

# PLANNING COMMISSION STAFF REPORT

DATE:

May 13, 2015

SUBJECT:

STEPHEN WOOSTER, ON BEHALF OF THE OGDEN M. EDWARDS REVOCABLE LIVING TRUST, FOR A CONDITIONAL USE PERMIT TO ALLOW A COCKTAIL LOUNGE AND NIGHTCLUB USE WITHIN AN

EXISTING RESTAURANT AT 2080 N. PALM CANYON DRIVE, ZONE C-

1/R-3 (CASE 5.1166 CUP).

FROM:

Department of Planning Services

#### PROJECT DESCRIPTION

This is a request for approval of a Conditional Use Permit for a cocktail lounge and nightclub use within an existing 6,465 square foot restaurant building at 2080 N. Palm Canyon Drive. The restaurant and lounge, to be called The W Ultra Lounge, is intended to be open seven days a week from 8:00 a.m. to 2:00 a.m. Live entertainment may include music, comedy performances, fashion shows, and dancing.

### **ISSUES**

• A Conditional Use Permit (5.1166 CUP) was approved for a cocktail lounge use on the site in 2007, but has since expired as the use was discontinued in 2012.

### RECOMMENDATION

Approve, subject to conditions.

### **BACKGROUND INFORMATION**

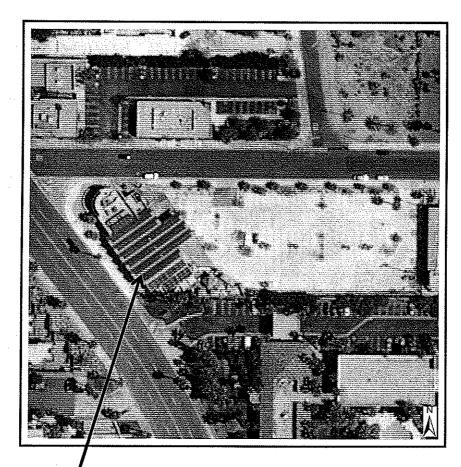
Related Relev	ant Actions by Planning, Building, Fire, etc.
(08/22/07)	The Planning Commission approved a Major Architectural Application (3.2961 MAJ) and a Conditional Use Permit (5.1166 CUP) for a new restaurant building and associated cocktail lounge use at the subject property.

Most Recent 0	Change of Ownership
(02/01/08)	The Ogden M. Edwards Revocable Living Trust

Related Build	ling Permits/Business Licenses				
03/05/08	A building permit was issued for construction of the 6,465 square foot restaurant building.				
10/17/08	A business license was issued for a restaurant and lounge use on the subject site.				
07/16/12	The business license for the restaurant and lounge use was surrendered.				

Neighborhood	Meeting		
N/A	A neighborhood mee	eting is not requi	red, nor was one held.

Field Check	
	Staff visited the site to review the existing conditions.



SITE: 2080 N. PALM CANYON DRIVE

### **DETAILS OF APPLICATION REQUEST**

Site Area	
Net Acres	1.24 Acres

Surrounding Property	Existing Land Use Per Chapter 92	Existing General Plan Designation	Existing Zoning Designation C-1/R-3 C-1/R-2	
Subject Property	Restaurant Use	TRC (Tourist Resort Commercial)		
North	Cocktail Lounge/Nightclub Use, Retail Use	MU (Mixed- use/Multi-use)		
South	Hotel Use	TRC (Tourist Resort Commercial)	C-1/R-3	
East	East Assisted Living Facility Use		R-3	
West	West Multifamily Residential Use		C-1	

Special Purpose and Overlay Districts	Compliance
"R" Resort Overlay Zone	Υ

Pursuant to Section 93.06.00(D)(30), the following parking standards apply:

Parking Require	ment						
	SF or # of Units	Parking Ratio	Required		Provided		
Use			Reg.	Handi- cap	Reg.	Handi- cap	Comp.
Restaurant	2,373 SF	1 space /35 SF where public is served	68		69		
<b>TOTAL SPACES</b>	REQUIRE	D ·	68	The control of the co	69	The second secon	Υ
Regular and Han	dicap Spa	ces Req.	65	3	66	3	Υ

