



3/31/2003

City of Sausalito  
Community Development Department  
420 Litho Street  
Sausalito, CA 94965

Dear Sir or Madam;

I am requesting a renewal of Conditional Use Permit UP 95-56, to allow a small scale eating and drinking establishment at 350 Harbor Drive, formerly known as Caruso's Sportfishing Center, APN 63-030-01.

My intention is to create a combination fish market and café, and to further perpetuate the heritage of Tony Caruso's original establishment founded in 1957.

The current proposed design envisions a symbiotic balance between fresh fish sales, prepared foods to go, as well as onsite prepared food items similar to what had been served previously at this location. It is my hope and intention to retain the name of *Caruso's* for the business.

Enclosed, please find site photographs, a site plan, and floor plan describing a remodeled space designed to facilitate the flow of the above-mentioned elements of the business. Aesthetically, the design is intended to be simple, fun, and a celebration of Sausalito's maritime and waterfront history.

As both a resident of Sausalito and a maritime enthusiast, I have enjoyed Caruso's for many years as a connection between the waterfront and the community. I look forward to maintaining this legacy for future generations to come.

Thank you for your consideration,



William Foss  
21 Sunshine Avenue  
Sausalito, CA 94965

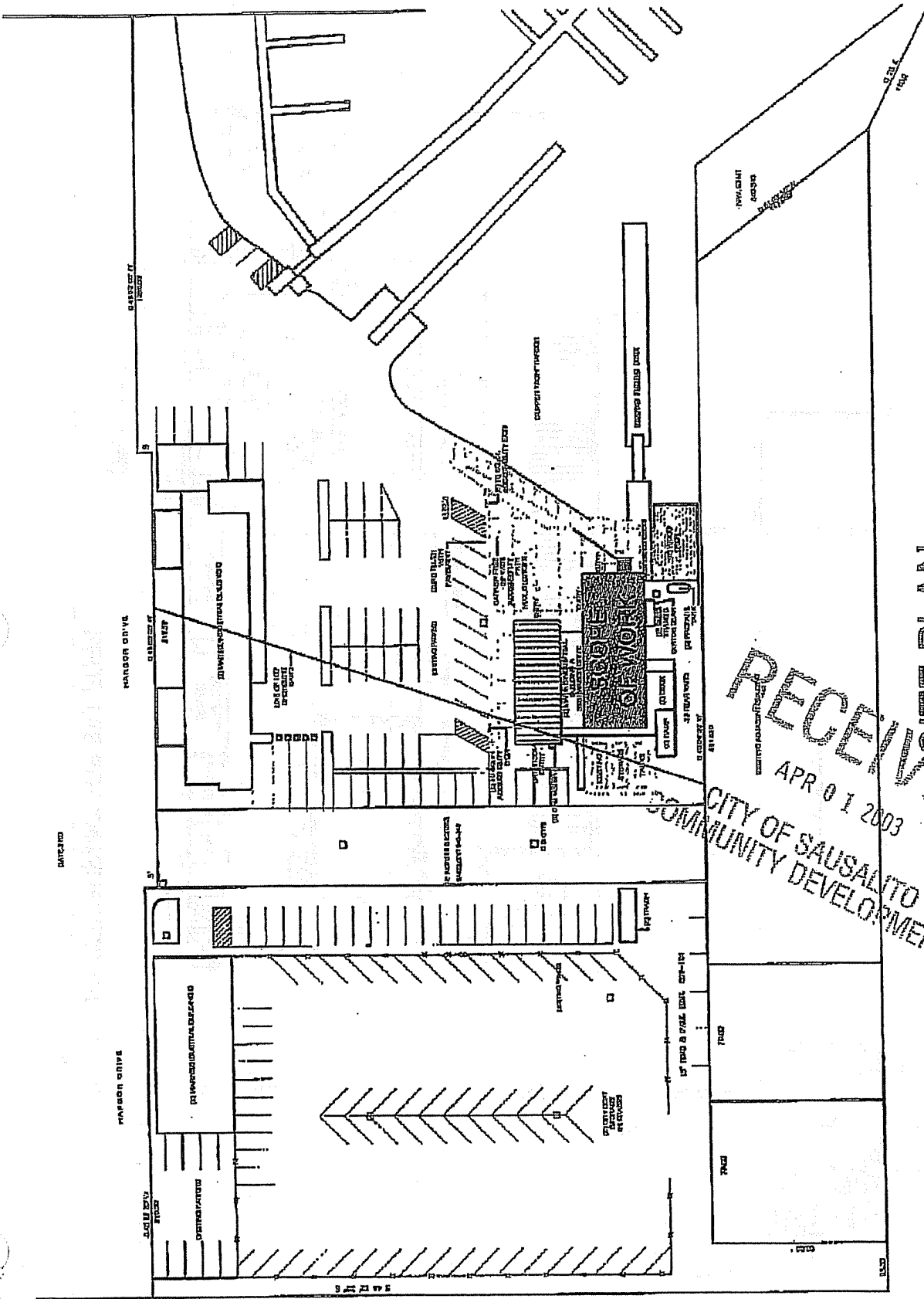
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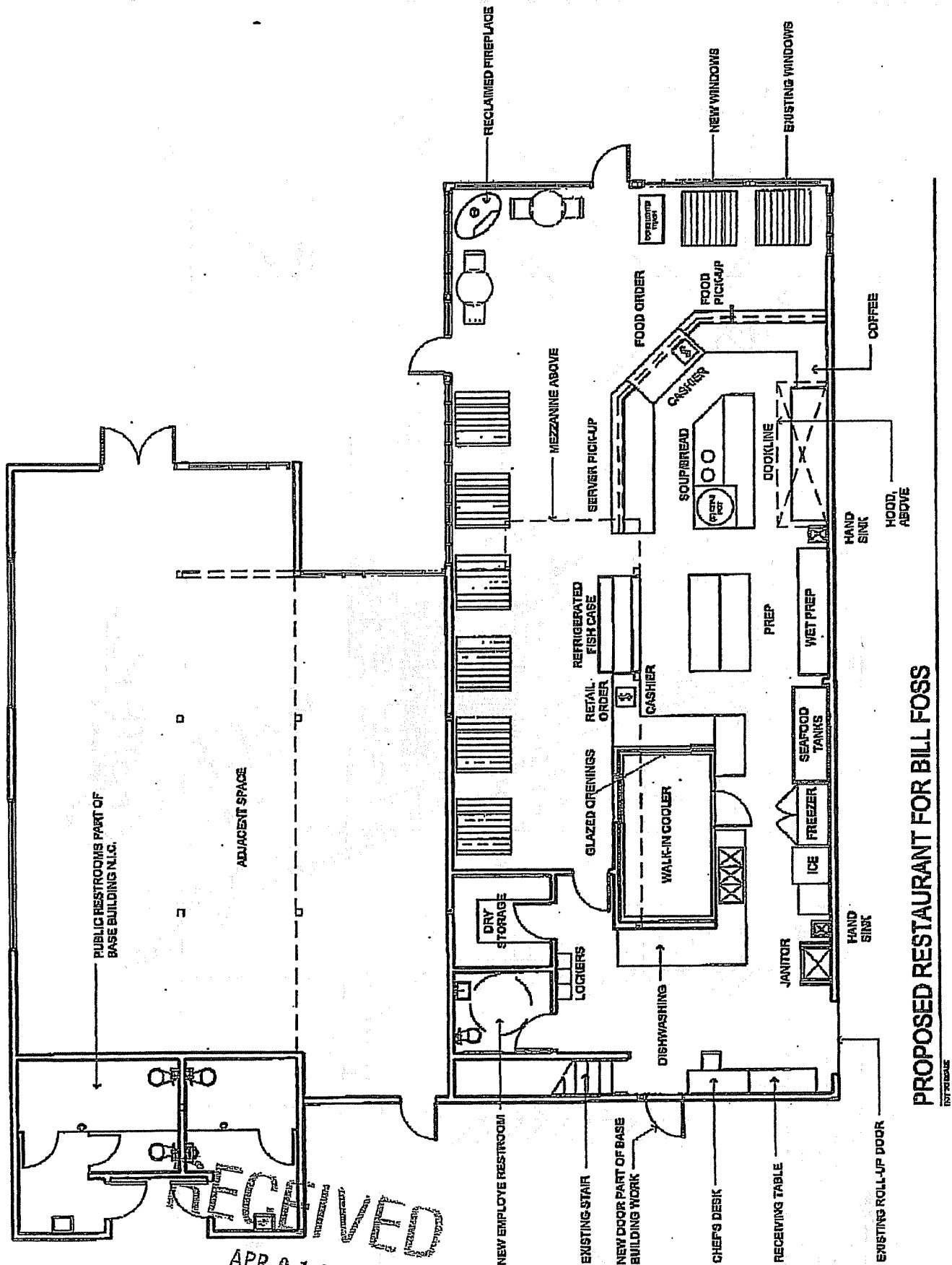
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PROPOSED RESTAURANT FOR BILL FOSS

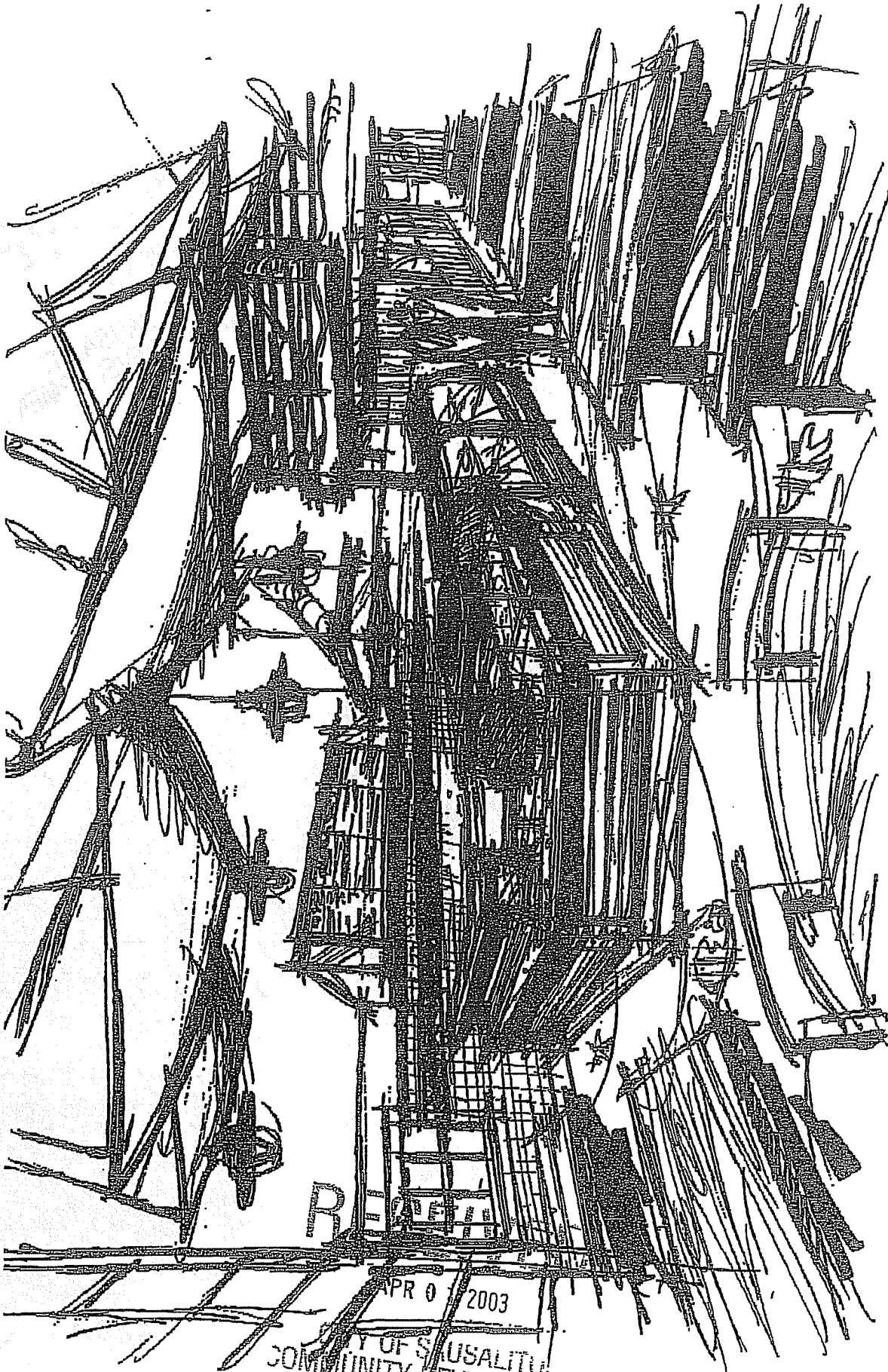
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RESEARCH

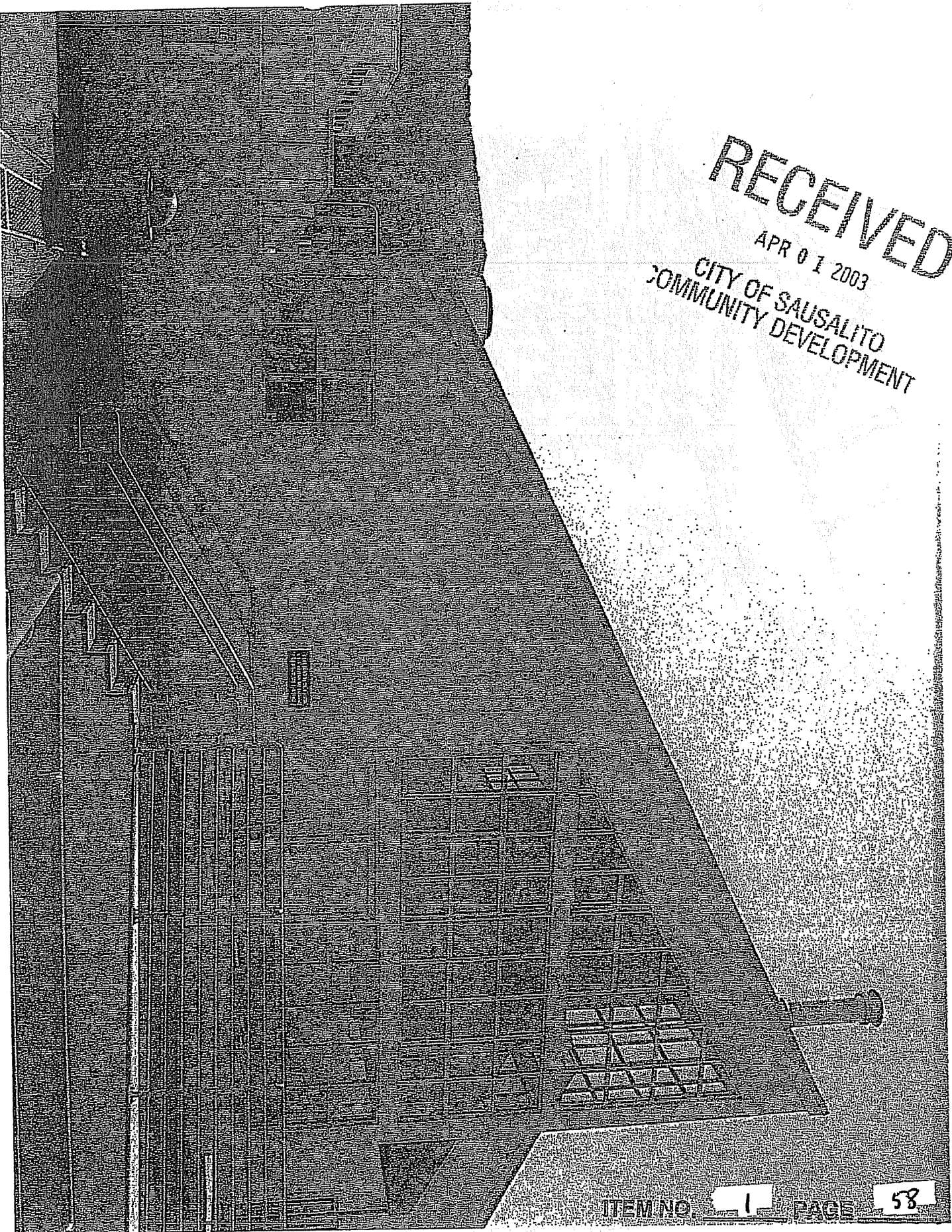
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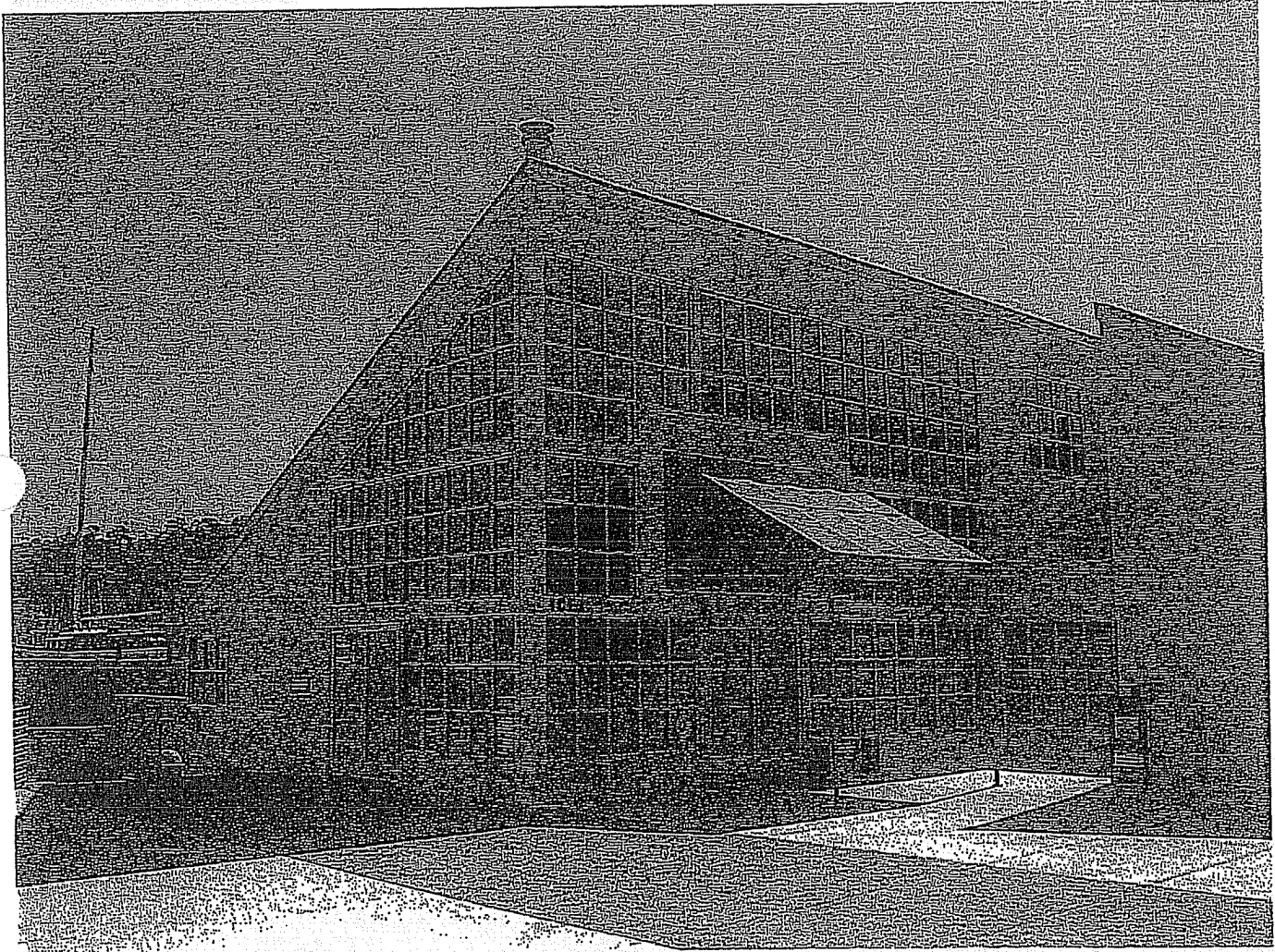
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COMMUNITY DEVELOPMENT





