

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 2011- 011  
FMBSEZ2011-0001 (La Ola Restaurant)

WHEREAS, applicant Thomas List has requested a Special Exception in the DOWNTOWN zoning district to increase outdoor seating and provide live music (amending conditions set forth in Resolution 04-14); and

WHEREAS, the subject property is located at 1035 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0060B.0120 and the legal description of the subject property is BUSINESS CENTER BLK 8 PB 9 PG 9 LT 7 + LOT 6 LESS WLY 6 FT LESS ROW OR3539 PG3351; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on September 13, 2011; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a Special Exception in the DOWNTOWN zoning district to increase outdoor seating and provide live music (amending conditions set forth in Resolution 04-14), with any approval subject to the following conditions:

**RECOMMENDED CONDITIONS OF APPROVAL:**

1. *The expanded seating area cannot exceed current building, fire and life safety codes and will be re-evaluated on an annual basis for compliance.*
2. *No bars, tables, chairs, speakers or any other item may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.*

3. *Conditions 1, 2, 4, 5, 6, and 8 from Resolution 04-14 (see **Exhibit C**) remain in effect.*
4. *Non-amplified live music is permitted only between the hours of 3:00 pm and 9:00pm, 7 days a week and must comply at all times with applicable Town noise ordinances.*
5. *Upon approval by Town Council applicant must amend its Business Extension in Times Square agreement to reflect the changed site plan.*

**RECOMMENDED FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. Changed or changing conditions **do not exist** that make the requested approval, as conditioned, appropriate:
2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:
3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use.
4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources:
5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property:
6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

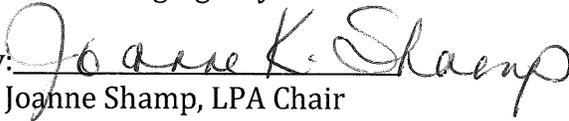
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The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Zuba** and seconded by LPA Member **Kakatsch**, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair	AYE	Bill Van Duzer, Member	Absent
Rochelle Kay, Member	AYE	John Kakatsch, Member	AYE
Hank Zuba, Member	AYE	Tom Cameron, Member	AYE

DULY PASSED AND ADOPTED THIS **13th** day of SEPTEMBER, 2011.

Local Planning Agency of the Town of Fort Myers Beach

By:   
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By:   
Fowler White Boggs, P.A.  
LPA Attorney

ATTEST:

By:   
Michelle Mayher  
Town Clerk

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 04-14

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA  
APPROVING THE REQUEST FOR CONSUMPTION ON PREMISES

WHEREAS, Prismatic Corp., Times Square Coffee Shop has requested a Special Exception for consumption on premises (2-COP) of alcoholic beverages with outdoor seating in conjunction with a cafe; and,

WHEREAS, the subject property is located at 1035 Estero Blvd., and the applicant has indicated the property's current STRAP number is: 24-46-23-W3-00208.0060 and the legal description is attached as Exhibit "A" ; and,

WHEREAS, the LPA gave full and complete consideration to the recommendations of the Staff, the documents in the file, and the testimony of all interested persons and recommended that the Town Council approve the Applicant's request subject to the 8 conditions listed on Page 2 of the Staff Report dated March 11, 2004 and which is attached hereto and incorporated herein by reference with the following change:

Condition #4. *Esthetically pleasing* legible signs will be clearly posted for the areas not approved for on premise consumption stating "Alcoholic beverages are prohibited beyond this point."

FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the requested modification:

1. The applicant did comply with Section 34-1264 (2) b. which places the burden of proof upon the applicant to demonstrate that approval will not have any adverse affect on surrounding properties.
2. That there is no error or ambiguity in the Land Development Code or Town Plan which must be corrected by the Special Permit.
3. That the character and nature of the surrounding area make approval of the Special Permit, as conditioned, appropriate.
4. That the Special Permit, as conditioned, is consistent with the goals, objectives, policies and intent of the Town Plan, and the densities, intensities and general uses set forth in the Town Plan and Land Development Code.
4. That the Special Permit, as conditioned, meets all performance and locational standards set forth for the proposed use.
5. That urban services will be available and adequate to serve the proposed use when it is constructed.

