

CITY OF MIDDLETOWN
ZONING BOARD OF APPEALS AGENDA
NOVEMBER 20, 2024 7:00 PM
COMMON COUNCIL CHAMBERS

Meeting called by: Jim Burtis, Chairman

Clerk: Martina Tu

Members: Wendy Rodrigues, Marc Woody, Mary Ann Cavallaro, Jim Burtis, Keith Hallock

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES

Accept the Minutes of _____

NEW BUSINESS

Request of 97 North LLC., seeking an interpretation of the zoning ordinance in order to extend the hours of operation of El Punto Lounge located at 97 North Street, Middletown

ADJOURNMENT

SOBO & SOBO

PERSONAL INJURY ATTORNEYS

Mailing Address:
One Dolson Avenue
Middletown, NY 10940
Voice: (855) 468-7626
Fax: (845) 343-0929

September 25, 2024

Middletown Zoning Board of Appeals
2 James Street
Middletown, NY 10940

N.Y. Offices:
Bronx
Manhattan
Middletown
Monticello
Newburgh
Poughkeepsie
New City

Dear Members of the Zoning Board of Appeals

I hope this letter finds you well. I am writing to formally request a variance to the current City of Middletown Code that mandates the closure of bars on weekends at 2:00 AM, which would grant a variance permitting my establishment to stay open until 4:00 AM. As a local business owner, I feel compelled to bring to your attention the financial challenges that this regulation imposes on my establishment, which are unique in comparison to other bars due to their specific circumstances.

As you are aware, the current city ordinance within the subject mixed-use zoning district, pursuant to section 475-21.1, restricts me from operating during this hour, effectively limiting my revenue potential, and impacting my operational sustainability. What amplifies the situation is the fact that the bars directly across the street from my location are allowed to remain open until 4:00 AM based on a grandfathered exception. The disparity in operational hours creates an uneven playing field within our community, with my patrons frequently opting to visit these competitors immediately after my closure at 2:00 AM.

This shift not only affects my bottom line, but it also results in a loss of business that is detrimental to my employees and the vibrancy of our local economy. The undue financial hardship faced by my bar is a direct consequence of this disparity in the regulations. While I respect the historical context of the grandfathered exceptions, I urge the board to consider the implications of maintaining an unfair operational landscape that hinders healthy competition and stifles local businesses like mine.

Furthermore, I believe that allowing my bar to extend its hours to match those of my competitors would not only benefit my business but would also contribute positively to the local economy and community. Extended hours can lead to increased employment opportunities within my bar and associated businesses while promoting responsible nightlife that can help to foster a safer, more welcoming atmosphere in our city.

I would also like to emphasize that granting this requested use variance will not alter the essential character of the neighborhood. Our area is known for its vibrant nightlife, and having bars that operate until 4:00 AM is consistent with the established social

landscape. The establishments that are currently permitted to remain open during late hours not only contribute to the economy but also attract patrons who appreciate the safety and vibrancy of our local nightlife. My bar has built its reputation on delivering a responsible and enjoyable experience for our customers. My commitment to maintaining a safe environment, managing noise levels, and complying with all regulations will remain steadfast, should the variance be granted. The granting of this variance would simply align my operational hours with those of nearby businesses, maintaining the neighborhood's character rather than transforming it.

Additionally, I would like to address the nature of the financial hardship my business is experiencing. This hardship has not been self-created; rather, it is a byproduct of the specific regulations that restrict operational hours while allowing competitors to operate beyond those hours due to a grandfathered status. The economic challenges I face are not due to mismanagement or lack of effort, but rather a regulatory disparity that places my establishment at a strategic disadvantage. I have worked diligently to create a welcoming environment and a loyal customer base, but the current restrictions severely limit my potential for sustainable business growth.

While I fully respect and understand the purpose of the city's regulations, I urge the board to consider the unique circumstances surrounding my request. Allowing my bar to extend its hours to match those of my competitors would not only alleviate the undue financial hardship I am currently facing but also enhance the cohesion of our business community by fostering fair competition.

I respectfully ask the planning board to consider my request for a variance that would enable me to operate during the same hours as the establishments nearby, whom are situated directly across the street. Furthermore, I am open to discussing any terms or conditions that may accompany the granting of this variance and am willing to work collaboratively to address any concerns that the board might foresee.

