



The Commonwealth of Massachusetts

Department of Public Safety

Board of Building Regulations and Standards

One Ashburton Place, Room 1301

Boston, Massachusetts 02108-1618

Phone (617) 727-7532 Fax (617) 227-1754

TTY (617) 727-0019

www.mass.gov/dps

Deval L. Patrick  
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Timothy P. Murray  
Lieutenant Governor

Kevin M. Burke  
Secretary

Thomas G. Gatzunis, P.E.  
Commissioner

Alexander MacLeod, R.A.  
Chairman

Gary Moccia, P.E.  
Vice Chairman

Robert Anderson  
Administrator

Date: June 16, 2009

Name of Appellant: Richard Pentland, Esq.

Service Address: 250 Commercial St., Ste. 210  
Worcester, MA. 01532

In reference to: West Side Grill  
45 Belmont St., Route 9  
Northborough, MA. 01532

Docket Number: 09-731

Property Address: West Side Grill  
45 Belmont St., Route 9  
Northborough, MA. 01532

Date of Hearing: 05-07-09

Enclosed please find a copy of the decision on the matter aforementioned.

Sincerely:

BUILDING CODE APPEALS BOARD

Patricia Barry, Clerk

cc: Building Code Appeals Board  
Building Official

**COMMONWEALTH OF MASSACHUSETTS  
State Building Code (780 CMR) Appeals Board  
Board's Ruling on Appeal<sup>1</sup>**

**Docket No. 09-731**

Appellant(s): Ken and Rod and Ken Realty, LLC vs.  
represented by Richard Pentland, Esq.

Appellee(s): City of Northborough  
William Farnsworth

**Procedural History**

This matter came before the State Building Code Appeals Board ("Board") on the Appellant's appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, the Appellant requested that the Board overturn the local building official's determination of an A-2 nc Use for the West Side Grill per the 6<sup>th</sup> Edition 780 CMR reference to M.G.L. c. 143 s. 100 for this establishment at 45 Belmont St., Route 9, Northborough, MA in accordance with GL c. 30A, §§10 & 11; GL c. 143, §100; 801 CMR 1.02 *et. seq.*; and 780 CMR 122.3.4. The Board convened a public hearing on May 7, 2009 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

The Appellant appeared and testified for the hearing representing the owner. William Farnsworth of the building department and others appeared and testified at this hearing, as shown on the sign in sheet on file at the Department of the Public Safety.

**Discussion**

A motion was made to deny the Appellant's request to overturn the local building official's determination of an A-2 nc Use for the West Side Grill. This motion was based on the fact that an entertainment license is held by the owners, and noise and distraction which may be caused by entertainment, may preclude the recognition of alarms. There was a second on the motion and a board vote was taken, which was unanimous.

**Conclusion**

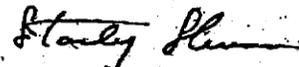
**The Appellant's request to overturn the local building official's determination regarding the 6<sup>th</sup> Edition 780 CMR reference to M.G.L. c. 143 s. 100 is hereby denied as described in the discussion above and so ordered<sup>2</sup> on this date: May 7, 2009.**



Douglas Semple



Timothee Rodrique



Stanley Shuman

<sup>1</sup> This is a concise version of the Board's decision. You may request a full written decision within 30 days of the date of this decision. Requests must be in writing and addressed to: Department of Public Safety, State Building Code Appeals Board, Program Coordinator, One Ashburton Place, Room 1301, Boston, MA 02108

<sup>2</sup>In accordance with M.G.L. c. 30A, §14, any person aggrieved by this decision may appeal to the Superior Court within 30 days after the date of this decision.

STATE BUILDING CODE APPEALS BOARD SIGN-IN SHEET

Docket Number 09-731 Appellant Pentland, Esq Building Official Farnsworth  
 Hearing Date 05-07-09 Hearing Time 9:30 a.m.  
 Appeals Board Members Shuman : Semple : Rodrigue

PLEASE PRINT LEGIBLY

<u>Name</u>	<u>Address</u>	<u>Telephone</u>
Richard Pentland	250 Commercial St Wore	508-757-7488
Louis De Michele	2A Bellingham Rd. Wore	508-853-9618
Kenneth M. Houry	19 SAXON ROAD Wore	508-523 7031
Tom Rodrigue	BBS	
Douglas Semple	BBS	
Stanley Shuman	BBS	
Willa Farnsworth	63 MAIN ST NORTHBOROUGH, MA.	508-393-5010
DAVID M. DURGIN	11 MAIN ST NORTHBOROUGH MA	508-393-1540
Patricia Semple	BBS	

State Building Code Appeals Board

Summary to be filled out by Appeals Board Clerk

Pursuant to Docket no. (insert Docket no.) 09-731

Based on the following findings of fact/testimony:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

A motion was made by (insert Board member name) Doug

A second was made by (insert Board member name) Stan

The motion is:

Doug made a motion to uphold the Building Officials ruling that this should be classified as an (A-2) designation due to the fact that they have a full entertainment license for this building.

With the following conditions:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

The Board voted (to (check one) grant \_\_\_\_\_ or deny  the variance \* uphold the Building Officials Decision as use Now A-2-Designation

from 780 CMR Sections (cite all sections that apply) MGL Chapter 143, Section 100

Members voting for the motion: Unanimous

Members voting against the motion: \_\_\_\_\_

STATE BUILDING CODE APPEALS BOARD

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OPENING STATEMENT:

Mr. Chairman:

The date is: May 5, 2009 the docket # is 09-731

The appellant is: Richard Pentland, Esq.

250 Commercial Street, Suite 210, Worcester, MA. 01608

The property involved is:

West Side Grill, 45 Belmont Street, Route 9, Northborough, MA. 01532

The appeal is based on the provisions of the 6<sup>th</sup> Edition of the State Building Code relative to: (Section/Table)

Relief desired:

MGL Chapter 143, Section 100

DECISION: (Please complete this section at the hearing).

The Building Official supported/opposed the appeal filing:

Board members voted to:

Grant Appeal

Deny Appeal

Reason for approval/denial: \_\_\_\_\_

The decision was \_\_\_\_\_ unanimous/ \_\_\_\_\_ objected to by: \_\_\_\_\_

Reason for objection: \_\_\_\_\_

Provisos (if any): \_\_\_\_\_

BOARD: \_\_\_\_\_



Deval L. Patrick  
Governor

Timothy P. Murray  
Lieutenant Governor

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Secretary

# The Commonwealth of Massachusetts

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Commissioner

Alexander MacLeod, R.A.  
Chairman

Gary Moccia, P.E.  
Vice Chairman

Robert Anderson  
Administrator

29-Apr-09

Mr./Mrs. Richard Pentland, Esq  
250 Commercial Street, Suite 210  
Worcester, MA. 01608

**Docket Number** 09-731  
**Property Address** West Side Grill, 45 Belmont Street, Route 9 Northborough, MA. 0153  
**Hearing Location** 1380 Bay Street Taunton, MA. 02780  
**Hearing Date and Time** 05-07-09 9:30 a.m.

Dear Mr./Mrs. Pentland, Esq

The appeal for the subject property has been scheduled to be heard on the hearing date and time and location indicated above. A map is enclosed for your convenience.

The State Building Code Appeals Board requires your presence or that of your representative at its hearing relative to the above case.

Please bring with you a copy of the record, including any plans, sketches, drawings, etc, that will help to give the Appeals Board grounds to adjudicate this appeal. The State Building Code Appeals Board hearings are held pursuant to 801 CMR 1.02 Informal Fair Hearing Rules.

NO POSTPONEMENTS OR REFUNDS WILL BE GRANTED. In order to reschedule an appeal case, you must first withdraw the original case and file a new application. A new application fee will be required.

Very truly yours,

THE STATE BUILDING CODE APPEALS BOARD

Patricia A. Barry  
Coordinator



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Vice Chairman

Robert Anderson  
Administrator

29-Apr-09

Mr./Mrs. Farnsworth  
Building Commissioner  
Town of Northborough, 63 Main Street  
Northborough, MA. 01532

**Docket Number** 09-731  
**Property Address** West Side Grill, 45 Belmont Street, Route 9 Northborough, MA. 0153  
**Hearing Location** 1380 Bay Street Taunton, MA. 02780  
**Hearing Date and Time** 05-07-09 9:30 a.m.

Dear Mr./Mrs. Farnsworth

The appeal for the subject property has been scheduled to be heard on the hearing date and time and location indicated above. A map is enclosed for your convenience.

The State Building Code Appeals Board requires your presence or that of your representative at its hearing relative to the above case.

Please bring with you a copy of the record, including any plans, sketches, drawings, etc, that will help to give the Appeals Board grounds to adjudicate this appeal. The State Building Code Appeals Board hearings are held pursuant to 801 CMR 1.02 Informal Fair Hearing Rules.

NO POSTPONEMENTS OR REFUNDS WILL BE GRANTED. In order to reschedule an appeal case, you must first withdraw the original case and file a new application. A new application fee will be required.

Very truly yours,

THE STATE BUILDING CODE APPEALS BOARD

Patricia A. Barry  
Coordinator



# The Commonwealth of Massachusetts

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Robert Anderson  
Administrator

29-Apr-09

Chief David M. Durgin  
11 Pierce Street  
Northborough, MA 01532-1907

<b>Docket Number</b>	09-731
<b>Property Address</b>	West Side Grill, 45 Belmont Street, Route 9 Northborough, MA. 0153
<b>Hearing Location</b>	1380 Bay Street Taunton, MA. 02780
<b>Hearing Date and Time</b>	05-07-09 9:30 a.m.

Dear Chief David M. Durgin

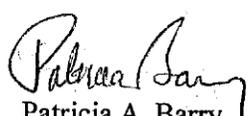
The appeal for the subject property has been scheduled to be heard on the hearing date and time and location indicated above. A map is enclosed for your convenience.

This notice is forwarded to you by the State Building Code Appeals Board as a courtesy. You are not compelled to attend but are encouraged to do so if you have a particular interest in the case.

If you have any questions relative to the above referenced appeal, please contact your BUILDING OFFICIAL.

Very truly yours,

THE STATE BUILDING CODE APPEALS BOARD

  
Patricia A. Barry  
Coordinator

29-Apr-09

STATE BUILDING CODE APPEALS BOARD

DOCKET NUMBER: 09-731

PROPERTY ADDRESS: West Side Grill, 45 Belmont St., Rte. 9, Northborough

APPELLANT: Richard Pentland, Esq

BUILDING OFFICIAL: William Farnsworth

(check one)

Item #	Item	Document Dated	Date Received	Appellant	Building Official
1.	Exhibit #1 - Application		5-7-09	✓	
2.	Exhibit #2 - Pictures of Restaurant & Bar (14 pages)		5-7-09	✓	
3.	Exhibit #3 - Pictures (2) of the Restaurant		5-7-09	✓	
4.	Exhibit #4 - MSBC 6th Edition (+ Restaurant Licenses) + Broca Commentary + Victauler License (7-pages total)		5-7-09		✓
5.	Exhibit #5 - Floor Plan & occupancy loads - 1-page		5-7-09		✓
6.					
7.					
8.					
9.					
10.					



# The Commonwealth of Massachusetts

## Department of Public Safety Board of Building Regulations and Standards

One Ashburton Place, Room 1301  
Boston, Massachusetts 02108-1618

Phone (617) 727-7532

Fax (617) 227-1754



### STATE BUILDING CODE APPEALS BOARD APPEAL APPLICATION FORM

DOCKET NUMBER (State Use Only)	09-731	DATE	4/7/08
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The undersigned hereby appeals to the State Board of Building Regulations and Standards from the decision of the following person. (Please fill-in the name of the appropriate municipal or state building inspector or other authority. Also, Also indicate if this is a request for a *hearing de novo* (new hearing) relative to a decision of a municipal appeals board.)

De Novo Hearing

Building Official from the City/Town of:	Northborough, MA
Board of Appeals from the City/Town of: (Request for <i>hearing de novo</i> )	
State Building Official:	
Other:	Automatic Sprinkler Appeals Board

Please mark the appropriate box indicating the requested action to be considered by Appeals Board members.

Variance		Order	x	Direction	x
Interpretation		Failure to Act		Other	x
STATE USE ONLY					
Fee Received:	150.00				
Check Number:	6011				
Received By:	P. Barry				

(This section must be completed or the application will be returned.)

Has the building or structure been the subject of an appeal by this or any other appeals board previous to this filing?