## II. BACKGROUND INFORMATION AND RECOMMENDATION:

A. Recommendation: Staff recommends APPROVAL of the request with the following conditions:

1. The Special Exception is limited to on premises consumption of alcoholic beverages in conjunction with outdoor seating and is limited to a 2-COP beverage license to be used in conjunction with the café.
2. Prior to the issuance of a Certificate of Occupancy for the use, the applicant must obtain a yearly permit agreement with the Town of Fort Myers Beach to allow the placement of tables and chairs within the Times Square area.
3. Indoor seating is not approved as part of this Special Exception. The consumption on premises for outdoor seating is limited to the area shown on attached Exhibit "B" and the area leased from the Town of Fort Myers Beach located within the Times Square area and is limited to a maximum of 10 tables with a maximum seating capacity of 42 seats.
4. Legible signs will be clearly posted for the areas not approved for on premise consumption stating "Alcoholic beverages are prohibited beyond this point.
5. Lighting on the outdoor seating areas will be shuttered and shielded from the surrounding properties.
6. The hours for the outdoor seating area will only be used between 8:00 a.m. to 12:00 Midnight, 7-days a week, Sunday through Saturday.
7. Entertainment is limited to recorded background music between the hours of 8:00 a.m. to 12:00 Midnight, 7-days a week, Sunday through Saturday.
8. Prior to the issuance of a Certificate of Occupancy for the use, the applicant and property owner must comply with the provisions of the Land Development Code, Sections 14-71 through 14-79 relating to the protection of Sea Turtles.

### Findings & Conclusions

Based upon an analysis of the application and the standards for approval of a special exception, staff makes the following findings and conclusions:

1. The requested special exception, as conditioned:

COP2003-00091

PROPERTY DESCRIPTION  
EXHIBIT "A"

IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE  
COUNTY, FLORIDA:

A TRACT OR PARCEL OF LAND IN THE BUSINESS  
CENTER SUBDIVISION, PLAT BOOK 9, PAGE 9, BLOCK  
8, LOTS 6 & 7, ESTERO ISLAND, FT. MYERS BEACH,  
PUBLIC RECORDS, LEE COUNTY, FLORIDA.

Applicant's Legal Checked  
by AMJ 07JULY03

6. That there are no environmentally critical areas or natural resources to be adversely affected by the Special Permit, as conditioned.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES the requested modification with the following conditions:

the 8 conditions listed on Page 2 of the Staff Report dated March 11, 2004 and which is attached hereto and incorporated herein by reference with the following change:

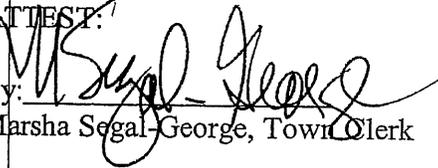
Condition #4. *Esthetically pleasing* legible signs will be clearly posted for the areas not approved for on premise consumption stating "Alcoholic beverages are prohibited beyond this point."

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

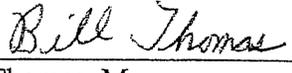
Howard Rynearson	<u>AYE</u>
Don Massucco	<u>NAY</u>
Bill Thomas	<u>AYE</u>
W. H. "Bill" Van Duzer	<u>AYE</u>
Garr Reynolds	<u>NAY</u>

Adopted this 19th day of April, 2004.

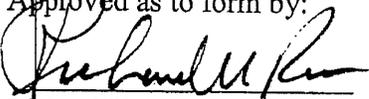
ATTEST:

By:   
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By:   
Bill Thomas, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney

- a) is consistent with the goals, objectives, policies and intent of the Town of Fort Myers Beach Comprehensive Plan;
- b) meets or exceeds all performance and locational standards set forth for the proposed use;
- c) will be compatible with existing or planned uses;
- d) will not cause damage, hazard, nuisance or other detriment to persons or property; and
- e) will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code.

