



Planning Commission Staff Report

Date: September 12, 2012

Case No.: 5.1279 – CUP

Type: Conditional Use Permit

Location: 611 South Palm Canyon Drive

APN: 513-290-014

Applicant: Fury Investments, Inc.

General Plan: MU / MU (Mixed Use / Multi-Use)

Zone: PD 77 (Planned Development District 77)

From: Craig A. Ewing, AICP, Director of Planning Services

Project Planner: David A. Newell, Associate Planner

PROJECT DESCRIPTION:

The applicant is requesting a Conditional Use Permit (CUP) to operate a night club use within the Sun Center commercial complex located at 611 South Palm Canyon Drive. Zelda's Nightclub is an existing night club use operating under a CUP that expired in 2007. The owner is seeking approval of a new CUP to allow its continued operation.

RECOMMENDATION:

That the Planning Commission approve Case 5.1279 – CUP, a Conditional Use Permit to operate a night club as a primary use at 611 South Palm Canyon Drive, #15 & #16, subject to the Conditions of Approval in the attached draft resolution.

BACKGROUND AND SETTING:

The applicant is requesting approval to operate a night club use that is approximately 5,720 square feet in size and currently in business at the Sun Center; 611 S. Palm Canyon Drive, Unit #15 & #16. The Planning Commission approved the use in 2001 and limited the permit to two years. A subsequent amendment to expand the use and modify the hours of operation was granted by the Commission in 2002; the CUP was then limited to a five year time term, which expired in 2007. No additional extensions have been granted by the Commission since that time.

The subject property is approximately 4.4 acres in size and developed as a multi-tenanted commercial complex. It is located adjacent to commercial uses to the north and east; residential uses to the west; and vacant land exists to the south. The property is a fully developed shopping center.

Table 1: Adjacent General Plan Designations, Zones and Land Uses:

	General Plan	Zoning	Existing Land Uses
North	CBD (Central Business District)	PD-82 (Planned Development District 82)	Multi-tenanted Commercial
South	MU / MU (Mixed Use / Multi-Use)	R-3 (Multiple-family Residential and Hotel) & C-2 (General Commercial)	Vacant
East	TRC (Tourist Resort Commercial)	PD-187 (Planned Development District 187)	Resort Hotel (Motel 6)
West	LDR (Low Density Residential)	R-2 (Limited Multiple-family Residential)	Single-family Residences

The existing site layout contains two main buildings with an alley and parking. There are two main parking lots; the main lot fronts Palm Canyon Drive and the smaller lot faces Belardo Road. The night club is located within the easterly building which has Palm Canyon Drive frontage, but generally faces the main parking area. The floor plan layout consists of a lobby entry, large dance floor, three bars, a pool table room, storage areas and an outdoor patio (see attached floor plan). The use operates Thursday to Saturday from 9:00 p.m. to 2:00 a.m.

ANALYSIS:

General Plan

The subject location is within the Mixed Use / Multi-Use area of the General Plan. General Plan Policy Land Use Element states,

Specific uses intended in these areas include community-serving retail commercial, professional offices, service businesses, restaurants, daycare centers, public and quasi-public uses...

The night club use is a service business; therefore, staff believes that the use is consistent with this General Plan Land Use designation.

The General Plan further defines this specific Mixed Use / Multi-Use area as,

The Sunny Dunes and Palm Canyon Drive mixed/multi-use area currently contains scattered commercial uses and large vacant parcels. Different from the mixed/multi-use areas identified above, the Palm Canyon Drive and Sunny Dunes Road area is envisioned as a mixed-use area creating an office, retail, and residential node just south of Downtown. This mix of uses will complement the hotel uses along East Palm Canyon Drive by providing a concentrated commercial and office base in close proximity to visitor accommodations.

The night club use provides an entertainment venue for nearby residents and visitors.

Zoning

The existing lounge is located within the Planned Development 77 with an underlying Zoning of C-1 (Central Retail Business), which permits night clubs as primary uses with the approval of a Conditional Use Permit, pursuant to Section 92.12.01(D)(9) of the Palm Springs Zoning Code.

