

Commission Letter # 303-09(E)
Commission Meeting: 10/19/2009

RE: 526 Main Street Pub, 526 S. Main Street

October 15, 2009

The Honorable Mayor
and
Members of City Commission

Reference the accompanying October 8, 2009 memorandum and related materials from Lt. Gordon Young to City Manager Donald E. Johnson regarding the proposed transfer of a Class C license currently in escrow at 4313 W. Thirteen Mile Road in Royal Oak to 526 South Main Street, L.L.C., for use at 526 S. Main Street.

The Police Department has recommended against the request based upon the size of the proposed establishment, the dance permit, proximity to BlackFinn, and the related strain on limited police resources. On October 14, 2009, the City's Liquor Control Committee (LCC) voted 2-1 to recommend that the City Commission recommend denial of the request by the Michigan Liquor Control Commission. If the Commission agrees with the LCC's recommendation, the following resolution would be appropriate:

BE IT RESOLVED, that the Royal Oak City Commission hereby recommends that the Michigan Liquor Control Commission deny the request for transfer of a Class C license from The Ballard Group, L.L.C., (in escrow at 4313 W. Thirteen Mile Road, Royal Oak, Michigan 48073, Oakland County) to 526 South Main Street, L.L.C., to be located at 526 S. Main, Space 105-205, Royal Oak, Michigan, based upon the following findings:

1. There are currently approximately forty-seven (47) businesses that hold licenses in Royal Oak for the on-premises consumption of alcoholic beverages. Out of those businesses, one with a posted occupancy limit of three hundred eighty-seven (387) is directly adjacent to the proposed establishment. Another twenty (20) of those businesses are located within approximately one-quarter (1/4) mile of the proposed establishment. The posted occupancy limits of those establishments total approximately six thousand five hundred (6,500). Another thirteen (13) licensed businesses are located within approximately one (1) mile of the proposed business. The posted occupancy limits of those establishments total more than two thousand (2,000).
2. The applicant is proposing to operate a nine thousand (9,000) square foot establishment with a seating capacity of four hundred fifty-seven (457) occupants, not including proposed seasonal outdoor seating

for thirty-six (36) additional patrons. The proposed seating capacity would give the establishment the fourth-highest occupancy of all the liquor licensees in the City (behind only the Royal Oak Music Theatre, Woody's Diner, and Mr. B's Pub).

3. The applicant has requested the transfer of a liquor license with a dance permit. Historically, liquor-licensed establishments with dance permits have generated a greater number of calls for police service than establishments that do not have dance permits.

4. Staffing in the Royal Oak Police Department has been reduced from 104 officers in 2003 to the current level of 81 officers. In the near future, staffing is expected to continue to decrease through continued attrition, not increase.

5. The applicant, Paul Derrico, is a member of Ottawa Venture, L.L.C., which has held a liquor license in Grand Rapids, Michigan. According to Michigan Liquor Control Commission (MLCC) records, Ottawa Venture has been responsible for the following Liquor Control Code violations:

- A. 4/28/06 Sale to Minor
- B. 8/10/06 Overcrowding
- C. 11/29/06 Allowing Minor to Consume Alcohol
Allowing an Intoxicated Person to Consume Alcohol
Allowing an Intoxicated Person to Loiter on Premises
- D. 5/29/08 Allowing an Intoxicated Person to Loiter on Premises
Sale to an Intoxicated Person
Allowing an Intoxicated Person to Consume Alcohol
Allowing an Intoxicated Person to Loiter on Premises
Allowing an Intoxicated Person to Loiter on Premises
Overcrowding
- E. 6/5/08 Overcrowding

Therefore, the City Commission recommends that the Liquor Control Commission deny the request for the transfer, based upon the following:

- 1. the total number of similar licenses in the City,
- 2. input from residents and surrounding business owners,
- 3. impact of the establishment on surrounding businesses and neighborhoods,
- 4. crowd control,
- 5. pedestrian movement,
- 6. parking availability,
- 7. the total square footage of liquor-licensed establishments in the area,
- 8. the number of on-premises establishments in the area,

9. the concentration and capacity of similar establishments,
10. the number of seats/occupancy in the immediate area,
11. the concentration of drinking establishments and the impact of those establishments on policing requirements,
12. policing requirements,
13. the Michigan Liquor Control Commission violation history of the applicant,
14. the ratio of food to alcohol sales,
15. the accompanying dance permit,
16. the type or character of the proposed establishment, and
17. other unspecified factors having a negative effect on the health, safety and welfare and/or the best interests of the community.

