

The Commonwealth of Massachusetts

TOWN OF LENOX

Filing fee is due with the petition. If hearing expenses exceed this amount the Zoning Board of Appeals will bill the petitioner.

The undersigned hereby petitions the Town of Lenox Zoning Board of Appeals for:

x A Special Permit for exception under the provisions of Section 10.2 with specific reference to Section 10.2.4 of the Town of Lenox Zoning By-Law to operate a Restaurant / Brewpub.

x A Waiver pursuant to Section 10.2.17, from all submission requirements required for a new mixed-use development because the development is fully constructed and Petitioner is requesting to continue the use of the existing building as a restaurant and brewpub.

To permit the following use or activity: See attached memorandum, Special Permit Application – Proposed Brewpub Lenox, MA.

For premises:

Owner of Record: BHG Group LLC

Address 55 Pittsfield Road, Unit 2, Lenox, MA

Map and Parcel Map 17-40-2

Zoned as C-3A and Gateway Mixed Use Development Overlay District

Deed Reference Book 3692 Page 213

(This information is available from the Assessor's Office or townoflenox.com in the Property Assessments-Online Database section.)

Petitioner *Alexandra Glover*

Brewha LLC, by its attorney, Alexandra H. Glover

(Your signature here also acknowledges that you agree to pay all hearing expenses relative to this petition.)

Address (Mailing Address) c/o Lazan Glover & Puciloski

Telephone Number 413-644-0200

Email address glover@lazanlaw.com

06182009 rev.

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Alexandra H. Glover
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Special Permit Application – Proposed Brewpub Lenox, MA

Dated: March 14, 2022
Petitioner: Brewha LLC
Submitted by: Alexandra H. Glover, Lazan Glover & Puciloski, LLP

I. BACKGROUND

Robert Trask is the manager and principal of Brewha LLC, a contract purchaser of the property located at 55 Pittsfield Road, Unit 2, Lenox. Rob Trask is also the principal of 51 Park Restaurant & Tavern in Lee, Massachusetts. Brewha LLC has a signed purchase and sale agreement with BHG Group, LLC for the former restaurant building located at 55 Pittsfield Road, Unit 2, contingent upon approval by the Town of Lenox Zoning Board of Appeals.

55 Pittsfield Road, Unit 2 is part of a mixed-use development known as The Lenox Commons. Unit 2 was previously occupied by Bobby Mac's and various other restaurants. The existing retail stores at Lenox Commons include restaurants, a chocolate confectioner, martial arts studio, hair salon, pet store and medical offices. The residential homes are a series of condominium units that are located behind the retail stores, and next to Kennedy Park.

II. PROPERTY INFORMATION

CURRENT OWNER: BHG GROUP, LLC
ADDRESS: 55 Pittsfield Road, Unit 2, Lenox, Massachusetts (the "Property")
DEED REFERENCE: Berkshire Middle District Registry of Deeds, Book 3692 Page 213
TAX PARCEL: 17-40-2
ZONE: C-3A
CURRENT USE: Non-operating restaurant and bar

EXHIBITS ATTACHED: A. Lenox Commons site plan
B. Previous interior layout with brewery area overlay
C. Detailed interior layout of restaurant/brewery

III. PROPOSED USE

The proposed project would be a brewpub serving seasonal food consisting of 150 indoor and 80 seasonal outdoor dining seats. The restaurant would offer a casual dining menu along with a full bar including wine, beer, and spirits. The production of beer onsite would provide a central theme to the customer experience. The customer would be able to enjoy fresh beer, along with a portion of the menu, specifically paired with or utilizing beer as an ingredient. While dining, those who are inclined would have the experience of learning about the various beers produced at the source from knowledgeable staff.

The project would utilize the current kitchen, but would renovate the interior dining space to alter the layout and incorporate the brewing equipment. There are two existing outdoor patio dining areas, one on each of the north and south sides of the building. These two outdoor dining areas would be revitalized and continued to be used for additional seasonal seating.

The brewpub will offer a comfortable atmosphere that serves all demographics and creates a sense of community among its patrons. Background music will be playing throughout the interior and exterior customer areas at times when additional entertainment is not provided. Live entertainment would be offered at various times throughout the year. We envision the entertainment offered to be stylized as a more intimate experience with spoken word performances, small theatrical groups, and live music. The entertainment would be offered either inside or outside based upon seasonality, weather, and the type of experience we are looking to provide at the time.