The use occupies approximately 5,720 square feet of floor area within the 106,894-square foot commercial complex. Pursuant to Section 93.06.00(D)(5) of the Zoning Code, discotheques are required to have one parking space for every three seats or one space for every thirty-five square feet where the public is served. The applicant states that there are approximately 150 seats; staff determined that the area where the public is served is approximately 4,900 square feet. The total parking required for the use is 50 for seating or 140 for floor area. The tenant space fronts a parking area with 153 parking spaces and additional off-street parking is available at the rear of the complex. Furthermore, the use is operating when all other businesses in the center are closed (from 9:00 p.m. to 2:00 a.m.). Therefore, the use complies with the zoning code.

Safety and Security

Staff requested comments and recommendations on the proposal from the Fire and Police Departments. The Fire Department is requiring an exit / analysis plan be completed for the use to ensure overcrowding does not occur. The Police Department has noted concerns with security and lack of video surveillance. The applicant has been working with the Police Department to resolve these issues. Staff will provide the Commission with additional conditions of approval from the Police Department to ensure these issues are addressed.

REQUIRED FINDINGS:

The Conditional Use Permit process, outlined in Section 94.02.00 of the PSZC, requires the Planning Commission to make a number of findings for approval of the permit. Those findings are analyzed by staff in order below:

- 1) *That the use applied for at the location set forth in the application is properly one for which a conditional use permit is authorized by this Zoning Code.*

Pursuant to Section 92.12.01(D)(9) of the Zoning Code, a night club use is permitted within the C-1 Zone with the approval of a Conditional Use Permit. The use will be located within a multi-tenanted commercial / retail complex that fronts a major thoroughfare within a Central Retail Business Zone of the City.

- 2) *That the use is necessary or desirable for the development of the community, and is in harmony with the various elements or objectives of the general plan, and is not detrimental to existing uses or to future uses specifically permitted in the zone in which the proposed use is to be located.*

The use will provide entertainment and gathering space within a commercial zone in the City. The proposed use is desirable for the development of the community as it adds to the nighttime activities available in the City. The business has previously operated at this location and it is not anticipated to be detrimental to existing uses or future uses specifically permitted in the C-1 Zone.

- 3) *That the site for the intended use is adequate in size and shape to accommodate such use, including yards, setbacks, walls or fences, landscaping, and other features required in order to adjust such use to those existing or permitted future uses of land in the neighborhood.*

The overall site is approximately 4.4 acres in size and is fully developed. The off-street parking lot fronting Palm Canyon Drive was recently remodeled and includes 153 parking spaces (including six handicap spaces). The use operates when other businesses are closed (after 9:00 p.m.) and requires 140 parking spaces where the public is served. Therefore, the site is adequate in size and shape for the night club use.

- 4) *That the site for the proposed use relates to streets and highways properly designed and improved to carry the type and quantity of traffic to be generated by the proposed use.*

The project site is located along South Palm Canyon Drive, which is designated as a major thoroughfare on the General Plan Circulation Element. The tenant space is approximately 5,720 square feet in size and any traffic generated by the proposed use will be insignificant to the streets and highways.

- 5) *That the conditions to be imposed and shown on the approved site plan are deemed necessary to protect the public health, safety and general welfare and may include minor modification of the zone's property development standards. Such conditions may include:*
 - a. *Regulation of use*

- b. *Special yards, space and buffers*
- c. *Fences and walls*
- d. *Surfacing of parking areas subject to city specifications*
- e. *Requiring street, service road, or alley dedications and improvements or appropriate bonds*
- f. *Regulation of points of vehicular ingress and egress*
- g. *Regulation of signs*
- h. *Requiring landscaping and maintenance thereof*
- i. *Requiring maintenance of grounds*
- j. *Regulation of noise, vibrations, odors, etc.*
- k. *Regulation of time for certain activities*
- l. *Time period within which the proposed use shall be developed*
- m. *Duration of use*
- n. *Dedication of property for public use*
- o. *Any such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this Zoning Code, including but not limited to mitigation measures outlined in an environmental assessment.*

Staff has included Conditions of Approval to provide parameters and restrictions for the use, including, but not limited to, compliance with the City Noise Ordinance, restriction of operational hours, etc.

