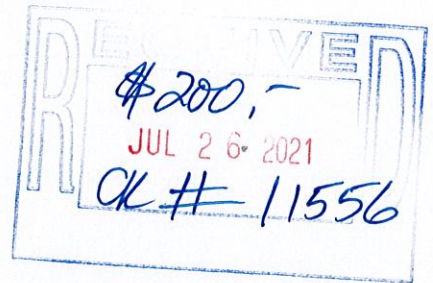


# COMBINED APPLICATION FOR A SPECIAL USE PERMIT & A REGULATORY (DIMENSIONAL) VARIANCE

CITY OF NEWPORT, RI  
ZONING BOARD OF REVIEW

DATE: 7/26/2021

*200  
Avg-5*



Board members:

The undersigned hereby petitions the Zoning Board of Review for a special use permit a variance in the application of the provisions or regulations of the Zoning Ordinance affecting the following described premises in the manner and on the grounds hereinafter set forth.

## Location of premises

Street & No: 151 Swinburne Row

Tax Assessor's Plat 24 Lot 349/1\*

## Petitioner Information

Applicant L and B Associates, LLC Address 543 Thames St., Newport RI 02940

Owner Swinburne Row Retail, LLC Address PO Box 962003, Boston, MA 02196

Lessee \_\_\_\_\_ Address \_\_\_\_\_

## Property Characteristics

Dimensions of lot-frontage 557.9' depth \_\_\_\_\_ area 50,420+/- sq. ft.

Zoning District in which premises is located General Business

How long have you owned above premises? Since 2/2/2017

Are there buildings on the premises at present? Yes

Total square footage of the footprint of existing buildings Approx. 15,081 sf

Total square footage of the footprint of proposed buildings No change

Present use of premises Restaurant

\*The proposed alteration is to condominium unit 1 at the 135-151 Swinburne Row Condominium, which contains an existing restaurant. Dimensional information for the lot and buildings are provided for the entirety of Lot 349.



All of the following information and questions must be filled in and answered completely.

Proposed use of premises Same

Give extent of proposed alterations See attached narrative.

### Zoning Characteristics Matrix

|                       | Existing             | Required/Allowed | Proposed  |
|-----------------------|----------------------|------------------|-----------|
| Lot Size (sq. ft.)    | 50,420+/-            | 5,000            | no change |
| Lot Coverage          | 30.85%               | 80%              | no change |
| Dwelling Units        | n/a                  | n/a              | n/a       |
| Parking (# of spaces) | 55*                  | 74               | no change |
| Front Setback         | 9.7' (main building) | 0'               | no change |
| Side Setbacks         | n/a                  | 0'               | no change |
| Rear Setback          | 16.8'                | 5'               | no change |
| Height                | Less than 40'        | 45'              | no change |

What provisions of the Comprehensive Land Use Plan are the applicable to this project?

Goal ED-1: To develop a robust and diverse economy, providing suitable employment

opportunities for residents, and a stable tax base.

Goal LU-1: To provide a balanced City consisting of residential, commercial, and employment

uses consistent with the character, environmental resources and vision of the community.

\*The property is deficient as to parking and in 2018, received a variance for parking. A fuller explanation is in the accompanying narrative.



What special conditions and circumstances exist which are peculiar to the land, structure or building involved, which are not applicable to other lands, structures or buildings in the same district?

See narrative.

Explain how the literal interpretation of the provisions of this zoning code deprive the applicant of rights commonly enjoyed by other property owners in the same district under the provisions of this zoning code?

See narrative.

Explain why this is the minimum variance that will make possible the reasonable use of the land, building or structure.

See narrative.



## The Zoning Boards Role

Special use permits shall be granted only where the zoning board of review finds that the proposed use or the proposed extension or alteration of an existing use is in accord with the public convenience and welfare, after taking into account, where appropriate:

1. The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of the structure;
2. The resulting traffic patterns and adequacy of proposed off-street parking and loading;
3. The nature of the surrounding area and the extent to which the proposed use or feature will be in harmony with the surrounding area;
4. The proximity of dwellings, churches, schools, public buildings and other places of public gathering;
5. The fire hazard resulting from the nature of the proposed buildings and uses and the proximity of existing buildings and uses;
6. All standards contained in this zoning code;
7. The comprehensive plan for the city.

