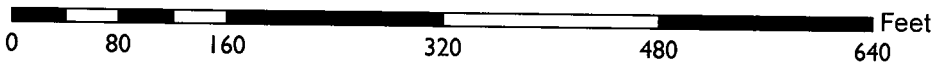
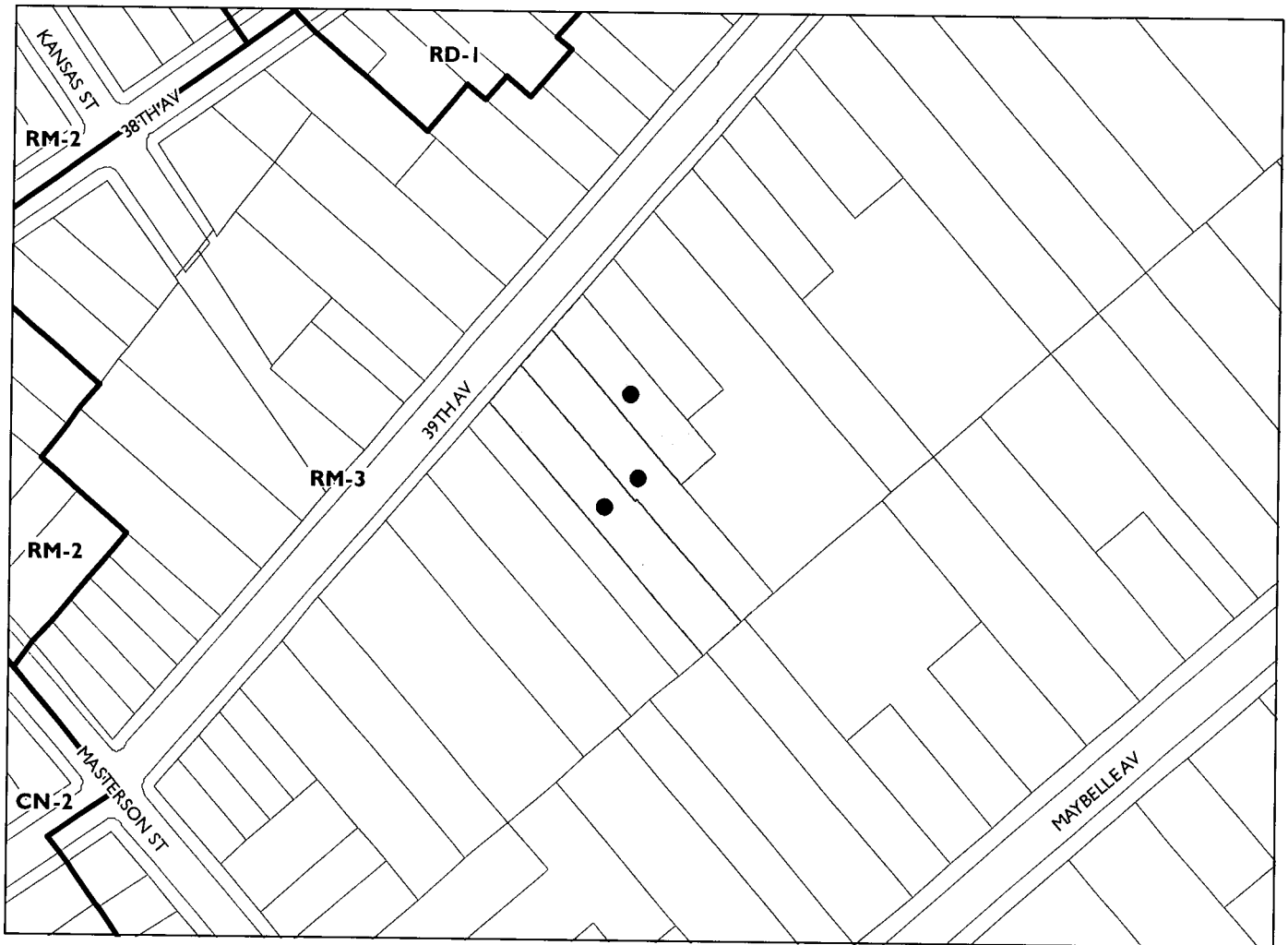