CONCLUSION:


The request is consistent with the use on the site and is compatible with the General Plan and Zoning Ordinance land uses. Required findings necessary for the issuance of a Conditional Use Permit have been made and staff is therefore recommending approval of Case 5.1279 – CUP, subject to the attached Conditions of Approval.

ENVIRONMENTAL DETERMINATION:

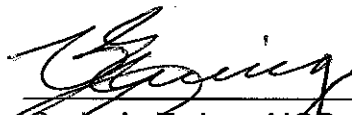
Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the project is Categorically Exempt as a Class I exemption per Section 15301(Existing Facilities).

NOTIFICATION:

Notification of this public hearing was sent to property owners within a 400 foot radius of the subject parcel. As of the writing of this report, no correspondence from the public has been received.



David A. Newell
Associate Planner



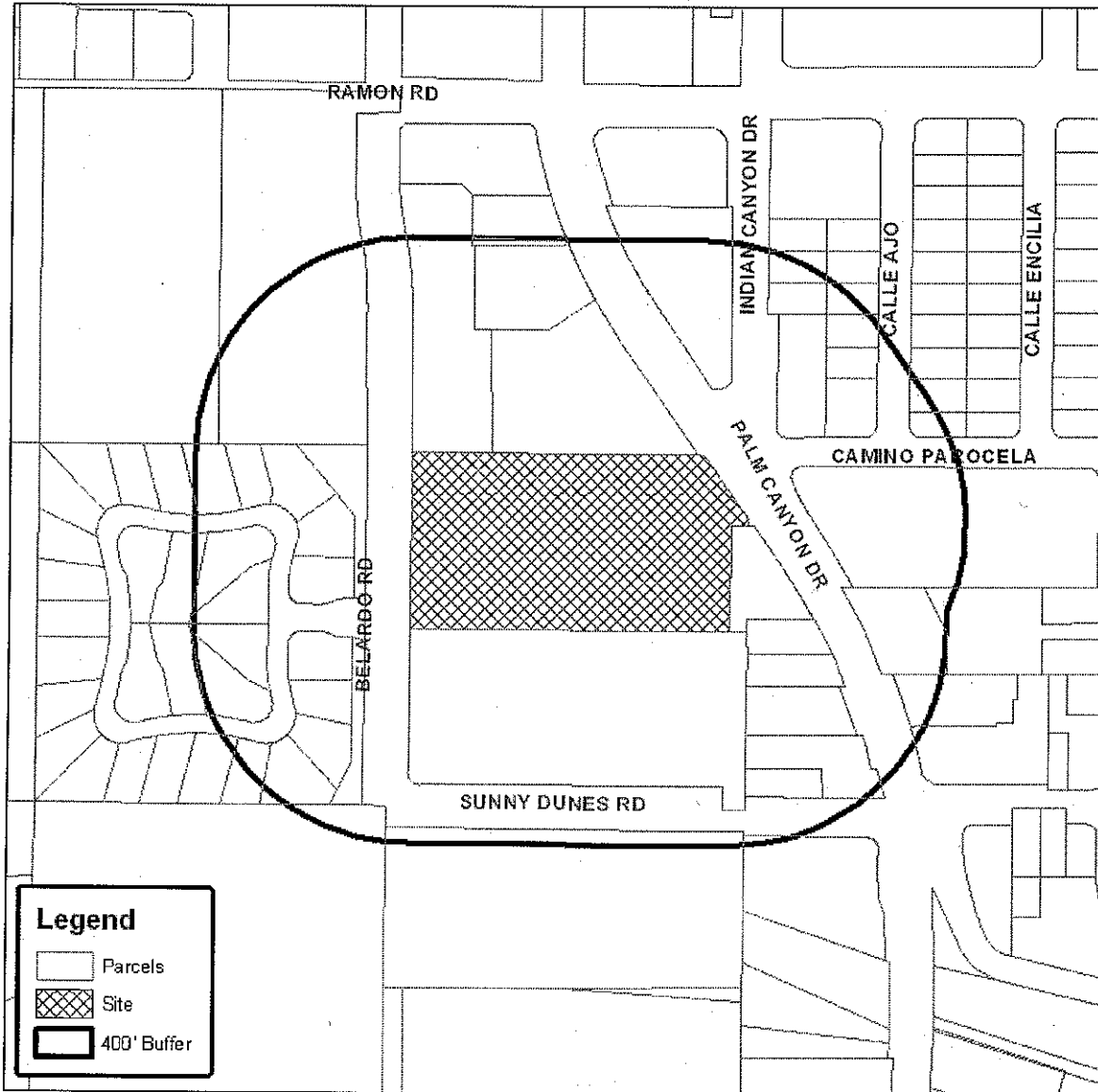
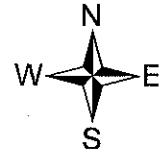
Craig A. Ewing, AICP
Director of Planning Services