Thank you for considering my request. I look forward to the opportunity to discuss this matter further and hope for a favorable resolution that benefits our community as a whole.

Respectfully yours,

Mrs. Karina Mateo
Owner and Proprietor
ELPUNTO NIGHTCLUB, INC.
97 North Street
Middletown, NY 10940

Enclosures (Exhibits related to financial hardship support and witness statements will be attached)

APPLICATION

ZONING BOARD OF APPEALS

City of Middletown, New York

Date deemed complete _____
Accepted by _____

Date

3/29/2024

Items 1, 2 and 3 are required to be completed

1. Address of Subject Property 97 North Street, Middletown NY 10940

Section 31 Block 2 Lot 10

Current Zoning District DMU

Building: Existing X New _____

2. Owner of Property 97 North LLC

Owner's Address 270 Sylvan Ave, Ste 1120

City Englewood Cliffs State NJ Zip 07632

Phone numbers: Home: _____

Business: _____

Cell: 908-812-1600

3. Applicant name KARINA MATEO, Owner of EL Punto Lounge

If different from Owner

Applicants Address 97 North Street

City Middletown State NY Zip 10940

Phone numbers: Home: _____

Business: _____

Cell: 845-283-3851

4. **AREA VARIANCE.** An appeal is requested from the Zoning Board of Appeals to the Zoning Ordinance, Section 475 of the Code of the City of Middletown. Indicate the Article, Section, Subsection, Paragraph, Subparagraph and Title of the Section that are the subject of the appeal. Indicate the necessary amount of relief requested. Additional sheets may be attached if more space is necessary.

Section	Required Dimension	Actual Dimension	Variance Requesting
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a. _____

b. _____

The Zoning Board of Appeals, shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances, as defined herein. The Board of Appeals, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider whether:

- (a) An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; and
- (b) The benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance; and
- (c) The requested area variance is substantial; and
- (d) The proposed variance will have adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (e) The alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

5. USE VARIANCE. Indicate on a separate piece of paper the specific reason(s) that the variance is necessary. All concerns listed below must to be addressed.

The Zoning Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of this ordinance, shall have the power to grant use variances, as defined herein.

No use variance shall be granted by the Board of Appeals without showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

- (a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; and
- (b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; and
- (c) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (d) The alleged hardship has not been self-created.

The Board of Appeals, in granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Specific reasons outlining a showing of unnecessary hardship is enclosed under
a separate cover affixed to this form.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

6. **AN INTERPRETATION OF THE ZONING ORDINANCE.** Explain the circumstances of the Section in question, the Title of the Section, the nature of the request, and the person or agency making the original determination. Additional sheets may be attached if more space is required.

enclosed see letter addressing this
Section.

7. **SIGN ORDINANCE.** Indicate the section to be varied, the title, and the amount of the variance in excess of the ordinance. Explain all conditions that require the variance to be issued. Additional sheets may be attached if more space is required.

Section/ Title	Required Dimension	Actual Dimension	Variance required
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8. Sign at the place indicated and print name.

Signature of applicant

Printed name and title Karina Mateo, Owner of EL Punto Lounge

Date March 25, 2024

I, Cheolwoong Lee, being duly sworn, deposes and says:

I am a resident of Englewood Cliffs, NJ 07632, and presently, an officer of 97 North, LLC., which duly owns the premises, located at 97 North Street, Middletown NY, 10940. The aforementioned property is leased to business, EL Punto Lounge, Inc., owned by one, Karina Mateo. I hereby grant EL Punto Lounge, Inc., and Karina Mateo permission to seek a use variance to extend their hours of operation, and any other applications deemed appropriate in furtherance of the EL Punto Lounge business.



Cheolwoong Lee

Sworn to before me on this 29th
day of March, 2024.