Respectfully submitted,



David W. Gillam
City Attorney

cc: Donald E. Johnson, City Manager
Melanie Halas, City Clerk
Christopher A. Jahnke, Chief of Police
Lt. Gordon Young, Criminal Investigations

Royal Oak Police
Criminal Investigation
Division

MEMORANDUM

To: Mr. Don Johnson, City Manager
From: Gordon Young, Lieutenant
CC: Christopher Jahnke, Chief of Police *c/s*
Date: 10/8/2009
Re: Supplemental Report for 526 South Main L.L.C.

Kelly Allen, the attorney representing 526 South Main L.L.C. has indicated that the applicant has obtained a 2009 escrowed Class C license located at 4313 West Thirteen Mile, Royal Oak, MI 48073 Oakland County.

The applicant requests that the LCC committee reconsider the transfer request. The applicant feels that by obtaining a Royal Oak Liquor License, he has resolved the primary reason for a negative recommendation. All other aspects of the request have remained the same.

As indicated in Deputy Chief O'Donohue's memo from the May 13 LCC meeting, the police department is opposed to license transfers from outside the City. However, there are several other issues also included in the memo that have not been resolved. Specifically, this establishment is simply too large. With a proposed capacity of 457, in addition to the dance permit, this establishment will cause a strain on police resources. Additionally, two (2) large and successful MLCC licensed establishments in such close proximity would likely exacerbate problems in the CBD.

For the above stated reasons, the police department remains opposed to this transfer request.

This application is subject to the approval or denial of the Royal Oak City Commission.

Respectfully

A handwritten signature in black ink, appearing to read "Gordon Young". The signature is fluid and cursive, with a large initial "G" and "Y".

**Gordon Young, Lieutenant
Criminal Investigation Division
Royal Oak Police Department**

**cc: City Clerk
City Attorney
Building Department
Fire Marshal
Michigan Liquor Control Commission
File**

**Royal Oak Police
Criminal Investigation
Division****MEMORANDUM**

To: Mr. Don Johnson, Interim City Manager
From: Corrigan O'Donohue, Interim Deputy Chief
CC: Christopher Jahnke, Interim Chief
Date: 5/5/2009

Re: REQUEST FOR TRANSFER OF CLASS C AND SDM LICENSED BUSINESS WITH SUNDAY SALES PERMIT, DANCE PERMIT, ADDITIONAL BAR PERMIT, AND OFFICIAL PERMIT (FOOD), FROM MCQUISTION'S AIRPORT INN, INC., (IN ESCROW AT 6123 HIGHLAND, WATERFORD, MICHIGAN 48327, OAKLAND COUNTY) TO 526 SOUTH MAIN STREET, LLC TO BE LOCATED AT 526 SOUTH MAIN, SPACE 105-205, ROYAL OAK, MICHIGAN AND REQUEST FOR A NEW ENTERTAINMENT PERMIT AND OUTDOOR SERVICE PERMIT (ON CITY SIDEWALK) AND CANCEL THE EXISTING SDM LICENSE.

The Royal Oak Police Department has received a request from the Michigan Liquor Control Commission (MLCC) for an investigation and recommendation to transfer ownership of a Class C license with dance permit, additional bar permit, and official permit (food) to 526 South Main LLC, located at 526 S. Main Street, Royal Oak. The license is currently in escrow and is assigned to 6123 Highland, Waterford, Michigan 48327. The applicant is also requesting a new entertainment permit and outdoor service permit.

The applicant, Mr. Paul Derrico, is the current owner of BlackFinn. The applicant also has financial interest in one other MLCC licensed business (Margarita Grill, currently in escrow) in Grand Rapids and four (4) others throughout the United States. The applicant received five (5) MLCC violations between April 28, 2006, and June 5, 2008, attached. A criminal check was conducted and Mr. Derrico was found to meet all the requirements of the police department.

