

# SNIFFEN & SPELLMAN, P.A.

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October 19, 2020

**Via E-mail**

Landmarks Preservation Commission  
c/o Renee Silvan, Chairman  
360 South County Road  
Palm Beach, Florida 33408

**Re: Objection to Application by Café L'Europe for Outdoor Seating  
Landmarks' Case # COA-039-2020  
Zoning Case #Z-20-00295**

Dear Chairman Silvan:

Our office represents Thomas O. McCarthy who resides at 140 Brazilian Avenue in the residential neighborhood immediately adjacent to Café L'Europe. Mr. McCarthy objects to the Application by 331 South County Road LLC ("Applicant") seeking to relocate 20 dining seats from inside Café L'Europe to outside along the sidewalk of South County Road and Brazilian Avenue. Such outdoor seating would: a) alter the Historic Vista of the Town Hall Square District; b) result in an inadequate space for pedestrian standing or traffic; c) allow for noise and odors to permeate into the nearby residential neighborhood; d) promote a future increase in the number of seats of Café L'Europe; and e) is on its face not supported by a sufficient hardship required for the variance sought.

The Applicant asserts that it should be allowed to relocate 20 of its inside seats to outside dining along the sidewalk on South County Road and Brazilian Avenue, because "it is common for restaurants in this area" to have such seating. The analysis is not that simple. The Applicant overlooks the fact that much of the outside dining in the Town is not located on a public sidewalk, but placed within the property lines of the restaurant (such as Bricktops) or tucked away on a side street or Via, as opposed to along a main street such South County Road or Worth Avenue.

More importantly, Café L'Europe is located in the Town Hall Square Historic District and Vista. The Town Hall Square District was put in place in 1990 in order to preserve the character and vista of the Town Hall Square from South County Road (in both directions) from Chilean Avenue on the south end to Brazilian Avenue on the north end.<sup>1</sup> In doing so, the Town Hall Square area was to recall "Palm Beach's early, pedestrian-oriented days." At the same time, while the focus of the district was the Town Hall and the Memorial Fountain, the buildings on the west and east sides of South Ocean were included to "help to frame in, and compliment, this focal composition." Town Hall Square Designation Report, p. 3. The Applicant's request, however, will alter the Town Hall vista, and narrow the accessibility of the very sidewalks which were to reflect the early "pedestrian oriented days."

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<sup>1</sup> A copy of the Town Hall Square District/Vista Map is attached hereto as Exhibit "A."

**REPLY TO:**

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In addition, the granting of outdoor seating to Café L'Europe could easily set a precedent for restaurants like Buccan,<sup>2</sup> or other future restaurants, to seek the approval of its own outdoor seating on the sidewalk of South County Road, thereby narrowing the pedestrian flow on both sides of the Historic District. As such, the Application should be denied.

Outside of marring the Historic District and Vista, granting the Applicant's Application for outdoor seating on the sidewalk would result in inadequate space for pedestrian standing or traffic. This squeeze in space is apparent in the Applicant's Site Plan. Page LS.5<sup>3</sup> shows the sidewalk along South Ocean Avenue in front of Café L'Europe is at most 10 feet in width, which width is diminished to 7 feet in the multiple areas where 3 foot planters are located on the street side of the sidewalk. Taking out the width of the tables<sup>4</sup> from this area leaves 4.75 feet (per the Application) of clear sidewalk (or less than half of the original size) of sidewalk available for public use. Such area is less than even the 6 feet required for social distancing.<sup>5</sup>

At the same time, the available sidewalk space between tables will be further reduced by those patrons getting in and out at the valet stand in front of the entrance,<sup>6</sup> as well as any diners waiting outside for their table, who will necessarily compete for the same space containing tables and seating for 12. The result is even less public sidewalk access, along with the creation of a potential public safety issue should there be an emergency which requires an evacuation of the restaurant. Therefore, the Application should be denied.

On the Brazilian Avenue side of Café L'Europe, in addition to a reduction in the available clear sidewalk space, the four proposed tables and 8 outdoor seats will necessarily result in an increase in the noise, glare, light and odors escaping into the nearby residential area and Mr. McCarthy's home. It is inevitable that conversation, music and odors will travel easily to the nearby neighbors. At the same time, it will be tempting for Café L'Europe to open the floor to ceiling windows along both Brazilian Avenue and South County Road next to the outdoor seating, so that outdoor diners can feel like they are part of the inside action while also getting a breath of cool air from the air conditioning, resulting in even more noise and odors being released into the neighborhood. Denying the Application will keep any such light, noise and odors captured inside, leaving the neighborhood to remain silent in the evenings.