No  Yes  If, yes, please indicate the date of the previous appeal, whether the matter was heard before a local or state appeals board, the code section that was at issue, and the specifics of the decision (i.e. a variance was granted/not granted).

4/11/07 Automatic Sprinkler Appeals Board Hearing (ASAB)

2/8/08 Worcester Superior Court; Failure to notify property owners of change in designation (from A-3 to A-2) and to allow 45 days within which to appeal improper Hearing at ASAP, due process

Please take care to submit all written supporting documentation with this application to allow time for review.

However, Board members reserve the right to continue proceedings if such material warrant extensive review.

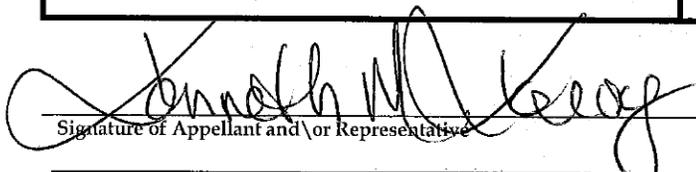
To be provided, if requested, copies of Complaint, Motion for Restraining Order, Transcript of 4/11/07 ASAB Hearing, designation of premises, etc. all of which are in the possession of the parties to this matter.

Please provide a brief description of the desired relief below. Additional information may be attached if space is not sufficient. All appropriate code sections that are subject to appeal must be identified in the description.

Property owners wish to present evidence to the Board to show why the designation of the premises should not have been changed from a restaurant use (A-3) to use as a bar room, night club, disco etc. (A-2), when the property was not ever used as such in the 266 years of its existence and present property owners have not used the premises as such and will not do so.

Please complete the following section completely and accurately.

Name of Appellant:	Kenneth Koury, Louis DeMichele & Rodney Haddad, Members of Ken & Rod Realty LLC	Representing:	West Side Grille
Address For Service	45 Belmont Street, Route 9 Northborough, MA 01532		
	<i>Location</i>		
Telephone Number:	c/o Richard J. Pentland, Esquire 508-757-7488	Fax Number:	508-754-1638
Address of Subject Property (if different from service address):	c/o Richard J. Pentland, Esquire		
	250 Commercial Street, Suite 210		
	Worcester, MA 01608		
What is appellant's connection to subject property?		Property Owner	

  
Signature of Appellant and/or Representative

Kenneth M. Koury, Manager  
Ken & Rod Realty, LLC  
Please Print Name Legibly

Please return applications to:  
Program Manager, Board of Appeals  
Board of Building Regulations and Standards - One Ashburton Place, Room 1301  
Boston, MA 02108-1618

**DESCRIPTION OF BUILDING OR STRUCTURE RELATIVE TO THE MASSACHUSETTS STATE BUILDING CODE (7th EDITION):** (Check as appropriate)

Do not complete the entire table below for a One- or Two-Family Dwelling; complete only section entitled "Description of the Proposed Work".

DESCRIPTION OF PROPOSED WORK (check all applicable)				
New Construction <input type="checkbox"/>	Existing Building <input type="checkbox"/>	Repair(s) <input type="checkbox"/>	Alteration(s) <input type="checkbox"/>	Addition <input type="checkbox"/>
Accessory Bldg. <input type="checkbox"/>	Demolition <input type="checkbox"/>	Other <input checked="" type="checkbox"/> Specify: _____		
Brief Description of Proposed Work: _____ _____				

USE GROUP AND CONSTRUCTION TYPE					
USE GROUP (Circle appropriate Use Group)				CONSTRUCTION TYPE	
A Assembly	A-1	A-2	A-3	1A	
	A-4	A-5	Improperly designated Should be A-3	1B	
B Business				2A	
E Educational				2B	
F Factory	F-1	F-2		2C	
H High Hazard				3A	
I Institutional	I-1	I-2	I-3	3B	
M Mercantile				4	
R Residential	R-1	R-2	R-3	5A	
S Storage	S-1	S-2		5B	
U Utility	Specify: _____				
M Mixed Use	Specify: _____				
S Special Use	Specify: _____				

**COMPLETE THIS SECTION IF EXISTING BUILDING UNDERGOING RENOVATIONS, ADDITIONS AND/OR CHANGE IN USE**

Existing Use Group: _____	Proposed Use Group: _____
Existing Hazard Index (780 CMR 34): _____	Proposed Hazard Index (780 CMR 34): _____

BUILDING HEIGHT AND AREA		
BUILDING AREA	Existing (if applicable)	Proposed
Number of Floors or stories include basement levels	One	Same
Floor Area per Floor (sf)	6,000 + 4,000	"
Total Area (sf)	10,000	"
Total Height (ft)	40	"

Are there unresolved issues with local zoning ordinances? Yes  or No   
 If yes, please explain briefly why this zoning issue is not a factor in the appeal:

Use of the premises is allowed by Zoning

# Anderson & Pentland

*Attorneys at Law*

250 Commercial Street  
Winsor Building -- Suite 210  
Worcester, Massachusetts 01608

Ernest L. Anderson  
1914-1970  
Stanley W. Hunt  
1938-1980

Lloyd Anderson  
1948-1990

—  
Telephone (508) 757-7488  
Telecopier (508) 754-1638

April 7, 2008

Commonwealth of Massachusetts  
Department of Public Safety  
One Ashburton Place  
Room 1301  
Boston, MA 02108

ATTENTION: Mr. Todd Grossman

Re: Kenneth Koury, Louis DeMichele and Rodney Haddad,  
Members of Ken and Rod and Ken Realty, LLC ("Owners")  
West Side Grille Restaurant  
45 Belmont Street, Route 9, Northborough, MA  
Appeal of Designation Change From A3 to A2

Dear Mr. Grossman:

On June 28, 2006, the Owners purchased the land and building ("Premises") located at Route 9, Northborough, MA from Mr. James J. Donoghue. At the time of purchase, and for the previous 24 consecutive years, the premises was used exclusively as a restaurant (Tweeds) and as such, was designated with a use group classification "A-3" in its Certificate of Inspection. Since June 28, 2006 and for the ensuing one year and eleven months, no changes were made to the Premises, the operation of it, or the customer seating in it. Furthermore, as in the previous 24 years, there has been absolutely no live entertainment, dancing, disk jockeys, etc. allowed in the premises.

M.G.L. Ch. 148, §26G½ (enacted after the disastrous night club fire in Rhode Island) provides that buildings with a capacity over 100 people (like the Owners' building) "designated or used as a night club, bar, discotheque, dance hall, or similar enterprise" must install an automatic sprinkler system. Under the Statute, the local (in this case Northborough) building inspectors have the authority to enforce that law should any premises be so used.

On August 3, 2006, the Owners were advised by the Northborough authorities, that they must install an automatic sprinkler system. Upon being so notified, the Owners appealed to the Automatic Sprinkler Appeals Board, as was their right under the statute. Some time thereafter, the Owners (3/8/07) were notified that the Automatic Sprinkler Appeals Board Hearing would be held at 9:00 a.m. on April 11, 2007. The Owners, completely unaware that any changes had been made to the use designation of the premises in the Certificate of Inspection, believed they would not be required to install an automatic sprinkler system (costing in excess of \$50,000), since the premises was then, and always had been, used exclusively as a restaurant.

Unbelievably, on April 10, 2007 at approximately 3:00 p.m., the very afternoon before the Appeal Hearing, the Northborough Fire Department or Northborough Building Inspector delivered a new Certificate of Inspection, changing the use designation of the Premises from an A-3 "restaurant" to an A-2 "night club, bar, discotheque, dance hall, etc." This untimely and improper notice given to the Owners is an obvious violation of Ch. 143 §3A, which provides in so many words that if the Premises designation has been changed, the Owners have 45 days to appeal such a change to the State Building Code Appeals Board in Boston. Furthermore, upon that appeal, the change in the Premises designation would be automatically stayed until the Hearing in Boston.

The very next morning, blissfully unaware of the significance of the change in designation (or of their right to appeal to State Building Code Appeals Board, the Owners proceeded with the Hearing in front of the Automatic Sprinkler Appeals Board, in effect only two to three hours after being notified of the improper change in designation of use.

The transcript of the Hearing (prepared by a certified Court Reporter (Catuogno Reporting) in front of the Appeals Board documented the foregoing allegations that the Owners:

1. were improperly noticed of the change in designation from A-3 and A-2;
2. were improperly noticed of the change in designation the very afternoon before the Hearing;
3. were unaware of the significance of the change in designation;
4. were totally unprepared for the Hearing because of the change in designation; and

Department of Public Safety  
April 7, 2008  
Page three

5. were not given their legal right to appeal the change in designation to the State Building Code Appeals Board in Boston.

The Automatic Sprinkler Appeals Board affirmed the Northborough Fire Department's Order to install sprinklers.

The Owners filed an action (pursuant to M.G.L. Ch. 30 §14) in the Worcester Superior Court, which on February 8, 2008 upheld the Owners's position and allowed them to appeal the change in designation to the State Building Code Appeals Board.

A certified copy of said Superior Court Decision is enclosed. There has been no appeal of that Decision.

Very truly yours,



Richard J. Pentland

RJP/cg

Enclosure

2/12

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

SUPERIOR COURT  
CIV NO. 07-01335 C

KENNETH KOURY, et al.  
Plaintiffs

v.

TOWN OF NORTHBOROUGH FIRE DEPARTMENT, et al.  
Defendants

**PLAINTIFFS' MOTION FOR RECONSIDERATION**

The plaintiffs file this motion seeking the court to reconsider its order of January 15, 2008, regarding the above matter. There is no opposition to the motion for reconsideration from the defendants.

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The motion is ALLOWED to the extent that the plaintiffs are permitted to appeal the change in designation from A-3 to A-2, pursuant to G.L. c. 143, sec. 3A. In addition, the case is remanded to the Automatic Sprinkler Appeals Board to allow additional evidence to be presented.

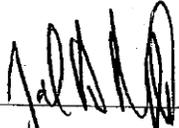
Given that the matter is remanded to the administrative agency, the request to allow plaintiffs a hearing in the Superior Court is premature at this time.

*Copies marked*

SO ORDERED

2/8/08

Date

  
\_\_\_\_\_

Associate Justice Superior Court

**STATE BUILDING CODE APPEALS BOARD**  
Service Notice

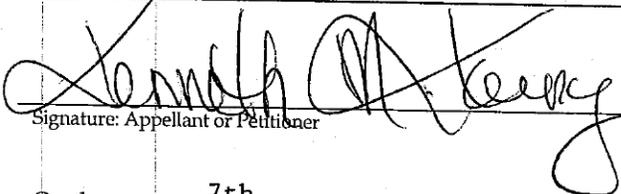
I, Kenneth M. Koury, as Manager/Member for the

Appellant/Petitioner Ken & Rod Realty, LLC an appeal filed with the State

Building Code Appeals Board on April 7, 20 08

HEREBY SWEAR UNDER THE PAINS AND PENALTIES OF PERJURY THAT IN ACCORDANCE WITH THE PROCEDURES ADOPTED BY THE STATE BOARD OF BUILDING REGULATIONS AND STANDARDS AND SECTION 122.3.1 OF THE STATE BUILDING CODE, I SERVED OR CAUSED TO BE SERVED, A COPY OF THIS APPEAL APPLICATION ON THE FOLLOWING PERSON(S) IN THE FOLLOWING MANNER:

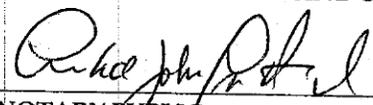
	NAME AND ADDRESS OF PERSON OR AGENCY SERVED	METHOD OF SERVICE	DATE OF SERVICE
1	SEE ATTACHED		
2			
3			

  
Signature: Appellant or Petitioner

On the 7th Day of April 20 08 PERSONALLY APPEARED

BEFORE ME THE ABOVE NAMED Kenneth M. Koury  
(Type or Print the Name of the Appellant)

AND ACKNOWLEDGED AND SWORE THE ABOVE STATEMENTS TO BE TRUE.

