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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 / 5520 Pennington Avenue		

TO

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

DATE: September 25, 2013

REQUEST

The Department of Planning has received Jaguar Asset Management LLC's Board of Municipal and Zoning Appeals (BMZA) application to use the property for an adult entertainment establishment and offices, and to construct a two-story front addition, a two-story rear addition, and two vestibules. The Zoning Administrator has determined that this (adult entertainment) is a Class III nonconforming use in a M-3 District, and that a variance of Zoning Code nonconforming use expansion requirements is needed for approval of this application. We understand that this appeal is scheduled for hearing on October 1, 2013.

SITE

5520 Pennington Avenue is located on the northwest corner of the intersection with Alder Street. This property measures approximately 115'6" by 125' and is currently improved with a two-story detached commercial building measuring approximately 115' by 50'. Adjoining this property is a 2.11 acre unimproved lot extending from Aspen Street to the Marley Neck Branch of the B & O Railroad, a lot under common ownership used for off-street parking for the business at 5520 Pennington Avenue. This site is zoned M-3 and is located within the Brooklyn – Curtis Bay Strategic Neighborhood Action Plan area.

ANALYSIS

Use: In this zoning district, adult entertainment businesses are not listed as a permitted or conditional use, and so are not allowed (§7-406 to §7-409). In this case, the property was last authorized for use as a restaurant with live entertainment, which is a conditional use in this M-3 Industrial District. (A restaurant without live entertainment or dancing is a permitted use in a M-3 District (§7-406)).

Determination of nonconformity or noncompliance: (a) Whether a nonconforming use, noncomplying density or other form of nonconformity exists is a question of fact that, except as specified in subsection (b) of this section, must be decided by the Board after public notice and hearing in accordance with the rules of the Board (§13-107). This application includes use of the property for an adult entertainment establishment, which is a Class III nonconforming use in this M-3 Zoning District. Zoning violation notices were issued in 1996 and 1998 relating to possible use of the premises for an adult entertainment establishment without a proper Certificate of Occupancy (or Use and Occupancy permit), and there is no record that this use has been lawfully established as a nonconforming use at this location. Unless the applicant demonstrates that an adult entertainment establishment lawfully exists on the property, the Board is constrained from approving this portion of the application, because approval would require approval of creation of a new nonconforming use, which is not authorized in the Zoning Code. The applicant would be able to continue to use the premises for live entertainment accessory to the principal use as a restaurant or tavern.

Land Use and Urban Design: The applicant has presented construction plans for the proposed front and rear additions and front and side vestibules which indicate that the amount of extension of the nonconforming use (if it has been established) would be approximately 23%. However, both the proposed rear addition and the proposed side vestibule would be built over the existing rear and side lot lines, respectively, of 5520 Pennington Avenue. These additions are not approvable unless the two lots known as Block 7173, Lot 1 and Block 7173, Lot 2/3 are first consolidated.

TransForm Baltimore: This property would become part of an I-2 District (Proposed Zoning Map Area 13-A) in which restaurants and taverns would be conditional uses, and live entertainment and adult entertainment uses would be prohibited (Table 11-301). "Adult use" includes adult entertainment business, as defined in City Code Article 15, Subtitle 1, (§1-302 (I)). The use of this property would therefore continue to be nonconforming, if that is already its status; or would become nonconforming with regard only to the live entertainment portion of its use.

RECOMMENDATION

The Department of Planning recommends that approval of the portion of this appeal relating to construction of additions to the existing building, if granted, be conditional upon the applicant first consolidating the two lots known as Block 7173 Lot 1 and Block 7173, Lot 2/3 (also known as 5520 Pennington Avenue). The Department recommends disapproval of the portion of this appeal relating to an adult entertainment establishment or adult entertainment business unless the applicant demonstrates lawful establishment of that nonconforming use, because the Zoning Code does not authorize creation of new nonconforming uses, which an adult entertainment establishment would be in a M-3 Zoning District.

TJS/wya/mf

cc: Jaguar Asset Management LLC, Appellant