| | |
|-------------------------------------|--|
| Location: | 3732, 3740, and 3746 39 th Ave. (APNs: 030-1925-005-00, 004-00, and 003-03) and off-site parking at 4248 Macarthur Boulevard. (See map on reverse) |
| Proposal: | The proposal is for the approval of Regular Design Review, Minor Variance, and Minor Conditional Use Permit to allow for Community Assembly Activity Civic to establish a spiritually based community center for ceremony and education. The project includes new structures (yurts), as well as the redesign of sweat lodge, fire pit facility, existing garages, and platform for ceremonies. The site is located on three adjacent lots and includes residential activities and facilities. |
| Applicant: | Wilson Riles |
| Owner: | Riles Ishmael & Philip |
| Planning Permits Required: | The approval of findings to allow for Regular Design Review for the construction of 4 new detached yurts, sweat lodge (and redesigned fire pit) and platform for ceremonies; and Minor Variance to allow for the change of a primary use within a structure located within the side yard setback; and a Minor Conditional Use Permit for a Community Assembly Civic Activity. |
| General Plan: | Mixed Housing Type Residential |
| Zoning: | RM-3 Mixed Housing Type Residential 3 Zone |
| Environmental Determination: | Exempt, Section 15303 of the State CEQA Guidelines: New Small Structures, Existing Facilities. |
| Historic Status: | F3, D3, and C3 |
| Service Delivery District: | 4 |
| City Council District: | 4 |
| Status: | Pending |
| Staff Recommendation: | Approve PLN15195 with Findings and Conditions of Approval, based on Appeal. |
| Finality of Decision: | Only environmental determination is appealable to the City Council |
| For Further Information: | Contact case planner Moe Hackett at 510-238-3973 or mhackett@oaklandnet.com |

SUMMARY

The Planning Commission is asked to consider an appeal of a Zoning Manager Denial of case file PLN15195. At this time, staff recommends that the Planning Commission consider the appeal, overturn the previous decision by the Zoning Manager, and approve case file PLN15195.

CITY OF OAKLAND PLANNING COMMISSION



Case File: PLN15195-A01
Applicant: Wilson Riles
Address: 3732, 3740, and 3746 39th Ave
Zone: RM-3

BACKGROUND

The subject application, PLN15195, pertaining to 3732 -3746 39th Avenue, was initiated following complaints to the City from neighbors relating to the keeping of farm animals, smoke and sparks, odor, noise, unapproved and unfinished structures, as well as other habitability issues. The City issued Notices of Violation and Inspection and Re-Inspection Notices for Code Compliance to the applicant.

In response, the owner of the properties applied for a Conditional Use Permit, Regular Design Review and Variance permits for the activity. A large volume of comments was received both in favor of and in opposition to the proposal, and on December 9, 2016, the application was denied by the Zoning Manager. On December 19, 2016, the applicant filed a timely appeal of the denial.

On July 19, 2017, the appeal was heard by the Planning Commission. The Planning Commission voted 6-0 in a straw vote to preliminarily support the appeal, thereby opposing the decision of the Zoning Manager and supporting approval of Regular Design Review, Variance, and Conditional Use Permits for the activities at the site. The Planning Commission then directed staff to return with required findings, conditions, and environmental review. This item is a response to that request.

PROJECT DESCRIPTION

The project consists of a Community Assembly Civic Activity that was established on three adjacent residential lots at 3732 -3746 39th Avenue without permits. The use involves four yurts, a small above-ground swimming pool, a fire pit, and a “dug-in” sweat lodge for use during religious/spiritual activities (see Attachment A for a site plan). Farm animals are also raised on the site. Bathrooms and garages in the three houses on the lots are used as meeting spaces by attendees of the facilities. Residents of these houses, however, are not necessarily affiliated with the religious/spiritual activities on the lots. Twenty-six parking spaces, available after 6:30 p.m. on weekdays (and 2:00 on weekends), are proposed to be provided approximately 1,350 feet from the site, at 4248 MacArthur Boulevard. The Zoning Manager previously determined that this number would be more than sufficient for the size of the facilities and the 20-person project capacity. The owner of 4248 has provided preliminary consent to make the proposed parking spaces available.

Spiritual/religious activities would take place in yurts, which are tent-like structures with a semi-fixed frame and, in this case, a raised wooden platform foundation. The project also allows for the yurts to be used as temporary habitation and meeting spaces. Activities occur as semi-regularly scheduled events, usually a few times per month. The sweat lodge events generally take place in the evenings, on weekends, and during holidays and two or three times a month. As conditioned, the sweat lodge activity would not continue past 10:00 p.m.

PROPERTY DESCRIPTION

The subject site consists of three separate residential lots with a combined area of 26,435 square feet. Each lot contains a single-family home and is located mid-block between Masterson and Bayo Streets in the Laurel Residential District in the lower Oakland Hills.

GENERAL PLAN ANALYSIS

The Land Use and Transportation Element of the General Plan (LUTE) states that “Future development within this classification (Mixed Housing Type Residential) should be primarily residential in character, with live-work types of development, small commercial enterprises, schools, and other small scale, compatible civic uses possible in appropriate locations.” The proposal is designed to accommodate a small scale, compatible civic use and thus is consistent with this LUTE Intent. The proposal is also consistent with the following LUTE policies:

POLICY N2.1 DESIGNING AND MAINTAINING INSTITUTIONS

As institutional uses are among the most visible activities in the City and can be sources of community pride, high quality design and upkeep/maintenance should be encouraged. The facilities should be designed and operated in a manner that is sensitive to surrounding residential and other uses.