  
NOTARY PUBLIC  
Richard John Pentland

2/20/15  
MY COMMISSION EXPIRES

<u>Name and Address of Person or Agency Service</u>	<u>Method of Service</u>	<u>Date of Service</u>
1. David R. Marks, Esquire Administrative Law Division Office of Attorney General One Ashburton Place, 20th Floor Boston, MA 02108	Certified Mail	4/7/08
2. Maurice Pillette, Chairman Fire Safety Commission Automatic Sprinkler Appeals Board P.O. Box 1025 State Road Stow, MA 01775	Certified Mail	4/7/08
3. Gregg J. Corbo, Esquire Kopelman and Paige, PC 101 Arch Street Boston, MA 02110	Certified Mail	4/7/08
4. William S. Farnsworth, Building Inspector Town of Northborough 63 Main Street Northborough, MA 01532	Certified Mail	4/7/08
5. David M. Durgin, Chief Northborough Fire Department 11 Pierce Street Northborough, MA 01532	Certified Mail	4/7/08
6. Andrew Dowd, Town Clerk Town of Northborough 63 Main Street Northborough, MA 01532	Certified Mail	4/7/08

3/2  
C

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss

SUPERIOR COURT  
CIV NO. 07-01335

KENNETH KOURY, et al.  
Plaintiffs

v.

TOWN OF NORTHBOROUGH FIRE DEPARTMENT, et al.  
Defendants

STATE DEFENDANT'S MOTION FOR CLARIFICATION

The defendant, Automatic Sprinkler Appeals Board of the Massachusetts Fire Safety Commission (ASAB) filed this motion seeking a clarification of the Court's Order of February 8, 2008.<sup>1</sup> Specifically, it is the defendant's understanding that the remand Order is limited to the "taking of additional evidence regarding the effect of the change in use group designation under the state Building Code, which may impact the need for installation of sprinklers under G. L. c. 148, sec. 26G 1/2." Moreover, the defendant contends that the Order does not "resurrect the plaintiffs' right to appeal the change in the Building Code designation of their premises to the Building Code Appeal Board, under G.L. c. 143, sec. 100."

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As noted in the plaintiffs' opposition, it was my intent to allow the plaintiffs the right to start from the beginning and appeal to the Building Code Appeals Board for basic

<sup>1</sup> The defendant filed this motion for clarification on April 14, 2008. For reasons that are not clear, but solely my fault, I was unaware of the motion until recently notified by the clerk's office. I sincerely apologize to the parties for the delay in responding to this motion.

Entered and Copies Mailed 3/4/09

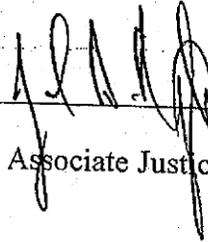
fairness reasons. The actions of the building inspector seem a bit harsh and certainly untimely and improper. At the time of the hearing the defendants did not object and their late objections are inconsistent with an appropriate resolution of this dispute.

Motion for clarification and/or reconsideration is DENIED.

*SO ORDERED*

2/27/09

Date



Associate Justice Superior Court

**Commonwealth of Massachusetts  
County of Worcester  
The Superior Court**

CIVIL DOCKET#: WOCV2007-01335-C

RE: Koury et al v Northborough Fire Dept et al

TO: David R Marks, Esquire  
Mass Atty General's Office  
1 Ashburton Place  
20th Floor  
Boston, MA 02108

MAR 05 2009

**NOTICE OF DOCKET ENTRY**

You are hereby notified that on **02/27/2009** the following entry was made on the above referenced docket:

**ORDER of DENIAL on State Defendant's Motion for Clerification and / or Reconsideration (J. Agostini, Justice) Copies mailed 3/4/09.**  
Dated at Worcester, Massachusetts this 4th day of March, 2009.

Dennis P. McManus, Esq.,  
Clerk of the Courts

BY: Alexander Rodriguez, III  
Assistant Clerk

Telephone: 508-831-2358 (Session Clerk) or 508-831-2347

**Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130**

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT DEPARTMENT

WORCESTER, ss.

SUPERIOR COURT  
NO. WOCV2007-01335

KENNETH KOURY, LOUIS DEMICHELE, and  
RICHARD QUALEY,

Plaintiffs,

vs.

TOWN OF NORTHBOROUGH, FIRE  
DEPARTMENT, TOWN OF NORTHBOROUGH,  
BUILDING DEPARTMENT, and  
MASSACHUSETTS FIRE SAFETY  
COMMISSION, AUTOMATIC SPRINKLER  
APPEALS BOARD,

Defendants.

**STATE DEFENDANT'S MOTION FOR CLARIFICATION OR  
RECONSIDERATION OF ORDER OF FEBRUARY 8, 2008, REGARDING  
PLAINTIFFS' MOTION FOR RECONSIDERATION**

The state defendant, the Automatic Sprinkler Appeals Board of the Massachusetts Fire Safety Commission ("ASAB"), moves this Court to clarify its order of February 8, 2008, in which the Court ruled on the Plaintiffs' Motion For Reconsideration. The order of February 8, 2008 (attached hereto), states: "The motion is ALLOWED to the extent that the plaintiffs are permitted to appeal the change in designation from A-3 to A-2, pursuant to G. L. c. 143, sec. 3A. In addition, the case is remanded to the Automatic Sprinkler Appeals Board to allow additional evidence to be presented."

The state defendant understands the Court's order to remand the matter to the Automatic Sprinkler Appeals Board for the taking of additional evidence regarding the effect of the change in use group designation under the state Building Code, which may

impact the need for installation of sprinklers under G.L. c. 148, § 26G ½. The ASAB is uncertain, however, whether the order is intended to resurrect the plaintiffs' right to appeal the change in the Building Code designation of their premises to the Building Code Appeals Board, under G. L. c. 143, § 100. The Board respectfully asks that the Court clarify the order to make specific that the remand is limited to further proceedings before the Automatic Sprinkler Appeals Board, which has no jurisdiction to designate Building Code use group classifications or to hear appeals regarding such designations.

This Court would lack the authority to allow the plaintiffs to appeal a change in Building Code use group classification to the state Building Code Appeals Board, because the plaintiffs are jurisdictionally barred from pursuing such an appeal. Under G. L. c. 143, § 100, the plaintiffs had 45 days from notice of the change of designation on April 11, 2007, at the latest, to appeal the decision of the Northborough authorities to the Building Code Appeals Board. The plaintiffs failed to take such an appeal, which would have been their sole avenue to obtain review of the local action. G. L. c. 143, § 100; 780 Code Mass. Regs. §§ 122.1, 122.3. Without a final agency decision, no decision of the local building authority may be reviewed under chapter 30A. G. L. c. 30A, § 14.

The plaintiffs' failure to appeal the local inspector's decision to the Building Code Appeals Board within 45 days of notice of the decision is a jurisdictional defect that deprives the Building Code Appeals Board of jurisdiction to hear the appeal now and, by the same token, precludes judicial review of the decision. See Pavian, Inc. v. Hickey, 70 Mass. App. Ct. 477, 480, 483, n.3 (2007) and Gordon v. State Bldg. Code Appeals Bd., 70 Mass. App. Ct. 12, 19-20 (2007). Finally, the plaintiffs did not name the Building

Code Appeals Board as a party in the complaint filed in this Court and the Court's order cannot, therefore, bind the Building Code Appeals Board.

For these reasons, the ASAB respectfully asks that this Court clarify its order of February 8, 2008, to make specific that the remand is limited to further proceedings before the ASAB, for the limited purpose of allowing the plaintiffs to present additional evidence regarding the factors that underly the appropriate Building Code classifications, while recognizing the ASAB's lack of authority to change the use group classification.

In the alternative, if this Court intended in the February 8, 2008 order to authorize plaintiffs to appeal the change in designation to the Building Code Appeals Board, the ASAB respectfully asks this Court to reconsider its order, and to issue a new order that omits the reference to "permit[ting plaintiffs] to appeal the change in designation from A-3 to A-2, pursuant to G. L. c. 143, sec. 3A."

Respectfully submitted,

MASSACHUSETTS FIRE SAFETY COMMISSION,  
AUTOMATIC SPRINKLER APPEALS BOARD

By its attorney,

MARTHA COAKLEY  
ATTORNEY GENERAL

By: David R. Marks, BBO No. 548982  
Assistant Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108  
(617) 727-2200, ext. 2362

Dated: April 3, 2008

# Anderson & Pentland

Attorneys at Law

250 Commercial Street  
Winsor Building – Suite 210

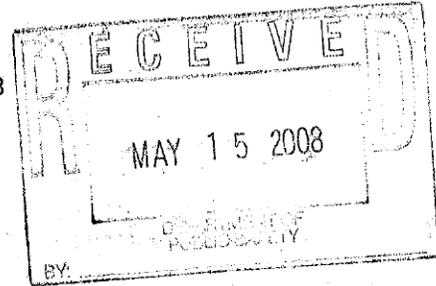
Worcester, Massachusetts 01608

Ernest L. Anderson  
1914-1970  
Stanley W. Hunt  
1938-1980

Lloyd Anderson  
1948-1990

Telephone (508) 757-7488  
Telecopier (508) 754-1638

May 2, 2008



Commonwealth of Massachusetts  
Department of Public Safety  
Board of Building Regulations  
One Ashburton Place, Room 1301  
Boston, MA 02108

Re: Kenneth Koury, Louis DeMichele and Rodney Haddad,  
Members of Ken and Rod Realty, LLC ("Owners")  
West Side Grille Restaurant  
45 Belmont Street, Route 9, Northborough, MA  
Appeal of Designation Change From A3 to A2

Dear Sir/Madam:

Enclosed for reference is a copy of my letter dated April 7, 2008, which was received by your office on April 8, 2008.

Would you kindly advise me as to the status of this Appeal Application. Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Richard J. Pentland".

Richard J. Pentland

RJP/cg

Enclosure



# Anderson & Pentland

Attorneys at Law

250 Commercial Street

Winsor Building - Suite 210

Worcester, Massachusetts 01608

Ernest L. Anderson  
1914-1970  
Stanley W. Hunt  
1938-1980

Lloyd Anderson  
1948-1990

Telephone (508) 757-7488  
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April 7, 2008

Commonwealth of Massachusetts  
Department of Public Safety  
One Ashburton Place  
Room 1301  
Boston, MA 02108

Re: Kenneth Koury, Louis DeMichele and Rodney Haddad,  
Members of Ken and Rod Realty, LLC ("Owners")  
West Side Grille Restaurant  
45 Belmont Street, Route 9, Northborough, MA  
Appeal of Designation Change From A3 to A2

Dear Sir/Madam:

I am enclosing herewith four copies of the following:

1. State Building Code Appeals Board Application Form
2. Letter as to the facts of the Appeal, with copy of Superior Court Decision dated February 8, 2008
3. Service Notice
4. Check for \$150
5. CD of enclosed documents, as required

Please note, also to be provided, if requested, copies of Complaint, Motion for Restraining Order, Transcript of April 11, 2007 Automatic Sprinkler Appeals Board Hearing, designation of premises, etc., all of which are in the possession of the parties to this matter.

Very truly yours,

Richard J. Pentland

RJP/cg

Enclosure

CERTIFIED MAIL NO. 7006-0810-0004-2277-4369  
RETURN RECEIPT REQUESTED

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"><li>Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</li><li>Print your name and address on the reverse so that we can return the card to you.</li><li>Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>	A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>C. Rodriguez</i>
1. Article Addressed to:  Mass. Dept. of Public Safety Bd. of Building Regulations One Ashburton Place, Rm 1301 Boston, MA 02108	B. Received by (Printed Name) <i>C. RODRIGUEZ</i> C. Date of Delivery <i>4-8-08</i>
	D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
2. Article Number (Transfer from service label)	<b>7006 0810 0004 2277 4369</b>

Anderson & Pentland

Attorneys at Law  
250 Commercial Street  
Winsor Building - Suite 210  
Boston, Massachusetts 01608

Telephone (508) 757-7488  
Telecopier (508) 754-1638

April 7, 2008

Massachusetts  
Public Safety

Room 1301  
Boston, MA 02108

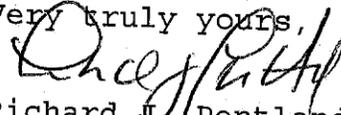
Re: Kenneth Koury, Louis DeMichele and Rodney Haddad,  
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West Side Grille Restaurant  
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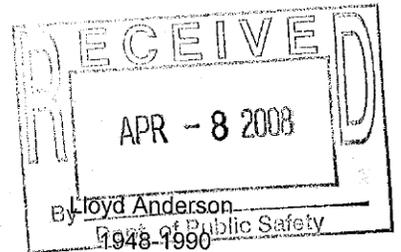
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Very truly yours,  
  
Richard J. Pentland

RJP/cg

Enclosure

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RETURN RECEIPT REQUESTED

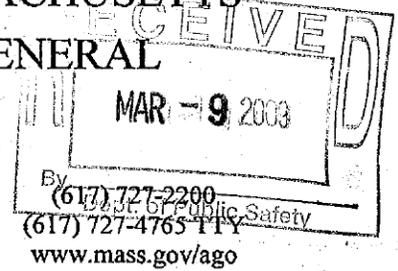




MARTHA COAKLEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108



FACSIMILE TRANSMITTAL COVER SHEET

TO: Todd Grossman NO. OF PAGES INCLUDING COVER: 4

FAX NO: 617-248-0813

PHONE NO: 617-727-3200 DATE: March 9, 2009

FROM: David R. Marks, A.A.G.