### **ANALYSIS**

The proposed cocktail lounge and nightclub uses are consistent with the General Plan designation (TRC – Tourist Resort Commercial), and are allowed in the C-1 zoning district upon approval of a Conditional Use Permit. The restaurant use is permitted by right in the C-1 zoning district. It should be noted that the parcel is split between two zoning districts; the western 250-foot portion of the site adjacent to North Palm Canyon Drive is zoned C-1, and the eastern portion of the property is zoned R-3. The restaurant building lies wholly within the C-1 portion of the property, with the parking

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area located on the R-3 portion of the site. A parking lot is a permitted use in the R-3 zoning district. No exterior modifications are proposed to the existing building, nor is any additional square footage being added. The site complies with the parking requirements for a restaurant use as listed in PSMC Section 93.06.00(D)(30).

Previous operations at the site have resulted in several documented complaints of noise issues related to entertainment. In order to address any potential impacts to adjacent uses, conditions of approval have been included to require that doors and windows be closed while entertainment is occurring, and to note that conformance to the City's noise ordinance will be required.

### FINDINGS - CONDITIONAL USE PERMIT

Section 94.02.00 of the Palm Springs Zoning Code (PSZC) requires that the following conditions be met in order to approve a Conditional Use Permit:

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.

Section 92.12.01(A) allows the restaurant use in the C-1 (Retail Business) District as a permitted use. Cocktail lounge and nightclub uses may be permitted in the C-1 zoning district upon the approval of a Conditional Use Permit.

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 re-establishment of the restaurant use will provide additional dining options for visitors and residents in the North Palm Canyon Drive corridor; the nightclub and cocktail lounge use will also assist in strengthening existing entertainment-related uses in the area. The proposed uses are consistent with the goals of the General Plan in maintaining a "resort destination image," in that they will support the existing and proposed hotel development in the area.

While the proposed uses are consistent with the zoning code and General Plan, it should be noted that there are residential units located immediately across the street to the west of the subject site, and there is a hotel use located immediately south of the site. Due to the proximity of these uses and the proposed hours of operation, musical entertainment may have the potential to impact adjacent properties if not adequately addressed. Conditions of approval have been included to assist in mitigating any potential impacts to adjacent properties.

3. That the site for the intended use is adequate in size and shape to

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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 proposed uses will be located within an existing restaurant building that was designed to include a bar area and stage for entertainment; no expansion of the existing building is proposed. The site on which the building is located provides parking spaces sufficient for the proposed uses, and landscape buffers are provided at the perimeter of the property to adequately screen the parking lot from abutting properties and rights-of-way.

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

The existing building fronts directly on North Palm Canyon Drive, with the parking area being accessible from East Via Escuela. Via Escuela is designated as a Collector Street in the Circulation Element of the General Plan, and has adequate capacity to accommodate the traffic generated by the uses.

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.

The conditions imposed upon the project are to ensure the safety of patrons and the general public, and to address potential impacts to adjacent properties. These conditions include compliance with building and life safety codes, compliance with the City's noise ordinance, adherence to operational standards, and compliance with general code requirements.

### **ENVIRONMENTAL ANALYSIS**

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the project has been determined to be categorically exempt from further environmental review pursuant to Section 15301(a) – Existing Facilities.

### **NOTIFICATION**

A public hearing notice was published in the local newspaper and mailed to all property owners and registered occupants within a 500-foot radius of the subject property. As of the writing of this report, staff has not received any public correspondence.

### CONCLUSION

The application will re-establish the cocktail lounge and nightclub uses that had existed on the site previously, and are permitted in the C-1 zoning district upon approval of a

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Conditional Use Permit. The uses conform to the criteria for approval as conditioned; consequently, staff recommends approval of the application.