IV. APPLICABLE USE CATEGORIES

1. Restaurant and accessory brewery

The Petitioner seeks a special permit for an “eating place serving food and beverages to be consumed within the building or in a designated and permitted outdoor area of the dining establishment.” Town of Lenox Zoning Bylaw, Table 5.2 (F)(3). The Bylaw defines “Eating Establishment” as “an establishment with the kitchen facilities where food is prepared for consumption, including the serving of alcoholic beverages.”¹ Clearly, restaurant use allowed by special permit in this zoning district necessarily includes, as an accessory use, facilities for preparation of the food and drink to be served to customers.

The brewing operation falls squarely within the legal definition of "accessory use". The Bylaw defines “accessory use” to be “[a] use customarily incidental to that of the main or principal building or use of the land.” An accessory or “incidental” use is permitted as necessary, expected, or convenient in conjunction with the principal use of the land. Determining whether an activity is an “incidental” use is a fact-dependent inquiry, which both compares the net effect

¹ There is no use category for "eating establishment". Presumably, this is a minor drafting issue in the Bylaw, and this definition applies to the "eating place serving food and beverages" use category.

of the incidental use to that of the primary use and evaluates the reasonableness of the relationship between the incidental and the permissible primary uses.

The word “incidental” incorporates two concepts. It means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance. “Incidental,” when used to define an accessory use must also incorporate the concept of reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant.² *Town of Harvard v. Maxant*, 360 Mass. 432, 438 (1971).

18A Mass. Prac. at § 17.30 at text and n.2; see *Gallagher v. Board of Appeals of Acton*, 44 Mass. App. Ct. 906 (1997).³

A brewpub is, simply put, a restaurant that sells food and beverages, including fresh beer brewed on the premises. This is much like a bakery cafe’s primary purpose is to sell food and drink, chief being goods baked in a commercial kitchen on the premises, or any restaurant serves food and drink, which food is baked, cooked, or otherwise prepared in a commercial kitchen on the premises. A brewpub necessarily requires the brewing of the beer that is to be served as a common accessory use, and one that should be permitted as necessary, expected, and convenient in conjunction with the principal use of the land as a brewpub. The brewing operation, just like the brewpub’s kitchen, is subordinate to the primary use of the property for an eating establishment.⁴

An analogous case⁵ is *Coco Bella LLC v. Town of Hopkinton Bd. of Appeals*, 92 Mass. App. Ct. 1102, 2017 WL 3297449 (2017) (Rule 1:28 memorandum). There, overturning the Land Court and reinstating the zoning board of appeals’ decision, the Appeals Court concluded first that a proposed Dunkin’ Donuts establishment fell outside the town bylaw’s definition of “restaurant” because service was not to be limited to customers seated at tables as the definition required. This ruling would have prohibited the proposed use of the building, but that the Court also held that the establishment did satisfy the definition of a retail store permitted under the bylaw, concluding that the food preparation that was to take place on site, such as preparing sandwiches and baking muffins and bagels, was an accessory use in a retail store where such

² Merriam Webster’s dictionary defines “attendant” as “accompanying or following as a consequence or result” and “concomitant” as “accompanying especially in a subordinate or incidental way.”

³ As this Board is no doubt aware, a zoning board of appeals exercises great discretion in determining what constitutes an accessory use. *E.g.*, *Subaru of New England, Inc. v. Board of Appeals of Canton*, 8 Mass. App. Ct. 483, 487 (1979); 18A Mass. Prac., Municipal Law and Practice § 17.30 (5th ed.).

⁴ The Bylaw’s definition of accessory use tracks Massachusetts law, which defines an accessory use as “a use which is dependent on or pertains to a principal or main use.” 18A Mass. Prac., Municipal Law and Practice § 17.30 (5th ed.). An accessory use is both subsidiary to the primary use of locus, and related to that primary use. *Id.* at § 17.30; see *Town of Needham v. Winslow Nurseries, Inc.*, 330 Mass. 95, 101 (1953); *Building Inspector of Falmouth v. Gingrass*, 338 Mass. 274, 275 (1959). Here, the preparation of some of the beverages served in an establishment that offers both food and drink is clearly dependent on, and pertaining, subsidiary, and related to the principal, main or primary use: a brewpub.