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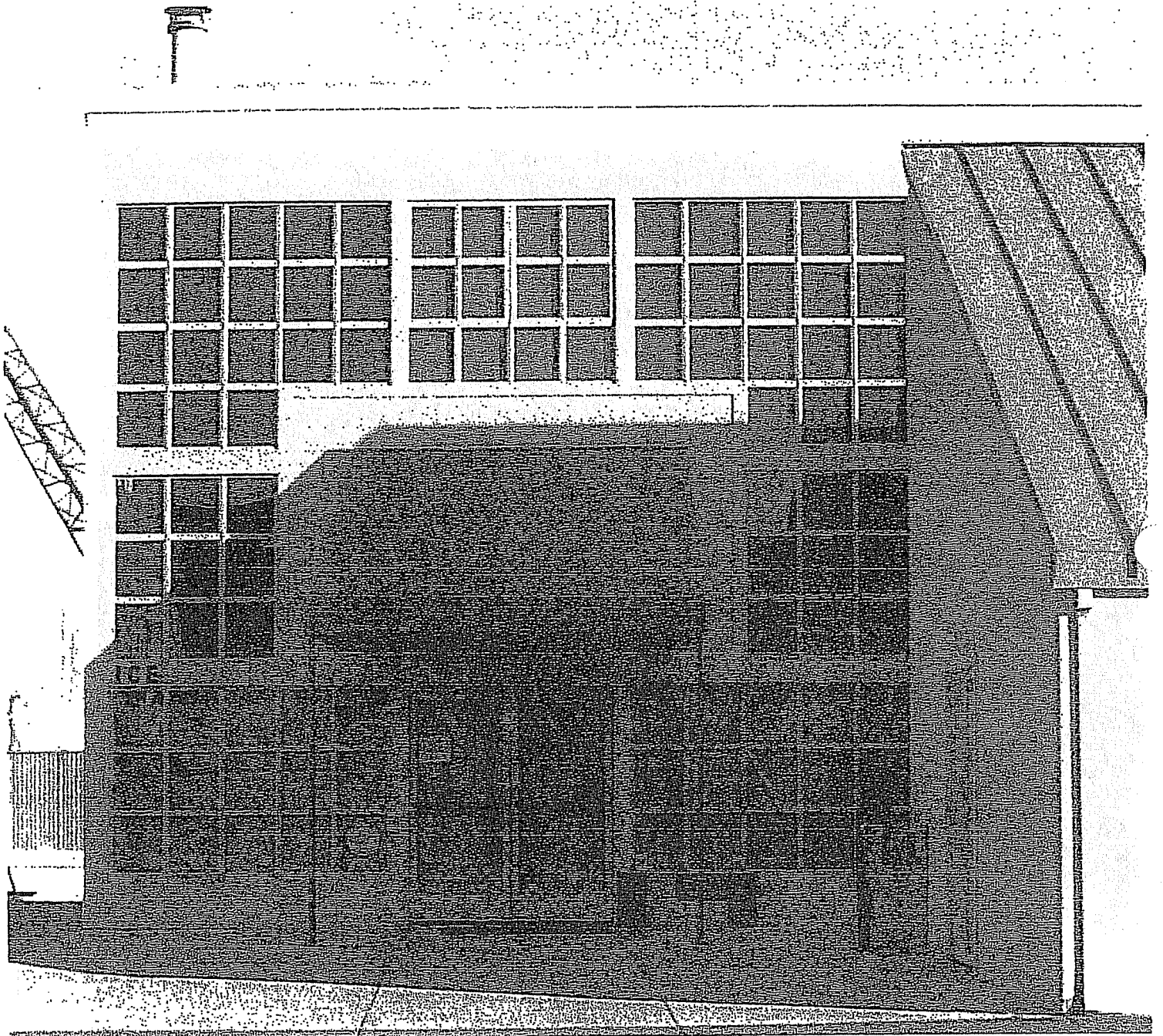
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3 BEFORE Front



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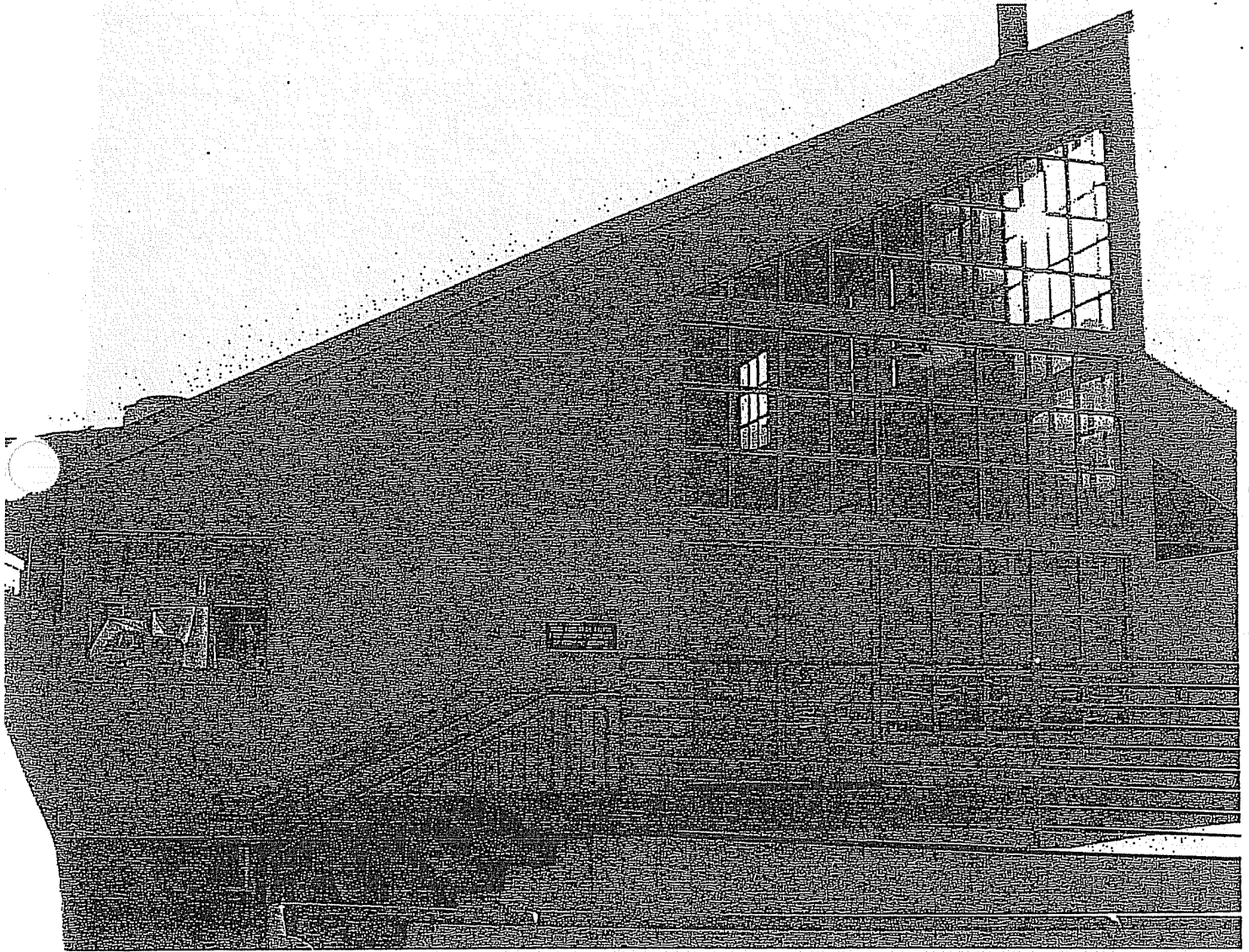
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Back Side



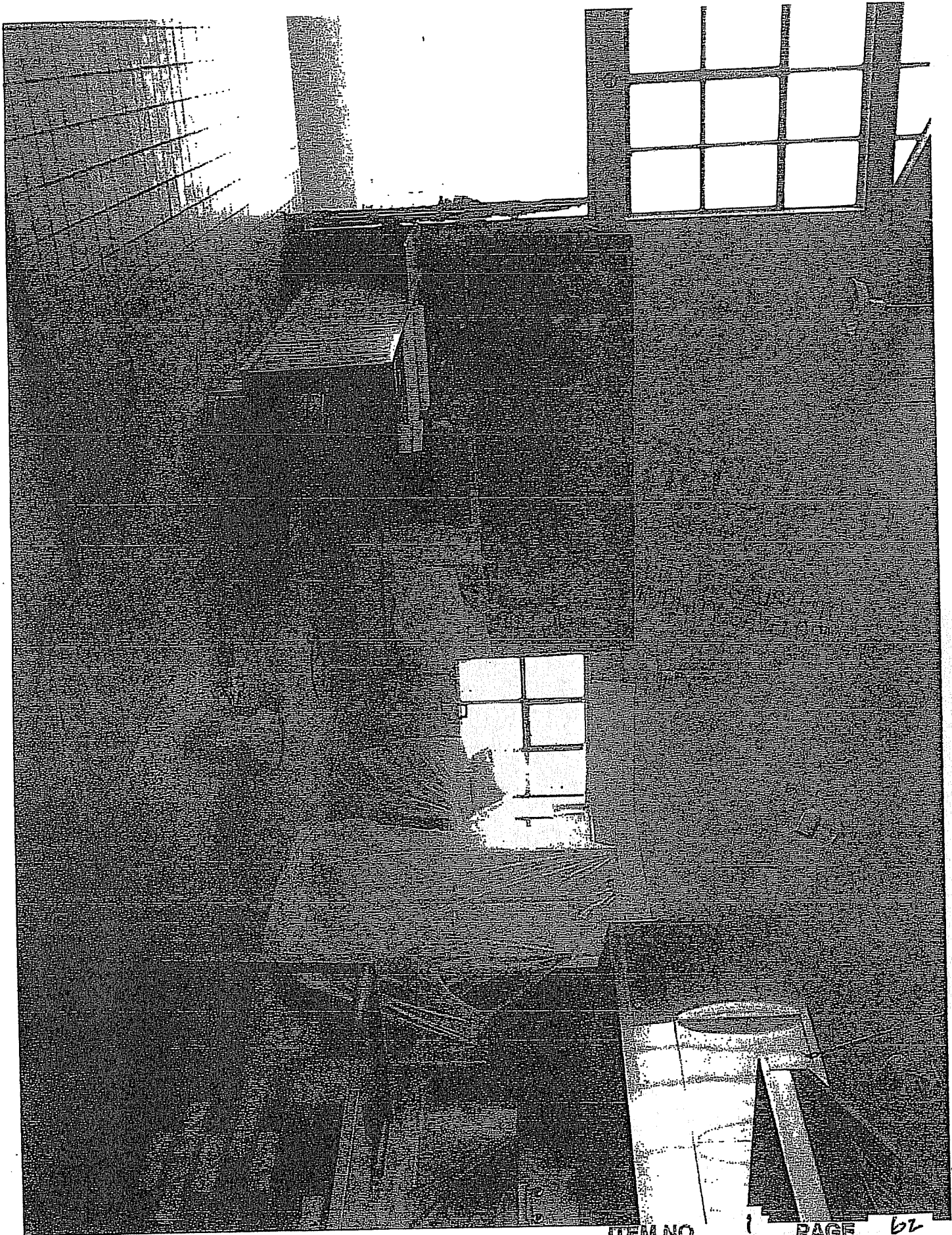
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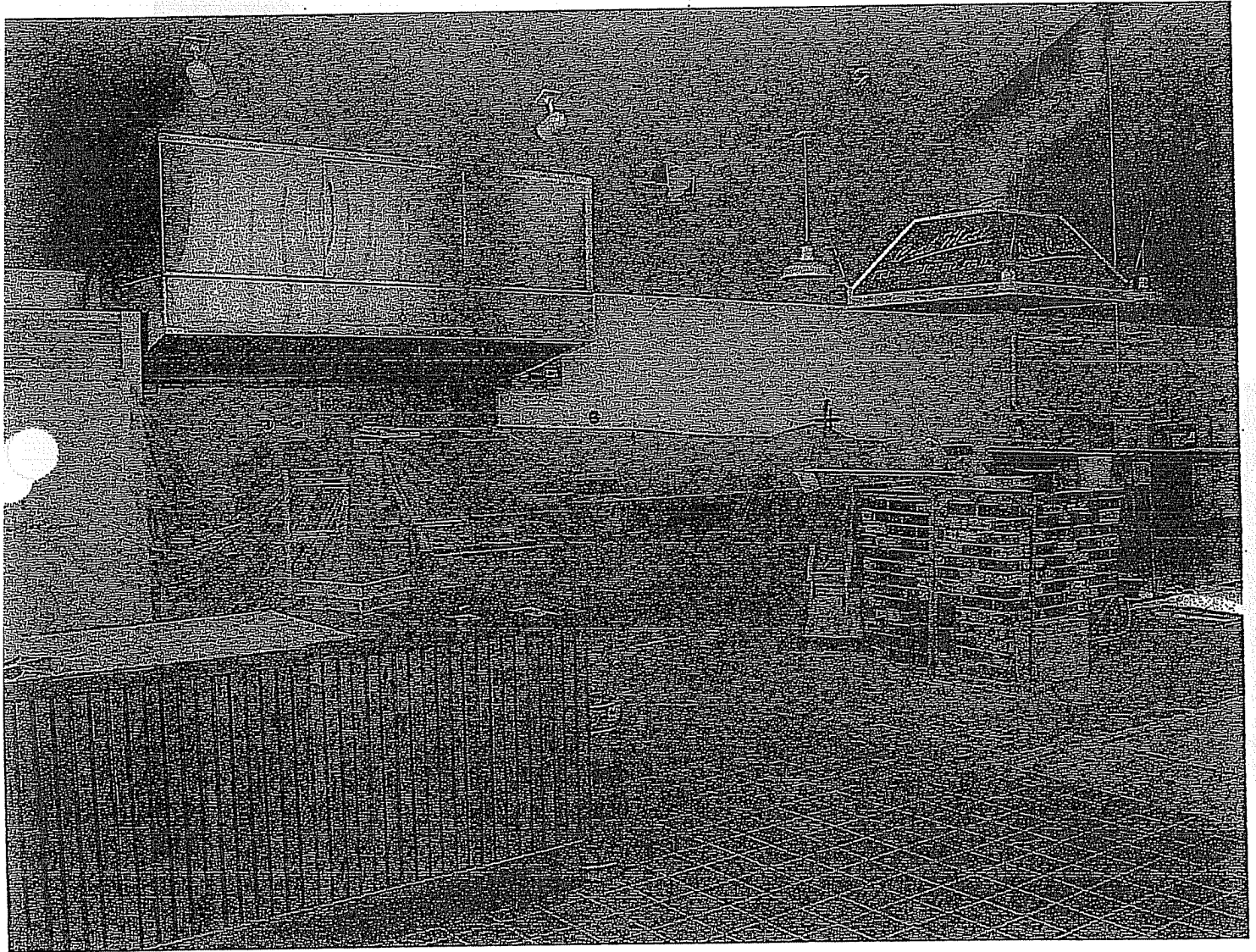
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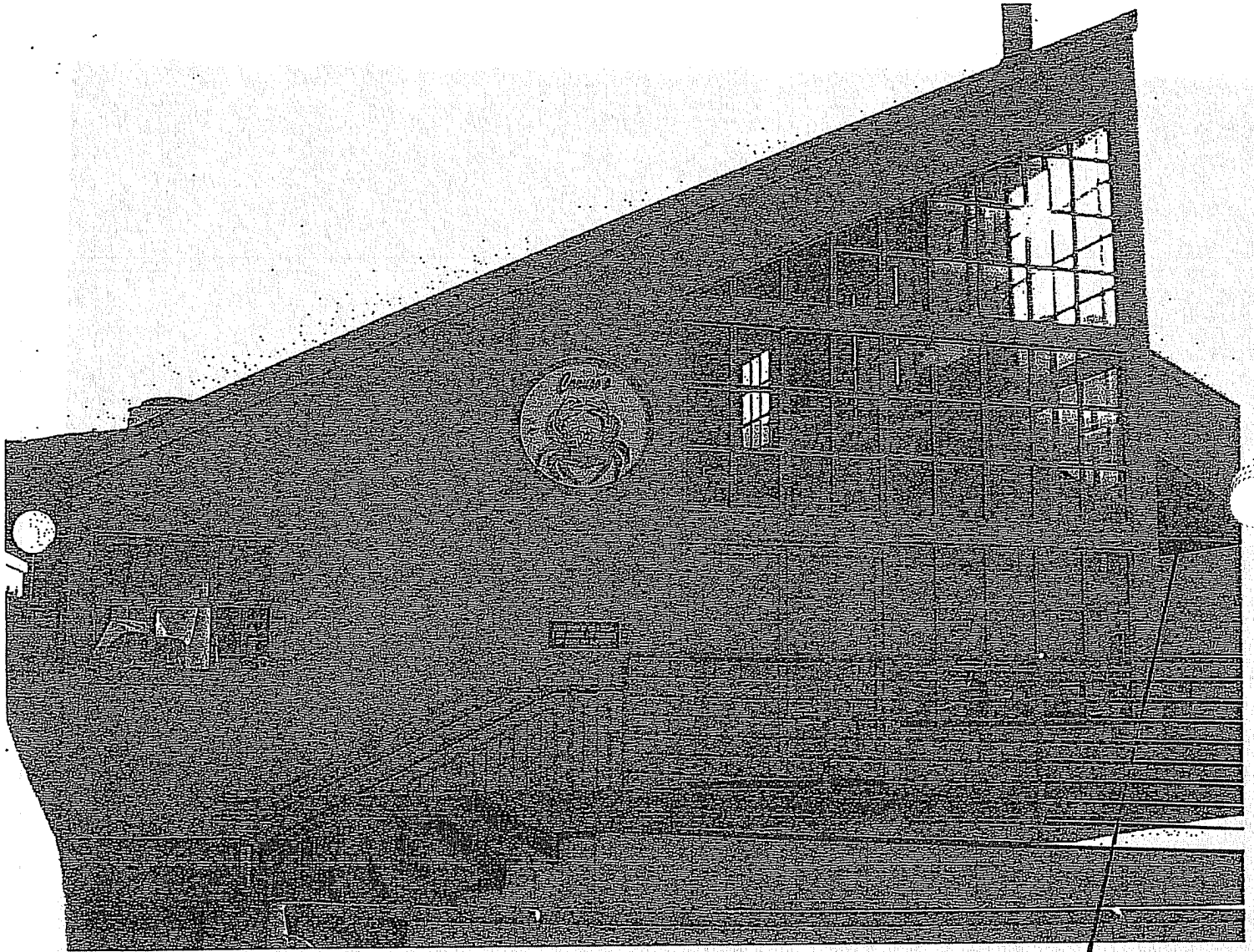
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3' x 3' = 9' □