Flinn Fagg, AICP

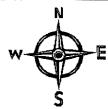
**Director of Planning Services** 

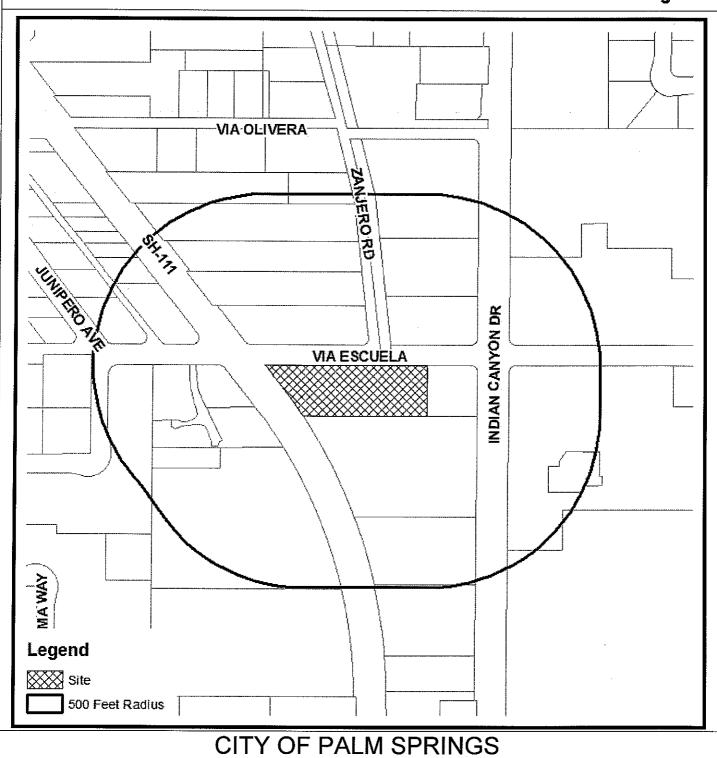
# Attachments:

- 1. Vicinity Map
- 2. Resolution
- 3. Conditions of Approval
- 4. Justification Letter
- 5. Site Plan/Floor Plan
- 6. Site Photos



# Department of Planning Services Vicinity Map





A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING CASE 5.1166, A CONDITIONAL USE PERMIT (CUP) TO OPERATE A COCKTAIL LOUNGE AND NIGHTCLUB USE AT 2080 N. PALM CANYON DRIVE.

### THE PLANNING COMMISSION FINDS AND DETERMINES AS FOLLOWS:

- A. Stephen Wooster, on behalf of the Ogden M. Edwards Revocable Living Trust ("Applicant"), has filed a Conditional Use Permit application with the City pursuant to Section 94.02.00 of the Zoning Code to allow a cocktail lounge and nightclub use in an existing 6,465-square foot restaurant building located at 2080 N. Palm Canyon Drive, Zone C-1/R-3, APN: 504-320-030.
- B. A cocktail lounge and nightclub may be permitted in the C-1 (Retail Business) Zone upon the approval of a Conditional Use Permit, pursuant to Section 92.12.01(D)(9) of the Zoning Code.
- C. A notice of public hearing of the Planning Commission of the City of Palm Springs to consider Case No. 5.1166 CUP was given in accordance with applicable law.
- D. On May 13, 2015, a public hearing on the application was held by the Planning Commission in accordance with applicable law.
- E. 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
- F. 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 OF THE CITY OF PALM SPRINGS RESOLVES:

- <u>Section 1:</u> Section 94.02.00(B)(6) of the Zoning Code requires the Planning Commission to 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.

Section 92.12.01(D)(9) of the Palm Springs Zoning Code permits a cocktail lounge and nightclub in the C-1 zone when approved under a Conditional Use Permit.

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 re-establishment of the restaurant use will provide additional dining options for visitors and residents in the North Palm Canyon Drive corridor; the nightclub and cocktail lounge use will also assist in strengthening existing entertainment-related uses in the area. The proposed uses are consistent with the goals of the General Plan in maintaining a "resort destination image," in that they will support the existing and proposed hotel development in the area.