Added to the above, Mr. McCarthy and others in his neighborhood are concerned that the transfer of 20 seats from inside to outside of Café L'Europe is merely the first step in a process designed to pave the way for a future expansion of the number of total permitted seats. Given that outdoor seating cannot expand the total number of seats available under the Town Code, it appears clear that in these times of COVID-19 concerns, the Applicant is moving tables outside to accommodate those patrons who may balk at dining in close quarters. The Applicant will then later

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<sup>2</sup> Presently, Buccan has only temporary COVID outside seating.

<sup>3</sup> An expanded view of page LS.5 is attached hereto as Exhibit "B."

<sup>4</sup> Curiously, there are no pictures of the proposed tables and/or a mock set up of how they would (or would not), actually fit in the small space between the planters and the building along South County Road.

<sup>5</sup> Pictures demonstrating just how narrow the sidewalk area is now, much less if tables were added, are attached as Composite Exhibit "C."

<sup>6</sup> While the Applicant appears to represent that there are 6 spaces in front of Café L'Europe, it fails to disclose that three of the spaces are reserved for the valet service. *See*, pictures attached as Composite Exhibit "D."

come back for permission to fill in the seats which it transferred outside, thereby increasing the overall number of seats and exacerbating the existing parking and other present operational issues of Café L'Europe. As such, the Application should be denied.

Finally, even if all of the above issues could be ignored (which they cannot) on its face the Application includes a request for a variance, but does not demonstrate any hardship at all, much less of the level required for a variance. At the same time, the Application reflects the desire for a future increase the total number of seats as a justification for a variance, despite the fact on its face the Application claims there will be no increase in total seats.

For example, despite admitting that “the property contains an existing restaurant which has been in existence in this location since 1995,” the Applicant suddenly claims it needs “20 outdoor seats to accommodate their customers when the weather is nice and the Town is at its busiest” in order to operate. Moreover, the need for such seats is because “there have been many occasions **when the applicant has had to turn away customers for lack of seating during the popular dining hours.**” Application Exhibit “C”, ¶1 (emphasis added). The Applicant then claims that it “was not the cause of the dinner patterns of their customers wanting to come at the same timeframe and **causing a lack of available seating.**” Application, Exhibit “C” ¶2 (emphasis added). As a result, the Applicant claims its hardship is a lack of parking for additional outdoor seats, and that 20 outdoor seats is the minimum amount that will make possible the reasonable use of the land, building or structure. Application, Exhibit “C” ¶4-5.

As a preliminary matter, the Court's are clear that an applicant for a variance must demonstrate a “unique hardship” to qualify for a variance. *Bernard v. Town of Palm Beach*, 569 So. 2d 853 (Fla. 4th DCA 1990) (citing, *Nance v. Town of Indialantic*, 419 So. 2d 1041 (Fla. 1982)). By definition, such a **“hardship” may not be found unless no reasonable use can be made of the property without the variance;** or, stated otherwise, **“the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned.”** *Bernard* at 854 (citing, *Town of Indialantic v. Nance*, 485 So. 2d 1318, 1320 (Fla. 5th DCA); *see also*, *Thompson v. Planning Comm'n*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985)(emphasis added). The Applicant admits, however, that a restaurant has been in existence on the property since 1995 without outdoor seating. Therefore, the property can clearly be used for its intended purpose. There is no hardship and no basis for a variance. As such, Landmarks should not be required to spend its valuable time, effort and energy on an Application which on its face cannot be granted because the variance required is not obtainable.

Furthermore, as noted, the Application indicates that it seeks to “Relocate 20 of the existing indoor dining seats to outdoor dining (**not increasing total number of seats**)” yet the justification for the Application relies upon the circumstances and a hardship of having “to turn away customers **for lack of seating,**” and that customers all come at the same time “causing a **lack of available seating.**” (emphasis added) Such statements are inapposite. Clearly, moving seats from inside to outside and “not increasing the total number of seats” will not address having to turn away customers for a lack of available seating as there will still be the exact same number of seats. As such, the “lack of available seating” cannot be the basis for a hardship to support a variance for

outdoor seating which does not seek an increase in the total number of seats. Therefore, the Application should be denied.

In light of all of the above, Mr. McCarthy respectfully requests that the Application be denied.