The burden of proof in a special-use permit application is on the applicant. This means that if the applicant fails to present adequate competent evidence to prove the applicable standard for issuing a special-use permit has been met, the board must deny the application.

In granting a variance, the zoning board of review shall **require** that evidence of the following standards be entered into the record of the proceedings:



- a. That the reasons set forth in the application justify the granting of the variance and that the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure;
- b. That the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will not impair the intent or purpose of the zoning code or the comprehensive plan upon which this zoning code is based;
- c. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general



characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant; and

- d. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
- e. That the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief;

By signing below, I hereby attest that the information provided is accurate and truthful. I also attest that I have read the section entitled "The Zoning Board's Role".

|   |  |
|---|--|
|  |  |
| <b>Applicant's Signature</b>  | <b>Owner's Signature</b>   |
| Andrew M. Teitz, AICP, Esq. - Attorney for Owner/Applicant                        |  |
| ( 401 ) 331-2222  | ( )  |
| <b>Telephone Number</b>   | <b>Telephone Number</b>  |
| <b>Email address</b> andyteitz@utrlaw.com   |  |

Be sure all required drawings are attached to this application at the time of the submittal.



## NEWPORT ZONING BOARD

### ADDENDUM TO SPECIAL USE PERMIT

**Application of L and B ASSOCIATES, LLC, applicant, and SWINBURNE ROW RETAIL, LLC, owner; for a special use permit and a variance to the off-street parking requirements for permission to construct a proposed 1,000 sq. ft. roof terrace dining area and a proposed 900 sq. ft. bocce court dining area, while providing 0 additional off-street parking spaces (14 additional off-street parking spaces required), applying to the property located at 151 Swinburne Row, known as Stoneacre Garden, TAP 24, Lot 349, Unit 1 (GB zone).**

#### Summary of Application and Requested Relief

The Applicant seeks permission to expand the service area for the existing restaurant on the Subject Property, known as Stoneacre Garden, in two locations on the property. First, a proposed rooftop service area would be located on the northwest corner of the restaurant's existing footprint. The roof terrace dining area would be 1,000 sf, would accommodate 66 customers, and would require 8 additional parking spaces (7 for the square footage and 1 for the additional three servers). Secondly, a proposed courtside service area would be located at the southern end of the restaurant, adjacent to the bocce court. The courtside service area would be 900 sf and would thus require 6 additional parking spaces (6 for the square footage and 0 for additional servers as it will be served with the existing patio staff. A total of 14 parking spaces would be required, and the applicant proposes to add 0 additional off-street parking spaces.

The Board previously granted a special use permit and a variance for the property, in 2018, when the restaurant was in between tenants. The existing parking deficiency at the restaurant, which was approved by way of a dimensional variance, is 10 spaces (55 provided, 65 required). The applicant requests a dimensional variance that would allow 55 spaces where 79 are required – an increase of 14 spaces.

A special use permit is also required pursuant to Sec. 17.108.020 of the Zoning Ordinance, which provides as follows:

“Any substantial revision of an approved special use permit application and any reconstruction, enlargement, extension, moving or structural alteration of an approved special use permit or any building or structure in connection therewith shall require submission of a new special use permit application as for the original application.”

It should be noted that in 2018, when the Zoning Board granted a special use permit for a second-floor deck, the property was nonconforming by dimension. As such, the property was permitted to expand by special use permit. Now, the applicant proposes to expand the service area of the restaurant through the addition of a second roof terrace service area and a courtside service area. This application is therefore also subject to the requirement of a special use permit under Sec. 17.72.030, which governs alterations to nonconforming development.

“Dimensionally Nonconforming—Excepting Proposed Decks (as defined in the Rhode Island State Building Code and regulations adopted thereby). Alteration to



dimensionally nonconforming structures that otherwise conform to the use regulations of the zoning district shall be allowed as a matter of right if the alteration in and of itself: (1) conforms to the current dimensional requirements of the zoning district in which the property is located; and (2) does not increase or intensify the element(s) of the dimensional nonconformity.

A structure or land which is nonconforming by dimension, but the use of which is a use permitted by right in the district in which the land or structure is located, shall only be altered, changed, enlarged or subject to addition or intensification with respect to its nonconforming element(s) by obtaining a special use permit from the zoning board of review.”