**B. Rationale:**

**Introduction/Synopsis**

The proposed café is located in the same building as the West Coast Surf Shop. The applicant plans to open a small café with outdoor seating in the southwesterly retail space of the building as depicted on the attached Exhibit "B". The applicant wishes to "create an outdoor café in the tradition of the sidewalk bistros of Paris." The menu is tailored towards espresso, cappuccino, smoothie, or wine along fresh baked goods, cheeses, and deserts. The applicant is requesting a 2-COP license which will allow them to serve beer and wine only. The café is located in the Downtown zoning district and is in the Pedestrian Commercial land use category.

Land Development Code (LDC), Section 34-1264(a)(2)a.2. states any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages, except that a restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership. Lynn Hall Park, is within 500 feet which trigger this requirement and therefore the request must go through the public hearing process.

**Requested Special Exception**

The proposed consumption on premises is for a 2-COP liquor license for beer and wine only. The applicant received an interior remodeling permit (COM2004-00364) for the café on March 3, 2004, see Exhibit "C". The café will contain 300 square feet of floor area within the existing West Coast Surf Shop building. The applicant proposes to place 10 tables with a seating capacity of 42 seats outside the café in the Times Square area. Indoor seating will not be provided as stated on Exhibit "D". The hours of operation for the outdoor café will be 8:00 a.m. to 12:00 midnight, 7-days

a week. Music and entertainment will be provided and geared towards setting a mood conducive to conversation as stated in Exhibit "E".

### Parking

Additional on site parking spaces are not required for property located within the Downtown zoning district. Section 34-676 of the LDC states the Downtown district is planned as a "park-once" district, with preference given to pedestrian movement within the district. On-street parking will be provided by the town along Old San Carlos Boulevard and other public parking is available under the Sky Bridge. The parking space requirement for properties in the Times Area and Bayfront pedestrian plazas are calculated by multiplying 0% for existing building space and 50% for new building space. No parking spaces may be provided in the Times Square area but the required space must be located within 750 feet in single-purposed, shared, or joint-use parking lots as defined in Division 26 of the LDC.

Beverly Primeau, the property owner of the building where the proposed café is to be located, has eight on-site parking spaces. In September 2001, Ms. Primeau entered into an agreement with the Town of Fort Myers Beach regarding parking for the business. Three of the parking spaces are located in the southeast portion of the property, next to concrete bollards, behind the trolley stop. The other five parking spaces are located in the northeast portion, just off Estero Boulevard. In the agreement Ms. Primeau agreed that the parking area located in the northeast portion of the property shall be restricted to two employee parking spaces and three customer parking spaces.

### Surrounding Zoning and Neighborhood Compatibility

The subject property and all of the surrounding properties are in the Downtown zoning district. This zoning district promotes pedestrian-oriented commercial activities. The subject property and all of the surrounding properties are also in the Pedestrian Commercial land use category. Commercial activities in this land use category must contribute to the pedestrian-oriented public realm. The surrounding properties are developed mostly with retail uses and restaurants with outdoor seating. The proposed café with outdoor seating and the requested special exception are compatible with the surrounding properties.

### Town of Fort Myers Beach Comprehensive Land Use Plan

The subject property and surrounding properties are located in the Pedestrian Commercial land use category according to the adopted Town of Fort Myers Beach Future Land Use Map. Policy 4-B-6 describes the Pedestrian Commercial district as a primarily commercial district applied to the intense activity centers of Times Square (including Old San Carlos and nearby portions of Estero Boulevard). Commercial activities must contribute to the pedestrian-oriented public realm as described in the

comprehensive plan and must meet the design concepts of the plan. Staff finds the proposed café **CONSISTENT** with Policy 4-B-6.