Notary Public

STATE OF New York)
) ss:
COUNTY OF Orange)

FUNSHO ILORI
Notary Public, State of New York
Registration No. 021L6399023
Qualified in Orange County
Commission Expires October 15, 2027

AFFIRMATION OF TRUTH STATEMENT

1. I, KARINA MATEO, Principal and CEO of EL PUNTO LOUNGE, INC., with a business address of 97 North Street, Middletown, New York 10940, am over the age of eighteen (18) years old.
2. I can attest that the facts herein are true of my own personal knowledge, except for those matters stated upon information and belief, and as to those matters, I believe them to be true.
3. This affirmation is submitted in support of the use variance application, to extend the operational hours of operation of EL PUNTO LOUNGE, INC., by two hours, which is located, in a mixed-use zoning district of the City of Middletown, pursuant to section 475-21.1.
4. Further, I make this request because the zoning regulations and restrictions have caused my business to suffer unnecessary hardship. The Board requires a showing of unnecessary hardship, which will be addressed in more detail below:

(a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; and

On or around April of 2023, I began my journey as a bar business owner in the City of Middletown in an effort to fill a cultural void, as there were little to no establishments that were representative of the Dominican Republic and Ecuadorian communities. To that end, I invested nearly \$100,000, on repairs, contractor costs, inventory, employees, lease agreement and fees. However, due to the 2:00 a.m. closing restriction, I cannot realize a return on my investment. In April of 2023, I operated the business, under the impression, that my liquor license, permitting my business to sell beer and wine, until 4:00 a.m. in the City of Middletown. During the weeks of April 17 and April 23 of 2023, the gross sales reached \$10,221.16 and \$15,151.15. respectively. Similarly, on the week of April 29, 2023, the gross sales amounted to \$11, 530.00. However, upon further review of the City Code, I learned that the restrictions of the zoning regulations, requires that my establishment to close at 2:00 a.m. and 12:00 a.m. on Sundays. Abiding to same, the daily operations were followed as directed, which immediately impacted the business' weekly gross sales significantly. Enclosed for review is competent financial evidence showing the reduction of weekly gross sales. Gross sales were reduced by more than two-thirds.

To date, including the month of March 2024, the gross weekly sales averaged approximately \$3500-\$4,000. After paying expenses, including rent, the business consistently failed to meet positive net returns.

(b) The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood; and

There are various nightclubs/tavern establishments located within the same zoning district, which are also on North Street. Those bars/taverns are permitted to close at 4:00 a.m., including, Caborcas Mexican Bar & Restaurant, as well as Gallo De Oro, which are situated directly across the street from my business, at 90 North Street, in Middletown, New York. This hardship to the property is unique and fails to apply to a substantial portion of the neighborhood. The aforementioned businesses are currently permitted to remain open, while I am required to close my doors. This is further compounded by the fact that all of my customers, who are directed to leave my establishment at 1:45 a.m., directly followed by their immediate entry into Caborcas' and/or Gallo De Oro's establishment immediately thereafter. Moreover, this restriction creates a significant burden on my business, as my clientele are choosing a less restrictive alternative establishment. Essentially, my competitors, whose services are similarly situated, and incidentally put in a position to reap the benefits of my business' client retention through marketing and advertising. For the better part of the year, I have observed my patrons on countless occasions leave my establishment at closing time, to walk across the street, to my competitors, at Carborcas and Gallo De Oro, effectively, putting me out of business.

(c) The requested use variance, if granted, will not alter the essential character of the neighborhood; and

If granted, the essential character of the neighborhood will not be altered by this use variance as similarly situated establishments currently exist within one hundred (100) feet of one another, which was intended to create a cultural haven for a community that is disproportionately represented. The character of the neighborhood reflects diversity, family-oriented backdrop of primarily Hispanic blue-collar working Americans.

(d) The alleged hardship has not been self-created.

The hardship was not self-created as I performed my due diligence in researching the community's void, as it relates to the Dominican Republican and Ecuadorian culture. I was advised by the members of the community that there was a lack of Dominican and Ecuadorian representatives within the multi-faceted Hispanic culture. And that the Mexican cultural norms were well established and pervasive. Unfortunately, I cannot compete with the Mexican American businesses if my establishment is subject to different operational restrictions, which will undoubtedly prevent this business to remain open. In Enclosed are statements from various members of the community in further support of this request. I have not acted in any manner which would reasonably lead to this undue

hardship. More importantly, if this application is granted, I will endeavor to improve the economy of the district. For instance, with additional revenue, I will be able to hire local residents as part of an increased security personnel staff, and service employees to assist in preserving and protecting the character of the neighborhood, including the health, safety, and welfare of the community. Likewise, I would continue to cooperate with law enforcement, and any additional departments within the City of Middletown's office of administration. I am only a small business owner with a dream of providing a service to the people of this community whom I consider my extended family, and friends, to create a safe atmosphere of work and play for the downtown area.