PHONE NO: 617-727-2200 Ext. 2362

FAX NO: 617-727-5785

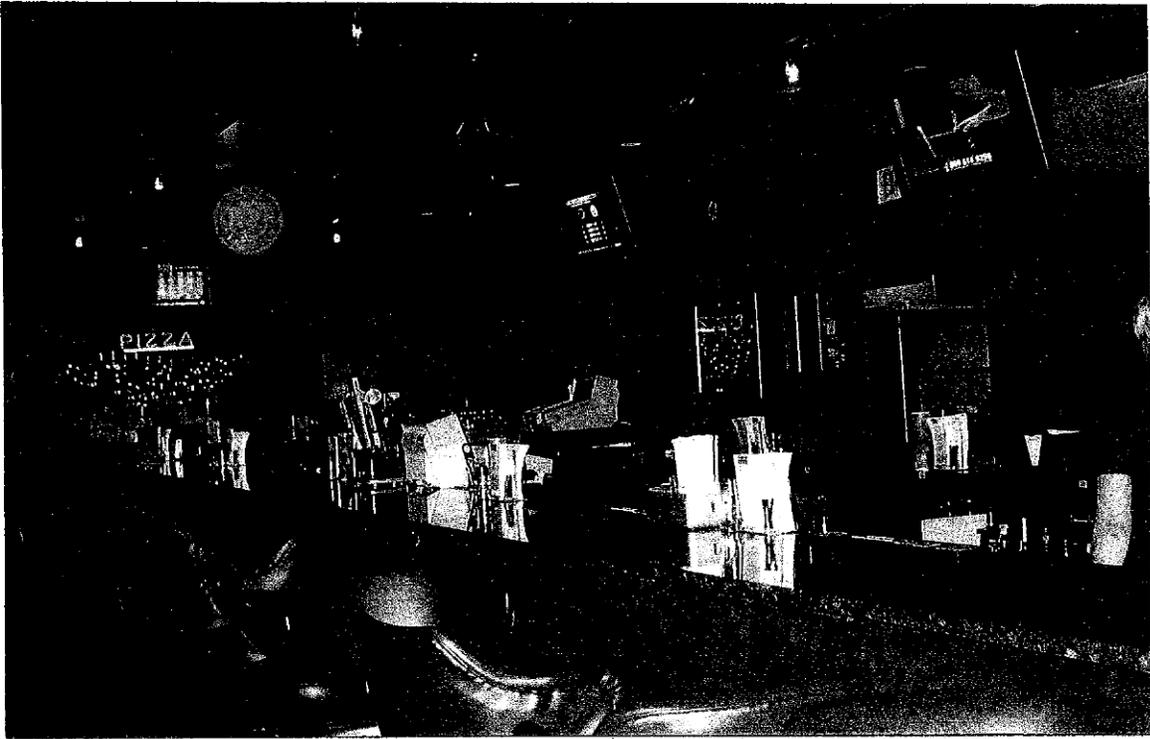
RE: Kowry v. Northborough

URGENT  FOR REVIEW  PLEASE COMMENT  PLEASE REPLY

NOTES/COMMENTS:

Todd - We talked about this a while back. This is the Judge's order on my motion for clarification/reconsideration. Please call me so we can discuss this! Thanks, David

**Confidentiality Notice:** The documents accompanying this facsimile contain information from the Office of the Attorney General which may be CONFIDENTIAL and/or PRIVILEGED. The information is intended only for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify us so that we can arrange for the return of the original documents to us at no cost to you. Thank you.



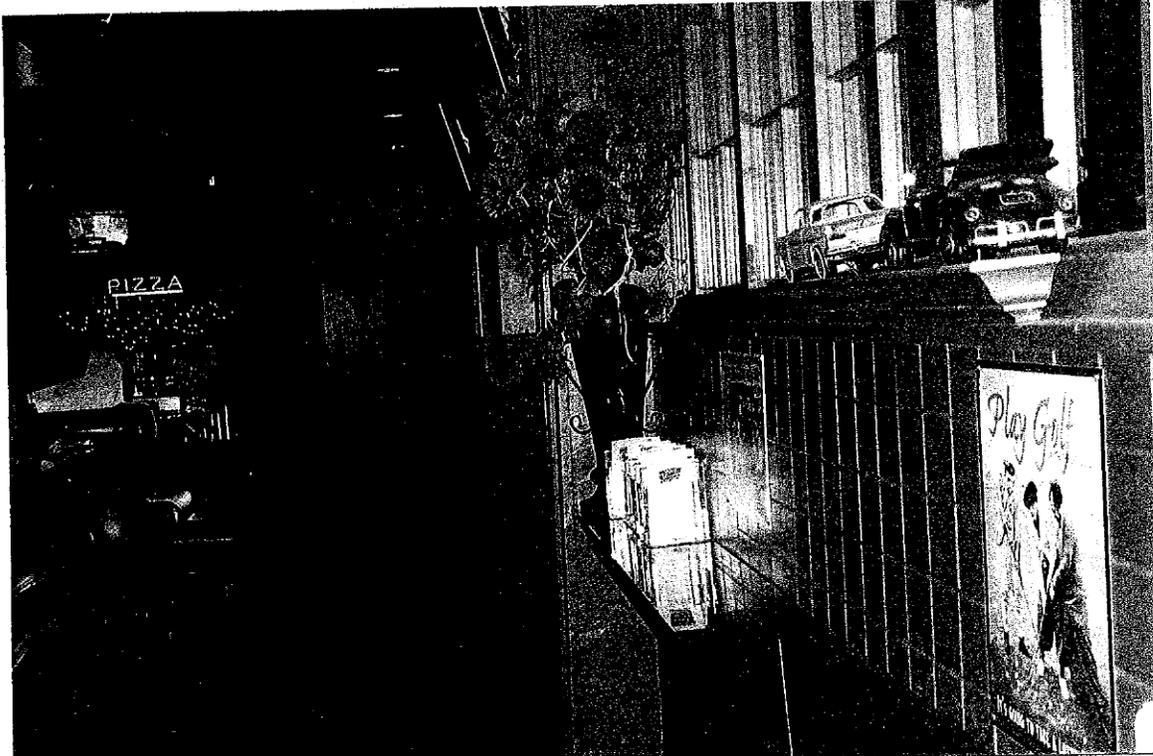
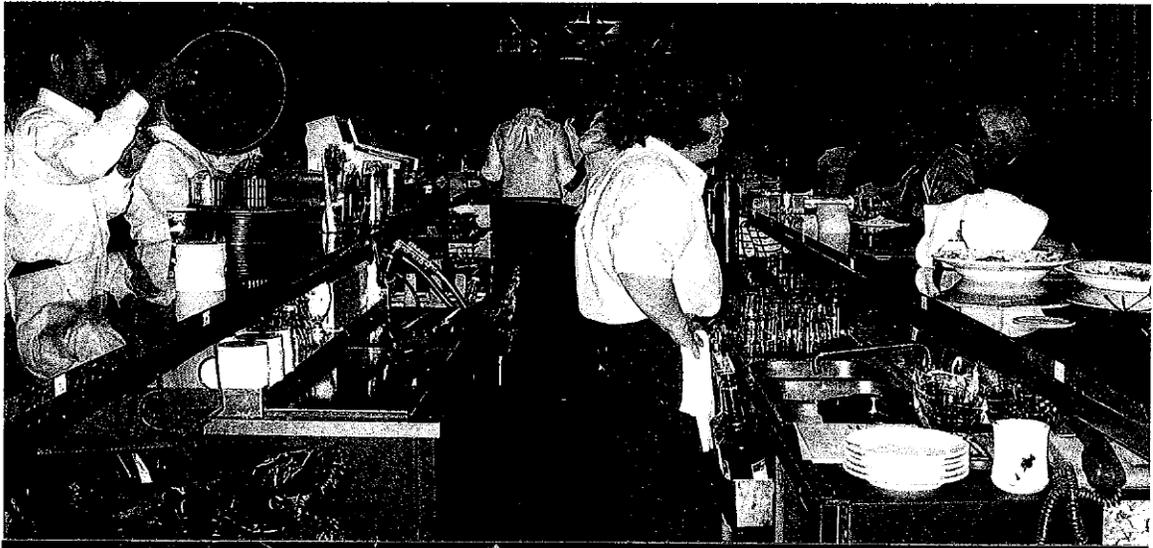
# HOURS OF OPERATION

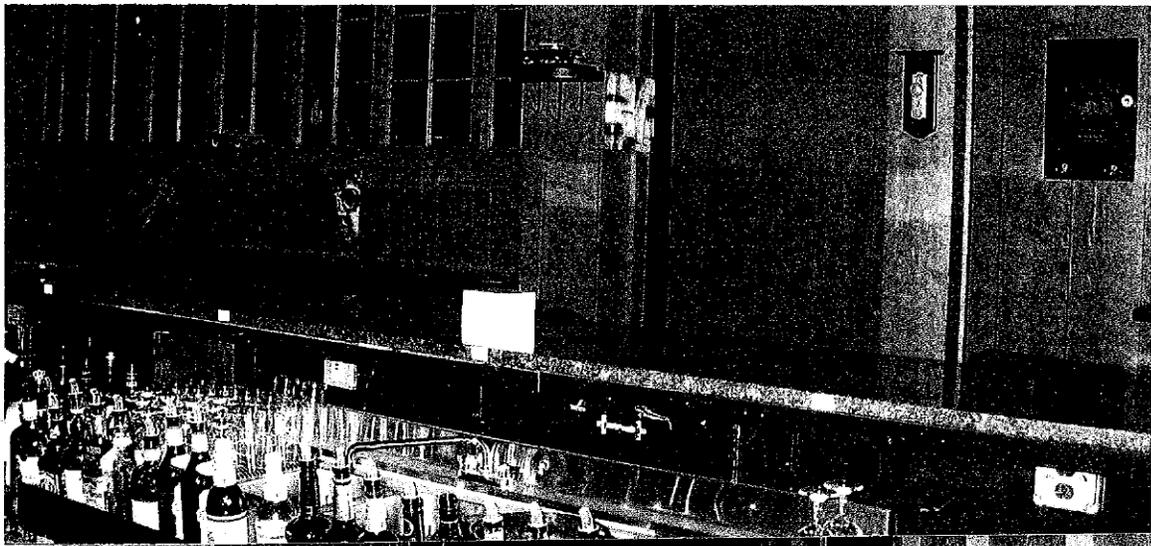
**OPEN**

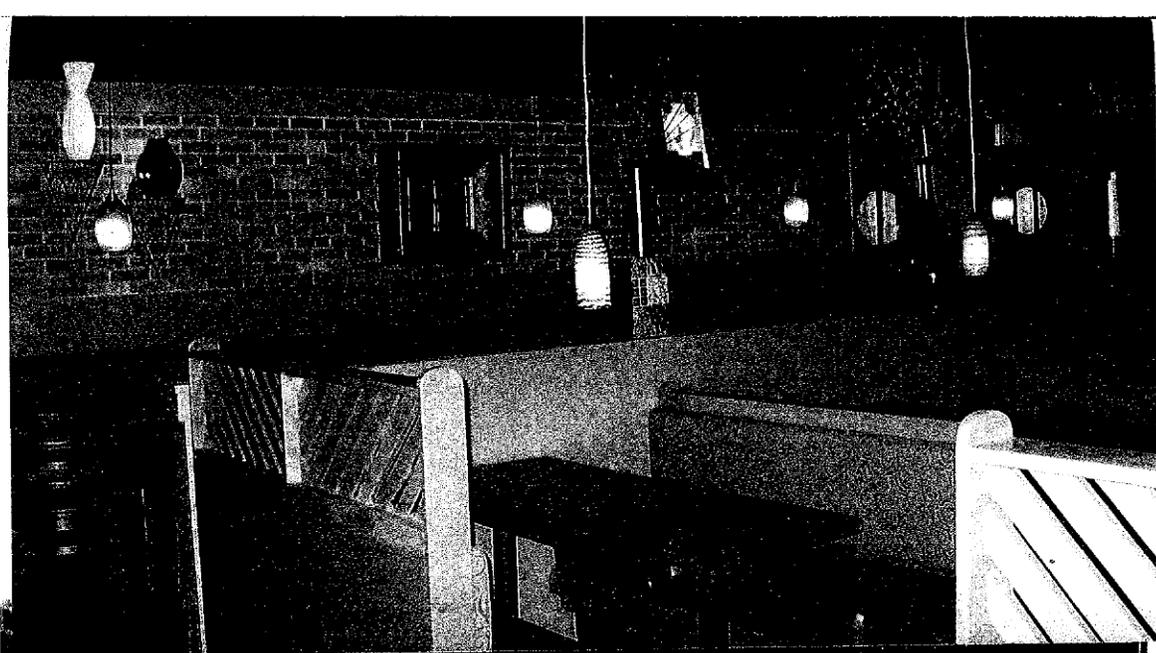
**KITCHEN  
CLOSES**

**BAR  
CLOSES**

<b>MON thru WED</b>	<b>11:30</b> AM	<b>10</b> PM	<b>12</b> AM
<b>THUR thru SAT</b>	<b>11:30</b> AM	<b>11</b> PM	<b>1</b> AM
<b>SUNDAY</b>	<b>12</b> PM	<b>10</b> PM	<b>11</b> PM