The applicant has formed 526 South Main, LCC for this purchase. The applicant is the sole stockholder in 526 South Main, LCC

The applicant is proposing a very large two-level restaurant/bar, tentatively named 526 Main Street Pub, to be located next to BlackFinn. The applicant is purchasing

the business and inventory for \$748,000.00. This will be paid with \$250,000.00 from the applicant's personal savings; and \$500,000.00 will be paid by the landlord, Royal Oak Partners, LLC. If approved, the applicant will pay a monthly lease payment of \$20,977.00.

The applicant intends to operate as a full service restaurant occupying approximately 9,154 square feet. The business may offer bands, DJ's and dancing. 526 South Main Pub may also have entertainment with promotions and contests. 526 South Main Pub will have a 10' x 10' dance floor on the second level. The applicant is willing to enter into a similar type of Dance Permit Agreement that he signed with BlackFinn, if this transfer is approved.

The proposed seating capacity for the establishment is 457 occupants, 149 on the first floor (including 10 bar seats), and 308 on the second floor (including 20 bar seats). Proposed outdoor seating is 36. Final occupancy will be set by the police department.

Before BlackFinn was opened, two (2) other similar sized establishments had been approved at the above-mentioned location. Both involved a license transfer from outside the City of Royal Oak and both never finalized their transfers due to internal business issues. The latest, Lotus, was approved in 2005. The Lotus transfer was not completed by the applicant and was pending at MLCC until 2007, when the transfer request was officially cancelled. One of the police department's primary objections to originally approving the BlackFinn license transfer was the pending approval of the Lotus.

The owner and management of BlackFinn have been very cooperative with the police department, and the police department does not have any issue with the way BlackFinn operates. Although there were some marketing issues with BlackFinn when they first opened, they did not do anything illegal; and they were receptive to adjusting their marketing techniques to accommodate concerns of other establishments

The police department, however, is opposed to this transfer request. The police department remains opposed to adding any new liquor licenses from outside the City of Royal Oak. Additionally, this establishment is simply too large. With a proposed capacity of 457, in addition to the Dance permit, this establishment will cause a strain on police resources. BlackFinn has been very successful since its opening, and it is likely this establishment would also be successful. Two (2) large and successful MLCC licensed establishments in such close proximity would predictably increase the number of problems. Finally, this type of establishment does not fit in the smaller "Bistro type" establishments in which the LCC Committee seems to want to go with new MLCC transfer requests.

All necessary forms will be completed, including the Business Responsibility Agreement, Limited Power of Attorney form, Royal Oak Police Business Information Card, and a Ticket/Tow Authorization form.

This application is subject to the approval or denial of the Royal Oak City Commission.

Respectfully



Corrigan O'Donohue, Interim Deputy Chief
Criminal Investigation Division
Royal Oak Police Department

cc: **City Clerk**
 City Attorney
 Building Department
 Fire Marshal
 Michigan Liquor Control Commission
 File

**PROPOSED
PLAN OF OPERATION
526 MAIN STREET PUB
As of April 21, 2009**

Business Name: 526 South Main Street, LLC
Doing Business as: 526 Main Street Pub
Address: 526 South Main, Space 105-205
ROYAL OAK, MI 48067
Phone To be determined
Fax To be determined

PREAMBLE: We have received a copy of 90-3, the City of Royal Oak ordinance regulating liquor licenses. 526 South Main Street, LLC is requesting to transfer ownership and location of a Class C liquor license which was formerly operated at 6123 Highland, Waterford. The following Plan of Operation is developed in keeping with the spirit and intent of the City's Ordinance. 526 South Main Street, LLC will be doing business as 526 Main Street Pub ("Main Street Pub").

HOURS OF OPERATION: Hours of operation for the business will be 7 days a week 11:00 a.m. - 2:00 a.m. Last call will be 30 minutes before closing and last service 20 minutes before closing.

The full kitchen will be open until 11:00 pm., the late night menu may be served from 11:00 p.m. to 1:00 a.m.

FORMAT: Main Street Pub will be owned and operated by 526 South Main Street, LLC. Main Street Pub will operate as a full service restaurant occupying approximately 9,154 square feet on two floors in the Main Place of Royal Oak. The restaurant will offer appetizers, featuring "Garlic Knots", specialty pizza, signature wings, salads, sandwiches and full course meals in a fun and friendly atmosphere. Main Street Pub may offer Disc jockey's and live bands as entertainment.