⁵ There do not appear to be any court decisions in the Commonwealth directly involving zoning of brewpubs.

items were sold in part to go. Similarly, here, the brewing of beer for sale, among other food and drink items, to the brewpub's patrons is an accessory use. Indeed, the preparation of a beverage is, if anything, more directly related to the use of a brewpub than food preparation is to a retail store.

Here, the restaurant will brew beer just as a bakery café bakes bread or a restaurant prepares meals. Such uses are incidental and accessory in that they are entirely necessary, expected, convenient and attendant upon the principal use of the land. For all of these reasons, the brewing of beer on the premises of the brewpub must be considered an accessory use.

V. THE BREWERY OPERATION EXPLAINED

The kitchen of a restaurant is familiar to many, but we thought it would be helpful to provide basic understanding of the brewery. The brewery operation for the proposed brewpub will consist of a 10-barrel brewing system, which effectively means a maximum batch size of 310 gallons, as there are 31 gallons in a barrel of beer. The business plan anticipates that we would produce approx. 400 barrels of beer in our first year of operation. This production will supply beer to this brewpub and our sister location at 51 Park Restaurant in Lee. It is an important part of the business plan to market the Lenox brewpub through the Lee location by selling the product there as well. This also allows us to turn the beer more quickly in order to keep the product fresh for our customers. We do not have any plans to distribute beer to other restaurants or package stores. Based on the production capacity you will see outlined in the below table, we will not have the capacity or intent to be a large wholesale production facility.

Comparison on beer locally produced on an annual basis:

Proposed Brewpub (Lenox)	< 1000 Barrels
Bright Ideas (North Adams)	< 1000 Barrels
Shire Breu Hous (Dalton)	< 1000 Barrels
Wandering Star (Pittsfield)	< 1000 Barrels
Barrington Brewpub (GB)	< 1000 Barrels
Northampton Brewpub (Northampton)	< 1000 Barrels
Berkshire Brewing Company (Deerfield)	19,000 Barrels
Treehouse Brewing (Charlton)	41,000 Barrels
Harpoon Brewery (Boston)	146,400 Barrels

The base raw materials needed to produce beer are; Grains (barley, oats, wheat, etc.), Hops (plant-based product), Yeast, and "Adjuncts" that can be used to flavor beer (i.e. fruit puree, chocolate, vanilla, nuts, etc.)

Facility - Similar to the kitchen facility, the brewing area will be in a separate section of the building:

- 1) Mash Tun (Stainless Steel vessel for combining hot water with the grains for "steeping")
- 2) Kettle (Stainless Steel vessel for boiling the sugar water)

- 3) Hot Water Tank (for providing hot water throughout the process)
- 4) Fermentation Vessels (Stainless Steel vessels where the fermentation with yeast occurs)
- 5) Bright Tanks (Stainless Steel vessels for maturation and carbonation)
- 6) Refrigerated Chiller (Provides temp control to the Fermentation and Bright Tank Vessels)
- 7) Gas Boiler - Provides heat to the Mash Tun and Kettle
- 8) Walk-in Cooler for storing beer, hops & yeast

Process (Typically occurs 2-3 times per week):

- 1) The grains are steeped in hot water to extract the sugars (Mash Tun)
- 2) The sugar water is then boiled (Kettle)
- 3) The boiled liquid (called wort) is then cooled
- 4) The cooled liquid is then fermented with yeast over a period of time, generally 2 weeks, where the sugars are converted to alcohol (Fermentation Vessels)
- 5) Hops are added at various points in the process to add flavor, aroma and/or bittering
- 6) The raw beer is then matured (Bright Tanks), carbonated and then transferred to kegs or cans for serving to the customer

Waste Products:

- 1) The “spent grains” and hop material is over 85% of byproduct. Relationships will be established with local farms for pickup as it is used as feed for farm animals. These materials will be stored in bulk containers with lids.
- 2) The yeast can be captured and reused several times before disposal. The yeast is an aerobic organism which aids in sewage treatment.
- 3) Steam will be discharged through a vent stack during the boiling process. This process would be approximately three to four hours during the boiling and cooling step. The smell of “baking bread” will be produced during this brief period of time.
- 4) Water effluent will be discharged to the municipal sewer as a result of the cleaning the equipment after processing.

VI. TRAFFIC and PARKING

The site is served by an intersection with a traffic light as well as turning lanes ensuring safe traffic flow into and out of the site. The existing site is already developed, and the Town has previously approved the traffic study for the intended occupancies at 55 Pittsfield Road, which included the current restaurant use in the Unit 2 building. Many of the current uses within the site are closed in the evenings and on weekends which would help offset the highest volume of traffic for the brewpub.