### Conclusion

The requested Special Exception for a consumption on premises (2-COP) with outdoor seating is consistent with the Town of Fort Myers Beach Comprehensive Plan and will be compatible with existing and planned uses. The goal of the café is to create a sidewalk bistro to encourage pedestrian customers to enjoy their services. The request will not cause damage, hazard, nuisance or other detriment to persons or property and will be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the Land Development Code. Given the location of the café, staff finds that the request satisfies the requisite finding for special exceptions and recommends **APPROVAL** of the request with conditions.

### III. SUBJECT PROPERTY

- A. **STRAP:** The applicant indicates the STRAP number is: 24-46-23-W3-00208.0060
- B. **LEGAL DESCRIPTION:** See Exhibit "A"

### IV. ATTACHMENTS

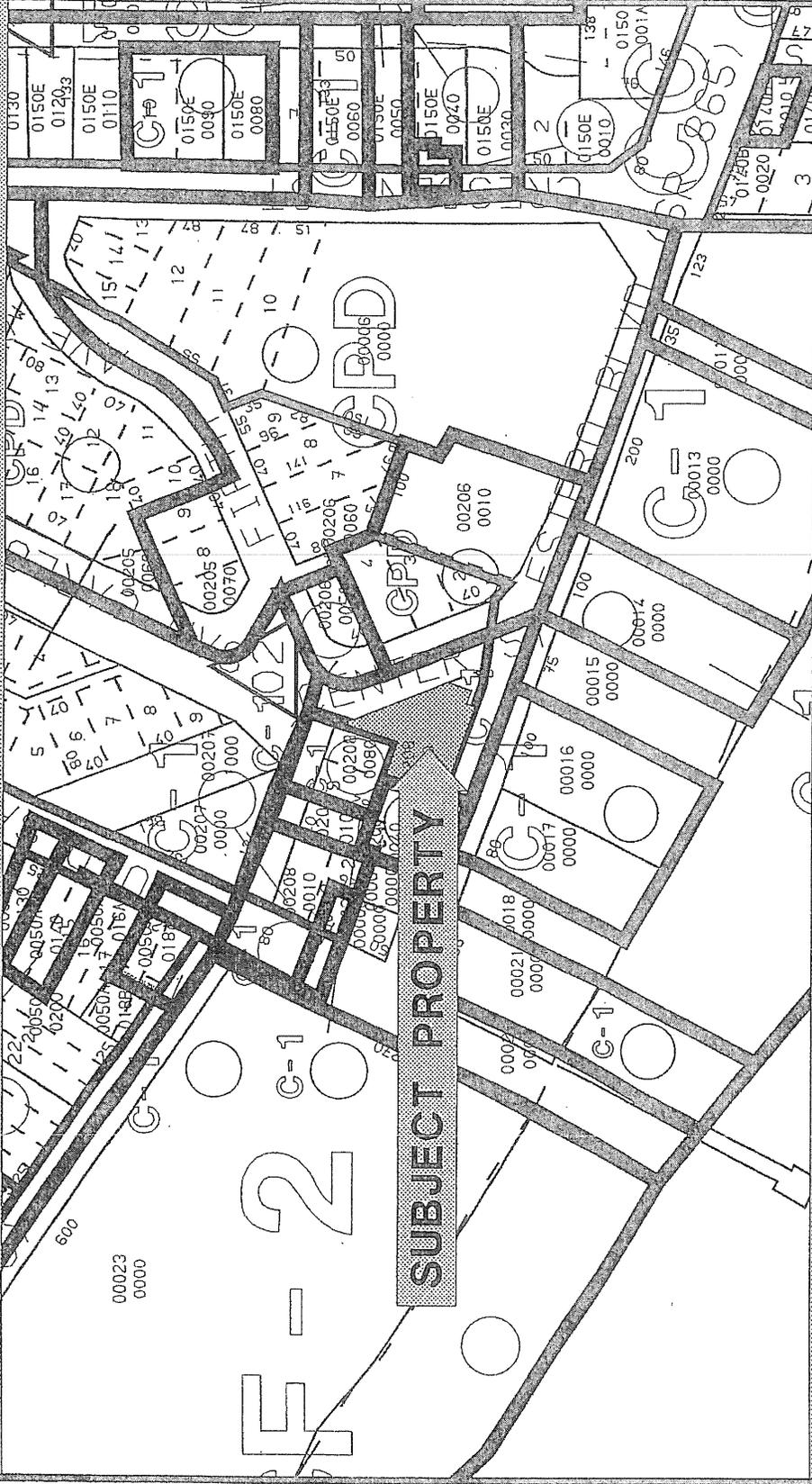
- A. Map of surrounding zoning

### V. EXHIBITS

- A. Legal Description
- B. Site plan showing location of café and surrounding uses
- C. Interior remodel permit COM2004-00364 floor plan
- D. Site plan of café with outdoor seating
- E. Applicant's narrative stating their menu, hours operation and seating capacity

cc: Applicant  
Town of Fort Myers Beach LPA  
Zoning File

# ZONING MAP



SUBJECT PROPERTY

A

COP2003-00091

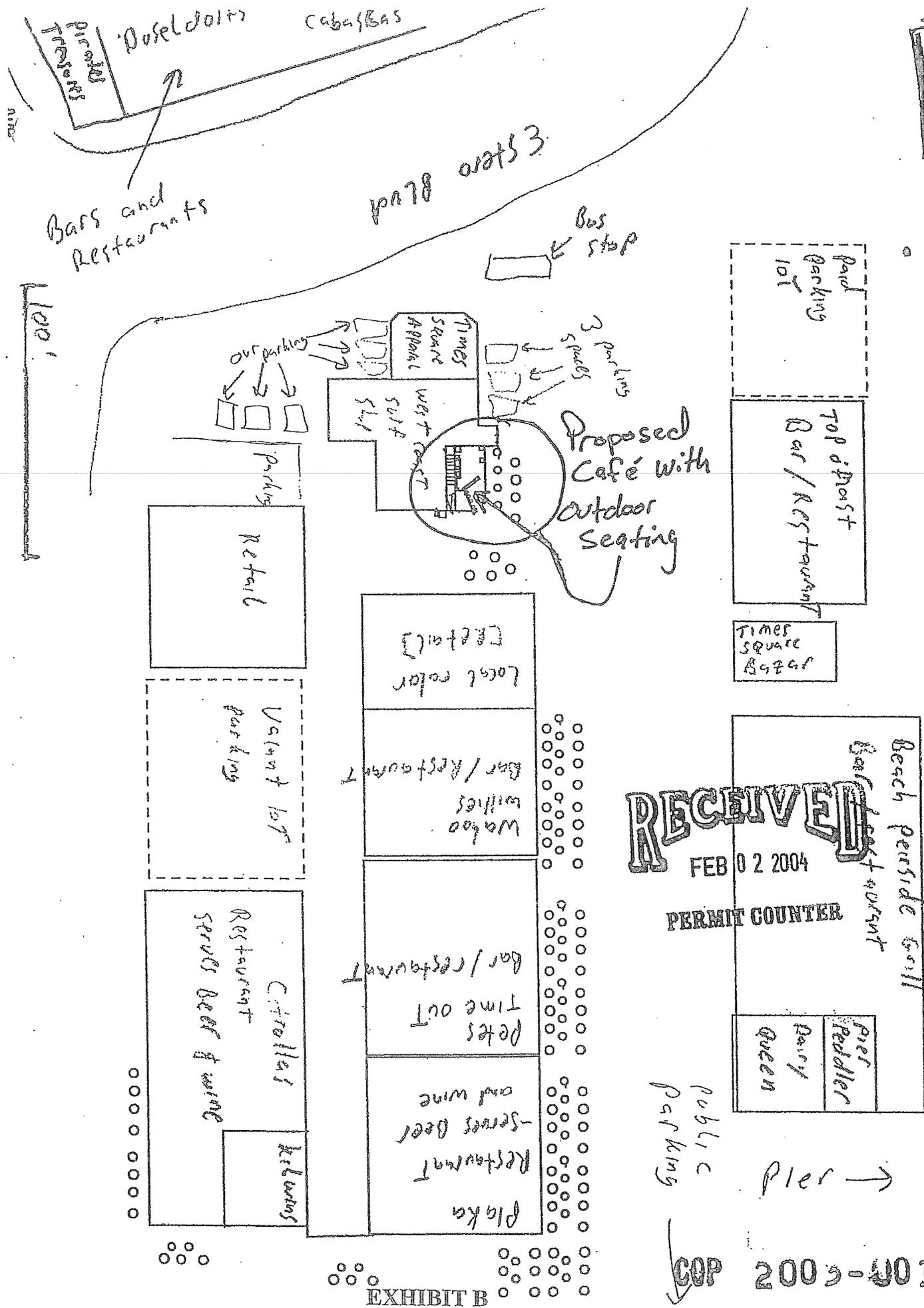
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IN SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST, LEE  
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CENTER SUBDIVISION, PLAT BOOK 9, PAGE 9, BLOCK  
8, LOTS 6 & 7, ESTERO ISLAND, FT. MYERS BEACH,  
PUBLIC RECORDS, LEE COUNTY, FLORIDA.