As conditioned, the proposal will be operated in a manner that is sensitive to the surrounding residential neighborhood. All non-residential facilities will be located toward the rear of the properties and will not be visually prominent from the public right-of-way. All related activities will occur either indoors or at the rear of the properties.

POLICY N9.6 RESPECTING DIVERSITY

The City's diversity in cultures and populations should be respected and built upon.

The proposal will add to the religious and cultural diversity of the City.

ZONING ANALYSIS

The proposed activity is considered a Community Assembly Civic Activity per Section 17.010.160 of the Planning Code. The project requires a Conditional Use Permit because this activity is conditionally permitted in the RM-3 Zone, where the site is located. The proposal also requires regular Design Review for construction of the yurts and a parking Variance for conversion of the garage spaces to a meeting room within the side yard setback. Staff supports these permits for the reasons described in the Findings section of this report.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines categorically exempts specific types of projects from environmental review. Section 15303 of the State CEQA Guidelines exempts projects that "consist of limited numbers of new small structures and the conversion of existing small structures". Section 15311 of the State CEQA Guidelines exempts the "the construction, or replacement of minor structures accessory to (appurtenant to) existing commercial, industrial or institutional facilities." Section 15332 of the State CEQA Guidelines exempts certain infill projects that meet certain criteria. The following describes how the project meets each criterion.

- a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations
See Zoning Analysis, General Plan Analysis, and Findings contained in this report.
- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
The project site is surrounded by an urban residential neighborhood on a site that is 26,435 square feet.
- c. The project site has no value as habitat for endangered, rare or threatened species.
The project site is in a highly urbanized area that has no value as habitat for endangered, rare, or threatened species.
- d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
 - *As described in the application and as conditioned, no more than 20 people will attend the site at a given time or during an event. This number of people does not have the potential for a significant impact on the neighborhood or its streets.*

- *As conditioned and by law, the project will be required to adhere to the City's noise performance standards, contained in Chapter 17.120 of the Planning Code.*
- *An analysis of the air quality impacts of the project has been provided by a combustion expert. He determined that, as conditioned, the ceremonial burning of wood at the site will have minimal effect on neighboring properties (see Attachment B)*
- *The project does not involve hazardous materials or activities that may affect water quality.*

Given the above, staff has made the determination, based on substantial evidence in the record, that the project is exempt from further Environmental Review.

KEY ISSUES AND IMPACTS

In addition to Standard Conditions of Approval, staff recommends three project specific operational conditions on the proposal: (1) the outdoor events shall not continue at the site past 10:00 pm, (2) no more than 20 people shall attend an event, and (3) no more than three events shall take place per month. These conditions reflect the activity as described by the applicant in the application material. Staff believes that with these conditions, the proposed spiritual community and the surrounding properties can harmoniously coexist in the subject neighborhood.

RECOMMENDATIONS:

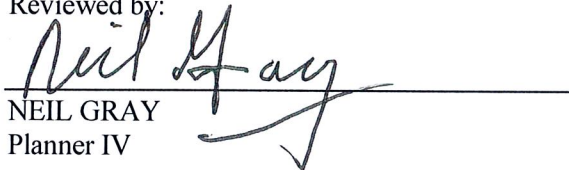
1. Affirm staff's environmental determination.
2. Approve the Design Review, Variance, and Conditional Use Permit subject to the attached findings and conditions of approval.

Prepared by:

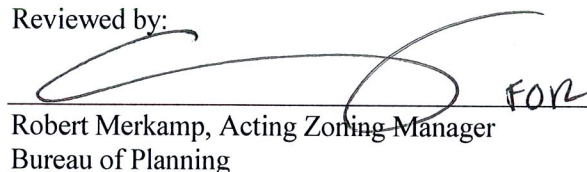


Moe Hackett
Planner II

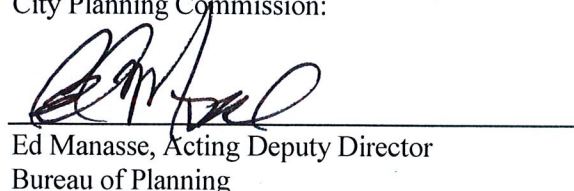
Reviewed by:


NEIL GRAY
Planner IV

Reviewed by:


FOR
Robert Merkamp, Acting Zoning Manager
Bureau of Planning

Approved for forwarding to the
City Planning Commission:


Ed Manasse, Acting Deputy Director
Bureau of Planning

LEGAL NOTICE: The CEQA determination is Appealable to the City Council. Any party seeking to challenge such decision in court must do request an Appeal within ten (10) days of the date the decision is announced, unless an earlier date applies

Attachments:

- A. Site Plan
- B. Combustion analysis
- C. Parking agreement (High Street Pharmacy)

Attachment A: Findings

This proposal meets the required findings under Regular Design Review (Section 17.136.050(A), Minor Variance (Section 17.148.050) and Conditional Use (Section 17.148.050), of the **Oakland Planning Code (Title 17)** as set forth below. Required findings are shown in **bold** type; explanations as to why these findings can be made are shown in normal type.