Arter side



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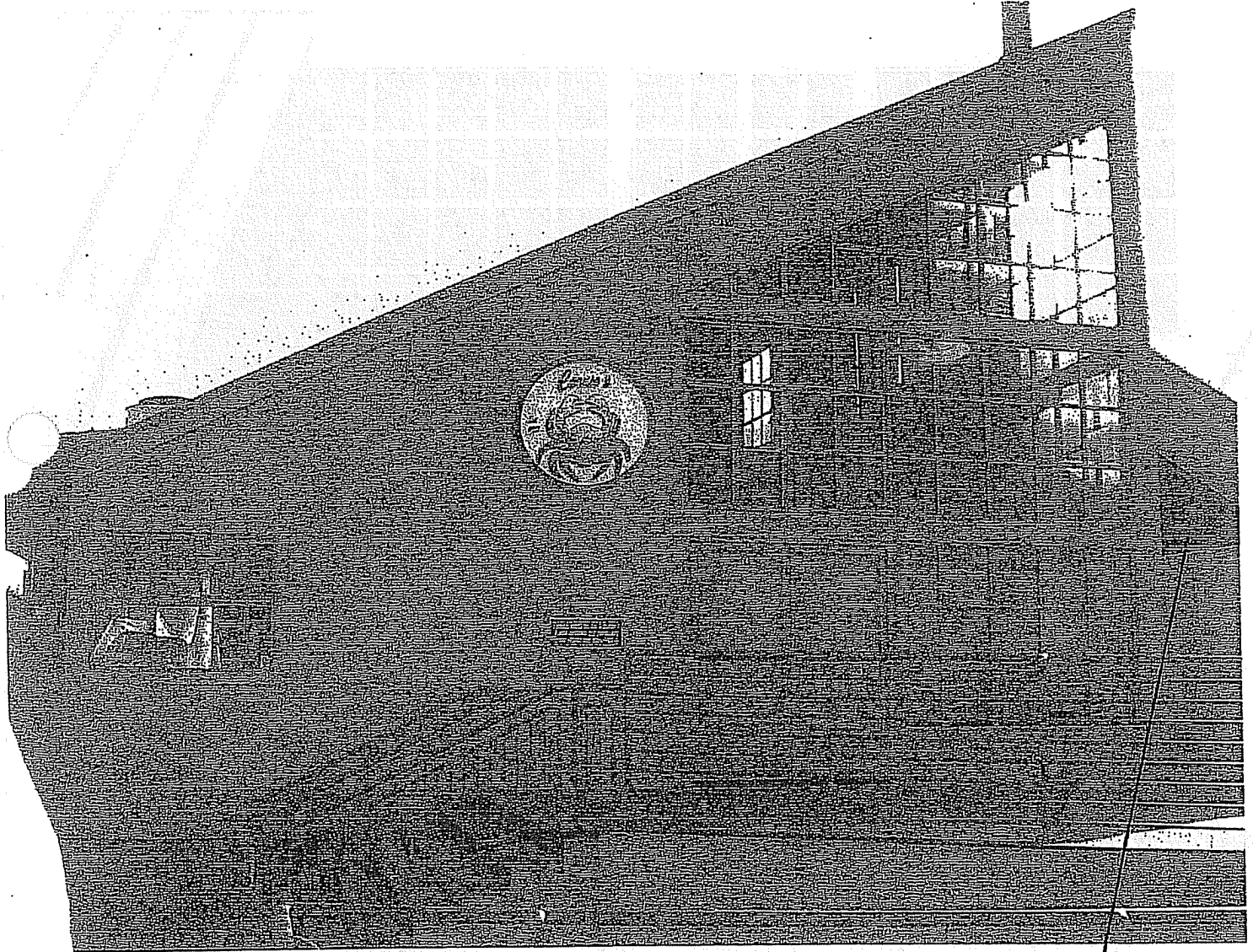
CITY OF SAUSALITO  
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Existing awning  
to be removed

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3' x 3' = 9' □

water side



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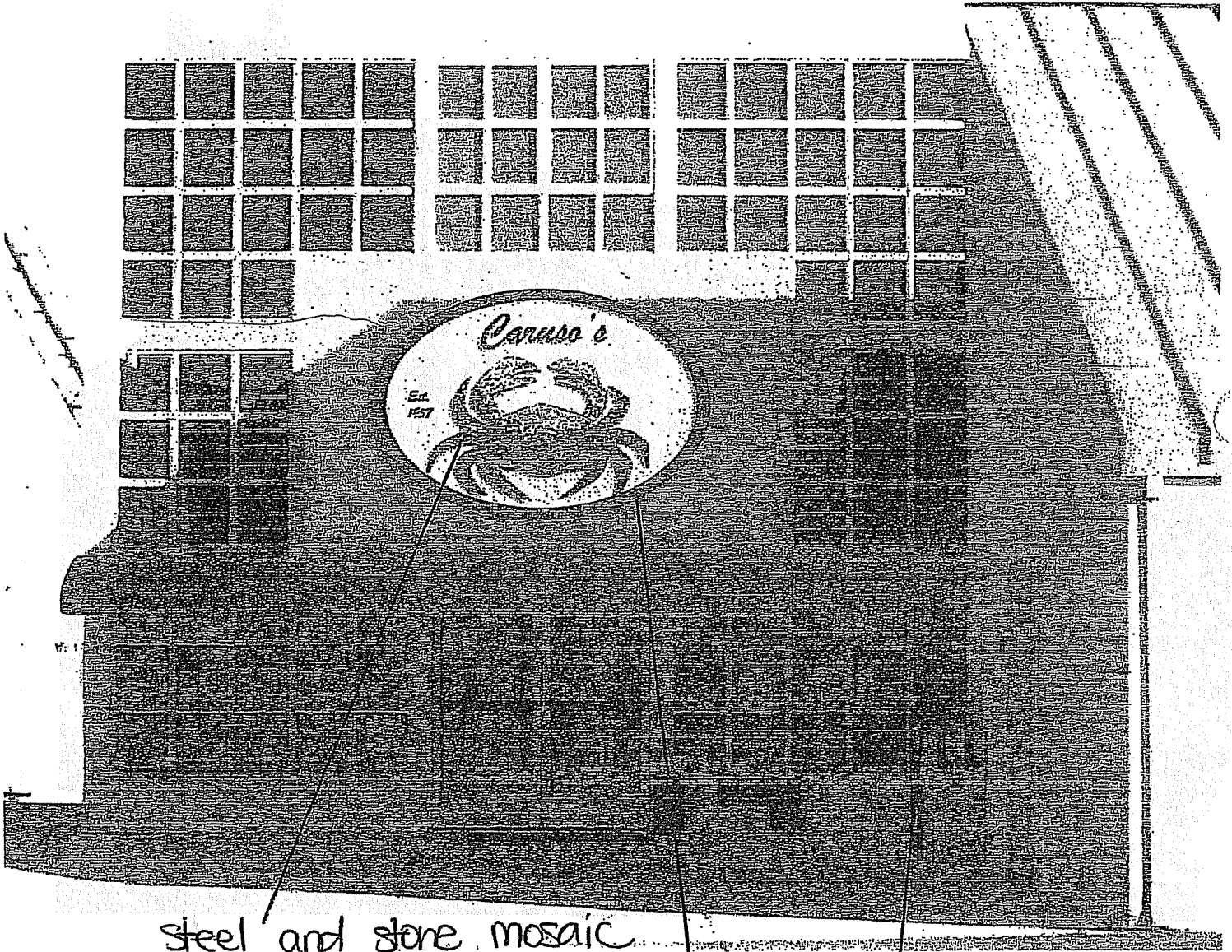
Existing awning  
to be removed.

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7' x 5' = 35 L

Water Front

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steel and stone mosaic

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CITY OF SAUSALITO  
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Wood w/  
attached  
wood  
lettering

Proposed awning

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RESOLUTION NO. 4365

**RESOLUTION OF THE SAUSALITO CITY COUNCIL  
GRANTING AN APPEAL OF A CONDITION OF APPROVAL FOR  
A CONDITIONAL USE PERMIT TO ALLOW SMALL SCALE EATING  
AND DRINKING ESTABLISHMENT WITHIN CARUSO'S  
SPORTFISHING CENTER AT 350 HARBOR DRIVE**

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WHEREAS, appeal of a condition of approval for an approved Conditional Use Permit has been filed pursuant to Sausalito Municipal Code Title 10 (Zoning) Section 10.951 by Donald Olsen, on behalf of John Wheeler and Clipper Yacht Harbor, requesting Council reversal of a condition of approval contained in Resolution 1996-19 which limited the approval of UP 95-56 to two years;

WHEREAS, the Sausalito Planning Commission approved Conditional Use Permit application number UP 95-56 on August 28, 1996 which approved an amendment to Resolution 1990-15 in order to extend UP 89-132 for a twenty seat small scale eating establishment, to allow an increase in seating of up to sixty seats at the existing small scale eating establishment, and to allow outdoor dining for the property located at 350 Harbor Drive (APN 63-030-01) which is within the W (Waterfront) zoning district, and

WHEREAS, the City Council has conducted a duly noticed public meeting on the appeal commencing on October 22, 1996 and concluding on November 5, 1996, in the manner prescribed by local ordinance, at which time all interested persons were given an opportunity to be heard,

WHEREAS, said public hearing was conducted in accordance with the requirements of the California Government Code and of Title 10 of the Sausalito Municipal Code; and

WHEREAS, following the receipt and consideration of oral and written testimony on the subject appeal, the City Council has considered the appeal of Condition No. 11 of Resolution 1996-19,

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS AND DECLARES: that it is able to support the appeal and overturn the Planning Commission decision to limit the term of the Conditional Use Permit to two years by extending the term of the Conditional Use Permit to five years.

THE CITY COUNCIL FURTHER FINDS:

**Section 1: Required Determinations and Findings.**

In granting the appeal, the City Council hereby relies on the findings and evidence contained in Resolution 1996-19 made by the Planning Commission in approving UP 95-56.

**Section 2: Conclusion and Decision.**

THE CITY COUNCIL THEREFORE CONCLUDES, based on the testimony received, that it can support the appeal and overturn the Planning Commission imposed condition to limit the term of the approved Conditional Use Permit number UP 95-56 to a two year term.

The approval of UP 95-56 is subject to the following conditions:

1. Resolution 1990-15 is hereby rescinded.
2. This eating establishment may continue to offer on-sale beer and wine. No alcoholic beverages shall be served except during those hours when food service is also offered.
3. Approval of this Conditional Use Permit shall be limited to the establishment of a twenty (20) person occupancy eating and drinking establishment, with service of beer and wine exclusively to customers seated in the dining area.

This use may operate as an extension of the incidental commercial food service (delicatessen limited to take-out, principally for provisioning of the harbor) already in operation on the premises and proposed to be expanded and relocated to the easterly end of the building.

4. The eating and drinking establishment may operate seven (7) days per week and shall serve the public only during the following hours of operation, as previously conditioned in Resolution 1990-15:

Winter Hours      **October 1 - May 31**      5:30 a.m. - 6:30 p.m.

Summer Hours      **June 1 - September 30**      5:00 a.m. - 7:00 p.m.

SA



5. The intermittent placement of some or all of the twenty seats outdoors, according to season and weather, as proposed by the applicant is allowed. At no such time may the total number of seats, indoors or outdoors, at the small scale eating establishment exceed twenty (20) seats. No outdoor service shall be permitted.
6. In expanding the existing commercial food service and adding a small-scale eating and drinking establishment, the applicant shall undertake to serve food to sit-down patrons on china or paper plates and beverages in similar cups or glasses, and shall endeavor to package take-out food and beverages in non-plastic wrappings and recyclable containers.

This advisory condition was previously adopted by the Planning Commission in Resolution 1990-15 due to the location of the subject site near the environmentally sensitive shoreline and marine waters.

7. The restrooms shall remain open to the general public as well as to clientele throughout business hours, as required by the previous approval of Conditional Use Permit #737 and by UP 89-132 for these premises.
8. In addition to a minimum of five (5) spaces being marked and maintained along the entry curb for 15 minute parking, in accordance with the conditions of approval of prior Conditional Use Permit #737, the additional five (5) spaces designated in a location to be approved by the Director of Public Works for 30-minute parking required by UP 89-132 shall remain.

This requirement is imposed in order to insure adequate convenient parking space is available for cafe patrons.

9. The above conditions of approval are imposed to promote public safety and welfare and the orderly development of the project site and immediate vicinity as provided in the General Plan.
10. Conditional Use Permit Application No. UP 95-56 is granted only for the location and the use proposed in this application, as modified by the terms of this approval. Any change in use at this location shall terminate this conditional use permit.
11. CUP 95-56 is approved for a five year period beginning on the date of the adoption of this resolution.

PASSED AND ADOPTED at the rescheduled regular meeting of the City Council of the City of Sausalito on the 5<sup>th</sup> day of November, 1996, by the following vote:

AYES: Councilmember: Albritton, Belser, Miskel, Stratigos, Mayor Ziegler  
NOES: Councilmember: None  
ABSENT: Councilmember: None

  
\_\_\_\_\_  
MAYOR, SAUSALITO CITY COUNCIL

ATTEST:

  
\_\_\_\_\_  
DEPUTY CITY CLERK

RESOLUTION NO. 2003 - 33

**RESOLUTION OF THE SAUSALITO PLANNING COMMISSION  
APPROVING CONDITIONAL USE PERMIT AND SIGN PERMIT APPLICATION NO.  
UP/DR 03-25 FOR THE ESTABLISHMENT OF A FISH MARKET AND FOOD SERVICE  
CAFÉ LOCATED AT 350 HARBOR DRIVE**

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WHEREAS, an application has been filed pursuant to Municipal Code Title 10 (Zoning) by the applicant, William Foss, on behalf of the property owner, Clipper Yacht Harbor, requesting Planning Commission approval of a Conditional Use Permit for a building within the property located at 350 Harbor Drive (APN 063-030-01); and

WHEREAS, the Planning Commission has conducted a duly noticed public meeting on June 11, 2003, in the manner prescribed by local ordinance, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission has received and considered oral and written testimony on the subject application and obtained evidence from site visits; and

WHEREAS, the Planning Commission has reviewed and considered the information contained in the June 11, 2003 staff report for the proposed project; and

WHEREAS, the Planning Commission finds that, as conditioned herein, the proposed project complies with the requirements of the Zoning Code, including the required Conditional Use Permit criteria as outlined in the staff report; and

WHEREAS, the Planning Commission finds that, as conditioned herein, the proposed project complies with the General Plan as outlined in the staff report; and

WHEREAS, the Planning Commission finds that, as conditioned herein, the proposed project complies with the Marinship Specific Plan as outlined in the staff report; and

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the requirements of CEQA pursuant to Section 15301 (a); and

NOW, THEREFORE, THE PLANNING COMMISSION CONCLUDES, based on the above-noted criteria, that it can approve Application No. CU 03-12, subject to the following conditions of approval:

1. This approval is limited to the operation of a fish market and food service café with 20 seats.

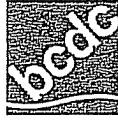
2. This Conditional Use Permit authorizes the service of beer and wine at this establishment in accordance with the necessary license from the Alcohol and Beverages Commission.
3. The Conditional Use Permit approval is only granted for the location and the proposed use in this application. Any change or expansion in the proposed use shall require approval of a new Conditional Use Permit.
4. The approval includes the proposed signage as shown on the photographic renderings stamped received on April 29, 2003.
5. The restrooms shall remain open to the general public as well as to clientele throughout the business hours, as required by the previous Conditional Use Permit approval.
6. The eating and drinking establishment may operate seven (7) days per week and shall serve the public only during the following hours of operation: 5:00 am – 9:00 pm.
7. The use shall maintain the five (5) parking spaces that are marked along the entry curb for 15 minute parking.
8. Prior to starting the business the applicant shall obtain the required Occupational Permit from the Community Development Department and a City Business License from the Administration Department.
9. This approval will expire in two (2) years from the date of adoption of this resolution if the property owner has not exercised the entitlements hereby granted. A one-year extension may be granted by the Community Development Department if a request is submitted prior to the two (2) year expiration date.

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the Sausalito Planning Commission on the 11th day of June 2003, by the following vote:

AYES: Commissioner: Chairman Snyder, Pettitt, Leone, Kellman  
 NOES: Commissioner:  
 ABSENT: Commissioner: Williams  
 ABSTAIN: Commissioner:

\_\_\_\_\_  
 SECRETARY TO THE PLANNING COMMISSION

Attachment: June 11, 2003 Planning Commission Staff Report for UP/DR 03-25



Making San Francisco Bay Better

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JAN 26 2009

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

January 23, 2009

Lilly Schinsing  
City of Sausalito  
Community Development Department  
420 Litho Street,  
Sausalito, CA 94965

**SUBJECT:** Proposed Gazebo at Fish Restaurant (350 Harbor Drive)  
(BCDC Permit No. 9-84)

Dear Lilly:

Thank you for providing us with site plans for a proposed gazebo associated with Fish Restaurant located at 350 Harbor Drive in the City of Sausalito, Marin County. As you and I discussed, BCDC staff has not yet reviewed these plans in detail nor has our Commission authorized the new structure.

As I mentioned today in our phone conversation, Fish is located adjacent to a dedicated public area and in reviewing any proposed structure at the site we would mainly be concerned as to how the gazebo would potentially affect public access to the shoreline and the public's view of the Bay.

Since the City of Sausalito is currently considering the project and working with the project proponents, we'd appreciate your informing the applicant of its responsibility to contact BCDC about the project and to obtain Commission approval prior to commencement of construction at the site. The project would likely require an amendment to BCDC Permit No. 9-84, and we'd be happy to discuss the amendment process with the project proponent.

If you have any questions, please do not hesitate to contact me at (415) 352-3613.

Sincerely,

JAIME MICHAELS  
Coastal Analyst

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IN PROGRESS  
CMAA

[JUNE 11, 2003 PLANNING COMMISSION MINUTES]

down. He knows what the applicant is going for with the "tasty" but it doesn't fit in with the look of the rest of the area. But it is the size of the sign that he objects to.

Chairman Snyder said colors of the sign might have to change once he knows what color the landlord is going to paint the building. He doesn't have a problem with the bay sign. The remote site isn't going to do him any good. It is a big, bland box of a building.

Commissioner Pettitt summarized the Commission's direction: No one likes the off-site sign, so that's toast. At least two Commissioners want the sign smaller.

Commissioner Pettitt moved, seconded by Commissioner Kellman, to continue the application to July 9, 2003.

The motion was approved unanimously by roll call vote (Commissioner Williams not present).

