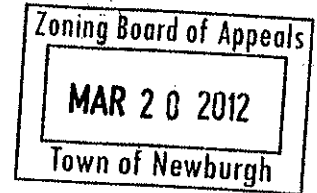


TOWN OF NEWBURGH

Crossroads of the Northeast

OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

CODE COMPLIANCE DEPT.
TELEPHONE 845-564-7801
FAX LINE 845-564-7802



March 16, 2012

HAND DELIVERED

Mrs. Grace Cardone, Zoning Board of Appeals Chairwoman
Zoning Board of Appeals
308 Gardnertown Road
Newburgh, New York 12550

Re: Building Permit Application of Santa Monica Holdings, LLC
Request For Interpretation of Zoning Code Section 185-3 Definitions;
Word usage: "Eating and Drinking", "Accessory" and "Use"; Section
185-10, Utilization of Use Table; B-District Table of Use and Bulk
Requirements

Dear Mrs. Cardone:

Pursuant to Code 185-54A(1), I am writing to request an interpretation regarding the meaning of the above referenced definitions and Code provisions, as well as the requirements of the site plan approval granted by the Planning Board on January 20, 2011 for Santa Monica Holdings, LLC for an Eating and Drinking Establishment (with entertainment). Section 184-54A(1) authorizes the Zoning Board of Appeals to interpret "the meaning of any portion of the text of this chapter or of any condition or requirement specified or made under the provisions of this chapter."

The property is located in the B District. The Planning Board has granted the applicant site plan approval for an Eating and Drinking Establishment (with entertainment).

As part of the applicant's building permit application, its architect has submitted a floor plan showing seven rooms, in addition to other rooms and areas of the building. Each of the seven rooms has a door. Four of the rooms in question are labeled as "VIP"

(one on the first floor and three on the second floor). Three rooms on the second floor are labeled as "Pres". When our Department asked the applicant's architect to explain the use of the seven "VIP" and "Pres" rooms so that we could conduct a building code review, he submitted a marked plan showing the seven rooms, as well as the stage and open seating areas to be "entertaining areas". That response was subsequently withdrawn by the applicant's attorney, who has written letters and submitted a floor plan indicating that the rooms are for drink service. He informs us that patrons will be required to buy a bottle of champagne in order to use the rooms. The applicant advises that there are two similar rooms in the current building, but we have located no record of the Department having issued a building permit for the creation of these rooms.

The applicant has verbally advised that patrons who purchase a champagne bottle in order to enter the rooms can also obtain performances/entertainment in the rooms, although this will not be mandatory. As the seven private rooms will nonetheless provide additional venues for private performances/entertainment for those of the establishment's patrons who have purchased a bottle in order to use the rooms, our Department faces the question of whether the principal use, with the addition of seven private rooms, will be an "Eating and Drinking Place" to which the entertainment is clearly incidental and subordinate. "Use" is defined by Section 185-3 as "the specific purpose for which land or a building is used or occupied or maintained".

I am accordingly requesting the Zoning Board of Appeals' interpretation as to whether the seven "VIP" and "pres" private rooms proposed by the applicant are consistent with the definition of "Eating and Drinking Place" and the Planning Board's site plan approval, or would the existence of these rooms change the establishment to a "Prohibited Use".

I enclose copies of the submissions by the applicant as well as the Planning Board's site plan approval resolution.

I would appreciate the Zoning Board of Appeals immediate attention to this request for interpretation so that we can conclude our building permit application review in a timely manner.

Very Truly Yours,

Gerald Canfield

Enc.

Cc: David Donavon, Esq
Mark C. Taylor, Esq.
Mr. Keith Silfstein
John Cappello, Esq.

RESOLUTION OF APPROVAL
SITE PLAN
ARB
FOR
SANTA MONICA HOLDINGS, LLC

Nature of Application

Santa Monica Holdings, LLC has applied for approval of a Site Plan permitting the use of the property identified herein for an eating and drinking establishment (with entertainment) and for approval of architectural renderings by the Planning Board sitting as the Architectural Review Board.

Property Involved

The property affected by this resolution is shown on the Tax Maps of the Town of Newburgh as parcel(s) 20-2-30.21.

Zoning District

The property affected by this resolution is located in the B zoning district of the Town of Newburgh.