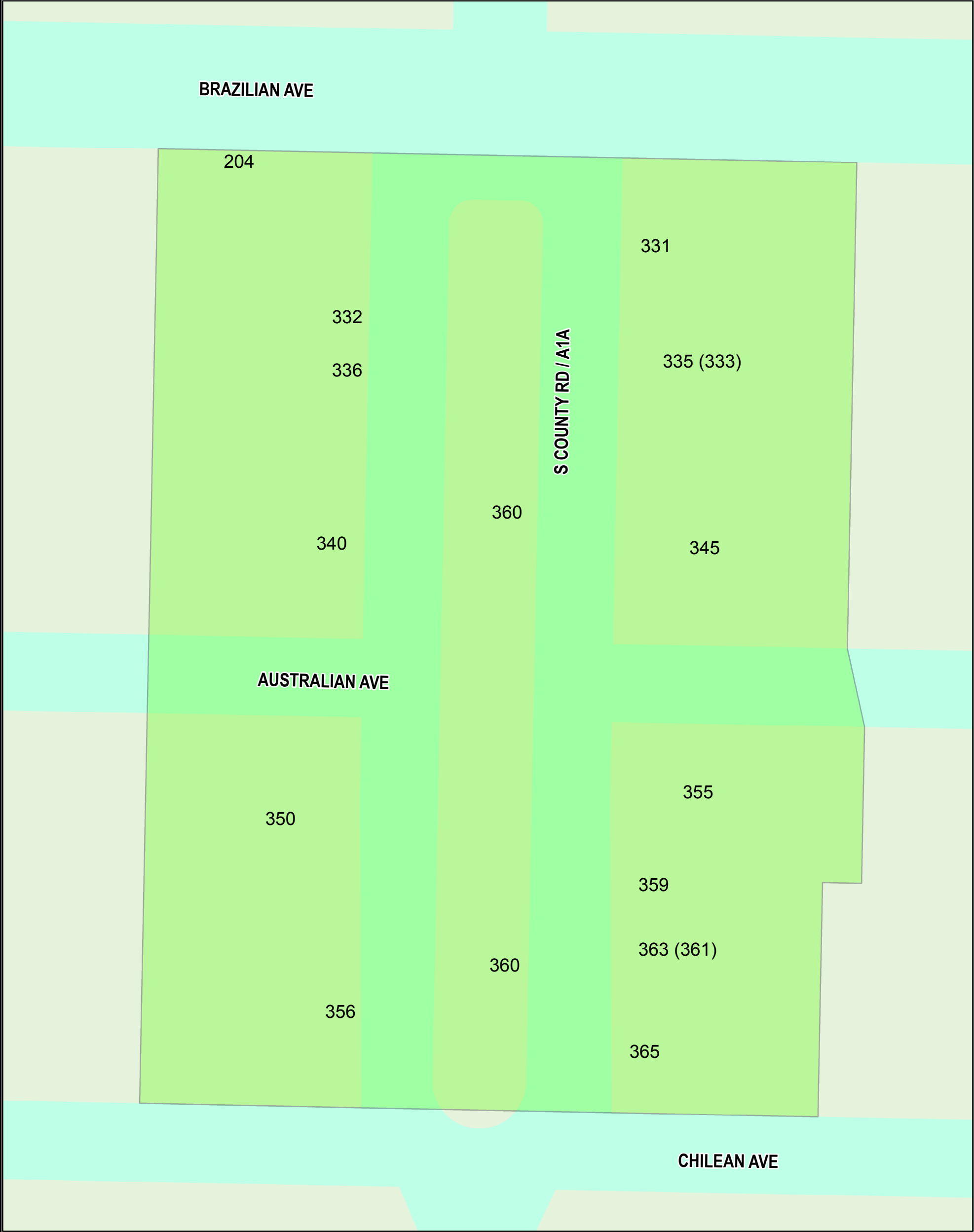
Very truly yours,

*/s/ John R. Eubanks, Jr.*

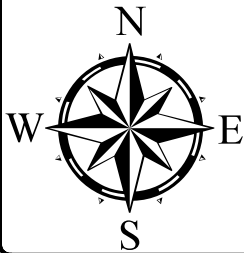
John R. Eubanks, Jr.

cc: Landmarks Preservation Commission Members  
Wayne Bergman, Director Planning, Zoning & Building  
Kelly Churney, Administrative Specialist  
Town Clerk, Town of Palm Beach  
Thomas O. McCarthy