7. 350 Harbor Drive UP/DR 03-25  
William Foss (applicant)/Caruso's LLC (applicant)  
Clipper Yacht Harbor (owner)

The applicant requests Planning Commission approval of a Conditional Use Permit to allow for a proposed Fish Market and café in the former location of Caruso's Fish Market. Commercial Food Service is a Conditionally permitted use within the Waterfront Zone. Twenty (20) seats are proposed, the maximum allowed by the Marinship Specific Plan. The application includes proposed new business identification signage.

Chair Snyder said this application strikes him as being a reflection of what everybody says has been missing in Sausalito. It is pretty straightforward. Can it be completed in 15 minutes?

Vice Chair Pettitt said he thinks they can get through it quickly.

Chairman Snyder said he'd like to proceed.

**Staff report by Assistant City Planner Larissa King**

This is an application for a food service establishment at 350 Harbor Drive with fish market and café, keeping the same idea and theme and name as the former use there, Caruso's.

The main issue is that the Marinship Specific Plan only allows 20 seats for food service establishments in this area so there would have to be a condition of approval now to insure that. There is a process in the draft zoning ordinance

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where they could come with an exception but currently the seating has to be limited to 20.

She could not find an approval for the prior Caruso's signage, in order to get a comparison of what used to be there. On the building wall where they are proposing the circular sign it is the same location and size as what was there.

She has included the building elevations, the floor plans provided by the applicant and a general site plan of the whole yacht harbor in the staff report to help the discussion.

Chair Snyder mentioned that the seating quantity is an issue but yet they are not applying for any more than 20 seats.

Ms. King said the floor plan shows more if you start counting how many people can sit at a bench.

Chair Snyder said the way it was explained was that it could be approved as a land use issue for signage and then they can come back in short order -

Vice Chair Pettitt said once the new ordinance is in effect.

Planning Director Drummond Buckley said you could approve it even for the seating; you just have to say 20.

Chair Snyder said the point is that the Commission is not foreclosing their ability to have more seating in the future simply by approving it for 20 seats at this time.

Vice Chair Pettitt commented that everyone knows how good the city's enforcement on these kinds of things is anyway.

Commissioner Leone asked if you know they can only have a certain number of seats, shouldn't the lay out being submitted for approval indicate that that's the layout that is being approved? You are essentially approving a layout that's not permitted.

Ms. King said she doesn't think she references the layout in the resolution. (A draft resolution is in the staff report.) She has also provided the Commission with the council's prior resolution. She just states the use and that it is 20 seats. She did reference the signage.

Mr. Buckley said the Commission could specify that a revised lay out showing 20 seats shall be submitted prior to operation.

Chair Snyder said that way it's on the record and they can come back and make a very conscious change.

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Vice Chair Pettitt asked about hours and referred to fact that the Councils resolution defined precise hours of operation.

Ms. King said that question was raised by Mr. Leone in a phone call to her and she apologizes for not transferring a lot of those conditions, including that one, from the City Councils resolution. She asked which ones to transfer.

Vice Chair Pettitt suggested just incorporating by reference the City Council's resolution and conditions. Is the Commission bound to the Council's restrictions?

Ms. King said for the 20 seats, yes.

Vice Chair Pettitt asked what about for the hours?

Ms. King said she didn't see anything in the MSP pertaining to hours.

Mr. Buckley pointed out the old CUP is expired.

Presentation by Applicant William Foss

Vice Chair Pettitt asked if the applicant is happy with the hours in the Council's old resolution? What kind of hours does he need?

Mr. Foss said given that the sport fishing fleet leaves from there, it is conceivable that they would want to do breakfast service as early as 5 a.m. They intend to be open for dinner. As he recalls the hours were tied to the operation of the sport-fishing center in the original CUP.

Vice Chair Pettitt said yes, they had 5:30 a.m. to 6:30 p.m. from October through May and then June through September it was 5 a.m. to 7 p.m.

Chair Snyder asked if there is an issue associated with the hours?

Vice Chair Pettitt said he just doesn't want to put a restriction in there that they can't live with.

Mr. Foss said make it midnight. Just kidding.

Chair Snyder said yes, 5:30 a.m. to midnight.

Mr. Foss said 5 to 7 should work.

Vice Chair Pettitt said if nobody has a reason to put a restriction in there -

Commissioner Leone said if you read the MSP the intent is that this is supposed to be an incidental use, the actual in-house dining is not supposed to be the principal purpose.

Mr. Buckley said you are trying not to create a tourist attraction.

Commissioner Leone said right, it's not supposed to be a destination restaurant, it's supposed to be a fish market with incidental eating and he gathers even from the layout with too many seats, that it is bench seating, it's casual. It looks like it's going to be quite nice inside. He would like to see the conditions that the City Council adopted put in this resolution, which some of them are and some of the aren't, like the restrooms - which characterize that language, the incidental use language, the hours, basically all the ones that aren't included, the concept of what's going to happen with parking -

Mr. Buckley clarified that the MSP doesn't require that it be an incidental use. The Marinship actually allows small eating establishments with no more than 20 seats.

Commissioner Leone said, right, but it has to cater to the Marinship residents.

Mr. Buckley said right, catering to the residents of Sausalito and the people who use the Marinship. The prior approval tried to make it incidental to the fish market; that's the CUP that has expired. It is fine for the Planning Commission to continue that language, but that's not a MSP requirement, it may have been in the spirit of the Marinship, but that was something that came out of the original approval not the MSP.

Vice Chair Pettitt said to go to the hours questions, he doesn't know if they plan to stay open when it stays light in the summer. When people are coming back from sailing it would be nice to be able to sit out there and have a snack. There are people who come back quite late in the evening from their boats.

Commissioner Leone asked if Vice Chair Pettitt is applying for this application or is Mr. Foss applying for it?

Commissioner Kellman asked if the applicant is going to come back to the Commission on the seating?

Mr. Foss said yes. He doesn't know what the exact procedure is, but as soon as they figure it out, yes, they will be.

Commissioner Kellman asked if Mr. Foss has a concept in his head about what he's going to be asking for?

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Mr. Foss said yes, currently they are trying to get it up to 60 seats. Unfortunately there are a lot of other questions to be answered, such as limitations on grease traps and interceptors, but somewhere between 45 and 60.

Chair Snyder asked if there is an issue with the hours of operation? That is usually an issue where there is a potential for a nuisance to be created and given where this is --

Mr. Buckley said it's not just whether it is a nuisance. Hours of operation could be imposed in an effort to make it consistent with the intent of the Marinship. He's not trying to suggest that that's not a legitimate concern. If the Commission thinks it is achieving that goal, then it is something to consider.

Chair Snyder said he doesn't know what the concerns are, so -

Mr. Buckley said, for instance, say it was allowed to stay open until 2 a.m. and you may have a concern that that would bring in a night time crowd from Mill Valley -

Vice Chair Pettitt said, or those ruffians from Tiburon.

Chair Snyder said he gets the point, but 5 a.m. to 7 p.m. is unduly restrictive.

Commissioner Leone pointed out that's what Caruso's operated under the direction of the City Council.

Vice Chair Pettitt said yes, and look what happened to Caruso's.

Commissioner Leone said it wasn't the failure of his business that caused him to leave.

Chair Snyder said in any event does Commissioner Leone want to limit the opening hours to 7 p.m. during the summer time

Commissioner Leone said the applicant said he didn't have a problem with the hours that Vice Chair Pettitt just read off. It seems the applicant's intent is that they are going to come back as soon as they can to enlarge it to something else. The City Council approved this set of conditions in 1996, which he thinks was the will of the people at the time. What he's heard since is that people wish there was still a fish market there that catered to the Sausalito fishing fleet. He doesn't hear that they wish there was another seafood restaurant of 60 seats that was open to midnight.

Chair Snyder said he's not suggesting midnight.

Vice Chair Pettitt said 8 p.m. is a better number.

The applicant said he was hoping for 9 p.m. because he likes Vice Chair Pettitt's idea.

Vice Chair Pettitt said he thinks 9 is good for the summertime because it's still not dark but it's not late enough for it to become an evening destination restaurant.

Mr. Foss said 9 p.m. works pretty well because it works with the fish market.

Chair Snyder said when he gets home from work he can go down and buy his fish to dinner.

Vice Chair Pettitt said that works, because the fish market is open to 9.

Mr. Foss noted that Mollie Stone's is open until 9.

Mr. Buckley said it has been mentioned that Mollie Stone's was part of the problem with Caruso's closing because of the competition. So that is a legitimate point.

Commissioner Leone said but again - he doesn't know why he's always defending the Marinship but -

Chair Snyder asked if an hour is going to create a problem?

Commissioner Leone said it changes the character of what this establishment is from retail with incidental eating to a principal destination restaurant.

Commissioner Kellman said she thinks Commissioner Leone is right except for people who actually work in the city and come home and want to use the retail establishment; in that case, it sort of defeats the purpose for the retail establishment. The scenario that Vice Chair Pettitt just described about getting back late from being out on the water and wanting to sit and have a beer, that may be what the intent is trying to get away from, but the flip side is that to the extent that the fish market is selling fish to locals, you need to make it a little more flexible so people can actually utilize it. If it closes at 7, she'll never be there.

Chair Snyder said he wouldn't either.

Commissioner Leone said he would just refer to what the City Council said in the past, that this use might operate as an extension -

Chair Snyder said that is the past. What does the Marinship Plan say?

Commissioner Leone said he didn't bring the Marinship Plan with him.

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Vice Chair Pettitt said staff says what they are talking about is allowed in the Marinship Plan.

Commissioner Leone said it's not to cater to Commissioner Kellman; it's to cater to the people working in the Marinship.

Vice Chair Pettitt said, and Sausalito residents.

Mr. Buckley said he doesn't think Commissioner Kellman was born when the Marinship Plan was passed.

Chair Snyder said they are talking about two hours.

Chair Snyder asked for public comment.

**Public Comment**

David Lay asked if the public restroom is going to stay open for the public for non-customers.

Commissioner Leone said the draft resolution says the restroom will stay open to the public during business hours.

Mr. Buckley pointed out that Goal No. 4 of the MSP says, "It is the intent of the plan to preserve the Marinship as an area primarily oriented to the use and service of Sausalito residents." And that includes Commissioner Kellman.

**Public Comment closed.**

**Commission Discussion**

Commissioner Kellman said since this is going to be a restaurant and retail establishment you could always limit the restaurant hours and keep the retail establishment open later.

Vice Chair Pettitt said he could see 5 a.m. to 9 p.m. as the hours. They don't have to be open those hours, the Commission is just saying they could be if they choose to be. Basically he's trying to give them summer daylight.

Chair Snyder asked where does the draft resolution address hours of operation?

Mr. Buckley said it doesn't. The Commission can make that part of its motion.

Vice Chair Pettitt said the signage is fine.

APPROVED

June 11, 2003

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Chair Snyder said he liked the signage before and they aren't going to take it down.

Chair Snyder moved to adopt the draft resolution of approval subject to the additional condition that the hours be stated as operating from 5 a.m. to 9 p.m. during the summer months -

There was a discussion of whether to have winter and summer hours with the Commission consensus being the hours will be no earlier than 5 a.m. and no later than 9 p.m. year round.

Vice Chair Pettitt said when they have more seats they might want to change that.

Ms. King asked if Condition 7 from the Council's resolution regarding restrooms should be added to this resolution?

Vice Chair Pettitt noted that the applicant is going to come back and go through the Marinship exception procedure to have more seats -

Commissioner Leone said the Commission doesn't know that.

Vice Chair Pettitt said it's not viable at 20 seats.

Commissioner Leone said the Commission doesn't know that either. He assumes it is in the applicant's best interest to do that, but he doesn't know that.

Ms. King asked if the Commission wants to add number 7 from the Council's resolution.

Vice Chair Pettitt said it is included as Condition No. 5 of the draft resolution. It references the restrooms shall stay open ...

Commissioner Leone referred to No. 8, regarding the parking concept, was that - there are 15-minute things there currently, but because this is expired, does it need to be carried over? If it is supposed to have retail carryout, you need to give people a way to come and go. There are only five spaces and they are already painted that way. He doesn't see any harm in continuing it.

Ms. King said so, maintain the 15-minute parking?

Vice Chair Pettitt agreed that Commission should carry that over.

Commissioner Leone asked why would No. 10 need to be included? That makes the use permit only for this use.

APPROVED

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Mr. Buckley said there was another use permit before that; it was referring to an older one.

Ms. King said she says the same thing in No. 3. When you expand a CUP permit you need to get a new conditional use permit.

**Chairman Snyder moved, seconded by Commissioner Pettitt, to adopt the draft resolution of approval with the conditions stated on the record.**

**ROLL CALL**

**AYES:** Chairman Snyder, Vice Chair Pettitt,  
Commissioners Kellman and Leone  
**NOES:** None.  
**ABSENT:** Commissioner Williams

8. 205 Second Street DR 03-36  
Bonnie Berg Mallard (applicant)  
Second Street Partners, LLC (property owner)

**Business Identification Signage**

The applicant said she is opening Habitat Books at this location. The Commission asked the applicant about the proposed illumination. Commissioner Leone noted this is a commercial neighborhood district; he is happy to have the applicant light the sign when it is open; it should not be lighted when the business is not open. Commissioner Kellman suggested the sign be allowed to stay illuminated while the surrounding restaurants are open.

(The applicant clarified that the little oval sign is the only one that will be illuminated.)

Commissioner Leone asked if this is a dining establishment for which there needs to be parking.

Commissioner Pettitt said the use has already been approved; it is just a coffee pot or a cup of tea, it is all very incidental to the bookstore. It is not classified as an eating establishment.

Mr. Buckley said staff agrees with Commissioner Pettitt's characterization.

Chairman Snyder asked for public comment.

No response.

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Making San Francisco Bay Better

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JAN 26 2009

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

January 23, 2009

Lilly Schinsing  
City of Sausalito  
Community Development Department  
420 Litho Street,  
Sausalito, CA 94965

**SUBJECT:** Proposed Gazebo at Fish Restaurant (350 Harbor Drive)  
(BCDC Permit No. 9-84)

Dear Lilly:

Thank you for providing us with site plans for a proposed gazebo associated with Fish Restaurant located at 350 Harbor Drive in the City of Sausalito, Marin County. As you and I discussed, BCDC staff has not yet reviewed these plans in detail nor has our Commission authorized the new structure.

As I mentioned today in our phone conversation, Fish is located adjacent to a dedicated public area and in reviewing any proposed structure at the site we would mainly be concerned as to how the gazebo would potentially affect public access to the shoreline and the public's view of the Bay.

Since the City of Sausalito is currently considering the project and working with the project proponents, we'd appreciate your informing the applicant of its responsibility to contact BCDC about the project and to obtain Commission approval prior to commencement of construction at the site. The project would likely require an amendment to BCDC Permit No. 9-84, and we'd be happy to discuss the amendment process with the project proponent.

If you have any questions, please do not hesitate to contact me at (415) 352-3613.

Sincerely,

JAIME MICHAELS  
Coastal Analyst

**SEILER  
EPSTEIN  
ZIEGLER &  
APPLEGATE LLP**

**Attorneys at Law**

wjz@sezalaw.com

March 12, 2007

Debra Lutske, Assistant Planner  
City of Sausalito  
Community Development Department  
420 Litho Street  
Sausalito, CA 94965

Re: Caruso's LLC/Fish Restaurant Application/350 Harbor Drive/DR 007-002

Dear Ms. Lutske:

This is in response to your letter dated February 5, 2007, regarding the subject application for permit to construct a permanent gazebo and to increase the number of allowed seats at the restaurant.

First, together with this letter, as you requested, I am delivering new, additional, plan sheets prepared by William Craig showing the location of current seating, proposed seating and handicapped seating. Please note, however, that tables in the restaurant are moved occasionally by patrons, depending upon weather conditions. As I am certain you are aware, due to variable weather conditions at the site, when the weather permits, many people prefer to eat outdoors. That, in fact, is the primary reason for this application: the gazebo will permit more outdoor dining under varying weather conditions and the extra seating will allow diners to eat either indoors or outdoors without such frequent movement of tables and benches.

Secondly, your letter indicates that you are uncertain about the nature of the application, which I have characterized as an "Exception to the Marinship Specific Plan" and you asked me about the Code Section I have referred to that would allow the granting of an "exception." The exception procedure is found at Section 10.28.050 (F) of the Municipal Code. This section provides that "Minor exceptions to the development standards or definitions of use established by the Marinship Specific Plan that do not alter the general development programs of the Plan may be approved by the City Counsel..." Consequently, no amendment to the Specific Plan is required, as you suggest; rather, the provisions of the above section can be followed to allow the requested change in seating capacity. For this reason, I am not submitting the amendment fee you requested.

Thirdly, you indicated in your letter that the Marinship Specific Plan ("MSP") appears to discourage restaurants from containing more than forty (40) seats. In fact, I believe you are incorrect: in the W-M zoning district (Waterfront-Marinship Overlay) where the subject property is located limits occupancy in restaurants to 20 persons. (See §10.44.210 (D)) However, the

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EXHIBIT H  
(4 PAGES)

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Sausalito City Council has seen fit to modify this requirement on at least two occasions. In 1990, it granted a CUP allowing a restaurant with 20 seats, but then in 1996, it amended that limitation to increase seating to 40. In 2004, the City Council again amended the Use Permit, this time to 70 (See Resolution No. 4732, condition 2). Thus, it is clear that not only is there ample precedent for the request being made, but it is also apparent that there are unique factors present in the location and nature of this particular restaurant that justify changes from the otherwise very restrictive policy concerning restaurants in the W-M district.

I will detail the factors which I believe have led the City Council to open up the seating limitation in greater detail below, but before proceeding to that discussion, I would like to point out a fact that will hopefully place this application in a more understandable context. That is, the actual use and capacity of Fish Restaurant has not changed since its opening, and the request being made now is not an effort to enlarge the restaurant or to create a bigger business. It is simply an effort to conform the permit authorization to an existing business that must constantly adjust to very unique circumstances. Because of the waterfront location of the restaurant and the varying weather conditions at the site, where it is pleasant to dine outdoors and enjoy the view when possible, sudden winds and afternoon fog often bring quick changes in the environment. The restaurant owner has attempted to accommodate his patrons by providing seating both inside and out, each of which is used with varying intensity depending upon conditions. The requested increase in authorized seating will not increase the number of customers at the restaurant, nor is that the intent. On the contrary, this application should be viewed as an effort to preserve a unique Sausalito dining opportunity in its present condition and to obtain approval for a restaurant for which there is no desire to change.

To respond more specifically to your letter, this application is consistent with the general purposes of the MSP for the following reasons:

- 1) The primary goal of the MSP is to preserve the area for continued marine industrial use and to retain marine-related industries. The restaurant and fish market at this location is closely tied to marine-related industries by providing a working fish market and providing a necessary service to marine industry employees, boat owners and employees of nearby businesses that have previously been determined to be appropriate for the area. Typical daytime customers are from boat related occupations and other nearby businesses.
- 2) A second goal of the MSP is to enhance public access and enjoyment of the Sausalito waterfront. This restaurant and fish market brings people to the waterfront where ample paths and shoreline access points are regularly used.
- 3) The intent of the MSP is to promote the waterfront area and to continue waterfront uses. Here, the restaurant works in conjunction with the fish market, which receives direct service from the fishing industry.