17.136.050(A) - RESIDENTIAL DESIGN REVIEW CRITERIA:**A. The proposed design will create a building that is well related to the surrounding area in setting, scale, bulk, height, materials and textures.**

The design-related aspect of this proposal involves the legalization of four yurts at the rear of the home at 3740 39th Avenue. The walls of these approximately 525 square-foot structures primarily consist of a fabric similar to that used for tents. The structures will allow for overnight habitation and meeting spaces. These structures represent minor additions to the open rear areas on which they are sited. The approximately eight-foot structures will not be seen from the street, and thus will not affect the surrounding area in setting, scale, bulk, height, materials, and textures.

B. The proposed design will protect, preserve or enhance desirable neighborhood characteristics.

The yurts will not be visible from the street. As such, the proposal preserves desirable neighborhood characteristics.

C. The proposed design will be sensitive to the topography and landscape.

The subject lot is relatively flat and without significant natural landscape. The City of Oakland is requiring that the yurts and other structures be located outside of required setbacks.

D. If situated on a hill, the design and massing of the proposed building relates to the grade of the hill.

The subject lot is relatively flat. No grading or retaining walls are required to create usable space.

E. The proposed design conforms in all significant respects with the Oakland General Plan and with any applicable district plan or development control map which has been adopted by the City Council.

The Land Use and Transportation Element of the General Plan (LUTE) states that “Future development within this classification (Mixed Housing Type Residential) should be primarily residential in character, with live-work types of development, small commercial enterprises, schools, and other small scale, compatible civic uses possible in appropriate locations.” The proposal is designed to accommodate a small scale, compatible civic use and thus is consistent with the intent of the LUTE. The proposal is also consistent with the following LUTE policies:

Policy N2.7 Designing Community Facilities

Site design, architecture, and operating practices of community facilities should be compatible with the area’s desired character, and should include public art where possible.

The proposed design will be compatible with the area’s desired character because it will not be visible from the street.

FINDINGS

17.148.050 - (MINOR) VARIANCE CRITERIA:

- A. Strict compliance with the specified regulations would result in practical difficulty or unnecessary hardship inconsistent with the purpose of the Zoning Regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance:**

The proposed Variance is for the conversion of garages to meeting rooms within the side yard setback. The conversion improves the operational efficiency of the site by providing a meeting space for the proposed activities.

- B. Strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation:**

The proposed design will have minimal negative effects on the neighboring property (see Finding C). Nearby civic activities have fully enclosed meeting and library facilities which are utilized to good effect. Strict compliance would preclude the effective design solution of providing meeting space for the civic activity.

- C. The variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy:**

The conversion of the garage will not substantially affect the livability of the neighboring property because the lack of fenestration facing the side property line will limit the noise effects of meetings within the garage.

17.134.050 GENERAL USE PERMIT FINDINGS:

- A. That the location, size, design, and operating characteristics of the proposed development will be compatible with, and will not adversely affect, the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.**

The allowance for civic activities within the RM-3 and other residential zones is common throughout the City of Oakland. The use of a fire pit and sweat lodge will have minimal impact on the neighborhood (see a combustion analysis in Attachment B). The surrounding streets have ample capacity for the number of visitors to the site, and ample parking will be provided approximately 1,350 feet walking distance at 4248 MacArthur Boulevard. Conditions related to performance standards and hours of operation assure that the open facilities and yurt activities will not present significant noise impacts.

FINDINGS

- B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.**

The rear yard open spaces, sweat lodge, and yurt facilities will provide sufficient space for the applicants to perform their spiritual activities. The City of Oakland is requiring the yurts to be located outside of any required setbacks (see Attachment A for a site plan).

- C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region.**

The proposal will provide essential spiritual services to the community and will enhance the successful operation of the surrounding area by supporting the religious practices of residents.

- D. That the proposal conforms to all applicable design review criteria set forth in the DESIGN REVIEW PROCEDURE of Chapter 17.136 of the Oakland Planning Code.**

See Design Review findings, above.

- E. For proposals involving a One- or Two-Family Residential Facility: If the Conditional Use Permit concerns a regulation governing maximum height, minimum yards, or maximum lot coverage or building length alongside lot lines, the proposal also conforms with at least one of the following criteria:**

- 1. The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation, and, for conditional use permits that allow height increases, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height,**

- OR -

- 2. At least sixty (60) percent of the lots in the immediate context are already developed and the proposal would not exceed the corresponding as-built condition on these lots, and, for conditional use permits that allow height increases, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five closest lots on each side of the project site plus the ten closest lots on the opposite side of the street (see illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any conditional use permit.**

The Conditional Use Permit does not concern a regulation governing maximum height, minimum yards or maximum lot coverage or building length along lot lines.

- F. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.**

See General Plan Analysis, above.