Plans

The Site Plan materials considered consist of the following:

1. Completed application form and Environmental Assessment Form.
-

2. Plans prepared for Santa Monica Holdings, LLC
as follows:

<u>Author</u>	<u>Title</u>	<u>Last Revision Date</u>
Minuta Architecture, PLLC	Title Sheet	January 10, 2011
Minuta Architecture, PLLC	Bulk Table and Proposed Site Layout	January 10, 2011
Minuta Architecture, PLLC	Landscape Plan and Legend	January 10, 2011
Minuta Architecture, PLLC	Site Details	January 10, 2011
Minuta Architecture, PLLC	Dumpster & Generator Enclosure Details	January 10, 2011
Minuta Architecture, PLLC	Site Details	January 10, 2011
Minuta Architecture, PLLC	On-site Traffic Circulation and Existing Site Plan	January 10, 2011
Minuta Architecture, PLLC	Site Lighting Plan	January 10, 2011
Minuta Architecture, PLLC	Conceptual Design Renderings	January 10, 2011
W.E. James Associates	Survey	November 2, 2009
The Chazen Companies	Grading, Erosion and Sediment Control Plan	January 10, 2011
The Chazen Companies	Utility Plan	January 10, 2011
The Chazen Companies	Site & Sanitary Sewer Details	January 10, 2011
The Chazen Companies	Water System Details	January 10, 2011
The Chazen Companies	Erosion & Sediment Control Details & Notes	January 10, 2011
The Chazen Companies	Storm Sewer & Storm-water Management Details	January 10, 2011
The Chazen Companies	Post Development Drainage Area Map	January 10, 2011

History

DATE OF APPLICATION

The application was filed with the Planning Board on December 15, 2009.

PUBLIC HEARING

A public hearing on this application was convened on January 20, 2011 and closed on the same date.

SEQRA

Type of Action:

This matter constitutes an unlisted action under the State Environmental Quality Review Act.

Lead Agency:

The Town of Newburgh Planning Board is the lead agency in regard to this action. The Planning Board's status as lead agency was established on August 5, 2010.

Declaration of Significance:

A negative declaration was issued on December 16, 2010.

GML 239 Referral

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

Findings

The Planning Board has determined that approval of the Site Plan will substantially serve the public convenience, safety and welfare; and will not otherwise be unduly detrimental to the public health, safety, comfort convenience or

welfare, subject to compliance in full with conditions hereinafter imposed pursuant to Section 185-57 (H).

The Planning Board has further determined that strict compliance with the Town of Newburgh Design Guidelines prohibition upon parking in the front yard should be waived here. The lot in question has two front yards, an existing building, and wetlands toward the rear portion of the lot. Thus application of this prohibition is nearly impossible here. Moreover, landscaping providing screening are part of the proposal and achieve the objectives of the design guidelines; here, the protection of the views from public roadways. Therefore, the Planning Board hereby modifies application of the design guidelines to this applicant so as to allow parking in the front yard because the public interest will be protected and the development is otherwise in keeping with the general spirit and intent of the design guidelines. On balance, the Planning Board also elects not to require sidewalks of this applicant because the construction of sidewalks would interfere with the landscape screening provided in order to allow waiver of the prohibition upon parking in the front yard.

The Planning Board has further determined that strict compliance with the Town of Newburgh Design Guidelines prohibition upon the maximum height of lighting poles would not make sense in this matter because to require complying poles would create unworkable light distribution; the number and height of the lighting poles proposed is a proper balance between effective lighting and the scale of the parking area involved. Therefore, the Planning Board hereby modifies application of the design guidelines to this applicant so as to allow use of the lighting poles shown on the plans because the public interest will be protected and the development is in keeping with the general spirit and intent of the design guidelines.

The Planning Board has further determined, in its capacity as Architectural Review Board, that the renderings submitted and approved on January 20, 2011 are architecturally appropriate and blend into the existing character of the neighborhood. Said renderings are hereby approved. A copy of said renderings,

signed by the Chair simultaneously with this resolution are on file in the Building Inspector's office. No building permit nor certificate of occupancy shall be issued except for structures consistent with these renderings.

Resolution of Approval

NOW, THEREFORE, THE PLANNING BOARD RESOLVES to approve this Site Plan as said proposal is depicted on the plans identified above and to grant ARB approval, all upon the conditions outlined below, and the Chairperson (or his designee) is authorized to sign the plans upon satisfaction of those conditions below noted to be conditions precedent to such signing.