Parking and loading areas conform to zoning requirements. All available parking is in common with the commercial condominium development, and includes complementary uses. For instance, the brewpub’s greatest use of parking is during times that the medical offices are closed. This type of complementary use of shared parking is considered preferential under the Zoning Bylaw (Section 7.16, “to the extent feasible, parking areas shall be shared with adjacent uses.”)

Section 7.1 of the Lenox Zoning Bylaw establishes the off-street parking requirements: 1 space for per 3 seats.

Required Parking:

- Year-Round Brewpub: 1 parking space per 3 seats (brewpub 150 seats) = 50 spaces
- Seasonal: 1 parking space per 3 seats (brewpub outdoor seating 80 seats) = Additional 27 spaces

TOTAL REQUIRED PARKING: 77 spaces

Proposed Parking:

- 25 Parking Spaces adjacent to restaurant
- 45 Shared Parking Spaces in connected lot around adjacent building (Building #4)
- 12 Employee Parking Spaces behind building

TOTAL PROVIDED PARKING: 82 adjacent and shared parking near restaurant. Additional 200+ shared parking spaces in the Lenox Commons complex.

The complex has a mix of tenants comprised of mainly medical offices and businesses open during daytime hours. Again, most of the tenant businesses are closed in the evening and on weekends when the brewpub would have its highest volume of customer parking requirements.

VII. SPECIAL PERMIT CRITERIA

1. Community needs served by the proposal;

Currently, there are no brewpubs in Lenox. Discussions with Lenox residents and officials have been very positive with respect to the addition of a brewpub and the facility serves a community need with plans for increased housing and growth in tourism. The brewpub is also expected to employ 20 full-time, 10 part-time people.

2. Traffic flow and safety, including parking and loading;

As detailed above, the traffic flow, parking, and loading are essentially unchanged from the prior restaurant use, and are safe and in compliance with the Bylaw.

3. Adequacy of utilities and other public services;

The building was designed and built as a full-service restaurant with an infrastructure for adequate utilities in place.

4. *Neighborhood character and social structures;*

Neighbors are predominantly commercial, and the project is located within the commercial zoning district. Outdoor dining areas are screened from the neighbors with fencing and/or plantings.

5. *Impacts on the natural environment;*

The property is already developed. There will be no impact on the natural environment from the project.

6. *Potential economic and fiscal impact to the Town, including impact on town services, tax base, and employment;*

Project will revitalize a vacant restaurant building falling into disrepair. Project will contribute to the tax base and will generate approximately 20 full-time and 10 part-time jobs.

VIII. CONCLUSION

The proposed brewpub meets all of the criteria of a special permit for a brewpub, a restaurant that prepares food and brews beer. The brewpub is exactly the type of business that will be successful and thus beneficial to the Town of Lenox. The location of 55 Pittsfield Street, the site of several previous restaurants, is an ideal site for the brewpub. The site is already fully developed, with ample parking, safe ingress, and egress at a traffic-light controlled driveway. There are no residences in the nearby vicinity. There are no expected detrimental effects from the operation of the brewpub.

The Petitioner, Brewha LLC, and its owner/operator, Rob Trask, respectfully request that this Board grant the requested special permit.

Respectfully submitted,



Alexandra H. Glover

EXHIBIT A

COUNTY OF BERNSHIRE
 WHERE ORDERED REGISTERED
 June 27, 2006 at 10:00 A.M.
 IN DRAWER E 48
 SEE INSTRUMENT RECORDS IN
 BOOK PAGE
 REGISTER
 May 11, 2006
 Sidney R. Smith, Jr., Et. Al.
 BOOK 525 PAGE 337

I Certify That This Plan Shows The Property
 Being Surveyed, Including Streets, Appur-
 tenances, Easements, And Other Rights,
 And The Lines Of Streets And Ways Shown Are
 True To The Lines Of Public Streets And Ways
 Already Established, And That No New Lines For
 The Division Of Existing Ownership Or For New
 Ways Are Shown.
 James E. Seidl
 Professional Land Surveyor