Applicant's Legal Checked  
by AMM 07JULY03

Figure 1

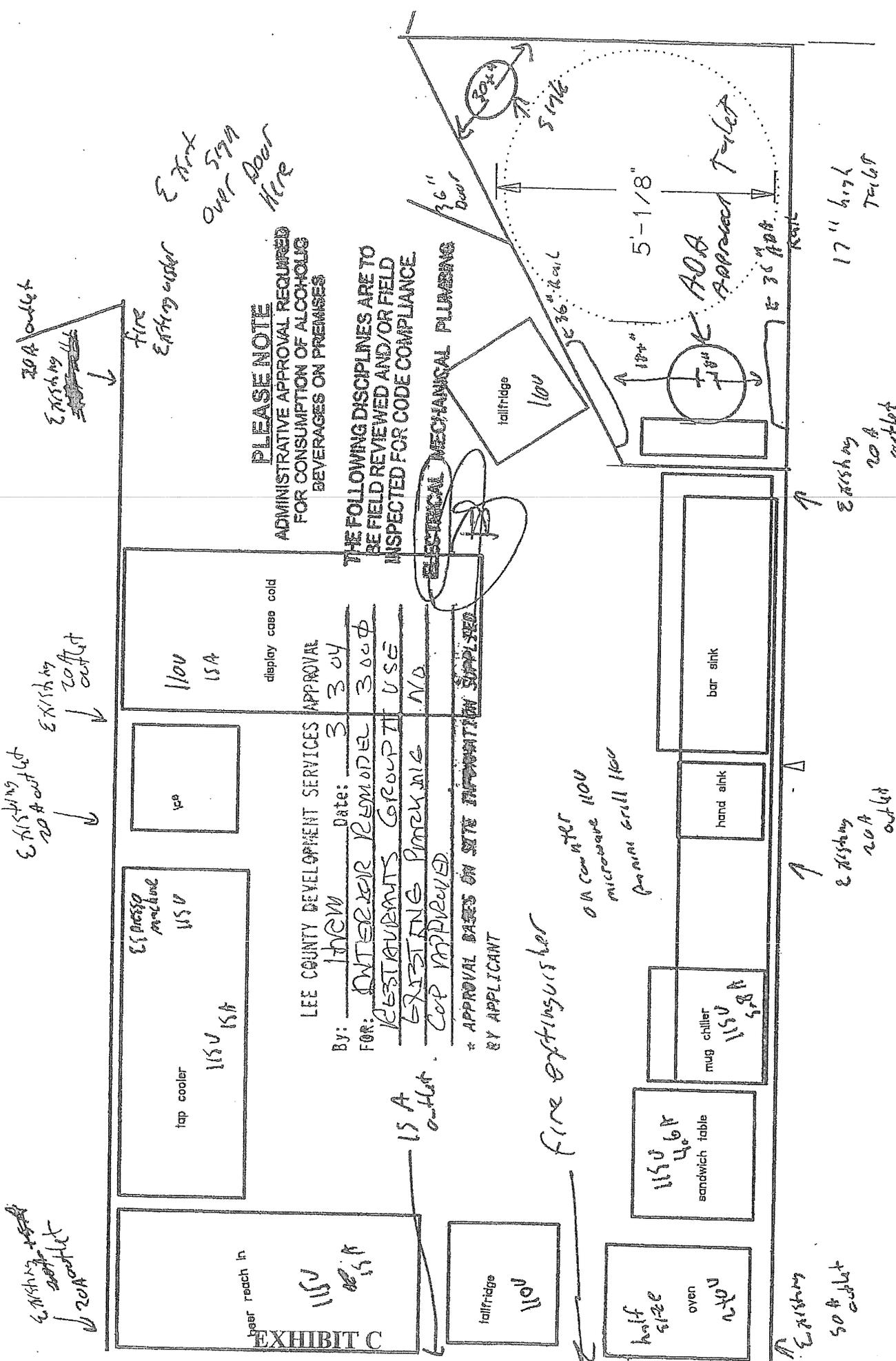


RECEIVED  
FEB 02 2004

PERMIT COUNTER

Pier Peddler  
Dairy Queen

2003-00155



**PLEASE NOTE**  
 ADMINISTRATIVE APPROVAL REQUIRED  
 FOR CONSUMPTION OF ALCOHOLIC  
 BEVERAGES ON PREMISES

THE FOLLOWING DISCIPLINES ARE TO  
 BE FIELD REVIEWED AND/OR FIELD  
 INSPECTED FOR CODE COMPLIANCE

**ELECTRICAL MECHANICAL PLUMBING**

LEE COUNTY DEVELOPMENT SERVICES APPROVAL  
 By: HWEN Date: 3 304  
 FOR: INTERIOR REMODEL 3000  
RESTAURANTS GROUP II USE  
EXISTING PREMISE NO  
Cap approved

\* APPROVAL BASES ON SITE INFORMATION SUPPLIED  
 BY APPLICANT

EXHIBIT C

EXISTING 20A outlet  
 fire extinguisher  
 E.H.M. OVER DOOR HERE

EXISTING 20A outlet  
 20A outlet

EXISTING 20A outlet  
 20A outlet

EXISTING 20A outlet  
 20A outlet

15A outlet

fire extinguisher

ON COMMER MICROWAVE 110V  
 PERMITS GRILL 110V

mug chiller 115V 5.8A

sandwich table 115V 4.6A

half size oven 240V

EXISTING 50A outlet

EXISTING 20A outlet

hand sink

bar sink

EXISTING 20A outlet

17" high toilet

A.O.A. Approach Toilet

refrigerator 110V

refrigerator 110V

36" Door

30x40 sink

5'-1/8"

18"