I, KARINA MATEO, affirm this 25th day of March 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: March 25, 2024
Middletown, New York

A handwritten signature in black ink, appearing to read 'KARINA MATEO', enclosed within a hand-drawn oval.

KARINA MATEO



Sales Trends

Gross sales

Last 7 days

vs 7 days prior

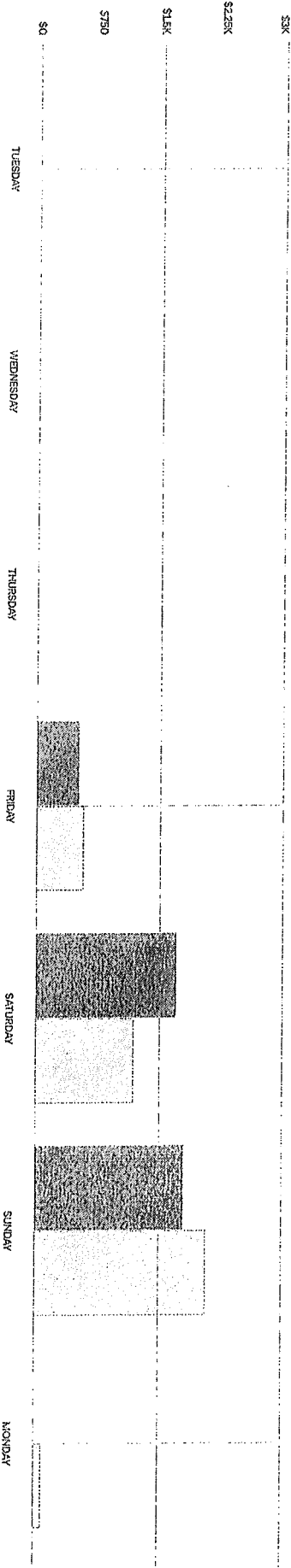
Metrics 1 selected

View Bar

Gross sales

Mar 12 - Mar 18, 2024 \$4,009.00 Mar 05 - Mar 11, 2024 \$3,915.00

▲ 2.4%



Gross sales

Apr 23, 2023 - Apr 30, 2023

vs 8 days prior

Metrics 1 selected

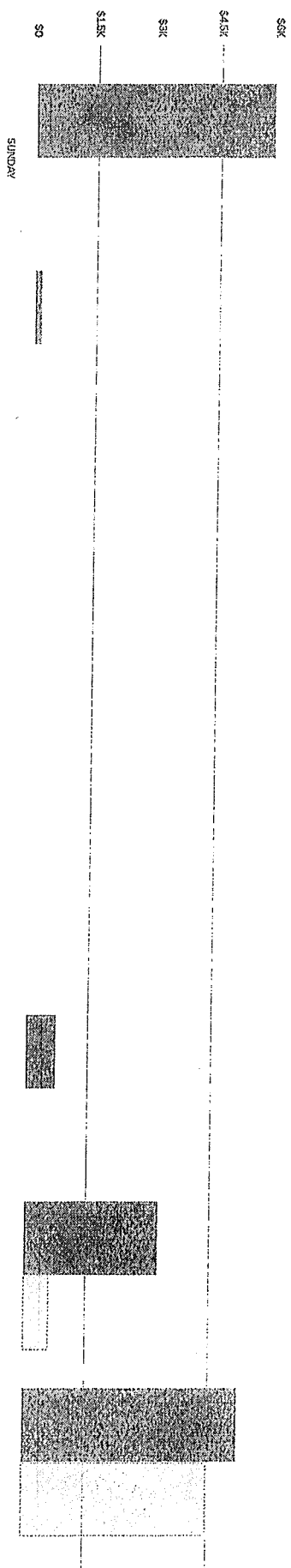
View Bar

Gross sales

Apr 23 - Apr 30, 2023 \$15,151.15

Apr 15 - Apr 22, 2023 \$5,083.00

▲ 198.07%



Gross sales

Last 7 days

vs Apr 17, 2023 - Apr 23, 2023

Metrics 1 selected

View Bar

Gross sales

Mar 12 - Mar 18, 2024 \$4,009.00

Apr 17 - Apr 23, 2023 \$10,221.15

▼ 60.78%

SRK	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY	MONDAY
\$45K							
\$3K							
\$15K							
\$0							