The proposed overall seating capacity for Main Street Pub will be approximately 457, with seating for 149 customers on the first floor and 308 customers on the second floor, this includes 10 bar seats on the first floor and 20 bar seats on the second floor. There will also be outdoor seating. The final occupancy will be approved by the Royal Oak Police Department.

We anticipate the food sales/alcohol sales ratio will be approximately 70% food and 30% alcoholic beverages.

CODE COMPLIANCE: The premises will comply and will continue to comply with all applicable health, safety, building, sanitation, electrical, plumbing, and fire codes as well as zoning requirements.

There will be Outdoor Service on Main Street, only. The Outdoor Service Area will operate in accordance with and consistent with all City policies, practices, and procedures regulating outdoor service, including, but not limited to:

- a. The Outdoor Service Area will not be permanently enclosed;
- b. The fence and/or other barricades or rail surrounding the Outdoor Service Area should be anchored in accordance with the Uniform Engineering Anchoring System as promulgated by the Engineering Department of the City of Royal Oak;

- c. The manner in which the Outdoor Service Area is enclosed shall be subject to prior approval and inspection by the Police and Engineering Department;
- d. The use of alcohol will be allowed in accordance with the rules of the Michigan Liquor Control Commission and the City's Ordinances from April 15th to October 15th;
- e. The Outdoor Service Area will be clean free of debris of trash. The Area shall be cleaned at the close of each business day; and,
- f. Main Street Pub will pay fees in accordance with the City's Sidewalk Café License Agreement application.

PLAN OF OPERATION: It is acknowledged that under ordinance 2001-06 section 4A, the business shall be operated in accordance with this approved plan of operation. Changing the operation of the business in any manner inconsistent with the approved plan of operation is a violation of the ordinance and the rules of the Liquor Control Commission. Any change to the plan of operation must be approved by the City Commission prior to it being placed into effect on the business premises.

DANCE PERMIT: Main Street Pub will have a 10' x 10' dance floor. The dance permit will be used in conjunction with a "Dance Permit Agreement" executed between Main Street Pub and the City.

ENTERTAINMENT: Main Street Pub may offer bands, DJ's and dancing. Main Street Pub may have Entertainment with promotions and contests.

SECURITY: Security for the customer, building, and community are the first priorities for the corporation. Main Street Pub will undertake whatever measures are necessary to maintain, secure, and supervise our customers and premises.

PARKING: Parking will be on the public streets and the various public parking garages. Main Street Pub will purchase parking passes for its employees use at the parking garage located on Lafayette between Fifth and Sixth streets. Main Street Pub will purchase the parking passes through the Royal Oak Parking Supervisor, Mr. Duane Dixon.

ALCOHOL MANAGEMENT: Main Street Pub will strictly obey all rules, regulations, and ordinances established by the City of Royal Oak and the State of Michigan Liquor Control Commission. There will be neither service to nor consumption of alcoholic beverages to minors at any time. The establishment fully participates in the TIPS/TAM training program and will continue such participation in that program or a similarly recognized program approved by the Royal Oak Police Chief. TIPS/TAM certification shall be provided to the Chief of Police within one hundred twenty (120) days of date of hire.

In addition, the following policies shall be enforced at Main Street Pub:

- No alcoholic beverages are allowed on the premises other than what is dispensed by the establishment.
- All staff will pay attention and stay alert to observable clues displayed by an intoxicated individual such as: (a) impaired reflexes, (b) impaired coordination, (c) reduced judgment and inhibitions, (d) impaired vision, or physical behavior.
- All staff will be alert to potential problems at their respective areas at the facility.