Specific Conditions

1. The plans shall not be signed until receipt of a letter from the Planning Board Engineer certifying that the deficiencies in the plans noted in his memo of January 17, 2011 have been remedied to his satisfaction.
2. The plans shall not be signed until receipt of a letter from Karen Arent, the Town of Newburgh Landscaping Consultant, certifying that the deficiencies in the plans noted in her memo of January 18, 2011 have been remedied to her satisfaction.
3. The plans shall not be signed until receipt of a letter from BC Planning, LLC certifying both that the map notes required by a certain resolution of the town board dated July 15, 2009 have been added to the plans and that the certificate and acknowledgment required by that same resolution has been properly executed and delivered to the Town or, in lieu thereof, that the applicant has fully paid the landscape security and inspection fee required by this resolution.
4. This approval is further subject to review and approval by the

Town of Newburgh Highway Department of the proposed curbing along DeVito Drive, including review of the existing catch basin.

5. This approval is subject to approval by the New York State Department of Transportation of the proposed driveway utilization, utility locations and parking lot configuration in substantially the same location as shown on the plans. Should the New York State Department of Transportation require changes in either the location or configuration from what is shown on the plans, the applicant must return to the planning board for further review.
6. This approval is subject to and conditioned upon delivery of written approval by the Orange County Department of Health [subsurface sanitary sewer disposal system].
7. This approval is subject to and conditioned upon delivery of written approval by the New York State Department of Environmental Conservation [subsurface sanitary sewer disposal system approval (SPDES)].

Architectural Review Board Approval

8. No building permit shall be issued authorizing construction of structures inconsistent with the architectural renderings submitted to, and approved by, the Architectural Review Board as part of this approval, nor shall any certificate of occupancy be issued for any structures constructed except in conformance with such renderings. Karen Arent, the Town's Landscape Architect, shall review the building plans when submitted to the Building Department in order to insure compliance with the approved architectural renderings. Karen Arent, the Town's Landscape Architect, shall also inspect the work before a cer-

tificate of occupancy is issued to insure compliance with the approved architectural renderings.

Landscape Security & Inspection Fee

9. Pursuant to 185-57 (L), together with 163-9 (B) [incorporated therein by reference], as well as 185-50 (D), this approval shall be subject to the applicant posting, with the Town Clerk, a performance security, in an amount to be fixed by the town board upon recommendation of the town's landscape consultant in order to secure timely completion and appropriate maintenance of the landscaping improvements depicted on the plans, satisfactory to the Town Board, Town Engineer and Town Attorney as to form, sufficiency, manner of execution and surety. The performance security shall recite that all improvements secured thereby shall be completed within three year(s) of this approval and maintained for a period of two years thereafter. The Town's Landscape Architect, is hereby authorized to periodically inspect the site in order to insure compliance with this condition. A separate inspection fee in an amount in accordance with Section 104-2 (G)(6) shall be submitted and deposited in an escrow account to cover the cost of the Town's Landscape Architect services. The applicant shall be required to pay the required landscaping security to the town before any building permit for any building or structure is issued. The amount of the landscape security may be adjusted (upon recommendation of the Town's landscape consultant) if warranted due to changes in the market pricing of the required landscape materials. The applicant shall be required to pay the required landscaping inspection fee in the amount of \$2,000 to the town before the plans are signed.

Stormwater Improvement Security & Inspection Fee

10. Prior to the signing of plans or issuance of a building permit, the applicant shall deliver a performance security to the Town Clerk, pursuant to Section 157-10 (B) of the Code of Ordinances of the Town of Newburgh, in order to guarantee to the town that the applicant will faithfully cause to be constructed and completed the required public stormwater improvements shown on the plans. The performance security shall be in an amount set by the Town Board and shall be satisfactory to the Town Board and Town Attorney as to form, sufficiency, manner of execution and surety. A period of three (3) years shall be set forth in the document of surety within which required improvements must be completed. An inspection fee in an amount in accordance with Section 104-2 (A)(8) shall also be paid to the Town prior to signing of the plans. A separate inspection fee in an amount in accordance with Section 104-2 (A)(8) shall also be submitted and deposited in an escrow account to cover the cost of the Town's periodic inspection of the erosion control measures to be implemented by the applicant.

Outdoor Fixtures & Amenities

11. This site plan approval allows construction of only that which is shown on the plans identified above. No outdoor amenities or accessory structures or outdoor fixtures—including but not limited to exterior walls, mechanical units, dumpsters, etc.—may be constructed, placed or erected except as shown on the approved site plan. Architectural drawings shall carry a certification that what is shown thereon is fully consistent with the approved site plan.

General Conditions

This approval is conditioned upon the applicant submitting all necessary copies of the plans to be signed, including mylars when required, to the Town of Newburgh Building Department. A full set of the plans to be signed shall simultaneously be submitted to BC Planning, LLC. The plans shall not be signed until BC Planning, LLC has reported to the Chair that all conditions of this resolution required to be satisfied before the plans can be signed have, in fact, been satisfied.