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- 4) Increasing the number of seats not only does not change any current uses, but rather makes them more convenient and open to more people in the area. The restaurant is not tourist related, nor does it make any effort to attract people from out of the area. There are no signs visible from the street, nor is there any request to increase signage. Restaurant patronage results primarily from individuals already involved in maritime activities in the area and provides a reason for them to remain in the area.
- 5) No change in use is being requested. The restaurant is currently functioning at the requested intensity and has not produced any apparent increase in levels of traffic. It is targeted at residents and workers currently in the waterfront area and makes no attempt to draw people from outside the area.
- 6) Food service in the area is limited, particularly in comparison with the water-oriented and marine/industrial uses in the area. Consequently, the restaurant serves a consistent need of the waterfront population.
- 7) There is no negative impact on shoreline access. On the contrary, as part of our compliance with BCDC regulations, there will be improved access to the area. The restaurant serves as a means to attract people to the waterfront and provides benches and amenities for visitors.

An exception should be granted to the seating limitations of the MSP because:

- 1) Increasing the allowable seating will not threaten the character of the Marinship or the goals of the Specific Plan, as demonstrated above. The primary goals of the MSP are enhanced by the presence of the restaurant.
- 2) If the current seating restriction on the restaurant is allowed to continue, rising economic costs would make it difficult for the owner to continue operations. This situation could not have been foreseen when the MSP was adopted.
- 3) The request now being made furthers the intent of several of the goals of the MSP. The service being provided is oriented to the use of Sausalito residents and specifically the employees and participants of the marine related activities in the area. It plainly meets the intent of the 1985 Traffic Initiative because it does not increase traffic but it preserves the marine character of the area by serving those involved in marine activities.
- 4) No negative impact on traffic conditions in the Marinship or on Bridgeway Boulevard will be created. The restaurant has operated at the current level of intensity for several years and it has never created an observable traffic condition.

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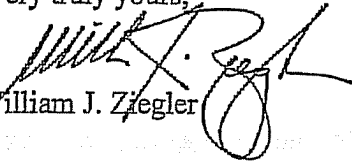
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Attorneys at Law  
Page 4

- 5) The restaurant will serve the needs of residents of Sausalito and the employees in the Marinship, as required by the terms of §10.28.050(F)(2)(e) of the MSP.

It is respectfully submitted that the Planning Commission should recommend to the City Council approval of the requested exception.

Very truly yours,

  
William J. Ziegler

Cc: William Foss

**SEILER  
EPSTEIN  
ZIEGLER &  
APPLEGATE LLP**

**Attorneys at Law**

wjz@sezalaw.com

April 18, 2007

**Hand Delivered**

Debra Lutske, Assistant Planner  
City of Sausalito  
420 Litho Street  
Sausalito, CA 94965

Re: Caruso's LLC/Fish Restaurant Application/350 Harbor Drive/DR 007-002

Dear Ms. Lutske:

I am responding to your most recent letter, which I received last week. Although it is dated February 5, 2007, that date is clearly erroneous and I suspect that it came from your prior letter in February, which was dated February 5, 2007. For clarity, I will refer to your most recent letter as the "April Letter."

In your April letter you ask for additional information on six (6) issues which arise from the exception procedure found in the Marinship Specific Plan at §10.28.050 (F). I will address them in order:

- 1) You ask for documentation describing how the exception conforms to the Development Program standards. The "standards" you refer to are, I believe, found at section (E) of §10.28.050. This section begins with the statement that "All lands within the boundaries of the -M overlay district are subject to the development standards established by this section and shown in Table 10.28-1..." First, I note that table 10.28-1 deals with lot size, parking setbacks, landscaped area and the like, that is, lot development issues. This application for additional seating at the restaurant involves no development or construction, other than of the gazebo, which I do not believe your letter is referring to. Further, I would like to point out that subparagraph (1) of section (E) reads as follows: "Applicability. Development standards shall apply to any new construction, redevelopment or exterior building remodeling involving at least 25% of the existing floor area or 25% of the market value of the parcel improvements." Based upon the plain meaning of this sentence it does not appear that the so-called "development standards" are applicable to this project, since there is no new construction, redevelopment or remodeling involved and certainly the requested change in seating does not involve 25% of the market value of the parcel improvements. Likewise, the additional listed standards regarding "Public Access", "Dry Boat Berths", "Industrial Equivalent FAR" and "Building Height and Bulk" do not appear applicable, again because no new construction is being requested. Consequently, without further clarification from you, I do not believe there are any "Development Program Standards" that apply to this project and application.

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**EXHIBIT I**  
(4 PAGES)

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- 2) Secondly, you ask for "Documentation describing the changed circumstances which warrant or require the exception." The term "documentation" is unclear, but I assume that what is required is whatever is necessary to make the finding described in §10.28.050 (F)(2)(b), to the effect that the exception is needed "to accommodate changed economic or operational circumstances..." My response to this requirement is to point out that there are both economic and operational factors that require the additional seating.

First, as to the "operational" circumstances, I previously described the unique environmental conditions that affect an outdoor restaurant at this location in my letter to you dated March 12, 2007. Briefly, the restaurant is structured as a casual eating environment, and is set up so that guests can eat with a view of the waterfront when the weather is pleasant enough to allow it. On sunny, warm days, most guests prefer to sit outside with their food. I believe this is the primary purpose of the deck, which is a major attraction of this location. (This also satisfies one of the primary goals of the MSP, which states among its purposes that it is intended "to encourage public access and use of the water and waterfront" and "to maximize the amount of open water and open shoreline areas."). However, wind and fog are not rare on the Sausalito waterfront, although their sudden appearance may cause a quick search for a warmer spot. Thus, indoor tables are equally necessary for the location. If there were not ample tables both inside and out, the restaurant would need to severely curtail its operations, if in fact it could continue in its current style. Since the earlier authorization for seventy (70) seats at the site, it has become clear that alternative seating locations are essential, particularly if outdoor dining is to be maintained, which we submit is one of the main attractions of the restaurant.

The changed economic circumstances arise both from a continuing, more costly environment in which to do business and the need to maintain the current level of service. With the restriction of a seventy (70) seat location, the owner would be unable to increase his revenue to compensate for rising economic costs so as to continue in business. In short, removing tables to conform to the current seating limit would likely put the restaurant out of business.

- 3) Thirdly, you ask about any "change in the number of residents, employees, patrons, or visitors in the area resulting from the exception." My answer is that there is no evidence of any such change. As is well known, the restaurant has been operating with basically the requested number of seats for over two (2) years, and there has been no observable increase in traffic or any traffic impact at all during this time. Parking is more than sufficient for the site and patronage has never gotten to the level where there are any complaints known to applicant.
- 4) Fourthly, you have asked about "the probable amount and type of traffic to be generated by the exception and the impact on the intersections with Bridgeway which serve the Marinship." As noted above, there is no evidence of any increase

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in volume or type of traffic. The restaurant has been operating at the requested level, and we have no knowledge of any change in traffic levels. We believe there are several reasons for this: (i) Harbor Drive carries a significant amount of traffic in any event, and the incremental increase derived from a small restaurant such as this would not be noticeable; (ii) the daytime patrons of the restaurant are primarily persons who are already in the area due to the location of the offices and businesses located there. In fact, daytime traffic at the Bridgeway intersection may be *reduced* because of the location of the restaurant, which enables lunchtime guests to stay in the area, rather than go out to Bridgeway to another restaurant to eat; and (iii) evening traffic is lighter in any event, probably due to fewer trips to Mollie Stone's and the Post Office, but given the regular flows to those locations, traffic to 350 Harbor Drive is not measurable.

- 5) You have asked for a "Parking Summary", noting that the proposed use will require a total of 35 spaces. I would like to call attention to the site plan that I delivered to you, I believe in February, being Sheet No A1, prepared by William Craig, which shows thirty-five (35) dedicated and numbered parking spaces, in the parking lot in front of the restaurant. Do you need anything more?
  
- 6) Finally, you asked for a description of how the proposed exception to the MSP complies with the 1985 Traffic Initiative (the "Initiative"). I believe that I previously addressed this issue in my letter of March 12, 2007, on page 3, where I said the exception "plainly meets the intent of the 1985 Traffic Initiative because it does not increase traffic but it preserves the marine character of the area by serving those involved in marine industries." I believe this statement is still true. The Initiative amended the basic area, open space and bulk regulations of new construction in certain areas in an effort to reduce newer floor area ratios being constructed, but there is no new construction being requested here. In fact, none of the standards mentioned in the initiative, with the possible exception of Section 10.200.2(d), are involved. This subsection states that "Where a parcel is already developed, no conversion or change in use may be permitted when that conversion or change in use will result in increased commercial usage or density." As used in this sentence, no "conversion" or "change in use" is being requested. As you know, the quoted terms are terms of art in a zoning context, and are not applicable here. Noting is being "converted" or "changed in use" in a zoning sense. The first sentence of Section 10.200.1 of the Initiative states as a finding and purpose that that there is a desire to "reduce the increase in automobile traffic generated by new development in the City's commercial and industrial zones and to preserve the maritime character of those areas by reducing permissible density in commercial and industrial areas." This sentence is also not relevant to this application because this is a waterfront area, not a commercial or industrial zone. Likewise, this is not a "density" issue. Density issues are addressed in table No. 2 of the Initiative, which restricts *building sizes* in the affected zones. I gave a number of reasons in my March 12, 2007 letter why this restaurant preserves the marine character of the area. Among them are the facts that Fish Restaurant relies

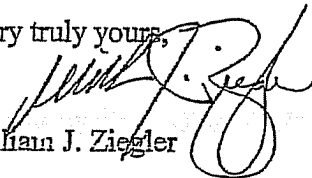
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on those people who live and work in the area and does not attempt to draw traffic from other areas. No increased signage is being requested and there is currently minimal signage. The restaurant is a resident serving facility and it provides an important service to the employees of the Marinship and the residents of Sausalito. As such, it fully comports with the 1985 Traffic Initiative.

I would be pleased to answer any further questions you may have.

Very truly yours,



William J. Ziegler

Cc: William Foss

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**SEILER  
EPSTEIN  
ZIEGLER &  
APPLEGATE LLP**

Attorneys at Law

wjz@sezalaw.com

February 6, 2008

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FEB - 6 2008

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

Diane Henderson  
Community Development Director  
City of Sausalito  
420 Litho Street  
Sausalito, CA 94965

Re: Caruso's LLC/Fish Restaurant Application/350 Harbor Drive/DR 007-002

Dear Ms. Henderson:

This is in response the June 7, 2007, letter from Debra Lutske to me on the above matter. I apologize for this late reply, but as you will observe from a review of the file, Ms. Lutske requested an extensive number of items and additional work before this reply could be formulated, not the least of which were a survey and a plan showing all other uses on the parcel in question. The survey was conducted last summer and a copy of all survey results is included herewith. The parking and parcel study required work from the property landlord, Clipper Yacht Harbor, and was prepared by Clipper's architect, Michael Rex Associates. I am also attaching this plan from Mr. Rex's office, entitled "Harbor Drive Site Map." Please let me know if you need additional copies of this plan.

I would like to respond to the requests contained in Ms. Lutske's June 7, 2007, letter in the order in which they appear:

First, Ms. Lutske requests "documentation" describing how the requested exception to the MSP will conform to the MSP Goals, Development Programs and Development Standards. I assume that by "documentation" she means explanation. I believe I did that in my letters of March 12, 2007 and April 18, 2007, to which I refer you. However, I will try to be clearer this time.

1. Twenty-one (21) "goals" are articulated in the MSP, and this application furthers a number of them. Specifically, Goal 1 seeks to "preserve and enhance the...character of the Marinship. This is accomplished by providing a food service which is totally consistent with the style and needs of the Marinship, by catering to workers in this area and by attracting people to the waterfront at a location and in the manner previously done in this area. The survey enclosed demonstrates this further, which I will comment upon more below.
2. Goal 4 of the MSP states that it "is the intent of the plan to preserve the Marinship area primarily oriented to the use and service of Sausalito residents, not tourists." Again, the survey results demonstrate exactly this fact, that it is Marinship employees and Sausalito residents who provide the major restaurant clientele. Only 19% of the

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responding patrons claimed to come from outside Sausalito and/or the Marinship. The survey indicated that many people arrived by boat, but for purposes of their travel to the Fish restaurant site, they came from the Marinship.

3. Goal 6 of the MSP states that it "is the intent of the plan to encourage development that produces low levels of traffic congestion" The survey included shows that there are very low levels of traffic at this site, which I will point out in my comments on the survey, below.
4. Goal 9 of the MSP states that "the amount of restaurant and food service use in the Marinship should be linked to the local working population...." This is apparent from the survey results below.
5. Goal 14 of the MSP states that "Waterfront parcels shall provide approved public access to and from the water..." The subject property not only provides this access and invites more residents to the area than has ever occurred before; it also provides separate walkways and waterfront seating facilities that have not previously existed. In fact, it is those very outside seating facilities along the water that 91% of all patrons favor when the weather permits.
6. Goal 18 of the MSP states that it "is the intent of the plan to preserve and enhance the viability of the commercial fishing industry in Sausalito and the Marinship." Fish restaurant clearly accomplishes this goal in that it both purchases seafood from commercial fishermen in the area and it provides a fish market that is frequented and supported primarily by the residents of the area and of Sausalito. The fish market at the site is unique in this respect.

While no project could further all of the goals of the MSP, this project is not in conflict with any of them, and it is consistent with and furthers key goals. In regard to the "Development Programs" of the MSP, there is also conformance of this application to the MSP.

In this regard, the General Intent of the Waterfront Zone, where the property is located, as stated in the MSP is that "Development in this zone should reinforce and support the Marinship's maritime trades and industries." It also states that the intent for the "W" Zone includes the following marine-oriented uses: *...wholesale and retail fish sales...*" It could not be more obvious that this application falls directly within the intent of the MSP as a favored use. Under typical uses in this zone, the MSP further reads as follows: *"Unless noted otherwise, the typically permitted uses in the "W" zone include: marine industrial, arts, marine commercial service, food service..."* [Emphasis added]

In addition, under the definition of "Commercial Food Service" for the W zone, after stating that there should be an analysis of the needs of the employees in the Marinship, the MSP requires that "a determination shall be made that the location and signing does not encourage use by persons outside the Marinship." Here, no signing exists for the restaurant except on its awnings, and the location of the property attracts no one from the outside, since it is only visible from the water and from the property itself. The survey enclosed amply demonstrates that a majority of the patrons come from the Marinship and from Sausalito.

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Finally, this application does not seek further "development" of the property, but only additional seating. Thus, an analysis of the Development Standards and Development Programs in the MSP is somewhat of an academic exercise and should not be used to defeat or restrict this longstanding use, which is clearly favored in the area. In fact, the "Development Standards" of the MSP barely address this type of application and are not applicable, as I have previously pointed out. Other than broad statements about "Parcel Access" and "Public Access" in the MSP, which are more than amply satisfied by this property, it is difficult to find any relevant criteria, other than the twenty seat limitation, which is the subject of this application, and to which a previous exception has been granted for this applicant. Unless there is a specific concern in this regard I will not address it further.

Secondly, Ms. Lutske states in her letter that the site plan does not clearly identify the entire parcel. I believe that is incorrect and I refer you to Sheet No A-1, which is a Site Plan and shows the property lines. It is accurate and it is scaled and shows all structures and striped parking, with numbered parking places that are dedicated to the applicant. I am uncertain what more could be provided. However, as I indicated at the outset, I am also enclosing another parcel map prepared by Michael Rex Associates, which shows the same items plus all building sizes. Other than the designated spaces shown on Sheet A-1 for the applicant, the parking spaces are not dedicated. Also, contrary to Ms. Lutske's statement, all spaces are code compliant.

Thirdly, a survey was requested of all of Fish restaurant's patrons, over a nine-day period of time, including two (2) weekends, at three hours each day, to identify mode of transportation and location of patrons before travel. This has been completed and the results are enclosed herewith. The data was collected on nine days from August 4<sup>th</sup> through August 12<sup>th</sup>, 2007, three hours each day, for a 27 hour total. In the survey attached, there is both a summary sheet and separate hourly totals. We also sought information regarding indoor-outdoor seating preferences and whether the weather was sunny, foggy, windy, etc. In addition, a question was asked whether the patron was aware of sustainable seafood practices ("SSA" on the survey), since the restaurant only serves seafood that is compliant with such practices.

In brief, the Survey Summary shows that during the 27-hour survey period, 702 patrons ate at the restaurant. Of this number, 27% came by foot, 8% by bicycle, 7% by boat and the balance by automobile. A total of 152 autos came to the site over this 27 hour period, which is an average of 5.63 autos per hour. From these numbers, compiled during peak periods, it is apparent that the parking provided is more than adequate, and that the traffic impact is minimal. Additional detailed travel information is contained in the survey, but with a total of 42% of the patrons traveling by foot, bicycle and boat, it is obvious that the restaurant is both a very local phenomenon and that the traffic impact is light.

In addition, the survey shows that 31.5% of the patrons come from the Marinship and boats nearby and that another 29% of the total patronage come from other areas of Sausalito. Only 19% of all patrons come from outside Sausalito and the Marinship. Since not all patrons answered all questions, the total of all origination points does not equal 100% of all patrons who came during the survey period. Nonetheless, it is apparent that the restaurant is not a

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tourist destination and that the vast majority of all patrons are local, with the biggest number coming from the Marinship itself.

Finally, the survey plainly demonstrated the reason for this application for additional outdoor seating when the weather is inviting, namely, a total of ninety-one percent (91%) of all patrons expressed a wish to eat outdoors when the weather permits. Since it is impossible to constantly move tables and seats inside and then again outside when the weather changes, it is necessary to have alternative seating outside in good weather. In fact, the major attraction of the restaurant is its waterfront location and pleasant conditions when the weather is good. In good weather there is simply insufficient seating outdoors while the indoor seating goes empty; the converse occurs in poor weather.

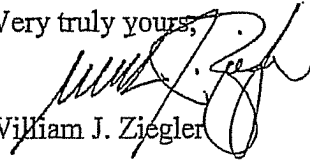
Total average hourly attendance of 26.11 patrons per survey hour also indicates that it is extremely unlikely that all existing or requested seats are or will be filled at any one time. This is demonstrated by the largest number of patrons to arrive at the site during the hours surveyed (two of which, noon and evening, are the peak hours): on Sunday, August 12 at the noon hour there were 55 people present. This was the largest number of patrons in the restaurant during the entire survey period, which also occurred during the busiest time of the year. The next busiest hours surveyed were noon on Friday, August 10, 2007, when 49 people were present and on Tuesday, August 7<sup>th</sup>, also at noon when there were a total of 46 patrons in the restaurant.

The above numbers also demonstrate the fallacy in counting seats that has precipitated this application, namely, the determination by your department to count each bench at the restaurant as two (2) seats, and thus reduce the allowable seat count. More often than not, the bench seat on each side of the picnic-style table is occupied by only one person, thus causing a need for many more bench seats than the permit presently allows. The applicant is very clear, and now has empirical evidence showing, that while the presently permitted seating of 70 persons is theoretically adequate, when each seat is counted as two (2), he is being unfairly penalized for the picnic-waterfront style of his restaurant. This is a situation that more than justifies the requested exception.

As requested, I have previously submitted the gate detail on the lower deck separating the public access area from the lower deck eating area. This is found on Sheet A1.0, which also shows the seating plan and the gazebo area. Finally, total building coverage is shown on the Michael Rex Associates plans attached hereto.