Attachments:

1. 400' Radius Map
2. Draft Resolution with Conditions of Approval
3. Floor Plan



Department of Planning Services Vicinity Map



CITY OF PALM SPRINGS

CASE NO: 5.1279 CUP

APPLICANT: Fury Investments, Inc.

DESCRIPTION: A Conditional Use Permit request to operate a night club use within the mixed-use commercial center located at 611 S. Palm Canyon Drive, Suite #15 & #16, Zone PD-77 (C-1), Section 22.

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF PALM SPRINGS, CALIFORNIA,
APPROVING CASE 5.1279, A CONDITIONAL USE
PERMIT (CUP) TO ALLOW A NIGHT CLUB USE AT
611 SOUTH PALM CANYON DRIVE.

WHEREAS, Fury Investments, Inc. ("Applicant") has filed a Conditional Use Permit application with the City pursuant to Section 94.02.00 of the Zoning Code to allow a night club use in a 5,720-square foot tenant space within a multi-tenanted commercial complex located at 611 South Palm Canyon Drive, Zone C-1, Section 22, APN: 513-290-014; and

WHEREAS, a night club may be permitted in the C-1 (Central Retail Business) Zone with the approval of a Conditional Use Permit, pursuant to Section 92.12.01(D)(9) of the Zoning Code; and

WHEREAS, notice of public hearing of the Planning Commission of the City of Palm Springs to consider Case No. 5.1279 – CUP was given in accordance with applicable law; and

WHEREAS, on September 12, 2012, a public hearing on the application was held by the Planning Commission in accordance with applicable law; and

WHEREAS, the proposed project is considered a "project" pursuant to the terms of the California Environmental Quality Act ("CEQA"), and has been determined to be Categorically Exempt as a Class I exemption (Existing Facilities) pursuant to Section 15301 of the CEQA Guidelines; and

WHEREAS, the Planning Commission has carefully reviewed and considered all of the evidence presented in connection with the hearing on the project, including, but not limited to, the staff report, and all written and oral testimony presented.

THE PLANNING COMMISSION HEREBY FINDS AS FOLLOWS:

Section 1: Section 94.02.00(B)(6) of the Zoning Code requires the Planning Commission not approve a Conditional Use Permit unless it finds as follows:

1. *That the use applied for at the location set forth in the application is properly one for which a conditional use permit is authorized by this Zoning Code.*

Pursuant to Section 92.12.01(D)(9) of the Zoning Code, a night club use is permitted within the C-1 Zone with the approval of a Conditional Use Permit. The use will be located within a multi-tenanted commercial / retail complex that fronts a major thoroughfare within a Central Retail Business Zone of the City.

2. *That the use is necessary or desirable for the development of the community, is in harmony with the various elements or objectives of the general plan, and is not detrimental to existing uses or to future uses specifically permitted in the zone in which the proposed use is to be located.*

The use will provide entertainment and gathering space within a commercial zone in the City. The proposed use is desirable for the development of the community as it adds to the nighttime activities available in the City. The business has previously operated at this location and it is not anticipated to be detrimental to existing uses or future uses specifically permitted in the C-1 Zone.