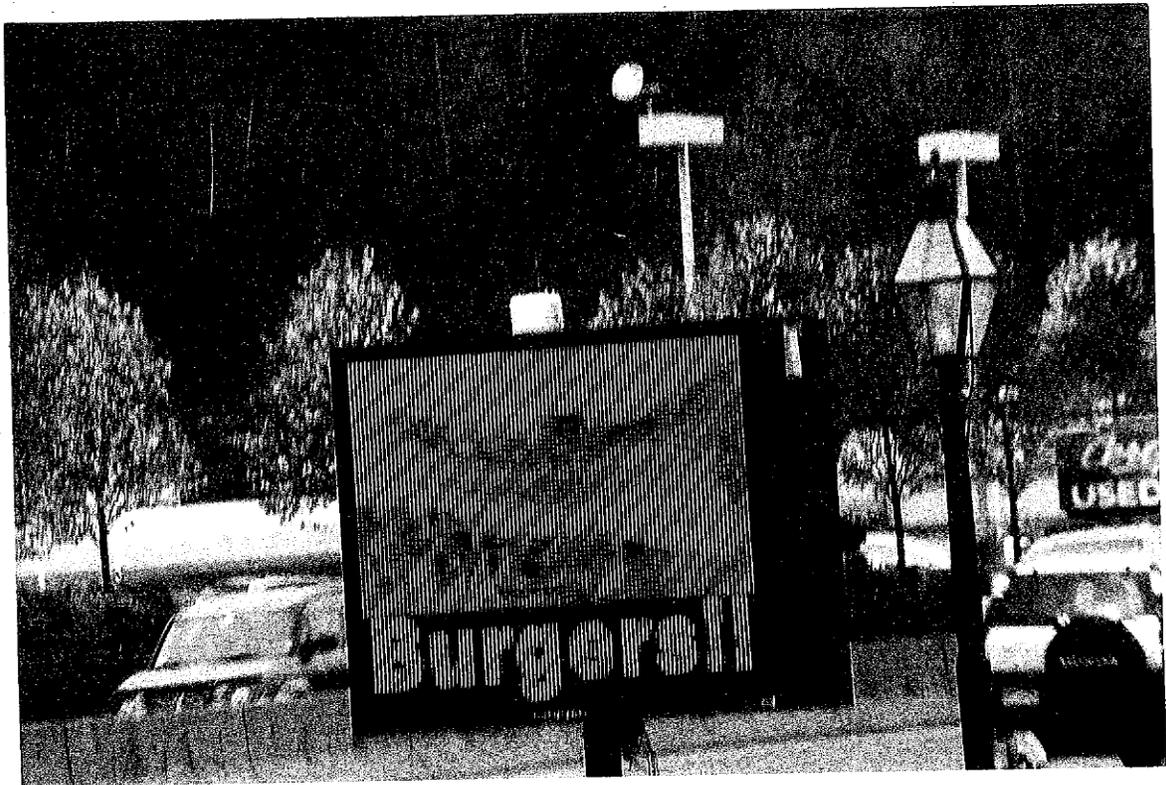
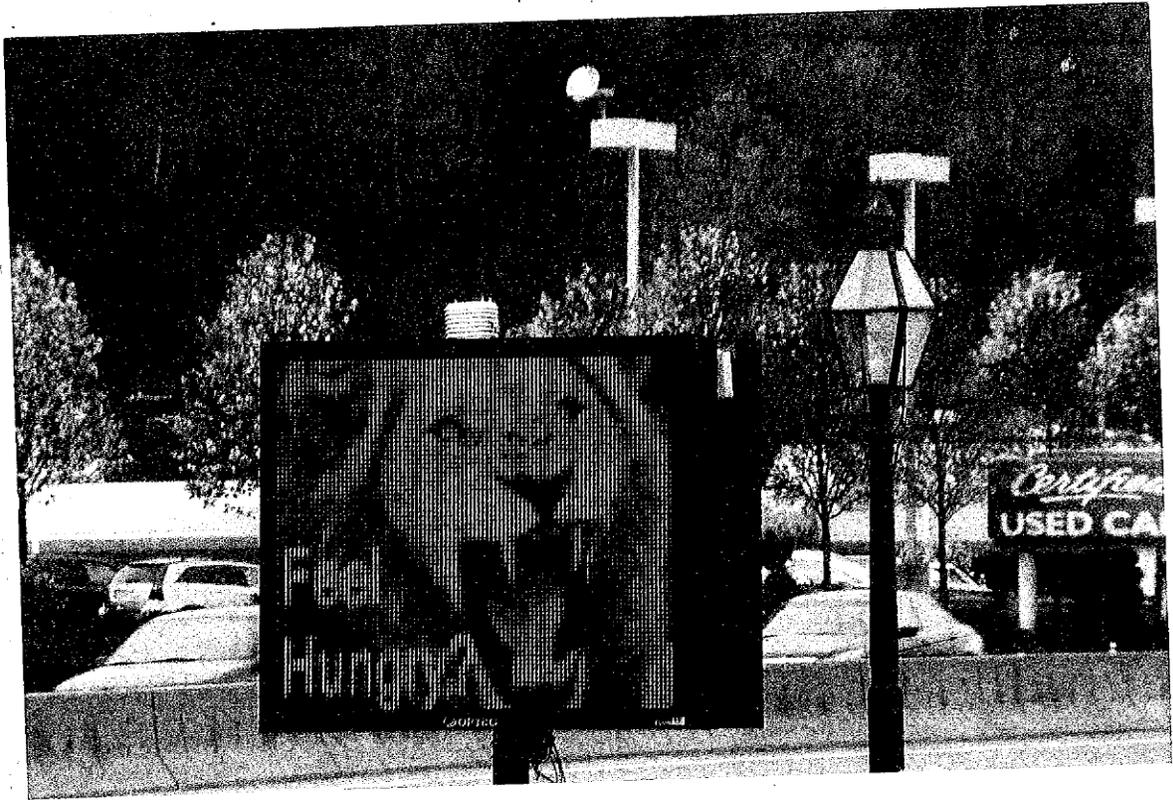


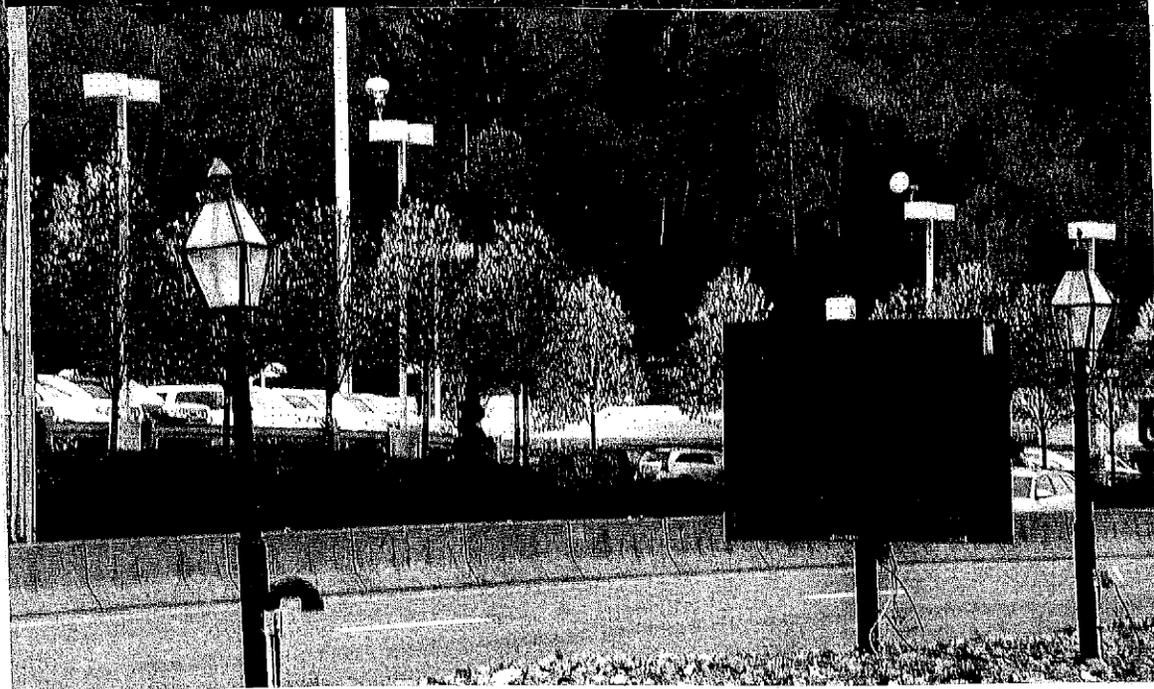
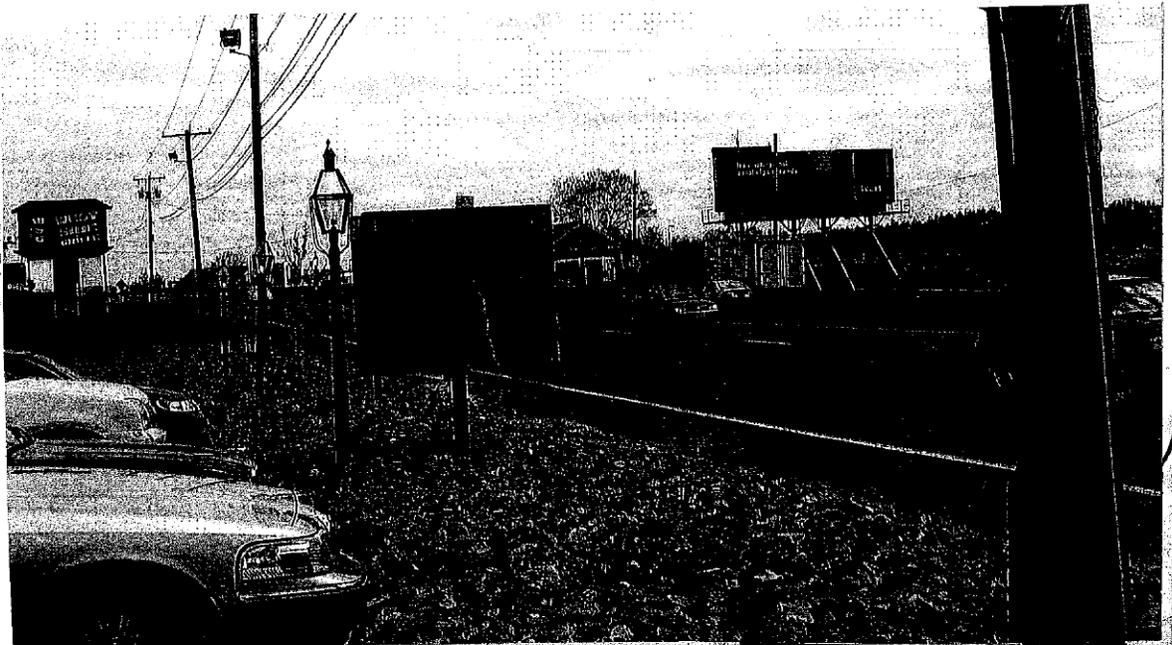