This approval is further conditioned upon the applicant delivering (prior to signing of the plans) proof, in writing, that all fees—engineering, planning, legal and otherwise—in regard to this project have been fully paid. The applicant shall also be required to deliver proof that all required Public Improvement, Erosion Control and Landscaping inspection fees and escrow have been deposited with the Town. The plans shall not be signed until proof, satisfactory to the Chair, has been presented showing that all fees have been paid and escrow deposits made.

Approval of the final site plan shall, pursuant to Section 185-58 (E) of the Zoning Ordinance, be valid for two years from the date this resolution is filed in the office of the Town Clerk, after which time this approval shall be null and void unless a building permit has been issued. If no building permit has been issued within that time, the plan must be resubmitted to the Planning Board for approval.

A FAILURE to comply with the general condition immediately above in a timely manner shall result, without further action, in a lapsing of this approval.

In Favor 5 Against 0 Abstain Absent 2

Dated: January 20, 2011

JOHN P. EWASUTYN, CHAIRPERSON
TOWN OF NEWBURGH PLANNING BOARD

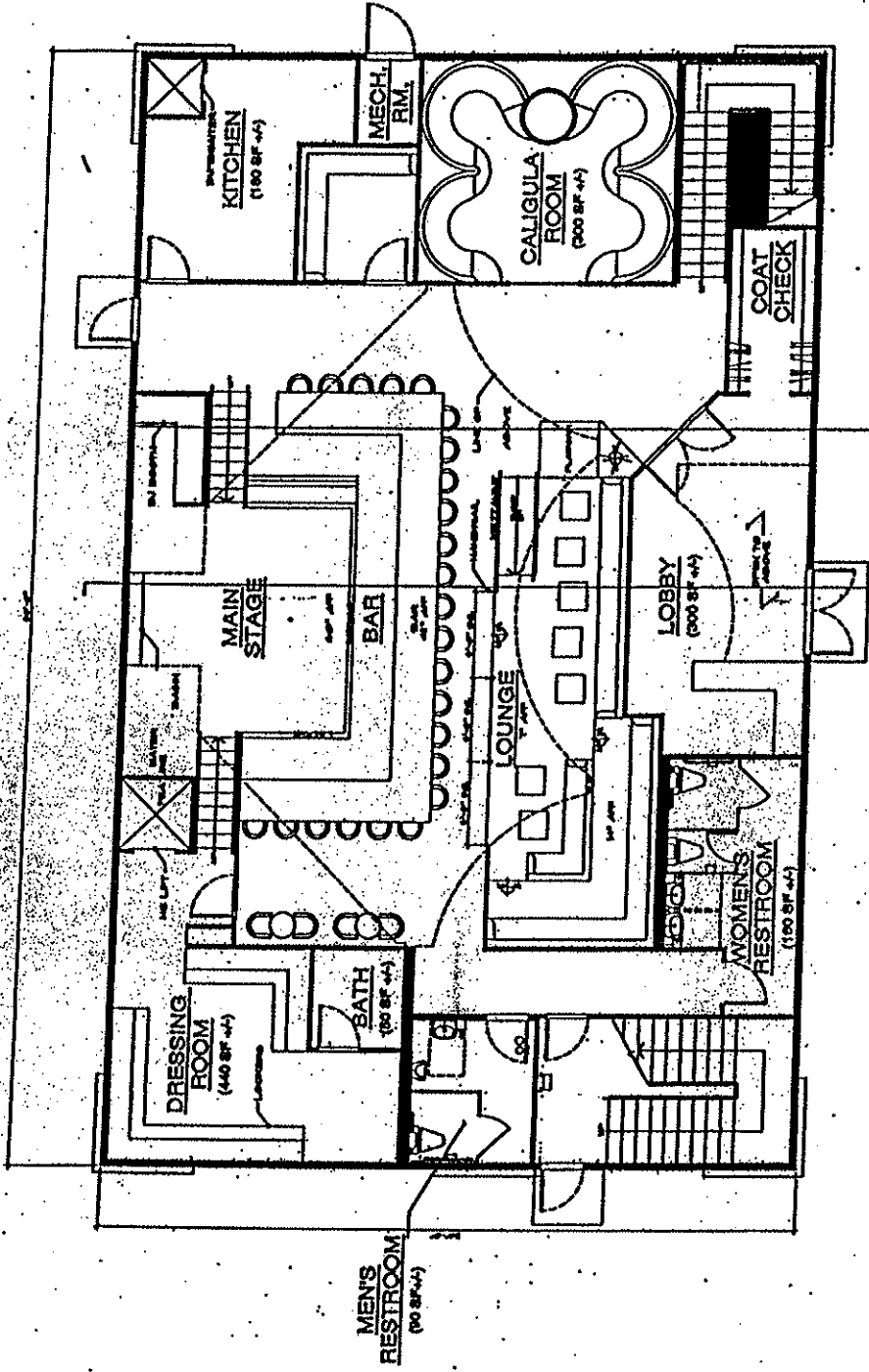
STATE OF NEW YORK)
)ss:
COUNTY OF ORANGE)