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 proposed uses will be located within an existing restaurant building that was designed to include a bar area and stage for entertainment; no expansion of the existing building is proposed. The site on which the building is located provides parking spaces sufficient for the proposed uses, and landscape buffers are provided at the perimeter of the property to adequately screen the parking lot from abutting properties and rights-of-way.

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 existing building fronts directly on North Palm Canyon Drive, with the parking area being accessible from East Via Escuela. Via Escuela is designated as a Collector Street in the Circulation Element of the General Plan, and has adequate capacity to accommodate the traffic generated by the uses.

- 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
- I. 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.

The proposal is to operate a 6,465-square foot restaurant, cocktail lounge and nightclub in an existing building. Conditions of Approval have been included in the attached Exhibit A to ensure that the use operates in a manner which protects the public health, safety and general welfare. These conditions include compliance with the City's noise ordinance, limitations on operating hours and other necessary requirements.

NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby approves Case No. 5.1166 – CUP, subject to the conditions set forth in the attached Exhibit A.

ADOPTED this 13th day of May, 2015.

AYES:	
NOES:	
ABSENT:	
ABSTAIN:	

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

Flinn Fagg, AICP Director of Planning Services

### **EXHIBIT A**

Case 5.1166 CUP The W Ultra Lounge

2080 N. Palm Canyon Drive

May 13, 2015

### **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. <u>Project Description</u>. This approval is for the project described per Case 5.1166 CUP, except as modified 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, date stamped April 19, 2015, except as modified by the conditions below.
- ADM 3. <u>Conform to all Codes and Regulations</u>. 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. <u>Minor Deviations</u>. 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 5.1166 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. <u>Time Limit on Commencement of Use</u>. The time limit for commencement of the use authorized by this conditional use permit shall be two (2) years from the effective date of approval. A conditional use permit shall become effective after an elapsed period of fifteen (15) days from the date of the decision by the commission authorizing the permit.
- 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. 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 the law.
- ADM 11. Comply with City Noise Ordinance. This use and property 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. <u>Conditional Use Permit Availability.</u> The applicant shall provide a copy of this Conditional Use Permit to all buyers and potential buyers.

### PLANNING DEPARTMENT CONDITIONS

- PLN 1. <u>Alcohol Sales</u>. The Conditional Use Permit authorizes the sale of beer, wine, and distilled spirits from 2080 N. Palm Canyon Drive.
- PLN 2. Hours of Operation. The operating hours shall be 8:00 A.M. to 2:00 A.M. daily. Any future modifications to the hours of operation shall require an amendment to this Conditional Use Permit.
- PLN 3. <u>Entertainment</u>. Entertainment to include disc jockeys, live music, comedy performers, fashion shows, and dancing. All entertainment shall be limited to indoor areas only, and all doors and windows shall remain closed while the entertainment is occurring. Bass levels shall be maintained at a reasonable level.
- PLN 4. <u>Sign Applications Required</u>. 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 5. <u>Exterior Alarms & Audio Systems</u>. No sirens, outside paging or any type of signalization will be permitted, except approved alarm systems.
- PLN 6. <u>Outside Storage Prohibited</u>. No outside storage of any kind shall be permitted except as approved as a part of the proposed plan.

### **BUILDING DEPARTMENT CONDITIONS**

BLD 1. <u>Construction Permits</u>. Prior to any construction on-site, all appropriate permits must be secured.

### FIRE DEPARTMENT CONDITIONS

These Fire Department conditions may not provide all requirements. Detailed plans are still required for review.

- FID 1 These preliminary conditions are subject to final plan check and review. Initial fire department conditions have been determined from the previously approved seating plan contained in the CUP application stamped August 22, 2007. Additional requirements may be required at the time of the Exit Analysis submittal.
- FID 2 Fire Department Conditions were based on the 2013 California Fire Code as adopted by City of Palm Springs, Palm Springs Municipal Code and latest adopted NFPA Standards.