Feb 11, 2024

All Devices, vs previous Sunday

1D

1W

1M

3M

1Y

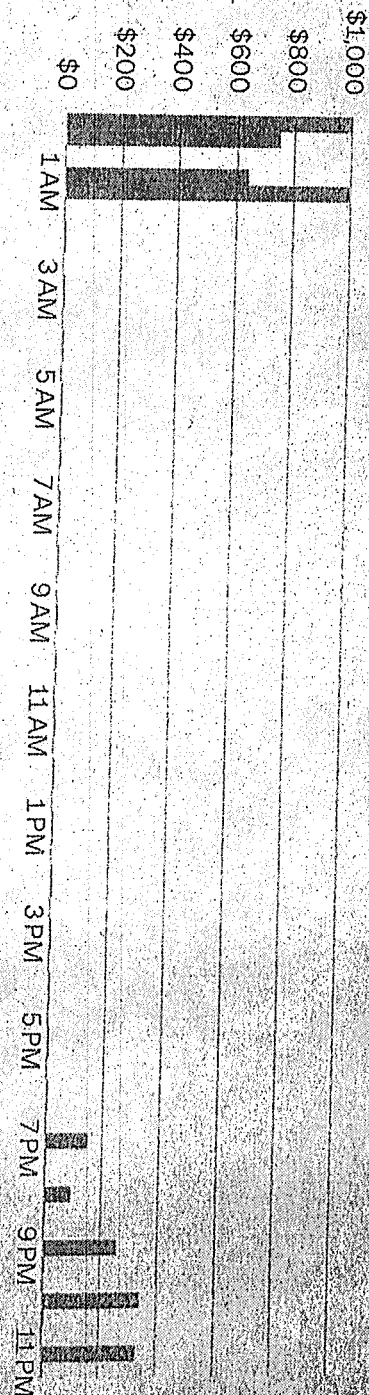
NET SALES

Feb 11, 2024

\$2,804.00

Previous Sunday

\$1,738.00



SALES BY PAYMENT TYPES

Total Collected

\$2,804.00

Cash

100%

\$2,804.00

Home



Transactions



Settings



Notifications



More

Logout

Checkout

trial

Processing!
Who might
ing Square?
share your

Feb 2, 2024

All Devices, vs previous Friday

1D

1W

1M

3M

1Y

SALES SUMMARY: OVERVIEW

...

\$0.00

Gross Sales

-100%

\$0.00

Net Sales

-100%

0

Sales

-100%

\$0.00

Average Sale

-100%

\$0.00

Returns

\$0.00

Discounts & Comps

GROSS SALES

...

Feb 2, 2024

Previous Friday

\$0.00

\$521.00

\$400

\$300

\$200

\$100

\$0

2 AM

5 AM

8 AM

11 AM

2 PM

5 PM

8 PM

11 PM

March 20, 2024

To Whom It May Concern:

RE: Letter of Support for El Punto Lounge, Inc., Extension Request

My name is Elrey Arturo, founder of La Excitante de Middletown. We are a Spanish/Dominican Online Radio Station influenced and inspired by the Dominican American experience along with other Hispanic businesses in Middletown, NY. We are a business partner of El Punto lounge and bar located at 97 North Street in the heart of Downtown Middletown. My family and I frequently visit El Punto because it is the only business in the area that provides this cultural experience. I write this letter of support in hopes that you will consider letter in your decision to extend the hours of operation.

Also, I have witnessed El Punto's number of clientele plunge drastically due to its restrictive hours of operation in comparison to its competitors like, Gallo De Oro, which closes at 4:00 a.m. on busy weekends.

Thank you for your time and consideration.