Please let me know if you need any additional information.

Very truly yours,

  
William J. Ziegler

Attachments: 1) Michael Rex Associates Site Map, Sheet A1.2

2) Survey Summary (2 pages) and Survey (6 pages)

Cc: William Foss, w/enc.



# Clipper Yacht Harbor

CLIPPER YACHT COMPANY, LLC • P.O. Box 187 • 310 Harbor Drive • Sausalito, California 94966  
Tel: (415) 332-3500 • Fax: (415) 332-0257 • www.clipperyacht.com

January 14, 2009

Community Development Department  
Attn: Lilly Schinsing  
City of Sausalito  
420 Light Street  
Sausalito, CA 94965

RECEIVED  
JAN 14 2009  
CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT

Re: Caruso's LLC/Fish Restaurant Application/350 Harbor Drive/DR 007-002

Dear Ms. Shinsing:

This is to confirm that the thirty-nine parking spaces shown on the map of Clipper Yacht Harbor dated March 5, 2008, filed with you, a copy of which is attached hereto, are assigned to Fish Restaurant, for the parking of its customers.

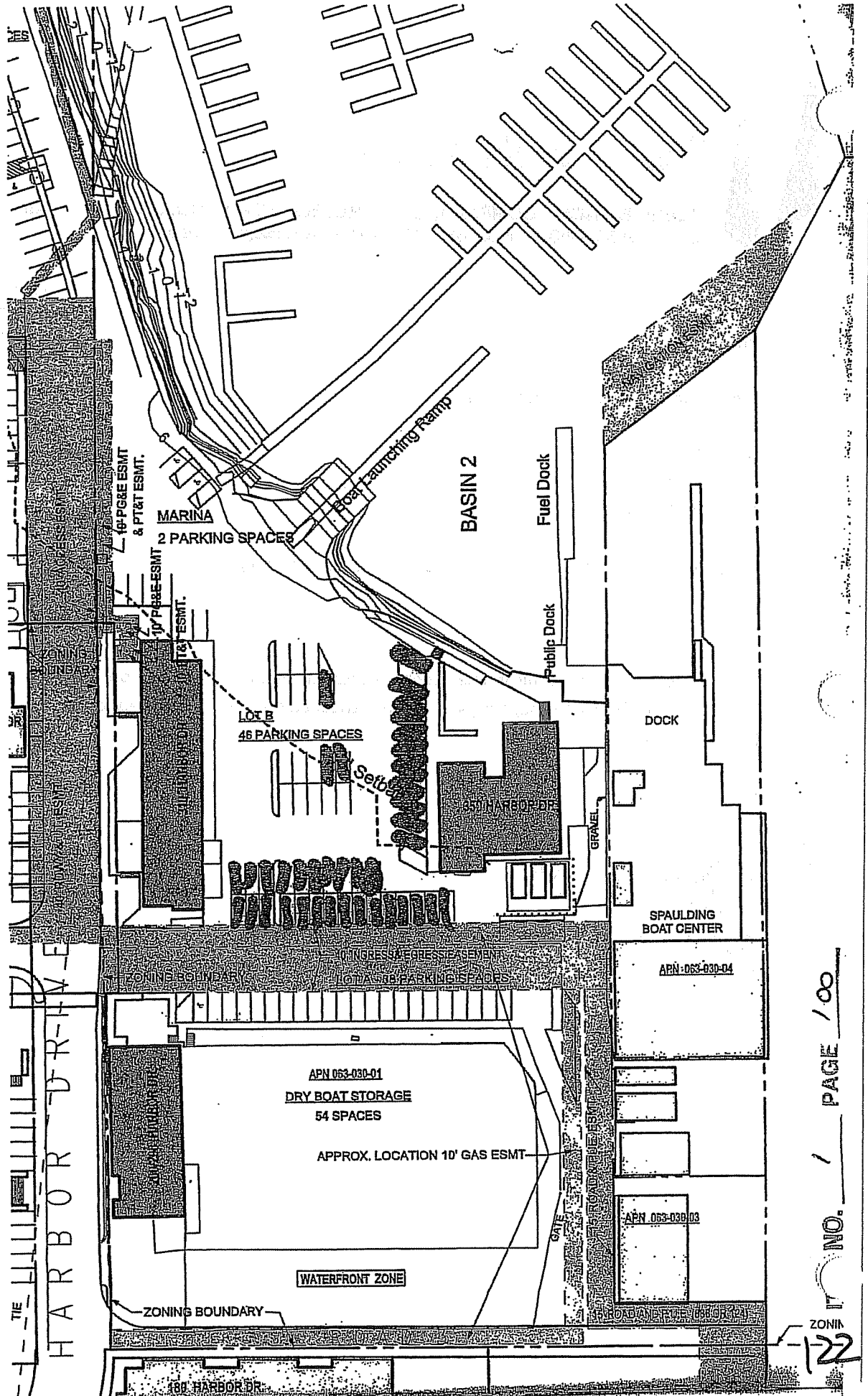
Very truly yours,

Jordan Rodgers  
Harbor Master  
Clipper Yacht Harbor

RECEIVED

JAN 14 2009

CITY OF SALDALITO  
COMMUNITY DEVELOPMENT



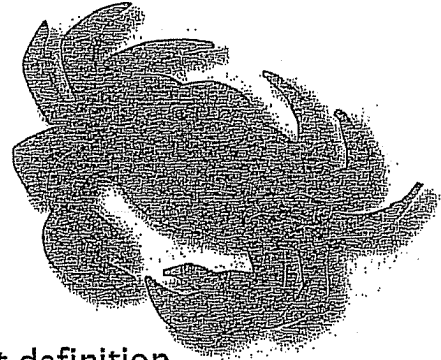


# Fish.

RECEIVED

FEB 03 2009

CITY OF SAUSALITO  
COMMUNITY DEVELOPMENT



Who we are.

We are champions of Sustainability. Our stringent definition includes not only the health of the ocean and renewable resources, but the well-being of the people who have fished for generations. We have been recognized by Monterey Bay Aquarium as the leader in our industry, and lead by example.

We buy all of our local fish from local fisherman who deliver their catch to our dock, providing the catch is sustainable. This includes halibut, black cod, herring, sardines, anchovies, sand dabs, rockcod, crab and salmon. We buy direct from the boats, and pay them better than wholesalers. We also buy as much of our produce directly from local organic farmers as possible.

We are the founders of Fish Or Cut Bait (FOCB.org), a non-profit started in 2008 to give the consumer the information they need to make the choices that will assure a healthy ocean and source of seafood for future generations.

FOCB.org has received national attention for it's first initiative, the "Farm Free Salmon Pledge", a grass roots movement to stop the deceptive practice of claiming that a farmed salmon product can be sustainable. In 2009, FOCB.org and the pledge was introduced to millions on the Rachel Ray show.

We are a small, family run business trying to do the right thing.

Kenny BELON

CO/OWNER  
FISH.

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**SURVEY SUMMARY--FISH RESTAURANT**

August 4th-12th, 2007

	<u>By Foot</u>	<u>By Bicycle</u>	<u>By Boat</u>	<u>Number of Autos Used</u>
Number of Patrons: Total:	331	29	32	67
(9 days)				
Noon Hour:	90			
Afternoon Hour:	172	16	4	35
Evening Hour:	202	13	11	50
<b>3 HOUR TOTAL:</b>	<b>705</b>	<b>58 (8%)</b>	<b>47(7%)</b>	<b>152 (5.63 PER HOUR)</b>

**SUMMARY OF AUTO USE:**

Noon hour total:	67
Afternoon hour total:	35
Evening hour total:	50
<b>TOTAL AUTOS:</b>	<b>152</b>
Avg. per hr, weekends:	6.33

Avg. per hr, weekdays: 5.07

**Patrons coming from Marlinship & Boats:**

Noon hour:	116
Afternoon hour:	51
Evening hour:	55
<b>TOTAL MS &amp; BOATS:</b>	<b>222</b>

222 (31.5%)

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CITY OF SAUVALTO  
COMMUNITY DEVELOPMENT  
FEB - 9

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COMMUNITY DEVELOPMENT

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CITY OF SAUVALTO  
COMMUNITY DEVELOPMENT

**Patrons coming from Sausalito (non-Marinship & boat): 209 (29.6%)**

Noon hour: 78  
Afternoon hour: 56  
Evening hour: 75  
Total Sausalito 209

**Non-Sausalito/Marinship Patrons: 135 (19%)**

Noon hour: 74  
Afternoon hour: 30  
Evening hour: 31  
Total non-Sausalito/Marinship: 135

**Overall seating preferences: Indoor: 58 (9%), Outdoor: 617 (91%)**

**FISH RESTAURANT SURVEY (Noon)**

August 4th-12th, 2007  
Time: 11:30 am to 12:30 pm

Date:	Patrons:	Transportation:	Came from:	Seating Preference	Weather Conditions:	SSA:
Saturday, Aug. 4	29	By foot: 13 Autos: 7 By bicycle: 7 By boat: 4 Other: 0	Marinship: 10 Boat: 0 Sausalito: 29 Marin Cty: 2 Other: 4	Indoors: 0 Outdoors: 29	Sunny	Yes: 7 No: 22
Sunday, Aug. 5:	34	By foot: 1 Autos: 8 By bicycle: 12 By boat: 19 Other: 0	Marinship: 1 Boat: 0 Sausalito: 34 Marin Cty: 5 Other: 19	Indoors: 0 Outdoors: 34	Cold & foggy	Yes: 10 No: 24
Monday, Aug 6:	24	By foot: 8 Autos: 7 By bicycle: 7 By boat: 6 Other: 6	Marinship: 7 Boat: 0 Sausalito: 20 Marin Cty: 6 Other: 6	Indoors: 4 Outdoors: 20	Foggy	Yes: 20 No: 4
Tuesday, Aug 7:	46	By foot: 7 Autos: 10 By bicycle: 4 By boat: 0 Other: 0	Marinship: 6 Boat: 5 Sausalito: 41 Marin Cty: 16 Other: 7	Indoors: 5 Outdoors: 41	Foggy	Yes: 29 No: 17
Wednesday, Aug. 8	36	By foot: 19 Autos: 7 By bicycle: 6 By boat: 6 Other: 5	Marinship: 15 Boat: 3 Sausalito: 33 Marin Cty: 6 Other: 11	Indoors: 3 Outdoors: 33	Cold & foggy	Yes: 17 No: 19

Noon, page 1

Date	By foot:	7	Marinship:	10 Indoors:	0	Warm	Yes:	9
Thursday, Aug. 9	Auto:	2	Boat:	0			Yes:	
	By bicycle:		Sausalito:	10 Indoors:	26		No:	10
	By boat:	2	Marin Cty:	2				
	Other:		Other:	3				
Friday, Aug. 10	By foot:	15	Marinship:	15 Indoors:	0	Sunny	Yes:	33
	Auto:	7	Boat:	27			No:	8
	By bicycle:		Sausalito:	2 Indoors:	41			
	By boat:	27	Marin Cty:	2				
	Other:		Other:	3				
Saturday, Aug. 11	By foot:	15	Marinship:	15 Indoors:	0	Warm	Yes:	13
	Auto:	4	Boat:	0			No:	18
	By bicycle:		Sausalito:	10 Indoors:	32			
	By boat:	1	Marin Cty:	6				
	Other:	2	Other:	1				
Sunday, Aug. 12	By foot:	5	Marinship:	10 Indoors:	0	Warm	Yes:	15
	Auto:	15	Boat:	0			No:	40
	By bicycle:	6	Sausalito:	10 Indoors:	55			
	By boat:	2	Marin Cty:	15				
	Other:		Other:	20				
<b>Total Patrons:</b>								<b>331</b>

Noon, page 2

**FISH RESTAURANT SURVEY (Afternoon)**

August 4th-12th, 2007  
Time: 3:00 to 4:00 pm

Date:	Patrons:	Transportation:	Came from:	Seating Preference	Weather Conditions:	SSA:
Saturday, Aug. 4	32	By foot: 14 Autos: 8 By bicycle: 7 By boat: 4 Other:	Marinship: 6 Boat: 0 Sausalito: 15 Marin City: 5 Other: 6	Indoors: 0 Outdoors: 32	Sunny	Yes: 15 No: 17
Sunday, Aug. 5:	19	By foot: 5 Autos: 2 By bicycle: 2 By boat: 2 Other:	Marinship: 0 Boat: 0 Sausalito: 2 Marin City: 5 Other: 12	Indoors: 2 Outdoors: 17	Cold & foggy	Yes: 10 No: 6
Monday, Aug 6:	7	By foot: 5 Autos: 2 By bicycle: 2 By boat: 2 Other:	Marinship: 3 Boat: 3 Sausalito: 4 Marin City: 4 Other: 7	Indoors: 3 Outdoors: 7	Foggy	Yes: 7 No: 7
Tuesday, Aug 7:	12	By foot: 4 Autos: 3 By bicycle: 3 By boat: 3 Other:	Marinship: 3 Boat: 3 Sausalito: 4 Marin City: 4 Other: 3	Indoors: 5 Outdoors: 7	Warm & windy	Yes: 7 No: 5
Wednesday, Aug. 8	13	By foot: 5 Autos: 3 By bicycle: 3 By boat: 3 Other:	Marinship: 5 Boat: 3 Sausalito: 5 Marin City: 5 Other: 3	Indoors: 3 Outdoors: 10	Warm	Yes: 5 No: 8

Afternoon, page 1

Date:	Patrons:	Transportation:	Came from:	Seating Preference	Weather Conditions:	SSA:
Thursday, Aug. 9	19	By foot: 8 Auto: 2 By bicycle: 4 By boat: 2 Other: 2	Marinship: 10 Boat: 2 Sausalito: 5 Marin Cty: 2 Other: 2	Indoors: 2 Outdoors: 17	Sunny	Yes: 12 No: 7
Friday, Aug. 10	20	By foot: 10 Auto: 3 By bicycle: 3 By boat: 3 Other: 3	Marinship: 7 Boat: 0 Sausalito: 8 Marin Cty: 5 Other: 5	Indoors: 0 Outdoors: 20	Warm	Yes: 5 No: 15
Saturday, Aug. 11	21	By foot: 8 Auto: 2 By bicycle: 3 By boat: 3 Other: 3	Marinship: 5 Boat: 0 Sausalito: 8 Marin Cty: 8 Other: 8	Indoors: 0 Outdoors: 21	Sunny	Yes: 7 No: 14
Sunday, Aug. 12	29	By foot: 7 Auto: 7 By bicycle: 7 By boat: 7 Other: 7	Marinship: 8 Boat: 4 Sausalito: 9 Marin Cty: 4 Other: 4	Indoors: 12 Outdoors: 17	Sunny	Yes: 7 No: 14
<b>Total Patrons:</b>						
	172					

Afternoon, page 2



**FISH RESTAURANT SURVEY (Evening)**

August 4th-12th, 2007  
Time: 7:30 to 8:30 pm

Date:	Patrons:	Transportation:	Came from:	Seating Preference	Weather Conditions:	SSA:
Saturday, Aug. 4	17	By foot: 7 Autos: 5 By bicycle: 5 By boat: 10 Other: 2	Marinship: 0 Boat: 17 Sausalito: 5 Marin Cty: 10 Other: 2	Indoors: 0 Outdoors: 17	Windy	Yes: 6 No: 11
Sunday, Aug. 5:	9	By foot: 5 Autos: 5 By bicycle: 5 By boat: 1 Other: 3	Marinship: 5 Boat: 5 Sausalito: 0 Marin Cty: 1 Other: 3	Indoors: 5 Outdoors: 0	Cold & foggy	Yes: 6 No: 3
Monday, Aug 6:	15	By foot: 1 Autos: 5 By bicycle: 5 By boat: 4 Other: 5	Marinship: 5 Boat: 1 Sausalito: 5 Marin Cty: 4 Other: 5	Indoors: 5 Outdoors: 10	Foggy	Yes: 10 No: 5
Tuesday, Aug 7:	24	By foot: 2 Autos: 8 By bicycle: 8 By boat: 18 Other: 4	Marinship: 5 Boat: 2 Sausalito: 18 Marin Cty: 4 Other: 4	Indoors: 5 Outdoors: 19	Windy	Yes: 17 No: 7
Wednesday, Aug. 8	14	By foot: 4 Autos: 5 By bicycle: 5 By boat: 8 Other: 2	Marinship: 4 Boat: 2 Sausalito: 4 Marin Cty: 8 Other: 2	Indoors: 4 Outdoors: 10	Cold	Yes: 12 No: 2

Evening, page 1

Date:	Patrons:	Transportation:	Came from:	Seating Preference	Weather Conditions:	SSA:
Thursday, Aug. 9	30	By foot: 9 Autos: 5 By bicycle: 2 By boat: 2 Other: 2	Marinship: 11 Boat: 2 Sausalito: 7 Marin Cty: 5 Other: 5	Indoors: 2 Outdoors: 28	Windy	Yes: 20 No: 10
Friday, Aug. 10	32	By foot: 10 Autos: 7 By bicycle: 4 By boat: 4 Other: 4	Marinship: 11 Boat: 1 Sausalito: 16 Marin Cty: 3 Other: 2	Indoors: 1 Outdoors: 30	Warm	Yes: 10 No: 20
Saturday, Aug. 11	25	By foot: 5 Autos: 3 By bicycle: 4 By boat: 4 Other: 4	Marinship: 5 Boat: 5 Sausalito: 10 Marin Cty: 10 Other: 10	Indoors: 0 Outdoors: 25	Windy	Yes: 5 No: 20
Sunday, Aug. 12	36	By foot: 5 Autos: 5 By bicycle: 9 By boat: 9 Other: 9	Marinship: 11 Boat: 10 Sausalito: 5 Marin Cty: 10 Other: 10	Indoors: 0 Outdoors: 36	Warm	Yes: 6 No: 30
<b>Total Patrons:</b>	<b>202</b>					

Evening, page 2



# STAFF REPORT

## SAUSALITO CITY COUNCIL

---

### AGENDA TITLE:

Requesting approval by the City Council of an Exception to the Marinship Specific Plan, Application No. SA 04-029.

### RECOMMENDED MOTION:

After taking public testimony, Staff recommends that the City Council consider directing Staff to prepare a draft resolution approving the requested Exception, as recommended by the Planning Commission pursuant to Resolution No. 2004-029.

---

### SUMMARY

Caruso's LLC, aka Fish Restaurant, is requesting approval of an Exception to the Marinship Specific Plan to increase the maximum allowable seating from 20 seats to 70 seats, including indoor and outdoor seating, for the existing restaurant at 350 Harbor Drive. On June 23, 2004, the Planning Commission approved Resolution No. 2004-029 recommending approval of the application (SA 04-029).

### BACKGROUND

On June 9th the Planning Commission conducted a public hearing regarding the proposed project and directed staff to return with a draft resolution recommending approval on June 23rd. The minutes of the June 9th meeting are attached.

A full description of the project, including an analysis based on the required findings, is contained in the attached June 9, 2004 staff report.