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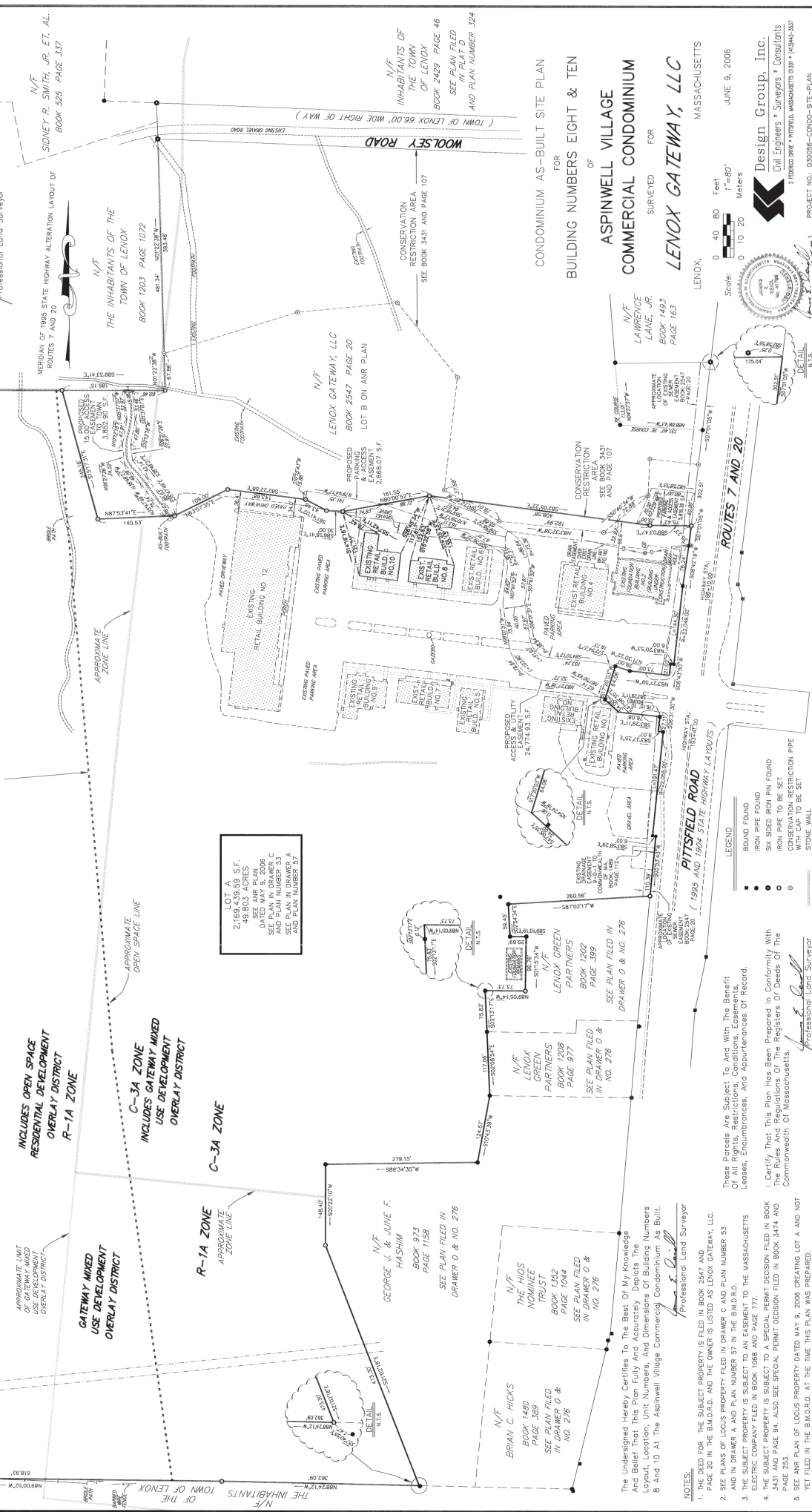
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DESIGN GROUP, INC.
 Civil Engineers + Surveyors + Consultants
 2 BEDFORD AVE. • PITTSFIELD, MASSACHUSETTS 01201 • (413) 445-3307
 PROJECT NO.: 030056-CONDO-SITE-PLAN

CONDOMINIUM AS-BUILT SITE PLAN
 FOR
 BUILDING NUMBERS EIGHT & TEN
 OF
 ASPINWELL VILLAGE
 COMMERCIAL CONDOMINIUM
 SURVEYED FOR
 LENOX GATEWAY, LLC
 LENOX, MASSACHUSETTS
 JUNE 9, 2006
 Scale: 1"=80'
 0 40 80 Feet
 0 10 20 Meters