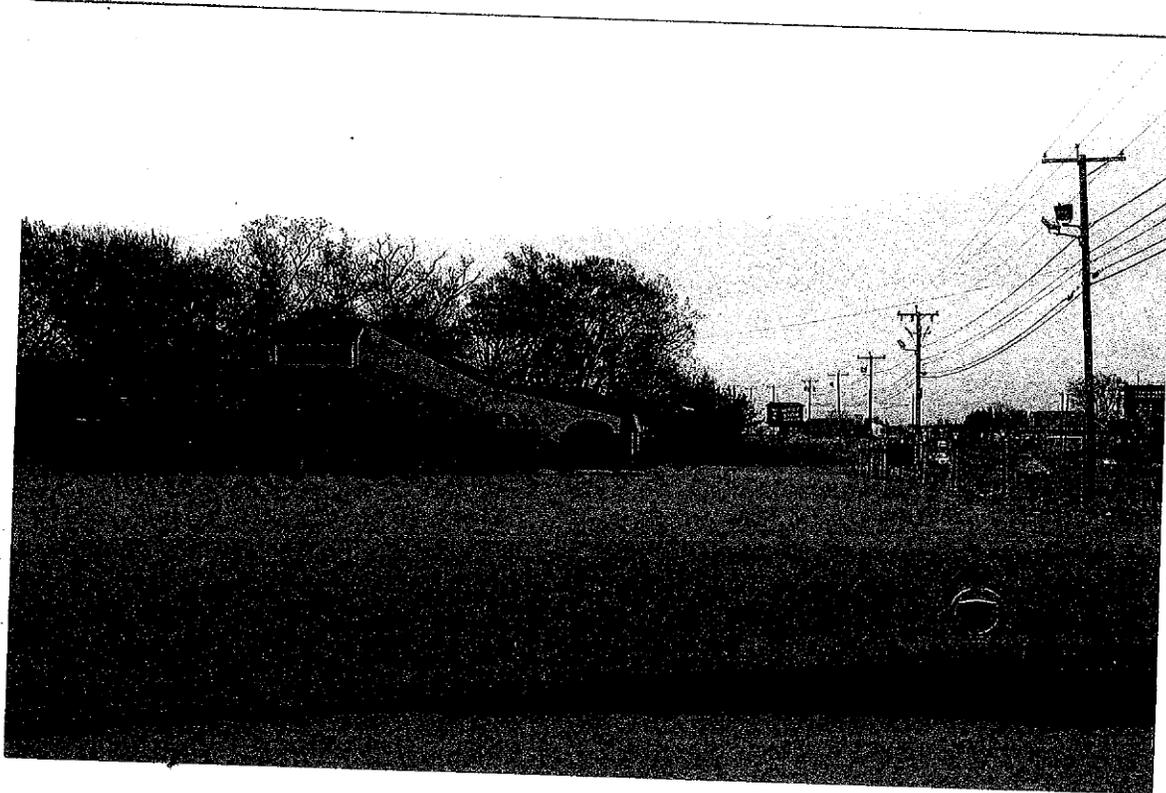


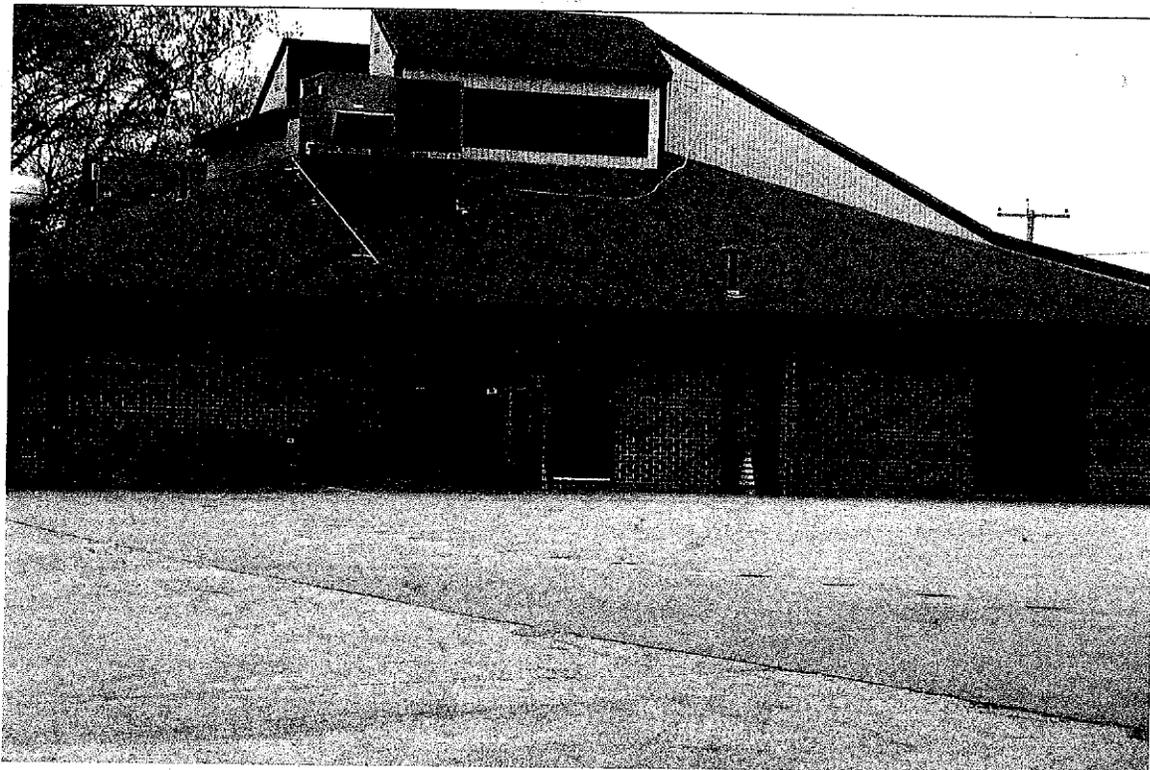


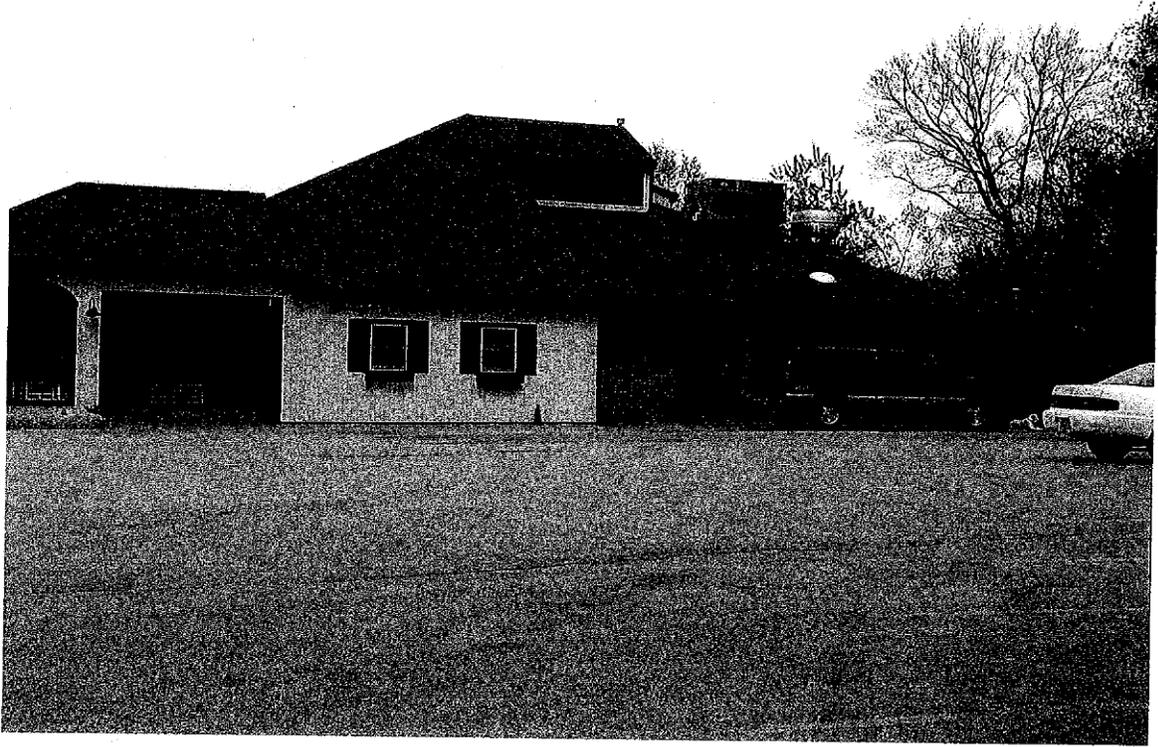








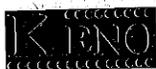




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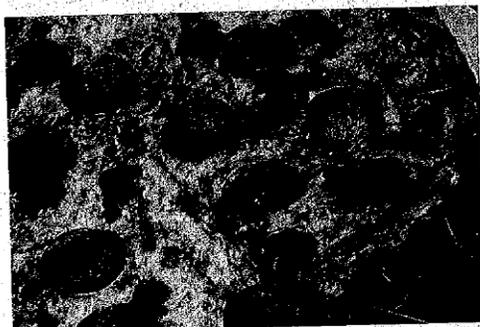
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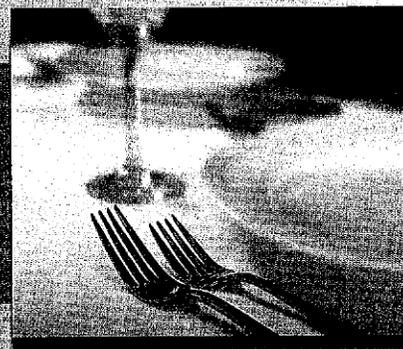
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requires a fire-resistance rated separation, the specific occupancy area shall be separated from the remainder of the building with *fire separation assemblies* (see 780 CMR 709.0). Where Table 302.1.1 requires smoke partitions, the smoke partitions shall be constructed of materials consistent with the type of construction and shall be capable of resisting the passage of smoke. The smoke partitions shall extend from the floor to the underside of the fire-resistance rated floor/ceiling or roof/ceiling assembly or to the underside of the floor or roof deck above. All doors shall be self-closing or automatic-closing upon detection of smoke.

**302.1.2 Accessory areas:** Except for accessory areas of Use Group H in accordance with 780 CMR 302.1.2.1 and specific occupancy areas indicated in 780 CMR 302.1.1, where the area devoted to an accessory occupancy does not occupy more than 10% of any *fire area* nor more than 10% of the allowable area permitted by 780 CMR 503.0 based on the accessory use group, a *fire separation assembly* shall not be required between the main use group and accessory areas. The required type of construction and the automatic fire suppression requirements in 780 CMR 904.0 shall be based on the main use group of the *fire area*.

**302.1.2.1 High-hazard uses:** In buildings that are three stories or less in *height* and equipped throughout with an automatic suppression system in accordance with 780 CMR 9, an occupancy in Use Group F or S is permitted to have accessory areas of Use Group H-2, H-3 or H-4, provided that such areas do not occupy more than 10% of any *fire area* nor more than 10% of the allowable area permitted by 780 CMR 503.0 based on the use group of the accessory area. A *fire separation assembly* shall not be required between the F or S use group and the accessory H use group. The maximum quantity of *hazardous materials* within the accessory H use group shall not exceed twice the permitted exempt amount specified in Table 307.8(1) or Table 307.8(2). The required type of construction shall be based on the main use group of the *fire area*.

**302.2 Mixed use:** All buildings and structures that include more than one use group shall be further designated as a mixed use and shall comply with 780 CMR 313.0. Specific occupancy areas and accessory areas complying with 780 CMR 302.1.1 and 302.1.2, respectively, shall be classified in

11580  
**780 CMR 303.0 ASSEMBLY USE GROUPS**

**303.1 General:** All structures which are designed or occupied for the gathering together of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption or awaiting transportation, shall be classified as Use Group A-1, A-2, A-3, A-4 or A-5. A room or space used for assembly purposes by less than 50 persons and which is accessory to another use group shall be included as a part of that main use group. Other buildings or structures which accommodate less than 50 but would otherwise qualify as places of assembly, shall be classified in Use Group B. The term "Use Group A" shall include Use Groups A-1, A-2, A-3, A-4 and A-5.