3. *That the site for the intended use is adequate in size and shape to accommodate such use, including yards, setbacks, walls or fences, landscaping, and other features required in order to adjust such use to those existing or permitted future uses of land in the neighborhood.*

The overall site is approximately 4.4 acres in size and is fully developed. The off-street parking lot fronting Palm Canyon Drive was recently remodeled and includes 153 parking spaces (including six handicap spaces). The use operates when other businesses are closed (after 9:00 p.m.) and requires 140 parking spaces where the public is served. Therefore, the site is adequate in size and shape for the night club use.

4. *That the site for the proposed use relates to streets and highways properly designed and improved to carry the type and quantity of traffic to be generated by the proposed use.*

The project site is located along South Palm Canyon Drive, which is designated as a major thoroughfare on the General Plan Circulation Element. The tenant space is approximately 5,720 square feet in size and any traffic generated by the proposed use will be insignificant to the streets and highways.

5. *That the conditions to be imposed and shown on the approved site plan are deemed necessary to protect the public health, safety and general welfare and may include minor modification of the zone's property development standards. Such conditions may include:*
 - a. *Regulation of use*
 - b. *Special yards, space and buffers*
 - c. *Fences and walls*
 - d. *Surfacing of parking areas subject to city specifications*
 - e. *Requiring street, service road, or alley dedications and improvements or appropriate bonds*
 - f. *Regulation of points of vehicular ingress and egress*
 - g. *Regulation of signs*
 - h. *Requiring landscaping and maintenance thereof*
 - i. *Requiring maintenance of grounds*
 - j. *Regulation of noise, vibrations, odors, etc.*

- k. Regulation of time for certain activities*
- l. Time period within which the proposed use shall be developed*
- m. Duration of use*
- n. Dedication of property for public use*
- o. Any such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this Zoning Code, including but not limited to mitigation measures outlined in an environmental assessment.*

Staff has included Conditions of Approval to provide parameters and restrictions for the use, including, but not limited to, compliance with the City Noise Ordinance, restriction of operational hours, etc.

NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby approves Case No. 5.1279 – CUP, a Conditional Use Permit to allow a night club use of approximately 5,720 square feet within a mixed use complex located at 611 South Palm Canyon Drive, subject to the conditions set forth in the attached Exhibit A.

ADOPTED this 12th day of September 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

Craig A. Ewing, AICP
Director of Planning Services

RESOLUTION NO.

EXHIBIT A

Case 5.1279 CUP
Fury Investments, Inc. DBA Zelda's

611 South Palm Canyon Drive, Suite #15 & #16

September 12, 2012

CONDITIONS OF APPROVAL

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning Services, the Director of Building and Safety, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

ADMINISTRATIVE CONDITIONS

- ADM 1. Project Description. This approval is for the project described per Case 5.1279 CUP, except as modified by the conditions below.
- ADM 2. Reference Documents. The site shall be developed and maintained in accordance with the approved plans on file in the Planning Division, except as modified by the conditions below.
- ADM 3. Conform to all Codes and Regulations. The project shall conform to the conditions contained herein, all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, and any other City County, State and Federal Codes, ordinances, resolutions and laws that may apply.
- ADM 4. Minor Deviations. The Director of Planning or designee may approve minor deviations to the project description and approved plans in accordance with the provisions of the Palm Springs Zoning Code.
- ADM 5. Indemnification. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Case 5.1279 CUP. The City of Palm Springs will promptly notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the matter

and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive the indemnification herein, except, the City's decision to settle or abandon a matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein.