The adopted resolution cites several findings for approval, based on the staff report and the deliberation by the Commission on June 9, as follows:

- "...the Planning Commission finds that, as conditioned herein, the proposed project complies with the requirements of the Zoning Code, including the required findings to grant an exception to the Marinship Specific Plan, and the applicable goals of the Marinship Specific Plan, as outlined in the staff report except as may otherwise be noted in this resolution; and
- "...the Planning Commission finds that, as conditioned herein, the proposed project complies with the General Plan as outlined in the staff report; and
- "...all applicable conditions of approval for CUP 03-025 remain in effect; and

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EXHIBIT N  
(56 PAGES)

- "...the increase in seating recommended for approval by the Planning Commission applies to the existing use and intensity of use currently on site; and
- "...the Planning Commission's recommendation is based on a fish restaurant with an ancillary fish market that cumulatively reflects and maintains the waterfront nature of the Marinship; and
- "... the Planning Commission is recommending approval of a maximum of 70 seats based on the seating plan submitted June 3, 2004, which does not include seating on the lower outside deck represented as "public beach; and
- "...the Planning Commission has determined that the location and signage does not encourage use by persons outside the Marinship; and
- "...the recommendation of approval for the proposed exception does not set a precedent in the Marinship nor does it question the intent of the existing provisions of the Marinship Specific Plan."

## ISSUES

Since the Planning Commission's review of this project, concern has been expressed regarding the existing number of seats and the true seating capacity of the picnic tables used at the restaurant versus the seating shown on the submitted plans. Plans submitted by the applicant and reviewed by the Planning Commission indicate 13 standard tables (8 inside and 5 outside) each seating four people, 4 small tables (3 inside and 1 outside) each seating two people, and 10 bar stools for a total of 70 seats. The Commission recommended approval of this project based on the information provided by the applicant.

The existing seating at the restaurant is at wooden picnic tables with unattached benches. Due to the size of the benches it is debatable whether each standard table seats four or six people and whether each small table seats two or four people. This has the potential to alter the total seating calculation. The larger capacity for each table could result in seating for 94 people instead of the 70 approved by the Planning Commission. This in turn could have a significant impact on parking and traffic associated with the restaurant. The Council may wish to consider this and discuss how the existing bench seating should be calculated.

Staff visited the site on July 21, 2004, to verify the number of existing tables being used. Staff counted 20 standard tables, 5 small tables, and 14 bar stools. The majority of the tables were located outside on the patio with only 4 standard tables and the bar stools located inside. The applicant has indicated to Staff that tables are moved inside or outside depending on the weather conditions. Four standard tables and 3 of the small tables were located on the lower deck while the remaining were situated on the upper deck and entryway.

This number is significantly different than the seating illustrated on the submitted seating plan. The existing seating could accommodate 104 to 154, 149% to 220% of the increased seating approved by the Planning Commission.

## OTHER AGENCY APPROVALS

During the Commission review, a question was raised as to whether the project would require an approval from the Bay Conservation and Development Commission (BCDC). Staff has contacted BCDC regarding this issue and will report more details, if provided, at the July 27 hearing. If the Council directs staff to approve the Exception, it may wish to consider a condition of approval which states that any necessary BCDC approvals be obtained, and that the project be confirmed to be consistent with BCDC regulations, before the Exception is effective.

## CEQA

Staff determined that the project was exempt from CEQA pursuant to 15301 (Existing Facilities). This section of CEQA exemptions includes minor alterations to existing private structures, including interior changes and additions of up to 10,000 square feet in urbanized areas. The proposed project does not involve any new physical construction, alteration, or major remodeling on the site and therefore Staff determined the impact would be less than those alterations listed as exemptions.

A key consideration of CEQA section 15301 is that there is "negligible or no expansion of use beyond that existing at the time of the lead agency's determination." Although Staff does not believe that the requested intensity of use will have a negative impact to the environment, the Council may wish to discuss this issue.

## CORRESPONDENCE

Staff received written correspondence voicing concern about the increase in traffic on Harbor Drive associated with the expansion of the restaurant (see attached).

Additionally, Staff met with the attorney for the Spalding Estate regarding their concerns with parking on the Clipper Yacht Harbor site. The true number of seats was also questioned with reference to the capacity of the existing tables and the number of existing tables on site. Written correspondence is attached.

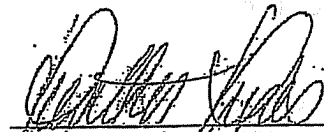
## STAFF RECOMMENDATIONS

Staff recommends that the City Council direct staff to prepare a Resolution of Approval consistent with the Planning Commission's recommendation contained in Resolution 2004-029, thereby approving the proposed Exception.

## ATTACHMENTS

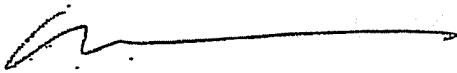
1. Vicinity Map
2. Planning Commission Resolution of Approval 2004-29
3. June 9, 2004 Staff Report (not including attachments)
4. June 23, 2004 Staff Report (not including attachments)
5. Approved minutes of the June 9, 2004 Planning Commission hearing
6. City Engineer Memorandum regarding project
7. Correspondence from Applicant
8. Correspondence received in response to the public hearing notice for the Planning Commission hearing
9. Correspondence received in response to the public hearing notice for the City Council hearing
10. Staff photos
11. Reduced sized plan sets

PREPARED BY (Department Head):



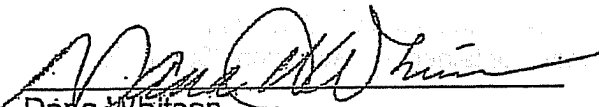
Heather Hines  
Contract Planner

REVIEWED BY (Department Head):



Drummond Buckley, AICP  
Planning Director

SUBMITTED BY:

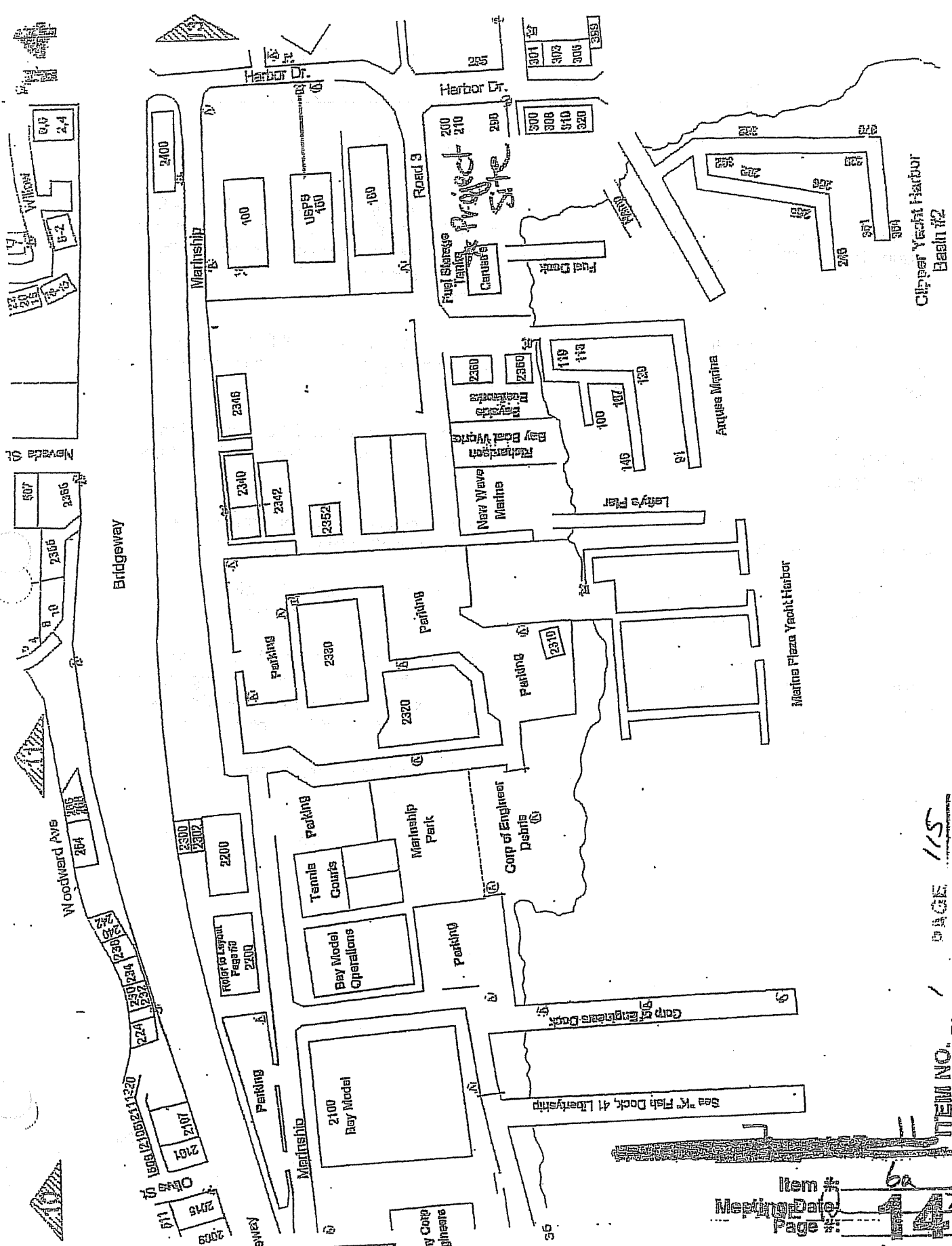


Dana Whitson  
City Manager

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**RESOLUTION NO. 2004-29**

**RESOLUTION OF THE SAUSALITO PLANNING COMMISSION  
RECOMMENDING APPROVAL OF AN EXCEPTION  
TO THE MARINSHIP SPECIFIC PLAN APPLICATION NO. SA 04-029  
TO INCREASE THE MAXIMUM ALLOWABLE RESTAURANT SEATING TO 70 SEATS  
AT 350 HARBOR DRIVE**

---

WHEREAS, an application for an exception to the Marinship Specific Plan and was filed on April 1, 2004 by Caruso's LLC, applicant, on behalf of Clipper Yacht Harbor, property owner, requesting the Planning Commission's recommendation of approval for an exception to the Marinship Specific Plan to increase the maximum allowable seating from 20 seats to 70 seats, including indoor and outdoor seating, (APN #064-162-014); and

WHEREAS, the Planning Commission has conducted duly noticed public meetings on May 26, 2004, June 09, 2004, and June 23, 2004, in the manner prescribed by local ordinance, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission has reviewed and considered the project plans titled "Fish Restaurant Seating Plan" submitted June 3, 2004, and parking plan submitted dated May 5, 2003, and submitted May 12, 2004; and

WHEREAS, the Planning Commission has received and considered oral and written testimony on the subject application and obtained evidence from site visits; and

WHEREAS, the Planning Commission has reviewed and considered the information contained in the June 9, 2004 staff report for the proposed project attached hereto; and

WHEREAS the Planning Commission finds that, as conditioned herein, the proposed project complies with the requirements of the Zoning Code, including the required findings to grant an exception to the Marinship Specific Plan, and the applicable goals of the Marinship Specific Plan, as outlined in the staff report except as may otherwise be noted in this resolution; and

WHEREAS, the Planning Commission finds that, as conditioned herein, the proposed project complies with the General Plan as outlined in the staff report; and

WHEREAS, the Planning Commission finds the project Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301(e).

WHEREAS, all applicable conditions of approval for CUP 03-025 remain in affect; and

WHEREAS, the increase in seating recommended for approval by the Planning Commission applies to the existing use and intensity of use currently on site.

WHEREAS, the Planning Commission's recommendation is based on a fish restaurant with an ancillary fish market that cumulatively reflects and maintains the waterfront nature of the Marinship; and

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WHEREAS, the Planning Commission is recommending approval of a maximum of 70 seats based on the seating plan submitted June 3, 2004, which does not include seating on the lower outside deck represented as "public beach";

WHEREAS, the Planning Commission has determined that the location and signage does not encourage use by persons outside the Marinship; and


WHEREAS, the recommendation of approval for the proposed exception does not set a precedent in the Marinship nor does it question the intent of the existing provisions of the Marinship Specific Plan.

NOW, THEREFORE, THE PLANNING COMMISSION CONCLUDES, based on the above-noted criteria, that it can recommend approval of Application No. SA 04-029, subject to the following conditions of approval:

1. Approval of this application is limited to the project plans titled "Fish Restaurant Seating Plan" submitted June 3, 2004 and the parking plans submitted May 12, 2004.
2. At no time shall the restaurant seating exceed a maximum of 70 seats, including both indoor and outdoor seating.
3. As a condition of this approval, no alternative or unrelated construction, site improvements, tree removal and/or alteration, exterior alterations and/or renovations shall be performed on the project site prior to commencement of construction of the proposed project. In such cases, this approval shall be rendered null and void unless approved by the Community Development Department as a modification to this approval.
4. The applicant shall comply with the City Engineer's requirements for a 70 seat restaurant.

RESOLUTION PASSED AND ADOPTED, at the regular meeting of the Sausalito Planning Commission on the 23<sup>rd</sup> day of June, 2004, by the following vote:

AYES:	Commissioner:	Pettitt, Williams, Kelly
NOES:	Commissioner:	Chair Leone
ABSENT:	Commissioner:	Vice-Chair Kellman
ABSTAIN:	Commissioner:	

  
SECRETARY TO THE PLANNING COMMISSION *D. Burke*

Attachment: June 9, 2004 Staff Report to the Planning Commission for SA 04-029

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# STAFF REPORT

## SAUSALITO PLANNING COMMISSION

Agenda Item Number 6

**PROJECT:** 350 Harbor / SA 04-029 / APN 063-030-01  
**MEETING DATE:** June 9, 2004  
**STAFF:** Heather Hines, Contract Planner  
**APPLICANT:** Caruso's LLC  
**PROPERTY OWNER:** Clipper Yacht Harbor

### REQUEST

The applicant requests Planning Commission approval of an exception to the Marinship Specific Plan to allow 70 seats at the existing restaurant. The seating is to include 48 indoors seats and 22 outdoor seats.

### REGULATORY FRAMEWORK

**Zoning:** W - M (Waterfront – Marinship Overlay)  
**General Plan/Marinship Specific Plan:** Waterfront / MarinShip Specific Plan Zone 2 Parcel 8-A  
**Special Regulations:** Compliance with goals of Marinship Specific Plan; Exceptions to Marinship Specific Plan  
**CEQA:** Categorically exempt pursuant to Section 15301(e)  
**Required Permit:** Exception to the Marinship Specific Plan

### BACKGROUND

The use of this site for a restaurant has a long and detailed history. Originating in 1984 the Planning Commission approved a request for a conditional use permit for limited food sales (deli). At that time the Planning Commission clearly specified that they were not approving a restaurant and did not approve any tables or chairs on site. No on site cooking or serving of alcohol was permitted. The food and beverage service was considered accessory to the bait and tackle sales on site and was limited to the sale of prepackaged food such as sandwiches.

In October 1989 the property owner applied for a conditional use permit for a small restaurant, including 20 seats in 300 square feet of the 5,345 square feet of the entire building. The Planning Commission approved the proposed project and adopted Resolution 1990-15. Resolution 1990-15 specified that seating would be limited to 20 seats located within the designated 300 square feet in the NE corner of the building. Furthermore, no outdoor seating was permitted, hours of operation were specified, five existing parking spaces were required to be designated as 30 minute spaces, and the conditional use permit was given a time limitation of five years.

In February of 1995 the City of Sausalito sent a letter to the property owner indicating that the CUP/

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issued in 1990 was due to expire in July of 1995. Additionally, the letter indicated that the restaurant was operating in violation of the conditions of that CUP by servicing more than 20 seats in 300 square feet of space.

In July of 1995 the property owner filed an application for an amendment to the previously approved use permit for a time extension. Additionally, at this time an application for a Specific Plan Amendment was submitted to increase the allowable seating and permit outdoor seating. After considerable consideration over four meetings the Planning Commission approved the amendment to the use permit, granting a two year extension. Resolution 1996-16 was approved by the Planning Commission for approval for an amendment to the Marinship Specific Plan and an amendment to the SMC, allowing outdoor seating in the "W" zoning district. Resolution 1996-18 was approved by the Planning Commission denying the request to amend the Marinship Specific Plan and amend the SMC to allow an increase in permitted seating in restaurants in the "W" zoning district. After review the City Council approved the Planning Commission's decisions, adding that any outdoor seating would not increase total seating on site.

The applicant is the owner of Fish, the new restaurant on site. At this time the applicant is requesting formal approval of the existing seating through this application for an exception to the limitations of the Marinship Specific Plan.

**EXISTING SETTING**

**Neighborhood:**

The existing area consists of industrial and waterfront uses as allowed by zoning and the Marinship Specific Plan.

**Subject Parcel:**

The restaurant is located within a portion of an existing building on the Clipper Yacht Harbor site, occupying approximately 2,968 square feet of Building A on the site. The Clipper Yacht Harbor site is a parcel that consists of 3.4 acres of land and 6.8 acres of water, for a total site area of 10.2 acres.

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**PROJECT DESCRIPTION**

- Structures:** No structural changes are proposed to the existing building.  
The applicant is requesting approval for 70 seats (48 indoor and 22 outdoor), which already exist on site.
- Design:** The project does not propose design modifications to the existing building.  
No signs are being proposed for the restaurant.
- Land Use/Density:** The existing restaurant occupies approximately 2,968 square feet of building area as well as approximately 1,200 square feet of outside deck and patio area.  
The existing building also includes a 1,645 square foot commercial space that is proposed as a bait and tackle shop, which is permitted in the W zoning district.
- Tree Protection:** No tree removal or alteration is proposed.
- New Landscaping:** No modifications are proposed to the existing landscaping.

**ISSUES**

**Number of Seats –** This application is requesting an exception to the Marinship Specific Plan to allow a restaurant with a seating capacity of 70 seats, 48 indoor seats and 22 outdoor seats. The existing restaurant currently operates at this capacity.

Food service is listed as an allowable use in the Waterfront zoning district in the Marinship Specific Plan. However, the Specific Plan limits restaurants in the "W" zone to "small-scale eating establishments (with limited dining on the premises, not to exceed 20 seats)" and requires a conditional use permit. As detailed in the background section, a conditional use permit was originally issued in 1990 for a 20 seat restaurant on this parcel.

The Sausalito Municipal Code lists restaurants as a conditional use in the Waterfront zoning district and refers to the Specific Plan for further details.

Section 10.28.050(F) of the zoning ordinance outlines a process for exceptions to the Marinship Specific Plan. The code defines an applicable exception as "minor exceptions to the development standards or definitions of use established by the Marinship Specific Plan that do not alter the general development programs of the Plan" and further details that these exceptions may be approved by the City Council with the recommendation of the Planning Commission. Specific findings are provided and required for the Planning Commission to approve and recommend this application to the City Council,

Staff has outlined the applicable goals of the Marinship Specific Plan as well as the findings for exceptions in this report and provided project analysis to address each individually.

The applicant has provided written response to the five required findings (see attached).

The Planning Commission should consider whether this application complies with the required findings for exceptions to the Marinship Specific Plan.

**Parking** – Because the requested exception to the Marinship Specific Plan would permit a theoretical increase in the intensity of the use, the on-site parking would have to meet the code requirements. Because the project parcel is a large parcel (10.2 acres) with a number of existing land uses, a parking summary was required with this application to verify the existing uses and existing parking on the property. The following summary outlines these parameters as submitted by the applicant and illustrated on the attached parking plan.

