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|------|-----------------------|--|---|---|
| FROM | NAME & TITLE          | THOMAS J. STOSUR, DIRECTOR <i>Shole/for T. SS</i>                        | CITY of<br>BALTIMORE<br><br><b>MEMO</b> |  |
|      | AGENCY NAME & ADDRESS | DEPARTMENT OF PLANNING<br>417 EAST FAYETTE STREET, 8 <sup>TH</sup> FLOOR |   |   |
|      | SUBJECT               | BMZA / 1531-1533 Pennsylvania Avenue                                     |   |   |

TO

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

DATE: April 12, 2012

**REQUEST**

The Department of Planning has received Raymond Nelson's Board of Municipal and Zoning Appeals (BMZA) application to use the first and second floors as a tavern, including live entertainment and dancing. We understand that this appeal is scheduled for hearing on April 17, 2012.

**SITE**

1531-1533 Pennsylvania Avenue is located on the southeast corner of the intersection with McMechen Street. This property measures approximately 109'5" by 100' and is currently improved with a two-story building measuring approximately 25' by 70'. This site is zoned B-2-2 and is located within the Upton Urban Renewal Plan area. A two-story building which serves as the existing tavern is located on the former Lot 34/35 portion of the property, while the former Lot 36 portion of the property, currently vacant, is designated for use for a new building addition that would house a proposed package goods liquor store and a kitchen for the tavern on its first floor, and a dance floor area on its second floor.

**ANALYSIS**

Conditional Use: In this zoning district, taverns – including live entertainment and dancing, are a conditional use, requiring approval by the Board (§6-308). Liquor stores: package goods, are a permitted use (§6-306).

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 information provided by the applicant in support of this appeal states that, although the tavern is open from 6:00 a.m. to 2:00 a.m. daily, live entertainment would end at midnight on Mondays, Tuesdays, Thursdays, and Sundays, and at 2:00 a.m. on Wednesdays, Fridays, and Saturdays. Contradicting this is information that the applicant intends to keep the premises open til 4:00 a.m. on Friday and Saturday nights. Sound levels would remain at a maximum 80 decibels measured at 10' distant from the property.

**Definition:** "After-hours establishment" means any of the following that remains open after 2 a.m. on any day:

1. a banquet hall, dance hall, private club or lodge, or similar place; or
2. a restaurant that provides live entertainment or dancing.

After-hours establishments are not permitted or conditional uses in B-2 Community Business Districts, and therefore this portion of the application should be disapproved.

**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 Upton Urban Renewal Plan, which does not allow taverns or liquor stores in the area designated as Community Business by its Land Use Plan.

The Upton Urban Renewal Plan restricts land uses as designated in its Land Use Provisions and Standards and in the area shown in its Exhibit 2. This property is subject to the requirements of the Land Use Provisions and Standards of the Urban Renewal Plan, which prohibits liquor stores and taverns. While the existing tavern may be considered "grand-fathered", the proposed liquor store should be disapproved as it is prohibited in the same Plan as a new use. Any expansion of the nonconforming tavern use is limited by the terms of subsection C.2.a.(4) {"Land Use Plan – Land Use Provisions and Standards – Commercial"} of the Urban Renewal Plan, which reinforces the Zoning Code limitation that a nonconforming use may not be expanded or enlarged by more than 25%.

**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). This definition does not create an authorization for accessory outdoor table service for a tavern. The application includes a statement that 20 -30 outdoor seats would be the size of a proposed outdoor table service area. This portion of the application should therefore be disapproved, as the Zoning Code does not authorize accessory outdoor table service for taverns.

**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). 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). There are no off-street parking requirements pertaining to taverns.

### **RECOMMENDATION**

The Department of Planning recommends disapproval of the portions of this appeal relating to

1. proposed functioning as an after-hours establishment,
2. outdoor table service for up to 30 patrons, and
3. a proposed liquor store to be constructed,

as the Zoning Code does not authorize after-hours establishments in B-2 zones, nor accessory outdoor table service for taverns, and the applicable Urban Renewal Plan prohibits liquor stores in the area where this property is located. The Department has no objection to approval of live entertainment at this location, subject to these conditions:

- 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.

The Department has no objection to approval of a building addition provided that it does not constitute or allow an expansion of the existing tavern by more than 25% and further provided that any additional floor area created is not used in part or in whole as a liquor store, which is prohibited by the Upton Urban Renewal Plan.

The Department separately recommends that the applicant confer with the Department of Housing and Community Development concerning the acquisition status of his property under the Upton Urban Renewal Plan, as it is part of a designated Disposition Lot in that Plan.

TJS/wya/mf

cc: Raymond Nelson, Appellant