- ADM 6. Maintenance and Repair. The property owner(s) and successors and assignees in interest shall maintain and repair the improvements including and without limitation all structures, sidewalks, bikeways, parking areas, landscape, irrigation, lighting, signs, walls, and fences between the curb and property line, including sidewalk or bikeway easement areas that extend onto private property, in a first class condition, free from waste and debris, and in accordance with all applicable law, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction at the property owner's sole expense. This condition shall be included in the recorded covenant agreement for the property if required by the City.
- ADM 7. Time Limit on Approval. The Conditional Use Permit does not have a time limit, provided the use remains in compliance with all conditions of approval.
- ADM 8. Right to Appeal. Decisions of an administrative officer or agency of the City of Palm Springs may be appealed in accordance with Municipal Code Chapter 2.05.00. Permits will not be issued until the appeal period has concluded.
- ADM 9. Cause No Disturbance. The owner shall monitor outdoor parking areas, walkways, and adjoining properties and shall take all necessary measures to ensure that customers do not loiter, create noise, litter, or cause any disturbances while on-site. The owner and operator shall ensure that at closing time, all customers leave the property promptly and that the property is clean and secure before the owner/operator leaves the premises. The Police Chief, based upon complaints and/or other cause, may require on-site security officers to ensure compliance with all City, State, and Federal laws and conditions of approval. Failure to comply with these conditions may result in revocation of this permit, temporary business closure or criminal prosecution.
- ADM 10. Grounds for Revocation. Non-compliance with any of the conditions of this approval or with City codes and ordinances, State laws; any valid citizen complaints or policing and safety problems (not limited to excessive alcohol consumption, noise, disturbances, signs, etc) regarding the operation of the

establishment; as determined by the Chief of Police or the Director of Building and Safety, may result in proceedings to revoke the Conditional Use Permit. In addition, violations of the City Codes and Ordinances will result in enforcement actions which may include citations, arrest, temporary business closure, or revocation of this permit in accordance with law.

- ADM 11. Comply with City Noise Ordinance. This use shall comply with the provisions of Section 11.74 Noise Ordinance of the Palm Springs Municipal Code. Violations may result in revocation of this Conditional Use Permit.
- ADM 12. Control of Noise. Entertainment is permitted in the location shown on the approved floor plan only. If complaints are received, all exterior doors and windows shall be closed immediately upon request of the enforcement officer.
- ADM 13. Notice to Tenants. The applicant shall provide all tenants with a copy of the Conditions of Approval for this project.
- ADM 14. Conditional Use Permit Availability. The applicant shall provide a copy of this Conditional Use Permit and approved security plan to all buyers and potential buyers.
- ADM 15. Maintenance of Outdoor Seating/Dining. Daily cleaning and wash down of sidewalks for any outdoor seating areas or patios will be required.

PLANNING DEPARTMENT CONDITIONS

- PLN 1. Seating Count. The applicant shall be limited to the total number of 150 seats. Any deviation from these numbers shall require prior approval by the Planning Commission. The applicant shall maintain the minimum clearance as specified by the Fire Department between the front entrance and the outdoor tables and chairs.
- PLN 2. Hours of Operation. The applicant shall be required to maintain the operating hours as stated on the Conditional Use Permit application. Hours of operation shall be from 9:00 p.m. to 2:00 a.m. Thursday to Saturday. Any future modifications to the hours of operation shall require prior approval by the Planning Commission and the City reserves the right to modify or restrict the business hours based upon documented operational circumstances.
- PLN 3. Sign Applications Required. No signs are approved by this action. Separate approval and permits shall be required for all signs in accordance with Zoning Ordinance Section 93.20.00.
- PLN 4. Maintenance of Awnings & Projections. All awnings shall be maintained and periodically cleaned.

PLN 5. Exterior Alarms & Audio Systems. No sirens, outside paging or any type of signalization will be permitted, except approved alarm systems.

PLN 6. Outside Storage Prohibited. No outside storage of any kind shall be permitted except as approved as a part of the proposed plan.