### **Standards for Relief: Dimensional Variance for Parking**

The Application satisfies the following standards set forth in Sec. 17.108.010(C):

1. The relief to be granted is the least relief necessary.

- The Applicant has requested a variance for 14 parking spaces, which is the number of spaces that would be required for the proposed new service areas (8 required for the rooftop service area and 6 required for the courtside service area). The variance is the least relief necessary to relieve the hardship. As noted above, the property is currently deficient as to parking, and this deficiency was recently approved by the Zoning Board through a variance in 2018. The site lacks additional parking area.

2. The granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based.

- The addition of these two service areas represents a modest expansion to the existing restaurant. The restaurant will continue to be compatible with neighboring properties and the addition of the service areas will help modernize the restaurant. As we have seen over the last year, outdoor dining areas are crucial to the success of restaurants all over, but especially in Newport, where proximity to the waterfront is one of the property’s key features.

3. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in GLRI §45-34-30(a)(16).

- The property has an existing parking deficiency, as the property was developed prior to the current parking regulations.

4. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

- The Applicant purchased the property in 2018, when the restaurant site was vacant. The property was developed prior to the Applicant’s purchase. The goal of this application is



ensuring the restaurant's continued viability in a competitive climate. Board members will recall that this property was previously home to restaurants known as the Barking Crab, later the Boat Yard Bar & Grill, and most recently the Backyard Patio & Grill, before Stoneacre Garden opened its doors in 2020.

Additionally, the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience.

- If the Applicant were required to add 14 additional off-street parking spaces, the property could not accommodate these spaces, and the Applicant would be forced to abandon its plans for the additional outdoor service areas. This could endanger Stoneacre Garden's continued viability at this location, due to increased customer demand for these outdoor service areas.

#### **Standards for Relief: Special Use Permit for Service Area Expansion**

Per Sec. 17.108.020(G), special use permits shall be granted only where the zoning board of review finds that the proposed use or the proposed extension or alteration of an existing use is in accord with the public convenience and welfare, after taking into account, where appropriate:

1. The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of the structure;
  - The two additional service areas will not overwhelm the existing restaurant and represent a modest expansion.
2. The resulting traffic patterns and adequacy of proposed off-street parking and loading;
  - As only 14 additional parking spaces would be needed for the proposed expansion, for which the Applicant is requesting relief, there will be little to no impact on traffic in the surrounding area.
3. The nature of the surrounding area and the extent to which the proposed use or feature will be in harmony with the surrounding area;
  - The proposed roof terrace service area and proposed courtside service area will fit in well with both the existing restaurant and the surrounding area, contributing to the vibrancy of the site.
4. The proximity of dwellings, churches, schools, public buildings and other places of public gathering;
  - Since the Zoning Board approved the addition of a second-floor deck to the property in 2018, there have been no issues with surrounding properties. Similarly, the addition of these two service areas will have no adverse impact on the surrounding area, which is predominantly commercial in nature.
5. The fire hazard resulting from the nature of the proposed buildings and uses and the proximity of existing buildings and uses;