Respectfully submitted,

Elrey Arturo
Elreyarturo15@gmail.com

March 14, 2024

TO WHOM IT MAY CONCERN

Please allow this correspondence to serve as letter of support on behalf of EL Punto Lounge, Inc's application to extend their hours of operation. I am the owner and president of Angelo's Barbershop and Salon located at 34 Dolson Avenue, Middletown, NY 10940. I write this letter because I genuinely look enjoy my experience at El Punto Lounge. More than anything, what I appreciate the most is after a long week of running a business, managing stress, and supporting a family, being able to meet with likeminded friends at El Punto Lounge to celebrate. The opportunity to listen to music that reminds me of my youth in the company of a more seasoned group. The customers that typically frequent El Punto including myself, look forward to dancing Bachata, Salsa and Merengue, which are very popular types of music and dance originating in Dominican Republic. El Punto also never disappoints when it comes to their delicious appetizers and wonderful drinks.

Please also know that El Punto is a safe and friendly environment with excellent staff who are always warm and hospitable. I always feel welcome there. In the Middletown area currently, it is challenging to find a business such as this. Despite all the great qualities surrounding this establishment, its restrictive hours of operation have negatively impacted its business. Primarily because Dominicans and Ecuadorians culture prides itself on dancing the night away, particularly, to romantic Hispanic ballads they refer to as "oldies." Most of the customers' nights are cut short due to El Punto's restrictive closing time. Unfortunately, most or all the customers walk across the street to Gallo Oro to spend the rest of the evening in a more Mexican cultural experience, which is perfectly fine. However, it is an experience that is overly saturated in Middletown.

I sincerely hope this letter helps provide some insight into the wants and desires of the hardworking, law abiding and tax paying members of this community. If you have any questions or concerns, please do not hesitate to contact me.

Thank you.

Very truly yours,

Angelo Castillo
(845) 820-8902

March 21, 2024

From: Jonas Furniture & Mattress
Jonas Emilio Savinon Hernandez
134 North Street
Middletown, New York 10940

To: City of Middletown Planning Board

Re: EL PUNTO LOUNGE

I am run a small furniture business located on North Street. I employ a dozen workers who work extremely hard for my business. Many people are unaware how physically taxing the furniture business is. We work long hours and when the store is closed, we are preparing orders and displays for the next day. I bring this to your attention, because all my employees are of Hispanic descent. Most of which, immigrated to the United States for better opportunities, so that we might earn a piece of the proverbial "American pie." But at the same token, we miss certain cultural expressions of music, cuisine, dance, the people. And for the first time in years, El Punto Lounge has offered a safe space for an authentic familiarity of my childhood and upbringing, from the music, the owner's warm welcome, language, and events.

My staff and I are grateful for this establishment because it reminds us of home. We look forward to going to see our friends and family at El Punto. But the weekends at El Punto are cut prematurely short, forcing us to end our night of fun after the conclusion of an arduous work week or stressful day. Most clients will spend the rest of their night at Gallo De Oro, a Mexican establishment across the street that closes at 4:00 a.m., which does not offer the same experience. Customers either travel to New Jersey or NYC to find the type of experience El Punto offers, which is right here in our backyard.

I appreciate your attention to this.

Sincerely,

Jonas Hernandez

Jonas Hernandez

3/14/2024

EVENTOS VIP USA, LLC.

MIDDLETOWN, NY 10941

To Whom It May Concern:

My name is Ray Laureano, owner of EVENTOS VIP USA, LLC. We are a Spanish/Dominican event company heavily involved with the Dominican community and other Spanish businesses in Middletown. We are a business partner of EL Punto lounge and bar located at 97 North street in Middletown, N.Y.

The main reason for this letter is in regards to the business hours that El Punto currently has, we work with EL Punto mainly because it is the only place in Middletown that offers a great place for our cultural events, all of our activities with EL Punto including cultural dances, get togethers and gatherings with people who come from different places including, NYC, New Jersey, Connecticut and most of them can't even get to EL PUNTO on time because of the restricted business hours. By the time they get here its either about to close or already closed.

Please allow the extension of the hours for EL Punto, as EL Punto is the only establishment in downtown Middletown where our Dominican People can go to and enjoy our culture.

Thank you for the consideration.

SINCERELY,

RAY LAUREANO