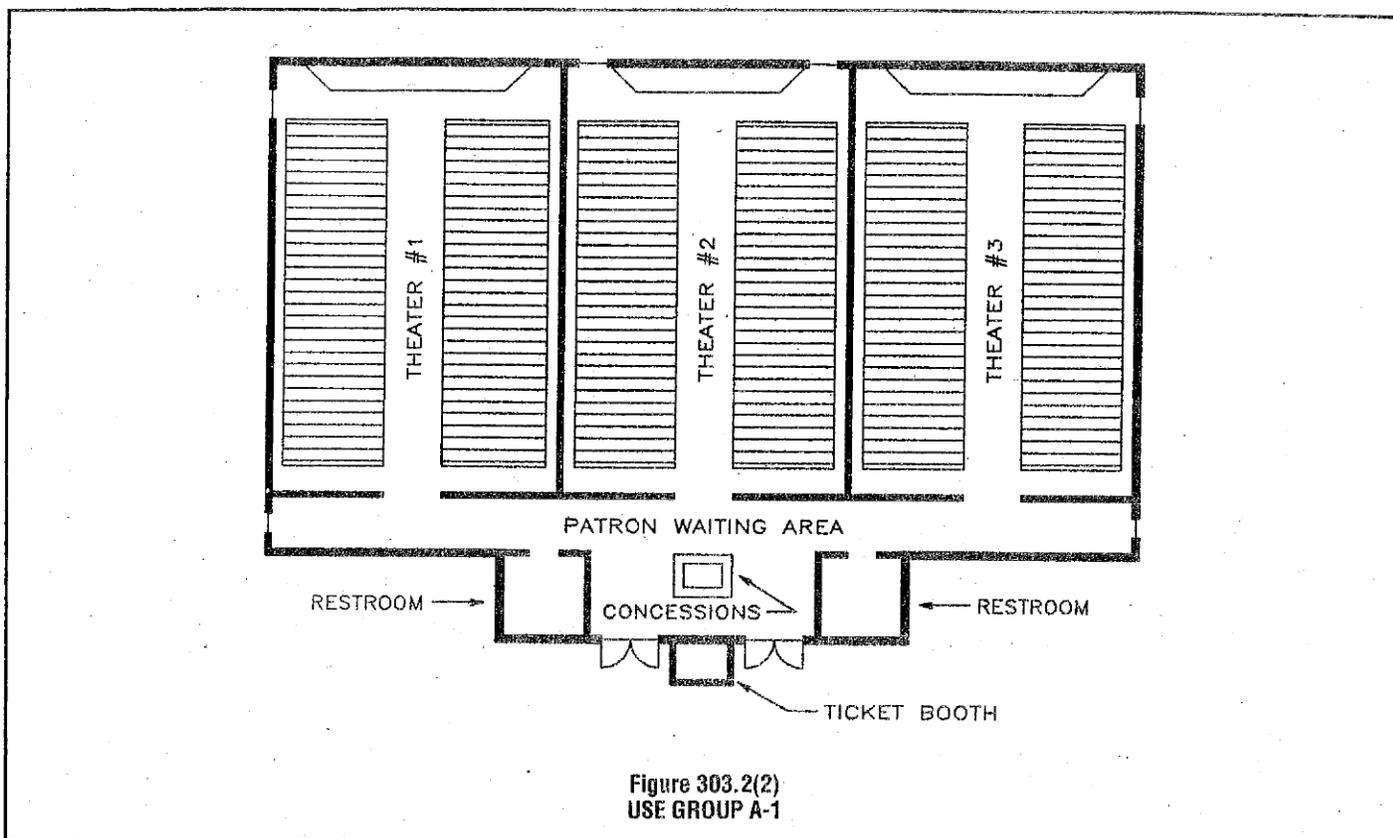
**303.2 Use Group A-1, theaters:** This use group shall include all theaters and all other buildings and structures intended for the production and viewing of performing arts or motion pictures; and which are usually provided with fixed seats-including theaters, motion picture theaters and television and radio studios admitting an audience. *Stages* and *platforms* shall comply with 780 CMR 412.0.

**303.3 Use Group A-2 structures:** This use group shall include all buildings and places of public assembly, without theatrical *stage* accessories, designed for occupancy as dance halls, nightclubs and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common *means of egress* and entrance.

**303.4 Use Group A-3 structures:** This use group shall include all buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation purposes as well as incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical *stage* other than a raised *platform*; and which are principally occupied without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than nightclubs, and recreation centers; and buildings designed for similar assembly purposes, including passenger terminals.

**303.5 Use Group A-4 structures:** This use group shall include all buildings and structures which are occupied exclusively for the purpose of worship or other religious services.

**303.6 Use Group A-5, outdoor assembly:** This use group shall include structures utilized for outdoor assembly intended for participation in or reviewing



occupied for the viewing of motion pictures. Facilities of this type ordinarily have fixed seating, no stage, a viewing screen, motion picture projection booth(s) and equipment [see Figure 303.2(2)].

Use Group A-1 presents a significant potential life safety hazard because of the large occupant loads and the concentration of people within confined spaces. The means of egress is an important factor in the design of such facilities. Theaters for the performing arts which require stages are considered particularly hazardous because of the amount of combustibles such as curtains, drops, leg drops, scenery, lighting equipment, burnable construction materials and other accessories normally associated with stage operation.

Where a stage or enclosed platform is utilized, Section 412.0 provides the construction and other requirements for the hazards associated with that type of space.

**303.3 Use Group A-2 structures:** This use group shall include all buildings and places of public assembly, without theatrical stage accessories, designed for occupancy as dance halls, nightclubs and for similar purposes, including all rooms, lobbies and other spaces connected thereto with a common means of egress and entrance.

Occupancies included in Use Group A-2 are identified in this section.

Use Group A-2 includes occupancies in which people congregate in high densities for social entertainment such as drinking and dancing (e.g., nightclubs, dance halls, cabarets, etc). The uniqueness of these occupancies is characterized by the following:

- No theatrical stage accessories other than a raised platform;
- Low lighting levels;
- Entertainment by a live band or recorded music generating above-normal sound levels;
- Later-than-average operating hours;
- Tables and seating arranged or positioned so as to create ill-defined aisles;
- A specific area designated for dancing;
- Service facilities primarily for alcoholic beverages with limited food service; and
- High occupant load density.

The fire records are very clear in identifying that the characteristics listed above often cause a delayed awareness of a fire situation and confuse the appropriate response, resulting in an increased egress time and sometimes panic. Together, these factors may result in extensive life and property losses. These characteristics are only advisory in determining if Use Group A-2 is the appropriate classification. There will always be additional characteristics that are unique to a project, and these must also be taken into consideration when a classification is made.

**Example 1:** The Downtown Club, a popular local nightclub/dance hall, features a different band every weekend [see Figure 303.3(1)]. It is equipped with a bar and basic kitchen facilities so that beverages and appetizers can be served. There is a platform for a band to perform on, a dance floor in front of the platform and numerous cocktail tables

and chairs. The tables and chairs are not fixed, resulting in a haphazard arrangement such that there are no distinct aisles. When the band performs, the house lights are dimmed and spotlights are keyed in on the performers. The club is equipped with a sound system that is used at loud levels. The club is open until 3:00 a.m. — the latest time the local jurisdiction will allow.

From this description of the Downtown Club, one can readily see that the appropriate classification is Use Group A-2. Sometimes, however, it is not this easy to determine the appropriate classification. In such cases, the code official must seek additional information regarding the function(s) of the building and each area within the building.

**Example 2:** The local Wallabys Club has a meeting hall which is used for club gatherings and social functions [see Figure 303.3(2)]. Based on this description alone, the Wallabys Club would be classified as Use Group A-3. One night a year the Wallabys Club sponsors a "Cabaret Night." A band and a show are featured, tables and chairs are placed close together, lights are dimmed for atmosphere, and beverages and snacks are served by waitresses.

Thus, on one night each year, the Wallabys Club is occupied for a purpose which has all of the characteristics indicative of a nightclub, Use Group A-2. Therefore, because Use Group A-2 represents an overall greater hazard to public safety and welfare than does the classification of Use Group A-3, the Wallabys meeting hall should be classified in Use Group A-2 instead of Use Group A-3. The greater of the relative hazards represented by all of the various uses of a space must be considered in assigning a use group classification to a structure.

Nightclubs, cabarets, dance halls, beer gardens, disco-

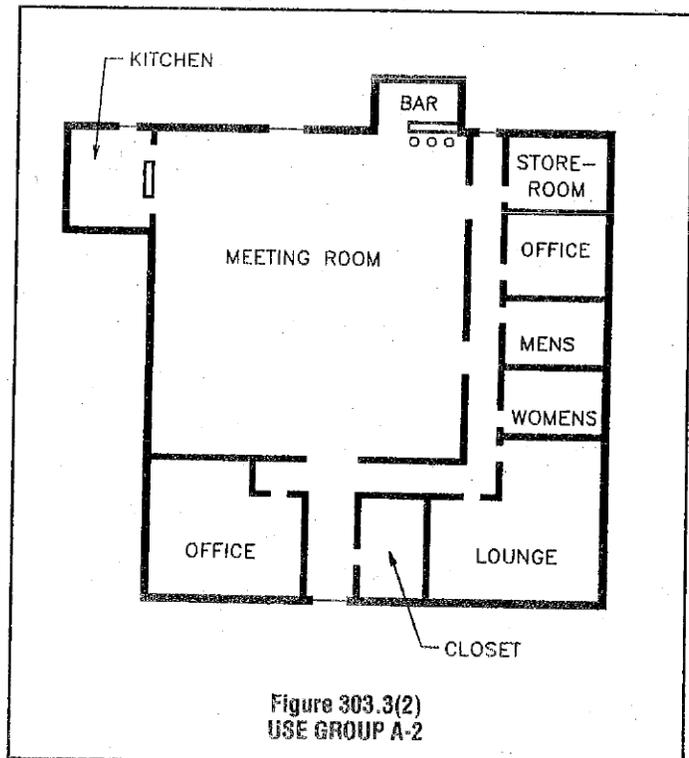
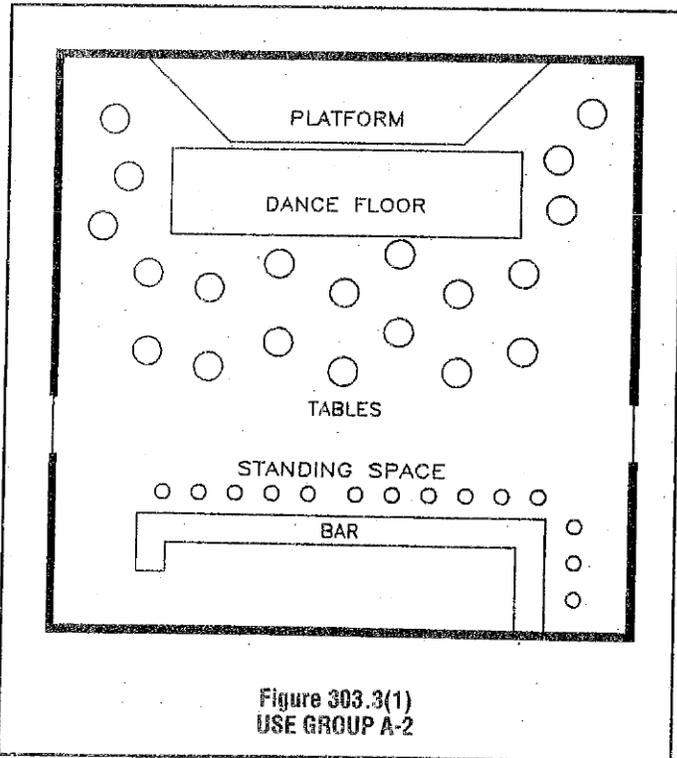
theques and other similar facilities are classified as Use Group A-2 because of the nature of their occupancies. Establishments of this type are frequently crowded, thus hindering access to exits. The level of risk to life safety in this use group is the highest when compared to all other assembly use groups and is reflected in the strictness of the code provisions.