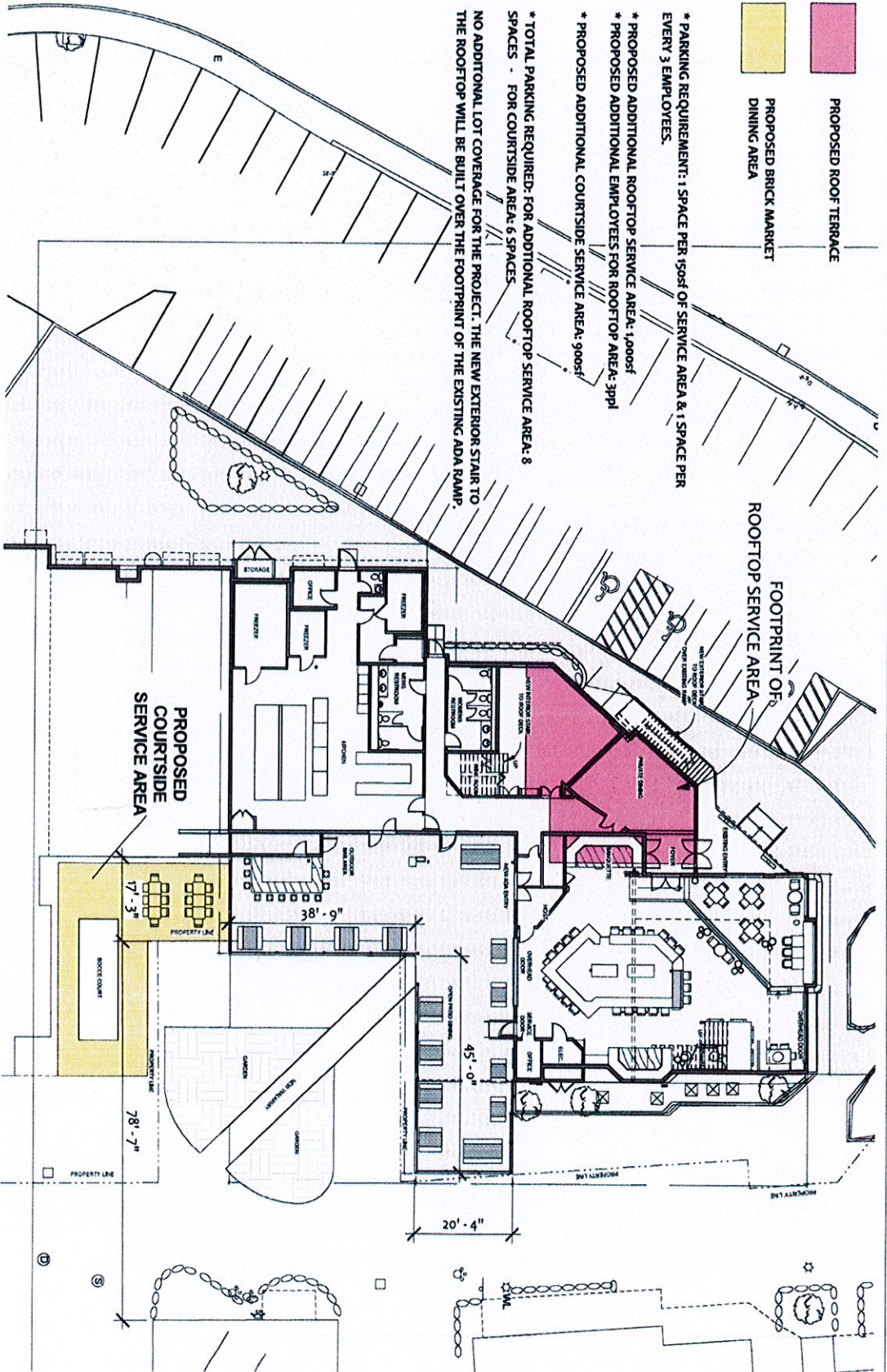
- This application presents no fire hazard concerns.
6. All standards contained in this zoning code;
- With the exception of parking, for which dimensional relief is requested, the application satisfies all other requirements of the Zoning Ordinance.
7. The comprehensive plan for the city.
- The addition of the two service areas is in harmony with the Comprehensive Plan, and specifically Policy LU-1.6: “The City shall encourage upgrading, beautification, revitalization, and environmentally appropriate reuse of existing commercial areas.”

*S:\ANDY\Turnip Greens, Chris Bender, Liquor License & Zoning\Zoning application\Narrative for Stoneacre Garden ZB App d2.docx*



- PROPOSED ROOF TERRACE
- PROPOSED BRICK MARKET DINING AREA

- \* PARKING REQUIREMENT: 1 SPACE PER 150SF OF SERVICE AREA & 1 SPACE PER EVERY 3 EMPLOYEES.
- \* PROPOSED ADDITIONAL ROOFTOP SERVICE AREA: 1,000sf
- \* PROPOSED ADDITIONAL EMPLOYEES FOR ROOFTOP AREA: 39pl
- \* PROPOSED ADDITIONAL COURTSIDE SERVICE AREA: 900sf
- \* TOTAL PARKING REQUIRED: FOR ADDITIONAL ROOFTOP SERVICE AREA: 8 SPACES - FOR COURTSIDE AREA: 6 SPACES
- NO ADDITIONAL LOT COVERAGE FOR THE PROJECT. THE NEW EXTERIOR STAIR TO THE ROOFTOP WILL BE BUILT OVER THE FOOTPRINT OF THE EXISTING ADA RAMP.