I Certify That This Plan Shows The Property
 Being Surveyed, Including Streets, Appur-
 tenances, Easements, And Other Rights,
 And The Lines Of Streets And Ways Shown Are
 True To The Lines Of Public Streets And Ways
 Already Established, And That No New Lines For
 The Division Of Existing Ownership Or For New
 Ways Are Shown.
 James E. Seidl
 Professional Land Surveyor

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THE UNDESIGNED HEREBY CERTIFIES TO THE BEST OF MY KNOWLEDGE
 AND BELIEF THAT THIS PLAN FULLY AND ACCURATELY REPRESENTS THE
 LAYOUT, LOCATION, UNIT NUMBERS, AND DIMENSIONS OF BUILDING NUMBERS
 8 AND 10 AT THE ASPINWELL VILLAGE COMMERCIAL CONDOMINIUM AS BUILT.
 JAMES E. SEIDL
 Professional Land Surveyor

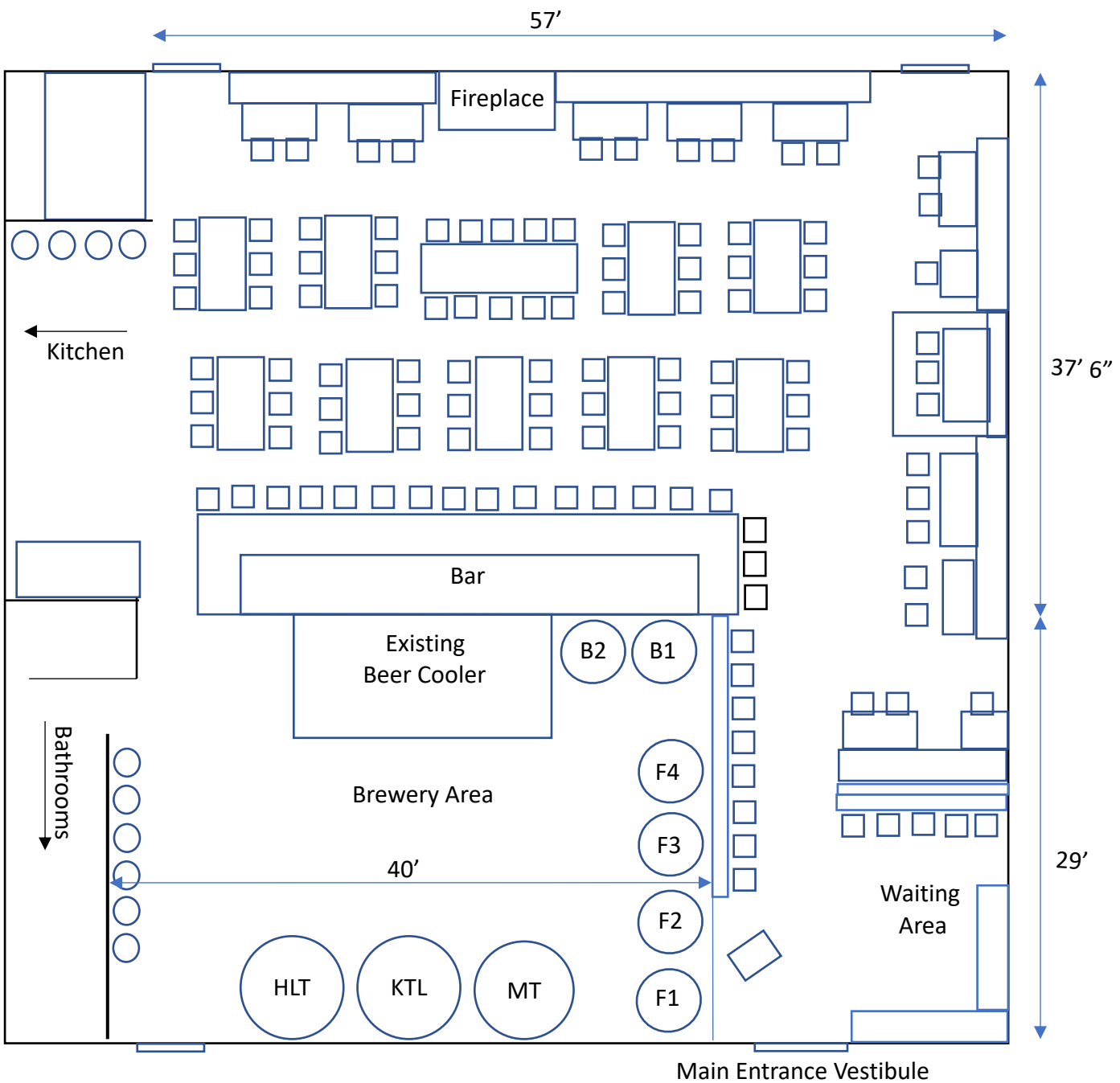
THE DEED FOR THE SUBJECT PROPERTY IS FILED IN BOOK 3547 AND
 PAGE 20 IN THE B.M.O.R.D. AND THE OWNER IS LISTED AS LENOX GATEWAY, LLC.
 2. SEE PLANS OF LOCUS PROPERTY FILED IN DRAWER C AND PLAN NUMBER 53
 AND IN DRAWER A AND PLAN NUMBER 57 IN THE B.M.O.R.D.
 3. THE SUBJECT PROPERTY IS SUBJECT TO AN EASEMENT TO THE MASSACHUSETTS
 TURNPIKE AUTHORITY, INC. AS SHOWN ON THE SUBJECT PLAN FILED IN BOOK
 3431 AND PAGE 94. ALSO SEE SPECIAL PERMIT DECISION FILED IN BOOK 3474 AND
 PAGE 253.
 4. SEE AIR PLAN OF LOCUS PROPERTY DATED MAY 9, 2006 CREATING LOT A AND NOT
 YET FILED IN THE B.M.O.R.D. AT THE TIME THIS PLAN WAS PREPARED.

