRECTOR <i>Shole / for T.J.S.</i> | CITY of BALTIMORE MEMO |  |
| | AGENCY NAME & ADDRESS | DEPARTMENT OF PLANNING 417 EAST FAYETTE STREET, 8 TH FLOOR | | |
| | SUBJECT | BMZA / 3137-3139 Eastern Avenue | | |

TO

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

DATE: March 23, 2012

REQUEST

The Department of Planning has received Shawn Harley's Board of Municipal and Zoning Appeals (BMZA) application, on behalf of Mellas Inc. and Jennifer Mejia, to continue to use the first floor of the premises for a tavern, and to include live entertainment and dancing. We understand that this appeal is scheduled for hearing on April 3, 2012.

SITE

3137-3139 Eastern Avenue is located on the southwest corner of the intersection with East Avenue. This property measures approximately 33' by 100' and is currently improved with a two-story attached residential mixed-use building measuring approximately 33' by 83'. This site is zoned B-2-2 and is located within the Highlandtown Business Area Urban Renewal Plan area and the Highlandtown – Patterson Park National Register Historic District.

ANALYSIS

Conditional Use: In this zoning district, taverns – 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 tavern, which is a permitted use in this B-2 Community Business District.

Urban Renewal Plan: This property is located in the Highlandtown Business Area Urban Renewal Area, where the Urban Renewal Plan does not prohibit or further restrict the proposed 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)

The applicant has submitted a plan indicating that the live entertainment would consist of musical and theatrical acts, a disc jockey, and dancing, lasting to 1:30 a.m. each night. There is a row home adjoining this property on its west side. For this reason, sound levels should be moderated at the party wall as much as at the distance of 10' from this structure. The application indicates sound levels would be limited to "the maximum allowed decibel level taking into consideration an effort to avoid disturbing the surrounding neighbors" which thus requires the Board to impose a maximum sound level as part of its decision to approve the proposed live entertainment and dancing.

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). The applicant has indicated that off-street parking is presently arranged through customer use of the Highlandtown parking lot in the 3500 block of Eastern Avenue, and that two security guards (and sometimes three) are used to maintain safety and comfort of patrons. This off-street parking area is beyond the 300' distance limit established in the Zoning Code.

RECOMMENDATION

The Department of Planning recommends that approval of this appeal, if granted, be subject to these conditions:

- Sound levels of live entertainment will be limited to 80 decibels as measured either at 10' from the structure on the property or at the party wall of the premises at 3135 Eastern Avenue that adjoins the applicant's premises;
- 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: Shawn Harley, Appellant