# FID 3 Plans and Permits (CFC 105.1):

<u>Permits and scaled drawings are required for this project</u>. Plan reviews can take up to 20 working days. Submit a minimum of four (4) sets of drawings for review. Upon approval, the Fire Prevention Bureau will retain one set.

Plans shall be submitted to:

City of Palm Springs Building and Safety Department 3200 E. Tahquitz Canyon Way Palm Springs, CA 92262

Counter Hours: 8:00 AM - 6:00 PM, Monday - Thursday

A deposit for Plan Check and Inspection Fees is required at the time of Plan Submittal. These fees are established by Resolution of the Palm Springs City Council.

Complete listings and manufacturer's technical data sheets for all system materials shall be included with plan submittals (four sets). All system materials shall be UL listed or FM approved for fire protection service and approved by the Fire Prevention Bureau prior to installation.

FID 6 "Exit Analysis Plan" required (CFC 104.7.2): Prepared, stamped and

signed by a <u>state licensed architect</u> in  $\frac{1}{4}$ " = 1' scale. The floor plan shall address the following for a Group A-2 occupancy:

- Provide net occupant load calculations for interior (restaurant & bar) and outdoor patios. The occupant load determination shall be made by the Fire Marshal
- Seating/table diagram with compliant aisle widths
- Minimum required egress width to accommodate occupant load
- Exit access travel distance
- Egress paths to public way
- · Means of egress illumination locations
- Illuminated EXIT sign locations
- Compliant exit doors/gates and door/gate hardware (panic hardware).
   Show on hardware schedule.
- Elevation changes in the exit discharge
- Locations of fire extinguishers (minimum rating 2A-10BC).
- Project Notes The previously approved seating plan submitted contains inaccurate occupant load calculations. Prepare and submit for approval a new floor plan with current seating plan and correct occupant load calculations and totals. Previously approved seating plan is not prepared by a licensed architect.
- FID 7 Posting of Occupant Load (CFC 1004.3): Every room or space which is used for assembly, classroom, dining, drinking, or similar purposes having an occupant load of 50 or more shall have the occupant load of the room or space posted in a conspicuous place, near the main exit or exit access doorway from the room or space. Posted signs shall be of an approved legible permanent design and shall be maintained by the owner or authorized agent.
  - Occupant load numbers will be determined by the Fire Marshal after the receipt and approval of the Exit Analysis Plan
  - Signage shall be posted in both the restaurant and patio
- FID 8 Fire Extinguisher Requirements (CFC 906): Provide one 2A-10BC portable fire extinguisher for every 75 feet of floor or grade travel distance for normal hazards. Extinguishers shall be mounted in a visible, accessible location 3 to 5 feet above floor level. Preferred location is in the path of exit travel or near an exit door.
  - Deep fat fryers shall have a Class K UL rated 2A:K wet chemical fire extinguisher located with 30 feet of the fryer(s)

# FID 9 Fire Protection Systems

- Fire extinguishers shall have been serviced by a licensed contractor within the previous year.
- Fire Alarm Systems (if present) shall have been inspected by a licensed

contractor within the past year.

- Cooking hood suppression system shall have been serviced by a C-16 licensed contractor within the previous 6-months.
- Cooking hood, exhaust plenum and exhaust fan grease collector shall have been cleaned within the previous 6-months.

**END OF CONDITIONS** 

To Whom it May Concern,

Re: Justification Letter for 2080. N. Palm Canyon Drive, Palm Springs, CA.

Please find the following information for the above property address formally known as Dinks.