THESE PARCELS ARE SUBJECT TO AND WITH THE BENEFIT
 OF ALL RIGHTS, RESTRICTIONS, CONDITIONS, EASEMENTS,
 LEASES, ENCUMBRANCES, AND APPURTENANCES OF RECORD.
 I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH
 THE RULES AND REGULATIONS OF THE REGISTRARS OF DEEDS OF THE
 COMMONWEALTH OF MASSACHUSETTS.
 James E. Seidl
 Professional Land Surveyor

EXHIBIT B

Proposed Dining Floor Plan Detail (Appendix A)

1.0"=10.0'



Exterior Patios

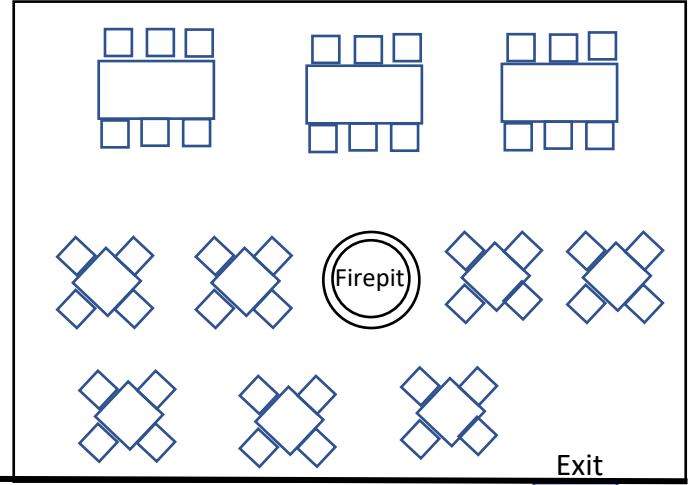
1.0"=10.0'



North Patio

25'

35'



Building

Exit

South Patio

20'

30'

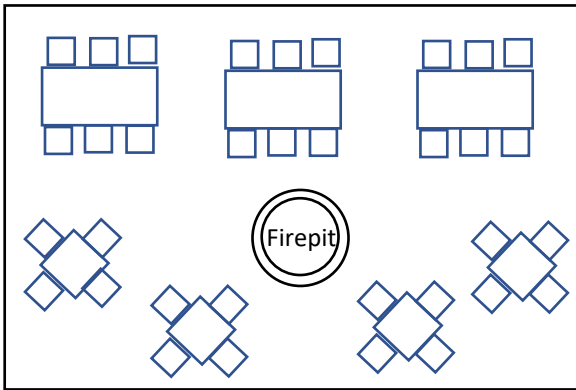


EXHIBIT C