① OVERALL SITE PLAN  
1" = 20'-0"

STONEACRE GARDENS @ SWINBURN ROW

OVERALL SITE PLAN

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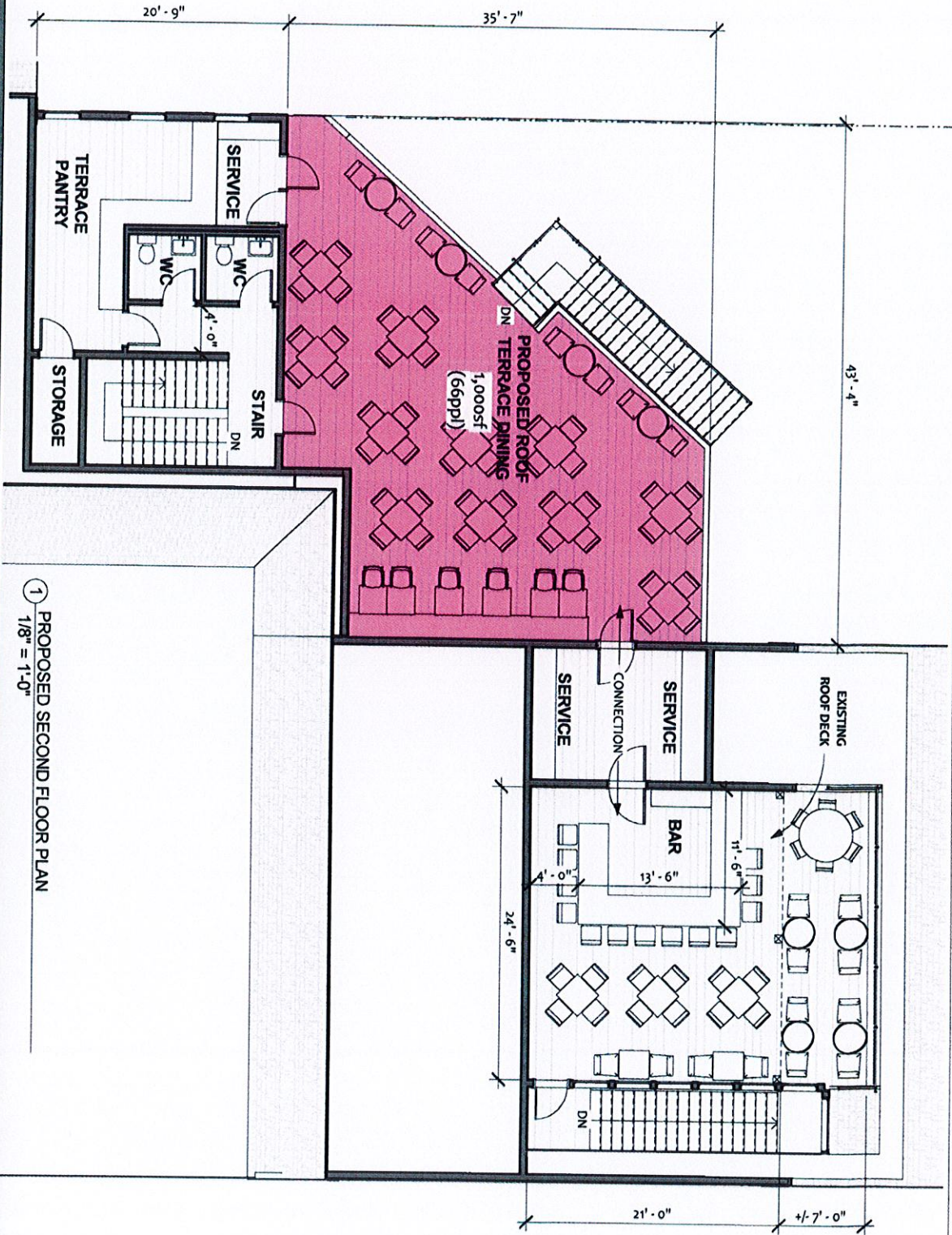
# STONEACRE GARDENS @ SWINBURN ROW

5 BARNESIDE AVE., NEWPORT, RI

ROOF TERRACE PLAN

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1 PROPOSED SECOND FLOOR PLAN  
1/8" = 1'-0"



