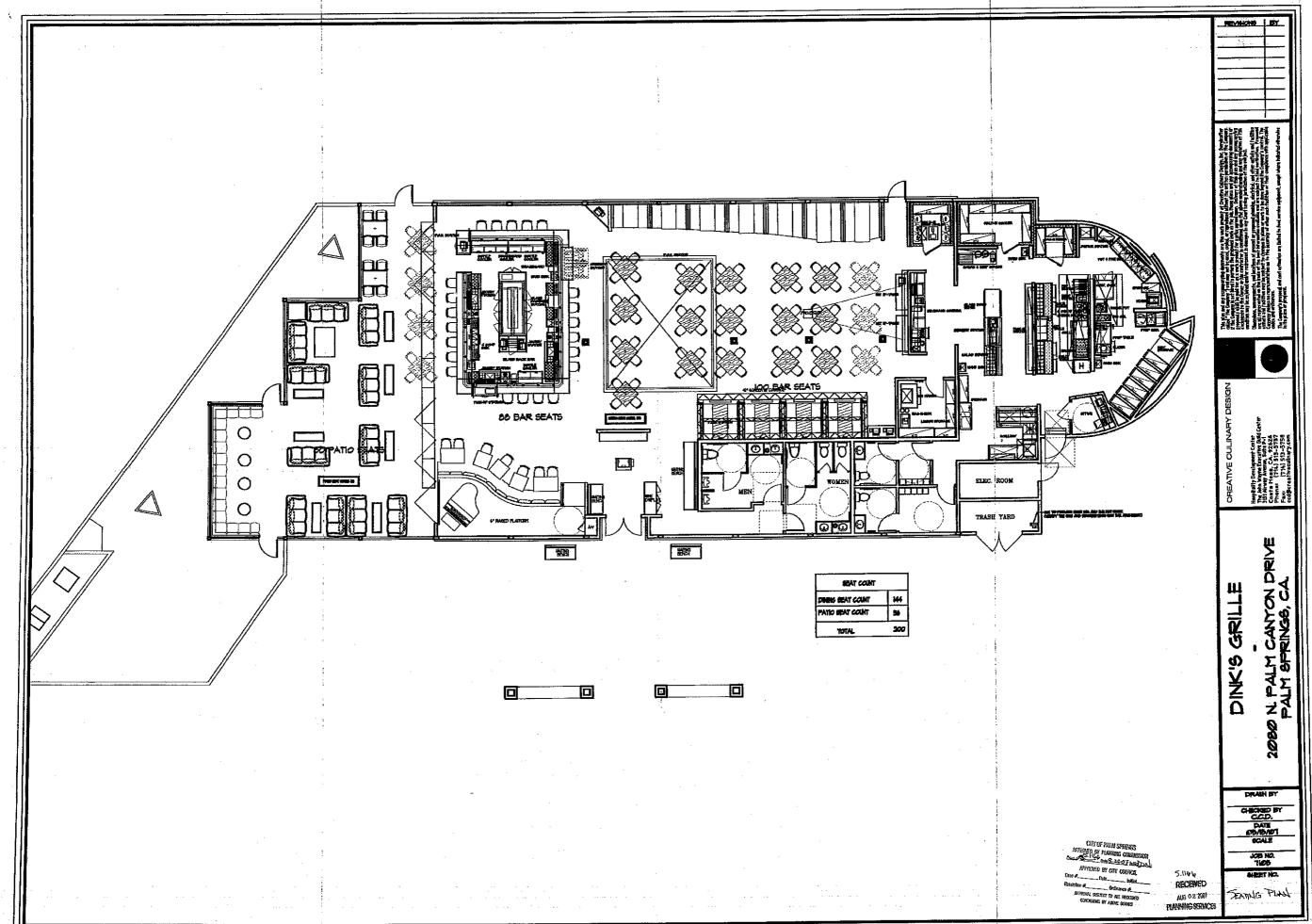
The type of use will be the same as previous usages and functions: Restaurant, bar, lounge, live entertainment (Occasional variety, comedy, trio, piano, dj, fashion, dance).

The premises are ABC approved License type 47 and the hours of operation will be in the range of 8am to 2am, 7 days a week, depending on season and there will be approximately 20 employees per shift.

May I take this opportunity to thank you in advance for all your help and I trust the above will meet to your satisfaction and approval. I look forward hearing from you at your earliest convenience and hope you are having a pleasant day.