I, JOHN P. EWASUTYN, Chairman of the Planning Board of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Resolution maintained in the office of the Town of Newburgh Planning Board, said resulting from a vote having been taken by the Planning Board at a meeting of said Board held on January 20, 2011.

JOHN P. EWASUTYN, CHAIRPERSON
TOWN OF NEWBURGH PLANNING BOARD

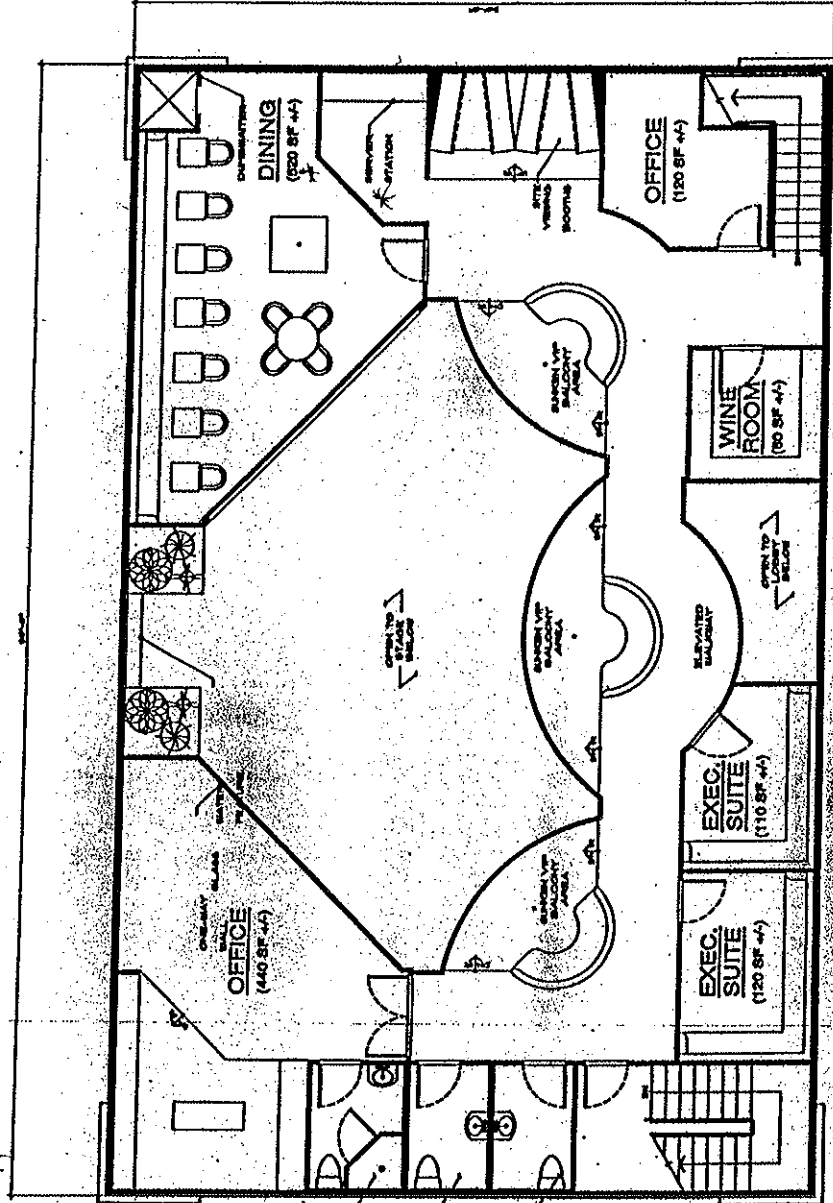
I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Resolution was filed in the Office of the Town Clerk on