**PARKING NEEDS**

Building Use	Floor Area	Code	Spaces
<b>Building A</b>			
Marine Commercial (Bait and Tackle Shop)	1,645 sq ft	1 per 500 sq ft	3 spaces
Restaurant	2,958 sq ft 70 seats	1 per 4 seats	18 spaces
<b>Building B</b>			
Marine Commercial	4,000 sq ft	1 per 500 sq ft	8 spaces
<b>Building C</b>			
Marine Commercial	5,050 sq ft	1 per 500 sq ft	10 spaces
Dry Boat Storage	60 spaces	1 per 3 striped spaces	20 spaces
Sport Fishing/Yacht Sale (Marine Commercial)	berths	1 per 500 sq ft	6 spaces (amount indicated on parking plan)
<b>Totals</b>			<b>65 spaces</b>

The submitted parking inventory indicates marine industrial uses in all three buildings and a parking requirement of one parking space per 250 square feet of floor area. The current code requirement for marine industrial is one parking space per 1,000 square feet of parking area.

The current uses in Building B and Building C include a diving center, electronics, yacht sales, and a bait and tackle shop. These uses fall under marine commercial per the definition in SMC 10.88. The parking requirement for marine commercial is one parking space per 500 square feet of floor area. Staff has applied the more restrictive marine commercial classification for purposes of determining parking requirements. The current requirements of marine commercial are still below the requirements used in the applicant's parking analysis.

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The above parking needs table indicates that 65 parking spaces are required by SMC to accommodate the existing uses on site, including the restaurant at a 70 seat capacity. According to the parking plan submitted by the applicant, there are currently 95 parking spaces on site, including ten one-hour parking spaces in front of the existing restaurant. The existing on-site parking appears to meet all code requirements for the variety of existing uses.

**GENERAL PLAN CONSISTENCY**

To determine whether an exception can be granted to increase the allowable seating on site, the Planning Commission must determine whether the proposed project is consistent with the goals of the General Plan and with the following policies and programs:

**Objective CD-4.0 Preserve Character:** Promote the uniqueness of Community sub areas and assume that their attributes are enhanced.

**Industrial Policies and Programs-- Marinship (p. 2-41)** The primary goal of the General Plan and the Marinship Specific Plan is to preserve the area for continued marine industrial use to mitigate concerns regarding traffic and the loss of focus on marine-related industry. The restaurant and fish market remain closely tied to the marine-related industry of the Marinship by providing a working fish market and providing a needed service to marine industry employees in the area.

**Policy LU-4.1 Waterfront Access** Promote and enhance public access and enjoyment of the Sausalito waterfront.

Program LU-4.1.1 Maintain and enhance water view corridors and walking paths to and along the shoreline where compatible with private development. The proposed project does not further impact the water view corridors or walking paths along the shoreline.

**Policy LU-4.2 Marinship Waterfront Uses:** Promote those marine industrial oriented uses that require waterfront location and ensure the preservation of the existing general industrial uses found in the Marinship Waterfront area.

Program LU-4.2.1 Continue to apply the provisions of the Marinship Specific Plan and the zoning ordinance as they pertain to the Marinship.

**Policy CD-4.2 Marinship:** Encourage the development of all industrial and commercial sites to be as visually attractive as possible consistent with functionality.

**Policy EQ-3.5 Bay Waters:** Preserve and enhance the open waters of Richardson Bay and San Francisco Bays.

**Waterfront (p. 2-20)**

The primary waterfront area is located in the Marinship and is regulated by the Marinship Specific Plan. In the waterfront area of the Marinship, development will be limited to that which supports the marine industry. The existing restaurant supports the employees of the marine industry by providing a place within the waterfront to eat.

**MARINSHIP SPECIFIC PLAN**

The following is a partial list of Marinship Specific Plan goals that are relevant to this request:

**General Intent 1:** *To promote the waterfront area and promote diversified water dependent uses.*

The restaurant works in connection with a fish market, as it has from its inception. This component of the use provides a direct service form the fishing industry to the marketplace. Therefore, the existing use appears to promote water uses.

**Goal 1:** *Preserve and enhance the maritime history and character of the Marinship. This shall include giving, to the extent determined reasonable, development preference to marine uses and maritime industries.*

The current use includes a fish market, which is marine-related. The restaurant component of the use serves the customers of the fish market and people who live and work on the waterfront. Increasing the allowable seats does not alter the type of use.

**Goal 2:** *Preserve and enhance the industrial character and use of the Marinship.*

The project does not propose to alter the exterior of the building and will not impact the existing industrial character of the building. The restaurant serves to enhance the marine related use of the entire Clipper Yacht Harbor site.

**Goal 4:** *It is the intent of the plan to preserve the Marinship as an area primarily oriented to the use and service of Sausalito residents, not tourists.*

The existing restaurant is tucked behind other buildings and is not visible from the street. Additionally, there are no signs on the building or visible from the street to draw people to the establishment. It is obvious that this use depends on the patronage of those individuals already involved in the maritime activities of the area.

**Goal 5:** *It is the intent of the plan to discourage the development of non-industrial commercial businesses that are determined by the City to displace industrial and marine businesses, or that would disproportionately contribute to traffic generation.*

No change in use is being requested. The applicant is requesting applicable permits for the existing use and intensity of that use. The restaurant, either as Fish or Carusos, has been in existence for many years and does not appear to have displaced industrial businesses or disproportionately contributed to traffic generation.

**Goal 6:** *It is the intent of the plan to encourage development that produced low levels of traffic generation.*

The restaurant is currently functioning at the requested intensity and has not appeared to produce increased levels of traffic. Additionally, it appears that the restaurant is targeted to those residents and workers already in the waterfront area and is not attempting to draw people to the area.

**Goal 7:** *It is the intent of the plan to encourage, to the extent possible, mixed use rather than single use development, especially on larger parcels.*

The project site is a 2,968 square foot portion of an existing building within Clipper Yacht Harbor. The Clipper Yacht Harbor site is approximately 10.2 acres (land and water) and this use contributes to the diversity of uses on the site.

**Goal 8:** *The amount of commercial service use permitted on a site should be significantly limited in comparison to the amount of industrial use.*

In comparison to the entire 10.2 acre site, which is primarily occupied with water oriented and marine commercial/industrial uses, the food service area proposed is limited.

**Goal 9:** *The amount of restaurant and food service use in the Marinship should be linked to the local working population it would serve and be no more than the minimum size needed to serve that projected population.*

Fish currently operates at the requested capacity of 70 seats. The restaurant appears to serve a full and consistent need of the waterfront working population. Additionally, at this capacity there does not appear to be an overwhelming burden on traffic or parking in the area, indicating that much of the clientele is already in the waterfront area.

**Goal 11:** *Maintain an urban rather than a suburban character in the Marinship.*

The project does not propose changes to the exterior of the existing building that would impact the existing character.

**Goal 12:** *Development plans should recognize the aesthetic and social value of small-scale, individual activities as a vital component in the overall composition of the Marinship.*

The existing activity as a small scale fish market and restaurant, makes an important contribution to the vitality of the Marinship in promoting the fishing/marine industry.



**Goal 13:** *Uses and development plans that permit and encourage public access and use of the water and waterfront shall have preference over those that do not.*

The use of this site enhances the mixed-use development of this site, offering a variety of services to encourage the public to visit this site and the adjoining waterfront. The proposal does not alter the use or create any new development plans.

**Goal 14:** *Waterfront parcels shall provide approved public access to and from the water, including (where determined possible) limited amounts of temporary public small boat tie-up.*

The proposal does not impact shoreline access.

**Goal 16:** *An intent of the plan is to maximize the amount of real and effective open water and shoreline area.*

The proposal does not impact shoreline access.

**Goal 18:** *It is the intent of the plan to preserve and enhance the viability of the commercial fishing industry in Sausalito and the Marinship.*

The fish market component of the proposed use is an important way to connect the commercial fishing industry with the local marketplace and the maritime history of Sausalito.

### EXCEPTION TO MARINSHIP SPECIFIC PLAN

Prior to approving this application, the Planning Commission must determine whether the necessary findings specified in SMC Section 10.28.050(F)(2) can be made to grant an exception for the increased restaurant seating.

10.28.050(F)(2)(a) The exception requested addresses an implementation measure of the Marinship Specific Plan and not a policy essential to achieving the goals of the Plan.

The application is requesting an exception to a land use limitation in the "W" zone. The limitation of eating establishments to 20 seats is an implementation measure of the larger goal of preserving the character of the waterfront. It does not appear that increasing the allowable seating will threaten the character of the Marinship or the goals of the Specific Plan.

10.28.050(F)(2)(b) The exception is needed to accommodate changed economic or operational circumstances affecting preferred uses described in the Plan which were not or could not have been foreseen when the Plan was adopted.

The applicant has indicated that changing economic circumstances necessitate the increased seating for the continued viability of the restaurant. With the permanent restriction of seating the business owner is unable to increase his revenue to compensate for rising economic costs.

10.28.050(F)(2)(c) The exception furthers the intent of one or more goals of the Marinship Specific Plan and the project is in substantial compliance with both specific and general regulations of the Marinship Specific Plan and the underlying zoning designation.

As discussed in the previous section, this proposal furthers the intent of several of the goals of the Marinship Specific Plan. Fish provides a service oriented to the use and service of Sausalito residents. As a result the restaurant does not draw in large amount of traffic because it relies on the clientele of those already in the waterfront area. The restaurant furthers the mixed use of the large Clipper Yacht Company site. The mix of the restaurant as a fish market clearly links the use with maritime industry and maintains its connection with the Maritime history of the area.

10.28.050(F)(2)(d) The exception will not result in a significant negative impact on the traffic conditions in the Marinship or on Bridgeway.

Fish relies on those people that live and work in the area and are not attempting to draw traffic from other areas. The lack of existing signage or any request for new signage further indicates this.

10.28.050(F)(2)(e) The exception will serve the needs of residents of Sausalito and employees in the Marinship.

The restaurant provides a important service to the employees of the Marinship and the residents of Sausalito.

### PUBLIC NOTICE AND FEEDBACK

**Notice:**

10 days prior to the hearing date, notice of this proposal was published the Marin Scope and was mailed to residents and property owners within 300 feet of the subject parcel.

**Written feedback:**

Staff has received two written comments in support of the proposed project (see attached).

### STAFF CONCLUSIONS

**Overall Staff Recommendation:**

Staff recommends that the Commission review the merits of this project as proposed and hear public testimony. The Commission may:

1. Approve the application as submitted.
2. Approve the application subject to specific conditions and/or modifications.
3. Continue the application for additional information and/or project revisions.
4. Deny the application on the basis that the project does not comply with Sections 10.28.050(F)

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**EXHIBITS**

1. Zoning Permit
2. Vicinity Map
3. Applicant's written request for exception to the Maranship Specific Plan, dated April 1, 2004
4. Site Photos
5. Reduced set of plans
6. Written comments, dated May 18, 2004 (Peterson)
7. Written comments, dated May 17, 2004 (Jampolsky)

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# STAFF REPORT

## SAUSALITO PLANNING COMMISSION

**PROJECT:** 350 Harbor / SA 04-029 / APN 063-030-01

**MEETING DATE:** June 23, 2004

**STAFF:** Heather Hines, Contract Planner

**APPLICANT:** Caruso's LLC

**PROPERTY OWNER:** Clipper Yacht Harbor

### 1. BACKGROUND

On June 9, 2004, the Planning Commission reviewed and considered the plans and materials for the requested exception to the Marinship Specific Plan for 350 Harbor Drive. The Planning Commission voted to recommend approval of the exception to the City Council, 3 to 1 (with one Commissioner absent). Included in their motion the Commission indicated that their approval was based on the waterfront nature of the existing use as a fish market and fish restaurant and their belief that this recommendation of approval does not set a precedent for other changes or exceptions to the Marinship Specific Plan nor does it question the intent of the Specific Plan.

Staff has attempted to incorporate these comments into the draft resolution to adequately represent the Planning Commission's deliberations in recommending approval of this project. Additionally, from the direction of the Commission's discussion, Staff has referenced maintaining the conditions of approval CUP 03-025 and the concern regarding discrepancies between existing seating and seating approved as shown on the submitted plans.

A Draft Resolution of Approval is attached for the Commission to review.

### 2. ATTACHMENTS

1. Draft Resolution of Approval

reflect the changes outlined by the Commission on the record, and approving the encroachment, including conditions that address grading and drainage.

*(Chair Leone noted that he is going to vote no because it assumes an approach of voting the same way on it the next time and he is more than inclined to vote for it next time if these changes are made, but he'll vote no on it until he sees those changes.)*

*(Commissioner Kelly said he wanted to go on record that if he votes yes tonight he doesn't have to vote for it next time. He's just trying to move the process along.)*

*(Commissioner Pettitt said he doesn't have to vote yes next time either.)*

**ROLL CALL**

**AYES:** Vice Chair Kellman, Commissioners Kelly and Pettitt  
**NOES:** Chair Leone  
**ABSTAINED:** None.  
**ABSENT:** Commissioner Williams

*(Chair Leone pointed out the hearing will not be renoticed.)*

6. 350 Harbor Drive SPA 04-029  
Staff: Hines  
Caruso's LLC (applicant)  
Clipper Yacht Harbor (owner)

Exception to the Marinship Specific Plan to increase allowable seating of The existing restaurant from 20 seats to a total of 70 seats, including indoor and outdoor seating.

**Staff report by Contract City Planner Heather Hines**

The Planning Commission approved a request for a conditional use permit for limited food sales in 1984. At that time the Planning Commission clearly specified that they were not approving a restaurant and did not approve any tables or chairs on site. In October 1989 the property owner applied for a conditional use permit for a small restaurant including 20 seats in 300 square feet of the 5,345 square feet of the entire building. In 1995 the property owner filed an application for an amendment to the previously approved use permit for a time extension. After considerable discussion the Planning Commission approved the amendment to the use permit, granting a two-year extension.

Presentation by Applicant

William Foss said they are simply asking for 70 seats instead of 20. The establishment has operated with that volume ever since he's been going there and he is asking the Commission to recognize that without that volume there isn't a business.

Chair Leone noted that Mr. Foss came in for the use permit in 2003 for 20 seats, today there is obviously seating outside and in for more than 70 seats. How did this come about?

Mr. Foss explained that the picnic tables are moveable. On any given day there are four to six four-tops in the public area, which are brought up if needed.

Chair Leone said he still hasn't explained how the restaurant went from 20 seats to however many there are now.

Mr. Foss said they never, ever operated with 20.

Chair Leone asked if the fact that they only had a use permit for 20 was meaningless to him?

Mr. Foss said yes, he's afraid so.

Commissioner Kelly asked if the initial use was the restaurant that is there?

Mr. Buckley said the previous restaurant was closed for more than six months and lost its grandfathered status, so from a zoning standpoint, it died.

Commissioner Kelly asked if the restaurant that is currently operating there now the same restaurant contained in this June 11, 2003 memo?

Mr. Foss said yes, sir. It wasn't opened yet when that report was done. The intention was to get the CUP back, which the previous tenant had let lapse two years before he closed business (including his beer and wine license). At the time they came in for the 20 seat CUP they worked as hard as possible to make sure that they had the doorway to get the exception procedure under the new zoning ordinance. There was no way to get to a successful business with 20 seats; they had to take the chance of opening with the 20-seat permit, hoping they could get the additional and if they couldn't, they'd be out of business.

Commissioner Pettitt asked if it could be economically viable with 20 seats if the rent was lower?

Mr. Foss said the rent is so low right now, he couldn't ask the owner to go lower.

Commissioner Pettitt said if it is not a high rent that's pushing the economics of this, he is much more sympathetic.

Commissioner Kelly said it is a smashing success is what it is.

Chair Leone asked whom Mr. Foss would describe as his customer base?

Mr. Foss said 100 percent local. They don't have a sign, they don't advertise. They get a lot of repeat customers, people who just want to go somewhere on the water.

Chair Leone asked for public comment.

Public Comment

Mike Monsef said this restaurant is a good reason the Marinship Plan has to be revisited. This is the type of business that has to be encouraged. The food is excellent and on top of that he has kept the waterfront atmosphere. What he has done is unique. The fish market is still there. He doesn't see why the city should make it hard on him to operate.

Commission Discussion

Chair Leone said the issue here is not about this particular applicant. The issue is the MSP. The MSP is about zoning and about each individual lot in the Marinship, and it only holds itself together if it is held together in total. Because if you say for one lot, whatever regulations were in the Marinship Specific Plan does not apply, it opens it up for every lot in the Marinship. You can argue that every individual case is different; however, the character of the Marinship is what you have to think about. There are those who want to see the Marinship as a bunch of lofts and restaurants on the water, and that's a fine vision. However, that is not the vision that is in the current MSP that was approved by the voters of Sausalito. If you want to take it back to the voters, go ahead. But to pinpoint little holes in the MSP one by one over and over, there will be nothing left down there that has any characteristic of the Marinship or what the Marinship used to be. He has heard good things about the restaurant and he's glad it has been successful. But that has nothing to do with the decision making on this issue. The issue is whether the city stands by what is said in the MSP. Here is an applicant that came in over a year ago and knew what the obstacles were and designed a restaurant that did not comply with what he had approval for. So what's the point of having zoning at all? While he would love to see the restaurant succeed, he would love to see it succeed in an area where it was appropriate. Unlike any other part of Sausalito, this location has adequate parking. The issue for all other restaurateurs in Sausalito is adequate parking. So you have chosen being in a

location where you can exploit that and have a restaurant that can grow, but this is not where it should be. He approved the CUP a year ago under the understanding that the applicant was going to live within the constraints of what was approved. The applicant has said that evening – and he grants him points for honesty – that he never intended to go along with what was approved. The Commission's job is not to differentiate between who is doing a good job with their business, it is to say whether the business complies with the zoning ordinance and this does not.

Commissioner Pettitt said in general he is very biased against applications that come in with the rule of we need to approve this because we can't any money if you don't approve it. As a general principle, the Commission is about land use and design review and the economics are irrelevant. And so he doesn't generally buy economic arguments.

Mr. Buckley said except there is a finding related to economics.

Commissioner Pettitt said let him finish. He also agrees with the Chair that the code is the code and you stick with the code. But there is a new zoning code and it specifically has a provision for making amendments to the MSP and if the City Council didn't want the Commission to have minor exceptions to the MSP they wouldn't have adopted a new code that had a provision for those minor exceptions. So he doesn't subscribe to the Chair's view that you can't have an exception. As far as he can see the application abides by the code, it meets the criteria for an exception to the MSP. And one of those criteria is economic. If somebody came in and said I want an exception to the MSP because I can't make any money because the rent is so high I have to have a bigger business, then he'd say no, because the point of the plan is to zone down and keep the rents affordable to waterfront business. But in this case the economics are about hiring people.

Chair Leone asked Commissioner Pettitt if he doesn't think saying the applicant could have an 80-seat restaurant, that isn't going to change the economics for other properties?

Commissioner Pettitt said he doesn't think it will. It is a minor change; it's the same use; it's bigger, but it's the same use. The economic impact is not to do with a landlord's exploiting the rent, which he would have a big issue with, it's to do with hiring people and hiring people is a good thing in this economic climate. It is clearly resident serving and the two or three times he's been in there he's seen a dozen people he knows, including a number of City Council members. It is clearly a resident serving business. It meets the criteria here.