FINDINGS

Conditions of Approval

1. Approved Use

The project shall be constructed and operated in accordance with the authorized use as described in the approved application materials, PLN15195 and PLN15195-A01 and the approved plans dated May 23, 2016 and July 19, 2018 (combustion report), as amended by the following conditions of approval and mitigation measures, if applicable (“Conditions of Approval” or “Conditions”).

2. Effective Date, Expiration, Extensions and Extinguishment

This Approval shall become effective immediately, unless the Approval is appealable, in which case the Approval shall become effective in ten (10) calendar days unless an appeal is filed. Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the Approval date, or from the date of the final decision in the event of an appeal, unless within such period a complete building permit application has been filed with the Bureau of Building and diligently pursued towards completion, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this Approval, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit or other construction-related permit for this project may invalidate this Approval if said Approval has also expired. If litigation is filed challenging this Approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

3. Compliance with Other Requirements

The project applicant shall comply with all other applicable federal, state, regional, and local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City’s Bureau of Building, Fire Marshal, Department of Transportation, and Public Works Department. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition #4.

4. Minor and Major Changes

Minor changes to the approved project, plans, Conditions, facilities, or use may be approved administratively by the Director of City Planning. Major changes to the approved project, plans, Conditions, facilities, or use shall be reviewed by the Director of City Planning to determine whether such changes require submittal and approval of a revision to the Approval by the original approving body or a new independent permit/approval. Major revisions shall be reviewed in accordance with the procedures required for the original permit/approval. A new independent permit/approval shall be reviewed in accordance with the procedures required for the new permit/approval. Such changes would include the expansion of the use, and alterations to the on or off-site parking locations and counts.

5. Compliance with Conditions of Approval

- a. The project applicant and property owner, including successors, (collectively referred to hereafter as the “project applicant” or “applicant”) shall be responsible for compliance with all the Conditions of Approval and any recommendations contained in any submitted and approved technical report at his/her sole cost and expense, subject to review and approval by the City of Oakland.
- b. The City of Oakland reserves the right at any time during construction to require certification by a licensed professional at the project applicant’s expense that the as-built project conforms to all applicable requirements, including but not limited to, approved maximum heights and minimum setbacks. Failure to construct the project in accordance with the Approval may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension, or other corrective action.
- c. Violation of any term, Condition, or project description relating to the Approval is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approval or alter these Conditions if it is found that there is violation of any of the Conditions or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City’s Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Approval or Conditions.

6. Signed Copy of the Approval/Conditions

A copy of the Approval letter and Conditions shall be signed by the project applicant, attached to each set of permit plans submitted to the appropriate City agency for the project, and made available for review at the project job site at all times.

7. Blight/Nuisances

The project site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within sixty (60) days of approval, unless an earlier date is specified elsewhere.

8. Indemnification

- a. To the maximum extent permitted by law, the project applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the Oakland Redevelopment Successor Agency, the Oakland City Planning Commission, and their respective agents, officers, employees, and volunteers (hereafter collectively called “City”) from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action, or proceeding (including legal costs, attorneys’ fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called “Action”) against the City to attack, set aside, void or annul this Approval or implementation of this Approval. The City may elect, in its sole discretion, to participate in the defense of said

Action and the project applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

- b. Within ten (10) calendar days of the filing of any Action as specified in subsection (a) above, the project applicant shall execute a Joint Defense Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment, or invalidation of the Approval. Failure to timely execute the Letter of Agreement does not relieve the project applicant of any of the obligations contained in this Condition or other requirements or Conditions of Approval that may be imposed by the City.

9. Severability

The Approval would not have been granted but for the applicability and validity of each and every one of the specified Conditions, and if one or more of such Conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid Conditions consistent with achieving the same purpose and intent of such Approval.

10. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Monitoring

The project applicant may be required to cover the full costs of independent third-party technical review and City monitoring and inspection, including without limitation, special inspector(s)/inspection(s) during times of extensive or specialized plan-check review or construction, and inspections of potential violations of the Conditions of Approval. The project applicant shall establish a deposit with Engineering Services and/or the Bureau of Building, if directed by the Director of Public Works, Building Official, Director of City Planning, Director of Transportation, or designee, prior to the issuance of a construction-related permit and on an ongoing as-needed basis.

11. Public Improvements

The project applicant shall obtain all necessary permits/approvals, such as encroachment permits, obstruction permits, curb/gutter/sidewalk permits, and public improvement ("p-job") permits from the City for work in the public right-of-way, including but not limited to, streets, curbs, gutters, sidewalks, utilities, and fire hydrants. Prior to any work in the public right-of-way, the applicant shall submit plans for review and approval by the Bureau of Planning, the Bureau of Building, Engineering Services, Department of Transportation, and other City departments as required. Public improvements shall be designed and installed to the satisfaction of the City.