POLICE DEPARTMENT CONDITIONS

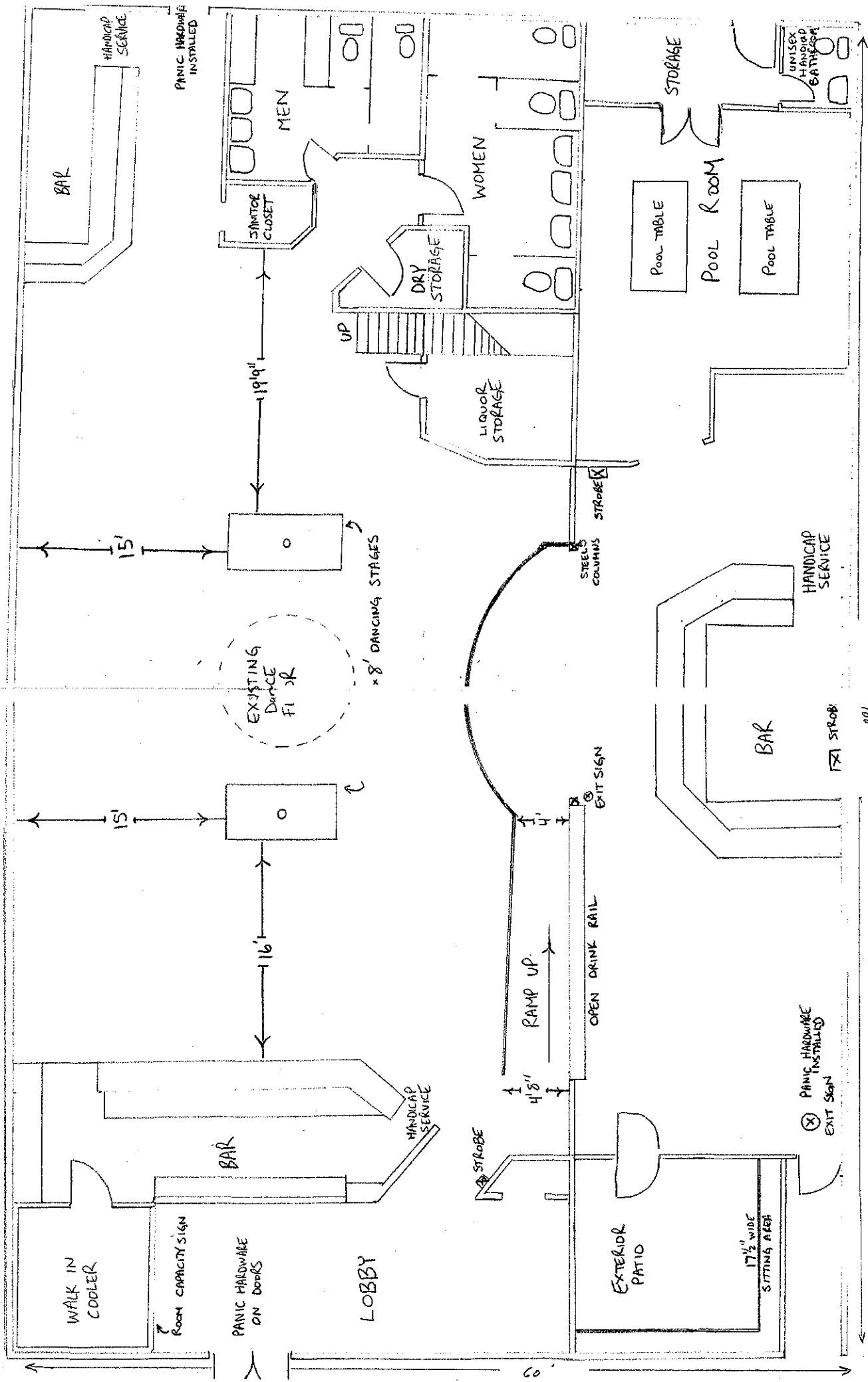
POL 1. The applicant and owner shall ensure compliance with Section II of Chapter 8.04 "Building Security Codes" of the Palm Springs Municipal Code.

POL 2.

BUILDING DEPARTMENT CONDITIONS

BLD 1. Prior to any construction on-site, all appropriate permits must be secured.

END OF CONDITIONS



RECEIVED

APR 25 2012

PLANNINGSERVICES

1000 UNIVERSITY DRIVE, SUITE 200