36" APPROX

RAIL

5 seats  
Tables

From  
3301

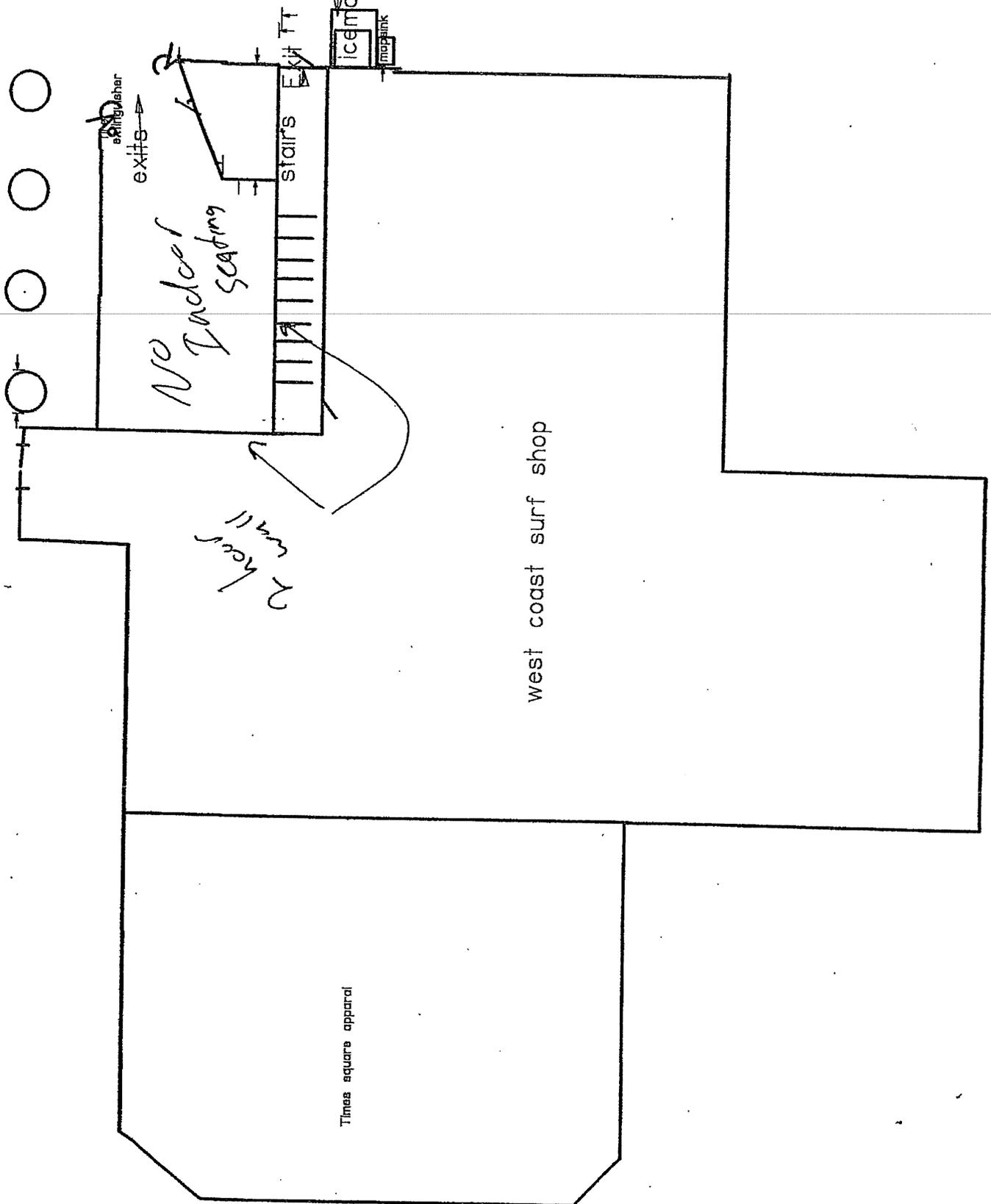


EXHIBIT D

Our goal is to create an outdoor café in the tradition of the sidewalk bistros of Paris. Our menu is tailored towards couples sharing an espresso or bottle of wine while snacking on fresh baked goods, cheeses, and deserts. With that in mind our music and entertainment will be geared towards setting a mood conducive to conversation.

Hours of operation: 8:am-12:am  
Seating capacity: 42

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HWEM  
3/3/04