12. Trash and Blight Removal

Requirement: The project applicant and his/her successors shall maintain the property free of blight, as defined in chapter 8.24 of the Oakland Municipal Code. For nonresidential and multi-family residential projects, the project applicant shall install and maintain trash receptacles near public entryways as needed to provide sufficient capacity for building users.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

13. Graffiti Control**Requirement:**

- a. During construction and operation of the project, the project applicant shall incorporate best management practices reasonably related to the control of graffiti and/or the mitigation of the impacts of graffiti. Such best management practices may include, without limitation:
 - i. Installation and maintenance of landscaping to discourage defacement of and/or protect likely graffiti-attracting surfaces.
 - ii. Installation and maintenance of lighting to protect likely graffiti-attracting surfaces.
 - iii. Use of paint with anti-graffiti coating.
 - iv. Incorporation of architectural or design elements or features to discourage graffiti defacement in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).
 - v. Other practices approved by the City to deter, protect, or reduce the potential for graffiti defacement.
- b. The project applicant shall remove graffiti by appropriate means within seventy-two (72) hours. Appropriate means include the following:
 - i. Removal through scrubbing, washing, sanding, and/or scraping (or similar method) without damaging the surface and without discharging wash water or cleaning detergents into the City storm drain system.
 - ii. Covering with new paint to match the color of the surrounding surface.
 - iii. Replacing with new surfacing (with City permits if required).

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

14. Lighting

Requirement: Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

When Required: Prior to building permit final

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

15. Operational Noise

Requirement: Noise levels, and all other off-site impacts, from the project site after completion of the project (i.e., during project operation) shall comply with the performance standards of Chapter 17.120 of the Oakland Planning Code and Chapter 8.18 of the Oakland Municipal Code. If noise levels exceed these standards, the activity causing the noise shall be abated until appropriate noise reduction measures have been installed and compliance verified by the City.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

Project Specific Conditions of Approval**16. Outdoor Wood Burning /Fire associated with Ceremonial Activities**

Requirement: During all wood burning events, the operator/ participants shall:

- Employ dry, high surface area to volume ratio fuels (i.e. woods) that are of good quality.
- Designate a person or persons to monitor and supervise the fire at all times, during all fire burning activities.
- During startup, maintain good ventilation, and start with thinner, lightweight fuels/woods, which are allowed to reach well established flaming before additional fuels are added.
- Stack fuels in configurations that maximize air flow and radiative feedback between fuels.
- Minimize burning during windy or wet environmental conditions.
- Monitor the fire to maintain robust flaming or well-developed coal beds until the fire is extinguished.
- Implement extreme changes, at the City's sole and absolute discretion, which may include, but are not limited to: (1) additional alterations or replacement of the fire burning facility; (2) possible redesign the shape of the "fire box", (3) possible increase of the chimney and spark arresting apparatus height or design, and/or (4) modifications of the fire starting and burning procedures.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

17. Hours of Operation / Open Facility Operations

Requirement: No outdoor activities shall be performed after 10:00 p.m. No more than three events a month.

When Required: Immediately and Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

18. Number of Attendees at Events

Requirement: No more than 20 people shall attend any one Nafsi ya Jami event, which shall be held no more than 3 times per month.

When Required: Immediately and Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

19. Requirement for Off-Site Parking

Requirement: as approved, required off-street parking is provided at an off-site location at 4248 Macarthur Boulevard. The owners or owners of the project site and the site of the parking shall prepare and execute to the satisfaction of the City Attorney, and file with the Alameda County Recorder, an agreement guaranteeing that such facilities will be maintained and reserved for the Community Assembly Civic Activities at 3732 – 3746 39th Avenue, for the duration of said activity.

When Required: Ongoing

Initial Approval: N/A

Monitoring/Inspection: Bureau of Building

20. Final Site and Facility Plan

Requirement: The project applicant shall present to the Zoning Manager a full set of site plans and elevations which include all detached structures and their relationship with primary structures and property lines. All plans shall be to scale and shall include full descriptions. Acceptable drawings /plans shall be scaled at 1/4"=1', 3/16"=1', or 1/8"=1' and shall include a north arrow or reference to other landmarks (including neighboring structures and 39th Avenue.

When Required: Within 30 days of approval of PLN15195

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Planning

Applicant Statement

I have read and accept responsibility for the Conditions of Approval. I agree to abide by and conform to the Conditions of Approval, as well as to all provisions of the Oakland Planning Code and Oakland Municipal Code pertaining to the project.