ANDREW J. ZARUTSKIE, CLERK
TOWN OF NEWBURGH



First Floor

First Submissions A-1

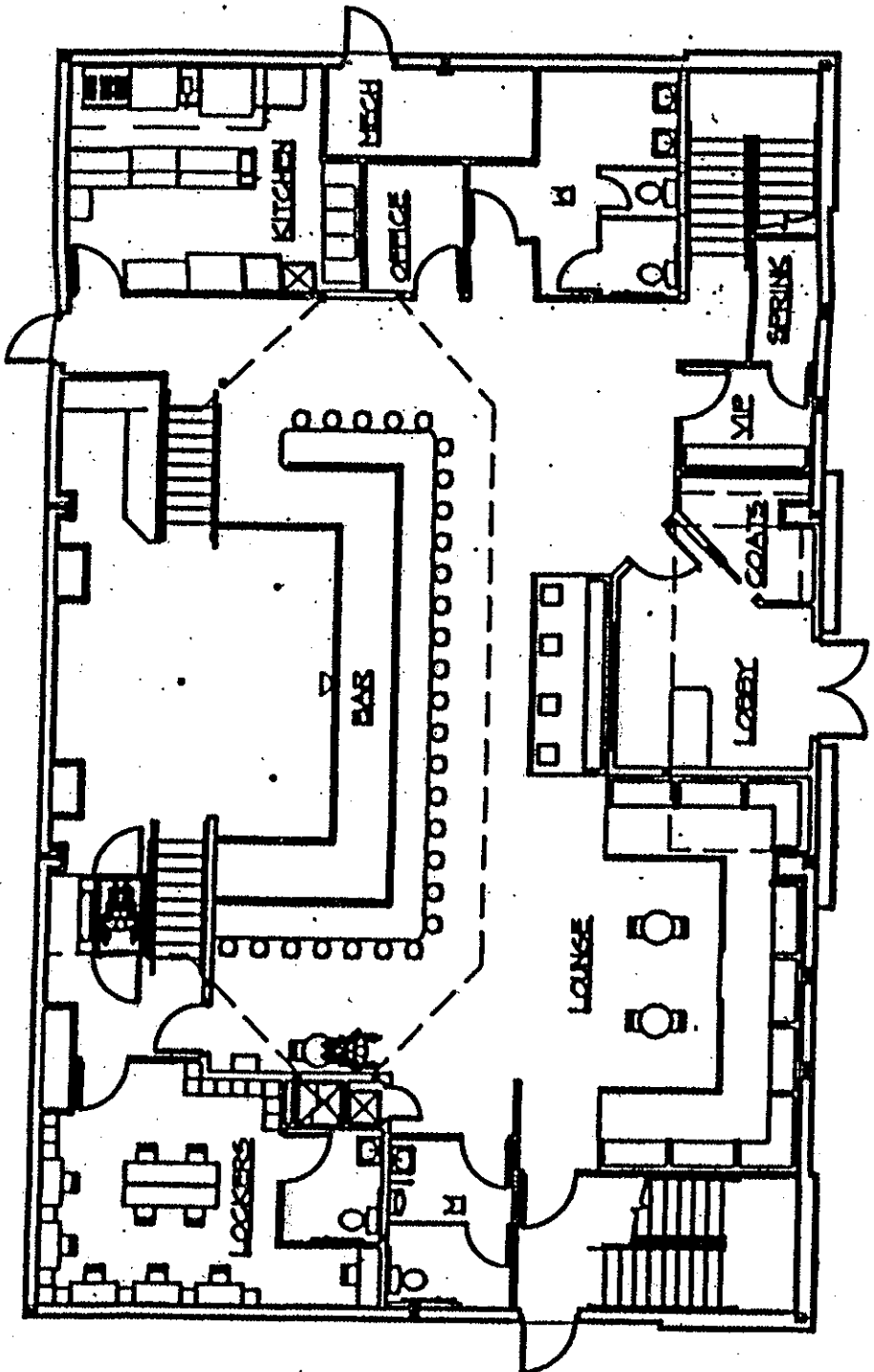


OFFICE RESTROOM (80 SF +/-)
WOMEN'S RESTROOM (80 SF +/-)
MEN'S RESTROOM (80 SF +/-)