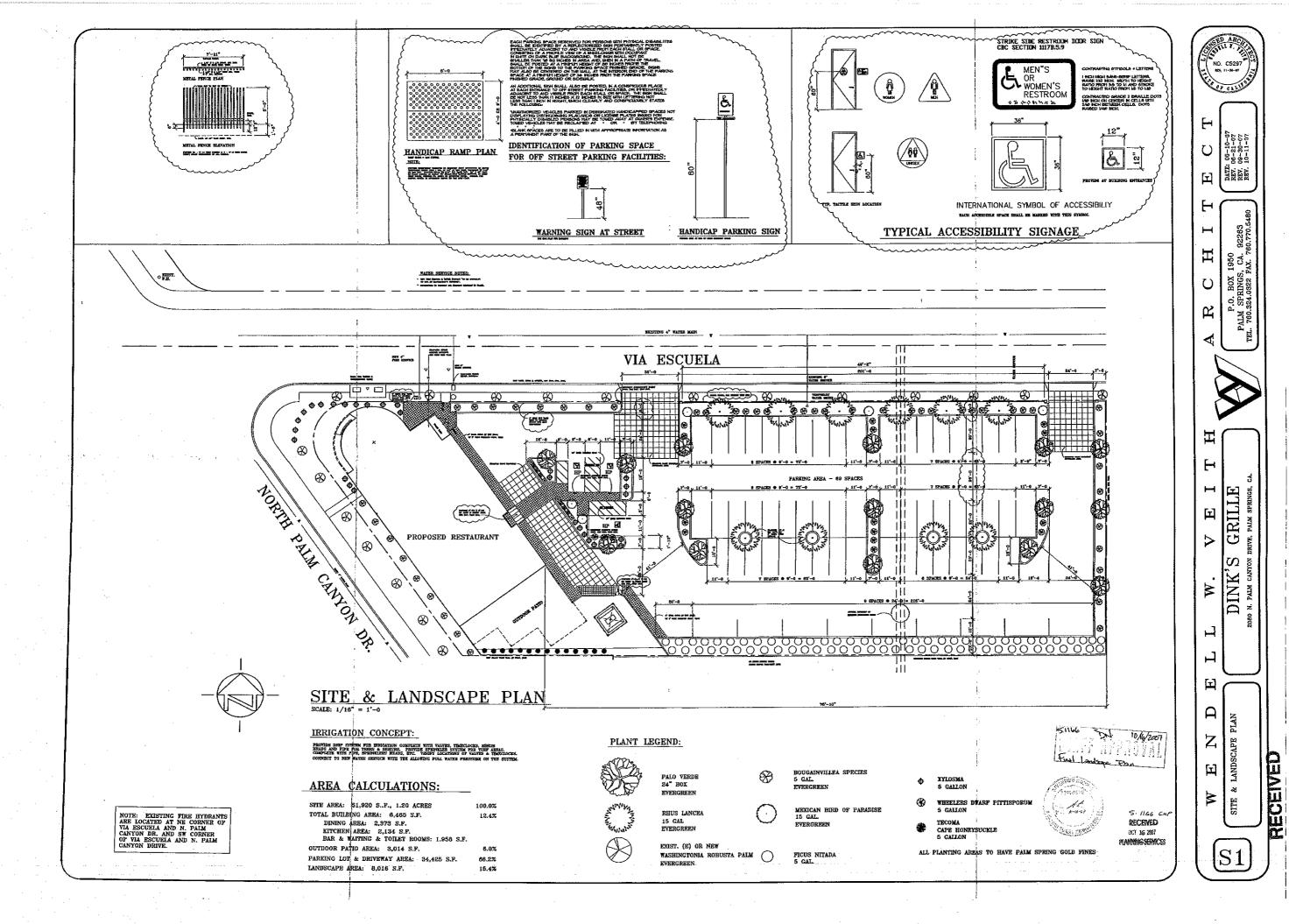
Kind regards,

Stephen Wooster



RECEIVED

PLANNING SERVICES



PLANNING SERVICES
DEPARTMENT