Name of Project Applicant

Signature of Project Applicant

Date



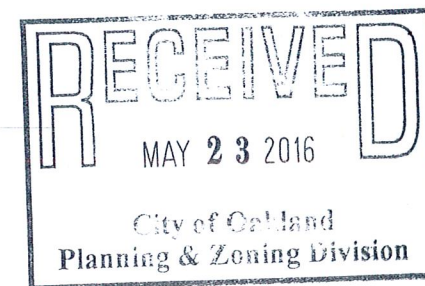
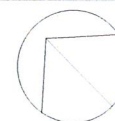
EXISTING SITE PLAN

NAFSI YA JAMII RETREAT CENTER
AND FULL HARVEST FARMS
3742 - 3746 39TH AVE
OAKLAND, CA 94619
SEPT 26, 2015

ART.GARDEN.DESIGN.
ALANA CORPUZ
ARTGARDENDESIGN.NET

scale: 3/32" = 1'-0"

0 10' 20' 50'





1921 University Avenue • Berkeley, CA 94704 • Phone 510-629-4930 • Fax 510-550-2639

David Rich
rich@reaxengineering.com

April 24, 2018

Subject: Nafsi ya Jamii, Engineering Judgment, Outdoor Fireplace Burning Characteristics
Case File No.: PLN15195

Dear Sir or Madam,

Dr. David Rich from Reax Engineering has conducted an evaluation of an outdoor fireplace located on a one-acre parcel of land at 3732, 3720, and 3746, 39th Avenue in Oakland Ca.

Dr. Rich has a PhD in Combustion Engineering with expertise in fire science and is a lecturer in Smoke Control in the graduate program in Fire Protection Engineering at Cal Poly San Luis Obispo. Experience relevant to the current project includes design and performance evaluation of pyrolysis reactors, wood burning stoves and outdoor fire pits including experimental evaluations and modeling of the UC Berkeley Dafur Stove and experimental evaluation of fire pit performance for the Girl Scouts of America.

Representatives of the Native American spiritual nonprofit organization, Nafsi ya Jamii have requested evaluation of an outdoor fireplace to determine whether the process of burning wood fuels in the fireplace is likely to produce more smoke than typical fire pit burning of wood permitted under local municipal codes. It is our understanding that the fireplace burns wood to heat rocks used in traditional Arapaho sweat lodge ceremonies. Several dozen rocks are brought from the fireplace into an adjacent sweat lodge through an opening in the lodge that faces the nearby fireplace. During the ceremony, the door of the lodge is opened several times so that the fire keeper may quickly exit and bring in additional, ceremonially heated rocks. A typical sweat lodge ceremony lasts 3 to 4 hours.

Site Visit and Materials Reviewed

Dr. Rich visited the site on Saturday, January 6th, 2018 where he inspected a well-constructed concrete fireplace with exterior dimensions of approximately 2 ½ ft. wide by 4 ½ ft. high and 3 ft. deep. A 6 ½ inch diameter steel chimney fitted with a spark arresting screen extends approximately 5 ft. 10 inches above the surface of the top surface of the concrete box (Figure 1). Interior dimensions are approximately 1 ft. 10 inches wide by 2 ft. 4 inches tall with approximately 4-inch-thick concrete walls. Nafsi Y Jamii representatives reported to me that the fireplace was newly constructed by Leon Dockery, construction professor at Laney College.

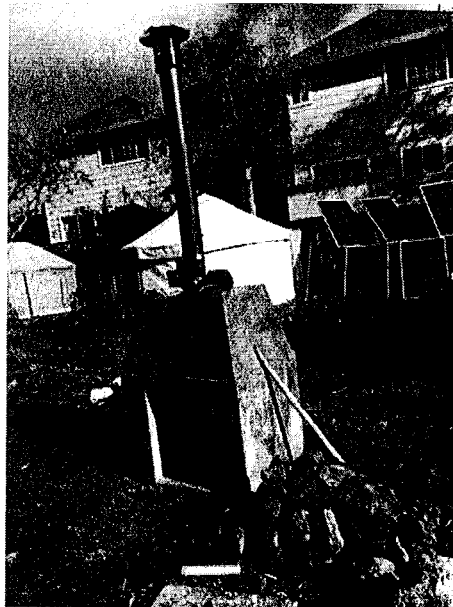


Figure 1. Fireplace located at the Oakland site where sweat lodge ceremonies are proposed.

Also reviewed were the following documents.

1. Nafsi ya Jamii Commissioners Handbook Oakland Planning Commission July 19th, 2017
2. Legal Brief Nafsi ya Jamii Sweat Lodge Wilson Rules
3. Section 3 Opposition Binder.pdf

Evaluation

Review of the "Opposition Binder" referenced above indicates that evaluation of smoke production from the Nafsi ya Jamii site was based on a photographic review of a smoke plume produced during trials of a simple fire pit. This fire pit was reportedly assembled from loosely placed cinder blocks forming an approximately 4-foot diameter and 7-foot-high ring. The replacement fireplace is smaller and employs a chimney which enhances airflow to the fuel for cleaner burning than conventional fire pits and directs smoke in a higher temperature plume to greater elevations. The smaller fire box reduces the mass of fuel that can be burned and promotes radiative heat feedback to the fuel during combustion, also raising efficiency.