Second Floor

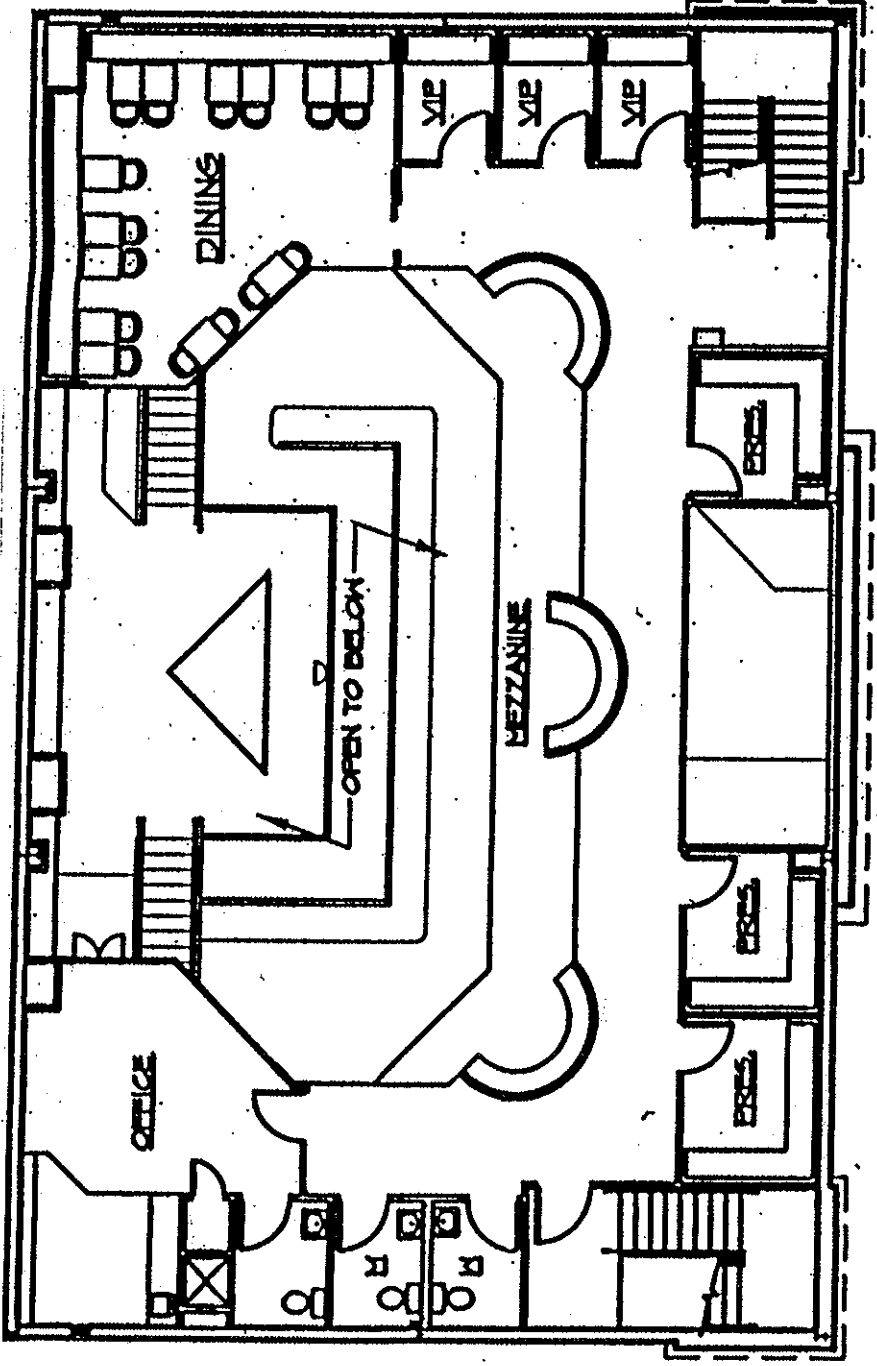
1 Second Floor Plan
 1/21/17

First Submission A2



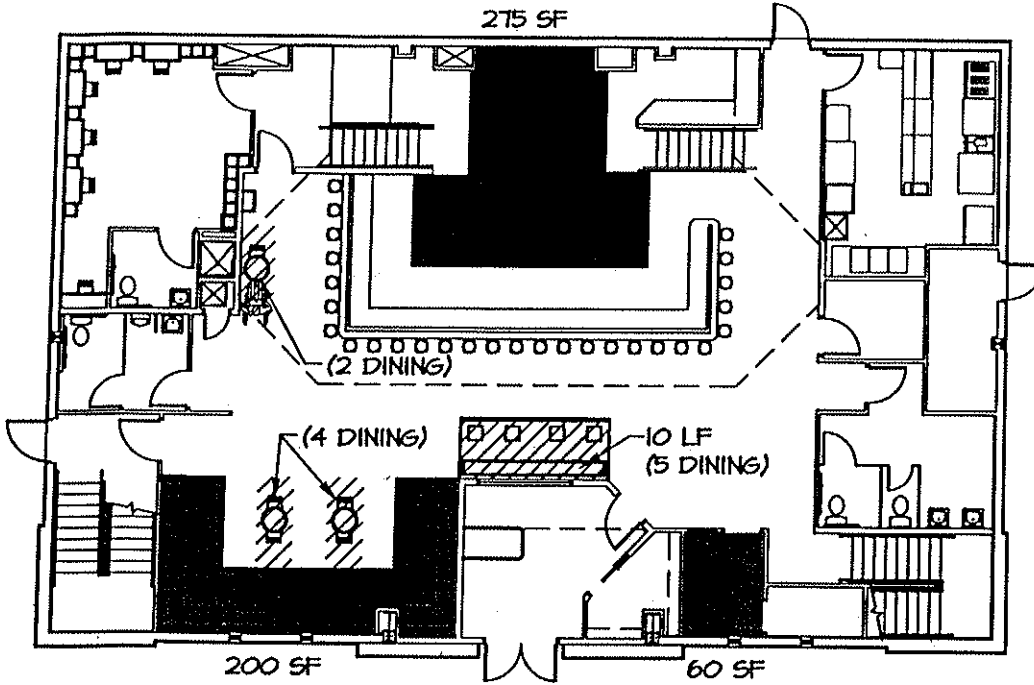
FIRST FLOOR PLAN

Mazzarelli Submission SK-8

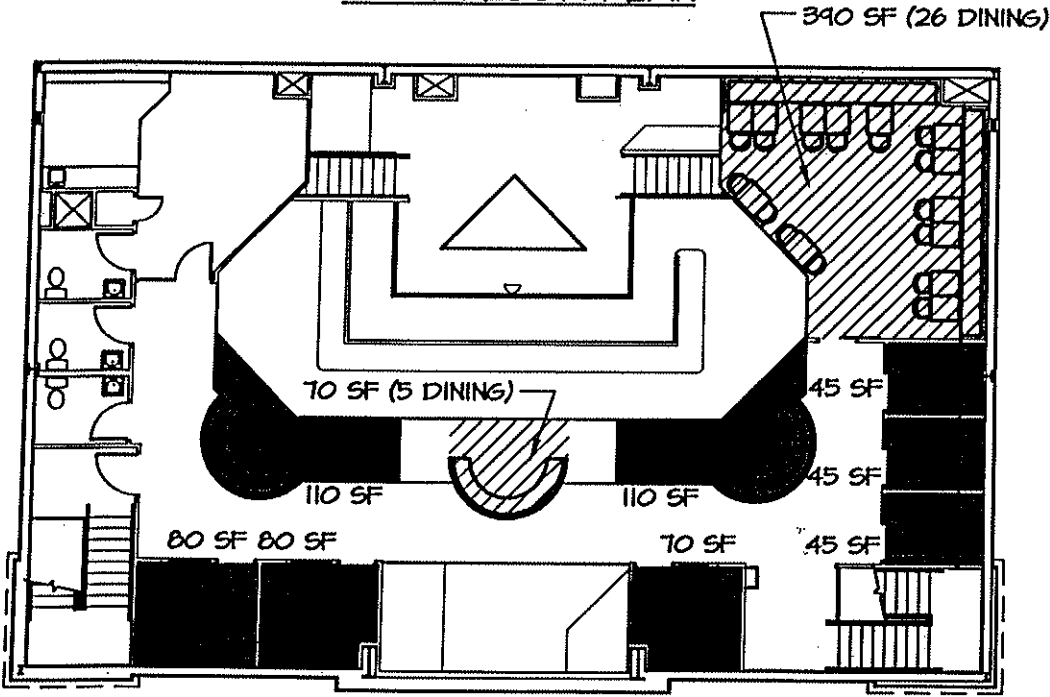


SECOND FLOOR PLAN

Mazzarelli Submission SK8



FIRST FLOOR PLAN





SECOND FLOOR PLAN

FLOOR PLANS

1
SK-4

SCALE: 1/16"=1'-0"

-  EATING/DINING AREA
-  ENTERTAINING AREA

CODE COMPLIANCE DEPT.
JAN 23 2012
Sign X

2ND Submission

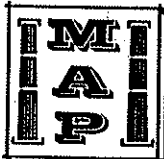
project no.
11-24

date
16 JAN 12

drawn by
SES

THE MANSION
GENTLEMEN'S CLUB AND STEAKHOUSE
SANTA MONICA HOLDINGS, LLC
NEWBURGH NEW YORK
5044 ROUTE 97

AREAS DESIGNATIONS FOR DINING & ENTERTAINMENT
MAZZARELLI ARCHITECTURE
+ PLANNING, PC
44 NORTH CLOVER STREET
POUGHKEEPSIE NY 12401
845.492.0275



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DISTRIBUTION:
BUILDING DEPT.

SK-4