**303.4 Use Group A-3 structures:** This use group shall include all buildings with or without an auditorium in which persons assemble for amusement, entertainment or recreation purposes as well as incidental motion picture, dramatic or theatrical presentations, lectures or other similar purposes without theatrical stage other than a raised platform; and which are principally occupied without permanent seating facilities, including art galleries, exhibition halls, museums, lecture halls, libraries, restaurants other than nightclubs, and recreation centers; and buildings designed for similar assembly purposes, including passenger terminals.

Occupancies included in Use Group A-3 are identified in this section.

Structures in which people assemble for the purpose of social activities (such as entertainment, recreation and amusement) that are neither classified in Use Group A-1 or A-2 nor appropriately classified in Use Group A-4 or A-5 are to be classified in Use Group A-3.

Exhibition halls, restaurants, libraries, museums, gymnasiums, recreation centers, health clubs, indoor arenas, indoor shooting galleries, bowling centers, billiard halls and the like are among the facilities often classified in Use Group A-3. Also, lecture halls that are located in colleges, universities or in schools for students up to 12th grade, and which have an occupant load of 50 or more, are included in this use group classification.



The fire hazard in terms of combustible contents (fuel load) in structures classified in Use Group A-3 is ordinarily considered to be moderate to low. Because structures classified in Use Group A-3 vary widely as to the purpose for which the structures are used, the fuel load varies widely. For example, the fuel load in a library or an exhibition hall usually is considerably greater than that normally found in a lecture hall.

The density of the occupant load in structures classified in Use Group A-3 is generally lower than it is for Use Groups A-1 and A-2. Hence, the risks to life safety are deemed to be lower which is reflected by the allowable areas for Use Group A-3 in Table 503.

**303.5 Use Group A-4 structures:** This use group shall include all buildings and structures which are occupied exclusively for the purpose of worship or other religious services.

Occupancies included in Use Group A-4 are identified in this section. Structures classified in Use Group A-4 are those in which people gather exclusively for worship and other religious purposes. Although such worship and religious purposes are without restriction to any particular sect or creed, the intent of the code is to limit the Use Group A-4 classification to occupancies that are specifically related to worship services, devotions and religious rituals.

Use Group A-4 occupancies differ from other assembly occupancies in that the activity is, by nature, more orderly and their use tends to be limited in duration and frequency. Furthermore, the occupants of such facilities most often are very familiar with the facility and are well-oriented to its egress pattern. Buildings classified in Use Group A-4 typically contain a vestibule (narthex), a seating area (nave) and an altar area (sanctuary). This is illustrated in Figure 303.5.

Structures classified in Use Group A-4 are considered to have the lowest risk to life safety of all the use groups within the assembly use group category. This is reflected in Table 503, which shows that the floor area allowances for Use Group A-4 buildings are nearly twice those permitted for Use Groups A-1 and A-3 and approximately six times the floor areas allowed for Use Group A-2.

Frequently, other occupancies are located within the same structure where religious services (Use Group A-4) are performed [e.g., education (Use Group E) for classrooms, child care for infants (Use Group I-2), business (Use Group B) for the staff offices, and assembly areas (Use Group A-2 or A-3) for meetings, wedding receptions and other functions]. When this occurs, and depending on their size, these other occupancies must be considered as either accessory areas or other principal occupancies. Any area which does not qualify as an accessory area must be identified as a principal occupancy. Accordingly, the structure then contains mixed use groups and is subject to the provisions of Section 313.0. See Formal Interpretation No. 10/201/81.

**303.6 Use Group A-5, outdoor assembly:** This use group shall include structures utilized for outdoor assembly intended for participation in or reviewing activities, including *grandstands* (Section 1013.0), *bleachers* (Section 1013.0), *coliseums*, *stadiums*, *amusement park structures* (Section 413.0) and *fair or carnival structures*. Such structures shall comply with all pertinent provisions of this code.

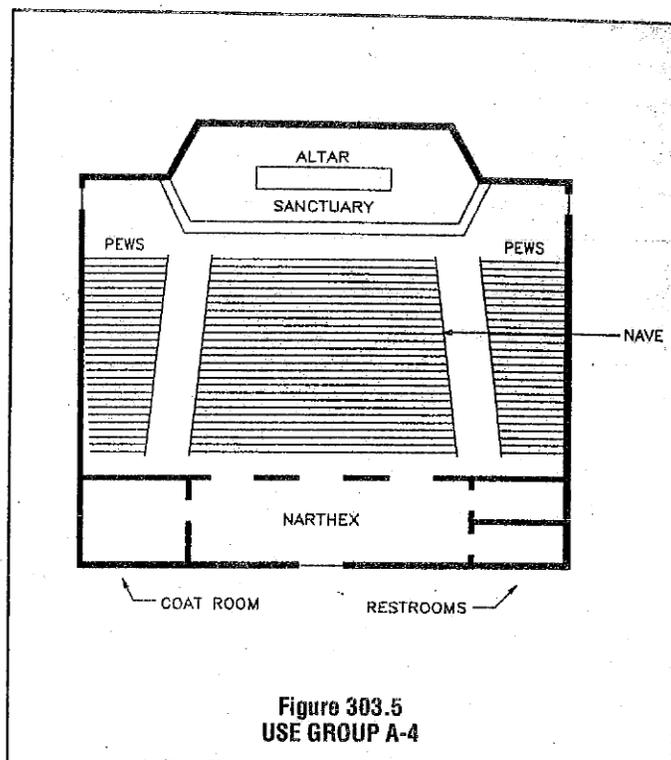


Figure 303.5  
USE GROUP A-4

Occupancies included in Use Group A-5 are identified in this section. Structures classified in Use Group A-5 are "outdoor" facilities where people assemble to review or participate in social and recreational activities (e.g., stadiums, grandstands, bleachers, coliseums, etc.). In order to qualify as an "outdoor" facility the building must be one of the two following types:

- A structure with a roof but no exterior walls; or
- A structure with exterior walls but no roof.

Any recreation facility that has exterior walls that completely enclose the facility and a roof that fully covers the area would not be classified in Use Group A-5 but rather in Use Group A-3 (see Section 303.4).

Use Group A-5 is a special use group classification unlike any other in the assembly use group category because facilities classified in Use Group A-5 are intended for occupancy out of doors. Thus, smoke — one of the main hazards to life safety during a fire — will be quickly evacuated from the structure through the large openings. Also, the capability of large crowds to exit the structure quickly and orderly during emergencies is an important design consideration (see also the requirements of Section 1013.0 for bleachers and grandstands).

#### SECTION 304.0 BUSINESS USE GROUP

The risks to life safety in the business use group classification are low. Exposure to the potential effects of fire are limited because business-type facilities customarily have low fuel loads, they are normally occupied only during the daytime and, with some exceptions, they are usually occupied for a set number of hours. The occupants, because of the nature of the use, are alert



Commonwealth of Massachusetts  
Town of Northborough  
hereby grants an  
**All Alcohol Restaurant License**  
to be drunk on the premises

To: *KLRR Foods, Inc. d/b/a West Side Grille – Kenneth Koury, Mgr.*  
*45 Belmont Street/Route 9, Northborough, MA*

*On the following described premises:*

*One story restaurant with kitchen, dining room, bar and function room in basement, storage room, cellar; entrance/exit on Belmont Street/Route 9.*

*This license is granted and accepted upon the express condition that the licensee shall, in all respects, conform to all the provisions of M.G.L, Chapter 138 and Chapter 304 of the Acts of 2004 (the "Fire Safety Act") as amended, the Decision and Order of the Automatic Sprinkler Appeals Board – Docket 2006-180, as well as any rules or regulations made thereunder by the licensing authorities.*

*This license shall be displayed on the premises in a conspicuous position where it can easily be seen and read.*

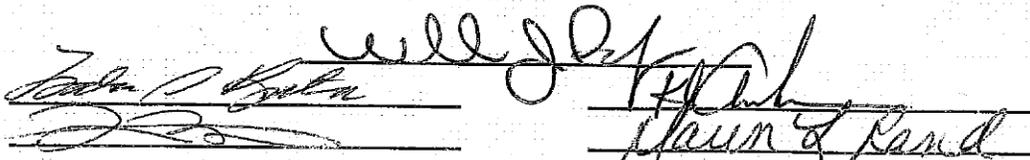
*This license expires December 31, 2008, unless earlier suspended, cancelled or revoked.*

*The hours during which alcoholic beverages may be sold are:*

*Monday through Saturday: 11am – 2am*

*Sunday: 12pm – 1am*

*IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signatures this 10<sup>th</sup> day of December, 2007.*

  
Two handwritten signatures are present, each written over a horizontal line. The signature on the left is more cursive and less legible. The signature on the right is written in a more formal, blocky style and appears to read "Klaus & Rand".

Fee: \$50.00

Commonwealth of Massachusetts  
Town of Northborough  
hereby grants a  
Common Victualler's License

To: West Side Grille  
45 Belmont Street (Route 9), Northborough, MA

This license is granted in said Town of Northborough and for this location only and shall expire on December 31, 2008 unless earlier suspended, cancelled or revoked.

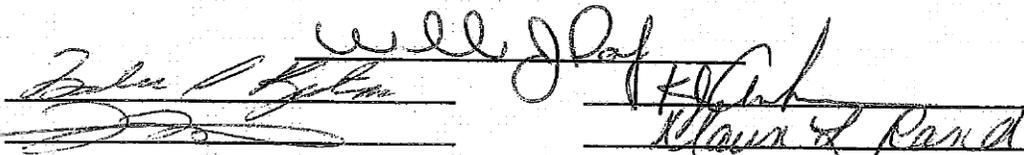
This license is granted in conformity with the authority granted to the Northborough Board of Selectmen, as the licensing authority, by Massachusetts General Laws, Chapter 140, and any amendments thereto.

EXTRACTS FROM THE  
MASSACHUSETTS GENERAL LAWS, CHAPTER 140

Section 7: A Common Victualler who, upon request, refuses to supply food to a stranger or traveler shall be punished by a fine of not more than fifty dollars.

Section 9: If, in the opinion of the licensing authorities, a licensee as an Innholder or Common Victualler ceases to be engaged in the business he is licensed to pursue, or fails to maintain upon his premises the implements and facilities required by this Chapter, they shall immediately revoke the license. If a licensee at any time conducts his licensed business in an improper manner, the licensing authorities, after notice to the licensee and reasonable opportunity for a hearing, may upon satisfactory proof thereof suspend or revoke this license. A Common Victualler who violates Section 7 shall forfeit his license.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signatures this 10<sup>th</sup> day of December, 2007.

  
The image shows two handwritten signatures in black ink. The signature on the left is partially obscured by a horizontal line. The signature on the right is more legible and appears to read "Clara A. Rand". Both signatures are written over horizontal lines that serve as baselines for the signatures.

Fee: \$100.00

Commonwealth of Massachusetts  
Town of Northborough  
hereby grants an  
Entertainment License

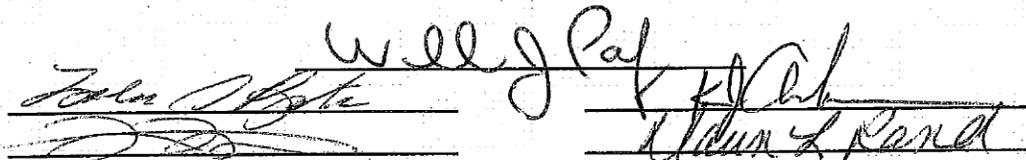
To: West Side Grille  
45 Belmont Street (Route 9), Northborough, MA

This license is granted in said Town of Northborough and for this location only and shall expire on December 31, 2008 unless earlier suspended, cancelled or revoked.

This license is granted in conformity with the authority granted to the Northborough Board of Selectmen, as the licensing authority, by Massachusetts General Laws, Chapter 140, Section 183A and any amendments thereto.

This license shall cover any and all entertainment activities set forth in MGL, Chapter 140, Section 183A, Paragraph 2, but not those activities set forth in MGL, Chapter 140, Section 183A, Paragraph 3.

IN TESTIMONY WHEREOF, the undersigned have hereunto affixed their official signatures this 10<sup>th</sup> day of December, 2007.

  
The image shows three handwritten signatures on lines. The first signature on the left is partially obscured. The middle signature is 'W. J. Pal'. The signature on the right is 'Alan L. Rand'.