- Be polite and courteous to the intoxicated individual (s). Be knowledgeable as to when to request assistance from additional facility staff.
- Patrons who appear to be under thirty-five years of age or younger will be asked to show proper valid identification. Signs will be posted at serving locations. Patrons must produce proper identification.
- All patrons under 21 years of age - service will be refused.
- Check 'State Seal' and other markings. Check for damage or alterations to identification card.
- Do not return falsified identification cards. Call management immediately.
- If a patron shows signs of intoxication, then refuse service, politely explain policy, suggest non-alcoholic purchase, and call for management immediately.
- Remind customers of Main Street Pub of the free cab ride policy. This policy states: if any customer, for any reason feels they have had too much to drink, then Main Street Pub will pay to provide the customer with a free ride home--no questions asked.
- If a patron is purchasing on behalf of someone else who appears less than 30 years old, then request to see identification of recipient or contact supervisory personnel who will seek patron(s) out. Refuse service to minors. Inform all parties involved that policy allows for ejection from premises, and notification to police department of illegal activity.
- Alcohol dispensing may be restricted to one of the following practices, or any combination thereof:
 - No sales to intoxicated persons
 - No sales without proper identification
 - Limited alcoholic choices if necessary
 - When in doubt, do not serve - call supervisor
- Observe all patrons leaving the property. No alcoholic beverages are allowed to leave the facility or property.