High smoke production in combustion of cellulosic fuels (wood) is primarily caused by inefficient combustion of the fuels, typically resulting from any one or a combination of the following discussed in further detail below:

- Inadequate air flow
- High heat losses
- Decomposed and/or high moisture content or overly large fuels

Air Flow

High smoke production is typically accompanied by lowered heating efficiency since the smoke is combustible. Design of wood burning appliances seeks to minimize smoke production and maximize heat production. This is achieved in well-designed fireplaces by enhancing air flow through the fuel using efficient natural ventilation which maximizes air flow rates and thereby efficient combustion of the fuel (and smoke).

Chimneys are the most common engineered approach to maximizing air flow without resorting to forced ventilation associated with mechanical fans. Nafsi ya Jamii has constructed their fireplace with a 6 ft. tall by 6 1/2 -inch diameter chimney above the fire box which will effectively draw air into the front opening of the fire box and through the burning fuels before being drawn up the chimney. This approach will provide significantly more efficient combustion and lower smoke production rates when compared with typical open fire pits with no chimney that are commonly used in backyard recreational applications. The chimney will also retain the high temperature of the smoke as it rises which enhances buoyancy and directs the hot column of smoke higher into the air above the fireplace. This will reduce low level dissipation and spread to the areas directly surrounding the fireplace when compared with burning in an open fire pit.

Heat Losses

Fires also burn more efficiently if there is an external source of heat aiding the decomposition and combustion of the fuel. Hot walls of a fire place provide this heat through re-radiation of flame energy. With five reradiating surfaces around the fuel in the Nafsi ya Jamii designed fireplace, the fuel would see enhanced burning after a short period of heating of the fireplace walls. Gathering fuels together into a closely spaced vertical arrangement also enhances radiative heat feedback between separate pieces of fuel as is seen with use of charcoal stovepipe starters. Open fire pits have significantly lower re-radiating surface area and poorer ability to limit spreading of the fuel with an associated decrease in fuel burning efficiency.

Wood Quality

Fuels of low quality and/or high moisture content require a greater amount of heat to decompose to pyrolysis products and will therefore burn less efficiently. Large fuels also perform poorly in the early phases of combustion due to lower surface area to volume ratios that limit heat transfer to the fuel. Both open pit and enclosed fireplaces will see degraded performance resulting from use of low quality fuels. However, the baseline enhancement in combustion efficiency associated with fireplace construction will provide improved burning of lower quality fuels and better natural ventilation of smoke to higher altitudes.

Conclusion and Recommendations

The new Nafsi ya Jamii fireplace will significantly increase fuel burning efficiency and reduce smoke production due to enhanced air flow, higher heat retention, and radiative heat feedback to the fuels when compared to typical open fire pits. The fireplace will also reduce low-level smoke spread by ducting and columnating hot smoke to higher altitudes.

Fire pit burning was used as the basis for opposition arguments alleging higher smoke production rates. Improved performance of the newly designed Nafsi ya Jamii fire pit is reasonably expected to address these concerns for the reasons outlined above.

During our review, the following recommendations were made (subject to ceremonial limitations) which may further minimize smoke production as follows:

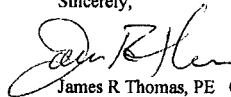
- Employ dry, high surface area to volume ratio fuels of good quality.
- During startup, maintain good ventilation, and start with thinner, light weight fuels which are allowed to reach well established flaming before additional fuels are added.
- Stack fuels in configurations that maximize air flow and radiative feedback between fuels. Do not exceed the ventilation capacity of the fireplace.
- Minimize burning during windy or wet environmental conditions.
- Monitor the fire to maintain robust flaming or well-developed coal beds until the fire is extinguished.
- Consider added height with double walled construction to the chimney to enhance smoke loft to higher elevations.

Sincerely,

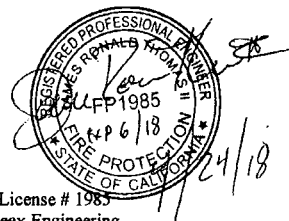


David B. Rich, PhD
Principal, Reax Engineering

Sincerely,



James R Thomas, PE CA License # 1985
Fire Protection Engineer, Reax Engineering





Date October 1, 2015

TO WHOM IT MAY CONCERN:

As the owner of High Street Pharmacy at 4248 MacArthur Boulevard, it is my pleasure to inform you that the Pharmacy has an agreement with Pat St. Onge and Wilson Riles for their use of our parking lot. Next to our building we have a 26 space parking lot and it is less than four blocks away from their property at 3746 39th Avenue.

High Street Pharmacy is closed for business at 6:30 on weekdays. However, even during those business hours more than half the lot is free. On Saturdays we close at 2:00 p.m. and on Sundays we are closed all day.

We appreciate the work that Pat, Wilson, and Nafsi ya Jamii does with and for our community. We are glad to share the use of the parking space vacancies in our lot.

If there are any questions, please feel free to contact me here at the Pharmacy (510-530-1335).

Gareen

HIGH STREET PHARMACY

TELEPHONE: (510) 530-1335 FAX: (510) 531-8902

4248 MACARTHUR BLVD. OAKLAND, CA 94619

SERVING THE BAY AREA SINCE 1946

Attachment C