# TOWN HALL SQUARE DISTRICT



**EXHIBIT A**



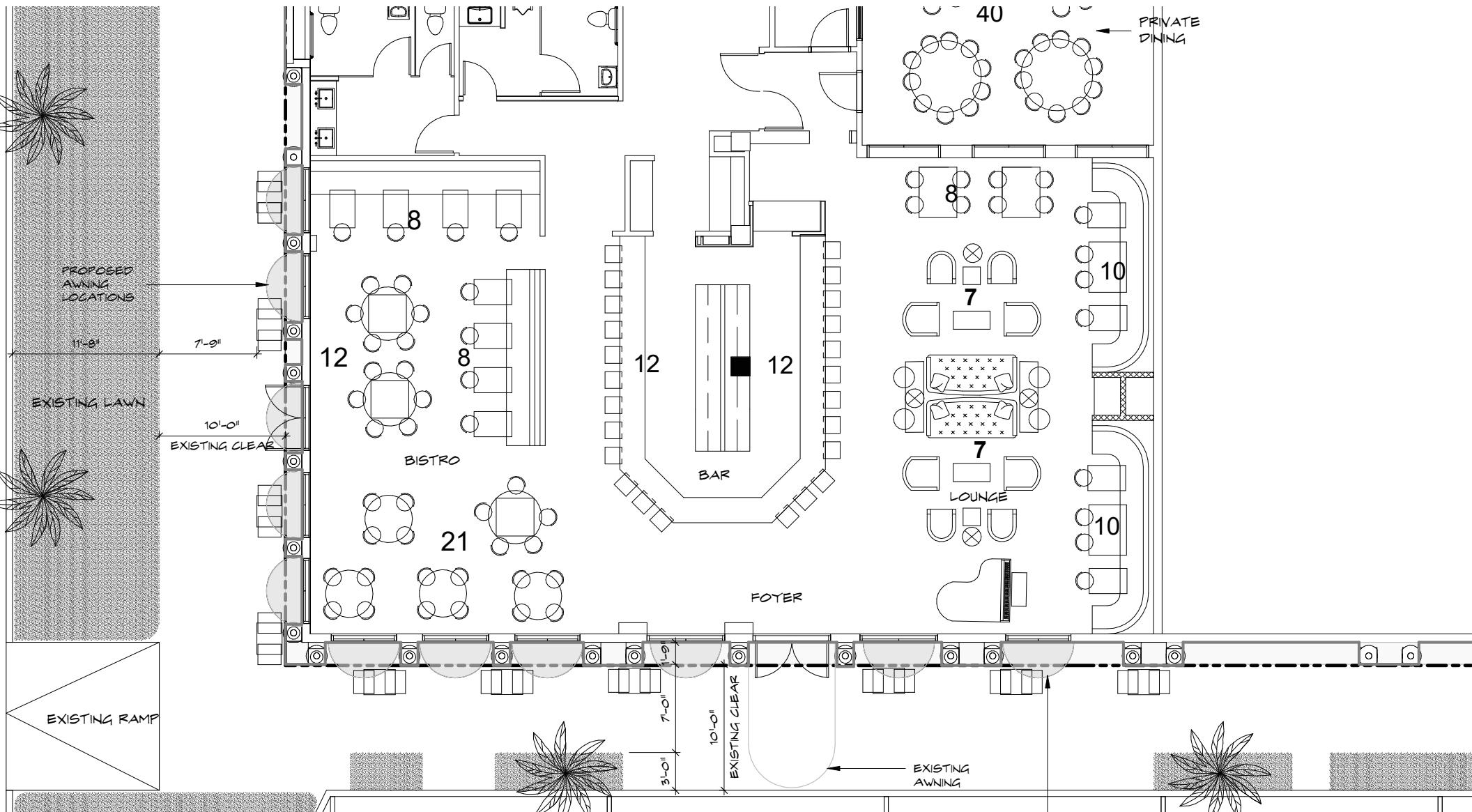
**Legend**

Historic Districts / Vistas



Created By: J. David Donta  
Date: February 22, 2016  
Town of Palm Beach  
Planning, Zoning & Building Dept.





**EXHIBIT B**





EXHIBIT C









1 HOUR  
PARKING  
9:00 AM  
TO  
6:00 PM  
←→

PASSENGER  
LOADING  
ZONE ONLY  
6:00 PM TO 12:00 AM  
NO UNATTENDED  
VEHICLES ALLOWED  
TOW-AWAY ZONE  
←