- Approach any patron appearing to be impaired and leaving the property. Determine if they are driving, and if so, attempt to persuade them not to drive and request a non-impaired companion to drive. If unable, offer a FREE cab ride directly home.
- Supervisory and management personnel will complete documentation of any alcoholic related incidents at end of event. Information will be disseminated accordingly, and forwarded to the Royal Oak Police Department.
- We shall provide free and/or at reduced prices non-alcoholic beverages to all designated drivers.

MONTHLY MEETING WITH POLICE DEPARTMENT: Main Street Pub will meet with the Royal Oak Police Department on a monthly basis. Main Street Pub will designate its General Manager and/or owner to attend these meetings. The meetings shall be conducted at the Police Department or at the Main Street Pub, at the Police Department's discretion.

REFUSE: Main Street Pub will provide trash receptacles on its premises. Each time these receptacles are full, staff will take the refuse to the central dumpster at the Main Place Development. Main Street Pub will not have trash or refuse on the streets, the sidewalks or in the surrounding parking lots at any time. The Main Place Development has the trash picked up from its central dumpster on a daily basis. Main Street Pub staff will maintain the surrounding premises on a daily basis, taking care to pick up our debris as well as that of our neighbors and guests.

GENERAL: Every effort will be made to maintain positive relationships with adjacent and nearby businesses and residences, and cooperate with all city departments. Every effort will be made to address and resolve any problems that may arise.

EMERGENCY:

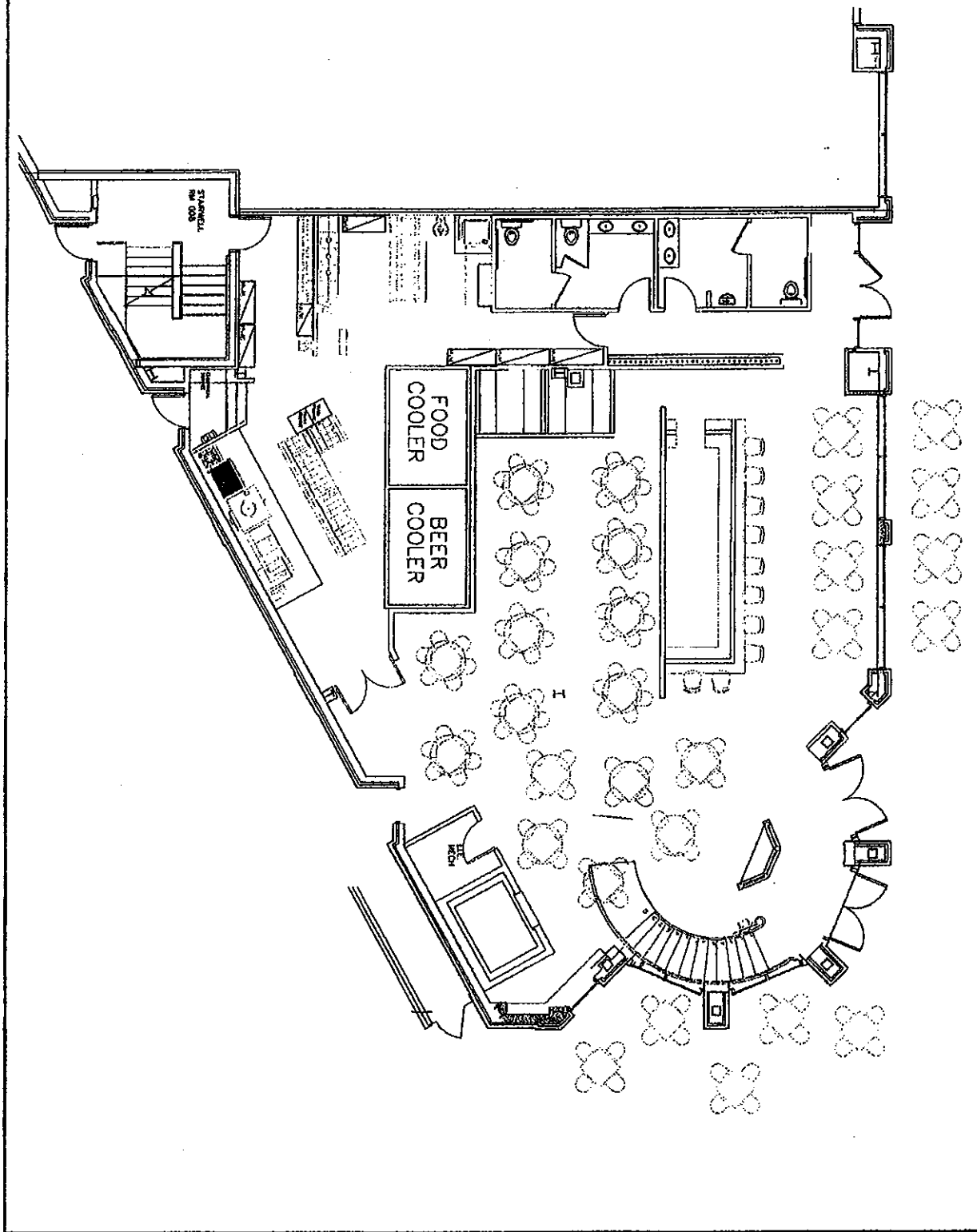
In case of emergency, contact the following individuals:

**PAUL DERRICO
(203) 423-9723**

Main Street Pub

BY: _____

DATE: _____



NO.	DATE	SYMBOL	DESCRIPTION	BY	DATE
1	1/1/00		Initial Design	AD	1/1/00
2	1/1/00		Final Design	AD	1/1/00
3	1/1/00		As-Built	AD	1/1/00
4	1/1/00		Revised	AD	1/1/00
5	1/1/00		Revised	AD	1/1/00
6	1/1/00		Revised	AD	1/1/00
7	1/1/00		Revised	AD	1/1/00
8	1/1/00		Revised	AD	1/1/00
9	1/1/00		Revised	AD	1/1/00
10	1/1/00		Revised	AD	1/1/00

526 Main Street Pub

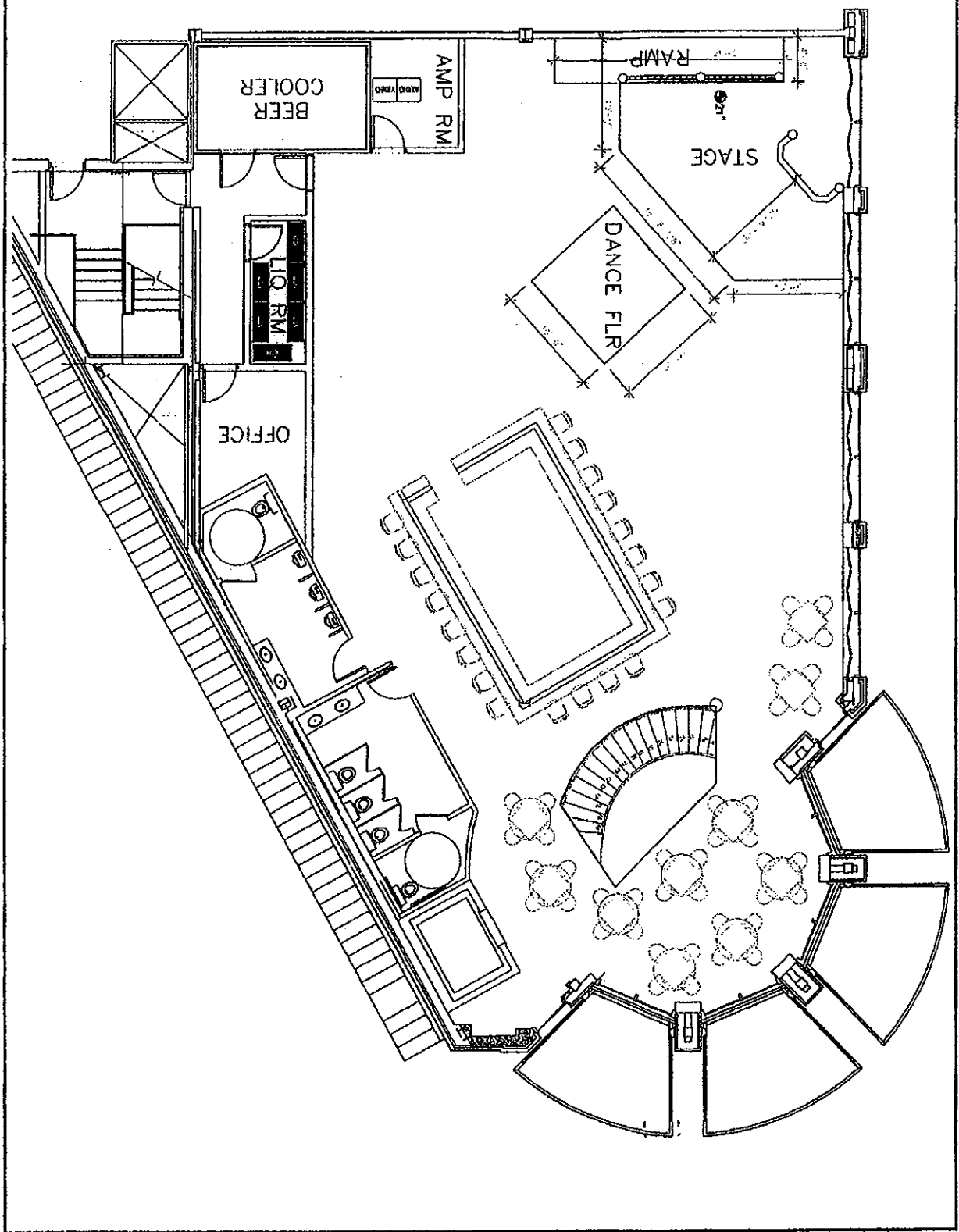
Revised Date: 01/01/00

Floor Plan 1st Floor



Intelligent Designs, Inc
 Custom Systems Integration

7115 Oldham Road, Norfolk, VA
 PHONE 814.723.8807 FAX 814.851.8807



NO.	REVISED		BY	DATE	DESCRIPTION
	NO.	DATE			
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

526 Main Street Pub

Royal Oak, MI

Floor Plan 2nd Floor



Intelligent Designs, Inc
 Custom Systems Integration

7416 Chipping Road, Norfolk, VA
 PHONE 814.721.6937 FAX 814.811.6207



LAW OFFICES

ADKISON, NEED & ALLEN

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OF COUNSEL:
KEVIN M. CHUDLER
COLEMAN E. KLEIN

October 14, 2009

Christopher A. Jahnke
Chief of Police, City of Royal Oak
211 S. Williams Street
Royal Oak, Michigan 48067

**RE: Royal Oak LCC Committee Meeting, October 14, 2009
526 S. Main Street LLC**

Dear Chief Jahnke:

Attached to this letter as a PDF file are all of the documents I believe would be necessary for the LCC Committee to review 526 S. Main LLC's request for approval with the Royal Oak License.

I noticed that there were no documents attached to the Agenda for today's meeting for this Agenda Item. I will bring extra copies to the meeting as well.

You also asked for some information regarding Black Finn. Black Finn provides Health Insurance Benefits to its full time employees. At this time there are 10 employees insured. This number does fluctuate. You also asked for the food to alcohol ratio of the Black Finn sales. A review of the sales ending September 30, 2009 indicate that food sales comprise approximately 24.49% of the sales, and alcohol sales comprise the balance of the sales. Of this, approximately 26.33% is comprised of beer and wine sales.

If you need anything further, please let me know.

Thank you for your assistance.

Very truly yours,

ADKISON, NEED & ALLEN, P.L.L.C.


Kelly A. Allen

/rlg
Enclosures